



Earnest Money Deposit and COVID-19

This case examines a scenario where the buyer’s agent failed to ensure that an earnest money deposit (EMD) provided to her was submitted to the escrow agent and failed to inform the other party to the transaction written notice of a material change to the transaction. If an agent takes possession of an EMD that will not be held in the firm’s escrow account, the agent must ensure that the EMD is delivered to the escrow agent names in the contract by the end of the fifth business banking day following receipt unless otherwise agreed to in writing by the principals to the transaction.

THE SITUATION:

On January 27, 2022, the Board received a written complaint from Franklin Anker, Broker for Spot Realty, LLC (“Spot Realty”) regarding Allison Cruse.

On February 1, 2019, Ms. Cruse was issued as salesperson license and was a real estate salesperson with Spot Realty.

THE INVESTIGATION:

On January 3, 2022, Rebecca and Davis Franck, as buyers, and Shooting Star Investments, as Seller, entered into a Purchase Agreement for the purchase of 2340 Elmsdale Road, Roanoke, VA (“subject property”). Spot Realty and Allison Cruse represented the buyers. River Real Estate and Andrew Pitts represented the Seller.

On January 4, 2022, the agreement was ratified.

The Agreement stated, in part:

4. **DEPOSIT:** Purchaser shall make a deposit of \$ 2,000 to be held by Best Title Services/Les Byrd Attorney (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 5 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.

If the Escrow Agent is a Virginia Real Estate Board ("VREB") licensee, the parties direct the Escrow Agent to place the Deposit in an escrow account by the end of the fifth business banking day following the latter of: (i) the date this Contract is fully executed by the parties, or (ii) receipt during the Extended Deposit period. If the Escrow Agent is not a VREB licensee, the parties direct the Escrow Agent to place the Deposit in an escrow account in conformance with applicable Federal or Virginia law and regulations. The Deposit may be held in an interest bearing account and the parties waive any claim to interest resulting from such Deposit. The Deposit shall not be released by the Escrow Agent until (i) credited toward the purchase price at settlement; (ii) Seller and Purchaser agree in writing as to its disposition; (iii) a court of competent jurisdiction orders a disbursement of the funds; or (iv) disbursed in such manner as authorized by the terms of this Contract or by Virginia law or regulations. Seller and Purchaser agree that Escrow Agent shall have no liability to any party for disbursing the Deposit in accordance with this paragraph, except in the event of Escrow Agent's negligence or willful misconduct.

On January 5, 2022, Mr. and Mrs. Franck provided Ms. Cruse with a \$2,000 earnest money deposit. However, Ms. Cruse misplaced the check. She told investigators that she notified Mr. and Mrs. Franck of this on January 9, 2022 and asked them to have a new check delivered by the end of the day.

Ms. Cruse then found the check, but Mrs. Franck had already canceled it. Ms. Cruse said she followed up on January 13, 2022, to confirm deposit at the title company. Mrs. Franck told her that they did not get to the title company before it closed that day.

Ms. Cruse told investigators that during the time between contract ratification and collection of the EMD she was in quarantine after being diagnosed with COVID-19 and was not able to immediately deliver the EMD until she exited quarantine on January 9, 2022. She stated that her clients were aware of this and wanted her to deliver the EMD due to their work schedules.

Ms. Cruse told investigators that she informed the listing agent on the phone that the EMD was not deposited but did not "discuss it in writing."

On January 14, 2022, a home inspection was conducted at the subject property. Based upon the inspection report, Mr. and Mrs. Franck terminated the agreement. Ms. Franck texted Ms. Cruse on January 14, 2022, at 8:57 p.m. stating:

After today and reading the Home Inspection Report, we would like to halt all further inspections. I think most were done today but if anything is remaining then let's go ahead and cancel them.

Mr. and Mrs. Franck, after deciding to terminate the agreement, told Ms. Cruse that they did not want to lose their deposit and were worried that if they took it to the title company that they would not get it back.

On January 21, 2022, the parties entered into Release of Contract.

THE RESULT:

The Board determined that Ms. Cruse failed to exercise ordinary care by failing to ensure the EMD check received by her was delivered to the escrow agent in accordance with the terms of the Agreement and failed to notify the seller's agent in writing that the EMD was not deposited per the terms of the Agreement. The Board required her to pay a fine of \$500 and required her to complete three classroom hours of Board-approved Post-License education pertaining to Escrow.

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