BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION	*	
	*	**CASE NO. 2018-RE-471**
v.		
	*	**OAH NO. LABOR-REC-21-20-27639**
MELANIE BREEDEN,		
Respondent	*	

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OPINION AND FINAL ORDER

This matter came before a hearing panel of the Maryland Real Estate Commission ("Commission") on February 16, 2022 as a result of written exceptions filed by Respondent, Melanie Breeden, to the Commission's Proposed Order of June 24, 2021. On March 19, 2021, Administrative Law Judge Tracey Johns Delp ("ALJ") convened a hearing ("ALJ Hearing") at the Office of Administrative Hearings ("OAH") on the complaint filed against Respondent. The ALJ filed a Recommended Decision, dated April 23, 2021, in which she recommended that Respondent be found to be in violation of the Maryland Real Estate Brokers Act, Title 17 of the Business and Occupations Article of the Maryland Code ("BOP") and that as a result her license be revoked and a monetary penalty be issued against her. On June 24, 2021, the Commission issued the Proposed Order affirming the ALJ's Findings of Fact, approving the Conclusions of Law, and adopting the Recommended Order.

On or about July 8, 2021, Respondent filed written exceptions to the Proposed Order. A virtual hearing on the exceptions was held February 16, 2022 ("February 16th Hearing") before a panel consisting of Commissioners Anne Cooke, Michael Lord, and Donna Horgan. Hope Sachs, Assistant Attorney General, appeared as the presenter of evidence on behalf of the Commission Respondent appeared, without an attorney. She acknowledged her right to representation by

counsel but waived that right and proceeded *pro se*. The proceedings were electronically recorded.

PRELIMINARY MATTERS

At the February 16th Hearing, Respondent moved to introduce additional evidence. The presenter of evidence opposed Respondent's motion. Pursuant to the Code of Maryland Regulations ("COMAR") 09.01.03.09 K:

> Additional evidence may not be introduced unless the party seeking to introduce it demonstrates to the satisfaction of the administrative unit that the new evidence:
> (1) Is relevant and material;
> (2) Was not discovered before the ALJ hearing; and
> (3) Could not have been discovered before the ALJ hearing with the exercise of due diligence.

The Panel recessed to review and after careful consideration, determined the evidence was inadmissible because Respondent failed to argue, let alone prove, that the evidence was not or could not have been discovered before the ALJ hearing.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, three exhibits, as well as the OAH file containing the exhibits which were introduced at the ALJ Hearing, were admitted and entered into evidence:

REC Ex. 1: Proposed Order and Recommended Decision
REC Ex. 2: Respondent's exceptions
REC Ex. 3: Commission hearing notices

FINDINGS OF FACT

The Commission adopts the Findings of Fact recommended by the ALJ.

DISCUSSION

Respondent is a licensed real estate salesperson. FF 1.[1] In early 2017 Daniel Shipley hired Amanda Shipley, nee Beele, (his then partner, now spouse) to list his property, 202 HIgh

[1] FF refers to the Findings of Fact in the ALJ's Recommended Decision.

Meadow Terrace, Abingdon, Maryland (the 'Property") for purchase or rent to own. FF2-3. Respondent scheduled visits to the Property and represented to Ms. Shipley that she had a prospective tenant when unbeknownst to either Shipley, the prospective tenant was in fact the Respondent. FF 5.

Respondent referred to herself in the third person by her maiden name in text messages with Ms. Shipley and on her rental application. Ms. Shipley relied on that name when conducting her Maryland Judiciary Case Search and credit report queries. Had she known Respondent's last name to be Breeden, the results would have been much different. Respondent executed a one year lease for the Property under her maiden name. FF 6-20.

The lease required the tenant to pay for utilities and allowed no pets. Respondent was unable to obtain a BGE account because of a past due balance under her married name and as a result, through an addendum, the lease was converted to month to month. FF 21-30. Respondent failed to pay utility bills for the Property, made late rent payments, or no payments at all, and in November 2017 when a rent check was returned for insufficient funds both Shipleys realized Respondent and the Tenant were the same person. FF 31-34. At some point during the lease period Mr. Shipley was informed that his hot tub was no longer at the Property and it was never returned. FF 35-38. Mr Shipley initiated eviction proceedings against Respondent. FF 39. During showings of the Property it was discovered Respondent had at least one cat in violation of the lease. FF 40-41.

Mr. Shipley filed a complaint against Respondent with the Commission in April of 2018. In her response Respondent claimed Ms. Shipley knew she was the tenant and that she had been honest about her credit issues. Both claims were proven false by the text messages Ms. Shipley

provided to the Commission. In addition, Respondent manufactured false text messages in an attempt to contradict the text messages Ms. Shipley provided. FF 42-46.

At the February 16th Hearing Respondent argued the revocation was too harsh and too extreme. She suggested she instead pay a fine and be ordered to attend education sessions. She explained she had a child who was ill at the time and she was also going through a divorce. She argued the ALJ relied too much on the Shipleys. The presenter of evidence for the Commission argued the ALJ had made no errors in her decision, stressing that Respondent used her maiden name, not her legal name, never identified herself as a real estate agent, took personal property from Mr. Shipley, failed to pay both rent and utilities she was contractually obligated to pay, and once confronted with a complaint by Mr. Shipley attempted further deceptions when responding to the Commission.

The Commission is required to "administer and enforce the provisions" of the Maryland Real Estate Brokers Act (the "Brokers Act"). BOP § 17-209. In this matter the ALJ has recommended the Commission find that the allegations against Respondent amount to violations of BOP §§ 17-322(b)(3), (4), (25), and (33) as well as COMAR 09.11.02.01C and that as a result the Respondent's license should be revoked and a monetary penalty should be imposed. The Commission agrees with the ALJ.

Respondent used her maiden name and spoke of herself in the third person when communicating with Ms. Shipley about the Property. That was a wilful misrepresentation in violation of BOP § 17-322(b)(3). The name of a tenant is a material fact and Respondent intentionally withheld her legal name in communications with another licensee, in the rental application, and on the lease for the Property, in violation of BOP § 17-322(b)(4). BOP § 17-322(b)(25) provides that a licensee is in violation of the Brokers Act when she "engages in

conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings." Respondent's dealings with the Shipleys were in bad faith, untrustworthy, dishonest, fraudulent, and improper. Respondent was also dishonest and fraudulent with the Commission, she denied the claims that she presented herself as a third party and went so far as to falsify text messages in an attempt to support herself. When questioned at the ALJ Hearing about unique grammatical errors and the format of the text messages she provided, Respondent had no explanation and "did not appear incredulous or even mildly upset as you might expect someone to react when challenged on their veracity." Recommended Decision 19-22. Under COMAR 09.11.02.01C Respondent is required to

> protect the public against fraud, misrepresentation, or unethical practices in the real estate field. ... endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession [and] ... assist the [C]ommission.

All of the above facts and discussion make it clear that Respondent is in violation of COMAR 09.11.02.01C and therefore BOP § 17-322(b)(33) which prohibits violations of the Commission's regulations.

Finally, the Recommended Decision includes no facts or discussion to indicate Respondent took responsibility for her actions, made any attempt at apology, or exhibited remorse. At the February 16th Hearing, Respondent was defensive and evasive and still unapologetic and unremorseful.

Respondent's actions were egregious and necessitate revocation of her license. However, the monetary penalty of $5,000.00 on top of revocation is excessive and will be reduced.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, the Commission concludes as a matter of law that Respondent violated BOP § 17-322(b)(3), (4), (25), and (33) as well as COMAR 09.11.02.01C and revocation of her license and imposition of a monetary penalty are appropriate sanctions.

ORDER

The Exceptions of the Respondent, Melanie Breeden, having been considered, it is this 13 day of May, 2022 by the Maryland Real Estate Commission, hereby ORDERED:

1. That any and all real estate licenses issued by the Maryland Real Estate Commission held by Melanie Breeden are REVOKED from the date all rights to appeal this order are exhausted;

2. That Respondent Melanie Breeden shall pay a civil penalty in the amount of One Thousand Dollars ($1,000.00) within thirty (30) days from the date all rights to appeal are exhausted; and

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

MARYLAND REAL ESTATE COMMISSION
SIGNATURE ON FILE

By: _____

Note: A judicial review of this Final Order may be sought in the Circuit Court for the Maryland County in which the Appellant resides or has his/her 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.