

FINAL ORDER

BEFORE THE MARYLAND REAL ESTATE COMMISSION JUN 20 2011

MARYLAND REAL ESTATE COMMISSION \*

MARYLAND REAL ESTATE COMMISSION

v. \*

ADERONKE IZON  
Respondent

\* CASE NO. 2009-RE-066  
\* OAH NO. DLR-REC-21-10-21784  
\*

\* \* \* \* \*

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated February 24, 2011, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of April, 2011

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, AFFIRMED;

C. That the Recommended Order be, and hereby is, AMENDED as follows:

ORDERED that the Respondent Aderonke Izon violated Md. Bus. Occ. and Prof. Art. §17-322(b)((6), (25), and (33), §17-530, and COMAR 09.11.02.01H, 09.11.02.02A, and 09.11.02.02D;

ORDERED that the Respondent Aderonke Izon be REPRIMANDED;

ORDERED that the Respondent Aderonke Izon be assessed a civil penalty in the amount of \$2,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that all real estate licenses held by the Respondent Aderonke Izon shall be SUSPENDED if the civil penalty not is paid in full within the thirty day time period;

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

D. Pursuant to §10-220 of the State Government Article, the Commission finds that the Recommended Decision of the Administrative Law Judge had to be modified because the judge omitted the provisions that the civil penalty be paid within a specified time period and that all real estate licenses held by the Respondent are suspended if she does not pay the civil penalty in full within the thirty day time period.

E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.08 those parties adversely affected by this Proposed Order shall have 20 days from the postmark date of the Order to file exceptions and to request to present arguments on the proposed decision before this Commission. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor,

500 North Calvert Street, Baltimore, MD 21202.

# SIGNATURE ON FILE

Maryland/Real Estate Commission

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**MARYLAND REAL ESTATE  
COMMISSION**

**v.**

**ADERONKE IZON,  
RESPONDENT**

**\* BEFORE BRIAN ZLOTNICK,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH CASE NO.: DLR-REC-21-10-21764  
\* REC COMPLAINT NO: 2009-RE-066**

**\* \* \* \* \***

**RECOMMENDED DECISION**

**STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
RECOMMENDED ORDER**

**STATEMENT OF THE CASE**

On August 4, 2008, Maurice Roman (Complainant) filed a complaint with the Maryland Real Estate Commission (Commission or REC), an administrative unit of the Department of Labor, Licensing and Regulation (DLLR), against Aderonke Izon (Respondent), a licensed real estate agent for Keller Williams Realty Consultants (Broker). On May 31, 2010, the REC issued a Statement of Charges and Order for Hearing against the Respondent.

On December 3, 2010, I conducted a hearing at the County Office Building, 1400 McCormick Drive, Largo, Maryland 20774. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2010) (Business Occupations Article). Jessica Kauffman, Assistant Attorney General, represented the Commission. The Respondent represented herself.

The Administrative Procedure Act, the procedures for Administrative Hearings of the Office of the Secretary of the DLLR, the procedures for Hearings of the Commission, and the OAH Rules of

Procedure govern procedure in this case. Md. Code Ann., State Gov't §§10-201 through 10-226 (2009 & Supp. 2010); Code of Maryland Regulations (COMAR) 09.01.02, 09.01.03, 09.11.03, and 28.02.01.

### ISSUES

The issues are whether the Respondent violated the Maryland real estate law and, if so, whether the REC may suspend the Respondent and impose a civil penalty.

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits on behalf of the Commission:

- REC #1 Notice of Hearing, dated September 15, 2010
- REC #2 Transmittal form with attached statement of charges, dated May 31, 2010
- REC #3 Respondent's licensing record
- REC #4 Metropolitan Regional Information System (MRIS) listing for 11429 Laurelwalk Drive, #B-123, Laurel, Maryland (Property)
- REC #5 Residential Contract of Sale for the Property, dated April 22, 2008
- REC #6 E-mail from the Respondent to the Complainant, dated June 23, 2008
- REC #7 Letter from Wilshire Credit Corporation to the Respondent, dated June 20, 2008
- REC #8 Letter from the Complainant to Mr. Fontana, dated July 14, 2008
- REC #9 Complaint Form, dated August 4, 2008

The Respondent did not present any documents into evidence.

#### Testimony

The Commission presented the testimony of the Complainant and Robert Oliver, Commission Investigator.

The Respondent testified on her own behalf and did not present any witnesses.

## FINDINGS OF FACT

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

1. The Respondent first obtained her real estate salesperson license on October 10, 2005 and that license has remained effective since that date. The Respondent's real estate salesperson license became inactive on April 25, 2010 and expires on October 10, 2011.
2. The Complainant asked the Respondent to show him some properties in the Hyattsville and Upper Marlboro areas. The Respondent informed the Complainant of the 11429 Laurelwalk Drive, Unit B123 condominium (Property) located in Laurel, Maryland.
3. The Complainant entered into a Residential Contract of Sale (Contract) to purchase the Property for \$120,000. The seller of the Property was Elizabeth Adepegba, the Respondent's mother. The Respondent never disclosed to the Complainant that she was related to the seller of the Property. The Contract lacked any disclosure that the seller was the Respondent's mother. The Contract indicated a settlement date of May 30, 2008. The Complainant and the seller of the Property signed the Contract.
4. The Respondent indicated on the Contract that she was acting as the seller's and buyer's agent and she checked the box indicating that she was acting as dual agent in the Contract. There was no other agent involved in the transaction. The Respondent represented both the buyer and the seller in the Contract.
5. The Respondent failed to present the Contract to the Broker.
6. Settlement on the Property did not occur on May 30, 2008.
7. No addendums to the Contract were made to extend the settlement date to a date after May 30, 2008.
8. The lien holder of the Property, Wilshire Credit Corporation, advised the seller on June 20, 2008, that they would release the lien on the Property in exchange for a discounted payoff in the

amount of \$110,057.24. This offer expired on July 1, 2008. No addendums to the Contract were made to reflect the position of Wilshire Credit Corporation regarding the Property.

9. On a date after May 30, 2008, the Respondent told the Complainant that the Seller had a higher offer for the Property and that the Complainant had the option to match that higher offer. The Complainant declined to match the higher offer and demanded that the Contract go to settlement as negotiated. The Contract never went to settlement.
10. The Respondent has no history of violations with the Commission.

### DISCUSSION

#### **Statutory and Regulatory Violations**

The Commission charged the Respondent with violating sections 17-322(b)(6), (25) and (33) and 17-322(c) of the Business Occupations and Professions Article, as well as COMAR 09.11.02.01H, COMAR 09.11.02.02A and .02D. The Commission may reprimand any licensee, or suspend or revoke a licensee for numerous reasons delineated in law. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b) (2010). The Commission is seeking to impose a reprimand on the Respondent's real estate license for the following reasons.

The Commission may reprimand a licensee who acts as a dual agent when prohibited. §§ 17-322(b)(6) and 17-530 (2010). A dual agent "means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who acts as an agent for both the seller and the buyer or the lessor and the lessee in the same real estate transaction." § 17-530(a)(5). A real estate agent must obtain the written informed consent of all of the parties to a real estate transaction to act as a dual agent. § 17-530(c) and (d)(1)(i) and (ii). The importance of the informed consent is obvious and cannot be overstated: it protects the parties and the real estate agent from inherent conflict of interest.

The Respondent did have the Complainant and the Seller complete a dual agency agreement when she had them sign the form that indicated that she was acting as a dual agent in the transaction;

however, the Respondent was a licensed salesperson in this transaction and not a licensed broker. The Broker never received the Contract and as such could not assign another salesperson to the transaction to ensure that the Complainant and the seller both had their own salesperson to represent their interests in this transaction. The Respondent argued that the Complainant was acting as his own agent and that she was not acting as his buying agent or as a dual agent. I did not find the Respondent's assertion to be credible in that she assisted the Complainant in locating the Property and as such was acting as the Complainant's buying agent. I also did not find the Respondent's assertion that the Broker was acting as the dual agent in this transaction to be credible. Janet Heitkamp, Co-Owner of the Broker, told an REC investigator that she had discussed the dual agency disclosure with the Respondent but the Broker never received the Contract for review within 48 hours of its ratification. Furthermore, the Broker never assigned a second salesperson to the transaction as it was unaware of the nature of the Contract as it was not provided for review by the Respondent. Accordingly, I find that the evidence established that the Respondent was acting as a dual agent in this transaction in violation of the above cited statute.

The Commission may also reprimand a licensee who engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness, or that constitutes dishonest, fraudulent or improper dealings. § 17-322(b)(25).

Section 17-322(b)(33) of the Business Occupations Article provides:

(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:

(33) violates any regulation adopted under this title or any provision of the code of ethics.

COMAR 09.11.02.01H provides:

For the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the



exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed.

The evidence is overwhelming that the Contract contained a settlement date of May 30, 2008.

However, a lien holder of the Property indicated that the lien would be released for a certain amount of money and that the deadline for this arrangement was July 1, 2008. The Respondent forwarded the e-mail she received from the lien holder, yet no addendums were made to the Contract to extend the settlement date or to account for the demands of the lien holder. The Respondent continued to negotiate the sales price of the Property with the Complainant after May 30, 2008 even though the Contract was executed and the settlement date established as May 30, 2008.

Accordingly, the Respondent violated the regulations as the financial obligations related to the lien holder of the Property were not placed in writing as an addendum to the Contract, and as such violated COMAR 09.11.02.01H.

Furthermore, COMAR 09.11.02.02D provides:

**D. Disclosure Requirement.**

- (1) The licensee may not acquire an interest in, or purchase, personally, for any member of the licensee's immediate family, for the licensee's firm, for any member of the firm, or for any entity in which the licensee has an ownership interest, property listed with the licensee or the licensee's firm without making the licensee's true position known to the listing owner. In selling or leasing property in which the licensee, the licensee's firm, or any member the licensee's immediate family or the licensee's firm has an ownership interest, the licensee shall reveal that interest in writing to all parties to the transaction.

There is no dispute that the seller of the Property is the Respondent's mother. The Respondent argued that she indicated in the MRIS listing that the agent was related to the seller. The Respondent acknowledged, however, that she never indicated her relation to the seller in the Contract. The Complainant indicated that he never saw a copy of the MRIS listing prior to the hearing and that he was

unaware that the seller was the Respondent's mother. Clearly, the Respondent's failure to disclose her relation to the seller in the Contract violated COMAR 09.11.02.02D.

Accordingly, the Respondent violated the regulations and related statute, as charged.

**May the REC impose a \$2,000.00 civil penalty in addition to the disciplinary reprimand?**

Section 17-322(c) of the Business Occupations Article (2010) governs the imposition of monetary penalties and provides, in pertinent part, as follows:

(c) *Penalty.* – (1) 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.

(2) To determine the amount of the penalty imposed, the Commission shall consider:

- (i) the seriousness of the violation;
- (ii) the harm caused by the violation;
- (iii) the good faith of the licensee; and
- (iv) any history of previous violations by the licensee....

The statute is designed to protect the public from professional wrongdoing. The requirements to disclose familial relationships to parties to a contract, include all pertinent financial information related to the property in a contract and the prohibition of licensed salespersons from acting as dual agents, are not a matter of judgment; these mandates are imposed upon a real estate broker by statute and regulation. These requirements go to the essence of what the public should be able to expect from real estate licensees. At the hearing, the Commission argued that the Respondent's actions were serious and they caused harm to the Complainant. He was never able to purchase the Property at settlement in accordance with the Contract. I did consider that the Respondent has no history of previous violations.

Accordingly, a civil penalty is warranted. The Commission recommended a total penalty of \$2,000.00 for all of the above-stated violations and I find the recommendation reasonable.

**CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated section 17-322(b)(6),(25) and (33) and section 17-530 of the Business Occupations Article, and the Real Estate Commission Code of Ethics, COMAR 09.11.02.01H and COMAR 09.11.02.02A and COMAR 09.11.02.02D.

I further conclude as a matter of law that the Maryland Real Estate Commission may impose a reprimand on the Respondent's license and may impose on her a monetary penalty of \$2,000.00. Md. Code Ann., Bus. Occ. & Prof. §§17-322(b)(25), (27), (30),(31) and (33) and 17-322(c) (2010).

**RECOMMENDED ORDER**

**IT IS THEREFORE RECOMMENDED** that the Maryland Real Estate Commission:

**ORDER** that Respondent Aderonke Izon's license receive a reprimand and she be required to pay a \$2,000.00 civil penalty for violating the provisions of the Business Occupations Article and the Real Estate Commission Code of Ethics; and,

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

February 24, 2011  
Date Decision Mailed

**SIGNATURE ON FILE**

Brian Zlotnick /  
Administrative Law Judge

BMZ/  
#120684