

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION \*

v. \*

IRIS C. LATTIMORE  
Respondent

\* OAH No.: DLR-REC-21-15-11061

\* CASE NO. 2015-RE-231

\* \* \* \* \*

PROPOSED ORDER

The Findings of Fact, Conclusions of Law, and Recommended Order of the Administrative Law Judge dated October 29, 2015, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 24th day of November, 2015

**ORDERED,**

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

B. That the Conclusions of Law in the recommended decision be, and hereby are, **AMENDED** to reflect that the proven statutory violations justify assessing a monetary penalty of \$1,600;

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

**ORDERED** that the Respondent Iris C. Lattimore violated Md. Bus. Occ. And Prof. Art. §17-322(b)(25) and (33) and COMAR 09.11.01.16;

ORDERED that the Respondent Iris C. Lattimore did not violate Md. Bus. Occ. And Prof. Art. §17-322(b)(32);

ORDERED that the Respondent Iris C. Lattimore pay to the Real Estate Commission a civil penalty in the amount of \$1,600 within thirty days of the date of this Proposed Order, and that, if the Respondent fails to pay the penalty in full within that time, all real estate licenses held by her will be suspended until the penalty is paid; and

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, after consideration of the factors at §17-322(c)(2) of the Business Occupations and Professions Article, that the recommended order must be amended to reflect a civil penalty of \$1,600.

§17-322(c)(2) directs the Commission to consider four factors in determining the penalty that should be imposed for a violation. The first factor is the seriousness of the violation.

The Commission relies upon an applicant to voluntarily comply with the requirements of §17-315 to complete specified continuing education (CE) courses during each licensing period and to truthfully report those credits when filing an on-line

application for license renewal. The Commission considers a licensee's failure to comply with the requirement that she complete designated continuing education classes prior to license renewal and the licensee's lack of truthfulness in reporting completion of those credits to be a serious violation. Under the law, she was not eligible for renewal of her license, and she received it only because she submitted incorrect data into the electronic process.

The failure to complete the required continuing education credits and the submission of an on-line application indicating that the credits had been received is also indicative of a lack of good faith, the second factor to be considered in assessing a penalty. In addition, the failure to respond to Commission inquiries is also indicative of a lack of good faith.

Buttressing this conclusion is the fact that the ALJ did not find Respondent's testimony asserting that she did not receive any of the Commission inquiries directed to her at the Taylor Properties address to be credible.

The Respondent's acknowledgement that she failed to take the required CE courses as a result of the fact that "so much was going on in my life" is not a mitigating factor. Nor is the fact that, as the Respondent argued, she was unaware that she could be

held accountable for a fine as high as \$1,600 by the Commission. It would be an absurd result to allow the Respondent to benefit from her lack of knowledge regarding the basic statutory and regulatory requirements that apply to her license, when the violations are related directly to Respondent's failure to comply with the CE requirement which is intended to educate her about those very same requirements.

With regards to the final two factors to be considered by the Commission, there was no indication of harm to the public or of any previous violations by the licensee.

The ALJ relied on the fact that the Respondent took four additional courses after her renewal in order to justify the recommended reduction in the penalty amount. The Commission does not find that to be a mitigating factor in this particular case.

The four courses taken by the Respondent after the filing of the Complaint pertain to the 2016 renewal, not to the 2014 renewal which is at issue in this case. As such, they had no curative or mitigating effect on the violations in this case.

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.

**SIGNATURE ON FILE**

Maryland Real Estate Commission

MARYLAND REAL ESTATE

\* BEFORE UNA M. PEREZ,

COMMISSION

\* AN ADMINISTRATIVE LAW JUDGE

v.

\* OF THE MARYLAND OFFICE OF

IRIS C. LATTIMORE,

\* ADMINISTRATIVE HEARINGS

RESPONDENT

\* OAH CASE No.: DLR-REC-21-15-11061

\* REC CASE No.: 2015-RE-231

\* \* \* \* \*

**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 March 30, 2015, the Maryland Real Estate Commission (MREC) issued a Statement of Charges and Order for Hearing against Iris C. Lattimore (Respondent) for alleged violations of Maryland Annotated Code, Business Occupations and Professions Article, Sections 17-322(b)(25), (32), and (33), and Code of Maryland Regulations (COMAR) 09.11.01.16.

On August 20, 2015,<sup>1</sup> I convened a hearing at the Office of Administrative Hearings (OAH), in Hunt Valley, Maryland. Assistant Attorney General Hope Sachs represented the MREC. The Respondent appeared and represented herself.

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<sup>1</sup> The hearing was originally scheduled for June 9, 2015, but was postponed at the Respondent's request.

Procedure is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); the MREC's Hearing Regulations, COMAR 09.11.03; and the Rules of Procedure of the OAH, COMAR 28.02.01.

### **ISSUES**

The issues in this case are as follows:

- 1) Did the Respondent engage in conduct that demonstrated bad faith, incompetency, or untrustworthiness, or that constituted dishonest, fraudulent, or improper dealings?
- 2) Did the Respondent violate any other provision of Title 17?
- 3) Did the Respondent fail to timely reply to a written inquiry from the MREC, thereby violating COMAR 09.11.01.16?
- 4) Is the Respondent subject to any appropriate sanction, and if so, what sanctions and/or penalties should be imposed?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted into evidence the following exhibits on behalf of the MREC:

- MREC Ex. 1 Notice of Hearing, July 2, 2015, with attached certified mail "green card"
- MREC Ex. 2 MREC Complaint No. 231RE2015, November 17, 2014
- MREC Ex. 3 Statement of Charges and Order for Hearing, March 30, 2015
- MREC Ex. 4 Licensing Information, printed May 14, 2015
- MREC Ex. 5 Salesperson Renewal Application (online), printed March 16, 2015
- MREC Ex. 6 Continuing Education printout, August 18, 2015
- MREC Ex. 7 Continuing Education Requirements, printed August 18, 2015

MREC Ex. 8 Letter from the MREC to the Respondent, November 17, 2014

MREC Ex. 9 Notice of Complaint (Final Notice) from the MREC to the Respondent, December 17, 2014

The Respondent did not offer any exhibits.

**Testimony**

The MREC presented the testimony of Charlene Faison, MREC Education Administrator.

The Respondent testified on her own behalf.

**FINDINGS OF FACT**

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

1. At all relevant times, the Respondent was licensed by the MREC as a real estate salesperson under registration number 05 592106. MREC Ex. 4.
2. Prior to October 14, 2014, the MREC's records showed that the Respondent was affiliated with a real estate brokerage, Colliers International D.C., LLC, at 1625 Eye Street, N.W., Suite 700, Washington, D.C. 20006. MREC Ex. 4.
3. On October 14, 2014, the Respondent filed her Salesperson Renewal application (Application) using the MREC's electronic licensing program. MREC Ex. 5.
4. As of at least November 4, 2014, the Respondent transferred her brokerage affiliation to Taylor Properties Referral Company, 175 Admiral Cochrane Drive, Suite 111, Annapolis, MD 21401 (Taylor Properties). MREC Ex. 4.
5. As a salesperson, the Respondent was required to complete 15 hours of continuing education (CE) for the license renewal period ending in October 2014.
6. The 15 CE hours must include three required courses: ethics (3.0 hours); legislative (3.0 hours); and fair housing (1.5 hours). MREC Ex. 7.



7. On her Application, the Respondent answered “Yes” to the question “Have you completed the CE hours required since your last renewal?”
8. The application form states that the MREC will perform random audits, and that failure to complete the CE requirements before renewal could result in sanctions. MREC Ex. 5.
9. At or about the time of the Respondent’s Application, the MREC notified the Respondent that she was included in a random audit, and that she was to submit proof of completion of the required CE within 30 days.
10. As of November 17, 2014, a check of the MREC’s records revealed no CE courses completed by the Respondent. In addition, the Respondent had not submitted any proof of compliance with the CE requirement. The MREC filed a Complaint against the Respondent on November 17, 2014. MREC Ex. 2.
11. On November 17, 2014, the MREC sent a letter and a copy of the Complaint to the Respondent at the Taylor Properties address. The letter demanded a written response to the Complaint within 20 business days, as required by COMAR 09.11.01.16. MREC Ex. 8.
12. The Respondent did not file a written response within 20 business days. On December 17, 2014, the MREC sent another letter to the Respondent at the Taylor Properties address, affording her an additional 10 days to provide a written response. MREC Ex. 9. The Respondent did not provide any response.
13. As of October 14, 2014, the Respondent had only completed one of the required CE courses, Ethics, on October 8, 2014. MREC Ex. 6.
14. The Respondent has no history of previous violations.

## DISCUSSION

To qualify for the renewal of a real estate salesperson's license, a licensee is required to complete at least 15 clock hours of continuing education instruction during the preceding two-year term. Md. Code Ann., Bus. Occ. & Prof. § 17-315(a) (Supp. 2015). The evidence showed that the Respondent applied to renew her license on October 14, 2014.<sup>2</sup> The two-year period in question was October 15, 2012 to October 15, 2014. *See* MREC Ex. 4. It is not disputed that the Respondent had completed three of the required 15 CE hours by October 14, 2014, although this information was not available to the MREC when it filed the Complaint on November 17, 2014.<sup>3</sup> It is also undisputed that the Respondent answered "Yes" to the question asking if she had completed the required CE courses, and that the Application was submitted under the penalty of perjury.

It is further undisputed that the Respondent was selected for a "random audit" of compliance with the CE requirements, and was instructed to submit proof of compliance within 30 days. Ms. Faison explained that when renewal applicants submit their credit card information at the time of application, a certain percentage receive a "pop-up" message instructing them to submit proof of CE compliance within 30 days. It is also undisputed that the Respondent did not submit the required proof within 30 days, and that she did not respond to the MREC's letters of November 17, 2014 or December 17, 2014, requiring a written response to the Complaint.

With regard to the Respondent's address, Ms. Faison testified that every salesperson who is active must be associated with a brokerage company, and that the Respondent's business address of record in November 2014 was Taylor Properties in Annapolis. Ms. Faison further

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<sup>2</sup> Ms. Faison explained that page 2 of MREC Ex. 4 is a list of electronic transactions, and that the code "6106" for October 14, 2014, signifies the receipt of an application.

<sup>3</sup> Ms. Faison acknowledged that the Respondent took four CE courses after the filing of the Complaint, but added that these would pertain to the 2016 renewal, not the 2014. *See* MREC Ex. 6.

explained that it was standard MREC practice to send official communications to the broker's office if a salesperson has an active license. She testified that she had reviewed the Respondent's file, and had not seen any returned mail from the Taylor Properties address.

The Respondent testified that she never received the Complaint (MREC Ex. 2), the Statement of Charges and Order for Hearing (MREC Ex. 3), or the two letters from the Commission (MREC Ex. 8 and 9). She acknowledged that she did not complete all the required CE courses on time, because there was "so much going on in my life." She did not explain why she answered "Yes" to the CE question on the Application when she knew she had not complied with the requirements. She claimed not to know who Colliers International D.C., LLC was.

On cross-examination, the Respondent said that she was, or had been, affiliated with Taylor Properties, and that "I am still supposed to be with Taylor Properties." She claimed that she had been to Taylor Properties only once; that she had not been participating as a real estate agent for the last four years; that she had only made one rental since she had been an agent; and that Taylor Properties told her she could go on "referral status."

### Analysis

#### 1. Bad Faith, Untrustworthiness, or Dishonest, Fraudulent or Improper Dealings

The MREC may take disciplinary action against a real estate salesperson if that person engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness, or that constitutes dishonest, fraudulent, or improper dealings. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) (2010). When the Respondent applied for the renewal of her license, she provided a dishonest answer to a straightforward question on the application form. The Respondent thereby violated section 17-322(b)(25).

2. Violation of Any Other Provision of Title 17

The MREC may also take disciplinary action against a licensee who violates “any other provision” of Title 17. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(32) (2010). In this case, the MREC did not separately charge a violation of section 17-315(a), the continuing education requirement, or any other substantive provision of Title 17. Thus, I conclude that she is not subject to sanctions under section 17-322(b)(32).

3. Violation of COMAR 09.11.01.16

The MREC may also take disciplinary action against a licensee who violates any regulation adopted under Title 17. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33) (2010). COMAR 09.11.01.16, Form of Licensee’s Reply to Commission’s Written Inquiries, provides:

A licensee shall reply in writing to the Commission within 20 days of receipt of written inquiries directed to the licensee by the Commission. Failure to reply in this way may be considered by the Commission to be a violation of Business Occupations and Professions Article, §17-322(a)(25), Annotated Code of Maryland, for which revocation or suspension of the license can be imposed.

It is undisputed that the MREC did not receive any response to its letters of November 17, 2014 or December 17, 2014, directed to the Respondent at the Taylor Properties address.

The Respondent claimed repeatedly that she did not receive any of the MREC communications directed to her at the Taylor Properties address. I did not find this testimony credible. First, the OAH Notice of Hearing dated July 2, 2015, rescheduling the hearing after the Respondent’s request for postponement, was mailed to the Respondent at the Taylor Properties address, 175 Admiral Cochrane Drive, Suite 111, Annapolis, MD 21401. The Respondent appeared for the hearing on August 20, 2015, in accordance with that notice.

Second, the original OAH Notice of Hearing, dated April 23, 2015, was mailed to the Respondent at the same Annapolis address. As noted in footnote 1, above, the Respondent

requested, and was granted, a postponement of the hearing. These facts permit the inference that she received both OAH notices at the Taylor Properties address. Since the MREC letters were mailed to the same address, and were not returned, it is reasonable to infer that the Respondent received these also and simply ignored them. I conclude that the Respondent violated COMAR 09.11.01.16, thereby violating section 17-322(b)(25), and is subject to sanctions under section 17-322(b)(33).

Sanction—Civil Penalty

The MREC did not request a reprimand or a suspension or revocation of the Respondent's license. Instead, it recommended the imposition of a civil penalty of \$1,600.00. The statute provides for a civil penalty, as follows:

- (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.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2010).

The Respondent's violations were serious. First, although she did not complete most of the required CE during the required time period, she lied on her Application about her compliance with this requirement. The public relies on the MREC to license competent (and presumably honest) salespersons. The Respondent was essentially attempting to be licensed without meeting the competency standard, and was aware that she had not fully complied with the requirement. Second, she did not comply with the MREC's demand for a written response to

the Complaint pursuant to COMAR 09.11.01.16; by the terms of the regulation, this constitutes a violation of section 17-322(b)(25).

Although the violations did not cause any specific harm that was proven by the MREC, the Respondent did not act in good faith. She did express that there was a lot going on in her family life. I do find some evidence of good faith "after the fact;" the Respondent took four courses, totaling nine hours, after October 2014. MREC Ex. 6. Finally, the Respondent has no history of previous violations.

The Respondent argued that she was unaware that she could be subject to a penalty as high as \$1,600.00. As a licensee, she is responsible for knowing the basic statutory and regulatory requirements that apply to her license; indeed, that is most likely one of the purposes of the ongoing CE requirement.

In this case, while I do not condone or excuse the Respondent's conduct, I have considered the fact that she did take four additional courses (although not timely) after her renewal. The MREC proved two separate violations, each of which could result in a civil penalty of \$5,000.00. The MREC requested a total civil penalty of \$1,600.00 for all violations. This request is considerably lower than the maximum penalty available for even one violation. Nevertheless, under the circumstances of this case, I recommend that the penalty be reduced somewhat, to \$1,000.00.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondent engaged in conduct that demonstrated bad faith and untrustworthiness and that constituted dishonest, fraudulent, and improper dealings. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) (2010).

I further conclude, as a matter of law, that the Respondent failed to timely reply to written inquiries from the MREC. COMAR 09.11.01.16; Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) and (33) (2010).

I further conclude, as a matter of law, that the MREC did not prove a violation of any other provision of Title 17 of the Business Occupations and Professions Article. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(32) (2010).

I further conclude, as a matter of law, that the proven statutory violations justify assessing a monetary penalty of \$1,000.00. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2010).

**RECOMMENDED ORDER**

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

The Commission's charges against the Respondent under sections 17-322(b)(25) and (33) of the Business Occupations Article, and COMAR 09.11.01.16, be **AFFIRMED**; the Commission **ORDER** that the Commission's charges against the Respondent under section 17-322(b)(32) be **REVERSED**; the Commission **ORDER** that the Respondent pay a civil penalty in the amount of \$1,000.00; and, the Commission **ORDER** that its records and publications reflect its final decision.

October 29, 2015  
Date Decision Issued

UMP/da  
#158784

**SIGNATURE ON FILE**

Una M. Perez  
Administrative Law Judge