

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

*

*

CASE NO. 2020-RE-211

v.

*

OAH NO. DOL-REC-21-22-13486

KATIE KIM,
Respondent

*

* * * * *

PROPOSED ORDER

The Proposed Findings of Fact, Proposed Conclusions of Law and Recommended Order of the Administrative Law Judge dated November 4, 2022, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 9th day of May 2023, hereby

ORDERED:

A. That the Proposed Findings of Fact in the proposed decision be, and hereby are, **AFFIRMED.**

B. That the Proposed Conclusions of Law in the proposed decision be, and hereby are, **APPROVED** in part and **AMENDED** in part as follows:

... Consequently, I conclude that the Respondent is subject to the disciplinary sanction of a reprimand. Bus. Occ. & Prof. § 17-322(b) (Supp. 2022)

I further conclude that the Respondent is subject to a monetary penalty of **\$10,000.00**. Bus. Occ. & Prof. § 17-322(c) (Supp. 2022).

C. That the Recommended Order in the proposed decision be, and hereby is, **ADOPTED** in part and **AMENDED** in part as follows:

The Respondent pay a monetary penalty of **\$10,000.00**.

D. That the records, files, and documents of the Maryland Real Estate Commission reflect this decision.

E. Pursuant to Annotated Code of Maryland, State Government Article § 10-220, the

Commission finds that the Recommended Decision of the Administrative Law Judge required modification because it failed to include a sufficient civil penalty against the Respondent. This case presents a rare occasion where the Commission disagrees with ALJ regarding certain areas of their recommendation, specifically the degree of the offense and the necessary sanction.

F. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties adversely affected by this Proposed Order shall have twenty (20) days from the postmark date of the Order to file written exceptions to this Proposed Order. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 1100 N. Eutaw Street, Baltimore, MD 21201. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

G. Once this Proposed Order becomes final, the parties have an additional thirty (30) days in which to file an appeal to the Circuit Court for the Maryland County in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City.

MARYLAND REAL ESTATE COMMISSION

SIGNATURE ON FILE

5/9/23
Date

By: _____

... that the Commission's decision of the 13th day of June 1954 ...
... it failed to include a sufficient number of ...
... the Commission's decision of the 13th day of June 1954 ...
... to Order of Maryland Regulations (COMAR) 08.01.01 ...
... that Maryland Order should have twenty (20) ...
... the written explanation to this proposed ...
... Maryland Order, Maryland State Commission, ...
... Maryland, MD 21201. If no further explanation ...
... the proposed ...
... that the proposed Order becomes final ...
... to the appeal to the Circuit Court for the ...
... the Circuit Court for the ...

MARYLAND STATE COMMISSION

SIGNATURE ON FILE

1115

**MARYLAND REAL ESTATE
COMMISSION**

v.

**KATIE KIM,
RESPONDENT**

*** BEFORE DENISE O. SHAFFER
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: LABOR-REC-21-22-13486
* MREC No.: 2020-RE-211**

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On October 7, 2019, Candance Jaimes (Complainant) filed a Complaint against Katie Kim, a licensed real estate salesperson (Respondent), for alleged violations of the Maryland Real Estate Brokers Act (Act), Md. Code Ann., Bus. Occ. & Prof. §§ 17-101 to -702 (2018 & Supp. 2022), and Code of Maryland Regulations (COMAR) 09.11.02.01D and .02A, enacted under the Act.

On May 27, 2022, after an investigation, the REC determined that the charges against the Respondent were warranted and issued a Statement of Charges (Charges). The Charges advised the Respondent that if the charged violations were substantiated, the REC would seek a reprimand, suspension, or revocation of her real estate salesperson license, along with a \$5,000.00 fine per violation. Accordingly, the REC ordered a hearing on the Charges and, on

June 7, 2022, forwarded the case to the Office of Administrative Hearings (OAH) to conduct a hearing. Bus. Occ. & Prof. § 17-409 (2018).

On September 15, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Occ. & Prof. §§ 17-324(a), 17-408(a) (2018). Katherine Villareale, Assistant Attorney General, Maryland Department of Labor (Department), represented the REC. The Respondent represented herself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, the REC's procedural regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 09.11.03; COMAR 28.02.01.

ISSUES

1. Did the Respondent violate section 17-322 of the Act and COMAR 09.11.02?
2. If so, what is the appropriate sanction?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the REC:

- REC Ex. 1 - June 13, 2022 Notice of Hearing; June 14, 2022 subpoenas for Ms. Jaimes and Michael Marci, REC Investigator
- REC Ex. 2 - May 27, 2022 Statement of Charges and Order for Hearing¹
- REC Ex. 3 - Not admitted and withdrawn²
- REC Ex. 4 - August 5, 2021 Report of Investigation, with the following attachments:³
1. REC Online Complaint form
 2. Search providing Respondent Kim's license number
 3. Response submitted by Respondent Kim

¹ The document offered by the REC as Exhibit 2 contained even pages only. The complete Statement of Charges and Order for Hearing was forwarded with the transmittal, and I referred to that document.

² REC Exhibit 3 was licensing information for a real estate salesperson unrelated to this case.

³ I have set out the description of each document provided in the "exhibit list" of the Report.

4. Request for investigation
5. Contract of Sale
6. Property Inspection Report
7. Property Inspection Notice
8. Email list of properties sold without permits
9. SDAT⁴ real property search
10. Zillow listing
11. Email from Respondent Kim requesting Indemnity/Hold Harmless Clause
12. MHIC verification of Respondent Kim's license
13. Email copy of permits submitted by Respondent Kim
14. Mutual Release of Obligation Under Contract of Sale

The Respondent did not offer exhibits.

Testimony

The REC presented the testimony of Michael Macri, REC Investigator, Candance Jaimes, Complainant, and Katie Kim, Respondent. The Respondent testified on her own behalf and did not present other witnesses.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to this hearing, the Respondent was licensed by the REC as a real estate salesperson with Realty 1 Maryland LLC.
2. On September 12, 2019, the Complainant and her husband met with the Respondent to view a property at 6268 Dawn Day Drive in Howard County (Property). During the walk-through of the Property, the Respondent stated that there were no issues with the Property and that the renovation work was "high quality." The conversation did not include a discussion of the permits related to the renovation or whether the contractor performing the renovation was licensed by the Home Improvement Commission.
3. The Respondent was the owner of the Property, and her business partner, Henry Lopez,⁵ who was not a licensed home improvement contractor, performed the renovations. The

⁴ State Department of Assessments and Taxation

Complainant was aware that the Respondent was an owner of the Property. She did not know that Mr. Lopez was unlicensed.

4. On September 13, 2019, the parties entered into a contract to purchase the Property, subject to a home inspection. The Complainant delivered an earnest money deposit of \$4,000.00 to the Respondent.

5. The contract included a Maryland Residential Property Disclosure and Disclaimer Statement. In that document, the Respondent did not make any disclosures and only noted that she “did not have knowledge of any latent defect.” (REC Ex. 4, attachment # 5, pg. 23)

6. On September 20, 2019, 4U Inspection Services conducted the home inspection. Among other things, the inspector determined that the electrical work “did not meet standard building practices of clearance” (REC Ex. 4, attachment # 6, pg. 15-19), and the plumbing work was “substandard” and not consistent with “standard building practices (REC Ex. 4, attachment # 6, pg. 20-23). The report also noted that inspection/permitting stickers were not present for the electrical or plumbing work.

7. The Complainant contacted the Respondent after she received the inspection report. The Respondent admitted that the permits had not been pulled during the renovation, and she also disclosed that Mr. Lopez was not a licensed contractor.

8. The electrical and plumbing work performed by Mr. Lopez required permits and permitting inspections.

9. The Complainant and the Respondent entered into negotiations. The Complainant requested retroactive permits, and the Respondent did not agree to provide them.

10. During those negotiations, the Respondent provided the Complainant with listings of other homes in Howard County and stated: “This may not make you feel better, but I just

⁵ In the REC Statement of charges, Mr. Lopez is referred to as the Respondent’s husband. It was undisputed at the hearing that Mr. Lopez is the Respondent’s business partner, not her husband.

wanted to share some of the houses that were renovated without permits and resold recently in Howard County.” (REC Ex. 4, attachment # 8, pg. 1). The Respondent also offered to provide a one-year warranty on the unpermitted electrical and plumbing work.

11. After this and other attempts to resolve the dispute, the parties terminated the contract. The Complainant sought a return of the \$4,000.00 earnest money deposit and a refund of \$988.00 for the home inspection. The Respondent agreed and refunded both sums to the Complainant.

12. The Respondent relisted the home for sale. She disclosed the lack of permits to a new buyer. At the request of a subsequent buyer, she sought and received retroactive permits. The Respondent sought and received a home improvement contractor license.

13. The Respondent has no prior violations of the Act.

DISCUSSION

Regulatory Charge(s)

The REC contended in its Charges that the Respondent:

(b) Subject to the hearing provisions of § 17-324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

* * *

(4) intentionally or negligently fails to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee or applicant deals;

* * *

(25) engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;

* * *

(32) violates any other provision of this title;

(33) violates any regulation adopted under this title or any provision of the code of ethics; . . .

Bus. Occ. & Prof. § 17-322(b)(4, 25, 32 & 33) (Supp. 2022).

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. State Gov't § 10-217 (2021); COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). In this case, the REC bears the burden to prove by a preponderance of the evidence that the Respondent committed the violations alleged in the Charges. COMAR 28.02.01.21K(1), (2)(a).

I conclude that the Respondent violated sub-subsections⁶ 4, 25, and 33 of section 17-322(b) of the Act as charged.⁷ With respect to subsection (4), the Respondent conceded at the hearing that she failed to disclose to the Complainant that Mr. Lopez was not a licensed contractor and that electrical and plumbing permits were not pulled. These are material facts related to the property, relevant to any home buyer's decision to enter into a contract. The Respondent knew these facts at the time of the September 12, 2019, walk-through and failed to disclose them, instead stating that the renovations were "high quality." She also knew these facts on September 13, 2019, when she executed the Maryland Residential Property Disclosure and Disclaimer Statement without disclosing them.

With respect to subsection (25), the Respondent argued that she made a mistake and did not act in bad faith or an untrustworthy manner. In its closing, the Department focused on the word "incompetency," arguing that, even if the Respondent did not know that she was required to disclose these facts, that unawareness is unacceptable. On this point, I found the Respondent's

⁶ Although these citations are to "sub-subsections," for ease of reference and readability, I will refer to them as subsections hereafter.

⁷ The Complainant testified about prior insurance claims made with respect to the property and asserted that the Respondent also has a duty to disclose those claims. The Department did not refer to this allegation in its charging document, opening statement or closing statement. As the Department did not file charges based on these facts, I decline to consider them here.

communication after the inspection telling. When the Complainant brought the permitting issue to the Respondent's attention, the Respondent (1) refused to seek retroactive permits and (2) provided the Complainant with a list of recently sold homes asserting that these homes had been renovated and sold without permits. These actions by the Respondent demonstrate that she was aware of the requirements of the law and willing to ignore them to complete the sale. I find that this demonstrates that the Respondent acted in bad faith and that the contract negotiations amounted to "improper dealings" in violation of the Act.

The Department also argued that the Respondent's request to the Complainant to sign an indemnification or "hold harmless clause" prior to refunding the money demonstrates a lack of good faith. The Respondent explained that she knew that the Complainant was an attorney, and she was worried about being sued. She did not intend to circumvent any obligations by doing so and I did not place any weight on this offer when reaching the conclusion that the Respondent acted in bad faith.

With respect to subsection (33), the charged COMAR provisions provide:

COMAR 09.11.02.01D Relations to the Public. The licensee shall make a reasonable effort to ascertain all material facts concerning every property for which the licensee accepts the agency, in order to fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of material facts.

COMAR 09.11.02.02A Relations to the Client. In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction.

As discussed above, the Respondent knowingly failed to disclose and thereby concealed material facts regarding the lack of permits and the unlicensed status of the home improvement contractor. This failure violated the statute and the ethical obligations in COMAR 09.11.02.01D. Similarly, the Respondent's nondisclosure, coupled with her attempt to cajole the Complainant into following through on the contract because "other people bought homes without proper

permitting,” demonstrates that she was not protecting and promoting the interest of the Complainant in violation of COMAR 09.11.02.02A.

With respect to subsection (32), the Department did not refer to an additional section of the Act in its charging document or during the hearing. Rather, during closing, it referred generally to the Respondent’s ethical obligations. As the Code of Ethics is set forth in COMAR 09.11.02, I considered that argument when addressing subsection (33) above. Without being apprised of a different statutory basis of this charge, I find that the Department has failed to prove a violation under subsection (32).

Disciplinary Sanctions

Section 17-322(c) of the Act provides as follows:

(c)(1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the Commission may impose a penalty not exceeding \$5,000 for each violation.

(2) To determine the amount of the penalty imposed, the Commission shall consider:

- (i) the seriousness of the violation;
- (ii) the harm caused by the violation;
- (iii) the good faith of the licensee; and
- (iv) any history of previous violations by the licensee.

(3) The Commission shall pay any penalty collected under this subsection into the General Fund of the State.

(4) The Commission may not impose a fine based solely on a violation of subsection (b)(35) of this section.

Bus. Occ. & Prof. § 17-322(c) (Supp. 2022).

The Department requested a reprimand and a \$5,000.00 fine. In doing so, the Department noted that the violations were serious in that the failure to obtain permits and the failure to use a licensed home improvement contractor implicated the safety of the renovations. The Department conceded that the harm was mitigated by the Respondent’s decision to terminate the contract and refund the earnest deposit money as well as the home inspection fee. On the issue of good faith, the Department stated that the Respondent’s actions while attempting to consummate the sale,

including refusing to pull retroactive permits and sending the listing of other nonpermitted homes, showed a lack of good faith. The Department credited the Respondent's subsequent decision to obtain the retroactive permits and a home improvement license as indicative of good faith and the Respondent "learning from this incident." The Department acknowledged that there were no prior violations.

The Respondent argued that she made a mistake and had no intention to misrepresent facts or engage in bad-faith negotiations. She described the steps she has taken to remedy the situation, including obtaining the retroactive permits, refunding all monies paid by the Complainant, obtaining a home improvement license, and engaging in continuing education.

The Department justified its request for a reprimand. The Respondent committed the violations, conceded that she did so, and took steps to correct her mistakes after the contract was terminated. She also refunded all the money the Complainant paid, thereby mitigating the financial harm. Additionally, the fact that this is the Respondent's first violation supports the Department's request for a reprimand. Bus. Occ. & Prof. § 17-322(b)(Supp. 2022).

Similarly, the Department has justified its request for a \$2,500.00 fine for two violations. The Department is authorized to request up to a \$5,000.00 fine for each violation. Although I have upheld three statutory violations, the factual basis for each is the same. The Respondent failed to disclose two material facts: (1) the permits had not been pulled as required, and (2) the renovation work was not performed by a licensed home improvement contractor. Bus. Occ. & Prof. § 17-322(c) (Supp. 2022)

PROPOSED CONCLUSIONS OF LAW

I conclude that the Respondent violated § 17-322(b)(4, 25 & 33) of the Act and did not violate § 17-322(32) of the Act. Bus. Occ. & Prof. § 17-322(b)(4, 25, 32 & 33) (Supp. 2022).

Consequently, I conclude that the Respondent is subject to the disciplinary sanction of a reprimand. Bus. Occ. & Prof. § 17-322(b) (Supp. 2022)

I further conclude that the Respondent is subject to a monetary penalty of \$5,000.00. Bus. Occ. & Prof. § 17-322(c) (Supp. 2022).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Real Estate Commission **ORDER**:

The Charges against the Respondent based on § 17-322(b)(4, 25 & 33) of the Act be **UPHELD**;

The Charge against the Respondent based on § 17-322(b)(32) of the Act be **DISMISSED**;

The Respondent be **REPRIMANDED**; and

The Respondent pay a monetary penalty of \$5,000.00.

SIGNATURE ON FILE

November 4, 2022
Date Decision Mailed

Denise O. Shaffer
Administrative Law Judge

DOS/at
#201740

MARYLAND REAL ESTATE

* BEFORE DENISE O. SHAFFER

COMMISSION

* AN ADMINISTRATIVE LAW JUDGE

v.

* OF THE MARYLAND OFFICE

KATIE KIM,

* OF ADMINISTRATIVE HEARINGS

RESPONDENT

* OAH No.: LABOR-REC-21-22-13486

* MREC No.: 2020-RE-211

* * * * *

FILE EXHIBIT LIST

I admitted the following exhibit(s) offered by the REC:

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