

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

OLAYIWOLA ADEWOLE
Respondent

* CASE NO. 2010-RE-313

* OAH NO. DLR-REC-21-11-08515

*

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated August 2, 2011, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 17th day of October, 2011

ORDERED,

A. That the Findings of Fact in the recommended decision be, and hereby are, AFFIRMED;

B. That the Conclusions of Law in the recommended decision be, and hereby are, AFFIRMED;

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

ORDERED that the Respondent Olayiwola Adewole violated Md. Bus. Occ. and Prof. Art. §§17-322(b)(4), (25), (31), (32), and (33); 17-502; and 17-532; and COMAR 09.11.02.02A;

ORDERED that the Respondent Olayiwola Adewole is subject to sanction pursuant to § 17-322(b) and (c);

ORDERED that all real estate licenses held by the Respondent Olayiwola Adewole be and hereby are SUSPENDED for thirty (30) days;

ORDERED that the Respondent Olayiwola Adewole be assessed a civil penalty in the amount of \$1,000.00, which shall be paid to the Real Estate Commission within thirty (30) days of the date of this Proposed Order;

ORDERED that all real estate licenses held by the Respondent Olayiwola Adewole shall be suspended if the civil penalty is not paid in full within the 30-day time period; and that this suspension is in addition to the 30-day disciplinary suspension;

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

D. Pursuant to §10-220 of the State Government Article, the Commission finds that the Recommended Decision of the Administrative Law Judge had to be modified because the judge omitted the provision that the civil penalty be paid within a specified time period, and that all real estate licenses held by the Respondent would be suspended if she does not pay the full amount of the civil penalty within that 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

MARYLAND REAL ESTATE
COMMISSION

v.

OLAYIWOLA ADEWOLE,
RESPONDENT

* BEFORE YOLANDA L. CURTIN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE No.: DLR-REC-21-11-08515
* MREC File No. 10-RE-313

* * * * *

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 or about February 3, 2010, Daniel Hinton (Complainant) filed a complaint with the Maryland Real Estate Commission (REC), an administrative unit of the Department of Labor, Licensing and Regulation (DLLR), against Olayiwola Adewole (Respondent), a licensed real estate agent affiliated with Exit First Realty. On February 22, 2011, the REC issued a Statement of Charges and Order for Hearing against the Respondent.

On May 4, 2011, I conducted a hearing at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2010). Peter Martin, Assistant Attorney General, represented the DLLR. The Respondent represented herself.

The Administrative Procedure Act, the procedures for Administrative Hearings of the Office of the Secretary of the DLLR, the procedures for Hearings of the REC, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§10-201 through 10-226 (2009 & Supp. 2010); Code of Maryland Regulations (COMAR) 09.01.02, 09.01.03, 09.11.03; and COMAR 28.02.01.

ISSUES

Did the Respondent's failure to turn in earnest money in a timely fashion constitute a violation under the Business Occupation and Professions Article or the Code of Ethics; and if so, what is the appropriate sanction?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the REC:

REC Ex. #1- Notice of Hearing

REC Ex. #2- Amended Statement of Charges and Order for Hearing

REC Ex. #3- Licensing Information for Respondent

REC Ex. #4- Report of Investigation on Respondent

The Respondent did not offer any exhibits into evidence.

Testimony

The REC presented the testimony of the Daniel Hinton, the Complainant; Gene Hammel, the Complainant's real estate agent; Edward Haraway, broker with Exit First Realty; Vernada Williams, associate broker with Exit First Realty; and William Reynolds, investigator for the REC.

The Respondent testified on her own behalf.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent was a licensed real estate broker in Maryland under registration number 05-613861.
2. At all relevant times, the Respondent was an agent associated with Exit First Realty.
3. Exit First Realty has a company policy regarding earnest money that requires all agents to turn in earnest money within seven days of receipt.
4. Respondent had knowledge of Exit First Realty's policy regarding earnest money.
5. In 2008 the Complainant was selling his home located at 6100 Glenn Dale Road, Bowie, Maryland 20720 (the property).
6. Due to concerns that the sale of the property would fall through once a contract on the property was offered, the Complainant included a provision in the contract that set the earnest money amount to \$5,000.00, instead of \$2,000.00.
7. The Respondent's client, Edileola Makinde, offered to purchase the property at a price of \$575, 000.00. As set forth in the terms of the contract, Ms. Makinde was required to pay \$5,000.00 in earnest money.
8. The contract was ratified on July 2, 2008, and Ms Makinde gave a check to the Respondent in the amount of \$5,000.00 made payable to Exit First Realty to cover the earnest money amount. Settlement was scheduled for July 30, 2008.
9. Settlement did not take place on July 30, 2008, because Ms. Makinde learned that the property had appraised at a lower amount than the contract price and she informed the Respondent that she was nervous and concerned about going forward with the purchase of the property.

10. The Respondent never indicated to the Complainant or his agent that there would be a delay in the settlement or that she would turn in the earnest money and contract after the settlement date.

11. Ms. Makinde did not purchase the property.

12. The Respondent turned in the contract and the earnest money check to Exit First Realty on or about August 11, 2008. At that time, she left Exit First Realty for a new job with Executive Realty.

13. Once Exit First Realty received the earnest money check, it deposited the check to release the funds to the Complainant.

14. Ms. Makinde's check for the earnest money was returned to Exit First Realty due to insufficient funds on August 12, 2008. On August 20, 2008, the Complainant received a fax from Exit First Realty informing him that Ms. Makinde's check had insufficient funds.

15. After learning that Ms. Makinde's check was returned for insufficient funds, Exit First Realty made attempts to obtain a certified or cashier's check from Ms. Makinde; however, their attempts were unsuccessful and the earnest money was not recovered.

16. The Complainant was unsuccessful in recovering the earnest money from Exit First Realty.

17. On February 3, 2010, the Complainant filed a complaint with the REC against the Respondent. The Respondent learned of the complaint when she made attempts to renew her real estate license. At that time she became aware that Ms. Makinde's earnest money check did not clear with the bank.

DISCUSSION

The REC has charged that the Respondent with violating several statutory sections of the Business Occupations and Professions Article, as well as the Code of Ethics under COMAR

09.11.02.02A. Specifically, the REC alleges that the Respondent violated the following:

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

...

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

...

(4) intentionally or negligently fails to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and the relates to the property with which the licensee or applicant deals;

...

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

...

(31) violates any provision of Subtitle 5 of this title that relates to trust money;

(32) violates any other provision of this title;

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

Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(4), (25), (31), (32), and (33) (2010);

§ 17-502. Handling of trust money.

(a) *Submission to broker 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.

Md. Code Ann., Bus. Occ. & Prof. § 17-502(a) (2010);

§17-532. Duties to client.

...
(c) *In general.*- (1) a licensee shall:

...

(iv) treat all parties to the transaction honestly and fairly and answer all questions truthfully;

(v) in a timely manner account for all trust money received;

(vi) exercise reasonable care and diligence[.]

Md. Code Ann., Bus. Occ. & Prof. § 17-532(c) (2010); and pursuant to COMAR 09.11.02.02,

Code of Ethics:

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 the statutory obligations towards the other parties to the transaction.* (Emphasis added.)

For these violations, the REC is seeking to suspend and impose a penalty against the Respondent as permitted by section 17-322(c) of the Business Occupations and Professions Article. For the reasons discussed below, I find that the REC has established that the Respondent violated the Business Occupations and Professional Article as well as the Code of Ethics.

The Complainant testified that the earnest money amount was increased in the contract to \$5,000.00 in an attempt to prevent a buyer from walking away from the transaction. The Complainant and his wife believed that should a buyer deposit \$5,000.00 for the transaction, it would be unlikely that the buyer would look for a way out of the deal. In the event that the buyer did, then the Complainant would have the benefit of recovering the earnest money. In this matter, when the settlement did not occur as scheduled, the Complainant became concerned that the sale would not occur at all; therefore, he sought to recover the earnest money. Despite attempts by his agent to determine why settlement had not occurred, the Complainant did not

learn that the earnest money check had not cleared until several weeks after the check had been collected by the Respondent.

Mr. Hammel, the Complainant's agent, testified that the Respondent never told him that she was turning in the earnest money at a later date. Mr. Hammel was unaware that the earnest money check was not turned in to Exit First Realty until August 11, 2008 and that the check was deposited on August 12, 2008, long after the check was actually collected by the Respondent. He made several fruitless attempts to get in touch with the Respondent to try to salvage the transaction on behalf of Complainant with no success.

The Complainant's house was eventually sold; however, at a lower amount than what had been agreed to by the Respondent's buyer. The contract price agreed upon between the Complainant and the Respondent's buyer was \$575,000.00 and the house was sold for \$499,000.00.

The evidence established that Exit First Realty has a company policy that requires earnest money to be deposited within seven days, and that Respondent had knowledge of this policy. Mr. Haraway, broker for Exit First Realty, testified that he made attempts to contact the Respondent regarding the late deposit of the earnest money but he could not recall if Respondent had ever returned his calls. Similarly, Vernada Williams, assistant broker with Exit First Realty, testified that she had written a letter to Respondent when the earnest money check was returned due to insufficient funds in Ms. Makinde's account, but that the Respondent never replied to the letter.

For her part, the Respondent testified that throughout her dealings with the Complainant's agent she maintained constant communication with him and informed him that her buyer had concerns with the appraisal value of the property. She further testified that she did

not know that her client's earnest money check had not cleared with the bank until she went to renew her real estate license and learned that a complaint had been filed against her. Regarding why she did not turn in the check and contract within a few days after the contract was ratified and the earnest money check collected, the Respondent testified that she was overwhelmed with several personal matters, including a foreclosure of her home and taking care of her children, that she forgot to turn in the check and contract, although she was able during this time to obtain a new job with another real estate agency. The Respondent claimed full responsibility for her failure to turn in the earnest money check and the contract on time.

Throughout her testimony, I found the Respondent credible that she did not know that the potential buyer did not have sufficient funds to cover the earnest money and also that she did not learn that the earnest money check had not cleared until she made attempts to renew her license. I also found her to be remorseful for her failure to turn the earnest money check in on time. Despite these findings, however, I am not persuaded by the Respondent's testimony that she maintained constant communications with Mr. Hammel. Had she done so, she would have known that the Complainant and his wife were concerned about the settlement not taking place, and the value they placed in the earnest money. Consequently, her failure to turn in the earnest money deposit within a timely manner and her failure to inform the Complainant's agent that she would not turn in the check until several weeks after she received it does subject the Respondent's license to an appropriate sanction.

First, the Respondent failed to disclose a material fact to the Complainant. Specifically, she failed to disclose that she was not turning in the earnest money check to Exit First Realty until several weeks after she received it. While no evidence was presented to establish that the Respondent's conduct was intentional, she was certainly negligent in her failure to disclose the

delay. Such conduct is in direct violation of section 17-322(b)(4) and the Code of Ethics.

Second, although the Respondent's actions were not in bad faith, her failure to follow her own company's policy by not turning in the earnest money check within seven days of its receipt demonstrates incompetence, in violation of section 17-322(b)(25). Third, because the Respondent's actions involved trust money, she violated section 17-322(b)(31) and section 17-502. Also, because she has violated multiple sections of the Business Occupations and Professions Article and COMAR 09.11.02.02A (Code of Ethics), her license is subject to sanction, as set forth in section 17-322(b)(32) and (33).

Lastly, although her conduct did not affect her relationship with her client, Ms. Makinde, her conduct still violated section 17-532(c)(1)(iv), (v) and (vi) because, as a real estate agent, the Respondent has the duty and obligation to treat all parties to a transaction fairly, to account in a timely manner for all trust money and to exercise reasonable care and diligence in the exercise of her duties. The Respondent failed to meet her duties and obligations when she did not follow-up with Mr. Hammel and when she did not turn in the earnest money check in a timely fashion.

As a result of the above violations, the Respondent's license should be sanctioned. section 17-322(c) allows the REC to impose a penalty not exceeding \$5,000 in addition to or instead of a suspension or revocation of Respondent's license. The REC has recommended a penalty of \$5,000.00 be imposed in addition to a suspension period of 30 days. In determining the appropriate penalty amount, section 17-322(c) of the Business Occupations Article requires that I consider the following before determining whether a civil penalty is appropriate for a violation. I find that these factors are also relevant to determine if a suspension is appropriate:

§17-322. Determination of penalty.

(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.

While I recognize that the Respondent's violations were serious in that the Complainant was unable to recoup the earnest money he had placed significant reliance on, the Respondent's violations did not appear deliberate. Her violations were negligent rather than malicious. The Respondent has taken full responsibility for her mistakes and this is the first complaint against Respondent. I found her testimony to be sincere that she was overwhelmed with her own personal matters and that is why she did not promptly turn in the earnest money. Although the Complainant ultimately had to sell the home at a lower price than the amount the Respondent's buyer agreed to pay for the house, I do not find that the Respondent's conduct led to the sale falling through because the potential buyer had concerns about the value of the home and she backed out of the deal for that reason.

Thus, considering the above, I agree that a 30-day suspension is appropriate in this matter, but that the monetary penalty imposed should not be the maximum amount allowed by the applicable statute. Instead, taking into consideration all of the factors discussed above, and the fact that I have recommended a period of suspension, I conclude that the appropriate monetary penalty should be \$1,000.00.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent's real estate license is subject to sanction pursuant to sections 17-322(b)(4), (25), (31), (32) and (33), 17-502 and 17-532 of the Business Occupations and Professions Article. Additionally, she is subject to sanction because she violated the Code of Ethics as set forth in COMAR 09.11.02.02A.

I further conclude that the Respondent is subject to a civil penalty under section 17-322(c) of the Business Occupations and Professions Article.

I further conclude as a matter of law that an appropriate sanction in this case is a 30-day suspension and a \$1,000.00 civil penalty. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b) and (c) (2010).

RECOMMENDED ORDER

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

ORDER that real estate broker Olayiwola Adewole, registration number 05-613861, be imposed a 30-day suspension and a civil penalty of \$1,000.00, and

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

SIGNATURE ON FILE

August 2, 2011
Date Decision Mailed

Yolanda L. Curtin
Administrative Law Judge

#124991

MARYLAND REAL ESTATE

*** BEFORE YOLANDA L. CURTIN,**

COMMISSION

*** AN ADMINISTRATIVE LAW JUDGE**

v.

*** OF THE MARYLAND OFFICE OF**

OLAYIWOLA ADEWOLE,

*** ADMINISTRATIVE HEARINGS**

RESPONDENT

*** OAH CASE No.: DLR-REC-21-11-08515**

*** MREC File No. 10-RE-313**

*** * * * ***

Exhibits

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