

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE  
COMMISSION

V.

XINSHENG ZHAO

RESPONDENT

\* BEFORE LOUIS N. HURWITZ,  
\* ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH No: DLR-REC-21-07-29830  
\* REC CASE NO: 2005-RE-173

\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated May 8, 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  
J. Nicholas D'Ambrosia, Commissioner

MARYLAND REAL ESTATE

\* BEFORE LOUIS N. HURWITZ,

COMMISSION

\* AN ADMINISTRATIVE LAW JUDGE

v.

\* OF THE MARYLAND OFFICE OF

XINSHENG ZHAO

\* ADMINISTRATIVE HEARINGS

\* OAH CASE NO.: DLR-REC-21-07-29830

\* REC COMPLAINT NO.: 2005-RE-173

\* \* \* \* \*

**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 November 1, 2004, Donglian Sun (Complainant) 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 Xinsheng Zhao<sup>1</sup> (Respondent),<sup>2</sup> a real estate salesperson. On June 25, 2007, the REC issued a Statement of Charges and Order for Hearing against the Respondent.

On December 13, 2007, February 7, 2008, and February 8, 2008, a hearing was held before Louis N. Hurwitz, Administrative Law Judge, at the Office of Administrative Hearings

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<sup>1</sup> In several documents and at times during the hearing, Mr. Zhao is referred to as Jason, his chosen Americanized name. He is only licensed and known by the Commission as Xinsheng Zhao.

<sup>2</sup> This matter was consolidated, for hearing purposes, with the regulatory case against Susan Chang, Mr. Zhao's supervising real estate broker. The Chang charges are addressed in a separate decision (OAH Case No. DLR-REC-21-07-29841).

(OAH), 11101 Gilroy Road, Hunt Valley, Maryland 21031. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2004). Jessica B. Kaufman, Assistant Attorney General, represented the REC. The Respondent appeared on his own behalf.

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. 2007); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

### **ISSUES**

1. Did the Respondent<sup>3</sup> 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?<sup>4</sup>

2. Did the Respondent violate Section 17-322(b)(30) of the Business Occupations and Professions Article by failing to make the disclosure or to provide the consent form required by Section 17-530(b)(1)?

3. Did the Respondent violate Section 17-322(b)(32) by violating any other provision of the real estate article?

4. Did the Respondent violate COMAR 09.11.02.01 by failing to place all financial obligations and commitments in writing and provide a copy of the documents to parties involved?

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<sup>3</sup> Mr. Zhao is referred to in this decision as the Respondent. The broker with whom he is affiliated, Susan Chang, is referred to as Respondent Chang.

<sup>4</sup> The current version of Section 17-322 is found in the 2007 supplement to the Business Occupations and Professions Article.

5. 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:

- REC #1 Notice of Hearing, dated August 29, 2007, in the case of REC v. Respondent
- REC #2 Statement of Charges and Order for Hearing, dated June 25, 2007
- REC #3 Computer printouts of Respondent's licensing history for license #05-5241405, dated October 24, 2007
- REC #4 Notice of Hearing, dated August 29, 2007, in the case of REC v. Respondent Chang
- REC #5 Statement of Charges and Order for Hearing (Chang case), dated June 25, 2007
- REC #6 Computer printouts of Respondent Chang's licensing history for license #03-69566, dated October 24, 2007
- REC #7 Consent Order, REC Case No. 2002-RE-186, dated May 28, 2004
- REC #8 Consent Order, REC Case No. 95-RE-394, dated February 24, 1998
- REC #9 Report of Investigation by Jack L. Mull, Jr., dated October 2, 2006, with attachments:
  - Att. 1- Complaint and Fund Claim, received on November 1, 2004, includes letters from the Complainant dated October 28, 2004, November 12, 2004, and February 18, 2005
  - Att. 2A- Letters from Respondent Chang to the REC, December 3, 2004 and December 20, 2004
  - Att. 2B- Letter from Respondent to the REC, December 3, 2004  
Letter from Respondent to the REC, December 20, 2004  
Letter from Respondent to the REC, March 23, 2005  
Listing Agreement, June 18, 2004  
Sales flier for 15505 Peach Leaf Lane, North Potomac, MD 20878  
Agent Synopsis Report, undated  
Maryland Residential Property Disclosure Statement, June 18, 2004  
Understanding Whom Real Estate Agents Represent form, June 18, 2004

- Maryland Department of Assessments and Taxation Real Data  
Property Search  
Evergreen New Case Confirmation, date-stamped August 2, 2004  
Cover letter and Seller's Questionnaire from Evergreen Settlement  
Co., Inc., August 26, 2004  
Housing and Urban Development Settlement Statement, September 1,  
2004  
Post-Settlement Occupancy Agreement, September 1, 2004  
Townhouse lease, August 31, 2004  
Att. 3- DLLR Request for Investigation, November 21, 2005  
Att. 4- Listing Contract, June 18, 2004  
Att. 5- Agent Synopsis Report, undated  
Att. 6- Residential Contract of Sale, July 21, 2004  
Addendum of Clauses, July 21, 2004  
Unsigned Understanding Whom Real Estate Agents Represent form,  
July 21, 2004  
General Addendum, July 21, 2004  
Consent for Dual Agency, signed by the buyer, July 21, 2004  
Montgomery County Jurisdictional Addendum to Sales Contract, July  
21, 2004  
Notice of Buyer's Right to Property Condition Disclosure Statement or  
Disclaimer Statement, July 21, 2004  
Government Regulations, Easements and Assessments Disclosure and  
Addendum, July 21, 2004  
Some Information Relative to the Purchase of Real Estate, July 21,  
2004  
Federal Lead Paint Disclosure  
Federal Lead Paint Disclosure and Notice Statement  
Copy of buyer's \$1,000 check to Evergreen  
Att. 7- Letter from Xiaobiao Fan to the REC, August 18, 2006  
Att. 8- Sales flier for 15505 Peach Leaf Lane, North Potomac, MD 20878  
Att. 9- General Addendum, July 21, 2004  
Att. 10- Summary and Price Analysis Reports

The Respondent submitted the following documents, which were admitted into evidence:

- R-ZHAO #1 Undated, handwritten letter from Alta Sligh Ayers, purchaser of the property  
R-ZHAO #2 Letter from DLLR to the Complainant, June 25, 2007

Respondent Chang submitted the following documents, which were admitted into  
evidence:

- R-CH #1 Notes/agenda from 26 Evergreen office meetings from November 11, 2003  
through March 20, 2007

- R-CH #2 Evergreen Properties Office Policy and Procedure, undated
- R-CH #3 Thomas J. Lynch Real Estate Training Agreement with Evergreen Properties
- R-CH #4 Attorney-Client Fee Agreement, February 6, 2008

Testimony

The Commission presented the testimony of the Complainant, Donglian Sun, and Jack L. Mull, Jr., an investigator for the REC.

The Respondent testified on his own behalf and presented the testimony of Alta Sligh Ayers, buyer of the real property at issue, and Behjat (Behy) Baharloo, the buyer's real estate agent from Evergreen Realty.

Respondent Chang testified on her own behalf and presented the testimony of her husband and Evergreen associate broker, Frank Chang, and Steven Soto, an attorney with whom the Respondent has contracted to review Evergreen salesperson's contracts.

**FINDINGS OF FACT**

Having considered the evidence presented, 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 salesperson licensed by the Commission under license #05524105, and was working through the brokerage of Evergreen Realty. He has been licensed by the Commission since January 2000.
2. The Complainant and her husband were the owners of the property located at 15505 Peach Leaf Lane, Gaithersburg, Maryland 20878<sup>5</sup> (the property).

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<sup>5</sup> The address is listed alternately as being in North Potomac, which was explained at the hearing as the designation used by some Gaithersburg residents who desire the supposedly more desirable association with Potomac, Maryland.

3. On June 18, 2004, the Complainant entered into a listing agreement with the Respondent, an agent with Evergreen Realty, to sell the subject property.

4. The Complainant's husband was not available when the Complainant signed the listing agreement. She signed her husband's name to the listing agreement and related documents at the Respondent's direction.

5. At the time of listing the property for sale, the Complainant explained to the Respondent that she did not want to list her home for sale until she found a suitable home to purchase in its place. The listing agreement provided for a listing price of \$468,000. The Respondent indicated that he would wait to list the property until the owners found a home of their choice.

6. The Complainant and her husband conducted a home search in Virginia with another real estate agent, Tao Xiong, who was licensed in Virginia and was also affiliated with Evergreen Properties.

7. Sometime in June 2004, after the Complainant signed the listing agreement, the Complainant and her husband entered into a contract to purchase a home in Fairfax County, Virginia. They decided that the home was too expensive and withdrew from the contract, forfeiting their earnest money deposit.

8. From June 18, 2004 until July 14, 2004, the Respondent spoke to the Complainant or her husband several times.

9. As of July 14, 2004, the Respondent had neither listed the property in the multiple listing service nor otherwise marketed the property for sale.

10. On July 14, 2004, the Respondent and Mr. Xiong met with the Complainant's husband at the property. It was the first time the Respondent met the Complainant's husband.

The Respondent did not have the Complainant's husband sign the listing agreement at that time or at any other time.

11. The Respondent and agent Xiong discussed pricing and marketing strategy with the Complainant at the July 14, 2004 meeting. At the meeting, the Complainant's husband agreed to market the property for a one-week period. There was no document generated from the meeting that produced an agreement to market the property or to change the price listed in the listing agreement from \$468,000 to \$458,000.

12. In addition to entering the property in the multiple listing service on July 15, 2004 at a price of \$458,000, the Respondent began developing a brochure with which to market the property.

13. At no time did the Complainant or her husband seek to terminate the June 18, 2004 listing agreement.

14. On July 18, 2004, the Respondent gave the Complainant fliers for an upcoming open house at the property.

15. When the property's eventual buyer viewed the house on or about July 19, 2004, the Complainant offered her a sales brochure and told her the property's selling price.

16. On July 21, 2004, the Respondent and the prospective buyer's agent, Behy Baharloo, also affiliated with Evergreen, came to the property to present an offer to the Complainant and her husband. The Respondent also presented a lower offer from an agent who represented another real estate broker. Although the lower of the two offers was rejected by the Complainant and her husband, the Respondent and the homeowners engaged in an approximately four to five hour negotiating session, which ended around midnight, regarding the higher offer (the one made by Ms. Baharloo's customer). The session was characterized by the

Complainant shouting at her husband and by protracted, spirited discussions between the homeowners and the Respondent. Most of the conversation was in Chinese.

17. The Respondent and the seller's agent, Baharloo, convinced the Complainant and her husband to accept Ms. Baharloo's buyer's \$455,000 offer, with \$10,000 of that amount returned to the buyer by the sellers at settlement to assist with settlement costs and to address a moisture issue in the basement. The \$10,000 was addressed in an Addendum to the Contract of Sale signed by the parties.

18. The Complainant has lived in the United States since 1996 and reads and understands English. The Complainant teaches at George Mason University.

19. Although the Respondent and Ms. Baharloo may have orally disclosed to the buyer and sellers that the listing and selling agents were both affiliated with Evergreen, the Respondent did not have the seller sign a Consent for Dual Agency Form, as required by law.

20. The Complainant and her husband discussed with the Respondent including a Home of Choice (HOC) contingency, which would make the sale contingent upon the sellers purchasing another home, in a contract for the sale of their home. The contract presented to the Complainant and her husband on July 21, 2004 did not include such a clause.

21. The Complainant eventually signed the required documents late in the evening of July 21, 2004, accepting the buyer's offer of \$455,000, with \$10,000 of that amount being returned to the buyer at settlement. The Complainant did not read the contract before signing it.

22. The contract did not include a Post-Settlement Occupancy (rent-back) Agreement allowing the sellers to rent the property from the new owners for 15 days after settlement, as requested by the sellers. The Respondent did not raise the post-occupancy settlement issue with the buyer's agent prior to signing the contract.

23. The signature page of the July 21, 2004 Addendum of Clauses lists real estate agents who were not involved in the instant transaction.

24. After signing the contract and agreeing to sell the property, the Complainant had misgivings about the decision since she and her husband had not yet found a suitable house to purchase.

25. After the sellers and buyer signed the Contract of Sale, the Respondent presented the buyer with a document that would provide the sellers with an HOC contingency and rent-back option. The buyer did not agree to the HOC contingency and the rent-back option.

26. The Complainant requested the Respondent's assistance finding a home to rent before the scheduled settlement on the property.

27. The Respondent assisted the Complainant and her husband in finding a home to rent. On August 31, 2004, the Complainant and her husband signed a lease agreement for a townhouse.

28. The settlement scheduled for August 31, 2004 did not take place due to a matter related to the buyer's mortgage.

29. The settlement went forward on September 1, 2004, and the parties discussed the rent back issue. The buyer rejected the Complainant's request to rent back the property without charge. The sellers and buyer signed a Post-Settlement Occupancy Agreement, allowing the sellers to rent the property from the buyer through September 2, 2004 for the amount of \$237.32.

30. At settlement, there was much discussion and bickering between the Complainant and her husband in their native language. Both the Complainant and her husband signed all settlement related documents on September 1, 2004.

31. On or about November 1, 2004, the Complainant filed a complaint with the Commission.

32. On November 16, 2005, the Commission referred the complaint to Jack L. Mull for investigation.

### **DISCUSSION**

The Commission charged the Respondent with violating Sections 17-322(b)(25), (30) and (32) of the Business Occupations and Professions Article, as well as COMAR 09.01.02.01C.

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;

....

(30) fails to make the disclosure or provide the consent form required by § 17-530 this title;

...

(32) violates any other provision of this title;

....

§ 17-530 – Notice of representation or agency

(b)(1) A licensee who participates in a residential real estate transaction as a seller's agent, buyer's agent, or as a cooperating agent shall disclose in writing that the licensee represents the seller or lessor or the buyer or lessee.

...

COMAR 09.11.02.01, regarding relations to the public, provides in pertinent part:

....

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

The Commission contended that the Respondent, in his capacity as a Listing/Selling Agent, obtained a signed Listing Agreement to sell the property but did not heed the Complainant's request not to market the property until she had found a suitable home to purchase. The Commission alleged that the Respondent began to market the property and that shortly thereafter, he presented a contract offer for the Complainant and her husband to consider, prior to the Complainant finding a new home. It is further alleged that the Respondent, without the consent of the sellers, unilaterally reduced the listing price of the property by \$10,000 when entering the property information into the automated multiple listing service.

The Commission also asserted that the Respondent brought the buyer's agent (also affiliated with Evergreen) with him when he presented the contract to the sellers and coerced them to accept the contract, explaining that market conditions would likely result in subsequent offers being less than the offer being presented. The Complainant was also charged with failing to present the Complainant with the required dual agency information. Lastly, the Commission alleged that the Respondent and the buyer's agent failed to carry out a promise to arrange for a rent back on the property to allow the Complainant to find another home. The latter failure supposedly forced the Complainant to move from the property ten months before finding another home.

In its administrative charges, the Commission cited the Respondent under the above-referenced sections, alleging bad faith or improper dealings, failing to provide notice of dual agency, and failing to put all of the obligations and commitments regarding the real estate

transaction in writing. The REC sought a thirty day suspension of the Respondent's license and a civil penalty of \$3,000 for the violations.

Although the Respondent disputed most of the allegations and specifically challenged the claims, there is sufficient credible evidence to support a finding that the Respondent violated real estate law in his effort to sell the property. The Commission presented the testimony of the Complainant, Donglian Sun, and Jack L. Mull, Jr., an investigator for the REC. The testimony clearly established the following: the Listing Agreement was not signed by the Complainant's husband, co-owner of the property; the Respondent did not provide the Complainant with a Consent for Dual Agency form; and the change in the property's listing price from \$468,000 to \$458,000 was not reduced to writing. The Respondent did not contest these violations. He only offered explanations, which will be addressed later in this Discussion, and further responded to the remaining charges.

Mr. Mull conducted a very thorough investigation of the complaint. He reviewed the complaint letter and related documents regarding the transaction, including the contract, addenda, and settlement statements. He also interviewed the Complainant, Evergreen agent Baharloo, and Frank Chang, associate broker of Evergreen at the time of the transactions.<sup>6</sup> The Complainant's husband, Xiaobio Fan, and the Respondent provided Mr. Mull with written statements. Mr. Mull compiled a very comprehensive report setting forth detailed accounts of each of the interviews, and attaching all relevant documents.

Mr. Mull testified in great detail about his August 16, 2006 in-person interview of the Complainant, and his September 21, 2006 interviews of the Respondent, Ms. Baharloo, and Mr.

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<sup>6</sup> At some point after above- referenced transactions in 2004, Respondent Chang became the principal broker of record for Evergreen and Mr. Chang, her husband was designated associate broker.

Chang. He related that the Complainant acknowledged to him that her complaint was prompted by her dissatisfaction with the house she purchased after selling the property in question. The Complainant spoke of being pressured by the Respondent. The Complainant's statements were supported by her testimony, while she offered significant additional information that shed light on the dealings between the Respondent and Complainant.

The Complainant is a highly educated woman who has resided in the United States since 1996. She teaches at George Mason University in Virginia. Although the Respondent requested and received the services of an interpreter, the Complainant elected to participate in the hearing in English and only sought the interpreter's assistance on a few occasions. During the transactions at issue here, the Respondent mostly spoke to the Complainant in Mandarin Chinese.

The Complainant told of being pressured by the Respondent to sign the June 18, 2004 Listing Agreement in her husband's absence, and being instructed by him to sign her name and her husband's name to the Agreement and related documents on that date. The Respondent denied directing the Complainant to sign her husband's name. He maintained that the Complainant signed her husband's name, but that he instructed her to take the documents to her husband for his signature as well; however, the Complainant lost her copy of the Listing Agreement and never obtained her husband's signature. What is clear from the evidence is that the Complainant's husband never signed the Listing Agreement or any of the documents that accompanied it after the Respondent met the Complainant's husband on July 14, 2004. The Complainant failed to obtain Mr. Fan's signature on the Listing Agreement and related documents at any time.

The Respondent clearly did not have the sellers sign a Consent for Dual Agency form but argued that the sellers were clearly aware of the fact that the buyer's agent, Ms. Baharloo, was also affiliated with Evergreen. This explanation is inadequate. The requirement that such an important disclosure be made in writing, with copies to the parties, is firmly rooted in real estate law. The testimony also supports a finding that, at a meeting with the Respondent on July 14, 2004, the Complainant's husband agreed to list the property for one week and to reduce the price to \$458,000. The change in price was not reduced to writing and signed by the sellers, in violation of real estate law. COMAR 09.11.02.01H.

The Complainant originally informed the Respondent on June 18, 2004 that she did not want the property listed for sale until she found another home to purchase. The Complainant then entered into a contract to purchase a home in Virginia, but withdrew from the agreement after she and her husband had misgivings because they viewed the house as too expensive. Then, in a visit to the Complainant's home on July 14, 2004, the Respondent convinced the Complainant's husband to test the market by listing the property for sale for one week. The Respondent did not list the property for sale with the multiple listing service until July 15, 2004.

The Complainant also noted that she discussed the HOC contingency and rent-back issues with the Respondent and was assured that language addressing the Complainant's concerns would be included in a sales contract. The Respondent maintained that the HOC issue was only brought up by the Complainant a few days after the contract was ratified on July 21, 2004. No HOC was made a part of the sales contract. A rent-back agreement was subsequently negotiated with the buyer, allowing the sellers to rent-back the property for two days after settlement.

The alleged improper coercion by the Respondent to have the Complainant sign the June 18, 2004 Listing Agreement must be looked at in the context of the Complainant's assertion that she was improperly pressured to accept the offer presented to her and her husband by the Respondent and Ms. Baharloo on July 21, 2004 in what turned out to be a protracted negotiating session between the Respondent and the Complainant and her husband.

In her testimony, the Complainant disclosed for the first time that she was totally confused and did not read the Contract of Sale. She stated that she fully trusted the Respondent and was totally dependent upon him. The Complainant explained that, on July 21, 2004, the Respondent and Ms. Baharloo came to her home and spent at least four hours pressuring the sellers to accept Baharloo's buyer's offer. Accounts of the July 21, 2004 evening meeting reveal that the Complainant and her husband shouted and bickered extensively in Chinese. The Complainant noted that she became upset when she read the contract of sale after the fact and determined that the HOC contingency was not included.

The Complainant is a highly educated woman who does not appear to lack the capacity to enter into a mutual and voluntary agreement to list her home for sale and then to accept an offer to sell her home. The Respondent communicated with the Complainant in Chinese; language was not an issue. At some point, an adult who has the capacity and is considering entering into a contractual relationship must take responsibility for the documents she signs. Someone who does not read the documents she signs and later describes herself as totally dependent on the Respondent suffers the consequences of abdicating her right to freely and voluntarily agree to the contract's terms. It is wholly inadequate and, frankly somewhat incredible, at this stage of the process, for the Complainant, a very intelligent woman, to say that she was totally dependent on the Respondent, who subjugated her will when it came to signing the Listing Agreement and

entering into the Contract of Sale. The Complainant actively participated in the lively give-and-take negotiations with her husband and the Respondent when the latter was trying to convince her to accept Ms. Baharloo's buyer's offer. If she did not want to list the home with the Respondent or sell the home to Ms. Baharloo's buyer, she simply could have refused to do so. Instead, the Complainant, entered into the above-referenced contracts and later developed a case of "seller's remorse." Then, months later, after purchasing a home she is dissatisfied with, she decided to file a complaint against the Respondent.

It is clear, however, that the Respondent used aggressive strategies to persuade the Complainant to sign the listing agreement, and to persuade the Complainant and her husband to accept the eventual buyer's offer, after lengthy negotiations. The Complainant stated that the Respondent told her that the housing market would likely experience a sharp, rapid decline while encouraging her to list the property and then to accept the buyer's offer. The Respondent brought the buyer's agent, Ms. Baharloo, to the Complainant's home on July 14, 2004 to help convince the Complainant to accept the buyer's offer because he knew that the Complainant was going to be difficult to persuade. It is well-known in sales transactions that it is more difficult to resist intense sales pressure in one's home, unlike when a customer is visiting a seller's place of business, because one cannot just leave the premises and end the transaction. The Respondent and Ms. Baharloo spent four to five hours persuading the Respondent to accept Ms. Baharloo's buyer's offer. Regardless, I find that the Respondent could have exercised her own free will in this case, despite the aggressive measures that were brought to bear upon her.

Perhaps the Complainant is similarly unhappy with her husband for agreeing to the sale and convincing her to do so as well. The two bickered extensively at the July 21, 2004 meeting

where the contract was presented and at the September 21, 2004 settlement. Mr. Fan was present at the hearing but was not called to testify.

Based on the Respondent's explanation and his disingenuous attempt to place responsibility on the Complainant for obtaining the Complainant's husband's signature on the Listing Agreement and related documents, his instruction to the Complainant to sign the documents for her husband, his failure to follow-up to obtain the proper signature on the Listing Agreement, his failure to present a Consent for Dual Agency form to the sellers, his failure to have the sellers reduce the reduction in the listing price to writing, and his failure to update documents which had listed agents unrelated to this transaction, I find there was conduct that demonstrates bad faith, incompetency, or untrustworthiness, or that constitutes dishonest, fraudulent, or improper dealings.

On balance, I am not as concerned with the Respondent's aggressive action to obtain the listing and, later, to close the deal. The Complainant is a competent adult who had misgivings about selling her home in the first place. She then became a reluctant seller who negotiated assertively before accepting the buyer's offer, then chose not to read the Contract of Sale she signed. The Complainant read the contract after-the-fact and was then overcome with "seller's remorse." I am more concerned here with the Respondent's failure to obtain the Complainant's husband's signature on documents associated with the Listing Agreement, his failure to provide a Consent for Dual Agency form to the sellers for their signature, and his failure to reduce to writing the change in the listing price. The Respondent's oversight in not updating the names of the real estate agents in one of the documents is not a major oversight in light of the volume of paperwork involved in this transaction.

I find that the REC has demonstrated, by a preponderance of the evidence, that the Respondent violated the provisions of Sections 17-322(b), (25), (30), (32), and Section 17-530(b)(1) of the Business Occupations and Professions Article, and COMAR 09.11.02.01H. Credible evidence established that the Respondent engaged in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings, thereby sustaining a violation of Section 17-322(b)(25). He violated Section 17-322(b)(30) of the Business Occupations and Professions Article by failing to make the disclosure or to provide the consent form required by Section 17-530(b)(1), thereby also breaching Section 17-322(b)(32) for violating another section of this article, and COMAR 09.11.02.01H by failing to place all financial obligations and commitments in writing and provide a copy of the documents to parties involved. As a result, he is subject to sanction under Section 17-322(c).

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

Although the Respondent has no history of violations, his aggressive tactics in this case and his failure to obtain the Complainant's husband's signature on the Listing Agreement and related documents, his failure to reduce the price change to writing, and his failure to provide a Consent for Dual Agency form to the sellers are serious violations that had the potential to cause significant harm. Indeed, the Respondent's all-out efforts to obtain the listing and close the deal,

to the detriment of the Complainant and without regard to the legal requirements, calls into question his good faith in dealing with the public. The Respondent's actions caused harm to the public and to the dignity of the real estate profession.

In urging the imposition of a monetary penalty, the Commission noted that there was little good faith on the Respondent's part and that the violations were serious. I agree that a civil penalty is in order because the Respondent, in an all-out effort to get the listing and close the deal, violated the above-referenced real estate laws. However, given the Respondent's lack of prior violations, the Complainant's failure to read the contract and take responsibility for entering into the legal agreement, and her subsequent "seller's remorse," I find that the thirty day suspension of the Respondent's real estate license recommended by the Commission is excessive and should not be imposed. I find that any harm suffered by the Complainant was, at best, minimal and brought on mostly by her voluntarily entering into the sales contract.

Because the Complainant suffered little or no actual harm, a reprimand is a proper sanction in this case. I also find that the Commission's recommended sanction of a \$3,000 civil penalty is an appropriate sanction.

### **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 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).

B. The Respondent failed to make the disclosure or to provide the consent form required by Section 17-530(b)(1), violating Md. Code Ann., Bus. Occ. & Prof. §17-322(b)(30), thereby also breaching Section 17-322(b)(32) for violating another section of this article.

C. The Respondent failed to place all financial obligations and commitments in writing and to provide a copy of the documents to the parties involved. COMAR 09.11.02.01H.

I further conclude that the Respondent is subject to sanction for his conduct, and that a reprimand against his license and a \$3,000 civil penalty are appropriate sanctions. Md. Code Ann., Bus. Occ. & Prof. §17-322(c).

**RECOMMENDED ORDER**

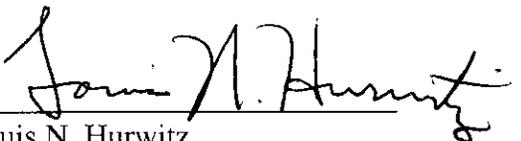
I THEREFORE RECOMMEND that the Maryland Real Estate Commission:

**ORDER**, that the Respondent receive a reprimand against his license; and further

**ORDER**, that the Respondent pay a civil penalty of \$3,000; and further

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

May 8, 2008  
Date Decision Mailed

  
\_\_\_\_\_  
Louis N. Hurwitz  
Administrative Law Judge

LNH  
#96039

MARYLAND REAL ESTATE  
COMMISSION

v.

XINSHENG ZHAO

\* BEFORE LOUIS N. HURWITZ,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH CASE NO.: DLR-REC-21-07-29830  
\* REC COMPLAINT NO.: 2005-RE-173

\* \* \* \* \*

**FILE EXHIBIT LIST**

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

- REC #1 Notice of Hearing, dated August 29, 2007, in the case of REC v. Respondent
- REC #2 Statement of Charges and Order for Hearing, dated June 25, 2007
- REC #3 Computer printouts of Respondent's licensing history for license #05-5241405, dated October 24, 2007
- REC #4 Notice of Hearing, dated August 29, 2007, in the case of REC v. Respondent Chang
- REC #5 Statement of Charges and Order for Hearing (Chang case), dated June 25, 2007
- REC #6 Computer printouts of Respondent Chang's licensing history for license #03-69566, dated October 24, 2007
- REC #7 Consent Order, REC Case No. 2002-RE-186, dated May 28, 2004
- REC #8 Consent Order, REC Case No. 95-RE-394, dated February 24, 1998
- REC #9 Report of Investigation by Jack L. Mull, Jr., dated October 2, 2006, with attachments:
  - Att. 1- Complaint and Fund Claim, received on November 1, 2004, includes letters from the Complainant dated October 28, 2004, November 12, 2004, and February 18, 2005

- Att. 2A- Letters from Respondent Chang to the REC, December 3, 2004 and December 20, 2004
- Att. 2B- Letter from Respondent to the REC, December 3, 2004  
 Letter from Respondent to the REC, December 20, 2004  
 Letter from Respondent to the REC, March 23, 2005  
 Listing Agreement, June 18, 2004  
 Sales flier for 15505 Peach Leaf Lane, North Potomac, MD 20878  
 Agent Synopsis Report, undated  
 Maryland Residential Property Disclosure Statement, June 18, 2004  
 Understanding Whom Real Estate Agents Represent form, June 18, 2004  
 Maryland Department of Assessments and Taxation Real Data Property Search  
 Evergreen New Case Confirmation, date-stamped August 2, 2004  
 Cover letter and Seller's Questionnaire from Evergreen Settlement Co., Inc., August 26, 2004  
 Housing and Urban Development Settlement Statement, September 1, 2004  
 Post-Settlement Occupancy Agreement, September 1, 2004  
 Townhouse lease, August 31, 2004
- Att. 3- DLLR Request for Investigation, November 21, 2005
- Att. 4- Listing Contract, June 18, 2004
- Att. 5- Agent Synopsis Report, undated
- Att. 6- Residential Contract of Sale, July 21, 2004  
 Addendum of Clauses, July 21, 2004  
 Unsigned Understanding Whom Real Estate Agents Represent form, July 21, 2004  
 General Addendum, July 21, 2004  
 Consent for Dual Agency, signed by the buyer, July 21, 2004  
 Montgomery County Jurisdictional Addendum to Sales Contract, July 21, 2004  
 Notice of Buyer's Right to Property Condition Disclosure Statement or Disclaimer Statement, July 21, 2004  
 Government Regulations, Easements and Assessments Disclosure and Addendum, July 21, 2004  
 Some Information Relative to the Purchase of Real Estate, July 21, 2004  
 Federal Lead Paint Disclosure  
 Federal Lead Paint Disclosure and Notice Statement  
 Copy of buyer's \$1,000 check to Evergreen
- Att. 7- Letter from Xiaobiao Fan to the REC, August 18, 2006
- Att. 8- Sales flier for 15505 Peach Leaf Lane, North Potomac, MD 20878
- Att. 9- General Addendum, July 21, 2004
- Att. 10- Summary and Price Analysis Reports

The Respondent submitted the following documents, which were admitted into evidence:

R-ZHAO #1 Undated, handwritten letter from Alta Sligh Ayers, purchaser of the property

R-ZHAO #2 Letter from DLLR to the Complainant, June 25, 2007

Respondent Chang submitted the following documents, which were admitted into evidence:

R-CH #1 Notes/agenda from 26 Evergreen office meetings from November 11, 2003 through March 20, 2007

R-CH #2 Evergreen Properties Office Policy and Procedure, undated

R-CH #3 Thomas J. Lynch Real Estate Training Agreement with Evergreen Properties

R-CH #4 Attorney-Client Fee Agreement, February 6, 2008