

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v.

* CASE NUMBER 2008-RE-584

MARK DUBYOSKI *

Respondent

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FINAL ORDER

Mark Dubyoski, Respondent, a licensed salesperson, upon request of the Maryland Real Estate Commission, provided certificates of attendance for mandated Continuing Education courses for the 2006 renewal of his license. A review of those certificates revealed that he failed to submit a certificate of attendance for the required one and half hour fair housing course. The Respondent was notified of the failure to submit the required certificate and told that a fine in an amount up to \$5,000 could be imposed for this violation of Sections 17-314(e)(4) and 17-315, Business Occupations and Professions Article, ("BOP" Article), *Annotated Code of Maryland*. He requested a hearing before the Commission.

A hearing was held on September 29, 2008, before a panel of three members of the Commission. Mr. Dubyoski represented himself before the panel. Steven Long, Assistant Executive Director testified on behalf of the Commission. The proceedings were electronically recorded.

FINDINGS OF FACT

From the testimony and exhibits presented, with an opportunity to observe the demeanor of the witnesses, the Real Estate Commission finds the relevant facts to be these:

1. Mark Dubyoski submitted an electronic application for renewal of his associate broker's license on December 30, 2005. On the application he indicated that he had met the continuing education requirements for license renewal. Based on this representation, his license was renewed.

2. Pursuant to § 17-315, BOP Article, *Annotated Code of Maryland*, Mr. Dubyoski was required to complete seven and one half hours of continuing education instruction in three specific subject areas during the two-year period preceding his 2006 license renewal. A one and a half hour course in Fair Housing was required. Section 17-315(b)(2)(iii).

3. In response to the request of the Commission, set forth in a letter dated August 30, 2007, Mr. Dubyoski furnished copies of the continuing education certificates related to the 2006 renewal to the Commission. The request to Mr. Dubyoski was part of a random audit of licensee compliance with continuing education requirements.

3. Commission staff reviewed the submitted certificates and determined that Mr. Dubyoski failed to submit a certificate for the required fair housing class, but had certified on the renewal application that he had fulfilled all continuing education requirements.

4. At the hearing, Mr. Long and Mr. Dubyoski testified under oath. Mr. Long testified to the following:

Mr. Dubyoski was notified by mail, on August 30, 2007, that he had been randomly selected to be an audit candidate for the audit of the 2006 renewal period. He was required to obtain seven and one half hours of continuing education in two specific subject areas for the 2006 renewal period. An examination of the certificates that he furnished to the Commission revealed that he had completed only two of the three required courses. The missing certificate was for the required fair housing course.

Mr. Dubyoski testified that failing to attend the required fair housing class was an oversight on his part. He admitted that his failure to take the required class was caused by his carelessness. Mr. Dubyoski provided to the panel a certificate of completion for the Fair Housing class that he attended after he was notified of the audit.

DISCUSSION

In this case, there is no question that Mr. Dubyoski violated §§17-314(e)(4) and 17-315, BOP Article, *Annotated Code of Maryland*. The question is what penalty should be imposed for that violation. Section 17-322(c) provides that the Commission may reprimand a licensee or suspend or revoke the license, and it may assess a civil penalty, not exceeding \$5,000 for each violation.

Section 17-322(c)(2) directs the Commission to consider four factors in determining the penalty that should be imposed for a violation. The first factor is the seriousness of the violation. The Commission relies upon an applicant to voluntarily comply with the requirements of §17-315 to complete specified continuing education courses during each licensing period and to truthfully report those credits when filing an on-line application for license renewal. The Commission considers a licensee's failure to comply with the requirement that he complete designated continuing education classes prior to license renewal and the licensee's lack of truthfulness in reporting completion of those credits to be a serious violation. Under the law, he was not eligible for renewal of his license, and he received it only because he submitted incorrect data into the electronic process. The failure to complete the required continuing education credits and the submission of an on-line application indicating that the credits had been received is also indicative of a lack of good faith, another factor to be considered in assessing a penalty.

There was no indication of harm to the public or of any previous violations by the licensee, the third and fourth factors to be considered.

Mr. Dubyoski testified that his carelessness was the cause of his failure to complete the required continuing education requirements. The Commission does not find that to be a mitigating factor. For these reasons, the Commissioners believe that a \$1,500 civil penalty is appropriate.

CONCLUSIONS OF LAW

The Real Estate Commission reaches the following conclusions of law:

1. Mark Dubyoski was licensed as a salesperson on December 30, 2005 and renewed his license that day. He indicated on the on-line application that he had fulfilled the continuing education requirements for renewal. Mr. Dubyoski had not, in fact, completed the required one and a half hour course in fair housing.
2. Failure to complete the required course prior to applying for renewal of his license is a violation of §§17-315, and 17-322(b)(32).
3. Mr. Dubyoski's violation indicates a lack of good faith and is serious in nature, going to the heart of the licensing process.
4. After evaluating the statutory factors to be considered in assessing a penalty, the Commission concludes that a fine of \$1,500.00 is appropriate and just.

ORDER

In consideration of the Findings of Fact and Conclusions of Law, it is, by the Maryland Real Estate Commission, this 29th day of October, 2008,

ORDERED

A. That the licensee, Mark Dubyoski, pay a civil penalty of \$1500.00 and an administrative reinstatement fee of \$100.00 to the Commission; the fee and fine to be paid within 30 days of the date of this order.

B. If the penalty and administrative reinstatement fee are not paid within thirty days of this order becoming final, all real estate licenses held by the Respondent will be suspended until such time as the penalty and administrative reinstatement fee are paid.

C. That the records, files and documents of the Real Estate Commission reflect this decision.

MARYLAND REAL ESTATE COMMISSION

J. Nicholas D'Ambrosio, Chairman

By: *Kathleen 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 licensee 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.

Maryland Real Estate Commission

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BEFORE THE

v.

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MARYLAND REAL

Mark Edward Dubyoski

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ESTATE COMMISSION

Respondent

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Agency Case No.: 2008-RE-584

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Consent Order

This matter comes before the Maryland Real Estate Commission ("Commission") as the result of an audit of continuing education hours conducted by the Commission in connection with the 2006 renewal application of Mark Dubyoski. As a result of the audit, it was determined that the Respondent did not complete the required hours of continuing education instruction for renewal of license. As a means of resolving this matter, the Commission and the Respondent have agreed to enter into this Consent Order, and agree and stipulate to the following:

1. On 12/30/2005 the Respondent submitted an electronic application for the renewal of a Salesperson's license for the (2006-2008) renewal period.
2. Pursuant to Section 17-315 of the Business Occupations and Professions Article, Maryland Annotated Code, the Respondent was required to complete 7.5 hours of continuing education instruction during the two year period preceding the renewal date of 02/20/2006.
3. The Respondent failed to complete the required number of hours, but certified on the renewal application dated 12/30/2005, that the continuing education requirement had been fulfilled. The failure to obtain the continuing education hours was in

comply with the terms of this Consent Order. The Respondent further agrees that the suspension of license will continue until the Respondent evidences compliance.

9. The Respondent and the Commission understand that this Consent Order will serve as the Final Order in this matter and be a part of the Respondent's licensing record maintained by the Commission. The Commission's records and publications will reflect the terms of the Consent Order.

WHEREFORE, based on these stipulations and agreements, it is hereby this

5th day of February, 200~~8~~⁹, **ORDERED** by the Commission:

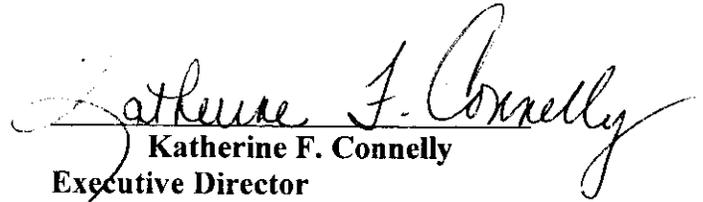
- I. That the Respondent has been found to have violated Section 17-315 of the Business Occupations and Professions Article, Maryland Annotated Code.
- II. That the Respondent shall complete 1.5 hours of continuing education in the categories enumerated in the Checklist attached to and incorporated with this Consent Order. The hours must be completed within sixty (60) days of the date of this Consent Order.
- III. That upon completion of the hours, but no later than sixty (60) days from the date of this Consent Order, the Respondent shall provide the Commission with all of the original certificates of completion for the continuing education hours required.
- IV. That the Respondent shall pay a fee of \$100 in connection with the administration of this matter, and a fine of \$1500.00 in connection with the violation within 30 days of the date of this Consent Order.
- V. That in the event the terms and conditions of this Consent Order are not met by the Respondent within the time described, the Commission will immediately suspend all real estate licenses held by the Respondent, without a hearing on the

suspension. The suspension will continue until such time as the Respondent evidences compliance with the terms of this Consent Order.

- VI. That the records of the Commission shall reflect that this matter was resolved by execution of this Consent Order.



Mark Dubyoski
Respondent



Katherine F. Connelly
Executive Director
Maryland Real Estate Commission