

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE  
COMMISSION

V.

EVERARD H. DOUGLAS

\* BEFORE NICOLE PASTORE KLEIN,  
\* ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH No: DLR-REC-21-08-32535  
\* REC CASE NO: 2007-RE-265

\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated May 26, 2009, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 17th day of June, 2009,

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;

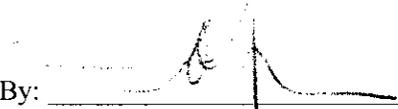
C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

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

MARYLAND STATE REAL ESTATE COMMISSION

6/17/09  
Date

By:   
Surina A. Jordan, Commissioner

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\* OAH CASE NO.: DLR-REC-21-08-32535  
\* REC COMPLAINT NO.: 2007-RE-0265

\* \* \* \* \*

**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 October 17, 2006, Margaret S. Robinson (Complainant) filed a complaint with the Maryland Real Estate Commission (REC), an administrative unit of the Department of Labor, Licensing and Regulation (DLLR), against Everard H. Douglas (Respondent), a real estate salesperson. On July 23, 2008, the REC issued a Statement of Charges and Order for Hearing against the Respondent.

On February 26, 2009, I held a hearing at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland 21031. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2004). Kris King, Assistant Attorney General, represented the REC. The Respondent represented himself.

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. 2008); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

### **ISSUES**

1. Did the Respondent fail to submit trust money, *i.e.* an earnest money deposit, obtained while providing real estate brokerage services to the real estate broker on whose behalf he provided services, in violation of Section 17-502(a) of the Business Occupations and Professions Article?
2. If the Respondent committed the violation set forth above, what sanction is appropriate under Section 17-613(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 | October 8, 2008 Notice of Hearing  |
| REC #2 | July 23, 2008 Statement of Charges   |
| REC #3 | Computer printouts of Respondent's REC licensing history for license #526254, as of February 25, 2009, showing: license expired on August 23, 2008; Respondent's placement on inactive status on October 15, 2007; Respondent's termination with broker on October 4, 2007   |
| REC #4 | March 3, 2008 Report of Investigation by Jack L. Mull, Jr., with attachments: <ul style="list-style-type: none"><li>- October 17, 2006 REC Complaint</li><li>- November 20, 2006 Response Letter from Broker, Robert Blumenkrantz, to the REC</li><li>- November 18, 2006 Response Letter from Respondent to the REC</li><li>- October 23, 2007 REC Request for Investigation</li><li>- March 2, 2006 Residential Contract of Sale (contract) between Complainant and Gwendolyn F. Wilson (Buyer)</li><li>- March 10, 2006 Letter from Complainant to Buyer</li><li>- October 30, 2006 Response Letter from Danny DeAngelo, Complainant's Listing Agent/Associate Broker, to the REC</li></ul> |
| REC #5 | April 19, 2006 Letter from Complainant to Buyer  |

REC #6 April 19, 2006 Release Agreement between Complainant and Buyer<sup>1</sup>

The Respondent did not submit any documents into evidence.

Testimony

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

The Respondent testified on his behalf and did not present any other witness testimony.

**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 REC under license #526254, and was working through the brokerage of Re/Max Allegiance (Broker). His license expired on August 23, 2008. On October 15, 2007, the Respondent's license was placed on inactive status and, just prior to that, on October 4, 2007, the Respondent's affiliation with the Broker was terminated.
2. The Complainant is the owner of the property known as 305 Wren Court, Upper Marlboro, Maryland 20774 (the property).
3. Sometime in mid to late February 2006, the Complainant engaged Danny DeAngelo, Associate Broker with Weichert Realtors, Inc., to sell the property.
4. On February 28, 2006, the Buyer, through her agent, the Respondent, presented the Complainant with a contract to purchase the property. The contract, at

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<sup>1</sup> Although this particular exhibit, REC #6, did not contain a signature from the Buyer, the Complainant testified that she did, in fact, receive a signed Release Agreement from the Buyer. The Release Agreement, however, is not at issue in this case.

paragraph 18, provided for a \$3,000.00 deposit to be made by the Buyer “at the time of th[e] offer” to be held in escrow by the Broker (earnest money).

5. At some point on or between February 28, 2006 and March 2, 2006, the Buyer provided the Respondent with the earnest money deposit check in the amount of \$3,000.00 made payable to the Complainant.
6. On March 2, 2006, the Complainant accepted the Buyer’s contract for the property.<sup>2</sup> The Respondent had informed Mr. DeAngelo that he had the earnest money deposit in his possession.
7. The Respondent did not deposit the \$3,000.00 earnest money deposit into the Broker’s escrow account because he misplaced it.
8. Sometime after March 2, 2006 but prior to March 23, 2006, the Respondent informed his client, the Buyer, that he had lost her earnest money deposit. On or about March 23, 2006, the Buyer drafted a new check for the earnest money deposit.
9. The Respondent never informed the Complainant, or her agent Mr. DeAngelo, that he had misplaced the original earnest money deposit and/or never deposited it.
10. On April 7, 2006, the Respondent turned over the contract and the March 23, 2006 earnest money deposit check to the Broker.
11. On or about April 13, 2006, when Mr. DeAngelo was attempting to arrange for a mutually agreeable settlement date with the Respondent but was unable to reach

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<sup>2</sup> At the time the Complainant accepted the Buyer’s contract, she had received two other offers for the property. The Complainant declined those other offers in order to accept the contract presented by the Buyer.

him, the Broker informed Mr. DeAngelo that the Buyer had stopped payment on the earnest money deposit check.

### DISCUSSION

The REC charged the Respondent with violating Section 17-502(a) of the Business Occupations and Professions Article, which states:

§17-502 - Handling of trust money.

- (a) *Submission to brokers by associate brokers and salespersons.* – An associate real estate broker or a real estate salesperson who obtains trust money while providing real estate brokerage services promptly shall submit the trust money to the real estate broker on whose behalf the associate real estate broker or the real estate salesperson provided the real estate brokerage services.

Md. Code Ann., Bus. Occ. & Prof. § 17-502(a) (2004).

The REC contended that the Respondent failed to deposit the earnest money into the Broker account, which resulted in the Buyer backing out of the contract. That failure was significant because since the Complainant's contract fell through, the seller, *i.e.*, the Complainant, is supposed to be able to recover money, *i.e.*, the earnest money deposit, for the time the property is off the market. In this case, the REC argued that the Complainant suffered great harm, as not only was the property off the market for over a month and half during a time when the real estate market was at its prime, but currently, over two years later, the property still is not sold.

As the Respondent's real estate salesperson license expired on August 23, 2008 and, as it had been inactive prior thereto since October 15, 2007, the REC sought only a civil penalty of \$2,500.00 for the alleged violation.

The Respondent did not technically contest his failure to deposit the earnest money. He admitted that the Buyer gave him the earnest money deposit check at least by the ratification date

of the contract, March 2, 2006, and that he informed the Complainant's agent of the same. He further admitted that he never deposited the earnest money into the Broker's account because he had misplaced it. What concerns me is that when the Respondent knew he had misplaced it and, therefore, not deposited the check into the Broker's account, he conceded that he failed to notify the Complainant and/or her agent of the same. The Respondent offered explanations for his actions,<sup>3</sup> but none permit him to evade the legal requirements mandated to "promptly" submit the earnest money to the Broker.

The evidence presented supported the charge brought by the REC. The testimony of the Complainant (seller) and Mr. Mull (the REC investigator)<sup>4</sup> clearly established that the Respondent failed to deposit the Buyer's earnest money check into escrow.

Mr. Mull conducted a very thorough investigation of the complaint. He reviewed the complaint letter and related documents regarding the transaction, including the contract and correspondence sent from the Complainant to the Buyer approximately two weeks after the contract.<sup>5</sup> He also reviewed the written response letters submitted by the Respondent, Mr. Blumenkrantz, the Broker with whom the Respondent was affiliated, and the Complainant's agent. Mr. Mull then interviewed the Complainant, the Broker's office manager, Carolyn

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<sup>3</sup> The Respondent, at one point during his testimony, argued that he believed the Complainant was going to back out of the contract due to a problem she was having with the construction of her new home and, therefore, he held on to the earnest money deposit check in an effort to protect his client, the Buyer. Since the Respondent had already testified, as well as stated in his response letter to the REC and to Mr. Mull, that he had misplaced the earnest money deposit check, I did not find this latter alleged breach of contract argument persuasive. Furthermore, the Respondent testified that even after he had notice that the Complainant was having problems with the construction of her new home, he still requested from his client that she give him a new earnest money deposit check as he had lost the original one. Thus, he contradicted his earlier testimony. Now, while I agree that the Complainant's March 10, 2006 letter to the Buyer does present some concern over the sale of the property, a possible breach of contract does not in any way affect the Respondent's legal obligation to have turned over the earnest money deposit to the Broker "promptly" after March 2, 2006, the date of the contract.

<sup>4</sup> Mr. Mull has been an REC investigator for approximately four and a half years. Prior to that, he was employed as a Prince George's County Police Officer for twenty-three years.

<sup>5</sup> See fn.4.

Sanguillen,<sup>6</sup> the Complainant's agent, and the Respondent. He 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 February 26, 2008 telephone interview of the Respondent. He related that the Respondent admitted misplacing the Buyer's first earnest money deposit check and, as a result, asked the Buyer to submit a new one. The Respondent further admitted that he did not submit the second earnest money deposit check until April 7, 2006.

I find that the REC has demonstrated, by a preponderance of the evidence, that the Respondent violated Section 17-502(a) of the Business Occupations and Professions Article. As thoroughly outlined above, overwhelming credible evidence established that the Respondent failed to promptly deposit the earnest money deposit into the Broker's escrow account. Indeed, the Respondent conceded that he did not submit the earnest money to the Broker until April 7, 2006, approximately five weeks after the March 2, 2006 contract was signed. No matter what other alleged intervening contractual circumstances may have been present, the statute does not provide for any allowances which enable a real estate salesperson to hold onto an earnest money deposit. Thus, as a result of violating Section 17-502(a), the Respondent is subject to sanction under Section 17-613(c).

Md. Code Ann., Bus. Occ. & Prof. § 17-613(c) (Supp. 2008) provides for the imposition of monetary penalties and states, in pertinent part, as follows:

- (c) *Penalty; factors.* – (1) The Commission may impose on a person who violates any provision of this title a penalty not exceeding:
- (i) \$5,000 for a first violation;
  - (ii) \$15,000 for a second violation; and
  - (iii) \$25,000 for a third or subsequent violation.

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<sup>6</sup> Ms. Sanguillen stated that the Broker did not receive the earnest money deposit check, or the contract on the property, until April 7, 2006. She further stated that the earnest money deposit check was dated March 23, 2008.

- (2) In setting the amount of the penalty, the Board shall consider:
- (i) the seriousness of the violation;
  - (ii) the harm caused by the violation;
  - (iii) the good faith of the violator;
  - (iv) any history of previous violations by the violator; and
  - (v) any other relevant factors.

In urging the imposition of a \$2,500.00 monetary penalty, the REC noted that in addition to the previously-discussed violation, the seriousness, and the harm caused by the violation, the Respondent has not acted in good faith throughout this case. I am inclined to agree. Although the Respondent has no history of violations, his actions in this case were serious and caused significant harm. Indeed, perhaps if the earnest money had been deposited timely, it would have been more difficult for the Buyer to breach the contract and the Buyer would have been unable to stop payment on the earnest money deposit check. Trust money violations by their nature are always serious. Compounding the serious nature of the violation is the lack of good faith exhibited by the Respondent in that he never told the Complainant, her agent or the Broker that he failed to deposit the original check. Consequently, I find that the REC's recommended sanction of a \$2,500.00 civil penalty is more than appropriate.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the REC demonstrated by a preponderance of the evidence that the Respondent failed to submit trust money obtained while providing real estate brokerage services to the real estate broker on whose behalf he provided services. Md. Code Ann., Bus. Occ. & Prof. §17-502(a) (2004).

I further conclude that the Respondent is subject to sanction for his conduct, and that a \$2,500.00 civil penalty is an appropriate sanction. Md. Code Ann., Bus. Occ. & Prof. §17-613(c) (Supp. 2008).

**RECOMMENDED ORDER**

I THEREFORE RECOMMEND that the REC:

**ORDER** that the Respondent pay a civil penalty of \$2,500.00; and further

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

May 26, 2009

Date Decision Mailed



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Nicole Pastore Klein  
Administrative Law Judge

NPK  
#105406

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