



Late EMDs

This case examines an escrow case where the agent neglected to turn in an Earnest Money Deposit (EMD) and failed to notify all principals to the transaction in writing of changes made to the contract. It remains of the utmost importance to verify the status of the deposit and communicate changes to all principals. Further, it demonstrates that agents must adhere to contract requirements and the Virginia rules and regulations governing real estate licensees, regardless of any outside factors.

THE SITUATION:

On October 9, 2021, the Board received a written complaint from the Principal Broker of Best Real Estate, Inc. regarding Eloise Rocket, alleging a violation of the escrow regulations.

Ms. Rocket was issued a real estate salesperson license in February 1997.

THE INVESTIGATION:

Investigators learned that on September 17, 2021, Wes McGrady and Julie McGrady (collectively, "the McGradys"), as buyers, and Grey Blackwell, as seller, entered into a Residential Contract of Purchase of 3190 Randolph Road, Roanoke, Virginia ("subject property"). Best Real Estate, Inc. was both the listing and selling firm. Ms. Rocket was a disclosed Dual Agent. The contract was ratified on September 18, 2021.

The Contract stated in part:

- DEPOSIT:** Purchaser shall make a deposit of \$5,000 to be held by Best Real Estate, 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 7 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.

On September 16, 2021, the McGradys had provided Ms. Rocket with a \$5,000 EMD. On October 2, 2021, the \$5,000 EMD check was received by Best Real Estate, Inc. from Ms. Rocket via United States Postal Service Mail (postmarked September 30, 2021).

On October 5, 2021, the \$5,000 EMD check was deposited into Best Real Estate, Inc.'s escrow account.

Initially, Ms. Rocket told investigators that for several days following the McGradys' offer, the seller could not respond due to power outages from a storm in New Orleans. She then noted that on September 20, 2021, she was admitted to a local hospital for a procedure under anesthesia, and that she received a signed contract on September 21, 2021.

She also told investigators that during this time period, her scanner and DocuSign account were not working, and the local UPS Store was closed due to COVID. In addition, she reported that the seller and purchasers omitted signatures and initials on the contract and related documents, meaning there was a lot of back and forth for corrections.

Ms. Rocket also reported that the EMD check had been paper clipped to the original contract offer, dated September 17th, in back of the file. She stated that she did not recall the date on which she mailed the contract to Best Real Estate, Inc. Ultimately, she attributed the error to multiple aspects of the transaction, including: a confusing transaction, an incorrigible seller, a hospital stay, and undue stress.

Later, Ms. Rocket told investigators that she did not realize the EMD was late because she was so busy with her customers and satisfying contracts. She received a call from her broker after the check was mailed and deposited. Her broker notified her that the check was late for the deposit. Ms. Rocket told investigators that she did not notify anyone in writing that the EMD check was late for deposit.

THE RESULT:

The Board determined that Ms. Rocket failed to submit the \$5,000 EMD check to Best Real Estate, Inc. within seven days of the contract's ratification and failed to notify all principals to the transaction in writing of changes made to the contract. The Board issued a fine of \$1,000 and recommended that Ms. Rocket be placed on probation for a period of six months and required to complete six hours of Board-approved post-license education in contract writing. The Board specifically noted her statements regarding being too busy with other transactions to be an aggravating factor in the discipline issued.

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