

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

MAINE REAL ESTATE COMMISSION

In Re:

Mona A. Benoit
Castlerock Real Estate
1035 Main Street
Sanford, Maine

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CONSENT AGREEMENT

INTRODUCTION

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

FACTS

On, April 12, 2005 Virginia M. DeBoer("DeBoer") filed a complaint with the Maine Real Estate Commission against, Matthew E. Gardner ("Gardner"), at the time a real estate sales agent licensed with Castlerock Real Estate ("Castlerock"). Gardner's sale agent license expired on 1/12/07. Castlerock Real Estate is owned by Mona and Dennis Benoit. Mona is the designated broker and Dennis Benoit ("Dennis") is licensed as an associate broker with the agency. Based upon the staff investigation, the Director determined the facts to be as follows:

Section 1. The DeBoer Complaint

Virginia M. DeBoer was the designated broker of Choice One Real Estate in Sanford. Anthony Fantasia ("Fantasia") was an associate real estate broker licensed with Choice One Real Estate. Choice One Real Estate practices appointed agency.

On October 6, 2004, Fantasia listed for sale a single family home located in Waterboro owned by Roger and Jennie Moreau ("the Moreaus"). At the time of the listing, the property was in foreclosure. The property was originally listed at a sale price of \$179,000.00; the price was reduced on two occasions and finally on January 3, 2005 the price was reduced to \$162,500.00.

At some point in February 2005, Matthew E. Gardner ("Gardner"), at the time a sales agent licensed with Castlerock Real Estate ("Castlerock"), prepared an offer on behalf of Castlerock's buyer client, Valerie Grant ("Grant"), to purchase the Moreau property. The offer included a purchase price of \$157,000.00; a \$500.00 earnest money deposit; a requirement that the sellers contribute \$4,000.00 towards the buyer's closing costs; and a closing date of March 31, 2005. On February 23, 2005 the sellers accepted the offer. The buyer did not have the funds to pay the \$500.00 earnest money deposit, and Gardner paid for a money order from York County Federal

Credit Union for Grant's earnest money deposit. Gardner did not tell Fantasia that he had paid the \$500.00 deposit.

Between March 26, 2005 to April 1, 2005 Fantasia was on vacation. During this period DeBoer began working with the Moreaus as their appointed agent.

On March 31, 2005 the Moreau/Grant closing was scheduled for 12:00 p.m. at Cousins Home Lending in Sanford. Earlier that day the HUD-1 settlement statement ("the HUD-1") was faxed by the title company to DeBoer and Gardner. The HUD-1 listed the contract sales price as \$179,000.00. Upon receipt of the HUD-1, DeBoer contacted Robert Raymond ("Raymond"), the loan officer with Cousins Home Lending, and requested that a corrected HUD-1 be prepared to reflect the true contract price of \$157,000.00. At 12:08 p.m. DeBoer received, by fax, another HUD-1 with a contract sales price of \$157,000.00.

When DeBoer arrived at the closing, documents were already being signed by the parties. In attendance were Dennis, the Moreaus, Grant and her husband, Gardner, Raymond, and the attorney representing the title company. Gardner had requested that Dennis attend the closing. At some point, DeBoer became aware that the sales price on the closing documents, including the HUD-1, was \$179,000.00. At some point in the closing, an addendum that had been prepared by Dennis was signed by the buyer and sellers, in which the parties agreed that the sales price was \$179,000.00 and that the sellers would give the buyer any amount over \$153,000.00 for closing costs and upgrades. The terms of the addendum were not included in the HUD-1. The transaction closed on March 31, 2005.

Prior to the closing and on March 31, 2005 Dennis had a bank check in the amount of \$17,693.91 issued from a Castlerock agency account established at the York County Federal Credit Union. The bank check was issued to two payees, "Dennis A. Benoit" and "Apple Tree Title." Dennis claimed this was a loan to the buyer for her closing costs. Dennis' "loan" to the buyer was not included on the HUD-1 for the closing. On that day, Dennis also wrote two checks from the same agency account, one for \$1,306.08 payable to Grant and one for \$500.00 payable to Gardner. These three checks totaled \$19,499.99.

During the closing the settlement agent wrote a closing proceeds check to the sellers in the amount of \$19,499.99. Dennis asked that the sellers endorse the check. Dennis then picked up the check, which had been endorsed by the sellers, off the closing table and placed it in a folder. On March 31, 2005 Dennis deposited \$19,499.99 into the agency's account at York County Federal Credit Union.

During July of 2005 Grant was contacted by Cousins Home Lending main office in Portsmouth, New Hampshire and told she had obtained a fraudulent loan when purchasing the Waterboro home. Grant was told that she needed to refinance her mortgage. Although costs to refinance were reduced, the closing statement shows Grant incurred \$4,967.52 in settlement charges in order to refinance the mortgage.

Section 2. Castlerock Real Estate Transaction Files

By letter dated May 10, 2007, the Director notified Mona that she was to provide copies of all real estate transaction files in which Robert Raymond was involved as the loan officer. Raymond was the loan officer on the Grant transaction. He worked for Cousins Home Lending.

Mona provided copies of 55 real estate transaction files that involved Castlerock and Raymond. The Director identified 15 transactions which closed between September 17, 2005 and November 30, 2006. In each of these 15 real estate transactions the following facts are established:

- (A) Raymond was the loan officer for each transaction.
- (B) Castlerock practiced disclosed dual agency.
- (C) The purchase and sale agreements for each transaction contained a clause identifying who was representing the buyer and seller.
 - In 13 of the purchase and sale agreements Mona and Dennis were identified as representing both seller and buyer.
 - In one of the agreements Dennis was identified as representing both seller and buyer.
 - In one agreement Dennis was identified as representing the buyer and Gardner was identified as representing the seller.
- (D) Addenda were prepared for each transaction, most often on the day of closing or the day before, in which the parties agreed to a changed contract sales price and terms that often required monies to be paid back to the buyer or seller. These changes, based on information from Raymond, were not included on the HUD-1 for that transaction.
 - 14 of the addenda were prepared by Dennis and/or Mona.
 - One of the addenda was prepared by Gardner.
- (E) On September 17, 2005, 33 M.R.S.A. § 506 went into effect stating as follows: "In a residential mortgage loan closing, a buyer, seller or settlement agent may not knowingly be a party to a financial or other arrangement not reflected in the loan settlement statement if the effect of that arrangement is to substantially overstate the contract sales price. Any violation of this section constitutes a violation of the Maine Unfair Trade Practices Act."

Section 3. Sale of 94 Twombly Road, Sanford

The transaction file pertaining to the sale of 94 Twombly Road in Sanford is one of the 15 transaction files identified in Section 2 above.

The sellers were Richard and Patricia Smith ("the Smiths") and the buyer was Scott Arnold ("Arnold"). Dennis orally conveyed an offer from Arnold to the Smiths and an agreement was reached. The purchase and sale agreement contained a "total purchase price" of \$79,900.00. In a separate addendum the Smiths agreed to return \$20,000.00 to Arnold from the "final sale proceeds, which will leave sellers with the agreed sales price of \$59,900." The Smiths and Arnold signed the purchase and sale agreement and the addendum on November 3, 2006. Dennis and Mona are identified on the purchase and sale agreement as disclosed dual agents.

The sellers were moving to Louisiana and agreed to convey power of attorney to Dennis for the closing. The closing date on the HUD-1 is November 30, 2006. Dennis and Arnold attended the closing. The Smiths were in Louisiana. On the HUD-1 the "contract sales price" was stated as "\$79,900.00." The closing documents were mailed over night to the Smiths. On December 1, 2006 the Smiths signed the HUD-1 and each signed a "Limited Power of Attorney," conveying that authority to Dennis. The signed documents were returned to the title company.

The Smiths' closing proceeds check was made out as: "Dennis Benoit, Atty in Fact for Richard Smith & Patricia Smith." On December 4, 2006 Dennis deposited the Smiths' proceeds from the sale, \$15,454.84, into a Castlerock agency account established at the York Country Federal Credit Union. On December 4, 2006 Mona issued check #9221 payable to Arnold in the amount of \$15,454.84. This was an agreed modification of the \$20,000.00 figure originally set forth in the addendum.

The HUD-1 did not contain the information included on the Addendum changing the agreed sales price to \$59,900.00, nor did it indicate that the sellers had agreed to return \$15,454.84 to the buyer.

Section 4. Written agency policy

On 9/19/07 the Commission received the written agency policy specifying the type of agency practiced at Castlerock. Hand written on the cover page of the policy was the date of "Nov 24, 2000." The policy stated that disclosed dual agency is practiced at the agency. On page 5 the policy states: "Buyers and Sellers who choose this agency to represent them, should enter into a written contract that clearly establishes both their obligations as well as those of the agency."

On 7/1/06 The Real Estate Brokerage Act was amended to require that buyer broker client services be in writing and include at a minimum specific terms. Five of the 15 transaction files referenced above contained purchase and sale agreements dated after 7/1/06 for which Mona and Dennis were acting as agents for both the buyer and the seller. No written buyer broker agreements were executed for the 5 transactions.

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. Mona acknowledges all the facts set forth above as true to the best of her knowledge and belief.
2. With respect to Section 2 and Section 3 of the facts Mona acknowledges that she failed to protect the interests of her seller pursuant to 32 M.R.S.A. §13273 (1)(B)(3) by failing to disclose to the seller material facts of which Mona had actual knowledge or, if acting in a reasonable manner should have known, concerning the transaction by not advising her seller that

under 33 M.R.S.A. §506 the sellers could not be party to an agreement not disclosed on the HUD-1 settlement statement if that agreement would result in the contract sales price being substantially overstated on the settlement statement, in violation of 32 M.R.S.A. §13067(1)(G) in effect at the time.

3. With respect to Section 2 and Section 3 of the facts Mona acknowledges that she failed to protect the interests of her buyer clients pursuant to 32 M.R.S.A. §13274(1)(B)(3) by failing to disclose to the buyers material facts of which Mona has actual knowledge or, if acting in a reasonable manner should have known, concerning the transaction by not advising her buyer that under 33 M.R.S.A. §506 the buyers could not be a party to an agreement not disclosed on the HUD-1 settlement statement if that agreement would result in the contract sales price being substantially overstated on the settlement statement, in violation of 32 M.R.S.A. §13067(1)(G) in effect at the time.

4. With respect to Section 4 of the facts Mona acknowledges that she failed to provide a written brokerage agreement between the agency and buyer clients in five transactions, in violation of 32 M.R.S.A. §13177-A(2).

5. With respect to Section 4 of the facts Mona acknowledges that she failed to monitor compliance with her company's agency relationship policy by allowing buyer clients to be represented by affiliates of Castlerock Real Estate without a written buyer broker agreement, in violation of 32 M.R.S.A. §13067(1)(F) in effect at the time, and Chapter 400 Section 1(2) of the Maine Real Estate Commission Rules in effect at that time.

6. With respect to Section 1-4 of the facts Mona demonstrated bad faith, incompetency, untrustworthiness or dishonest, fraudulent or improper dealings by allowing the general course of conduct by the agency, of which she was aware or should have been aware, in violation of 32 M.R.S.A. §13067(1)(A) in effect at that time.


7. Mona agrees to the immediate revocation of her broker real estate license.

8. The Director and the Commission agree that no further agency or legal action will be initiated against Mona by the Commission based upon the facts described herein, except that in the event that Mona 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 Mona 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 Mona in the future.

Dated: 7-11-08


MONA A. BENOIT

Dated: 7-11-08

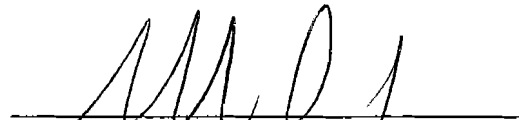

WITNESS

Dated: 7/15/08


CAROL J. LEIGHTON
Director
Maine Real Estate Commission

APPROVED

Dated: 7/16/08


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


JEFFREY S. MITCHELL
Chair
Maine Real Estate Commission