

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

V.

TIONAH M. GLOVER

* BEFORE WILLIAM SOMERVILLE,
* ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-21-08-28198
* REC CASE NO: 2008-RE-384

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated April 22, 2009, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of May, 2009,

ORDERED,

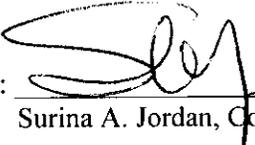
- A. That the Findings of Fact in the Recommended Decision be, and hereby are, AFFIRMED;
- B. That the Conclusions of Law in the Recommended Decision be, and hereby are, APPROVED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

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

MARYLAND STATE REAL ESTATE COMMISSION

5/20/09
Date

By: 
Surina A. Jordan, Commissioner

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*** * * * ***

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 21, 2007, the Maryland Real Estate Commission (Agency) filed a complaint against Tionah M. Glover (Respondent), a real estate sales agent. On July 8, 2008, the Agency issued a Statement of Charges and Order for Hearing. The Agency subsequently referred the case to the Office of Administrative Hearings (OAH). Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2004).

On January 26, 2009, I convened a hearing at the Office of Administrative Hearings in Hunt Valley, Maryland. Hope Sachs, Assistant Attorney General, appeared on behalf of the Agency. The Respondent failed to appear. As a preliminary matter, I determined that notice to the Respondent was proper and that the matter should proceed. Md. Code Ann., Bus. Occ. & Prof. § 17-324(f).

Procedure is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the OAH Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2008); Code of Maryland Regulations (COMAR) 09.01.03, 09.11.03, and COMAR 28.02.01.

ISSUES

The issue is whether the Respondent violated Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(1), (24) or (25), and if so, what is the appropriate sanction.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted into evidence the following documents offered by the Agency:

- Agency Ex. # 1 - Notice of Hearing
- Agency Ex. # 2 - Notice of Hearing (alternate address)
- Agency Ex. # 3 - Licensing History
- Agency Ex. # 4 - Report of Investigation, with attachments, undated.

Testimony

The Agency presented testimony from Robert Oliver, Investigator.

FINDINGS OF FACT

Having considered the demeanor of the witness¹ and other evidence offered, I find the following facts by a preponderance of the evidence:

1. On May 25, 2005, the Respondent was convicted of uttering a bad check.

¹ Evidence includes that which is witnessed in a court room, Am. Jur. Trial §515, and with regard to demeanor, it is referred to as "demeanor evidence." *Berry v. State*, 155 Md. App. 144, 160-61(2004); *White v. State*, 142 Md. App. 535, 548 (2002); *Breeder v. State*, 95 Md. App. 481, 496 (1993).

2. On May 22, 2006, the Respondent was convicted of theft – scheme – over \$500. The Respondent, and four or five other employees of Exxon Corporation, used prepaid Exxon gas cards in that scheme.

3. On December 6, 2006, the Respondent was convicted of uttering a bad check and theft under \$500.

4. On May 18, 2007, the Respondent completed, signed, and submitted to the Agency an application for a license to become a Real Estate Agent. On that application, the Respondent answered “no” to question 14(f) – “Have you ever been convicted of a felony or misdemeanor in any state or federal court?”

5. On July 9, 2007, the Agency issued to the Respondent a Real Estate Agent license, no. 3573041.

6. On December 21, 2007, the Respondent’s employer, a Real Estate Broker, filed criminal charges against the Respondent for Theft, Identification Theft, and counterfeit orders. There were thirty-six counts.

DISCUSSION

Burdens

No statute or regulation directly addresses which party has the burdens of production and persuasion² in this type of administrative case. See Md. Code Ann., Bus. Occ. & Prof. §§ 17-323 and 17-324 (explaining some notice requirements but not setting forth burdens of proof);

² Maryland law has long recognized that the “burden of proof” is more precisely discussed in terms of a burden of production and a burden of persuasion. Since before 1999, a third such burden has been addressed in Maryland, that being the “burden to plead.” *Owens-Corning v. Walatka*, 125 Md. App. 313, 325 (1999) citing Lynn McLain, Maryland Evidence § 300.1, at 132 (1987)).

see also COMAR 09.11.03.02(general hearing regulations). One applicable regulation allows a reasonable inference that the Agency intended to take on those burdens in an administrative case in which the Agency seeks to suspend or revoke an individual's license. See COMAR 09.01.02.13E. Generally, the party asserting the affirmative of a proposition has the burdens to prove that proposition. In *Commiss'r of Labor & Industry v. Bethlehem Steel*, 344 Md. 17, 34 (1996) the Court held “that the burden of proof is generally on the party asserting the affirmative of an issue before an administrative body.” In the instant case, the Agency is asserting that the Respondent violated portions of a statute; I conclude that the Agency has the burdens in this case.

With regard to the standard of proof, the statutes make it clear that the standard is by a preponderance of the evidence. Md. Code Ann., Bus. Occ. & Prof. §17-324(b) (referring to Maryland's Administrative Procedures Act.)

Administrative Charges

The Agency charged the Respondent with violating three portions of the applicable statute. Md. Code Ann., Bus. Occ. & Prof. §17-322(b).

Section 17-322(b)(1)

The Agency may take action against a licensee who fraudulently or deceptively obtains or attempts to obtain a license for the applicant. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(1) (Supp. 2008). In the instant case, it is clear that the Respondent, as an applicant, in her attempt to obtain a license, deceptively indicated in the application form that she had not been convicted of any crimes. In reality, she had been convicted of crimes, and those crimes would have posed an obstacle to obtaining a license if they had been disclosed. Md. Code Ann., Bus.

Occ. & Prof. §17-303(b) and (g) (requirement that an applicant have professional competence and good character and reputation.) The Agency has demonstrated a violation of this code section.

Section 17-322(b)(24)

The Agency may take action against a licensee who is convicted of a felony, or who is convicted of a misdemeanor that directly relates to fitness and qualifications of an applicant to provide real estate services. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(24) (Supp. 2008). In the instant case, there is no doubt that the Respondent was convicted of crimes that relate directly to fitness and qualifications of a licensee. Honesty and trustworthiness are traits that demonstrate good character and reputation. Md. Code Ann., Bus. Occ. & Prof. §17-303(b) and (g) (requirement that an applicant have professional competence and good character and reputation.) Honesty is also specifically required of a real estate professional, otherwise. Md. Code Ann., Bus. Occ. & Prof. §17-532(c)(1)(iv) (requirement of honesty, fairness and truthfulness). The Respondent demonstrated a lack of those traits or qualifications through her long criminal history. The Agency has demonstrated a violation of this code section.

Section 17-322(b)(25)

The Agency may take action against a licensee who engages in conduct that demonstrates bad faith, incompetence, or untrustworthiness or who engages in conduct that constitutes dishonest, fraudulent, or improper dealings. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) (Supp. 2008). The Respondent's criminal history, and the failure to disclose it, demonstrates conduct that shows untrustworthiness and that shows dishonest dealings. (See Findings of Fact 1, 2, 3, and 4.) The Agency has demonstrated a violation of this code section.

Sanctions

The Agency argued that for fraudulently attempting to obtain a license, the Respondent should be fined \$1,000, for the criminal convictions she should be fined \$1,500, and for the conduct that demonstrates untrustworthiness and dishonest dealings, the Respondent should be fined \$1,000. The Agency also asks for revocation of the license.

Factors to review and consider in making such a decision are set forth in the statute. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (seriousness of the violation, harm caused, lack of good faith, and previous history of violations.) The Respondent's violations were serious and caused harm to the reputation of the industry or business. A criminal case was publicly filed against the Appellant who was a person who should not have been in the business at all. There was a demonstration of a lack of good faith to a previous employer. (See, Finding of Fact 2.) The Respondent had a long history of theft by dishonesty and is currently accused of additional theft by trickery. I cannot say that the sanctions suggested by the Agency are unreasonable under the facts and circumstances of this case.

I can, in good conscience, recommend revocation of the Respondent's license under the facts and circumstances of this case. After reviewing the five criteria in the statute, Md. Code Ann., Bus. Occ. & Prof. § 17-322(d) (Supp. 2008), I conclude that the nature of the crimes reflects inherent dishonesty; the crimes are related to real estate activities to the extent that the Respondent was handling another's money in at least one instance and demonstrated dishonesty in all instances; not much time has elapsed since the conduct and after the convictions; and the Respondent was not truthful or candid on the license application. The Respondent has shown

herself to be entirely untrustworthy and otherwise unfit to engage in the business of a real estate agent.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Agency has shown by a preponderance of the evidence that the Respondent deceptively obtained a license, was convicted of crimes that relate to the fitness to be a real estate agent, and engaged in conduct that demonstrated or constituted bad faith, untrustworthiness or dishonesty. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(1), (24) and (25) (Supp. 2008).

I further conclude that the appropriate sanctions are the revocation of the Respondent's real estate license and the imposition of a \$3,500 civil penalty. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b), (c), and (d) (Supp. 2008).

RECOMMENDED ORDER

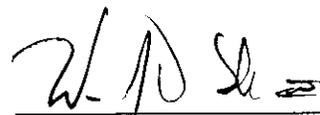
I THEREFORE RECOMMEND that the Real Estate Commission

ORDER that the Respondent's real estate license be revoked and that the Respondent pay a civil penalty of \$3,500; and further

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

April 22, 2009
Date Decision Mailed

Ws/
103528



William J.D. Somerville, III
Administrative Law Judge

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EXHIBIT LIST

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