



Late EMD

In this case study, the agent failed to make a timely deposit of the escrow funds. Despite having signed an acknowledgment of the Broker's Policy and Procedure Manual, the agent still failed to input the contract and timely deposit the funds. Nevertheless, because of these policies and procedures, the Principal Broker was still able to discover the error and report the escrow violation to DPOR, ensuring that she properly supervised the agents in the firm.

THE SITUATION:

On March 26, 2019, The Board received a written complaint from Jenny Peck, Principal Broker for Tree Top Realty, Inc. regarding their agent, Antonio Rafa.

Mr. Rafa received his real estate license on April 10, 2009.

THE INVESTIGATION:

Mr. Rafa became affiliated with Tree Top Realty, Inc. in March 2012 and signed an Acknowledgement of Receipt for the Policy and Procedure Manual for Tree Top Realty, Inc.

On February 12, 2019, Rebecca and Andrew Bello, as Buyers, and Simone Tripp, as Seller, entered into a Sales Contract for Unimproved Land ("Contract") for the purchase of land located in Petersburg, Virginia. Mr. Rafa was listed as the Selling Agent, representing the Buyers. In the contract, closing was scheduled to occur on April 1, 2019.

Investigators learned that Tree Top Realty, Inc. uses a paperless system where agents are required to submit a contract to the system once the contract is ratified, which then allows for alerts to the agent and other staff if there are any discrepancies.

Section 4 of the Contract required the Buyer to make a deposit ("EMD") in the amount of \$4,500 to be held by Tree Top Realty, Inc. in the form of a check within five days after the date of ratification. It further stated that the EMD was to be placed in an escrow account by the end of the fifth business banking day following receipt or following the Date of Ratification, whichever is later.

On February 12, 2019, the Contract was ratified. Mr. Rafa failed to submit the Contract to the paperless system used by Tree Top Realty, Inc.

Mr. Rafa told investigators that the Buyers lived out of the area and, therefore, all communication was through text, phone, and email. The parties negotiated for approximately two to three weeks. Once the Contract was ratified, Mr. Rafa forgot to submit the Contract to the paperless system and forgot to have the Buyers send in the EMD check. Mr. Rafa stated that he was not used to working with clients with whom he cannot meet personally to collect the EMD.

The Buyer later provided the EMD with a check dated March 15, 2019. The check was deposited by Tree Top Realty, Inc. on March 15, 2019. On April 14, 2019, Mr. Rafa sent an email to the Listing Agent stating that the EMD for the transaction was deposited late.

Mr. Rafa told investigators that he was not aware that he needed to notify those on the other side of the transaction until Ms. Peck told him. Once he became aware of this requirement, he sent the email to the Listing Agent.

THE RESULT:

The Board determined that Mr. Rafa failed to exercise ordinary care when he failed to timely submit the Contract to Tree Top Realty, Inc. and failed to follow up on the collection of the EMD from the Buyer in order to have met the deposit terms of the contract. The Board also determined that he failed to provide in a timely manner to all principals to the transaction written notice of the material change to the transaction regarding failure to deliver the EMD as required by the Contract. He was required to pay a fine of \$1,100 and complete at least three classroom hours of Board-approved continuing education pertaining to Real Estate Contracts.

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