

FINAL ORDER

MAY 09 2012

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

MARCUS J. BRUNO
Respondent

* CASE NO. 2009-RE-497

* OAH NO. DLR-REC-21-11-08532

*

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated December 13, 2011, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 15th day of March, 2012

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 Marcus J. Bruno violated Md. Bus. Occ. and Prof. Art. §17-322(b)(25) and (33); and COMAR 09.11.02.01H and 09.11.02.02A;

ORDERED that the Respondent Marcus J. Bruno be assessed a civil penalty in the amount of \$1,500.00, which shall be paid within

FINAL ORDER

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MARYLAND REAL ESTATE COMMISSION

STATE OF MARYLAND

IN SENATE

COMMISSIONERS

The following persons have been appointed to the Commission:

[Handwritten signature]

Commissioner of the State of Maryland

Commissioner of the State of Maryland

Commissioner of the State of Maryland

Commissioner of the State of Maryland

within thirty (30) days of the date of this Proposed Order;

ORDERED that all real estate licenses held by the Respondent Marcus J. Bruno 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

THE MARYLAND REAL ESTATE
COMMISSION

v.

MARCUS J BRUNO,
RESPONDENT

* BEFORE T. AUSTIN MURPHY,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO.: DLR-REC-21-11-08532
* MREC NO.: 2010-RE-497

* * * * *

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 20, 2009, Matthew Frazier (Complainant) filed a complaint with the Maryland Real Estate Commission (MREC) against Marcus Bruno (Respondent), a registered real estate broker in connection with the Complainant's property located at 6408 Gateway Boulevard, District Heights, Maryland 20747 (the Property). Based on its investigation of the complaint, the MREC issued a Statement of Charges and Order for Hearing (Charges) against the Respondent on February 23, 2011.

I held a hearing on September 14, 2011, at Largo Government Center in Largo, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-324(a) (2010). Assistant Attorney General Hope Sachs represented the MREC. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation (DLLR), and the Rules of Procedure of OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2011); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

ISSUES

1. Did the Respondent's activities in connection with transactions regarding the Property violate the Maryland Real Estate Brokers Act, Maryland Annotated Code, Business Occupations and Professions Article and the implementing regulations as follows:
 - a. Violating section 17-322(b)(25) of the Business Occupations and Professions Article by acting throughout his dealings with the Complainant in bad faith and in an incompetent and untrustworthy manner;
 - b. Violate section 17-322(b)(32) of the Business Occupations and Professions Article by violating any other provision of Real estate Brokers Act;
 - c. Violate section 17-322(b)(33) of the Business Occupations and Professions Article by violating any regulation adopted under the Real Estate Brokers Act;
 - d. Violate COMAR 09.11.02.01H by failing to return the property keys to the Complainant and using letterhead of a broker he was not affiliated with; and
 - e. Violate COMAR 09.11.02.02A by failing to meet his statutory obligations to the Complainant?
2. If so, what is the appropriate sanction for the Respondent's misconduct pursuant to section 17-322(c)?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the MREC:

REC 1 June 8, 2011 Notice of Hearing

REC 2 September 13, 2011 licensing history of the Respondent

REC 3 Copy of REC's Statement of Charges and Order for Hearing

REC 4 October 27, 2010 Report of Investigation by William F. Reynolds, Investigator

The Respondent offered no exhibits for admission into evidence.

The Complainant offered no exhibits for admission into evidence.

Testimony

William F. Reynolds, Investigator for DLLR, testified for the MREC.

The Respondent testified in his own behalf. He presented no testimony of any other witness.

FINDINGS OF FACT

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

1. In 2008 and 2009, and at all times relevant, the Respondent held a valid real estate sales broker's license in the State of Maryland. He regularly engaged in a business of dealing in real estate, including representing parties in the sale, purchase, or rental of real estate.
2. In 2009, the Complainant contracted with the Respondent that the Respondent would act as the Complainant's rental agent for the Property located at 6408 Gateway Boulevard, District Heights, Maryland (property).

3. The agency agreement was on a document from Remax One. The Respondent was affiliated with HomeSource Real Estate Solutions at the time he entered into the contract with the Complainant.

4. In early 2009 the Respondent procured a rental agreement with an individual who would qualify for Section 8 housing to rent the Property beginning March 1, 2009.

5. The Complainant told the Respondent that the new tenant should not move into the Property until she qualified for Section 8 housing.

6. The Complainant and Respondent argued about the move-in date and the tenant's eligibility for Section 8 housing.

7. The Respondent decided that he could not work with the Complainant and left the Complainant's keys to the property in the dwelling.

DISCUSSION

The MREC has charged the Respondent with violating several provisions of the Business Occupations and Professions Article as well as applicable regulations. The MREC charged the Respondent with violation of the following relevant provisions of the 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:

...

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

...

(32) violates any other provision of this title; [or]

...

(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)(25), (32) and (33) (2010).

The MREC also charged the Respondent with violation of the following provisions of the Code of Ethics found in Title 9, Subtitle 11, Chapter 2 of the Code of Maryland Regulations (COMAR):

.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.

...

.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.

The MREC, as the moving party, has the burden of proof by a preponderance of the evidence to demonstrate that the Respondent violated the statutory and regulatory sections at issue. Md. Code Ann, State Gov't § 10-217 (2009); *Commissioner of Labor and Industry v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) citing *Bernstein v. Real Estate Comm'n*, 221 Md. 221, 231 (1959).

The MREC alleges that the Respondent failed to properly return the Complainant's keys to the Property when the Respondent terminated his agency relationship. The Investigator testified that the Complainant advised him that the Respondent and the Complainant had an argument about the tenant moving into the Property before the tenant qualified for section eight housing. After the argument, according to the Complainant, the Respondent left the keys to the

Property in the kitchen.

The Investigator also testified that he viewed the contract between the Respondent and the Complainant and found that it was on stationery belonging to Remax One. At the time that the contract was executed by the Respondent and the Complainant, the Respondent was affiliated with HomeSource Real Estate Solutions which was not affiliated with Remax One.

The Respondent admitted that the Complainant's rendition was accurate. The Respondent stated that he had scheduled a meeting with the Complainant for February 28, 2009 and, when the Complainant did not show for the meeting, the Respondent placed the keys in a kitchen drawer and locked the door to the Property from the inside before he left the premises. The Respondent explained that he used the Remax One form because he was in transition at the time of the contract.

For the reasons discussed below, I find that the MREC has established that the Respondent is subject to sanction for his dealings regarding the Property. My findings in this matter are based on the testimony of the Investigator who talked to the Complainant, the Respondent and the Respondent's associate at HomeSource Real Estate Solutions.

The Respondent was required to provide the Complainant with a Contract written on documents that clearly identified him as an associate with HomeSource Real Estate Solutions. His failure to do so amounted to a violation of section 17-322(b)(25) of the Business Occupations and Professions Article by acting throughout his dealings with the Complainant in bad faith and in an incompetent and untrustworthy manner, as well as a violation of COMAR 09.11.02.01A. His failure to return the keys to the Complainant in a manner that assures the safety of the keys and the property was a violation of COMAR 09.11.02.02A.

Accordingly, for all the reasons discussed above, I find that the MREC has proven its case

and the Respondent is subject to sanction.

Based on the Respondent's misconduct, the MREC asks that the Respondent's license be revoked, and that a penalty of \$1,500.00 be assessed. Section 17-322 of the Business Occupations Article provides as follows:

(c) Penalty. --

(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 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.

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

(4) The Commission may not impose a fine based solely on a violation of subsection (b)(35) of this section.

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

The Respondent's violations were serious. However, the Complainant suffered little harm. The property was eventually rented to a qualified Section 8 tenant and although there was a potential for harm by leaving the keys at the premises, none was suffered. Therefore, the penalty for the violation of Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) should be \$1,000.00 and the violation of COMAR 09.11.02.02A should be \$500.00.

Accordingly, in light of Respondent's conduct, which resulted in two violations, the appropriate sanction is a \$1,500.00 civil penalty.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent's real estate license is subject to sanction pursuant to sections 17-322(b) (25), (32) and (33) of the Business Occupations and Professions Article. Additionally, he is subject to sanction because he violated the Code of Ethics as set forth in COMAR 09.11.02.01H, and COMAR 09.11.02.02A.

I further conclude that the Respondent is subject to a civil penalty under section 17-322(c) of the Business Occupations and Professions Article.

I further conclude as a matter of law that an appropriate sanction in this case is a \$1,500.00 civil penalty. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b) and (c) (2010).

RECOMMENDED ORDER

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

ORDER that the Respondent violated section 17-322(b) (25), (32), and (33) of the Business Occupations and Professions Article, and

ORDER that the Respondent violated COMAR 09.11.02.01 H, and COMAR 09.11.02.02A;

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

ORDER that the Respondent pay a civil statutory penalty to the Maryland Real Estate Commission in the amount of \$1,500.00; and

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

December 13, 2011
Date Decision Issued

TAM/jf, #128288

SIGNATURE ON FILE

T. Austin Murphy
Administrative Law Judge

THE MARYLAND REAL ESTATE
COMMISSION

v.

MARCUS J BRUNO,
RESPONDENT

* BEFORE T. AUSTIN MURPHY,
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FILE EXHIBIT LIST

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