

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

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CASE NO. 115-RE-2015 GF

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V.

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DERRICK ENGLISH
DELTA EXCLUSIVE REALTY L.L.C.
99 COMMERCE PLACE, SUITE 325 D
LARGO, MARYLAND 20774
LIC. REG. 05-629297

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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 Daniel Bendt, Esquire ("Complainant") against the Respondent, Derrick English, license registration number 05-629297, a real estate salesperson affiliated with broker Delta Exclusive Realty, L.L.C. Based on the complaint and an investigation the Commission issued a Statement of Charges and Order for Hearing dated March 25, 2016 and transmitted this matter to the Office of Administrative Hearings for a contested case evidentiary hearing on the regulatory charges against the Respondent. To resolve this matter without a 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 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 currently licensed by the Commission as a real estate salesperson affiliated with Delta Exclusive Realty, L.L.C., license registration number 05-629297. 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 Complainant, acting as the personal representative for the Estate of Franklin Delano Henry, listed a property, known as 2625 Butterfly Place, Indian Head, Maryland 20640, for sale through Deborah Rice, a real estate broker trading as Tri-Cities Real Estate L.L.C.
3. The Respondent prepared a contract offer dated August 14, 2014 on behalf of a buyer whom he identified on the contract of sale as "2625 Butterfly Place L.L.C.". However, there is not now and there has never been a limited liability company using the name "2625 Butterfly Place, L.L.C." registered with the Maryland Department of Assessments and Taxation.

4. The actual prospective buyer of the property was Respondent's brother who, for purposes of purchasing the property, was doing business using the name "2625 Butterfly Place, L.L.C.". The Respondent failed to disclose his familial relationship to the buyer in writing to the Complainant or his agent.

5. In the contract offer prepared by the Respondent, the buyer offered to pay \$35,000 in cash for the property; the contract offer did not contain a financing contingency. The contract offer also provided that the buyer had made an initial earnest money deposit of \$1000 "at the time of this offer" to be held in escrow by the Respondent's broker. The agreed upon date for settlement was September 15, 2014.

6. The Respondent did not collect an earnest money deposit from the buyer at the time of the offer or anytime thereafter.

7. The seller accepted and ratified the contract on August 15, 2014. After contract ratification the Respondent did not provide a copy the ratified contract of sale to his broker and the Respondent did not collect the \$1000 earnest money deposit from the buyer and turn it over to his broker for deposit into his broker's escrow account.

8. The Respondent's broker first learned of the existence of the ratified contract of sale on September 11, 2014 when he received an e-mail from the seller's agent, Deborah Rice, in which she wrote "I am working on a transaction with your agent, Derrick English, on the above-referenced property in which we are under contract to settle on Monday, September 15. He asked me to quit contacting him, hence this email to you. Could you find out the time and place for settlement on Monday? Thanks. Deborah".

9. When questioned about the transaction by his broker the Respondent admitted he had failed to collect an earnest money deposit from the buyer although he represented he had done so in the contract.

10. ~~When the Respondent's broker contacted the buyer about the earnest money deposit the buyer refused to submit the earnest money deposit to the Respondent's broker for deposit into the broker's escrow account. The buyer also refused to go to settlement on the transaction.~~

11. By letter dated October 7, 2014 the Commission requested that the Respondent provide a written response to the complaint within twenty business days but the Respondent failed to provide a written response within that time period. By letter dated November 7, 2014 the Commission again requested that the Respondent provide a written response to the complaint, this time, within ten days of the date of the letter. The Respondent also failed to provide a written response to the complaint within that time period. When contacted by Commission staff on or about October 6, 2015, the Respondent claimed he had responded to his broker and had no further obligation to respond to the Commission.

12. The Respondent's conduct in this transaction and in response to the complaint constituted improper dealings.

13. The Respondent admits that by his conduct described above he has violated Business and Occupations Article, Annotated Code of Maryland ("BOP") §§17-322(b)(25)(improper dealings), (32), and (33), 17-532(c)(1)(v) as well as Code of Maryland Regulations ("COMAR") 09.11.01.16, 09.11.02.02A and D, 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:

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

(32) violates any other provision of this title

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

§17-532 Duties to client

(c) In general.—(1) A licensee shall:...

(v) in a timely manner account of all trust money received;

COMAR 09.11.01.16

A licensee shall reply in writing to the Commission within 20 days of receipt of written inquiries directed to the licensee by the Commission. Failure to reply in this way may be considered by the Commission to be a violation of Business Occupations and Professions Article, §17-322(a)(25), Annotated Code of Maryland, for which revocation or suspension of the license can be imposed.

COMAR 09.11.02.02

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.

D. Disclosure Requirement for Licensees and Employees Buying, Selling, Leasing, and Renting Property.

(1) A licensee seeking to acquire an interest in real property must disclose the licensee's licensing status in writing to the seller or lessor of the property no later than the time that an offer is submitted.

(2) The disclosure requirement of §D(1) of this regulation also applies when the licensee is acting on behalf of or representing:

- (a) A member of the licensee's immediate family;
- (b) An entity in which the licensee has an ownership interest;
- (c) An employee of the real estate brokerage with which the licensee is affiliated; or
- (d) An employee of a team or group of which the licensee is a member.

(3) A licensee seeking to sell or lease real property owned by the licensee must disclose that ownership interest in writing at the time that the property is offered for sale or lease.

(4) The disclosure requirement of §D(3) of this regulation also applies when the licensee is acting on behalf of or representing:

- (a) A member of the licensee's immediate family;
- (b) An entity in which the licensee has an ownership interest;
- (c) An employee of the real estate brokerage with which the licensee is affiliated; or
- (d) An employee of a team or group of which the licensee is a member.

(5) Written notice required by §D(3) and (4) of this regulation may be given through the multiple list service and through any other written means effective in bringing the information to the attention of prospective buyers or lessees.

(6) The licensee's immediate family shall include the licensee's spouse or domestic partner, child, stepchild, child's spouse, stepchild's spouse, parent, sibling, grandparent, or grandchild.

14. The Respondent consents to the entry of an Order by the Commission that he has violated the above-listed provisions of the Maryland Real Estate Broker's Act and Code of Ethics. As penalty for the violations, the Respondent agrees to accept a reprimand against his license registration number 05-629297. In addition, he agrees to pay a civil monetary penalty of \$3000.00 within sixty (60) days of the date he executes this Consent Order and Settlement Agreement.

15. The Respondent further agrees that within sixty (60) of the date he executes this Consent Order and Settlement Agreement he will complete a 3-hour contracts course and a 3-hour ethics and he will provide to the Commission certificates of completion from the instructors of those courses. The Respondent agrees that the 3-hour contracts course and a 3-hour ethics course, course 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.

16. The Respondent agrees that should he fail to pay the \$3000.00 civil monetary penalty and/or provide to the Commission certificates of completion from the instructors of the 3-hour contracts course and a 3-hour ethics course within 60 days of his execution of this Consent Order and Settlement Agreement, the Respondent's license shall be automatically suspended until such time as he complies with the requirements of this Consent Order and Settlement Agreement.

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

18. The Commission agrees to accept this Consent Order and Settlement Agreement as the full and final resolution of Case No. 115-RE-2015.

BASED ON THESE STIPULATIONS AND AGREEMENTS, IT IS THIS
31st DAY OF August, 2016 BY THE MARYLAND REAL
ESTATE COMMISSION:

ORDERED that the Respondent's has violated BOP §§17-322(b)(25)(improper dealings), (32), and (33), 17-532(c)(1)(v) as well as COMAR 09.11.01.16, 09.11.02.02A and D; and it is further,

ORDERED that based on the violations, a REPRIMAND is placed against the Respondent's license registration number 05-629297; and it is further

ORDERED that the Respondent be assessed a civil monetary penalty of \$3000.00 for the violations, which amount is payable to the Commission within sixty (60) days of the date the Respondent has executed this Consent Order and Settlement Agreement, and it is further

ORDERED that within sixty (60) of the date he executes this Consent Order and Settlement Agreement the Respondent shall complete a 3-hour contracts course and a 3-hour ethics course, and provide to the Commission certificates of completion from the instructors of those courses, which shall be completed in addition to, and not substituted for, the continuing education course requirements set forth in BOP §17-315 and COMAR 09.11.06; and it is further

ORDERED that should the Respondent fail to pay the \$3000.00 civil monetary penalty and/or provide to the Commission certificates of completion from the instructors of the 3-hour contracts course and a 3-hour ethics course within 60 days of his execution of this Consent Order and Settlement Agreement, the Respondent's license registration number 05-629297 shall be automatically suspended and shall continue to be suspended until such time as he complies with the requirements of this Consent Order and Settlement Agreement; and it is further

ORDERED that the Commission's records and publications reflect the violation and penalties imposed upon the Respondent.

MARYLAND REAL ESTATE COMMISSION:

By: 
KATHERINE F. CONNELLY
EXECUTIVE DIRECTOR

AGREED: 
SIGNATURE ON FILE

Derrick English, Respondent

August 31, 2016
DATE