

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

IN THE MATTER OF:	:	
	:	
NATHAN CLARK	:	DBR No: 14RE004
	:	
RESPONDENT	:	
	:	

CONSENT ORDER

It is hereby agreed by and between the Department of Business Regulation (“Department”) and Nathan Clark (“Respondent”) as follows:

1. On October 7, 2013, the Respondent and the Department entered into a Consent Agreement (the “Consent Agreement”). In the Consent Agreement, Respondent “agrees to set-forth all appropriate and necessary disclaimers in the body of a claim made in an advertisement.” In the Consent Agreement, Respondent agreed that his Guaranteed Sales Program advertising “at a minimum shall contain a clearly legible disclaimer ensuring that the public knows that the seller and realtor must agree to the price that Respondent will pay if it is not sold.” The Consent Agreement further states that “Respondent agrees that any a footnote disclaimer in written advertised material is not an acceptable to the Department.” The Respondent and the Department disagreed as to whether the Respondent was in literal compliance or in compliance with spirit and intent of the Consent Agreement.

2. Respondent had a radio advertisement that stated “Nathan Clark guarantees to sell your home at a price and deadline you agree to or he’ll buy it.” It did not state specifically that the seller and realtor must agree to the price that Respondent will pay if it is not sold. Nor did it state specifically that the seller and realtor must agree on the time of possession.
3. Respondent had a radio advertisement that stated “You establish a price and deadline and if that deadline passes and your home isn’t sold – Nathan pulls out his checkbook and buys your home.” It did not specifically state that the seller and realtor must agree to the price that Respondent will pay if it is not sold. Nor did it specifically state that the seller and realtor must agree on the time of possession.
4. Respondent had a TV and website video that states “I guarantee in writing that I will sell your home at a price and time frame you agree to or I’ll buy it myself.” It did not specifically state that the seller and realtor must agree to the price that Respondent will pay if it is not sold. Nor did it specifically state that the seller and realtor must agree on the time of possession.
5. Respondent had a radio advertisement that stated “Nathan says ‘fire me and pay nothing.’” The advertisement did not specifically state that the client can only fire the realtor prior to accepting an offer.
6. Respondent had a radio advertisement that states “If Nathan doesn’t do his job, you can fire him at any time.” The advertisement did not specifically state that the client can only fire the realtor prior to accepting an offer.

7. Respondent had a TV and website video that stated “If we don’t do everything we promise, you can fire us.” The advertisement did not specifically state that the client can only fire the realtor prior to accepting an offer to purchase.
8. Respondent’s website advertises the Guaranteed Sales Program with the disclaimer “Seller and Nathan must agree on price and time of possession.” However, at the time the complaint was filed, the size of the font made the disclaimer inconspicuous in the opinion of the Department.
9. Respondent has print advertisements that advertise the Guaranteed Sales Program with the disclaimer “Seller & Nathan must agree on guaranteed price & closing date at time of listing.” However, at the time the complaint was filed, the size of the font made the disclaimer inconspicuous in the opinion of the Department.
10. Respondent has print advertisements that advertise the Guaranteed Sales Program with the disclaimer “Seller and Nathan must agree on price and time of possession.” However, at the time the complaint was filed, the size of the font made the disclaimer inconspicuous in the opinion of the Department.
11. The Department alleges that the Respondent’s advertisements described in paragraphs 2-10 violate the following provisions of law:
 - A. R.I. Gen. Laws § 5-20.5-14(a)(2) false promise of a character likely to influence, persuade or induce any person to enter into any contract or agreement when he or she could not or did not intend to keep that promise;
 - B. R.I. Gen. Laws § 5-20.5-14(a)(3) continued and flagrant course of misrepresentation or making of false promises through salespersons, other persons, or any medium of advertising, or otherwise;

- C. R.I. Gen. Laws § 5-20.5-14(a)(4) misleading or untruthful advertising;
 - D. R.I. Gen. Laws § 5-20.5-14(a)(20) conduct in a real estate transaction, which demonstrates bad faith, dishonesty, untrustworthiness, or incompetence; and
 - E. Commercial Licensing Regulation 11, Section 25(M) failing to assure that every advertisement or piece of promotional material shall clearly and completely disclose to the consumer all material terms and conditions of the offering.
12. The Department and the Respondent disagreed as to whether the various forms of advertisement described in paragraphs 2-10 violate the terms of the Consent Agreement.
 13. During the pendency of the Complaint and Order to Show Cause in the instant matter, Respondent independently made, modified, amended and changed his print, radio, television and web site advertisements to address the Department's concerns about the disclaimers.
 14. Respondent shall immediately cease and desist from advertising in a manner that is not in compliance with § 5-20.5-1 *et seq.* and CLR 11. Further, to the extent that Respondent's advertising is in compliance with the terms of this Consent Order, and more particularly as set forth in paragraphs 16 through 19 below, the same shall be deemed to be in full compliance with § 5-20.5-1 *et seq.* and CLR 11.
 15. Within ten (10) days of this Order, Respondent shall pay the sum of \$5,000 to the General Treasurer, State of Rhode Island as a civil monetary penalty, which

amount represents a penalty of \$1,000 each for the Department's alleged violation of R.I. Gen. Laws § 5-20.5-14(a)(2), R.I. Gen. Laws § 5-20.5-14(a)(3), R.I. Gen. Laws § 5-20.5-14(a)(4), R.I. Gen. Laws § 5-20.5-14(a)(20), and Commercial Licensing Regulation 11, Section 25(M).

16. When advertising the Guaranteed Sales Program on the radio, TV, or website video, the Respondent shall specifically state in the disclaimer that the Respondent and client must agree on the price and time of possession.
17. When advertising the fire me anytime program on the radio, TV, or website video, the Respondent shall specifically state in the disclaimer that the Respondent can only be fired prior to the client accepting an offer.
18. When advertising the Guaranteed Sales Program in print, the disclaimer that the Respondent and client must agree on the price and time of possession must be printed in 12 point font size. When advertising the fire me anytime program in print, the disclaimer that the Respondent can only be fired prior to the client accepting an offer must be printed in 12 point font size.
19. Respondent permanently waives any right to a hearing and appeal under the § 5-20.5-1 *et seq.* and § 42-35-1 *et seq.* of the Rhode Island General Laws.

20. If Respondent fails to abide by any of the requirements of this Consent Order, the Department may initiate further administrative proceedings and impose penalties against Respondents including such additional administrative penalties as deemed appropriate by the Department such as revocation or suspension, or administrative penalties. Respondents shall be provided with notice and opportunity for hearing should the Department take further action.

For the Division:

Maria D'Alessandro
Signature
Date: 5/20/15

Maria D'Alessandro, Esq.
Deputy Director, Securities, Commercial
Licensing and Racing and Athletics

For the Respondent:

Nathan Clark
Signature
Date: 5-12-15

Nathan Clark

RECOMMENDED BY:

Catherine Warren
Date: 5/22/15

Catherine Warren, Esq.
Hearing Officer

ORDER

I have read the Consent Order as agreed to by and between the parties in the above captioned matter and I hereby take the following action:

Approve

Reject

Dated: 5/27/15

Macky McCleary
Macky McCleary
Director

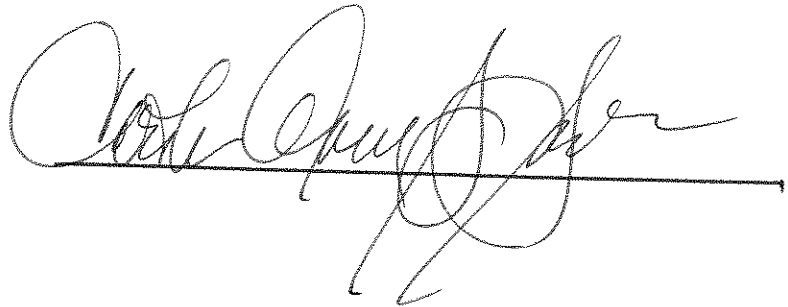
ENTERED as Administrative Order No. 15-17 on the 27th day of May,
2015.

CERTIFICATION

I hereby certify on this 27th day of May, 2014 that a copy of the within Consent Order was sent by first class mail, postage prepaid, and e-mail to:

Robert A. D'Amico II, Esq.
D'Amico · Burchfield, LLP
536 Atwells Avenue
Providence, RI 02909
RAD@DBLawRI.com

and by electronic mail in PDF format to the following parties: Hearing Officer Catherine Warren, Esq., Jenna Algee, Esq., Maria D'Alessandro, Esq., Deputy Director, Securities, Commercial Licensing and Racing and Athletics, and William DeLuca, Real Estate Administrator.

A handwritten signature in black ink, appearing to read "Robert A. D'Amico II", is written over a horizontal line. The signature is highly stylized and cursive.