

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE *
COMMISSION *
V. * CASE NO. 10-RE-300
*
TERRENCE L. MCKENZIE *
CENTURY 21/POTOMAC WEST *
111 S. GEORGE STREET *
CUMBERLAND, MARYLAND 21502 *
Lic. No. 05-321644 *
* * * * *

CONSENT ORDER AND SETTLEMENT AGREEMENT

This matter comes before the Maryland Real Estate Commission ("Commission") as the result of a complaint filed by Robert Fansler ("Complainant") against the Respondent real estate salesperson, Terrence L. McKenzie, license registration number 05-321644. Based on the complaint and an investigation the Commission issued a Statement of Charges and Order for Hearing dated December 15, 2010 against the Respondent alleging violations of provisions of the Maryland Real Estate Broker's Act, Md. Code Ann., Bus. Occ. & Prof. Art., Title 17 ("BOP") and the Code of Maryland Regulations ("COMAR"). The Commission transmitted this matter to the Office of Administrative Hearings ("OAH") for a hearing on the regulatory charges and the OAH scheduled a hearing in this matter for September 9, 2011 at 10:00 a.m. at the OAH in Cumberland, Maryland. Prior to the hearing date, the Commission and the Respondent 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 which are consistent with the best interest of the people of the State of Maryland.

The Commission and the Respondent agree and stipulate as follows:

1. The Respondent is and was at the time of the transaction at issue licensed by the Commission as a real estate salesperson affiliated with Century 21/Potomac West, license registration number 05-321644. 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. On or about January 20, 2007, the Complainant and his wife entered into a contract to purchase 10717 Cash Valley Road, Cumberland, Maryland. The Respondent was the listing agent for the seller, Anna Truly, in that transaction.
3. The Maryland Residential Property Disclaimer form signed by Ms. Truly did not disclose leaks in the basement as known latent defects.

4. The Complainant settled on the transaction on February 22, 2007. Thereafter, he discovered water penetrating the basement walls after rainfalls. As a result of the water infiltration the walls developed a black substance and musty odor.

5. The Complainant filed suit in the District Court of Allegheny County alleging misrepresentation concerning the existence of water penetration and mold in the basement. Ms. Truly, the Respondent and the Respondent's broker were co-defendants in the lawsuit.

6. The case was subsequently moved to the Circuit Court for Allegheny County, Case No. C-08-21022 where a trial on the merits was held before Circuit Court Judge Gary G. Leasure. On January 4, 2010, Judge Leasure issued a Memorandum & Order of Court in which he held as to the Respondent:

Co-defendant McKenzie was the listing agent in this transaction on behalf of the sale broker Century 21. Chris Bingaman discussed with him the water infiltration problem prior to the listing. Nevertheless, the listing was accepted with the seller's disclaimer that there were no known latent defects. Subsequently another agent of Century 21 made specific inquiry of McKenzie or other members of his sales team regarding the question of water. He believed he was told such a problem did not exist.

Md. Code Ann., Bus. Occ. & Prof. §17-322(b)(4) requires a broker and its agents to disclose to prospective purchasers a material fact that it knows relates to property with which it deals. This includes disclosure of known defects. See MICPEL Residential Real Estate Transactions, Fourth Edition, Rieger and Gibbons, §1.31 that discusses these statutory obligations.

In this case, Co-defendant's McKenzie and Century 21 breached this duty. They are jointly and severally liable with Truly for damages.

7. The Circuit Court entered judgment in the amount of \$12,475.69 in favor of the Complainant against all three co-defendants. The Circuit Court decision was not appealed and is therefore final.

8. The Respondent admits that based upon the decision of the Circuit Court of Allegheny County, Case No. C-08-21022, that the Commission would conclude that he has violated Business and Occupations Article, Annotated Code of Maryland ("BOP") §17-322(b)(4) which provides:

§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:

- (4) intentionally or negligently fails to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee or applicant deals;

9. The Respondent consents to the entry of an Order by the Commission that he has violated BOP §17-322(b)(4) and the Respondent agrees to pay a total civil penalty of \$1500.00, payable in two installments of \$750.00 each with the first payment of \$750.00 due on or before August 31, 2011 and the second payment of \$750.00 due on or before September 30, 2011.

10. The Respondent further agrees to complete a 3-hour course on agency within 60 days of the date of this Consent Order. The 3-hour agency course referenced in this Consent Order shall be in addition to, and not substituted for, the continuing education course requirements set forth in BOP §17-315 and COMAR 09.11.06. Respondent agrees to provide to the Commission a certificate of completion from the instructor of the 3-hour agency course referenced in this Consent Order within 60 days of his execution of this Consent Order.

11. The Respondent also agrees that should he fail to pay the \$1500.00 civil penalty as set forth in ¶9 and/or provide to the Commission a certificate of completion from the instructor of the 3-hour agency course referenced in this Consent Order within 60 days of the Respondent's execution of this Consent Order, the Respondent's license shall be automatically suspended until such time as he complies with the requirements of this Consent Order.

12. The Respondent, by entering into the Consent Order and Settlement Agreement, 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, any and all further proceedings before the Commission and any rights to appeal from this Consent Order.

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

14. The Commission agrees to accept this Consent Order and Settlement Agreement as the full and final resolution of Case No 10-RE-300.

30th BASED ON THESE STIPULATIONS AND AGREEMENTS, IT IS THIS
DAY OF August, 2011 BY THE MARYLAND REAL
ESTATE COMMISSION:

ORDERED that the Respondent has violated BOP §17-322(b)(4) and it is further,

ORDERED that based on the violations, the Respondent be assessed a civil penalty of \$1500.00 for the violation, which amount is payable to the Commission in two installments of \$750.00 each with the first payment of \$750.00 due on or before August 31, 2011 and the second payment of \$750.00 due on or before September 30, 2011, and it is further

ORDERED that the Respondent shall take a 3-hour agency course that shall be in addition to, and not substituted for, the continuing education course requirements set forth in BOP §17-315 and COMAR 09.11.06 and the Respondent shall provide to the Commission a certificate of completion from the instructor of the 3-hour agency course within 60 days of his execution of this Consent Order; and it is further

ORDERED that should the Respondent fail to pay the total civil penalty by September 30, 2011 or provide to the Commission a certificate of completion from the instructor of the 3 hour agency course referenced in this Consent Order within 60 days of his execution of this Consent Order, the Respondent's license shall be automatically suspended until such time as he complies with the requirements of this Consent Order; and it is further

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

MARYLAND REAL ESTATE COMMISSION:

By

Katherine F. Connelly 9/6/11
KATHERINE F. CONNELLY
EXECUTIVE DIRECTOR

AGREED:

Terrence L. McKenzie
TERRENCE L. MCKENZIE
Respondent

8/30/11
DATE