

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION
V.

THADDEUS K. POWELL
RESPONDENT

AND

CLAIM OF WILLIAM M. EPPS

AGAINST THE REAL ESTATE
COMMISSION GUARANTY FUND

* BEFORE YVETTE N. DIAMOND,
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-24-08-34742
* REC CASE NO: 2007-RE-709

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated June 23, 2009, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 15th day of July, 2009.

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

7/15/09

Date

By: 

Surina A. Jordan, Commissioner

MARYLAND REAL ESTATE

*** BEFORE YVETTE N. DIAMOND,**

COMMISSION

*** AN ADMINISTRATIVE LAW JUDGE**

v.

*** OF THE MARYLAND OFFICE OF**

THADDEUS K. POWELL,

*** ADMINISTRATIVE HEARINGS**

and

CLAIM OF WILLIAM M. EPPS AGAINST

OAH CASE NO: DLR-REC-24-08-34742

THE MARYLAND REAL ESTATE

COMPLAINT NO.: 2007-RE-709

COMMISSION GUARANTY FUND

*** * * * ***

PROPOSED DECISION

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

STATEMENT OF THE CASE

On June 5, 2007, William Epps (“Claimant”) filed a complaint with the Maryland Real Estate Commission (“Commission” or “REC”), an administrative unit of the Department of Labor, Licensing and Regulation (“DLLR”), and a claim for reimbursement against the Commission’s Guaranty Fund (“Fund”) for losses allegedly caused by the acts and omissions of a licensed real estate agent, Thaddeus K. Powell (“Respondent”). On August 22, 2008, the Commission filed related charges against the Respondent.

On May 1, 2009, a hearing was held before Yvette N. Diamond, Administrative Law Judge, at the Office of Administrative Hearings (“OAH”) in Hunt Valley, Maryland. Md. Code

Ann., Bus. Occ. & Prof. § 17-408 (2004). Assistant Attorney General Jessica Kaufman represented the REC and Assistant Attorney General Matthew A. Lawrence represented the Fund. The Claimant was represented by Calvert Steuart, Esquire. The Respondent appeared and represented himself.

Procedure in the case is governed by the Administrative Procedure Act, the procedures for DLLR hearings delegated to the OAH, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2008); COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Respondent directly or through another person willfully making a misrepresentation or knowingly making a false promise, in violation of Section 17-322 (b)(3) of the Business Occupations and Professions Article?
2. Did the Respondent accept a listing contract to sell real property that fails to provide a definite termination date that is effective automatically without notice from the buyer or the seller, in violation of Section 17-322 (b)(10) of the Business Occupations and Professions Article?
3. Did the Respondent fail to promptly furnish each party to a real estate transaction the listing contract to sell or rent the real property or the lease agreement, in violation of Section 17-322 (b)(14) of the Business Occupations and Professions Article?
4. Did the Respondent accept a commission or other consideration from any person other than a real estate broker with whom the associate broker or salesperson is affiliated, in violation of Section 17-322 (b)(21) of the Business Occupations and Professions Article?

5. Did the Respondent fail to account for or to remit promptly any money that came into his possession but belonged to another person, in violation of Section 17-322 (b)(22) of the Business Occupations and Professions Article?

6. Did the Respondent engage in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent or improper dealings, in violation of Section 17-322 (b)(25) of the Business Occupations and Professions Article?

7. Did the Respondent violate any other provision of this Article, in violation of Section 17-322(b)(32) of the Business Occupations and Professions Article?

8. Did the Respondent violate COMAR 09.11.01.12, COMAR 09.11.02.01C and H, and COMAR 09.11.02.02A and E by failing to reduce a residential listing contract to writing; failing to protect the public against fraud, misrepresentation, or unethical practices; and protect and promote the interests of the client, in violation of Section 17-322(b)(33) of the Business Occupations and Professions Article?

9. Did the Respondent fail to treat all parties to the transaction honestly and fairly and answer all questions truthfully, in violation of Section 17-532(c) of the Business Occupations and Professions Article?

10. Did the Claimant suffer an actual monetary loss as a result of the conduct of the Respondent?

SUMMARY OF THE EVIDENCE

Exhibits

The REC submitted the following exhibits, which were admitted into evidence:

REC #1 Notice of hearing, dated January 22, 2008; Statement of Charges and Order for Hearing, dated August 22, 2008

- REC #2 Transmittal and Statement of Charges and Order for Hearing, dated August 22, 2008
- REC #3 Licensing Records of Respondent under license #05-534253
- REC #4 Deed showing sale of 8931 Town Center Circle, Unit #310, Upper Marlboro, Maryland (“Unit 310”) from Claimant to Kristi Holden, dated August 7, 2006
- REC #5 Lease Agreement between Claimant and Maria Benbow, dated March 2, 2007
- REC #6 Report of Investigation by Steven Long, dated August 7, 2006, with attachments:
- Complaint and Guaranty Fund Claim, received June 5, 2007
 - Letter from Realty Executives to Commission, dated July 6, 2007
 - Transcript of proceedings, *Claimant v. Respondent*, Circuit Court for Prince George’s County, CAL 07-22348, February 8, 2008
- REC #7 Letter from Claimant to Commission, dated March 20, 2008; Judgment in favor of Claimant against Respondent for \$36,008.00 in *Claimant v. Respondent*, Circuit Court for Prince George’s County, CAL 07-22348, February 8, 2008
- REC #8 Wells Fargo mortgage statement for Unit 310, dated April 30, 2007
- REC #9 Monthly condo fee payable to Largo Town Center Condo for \$185.00 for Unit 310
- REC #10 Letter showing loan from Alia Bland to Claimant of \$13,000.00 at 5% interest

The Claimant submitted the following exhibit, which was admitted into evidence:

Claimant #1 Itemization of Losses, totaling \$24,316.81

The Respondent and the Fund did not submit any exhibits into evidence.

Testimony

The Commission presented the testimony of the Claimant and Steven Long, Assistant Executive Director of the Commission and formerly an investigator for the Commission.

The Claimant testified on his own behalf.

The Respondent testified on his own behalf and presented the testimony of Kelvin Hunter.

The Fund did not present any testimony.

FINDINGS OF FACT

Having considered the evidence and testimony presented, I find the following facts by a preponderance of the evidence:

1. At all times relevant to this proceeding, the Respondent was a real estate salesperson licensed by the Commission.
2. The Claimant is not a native of Maryland. At all times relevant to this proceeding, he was a resident in general surgery at the Washington Hospital Center and lived in Prince George's County, Maryland. He now resides in Nashville, Tennessee.
3. The Claimant purchased and lived for five years at the property known as 8941 Town Center Circle, Unit 301, Upper Marlboro, Maryland ("Home").
4. The Claimant also purchased Unit 310 as a rental property.
5. The Claimant's Home and rental property were in different buildings on the same street.
6. The Claimant met the Respondent in the summer of 2002.
7. The Respondent was the uncle of one of the Claimant's friends from medical school.
8. The Respondent was the agent for the Claimant in 2002 when he purchased his Home and when the Claimant purchased Unit 310 as a rental property in August 2006.
9. In December 2006, the Claimant decided to sell Unit 310.
10. When the Claimant could not find a buyer for Unit 310, he asked the Respondent

to list the property for sale for \$260,000.00.

11. The Respondent never gave the Claimant a written listing agreement for Unit 310.

12. The Respondent told the Claimant he would list Unit 310 on the Multiple Listing Service (“MLS”) and that he should be patient because the real estate market was slow.

13. In April 2007, the Claimant learned that the Respondent never listed Unit 310 on the MLS.

14. The Claimant confronted the Respondent and told him he was going to change realtors, at which time the Respondent informed the Claimant that he had leased Unit 310 to a tenant. The Respondent offered to buy Unit 310 from the Claimant.

15. The Respondent leased Unit 310 to a tenant without the Claimant’s knowledge or consent, and was collecting rent from that tenant under a one-year lease.

16. The Claimant went to Unit 310, explained to the tenant that the Respondent had leased the property to her illegally, and asked her to vacate the property.

17. The tenant informed the Claimant she had a one-year lease through the Department of Housing and Urban Development (“HUD”) and refused to move out.

18. The Claimant went to the HUD office and obtained copies of the lease and related documents for Unit 310.

19. The March 2, 2007 lease was between the Claimant and Maria Benbow.

20. The Respondent forged the Claimant’s signature on the lease and other documents relating to the tenancy at Unit 310.

21. The Claimant never authorized the Respondent to sign his name to any documents or enter into any lease agreements on his behalf.

22. The Claimant made monthly mortgage payments to Wells Fargo Home Mortgage

and paid condominium fees for Unit 310 while the Respondent was collecting rent for the property from HUD.

23. The Respondent never turned over the rental income to the Claimant.

24. The Claimant filed suit against the Respondent in the Circuit Court for Prince George's County and obtained a judgment against him on February 8, 2008 in the amount of \$36,008.00.

25. The Respondent never paid the amount of the judgment to the Claimant.

26. On May 6, 2007, the Claimant borrowed \$13,000.00 from Alia Bland at a rate of 5%. Payments of \$500.00 per month were due by the Claimant to Bland on the 5th of each month beginning July 5, 2007.

27. On June 5, 2007, the Claimant filed a complaint with the Commission and a claim for reimbursement from the Fund in the amount of \$68,000.00.

28. At the hearing, the Claimant amended his claim to \$24,316.81.

DISCUSSION

This case involves regulatory charges filed by the Commission and a claim filed by the Claimant against the Fund alleging that the Claimant has sustained an actual monetary loss as the direct result of the Respondent's actions.

I. Regulatory Charges

The Commission has charged the Respondent with violating Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(3), (10), (14), (21), (22), (25), (32), and (33); and Md. Code Ann., Bus. Occ. & Prof. § 17-532(c)(2004 & Supp. 2008), and COMAR 09.11.01.12, COMAR 09.11.02.01C and H, and COMAR 09.11.02.02A and E. The Respondent is also subject to the penalty provided for in Business Occupations and Professions Article § 17-322(c). The relevant

provisions of the law are as follows:

**§ 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:

...

(3) directly or through another person willfully makes a misrepresentation or knowingly makes a false promise;

(10) accepts a listing contract to sell real property that fails to provide a definite termination date that is effective automatically without notice from the buyer or the seller;

(14) for any transaction in which the licensee has served as or on behalf of a real estate broker, fails to furnish promptly to each party to the transaction a copy of:

(i) the listing contract to sell or rent real property;

...

(iii) the lease agreement;

(21) for real estate brokerage services provided by an associate real estate broker or a real estate salesperson, accepts a commission or other valuable consideration from any person other than a real estate broker with whom the associate broker or the salesperson is affiliated;

(22) fails to account for or to remit promptly any money that comes into the possession of the licensee but belongs to another person;

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

(32) violates any other provision of this title;

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

...

§ 17-532. Duties to client

(c) In general. (1) A licensee shall:

...

(iv) treat all parties to the transaction honestly and fairly and answer all questions truthfully;

Additionally, COMAR 09.11.02.12 requires that all residential listing contracts be in writing and signed. COMAR 09.11.02.01C requires that the licensee protect the public against fraud, misrepresentation or unethical practices in the real estate field. COMAR 09.11.02.01H requires that the licensee see to it that financial obligations and commitments regarding real estate transactions be in writing and that copies of those agreements be provided to all parties within a reasonable time after the agreements are executed. COMAR 09.11.02.02A provides that in accepting employment as an agent, the licensee shall protect and promote the interests of the client. Finally, COMAR 09.11.02.02E provides that when acting as agent in the management of property, the licensee may not accept any commission, rebate, or profit on expenditures made for an owner without the owner's knowledge and consent.

The Commission contended that the Claimant wanted to sell Unit 310 and asked the Respondent to list the property for sale. According to the Commission, the Respondent leased the property to a tenant without the knowledge or consent of the Claimant, forged the Claimant's signature on several documents, and kept the rental income for himself. The Commission argued that the Respondent committed eleven substantive violations of the law and sought a ninety-day suspension of his real estate license and a civil penalty of \$10,000.00.

The Claimant adopted the Commission's argument and argued that the Respondent defrauded him by forging his name, renting the property, and converting the rental income to his own use. The Claimant requested an award of \$24,381.00 from the Fund.

The Respondent denied the allegations made by the Commission and the Fund.

The Fund contended that the Claimant was entitled to an award due to the acts or omissions and misrepresentations of the Respondent, a licensed salesperson. The Fund asserted that the Claimant was not entitled to reimbursement for airfare, car rental, a week of unpaid vacation, and hotel expenses, because those are consequential damages not contemplated by statute.

The Claimant testified in great detail about his course of dealings with the Respondent, how he acquired Unit 310, and what he expected of the Respondent. His testimony was consistent with the statements set forth on his complaint and claim filed with the Fund. The Claimant's testimony was supported by the documentation adduced in the Commission's investigation. It was clear that the Claimant was a novice in the real estate business and relied upon the Respondent to his detriment. Although Unit 310 was located not far from the Claimant's Home, he had a very busy schedule as a surgery resident and it is understandable that he did not have the time or the inclination to check on the property. Given the fact that the Respondent was the realtor involved in the Claimant's acquisition of both properties, and the fact that they were acquainted through the Respondent's nephew, who was the Claimant's friend, the Claimant simply never expected the Respondent to defraud him. I found the Claimant to be a very credible witness and gave great weight to his testimony.

Mr. Long conducted a very thorough investigation of the complaint. He reviewed the complaint letter and related documents regarding the transaction, including the lease. He also reviewed the transcript of the proceedings in the Circuit Court for Prince George's County. He compiled a comprehensive report setting forth the chronology of events and attaching to it the relevant documents.

The Respondent testified that he considers the Claimant to be family, "like a nephew." He denied acting as a real estate salesperson on behalf of the Claimant and said that there relationship was merely an informal one. The Respondent admitted signing the Claimant's name to the lease and the HUD documents regarding Unit 310 and said that the Claimant gave him authority to do so. The Respondent acknowledged that the Claimant did not give him a power of attorney. He claimed that he used the Claimant's deposit slips from BB&T Bank to deposit the HUD rent checks but had no documentation to support his statements. Later, the Respondent stated that he deposited cash into the Claimant's bank account on two occasions but had no documentation to support that claim. I did not find the Respondent to be a credible witness. His testimony was contradictory, unsupported by any documentary evidence, and I gave it little weight.

The Respondent also presented the testimony of his friend, Kelvin Hunter, who had worked as his helper for ten years. Mr. Hunter stated that he did not know whether the Respondent signed the Claimant's name to the documents at issue in this matter. I found his testimony to have little probative value.

The uncontroverted evidence supported all of the charges brought by the Commission as well as an award to the Claimant, however, the amount of that award is less than the amount of the claim. The testimony of the Claimant and Mr. Long (the REC investigator) clearly established the following: The Respondent never gave the Claimant a written listing agreement for Unit 310 or listed the property with the MLS, as requested by the Claimant. Instead, he forged the Claimant's signature on several documents and rented Unit 310 to a HUD tenant under a one-year lease without the Claimant's knowledge or consent. In the meantime, the Claimant was making mortgage payments to Wells Fargo Home Mortgage, and paying

condominium fees for Unit 310 while the Respondent was collecting rent for the property from HUD. The Respondent never turned over the rental income to the Claimant.

Ultimately, the Claimant filed suit against the Respondent in the Circuit Court for Prince George's County and obtained a judgment against him on February 8, 2008 in the amount of \$36,008.00, but the Respondent has never paid the amount of the judgment to the Claimant.

Consequently, I find that the Respondent violated Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(3), (10), (14), (21), (22), (25), (32), and (33); and Md. Code Ann., Bus. Occ. & Prof. § 17-532(c)(2004 & Supp. 2008), and COMAR 09.11.01.12, COMAR 09.11.02.01C and H, and COMAR 09.11.02.02A and E. The Respondent's actions demonstrate bad faith, untrustworthiness, and improper dealings. His misrepresentations and untrustworthy practices are damaging to the integrity of the real estate profession, thereby violating the profession's Code of Ethics. As a result, he is subject to sanction under Section 17-322(c).

II. Penalties

Section 17-322(c)(1) of the Business Occupations and Professions Article provides that a licensee may be reprimanded or have his Real Estate Agent's, Associate Broker's or Broker's license suspended or revoked for violations of the Maryland Real Estate law. Md. Code Ann., Bus. Occ. & Prof. §17-322 (c)(1). The section also provides that instead of *or in addition to* reprimanding a licensee or suspending or revoking a Real Estate license, the Commission may impose a civil penalty not to exceed \$5,000.00 for each violation. Section 17-322(c)(2) lists the factors that must be considered in imposing a civil penalty:

(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 Respondent's violations are serious. In all, he committed eleven substantive violations of the statute and applicable regulations. His actions demonstrate dishonesty and bad faith, and undermine the integrity of the real estate profession. The Claimant was harmed by the Respondent's actions. Considering all of the factors, I accept the Commission's recommendation of imposition of a ninety-day suspension of the Respondent's license and a \$10,000.00 civil penalty as reasonable.

III. Claim Against the Guaranty Fund.

Claims for reimbursement from the Fund are governed by Md. Code Ann., Bus. & Prof. § 17-404 (2004) and COMAR 09.11.03.04F, which state as follows:

§ 17-404. Claims against Guaranty Fund.

(a) *In general.* -- (1) Subject to the provisions of this subtitle, a person may recover compensation from the Guaranty Fund for an actual loss.

...

(2) A claim shall:

(i) be based on an act or omission that occurs in the provision of real estate brokerage services by:

1. a licensed real estate broker;
2. a licensed associate real estate broker;
3. a licensed real estate salesperson; or
4. an unlicensed employee of a licensed real estate broker;

(ii) involve a transaction that relates to real estate that is located in the State; and

(iii) be based on an act or omission:

1. in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or
2. that constitutes fraud or misrepresentation.

Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2004).

COMAR 09.11.03.04 Claims Against the Guaranty Fund.

A. Guaranty Fund claim shall be based on the alleged misconduct of a licensee.

B. For the purpose of a guaranty fund claim, misconduct:

(1) Is an action arising out of a real estate transaction involving real estate located in this State which causes actual loss by reason of theft or embezzlement of money or property, or money or property unlawfully obtained from a person by false pretense, artifice, trickery, or forgery, or by reason of fraud, misrepresentation, or deceit;

(2) Is performed by an unlicensed employee of a real estate broker or by a duly licensed real estate broker, associate broker, or salesperson; and

(3) Involves conduct for which a license is required by Business Occupations and Professions Article, Title 17, Annotated Code of Maryland.

After reviewing all of the evidence, I find that the documentation and credible testimony established that the Claimant suffered an actual loss of \$3,600.00 for rent monies not received. Although the Claimant made a claim for legal fees, he did not document them. He also did not provide documentation of the mortgage payments that he made and condominium fees that he paid. Consequential damages such as unpaid vacation, airfare, car rental, hotel expenses, and are not compensable from the Fund.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that:

A. The Respondent directly or through another person willfully made a misrepresentation, in violation of Section 17-322 (b)(3) of the Business Occupations and Professions Article.

B. The Respondent accepted a listing contract to sell real property that failed to provide a definite termination date that was effective automatically without notice from the buyer or the seller, in violation of Section 17-322 (b)(10) of the Business Occupations and Professions Article.

C. The Respondent failed to promptly furnish each party to a real estate transaction the listing contract to sell or rent the real property or the lease agreement, in violation of Section 17-322 (b)(14) of the Business Occupations and Professions Article.

D. The Respondent accepted a commission or other consideration from someone other than a real estate broker with whom he was affiliated, in violation of Section 17-322 (b)(21) of the Business Occupations and Professions Article.

E. The Respondent failed to account for or to remit promptly any money that came into his possession but belonged to another person, in violation of Section 17-322 (b)(22) of the Business Occupations and Professions Article.

F. The Respondent engaged in conduct that demonstrated bad faith, incompetency, or untrustworthiness or that constituted dishonest, fraudulent or improper dealings, in violation of Section 17-322 (b)(25) of the Business Occupations and Professions Article.

G. The Respondent violated other provisions of this Article, in violation of Section 17-322(b)(32) of the Business Occupations and Professions Article.

H. The Respondent violated COMAR 09.11.01.12, COMAR 09.11.02.01C and H, and COMAR 09.11.02.02A and E, by failing to reduce a residential listing contract to writing; failing to protect the public against fraud, misrepresentation, or unethical practices; and failing to protect and promote the interests of the client, in violation of Section 17-322(b)(33) of the Business Occupations and Professions Article.

I. The Respondent failed to treat all parties to the transaction honestly and fairly and answer all questions truthfully, in violation of Section 17-532(c) of the Business Occupations and Professions Article.

I further conclude that the Respondent is subject to sanction for his conduct, and that a ninety-day suspension of his real estate license and a \$10,000.00 civil penalty are appropriate sanctions under Section 17-322 (c) of the Business Occupations and Professions Article.

Finally, I conclude that the Claimant is entitled to payment of \$3,600.00 from the Fund pursuant to Section 17-404 of the Business Occupations and Professions Article.

RECOMMENDED ORDER

I RECOMMEND that the Maryland Real Estate Commission:

ORDER, that the Respondent's license be suspended for ninety days;

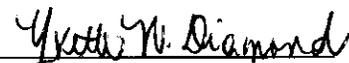
ORDER, that the Respondent pay a civil penalty of \$10,000.00; and

ORDER, that the Claimant be awarded \$3,600.00 from the Fund to compensate the actual losses he sustained due to the conduct of the Respondent; and

ORDER, that the records and publications of the Commission reflect this decision.

June 23, 2009
Date Decision Mailed

YND/cmh
#106354


Yvette N. Diamond
Administrative Law Judge

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COMMISSION

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* * * * *

FILE EXHIBIT LIST

The REC submitted the following exhibits, which were admitted into evidence:

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