

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE

* BEFORE BRIAN ZLOTNICK,

COMMISSION

* ADMINISTRATIVE LAW JUDGE

V.

* OF THE MARYLAND OFFICE OF

SHARON CURTISS,

* ADMINISTRATIVE HEARINGS

RESPONDENT

* OAH No: LABOR-REC-21-24-00264

* REC CASE NO: 2022-RE-663

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated October 8, 2024, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of November, 2024,

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;

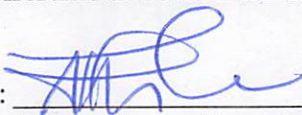
C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

D. That the records, files and documents of the Maryland State Real Estate Commission reflect this decision.

MARYLAND STATE REAL ESTATE COMMISSION

11/25/24
Date

By:  for Donna Horgan
Donna Horgan, Commissioner

MARYLAND REAL ESTATE
COMMISSION

v.

SHARON CURTISS,
RESPONDENT

* BEFORE BRIAN ZLOTNICK,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: LABOR-REC-21-24-00264
* MREC No.: 2022-RE-663

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On April 14, 2022, the Real Estate Commission (REC) filed a Complaint against Sharon Curtiss (Respondent or Curtiss), a licensed real estate broker, for alleged violations of the Maryland Real Estate Brokers Act (Act). Md. Code Ann., Bus. Occ. & Prof. §§ 17-101 to 702 (2018 & Supp. 2024).¹ On November 27, 2023, after an investigation, the REC issued a Statement of Charges (Charges) against the Respondent. Bus. Occ. & Prof. §§ 17-320(d)(1), 17-322(b)(32), (34) (2018 & Supp. 2024).

The REC transmitted the case to the Office of Administrative Hearings (OAH) on November 30, 2023, to conduct a hearing. Bus. Occ. & Prof. § 17-409. On February 28, 2024, the REC administratively consolidated the *REC v. Sharon Curtiss* case (Curtiss)², OAH case # LABOR-REC-21-24-00264, scheduled for a hearing on March 26, 2024, with the *REC v.*

¹ Unless otherwise noted, all references to the Business Occupations and Profession Article are to the 2018 Volume of the Maryland Annotated Code.

² Sharon Curtiss will be referred to as either Curtiss or Respondent Curtiss for the remainder of this decision.

Merle Hoffman case (Hoffman)³, OAH case # LABOR-REC-21-23-33010, scheduled for a hearing on March 27, 2024. On March 1, 2024, in response to the REC's February 28th consolidation decision, I issued an Order consolidating the Curtiss and Hoffman cases to a consolidated hearing scheduled for March 27, 2024.

On March 21, 2024, Hope Sachs, Assistant Attorney General, REC Fund, filed a Motion for Consolidation and Postponement (Motion) of the April 9th hearing in the matter of *REC v. Kim Kiejzik & Claim of Steven Wichtendahl against the REC Fund*, OAH case # LABOR-REC-24-24-00256 case (Kiejzik-Wichtendahl) with the Curtiss and Hoffman cases. In response to the Motion, I converted the March 27th hearing and the April 9th hearing in these matters to a joint telephone prehearing conference (Conference) on March 27, 2024, to discuss the Motion and the Curtiss, Hoffman and Kiejzik-Wichtendahl cases. At the Conference I granted the Motion on the record and determined that separate decisions will be issued for the Curtiss, Hoffman and Kiejzik-Wichtendahl cases.⁴

On April 8, 2024, I issued a Prehearing Conference Report and Scheduling Order which scheduled the consolidated Curtiss, Hoffman, and Kiejzik-Wichtendahl cases for a remote hearing on June 11, 2024. On June 11, and July 16, 2024⁵, I held the consolidated Curtiss, Hoffman and Kiejzik-Wichtendahl hearing by video. Bus. Occ. & Prof. §§ 17-324(a), 17-408(a) (2018); COMAR 28.02.01.20B(1). Catherine Villareale, Assistant Attorney General, Maryland Department of Labor (Department), represented the REC on the charged violations of law. Ernie Dominquez, Assistant Attorney General, Department, represented the REC Fund. Respondents Curtiss, Hoffman and Kiejzik were each self-represented. Steven Wichtendahl (Claimant) was self-represented.

³ Merle Hoffman will be referred to as either Hoffman or Respondent Hoffman for the remainder of this decision.

⁴ This decision is limited to issues involving Curtiss.

⁵ An additional hearing day was necessary as the cases had not concluded at the end of the June 11th hearing. At the conclusion of the June 11th hearing, the parties agreed to schedule day two on July 16, 2024.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, the REC's procedural regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 09.01.03; COMAR 09.11.03; COMAR 28.02.01.

ISSUE

Did Respondent Curtiss violate the Act as set forth in the Charges?

SUMMARY OF THE EVIDENCE⁶

Exhibits

I admitted the following exhibits offered by the REC:

- REC Ex. 1 OAH Notice of Hearing for Hoffman, April 2, 2024
- REC Ex. 2 Statement of Charges and Order for Hearing for Hoffman, November 27, 2023
- REC Ex. 3 Respondent Hoffman's license record, May 21, 2024
- REC Ex. 4 Report of Investigation, 6/15/21
- REC Ex. 5 Statement of Charges and Order for Hearing for Curtiss, November 27, 2023
- REC Ex. 6 Respondent Curtiss' license record, May 21, 2024
- REC Ex. 7 OAH Notice of Hearing, for Kiejzik-Wichtendahl, April 2, 2024
- REC Ex. 8 Statement of Charges and Order for Hearing for Kiejzik-Wichtendahl, April 2, 2024
- REC Ex. 9 Respondent Kiejzik's license record, March 18, 2024
- REC Ex. 10 REC Investigation Report for Hoffman, with attachments, June 29, 2023
- REC Ex. 11 REC Investigation Report for Kiejzik-Wichtendahl, December 3, 2021

I admitted the following exhibits, except when noted otherwise, offered by the Respondent⁷:

- Resp. Ex. 1 2018 Manager's Calendar
- Resp. Ex. 2 Sales Meetings minutes, various dates in 2018
- Resp. Ex. 3 Emails between the Respondent and Elaine Brady, May 14, 2018; August 7, 2018; September 14, 2018, and November 5, 2018
- Resp. Ex. 4 Emails between the Respondent and Edwin Santiago, November 19, 2021
- Resp. Ex. 5 List of 2024 Emails sent from the Respondent to new affiliated real estate agents on the days that those agents were on-boarded to the Respondent's branch office
- Resp. Ex. 6 Consent for Dual Agency Form, signed by the Seller, November 26, 2018 – NOT OFFERED INTO EVIDENCE

⁶ This hearing was consolidated with REC v. Merle Hoffman (OAH case # LABOR-REC-21-23-33010) and REC v. Kim Kiejzik (OAH case # LABOR-REC-24-24-00256). A copy of all exhibits has been retained with the record of this matter.

⁷ The Respondent's exhibits were premarked.

- Resp. Ex. 7 Notification of Dual Agency Within a Team Form, signed by Seller, November 20, 2018 – NOT OFFERED INTO EVIDENCE
- Resp. Ex. 8 Multiple Listing Service (MLS) for 4 Oxford Court, December 31, 2018 – NOT OFFERED INTO EVIDENCE
- Resp. Ex. 9 Exclusive Buyer/Tenant Representation Agreement, December 6, 2018 – NOT OFFERED INTO EVIDENCE
- Resp. Ex. 10 Consent for Dual Agency Form, signed by the Buyer, December 6, 2018 – NOT OFFERED INTO EVIDENCE
- Resp. Ex. 11 Agent Production & Inventory Report for Kim Kiejzik, September 8, 2017 through September 8, 2018 – NOT OFFERED INTO EVIDENCE
- Resp. Ex. 12 Certificates of Course Completion for DL/MREC Brokerage Relationships & Disclosures, October 25, 2022 and June 27, 2023

Testimony

The REC presented the testimony of the following individuals:

- Lindsey Anderson, Licensing and Regulation Investigator, REC
- Steven Wichtendahl, Claimant

The Respondent testified and did not present other witnesses.

The Fund did not offer any witnesses.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant, the Respondent was a licensed real estate salesperson in Maryland and the regional vice president and branch manager for Berkshire Hathaway Home Services-Penfed Realty (BHHS-PenFed) Ocean Pines, Ocean City, and Ocean City West offices.
2. The Respondent became branch manager for BHHS-PenFed Ocean Pines in 2015 and regional vice president in 2021.
3. As the branch manager, the Respondent supervises the salespersons and administrative staff working for BHHS-PenFed. She is also responsible for organizing trainings and mandatory sales meetings and reviewing sale contracts for completeness.

4. In 2018 Hoffman and Kiejzik were licensed by the REC as real estate salespersons associated with BHHS-PenFed under the supervision of the Respondent. In September 2018, the Respondent emailed Hoffman and Kiejzik, as well as numerous other realtors employed at BHHS-PenFed, a detailed reminder regarding policies and procedures that are followed by BHHS-PenFed.

5. Steven Wichtendahl (Claimant) first met Kiejzik in November 2018 to obtain home listings. On December 4, 2018, Kiejzik sent the Claimant a listing for a home located at 4 Oxford Court, Berlin, Maryland (4 Oxford Court).

6. On December 6, 2018, the Claimant signed an Exclusive Buyer Representation Agreement (Buyer Agreement) which listed Kiejzik as the Buyer Agent and BHHS-PenFed as the Broker. An addendum to the Buyer Agreement indicated that a Consent for Dual Agency and a Notification of Dual Agency within a Team forms were attached and made part of the Buyer Agreement.

7. On November 26, 2018, the Estate of Eneken Frischkorn and Katherine Hearn (Seller) signed a Consent for Dual Agency Form for 4 Oxford Court. The Claimant signed an Affirmation for Prior Consent for Dual Agency Form for 4 Oxford Court on December 6, 2018.

8. On December 6, 2018, the Claimant signed a Residential Contract of Sale (Contract) for 4 Oxford Court. The Seller signed the Contract on December 7, 2018. The Contract listed BHHS-PenFed as the listing brokerage company and Respondent Hoffman as the Sales Associate for BHHS-PenFed. The Contract listed Respondent Kiejzik as the Buyer Agent. The Contract did not list Respondent Hoffman as the Listing Broker, Seller Agent or as an Intra-Company Agent with Broker as Dual Agent. The Contract did not list Respondent Kiejzik as an Intra-Company Agent with Broker as Dual Agent. Respondent Kiejzik failed to have the Claimant sign a Consent for Dual Agency form at the time of the Contract's execution.

9. On December 6, 2018, the Contract was submitted to the Respondent for review and the Respondent failed to notice that the disclosures for dual agency were not signed by the Seller and Claimant at the execution of the Contract.

10. In 2021, the Respondent became aware of her oversight in failing to identify that the Contract lacked accurate disclosures regarding the agency status of Hoffman and Kiejzik.

11. After the Respondent realized her error in failing to properly review the Contract, she took various steps to avoid any future failures by BHHS-PenFed to identify the proper agency identification of its brokers to the buyers and sellers involved in the transaction.

12. In 2021, the Respondent hired a reviewer to assist her in reviewing all real estate sale contracts involving BHHS-PenFed for accuracy and completeness.

13. The Respondent conducts numerous classes each year with BHHS-PenFed agents that discuss agency, and she also provides the sales agents with various scenarios and then tests those agents to ensure their understanding of agency designations in sales contracts.

14. On June 14, 2023, the Respondent was interviewed by REC Investigator Colyn Wall. During the interview, the Respondent admitted that when she reviewed the Contract on December 6, 2018 she failed to notice that dual agency disclosures were not signed. The Respondent admitted to the investigator that this was an oversight on her part.

15. The Respondent has no prior violations of the Act.

DISCUSSION

APPLICABLE LAW

The Act is a comprehensive statutory scheme that regulates real estate professionals in this State. The REC is charged with administering and enforcing the provisions of the Act. Bus.

Occ. & Prof. § 17-209. Describing the role and function of the Act, the Appellate Court of Maryland explained that:

The Maryland legislature has seen fit to regulate the field of real estate sales through these statutes and regulations. As a regulated profession, much like physicians, attorneys, or certified public accountants, real estate brokers have a responsibility to the public to conduct themselves in a reputable manner. These statutes set minimum guidelines for professional conduct, their purpose being to safeguard the public.

Lewis v. Long & Foster Real Estate, Inc., 85 Md. App. 754, 760 (1991).

The REC contended in its Charges that the Respondent violated the following provisions:

(d)(1) A branch manager, as defined in § 17-518(d) of this title, shall exercise reasonable and adequate supervision over the provision of real estate brokerage services by any sales agent or associate broker with that office.

....

(b) 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:

.....

(32) violates any other provision of this title;

.....

(34) violates § 17-320(d) of this subtitle by failing as a branch office manager to exercise reasonable and adequate supervision over the provision of real estate brokerage services by any salesperson or associate broker registered with that office;

Bus. Occ. & Prof. §§ 17-320(d)(1); 17-322(b)(32), (34) (2018 & Supp. 2024).

By regulation and statute, “[a] branch office manager shall exercise *reasonable and adequate supervision* over the activities of the associate brokers and salespersons registered with the office.” COMAR 09.11.05.02B (emphasis added). The regulations define “supervision” as follows:

Supervision means direction and review by the:

- A. Broker of professional real estate activities by associate brokers, designated sales managers and salespersons associated with that brokerage, regardless of the type of work relationship existing between them;
- B. Broker of the supervisory activities of each branch office manager; and

C. Branch office manager of professional real estate activities by the associate brokers and salespersons registered with that office.

COMAR 09.11.05.01.

The regulations provide the following guidance for determining reasonable and adequate supervision:

B. Factors to be considered in determining whether supervision is reasonable and adequate include, but are not limited to, the following:

(1) Availability of:

(a) Training or education sessions held regularly at least once every 2 months;

(b) Experienced supervisory personnel to review and discuss:

(i) Contract provisions;

(c) Written procedures and policies which provide clear guidance in the following areas:

(i) Proper handling of deposit monies and other funds in accordance with Business Occupations and Professions Article, §§ 17-501 – 17-508, Annotated Code of Maryland;

(iv) Review of contracts, leases, and brokerage agreements upon execution by all parties to the contract, lease, or brokerage agreement;

(viii) The obligation of all licensees to comply with all applicable provisions of Business Occupations and Professions Article, Title 17, Annotated Code of Maryland (the Maryland Real Estate Brokers Act), the Code of Ethics as adopted and as amended from time to time by the Commission, and all applicable local, State, and federal laws and regulations;

(2) Evidence of:

(b) Review by the broker, branch office manager, or designee of the broker or branch office manager of contracts of sale, leases, and brokerage agreements executed by all parties to the contract, lease, or brokerage agreement;

(d) Compliance with the written policies and procedures as specified in §B(1)(c) of this regulation; and

(e) Dissemination of the written policies and procedures as specified in §B(1)(c) of this regulation to licensees affiliated with the broker.

COMAR 09.11.05.03B.

BURDEN OF PROOF

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. Md. Code Ann., State Gov't § 10-217 (2021); COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). In this case, the REC bears the burden to prove by a preponderance of the evidence that the Respondent violated the Act as charged. As discussed below, I find that the REC has met this burden.

ANALYSIS

Charges under Section 17-320(d)(1), Section 17-322 (b)(32) and Section 17-322 (b)(34)

It is undisputed that the Contract identifies the listing brokerage as BHHS PenFed and that the Kiejzik is identified as a sales associate with BHHS-PenFed. Further, the Contract also designates Hoffman as a sales associate with BHHS-PenFed. In this transaction, Respondent Hoffman was the Seller's agent, and the Respondent Kiejzik was the Claimant's (Buyer's) agent. Yet, the Contract failed to identify either Kiejzik or Hoffman as an intra-company agent/dual agent with the broker. In fact, the Contract specifically designated Kiejzik as a Buyer Agent and not a Dual Agent.

I further find that the REC presented evidence that the Respondent violated Section 17-320(d)(1) when she failed to review the Contract of Sale when presented on December 6, 2018. The Respondent failed to notice that the Contract failed to disclose the dual agency status of Hoffman and Kiejzik in this transaction to Seller and the Claimant. Further, the REC presented evidence that the Respondent violated Section 17-322(b)(34) by establishing that the Respondent was the branch manager of BHHS-PenFed on December 6, 2018 and that Hoffman

and Kiejzik were sales agents registered with BHHS-PenFed at that time. Additionally, the REC established that the Respondent failed to exercise reasonable and adequate supervision over the provision of real estate services by Hoffman and Kiejzik when she failed to exercise proper oversight of the Contract to ensure that the Seller and Claimant affirmed their understanding of the dual agency status of Hoffman and Kiejzik. Lastly, since the REC met its burden to show that the Respondent violated certain sections of the Act, it also established that the Respondent violated Section 17-322(b)(32).

The Respondent did not dispute the charges against her, admitting during the hearing that this was an isolated oversight on her part and that she takes her role as branch manager very seriously and has since taken steps to prevent a reoccurrence of this issue.

I conclude that the Respondent violated the statutes as charged, and I will address sanctions as follows.

Disciplinary Sanctions

Section 17-322(c) of the Act provides as follows:

(c)(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.

(3) The Commission shall pay any penalty collected under this subsection into the General Fund of the State.

(4) The Commission may not impose a fine based solely on a violation of subsection (b)(35) of this section.

Bus. Occ. & Prof. § 17-322(c) (Supp. 2024).

The REC recommended that the Respondent be reprimanded and fined \$2,000.00 for her failure to properly supervise Hoffman and Kiejzik in the transaction with the Seller and Claimant for 4 Oxford Court. The REC argued that the Respondent's conduct was serious in that she failed to uphold her obligation as branch manager to adequately supervise this transaction which resulted in a failure to inform the Claimant and the Seller of the proper agency designation of Hoffman and Kiejzik.

I agree with the REC. Respondent Kiejzik and Respondent Hoffman were clearly acting as Dual Agents in this transaction and were sales associates at BHHS-PenFed under the supervision of the Respondent at the time of this transaction. The Contract was provided to the Respondent on December 6th for her review, but, as she admitted, she failed to notice that it lacked notification and affirmation of Hoffman and Kiejzik's agency status. Clearly, this was a serious oversight as a Dual Agent's interests will differ from those of a Buyer Agent or a Seller Agent. However, I considered the Respondent's candid admission of her error and her credible presentation of evidence detailing the steps she took to ensure that this oversight remains an isolated incident. The Respondent indicated that after she learned of this incident in 2021, she hired a reviewer to assist her reviewing all contracts in her office for accuracy and completeness. I further considered the Respondent's credible assertions that she conducts regular training sessions for the sales associates in her office and that she also presents those associates with various scenarios regarding agency situations and then tests the associates to ensure their understanding of agency. Considering the extensive steps the Respondent has taken to address her oversight, and that the Respondent has no history of any prior violations of the Act, I find that that a reprimand and a fine of \$1,000.00 is the appropriate penalty to impose on the Respondent.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Respondent violated Business Occupations and Professions Article Sections 17-320(d)(1) and 17-322(b)(32), (34) (2018 & Supp. 2024). Consequently, I conclude that the Respondent is subject to the disciplinary sanctions of a reprimand and a \$1,000.00 fine. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (Supp. 2024).

RECOMMENDED ORDER


I **RECOMMEND** that the Maryland Real Estate Commission **ORDER**:

The Charges against the Respondent be upheld;

The Respondent be reprimanded and fined \$1,000.00; and

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

October 8, 2024
Date Decision Issued



Brian Zlotnick
Administrative Law Judge

BMZ/dlm
#214300