

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

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CASE NO. 837-RE-2022

V.

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MICHAEL NOLEN
COLDWELL BANKER REALTY
License Registration No. 05-642353

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CONSENT ORDER AND SETTLEMENT AGREEMENT

This matter comes before the Maryland Real Estate Commission (“Commission”) as the result of a complaint filed by Samantha Schweinhart and David Lee McSherry (“Complainants”). Based on the complaint and an investigation the Commission issued a Statement of Charges and Order for Hearing dated June 13, 2023 against the Respondent, Michael Nolen, a real estate salesperson affiliated with Coldwell Banker Realty, license registration number 05-642353. The Commission transmitted this matter to the Office of Administrative Hearings (“OAH”) for a hearing, which the OAH scheduled for September 28, 2023. To resolve this matter without a formal hearing, the Commission and the Respondent have agreed to enter into this Consent Order and Settlement Agreement to provide for the imposition of disciplinary measures, which are fair and equitable in these circumstances and consistent with the best interest of the people of the State of Maryland.

The Commission and the Respondent agree and stipulate as follows:

1. At all times relevant to the matters set forth in this Consent Order and Settlement Agreement, the Commission has had jurisdiction over the subject matter and the Respondent.
2. The Commission licenses the Respondent as a real estate salesperson affiliated with Coldwell Banker Realty, license registration number 05-642353. The Respondent’s current license will expire on May 31, 2024.
3. On April 3, 2019, Coldwell Banker Residential Brokerage, identifying the Respondent as listing agent, entered a listing agreement with the owner/seller of a property known as 209 Dorchester Street, Unit B, Ocean City, Maryland 21842 (“Dorchester property”).
4. In or about September 2019, the Respondent showed the Dorchester property to Mr. McSherry. During the showing, the Respondent represented that he had wanted to purchase the Dorchester property himself but was not able to make an offer.
5. The Respondent also represented that should the Complainants make an offer to purchase the Dorchester property he could prepare the contract offer and present it to the owner/seller.

6. On or about October 8, 2019, the Complainants advised the Respondent that they wanted to make an offer on the Dorchester property and, thereafter, provided the Respondent with information about their intended negotiating strategy, including the price they intended to offer.

7. On or about October 15, 2019, the Respondent prepared a contract offer on behalf of the Complainants to purchase the Dorchester property.

8. Although the Complainants understood that the Respondent would act on their behalf in good faith, between the date the Complainants notified the Respondent that they wanted to make an offer on the Dorchester property and the date the Respondent prepared and submitted the contract offer on behalf of the Complainants to the owner/seller, the Respondent began negotiations to purchase the Dorchester property for himself representing to the owner/seller that he had made a "much better" offer than the Complainants.

9. The Respondent did not notify the Complainants of his renewed interest in, or offer to purchase, the Dorchester property until October 18, 2019, when the Respondent advised the Complainants his manager would assign a different agent to represent them going forward.

10. The owner/seller accepted the Respondent's offer to purchase the Dorchester property.

11. Based on the facts described above, the Respondent admits and consents to the entry of an Order that he violated Business and Occupations Article, Annotated Code of Maryland ("BOP") §§17-322(b)(33) and COMAR 09.11.02.02A, which provide:

§17-322. Denials, reprimands, suspensions, revocations, and penalties-- Grounds.

(b) *Grounds.* —Subject to the hearing provisions of §17-324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

* * *

(33) violates any regulation adopted under this title or any provision of the code of ethics[.]

Code of Maryland Regulations

Title 09. Maryland Department of Labor

Subtitle 11. Real Estate Commission

Chapter 02. Code of Ethics

. 02 Relations to the Client.

A. In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve the licensee from his statutory obligations towards the other parties to the transaction.

12. As penalty for the Respondent's violation described above, the Respondent consents to the entry of an Order that he shall pay a civil penalty in the amount of two thousand five hundred dollars (\$2500.00) within ten (10) days of his execution of this Consent Order and Settlement Agreement.

13. The Respondent further consents to the entry of an Order that within sixty (60) days of his execution of this Consent Order and Settlement Agreement he shall complete and provide proof of completion of two 3-hour ethics courses taken in addition to, and not substituted for, the continuing education course requirements set forth in BOP §17-315 and COMAR 09.11.06 for the renewal of the Respondent's license, which will expire on May 31, 2024.

14. The Respondent further consents to the entry of an Order that should he fail to pay the civil penalty or complete the continuing education courses as agreed herein, the Commission shall automatically suspend any real estate licenses the Respondent may hold, including license registration number 05-642353, until the Respondent has fully complied with the Commission's Order.

15. By entering into the Consent Order and Settlement Agreement, the Respondent expressly waives the right to an administrative hearing before the Office of Administrative Hearings on the charges, the making of Findings of Fact and Conclusions of Law by an administrative law judge, all further proceedings before the Commission and any rights to appeal from this Consent Order.

16. The Respondent enters this Consent Order and Settlement agreement voluntarily, knowingly, willingly, and with the advice of counsel.

17. The Commission agrees to accept this Consent Order and Settlement Agreement as the full and final resolution of this matter.

**BASED ON THESE STIPULATIONS AND AGREEMENTS, IT IS THIS 27^v
DAY OF September, 2023 BY THE MARYLAND REAL ESTATE
COMMISSION:**

ORDERED that the Respondent's has violated BOP §17-322(b)(33) and COMAR 09.11.02.02A, and it is further,

ORDERED that based on the Commission's consideration of the seriousness of the violation, the harm caused by the violation, the good faith of the Respondent, and any history of previous violations by the Respondent, the Commission imposes on the Respondent a civil penalty of \$2500.00, which the Respondent shall pay to the Commission within ten (10) days of the Respondent's execution of this Consent Order and Settlement Agreement, and it is further.

ORDERED that within sixty (60) days of the Respondent's execution of this Consent Order and Settlement Agreement, the Respondent shall complete and provide proof of

completion of two 3-hour ethics courses taken in addition to, and not substituted for, the continuing education course requirements set forth in BOP §17-315 and COMAR 09.11.06 for the renewal of the Respondent's license, and it is further

ORDERED that should the Respondent fail to pay the civil penalty or complete the continuing education courses as set forth herein, the Commission shall automatically suspend any real estate licenses the Respondent may hold, including license registration number 05-642353, until the Respondent has fully complied with the Commission's Order, and it is further

ORDERED that the Commission's records and publications reflect the violation and civil penalty imposed on the Respondent.

MARYLAND REAL ESTATE COMMISSION:

By: **SIGNATURE ON FILE**

MICHAEL KASNIC
EXECUTIVE DIRECTOR

~~AGREED:~~
SIGNATURE ON FILE
MICHAEL NOLEN, RESPONDENT

9/27/2023
DATE