

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE

* BEFORE DEBORAH H. BUIE,

COMMISSION

* ADMINISTRATIVE LAW JUDGE

V.

* OF THE MARYLAND OFFICE OF

PATRICIA J. MOORE

* ADMINISTRATIVE HEARINGS

RESPONDENT

* OAH No: DLR-REC-21-08-09906

* REC CASE NO: 2006-RE-054

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated December 23, 2008, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 22nd day of January , 2009,

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, APPROVED;

C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

D. That the records, files and documents of the Maryland State Real Estate Commission reflect this decision.

MARYLAND STATE REAL ESTATE COMMISSION

1/22/09
Date/

By: Latherine J. Connelly, Exec. Dir. for
Anne S. Cooke, Commissioner

MARYLAND REAL ESTATE

*** BEFORE SONDRAL. SPENCER,**

COMMISSION

*** AN ADMINISTRATIVE LAW JUDGE**

v.

*** OF THE MARYLAND OFFICE OF**

PATRICIA J. MOORE

*** ADMINISTRATIVE HEARINGS**

*** OAH CASE NO.: DLR-REC-21-08-09906**

*** REC COMPLAINT NO.: 2006-RE-054**

*** * * * ***

PROPOSED DECISION

**STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
RECOMMENDED ORDER**

STATEMENT OF THE CASE

On August 3, 2005, Carlette and Shawn Adams (Complainants)¹ filed a complaint with the Maryland Real Estate Commission (REC or Commission), an administrative unit of the Department of Labor, Licensing and Regulation (DLLR), against Patricia J. Moore (Respondent), a real estate broker. On February 29, 2008, the REC issued a Statement of Charges and Order for Hearing against the Respondent.

I held a hearing on October 3, 2008,² at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland 21031. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2004). Jessica Kaufman, Assistant Attorney General, represented the REC.

¹ Throughout this decision, Carlette Adams will also be referred to as Carlette Jameson, her present name.

² The hearing was originally scheduled for August 1, 2008 and was postponed at the Respondent's request. The hearing was rescheduled for August 20, 2008 and postponed at the request of the Commission.

Michael Rosier, Esq., represented the Respondent.

Procedure in the case is governed by the Administrative Procedure Act, the procedures for DLLR hearings delegated to the OAH, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2008); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Respondent engage in conduct that demonstrates bad faith, incompetency, or untrustworthiness, or that constitutes dishonest, fraudulent, or improper dealings, in violation of Section 17-322(b)(25) of the Business Occupations and Professions article?
2. Did the Respondent violate Section 17-322(b)(33) of the Business Occupations and Professions article by violating any regulation adopted under the Business Occupations and Professions article or any provision of the code of ethics?
3. Did the Respondent violate COMAR 09.11.02.01H (Code of Ethics) by failing to place financial obligations and commitments regarding real estate transactions in writing, expressing the exact agreement of the parties, and failing to remit copies of these agreement in the hands of all parties involved within a reasonable time after the agreements were executed?
4. If the Respondent committed any of the violations set forth above, what sanctions are appropriate under Section 17-322(c) of the Business Occupations and Professions article?

SUMMARY OF THE EVIDENCE

Exhibits

The REC submitted the following exhibits, which were admitted into evidence:

- | | |
|---------|--|
| MREC #1 | Notices of Hearing, dated July 3, 2008, and July 29, 2008; and Statement of Charges and Order for Hearing, dated February 29, 2008 |
| MREC #2 | Copy of the Respondent's REC Licensing History, dated September 11, 2008 |

MREC #3 Investigative Services Report of Investigation issued by Robert Oliver, dated July 12, 2007, with the following attachments:

- Att. #1 REC Complaint, received by the REC on August 3, 2005
- Att. #2 Letter to the REC from the Respondent, dated August 19, 2005
- Att. #3 Letter to Mr. West from Vicki Wheeler, dated April 6, 2006, with attached chronology; Preferred Title flyer; Better Business Bureau Report re: Preferred Title; Real Estate Agent Disclosure Statement; Copies of two business cards
- Att. #4 Metropolitan Regional Information Systems listing for 17425 Gallagher Way, Olney, Maryland
- Att. #5 Better Business Bureau Report Re: Preferred Title
- Att. #6 Residential Contract of Sale for 17425 Gallagher Way, Olney, Maryland
- Att. #7 Appraisal Report for 17425 Gallagher Way, Olney, Maryland
- Att. #8 Letter to Benny Gabriel from Quality Mortgage, dated May 13, 2005
- Att. #9 Letter to Benny Gabriel from Quality Mortgage, dated June 14, 2005
- Att. #10 General Addendum, dated May 24, 2005
- Att. #11 Settlement Statement, dated June 29, 2005
- Att. #12 Copies of two checks payable to the Carlette Adams, dated June 29, 2005

MREC #4 Supplement to Investigative Services Report of Investigation issued by Robert Oliver, dated July 12, 2007

The Respondent submitted the following exhibit, which was admitted into evidence:

- Resp. #1 Affiliated Business Arrangement Disclosure Statement

Testimony

The Commission presented the testimony of Carlette Jameson, Shawn Adams, Vicki Wheeler (the Complainants' listing agent), and Robert Oliver, an investigator for the REC.

The Respondent testified on her own behalf and presented no additional 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 was a real estate broker licensed by the Commission under license #3702236. The Respondent is the president/owner of Preferred Title and a licensed broker with PAM Enterprise Reality.

2. In May 2005, the Complainants listed their residence located at 17425 Gallagher Way, Olney, Maryland, (the Property) for sale. The sales price for the Property was \$320,000.00. Vicki Wheeler was the listing agent.

3. On May 20, 2005, the Respondent submitted a purchase contract (the Contract) to the Sellers for the Property from Benny Gabriel (the Buyer). The Buyer offered \$323,000.00 for the Property.

4. At the request of the Buyer, the Respondent submitted the Contract for the Property as a cooperating agent. On the Contract, the Respondent is listed as the seller's agent. The printed information next to the block checked for seller's agent has the following notation, "whether 'cooperating agent' or 'selling agent'."

5. A cooperating agent works for a real estate company different from the seller's agent's company. The cooperating agent can assist a buyer in purchasing a property but his or her loyalty is only to the sellers. The cooperating agent's fee is paid by the sellers through the seller's agent company.

6. The Buyer selected Preferred Title as the settlement company. The Buyer paid for the title insurance. The Respondent disclosed her relationship to Preferred Title to the Buyer and, on May 24, 2005, the Buyer executed an Affiliated Business Arrangement Disclosure Statement.

7. The Contract for the Property was ratified on May 20, 2005.

~~8. The Contract became voidable by the Complainants after June 4, 2005 because the loan commitment letter was not provided according to the Contract.~~

9. The Property was appraised on May 31, 2005. On June 2, 2005, the Complainants' listing agent met the appraiser at the Property but did not obtain a copy of the appraisal.

10. On or about June 6, 2005, the Complainants' listing agent contacted the mortgage broker and asked if the appraisal was okay. The broker told the Complainants' listing agent that the appraisal was okay.

11. On or about June 6, 2005, while in Spain, the Respondent contacted the mortgage broker, who said the appraisal value was less than the purchase price. The appraisal value was \$320,000.00. The mortgage broker further advised the Respondent that the information about the appraisal was communicated to the Buyer and the Complainants' listing agent.

12. The Contract was voidable by the Buyer and the Complainants after the appraisal value was determined to be less than the purchase price.

13. On or about June 9, 2005, while still in Spain, the Respondent spoke to the Complainants' listing agent, who said "everything is okay."

14. On June 14, 2005, the Complainants' listing agent received a copy of the Buyer's loan approval letter, which indicated that the Buyer's loan was approved for \$320,000.00.

15. Pursuant to the Contract, the settlement date was June 24, 2005. When the settlement did not occur on that date, the Contract was voidable.

16. On June 24, 2005, the Respondent contacted the Complainants' listing agent inquiring about extending the Contract. The Complainants' listing agent suggested that the parties wait until Monday, June 27, 2005.

17. On June 27, 2005, the settlement was postponed because the loan package had not been sent to the settlement officer. The Contract remained voidable. Neither the Complainants' listing agent nor the Respondent advised the Complainants that the Contract was voidable.

18. The settlement occurred on June 29, 2005. Shawn Adams went to settlement in the morning and Carlette Jameson went to settlement in the afternoon. The couple was separated at the time of the settlement.

19. As required by the mortgage lender, on the date of settlement, the Respondent drafted an addendum (the Addendum) reflecting that the purchase price was reduced to \$320,000.00.

20. When the Complainants arrived at settlement, they were advised that the appraisal value of the Property was less than the purchase price. Prior to settlement, the Complainants had not been informed that the appraisal value was less than the purchase price.

21. At settlement, the Complainants were advised that the Contract was voidable. The Complainants chose not to void the Contract and they executed the Addendum.

22. Prior to the settlement date, the Respondent did not have any face-to-face contact with the Complainants or the Complainants' listing agent; the Respondent's contact with the Complainants' listing agent was by telephone.

23. Approximately three days after the settlement, Carlette Jameson discovered that the Respondent was the president/owner of Preferred Title.

24. On August 3, 2005, the Complainants filed a complaint with the Commission because the Respondent had not disclosed the appraisal value and she was the president of the title company.

DISCUSSION

The Commission charged the Respondent with violating Section 17-322(b)(25) and (33) of the Business Occupations and Professions Article and COMAR 09.11.02.01H. The relevant portions of the law and regulation are as follows:

§17-322 - Denials, reprimands, suspensions, revocations, 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 licensee if the applicant or licensee:
....

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

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

COMAR 09.11.02.01

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 transaction are in writing, expressing the exact agreement of the parties, and that copies of these arrangement are placed in the hands of all parties involved within a reasonable time after the agreements are executed.

The Commission's charges arise out of the Contract, dated May 24, 2005, between the Buyer and the Complainants, for 17425 Gallagher Way, Olney, Maryland. The Commission alleges that the Respondent was aware of the appraisal value and did not inform the

Complainants' or their listing agent; the Addendum changing the purchase price was not provided to the Complainants or their listing agent until settlement; the Respondent did not disclose her affiliation with the title company, verbally or in writing, to the Complainants or their listing agent; and the Respondent failed to have the Complainants sign a document extending the contract to June 29, 2005.

In its administrative charges, the Commission cited the Respondent under the above-referenced sections, alleging that her conduct constituted bad faith, incompetency, or untrustworthiness, as well as dishonest, fraudulent or improper dealings. The Commission requests that a reprimand be issued to the Respondent and that a civil penalty of \$1,000.00 be imposed for the violations.

The essential facts are not in dispute except that the Respondent contends that she disclosed to the Complainants' listing agent that she was the president of the title company. In addition to the issue regarding the Respondent's affiliation to the title company, the other issues in this case hinge on identifying the responsibilities of a cooperating agent. Both the cooperating agent and the seller's agent have a duty of loyalty to the seller, not the buyer. The seller pays the cooperating agent's and the seller's agent's fees. Having established that a cooperating agent's duty of loyalty is to the seller and that a cooperating agent has the same responsibilities as a seller's agent, the question remains whether the Respondent, as the cooperating agent, failed to perform her duties and failed to maintain her duty of loyalty to the Complainants.

APPRAISAL VALUE

The appraisal value of the Property was determined to be \$320,000.00. The purchase price, agreed upon by the Complainants and the Buyer, was \$323,000.00. The Respondent became aware that the appraisal value was less than the purchase price on or about June 6, 2005,

while in Spain, and she assumed that the Complainants' listing agent was also aware of that information. According to the Complainant's listing agent, she was only aware that the appraisal was "okay" and assumed that the appraisal value was at least equal to the purchase price. On June 14, 2005, the Complainants' listing agent received a copy of the Buyer's loan approval letter which indicated that the amount of the loan was \$320,000.00. According to the Complainants' listing agent, she assumed that the Buyer was going to pay the difference between the loan amount and the purchase price. Neither the Respondent nor the Complainants' agent disclosed the appraisal value or the approved loan amount to the Complainants or raised any concerns to the Complainants regarding the appraisal value. Both had a responsibility to do so.

The Respondent maintains that she had no face-to-face or other type of contact with the Complainants prior to the settlement date. She assumed that since the Complainants' listing agent had the same information about the appraisal value, the Complainants' listing agent had advised the Complainants. With a duty of loyalty to the Complainants, the Respondent should have made sure that the Complainants were made aware of the appraisal value. Her failure to do so was a breach that duty. Both the Complainants' listing agent and the Respondent failed to disclose the information about the appraisal value to the Complainants. While I find the Complainants' agent also breached her duty as a seller's agent, since the complaint was only filed against the Respondent, I cannot recommend any sanctions against her.

PURCHASE PRICE ADDENDUM

Because the appraisal value was less than the purchase price, the mortgage lender required that the purchase price be reduced to reflect the appraisal value. It is unclear when the mortgage lender communicated this request to the Respondent. During the Commission's investigative interview, the Respondent was asked why no addendum was drafted until the

settlement date. In his report, the investigator wrote that the Respondent replied that “someone should have done it,” either the sellers’ agent or herself. The Respondent further replied that she was notified on the last day that the lender needed an addendum; so, she drafted it and presented to the Complainants at the settlement.

The Commission has not established the Respondent was aware that the Addendum was necessary and should have been presented to the Complainants prior to the settlement. The Respondent was the cooperating agent, not the Buyer’s agent. At the hearing, the Complainants’ listing agent testified that when she became aware that the approved loan amount was less than the purchase price, she assumed that the Buyer was going to make up the difference. Her testimony conflicts with the Respondent’s written response to the Commission. In that response, the Respondent indicated that, while in Spain, she contacted the Complainant’s listing agent after the Buyer advised her that he did not have the additional money to pay the difference between the appraisal value and the purchase price. According to the Respondent, the Complainants’ listing agent said that she would talk to the mortgage lender and she also said that the Complainants would proceed with the sale because they were getting a divorce. Absent persuasive evidence that the Respondent was aware that the lender required an addendum and that she needed to prepare one prior to the day of settlement, I cannot conclude that the Respondent’s failure to do so was a breach of her duty of loyalty.

TITLE COMPANY AFFILIATION

The Respondent is the president/owner of the title company selected by the Buyer. According to the Complainants’ agent, the Respondent disclosed that she was affiliated with the title company but did not disclose that she was the president. As the cooperating agent, whose duty of loyalty is owed to the Complainants, it would have been a preferable business practice

for the Respondent to disclose to the Complainants that she was the president of the title company selected by the Buyer. Her failure to do so, however, does not constitute a violation of the cited regulation.

The Buyer, not the Complainants, selected and paid the title company. The Respondent disclosed her affiliation to the title company to the Buyer. The Complainants' agent noted that ~~even if she had known that the Respondent was the president of the title company, it would not~~ have affected the transaction. Since the Complainants had no right to select the title company and did not pay the title company, I find that the Respondent's failure to disclose her affiliation with the title company did not constitute bad faith, incompetency, untrustworthiness or dishonest, fraudulent or improper dealings and did not breach her duty.

EXTENSION OF THE CONTRACT

The Contract was voidable at least three times during the transaction. The Commission, however, only charged the Respondent with failing to obtain an extension of the Contract to June 29, 2005. In the Contract, the Complainants and the Buyer agreed to a June 24, 2005 settlement date. On June 24, 2005, the Respondent contacted the Complainants' listing agent about extending the Contract. The Complainants' listing agent suggested that they wait until June 27, 2005. The settlement did not occur on June 27, 2005 and no extension was drafted. If there were any further discussions about an extension, neither the Complainants' listing agent nor the Respondent mentioned it. The settlement occurred on June 29, 2005. At the settlement, the Complainants were advised that the Contract was voidable because of the reduction to the purchase price.

As previously discussed, both the Complainants' listing agent and the Respondent, as the cooperating agent, had a duty of loyalty to the Complainants. On June 24, 2005, they should

have contacted the Complainants about extending the Contract. When the Complainants' listing agent suggested that they wait, the Respondent should have contacted the Complainants. When the settlement did not occur on June 27, 2005, the Respondent again had a duty to contact the Complainants about extending the Contract. I find that the Respondent breached her duty of loyalty to the Complainants by failing to contact the Complainants and extend the Contract. Both ~~the Complainants' listing agent and the Respondent~~ failed to contact the Complainants about extending the Contract. Again, while I find the Complainants' agent also breached her duty as a seller's agent, since the complaint was only filed against the Respondent, I cannot recommend any sanctions against her.

SANCTION

I find that the Commission has demonstrated, by a preponderance of the evidence, that the Respondent violated the provisions of Section 17-322(b)(25) of the Business Occupations and Professions article when she engaged in improper dealings by failing to inform the Complainants about the appraisal value and failing to extend the Contract to June 29, 2005. I find that the Commission has not demonstrated that the Respondent violated the provisions of Section 17-322(b)(32) and COMAR 09.11.02.01H in reference to the drafting of the Addendum and disclosing her affiliation to the title company.

As a result, the Respondent is subject to sanction under Section 17-322(c) of the Business Occupations and Professions article, which provides for the imposition of monetary penalties and states, 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 Respondent has no history of violations. She did not benefit financially from her failure to disclose the appraisal value or her failure to extend the Contract. In fact, due to the appraisal value being less than the Contract price, her commission was less because the Contract price was reduced. The Complainants had an opportunity to void the Contract at the settlement but chose not to. Thus, any harm caused was minimal. The seriousness of the violations has to be juxtaposed with the conduct of the Complainants' listing agent. Both the Complainants' listing agent and the Respondent breached their duty of loyalty to the Complainants. The Respondent thought that the Complainant's listing agent had the same information about the appraisal value and that the listing agent had communicated that information to the Complainants. In reference to the contract extension, the Complainants' listing agent suggested that they wait until June 27, 2005. While the role of the Complainants' listing agent in this transaction does not absolve the Respondent of her responsibilities, the Respondent's conduct was not motivated by dishonesty or fraud but miscommunication, and therefore, does not constitute bad faith. Accordingly, based on the above listed factors, I recommend that the sanction imposed be a reprimand.

Because the Respondent's conduct was not motivated by dishonesty or fraud, I do not find that the \$1,000.00 civil penalty requested by Commission is appropriate. Accordingly, I recommend that no civil penalty be imposed.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that:

A. The Respondent engaged in improper dealings by failing to disclose the difference between the appraisal value and the Contract price and failing to extend the Contract to June 29, 2005, in violation of Section 17-322(b)(25) of the Business Occupations and Professions article.

B. The Respondent did not engage in conduct that violated Section 17-322(b)(33) of the Business Occupations and Professions article and COMAR 09.11.02.01H.

I further conclude that the Respondent is subject to sanction for her conduct, and that a reprimand is an appropriate sanction. Md. Code Ann., Bus. Occ. & Prof. §17-322(c).

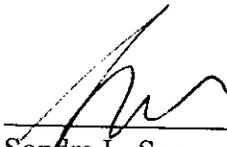
RECOMMENDED ORDER

I THEREFORE RECOMMEND that the Maryland Real Estate Commission:

ORDER, that the Respondent receive a reprimand; and further

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

December 23, 2008
Date Decision Issued



Sondra L. Spencer
Administrative Law Judge

SLS/tc
#101244

MARYLAND REAL ESTATE
COMMISSION

v.

PATRICIA J. MOORE

* BEFORE SONDRAL. SPENCER,
* AN ADMINISTRATIVE LAW JUDGE
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* OAH CASE NO.: DLR-REC-21-08-09906
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* * * * *

FILE EXHIBIT LIST

The REC submitted the following exhibits, which were admitted into evidence:

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The Respondent submitted the following exhibit, which was admitted into evidence:

Resp. #1 Affiliated Business Arrangement Disclosure Statement

The Fund did not submit any documents for admission into evidence.