

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v.

* CASE NUMBER 2008-RE-589

SCOTT D. MCQUILKEN *

Respondent

*

*

*

*

*

FINAL ORDER

Scott D. McQuilken, Respondent, a licensed broker, 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 three hour ethics course and the required one and a 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. McQuilken 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. Scott D. McQuilken submitted an electronic application for renewal of his broker's license on February 1, 2006. 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. McQuilken 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 three hour course in ethics "that includes the Maryland Code of Ethics and a discussion of the practices of flipping and predatory lending" was required. Section 17-315(b)(2)(iv) and a one and a half hour course in fair housing was also 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. McQuilken furnished copies of the continuing education certificates related to the 2006 renewal to the Commission. The request to Mr. McQuilken was part of a random audit of licensee compliance with continuing education requirements.

3. Commission staff reviewed the submitted certificates and determined that Mr. McQuilken submitted a certificate for the required ethics class, fair housing class, and legislative update. The certificate for the ethics class and fair housing class was from a Delaware provider and was not an approved class by the Commission. He certified on the renewal application that he had fulfilled all continuing education requirements.

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

Mr. McQuilken 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 three 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 one of the three required courses. The certificate submitted for the required ethics course and fair housing course was not an approved course by the Commission to comply with the Maryland requirements.

Mr. McQuilken testified that he thought the Delaware provider's course was an approved course to meet the Maryland requirements. He also testified that he did not willfully neglect to take the required courses, but it was an error on his part for failing to ensure that the courses were approved courses to meet the Maryland requirements.

DISCUSSION

In this case, there is no question that Mr. McQuilken 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. McQuilken testified that he had believed that the Delaware courses met the educational requirement needed for Maryland continuing education. The Commission does not find that to be a mitigating factor. The responsibility for completing required education course is on the licensee. 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. Scott D. McQuilken was licensed as a broker on February 1, 2006 and renewed his license that day. He indicated on the on-line application that he had fulfilled the continuing education requirements for renewal. Mr. McQuilken had not, in fact, completed the required Maryland approved three hour course in ethics or the fair housing course.
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. McQuilken'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, Scott D. McQuilken, 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: *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 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.