

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

v.

**LARRY N. THOMPSON
Respondent**

*
*
*
*
*
*
*

CASE NO. 2004-RE-048

OAH NO. DLR-REC-21-06-26225

* * * * *

OPINION AND FINAL ORDER

INTRODUCTION

This matter comes before the Commission for argument on exceptions filed by Larry N. Thompson to the Proposed Order of the Maryland Real Estate Commission (“Commission”) of July 18, 2007. On May 29, 2007, Administrative Law Judge Eleanor A. Wilkinson (“ALJ”) filed a Proposed Decision and Recommended Order in which she recommended that the Respondent, Larry N. Thompson, be found to have violated Sections 17-322(b)(25) and (33) of the Business Occupations and Professions Article, as well as COMAR 09.11.02.01C. For those violations, the ALJ recommended the imposition of a 120 day suspension of his license and a \$5,000 civil penalty.

On July 18, 200~~8~~⁷, the Commission issued a Proposed Order which adopted the ALJ’s Recommended Findings of Fact, Conclusions of Law , and Order. The Respondent filed exceptions to the Proposed Order on August 16, 2007.

On June 18, 2008, argument on the Respondent's exceptions was heard by a panel of the Commission consisting of Anne S. Cooke, Georgiana Tyler and Abraham Fernando Carpio. The Respondent was represented by H. Jeffrey Ziegler. The Presenter of Evidence was Jessica Kaufman. The argument was electronically recorded.

SUMMARY OF THE EVIDENCE

At this hearing, the Commission placed into evidence seven exhibits. The Respondent placed into evidence three exhibits. Both the transcript of the hearing before the ALJ, and the exhibits thereto, were before the Commission.

FINDINGS OF FACT

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

CONCLUSIONS OF LAW

The Commission amends the ALJ's Conclusions of Law as follows:

The Commission adopts the ALJ's Conclusion of Law that the REC has demonstrated by a preponderance of the evidence that the Respondent has violated Sections 17-322(b)(25) and (33) of the Business Occupations and Professions Article as well as COMAR 09.11.02.01C.

The Commission concludes that the Respondent is subject to sanctions for his conduct under Section 17-322(c) and amends the conclusions of law by reducing the sanctions from a 120 day suspension to a 90 day suspension of his license and from a \$5,000 civil penalty to a \$4,000 civil penalty.

DISCUSSION

On January 17, 2007 Mr. Thompson requested a postponement, in writing, of a hearing scheduled before an ALJ on March 1, 2007. In requesting the postponement, he stated that he and his wife would be in Florida from January 18 to April, 2007. He further stated that: "...My wife's and my declining health and my doctors make Florida a requirement for us...." The requested postponement was not granted.

Mr. Ziegler contended that the failure to grant a postponement was an abuse of discretion and denied Mr. Thompson a right to a fair hearing under the Administrative Procedures Act. Mr. Ziegler also complained that Mr. Thompson was not notified until the day before the hearing that his request for a postponement had been denied. He argued that courtesy should have required that Mr. Thompson be given greater notice of the denial of his request for a postponement.

The transcript of the March 1, 2007 hearing indicates as follows:

"JUDGE: The initial notice of the hearing was sent out on October 27th, 2006, for the hearing today, March 1st, at 10:00 a.m. at the OAH. On January 17th, I think it was, Mr. Thompson wrote a letter saying that he would be out of the State of Maryland from January 18th to April 15th and not available for the hearing, and said my wife said my declining health and my doctors make Florida a requirement for us. I can be available any time after April 15th. I will also have an attorney to accompany me.

I believe he was asked at some earlier point, I've got the register of actions, for some kind of medical documentation. The file - - on January 19th, there was a telephone call to his office, and somebody from his home in - wherever the person was who answered the phone, the clerk, Ms. Sykes, notified the person that Mr. Thompson needed to contact her about the case and the letter. And she received a telephone call from a Cherie Conrad, which she stated she was Mr. Thompson's daughter. I explained to her that I need a letter from the attorney who was representing her father and the doctor, from the doctor's office as well.

And there was a letter from a Mr. Armstrong, but Mr. Armstrong, who is an attorney, stated in the letter that he was not representing a client, and no medical documentation and no further correspondence from Mr. Thompson was ever received. He was notified that the postponement was denied by a telephone message, I believe yesterday...." (T. pp. 4-6.)

An entry by Sandra L. Sykes on the OAH Register of Actions for January 19, 2007 states:

"TCF Shari Conrad, which she stated that she was Mr. Thompson daughter, I explained to her that I need a letter from the atty who was representing her father and doc. from the doctor office as well."

Ms. Kaufman argued that the notice requirements of §§10-208 and 10-209, State Government ("SG") Article, Annotated Code of Maryland were met. She stated that

COMAR 28.02.25 provides that when a request for postponement is made, the OAH may require the party making the request to provide documentation of the reasons for the postponement request. Such a demand was made but Mr. Thompson failed to provide the required medical documentation. She also stated that Mr. Thompson had an obligation to provide the Commission with a change of address for the time he was not in Maryland. Ms. Kaufman stated that COMAR 28.02.20 provides that if a party fails to appear for a hearing, the OAH may proceed with the hearing.

The Commission agrees that the request for postponement was properly denied due to Mr. Thompson's failure to provide the required medical documentation. As the Court held in Bernstein v. Bd. Of Education, 245 Md. 464, 474, 226 A.2d 243 (1967) citing State Roads Comm'n. v. Wyvill, 244 Md. 163, 168, 223 A.2d 146 (1966): "The granting of a continuance is within the sound discretion of an administrative agency as it is in the comparable discretion of a trial court." Having failed to comply with the requirement to provide medical documentation, the Commission concludes that the denial of Mr. Thompson's request for postponement was justified. Neither Mr. Thompson nor his counsel cited any legal basis for their argument that the notification of denial was improper because it was given the day before the hearing and the Commission finds that argument to be without merit. Mr. Thompson had the responsibility to notify the

Commission of his address during late January, February, March and early April but apparently failed to do so. He also had the responsibility to discover whether his request for postponement had been granted within sufficient time to permit him to travel from Florida to Maryland in the event the request was denied.

Mr. Ziegler also argued on Mr. Thompson's behalf that the license suspension for 120 days and the civil penalty of \$5,000.00 was excessive in light of the facts of the case and Mr. Thompson's lack of a prior disciplinary history. Mr. Ziegler stated that Mr. Thompson has been engaged in the real estate business since 1963 without complaints. He contended that there was no prejudice to the other party in the transaction because the sale of the property occurred. He also argued that there was no bad faith because both parties to the transaction knew the deposit would be in the form of a promissory note until the completion of a feasibility study.

Ms. Kaufman argued that the penalty was appropriate. She pointed out that the Commission has the authority, pursuant to §17-322(c), Business Occupations and Professions Article, Annotated Code of Maryland, to impose a civil penalty of up to \$5,000 per violation and in the instant case, Mr. Thompson was found to have committed several violations. She argued that in Maryland Aviation Administration v. Noland, 386 Md. 556 (2005) the Court held that a sanction is proper if it does not exceed the authority of the agency, is not unlawful and is based upon competent, material and substantial

evidence. According to Ms. Kaufman, the sanctions in this case were proper because they meet the criteria that the sanction does not exceed that permitted by statute; are not unlawful; and the administrative law judge had the opportunity to observe the witnesses and evaluate their testimony. The Commission notes that the Court in Noland was reiterating the standard for judicial reversal of an administrative agency's sanctions as cited in MTV v. King, 369 Md. 274, 291, 799 A.2d 1246 (2002). The Noland Court did not establish that same standard for an administrative agency's review of its own proposed sanctions. When a State agency delegates the hearing responsibility to an administrative law judge from the Office of Administrative Hearings, any responsibilities not expressly given the administrative law judge remain with the agency, and unless statutorily proscribed, the agency reserves the right to review any aspect of the administrative law judge's decision. Bragunier v. Md. Comm. Of Labor, 111 Md.App. 698, 707 (1996). Thus, the Commission has the authority to review and amend the sanctions recommended by the ALJ in this case.

Under the licensing law, the fine is set by consideration of four factors: the seriousness of the violation; the harm caused by the violation; the good faith of the licensee; and any history of previous violations. Section 17-322(c)(2), Business Occupations and Professions Article, Annotated Code of Maryland. In considering these factors, the Commission concurs with the ALJ's determination that the violations were

serious and had the potential to cause significant harm and that the Respondent's conduct was indicative of an absence of good faith. (Rec. Order p. 8) However, the Commission notes the lack of actual harm to the Sellers and the lack of a history of previous violations by the Respondent over a lengthy period of time and concludes that the penalty recommended by the ALJ should be amended to a 90 day suspension and a civil penalty of \$4,000.00.

ORDER

Argument on the Exceptions filed by the Respondent, Larry N. Thompson, having been heard on June 18, 2008, it is this 1st day of July 2008, by the Maryland Real Estate Commission, **ORDERED**,

- A. That the Proposed Order is **ADOPTED** with the exception of the reduction in the suspension of Respondent, Larry N. Thompson's, real estate licenses from one hundred twenty (120) days to ninety (90) days and the reduction of the civil penalty amount from \$5,000 to \$4,000;
- B. That all real estate licenses held by the Respondent, Larry N. Thompson, shall be **SUSPENDED** for a period of ninety (90) days;
- C. That the Respondent, Larry N. Thompson be assessed a civil penalty in the amount of \$4,000 which shall be paid to the Commission within 30 days of the date of this Order;
- D. That all real estate licenses held by the Respondent, Larry N. Thompson be **SUSPENDED** until he pays in full the \$4,000 monetary penalty and that this

suspension be in addition to and not in lieu of the ninety (90) days disciplinary suspension; and

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

Maryland Real Estate Commission

By: *Anne S. Cook*

Commissioner *by Kenneth J. Connelly*
Executive Director

Note – A judicial review of this Final Order may be sought in the Circuit Court of Maryland in the county in which the Respondent resides or has his 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.

MARYLAND REAL ESTATE
COMMISSION

v.

LARRY N. THOMPSON

* BEFORE ELEANOR A. WILKINSON,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE NO.: DLR-REC-21-06-26225
* REC COMPLAINT NO: 04-RE-048

* * * * *

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 August 7, 2003, Lorraine and Orlando Boccabella (the Claimants) filed a Complaint and Guaranty Fund (GF) Claim¹ with the Maryland Real Estate Commission (the REC), an administrative unit of the Department of Labor, Licensing and Regulation (DLLR). The complaint was against Larry N. Thompson (the Respondent), a real estate salesperson. On April 26, 2006, the REC issued a Statement of Charges and Order for Hearing against the Respondent. On January 30, 2007, the REC issued an Amended Statement of Charges and Order for Hearing.

The case was initially scheduled for hearing on December 11, 2006, but was postponed at the request of Assistant Attorney General Susan Cherry, due to the unavailability of a witness. By notice of October 26, 2006, the hearing was rescheduled for March 1, 2007. On January 17, 2007, the Respondent requested a postponement, stating that he and his wife would be in Florida from

January 18, 2007 through April 15, 2007 for medical reasons. The Clerks' Office of the Office of Administrative Hearings (OAH) informed the Respondent's daughter that the OAH would require supporting documentation from the Respondent's doctor to grant a postponement. The postponement request was denied when no documentation was produced.

On March 1, 2007, I conducted a hearing at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland 21031. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2004). Assistant Attorney General Peter Martin represented the REC. Neither the Respondent, nor anyone authorized to represent him, appeared.

The Administrative Procedure Act, the procedures for DLLR Hearings Delegated to the OAH, 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. 2006); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

ISSUES

1. 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?²
2. Did the Respondent violate any regulation adopted under Title 17 of the Business Occupations and Professions Article or any provision of the code of ethics, thus violating Section 17-322(b)(33)?
3. Did the Respondent fail to protect the public against fraud, misrepresentation or unethical practices, in violation of COMAR 09.11.02.01C?

¹ The GF Claim was dropped prior to the transmission of the case to the Office of Administrative Hearings.

² The current version of Section 17-322 is found in the 2006 Supplement to the Business Occupations and Professions Article.

4. 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

I admitted the following documents on behalf of the REC:

- REC Ex. #1 - August 1, 2006 Notice of Hearing and April 26, 2006 Charges
- REC Ex. #2 - October 27, 2006 Notice of Hearing
- REC Ex. #3 - January 30, 2007 Amended Charges
- REC Ex. #4 - January 22, 2007 letter from Lester W. Davis, III to Whom It May Concern, with Respondent's licensing history
- REC Ex. #5 - October 21, 2002 Contract of Sale between the Complainants and Oakhill Construction, L.L.C. (Oak Hill) for an unimproved lot at 1700 Spencerville Road
- REC Ex. #6 - Report of Investigation by Steven Long, closed October 31, 2004
- REC Ex. #7 - August 7, 2003 Complaint and Guaranty Fund Claim
- REC Ex. #8 - November 22, 2002 facsimile from Ronald G. Nahus to the Respondent
- REC Ex. #9 - December 2, 2002 handwritten note by Ronald G. Nahus
- REC Ex. #10 - December 3, 2002 facsimile from Ronald G. Nahus to the Respondent
- REC Ex. #11 - December 16, 2002 facsimile from Ronald G. Nahus to William Armstrong, III, with attached correspondence

The Respondent submitted no documents.

Testimony

The Commission presented the testimony of the following witnesses:

- Claimant Lorraine Boccabella
- Ronald G. Nahus, listing agent for the Claimants
- John Steven Long, Assistant Executive Director of the REC

The Respondent was not present and no testimony was offered on his behalf.

FINDINGS OF FACT

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

1. Presently and at all times relevant to this proceeding, the Respondent is and has been a salesperson licensed by the Commission under License Number 05-31997. He is

affiliated with Thompson Company Realtors, L.L.C. The broker for Thompson Company Realtors, L.L.C. is Cherie Conrad, the Respondent's daughter.

2. On October 7, 2002, Oak Hill offered to purchase the vacant property located at 1700 Spencerville Road in Montgomery County from the Claimants for \$125,000.00. The Respondent represented Oak Hill as the Buyer's agent in this transaction and authored the contract of sale. Oak Hill is owned by Terry Edward Conrad, the Respondent's son-in-law.

3. The Claimants made some changes to the contract terms, accepted the offer, and signed the contract on October 21, 2002. The Claimants were represented in this transaction by Ronald G. Nahas (Sellers' agent), a licensed real estate broker, who returned the signed contract to Oak Hill with the changes.

4. Oak Hill accepted and initialed the changes, returning the contract to the Sellers' agent on October 22, 2002.

5. The contract specified that a deposit in the form of a \$1,000.00 note would be held in the Buyer's Broker's Escrow Account (Escrow Account). The Contract also had a contingency clause, allowing Oak Hill twenty-five days from the contract ratification date to complete a feasibility study to determine if the property was suitable for Oak Hill's purposes. At the end of this period, the deposit was to be increased to \$4,000.00 in cash or check, to be deposited in the Escrow Account. Settlement was to be within thirty days after expiration of the twenty-five day feasibility study period or sooner, at the option of Oak Hill.

6. On November 25, 2002, the Sellers' agent notified the Respondent by facsimile that the feasibility study period had expired on November 16, 2002, and, in the absence of any written notice declaring the contract null and void, that the contingency had expired. The

facsimile requested confirmation that the deposit had been increased to \$4,000.00 and asked for the date, time, and place of settlement.

7. When the Sellers' agent received no response from the Respondent, he telephoned the Respondent on December 2, 2002. The Respondent promised to get back to the Sellers' agent, but he never did.

8. On December 3, 2002, the Sellers' agent sent a follow-up facsimile to the Respondent reiterating his previous request. The Respondent again failed to respond.

9. On December 9, 2002, William John Armstrong, III, Esquire, wrote to the Claimants on behalf of Oak Hill, explaining that the process of creating a usable building lot was taking longer and costing more than anticipated and proposing that the additional \$3,000.00 be deposited into the escrow account in exchange for a six month extension for the feasibility study.

10. On December 14, 2002, the Claimants responded that they were not interested in modifying the contract, that the additional \$3,000.00 deposit was overdue and should be paid immediately, and that they expected to go to settlement no later than December 24, 2002.

11. Settlement finally took place on July 18, 2003, as a result of an agreement reached to resolve the Claimants' civil suit against Oak Hill for specific performance.

12. At settlement, the Sellers' agent noted that the settlement documents showed no credit to Oak Hill for any deposits held in escrow. He inquired about this and was told that the Respondent had never collected the deposits and had torn up the note.

13. When the Claimants became aware of the Respondent's failure to obtain and escrow the required deposits, they filed their August 7, 2003 Complaint with the REC, seeking disciplinary action against the Respondent and \$2,500.00 in damages for lost interest on their investment due to the delayed settlement.

14. Mr. Long investigated the Complaint for the REC and interviewed the Respondent on October 27, 2004. The Respondent stated that Oak Hill had refused to give him the deposit. He added that he has failed to collect the required deposits on numerous contracts and does this when he knows or trusts the buyer. When asked about his failure to respond to the correspondence from the Sellers' agent, the Respondent stated that he did not have to respond because he knew that the deal would never be completed and go to settlement.

DISCUSSION

The Commission has charged the Respondent with violating Sections 17-322(b)(25) and (33) and (c) of the Business Occupations and Professions Article as well as COMAR 09.11.02.01C. The relevant portions of the law and regulation 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:

...

(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;

...

(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;

(iv) any history of previous violations by the licensee.

COMAR 09.11.02.01C provides in pertinent part:

COMAR 09.11.02.01 Relations to the Public.

...
C. The licensee shall protect the public against fraud, misrepresentation or unethical practices in the real estate field. He shall endeavor to eliminate in his 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 practice of brokers and salesmen in this state.

At the heart of these charges is the Respondent's failure to collect and escrow the deposits required under the terms of the contract and his failure to respond to the repeated communications from the Sellers' agent. The REC is seeking a suspension of the Respondent's license for 120 days and a civil penalty of \$5,000.00 for these violations.

The un rebutted testimony of the Claimant, the Sellers' agent, and the REC Investigator clearly established that the Respondent not only failed to collect and escrow required deposits in this transaction, but candidly admitted to the Investigator that this was his regular practice when he knew and trusted the buyer he was representing. In this instance, the buyer was his son-in-law and the Respondent did not believe the property was ever going to settlement. He also asserted that based on his belief that the sale would never be finalized, he had no duty to respond to any communications from the Seller's agent. Neither Oak Hill nor the Respondent was scheduled to appear at settlement. In the event the sale of the property failed to occur for any reason, those deposits would have been due to the Claimants. In fact, the Claimants had to file a civil suit to bring the sale to fruition.

The Respondent's conduct in this transaction was clearly dishonest, fraudulent, and improper, demonstrating bad faith and untrustworthiness in violation of Section 17-322(b)(25) of

the Business Occupations and Professions Article. That conduct also sustains the charge of violating Section 17-322(b)(33) of the Business Occupations and Professions Article. The Respondent concealed material information from the Claimants and their agent. He further admitted to the REC Investigator that this manner of conducting business was a regular practice for him. His cavalier disregard for the Claimants' interests would have resulted in a \$4,000.00 loss for them had they not filed suit.

The Respondent's failure to escrow deposits and failure to respond to communications from the Sellers' agent shows a blatant disregard for the interests of the public and the code of ethics by which he is bound, particularly in light of the entangled family relationships in this transaction. The facts of this case reflect poorly on the integrity of the real estate profession. Therefore, I find that the Respondent's actions constitute a violation of COMAR 09.11.02.01C.

The Respondent's violations were serious and had the potential to cause significant harm. Although the Respondent has no history of violations, his dishonest and fraudulent conduct is indicative of a total absence of good faith in his dealings with the public. The penalty requested by the REC is reasonable and appropriate under these circumstances. Accordingly, I recommend a 120 day suspension of his license and a \$5,000 civil penalty.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude that the REC has demonstrated by a preponderance of the evidence that the Respondent has violated Sections 17-322(b)(25) and (33) of the Business Occupations and Professions Article, as well as COMAR 09.11.02.01C. I further conclude that the Respondent is subject to sanctions for his conduct, under Section 17-322(c), and that a 120 day suspension of his license and a \$5,000 civil penalty are appropriate sanctions.

RECOMMENDED ORDER

I THEREFORE RECOMMEND that the REC:

ORDER that the Respondent's license be suspended for 120 days and that the Respondent pay a civil penalty of \$5,000; and

ORDER that the records and publications of the REC reflect its final decision.

May 29, 2007
Date Decision Mailed

EAW # 88623


Eleanor A. Wilkinson
Eleanor A. Wilkinson
Administrative Law Judge

MARYLAND REAL ESTATE
COMMISSION

v.

LARRY N. THOMPSON

* BEFORE ELEANOR A. WILKINSON,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE NO.: DLR-REC-21-06-26225
* REC COMPLAINT NO: 04-RE-048

* * * * *
* * * * *

EXHIBIT LIST

I admitted the following documents on behalf of the REC:

- REC Ex. #1 - August 1, 2006 Notice of Hearing and April 26, 2006 Charges
- REC Ex. #2 - October 27, 2006 Notice of Hearing
- REC Ex. #3 - January 30, 2007 Amended Charges
- REC Ex. #4 - January 22, 2007 letter from Lester W. Davis, III to Whom It May Concern, with Respondent's licensing history
- REC Ex. #5 - October 21, 2002 Contract of Sale between the Complainants and Oakhill Construction, L.L.C. for unimproved lot at 1700 Spencerville Road
- REC Ex. #6 - Report of Investigation by Steven Long, closed October 31, 2004
- REC Ex. #7 - August 7, 2003 Complaint and Guaranty Fund Claim
- REC Ex. #8 - November 22, 2002 facsimile from Ronald G. Nahus to the Respondent
- REC Ex. #9 - December 2, 2002 handwritten note by Ronald G. Nahus
- REC Ex. #10 - December 3, 2002 facsimile from Ronald G. Nahus to the Respondent
- REC Ex. #11 - December 16, 2002 facsimile from Ronald G. Nahus to William Armstrong, III, with attached correspondence

The Respondent submitted no documents.