

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

*

* **CASE NO. 2017-RE-443**

v.

*

* **OAH NO. DLR-REC-21-18-24215**

**AMY L. JURAS,
Respondent**

*

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated February 6, 2019, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 22nd day of March, 2019

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 in the recommended decision be, and hereby is, **ADOPTED** in part and **AMENDED** in part as follows:

ORDERED that charges of the Maryland Real Estate Commission against the Respondent, Amy L. Juras, are **UPHELD** in part and **DENIED** in part;

ORDERED that the Respondent, Amy L. Juras, pay a civil penalty in the amount of **One Thousand Dollars (\$1,000.00)** within thirty (30 days) of the date of this order;

ORDERED that the Respondent, Amy L. Juras complete eight hours of

continuing professional education in real estate ethics and best practices within ninety (90) days from the date of this recommended decision;

ORDERED that all real estate licenses held by the Respondent, Amy L. Juras, shall be suspended until the civil penalty is paid and the eight hours of education are complete; and

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

E. Pursuant to Annotated Code of Maryland, State Government Article § 10-220, the Commission finds that the Recommended Decision of the Administrative Law Judge required modification because it omitted from the Recommended Order (1) a deadline for payment of the civil penalty and (2) suspension of all licenses held by the Respondent until the civil penalty is paid and education requirement complete.¹

F. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties adversely affected by this Proposed Order shall have twenty (20) days from the postmark date of the Order to file exceptions and 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.

MARYLAND STATE REAL ESTATE
COMMISSION

SIGNATURE ON FILE

22 March 2019
Date

By: _____

¹ The Commission notes that on page seven (7) of the Recommended Decision the Administrative Law Judge states that “[t]he law and regulations are silent as to the assignment of the burden of proof in the instant matter” and goes to conclude based on case law that the burden is on the Commission. However, the regulations do confirm the Administrative Law Judge’s conclusion. See COMAR 09.01.02.16.

SIGNATURE ON FILE

MARYLAND REAL ESTATE

*** BEFORE STEVEN V. ADLER,**

COMMISSION

*** ADMINISTRATIVE LAW JUDGE**

v.

*** OF THE MARYLAND OFFICE OF**

AMY L. JURAS,

*** ADMINISTRATIVE HEARINGS**

RESPONDENT

*** OAH CASE No.: DLR-REC-21-18-24215**

*** MREC COMPLAINT No: 2017-RE-443**

*** * * * ***

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 July 30, 2018, the Maryland Real Estate Commission (Commission) issued a Statement of Charges and Order for Hearing (Statement of Charges) against Amy L. Juras (Respondent), a licensed real estate salesperson, alleging the Respondent violated sections 17-322(b)(25), (32), (33) of the Business Occupations and Professions Article and the Code of Maryland Regulations (COMAR) 09.11.02.01C in the provision of real estate services. On the following day, July 31, 2018, the Commission transmitted this matter to the Office of Administrative Hearings (OAH) for a hearing on the merits.¹

On November 15, 2018, I convened an evidentiary hearing at the Tawes State Office Building in Annapolis, Maryland. Hope Sachs, Assistant Attorney General, of the Office of the

¹ Md. Code Ann., Bus. Occ. & Prof. § 17-323(d)(2) (2018) (If the Commission determines there is a reasonable basis to believe any grounds exist for disciplinary action under § 17-322 of this subtitle, the investigation shall be referred for a hearing.).

Attorney General of Maryland represented the Commission. The Respondent was present and represented by Barbara J. Palmer, Esquire, of Liff, Walsh & Simmons, LLC.

The contested case provisions of the Administrative Procedure Act (APA), the Commission's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 09.11.03; COMAR 28.02.01.

ISSUES

- 1) Did the Respondent engage in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings?
- 2) Did the Respondent violate any other provision of Title 17 of the Business Occupations and Professions Article other than those enumerated above?
- 3) Did the Respondent violate the Code of Ethics or any regulation adopted under Title 17 of the Business Occupations and Professions Article?
- 4) If so, what sanctions and civil penalties should be imposed?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits in evidence on behalf of the Commission:

REC Ex. 1 – Notice of Hearing, dated September 26, 2018

REC Ex. 2 – Respondent's Licensing History, printed November 9, 2018

REC Ex. 3 – Statement of Charges, dated July 30, 2018

REC Ex. 4 – Residential Brokerage Agreement (Maryland), dated September 13, 2016

REC Ex. 5 – Residential Contract of Sale, dated December 15, 2016

REC Ex. 6 – Report of Commission Investigation, dated October 16, 2017

REC Ex. 7 – Lockbox Access Log – Serial Number: 00403311, undated, received on January 25, 2017

REC Ex. 8 – Letter from the Commission to the Respondent’s broker, dated March 31, 2017

There were no other exhibits offered or admitted.

Testimony

The Commission presented the testimony of Nancy A. Gordon, the Complainant, and Brenda Iman, Commission Investigator.

The Respondent testified on her own behalf and presented the testimony of Diane Windell and Tom Huff,² qualified as an expert in the field of real estate sales and ethics.

FINDINGS OF FACT

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

1. At all times relevant, the Respondent was licensed by the Commission as a real estate salesperson.
2. The Respondent has been a real estate salesperson for sixteen years in this State, with the same broker, without incident.
3. At all times relevant, the Respondent was the agent of Ms. Windell, the buyer of residential real property located at 333 Elderwood Court in Annapolis, Maryland (Property).
4. Prior to its transfer, the Property was owed by the Lenora Gordon Revocable Trust (Trust) for whom Ms. Gordon served as the primary trustee.
5. The Trust engaged William Lambros, a licensed real estate salesperson, to serve as the seller’s agent to market and sell the Property.
6. On September 13, 2016, the Trust and Mr. Lambros entered into a listing agreement for Mr. Lambros to market and sell the Property.

² Mr. Huff testified telephonically.

7. On October 29, 2016, an addendum was made to the listing agreement to permit the use of an electronic lockbox for storage of keys for access to the Property for showings by prospective buyers.

8. The Respondent was not a party to, nor had knowledge of, the terms of the listing agreement and lockbox addendum.

9. The Respondent relied upon the representations of Mr. Lambros as to the terms of the lockbox addendum and the Respondent's responsibilities prior to use of the lockbox.

10. The Respondent's understanding of her obligation to the seller for use of the lockbox was one of notification only and not express permission before entry.

11. The Respondent was advised by Mr. Lambros that prior to entering the Property she must notify him of her entry. He did not advise the Respondent that she needed the express permission of Ms. Gordon, through Mr. Lambros, prior to gaining entry to the Property using the lockbox.

12. Each user of the lockbox enters a unique code to gain access to the lockbox contents, the keys to the Property, and the lockbox electrically records the time, date, and code number of all entries.

13. The Respondent is conversant with the use of lockboxes generally in real estate sales and is aware of the electronic recordation of all persons who access the lockbox.

14. On December 17, 2016, the Trust reached an agreement with Ms. Windell to sell her the Property for \$206,000.00.

15. On January 16, 2017, the Respondent contacted Mr. Lambros by telephone to advise him of her intention to enter the Property with the then putative buyer, Ms. Windell.

16. The Respondent attempted to contact Mr. Lambros approximately thirty minutes prior to her arrival at the Property.

17. The Respondent was unable to speak with Mr. Lambros and, instead, left him a voicemail message detailing her intention to enter to the Property on that date, January 16, 2017.

18. The Respondent and Ms. Windell entered the Property using the lockbox on January 16, 2017.

19. Sometime after their entry, the Respondent received a telephone call from Mr. Lambros informing her that their entry was not permitted. The Respondent informed Mr. Lambros that she and Ms. Windell were already inside the Property. Mr. Lambros did not direct them to leave the premises.

20. Ms. Windell requested she be permitted to remain in the Property while the Respondent left to attend to other appointments so that Ms. Windell could measure for the later installation of flooring.

21. The Respondent initially refused Ms. Windell's request believing it to be improper, but eventually acquiesced after Ms. Windell became markedly upset.

22. The Respondent then left Ms. Windell alone in the Property.

23. Unbeknownst to either the Respondent or Ms. Windell at the time, the flooring contractor arrived at the Property and instead of measuring the flooring as expected, delivered the replacement flooring Ms. Windell was intending to have installed in the Property after settlement. The flooring remained unopened in boxes in the kitchen area of the Property until after settlement.

24. The Respondent returned later in the day of January 16, 2017, to ensure the Property was secured, but did not enter the Property or see the packaging containing the flooring in the kitchen.

25. At the time the Respondent and Ms. Windell entered the Property, the Property was under a contract of sale between the Trust and Ms. Windell, with a scheduled settlement date of January 20, 2017.

26. The flooring material was stored at the Property for three days prior to settlement.

27. Once the Respondent came to know the flooring was left at the Property, the Respondent apologized to Ms. Gordon in writing and agreed to indemnify Ms. Gordon for any harm coming from the Respondent's actions on January 16, 2017.

28. The Property settled as scheduled on January 20, 2017, and the Trust did not suffer any pecuniary loss from the actions of the Respondent on January 16, 2017.

DISCUSSION

I

Law and Governing Regulations

The Real Estate Brokers Act (Act) is a comprehensive statutory scheme that regulates real estate professionals in this State. The primary purpose of this statutory scheme is for the protection of the public. Md. Code Ann., Bus. Occ. & Prof. §§ 17-101 through 17-702 (2018); *see Smirlock v. Potomac Dev. Corp.*, 235 Md. 195 (1963); *Thorpe v. CARTE t/a Carte Real Estate Co.*, 252 Md. 523 (1968); *Zalis v. Blumenthal*, 254 Md. 265 (1969). The Commission is charged with administering and enforcing the provisions of the Act pursuant to section 17-209 of the Business Occupation and Professions Article. Describing the role and function of the Act, the Court of Special Appeals explained that:

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

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

In the instant case, the Commission alleges both statutory and regulatory violations. Specifically, the Commission alleges violations of sections 17-322(b)(25), (32), and (33) of the Business Occupations and Professions Article and COMAR 09.11.02.01C. The statutory provisions provide, in relevant part, as follows:

(b) 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:

...

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

...

(32) violates any other provision of this title;

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

...

(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.

Md. Code Ann., Bus. Occ & Prof. §§ 17-322(b)(25), (32), (33), 17-322(c) (2018).

The regulatory provision provides, in relevant part, as follows:

C. The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State.

COMAR 09.11.02.01C.

II

Burden of Proof

The law and regulations are silent as to the assignment of the burden of proof in the instant matter. In such circumstances, the burden lies with the party asserting the affirmative of the issue before the administrative tribunal. *Comm'r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) (quoting *Bernstein v. Real Estate Comm'n*, 221 Md. 221, 231

(1959) (the burden of proof lies with the party asserting the affirmative of an issue)); *Garrett v. State*, 124 Md. App. 23, 28 (1998) (“[t]he general practice is to allocate the burden of proof to the party asserting the affirmative of an issue, or seeking to change the status quo”); *cf. Schaffer v. Weast*, 546 U.S. 49, 56 (2005) (absent clear legislative intent to the contrary, the burden of proof is with the party seeking relief). I conclude, therefore, that as the proponent of the Statement of Charges at issue, the Commission bears the burden of proof in this matter.

The standard of proof is by a preponderance of the evidence. Md. Code Ann., State Gov’t § 10-217 (2014); *see also Bernstein*, 221 Md. at 232 (internal citation omitted). To prove something by a “preponderance of the evidence” means “to prove that something is more likely so than not so,” when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002); *see also Mathis v. Hargrove*, 166 Md. App. 286, 310 n.5 (2005).

For the reasons set forth below, I find the Commission has met its burden of proof, in part.

III

Positions of the Parties

The Commission contended the Respondent clearly violated the terms of the lockbox addendum to the listing agreement and in so doing violated the statutory and regulatory provisions set forth above. The Commission argued that it does not consider the degree of harm engendered by a violation, but merely the existence of the violation itself and so for these reasons it is of no decisional moment that Ms. Gordon suffered no financial harm by or through the Respondent’s actions on January 16, 2017. The Commission averred that the appropriate sanction would be the imposition of a reprimand and a \$5,000.00 civil penalty (\$2,500.00 for the statutory violation + \$2,500.00 for the regulatory violation).

The Respondent maintained that she was neither a party to nor aware of the terms of the lockbox addendum to the listing agreement, which she explained is a contract between the Trust

and Mr. Lambros and that she reasonably relied on Mr. Lambros's representation that she need only notify him of her entry to the Property not to obtain permission prior to each entry. The Respondent testified that she takes the matter very seriously, admits responsibility for her actions, has apologized to Ms. Gordon and agreed to indemnify her, and has been chastised by her broker for the events of January 16, 2017. For these reasons, the Respondent averred that no further sanction or penalty from the Commission is warranted under the facts of this case.

IV

Analysis

It is a fundamental principle of the adversary dispute resolution process—litigation—that one of the most effective means of attacking the credibility of a witness is cross-examination. *Pantazes v. State*, 376 Md. 661, 680 (2003). Through cross-examination, a party is able to impeach the credibility of a witness and to establish a witness's possible biases, prejudices, motives to testify falsely, or ulterior motives pertaining to the outcome of the hearing. *Marshall v. State*, 346 Md. 186, 192 (1997); *Smallwood v. State*, 320 Md. 300, 306 (1990). Accordingly, I closely observed the testimonial demeanor of the Respondent and her witnesses all of whom were subject to a robust and spirited cross-examination during which none of their responses or statements revealed deception, evasion, doubt, or contradiction.³ See *B.H. v. Anne Arundel Cty. Dep't of Soc. Servs.*, 209 Md. App. 206, 224-25 (2012).

I have also considered that the Respondent is a party witness, which furnishes her with an interest in the outcome of the case and a motive to color her testimony in a light most favorable to her, nevertheless, despite this possible motivation, I find the Respondent to be a credible witness. *Md. Bd. of Physicians v. Elliott*, 170 Md. App. 369, 387-89 (2006) (A finder-of-fact is authorized to determine the credibility of a witness's testimonial evidence based on the witness's

³ Although Mr. Huff, an expert witness rather than a fact witness, testified by telephone, this did not prevent me from critically evaluating his credibility. I listened closely to the intensity, tone, pitch, and timbre of his voice throughout his testimony for clues of falsity, evasion, or deceit, and found none.

demeanor.); *Steinberg v. Arnold*, 42 Md. App. 711, 712 (1979) (“as fact finder, [the judge] has the usual jury prerogatives of whether to believe or disbelieve witnesses, how much weight to give testimony and ultimately whether to be persuaded or not to be persuaded”); Maryland State Bar Association, *Maryland Civil Practice Jury Instructions* (MPJI-Cv) 1:3 (5th ed. 2018).

Moreover, the Respondent’s testimony was supported by the credible evidence of record, specifically the testimony of Ms. Windell, Mr. Huff, and common sense. The Respondent’s testimony that she relied on the seller’s agent, Mr. Lambros, for guidance and direction as to the seller’s requirements for use of the lockbox at the Property was not refuted by the testimony of the Commission’s witnesses, Ms. Iman or Ms. Gordon; neither of whom had any actual direct knowledge of the discussion the Respondent and Mr. Lambros had as to the terms of use of the lockbox. Furthermore, it is in accord with reason and common sense. The only method by which the Respondent, the buyer’s agent, who is not a party to the seller’s listing agreement with her agent where the lockbox agreement was contained, could come to know the seller’s requirements for use of the lockbox would be by discussing it with the seller’s agent, as the Respondent credibly testified occurred here.

The Respondent’s account of events was opposed solely by the hearsay account of Mr. Lambros and then only vaguely and indirectly. REC Ex. 6 at 31-32. Mr. Lambros writes, in relevant part, “I never gave [the Respondent] the freedom to go to [the Property] anytime she or the buyer wanted. *Id.* at 31. Mr. Lambros further writes, “I had no knowledge that [the Respondent] was entering the seller’s property without an appointment . . .” *Id.*

Neither of these statements nor any other contained in his letter expressly and directly refutes the Respondent’s position that Mr. Lambros informed the Respondent that her sole obligation before entering the Property was to notify Mr. Lambros. The most direct refutation of the Respondent’s position comes from a letter written by a senior vice president of Mr.

Lambros's firm. *Id.* at 33. However, there is no basis in the record before me to believe the author of this letter has any first-hand knowledge of the events at issue or how she came to know the matters she is asserting to be true. *Id.* My inability to assess the credibility of statements within the letter written by the senior vice president of Mr. Lambros's real estate firm causes me to give those statements little probative weight. *Id.*

A presiding officer at an administrative proceeding may admit probative evidence "that reasonable and prudent individuals commonly accept in the conduct of their affairs." Md. Code Ann., State Gov't § 10-213(b) (2014); COMAR 28.02.01.21B. The presiding officer may then give probative effect to that evidence. *Id.* This includes hearsay.⁴ The APA expressly provides that "[e]vidence may not be excluded solely on the basis that it is hearsay." Md. Code Ann., State Gov't § 10-213(c) (2014); COMAR 28.02.01.21C. Hearsay evidence is admissible in an administrative hearing, but "if it is to be relied upon as the basis for an administrative decision, the hearsay must be competent and have probative force." *Parham v. Dep't of Labor, Licensing & Regulation*, 189 Md. App. 604, 618 (2009) (quoting *Kade v. Charles H. Hickey Sch.*, 80 Md. App. 721, 725 (1989)). If hearsay is found to be credible, competent, and sufficiently probative, hearsay evidence may be the sole basis for the decision of an administrative body. *Redding v. Bd. of Cty. Comm'rs*, 263 Md. 94, 110-11 (1971), *cert. denied*, 406 U.S. 923 (1972); *Kade*, 80 Md. App. at 725.

Hearsay evidence is more probative if the statement is made close in time to the incident described, if it is under oath, if it is corroborated by other evidence, if there is information about the circumstances under which it was made, and if there is an explanation of why the person who made the statement did not testify at the administrative hearing. *Travers v. Baltimore Police Dep't*, 115 Md. App. 395, 413-416 (1997); *Kade*, 80 Md. App. at 726.; *see Consol. Edison Co. of*

⁴ Hearsay is an out of court statement offered to prove the truth of the matter asserted. Md. Rule 5-801(c).

NY v. NLRB, 305 U.S. 197, 230 (1938). Whether a proceeding is administrative or judicial, the “critical requirement” is that “the evidence presented must be competent.” *Travers*, 115 Md. App. at 412. “‘Competent evidence’ is simply evidence that is reliable and admissible.” *Juliano v. State*, 166 Md. App. 531, 540 (2006). It has “some degree of reliability and trustworthiness.” *Id.* at 540. The probative value and reliability of proffered evidence and the fairness of utilizing it are the “principal factors considered in the competency analysis” for admissibility. *Travers*, 115 Md. App. at 413.

Maryland appellate courts have looked to many factors to determine the reliability of hearsay evidence. One indication of its reliability is whether it has been directly contradicted by other more reliable evidence. *See Rogers v. Radio Shack*, 271 Md. 126, 128 (1974). Another factor is whether the Respondent had a meaningful opportunity to cross examine the hearsay declarant. *Parham*, 189 Md. App. at 619 (citing *Kade*, 80 Md. App. at 725-26). Hearsay evidence is less probative if it is contradicted by more reliable evidence. *Parham*, 189 Md. App. at 618 (citing *Rogers*, 217 Md. at 128).

I am unpersuaded by the unsworn statement of Mr. Lambros, who has a motive to color his account of events in a light most favorable to him since Ms. Gordon’s initial complaint to the Commission named both Mr. Lambros and the Respondent as malefactors and, as a result could have resulted in possible sanctions by the Commission against his license to practice in the field of real estate. There is no evidence before me as why Mr. Lambros was not called to testify in the proceeding nor is his account corroborated by other credible evidence. The credible evidence of record is to the contrary of Mr. Lambros’s account of events. Mr. Lambros’s hearsay statements are directly contradicted by the testimonial evidence provided by the Respondent, who was subject to extensive cross-examination and whom I find credible. Further, Mr. Lambros’s hearsay statements are unsworn and undated so I am unable to determine the

circumstances under which they were made and if they were authored contemporaneously with the occurrence or long after during which a motive to fabricate may have developed. Applying the reliability factors set forth above to Mr. Lambros's hearsay statements, I am not persuaded those statements are reliable or should be given any weight.

Ms. Windell testified candidly and credibly that neither she nor the Respondent had any notion the flooring contractor would deliver the flooring material on January 16, 2017, but, instead, expected him only to measure and discuss the installation. Ms. Windell testified without equivocation that the Respondent left her alone in the Property only at her express and repeated behest, due to the contractor's late arrival; the Respondent's appointments with other clients that she became late for while waiting at the Property for the arrival of the flooring contractor; Ms. Windell's need to return to work and inability to reschedule the appointment with the flooring contractor; and of Ms. Windell's very short timeframe for moving, the concomitance of which caused her to become a "nervous wreck." Test. Windell; REC Ex. 6 at 30.

Additionally, Ms. Windell explained that the Respondent knew nothing of the delivery and storage of the flooring material in the Property until she was made aware of the occurrence by Ms. Gordon. *Id.* While Ms. Windell and the Respondent enjoy a cordial acquaintanceship, I am not persuaded this relationship motivated her to perjure herself before the tribunal. Further, her testimony at the hearing is in accord with a written statement she made to the Commission on October 6, 2017. *Id.* For these reasons, I find her testimony credible and give it probative weight.

I have also considered that as a real estate agent with sixteen years' of experience, the Respondent has a close working knowledge of the electronic records created by use of an electronic lockbox and that every entry to a property is recorded and maintained. It defies reason and common sense to conclude the Respondent would enter the Property in violation of the terms of the lockbox's use, knowing that her entry onto the Property would be recorded and a clear

record created to establish a violation of the lock box terms, which could subsequently be used against her in a disciplinary action, such as the case at bar.

After carefully weighing the evidence before me, I conclude the Commission's Statement of Charges is premised upon a fundamental misapprehension of the factual circumstances undergirding the events at issue. In both the Statement of Charges itself and in argument at the hearing, the Commission maintained that the Respondent violated the lockbox addendum to the listing agreement and this was the basis of the charges filed against her. REC Ex. 3 at 2. The Respondent, however, was not a party or signatory to the lockbox addendum to the listing agreement. REC Ex. 4. The listing agreement, including all addendums, is a contract between the seller, the Trust, and the seller's listing agent, Mr. Lambros. *Id.* There is no evidence the Respondent was furnished with a copy of the agreement nor is there any credible evidence that she was made aware of its contents. The only credible evidence on this point comes from the Respondent who consistently and without refutation disputed having ever seen the listing agreement or any of its addendums, including the lockbox addendum, and explained that she relied on the representations of the seller's agent, Mr. Lambros, as she does in all such situations where she is solely the buyer's agent, for instructions on how to properly use the lockbox pursuant to the seller's terms.

Even if the Respondent had seen the agreement, there is nothing in the plain language of the lockbox addendum that would notify the Respondent that she must obtain the permission of Ms. Gordon before using the lockbox to gain entry to the Property. *Id.* In the field marked showing information contact name, the addendum provides that the Property was "vacant as of 11/1/2016" and lists no person's name to contact for "showing information." *Id.* The only mechanism by which the Respondent could have been made aware of the terms of the lockbox addendum were if Mr. Lambros accurately explained those terms to her, an occurrence the

Respondent strenuously, consistently, and credibly denied. The Respondent maintained throughout her direct and cross-examinations that Mr. Lambros advised her that she had only to notify him prior to making entry to the Property using the lockbox. The only evidence of record that supports the position that Mr. Lambros advised the Respondent of Ms. Gordon's requirements for use of the lockbox is Mr. Lambros's self-serving, unreliable, unsworn, and undated hearsay statement, to which I gave no evidentiary and probative weight, as discussed above.

For these reasons, I am not persuaded the Respondent was on notice of the terms of the lockbox addendum, a party to the agreement, or otherwise bound by its terms. I find credible the Respondent's testimony that in this case, as in all others, she relied upon the representations of the seller's agent for the terms of use of the lockbox. This is not in violation of law or regulation.

The Respondent and the Commission agree, however, that allowing Ms. Windell to remain in the Property after the Respondent departed and unknowingly permitting flooring material to be stored in the Property prior to the consummation of the sale was in error. I have considered the testimony of Mr. Huff, the sole expert witness of record, who has thirty one years' experience in the field and has been an instructor in real estate ethics for more than twenty years. Mr. Huff thoughtfully analyzed the Respondent's acts and opined they were "a very minor transgression." The weight of the evidence supports Mr. Huff's position. I am persuaded the record supports a finding that the Respondent's action, while against her better judgment, the product of a poor choice made fleetingly and without bad faith or malice toward any person, and occurring only once without repetition, are nevertheless, an act of "incompetence" that makes her conduct sanctionable by the Commission. Md. Code Ann., Bus. Occ & Prof. §§ 17-322(b)(25) (2018). I am not persuaded, however, that the Respondent's one-time transgression can be properly deemed a "practice" as that term is used in the regulatory provision alleged to have been

violated, COMAR 09.11.02.01C. *See Merriam-Webster's Collegiate Dictionary* (11th ed. 2006) (practice means "to do or perform often, customarily, or habitually").

I have also considered that the purpose of sanctioning licensed professionals is chiefly for the protection of the public. I am satisfied that the Respondent understands that her action—permitting Ms. Windell to remain at the Property without the Respondent being present—was improper. To the extent that future behavior is predictable, I find that it is unlikely that Respondent will repeat her improper conduct again in the future.

In determining the appropriate penalty, I have considered the pertinent statutory factors.

- (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.

Md. Code Ann., Bus. Occ & Prof. §§ 17-322(c)(2) (2018).

The Respondent's actions, while improper, were not of a grossly serious nature. The Respondent was not aware that she was entering the Property contrary to Ms. Gordon's requirements until after she had made entry; she did so three days before settlement for a Property that was under contract with the buyer she represented; she did not cause any financial harm to Ms. Gordon by her actions; and she immediately indemnified Ms. Gordon when she came to know what had occurred and freely acknowledged her wrongdoing in a written apology. There is no evidence the Respondent was motivated by self-interest or gain, but, instead, the evidence supports she was acting in good-faith when she made a regrettable error of judgment, for which she demonstrated genuine contrition. Finally, the Respondent has no prior disciplinary history with the Commission or from any other quarter. Accordingly, pursuant to section 17-322(c) of the Business Occupations and Professions Article, a combination of a financial penalty of \$1,000.00 and a reasonable period of additional continuing education is an appropriate sanction.

I am not persuaded further action against the Respondent's license is necessary or warranted by the facts of this case or would serve the Commission's interest in protecting the public.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondent engaged in conduct that demonstrated incompetency in the provision of real estate services. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) (2018).

I further conclude, as a matter of law, that the Commission has not proven that the Respondent violated any other provision of Title 17 of the Business Occupations and Professions Article. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(32) (2018).

I further conclude, as a matter of law, that the Commission has not proven that the Respondent violated the Code of Ethics or any regulations adopted under of Title 17 of the Business Occupations and Professions Article. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33) (2018); COMAR 09.01.11.02.

I finally conclude, as a matter of law, that the Respondent is subject to a \$1,000.00 civil penalty and must complete eight hours of continuing professional education in real estate ethics and best practices within ninety days from the date of this recommended decision as a sanction and penalty for her acts on January 16, 2017, involving the Property. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2018); COMAR 09.11.06.

RECOMMENDED ORDER

I RECOMMEND that:

1. The charges of the Maryland Real Estate Commission be **UPHELD**, in part, and **DENIED**, in part;
2. **I FURTHER RECOMMEND** that a civil penalty in the amount of \$1,000.00 be assessed against the Respondent;

3. **I FURTHER RECOMMEND** that the Respondent complete eight hours of continuing professional education in real estate ethics and best practices within ninety days from the date of this recommended decision; and

4. **I FINALLY RECOMMEND** that the Maryland Real Estate Commission's records and publications reflect its final decision.

February 6, 2019
Date Decision Issued

SIGNATURE ON FILE

Steven V. Adler
Administrative Law Judge

SVA/cmg
#178076

SIGNATURE ON FILE

MARYLAND REAL ESTATE

COMMISSION

v.

AMY L. JURAS,

RESPONDENT

*** BEFORE STEVEN V. ADLER,**

*** ADMINISTRATIVE LAW JUDGE**

*** OF THE MARYLAND OFFICE OF**

*** ADMINISTRATIVE HEARINGS**

*** OAH CASE No.: DLR-REC-21-18-24215**

*** MREC COMPLAINT No: 2017-RE-443**

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FILE EXHIBIT LIST

I admitted the following exhibits in evidence on behalf of the Commission:

REC Ex. 1 – Notice of Hearing, dated September 26, 2018

REC Ex. 2 – Respondent’s Licensing History, printed November 9, 2018

REC Ex. 3 – Statement of Charges, dated July 30, 2018

REC Ex. 4 – Residential Brokerage Agreement (Maryland), dated September 13, 2016

REC Ex. 5 – Residential Contract of Sale, dated December 15, 2016

REC Ex. 6 – Report of Commission Investigation, dated October 16, 2017

REC Ex. 7 – Lockbox Access Log – Serial Number: 00403311, undated, received on
January 25, 2017

REC Ex. 8 – Letter from the Commission to the Respondent’s broker, dated March 31, 2017

There were no other exhibits offered or admitted.