

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

MARYLAND REAL ESTATE  
COMMISSION

v.

OAH Case No. LABOR-REC-24-24-00316

LINDSEY J. FUNK,  
ANNEMARIE BALCERZAK, and  
AB & CO Realtors, Inc.  
Respondents,

MREC Case No. 692-RE-2021

AND

CLAIM OF ALDEN REITH AGAINST  
THE MARYLAND REAL ESTATE  
COMMISSION GUARANTY FUND

\* \* \* \* \*

**CONSENT ORDER AND SETTLEMENT AGREEMENT**

This matter comes before the Maryland Real Estate Commission ("Commission") as the result of a complaint and Guaranty Fund claim filed by Alden Reith ("Claimant") against Lindsey J. Funk, a real estate salesperson currently affiliated with AB & Co Realtors, Inc. ("Respondent Funk") and Annemarie (Annie) Balcerzak, a real estate salesperson currently affiliated with and the owner of AB & Co. Realtors, Inc. ("Respondent Balcerzak") (collectively the "Parties"). Based on the complaint and an investigation, the Commission issued a Statement of Charges and Order for Hearing against Respondent Funk and Respondent Balcerzak dated December 21, 2023 ("Charge Letter") and transmitted this matter to the Office of Administrative Hearings ("OAH") for a hearing. By Notice of Hearing dated January 25, 2024, the OAH scheduled the hearing for April 4, 2024. To resolve this matter without a formal hearing, the Parties have agreed to enter into this Consent Order and Settlement Agreement ("Consent Order") to provide for the imposition of disciplinary measures that are fair, equitable, and consistent with the best interest of the people of the State of Maryland and to resolve the Complainant's Guaranty Fund claim.

The Parties agree and stipulate as follows:

1. At all times relevant to the matters in this Consent Order, the Commission has had jurisdiction over the subject matter and the Respondents.
2. The Commission currently licenses Respondent Funk as a real estate salesperson affiliated with AB & Co. Realtors, Inc., license registration number 05-673727. Prior to affiliating with AB & Co. Realtors, Inc., Respondent Funk's license was affiliated with the real estate brokerage known as Keller Williams Legacy.
3. The Commission currently licenses Respondent Balcerzak as a real estate salesperson affiliated with AB & Co. Realtors, Inc., license registration number 05-614126. Respondent Balcerzak also owns AB & Co. Realtors, Inc. Prior to affiliating with AB & Co

Realtors, Inc., Respondent Balcerzak's license was affiliated with the real estate brokerage known as Keller Williams Legacy.

4. The Commission licenses Thomas P. Molloy, IV, as the real estate broker of record for AB & Co. Realtors, Inc., license registration number 01-661568. Prior to becoming the real estate broker of record for AB & Co. Realtors, Inc., Mr. Molloy was a real estate salesperson affiliated with the real estate brokerage known as Keller Williams Legacy.

5. The Baltimore City Department of Finance created a program designed to encourage the construction and purchase of new homes in Baltimore City known as the "Newly Constructed Dwelling Tax Credit" program ("NCD program"). The NCD program provided a "five-year City real property tax credit (50% in the first taxable year and declining by 10 percentage points thereafter) on newly constructed or substantially rehabilitated dwellings if the property has not been previously occupied by owner or tenant since its construction or rehabilitation." Owners of newly constructed or substantially rehabbed dwellings could qualify for the tax credit by: (a) purchasing a new constructed or substantially rehabbed dwelling that has not been previously occupied; (b) occupying the dwelling as their principal residence for the duration of the credit period; and (c) filing an application for the tax credit within 90 days of settling on the purchase of the dwelling or within 90 days after the State Department of Assessments and Taxation issues the first assessment notice reflecting the value of the new construction. The NCD program expired on June 30, 2019.

6. The Baltimore City Department of Finance also created a program to encourage the construction and purchase of new homes in Baltimore City known as the "High-Performance Newly Constructed Dwellings Tax Credit" program ("HPNCD program"). To be eligible for the HPNCD program, a property owner must meet certain criteria, which included the receipt of a "high-performance" certification from Department of Housing and Community Development ("DHCD"). By law, a "high-performance building" means: (a) a building that achieves at least a silver rating according to the U.S. Green Building Council's Leadership in Energy and Environmental Design green building rating as adopted by the Maryland Green Building Council; (b) is a residential building that achieves at least a silver rating according to the International Code Council's 700 National Green building standards; (c) achieves at least a comparable rating according to any other appropriate rating system; (d) or meets comparable green building guidelines or standards approved by the State of Maryland.

7. RC Crittenton, LLC ("Seller") developed a townhome community known as Crittenton Hill ("Community") located on West 32<sup>nd</sup> Street (Lots 8-19) ("West 32<sup>nd</sup> Street Lots") and Elm Avenue (Lots 1-7) ("Elm Avenue Lots") in Baltimore City, Maryland. Jeff Barba of Gnu Homes LLC ("Builder") built the dwellings in the Community.

8. Promotional materials created to market sales of the townhomes to be built in the Community contained a document titled "Included Features" and referenced, *inter alia*, a "Baltimore City New Home Tax Phase-In Program" ("promotional materials"). Respondent Funk did not create the promotional materials.

9. Purchasers of the townhomes built on the West 32<sup>nd</sup> Street Lots received tax credits under the NCD program. Respondent Funk was not involved in the sales of the West 32<sup>nd</sup> Street Lots.
10. Beginning in October 2019, Respondent Funk served as the selling and listing agent for the Elm Avenue Lots. The promotional materials Respondent Funk used to market the Elm Avenue Lots were the same promotional materials that had been used to market the West 32<sup>nd</sup> Street Lots, which referenced the "Baltimore City New Home Tax Phase-In Program." Respondent Funk was unaware that the NCD program had expired on June 30, 2019.
11. In October 2019, Respondent Funk became aware of the HPNCD program and, upon reviewing the details of that program, Respondent Funk believed purchasers of the Elm Avenue Lots would be eligible to receive a tax credit under the HPNCD program; consequently, she did not revise the promotional materials used to market the Elm Avenue Lots.
12. On June 6, 2020, Claimant viewed Lot 7 in the Community located at 3113 Elm Avenue, Baltimore, Maryland, 21211 ("Property") during an open house. Respondent Funk provided a copy of the promotional materials to the Claimant on that date. The Claimant was interested in purchasing the property because of the advertised "Baltimore City New Home Tax Phase-In Program" tax credit.
13. On or about June 15, 2021, the Claimant made a contract offer to purchase the property, which the Seller accepted and ratified.
14. Thereafter, Claimant's buyer's agent and Claimant's mortgage broker requested that Respondent Funk provide them with information about the advertised "Baltimore City New Home Tax Phase-In Program" tax credit. When providing the information, Respondent Funk did not differentiate between the expired NCD program and the HPNCD program.
15. Based upon the Claimant's understanding that the property would be eligible for the advertised tax credit, the Claimant's mortgage loan application reflected the phased-in tax reduction.
16. The day before the Claimant settled on her purchase of the property, the Claimant learned she could not apply for the tax credit until after she settled on the purchase of the property.
17. The Claimant settled on her purchase of the property on December 4, 2020.
18. When Claimant attempted to file an application for the NCD program, she discovered that the NCD program had expired on June 30, 2019.
19. Claimant subsequently applied for the HPNCD program. However, the Baltimore City Department of Finance notified the Claimant by email dated May 28, 2021 that her application could not be approved because the DHCD could not determine whether the property as constructed met the high-performance threshold.

20. By email dated May 30, 2021, the Claimant contacted the Seller to obtain information about the construction of the property. In turn, the Seller contacted the Builder, Respondent Funk, and Respondent Balcerzak to obtain the requested information writing: "do you guys know anything about this? I don't."

21. By email dated May 31, 2021, Respondent Funk wrote to the Seller, the Builder, and Respondent Balcerzak, "I do not. I was always told by Jeff that CH would qualify for this. I don't see why they wouldn't. I wonder if there is a mix up with the city..."

22. By email dated June 1, 2021, the Builder wrote to Respondent Funk and Respondent Balcerzak, "I have never heard of the High-Performance tax credit. Only the new home tax credit. But they should qualify with a HERS test from a 3rd party testing company. We use Green Gurus. During construction we used them to complete a blower door test to get the Use and Occupancy."

23. Based upon the above-described facts, Respondent Funk admits and consents to the entry of an Order by the Commission finding that she violated and is subject to Business Occupations and Professions Article ("BOP"), §17-322(b)(19) and (33) well as Code of Maryland Regulations ("COMAR") 09.11.02.01(G), 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:

(19) advertises in any misleading or untruthful manner...

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

**COMAR 09.11.02.01**

**G. Advertisement**

(1) for the purpose of this regulation, "advertisement" means any representation, promotion or solicitation directed to consumers, by any means of communication, for any purpose concerning the provision of real estate brokerage services.

(2) The licensee in advertising shall be especially careful to present a true picture...

24. As a penalty for the above-described violations, Respondent Funk further consents to the entry of an Order by the Commission imposing a **REPRIMAND** against Respondent Funk's license, registration number 05-673727.

25. To resolve the Complainant's Guaranty Fund claim, the Respondents jointly and severally agree to pay to the Complainant and the Complainant agrees to accept the sum of \$16,395.66 payable by certified check, cashier's check, money order, or attorney escrow check within fourteen days (14) days of the date of this Consent Order.

26. The Complainant agrees that upon her receipt of the full payment of \$16,395.66 from the Respondents, the Commission shall dismiss Complainant's Guaranty Fund claim in this matter with prejudice.

27. The Respondents further agree that should they fail to make payment to the Complainant in the amount of \$16,395.66 within thirty (30) days from the date of this Consent Order, the Respondents' licenses shall be automatically suspended and remain suspended until such time as the payment in full has been made to the Complainant; should the Respondents' failure to make payment to the Complainant in the amount of \$16,395.66 extend beyond thirty (30) days from the date of this Consent Order, the Complainant may request that the Commission transmit this matter back to the Office of Administrative Hearings for a hearing on the Complainant's Guaranty Fund claim.

28. Respondent Balcerzak acknowledges that the Commission initiated this proceeding against her with substantial justification and in good faith. In consideration of the above facts, agreements, and stipulations, the Commission agrees to enter an Order dismissing the charges against Respondent Balcerzak.

29. By entering into the Consent Order and Settlement Agreement, the Respondents expressly waive the right to: (a) an administrative hearing before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings to defend the charges and the Guaranty Fund claim; (b) the making of Findings of Fact and Conclusions of Law by an ALJ; (c) submit exceptions to this Consent Order and Settlement Agreement before the Commission; and (d) seek judicial review of this Consent and Settlement Agreement by a court of competent jurisdiction.

30. Having consulted with independent legal counsel regarding the negotiation and execution of this Consent Order, the Respondents hereby agree and acknowledge that they are entering this Consent Order knowingly, willingly, voluntarily, and with the advice of counsel.

31. The Claimant hereby agrees and acknowledges that she is entering this Consent Order knowingly, willingly, and voluntarily. The Claimant further agrees and acknowledges that she had the opportunity to consult with independent legal counsel of her own choosing at her own expense but chose not to do so.

32. The Parties agree that the Commission shall withdraw this matter from the OAH Hearing document for settlement purposes pursuant to COMAR 09.01.03.07A.

**BASED ON THESE STIPULATIONS AND AGREEMENTS, IT IS THIS <sup>3rd</sup> DAY OF Apr 11, 2024 BY THE MARYLAND REAL ESTATE COMMISSION:**

**ORDERED** that Respondent Lindsey J. Funk has violated the Maryland Real Estate Broker's Act, Md. Code Ann., Business Occupations and Professions Article, §17-322(b)(19) and (33) well as Code of Maryland Regulations 09.11.02.01(G); and it is further

**ORDERED** that based on the violations, the Commission imposes a **REPRIMAND** against Respondent Lindsey J. Funk's license, registration number 05-673727; and it is further

**ORDERED** that the Commission's charges against Respondent Annamie (Aunie) Balczak be and hereby are dismissed; and it is further.

**ORDERED** that the Respondents shall jointly and severally pay the Claimant the sum of \$16,395.66 payable by certified check, cashier's check, or money order within fourteen days (14) days of the date of this Consent Order. Upon the Claimant's receipt of the sum of \$16,395.66 by certified check, cashier's check, money order, or attorney escrow check from the Respondents, the Claimant's Inquiry Fund claim shall be dismissed with prejudice, and it is further.

**ORDERED** that should the Respondents fail to make payment to the Claimant in the amount of \$16,395.66 within fourteen (14) days of this Consent Order as ordered herein, the Respondents' licenses shall be automatically suspended and remain suspended until such time as payment in full has been made to the Claimant; and it is further.

**ORDERED** that should Respondents' failure to make payment to the Claimant in the amount of \$16,395.66 extend beyond thirty (30) days of the date of this Consent Order, the Claimant may request that the Commission transmit this matter back to the Office of Administrative Hearings for a hearing on the Claimant's Query Fund claim; and it is further.

**MARYLAND REAL ESTATE COMMISSION**

By 4/3/24 CHAIR  
**SIGNATURE ON FILE**

Date	4/3/2024	THIS SO AGREED SIGNATURE ON FILE
Date	4/3/2024	LINDSEY B. KERR ON FILE
Date	4/3/2024	Annemie (Aunie) Balczak Respondent
Date	4/3/2024	Aunie Balczak Claimant