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STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

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MONROE COUNTY CLERK

WILLIAM HOWARD, suing in the right of Archer Rd.
Vista, LLC, WILLIAM HOWARD, Individually, and
WESTSIDE DEVELOPMENT OF ROCHESTER, INC;

Plaintiffs,

ORDER

v.

GARY L. POOLER

Index No. 2013/8187

Defendant.

and

ARCHER RD. VISTA LLC and GARY L. POOLER as
Manager of ARCHER RD. VISTA LLC,

Intervenors.

This matter having come before the Court for a Bench Trial on March 20-27, 2017, and the Court having reviewed the parties' respective post-trial submissions and given due consideration to the testimony and evidence presented during the trial, and the Court having issued a Bench Decision (the "Decision") dated April 2, 2018; it is hereby

ORDERED that, pursuant to the Court's Decision, a copy of which is annexed hereto and incorporated by reference herein:

1. Defendant Pooler, individually, shall pay damages to Plaintiff Howard, individually, in an amount of \$193,376.66 plus any additional pre-judgment interest, at a rate of 9%, that shall accrue from March 28, 2017 until such time as a judgment is entered, as a result of Pooler's refusal to allow Howard to procure a new builder;

2. Defendant Pooler, individually, shall pay damages to Plaintiff Howard, individually, in an amount of \$324,553.30, plus pre-judgment interest at a rate of 9% from September 9, 2015 (the date of the last home sale) through such time as a judgment is entered, as a result of Pooler's breach of the covenant of good faith and fair dealing with respect to Howard's right to act as exclusive listing agent for Archer Rd. Vista's (the "Company") lots and to have primary responsibility for sales and customer relations with builders;
3. Westside Development shall be awarded the land necessary for wetland mitigation and a sewer easement, the amount and location of which shall ultimately be determined by the New York State Department of Environmental Conservation and the Corps of Engineers, as described in the Decision;
4. Pooler shall pay damages to the Company in an amount of \$70,630 in connection with unmemorialized loans between various Pooler entities and the Company;
5. Pooler shall pay damages to the Company in an amount of \$234,389.61 in connection with Pooler's use of Company funds to pay his legal expenses, plus pre-judgment interest at a rate of 9% from April 19, 2016 (the date of the last payment of legal expenses) through such time as a judgment is entered;
6. Pooler shall pay damages to the Company in an amount of \$317,146, plus pre-judgment interest of \$276,859.98 through March 22, 2017 and additional pre-judgment interest at a rate of 9% from March 23, 2017 through such time as a judgment is entered, in connection with the overstatement of invoices from Pooler Enterprises to the Company;

7. Pooler shall pay damages to the Company in an amount of \$103,812 in connection with overhead and profit charged by Pooler Enterprises to the Company;
8. The Company shall be dissolved, and the Court shall appoint an independent receiver to oversee the dissolution and to winding up of the Company's affairs. The receiver shall wind up the Company's affairs in accordance with the Decision, which requires the receiver to, among other things:
 - a. Provide for the wetland mitigation lands as set forth in paragraph 3 herein, and hold the Company's undeveloped land in escrow until it is determined how much land is necessary for wetland mitigation;
 - b. Require Pooler to indemnify the Company against any entitlement to interest or principal payments alleged by any Pooler entities with respect to any additional outstanding loans between the Pooler entities and the Company not otherwise covered by the Decision;
 - c. To the extent damages awarded by the Court in its Decision are not recoverable from Pooler by either Howard or the Company, make payment of such damages from Pooler's share of distributions made upon dissolution of the Company;
 - d. Except to the extent otherwise specified in the Decision, distribute the Company's assets 60% to Pooler and 40% to Howard;
9. Upon the conclusion of this matter, the entry of this Order, and the appointment of a receiver, the Notice of Pendency shall be deemed moot and

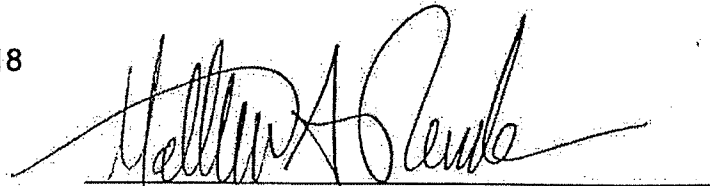
is canceled as a matter of law, subject to any stays of enforcement required by an appeal of this Order;

10. Pooler shall be required to pay damages to Howard in connection with attorneys' fees incurred by Howard as a derivative plaintiff acting on the Company's behalf, and Plaintiffs' counsel shall submit an affirmation in support of an award of attorneys' fees to the Court in connection therewith;

11. The Company is entitled to a constructive trust in the total sum of damages awarded to the Company;

12. Any relief requested by any party not explicitly granted herein, or reasonably necessary to secure the relief granted herein or in the Decision incorporated by reference herein, is denied.

DATED: 5/3, 2018



Hon. Matthew A. Rosenbaum
Supreme Court Justice

ENTER: