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LEGAL CASE STUDY

Failure to Follow Up

This case examines a scenario where a Buyer's Agent did not perform due diligence in ensuring that her clients' EMD was received in a timely fashion. Agents must provide accurate and updated information to all parties to the transaction.

The Situation:

On July 23, 1984, Sabrina Gravely was issued a real estate salesperson license by the Virginia Real Estate Board ("VREB"). On February 4, 2015, Gravely became affiliated with Leatherwood Realty.

On November 30, 2020, the Department of Professional and Occupational Regulation ("DPOR") received information from Gravely's broker regarding this issue, which started the investigation.

The Investigation:

Gravely entered into a purchase agreement on behalf of her buyer clients to buy 123 Mountain Valley Road in Axton. The contract was ratified on October 17, 2020. The ratified contract stated that Purchaser would pay the earnest money deposit ("EMD") to Leatherwood Realty within three days after the date of ratification.

On October 20, Gravely submitted to her broker a copy of a United States Postal Service tracking slip sent by her clients that indicated the EMD had been sent to Leatherwood Realty. On October 22, the tracking information indicated that the EMD was out for delivery, but it was never received. On

November 7, the tracking information indicated the letter had been returned as “Unclaimed.” The transaction closed on November 19, 2020, and the buyers received the returned EMD check the following day. Leatherwood Realty received the EMD and deposited it into their escrow account on November 23. At no point did anyone from Leatherwood Realty communicate this issue to the Listing Agent.

Gravely said that the office administrator normally tracks EMD receipts, and as she had not heard that there was any issue in this particular transaction she assumed that the EMD had been received. Because of Covid-19 precautions, the Leatherwood Realty offices were basically unstaffed and the building was inaccessible to the public.

The Results:

Gravely was charged with two violations:

1. Count 1 – Violation of §54.1-2132.A.4 of the Code of Virginia. This code section requires buyer’s agents to exercise ordinary care in their dealings with buyers. By not ensuring that the EMD had been delivered to the brokerage in accordance with the terms of the contract, Gravely violated this code section.
2. Count 2 – Violation of 18 VAC 135-20-310.2. This regulation requires licensees to provide in a timely manner to all principals to the transaction written notice of any material changes to the transaction. Gravely never informed the Listing Agent that the EMD had not been received, which is a violation of this regulation.

The Real Estate Board imposed a penalty of \$500 for Count 1 and \$600 for Count 2, for a total penalty of \$1,100.

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