

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

DENNIS L. CATRON *
RESPONDENT

CASE NO. 2009-RE-135

* OAH NO. DLR-REC-21-09-09195

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated January 19, 2010 having been received, read and considered, it is, by the Maryland Real Estate Commission, this 5th day of March, 2010,

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 Dennis L. Catron violated Md. Bus. Occ. and Prof. Art. § 17-532(c)(1)(vi) and COMAR 09.11.02.01C;

ORDERED that the Respondent Dennis L. Catron be and hereby is **REPRIMANDED;**

Commissioners find that the Respondent's uncooperative attitude and his rude treatment of a fellow professional in the presence of her clients require a penalty greater than that recommended by the Administrative Law Judge. They are also concerned by his casual attitude to the whereabouts of the house key; licensees are required to exercise due care and diligence in performing their duties. Failure to keep track of the key to a home and an inability or refusal to explain what happened to it certainly do not show an individual who is carrying out his statutory duties in the required manner.

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.

June A. Jordan, Chair
Maryland Real Estate Commission


MARYLAND REAL ESTATE

*** BEFORE BRIAN ZLOTNICK,**

COMMISSION

*** AN ADMINISTRATIVE LAW JUDGE**

v.

*** OF THE MARYLAND OFFICE OF**

DENNIS L. CATRON,

*** ADMINISTRATIVE HEARINGS**

RESPONDENT

*** OAH CASE NO.: DLR-REC-21-09-09195**

*** REC COMPLAINT NO.: 09-RE-135**

*** * * * ***

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 or about September 17, 2008, Curtis and Nadine Dingle (Complainants) filed a complaint with the Maryland Real Estate Commission (Commission or REC), an administrative unit of the Department of Labor, Licensing and Regulation (DLLR), against Dennis Catron (Respondent), a real estate salesperson associated with Zip Realty, Inc. On January 20, 2009, the Commission issued a Statement of Charges and Order for Hearing against the Respondent.

I conducted a hearing on November 9, 2009, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland, under Section 17-324 of the Business Occupations & Professions Article, Annotated Code of Maryland (2004). Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2004). Peter Martin, Esquire, Assistant Attorney General,

represented the Commission. Although notified of the hearing, the Respondent failed to appear.¹

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 (2009); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Respondent fail to exercise reasonable care and diligence, in violation of Section 17-532(b)(1)(vi) of the Business Occupations and Professions Article?²
2. Did the Respondent violate any regulation adopted under the Business Occupations and Professions Article, in violation of Section 17-322(b)(33) of the Business Occupations and Professions Article?³
3. 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?

¹ Notices of the hearing, including a copy of the Commission's charges, were mailed both regular mail and certified, return receipt requested, to the Respondent at his last address of record with the Commission and his current address listed with the Maryland Motor Vehicle Administration. Although the certified mail was returned, the regular mail was not returned. I conclude that the Respondent was provided reasonable notice of the hearing. Md. Code Ann., Bus. Occ. & Prof. § 17-324(f) (2004)

² The current version of Section 17-532 is found in the 2009 supplement to the Business Occupations and Professions Article.

³ The current version of Section 17-322 is found in the 2009 supplement to the Business Occupations and Professions Article.

SUMMARY OF THE EVIDENCE

Exhibits

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

- REC #1 Notice of Hearing, dated August 19, 2009, and Statement of Charges, dated January 20, 2009, with attached certified and regular mail receipts
- REC #2 October 6, 2009 letter from the REC to the Respondent with attached Statement of Charges and certified and regular mail receipts
- REC #3 Certified printout of the Respondent's REC Licensing History, dated October 28, 2009
- REC #4 October 16, 2009 Affidavit of Charlotte Streat
- REC #5 Respondent's License Exam Profile
- REC #6 September 17, 2008 Complaint and Guaranty Fund Claim

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

Testimony

The Commission presented the testimony of Nadine Dingle and Valerie Ballard, Real Estate Agent.

The Respondent was not present.

FINDINGS OF FACT

Having considered the evidence and testimony presented, I find the following facts by a preponderance of the evidence:

1. At all times relevant to this matter the Respondent was a licensed real estate sales person, holding license # 05-586870, and he was associated with a real estate brokerage firm.
2. In September 2008, the Complainants were listing their house at 620 Lucky Leaf Circle (Property) for sale with their real estate agent, Valerie Ballard. A combination lock box was placed at the Property to permit buying agents to show the Property to their clients.
3. Centralized Showing, a real estate service selected by the Complainants, notifies a seller whenever a buying agent requests to show their home to one of their clients.
4. A key to the Property is placed in the lock box and the combination to open the lock box is provided to a buying agent through Centralized Showing.
5. On September 15, 2008, Centralized Showing notified the Complainants that a buying agent wanted to show their home to a client. The Complainants left the Property in order to permit the buying agent to show their home. The buying agent, the Respondent, received the combination to the lock box and retrieved the key to the Property to show it to his clients.
6. The Complainants returned to their home after the Respondent showed the Property and discovered an open lock box without their house key. The Complainants contacted Ms. Ballard, who came over to the Property.
7. Centralized Showing notified Ms. Ballard that the Respondent was the agent that showed the Property on September 15, 2008. Ms. Ballard telephoned the Respondent, placing the call on speakerphone to allow the Complainants

to listen to the conversation, and asked him what happened to the key. The Respondent told Ms. Ballard to stop acting like a jerk and told her to change the combination on the lock box. Ms. Ballard continued to ask the Respondent if he had the key and the Respondent never acknowledged having the key. The Respondent argued with Ms. Ballard when he stated the following, "you're not going to tell me that you never took a key by mistake before."

8. The Respondent never called Ms. Ballard back and never returned the key.
9. On September 15, 2008, the Complainants paid a locksmith \$232.00 to change the locks on the Property.

DISCUSSION

The Commission charged the Respondent with violating Sections 17-532(c)(1)(vi) of the Business Occupations and Professions Article, as well as COMAR 09.11.02.01C. The relevant portions of the statute and regulations are as follows:

§17-532 – Duties to client.

(c) *In general.* – (1) A licensee shall:

(vi) exercise reasonable care and diligence[.]

COMAR 09.11.02.01

C. The Licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State.

Authority: Business Occupation and Professions Article, § 17-208,
Annotated Code of Maryland

The Commission's charges arose from the listing of the Property. The Commission alleged that the Respondent failed to act with reasonable care and diligence when he failed to return the Property's key to the lockbox after he showed it to his client. The Commission further alleged that the Respondent acted in a manner which was damaging to the dignity and integrity of the real estate profession when, during a telephone conversation with Ms. Ballard, which was put on speakerphone to allow the Complainants to listen, the Respondent called Ms. Ballard a "jerk" and was argumentative with her. During the telephone conversation, the Respondent stated to her that she must have lost a key to a property in the past and that she should just change the combination on the lock box. I find that the evidence overwhelmingly supports the Commission's charges.

I conclude that the Commission has demonstrated, by a preponderance of the evidence, that the Respondent violated the provisions of Section 17-532(c) of the Business Occupations and Professions Article. As stated before, the Respondent failed to exercise due care and diligence by failing to return the key to the lockbox after showing the Complainants' home. Further, the Complainants were compelled to hire a locksmith to change the Property's locks, as they were concerned that a key to their home was missing.

The Commission's evidence established that the Respondent's conduct demonstrated a lack of due care and diligence and it further established that the Respondent's rude telephone conversation with Ms. Ballard damaged the integrity and

dignity of the real estate profession as that conversation was conducted with the participation of the Complainants and Ms. Ballard.

As a result of his violations, the Respondent is subject to sanction under Section 17-322(c) of the Business Occupations and Professions Article, which provides 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.

Although the record does not disclose any history of violations, the Respondent's actions in this case are serious violations that caused great harm to the Complainants. I agree with the Commission's attorney who argued at the hearing that the Respondent was careless when he failed to return the key to the lockbox and that his argumentative tone with the Complainants' agent damaged the dignity and integrity of the real estate profession. The Respondent should have returned the key, or if he lost it, he should have at least apologized to the Complainants for any inconvenience and offered to pay any costs associated with making new keys for the Property. As noted above, COMAR 09.11.02.01C provides that a real estate licensee shall eliminate any practices which could be damaging to the public or the dignity and integrity of the real estate profession. Certainly, the Respondent's failure to return the Property's key to the lockbox and his rude behavior with Ms. Ballard was both damaging to the public and the dignity of the real estate profession.

The Commission recommended a civil penalty and a reprimand, which I find appropriate. The Commission recommended a penalty of \$500.00 each for the violations of Section 17-532(c)(vi) and COMAR 09.11.02.01C, for a total of \$1,000.00. I think this is appropriate, considering the lack of good faith by the Respondent when he failed to admit that he lost the Property's key, in addition to the serious harm caused by the Respondent's actions, as the Complainants were forced to hire a locksmith to change the locks of their residence. As noted above, they had to spend \$232.00 to secure their home with new locks. Therefore, I recommend a reprimand and a penalty of \$500.00 for each violation, for a total penalty of \$1,000.00.

CONCLUSIONS OF LAW

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

A. The Respondent failed to exercise reasonable care and diligence when he lost the Property's key in violation of Section 17-532(c)(vi) of the Business Occupations and Professions Article. Md. Code Ann., Bus. Occ. & Prof. § 17-532(c)(vi).

B. The Respondent acted in a manner that was damaging to the public and the dignity and integrity of the real estate profession when he acted rudely with Ms. Ballard and called her a "jerk" while the Complainants were listening during a speaker phone conversation, in violation of COMAR 09.11.02.01C.

C. I further conclude that the Respondent is subject to sanction for his misconduct, and that a \$500.00 civil penalty for each of the two violations (totaling \$1,000.00) 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 pay a civil penalty of \$1,000.00; and further
ORDER, that the Respondent be reprimanded; and further
ORDER, that the records and publications of the Commission reflect its final
decision.

January 19, 2010
Date Decision Mailed

Brian Zlotnick
Brian Zlotnick *ecv*
Administrative Law Judge

BMZ/
#109715

**MARYLAND REAL ESTATE
COMMISSION**

v.

**DENNIS L. CATRON,
RESPONDENT**

*** BEFORE BRIAN ZLOTNICK,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE NO.: DLR-REC-21-09-09195
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*** * * * ***

FILE EXHIBIT LIST

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- REC #6 September 17, 2008 Complaint and Guaranty Fund Claim

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

ORDERED that the Respondent Dennis L. Catron be assessed a civil penalty in the amount of \$2,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that the all real estate licenses held by the Respondent Dennis L. Catron shall be **SUSPENDED** if the civil penalty imposed on him in this Order is not paid in full within thirty (30) days;

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. After reviewing the facts as found by the Judge and the conclusions of law made based on those facts, the Commission believes that the appropriate penalty is a reprimand and a civil fine in the amount of \$2,000. The Respondent obtained access to show his clients a home through a lock box on the exterior of the home, and failed to return the key to the lock box. When this was brought to his attention by the listing agent, he was abusive to her, in the presence of her clients, and refused to provide her any information concerning the whereabouts of the key. He told her to change the combination on the lockbox, which was hardly a satisfactory solution for sellers whose house key was missing. Having no information from the Respondent about who might have their key, the sellers were forced to have the locks on their home changed by a locksmith. The