

MARYLAND REAL ESTATE
COMMISSION

v.

LINDA J. PELLUM

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BEFORE THE
MARYLAND REAL
ESTATE COMMISSION
CASE NO. 2004-RE-207
OAH CASE NO.
DLR-REC-21-06-20946

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OPINION AND FINAL ORDER

INTRODUCTION

This matter comes before the Commission for argument on exceptions filed by the Respondent, Linda J. Pellum, to the Commission's Proposed Order of May 1, 2007. On April 9, 2007, Marc Nachman ("ALJ") filed a Recommended Decision and Order in which he recommended that Linda J. Pellum, ("Respondent"), a licensee of the Commission, be found to have violated § 17-322(b)(30) and (32), and §§ 17-502(a) and 17-530(b)(1) of the Annotated Code of Maryland, Business Occupations and Professions Article ("BOP"), and COMAR 09.11.01.07 and 09.11.02.01H. For these violations, the ALJ recommended that the Respondent's license be suspended for a period of 90 days and that she pay a monetary penalty of \$8,500.

On May 1, 2007, the Maryland Real Estate Commission ("Commission") issued a Proposed Order that adopted the ALJ's Recommended Findings of Fact, Conclusions of Law, and sanctions, and amended the recommended order to provide for suspension of Ms. Pellum's real estate license for an additional period if she did not pay her civil penalty within the time

allotted and required her to complete a three-hour course in the principles of agency in addition to the courses required for license renewal. Ms. Pllum filed exceptions to the Proposed Order.

On December 19, 2007, argument on the Respondent's exceptions was heard by a panel of the Commission. The Respondent represented herself. The Presenter of Evidence on behalf of the Commission was Jessica Kaufman, Assistant Attorney General. The argument was electronically recorded.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, the Presenter of Evidence offered eight exhibits, all of which were accepted. Ms. Pllum did not offer any exhibits. The transcript of the hearing before the ALJ and the exhibits admitted into evidence at the hearing were before the Commission.

FINDINGS OF FACT

The Commission adopts the findings of fact recommended by the ALJ.

CONCLUSIONS OF LAW

The Commission adopts the ALJ's Conclusions of Law.

DISCUSSION

The Commission adopts the reasoning set forth in the ALJ's Discussion section, and will address the arguments the Respondent raises in her exceptions. The primary focus of the exceptions was the credibility and motivation of the buyer in the transaction, who testified at the hearing. Ms. Pllum argued that the proposed purchase was a scam, and that the buyer was "a shark, not a buyer." According to Ms. Pllum, the buyer was trying to tie up the property so that she could shop the contract. She herself did not know it was a scam, and she apologized to the Commission for "not seeing the sand being thrown in her face." She said that the buyer told her

to hold the deposit check, and that the seller was the one who was hurt in the scam. She called the Commissioners' attention to footnote 10, on page 12 of the recommended order, where the ALJ stated that, "The Complainant was not a trustworthy or credible witness."

What is unfortunate about this case is that the violations committed by the Respondent are substantiated by her own testimony, but that she has not come to terms with that fact. She was the listing agent on this property for the seller, who was also a friend. Yet when the buyer presented a contract on behalf of her company, a contract prepared by the Respondent, she listed herself as a dual agent. At that time, and at the hearing, she appeared to see no problem in working in this manner.¹ Her broker testified that he was unaware of her dual role and did not approve it. He also testified that the agency's policy is in accordance with Maryland law so that there must be two agents working under a broker in a dual agency situation. T. 104.

The law in Maryland permits dual agency only under very limited circumstances. See Section 17-502 of the Business Occupations and Professions Article. The broker, not a salesperson, is the dual agent, and the broker in turn assigns one intra-company agent to represent the seller and one to represent the buyer. A signed agreement is also required in each instance. In this case the evidence is uncontraverted that Ms. Pellum designated herself as the dual agent for both parties, without the knowledge of her broker. In her exceptions she claims that it was the buyer who wanted dual agency. However, a salesperson familiar with the licensing law would have known that she could not represent both parties, and that the broker, as well as a second agent, had to be involved. Her disregard for, or ignorance of, the law left the seller

¹ The Real Estate Commission investigator who interviewed Ms. Pellum testified as follows: "She stated that in this specific transaction that she was the listing agent as well as the buyer's agent, that her broker, Mr. Bengel, was acting as the dual agent." T. 112.

without a licensee to protect her interests.

The second violation which requires only her testimony to substantiate was the failure to promptly submit the trust money to her broker. Instead, as she admits, she followed the buyer's request, and held the check^{2,3}. Again, her broker was unaware of the existence of the check. He testified that the brokerage requirement is that checks be submitted to his office within five business days of ratification of the contract. T. 97. Section 17-502 requires a salesperson who obtains trust money to "promptly" submit the trust money to the broker. Instead, Ms. Pellum held the check for more than six weeks. Her decision to hold the check was thus in violation of the licensing law, the policies of the brokerage with which she was affiliated, and of her duty to protect the interests of her client, the seller.

The final charge relates to the failure to prepare a contract addendum extending the settlement date beyond October 28, 2003. In her written exceptions, Ms. Pellum stated that the buyer refused to sign "documents of extension."⁴ There is no evidence in the record that she prepared such documents and submitted them to the buyer. Thus, the settlement date passed without any protections for the seller - the deposit check was undeposited, the contract had expired, and no extension documents had been signed. It is hard to conclude that the harm to the seller was caused solely by the actions of the buyer; Ms. Pellum's failure to comply with the

²Her explanation for not depositing the check in a timely manner was, "Since I was acting as dual agent, I was doing what the buyer asked me to do." T. 161.

³ With regard to her ultimate decision to deposit the check, she testified, "And the reason why I went ahead and cleared the check was because I already knew at that point I was in trouble with the seller." T. 154.

⁴ She testified: "I didn't have an addendum saying she was extended to the 10th because she would not have signed one. She kept talking to me like she was in the transaction." T. 153.

basic requirements of the licensing law left her without any legal protections.

In spite of her contention that the case revolves around the testimony of a witness whose credibility was challenged by the ALJ, the evidence from her own mouth is sufficient to find Ms. Pellum in violation of all the cited provisions of the law. She has no one to blame but herself for being before the Commission on these charges, and her refusal to acknowledge her own failings is troubling to the Commissioners. It is hard to see how the interests of Maryland consumers can be protected when a licensee is so ill-equipped to comply with the State licensing laws.

As the ALJ noted, this is not Ms. Pellum's first appearance before the Commission. In 1991 her license was revoked in a matter involving the inappropriate handling of a real estate deposit. For that reason, as well as for the serious violations she committed in this case, the Commission believes that a ninety-day suspension of her license and a civil penalty of \$8,500.00 are entirely appropriate. Her actions did not demonstrate good faith, they caused harm to the seller by tying up her property for several months, and they go to the heart of the professional obligations of a real estate licensee. It is the hope, and the expectation, of the Commissioners that she will use the ninety-day suspension period and the mandated hours of professional education to become better acquainted with the Maryland licensing law.

ORDER

Argument on the Exceptions filed by the Respondent, Linda J. Pellum, having been heard on December 19, 2007, it is this 4th day of January 2008, by the Maryland Real Estate Commission, **ORDERED**,

A. That the Proposed Order and recommended decision be, and hereby are, **AFFIRMED**; and

B. That the records and publications of the Maryland Real Estate Commission reflect this decision.

MARYLAND REAL ESTATE COMMISSION

(COMMISSIONER'S SIGNATURE
APPEARS ON ORIGINAL ORDER)

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MARYLAND REAL ESTATE
COMMISSION

v.

LINDA J. PELLUM

* BEFORE MARC NACHMAN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE NO.: DLR-REC-21-06-20946
* REC COMPLAINT NO: 2004-RE-207

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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 December 29, 2003, Carolyn Gorhambey¹ (Complainant) filed a complaint with the Maryland Real Estate Commission (the Commission or REC) against Linda J. Pellum (Respondent), a real estate salesperson. On March 2, 2005, the Commission issued a Statement of Charges and Order for Hearing against the Respondent.

On January 9, 2006, I conducted a hearing at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland 21031, pursuant to Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2004 & Supp. 2006).² Assistant Attorney General Kris King represented the Commission. The Respondent represented herself.

¹ The Complainant spells her name "Gorhambey" as well as "Gorham-Bey." See REC Exs. # 6 and 11.

² Unless otherwise noted, all statutory references in this decision are to the Business Occupations and Professions Article of the Annotated Code of Maryland (2004).

The Administrative Procedure Act, the procedures for Administrative Hearings of the Office of the Secretary of the Department of Labor, Licensing and Regulation, the procedures for Hearings of the Commission, and the OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2006); Code of Maryland Regulations (COMAR) 09.01.02, COMAR 09.01.03; COMAR 09.11.03; and COMAR 28.02.01.

ISSUES

The issues are:

- 1) whether the Respondent willfully acted as a dual agent without advising the Complainant or obtaining the required consent to do so, in violation of Bus. Occ. & Prof. §§ 17-322(b)(30) and (32), and § 17-530 (b) and (c);
- 2) whether the Respondent failed to timely submit the deposit check paid by the Complainant to her broker for deposit, in violation of Bus. Occ. & Prof. § 17-502 (a) and COMAR 09.11.01.07;
- 3) whether the Respondent failed to prepare agreements to reflect the extension of the contract settlement date, in violation of Bus. Occ. & Prof. § 17-208 and COMAR 09.11.01.07; and, for each violation proven,
- 4) what sanctions are appropriate under Bus. Occ. & Prof. § 17-322(c).

SUMMARY OF THE EVIDENCE

Exhibits

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

- REC Ex. #1 - Notice of Hearing, dated August 14, 2006, with attached Charges
- REC Ex. #2 - Letter from Katherine F. Connelly, Executive Director, REC, written "To Whom It May Concern," dated January 8, 2007, with attachment

- REC Ex. #3 - Recommended Order, OAH Case No. 90-DLR-REC-01-013, dated September 30, 1991, with Proposed Order of REC, dated October 10, 1991
- REC Ex. #4 - Newspaper advertisement concerning real property sale, December 14, 2003
- REC Ex. #5 - Residential Contract of Sale between seller Josephine White and purchaser Bucca Properties, LLC (Bucca), dated October 13, 2003, with attachments, including copy of deposit check
- REC Ex. #6 - Correspondence from Bucca to Fortune Mortgage Company, dated October 15, 2003
- REC Ex. #7 - Correspondence from Fortune Mortgage Company, dated October 17, 2003
- REC Ex. #8 - Agreement of Release with attachments, unsigned
- REC Ex. #9 - Copy of deposit check
- REC Ex. #10 - E-mail from Respondent to Complainant, dated December 4, 2003
- REC Ex. #11 - REC Complaint, received December 31, 2003, with attachments
- REC Ex. #12 - REC questionnaire completed by Charles Bengel, dated July 7, 2005
- REC Ex. #13 - Report of Investigation by Jack L. Mull, Jr., closed July 12, 2005

The Respondent did not submit any documents into evidence.

Testimony

The Commission presented the testimony of the following witnesses:

- Carolyn Gorhambey, Complainant
- Charles Bengel, Real Estate Broker
- Jack L. Mull, Jr., Investigator, REC

The Respondent testified on her own behalf and presented the testimony of the following witnesses:

- Josephine White
- Mary B. Jordan

FINDINGS OF FACT

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

1. Presently and at all times relevant to this proceeding, the Respondent is and has been a real estate salesperson licensed by the Commission under registration number 05-22306. (REC Ex. #2.)

2. At the time of the events that give rise to this proceeding, the Respondent was affiliated with RE/MAX Allegiance.
3. Prior to October 13, 2003, Josephine White owned a house located at 2218 Rosedell Place, Fort Washington, Maryland (the property).
4. Prior to October 13, 2003, Ms. White listed the property for sale with the Respondent.
5. The Respondent advertised the property for sale.
6. On about October 13, 2003, the Complainant contacted the Respondent expressing her interest in purchasing the property.
7. On October 13, 2003, the Respondent prepared a Residential Contract of Sale (REC Ex. # 5) (contract) between the Complainant's company, Bucca, and Ms. White.
8. Among the terms of the contract (REC Ex. # 5) pertinent to the Statement of Charges filed by the REC were the following:
 - a. Bucca was the purchaser;
 - b. The Respondent indicated that she was acting as a dual agent;
 - c. The purchase price was \$169,000 (paragraph 6);
 - d. Settlement was to incur on or before October 28, 2003 (paragraph 7 and the "General Addendum" attached to the contract);
 - e. The Complainant agreed to pay an initial deposit of \$1,000, which was to be held by RE/MAX Allegiance in a non interest bearing escrow account (paragraphs 18 and 22);

- f. The contract was not contingent on the buyer obtaining financing (paragraph 19 and the "General Addendum" attached to the contract);
 - g. The following inconsistent terms were also included in the contract:
 - i. The contract was subject to a home improvement inspection (paragraph 41 and a separate home improvement inspection addendum); and
 - ii. The property was being sold "as is" (the "General Addendum").
- 9. The Respondent did not prepare for or present to the Complainant or the seller a separate disclosure that she was acting as a dual agent.
- 10. The Complainant wrote a check on the Bucca account for \$1,000 payable to RE/MAX Allegiance as a deposit on the property, pursuant to the contract; she gave this check to the Respondent.
- 11. RE/MAX requires its agents to submit deposit checks within seven days of receipt (REC Ex. # 12); the Respondent failed to do so.
- 12. The Respondent did not deliver the deposit check to her broker RE/MAX Allegiance until December 3, 2003 (REC Ex. # 9), having met with the Complainant two days earlier; the check was subsequently deposited into a RE/MAX non interest bearing escrow account.
- 13. At no time prior to December 3, 2003, did the Complainant send the Respondent written notification to cancel the contract or to request to return of the deposit check, nor did the Complainant advise that she was prepared to go to settlement on the property.

14. The Complainant requested the return of her deposit check after it was deposited in the escrow account.
15. The Complainant failed to settle on the property on or before October 28, 2003, as required under the contract.
16. The Respondent unilaterally scheduled settlement for December 10, 2003, although she did not prepare an addendum to the contract or any other agreement to be signed by the parties recognizing the delayed settlement date.
17. Although the Complainant failed to timely settle on the property, the Respondent failed to prepare an addendum to the contract extending the settlement date or take actions to forfeit the Complainant's deposit.
18. On December 31, 2003, the Complainant filed a Complaint with the Commission against the Respondent based on the Respondent's actions and omissions (REC Ex. # 11).³
19. On March 2, 2005, after reviewing the complaint and conducting an investigation (REC Ex. # 13), the REC issued a Statement of Charges against the Respondent.

DISCUSSION

A. The applicable laws and regulations supporting the Statement of Charges.

The REC charged the Respondent with violating Business Occupations and Professions Article §§ 17-322(b)(30), (32), 17- 502(a), 17-530(b)(1), (c), as well as COMAR 09.11.02.01H and 09.11.01.07. The relevant portions of the law are as follows:

³ The Complaint included other allegations against the Respondent (*e.g.*, slander and other inappropriate behavior by the Respondent), which the REC declined to include in the Statement of Charges it filed against the Respondent.

**§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:

...

(30) fails to make the disclosure or provide the consent form required by 17-530 of this title;

...

(32) violates any other provision of this title....

§ 17-502. Handling of trust money.

(a) Submission to brokers by associate brokers and salespersons, - An Associate real estate broker or a real estate salesperson who obtains trust money while providing real estate brokerage services promptly shall submit the trust money to the real estate broker on whose behalf the associate real estate broker or the real estate salesperson provided the real estate brokerage services.

§ 17-530. Disclosure of relationship with lessor or seller.

(b) Required. - (1) A licensee who participates in a residential real estate transaction as a seller's agent, buyer's agent, or as a cooperating agent shall disclose in writing that the licensee represents the seller or lessor or the buyer or lessee.

(c) Dual Agents - Generally prohibited. - Except as otherwise provided in subsection (d) of this section, a licensed real estate broker, licensed real estate associate broker, or licensed real estate salesperson may not act as a dual agent in this State.

The following regulations are also relevant to this complaint:

COMAR 09.11.01.07 Records of Transactions.

Licensees shall maintain adequate records of all real estate transactions engaged in by them as licensed real estate brokers or salesmen. If a licensee has custody or possession of money belonging to others, in the absence of proper written instructions from the parties involved in the transaction to the contrary, these funds may not be intermingled with funds belonging to the licensee, but rather they shall be deposited and retained as required in a non-interest-bearing escrow account clearly designated as containing funds held for others. The records of transactions, including bank accounts or deposits referred to in these regulations,

shall be available during usual business hours for inspection by the Commission, its field representatives, or other employees.

COMAR 09.11.02.01 Relations to the Public.

...
H. For the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed.

Based on the evidence, I find that the REC has met its burden, and that the Respondent committed violations under the cited provisions.

B. Violations arising from the Residential Contract of Sale of October 13, 2003,

The Complainant testified that she saw a newspaper advertisement for the property and contacted the Respondent, who was the listing agent. The Respondent was the agent for the seller, Ms. White, who was also a personal friend. Although there was some contradictory testimony regarding the Complainant's reasons for purchasing the property,⁴ her actual intention to complete the purchase of the property,⁵ or the means she chose to finance the purchase,⁶ the contradictions were largely irrelevant to the charges filed against the Respondent, as the Complainant entered into a contract to purchase the property.

On or about October 13, 2003, the Respondent prepared a "Residential Contract of Sale" between the seller and the Complainant's company, Bucca.⁷ The Complainant offered to purchase the property for a lower price than the seller was asking, but without any financing contingency. The seller accepted the Complainant's offer because she had already entered into

⁴ The Respondent testified that the Complainant was purchasing the property for an adopted son; the Complainant evaded answering questions regarding this assertion.

⁵ The Respondent asserts that the Complainant never intended to purchase the property, but instead was merely interested in assigning her company's interest in the contract for some additional compensation. *See* footnote 10.

⁶ The contract was a "cash" sale without a financing contingency, *but see* REC Ex. # 6 and 7.

⁷ The Complainant signed a contract in her personal capacity and not as a representative of Bucca.

two previous contracts that were contingent on financing, but the buyers under those contracts failed to secure financing, and the contracts were voided.

The contract reflected a purchase price of \$169,000, which was not subject to any financing contingencies, as this was a cash sale as indicated in paragraph 19 of the contract and the General Addendum attached to the contract. The purchaser was, however, obligated to submit "proof of cash" within seven days from the date of the contract. On the fourth and fifth pages of the contract, paragraphs 18 and 22 evidenced "RE/MAX Alliance" as the broker that would be holding the \$1,000 deposit in a non-interest bearing escrow account. Under paragraph 7 of the contract, settlement was to occur on or before October 28, 2003. The contract also included a home inspection contingency, although a general addendum, signed by the parties to the transaction on the contract date, indicated that the "property is being sold as is, all cash."

The Complainant wrote a check on the Bucca checking account for \$1,000, indicating on the check's memorandum line that it was to pay the deposit on the subject property. The Complainant gave the Respondent this check on October 13, 2003, but the Respondent did not deposit that check until after December 3, 2003. Although settlement was to have occurred on or before October 28, 2003, this date passed without any written addendum extending the settlement date.

1. Dual Agency Disclosure.

On the first page of the contract, the Respondent indicated that she was acting as an "intra-company agent with a broker as dual agent." Absent from the contract, however, was a disclosure or addendum explaining that the Respondent was acting in two capacities, as listing agent as well as agent for the Complainant, and the significance of that agency status. The Respondent half-heartedly testified that she prepared a dual agency disclosure form for the

parties to sign, that it was forwarded to the parties, but that they never signed and returned it to her. Furthermore, the Respondent was unable to present a copy of that form to the REC investigator or submit it into evidence at the hearing. The Complainant testified that she was not provided a copy of any such disclosure, and Ms. White, the seller, no longer had any documentation relating to this transaction. Mr. Bengel told the REC investigator and also testified at the hearing that he was unaware of the dual agency until the complaint was filed.

The Respondent certainly acted in a dual agent capacity, as was indicated on the first page of the contract. In his testimony, Mr. Bengel at first incorrectly stated that dual agency representation was prohibited in Maryland. He later corrected his testimony, stating that it was allowed in some instances, but that there still had to be more than one agent involved in the transaction. The example he gave was a large realtor representing two parties to a real estate transaction, but with each party being represented by separate salespersons, and signing disclosures putting the parties on notice of the possibility of conflicting allegiances. In this manner, the parties are made aware of the inherent risk involved in dual representation, but may choose to continue with the transaction regardless. Contrary to the Respondent's assertions, Mr. Bengel was not informed that he was, nor did he agree to serve as, the agent designated to represent the purchaser.

Because the Complainant did not recall ever having seen such a disclosure, and the Respondent was unable to produce such a document or explain its absence in any cogent way, I find that this disclosure was not prepared and presented to the parties to the contract as the law requires. This omission was certainly a violation of the statute and regulation. Business Occupations and Professions Article §§ 17-322(b)(30) and 17-530.

2. Untimely deposit of the Complainant's deposit check into escrow.

It is also clear that the Respondent did not timely submit the Complainant's deposit check to Mr. Bengel, her broker, or anyone else at RE/MAX when required to do so. Under Maryland law, a real estate salesperson who receives a purchaser's deposit on behalf of the seller must submit that money to his or her broker for deposit into an escrow account in compliance with Business Occupations and Professions Article § 17-502. Although there is no statutory or regulatory requirement establishing a time limit to do so, earnest money must be deposited under the contract as well as under the broker's office procedures requiring these deposits to be made within seven days of ratification of the sales contract. REC Ex. # 12, page 4. Mr. Bengel told the REC investigator that deposit rates had to be submitted to his office within 48 hours of contract ratification (REC Ex. # 12, page 3).

According to the Respondent, the Complainant requested that she hold the deposit check and not place that check into an escrow account, but the Complainant denies giving such an instruction. Even if the Complainant were to have made such a request, neither Maryland law, the broker's procedural manual, or the Respondent's obligation to protect the seller would countenance such a delay. Although the Respondent asserted that she was following the Complainant's instruction to withhold this deposit (a contention which the Complainant rejects), the failure to deposit this check hurts the Seller, who may still be entitled to retain the deposit if the Buyer is deemed to have breached the contract by failing to settle by the settlement date. The Respondent did not appropriately handle the deposit which was required to be deposited into an escrow account. Failing to do so, for whatever reason is a violation of Business Occupations and Professions Article § 17-502 and COMAR 09.11.01.07.

3. Lack of written agreement extending the settlement date.

Lastly,⁸ although the contract called for settlement to occur on or before October 28, 2003, settlement did not take place as required. The Complainant testified that by October 20, 2003, she retained a home improvement contractor to inspect the house, determined that there were too many repairs to be made, and decided she no longer wanted to pursue the contract. Although the Complainant may have been able to void the contract under the home inspection addendum,⁹ she failed to present evidence of her written notification to the Respondent's or to the seller which was required to void the contract under that addendum. Accordingly, her contention that she nullified the contract as a result of an unfavorable inspection cannot stand.

Although the Complainant indicated the contrary,¹⁰ on several occasions, the Respondent contacted the Complainant asking for her to settle on the property, which was evidenced by emails sent to the Complainant (REC Ex. # 10), and personal meetings between the Respondent and Complainant, including their meeting in December 2003 which was followed by the belated deposit of the Complainant's deposit check. Regardless of the Complainant's intention, whether to settle on the property or void the contract, and regardless of the Respondent's belief that the Complainant was still obligated to settle on the property despite the

⁸ In her complaint, the Complainant made other allegations against the Respondent that, after investigation by Mr. Mull, were not included in the charges brought by the REC against the Respondent.

⁹ The home inspection addendum is contrary to the general addendum indicating that the property was being sold "as is." Because of the decision reached in this case, I do not need to determine whether the home inspection contingency was met.

¹⁰ The Complainant was not a trustworthy or credible witness. She was shifty, argumentative and avoided directly answering questions as much as she avoided making eye contact with a questioner as well as the Administrative Law Judge. Her answers were indirect and evasive, and I do not believe that she was forthright in her responses. The Complainant denied any interest in purchasing the property after October 20, 2003, but reluctantly admitted that she was given the keys to the house in November 2003 for her workers to further inspect the property to estimate repairs necessary. She stated that she took the key "because it was given to her," but her subsequent actions belayed that intention. Furthermore, she denied involving any other individuals in the transaction, but admitted to Mr. Mull, the investigator, that she consulted with her real estate "mentor" about what can only be described as "flipping" the contract, *i.e.*, having no intention to purchase the property, but rather selling to a third party the right to purchase the property by transferring her rights under the contract to that third party for a fee.

lack of an addendum extending it, the October 28, 2003, settlement date passed without the return of the Complainant's deposit, settlement taking place, or the execution of a contract addendum agreeing on a new settlement date. The Respondent failed to record such an extension "in writing, expressing the exact agreement of the parties," making sure that "copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed." COMAR 09.11.01.07 and 09.11.02.02

C. Sanctions.

The Respondent contravened significant proscriptions in the statute and regulations concerning real estate transactions. The Respondent violated Business Occupations and Professions Article §§ 17-322(b)(30), (32), 17- 502(a), 17-530(b)(1), (c), as well as COMAR 09.11.02.01H and 09.11.01.07.

The REC set forth three separate and distinct violations that she committed: undertaking dual agency representation of the parties to the contract without disclosure, handling deposit money in an improper and untimely manner, and failing to prepare a written agreement relating to the settlement date and its extension. All three of these violations were proven by the required standards, and were even conceded by a contrite Respondent.

Business Occupations and Professions Article §§ 17-322(c) governs the imposition of penalties for violations proven by the REC:

(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.

1. Seriousness and harm.

These violations are serious and have caused significant harm. Although the seller in the instant case did not fault the Respondent for actions or omissions, the Respondent's failure to properly disclose her dual representation, the belated deposit of the escrow check, and the failure to document the extension of the settlement date, caused significant trouble to those involved in the transaction and do not reflect well on other real estate professionals.

2. Good faith.

I believe that the Respondent intended to act in the seller's best interest, however this was complicated by her dual allegiance to both parties to the transaction. Nevertheless, the Respondent violated several important laws and ethical considerations concerning the timely deposit of escrow money and failing to prepare written agreements evidencing the contract terms. These errors were exacerbated by the Complainant's duplicity. Still, had the deposit been timely made and the Complainant were pressed to settle on the property or sign an extension, or had the Complainant been forced to forfeit her deposit when she failed to settle on or before October 28, 2003, this matter would have been resolved significantly sooner than it was. Moreover, the Respondent initially stated that the dual agency disclosure form was prepared, but was unable to produce it and Mr. Bengel knew nothing about it. At the hearing, however, the Respondent conceded not having prepared the required form for the parties' signatures.

3. History of prior violations.

In 1989, the Respondent was charged with several violations including commingling and misappropriating a client's real estate purchase deposit; subsequently, in 1991, the Respondent's

real estate license was revoked. Although this violation was somewhat remote in time, the crux of that violation concerned the inappropriate handling of another real estate deposit.

Considering all of these factors, I accept the suggestions made by counsel for the REC, and recommend the following sanctions:

- a. A civil penalty of \$3,500 for failure to properly disclose the Respondent's dual agency;
- b. A civil penalty of \$3,500 for inappropriately handling the Complainant's deposit check; and
- c. A civil penalty of \$1,500 for failure to document the extension of the settlement date beyond October 28, 2003.

Although revocation is sometimes appropriate for these violations, the Respondent also fell victim to the Complainant, who was not dealing with her or the seller in good faith. The Complainant's dishonesty does not excuse the Respondent's omissions, but actually reinforces the need for the Respondent to have complied with the law, her broker's regulations, and the need to protect the seller, who was victimized not only by the Complainant, but by the Respondent's failure to protect her interests. Accordingly, I recommend that the Respondent's license to sell real estate be suspended for a period of 90 days.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the REC demonstrated by a preponderance of the evidence that the Respondent violated Business Occupations and Professions Article §§ 17-322(b)(30), (32), 17- 502(a), 17-530(b)(1),

(c), as well as COMAR 09.11.02.01H and 09.11.01.07. I further conclude that the Respondent is subject to sanction for her conduct under § 17-322(c), and that an appropriate sanction is a 90 day suspension of the Respondent's license to sell real estate as well as a civil penalty of \$8,500.

RECOMMENDED ORDER

IT IS THEREFORE RECOMMENDED that the Maryland Real Estate Commission:

ORDER, that the Respondent's license be suspended for a period of 90 days, and that the Respondent pay a civil penalty of \$8,500; and

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

ADMINISTRATIVE LAW JUDGE'S SIGNATURE
APPEARS ON ORIGINAL ORDER

April 9, 2007
Date Decision Mailed

MN/lh
88276

Marc Nachman
Administrative Law Judge