

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

*

V.

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OAH NO.DLR-REC-24-08-23674
CASE NO. 07-RE-190

*

GARY PAKULLA T/A
RE/MAX ADVANTAGE REALTY

*

AND

*

CLAIM OF EDWARD TRACY AGAINST
THE MARYLAND REAL ESTATE
COMMISSION GUARANTY FUND

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* * * * *

CONSENT ORDER

This matter comes before the Maryland Real Estate Commission ("Commission") as the result of a complaint and Guaranty Fund claim filed by Edward Tracy ("Claimant") against Gary Pakulla, an associate real estate broker affiliated with RE/MAX Advantage Realty, license registration number 03-15274 ("Respondent"). Based on the complaint and an investigation, the Commission issued a Statement of Charges and Order for Hearing. The case was referred to the Office of Administrative Hearings ("OAH") and scheduled for hearing on the charges and Guaranty Fund Claim.

In this matter, Jessica B. Kaufman, Assistant Attorney General, was assigned to represent the Commission, Gerard G. Magrogan, Esquire, represents Gary Pakulla and Edward Tracy represents himself. Prior to the hearing the parties agreed to enter into this Consent Order as a final settlement of Case No. 07-RE-190.

THE PARTIES AGREE AND STIPULATE TO THE FOLLOWING:

1. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.07, this matter shall be withdrawn from the OAH docket for settlement purposes.
2. The Respondent is currently, and was at the time of the transaction at issue, licensed by the Commission as an associate real estate broker affiliated with RE/MAX Advantage Realty holding license registration number 03-15274. 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.
3. On or about September 15, 2006, the Claimant filed a complaint and Guaranty Fund claim against the Respondent. Based on the complaint and an investigation, the Commission issued a Statement of Charges and Order of Hearing dated June 5, 2008 ("Charge Letter") alleging that the Respondent has violated Md.

Code Ann., Business Occupations and Professions Art. (BOP), §17-322(b) (4) (25) and (33) as well as COMAR 09.11.02.01H and 09.11.02.02A.

4. The charges against the Respondent arise out of a residential contract of sale dated on or about September 6, 2005 between the Claimant and Craig and Tracy Carter (“Sellers”) for 712 Lenstrom Friend Court, Catonsville, Maryland (“the property”). The Respondent was the listing agent in the transaction.

5. Under Baltimore County Code §32-4-310, the developer of Meridale Meadows, the subdivision in which the property is located, had the authority to charge to the owners of the individual lots, and their successors, fees representing the cost of connecting the water and sewer pipes in the streets of the subdivision to each individual lot in the subdivision. The fees, which are known as “front foot benefit assessments,” are amortized over a period of 30 years and are payable by the owners or their successors at the rate of \$550.00 per year. An agreement between the developer and Forest Glen Utility Company to collect these fees was recorded in the Baltimore County Land Records, liber 0014252, folio 665 on March 3, 2000.

6. The Respondent admits that the Sellers made him aware that a front foot benefit assessment was associated with the property but that he did not include information about the fees in the contract and related documents and that he did not otherwise disclose the fees to the Claimant in violation of BOP §17-322(b) (33) and COMAR 09.11.02.01H and 09.11.02.02A 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:

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

COMAR 09.11.02.01-H

For the protection of all parties with whom he deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed.

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.

7. Based on the aforementioned violations, the Respondent agrees to take a contracts course in addition to the regular continuing education requirements set forth in Md. Code Ann., Business Occupations and Professions Art., §17-315 and COMAR 09.11.06 and to submit to the Commission a copy of the certificates of completion for all continuing education courses, including the additional contracts course, taken during the preceding 2 year term. The Respondent further agrees that he shall not qualify for renewal of his license, which expires April 11, 2009, unless and until he has complied with ¶7 of this Consent Order.

8. To resolve the Claimant's Guaranty Fund claim, the Respondent agrees to pay, and the Claimant agrees to accept, the sum of \$9543.00 by check or checks payable to Edward Tracy. The Respondent and the Claimant also agree to execute a Mutual General Release.

9. The payment shall be delivered to Jessica B. Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation, 500 N. Calvert St., Suite 406, Baltimore, Maryland 21202, no later than March 11, 2009 who shall forward the payment to the Claimant upon his execution of the Mutual General Release.

10. Upon receipt of the payment referenced in ¶8 of this Consent Order, the Commission agrees to dismiss the charges in the Charge Letter that the Respondent violated BOP §17-322(b) (4) and (25) and the Claimant agrees to dismiss, with prejudice, his claim against the Guaranty Fund.

11. Should the Respondent fails to make the payment referenced in ¶8 of this Consent Order on or before March 11, 2009, he agrees that his associate real estate broker license number 03-15274 shall be automatically suspended by the Commission and shall continue to be suspended until such time as payment is made. The Respondent further agrees that the Claimant shall be entitled to a hearing on his Guaranty Fund claim.

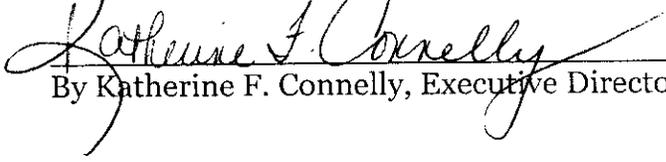
12. By entering into the Consent Order, the Respondent and the Claimant, expressly waive the right to an administrative hearing, the making of Findings of Fact and Conclusions of Law by an Administrative Law Judge, any and all further proceedings before the Commission to which they may be entitled in this matter and any rights to appeal from this Consent Order.

13. This Consent Order may be signed by the Respondent and the Claimant in counterparts.

March ^{4th} BASED ON THESE STIPULATIONS, IT IS THIS DAY OF
COMMISSION: 2009 BY THE MARYLAND REAL ESTATE

ORDERED that this matter shall be resolved in accordance with the terms of this Consent Order, and that the same shall be reflected among the records of the Commission.

MARYLAND REAL ESTATE COMMISSION:


By Katherine F. Connelly, Executive Director

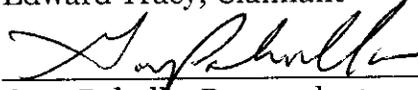
AGREED:

Date

2.23.09

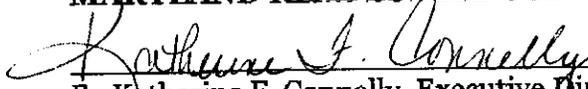
Date

Edward Tracy, Claimant



Gary Pakulla, Respondent

MARYLAND REAL ESTATE COMMISSION:


By Katherine F. Connelly, Executive Director

AGREED:

2-23-09
Date


Edward Tracy, Claimant

Date

Gary Pakulla, Respondent