

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION \*

v. \*

THEODORE RIDDICK  
Respondent

\* CASE NO. 2008-RE-531

\* OAH NO. DLR-REC-21-10-17459

\*

\* \* \* \* \*

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated January 7, 2011, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 8th day of March, 2011

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, AFFIRMED;

C. That the Recommended Order be, and hereby is, AMENDED as follows:

ORDERED that the Respondent Theodore Riddick violated Md. Bus. Occ. and Prof. Art. §17-322(b)(32) and (33), §17-532(c)(1)(iv) and (vi), and COMAR 09.11.02.02A;

ORDERED that the Respondent Theodore Riddick be REPRIMANDED;

ORDERED that the Respondent Theodore Riddick be assessed a civil penalty in the amount of \$1,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that the Respondent Theodore Riddick shall be ineligible to hold a real estate license until the civil penalty is paid in full;

ORDERED that the records and publications of the Maryland Real Estate Commission reflect this decision.

D. Pursuant to §10-220 of the State Government Article, the Commission finds that the Recommended Decision of the Administrative Law Judge had to be modified because the judge omitted the provision that the civil penalty be paid within a specified time period and that the Respondent is ineligible to hold a real estate license until he pays the civil penalty in full. The Commission also added to the Proposed Order the sections of Title 17 that provide for disciplinary action against licensees who violate other provisions of this Title (§17-322(b)(32)), and COMAR (§17-322(b)(33)).

E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.08 those parties adversely affected by this Proposed Order shall have 20 days from the postmark date of the Order to file exceptions and to request to present arguments on the proposed decision before this Commission. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor,

500 North Calvert Street, Baltimore, MD 21202.

# SIGNATURE ON FILE

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Maryland Real Estate Commission

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MARYLAND REAL ESTATE

\* BEFORE UNA M. PEREZ,

COMMISSION

\* AN ADMINISTRATIVE LAW JUDGE

v.

\* OF THE MARYLAND OFFICE OF

THEODORE RIDDICK,

\* ADMINISTRATIVE HEARINGS

RESPONDENT

\* OAH CASE No.: DLR-REC-21-10-17459

\* MREC FILE No: 08-RE-531

\* \* \* \* \*

**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 or about February 29, 2008, Norris Laws (Complainant) filed a complaint with the Maryland Real Estate Commission (REC or Commission), an administrative unit of the Department of Labor, Licensing and Regulation (DLLR), against Theodore Riddick (Respondent), a licensed real estate agent then associated with Dansler & Associates real estate brokerage. On May 3, 2010, the REC issued a Statement of Charges and Order for Hearing against the Respondent.

On October 18, 2010, I conducted a hearing at the Prince George's County Office Building, 1400 McCormick Drive, Room 306, in Largo, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2010) (Business Occupations Article). Jessica B. Kaufman, Assistant

Attorney General, represented the REC. Neither the Respondent nor anyone authorized to represent him appeared.<sup>1</sup>

The Administrative Procedure Act, the procedures for Administrative Hearings of the Office of the Secretary of the DLLR, the procedures for Hearings of the Commission, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§10-201 through 10-226 (2009 & Supp. 2010); Code of Maryland Regulations (COMAR) 09.01.02, 09.01.03, 09.11.03, and 28.02.01.

### **ISSUES**

- 1) Did the Respondent violate sections 17-532(c)(1)(iv) and (vi) of the Business Occupations Article and/or COMAR 09.11.02.02A?
- 2) If so, what sanctions are appropriate?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits on behalf of the REC:

- REC Ex. #1 Notice of Hearing, August 13, 2010; Notice of Hearing, July 6, 2010 (two copies), with May 3, 2010 Statement of Charges and Order for Hearing; first-class mail returned "Unclaimed," July 29, 2010
- REC Ex. #1A Certified mail "Green Card," showing receipt of the August 13, 2010 Notice of Hearing by the Respondent on August 24, 2010 [in OAH file]
- REC Ex. #2 Transmittal and copy of Statement of Charges and Order for Hearing
- REC Ex. #3 Licensing Information, printed October 6, 2010
- REC Ex. #4 Real Property Data Search, 4865 Young Road, Waldorf, Maryland, July 30, 2010
- REC Ex. #5 Real Estate Commission Report of Investigation, September 2, 2009, with Exhibits 1-5

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<sup>1</sup> See Part I of Discussion, below.

REC Ex. #6 Real Estate Commission Report of Investigation, Supplemental Investigation Report, October 2, 2009

REC Ex. #7 Real Estate Commission Report of Investigation, Second Supplemental Investigation Report, December 1, 2009

The Respondent did not submit any exhibits as he was not present at the hearing.

### **Testimony**

The Complainant; Gregory Redmon, Broker, Dansler & Associates; and Brenda Iman, REC Investigator, testified on behalf of the REC. No testimony was offered on behalf of the Respondent.

### **FINDINGS OF FACT**

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

1. At all relevant times, the Respondent was a licensed real estate agent in Maryland under license number 3799294, registration number 05-590769. REC Ex. #3.<sup>2</sup>
2. At all relevant times, the Respondent was associated with Dansler & Associates (Dansler), a licensed real estate brokerage. The principal of Dansler is Gregory Redmon (Redmon). The Respondent was the only agent associated with Dansler.
3. In July 2007, the Complainant owned, and desired to sell, a residential property on Vine Street in Capitol Heights, Maryland (the Property).
4. On or about July 6, 2007, the Complainant entered into a contract for the sale of the Property (Contract). The buyer was Montero Valentine (Buyer). The purchase price was \$265,000.00.
5. The Respondent represented the Buyer in the transaction.

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<sup>2</sup> The Respondent's license expired on or about September 8, 2010. REC Ex. #3.

6. The Contract provided that the Buyer had paid a deposit of \$2,650.00 by check to Capital Title.
7. The Contract also provided that settlement would take place on August 6, 2007.
8. Dansler had a written policy requiring agents to turn in contracts to the broker within five business days of ratification. REC Ex. #6. The policy also stated that Dansler would not take any deposits; deposits were to be placed with the “cooperating broker” or a title company. *Id.*
9. Redmon made the Respondent aware of Dansler’s policy regarding contracts and deposits.
10. On July 6, 2007, the Buyer wrote a check for \$2,650.00 payable to “Capitol Title” and gave it to the Respondent.
11. The Respondent did not turn in the Contract to the broker.
12. Two days before the scheduled settlement, the Complainant’s agent learned that the Buyer’s deposit check had been returned for insufficient funds (NSF). Efforts by the Complainant’s agent to reach the Respondent were unsuccessful.
13. Settlement did not take place on August 6, 2007.<sup>3</sup>
14. When first contacted by the Commission regarding the complaint, the Respondent stated that he took the deposit check to the title company personally and that it was not brought to his attention until much later that the earnest money deposit was returned. REC Ex. #5, attached Exhibit 2.
15. When contacted again by the Commission, the Respondent gave the date of the Contract as February 6, 2007. He stated that the title company had advised him on

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<sup>3</sup> The Complainant sold the Property to another buyer, some six months later.

February 23, 2007 that the check had been returned NSF. REC Ex. #5, attached Exhibit 4.

16. When the Commission asked for further clarification of the dates, the Respondent did not provide any more information. REC Ex. #5 and attached Exhibit 5.

17. The Respondent has no history of statutory or regulatory violations.

18. On August 13, 2010, the OAH sent a Notice of Hearing (Notice) to the Respondent at the following address: 4865 Young Road, Waldorf, MD 20601. This is the Respondent's address of record with the Commission.

19. The Notice was sent to the Respondent by certified mail and regular mail. The Respondent personally signed the certified mail "Green Card," showing receipt of the Notice on August 24, 2010.<sup>4</sup> REC Ex. #1A.

20. The Respondent did not contact the OAH to request a postponement of the October 18, 2010 hearing.

21. The Respondent failed to appear after proper notice.

## DISCUSSION

### I. The Respondent's Failure to Appear

Section 17-324 of the Business Occupations Article provides that before the Commission can take any final action against an individual, the individual must be personally served with a hearing notice; or, the hearing notice must be sent by certified mail at least ten days prior to the hearing to the individual's last known business address. Md. Code Ann., Bus. Occ. & Prof. § 17-324(d) (2010). If the individual, after receiving proper notice of the hearing, fails or refuses to appear, the Commission may hear and determine the matter despite the individual's absence. Md. Code Ann., Bus. Occ. & Prof. § 17-324(f) (2010).

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<sup>4</sup> The Respondent both signed and printed his name; the printed name "T. Riddick" is clearly legible.



The record demonstrates that the OAH sent a Notice of Hearing to the Respondent by certified and first class mail, to his address of record with the Commission, at least ten days prior to the hearing. REC Ex. #1. State property records reflect that the address is the Respondent's principal residence. REC Ex. #4. The Respondent signed the receipt for the certified mail ("Green Card") on August 24, 2010. REC Ex. #1A. As the Respondent received proper notice of the hearing and failed to appear, the Commission was entitled to proceed in the Respondent's absence. Md. Code Ann., Bus. Occ. & Prof. § 17-324(d), (f) (2010).

## II. Alleged Violations

The REC alleged first that the Respondent agent did not timely advise the Complainant that the earnest money deposit check had been returned NSF, even though the Respondent had been so advised by the title company. REC Ex. #2, Statement of Charges at 2. The REC further alleged that the Respondent did not provide evidence that the deposit check had been timely transmitted to the title company, and that he did not turn in the Contract to the broker of record. *Id.* Finally, the REC alleged that the Respondent failed to provide further information about the time line of the transaction when requested to do so by the Commission. *Id.* at 2-3. The Commission alleged that these omissions constituted violations of section 17-532(c)(1) of the Business Occupations Article and COMAR 09.11.02.02. *Id.* at 3-4.

### A. Applicable Law

The Commission's power to regulate licensees, as pertinent to this case, is as follows:

(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:

...

(32) violates any other provision of this title; [or]

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

Md. Code Ann., Bus. Occ. & Prof. § 17-322(b) (2010).

With regard to an agent's duties to a client, section 17-532 of the Business Occupations Article provides, in pertinent part:

(c)(1) A licensee shall:

...

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

(vi) exercise reasonable care and diligence.

Md. Code Ann., Bus. Occ. & Prof. § 17-532(c) (2010).

COMAR 09.11.02.02, which is part of the real estate licensee's Code of Ethics, provides in pertinent part:

.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 following reasons, I find that the REC established by a preponderance of the evidence that the Respondent violated both section 17-532(c) and COMAR 09.11.02.02A, and is therefore subject to regulatory sanctions and penalties.

B. Violation of Section 17-532(c)

There is no dispute that the Buyer drew a check for \$2,650.00 payable to Capitol<sup>5</sup> Title as an initial deposit, and that the Contract required that this deposit was to be held in escrow by the title company. *See* REC Ex. #5, attached Exhibit 1, paragraph 5, and copy of check. There is also no dispute that the Buyer's deposit check was returned NSF, that the Complainant's agent did not learn of this fact until two days before the scheduled settlement, and that the settlement

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<sup>5</sup> In the Contract, the spelling is "Capital."

was canceled. There is also no dispute that the Respondent did not turn in the Contract to his broker, as required by Dansler policy.<sup>6</sup>

What is not clear is when the Respondent forwarded the Buyer's check to the title company, and when the Respondent learned that the check had been returned NSF. The Respondent did not appear at the hearing, but he provided an e-mail response to the Commission, initially on April 11, 2008. REC Ex. #5, attached Exhibit 2. In that e-mail, the Respondent claimed that "It was not brought to my attention until much later that the earnest money deposit was returned. I took the check to the title company personally." *Id.*

Investigator Brenda Iman was unable to reach Capital Title to determine when the title company received the deposit check and when the Respondent was advised that the check had been returned. REC Ex. #5, paragraph 6. On or about June 10, 2009, Ms. Iman spoke by telephone with the Respondent. REC Ex. #5, paragraph 7. Ms. Iman asked him to provide the dates he gave the Contract to his broker and when he first learned the deposit check had bounced. *Id.*

The Respondent sent Ms. Iman an e-mail on June 17, 2009. REC Ex. #5, attached Exhibit 4. In it, he said that "the date for the contract was 2/6/07. The date I was contacted by the settlement company was on or about February 23, 2007." In light of the fact that the Contract was dated July 6, 2007, Ms. Iman asked the Respondent, via e-mail of August 12, 2009, to provide the exact time line of the transaction. REC Ex. #5, attached Exhibit 5. Ms. Iman testified credibly that the Respondent never replied to this e-mail or otherwise provided the Commission with the requested information.

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<sup>6</sup> In October 2009, REC Investigator Brenda Iman contacted Redmon, who told her that he was unaware of the Contract until he learned of the Complainant's complaint against the Respondent. REC Ex. #6. Mr. Redmon testified consistently at the hearing.

The record does not permit a finding of fact as to exactly when the Respondent forwarded the check or when he learned that it had bounced. Clearly, the dates in February 2007 cannot be correct, since the Contract was not even entered into until July 2007. I do not find that the exact dates of these events are material to my decision. It is undisputed that the check bounced, and that the Complainant's agent, and the Complainant, did not learn of this fact until two days before settlement. If the delay in notification was the fault of the title company, it stands to reason that the Respondent would have told Ms. Iman this. Instead, he completely evaded her very specific request for information on these points.

The Respondent did not appear at the hearing to explain his actions or inactions. By not advising the Complainant of the failure of the deposit until two days before settlement, the Respondent did not "treat all parties to the transaction honestly and fairly," nor did he "exercise reasonable care and diligence." His failure to turn in the Contract to his broker was also a failure to exercise reasonable care and diligence. Finally, in his responses (or lack thereof) to the Commission's investigator, he did not "answer all questions truthfully." I find that the REC has met its burden to prove that the Respondent violated section 17-532(c)(1)(iv) and (vi).

C. Violation of Code of Ethics

I also find that, based upon the same conduct by the Respondent, the Commission has proven a violation of COMAR 09.11.02.02. It is true that the Respondent represented the Buyer, not the Complainant seller, and therefore his primary duty was to the Buyer. Nonetheless, the regulation makes clear that the primacy of this duty "does not relieve the licensee from the statutory obligations towards the other parties to the transaction." The pertinent statutory obligations are those imposed by section 17-532(c), as discussed above. By breaching those duties to the seller, the Respondent also violated COMAR 09.11.02.02.

### III. Sanctions

With regard to penalties, section 17-322(c) of the Business Occupations Article provides in pertinent part 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.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2010).

Notwithstanding the fact that the Respondent's license has expired, the REC argued that an appropriate sanction in this case is a reprimand and the imposition of a \$500.00 penalty for the violation of section 17-532(c) and a penalty of \$500.00 for the violation of COMAR 09.11.02.02. It stipulated that the Respondent has no prior violations on his record, but argued that his violations in this case were serious and harmful, and that his failure to appear at the hearing showed a lack of good faith.

I agree with the Commission that the violations in this case were serious. The requirements to treat all parties to a transaction honestly and fairly, to answer all questions truthfully, and to exercise reasonable care and diligence are not a matter of judgment; they are imposed by statute and regulation. They go to the essence of what the public should be able to expect from real estate licensees.

With regard to harm, the Respondent's violations of section 17-532(c) and COMAR 09.11.02.02 deprived the Complainant of an opportunity to seek recourse against the deposit; there were no funds to be claimed.

I agree with the REC that the Respondent's failure to appear at the hearing shows a lack of good faith, especially in light of his self-serving and disingenuous representations to the Commission, and his failure to respond to Ms. Iman's very specific e-mail of August 12, 2009.

In light of the statutory factors, and despite Respondent's lack of previous violations, I find that a reprimand and a \$1,000.00 penalty (\$500.00 for the violation of section 17-532(c) and \$500.00 for the violation of COMAR 09.11.02.02) are appropriate in this case.

#### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated section 17-532(c) of the Business Occupations Article and COMAR 09.11.02.02, and is subject to sanctions under section 17-322(b)(32) and (33) and (c) of the Business Occupations Article.

I further conclude as a matter of law that an appropriate sanction in this case is a reprimand and the imposition of a penalty of \$500.00 for the violation of section 17-532(c) and \$500.00 for the violation of COMAR 09.11.02.02 (total: \$1,000.00). Md. Code Ann., Bus. Occ. & Prof. § 17-322 (2010).

**RECOMMENDED ORDER**

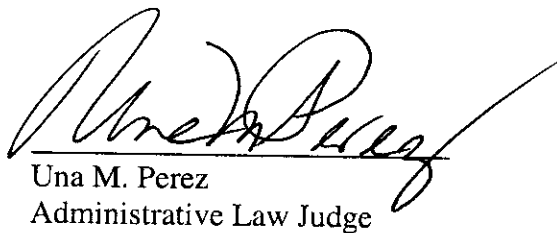
I therefore **RECOMMEND** that the Maryland Real Estate Commission:

**ORDER** that the Respondent, Theodore Riddick, be reprimanded and required to pay a \$1,000.00 civil penalty for violating section 17-532(c) of the Business Occupations Article and COMAR 09.11.02.02; and

**ORDER** that the records and publications of the Maryland Real Estate Commission reflect its final decision.

January 7, 2011  
Date Decision Mailed

#119132  
UMP/kkc

  
Una M. Perez  
Administrative Law Judge

**MARYLAND REAL ESTATE  
COMMISSION**

**v.**

**THEODORE RIDDICK,  
RESPONDENT**

**\* BEFORE UNA M. PEREZ,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH CASE No.: DLR-REC-21-10-17459  
\* MREC FILE No: 08-RE-531**

\* \* \* \* \*

**FILE EXHIBIT LIST**

I admitted the following exhibits on behalf of the REC:

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The Respondent did not submit any exhibits as he was not present at the hearing.