

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE

\*

BEFORE A. J. NOVOTZY, JR.,

COMMISSION

\*

ADMINISTRATIVE LAW JUDGE

V.

\*

OF THE MARYLAND OFFICE OF

REGINALD D. WALKER

\*

ADMINISTRATIVE HEARINGS

\*

OAH No: DLR-REC-21-08-28174

\*

REC CASE NO: 2007-RE-026

\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated March 31, 2009, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 15th day of April, 2009,

ORDERED,

A. That the Findings of Fact in the Recommended Decision be, and hereby are, AFFIRMED;

B. That the Conclusions of Law in the Recommended Decision be, and hereby are, APPROVED;

C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

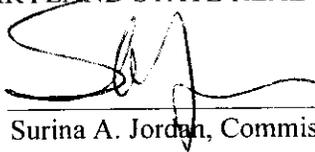
D. That the records, files and documents of the Maryland State Real Estate Commission reflect this decision.

MARYLAND STATE REAL ESTATE COMMISSION

4/15/09

Date

By:



Surina A. Jordan, Commissioner

**MARYLAND REAL ESTATE**

**\* BEFORE A. J. NOVOTNY, JR.,**

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**v.**

**\* OF THE MARYLAND OFFICE OF**

**REGINALD D. WALKER**

**\* ADMINISTRATIVE HEARINGS**

**\* OAH CASE NO.: DLR-REC-21-08-28174**

**\* REC COMPLAINT NO.: 07-RE-026**

**\* \* \* \* \***

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On July 13, 2006, Tony Clemmons (Complainant) filed a complaint with the Maryland Real Estate Commission (Commission or REC), an administrative unit of the Department of Labor, Licensing and Regulation (DLLR), against Reginald D. Walker (Respondent), a real estate salesperson associated with Realty Executives/2000. On July 1, 2008, the Commission issued a Statement of Charges and Order for Hearing against the Respondent.

I conducted a hearing on January 12, 2009, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland, under Section 17-324 of the Business Occupations & Professions Article, Annotated Code of Maryland (2004). Md. Code Ann., Bus. Occ. & Prof. §

17-324 (2004). Jessica Kaufman, Esquire, Assistant Attorney General, represented the Commission. Although notified of the hearing, the Respondent failed to appear.<sup>1</sup>

Procedure in the case is governed by the Administrative Procedure Act, the procedures for DLLR hearings delegated to the OAH, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2008); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

### ISSUES

1. Did the Respondent fail to furnish a party to a real estate transaction a copy of the listing contract to sell the property, in violation of Section 17-322(b)(14)(i) of the Business Occupations and Professions Article?<sup>2</sup>

2. Did the Respondent engage in conduct that demonstrates bad faith, incompetency, or untrustworthiness, or that constitutes dishonest, fraudulent, or improper dealings, in violation of Section 17-322(b)(25) of the Business Occupations and Professions Article?

3. Did the Respondent violate any regulation adopted under the Business Occupations and Professions Article, in violation Section 17-322(b)(33) of the Business Occupations and Professions Article?

4. Did the Respondent fail to treat all parties to a transaction honestly and fairly or fail to answer all questions truthfully in violation of Section 17-532(c)(1)(iv) of the Business Occupations and Professions Article?

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<sup>1</sup> Notice of the hearing, including a copy of the Commission's charges was mailed both regular mail and certified, return receipt requested to the Respondent at his last address of record with the Commission. The regular mail was not returned and someone at Realty Executives/2000, the brokerage where the Respondent operated, signed the delivery receipt. I conclude that the Respondent was provided reasonable notice of the hearing.

<sup>2</sup> The current version of Section 17-322 is found in the 2008 supplement to the Business Occupations and Professions Article.

5. Did the Respondent fail to protect the public against fraud, misrepresentation or unethical practices and/or fail to protect and promote the interests of his client in violation of COMAR 09.11.02.01C and .02A, respectively?

6. If the Respondent committed any of the violations set forth above, what sanctions are appropriate under Section 17-322(c) of the Business Occupations and Professions Article?

### **SUMMARY OF THE EVIDENCE**

#### Exhibits

The Commission submitted the following exhibits, which were admitted into evidence:

- |         |   |
|---------|---|
| REC #1  | Notice of Hearing, dated October 6, 2008  |
| REC #2  | Statement of Charges, dated July 1, 2008  |
| REC #3  | Computerized printout of the Respondent's REC Licensing History, dated November 21, 2008                    |
| REC #4  | Report of Investigation, issued by W. F. Reynolds, dated February 26, 2008, with the following attachments: |
| Att. #1 | Complaint to REC  |
| Att. #2 | Copies of check and bank records  |
| Att. #3 | Copy of Confessed Judgment  |
| Att. #4 | Copy of Contract of Sale  |
| Att. #5 | Prince George's County Department of Assessments and Taxation property data report                          |
| Att. #6 | Maryland Motor Vehicle Administrations records regarding the Respondent                                     |
| Att. #7 | Copies of records from Sunshine Therapeutic Services, Inc.  |
| Att. #8 | Copies of sales of homes in the area (of Complainant's home)  |
| Att. #9 | Copy of Respondent's response to the Commission investigator  |

Neither the Complainant nor the Respondent submitted any documents for admission into evidence.

### Testimony

The Commission presented the testimony of the Complainant, Tony E. Clemons, and William F. Reynolds, an investigator for the Commission.

The Respondent was not present.

### **FINDINGS OF FACT**

Having considered the evidence presented, I find the following facts by a preponderance of the evidence:

1. At all relevant times, the Respondent was a real estate salesperson licensed by the Commission under license #3638742. The license expired on November 11, 2007 and has not been renewed.
2. At all relevant times, the Respondent was working through the brokerage of Realty Executives/2000.
3. In the spring of 2005, the Complainant entered into a contract with the Respondent for the Respondent to act as seller's agent in the sale of the Complainant's home located at 15604 Cedar Drive, Accokeek, Maryland. The listing price was \$300,000.00. The contract provided for \$5,000.00 as earnest money deposit with any offer to buy.
4. The Respondent never provided the Complainant with a copy of the contract or listing.
5. Soon thereafter, the Respondent advised the Complainant that they could not sell the house for the asking price of \$300,000.00, but that he could sell it for \$250,000.00.

6. The Respondent presented the Complainant with an offer to buy, signed by Eric Alexander, dated May 25, 2005. Unknown to the Complainant, for the benefit of the buyer, the Respondent waived the \$5,000.00 earnest money deposit that was noted in the sales listing.

7. The Respondent acted as both the seller's agent and buyer's agent in the sale, but did not disclose his role as buyer's agent to the Complainant.

8. The Respondent erroneously advised the Complainant that because of the mortgage and encumbrances on the home, that the sale would have to be a "short sale."<sup>3</sup>

9. The Respondent presented a scheme to the Complainant wherein if the Complainant signed a fake confessed judgment note, at settlement the note would be paid and then the bogus judgment holder would remit the amount of the paid confessed judgment back to the Complainant so he could show some profit from the alleged short sale.

10. The Respondent offered to the Complainant a confessed judgment note payable to Sunshine Therapeutic Services (Sunshine) for \$15,000.00. The Respondent did not disclose that he had financial interests in Sunshine, being its resident agent, a director and an incorporator.

11. The Respondent also did not disclose to the Complainant that the potential buyer was the husband of one of the other directors of Sunshine.

12. On August 17, 2005 the house was sold to Eric Alexander for \$250,000.00, and at settlement, \$15,000.00 was paid to Sunshine as a result of the confessed judgment note.

13. The sale was not a short sale.

14. Two days after settlement, Woodrena Wilson, a director at Sunshine, gave the Complainant two checks: one was for \$8,000.00 and the other for \$7,490.49, as payback for the

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<sup>3</sup> A "short sale" occurs when the net profit from the sale of a property is less than the mortgage or other encumbrances on the property. If the creditors permit the sale, the seller generally receives no profit.

confessed judgment note. A stop payment was then issued on the check for \$7,490.49 before the Complainant could cash it.

15. On July 13, 2006, the Complainant filed his complaint with the Commission. On April 25, 2007, the Commission referred the complaint to William Reynolds for investigation.

### **DISCUSSION**

The Commission charged the Respondent with violating Sections 17-322(b)(14), (25), and (33) and 17-532 (c) of the Business Occupations and Professions Article, as well as COMAR 09.11.02.01C and .02A. The relevant portions of the statute and regulations are as follows:

§17-322 - Denials, reprimands, suspensions, revocations, and penalties-Grounds.

(b) Grounds. – 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 licensee 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:

(i) the listing contract to sell or rent real property;

. . . .

(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.

§ 17-532 – Duties to Client

(c) In general.- (1) A licensee shall:

. . . .

(iv) treat all parties to the transaction honestly and fairly and answer all questions truthfully.

COMAR 09.11.02.01, Relations to the Public, reads in relevant part:

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.

COMAR 09.11.02.02, Relations to the Client, reads in relevant part:

A. 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.

The Commission's charges arise out of a listing to sell and subsequent contract for sale between the Respondent and the Complainant for the sale of the Complainant's home in Accokeek, Maryland. The Commission alleged that at the time of the transactions the Respondent was licensed by the Commission as a real estate agent affiliated with Realty Executives/2000 and in the course of the listing and sale violated numerous sections of the statute and regulations. I find that the evidence overwhelmingly supports the Commission's charges.

I conclude that the Commission has demonstrated, by a preponderance of the evidence, that the Respondent violated the provisions of Section 17-322(b) of the Business Occupations and Professions Article. The evidence is undisputed that the Respondent failed to provide the Complainant with a copy of the real estate listing agreement, thus he violated Section 17-322(b)(14)(i) of the Business Occupations and Professions Article and is subject to sanction.

Additionally, the Respondent misadvised the Complainant of the need for a "short sale," failed to disclose his business relationship with the potential buyer, waived the earnest money deposit without the Complainant's knowledge or consent, and created a scheme to potentially

defraud creditors. The Respondent's actions ultimately caused a loss to the Complainant, and clearly demonstrate the Respondent's bad faith, untrustworthiness, dishonesty, and fraudulent and improper dealings, in violation of Section 17-322(b)(25) of the Business Occupations and Professions Article. Thus he is subject to sanction.

Similarly, the Respondent's conduct that violated Section 17-322(b)(25) of the Business Occupations and Professions Article, also clearly shows that the Respondent violated COMAR 09.11.02.01C and .02A, as well as Section 17-532(c) of the Business Occupations and Professions Article. The Respondent did not protect the public against fraud when he engaged in the bogus confessed judgment scheme and thus violated COMAR 09.11.02.01C as well as Section 17-322(b)(33) of the Business Occupations and Professions Article. The Respondent did not present absolute fidelity to his client (the Complainant) when he changed the terms of the listing and sale to benefit the buyer's interests, and thus violated COMAR 09.11.02.02A as well as Section 17-322(b)(33) of the Business Occupations and Professions Article.

I note the Complainant was not being fully honest when he consented to engage in the bogus confessed judgment scheme; however, the Complainant is not subject to charges by the Commission and his conduct does not lessen the Respondent's culpability and responsibility to follow the law, as well as his liability for sanction.

As a result of his violations, the Respondent is subject to sanction under Section 17-322(c) of the Business Occupations and Professions Article, which provides as follows:

(c) *Penalty.* – (1) 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.

(2) To determine the amount of the penalty imposed, the Commission shall consider:

- (i) the seriousness of the violation;
- (ii) the harm caused by the violation;

- (iii) the good faith of the licensee; and
- (iv) any history of previous violations by the licensee.

Although the record does not disclose any history of violations, the Respondent's actions in this case are serious violations that caused harm to his client. The Respondent also engaged in actions which could be damaging to the public or to the dignity and integrity of the real estate profession. In urging that the Respondent's license be revoked, the Commission noted that the Respondent's conduct was fraught with dishonesty. There was little good faith on the Respondent's part and his violations were serious. I agree that a civil penalty is in order because the Respondent engaged in serious, deliberate violations of the law. While I agree that the Respondent's actions warrant revocation of his real estate license, I do not agree with the Commission's position that I can recommend that revocation because the Commission's records show that the Respondent's real estate salesperson's license expired on November 11, 2007 and has not been renewed. I do not believe that I can recommend revocation of something that does not exist.

However, I find that the Commission's recommendation of a civil penalty is appropriate. Because of the serious and intentional nature of the Respondent's violations, and because there is no license to be revoked, I recommend the maximum penalty of \$5,000.00 for each of the violations of Sections 17-322(b)(14), (25), and (33)<sup>4</sup> and 17-532(c) of the Business Occupations and Professions Article, for a total civil penalty of \$20,000.00.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that:

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<sup>4</sup> I am considering the violation of section 17-322(b)(14) of the Business Occupations and Professions Article to encompass the violations of COMAR 09.11.02.01C and .02A.

A. The Respondent failed to furnish a party to a real estate transaction a copy of the listing contract to sell the property, in violation of Section 17-322(b)(14)(i) of the Business Occupations and Professions Article.

B. The Respondent engaged in conduct that demonstrates bad faith, incompetency, or untrustworthiness, or that constitutes dishonest, fraudulent, or improper dealings, in violation of Section 17-322(b)(25) of the Business Occupations and Professions Article.

C. The Respondent violated regulations adopted under the Business Occupations and Professions Article, in violation Section 17-322(b)(33) of the Business Occupations and Professions Article.

D. The Respondent failed to treat all parties to a transaction honestly and fairly in violation of Section 17-532(c)(1)(iv) of the Business Occupations and Professions Article.

I further conclude that the Respondent is subject to sanction for his misconduct, and that a \$5,000.00 civil penalty for each of the four violations (totaling \$20,000.00) is an appropriate sanction. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c).

### **RECOMMENDED ORDER**

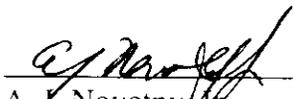
I THEREFORE RECOMMEND that the Maryland Real Estate Commission:

**ORDER**, that the Respondent pay a civil penalty of \$20,000.00; and further

**ORDER**, that the Respondent be ineligible to apply for a Maryland Real Estate license of any kind until such time he has paid the above-referenced civil penalty; and further

**ORDER**, that the records and publications of the Commission reflect its final decision.

March 31, 2009  
Date Decision mailed

  
\_\_\_\_\_  
A. J. Novotny, Jr.  
Administrative Law Judge

#105626