

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE  
COMMISSION

V.

SANGKYUN KIM t/a OMNI  
REALTY & INVESTMENT, INC.

\* BEFORE MARLEEN B. MILLER,  
\* ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH No: DLR-REC-21-10-17502  
\* REC CASE NO: 2010-RE-309

\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated December 16, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 19<sup>th</sup> 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**

B.

Marla S. Johnson, Commissioner

1/19/2011  
Date

MARYLAND REAL ESTATE  
COMMISSION

v.

SANGKYUN KIM t/a OMNI REALTY  
& INVESTMENT, INC.  
THE RESPONDENT

\* BEFORE MARLEEN B. MILLER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH CASE NO.: DLR-REC-21-10-17502  
\* REC CASE NO.: 10-RE-309

\* \* \* \* \*

**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 April 26, 2010, the Maryland Real Estate Commission (the MREC or the Commission) issued a Statement of Charges and Order for Hearing (the Charges) against Sangkyun Kim t/a Omni Realty and Investment (the Respondent) for his alleged violations of sections 17-320(c)(1); 17-322(b)(3), (25), (27), (31) (32) and (33); 17-505(a)(1) and (2); and 17-532(c)(1)(iv), (v) and (vi) of the Maryland Annotated Code's Business Occupations and Professions Article (the Business Occupations Article), as well as Code of Maryland Regulations (COMAR) 09.11.01.16, 09.11.02.01C, 09.11.02.02A and 09.11.05.02.

On September 30, 2010, I conducted a hearing on the Charges at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland, pursuant to Section 17-408 of the

Business Occupations Article.<sup>1</sup> Assistant Attorney General Chris King represented the Commission, but the Respondent failed to appear, to provide representation for himself at the hearing, or to request a postponement. As the Commission provided persuasive evidence<sup>2</sup> that timely notice of the hearing had been sent to the Respondent's then current address of record with the Commission, I proceeded to hear the case without him. *See* Business Occupations Article §§ 17-324(f); COMAR 09.01.02.09.

The Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009 and Supp. 2010), COMAR 09.11.03, and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

### ISSUES

The issues in this case are as follows:

1. Did the Respondent violate Business Occupations Article § 17-320(c)(1), § 17-322(b)(27) or COMAR 09.11.05.02A, by failing to exercise adequate and reasonable supervision of an associate performing real estate brokerage services on behalf of the Respondent?
2. Did the Respondent violate Business Occupations Article § 17-322(b)(31), § 17-505(a)(1) or (2), or §17-532(c)(1)(v) by mishandling or failing to account for trust money?
3. Did the Respondent violate Business Occupations Article § 17-322(b)(3), by willfully making a misrepresentation or knowingly making a false promise?
4. Did the Respondent violate Business Occupations Article § 17-532(c)(1)(vi), by failing to exercise reasonable care and diligence?
5. Did the Respondent violate Business Occupations Article § 17-532(c)(1)(iv), by

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<sup>1</sup> These cases were originally scheduled to be heard on May 26, 2009, but OAH postponed them, based on the Respondent's request that they be rescheduled until he completed a computer training course at the end of June 2010.

<sup>2</sup> *See* MREC Ex. ## 1 & 4.

failing to treat all parties honestly and fairly or by failing to answer all questions truthfully?

6. Did the Respondent violate COMAR 09.11.01.16, by failing to respond to the Commission's inquiries?

7. Did the Respondent violate Business Occupations Article § 17-322(b)(25), by engaging in conduct that demonstrated bad faith, incompetence, or untrustworthiness or that constituted dishonest, fraudulent, or improper dealings?

8. Did the Respondent violate Business Occupations Article § 17-322(b)(32), by also violating sections 17-320(c)(1), 17-505(a)(1) or (2), or 17-532(c)(1)(iv), (v) or (vi) of the Business Occupations Article?

9. Did the Respondent violate Business Occupations Article § 17-322(b)(33), by violating COMAR 09.11.01.16 or 09.11.05.02A or the provisions of the Code of Ethics set forth in COMAR 09.11.02.01C or 09.11.02.02A?

10. What sanctions and/or penalties should be imposed?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits:**

The Commission submitted the following documents, which I admitted into evidence as the following numbered exhibits:

1. Notice of Hearing, with attached Statement of Charges
2. The Respondent's Licensing History
3. Report of Investigation by Steven Long, MREC Assistant Executive Director, received March 9, 2010 and closed March 11, 2010
4. February 23, 2010 letter from Mr. Long to the Respondent
5. February 2, 2010 letter to the Respondent from Katherine F. Connelly, MREC Executive Director

6. March 10, 2010 Auditor's Report

The Respondent submitted no documents for admission into evidence.

Testimony

The Commission presented the testimony of Steven Long, MREC Assistant Executive Director, and Patrick Richardson, MREC Auditor. The Respondent presented no witnesses.

**FINDINGS OF FACT**

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

1. At all relevant times, the Respondent has been a licensed real estate broker.
2. On October 21, 2009, James and Alice Massey (the Sellers) entered into a Residential Contract of Sale (the Contract) with Sundong Woo and Jae Lim (the Buyers) for the purchase of their property located at 4821 Montgomery Road in Ellicott City, Maryland (the Property). The Contract provided for a purchase price of \$425,000.00, with a \$5,000.00 deposit (the Deposit) to be held in escrow by Omni Realty and Investment. The Contract further specified that settlement would occur on November 23, 2010.
3. Mi Won Yang, a real estate salesperson working under the Respondent's supervision, acted as the Buyers' agent and took possession of the Buyers' Deposit to hold in escrow pending settlement.
4. After Ms. Yang reportedly returned to Korea, the Respondent took over for her in communications regarding the Contract and the Deposit.
5. On October 26, 2010, the Respondent placed the \$5,000.00 Deposit into his escrow account, but he transferred that amount out of the escrow account two days later without the authority to do so.
6. Several days after the scheduled settlement, the Respondent called the listing

agent, Paul Buckmaster, and told him that the Buyers' loan had been denied.<sup>3</sup> Mr. Buckmaster then indicated to the Respondent that he intended to submit an addendum to get the deposit released to the Sellers. The Respondent replied that he could not release the money at that time and, thereafter, the Respondent failed to return any of the numerous telephone messages left by the Sellers and Mr. Buckmaster.

7. On January 25, 2010, Patrick Richardson, MREC Auditor, was assigned to conduct an audit of the Respondent's escrow account.

8. Mr. Richardson made the following unsuccessful attempts to contact the Respondent. On January 26, 2010, Mr. Richardson left a business card and introductory letter on the door to the Respondent's office, which was closed. The letter explained that Mr. Richardson was attempting to audit the Respondent's escrow account on behalf of the Commission. Mr. Richardson returned to the Respondent's office on January 29, 2010, at which time the office was again closed, but the business card and letter were no longer on the door. On February 3, 2010, Mr. Richardson went to the Respondent's home and, finding no one at home, left another letter and business card on the front door. On that same date, Mr. Richardson returned to the Respondent's office and was met by an individual named Jun, who told Mr. Richardson that the Respondent was out conducting business but that he would give the Respondent a message to contact Mr. Richardson. The Respondent received but neither returned the message nor responded to the letters left at his home and office.

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<sup>3</sup> Paul Buckmaster of Main Street Realty advised the Commission that a letter had been provided to the Sellers, indicating that the Buyers had been pre-approved for a loan. According to Mr. Buckmaster, however, that pre-approval letter had been signed by the Respondent's brother.



9. On February 2, 2010, the Sellers filed a Complaint and Guaranty Fund Claim<sup>4</sup> (the Complaint) with the Commission, alleging that the Deposit had been improperly returned to the Buyers. The Commission sent the Complaint to the Respondent for comment, but he failed to respond in any way.

10. On February 23, 2010, Mr. Richardson sent a certified letter to the Respondent, ordering him to appear at the Commission's office on March 10, 2010 at 10:00 a.m. for the purpose of having his escrow account audited.

11. On March 10, 2010, the Respondent met with Mr. Richardson and MREC Assistant Executive Director Long in the Commission's office, producing copies of bank statements for his escrow account for the prior twelve month period.

12. A review of the bank statements revealed to the auditor that the \$5,000.00 Deposit had been placed in the Respondent's escrow account on October 26, 2010, that \$5,000.00 had been transferred out of the account on October 28, 2010, and that the balance in the escrow account on February 26, 2010 was \$12.55.

13. The Respondent told the auditor that one of the two Buyers asked for his deposit back, to be replaced with a check from the other one. The Respondent acknowledged granting that request and releasing the deposit without receiving a signed release from the Sellers. He further advised the auditor that one of the Buyers replaced the deposit with a \$5,000.00 check, but when asked for it, the Respondent told the Commission's representatives that although one of the Buyers reportedly had issued a certified check made out to Omni Realty, the Respondent had been given only a copy of the Check and that one of the Buyers had held the original himself.

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<sup>4</sup> On March 9, 2010, MREC Assistant Director Long explained to Mr. Massey (the Seller who filed the Complaint) that he must first have a judge in the District Court determine who is legally entitled to the deposit before he can successfully pursue a guaranty fund claim to recover it. Mr. Massey apparently never pursued the issue in District Court, so the Commission has never scheduled a hearing on his claim against the guaranty fund.

The Respondent belatedly noted that he would be willing to arrange to deposit the Buyer's check in the Respondent's escrow account if the auditor told him he needed to do so.

14. In response to inquiry as to why the Respondent failed to respond to Mr. Richardson's messages and to why he had filed no written response to the Commission regarding the Complaint, he stated that he had been too busy, that he never goes to his real estate office and that he works twelve to fourteen-hour days at a busy fast food restaurant he owns. He further stated that he intends to close his real estate office. When asked where the Respondent's affiliated agents would work, he replied that they could work from their homes or out of the Respondent's restaurant. He acknowledged that his agents have no supervision and that they merely call the Respondent or come to his restaurant if they have contracts to turn in.

15. Later on March 10, 2010, the Respondent faxed to the auditor a copy of a \$5,000.00 cashier's check dated February 24, 2010 and made payable to Omni Realty, listing the purchaser as Jae Ho Lim.

## DISCUSSION

### *The Respondent's Violation of Statutes and Regulations*

The Commission has charged the Respondent with violating the following statutes and regulations governing the conduct of real estate brokers:

#### **§ 17-320.**

(c) *Supervision by real estate broker-* (1) A real estate broker shall exercise reasonable and adequate supervision over the provision of real estate brokerage services by any other individual, including an independent contractor, on behalf of the broker

#### **§ 17-322. Denials, reprimands, suspensions, revocation, 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:



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

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

....  
(27) violates § 17-320(c) of this subtitle by failing as a real estate broker to exercise reasonable and adequate supervision over the provision of real estate brokerage services by another individual on behalf of the broker;

....  
(31) violates any provision of Subtitle 5 of this title that relates to trust money;

(32) violates any other provision of this title. . . .

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

**§ 17-505. Maintenance and disposition of trust money**

(a) *Maintenance of account.*- A real estate broker shall maintain trust money in an account authorized under this Part I of this subtitle until:

(1) the real estate transaction for which the trust money was entrusted is consummated or terminated; [or]

(2) the real estate broker receives proper written instructions from the owner and beneficial owner directing withdrawal or other disposition of the trust money. . . .

**§ 17-532. Duties to client.**

....  
(c) *In general.* -

(1) A licensee shall:

....  
(iv) treat all parties to the transaction honestly and fairly and answer all questions truthfully;

(v) in a timely manner account for all trust money received; [and]

(vi) exercise reasonable care and diligence. . . .

**COMAR 09.11.01.16**

**.16 Form of Licensee's Reply to Commission's Written Inquiries.**

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.

**COMAR 09.11.02.01C**

**.01 Relations to the Public.**

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.

**COMAR 09.11.02.02A**

**.02 Relations to the Client.**

A. In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction.

**COMAR 09.11.05.02A**

**.02 Requirement of Supervision.**

A. A broker shall exercise reasonable and adequate supervision over the activities of the broker's associate brokers and salespersons.

For the reasons, that follow, I find that the Respondent violated all of the statutes and regulations set forth above and, consequently, recommend that his license be revoked and that he pay a \$5,000.00 penalty.

By the Respondent's own admission in his March 10, 2010 meeting with Mr. Richardson and Assistant Executive Director Long, he provides no real supervision to any of the real estate agents associated with his office. Such conduct clearly constitutes a violation of Business Occupations Article §§ 17-320(c)(1) and 17-322(b)(27), as well as COMAR 09.11.05.02A.

Moreover, limiting his contact with associates to phone calls and visits to the Respondent's busy

fast food restaurant shows a failure to exercise the reasonable care and diligence required under section 17-532(c)(1)(vi) of the Business Occupations Article.

As to the Respondent's unauthorized release of the Deposit (even assuming he actually did deliver the money to one of the Buyers rather than keeping it himself), the Respondent unquestionably violated Business Occupations Article §§ 17-322(b)(31), 17-505(a)(1) and (2), and 17-532(c)(1)(v). He mishandled money placed in trust with him and resisted repeated attempts by the auditor, the listing agent and the Sellers to have him account for his handling of funds placed in trust with him by the Sellers. Moreover, in failing to respond to the Complaint or to the repeated messages from the Commission's auditor in January and February of 2010, the Respondent also violated COMAR 09.11.01.16.

I am unclear as to any specific misrepresentations or false promises the Respondent allegedly made to the Buyers or to the Sellers in connection with the Contract of Sale or the Deposit. Instead, he intentionally avoided contact with them. Nevertheless, he did misrepresent to the Commission's auditor and to Assistant Executive Director Long that one of the Buyers promptly replaced the Deposit with another \$5,000.00 check. When asked for it, however, the Respondent corrected himself and then falsely led the Commission's representatives to believe that he had promptly received at least a copy of a certified check made out to Omni Realty and held by one of the Buyers. That misrepresentation was revealed when he sent the Commission a requested copy of the alleged check, which proved to have been written four months after he withdrew the \$5,000.00 from his escrow account and one day after the auditor's certified letter ordering him to appear at the Commission's offices. This conduct constituted willful misrepresentations in violation of Business Occupations Article §17-322(b)(3).

The factual findings and discussion above are replete with the Respondent's fraudulent conduct, bad faith, incompetence, untrustworthiness, dishonesty and improper dealings, in flagrant violation of Business Occupations Article §§ 17-322(b)(25) and 17-532(c)(1)(iv) and the provisions of the Code of Ethics set forth in COMAR 09.11.02.01C and 09.11.02.02A. The Respondent acted in such a way as to harm the Sellers and the dignity and integrity of the real estate profession.

Regulatory Sanctions/Penalties

Instead of or in addition to reprimanding, suspending or revoking a real estate licensee for his or her violation of the above statutes and regulations, Section 17-322(c) of the Business Occupations Article permits assessment of up to a \$2,000.00 monetary penalty, per violation, applying the following criteria:

- (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.

Business Occupations Article § 17-613(c) further provides as follows:

(c) *Penalty; factors.-*

(1) The Commission may impose on a person who violates any provision of this title a penalty not exceeding

- (i) \$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.

(2) In setting the amount of the penalty, the Board shall

consider:

- (i) the seriousness of the violation;
- (ii) the harm caused by the violation;
- (iii) the good faith of the violator;
- (iv) any history of previous violations by the violator;

and

- (v) any other relevant factors.

(3) The Board shall pay any penalty collected under this subsection into the General Fund of the State.

As indicated above, the Sellers and the real estate profession, in general, were seriously

harmful by the Respondent's acts and omissions. The Sellers took their Property off the market because they believed they had an enforceable contract with the Buyers and were left without even the Deposit for recompense. The Respondent showed no good faith in his dealings with the Sellers or the Commission. He acted dishonestly, mishandling and misappropriating money to be held in trust and unfairly delaying the Sellers' ability to market the Property. Moreover, neither before nor during his confrontation with the Commission's representatives did the Respondent honestly respond to the Charges against him. To make matters worse, he has yet to return all or any part of the money he misappropriated.

The Commission presented no evidence indicating that the Respondent had previously been found to be responsible for any statutory or regulatory violations. Nevertheless, in this case, the Commission proved numerous serious violations of multiple statutes and regulations by the Respondent, clearly justifying the revocation of his license and the \$5,000.00 penalty sought by the Commission.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondent violated 17-320(c)(1); 17-322(b)(3), (25), (27), (31) (32) and (33); 17-505(a)(1) and (2); and 17-532(c)(1)(iv), (v) and (vi) of the Business Occupations Article, as well as Code of Maryland Regulations (COMAR) 09.11.01.16, 09.11.02.01C, 09.11.02.02A and 09.11.05.02. I further conclude, as a matter of law, that these statutory violations justify revocation of his real estate license and a monetary penalty of \$5,000.00.

### **RECOMMENDED ORDER**

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

1. The Commission's charges against the Respondent, Sangkyun Kim t/a Omni Realty & Investment, Inc., under 17-320(c)(1); 17-322(b)(3), (25), (27), (31) (32) and (33);

17-505(a)(1) and (2); and 17-532(c)(1)(iv), (v) and (vi) of the Maryland Annotated Code's Business Occupations and Professions Article (the Business Occupations Article), as well as Code of Maryland Regulations (COMAR) 09.11.01.16, 09.11.02.01C, 09.11.02.02A and 09.11.05.02 be **AFFIRMED**;

1. The Commission **REVOKE** the real estate license of the Respondent, Sangkyun Kim;
2. The Commission **ORDER** that the Respondent, Sangkyun Kim, pay a civil penalty in the amount of \$5,000.00; and
3. The Commission **ORDER** that its records and publications reflect its final decision.

December 16, 2010  
Date decision mailed

MBMrbs  
# 118680

**SIGNATURE ON FILE**

Marleen B. Miller  
Administrative Law Judge