REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of

SANDRA ELAINE BITTLER

STIPULATED FINAL ORDER

The Oregon Real Estate Agency (OREA) and Sandra Bittler (Bittler) do hereby agree and stipulate to the following:

FINDINGS OF FACT

&

CONCLUSIONS OF LAW

1.

1.1 Bittler was licensed as a principal broker with Oregon First from April 26, 2011 until September 2, 2014.

1.2 On September 1, 2014, OREA received an email from Arthur Donaghey (Donaghey). Based on a newspaper article regarding the transaction, Donaghey requested OREA investigate Bittler's 2013 purchase of her neighbor's property.

1.3 On September 3, 2014, OREA received a hand delivered envelope from Oregon First. The envelope contained a copy of an email to Bittler dated August 31, 2014, from Ken Mistler (Mistler), President and Principal Broker for Oregon First. Mistler alleged Bittler had violated licensing administrative rules.

1.4 Bittler and her husband, Michael Leland (Leland), moved into their neighborhood about seven years ago. At that time, they told their neighbor, Elmo Marquette (E. Marquette) to let them know if he ever wanted to sell the 2.02 acre parcel (subject property) that abutted both the Marquettes’ property and Leland and Bittler's property.

///

///
1.5 Bittler told OREA investigator Rob Pierce (Pierce) that she and her husband saw E. Marquette around the neighborhood and spoke with him many times over the next seven years. Bittler said the subject property was not discussed with E. Marquette again until E. Marquette rang Bittler's doorbell in November 2013 and said he was ready to sell the subject property.

1.6 Bittler said it was E. Marquette that set the asking price at $22,000.00. Bittler said she had only done residential homes transactions and was not well versed in bare land transactions, but she thought the price seemed a little low.

1.7 On November 4, 2013, at 11:05 am, Bittler sent an email to Heidi Gamelgaard (Gamelgaard), Sr. Escrow Officer for Fidelity National Title, asking her to send her any information she had on the subject property, specifically asking Gamelgaard if the subject property was a buildable lot and if there was anything attached to the subject property or the title that would be conveyed in a sale. Bittler also asked Gamelgaard if she could use a simple Earnest Money Agreement to buy the subject property and follow the normal transaction route using Gamelgaard as the escrow office, even though there was no structure on the property.

1.8 On November 4, 2013, at 12:36 pm, Melissa Scott, Customer Service Representative for Fidelity National Title responded to Bittler's email. Scott told Bittler the subject property was zoned R10 with a P&C overlay. The email was copied to Gamelgaard.

1.9 On November 4, 2013, at 2:55 pm, Bittler sent an email to Gamelgaard, explaining to Gamelgaard, from what she was able to find online, that the P&C overlay was environmentally protected land area that would make developing the subject property very difficult. In her email, Bittler said she thought the subject property was not really all that valuable, considering the fact the subject property was landlocked, combined with the zoning restrictions. In her email, in regards to the subject property, Bittler said, "It would be awesome to clear it and extend our back yard if it really was only for $20k."

1.10 A review of a City of Portland zoning map confirms the subject property is zoned R10 with a P&C overlay covering approximately half of the 2.02 acre parcel. According to the City of Portland Ordinance 33.430.15, development would only be approved in the environmental protection zone only in rare and unusual circumstances.

///

2 of 8 - Stipulated Final Order- Sandra Elaine Bittler
1.11 On the zoning map, SW 59th Avenue appears to extend to the subject property providing access to the land. However, a review of google maps and google maps street view for the Marquettes' home located at 5857 SW Garden Home Road shows the street listed as SW 59th Avenue is actually a gravel driveway that ends at the Marquette house and does not extend the entire distance of the easement back to the subject property.

1.12 On November 12, 2013, Bittler and Leland wrote an offer to purchase the subject property from E. Marquette and his wife Mellitta Marquette (the Marquettes) for $22,000.00.

1.13 On page one of the offer, in the section for final agency acknowledgement, Bittler did not fill in the name of the selling licensee or the name of the registered business name she worked under. Also, Bittler failed to check the box indicating she was representing the buyer only.

1.14 On page three of the offer, Bittler disclosed she was a real estate broker, but did not contain any language stating she was representing herself as the buyer in the transaction.

Violation: By failing to fill out the final agency acknowledgement on page one of the sale agreement and failing to state she was representing herself as the buyer in the transaction, Bittler violated ORS 696.301(3) (2013 Edition) as it incorporates OAR 863-015-0145(1) (4-1-2013 Edition), which states if a licensee, whether active or inactive, either directly or indirectly offers or negotiates for the sale, exchange, lease option, or purchase of real estate and the licensee is a principal to the transaction, the licensee must disclose to the other party to the offer or transaction that the licensee is a real estate licensee. The licensee must make the disclosure in any advertising or display signs, and it must appear in writing on at least the first written document of agreement concerning the offer or transaction. The disclosure set forth on the agreement document also must state that the real estate licensee is representing himself or herself as either the buyer or seller in the transaction.

1.15 Bittler said she advised E. Marquette more than once to get representation, but he did not want to be represented. Bittler said E. Marquette wanted to keep the transaction simple and would have sold the property on a handshake deal if he could. Bittler said E. Marquette asked her to draw up the documents so they could close the transaction. Bittler said she walked the Marquettes through the contract, explaining all of it, including the selling price that had been agreed upon.
1.16 On November 13, 2013, the Marquettes accepted the offer.

1.17 On November 18, 2013, signing was scheduled for the subject property. The signing was to happen at the Marquettes’ home and Gamelagaard asked Bittler to meet her at the Marquettes house for the signing. Gamelagaard said she always uses a buddy system when doing an outside closing and in this case thought Bittler would be the logical choice, since Bittler was friends with the Marquettes, lived around the corner from the Marquettes, and was also one of the buyers of the property.

1.18 Bittler said when she arrived at the Marquettes’ home prior to Gamelagaard, on November 18, 2013, Melllitta Marquette said they weren’t getting enough for the property.

1.19 Bittler said when Gamelagaard arrived, she immediately told Gamelagaard the deal was off because Melllitta had changed her mind.

1.20 Gamelagaard told Pierce that when she got to the Marquettes’ house she was told right away by Bittler there was a problem. Gamelagaard said Melllitta Marquette was not happy with the price they were getting and thought they should be getting more. Gamelagaard gave the Marquettes the folder with the escrow documents and left without attempting to get the closing documents signed.

1.21 Gamelagaard said Bittler walked out with her and apologized for Gamelagaard having to come out for nothing.

1.22 The next day, on November 19, 2013, Bittler said E. Marquette called and told Bittler they were ready to move forward with the transaction. E. Marquette said he had discussed it with his wife and they decided it would be best to go ahead and sell the property to Bittler at the agreed upon price, rather than spending more time trying to get a higher price.

1.23 On November 21, 2013, Gamelagaard returned for the second time for the signing of the closing documents. Bittler said Gamelagaard explained each and every document in detail to the Marquettes. Bittler said Gamelagaard was specific about the price being $22,000.00, mentioning the price in several documents and both Marquettes seemed to be in agreement regarding the price.

1.24 Bittler said there was no hesitation by Meliitt Marquette regarding the price at the second signing, and Bittler was confident that the Marquettes completely understood the transaction, including the price they were selling the subject property for.
1.25 Gamelgaard said she explained each document to the Marquettes in detail before she had them sign, to make sure they understood what they were signing.

1.26 Gamelgaard said she explained the preliminary title report to the Marquettes. The preliminary title report had been mailed to the Marquettes on November 15, 2013, so they had a couple days to look it over prior to signing the closing documents. Gamelgaard said the preliminary title report clearly showed the selling price to be $22,000.00. Gamelgaard said she did not remember if she specifically said $22,000.00 or if she just pointed out the amount.

1.27 Gamelgaard said she explained the Sale Escrow Instructions to the Marquettes, which showed that a title insurance policy was to be obtained in the amount of $22,000.00.

1.28 Gamelgaard said she explained the Seller’s Estimated Settlement Statement to the Marquettes. The Seller’s Estimated Settlement Statement clearly showed the selling price of the property to be $22,000.00, and the total amount to be deposited to the Marquettes’ Key Bank account, including prorations to be $23,581.74.

1.29 A Substitute Form 1099-S was prepared for the sale of the property that showed the proceeds of the sale to be $22,000.00. Gamelgaard said she explained this form to the Marquettes and they signed it on November 21, 2013.

1.30 A Statutory Warranty deed was prepared, transferring title to the property from the Marquettes to Leland and Bittler for true and actual consideration in the amount of $22,000.00. Gamelgaard said she explained the Warranty Deed to the Marquettes and they signed it on November 21, 2013. Gamelgaard was confident that by walking the Marquettes through all the closing documents and the explanations she had given them, the Marquettes understood the transaction.

1.31 Regarding possible future development on the subject property, Bittler said there was a verbal agreement to not develop the subject property as long as the Marquettes lived there. Bittler said it was not part of the written contract because of the friendly nature of the transaction and because she did not know how the agreement might affect the deed if it was in writing.

///
///
///
Violation: By making a verbal agreement not to develop the subject property and failing to include it in the written sale agreement Bittler violated ORS 696.301(3) (2013 Edition) as it incorporates OAR 863-015-0135(5) (4-1-2013 Edition), which states real estate licensees must include all of the terms and conditions of the real estate transaction in the offer to purchase or, directly or by reference, in the counter-offer, including but not limited to whether the transaction will be accomplished by way of deed or land sales contract, and whether and at what time evidence of title will be furnished to the prospective buyer.

1.32 Bittler failed to turn her transaction with the Marquettes in to Oregon First, the registered business name she worked under. She said the reason she did not turn it in to Oregon First was because she didn’t think she was required to. Bittler said because she is a principal broker herself, she did not think state law required her to submit her personal transactions for another broker’s approval. Bittler said this was the first and only transaction that she had ever done that did not involve Oregon First.

Violation: By failing to turn the transaction documents in to Oregon First, Bittler violated ORS 696.301(3) (2013 Edition) as it incorporates OAR 863-015-0260(1)(a) (4-1-2013 Edition), which requires that transactions involving a licensee as a principal to the transaction must be processed in the same manner as the licensee’s other professional real estate activities and comply with the records requirements under OAR 863-015-0250. Additionally, Bittler violated ORS 696.301(3) (2013 Edition) as it incorporates OAR 863-015-0260(1)(a), which states that records of professional real estate activity may be stored at the principal broker’s main office, and records of professional real estate activity originating at a branch office may be maintained and stored at either that branch office or at the principal broker’s main office.

1.33 Bittler said she and Leland first learned of the Marquettes’ displeasure with the purchase price of the subject property after being contacted by a reporter for a story that ran August 30, 2014.

1.34 On September 5, 2014, attorneys for Bittler, Leland and the Marquettes announced a settlement. According to the terms of the settlement, the subject property was returned to the Marquettes by Bittler and Leland with no restrictions regarding future development. The Marquettes were allowed to keep the $22,000.00 that Bittler and Leland had
1.35 On September 30, 2014, Pierce attempted to interview the Marquettes regarding the transaction with Bittler and Leland. Melitta Marquette said the disagreement with Bittler and Leland had been resolved to her satisfaction and she and E. Marquette would not discuss the matter any further.

2.1 OREA reserves the right to investigate and pursue additional complaints that may be received in the future regarding this licensee.

STIPULATION & WAIVER

I have read and reviewed the above findings of fact and conclusions of law which have been submitted to me by OREA and further, the order which follows hereafter. I understand that the findings of fact, conclusions of law and this stipulation and waiver embody the full and complete agreement and stipulation between OREA and me. I further understand that if I do not agree with this stipulation I have the right to request a hearing on this matter and to be represented by legal counsel at such a hearing. Hearings are conducted in accordance with the procedures set forth in ORS Chapter 183 and in accordance with the Rules of Practice and Procedure adopted by the Attorney General of the State of Oregon. I freely and voluntarily waive my rights to a hearing, to representation by legal counsel at such a hearing, and to judicial review of this matter.

I hereby agree and stipulate to the above findings of fact and conclusions of law and understand that the order which follows hereafter may be completed and signed by the Real Estate Commissioner or may be rejected by the Real Estate Commissioner, in which case an amended notice of intent may be issued in this matter. I understand that, in accordance with the provisions of ORS 696.445(3), notice of this order shall be published in the Oregon Real Estate News Journal.

///
///
///
///
///
ORDER

IT IS HEREBY ORDERED that Bittler's principal broker license be, and hereby is, reprimanded.

IT IS SO STIPULATED:

Sandra Elaine Bittler
SANDRA ELAINE BITTLER

Date 2-2-15

IT IS SO ORDERED:

GENE BENTLEY
Real Estate Commissioner

Date 2-14-15

DATE of service: 2-18-2015