

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

MAINE REAL ESTATE COMMISSION

In Re:)
F. Blair Einstein)
Blair Agency) *CONSENT AGREEMENT*
P.O. Box 368)
Belfast, Maine)
)

INTRODUCTION

This Consent Agreement regarding the brokerage activity of F. Blair Einstein is entered into pursuant to 32 M.R.S.A. § 13069(6)(B) (1988). The parties to this Consent Agreement are F. Blair Einstein ("Einstein") and Carol J. Leighton, Director of the Maine Real Estate Commission ("Director").

FACTS

On 9/7/05 Peter R. Clifford ("Clifford") filed a complaint with the Maine Real Estate Commission against Einstein, a broker licensed with and designated broker of Blair Agency. Based upon the staff investigation, the Director determined the facts to be as follows:

During September of 2004 Alfred Keith ("Keith") owned a single family home and land located on Bluff Road in Northport, Maine. Keith was living in a nursing home in Bangor. Keith assigned Drexell White ("White") as his power of attorney and was represented by Attorney Edmond Bearor ("Bearor"). Prior to this transaction Keith, White, Einstein, and Clifford knew one another for numerous years. At some point Clifford spoke with Keith and White about his interest in Keith's Northport home.

On 9/23/04 Einstein listed for sale Keith's Northport home and land. The listing agreement was signed by White as Keith's power of attorney. At the time of the listing Einstein did not obtain property disclosure information.

On 9/24/04 Einstein prepared a written offer from Clifford for the purchase of Keith's home in Northport. The written offer was conveyed to White. Clifford's offer included a \$1,000.00 earnest money deposit.

Clifford and Einstein do not agree on the events that occurred between 9/24/05 and 10/29/04. Nevertheless, on 10/29/04 Einstein and Clifford met to revise Clifford's offer. Under the section of the purchase and sale agreement stipulating the book and page number of the deed describing the property being purchased, Einstein checked that Keith was conveying "part of" his Northport property. Additionally the purchase price was reduced by \$10,000.00 from Clifford's initial

offer, the date of acceptance of the offer was changed to 10/29/04, and the closing date was changed to 2/29/05. During their meeting Einstein provided a copy of part of the survey that had been completed on Keith's property. The copy included the portion of Keith's property Clifford was purchasing. At no time during the negotiations of either written offer did Einstein provide written property disclosure information to Clifford.

On 11/15/04 Keith accepted Clifford's offer.

During December of 2004 Einstein contacted Bearor and requested that he retain Clifford's earnest money deposit as he was leaving for vacation and would not be in Maine for the closing, which was scheduled for the end of January 2005. Bearor agreed, and on 12/17/04 Einstein mailed a check #1937 from the agency trust account for \$1,000.00 payable to Bearor's office. Einstein had not obtained written consent from the parties.

Prior to issuing the check to Bearor for Clifford's earnest money, Einstein reviewed his trust documents for the deposit and was unable to find where Clifford's earnest money had been deposited. Einstein found Clifford's check in the transaction file. During the investigation Einstein provided documentation that on 12/17/04 he deposited \$1,000.00 into his agency's trust account. The copy of the statement provided does not include identification of the account as a "real estate trust account."

Various problems arose and the closing did not occur on 2/29/05. A new contract was eventually negotiated and during August of 2006 Clifford purchased Keith's home. Einstein was not involved in the transaction. During the investigation Clifford stated he was unaware that his earnest money deposit of \$1,000.00 had been conveyed to Bearor until sometime during the negotiations of the final contract. The \$1,000.00 was applied to the purchase of Keith's property by Clifford.

AGREEMENT

Whereas, the parties wish to conclude this matter without a hearing before the Commission, they hereby agree to the following terms, subject to the approval of the Commission and the Department of the Attorney General.

1. Einstein acknowledges all the facts set forth above as true to the best of his knowledge and belief.
2. Einstein acknowledges that he failed to obtain information necessary to make disclosures to the buyer by not obtaining at the time of listing Keith's property, disclosure information pertaining to the private water supply, heating, waste disposal system, and hazardous materials, which constitutes a violation of 32 M.R.S.A §13067(1)(F) in effect at the time; and Chapter 330 Section 15(A) of the Maine Real Estate Commission Rules in effect at the time.
3. Einstein acknowledges that he failed to deposit earnest money within three business days of the acceptance of the offer by placing Clifford's check for \$1,000.00 issued for the

purchase of Keith's property into the transaction file and not into his agency's trust account, which is a violation of 32 M.R.S.A. §13067(1)(F) in effect at the time; and Chapter 320 Section 3(C) of the Maine Real Estate Commission Rules in effect at the time.

4. Einstein acknowledges that he failed to have the bank statements for the agency's trust account identified as a "real estate trust account" which constitutes a violation of 32 M.R.S.A. §13067 (1)(F) in effect at the time; and Chapter 320 Section 3(B) of the Maine Real Estate Commission Rules in effect at the time.

5. Einstein acknowledges that he failed to properly maintain an earnest money deposit by releasing Clifford's earnest money deposit prior to the closing without a written agreement of the parties, which constitutes a violation of 32 M.R.S.A. §13067(1)(F) in effect at the time; and Chapter 320 Section 3(D) of the Maine Real Estate Commission Rules in effect at the time.

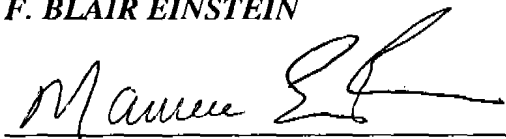
6. Einstein agrees to pay a fine to the Commission in the amount of \$4,000.00 by June 4, 2008. Payment is to be in the form of a bank check or money order payable to the Treasurer of the State of Maine.

7. The Director and the Commission agree that no further agency or legal action will be initiated against Einstein by the Commission based upon the facts described herein, except that in the event that Einstein does not fully comply with the terms of this Agreement, the Director or the Commission shall initiate whatever action is deemed necessary. However, the Director or the Commission may consider the misconduct described above as evidence of a pattern of conduct in the event that similar misconduct allegations are brought against Einstein in the future. Additionally, the Director or the Commission may consider the fact that discipline was imposed by this Agreement as a factor in determining appropriate discipline should any further misconduct allegations be proven against Einstein in the future.

Dated: 12/29/07


F. BLAIR EINSTEIN

Dated: 12/29/07

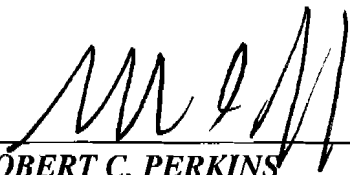

WITNESS

Dated: 1/2/08


CAROL J. LEIGHTON
Director
Maine Real Estate Commission

APPROVED

Dated: 1/17/08



ROBERT C. PERKINS
Assistant Attorney General
Commission Counsel for the
Office of the Attorney General



JEFFREY S. MITCHELL
Chair
Maine Real Estate Commission