

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

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v.

CASE NO. 2020-RE-517

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**DELANEY BURGESS,
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 Delaney Burgess (“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 June 5, 2017, the Commission licensed the Respondent, license registration number 05-668108, as real estate salesperson affiliated with broker RE/MAX United Real Estate. The Respondent’s current license will expire on June 5, 2023.
3. Timothy Asher is a member of Phoenix Property Developers, LLC (“Phoenix”). Phoenix is a Maryland limited liability company that Mr. Asher formed in or about May 2012 for the purpose of purchasing, substantially renovating, and selling residential real property in Maryland. Mr. Asher is authorized to enter contracts on Phoenix’s behalf. Mr. Asher 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 the Respondent 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"). The Respondent 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 the Respondent 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 ("OSSDS") Inspection and Test Addendum" and a "Property Inspections Addendum."

10. Upon receipt of the Villas' purchase offer, Mr. Asher represented to the Respondent and Ms. Nyman that the property was on public sewer and did not have a private septic tank.

11. Based upon Mr. Asher's representation that the property was on public sewer and did not have a private septic tank, the Respondent 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, Mr. Asher, 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. The Respondent contacted Mr. Asher who again represented to the Respondent that the property was on public sewer and did not have a private septic tank.

16. Based on Mr. Asher's representation, the Respondent 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, Mr. Asher, 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 the Respondent and Ms. Nyman had initially represented in the MLS listing rather than public sewer as Mr. Asher 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, Mr. Asher 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 Respondent admits that she has violated Business and Occupations Article, Annotated Code of Maryland ("BOP") §17-322(b) (33) and COMAR 09.11.02.01D, 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 Code of Ethics, Relation to the Public

D. The licensee shall make a reasonable effort to ascertain all material facts concerning every property for which the licensee accepts the agency, in order to fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of material facts.

24. To resolve the regulatory charges in this matter, the Respondent consents to the entry of an Order that she has violated §17-322(b) (33) and COMAR 09.11.02.01D and agrees to pay a civil penalty of fifteen hundred dollars (\$1500.00) no later than January 3, 2023.

25. To resolve the Guaranty Fund claim, the Respondent hereby agrees to pay and the Villas agree to accept the sum of one thousand five hundred dollars (\$1500.00) 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 deliver the payment to the Villas.

26. Should the Respondent fail to pay the civil penalty of \$1500 and/or make payment to the Villas in the amount of \$1500 by January 3, 2023, the Respondent understands and agrees that her real estate license registration number 05-668108, and any other real estate licenses that she holds, shall be automatically suspended and shall continue to be suspended until such time as payment is made. Further, the Respondent understands and agrees that the Villas shall be entitled to a hearing on their claim against the Guaranty Fund.

27. 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 regulatory charges in this matter, the making of Findings of Fact and Conclusions of Law by an administrative law judge on the regulatory charges in this matter, any and all further proceedings before the Commission on the regulatory charges in this matter, and any rights to appeal from this Consent Order.

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 ON THESE STIPULATIONS AND AGREEMENTS DESCRIBED ABOVE, IT IS THIS 3rd DAY OF January, ~~2022~~ 2023 BY THE MARYLAND REAL ESTATE COMMISSION:

ORDERED that the Respondent's has violated has violated Business and Occupations Article, Annotated Code of Maryland ("BOP") §17-322(b) (33) and Code of Maryland Regulations 09.11.02.01D, and it is further,

ORDERED that based on these violations, the Respondent is assessed a civil penalty of \$1500.00 for the violation, which amount shall be paid to the Commission no later than January 3, 2023, and it is further

ORDERED that the Respondent shall pay to the Villas the sum of one thousand five hundred dollars (\$1500.00) 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. Eulaw Street, Room 605, Baltimore, Maryland 21201, who shall deliver the payment to the Villas; and it is further

ORDERED that should the Respondent fail to pay the civil penalty of \$1500 and/or make payment to the Villas in the amount of \$1500 by January 3, 2023, the Respondent's real estate license registration number 05-668108, and any other real estate licenses that she holds, shall be automatically suspended and shall continue to be suspended until such time as payment is made. Further, should the Respondent fail to make payment to the Villas in the amount of \$1500 by January 3, 2023, the Villas shall be entitled to a hearing on their claim against the Guaranty Fund; and it is further

ORDERED that the Respondent has expressly waives the 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 on the regulatory charges in this matter, any and all further proceedings before the Commission on the regulatory charges in this matter, and any rights to appeal from this Consent Order; and it is further

ORDERED that the Commission's records and publications reflect the violation and civil penalty imposed on the Respondent.

**MARYLAND REAL ESTATE COMMISSION:
SIGNATURE ON FILE**

By: Michael Kasnic, Executive Director

12/19/2022

Date

12/25/22

Date

12/25/22

Date

**AGREED:
SIGNATURE ON FILE**

Destiny Briggs

SIGNATURE ON FILE

SIGNATURE ON FILE

Amaro Villa