



Contract Obligations Fail

The following case study highlights the importance of real estate licensees exercising ordinary care and promoting their clients' interests by providing reasonable assistance to their clients to ensure they satisfy their contract obligations.

The Facts

On August 11, 2022, Debbie Dunz was issued a salesperson license and became affiliated with Laissez Faire Realty.

Dunz represented buyer Jack Breacher for the purchase of residential property. On March 14, 2024, Breacher entered into a Standard Purchase Agreement (Contract) for the purchase of residential property. Magnus Patience at Patience Realty represented the seller, Danny Desper.

The Contract required Breacher to pay an earnest money deposit (EMD) in the amount of \$750 within two business days of ratification to be held by a law firm acting as the Escrow Agent. The EMD was due by March 16, 2024. Breacher did not pay the EMD on time, and Dunz did not inform Patience or Desper about the missed deposit.

Dunz stated that she informed Breacher that he was required to pay the EMD to the Escrow Agent by the close of business on March 16, 2024, but Dunz then traveled for business from March 15 through March 19, 2024. Dunz did not confirm whether Breacher deposited the EMD on March 16, 2024. After returning from her trip, Dunz stated she called Breacher several times, beginning on March 21, 2024. Dunz was unable to reach Breacher until March 22, 2024, at which time, Dunz told Breacher that he had failed to deposit the EMD. Breacher submitted the EMD on March 23, 2024. Patience then obtained a copy of the EMD check and discovered it was not deposited until March 24, 2024.

The contract also specified that the buyer would obtain a well and septic inspection. There was a Property Inspection Contingency with a deadline of March 21, 2024. Breacher did not perform his inspections before the deadline, and on March 22, 2024, Patience contacted Dunz, indicating that the

contingency deadline had passed. Dunz responded that she would need an extension until March 24, 2024 and assured Patience the buyer would still close on time.

On March 22, 2024, the seller agreed to the extension for the inspection contingency but wanted an increase in the EMD to \$1,500. Patience memorialized the extension in an Addendum (Addendum 1) and sent it to Dunz. Dunz never responded to Addendum 1, and the buyer never signed Addendum 1. On March 30, 2024, the well and septic systems were inspected, and on the following day, Dunz informed Patience that the well was barely functioning and would need repair. These inspections were performed well after the original deadline and even after the deadline proposed in Addendum 1, which the buyer never signed.

On April 2, 2024, Breacher obtained a denial letter from his lender because of the condition of the well, which would require repairs before the lender would move forward. However, the lender that denied the loan was not the same lender indicated in the Contract. Dunz and Breacher never informed Patience and Desper that Breacher had changed lenders even though the Contract required that the buyer obtain written permission from the seller to change lenders.

Dunz prepared an Addendum (Addendum 2) to reduce the purchase price to address the well issue, indicating the lender would not move forward at the current price because of the condition of the well. On April 2, 2024, the parties ratified Addendum 2, which also extended the settlement date to on or before April 6, 2024.

On April 5, 2024, the buyer provided a notice of termination because the lender denied the loan at the original contract price, and the lender never agreed to a price reduction instead of repairs. The seller did not agree to release the buyer from the Contract.

The Result

Based on its investigation, the Board concluded the following:

EMD

Dunz violated Virginia Code sections 54.1-2132.A.2.d. and 54.1-2132-A.4 because she did not exercise ordinary care by failing to ensure the EMD was submitted by her client to the Escrow Agent as required in the Contract. Dunz also violated 18 VAC 135-20-310 because she failed to provide in a timely manner to all principals to the transaction written notices that the EMD had not been deposited per the terms of the Contract.

Changing Lenders

Dunz violated Virginia Code section 54.1-2132.A.4. because she failed to exercise ordinary care by failing to ensure the buyer obtained written permission from the seller to change lenders and/or by failing to include additional lenders in the Contract.

Inspections

Dunz violated Virginia Code section 54.1-2132.A.4. because she failed to exercise ordinary care by failing to ensure that the well and septic inspections were conducted in accordance with the requirements of the Property Inspection Contingency Addendum, by failing to respond to Addendum 1 on behalf of her client, and by sending a termination of contract after her client ratified Addendum 2.

The Penalty

The Board imposed monetary penalties totaling \$1,600 and placed Dunz on probation for a period of six months. During probation, the Board required that Dunz complete a 3-hour class on escrow requirements and a 6-hour class on contract writing.

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