

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

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CASE NO. 2020-RE-003

v.

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**TAKONIA PERSON
Respondent**

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OAH NO. DOL-REC-21-22-07618

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OPINION AND FINAL ORDER

This matter came before a hearing panel of the Maryland Real Estate Commission (“Commission”) on June 21, 2023 as a result of written exceptions filed by Respondent, Takonia Person, to the Commission’s Proposed Order of January 31, 2023. On October 13, 2022, Administrative Law Jennifer L. Gresock convened a hearing (“ALJ Hearing”) at the Office of Administrative Hearings (“OAH”) on the complaint filed against Respondent. On January 3, 2023, the ALJ filed a Proposed Decision in which she recommended the Respondent be found to be in violation of the Maryland Real Estate Brokers Act (the Brokers Act), Title 17 of the Business and Occupations Article of the Maryland Code (“BOP”) and that as a result her license be suspended for a period of one (1) year and a penalty in the amount of \$6,000.00 be assessed against her. On January 31, 2023, the Commission issued the Proposed Order affirming the ALJ’s Findings of Fact, approving the Conclusions of Law, and adopting the Recommended Order.

On or about February 7, 2023, Respondent filed written exceptions to the Proposed Order. A virtual hearing on the exceptions was held June 21, 2023 (“June 21st Hearing”) before a panel consisting of Commissioners Donna Horgan, Michael Lord, and Sandra Olson (“Panel”). Hope Sachs, Assistant Attorney General, appeared as the Presenter of Evidence on behalf of the

Commission. Respondent acknowledged her right to be represented by counsel and proceeded *pro se*. The proceedings were electronically recorded.

PRELIMINARY MATTERS

This matter was originally set for a hearing on April 19¹, 2023. Respondent requested a postponement which was granted, and the hearing was rescheduled for June 21, 2023.

At the beginning of the June 21st Hearing, Respondent, after being asked about appearing without an attorney, asserted that she had requested a postponement because her attorney was on sick leave, and that the request had been denied. However, no such request was received by the Commission. The Respondent had requested a delay so that the hearing on her exceptions be held after a pending license renewal application hearing, but made no mention of an attorney. Respondent agreed to proceed *pro se* at the June 21st Hearing.

At various points throughout the June 21st Hearing, Respondent referred to matters not properly before the Panel, including a conversation she allegedly had with a witness after the OAH Hearing as well as to testimony at the OAH Hearing. The transcript of the OAH Hearing transcript was, however, not in evidence before the Panel. COMAR 09.01.03.09 H. Moreover, Respondent did not submit a request to submit new evidence in accordance with COMAR 09.01.03.09 L. Accordingly, in reaching this decision, only the ALJ's Proposed Decision, Respondent's written exceptions, and arguments made at the June 21st Hearing were considered. *See*, COMAR 09.01.03.09 G.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, three exhibits, as well as the OAH file containing the exhibits which were introduced at the ALJ Hearing, were admitted and entered into evidence:

¹ REC Exhibit 1 also contains a letter, dated February 13, 2023, indicating the hearing had been scheduled for April 18, 2023.

- REC Ex. 1: The Commission's hearing notices
REC Ex. 2: The Commission's Proposed Order and the ALJ's Proposed Decision
REC Ex. 2: Respondent's written exceptions.

FINDINGS OF FACT

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

DISCUSSION

Respondent was licensed by the Commission at all relevant times as a real estate salesperson with Bennett Realty Solutions. PD 3.² On May 23, 2019, Christina Ittenbach entered into a Residential Contract of Sale (Contract) to sell her home, located at 12645 Hillsmeade Station Drive in Bowie, Maryland (the Property), to Sonya Phyll. PD 3. Respondent was the agent for Ms. Phyll, the buyer. PD 3. The Contract included a Seller Contribution Addendum reflecting an agreed-upon seller contribution of 1.5% of the sales price, and the agreed-upon settlement date was July 3, 2019. PD 3. All signatures in the Contract for both the buyer and seller were executed electronically. PD 3.

On June 25, 2019, the lender's processor sought additional documentation from Respondent as part of the loan approval process, including an executed Seller Contribution Addendum. PD 3. That same day, via an email attachment, Respondent submitted to the lender a Seller Contribution Addendum that reflected a seller contribution of 3.0% of the sales prices. PD. 4. The Addendum included non-electronic, handwritten signatures for both Ms. Ittenbach (the seller) and Ms. Phyll (the buyer), each dated June 25, 2019. PD 4. Neither Ms. Ittenbach nor Ms. Phyll signed the June 25, 2019 Addendum. PD 4. Respondent forged Ms. Ittenbach's and Ms. Phyll's signatures on the June 25, 2019 Addendum. PD 4.

Previously, in 2018, Respondent and the Commission executed a Consent Order and Settlement Agreement, in which she conceded a violation of the Brokers Act. PD. 4.

² PD refers to the ALJ's Proposed Decision.

The ALJ found that the Commission met its burden of proving Respondent violated BOP §§ 17-322(b) (3) and (25) by generating a false Addendum reflecting a 3.0% seller contribution and signing the names of both the seller and the buyer. PD. 7. The ALJ further found a violation of Code of Maryland Regulations (“COMAR”) 09.11.02.02A, which is part of the Commission’s Code of Ethics, in that Respondent’s dishonest and deceptive behavior jeopardized the integrity of the transaction, contrary to the interests of both her own client and the seller. PD. 8. The ALJ noted section 17-322(b)(33) provides the statutory basis for imposing a penalty for a regulatory violation and that the statute specifically references the code of ethics. *Id.* The ALJ further found that the Commission, which the ALJ refers to as “the Department,” failed to prove a violation of subsection (b) 32 of Section 17-322 as the Commission’s charging document did not refer to an additional section of the act that would form the predicate of a subsection (b) 32 violation. *Id.*

As a result, the ALJ recommended Respondent’s license be suspended for a period of one (1) year and a penalty in the amount of \$6,000.00 be assessed against her. *Id.* at 18-19. The Commission adopted the ALJ’s Proposed Findings of Fact, Proposed Conclusions of Law, and Recommended Order, and amended the last to include a penalty non payment related suspension.

At the June 21st Hearing, Respondent argued the ALJ made several errors:

1. There was not a fair and impartial hearing because all the parties were not interviewed. She specifically asserted that while everyone from Complainant’s side was interviewed, it didn’t appear that the buyer was interviewed and thus all the facts were not presented;
2. That there is no proof of her forging a legal document or sending the emails;
3. That the ALJ’s decision was based on perjured testimony on the part of the Complainant;
4. That there was no examination of the handwriting by a handwriting expert; and
5. That it doesn’t make sense that she would confess.

At the hearing, the Presenter of Evidence argued the ALJ had not erred. Specifically, she argued the ALJ's Proposed Decision was supported by substantial evidence and that it was legally correct. She noted the ALJ specifically found that the signatures were forged, noting that all signatures on the contract of sale were electronic, whereas the addendum was signed by hand. She pointed out that the ALJ found that a witness, in a conversation with their manager, made a contemporaneous recollection of her conversation with Respondent in which the latter admitted forging the addendum.

The Presenter of Evidence further noted that the ALJ found Respondent's explanation made no sense and that her actions undermined the integrity of the sales process. In objecting to Respondent's assertion about the Commission's investigation being lacking, the Presenter of Evidence argued that there was nothing in the record to sustain that assertion.

Respondent asserted the OAH Hearing transcript would show that Ms. Biggs (one of the Complainants) said the conversation between her and Respondent never happened. However, Respondent did not order a transcript of the OAH Hearing. Moreover, her assertion on this point has no basis in the ALJ's proposed decision. The ALJ's Proposed Decision states:

Ms. Biggs also credibly testified that the Respondent admitted to her that she created the Addendum; while Ms. Biggs did not recall the Respondent saying that she had also included the false signatures, she acknowledged that the email she wrote the same day as that conversation explicitly says as much, and that the email was written specifically to accurately memorialize her conversation with the Respondent. PD. 7.

The Commission is required to "administer and enforce the provisions" of the Maryland Real Estate Brokers Act (the "Brokers Act"). BOP § 17-209. Included in the provisions the Commission shall enforce is BOP § 17-322(b) which provides that:

... the Commission may ... reprimand any licensee, or suspend or revoke a license if the ... licensee ... (3) directly or through another person willfully makes a misrepresentation or knowingly makes a false promise ... (25) engages in

conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings ... [or] (33) violates any regulation adopted under this title or any provision of the code of ethics.

As recommended by the ALJ, there is substantial evidence Respondent generated a false Addendum and forged the signature of both the buyer and seller, and furthermore, that her dishonest and deceptive behavior jeopardized the integrity of the transaction.

The ALJ recommended the Commission find Respondent's behavior in this matter substantiates a violation of the Brokers Act to such an extent that her license be suspended for one (1) year and that she be required to pay a monetary penalty in the amount of \$6,000.00. The Commission agrees with the ALJ. Respondent has failed to establish that the ALJ's Proposed Decision and the Commission's Proposed Order were in error.

Contrary to Respondent's assertions, as outlined in the ALJ's Proposed Decision, there was substantial evidence that Respondent generated a false addendum and forged the names of both the buyer and seller, including witness testimony, email correspondence entered at the OAH Hearing, the fact that the addendum was sent from Respondent's email account, and the fact that the contract included only electronic signatures while signatures on the addendum were handwritten. Respondent did not present any convincing argument that would support changing the ALJ's Proposed Decision. Respondent acknowledged the seller's contribution was to be 1.5% and that the Proposed Decision referenced an email in which Ms. Biggs recounted her conversation with Respondent.

Respondent is subject to the requirements of the Brokers Act. She has been a licensed salesperson for years and is well aware of the Commission's disciplinary authority, especially given her own disciplinary history. In addition, the recommended sanction and penalty are not incongruous with the violations. First, a one (1) year suspension is well within the Commission's

authority and is appropriate given the nature of the charges. Furthermore, under BOP § 17-322(c) the Commission is empowered to issue a penalty not exceeding \$5,000.00 for **each** violation. In this case the ALJ recommended the Respondent be found to have violated a total of three (3) subsections of the Brokers Act: BOP § 17-322(b) (3), (25), and (33). Thus, a \$6,000.00 penalty, which falls well below the \$15,000.00 the ALJ could have recommended, is reasonable. The Commission agrees with the ALJ's recommendations.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, the Commission concludes as a matter of law that Respondent violated BOP § 17-322(b) (3), (25), and (33) and that a one (1) year suspension and \$6,000.00 monetary penalty are the appropriate sanctions.

ORDER

The Exceptions of the Respondent, Takonia Person, having been considered, it is this 20th day of September, 2023 by the Maryland Real Estate Commission, hereby ORDERED:

1. That all real estate licenses held by the Respondent, **TAKONIA PERSON**, be **SUSPENDED** for a period of **one (1) year** from the date all rights to appeal are exhausted;
2. That the Respondent, **TAKONIA PERSON**, pay a civil penalty in the amount of **Six Thousand Dollars (\$6,000.00)** within **thirty (30)** days of the date all rights to appeal are exhausted;
3. That all real estate licenses held by the Respondent, **TAKONIA PERSON**, be **SUSPENDED** from the date all rights to appeal are exhausted and shall not be reinstated until the civil penalty is paid; and
4. That the records and publications of the Maryland Real Estate Commission reflect this decision.

MARYLAND REAL ESTATE COMMISSION

By: SIGNATURE ON FILE

Note: A judicial review of this Final Order may be sought in the Circuit Court for the Maryland County 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.