

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v.

FELITA A. PHILLIPS

RESPONDENT

*** CASE NO. 2006-RE-374**

*** OAH NO. DLR-REC-21-09-**

*** 10560**

* * * * *

OPINION AND FINAL ORDER

This matter came before the Commission for argument on Exceptions filed by the Respondent, Felita A. Phillips, to the Proposed Order of July 14, 2010. On May 27, 2010, Administrative Law Judge Jerome Woods, II (“ALJ”) filed a Recommended Decision and Order in which he recommended that the Commission’s charges against the Respondent, under §17-530, Business Occupations and Professions Article, Annotated Code of Maryland (“Md. Bus. Occ. & Prof. Art.”) be affirmed and that she be assessed a civil penalty of \$2,000.00.

On July 14, 2010, the Maryland Real Estate Commission (“Commission”) issued a Proposed Order that affirmed the ALJ’s Findings of Fact and Conclusions of Law but amended the Recommended Order as follows:

1. Ordered that the Respondent, Felita A. Phillips, violated Md. Bus. Occ. and Prof. Art. §§ 17-322 (b) (30) and 17-530 (c) and (d) (1) (i) and (ii);
2. Ordered that the Respondent be and hereby is reprimanded;
3. Ordered that the Respondent, Felita A. Phillips be assessed a civil penalty in the amount of \$2,000.00, which shall be paid within thirty (30) days of the date of the Proposed Order;

4. Ordered that all real estate licenses held by the Respondent, Felita A. Phillips, shall be suspended if the civil penalty imposed on her in the Proposed Order is not paid in full within thirty (30) days;

5. Ordered that the Respondent, Felita A. Phillips, complete a three-hour course in agency law approved for continuing education by the Real Estate Commission within 60 days of the date of the Proposed Order, and that she furnish evidence of completion of the course to the Commission by the end of that time period; and

6. Ordered that the mandated three-hour course in agency is in addition to the number of course hours required for license renewal.

7. Ordered that the records and publications of the Maryland Real Estate Commission reflect the modified decision of the Commission.

The Respondent, Felita A. Phillips, filed Exceptions, dated July 26, 2010, to the Proposed Order.

A hearing was held by a panel of the Commission, consisting of Commissioners J. Nicholas D'Ambrosia, Marla S. Johnson, and Colette P. Youngblood, on December 15, 2010. Peter Martin, Assistant Attorney General, represented the Commission. The Respondent, Felita A. Phillips, appeared at the hearing. The proceedings were electronically recorded.

SUMMARY OF EVIDENCE

On behalf of the Commission, three exhibits, including the exhibits entered at the hearing before the ALJ, were entered into evidence. A transcript of the ALJ's hearing was not provided.

PRELIMINARY MATTERS

The Respondent, Felita A. Phillips, waived representation by counsel at the Exceptions hearing.

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

On June 1, 2006, Jacob Forbai ("Complainant") filed a complaint with the Commission against Respondent, Felita Phillips, regarding the sale of the Complainant's property at 8830 Pine Branch Road, Unit 705, Silver Spring, Maryland ("the Property"). At the time of the real estate transaction which was the basis for the complaint filed in this matter, the Respondent was the licensed real estate broker for Pearl Properties. FF2.¹ Licensing records of the Commission, entered into evidence at the hearing before the ALJ, disclose that the Respondent has been licensed as a real estate broker since 1994. The Respondent was the broker and listing agent for the Complainant's property. FF3. During the transaction, Pearl Properties was acting as a dual agent for the Purchaser and the Complainant. FF4. The agent for the Purchaser was Richard Tulloch, an associate broker at Pearl Properties, at the time of the sale of the Property. FF5. The Complainant signed a listing agreement, prepared by the Respondent, on April 1, 2005. FF6. The Respondent, as the broker, continued to represent the Complainant, without assigning another licensee in the brokerage as the intracompany agent for the Complainant. On May 22, 2005, the Complainant entered into a sales contract with a Purchaser for

\$185,000.00. On June 16, 2005, the Purchaser and the Complainant signed a Settlement Statement for the Property. FF9. Pearl Properties was paid a commission of \$5,250.00 for the sale of the Property. FF10.

In accordance with the provisions of Md. Bus. Occ. and Prof. Art. §17-322 (b) (30), the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee fails to make the disclosure or provide the consent form required by §17-530 of Md. Bus. Occ and Prof. Art.

Md. Bus. Occ. and Prof. Art. §17-530 provides, in part:

“

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

(d)(1)(i) If a licensed real estate broker or a designee of the real estate broker obtains the written informed consent of all parties to a real estate transaction, the real estate broker may act as a dual agent in the transaction.

(ii) When acting as a dual agent in a real estate transaction, a real estate broker or a designee of the real estate broker shall assign a licensed associate real estate broker or licensed real estate salesperson affiliated with the real estate broker to act as the intra-company agent on behalf of the seller or lessor and another licensed associate real estate broker or licensed real estate salesperson affiliated with the real estate broker to act as the intra-company agent on behalf of the buyer or lessee.”

The Respondent, a real estate broker, acted as the listing agent for the Property and an associated broker in the same brokerage represented the buyer. Based on the statute, referred to above, the Respondent was required to assign a licensed associate real estate broker or licensed real estate salesperson to represent the Complainant-Seller and another licensed associate real estate broker or licensed real estate salesperson to represent the Purchaser. The Respondent failed to do this and instead continued to

¹ “FF” refers to the ALJ’s Findings of Fact.

represent the Complainant-Seller and participate in the transaction as an intra-company agent in violation of the specific provisions of the law.

To determine the penalty which should be imposed for the Respondent's violations of Md. Bus. Occ. and Prof. Art. §§17-322 (b) (30) and 17-530 (c) and (d) (1)(i) and (ii), the Commission is required under Md. Bus. Occ. and Prof. Art. §17-322 (c) to consider the following factors:

- (1) the seriousness of the violation;
- (2) the harm caused by the violation;
- (3) the good faith of the licensee; and
- (4) any history of previous violations by the licensee.

The Respondent's violations are serious. The statutory requirements regarding dual agency are meant to prevent the possibility of unfairness to one party to a transaction that can arise when one party is represented by an agent and the other party is represented by that agent's broker and boss. In such a situation, the agent may be less willing to aggressively represent his client's interests if those interests conflict with the interests of his broker's client. As a broker for approximately eleven years at the time of the transaction in question, the Respondent either knew, and chose to ignore the requirements of the law in regard to dual agency, or did not know a basic provision of the law regarding real estate transactions. Further, her violation of the dual agency law reflects poorly on the real estate profession.

Although there was no evidence presented before the ALJ of a quantifiable harm to either the Complainant or the Purchaser, the statutory violation relating to dual agency had the potential to cause harm. In addition, the general public is harmed when it cannot

rely upon real estate brokers, who are supervising licensed associate real estate brokers and licensed real estate salespersons, to know and comply with every requirement of the law regarding real estate transactions.

There is evidence in the record that the Respondent acted in bad faith by not responding initially to the inquiries of the Commission's investigator and by failing to notify the Commission of her new address.

There is no history of prior statutory or regulatory violations by the Respondent.

Having evaluated each of the above listed factors for determining a penalty for violations of Md. Bus. Occ. and Prof. Art. §§17-322 (b) (30) and 17-530 (c) and (d) (1) (i) and (ii), the Commission concludes that the appropriate penalty is a reprimand, a civil fine in the amount of \$2,000.00, and a three-hour course in agency law in addition to the number of course hours required for license renewal.

ORDER

The Exceptions of the Respondent having been considered, it is this 24th day of January, 2011 by the Maryland Real Estate Commission

ORDERED:

1. That the Respondent, Felita A. Phillips, violated Md. Bus. Occ. and Prof. Art. §§17-322 (b) (30) and 17-530 (c) and (d) (1) (i) and (ii);
2. That the Respondent, Felita A. Phillips, be and hereby is **REPRIMANDED**;
3. That the Respondent, Felita A. Phillips, be assessed a civil penalty in the amount of Two Thousand Dollars (\$2,000.00), which shall be paid within thirty (30) days of the date of this Order;

4. That all real estate licenses held by the Respondent, Felita A. Phillips, shall be **SUSPENDED** if the civil penalty imposed on her in this Order is not paid in full within thirty (30) days;

5. That the Respondent, Felita A. Phillips, complete a three-hour course in agency law approved for continuing education by the Real Estate Commission within sixty (60) days of the date of this Order, and that she furnish evidence of completion of the course to the Commission by the end of that time period;

6. That the mandated three-hour course in agency is in addition to the number of course hours required for license renewal; and

7. 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)

By: _____

*Eric Dir. for
?hair*

Note: A judicial review of this Final Order may be sought in the Circuit Court of Maryland in the county in which the Applicant resides or has his principal place of business, or in the Circuit Court for Baltimore City. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

FELITA A. PHILLIPS *
RESPONDENT *

CASE NO. 2006-RE-374

OAH NO. DLR-REC-21-09-10560

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated May 27, 2010 having been received, read and considered, it is, by the Maryland Real Estate Commission, this 14th day of July, 2010,

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 Felita A. Phillips violated Md. Bus. Occ. and Prof. Art. §§ 17-322(b)(30) and 17-530(c) and (d)(1)(i) and (ii);

ORDERED that the Respondent Felita A. Phillips be and hereby

is **REPRIMANDED**;

ORDERED that the Respondent Felita A. Phillips be assessed a civil penalty in the amount of \$2,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that the all real estate licenses held by the Respondent Felita A. Phillips shall be **SUSPENDED** if the civil penalty imposed on her in this Order is not paid in full within thirty (30) days;

ORDERED that the Respondent Felita A. Phillips complete a three-hour course in agency law approved for continuing education by the Real Estate Commission within 60 days of the date of this Proposed Order, and that she furnish evidence of completion of the course to the Commission by the end of that time period;

ORDERED that the mandated three-hour course in agency is in addition to the number of course hours required for license renewal;

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. After reviewing the facts as found by the Judge and the conclusions of law made based on those facts, the Commission believes that the appropriate penalty is a reprimand, a civil fine in the amount of \$2,000, and a three-hour course in agency law. The Respondent, a real estate

broker, acted as the listing agent for a property on which an associate broker in the same brokerage represented the buyer. Instead of complying with the specific provisions of the law governing dual agency, the Respondent continued to represent the seller, without designating another licensee in the brokerage as the intracompany agent for the seller. She was either unaware of the provisions of the law, or knew of them and failed to comply. In either event, her conduct fell far below the level of competence that the Commission expects from any licensee, much less a broker. For this reason, the Commission believes that a reprimand as well as a course in agency law is required to reflect the seriousness of the violation.

The Commission also notes several errors in the recommended order that must be addressed. On page 2, the Judge states that the hearing notices were mailed to "his" last known business address and "he" is currently licensed. These were clearly erroneous references to the Respondent who is female. On page 5, the Judge stated, "In sum, the Respondent violated the regulations, and in turn the statute, as charged." In fact, the Respondent was not charged with violating a regulation of the Commission, and nowhere else in the recommended order is there a reference to a regulation. This, too, was an error on the part of the Judge, but it in no way affects the findings or legal conclusions of the case. On page 6, the Judge stated that Section 17-322(c) of the Business Occupations and Professions Article provides for a maximum monetary penalty of \$2,000. That maximum amount was increased in 2001 to \$5,000.

Again, this error does not affect the outcome of this case.

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.

S. J.
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celly
[COMMISSIONER'S SIGNATURE
APPEARS ON ORIGINAL ORDER]
Executive Director

**MARYLAND REAL ESTATE
COMMISSION**

v.

**FELITA A. PHILLIPS,
RESPONDENT**

*** BEFORE JEROME WOODS, II,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE NO.: DLR-REC-21-09-10560
* REC COMPLAINT NO: 2005-RE-374**

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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 June 1, 2006, Jacob Forbai (“Complainant”) filed a complaint (“Complaint”) with the Maryland Real Estate Commission (“REC” or “Commission”) against the Respondent Real Estate Agent, Felita Phillips (“Respondent”), regarding the Complainant’s property at 8830 Pine Branch Road, Unit 705, Silver Spring, Maryland (“Property”). Based on the REC’s investigation of the Complaint, the REC filed a Statement of Charges and Order for Hearing (“Charges”) against the Respondent with the Office of Administrative Hearings (“OAH”), dated February 17, 2009.

The hearing scheduled for December 9, 2009 was postponed. On December 23, 2009, the OAH sent a notice of hearing to all parties, including the Respondent, by first class and certified mail. The notice to the Respondent sent by certified mail was returned by the United

States Postal Service with the notation “returned addressee unknown.” The notice sent by regular mail was not returned. On March 3, 2010, I convened the hearing at the OAH in Wheaton, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2004).¹ Assistant Attorney General Peter Martin represented the REC at the hearing. The Respondent failed to appear. The address to which the notices of hearing were mailed was his last known business address of record and he is currently licensed under that address. Accordingly, the hearing proceeded in the Respondent’s absence. Md. Code Ann., Bus. Occ. & Prof. § 17-324(d)(1) and (f) (2004).

Procedure in this case is governed by the provisions of the Administrative Procedure Act, Md. Code Ann., State Gov’t §§ 10-201 through 10-226 (2009), the Code of Maryland Regulations (“COMAR”) 09.11.03, and the Rules of Procedure of the OAH. COMAR 28.02.01.

ISSUE

The issue in this case is whether the Respondent violated section 17-530 of the Business Occupations Article and if so, whether the Respondent is subject to sanctions under section 17-322(c) of the Business Occupations Article.

SUMMARY OF THE EVIDENCE

Exhibits

The REC submitted the following documents, all of which were admitted into evidence:

- Agency Ex. #1- Notice, dated August 13, 2009, with returned certified mailing of the Notice of Hearing and Statement of Charges, dated February 17, 2010
- Agency Ex. #2- Notice of hearing, dated December 23, 2009
- Agency Ex. #3- Certified Licensing History, dated February 25, 2010
- Agency Ex. #4- Listing Agreement, dated April 1, 2005

¹ This section of the Maryland Annotated Code will be referred to as the “Business Occupations Article” throughout this decision.

- Agency Ex. #5- Regional Sales Contract, dated May 22, 2005
- Agency Ex. #6- Settlement Statement, dated June 16, 2005
- Agency Ex. #7- Report of Investigation, dated October 8, 2008
- Agency Ex. #8- Complaint and Guaranty Fund Claim, dated May 21, 2006
- Agency Ex. #9- Professional License History, dated February 26, 2010
- Agency Ex. #10- Affidavit of Katherine F. Connelly, dated February 24, 2010

I did not admit any exhibits on the Respondent's behalf.

Witnesses

The REC presented the following witnesses: Jacob Forbai and William Reynolds, REC Investigator.

FINDINGS OF FACT

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

1. At times relevant hereto, the Respondent was licensed by the REC as a real estate agent.
2. At the time of the Complainant's sale of the Property, the Respondent was the broker for Pearl Properties.
3. The Respondent was the broker and the listing agent.
4. During the transaction, Pearl Properties was acting as a dual agent for the Purchaser and the Complainant.
5. Richard Tulloch was an associate broker at Pearl Properties at the time of the sale of the Property. He was the agent for the Purchaser.
6. On April 1, 2005, the Complainant signed a listing agreement, prepared by the Respondent, to sell the Property.

7. On May 22, 2005, the Complainant entered into a sales contract with a Purchaser for \$185,000.00. The Purchaser was to buy the Property.
8. Pearl Properties represented the parties in the transaction.
9. On June 16, 2005, the Purchaser and the Complainant signed the Settlement Statement for the Property.
10. The commission paid to the real estate company, Pearl Properties, for the sale of the Property was \$5,250.00.
11. The Respondent has had no previous statutory or regulatory violations.

DISCUSSION

The REC may suspend a licensee who fails to have the sellers and buyers complete a dual agency agreement when one is required. Md. Code Ann., Bus. Occ & Prof. §§ 17-322(b)(30) (Supp. 2009) and 17-530 (2004).

A 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 or the lessor and the lessee in the same real estate transaction.” Md. Code Ann., Bus. Occ. & Prof. § 17-530(a)(5). A real estate agent must obtain the written informed consent of all of the parties to a real estate transaction to act as a dual agent. Md. Code Ann., Bus. Occ. & Prof. §§ 17-530(c) and (d)(1)(i) and (ii).

The Commission charged the Respondent with violation of the following provisions of Business Occupations Article section 17-530:

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

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

(d) *Same - Exception.* - (1)(i) If a licensed real estate broker or a designee of the real estate broker obtains the written informed consent of all parties to a real estate transaction, the real estate broker may act as a dual agent in the transaction.

(ii) When acting as a dual agent in a real estate transaction, a real estate broker or a designee of the real estate broker shall assign a licensed associate real estate broker or licensed real estate salesperson affiliated with the real estate broker to act as the intracompany agent on behalf of the seller or lessor and another licensed associate real estate broker or licensed real estate salesperson affiliated with the real estate broker to act as the intracompany agent on behalf of the buyer or lessee.

Md. Code Ann., Bus. Occ. & Prof. § 17-530(c) and (d)(ii) (2004).

The importance of the citation above is obvious and cannot be overstated; it protects the parties and the real estate agent from inherent conflict of interest.

The Respondent as the broker participated in the transaction for the sale of the Property as an Intracompany Agent. However, based on the statute above, the broker cannot do that. The broker has to assign either a licensed associate real estate broker or a licensed sales person to represent one party (buyer) and then assign another associate broker or agent to represent the other party (seller). The REC argued that the Respondent cannot act as an Intracompany Agent because a broker who represents one of the parties, with one of her agents or associate brokers, puts the agent in the awkward position of having your boss on the other side, and raises the possibility that the transaction may not be fair, as the agent may do what is best for the broker and not for the buyer. This is what the statute seeks to prevent and I must agree that the Respondent acted contrary to the statute.

In sum, the Respondent violated the regulations, and in turn the statute, as charged.

Instead of or in addition to reprimanding, suspending or revoking a real estate licensee for his or her violation of the above statutes and regulations, section 17-322(c) of the Business

Occupations Article permits assessment of up to a \$2,000.00 monetary penalty,² per violation, applying the following criteria:

(c) Penalty.

(2) To determine the amount of the penalty imposed under this subsection, 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 Respondent has had no previous statutory or regulatory violations. Because of the Respondent's history, I decline to order a reprimand, suspension or revocation of her license. However, the REC has requested a \$2,000.00 civil penalty because the Respondent has not shown good faith. According to Mr. Reynolds, the REC Investigator, the Respondent did not initially respond to the Investigator's inquiries regarding this matter and has not informed the REC of her new address, further evidencing her bad faith. With regard to seriousness of the violation and harm, the Respondent knew the requirements or should have known of the requirements when acting as a dual agent and her actions do not reflect well on the real estate profession as a whole. Moreover, it is important that the REC sanction the Respondent, at the very least, for her failure to honor her obligations under the statute. Under these circumstances, I believe a civil penalty of \$2,000.00 will appropriately address the Respondent's violations.

² Business Occupations Article, section 17-322(c)(3) provides that the Commission "shall pay any penalty collected under this subsection into the General Fund of the State."

CONCLUSIONS OF LAW

I conclude as a matter of law that the Respondent violated the Business Occupations Article for improperly acting as the agent for both the buyer and seller in a real estate transaction. Md. Code Ann., Bus. Occ. & Prof. § 17-530(c) and (d) (2004). I further conclude as a matter of law that the REC may impose on the Respondent a \$2,000.00 civil penalty. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(30) and (c) (Supp. 2009).

RECOMMENDED ORDER

I THEREFORE RECOMMEND that the Maryland Real Estate Commission **ORDER** as follows:

1. The Commission's charges against the Respondent, Felita Phillips, under Business Occupations Article section 17-530 be **AFFIRMED**;
2. **ORDER** that the Respondent pay a \$2,000.00 civil penalty; and further
3. **ORDER** that the records and publications of the Commission reflect its final decision.

ADMINISTRATIVE LAW JUDGE'S SIGNATURE APPEARS ON ORIGINAL ORDER

May 27, 2010
Date Decision Mailed

Jerome Woods, II
Administrative Law Judge

JW/rbs
#114220

MARYLAND REAL ESTATE
COMMISSION

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FELITA A. PHILLIPS,
RESPONDENT

* BEFORE JEROME WOODS, II,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE NO.: DLR-REC-21-09-10560
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* * * * *

FILE EXHIBIT LIST

Exhibits

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I did not admit any exhibits on the Respondent's behalf.