



EMD Communication

Background:

In December of 2022, Kinsella Realty (“Kinsella”) entered into an Exclusive Right to Represent Buyer Agreement with Terrance Mann (“Mann”). The buyer agreement listed Archie Graham (“Graham”) as the “Buyer’s Agent”. A few days later, Mann entered into a purchase agreement to buy a property. The contract was ratified and went to settlement a few weeks later. The Purchase Contract stated that Mann would deliver the \$500 EMD to FOD Title within five business days after the contract had been fully ratified by the parties.

Graham stated to the VREB investigator that both he and his transaction coordinator had repeatedly requested that Mann submit the EMD as required by the contract. Mann ignored those requests and finally, on the day before closing, stated that he would get one cashier’s check to cover both the EMD and his cash-to-close amount and present that single check at closing.

Graham acknowledged that he could find no communication between him and listing agent stating that Mann had not submitted the EMD. The listing agent confirmed that she was not aware that Mann had never paid the EMD.

Result:

Graham entered into a Consent Order with the VREB acknowledging that he violated 18 VAC 135-20-310.2, which states:

Actions constituting improper delivery of instruments include . . . failing to provide in a timely manner to all principals to the transaction written notice of any material changes to the transaction.

Graham agreed to one count of violation of the regulation and a monetary fine of \$600, plus \$150 in board costs. In addition, Graham must complete six hours of Post-License education on Real Estate Law and Regulations within six months of the consent order.

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