

**BEFORE THE MARYLAND REAL ESTATE COMMISSION**

**MARYLAND REAL ESTATE  
COMMISSION**

v.

**MARYAM REZAIE,  
RESPONDENT**

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\* **OAH NO. DLR-REC-21-10-24977**  
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\* **REC CASE NO. 2008-RE-614**  
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**OPINION AND FINAL ORDER**

This matter came before the Commission for argument on Exceptions filed by the Respondent Maryam Rezaie, to the Proposed Order of June 14, 2011. On March 24, 2011, Administrative Law Judge Susan A. Sinrod (“ALJ”) filed a Recommended Decision and Order in which she recommended that the Respondent’s real estate broker license be suspended for a period of four (4) months, and that a civil penalty of \$4,000.00 be imposed on the Respondent.

On June 14, 2011, the Maryland Real Estate Commission (“Commission”) issued a Proposed Order that adopted the ALJ’s Findings of Fact and Conclusions of Law. In its Proposed Order, the Commission amended the ALJ’s Recommended Order as follows:

“ORDERED that the Respondent Maryam Rezaie violated Md. Bus. Occ. and Prof. Art., §§17-322(b)(25), (31), (32), and (33); and 17-505; and COMAR 09.11.02.01C and H, and 09.11.0202A;

ORDERED that all real estate licenses held by the Respondent Maryam Rezaie be, and hereby are, REVOKED;

ORDERED that the Respondent Maryam Rezaie pay a civil penalty in the amount of \$20,000.00 to the Maryland Real Estate Commission within thirty (30) days of the date of this Order;

ORDERED that the Respondent Maryam Rezaie is ineligible to hold a real estate license until the civil penalty is paid in full;

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

The Respondent filed Exceptions to the Proposed Order of the Commission. On February 15, 2012, a hearing on the Exceptions filed by the Respondent was held by a panel of Commissioners, consisting of Commissioners Nancy Simperts, Marla Johnson, and Juan Munoz, Assistant Attorney General Peter Martin represented the Commission. The Respondent was represented by Richard Chaifetz, Esq. A transcript of the hearing before the ALJ was provided by the Respondent for the Commission’s review. The proceedings were electronically recorded.

#### **SUMMARY OF THE EVIDENCE**

On behalf of the Commission, five exhibits, as well as the exhibits which were entered into the record at the hearing before the ALJ, were entered into evidence at the Exceptions hearing.

#### **FINDINGS OF FACT**

The Commission adopts the Findings of Fact of the ALJ.

#### **CONCLUSIONS OF LAW**

The Commission adopts the Conclusions of Law of the ALJ.

## DISCUSSION

At all times relevant to this matter, the Respondent was a licensed real estate broker, and the principal broker associated with Metropolitan Fine Properties, Inc. FF 1-2<sup>1</sup>. The Respondent, the broker of Metropolitan Fine Properties, Inc., signed the Buyer Agency Agreement to act as the agent of the buyers, Ahmad and Fruzan Babazadeh. REC Exhibit 5, Att. 4. The Respondent's husband, Ali Varkiani, was a licensed real estate agent for the Respondent's brokerage, as well as a licensed mortgage broker. FF 3-4. The buyers chose to deal with the Respondent's brokerage because they were more comfortable speaking Farsi than English, and Mr. Varkiani spoke Farsi. FF 3.

The buyers informed Mr. Varkiani that they did not have good credit, and that they had only \$30,000.00 that they could use toward the purchase of a home. Mr. Varkiani assured the buyers that he could obtain a mortgage loan for them. FF 5. On or about August 3, 2007, the buyers entered into a contract to purchase a home for \$930,000.00, and paid a \$20,000.00 earnest money deposit to be held in escrow by the Respondent's brokerage. FF 8. The Respondent signed the contract as the buyers' agent. Under the contract, if the sale took place, the buyers would be responsible to pay the Respondent a commission of 3% (\$27,900.00). REC Exhibit 5, Att. 6.

The buyers made it specifically clear to Mr. Varkiani that the \$20,000.00 deposit was nearly all the money they had and, if they could not obtain a loan, they wanted to be released from the contract, so that they would not lose the \$20,000.00 deposit. FF 9. In spite of this, on

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<sup>1</sup> "FF" refers to the ALJ's Findings of Fact.

August 31, 2007, Mr. Varkiani presented the buyers with an addendum to sign that extended the settlement date to October 30, 2007, and removed the financing contingency contained in the original contract of sale. Mr. Varkiani assured the buyers that they were going to be approved for a loan and, therefore, there was no problem with the removal of the financing contingency. FF 13-14. The buyers did not understand what they had signed, as they continued to state that they could not afford to lose their \$20,000.00. FF 16.

The settlement did not occur on October 30, 2007. FF 15. By check dated November 6, 2007, the Respondent transferred the buyers' \$20,000.00 earnest money deposit from her escrow account to the sellers. FF 19. REC Exhibit 5, Att. 9. The Respondent did not have a signed release from the buyers authorizing transfer of the escrow deposit, and the buyers did not know that their funds had been released. By e-mail correspondence dated February 28, 2008, the buyers requested return of their escrow deposit. By e-mail correspondence dated February 29, 2008, the Respondent informed the buyers that she had released their earnest money deposit to the sellers in November 2007, and the Respondent asserted to the buyers that she had done so "per your authorization." FF 19. REC Exhibit 5, Att 13. Neither the Respondent, nor the sellers' agent, ever produced a copy of a signed release by the buyers of the earnest money deposit held in escrow by the Respondent. REC Exhibit 5.

The ALJ found that "[t]he Respondent, in her own capacity, and as Mr. Varkiani's supervisor, demonstrated bad faith, dishonesty and untrustworthiness throughout Metropolitan's dealings with the Complainants." The Respondent was the buyers' agent in this transaction. She had the duty to protect and promote the interests of her clients. Instead of protecting the buyers, she released their \$20,000.00 deposit to the sellers without signed authorization from the buyers, as

required by law. The buyers were not experienced in real estate transactions, and relied on the Respondent and her husband/sales associate to protect their interests in this purchase. Instead of protecting the buyers' interests, the buyers were pushed by the Respondent and her agent further and further into a transaction that they did not understand, and that their finances could not support. Important details of the transaction were not adequately explained to the buyers by the Respondent, including the withdrawal of the financing contingency from the sales contract, and the release of the buyers' deposit from escrow. The Respondent's unilateral release of the buyers' deposit from escrow, without legal authorization, is particularly disturbing.

In her exceptions, the Respondent argues that the fact that a signed release of deposit was not found in either her file or that of the listing agent does not mean that the document was not signed. However, there is clear evidence in the file, independent of the testimony of the buyers, that contradicts this assertion. In December 2007, the attorney for the sellers wrote to Ms. Rezaie and her clients telling them that the sellers had elected to terminate the contract, and that a signed release of contract and an authorization for all deposited funds to be released to the sellers should be forwarded to her within 7 days. (REC #5, Att. 11). This letter was dated two months after the Respondent sent the \$20,000 deposit money to the sellers.

The description in the exceptions of the circumstances of the release of the funds is also inconsistent with the evidence. In the exceptions, the Respondent says that "when the time for closing came and they did not have the financing, they were required to release the deposit to the sellers." However, the Respondent released the deposit before the transaction was over, according to the documents. There is a memorandum from the seller's agent to the Respondent dated November 15, 2007, that sets forth the "necessary requirements" for the sellers to extend the

contract. The final paragraph states, "If these terms are NOT MET, then said mentioned sales contract will become void and a release of contract will be provided by Noon, Monday, November 19, 2007." (REC #5, Att.15). Thus, the Respondent released the deposit well before the end of the contract. She stated in her written response to the Commission that the funds were released in exchange for the sellers' commitment to hold a second trust on the property. However, this never occurred, so the Respondent, who was required by law to protect and promote the interests of her clients, effectively bargained away their \$20,000 deposit for nothing. Her actions combined with the absence of any evidence of written documentation of consent support the finding that she was violation of Section 17-322(b)(25), as well of the charges related to trust monies and the Code of Ethics.

Respondent also argues in her exceptions that the ALJ and the Commission were wrong in ascribing improper motives to her because her release of the deposit would lead to the potential of a commission. She says, "The transfer of the deposit to the sellers was antithetical to Respondent's interests because it meant that a sale would not occur and she would earn nothing." This statement itself is inconsistent with the Respondent's position in the investigation and at the hearing. She justified her release of the funds as being necessary to get the sellers' commitment to continuing the transaction. She did not say that she released the funds because the transaction was over; she was doing whatever she could to arrange a sale of the property even though it had become clear that this was no longer in the best interests of her clients. Therefore, the suggestion that she was motivated by the possibility of a sizable commission was entirely justified.

The Respondent also claimed that the ALJ should have had a translator present at the hearing to assist the buyers in their testimony, and that the absence of a translator required vacating the

decision. The transcript does not reflect an unfamiliarity with the English language on the part of the buyers. They were clear as to all the salient points related to their dealing with the Respondent, and their testimony was substantiated by the exhibits. The ALJ found them credible, and the Respondent not credible, for a number of reasons. There is no basis to disturb those findings. See *Berkshire v. MIA*, 142 Md.App. 628, 648 (2002), and cases cited therein.

Finally, the Respondent argues that the decision of the Commission to dismiss the buyers' Guaranty Fund claim is in conflict with the Proposed Order. That is not true. To qualify for an award from the Fund, a claimant must show that the licensee was responsible for an act or omission in which money is obtained by theft, embezzlement, false pretenses, of forgery or that constitutes fraud or misrepresentation. Section 17-404(a)(2)(iii). The Commission has not charged that the Respondent obtained funds from the buyers through improper actions or that she committed fraud or misrepresentation. She violated the rules regarding trust monies, and she did not protect and promote the interests of her clients; the evidence required to reach these conclusions is different than that required to support recovery from the Fund.

For the reasons set forth in the Proposed Order, the Commission concludes that revocation of the Respondent's license and imposition of a \$20,000 civil penalty is the appropriate sanction in this case. Accordingly, the exceptions will be denied, and the penalty will be that set forth in the Proposed Order.

#### **FINAL ORDER**

The Exceptions of the Respondent, Maryam Rezaie, having been considered, it is this 14th day of May, 2012, by the Maryland Real Estate Commission,

**ORDERED:**

1. That the Respondent, Maryam Rezaie, violated Md. Bus. Occ. and Prof. Art., §§ 17-322(b)(25), (31), (32), (33), and 17-305;
2. That the Respondent, Maryam Rezaie, violated the Code of Ethics provisions in COMAR 09.11.02.01C and H, and COMAR 09.11.02.02A;
3. That all real estate licenses held by the Respondent, Maryam Rezaie, be **REVOKED**;
4. That the Respondent, Maryam Rezaie, be assessed a Civil Penalty in the amount of **Twenty Thousand Dollars (\$20,000.00)**, which shall be paid within thirty (30) days of the date of this Order;
5. That the Respondent, Maryam Rezaie, shall be ineligible for any real estate license until the Civil Penalty is paid in full; and
6. That the records and publications of the Maryland Real Estate Commission shall reflect this decision.

**MARYLAND REAL ESTATE COMMISSION**

By: SIGNATURE ON FILE

**Note: Judicial review** of this Final Order may be sought in the Circuit Court of the jurisdiction in which the party 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 Circuit Court **within 30 days** after the mailing date of this Order.