

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

ANTHONY F. TURNER *
RESPONDENT *

CASE NO. 2005-RE-279

OAH NO. DLR-REC-21-07-39922

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated September 9, 2008 having been received, read and considered, it is, by the Maryland Real Estate Commission, this 13rd day of October 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, **AFFIRMED;**

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

ORDERED that the Respondent Anthony F. Turner violated Md. Bus. Occ. and Prof. Art. § 17-322(b)(25) and (33), § 17-301(a)(2), and COMAR 09.11.02.01H;

ORDERED that all real estate licenses held by the Respondent

MARYLAND REAL ESTATE
COMMISSION

v.

ANTHONY F. TURNER

* BEFORE STUART G. BRESLOW,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE NO.: DLR-REC-21-07-39922
* REC COMPLAINT NO.: 2005-RE-279

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
ISSUES
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CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On March 2, 2005, Cora LeMaitre (Complainant) filed a complaint with the Maryland Real Estate Commission (Commission or REC) against Anthony Turner (Respondent), a real estate salesperson, regarding the sale of residential property at 1843 Tufa Terrace, Silver Spring, Maryland 20904. After an investigation, the Commission issued a Statement of Charges against the Respondent and Order for Hearing, dated October 1, 2007.

On June 16, 2008, I held a hearing at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2004). Jessica Berman Kaufman, Assistant Attorney General, represented the Commission. The Respondent appeared and represented himself.

The Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the Office of Administrative

Hearings govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2007); COMAR 09.01.03, COMAR 09.11.03.02; and COMAR 28.02.01.

ISSUES

The issues are:

1. Whether the Respondent provided real estate sales services in the sale of real property in violation of section 17-301(a)(2) of the Business Occupations and Professions Article, Annotated Code of Maryland, without a license.
2. Whether the Respondent, in providing real estate sales services in a sale of real property, is subject to sanction under section 17-322(b)(25) of the Business Occupations and Professions Article, Annotated Code of Maryland, by engaging in conduct that demonstrates bad faith, incompetency, or untrustworthiness that constitutes dishonest, fraudulent, or improper dealings.
3. Whether the Respondent is in violation of COMAR 09.11.02.01H for failure to put all real estate commitments in writing.

SUMMARY OF THE EVIDENCE

Exhibits

The Commission submitted the following documents, all of which were admitted into evidence:

- REC #1 - Notice of Hearing, dated March 24, 2008
- REC #2 - Transmittal with Statement of Charges and Order for Hearing, dated October 1, 2007
- REC #3 - REC Licensing Information on the Respondent, dated June 9, 2008
- REC #4 - Report of Investigation, with attachments:

1. Complaint and Guaranty Fund Claim

- 1B. Letter from Rector Smith, President of Dreamhome Improvements, to Complainant, dated October 4, 2004
- 2A. Letter from Charles G. Swann, Managing Broker, Realty Executives, to the REC, dated March 30, 2005
- 2B. Letter from Respondent to the REC, dated March 25, 2005
- 4.¹ Listing Agreement, dated October 18, 2003.
5. Contract for Work between Complainant and Dreamhome Improvements, dated October 23, 2003.
6. Regional Sales Contract between Complainant and Shagge Jeylu, dated October 27, 2003
7. Inspection Report from Schwindt & Company, dated November 6, 2003
8. Contract Change Order Summary, Dreamhome Improvements, dated December 10, 2003
9. FHA lender inspection report, undated
10. Memo from Eva von Bronk, GRI, Eva Realty, LLC to Respondent, dated December 12, 2003
11. Fax from Tom Gravitt, President, Snowdens Mill Townhouse Assn., to Respondent, dated October 21, 2003
12. Deposit slip for \$160, dated November 26, 2003
- 14.² Email from Eva von Bronk to the attorney for the Buyer, dated August 13, 2004
15. Phone call log, Eva Realty, LLC dated February 18, 2004
16. Letter from Veto Kallarakal, Senior Loan Officer FNMC, to Eva von Bronk, dated October 28, 2003
17. Letter from Eva von Bronk to Respondent, dated January 12, 2003
18. Email from Eva von Bronk to Respondent, dated January 14, 2004
19. Email from Respondent to Eva von Bronk, dated January 15, 2004
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21. Fax from Diego A. Vaca, Vice-President, Amerititle, Inc. to whom it may concern, dated January 28, 2005
22. Fax from Eva von Bronk to Respondent, dated November 6, 2003
23. Fax from Eva von Bronk to Respondent, dated December 20, 2003

The Respondent submitted the following documents, all of which were admitted into evidence with the exception of Resp. #2 and the first page of Resp. #4:

¹ There is no attachment 3 in REC #4.

² There is no attachment 13 in REC #4

- Resp. #1- Maryland Residential Property Disclosure and Disclaimer Statement, dated October 18, 2003
- Resp. # 2 - Unsigned Contract for Work, between the Complainant and Dreamhome Improvements, dated July 28, 2003
- Resp. # 3 - Memo from Complainant to Respondent, dated December 12, 2003
- Resp. # 4 - Letter from Respondent to Eva von Bronk, undated, was not admitted, however the attached General Addendum was admitted
- Resp. # 5 - Suntrust deposit slip, dated November 26, 2003
- Resp. # 6 - Letter from Myrna C. Lebi, Community Manager, Cinnamon Run, to Complainant, dated January 5, 2004

Testimony

The Commission presented the testimony of the Complainant, Cora LaMatre, Eva von Bronk, Eva Realty, LLC, and Jack Mull, Investigator, REC. The Respondent testified in his own behalf and presented the testimony of Charles G. Swann.

FINDINGS OF FACT

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

1. The Respondent holds a license issued by the Commission as a real estate salesperson, which he obtained on March 18, 1999 and continues in effect today, with the exception of the period March 18, 2003 through November 9, 2003.
2. In addition to being a licensed real estate salesperson, the Respondent works full-time for an intelligence agency in Bethesda, Maryland.
3. The Respondent was associated as a salesperson with Century 21/AAA Realty, Ltd.,

until he joined Realty Executives Andrews/Camp Springs (Broker) in September 2001.

4. The Respondent did not advise the REC of his change in Brokers and his new office address until his license was renewed in 2003.

5. On October 18, 2003, the Complainant listed her property known as 1843 Tufa Terrace, Silver Spring, Maryland (Property) with the Broker and with the Respondent as the Listing Agent. The Respondent represented the Complainant as her agent for the sale of the Property

6. On October 29, 2003, the agent for the purchaser of the Property, Eva von Bronk, and the Respondent presented a contract for the sale and purchase of the Property (Contract) to the Complainant. The sales price was for the full listing price, however the parties agreed that the seller, the Complainant, would contribute \$5,000.00 towards the purchaser's closing costs. The contract was ratified on October 30, 2003. Settlement was to take place on December 15, 2003.

7. The Contract included an addendum for a home inspection of the Property by the purchaser, which was performed and completed by Schwindt & Company on November 5, 2003.

8. On November 6, 2003, a report of the inspection was sent to the purchaser's agent, Eva von Bronk who, in turn, emailed and faxed the report to the Respondent, confirming receipt by him on November 7, 2003.

9. The Respondent did not send the home inspection report to the Complainant within three days of his receipt of the report from Eva von Braun. The Complainant first received the report on December 17, 2003 from the Respondent.

10. The Respondent requested another copy of the inspection report from Eva von Bronk, after he advised her that he no longer had a copy of it. Another copy was emailed to the Respondent on November 23, 2003.

11. An addendum was provided to the Complainant by the Respondent on December 13, 2003, agreeing to postpone the settlement until January 14, 2004 and included requirements to have repairs completed prior to settlement. This addendum was never agreed to by the Complainant.

12. The Complainant and Respondent agreed to meet within three days after receipt of the addendum to make a counterproposal to the addendum. The parties did not meet within three days, but agreed to meet on December 30, 2003 to prepare an addendum. The meeting on December 30, 2003 did not take place and no addendum was prepared.

13. Both the Complainant and the Respondent had difficulty communicating with each other, due to their unavailability or failure to timely respond to telephone calls.

14. Repairs to the Property proceeded slowly. In addition to the repairs required by the inspection report, the homeowner's association required repairs as well. The Complainant did not disclose to the Respondent, at the time the property was listed, that her homeowner's association required certain work to be done to the Property.

15. The work contracted by the Complainant in the original contract for work and the change order was completed by January 3, 2004. Additional work required by the lender, including repair of termite damage, was never completed. The Complainant refused to remove wallboard in certain areas of the Property to allow for termite damage repair and inspection.

16. The last settlement date, January 20, 2004, was cancelled by the Complainant.

17. The Complainant has not paid the contractor in full for the work that he performed under the contract and the change order.

18. The Respondent did not document conversations he had with the Complainant concerning the purchase and sale of the Property.

19. The Complainant was sued by the purchaser as a result of this transaction.

20. The Respondent has no history of prior violations of any of the provisions regulating the conduct of real estate salespersons and brokers under the Maryland Real Estate Brokers Act.

DISCUSSION

The charges herein arise out of the Respondent's provision of real estate salesperson services as the Complainant's agent for the sale of the property. It is alleged that the Respondent violated the Maryland Real Estate Brokers Act by failing to have a current salesperson license during the period when the transaction for the Property was to take place and for failing to see to it that commitments regarding real estate transactions are in writing and that the agreements are placed in the hands of all parties involved within a reasonable time. The applicable sections of law provide:

§ 17-301. License required³.

...

(2) Except as otherwise provided in this title, an individual shall be licensed by the Commission as an associate real estate broker or a real estate salesperson before the individual, while acting on behalf of a real estate broker, may provide real estate brokerage services in the State.

Md Code Ann., Bus. Occ. & Prof. § 17-301(a)(2) (2004)

§ 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 license if the applicant or licensee:

...

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

³ The Statement of Charges and Order for Hearing identified this section but included another section in the description. The Commission corrected the error during the hearing.

....
Md Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) (Supp. 2007)⁴

The regulation in COMAR 09.11 Chapter .02, *Code of Ethics*, allegedly violated, provides:

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..

COMAR 09.11.02.01H (emphasis added).

There is no dispute that the Respondent allowed his salesperson license to lapse on March 18, 2003. It was not renewed until November 10, 2003. During this period, the Respondent, while acting as a salesperson with the Broker, entered into a listing agreement with the Complainant for the sale of the Property. He also presented and negotiated on her behalf the Contract for the sale of the Property. The Contract was ratified on October 30, 2003, well within the time period that Respondent was unlicensed with the Commission. The Respondent did not provide a clear explanation of why he allowed his license to lapse; however, he did mention that he was formerly associated with another broker, Century 21/ AAA Realty, LTD., and he may not have received notice of the renewal. His former broker and the Commission may not have sent the renewal to his new address. According to the REC licensing information (REC #3), the Respondent transferred his license to the Broker's company on September 6, 2001. In order for the salesperson to renew a license, the licensee must notify the Commission of the name of each real estate broker with whom the licensee then is affiliated. Md Code Ann., Bus. Occ. & Prof. § 17-314(e)(5) (2004). If the Commission did not have his Broker's address, then information sent by the Commission would not be expected to be delivered to the Broker. It is the responsibility

⁴ The Statement of Charges and Order for Hearing identified this section but included §17-322(b)(33) in the description. The Commission corrected the error during the hearing.

of the licensee to make sure that the Commission has his current address so that notices and other correspondence can be delivered to the licensee. While certain of the activities involving this transaction took place after the Respondent's license was renewed, the evidence is indisputable that the Respondent did not possess a valid Commission license as a salesperson during relevant time periods involving this transaction.

The Respondent was surprised, shortly after the Property was listed, to learn that there were numerous violations involving the Property that were cited by the homeowner's association for the Property. Some of these violations date back to 1999 and had not been corrected. In addition, the Respondent advised the Complainant that these items would need to be satisfactorily addressed before the settlement. The Contract was ratified on October 30, 2003. The Contract included a Home Inspection Addendum that permitted the purchaser to have a home inspection firm inspect the Property. This was completed and an inspection report was issued on November 6, 2003. It was delivered by both fax and by email to the Respondent by Eva von Braun. The terms of the home inspection addendum provide the following: "Failure of either party to respond within 3 Days after Delivery of a notice from the other party will result in acceptance by both parties of the terms of the most recent notice." There is no evidence in the record that the Respondent, on behalf of the Complainant, provided notice to the Complainant within the three-day time period. The Respondent had three other options once he received the inspection report. He could have provided notice to the Complainant that he accepted the terms contained in the inspection report; he could have delivered notice continuing negotiations by making another offer or he could have delivered a notice that the Contract would be void unless the purchaser agreed not to require the repairs. The Respondent did not take advantage of any of these three options; instead, he failed to respond, thereby agreeing, on behalf

of the Complainant, to do the repairs specified in the inspection report. This fourth option would have been acceptable as well, provided the Respondent delivered the inspection report to the Complainant in a timely manner so that the Complainant had an opportunity to review the repair requirements and determine whether she wished to have the repairs done.

The Respondent did not afford the Complainant that opportunity. Although the Respondent claimed that he sent the inspection report to the Complainant in time, I do not find his testimony on that issue to be credible. Eva von Bronk testified that the Respondent called her requesting another copy of the inspection report on November 23, 2003 because he did not keep a copy of the report, alleging that he sent the report to the Complainant and had deleted his own copy on his email system by mistake. I find his explanation to be less credible than that of the Complainant. The Complainant testified that she did not receive a copy of the inspection report until weeks later. There was never a meeting between the Respondent and the Complainant to review the report within the three-day time period. Therefore, it does not really matter when the Complainant received the inspection report, provided it was not received within three days, because according to the Contract, it was accepted since there was no response within the three-day time requirement.

Eva von Bronk testified that the Respondent was surprised to learn that there was a three-day time period by which to respond to the inspection report. It is noteworthy that the Inspection Addendum is a preprinted form. Either the Respondent was unfamiliar with this standard addendum or simply forgot about it and let the time lapse. In either case, he placed the Complainant in a position that required her to perform the repairs whether she wanted to or not.

The Respondent's Broker, Charles G. Swann, testified that in November, 2003, he discussed this transaction with the Respondent. The Respondent advised that he was having

trouble getting the Complainant to perform the repairs that were required. The Respondent discussed this with the Broker and they concluded that the Complainant did not have sufficient funds to cover the cost of repairs. The fact that the contractor who performed the repairs is still owed money for the work he performed, tends to support this argument. The Broker offered to provide an equity advance and fund the repairs, but this was rejected. However, under the terms of the Addendum, the Complainant did not have to pay for any of the repairs, had she provided notice within the three-day period that she would void the Contract. In Exhibit REC. #4, attachment 2a, the Broker indicated that the Complainant was receiving real estate advice from an unlicensed third party who advised her that she did not have to make the repairs to sell her house. If the Complainant did not want to make the repairs in order to sell her house, she should have indicated such by sending timely notice to void the contract. Again, she was not given that opportunity.

When it became apparent that the original settlement date of December 15 would not be met, due to the work being incomplete, a General Addendum was prepared by the purchaser. It was delivered to the Respondent on December 12, 2003 and included a new settlement date of January 14, 2004 along with requirements that repairs be completed by that date. The Respondent met with the Complainant on December 13, 2003 to review the General Addendum. They agreed to meet within three days to discuss sending a counterproposal; however, the parties never met again in December. No counterproposal was ever made. Both the Complainant and the Respondent accused the other of not being available to communicate on this subject during this period. The difficulty communicating may have been a result of the holiday season or the fact that the Respondent worked at another full-time job, but a matter of such importance as meeting to discuss a counterproposal to enable the parties to finalize a settlement for the Property

should have required greater efforts on the part of the Respondent to insist on a timely meeting. The parties were unable to settle on this Property as the settlements scheduled for January 14, 2004 and January 20, 2004 were cancelled.

As a result of failing to complete settlement, the purchaser brought suit against the Complainant. The Complainant prevailed in Circuit Court; however, the case is currently on appeal in the Court of Special Appeals.

The Respondent testified that he repeatedly tried to call the Complainant but she failed to respond to his calls. He did not have documentation of his attempts to contact her or the discussions he had with her. His lack of documentation to support his testimony is contrasted with that of Eva von Bronk, who kept meticulous notes of all communications with the parties involved with this transaction in a database. These notes were made contemporaneously with the events and I find them to be a reliable recitation of what took place at the time the notes were made. When she recorded most of the information contained in her database, there was no indication that any party would take legal action. There was no incentive to skew the descriptions of the conversation in any way as there might be now, given the instant case or the litigation which occurred shortly after the failure of the parties to complete settlement. Therefore, I weigh these notes more heavily in evaluating the evidence than the testimony of the Respondent.

I also assessed the behavior of the Respondent and the Complainant while testifying, whether their accounts were coherent and logical, whether their testimony was supported by other evidence and whether they had a motive not to tell the truth. In this assessment, I formed an opinion on the credibility and reliability of the testimony from the Respondent and the Complainant. Testimony from the Complainant appeared to be straightforward, convincing and

supported by the testimony of Eva von Bronk and the documentary evidence before me. For reasons explained above, the Respondent's testimony is suspect. Insofar as there is conflict, I accept the Complainant's testimony and reject the Respondent's testimony. As reflected in the Findings of Fact, herein, I have resolved the disputes of fact in favor of the Commission and have rejected the version of events offered by the Respondent.

The Respondent failed to furnish a copy of the home inspection addendum to the Complainant in a timely manner and failed to prepare a counterproposal to the general addendum, in violation of COMAR 09.11.02.01H. In addition, by not providing the Complainant with the inspection report in time for her to evaluate her options within the three-day required period, the Respondent demonstrated a lack of competency in violation of Md Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) (Supp. 2007). Finally, the Respondent admits that during the transaction involving this Property, he did not have a valid salesperson license in violation of Md. Code Ann., Bus. Occ. & Prof. § 17-301(a)(2) (2004).

The evidence has demonstrated that the Respondent is subject to sanctions for three violations of the Maryland Real Estate Broker's Act. For those violations, the Respondent is subject to adverse administrative action regarding his salesperson license and to civil penalties:

(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.

. . . .

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

The Maryland Real Estate Brokers Act was enacted in order to protect the public and to reassure the public that only competent and trustworthy individuals are licensed as real estate brokers and salespersons. The Respondent committed several serious violations. One of the violations includes a violation of a broker's or salesperson's ethical responsibilities to make sure that all obligations and commitments regarding real estate transactions are in writing. His failure to provide the written inspection report to the Complainant within the time requirements and his failure to prepare a counterproposal to the general addendum highlight the problems that can occur when there is inadequate documentation. It also demonstrates a lack of competency on the part of the Respondent which results in another violation. However, in this record, since the Complainant prevailed in the suit brought against her in Circuit Court, her financial harm directly linked to the Respondent's violations does not appear to be substantial, although she claimed to have suffered medically as a result of this transaction and had to incur legal fees to defend herself in Circuit Court. There was clearly frustration on both parties regarding the lack of communication. I do not find the Respondent acted in bad faith; however, his lack of documentation of phone calls and of meetings he had with the Respondent places his testimony in doubt, especially since it has been nearly five years since this transaction took place. The record fails to demonstrate any previous violations by the Respondent.

The Commission maintains that the Respondent's misconduct in this case requires the imposition of a civil statutory penalty. I agree. The Commission recommended a two week suspension and a \$5,000.00 fine. By weighing all of the relevant factors, I conclude that the Respondent should be fined \$500.00 under section 17-301(a)(2) of the Business Occupations and

Professions Article and \$500.00 under COMAR 09.11.02.01(H). I also conclude that the Respondent should be fined \$500.00 for violating section 17-322(b)(25) of the Business Occupations and Professions Article.

In addition to the \$1,500.00 civil statutory penalty in this case, I recommend that the Respondent be suspended for one week for his violations of the Maryland Real Estate Brokers Act.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, the ALJ concludes as a matter of law that the Respondent is subject to sanction under sections 17-322(b)(25) and 17-301(a)(2) of the Business Occupations and Professions Article and COMAR 09.11.02.01H.

RECOMMENDED ORDER

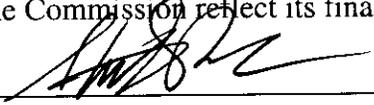
IT IS THEREFORE RECOMMENDED that the Maryland Real Estate Commission:

ORDER that the Respondent is subject to sanction under sections 17-322(b)(25) and 17-301(a)(2) of the Business Occupations and Professions Article and COMAR 09.11.02.01H; and further

ORDER that a civil statutory fine of \$1,500.00 and a one week suspension of Respondent's salesperson license be imposed upon the Respondent under section 17-322(c) of the Business Occupations and Professions Article for the violation of sections 17-322(b)(25) and 17-301(a)(2) of the Business Occupations and Professions Article and COMAR 09.11.02.01H; and further

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

September 9, 2008
Date Decision Mailed
#99201



Stuart G. Breslow
Administrative Law Judge

**MARYLAND REAL ESTATE
COMMISSION**

v.

ANTHONY F. TURNER

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