

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION \*

v. \*

ELMER A. PALMA  
RESPONDENT

\* CASE NO. 2008-RE-118

\* OAH NO. DLR-REC-21-09-46662

\* \* \* \* \*

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated August 18, 2010 having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of October, 2010.

ORDERED,

A. That the Findings of Fact in the recommended decision be, and hereby are, AFFIRMED;

B. That the Conclusions of Law in the recommended decision be, and hereby are, AFFIRMED;

C. That the Recommended Order be, and hereby is, AMENDED as follows:

ORDERED that the Respondent Elmer A. Palma violated Md. Bus. Occ. and Prof. Art. § 17-322(b)(25) and (33) and COMAR 09.11.02.02H;

ORDERED that the Respondent Elmer A. Palma be and hereby is REPRIMANDED;

ORDERED that the Respondent Elmer A. Palma be assessed a

civil penalty in the amount of \$3,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that the all real estate licenses held by the Respondent Elmer A. Palma shall be SUSPENDED if the civil penalty imposed on him in this Order is not paid in full within thirty (30) days;

ORDERED that the records and publications of the Maryland Real Estate Commission reflect this decision.

D. Pursuant to §10-220 of the State Government Article, the Commission finds that the Recommended Decision of the Administrative Law Judge had to be modified. After reviewing the facts as found by the Judge and the conclusions of law made based on those facts, the Commission believes that the appropriate penalty is a reprimand and a civil fine in the amount of \$3,000. The Respondent instructed the settlement officer to alter the HUD-1 form after it had been reviewed by the Seller, so that it reflected the Seller's contribution to funds for repair of the property. The property was sold "as is", meaning that the Seller had no obligation to pay for any repairs. The Respondent's motivation for ordering these changes was not clear because he did not appear at the hearing. What is clear is that he did not have either verbal or written consent from the Seller to do so.

The sale of real property in Maryland requires written documentation, and the rules of the Real Estate Commission require that all financial agreements between the parties be in writing. The reason for that is obvious: a party may not be able to enforce

his or her rights if they are not evidenced in a written document. A licensee who does not follow these vital rules leaves the parties to the transaction unprotected should problems arise. For this reason, the Commission views the Respondent's omissions as serious offenses that require an appropriately sanction. The maximum penalty for each violation is \$5,000. The Commission takes into consideration the Respondent's lack of prior disciplinary actions and the unresolved question of why he took the actions he did. However, unlike the Administrative Law Judge, the Commission views the failure to reduce agreements, if they ever existed, to writing to be a serious offense. Taking all these factors into account, the Commission believes that a penalty of \$1,500 on each violation and a reprimand are the appropriate sanctions in this case. The Commission has also set forth in the Order a time within which the penalty must be paid, and a license suspension if it is not paid within that time.

E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.08 those parties adversely affected by this Proposed Order shall have 20 days from the postmark date of the Order to file exceptions and to request to present arguments on the proposed decision before this Commission. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 500 North Calvert Street, Baltimore, MD 21202.

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( COMMISSIONER'S SIGNATURE  
APPEARS ON ORIGINAL ORDER )

*[Handwritten signature]*  
Commissioner  
Maryland Real Estate Commission

MARYLAND REAL ESTATE  
COMMISSION

v.

ELMER A. PALMA,  
RESPONDENT

\* BEFORE EILEEN C. SWEENEY,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH CASE NO.: DLR-REC-21-09-46662  
\* MREC FILE NO: 08-RE-118

\* \* \* \* \*

**RECOMMENDED DECISION**

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

**STATEMENT OF THE CASE**

On August 10, 2007, Cheryll Brewton (Complainant) filed a complaint with the, Maryland Real Estate Commission (REC or Commission), an administrative unit of the Department of Labor, Licensing and Regulation (DLLR), against Elmer A. Palma (Respondent), a real estate salesperson associated with Fairfax Realty, Inc. On December 15, 2009, the REC issued a Statement of Charges and Order for Hearing against the Respondent.

On June 3, 2010, I conducted a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2004) (Business Occupations Article). Hope Sachs, Assistant Attorney General, represented the REC. The Respondent failed to appear after due notice to his address of record.

The Administrative Procedure Act, the procedures for Administrative Hearings of the Office of the Secretary of the DLLR, the procedures for Hearings of the Commission, and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§10-201 through 10-226 (2009); Code of Maryland Regulations (COMAR) 09.01.02, 09.01.03, 09.11.03 28.02.01.

### **ISSUES**

- 1) Did the Respondent violate sections 17-322(b)(25) and (33) of the Business Occupations Article and COMAR 09.11.02.01H?
- 2) If so, what is the appropriate sanction?

### **SUMMARY OF EVIDENCE**

#### **Exhibits**

I admitted the following exhibits on behalf of the REC:

- REC Ex. 1     April 12, 2010 Notice of Hearing
- REC Ex. 1A   April 14, 2010 certified mail receipt
- REC Ex. 2     May 26, 2010 Licensing Information
- REC Ex. 3     December 15, 2009 Statement of Charges and Order for Hearing
- REC Ex. 4     September 18, 2008 Investigative Services Report of Investigation, with attachments

The Respondent did not submit any exhibits as he was not present at the hearing.

#### **Testimony**

The REC presented the testimony of the Complainant and Robert Oliver, REC Investigator.

## FINDINGS OF FACT

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

1. At all relevant times, the Respondent was a licensed real estate salesperson in Maryland under license numbers 3332991, 3678610, 3900254 and 3916318.
2. At all relevant times, the Respondent was affiliated with Fairfax Realty, Inc.
3. On May 17, 2007, the Complainant entered into a contract of sale for property known as 10405 Woodlawn Boulevard, Upper Marlboro, Maryland 20774 (Property). The Respondent acted as the agent for the buyers, Jose Portillo and Vilma Torres (Buyers). Roxanne Richardson, Re/Max Sales, acted as the agent for the Complainant.
4. Pursuant to the contract of sale, the Buyers delivered a deposit in the amount of \$500.00 to Fairfax Realty, Inc., to be placed in an escrow account after the Date of Ratification.
5. The Complainant agreed to pay \$16,000.00 at settlement toward the Buyers' charges, "including but not limited to loan origination fees, discount fees, buy down or subsidy fees, prepaids or other charges as allowed by the lender." (REC Ex. 4.)
6. The contract of sale provided that "[a]ny changes to this Contract must be made in writing for such changes to be enforceable." (REC Ex. 4.)
7. Settlement was originally scheduled for June 15, 2007.
8. An Addendum of Clauses, which was made part of the contract of sale, provided that the Property was being sold "as is." (REC Ex. 4.)
9. Pursuant to the Addendum of Clauses, the parties agreed that the Complainant would occupy the Property for a period of fourteen days following settlement, that they would execute a Post-Settlement Occupancy Agreement and that the Complainant would pay a security deposit of \$3,000.00 at settlement. (REC Ex. 4.)

10. Pursuant to a First-Time Maryland HomeBuyer Transfer and Recordation Tax Addendum, the Complainant agreed to pay the cost of the Recordation Tax and the Local (county) Transfer Tax.

11. Pursuant to a May 20, 2007 Maryland Residential Property Disclosure and Disclaimer Statement, the Complainant elected to sell the Property, "as is," without representations and warranties as to its condition. (REC Ex. 4.)

12. When the Buyers did a walk-through inspection of the Property on June 24, 2007, they could not get the central air conditioning unit to work and signed a Walk-Through Inspection form indicating that the unit "need[ed] to be checked by a professional." (REC Ex. 4.) The form also indicated that repairs were to be made and paid for from funds held in escrow by [Fairfax Realty, Inc.], specifically, "\$200 for thermostat replacement." (REC Ex. 4.)

13. The Complainant did not sign the Walk-Through Inspection form; she never agreed, orally or in writing, to pay for repair or replacements of the air conditioning unit.

14. On or about June 24, 2007, RAI Contractors submitted an invoice to the Buyers in the amount of \$6,399.50 for the replacement of wood trim on the left side of the house around the roof, replacement of carpet in four bedrooms, and installation of wood flooring in the living room.

15. On June 25, 2007, the Complainant signed a Sales Contract Addendum agreeing to an earnest money deposit of \$1,000.00 and to change the settlement date to June 26, 2007.

16. A June 25, 2007 HUD-1 Estimated Settlement Statement indicated that the Complainant was to contribute \$16,000.00 at settlement toward the Buyers' closing costs. It also indicated "Walkthrough Escrows" of \$200.00.

17. The parties settled on the Property on June 26, 2007; they went to the title company office at separate times to sign relevant documents.

18. The Complainant reviewed a HUD-1 Settlement Statement which showed that she contributed \$16,000.00 toward the Buyers' closing costs.<sup>1</sup>

19. The Complainant and the Buyers signed an Addendum to HUD-1 Settlement Statement on June 26, 2007 indicating that they had "carefully reviewed the HUD-1 Settlement Statement and to the best of [their] knowledge and belief, it [was] a true and accurate statement of all receipts and disbursements made on [their] account or by [them] in this transaction." (REC Ex. 4.)

20. On June 26, 2007, the parties executed a Post-Settlement Occupancy Agreement by which the Complainant was to remain in the Property from the date of settlement through July 11, 2007 at a charge of \$88.00 per day. The Complainant agreed to credit the Buyers at settlement with the sum of \$1,320.00, the amount due from the date of settlement through July 11, 2007. The Agreement also provided that the settlement attorney shall hold \$1,000.00 in escrow from the Complainant's proceeds of sale until the purchasers had an opportunity for a second inspection of the Property, after the Complainant vacated.

21. Approximately two weeks after settlement, the Complainant received a Final HUD-1 Settlement Statement dated June 26, 2007, which indicated that she contributed \$9,600.00 toward the Buyers' costs and payment of an invoice from RAI Contractors in the amount of \$6,399.50, as well as the walk-through escrow of \$200.00.

22. The Complainant never agreed, orally or in writing, to pay less than \$16,000.00 in closing costs and never agreed to pay the \$6,399.50 Invoice from RAI Contractors.

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<sup>1</sup> The REC did not make clear whether the Complainant reviewed a HUD-1 Settlement Statement marked "Estimated" or marked "Final."



23. On July 11, 2007, the Complainant signed a Revised Post Settlement Occupancy Agreement extending the post settlement occupancy date from July 11, 2007 to July 15, 2007 at a rate of \$176.00 per day (total (\$704.00)).

24. Sometime after the Complainant filed a complaint with the REC on August 10, 2007, the Complainant received a full refund of the amount held in escrow.<sup>2</sup>

25. The Respondent has no history of statutory or regulatory violations.

### **DISCUSSION**

The REC contended that the Respondent changed the terms of the contract of sale between the Complainant and the Buyers without the Complainant's written agreement in violation of sections 17-322(b)(25) and (33) of the Business Occupations Article and COMAR 09.11.02.01H. Specifically, the REC contended that the Respondent improperly withheld \$200.00 from funds held in escrow, to repair a thermostat, and directed the settlement officer handling the settlement on the Property to change the HUD-1 Settlement Statement to reflect incorrectly that the Complainant was responsible for "Walkthrough Escrows" in the amount of \$200.00 and for the cost of repairs made by RAI Contractors to the Property. (REC Ex. 4.) In addition, the Respondent directed the settlement officer to revise the amount of the Complainant's contribution toward the Buyers' closing costs on the HUD-1 Settlement Statement without the Complainant's knowledge or written consent.

### **Legal Standards**

Section 17-322 provides in pertinent part as follows:

**§ 17-322. Denials, reprimands, suspensions, revocations, and penalties --  
Grounds.**

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<sup>2</sup> An undated Escrow Release Agreement signed by the Buyers indicates that \$496.00 was returned by the Escrow Agent to the Complainant. The Complainant did not sign the form.

...

(b) *Grounds.* -- 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:

...

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

...

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

COMAR 09.11.02.01H provides:

**.01 Relations to the Public.**

...

H. For the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed.

For the following reasons, I find that the REC established by a preponderance of the evidence that the Respondent violated the aforementioned statute and regulation.

**Violations**

The Complainant testified without contradiction that she never agreed orally or in writing to be responsible for a \$200.00 repair bill for the air conditioning unit in the Property, for a reduction in the amount of her contribution to the Buyers' closing costs or for RAI Contractors' Invoice in the amount of \$6,399.50.

Roxanne Richardson, the Complainant's agent, advised John Oliver, REC Investigator, that she never agreed on behalf of the Complainant to a change in the figures on the estimated HUD-1 Settlement Statement. She could not recall why a Walk-Through Checklist form

indicated that the Complainant would pay for repairs to the thermostat on the air conditioning unit when the contract of sale stated that the Property was being sold “as is.”

When Mr. Oliver spoke to Louisa Miranda, the settlement officer who handled the sale of the Property for Realty Title of Tysons, she initially stated that she could not recall the specifics of the settlement, but that she would not have made changes on the HUD-1 Settlement Statement without the approval of the Complainant’s agent. She subsequently told Mr. Oliver that she recalled Ms. Richardson telling her that there was no problem making the changes, “as long as the bottom line does not change.” (REC Ex. 4.)

Although the Respondent contended that the Complainant or Ms. Richardson agreed to the changes orally, he admitted to Mr. Oliver that adding the cost of repairs to the HUD-1 Settlement Statement was “probably a mistake.” (REC Ex. 4.)

I found the Complainant’s testimony that she did not agree to any contract changes to be credible. She was confident and consistent in her testimony. Furthermore, her testimony was buttressed by the exhibits entered into evidence, which showed that the Property was to be sold “as is” and that any changes to the contract of sale were to be made in writing. The exhibits included no written agreements to change the terms of the contract of sale.

The Respondent, Ms. Richardson, and Ms. Miranda did not appear at the hearing. Thus, I had no way of judging their credibility or the reliability of their contradictory statements to Mr. Oliver. Ms. Richardson could not recall the specifics of discussions regarding the air conditioning unit but denied agreeing to the changes on the HUD-1 Settlement Statement; the Respondent and Ms. Miranda contended that she did agree to the changes on behalf of the Complainant. Regardless of what communications took place among the agents and the settlement officer, the evidence clearly shows the Respondent failed to see to it that the financial

obligations and commitments regarding the sale were in writing, expressing the exact agreement of the parties, and that copies of the alleged agreement were placed in the hands of all parties involved within a reasonable time after the alleged agreements were executed. I find that such conduct demonstrated, at the least, incompetence in violation of subsection (b)(25) of section 17-322 and unethical conduct in violation of COMAR 09.11.02.01H, and consequently, a violation of subsection (b)(33) of section 17-322.

### **Sanctions**

The REC argued that an appropriate sanction in this case is a reprimand and the imposition of a \$1,500.00 penalty for each violation (total: \$3,000.00).<sup>3</sup> It stipulated that the Respondent has no prior violations on his record but argued that his violations in this case were serious and harmful, and that his failure to appear at the hearing showed a lack of good faith.

Section 17-322(c) provides in pertinent part as follows with regard to penalty:

#### **§ 17-322. Denials, reprimands, suspensions, revocations, and penalties -- Grounds.**

...

(c) *Penalty.* -- (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.

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<sup>3</sup> Section 17-322(c)(4) provides, "The Commission may not impose a fine based solely on a violation of subsection (b)(35) of this section." Md. Code Ann., Bus. Occ. & Prof. § 17-322(c)(4).

I find that, in this case, the practical effect of the Respondent's violations was not serious. The Complainant did ultimately receive a refund of the appropriate escrow amount. She contended that the decrease in the amount of her contribution to the Buyers' closing costs reported on the revised HUD-1 Settlement Statement will result in negative tax consequences for her; however, I can only speculate that that will be the case and as to the amount involved. Furthermore, I can only speculate that the Respondent acted in bad faith, rather than just incompetently and contrary to the ethics regulation, in perhaps relying upon Ms. Richardson's authorization to change the contract terms. I do not impute a lack of good faith, as the REC suggests, from the Respondent's failure to appear at the hearing as there could be many reasons for that. Thus, in light of these factors as well as the Respondent's prior good history, I find that a reprimand and a \$250.00 penalty for each violation (total: \$500.00) is appropriate in this case.

#### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated sections 17-322(b)(25) and (33) of the Business Occupations Article and COMAR 09.11.02.02H.

I further conclude as a matter of law that an appropriate sanction in this case is a reprimand and the imposition of a \$250.00 penalty for each violation (total: \$500.00). Md. Code Ann., Bus. Occ. & Prof. §17-322(c) (Supp. 2009).

#### **RECOMMENDED ORDER**

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

**ORDER** that the Respondent, Elmer A. Palma, be reprimanded and required to pay a \$500.00 civil penalty for violating sections 17-322(b)(25) and (33) of the Business Occupations Article and COMAR 09.11.02.02H; and

**ORDER** that the records and publications of the Maryland Real Estate Commission reflect its final decision.

August 18, 2010  
Date Decision Mailed

#116093

ADMINISTRATIVE LAW JUDGE'S SIGNATURE  
APPEARS ON ORIGINAL ORDER

Eileen C. Sweeney  
Administrative Law Judge



MARYLAND REAL ESTATE

COMMISSION

v.

ELMER A. PALMA,  
RESPONDENT

\* BEFORE EILEEN C. SWEENEY,

\* AN ADMINISTRATIVE LAW JUDGE

\* OF THE MARYLAND OFFICE OF

\* ADMINISTRATIVE HEARINGS

\* OAH CASE NO.: DLR-REC-21-09-46662

\* MREC FILE NO: 08-RE-118

\* \* \* \* \*

**FILE EXHIBIT LIST**

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REC Ex. 2 May 26, 2010 Licensing Information

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REC Ex. 4 September 18, 2008 Investigative Services Report of Investigation, with attachments

The Respondent did not submit any exhibits as he was not present at the hearing.

# DLLR

STATE OF MARYLAND  
DEPARTMENT OF LABOR, LICENSING AND REGULATION

MARTIN O'MALLEY, Governor  
ANTHONY G. BROWN, Lt. Governor  
ALEXANDER M. SANCHEZ, Secretary

Division Occupational & Professional Licensing  
Stanley J. Botts, Commissioner

DLLR Home Page: [www.dllr.state.md.us/license/occprof/recomm.html](http://www.dllr.state.md.us/license/occprof/recomm.html)  
MREC E-mail: [mrec@dllr.state.md.us](mailto:mrec@dllr.state.md.us)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
FIRST CLASS MAIL

October 20, 2010

Mr. Elmer A. Palma  
Fairfax Realty, Inc.  
7611 W. Little River Turnpike, Suite 101  
Annandale, Virginia 22003

**RE: Maryland Real Estate Commission v. Elmer A. Palma**  
**Case No. 2008-RE-118**


Dear Mr. Palma:

Enclosed is your copy of the Proposed Order of the Commission issued on behalf of MREC v. Elmer A. Palma heard by an Administrative Law Judge on June 3, 2010.

The Respondent has the right to file Exceptions to the Proposed Order and to present Arguments to the Commission. Written exceptions to the Proposed Order or a request to present Arguments must be filed with the Commission within 25 days of the Respondent's receipt of this Proposed Order.

Should the Respondent fail to make his Exceptions and request to present Arguments known to the Commission within the time specified, the Proposed Order of the Commission shall be deemed final and shall become effective 30 days thereafter. This additional period is to allow time should the Respondent desire to file in a Court of Law.

( COMMISSIONER'S SIGNATURE  
APPEARS ON ORIGINAL ORDER )

  
Katherine F. Connelly  
Executive Director

KFC/bai

Enclosure: Copy of Proposed Order  
cc: file

