

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION	*	
	*	CASE NO. 2021-RE-486
v.	*	
	*	OAH NO. LABOR-REC-24-23-09759
CHARLES ST. CLAIR,	*	
Respondent Agent	*	
CHARLES PARRISH	*	
Respondent Broker	*	CASE NO. 2023-RE-302
and	*	
	*	OAH NO. LABOR-REC-21-23-09777
IN THE MATTER OF THE CLAIM	*	
OF LAWRENCE JOHNSON AGAINST	*	
THE MARYLAND REAL ESTATE	*	
COMMISSION GUARANTY FUND	*	
* * * * * *	*	* * * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated September 5, 2023, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 31st 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 Agent violated Md. Code Ann., Bus. Occ. & Prof. §17-322(b)(25) by using an Agreement that contained an error (stating he was not a licensed agent when he was a licensed agent) and omitted the name of the LCC, which demonstrated incompetency;

2. The Respondent Agent's use and signing of a form agreement that stated no commission was due to any real estate agent and his collection of a commission from the end-buyer was not a violation of Md. Code Ann., Bus. Occ. & Prof. §17-322(b)(32);
3. The Respondent Agent did not violate any regulations adopted under the Maryland Real Estate Broker's Act in violation of Md. Code Ann. Bus. Occ. & Prof. §17-322(b)(33); and,
4. The Respondent Agent did not violate COMAR 09.11.02.02D because he was not a real estate agent for the Claimant.
5. The Respondent Broker did not violate Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(3) by signing an agreement that stated no commission was due to any real estate agent and then collecting a commission from the end-buyer.
6. The Respondent Broker did not violate Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) by signing an Agreement that contained an error and omitted the name of the LCC;
7. The Respondent Broker did not fail to exercise reasonable and adequate supervision of the Respondent Agent in violation of Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(27);
8. The Respondent Broker did not violate any other provision of the Maryland Real Estate Broker's Act in violation of Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(32);
9. The Respondent Broker did not violate any regulations adopted under the Maryland Real Estate Broker's Act in violation of Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33);

10. The Respondent Broker did not violate COMAR 09.11.02.02A because he was not a real estate broker for the Claimant.

11. The appropriate sanction for the Respondent Agent is a reprimand; and

As a matter of law, Claimant did not sustain an actual monetary loss as a result of Respondent Broker's acts or omissions in his capacity as a licensed real estate broker. Md. Code Ann., Bus. Occ. & Prof § 17-404(a)(2).

C. That the Recommended Order in the recommended decision be, and hereby is, **AMENDED** as follows:

ORDERED that the charge against Respondent Agent, Charles St. Clair, for violating section 17-322(b)(25) of the Business Occupations and Professions Article be **UPHELD**;

ORDERED that the charges against Respondent Agent, Charles St. Clair, for violating sections 17-322(b)(32) and 17-322(b)(33) of the Business Occupations and Professions Article and COMAR 09.11.02.02D be **DISMISSED**;

ORDERED that all charges against the Respondent Broker, Charles Parrish, be **DISMISSED** .

ORDERED that Respondent Agent, Charles St. Clair, be reprimanded;

ORDERED that the Claimant's claim against the Maryland Real Estate Guaranty Fund be **DENIED**; and

ORDERED 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 Commission did not entirely agree with the ALJ's conclusions. This case presents a rare occasion where the Commission disagrees with ALJ regarding certain areas of their recommendation. The Commission agrees with the ALJ that Respondent Agent improperly used a form agreement stating that he was not a licensed agent when in fact he was; and the Commission believes that a reprimand is the appropriate penalty for this violation. However, the Commission disagrees with the ALJ's conclusion with respect to Respondents signing an agreement stating that no commission would be collected. The Commission considers it highly significant that the commission was collected from the end-buyer as opposed to the Complainant. The agreement was clearly intended to define the outcome for the Complainant, not the end-buyer. Given that the agreement was with the Complainant, and that the end-buyer was not a party to the agreement, and that no commission was charged to the Complainant, the Commission cannot find a justification for a violation on this issue. The Commission also disagrees with the ALJ's conclusions with respect to the Respondent Broker. Respondent Broker's primary involvement was to put the property up for auction. Given that the property never actually went up for auction, as well as the fact that there was no listing agreement, the Respondent Broker did not fail to supervise Respondent Agent. He signed the agreement along with the Complainant and the Respondent Agent; but the Respondent Agent drafted the agreement, and the Respondent Broker, as the owner of the company that was going to conduct the auction, had only a limited role in the overall transaction.

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

01/31/2024
Date

By: SIGNATURE ON FILE

MARYLAND REAL ESTATE
COMMISSION

v.

CHARLES ST. CLAIR,
RESPONDENT AGENT

* BEFORE ANN C. KEHINDE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* MREC NO: 23-RE-302
* OAH CASE NO.: LABOR-REC-21-23-09777

* * * * *

* * * * *

MARYLAND REAL ESTATE
COMMISSION

v.

CHARLES PARRISH,
RESPONDENT BROKER

and

CLAIM OF LAWRENCE JOHNSON
AGAINST THE REAL ESTATE
GUARANTY FUND

* BEFORE ANN C. KEHINDE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* MREC NO.: 21-RE-486
* OAH CASE NO.: LABOR-REC-24-23-09759

* * * * *

* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On or about March 6, 2021, Lawrence Johnson (Claimant) filed a claim for reimbursement with the Maryland Real Estate Commission (REC or Commission) Guaranty Fund (REC GF) for losses allegedly incurred as a result of the conduct of Charles Parrish, Real Estate Broker (Respondent Broker). On or about March 16, 2021, the Claimant filed a complaint against the Respondent Broker alleging violations of the Maryland Real Estate Broker's Act, Maryland Code Annotated, Business Occupations and Professions Article, section 17-101 *et seq.* (2018 & Supp. 2022) and the provisions at Code of Maryland Regulations (COMAR) 09.11.02, enacted under the Maryland Real Estate Broker's Act.

On December 2, 2022, the Commission filed a complaint against Charles St. Clair, Real Estate Agent (Respondent Agent).

On March 27, 2023, the Commission filed a Statement of Charges and Order for Hearing, setting forth regulatory charges (Charges) against Respondent Broker and ordering a consolidated hearing on the Charges and the Claimant's claim against the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-409(a) (2018).¹

The Commission filed a Statement of Charges and an Order for Hearing against Respondent Agent on March 28, 2023.

The REC transmitted the matters to the Office of Administrative Hearings (OAH) on April 3, 2023, and requested that all of the matters be consolidated. On April 27, 2023, the OAH sent the parties a Notice of Hearing, advising that an evidentiary hearing would be held on June 12, 2023, at the OAH, 11101 Gilroy Road, Hunt Valley, MD 21031.

¹ Unless otherwise noted, all references to the Business and Occupations Article are to the 2018 Replacement Volume.

On June 12, 2023, I conducted a hearing pursuant to Md. Code Ann., Bus. Occ. & Prof. §§17-324 and 17-409(a) (2018). Eric B. London, Assistant Attorney General (AAG) represented the Commission. Respondent Broker and Respondent Agent were present and both were represented by Taylor Miller, Esquire and Tony Garcia, Esquire. The Claimant was present and represented by Elliot Lewis, Esquire. Nicholas Sakalow, AAG, represented the REC GF.

The contested case provisions of the Administrative Procedure Act (APA), the Commission's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); Code of Maryland Regulations (COMAR) 09.11.03; COMAR 28.02.01.

ISSUES

The issues as to **Respondent Agent** are:

1. Whether he violated Md. Code Ann., Bus. Occ. & Prof. §17-322(b)(25) by engaging in conduct that demonstrated bad faith, incompetency, untrustworthiness, or that constituted dishonest, fraudulent or improper dealings;
2. Whether he violated any other provision of the Maryland Real Estate Broker's Act in violation of Md. Code Ann., Bus. Occ. & Prof. §17-322(b)(32);
3. Whether he violated any regulations adopted under the Maryland Real Estate Broker's Act in violation of Md. Code Ann. Bus. Occ. & Prof. §17-322(33); and,
4. Whether he violated COMAR 09.11.02.02D by failing to make a reasonable effort to ascertain all material facts concerning every property for which the licensee accepts the agency, in order the fulfill the obligations to avoid error, exaggeration, misrepresentation, or concealment of material facts?

The issues as to the **Respondent Broker** are:

5. Whether he violated Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(3) by directly, or through another person, willfully making a misrepresentation or knowingly making a false promise;
6. Whether he violated Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) by engaging in conduct that demonstrated bad faith, incompetency, untrustworthiness, or that constituted dishonest, fraudulent or improper dealings;
7. Whether Respondent Broker violated Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(27) by failing to exercise reasonable and adequate supervision of the provision of real estate services by another individual on behalf of the broker;
8. Whether he violated any other provision of the Maryland Real Estate Broker's Act in violation of Md. Code Ann., Bus. Occ. & Prof. 17-322(b)(32);
9. Whether he violated any regulations adopted under the Maryland Real Estate Broker's Act in violation of Md. Code Ann. Bus. Occ. & Prof. 17-322(33); and,
10. Whether he violated COMAR 09.11.02.02A by failing to protect and promote the interests of the client when accepting employment as an agent?

The issue as to **sanction(s)**, if any, are:

11. If the answer to any of the issues from one through four are in the affirmative, what is the appropriate sanction(s) that should be imposed against the Respondent Agent?
12. If the answer to any of the issues from five through ten are in the affirmative, what is the appropriate sanction(s) that should be imposed against the Respondent Broker?

The issue as to the **Claim to the REC GF** is:

13. Did the Claimant sustain an actual monetary loss as a result of Respondent Broker's acts or omissions in his capacity as a licensed real estate broker; and,
14. If so, what is the appropriate award to the Claimant from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits:

The Real Estate Commission submitted the following documents, which were admitted into evidence:

- REC Ex. #1: Notice of Hearing for Respondent Broker, June 12, 2023
- REC Ex. #2: Licensing History, Respondent Broker, June 8, 2023
- REC Ex. #3: Notice of Hearing for Respondent Agent, June 12, 2023
- REC Ex. #4: Licensing History, Respondent Agent, June 8, 2023
- REC Ex. #5: REC Report of Investigation for Respondent Broker, October 12, 2022
- REC Ex. #6: Claimant's Complaint, March 16, 2021, with attachments:
- Licensing History for Respondent Broker
 - Response to the Complaint, Respondent Broker (undated)
 - Entry of Appearance for Respondents (Tony N. Garcia, Esquire), April 30, 2021
 - House Inspection (handwritten notes)
 - Licensing History for Respondent Agent
 - Letter from John Denick, Esquire, on behalf of the Claimant, March 8, 2021
 - HUD Settlement Statement, November 5, 2020
 - Agreement of Purchase and Sale, September 10, 2020
 - Addendum to Real Estate Purchase and Sale Agreement, October 14, 2020
 - Response to the Complaint, Respondent Agent (undated)
- REC Ex. #7: REC Report of Investigation for Respondent Agent and Respondent Broker, Case Number: 302-RE-2023

REC Ex. #8: Flyer announcing Public Auction, Auction Brokers, October 10, 2020

The Claimant submitted the following documents which were admitted into evidence:

CL Ex. #1: Exclusive Auction Service Agreement- Seller/Property Information

The Respondents submitted the following documents which were admitted into evidence:

Resp. Ex. #1: Respondent Agent's initial business call "script"

Resp. Ex. #2: Property Data; inspection, September 10, 2020

Resp. Ex. #3: Bright MLS Residential Profile Sheet of the Property, September 15, 2020

Resp. Ex. #4: Agreement of Purchase and Sale, September 10, 2020

Resp. Ex. #5: State of Maryland Department of Assessments and Taxation, St. Clair Family Property, LLC, November 3, 2018

Resp. Ex. #6: Internal Revenue Service (IRS) 2022 Form 8995, Qualified Business Income Deduction, St. Clair Properties, LLC

The REC GF did not offer any exhibits.

Testimony:

The Commission elicited testimony from the following witnesses:

1. Frazier West, Investigator, REC, Maryland Department of Labor
2. Lawrence Joseph Johnson, Claimant²
3. Karen Johnson, Claimant's wife

Charles W. St. Clair, Respondent Agent, and Charles Parrish, Respondent Broker, testified on their own behalf and did not elicit testimony from any other witnesses.

The REC GF did not elicit testimony from any witnesses.

² I permitted the Claimant's counsel to question the Claimant and his wife outside the scope of what was elicited on direct examination by the REC so that the Claimant and his wife did not have to be re-called as witnesses for their case.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent Broker was licensed by the Commission under License No. 5865729 and was the owner of Charles Real Estate and Auction Brokers, LLC. The Respondent Broker has been a real estate broker since April of 1984.
2. At all relevant times, the Respondent Agent was licensed by the Commission under License No. 5841902 and was employed by Charles Real Estate and Auction Brokers, LLC. The Respondent has been a real estate agent since February of 2020.
3. Prior to becoming a licensed real estate agent, Respondent Agent bought real estate as an investor since 2007. On January 6, 2009, the Respondent Agent registered a limited liability company (LLC) known as St. Clair Family Properties, LLC, with the Maryland Department of Assessments and Taxation. On the Respondent Agent's 2022 Internal Revenue Service (IRS) Form 8995, the Respondent listed his Trade, Business, or Aggregation name as St. Clair Properties, LLC.
4. The Claimant inherited his mother's property, located at 2805 Louisiana Avenue, Halethorpe, Maryland 21227 (Property), after she died in 2013. In 2020, Claimant decided to sell the Property, and contacted Respondent Broker.
5. Respondent Broker spoke with the Claimant by telephone and then asked Respondent Agent to meet with the Claimant.
6. Respondent Agent met with the Claimant and his wife at the Property on or about September 10, 2020.
7. Respondent Agent inspected the house and noted it needed extensive repairs: the roof was intact but fifteen to twenty years old, the kitchen needed extensive updating, there was a hole in the first-floor ceiling, the first-floor commode leaked into the basement, and all of the windows needed to be replaced.
8. Respondent Agent told the Claimant that he was a licensed real estate agent, but he also bought properties as an investor. Respondent Agent told the Claimant that he could present the Claimant with three options: (1) the Property could be listed for sale; (2) Respondent Agent could arrange for the Property to be auctioned; or (3) Respondent Agent could purchase the Property from the Claimant.

9. Respondent Agent told the Claimant that in order to list the Property, repairs would need to be made. Respondent Agent told the Claimant that in order to auction the Property "as is," the Claimant would be responsible for advertising costs.
10. The Claimant did not want to spend any money on renovations of the Property or pay for advertising costs to hold an auction. The Claimant wanted to make the most money he could from the Property but not invest any time or money.
11. Respondent Agent considered the amount of money that it would take to renovate the Property as well as "comps" of properties within one mile of the Property. Respondent Agent told the Claimant that he believed a reasonable price for the Property, given the shape it was in, was \$75,000.00.
12. Respondent Agent offered to pay \$70,000.00 for the Property and, if the Property sold for more than \$100,000.00, he would split (fifty-fifty) the amount that exceeded \$100,000.00 with the Claimant. The Claimant rejected that offer and told Respondent Agent that he did not want any risk; he told Respondent Agent he would sell him the property for \$75,000.00.
13. Respondent Agent agreed to purchase the Property for \$75,000.00. The Property was sold in an "AS-IS" condition, with no contingencies or inspection requirements. The Claimant had three days to reconsider the agreement. (Resp. Ex. 4, p. 1).
14. Respondent Agent used a form "Agreement of Purchase and Sale" (Agreement) that he had used prior to becoming a licensed real estate agent. The Claimant and Respondent Agent signed the Agreement on September 10, 2020, and Respondent Broker signed the Agreement on September 11, 2020.
15. The form Agreement stated that the buyer was Charles Parrish and Charles W. St. Clair, Jr., who were "agents of an LLC to be named herein." (Resp. Ex. 4, p. 1). No LLC was named in the Agreement.
16. The form Agreement stated: "**It is understood that there is no commission due to any real estate agent in this transaction and that the Buyer IS NOT a licensed real estate agent in the State of Maryland.**" (Resp. Ex. 4, p. 2) (capitals contained in original; bold supplied).
17. Respondent Broker is the owner of Auction Brokers, LLC.
18. Auction Brokers, LLC, scheduled the Property for an auction on Saturday, October 10, 2020.
19. On or about October 5, 2020, a pre-auction offer of \$120,000.00 was received from Tim Minh Truong (End Buyer). Respondent Agent told the Claimant that an

auction would not be held on October 10, 2020, because he was accepting the pre-auction offer of \$120,000.00 from the End Buyer.

20. The Claimant told Respondent Agent that he wanted to renegotiate the price.
21. On October 14, 2020, the Claimant, Respondent Agent, and Respondent Broker signed an Addendum to Real Estate Purchase and Sale Agreement (Addendum). The Addendum provided that the purchase price for the Property would be \$80,000.00 and all other terms and conditions of the original Agreement would remain the same. (REC Ex. 6, attachment 8).
22. Settlement occurred on November 5, 2020, and was conducted by Clearview Settlement Solutions, LLC. Present were the Claimant and Respondent Agent; the End Buyer was not present and met with the Settlement Officer separately. The Settlement Officer reviewed the Settlement statement with Claimant and Respondent Agent. The Claimant consented to the transaction and signed all necessary documents. The End Buyer paid a total of \$137,614.07.
23. The U.S. Department of Housing and Urban Development (HUD) Settlement Statement for the Property contains the following information on line 700: "TOTAL SALES/BROKER COMMISSION based on price \$80,000.00 = \$12,000.00". The entry next to this line notes that it was "PAID FROM BORROWER'S FUNDS AT SETTLEMENT." (REC Ex. 6, attachment 6).
24. The Claimant received a check at settlement in the amount of \$81,410.07. This was comprised of \$80,000.00 for the contract sales price, plus \$1,510.07 refund of prorated county taxes already paid by the Claimant, minus \$100.00 for a water bill.
25. From the transaction, Respondent Broker and Respondent Agent each received an assignment fee of \$20,000.00 (lines 1304 and 1305) as well as a commission in the amount of \$12,000.00 (line 700) (REC Ex. 6, attachment 6) for a total of fifty-two thousand dollars.

DISCUSSION

THE CHARGES

Law and Governing Regulations

The Real Estate Brokers Act (Act) is a comprehensive statutory scheme that regulates real estate professionals in this State. This statutory scheme's primary purpose is to protect the public. Md. Code Ann., Bus. Occ. & Prof. §§ 17-101 through 17-702 (2018); *see Smirlock v. Potomac Dev. Corp.*, 235 Md. 195 (1963); *Thorpe v. CARTE t/a Carte Real Estate Co.*, 252 Md.

523 (1968); *Zalis v. Blumenthal*, 254 Md. 265 (1969). The Commission is charged with administering and enforcing the provisions of the Act pursuant to section 17-209 of the Business Occupation and Professions Article. Describing the role and function of the Act, the Court of Special Appeals explained that:

The Maryland legislature has seen fit to regulate the field of real estate sales through these statutes and regulations. As a regulated profession, much like physicians, attorneys, or certified public accountants, real estate brokers have a responsibility to the public to conduct themselves in a reputable manner. These statutes set minimum guidelines for professional conduct, their purpose being to safeguard the public.

Lewis v. Long & Foster Real Estate, Inc., 85 Md. App. 754, 760 (1991).

The Commission has charged the Respondent Agent under the following provisions of the Business Occupations & Article:

**§17-322 Denials, reprimands, suspensions, revocations, and penalties—
Grounds.**

(b) Grounds. – Subject to the hearing provisions of §17-324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a licensee if the applicant or licensee:

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

* * *

(32) violates any other provision of this title;

* * *

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

COMAR 09.11.02.02 of the Code of Ethics provides:

.02 Relations to the Public.

D. The licensee shall make a reasonable effort to ascertain all material facts concerning every property for which the licensee accepts the agency, in order to fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of material facts.

The Commission charged the Respondent Broker under the following provisions of the

Business Occupations & Article:

§17-320 Employment of and contractual arrangements with salespersons and associate brokers.

(c) Supervision by real estate broker. – (1) A real estate broker shall exercise reasonable and adequate supervision over the provision of real estate brokerage services by any other individual, including an independent contractor, on behalf of the broker.

**§17-322 Denials, reprimands, suspensions, revocations, and penalties—
Grounds.**

(b) Grounds. – Subject to the hearing provisions of §17-324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a licensee if the applicant or licensee:

(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;

* * *

(27) violates §17-320(c) of this subtitle by failing as a real estate broker to exercise reasonable and adequate supervision over the provision of real estate services by another individual on behalf of the broker;

* * *

(32) violates any other provision of this title;

* * *

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

COMAR 09.11.02.02 of the Code of Ethics provides:

.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 his statutory obligations toward the other parties to the transaction.

Burden of Proof

The law and regulations are silent as to the assignment of the burden of proof in the instant matter. In such circumstances, the burden lies with the party asserting the affirmative of the issue before the administrative tribunal. *Comm'r of Labor & Indus. V. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) (quoting *Bernstein v. Real Estate Comm'n*, 221 Md. 221, 231 (1959) (the burden of proof lies with the party asserting the affirmative of an issue); *Garrett v. State*, 124 Md. App. 23, 28 (1998) (“[t]he general practice is to allocate the burden of proof to the party asserting the affirmative of an issue, or seeking to change the status quo”); *cf. Schaffer v. Weast*, 546 U.S. 49, 56 (2005) (absent clear legislative intent to the contrary, the burden of proof is with the party seeking relief). I conclude, therefore, that as the proponent of the Charges, the Commission bears the burden of proof.

The standard of proof is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2021); *see also Bernstein*, 221 Md. At 232 (internal citation omitted). To prove something by a “preponderance of the evidence” means “to prove that something is more likely so than not so,” when all of the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002); *see also Mathis v. Hargrove*, 166 Md. App. 286, 310 n.5 (2005).

Analysis

The REC argued that the Respondents violated the statute and regulations by:

(1) not specifying the name of the LLC that would buy the Claimant's Property and erroneously stating that Respondent Agent was not a licensed real estate agent in the State of Maryland;

(2) significantly undervaluing the Property (which the Claimant then relied on); and,

(3) stating in the Agreement that no commission would be collected but then receiving a commission at settlement.

The REC further argued that, although Respondent Agent had the majority of the contact with the Claimant (except for one initial telephone conversation), Respondent Broker also signed the Agreement and the Addendum, and had a duty as the broker to supervise the agent.

Errors in the Agreement prepared by the Respondent Agent:

Respondent Agent concedes that he used an old form of the Agreement that he drafted prior to becoming a licensed real estate agent. He concedes that he *was* licensed at the time he entered into the Agreement and the statement that he was not licensed was incorrect.

The REC also argued that the Agreement omitted crucial information. In reciting the parties, the Agreement states: “by and between [Respondent Broker] and [Respondent Agent], agents of an LLC to be named herein known as “Buyer” ...” but the Agreement does not provide the name of the LLC. The Respondents argued that the word “later” was missing because the sentence is not grammatically correct without “to be later named herein...” Even if the word “later” was added, the Agreement never provided the name of the LLC anywhere in the document.³

It is clear that the Respondent Agent drafted the Agreement, and that the Agreement contained the error and omission. I found the Respondent Agent’s testimony convincing that this was the first transaction he was involved with after he became a licensed real estate agent, and he used an old form. The misuse of an old form, which incorrectly stated that the Respondent Agent was not a licensed real estate agent does not, by itself, demonstrate bad faith,

³ In fact, as noted the person who ultimately purchased the Property was Tim Minh Truong. The transaction at issue in this case appears to be a wholesale real estate transaction because the Respondents never took title to the Property. In such a transaction, Mr. Truong would be referred to as an End Buyer.

untrustworthiness, dishonesty, or fraudulent or improper dealings. The fact that the Respondent did not state the name of the LLC is also not proof of bad faith, untrustworthiness, dishonesty or fraudulent or improper dealings but it does demonstrate a level of incompetence. Legal documents for the sale of a home need to be complete and accurate. In using an old form, and by not making sure the LLC was stated in the Agreement, the Respondent Agent was incompetent in violation of section 17-322(b)(25).

Likewise, the Respondent Broker reviewed and signed the Agreement and did not notice the error and omission in the Agreement. He therefore failed to exercise reasonable and adequate supervision of an agent in violation of section 17-322(b)(27).

Valuation of the Property:

The REC argued that the Respondent Agent significantly undervalued the worth of the Property when he met with the Claimant and his wife on September 10, 2020. As a licensed real estate agent, the Respondent Agent had a duty to deal fairly and properly with the Claimant.

The Respondent Agent testified that he went over, in detail, the three options that were available to the Claimant: list the property; sell the property at auction; or sell the property to the Respondents. The Respondent Agent further testified that he made it clear to the Claimant that if he was buying the property, he was not acting as the Claimant's real estate agent. Indeed, there was no document outlining any agreement between the Claimant and the Respondent Agent as a seller's agent.⁴

The Respondent Agent further testified that the Claimant wanted to sell the Property "as is" and the Respondents were interested in purchasing the property. The Respondent Agent testified credibly that he has bought five to six properties in the past, renovated and sold them, so he has experience in estimating how much it will cost to renovate a property to meet "market standards." The Respondent Agent also testified that he factors the cost of needed renovations

⁴ If anything, the mistake in the Respondent Agent's Agreement (in which he erroneously stated that he was not a licensed real estate agent in Maryland) further detracts from any reasonable belief by the Claimant that the Respondent Agent was acting as his (the seller's) "advocate" (as the Claimant testified) or real estate agent.

into consideration when he gives a range for what a property might sell for, and he did that in arriving at the figure of \$75,000.00.

The REC argued that the figure of \$75,000.00 was well below the Maryland Department of Assessments and Taxation assessment of the Property and well below the value of other properties in the one-mile area used for “comps” or comparisons. The Respondent Agent agreed that the figure was below the assessed value but noted that when a property is assessed, it is based on how the property appears on the outside and the assessor has no idea of the condition inside the property. Further, he testified that the properties used for comparisons were “turnkey ready” meaning that little or no renovations were needed on those properties. In this case, the Respondent Agent testified, the Claimant did not want to spend any money or time in fixing up the property. Therefore, the Respondent Agent testified, the “comps” were not really a good comparison to the subject Property. The REC did not provide any evidence to refute the Respondent Agent’s assertions regarding the assessment or the comps.

The Respondent Agent also testified that he was pleasantly surprised when he received a pre-auction offer of \$120,000.00 for the Property, but he was not apologetic. The Respondent Agent explained that sometimes they do better than they expected (and earn a profit as they did here) and sometimes they take a loss on a property if they pay more than they are able to get from a buyer. The Respondent Agent’s explanation is persuasive that he and the Respondent Broker assume the risk that a purchased property may or may not ultimately generate a profit, whereas the Claimant was only interested in a risk-free transaction. The Claimant agreed in his testimony that he did not want to spend any money or time renovating the Property and he did not want to take any risks.

In sum, the REC did not meet its burden to demonstrate that the Respondent Agent engaged in conduct that demonstrated bad faith, incompetency, or untrustworthiness or that he

was dishonest, fraudulent, or improper in providing his opinion on the value of the Property in his interactions with the Claimant. If the Respondent Agent did not engage in this misconduct in undervaluing the Property, the Respondent Broker did not fail to properly supervise the Respondent Agent.

Once it was clear that the Claimant did not want to spend any money or time making repairs to the Property, the Respondent Agent presented the Claimant with two options for the purchase of the Property. The first option was for the Respondents to buy the Property for \$75,000.00. The second option was for the Respondents to buy the Property for \$70,000.00 and then, if the Property sold for more than \$100,000.00, the amount in excess of \$100,000.00 would be split fifty-fifty between the Respondents and the Claimant. The Claimant told Respondent Agent that he did not want any risk and preferred to enter a contract for the outright sale of the Property for \$75,000.00. The fact that the Claimant was presented with two options for the purchase of his property, selected one, and initialed his rejection of the other option, demonstrates that he knew the Respondent was purchasing his property and not acting as his real estate agent. Furthermore, there was no evidence that the Claimant was prevented from seeking the opinions of other real estate agents, appraisers, an attorney, etc., to advise him on the sale of the Property to the Respondents. The Claimant testified that he had "packets of information" from other real estate agents, but he did not reach out to any of them.

After the Claimant learned of the pre-auction bid, he told the Respondents he wanted to renegotiate the contract price. It is undisputed that the price was increased by \$5,000.00, and that the Claimant was accompanied by his wife, and perhaps his son, in those negotiations. The Claimant signed the Addendum on October 14, 2020, and all of the terms remained the same except for the increase of contract price by \$5,000.00.

The Claimant testified that he settled for \$80,000.00 because that was all he could get after the Respondents threatened to sue him if he did not go through with the sale. Both of the Respondents adamantly denied making any threat to sue the Claimant. Respondent Agent further testified that the Claimant was cordial up through closing and that the Claimant did not express any dissatisfaction until well after the settlement was completed.

I do not find the Claimant's testimony regarding a threat by the Respondents credible. First, the plain language of the Agreement (and the Addendum which changed the price but not the other terms) informed the Claimant that he had until September 13, 2020 (three days) to rescind the Agreement. Further, the Claimant was vague as to when he alleged the Respondent Agent threatened to sue him. During the hearing, the Claimant testified that during the settlement, he saw the \$20,000.00 assignment fees and complained that it was "exorbitant," "this was his inheritance" and it was "not right" what the Respondents were doing. The Claimant further testified that Respondent Agent responded, "you signed a contract. We will take you to court." Therefore, he testified, he had no alternative but to go forward with the settlement. The Claimant testified that the Respondent Agent may have also threatened him back in October 2020.

When the Claimant was interviewed by the REC investigator on July 11, 2022, he was asked by the investigator if he read the HUD Settlement Statement before he signed it. The investigator specifically directed the Claimant's attention to the amount he would receive and then lines 1304 and 1305 that stated each Respondent would receive an "assignment fee" of \$20,000.00. Next, the Claimant was asked if he read the document, why did he agree and sign it at the settlement on November 5, 2020. The Claimant responded, "I was trusting [Respondent Agent] and he told me if I did not sign, he was going to sue me." (REC Ex. #5, p. 4). The Claimant was further questioned if he asked the "settlement agent any questions when you did

not agree with each of them getting \$20,000.00 a piece?" and the Claimant responded, "no." The investigator also asked the Claimant why he did "not rescind the contract before the three days expired?" The Claimant again answered that the Respondent Agent "threaten[ed] he would sue me." (REC Ex. #5, attachment 5, p. 4). I find it more likely than not that if a settlement officer heard threats being made during settlement, she would not have allowed the settlement to continue. The Claimant's response to the investigator as to why he did not say anything to the settlement officer at the settlement – because he trusted the Respondents would "do right by me" – was more likely than not the Claimant's reaction at the time of settlement, and not that the Respondent threatened to sue him. (REC Ex. #5, attachment 5, p. 5).

Commissions:

The Agreement prepared by the Respondent Agent and signed by the Claimant on September 10, 2020, stated in pertinent part: "**It is understood that there is no commission due to any real estate agent in this transaction**" (Resp. Ex. 4, p. 2) (capitals contained in original; bold supplied). In the HUD Settlement Statement, line 700 provides for a "total sales/broker commission based on a price \$80,000.00 = 12,000.00." (REC Ex #6, attachment 6).

The Respondents argued that the item was not really a commission but a "buyer's premium" and therefore it did not violate the Agreement. Although the Respondents did not cite any statutory, regulatory, or case law that defines what a "buyer's premium" is, they testified that it is a fee paid to cover the costs of the auction. In this case, the auction was cancelled, and it appears the costs of marketing for the auction were minimal (a sign was posted at the Property, a lock box installed so the house could be shown prior to auction, and fliers were produced and distributed). However, if the "buyer's premium" was based on the auction costs, as the Respondents alleged, then it is illogical that the amount on the HUD Settlement Sheet would be calculated based on the sales price. In other words, one could assume that the costs to auction an

\$80,000.00 home would be identical to the costs to auction a \$120,000.00 home, but instead the commission is stated as a percentage of the sales price and not a flat fee. Therefore, both the usage of the term “commission” and how the commission was calculated, weigh against the Respondents’ claim that the amount was a “buyer’s premium” and not a commission. I conclude, therefore, that the REC sustained its burden in showing that the Respondent Agent misrepresented part of the transaction when he presented the Claimant with an Agreement that stated that no commissions would be collected, but a commission was collected at the time of settlement.

The Respondents’ argument that the “buyer’s premium” was collected from the end buyer, and not the Claimant, is of no consequence. The Agreement unambiguously states that no commission would be due to *any* real estate agent in the *transaction* not just that a commission would not be collected from the Claimant.

The Respondent Broker was charged with violating section 17-322(b)(3), which forbids making a misrepresentation or knowingly making a false promise. When the Respondent Broker signed the Agreement stating that no real estate commission would be collected in the transaction, and then collected a commission, that was a misrepresentation or a false promise.

The Respondent Agent was not charged with violating section 17-322(b)(3), but he was charged with violating section 17-322(b)(32) which prohibits a licensee from violating any other provision of the Maryland Real Estate Broker’s Act. Therefore, the Respondent Agent violated section 17-322(b)(32) because his misrepresentation or false promise concerning the commission was a violation of a provision of the Maryland Real Estate Broker’s Act, specifically, section 17-322(b)(3).

Sanctions

Section 17-322 of the Business Occupations and Professions Article provides that the Commission may reprimand, suspend, or revoke a license when a licensee has violated its provisions. The Commission may also impose a penalty of up to \$5,000.00 for each violation of the Article.

The considerations the Commission must undertake when imposing a sanction include the following:

- (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 violation by the licensee.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c)(2).

In recommending that both Respondents be reprimanded, and that Respondent Agent be fined \$1,000.00 and Respondent Broker be fined \$1,500.00, the REC acknowledged that neither Respondent has any prior history of violations but argued that the violations should not be “glossed over” because their actions damaged the reputation of the real estate industry. The REC further argued that the Respondent Broker should be fined more than the agent because the Respondent Broker had a duty to supervise the agent.

As noted above, the most serious allegation (that the Respondent Agent undervalued the Property) was not proven by the REC by a preponderance of the evidence. The REC did prove that the Agreement misstated that the Respondent Agent was not a licensed real estate agent and the Agreement did not contain the name of the LLC. Legal documents need to be accurate and complete, so errors and omissions are serious, but I conclude that the violations did not result in any harm to the Claimant. The Claimant testified that he thought the Respondent Agent would be his “advocate” and help him “sell the property” even though the Claimant signed an

Agreement that clearly identified the Respondents as buying his property. If the Claimant still believed the Respondents were helping him to sell the Property even after they offered him a contract to purchase the Property (and misstated that the Respondent Agent was not a licensed real estate agent), I doubt adding the proper entity of the LLC would have done anything to change the Claimant's mind.

The misrepresentation that the Respondents would not collect a commission from the transaction, when they did collect a commission, is a more serious violation. Commissions are how real estate agents and brokers get paid and it damages the industry as a whole if there are any misrepresentations regarding commissions.

For these reasons, I agree that the Respondents should receive reprimands as a result of the errors in the Agreement and for receiving a commission when the Agreement stated that no commission would be received by any real estate agent. I recommend, however, that the Respondent Agent be fined \$500.00 and the Respondent Broker be fined \$750.00, because the REC did not prove the allegation concerning the undervaluation of the Property.

THE GUARANTY FUND CLAIM

Law and Governing Regulations

The Claimant filed a claim for reimbursement from the Fund for losses incurred as a result of the Respondent Broker's conduct. Under the Act, an individual may recover an award from the Fund for an actual loss as follows:

(2) A claim shall:

(i) be based on an act or omission that occurs in the provision of real estate brokerage services by:

1. a licensed real estate broker;
2. a licensed associate real estate broker;
3. a licensed real estate salesperson; or
4. an unlicensed employee of a licensed real estate broker;

(ii) involve a transaction that relates to real estate that is located in the State;
and

(iii) be based on an act or omission:

1. in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or
2. that constitutes fraud or misrepresentation.

Md. Code Ann., Bus. Occ. & Profs. § 17-404(a)(2).

The amount of compensation recoverable by a claimant from the Guaranty Fund “shall be restricted to the actual monetary loss incurred by the claimant, but may not include monetary losses other than the monetary loss from the originating transaction.” COMAR 09.11.01.15.

The maximum recovery from the Fund is \$50,000.00. Md. Code Ann., Bus. Occ. & Prof.

§ 17-404(b).

Burden of Proof

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Occ. & Prof. § 17-407(e) (2018); State Gov’t § 10-217. To prove 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).

Analysis

First, the analysis under section 17-404 requires that a claim shall be based on an act or omission “that occurs in the provision of real estate brokerage services.” As discussed above, the Respondents were buyers in this case and never entered into an agreement with the Claimant to act as his real estate broker or agent. However, even if the Respondent Broker was providing “real estate brokerage services” in this case, the Claimant has failed to meet his burden that he had an actual monetary loss caused by the Respondent Broker’s acts or omissions.

As discussed above, the Respondent Broker failed to properly exercise reasonable and adequate supervision of the Respondent Agent who used an old form that erroneously stated that the Respondent Agent was not a licensed real estate agent when he was licensed. The form also omitted the name of the LLC. However, the Claimant has not shown how an error and omission in the form Agreement caused him any monetary loss.

As also discussed above, the Respondent Broker received a commission despite the Agreement explicitly providing that no real estate agent would receive a commission in the transaction. Again, however, the Claimant has not shown how this misrepresentation resulted in a monetary loss to him. The Claimant agreed to sell the Property to the Respondents for \$75,000.00, which was then amended to \$80,000.00. The Claimant received a little over \$80,000.00 at settlement, which is exactly what he bargained for and what was provided for in the Agreement.

The Claimant had several options for the disposition of his Property. The Claimant could have paid an appraiser to perform an appraisal of the Property, he could have requested a second or third opinion from other real estate agents as to what they believed the Property could sell for, or the Claimant could have listed it for sale with a real estate agent, or have the Property auctioned. The Claimant did not want to exercise any option that required him to put more money and time into the Property, and he wanted to limit his risk. Therefore, he agreed to sell the Property to the Respondents for \$75,000.00. When the Claimant heard about the pre-auction offer of \$120,000.00, the Claimant realized that he had made a bad deal. It is understandable that he was upset. The fact that he had made a bad deal, however, does not translate into proof that the Respondents took an action that resulted in a monetary loss to the Claimant.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law regarding the **Respondent Agent** that:

1. The Respondent Agent violated Md. Code Ann., Bus. Occ. & Prof. §17-322(b)(25) by using an Agreement that contained an error and omitted the name of the LCC, which demonstrated incompetency;
2. The Respondent Agent's misrepresentation or false promise concerning not collecting a commission in the transaction when he did collect a commission was a violation of Md. Code Ann., Bus. Occ. & Prof. §17-322(b)(32);
3. The Respondent Agent did not violate any regulations adopted under the Maryland Real Estate Broker's Act in violation of Md. Code Ann. Bus. Occ. & Prof. §17-322(33); and,
4. The Respondent Agent did not violate COMAR 09.11.02.02D because he was not a real estate agent for the Claimant.

Based upon the foregoing Findings of Fact and Discussion, I further conclude, as a matter of law regarding the **Respondent Broker** that:

5. The Respondent Broker violated Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(3) by directly, or through another person, willfully made a misrepresentation or knowingly made a false promise when he agreed not to collect a commission in the transaction but did collect a commission;
6. The Respondent Broker violated Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) by signing an Agreement that had contained an error and omitted the name of the LCC which demonstrated incompetency;

7. The Respondent Broker violated Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(27) by failing to exercise reasonable and adequate supervision of the Respondent Agent;
8. The Respondent Broker did not violate any other provision of the Maryland Real Estate Broker's Act in violation of Md. Code Ann., Bus. Occ. & Prof. §17-322(b)(32);
9. The Respondent Broker did not violate any regulations adopted under the Maryland Real Estate Broker's Act in violation of Md. Code Ann., Bus. Occ. & Prof. §17-322(33); and,
10. The Respondent Broker did not violate COMAR 09.11.02.02A because he was not a real estate broker for the Claimant.

Based upon the foregoing Findings of Fact and Discussion, I further conclude, as a matter of law,

11. The appropriate sanction for the Respondent Agent is a reprimand and a \$500.00 fine pursuant to Md. Code Ann., Bus. Occ. & Prof. § 17-322(b), (c); and
12. The appropriate sanction for the Respondent Broker is a reprimand and a \$750.00 fine pursuant to Md. Code Ann., Bus. Occ. & Prof. § 17-322(b), (c); and

Based on the foregoing Findings of Fact and Discussion, I further conclude, as a matter of law that the Claimant did not sustain an actual monetary loss as a result of Respondent Broker's acts or omissions in his capacity as a licensed real estate broker. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2).

RECOMMENDED ORDERS

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

The charges against Respondent Agent for violating sections 17-322(b)(25) and (32) of the Business Occupations and Professions Article be **UPHELD**; and

The charges against Respondent Agent for violating section 17-322(b)(33) and COMAR 09.11.02.02D be **DISMISSED**; and

The charges against Respondent Broker for violating section 17-322(b)(3), (25), and (27) be **UPHELD**; and

The charges against Respondent Broker for violating section 17-322(b)(32) and (33) and COMAR 09.11.02.02A be **DISMISSED**;

That the Respondents be subject to a **REPRIMAND**; and that a **penalty of \$500.00** be imposed against the Respondent Agent, and that a **penalty of \$750.00** be imposed against the Respondent Broker as appropriate sanctions;

That the Claimant's claim for an award from the Guaranty Fund be **DENIED** and **DISMISSED**; and it is further

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

September 5, 2023
Date Decision Issued

SIGNATURE ON FILE

Ann C. Kehinde
Administrative Law Judge

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