

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

JAE H. KANG
Respondent

* CASE NO. 2013-RE-127

* OAH NO. DLR-REC-21-13-08528

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PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated July 1, 2013, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 5th day of August, 2013,

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, AFFIRMED;

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

ORDERED that the Respondent Jae H. Kang violated Md. Bus. Occ. and Prof. Art. §§17-315; and 17-322(b)(1), (3), (25), and (32);

ORDERED that the Respondent Jae H. Kang be and hereby is REPRIMANDED;

ORDERED that the Respondent Jae H. Kang be assessed a civil penalty in the amount of \$5,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that all real estate licenses held by the Respondent Jae H. Kang shall be suspended if the civil penalty is not paid in full within the 30-day time period;

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 the Recommended Decision of the Administrative Law Judge had to be modified because the judge omitted the provision that the civil penalty be paid within a specified time period and that all real estate licenses held by the Respondent would be suspended if he does not pay the full amount of the civil penalty within that time period. The judge also included an erroneous case number in the caption of the Recommended Decision. That has been changed from 2012-RE-127 to 2013-RE-127.

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.

SIGNATURE ON FILE

Maryland Real Estate Commission

**MARYLAND REAL ESTATE
COMMISSION**

v.

**JAE H. KANG,
RESPONDENT**

*** BEFORE JUDITH JACOBSON,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE NO.: DLR-REC-21-13-08528
* REC CASE NO.: 2012-RE-127**

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RECOMMENDED DECISION

**STATEMENT OF THE CASE
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DISCUSSION
CONCLUSIONS OF LAW
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STATEMENT OF THE CASE

On February 11, 2013, the Maryland Real Estate Commission (MREC or Commission) issued a Statement of Charges and Order for Hearing against Jae H. King (Respondent) for his alleged violations of Maryland Annotated Code, Business Occupations and Professions Article, Sections 17-315(a)(1)(ii), 17-322(b)(1), (3), (25), and (32) (2010).

On May 16, 2013, I convened a hearing at the Office of Administrative Hearings (OAH), Hunt Valley, Maryland. Assistant Attorney General Jessica Kaufman represented the MREC. The Respondent failed to appear for the hearing.

Procedure is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009 & Supp. 2012); the MREC's Hearing Regulations, Code of Maryland Regulations (COMAR) 09.11.03; and OAH Rules of Procedure, COMAR 28.02.01.

The Respondent was sent a Notice of Hearing at his address of record, advising him of the date, time and location of the hearing and advising that a party's failure to appear could result in a decision against that party. The Respondent received the notice; the copy that was sent to him certified mail was signed by someone at his address. I granted the MREC's request to proceed in the Respondent's absence. COMAR 09.01.03.05; COMAR 28.02.01.23.

ISSUES

The issues in this case are as follows:

- 1) Did the Respondent fail to qualify for the renewal of his license because he failed to complete the required continuing education instruction during the preceding two year term?
- 2) Did the Respondent fraudulently or deceptively obtain or attempt to obtain a license?
- 3) Did the Respondent willfully make a misrepresentation?
- 4) Did the Respondent engage in conduct that demonstrated bad faith, incompetency, or untrustworthiness, or that constituted dishonest, fraudulent, or improper dealings?
- 5) Is the Respondent subject to any appropriate sanction, and if so, what sanctions and/or penalties should be imposed?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted into evidence the following exhibits on behalf of the MREC:

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|----------------|---|
| MREC Ex. # 1 - | Notice of Hearing, March 18, 2013 |
| MREC Ex. # 2 - | Transmittal; Statement of Charges and Order for Hearing, February 11, 2013 |
| MREC Ex. # 3 - | Licensing Information, April 23, 2013 |
| MREC Ex. # 4 - | Report of Investigation by Brenda Iman, December 27, 2012; Complaint Form, November 8, 2012; Licensing Information, October 3, 2012, with notes; E-mail from MREC to the Respondent, September 4, 2012, with notes; Maryland Agent Certificates of Course Completion, September 22, |

2012, September 27, 2012, September 28, 2012, September 30, 2012, and October 1, 2012; Audit Checklist, undated; Letter from the Respondent, November 20, 2012; Letter from David P. Michalski to the MREC, November 28, 2012

No exhibits were submitted on the Respondent's behalf.

Testimony

The MREC presented the testimony of Steven Long, MREC Assistant Executive Director, and Brenda Iman, MREC Paralegal. No testimony was presented for the Respondent.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent was licensed by the MREC as a real estate salesperson.
2. The Respondent was required to complete 15 hours of continuing education for the license renewal period of September 7, 2010 to September 4, 2012.
3. As of September 4, 2012, the Respondent had not completed any of the required courses.
4. On September 4, 2012, the Respondent renewed his real estate salesperson's license using the MREC's electronic licensing program.
5. The Respondent answered "Yes" to the question, "Have you completed the CE [continuing education] courses required since your last renewal?"
6. The Respondent had no previous violations under the MREC statute or regulations.

DISCUSSION

Failure to Complete Continuing Education Instruction

To qualify for the renewal of a real estate salesperson's license, a licensee is required to complete at least 15 clock hours of continuing education instruction during the preceding two-year term. Md. Code Ann., Bus. Occ. & Prof. § 17-315(a) (Supp. 2012). The evidence showed that the Respondent applied to renew his license on September 4, 2012. The two-year period in question was September 7, 2010 to September 4, 2012. It was not disputed that the Respondent

failed to meet this requirement. He violated Section 17-315(a), and was thereby subject to disciplinary action. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(32) (2010).

Fraudulent or Deceptive Attempt to Obtain a License

The MREC may take disciplinary action against a real estate salesperson if that person fraudulently or deceptively attempts to obtain a license. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(1) (2010). When the Respondent applied for the renewal of his license, he answered “Yes” to the question asking if he completed the required continuing education courses. His answer was false and deceptive. The Respondent violated Section 17-322(b)(1).

Misrepresentation

The MREC may take disciplinary action against a real estate salesperson if that person willfully makes a misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(3) (2010). The Respondent’s answer to the question asking if he completed the required continuing education courses was a misrepresentation.

In a letter to the MREC dated November 20, 2012, the Respondent wrote that he had not paid attention to the functions of the online renewal process, and that he took all the required courses. He submitted certificates for continuing education courses, but all were dated after September 4, 2012. (MREC Ex. # 4). The Respondent knew he had not completed the courses when he affirmatively answered the question on September 4, 2012. I find that his misrepresentation was willful. The Respondent violated Section 17-322(b)(3).

Bad Faith, Untrustworthiness, or Dishonest, Fraudulent or Improper Dealings

The MREC may take disciplinary action against a real estate salesperson if that person 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)(25) (2010). When the Respondent applied for the renewal of his license, he provided an answer that was dishonest. The Respondent violated Section 17-322(b)(25).

Reprimand

The MREC requested the imposition of a reprimand. Such a sanction is authorized by statute for these violations, and I find that under the facts of this case, a reprimand is justified. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(2010). The continuing education requirement is reasonable; the Respondent did not provide any explanation for his noncompliance with it and he misrepresented his compliance in his application.

Civil Penalty

The MREC requested the imposition of a civil penalty totaling \$5,000.00. The statute provides for a civil penalty, as follows:

- (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) (2010).

The Respondent's violations were serious: he did not complete any of the required continuing education during the required time period, and he lied about the failure in his renewal application. The public relies on the commission to license competent salespersons, and the Respondent was essentially asking to be licensed without meeting the competency standard.

Although the violations did not cause any specific harm that was proven by the MREC, the Respondent did not act in good faith. He did not appear at the hearing and therefore forfeited his opportunity to show any good intentions.

The Respondent had no history of previous violations.

In this case, the Respondent had four separate violations, each of which could result in a civil penalty of \$5,000.00. The MREC requested a civil penalty of \$1,600.00 for the violation of the requirement of continuing education, and \$3,400.00 for the other violations. I find this request reasonable; it is considerably lower than the maximum penalty available, and is appropriate for a first violation.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondent fail to qualify for the renewal of his license because he failed to complete the required continuing education instruction during the preceding two year term. Md. Code Ann., Bus. Occ. & Prof. § 17-315(a)(ii) (Supp. 2012); Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(32) (2010).

I conclude, as a matter of law, that the Respondent deceptively attempted to obtain a license. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(1) (2010).

I conclude, as a matter of law, that the Respondent willfully made a misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(3) (2010).

I conclude, as a matter of law, that the Respondent engaged in conduct that demonstrated bad faith and untrustworthiness and that constituted dishonest, fraudulent, and improper dealings. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) (2010).

I further conclude, as a matter of law, that these statutory violations justify imposing a reprimand and assessing a monetary penalty of \$5,000.00. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2010).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Real Estate Commission **ORDER** as follows:

The Commission's charges against the Respondent under Sections 17-315, 17-322(b)(1), (3), (25), and (32) of the Business Occupations Article be **AFFIRMED**; the Commission impose a **REPRIMAND** on the Respondent; the Commission **ORDER** that the Respondent pay a civil penalty in the amount of \$5,000.00; and, the Commission **ORDER** that its records and publications reflect its final decision.

July 1, 2013
Date Decision Issued

JJ/emh
#143427

SIGNATURE ON FILE

Judith Jacobson
Administrative Law Judge

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