

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE CENTER
1511 PONTIAC AVENUE, BLDG. 68-1
CRANSTON, RHODE ISLAND 02920**

IN THE MATTER OF:

GREGORY E. MICALLEF,

RESPONDENT.

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DBR No.: 09-L-0047

CONSENT ORDER

The Department of Business Regulation (“Department”) and Gregory E. Micallef (“Respondent”) hereby consent and agree that:

1. At all times pertinent hereto, Respondent was licensed by the Department as a real estate broker, holding license B13501.

2. On or about August 11, 2008, the Department received a complaint (“Complaint”) filed by Arthur Petrosinelli (“Complainant”) against the Respondent, as an affiliated broker at Olympus Group Real Estate (“the agency”) arising out of a real estate transaction for the property located at 777-787 Admiral Street, Providence, Rhode Island (“subject property”).

3. On or about August 27, 2007, the Complainant executed a Purchase and Sales Agreement for the subject property as an authorized signatory on behalf of Anginette Place, LLC, which named Gregory Micallef as the Listing Agent, and Richard J. Amato as the Cooperating Agent, both acting on behalf of the Seller exclusively. Said Agreement called for the payment of \$40,000.00 as a deposit from the Complainant and set a closing date of November 6, 2007. The Seller of the subject property was listed as Jay Five Realty and Jonathan Savage, Esq. as its authorized signatory, executed said Agreement.

4. On August 27, 2007, the Complainant tendered payment in the amount of \$40,000.00 payable to Olympus Group Real Estate.

5. The complaint alleges that the closing on the subject property was not consummated on the planned date, or anytime thereafter, due to the Seller's failure to accurately disclose the number of legal units in the subject property, zoning violation issues and Seller's inability to deliver clear title.

6. No closing, transfer of ownership, or exchange of purchase monies between the Complainant and the Respondent or Olympus Group Real Estate relative to the subject property took place on November 7, 2007.

7. Subsequent to that date, the Complainant requested the refund of his deposit monies from the Respondent and the Agency.

8. In December 2007, the Complainant/Buyer (Anginette Place LLC) and the Seller (Jay Five Realty, LLC) each filed civil lawsuits against the other in the Rhode Island Superior Court, seeking specific performance of the purchase agreement and other legal remedies.

9. On or about June 13, 2008 both the Complainant and Jonathan Savage, acting on behalf of Seller Jay Five Realty, LLC, executed a written release of funds instructing the Agency to refund \$30,000.00 of the deposit monies held in escrow to the Complainant and the amount of \$10,000.00 of the deposit monies to Savage.

10. At least as of June 13, 2008, the Respondent, and Olympus Group Real Estate had received formal notice that the ownership of the deposit monies was in dispute, but had in effect first received notice of said dispute in December of 2007, when the lawsuits were filed.

11. Respondent, and Olympus Group Real Estate refused to refund any portion of the deposit monies to the Complainant after demand for same was made, and a release executed by the parties to the transaction was received.

12. The disputed deposit monies should have been transmitted to the General Treasurer on or about May 6, 2008.

13. On August 15, 2008, the Principal Broker for Olympus Group Real Estate sent a letter to the Complainant informing him that the deposit monies in dispute would be transmitted to the General Treasurer in thirty days, citing R.I. Gen. Laws § 5-20.5-26. This

act evidenced the fact that the Principal Broker had knowledge of his obligations on behalf of the Agency under § 5-20.5-26.

14. The disputed deposit monies were never transmitted from the Agency's escrow account to the General Treasurer.

15. The Respondent, as an affiliated broker of Olympus Group Real Estate, failed to insure that the disputed deposit monies were transmitted to the General Treasurer within the proscribed time period, and further failed to notify the parties of the statutory requirements regarding disputed deposits in violation of the within cited laws and regulations.

16. R.I. Gen. Laws § 5-20.5-14(a)(20) authorizes the Department to suspend or revoke a license where a licensee, engages in any conduct in a real estate transaction, which demonstrates bad faith, dishonesty untrustworthiness or incompetency.

17. Department of Business Regulation Commercial Licensing Regulation 11, Rule 7(F)(2) (*effective dates prior to May 27, 2009*) required that funds held in escrow may be applied to the commission only when earned by the listing company. Similarly, Section 18 (A)(5) of CLR 11 (*in amended form as of May 27, 2009*) 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. .

18. R.I. Gen. Laws § 5-20.5-26(a)(1)(v), and Rule 7(C)(1) of Commercial Licensing Regulation 11 (*effective dates prior to May 27, 2009*) and Section 19(C)(1) of the Commercial Licensing Regulation (*in amended form as of May 27, 2009*) provide that whenever the ownership of any deposit monies received by a licensee is in dispute by the parties to a real estate transaction, the monies shall be transmitted to the General Treasurer within one hundred eighty (180) days of the date of the original deposit, or promptly thereafter, those monies to be held in trust by the General Treasurer until the dispute is mediated, arbitrated, litigated, or otherwise resolved by the parties.

19. Rule 7(C)(2) of Commercial Licensing Regulation 11 (*effective dates prior to May 27, 2009*) and Section 19(C)(2) of Department of Business Regulation Commercial Licensing Regulation 11 (*in amended form as of May 27, 2009*) provide that a licensee must inform the parties to a real estate transaction in writing of the statutory requirements regarding disputed deposits.

20. Based on the foregoing, the Department has reason to believe that Respondent has violated R.I. Gen. Laws §§ 5-20.5-14(a)(20), 5-20.5-26(a)(1)(v), and Commercial Licensing Regulation 11, Rules 7(F)(2) and Rule 7(C)(2) (in addition to the pertinent Sections of Regulation 11 amended May 27, 2009, as cited herein.)

21. The Department has sufficient cause to suspend or revoke Respondent's license pursuant to R.I. Gen. Laws § 5-20.5-14(a) and assess an administrative penalty for each such violation, pursuant to R.I. Gen. Laws § 5-20.5-14(b).

WHEREFORE, in an effort to effect a timely and amicable resolution of the issues raised in this Consent Agreement without an administrative hearing and to allow Respondent to regain good-standing status of his license, Respondent agrees to the following:

a. Respondent shall pay an administrative penalty in the amount of \$2,500.00, to the Rhode Island General Treasurer, for violations of the Rhode Island General Laws and Department of Business Regulation Commercial Licensing Regulation 11, as set forth in paragraph 20 herein;

b. The Respondent's broker's license, number B13501 shall be suspended for a period of 30 days, beginning on December 1, 2009 and ending on December 30, 2009.


c. The Respondent shall take whatever action is necessary to insure that the amount of \$40,000.00, representing the disputed deposit monies described herein, is transmitted forthwith from the escrow account of Olympus Group Real Estate to the Office of the General Treasurer.

By agreeing to resolve this matter through the execution of this Consent Agreement, the Respondent voluntarily waives his right to the administrative hearing process, voluntarily waives his right to appeal any finding therefrom to the Superior Court, and agrees to take all necessary action as delineated in this Consent Agreement to maintain his license in good standing.

Respondent hereby acknowledges and agrees that failure to abide by any of the requirements of this Consent Agreement shall be grounds for the Department to initiate further administrative proceedings to impose penalties against Respondent including, but not limited to: (i) revocation and/or suspension, and (ii) such additional administrative penalties that the Department deems appropriate, pursuant to R.I. Gen. Laws § 5-20.5-14.

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: ~~November 2, 2009~~

Gregory E. Micallef, Respondent
By his Counsel:



Michael Robinson, Esq.


Date: 10-29-09



Gregory E. Micallef, Respondent

Date: 10/27/09

Recommended by:



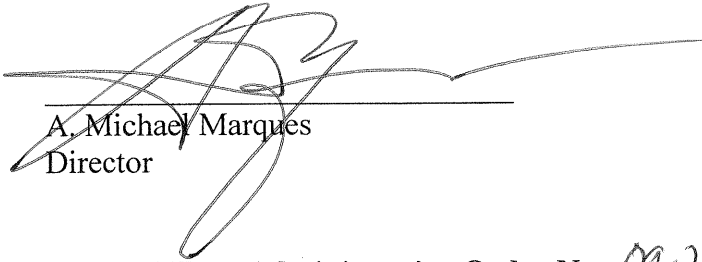
Catherine R. Warren, Esq.
Hearing Officer

Date: 11/2/09

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: November 4, 2009

ENTERED as Administrative Order No. 09-247 on the 4th 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

I hereby certify that a duplicate original of this Consent Order was sent by first class mail, postage prepaid, to Michael K. Robinson, Esq., Robinson Law Associates, 1383 Warwick Avenue, Warwick, Rhode Island 02888, on the 5th day of November, 2009, and a true copy sent to the following parties at the Rhode Island Department of Business Regulation by electronic mail:

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

Maria D'Alessandro, Associate Director

William DeLuca, Acting Administrator – Real Estate

Leslie Pratt, Licensing Aide