

BEFORE THE MARYLAND REAL ESTATE COMMISSION

In the Matter of the Audit of

Michael D. Frank

CASE NO. 654-RE-2021

For a Salesperson License

* * * * *

OPINION AND FINAL ORDER

On or about April 20, 2021, Respondent, Michael D. Frank, applied for renewal of his real estate salesperson license. Mr. Frank is licensed by the Maryland Real Estate Commission (the "Commission") as a salesperson. In that application, and certified "under penalty of perjury," Mr. Frank claimed he completed fifteen (15) hours of continuing education ("CE"), three (3) hours of which were ethics, completed during his prior two (2) year license period. Mr. Frank was randomly selected for a CE audit during which it was discovered that he had not completed CE as he claimed. Charges were issued against Respondent and he requested a hearing in front of the Commission.

On June 15, 2022, a hearing on the allegations against Respondent was held by a panel of Commissioners, consisting of Commissioners Anne Cooke, Donna Horgan, and Michael Lord (the "June 15th Hearing"). Eric London, Assistant Attorney General, appeared as the presenter of evidence for the Commission. Mr. Frank appeared with counsel. The proceedings were electronically recorded and Mr. Frank was placed under oath.

SUMMARY OF EVIDENCE

On behalf of the Commission, seven exhibits were submitted.

Exhibit 1 — Commission Hearing Notice, dated January 4, 2022

Exhibit 2— Notice of Charges and Order for Hearing, dated January 4, 2022

Exhibit 3 — Michael D Frank's license record

Exhibit 4 – Complaint, dated June 8, 2021

Exhibit 5 – Michael D. Frank’s CE audit records

Exhibit 6 – Michael D. Frank’s response to Complaint, dated June 14, 2021

Exhibit 7 – Response from Terri Bracciale (Mr. Frank’s Broker) to Complaint, dated July 1, 2021

Mr. Frank presented no exhibits.

FINDINGS OF FACT

From the testimony and exhibits presented, and with an opportunity to observe the demeanor of Mr. Frank and to assess his credibility, the Commission finds the relevant facts to be these:

1. On or about April 20, 2021, Michael D. Frank applied for renewal of his real estate salesperson license.
2. Mr. Frank is licensed by the Maryland Real Estate Commission (the “Commission”) as a salesperson.
3. In that application, and certified “under penalty of perjury,” Mr. Frank claimed he completed fifteen (15) hours of continuing education (“CE”), three (3) hours of which were ethics, completed during his prior two (2) year license period.
4. Mr. Frank was randomly selected for a CE audit by the Commission.
5. The CE audit revealed that not only had Mr. Frank not completed the ethics course but he had also failed to complete the requisite three (3) hours of principles of real estate brokerage relationship and disclosures.

DISCUSSION

The purpose of licensure by the Commission is to protect the public by allowing only

those individuals with good character and reputation, as well as sufficient age and education, to obtain a real estate salesperson license. Md. Code Ann., Bus. Occ. & Prof. ("BOP") § 17-303. Once licensed, an individual is required to complete fifteen (15) clock hours of CE each two-year licensing period to renew. BOP § 17-315(a). Specifically at issue in this matter is the requirement that within the two-year licensing period licensees complete "at least one 3 clock hour ethics course ... [and] at least one 3 clock hour course that includes the principles of real estate brokerage relationships and disclosures." BOP § 17-315 (b)(2)(iv)-(v). In its statement of charges the Commission alleged Respondent violated said provisions by not taking the course requirements as claimed on his renewal application. The burden of establishing allegations that a respondent violated a law or regulation is on the presenter of evidence. Code of Maryland Regulations ("COMAR") 09.01.02.16.

In testimony, Respondent admitted his failure to comply and asked for leniency. He explained he had no previous violation history and had contacted the Commission immediately after submission of his renewal application when he realized he had not answered the CE portion accurately. However, on cross examination Respondent admitted that he did not communicate with the Commission regarding this matter until they contacted him regarding the audit.

In argument Respondent again made the case for leniency and tied his failure to complete the CE as required to the ongoing pandemic and Commission procedures. The Commission was not moved by Respondent's testimony or argument. On the application, Respondent claimed, "under penalty of perjury," to have completed CE as required. He did not. At the June 15th Hearing he insisted he had contacted the Commission immediately. He did not. In fact, he had no communication with the Commission until he was notified by them about the audit results. Respondent violated BOP § 17-315. Under BOP § 17-322(b)(32) "the Commission may ...

reprimand any licensee... if the... licensee: violates any other provision of this title.”

Furthermore:

(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.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c). CE is a bedrock of the Commission’s mission. They take the requirements very seriously. Indeed, the General Assembly saw fit to mandate by law that the Commission’s licensees keep up to date on various topics, including ethics, fair housing, etc. Failure to complete CE requirements puts consumers and even other licensees at financial and personal risk. Respondent insisted he acted in good faith however his testimony, especially in light of his answers on cross examination, was not credible. Finally, Respondent does not have any other disciplinary history with the Commission.

It is the Commission’s position that the violation of BOP § 17-315 requires a reprimand and a civil penalty. However, given the Respondent’s lack of a disciplinary record, the imposition of the maximum amount is unnecessary.

CONCLUSIONS OF LAW

Based on the Findings of Fact, and for the reasons set forth in the above Discussion, the Commission concludes that Michael D. Frank failed to meet CE requirements as required and is, therefore, in violation of BOP § 17-315. The Commission further concludes that a reprimand is an appropriate sanction and the Respondent is subject to the imposition of a \$1,500.00 civil penalty.

ORDER

In consideration of the Findings of Fact, Discussion, and Conclusions of Law it is this 22nd day of August, 2022, by the Maryland Real Estate Commission, **ORDERED** that:

1. The charges of the Commission against Respondent, Michael D. Frank, are **UPHELD**;
2. Respondent, Michael D. Frank, shall be **REPRIMANDED**;
3. A civil penalty in the amount of \$1,500.00 shall be assessed against Respondent, Michael D. Frank;
4. An administrative fee in the amount of \$100.00 shall be assessed against Respondent;
5. All real estate licenses held by the Respondent, Michael D. Frank, shall be suspended until the civil penalty is paid; and
6. The records and publications of the Maryland Real Estate Commission shall reflect this decision.

MARYLAND REAL ESTATE COMMISSION

By: SIGNATURE ON FILE
Commissioner

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 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.