

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE *

COMMISSION *

REC CASE NO. 2008-RE-363

*

V.

*** OAH NO. DLR-REC-21-10-17335**

JERRY GANTT *

RESPONDENT *

*

* * * * *

OPINION AND FINAL ORDER

This matter came before the Maryland Real Estate Commission (“Commission”) on argument on Exceptions filed by the Respondent, Jerry Gantt, to the Proposed Order of January 16, 2011. On January 5, 2011, Administrative Law Judge William J. D. Somerville, III (“ALJ”) filed a Proposed Decision and Recommended Order in which he recommended that the Respondent’s real estate license be revoked and that the Respondent pay a civil penalty of \$5,000.00.

On February 16, 2011, the Commission issued a Proposed Order that affirmed the ALJ’s Findings of Fact, approved the ALJ’s Conclusions of Law; and adopted the ALJ’s Recommended Order.

A hearing on the Exceptions filed by the Respondent was held by a panel of Commissioners, consisting of Commissioners J. Nicholas D’Ambrosia, Marla S. Johnson, and Jeff M. Thaler on June 15, 2011. Peter Martin, Assistant Attorney General, represented the Commission. A transcript of the hearing before the ALJ was not

provided to the Commission. The proceedings were electronically recorded. The Respondent did not appear for the Exceptions' hearing.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, three exhibits, including the Office of Administrative Hearings' ("OAH") file and the exhibits which were introduced before the ALJ, were entered into evidence.

PRELIMINARY MATTERS

On February 18, 2011, the Commission forwarded a letter, with a copy of the Proposed Decision of the ALJ and the Proposed Order of the Commission, to the Respondent at his address of record. On February 25, 2011, the Commission received an e-mail from the Respondent filing Exceptions to the Proposed Order. On March 1, 2011, the Commission forwarded a letter to the Respondent, informing him that a hearing on his Exceptions would take place at 500 N. Calvert Street, Third Floor Conference Room, Baltimore, Maryland 21202 on Wednesday, June 15, 2011 at 1:30 p.m. The letter advised the Respondent that : " If the excepting party fails to appear within fifteen minutes of the scheduled time for this hearing, its exceptions will be dismissed absent extenuating circumstances." The March 11, 2011 letter from the Commission to Mr. Gantt was sent to him at his address of record. Mr. Gantt did not appear on June 15, 2011 at 1:30 p.m. for his scheduled hearing. The Commission waited until 1:49 p.m. before commencing the hearing in Mr. Gantt's absence. Due to Mr. Gantt's failure to appear for the scheduled hearing on his Exceptions and in accordance with the provisions of Code of Maryland Regulations ("COMAR") 09.11.03.01F, which provides that:

“The panel may dismiss an appeal without holding a hearing if the person who filed exceptions to the proposed order fails to appear at the scheduled time after receiving proper notice.”

the Commission dismissed Mr. Gantt’s Exceptions.

On or about June 16, 2011, Mr. Gantt mailed a letter to the Commission in which he stated that he was out of town for five days and when he returned on June 15, 2011 he found the Commission’s letter of March 1, 2011 in his mail box. He requested that the Commission reschedule the Exceptions’ hearing to permit him “...the opportunity to present additional information.” Mr. Gantt’s request for another opportunity to present additional evidence at a new Exceptions’ hearing was reviewed by the panel of Commissioners after its receipt by the Commission and was denied. The Commission based its denial of the Respondent’s request for a new Exceptions’ hearing on the facts that: 1) The notice of the hearing was mailed to Mr. Gantt’s address of record, the same address to which the Proposed Order of the Commission and the Proposed Decision and Recommended Order of the ALJ had been mailed and received by the Respondent, in accordance with the provisions of Code of Maryland Regulations (“COMAR”) 09.01.02.07; 2) Mr. Gantt was notified, in accordance with the provisions of COMAR 09.11.03.01F, that if he failed to appear within fifteen minutes of the scheduled time for the Exceptions’ hearing, the Exceptions would be dismissed, absent extenuating circumstances; 3) Mr. Gantt failed to present credible evidence of extenuating circumstances which would have justified his failure to appear at the scheduled hearing; and 4) Mr. Gantt had failed to obtain a postponement of the Exceptions’ hearing scheduled for June 15, 2011.

FINDINGS OF FACT

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

DISCUSSION

At all times relevant to this matter, the Respondent was licensed by the Commission as a real estate broker. His real estate company was G & H Realty Services, LLC. FF1¹ On or about July 14, 2006, an agent working for the Respondent brokered a real estate sales contract between his customer, who was a buyer, and a seller of the property known as 18 Sparrow Hill Court in Catonsville, Baltimore County. FF 2. Both parties to the contract entered into the contract on or before that date. FF 2. Several days earlier, on July 11, 2006, the buyers had given the agent a written offer and an initial deposit of \$5,000.00 “to be held in escrow by: G & H Realty”. FF 3. On August 1, 2006, the Respondent deposited the \$5,000.00 into G & H Realty’s escrow account. FF 4. On or about August 4, 2006, the buyers believed that the contract of sale had been breached and submitted a release of escrow funds agreement to the agent employed by the Respondent. FF 5. The buyers asked to have the sellers execute the release and to have their \$5,000.00 deposit returned to them. FF 5. The sellers did not execute the release and disputed the return of the deposit money. FF 6. On December 5, 2007, the buyers filed a complaint with the Commission. FF 7. On or about July 9, 2008, the Respondent filed an interpleader action in the District Court of Maryland asking for equitable relief on behalf of G & H Realty. FF 8. The Respondent is not a member of the bar in the State of Maryland or in any other State. FF 8. Between August 1, 2006 and July 9, 2008, the amount of money in G & H Realty’s escrow account fluctuated up and down, in

¹ “FF” refers to the ALJ’s Findings of Fact.

pertinent part, as follows: On June 7, 2007, the Respondent deducted \$800.00 from the account such that the balance dropped to \$2,383.76; on June 13, 2007, the Respondent deducted \$1,095.00 from the account such that the balance dropped to \$4,397.76; on November 21, 2007, the Respondent deducted \$500.00 from the account such that the balance dropped to \$29.80; and on March 3, 2008, the Respondent deducted \$500.00 from the account such that the balance dropped to \$4,613.80. FF 9. On April 30, 2010, after having completed an investigation, the Commission issued administrative charges against the Respondent. FF 10.

Md. Code Ann., Business Occupations and Professions Article (“Bus. Occ. & Prof. Art.”), §17-501 (c) defines “trust money” as follows:

§ 17-501.

(c) “Trust money” means a deposit, payment, or other money that a person entrusts to a real estate broker or, on behalf of a real estate broker, to an associate real estate broker or a real estate salesperson to hold for:

- (1) the benefit of the owner or beneficial owner of the trust money; and
- (2) a purpose that relates to a real estate transaction involving real estate.

It is clear that the buyer’s \$5,000.00 deposit received by the Respondent from his agent, for deposit in the escrow account of G & H Realty, the Respondent’s real estate brokerage firm, was “trust money” as defined by Md. Code Ann., Bus. Occ. & Prof. Art., § 17-501(c).

Md. Code Ann., Bus. Occ. & Prof. Art., §17-502, provides, in pertinent part:

§ 17-502.

(b) (1) . . . a real estate broker promptly, but not more than 7 business days after the acceptance of a contract of sale by both parties, shall deposit trust money in an account that is maintained by the real estate broker:

- (i) separately from the real estate broker’s own accounts; and

(ii) solely for trust money.

(2) A real estate broker may not use trust money for any purpose other than that for which it is entrusted to the real estate broker.

The contract was accepted by both parties on July 14, 2006 and the Respondent was required by the provisions of Md. Code Ann., Bus. Occ. & Prof. Art., §17-502(b)(1) to deposit the \$5,000.00 in trust money within seven business days of that date. The Respondent did not deposit the trust money in his brokerage's escrow account until August 1, 2006. Thus, the Respondent violated Md. Code Ann., Bus. Occ. & Prof. Art., § 17-502(b)(1).

It is also clear, based on the fluctuations below \$5,000.00 in the escrow account during the time when there should have been a minimum of \$5,000.00 in the account, (or valid documentation showing that the trust money had been properly distributed to some other person or account) that the Respondent used the trust money for his own purposes. The evidence presented demonstrated that the deposit money was not continuously in the escrow account from the time when it was deposited until the time when the Respondent filed the interpleader action. At the hearing before the ALJ, the Respondent, who the ALJ found to be vague, evasive and untrustworthy in his testimony, either could not or would not explain what had transpired with the \$5,000.00 during the time period at issue. The Commission, therefore, concludes that the Respondent violated Md. Code Ann., Bus. Occ. & Prof. Art., § 17-502(b)(2).

The Commission further concludes that the Respondent has violated Md. Code Ann., Bus. Occ. & Prof. Art., § 17-322(b)(32) based on his violation of other provisions of Title 17, as set forth above.

Instead of or in addition to reprimanding, suspending or revoking a real estate license for violations of the above cited statutes, Md. Code Ann., Bus. Occ. & Prof. Art., §17-322(c) permits the assessment of up to a \$5,000.00 penalty per violation. To determine the amount of the penalty to be imposed, the Commission is required to consider the following criteria:

- 1) the seriousness of the violation;
- 2) the harm caused by the violation;
- 3) the good faith of the licensee; and
- 4) any history of previous violations by the licensee.

Although the Respondent has no history of prior violations, the Commission finds that the violations in this case are extremely serious. The Respondent failed to comply with requirements of the law regarding the handling of a large sum of money held in trust for the benefit of others. The Respondent's failure to handle the trust funds in accordance with the provisions of the law caused harm to the reputation of the real estate industry and violated the trust which the public accords to real estate licensees who handle their funds. Further, the evidence and testimony established that the Respondent used the trust fund money for his own purpose while it was under his control and deprived the parties of the use of the money, for any purpose, during that time. The Respondent's actions also disclose a lack of good faith in dealing, as a licensed real estate broker, with the public. By his actions, the Respondent has demonstrated that he cannot be trusted to handle trust funds being held pursuant to Title 17, Bus. Occ. & Prof. Art. Therefore, the Commission concludes, based on an evaluation of the criteria noted

above, that the appropriate sanctions in this case are the revocation of the Respondent's real estate license and the imposition of a \$5,000.00 civil penalty

CONCLUSIONS OF LAW

Based upon the ALJ's Findings of Fact, which have been adopted by the Commission, and the foregoing Discussion, the Commission concludes, as a matter of law, that:

1. The Respondent did not deposit trust money within seven business days of acceptance of a contract of sale by both parties in violation of Md. Code Ann., Bus. Occ. & Prof. Art., § 17-502(b)(1);

2. The Respondent used trust funds for purposes other than that for which they were entrusted to him in violation of Md. Code Ann., Bus. Occ. & Prof. Art., § 17-502(b)(2);

3. The Respondent's violations of Md. Code Ann., Bus. Occ. & Prof. Art., §§ 17-502(b)(1) and 17-502(b)(2) constitute a violation of Md. Code Ann., Bus. Occ. & Prof. Art., § 17-322(b)(32); and

4. The Respondent is subject to sanctions for his conduct, and the revocation of all real estate licenses held by him and a \$5,000.00 civil penalty are appropriate sanctions. Md. Code Ann., Bus. Occ. & Prof. Art., § 17-322(c).

ORDER

It is this 7th day of September, 2011, by

the Maryland Real Estate Commission, **ORDERED:**

1. That the Respondent, Jerry Gantt, violated Md. Code Ann., Bus. Occ. & Prof. Art., §§ 17-502(b)(1); 17-502(b)(2); and 17-322(b)(32);

2. That any and all real estate licenses held by the Respondent, Jerry Gantt, be and hereby are REVOKED;

3. That the Respondent, Jerry Gantt, be assess a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) which shall be paid within thirty (30) days of the date of this Order;

4. That the Respondent, Jerry Gantt, shall not be eligible for any license issued by the Commission until the civil penalty is paid; and

5. 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 of Maryland 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.