



## **Earnest Money Deposit and Ordinary Care**

This case examines a scenario where the agent failed to receive and deposit the earnest money deposit before settlement. It continues to be vital that agents track the progress of the transaction to ensure that all requirements are met and adhere to the escrow rules and regulations.

### **THE SITUATION:**

On August 5, 2021, the Department of Professional and Occupational Regulation received information from Yelena Tachnov, Principal Broker for HomeNow Realty, Inc. (“HomeNow”), regarding Mr. Christopher Sharpe.

Mr. Sharpe obtained his real estate salesperson license on September 4, 2013, and was a salesperson at HomeNow.

### **THE INVESTIGATION:**

Investigators learned that on June 20, 2021, HomeNow, as Broker, entered into an Exclusive Right to Represent Buyer Agreement with Andrew Franko, as Buyer. Mr. Sharpe signed the brokerage agreement on behalf of HomeNow.

On June 27, 2021, Mr. Franko, as Buyer, and Rory James, as Seller, entered into a Purchase Agreement for the purchase of 138 South Train Ave, Chesterfield, Virginia. Section 9 of the contract specified that “settlement shall be made at the offices of TBD on or before July 31, 2021. Section 8 of the contract specified that Mr. Franko was to make an earnest money deposit in the amount of \$3,000 to be held by HomeNow. Mr. Franko was to pay the earnest money deposit within 5 days after the Date of Ratification.

On July 31, 2021, settlement occurred. The settlement statement specified a buyer credit in the amount of \$3,000 for the earnest money deposit.

On August 3, 2021, Ms. Tachnov received information that the earnest money deposit had not been received by HomeNow and asked Mr. Sharpe about the earnest money deposit. The same day Mr.

Franko paid the earnest money deposit to HomeNow by check. On August 5, 2021, the earnest money deposit was deposited into HomeNow's escrow banking account.

Mr. Sharpe told investigators that he takes full responsibility for not turning in the earnest money deposit check for the transaction until after the property had closed. He stated, "Due to a miscommunication between myself and Mr. Franko, I was under the impression that he had dropped the check off at the office. When I realized what happened I contacted Mr. Franko. He immediately provided the earnest money deposit check, and it was dropped off at my office the same day."

**THE RESULT:**

The Board determined that Mr. Sharpe failed to collect the earnest money deposit prior to settlement and therefore did not exercise ordinary care. The Board issued a fine of \$500 and required Mr. Sharpe to complete at least three classroom hours of Post-License education pertaining to Escrow Requirements.

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