

THE MARYLAND REAL ESTATE COMMISSION

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| MARYLAND REAL ESTATE | * | BEFORE ROBERT F. BARRY, |
| COMMISSION | * | ADMINISTRATIVE LAW JUDGE |
| V. | * | OF THE MARYLAND OFFICE OF |
| GEORGE R. BROWN | * | ADMINISTRATIVE HEARINGS |
| T/A | * | OAH No: DLR-REC-21-07-23920 |
| EXIT POWERHOUSE REALTY | * | REC CASE NO: 2007-RE-124 |
| * * * * * | * | * * * * * |

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated April 28, 2008, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 18th day of June, 2008,

ORDERED,

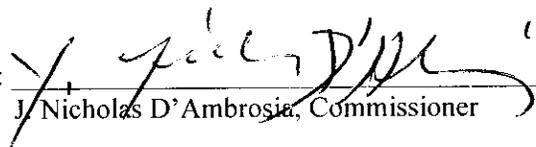
- A. That the Findings of Fact in the Recommended Decision be, and hereby are, AFFIRMED;
- B. That the Conclusions of Law in the Recommended Decision be, and hereby are, APPROVED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

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

MARYLAND STATE REAL ESTATE COMMISSION

6-18-2008
Date

By: 
J. Nicholas D'Ambrosia, Commissioner

STATE REAL ESTATE

* BEFORE ROBERT F. BARRY,

COMMISSION

* AN ADMINISTRATIVE LAW JUDGE

V.

* OF THE MARYLAND OFFICE

GEORGE R. BROWN JR.,

* OF ADMINISTRATIVE HEARINGS

T/A

* OAH No.: DLR-REC-21-07-23920

EXIT POWERHOUSE REALTY

* REC COMPLAINT NO.: 2007-RE-124

* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On August 22, 2006, the State Real Estate Commission (Commission) filed a complaint against George R. Brown Jr., t/a Exit Powerhouse Realty (Respondent), a licensed real estate salesperson. On May 4, 2007, Katherine Connelly, Executive Director of the Commission, charged the Respondent with violating Maryland real estate law by (1) fraudulently or deceptively obtaining or attempting to obtain a real estate license, (2) willfully making a misrepresentation, and (3) engaging in conduct that demonstrates bad faith or untrustworthiness or that constitutes dishonest or fraudulent dealings. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(1), (3), and (25) (Supp. 2007).

On May 8, 2007, the Commission transmitted this case to the Office of Administrative Hearings (OAH) for a contested-case hearing. On October 2, 2007, the OAH scheduled a hearing for January 28, 2008. On January 28, 2008, on behalf of the Commission, I conducted a hearing

at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland 21031. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2004) and Code of Maryland Regulations (COMAR) 09.01.03.03. Peter Martin, Assistant Attorney General, represented the Commission. The Respondent represented himself.

The contested-case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2007); the procedures for Administrative Hearings of the Office of the Secretary of the Department of Labor, Licensing and Regulation (DLLR); COMAR 09.01.02, COMAR 09.01.03, COMAR 09.11.03.01 and .04; and the Rules of Procedure of the OAH, COMAR 28.02.01, govern procedure.

ISSUES

1. January 25, 2002 Online Renewal
 - A. Did the Respondent fraudulently or deceptively renew his real estate salesperson's license?
 - B. Did the Respondent willfully make a misrepresentation?
 - C. Did the Respondent engage in conduct that demonstrates bad faith or untrustworthiness or that constitutes dishonest or fraudulent dealings?
2. June 14, 2005 In-Person Application
 - A. Did the Respondent fraudulently or deceptively attempt renew his real estate salesperson's license?
 - B. Did the respondent willfully make a misrepresentation?
 - C. Did the Respondent engage in conduct that demonstrates bad faith or untrustworthiness or that constitutes dishonest or fraudulent dealings?

SUMMARY OF THE EVIDENCE

Exhibits

The Commission submitted the following exhibits that were admitted into evidence:

REC #1 - Notice of Hearing;

Statement of Charges and Order for Hearing, May 4, 2007

REC #2 - Amended Statement of Charges and Order for Hearing, January 4, 2008;

Certified Mail Receipt

REC #3 - Respondent's Certified REC Licensing History, Registration Number 05-0324862, January 11, 2008

REC #4 - Online Application to Renew Real Estate License

REC #5 - Respondent's REC Licensing History, Registration Number 05-324862, January 14, 2008

REC #6 - REC Report of Investigation, with the following six attachments:

(1) REC Complaint, 07-RE-01214, received August 22, 2006

(2) REC Request for Investigation, November 30, 2006

(3) Final Order, District of Columbia Board of Real Estate, Case No. 2003-OAD-024, executed August 26, 2004;

Recommended Decision and Order to District of Columbia Board of Real Estate, Case No.: 2003-OAD-024, Lennox J. Simon, Administrative Law Judge, June 7, 2004

(4) Application for Original or Renewal of License, Registration No. 0324862, Maryland Real Estate Commission, June 14, 2005

(5) Certification of Stephanie Johnston, District of Columbia Board of Real Estate, August 29, 2006

(6) Letter, May 18, 2006, from the Respondent to the REC

REC #7 - Certification of Documents, January 25, 2008;

Cover Letter, September 5, 2002, from the REC;

Certified Mail Receipts;

Proposed Order, September 5, 2002, OAH Case No.: DLR-REC-24-200100013; REC Case No.: 2000-RE-112;

Proposed Decision, June 12, 2002, OAH Case No.: DLR-REC-24-200100013; REC Case No.: 2000-RE-112;

Unclaimed Mail Notices

REC #8 - Letter, February 11, 2003, from the Chairman, District of Columbia Board of Real Estate, to the Respondent, with attached Consent Order

The Respondent submitted the following documents that were admitted into evidence:

RESP #1 - Final Order, August 26, 2004, District of Columbia Board of Real Estate, case No.: 2003-OAD-024

RESP #2 - Letter, March 22, 2004, from Vernada Williams, Broker, to the Respondent

RESP #3 - Letter, September 8, 2003, from Promissor, Inc., to the Respondent

Testimony

Klaus D. Reichelt, Assistant Director of Systems Development, DLLR, and Jack Mull, Investigator, DLLR, testified for the Commission.

The Respondent testified on his own behalf.

FINDINGS OF FACT

After considering the evidence submitted, I find the following facts by a preponderance of the evidence:

1. The Respondent was licensed by the Commission as a real estate salesperson under registration number 05-324862.
2. The Respondent was licensed by the District of Columbia Board of Real Estate (Board of Real Estate) as a real estate salesperson under license number SP-97075.
3. On September 20, 2001, the Respondent and the Board of Real Estate resolved a complaint that had been filed against the Respondent for his conduct in managing a rental property.
4. The Respondent conceded that he had (a) made a substantial misrepresentation in the practice of real estate, (b) commingled escrow funds with his own personal funds, and (c)

failed within a reasonable time to account for or remit money coming into his possession which belonged to another.

5. The Board of Real Estate ordered as follows:

That commencing from the date of the Board's Final Order, Respondent's District of Columbia real estate salesperson's license is placed on SUSPENSION for a period of TWO (2) YEARS. The suspension period shall be STAYED for the entire TWO (2) Years provided the [R]espondent is not charged with any further acts prohibited by real estate salespersons pursuant to the laws of the District of Columbia[.]

6. The Board of Real Estate further ordered as follows:

That the [Respondent] shall pay a fine of Seven Thousand Five Hundred Dollars (\$7,500.00). The first payment is due within ten business days of the Board's execution of this Consent Order and the remaining three payments must be paid on or before the 40th, 70th, and 100th day following the Board's execution of this Consent Order. Payments must be made by certified check or money order payable to the D.C. treasurer and shall be delivered to Failure of [R]espondent to make timely payment of this fine will result in all charges being reinstated and the matter rescheduled for a public hearing.

7. On January 25, 2002, the Respondent renewed his Maryland real estate salesperson's license online.

8. On February 11, 2003, the Board of Real Estate adopted the Consent Order as the Board's Final Order.

9. The Respondent failed to pay the fine ordered by the Board of Real Estate.

10. On June 7, 2004, Administrative Law Judge Lennox J. Simon, Office of Adjudication, Department of Consumer and Regulatory Affairs, District of Columbia, issued a Recommended Decision and Order to the Board of Real Estate in Case No.: 2003-OAD-024.

11. On July 27, 2004, with an execution date of August 26, 2004, Constance Maffin, Chairperson, Board of Real Estate, issued a Final Order revoking the Respondent's real estate salesperson's license.

12. On September 5, 2002, the Commission, affirming the Recommended Decision of Administrative law Judge William J.D. Somerville III, suspended the Respondent's Maryland real estate salesperson's license for ninety days, and imposed a \$6,000.00 fine.

13. On June 14, 2005, the Respondent applied in person at the Commission's office in Baltimore, Maryland for a renewal of his Maryland real estate salesperson's license.

14. The renewal form contained a section, which, in pertinent part, provided as follows:

CONDUCT

(If renewing, this covers the period since the last renewal)

...

Have you ever had a real estate license denied, suspended or revoked by Maryland or any other state? ___Yes ___No

15. The Respondent placed a check mark next to No. He had placed a check mark next to Yes, but then scratched it out.

DISCUSSION

Introduction

The Commission charged the Respondent with violating three sections of Title 17, Subtitle 3 of the Business Occupations and Professions Article of the Maryland Annotated Code.

The statute, Section 17-322, in pertinent part, provides as follows:

...

(b) 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 license if the applicant or licensee:

(1) fraudulently or deceptively obtains or attempts to obtain a license for the applicant . . . ;

(3) directly . . . willfully makes a misrepresentation . . . ;

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

Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(1), (3), and (25) (Supp. 2007).

The Commission alleged that the Respondent violated each of the three provisions of the statute on two separate occasions: (1) on January 25, 2002 when he renewed his real estate salesperson's license online and (2) on June 14, 2005 when he filed an in-person application to renew his real estate salesperson's license.

1. January 25, 2002 Online Renewal

On September 20, 2001, the Respondent and the District of Columbia Board of Real Estate agreed in a Consent Order to resolve a complaint that had been filed against the Respondent for his conduct in managing a rental property. The Respondent conceded that he had violated District of Columbia laws related to real estate salespersons. He also agreed that the Board of Real Estate, "commencing from the date of the Board's Final Order," would suspend his real estate salesperson's license for two years, but stay that suspension on the conditions that (1) the Respondent not be charged with further violations of District of Columbia law related to real estate salespersons, and (2) that the Respondent pay a fine of \$7,500.00 in four installments, with the first payment due "within ten business days of the Board's execution of this Consent Order." For reasons not explained in the record, the Board of Real Estate did not adopt the Consent Order as a Final Order until February 11, 2003.

The Commission's charges related to the Respondent's January 25, 2002 online renewal of his Maryland real estate salesperson's license are based upon the false factual premise that the Respondent's District of Columbia real estate salesperson's license had been suspended effective

September 20, 2001. The Commission's own exhibits establish that the Board of Real Estate did not issue its Final Order, with a suspension stayed upon specific conditions, until February 11, 2003, more than a year after the Respondent renewed his Maryland real estate salesperson's license. (At the hearing, based on an assumption that the effective date of the Consent Order was September 20, 2001, the parties argued whether a suspension that was stayed upon specific conditions was a suspension that a licensee would have to report to the Commission. Based on the above discussion, I do not need to address that issue.) The Commission did not prove that the Respondent committed any violation of the statute in connection to his January 25, 2002 renewal of his license.

2. June 14, 2005 In-Person Attempt to Renew

On June 14, 2005, the Respondent applied in person at the DLLR office in Baltimore, Maryland for a renewal of his Maryland real estate salesperson's license. (At the hearing, the Respondent claimed that he was applying to have his Maryland license reinstated after serving the Commission's 90-day suspension and paying a \$6,000.00 fine. I find that the Respondent was attempting to renew his license. In any event, whether it was a reinstatement or a renewal, the Respondent had the same obligation to report information to the Commission). The renewal form contained a section that required the Respondent to report whether, during the period since the last renewal, he had had a real estate license suspended or revoked by Maryland or any other state. The Respondent answered "no." The Respondent's answer was patently false. Since he last renewed his Maryland real estate salesperson's license, the Respondent's Maryland license had been suspended and his District of Columbia license had been revoked. On September 5, 2002, the Commission suspended the Respondent's real estate salesperson's license for ninety days. On

August 26, 2004, the District of Columbia Board of Real Estate revoked the Respondent's real estate salesperson's license.

At the hearing, the Respondent unconvincingly attempted to explain how he did not make any misrepresentation to the Commission. First, the Respondent testified that he thought he did not have to report the Maryland suspension because the Commission presumably would know about it as part of what the Respondent called his reinstatement process. As stated above, the Respondent had to report the suspension to the Commission whether it was reinstatement or a renewal. The Respondent also suggested that he misunderstood the question being asked on the form, or was misled as to the meaning of the question by clerical staff at the Department. The Respondent seemingly claimed that he did not have to report the Maryland suspension because the conduct underlying the suspension occurred in 1999, which was before his last renewal. I find this argument to be without merit. The form contains a heading entitled "Conduct," but the question asked is whether, since the last renewal, the Respondent's real estate license had been suspended. I do not credit the Respondent's testimony that he misunderstood the question being asked.

Second, the Respondent testified that his not reporting the District of Columbia revocation of his license was an "oversight." I find it inconceivable that the Respondent simply forgot to disclose to the Commission that his District of Columbia license had been revoked. The Respondent signed the application to renew his Maryland license and certified "under the penalty of law, that the information herein is true to the best of my knowledge and belief." I have no doubt whatsoever that the Respondent knowingly misrepresented that his District of Columbia license had not been revoked. The Respondent knew that if he disclosed the revocation (as well

as the suspension) to the Commission that he most likely would not be allowed to renew his Maryland license.

The conduct described above supports the additional charges that the Respondent knowingly made a misrepresentation and engaged in conduct that demonstrates bad faith or untrustworthiness or that constitutes dishonest or fraudulent dealings.

Sanction

Section 17-322(c) of the Business Occupations and Professions Article provides:

(c) (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.

(3) The Commission shall pay any penalty collected under this subsection into the General Fund of the State.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (Supp. 2007).

The Commission requested that I recommend that the Respondent's real estate salesperson's license be revoked and that the Respondent pay a civil penalty of \$5,000.00. I will recommend that the Respondent's real estate salesperson's license be revoked. I will also recommend that the Respondent be ordered to pay a \$5,000.00 civil penalty. I note that the statute does not require that I base a civil penalty on the Respondent's financial situation. The Respondent had a prior Maryland violation, and he displayed a lack of good faith in his answers to the application for renewal. His conduct warrants a substantial civil penalty.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude that, in connection with his January 25, 2002 renewal of his license, the Respondent did not violate Maryland real estate law by (1) fraudulently or deceptively obtaining a real estate license, (2) willfully making a misrepresentation, and (3) engaging in conduct that demonstrates bad faith or untrustworthiness or that constitutes dishonest or fraudulent dealings. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(1), (3), and (25) (Supp. 2007).

Based upon the foregoing Findings of Fact and Discussion, I conclude that, in connection with his June 14, 2005 attempt to renew his license, the Respondent's real estate salesperson's license should be revoked because the Respondent violated Maryland real estate law by (1) fraudulently or deceptively attempting to obtain a real estate license, (2) willfully making a misrepresentation, and (3) engaging in conduct that demonstrates bad faith or untrustworthiness or that constitutes dishonest or fraudulent dealings. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(1), (3), and (25) and (c) (Supp. 2007). Additionally, I conclude, that the Respondent should pay a civil penalty of \$5,000.00. Md. Code Ann. § 17-322(c) (Supp. 2007).

RECOMMENDED ORDER

IT IS THEREFORE RECOMMENDED that the Maryland Real Estate Commission: **ORDER** that the Respondent's real estate salesperson's license be revoked and further **ORDER** that the Respondent pay a civil fine of \$5,000.00, and further **ORDER** that the records and publications of the Commission reflect its final decision.

April 28, 2008
Date Decision Mailed


Robert F. Barry
Administrative Law Judge