

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

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IN THE MATTER OF:

JOHN A. PALIOTTA,  
d/b/a DIAMANTI REALTY, INC.,  
Respondent.

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DBR No.: 11-L-0043

CONSENT ORDER

The Department of Business Regulation (“Department”) and John Paliotta (“Respondent”) hereby consent and agree that:

1. Respondent is licensed as a real estate salesperson (License No. S24520) to engage in the business of real estate, and was at all times relevant hereto affiliated as a sales associate with Re/Max 1<sup>st</sup> Choice (“brokerage”) located at 980 Reservoir Avenue, in the City of Cranston, Rhode Island .

2. On May 17, 2011, the Department received a complaint alleging violations of R.I. Gen. Laws §5-20.5-1, *et seq.* in connection with a real estate transaction for property located at 160 Tillinghast Road, Coventry, Rhode Island, a bank-owned property (“subject property”). The complainant engaged the services of the Respondent as a buyer’s agent for the subject property.

3. On December 13, 2010, the Complainant executed an Offer to Purchase Real Estate for the subject property for the sum of \$235,000.00. The Offer recited additional terms and conditions of “Subject to inspections” and “Cash Offer”. This document also served as a receipt for the amount of five thousand (\$5000.00) dollars, which was paid by Complainant as a deposit for the purchase of the subject property (“deposit”). The document indicated that the deposit was accepted by Respondent for Re/Max 1<sup>st</sup> Choice, and was signed by him.

4. The Complainant was instructed by the Respondent to name Diamante Realty as payee on the deposit check at the time the deposit was made. Those funds were deposited into a non-escrow account containing the personal funds of the Respondent.

5. On December 15, 2010 a written offer for the property was sent by facsimile to the listing agency of Gower and Co.

6. Subsequent to the Complainant's written offer, Respondent advised the Complainant that the subject property could not be financed, and must be sold as a "cash only" transaction. When Complainant responded that he would be unable to pay cash for the property, Respondent promised that he would attempt to arrange "private financing" for the Complainant to complete the purchase.

7. On May 7, 2011, Complainant contacted Respondent to inquire about the status of the offer, which time the Respondent allegedly told Complainant that the proof of funds was sent to the listing agency and that on May 9, 2011 everything should be ready to close on the property.

8. On May 7, 2011, Complainant noticed work being done on the property and inquired about this to Respondent, who allegedly called the listing agency and was told they "no longer had the listing."

9. On May 7, 2011, Complainant learned, after contacting the listing broker that the subject property had been sold to another buyer in February of 2011. A representative of that listing agency stated that they received the written offer, but never received any deposit check or proof of funds, even after repeated attempts to contact the Respondent for the money, so the Complainant's offer had never been presented to the bank/seller.

10. On May 11, 2011, the Complainant went to Respondent's home to request the return of his deposit monies, and the Respondent refunded the five thousand (\$5,000.00) dollar deposit to the Complainant by bank check.

11. On May 17, 2011, the Principal Broker for Re/Max 1<sup>st</sup> Choice filed a Complaint with the Department against Respondent, stating "it has been brought to my attention and confirmed by one of our affiliate licenses (sp) John Paliotta violated the rules and Regulations of the Department of Business Regulation, by accepting deposit monies upon writing offer's to purchase property and instruct the consumer to make said deposit monies payable directly to him. He then. . . used said monies for his own personal use."

12. During the course of its investigation into the circumstances surrounding these two complaints against the Respondent, the Department received evidence that the Respondent had listed, offered and/or participated in a significant number of real estate transactions which dated back to 2006 in which he solicited and accepted deposit funds made payable to himself personally or his wholly owned corporation, Diamante Realty.

13. The funds received by the Respondent were deposited into non-escrow accounts, which were maintained outside the Re/Max 1<sup>st</sup> Choice brokerage. The Respondent admitted that he had commingled client deposit monies with personal and business monies in these bank accounts..

14. After the conclusion of this investigation, it has become evident that the Respondent, while affiliated with Re/Max 1<sup>st</sup> Choice, has engaged in a course of conduct which violates numerous Rhode Island statutes and Commercial Licensing regulations as set forth herein.

15. The Respondent admits having committed violations of the relevant provisions of the Rhode Island General Laws and Commercial Licensing Regulation 11 as set forth in Paragraphs A through I below.

### RELEVANT LAW

A. R.I. Gen. Laws § 5-20.5-26(a)(1)(i) states that a “salesperson shall not commingle deposit money... and his or her own funds, use a customer’s funds as his or her own, or fail to keep an escrow or trustee account of funds deposited with him or her relating to a real estate transaction.”

B. R.I. Gen. Laws § 5-20.5-14(a)(5) authorizes the Department to suspend or revoke a license where a licensee fails to deposit money or other customers’ funds received by a salesperson upon execution of a purchase and sales agreement.

C. R.I. Gen. Laws § 5-20.5-14(a)(12) authorizes the Department to suspend or revoke a license where a salesperson accepts a commission or any valuable consideration for the performance of any acts specified in this chapter, from any person except the licensed real estate broker with whom he or she is affiliated.

D. 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.

E. R.I. Gen. Laws § 5-20.5-14(a)(20) authorizes the Department to suspend or revoke a license where a licensee performs any conduct in a real estate transaction, which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency.

F. R.I. Gen. Laws § 5-20.5-17(a) provides that any person acting as a broker without first obtaining a license is guilty of a misdemeanor and upon conviction, is punishable by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment for a term not to exceed one year or both and if a corporation, is punishable by a fine of not less than one thousand dollars nor more than two thousand dollars.

G. Section 18(A)(3) of *Commercial Leasing Regulation 11 – Real Estate Brokers and Salespersons* provides that funds designated for escrow shall be deposited in the escrow account of the principal broker of the seller unless otherwise agreed to in writing by the parties to the real estate transaction.

H. Section 18(A)(6) of *Commercial Leasing Regulation 11 – Real Estate Brokers and Salespersons* 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 in the conversion or misapplication of such money or property.

I. Section 18(B) of *Commercial Leasing Regulation 11 – Real Estate Brokers and Salespersons* prohibits a salesperson from holding client funds. An affiliated licensee shall turn over all deposit monies received promptly to his or her principal broker or, at the direction of the principal broker, deposit the funds in the principal broker's escrow account.

BASED ON THE FOREGOING, the Department finds that there is reason to believe that Respondent has violated R.I. Gen. Laws §§ 5-20.5-26(a)(1)(i), 5-20.5-14(a)(5), 5-20.5-14(a)(12),

5-20.5-14(a)(15), 5-20.5-14(a)(20), 5-20.5-17(a); and Sections 18(A)(3), 18(A)(6) and Section 18(B) of *Commercial Leasing Regulation 11 – Real Estate Brokers and Salespersons*.

Accordingly, The Department has sufficient cause to suspend or revoke Respondent's license pursuant to R.I. Gen. Laws § 5-20.5-14(a) and assess an administrative penalty for each such violation, pursuant to R.I. Gen. Laws § 5-20.5-14(b).

In order to affect a timely and amicable resolution of the issues described in this Consent Order without an administrative hearing and to allow Respondent to regain good-standing status of his license in the future, Respondent agrees to the following:

1. Respondent shall pay an administrative penalty in the amount of seven thousand five hundred (\$7,500.00) dollars, to the Rhode Island General Treasurer, for violations of the Rhode Island General Laws and Department of Business Regulation Commercial Licensing Regulation 11, as set forth in the Relevant Law section herein. The penalty shall be paid at a rate of \$1,250.00 per month, with the first payment being due on the date he affixes his signature to this Order. The total amount shall be paid in full within six (6) months from the date execution of this Order
2. The Respondent's real estate salesperson's license, number S24520, shall be suspended for a period of 30 days, beginning on the date of execution of this Order by the Department. During that time, the Respondent is prohibited from participating in any manner in any real estate transaction as defined in the Rhode Island General Laws, including the receipt of commissions or compensation of any kind for such transactions.
3. The Respondent shall successfully complete twelve (12) credit hours of real estate education in the area of Ethics within six months from the date of execution of this Order by the Department. These courses may not be used to qualify as continuing education required for renewal, and will not be accepted for that use.

4. The Respondent agrees that the Department may, in its discretion, monitor all real estate transactions in which the Respondent participates for a period of two years, commencing on the date of execution of this document. To effectuate said monitoring, the Respondent shall remain affiliated with his current principal broker, Garry Reilly of Realty Associates. Random or scheduled monitoring shall include the production of any and all documents required to be maintained by real estate brokers under R.I. Gen Laws §§ 5-20.5-1 *et seq.* and/or Commercial Licensing Regulation 11 – *Real Estate Brokers and Salespersons* on demand of the Department.
5. The Respondent agrees that he will not receive or hold any cash, checks, or other negotiable instruments belonging to real estate clients, or relating to any real estate transaction, in his own name, or in the name of Diamanti Realty for any purpose whatsoever, and the receipt of any funds related to real estate transactions in which he participates shall be handled solely by his principal broker. The Respondent may receive payments from the Principal Broker only for earned commissions or other employment compensation.
6. If the Respondent's affiliation or employment with Realty Associates is terminated or interrupted for any reason, both the Respondent and his principal broker shall notify the Department within ten (10) days, including a statement of the reasons therefore.

WHEREFORE, it has been determined by the Department that it is in the public interest to resolve the above-referenced matters without the continuation of the administrative hearing process. In making its determination, the Department has considered the following mitigating factors and their effect on the appropriateness of the penalties assessed against the Respondent for the violations alleged:


- I. The Respondent has been licensed by the Department as a real estate broker for a period of 20 years, and has no prior complaints involving similar offenses, and has no history of disciplinary actions by the Department prior to the filing of this complaint,
- II. The Department has discovered no evidence that the Respondent has misappropriated client funds for his personal use resulting in financial losses to real estate consumers,
- II. The Respondent has shown an understanding and acknowledgement of the violations, has expressed remorse therefore, and has undertaken remedial actions and practices to insure that such violations do not take place in the future;
- III. The Respondent has made a good faith attempt to cooperate with the Department's inquiries and demands during its investigation of the complaints against him.
- IV. The Respondent has become affiliated with a licensed real estate broker in good standing with the Department, who has full knowledge of the complaints and investigation described in this Order, and who has agreed to monitor the business practices of the Respondent and report any irregularities or violations of laws or regulations to the Department upon discovery.

By agreeing to resolve this matter through the execution of this Consent Order, the Respondent voluntarily waives his right to the administrative hearing process, voluntarily waives his right to appeal any finding to the Superior Court, and agrees to take all necessary action as delineated in this Consent Order.

Respondent hereby acknowledges and agrees that failure to abide by any of the requirements of this Consent Order shall be grounds for the Department to initiate further administrative proceedings to impose penalties against Respondent including, but not limited to: (i) revocation and/or suspension of his license, and (ii) such additional administrative penalties that the Department deems appropriate, pursuant to R.I. Gen. Laws § 5-20.5-14.

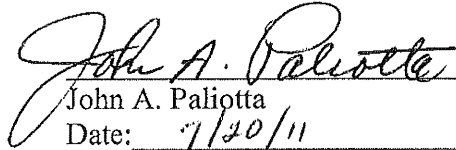
**THE DEPARTMENT AND THE RESPONDENT HEREBY CONSENT AND AGREE TO THE FOREGOING AS TO FORM AND SUBSTANCE:**

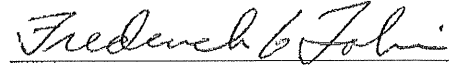
**Department of Business Regulation**  
By its Legal Counsel:

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

Date: 7/20/11

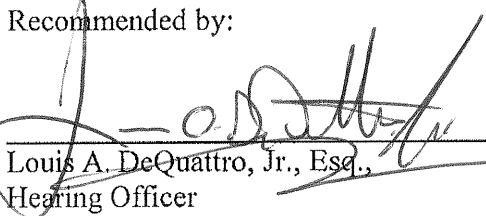
**Respondent:**

  
John A. Paliotta  
Date: 7/20/11

  
Frederick G. Tobin, Esq.  
Counsel for Respondent

Date: 7/20/11

Recommended by:

  
Louis A. DeQuattro, Jr., Esq.,  
Hearing Officer

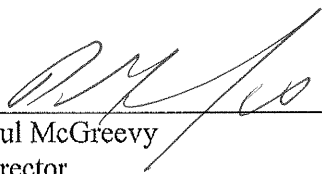
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ORDER

I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT  
 REJECT  
 MODIFY

  
\_\_\_\_\_  
Paul McGreevy  
Director

Date: 21 July 2011

ENTERED as Administrative Order No. 11- 058 on the 21<sup>st</sup> day of July, 2011.

THIS CONSENT ORDER CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO RHODE ISLAND GENERAL LAWS TITLE 42, CHAPTER 35. AS SUCH, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW OF SAID COURT. HOWEVER, RESPONDENT UNDERSTANDS THAT BY WAIVING HER RIGHT TO A COMPLETE HEARING AND AGREEING TO THIS CONSENT ORDER, THE ABOVE RIGHTS ARE WAIVED AND IF ANY TERMS OF THIS CONSENT ORDER ARE VIOLATED, REFERRAL MAY BE MADE TO THE RHODE ISLAND ATTORNEY GENERAL FOR FURTHER PROSECUTION.