

MARYLAND REAL ESTATE
COMMISSION

v.

JAMES (TOBY) E. VICTOR, III,

Respondent

* BEFORE THE MARYLAND
* REAL ESTATE COMMISSION
* COMPLAINT NO. 2012-RE-451
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CONSENT ORDER

This matter comes before the Maryland Real Estate Commission (“Commission”) based on a complaint filed by Keith and Catherine Bryan, Complainants, against James (Toby) E. Victor, III (“Respondent”). Based on that complaint, the Commission determined that administrative charges against the Respondent were appropriate and that the case should be referred to the Office of Administrative Hearings (“OAH”) for the scheduling of a hearing. This matter was heard by an Administrative Law Judge at the OAH on January 10, 2014. However, after the conclusion of the hearing, the Commission and the Respondent reached an agreement to resolve the matter in lieu of that hearing. The Commission and the Respondent consent to the entry of this Order as final resolution of this action as to administrative charges against the Respondent in Complaint No. 2012-RE-451.

IT IS STIPULATED BY THAT PARTIES that:

1. The Respondent is currently licensed as a real estate salesperson and is affiliated with Execuhome Realty (License No. 05-574570); his license expires on August 16, 2014.

2. At the time of the events at issue in this case, the Respondent was licensed as a real estate salesperson and was affiliated with Execuhome Realty.

3. On January 10, 2012, Keith and Catherine Bryan, sellers, and Springtree Farm Group, Inc., by Paul Robinson, buyer, entered into a contract of sale for 7709 Brink Road, Gaithersburg, Maryland.

4. The Respondent was the buyer's agent in the transaction.

5. The sellers were represented by Lisa Sabelhaus, a licensed salesperson affiliated with Re/Max Town Center.

6. The contract of sale required the buyer to pay a \$20,000 earnest money deposit which was to be deposited into escrow with Lake Forest Title & Escrow.

7. The transaction was a short sale requiring third party approval by Citizens & Farmer's Bank.

8. Settlement on the transaction was to occur within 35 days after the bank approved the sale.

9. The buyer submitted a \$20,000 earnest money deposit check dated January 10, 2012 payable to Lake Forest Title & Escrow.

10. On or about January 23, 2012, Respondent provided that check to Lake Forest Title & Escrow for deposit into escrow.

11. On or about January 27, 2012, a representative from Lake Forest Title & Escrow notified the Respondent by telephone that the buyer's earnest money deposit check had been returned for insufficient funds.

12. The Respondent did not disclose this fact to the sellers or their agent.

13. The Respondent contacted the buyer on several occasions about replacing the earnest money deposit check.

14. The buyer repeatedly promised the Respondent that he would do so.

15. The buyer did not replace the earnest money deposit check.

16. The Respondent did not tell the sellers or their agent of the continuing problems with getting a replacement earnest money deposit check.

17. On or about March 14, 2012, the sellers' agent notified the Respondent that the bank had approved the sale and that settlement had been scheduled for March 29, 2012.

18. On or about March 26, 2012, three days before the scheduled settlement date, Lake Forest Title & Escrow advised the Respondent that the buyer had still not replaced the earnest money deposit check.

19. The Respondent did not disclose this fact to the sellers or their agent.

20. On or about March 26, 2012, a representative of Lake Forest Title & Escrow advised the sellers and their agent that the buyer's earnest money deposit check had been returned for insufficient funds in January, 2012 and that the buyer had not replaced the check.

21. The transaction did not go to settlement.

22. By entering into this Consent Order, the Respondent expressly waives the right to a hearing or any further proceedings to which he may be entitled in this matter, and any rights to appeal from this Consent Order.

23. The Respondent enters this Consent Order freely, knowingly, and voluntarily, and having had the opportunity to seek the advice of counsel.

24. The Respondent agrees to abide by Maryland Real Estate Brokers Act, Maryland Annotated Code, Business Occupations and Professions Article §17-101 *et seq.*, and regulations of the Commission in future real estate transactions.

BASED ON THESE STIPULATIONS, IT IS, THIS 23rd *day of January*, 2014, **BY THE MARYLAND REAL ESTATE COMMISSION,**

ORDERED that Respondent James (Toby) E. Victor, III has violated Maryland Annotated Code, Business Occupations and Professions Article, §§17-322(b)(25),(32), and (33), and 17-532(c)(1)(vi), as well as Code of Maryland Regulations 09.11.02.02A, and it is further

ORDERED that the Respondent is reprimanded for those violations, and it is further

ORDERED that the Respondent is assessed a total civil penalty of \$5,000.00 for those violations, which amount is payable to the Commission within 30 days of the date on which this Consent Order is executed by the Commission, and it is further

ORDERED, that, if payment of the civil penalty is not made within that 30-day period, the Respondent's real estate salesperson's license shall be automatically suspended until payment of the total civil penalty is made, and it is further.

ORDERED that the Commission's records and publications shall reflect the terms of this Consent Order.

SIGNATURE ON FILE

JAMES (TOBY) E. VICTOR, III

SIGNATURE ON FILE

COMMISSIONER *Ann S. Cooke*
MARYLAND REAL ESTATE COMMISSION

01/16/2014
Date