

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

OLUSEUN OGUNFOWOKAN
Respondent

* CASE NO. 2012-RE-373

* OAH NO. DLR-REC-21-13-12607

*

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated September 12, 2013, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 16 day of December, 2013,

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, ADOPTED

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

ORDERED that the Respondent Oluseun Ogunfowokan violated Md. Bus. Occ. and Prof. Art. §17-322(b)(25) and (32), and §§ 17-301(a) and 17-601(b);

ORDERED that the Respondent Oluseun Ogunfowokan be assessed a civil penalty in the amount of \$5,000.00, which shall be paid

within thirty (30) days of the date of this Proposed Order;

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 ("ALJ") had to be modified because the ALJ omitted the provision that the civil penalty be paid within a specified 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

**MARYLAND REAL ESTATE
COMMISSION**

v.

**OLUSEUN OGUNFOWOKAN,
RESPONDENT**

*** BEFORE KIMBERLY A. FARRELL,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH Case #: DLR-REC-21-13-12607
* REC Case #: 2012-RE-373**

*** * * * ***

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 March 28, 2013, the Maryland Real Estate Commission (REC or Commission) issued Statements of Charges and Orders for Hearing against each of three Respondents in related matters. Oluseun Ogunfowokan (Respondent A)¹ was alleged to have violated Maryland Annotated Code, Business Occupations and Professions (BOP) Article, sections 17-301(a)(2), 17-322(b)(32), and 17-601(b) (2010).² Katia Lubin (Respondent B) was alleged to have violated BOP sections 17-322(b)(3), (25), (32) and (33), and Code of Maryland Regulations (COMAR) 09.11.02.01-C.³ Gerard Occhiuzzo (Respondent C) was alleged to have violated BOP section 17-322(b)(33), and COMAR 09.11.02.01-C and 09.11.05.02B.⁴

¹ Respondent A's OAH file number is DLR-REC-21-13-12607.

² All references to BOP are to the 2010 volume and the 2012 Supplement.

³ Respondent B's OAH file number is DLR-REC-21-13-12606.

⁴ Respondent C's OAH file number is DLR-REC-21-13-12608.

On May 30, 2013, the REC issued Amended Statements of Charges and Orders for Hearing against each of the three Respondents. Respondent A's amended Statement of Charges added an allegation of a violation of BOP section 17-322(b)(25). Respondent B's amended Statement of Charges deleted the allegation that she violated BOP section 17-322(b)(32). Respondent C's amended Statement of Charges added allegations of a violations of BOP sections 17-320(d)(1) and 17-322(b) subsections (32) and (34).

On June 28, 2013, I convened a hearing at the Department of Agriculture's building located in Annapolis, Maryland. The three files were consolidated for hearing purposes; however, a separate decision is issuing as to each Respondent. Peter Martin, Assistant Attorney General, represented the REC. The Respondents each appeared pro se.

Procedure is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009 & Supp. 2012); the MREC's Hearing Regulations, COMAR 09.11.03; and Office of Administrative Hearings Rules of Procedure, COMAR 28.02.01.

ISSUES

The issues as to Respondent A are as follows:

1. Did Respondent A provide real estate brokerage services on behalf of a real estate broker without being licensed as an associate real estate broker or as a real estate salesperson in violation of BOP section 17-301(a)?
2. Did Respondent A engage in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings in violation of BOP section 17-322(b)(25)?
3. Did Respondent A violate a provision of BOP title 17 not otherwise specifically enumerated in BOP section 17-322(b) in violation of BOP section 17-322(b)(32)?

4. Did Respondent A provide, offer to provide, or attempt to provide real estate brokerage services on behalf of a real estate broker when he was not licensed as an associate real estate broker or a real estate salesperson for that real estate broker in violation of BOP section 17-601(b)?

5. Is Respondent A subject to any sanction, and if so, what sanctions and/or penalties should be imposed?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted into evidence the following exhibits on behalf of the REC:

- REC #1 Notice of Hearing as to Respondent B, April 5, 2013, with attached Statement of Charges and Order for Hearing, March 28, 2013
- REC #2 Cover letter to Respondent B, May 31, 2013, and attached Amended Statement of Charges and Order for Hearing dated May 30, 2013
- REC #3 REC records regarding licensure for Respondent B
- REC #4 Notice of Hearing as to Respondent A, April 5, 2013, with attached Statement of Charges and Order for Hearing, March 28, 2013
- REC #5 Cover letter to Respondent A, May 31, 2013, and attached Amended Statement of Charges and Order for Hearing dated May 30, 2013
- REC #6 Cover letter to Respondent A, June 3, 2013, sent to a different address
- REC #7 REC records regarding licensure for Respondent A
- REC #8 Notice of Hearing as to Respondent C, April 5, 2013, with attached Statement of Charges and Order for Hearing, March 28, 2013
- REC #9 Cover letter to Respondent C, May 31, 2013, and attached Amended Statement of Charges and Order for Hearing dated May 30, 2013
- REC #10 REC records regarding licensure for Respondent C
- REC #11 Report of Investigation, received June 9, 2009
- REC #12 Email from Carrie Conn of Rhino Settlement Services, Inc. to Jorge Valle Sanchez, May 28, 2009
- REC #13 Fax sent from Fairfax Realty to "Tina," May 4, 2009
- REC #14 Fax sent from Avison Residential Solutions, L.L.C. to "Katia Lubin," May 8, 2009
- REC #15 Report of Investigation, marked closed October 10, 2012⁵

⁵ The original investigation was opened upon receipt of a Complaint and Guaranty Fund Claim by Jorge Valle Sanchez (JVS). JVS later withdrew his complaint. Later still, the REC generated its own complaint and reopened or restarted the investigation. Thus, there are two Reports of Investigation with different dates. They are in evidence as REC #11 and REC #15.

REC #16 Printout of DLLR's Division of Occupational and Professional Licensing's "Guidelines for the Use of Unlicensed Employees – Maryland Real Estate Commission"

Respondent C offered one exhibit which I admitted into evidence:

RESP #1 Email from the REC to Respondent C, September 24, 2012, and his undated response to the questions posed by the REC

Neither Respondent A nor Respondent B offered any exhibits for consideration.

Testimony

The REC presented the testimony of Jorge Valle Sanchez, Tina Herold-Byrd, and Jennifer Grimes, an investigator for the REC. Respondents A and C testified. (Respondent B elected not to testify.) No other witnesses were called.

FINDINGS OF FACT

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

1. Respondent A was a real estate salesperson licensed by the REC under salesperson's number 520771 beginning in 1999. He had various transfers and renewals or reinstatements of his license through April 19, 2007, when his license expired. His license was not renewed after that time.⁶
2. From 2001 through the expiration of his license, Respondent A was affiliated with Fairfax Realty located at 1725 Elton Road in Rockville, Maryland (Fairfax).
3. Fairfax had more space than it needed so it rented out space to other persons or businesses. Respondent A leased space from Fairfax after the expiration of his license and maintained an office there even though he was no longer affiliated with the realty company.
4. Respondent A uses the nickname "Olu."
5. Respondent A's native language is not English and he speaks English with a very heavy accent.

⁶ Respondent A could not and can not renew his license due to an outstanding tax debt.

6. Respondent B is a real estate salesperson licensed by the REC under salesperson's number 575570 beginning in October 2003. Her current license has an expiration date of October 21, 2013.
7. Respondent B's first name is Katia.
8. Respondent B has been affiliated with Fairfax since she obtained her license.
9. Respondent B has a full-time job working for SunTrust Bank which is located across the street from Fairfax, where she works part-time, usually in the evening.
10. Respondents A and B knew each from years of working in the same office.
11. Respondent B hired Respondent A to work as her unlicensed assistant. Respondent B gave \$500.00 gift certificates to Respondent A for his assistance.
12. Respondent C is a real estate broker licensed by the REC under broker's number 503038. He was first licensed as a real estate professional in Maryland in September 1994. His current license has an expiration date of January 2, 2015.
13. Respondent C moved from another branch of Fairfax to the Elton Road office on or about December 11, 2008. His title at the time of the events in this case was branch manager. At the time, approximately 450 salespersons were affiliated with the branch. REC #11, pg. 7.
14. In 2009, JVS, a licensed salesperson affiliated with Ensley Realty at the time of these events, represented the buyers in a residential real estate transaction for the purchase of a residential property (the property) in Severn, Maryland.
15. Respondent B was the listing agent for the property. The property was one of about three listings the Respondent had in 2009.
16. When JVS tried to make contact with Respondent B regarding the property, JVS very pointedly asked to speak with Respondent B. Respondent A identified himself as Respondent B - specifically, he identified himself as "Katia."

17. Respondent A answered questions about the property posed by JVS. Respondent A also rejected a request by the buyers for certain home repairs to be made a part of the contract after the home inspection was completed. In the course of conversations with JVS, Respondent A answered questions about the listing, title issues, financing, attributes and amenities of the property, and closing details; he negotiated parts of respective commissions; and he represented that he personally had spoken with the sellers about certain issues.

18. In addition to this personal phone contact, in connection with the sale of the property, Respondent A sent faxes which he signed with Respondent B's name on the following dates:

- April 6, 2009 fax to JVS (states it is from Respondent B in the transmittal information, also is signed with Respondent B's name and the title "Realtor"; the contact information provided (telephone numbers and email address) is that of Respondent A) (REC 11, pg. 75.)
- April 22, 2009 fax to JVS (states it is from "[Respondent B] – Realtor" and is signed with Respondent B's name; the body of the letter asked JVS to "please review and call me for discussion...Call me, please on [Respondent A's phone number]"). (REC #11, pg.77.)
- April 27, 2009 fax to JVS (states it is from Respondent B and is signed with Respondent B's name; the body of the fax says to "fax or email to me at [Respondent A's email address.])" (REC 11, pg. 78.)
- May 4, 2009 fax to JVS states it is from Respondent B and is signed with Respondent B's name. (REC #11, pg. 79.)

19. At some point Respondent A advised JVS that besides "Katia," he also went by the nickname "Olu."

20. Tina Herold-Byrd (TH-B) was the senior loan officer for the transaction involving the sale of the property. She had an unusual amount of contact with the person holding himself out to be the seller's agent in that she spoke to him and interacted with him far more frequently than is common. The person she spoke with always was the same – TH-B recognized the voice. Most times the person identified himself as "Katia," but, on a couple of occasions, the person identified himself as "Olu." It was confusing to TH-B, who discussed the issue of the various

names and the seemingly incongruent genders with JVS and with a woman named Carrie Conn (Conn) who worked for Rhino, the title company involved with the transaction.

21. Conn had also spoken with Respondent A, who identified himself to her by Respondent B's first name and also by "Olu." Conn and Respondent A also sent email and faxes back and forth during the course of the transaction. Respondent A always identified himself on these documents as Respondent B.

22. Eventually TH-B asked Respondent A directly how he would prefer to be addressed and he responded that she should use the name "Katia" in addressing him.

23. Subsequently, when TH-B came to believe that Respondent A had been pretending to be Respondent B, she confronted him. Respondent A admitted to TH-B that he had been pretending to be Respondent B.

24. TH-B was particularly upset by the deception because throughout the course of the real estate deal, Respondent A kept making unreasonable requests of TH-B, such as that she personally call and counsel the sellers, who were becoming increasingly difficult to deal with due to a divorce occurring between them. Respondent A also asked TH-B to reduce her commission and to overlook problems that surfaced during the inspection of the property. TH-B went out of her way to help Respondent A, thinking it was Respondent B, and TH-B was livid when she found out Respondent A had been lying to her throughout the course of the transaction.

25. By this time JVS was considering making a complaint about Respondents A, B, C, and others persons as well, because he had come to realize that Respondent A had been acting as Respondent B.

26. JVS contacted Respondent C on May 21, 2009, to complain that Respondent A (who JVS believed to be Respondent B) had not sent necessary documents to facilitate closing on the property.

27. On May 26, 2009, JVS spoke with other personnel at Fairfax. He was advised that Olu Ogun⁷ was not an agent, but was an assistant to Respondent B.
28. On May 27, 2009, JVS called Fairfax and asked to speak with Respondent C. JVS was transferred to Respondent C's voicemail.
29. On June 4, 2009, Respondent C called JVS. During the course of the conversation Respondent C acknowledged that Respondent A did not have any license from the REC.
30. Meanwhile, Respondent A kept trying to persuade TH-B to speak with JVS to try to talk JVS out of filing any complaint. Respondent A became emotional while talking to TH-B, explaining to her that he was not licensed because of his tax problem and that he had a family to support. He also told her that Respondent B permitted him to use her name while she was out of the country.
31. In addition to phone contact between TH-B and Respondent A, they also exchanged faxes on which Respondent A identified himself as Respondent B.
32. When interviewed by an investigator for the REC on October 6, 2010, Respondent A admitted to sending the faxes in the above findings of fact. He also acknowledged preparing the listing agreement, preparing the Homeowners Association (HOA) material, and preparing a contract addendum extending the settlement date on the property. During the same interview he denied ever identifying himself as Respondent B, saying that he always answered the phone, "Katia's office," and that others must have misunderstood what he was saying due to his accent. Respondent A confirmed that it was his cell phone number listed in the faxes as the contact number for Respondent B as well as his email address that appeared in the faxes as a contact address for Respondent B.

⁷ This abbreviated form of Respondent A's full name appears several places in the evidence. For example, in Respondent B's undated correspondence to the Commission, she referred to Respondent A as "Mr. Oluseun Ogunfowokan (a.k.a.) Mr. Olu Ogun." REC #11, pg. 66.

33. When interviewed by an investigator for the REC on October 6, 2010, Respondent B failed to bring her file regarding the sale of the property as she had been instructed to do. She stated that she had prepared the listing agreement, but, when shown a copy of that document, she retracted her original statement and advised that Respondent A had filled out the listing agreement. She acknowledged that Respondent A was her unlicensed assistant, and that he had permission to answer calls about showing the property, answer questions about listed properties, and to send faxes and emails on her behalf. She stated that her instructions to Respondent A with respect to phone calls were that he was to answer her phone with the phrase "Katia's office" and to always indicate that he was calling or answering on her behalf.

34. JVS and Respondent B never spoke to each other during the course of the real estate transaction.

35. Fairfax has a written policy governing the use of unlicensed assistants. That policy reads:

A Sales Associate shall not engage or hire the services of an unlicensed personal assistant without the express prior written consent of the Managing Broker. If authorized to hire or engage the services of an unlicensed personal assistant, it is the responsibility of the Agent to take all steps necessary to ensure that the unlicensed personal assistant does not perform any act or engage in any conduct for which a real estate salesperson's license would otherwise be required under the laws of the licensee's jurisdiction. The assistant must attend a Real Estate Professional Assistant Class offered by NVAR or a similar class that may be offered by the Fairfax Realty Inc. training department. A potential assistant will not be approved by a Managing Broker without completing this course.

REC #15, pg. 3.

36. Respondent B was aware of the policy, but did not follow it.

37. Respondent A was aware of the policy but did not follow it.

38. Respondent C was aware of the policy.

39. Respondent C had looked into trying to locate an appropriate class for real estate assistants. He could not find any class in existence and had initiated discussion on creating a class.

40. Respondent B acknowledges that Respondent C “always spelled out the acceptable duties of an unlicensed assistant.” REC #15, pg. 4 (real estate investigator’s report of interview with Respondent B).

41. Respondent C became aware during the transaction at issue in this case that Respondent A was acting as Respondent B’s unlicensed assistant. Respondent C had never been notified of the business arrangement and he did not approve Respondent A to serve as Respondent B’s unlicensed assistant.

42. Respondent A was the only unlicensed assistant in the office.

43. No managing broker had ever approved Respondent A as an unlicensed assistant for Respondent B.

44. Upon learning of the original complaint, Respondent C:

- discussed the matter with Respondent B, who insisted that Respondent A was not improperly acting as a licensed real estate agent, and was not misrepresenting himself as Respondent B;
- reviewed with Respondent B the guidelines for unlicensed employees;⁸
- discussed the matter with Respondent A, who assured him that he was not identifying himself improperly as Respondent B or as a licensed real estate salesperson;
- contacted Conn to ask her to provide a statement about her interaction with Respondent A;
- after gathering information about the matter, advised Respondent A that he could no longer serve as an assistant to anyone in the office; and
- added additional conditions to the policy regarding unlicensed assistants, including that he (Respondent C) must sign off on any agreement involving use of an unlicensed assistant and he conducts monthly consultations with any unlicensed assistants.

⁸ “Guidelines for the Use of Unlicensed Employees” is a publication available from the Department of Labor, Licensing and Regulation. It is available online at <http://www.dlrr.state.md.us/license/mrec/mreccododnts.shtml>, and was admitted into evidence as REC #16. The guidelines have not been updated or changed since the date of the events in this case.

45. Respondent C was familiar with the “Guidelines for the Use of Unlicensed Employees” before he came to the Elton Road branch of Fairfax. He had used it at his previous location to advise real estate professionals under his supervision.

46. Respondents A and B were also familiar with the “Guidelines for the Use of Unlicensed Employees” prior to Respondent B hiring Respondent A as her unlicensed assistant.

47. As branch manager, Respondent C held meetings to educate and update the real estate professionals in the office. The meetings were sometimes monthly and sometimes were every other month. Respondent C instructed those in attendance to sign the attendance sheets and he kept the attendance sheets as records.

48. Respondent B either did not attend the meetings or did not sign the attendance sheets.

49. Respondent C was routinely available in person and by phone to answer questions from or to consult with real estate professionals affiliated with Fairfax’s Elton Road office.

DISCUSSION

Respondent A’s alleged violations are so intertwined that splitting each allegation out for separate discussion would be inefficient. There is no dispute that Respondent A was not licensed in any capacity by the REC while the events at issue in this case occurred. It must be determined, then, whether Respondent A provided, attempted to provide, or offered to provide real estate brokerage services. BOP section 17-101(l) defines providing real estate brokerage services as follows:

"Provide real estate brokerage services" means to engage in any of the following activities:

- (1) for consideration, providing any of the following services for another person:
 - (i) selling, buying, exchanging, or leasing any real estate; or
 - (ii) collecting rent for the use of any real estate;
- (2) for consideration, assisting another person to locate or obtain for purchase or lease any residential real estate;

- (3) engaging regularly in a business of dealing in real estate or leases or options on real estate;
- (4) engaging in a business the primary purpose of which is promoting the sale of real estate through a listing in a publication issued primarily for the promotion of real estate sales;
- (5) engaging in a business that subdivides land that is located in any state and sells the divided lots; or
- (6) for consideration, serving as a consultant regarding any activity set forth in items (1) through (5) of this subsection.

For some of the subsections, determining that an individual has engaged in providing real estate brokerage services requires a finding that the individual received consideration.

Respondent A received compensation for the assistance he provided to Respondent B in the form of \$500 gift certificates. Therefore, if he engaged in any of the activities listed in BOP section 17-101 with respect to the transaction involving the property, he provided real estate brokerage services. Respondent A's activities fit several of BOP 17-101's subsections. He engaged for consideration in selling real estate for another person. He also assisted another person in locating or obtaining residential real estate for purchase, again for consideration. His activities may fit other subsections as well, but it is evident that he engaged in providing real estate brokerage services when he was not licensed by the REC and accordingly could not be in a position to properly provide services for a real estate broker.

Respondent A's machinations would be laughable if the fallout were not so serious. He misrepresented himself many times orally and in writing to individuals involved with the transaction, starting with JVS and going through TH-B and Conn. He said that he was "Katia" and also "Olu." He was asked directly about the fact that he was giving totally different names and explained "Olu" as a nickname. He made and answered phone calls and sent and received faxes and emails as if he were Respondent B, not, as he tried to suggest, as her personal assistant. Respondent A does have a thick accent as he asserts, but it is simply ridiculous to maintain that

three different individuals, connected with three separate businesses completely misunderstood who he was.

Respondent A tried to suggest that there was “something” between JVS and TH-B and that TH-B was only saying what JVS told her to say. JVS has represented TH-B personally in one or more real estate transactions and over many years they have completed many business transactions with each other. JVS refers business to TH-B. Still, I found TH-B to be a particularly compelling witness. She came across as a businesswoman going the extra mile to try to help a real estate professional who seemed a little lost, or not up to the rigors of the transaction at hand. She made adjustments to try to see the deal through to fruition, and she was both angry and offended when she found she had been taken advantage of by Respondent A who completely misrepresented who he was. In addition, the copies of the faxes in evidence offer independent verification of TH-B’s testimony.

In his testimony, Respondent A took responsibility for some of his actions. He indicated that he had forgotten himself – forgotten that he was not still a licensed agent and that he had undertaken more than he should have. He agreed he went beyond what he was supposed to do. He expressed regret that he had put Respondents B and C in unfortunate professional positions. He stated that Respondent B had not asked or instructed him to do some of the actions he had undertaken. He wanted to exonerate Respondent C entirely, because Respondent C had no connection with his rogue activities. Despite what he took responsibility for, Respondent A forcefully maintained that he had never misrepresented himself as being Respondent B. In his testimony and in his closing argument I appreciated that he took at least some responsibility for his actions and the consequences they wreaked on others. I also noted, though, that he wheedled and pleaded for mercy and “clemency” in a manner that exactly reproduced what TH-B had described as Respondent A’s demeanor in dealing with her after she confronted him about his

deception, when he still wanted her to do things for him, such as convince JVS not to follow through with filing a complaint. This further bolstered TH-B's credibility.

The Respondent's actions demonstrate bad faith and untrustworthiness and constitute dishonest and improper dealings. As demonstrated by the discussion, the REC proved all the violations alleged. Accordingly, I turn to the question of what, if any, sanction or penalty should be imposed.

Under BOP section 17-322, the Commission may deny a license to an applicant or discipline any licensee if they violate certain statutory provisions or COMAR regulations.

Respondent A is neither a licensee nor an applicant, so these sanctions are inapplicable.

Pursuant to BOP section 17-322(c) the Commission also has the following option:

(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.

In this instance, the Commission recommended a penalty of \$5,000.00, which I find to be reasonable in light of the factors that are to be considered. This was a serious violation. This was not an unsophisticated novice who ran afoul of some of real estate's more esoteric rules. This was an individual who had been a licensed real estate salesperson for a number of years at the same office. He knows that he absolutely should not have represented himself as Respondent B, as evidenced by the fact that even at the hearing, while he was willing to admit some inappropriate conduct, he still insisted, despite overwhelming evidence to the contrary, that he had never once said he was Katia. Respondent A caused professional problems for Respondents

B and C. He incensed JVS to the point that JVS filed a complaint with the REC, something he had never done in the ten or eleven years he had been a real estate professional. The harm here was limited to the fairly small group of professionals directly involved in the transaction, and perhaps included the buyers, but the fact that the circle of harm was limited was coincidental and in no part due to care on the part of Respondent A.

Respondent A exhibited no good faith during the real estate transaction. As mentioned above, he offered apologies at the hearing for some of his inappropriate action, and, to his credit, he acknowledged and expressed remorse for how his actions had adversely impacted the other two Respondents. I was not advised of any previous violations by Respondent A.

The REC proved that the Respondent violated two subsections of BOP section 17-322 – (b)(25) and (b)(32). The REC is authorized to seek a \$5,000.00 for each of these violations, but is seeking a penalty of half that much. Additionally, BOP section 17-613 reiterates that the REC may impose a \$5,000.00 penalty for a first violation of any provision of title 17 of the BOP Article. Considering all the relevant factors, a penalty of \$5,000.00 is commensurate with Respondent A's actions.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that Respondent A provided real estate brokerage services on behalf of a real estate broker without being licensed as an associate real estate broker or as a real estate salesperson in violation of BOP section 17-301(a).

I conclude as a matter of law that Respondent A engaged in conduct that demonstrated bad faith and untrustworthiness and that constituted dishonest and improper dealings in violation of BOP section 17-322(b)(25).

I conclude as a matter of law that Respondent A violated “any other provision of this title,” in violation of BOP section 17-322(b)(32) by his actions in impersonating Respondent B.

I conclude as a matter of law that Respondent A provided, offered to provide, or attempted to provide real estate brokerage services on behalf of a real estate broker when he was not licensed as an associate real estate broker or a real estate salesperson for that real estate broker in violation of BOP section 17-601(b).

I further conclude as a matter of law that these statutory violations justify imposing a monetary penalty of \$5,000.00. BOP section 17-322(c).

RECOMMENDED ORDER

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

The Commission’s Amended Charges against the Respondent under sections 17-301(a), 17-322(b)(25) and (32) and 17-601(b) of the Business Occupations and Professions Article be **AFFIRMED**; the Commission **ORDER** that the Respondent pay a civil penalty in the amount of \$5,000.00; and, the Commission **ORDER** that its records and publications reflect its final decision.

September 12, 2013
Date Decision Issued

KAF/kkc
Document #144716

SIGNATURE ON FILE

Kimberly A. Farrell
Administrative Law Judge

**MARYLAND REAL ESTATE
COMMISSION**

v.

**OLUSEUN OGUNFOWOKAN,
RESPONDENT**

*** BEFORE KIMBERLY A. FARRELL,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH Case # : DLR-REC-21-13-12607
* REC Case #: 2012-RE-373**

*** * * * ***

FILE EXHIBIT LIST

I admitted into evidence the following exhibits on behalf of the MREC:

- REC #1 Notice of Hearing as to Respondent B, April 5, 2013, with attached Statement of Charges and Order for Hearing, March 28, 2013
- REC #2 Cover letter to Respondent B, May 31, 2013, and attached Amended Statement of Charges and Order for Hearing dated May 30, 2013
- REC #3 REC records regarding licensure for Respondent B
- REC #4 Notice of Hearing as to Respondent A, April 5, 2013, with attached Statement of Charges and Order for Hearing, March 28, 2013
- REC #5 Cover letter to Respondent A, May 31, 2013, and attached Amended Statement of Charges and Order for Hearing dated May 30, 2013
- REC #6 Cover letter to Respondent A, June 3, 2013, sent to a different address
- REC #7 REC records regarding licensure for Respondent A
- REC #8 Notice of Hearing as to Respondent C, April 5, 2013, with attached Statement of Charges and Order for Hearing, March 28, 2013
- REC #9 Cover letter to Respondent C, May 31, 2013, and attached Amended Statement of Charges and Order for Hearing dated May 30, 2013
- REC #10 REC records regarding licensure for Respondent C
- REC #11 Report of Investigation, received June 9, 2009
- REC #12 Email from Carrie Conn of Rhino Settlement Services, Inc. to Jorge Valle Sanchez, May 28, 2009
- REC #13 Fax sent from Fairfax Realty to "Tina," May 4, 2009
- REC #14 Fax sent from Avison Residential Solutions, L.L.C. to "Katia Lubin," May 8, 2009
- REC #15 Report of Investigation, marked closed October 10, 2012
- REC #16 Printout of DLLR's Division of Occupational and Professional Licensing's "Guidelines for the Use of Unlicensed Employees – Maryland Real Estate Commission"

Respondent C offered one exhibit which I admitted into evidence:

RESP #1 Email from the REC to Respondent C, September 24, 2012, and his
undated response to the questions posed by the REC

Neither Respondent A nor Respondent B offered any exhibits for consideration.