

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

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CASE NO. 2010-RE-375

V.

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GEORGEANNA S. GARCEAU,
Respondent

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CONSENT ORDER AND SETTLEMENT AGREEMENT

This matter comes before the Maryland Real Estate Commission ("Commission") as the result of a decision issued by the Maryland Court of Special Appeals in *Maryland Real Estate Commission v. Georgeanna Garceau*, 234 Md. App. 324 (2017), *cert den.*, *Georgeanna Garceau v. Maryland Real Estate Commission*, 457 Md. 460 (2018) ("*Garceau*"). Based upon the Respondent's violations of the Maryland Real Estate Broker's Act, Md. Code Ann., Bus. Occ. & Prof. Art. ("BOP"), Title 17 ("the Act"), and the Commission's Code of Ethics, Code of Maryland Regulations ("COMAR") 09.11.02 ("Code of Ethics") that were upheld by the Court of Special Appeals in its decision, as well as the Memorandum Opinion and Order issued by the Circuit Court for Harford County ("Circuit Court") on September 9, 2015, *In the Matter of Georgeanna S. Garceau*, Case No. 12-C-14-1972, the Commission and the Georgeanna S. Garceau ("Respondent") have agreed to enter into this Consent Order and Settlement Agreement ("Consent Order") to provide for the imposition of sanctions that are fair, equitable, 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. The Respondent is licensed by the Commission as a real estate broker trading as Garceau Realty, license registration number 01-84755. At all times relevant, the Commission has had jurisdiction over the subject matter and the Respondent.
2. The Commission issued a Supplemental Final Order dated May 29, 2014 finding that the Respondent violated provisions of the Act as well as provisions of the Code of Ethics. Based on the violations found by the Commission, the Commission sanctioned the Respondent by imposing a 14 day suspension of the Respondent's real estate broker's license and a \$4000 civil monetary penalty.
3. The Respondent petitioned for judicial review of the Commission's Supplemental Final Order in the Circuit Court, *In the Matter of Georgeanna S. Garceau*, Case No. 12-C-14-1972, which issued a Memorandum Opinion and Order on September 9, 2015 upholding the violations, setting aside the 14 day license suspension, and sustaining the civil monetary penalty of \$4000.

4. The Commission noted an appeal to the Court of Special Appeals and the Respondent noted a cross-appeal from the Circuit Court's September 9, 2015 Memorandum Opinion and Order. Thereafter, the Court of Special Appeals issued *Garceau*.

5. In *Garceau*, the Court of Special Appeals concluded:

"[T]here was not substantial evidence in the record to support MREC's decision that nondisclosure of the [Cross Country Estates Community Association] constituted a violation of BOP §17-322(b)(4) and (25)... We conclude that Ms. Garceau did not violate either BOP §17-322(b)(4) or (25) in not disclosing the [Cross Country Estates Community Association]."

234 Md. App. at 357. However, in *Garceau*, the Court of Special Appeals further concluded:

"[T]here was substantial evidence in the record to support MREC's finding that 1) the failure to disclose the material fact—"that due to actual and potential contamination of wells in the area, including in Cross Country Estates, the Property was subject to period well testing for possible contamination"—constituted a violation of BOP §17-322(b)(4); and 2) the failure to disclose "demonstrate[d] bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings[.]" constituting a violation of BOP §17-322(b)(25). Given the media attention focused on [sic] ExxonMobil case and this well-water contamination story, we also conclude that there is substantial evidence to support the finding that Ms. Garceau failed to "remain informed of matters affecting real estate in the community, the State and the nation[.]" which constituted a violation of COMAR 09.11.02.01, as well as a violation of BOP §17-322(b)(33). Therefore, we hold that MREC's decision with regard to the well testing was supported by substantial evidence and was correct as a matter of law."

234 Md. App. at 361-362. In reaching this conclusion and holding, the Court of Special Appeals noted: "The conduct complained of clearly falls within the plain language of the violations of the applicable statute and corresponding COMAR provision." 234 Md. App. at 362, fn. 19.

6. With regard to the sanctions imposed by the Commission in its Supplemental Final Order, in *Garceau*, the Court of Special Appeals held: "MREC's combined sanction (the fine and the suspension) originally imposed for both violations is arbitrary and capricious...the overall combined sanction imposed by the MREC on Ms. Garceau should be modified accordingly," 234 Md. App. at 365. The Court of Special Appeals remanded this matter to the Circuit Court with instructions to remand this matter to the Commission with instructions to **"RECONSIDER THE SANCTIONS IN LIGHT OF THE CIRCUIT'S COURT'S RULING AND OUR HOLDING."**

7. Based on the Court of Special Appeals conclusions and holding quoted in paragraph 5 above—"1) the failure to disclose the material fact-that due to actual and potential contamination of wells in the area, including in Cross Country Estates, the Property was subject to period well testing for possible contamination"; "2) the failure to disclose "demonstrate[d] bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings[,]"; "[g]iven the media attention focused on [sic] ExxonMobil case and this well-water contamination story, we also conclude that there is substantial evidence to support the finding that Ms. Garceau failed to "remain informed of matters affecting real estate in the community, the State and the nation[,]"; and "[t]herefore, we hold that MREC's decision with regard to the well testing was supported by substantial evidence and was correct as a matter of law"--the Respondent admits that the Court of Special Appeals upheld the Commission's finding that she has violated BOP §§17-322(b)(4), (25), and (33) as well as COMAR 09.11.02.01, 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:

* * *

(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 relates to the property with which the license or applicant deals;

* * *

(25) engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent or improper dealing;

* * *

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

(c) *Penalty.*—(1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the Commission may impose a penalty not exceeding \$5000 for each violation.

**Code of Maryland Regulations
 Title 09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION
 Subtitle 11 REAL ESTATE COMMISSION
 Chapter 02 Code of Ethics
 .01 Relations to the Public.**

A. The licensee shall remain informed of matters affecting real estate in the community, the State, and the nation.

8. In accordance with the circuit court's ruling and the Court of Special Appeals holding, based on the aforementioned violations of the Act and Code of Ethics, the Respondent agrees to pay, and the Commission agrees to accept, as a sanction for her violations, a civil penalty in the amount of two thousand dollars (\$2000) payable upon the Respondent's execution of this Consent Order.

9. The Respondent agrees that by entering into this Consent Order, she expressly waives the right to any and all further proceedings before the Commission in this matter and waives any and all rights to petition for judicial review of or otherwise appeal from this Consent Order. The Respondent further agrees that she has entered into this Consent Order voluntarily, willing, knowingly, and with the advice of counsel, Gerard G. Magrogan, Esquire.

10. The Commission agrees to accept this Consent Order as the full and final resolution of Case No. 2010-RE-375.

BASED ON THESE STIPULATIONS AND AGREEMENTS, IT IS THIS _____ DAY OF June 5, 2018 BY THE MARYLAND REAL ESTATE COMMISSION:

ORDERED that the Respondent has violated BOP §17-322(b)(4), (25), and (33) as well as COMAR 09.11.02.01; and it is further,

ORDERED that the Respondent be assessed a civil penalty of two thousand dollars (\$2000.00) for her violations, which amount is payable to the Commission upon the Respondent's execution of this Consent Order, and it is further

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

MARYLAND REAL ESTATE COMMISSION:

By:

MICHAEL L. KASNIC, EXECUTIVE DIRECTOR

AGREED:

GEORGEANA S. GARCEAU, RESPONDENT

Date