

BEFORE THE MARYLAND REAL ESTATE COMMISSION

SEP 12 2011

MARYLAND REAL ESTATE  
COMMISSION

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MARYLAND REAL  
ESTATE COMMISSION

V.

\*

\* CASE NO. 2008-RE-368

SOLOMON H. CAMPBELL  
Respondent

\* OAH NO. DLR-REC-24-10-08814

And

\*

CLAIM OF ANGELA H. HOOD  
AGAINST THE MARYLAND  
REAL ESTATE GUARANTY FUND

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OPINION AND FINAL ORDER

This matter came before the Commission on argument on Exceptions and Amended Exceptions filed by the Claimant, Angela H. Hood, to the Proposed Order of December 8, 2010. On October 6, 2010, Administrative Law Judge Michael J. Wallace (“ALJ”) filed a Proposed Decision and Recommended Order in which he recommended that “...the Respondent’s real estate license be reprimanded;...the Respondent pay a civil penalty of \$7,500.00;...and that the Claimant’s claim against the Fund dated December 5, 2007 for actual losses sustained as a result of the misconduct of the Respondent be denied...”.

On December 8, 2010, the Commission issued a Proposed Order that affirmed the ALJ’s Findings of Fact and Conclusions of Law but amended the Recommended Order, in part, as follows: That the Respondent, Solomon H. Campbell, violated Md. Bus. Occ. & Prof. Art. § 17-322(b)(14), (25), and (33) and COMAR 09.11.02.01C and H; that the Respondent, Solomon H. Campbell be reprimanded; that the Respondent, Solomon H.

Campbell, be assessed a civil penalty of \$7,500.00; and that the claim of Angela H. Hood against the Maryland Real Estate Guaranty Fund be denied.

A hearing, on the Exceptions and Amended Exceptions filed by the Claimant, was held by a panel of Commissioners, consisting of Commissioners Anne S. Cooke, Robin L. Pirtle, and Georgiana S. Tyler on May 18, 2011. Jessica Berman Kaufman, Assistant Attorney General, represented the Commission. The Claimant, who was present for the hearing, was not represented by counsel and waived legal representation. The Respondent did not appear for the hearing. A transcript of the hearing before the ALJ was not provided to the Commission. The proceedings were electronically recorded.

#### **SUMMARY OF THE EVIDENCE**

On behalf of the Commission, five exhibits as well as the Office of Administrative Hearings' folder containing the exhibits which were introduced at the hearing before the ALJ, were entered into evidence.

#### **FINDINGS OF FACT**

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

#### **DISCUSSION**

At all times relevant to this matter, the Respondent, Solomon H. Campbell, was a licensed real estate salesperson affiliated with Weichert Realtors ("Weichert"), a real estate franchise with offices in Baltimore, Maryland. FF 1, 2.<sup>1</sup> The Claimant works for USPS in Maryland, near Washington, D.C. and met the Respondent, who was a driver for Pitney Bowes and often delivered mail to the Respondent's office, in 2005. FF 4. In

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<sup>1</sup> "FF" refers to the ALJ's Findings of Fact

2007, the Claimant was interested in purchasing an investment property that she could refurbish and sell for a profit by the end of 2007. FF 3. At some point, the Claimant learned that the Respondent was a licensed real estate salesperson and, through several conversations with the Respondent, the Respondent stated that he could help the Claimant locate and purchase a property for her stated purposes. FF 5. On June 16, 2007, the Claimant entered into a Buyer Agency Agreement with Weichert and the Respondent was listed as her agent. FF 6. The Respondent showed several properties to the Claimant, including a property located at 1910 Etting Street in Baltimore, Maryland (“Property”). FF 7. In July, 2007, the Respondent introduced the Claimant to Anslem McEwen who was known as “Slem” to the Respondent. FF 7. Mr. McEwen was an unlicensed home improvement contractor who had done work on the Respondent’s home. FF 8. The Respondent had also referred Mr. McEwen to other buyers who had worked with the Respondent. FF 8. The Respondent told the Claimant that Mr. McEwen could do rehabilitation work on the Property for the Claimant. FF 9. The Respondent stated that Mr. McEwen did quality home improvement work and showed the Claimant work which Mr. McEwen had previously done on the Respondent’s house. FF 9. Although the Respondent knew, he did not tell the Claimant that Mr. McEwen was not a licensed home improvement contractor. FF 10. The Claimant decided to buy the Property and, on August 6, 2007, submitted a contract to purchase it for \$18,000.00. FF 11. The proposal was accepted and, on August 10, 2007, the parties settled and ownership of the Property was transferred to the Claimant. FF 12. The Claimant never received a final, signed copy of the sales contract. FF 13. Shortly after settlement, the Respondent suggested that Mr. McEwen be hired to do the rehabilitation work on the Property, at a cost of

approximately \$40,000.00 and the Claimant agreed to hire Mr. McEwen. FF 14. The Respondent instructed the Claimant to make payments to him and stated that he, in turn, would pay cash to Mr. McEwen to do the home improvements on the Property. FF 15. In explanation for this suggested arrangement, the Respondent stated that he believed that Mr. McEwen would charge less for the home improvement work if he believed the Property belonged to the Respondent rather than someone else. FF 15. From August 8, 2007 through October 3, 2007, the Claimant gave the Respondent ten checks totaling \$53,952.00 for the home improvement work. FF 16. The Respondent did not provide any receipts to the Claimant and told her that Mr. McEwen would issue one receipt after all of the work on the Property had been completed. FF 16. The home improvement work on the Property began in September, 2007 but, when the Claimant visited the Property almost every weekend, she did not see much progress. FF 17. When the Claimant expressed her concerns to the Respondent, he made excuses for Mr. McEwen, stating that he was out of town or was occupied with other work. FF 17. By October, 2007, the Claimant began to run out of money and issued her last check to the Respondent on October 3, 2007. FF 18. After that date, no other home improvement work was done on the Property by Mr. McEwen. FF 18. On or about December 2, 2007, the Claimant attempted to enter the Property but her keys did not work. FF 19. She learned that the locks had been changed and that she would be required to hire a locksmith in order to gain access to the Property. FF 19. The Claimant contacted a locksmith on December 4, 2007 and paid him \$323.00 to change the locks on the Property. FF 19. The Respondent continued to come to the Claimant's worksite as a driver for Pitney Bowes. FF 20. In November, 2007 and July, 2008, while at the

Claimant's worksite, the Respondent made sexual advances to the Respondent and told her he wanted to have sex with her. FF 21. The Claimant informed her USPS supervisor of the sexual advances and an investigation was begun regarding the allegations. Upon completion of the investigation, the Claimant's allegations were found to have merit. FF 22. As a result of the investigation, the Respondent was reassigned to another route later in 2008 and ceased having contact with the Claimant. FF 23. The Claimant sold the Property in February, 2010 for \$16,500.00. FF 24.

Md. Code Ann., Bus. Occ. & Prof. Art., § 17-322 provides, in relevant part:

**§17-322.**

(b) Subject to the hearing provisions of § 17-324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

...

(14) for any transaction in which the licensee has served as or on behalf of a real estate broker, fails to furnish promptly to each party to the transaction a copy of:

...

(ii) the contract of sale;

...

...

(25) engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;

...

(33) violates any regulation adopted under this title or any provision of the code of ethics [.]

Additionally, Code of Maryland Regulations ("COMAR") 09.11.02.01 C and H provide:

01. Relations to the Public.

C. 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.

...

H. For the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed.

The Complainant testified at the hearing before the ALJ that the Respondent had failed to provide the final, executed copy of the contract of sale for the Property to her. Although the Respondent testified that he had provided a copy to the Claimant, he failed to support his assertion by producing a copy of the final, executed contract at the hearing before the ALJ. Having had an opportunity to observe the demeanor and assess the testimony of the Respondent during the hearing before him, the ALJ noted that the Respondent provided testimony which was inconsistent with assertions he had made during the investigation of this matter; was often evasive and vague in his answers; frequently failed to maintain good eye contact; and failed to directly answer questions posed to him. Based on his observation of the demeanor of the Respondent and the Respondent's inability to support his assertion in regard to providing a copy of the final, executed copy of the contract to the Claimant, the ALJ concluded that the Respondent had failed to provide a final, executed copy of the contract for the Property to the Claimant. The Commission adopts the determination of the ALJ in regard to the

credibility of the Respondent's testimony and concludes that, by failing to provide the Claimant with a copy of the final, executed contract of sale for the Property, the Respondent violated Md. Code Ann., Bus. Occ. & Prof. Art., § 17-322(b)(14) and (33) and COMAR 09.01.02.01H.

The Commission further concludes that the Respondent engaged in conduct that demonstrated bad faith, incompetency, or untrustworthiness or that constituted dishonest, fraudulent, or improper dealings when he suggested that Mr. McEwen perform home improvement work on the Property in an "under the table" fashion, despite the fact that he knew that Mr. McEwen was an unlicensed home improvement contractor. At the hearing before the ALJ, the Claimant testified that the Respondent suggested that she pay him for the work being done by Mr. McEwen and he, in turn, would cash her checks and give the cash to Mr. McEwen. She also testified that the Respondent did not disclose to her, at any time, that Mr. McEwen was not a licensed home improvement contractor. The ALJ noted that, although the Respondent testified that he did not want to get involved with any of the arrangements between the Claimant and Mr. McEwen, he was unable to explain why he agreed to have the Claimant write checks payable to him and then personally cash the checks to give cash to Mr. McEwen instead of having the Claimant either make the checks payable directly to Mr. McEwen or pay Mr. McEwen in cash.

It is clear from the testimony and evidence presented that the Respondent was the Claimant's agent in the transaction for the purchase of the Property and the rehabilitation of the Property, which was an integral factor in whether or not the sale occurred. The Respondent put the Claimant in touch with a home improvement contractor that he,

admittedly, knew was not licensed. Despite the Respondent's contention that he did not want to get involved in the arrangement between the Claimant and Mr. McEwen, he agreed to allow the Claimant to pay him by check for the home improvement work being performed by the unlicensed contractor and to then cash the checks and pay the unlicensed contractor himself. Although he was acting as the Claimant's agent in the transactions with Mr. McEwen, he failed to put the arrangements regarding payment for the rehabilitation work in writing.

The evidence presented clearly established that the Respondent violated Md. Code Ann., Bus. Occ. & Prof. Art., §§ 17-322(b)(25) and (33) and COMAR 09.11.02.01H by failing to put the financial obligations and commitments of the parties, regarding the home improvement work, which was an integral part of the transaction regarding the property, in writing and by engaging in conduct relating to the rehabilitation work on the Property that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings.

In addition, the Respondent's activity in collecting money from the Claimant and making payments, seemingly "under the table", to an unlicensed home improvement contractor was damaging to the Claimant's interests and to the dignity and integrity of the real estate profession in violation of COMAR 09.11.02.01C.

Instead of or in addition to reprimanding, suspending or revoking a real estate license for his or her violation of the above cited statutes and regulations, 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 established history of violations, the Commission finds that the violations in this case are serious ones which caused significant harm to the Claimant. The Claimant made it clear to the Respondent that she wished to purchase a property which could be renovated and then resold. The Respondent agreed to act as her agent in the process but failed to provide her with a copy of the final, executed contract of sale as required by law. Further, he referred her to an unlicensed home improvement contractor to perform the renovations on the Property she purchased. The Respondent then failed to advise the Claimant that the terms of her agreement with the unlicensed home improvement contractor should be put in writing or in assisting her in memorializing the terms and conditions of that agreement. As a consequence of the Respondent's failure to properly advise and assist the Claimant, she has no record of her agreement with the unlicensed contractor nor any documentation of the work which was to be performed on the Property. The arrangement whereby the Claimant paid the Respondent by check and the Respondent was to cash the checks and give the money to the unlicensed contractor, at a minimum, gives the appearance of impropriety. Whether or not the Respondent actually gave all of the money he received from the Claimant to the unlicensed contractor is not clear; nonetheless, the potential for wrongdoing under that arrangement is apparent. The Respondent's conduct in this matter, which caused harm to the Claimant as well as to the dignity of the real estate

profession, indicates a total absence of good faith on his part in his dealings with the public.

Based on its review of the facts and the criteria set forth in Md. Code Ann., Bus. Occ. & Prof. Art., § 17-322(c), the Commission concludes that a reprimand of the Respondent and a \$7,500.00 civil penalty are the appropriate sanctions in this case.

The Claimant also filed a claim for reimbursement from the Maryland Real Estate Commission Guaranty Fund (“Fund”) in the amount of \$25,000.00, which is the maximum claim which may be awarded by the Fund, to compensate her for a portion of the \$53,952.00 that she expended for an unlicensed contractor, to whom she was referred by the Respondent, to perform renovations on the Property. She also contends that the unlicensed home improvement contractor abandoned work on the project without completing the work he was paid to perform on the Property.

Claims for reimbursement from the Fund are governed by Md. Code Ann., Bus. Occ. & Prof. Art., §17-404, which provides, in pertinent part:

**§ 17-404.**

(a)(1) Subject to the provisions of this subtitle, a person may recover compensation from the Guaranty Fund for an actual loss.

(2) A claim shall:

(i) be based on an act or omission that occurs in the provision of real estate brokerage services by:

...

3. a licensed real estate salesperson;

...

State; and

- (ii) involve a transaction that relates to real estate that is located in the
- (iii) be based on an act or omission:

...

- 2. that constitutes fraud or misrepresentation.

With respect to claims against the Fund, COMAR 09.11.03.04 further provides:

**04. Claims Against the Guaranty Fund.**

A. A guaranty fund claim shall be based on the alleged misconduct of a licensee.

B. For the purpose of a guaranty fund claim, misconduct:

- (1) Is an action arising out of a real estate transaction involving real estate located in this State which causes actual loss by reason of theft or embezzlement of money or property, or money or property unlawfully obtained from a person by false pretense, artifice, trickery, or forgery, or by reason of fraud, misrepresentation, or deceit;
- (2) Is performed by an unlicensed employee of a real estate broker or by a duly licensed real estate broker, associate broker; or salesperson; and
- (3) Involves conduct for which a license is required by Business Occupations and Professions Article, Title 17, Annotated Code of Maryland.

COMAR 09.11.01.18 provides further:

The amount of compensation recoverable by a claimant from the Real Estate Guaranty Fund, pursuant to Business Occupation and Professions Article, Title 17, Subtitle 4, Real Estate Guaranty Fund, Annotated Code of Maryland, shall be restricted to the actual monetary loss incurred by the claimant, but may not include monetary losses other than monetary loss from the originating transaction. Actual monetary losses may not include commissions owed to a licensee of this Commission acting in his capacity as either a principal or agent in a real estate transaction, or any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.

The Claimant entered into a contract to purchase real estate with the assistance of the Respondent and the Respondent suggested that the Claimant contract with Mr.

McEwen, an unlicensed contractor, to do the home improvement work. While the Respondent's involvement in this case warrants the regulatory sanctions discussed above, the Claimant has failed to establish entitlement to an award from the Fund.

The Claimant did not establish, at the hearing before the ALJ, exactly what work was to be performed by the unlicensed home improvement contractor; what work he did; what work he did not complete; and the value of the work performed by the contractor before he abandoned the project. Section 17-404 of the Business Occupations Article requires that to be successful, a claim against the Guaranty Fund must be based on an act or omission that occurs in the provision of real estate brokerage services by a licensed real estate salesperson. In addition, COMAR 09.11.03.04 provides that a guaranty fund claim must be based on the alleged misconduct of the licensee. In the instant case, the Respondent's claim was based on the actions or inactions of an unlicensed home improvement contractor who allegedly abandoned the project without completing all of the work he agreed to do, not on the conduct of the licensee. Thus, she has failed to comply with the criteria of Section 17-404 of the Business Occupations Article for an award from the Fund and her claim against the Fund must be denied.

In her Exceptions and Amended Exceptions to the Proposed Order of the Commission, the Claimant sought to introduce new evidence and to amend her Fund claim by seeking an award from the Fund to cover the difference between the purchase price of the property and the net selling price; the cost of security doors and windows to prevent squatters from entering the Property; the cost of locksmith services to change the locks on the property; and the cost of legal services to obtain a cease and desist order to prevent the Respondent from entering the Property. Pursuant to the provisions of

COMAR 09.01.03.09K, the Commission will only consider new evidence at an Exceptions' hearing if it meets the following criteria:

- 1) The new evidence sought to be admitted at the Exceptions' hearing is relevant and material;
- 2) The new evidence was not discovered before the ALJ hearing; and
- 3) The new evidence could not have been discovered before the ALJ hearing with the exercise of due diligence.

The evidence which the Claimant sought to introduce via her Exceptions and Amended Exception in regard to alleged losses sustained by her as a result of her purchase and renovation of the Property, but not introduced at the hearing before the ALJ, was available to her at the time of the hearing before the ALJ and, therefore, was not considered by the Commission .

### **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 failed to provide a copy of the final, executed contract of sale for the Property to the Claimant, a party to the sale, in violation of Md. Code Ann., Bus. Occ. & Prof. Art., § 17-322(b)(14).
2. The Respondent engaged in conduct that demonstrates bad faith, incompetency, or unworthiness, or that constitutes dishonest, fraudulent, or improper dealings, in violation of Md. Code Ann., Bus. Occ. & Prof. Art., § 17-322(b)(25).

3. The Respondent violated the provisions of the code of ethics, specifically COMAR 09.11.02.01 C and H and, thus, also violated the provisions of Md. Code Ann., Bus. Occ. & Prof. Art., § 17-322(b)(33).

4. The Respondent is subject to sanctions for his conduct, and a reprimand and \$7,500.00 civil penalty are appropriate sanctions. Md. Code Ann., Bus. Occ. & Prof. Art., § 17-322(c).

5. The Claimant has not met the requirements for an award from the Maryland Real Estate Guaranty Fund and is not entitled to prevail on her claim against the Fund. Md. Code Ann., Bus. Occ. & Prof. Art., § 17-404; COMAR 09.11.03.04, and COMAR 09.11.01.18.

### **ORDER**

The Exceptions and Amended Exceptions of the Claimant, Angela S. Hood, having been considered, it is this 10<sup>th</sup> day of August, 2011 by the Maryland Real Estate Commission, **ORDERED:**

1. That the Respondent, Solomon H. Campbell, violated Md. Code Ann., Bus. Occ. & Prof. Art., §§ 17-322(b)(14), (25), and (33); and COMAR 09.11.02.01C and H;

2. That the Respondent, Solomon H. Campbell, be, and hereby is, **REPRIMANDED;**

3. That the Respondent, Solomon H. Campbell, be assessed a civil penalty in the amount of \$7,500.00, which shall be paid within thirty (30) days of the date of this **ORDER;**

4. That all real estate licenses held by the Respondent, Solomon H. Campbell, shall be suspended if the civil penalty is not paid in full within the 30-day period, and shall remain suspended until the civil penalty is paid;

5. That the claim of Angela S. Hood against the Maryland Real Estate Commission Guaranty Fund is **DENIED**; and

6. 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.