

**BEFORE THE MARYLAND REAL ESTATE COMMISSION**

<b>MARYLAND REAL ESTATE COMMISSION</b>	*	
	*	
v.	*	<b>REC CASE NO. 2007-RE-424</b>
<b>JAMES W. WARD RESPONDENT</b>	*	<b>OAH No.: DLR-REC-24-07-29813</b>
	*	
<b>AND</b>	*	
	*	
<b>CLAIM OF HOMESOURCE REAL ESTATE ASSET SERVICES INC. AGAINST THE REAL ESTATE COMMISSION GUARANTY FUND</b>	*	
	*	
	* * * * *	

**OPINION AND FINAL ORDER**

**INTRODUCTION**

This matter came before the Commission for argument on Exceptions filed by the Respondent, James W. Ward, to the Proposed Order of July 29, 2008. On June 24, 2008, Administrative Law Judge D. Harrison Pratt (“ALJ”) filed a Recommended Decision and Order in which he recommended that the Respondent’s license be revoked; that he pay to the Maryland Real Estate Commission a civil penalty of \$25,000.00; and that the Claimant be reimbursed \$25,000 from the Maryland Real Estate Guaranty Fund .

On July 29, 2008, the Maryland Real Estate Commission (“Commission”) issued a Proposed Order that adopted the ALJ’s Recommended Findings of Fact, Conclusions of Law and Recommended Order. The Respondent filed Exceptions to the Proposed Order.

A hearing was held by a panel of Commissioners consisting of Commissioners Surina A. Jordan, Anne S. Cooke and J. Nicholas D’Ambrosia on October 15, 2008. Mr. Ward was represented by his attorney, Jewell Elliott, Esq. Jessica Berman Kaufman, Assistant Attorney General, represented the Commission. The proceedings were electronically recorded.

## SUMMARY OF THE EVIDENCE

On behalf of the Commission, six exhibits, including the exhibits from the hearing before the ALJ, were entered into evidence, all of which were accepted. The Respondent did not offer any exhibits.

## FINDINGS OF FACT

The Commission adopts the Findings of Fact recommended by the ALJ.

## CONCLUSIONS OF LAW

The Commission adopts the ALJ's Conclusions of Law.

## DISCUSSION

This case involves the actions of James Ward, a licensed real estate broker, in regard to bids on 23 HUD properties. With the exceptions of whether or not Mr. Ward was notified that the bids had been accepted; the motivation of Mr. Ward for recycling earnest money deposit checks, and maintenance of a separate escrow account, the facts are undisputed:

Mr. Ward was qualified by HUD and HomeSource, HUD's agent, to act as a selling broker on HUD-owned residential properties. FF 2-3.<sup>1</sup> He submitted bids on 23 properties in 2005 and 2006. FF 5. Upon HomeSource's acceptance of a bid by a prospective buyer represented by Mr. Ward, he was required to collect an earnest money deposit from the buyer. FF 4. He was also required to submit documentation, including copies of money orders, to HomeSource as evidence that an earnest money deposit had been collected. FF 6. If the contract was cancelled for any reason, the earnest money deposit was to be forfeited to HUD. FF 4. Mr. Ward failed to collect the earnest money deposits on some of the 23 properties although he represented to HomeSource that he had done so. FF 7. Instead, Mr. Ward obtained several money orders which he copied and "recycled" for multiple bids.

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<sup>1</sup> "FF" refers to the ALJ's Findings of Fact which have been adopted by the Commission.

FF 7. The copies of the money orders would be altered to indicate to which bid they were to be applied. When a contract was cancelled, Mr. Ward failed to forfeit the earnest money deposit as required by HUD rules. FF 8. Mr. Ward also failed to maintain a separate escrow account in his brokerage for earnest money deposits, as required by the real estate licensing law. FF 10. As a result of Mr. Ward's failure to properly collect and forfeit the earnest money deposits on the 23 properties, HomeSource and HUD sustained an actual monetary loss in the amount of \$38,000.00. FF 9.

Through his counsel, Mr. Ward blamed his problems on the HUD bidding process: He claimed that there were problems with the HUD website used to notify potential purchasers of the status of their bids; problems receiving notification that bids had been accepted; problems due to the alleged failure to return ratified contracts to him; and problems due to the alleged failure of the HUD agent, HomeSource, to grant appropriate extensions of time in which to obtain financing.

He also argued that his clients had formerly been able to use personal checks as earnest money deposits but that HomeSource, the new HUD agent, required the use of a money order for each bid. Mr. Ward admitted that he used the same money orders multiple times as evidence of earnest money deposits but argued that it was "impractical" to use a new money order for each bid. The recycling of money orders was done as a convenience for clients so they would not have to obtain new money orders each time.

In regard to the earnest money deposits, Mr. Ward said that he had been returning those deposits to bidders since 2002 without issue but acknowledged that it is HUD policy for purchasers to forfeit 100% of the earnest money deposit if they fail to close for any reason.

Mr. Ward admitted that he closed the brokerage escrow account in 2006 in order to save bank fees because business had slowed and there was no money in it. Another business

account was used as a depository for escrow funds. Mr. Ward opened a new escrow account the day before the Commission's auditor came to review his firm's records.

Mr. Ward argued that he had not attempted to defraud anyone and that he did not benefit from any unjust enrichment because he kept none of the deposit money.

Mr. Ward seeks to avoid responsibility for his actions by placing blame on the HUD system. The evidence, however, does not support his argument. The evidence does show a broker whose business practices fell far short of those expected of a licensee. He registered to participate in the HUD purchase program yet he refused to follow the rules of that program. He did not collect earnest money deposits, as a convenience to his clients, ignoring his obligations to the seller of the property. He altered the copies of the money orders to trick HomeSource into believing that deposit monies were in hand. His decision not to forfeit the deposits was of direct financial benefit to him and his family members, who were the bidders on the properties. These were monies that clearly belonged to the seller under the documents of sale. He put escrow monies into a business account, closing the statutorily required broker's escrow to save fees. The law is clear that a real estate brokerage may not operate without a separate account for trust monies. Section 17-502(b), COMAR 09.11.01.09A. Mr. Ward's unilateral decision to close down this account to save fees demonstrates either a blatant disregard for the licensing laws or an unacceptable lack of knowledge about them.

With regard to the specific charges, the licensing law provides that the Commission may suspend or revoke a license of a real estate broker if he directly or through another person willfully makes a misrepresentation or knowingly makes a false promise (§17-322(b)(3)). The evidence and testimony shows that the Respondent intentionally misled HomeSource to believe that he had collected earnest money deposits for each of the 23 contracts by submitting recycled money orders. The purpose of the money orders was to insure that earnest money deposits actually existed. The use of recycled money orders for

multiple contracts defeated that purpose and was an intentional misrepresentation that the funds existed and were available as deposits on the properties.

Section 17-322(b)(22) prohibits a real estate broker from failing to account for or to remit promptly any money that comes into the possession of the licensee but belongs to another person. Upon cancellation of the contracts, the earnest money deposits were to be forfeited. Mr. Ward, through his counsel, has admitted that he failed to keep records of the earnest money deposits and failed to forfeit the earnest money deposits for the 23 properties to HomeSource and HUD as required by the rules for HUD transactions.

Mr. Ward's failure to collect all of the earnest money deposits; his "recycling" of money orders while misrepresenting to HomeSource that the appropriate earnest money deposits had been collected; his failure to keep adequate records of the transactions; and his failure to remit earnest money deposits to HomeSource and HUD upon cancellation of the contracts show that he engaged in conduct that was improper and fraudulent and which demonstrate bad faith and untrustworthiness. (See §17-322(b)(25)).

The evidence as well as the admission by Mr. Ward's counsel show that he failed to place earnest money deposits in a separate escrow account but instead placed \$38,000 of deposit money (from non-HUD related transactions) in his general business account, an improper co-mingling of trust and general business funds in violation of §§17-502 and 17-322(b)(31). Mr. Ward admitted that prior to being contacted by the auditor for the Commission, he did not even have a separate escrow account, having closed it due to inactivity and service costs on the account.

Finally, the actions of Mr. Ward violated provisions of the Code of Ethics (§17-322(b)(33)). COMAR 09.11.02.01C. requires a licensee to protect the public against fraud, misrepresentation, or unethical practices in the real estate field and requires a licensee to 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. COMAR 09.11.02.02A. requires a licensee to protect and promote the interests of the client, but provides that his statutory obligations to the other parties to the transaction must not be ignored. Mr. Ward's practices were patently unethical, and he failed to fulfill his statutory obligations to the seller.

The Commission must consider the following factors in determining the appropriate sanctions: the seriousness of the violation; the harm caused by the violation; the good faith of the licensee; and any history of previous violations by the licensee. No evidence of any prior violations by Mr. Ward was presented to the Commission. However, the Commission considers the instant violations to be very serious. Mr. Ward engaged in intentional misrepresentation, on a large scale, to HomeSource and HUD that earnest money deposits had been received and were being properly secured. Instead, Mr. Ward, on behalf of himself, his family members and an employee, fraudulently used the same money orders multiple times as evidence of earnest money deposits on 23 contracts. When the contracts were cancelled, Mr. Ward, his family members and employee benefited unjustly by failing to forfeit the earnest money deposits. In addition, Mr. Ward failed to comply with a basic requirement for a real estate broker, that he maintain a separate escrow account. The Commission considers the Respondent's intentional misrepresentations that he had collected the required earnest money deposits, although he had actually failed to do so, and his failure to maintain a separate escrow account not only very serious violations but also indicative of a lack of good faith on his part. These violations have caused serious harm to the claimant in the amount of \$38,000.00 (the amount which should have been forfeited on the 23 contracts). The harm is continuing in nature since Mr. Ward has still not submitted the forfeited deposits to HomeSource and HUD. The Real Estate Commission simply cannot protect the citizens of Maryland when an individual who engages in such a pattern of violations of the licensing law holds a broker's license.

For these reasons, the Commission will affirm the Proposed Order including the revocation of his license, the civil penalty of \$25,000.00 and the Maryland Real Estate Guaranty Fund award of \$25,000.00.

**ORDER**

Argument on the Exceptions filed by the Respondent, James W. Ward, having been heard on October 15, 2008, it is this 1st day of December, 2008 by the Maryland Real Estate Commission **ORDERED**,

1. That the Respondent, James W. Ward, has violated Sections 17-322(b)(3), (22), (25), (31) and (33) and Section 17-502b) of the Business Occupations and Professions Article, *Annotated Code of Maryland*, and COMAR 09.11.02.01C. and 09.11.02.02A;
2. That all real estate licenses held by the Respondent, James W. Ward, be revoked, and that he pay to the Maryland Real Estate Commission a civil penalty of \$25,000.00 within thirty (30) days of the date of this Order;
3. That the Claimant, Homesource Real Estate Asset Services Inc., be reimbursed \$25,000.00 from the Maryland Real Estate Guaranty Fund to compensate for the actual loss that it sustained because of the conduct of the Respondent;
4. That the Respondent, James W. Ward, shall be ineligible for a real estate license until the civil penalty is paid and the Maryland Real Estate Guaranty Fund is reimbursed; and
5. That the records and publications of the Maryland Real Estate Commission reflect this decision.

**MARYLAND REAL ESTATE COMMISSION**

By Katherine J. Connelly  
*Executive Director*

**Note:** A judicial review of this Final Order may be sought in the Circuit Court of Maryland in the county in which the Applicant resides or has his principal place of business, or in the Circuit Court for Baltimore City. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE  
COMMISSION  
V.

JAMES W. WARD  
RESPONDENT

AND

CLAIM OF HOMESOURCE REAL  
ESTATE ASSET SERVICES INC.  
AGAINST THE REAL ESTATE  
COMMISSION GUARANTY FUND

\* BEFORE D. HARRISON PRATT,  
\* ADMINISTRATIVE LAW JUDGE,  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH No: DLR-REC-24-07-29813  
\* REC CASE NO: 2007-RE-424

\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated June 24, 2008, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 16th day of July, 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

7/29/08  
Date

By: Katherine J. Connelly, Exec. Director  
for J. Nicholas D'Ambrosia, Commissioner

MARYLAND REAL ESTATE

\* BEFORE D. HARRISON PRATT,

COMMISSION

\* AN ADMINISTRATIVE LAW JUDGE

v.

\* OF THE MARYLAND OFFICE OF

JAMES W. WARD t/a

\* ADMINISTRATIVE HEARINGS

GOLDEN ARROW REAL ESTATE, INC.

\*

RESPONDENT

\* OAH CASE NO: DLR-REC-24-07-29813

and the

\*

CLAIM OF HOMESOURCE REAL

\*

COMPLAINT NO.: 07-RE-424GF

ESTATE ASSET SERVICES, INC.,

\*

AGAINST THE MARYLAND REAL

\*

ESTATE COMMISSION GUARANTY

\*

FUND

\* \* \* \* \*

**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 December 27, 2006, HomeSource Real Estate Asset Services, Inc. (HomeSource or Claimant) filed a complaint (the Complaint) with the Maryland Real Estate Commission (MREC) complaining of acts and omissions of a licensed real estate broker, James Ward (Ward or Respondent). The Claimant also filed a claim for reimbursement (the Claim) against the

Commission's Guaranty Fund (the Fund) for monetary losses allegedly caused by the acts and omissions of Ward. Based on this complaint, the Commission determined that charges against Ward were warranted and filed a Statement of Charges and Order for Hearing (Charges) on July 18, 2007. The Charges also indicated that the Commission determined that the Claimant was entitled to a hearing on the claim against the Fund, that these matters arose out of the same facts and circumstances and, therefore, should be heard and determined at the same time.

On March 27, 2008, I held a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland on the Charges against the Respondent and the Claim against the Fund. William Sherman, Esq., represented the Claimant. Assistant Attorney General Jessica Kaufman represented the MREC. Assistant Attorney General Hope Miller represented the MREC Guaranty Fund. The Respondent, although properly served with notice of the hearing, failed to appear.

I heard this case pursuant to § 17-324 of the Business Occupations and Professions Article, Annotated Code of Maryland (2004).<sup>1</sup> Procedure in this case is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2004 & Supp. 2007), OAH's Rules of Procedure, COMAR 28.02.01, and the MREC's Hearing Regulations, COMAR 09.11.03 and 09.01.03.

### ISSUES

The issues are:

1. Whether the Respondent violated any sections of Title 17, subtitle 3 of the Business Occupations Article.

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<sup>1</sup> Hereinafter, "the Business Occupations Article"

2. If the Respondent did violate any sections of Title 17, subtitles, of the Business Occupations Article what if any sanctions should be imposed.
3. Whether the Claimant sustained any actual monetary loss compensable by the MREC Fund as the result of any misconduct of the Respondent, and if so, in what amount.

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

The following documents were admitted into evidence on behalf of the MREC and the Claimant:

- REC Ex. #1 Notice of Hearing from the OAH, December 20, 2007, with attachments.
- REC Ex. #2 Notice of Hearing from the OAH, August 22, 2007.
- REC Ex. #3 Statement of Charges and Order for Hearing from the REC, July 18, 2007.
- REC Ex. #4 Respondent's licensing history.
- REC Ex. #5 Respondent's licensing history as a real estate broker.
- REC Ex. #6 Licensing history of real estate agents affiliated with Golden Arrow Real Estate, Inc.
- REC Ex. #7 Licensing history of Ewan McKenzie.
- REC Ex. #8 Licensing history of George Nwosu.
- REC Ex. #9 Housing and Urban Development (HUD) Selling Broker Registration Package, with documents pertaining to the Respondent attached.
- REC Ex. #10 Tips for Selling HUD Owned Homes in Maryland and D. C., from HomeSource Real Estate Asset Services, Inc.
- REC Ex. #11 HUD Case Workflow Summary (HomeSource).

REC Ex. #12 Listing of alleged fraudulent transactions.

REC Ex. #13 Documentation as to transactions pertaining to the following properties:

1. 1011 N. Ashburton St., Baltimore, Maryland.
2. 340 Whitridge Ave., Baltimore, Maryland.
3. 2504 Marbourne Ave, Baltimore, Maryland.
4. 1803 Clifton Ave., Baltimore, Maryland.
5. 3040 Chesterfield Ave., Baltimore, Maryland.

REC Ex. #14 Documentation as to transactions pertaining to the following properties:

1. 1500 Carlswell St., Baltimore, Maryland.
2. 4013 Bellwood Ave., Baltimore, Maryland.
3. 2004 Griffis Ave., Baltimore, Maryland.

REC Ex. #15 Documentation as to transactions pertaining to the following properties:

1. 1441 Luzerne Ave., Baltimore, Maryland.
2. 3025 Kenyan Ave., Baltimore, Maryland.
3. 1804 N. Carey St., Baltimore, Maryland.
4. 4247 Nicholas Ave., Baltimore, Maryland.

REC Ex. #16 Documentation as to transactions pertaining to the following properties:

1. 269 S. Hilton St., Baltimore, Maryland.
2. 2001 Cecil Ave., Baltimore, Maryland.
3. 748 Bartlett Ave., Baltimore, Maryland.
4. 2920 Huntingdon Ave., Baltimore, Maryland.

REC Ex. #17 Documentation as to transactions pertaining to the following properties:

1. 1441 Luzerne Ave., Baltimore, Maryland.

2. 557 S. Longwood St., Baltimore, Maryland.

REC Ex. #18 Documentation as to transactions pertaining to the following properties:

1. 557 S. Longwood St., Baltimore, Maryland.
2. 4247 Nicholas Ave., Baltimore, Maryland.

REC Ex. #19 Documentation as to transactions pertaining to the following properties:

1. 2920 Huntingdon Ave., Baltimore, Maryland.
2. 1610 St. Stephens St., Baltimore, Maryland.

REC Ex. #20 Report of Investigation by Robert Oliver, May 3, 2007, with attachments.

### Testimony

The following witnesses testified on behalf of the REC and the Claimant:

1. Deborah Caruso, Contract Manager and Vice President of HomeSource.
2. Mae Thrift, President and Property Management Director of HomeSource.
3. Steven Long, Assistant Executive Director of the MREC.

The Respondent failed to appear for this hearing and therefore did not testify.

### **FINDINGS OF FACT**

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the allegations in this case, the Respondent was a Maryland licensed real estate broker working for, and trading as, Golden Arrow Real Estate, Inc. (Golden Arrow).
2. HomeSource is, and at the time of the alleged misconduct in this case, was an agent for the United States Department of Housing and Urban Development (HUD). As an agent of HUD, HomeSource was an authorized management and marketing company for the sale of HUD real estate properties.

3. Ward was qualified by HUD and HomeSource to act as a selling broker and as such he was authorized to submit bids to HomeSource on behalf of prospective buyers of HUD properties.

4. Upon accepting a bid by a prospective buyer, Ward was required to collect from the buyer an earnest money deposit. Except in certain situations not relevant in this case, the earnest money deposit must be forfeited to HomeSource and HUD should a contract for the purchase be cancelled.

5. In 2005 and 2006, Ward submitted 23 bids to HomeSource for the purchase of HUD properties located in Maryland. These 23 bids were approved and accepted by HomeSource and HUD.

6. Upon notification by HomeSource that the bids to purchase the HUD properties had been approved or accepted, Ward was required to submit to HomeSource certain documentation as to the sale, including copies of money orders evidencing that earnest money deposits had been collected from prospective buyers.

7. Ward failed to collect the earnest money deposits for some of the 23 HUD properties for which he acted as selling agent/broker in 2005 and 2006. He also misrepresented to HomeSource that he had collected deposits for all 23 properties. Instead, Ward, with the complicity of the prospective buyers, obtained some money orders and then copied these money orders and sent these copies as putative verification that the earnest money deposits had been collected. For properties for which he did collect the deposits, he improperly returned the deposits to the prospective buyers.

8. At some point after the bids for the 23 properties were accepted by HomeSource and HUD, the contracts were cancelled. At this time, HomeSource made demand upon Ward for

forfeiture of the earnest money deposits that should have been collected. The earnest money deposits for the 23 properties were never forfeited.

9. As a result of Ward's failure to collect and forfeit earnest money deposits on the 23 HUD properties, HomeSource and HUD sustained an actual monetary loss in the amount of \$38,000.00.

10. Upon receiving the complaint from HomeSource, the MREC assigned an auditor to audit the books and accounts of Ward. The auditor spoke with Ward and informed him that the audit was to be conducted and that it would include a review of his escrow accounts. At the time of the contact by the auditor, Ward did not have any escrow account. After contact by the auditor, Ward opened an escrow account and then transferred \$38,000.00 from his business account into the escrow account. This \$38,000.00 consisted of deposits from the sale of real estate properties, but not from the 23 HUD properties.

## **DISCUSSION**

### **Regulatory Charges**

The regulatory charges filed against the Respondent by the MREC are as follows:

1. Violation of §17-322(b)(3) - Directly or through another person willfully making a misrepresentation or knowingly making a false promise.
2. Violation of § 17-322(b)(22) - Failing to account for or to remit promptly any money that comes into the possession of the licensee but belongs to another person.
3. Violation of § 17-322(b)(25) – Engaging in conduct that demonstrates bad faith, incompetency, untrustworthiness or that constitutes dishonest, fraud or improper dealings.
4. Violation of § 17-322(b)(31) – Violating any provision of subtitle 5 that relates to trust money.

5. Violation of § 17-322(b)(32) – Violating of any other provision of this title.

6. Violation of § 17-322(b)(33) – Violating any regulation adopted under this title or any provision of the code of ethics.

As to alleged violations of § 17-322(b)(31) (#4 above), § 17-501c defines “trust money” as follows:

(c) "Trust money" means a deposit, payment, or other money that a person entrusts to a real estate broker or, on behalf of a real estate broker, to an associate real estate broker or a real estate salesperson to hold for:

(1) the benefit of the owner or beneficial owner of the trust money; and

(2) a purpose that relates to a real estate transaction involving real estate in the State.

Section 17-502 concerns the requirements for the handling of trust money (#4 above) and provides in pertinent part as follows:

#### Section 17-502 Trust money

(a) 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.

(b)(1) Except as otherwise provided in subsection (c) of this section, **a real estate broker promptly, but not more than 7 business days after the acceptance of a contract of sale by both parties, shall deposit trust money in an account that is maintained by the real estate broker:** (Emphasis added).

**(i) separately from the real estate broker's own accounts; and**

**(ii) solely for trust money.** (Emphasis added).

As to alleged violations of § 17-322(b)(33) (#6 above), the code of ethics for real estate brokers is found at COMAR 09.11.02.01 and 09.11.02.02 which provide, in pertinent part, as follows:

COMAR 09.11.02.01 Relations to the Public.

- A. The licensee shall remain informed of matters affecting real estate in the community, the State, and the nation.
- B. The licensee shall be informed on current market conditions in order to be in a position to advise clients as to the fair market price.
- 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. (Emphasis added).
- D. The licensee shall make a reasonable effort to ascertain all material facts concerning every property for which the licensee accepts the agency, in order to fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of material facts.
- E. The licensee, acting as agent, may not discriminate in the sale, rental, leasing, trading, or transferring of property to any person or group of persons because of race, color, creed, religion, national origin, sex, handicap, or familial status.
- F. The licensee may not be a party to the naming of a false consideration in any document.

COMAR 09.11.02.02 Relations to the Client.

- A. In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction.** (Emphasis added).
- B. In justice to those who place their interests in the licensee's care, the licensee shall endeavor always to be informed regarding laws, proposed legislation, governmental orders, and other essential information and public policies which affect those interests.
- C. A licensee may not accept compensation from more than one party to a transaction without the full knowledge of all the parties.

The evidence before me, which is not refuted by any testimony from the Respondent, shows clearly that he failed to collect earnest money deposits for some of the HUD properties for which he placed bids and that those deposits he did collect were improperly returned to

prospective buyers. As part of his investigation, Mr. Oliver, the MREC investigator, met with the Respondent and his attorney to discuss the allegations. While the Respondent made some vague suggestions that the contracts or bids which he submitted were not accepted, or that he was never informed that they were accepted, the documents show otherwise. For each of the 23 HUD properties in question there is documentation from HomeSource that notice was in fact sent to the respondent that the bids were approved and accepted. Furthermore, the testimony of the HomeSource witnesses shows that notice of acceptance of such bids is available on the HUD website. Because such bids must be submitted on line, I find that the Respondent was certainly aware that his bids had been approved.

Furthermore, the Respondent also admitted that he failed to keep any records of the earnest money he did collect or any refunds he made. This is an admission that at best demonstrates incompetence and at worst an intent to deceive. These earnest money deposits were, in actuality, assets belonging to HomeSource and HUD and the Respondent's return of the deposits to prospective buyers was a violation of section 17-322(b)(22).

I also have no doubt that the Respondent knowingly misrepresented to HomeSource that he had collected earnest money deposits when in fact he had failed to do so. The Claimant's documentation, corroborated by testimony from the Claimant's employee's, shows that the Respondent sent copies of money orders to HomeSource to verify that he had collected earnest money deposits. The Respondent admitted that he used copies of some money orders on multiple occasions for multiple contracts. He even admitted to keeping copies of money orders on his desk to use for such "verifications" and that he did this as a convenience to his clients, the prospective buyers. Certainly the Respondent's actions in attempting to verify that earnest money had been collected for all of the 23 HUD properties by using copies of money orders was

a blatant misrepresentation that he had collected the required deposits. In short, he knew that he was required to collect the deposits and that he had not collected them and then he misrepresented to HomeSource that he had collected them, and in doing so he violated of section 17-502(b)(3).

The Respondent's failure to collect earnest money deposits for some of the HUD property contracts, something he knew he was required to do, and his failure to remit the deposits he did collect, while at the same time intentionally misleading HomeSource that he had collected the deposits, shows patently that the Respondent acted in bad faith and was untrustworthy. These actions clearly constitute dishonesty, fraud and improper dealings in violation of section 17-502(b)(25).

The evidence also shows, without doubt, that the Respondent failed to place trust money (deposits) in a separate account (escrow account) but rather placed \$38,000.00 of deposit money (not related to the 23 HUD properties) in his general business account, thereby co-mingling trust money with general business assets. The Respondent acknowledged that prior to being contacted by Patrick Richardson, the MREC auditor, he did not even have an escrow account for holding deposits made for real estate transactions. After being initially contacted by the auditor, the Respondent further acknowledged that he then opened an escrow account and transferred \$38,000.00 from his general business account into this newly created escrow. He further acknowledged that these funds were deposits he had collected for various real estate transactions. He admitted further that he had previously had an escrow account but closed it because of inactivity and the costs of maintaining it. These deposits were obviously trust money and the Respondent's failure to sequester them in a separate account was a violation of section 17-502(b)(1) and (2).

Finally, the actions of the Respondent, I find, demonstrate obvious violations of the code of ethics for real estate brokers. Brokers have ethical obligations not only to their individual clients but to the public in general. The Respondent's intentional failure to collect and remit earnest money payments, and his misrepresentations to the contrary, certainly did nothing to "protect and promote the interests of the client" his clients being HomeSource and HUD. In fact, his actions were intended to deceive his clients and to deprive them of earnest money deposits to which they were legally entitled. While the Respondent also had obligations to his other clients, prospective buyers of HUD properties, these obligations certainly did not relieve him of his statutory obligations to HomeSource and HUD. As to the Respondent's obligations to the public in general, his failure to act as he knew he should and the subsequent misrepresentations obviously are not actions that could in any way eliminate practices that are "damaging to the public or to the dignity and integrity of the real estate profession." His actions have in fact undermined that dignity and integrity, thereby violating section 17-502(b)(33), COMAR 09.11.02.02C & 09.11.02.02A.

### **Sanctions**

Pursuant to section 17-322(b) the MREC may "suspend or revoke a license if the applicant or licensee" for any of the violations listed in this section. I have found that the Respondent has violated the following sections, as outlined above:<sup>2</sup>

1. Section 17-502(b)(3).
2. Section 17-502(b)(22).
3. Section 17-502(b)(25).
4. Section 17-502(b)(31)

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<sup>2</sup> While the MREC has also charged the Respondent with violation of § 17-502(b)(32), I find that any violations of this section should be merged with the other violations I have found.

5. Section 17-502(b)(33).

In addition to suspending or revoking the license of a real estate broker under section 17-502(b), the MREC, pursuant to section 17-502(c), may impose a monetary penalty in the amount of \$5,000.00 for each violation.<sup>3</sup> In deciding on the appropriate sanctions, pursuant to § 17-502(c)(2), the MREC is required to consider;

1. The seriousness of the violation.
2. The harm caused by the violation.
3. The good faith of the licensee, and
4. Any history of previous violations by the licensee.

I have discussed above my determination that the Respondent did not act in good faith. I believe that his failure to appear at the hearing in this matter is yet another indication of his lack of good faith. The fact that I have determined that the Respondent intentionally misrepresented his actions in this case, standing alone, shows a lack of good faith. Furthermore, given that the misconduct of the Respondent occurred in 2005 and 2006 and that he has done nothing to rectify the impact of his misconduct shows that the bad faith continues. This bad faith, coupled with the Claimant being deprived of \$38,000.00, makes the Respondent's violations very serious. While there was some mention that the Respondent had a previous incident of failing to collect or remit earnest money deposits, I have no clear evidence that this occurred and I shall therefore view the instant case as the Respondent's first.

Because of the outright intentional misrepresentations of the Respondent, and particularly because he and family members stood to make a significant financial gain as a result his misconduct, I agree with Counsel for the MREC that revocation of the Respondent's license is

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<sup>3</sup> Section 17-502(c)(1) provides that "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.**" (Emphasis added).

appropriate. In addition, I find that a monetary sanction in the amount of \$5,000.00 for each of the statutes violated (for a total monetary sanction of \$25,000.00) is appropriate.<sup>4</sup>

**Guaranty Fund Claim**

Section 17-404 of the Business Occupations Article sets forth the criteria for recovery against the Fund:

Section 17-404. Recovery of compensation from Fund

(a)(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:

1. a licensed real estate broker;
2. a licensed associate real estate broker;
3. a licensed real estate salesperson; or
4. an unlicensed employee of a licensed real estate broker;

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

(iii) be based on an act or omission:

1. in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or
2. that constitutes fraud or misrepresentation.

Section 17-402 (c) of the Business Occupations Article allows the REC to adopt regulations to administer the Guaranty Fund. Under that power, the REC adopted COMAR 09.11.03.04 to regulate claims against the Guaranty Fund:

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<sup>4</sup> While I have found that five statutes have been violated, it is certainly true that there have been multiple violations of some of the laws and a penalty of \$5,000.00 for each violation of each law is possible. However, I find that a total sanction of \$25,000.00 is appropriate.

.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 licensed 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.

In this case, there is no dispute that the bases of this claim are acts or omissions that occurred in the provision of real estate brokerage services by a licensed real estate broker which involved transactions that related to real estate that was located in the Maryland. The Claimant has the burden of proving that it is entitled to reimbursement from the Guaranty Fund pursuant to section 17-407(e) and I find that the Claimant has sustained its burden.

Had the Respondent collected the earnest money deposits as required and remitted them to the Claimant, then the Claimant would have received \$38,000.00 in forfeited deposits.<sup>5</sup> Counsel for the MREC Fund argues that HomeSource has not sustained an actual monetary loss because it would not have been required to pay HUD for the deposits that were not forfeited. I disagree. No one has claimed that HomeSource was anything other than an agent of HUD. As such, HomeSource is authorized to act in the place of and for the benefit of HUD. HUD has certainly sustained an actual monetary loss, as its agent has demonstrated, and that loss is in the

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<sup>5</sup> I have reviewed the documentation provided by the Claimant and find that it supports its claim of loss in the amount of \$38,000.00.

amount of \$38,000.00. However, pursuant to section 17-404(b), the Claimant is limited to a recovery from the MREC Fund not to exceed \$25,000.00.

**CONCLUSIONS OF LAW**

For the reasons set forth above, I conclude that the Respondent has violated sections 17-322(b)(3), (22), (25), (31) and (33) of the Business Occupations Article. I further conclude that Claimant suffered an actual monetary loss as a result of the conduct of Respondent in the amount of \$38,000.00.

**RECOMMENDED ORDER**

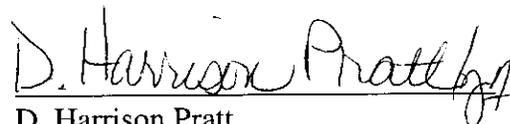
**I RECOMMEND** that the Maryland Real Estate Commission:

**ORDER** that the Respondent's license be revoked, and that he pay to the Maryland Real Estate Commission a civil penalty of \$25,000.00;

**ORDER** that the Claimant be reimbursed \$25,000.00 from the Maryland Real Estate Guaranty Fund to compensate him for the actual loss that it sustained because of the conduct of the Respondent; and

**ORDER** that the records and publications of the Maryland Real Estate Commission reflect this decision.

June 24, 2008  
Date Decision Mailed

  
D. Harrison Pratt  
Administrative Law Judge

Doc #97486

**MARYLAND REAL ESTATE**

**COMMISSION**

**v.**

**JAMES W. WARD t/a**

**GOLDEN ARROW REAL ESTATE, INC.**

**RESPONDENTS**

**and the**

**CLAIM OF HOMESOURCE REAL**

**ESTATE ASSET SERVICES, INC.,**

**AGAINST THE MARYLAND REAL**

**ESTATE COMMISSION GUARANTY**

**FUND**

\* **BEFORE D. HARRISON PRATT,**  
 \* **AN ADMINISTRATIVE LAW JUDGE**  
 \* **OF THE MARYLAND OFFICE OF**  
 \* **ADMINISTRATIVE HEARINGS**  
 \* **OAH CASE NO: DLR-REC-24-07-29813**  
 \* **COMPLAINT NO.: 07-RE-424GF**

\* \* \* \* \*

**EXHIBIT LIST**

The following documents were admitted into evidence on behalf of the MREC and the Claimant:

REC Ex. #1 Notice of Hearing from the OAH, December 20, 2007, with attachments.

REC Ex. #2 Notice of Hearing from the OAH, August 22, 2007.

REC Ex. #3 Statement of Charges and Order for Hearing from the REC, July 18, 2007.

REC Ex. #4 Respondent’s licensing history.

REC Ex. #5 Respondent’s licensing history as a real estate broker.

- REC Ex. #6 Licensing history of real estate agents affiliated with Golden Arrow Real Estate, Inc.
- REC Ex. #7 Licensing history of Ewan McKenzie.
- REC Ex. #8 Licensing history of George Nwosu.
- REC Ex. #9 Housing and Urban Development (HUD) Selling Broker Registration Package, with documents pertaining to the Respondent attached.
- REC Ex. #10 Tips for Selling HUD Owned Homes in Maryland and D. C., from HomeSource Real Estate Asset Services, Inc.
- REC Ex. #11 HUD Case Workflow Summary (HomeSource).
- REC Ex. #12 Listing of alleged fraudulent transactions.
- REC Ex. #13 Documentation as to transactions pertaining to the following properties:
1. 1011 N. Ashburton St., Baltimore, Maryland.
  2. 340 Whitridge Ave., Baltimore, Maryland.
  3. 2504 Marbourne Ave, Baltimore, Maryland.
  4. 1803 Clifton Ave., Baltimore, Maryland.
  5. 3040 Chesterfield Ave., Baltimore, Maryland.
- REC Ex. #14 Documentation as to transactions pertaining to the following properties:
1. 1500 Carlswell St., Baltimore, Maryland.
  2. 4013 Bellwood Ave., Baltimore, Maryland.
  3. 2004 Griffis Ave., Baltimore, Maryland.

REC Ex. #15 Documentation as to transactions pertaining to the following properties:

1. 1441 Luzerne Ave., Baltimore, Maryland.
2. 3025 Kenyan Ave., Baltimore, Maryland.
3. 1804 N. Carey St., Baltimore, Maryland.
4. 4247 Nicholas Ave., Baltimore, Maryland.

REC Ex. #16 Documentation as to transactions pertaining to the following properties:

1. 269 S. Hilton St., Baltimore, Maryland.
2. 2001 Cecil Ave., Baltimore, Maryland.
3. 748 Bartlett Ave., Baltimore, Maryland.
4. 2920 Huntingdon Ave., Baltimore, Maryland.

REC Ex. #17 Documentation as to transactions pertaining to the following properties:

1. 1441 Luzerne Ave., Baltimore, Maryland.
2. 557 S. Longwood St., Baltimore, Maryland.

REC Ex. #18 Documentation as to transactions pertaining to the following properties:

1. 557 S. Longwood St., Baltimore, Maryland.
2. 4247 Nicholas Ave., Baltimore, Maryland.

REC Ex. #19 Documentation as to transactions pertaining to the following properties:

1. 2920 Huntingdon Ave., Baltimore, Maryland.

2. 1610 St. Stephens St., Baltimore, Maryland.

REC Ex. #20 Report of Investigation by Robert Oliver, May 3, 2007, with  
attachments.