

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION \*

v. \*

ANDREW C. EVANS, SR., \*  
Respondent \*

\* CASE NO. 2015-RE-069

And

\* OAH NO. DLR-REC-24-16-28369

THE CLAIM OF TARA E. MILLER, aka \*  
TARA E. THOMAS AGAINST THE \*  
MARYLAND REAL ESTATE GUARANTY \*  
FUND \*

\* \* \* \* \*

PROPOSED ORDER

The Findings of Fact, Conclusions of Law, and Recommended Order of the Administrative Law Judge dated March 20, 2017, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 15th day of May, 2017

**ORDERED,**

A. That the Findings of Fact in the recommended decision be, and hereby are, **ADOPTED**;

B. That the Conclusions of Law in the recommended decision be, and hereby are, **AMENDED** as follows:

That the Respondent violated §§ 17-322(b)(3), (32), and (33) and 17-532(c)(1)(iv) of the Business Occupations and Professions Article, as well as COMAR 09.11.02.01C and 09.11.02.02A;

That the Respondent did not violate COMAR 09.11.02.02D;

That the Commission may, instead of or in addition to

reprimanding a licensee or suspending or revoking a license, impose a civil penalty pursuant to § 17-322(c) of the Business Occupations and Professions Article for the violations;

That the appropriate sanction and penalty for the Respondent in this case is a thirty-day suspension of the Respondent's salesperson's license and a civil penalty of \$5,000; and

That the Claimant is not entitled to payment from the Maryland Real Estate Guaranty Fund, Business Occupations and Professions Article, §§ 17-401 through 17-412.

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

**ORDERED** that all real estate licenses held by the Respondent, Andrew C. Evans, Sr., be and hereby are **SUSPENDED** for thirty (30) days;

**ORDERED** that the Respondent, Andrew C. Evans, Sr., shall be assessed a civil penalty in the amount of **Five Thousand Dollars (\$5,000)**, which shall be paid to the Real Estate Commission within thirty (30) days of the date of this Order;

**ORDERED** that all real estate licenses held by the Respondent, Andrew C. Evans, Sr., shall be suspended until the civil penalty is paid in full, including any interest that is payable under the law, and that this suspension is in addition to, and not in lieu of, the disciplinary suspension;

**ORDERED** that the claim filed by Tara E. Miller, aka Tara E.

Thomas, against the Maryland Real Estate Guaranty Fund based on the actions of Andrew C. Evans, Sr. is **DENIED**; and

**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 Recommended Order of the Administrative Law Judge had to be modified for two reasons. First, the Real Estate Commission (Commission) has concluded that the Respondent did not violate COMAR 09.11.02.02D. Second, the Commission has concluded that the Respondent should be subject to a civil penalty of \$5,000 based on the violations. Each modification to the Recommended Order is discussed in greater detail below.

**COMAR 09.11.02.02D**

The ALJ concluded that the Respondent violated COMAR 09.11.02.02D by not disclosing the fact that Ms. Howard was his daughter to the Claimant. The Commission disagrees with this legal conclusion and wishes to clarify the proper interpretation of the regulation.

COMAR 09.11.02.02D imposes a disclosure requirement for licensees and employees buying, selling, leasing, and renting property. COMAR 09.11.02.02D(1) states: "A licensee seeking to acquire an interest in real property must disclose the licensee's licensing status in writing to the seller or lessor of the property no later than the time that an offer is submitted." Similarly,

COMAR 09.11.02.02D(3) states: "A licensee seeking to sell or lease real property owned by the licensee must disclose that ownership interest in writing at the time that the property is offered for sale or lease."

These regulatory requirements are consistent with 17-322(b)(18), which allows the Commission to sanction a licensee when a licensee "as a real estate broker, an associate real estate broker, or a real estate salesperson, advertises the sale or rent of or an offer to buy real property while failing to disclose in the advertisement the name of the advertiser and the fact that the advertiser is a real estate broker, an associate real estate broker, or a real estate salesperson." The Commission has consistently interpreted this provision to require a licensee who offers a property for sale or offers to purchase a property for the licensee's own benefit to disclose that the licensee holds a real estate license, and has taken disciplinary action against licensees who have failed to so indicate.

The legislative history buttresses the Commission's interpretation. Prior to the 1988 revisions to the real estate licensing law (Chapter 563 of the 1988 Laws of Maryland), the provision was set forth in a more general provision prohibiting any misleading or untruthful advertising. The prior placement of the provision in the more general category of misleading or untruthful advertising only makes sense if the licensee is the one advertising

an offer to sell or purchase a property for the licensee's own benefit. Put another way, there is nothing inherently misleading or untruthful about a licensee offering a property for sale on behalf of a client. However, if the licensee is selling or purchasing the property for the licensee's own benefit, and the licensee does not disclose the fact that the licensee is a licensed real estate agent, the counterparty in the transaction will have no idea that the counterparty is dealing with someone who has expertise in real estate transactions. Thus, the statutory provision is intended to serve a consumer protection function, and to ensure that real estate agents act ethically and truthfully in their interactions with the public.

Through COMAR 09.11.02.02D(2) and (4), the Commission expanded the disclosure requirement to four additional situations that are different than the situation where a licensee is selling or offering to buy property for the licensee's own benefit. The substantive disclosure obligations in COMAR 09.11.02.02D(1) that the regulation extends to the specified situations are that a licensee "must disclose [the specified situation] . . . in writing to the seller or lessor of the property no later than the time that an offer is submitted." The substantive disclosure obligations in COMAR 09.11.02.02D(3) that the regulation extends to the specified situations are that a licensee "must disclose [the specified situation] . . . in writing at the time that the property is

offered for sale or lease."

The disclosure requirement in COMAR 09.11.02.02D(2) and (4) only applies where the licensee is "acting on behalf of or representing" one of the four enumerated individuals or entities, specifically:

- (a) A member of the licensee's immediate family;
- (b) An entity in which the licensee has an ownership interest;
- (c) An employee of the real estate brokerage with which the licensee is affiliated; or
- (d) An employee of a team or group of which the licensee is a member.

The use of the phrase "acting on behalf of or representing" was meant to limit the disclosure requirement to those situations where the licensee has an agency relationship with one of the enumerated individuals or entities. The decision to expand the disclosure requirement reflects the Commission's determination that counterparties should know that, in the specified situations, the licensee may have a personal interest that is of a different nature than the normal desire to generate good will and additional business through effective representation of the client.

Turning to the instant case, the ALJ misinterpreted COMAR 09.11.02.02D(2), in particular, the prefatory phrase "[t]he disclosure requirement of §D(1) of this regulation also applies." The ALJ seems to conclude that, since 09.11.02.02D(1) applies to

situations where the licensee is seeking to acquire an interest in real property, then COMAR 09.11.02.02D(2) is also applicable in situations where the licensee is seeking to acquire an interest in real property. But, as noted above, this is not how the Commission intended the language to be interpreted. Instead, the Commission inserted "acting on behalf of or representing" to indicate that COMAR 09.11.02.02D(2) applies where there is an agency relationship between the licensee and one of the enumerated individuals or entities. The reference to "the disclosure requirement" was intended to make the substantive requirements of 09.11.02.02D(1), namely the requirement to disclose in writing to the seller no later than the time an offer is submitted, applicable to the enumerated situations.

Here, there is no evidence to show that Respondent was acting in an agency capacity with respect to his daughter, Ms. Howard. Instead, he was engaged to act on behalf of the Respondent. Therefore, COMAR 09.11.02.02D(2) would not have required the Respondent to reveal the fact that Ms. Howard was his daughter to the Respondent. This conclusion does nothing to diminish the separate conclusion that the Respondent violated Sections 17-322(b)(3) and 17-532(c)(1)(iv) of the Business Occupations and Professions Article, as well as COMAR 09.11.02.01C and 09.11.02.02A, which impose more general ethical obligations on licensees. Nor does it diminish the conclusion that a \$5,000

penalty is warranted, as discussed in further detail below.

### **Civil Penalty**

Pursuant to § 17-322(c) of the Business Occupations and Professions Article, the Commission is required to consider the following factors when deciding on a proper penalty amount: the seriousness of the violation, the harm caused by the violation, the good faith of the licensee, and any history of previous violations by the licensee. The Commission agrees with the ALJ that the violations in this case are serious. The Respondent's violations touch on the core ethical obligations of a real estate agent, including honesty, fairness, and truthfulness. As such, the Respondent's violations have the capacity to reflect unfavorably on the profession as a whole in the eyes of the public.

The Respondent's violations caused harm to the Claimant, even though the Commission agrees with the ALJ's conclusion that the harm is not compensable under the Guaranty Fund. Further, as discussed above, the harm caused by the Respondent's violations bears more generally on the profession as a whole and the violations have the potential to cause damage to the dignity and integrity of the real estate profession. This is especially true in this case as the Respondent was quite clearly not looking out for the best interest of his client.

The Commission agrees also with the ALJ's conclusion that the Respondent's actions were unquestionably not in good faith. This



is demonstrated by the fact that the Respondent had multiple opportunities to disclose his relationship to Ms. Howard, and failed to do so. In fact, the Respondent not only concealed the relationship, he also advocated for Ms. Howard in his dealings with the Claimant. Further, the Respondent misled the Claimant regarding the true nature of his relationship to Century 21 Horizon Realty. The Respondent's actions demonstrate a pattern of untrustworthy and misleading behavior, which is the very opposite of acting in good faith.

The one factor bearing in the Respondent's favor is the fact that he has no history of previous violations. However, based on the Commission's consideration of the other three factors, it has concluded that a \$5,000 penalty is appropriate.

The ALJ also concluded in the Discussion section of the Recommended Order that a \$5,000 penalty is appropriate, but failed to include such a penalty in the Conclusions of Law and Proposed Order sections of the Recommended Order. Nevertheless, the Commission notes that the ALJ properly considered the statutory factors in the Discussion section of the Recommended Order and finds her analysis persuasive.

E. Pursuant to 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.

MARYLAND REAL ESTATE COMMISSION

SIGNATURE ON FILE

By: \_\_\_\_\_  
COMMISSIONER

<p><b>IN THE MATTER OF THE CLAIM OF</b></p> <p><b>TARA E. MILLER,</b></p> <p><b>aka TARA E. THOMAS,</b></p> <p><b>CLAIMANT</b></p> <p><b>v.</b></p> <p><b>THE MARYLAND REAL ESTATE</b></p> <p><b>COMMISSION GUARANTY FUND,</b></p> <p><b>FOR THE ALLEGED MISCONDUCT</b></p> <p><b>OF ANDREW C. EVANS, SR.,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE LAURIE BENNETT,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* OAH Case No.: DLR-REC-24-16-28369</b></p> <p><b>* MREC Case No.: 2015-RE-069</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p>
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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On August 25, 2014, Tara Miller (Claimant) filed a complaint with the Maryland Real Estate Commission (the REC) about her business relationship with Andrew C. Evans, Sr. (Respondent); and on or about that date, she filed a claim for reimbursement from the REC’s Guaranty Fund (the Fund) for reimbursement of actual monetary losses she allegedly suffered as a result of that relationship. The REC investigated. On July 22, 2016, the REC issued charges against the Respondent on the basis that he violated Maryland real estate law and ordered that he have a hearing on the charges and that the Claimant have a hearing on her Fund claim. On

August 17, 2016, the REC forwarded the matter to the Office of Administrative Hearings (the OAH) for a hearing.

I convened a hearing on January 19, 2017, at the OAH in Hunt Valley, Maryland. At the start of the hearing, the Respondent, who represented himself, stated that he had retained a lawyer, Stacie Diane Trageser, but she would not be representing him. He stated that he called her office one week before the hearing and again three days before the hearing, and during the later call, he spoke to her associate, Donald H. Feige, who told him Ms. Trageser is no longer with the practice. The Respondent believes the file about his dealings in this case that he gave Ms. Trageser is not available at her now former office.

The Respondent did not ask to postpone the hearing to obtain another lawyer and he said that he did not think he would be disadvantaged going forward on his own. I did not grant a postponement on my own initiative. The OAH issued a hearing notice to the Respondent two months prior to the hearing, on October 19, 2016. He should not have waited until one week before the hearing to make contact with a lawyer he admits he had not otherwise spoken to since July 2016. OAH's regulations provide that a request for postponement made within five days of the hearing must be based on an emergency, which "means a sudden, unforeseen occurrence requiring immediate attention which arises within 5 days of the hearing." Code of Maryland Regulations (COMAR) 28.02.01.16D(1). No emergency existed in this case.

I proceeded with the hearing as scheduled. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010).<sup>1</sup> The Respondent represented himself. The Claimant represented herself. Hope Sachs, Assistant Attorney General, represented the REC on its regulatory (i.e., disciplinary) charges. Kris King, Assistant Attorney General, represented the Fund.

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<sup>1</sup> Unless otherwise noted, all statutory references are to the Business Occupations and Professions Article, 2010 volume.

Procedure is governed by the contested case provisions of the Administrative Procedure Act, the REC procedural regulations, and the OAH Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); COMAR 09.11.03; COMAR 28.02.01.

### **ISSUES**

Did the Respondent directly or through another person willfully make a misrepresentation or knowingly make a false promise; or engage in conduct that demonstrates bad faith, incompetency, or untrustworthiness; violate any other provision of the Business Occupations and Professions Article, Title 17, or violate any regulation adopted under the Business Occupations and Professions Article, Title 17, or any provision of the code of ethics; and, if so, is he subject to a thirty-day suspension of his license and a civil penalty?

Did the Respondent treat all parties to the real estate transaction with the Claimant honestly and fairly and answer all questions truthfully; and did he exercise reasonable care and diligence; and, if not, is he subject to a thirty-day suspension of his license and a civil penalty?

Did the Respondent 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 REC charged with regulating the practices of brokers, associate brokers, and salespersons in this State; and, if not, is he subject to a thirty-day suspension of his license and a civil penalty?

In accepting employment as the Claimant's agent, did the Respondent protect and promote the interests of his client; and, if not, is he subject to a thirty-day suspension of his license and a civil penalty?

In seeking to acquire an interest in real property, did the Respondent disclose in writing to the seller or lessor of the property no later than the time that an offer is submitted that he was

acting on behalf of or representing a member of his immediate family; and, if not, is he subject to a thirty-day suspension of his license and a civil penalty?

Did the Claimant sustain an actual loss, compensable by the Fund, due to an act or omission of the Respondent in which money or property was obtained from the Claimant by theft, embezzlement, false pretenses, or forgery, or an act or omission that constitutes fraud or misrepresentation in the provision of real estate sales services; and, if so, what amount of award is the Claimant entitled to receive from the Fund?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits that the REC offered:

1. Notice of Hearing, October 19, 2016
2. Statement of Charges, July 22, 2016
3. Licensing history
4. Report of Investigation, closed September 16, 2015
5. Code Enforcement & Inspections Citation, October 9, 2013

I admitted the following exhibit that the Claimant offered:

1. Water bill, for the Current Bill Date, April 2, 2013; letter from Claimant to Customer Care, May 10, 2013

Unless otherwise noted, I admitted the following exhibits that the Respondent offered:

1. Invoice from Professional Property Management Company LLC, January 8, 2008
2. Facsimile cover sheet from Professional Property Management Company LLC, February 25, 2008
3. Facsimile cover sheet from Professional Property Management Company LLC, February 25, 2008

4. City of Baltimore water bill, due July 23, 2008
5. Invoice from Professional Property Management Company LLC, March 7, 2008
6. City of Baltimore water bill, due April 9, 2008
7. City of Baltimore water bill, due October 21, 2008
8. Letter from Professional Property Management Company LLC to Claimant,  
January 27, 2009
9. Baltimore County Housing Office, Rental Assistance Program, Contract & Lease  
Agreement Amendment, February 22, 2010
10. M&T Bank Bill Payment History, January 6, 2011
11. Letter from Department of Social Services, Housing Office to Harris Demon,  
February 22, 2010
12. M&T Bank Bill Payment History, July 6, 2009
13. M&T Bank Bill Payment History, September 8, 2008
14. M&T Bank deposit slip, September 10, 2008
15. Professional Property Management Company LLC invoice, June 5, 2007
16. Tops Roofing Construction Proposal, January 18, 2008
17. Professional Property Management Company LLC invoice, January 20, 2008
18. Tops Roofing Construction Proposal, January 21, 2008
19. Professional Property Management Company LLC invoice, April 10, 2008
20. Nu-Wave Contracting, Inc. Proposal, May 7, 2009
21. Professional Property Management Company LLC service request, June 18, 2009
22. M&T Bank Bill Payment History, July 6, 2009; deposit slip, July 7, 2009; 5  
photographs; McCabe's Home Improvements invoice, June 19, 2009; check

receipt, June 19, 2009; Professional Property Management Company LLC  
invoice, July 1, 2009

23. Mitchell Plumbing & Heating, Inc. invoice February 19, 2010
24. Mitchell Plumbing & Heating, Inc. invoice February 19, 2010
25. Professional Property Management Company LLC invoice, April 4, 2010
26. Professional Property Management Company LLC invoice, June 9, 2010
27. Professional Property Management Company LLC invoice, August 9, 2010
28. Professional Property Management Company LLC invoice, October 1, 2010
29. Professional Property Management Company LLC invoice, December 17, 2010
30. Mitchell Plumbing & Heating, Inc. invoice January 18, 2011
31. Mitchell Plumbing & Heating, Inc. invoice January 31, 2011
32. L&F Maintenance invoice, June 25, 2011
33. L&F Maintenance invoice, August 31, 2011
34. L&F Maintenance invoice, October 22, 2011
35. L&F Maintenance invoice, December 6, 2012
36. L&F Maintenance invoice, February 5, 2013
37. L&F Maintenance invoice, March 16, 2012
38. NOT ADMITTED Checklist (page 10 of a document), not dated
39. NOT ADMITTED Baltimore County Rental Housing License, July 2, 2008
40. NOT ADMITTED Baltimore County Rental License Inspection Sheet, June 4,  
2008
41. NOT ADMITTED Baltimore County Rental Housing License Application  
Payment Coupon, July 2, 2008



42. NOT ADMITTED Baltimore County Rental License Inspection Sheet, June 7, 2011

43. Professional Property Management Company LLC form letter, January 22, 2009<sup>2</sup>

The Fund did not offer any exhibits.

### **Testimony**

The REC presented the following witnesses:

- The Claimant (who testified on the regulatory charges and her Fund claim)
- Robert Hirsch, who manages a real estate company for Century 21
- Michelle Macer, REC Regulatory Investigator

The Claimant did not present witnesses.

The Respondent testified and he presented the following witnesses:

- Leticia Timmons, his significant other and employee
- Edith Joyce Evans, his mother

The Fund did not present any witnesses.

### **FINDINGS OF FACT**

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

1. At all relevant times, the Respondent was licensed by the REC as a real estate salesperson.
2. When the Respondent was first licensed, he worked for Century 21 Horizon Realty, prospecting rental property owners who needed a management company. Century 21 Horizon Realty would have earned a fee on the monthly rent for a successfully prospected client and the Respondent would have received a percentage of the first month's rent. The Respondent decided to start his own business so that he would earn all proceeds from a new

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<sup>2</sup> At the hearing, I marked and admitted two documents as Respondent Exhibit 1. After the hearing, I re-marked this document as Exhibit 43.

client. On an unspecified date, he terminated his employment with Century 21 Horizon Realty.

3. The Claimant located the Respondent through an internet search to manage rental property she owned at 3524 McShane Way, Baltimore, Maryland (the Property). The Claimant was moving from the Property to Pennsylvania and she did not want the burden of the day-to-day operations of owning rental property and dealing directly with the tenants.
4. The Respondent went to the Property and spoke with the Claimant. On January 11, 2007, they signed a property management agreement (the Agreement) on Century 21 Horizon Realty letterhead. The Respondent told the Claimant that he worked for Century 21 Horizon Realty but was opening his own business called Professional Property Management (sometimes referred to in evidence as Property Management) (PPM) and the Claimant would be his first client.
5. Notwithstanding the Century 21 Horizon Realty letterhead, the Claimant believed at the time she signed the Agreement, the Respondent was working for PPM and that PPM would manage her Property.
6. The Respondent did not advise Century 21 Horizon Realty that he prospected the Claimant. Century 21 Horizon Realty protocol required that he submit the client for approval, which the Respondent did not do. Century 21 Horizon Realty did not expressly or impliedly accept the Claimant as a client. The Respondent did not pay Century 21 Horizon Realty its proceeds from the Claimant's contract.
7. The Claimant hired the Respondent to manage the Property (i.e., find tenants; oversee maintenance; collect rent and deposit rent into the Claimant's account; advise the Claimant of maintenance costs over \$500.00 and exercise his discretion for repairs under less than that; and file eviction papers in the event of overdue rent).

8. The Agreement includes a Frequently Asked Questions section, the first of which thanked the Claimant for hiring the Property Management Division of Century 21 Horizon Realty. The Respondent gave the Claimant a Century 21 refrigerator magnet.
9. The Agreement includes a statement that Section 8 tenants (i.e., government-subsidized rent for low-income persons) are not permitted.
10. Page five of the Agreement includes a section called Leasing Information, which offered the Claimant the opportunity to state whether she would accept pets at the rental property. On the corresponding lines for dogs, the Respondent inserted a question mark where he would otherwise write "yes," the owner would accept dogs, or "no," the owner would not accept dogs. The Respondent did not have the Claimant's express or implied permission to permit a tenant to have dogs at the Property.
11. Regarding payment of water bills at the Property, the Respondent advised the Claimant in a Frequently Asked Questions document attached to their Agreement that:

After the Management Agreement is signed we will send a letter to the water department requesting that your water bill be sent to our office. When we receive the water bill we will pay it immediately. After the bill is paid we will forward a copy to the tenant along with a letter requesting the water bill amount be forwarded with the following months rent. Any tenant that does not include the water bill amount with their rent will be turned over to rent court, for non-payment of rent.

REC Ex. 4, p. 39, ¶ 4.

12. Regarding the Baltimore Gas and Electric (BGE) bill, the Respondent advised the Claimant in a Frequently Asked Questions document attached to their Agreement that:

BGE offers an 'Automatic Rollover' for property owners who rent out their property. This ensures that when your tenant vacates the property and has the electricity turned off in their name it will then be put in [the owner's] name so the

electricity will not be disrupted. This is especially important in the winter so the heat will stay on so pipes do not freeze and burst.

REC Ex. 4, p. 39. The Agreement includes a checklist of items that were required of the Claimant in order for the Respondent to manage the Property. One item on the list is “BGE Automatic Turnover” and on the corresponding line, the Respondent wrote “will take care of.” REC Ex. 4, p. 42, ¶ 7.

13. The Agreement obligated the Respondent to sue on the Claimant’s behalf to recover unpaid rent and other sums due from tenants.

14. At all relevant times, the Respondent’s habit and practice was to perform a background check on all prospective tenants and other adults expected to live in the rental property. The background check included: verifying through a “register check” whether the adult tenants had a history of failing to pay rent or of eviction; verifying their Social Security numbers to confirm they are who they say they are; performing a criminal background check in Maryland and throughout the country; confirming employment and proof of income; calling employers to verify whether the person shows up for work on time and how long the tenant has worked at the job; and inquiring from employers whether their businesses are stable (to determine whether it is likely the tenant will remain employed and thus have the ability to pay rent).

15. In early 2007, the Respondent rented the Property to a male and a female. The tenants fell behind in their rent. The Respondent called the Claimant monthly with excuses about why the tenants could not pay the rent (e.g., the tenant was mugged, the tenant had dental work). The Claimant told the Respondent that she hired him to manage these problems. The Respondent pursued eviction and the tenants were evicted in January 2008.

16. In March 2008, the Respondent re-rented the Property to a second tenant, a single male who had rent paid through Section 8. The Respondent encouraged the Claimant to take a Section

8 tenant for stability. The Claimant consented to taking a Section 8 tenant. The tenant did not cause the Claimant any trouble. In March 2012, the tenant moved out of his own accord.

17. Effective May 1, 2012, the Respondent re-rented the Property to Crystal Howard and her husband Anthony Howard.

18. Ms. Howard is the Respondent's daughter. The Respondent intentionally concealed from the Claimant his relationship to the tenants.

19. The Respondent and Ms. Howard signed an Addendum to Lease dated May 1, 2012, that states the bases for eviction and non-renewal of the lease, including:

No pets. There is a no pet clause in our Lease. Unless otherwise noted in your Lease there are to be no pets in any of our rental properties. If we discover you have a pet this will be considered a breach of your lease and could result in your immediate eviction.

REC Ex. 4, p. 19.

20. The Respondent did not perform a background check on Crystal Howard or Anthony Howard. They were the only adults living in the home.

21. Ms. Howard operated a licensed day care facility out of the Property. The Agreement did not prohibit operating a business on the Property.

22. Ms. Howard had two dogs at the Property. The Respondent knew about the dogs and did not disclose this information to the Claimant, nor did he move to evict the tenants for possessing dogs.

23. By about June 2012, Ms. Howard was behind in her rent. The Claimant asked the Respondent to file for eviction. The Respondent pursued eviction about four times, but he always encouraged the Claimant to allow Ms. Howard to stay in the Property, and the Claimant relented based on the Respondent's assertion that eviction would cost her more money than she had already lost to non-payment of rent.

24. To avoid eviction, the Respondent suggested to Ms. Howard that she write to the Claimant about her desire to stay in the Property. On October 9, 2012, the Respondent sent the Claimant an email enclosing an email from Ms. Howard of the same date. In the Respondent's email, which bears the company names Century 21 Horizon Realty and PPM, he wrote:

I met with the tenants at the property which in fact shows very well. They have definitely been a product of the economy regarding the down sizing [sic] and lay-offs at his previous job. Nevertheless, all is well and they seem to be back on track now having a new job and etc. I would like you to consider allowing them to continue their current lease and to impose an additional amount each month (affordable of course), to be paid towards their current past due balance, along with paying their regular monthly rent payment on time each month.

REC Ex. 4, p. 104. Ms. Howard stated in her email that the Property is near her son's school and her husband got a new job. The Claimant wanted the Property for her brother and his wife and she was concerned about Ms. Howard's constant nonpayment of rent. Eventually, the Claimant had the Respondent move forward with eviction proceedings.

25. The Howards vacated the Property during or around December 2012.

26. At no time prior to the eviction did the Respondent disclose to the Claimant his relationship to the tenants.

27. Soon after the Howards vacated the Property, the Claimant called the Respondent and spoke to his then wife, Jennifer Evans, who worked with the Respondent. She asked Ms. Evans about the condition of the Property and Ms. Evans said it showed well, implying that it was in good condition.

28. During or about December 2012, the Claimant's brother and his wife went to the Property. The interior contained animal feces, urine, fleas, trash, bulk trash, mold in the bathroom and filthy kitchen appliances. They found a diploma for Crystal Evans in a closet. They showed

it to the Respondent's friends or workers who were cleaning the Property and one of the workers said Crystal Evans is the Respondent's daughter.

29. The Claimant called the Respondent and confronted him about his relationship to Crystal Howard, née Evans. The Respondent apologized to the Claimant for not disclosing his relationship to Ms. Howard. The Respondent told the Claimant that he did not tell her about his relationship to Ms. Howard because he was worried that their relationship would impact the Claimant's decision to allow her and his son-in-law to rent the Property. Had she known their relationship, the Claimant would not have permitted the tenancy. The Claimant threatened to report the Respondent to the REC. The Respondent begged her not to make the report and he told her he wanted to prove he was trustworthy by making the house rent-worthy and finding a new tenant. The Claimant relented with the understanding that the Respondent would clean up the property and make any repairs occasioned by his daughter after which the Claimant or her brother would inspect the house.
30. The Respondent told the Claimant there were "major family problems" that were devastating to his family; he did not know where his daughter was; and he would file a judgment against her, which he did not do.
31. By lease dated February 1, 2013, the Respondent re-rented the property to Mary Ann Steinhice.
32. The Respondent and Ms. Steinhice entered into an Addendum to Lease dated February 1, 2013, that stated the bases for eviction and non-renewal of the lease, including:
- No pets. There is a no pet clause in our Lease. Unless otherwise noted in your Lease there are to be no pets in any of our rental properties. If we discover you have a pet this will be considered a breach of your lease and could result in your immediate eviction.

REC Ex. 4, p. 85.

33. Ms. Steinhice's rent was \$25.00 per month less than Ms. Howard's. The Claimant agreed to the decrease because she believed the Property was worth less due to the Howards' damage.
34. By April 2013, Ms. Steinhice was behind in her rent.
35. The Respondent had Ms. Steinhice evicted.
36. After the Respondent secured an eviction order, he went to the Property. The constable was there. Ms. Steinhice was in her pajamas and she had not starting packing her belongings. The constable found a dog in the basement. The Respondent had not previously noticed a dog. The constable told Ms. Steinhice to take any prescriptions at the Property and immediately vacate the premises. The constable started moving Ms. Steinhice's belongings to the front lawn.
37. The Claimant decided that she was finished doing business with the Respondent. She emailed him and asked him to return his key to the Property. The Respondent said he would put the key in overnight mail to her. On receiving the key, the Claimant went to the Property. The key did not work in the lock box at the Property. The front railing was lying against the house, one of nine windows in the front door was broken, the door was boarded up, and trash was strewn about.
38. The Claimant called the Respondent and told him to come to the Property right away. While waiting, Mr. Ruckle, from the Respondent's maintenance company, handed the Claimant a citation from the county for \$6,000.00 for trash and feces in the yard. The Respondent and Leticia Timmons, his significant other and employee, went to the Property. The Claimant paid to have the Property repaired.
39. The Claimant would have been entitled to a hearing had she received the citation in a more timely way. The Respondent had previously forwarded a citation to the Claimant so the Respondent understood that expectation. The Claimant called the county and was told there



is a lien on the Property based on her failure to appear at the hearing. The Claimant explained that she did not timely receive the citation and the Respondent had neglected to maintain the Property. The county withdrew the fine and the lien.

40. After Ms. Steinhice was evicted, the Claimant learned from BGE that Ms. Steinhice never had the utility transferred to her name. The bill went unpaid and it was overdue in the amount of \$1,317.88. The Claimant paid the bill.
41. After Ms. Steinhice was evicted, the Claimant discovered that the water bill had not been paid in about five years and it had an overdue balance of \$700.00. The Claimant paid the bill. The Respondent reimbursed the Claimant for the water bill.
42. During or about April 2013, the Claimant telephoned the Respondent and a person named Crystal answered. The Crystal who answered the telephone is Crystal Howard, the Claimant's former tenant. The Respondent did not previously advise the Claimant that he now knew his daughter's whereabouts (assuming he truly did not know where she went after she left the Property). The Respondent did not take collection action against Crystal or Anthony Howard for unpaid rent or damage to the Property.

### **DISCUSSION**

#### ***I. The REC may suspend the Respondent's real estate salesperson's license.***

The REC is seeking to suspend the Respondent's license for thirty days and impose a civil penalty. The REC bears the burden of proving by a preponderance of the evidence that the Respondent committed violations of laws or regulations. COMAR 09.01.02.16A. The REC may reprimand any licensee or suspend or revoke a license if the licensee:

- directly or through another person willfully makes a misrepresentation or knowingly makes a false promise, § 17-322(b)(3); or
- engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness, § 17-322(b)(25); or
- violates any other provision of this title, § 17-322(b)(32); or

- violates any regulation adopted under this title or any provision of the code of ethics, or § 17-322(b)(33).

The pertinent “any other provision” referenced in § 17-322(b)(32) is § 17-532(c), which requires that a licensee “treat all parties to the transaction honestly and fairly and answer all questions truthfully and exercise reasonable care and diligence.”

The pertinent regulations referenced in § 17-322(b)(33) provide as follows:

- COMAR 09.11.02.01C:

The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall 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. The licensee shall assist the commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State.

- COMAR 09.11.02.02A:

In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction.

- COMAR 09.11.02.02D:

(1) A licensee seeking to acquire an interest in real property must disclose the licensee's licensing status in writing to the seller or lessor of the property no later than the time that an offer is submitted.

(2) The disclosure requirement of §D(1) of this regulation also applies when the licensee is acting on behalf of or representing:

(a) A member of the licensee's immediate family;

...

With respect to the misrepresentation charges, that term is not specifically defined in the applicable statutes and regulations. Nevertheless, Maryland recognizes two distinct types of misrepresentation: fraudulent and negligent. Fraudulent misrepresentation, also known as an action for deceit, requires proof of scienter, an intent to deceive the other party. *Martens*

*Chevrolet, Inc. v. Seney*, 292 Md. 328, 333 (1982) (citing *Cahill v. Applegarth*, 98 Md. 493

(1904)). Negligent misrepresentation exists when all five of the following are present:

- (1) the defendant, owing a duty of care to the plaintiff, negligently asserts a false statement;
- (2) the defendant intends that his statement will be acted upon by the plaintiff;
- (3) the defendant has knowledge that the plaintiff will probably rely on the statement, which, if erroneous, will cause loss or injury;
- (4) the plaintiff, justifiably, takes action in reliance on the statement; and
- (5) the plaintiff suffers damage proximately caused by the defendant's negligence.

*Martens Chevrolet*, 292 Md. at 337.

“Negligent misrepresentation ... depends on the existence of a duty owed by a defendant to the plaintiff. ‘Patently, the duty to furnish the correct information arises when the relationship is of the nature that one party has the right to rely upon the other for information. The precise degree of the relationship that must exist before recovery will be allowed is a question that defies generalization.’” *Cooper v. Berkshire Life Ins. Co.*, 148 Md. App. 41, 57-58 (2002), citing *Giant Food, Inc. v. Ice King, Inc.*, 74 Md. App. 183, 189 cert denied, 313 Md. 7 (1988). “[T]he most common example of the duty to speak with reasonable care is based on a business or professional relationship, or one in which there is a pecuniary interest.” *Id.* at 190 (citing Prosser & Keeton on the Law of Torts § 107, at 105 (5th ed. 1984, 1988 Supp.)).

For the reasons that follow, the REC proved its charges.

*a. The Respondent did not disclose to the Claimant that Crystal Howard is his daughter and he did not pursue collection against Crystal Howard and Anthony Howard.*

The REC asserts, and the Respondent concedes, that the Respondent did not tell the Claimant that Crystal Howard is his daughter until the Claimant confronted him. The Claimant found out on her own after Ms. Howard and her husband moved out of the house. The Claimant’s brother and sister-in-law found Crystal Evans’ diploma in the closet and one of the

workers at the Property said she is the Respondent's daughter. The Claimant confronted the Respondent, who admitted to the Claimant that Ms. Howard is his daughter.

During the Respondent's communication with the Claimant, during the REC's investigation and at the hearing, he gave conflicting reasons for not making the disclosure. The Respondent said he forgot. He said he was overwhelmed with his business and did not have time to tell her. He said he did not think it was necessary to tell her because they had a five-year-long trusting relationship and he was sure the Claimant would have said yes if he asked. He said he thought his daughter and son-in-law "would be a great fit for [the Property]," and **that is what [he] told the owner.**" REC Ex. 4, p. 90. He said he was worried that if he told her the truth, it would impact her decision to allow the daughter and son-in-law to rent from her. These many inconsistent excuses show the Respondent intended to deceive the Claimant.

On October 9, 2012, the Respondent emailed the Claimant and enclosed an email from Ms. Howard explaining why she wanted to stay in the Property after falling behind in her rent. The Respondent wrote that he "met with the tenants." The Respondent's casual reference to his daughter and son-in-law as "the tenants" obviously was another effort to conceal their relationship.

The Respondent indignantly told the REC that the Claimant "never asked if Ms. Howard was a family member" and when the Claimant eventually asked him outright, he admitted their relationship. REC Ex. 4, p. 94. The Claimant had no reason to ask the Respondent at the time he rented to Ms. Howard whether he was Ms. Howard's immediate relative any more than she would have had cause to ask him if he was related to any other tenant. The Respondent's blaming the Claimant for not being more proactive is further evidence of his intent to deceive her.

It would have taken the Respondent a minute or so to alert the Claimant by telephone or in an email. I find it more likely than not that the Respondent did not tell the Claimant the truth because he was advocating for his daughter's interests, not the Claimant's. Ms. Howard quickly fell behind in her rent. The Claimant wanted to evict the tenant, as was her right. The Respondent talked her out of it and convinced her to give the tenants another try. The Respondent could have told the Claimant that Ms. Howard was his daughter at that time. Obviously, the Respondent did not because he was trying to protect his daughter.

The Respondent's deceit about Ms. Howard runs deeper than just not revealing their relationship to the Claimant. The Respondent asserts that when he eventually evicted his daughter, at the Claimant's behest, his daughter disappeared and he could therefore not pursue collection for back rent and other monies owed. He, however, did not pursue collection when his daughter returned (assuming she was ever truly missing to the Respondent) and went to work for him. Admittedly, the Respondent paid the Claimant his daughter's back rent, but only because the Claimant found out that Ms. Howard was working for him.

By not disclosing his relationship to Ms. Howard, the Respondent violated COMAR 09.11.02.02D, which states that "[i]n seeking to acquire an interest in real property, the Respondent did not disclose in writing to the seller or lessor of the property no later than the time that an offer is submitted that he was acting on behalf of or representing a member of his immediate family." The Respondent acquired an interest in the Claimant's property – that is, he received proceeds from the rental to Ms. Howard. He was therefore obligated to reveal their relationship in writing.

By failing to make the disclosure that Ms. Howard was his immediate relative and failing to pursue collection, the Respondent made a willful misrepresentation under § 17-322(b)(3); he engaged in conduct that demonstrates bad faith or untrustworthiness under § 17-322(b)(25); he

did not protect the public against misrepresentation or unethical practices in the real estate field under COMAR 09.11.02.01C; and he violated § 17-322(b)(32) by making a misrepresentation or engaging in an unethical practice under COMAR 09.11.02.01C, by failing to protect and promote the Claimant's interests under COMAR 09.11.02.02A, and by not disclosing the relationship in writing under COMAR 09.11.02.02D.

*b. The Respondent misrepresented for whom he was working when he made the Agreement with the Claimant.*

The REC claims that the Respondent misrepresented to the Claimant that he was working for Century 21 Horizon Realty when they entered the Agreement. The Claimant told the REC that when she and the Respondent first met, the Respondent told her that he was working for Century 21 Horizon Realty, he was opening his own business and she would be his first client. The Respondent told the REC that the Claimant correctly reported what he told her. At the hearing, the Claimant testified that she believed the Respondent would be managing her property through his company, PPM. In fact, PPM managed the property from the start. The Respondent never told Century 21 Horizon Realty that he had prospected the Claimant, he never submitted their Agreement to Century 21 Horizon Realty for approval, and he never gave Century 21 Horizon Realty any proceeds from the Agreement.

The Respondent asserts that several days after he and the Claimant signed the Agreement, he had her sign a new agreement, this time on PPM letterhead. He did not offer the alleged new agreement as evidence, claiming that it was in the hands of his former attorney, Ms. Trageser. During the REC investigation and at the hearing, he claimed that he lost various documents to the attorney, a flood and an office move, none of which he corroborated. Throughout the Respondent's testimony, he asserted that his hands were tied because he did not have his file in the Claimant's case, having given it to Ms. Trageser.

The Respondent did not explain how, if Ms. Trageser had his file, he had many documents still in his possession, including those that I admitted at his request and others that he testified about but withdrew before I had the opportunity to mark them for identification. The Respondent never said he sent the attorney *some* documents; rather he sent her his "file," from which I infer that he sent her everything related to the Claimant which obviously is not the case. I therefore question whether he sent the attorney anything. Also, the Respondent did not offer any evidence about efforts he made to obtain the alleged file from Ms. Trageser. He did not say that he asked Mr. Feige where he could reach Ms. Trageser; that he asked to speak with someone of authority in the law firm to request help to locate Ms. Trageser; that he looked for a telephone number or address on the internet or with 411 information; that he called any bar association to obtain information about her current contact information; or that that he called the Attorney Grievance Commission to complain that his attorney disappeared with his papers. The Respondent did not make any effort to remedy the situation. The Respondent also did not subpoena the documents or offer as a witness Mr. Feige or anyone else at the firm to confirm that any papers the firm received from the Respondent are not available. The Respondent was not credible as to missing information.

I find that there never was a second agreement on a PPM form or letterhead. The only agreement is the one on Century 21 Horizon Realty letterhead. This fact is compelling evidence that the Respondent was purporting to act on behalf of Century 21 Horizon Realty and he misrepresented his employment to the Claimant.

The Claimant testified that the Respondent gave her a refrigerator magnet bearing the name Century 21 Horizon Realty. Even as late as October 9, 2012, the Respondent was using the Century 21 Horizon Realty name on an email. These facts are further evidence that the Respondent was purporting to act on behalf of Century 21 Horizon Realty.

When the Claimant finally decided to terminate her dealings with the Respondent, she called Century 21 Horizon Realty for help, precisely because its name is on the Agreement. Notwithstanding what the Respondent told her about his pending new business, the Claimant had reason to believe he was still associated with his former employer. I find that the Respondent misrepresented his employment.

Even if the Respondent did not misrepresent who would be managing the Claimant's property, his use of the Century 21 Horizon Realty name was unethical and untrustworthy. First, as discussed, the Respondent did not enter into a new agreement between the Claimant and PPM. Second, the Respondent did not present the Claimant to Century 21 Horizon Realty as a client, thus depriving the latter of financial benefits of a new client and of the opportunity to either accept or reject the Claimant as a client. Thus, at worst, he made misrepresentations; at best, he siphoned off a Century 21 client. In either event, his conduct shows a lack of trustworthiness.

For these reasons, I conclude that the Respondent engaged in conduct that demonstrates bad faith or untrustworthiness under § 17-322(b)(25); he made a willful misrepresentation under § 17-322(b)(3); and he violated § 17-322(b)(32) by making a misrepresentation or engaging in an unethical practice under COMAR 09.11.02.01C; he did not protect the public against misrepresentation or unethical practices in the real estate field under COMAR 09.11.02.01C; and in accepting employment as an agent, the Respondent did not protect and promote the interests of the client, under COMAR 09.11.02.02A.

- c. The Respondent did not perform background checks on Crystal and Anthony Howard; he permitted them to have pets on the Property; and did not file a civil action against Ms. Howard for nonpayment of rent and damage to the Property.*

The Respondent testified that he always performed a background check on all adults living in rental property. The reason for the check is obvious: to assess whether he is renting to a trustworthy tenant. The background check included: verifying through a "register check"



whether the adult tenants have a history of failing to pay rent or of eviction; verifying their Social Security numbers to confirm they are who they say they are; performing a criminal background check in Maryland and throughout the country; confirming employment and proof of income; calling employers to verify whether the tenant shows up for work on time and how long the tenant has worked at the job; and inquiring how the business is going (to determine whether it is likely the tenant will remain employed and pay rent). The Respondent did not perform a background check on Ms. Howard or her husband. Had he done so, he may have learned that Mr. Howard's job was not stable and the couple would not be good tenants.

The Respondent testified that he found it unnecessary to do an employment check on Mr. Howard because the husband had been working at the same company for ten years as a supervisor. Had he called Mr. Howard's employer, he may have learned that his son-in-law's job was not stable. Also, according to the Respondent, he did not do a rental history check because his daughter and son-in-law previously owned a house in Dundalk that they could not afford and which went to foreclosure. These are all excuses to justify putting his daughter in the Claimant's house, all the while knowing that she had recently defaulted on her mortgage. The Respondent testified that he thought it would all work out with his daughter and instead it was a nightmare. I observed the Respondent testifying about his daughter and I found his distress about her genuine. Whether he expected her tenancy in the Property to go more smoothly is not the point. Even if it had all worked out, I would conclude that he did not perform due diligence and he neglected his responsibility solely because Ms. Howard is his daughter. The Respondent did not perform a background check because he favored his daughter over the Claimant.

The Respondent was not authorized to abdicate his responsibility to perform a background check on the Howards as he claims he did for the Claimant's other tenants. He did not have the right to assume they would pass the check just because they were family, or that if

they did not pass the check, their tenancy was nevertheless acceptable. The Respondent deprived the Claimant of her right to know the background of her tenants.

The Respondent also did not protect the Claimant's interests when he encouraged the Claimant to keep Crystal and Anthony Howard as tenants after they fell behind in rent. When the Claimant told the Respondent to evict them, the Respondent told her she would lose more money because he would have to re-paint; she would not recover back rent; and the Property would remain vacant until it was re-rented. These things may be true, but it is more likely than not that the Respondent was advocating for his daughter's interests, not because he thought evicting her would ultimately hurt the Claimant but because he wanted his daughter to remain in the Property. I doubt the Respondent would have advocated for another tenant.

The Respondent told his daughter to write the Claimant a letter about why she should stay in the Property. The Respondent forwarded Ms. Howard's plea along with his own email, in which he wrote that the tenants:

seem to be back on track now having a new job and etc. I would like you to consider allowing them to continue their current lease and to impose an additional amount each month (affordable of course), to be paid towards their current past due balance, along with paying their regular monthly rent payment on time each month.

REC Ex. 4, p. 104. Again, the Respondent was advocating for his daughter, to his client's detriment.

The Respondent also did not protect the Claimant's interests when he knowingly allowed Ms. Howard to have two dogs on the Property. The lease that Ms. Howard signed specifically says that pets are not permitted and that housing pets on the Property is grounds for eviction. The Respondent testified that the Agreement he signed with the Claimant gave him the discretion to decide on a case-by-case basis whether pets were permissible. That is not so. The Agreement includes a list of items next to which is a line for the Respondent to write "yes" or "no." One

item is pets and on the corresponding line, the Respondent made a question mark rather than writing in a word. He construes the question mark as giving him discretion. His interpretation of a question mark is not believable. I find it more likely than not that he inserted a question mark because he knew dogs were not permitted and he wanted to give himself some wiggle room to permit his daughter to have them.

The Respondent also testified that the Claimant's silence on the issue of pets was her implied permission to permit them. The Claimant's silence meant just the opposite: she did not grant permission.

The Respondent offered all of these baseless explanations to justify why he permitted his daughter to have dogs at the Property. Also, it is ironic that the Respondent is using the Century 21 Horizon Realty agreement to support his claim about permitting Ms. Howard to have two dogs while at the same time asserting that Agreement was superseded.

Ms. Steinhice also had a dog at the Property. The Respondent testified that he did not know about the dog until Ms. Steinhice's eviction when the constable found a dog in the basement at the Property during eviction. While the Respondent was generally not a credible witness, the evidence does not show that he knew or should have known about that dog.

The Respondent also did not protect the Claimant's interest when he did not pursue collection against Ms. Howard for nonpayment of rent and damage to the Property. The Respondent told the Claimant and he testified that he could not pursue legal action against his daughter because he did not know where she was living after he evicted her. Several months after the eviction, the Claimant called the Respondent and a woman answered and identified herself as Crystal. The Claimant asked if she is Crystal Howard and the person said yes. The Respondent never told the Claimant he knew where his daughter was. The Respondent did not corroborate his claim that he did not know where his daughter moved and, even so, he made no

collection efforts after she returned and went to work for him. Again, he favored his daughter over his client.

For these reasons, I conclude that the Respondent engaged in conduct that demonstrates bad faith or untrustworthiness under § 17-322(b)(25); he violated any regulation adopted under this title or any provision of the code of ethics under § 17-322(b)(32) by not treating all parties to the transaction honestly and fairly and answering all questions truthfully and exercising reasonable care and diligence; and violated § 17-322(b)(33) by not protecting the public against fraud, misrepresentation, or unethical practices in the real estate under COMAR 09.11.02.01C and by not protecting and promoting his clients' interests under COMAR 09.11.02.02A.

*d. The Respondent did not pay the water bill as the Agreement requires.*

The Agreement specifically provides that the Respondent will arrange to have the water bill for the Property sent to his office, he will pay the bill and he will seek reimbursement from the tenant. After Ms. Steinhice was evicted, the Claimant discovered that the bill had not been paid in five years and it had an overdue balance of \$700.00. The Claimant paid the bill. While it is unclear why the water department did not turn off the water during the long period of nonpayment, what is clear is that the Respondent did not comply with the Agreement. The fact that he reimbursed the Claimant after she paid the bill is immaterial.

For these reasons, I conclude that the Respondent engaged in conduct that demonstrates bad faith or untrustworthiness under § 17-322(b)(25); he violated any regulation adopted under this title or any provision of the code of ethics under § 17-322(b)(32) by not treating all parties to the transaction honestly and fairly and answering all questions truthfully and exercising reasonable care and diligence; and he violated § 17-322(b)(33) by not protecting and promoting his client's interests under COMAR 09.11.02.02A.

*e. The Respondent did not mishandle the BGE bill.*

The Claimant asserts that the Respondent violated the Agreement by not having the BGE bill transferred to Ms. Steinhice's or his business's name after Ms. Howard was evicted and as a result, she (the Claimant) incurred the expense of an overdue account. The REC investigator asked the Claimant about the bill and she said that it was the Respondent's responsibility to change the name and because it was his responsibility, she did not take the initiative even after she learned that he had not done so. The Frequently Asked Questions portion of the Agreement provides that the property owner may arrange for an automatic rollover, meaning that when a tenant vacates the premises, the bill will revert to the owner. The only other mention of the BGE bill is on a checklist where the Respondent wrote "will take care of." The annotation is unclear: it could mean that the Respondent would arrange for rollover or the Claimant would take care of it. The record does not include other evidence to clear up the ambiguity.

There is some evidence that the Respondent undertook responsibility for ensuring the name change. The Claimant testified that when she learned the bill was past due \$1,317.88, the Respondent emailed her to say he is busy, he relies on his staff and his staff dropped the ball. The email is not in evidence. The Respondent testified only that he would have no way of knowing whether a tenant actually paid the bill.

Regardless, the rollover provision would only ensure that after Ms. Howard vacated, the bill would roll over to the Claimant's name, not that the Respondent would ensure that Ms. Steinhice put the bill in her name. Absent more persuasive evidence that the Respondent was responsible for ensuring that the BGE bill was transferred to Ms. Steinhice's name, I cannot find that the Respondent violated real estate law with respect to the BGE bill.

*f. A thirty-day sanction is appropriate.*

The REC has the discretion to reprimand any licensee or suspend or revoke a license under § 17-322(b). The REC asks for a thirty-day suspension. The Respondent argues that a suspension is improper because he did not intentionally lie to the Claimant and he did many things for her benefit. As previously discussed, the Respondent's bad behavior was often intentional. The fact that he acted lawfully, and perhaps even diligently, in some aspects of his business relationship with the Claimant does not change the fact that he acted unlawfully and unethically in other aspects. A thirty-day suspension is appropriate.

The Respondent offered a character witness, Edith Joyce Evans. Mrs. Evans testified that the Respondent is professional, honest and respectful. Mrs. Evans is the Respondent's mother. I would not expect her to openly express a negative opinion of her son. Her testimony does not help me evaluate the Respondent's character.

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. Md. Code Ann., Bus. Occ. & Prof. § 17-613(c) (Supp. 2016). The REC is seeking a total of \$5,000.00 for the violations. The Respondent testified that he cannot afford such a big penalty. His ability to pay is not a factor for consideration. Rather, the REC shall consider the seriousness of the violation; the harm caused by the violation; the good faith of the licensee; and any history of previous violations by the licensee. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2010).

The violations, including ethical breaches, are serious. The Respondent caused harm, including, for example, by not performing a background check on Crystal and Anthony to determine whether they were worthy tenants, by not pursuing judgment against them and by encouraging the Claimant to keep them as tenants even after his son-in-law had lost his job. The

fact that he reimbursed the Claimant for their back rent does not change the fact that he harmed her. The Respondent did not operate in good faith, including, for example, concealing his relationship to Ms. Howard. The only factor in the Respondent's favor is that he has no prior violations.

Mr. Hirsch, formerly of Century 21 Horizon Realty, testified that the Respondent did not submit the Agreement for approval and had he done so, it would have been approved. The Respondent testified that he did not submit the Agreement for approval because he had already terminated his employment. The Respondent did not prove the date of his termination. If the Respondent had already terminated his employment, he would have had no proper cause to use Century 21 Horizon Realty's letterhead. Either the Respondent misled the Claimant about who he was conducting business for or he scammed Century 21 Horizon Realty out of a client. Either way, the Respondent's lack of trustworthiness is apparent.

Taking all of the penalty factors into consideration, I find that a \$5,000.00 penalty is appropriate.

***II. The Claimant is not eligible for reimbursement from the Fund.***

A claimant may recover compensation from the Fund for an actual loss based on an act or omission by a licensed real estate salesperson that occurs in the provision of real estate salesperson services involving a transaction that relates to real estate that is located in this State. § 17-404(a)(2). A claim must be based on an act or omission in which money or property is obtained from a person *by theft, embezzlement, false pretenses, or forgery; or an act or omission that constitutes fraud or misrepresentation.* § 17-404(a)(2)(iii); COMAR 09.11.03.04A and B. The amount recoverable from the Fund is restricted to the actual monetary loss incurred by the claimant. COMAR 09.11.01.18. At a hearing on the claim, the Claimant bears the burden of

proving entitlement to recover from the Fund. § 17-407(e). For the reasons that follow, I find that the Claimant has not met her burden.

The Claimant does not assert that her loss is occasioned by the Respondent's theft, embezzlement, false pretenses, forgery or fraud. The only misrepresentation that arguably caused a loss is the Respondent's failing to disclose that Ms. Howard is his daughter. One possible loss she suffered is unpaid rent – the assumption being that she would not have rented to Ms. Howard had she known this information. The Respondent paid his daughter's back rent to the Claimant.

Another possible loss is damage the Howards or Ms. Steinhice caused to the Property. I do not find that the damage flows from the misrepresentation. As with any tenant who caused damage to the Property, the Claimant (i.e., not the Respondent) was responsible for making the repair, and pursuing the tenant for collection. That is the cost of doing business, even where the damage is caused by the Claimant's family.

Another possible loss from misrepresentation is the Respondent's assertion to the Claimant that he did not know where his daughter was located and thus could not pursue collection against her for unpaid rent, damage to the Property, and unpaid utilities. The Claimant discovered in April 2013, only four months or so after that Howards' eviction, that Ms. Howard was working for the Respondent. The record shows that it was not then too late to pursue collection against the Howards. The Claimant apparently chose not to pursue collection.

The Claimant in fact paid to fix damage caused not just by the Howards but also Ms. Steinhice. She paid to replace the door window, cleaned the Property and removed trash, and she paid back utilities. The tenants were unworthy by any means. The Claimant's loss, though, is not the result of the Respondent's theft, embezzlement, false pretenses, or forgery; or an act or omission that constitutes fraud or misrepresentation.



Finally, the Respondent made certain promises to repair certain things in consideration of the Claimant not reporting him to the REC. His promise is a side agreement with the Claimant for which she may have a private action against him. The Respondent's failure to live up to his side agreement is not tantamount to theft, embezzlement, false pretenses, or forgery; or an act or omission that constitutes fraud or misrepresentation under the Fund law.

The Respondent committed many bad acts in his dealings with the Claimant. Regrettably for the Claimant, her remedy is not through the Fund.

### **CONCLUSIONS OF LAW**

I conclude as a matter of law that the Respondent is subject to a thirty-day suspension of his real estate salesperson's license because:

1. The Respondent willfully made a misrepresentation or knowingly made a false promise; or engaged in conduct that demonstrated bad faith, incompetency, or untrustworthiness, violated any other provision Title 17, § 17-322(b)(32); and
2. The Respondent violated a regulation adopted under the Business Occupations and Professions Article, Title 17, or a provision of the code of ethics, § 17-322(b)(33); and
3. The Respondent did not treat all parties to the real estate transaction honestly and fairly and did not answer all questions truthfully; and he did not he exercise reasonable care and diligence, § 17-532; and
4. The Respondent did not 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; or assist the REC charged with regulating the practices of brokers, associate brokers, and salespersons in this State, COMAR 09.11.02.01C; and

5. In accepting employment as an agent, the Respondent did not protect and promote the interests of the client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction, COMAR 09.11.02.02A; and
6. In seeking to acquire an interest in real property, the Respondent did not disclose in writing to the seller or lessor of the property no later than the time that an offer is submitted that he was acting on behalf of or representing a member of his immediate family, COMAR 09.11.02.02D.

I further conclude that the Claimant did not sustain an actual loss compensable by the Fund due to an act or omission of the Respondent in which money or property was obtained from the Claimant by embezzlement or other misappropriation in the provision of real estate sales services. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(iii) (Supp. 2016); COMAR 09.11.03.04A and B.

#### PROPOSED ORDER

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

1. Upholding its charges against the Respondent;
2. Suspending the Respondent's real estate salesperson's license for thirty days; and
3. Denying the Claimant's claim for reimbursement from the Maryland Real Estate Commission's Guaranty Fund.

I further **RECOMMEND** that the records and publications of the Maryland Real Estate Commission reflect this Proposed Decision.

March 20, 2017  
Date Decision Issued

**SIGNATURE ON FILE**

\_\_\_\_\_  
Laurie Bennett  
Administrative Law Judge

LB/sm  
#166300