

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION
V.

ANGELA DILLONSMITH
RESPONDENT

AND

CLAIM OF NAHIL (NINA) DAVIS

AGAINST THE REAL ESTATE
COMMISSION GUARANTY FUND

* BEFORE LATONYA B. DARGAN,
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-24-07-44424
* REC CASE NO: 2004-RE-233

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated August 11, 2008, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of August, 2008.

ORDERED,

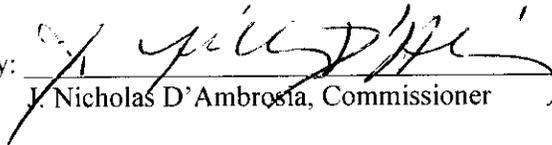
- A. That the Findings of Fact in the Recommended Decision be, and hereby are, AFFIRMED;
- B. That the Conclusions of Law in the Recommended Decision be, and hereby are, APPROVED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

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

MARYLAND STATE REAL ESTATE COMMISSION

8-20-2008
Date

By: 
J. Nicholas D'Ambrosia, Commissioner

MARYLAND REAL ESTATE	* BEFORE LATONYA B. DARGAN,
COMMISSION	* AN ADMINISTRATIVE LAW JUDGE
v.	* OF THE MARYLAND OFFICE
ANGELA DILLONSMITH	* OF ADMINISTRATIVE HEARINGS
and	* OAH Case No.: DLR-REC-24-07-44424 ¹
CLAIM OF NAHIL (NINA) DAVIS	* MREC Case No.: 04-RE-233
AGAINST THE MARYLAND REAL	*
ESTATE COMMISSION GUARANTY	*
FUND	*
* * * * *	* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On January 22, 2004, Nahil (Nina) Davis (Claimant) filed a complaint with the Maryland Real Estate Commission (REC)² and a claim against the REC Guaranty Fund (Fund) for losses allegedly caused by the acts of a licensed real estate salesperson, Angela Dillonsmith (Respondent). On October 1, 2007, the REC filed regulatory charges

¹ This case was consolidated and heard with *MREC v. Angela Dillonsmith and Claim of Lipton McKain & Diane Mair Against the REC Fund*, OAH Case No. DLR-REC-24-07-44422 (MREC Case No. 05-REC-162). A separate decision is being issued in Case No. DLR-REC-24-07-44422.

² The REC is an administrative unit within the Department of Labor, Licensing and Regulation.

against the Respondent for her dealings with the Claimant and authorized a hearing on the Claimant's claim against the Fund.

On May 12, 2008, I conducted a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2004).³ Assistant Attorney General Jessica B. Kaufman represented the REC. Assistant Attorney General Eric London represented the Fund. The Claimant and the Respondent represented themselves.

The Administrative Procedure Act, the REC's Hearing Regulations and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2004 & Supp. 2007); Code of Maryland Regulations (COMAR) 09.01.03, 09.11.03 and 28.02.01.

ISSUES

1. Did the Respondent violate Business Article § 17-322(b)(3) by directly or through another person willfully making a misrepresentation or knowingly making a false promise;
2. Did the Respondent violate Business Article § 17-322(b)(7) by retaining or attempting to retain the services of an unlicensed individual as an associate real estate broker or a real estate salesperson to evade the law prohibiting payment of a commission to an unlicensed individual;
3. Did the Respondent violate Business Article § 17-322(b)(21) by accepting a commission or other valuable consideration from a person other than a real estate broker with whom the associate broker or the salesperson is affiliated;
4. Did the Respondent violate Business Article § 17-322(b)(25) by engaging in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;
5. Did the Respondent violate Business Article § 17-322(b)(33) by violating any of the regulations adopted under the title or any provision of the REC's Code of Ethics;

³ Throughout this decision, Maryland Code Annotated, Business Occupations & Professions (2004 & Supp. 2007) is referred to as "the Business Article."

6. Did the Respondent violate Business Article § 17-534(b) by preparing a broker agreement that did not contain a termination date that was effective automatically without notice from the client;
7. Is the Respondent subject to the disciplinary sanctions of Business Article § 17-322(b);
8. Did the Claimant suffer an “actual loss” compensable under Business Article § 17-404 as a result of the Respondent’s alleged misconduct and, if so, what award should be granted from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

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

- REC #1: March 5, 2008 Notice of Hearing
- REC #2: October 1, 2007 Statement of Charges and Order for Hearing, with attached transmittal cover letter to OAH
- REC #3: March 6, 2008 Certified copy of the Respondent’s licensing history
- REC #4: Steven Long’s February 5, 2008 affidavit
- REC #5: Walter C. Nooe, Jr.’s September 21, 2005 Investigation Report⁴
- REC #6: Jack L. Mull, Jr.’s July 9, 2007 Supplemental Investigation Report
- REC #7: The Claimant’s business card for RE/MAX Professionals International Group

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

- Claimant #1: Photocopy of a note written by the Respondent
- Claimant #2: Informational materials from “The International Group”

I admitted the following exhibit into evidence on behalf of the Fund:

- Fund #1: Financial information sheets for Christopher Hallums and the

⁴ Mr. Nooe retired and was replaced as the REC investigator by Jack L. Mull. Jr.

property located at 13707 Carlene Drive, Upper Marlboro, Maryland, with attached communications from the Claimant to Jose Strickland

Testimony

The REC presented the testimony of the following witnesses:

1. The Claimant
2. Diane Mair
3. Lipton McKain
4. Jack Mull, Jr., REC Investigator

The Claimant testified on her own behalf and also presented the testimony of Kelly Todd. The Respondent testified on her own behalf and did not present any other witnesses. The Fund did not present any witnesses.

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 matter, the Respondent was a licensed real estate salesperson, Registration No. 532183. The Respondent's license was most recently renewed on January 24, 2007 and it expired on January 2, 2008. The Respondent's license was not renewed after it expired on January 2, 2008.
2. Sometime in June 2003, the Respondent worked as a real estate salesperson with RE/MAX™ Allegiance, a real estate franchise located in Bowie, Maryland. RE/MAX is an internationally-known and respected corporation that handles residential and commercial real estate sales/leasing and includes a network of franchises throughout the world.

3. Sometime in June 2003, the Claimant responded to a pair of advertisements in the classified section of a local newspaper seeking home investors. When the Claimant called the contact telephone number in the advertisements, she reached the Respondent. The Claimant told the Respondent that she was interested in being an investor.
4. Sometime in June 2003, the Claimant and her husband met with the Respondent at the Respondent's business office in Bowie.
5. The Respondent's investor program operated under the names "RE/MAX Professionals International Group" and "All Under One Roof Real Estate." Neither RE/MAX Professionals International Group nor All Under One Roof Real Estate are formally or officially associated with RE/MAX.
6. During the June 2003 meeting, the Respondent explained her investment program to the Claimant. The Respondent advised the Claimant that if she became an investor with the Respondent, she would have an opportunity to purchase multiple properties and, through land-installment contracts, lease those properties on a rent-to-own basis to buyers who could not obtain conventional mortgages because of credit problems.
7. During the June 2003 meeting, the Respondent also told the Claimant that she could become an "investor-recruiter". As an investor-recruiter, the Claimant would be responsible for reviewing the qualifications of other potential investors who responded to the newspaper advertisement. If any of the potential investors ultimately purchased investment properties through the Respondent's program, then the Respondent would pay the Claimant a 12%

share of any commission the Respondent received in connection with the sale/purchase of the property.

8. On or around June 23, 2003, the Respondent presented the Claimant with a buyer/broker exclusive retainer agreement (Agreement) and had the Claimant sign it. The Claimant believed she was signing the contract to become an investor/investor-recruiter with the Respondent's program.
9. In addition to signing the Agreement on June 23, 2003, the Claimant paid the Respondent \$1,800.00, an amount the Claimant believed was a deposit that would be returned to her once she purchased her first investment property.
10. The Agreement did not contain a termination date. Instead, the Respondent struck through the language related to an expiration date and wrote "until further notice."
11. At no time during or prior to June 2003 was the Claimant licensed as a real estate agent. The Claimant was not licensed as a real estate agent until January 2, 2004.
12. On or around July 9, 2003, the Respondent deposited the Claimant's \$1,800.00 check into a Mercantile Safe Deposit and Trust Co. checking account designated as "Angela Dillonsmith D/B/A All Under One Roof Real Estate."
13. Sometime in August 2003, the Claimant came into contact with Lipton McKain and Diane Mair, a couple interested in becoming investors in the Respondent's program. The Claimant put Mr. McKain and Ms. Mair in touch with the Respondent.

14. Mr. McKain and Ms. Mair eventually purchased the property at 8903 Briardale Lane, Laurel, Maryland (the Briardale Property) for \$299,900.00.
15. The Respondent earned a commission on the purchase of the Briardale Property that totaled \$3,009.67. The Respondent paid the Claimant approximately \$361.00, which represented 12% of the Respondent's commission on the Briardale Property purchase.
16. Sometime in October 2003, the Claimant reviewed the investor application for Christopher Hallums and contacted him about possibly purchasing the property at 13707 Carlene Drive, Upper Marlboro, Maryland (the Carlene Property). The Claimant put Mr. Hallums in touch with the Respondent.
17. On January 22, 2004, Mr. Hallums went to settlement on the Carlene Property. The closing price was \$366,000.00. The Respondent earned a commission on the purchase of the Carlene Property that totaled \$2,745.00.
18. The Respondent never paid the Claimant any commission amounts related to the purchase of the Carlene Property.

DISCUSSION

In its Statement of Charges, the REC determined that the regulatory charges and the monetary claim filed against the Fund by the Claimant arose from the same facts and circumstances and should be consolidated for hearing at the same time. Accordingly, the evidence presented in this hearing was considered in determining the merit of both the regulatory charges and the Fund claim.

The Regulatory Violations

The case against the Respondent arises out of her dealings with the Claimant in connection with the Respondent's personal investment business. Specifically, the REC argued that the Respondent engaged in misconduct when she (i) represented to the Claimant that her personal investment business was affiliated with RE/MAX™ even though it was not; (ii) retained the services of the Claimant as a real estate salesperson even though the Claimant was not licensed as a real estate salesperson; (iii) misrepresented the nature of the buyer/broker agreement she had the Claimant sign; and, (iv) accepted a commission from the Claimant, in the form of the \$1,800.00 payment, even though the Claimant is not a real estate broker.

Under the REC's theory of the case, the Respondent's conduct constitutes violations of Business Article § 17-322(b) (Supp. 2007), which provides in pertinent part as follows:

**§ 17-322. Denials, reprimands, suspensions, revocations and penalties
– Grounds.**

(b) Subject to the hearing provisions of § 17-243 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: ...

(3) directly or through another person willfully makes a misrepresentation or knowingly makes a false promise; ...

(7) retains or attempts to retain the services of any unlicensed individual as an associate real estate broker or a real estate salesperson to evade the law prohibiting payment of a commission to an unlicensed individual;

(21) for real estate brokerage services provided by an associate real estate broker or a real estate salesperson, accepts a commission or other valuable consideration from any person other than a real estate broker with whom the associate broker or the salesperson is affiliated; ...

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

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

The REC further argued that the Respondent's conduct constitutes a violation of: Business Article § 17-534(b) (failing to include in the brokerage agreement a definite termination date that is effective automatically without notice from the client); and, COMAR 09.11.02.01C (failing to protect the interests of the public against fraud, misrepresentation or unethical practices in the real estate field). For the reasons articulated below, I find that with the exception of Business Article § 17-322(b)(7), the Respondent violated the above statutory and regulatory provisions.

Violations under Business Article § 17-322(b)(3)

The evidence supports a finding that the Respondent made misrepresentations and false promises to the Claimant in a number of different matters. First, the Respondent represented to the Claimant that the Respondent's investment program was affiliated with RE/MAX™ even though it was not. One of the two newspaper advertisements placed by the Respondent clearly sought to affiliate the Respondent's personal investment program/business with RE/MAX™; the advertisement included the language "[I]et RE/MAX work for you." (REC Ex. #5, Attachment #2, p. 10). Additionally, when the Respondent provided the Claimant with informational material about "The International Group" (one of the names under which the Respondent conducted her personal investment program), the informational material contained the address for the RE/MAX Professionals office in Bowie, Maryland; on its face, the informational document gives the appearance that The International Group is a part of, or somehow affiliated with,

RE/MAX. (Claimant Ex. #2, p. 1). The initial meeting between the Respondent and the Claimant was held in the Respondent's office at the RE/MAX franchise site. When the Claimant was issued business cards by the Respondent, the cards bore the official RE/MAX logo (an air balloon) and the RE/MAX name. Furthermore, in both the Claimant's testimony before me as well as in her interview with the REC investigator, she indicated that a primary reason she felt it was safe to do business with the Respondent was because the Respondent led her to believe that the investment program was affiliated with RE/MAX. (T. Claimant; *see also* REC #5, p. 5).

The REC presented evidence demonstrating that the Respondent's personal business was *not* affiliated with RE/MAX in any way. By letter dated February 11, 2004, Robert Blumenkrantz, the Broker of Record for the RE/MAX franchise that employed the Respondent as an agent, advised the REC investigator that the Respondent's personal enterprise was not sanctioned by the company. (REC #5, Attachment #3, p. 1). Mr. Blumenkrantz further noted that the RE/MAX Allegiance franchise did not receive any money from the Respondent in connection with the agreement between the Respondent and the Claimant, and indicated that the name "RE/MAX Professionals" was not a real franchise name. Mr. Blumenkrantz asserted that the RE/MAX Allegiance franchise (i) did not receive monies from the Respondent's transactions with the Claimant and (ii) had no actual records of the Respondent's transactions with the Claimant; both facts were corroborated by Shelly R. West, who served as the office manager. (REC Ex. #5, Attachment #3, p. 2).

For her part, the Respondent conceded that she placed the newspaper advertisements and that she used the RE/MAX™ name in one of them. (*See also*, REC

Ex. #6, p. 3). She testified, however, that she believed it was appropriate to do so because she considered herself to be selling her professional services to the public. According to the Respondent in both her testimony before me and in her interview with the REC investigator, she thought it was “okay” to use the RE/MAX™ name. I do not find the Respondent to be credible in this regard because she essentially concealed her activities from her supervisors at RE/MAX. If the Respondent’s use of the RE/MAX™ name in connection with her personal business enterprise was appropriate, then I find it more likely than not that the Respondent would have made her supervisors aware of what she was doing in her dealings with the Claimant. The fact that the Respondent did not make anyone at the RE/MAX franchise aware of her dealings with the Claimant suggests that those dealings were actually *independent from* the Respondent’s official capacity as a RE/MAX agent. I find it more likely than not that the Respondent used the RE/MAX name in connection with her personal business enterprise because of the cachet that name carries in the real estate industry. Indeed, the Claimant testified that she believed the Respondent to be reputable because all of the Respondent’s business appeared to be affiliated with RE/MAX. The Claimant’s sentiments in this regard were echoed in the testimony of Lipton McKain and Diane Mair.

The second misrepresentation engaged in by the Respondent centers around the June 23, 2003 Agreement. The Claimant testified that the Respondent told her that the \$1,800.00 payment was a fee for joining the Respondent’s investment program. According to the Claimant, it was her understanding that the \$1,800.00 payment would be returned to her once she purchased her first investment property. Additionally, the Claimant testified that based on the Respondent’s statements to her, she believed the

document that she signed on June 23, 2003 was an investor contract. According to the Claimant, she genuinely did not understand that she was signing an exclusive buyer-broker retainer agreement. For her part, the Respondent maintained that the Claimant knew she was signing a buyer-broker agreement and that the \$1,800.00 fee was non-refundable. (*See also*, REC Ex. #6, p. 2).

I am mindful of the fact that on its face the June 23, 2003 Agreement states that it is an exclusive retainer agreement for a broker's representation of a buyer. (REC Ex. #5, Attachment #2, p. 4). I also note for the record that the Claimant presented as a reasonably intelligent individual who was clearly also literate; on the surface, it would seem that the Claimant should have been able to review the document and ascertain that it was really a buyer-broker agreement and not an investor contract. In her testimony before me, the Claimant presented as sincere when she stated that she thought she was signing an investor contract based on the Respondent's explanation of the investment program. Although the Claimant was clearly not happy about the Respondent's overall conduct during their dealings with each other, she did not seem to be angry or vindictive. She was quite matter-of-fact in her assertion that all she really wanted was the return of her \$1,800.00 as well as the money owed to her in connection with the Carlene Property purchase/sale. My overall impression of the Claimant was that she was telling the truth about what the Respondent said to her during their initial meeting and how the Respondent explained the June 23, 2003 Agreement to her.

It must also be noted that the Claimant is not the only person who had the impression that the document entitled "Exclusive Retainer Agreement" was an investor contract (rather than a buyer-broker agreement) or that the \$1,800.00 was refundable.

Mr. McKain and Ms. Mair both testified that they thought the document was an investor contract and that they thought they would get the \$1,800.00 fee back once they purchased their first investment property. Given that three reasonably intelligent, literate adults all had the same impression that the document was an investor contract and that the \$1,800.00 was refundable, I find it more likely than not that they all came to these conclusions because *that is what the Respondent told them*. I find that the Respondent misrepresented to the Claimant the nature of both the June 23, 2003 Agreement and the \$1,800.00 fee.

Violations under Business Article § 17-322(b)(21)

The REC has also proven its case that the Respondent accepted a commission or other valuable consideration from a person other than a real estate broker, in violation of Business Article § 17-322(b)(21). The evidence clearly demonstrates that the Respondent accepted \$1,800.00 from the Claimant as the fee for “enrolling” the Claimant in the investment program. (T. Claimant; REC Ex. #5, Attachment #2, pp. 7-8). The evidence also demonstrates that the Respondent deposited the money into her personal account rather than into her broker’s account. (REC Ex. #5, Attachment #5, p. 3).

Violations under Business Article § 17-322(b)(25)

I find that the Respondent’s entire course of conduct in this matter constitutes a violation of Business Article § 17-322(b)(25). The Respondent acted in an untrustworthy manner toward the Claimant when she misrepresented that her personal business enterprise was affiliated with RE/MAX and when she misrepresented the nature of the June 23, 2003 Agreement. Additionally, the evidence demonstrates that the Respondent

failed to make promised payment of monies owed to the Claimant in connection with the purchase/sale of the Carlene Property.

The Claimant testified that she was responsible for putting Christopher Hallums, who ultimately purchased the Carlene Property, in touch with the Respondent. (*See also*, Fund Ex. #1). The Claimant also testified that under the terms of her agreement with the Respondent, she was entitled to 12% of any commission earned by the Respondent on any transaction for which the Claimant helped secure the investor.⁵ (*See also*, REC Ex. #5, Attachment #2, p. 9). Additionally, the Claimant testified that she tried to contact the Respondent numerous times to discuss payment and the Respondent did not return her calls; the Claimant's testimony that she made numerous attempts to contact the Respondent was corroborated by Kelly Todd, who worked as a receptionist for the Respondent during the relevant period. On cross-examination, the Respondent conceded that the Claimant secured Mr. Hallums as a purchaser/investor for the Carlene Property and, as a result, the Claimant was likely entitled to a commission. I am frankly stymied that the Respondent continually failed to pay the Claimant a commission on the Carlene Property transaction even though the Respondent was aware that the Claimant had secured Mr. Hallums as an investor; such behavior is the very essence of untrustworthiness.

Violations under Business Article § 17-322(b)(33) and the REC Code of Ethics

The REC has further proven that the Respondent acted in violation of Business Article § 17-322(b)(33) and COMAR 09.11.02.01C. The REC Code of Ethics is found at COMAR 09.11.02. Regulation 09.11.02.01 states, in pertinent part, the following:

⁵ By the time Mr. Hallums went to settlement on the Carlene Property on January 22, 2004, the Claimant was a licensed real estate salesperson.

01. Relations to the Public.

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.

By making significant misrepresentations to the Claimant – a member of the public – and failing to honor agreements she entered into with the Claimant, the Respondent failed in her professional and ethical obligations under COMAR 09.11.02.01C. Rather than eliminating practices in the community that could be damaging to the integrity of the real estate profession, the Respondent perpetuated such practices.

Violations under Business Article § 17-534(b)

Finally, the REC has demonstrated that the Respondent violated the provisions of Business Article § 17-534(b) (2004), which pertains to brokerage agreement requirements and provides as follows:

§ 17-534. Brokerage Relationship

(b) The brokerage agreement shall:

(1) have a definite termination date that is effective automatically without notice from the client[.]

As discussed above, I found that the Respondent misrepresented the nature of the June 23, 2003 Agreement to the Claimant; the Respondent lead the Claimant to believe the document was an investor contract even though it was really a buyer-broker agreement. Even though the Respondent misrepresented the nature of the document, her misrepresentation did not change what the document *actually* was – a buyer-broker agreement. As the document was, in form, a buyer-broker agreement, it must conform to

the requirements for such agreements as those requirements are outlined in Business Article § 17-534(b). The evidence demonstrates that the Respondent struck the language dealing with automatic termination and in its place wrote “until further notice.” (REC Ex. #5, Attachment #2, p. 4). The Respondent’s action violates the provisions of Business Article § 17-534(b).

Alleged violations under Business Article § 17-322(b)(7)

The REC has not proven its case with regard to the Respondent’s alleged violation of Business Article § 17-322(b)(7). The evidence demonstrates that while the Claimant worked with the Respondent’s investment program, she did so in the capacity of “investor recruiter,” a title reflected on the Claimant’s business card. (REC Ex. #7). The Claimant’s duties included reviewing the applications of potential investors and contacting those potential investors. (REC Ex. #5, p. 2). Both the Claimant and the Respondent testified that the Claimant did not show any properties to investors nor did she perform any of the other duties of a real estate agent/salesperson or real estate broker.

Regulatory Sanctions/Penalties

In determining the appropriate penalties to be assessed in this case, I must consider the criteria set forth in Section 17-322(c) of the Business Article, which provides as follows:

§ 17-322. Denials, reprimands, suspensions, revocations, and penalties - Grounds. . . .

(c) *Penalty.*

- (1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license, the Commission may impose a penalty not exceeding \$5,000 for each violation.

- (2) To determine the amount of the penalty imposed under this subsection, 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) (Supp. 2007).

The Respondent does not have a prior disciplinary history. The REC, however, argued that the seriousness of the violations and the harm caused to both the Claimant and to the reputation of the real estate profession because of the Respondent's conduct justifies the revocation of the last license held by the Respondent, as well as the imposition of a \$5,000.00 civil penalty. The REC further argued that the Respondent has demonstrated very little good faith throughout her dealings with the Claimant. I have considered the four factors used in assessing the imposition of civil penalties. I find that the number and seriousness of the violations, the harm caused to the Claimant and to the reputation of the real estate profession by the Respondent's misconduct, and the Respondent's lack of good faith in her dealings with the Claimant warrant the revocation of the last license held by the Respondent and the imposition of a \$5,000.00 penalty.

Guaranty Fund Claim

Claims for reimbursement from the Fund are governed by Business Article § 17-404 which states, in pertinent part, as follows:

§ 17-404. Claims against the Guaranty Fund.

(a) *In general.* -- (1) Subject to the provisions of this subtitle, a person may recover compensation from the Guaranty Fund for an actual loss.

(2) A claim shall:

(i) be based on an act or omission that occurs in the provision of real estate brokerage services by: . . .

3. a licensed real estate salesperson; . . .

(ii) involve a transaction that relates to real estate that is located in the State; and

(iii) be based on an act or omission: . . .

2. that constitutes fraud or misrepresentation.

Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2004).

With respect to claims against the Fund, COMAR 09.11.03.04 further provides as follows.

.04 Claims Against the Guaranty Fund

A. A guaranty fund claim shall be based on the alleged misconduct of a licensee.

B. For the purpose of a guaranty fund claim, misconduct:

(1) Is an action arising out of a real estate transaction involving real estate located in this State which causes actual loss by reason of theft or embezzlement of money or property, or money or property unlawfully obtained from a person by false pretense, artifice, trickery, or forgery, or by reason of fraud, misrepresentation, or deceit;

(2) Is performed by an unlicensed employee of a real estate broker or by a duly licensed real estate broker, associate broker, or salesperson; and

(3) Involves conduct for which a license is required by Business Occupations and Professions Article, Title 17, Annotated Code of Maryland.

COMAR 09.11.01.18 provides further:

The amount of compensation recoverable by a claimant from the Real Estate Guaranty Fund, pursuant to Business Occupations and Professions

Article, Title 17, Subtitle 4, Real Estate Guaranty Fund, Annotated Code of Maryland, shall be restricted to the actual monetary loss incurred by the claimant, but may not include monetary losses other than the monetary loss from the originating transaction. Actual monetary losses may not include commissions owed to a licensee of this Commission acting in his capacity as either a principal or agent in a real estate transaction, or any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.

The Claimant bears the burden of proof in this proceeding against the Fund.

Business Article § 17-407(e) (2004). In this case, the Claimant produced the cancelled check showing that she paid the Respondent \$1,800.00. (REC Ex. #5, Attachment #2, pp. 7-8). The Claimant testified that she felt as though she “paid \$1,800.00 for nothing,” and indeed, the evidence demonstrates that the Respondent did very little for the Claimant in exchange for that money. Quite frankly, from the evidence it appears as though the Claimant paid the Respondent \$1,800.00 to work with the Respondent as an “investor-recruiter.” As discussed above, the Respondent was prohibited from accepting that payment under Business Article § 17-322(b)(21). As also discussed above, the Respondent obtained this payment through misrepresentation, in violation of Business Article § 17-322(b)(3).

The evidence further demonstrates that the Claimant is entitled to payment for her role in the purchase of the Carlene Property. The Claimant secured Mr. Hallums as a possible investor/purchaser and she put him in touch with the Respondent. Under the terms of the Claimant’s agreement with the Respondent, the Claimant was to receive 12% of any commission the Respondent received on a sale/purchase involving an investor the Claimant secured. (REC Ex. #5, Attachment #2, pp. 9, 11). The Respondent conceded that the Claimant is entitled to payment in connection with the Carlene Property. The Claimant’s payment for the Carlene property is calculated as follows:

Closing price:	\$366,000.00
Respondent's commission:	\$2,745.00
<u>Claimant's % of Respondent's share:</u>	<u>\$329.40</u>
Total payment to Claimant:	\$329.40

The record supports a finding that the Claimant's losses were incurred as a result of the Respondent's conduct, for the reasons articulated above. Accordingly, I find that the Claimant is entitled to reimbursement from the Fund in the amount of \$2,129.40.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated Business Article § 17-322(b)(3) by directly or through another person willfully making a misrepresentation or knowingly making a false promise.

I further conclude as a matter of law that the Respondent violated Business Article § 17-322(b)(21) by accepting a commission or other valuable consideration from a person other than a real estate broker with whom the associate broker or the salesperson is affiliated.

I further conclude as a matter of law that the Respondent violated Business Article § 17-322(b)(25) by engaging in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings.

I further conclude as a matter of law that the Respondent violated Business Article § 17-322(b)(33) by violating the REC's Code of Ethics, specifically COMAR 09.11.02.01C.

I further conclude as a matter of law that the Respondent violated Business Article § 17-534(b) when she prepared a broker agreement that did not have a termination date that was effective automatically without notice from the client.

I further conclude as a matter of law that the Respondent is subject to the disciplinary sanctions of Business Article § 17-322(b) and (c).

I further conclude as a matter of law that the Claimant suffered an “actual loss” compensable under Business Article § 17-404 as a result of the Respondent’s misconduct and that the Claimant is entitled to an award for the REC Guaranty Fund in the amount of \$2,129.40.

Finally, I conclude as a matter of law that the Respondent did not violate Business Article § 17-322(b)(7) by retaining or attempting to retain the services of an unlicensed individual as an associate real estate broker or a real estate salesperson to evade the law prohibiting payment of a commission to an unlicensed individual. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404 (2004), 17-322 (Supp. 2007), 17-534(b) (2004); COMAR 09.11.02.01C., 09.11.03.04, 09.11.01.18.

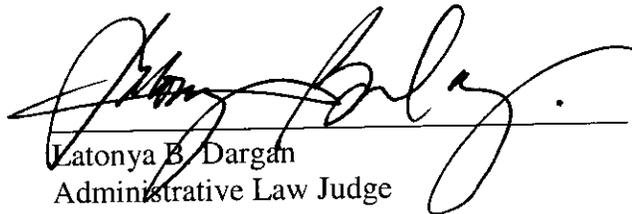
RECOMMENDED ORDER

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

1. The charges of the Commission be **UPHELD**;
2. A civil penalty in the amount of \$5,000.00 be assessed against the Respondent;
3. The last license held by the Respondent be **REVOKED**;
4. The Claimant be reimbursed \$2,192.00 from the Fund; and,

5. The Commission **ORDER** that REC's records and publications reflect its final decision.

August 11, 2008
Date Decision Mailed



Latonya B. Dargan
Administrative Law Judge

#98984

MARYLAND REAL ESTATE	* BEFORE LATONYA B. DARGAN,
COMMISSION	* AN ADMINISTRATIVE LAW JUDGE
v.	* OF THE MARYLAND OFFICE
ANGELA DILLONSMITH	* OF ADMINISTRATIVE HEARINGS
and	* OAH Case No.: DLR-REC-24-07-44424
CLAIM OF NAHIL (NINA) DAVIS	* MREC Case No.: 04-RE-233
AGAINST THE MARYLAND REAL	*
ESTATE COMMISSION GUARANTY	*
FUND	*
* * * * * * * * * * * *	

FILE EXHIBIT LIST

REC Exhibits:

- REC #1: March 5, 2008 Notice of Hearing
- REC #2: October 1, 2007 Statement of Charges and Order for Hearing, with
attached transmittal cover letter to OAH
- REC #3: March 6, 2008 Certified copy of the Respondent's licensing history
- REC #4: Steven Long's February 5, 2008 affidavit
- REC #5: Walter C. Nooe, Jr.'s September 21, 2005 Investigation Report⁶
- REC #6: Jack L. Mull, Jr.'s July 9, 2007 Supplemental Investigation Report
- REC #7: The Claimant's business card for RE/MAX Professionals
International Group

Claimant Exhibits:

- Claimant #1: Photocopy of a note written by the Respondent

⁶ Mr. Nooe retired and was replaced as the REC investigator by Jack L. Mull, Jr.

Claimant #2: Informational materials from “The International Group”

Fund Exhibits:

Fund #1: Financial information sheets for Christopher Hallums and the property located at 13707 Carlene Drive, Upper Marlboro, Maryland, with attached communications from the Claimant to Jose Strickland