

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

KEITH PATTERSON
Respondent

* CASE NO. 2009-RE-118

* OAH NO. DLR-REC-21-09-34620

*

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated October 21, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 8th day of December 2010

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 Keith Patterson violated Md. Bus. Occ. and Prof. Art. §§17-322(b)(19) and (32); 17-527.2, and 17-603(b);

ORDERED that the Respondent Keith Patterson be assessed a civil penalty in the amount of \$3,000.00, which shall be paid

within thirty (30) days of the date of this Proposed Order;

ORDERED that all real estate licenses held by the Respondent Keith Patterson shall be suspended unless the civil penalty is paid in full within the 30-day period, and shall remain suspended until it is paid.

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 provisions that the civil penalty had to be paid within 30 days, and that all real estate licenses held by the Respondent would be suspended unless the penalty is paid in full by that time. The Commission also included in its Proposed Order the specific sections of the law that the Respondent was found to have violated, and that formed the basis of his violation of §17-322(b)(32).

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.

[Handwritten signature]
Ma
for *[Handwritten signature]*, Chair
2

(COMMISSIONER'S SIGNATURE APPEARS ON ORIGINAL ORDER)

[Handwritten signature]
ON

MARYLAND REAL ESTATE
COMMISSION

v.

KEITH PATTERSON, d/b/a
PATTERSON REALTY

* BEFORE NEILE S. FRIEDMAN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE NO.: DLR-REC-21-09-34620
* REC COMPLAINT NO.: 2009-RE-118

* * * * *

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 September 15, 2008, Latitia Shirey (Complainant) filed a complaint against Keith Patterson (Respondent), a real estate salesperson. After an investigation, the Maryland Real Estate Commission (Commission or REC) issued a Statement of Charges against the Respondent and Order for Hearing, dated August 24, 2009.

On August 2, 2010, I held a hearing at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2010). Hope Sachs, Assistant Attorney General, represented the Commission. The Respondent appeared without counsel.

The Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 and Supp. 2010);

COMAR 09.01.03, COMAR 09.11.03.02; and COMAR 28.02.01.

ISSUES

The issues are:

1. Did the Respondent, d/b/a Patterson Realty, post, at a property he listed for sale, a sign that failed to include his name, but rather included the name of an unlicensed employee, in violation of section 17-527.2 of the Business Occupations and Professions Article, Annotated Code of Maryland?
2. Did the Respondent, d/b/a Patterson Realty, retain an unlicensed individual to provide real estate brokerage services in violation of section 17-603(b) of the Business Occupations and Professions Article, Annotated Code of Maryland.
3. If so, is he subject to sanction, and in what amount?

SUMMARY OF THE EVIDENCE

Exhibits

The Commission submitted the following documents, all of which were admitted into evidence:

- REC #1 - Notice of Hearing
- REC #2 - Statement of Charges and Order for Hearing
- REC #3 - REC Licensing Information on the Respondent
- REC #4 - REC Complaint and Guaranty Fund Claim
- REC #5 - Listing of 4460 Mountville Road, Frederick, MD
- REC #6 - Report of Investigation, with attachments
- REC #7 - REC Licensing Information, Susan McCourt
- REC #8 - Listing of 1612 Rock Creek Dr. #12, Frederick, MD
- REC #9 - Listing of 329 Seton Ave., Emmitsburg, MD

REC #10 - Listing of 801 E. Stratford Dr., Frederick, MD

Testimony

The Commission presented the testimony of Letitia R. Shirey, formerly a licensed real estate agent and Lucinda R. Sands, paralegal, REC.

The Respondent testified in his own behalf.

FINDINGS OF FACT

Having considered all of the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Respondent held a license issued by the Commission as a real estate agent from 1987 until June 8, 2008, when he failed to renew the license, and it expired. The Respondent renewed the license on December 9, 2008.
2. On May 8, 2008, while he was a licensed real estate agent, the Respondent, through his brokerage, Patterson Realty, listed for sale the property located at 4460 Mountville Road, Frederick, MD. The listing indicated that Sue McCourt was the "show contact" for the property.
3. From September through at least November 2008, after the Respondent's license had expired, the property was still listed for sale through the Metropolitan Regional Information Systems, Inc. (MRIS), a multiple listing service, with the Respondent identified as the listing agent.
4. From May through November 2008, Sue McCourt was not a licensed real estate broker or agent. Her associate broker's license had expired on June 9, 2006.
5. In September 2008 and on February 10, 2009 a for-sale sign was posted at the driveway entrance of the Mountville Road property. The sign listed Sue McCourt as the contact person for Patterson Realty.
6. In November 2008, the following properties were listed in the MRIS, with the

Respondent identified as the listing agent: 1612 Rock Creek Dr. #12, Frederick, MD; 329 Seton Ave, Emmitsburg, MD; and 801 E. Stratford Dr., Frederick, MD.

DISCUSSION

The charges herein arise out of the Respondent's use of an unlicensed person to perform tasks in connection with the sale of real estate he had listed with the MRIS and with alleged improper advertising connected with the property. The applicable sections of law provide:

§ 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 license if the applicant or licensee:

...

- (19) advertises in any misleading or untruthful manner or violates § 17-527.2 of this title; [or]

...

- (32) violates any other provision of this title;

§ 17-527.2. (b) A licensed real estate salesperson, licensed real estate broker, or licensed associate real estate broker may not advertise unless:

(1) the name or designated name of the licensed real estate salesperson, licensed real estate broker, or licensed associate real estate broker, as the name or designated name appears on the license certificate and pocket card issued by the Commission, is meaningfully and conspicuously included in the advertisement.

§ 17-603. Real estate brokerage services by unauthorized individuals; lending license of real estate broker.

...

(b) Retaining unlicensed individual.- A real estate broker may not retain an unlicensed individual to provide real estate brokerage services on behalf of the real estate broker.

Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(19), (32), 17-527.2 and 17-603(b)

(2010).

The Commission proved through its credible witness testimony that the Respondent posted a sign advertising the sale of the Mountville Road property that failed to include his name, but rather identified the name of an unlicensed individual as the contact person. The witness' testimony was corroborated by photographs of the sign. Also, the sign was observed by Ms. Shirey, a licensed real estate agent, who happened to drive past the property during the period of time that the Respondent was unlicensed as a real estate agent. The sign, as well as flyers advertising the property, were observed again by the Commission's investigator, Jack Mull, during a trip to the property on February 10, 2009. The flyers also failed to include the Respondent's name, and, like the sign, did include the name of the unlicensed Ms. McCourt as the contact person. This is in violation of § 17-527.2, which forbids a real estate salesperson from advertising unless his or her name is meaningfully and conspicuously included in the advertisement, and of § 17-603, which forbids brokers from retaining services of unlicensed individuals.

This behavior demonstrates bad faith on the part of the Respondent, particularly since all this occurred during a period of time that his license had lapsed. Further demonstrating bad faith is the fact that the Respondent had at least three other listings with the MRIS during the period of time he was unlicensed. The Respondent's behavior was particularly egregious because he has been licensed since 1987, so he should know better.

The evidence has demonstrated that the Respondent is subject to sanctions for two violations of the Maryland Real Estate Broker's Act. For those violations, the Respondent is subject to civil penalties:

(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).

The Respondent admitted that he had not removed his listings from the MRIS when his license expired, and he stated he would take “full responsibility” for that, but he denied knowing anything about a sign or flyers in connection with the Mountville Road property, and he insisted that Sue McCourt was the property owner’s wife. He was upset about the civil penalty he faces, stating that he feels violated and that the state is denying him his right to earn a living.

I did not find the Respondent’s testimony credible that he knew nothing about the sign or flyers, or that Ms. McCourt was the wife of the owner. Moreover, even if she were the wife of the owner, I fail to understand how that would make the behavior lawful. The Maryland Real Estate Brokers Act was enacted in order to protect the public and to reassure the public that only competent and trustworthy individuals operate as real estate brokers and salespersons. The Respondent committed several serious violations. One of the violations includes a violation of his responsibility to make sure that all individuals involved in the sale of real estate on his behalf are licensed, as required by Md. Code Ann., Bus. Occ. & Prof. § 17-603(b) (2010); the other includes a violation of his advertising responsibilities as required by Md. Code Ann., Bus. Occ. & Prof. § 17-527.2 (2010). These violations subject the Respondent to penalties pursuant to Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b) (19) and (32)(2010).

The Commission maintains that the Respondent’s bad faith in this case, requires the imposition of a civil statutory penalty.¹ I agree. The Commission recommended a \$3,000.00 fine. By weighing all of the relevant factors, I conclude that the Respondent should be fined \$1,500.00

¹ The Commission did not request a suspension, revocation or reprimand in this case.

under section 17-322(b)(32) of the Business Occupations and Professions Article and \$1,500.00 for violating section 17-322(b)(19) of the Business Occupations and Professions Article.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent is subject to sanction under sections 17-322(b)(19), (32) and (c) of the Business Occupations and Professions Article.

RECOMMENDED ORDER

IT IS THEREFORE RECOMMENDED that the Maryland Real Estate Commission:

ORDER that the Respondent is subject to sanction under sections 17-322(b)(19) and (32) of the Business Occupations and Professions Article; and further

ORDER that a civil statutory fine of \$3,000.00 be imposed upon the Respondent under section 17-322(c) of the Business Occupations and Professions Article for the violation of sections 17-322(b)(19) and (32) of the Business Occupations and Professions Article; and further

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

ADMINISTRATIVE LAW JUDGE'S SIGNATURE
APPEARS ON ORIGINAL ORDER

October 21, 2010
Date Decision Mailed

Neile S. Friedman
Administrative Law Judge

NSF/tc
#117306

MARYLAND REAL ESTATE
COMMISSION

v.

KEITH PATTERSON, d/b/a
PATTERSON REALTY

* BEFORE NEILE S. FRIEDMAN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE NO.: DLR-REC-21-09-34620
* REC COMPLAINT NO.: 2009-RE-118

* * * * *

SUMMARY OF THE EVIDENCE

Exhibits

The Commission submitted the following documents, all of which were admitted into evidence:

- REC #1 - Notice of Hearing
- REC #2 - Statement of Charges and Order for Hearing
- REC #3 - REC Licensing Information on the Respondent
- REC #4 - REC Complaint and Guaranty Fund Claim
- REC #5 - Listing of 4460 Mountville Road, Frederick, MD
- REC #6 - Report of Investigation, with attachments
- REC #7 - REC Licensing Information, Susan McCourt
- REC #8 - Listing of 1612 Rock Creek Dr. #12, Frederick, MD
- REC #9 - Listing of 329 Seton Ave., Emmitsburg, MD
- REC #10 - Listing of 801 E. Stratford Dr., Frederick, MD

DLLR
STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION

MARTIN O'MALLEY, Governor
ANTHONY G. BROWN, Lt. Governor
ALEXANDER M. SANCHEZ, Secretary

Division Occupational & Professional Licensing
Stanley J. Botts, Commissioner

DLLR Home Page: www.dllr.state.md.us/license/occp/comm.html
MREC E-mail: mrec@dllr.state.md.us

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
FIRST CLASS MAIL
RESENT

December 20, 2010

Mr. Keith Patterson
Patterson Realty
PO Box 688
Frederick, Maryland 21703

RE: Maryland Real Estate Commission v. Keith Patterson
Case No. 2009-RE-118

Dear Mr. Patterson:

Enclosed is the copy of the Proposed Order of the Commission issued on behalf of MREC v. Keith Patterson heard by an Administrative Law Judge on August 2, 2010.

You have the right to file Exceptions to the Proposed Order and to present Arguments to the Commission. Written exceptions to the Proposed Order or a request to present Arguments must be filed with the Commission within 25 days of the date of this letter.

If you should fail to make your Exceptions and request to present Arguments known to the Commission within the time specified, the Proposed Order of the Commission shall be deemed final and shall become effective 30 days thereafter. This additional period is to allow time should the Claimant(s) and/or Respondent(s) desire to file in a Court of Law.

(COMMISSIONER'S SIGNATURE
APPEARS ON ORIGINAL ORDER)

Katherine F. Connelly
Executive Director

KFC/bai

Enclosure: Copy of Proposed Order

