

## Failure to Safeguard the Interests of the Public

This case highlights not only the importance of adhering to the Board's regulations through actions such as depositing the earnest money deposit in a timely manner and notifying all parties of material changes to the transaction, but also the importance informing the Board of escrow violations.

### THE SITUATION:

Mr. Archer Bastien was issued a real estate broker license in January 1991 and became affiliated with Bastien Realty, Inc. ("Bastien Realty") as the Principal Broker. There are two other agents affiliated with Bastien Realty, Inc., Mr. Randall Dowd and Ms. Alicia Rigby. Both Mr. Dowd and Ms. Rigby received their real estate salesperson licenses in September 2017.

On December 17, 2018, Danielle Silver, as buyer, and Richard and Bonnie Kimpton, as sellers, entered into a contract for the purchase of a property located in Danville, Virginia. Bastien Realty was both the Listing and Selling Firm. Mr. Dowd, as Designated Agent, represented the Kimptons. Ms. Rigby, as Designated Agent, represented Ms. Silver.

The Board received a written complaint from the Kimptons regarding Mr. Bastien in February 2019.

### THE INVESTIGATION:

Investigators learned that the contract required Ms. Silver to deposit the earnest money deposit ("EMD") within three days of contract ratification. The contract stated:

4. **DEPOSIT:** Purchaser shall make a deposit of \$300 to be held by Bastien Realty, Inc. (the "Escrow Agent") in the form of:  check  cash  other \_\_\_\_\_ (the "Deposit"). Purchaser **[select one]:**  has paid the Deposit to the Escrow Agent OR  will pay the Deposit to the Escrow Agent within 3 days (the "Extended Deposit Date") after the date this Contract is fully executed by the parties. If Purchaser fails to pay the Deposit as set forth herein, then Purchaser shall be in breach of this Contract. At Seller's option and in lieu of all other remedies set forth in this Contract, Seller may terminate this Contract by written notice to Purchaser and neither party shall have any further obligation hereunder.

The contract was ratified on December 17, 2018, but Ms. Silver did not provide her EMD to Ms. Rigby. Investigators noted that the contract did not indicate whether Mr. Silver "has paid" or "will pay" the EMD.

Ms. Rigby told investigators that she received information that Ms. Silver had experienced some health issues on December 19, 2018. When Ms. Rigby shared the information with Mr. Bastien, she reported to investigators that he said, "we will accept deposit as late as December 26, 2018, when she is medically cleared." Ms. Rigby then texted Ms. Silver to inform her of the extension, and told Mr. Dowd of the delay in paying the EMD.

During an interview with investigators, Mr. Bastien denied that he granted Ms. Silver an extension but instead told Ms. Rigby to keep trying to get Ms. Silver to pay the EMD.

On December 26, 2018, Ms. Silver did not pay the EMD to Bastien Realty.

On December 27, 2018, a home inspection was performed at the property, and the Kimptons made the identified repairs, which cost approximately \$400. Mr. Bastien stated that the Kimptons were not required to make the repairs identified during the home inspection nor was Bastien Realty even aware that they were making those repairs.

On December 30, 2018, Ms. Silver provided her EMD check to Bastien Realty. On January 2, 2019, the office manager deposited her EMD check into Bastien Realty's escrow account. On January 6, 2019, Bastien Realty received notice that Ms. Silver's EMD check was being returned for insufficient funds. Ms. Rigby mailed a Release of Contract to Ms. Rigby following her failure to pay the EMD and her lack of communication with Ms. Rigby. Ms. Rigby did not receive a signed release from Ms. Silver.

Ms. Rigby acknowledged that she did not provide the Kimptons with written notice that the EMD had not been paid.

Mr. Bastien told investigators that the transaction was difficult from the start, but that he and Ms. Rigby were repeatedly misled by Ms. Silver on practically a daily basis. Further, he reported Mr. Dowd was kept updated, but was "as confused as we were regarding Ms. Silver's status." He also noted that Mr. Dowd had frequent text and phone communications with the Kimptons.

Mr. Bastien stated that he did not review the ratified contract, and that Bastien Realty has never notified sellers when deposits have not been paid in accordance with contracts. Further, that even though Ms. Rigby did not notify Mr. Dowd in writing that the EMD had not been paid, they did discuss the matter verbally and by email.

Mr. Bastien also told investigators that he did not report to the Board that Ms. Rigby failed to provide written notice to all principals to the transaction that the EMD had not been collected. He stated that he did not believe he was required to report the matter to the Board.

#### **THE RESULT:**

The Board determined that Mr. Bastien failed to safeguard the interests of the public by failing to review the ratified contract and failing to ensure that the principals to the transaction received notice of a material change to the transaction. Further, his failure to notify the Board of Ms. Rigby's noncompliance with the Board's regulations constituted a failure to safeguard the interests of the public. The Board issued a fine of \$1,050 for both violations and required him to complete at least three classroom hours of education pertaining to Broker Management and Supervision.