

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

GREGORY ALLEN
Respondent

* CASE NO. 2007-RE-407
* OAH NO. DLR-REC-21-10-17458

*

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated November 30, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 8th day of February, 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, AFFIRMED;

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

ORDERED that the Respondent Gregory Allen violated Md. Bus. Occ. and Prof. Art. §§17-322(b)(32), 17-530, and 17-601;

ORDERED that the Respondent Gregory Allen be and hereby is REPRIMANDED;

ORDERED that the Respondent Gregory Allen be assessed a civil

penalty in the amount of \$2,500.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that all real estate licenses held by the Respondent Gregory Allen shall be suspended if the civil penalty is not paid in full within the 30-day time period.

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 had to be modified because the judge omitted the provision that the civil penalty be paid within a specified time period and that all real estate licenses held by the Respondent would be suspended if he does not pay the full amount of the civil penalty within that time period.

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.

GREGORY ALLEN,
RESPONDENT

* BEFORE LAURIE BENNETT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE No.: DLR-REC-21-10-17458
* MREC FILE No: 07-RE-407

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RECOMMENDED DECISION

STATEMENT OF THE CASE
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CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On or about December 16, 2006, Robbin L. Brown (Buyer) filed a complaint with the Maryland Real Estate Commission (REC), an administrative unit of the Department of Labor, Licensing and Regulation (DLLR), against Gregory Allen (Respondent), currently a licensed real estate salesperson and real estate broker. On April 28, 2010, the REC issued a Statement of Charges and Order for Hearing against the Respondent.

On October 1, 2010, I conducted a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2010).¹ Jessica

¹ Unless otherwise noted, all statutory references are to the 2010 replacement volume of the Business Occupations and Professions article of the Annotated Code of Maryland.

Berman Kaufman, Assistant Attorney General, represented the REC. Neither the Respondent nor anyone authorized to represent him appeared after due notice.²

The Administrative Procedure Act, the procedures for Administrative Hearings of the Office of the Secretary of the DLLR, the procedures for Hearings of the REC, and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§10-201 through 10-226 (2009 & Supp. 2010); Code of Maryland Regulations (COMAR) 09.01.02, 09.01.03, 09.11.03, and 28.02.01.

ISSUES

Did the Respondent violate real estate law and, if so, what sanctions are appropriate?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the REC:

- REC Ex. 1: Notice of Hearing, July 2, 2010; Statement of Charges and Order for Hearing, April 28, 2010, with attachments; Memorandum from Sandra L. Sykes, Docket Specialist, OAH, July 23, 2010; returned certified mail; Memorandum from Sandra L. Sykes, Docket Specialist, OAH, July 9, 2010; returned first class mail
- REC Ex. 2: Case Transmittal, marked April 30, 2010; Statement of Charges and Order for Hearing, April 28, 2010
- REC Ex. 3: Licensing Information, printed September 23, 2010
- REC Ex. 4: Investigative Services, Report of Investigation, for the investigation closed on October 22, 2008, with attachments

² See Part I of Discussion, below.

REC Ex. 5: Supplement to Report of Investigation for the investigation closed on January 28, 2009, with attachments

Testimony

The REC presented the following witness: Robert Oliver, REC Investigator.

FINDINGS OF FACT

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

1. The REC first licensed the Respondent as a real estate salesperson on October 16, 1989. The Respondent periodically renewed the license, as required, except that when his license expired on July 25, 2006, the Respondent did not obtain a renewal until April 29, 2007.
2. On March 22, 2010, the REC licensed the Respondent as a real estate broker; that license is set to expire on March 22, 2012.
3. At all times relevant, the Respondent was associated with S. Lee Martin and Company, a licensed real estate broker.
4. On July 6, 2006, the Buyer entered into a brokerage agreement with S. Lee Martin to sell her residential property.
5. On July 13, 2006, the Seller entered into an agreement to sell the property to her daughter (Buyer). The contract does not state which party (e.g., the Buyer or the Seller) the Respondent represented in the sale. MREC Ex. 4, attachment 5.
6. The Respondent had the Seller sign an undated dual agency agreement confirming that he and S. Lee Martin were working as dual agents in the sale. The agreement does not state which party (e.g., the Buyer or the Seller) the Respondent was representing.
7. In the Respondent's capacity as a real estate salesperson, he represented the Buyer and the Seller throughout the transaction.

8. The Buyer and the Seller went to settlement on the property on August 29, 2006.
9. The Respondent acted as a real estate salesperson throughout the sale, including at settlement, even though his license had expired on July 25, 2006.
10. On April 16, 2010, the Respondent notified the REC that his current address is in care of Change Realty, LLC, 6609 Reisterstown Road, Suite 214, Baltimore, Maryland 21215.
11. On April 28, 2010, the REC issued a Statement of Charges and Order for Hearing against the Respondent.
12. On April 30, 2010, the REC transmitted the matter to the OAH for an evidentiary hearing.
13. On July 2, 2010, the OAH issued a Notice of Hearing, via first class and certified mail, to the Respondent at his address of record with the REC. On July 7, 2010, the United States Postal Service (USPS) returned the first class mail marked "Return to Sender/Not Deliverable as Addressed; Unable to Forward." On July 21, 2010, the USPS returned the certified mail marked "unclaimed."
14. The Respondent failed to appear for the October 1, 2010 hearing after proper notice.

DISCUSSION

I. The Respondent's Failure to Appear

Before the REC may take any final action against an individual, the individual must be personally served with a hearing notice, or, the hearing notice must be sent by certified mail at least ten days prior to the hearing to the individual's last known business address. Md. Code Ann., Bus. Occ. & Prof. § 17-324(d)(1) (2010). If the individual, after receiving proper notice of

the hearing, fails or refuses to appear, the Commission may hear and determine the matter despite the individual's absence. Section 17-324(f).

The record demonstrates, by a preponderance of the evidence, that the OAH sent a Notice of Hearing to the Respondent by certified and first class mail, to his address of record with the REC, at least ten days prior to the hearing. The USPS returned both letters. As the Respondent received proper notice of the hearing and failed to appear, the REC was entitled to proceed in the Respondent's absence.

II. Violations

The REC may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee violates any provision of Subtitle 17 other than those enumerated. Section 17-322(b)(32). The REC alleged that the Respondent violated Subtitle 17 by failing to disclose which party he represented in the transaction between the Seller and the Buyer and by providing real estate services without a license. For the reasons that follow, I find for the REC.

"A licensee who participates in a residential real estate transaction as a seller's agent, buyer's agent, or as a cooperating agent shall disclose in writing that the licensee represents the seller or lessor or the buyer of the lessee." Section 17-601. The Respondent had the Seller sign an undated dual agency agreement confirming that he and S. Lee Martin were working as dual agents in the sale. The agreement does not state which party (e.g., the Buyer or the Seller) the Respondent was representing. The REC's witness, Robert Oliver, REC Investigator, testified that he interviewed the Respondent, the Seller and the Buyer. The Respondent told Mr. Oliver that he represented only the Buyer. The Seller and the Buyer told Mr. Oliver that the Respondent

represented both of them. The Respondent is the only real estate salesperson listed on any of the documents related to the transaction. Thus, the record establishes that he purported to represent both the Buyer and the Seller, and, moreover, that he failed to comply with 17-610.

A real estate salesperson may not, on behalf of a real estate broker, provide real estate brokerage services without a license. Section 17-530. The Respondent's salesperson's license expired on July 25, 2006 and the Respondent did not renew it until April 29, 2007. During that time, he acted as a real estate salesperson in the transaction at issue.

The Respondent told Mr. Oliver that (1) he forgot to renew his license and (2) he does not recall getting the renewal notice. Nevertheless, the Respondent was obligated to keep his license current.

III. Sanctions

The REC may reprimand a licensee or suspend or revoke his license for violations of real estate law. Section 17-322(b). The REC recommended a reprimand. I find that a reprimand is appropriate. Although the Respondent has no prior violations, he gave falsely told Mr. Oliver that he only represented the Buyer and, as a longstanding licensee, he knew or should have known to renew his license every two years. Section 17-314(e).

Additionally, the REC may impose a civil penalty not exceeding \$5,000.00 for each violation. Section 17-322(c)(1). To determine the amount of the penalty, I 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.

Section 17-322(c)(2). The REC recommended a \$500.00 penalty for the dual agency violation and a \$2,000.00 for the licensure violation.

The Respondent has no prior violations of real estate law and the record does not establish any actual harm resulting from the Respondent's actions. On the other hand, the Respondent has had a real estate license since 1989 and he surely knew the requirements for a dual agency and for renewing his license. The record establishes that the Respondent flaunted the requirements. Moreover, a person can seek reimbursement from the REC's Guaranty Fund for monetary loss suffered by a licensee's actions or omissions. Section 17-404(a)(2)(i)(3). Because the Respondent acted as an unlicensed salesperson, the potential harm to the Seller and the Buyer was significant. Accordingly, the REC's request for a \$2,500.00 civil penalty is reasonable.

CONCLUSIONS OF LAW

I conclude that the Respondent violated sections 17-530 and 17-610 and is subject to sanctions under section 17-322 of the Business Occupations and Professions Article of the Annotated Code of Maryland; and

I further conclude as a matter of law that an appropriate sanction in this case is a reprimand and the imposition of a penalty of \$2,500.00. Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b) and (c)(1).

RECOMMENDED ORDER

I therefore **RECOMMEND** that the Maryland Real Estate Commission:

ORDER, that the Respondent violated section 17-530 and 17-610 of the Business Occupations and Professions Article, and be it further,

ORDERED, that the Respondent be **REPRIMANDED**; and be it further,

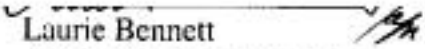
ORDERED, that the Respondent pay a civil statutory penalty to the Maryland Real Estate Commission in the amount of \$2,500.00; and be it further,

ORDERED, that the records and publications of the Maryland Real Estate Commission reflect this decision.

November 30, 2010
Date Decision Mailed

#117444
LB/

ADMINISTRATIVE LAW JUDGE'S SIGNATURE
APPEARS ON ORIGINAL ORDER


Laurie Bennett
Administrative Law Judge