BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION	*	
	*	**CASE NO. 2021-RE-167**
v.	*	**OAH NO. DOL-REC-24-23-21834**
IAN CASALE,		
Respondent	*	
	*	

* * * * * * * * * * * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated December 21, 2023, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 24 day of January, 2024, hereby **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, **AMENDED AS FOLLOWS:**

1. The Respondent violated sections 17-322(b)(3), (4), (25), and (33) of the Business Occupations & Professions Article, and COMAR 09.11.02.01C, and COMAR 09.11.02.02A.

2. The Respondent is subject to disciplinary sanctions of a one (1)-year suspension of his real estate salesperson license and a five thousand dollar ($5,000.00) fine. Md. Code Ann., Bus. Occ. & Prof. §17-322(c) (Supp. 2023).

C. That the Recommended Order in the recommended decision be, and hereby is,

AMENDED AS FOLLOWS:

ORDERED that all real estate licenses held by the Respondent, IAN CASALE, be suspended for a period of one (1) year from the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted;

ORDERED that the Respondent, IAN CASALE, pay a civil penalty in the amount of **Five Thousand Dollars ($5,000.00)** within thirty (30 days) of the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted;

ORDERED that all real estate licenses held by the Respondent, IAN CASALE, shall be suspended from the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted and shall not be reinstated until the civil penalty is paid.

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

E. Pursuant to Annotated Code of Maryland, State Government Article § 10-220, the Commission finds that the Recommended Decision of the Administrative Law Judge required modification because the Proposed Conclusions of Law in the Recommended Decision omitted reference to 17-322(b)(33). It is clear from the Discussion section in the Recommended Decision that the Administrative Law Judge found the two regulatory violations constituted violations of that section of the statute. Her findings in that regard were correct, and the Conclusions of Law are amended to reflect those findings.

F. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties adversely affected by this Proposed Order shall have twenty (20) days from the postmark date of the Order to file written exceptions to this Proposed Order. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 1100 N. Eutaw Street,

Baltimore, MD 21201. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

G. Once this Proposed Order becomes final, the parties have an additional thirty (30) days in which to file an appeal to the Circuit Court for the Maryland County in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City

MARYLAND REAL ESTATE COMMISSION

SIGNATURE ON FILE

1/26/24
Date

By:

MARYLAND REAL ESTATE	*	**BEFORE RACHAEL BARNETT,**
COMMISSION[1]	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE**
IAN CASALE,	*	**OF ADMINISTRATIVE HEARINGS**
RESPONDENT	*	
	*	**OAH No.: LABOR-REC-24-23-21834**
	*	**MREC No.: 167-RE-2021**

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On November 2, 2020, Veronica Harris (Claimant) filed a Complaint against Ian Casale, a licensed real estate salesperson (Respondent), for alleged violations of the Maryland Real Estate Brokers Act (Act), Md. Code Ann., Bus. Occ. & Prof. §§ 17-101 to -702 (2018 & Supp. 2023),[2] and the provisions at Code of Maryland Regulations (COMAR) 09.11.02.01C, enacted under the Act. The Claimant also filed a claim (Claim) with the Maryland Real Estate Commission's (REC) Guaranty Fund (Fund) to recover compensation of $11,000.00 for an alleged actual loss resulting from an act or omission of the Respondent.

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[1] The matter initially also involved a claim against the Real Estate Commission's Guaranty Fund; however, the parties entered into a settlement on that issue on the day of the hearing, thereby disposing of that matter.
[2] Unless otherwise noted, all references to the Business Occupations and Professions Article cite the 2018 Volume of the Maryland Annotated Code.

On August 16, 2023, after an investigation, the REC determined that charges against the Respondent were warranted and issued a Statement of Charges (Charges) against the Respondent. The Charges set forth that the Respondent entered a sales contract whereby he agreed to replace the roof of a property prior to sale but failed to do so and sold the property to the Claimant, nonetheless. As the listing agent for the seller, Cap-More, LLC, it was the Respondent's responsibility to ensure the repairs took place. After the sale, the Claimant informed the Respondent of a roof leak, and the Respondent presented the Claimant with a certificate of roof inspection and repair, documenting work that was never performed.

The Charges advised the Respondent that if the charged violations were substantiated the Commission would impose a monetary penalty of up to $5,000.00 per violation. Bus. Occ. & Prof. § 17-322(c). The REC further determined that the Claimant was entitled to a hearing to establish eligibility for an award from the Fund.[3] Accordingly, the REC ordered a combined hearing on the Charges and the Claim and, on August 21, 2023, forwarded the case to the Office of Administrative Hearings (OAH) to conduct a hearing. Bus. Occ. & Prof. § 17-409 (2018).

On October 18, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Occ. & Prof. §§ 17-324(a), 17-408(a) (2018). Ernie Dominguez, Assistant Attorney General, Maryland Department of Labor (Department), represented the REC on the charged violations of law. Jonathan Phillips, Assistant Attorney General, represented the Fund. The Claimant was self-represented. The Respondent was self-represented.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, the REC's procedural regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 09.01.03; COMAR 09.11.03; COMAR 28.02.01.

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[3] As previously mentioned, these charges have been dropped as part of the settlement.

ISSUES

1. Did the Respondent violate section 17-322 of the Business Occupations and Professions Article by engaging in any of the following conduct:
   a. making misrepresentations or knowingly making a false promise,
   b. failing to disclose to the Claimant a material fact that he knew or should have known about the property the Claimant planned to purchase,
   c. engaging in conduct that demonstrated bad faith, incompetency, untrustworthiness, or that constituted dishonest, fraudulent or improper dealings, and
   d. violating any regulation adopted under this title or any provision of the code of ethics, specifically:
      i. the requirement under COMAR 09.11.02.01C to protect the public against fraud, misrepresentation or unethical practices in the real estate field, and
      ii. the requirement under COMAR 09.11.02.02 to satisfy his statutory obligations towards parties (other than the client) in a transaction when acting as a real estate agent?
2. If so, what is the appropriate sanction?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the REC:

REC Ex. 1 - Notice of Hearing, August 29, 2023

REC Ex. 2 - Statement of Charges and Order for Hearing, August 16, 2023

REC Ex. 3 - Licensing Information, November 2, 2022

REC Ex. 4 - Report of Investigation, August 18, 2022

REC Ex. 5 - Residential Contract of Sale, September 9, 2019

REC Ex. 6 - Property Inspection Notice, September 18, 2019

REC Ex. 7 - Lago Contracting, LLC ("Lago") Certification, October 24, 2019

REC Ex. 8 - Lago Proposal, undated

The Claimant did not offer any exhibits for admission into evidence.

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

Testimony

The REC presented the following witness: Dr. Jillian Lord, Assistant Executive Director for the REC.

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the REC licensed the Respondent as a real estate salesperson. He was affiliated with Keller Williams Metropolitan and was also a listing agent and member of Cap-Moore, LLC.

2. In 2019, the Respondent was living a bi-coastal lifestyle, spending much of his time in California and coordinating with his Cap-Moore, LLC business associates in Maryland where he oversaw several house flips, including the one at issue in this matter.

3. On September 9, 2019, the Claimant and Respondent ratified a contract of sale ("Contract") for the purchase of a townhouse located on Wesley Avenue, in Baltimore Maryland, 21207 ("the Property").

4. A September 18, 2019 home inspection report indicated the roof needed to be replaced. The report listed the roof repair and other repairs needed in section 2C of the report.

5. On September 23, 2019, the Respondent signed the report, which included the agreement "Seller Agrees to complete the Corrective Action as specified in Paragraph 2.C." (REC Ex. 5).

6. The Respondent, acting on behalf of Cap-Moore, LLC, entered into a construction contract with Lago for the repairs to the Property, which did not include any roof work. The Respondent paid Lago for its work.

7. On October 21, 2019, the Claimant and Respondent settled on the Property.

8. Unbeknownst to the Claimant, the roof was not replaced, and the Claimant moved into the home. She occupied the home with her son.

9. On July 27, 2020, the Claimant observed a significant leak in her son's bedroom, where a hole or holes in the roof emerged and rainwater entered the home through the hole(s). The Claimant contacted the Respondent directly; however, this did not elicit any action on his part. The Claimant also notified her real estate agent, Safari Charles, who in turn notified the Respondent.

10. On September 11, 2020, the Respondent sent to Mr. Charles a copy of the roof certification, dated October 24, 2019, on the letterhead for Lago (and electronically signed by its owner, Fernando Parado). Mr. Charles, in turn, sent the Complainant a copy of this certification. The certification indicated Lago had completed roof repairs on the Property.

11. The Claimant contacted Lago, and Lago notified the Claimant that it only made repairs to the inside of the home, and it did not do any work on the roof. Additionally, Lago indicated that the certificate it provided did not mention roof work.

12. The Claimant then notified the Respondent that Lago indicated it did not perform any roof work on the Property. The Respondent did not offer any assistance.

13. The Claimant ultimately replaced the roof in November or December of 2020; her insurance company covered the cost of the replacement, aside from a deductible and the cost of the ceiling repair. The Claimant bore these costs.

DISCUSSION

Regulatory Charges

The REC contended in its Charges:

> (b) Subject to the hearing provisions of § 17-324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:
>
> . . . .
>
> (3) directly or through another person willfully makes a misrepresentation or knowingly makes a false promise;
>
> (4) intentionally or negligently fails to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee or applicant deals;
>
> . . . .
>
> (25) engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;
>
> . . . .
>
> (33) violates any regulation adopted under this title or any provision of the code of ethics.

Bus. Occ. & Prof. § 17-322(b)(3), (4), (25), and (33) (Supp. 2023).

In connection with the aforementioned regulatory charge (33), the REC contended that the Respondent violated the following regulations:

> The licensee shall protect the public against fraud, misrepresentation or unethical practices in the real estate field....

COMAR 09.11.02.01C

> 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 his statutory obligations towards the other parties to the transaction.

COMAR 09.11.02.02A

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. State Gov't § 10-217 (2021); COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). In this case, the REC bears the burden to prove by a preponderance of the evidence that the Respondent committed the violations alleged in the Charges. COMAR 28.02.01.21K(1), (2)(a).

The REC argued that the Respondent misrepresented that the roof would be replaced, and agreed to do so in the Contract, but then failed to complete the replacement. The REC further argued that the Respondent misrepresented that the roof had been replaced by providing a falsified roof certificate when queried. Furthermore, the REC argued that the Respondent admitted he acted negligently. He testified that he was unsure if he completed a walkthrough of the Property prior to its sale, and that was a negligent act on his part because a salesperson is responsible for completing a walkthrough prior to sale. The Claimant testified that she notified the Respondent that there was a significant leak in her son's bedroom where water entered through the roof during a storm. The Claimant explained that she tried text messaging the Respondent directly about the roof, but he just responded that he was busy and did not follow up with her. After reaching out to Mr. Charles, the Respondent provided a roof repair certificate to Mr. Charles, but the Claimant testified that she got in touch with the contractor, and he verified that he did not perform any roof work on the Property. The REC's investigation included an interview with Mr. Prada of Lago, which revealed that Lago only provided a certificate of the interior repairs it performed, which did not include roof work. Given this information, it is hard

to understand why the certificate provided to the Claimant specified roof work, unless the certificate was altered at some point. The Claimant explained that she thought the roof had been replaced when she closed on the Property and did not believe the Respondent was trying to defraud her at the time of sale; however, that impression changed after witnessing his behavior following the leak.

The Respondent argued that he believed the roof had been replaced by the time the sale occurred and that his business associates were assisting him with the transaction while he spent time in Los Angeles, California. The Respondent further argued that because there was a roof certificate, the Claimant could have approached the contractor directly to have the roof work done if the work had not been performed. The Respondent explained that when it came to his attention that Lago did not perform the roof replacement work that the certificate indicated, he suggested that the Claimant follow up directly with Lago. The Respondent stated on the record, "I'm sorry it turned out that way," using the passive tense, and he did not accept responsibility for failing to ensure that the roof replacement occurred or to have it completed after the Claimant informed him of the leak.

The Respondent made false representations to the Claimant. When the Respondent entered into the Contract with the Claimant, he agreed to have the roof replaced prior to sale. Subsequently, when the Respondent hired Lago and entered into a construction contract, he should have been aware that roof work was not part of the contract and therefore would not happen. He could have made himself aware of this fact by reading the contract. By selling the Property to the Claimant without having the roof replaced, he misrepresented the condition of the Property to the Claimant. For these reasons, I find the Respondent violated Section 17-322(b)(3) of the Business Occupations and Professions Article by making false representations to the Claimant.

The Respondent negligently failed to disclose to the Claimant the material fact that the roof was not replaced prior to closing on the Property. The Respondent was responsible for knowing the actual status of the roof on the day of the closing. The fact that he was relying upon his business associates in Maryland to keep him informed while living a bi-coastal lifestyle does not relieve him of this obligation. The Respondent negligently failed to confirm the roof was replaced and therefore sold the Property to the Claimant without adequately informing her agent that this agreed upon repair had not happened. For this reason, I find the Respondent violated Section 17-322(b)(4) of the Business Occupations and Professions Article by negligently failing to disclose to the Claimant that the roof had not been replaced prior to sale. Furthermore, his failure to accurately convey the status of agreed-upon repairs was an act of misrepresentation, in violation of COMAR 09.11.02.11 and Section 17-322(b)(33) of the Business Occupations and Professions Article.

The Respondent failed to adequately oversee the sale of the Property. He was relying upon others to keep him informed when he should have been present in Maryland to confirm all agreed upon repairs had occurred prior to sale. He acknowledged on cross examination that he should have participated in the walkthrough, but he was not sure if he did so. By failing to confirm that all agreed upon repairs took place prior to selling the Property, the Respondent engaged in conduct that demonstrated incompetency as a real estate salesperson in violation of Section 17-322(b)(25) of the Business Occupations and Professions Article. Furthermore, he failed to satisfy his statutory obligation of competence to the Claimant, in violation of COMAR 09.11.02.02 and Section 17-322(b)(33) of the Business Occupations and Professions Article.

I conclude that the Respondent violated the statute and regulations charged, and I will address sanctions as follows:

Disciplinary Sanction

Section 17-322(c) of the Act provides as follows:

> (c)(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.
>
> (3) The Commission shall pay any penalty collected under this subsection into the General Fund of the State.
>
> (4) The Commission may not impose a fine based solely on a violation of subsection (b)(35) of this section.

Bus. Occ. & Prof. § 17-322(c) (Supp. 2023).

The REC proposed a one-year suspension of the Respondent's real estate salesperson license and a $5,000.00 fine based on the seriousness of the violations and harm caused by the Respondent. The Respondent treated the Claimant dishonestly, and the Claimant suffered physical damage to her son's room as a result of the Respondent's violations. His behavior was untrustworthy and lacking in diligence. I agree that the penalties proposed by the REC are appropriate.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Respondent violated sections 17-322(b)(3), (4), and (25) of the Business Occupations Article and COMAR 09.11.02.01C and COMAR 09.11.02.02A. Consequently, I conclude that the Respondent is subject to disciplinary sanctions of a one-year suspension of his real estate salesperson license and a $5,000.00 fine. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (Supp. 2023).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Real Estate Commission ORDER:

The Charges against the Respondent be UPHELD; and the Respondent's license be suspended for one year, effective ten days from the date of this order; and

The Respondent pay a monetary penalty of $5,000.00; and the records and publications of the Maryland Real Estate Commission reflect this decision.

SIGNATURE ON FILE

December 21, 2023
Date Decision Issued

Rachael Barnett
Administrative Law Judge

RAB/at
#208721