

BEFORE THE MARYLAND REAL ESTATE COMMISSION **FINAL ORDER**

MARYLAND REAL ESTATE
COMMISSION

v.

GERRI M. WALKER-NURSE
Respondent

*

* CASE NO. 2008-RE-568

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* OAH NO. DLR-REC-21-10-08544

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NOV 16 2011

MARYLAND REAL
ESTATE COMMISSION

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OPINION AND FINAL ORDER

This matter came before the Maryland Real Estate Commission (“Commission”) on argument on Exceptions filed by the Respondent, Gerri M. Walker-Nurse, to the Proposed Order of March 8, 2011. On January 21, 2011, Administrative Law Judge Deborah H. Buie (“ALJ”) filed a Recommended Decision and Recommended Order in which she recommended that the Respondent’s license be suspended for sixty days and that she be required to pay a \$10,000.00 civil penalty.

On March 8, 2011, the Commission issued a Proposed Order that affirmed the ALJ’s Findings of Fact and Conclusions of Law. The Commission found that the Recommended Order had to be amended because the ALJ 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 she does not pay the full amount of the civil penalty within that time period. The Commission also added to the Proposed Order the sections of Title 17, Business Occupations and Professions Article (“Bus. Occ. & Prof. Art.”), *Annotated Code of Maryland*, that provide for disciplinary action against licensees

who violate Subtitle 5 (§17-322(b)(31)) and the Code of Maryland Regulations (“COMAR”) (17-322(b)(33)).

Although the ALJ concluded that the Respondent acted incompetently when she failed to prepare a pre-settlement occupancy agreement in writing and cited a violation of Bus. Occ. & Prof. Art., § 17-322(b)(25) in her Conclusions of Law as a basis for concluding that the Respondent’s license could be suspended and a fine could be imposed, this violation was inadvertently omitted in a list of violations set forth in the Commission’s Proposed Order. The Commission did affirm the ALJ’s Conclusions of Law and, therefore, a violation of §17-322(b)(25), in its Proposed Order. Therefore, the Commission considered the Respondent’s Exceptions as applying to a violation of Bus. Occ. & Prof. Art., § 17-322(b)(25).

A hearing on the Exceptions filed by the Respondent was held by a panel of Commissioners, consisting of Commissioners Anne S. Cooke, Robin L. Pirtle and Colette P. Youngblood, on July 20, 2011. Jessica Berman Kaufman, Assistant Attorney General, represented the Commission. A transcript of the hearing before the ALJ was not provided to the Commission. The proceedings were electronically recorded.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, three exhibits, as well as the Office of Administrative Hearings’ file containing exhibits which were introduced before the ALJ, were entered into evidence.

PRELIMINARY MATTERS

On March 8, 2011, the Commission forwarded a letter, with a copy of the Proposed Decision of the ALJ and the Proposed Order of the Commission, to the

Respondent, Gerri M. Miller (a/k/a Gerri M. Walker-Nurse), at her addresses of record. On March 21, 2011, the Respondent forwarded a letter to the Commission filing Exceptions to the Proposed Order. On March 30, 2011, the Commission forwarded a letter to the Respondent, informing her that a hearing on her Exceptions would take place at 500 N. Calvert Street, Third Floor Conference Room, Baltimore, Maryland 21202 on Wednesday, July 20, 2011, at 12:30 p.m. The letter advised the Respondent that: "If the excepting party fails to appear within fifteen minutes of the scheduled time for this hearing, its exceptions will be dismissed absent extenuating circumstances." The March 30, 2011 letter from the Commission to Ms. Walker-Nurse was sent to her at her address of record as well as at an address she listed in her March 21, 2011 letter to the Commission. Ms. Walker-Nurse did not appear on July 20, 2011 at 12:30 p.m. for her scheduled hearing nor has she presented any extenuating circumstances to the Commission to explain her absence. The Commission waited until 12:47 p.m. before commencing the hearing in this case in Ms. Walker-Nurse's absence. Due to Ms. Walker-Nurse's failure to appear for the scheduled hearing on her Exceptions and, in accordance with the provisions of COMAR 09.11.03.01F, which provides that:

"The panel may dismiss an appeal without holding a hearing if the person who filed exceptions to the proposed order fails to appear at the scheduled time after receiving proper notice."

the Commission dismissed Ms. Walker-Nurse's Exceptions.

FINDINGS OF FACT

The Commission adopts the Findings of Fact recommended by the ALJ.

DISCUSSION

The Respondent, Gerri M. Walker-Nurse, was first licensed by the Commission as a salesperson in 1996. FF 1¹. On February 17, 2006, the Respondent received her broker's license as the owner and broker of Help-U-Sell Gerri Walker-Nurse and Associates. FF 1.

On September 14, 2007, the Complainant, Heather K. Lowe, listed her property, 8048 Curve Lane, Lusby, Maryland (the "Property") for sale with Linda Crakes, agent with Re/Max 100. FF 2. The Complainant was employed as a loan officer and worked closely with the Respondent in that professional capacity. FF 3. In November, 2007, the Complainant was working on an unrelated loan application for the Jefferson family, who were clients of the Respondent. When the Jeffersons' application was denied for an unrelated property, the Complainant made it known to the Respondent that her own home (the Property) was for sale. FF 4. Soon after, the Jeffersons viewed the Complainant's Property and the Respondent told the Complainant that they were preparing to make an offer. FF 5. The Respondent also told the Complainant that the Jeffersons were about to receive a large worker's compensation settlement and, although they had some credit issues, she was confident they would obtain financing. FF 5.

On November 25, 2007, based upon assurances from the Respondent, the

¹ "FF" refers to the ALJ's Findings of Fact.

Complainant agreed to allow the Jeffersons to occupy the Property pending the sale. FF 6. The Respondent did not put this pre-settlement occupancy agreement in writing. FF 6.

On November 27, 2007, the Respondent prepared a contract offer on behalf of the Jeffersons to purchase the Property. On November 29, 2007, the Complainant accepted the offer: \$335,000.00 sales price; \$3,000.00 earnest money deposit; and settlement date of December 7, 2007. FF 7. The Jeffersons' loan was not approved in time for the December settlement date and settlement was rescheduled for February 28, 2008. FF 8. Throughout mid-December, the Respondent had no communication with the listing agent, Linda Crakes. FF 9. On at least one occasion, Ms. Crakes received information from another agent, who had attempted to show the Property to prospective buyers, that they were unable to view the Property because someone was living there. FF 9. After learning that the Jeffersons were living in the house, on January 2, 2008, Ms. Crakes contacted the Respondent and demanded a signed, properly executed, pre-settlement occupancy agreement. FF 10.

On January 12, 2008, the Respondent provided a pre-settlement occupancy agreement which had been signed and dated by the Jeffersons on December 28, 2007. FF 11. The pre-settlement occupancy agreement called for a monthly rent of \$2,083.00 and a security deposit of \$6,250.00. FF 12. In addition, an addendum (Option to Purchase) was also provided that called for a non-refundable option fee paid to the Complainant in the amount of \$12,500.00 to be credited towards the purchase price. FF 12. The Complainant signed the agreement on January 18, 2008, acknowledging that she was given rental payments for the months of December, 2007 and January/February, 2008, totaling \$6,250.00. FF 13. The agreement stated that, in addition to the \$6,250.00 in

rental payments, \$6,250.00 was “being held in escrow”, as a security deposit. FF 14. The \$6,250.00 security deposit, that was represented in the signed agreement by the Respondent as “being held in escrow”, was not placed in the Respondent’s escrow account. FF 15. On February 28, 2008, an audit of the Respondent’s escrow account did not reflect a deposit of \$6,250.00 for the account associated with the contract for the Property. FF 15. There was, however, a deposit of \$3,000.00 into escrow on November 29, 2007 for the Property. FF 15.

The Jeffersons were not able to obtain financing and, in March, 2008, the Complainant was forced to file an eviction action against them in rent court which was dismissed. FF 16, 17. On March 18, 2008, the Complainant filed a complaint with the Commission. FF 18. On March 25, 2008, the Jeffersons called the Complainant and indicated that they were planning on firing the Respondent but were still interested in purchasing the Property. FF 19. They requested that the Complainant release them from the contract and option agreement so that the Respondent could return the \$3,000.00 earnest deposit and the \$6,250.00 security deposit to them and they would, in turn, pay her for three additional months rent. FF 19. The Complainant informed her agent, Ms. Crakes, of the offer and was told to deny their request. FF 20. The Complainant did not abide by her agent’s advice and, on March 26, 2008, signed the “Release of Obligations Created Under the Real Estate Contract” which had been prepared by the Respondent. FF 20. Approximately thirty-six hours after signing the release, the Complainant went by the Property and discovered that the Jeffersons had vacated it, without leaving a forwarding address. FF 21. In addition, there was considerable damage to the interior of the Property. FF 21.

On May 27, 2009, Commission investigator Jack Mull interviewed the Respondent in the presence of her attorney. FF 22. The Respondent admitted that she failed to prepare a pre-settlement occupancy agreement before the Jeffersons moved into the Property and that she failed to communicate with the listing agent. FF 22. The Respondent did not produce any documentation to reflect the deposit of any funds other than the initial earnest deposit of \$3,000.00. FF 23. The Complainant ultimately fell behind on her mortgage payments and separated from her husband. FF 24. As a part of the divorce settlement, her ex-husband bought the Property. FF 24.

A licensed real estate broker in Maryland is subject to the following requirements of the Real Estate Commission's Code of Ethics set forth in COMAR 09.11.02. The sections applicable to the instant case are:

.01 Relations to the Public.

H. For the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed; and

.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.

With regard to deposits of trust money, Section 17-502(b)(1), Bus. Occ. & Prof. Art. provides:

(b)(1) Except as otherwise provided in subsection (c) of this section, a real estate broker promptly, but not more than 7 business days after the acceptance of a contract of sale by both parties, shall deposit money in an account that is maintained by the real estate broker:

- (i) separately from the real estate broker's own accounts; and

(ii) solely for trust money.

The Commission finds, based on the evidence presented at the hearing before the ALJ, as well as the Respondent's admission to the Commission's investigator, that the Respondent failed to create a pre-settlement occupancy agreement before the intended buyers moved into the Property and failed to communicate with the Complainant's agent for a period of time prior to the scheduled settlement date on the Property. The Commission concludes that the Respondent's failure to create a pre-settlement occupancy agreement before the intended buyers moved into the Property and failure to communicate with the Complainant's agent demonstrated incompetency in violation of §17-322(b)(25), Bus. Occ. & Prof. Art. Further, in failing to prepare a written pre-settlement occupancy agreement, setting forth the financial commitments and obligations of the parties, until the Complainant's agent demanded same, during which time the intended buyers lived in the Property, the Respondent failed to protect the interests of the Complainant and violated the provisions of both COMAR 09.11.02.01H. and COMAR 09.11.02.02A as well as §17-322(b)(33), Bus. Occ. & Prof. Art.

The Commission also finds that the Jeffersons and the Complainant agreed, in a written occupancy agreement, that the Jeffersons would pay a monthly rent of \$2,083.00 and a security deposit of \$6,250.00 on the Property. In the signed agreement, the \$6,250.00 security deposit was represented by the Respondent as "being held in escrow". However, an audit of the Respondent's escrow account did not reflect a deposit of \$6,250.00 associated with the contract for the Property. Therefore, the Commission concludes that the Respondent violated §§17-502(b) and 17-322(b)(31), Bus. Occ. & Prof. Art.

Instead of or in addition to reprimanding, suspending or revoking a real estate license for violations of the above-cited statutes, Bus. Occ. & Prof. Art. §17-322(c) permits the assessment of up to a \$5,000.00 penalty per violation. To determine the amount of the penalty to be imposed, the Commission is required to consider the following criteria:

- 1) the seriousness of the violation;
- 2) the harm caused by the violation;
- 3) the good faith of the licensee; and
- 4) any history of previous violations by the licensee.

Although the Respondent has no history of prior violations, the Commission finds that the violations in this case are very serious. The Respondent failed to comply with statutory requirements regarding the timely deposit of trust money in her business escrow account. She represented that \$6,250.00 was “being held in escrow”; however, an audit of her escrow account did not reflect a deposit of \$6,250.00 for the account associated with the contract for the Property. The Respondent’s failure to handle the \$6,250.00 in accordance with the provisions of the law caused harm to the reputation of the real estate industry and violated the trust which the public accords to real estate licensees who handle their funds. The Respondent also failed to prepare a pre-settlement occupancy agreement in writing until the Complainant’s agent demanded one and, as a result of her failure, the interests of the Complainant were not protected for a period of time.

The Respondent’s actions also harmed the Complainant: While the Jeffersons were living in the Property without being subject to the terms of an occupancy agreement, the Property was unavailable to be shown to other prospective buyers.

The Respondent's failure to treat all parties to the transaction honestly and fairly are a clear indication of her lack of good faith.

Having evaluated each of the above-listed factors for determining a penalty for violations of §§ 17-322(b)(25), (31), (33) and § 17-502(b), Bus. Occ. & Prof. Art. as well as violations of COMAR 09.11.02.01H and 09.11.02.02A, the Commission concludes that the appropriate penalty is a sixty days suspension of all real estate licenses held by the Respondent and a civil penalty in the amount of \$10,000.00.

CONCLUSIONS OF LAW

Based upon the ALJ's Findings of Fact, which have been affirmed by the Commission, and the foregoing Discussion, the Commission concludes, as a matter of law, that:

1. The Respondent, Gerri M. Walker-Nurse, violated Bus. Occ. & Prof. Art., §§ 17-322(b)(25), (31) and (33); and § 17-502(b), Bus. Occ. & Prof. Art., and COMAR 09.11.02.01H and 09.11.02.02A; and

2. The Respondent, Gerri M. Walker-Nurse, is subject to the penalties prescribed in Bus. Occ. & Prof. Art., § 17-322(c) for these violations, and the suspension of all real estate licenses held by her and a \$10,000.00 civil penalty are appropriate sanctions.

ORDER

It is this 17th day of October, 2011, by the Maryland Real Estate Commission, **ORDERED:**

1. That the Respondent, Gerri M. Walker-Nurse, violated Bus. Occ. & Prof. Art. §§ 17-322(25), (31) and (33) and § 17-502(b) and COMAR 09.11.02.01H and 09.11.02.02A;

2. That all real estate licenses held by the Respondent, Gerri M. Walker-Nurse, are hereby **SUSPENDED** for sixty (60) days;

3. That the Respondent, Gerri M. Walker-Nurse, be assessed a civil penalty in the amount of **Ten Thousand Dollars (\$10,000.00)** which shall be paid within thirty (30) days of the date of this ORDER;

4. That all real estate licenses held by the Respondent, Gerri M. Walker-Nurse, shall be suspended if the civil penalty is not paid in full within the thirty (30) day time period, and that this suspension is in addition to the sixty (60) day disciplinary suspension; and

5. That the records and publications of the Maryland Real Estate Commission reflect this decision.

MARYLAND REAL ESTATE COMMISSION

SIGNATURE ON FILE

By: _____

Note: A judicial review of this Final Order may be sought in the Circuit Court of Maryland in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

GERRI WALKER-NURSE
Respondent

* CASE NO. 2008-RE-568

* OAH NO. DLR-REC-21-10-08544

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PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated January 21, 2011, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 8th day of March, 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 Gerri Walker-Nurse violated Md. Bus. Occ. and Prof. Art. §17-322(b)(31) and (33), §17-502(b), and COMAR 09.11.02.01H and 09.11.02.02A;

ORDERED that all real estate licenses held by the Respondent Gerri Walker-Nurse be suspended for 60 days;

ORDERED that the Respondent Gerri Walker-Nurse be assessed a civil penalty in the amount of \$10,000.00, 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 Gerri Walker-Nurse shall be suspended if the civil penalty is not paid in full within the 30-day time period, and that this suspension is in addition to the 60-day disciplinary suspension.

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 she does not pay the full amount of the civil penalty within that time period. The Commission also added to the Proposed Order the sections of Title 17 that provide for disciplinary action against licensees who violate Title 5 (§17-322(b)(31)) and COMAR (§17-322(b)(33)).

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

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**MARYLAND REAL ESTATE
COMMISSION**

v.

**GERRI WALKER-NURSE,
RESPONDENT**

*** BEFORE DEBORAH H. BUIE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE NO.: DLR-REC-21-10-08544
* REC COMPLAINT NO: 2008-RE-0568**

* * * * *

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 March 13, 2008, Heather Lowe-Childress (Complainant) filed a complaint with the Maryland Real Estate Commission (Commission or REC), an administrative unit of the Department of Labor, Licensing and Regulation (DLLR), against Gerri Walker-Nurse (Respondent), a licensed real estate broker of Help-U-Sell Gerri Walker-Nurse and Associates, Realtors. On January 19, 2010, the REC issued a Statement of Charges and Order for Hearing against the Respondent.

On November 9, 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) (Business

Occupations Article). Hope Sachs, Assistant Attorney General, represented the Commission. Neither the Respondent nor anyone authorized to represent her appeared.¹

The Administrative Procedure Act, the procedures for Administrative Hearings of the Office of the Secretary of the DLLR, the procedures for Hearings of the Commission, 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

- 1) Did the Respondent violate the provisions of the REC Code of Ethics at COMAR 09.11.02.01H and 09.11.02.02A;
- 2) Did the Respondent violate section 17-502(b)(1) of the Business Occupations Article; and if so;
- 3) What is the appropriate sanction, pursuant to section 17-322(b)(25), (33) and (c) of the Business Occupations Article?

SUMMARY OF EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Commission:

- | | |
|--------|---|
| REC #1 | Notice of Hearing, dated September 13, 2010 |
| REC #2 | Notice of Hearing, dated September 13, 2010, returned undeliverable/Refused |
| REC #3 | Notice of Hearing, dated September 13, 2010, returned undeliverable/Refused |
| REC #4 | Affidavit of Steven Long |

¹ See Part I of Discussion, below.

REC #5, 6 & 7 Printouts of the Respondent's REC Licensing History, dated November 1, 2010

REC #8 Statement of Charges/Order for Hearing, dated January 19, 2010

REC #9 Report of Investigation, June 12, 2009

The Respondent was not present at the hearing; therefore no exhibits were presented.

Testimony

The Commission presented the testimony of Jack Mull, DLLR investigator.

FINDINGS OF FACT

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

1. The Respondent first obtained her broker's license on February 17, 2006 as the owner and broker of Help-U-Sell Gerri Walker-Nurse and Associates. She was first licensed as a salesperson in 1996.
2. On September 14, 2007, the Complainant listed her property, 8048 Curve Lane, Lusby, Maryland (the Property) for sale with Linda Crakes, agent with Re/Max 100.
3. The Complainant was employed as a loan officer and worked closely with the Respondent in that professional capacity.
4. In November 2007, the Complainant was working on an unrelated loan application for a family, the Jeffersons, who were clients of the Respondent. When the Jeffersons' application was denied for the unrelated property, the Complainant made it known to the Respondent that her own home (the Property) was for sale.
5. Soon after, the Jeffersons viewed the Complainant's Property and the Respondent told the Complainant that they were preparing to make an offer. She further told the Complainant that the Jeffersons were coming into a large worker's compensation

settlement and although they had some credit issues, she (the Respondent) was confident they would obtain financing.

6. On November 25, 2007, based upon assurances from the Respondent, the Complainant agreed to allow the Jeffersons to occupy the Property pending the sale. The Respondent did not put this pre-settlement occupancy agreement in writing.
7. On November 27, 2007, the Respondent prepared a contract offer on behalf of the Jeffersons to purchase the Property. The Complainant accepted the offer: (\$335,000.00 sales price; \$3,000.00 earnest deposit; settlement date 12-7-07) on November 29, 2007.
8. The Jeffersons' loan was not approved in time for the December settlement date. Settlement was rescheduled for February 28, 2008.
9. Throughout this time in mid-December, the Respondent had no communication with the listing agent agent, Linda Crakes. On at least one occasion, Ms. Crakes received information from another agent, who had attempted to show the Property to prospective buyers, that they could not view the home because someone was living there.
10. After learning that the Jeffersons were living in the house, on January 2, 2008, Ms. Crakes contacted the Respondent and demanded a signed, properly executed, pre-settlement occupancy agreement.
11. On January 12, 2008, the Respondent provided a pre-settlement occupancy agreement which had been signed and dated by the Jeffersons on December 28, 2007.
12. The pre-settlement occupancy agreement called for a monthly rent of \$2,083.00 and a security deposit of \$6,250.00. In addition, an addendum (Option to Purchase) was

also provided that called for a non-refundable option fee paid to the Complainant in the amount of \$12,500.00 to be credited towards the purchase price.

13. The Complainant signed the agreement on January 18, 2008, acknowledging that she was given rental payments for the months of December 2007 and January/February 2008, totaling \$6,250.00.
14. The agreement stated that in addition to the \$6,250.00 in rental payments, \$6,250.00 was "being held in escrow," as a security deposit.
15. The \$6,250.00 security deposit that was represented in the signed agreement by the Respondent as "being held in escrow" was not placed in the Respondent's escrow account. On February 28, 2008, an audit of the Respondent's escrow account did not reflect a deposit of \$6,250.00 for the account associated with contract for the Property. There was, however, a deposit of \$3,000.00 into escrow on November 29, 2007 for the Property.
16. The Jeffersons were not able to obtain financing and, in March 2008, the Complainant was forced to file eviction action against them in rent court.
17. The eviction action was dismissed.
18. On March 18, 2008, the Complainant filed a complaint with the REC.
19. On March 25, 2008, the Jeffersons called the Complainant and indicated that they were planning on firing the Respondent but were still interested in purchasing the Property. They requested that the Complainant release them from the contract and option agreement so that the Respondent could return the \$3,000.00 earnest deposit and the \$6,250.00 security deposit to them and they would in turn pay her for three additional months rent.

20. The Complainant informed her agent, Ms. Crakes, of the offer and was told to deny their request. The Complainant did not abide by her agent's advice and on March 26, 2008, signed the "Release of Obligations Created Under the Real Estate Contract." The release had been prepared by the Respondent.
21. Approximately thirty-six hours after signing the release, the Complainant went by the Property and discovered that the Jeffersons had vacated it, without leaving a forwarding address. In addition, there was considerable damage to the interior of the home.
22. On May 27, 2009, investigator Mull interviewed the Respondent in the presence of her attorney. The Respondent admitted that she failed to prepare a pre-settlement occupancy agreement before the Jeffersons moved into the Property and she failed to communicate with the listing agent.
23. The Respondent did not produce any documentation to reflect the deposit of any funds other than the initial earnest deposit of \$3,000.00.
24. The Complainant ultimately fell behind on her mortgage payments and separated from her husband. As a part of divorce settlement, her ex-husband bought the Property.

DISCUSSION

I. The Respondent's Failure to Appear

Section 17-324 of the Business Occupations Article provides that before the Commission can 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) (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.

Md. Code Ann., Bus. Occ. & Prof. § 17-324(f) (2010).

The record demonstrates that the OAH sent a Notice of Hearing to the Respondent by certified and first class mail, to her address of record with the Commission, at least ten days prior to the hearing. REC Ex. #1. State property records reflect that the address is the Respondent's principal residence. REC Ex. #4. The Respondent refused to accept the certified mail on September 24, 2010. REC Exs. #2 and 3. The Respondent received proper notice of the hearing and failed to appear; therefore, the Commission was entitled to proceed in the Respondent's absence. Md. Code Ann., Bus. Occ. & Prof. § 17-324(d), (f) (2010).

Statutory and Regulatory Provisions

The Commission charged the Respondent with violating the REC Code of Ethics at COMAR 09.11.02. The applicable sections provide as follows:

.01 Relations to the Public.

H. For the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed; and

.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.

With regard to the deposit, section 17-502 of the Business Occupations Article provides, in pertinent part:

(b)(1) Except as otherwise provided in subsection (c) of this section, a real estate broker promptly, but not more than 7 business days after the acceptance of a contract of sale by both parties, shall deposit trust money in an account that is maintained by the real estate broker:

- (i) separately from the real estate broker's own accounts; and
- (ii) solely for trust money.

Md. Code Ann., Bus. Occ. & Prof. § 17-502(b) (2010).

As a result of the alleged violations, the Commission states that the Respondent is subject sanction permitted by Business Occupations Article § 17-322 (2010). The relevant portions of the statute provides as follows:

§ 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:

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

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

...
(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 \$5,000.00 for each violation.

The Merits of the Instant Case

The Commission's charges arise out of a residential listing for the sale of the Complainant's home. There is no dispute that at the time of the negotiations the Respondent was licensed by the Commission as a real estate broker and was the owner/operator of Help-U-Sell Gerri Walker-Nurse Associates Realtors. The Commission argued that the Respondent acted incompetently when she failed to prepare a pre-settlement occupancy agreement in writing and,

by failing to do so, she did not protect the interest of the Complainant. In addition, the Commission argues that the Respondent did not account for earnest money taken on behalf of the contract. I find that the evidence overwhelmingly supports the Commission's charges.

The Respondent did not appear at the hearing to dispute the allegations, and based upon the interviews done by the REC investigator and documented in his report (REC Ex. #8), whereby the Respondent admitted her failure to create a written agreement, I am provided little alternative but to determine that the Commission has presented credible evidence to sustain a violation of COMAR 09.11.02.01(H) and 09.11.02.02A. The Respondent only provided a written agreement after being prodded to do so by the listing agent, and ultimately the Complainant's interests were harmed by the Property being unavailable for viewing by prospective buyers. Indeed, she never did procure a buyer for her Property. It was only by agreement with her ex-husband that she was relieved of the financial burden of the Property. The Respondent is, therefore, subject to sanction pursuant to Business Occupations Article § 17-322(b)(25), (33) and (c).

The remaining charges relate to the deposit of escrow funds. The evidence is undisputed that the Respondent prepared an addendum to the lease agreement (on January 12, 2008) in which she states that \$6,250.00 is being held in escrow, yet an audit of her escrow account on February 28, 2008 revealed no such deposit. Accordingly, I also find a violation of Business Occupations Article § 17-502(b).

Business Occupations Article § 17-322(c) (2010) governs the imposition of monetary penalties and provides, in pertinent part, 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....

The statute is designed to protect the public from professional wrongdoing. The requirements to treat all parties to a transaction honestly and fairly, to place all agreements in writing, and to handle deposit monies properly, are not a matter of judgment; these mandates are imposed by statute and regulation. These requirements go to the essence of what the public should expect from real estate licensees. At the hearing, the Commission argued that the Respondent's actions were serious: she took money that cannot be accounted for and the lack of a pre-settlement occupancy agreement completely compromised the seller's position.

The Commission requested that a sixty-day suspension be imposed and a \$10,000.00 fine. I agree that the recommended penalty is warranted. Accordingly, I recommend a total monetary penalty of \$10,000.00 for the violations of COMAR 09.11.02.01H; 09.11.02.02A; and section 17-502(b) of the Business Occupations Article. In addition to the civil penalty, I recommend a sixty-day suspension.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated Business Occupations Article §17-502(b) and the Real Estate Commission Code of Ethics, COMAR 09.11.02.02H and 09.11.02.02A.

I further conclude as a matter of law that the Maryland Real Estate Commission may suspend the Respondent's license for sixty days and may impose on her a monetary penalty of \$10,000.00. Md. Code Ann., Bus. Occ. & Prof. §§17-322(b)(25) and (33) and 17-322(c) (2010).

RECOMMENDED ORDER

IT IS THEREFORE **RECOMMENDED** that the Maryland Real Estate Commission:

ORDER that Respondent Gerri Walker-Nurse's license be suspended for sixty days and she be required to pay a \$10,000.00 civil penalty for violating the provisions of the Business Occupations Article and the Real Estate Commission Code of Ethics; and,

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

January 21, 2011
Date Decision Mailed

#119636

SIGNATURE ON FILE

Deborah H. Buie
Administrative Law Judge