

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *
v. *
SHERRY L. WANTZ * CASE NO. 2010-RE-294
AND * OAH NO. DLR-REC-21-10-27568
JOSEPH KAUB * OAH NO. DLR-REC-10-27582
Respondents * (Wantz)
* (Kaub)
* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law, and Recommended Order of the Administrative Law Judge dated June 13, 2011, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 21st day of September 2011

ORDERED,

A. That the Findings of Fact in the recommended decision be, and hereby are, ADOPTED:

B. That the Conclusions of Law in the recommended decision be, and hereby are, ADOPTED:

C. That the Recommended Order be, and hereby is, AMENDED as follows:

ORDERED that the Respondents Sherry L. Wantz and Joseph Kaub violated Md. Bus. Occ. and Prof. Art. §§17-322(b)(32) and (33); 17-532(c)(1)(ii)3; and COMAR 09.11.02.01H;

ORDERED that the Respondents Sherry L. Wantz and Joseph Kaub did not violate Md. Bus. Occ. and Prof. Art. §§17-322(b)(32) and 17-530, and COMAR 09.11.01.07;

ORDERED that the Respondents Sherry L. Wantz and Joseph Kaub, be and hereby are, REPRIMANDED;

ORDERED that the Respondents Sherry L. Wantz and Joseph Kaub each pay a civil penalty in the amount of \$2,500.00 to the Maryland Real Estate Commission within 30 days of the date of this Proposed Order;

ORDERED that all real estate licenses held by the Respondents Sherry L. Wantz and Joseph Kaub will be suspended if the civil penalties are not paid in full within the 30-day time period;

ORDERED that the records and publications of the Maryland Real Estate Commission reflect this decision.

D. Pursuant to §10-220 of the State Government Article, the Commission finds that Recommended Order of the Administrative Law Judge had to be amended to include a time period for payment of the civil penalties, as well as the provision that the Respondents' real estate licenses will be suspended if they do not pay the penalties within the prescribed time period.

E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.08 those parties adversely affected by this Proposed Order shall have 20 days from the postmark date of the Order to file exceptions and to request to present arguments on the proposed decision before this Commission. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor,

500 North Calvert Street, Baltimore, MD 21202.

SIGNATURE ON FILE

Maryland Real Estate Commission

STATE REAL ESTATE COMMISSION	* BEFORE ROBERT F. BARRY,
v.	* AN ADMINISTRATIVE LAW JUDGE
SHERRY L. WANTZ	* OF THE MARYLAND OFFICE
AND	* OF ADMINISTRATIVE HEARINGS
JOSEPH KAUB,	* OAH Case Nos.:
RESPONDENTS	* DLR-REC-21-10-27568 (WANTZ)
	* DLR-REC-21-10-27582 (KAUB)
	* MREC Case No.: 2010-RE-294

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On March 10, 2008, Birgit V. Mason filed a complaint with the State Real Estate Commission (Commission) against Bayo C. Oshinnaiye, a licensed real estate broker, and Gabriel O. Addey, a licensed real estate salesperson, concerning the sale of her home. After an investigation, and a review of the complaint by a panel of commissioners, the Commission, on January 20, 2010, determined that a complaint concerning the sale of Ms. Mason’s home should be opened against the Respondents, Sherry L. Wantz, a licensed real estate broker, and Joseph Kaub, a licensed real estate salesperson.¹ On January 25, 2010, Steven Long, the Commission’s Assistant Executive Director, filed a complaint (No. 2010-RE-294) against the Respondents.

¹ The REC apparently dismissed the complaint (No. 2008-RE-558) against Mr. Addey and Mr. Oshinnaiye.

On July 16, 2010, the Commission filed Statements of Charges against the Respondents, alleging that they had not presented to their client, Ms. Mason, in a timely manner, a written offer to purchase her home, in violation of Section 17-532(c)(1)(ii)3 of the Business Occupations and Professions Article and Code of Maryland Regulations (COMAR) 09.11.02.02A.

On July 21, 2010, the Commission transmitted this case to the Office of Administrative Hearings (OAH) for a contested-case hearing.

On November 16, 2010, the Commission filed Amended Statements of Charges against the Respondents, alleging that the Respondents had either failed to disclose in writing to Elizabeth Aiyepola, a potential buyer, that the Respondents represented the seller, Ms. Mason, in violation of Section 17-530(b)(1) of the Business Occupations and Professions Article, or, in the alternative, failed to maintain a record of that written disclosure in violation of COMAR 09.11.01.07 and Section 17-322(b)(33) of the Business Occupations and Professions Article; and had failed to see to it that obligations and commitments concerning a \$1,000.00 deposit were put in writing expressing the exact agreement of the parties, in violation of COMAR 09.11.02.01H and Section 17-322(b)(33) of the Business Occupations and Professions Article. The Commission also alleged that the Respondents had violated Section 17-322(b)(32) of the Business Occupations and Professions Article by violating an unspecified provision of title 17 of this article. As explained below, this charge is related to the charges in the initial Statements of Charges concerning the Respondents' alleged failure to present to their client, Ms. Mason, in a timely manner, a written offer to purchase her home.

On March 17, 2011², I conducted a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010). Hope Sachs, Assistant Attorney General, represented the Commission. The Respondents represented themselves.

² A hearing scheduled for January 11, 2011 was postponed due to Respondent Wantz's medical condition.

The Administrative Procedure Act, the Department of Labor, Licensing, and Regulation's regulations for Hearings Delegated to the OAH, and the OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); COMAR 09.01.02 and 09.01.03 and 28.02.01.

ISSUES

1. Did the Commission properly charge the Respondents with failing to disclose in writing to Ms. Aiyepola, a potential buyer, that the Respondents represented the seller, Ms. Mason?
2. Did the Respondents fail to maintain a record of a written disclosure to Ms. Aiyepola, a potential buyer, that the Respondents represented the seller, Ms. Mason?
3. Did the Respondents fail to present to their client, Ms. Mason, in a timely manner, a written offer to purchase her home?
4. Did the Respondents fail to see to it that obligations and commitments concerning a \$1,000.00 deposit were put in writing expressing the exact agreement of the parties?
5. What, if any, sanctions are appropriate?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Commission:

REC #1 - Notice of Hearing, for March 17, 2011

REC #2 - Respondent Wantz's licensing history with the Commission, broker's registration number 01-5265

REC #3 - Respondent Kaub's licensing history with the Commission, salesperson's registration number 05-61774

REC #4 - Affidavit of Steven Long, the Commission's Assistant Executive Director, with Complaint, filed by Mr. Long on January 25, 2010

REC #5 - Return receipt for certified mail delivery to Respondent Wantz on November 18, 2010, with cover letter, and Amended Statement of Charges and Order for Hearing, dated November 16, 2010

REC #6 - Return receipt for certified mail delivery to Respondent Kaub on November 18, 2010, with cover letter, and Amended Statement of Charges and Order for Hearing, dated November 16, 2010

REC #7 - Commission's Report of Investigation, with eight attachments:

1. Complaint and Guaranty Fund Claim, filed March 10, 2008, by Birgit Mason, with: letter from Ms. Mason; monthly billing statement from Central Mortgage Company; and receipts for moving expenses
2. Letter, April 4, 2008, from Bobo Oshinnaiye, Principal Broker, RE/MAX Home Center, to the Commission; Letter, April 11, 2008, from Gabriel Addey, RE/MAX Home Center
3. Request for Investigation, May 29, 2009
4. Residential Listing for 7224 Boscastle Lane, Hanover, Maryland 21076, Metropolitan Regional Information Systems, Inc.
5. Residential Contract of Sale, date of offer – November 17, 2007, between Ms. Mason and Elizabeth Aiyepola and Bamidele Olowa, prepared by Respondent Kaub
6. Check, dated November 8, 2007, from Ms. Aiyepola and Mr. Olowa, to RE/MAX Home Center, for \$1,000.00
7. Residential Contract of Sale, date of offer – November 8, 2007, between Ms. Mason and Elizabeth Aiyepola and Bamidele Olowa, prepared by Mr. Addey
8. Fax Cover Sheet, November 9, 2007, for fax from Mr. Addey to Respondent Kaub

REC #8 - Commission's Report of Investigation, Supplement-1 to Original Report of Investigation, with three additional attachments:

9. Fax Cover Sheet, November 19, 2007, for fax from Respondent Kaub to Ms. Aiyepola
10. Fax Cover Sheet, February 13, 2008, for fax from Respondent Wantz to Mr. Oshinnaiye, with Release of Obligation and Release of Deposit Agreement Created Under Contract of Sale

11. Exclusive Right to Sell Brokerage Agreement, September 20, 2007, between Ms. Mason and Exit 1st Class Realty (Respondent Wantz's brokerage), with Lock Box Addendum to Listing Agreement

Neither Respondent offered any exhibits.

Testimony

The Commission presented testimony from Jack L. Mull Jr., a Commission investigator.

The Respondents testified in their own behalf.

FINDINGS OF FACT

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

1. Respondent Wantz was a licensed real estate broker under registration number 01-5265 from November 29, 2004 to October 30, 2010, when her most recent registration expired.

At the time of her actions in this case, Respondent Wantz was the licensed real estate broker for Exit 1st Class Realty.

2. Respondent Kaub was a licensed real estate salesperson under registration number 05-61774 from September 11, 2006 to September 11, 2010, when his most recent registration expired. At the time of his actions in this case, he was affiliated with Exit 1st Class Realty.

3. At all times relevant in this case: (a) Bayo Oshinnaiye, a licensed real estate broker, was the principal broker for RE/MAX Home Center, and (b) Gabriel Addey, a licensed real estate salesperson, was affiliated with RE/MAX Home Center.

4. On September 20, 2007, Birgit Mason entered into an agreement with Exit 1st Class Realty, authorizing it, as the exclusive real estate broker, to sell her home, 7224 Boscastle Lane, Hanover, Maryland 21076, for a listing price of \$515,000.00.

5. On October 2, 2007, Elizabeth Aiyepola, who had met Mr. Addey at church, entered into an agreement with RE/MAX Home Center, authorizing it to sell her home and to assist her in finding a new, smaller home.

6. On or about November 6, 2007, Ms. Aiyepola and a female friend attended an open house being conducted by Respondent Kaub at Ms. Mason's home on Boscastle Lane.

7. After the open house, Ms. Aiyepola and Mr. Addey viewed the Boscastle Lane residence together in the company of Ms. Mason. Respondent Kaub was not available to show the residence at that time.

8. On November 8, 2007, Mr. Addey prepared a Residential Contract of Sale for Ms. Aiyepola and Bamidele Olowa³, in which they made an offer to purchase Ms. Mason's home for \$450,000.00, with a \$15,000.00 contribution from Ms. Mason towards the buyers' closing costs. The sales contract contained a provision for an earnest money deposit of \$1,000.00. Mr. Olowa wrote a check, on a joint account with Ms. Aiyepola, to RE/MAX Home Center, for \$1,000.00 earnest⁴ money.

9. On November 9, 2007, Mr. Addey faxed a copy of the contract to Respondent Kaub.

10. Respondent Kaub did not present the contract to Ms. Mason.

11. On November 17, 2007, Respondent Kaub prepared a Residential Contract of Sale for Ms. Aiyepola and Bamidele Olowa, in which they made an offer to purchase Ms. Mason's home for \$450,000.00, with a \$5,000.00 contribution from Ms. Mason towards the buyers' closing costs. The sales contract contained a provision for an earnest money deposit of \$1,000.00. The sales contract indicated that Respondent Kaub was acting as the seller's agent.

12. On November 18, 2007, Ms. Mason and Ms. Aiyepola signed the contract prepared by Respondent Kaub. Mr. Olowa did not sign the contract. The contract established a

³ I cannot determine from the record the relationship between Ms. Aiyepola and Mr. Olowa.

⁴ In the memo section of the check, Mr. Olowa wrote that the check was for "arnes money." At the hearing, Respondent Wantz suggested that "arnes" was not simply a misspelling of earnest, but meant that the check had nothing to do with earnest money. I reject that interpretation of the evidence.

settlement date of December 8, 2007, which was later extended to December 17, 2007.

Respondent Kaub did not obtain a check for earnest money from Ms. Aiyepola.

13. Subsequently, Mr. Addey complained to the Respondents about their not presenting to Ms. Mason the contract that he prepared and their effort to prevent him from obtaining a buyer's agent's commission. Respondent Wantz offered Mr. Addey \$1,800.00 to settle his complaint, but Mr. Addey, on the advice of his broker, Mr. Oshinnaiye, declined the offer.

14. Based on the signed contract, Ms. Mason moved out of her home on December 12, 2007.

15. On December 14, 2007, Ms. Aiyepola informed Respondent Kaub that she had not been able to arrange for financing on terms acceptable to her, and that she was cancelling the contract.

16. Subsequently, Ms. Mason contacted the Respondents and asked them for the earnest money deposit of \$1,000.00. The Respondents indicated that they did not have the deposit because it was being held by RE/MAX Home Center. Mr. Addey declined to give the deposit to Ms. Mason, and returned it to Ms. Aiyepola, because Ms. Mason and Ms. Aiyepola had not signed the contract prepared by Mr. Addey.

DISCUSSION

1. Did the Commission properly charge the Respondents with failing to disclose in writing to a potential buyer that the Respondents represented the seller?

In its Amended Statements of Charges, the Commission purportedly charged the Respondents with violating subsection 17-530(b)(1) by failing to disclose in writing to Ms. Aiyepola, a potential buyer, that the Respondents represented the seller, Ms. Mason. This subsection, however, does not provide for any disciplinary action; instead it is referenced in and properly charged through subsection 17-322(b)(30), which provides that the Commission can

discipline a licensee for failing to make the disclosure required by subsection 17-530. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(30) (2010). Because the Commission did not cite subsection 17-322(b)(30), it did not properly charge the Respondents with violating subsection 17-530(b)(1). The Respondents did not raise any issue concerning the Amended Statements of Charges; however, I find this to be a jurisdictional issue properly raised *sua sponte*. I will dismiss the purported charges under subsection 17-530(b)(1).

2. Did the Respondents fail to maintain a record of a written disclosure to a potential buyer that the Respondents represented the seller?

In its Amended Statements of Charges, the Commission alleged that the Respondents violated subsection 17-322(b)(33), which, in pertinent part, provides:

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

(33) violates any regulation adopted under this title

Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33) (2010).

The specific regulation related to this charge is COMAR 09.11.01.07, which, in pertinent part, provides:

Licensees shall maintain adequate records of all real estate transactions engaged in by them as licensed real estate brokers or salesmen. . . . 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.

As noted above, the Commission alleged that the Respondents did not provide Ms. Aiyepola a written disclosure that they represented the seller, Ms. Mason. *See*, Md. Code Ann., Bus. Occ. & Prof. § 17-530(b) (2010). I have already dismissed that charge. This disclosure is typically accomplished by using a standard Commission form: “Understanding Whom Real Estate Agents Represent.” (REC # 7, Attachment 7, page 24). In the alternative, and specific to

the allegation under COMAR 09.11.01.07, the Commission alleged that if the Respondents did provide Ms. Aiyepola a written disclosure that they represented the seller, Ms. Mason, they did not maintain a record of that written disclosure. In this case, I find it much more likely than not that the Respondents did not provide the required written notice to Ms. Aiyepola; therefore the Respondents did not violate COMAR 09.11.01.07. The Respondents failed to create a required written record, and they would have been liable for that failure had the Commission properly charged the offense; however, they cannot have failed to maintain a written record that they did not create in the first place.

3. Did the Respondents fail to present to their client, in a timely manner, a written offer to purchase her home?

In its Amended Statements of Charges, the Commission alleged that the Respondents violated subsection 17-322(b)(32), which, in pertinent part, provides:

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

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

Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(32) (2010).

In its initial Statements of Charges, the Commission alleged that the Respondents had not presented to their client, Ms. Mason, in a timely manner, a written offer to purchase her home, in violation of Section 17-532(c)(1)(ii)3. Subsection 17-532(c)(1)(ii)3, unlike subsection 17-530 discussed above, is not specifically mentioned in subsection 17-322(b); therefore the Commission can properly charge this violation through the catch-all subsection 17-322(b)(32), which it did in its Amended Statements of Charges.

Section 17-532(c)(1)(ii)3 provides that a licensee shall promote the interests of the client by, unless otherwise specified in the brokerage agreement, presenting in a timely manner all written offers to the client. Md. Code Ann., Bus. Occ. & Prof. § 17-532(c)(1)(ii)3 (2010). As

noted above, on November 8, 2007, Mr. Addey prepared a contract of sale for Ms. Aiyepola and Mr. Olowa, in which they made an offer to purchase Ms. Mason's residence for \$450,000.00, with a \$15,000.00 contribution from Ms. Mason towards the buyers' closing costs, an earnest money deposit of \$1,000.00, and a financing contingency. (REC #7, Attachment 7, page 1). On November 9, 2007, Mr. Addey faxed a copy of this contract of sale to Respondent Kaub at Exit 1st Class Realty. (REC #7, Attachment 8). At the hearing, both of the Respondents denied ever having seen this contract, despite its being in Exit 1st Class Realty's records when the Commission's investigator requested a copy of it on November 6, 2009. (REC #8, page 1).

Respondent Wantz suggested that perhaps Mr. Addey's fax did not come directly through to Exit 1st Class Realty on November 9, 2007, but only came through later and got filed away unbeknownst to the Respondents. Respondent Kaub simply denied any recollection of the contract. On the record in this case, I find it much more likely than not that the Respondents received the contract from Mr. Addey. The Respondents insisted that Respondent Kaub had initiated contact with Ms. Aiyepola. They did not want to acknowledge the obvious – that Mr. Addey was acting as a buyer's agent⁵, which would require the Respondents to share any commission with him. The Respondents did not present to Ms. Mason the contract of sale prepared by Mr. Addey. Frankly, I found the Respondents' testimony concerning the contract prepared by Mr. Addey not to be credible. The description of the transaction provided to Mr. Mull, the Commission's investigator, by Mr. Addey and Mr. Oshinnaiye, was much more believable than the version presented by the Respondents. Mr. Addey, acting as Ms. Aiyepola's agent, viewed Ms. Mason's home with Ms. Aiyepola, spoke on the phone with Respondent Kaub, and prepared a contract of sale making an offer on behalf of Ms. Aiyepola and Mr. Olowa.

⁵ "Buyer's agent" means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who represents a prospective buyer or lessee in the acquisition of real estate for sale or for lease. Md. Code Ann., Bus. & Prof. § 17-530(a)(2) (2010).

The Respondents, despite any confusion that Ms. Aiyepola may have had, knew that Mr. Addey was working with Ms. Aiyepola as a buyer's agent. At the hearing, the Respondents claimed that they thought that Mr. Addey was Ms. Aiyepola's brother because he had been referred to as her brother. Apparently the term "brother" meant that Mr. Addey was Ms. Aiyepola's brother in their church. But I am convinced that the Respondents knew that Mr. Addey, whether a biological or church brother to Ms. Aiyepola, was also her real estate agent.

I also note that on November 17, 2007, Respondent Kaub prepared a contract of sale for Ms. Aiyepola and Mr. Olowa that was identical to the one prepared by Mr. Addey except that it provided for a \$5,000.00 contribution towards the buyers' closing costs. It appears that Respondent Kaub simply copied the contract prepared by Mr. Addey. (As noted at the hearing by Respondent Wantz, in their effort to keep Mr. Addey out of the transaction, the Respondents also created a situation where Respondent Kaub was acting as a dual agent⁶ – preparing an offer for the prospective buyer to present to his client, the seller. The Commission, however, did not charge the Respondents with violating the prohibition against dual agency.) The Respondents clearly failed to present to Ms. Mason the written offer to purchase her home that was prepared by Mr. Addey.

4. Did the Respondents fail to see to it that obligations and commitments concerning a \$1,000.00 deposit were put in writing expressing the exact agreement of the parties?

In its Amended Statements of Charges, the Commission alleged that the Respondents committed a second violation of subsection 17-322(b)(33), which, in pertinent part, provides:

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

⁶ "Dual agent" means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who acts as an agent for both the seller and the buyer . . . in the same real estate transaction Md. Code Ann., Bus. Occ. & Prof. § 17-530(a)(5) (2010).

(33) violates any . . . provision of the code of ethics

Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33) (2010).

COMAR 09.11.02.01H, part of the code of ethics, provides:

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.

The Commission alleged that the contract prepared by Respondent Kaub required the buyer, Ms. Aiyepola, to provide a check for \$1,000.00 as a deposit to be placed in a non-interest bearing escrow account, but failed to state who would hold the deposit in escrow. (I note that this same error was made in the contract for sale prepared by Mr. Addey.) At the hearing, Respondent Kaub conceded that the sales contract that he prepared failed to state who would hold the deposit in escrow. (He also conceded that he did not obtain a check for \$1,000.00 as a deposit from Ms. Aiyepola.) The Respondents violated the above-stated portion of the code of ethics and, consequently, they also violated subsection 17-322(b)(33).⁷

5. What, if any, sanctions are appropriate?

The Respondents violated subsections 17-322(b)(32) and 17-322(b)(33), and the related statutory subsection and regulations, which subjects them to being reprimanded or to having their licenses suspended or revoked. Md. Code Ann., Bus. & Prof. § 17-322(b) (2010). Further, subsection 17-322(c) provides for the imposition of monetary penalties 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.

⁷ The Commission also charged the Respondents with violating COMAR 09.11.02.02A, another part of the code of ethics that provides: "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 the statutory obligations towards the other parties to the transaction." I cannot determine from the record the specific alleged conduct attached to this charge. I consider it to be subsumed in the other, more specific, charges.

(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.

The Commission recommended a reprimand and a penalty of \$5,000.00 for each Respondent, neither of whom is currently licensed by the Commission.

Neither subsection 17-322(b) nor 17-322(c) explicitly discuss whether the Commission can reprimand a former licensee whose license has expired; suspend or revoke a license which has expired; or impose a penalty against a former licensee whose license has expired. The Respondents did not raise any legal challenge against the Commission's authority to discipline them or to impose a penalty against them for conduct that occurred while they were licensed by the Commission. For purposes of this decision, I will assume that the Commission has such authority.⁸

I find a reprimand to be an appropriate disciplinary sanction under the circumstances. Neither Respondent holds an active license with the Commission, so any suspension or revocation would have no practical effect. A reprimand will create a written record of a disciplinary action, which the Commission can consider if the Respondents should ever apply to renew their licenses. Based on all the evidence, I also find that a monetary penalty is warranted, but I recommend that the total amount of the penalty should be \$2,500.00 for each Respondent (concurrent \$2,500.00 penalties for the violations of subsections 17-322(b)(32) and (33)). The

⁸ A statute applicable to the State Board of Physicians provides that a physician's license, certification, or registration may not lapse by operation of law while an individual is under investigation or while charges are pending. Md. Code Ann., Health Occ. § 14-403 (2009). The Commission perhaps should consider proposing similar legislation to clarify its authority to discipline real estate professionals for conduct committed while they were in fact licensed by the Commission, but after their license expired.

Respondents' violations were serious primarily because they constituted a deliberate effort to avoid recognizing a fellow real estate professional's role as a buyer's agent. The Respondents showed very little good faith in addressing their conduct. Even at the hearing, they remained essentially in denial of their misconduct towards Mr. Addey. The Respondents caused some harm to Ms. Mason, especially by failing to obtain the earnest money deposit from Ms. Aiyepola. After Ms. Aiyepola canceled the contract, Ms. Mason could not mitigate her own costs related to the canceled contract. Neither Respondent has been previously disciplined by the Commission, and it is this lack of a prior disciplinary history that leads me to recommend less than the \$5,000.00 penalty sought by the Commission.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude:

1. The Commission did not properly charge the Respondents with violating § 17-530(b)(1) of the Business Occupations & Professions Article (failing to disclose in writing to a potential buyer that the Respondents represented the seller), Md. Code Ann., Bus. & Prof. §17-322(b)(30) (2010);
2. The Respondents did not fail to maintain a record of a written disclosure to a potential buyer that the Respondents represented the seller, Md. Code Ann., Bus. & Prof. §17-322(b)(33) (2010), COMAR 09.11.01.07;
3. The Respondents failed to present to their client, Ms. Mason, in a timely manner, a written offer to purchase her home. Md. Code Ann., Bus. & Prof. §§17-322(b)(32) and 17-532(c)(1)(ii)3 (2010), COMAR 09.11.02.02A;
4. The Respondents failed to see to it that obligations and commitments concerning a \$1,000.00 deposit were put in writing expressing the exact agreement of the parties, Md. Code Ann., Bus. & Prof. §17-322(b)(33) (2010), COMAR 09.11.02.01H;

5. The Respondents are subject to disciplinary sanctions for their conduct, and reprimands and total penalties of \$2,500.00 for each Respondent are appropriate. Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b) and (c) (2010).

RECOMMENDED ORDER

I THEREFORE RECOMMEND that the Commissioner:

ORDER that the charges under subsection 17-530 of the Business Occupations and Professions Article be dismissed as not being properly charged;

ORDER that the Respondents did not violate subsection 17-322(b)(32) of the Business Occupations and Professions Article and COMAR 09.11.01.07 by failing to maintain a record of a written disclosure to a potential buyer that the Respondents represented the seller;

ORDER that the Respondents violated subsections 17-532(c)(1)(ii)3 and 17-322(b)(32) of the Business Occupations and Professions Article by failing to present to their client, in a timely manner a written offer to purchase her home;

ORDER that the Respondents violated subsection 17-322(b)(33) of the Business Occupations and Professions Article and COMAR 09.11.02.01H by failing to see to it that obligations and commitments concerning a \$1,000.00 deposit were put in writing expressing the exact agreement of the parties;

ORDER that each Respondent be reprimanded;

ORDER that each Respondent pay a total penalty of \$2,500.00; and further

ORDER that the records and publications of the Maryland Real Estate Commission reflect this decision.

June 13, 2011
Date Decision Mailed

SIGNATURE ON FILE

Robert F. Barry
Administrative Law Judge

STATE REAL ESTATE COMMISSION	* BEFORE ROBERT F. BARRY,
v.	* AN ADMINISTRATIVE LAW JUDGE
SHERRY L. WANTZ	* OF THE MARYLAND OFFICE
AND	* OF ADMINISTRATIVE HEARINGS
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* * * * *

FILE EXHIBIT LIST

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- REC #7 - Commission's Report of Investigation, with eight attachments:

1. Complaint and Guaranty Fund Claim, filed March 10, 2008, by Birgit Mason, with: letter from Ms. Mason; monthly billing statement from Central Mortgage Company; and receipts for moving expenses
2. Letter, April 4, 2008, from Bobo Oshinnaiye, Principal Broker, RE/MAX Home Center, to the Commission; Letter, April 11, 2008, from Gabriel Addey, RE/MAX Home Center
3. Request for Investigation, May 29, 2009
4. Residential Listing for 7224 Boscastle Lane, Hanover, Maryland 21076, Metropolitan Regional Information Systems, Inc.
5. Residential Contract of Sale, date of offer – November 17, 2007, between Ms. Mason and Elizabeth Aiyepola and Bamidele Olowa, prepared by Respondent Kaub
6. Check, dated November 8, 2007, from Ms. Aiyepola and Mr. Olowa, to RE/MAX Home Center, for \$1,000.00
7. Residential Contract of Sale, date of offer – November 8, 2007, between Ms. Mason and Elizabeth Aiyepola and Bamidele Olowa, prepared by Mr. Addey
8. Fax Cover Sheet, November 9, 2007, for fax from Mr. Addey to Respondent Kaub

REC #8 - Commission's Report of Investigation, Supplement-1 to Original Report of Investigation, with three additional attachments:

9. Fax Cover Sheet, November 19, 2007, for fax from Respondent Kaub to Ms. Aiyepola
10. Fax Cover Sheet, February 13, 2008, for fax from Respondent Wantz to Mr. Oshinnaiye, with Release of Obligation and Release of Deposit Agreement Created Under Contract of Sale
11. Exclusive Right to Sell Brokerage Agreement, September 20, 2007, between Ms. Mason and Exit 1st Class Realty (Respondents), with Lock Box Addendum to Listing Agreement

Neither Respondent offered any exhibits.