

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE, BLDG. 68-1
CRANSTON, RHODE ISLAND 02920**

| | | |
|-------------------|---|-------------------|
| IN THE MATTER OF: | : | |
| | : | |
| MARY E. LEAHEY | : | DBR No. 09-L-0142 |
| | : | |
| RESPONDENT. | : | |
| | : | |

CONSENT AGREEMENT

It is hereby agreed between the Department of Business Regulation (“Department”) and Mary E. Leahey (“Respondent”) as follows:

1. Respondent is licensed as a real estate broker (License No. C12588) to engage in the business of real estate, and is the Principal Broker for Coldwell Banker Residential Brokerage.

2. On March 3, 2009, the Department received a complaint from Richard Wasserman of Wasserman Homes & Properties LLC (“Complainant Wasserman”) alleging violations of R.I. Gen. Laws § 5-20.5-1, *et seq.* in connection with business activities and advertisements involving condominium properties located at 225 Main Channel Avenue, Warwick, Rhode Island.

3. On April 9, 2009, the Department received a complaint from Gail Kennedy (“Complainant Kennedy”) alleging violations similar in nature to those set forth in paragraph 2 above, in connection with the same properties and business activities.

4. On or about February 9, 2009, the Respondent through Coldwell Banker Residential Brokerage created a postcard type advertisement intended for mailing via the United States Postal Service to market a property listed by that agency (225 Main Channel Avenue, Unit #3), bearing a photograph purporting to depict the listed property.

5. At or about the same time period, several advertisements were posted to at least two internet real estate marketing websites, both bearing the same photograph purported to depict the listed property.

6. The photograph described in paragraphs 4 and 5 above did not depict the property being listed by the Respondent, but showed a different property (225 Main Channel Avenue, Unit #5) and was a photograph which had been taken by Complainant Wasserman for use in marketing that property, owned by Complainant Kennedy and listed for sale with Complainant Wasserman.

7. Respondent, acting as a Principal Broker licensee, failed to exercise adequate supervision over the activities Coldwell Banker Residential Brokerage, by not insuring that each advertisement created, published and disseminated by the agency was accurate and correct in its content and contained no untruthful or misleading information.

8. Respondent met with the Department on July 20, 2009 and requested an opportunity to submit additional information from the Multiple Listing Service in support of her contention that the use of the photograph was caused by MLS policy or error. Respondent was to provide supporting documentation to the Department for consideration within 30 days.

9. The information provided by the Respondent contained one sworn affidavit from a broker affiliated with the Agency, and one letter from a former non-licensed employee of the Agency.

10. In determining an appropriate resolution of this matter, the Department has considered the mitigating factors brought to its attention by the Respondent, specifically that the Respondent attempted to remedy the violation by instructing a non-licensed employee to change the photograph when the mistake was reported by the complainant, but that those efforts were frustrated by the policies of the internet sites where the wrong photograph had been posted, resulting in a delay in pulling those advertisements.

11. The Department has discovered no evidence that the violations cited herein were willful, intentional or committed with the intention to defraud the public or the Department.

12. R.I. Gen. Laws § 5-20.5-14(a)(4) authorizes the Department to suspend or revoke a license where a licensee is found guilty of any misleading or untruthful advertising.

13. Sections 4(A), 4(C) and 4(E)(1) of Commercial Licensing Regulation 11 (*effective dates from May 27, 2009 forward*) and Rule 2(A), (B) of Commercial Licensing Regulation 11 (*effective dates prior to May 27, 2009*) provide that a principal broker shall act in a supervisory capacity for every real estate transaction in which an agency, or an affiliated licensee of the agency participates, and shall be responsible for their compliance with the law and regulations.

14. R.I. Gen. Laws §5-20.5-14(a)(15) authorizes the Department to suspend or revoke a license where a licensee violates any rule or regulation promulgated by the Commission or the Department.

15. R.I. Gen. Laws §5-20.5-12(a)(2) provides that the Department shall establish any reasonable rules and regulations that are appropriate to the public use.

16. R.I. Gen. Laws §5-20.5-14(b) authorizes the Department to levy an administrative penalty not exceeding one thousand (\$1,000) dollars for each violation under this section or the rules and regulations of the Department.

BASED ON THE FOREGOING, the Department has reason to believe that Respondent violated R.I. Gen. Laws § 5-20.5-14(a)(4), and also violated Sections 4(A), 4(C) and 4(E)(1) of Commercial Licensing Regulation 11 (*effective dates from May 27, 2009 forward*) and Rule 2(A), (B) of Commercial Licensing Regulation 11 (*effective dates prior to May 27, 2009*), for (a) creating and publishing misleading or untruthful advertising, and (b) failing to adequately supervise the transactions of licensed and non-licensed employees and the brokerage office.

Accordingly, the Department has sufficient cause to assess an administrative penalty pursuant to R.I. Gen. Laws § 5-20.5-14(b).

THEREFORE, in an effort to effect a timely and amicable resolution of the issues raised in this Consent Agreement without an administrative hearing or a finding of violation of R.I. Gen. Laws § 5-20.5-1, *et seq. or Commercial Licensing Regulation 11*, and to allow Respondent to maintain her license in good standing, Respondent agrees to do the following to resolve this matter:


- I. To make a payment of FIVE HUNDRED (\$500.00) DOLLARS as an administrative penalty, payable to the Rhode Island General Treasurer.
- II. To voluntarily waive her right to the administrative hearing process and to voluntarily waive her right to appeal this matter to the Rhode Island Superior Court.

If Respondent fails to abide by any of the requirements of this Consent Agreement, the Department will initiate administrative proceedings to impose penalties against Respondent including, but not limited to: (i) suspension, (ii) revocation, and/or (iii) such additional administrative penalties as deemed appropriate by the Department. Respondent shall be provided with notice and opportunity for hearing should the Department decide to take such further action.


THE DEPARTMENT OF BUSINESS REGULATION AND RESPONDENT HEREBY CONSENT AND AGREE TO THE FOREGOING AS TO FORM AND SUBSTANCE:

Department of Business Regulation
By its Legal Counsel:

Respondent:



Ellen R. Balasco, Esq.
Deputy Chief of Legal Services



Mary E. Leahey, Respondent
Coldwell Banker Residential Brokerage
2258 Post Road
Warwick, RI 02886

Date: 10/28/09

Date: 10/27/09