

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE CENTER, BLDG. 68-69
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920

IN THE MATTER OF:

CHRISTINE ADAMS
FUTURE PROPERTIES, INC.,

RESPONDENT.

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DBR No.: 09-L-0144

CONSENT ORDER

The Department of Business Regulation (“Department”) and Christine Adams (“Respondent”) hereby agree that:

1. Respondent is a licensed real estate broker, License Number B15385, pursuant to the terms and provisions of R.I. Gen. Laws § 5-20.5-1, *et seq.*, and *Commercial Licensing Regulation 11– Real Estate Brokers and Salespersons*.

2. The Department suspended Respondent’s license on June 24, 2009 via an Emergency Order Summarily Suspending License, Notice of Intent to Revoke License, Impose Administrative Penalty and Providing Notice of Opportunity for Hearing (“Emergency Order”) based on the following information:

- a. Respondent represented the seller of property located at 7 Brighton Street, Providence, Rhode Island (the “subject property”), in accordance with a written listing agreement executed on March 13, 2008. .
- b. On April 9, 2009, the Department received a complaint from a potential buyer of said property (“Complainant”).

- c. Complainant alleged that, beginning on August 8, 2008 when they first viewed the subject property, they were desirous of purchasing said property, and made two offers and attempts to do so.
- d. The Respondent was the listing broker during one of the offers and negotiations to purchase, which were made by the Complainant, and had several listing agreements as a broker during the time period of this transaction.
- e. The complainant alleged that, on October 17, 2008, the Respondent re-listed the subject property, although she did not have a valid listing agreement with the legal owner of the property to do so.
- f. A Purchase and Sales Agreement (“Agreement”) was prepared by the Complainant’ broker, Jane Driver of Armory Properties LLC, specifying a purchase price of \$189,000.00 with a \$10,000 deposit paid upon execution, and a closing date of December 1, 2008. The Respondent was not listed as a broker on the Agreement, which The Complainant executed on or about October 29, 2008, and tendered a personal check in the amount of ten thousand (\$10,000.00) dollars made payable to Future Properties, Inc. Said Agreement was executed by Kathryn M. Taleriko, on November 6, 2008.
- g. Subsequent to signing the Purchase and Sales Agreement, the Complainant learned that Taleriko had transferred the property via quit-claim deed sometime during 2007 to a person named Karl Aziz, thereupon verifying that Taleriko was not the owner of the subject property when she signed the Agreement on November 6, 2008.
- h. It is alleged by the Complainant further that, when Respondent was questioned about Taleriko not being the owner of record, she admitted that she had knowledge of that fact, and that she would insure that the subject property was transferred back into Taleriko’s name prior to closing.
- i. Complainant alleges that, throughout the course of the transaction until November 8, 2008, the Respondent had misrepresented the identity of the legal owner of record for the subject property.

- j. The closing did not take place on December 1, 2008, the date specified in the Purchase and Sales Agreement in effect at that time. The Complainant alleges that the reason for the failure of the sales transaction was the Respondent's assertions that the lending bank would accept the terms of a so-called "short sale," which it declined to do.
- k. On January 21, 2009, the Respondent forwarded to the Complainant's Broker (Driver) a Release of Purchase Agreement and Disbursement of Escrow form via facsimile transmission, along with a written promise to return the deposit once the Release form was executed.
- l. As Complainant's were not in agreement with the terms and provisions of the Release prepared by the Respondent, their attorney drafted an alternative "Release of Purchase Agreement and Disbursement of Escrow" form which was executed by Complainant and Taleriko, and forwarded to the Respondent on March 19, 2009. Respondent failed to respond to this request. Said attorney made another request for return of the escrowed deposit in a letter dated March 27, 2009.
- m. On March 31, 2009, a second attorney engaged by Complainant requested the return of the escrowed funds in a letter to the Respondent. The Respondent had refused to return the Complainant's deposit to her or to otherwise respond to said requests.
- n. On or about April 28, 2009, the Complainant purchased the subject property. The Respondent had no part in the document preparation or execution of the final Purchase and Sales Agreement in effect at the time of that closing, and was not listed as a broker on said Agreement.
- o. At the closing on April 28, 2009 in which the Respondent did not participate, Karl Aziz first executed a Quit Claim Deed of the subject property to Taleriko, who on the same date then executed a Warranty Deed conveying the subject property to complainant for a new sale price of \$200,000., with a payment to Aziz d/b/a/ Nile Management Co. in the amount of \$14,154.79.

- p. Respondent was aware from at least December 30, 2008 forward that the ownership of the deposit amount of \$10,000.00 was in dispute, but failed to deposit said monies after 180 days with the Rhode Island General Treasurer, as required by Section 19(C) of *Commercial Licensing Regulation 11 – Real Estate Brokers and Salespersons*.
- q. The deposit monies in dispute were deposited into Respondent's "Client Escrow Account" and those monies remained there through July 2, 2009.
- r. The Respondent, having knowledge that the ownership or return of Complainant's deposit monies were in dispute, failed to transmit said funds to the General Treasurer and notify the parties in question within the time frames established by the Rhode Island General Laws and Commercial Licensing Regulations cited herein.
- s. The Respondent did subsequently transmit the deposit monies in dispute in this transaction to the Office of the General Treasurer on or about July 2, 2009, after the issuance of the Emergency Order.
- t. In response to the Complaint referenced herein, the Department conducted an investigation of the allegations made by Complainant, which included: (i) a Field Audit of the Future Properties, Inc. brokerage from June 11 through June 19, 2009, (ii) interviews with the Respondent on June 11, and 17, 2009 and (iii) a demand for the inspection of records at said brokerage on various dates both before and after the issuance of the Emergency Order on June 24, 2009.
- u. The documents produced by the Respondent in response to the Department's demand prior to the filing of the Emergency Order were insufficient to identify the ownership of all funds belonging to others and the transactions associated with those funds, and failed to verify the accuracy and proper use of the escrow account.
- v. The only bank documents provided to the Department by the Respondent prior to the filing date of the Emergency Order were sent via facsimile transmission on June 18, 2009 and included the following:

1. A six page bank statement for a Sovereign Bank account entitled "Escrow Standalone Savings", covering the period from March 4, 2009 to April 5, showing that the account had been closed on March 19, 2009 with what appeared to be a closing withdrawal in the amount of \$84,118.93;

2. A two page computer screen printout for Sovereign Bank account with no account title or accountholder name, covering the period of April 6, 2009 to June 18, 2009, showing a balance as of June 18, 2009 in the amount of \$27,406.15.

- w. Based on the documents provided by Respondent, which were in the possession of the Department on the date of filing the initial Emergency Order, there appeared to the Department to be \$56,712.78 missing from the Respondent's closed escrow account which was unaccounted for by the Respondent in any records provided to the Department, before June 24, 2009.
- x. Through the discovery process, which ensued after June 24, 2009, the Department has obtained documents which substantiates the transfer of all the funds from the closed Escrow Standalone Savings account into a new Escrow Checking Account of Future Properties, Inc. on March 19, 2009. Thus all escrow funds were subsequently accounted for in full, with no funds missing from the account.
- y. The Department attempted, prior to the filing of the Emergency Order on June 24, 2009, to obtain records of a contemporaneous accounting of the funds held in, and transferred from the escrow account for Future Properties, Inc., which would link client fund deposits and all transfers to specific real estate transactions or earned commissions.
- z. Based on the inability of the Respondent to produce the above-described documents, the Department had significant concerns as to whether the accounts and books for Future Properties, Inc. evidenced co-mingling of client funds, or mishandling of escrow monies at that agency and by the Respondent.

5. A hearing was commenced in this matter before a Hearing Officer, and in the course of discovery, testimony and production of documents during that hearing, the Department has determined that no readily discernible evidence exists that the Respondent has misappropriated, converted for her personal use, or commingled client funds.

6. Through the hearing and discovery process, the Department learned that the Complainant did eventually purchase the subject property in a closing which occurred on April 28, 2009, after litigation was commenced between the Complainant and the Seller. The Respondent did not participate in that closing.

RELEVANT LAW

7. R.I. Gen. Laws § 5-20.5-14(a)(15) authorizes the Department to suspend or revoke a license where a licensee violates any rule or regulation promulgated by the commission or the Department.

8. R.I. Gen. Laws § 5-20.5-14(a)(20) authorizes the Department to suspend or revoke a license where a licensee demonstrates incompetency.

9. R.I. Gen. Laws § 5-20.5-14(a)(21) authorizes the Department to suspend or revoke a license where a licensee fails to have all listing agreements in writing, properly identifying the property and containing all the terms and conditions of sale and the signatures of all parties concerned.

10. R.I. Gen Laws § 5-20.5-26 provides in pertinent part:

(i) Each real estate firm shall maintain an escrow account under the supervision of the broker qualified to do business in the name and on behalf of the corporate, partnership or association licensee. All those funds paid to a salesperson or paid directly to a broker shall be segregated on the broker's books and deposited in an account in a recognized federally insured financial institution in Rhode Island separate from any account containing funds owned by the broker. A broker or salesperson shall not commingle deposit money or other customers' funds and his or her own funds, use a customer's funds as his or her own, or fail to keep an escrow or trustee account of funds deposited with him or her relating to a real estate transaction, for a period of three (3) years, showing to whom the money belongs, date deposited, date of withdrawal, to whom paid, and any other pertinent information that the commission requires. Those records are to be available to the commission and the department or their representatives, on demand, or upon written notice given to the depository. Each broker/office supervisor shall maintain a monthly report as to the status of that office's escrow account, and is responsible for its accuracy.

(v) Whenever the ownership of any deposit monies received by a broker or salesperson pursuant to this section is in dispute by the parties to a real estate transaction, the broker or salesperson shall deposit the monies with

the general treasurer within one hundred eighty (180) days of the date of the original deposit, those monies to be held in trust by the general treasurer until the dispute is mediated, arbitrated, litigated, or otherwise resolved by the parties. The parties to a real estate transaction may agree in writing to extend the time period by which the monies must be deposited with the general treasurer in accordance with regulations promulgated by the department of business regulation.

11. Section 18 (A)(1) of *Commercial Licensing Regulation 11 – Real Estate Brokers and Salespersons* (CLR 11) requires a principal broker to be responsible for each and every escrow account maintained on behalf of the brokerage.

12. Section 18 (A)(5) of CLR 11 requires that funds held in escrow may be applied to the commission when earned by the licensee only at the time of or subsequent to, the closing of the real estate transaction.

13. Section 18 (A)(6) of CLR 11 prohibits a licensee from converting the money or property of another to her own use or applying such money to a purpose other than that for which it was paid or entrusted to her.

14. Section 20 (B) of CLR 11 requires that a licensee maintain and retain records sufficient to identify the ownership of all funds belonging to others and the property associated with those funds, and that such records shall be sufficient to show proper deposit of funds in an escrow account and to verify the accuracy and proper use of the escrow account.

15. Section 20 (B) of CLR 11 further requires that the following records be included in the records kept by licensees:

1. *Bank statements.*
2. *Canceled checks.* Checks shall conspicuously identify the payee and shall bear a notation identifying the purpose of the disbursement.
3. *Journal or check stubs.* A journal or check stubs shall identify in chronological sequence each bank deposit and disbursement of monies to and from the escrow account, including the amount and date of each deposit and a reference to the corresponding deposit ticket and any supplemental

deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for all funds in the account.

4. *Copies of contracts, leases and management agreements.*

5. *Closing statements and property management statements.*

6. *Other documents.* Invoices, bills and contracts paid from the escrow account, and any documents not otherwise described herein necessary and sufficient to verify and explain record entries. Records of all receipts and disbursements of escrow monies shall be maintained in such a manner as to create an audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets. Ledger sheets must be reconciled to the escrow account bank statements on a monthly basis. To be sufficient, records of escrow monies must include a worksheet for each such monthly reconciliation showing the ledger sheets, journals and bank statements to be in agreement and balance.

16. Section 20 (C) of CLR 11 requires that every principal broker shall make available for inspection by the Department all records of transactions, books of account, instruments, documents and forms utilized or maintained in the conduct of licensed business activity, and all records pertaining to escrow account shall be made available upon demand.

17. Section 19(C)(1) and (2), of *Commercial Licensing Regulation 11 – Real Estate Brokers and Salespersons* provides:

(1) If the ownership of the deposit monies is still disputed after 180 days from the date of the original deposit, the licensee must transmit the deposit to the General Treasurer, along with the “Escrow Deposit Transmittal Form”, and

(2) A minimum of thirty (30) days prior to the expiration of the 180 days, the broker shall by written letter inform the parties of the statutory requirements regarding disputed deposits.

18. Based on the foregoing, the Department has reason to believe that, had the hearing in this matter concluded, the Department would have demonstrated that Respondent has violated Rhode Island General Laws and the Department of Business Regulation Commercial Licensing Regulation 11, *Real Estate Brokers and Salespersons*, as set forth herein.

19. The Respondent does not admit to committing the violations alleged herein, but in the interest of having her license restored and remaining in good standing, agrees to comply with the terms of this Order.

WHEREFORE, it has been determined by the Department that it is in the public interest to resolve the above-referenced matters without the continuation of the administrative hearing process. In making its determination, the Department has considered the following mitigating factors and their effect on the appropriateness of the penalties assessed against the Respondent for the violations alleged.

I. The Respondent has been licensed by the Department as a real estate broker for a period of 26 years, and has no prior complaints involving similar offenses, and has no history of disciplinary actions by the Department prior to the filing of this complaint;

II. The Department has discovered no evidence that the violations regarding the books and record-keeping at Future Properties, Inc. were willful, intentional or committed with the intention to defraud the public or the Department;

III. The Department has discovered no evidence that the Respondent has misappropriated client funds for her personal use;

IV. The Respondent has shown an understanding and acknowledgement of the violations, and has undertaken remedial actions and practices to insure that such violations do not take place in the future;

V. The Respondent has made a good faith attempt to cooperate with the Department's inquiries and demands.

IN CONSIDERATION OF THE FOREGOING, the Respondent hereby agrees as follows:

a. Respondent's real estate brokers license is suspended for a period of time, beginning on the date of the Emergency Order and ending on the date of execution of this Consent Order;

b. Upon execution of this Consent Order, the Respondent's real estate brokers license shall be reinstated forthwith;

c. Respondent shall take whatever action and execute whatever documents are necessary to effectuate the release of the \$10,000.00 deposit in question from the Office of the General Treasurer and to comply with the findings of a court of competent jurisdiction regarding the rightful ownership of those funds.

d. The rights of the Respondent and/or the complainant to pursue any valid claim to all or part of those funds is unaffected by the contents and execution of this Consent Order;

e. The Respondent agrees that the Department shall monitor the business activities of Future Properties, Inc. and all real estate transactions in which the Respondent participates, for a period of six (6) months, beginning on the date of execution of this document. Said monitoring shall include the Respondent's production on demand of the Department of any and all documents required to be maintained by real estate brokers under R.I. Gen Laws §§ 5-20.5-1 *et seq.* and/or Commercial Licensing Regulation 11 – *Real Estate Brokers and Salespersons*.

f. The Respondent agrees to provide Edward Simpson, C.P.A. with complete monthly bank statements for her business/operating checking account and her escrow account for a period of six (6) months upon the reinstatement of Respondent's real estate brokers license.

g. Respondent authorizes Mr. Simpson to submit monthly summaries of those accounts to the Department during this six (6) month period, and he shall set up a recod-keeping system for the Respondent which clearly documents the flow of monies related to all transactions.


7. By agreeing to resolve this matter through the execution of this Consent Order, Respondent voluntarily waives her right to the hearing process, voluntarily waives her right to appeal to Superior Court, and agrees to take all necessary action as delineated in this Consent Order to regain and maintain her license in good-standing.

8. If Respondent fails to abide by any of the requirements of this Consent Agreement, or if any financial or transactional records submitted to the Department show evidence that the Respondent and Future Properties, Inc. are in violation of any of the laws or regulations cited herein, the Department will initiate administrative proceedings to impose penalties against Respondent including, but not limited to: (i) suspension, (ii) revocation, and/or (iii) such additional administrative penalties as deemed appropriate by the Department. Respondent shall be provided with notice and opportunity for hearing should the Department decide to take such further action.

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THE DEPARTMENT AND RESPONDENT HEREBY CONSENT AND AGREE TO THE FOREGOING AS TO FORM AND SUBSTANCE:

Department of Business Regulation
By its Legal Counsel:

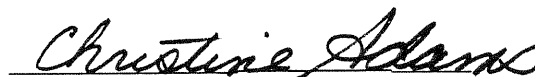

Ellen R. Balasco, Esq.
Deputy Chief of Legal Services

Date: 11/17/09

Christine Adams, Respondent
By her Counsel:

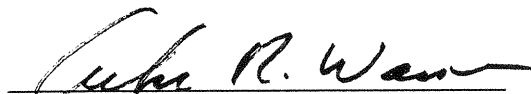

Michael F. Horan, Esq.

Date: Nov. 17, 2009


Christine Adams, Respondent

Date: 11/17/09

Recommended by:



Catherine R. Warren, Esq.
Hearing Officer

Date: 11/17/09

ORDER

I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT
 REJECT
 MODIFY


A. Michael Marques
Director

Date: 11-17-2009

ENTERED as Administrative Order No. CG-254 on the 17th day of November, 2009.

THIS CONSENT ORDER CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO RHODE ISLAND GENERAL LAWS TITLE 42, CHAPTER 35. AS SUCH, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW OF SAID COURT. HOWEVER, RESPONDENT UNDERSTANDS THAT BY WAIVING HER RIGHT TO A COMPLETE HEARING AND AGREEING TO THIS CONSENT ORDER, THE ABOVE RIGHTS ARE WAIVED AND IF ANY TERMS OF THIS CONSENT ORDER ARE VIOLATED, REFERRAL MAY BE MADE TO THE RHODE ISLAND ATTORNEY GENERAL FOR FURTHER PROSECUTION.

CERTIFICATION

The undersigned hereby certifies that a true copy of this Consent Order was mailed by regular mail, postage prepaid and sent by electronic mail to Michael F. Horan, Esq at 393 Armistice Blvd, P. O, Box A, Pawtucket, RI 02861, and also by electronic mail to the following parties at the Department of Business Regulation:

Maria D'Alessandro, Associate Director, Commercial Licensing

William DeLuca, Acting Administrator for Real Estate.
