

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE * BEFORE MARLEEN B. MILLER,
COMMISSION * ADMINISTRATIVE LAW JUDGE
V. * OF THE MARYLAND OFFICE OF
MARIA D. JOHNSON * ADMINISTRATIVE HEARINGS
RESPONDENT * OAH No: DLR-REC-21-12-26887
* REC CASE NO: 2011-RE-430

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated January 4, 2013, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 21st day of February, 2013,

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

2/20/2013
Date

By: SIGNATURE ON FILE
Marla S. Johnson, Commissioner

MARYLAND REAL ESTATE

COMMISSION

v.

MARIA D. JOHNSON

THE RESPONDENT

*** BEFORE MARLEEN B. MILLER,**

*** AN ADMINISTRATIVE LAW JUDGE**

*** OF THE MARYLAND OFFICE OF**

*** ADMINISTRATIVE HEARINGS**

*** OAH CASE NO.: DLR-REC-21-12-26887**

*** REC CASE NO.: 11-RE-430**

*** * * * ***

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On April 16, 2012, the Maryland Real Estate Commission (the MREC or the Commission) issued a Statement of Charges and Order for Hearing (the Charges) against Maria D. Johnson (the Respondent) for her alleged violations of sections 17-322(b)(3), (4), (25), (32), (33) and 17-532(c)(1)(iii), (iv), and (vi) of the Maryland Annotated Code's Business Occupations and Professions Article (the Business Occupations Article), as well as Code of Maryland Regulations (COMAR) 09.11.02.01A & C and 09.11.02.02A.

On October 16, 2012, I conducted a hearing on the Charges at the Largo Government Center in Largo, Maryland pursuant to section 17-408 of the Business Occupations Article. Assistant Attorney General Peter Martin represented the Commission. Spencer Stephens, Esquire, represented the Respondent.

The Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009 & Supp. 2012); the Commission's Hearing Regulations, COMAR 09.11.03; and OAH's Rules of Procedure, COMAR 28.02.01; govern procedure in this case.

ISSUES

The issues in this case are as follows:

1. Did the Respondent violate Business Occupations Article § 17-322(b)(3), by willfully making a misrepresentation or knowingly making a false promise?
2. Did the Respondent violate Business Occupations Article § 17-532(c)(1)(iii) or 17-322(b)(4), by intentionally or negligently failing to disclose a material fact that the Respondent knew or should have known and that related to the subject property?
3. Did the Respondent violate Business Occupations Article § 17-322(b)(25), by engaging in conduct that demonstrated bad faith, incompetence, or untrustworthiness or that constituted dishonest, fraudulent, or improper dealings?
4. Did the Respondent violate Business Occupations Article § 17-532(c)(1)(iv), by failing to treat all parties honestly and fairly or by failing to answer all questions truthfully?
5. Did the Respondent violate Business Occupations Article § 17-532(c)(1)(vi), by failing to exercise reasonable care and diligence?
6. Did the Respondent violate Business Occupations Article § 17-322(b)(32), by also violating sections 17-532(c)(1)(iii), (iv), or (vi) of the Business Occupations Article?
7. Did the Respondent violate Business Occupations Article § 17-322(b)(33), by violating the provisions of the Code of Ethics set forth in COMAR 09.11.02.01A or 09.11.02.01C or 09.11.02.02A?
8. If so, what sanctions and/or penalties should be imposed?

SUMMARY OF THE EVIDENCE

Exhibits:

The Commission submitted the following documents, which I admitted into evidence as the following numbered exhibits:

1. August 8, 2012 Notice of Hearing, with attached Charges
2. The Respondent's Licensing History
3. Report of Investigation by Jack L. Mull Jr., MREC Investigator, received May 6, 2011 and closed February 13, 2012
4. Copies of the Complainants' real estate expenses, dated from September 25, 2010 through January 9, 2011, consisting of 90 pages

The Respondent submitted the following documents, which I admitted into evidence as the following numbered exhibits:

1. Communications to and from the Respondent regarding the Property, dated from June 19 through September 7, 2010
2. June 8, 2010 email to Respondent, with attachment of House Bill 711/ Senate Bill 654 (Real Property – Tenants in Foreclosure – Conforming to Federal Law)
3. September 27, 2010 email from Respondent, with attachment of lease agreement between Richard Hall and Portfolio Investments, Inc., dated December 31, 2008
4. October 11, 2010 email from George Wingate to Respondent on foreclosure homes

Testimony

The Respondent testified on her own behalf, and the Commission presented the testimony of the following witnesses:

- Lolade A. Jones and George Wingate, Jr., the Complainants
- Erika Jackson, Listing Agent for Aurora Bank (the Seller)
- Erica Hunt, Settlement Attorney

- Jack L. Mull, Jr., the Commission's Investigator

FINDINGS OF FACT

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

1. At all relevant times, the Respondent has been a Maryland licensed real estate salesperson under license number 05-626759.
2. At no relevant time were either of the Complainants sophisticated real estate buyers.
3. In May 2010, the Complainants contacted the Respondent to be shown properties for potential purchase, particularly foreclosed-upon properties that might be purchased for a reasonable price.
4. Sometime thereafter, the Respondent showed to the Complainants property located at 6811 McCormick Road in Upper Marlboro, Maryland (the Property), which had been purchased by Aurora Bank (the Bank/Seller) upon foreclosure.
5. In reviewing the multiple listing and in the course of visits to the Property, the Complainants became aware that a tenant (the Tenant) was living at the Property. Whenever the Complainants asked the Respondent about the Tenant, the Respondent repeatedly assured them that the Tenant was a squatter, that the Seller was working on getting the Tenant to vacate and that the Tenant could be quickly and easily removed from the premises. The Respondent further advised that Complainants that the Respondent had a friend or relative in the Prince George's County Sheriffs office, whom she would call to assist the Complainants in removing the squatter from the Property.
6. The Respondent intended that the Complainants rely on the Respondent's representations that the Tenant could be quickly and easily removed by selling their former home

and purchasing the Property.

7. Although on June 7, 2010 the Seller's agent forwarded the Tenant's lease to the Respondent, the Respondent neither sent a copy of the lease to the Complainants nor told them about its existence prior to their settlement on the Property.

8. Unbeknownst to the Complainants, the Tenant's lease entitled her to remain in the property through December 31, 2010. Had the Complainants known of this lease term, they would not have purchased the Property and sold their existing home, with the Respondent's assistance.

9. On September 3, 2010, Aurora Bank (the Seller) entered into a Residential Contract of Sale (the Contract) with the Complainants (the Buyers) for their purchase of the Property for \$235,000.00. The Contract provided, in paragraph 21, that the Seller would deliver possession of the Property to the Complainants vacant at settlement. Also, a form addendum to the Contract contained an optional provision to explain that purchased property was "subject to an existing lease," but unlike other provisions agreed to, that optional clause was neither checked nor signed by the parties to the transaction. Moreover, no copy of the lease was attached as an exhibit to the Contract.

10. At the September 24, 2010 closing, the Respondent continued to refer to the Tenant as a "squatter" and to assure the Complainants that she knew judges and someone in the sheriff's office who would get the Tenant out quickly and easily.

11. Because the settlement attorney, who did not represent the Complainants or the Respondent, became concerned about the Respondent's misleading statements during settlement, she handwrote into the settlement Affidavit that the Borrowers/Buyers were aware that a tenant was in the Property. The existence of a lease through December 31, 2010 was not, however,

revealed at settlement.

12. When the Complainants tried to get into the Property after settlement, the Tenant would not let them in. The police were called, and the Tenant gave her lease to the police, who advised the Complainants that they would have to get a court order before entering the Property.

13. The Complainants contacted the Respondent, who provided minimal assistance to them in their efforts to evict the Tenant.

14. For the first time, on September 26, 2010, the Respondent sent a copy of the Tenant's lease to the Complainants.

15. It took the Complainants over three months to obtain possession of the Property, during which time they were forced to reside in a hotel and to incur extensive legal fees and other expenses.

16. On or about May 16, 2011, the Complainants filed a Complaint with the Commission. This is the first and only complaint ever filed against the Respondent.

17. Between around November 28, 2011 and February 13, 2012, the Commission's Investigator, Jack L. Mull, Jr., investigated the Complaint, reviewing all related documents and interviewing the Complainants, the Respondent and all other parties with personal knowledge of the transaction in question.

18. Based on the results of Mr. Mull's investigation, the Commission filed the Charges in this case.

DISCUSSION

The Respondent's Violation of Statutes and Regulations

The Commission has charged the Respondent with violating the following statutes and regulations governing the conduct of real estate brokers:

**§ 17-322. Denials, reprimands, suspensions, revocation, 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 license if the applicant or licensee:

....

(3) directly or through another person willfully makes a misrepresentation or knowingly makes a false promise;

(4) intentionally or negligently fails to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee or applicant deals;

....

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

....

(32) violates any other provision of this title;

(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:

....

(iii) disclose to the client all material facts as required under § 17-322 of this title;

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

....

(vi) exercise reasonable care and diligence

COMAR 09.11.02.01

.01 Relations to the Public.

A. The licensee shall remain informed of matters affecting real estate in the community, the State, and the nation.

....

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

.02 Relations to the Client.

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.

For the reasons that follow, I find that the Respondent violated all of the statutes and regulations set forth above.

It is undisputed that the Complainants knew that a *tenant* was residing at the Property. The Respondent therefore would have me conclude that this knowledge made it unreasonable for the Complainants to believe that they would have ready access after settlement. After hearing the witnesses' testimony and reviewing the exhibits, I disagree.

Dictionary.com provides the following alternative definitions of a "tenant":

1. a person or group that rents and occupies land, a house, an office, or the like, from another for a period of time; lessee.
2. *Law.* a person who holds or possesses for a time lands, tenements, or personality of another, usually for rent.
3. an occupant or inhabitant of any place.

<http://dictionary.reference.com/browse/tenant>. Under either the second or third definition provided, a tenant does not necessarily have the right to remain for any extended period. In this case, I find that the Complainants were intentionally misled by the Respondent into believing that the Tenant could be easily and quickly removed from the Property.

I am unconvinced by the argument made by the Respondent's counsel that his client inadvertently used the term "squatter" to describe the Tenant. The Complainants convincingly testified that the Respondent repeatedly, if not exclusively, used that term to refer to the Tenant.

Based on the testimony of the only impartial witness, the settlement attorney, the Respondent even used that term to refer to the Tenant at settlement, after the Respondent was in possession of a copy of the Tenant's lease.

At the hearing, the Respondent defined the term "squatter" as a person without a lease. Her definition is quite similar to *Dictionary.com*'s definition of a "squatter" as a person who settles on land or occupies property without title, right, or payment of rent.

<http://dictionary.reference.com/browse/squatter>. It therefore is not surprising that the Respondent's repeated use of that terminology convinced the Complainants that the Tenant had no right to remain in the Property after settlement.

The Complainants' repeated questions to the Respondent regarding the Tenant's rights should have caused her to strongly encourage her clients to seek legal counsel. At the very least, she should have assured that the Contract contain express terms regarding the nature of the tenancy. Instead, she left the Contract blank on the issue of the Tenant and assured the Complainants that the Tenant could be easily removed, that efforts were underway to remove her (a blatant lie), and that the Respondent's friends in court and the sheriff's office would help them speed up the process, if necessary. Why then should I believe the Respondent's testimony that she referred them to counsel for assistance? To make matters worse, she provided them with a copy of House Bill 711/ Senate Bill 654, the application of which is entirely dependent on the nature of the tenancy involved and would require a lawyer to fully explain.

The Respondent's complete honesty during her transactions with the Complainants might very well have cost her commissions on the purchase of the Property and the sale of the Complainants' former home. Moreover, this is a regulatory action, not a claim against the MREC Fund. An adverse result in this case will affect the Respondent professionally and

economically. In contrast, the Complainants have nothing to gain but self-satisfaction in seeing a wrong remedied. For these and the following reasons, I found almost none of the Respondent's testimony to be credible.

The Respondent denied ever telling the Complainants that the Tenant could be easily removed. According to the Respondent, she told the Complainants about the lease once she knew about it and, anyway, they "probably overheard" a statement made by the Tenant or her agent that the Tenant would be in the Property until December. The Respondent further testified that the Complainants told her they had plans to reside with relatives after settlement. If any of these statements were true, then why would the Complainants have gone to take possession of the Property almost immediately after settlement, why would they have waited for the arrival of the police to assist them, and why did they live in a hotel for over three months while they worked to get the Tenant out of the Property? Although the Respondent's own evidence demonstrated extensive email communications between her and the Complainants on virtually every subject connected with the Complainant's purchase of the Property, the only reference to the Tenant's lease is contained in a September 26, 2010 email to the Complainants, two days after settlement. *See Respondent's Ex. # 3.*

The Respondent's acts and omissions in her dealings with the Complainants demonstrate carelessness, bad faith, negligent and intentional misrepresentations, and a lack of fidelity to her clients' interests. Consequently, the only issue left to be decided is the appropriate sanctions/penalties for her conduct.

Regulatory Sanctions/Penalties

Instead of or in addition to reprimanding, suspending or revoking a real estate licensee for his or her violation of the above statutes and regulations, section 17-322(c) of the Business

Occupations Article permits assessment of up to a \$5,000.00 monetary penalty, per violation, applying the following criteria:

- (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.

Based on the harm suffered by the Complainants, the seriousness of the Respondent's conduct, the Respondent's bad faith and the absence of previous violations, the Commission's representative recommended at the hearing that the Respondent be reprimanded and that she be assessed a \$5,000.00 penalty. I agree that a reprimand is warranted for a first violation, but I question whether a \$5,000.00 penalty is sufficient for all of her violations. I cannot help but wonder exactly how much she made in commissions on the two transactions with the Complainants, an amount which she might have lost had she been honest in her dealings with them. Hopefully, she does not realize a net profit from these transactions or, at the very least, she does not leave this case feeling that she came out ahead. To aid in avoiding this, I believe a \$10,000.00 penalty would be more appropriate.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondent violated sections 17-322(b)(3), (4), (25), (32) and (33); 17-532(c)(1)(iii), (iv) and (vi) of the Business Occupations Article, as well as Code of Maryland Regulations (COMAR) 09.11.02.01A, 09.11.02.01C and 09.11.02.02A. I further conclude, as a matter of law, that these statutory violations justify reprimanding the Respondent and assessing a monetary penalty of \$10,000.00.

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Real Estate Commission **ORDER** as follows:

1. The Commission's charges against the Respondent, Maria D. Johnson t/a Keller Williams Preferred Properties, under 17-322(b)(3), (4), (25), (32) and (33); 17-532(c)(1)(iii), (iv) and (vi) of the Business Occupations Article, as well as Code of Maryland Regulations (COMAR) 09.11.02.01A, 09.11.02.01C and 09.11.02.02A be **AFFIRMED**;
2. The Commission **REPRIMAND** the Respondent, Maria D. Johnson;
3. The Commission **ORDER** that the Respondent, Maria D. Johnson, pay a civil penalty in the amount of \$10,000.00; and
4. The Commission **ORDER** that its records and publications reflect its final decision.

January 4, 2013
Date decision issued

MBM
139093

SIGNATURE ON FILE

Marleen B. Miller
Administrative Law Judge