

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v.

* CASE NUMBER 2008-RE-661

ELIZABETH OLVER *

Respondent

* * * * *

FINAL ORDER

Elizabeth Olver, 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 her license. A review of those certificates revealed that she failed to submit a certificate of attendance for the required three hour ethics class. 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. Ms. Olver was represented by counsel Joel D. Carpenter 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. Elizabeth Olver submitted an electronic application for renewal of her salesperson's license on July 2, 2006. On the application she indicated that she had met the continuing education requirements for license renewal. Based on this representation, her license was renewed.

2. Pursuant to § 17-315, BOP Article, *Annotated Code of Maryland*, Ms. Olver 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 titled Maryland Code of Ethics, Predatory Lending and Flipping was required was required, Section 17-315 (b) (2) (iv)

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

3. Commission staff reviewed the submitted certificates and determined that Ms. Olver failed to submit a certificate for the required ethics class. She did submit a certificate for a course titled National Association of Realtors Code of Ethics. This course is not approved by the Commission and does not meet the requirements of Section 17-315 (b) (2) (iv). She certified on the renewal application that she had fulfilled all continuing education requirements.

4. At the hearing, Ms. Long and Ms. Olver testified under oath. Ms. Long testified to the following:

Ms. Olver 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. She 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 she had completed only two of the three required courses. The certificate submitted for the required ethics class course was not an approved class by the Commission.

Ms. Olver testified that she takes full responsibility for her oversight in not taking the required course. She also testified that she did not willfully neglect to take the required course, but it was felt that the NAR Code of Ethics class met the requirements of the Commission.

DISCUSSION

In this case, there is no question that Ms. Olver 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, she was not eligible for renewal of his license, and she 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.

Ms. Olver testified that she mistakenly believed that the NAR Code of Ethics class met the requirements of the Commission. 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. Elizabeth Olver was licensed as a salesperson on July 1, 2006 and renewed her license that day. She indicated on the on-line application that she had fulfilled the continuing education requirements for renewal. Ms. Olver had not, in fact, completed the required three hour class, Maryland Code of Ethics, Predatory Lending and Flipping.
2. Failure to complete the required course prior to applying for renewal of her license is a violation of §§17-315, and 17-322(b)(32).
3. Ms. Olver'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 29 day of October, 2008,

ORDERED

A. That the licensee, Elizabeth Olver, 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

By: J. Nicholas J. Ambrose
Kalkreuth & Connolly, P.C.

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.