

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

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CASE NO. 2020-RE-517

v.

**TIMOTHY ASHER,
Respondent**

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**AND CLAIM OF SANDRA AND AMARO VILLA
AGAINST THE REAL ESTATE
COMMISSION GUARANTY FUND**

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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 and Guaranty Fund claim filed on or about May 16, 2020 by Sandra and Amaro Villa ("Villas"). Based on the complaint and an investigation, the Commission issued a Statement of Charges and Order for Hearing against the Respondent Timothy Asher ("Respondent") dated September 13, 2022 ("Charge Letter") and transmitted this matter to the Office of Administrative Hearings ("OAH") for a hearing on the regulatory charges and Guaranty Fund claim. By a Notice of Hearing dated November 28, 2022, the OAH scheduled this matter for hearing beginning on January 24, 2023 and continuing on January 25, 2023, January 26, 2023, and February 8, 2023. On December 1, 2022, the Commission issued an Amended Charge Letter against the Respondent. On December 14, 2022, the parties attended a settlement conference held at the OAH. During the settlement conference, the parties agreed to resolve this matter without the need for a formal hearing by entering into this Consent Order and Settlement Agreement, which provides for the imposition of disciplinary measures that are fair and equitable in these circumstances and are consistent with the best interest of the people of the State of Maryland. The parties agree and stipulate as follows:

1. 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. Effective December 29, 2011, the Commission licensed the Respondent, license registration number 05-641927, as real estate salesperson affiliated with broker RE/MAX Leading Edge; hereafter, the Respondent renewed his license on two year cycles. However, the Respondent allowed his real estate salespersons license to expire on December 29, 2021 without renewal.
3. The Respondent is a member of Phoenix Property Developers, LLC ("Phoenix"). Phoenix is a Maryland limited liability company that the Respondent formed in or about May 2012 for the purpose of purchasing, substantially renovating, and selling residential real property in Maryland. The Respondent is authorized to enter contracts on Phoenix's behalf.

4. The Respondent engages regularly in a business of dealing in real estate.
5. In or about July 2019, Phoenix purchased a residential property known as 7264 Forest Avenue, Hanover, Maryland (the "property") from seller Melissa Reese, Personal Representative of the Estate of William A. Reese, also known as William Andrew Reese.
6. At the time Phoenix made an offer on and purchased the property, the Metropolitan Listing Service ("MLS") listing represented under the heading "Utilities" that the property's sewer was a "Private/Community Septic Tank."
7. In or about December 2019, Phoenix entered an Exclusive Right to Sell Residential Brokerage Agreement to sell the property with real estate salesperson Delaney Burgess ("Ms. Burgess") and associate real estate Broker Gail Nyman ("Ms. Nyman"), who are affiliated with RE/MAX United Real Estate. John Lesniewski ("Mr. Lesniewski") is the broker of record for RE/MAX United Real Estate. Ms. Nyman is a team leader for a RE/MAX United Real Estate team known as the Gail Nyman Group ("Nyman Group"). Ms. Burgess is a member of the Nyman Group who works together with Nyman to provide real estate brokerage services.
8. In the MLS listing prepared by Ms. Burgess and Ms. Nyman on behalf of Phoenix, they represented under the heading "Utilities" that the property's sewer was a "Private/Community Septic Tank."
9. On December 22, 2019, the Villas, who were represented by a buyer's agent, submitted an offer to purchase the property, which included both an "On-Site Sewage Disposal System Inspection and Test Addendum" and a "Property Inspections Addendum."
10. Upon receipt of the Villas' purchase offer, the Respondent represented to Ms. Burgess and Ms. Nyman that the property was on public sewer and did not have a private septic tank based on representations from Respondent's contractor and charges on Respondent's purchase settlement statement for public water/sewer. The Respondent did not contact the Anne Arundel County Health Department to verify the representation made by the Respondent's contractor and the charges on the Respondent's purchase settlement statement for public water/sewer.
11. Based upon the Respondent's representation that the property was on public sewer and did not have a private septic tank, Ms. Burgess and Ms. Nyman represented to the Villas through their buyer's agent that the property was on public sewer and that they had "input the listing wrong."
12. In reliance on the representation that the property was on public sewer and did not have a private septic tank, the Villas moved forward with the contract to purchase the property without the OSSDS Addendum.
13. On December 24, 2019, the Respondent, on behalf of Phoenix, signed and ratified the Villas' contract offer to purchase the property.

14. After the home inspection and prior to settlement, the Villas requested that Phoenix make various repairs to the property. At the same time, the Villas inquired whether the property was on public sewer or private septic.
15. Ms. Burgess contacted the Respondent who again represented to Ms. Burgess that the property was on public sewer and did not have a private septic tank.
16. Based on the Respondent's representation, Ms. Burgess again represented to the Villas through their buyer's agent that the property was on public sewer.
17. During a pre-settlement walkthrough of the property, the Villas discovered certain repairs Phoenix had agreed to make following the home inspection had not been made to their satisfaction.
18. On January 31, 2020, Phoenix and the Villas settled on the sale of the property. At settlement, the Respondent, on behalf of Phoenix, and the Villas signed a contract amendment/addendum, which provided: "All parties agree that the seller is providing a \$1500 credit to the buyers. It is understood by all parties that the above-referenced property is being sold strictly in AS-IS condition."
19. Shortly after settlement, the Villas discovered that the property's sewage disposal system was a private septic tank as Ms. Burgess and Ms. Nyman had initially represented in the MLS listing rather than public sewer as the Respondent had repeatedly represented.
20. An inspection of the septic system revealed it was in poor condition and needed immediate replacement.
21. When notified of the Villas' discovery, the Respondent claimed to have made an "honest mistake," stated "luckily the state/county has a lot of money available for fixing septic systems," and refused to do anything further.
22. As a result of the Respondent's representation that the property was on public sewer and did not have a private septic tank, the Villas incurred costs totaling twenty-seven thousand, three hundred and thirteen dollars (\$27,313.00) to inspect, obtain permits, and ultimately replace the septic system.
23. The Commission has alleged in the Amended Charge Letter that The Respondent has violated, and is subject to the Maryland Real Estate Broker's Act, Business Occupations and Professions Article, §§17-322(b) (3), (4), (25), and (33) as well as Code of Maryland Regulations (COMAR) 09.1.02.01A and C. The Respondent denies the Commission's allegation but wishes to resolve this matter without the need for further administrative proceedings or other legal proceedings and to avoid the costs associated therewith.
24. To resolve the regulatory charges, the Respondent agrees that he shall not be entitled to apply to reinstate his real estate salespersons license, license registration number, 05-

641927, pursuant to BOP §17-314(g), or to otherwise apply for any other license type issued by the Commission, for a period of one (1) year commencing on the date the Commission executes this Consent Order. The Respondent agrees that following the one (1) year period, should he apply to have his real estate salespersons license reinstated pursuant to BOP §17-314(g) or to apply for any other license type issued by the Commission, after making application, the Respondent will be required to appear at an application hearing before the Commission or its designee. At the application hearing, the burden of proof will be on the Respondent to demonstrate that he meets all requirements for licensure by the Commission, including, but not limited to, the requirement of good character and reputation. The Respondent understands and agrees there is no guarantee that the Commission or its designee will determine following the hearing that the Respondent is entitled to reinstatement of his license pursuant to BOP §17-314(g) or for any other license type issued by the Commission.

25. The Respondent expressly waives his right to an administrative hearing before the Office of Administrative Hearings on the regulatory charges in this matter, the making of Findings of Fact and Conclusions of Law by an Administrative Law Judge, any further proceedings before the Commission in this matter, and any rights to appeal from this Consent Order.

26. To resolve the Guaranty Fund claim, the Respondent agrees to pay to the Villas and the Villas agree to accept from the Respondent the sum of twenty-two thousand, eight hundred and thirteen dollars (\$22,813.00) to be paid by cashier's or certified check no later than January 3, 2023. The Respondent shall deliver the payment to Jessica B. Kaufman, Senior Assistant Attorney General, Department of Labor, Licensing and Regulation, 1100 N. Eutaw Street, Room 505, Baltimore, Maryland 21201, who shall forward the payment to the Villas.

27. Should the Respondent fail to make the payment of twenty-two thousand, eight hundred and thirteen dollars (\$22,813.00) referenced in paragraph 26 of this Consent Order by January 3, 2023, the Respondent understands and agrees that the Villas shall be entitled to a hearing on their claim against the Guaranty Fund.

28. The parties agree that the Commission shall withdraw this matter from the Office of Administrative Hearings docket for settlement purposes pursuant to Code of Maryland Regulations 09.01.03.07.

BASED UPON THE STIPULATIONS AND AGREEMENTS DESCRIBED ABOVE, IT IS THIS 3rd DAY OF January, 2023 BY THE MARYLAND REAL ESTATE COMMISSION:

ORDERED the Respondent shall not be entitled to apply to reinstate his real estate salespersons license registration number, 05-641927, pursuant to BOP §17-314(g), or to otherwise apply for any other license type issued by the Commission, for a period of one (1) year commencing on the date the Commission executes this Consent Order; and it is further

ORDERED that should the Respondent apply to have his real estate salespersons license reinstated pursuant to BOP §17-314(g) or to apply for any other license type issued by the

Commission, after making application, the Respondent will be required to appear at an application hearing before the Commission or its designee. At the application hearing, the burden of proof will be on the Respondent to demonstrate that he meets all requirements for licensure by the Commission, including, but not limited to, the requirement of good character and reputation. There is no guarantee that the Commission or its designee will determine following the hearing that the Respondent is entitled to reinstatement of his license pursuant to BOP §17-314(g) or for any other license type issued by the Commission; and it is further

ORDERED that the Respondent has expressly waived his right to an administrative hearing before the Office of Administrative Hearings on the regulatory charges in this matter, the making of Findings of Fact and Conclusions of Law by an Administrative Law Judge, any further proceedings before the Commission in this matter, and any rights to appeal from this Consent Order; and it is further

ORDERED that the Respondent shall pay to the Villas the amount of twenty-two thousand, eight hundred and thirteen dollars (\$22,813.00) by cashier's or certified check no later than January 3, 2023. The Respondent shall deliver the payment to Jessica B. Kaufman, Senior Assistant Attorney General, Department of Labor, Licensing and Regulation, 1100 N. Eutaw Street, Room 605, Baltimore, Maryland 21201, who shall forward the payment to the Villas; and it is further

ORDERED that should the Respondent fail to make payment to the Villas in the amount of twenty-two thousand, eight hundred and thirteen dollars (\$22,813.00) by cashier's or certified check by January 3, 2023, the Respondents shall be entitled to a hearing on their claim against the Guaranty Fund.

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

MARYLAND REAL ESTATE COMMISSION:
SIGNATURE ON FILE

By: [Signature]
Michael Kasnic, Executive Director

SIGNATURE ON FILE

[Signature]
[Redacted]

12/27/2022

SIGNATURE ON FILE

[Signature]
Timothy E. Asher

Date

1-3-2023

SIGNATURE ON FILE

[Signature]
Sandra Villa

Date

1/3/2023

[Signature]
Angelo Villa

Date

[Redacted]