

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

MARVIN E. WEATHERSBY
RESPONDENT

* CASE NO. 2013-RE-295

* OAH NO. DLR-REC-21-13-35521

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated April 8, 2014 having been received, read and considered, it is, by the Maryland Real Estate Commission, this 18th day of June, 2014,

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, AMENDED as follows:

The Respondent did not misrepresent on his March 18, 2011 real estate broker's license renewal application that his office address was 9135 Jessie Lizzy Place, Najemoy, MD 20662. The Respondent did misrepresent on his February 6, 2013 real estate broker's license renewal application that his office address was 5410 Toyer Place, Marbury, MD 20458. The Respondent failed to conspicuously display his real estate broker sign on the outside of a door at his place of business at the Jessie Lizzy Place property and the Toyer Place

property.

The Respondent violated, Md. Bus. Occ. and Prof. Art., §§17-322(b)(3), (25), (32) and (33), 17-517, and 17-519, and COMAR 09.11.01.13 and 09.11.02.01C. Based on the seriousness of this offense and on the Respondent's two prior violations of the real estate licensing law, the appropriate penalty is revocation of his license.

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

ORDERED that the Respondent Marvin E. Weathersby violated Md. Bus. Occ. and Prof. Art. §§ 17-322(b)(3), (25), (32), and (33), 17-517, and 17-519, and COMAR 09.11.01.13 and 09.11.02.01C.

ORDERED that all real estate licenses held by the Respondent Marvin E. Weathersby be and hereby are REVOKED;

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 ("ALJ") had to be modified.

The ALJ found that the Respondent had violated §17-301(a), a subsection not included in the charging document, and not related to the facts in the case. She made no finding as to several sections included in the charges - §17-322(b)(3), (25), (32), and (33), and §17-517. It is clear from the Findings of Fact that the Respondent did violate these sections, and the Conclusions of Law and Recommended Order have been amended to reflect that fact.

Section 17-322(b)(3) provides that an applicant or licensee may not willfully make a misrepresentation. The Respondent, in applying to renew his license in 2013, listed his office address as 5410 Toyer Place. At that time, the property was a vacant lot; it was not a real estate office, and never became one. Having a brokerage office at a fixed location is a requirement for real estate brokers (§17-519). Without such an office, the Respondent failed to meet the requirements for holding a license to provide real estate brokerage services in the State. Listing this address was a willful misrepresentation on his part, as well as a violation of §17-517. It also shows bad faith, incompetency, and untrustworthiness on his part. In renewing his license, he was aware of the office requirement as reflected on the application materials. Instead of having a legitimate office, and the corresponding address, he tried to get around the requirement by listing a vacant lot, where, according to his testimony, he had hoped to have a modular home place sometime after filing the application.

His decision to list the vacant lot as his office was either evidence of incompetency by reflecting his ignorance of the office requirement, or an effort to evade the statutory office mandate. In either event, he violated §17-322(b)(25).

The ALJ failed to include §17-322(b)(32) and (33), as subsections that he had violated. They underlie the violations of §§ 17-517 and 17-519 and COMAR, so should have been cited. She also made no finding as to §17-517, although her discussion

correctly reflects the conclusion that it had been violated.

The ALJ recommended a civil penalty of \$5,000 even though she acknowledged that this was the Respondent's third violation. She called it a "moderate display of bad faith by the Respondent." The Commission believes that the appropriate sanction is revocation of the Respondent's license. Given the fact that he had no office location at the time he renewed his license, he was not entitled to the license, and would not have received it but for the misinformation he furnished on his application.

The Respondent argued that his inability to build an office on the lot was due to circumstances out of his control, even though he had the intention to do so. This argument is unpersuasive. A broker is required to have an office and to notify the Commission of any change in the office location. The Respondent complied with neither of these requirements.

Although the ALJ chose not to believe that part of his testimony, the Respondent stated that he had posted a brokerage sign on a tree on the vacant lot. A broker who thinks that such a posting meets the requirement that a broker maintain an office with a sign conspicuously displayed on the door or outside the premises is not an individual who can be trusted to provide real estate brokerage services to the public.

Of further concern to the Commission is that this is the third time that the Respondent's conduct has come before them. In the

previous cases, which involved violation of some of the same statutes, he received first a \$1,000 civil fine, and in the second case a ten-day suspension and a \$2,000 civil fine. In both cases there was restitution to harmed consumers. With this history, and with the facts of the instant case, the Commission believes that revocation of the license is the appropriate sanction.

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
COMMISSION

v.

MARVIN E. WEATHERSBY,
RESPONDENT

* BEFORE JENNIFER M. CARTER JONES,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE No.: DLR-REC-21-13-35521
* MREC FILE No: 13 RE 295

* * * * *

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 or about May 15, 2013, the Maryland Real Estate Commission (REC or Commission) issued Statements of Charges and Orders for Hearing against Marvin E. Weathersby (Respondent) for violating Maryland Annotated Code, Business Occupations and Professions (BOP) Article, sections 17-322(b)(3), (25) (32) and (33), 17-517, and 17-519 (2010),¹ and for violations of Code of Maryland Regulations (COMAR) 09.11.01.13 and COMAR 09.11.02.01-C.

On January 9, 2014, I convened a hearing at the Office of Administrative Hearings in Hunt Valley, MD. Jessica Kauffman, Assistant Attorney General, represented the REC. The Respondent represented himself.

¹ All references to BOP are to the 2010 volume and the 2013 Supplement.

Procedure is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009 & Supp. 2013); the REC's Hearing Regulations, COMAR 09.11.03; and OAH Rules of Procedure, COMAR 28.02.01.

ISSUES

1. Did the Respondent fail to maintain an office for real estate brokerage services and fail to conspicuously display a sign with the words "real estate," "realtor" or "realist" on the door outside of the office he maintains for the provision of real estate brokerage services required by BOP sections 17-517 and 17-519, and COMAR 09.11.01.13.
2. Did the Respondent fail to protect the public against fraud, misrepresentation or unethical practices in the real estate field in violation of COMAR 09.11.02.01-C.
3. Did the Respondent willfully make a misrepresentation or knowingly make a false promise; engage in conduct that demonstrates bad faith, incompetency, untrustworthiness or that constitutes dishonest, fraudulent or improper dealings; violate any regulation adopted under BOP Title 17 or any provision of the Code of Ethics in violation of BOP section 17-322(b)?
4. Is the Respondent subject to any sanction, and if so, what sanctions and/or penalties should be imposed?

SUMMARY OF THE EVIDENCE

Exhibits

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

REC #1	Notice of Hearing, dated October 1, 2013
REC #2	Transmittal for Hearing and Statement of Charges and Order for Hearing
REC #3	REC records regarding licensure for the Respondent
REC #4	Report of Investigation, marked closed on May 15, 2013, with attachments
REC #5	Supplemental Report, dated May 20, 2013
REC #6	REC records regarding renewal licensure for the Respondent, dated March 18, 2011, with attachments

- REC #7 Page from REC #3, dated February 16, 2013, with attached one-page Maryland State Department of Assessments and Taxation (SDAT) Property Data Search result
- REC #8 Email correspondence between the Respondent and Charlene Faison, REC Licensing Supervisor, for dates including June 9, 2010 through March 7, 2011

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

- RESP #1 Photographs of two homes, taken in or about May 2010
- RESP #2 Photograph of a backyard, taken in or about May 2010
- RESP #3 Not offered²
- RESP #4 Agreement of Parties, dated September 1, 2011
- RESP #5 Respondent's Charles County, Maryland Voter Notification Card
- RESP #6 Maryland Motor Vehicle Administration (MVA) Registration Certificates for 2012, 2013 and 2014
- RESP #7 Copy of the Respondent's Maryland Class B Commercial Driver's License, with an issue date of September 30, 2011
- RESP #8 Temporary Peace Order, issued by the District Court of Maryland For Charles County, dated March 14, 2013, with attached Petition for Protection/Peace Order, dated March 1, 2013; copy of a site plan; boundary survey; and Deed of Rescission, undated
- RESP #9 Photograph of mailboxes, taken in May 2013

Testimony

The REC presented the testimony of Steven Long, Assistant Executive Director for the REC; Charlene Faison, Licensing Supervisor for the REC; and Robert Hall, an investigator for the REC.

The Respondent testified but did not offer the testimony of any other witnesses.

FINDINGS OF FACT

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

1. The Respondent is a real estate broker licensed by the REC under broker license number 014040 (license) beginning in January 1998.

² A receipt book provided by the Respondent was identified and marked as Resp #3. I allowed the Respondent an opportunity to make copies of the relevant pages of the book and provide them to me and to AAG Kaufman, which he did not do. Accordingly, the exhibit is not admitted into evidence.

2. The REC charged the Respondent with violations of BOP sections 17-322(b)(3) and (35) in case number 2000-RE-077. As a result of those charges, the Respondent consented to pay a fine in the amount of \$1,000.00 and to pay \$500.00 restitution to a claimant.
3. After a hearing before the OAH on March 23, 2005, the REC suspended the Respondent for ten days in case number 03-RE-058 for incompetent and fraudulent acts. The Respondent was also required to pay a civil penalty of \$2,000.00 and to reimburse a claimant \$590.45 for amounts she lost as a result of the Respondent's acts or omissions.
4. The Respondent allowed his license to lapse between 2007 and 2011.
5. On March 18, 2011, the Respondent renewed his license. When he filed his application to renew the license, the Respondent listed his office address as 9145 Jessie Lizzy Place, Najemoy, MD 20662.
6. At the time of the Respondent's March 18, 2011 renewal application, Jesse Keys et al. owned 9135 Jessie Lizzy Place and Terawana Keyes owned 9165 Jessie Lizzy Place.
7. The Respondent entered into a lease with Terawana Keys to live rent-free at the address of 9145 Jessie Lizzy Place beginning in September 2011.
8. The MVA issued the Respondent a Commercial Driver's License on September 30, 2011. The address listed on the Respondent's driver's license was 9145 Jessie Lizzy Place.
9. The Respondent is registered to vote in Charles County. His County Voter Notification Card was issued on September 30, 2011 and it lists his address as 9145 Jessie Lizzy Place.
10. The Respondent's MVA vehicle registration for 2012, 2013, and 2014 list the Respondent's address as 9145 Jessie Lizzy Place.
11. The address 9145 Jessie Lizzy Place is not a recorded property with the MD State Department of Assessments and Taxation. Using a Google Maps search, 9145 Jessie Lizzy Place does not result in a known address.

12. On or about February 6, 2013, the Respondent purchased an unimproved parcel of land from Allen Burgess, which was identified as Tyler Place a/k/a Toyer Place, Marbury, MD 20658.

13. The Respondent renewed his application again on February 16, 2013. On his application to renew his license, the Respondent listed his address as 5410 Toyer Place, Marbury, MD 20658.

14. Charles County 911, which assigns addresses, has not identified an address at 5410 Toyer Place in Marbury, MD.

15. At all times relevant to this matter, Wanda L. Orgias owned the property with the address 5420 Toyer Place. Ms. Orgias' property abutted the property the Respondent purportedly purchased.

16. Between February 9, 2013 and March 5, 2013, the Respondent or entities authorized by the Respondent entered onto the property he believed he purchased, 5410 Toyer Place, and removed trees and placed gravel at the site.

17. Between February 9, 2013 and March 14, 2013, Wanda L. Orgias advised the Respondent that she believed he was trespassing and improperly removing trees from her property.

18. Before March 14, 2013, Wanda L. Orgias petitioned the District Court of Maryland for Charles County for a temporary peace order, prohibiting the Respondent from entering the residence or grounds, and areas surrounding her dwelling. On March 14, 2013, and April 11, 2013, the District issued temporary peace orders prohibiting the Respondent from entering the residence, grounds and areas surrounding Ms. Orgias' dwelling.

19. In or about December 2013, the Respondent signed an Agreement and Release document, which purportedly rescinded the sale of the property known as 5410 Toyer Place from Mr. Burgess to the Respondent.

- 20. The Respondent did not erect a dwelling at 5410 Toyer Place.
- 21. The Respondent's current license expires in March 2015.

DISCUSSION

The Commission's power to regulate licensees, as pertinent to this case, is as follows:

(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:

(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; [and]

...

(32) violates any other provision of this title.

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

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

Section 17-301(a)(2) of the Business Occupations Article dictates that “[e]ach licensed real estate broker who is a resident of the State [must] maintain an office in the State.” Section 17-519 provides that real estate brokers must display a sign at each office that the broker maintains for the provision for real estate brokerage services. That provision also dictates that the sign “must be displayed conspicuously on the door or outside of the premises of each office or branch office so that the sign is visible to the public[,]” and that the sign must include the “words ‘real estate’ or, where authorized by the respective trade associations, ‘realtor’ or ‘realist.’” COMAR 09.11.01.13 mandates that brokers must maintain a definite place of business, which “shall be an office or headquarters where the real estate broker and his employees regularly transact the business of a real estate broker. The records of the brokerage business, including the

records of the escrow account, shall be kept in this office or headquarters. The REC may not consider an answering service, a mechanical message recording device or a mail drop, singly or in combination, to satisfy the requirements of an office under Business Occupations and Professions Article, 17-517, 17-518, and 17-520.”

Furthermore, the REC Code of Ethics provides that a “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.” COMAR 09.11.02.01C.

The REC argued that the Respondent violated the provisions cited when he falsely reported on his 2011 application to renew his license that he maintained both a home and an office at 9145 Jessie Lizzy Place, Najemoy, MD 20662 and when he reported on his 2013 license renewal application that he maintained a home and an office at 5410 Toyer Place, Marbury, MD 20662. Particularly, the REC argued that the Respondent did not maintain an office at either of those locations and could not and did not conspicuously display a sign identifying the “office” as a real estate brokerage. In support of its case, the REC offered the testimony of Robert Hall, REC investigator, Steven Long, Assistant Executive Director for the REC, and Charlene Faison, REC licensing supervisor.

The Respondent argued that he did, in fact, maintain a residence and an office at the Jessie Lizzy Place address and that he was unable to maintain an office at the Toyer Place address due to circumstances beyond his control. I shall address both addresses individually.

The Jessie Lizzy Place address

Ms. Faison testified that she and the Respondent engaged in a long email conversation about the requirements for the Respondent's renewal application and that she particularly advised the Respondent that he could not use a post office box (P.O. Box) to serve as the mailing address for his real estate broker office. Rather, the office had to be a physical location.

Mr. Long testified that he investigated the Respondent's purported Jessie Lizzy Place office and learned from reviewing the land and taxation records of Maryland SDAT that although there were addresses for 9135 and 9165 Jessie Lizzy Place, there was no address listed as 9145 Jessie Lizzy Place, the address the Respondent included on his 2011 renewal application. According to the SDAT records, a woman named Terawana Keys owned 9135 and 9165 Jessie Lizzy Place.

The Respondent argued that he did, indeed, maintain both a residence and an office at the Jessie Lizzy Place address. To that end, the Respondent testified that he began renting a house at that address in March 2011 from Terawana Keyes, who owned the property. The Respondent presented photographs, which he testified depicted 9145 Jessie Lizzie Place. The Respondent also submitted copies of his MVA vehicle registration for 2012, 2013, and 2014; his voter's notification card; and his MVA-issued driver's license, all of which list his mailing address as 9145 Jessie Lizzy Place.

The Respondent also testified that at the Jessie Lizzy Place address, he kept a sign in the window facing the road with all of the information required by the REC.

I find that the REC has failed to meet its burden regarding its contention that the Respondent failed to maintain an office at the Jessie Lizzy Place address. Although I accept that no such address is recorded with the SDAT, the Respondent clearly showed that he maintained important documents listing the property as his address. Furthermore, although the REC

provisions require the Respondent to maintain a physical office, they do not require the licensee to verify that the office is listed with the SDAT to qualify. A preponderance of the evidence satisfies me that the Respondent was residing on 9145 Jessie Lizzy Place at the time of his 2011 license renewal application.

As I have stated, the Respondent is required to conspicuously display the license broker sign on the outside of a door at the place of business. The Respondent testified that he placed the sign in the window facing the road, and thus, it notified members of the public that the structure was a real estate brokerage. However, BOP section 17-519 requires that the sign be placed conspicuously on the outside of the door to the office. Because the Respondent did not place the sign on the outside of the door, the Respondent did not comply with REC requirements.

The 5410 Toyer Place Address

REC Investigator Robert Hall testified that he was assigned by the REC to investigate the 5410 Toyer Place address the Respondent reported as the location of the office where he provides real estate broker services on his 2013 renewal application. According to Mr. Hall, he visited the property and found that it was an unimproved lot with tractor marks on the ground. The only sign Mr. Hall observed at the property was one that read 5400 Toyer Place.

Mr. Hall then visited the local post office to determine if the postal authorities deliver mail to 5410 Toyer Place, and he learned that the post office had no record of the property.³ Mr. Hall then interviewed the Respondent, who advised him that he was currently involved in a land dispute regarding the Toyer Place property and that he was using his brother's home as his business address. The Respondent represented to Mr. Hall that he had intended to have a modular home delivered to his 5410 Toyer Place property in May, but due to the land dispute, he had to postpone the placement of the home.

³ Mr. Hall testified that a county office referred to as the "911 office" assigns all of the addresses in Charles County and that the 911 office had not assigned the address 5410 Toyer Place to any property in the county.

The Respondent conceded that he did not have an office constructed at 5410 Toyer Place on February 16, 2013, when he submitted his renewal application for his license. He also admitted that he never constructed any edifice at that location due to a property dispute and, he ultimately rescinded his ownership of the property to Mr. Burgess, who sold him the property. The Respondent argued, however, that he had every intention of building a home and office at the Toyer Place location and that the circumstances that prevented him from moving forward with his plans were beyond his control. Furthermore, the Respondent testified that he placed a sign identifying the property as the location for his real estate brokerage business, but it was removed by Ms. Orgias, who challenged his ownership of the property.

The relevant statutes and regulations in this matter are unequivocal. A real estate broker must maintain an office or definite place of business where he or she regularly transacts the business of a real estate broker, with a sign affixed to the door clearly advertising the brokerage services. The REC represented that the purpose of these requirements is to ensure that the REC is able to easily locate real estate broker businesses in circumstances when it must review and audit the business's records and to quickly and ably locate a broker in circumstances when it must intervene to protect the public from improper actions.

The Respondent clearly violated BOP sections 17-301(a)(2) and 17-519, COMAR 09.11.01.13, and COMAR 09.11.02.01C when he falsely reported on his February 2013 license renewal application that he maintained an office at 5410 Toyer Place. No address existed in Charles County at the time of the Respondent's renewal application and more importantly, no structure existed to which the address could be assigned. Because no office existed, the Respondent could not have displayed a sign comporting with the requirements of the REC regulations. In so finding, I do not find credible the Respondent's assertion that he attached a sign to a tree on the property upon which he intended to erect an office/residence, indicating that

the name and address of his real estate brokerage and the contact information. It would be highly illogical for a broker to attach a sign to a tree on vacant property where no office exists. Even if I accepted the Respondent's testimony as true, that he affixed his broker sign to a tree, it still did not comply with the requirement that he conspicuously place the sign on the office door.

Sanction

As I have stated, the Commission may reprimand, suspend or revoke a license when a licensee has violated provisions of the BOP title.

In addition to reprimand, suspension or revocation of the license, the REC may consider other penalties. Particularly, section 17-613(c)(1) of the Business Occupations Article entitles the Commission to impose a penalty not exceeding "(1) \$5,000.00 for a first violation, (ii) \$15,000.00 for a second violation and (iii) \$25,000.00 for a third or subsequent violation."

- (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 \$5,000.00 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.

BOP, §17-322(c).

Seriousness of the Violation

Certainly, each of the provisions of BOP Title 17 regulating real estate brokers was enacted with the intent that each would ensure consistent provision of real estate broker services and to provide the REC with the ability to protect the general public who avail themselves of brokers' services. Additionally, it is clear that some provisions of BOP and COMAR prohibit or regulate actions that are fairly egregious - including predatory actions, which could lead to

significant consequences to members of the general public. *See e.g.*, BOP, §17-322 (b)(1).⁴ The REC asserted that it requires real estate brokers to maintain an office because it protects the public. That is, it allows the REC to easily locate a broker and review and audit records the broker is required to maintain at his office. It also ensures that the REC will be able to correspond with brokers easily and notify them of and investigate allegations and complaints against them.

Although I agree that the Respondent's actions were improper, I find that on the continuum of potential violations, his failure to maintain an office in this case was not particularly serious vis-à-vis other behaviors and actions regulated by the REC. Particularly, the REC presented no evidence that calls into question the Respondent's position that he *intended* to have had an office erected by March 2013, when the license for which he applied in February 2013 would go into effect. The Respondent presented convincing evidence that despite his belief that he lawfully owned the parcel of land he designated as 5410 Toyer Place, ultimately he learned that there was a dispute about the ownership of the land and he was unable to construct his planned office. Although the Respondent should have immediately contacted the REC and notified it of his situation once he realized he would be unable to construct his office at 5410 Toyer Place before he received his new license, I find that he did attempt to comply with the requirements of BOP sections 17-301(a)(2) and 17-519.

⁴ That provision states:

(16) whether or not acting for monetary gain, knowingly induces or attempts to induce a person to transfer real estate or discourages or attempts to discourage a person from buying real estate:

- (i) by making representations about the existing or potential proximity of real property owned or used by individuals of a particular race, color, religion, sex, handicap, familial status, or national origin; or
- (ii) by representing that the existing or potential proximity of real property owned or used by individuals of a particular race, color, religion, sex, handicap, familial status, or national origin will or may result in:
 1. the lowering of property values;
 2. a change in the racial, religious, or ethnic character of the block, neighborhood, or area;
 3. an increase in criminal or antisocial behavior in the area; or
 4. a decline in the quality of the schools serving the area.

Harm Caused by the Violation

The Respondent testified, without rebuttal, that he has not provided any brokerage services since he renewed his license in 2011. Accordingly, no member of the public was harmed by the Respondent's actions.

The Good Faith of the Licensee

As I have stated, the Respondent did not comply with the requirements of sections 17-301(a)(2) and section 17-519, as he did not have a physical office as of his February 2013 renewal application. Therefore, he also did not conspicuously display a sign on the door of any office. As I have also stated, I find credible the Respondent's testimony that he intended, in good faith, to have erected an office for his real estate broker business by the effective date of the renewed license, but, due to circumstances beyond his control, he was unable to do so. Although the Respondent is responsible for the misrepresentations on his application and his failure to notify the REC once he learned he would be unable to construct his office, I do not find these failures particularly egregious in light of the circumstances presented on the record.

Any History of Previous Violations by the Licensee

The Respondent has two previous violations. In case number 2000-RE-077, the Respondent consented to pay a fine to the REC in the amount of \$1,000.00 and to pay restitution of \$500.00 to a complainant for violations of BOP sections 17-322(b)(3) and (b)(35). I am unaware of the facts in that case and the underlying allegations. After a hearing before the OAH on March 23, 2005, the Respondent was suspended for ten days in case number 03-RE-058 for incompetent and fraudulent acts. He was also required to pay a civil penalty of \$2,000.00 and to reimburse a claimant \$590.45 for amounts she lost as a result of the Respondent's actions. In the 2005 case, the Administrative Law Judge determined that the Respondent knowingly made a false promise; failed to account for or remit monies that came into his possession but belonged to

another person; engaged in conduct that demonstrated bad faith, incompetence or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings; failed to treat all parties to a transaction honestly and fairly; and failed to account for all trust money received in a timely manner in violation of section 17-322(b) of the BOP Article.

I find that the Respondent's prior acts of bad faith and improper dealing exemplify the importance of the statutory and regulatory requirements that brokers maintain an office with a conspicuous sign. Certainly, in the event that the Respondent were to engage in further improper acts, the REC has an interest in efficiently locating the Respondent's place of business, and if necessary, to conduct an investigation and review the Respondent's files (which are to be kept at his official office).

Balancing the Respondent's past violations and the REC's interest in protecting the public with the relative seriousness of the violations at issue in this case, I find that revocation of the Respondent's license is not appropriate. Rather, because the violations at issue indicate only a moderate display of bad faith by the Respondent and no member of the public was harmed, I find that the appropriate sanction is a civil penalty assessed against the Respondent in the amount \$5,000.00.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent did not misrepresent on his March 18, 2011 real estate broker's license renewal application that his office address was 9135 Jessie Lizzy Place, Najemoy, MD 20662. I further conclude that the Respondent did misrepresent on his February 6, 2013 real estate broker's license renewal application that his office address was 5410 Toyer Place, Marbury MD 20458. I further find that the Respondent failed to conspicuously display his real estate broker sign on the outside of a door at his place of business at the Jessie Lizzy Place property and the

Toyer Place property. Md. Code Ann., Bus. Occ. and Prof., §§ 17-301(a)(2), 17-322(b), and 17-519; COMAR 09.11.01.13 and 09.11.02.01C.

I further conclude as a matter of law, that the Respondent is subject to the imposition of a \$5,000.00 civil penalty based upon the relative seriousness of the Respondent's third violation.

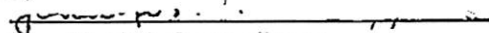
RECOMMENDED ORDER

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

1. The charges of the Commission be **UPHELD**;
2. **I FURTHER RECOMMEND** that a civil penalty in the amount of \$5,000.00 be assessed against the Respondent;
3. **I FURTHER RECOMMEND** that the Commission **ORDER** that Real Estate Commission's records and publications reflect its final decision.

SIGNATURE ON FILE

April 8, 2014
Date Decision Issued


Jennifer M. Carter Jones
Administrative Law Judge

JCI/emh
#148679

**MARYLAND REAL ESTATE
COMMISSION**

v.

**MARVIN E. WEATHERSBY,
RESPONDENT**

*** BEFORE JENNIFER M. CARTER JONES,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE No.: DLR-REC-21-13-35521
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* * * * *

FILE EXHIBIT LIST

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- REC #4 Report of Investigation, marked closed on May 15, 2013, with attachments
- REC #5 Supplemental Report, dated May 20, 2013
- REC #6 REC records regarding renewal licensure for the Respondent, dated March 18, 2011, with attachments
- REC #7 Page from REC #3, dated February 16, 2013, with attached one-page Maryland State Department of Assessments and Taxation (SDAT) Property Data Search result
- REC #8 Email correspondence between the Respondent and Charlene Faison, REC Licensing Supervisor, for dates including June 9, 2010 through March 7, 2011

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

- RESP #1 Photographs of two homes, taken in or about May 2010
- RESP #2 Photograph of a backyard, taken in or about May 2010
- RESP #3 Not offered
- RESP #4 Agreement of Parties, dated September 1, 2011
- RESP #5 Respondent's Charles County, Maryland Voter Notification Card
- RESP #6 Maryland Motor Vehicle Administration (MVA) Registration Certificates for 2012, 2013 and 2014
- RESP #7 Copy of the Respondent's Maryland Class B Commercial Driver's License, with an issue date of September 30, 2011
- RESP #8 Temporary Peace Order, issued by the District Court of Maryland For Charles County, dated March 14, 2013, with attached Petition for Protection/Peace Order, dated March 1, 2013; copy of a site plan; boundary survey; and Deed of Rescission, undated
- RESP #9 Photograph of mailboxes, taken in May 2013