

MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

VS.

WILLIAM H. GRAY

RESPONDENT

And

CLAIM OF KATHERINE EVANS
AGAINST THE MARYLAND REAL
ESTATE COMMISSION GUARANTY
FUND

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CASE NO. 2005-RE-454

OAH NO. DLR-REC-24-08-23686

CLAIMANT

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OPINION AND FINAL ORDER

Respondent, William H. Gray, filed Exceptions to the Proposed Order of March 5, 2010. On January 20, 2010, Administrative Law Judge Charles R. Boutin ("ALJ") filed a Proposed Decision and Recommended Order in which he recommended that pursuant to Section 17-322(b)(3), Business Occupations and Professions Article, ("Bus. Occ. & Prof. Art.") Annotated Code of Maryland, the Respondent pay a civil penalty of \$1,500; that pursuant to Section 17-322(b)(25) Bus. Occ. & Prof. Art., Annotated Code of Maryland, the Respondent pay a civil penalty of \$1,500.00; that pursuant to the Code of Ethics (COMAR 09.11.02.01C), the Respondent pay a civil penalty of \$1,500.00; and that pursuant to Section 17-322(b)(33), Bus. Occ. & Prof. Art., Annotated Code of Maryland, the Respondent be issued a reprimand. It was also recommended that the Claimant's claim against the Maryland Real Estate Commission Guaranty Fund be dismissed and no award paid.

On March 5, 2010, the Maryland Real Estate Commission ("Commission") issued a Proposed Order that affirmed the ALJ's Findings of Fact and Conclusions of Law but amended the sanctions proposed in the Recommended Order as follows: All licenses held by the Respondent would be suspended for 30 days; the Respondent would be assessed a civil penalty of \$6,000.00; and all real estate licenses held by the Respondent would be suspended until the civil penalty imposed on him is paid in full and that suspension is in addition to the 30 day disciplinary suspension imposed.

The Claimant, Katherine Evans, did not file Exceptions to the ALJ's Proposed Decision, adopted by the Proposed Order of the Commission, which denied her claim against the Maryland Real Estate Commission Guaranty Fund.

A hearing was held by a panel of Commissioners consisting of Commissioners Nicholas D'Ambrosia, Marla S. Johnson and Colette P. Youngblood. Jessica Berman Kaufman represented the Commission. Jack L. B. Gohn, Esquire represented William H. Gray, the Respondent. The proceedings were electronically recorded.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, four exhibits as well as the file related to the hearing before the ALJ which contained all of the exhibits admitted at the hearing before the ALJ, were entered into evidence.

FINDINGS OF FACT

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

CONCLUSIONS OF LAW

The Commission adopts the Conclusions of Law recommended by the ALJ.

DISCUSSION

At all times relevant to this matter, the Respondent was a salesperson licensed by the Commission. Since the transaction at issue, the Respondent has also been licensed as a broker. FF1¹. The Claimant met the Respondent at a home that was for sale. FF2. The Respondent introduced Jacob Appletree to the Respondent as a "counterpart agent" and said they were a team. FF 3,4. The Respondent represented to the Claimant that both he and Mr. Appletree were real estate agents associated with Anne Arundel Properties. FF5. The Respondent was not present at any appointment to view ten potential homes. FF6. Mr. Appletree worked with the Claimant in searching for and visting prospective properties. When the Claimant looked at the home she finally bought at 7571 Weather Worn Way, only Mr. Appletree was present. FF6,7. Negotiations regarding 7571 Weather Worn Way occurred between the Claimant and Mr. Appletree. FF8. Only the seller, her attorney, a representative of the title company, the Claimant, her husband and Mr. Appletree were present at the settlement on the property. FF9. The Respondent was not present at the settlement. Mr. Appletree, who received a \$1,500.00 finder's fee from the transaction, also stated to the Claimant that he was a licensed real estate agent . FF10,11. Mr. Appletree has never been a licensed real estate agent in Maryland. FF12. The Commission has charged the Respondent with violating sections 17-322(b)(3) and (25) of the Business Occupations and Professions Article ("Bus. Occ. & Prof. Art."),

¹ "FF" refers to the ALJ's Findings of Fact.

Annotated Code of Maryland as well as Code of Maryland Regulations ("COMAR") 09.11.02.01C.

The Commission concludes that the Respondent violated Section 17-322(b)(3), Bus. Occ. & Prof. Art. which prohibits a licensee from directly or through another person willfully making a misrepresentation or knowingly making a false promise. The Respondent misrepresented to the Claimant that Mr. Appletree was a licensed real estate agent and was part of a professional real estate team associated with Anne Arundel Properties. The Respondent also allowed Mr. Appletree to show properties to the Claimant, participate in negotiations and attend the settlement on the house which the Claimant purchased. He allowed Mr. Appletree to represent himself as a licensee during the transaction. Thus, the Respondent misrepresented to the claimant that Mr. Appletree was authorized under the law to provide real estate brokerage services. The Respondent also paid Mr. Appletree a fee for participating in the transaction. The Respondent's conduct in presenting Mr. Appletree to the Claimant as a licensed real estate professional and permitting him to engage in activities for which Mr. Appletree was required, but did not have a license, also violated Section 17-322(b)(25), Bus. Occ. & Prof. Art. which prohibits a licensee from engaging in conduct that demonstrates bad faith, incompetency, or untrustworthiness.

The misrepresentations and untrustworthy practices of the Respondent are also damaging to the integrity of the real estate profession and violate COMAR 09.11.02.01C as well as Section 17-322(b)(33), Bus. Occ. & Prof. Art., Annotated Code of Maryland. The Claimant had an expectation of being assisted and represented by an individual who had received the education and training to acquire a real estate license. The Respondent

did not accompany the Claimant to see prospective properties; did not engage in negotiations on the Claimant's behalf; and did not even attend the settlement on the property which was purchased. Rather, the Respondent misrepresented Mr. Appletree's licensing status and permitted an individual who he knew did not have a real estate license to provide services to the Claimant for which a real estate license is required by law. The Respondent's action violated his duty to endeavor to eliminate in the community any practices which could be damaging to the public or the dignity and integrity of the real estate profession.

In his Recommended Order, the ALJ recommended that, pursuant to Section 17-322(b)(3), the Respondent pay a civil penalty of \$1,500.00; that pursuant to Section 17-322(b)(25), the Respondent pay a civil penalty of \$1,500.00; and, that pursuant to the Code of Ethics, the Respondent pay a civil penalty of \$1,500.00. The ALJ also recommended that the Respondent be issued a reprimand. In its Proposed Order of March 5, 2010, the Commission ordered that all real estate licenses of the Respondent be suspended for 30 days and that the Respondent be assessed a civil penalty in the amount of \$6,000.00.

At the Exceptions hearing, counsel for the Respondent disputed only the penalty which was set forth in the Proposed Order. He contended that, at the hearing before the ALJ, the parties agreed that a \$1,500.00 civil penalty and a reprimand was the appropriate sanction to be imposed. He argued that the \$6,000.00 civil penalty set forth in the Proposed Order exceeded the maximum penalty which the Commission may impose since the Respondent was charged with a single course of action which should have constituted a single violation. Counsel for the Respondent also contended that the

suspension ordered in the Proposed Order was outside the parameters of the penalties imposed by the Commission for like violations and he referred to a chart of similar offenses which was appended to the Respondent's written Exceptions. Counsel for the Respondent also alleged that the penalty set forth in the Proposed Order was extreme given the relative lack of harm involved and the lack of prior violations by the Respondent.

Counsel for the Commission pointed out that the ALJ had proposed a total civil penalty of \$4,500.00, based on a civil penalty of \$1,500.00 for each of three violations of the real estate law by the Respondent. She argued that a civil penalty of up to \$5,000.00 can be imposed for each violation of the real estate law and that, in this case, there were three violations. Ms. Kaufman stated that the Commission increased the civil penalty for each of the three violations from \$1,500.00 to \$2,000.00 for a total civil penalty of \$6,000.00 and that it is the practice of the Commission to delineate a separate penalty for each violation which has been committed. Ms. Kaufman cited the case of *Board of Physicians v. Elliott*, 170 Md.App. 369,383 (2006) in support of her argument that when an agency, such as the Commission, delegates limited hearing authority to an ALJ, the Commission is at liberty to modify the ALJ's recommendation in making its own independent final decision. In this case, she argued, the Commission reviewed the recommendation of the ALJ and exercised its independent judgment to reject the sanction recommended by the ALJ and impose a sanction which it felt was more appropriate. In regard to the argument of counsel for the Respondent that the sanctions set forth in the Proposed Order were outside the parameters of penalties imposed for similar violations, counsel for the Commission stated that seven of the eight cases cited by counsel for the

Respondent were resolved by Consent Order. She argued that the law does not require the Commission to impose the same sanctions in similar cases and that since Consent Orders are the result of compromises between the parties, the Commission may agree to the imposition of a lesser penalty when entering into a Consent Order. She also stated that in some cases a greater civil penalty has been imposed for similar violations than that which the Commission proposed in this case. Ms. Kaufman referred to page three of the Proposed Order which cited the Commission's rationale for increasing the penalty recommended by the ALJ. The Proposed Order cited the Respondent's "utter disregard for the licensing laws"; the lack of a credible defense to the charges; the serious nature of the offense; and his lack of good faith as the rationale for increasing the penalty recommended by the ALJ.

Section 17-322(c)(1), Bus. Occ. & Prof. Art., Annotated Code of Maryland provides that a licensee may be reprimanded or have a license suspended or revoked for violations of the Maryland real estate law. This section also provides that instead of, or in addition to reprimanding a licensee, or suspending or revoking a license, the Commission may impose a civil penalty not to exceed \$5,000.00 for each violation. To determine the amount of the civil penalty imposed, Section 17-322(c)(2) requires the Commission to consider the following factors:

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.

The Respondent's violations are serious. By misrepresenting Mr. Appletree as a

licensee of the Commission, the Respondent falsely led the Claimant to believe that she was receiving real estate services from an individual who had the education and training to be licensed as a real estate professional by the Commission. By paying Mr. Appletree a \$1,500.00 finder's fee, the Respondent rewarded him for violating the laws which govern the real estate profession in Maryland. The Respondent's actions, which are rife with dishonesty and untrustworthiness, undermine the integrity of the real estate profession. By requiring persons engaged in the provision of real estate services to be licensed, the State recognizes that there is a value to having real estate services provided only by individuals who have met certain educational and training requirements. The Claimant was harmed by not having the benefit of services provided by a licensed real estate professional who had met licensing requirements. She was further harmed by not being informed, in advance of the settlement, that a mortgage had not been obtained in accordance with her expectations under the terms of the sales contract. Although she elected to proceed to settlement with a more expensive loan, had she been informed, prior to settlement, that a loan at the lower rate had not been obtained, she would have had a better opportunity to consider her options. The Respondent's actions also indicate a lack of good faith: It is inconceivable that he did not know that his unlicensed "team member", Mr. Appletree, could not legally show properties or conduct negotiations for the purchase of real property. The Real Estate Commission has had printed guidelines outlining what activities unlicensed assistants may or may not engage in for many years.

There was no evidence presented to indicate that there were any previous violations by the Respondent.

Having considered the ALJ's Proposed Decision, the Proposed Order of the Commission, the written Exceptions filed by the Respondent and arguments made by Respondent's counsel as well as counsel for the Commission at the Exceptions hearing, the Commission concludes that the imposition of a civil penalty of \$2,000.00 for each of the three violations which the Commission has found the Respondent to have committed, as well as the imposition of a suspension of the Respondent's real estate licenses, would be within its statutory power and a proper exercise of its discretionary powers. The Commission concludes that during the course of the transaction at issue, the Respondent committed three separate violations of the Maryland Real Estate Broker's Act and may be sanctioned for each violation. A civil penalty of \$2,000.00 for each violation and the imposition of a reprimand, suspension or revocation of a license are within the scope of the Commission's authority. Section 17-322(c), Bus. Occ. & Prof. Art., Annotated Code of Maryland grants the Commission the authority, instead of or in addition to reprimanding a licensee or suspending or revoking a license, to impose a penalty, not exceeding \$5,000.00, for each violation. The Commission concludes that it has the discretion to impose a penalties for violations of the Maryland Real Estate Brokers Act which are appropriate under the circumstances of the particular case. This case involves serious violations of the real estate law and evidences an utter lack of good faith on the part of the Respondent which warrants the imposition of a significant penalty.

The Claimant asserted that she was entitled to \$25,000.00 from the Fund because she did not receive the 6% annual percentage rate on a 30 year conventional mortgage loan which had been assured by the Respondent. The financial loss claimed by the Claimant is based on the difference in payments which the Claimant will be required to

make under the 10.49% thirty year conventional loan which the Claimant agreed to at settlement versus a 6% thirty year conventional loan which was called for in the original purchase contract.

In order for a claimant to obtain reimbursement from the Fund, the claim must be based on an act or omission that occurs in the provision of real estate brokerage services. (Section 17-404(a)(2)(i), Bus. Occ. & Prof. Art., Annotated Code of Maryland.) The ALJ found that the act upon which Claimant sought reimbursement from the Fund did not fall within the definition of providing real estate brokerage services set forth in Section 17-101(l), Bus. Occ. & Prof. Art., Annotated Code of Maryland. The ALJ concluded that the Claimant's request for reimbursement from the Fund was, therefore, without merit. The Commission accepted the ALJ's rationale and, in its Proposed Order, ordered that the claim of Katherine Evans against the Fund be dismissed. The Claimant did not file Exceptions to the Proposed Order.

ORDER

The Exceptions of the Respondent having been considered, it is this

26th day of July 2010:

ORDERED that the Respondent, William H. Gray, violated Md. Bus. Occ. & Prof. Art. Sections 17-322(b)(3), (25), and (33) and COMAR 09.11.02.01C;

ORDERED that the Respondent, William H. Gray, be and is hereby **REPRIMANDED**;

ORDERED, that the Respondent, William H. Gray be assessed a civil penalty in the amount of \$2,000.00 for violation of Md. Bus. Occ. & Prof. Art., Section 17-322(b)(3); be assessed a civil penalty in the amount of \$2,000.00 for violation of Md.

Bus. Occ. & Prof. Art., Section 17-322(b)(25); and be assessed a civil penalty in the amount of \$2,000.00 for violation of COMAR 09.11.02.01C. and Md. Bus. Occ. & Prof. Art., Section 17-322(b)(33) for a total civil penalty of \$6,000.00 which shall be paid within thirty (30) days of the date of this Order;

ORDERED that all real estate licenses held by the Respondent, William H. Gray, shall be **SUSPENDED** until the civil penalty imposed on him is paid in full;

ORDERED that the Respondent, William H. Gray, complete three (3) continuing education credits in real estate law, which shall not be included in the 15 continuing education credits required for the next licensing period, within ninety (90) days of this Order and provide the Commission with a certificate of completion;

ORDERED that the claim of Katherine Evans against the Real Estate Guaranty Fund be **DISMISSED**; and

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

MARYLAND REAL ESTATE COMMISSION

By:

(COMMISSIONER'S SIGNATURE
APPEARS ON ORIGINAL ORDER)

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Commissioner

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.