

# FINAL ORDER

JAN 08 2013

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL  
ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION \*

v. \*

EDUARDO H. GONZALEZ  
Respondent

\* CASE NO. 2009-RE-569

\* OAH NO. DLR-REC-21-11-40556

\*

\* \* \* \* \*

## PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated September 24, 2012, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 13th day of November, 2012

ORDERED,

A. That the Findings of Fact in the recommended decision be, and hereby are, AMENDED to reflect in Finding of Fact 3 that Vanessa Gonzalez is the Respondent's niece, and are otherwise 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 Eduardo H. Gonzalez violated Md. Bus. Occ. and Prof. Art. §§17-301(a); 17-322(b)(2), (3), (25), and (32); and 17-601(b);

ORDERED that the Respondent Eduardo H. Gonzalez be assessed a civil penalty in the amount of \$20,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order.

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. The judge also made an inadvertent error in Finding of Fact 3 when she described Vanessa Gonzalez as the Complainant's niece. It is clear from the rest of the Findings of Fact, as well as her last name, that Ms. Gonzalez should have been identified as the Respondent's niece.

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**

Maryland Real Estate Commission

MARYLAND REAL ESTATE  
COMMISSION

v.

EDUARDO H. GONZALEZ,  
RESPONDENT

\* BEFORE JENNIFER CARTER JONES  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF REAL  
ESTATE COMMISSION  
\* ADMINISTRATIVE HEARINGS  
\* OAH CASE No.: DLR-REC-21-11-40556  
\* MREC FILE No: 2009 RE 569

\* \* \* \* \*

**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 June 16, 2009, Sara Campos (now Lacayo) (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 Eduardo H. Gonzalez (Respondent). On July 28 2011, the REC issued a Statement of Charges and Order for Hearing against the Respondent. On or about April 5, 2011, the REC issued an Amended Statement of Charges and Order for Hearing.

On June 27, 2012, I conducted a hearing at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2010) (Business Occupations Article). Peter Martin, Assistant Attorney General, represented the REC. The Respondent failed to appear for the hearing.

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. 2012); Code of Maryland Regulations (COMAR) 09.01.02, 09.01.03, 09.11.03, and 28.02.01.

### **ISSUES**

- 1) Is the Respondent subject to sanction pursuant to sections 17-301(a)(2); 17-322(b)(2),(3), (25) and/or (32); 17-322(c); 17-601(b) and 17-613(c)(1) of the Business Occupations Article?
- 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 OAH Notice of Hearing, addressed to the Respondent at 6040 Chatsworth Lane, Bethesda, MD 20814, dated January 19, 2012 and REC Statement of Charges and Order for Hearing, dated July 28, 2011, sent by certified mail with attached envelope marked by the United States Postal Service (USPS) "Return to sender; and Not deliverable as addressed. Unable to forward;" and OAH Notice of Hearing, addressed to the Respondent at 6040 Chatsworth Lane, Bethesda, MD 20814, dated January 19, 2012 and REC Statement of Charges and Order for Hearing, dated July 28, 2011, sent by first class mail with attached envelope marked by the USPS "Return to sender; and Not deliverable as addressed. Unable to forward."
- REC Ex. #2 Corrected copies of the OAH Notice of Hearing, addressed to the Respondent at 6040 Chatsworth Lane, Bethesda, MD 20814, dated January 24, 2012, sent by certified and first class mail, returned by the USPS as undeliverable
- REC Ex. #3 Letter from the DLLR to the Respondent, dated March 6, 2012, addressed to the Respondent at Taylor Properties, 2042 Somerville Road, P.O. Box 6690, Annapolis, MD 21401, with attached OAH Notice of Hearing, dated January 24, 2012 and DLLR Statement of Charges and Order for Hearing,

dated July 28, 2011, sent by certified mail and returned by the USPS as unclaimed;

Letter from the DLLR to the Respondent, dated March 6, 2012, addressed to the Respondent c/o Robb Michael Taylor, Taylor Properties, 2042 Somerville Road, P.O. Box 6690, Annapolis, MD 21401, with attached OAH Notice of Hearing, dated January 24, 2012 and DLLR Statement of Charges and Order for Hearing, dated July 28, 2011, sent by certified mail and returned by the USPS as unclaimed;

Letter from the DLLR to the Respondent, dated March 6, 2012, addressed to the Respondent at P.O. Box 60138, Potomac, MD 20854, with attached OAH Notice of Hearing, dated January 24, 2012 and DLLR Statement of Charges and Order for Hearing, dated July 28, 2011, sent by certified mail and returned by the USPS as unclaimed; and

Letter from the DLLR to the Respondent, dated March 6, 2012, addressed to the Respondent at Taylor Properties, 10601 Baltimore Avenue #303, Beltsville, MD 20705, with attached OAH Notice of Hearing, dated January 24, 2012 and DLLR Statement of Charges and Order for Hearing, dated July 28, 2011, sent by certified mail and returned by the USPS as unclaimed

REC Ex. #4 Notice of Rescheduled Hearing from the OAH, dated April 19, 2012, to the Respondent at P.O. Box 60139, Potomac, MD 20854, with attached DLLR Amended Statement of Charges and Order for Hearing, dated April 5, 2012 sent by certified mail and returned by the USPS as "attempted not known."

Notice of Rescheduled Hearing from the OAH to the Respondent at P.O. Box 60139, Potomac, MD 20854, with attached DLLR Amended Statement of Charges and Order for Hearing, dated April 5, 2012, sent by first class mail and returned by the USPS as "Return to sender. Attempted not known. Unable to forward."

Notice of Rescheduled Hearing from the OAH to the Respondent Taylor Properties, 2042 Somerville Road, P.O. Box 6690, Annapolis, MD 21401, with attached DLLR Amended Statement of Charges and Order for Hearing, dated April 5, 2012 sent by certified mail and returned by the USPS marked "Return to sender. Vacant. Unable to forward."

REC Ex. #5 Letter from the DLLR to the Respondent, dated May 1, 2012, addressed to the Respondent at P.O. Box 60138, Potomac, MD 20854, with attached OAH Notice of Rescheduled Hearing, dated April 19, 2012 and DLLR

Statement of Charges and Order for Hearing, dated April 5, 2012, sent by certified mail and returned by the USPS as unclaimed; and

Letter from the DLLR to the Respondent, dated May 1, 2012, addressed to the Respondent at P.O. Box 60138, Potomac, MD 20854, with attached USPS certified mail receipt

- REC Ex. #6 Letter from the DLLR to the Respondent, dated May 21, 2012, addressed to the Respondent at P.O. Box 60138, Potomac, MD 20854, sent by certified mail and returned by the USPS as unclaimed
- REC Ex. #7 Affidavit of Steven Long, Assistant Executive Director of the REC, dated March 15, 2012
- REC Ex. #8 Affidavit of Amanda Marino, Administrative Assistant at Taylor Properties, dated May 1, 2012, with attached email correspondence between Ms. Marino and the Respondent for dates including March 2 through March 9, 2012
- REC Ex. #9 Letter from Katherine Connelly, Executive Director, DLLR, addressed to "To Whom It May Concern," dated May 22, 2012, with attached licensing history for the Respondent
- REC Ex. #10 Report of Investigation, completed by Jack L. Mull
- REC Ex. #11 Supplement-1 to Original Report of Investigation
- REC Ex. #12 Supplement-2 to Original Report of Investigation
- REC Ex. #13 Letter from Katherine F. Connelly, addressed to "To Whom It May Concern, dated June 25, 2012, with attached DLLR Division of Occupational and Professional Licensing Guidelines for the Use of Unlicensed Employees, Maryland
- REC Ex. #14 Office of the Attorney General, DLLR Guidelines on the Use of Unlicensed Employees
- REC Ex. #15 Letter from Katherine F. Connelly, addressed to "To Whom It May Concern, dated June 25, 2012 with attached Consent Order in the matter of Maryland REC v. Mary A. Randle, dated April 11, 2012
- REC Ex. #16 Letter from Katherine F. Connelly, addressed to "To Whom It May Concern," dated May 15, 2012 with attached Final Order in the matter of Maryland REC v. [the Respondent], dated January 19, 2000

The Respondent did not submit any exhibits for admission into evidence.

## Testimony

The REC presented the testimony of the following witnesses:

- The Complainant
- Real Estate Agent Francisco Chavez
- Vanessa Gonzalez<sup>1</sup>
- REC Investigator Jack L. Mull, Jr.

## FINDINGS OF FACT

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

1. At all times relevant to this matter, the Respondent was not a licensed Real Estate Salesperson or broker in the State of Maryland. The Respondent's Maryland license was revoked on February 22, 2000 after a conviction for theft over \$300.00 involving real estate funds in the Circuit Court for Montgomery County in case number 80849C. (REC Ex. #10).
2. At all times relevant to this matter, the Respondent was licensed as a Real Estate Salesperson in Washington D.C. and Virginia. The Respondent was affiliated with a Re/Max Supreme Properties office in Washington D.C. (REC Ex. #10).
3. The Complainant's niece, Vanessa Gonzalez, was a licensed real estate salesperson in Maryland, Virginia and Washington D.C. She worked primarily at Re/Max Supreme Properties where Mary Randle was the Properties Broker. (T. Gonzalez, REC Ex. #10).
4. Beginning in June 2007, Vanessa Gonzalez traveled out of the country. She did not return to the Washington D.C. area until mid-September 2008. (T. Gonzalez, REC Ex. #11).

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<sup>1</sup> Vanessa Gonzalez is the witness' maiden name. She since married and changed her name to Vanessa Varma. For consistency, I refer to the witness with the surname Gonzalez throughout this decision.

5. In or about September 2007, the Respondent listed a property for sale located at 5818 Linden Square Court in Rockville, Maryland. (Linden Square property). On the Listing Agreement for Improved Real Property, the Respondent listed Ms. Gonzalez as the listing agent and provided her contact information. (REC Ex. #11; T. Gonzalez).
6. Ms. Gonzalez' name and purported signature appear on pages of the sales contract for the Linden Square property, but she was not the listing agent and she neither signed the contract, nor authorized anyone else to sign the contract on her behalf. (REC Ex. #11; T. Gonzalez).
7. In or about December 2007, the Complainant was referred to the Respondent as a real estate salesperson, for assistance with finding and purchasing a house. (T. Complainant; REC Ex. #10).
8. The Respondent did not advise the Complainant that he was not a licensed by the State of Maryland as a real estate salesperson. (T. Complainant, REC Ex. #10).
9. The Respondent referred the Complainant to a loan officer with Bank of America, Rachid Amriui. The Complainant completed the loan application procedure with Mr. Amriui before viewing homes for potential purchase with the Respondent. (T. Complainant, REC Ex. #10).
10. The Respondent advised the Complainant that he worked for Re/Max, a home sales company, but the Respondent never met with the Complainant in an office. (T. Complainant).
11. The Respondent showed the Complainant approximately 15-20 homes in Maryland and, on one occasion, the Respondent advised the Complainant that she should have a home she was interested in purchasing inspected. The Complainant did arrange an inspection



based upon the Respondent's advice, which cost her \$400.00. (T. Complainant, REC Ex. #10).

12. The Respondent also made suggestions to the Complainant about repairs that would be necessary for some of the properties they viewed together. (T. Complainant, REC Ex. #10).

13. The Complainant only had interaction with the Respondent while searching for a home. (T. Complainant, REC Ex. #10).

14. Prior to January 3, 2008, the Respondent showed the Complainant a property located at 9700 Merwood Lane in Silver Spring Maryland (Merwood property). The listing agent, Francisco Chavez, was not present when the Respondent showed the Complainant the Merwood property. (T. Chavez; T. Complainant; REC Ex. #10).

15. After viewing the Merwood property, the Complainant advised the Respondent that she wished to make an offer to purchase the home. (T. Complainant).

16. The Complainant's offer on the Merwood property constituted a "short sale," in that it was below the asking price for the property. (T. Complainant. REC Ex. #10).

17. On January 3, 2008, the Complainant met with the Respondent at the White Flint Mall in Kensington, MD to complete the paperwork necessary to complete the purchase of the Merwood property.

18. The Respondent presented the Complainant with a Buyer's Agency Agreement for her signature. Vanessa Gonzalez, not the Respondent, was listed as the buyer's agent on that agreement. (T. Complainant. REC Ex. #10).

19. The Complainant initialed paragraph seven of the agreement, which disclosed that the Complainant had paid an advance fee of \$10,050.00 to retain the Respondent's real estate

company as her broker. Paragraph seven did not include any language stating that the \$10,050.00 was non-refundable and the Respondent did not otherwise inform the Complainant that the fee was non-refundable. (T. Complainant. REC Ex. #10).

20. The Complainant did not initial paragraph eleven of the agreement. At the time of the Complainant's January 3, 2008 meeting with the Respondent, there was no handwritten language written in paragraph eleven. (T. Complainant. REC Ex. #10).

21. After the Complainant completed the agreement and signed a contract for the Merwood property, the Respondent added the following handwritten language to paragraph eleven of the agreement: "Buyer has paid an advance fee of \$10,050 to retain the services of broker. This advance fee is not refundable but will be credited against the gross fee to be paid in accordance with the terms hereof." (T. Complainant. REC Ex. #10).

22. The Complainant signed a contract for the Merwood Property. The Contract listed the buyer's agent as Vanessa P. Gonzalez and showed a signature above Ms. Gonzalez's name. Ms. Gonzalez did not sign the contract or authorize the Respondent to sign her signature. (T. Complainant; T. Gonzalez; REC Ex. #10).

23. The Respondent's name did not appear on the contract for the Merwood Property. (T. Complainant. REC Ex. #10).

24. The seller's agent for the Merwood property, Francisco Chavez, spoke only with the Respondent regarding the Complainant's offer to purchase the property. Although Vanessa Gonzalez' name appeared on the contract, Mr. Chavez had no contact with Ms. Gonzalez regarding the sale of the Merwood property. (T. Chavez; REC Ex. #10).

25. On January 3, 2008, the Complainant gave the Respondent a check for \$1,000.00 drawn on the Complainant's mother's bank account, which represented an earnest deposit requested by the Respondent. (T. Complainant; REC Ex. #10).
26. On or about January 9, 2008, the Complainant met the Respondent at a McDonald's restaurant and provided him with a cashier's check for the \$10,050.00 advance fee requested by the Respondent. (T. Complainant; REC Ex. #10).
27. The Respondent completed a commission disbursement sheet stating that he would receive 80 % of the \$10,050.00 paid to Re/Max by the Complainant and that Ms. Gonzalez would receive 20% of the funds.
28. The Respondent endorsed in Ms. Gonzalez' name, a check for 20% of the \$10,050.00 advance fee required of the Complainant by the Respondent, and deposited the funds into Ms. Gonzalez' bank account. (T. Gonzalez; REC Ex. #11).
29. After January 9, 2008, the Complainant's offer to purchase the Merwood property via short sale was declined and the Complainant resumed her search for a property with the Respondent.
30. The Respondent showed the Complainant a property located on Emden Street (Emden property) and the Complainant advised the Respondent she wished to make a short sale offer on that property. (T. Complainant. REC Ex. #10).
31. On or about March 15, 2008, the Complainant again met with the Respondent at a McDonald's restaurant where the Respondent presented the Complainant with a contract for the Emden property for her signature. (T. Complainant. REC Ex. #10).

32. The Emden Property contract listed Vanessa Gonzalez as the buyer's agent, and it had a signature above Ms. Gonzalez's name. Ms. Gonzalez did not sign the contract or authorize the Respondent to sign her signature. (REC Ex. #10; T. Gonzalez).
33. The Emden property sellers accepted the Complainant's offer, but settlement was delayed while the Complainant's loan was approved. (T. Complainant. REC Ex. #10).
34. On or about September 10, 2008, the Complainant's loan was denied because her income was insufficient for her total obligations. (REC Ex. #10).
35. After the Complainant learned that she was unable to purchase the Emden property, she decided to terminate her property search with the Respondent. The Complainant contacted Mary Randle, Broker at the Re/Max Supreme office, and requested the return of the \$10,050.00 she had given to the Respondent. Ms. Randle refused to return the money on the basis that it was non-refundable. (T. Complainant. REC Ex. #10).
36. Ms. Randle sent the Complainant a copy of the Merwood agreement with the language in paragraph eleven, stating that the \$10,050.00 advance fee was non-refundable. (T. Complainant).
37. On or about October 2, 2008, the Respondent sent Ms. Gonzalez a letter regarding his interactions with the Complainant. (T. Complainant; REC Ex. #11).
38. On or about October 7, 2008, Marc Borberly, law clerk with the Neighborhood Legal Services Program in Washington D.C., sent a letter to Ms. Randle on the Complainant's behalf, seeking the return of the \$10,050.00 she had given to the Respondent and a return of the \$1,000.00 earnest money she had given to the Respondent.
39. On June 16, 2009, the Complainant filed a complaint against the Respondent, Ms. Randle and Ms. Gonzalez. (REC Ex. # 10).

40. On or about June 3, 2010, REC Investigator Jack Mull interviewed the Respondent, Ms. Gonzalez and Ms. Randle in the presence of their mutual attorney, Richard Miller.

41. Prior to September 29, 2010, Ms. Gonzalez obtained an independent attorney, Timothy G. Casey, Esquire.

42. On or about September 29, 2010, Mr. Casey contacted Peter Martin, REC Assistant Attorney General by fax and notified Mr. Martin that Ms. Gonzalez had recanted the statements she made to Mr. Mull on June 3, 2010. Mr. Casey attached a letter from Ms. Gonzalez and other relevant documents to his September 29, 2010 fax. (REC Ex. #11).

43. Ms. Randle received a disciplinary action from the REC for failure to disclose the truth and was required to pay a \$3,000.00 penalty. (T. Complainant).

### **DISCUSSION**

#### **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).

The documents of record show that on January 19, 2012, the OAH sent the Respondent a Notice of Hearing and the REC's July 28, 2011 Statement of Charges and Order for Hearing to his business address of record, 6040 Chatsworth Lane in Bethesda, MD (Bethesda address) by

certified and first class mail. The OAH sent corrected copies of the Notice of Hearing on January 24, 2012 to the Bethesda address by certified and first class mail as well.

The DLLR also sent by certified and first class mail a letter, dated March 6, 2012; the OAH's January 24, 2011 Notice of Hearing; and the REC's Statements of Charges and Order for Hearing to the Respondent at a second address of record, Taylor Properties, 2042 Somerville Road, P.O. Box 6690 in Annapolis, Maryland,<sup>2</sup> (Annapolis address) each of which was returned unclaimed.

On or about April 19, 2012, the OAH sent the Respondent a Notice of Rescheduled Hearing and a copy of the REC's *Amended* Statement of Charges and Order for Hearing by certified and first class mail to P.O. Box 60139, Potomac Maryland 20854 (Potomac address) and to the Annapolis address, each of which was returned by the USPS.

By letter, dated May 1, 2012, the DLLR sent the Respondent a letter, a copy of the OAH April 19, 2012 Notice of Rescheduled Hearing, and the Amended Statement of Charges and Order for Hearing by certified mail to the Respondent at the Potomac address, which was returned as unclaimed by the USPS.

Furthermore, Steven Long, Assistant Executive Director of the Commission submitted an affidavit, dated March 13, 2012 (REC Ex. # 7), in which he attested that he obtained the Respondent's then-active Virginia salesman license information from the Virginia Real Estate Commission's website, which affiliated the Respondent with Taylor Properties. Mr. Long also attested that he spoke with Douglas Schroeder, Chief of Enforcement for the Virginia Real Estate Commission, who advised Mr. Long that the Respondent's business address of record with the

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<sup>2</sup> The DLLR also sent another copy of these documents to Taylor Properties, c/o Robb Michael Taylor, and to the Respondent at P.O. Box 60138, Potomac, MD, and to the Respondent at 10601 Baltimore Avenue #303, Beltsville, MD, 20705, which were returned by the USPS as unclaimed.

Virginia Real Estate Commission is Taylor Properties, 2042 Somerville Road, Annapolis, Maryland 21401.

Finally, Amanda Marino, Administrative Assistant with Taylor Properties, located at 2042 Somerville Road, Annapolis, Maryland 21401, submitted an affidavit, dated May 1, 2012, in which she affirmed the following: Taylor Properties had recently received mail addressed to the Respondent from the REC and from the OAH regarding his hearing scheduled for June 27-28, 2012; the Respondent instructed Ms. Marino to forward all mail addressed to him at his Potomac address; and she forwarded the mail she received from the OAH and from the REC to the Respondent at his Potomac address. Attached to her affidavit, Ms. Marino submitted emails between Ms. Marino and the Respondent corroborating her statements.

I find that the Respondent was properly served with multiple Notices of Hearing by both the OAH and the REC 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).

### **Statutory and Regulatory Charges**

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:

(2) fraudulently or deceptively uses a license;

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

...

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

...

(32) violates any other provision of this title.

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

Section 17-301(a)(2) of the Business Occupations Article dictates that an individual must “be licensed by the Commission as an associate real estate broker or a real estate salesperson before the individual, while acting on behalf of a real estate broker, may provide real estate brokerage services in the State.” *See also* section 17-601(b).<sup>3</sup>

Furthermore, section 17-613(c)(1) of the Business Occupations Article entitles the Commission to impose a penalty not exceeding “(i) \$5,000.00 for a first violation, (ii) \$15,000.00 for a second violation and (iii) \$25,000.00 for a third or subsequent violation.” *See also* section 17-322(c) of the Business Occupations Article.<sup>4</sup>

The REC argued that the Respondent violated the provisions cited when he provided real estate brokerage services to the Complainant without a license in 2007 and 2008. Particularly, the REC argued that the Respondent showed the Complainant approximately twenty homes for sale in Maryland; suggested repairs the Complainant could make to various properties; prepared real estate documents including contracts of sale, buyer agency agreements, and agency disclosure forms, reviewed those real estate documents with the Complainant; directed the Complainant to provide a earnest money deposit check for \$1,000.00 and a second check for

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<sup>3</sup> As relevant to this matter, section 17-601(b) mirrors the prohibition against providing real estate broker services without a license. That provision states as follows:

(b) Associate real estate broker and real estate salesperson. -- Except as otherwise provided in this title, a person may not, on behalf of a real estate broker, provide, attempt to provide, or offer to provide real estate brokerage services unless licensed by the Commission as an associate real estate broker or a real estate salesperson to provide real estate brokerage services for that real estate broker.

<sup>4</sup> That section provides as follows:

(c) Penalty. –

(1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the Commission may impose a penalty not exceeding \$5,000.00 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.



\$10,050.00 representing an advance broker fee; which he accepted; and that he submitted those checks to a broker or someone on the broker's behalf.

The REC also alleged that the Respondent signed Vanessa Gonzalez's signature on the Complainant's contracts for the Merwood and Emden properties and other documents related to the Complainant's attempt to purchase property in the State of Maryland, without Ms. Gonzalez' knowledge or consent.

Finally, the REC argued that the Respondent acted fraudulently in that when he requested the \$10,050.00 broker fee from the Complainant, the Respondent did not divulge to the Complainant verbally or in writing that the \$10,050.00 fee was non-refundable. Rather, asserts the REC, the Respondent wrote in language to section eleven of the Buyer Agency Agreement after the Complainant had signed the document, which reads "Buyer has paid an advance fee of \$10.050 to retain the services of broker. This advance fee is not refundable but will be credited against the gross fee to be paid in accordance with the terms hereof." In support of its arguments, the REC presented the testimony of the Complainant; Vanessa Gonzalez, the Respondent's niece and former colleague; Francisco Chavez, a real estate agent; and Jack Mull, investigator for the REC. The REC also submitted Mr. Mull's investigation reports detailing Mr. Mull's interactions with the Complainant, the Respondent and other individuals associated with the Respondent's actions regarding his alleged provision of real estate brokerage services to the Complainant.

The Complainant testified that she was first referred to the Respondent by a friend and that shortly after she met the Respondent and explained that she was interested in purchasing a home, the Respondent began showing her properties for sale in Maryland. According to the Complainant, the Respondent showed her between 15-20 properties and on a number of occasions, offered advice about what repairs she should consider to certain properties and

whether she should seek an inspection before considering purchasing at least one property. The Complainant explained that the Respondent was the only individual who ever accompanied her to visit and view properties in Maryland.

In late 2007 or early 2008, explained the Complainant, she viewed the Merwood property and determined that she wished to make an offer to purchase that property. After she advised the Respondent of her intent to purchase the Merwood property, the Respondent drafted a contract and met the Complainant at White Flint Mall in Montgomery County. At that meeting, the Respondent presented the Complainant with a Buyer Agency Agreement and requested that she sign it and initial next to paragraphs relevant to the terms of the Respondent's representation of the Complainant as a real estate broker. The Complainant submitted that she initialed paragraph number 7, stating that she would provide the Respondent with an advance fee of \$10,050.00, but that the agreement did not contain language stating that the advance fee would be non-refundable. The Complainant testified that she never initialed paragraph 11 of the agreement acknowledging that the \$10,050.00 was non-refundable and would never have done so because her funds are limited.

When the Complainant's offer on the Merwood property was not accepted, the Complainant advised the Respondent that she wished to continue searching for a property in the area. Eventually, the Respondent showed her the Emden property and the Complainant decided to make an offer to purchase that property. Once again, according to the Complainant, the Respondent presented her with a contract for the purchase of the property which included Vanessa Gonzalez' name and signature as the real estate agent affiliated with this transaction.

The Complainant also testified that the Respondent explained that Vanessa Gonzalez' name and signature appeared on the contract and other official documents related to the purchase

of the Merwood and Emden properties because Ms. Gonzalez was in charge of processing the paperwork related to her purchase of the home. The Complainant, however, never had any contact with Vanessa Gonzalez; all of her dealings regarding her attempted purchase of the properties were with the Respondent.

According to the Complainant, although the seller accepted her offer on the Emden property, the Complainant was ultimately unable to purchase the property because she was not approved for a loan. Thereafter, the Complainant decided to terminate her relationship with the Respondent and requested the return of her \$10,050.00, which the Respondent and Mary Randle, the Broker at the Respondent's company, Re/Max Supreme Properties refused to return, prompting the Complainant to file a complaint with the REC.

Vanessa Gonzalez testified that she was out of the country living in Singapore for the entire timeframe during which the Respondent showed the Complainant homes and did not work with the Complainant in any capacity or prepare any of the documents the Complainant signed related to the Merwood and Emden Lane properties. Ms. Gonzalez further testified that she neither signed the Buyer Agency Agreement, the contracts, or any other documents related to Merwood and Emden properties, nor authorized the Respondent or anyone else to sign any documents related to those properties on her behalf.

Ms. Gonzalez reported that the Respondent is her uncle and before she moved to Singapore, she sold the Respondent all of her furniture and her fax machine. When presented with the Merwood contract bearing her name and fax number at the top, Ms. Gonzalez testified that the Respondent must have used her fax machine without changing the designated owner or the phone numbers.

Ms. Gonzalez reported that she became aware of the Respondent's transactions with the Complainant on or about August 4, 2008, when Ms. Randle contacted her via email while she was still out of state. In those emails, Ms. Randle advised Ms. Gonzalez that the Respondent had suggested terminating the Ms. Gonzalez' license with Re/Max Supreme Properties and asked that Ms. Gonzalez address outstanding issues including commissions assigned to Ms. Gonzalez that needed to be verified and the appropriate fees paid to Re/Max Supreme Properties. Ms. Gonzalez explained that she immediately replied to Ms. Randle's email and informed her that she did not have any outstanding commissions to address and expressed her concern about the Respondent's actions.

According to Ms. Gonzalez, Ms. Randle forwarded an email to Ms. Gonzalez and the Respondent on October 2, 2008, related to the status of the Emden property transaction. The Respondent forwarded Ms. Randle's email to Ms. Gonzalez,<sup>5</sup> on October 2, 2008, including a fully-detailed history of his transactions with the Complainant from his perspective. In that email, the Respondent provided the following:

Vanessa:

This case begin [sic] with a sale of a house that we couldn't finalize the sale because the agent took another contract after he had accepted ours. The agent was a Fairfax Reality agent that call Mary after having a heated discussion with me and Mary told him I was not an Agent.

Then I found another house where Gloria Rosario was the agent and it took a long time to get the Bank approval. But she finally got it.

First Rachid with Bank of America, I got an APPROVAL letter with her putting 20 per cent down I have a letter and Rachid can provided [sic] an affidavit. She never had the money to put down – according to Rachid he verified [sic].

Then I took her to Paul Ahearn to see if he could do an FHA she lied on the salary. [sic].

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<sup>5</sup> As I have stated, Ms. Randle sent her email to both the Respondent and Ms. Gonzalez. It appears that the Respondent forwarded Ms. Randle's email again to Ms. Gonzalez to address its content.

Then I took her to Wachovia the same thing [sic] I tried to get her to bring other people any other person she brought was not qualify, [sic]

Then I took her to Innovative Mortgage and she told the Loan Officer that she made 90,000.00 a year and was not true she only reports 19,000.00.

Bottom line, this lady made me work like a dog.

She has placed 1,000.00 deposit on the contract and gave us on the buyer broker \$10,050.00. We have collected the commission and I don't think we should give [sic] it back to her. I need you to meet with her we can probably get a release of the 1,000.00 – But I don't want to have worked for free.

Call me I can give you phone numbers of all of the Loan Officers I took her to.

REC Ex. #11.

Ultimately, explained Ms. Gonzalez, Ms. Randle informed Ms. Gonzalez that she would have to take responsibility for the Complainant's account because she was listed as the real estate agent of record and her license was on the line.

Ms. Gonzalez further testified that the Respondent identified her as the listing agent for a property located at 5818 Linden Square Court in Rockville, Maryland, and her signature can be found on documents related to the sale of that property. She explained, however, that she was not and could not have been the listing agent because the property was listed for sale and sold in September 2007 when she was out of the country in Singapore. Ms. Gonzalez pointed out that although her signature appears on the Sales Processing Sheet and the Listing Agreement for Improved Real Property for the Linden Square sale, she did not sign either of those documents and believes that the Respondent signed her signature without her permission.

Ms. Gonzalez testified that when the REC began investigating the Complainant's claim, she initially went along with the Respondent and Ms. Randle out of fear that she would lose her license or suffer some legal consequence if Re/Max Supreme Properties was ultimately found guilty of wrongdoing. She conceded that she was not truthful when Mr. Mull initially

interviewed her on June 3, 2010, along with Ms. Randle and the Respondent in the presence of their joint attorney. Ultimately, explained Ms. Gonzalez, she felt it imperative to set the record straight and to explain to Mr. Mull and the REC that the actions of the Respondent could not be attributed to her. Indeed, according to Ms. Gonzalez, she contacted the REC after her June 3, 2010 interview with Mr. Mull and offered a detailed accounting of what actually happened regarding the Merwood, Emden, and Linden Square properties and explained the Respondent's improper involvement in those transactions without her knowledge or consent.<sup>6</sup>

As I have stated, the Respondent failed to appear at the hearing. In the absence of any evidence to rebut the testimony of the REC witnesses, I find no reason to find their testimonies untruthful. Indeed, I can fathom no benefit the Complainant would have received by untruthfully testifying that she had never met Ms. Gonzalez or to otherwise absolve Ms. Gonzalez of wrongdoing if she had participated in the transactions related to the Complainant's search for a home.

I find that the numerous and thorough documents submitted by the REC corroborates the testimonies of its witnesses, and it is clear, therefore, that the Respondent provided real estate services without a license. It is also clear that the Respondent's actions were clearly fraudulent in that he procured from the Complainant and refused to return an advance fee in the amount of \$10,050.00. Furthermore, he improperly and fraudulently added language to the Buyer Agency Agreement *after* the Complainant signed it, stating that the \$10,050.00 advance fee was non-refundable. Additionally, I find that the Respondent forged Ms. Gonzalez' signature on numerous formal real estate documents related to the Merwood, Emden, and Linden Square properties.

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<sup>6</sup> Ms. Gonzalez was not absolved of all wrongdoing. Ultimately, she was given a disciplinary action for failure to disclose the truth and was required to pay a \$3,000.00 penalty.

Accordingly, I find that the Respondent violated sections 17-301(a)(2) and 17-601(b) as there is no dispute that the Respondent's license had been revoked as of February 22, 2000 after a conviction for theft over \$300.00 involving real estate funds in the Circuit Court for Montgomery County. Further, there is no doubt, based upon the ample evidence submitted by the REC that the Licensee provided real estate brokerage services in the State while acting on behalf of real estate broker Mary Randle and Re/Max Supreme Properties.

I further find that the Respondent is subject to sanction under section 17-322(b)(2) and (3) of the Article because the Respondent fraudulently and knowingly offered brokerage services with full knowledge that he was not licensed to do so in the State of Maryland. Further, the Respondent both willfully misrepresented to the Complainant that he was licensed to provide real estate brokerage services and willfully misrepresented to the Complainant and all parties associated with sale and purchase of the Merwood Lane, Emden Road, and Linden Square properties that the Vanessa Gonzalez was the agent responsible for the transactions regarding those properties.

Some of the Respondent's most egregious violations, however, are captured under section 17-324(b)(25), which authorizes sanction when an individual "engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings." According to the unrebutted evidence in this case, in addition to providing incompetent real estate brokerage services to the Complainant, the Respondent fraudulently and dishonestly procured \$10,050.00 as an advance fee from the Complainant without divulging that that the advance fee would be non-refundable. This action resulted in significant hardship for the Complainant because she borrowed the funds from her mother with the expectation that she and her mother would be able to purchase a property through the efforts

of the Respondent, but ultimately, she was unable to recoup that money, making it extremely difficult for her to afford purchasing a home.

Perhaps most distasteful, however, is the Respondent implicating Ms. Gonzalez in his illegal actions. The evidence is clear that the Respondent listed Ms. Gonzalez as the agent of record for the real estate transaction regarding the Merwood, Emden, and Linden Square properties. He also signed or placed Ms. Gonzalez' name on legally binding documents, including contracts for sale for each of these properties, exposing her to legal and professional sanctions. Indeed, as Ms. Gonzalez testified, although her license was not suspended or revoked, she ultimately received a disciplinary action and was fined \$3,000.00 by the REC for failure to disclose the truth.<sup>7</sup> The Respondent's actions display a total irreverence for the law as it relates to the requirement that licensees act honestly and in good faith. The fiduciary aspect of real estate brokers' and salespersons' work exposes those who choose the field to potential, and arguably, tempting opportunities to take advantage of individuals less versed in real estate transactions. In this instance, the Respondent not only took advantage of the Complainant, but he was also bold enough to use in the most deceitful manner, the good standing of his niece, Ms. Gonzalez, to advance his own monetary gain. The Respondent's violations were extremely serious, harmful, and patently executed in bad faith. It is also clear that these are not the Respondent's first violations evidencing bad faith and dishonesty as he was convicted of theft over \$300.00 involving real estate funds in the year 2000, resulting in the revocation of his Maryland license.

The REC argued pursuant to sections 17-613(c)(1) and 17-322(c) and in light of the egregious and fraudulent behavior of the Respondent, he should be subject to a civil penalty in

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<sup>7</sup> I do not excuse Ms. Gonzalez' failure to tell the truth when she was first questioned by Mr. Mull, however, the REC has already determined and imposed the appropriate sanction for that action.



the amount of \$20,000.00, representing an individual \$5,000.00 penalty for the violation of each, section 17-301(a)<sup>8</sup> and section 17-322(b)(2), (3), and (25).<sup>9</sup> For the reasons I have stated in this decision, I agree.

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated sections 17-301 (a), 17-601(b) and sections 17-322(b)(2), (3),(25), and (32) of the Business Occupations and Professions Article.

I further conclude as a matter of law that an appropriate sanction in this case is \$5,000.00 penalty for the Respondent's violation of four sections of the Article for a total penalty of \$20,000.00. Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(c) and 17-613§(c)(1) (2010).

### **RECOMMENDED ORDER**

I **RECOMMEND** that the Maryland Real Estate Commission impose a penalty of \$20,000.00

September 24, 2012  
Date Decision Mailed

SIGNATURE ON FILE

~~\_\_\_\_\_~~  
Jennifer M. Carter Jones  
Administrative Law Judge

JCI/da  
#137501

<sup>8</sup> Because section 17-601(b) prohibits the same action proscribed by 17-301(a), the REC does not seek a penalty for the Respondent's violation of that provision.

<sup>9</sup> The REC did not seek an additional penalty for violation of 17-322(b)(32), presumably because that provision is a "catch all" in that it authorizes a penalty for a violation of any other provision of the Title. Therefore, I did not impose a penalty for this violation.

**MARYLAND REAL ESTATE  
COMMISSION**

**v.**

**EDUARDO H. GONZALEZ,  
RESPONDENT**

**\* BEFORE JENNIFER M. CARTER JONES,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH CASE No.: DLR-REC-21-11-40556  
\* MREC FILE No: 2009 RE 569**

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

**FILE EXHIBIT LIST**

I admitted the following exhibits on behalf of the REC:

REC Ex. #1 OAH Notice of Hearing, addressed to the Respondent at 6040 Chatsworth Lane, Bethesda, MD 20814, dated January 19, 2012 and REC Statement of Charges and Order for Hearing, dated July 28, 2011, sent by certified mail with attached envelope marked by the United States Postal Service (USPS) "Return to sender; and Not deliverable as addressed. Unable to forward;" and OAH Notice of Hearing, addressed to the Respondent at 6040 Chatsworth Lane, Bethesda, MD 20814, dated January 19, 2012 and REC Statement of Charges and Order for Hearing, dated July 28, 2011, sent by first class mail with attached envelope marked by the USPS "Return to sender; and Not deliverable as addressed. Unable to forward."

REC Ex. #2 Corrected copies of the OAH Notice of Hearing, addressed to the Respondent at 6040 Chatsworth Lane, Bethesda, MD 20814, dated January 24, 2012, sent by certified and first class mail, returned by the USPS as undeliverable

REC Ex. #3 Letter from the DLLR to the Respondent, dated March 6, 2012, addressed to the Respondent at Taylor Properties, 2042 Somerville Road, P.O. Box 6690, Annapolis, MD 21401, with attached OAH Notice of Hearing, dated January 24, 2012 and DLLR Statement of Charges and Order for Hearing, dated July 28, 2011, sent by certified mail and returned by the USPS as unclaimed;

Letter from the DLLR to the Respondent, dated March 6, 2012, addressed to the Respondent c/o Robb Michael Taylor, Taylor Properties, 2042 Somerville Road, P.O. Box 6690, Annapolis, MD 21401, with attached

OAH Notice of Hearing, dated January 24, 2012 and DLLR Statement of Charges and Order for Hearing, dated July 28, 2011, sent by certified mail and returned by the USPS as unclaimed;

Letter from the DLLR to the Respondent, dated March 6, 2012, addressed to the Respondent at P.O. Box 60138, Potomac, MD 20854, with attached OAH Notice of Hearing, dated January 24, 2012 and DLLR Statement of Charges and Order for Hearing, dated July 28, 2011, sent by certified mail and returned by the USPS as unclaimed; and

Letter from the DLLR to the Respondent, dated March 6, 2012, addressed to the Respondent at Taylor Properties, 10601 Baltimore Avenue #303, Beltsville, MD 20705, with attached OAH Notice of Hearing, dated January 24, 2012 and DLLR Statement of Charges and Order for Hearing, dated July 28, 2011, sent by certified mail and returned by the USPS as unclaimed

REC Ex. #4 Notice of Rescheduled Hearing from the OAH, dated April 19, 2012, to the Respondent at P.O. Box 60139, Potomac, MD 20854, with attached DLLR Amended Statement of Charges and Order for Hearing, dated April 5, 2012 sent by certified mail and returned by the USPS as "attempted not known."

Notice of Rescheduled Hearing from the OAH to the Respondent at P.O. Box 60139, Potomac, MD 20854, with attached DLLR Amended Statement of Charges and Order for Hearing, dated April 5, 2012, sent by first class mail and returned by the USPS as "Return to sender. Attempted not known. Unable to forward."

Notice of Rescheduled Hearing from the OAH to the Respondent Taylor Properties, 2042 Somerville Road, P.O. Box 6690, Annapolis, MD 21401, with attached DLLR Amended Statement of Charges and Order for Hearing, dated April 5, 2012 sent by certified mail and returned by the USPS marked "Return to sender. Vacant. Unable to forward."

REC Ex. #5 Letter from the DLLR to the Respondent, dated May 1, 2012, addressed to the Respondent at P.O. Box 60138, Potomac, MD 20854, with attached OAH Notice of Rescheduled Hearing, dated April 19, 2012 and DLLR Statement of Charges and Order for Hearing, dated April 5, 2012, sent by certified mail and returned by the USPS as unclaimed; and

Letter from the DLLR to the Respondent, dated May 1, 2012, addressed to the Respondent at P.O. Box 60138, Potomac, MD 20854, with attached USPS certified mail receipt

- REC Ex. #6 Letter from the DLLR to the Respondent, dated May 21, 2012, addressed to the Respondent at P.O. Box 60138, Potomac, MD 20854, sent by certified mail and returned by the USPS as unclaimed
- REC Ex. #7 Affidavit of Steven Long, Assistant Executive Director of the REC, dated March 15, 2012
- REC Ex. #8 Affidavit of Amanda Marino, Administrative Assistant at Taylor Properties, dated May 1, 2012, with attached email correspondence between Ms. Marino and the Respondent for dates including March 2 through March 9, 2012
- REC Ex. #9 Letter from Katherine Connelly, Executive Director, DLLR, addressed to "To Whom It May Concern," dated May 22, 2012, with attached licensing history for the Respondent
- REC Ex. #10 Report of Investigation, completed by Jack L. Mull
- REC Ex. #11 Supplement-1 to Original Report of Investigation
- REC Ex. #12 Supplement-2 to Original Report of Investigation
- REC Ex. #13 Letter from Katherine F. Connelly, addressed to "To Whom It May Concern, dated June 25, 2012, with attached DLLR Division of Occupational and Professional Licensing Guidelines for the Use of Unlicensed Employees, Maryland
- REC Ex. #14 Office of the Attorney General, DLLR Guidelines on the Use of Unlicensed Employees
- REC Ex. #15 Letter from Katherine F. Connelly, addressed to "To Whom It May Concern, dated June 25, 2012 with attached Consent Order in the matter of Maryland REC v. Mary A. Randle, dated April 11, 2012
- REC Ex. #16 Letter from Katherine F. Connelly, addressed to "To Whom It May Concern," dated May 15, 2012 with attached Final Order in the matter of Maryland REC v. [the Respondent], dated January 19, 2000

The Respondent did not submit any exhibits for admission into evidence.