

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE * OAH NO. DLR-REC-21-10-17476

COMMISSION *

V. * REC CASE NO. 2008-RE-282

MICHAEL CAMPHOR *

Respondent *

*** * * * * * * * * * * * ***

OPINION AND FINAL ORDER

This case came before the Maryland Real Estate Commission (“Commission”) on argument on Exceptions filed by the Respondent, Michael Camphor, to the Proposed Order of January 19, 2011. On December 20, 2010, Administrative Law Judge Susan A. Sinrod (“ALJ”) filed a Recommended Decision and Recommended Order in which she recommended that the Respondent’s real estate license be revoked and that the Respondent pay a civil penalty of \$5,000.00.

On January 19, 2011, the Commission issued a Proposed Order that affirmed the ALJ’s Findings of Fact, approved the ALJ’s Conclusions of Law, and adopted the ALJ’s Recommended Order.

A hearing on the Exceptions filed by the Respondent was held by a panel of Commissioners, consisting of Commissioners J. Nicholas D’Ambrosia, Marla S. Johnson, and Jeff M. Thaler on June 15, 2011. Peter Martin, Assistant Attorney General, represented the Commission. A transcript of the hearing before the ALJ was not provided to the Commission. The proceedings were electronically recorded.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, four exhibits, including the exhibits which were introduced at the hearing before the ALJ, were entered into evidence.

PRELIMINARY MATTERS

When Mr. Camphor appeared before the Commission for the hearing on the Exceptions which he had filed, he requested that the hearing be postponed. He stated that although he had previously lacked resources to hire an attorney, he had now been able to hire an attorney. Mr. Camphor did not provide any information concerning the date on which he hired an attorney.

Mr. Martin advised the Commission that he had spoken with Mr. Camphor's attorney, a Mr. Preller, and had informed him that he would object to any request for a postponement made at the Exceptions' hearing because Mr. Camphor had been notified on March 1, 2011 that the hearing was scheduled for June 15, 2011 and had adequate time to hire an attorney prior to the hearing, to request a postponement, and to obtain a transcript of the hearing before the ALJ, if desired. Mr. Martin also introduced an e-mail, dated June 15, 2011, in which Matthew Schweizer, the President of the Complainant company, Pro Title, LLC, stated that he would defer to Mr. Martin's judgment in regard to a postponement of the Exceptions' hearing.

Mr. Martin noted that Mr. Camphor had not filed his Exceptions to the Proposed Order of January 19, 2011 until February 17, 2011 and argued that the Exceptions were not filed in a timely manner.

The Commission found that the Exceptions were not filed within twenty-five days of January 20, 2011, the date on which the Commission mailed its Proposed Order

and the Recommended Decision and Recommended Order of the ALJ to Mr. Camphor. However, the Commission decided that, in light of the fact that it had scheduled a hearing in response to Mr. Camphor's filing of Exceptions, it would permit the hearing to proceed.

The Commission determined that Mr. Camphor's request for a postponement of the hearing would not be granted. The Commission found that Mr. Camphor had been advised in its letter of March 1, 2011 that: "A postponement request must be made in writing, and will be considered only if it is received by the agency not less than ten (10) days before the scheduled date of the hearing. The request shall set forth the reasons for the request, and will be granted only for good cause. A postponement request received less than ten days before the hearing will not be considered unless there are extenuating circumstances." This notice regarding postponement of a hearing reflects the provisions of Code of Maryland Regulations ("COMAR") 09.01.02.10. The Commission concluded that Mr. Camphor had been properly notified of the steps to take in order to request a postponement but had failed to make a timely, written request for a postponement and had failed to provide extenuating circumstances which would support his request for a postponement.

As the basis for his Exceptions, Mr. Camphor stated that the Findings of Fact made by the ALJ and affirmed by the Commission in its Proposed Order were "incorrect". Mr. Martin's objection to Mr. Camphor's attempt to "prove the facts are wrong" was sustained by the Commission. The Commission notes that Mr. Camphor was advised in its letter to him of March 1, 2011 that : "If a transcript is not received by the Commission at least ten (10) days prior to the hearing, the party will be bound by the

factual findings in the Proposed Order, and may only argue that those factual findings do not support the legal conclusion reached.” Mr. Camphor did not file a copy of the transcript of the ALJ’s hearing and the Commission, therefore, concluded that in accordance with the provisions of Code of Maryland Regulations (“COMAR”) 09.01.03.09H., he was not permitted to refer to any testimony before the ALJ which was not incorporated into the ALJ’s findings of fact or conclusions of law.

FINDINGS OF FACT

The Commission adopts the Findings of Fact recommended by the ALJ.

DISCUSSION

At all times relevant to this matter, the Respondent, Michael Camphor, was a licensed real estate salesperson, under license number 3519183, and was affiliated with RE/MAX One. FF 1,2¹ On October 6, 2006, Pro Title, LLC, the Complainant in this case, conducted a settlement on the sale of a home owned by the Respondent and his wife. FF 3. At the time of the settlement, the Respondent and his wife were in the process of getting a divorce. FF 3. At the time of the settlement, the Complainant issued separate checks to the Respondent and his wife: The Respondent received a check in the amount of \$97,393.48 and his wife received a check in the amount of \$65,000.00. FF 4. The Respondent received a real estate commission from the sale in the amount of \$16,126.42 which, pursuant to the Respondent’s request, was made payable to “Title Express”, an entity to whom the Respondent owed money. FF 5.

¹ “FF” refers to the ALJ’s Findings of Fact.

Following the settlement, the Complainant discovered that it had not collected enough money from the proceeds to pay off HFC-HSBC, the mortgage holder on the property. FF 6. The Complainant contacted the Respondent, who requested that the entire amount of the proceeds for both he and his wife, minus the shortfall amount, be wired into his bank account. FF 6. In exchange, the Respondent promised he would return the original proceeds checks issued to him and his wife at settlement. FF 6. On October 12, 2006, the Complainant wired \$156,634.88 to the Respondent. FF 7. A stop payment order was placed against the \$65,000.00 check that had been previously issued to the Respondent's wife. FF 7. The Complainant, inadvertently, failed to place a stop payment order against the check that was originally issued to the Respondent. FF 7. The Respondent never returned either of the two original checks to the Complainant. FF 8. On April 5, 2007, the Respondent deposited the original check issued in his name in the amount of \$97,383.48 into his personal account. FF 8. On May 9, 2007, after the Complainant had contacted the Respondent, the Complainant and the Respondent met to discuss the matter. FF 9. At the meeting, the Respondent stated that he no longer had the money and offered two properties that he owned as collateral for the amount that he owed. FF 9. He executed a note in the amount of \$99,898.22 and a Deed of Trust to the Complainant. FF 9. The note had a due date of June 15, 2007. The Respondent did not pay the note at the time it was due. FF 10. However, after the Complainant had filed a police report and a criminal matter ensued, the Respondent paid approximately \$93,000.00 of the funds due and owing to the Complainant. FF 10. As of the date of the ALJ's hearing, there was still approximately \$4,300.00 due to the Complainant. FF 10.

Section 17-322, Business Occupations and Professions Article ("Bus. Occ. &

Prof. Art.”), Annotated Code of Maryland, provides, in pertinent part, as follows:

§17-322

(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:

. . . .

(3) directly or through another person willfully makes a misrepresentation or knowingly makes a false promise;

. . . .

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

. . . .

COMAR 09.01.02.02 provides:

.02 Relations to the Client.

C. The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State.

Matthew Schweizer, President of the Complainant; the Respondent; and an investigator for the Commission testified at the hearing before the ALJ. The ALJ evaluated the testimony and evidence presented and found “...the Respondent’s testimony to lack both credibility and consistency, especially when compared to the other evidence in the record.” The Respondent’s assertion that the reason for a second disbursement of the settlement funds was not due to a payoff shortfall but, instead, was

due to an error in the amount of his wife's check, was disproved by a review of the settlement statement, which was in evidence at the hearing before the ALJ. Further, the ALJ noted that, although the Respondent denied that \$156,634.88 was ever wired to his account, he did offer properties as collateral for the amount he owed and did repay a significant amount of the money at issue to the Complainant. The Commission concurs with the ALJ's conclusion that by offering properties as collateral and repaying funds, the Respondent conceded that he had received proceeds from the settlement twice; otherwise there would have been no reason to repay the funds.

The Commission finds that the Respondent knowingly received payment twice for the same transaction and, despite his agreement to return the check he had received at settlement when new funds were wired, he failed to do so. Thus, the Commission concludes that the Respondent violated §17-322(b)(3), Bus. Occ. & Prof. Art., by making a false promise to return the settlement check he had received after funds were wired to him by the Complainant. Further, the Commission concludes that the Respondent violated §17-322(b)(25), Bus. Occ. & Prof. Art., which prohibits a licensee from engaging in conduct that demonstrates bad faith, incompetency and untrustworthiness. The Commission concludes, based on the evidence and testimony presented at the hearing before the ALJ, that the Respondent was dishonest and untrustworthy in his dealings with the Complainant.

The Commission also finds that the Respondent's actions in this matter were unethical and, since he was a licensee of the Commission at the time, reflected poorly upon the real estate profession. Therefore, the Commission concludes that the Respondent violated COMAR 09.11.02.01.C. by failing to "protect the public against

fraud, misrepresentation, or unethical practices in the real estate field” and by failing to “endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession”

Instead of or in addition to reprimanding, suspending or revoking a real estate license for violations of Title 17, Bus. Occ. & Prof. Art., §17-322(c) permits the assessment of up to a \$5,000.00 per violation. To determine the amount of the penalty to be imposed, the Commission is required to consider the following criteria:

- 1) the seriousness of the violation;
- 2) the harm caused by the violation;
- 3) the good faith of the licensee; and
- 4) any history of previous violations by the licensee.

The Commission finds that the Respondent’s violations were serious. He twice received payment of a significant sum of settlement funds based on his false promise that he would return the first check he had received for those funds when new funds were wired to into his bank account. Instead of returning the initial check, he deposited it into his personal account. The Complainant was harmed by the Respondent’s failure to promptly repay the funds since, at least a portion of those funds, were trust funds designated to pay off a lien. The lack of the availability of those trust funds to pay off a lien subjected the Complainant to potential liability. The Respondent’s lack of good faith was evidenced by his conduct during the entire course of the transaction. Further, the ALJ also noted his bad faith, during the course of the investigation of this case, in fabricating facts in his response to the complaint and by refusing to talk to the Commission’s investigator. Although the Respondent ultimately repaid a significant

portion of the money he had misappropriated, his conduct in this matter disclosed a level of untrustworthiness and unethical behavior which is significantly damaging to the dignity and integrity of the real estate profession. At the hearing before the ALJ, the Commission's investigator testified that the Commission has previously taken action against the Respondent: In 2003, the Respondent entered into a Consent Order; paid \$1,100.00 and received a reprimand. In 2006, pursuant to a complaint against him, the Respondent was required to pay a fine of \$250.00 to the Commission and pay \$3,000.00 to the claimant. The Respondent had failed to pay the fine to the Commission or the amount owed to the claimant and the matter had been remanded for a hearing. At the time of the hearing before the ALJ, the Respondent's real estate license was suspended due to a tax lien. Thus, the Commission concludes that the Respondent has a history of prior violations. Therefore, the Commission concludes, based on an evaluation of the criteria noted above, that the appropriate sanctions in this case are the revocation of any real estate license held by the Respondent and the imposition of a \$5,000.00 civil penalty.

CONCLUSIONS OF LAW

Based upon the ALJ's Findings of Fact, which have been adopted by the Commission, and the foregoing Discussion, the Commission concludes, as a matter of law, that:

1. The Respondent knowingly and willfully received payment twice for the same transaction, by making a false promise to return the initial payment when the second payment was received, in violation of Md. Code Ann., Bus. Occ. & Prof. Art., §17-322(b)(3);

2. The Respondent engaged in conduct during the course of the transaction at issue that demonstrated bad faith, incompetency and untrustworthiness in violation of Md. Code Ann., Bus. Occ. & Prof. Art., §17-322(b)(25);

3. The Respondent failed to "protect the public against fraud, misrepresentation, or unethical practices in the real estate field" and failed to "endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession" in violation of COMAR 09.11.02.01C.; and

4. The Respondent is subject to sanctions for his conduct, and the revocation of all real estate licenses held by him and a \$5,000.00 civil penalty are appropriate sanctions. Md. Code Ann., Bus. Occ. & Prof. Art., §17-322(c).

ORDER

It is this 7th day of September, 2011, by the

Maryland Real Estate Commission, **ORDERED:**

1. That the Respondent, Michael Camphor, violated Md. Code Ann., Bus. Occ. & Prof. Art., §§ 17-322(b)(3); 17-322(b)(25); and COMAR 09.11.02.01C;

2. That any and all real estate licenses held by the Respondent, Michael Camphor, be and hereby are **REVOKED**;

3. That the Respondent, Michael Camphor, be assessed a civil penalty in the amount of **Five Thousand Dollars (\$5,000.00)** which shall be paid within thirty (30) days of the date of this ORDER;

4. That the Respondent, Michael Camphor, shall not be eligible for any license issued by the Commission until the civil penalty is paid; and

5. That the records and publications of the Maryland Real Estate Commission reflect this decision.

MARYLAND REAL ESTATE COMMISSION

SIGNATURE ON FILE

By: _____

Note: A judicial review of this Final Order may be sought in the Circuit Court of Maryland in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.