

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE CENTER, BLDGS 68-69
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920**

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|--------------------------------------|---|-------------------------|
| <u>IN THE MATTER OF:</u> | : | |
| | : | |
| LISA RAICHE | : | DBR No.: 13RE129 |
| d/b/a Town & Shore Realty | : | |
| | : | |
| <u>RESPONDENT.</u> | : | |

CONSENT AGREEMENT

The Division of Commercial Licensing (“Division”) of the Rhode Island Department of Business Regulation (“Department”) enters into this Consent Agreement (“Agreement”) with Lisa Raiche d/b/a Town & Shore Realty (“Respondent”) to resolve the above-captioned matter pursuant to its authority under R.I. Gen. Laws § 42-35-9(d).

It is hereby agreed by and between the Division and the Respondent that:

1. On or about September 10, 2013, the Department received a complaint from Linda Hershman that the Respondent did not return her deposit of \$5000 on real property in Westerly, Rhode Island, even though the sale was never consummated.
2. On December 16, 2013, the Department issued an Order to Show Cause Why License Should Not be Revoked or Suspended and/or Other Administrative Penalties Should Not Issue, Notice of Hearing, and Appointment of Hearing Officer (“Order”) to the Respondent. The Order is attached hereto as Exhibit 1.
3. The Department represents that had this matter gone to an evidentiary hearing, the Department would have been prepared to present witnesses, documents, and other evidence of the violations alleged in the Order.

4. To effect a timely and amicable resolution of this matter, without necessitating an evidentiary hearing, the Respondent hereby agrees to the following:
- A. The Respondent shall pay \$5,800 dollars to Linda Hershman no later than March 30, 2014. This payment reflects the \$5,000 deposit plus an amount approximating 7% interest from the date the deposit was made.
 - B. Beginning on March 30, 2014, the Respondent's real estate broker's license shall be suspended for a period of two (2) years.
 - C. The Respondent shall be permitted to act as a real estate salesperson under the supervision of a licensed broker during this two year suspension.
 - D. At the end of the two year suspension, Respondent may file an application for reinstatement of her real estate broker's license.
5. Respondent voluntarily waives any right to an administrative hearing and appeal to Superior Court under the Rhode Island Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq.*
6. If Respondent fails to abide by the requirements of this Consent Agreement, the Department may initiate further administrative proceedings against the Respondent.

For the Division:

Maria D'Alessandro

Signature

Date: 2/24/14

Maria D'Alessandro, Esq.
Deputy Director, Securities, Commercial
Licensing and Racing and Athletics

For the Respondent:

Lisa Raiche

Signature

Date: 2-21-2014

Lisa Raiche

EXHIBIT 1

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE CENTER, BLDGS 68-69
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920

IN THE MATTER OF: :
 :
LISA RAICHE : DBR No.: 13RE129
d/b/a Town & Shore Realty :
 :
RESPONDENT. :

**ORDER TO SHOW CAUSE WHY LICENSE SHOULD NOT BE REVOKED OR
SUSPENDED AND/OR OTHER ADMINISTRATIVE PENALTIES SHOULD NOT ISSUE,
NOTICE OF HEARING AND APPOINTMENT OF HEARING OFFICER**

In accordance with R.I. Gen. Laws § 5-20.5-15, the Rhode Island Administrative Procedures Act ("APA"), R.I. Gen. Laws § 42-35-1 *et. seq.*, and Central Management Regulation 2 *Rules of Procedure for Administrative Hearings* ("CMR 2"), the Director of the Department of Business Regulation ("Department") hereby issues this Order to Show Cause Why License Should Not be Revoked or Suspended and/or Other Administrative Penalties Should Not Issue, Notice of Hearing, and Appointment of Hearing Officer ("Order") to Lisa Raiche d/b/a Town & Shore Realty ("Respondent"), requiring Respondent to appear before the Department and answer why the Director should not issue an order revoking or suspending Respondent's real estate broker license and/or imposing other administrative penalties pursuant to the authority set forth in R.I. Gen. Laws § 5-20.5-6 and 14.

The Director issues this Order for the following reasons:

1. Respondent is currently licensed by the Department as a real estate broker.
2. Respondent does business as "Town & Shore Realty" at 12 High Street, Westerly, RI 02891.

3. Respondent acted as real estate broker for transactions involving the sale of real property located on 6 Littlebrook Rd., Westerly, RI 02891 (the "Property").
4. The owner of the Property at the time the Respondent listed the Property (the "Seller") was the Respondent's then husband.
5. On or about November 11, 2011, an interested buyer, Linda Hershman, (the "Buyer") and the Seller entered into a Purchase and Sales Agreement ("Agreement") for the Property.
6. Section 17 of the Agreement identifies the Seller and the Buyer and lists the Respondent as the Listing Brokerage Firm with the status of Designated Seller Representative.
7. Section 3 of the Agreement documents that a deposit of \$ 5000 ("Deposit") was paid at the time of execution.
8. Section 4 of the Agreement provides that the closing was to be held on November 23, 2011.
9. Section 5 of the Agreement conspicuously states:

"All deposits shall be held in an escrow account by the Listing Brokerage Firm named in Section 17, except as otherwise provided.

 - (a) The release of all deposits shall be upon execution of a written release by Buyer and Seller or as otherwise provided in Commercial Licensing Regulation 11.
 - (b) In the event of a dispute between Seller and Buyer as to the performance of any provision of this Agreement, the holder of the deposits shall transfer the deposits to the General Treasury of Rhode Island after 180 days from the date of the original deposit, in accordance with the above regulation."
10. On or about September 10, 2013 the Buyer filed a complaint with the Department ("Complaint"). The Complaint was received and handled pursuant to CMR 2 and Commercial Licensing Regulation 11 *Real Estate Brokers and Salespersons* (CLR 11), Section 16.
11. According to the Complaint, the closing has not occurred to this date nor has the Deposit been returned to the Buyer.

12. According to the Complaint, the Buyer, through its Designated Buyer Representative, has made significant efforts to recoup the Deposit.
13. On December 8, 2011, the Department issued an Order of Revocation revoking Respondent's real estate broker license based on a Hearing Officer's findings that a) the Respondent failed to deposit the funds paid by a lessee into an escrow account and admitted to the lessee that she had converted said funds to her own use by paying them to a third party and b) said conduct violated R.I. Gen. Laws § 5-20.5-14(a)(15), (17), and (20), R.I. Gen. Laws § 5-20.5-26(a)(1)(i), and Sections 18(A)(4) and 18(A)(6) of Commercial Licensing Regulation 11.
14. On or about January 17, 2012, the Respondent entered into a Consent Agreement with the Department whereby her real estate broker license was reinstated upon the Respondent's Agreement to return the misappropriated deposit, pay a \$ 1,500 administrative penalty to the Department, and satisfy certain educational and monitoring requirements.
15. Based on paragraphs 13 and 14 above, the revocation of Respondent's license was effective from 12/08/11 to 01/17/12. Any real estate broker activity during that period was done without valid licensure in violation of the licensing requirements of R.I. Gen. Laws § 5-20.5-1, *et seq.*
16. R.I. Gen. Laws § 5-20.5-26(a)(1)(i) provides that "[e]ach real estate firm shall maintain an escrow account under the supervision of the broker qualified to do business in the name and on behalf of the corporate, partnership, or association license and that "[a] broker or salesperson shall not...fail to keep an escrow or trustee account."
17. Pursuant to R.I. Gen. Laws § 5-20.5-26(a)(1)(iv), "[w]henver the ownership of any deposit monies received by a broker or salesperson pursuant to this section is in dispute by the parties to a real estate transaction, the broker or salesperson shall deposit the monies with the general

treasurer within one hundred eighty (180) days of the date of the original deposit, those monies to be held in trust by the general treasurer until the dispute is mediated, arbitrated, litigated, or otherwise resolved by the parties.” CLR 11, Section 19(C) provides the specific procedures for satisfying this statutory provision.

18. Pursuant to R.I. Gen. Laws § 5-20.5-26(c), “any licensee to whom any money or other property is entrusted as escrow funds, who intentionally appropriates to the licensee’s own use that money or property, or transfers the funds from an escrow account to a company or personal account prior to a closing, is guilty of unlawful appropriation.”
19. CLR 11, Section 18(A)(1) provides that “[t]he principal broker shall be responsible for each and every escrow account maintained on behalf of the brokerage and its offices.”
20. CLR 11, Section 18(A)(4) provides that “[f]unds designated for escrow shall be deposited in the escrow account promptly after the execution of the purchase and sales agreement or, in the case of a rental, promptly after receipt of the funds.”
21. CLR 11, Section 18(A)(5) provides that “[f]unds held in escrow may be applied to the commission when earned by the respective licensees only at the time of, or subsequent to, the closing of the real estate transaction.”
22. CLR 11, Section 18(A)(6) provides that “[a] licensee shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that for which it was paid or entrusted to him or her, or permit or assist any other person in the conversion or misapplication of such money or property.”
23. CLR 11, Section 19(A) provides:

“A principal broker may release a deposit to a seller or landlord only after the following steps have been taken:

- (1) The principal broker makes a good faith determination that the buyer or renter forfeited his or her rights to the deposit's return;
- (2) The principal broker provides written notice to the buyer or renter by certified mail, return receipt requested, of his or her intent to release the deposit to the seller or landlord sixty (60) days from the date of receipt of the written notice; and
- (3) The buyer or renter fails to notify the principal broker in writing within the sixty (60) day period that he or she disputes the ownership of the deposit."

24. Pursuant to R.I. Gen. Laws § 5-20.5-26(a)(1)(i), a broker is required to keep account of "funds deposited with him or her relating to a real estate transaction, for a period of three (3) years, showing to whom the money belongs, date deposited, date of withdrawal, to whom paid and any other pertinent information." CLR 11, Section 20 further details the recordkeeping requirements. Records pertaining to escrow accounts must be made available by the licensee to the department or their representatives on demand.

25. Pursuant to R.I. Gen. Laws § 5-20.5-14(a), "[t]he director has power to...suspend or revoke a license or place a licensee on probation for a period not to exceed one year" for the following causes:

- "(5) Failing to deposit money or other customers' funds received by a broker or salesperson into an escrow account maintained by the broker which complies with the requirements set forth in § 5-20.5-6, upon execution of a purchase and sales agreement;
- (6) Failing to preserve for three (3) years following its consummation records relating to any real estate transaction as described in the regulations issued by the department;
- (15) Violating any rule or regulation promulgated by the department in the interest of the public and consistent with the provisions of this chapter;
- (20) Any conduct in a real estate transaction, which demonstrates bad faith, dishonesty, untrustworthiness, or incompetence;
- (28) Paying any sums of money being held in an escrow account to any person, or converting such sums of money for his or her own use, in the event of a failed real estate transaction, without having complied with the department's rules and regulations relative to the transfer of disputed deposit funds to the office of the general treasurer."

26. R.I. Gen. Laws § 5-20.5-6(a) provides that “[a]ny license issued or renewed may be suspended or revoked by the director, for cause, prior to the expiration date.”
27. R.I. Gen. Laws § 5-20.5-6 (b) provides: “The director, after a due and proper hearing, may suspend, revoke, or refuse to renew any license upon proof that it was obtained by fraud or misrepresentation or that the holder of the license has been guilty of fraud or misrepresentation or criminal acts in the performance of his or her functions, or upon proof that the holder of the license has violated this statute or any rule or regulation issued pursuant to this statute.”
28. R.I. Gen. Laws § 5-20.5-14(b) further authorizes the director “to levy an administrative penalty not exceeding one thousand dollars (\$1,000) for any violation under this section or the rules and regulations of the department of business regulation.”

THEREFORE, the Director hereby orders the Respondent to appear before a Hearing Officer to show cause why the Director should not revoke or suspend the Respondent’s real estate broker license and/or why other administrative penalties should not issue pursuant to the authority set forth in R.I. Gen. Laws § 5-20.5-6 and 14. In accordance with CMR 2, Section 6, a pre-hearing conference shall be held on January 13, 2014 at 10:00 a.m. at the Department’s offices located at 1511 Pontiac Avenue, Bldg. 68-69, Cranston, Rhode Island 02920.

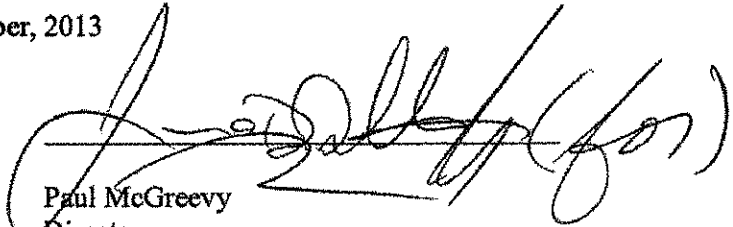
Pursuant to R.I. Gen. Laws § 42-6-8, the Director hereby appoints Ellen R. Balasco, Esq., as Hearing Officer for the purpose of conducting the hearing and rendering a decision in this matter.

The proceedings shall be conducted in conformity with R.I. Gen. Laws § 5-20.5-15, the APA, and CMR 2. CMR 2, Section 5 provides that it shall be the Respondent’s sole

responsibility or his/her or its representative to present his/her or its defense to the Hearing Officer. Pursuant to CMR 2, Section 7, you may retain legal counsel admitted in the State of Rhode Island.

If you have any questions regarding the subject matter of the hearing, please contact Jenna Algee, Esq. at (401) 462-9593 or jenna.algee@dbr.ri.gov and reference the case name and number.

Dated this 16th day of December, 2013


Paul McGreevy
Director

All are welcome at the Rhode Island Department of Business Regulation ("DBR"). If any reasonable accommodation is needed to ensure equal access, service or participation, please contact DBR at 401-462-9551, RI Relay at 7-1-1, or email directorofficeinquiry@dbr.state.ri.us at least three (3) business days prior to the hearing.