

MAR 19 2012

MARYLAND REAL ESTATE
COMMISSION

V.

CARREN A. PULLEY
RESPONDENT

* BEFORE RICHARD F. ROTHENBURG,
* ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-21-11-30615
* REC CASE NO: 2011-RE-308

MARYLAND REAL
ESTATE COMMISSION

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated December 2, 2011, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of January, 2011,

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, APPROVED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

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

MARYLAND STATE REAL ESTATE COMMISSION

SIGNATURE ON FILE

By: _____
Anne S. Cooke, Commissioner

1/20/12
Date

FINAL ORDER

MARYLAND REAL ESTATE

COMMISSION

v.

CARREN A. PULLEY

RESPONDENT

* BEFORE RICHARD F. ROTHE, JUDGE

* AN ADMINISTRATIVE LAW JUDGE
MAY 19, 2012
MARYLAND REAL ESTATE COMMISSION

* OF THE MARYLAND OFFICE OF

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* OAH CASE NO.: DLR-REC-21-11-30615

* COMPLAINT NO: 11-RE-308

* * * * *

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 February 24, 2011, the Maryland Real Estate Commission (Commission) initiated a complaint against Carren A Pulley (Respondent), a real estate sales person, because it discovered that the Respondent had lied on her Maryland Real Estate Licensing Examination Registration Form that she signed on October 4, 2007 when she answered "no" to the question of whether she had ever been convicted of a felony or misdemeanor in any State or Federal Court. On August 17, 2011, after investigating the complaint, the Commission issued a Statement of Charges and Order for Hearing against the Respondent.

I conducted a hearing on October 5, 2011, at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. §17-324 (2010). Jessica Berman Kaufman, Esq., Assistant Attorney General, represented the Commission. The Respondent represented herself. The Administrative Procedure Act, the procedures for Administrative Hearings of the Office of the Secretary of the Department of Labor, Licensing and Regulation (DLLR), the Commission's hearing procedures, and the OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§10-201 through 10-226 (2004 & Supp. 2011); Code of Maryland Regulations (COMAR) 09.01.02, 09.01.03, 09.11.03 and 28.02.01.

ISSUE

Should the Respondent's real estate license be revoked because she was convicted of a felony and failed to disclose that fact on her Maryland Real Estate Licensing Examination Registration Form?

SUMMARY OF THE EVIDENCE

Exhibits

The Commission submitted the following documents that were admitted into evidence:

- REC Ex. #1- Notice of Hearing, dated August 31, 2011
- REC Ex. #2- Statement of Charges and Order for Hearing, dated August 17, 2011
- REC Ex. #3- Appellant's Licensing History
- REC Ex. #4- Maryland Real Estate Licensing Examination Registration Form, dated October 4, 2007

- REC Ex. #5- Case Search Information, Circuit Court for Montgomery County, Criminal System, Case Number 83112c
- REC Ex. #6- Case Search Information, District Court for Montgomery County, Criminal System, Case Number 5D00074667
- REC Ex. #7- Commission Complaint and Guaranty Fund Claim, dated February 24, 2011
- REC Ex. #8- Letter to the Commission from the Respondent, dated March 7, 2011
- REC Ex. #9- Respondent's Real Estate Original License
- REC Ex. #10- Respondent's Real Estate Renewal License

The Respondent did not offer any exhibits for admission into evidence.

Testimony

The Commission presented the testimony of Steven Long, the Commission's Assistant Executive Director; and Robert Oliver, Investigator for the Commission. The Respondent testified on her own behalf.

FINDINGS OF FACT

After considering the evidence presented, I find the following facts by a preponderance of the evidence:

1. On May 5, 1999 in the Circuit Court for Montgomery County, Maryland (Circuit Court), the Respondent pled guilty and was found guilty of Count 1 of an indictment, theft over \$300.00, for which she was sentenced to confinement for 15 years, with 11 suspended and five years supervised probation¹.

1. In addition to the sentence to confinement for Count I, the presiding judge also ordered the Respondent to pay restitution of \$226,564.00 to Mr. and Mrs. Z.

2. On May 5, 1999, in the Circuit Court, the Respondent also pled guilty and was found guilty of in Count 2, theft over \$300.00, for which she was sentenced to three years confinement to be served consecutive to the confinement imposed for Count 1, with two of the years suspended².
3. On May 5, 1999, in the Circuit Court, the Respondent also pled guilty and was found guilty of Count 3, theft over \$300.00, for which she was sentenced to three years confinement to be served consecutive to the confinement imposed for Count 1, with one of the years suspended³
4. On May 5, 1999, in the Circuit Court, the Respondent also pled guilty and was found guilty of count 4, theft over \$300.00, for which she was sentenced to three years confinement to be served consecutive to the confinement imposed for Count 1, with two of the years suspended⁴.
5. On May 5, 1999, in the Circuit Court, the Respondent also pled guilty and was found guilty of count 5, fraudulent practices, for which she was sentenced to one year confinement to be served concurrent to the confinement imposed for Count
6. On May 5, 1999, in the Circuit Court, the Respondent also pled guilty and was found guilty of Count 6, sale of a security by an unregistered person, for which she was sentenced to one year confinement to be served concurrent to the confinement imposed for Count 1.

2. In addition to the sentence to confinement for Count 2, the presiding judge also ordered the Respondent to pay restitution of \$5,000.00 to LS.

3. In addition to the sentence to confinement for Count I, the presiding judge also ordered the Respondent to pay restitution of \$44,000.00 to Mr. and Mrs. S.

4. In addition to the sentence to confinement for Count I, the presiding judge also ordered the Respondent to pay restitution of \$15,500.00 to ML.

7. On May 5, 1999, in the Circuit Court, the Respondent also pled guilty and was found guilty of Counts 7, 8 and 9, transacting business by an unregistered person, for which she was sentenced to one year confinement for each Count, all to be served concurrent to the confinement imposed for Count 1.
8. On May 11, 1999, in the District Court of Maryland for Montgomery County (District Court), the Respondent was found guilty of two charges of assault-second degree for which she was sentenced to 18 months confinement and one charge of resisting arrest for which she was sentenced to two years confinement, which was suspended.
9. On the Respondent's Maryland Real Estate Licensing Examination Registration Form (Registration Form), which the Respondent signed on October 4, 2007, the Respondent answered "no" to the question number 14f, which asked: "Have you ever been convicted of a felony or misdemeanor in any State or Federal Court." On the Registration Form the Respondent certified that the information she provided was true and correct and that the registration was signed and affirmed under penalty of perjury.
10. The Respondent has held a Maryland Real Estate License continuously since November 6, 2007, with registration number 629972.
11. In a letter to the Commission, dated March 7, 2011, the Respondent admitted that she should have answered yes to question 14-F on her Maryland Real Estate Examination Registration Form.

DISCUSSION

In this matter, the Commission has charged the Respondent with violation of the following sections of the Maryland Annotated Code's Business Occupations and Professions article:

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

(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:

(1) fraudulently or deceptively obtains or attempts to obtain a license for the applicant or for another;

....

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

...

(24) under the laws of the United States or of any state, is convicted of:

(i) a felony;

(ii) a misdemeanor that is directly related to the fitness and qualification of the applicant or licensee to provide real estate brokerage service;...

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

(c) Penalty – (1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license, the Commission may impose a penalty not exceeding \$5,000.00 for each violation.

Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(1), (3), (24)(i) and(ii), and (25) and (c) (Supp. 2010).

At the hearing, the evidence was unrefuted that, on May 9, 1999, in the Circuit Court, the Respondent was found guilty of five counts of theft over \$300, one count of fraudulent practices, one count of sale of a security by an unregistered person, and

three counts of transacting business by an unregistered person. Further, the evidence is unrefuted that on May 11, 1999 in the District Court, the Respondent was found guilty of two charges of assault-second degree and one charge of resisting arrest. The evidence is also unrefuted that in response to the Application's question whether the Respondent was ever "convicted of a felony or misdemeanor in any State or Federal Court?" she marked an "X" in the space next to "No."

Currently, section 7-104 of the Criminal Law Article provides that thefts over \$500.00 are characterized as felony theft. Md. Code. Ann., Crim. Law § 7-104(g) (Supp. 2010). However, the law in effect at the time of the Respondent's conviction provided that theft in an amount over \$300.00 was a felony. See, Md. Ann., Code art. 27, § 342(f) (1996).

The Respondent appeared at the hearing and stated that she hoped that the State would have leniency so she can have a job. She stressed that she has had no other problems since 1999. She apologized for her actions and asked for forgiveness.

I conclude that the Respondent's failure to disclose her felony theft convictions on her Maryland Real Estate Licensing Examination Registration Form resulted in her deceptively obtaining a license in violation of section 17-322(b)(1); willfully making a misrepresentation in violation of section 17-322(b)(3); and being convicted of a felony in Maryland in violation of section 17-322(b)(24); and bad faith in violation of section 17-322(b)(25) all of the Business and Occupations Article. In her letter to the Commission, dated March 7, 2011, in addition to admitting that she answered "no" on question 14-f, the Respondent stated that she thought that since the offenses were

over five years old at the time she answered the question and then over ten years old she did not have to disclose her past. The Respondent overlooked the wording of the question which stated "have you ever been convicted of a felony or misdemeanor in, any State or Federal Court?"(emphasis added).

Any of the alleged and proven violations can properly be a basis for the revocation of the Respondent's real estate license, and I was provided no reasonable basis for mitigating that sanction, I will recommend that the Commission revoke the Respondent's Maryland State Real Estate License.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondent's real estate license should be revoked. Md. Code Ann., Bus. Occ. & Prof. § 17-322 (b) (1)(3), (24)(i), (ii), and (25) (Supp. 2010).

RECOMMENDED ORDER

I THEREFORE RECOMMEND that the Maryland Real Estate Commission **ORDER** that the Respondent's real estate license be revoked for her violations of Md. Code. Ann., Bus. Occ. & Prof. § 17-322(b)(1), (3), (24)(i), (ii) and (25); and further **ORDER** that the records and publications of the Commission reflect its final decision.

SIGNATURE ON FILE

December 2, 2011
Date Decision Mailed

Richard F. Rothenburg
Administrative Law Judge

RFR/jf
#127790

CARREN A. PULLEY

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