

**MARYLAND REAL ESTATE
COMMISSION**

v.

**DIANA KEELING
COLDWELL BANKER
RESIDENTIAL BROKERAGE
7272 Wisconsin Avenue
Bethesda, Maryland 20814
Lic. Reg. No. 05-303526
Respondent**

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* **BEFORE THE**
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* **MARYLAND REAL**
* **ESTATE COMMISSION**
* **CASE NO. 11-RE-403**

CONSENT ORDER AND SETTLEMENT AGREEMENT

This matter comes before the Maryland Real Estate Commission ("Commission") as the result of a complaint filed by the Commission dated March 5, 2013 against the Respondent real estate salesperson Diana Keeling, Lic. Reg. No. 05-303526, following the Commission's investigation of Complaint No. 403-RE-2011 GF filed on April 26, 2011 by Edward V. Staros and Patricia G. Staros. To resolve the Commission's complaint against the Respondent without a formal 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 Coldwell Banker Residential Brokerage, license registration number 05-303526. 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 Respondent was the listing agent for a property known as 7105 Arandale Road, Bethesda, Maryland a newly constructed residence built in an existing neighborhood. Cottage Industry LLC, an entity owned by Carey Hoobler ("Hoobler"), was the builder and seller of the property.

3. During construction of the residence, Hoobler requested that the Washington Suburban Sanitation Commission ("WSSC") build a water and/or sewer "house connection" from the main line to service the property. Under Maryland law, in the year following completion of water and/or sewer main construction, connecting improved properties or abutting unimproved properties are assessed Front Foot Benefit

Charges ("FFBC") to repay funds borrowed by WSSC for water and/or sewer main construction. The FFBC assessed against the property by the WSSC appear on a property tax bill for 20 years but may be paid in a lump sum at any time.

4. As part of the service application process, in lieu of paying cash to reimburse the WSSC for the construction costs, Hoobler elected to defer FFBC for a period of three years. The assessment of FFBC by the WSSC, Hoobler's decision to defer payment of FFBC for three years, and the amount of the assessment are material facts about the property.

5. The Complainant's buyer's agent prepared a contract offer dated May 27, 2007 on behalf of the Complainants. The sales contract included a form titled "Government Regulations, Easements and Assessments Disclosure and Addendum (REA)" that is required for all listing agreements and sales contracts in Montgomery County. On page 3 at ¶8 the REA states: "**8. Front Foot Benefit Charges:** Are there currently front foot benefit charges to WSSC? ___ yes ___ no. If yes, the annual assessment is \$_____." The buyer's agent did not fill in the blank spaces in ¶8 on page 3 of the REA before submitting the contract offer to the Respondent.

6. After the buyers' agent submitted the contract offer to the Respondent, Hoobler filled in the blank spaces in ¶8 on page 3 of the REA by handwriting a checkmark next to the word: "yes" and by handwriting the words: "? AWAITING WSSC Assessment" next to the dollar sign (\$). Hoobler also handwrote his initials, "CH" below ¶8 on page 3 of the REA. Hoobler accepted and ratified the sales contract on or about June 1, 2007.

7. On or about June 2, 2007 the Respondent faxed a copy of the ratified sales contract to the buyers' agent but failed to include a copy of page 3 of the REA in the fax transmission.

8. By this failure the Respondent negligently failed to disclose to the buyers and/or their agent a material fact that the Respondent knew or should have known that related to the property with which the Respondent was dealing. As a result the Complainants were deprived of the opportunity to negotiate with Hoobler prior to settlement the issue of who would pay the assessed FFBC when they became due to WSSC.

9. The parties settled on the transaction on June 25, 2007. The title work did not disclose FFBC assessed against the property, that Hoobler had deferred payment of the FFBC for three years or the amount of the annual assessment.

10. The Complainants first learned of FFBC assessed against the property in late April or early May 2010 when they received a mailing from WSSC informing them of the assessment, the three year deferral of the costs by Hoobler, and that the annual assessment would be added to their county tax bill beginning in July 2010 and continuing for 23 years unless they chose to pay the assessment in one lump sum.

11. The Respondent's conduct in this transaction also constituted incompetence and/or improper dealings.

12. The Respondent admits that by her acts and omissions described above she has violated the Maryland Real Estate Broker's Act, Md. Code Ann., Bus. Occ. & Prof. Art. ("BOP" or the "Act"), §17-322(b) (4), (25), (32), and (33), §17-532(c)(1) (vi) as well as the Commission's Code of Ethics, Code of Maryland Regulations ("COMAR") 09.11.02.01A, D, and H and COMAR 09.11.02.02A and B, which provide:

§17-322 Denials, reprimands, suspensions, revocations, and penalties--Grounds.

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(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:

* * *

(4) intentionally or negligently fails to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee or applicant deals;

* * *

(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:...

* * *

(vi) exercise reasonable care and diligence;

* * *

COMAR 09.11.02.01-A

The licensee shall remain informed of matters affecting real estate in the community, the State and the nation.

COMAR 09.11.02.01-D

The licensee shall make a reasonable effort to ascertain all material facts concerning every property for which he accepts the agency so that he may fulfill his obligation to avoid, error, exaggeration, misrepresentation, or concealment of material facts

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.

COMAR 09.11.02.02-B

In justice to all who place their interests in the licensee's care, the licensee shall endeavor always to be informed regarding laws, proposed legislation, governmental orders, and other essential information and public policies which affect those interests.

13. The Respondent consents to the entry of an Order by the Commission that she has violated the aforementioned provisions of the Act and COMAR.

14. As penalty for the violations, the Respondent agrees to complete a 3-hour contracts course and to provide to the Commission a certificate of completion from the instructor of the 3-hour contracts course within 60 days of the Respondent's execution of this Consent Order. The Respondent agrees that the 3-hour contracts 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. The Respondent further agrees that should she fail to provide the certificate of completion to the Commission within 60 days of her execution of this Consent Order, the Respondent's license shall be automatically suspended until such time as she has complied with the requirements of this Consent Order.

15. 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 ("OAH") on the regulatory charges, the making of Findings of Fact and Conclusions of Law by an administrative law judge of the OAH, any and all further proceedings before the Commission and any rights to appeal from this Consent Order.

16. The Commission agrees to accept this Consent Order and Settlement Agreement as the full and final resolution of Complaint No. 244-RE-2013.

24 **BASED ON THESE STIPULATIONS AND AGREEMENTS, IT IS THIS**
DAY OF APRIL, 2013 BY THE MARYLAND REAL
ESTATE COMMISSION:

ORDERED that the Respondent's has violated BOP §17-322(b) (4), (25), (32), and (33), §17-532(c)(1)(vi) as well as COMAR 09.11.02.01A, D, and H, and 09.11.02.02A and B and it is further,

ORDERED that based on the violations, the Respondent shall complete a 3-hour contracts course and provide to the Commission a certificate of completion from the instructor of the 3-hour contracts course within 60 days of the Respondent's execution of this Consent Order. The 3-hour contracts 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. Should the Respondent fail to provide the certificate of completion to the Commission within 60 days of her execution of this Consent Order, the Respondent's license shall be automatically suspended until such time as she has complied with the requirements of this Consent Order; and it is further

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

MARYLAND REAL ESTATE COMMISSION;

SIGNATURE ON FILE

By: _____
KATHERINE F. CONNELLY
EXECUTIVE DIRECTOR

AGREED: **SIGNATURE ON FILE**

DIANE KEELING, RESPONDENT

4-3-13

DATE