

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE * BEFORE LAURIE BENNETT,
COMMISSION * ADMINISTRATIVE LAW JUDGE
V. * OF THE MARYLAND OFFICE OF
ALEXANDER BELL * ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-21-07-11227
* REC CASE NO: 2005-RE-380

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated December 15, 2008, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 21st day of January, 2008,

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

1/21/09
Date

By: 
Surina A. Jordan, Commissioner

MARYLAND REAL ESTATE

*** BEFORE LAURIE BENNETT,**

COMMISSION

*** AN ADMINISTRATIVE LAW JUDGE**

v.

*** OF THE MARYLAND OFFICE OF**

ALEXANDER BELL,

*** ADMINISTRATIVE HEARINGS**

RESPONDENT

*** OAH CASE NO.: DLR-REC-21-07-11227**

*** REC COMPLAINT NO: 2005-RE-380**

*** * * * ***

RECOMMENDED DECISION

STATEMENT OF THE CASE
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RECOMMENDED ORDER

STATEMENT OF THE CASE

On March 12, 2008, the Real Estate Commission (“REC”), which is under the jurisdiction of the Department of Labor, Licensing and Regulation, Division of Occupational and Professional Licensing, issued a Statement of Charges and Order for Hearing against the Respondent. The REC charged the Respondent with violating Maryland real estate law.

I held a hearing on November 13, 2008 at the Office of Administrative Hearings (“OAH”). The Respondent represented himself. Jessica Kaufman, Assistant Attorney General, represented the REC.

At the start of the hearing, I noted that, on November 12, 2008 at 2:43 p.m., the Respondent’s attorney, Marc H. Sliffman, had entered his appearance and moved for a postponement because he had a scheduling conflict in the Circuit Court for Prince George’s

County. The OAH's postponement officer denied the request because: it was untimely, the Respondent has been aware of this case since May 2008, and the Respondent apparently waited until the day before the hearing to retain an attorney. The Respondent told me that he had not waited until the last minute to retain Mr. Sliffman and that Mr. Sliffman has been his attorney on other matters for a long time. I again denied the postponement request. If a request for postponement is made less than five days before the hearing, the OAH may grant it if the moving party establishes an emergency. An emergency means "a sudden, unforeseen occurrence requiring immediate attention." COMAR 28.02.01.25D. Mr. Sliffman's court conflict does not constitute an emergency. The Respondent first knew of his need for a lawyer in this matter when the REC issued its charges and order for a hearing in March 2008. The OAH issued its Notice of Hearing on May 22, 2008. The Respondent had six months to contact Mr. Sliffman to arrange for his representation.

The Administrative Procedure Act, the procedures for Administrative Hearings of the Office of the Secretary of the Department of Labor, Licensing and Regulation, the procedures for Hearings of the REC, and the OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2008); Code of Maryland Regulations ("COMAR") 09.01.02, COMAR 09.01.03; COMAR 09.11.03; and COMAR 28.02.01.

ISSUES

The issues are whether the Respondent violated the real estate law and, if so, whether the REC may suspend the Respondent and impose a civil penalty.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the REC's behalf:

- REC 1.* Notice of Hearing, dated May 22, 2008
- REC 2.* Transmittal for Department of Labor, Licensing and Regulation, Real Estate Commission, not dated; cover sheet, not dated; Statement of Charges and Order for Hearing, dated March 12, 2008
- REC 3.* Computer print-out of Respondent's licensing history with the REC
- REC 4.* Report of Investigation, for the investigation closed on May 25, 2007, with attachments

I did not admit any exhibits on the Respondent's behalf.

Witnesses

The REC presented the following witnesses: Pamela R. Mason, David Mason, Jr., and Jack Mull, REC investigator since September 2004.

The Respondent testified on his own behalf.

FINDINGS OF FACT

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

1. At all times relevant to the hearing, the Respondent was a licensed real estate agent associated with Murrell, Inc. in Marlow Heights, Maryland.
2. Pamela R. Mason and Davis Mason, Jr. (individually "Mr. Mason" or "Ms. Mason" and collectively the "Masons") were married to each other at the time they owned a single family dwelling known as 9915 Williamsburg Drive, Upper Marlboro, Maryland

("Williamsburg property"). In September 2003, the Masons separated, and they listed the Williamsburg property for sale with the Respondent.

3. At the time of the listing, the Masons were delinquent in their mortgage payments and foreclosure was imminent.
4. On September 7, 2003, the Masons signed a contract for sale ("Contract"), prepared by the Respondent, to sell the Williamsburg property to John Adams and Brenda Adams ("Buyers"). The Contract provided for a September 31, 2003 settlement date. September has only 30 days. The Masons and the Buyers understood that they would go to settlement at the end of the month.
5. Paragraph forty-five of the Contract is titled "Addenda." The Respondent did not check any of the boxes below the title to indicate that addenda are attached and no addenda were in fact attached.
6. The Contract did not include a Maryland Property Disclaimer Statement or, alternatively, a Residential Property Disclosure Statement. The disclaimer alerts buyers that the owner is selling the property "as is" and makes no representations or warranties as to the condition of the property or any improvements on the property. The disclosure statement discloses defects or other information about the condition of the real property actually known by the owner.
7. The Respondent represented the Masons and the Buyers in the sale/purchase of the Williamsburg property.
8. The Respondent did not tell the Masons that another real estate agent would have to represent them or the Buyers.

9. The Masons and the Buyers did not go to settlement at the end of September because the Buyers could not get financing to purchase the house. Nonetheless, the Masons allowed the Contract to continue but without a settlement date.
10. During or about September 2003, Mr. Mason asked the Respondent to find another buyer. The Respondent said that was not possible because the Contract was still in force. This was not true.
11. Mr. Mason telephoned the Respondent three to four times per week on average to inquire about the status of the sale of the Williamsburg property to the Buyers. The Respondent always took Mr. Mason's calls, or returned a call within a day or two, but the Respondent rarely initiated a call to the Masons. The Respondent repeatedly told the Masons that the Buyers were still trying to get financing.
12. During or about November 2003, the Respondent suggested that the Masons permit the Buyers to move into the Williamsburg property pending a November 2003 settlement. The Masons and the Buyers entered into a verbal lease agreement. The Respondent did not prepare a written lease agreement.
13. During or about November 2003, the Buyers took possession of the Williamsburg property with the assumption that they would eventually go to settlement, even though they were still unable to get financing.
14. The Respondent arranged for the Buyers to pay \$22,506.36 to a trustee to stave off the foreclosure. The payment would serve as earnest money for the sale, even though the Respondent did not draft an addendum to the Contract to that effect.
15. On March 24, 2004, the Respondent drafted a lease agreement for the Buyers to lease the Williamsburg property from the Masons. The last page of the lease agreement contains

signatures for Mr. Mason and Ms. Mason above the date. Neither of the Masons actually signed the lease agreement, and they did not authorize anyone to sign for them.

16. The lease agreement includes a General Addendum that provides terms for the sale of the Williamsburg Property to the Buyers, as follows:

1. All parties agree that if this transaction does not go thru, the purchaser will be reimbursed \$22,506.36 at the sale of 9915 Williamsburg Dr. immediately following[.]
2. All parties agree that the sellers portion of the water bill due is ~~\$918.00~~ 775.40 as of November 10th 2003 and must be paid immediately.
3. All parties agree that the sellers will complete the payment to the roofer for \$2000.
4. All parties agree that the contract for \$220,000 stays in force.
5. All parties agree that the \$22,506.36 will be earnest money deposit for the purchase of (~~\$22~~) 9915 Williamsburg Drive.

Strikethroughs in original.

17. The Buyers paid the Masons the earnest money.

18. Eventually, the Respondent told the Masons that the Buyers would not purchase the property because they could not get financing. The Masons sold the house to another buyer.

19. On November 10, 2003, the Respondent prepared a lease agreement for Ms. Mason to occupy property known as 13042 Salford Terrace ("Salford Terrace property"), Upper Marlboro, Maryland. The agreement calls for Ms. Mason to send her rent to "Murrell Realtors," where the Respondent worked. The Respondent never explained to Ms. Mason why she should not pay the owners of the property directly. The Respondent never gave Ms. Mason an address for mailing her rent check. As a result, Ms. Mason made no rental payments from November 2003 through June 2004.

20. Ms. Mason hoped to eventually purchase the Salford Terrace property with the proceeds from the sale of the Williamsburg property. During or about May 2004, however, the

owners of the Salford Terrace property showed up there and told Ms. Mason that they had just purchased it at a foreclosure sale. The new owner allowed Ms. Mason to stay in the house until she could find somewhere else to live.

21. In May 2005, Ms. Mason filed a complaint against the Respondent with the REC. The REC assigned Jack Mull to investigate the complaint.
22. Mr. Mull interviewed the Respondent and asked him for documents relating to the Williamsburg property. The Respondent told Mr. Mull that he did not have the documents.
23. Mr. Mull also interviewed Claude Murrell and Alan Carl, both of Murrell, Inc. Mr. Mull asked both men for documents related to the Williamsburg property. Mr. Murrell and Mr. Carl searched the office's files and found nothing.
24. On or about the day before Mr. Mull interviewed Mr. Carl, the Respondent told Mr. Carl that the Masons did not need to complete a dual agency form because the Respondent was only representing the Masons.

DISCUSSION

1. May the REC suspend the Respondent's real estate license for two weeks?

The REC may reprimand any licensee, or suspend or revoke a licensee for numerous reasons delineated in law. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b) (Supp. 2008).¹ The REC is seeking a two-week suspension of the Respondent's real estate license for three of those reasons, each of which is discussed below.

¹ Unless otherwise noted, all statutory references are to the 2008 supplement of the Business Occupations and Professions article of the Annotate Code of Maryland.

a. Did the Respondent fail to keep copies of certain documents as required by law?

The REC may suspend a licensee who fails to maintain copies of any executed listing contract to sell or rent real property; contract of sale; or lease agreement. § 17-322(b)(15).

The Respondent did not maintain copies of any of the documents related to the Williamsburg and Salford Terrace properties. He claimed that he lost them in a theft at his office, but I do not have any corroborating evidence. For example, I do not have a police report. Also, the Respondent did not tell Mr. Mull there had been a theft and neither Mr. Murrell nor Mr. Carl mentioned one.

b. Did the Respondent obtain a dual agency agreement?

The REC may suspend a licensee who fails to have the sellers and buyers complete a dual agency agreement when one is required. §§ 17-322(b)(30) and 17-530 (2004).

A dual agent “means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who acts as an agent for both the seller and the buyer or the lessor and the lessee in the same real estate transaction.” § 17-530(a)(5). A real estate agent must obtain the written informed consent of all of the parties to a real estate transaction to act as a dual agent. §§ 17-530(c) and (d)(1)(i) and (ii). The written consent shall include the following information:

- (i) the real estate broker receives compensation on the sale of a property listed only by the broker;
- (ii) as a dual agent the real estate broker represents both the seller and the buyer and there may be a conflict of interest because the interests of the seller and the buyer may be different or adverse;
- (iii) as a dual agent the real estate broker does not owe undivided loyalty to either the seller or the buyer.
- (iv) except as otherwise required by this title, a dual agent may not disclose information that a seller or buyer in a real estate transaction requests to remain confidential to the buyer or seller in the same real estate transaction;

(v) unless authorized by the seller, a dual agent may not tell a buyer that the seller will accept a price lower than the listing price or accept terms other than those contained in the listing agreement or suggest that the seller accept a lower price in the presence of the buyer;

(vi) unless authorized by the buyer, a dual agent may not tell a seller that the buyer is willing to pay a price higher than the price the buyer offered or accept terms other than those contained in the offer of the buyer or suggest that the buyer pay a higher price in the presence of the seller;

(vii) a dual agent may not disclose the motivation of a buyer or seller or the need or urgency of a seller to sell or a buyer to buy;

(viii) except as otherwise required by this title, if the information is confidential, a dual agent may not disclose any facts that lead the seller to sell;

(ix) the buyer or seller does not have to consent to the dual agency;

(x) the buyer or seller has voluntarily consented to the dual agency; and

(xi) the terms of the dual agency are understood by the buyer or seller.

(vii) the duty of a buyer's agent to assist in the:

1. evaluation of a property, including the provision of a market analysis of the property; and

2. preparation of an offer on a property and to negotiate in the best interests of the buyer;

(viii) the possibility that a dual agency may arise in a real estate transaction and the options that would become available to the buyer and seller or lessee and lessor; and

(ix) that any complaints concerning a licensee may be filed with the State Real Estate Commission.

§ 17-530(b)(5).

The importance of the informed consent is obvious and cannot be overstated: it protects the parties and the real estate agent from inherent conflict of interest.

The Respondent told Mr. Carl that the parties to the Williamsburg transaction did not need to sign a dual agency agreement because he was not acting as a dual agent. The evidence does not support the Respondent's assertion. The Respondent checked a box on the Contract indicating that he was the seller's agent; however, he was obviously also acting on the Buyer's behalf. In fact, he drafted the Contract for the Buyers; he explained the contract to them; he suggested that they use the earnest money to stave off the Masons' foreclosure; etc. The

Respondent never told Mr. Mull that the Buyers had another agent or that they were representing themselves.

Moreover, the Respondent told Mr. Mull that neither the Masons nor the Buyers requested that Murrell, Inc. assign another agent to one of them. The inference I draw from the Respondent's statement is that he knew he was acting on both parties' behalf but assumed that it was okay because neither of them protested. Whether a party protests is not the point. The parties may consent to dual agency, if the consent is informed and in writing. The Respondent did not obtain a dual agency agreement.

c. Did the Respondent violate REC regulations?

The REC may suspend a licensee who violates any of its regulations. § 17-322(b)(33). The REC contends that the Respondent violated the following regulations:

- ❖ 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 09.11.02.02A
- ❖ Unexcused failure to ensure that a prospective purchaser has the real property disclosure statement or disclaimer statement in hand before the submission of an offer to purchase may be considered a violation of the licensee's obligation to protect and promote the interests of the licensee's client when this failure could result in a contract becoming void or voidable. COMAR 09.11.02.02I.²
- ❖ 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. COMAR 09.11.02.01H.

Notwithstanding the Respondent's assertion that he was simply trying to help people in need, the Respondent did not protect and promote the Masons' interest. With respect to the Williamsburg property, the Respondent kept them in a sales contract with buyers who were

² The charging document cites regulation .02J, which is a scrivener's error.

unable to obtain financing; when Mr. Mason told him to find another buyer, the Respondent incorrectly told the Masons that still they had a binding contract with the Buyers; the Respondent did not initially draft a lease agreement between the Masons and the Buyers; the lease agreement contains terms of the sale and the Contract does not contain those terms; and the Respondent did not offer the Masons a dual agency agreement.

The Respondent also did not have the Masons complete a Maryland Property Disclaimer Statement or, alternatively, a Residential Property Disclosure Statement. Md. Code Ann., Real Prop. § 10-702(c), (d) and (e) (Supp.2008). A disclosure or disclaimer was especially important because the Williamsburg property was in disrepair.

With respect to the Salford Terrace property, the Respondent drafted a lease that called for Ms. Mason to send her rent to Murrell Realtors. The Respondent never received rent from Ms. Mason and he made no effort have her pay. Thus, he surely was not protecting the lessor's interests. In the end, Ms. Mason found herself occupying a foreclosed property.

Furthermore, the Respondent did not maintain copies of any of the documents related to either property. As I have already explained, I reject the Respondent's claim that the documents were stolen.

In sum, the Respondent violated the regulations, and in turn the statute, as charged.

II. May the REC impose a \$5,000.00 civil penalty in addition to the disciplinary suspension?

“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 \$5,000.00 for each violation.” § 17-322(c)(1). Imposition of a civil penalty requires consideration of the following factors:

- (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.

§ 17-322(c)(2).

The REC has requested a \$5,000.00 civil penalty because the Respondent has not shown good faith. According to the REC, the Respondent “worked every angle” of his dealings with the Masons, to no good end. The REC acknowledged that, to the Respondent’s credit, he has no prior violations on file with the REC. The Respondent argued that he should not suffer a suspension because he was simply doing a good deed by helping two couples in need. For the following reasons, I find that a \$5,000.00 civil penalty is appropriate.

The Respondent has no prior violations, but the current violations are serious and they caused harm to the Masons. The Masons could have sought out another buyer when they did not go to settlement on the Williamsburg property as originally planned, but the Respondent kept them in the Contract. When Mr. Mason told the Respondent to look for another buyer, the Respondent incorrectly told him the Contract was still in force. Because the Respondent represented the Masons and the Buyers, neither party had impartial advice about the Contract. He allowed the Buyers to rent the property with a lease agreement for months and the lease agreement ultimately contained terms that should have been in the Contract.

As to the Salford Terrace property, the lease agreement inexplicably contained a term requiring Ms. Mason to send her rent to “Murrell Realtors.” When she did not make any payments, he made no effort to obtain the rent. Nor did he make any effort to notify her that she was renting property in foreclosure.

The Respondent believes he was helping people in need. His belief is sincere, but it is woefully misplaced. The Respondent’s actions ended up hurting people. Accordingly, a civil penalty is appropriate.

CONCLUSIONS OF LAW

I conclude as a matter of law that the REC may suspend the Respondent's real estate license for two weeks and impose a \$5,000.00 civil penalty. Md. Code Ann., §§ 17-322(b)(15), (30) and (33), and 17-322(c)(1) (Supp. 2008).

RECOMMENDED ORDER

I THEREFORE RECOMMEND that the Maryland Real Estate Commission:
SUSPEND the Respondent's real estate license for two weeks; and further
ORDER that the Respondent pay a \$5,000.00 civil penalty; and further
ORDER that the records and publications of the Commission reflect its final decision.

December 15, 2008
Date Decision Mailed



Laurie Bennett
Administrative Law Judge

LB/
#101529

MARYLAND REAL ESTATE
COMMISSION

v.

ALEXANDER BELL,

Respondent

* BEFORE LAURIE BENNETT,
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* OF THE MARYLAND OFFICE OF
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* OAH CASE NO.: DLR-REC-21-07-11227
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* * * * *

FILE EXHIBIT LIST

For the REC:

REC 1. Notice of Hearing, dated May 22, 2008

REC 2. Transmittal for Department of Labor, Licensing and Regulation, Real Estate Commission, not dated; cover sheet, not dated; Statement of Charges and Order for Hearing, dated March 12, 2008

REC 3. Computer print-out of Respondent's licensing history with the REC

REC 4. Report of Investigation, for the investigation closed on May 25, 2007, with attachments

For the Respondent:

None.