

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE

COMMISSION

V.

OSCAR FLETCHER

* BEFORE ANN C. KEHINDE,
* ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-21-08-07404
* REC CASE NO: 2007-RE-654

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated December 8, 2008, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 21st day of January, 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

By: _____

Surina A. Jordan, Commissioner

Date

1/21/09

MARYLAND REAL ESTATE

* BEFORE ANN C. KEHINDE,

COMMISSION

* AN ADMINISTRATIVE LAW JUDGE

v.

* OF THE MARYLAND OFFICE OF

OSCAR FLETCHER

* ADMINISTRATIVE HEARINGS

* OAH CASE NO.: DLR-REC-21-08-07404

* COMPLAINT NO: 07-RE-654

* * * * *

RECOMMENDED DECISION

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RECOMMENDED ORDER

STATEMENT OF THE CASE

On May 10, 2007, the Maryland Real Estate Commission (Commission) initiated a complaint against Oscar Fletcher (Respondent), a real estate broker, because it discovered that the Respondent had lied on his 2004 license application when he answered “no” to the question of whether he had ever been convicted of a felony. On January 29, 2008, after investigation of the complaint, the Commission issued a Statement of Charges and Order for Hearing against the Respondent.

I conducted a hearing on September 8, 2008, at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. §17-324 (2004). Peter Martin, Assistant Attorney General, represented the Commission. Neither the Respondent nor anyone authorized to appear on his behalf appeared. The Administrative Procedure Act, the procedures for Administrative Hearings of the Office of the Secretary of the

Department of Labor, Licensing and Regulation (DLLR), the Commission's hearing procedures, and the OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§10-201 through 10-226 (2004 & Supp. 2008); Code of Maryland Regulations (COMAR) 09.01.02, 09.01.03, 09.11.03 and 28.02.01.

ISSUES

Should the Respondent's real estate license be revoked because he was convicted of a felony and failed to disclose that fact on his application?

SUMMARY OF THE EVIDENCE

Exhibits

The Commission submitted the following documents that were admitted into evidence:

- REC Ex. #1- Notice of Hearing, dated April 18, 2008; Statement of Charges and Order for Hearing, dated January 29, 2008.
- REC Ex. #2- Licensing History, dated August 7, 2008.
- REC Ex. #3- Report of Investigation, dated November 1, 2007.

As the Respondent failed to appear for the hearing, no documents were admitted into evidence on his behalf.

Testimony

The Commission presented the testimony of Steven Long, the Commission's Assistant Executive Director; and Robert Oliver, Investigator for the Commission. The Respondent failed to appear and therefore did not testify on his own behalf or present any other witnesses.

FINDINGS OF FACT

After considering the evidence presented, I find the following facts by a preponderance of the evidence:

1. On August 13, 1999, the Respondent pled guilty to a charge of theft over \$300 in the District Court of Maryland for Montgomery County.
2. On August 4, 2004, the Respondent completed an Application for Original or Renewal of License (Application). One of the questions on the Application required the Respondent to answer whether he was ever “convicted of a felony or misdemeanor in any State or Federal Court?” The Respondent marked an “X” in the space next to “No” in response to that question.
3. The licensing records of the Commission reflect that the Respondent’s address of record, from October 24, 2006, until the time of the hearing was: Re/MAX Realty Group, 6 Montgomery Village Avenue, Suite 200, Gaithersburg, MD 20879.
4. On February 20, 2007, March 6, 2007 and May 30, 2007, the Respondent sent correspondence to the Commission regarding his Application and the fact that he did not disclose his felony conviction.
5. In his May 30, 2007, letter, the Respondent requested that all future correspondence be directed to him at his business address of record.
6. On October 29, 2007, a Commission Investigator spoke with the Respondent by telephone about the Application.
7. On April 18, 2008, the OAH sent a Notice of Hearing to the Respondent at the following address: Re/MAX Realty Group, 6 Montgomery Village Avenue, Suite 200, Gaithersburg, MD 20879.

8. The Notice of Hearing was sent to the Respondent by certified mail and regular mail and was not returned to the OAH by the United States Postal Service.
9. The Notice of Hearing was sent to the Respondent more than ten days prior to the scheduled hearing date of September 8, 2008, with a hearing time of 10:00 a.m.
10. The Respondent did not contact anyone at the OAH to request a postponement nor was a postponement granted.
11. On September 8, 2008, at 10:20 a.m. I convened the hearing in this case, at which time neither the Respondent, nor anyone authorized to act on his behalf, appeared.

DISCUSSION

The Respondent's Failure to Appear

Section 17-324 of the Business Occupations and Professions Article provides that before the Commission can take any final action against an individual, the individual must be personally served with a hearing notice; or, the hearing notice must be sent by certified mail at least ten days prior to the hearing to the individual's last known business address. Md. Code Ann., Bus. Occ. & Prof. § 17-324(d) (2004). If the individual, after receiving proper notice of the hearing, fails or refuses to appear, the Commission may hear and determine the matter despite the individual's absence. Md. Code Ann., Bus. Occ. & Prof. § 17-324(f) (2004). The record demonstrates, by a preponderance of the evidence, that the OAH sent a Notice of Hearing to the Respondent by certified and first class mail, to his last known business address, at least ten days prior to the hearing. Neither mailing was returned to the OAH by the United States Postal Service as undeliverable. Furthermore, the evidence demonstrates that the Respondent was aware of the Commission's investigation and requested, in writing, that all correspondence from the Commission regarding the matter be sent to the business address of record to which the

Notices of Hearing were mailed. As the Respondent received proper notice of the hearing and failed to appear, the Commission was entitled to proceed in the Respondent's absence. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (d), (f) (2004).

The Respondent's Violations

In this matter, the Commission has charged the Respondent with violation of the following sections of the Maryland Annotated Code's Business Occupations and Professions article:

§ 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:

(1) fraudulently or deceptively obtains or attempts to obtain a license for the applicant or for another;

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

Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(1) and (25) (Supp. 2008).

At the hearing, the evidence was unrefuted that, on August 13, 1999, the Respondent was found guilty of theft over \$300. The evidence is also unrefuted that in response to the Application's question whether the Respondent was ever "convicted of a felony or misdemeanor in any State or Federal Court?," he marked an "X" in the space next to "No."

The Respondent did not appear at the hearing but he addressed the Application in three separate letters to the Commission. In the Respondent's February 20, 2007 letter to the Commission, he asserted that he "mistakenly failed to disclose that" he had pleaded guilty to theft eight years ago on his Application. He further noted that his failure was noticed when he applied for a job with State Farm Insurance and that he disclosed his felony conviction during the

hiring process. (REC Ex. 3, p. 13). On March 6, 2007, the Respondent wrote another letter to the Commission in which he stated that the mistake in not disclosing his felony conviction resulted from his having been in a “hurry” and his not having given “the application [his] full, total and undivided attention by thoroughly reading all of the questions.” (REC Ex. 3, p. 14). On July 6, 2007, the Respondent sent the Commission a third letter in which he said that it was his “understanding that the crime [that he] had been convicted of had been downgraded to a misdemeanor and was no longer classified as a felony.” Consequently, he indicated that, at the time, he “believed that [he] would never have to answer ‘yes’ to a felony question again with regards to a job application.” (REC Ex. 3, p. 15).

Currently, section 7-104 of the Criminal Law Article provides that thefts over \$500 are characterized as felony theft. Md. Code. Ann., Crim. Law § 7-104(g) (Supp. 2008). However, the law in effect at the time of the Respondent’s conviction provided that theft in an amount over \$300 was a felony conviction. See, Md. Ann., Code art. 27, § 342(f) (1996). As the Respondent failed to appear for the hearing, he has failed to provide any reasonable explanation as to why he would have thought that a change in the law would have retroactively altered his conviction. Even more importantly, the question asked the Respondent whether he had been convicted of a felony or a misdemeanor. Therefore, even if the Respondent believed his crime had been “downgraded” to a misdemeanor, he has failed to supply any rationale as to why he did not answer the question in the affirmative.

Finally, because the Respondent failed to appear for the hearing, he was unavailable to explain why he gave the Commission at least two different explanations as to why he did not truthfully answer the relevant question on his Application, neither of which adequately justifies his conduct. His first explanation was that he made a mistake because he was in a hurry and did

not read the Application carefully. His second explanation was that he did not answer the question properly because he thought he was no longer convicted of a felony. It is reasonable to infer from the Respondent's second explanation that he did read the question correctly and his answer was the result of a conscious decision on his part and not an inadvertent error.

I conclude that the Respondent's failure to disclose his felony theft conviction on his Application resulted in his deceptively obtaining a license in violation of section 17-322(b)(1) and bad faith in violation of section 17-322(b)(25) of the Business and Occupations Article. I further conclude that the Respondent's failure to explain why he offered two disparate explanations for his failure to disclose the felony theft conviction demonstrates bad faith in violation of section 17-322(b)(25) of the Business and Occupations Article. As both of the alleged and proven violations can properly be a basis for the revocation of the Respondent's real estate license, and I was provided no reasonable basis for mitigating that sanction, I conclude that the Commission's decision to revoke the Respondent's license should be upheld.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondent's real estate license should be revoked. Md. Code Ann., Bus. Occ. & Prof. § 17-322 (b) (1) and (25) (Supp. 2008).

RECOMMENDED ORDER

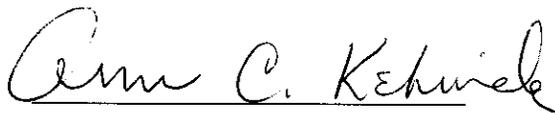
I THEREFORE RECOMMEND that the Maryland Real Estate Commission

ORDER that the Respondent's real estate license be revoked for his violations of Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(1) and (25); and further

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

December 8, 2008

Date Decision Mailed



Ann C. Kehinde

Administrative Law Judge

ACK
#101425