

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

DAVID E. HUGHES
RESPONDENT

* CASE NO. 2008-RE-773

* OAH NO. DLR-REC-21-08-46379

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law, and Recommended Order of the Administrative Law Judge dated May 21, 2010 having been received, read and considered, it is, by the Maryland Real Estate Commission, this 19th day of July, 2010,

ORDERED,

A. That the Findings of Fact in the recommended decision be, and hereby are, **AMENDED:**

Finding of Fact 2. The Respondent previously held a valid real estate salesperson's license from the MREC, license number 05-512929, issued on June 24, 1996, and scheduled to expire on April 30, 1998. During that time, he was affiliated with Weichert Realtors in the Camp Springs office, until September 23, 1996, and then with Weichert Referral Assoc. Co. Inc., located in Bethesda, Maryland. (MREC #3).

Finding of Fact 4. The records of the MREC reflect that the Respondent's affiliation with Weichert Referral Assoc. Co. was

terminated on July 7, 1997, and that he was not authorized to provide real estate brokerage services from that time until his license expired on April 30, 1998. He has not held a real estate license since that expiration date. (MREC #3).

Finding of Fact 13. The Complainants called the Respondent and asked him to accompany them at the meeting with Ryan Homes when Ms. Faison declined to do so because she had had a prior bad experience dealing with Ryan Homes. The Respondent agreed.

Finding of Fact 15. At the outset of the meeting, the Respondent told Ms. Calhoon that he was a representative of Homes by Finley, a Maryland real estate brokerage business.

Finding of Fact 16. The Respondent remained quiet throughout the meeting, except for answering questions posed by the Complainants about the Purchase Agreement.

Finding of Fact 22. After signing the contract, the Complainants became suspicious about the Respondent's role at the meeting when Ms. Calhoon attempted to reach him several times without success to request documents.

Finding of Fact 25. During the March 22, 2008 meeting, the Respondent held himself out to Ms. Calhoon and the Complainants as a licensed real estate agent.

The Commission adopts the remaining Findings of Fact without change.

B. That the Conclusions of Law in the recommended decision be, and hereby are, **AMENDED**:

A. The Respondent misrepresented himself as a licensed real

estate agent despite being unlicensed. Md. Code Ann., Bus. Occ. & Prof. § 17-301(a)(2);

B. The Respondent provided real estate brokerage services without a license. Md. Code Ann., Bus. Occ. & Prof. § 17-601(b);

C. The Respondent misrepresented to the public that he was a real estate licensee. Md. CODE Ann., Bus. Occ. & Prof. § 17-602(b).

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

ORDERED that the Respondent David E. Hughes violated Md. Code Ann., Bus. Occ. & Prof. §§ 17-301(a)(2), 17-322(b)(32), 17-601(b), and 17-602(b);

ORDERED that the Respondent David E. Hughes be assessed a civil penalty in the amount of \$10,000.00, and that the penalty shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that the Respondent David E. Hughes shall be ineligible for a real estate license until the civil penalty has been paid in full;

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 changes had to be made to various portions of the recommended decision based on mistakes made by the Administrative Law Judge. The errors begin with the Statement of the Case where the Judge stated that the MREC issued a Statement of

Charges and Order of Hearing alleging that the Respondent ``falsely acted as a licensed real estate broker.'' In fact, he was charged under Sections 17-301(a)(2), 17-601(b), and 17-602(b) with acting, and representing himself, as a salesperson or associate broker, not a broker. (MREC #2) She also stated that the Complaint filed alleged that he misrepresented himself as a licensed broker. The complaint itself does not include this charge and refers only to attached documents, which indicate that he was claiming to be an agent, not a broker. The same error is in the setting forth of the first issue on page 2. The citation to the statute, Section 17-301(a)(2), is correct, but the Judge erroneously used the word ``broker'' instead of ``salesperson or associate broker'' in the statement of issue 1.

The changes to the Findings of Fact are based on the inconsistencies between the Judge's findings and the documentary evidence in the case. Findings of Fact 2 and 4 relate to the licensing records (MREC #3). The records show that the Respondent's affiliation with Weichert Referral Assoc. Co., Inc. was terminated on July 7, 1997. His license expired on April 30, 1998. During the time that he was licensed but not affiliated with a real estate brokerage, he was not permitted to provide real estate brokerage services.

In Finding of Fact 15, the status of Homes by Finley was clarified because the Maryland real estate licensing law licenses individuals not companies. It was a real estate brokerage business, with an individual, Ted Gehring, as its licensed broker.

Findings of Fact 13, 16, and 22 refer to "the settlement". It is clear that the reference is to a meeting at which a purchase agreement was entered into. According to that agreement, settlement was scheduled for August 2008 (MREC #5, Ex. 4), although it never occurred. Settlement is generally the date when title transfers; the meeting that is referred to in these Findings was clearly not a settlement.

Finding of Fact 25 referred to the Respondent holding himself out as a licensed real estate broker. Again, the documentation does not support that terminology. The brokerage addendum (MREC # 5, Ex. 6) lists him as an "agent" with Homes by Finley as the entity to receive the broker's commission. In MREC #5, Ex. 5, the Agent/Broker Policy Form, the Respondent represented that he had a current Maryland real estate license with a Maryland broker. This appears to be another instance where the Judge confused the terms "broker" and "salesperson or associate broker."

In the Discussion section of the recommended decision the language of Section 17-301(a)(2) is incorrectly stated. It restates the language of (a)(1), which applies to brokers, and which was not charged in this case, instead of using the correct language of (a)(2) which covers associate brokers and salespersons. She also used the identical language in setting forth Section 17-602 as the language of Section 17-601. Section 17-602(b), with which the Respondent was charged, provides:

(b) Unless authorized under this title to provide real estate brokerage services on behalf of a real estate broker, a person may not represent to the public, by use of the titles "licensed associate real estate broker" or "licensed real estate salesperson", by other title, by description of services,

methods, or procedures, or otherwise, that the person is authorized to provide real estate brokerage services in the State on behalf of that real estate broker.

The Judge also included the language of COMAR 09.11.02.01C, which was not part of the charges in this case. Without addressing each instance of error, the Commission notes that the term ``broker'' is used incorrectly in the Discussion Section on several occasions as is the term ``settlement''. The correct terms are those set forth in the amended Findings of Fact.

The Conclusions of Law also had to be revised to correct the erroneous language and eliminate the section of the regulations that was not charged.

While it is unusual that the Commission is required to make such extensive changes in the recommended decision of an Administrative Law Judge, most of the necessary corrections are related to the Judge's confusion over the licensing categories of broker and salesperson, and the technical term ``settlement.'' There are also several transcription errors in reference to the applicable statutes. The Commissioners are satisfied from the documentary evidence in the case that the Respondent did in fact hold himself out to be a licensee, when he had not held a license for a number of years. The activities that he was engaged in, assisting consumers to obtain for purchase residential real estate, are clearly activities for which a license is required. The Commission considers unlicensed conduct to be a serious violation, which goes to the very heart of the licensing law. Consumers cannot be protected if unlicensed individuals are allowed to

provide these services without facing serious consequences. As a former licensee, the Respondent knew of the licensing requirements, and even signed a document stating that he was licensed. This evidences bad faith on his part. The Complainants were harmed because they thought that they were being advised by an individual who was qualified to provide real estate brokerage services. They suffered a financial loss when they decided that, under the circumstances, they should not proceed with the contract.

The Respondent clearly violated two provisions of the law - he provided real estate brokerage services without a license, and he misrepresented his licensing status. He is subject to a civil penalty in a maximum amount of \$5,000 on each charge. The Commission finds that the maximum penalty of \$10,000 is required to properly reflect the seriousness of the offense, the Respondent's lack of good faith, and the harm that was caused to the Complainants.

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.

(COMMISSIONER'S SIGNATURE
APPEARS ON ORIGINAL ORDER)

¹
M
by Katherine J. Connolly, Executive Director

MARYLAND REAL ESTATE
COMMISSION

v.

DAVID E. HUGHES,
RESPONDENT

* BEFORE KATHLEEN A. CHAPMAN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE NO: DLR-REC-21-08-46379
* MREC FILE NO: 08-RE-773

* * * * *

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 May 1, 2008, Terrace and Shanika LeGare (Complainants)¹ filed a complaint with the Maryland Real Estate Commission (MREC), an administrative unit of the Department of Labor, Licensing and Regulation (DLLR), against David Hughes (Respondent) alleging that he misrepresented himself as a licensed real estate broker. The MREC investigated the complaint and, on December 1, 2008, issued a Statement of Charges and Order of Hearing against the Respondent, alleging that he falsely acted as a licensed real estate broker, provided real estate brokerage services without a license, and misrepresented to the public that he was authorized to provide real estate brokerage services.

On December 4, 2008, the MREC transmitted the case to the Office of Administrative

¹ Only Mr. LeGare appeared at the hearing and I will refer to him throughout this decision as the Complainant; however, whenever necessary, I will continue to refer to the couple as the Complainants.

Hearings (OAH) for a hearing on whether regulatory charges should be upheld

On February 22, 2010, I conducted a hearing at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland.² Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2004).³ Jessica Kaufman, Assistant Attorney General, represented the MREC. The Respondent represented himself.⁴

The Administrative Procedure Act, the procedural regulations of the DLLR, and the Rules of Procedure of the OAH govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009); COMAR 09.01.03, COMAR 09.11.03.02; and COMAR 28.02.01.

ISSUES

1. Did the Respondent misrepresent himself as a licensed real estate broker despite being unlicensed in violation of section 17-301(a)(2) of the Business Occupations and Professions Article?
2. Did the Respondent provide real estate brokerage services without a license in violation of sections 17-601(b) and 17-602(b) of the Business Occupations and Professions Article?
3. If so, what is the appropriate sanction?

² The OAH originally scheduled this matter for a hearing on September 10, 2009, but postponed it at Ms. Kaufman's request due to a conflict in her schedule. The OAH rescheduled the hearing for October 15, 2009, but postponed it again because one of the MREC's witnesses had a family emergency. The OAH rescheduled the hearing for February 22, 2010. On February 1, 2010, the Respondent requested a postponement on the basis that his wife is gravely ill and confined to a nursing home and that he is suffering from post traumatic stress disorder, but he failed to support the request with documentation. I denied his request on the basis that it did not establish good cause pursuant to COMAR 28.02.01.25. On February 17, 2010, the Respondent re-submitted his postponement request, with a letter from his physician. The physician described the Respondent's condition as ongoing for the past three years. The Respondent did not provide any documentation regarding his wife's condition. Therefore, the postponement denied because it did not establish good cause. *Id.* The OAH telephoned the Respondent and informed him of my ruling.

³ All statutory references in this decision are to the Business Occupations and Professions Article of the Annotated Code of Maryland (2004) unless otherwise noted.

⁴ The Respondent appeared and participated in the hearing in a limited manner (e.g. he asked questions in cross-examination); however, midway through the MREC's presentation, the Respondent abruptly left the hearing room and did not return. I proceeded with the hearing in his absence.

SUMMARY OF THE EVIDENCE

Exhibits

The MREC submitted the following documents that I admitted into evidence:

- MREC #1 Notice of Hearing, dated November 9, 2009, July 31, 2009, and May 4, 2009; certified mail receipts, dated November 14, 2009 for the Complainants and November 24, 2009 for the Respondent

- MREC #2 Transmittal for Department of Labor, Licensing and Regulation, Maryland Real Estate Commission, received December 4, 2008; DLLR Hearing Cover Sheet, undated; Statement of Charges and Order for Hearing, dated December 1, 2008

- MREC #3 Licensing history, printed September 22, 2009

- MREC #4 Request for Investigation from the MREC, dated July 11, 2008

- MREC #5 Investigative Services Report of Investigation, dated September 22, 2008, with the following attachments:
 - Ex. 1A MREC Complaint and Guaranty Fund Claim, dated May 1, 2008
 - Ex. 1B Ryan Homes Agent/Broker Policy, dated March 22, 2008
 - Ex. 1C Letter from Complainants to Ryan Homes, dated April 16, 2008
 - Ex. 1D Letter from Ryan Homes to Complainants, dated April 21, 2008
 - Ex. 1E Letter from Complainants to NVR, dated April 23, 2008
 - Ex. 2A Letter from Theodore G. Gehring to MREC, dated June 12, 2008
 - Ex. 3 Homesite Reservation Form with Ryan Homes, dated March 22, 2008
 - Ex. 4 Maryland Purchase Agreement, dated March 22, 2008
 - Ex. 5 Cashier Check in the amount of \$5,000 from Complainants to Ryan Homes, dated March 24, 2008
 - Ex. 6 Check in the amount of \$5,815 from Complainants to Ryan Homes, dated April 22, 2008
 - Ex. 7 Common area improvements acknowledgment, dated March 22, 2008
 - Ex. 8 Final Cost Estimate, dated March 22, 2008
 - Ex. 9 Master Selection Sheet, dated March 22, 2008
 - Ex. 10 Acknowledgment of Receipt, dated March 22, 2008
 - Ex. 11 Request for Proposed Welled-Exit, dated March 28, 2008

The Respondent did not offer any exhibits into evidence.

Testimony

The Complainant; Steven Long, Assistant Executive Director of MREC; and Theodore Gehring, real estate broker, testified on behalf of the MREC. The Respondent did not testify or present any witnesses.

FINDINGS OF FACT

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

1. At all times relevant to this proceeding, the Respondent did not hold a valid real estate license from the MREC. (MREC #3.)
2. The Respondent previously held a valid real estate license from the MREC, number 5 512 929, from 1996 to 1998. During that time, he was affiliated with Weichert Realtors, located in Camp Springs, Maryland, and Weichert Referral Assoc. Co., Inc., located in Bethesda, Maryland. (MREC #3.)
3. The Respondent has never been employed by or affiliated with Homes by Finley.
4. The MREC terminated the Respondent's registration on July 7, 1997 and the Respondent has not held a valid real estate license since then. (MREC #3.)
5. In 2008, the Respondent worked as a real estate consultant for H&H Real Estate Consultants, a company he started in Maryland. (MREC #4; MREC #5, Ex. 8.)
6. On or about January 2008, the Complainants were interested in purchasing a home from Ryan Homes. However, before this could occur the Complainants needed to rent out their residence.

7. At or about this same time, the Complainants met with Ryan Homes sales and marketing representative, Christine Calhoun, at a Ryan Homes development in Oxon Hill, Maryland, and explained to her the need for a contingent sales contract.

8. At this meeting, Ms. Calhoun introduced the Respondent to the Complainants for the purpose of expediting the rental or sale of their residence.

9. The Respondent told the Complainants that "he sold homes" and agreed to view their home. The parties exchanged telephone numbers.

10. In late February 2008 or early March 2008, the Respondent went to the Complainants' home, conducted a walk through and gave his opinion regarding the value and asking price of the home. He also appeared with the intent of showing the home to a potential renter; however, the renter failed to show for this meeting.

11. The Complainants hired Janet Faison, Re/Max Realty, as their seller's agent in connection with the sale and/or rental of their home and not in connection with the purchase of the Ryan Homes purchase.

12. On March 17, 2008, the Complainants signed a Homesite Reservation Form with Ryan Homes for a home located in the community of Brentwood, Charles County, Maryland. (MREC #5, Ex. 3.)

13. The Complainants called the Respondent and asked him to accompany them at the settlement with Ryan Homes when Ms. Faison declined to do so because she had had a prior bad experience dealing with Ryan Homes. The Respondent agreed.

14. The Complainants and the Respondent met with Ms. Calhoun on March 22, 2008 for the purpose of entering into a contract to purchase a new home.

15. At the outset of the meeting, the Respondent told Ms. Calhoon that he was a representative of Homes by Finley, a Maryland licensed real estate broker.

16. The Respondent remained quiet throughout the settlement, except for answering questions posed by the Complainants about the Purchase Agreement.

17. After Ms. Calhoon explained the terms and conditions of the Purchase Agreement, the Respondent suggested to the Complainants that they add an addendum to the contract to include work on the basement. The addendum increased the purchase price of the new home.

18. Ms. Calhoon entered certain information on the Purchase Agreement and other documents for signature to reflect the Respondent's role at the settlement. Those forms included:

- a. A Maryland Brokerage Addendum to Purchase Agreement; and
- b. An Agent/Broker Policy form.

(MREC #5, Exs. 1, 4-6.)

19. On the Agent/Broker Policy form:

- a. The Respondent printed and signed his name next to the reference for Realtor;
- b. The Respondent printed the name of his company, H&H Real Estate Consultants, as the agency he worked for;
- c. At the Respondent's request, Ms. Calhoon added the following handwritten notation: "Homes by Finley, 54464 Annipolis [sic] Rd., Hyattsville, Md, Ted Gehring, Broker, 301-699-011;" and
- d. The listed broker was Homes by Finley.

(MREC #5, Exs. 1 and 5.)

20. The Respondent also signed the Maryland Brokerage Addendum to Purchase Agreement form. The form contained the following language:

1. Purchaser warrants to Seller that this sale was brought about solely by the sales personnel of Seller and that no outside broker or salesperson was the procuring cause of this sale, except **[the Respondent]** ("Agent") of **H&H Real Estate Consultants** ("Broker"). Purchaser agrees to hold Seller harmless and to defend Seller against any claim for compensation of any kind made by any agent or broker in connection with this Agreement except for the Agent and Broker identified above.

2. Seller shall pay Broker a commission in the amount of either:

X 2 % of \$ **339,990.00**; or

\$ _____

(MREC #5, Exs. 1 and 6.) (Emphasis contained in the original.)

21. Homes by Finley was listed in the broker information section on the Maryland Brokerage Addendum to Purchase Agreement form. (MREC #5, Exs. 1 and 6.)

22. After signing the contract, the Complainants became suspicious about the Respondent's role at the settlement when Ms. Calhoon attempted to reach him several times without success to request documents.

23. The Complainants contacted the MREC and learned that the Respondent was not a licensed real estate broker.

24. The Complainants subsequently cancelled the sales contract with Ryan Homes on the basis of Respondent's misrepresentation, but suffered a financial penalty (\$7,315.00) as a result. (MREC Ex. #5, Ex. 7.)

25. During the March 22, 2008 meeting, the Respondent held himself out to Ms. Calhoon and the Complainants as a licensed real estate broker.

26. The Respondent also represented to Ms. Calhoon that his commission/finder's fee of 2% should be distributed to Theodore Gehring, of Homes by Finley. (See paragraph 9 on the Agent/Broker Policy form, MREC #5, Exs. 1 and 5.)

27. The Complainants filed a complaint with the MREC on April 28, 2008. (MREC #5, Ex. 1.) The Complainants, however, declined to pursue a Guaranty Fund Claim.

28. The MREC assigned the case to Robert Oliver, Investigator, to conduct interviews regarding the allegations contained in the complaint. (MREC #4.)

29. The owner/operator of Homes by Finley, Theodore Gehring, was not aware of the sales transaction involving Ryan Homes and the Complainants, or the Respondent's involvement, until the MREC investigation ensued.

30. Mr. Gehring did not have an agreement with the Respondent to permit the Respondent to represent the interests of Homes by Finley at the settlement.

31. Mr. Oliver issued a Report of Investigation on September 22, 2008. (MREC #5.)

32. The MREC issued a Statement of Charges and Order for Hearing on December 1, 2008. (MREC #2.)

DISCUSSION

The MREC charged the Respondent with violating sections 17-301(a), 17-601, and 17-602 of the Business Occupations and Professions Article, which state in relevant part as follows:

§17-301. License required.

(a) *In general.*-

(1) Except as otherwise provided in this title, an individual shall be licensed by the Commission as a real estate broker before the individual may provide real estate brokerage services in the State.

(2) Except as otherwise provided in this title, an individual shall be licensed by the Commission as a real estate broker before the individual

may provide real estate brokerage services in the State.

§17-601. Providing real estate brokerage services without license.

(a) *Real estate broker.*- Except as otherwise provided in this title, a person may not provide, attempt to provide, or offer to provide real estate brokerage services unless licensed by the Commission as a real estate broker.

(b) *Associate real estate broker and real estate salesperson.*- Except as otherwise provided in this title, a person may not, on behalf of a real estate broker, provide, attempt to provide, or offer to provide real estate brokerage services unless licensed by the Commission as an associate real estate broker or a real estate salesperson to provide real estate brokerage services for that real estate broker.

§17-602. Misrepresentation.

(a) *Real estate broker.*- Except as otherwise provided in this title, a person may not provide, attempt to provide, or offer to provide real estate brokerage services unless licensed by the Commission as a real estate broker.

(b) *Associate real estate broker and real estate salesperson.*- Except as otherwise provided in this title, a person may not, on behalf of a real estate broker, provide, attempt to provide, or offer to provide real estate brokerage services unless licensed by the Commission as an associate real estate broker or a real estate salesperson to provide real estate brokerage services for that real estate broker.

COMAR 09.11.02.01 also provides, in pertinent part:

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 practice of brokers, associate brokers, and salespersons in this State.

The MREC presented the testimony of Mr. Long to establish that the Respondent was unlicensed at all times relevant to this matter and that he has not held a real estate license since 1997. The Complainant credibly and persuasively testified that he and his wife certainly believed the Respondent was a licensed real estate broker in light of their contacts with him. The

Complainant explained that the Respondent acted as if he were providing real estate brokerage services to him and his wife when he agreed to walk through their home to assess it for market value and locate a renter or buyer for their home, and when he appeared with them at settlement with Ryan Homes. Moreover, the MREC argued that the Respondent perpetuated this misrepresentation by signing documents at the settlement to reflect his role in the transaction as a real estate broker.

In addition, the MREC relied on the investigative report authored by Mr. Oliver. (MREC #5.) I found Mr. Oliver's report to be very thorough—he reviewed the complaint letter and related documents regarding the transaction. (*See*, MREC #5, Exs. 1 – 8.) Mr. Oliver also interviewed the Complainants, the Respondent, Mr. Gehring and Ms. Calhoun. Thereafter, Mr. Oliver issued a very comprehensive report setting forth detailed accounts of each of the interviews and attaching all relevant documents. Of particular importance with regard to this hearing are the statements the Respondent made to Mr. Oliver during the course of the investigation. The Respondent admitted to signing the Agent/Broker Policy form to allow a 2% commission/finder's fee to go to Homes by Finley. He also acknowledged that he was not a licensed real estate broker. According to Mr. Oliver's report, the Respondent felt he was due some compensation for his time and services and was hopeful that Mr. Gehring might share some of the proceeds with him. The Respondent also readily admitted that Mr. Gehring had no prior knowledge or participation in that agreement.

The Respondent did not deny the allegations as set forth by the MREC, or the sworn testimony. Instead, he spent his time at the hearing asking questions of the Complainant to establish that he never told the Complainant or his wife that he was a licensed realtor. He also elicited responses from the Complainant to confirm that he never asked the Complainants for any

money, promised anything unusual, or signed any forms. The Respondent also implied, by his questions, that he offered nothing but friendship and good advice to the Complainants. The Complainant, however, emphatically disagreed with this point and said that there was never a friendship; their relationship involved only the Purchase Agreement of the Ryan Homes home. The Complainant also acknowledged that he and his wife were represented by a Re/Max realtor (Janice Faison) at or about the same time that the Respondent interacted with them.

I am not persuaded by the Respondent's contention that he did nothing wrong. The uncontroverted evidence supports all of the charges brought by the MREC. The testimony of the Complainant, Mr. Gehring, and Mr. Long, and the investigative report authored by Mr. Oliver, clearly established the following: The Respondent was unlicensed in 2008. The Respondent acted as a real estate broker during the March 22, 2008 settlement involving Ryan Homes. The Respondent signed the Agent/Broker Policy form representing that he was a realtor and held a current valid Maryland real estate license, that he would be recognized as the agent for thirty days, that his agency name was H&H Real Estate Consultants, and that his commission/finder's fee should be distributed to Mr. Gehring, broker for Homes by Finley. The Maryland Brokerage Addendum to Purchase Agreement, signed by the Complainants, authorized the commission/finder's fee to be paid. On this form, the Respondent listed H&H Real Estate Consultants as procuring the sale and that the broker, Homes by Finley, was due a commission/finder's fee in the amount of 2% of \$339,990.00. The evidence is also clear that the Respondent was present during the signing of this document and never protested its inaccuracy. I am further persuaded by Mr. Gehring's testimony that he did not give the Respondent permission to accept a fee on his behalf. Had the sale not been cancelled, the MREC established that the Respondent was primed to receive a commission or finder's fee in the amount of 2% of

\$339,990.00 (or \$6,799.80). As such, I find that the MREC has demonstrated, by a preponderance of the evidence, that the Respondent violated the provisions of sections 17-301(a)(2), 17-601(b) and 17-602(b).

Md. Code Ann., Bus. Occ. & Prof. § 17-322 (Supp. 2008) provides for the imposition of monetary penalties and states, in pertinent part, as follows:

(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 licensee if the applicant or licensee:

...

(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 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. ...

In urging the imposition of a monetary penalty, the MREC noted that, in addition to the violations, the seriousness and the harm caused by the violations, the Respondent has not acted in good faith throughout this case. I agree. The MREC referenced the Respondent's statements during the investigation, his oral responses during the interview, and his behavior at this hearing as showing a callous disregard for the impact his actions have had on the parties involved in the March 22, 2008 transaction. The Complainants suffered a significant financial setback when they cancelled the sales contract as a result of the Respondent's actions. Ryan Homes suffered the loss of a sale. Mr. Gehring suffered the stigma of having to answer to the MREC for his

alleged role in the March 22, 2008. Fortunately for Mr. Gehring, the MREC cleared him of any wrongdoing. In addition, the MREC noted that the Respondent was once licensed by the commission so he was certainly aware of the statutory and regulatory requirements with regard to real estate transactions.

Due to the seriousness of the violation, the cavalier attitude of the Respondent, and the harm suffered in this case, civil penalties are in order. Consequently, I find that the MREC's recommended sanction of a \$10,000.00 civil penalty is appropriate.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Maryland Real Estate Commission demonstrated by a preponderance of the evidence that:

- A. The Respondent misrepresented himself as a licensed real estate broker despite being unlicensed. Md. Code Ann., Bus. Occ. & Prof. § 17-301(a)(2) (2004).
- B. The Respondent provided real estate brokerage services without a license. Md. Code Ann., Bus. Occ. & Prof. § 17-601(b) (2004).
- C. The Respondent misrepresented to the public that he was a real estate broker. Md. Code Ann., Bus. Occ. & Prof. § 17-602(b) (2004); COMAR 09.11.02.01.
- D. The Respondent violated other provisions of this Article. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(32).

I further conclude that the Respondent is subject to sanctions for his conduct in the amount of \$10,000.00 civil penalty. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c).

RECOMMENDED ORDER

I THEREFORE RECOMMEND that the Maryland Real Estate Commission:

ORDER, that the Respondent pay a civil penalty of \$10,000.00, and further

ORDER, that the records and publications of the Commission reflect its final decision.

ADMINISTRATIVE LAW JUDGE'S SIGNATURE
APPEARS ON ORIGINAL ORDER

May 21, 2010
Date Decision Issued

Kathleen A. Chapman
Administrative Law Judge

KAC/eb
#111782

MARYLAND REAL ESTATE

* BEFORE KATHLEEN A. CHAPMAN,

COMMISSION

* AN ADMINISTRATIVE LAW JUDGE

v.

* OF THE MARYLAND OFFICE OF

DAVID E. HUGHES,

* ADMINISTRATIVE HEARINGS

RESPONDENT

* OAH CASE NO: DLR-REC-21-08-46379

* MREC FILE NO: 08-RE-773

* * * * *

FILE EXHIBIT LIST

The MREC:

- MREC #1 Notice of Hearing, dated November 9, 2009, July 31, 2009, and May 4, 2009; certified mail receipts, dated November 14, 2009 for the Complainants and November 24, 2009 for the Respondent
- MREC #2 Transmittal for DLLR MREC, received December 4, 2008; DLLR Hearing Cover Sheet, undated; Statement of Charges and Order for Hearing, dated December 1, 2008
- MREC #3 Licensing history, printed September 22, 2009
- MREC #4 Request for Investigation from the MREC, dated July 11, 2008
- MREC #5 Investigative Services Report of Investigation, dated September 22, 2008, with the following attachments:
 - Ex. 1A MREC Complaint and Guaranty Fund Claim, dated May 1, 2008
 - Ex. 1B Ryan Homes Agent/Broker Policy, dated March 22, 2008
 - Ex. 1C Letter from Complainants to Ryan Homes, dated April 16, 2008
 - Ex. 1D Letter from Ryan Homes to Complainants, dated April 21, 2008
 - Ex. 1E Letter from Complainants to NVR, dated April 23, 2008
 - Ex. 2A Letter from Theodore G. Gehring to MREC, dated June 12, 2008
 - Ex. 3 Homesite Reservation Form with Ryan Homes, dated March 22, 2008
 - Ex. 4 Maryland Purchase Agreement, dated March 22, 2008
 - Ex. 5 Cashier Check in the amount of \$5,000 from Complainants to Ryan Homes, dated March 24, 2008
 - Ex. 6 Check in the amount of \$5,815 from Complainants to Ryan Homes, dated April 22, 2008

- Ex. 7 Common area improvements acknowledgment, dated March 22, 2008
- Ex. 8 Final Cost Estimate, dated March 22, 2008
- Ex. 9 Master Selection Sheet, dated March 22, 2008
- Ex. 10 Acknowledgment of Receipt, dated March 22, 2008
- Ex. 11 Request for Proposed Welled-Exit, dated March 28, 2008

The Respondent

None.