BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION	*	
v.	*	
RONNIE MOORE Respondent	*	CASE NO. 2008-RE-500
And	*	OAH NO. DLR-REC-24-09-44023
CLAIM OF LINDA DABNEY AGAINST THE MARYLAND REAL ESTATE GUARANTY FUND	*	

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law, and Recommended Order of the Administrative Law Judge dated November 15, 2010 having been received, read and considered, it is, by the Maryland Real Estate Commission, this 11th day of January, 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, AMENDED as follows:

That the Respondent violated Business Occupations and Professions Article, §§ 17-322(b)(3), (25), (30), (32), and (33), 17-530(b)(1), and COMAR 09.11.02.01H;

That the Respondent is subject to the penalties prescribed in Section 17-322(c) for these violations; and

That the Claimant is entitled to payment from the Maryland Real Estate Guaranty Fund, Business Occupations and Professions Article, Sections 17-401 through 17-412, in the amount of $18,000.

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

The Real Estate Commission ORDERS that:

The Respondent Ronnie Moore violated Md. Bus. Occ. and Prof. Art. §§ 17-322(b)(3), (25), (30), (32), and (33); 17-530(b)(1); and COMAR 09.11.02.01H;

All real estate licenses held by the Respondent Ronnie Moore are revoked;

The Respondent Ronnie Moore is assessed a civil penalty in the amount of $5,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

The claim of Linda Dabney against the Maryland Real Estate Guaranty Fund is granted in the amount of $18,000;

The Respondent Ronnie Moore shall be ineligible for a real estate license until the Guaranty Fund is repaid in full, together with interest as provided for by law, and the civil penalty is paid.

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 Conclusions of Law had to be amended due to the Administrative Law Judge's incorrect application of the law to the facts presented.

Facts. The Respondent is an ordained minister, founder of Choosing Hope Ministries, Inc., and holds degrees in psychology, law, and theology. (FOF 1) He first obtained his real estate license in 2006. (MREC #3) The claimant is a high school graduate who cleans houses for a living. Before September 2006 she had never purchased a home. (FOF 2)

The Respondent was the listing agent for the Flam Court property which was purchased by Eleanor Miles as investment property on September 1, 2006. Ms. Miles paid $350,000 for the property. The Respondent apparently also represented Ms. Miles after the parties signed a consent to dual agency document. (FOF 4)

On September 12, 2006, the Respondent asked the Claimant to clean the Flam Court property. They discussed the fact that it was for sale for $465,000 and whether the Claimant would be interested in purchasing it. She said that she could not afford it, but could afford to pay about $1,000 per month. (FOF 5) He told her that he could help her purchase the property by paying the balance of the mortgage after she paid $1,000 per month. He told her that $18,000 would be a fair down payment for her to make. (FOF 6)

On September 14, 2006, the Respondent, the Claimant, and Ms. Miles met at Ms. Miles' residence to complete the lease. The Respondent brought a standard, blank lease to the meeting. He told Ms. Miles and the Claimant that he was not there as a realtor and gave them a Counseling Form of Intent to sign that provided that he was there only to counsel Ms. Miles with the lease to purchase her

home to the Claimant. (FOF 7) The Claimant and Ms. Miles signed the agreement, and the Claimant gave her a non-refundable deposit in the amount of $18,000. She agreed to make rental payments of $1,000 per month beginning in November 2006 with an exclusive option to purchase for $465,000 through September 14, 2007. The Claimant moved into the property on October 6, 2006. (FOF 8)

In October 2006 Ms. Miles contacted the Respondent about the condition of the roof, and he sent someone over to look at it. The Claimant asked him to replace the roof, and he agreed, saying that she would have to refund him the money. (Proposed Decision, p. 19) When asked by the investigator why he paid to have the roof replaced, the Respondent answered that he "had a working relationship with [the Claimant] as his house keeper and he knew she did not have the money." (MREC #4, p. 52)

In November 2006 the Claimant applied for and obtained credit cards. (FOF 11) The Respondent's name was on the cards as an authorized user. (MREC #4, Exh. 10 , 11) At his suggestion, she authorized him to use the cards. He used them for personal items, including his real estate multiple list fee and carpeting for his home. The Claimant used them to purchase materials and supplies to improve the property. (FOF 11; MREC #4, Exh. 12, 13)

In February 2007 the Claimant told him that the furnace "blew out". He told her that he would send someone to fix it. (Proposed Decision, p. 19) The Claimant paid $3,678 to replace the furnace. (FOF 10; MREC #4, p. 14) The Claimant was unable to obtain financing for the purchase, and moved out of the house in

September, 2007. (FOF 12; Proposed Decision, p. 21)

Discussion. The judge found that the Respondent had not violated the licensing law because his activities did not come within the definition of the provision of real estate brokerage services. This conclusion was based on his finding that the Commission had not proved that the services were provided for consideration. This result was erroneous and based on a misunderstanding of the real estate licensing law.

The judge read the requirement of consideration into all categories of the definition of providing real estate brokerage services found in § 17-101(1). However, this term is found only in subsections (1), (2), and (6). There is no requirement of consideration in subsection (3), "engaging regularly in a business of dealing in real estate or leases or options on real estate." The Real Estate Commission has consistently held that this subsection applies to licensees as well as to those who regularly buy and sell their own properties. The purpose of the licensing law is to protect the public from unscrupulous practices in the real estate industry. Such protection simply cannot be afforded if a licensee can engage with consumers in real estate transactions but claim immunity from regulation based on the absence of compensation. For this reason, the Commission has interpreted this subsection as covering a licensee engaged in real estate activity.

The facts in this case show clearly why the Commission must have the ability to discipline licensees even though compensation is not evident. The Respondent, in an apparent effort to avoid the

need to comply with his obligations as a licensee, presented the parties with a document entitled ''Counseling Form of Intent''. (MREC #4, Exh. 24) In it he said that he would ''counsel'' Ms. Miles with the lease to purchase option on her home. Further, he would counsel either client with questions or help they needed to make an informed decision. However, he stated that he was not acting on behalf of either client as a ''Realtor''. A real estate licensee who assists consumers with advice on the lease/purchase of real property cannot be permitted to evade oversight by stating that he is not acting as a ''Realtor'' or subsequently claiming that he was not compensated for his advice.1 The licensing law would be of no use if the public were at the mercy of licensees who persuaded them to sign forms of this type, creating their own licensing exemptions. In a situation where a licensee is counseling consumers about a real estate transaction the Commission has the authority under subsection (3) to assert jurisdiction and pursue disciplinary charges.

Furthermore, even if the Commission did not have specific jurisdiction over a licensee under one of the definitions of the provision of real estate brokerage services, it could bring disciplinary action. The Court of Special Appeals in *Nelson v. Real Estate Commission*, 35 Md. App. 334, 339, cert. denied, 280 Md. 733 (1977) addressed this issue, and held:

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1 The Respondent used the term "Realtor" in his Counseling Form of Intent document. This term is not found in the licensing law, and is, in fact, a term that may only be used by a member of a realtor's organization (i.e. the National Association of Realtors, or the Maryland Association of Realtors). Thus, his contention that he was not acting as a "Realtor" has no relevance to

> We think it would be seriocomic to construe § 224(a) so as to allow the Real Estate Commission to call to task those brokers who violated the Commission's precepts while acting as brokers and at the same time carve from the Commission's jurisdiction the very same violations, committed by the identical broker, in a non-broker capacity. In the former instance, the broker might be branded as unethical but in the latter, even though the broker committed the same violation, he would retain, officially, his good character. (citation omitted)

Based on the *Nelson* decision, the Commission has on a number of occasions disciplined licensees whose activities related to real estate but did not come within the literal definition of real estate brokerage services. These charges were based on the provision of § 17-322(b)(25) which precludes a licensee from engaging in conduct "that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings."

The Respondent's conduct would certainly come within this provision. Eleven days after his client Ms. Miles purchased a property for investment for $350,000, he offered it to the Claimant, whom he knew as a person who earned her living cleaning houses, who was a high school graduate, and who had never purchased a home before, for $465,000. She told him that she could not afford it, and that $1,000 per month was the most she could afford to pay. Without regard to her financial situation, the fact that payments of $1,000 per month would never support the purchase of a house costing $465,000, and the 36% premium she would be paying over the recent purchase price, he induced her to pay $18,000 in a nonrefundable deposit. The judge did not address the Respondent's

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charges brought under the licensing law.

motives for agreeing to pay the balance of the mortgage over the $1,000. Clearly, his involvement with the property continued. He was the one the Claimant called when she had problems with the roof and the furnace. He told the investigator that he paid for the roof replacement because "he had a working relationship with Dabney, as his house keeper, and he knew that she did not have the money." (MREC #4, p. 52) The Claimant paid for replacement of the furnace. Again, the judge did not address the fact that the Respondent and the Claimant, and not the owner, were paying for repairs to a leased home. The most likely explanation is found in the investigator's interview with Ms. Miles, who told him that she considered "this purchase to be a joint venture and business arrangement with Moore." (MREC #4, p.23)2 Although the Respondent initially denied to the investigator that he had agreed with Ms. Miles to pay for repairs and get his money back when the house was sold (MREC #4, p. 34), he responded to a question about replacement of the roof by saying, "Dabney asked him if he could lend her the money or find a roofer to replace the roof and she would pay him back if they had to work something out on the credit cards to pay for the work if he needed the money back before she purchased the house." (MREC #4, p. 52)

There is no evidence that records were kept of the Claimant's expenditures on the house so that she could be given credit on the

2 Ms. Miles also told the investigator, "Moore suggested that she buy this property. He told Moore (sic) that she could buy it, rent it out for a year, and sell it for more than what she had paid. Moore said that he had seen the house and that he would pay for anything that needed repaired (sic). He said that he would get his money back when the house was sold." (MREC #4, p. 20)

purchase price, nor was there any documentation that set forth who was responsible for repairs or improvements in the property during the lease term. Thus, when the lease was over, and the Claimant was unable to purchase the house, she lost all the monies she had invested in it, in addition to her $18,000 deposit.

As a further part of his involvement with the Claimant and this property, the Respondent suggested that he be authorized to use credit cards that she applied for. His name appeared on two cards. (MREC #4, Exh. 10 and 11) He used the cards, which were billed to the Claimant, for personal items, including carpet for his home and his real estate multiple list fee. There was no evidence of an agreement as to how and when he would reimburse the Claimant for these expenses, or of an accounting for his charges. According to the Claimant's interview with the investigator, she contacted the Respondent about the personal charges, and he told her that he would pay her back, but never did. (MREC #4, p. 13) (This statement is substantiated by the fact that he listed her as a creditor in his bankruptcy filing in 2008. After filing a claim, she was notified that there were no assets available to creditors. (MREC #4, Exh. 16)) When he was questioned about the credit cards by the investigator, his attorney intervened and invoked the Fifth Amendment in response to the seven related questions. (MREC #4, pp. 59-60)

The Respondent's conduct with regard to the lease to purchase and the tenant/Claimant encompassed all the elements of § 17-322(b)(25) - bad faith, incompetence, and untrustworthiness, and

dishonest, fraudulent, and improper dealings.

The Respondent used his status as a real estate licensee to induce the Claimant to enter into a lease purchase agreement that he knew she would be unable to fulfill. He set her purchase price at a level 36% higher than the property had sold for ten days previously, giving her no opportunity to substantiate its value. He told her that $18,000 would be "a fair down payment" knowing that she was relying on him alone to set the terms of the agreement. He knew that she could not pay even half of the monthly mortgage payments on the earlier $350,000 sale ($2,800 according to his statement to the investigator (MREC #4, p. 46)), yet he told her that he could help her purchase the property. (FOF 6) In sum, he misrepresented the realities of this transaction to an inexperienced consumer while doing nothing whatsoever to protect her interests, in violation of § 17-322(b)(3). Her claimed loss of the $18,000 deposit was directly related to these misrepresentations.

The judge recommended dismissal of the charge under § 17-530(b) by saying that the Counseling Form of Intent insulated him from the disclosure requirements. As discussed above, the Respondent's efforts to characterize his participation as something other than real estate brokerage services carries no weight in this analysis. The Commission must look to his actions, and they clearly brought him under the licensing law. He had an obligation under § 17-530(b)(1) to advise the parties whom he represented, and he did not do so.

His violation of § 17-322(b)(33) and COMAR 09.11.02.01H is also evident. The lease purchase agreement had no provisions regarding major repairs, such as roof and furnace replacement, and how any expenditures by the tenant might affect the purchase price. Later, when the Respondent became involved with the Claimant in payment for repairs, there was no documentation of what was owed. These were clearly areas where written documentation was sorely needed and glaringly absent.

Having found that the Respondent violated §§ 17-322(b)(3), (25), (30), and (33), 17-530(b)(1), and COMAR 09.11.02.03H, the Commission must consider the appropriate sanction. The factors to be considered are set forth in § 17-322(c)(2). There is no history of previous violations by this licensee. However, the other three factors are present. The violations are serious. The Respondent made a concerted effort to avoid the statutory obligations imposed on a licensee by characterizing his activities, through a document entitled "Counseling Form of Intent" as "counseling". This is simply unacceptable. He held a real estate license and was engaged in real estate activities. His statement that he was not acting as a "Realtor" is of no legal effect, and can be viewed as an effort to mislead consumers as to the remedies available to them should problems arise. They could believe, as the Respondent asserts, that the Commission would have no right to consider any complaints they might have, and that they would have no recourse to the

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3 The charging document failed to cite § 17-322(b)(33); however, that paragraph is directly tied to the regulatory violation, COMAR 09.11.02.02A, and its omission does not prejudice the Respondent.

Guaranty Fund.

The harm from his conduct was substantial. The Claimant was induced to pay $18,000 as a nonrefundable down payment on property that she would never be able to purchase. She paid for repairs to the property that were rightfully the obligation of the owner, absent an agreement to the contrary, and would not even have had the right to credit for those payments had she been able to purchase the property. She was forced to pay for personal items that the Respondent charged on her credit cards. Although she was listed as a creditor in his bankruptcy proceeding, she received nothing as there were no assets available for distribution.

The Respondent's conduct was replete with bad faith. This began with his efforts to insulate himself from licensing requirements as described above. He deliberately misled the Claimant by advising her that she could afford a home that was completely beyond her means. Because he did not advise her whom he represented in the transaction, she saw no need to question the purchase price he named or the reasonableness of the nonrefundable deposit that he described as "fair." He did not account for expenditures made on the property, and even charged carpeting for his personal residence to the Claimant's credit cards.

The Commission believes that the conduct of the Respondent warrants revocation of his license and a $5,000 civil penalty. The public cannot be protected when a licensee engages in a course of conduct designed to insulate his activities from oversight by the Commission. Nor can it be protected from a licensee who does not

ensure that funds are properly accounted for, particularly when he uses the monies of the consumer for his own benefit.

The Commission, for reasons previously stated, finds that the Claimant is entitled to recover her claim of $18,000 from the Guaranty Fund because her loss resulted from misrepresentations on the part of the Respondent.

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.

Maryland Real Estate Commission

MARYLAND REAL ESTATE COMMISSION	*	**BEFORE MICHAEL D. CARLIS,**
	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE OF**
RONNIE MOORE,	*	**ADMINISTRATIVE HEARINGS**
RESPONDENT,	*	
AND	*	
THE CLAIM OF LINDA DABNEY	*	
AGAINST THE MARYLAND	*	
REAL ESTATE COMMISSION	*	**OAH CASE No: DLR-REC-24-09-44023**
GUARANTY FUND	*	**COMPLAINT No.: 2008-RE-500**

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On November 9, 2009, the Maryland Real Estate Commission (Commission) ordered a hearing on (i) charges against Ronnie Moore (Respondent) for alleged violations of sections 17-322(b)(3), (25), (30), (32), and (33) and section 17-530(b)(1) of the Business Occupations and Professions Article of the Annotated Code of Maryland and the Code of Maryland Regulations (COMAR) 09.11.02.01H and (ii) a

claim by Linda Dabney (Claimant) against the Commission's Guaranty Fund (Fund) for reimbursement for an alleged actual loss caused by the Respondent's misconduct.[1]

On August 17, 2010, I held a hearing in Hunt Valley, Maryland.[2] Jessica Berman Kaufman, Assistant Attorney General, and the Office of the Attorney General, represented the Commission. The Claimant represented herself. Gerard T. McDonough, Esquire, represented the Respondent. Hope M. Sachs, Assistant Attorney General, and the Office of the Attorney General, represented the Fund.

The Administrative Procedure Act, the Office of Administrative Hearings' Rules of Procedure, and the Commission's Hearing Regulations govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); COMAR 28.02.01; and COMAR 09.01.03, respectively.

ISSUES

The issues are (i) whether the Respondent violated sections 17-322(b)(3), (25), (30), (32), (33) and 17-530(b)(1) of the Business Occupations and Professions of the Maryland Annotated Code and COMAR 09.11.02.01H; (ii) if so, whether a revocation of the Respondent's license and a $25,000.00 penalty are reasonable sanctions; (iii) whether the Claimant suffered an actual loss caused by the Respondent's misconduct; and (iv) if so, whether the amount of the compensable actual loss is the amount claimed by the Claimant.

SUMMARY OF THE EVIDENCE

Exhibits[3]

The following were admitted for the Commission:

MREC 1: Notice of Hearing and Statement of Charges;

[1] The complaint and claim were filed with the Commission on February 14, 2008. The Claimant claimed an actual loss of $18,000.00.
[2] The hearing was originally scheduled for July 6, 2010. It was postponed at the Respondent's request.
[3] The Respondent and Fund did not offer exhibits.

MREC 2: Transmittal, with attached Statement of Charges and Order for Hearing (Charges);

MREC 3: The Respondent's licensing history; and

MREC 4: Statement of Authentication and Report of Investigation (Report), with attachments.[4]

The following were admitted for the Claimant:

Claimant #1: Check to E. Miles, dated October 16, 2006;

Claimant #2: Check to E. Miles, dated September 14, 2006;

Claimant #3: Home Comfort Retail Installment Agreement, dated February 12, 2007;

Claimant #4: Carpet Purchase Order, dated January 26, 2007;

Claimant #5: Letter to the Claimant, dated October 10, 2007;

Claimant #6: Contractor Agreement, dated February 4, 2007;

Claimant #7: Home Depot Credit Card information;

Claimant #8: Home Depot receipts and credit card information;

Claimant #9: Citi Professional Cash Card information and letter to the Respondent, dated December 5, 2007; and

Claimant #10: Citi Diamond Preferred Rewards Card information and letter to the Respondent, dated November 29, 2007.

Testimony[5]

The Claimant testified for the Commission. The Commission also examined the Respondent.

[4] The Commission employed Hal Orbits to investigate the complaint. Mr. Orbits investigated from April 1, 2009, to June 1, 2009. He interviewed Eleanor Miles, the Claimant, and the Respondent. Mr. Orbits's Report of Investigation (Report) is numbered pages 1 through 76. Exhibits 1 through 24 are attached to the Report. According to the Report, Mr. Orbits interviewed the Claimant on May 1, 2009; however, according to the report, he interviewed the Respondent on June 5, 2007, and Ms. Miles on May 6, 2007. Without an explanation to the contrary, which was not provided, those dates cannot be correct. The Claimant signed her complaint in July 2007; the Charges state that the complaint was filed in February 2008; and Mr. Orbits's investigation began in April 2009. I assume, therefore, Mr. Orbits meant "2009," when he wrote "2007."

[5] The Fund did not offer any witnesses.

The Claimant testified for herself.

The Respondent testified for himself.

FINDINGS OF FACT

I find the following by a preponderance of the evidence:

1. At all relevant times, the Respondent was a licensed real estate salesperson under registration number 614473. The Respondent also is an ordained minister and founder of Choosing Hope Ministries, Inc. (Choosing Hope). He additionally has degrees in psychology, law, and theology.

2. The Claimant is a high school graduate and cleans houses for a living. Before September 2006, she had never purchased a home. On September 14, 2006, she and Eleanor Miles signed a lease with purchase option (Lease) on 7605 Flam Court in Fort Washington, Maryland (Flam Property).

3. Before the September 14, 2006, transaction related to the Flam Property, the Respondent, Claimant, and Ms. Miles knew each other. Before September 2006, the Claimant had been Ms. Miles's cleaning lady for five or six years. Ms. Miles did not live at the Flam Property. Ms. Miles knew the Respondent because her boyfriend's daughter is the Respondent's fiancée. The Claimant met the Respondent two years before September 2006 at Ms. Miles's home where she was cleaning. The Claimant later began cleaning the Respondent's residence.

4. Ms. Miles purchased the Flam Property for $350,000.00 from Joanne Diggs as an investment on September 1, 2006. During this transaction, the Respondent was employed as a real estate agent by Century 21 H T Brown (Century 21). He was Ms. Diggs's real estate agent. The parties later consented to Century 21's dual agency. Century 21 earned a settlement fee of $21,000.00.

5. On September 12, 2006, the Respondent asked the Claimant to clean the Flam

Property. They discussed that the Flam Property was for sale for $465,000.00 and whether the Claimant would be interested in purchasing it. The Claimant said she could not afford the Flam Property, but she could afford about $1,000.00 per month. The Respondent suggested that she go look at the Flam Property.

6. On September 13, 2006, the Claimant met the Respondent at the Flam Property. The Claimant again told the Respondent that she could not afford the Flam Property. The Respondent told the Claimant that he could help her purchase the property by paying the balance of the mortgage after she paid $1,000.00 per month. The Respondent told the Claimant that $18,000.00 would be a fair down payment.

7. On September 14, 2006, the Claimant, Respondent, and Ms. Miles met at Ms. Miles's resident to complete the Lease. The Respondent brought a standard, blank lease to the meeting. The Respondent told the Claimant and Respondent he was not there as a realtor, and he, the Claimant, and Ms. Miles signed a Counseling Form of Intent that made it clear that the Respondent was not acting as a realtor for Ms. Miles or the Claimant., but was there only to "counsel [Ms. Miles] with the lease to purchase option [o]f her home to [the Claimant]."

8. On September 14, 2006, the Claimant and Ms. Miles signed the Lease. The Claimant gave Ms. Miles a non-refundable $18,000.00 deposit, agreed to make rental payments of $1,000.00 per month beginning in November 2006, and had an exclusive option to purchase the Flam Property for $465,000.00 through September 14, 2007. The Claimant moved in on October 6, 2006.

9. On October 16, 2006, at the Respondent's suggestion, the Claimant wrote Ms. Miles a check for $3,000.00 for an investment. Ms. Miles deposited the check into a Choosing Hope bank account. At the time, Ms. Miles was the Chief Executive officer of Choosing Hope with responsibilities for managing Choosing Hopes' finances.

10. Ms Miles and the Respondent paid for several improvements and repairs to the Flam Property. The Respondent paid about $6,200.00 to replace the roof in October 2006. The Claimant paid $3,678.00 to replace the furnace in February 2007. The Claimant also paid $1,350.00 to improve the bathroom in April 2007.

11. The Claimant applied for and obtained credit cards in November 2006. At the Respondent's suggestion, she authorized the Respondent to use the cards. The Respondent used the cards for personal items. The Claimant used the cards to purchase materials and supplies to improve the Flam Property.

12. The Claimant moved out of the Flam Property in September 2007.

DISCUSSION

Applicable Law

Section 17-322 of the Business Occupations and Professions Article provides in pertinent part:

> **§ 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 . . . reprimand any licensee, or suspend or revoke a license if the . . . licensee:
>
> . . .
>
> (3) directly or through another person willfully makes a misrepresentation or knowingly makes a false promise;
>
> . . .
>
> (25) engages in conduct that demonstrates bad faith, incompetence, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;
>
> . . .
>
> (30) fails to make a disclosure or provide the consent form required by § 17-530 of this title;
>
> . . .
>
> (32) violates any other provision of this title;
>
> (33) violates any regulation adopted under this title or any provision of the code of ethics[.]

Section 17-530 of the Business Occupations and Professions Article provides in pertinent part:

> **§ 17-530. Disclosure of representation, dual agency.**
>
> . . .
>
> (b) *In general.* — (1) A licensee who participates in a residential real estate transaction as a seller's agent, buyer's agent, or as a cooperating agent shall disclose in writing that the licensee represents the seller or lessor or the buyer or lessee.

COMAR 09.11.02.01H 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.

General Background

This case involves the Flam Property in Fort Washington, Maryland. Before September 2006, Joanne Diggs owned the Flam Property. At that time, the Respondent was employed by Century 21 as a licensed real estate salesperson.

On September 2006, Ms. Miles purchased the Flam Property from Ms. Diggs for $350,000.00. The Respondent represented Ms. Diggs in this transaction, and Ms. Diggs and Ms. Miles consented to Century 21's dual agency.[6]

The transaction that gave rise to the Charges occurred on September 14, 2006. On that date, the Claimant and Ms. Miles entered into the Lease. The Lease provided that the Claimant would pay $1,000.00 per month from November 2006 through September 14, 2007. The Lease gave the Claimant an option to purchase the Flam Property for $465,000.00. The Claimant gave

[6] Ms. Miles never lived in the Flam Property. The Report states that the Respondent suggested that Ms. Miles purchase the Flam Property and "rent it out for a year, and sell it for more than what she had paid." MREC #4, Report, page 20. The Report also indicates that the Respondent told Ms. Miles that "he had seen the house and that he would pay for anything that needed repair" and "he would pay for all the repairs to the Flam Property and get his money back when the house was sold." *Id.*

Ms. Miles a non-refundable deposit of $18,000.00 toward the purchase price. The Commission claims that the Respondent acted as a real estate salesperson during the transaction.

Some additional facts are not in dispute. Before the transaction on September 14, 2006, the Claimant, Respondent, and Ms. Miles knew each other. The Claimant earned a living by cleaning houses, including Ms. Miles's house. Sometime in 2006, while cleaning Ms. Miles's house, she met the Respondent, and began cleaning his house some months before the September 14, 2006, transaction. The Respondent was dating, and later became engaged to, Ms. Miles's boyfriend's daughter.[7] Furthermore, as discussed above, the Respondent represented Ms. Diggs when she sold the Flam Property to Ms. Miles. At some point, Ms. Miles became an officer of Choosing Hope.[8]

Evidence related to the Subject Transaction

The Claimant testified that the Respondent telephoned her on September 12, 2006, and told her he had a property (the Flam Property) that needed to be cleaned. According to the Claimant, the Respondent said he was selling the property for $465,000.00 and asked if she would be interested. The Claimant said she could not afford the asking price, and, in response to the Respondent's inquiry about what she could afford, told him "maybe $1,000.00 a month." According to the Claimant, some time later, the Respondent told her he could help her afford the property by "helping her pay the mortgage on the property."

The Claimant further testified that, on September 13, 2006, "[the Respondent] took [her and her daughter] to view the property," which she clarified to mean that she and her daughter met the Respondent at the Flam Property. When asked what the Respondent told her while they were inspecting the Flam Property, the Claimant testified, "He said the house was $465,000.00

[7] The Report states that Ms. Miles first met the Respondent in 2005 and the relationship "grew closer" because the Respondent was frequently at Ms. Miles's house. MREC 4, Report, page 18.
[8] The Report states that Ms. Miles said the Respondent had also arranged for the refinancing of her residence in Upper Marlboro in April or May 2006.

and he could help pay the mortgage and that I would pay $1,000.00. He wanted me to set up a time to do a contract with Eleanor T. Moore [sic][9] and he told me he felt a fair down payment on the house would be $18,000.00. He informed me to get the $18,000.00 cashier's check made out to Eleanor Miles." At the time, the Claimant said she knew the Respondent was a real estate agent, but could not remember whether she talked to him about whom he represented in the transaction.

The Claimant also testified that the Respondent met with her and Ms. Miles in the garage of Ms. Miles's home in Upper Marlboro on September 14, 2006. According to the Claimant, the Respondent brought a blank contract (the Lease) to the meeting and "instructed" them on how to complete it. The Claimant testified that the Respondent did not discuss his role in the transaction: "No, I don't remember him saying what his role was, whether he was an agent or counseling us. I don't recall him saying any of that."[10] When asked whether the Respondent gave her any document to sign regarding his role, the Claimant testified, "No." When asked whether she had been shown a copy of a document titled "Counseling Form of Intent," the Claimant acknowledged that it "looks like my signature"; she testified that she did not remember signing it.[11]

The Claimant identified MREC 4, Attachment Exhibit 3, as the Lease. The Lease contains eighteen paragraphs on three pages, with blanks that are filled-in, several handwritten notations, and the parties' initials throughout. According to the Claimant, on page one, she wrote her initials in the left margin; she did not recall writing her initials at paragraph 4C; and Ms. Miles wrote everything else except the word "mortgage" at paragraph 4C. On page two,

[9] The Claimant meant "Miles" not "Moore."
[10] This testimony is inconsistent with what the Claimant wrote in her complaint. The complaint includes a four-page attachment that provides a chronology of events. On September 14, 2006, the Claimant wrote: "Met with [the Respondent] and Eleanor T. Miles to write up the contract. Was told by [the Respondent] that he was not acting as a real estate agent, but counseling us on filling out contract." MREC 4, Report, Attached Exhibit 1.
[11] The Counseling Form of Intent is discussed in more detail below.

according to the Claimant, she wrote her initials, and Ms. Miles wrote "Electric, Gas & WSSC." The Claimant finally testified that she could not recall writing her initials on page three, except for the first three at the top of the page, but later testified that she could not recall writing those initials. She did not know who wrote the notations on that page. The Claimant also testified that some of the notations on the Lease were not there when she signed it on September 14, 2006.

On May 1, 2009, Mr. Orbits interviewed the Claimant. He summarized the Claimant's version of the transaction as follows:

> On September 12, 2006 [the Respondent] talked with [the Claimant] about cleaning the [Flam Property]. He informed her that the property was for sale for $465,000. [The Claimant] told [the Respondent] that she could not afford that price. When [h]e inquired about how much she could afford, [the Claimant] told him she might be able to afford $1000 per month. [The Respondent] told [the Claimant] to go look at the house.[12] [The Claimant] did not know it was [Ms.] Miles' house until she met [the Respondent] there the next day.
>
> On September 13, 2006, [the Claimant] and her daughter met [the Respondent] at the property. Although she really liked the house she told [the Respondent] she could not afford it for the asking price. [The Respondent] told [the Claimant] with his help she would be able to afford the house. When [the Claimant] asked [the Respondent] how he was going to help her, [the Respondent] stated that [the Claimant] would pay $1000 per month and he would pay the rest of the mortgage. [The Respondent] also told [the Claimant] she would have to pay a fair down payment of $18,000. [The Respondent] told [the Claimant] that he was a Real Estate Agent, however if she wanted to go with another real estate agent she could. [The Respondent] stated again that he would help her buy the house. [The Respondent] told [the Claimant] to get a cashier's check, in the amount of $18,000, made payable to [Ms.] Miles and set up a time to do a contract with [Ms. Miles]. [The Respondent] informed [the Claimant] she would not get her money back if she decided not to purchase the house. [The Respondent] also told [the Claimant] that he was a Loan Officer and he would obtain a loan approval for her. [The Respondent] requested her W-2 forms and other personal financial information, which she subsequently provided. [The Claimant] advised that she trusted [the Respondent] and, up to that point, she had not discussed this transaction with anyone else.[13]

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[12] The Respondent specifically denied to Mr. Orbits that this conversation took place.
[13] The Respondent specifically denied to Mr. Orbits that this conversation took place. He acknowledged, however, that he told the Claimant she would not get her deposit back during his "counsel" of her on September 14, 2006.

> On September 14, 2006 [the Claimant] obtained [the] Cashier's Check [] and gave it to [Ms.] Miles when she met with [the Respondent] and [Ms.] Miles to prepare the contract []. [The Respondent] told [the Claimant] that he was not acting as a Real Estate Agent, but was counseling them on filling out the contract. [Ms.] Miles actually wrote the contract, with instructions, from [the Respondent]. [The Claimant] never bought a house, and did not know the procedures. [The Respondent] told [the Claimant] that she was buying a house. He stated that he would show her ways to afford it. [The Claimant] and [Ms.] Miles signed the contract. When [the Claimant] asked [the Respondent] for a copy of the contract, he stated that he had to finalize it. [The Claimant] asked [the Respondent] what he meant, and he said that he was going to have his assistant type it. [The Respondent] then started talking about repairs of [sic] changes to the house, such as painting, replacing storm doors, replace [sic] roof, and upgrade bathrooms. [The Respondent] stated that he would pay for them and that would increase the value of the house.[14]

MREC 4, Report, pages 5–6.

Mr. Orbits interviewed Ms. Miles on May 6, 2009.[15] The pertinent part of the Report states as follows:

> A few days after the purchase [of the Flam Property from Ms. Diggs], [Ms. Miles] received a call from [the Respondent], who told her that he had a renter for the home.[16] [Ms.] Miles did not know it was [the Claimant] until [the Respondent] told her. [Ms.] Miles had never told [the Claimant] that she was buying the house and never asked [her] if she wanted to rent it. [The Respondent] is the one who talked [the Claimant] into the transaction. [Ms] Miles never knew about any of the financial discussions between [the Claimant] and [the Respondent] until they all met to complete the contract on September 14, 2006.
>
> On September 14, 2006, [Ms.] Miles, [the Claimant], and [the Respondent] met at [Ms.] Miles' home to complete a lease for [the Flam Property]. [The Respondent] brought a Lease with Purchase Form [] for [Ms.] Miles to fill out. [Ms.] Miles did acquire [sic] the form from any store.[17] [The Respondent] explained that [the Claimant] was going to [l]ease the house with option to purchase within one year. [The Claimant] would make a down payment of $18,000 which would go towards the purchase price of the house. The $18,000 was non-refundable if [the Claimant] decided not to purchase the house. Both [Ms.] Miles and

[14] The Respondent specifically denied to Mr. Orbits that he said any of the above, starting with "He stated that he would show her ways to afford it."
[15] See note 4.
[16] The Respondent specifically denied this to Mr. Orbits.
[17] It is clear from the context that Mr. Orbits meant to write "did **not** acquire the lease."

[the Claimant] verbally agreed to this. [The Respondent] further explained that [the Claimant] would pay a rent of $1,000 per month and all rent would go towards the purchase of the house. [Ms.] Miles' mortgage was $2,000 per month. [The Respondent] told [Ms.] Miles he would pay the additional $1000.00. He stated that he would get his money back from the proceeds of the sale of the house. [Ms.] Miles filled out the lease with [the Respondent] telling her what to write in each blank.[18] In Para 4 D, [Ms.] Miles did not write in "price or mortgage." She did write in $16,000, $12,000 and $28,000 but she does not recall why. She never received $28,000. In Para 17, she did not write "There will be no refund for any reason after 10 days." These annotations were not on the lease when she and [the Claimant] signed it. [Ms.] Miles could not explain why her and [the Claimant's] initials appear next to Para 17. [The Claimant] provided [Ms.] Miles with a cahier's check in the amount of $18,000. [Ms] Miles gave some of it to [the Respondent] in cash, however she does not recall why.[19] [Ms.] Miles subsequently spent all of the rest of the money.

[The Respondent] never refused to help with this transaction nor did he tell her that she should consult with a real estate attorney. This entire transaction was his idea and completed with his full voluntary involvement. [Ms.] Miles assumed that [the Respondent] was acting as a Real Estate Agent and was handling her loans. [The Respondent] never said otherwise.[20] [Ms.] Miles considered this purchase to be a joint venture and business arrangement with [the Respondent].

MREC 4, Report, pages 22-23.

The Respondent denied that he contacted the Claimant about purchasing the Flam Property. He also denied showing the Flam Property to the Claimant or agreeing to help her make mortgage payments. According to the Respondent, he "counseled" the Claimant and Ms. Miles's on how to complete the Lease. "The counseling was an agreement of price and what they could work with. I did not counsel or particularly have them fill out line by line from that standpoint." He further testified as follows: "Ms. Miles asked me to go over to the house [the Flam Property] to let a gentleman in that was supposed to consider some repairs to the house and

[18] The Respondent specifically denied to Mr. Orbits that this conversation took place. The Report does not indicate that Mr. Orbits asked the Respondent about Ms. Miles's statement that the Respondent brought a blank lease to the meeting.
[19] The Respondent denied that he received any of the $18,000.00 and denied that he played any part in the Claimant's and Ms. Miles's agreement to include the $18,000.00 deposit in the Lease.
[20] Mr. Orbits did not mention that he showed the Counseling Form of Intent to Ms. Miles.

[the Claimant] and her daughter met me over there. So I'm assuming that her [sic] and Ms. Miles had the meeting already set up."[21]

The Respondent also denied that he took a blank lease to the meeting. According to the Respondent, Ms. Miles had a lease with her. In regard to the notations that are written on the Lease, the Respondent testified that the **only** notation he wrote was "there will be no refund for any reason after 10 days" on page 3 because he understood that the Claimant and Ms. Miles had agreed to that. He explained that Ms. Miles received a telephone call and, before she "went in [to the house]," she asked him to finish the Lease.[22] Later he testified that the date at the top of the Lease "looks like" his handwriting.[23]

The Respondent was asked when he first became aware of the meeting on September 14, 2006. He testified: "Ms. Miles called me that evening around 5:30, 6:00 and she said she had spoken to [the Claimant] about finalizing the deal on the house. She asked me would I come over to just make sure that they doing the right things."[24] The Respondent speculated that Ms. Miles called him because he "had worked with Ms. Miles on other transactions before," but he denied that she was a member of Choosing Hope at the time.[25]

The Respondent was asked about his role at the meeting. He testified: "First, I asked Ms. Miles, as well as [the Claimant], 'Are you sure you do not want to get an agent to represent you?' Their response was, 'We don't want to pay any real estate fees.' And at that point I said I understood." According to the Respondent, he had them sign the Counseling Form of Intent because "that was the second time I had asked them about getting an agent on their behalf. I

[21] He admitted that he had brought the "Counseling Form of Intent" with him.
[22] He told Mr. Orbits he wrote this because "he had his pen out and just wrote it in." MREC 4, Report, page 45.
[23] The Respondent later testified that he also wrote "30 days" on the Lease at page three.
[24] During cross-examination, the Respondent testified that the Claimant cleaned his house during the day of September 14, 2006, and she had told him that she was meeting with Ms. Miles that evening.
[25] He testified that Ms. Miles was like an "adopted mother," mentioning she dated his fiancee's father.

guess at that point I was thinking commission and they did not want to pay commission and they did not want an agent."

The Counseling Form of Intent is reproduced below:

Choosing Hope Ministries Inc.

COUNSELING FORM OF INTENT

To whom it may concern:

I Dr. Ronnie Moore will counsel Mrs. Eleanor T. Miles with the lease to purchase option [o]f her home to Ms. Linda D. Dabney. The parties understand that I am not acting on [b]ehalf of either client as a Realtor, only a counselor, to counsel them with questions or help they may need to make an informed decision.

Signatures of Client's [sic] being Counseled:

Eleanor T. Miles [Ms. Mile's signature] Date 9-14-06
Linda D[.] Dabney [The Claimant's signature] Date 9/14/06
Dr. Ronnie Moore [The Respondent's signature] Date 9/14/06

MREC 4, Report, Attachment Exhibit 24.

When asked why he stayed to assist the Claimant and Ms. Miles after they told him they did not want a real estate agent, the Respondent testified:

> Through my ministry I help people in foreclosures and in various different situations. There is no specific area that I focus on in my ministry. I meet people at their need. Whatever they need is then that's why I try to provide myself. I've educated myself to be able to do that so I was more acting in a ministerial capacity trying to assist them making sure what they did was fair.

He was "there as a friend on their part."

Evidence about the Distribution of the Lease

The Claimant testified that she was not given a copy of the Lease on September 14, 2006. According to the Claimant, she asked for a copy, but the Respondent said he had "to finalize it," and when asked what that meant, the Respondent said, according to the Claimant's testimony,

that he wanted his assistant to type the Lease.[26] The Claimant also testified that she asked the Respondent for a copy of the Lease some time in November. According to the Claimant, the Respondent said that it had not been "finalized," but it was in a safe place. The Claimant received a copy of the Lease from Ms. Miles on April 28, 2007.[27]

The Report states that Ms. Miles said the Respondent gave her a copy of the Lease in April 2007, after she agreed to sign a letter relinquishing her position as Chief Executive Officer of Choosing Hope.

The Respondent, on the other hand, testified that Ms. Miles made copies of the Lease on September 14, 2006, and gave a copy to him and the Claimant. The Report contains the following:

> **Question:** Did you take the contract with you when you left?
>
> **Answer:** No.
>
> **Question:** Did [the Claimant] and [Ms.] Miles each have a copy of the contract?
>
> **Answer:** Yes.[28]
>
> . . .
>
> **Question:** Regarding the statement: "[The Claimant] asked [the Respondent] for a copy of the lease contract again [on November 22, 2006]. [The Respondent] said that he still had to finalize it, but he had it in safe keeping." Did this happen?
>
> **Answer:** No.
>
> . . .
>
> **Question:** Did [the Claimant] ever come to your house and ask for the copy of the contract and the return of her W-2s and personal documents that she had given you?
>
> **Answer:** No.

[26] The Claimant testified that Ms. Miles had a copier at her house.
[27] This testimony is consistent with what the Claimant told Mr. Orbits.
[28] The Respondent denied to Mr. Orbits that he told the Claimant he had to finalize the Lease.

MREC 4, Report, pages 46, 57, and 64.

Evidence about Repairs to the House and Related Matters

The Claimant testified that the Respondent said he would pay for repairs and upgrades to the Flam Property, specifically upgrading the bathrooms and installing storm doors. According to the Claimant, the Respondent told her get credit cards in her and the Respondent's nameS to purchase work that needed to be done on the Flam Property.

The Claimant further testified that the Respondent talked to her about a real estate investment in October 2006. Claimant #1 is a copy of a check that the Claimant issued to Ms. Miles for $3,000.00 on October 16, 2006. Ms. Miles deposited the check in a Choosing Hope bank account. According to the Claimant, the Respondent told her she would realize a $1,200.00 profit from the investment. When asked whether this investment had anything to do with the lease of the Flam Property, the Claimant testified: "At this point I really don't know for sure if it did or not. It was an investment so maybe not. I'm not sure."

The Claimant further testified that she replaced the furnace at the Flam Property. "I wasn't the home owner and I paid for something I really wasn't supposed to pay for." Claimant #3 is a contract with BGE Home Products & Services, Inc., that shows she paid $3,678.00 for a furnace on February 12, 2007. According to the Claimant, the Respondent at first told her that he would reimburse her for the furnace and later told her "it would be taken care of at closing when I bought the house."

The Claimant also testified that she obtained credit cards in her name and made the Respondent an authorized user. When asked why she authorized the Respondent to use the credit cards, the Claimant testified:

> At the request of [the Respondent]. He told me if I get the credit cards that it will raise my Beacon score for my credit. But, he asked me to get the credit cards in his name and my name so that if there were any repairs

or whatever needed to be done in the home that he would take care of it and whatever money was spent on the credit card that he would reimburse me.

The Claimant testified that the Respondent used her credit card on January 26, 2007, to purchase carpet for his home. Claimant #4 is a purchase order that supports the Claimant's testimony. The Claimant further testified that the Respondent used a credit card to pay $165.00 for "his quarterly fee for real estate license renewal." Claimant #5 shows a charge to a MasterCard for: "12/06 Quarterly Fee $165.00 Paid on 1/30/07."

The Claimant identified Claimant #6 as a contract she executed with Nathaniel L. Jones in February 2007 for work "that [the Respondent] wanted done to the house." Claimant #6 shows that improvements were made to the bathrooms and a storm door was installed. According to the Claimant, the Respondent never reimbursed her for these improvements.

The Claimant also testified that the Respondent used the credit cards for himself, and, at the Respondent's instruction, she used the cards to pay for home improvement supplies and material. Claimant #7 documents the use of a MasterCard for a purchase from Amoco Oil in North Carolina on January 1, 2007. Claimant #8 documents the use of the same credit card for purchases at Home Depot and Loew's from November 2006 through February 5, 2007. Some purchases were for home improvement products and supplies. The total amount of the unduplicated charges is allegedly $2,251.00. Several of the receipts, however, are illegible. The Claimant wrote the amount of the charges on those receipts. The total is $369.41. One transaction is for a cash advance of $700.00 from the Bank of America. Two receipts are for cash purchases from Loew's for $123.12.

The Claimant offered Claimant #9 to document the Claimant's other credit card purchases. Claimant #9 includes a law firm's letter demanding reimbursement from the Respondent of $6,025.46 for charges to two credit cards. The letter does not itemize the charges.

Claimant #9 also includes transactions on a Citi Bank "Professional Cash Card" for a total of $3,110.23 including: (i) a purchase on December 5, 2006, for an unidentified product for $110.23, (ii) a cash advance on December 7, 2006, for $1,000.00, and (iii) an automobile rental for $2,000.00 on December 13, 2006.

Finally, Claimant #10 documents additional purchases the Claimant testified the Respondent made with her credit card. Claimant #10 duplicates some charges that are discussed above and includes the following additional charges: (i) $9.09 on January 30, 2007, and $12.40 on February 5, 2007, at Exxon/Mobil, (ii) $20.88 at Shell Oil on January 29, 2007, and (iii) $611.65 to Sprint Wireless Services on January 31, 2007.

The Respondent, on the other hand, denied that he had discussed any investment opportunity with the Claimant. When asked about the deposit of the Claimant's check for $3,000.00 into Choosing Hope's account, he first testified that he did not know whether such a deposit had been made. After he examined MREC 4, Attachment Exhibit 9, he acknowledged the deposit. The Respondent explained that Ms. Miles worked for Choosing Hope as "an officer." He described her role as follows: "She was the sole proprietor of the account. Nobody's name was on the account but hers, uh, there was over $17,000.00 taken out of the account. I could not pursue that because the account was in her name only what I was told by the State's Attorney." When asked how often Ms. Miles deposited money into the account, the Respondent testified:

> I actually made the majority of the deposits for things that I was working on. Her job [was] to provide me with statements each month of the transaction of the account. After three months that was null and void. She became senile. She did not remember any of the occurred thru any of the transactions, so the $3,000.00 you're speaking of could have been a check that was given to Ms. Miles and she deposited it in the account.

In regard to the credit cards, he denied that he told the Claimant to take out credit cards with him as an authorized user. He acknowledged, however, that the Claimant had authorized

him to use two of her credit cards. He also acknowledged using a credit card to purchase carpet for his own use and for the charge designated Metropolitan Regional Information Systems. According to the Respondent, he did not reimburse the Claimant for the charges because "[the Claimant] owed me for $6,000.00 for putting a roof on her house."[29] He replaced the roof because "[the Claimant] asked me to." He testified:

> Mrs. Miles and her fiancé had called me and stated Mrs. Miles was having some concerns about the roof and I said, well, I have someone I can send over and take a look at the roof which I did send a guy over and he said there was nothing wrong with the roof [] put a little patching around the chimney but it was a double roof [two layers of shingles]. But her brother and [the Claimant] at the time thought that wasn't a good idea so [the Claimant] wanted the roof replaced. [The Claimant] asked me to replace [the] roof. I told her I would get the roof replaced and she would have to refund me my money.[30]

In regard to the furnace, the Respondent testified that, when the Claimant told him the furnace "blew out," he told her to contact Ms. Miles. Ms. Miles had someone inspect the furnace, but, later, the Claimant called the Respondent again said she wanted the furnace fixed. According to the Respondent, he told the Claimant that he would send someone to fix the furnace and she should work something out with him. When asked why the Claimant talked to him about the furnace, the Respondent testified: "I guess because Ms. Miles at the time had me handle some things for her."

The Respondent denied that he had had the Flam Property appraised or inspected, as the Claimant testified he had done after she moved in October 2006.

When asked why the Claimant applied for credit cards with his name on them, the Respondent testified:

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[29] The Respondent testified that he paid between $6,200.00 and $6,600.00 for the roof.
[30] According to the Report, Ms. Miles said that after the Respondent refinanced the Flam Property for her on January 5, 2007, she reimbursed the Respondent $8,000.00 for the roof.

[The Claimant] did not have the $6,000.00 [for the roof] to pay me back. This was something that was found out after the money was spent and so her idea was I [the Claimant] could probably get a credit card and pay you back that way. And so when she got the credit card she put one of the credit cards in my name realizing that that was actually my balance of receiving back my balance.

In the Report, the Respondent denied that he talked to the Claimant about making repairs to the Flam Property or that he offered to pay for the repairs. He also specifically denied that he had ever sent an appraiser or repairman to the Flam Property.

In regard to the roof, the Report states:

Question: What do you [the Respondent] know about a roof for Flam Ct.?

Answer: [The Claimant] asked him if he could lend her the money or find a roofer to replace the roof and she would pay him back if they had to work something out on the credit cards to pay for the work if he needed the money back before she purchased the house. He paid $6200 to have the roof replaced.

Question: Did you ever ask [Ms.] Miles to replace the roof?

Answer: No.

Question: Did you ever tell [the Claimant] to ask [Ms.] Miles to replace the roof?

Answer: No.

Question: Why did you pay to have the roof replaced?

Answer: He had a working relationship with [the Claimant] as his house keeper and he knew she did not have the money.[31]

MREC 4, Report, pages 51-52.

[31] The Report also indicates that the Respondent denied that he had told the Claimant to apply for credit cards to improve her credit. He said the Claimant "gave him the cards to use as reimbursement for putting the roof on Flam Ct." MREC #4, Report, page 57.

In regard to Mr. Orbits's questions about the Respondent's use of the credit cards, the Respondent, on the advice of his attorney, refused to answer based on the Fifth Amendment to the United States Constitution.

In regard to the replacement of the furnace, the Respondent denied that he discussed the repair with a repairman or that he had told the Claimant he would reimburse her for the furnace. The Report indicates that the Respondent said he gave the Claimant a space heater after Ms. Miles had told him the furnace was not working. The report also indicates that the Respondent contacted a repairman at the Claimant's request and then told the Claimant she would have to speak directly to the repairman about the furnace.

Evidence related to the Claimant's Vacating the Flam Property

The Claimant testified that Ms. Miles told her in March 2007 that she wanted to get the Flam Property out of her name. According to the Claimant, she knew at that time that she would be unable to get a loan to purchase the Flam Property, so she gave Ms. Miles thirty days notice of her intention to move-out, which she did in May 2007.[32]

The Report also mentions that Ms. Miles asked the Respondent in March 2007 to obtain financing for the Claimant's purchase of the Flam Property. The Report further states:

> In April 2007, [the Respondent] called [the Claimant] and told her that he had a loan, financed at 95%, for her to purchase the Flam [Property]. [The Respondent] said that she had to have 100% financing and [Ms.] Miles would carry a third mortgage. The price of the house would be $465,000 and the loan would be for $440,000. [The Respondent] said that [the Claimant] would owe [Ms.] Miles $25,000 and that [the Claimant] would finance the house in September or November. [The Respondent] and [the Claimant] discussed the costs already spent on the house and a buyer's contract. [The Respondent] asked [the Claimant] how much money she had. When [the Claimant] asked why, [the Respondent] stated that they needed to pay down credit cards in order to get her the 100% financing. [The Claimant] told [the Respondent] that she had a problem with this and she was not signing anything else because she had never

[32] The Report indicates that the Claimant moved into the Flam Property in October 2006 and moved out in September 2007.

> received the contract from September 14, 2006[.] [The Claimant] asked [the Respondent] what he did with the $18,000 cashier's check that he had instructed her to make payable to [Ms.] Miles. [The respondent]became very furious with [the Claimant] and said that she was calling him a crook; he was tired of [the Claimant] questioning him and wanted to wash his hands of everything with her. [The Claimant] agreed.[33] She called [Ms.] Miles and told her that she was no longer going to deal with [the Respondent], and his threats and controlling ways. [Ms.] Miles told [the Claimant] that [the Respondent] had contacted her and told her that she should take [the Claimant] to court and have her thrown out of the house. [The Claimant] subsequently received a copy of the September 14, 2007 contract with [Ms.] Miles. [The Claimant] subsequently moved out of the Flam Court residence in September 2007.

MREC #4, Report, pages 15-16.

Analysis

Disciplinary Violations

The Commission and the Respondent disagreed about whether Title 17 of the Business Occupations and Professions Article applies to the Respondent's involvement in the transaction related to the Flam Property on September 14, 2006. The Commission argued that the Respondent acted in the capacity of a licensed real estate salesperson. The Respondent argued that he acted in the capacity of a counselor at the behest of two people who did not want the expense of using a real estate agent and with whom he had a personal or business relationship.

According to the Respondent, the "key issue" is under which of his many titles was he acting on September 14, 2006: a minister, a lawyer, a clinical psychologist, or a real estate agent. The Respondent pointed out that he had a business relationship with the Claimant and a personal relationship with Ms. Miles, "when he got a call from these two ladies that they wanted to meet with him regarding this matter." When they told him they did not want to pay for the services of a real estate agent, he had them sign the Counseling Form of Intent, which, the Respondent argued, shows that the Claimant and Ms. Miles understood that that he was there to

[33] According to Mr. Orbits, the Respondent denied this discussion took place.

counsel, not to consult, which he considered a "very real" difference. According to the Respondent, the counseling arrangement was consistent with his relationships with Ms. Miles and the Claimant and was the Respondent's "natural reaction," given his ministerial and counseling background, which had trained him to help people. The "bottom line" is that there is "not sufficient evidence [I] had anything to gain whether or not [the Claimant] entered into this lease option/purchase agreement with Ms. Miles."

The Commission, on the other hand, argued that the Respondent acted in the capacity of a real estate salesperson during the transaction. The Commission referred to the Report as providing important background for the transaction. Specifically, it noted that the Respondent acted as a dual agent in the "originating transaction," when Ms. Miles purchased the Flam Property from Ms. Diggs on September 1, 2006, as an investment. The Commission further referred to the statutory definitions of a real estate salesperson as determinative of the Respondent's role in the transaction.

On this dispositive issue, I find for the Respondent for the following reason: There is insufficient evidence in the record before me to prove that the Respondent received consideration for the services he provided to the Claimant related to the lease with an option to buy the Flam Property

Section 17-101(o) of the Business Occupations and Professions Article defines "real estate salesperson" as "an individual who, while affiliated with and acting on behalf of a real estate broker, provides real estate brokerage services." Section 17-101(l) of the Business Occupations and Professions Article defines "provide real estate brokerage services" as follows:

> (l) *Provide real estate brokerage services.* — "Provide real estate brokerage services" means to engage in any of the following activities:

(1) for consideration,[34] providing any of the following services for another person:

(i) selling, buying, exchanging, or leasing any real estate; or

(ii) collecting rent for the use of any residential real estate;

(2) for consideration, assisting another person to locate or obtain for purchase or lease any residential real estate;

(3) engaging regularly in a business of dealing in real estate or leases or options on real estate;

(4) engaging in a business the primary purpose of which is promoting the sale of real estate through a listing in a publication issued primarily for the promotion of real estate sales;

(5) engaging in a business that subdivides land that is located in any state and sells the divided lots; or

(6) for consideration, serving as a consultant for any of the activity set forth in items (1) through (5) of this section.

On balance, the evidence before me does not prove "for consideration," an element that must be proven before sections 17-322(b)(3), (25), (30), (32), (33), and 17-530(b)(1) and COMAR 09.11.02.01H may be found to apply to Respondent.

Although not directly addressed by either party in their arguments, the Claimant testified that she brought a cashier's check to the meeting on September 14, 2006, at the Respondent's suggestion, and gave it to Ms. Miles when she signed the Lease. A copy of the check is in the record at MREC 4, Attachment Exhibit 2. Ms. Miles either deposited or cashed the check at a Bank of America. The Claimant testified: "Per Ms. Miles, she stated that she did give some of the money to [the Respondent] of the $18,000.00, but she didn't state how much she gave him and the rest of the money she said she spent." In addition, the Report indicates that Ms. Miles said she gave some of the $18,000.00 to the Respondent and spent the rest. The Report also indicates, however, that she did not know why she gave the money to the Respondent, and the Report does not mention when she gave the money to the Respondent. The Respondent, on the

[34] "Consideration" is "[s]omething (such as an act, forbearance, or a return promise) bargained for and received by a promisor from a promisee; that which motivates a person to do something, esp. to engage in a legal act." *Black's Law Dictionary* 324 (8th ed. 2004).

other hand, emphatically refuted that evidence by testifying that he did "not [receive] one penny" from the transaction that led to the Lease.

The Commission has the burden of proof. COMAR 09.01.02.16A. The burden is by a preponderance of the evidence. *Id.* Based on the evidence discussed above, I find that the Commission failed to prove the necessary element of "for consideration" based on the Claimant's $18,000.00 deposit for the following reasons.

In an administrative hearing, hearsay is admissible, and reliable hearsay alone may support an administrative law judge's decision. *See Motor Vehicle Admin. v. Karwacki*, 340 Md. 271, 285, 666 A.2d 511, 517 (1995); *Motor Vehicle Admin. v. McDorman*, 364 Md. 253, 262, 772 A.2d 309, 314 (2001). Here, however, assuming reliability, the hearsay evidence deserves little, if any, probative weight because it is significantly vague; it does not address when or why Ms. Miles may have given some of the $18,000.00 to the Respondent. Based on the hearsay, it is just as likely that Ms. Miles gave money to the Respondent as a contribution to Choosing Hope or as repayment of a debt than it is that she gave him money for services he provided related to the lease of the Flam Property. And, it is just as likely that Ms. Miles gave money to the Respondent weeks, months, even years after September 14, 2006 -- in other words for something unrelated to the transaction -- as it is that she gave the Respondent some of the $18,000.00 at or near the date of the transaction for his services. The vagueness of the hearsay evidence, therefore, significantly diminishes its probative value.[35]

On the other hand, the Respondent testified under oath that he did not receive any of the $18,000.00 -- "not one dime" -- for his participation in the transaction that led to the Lease. On this issue, I find the Respondent credible based on his demeanor. During the Respondent's

[35] The Commission unsuccessfully tried to contact Ms. Miles. The Commission represented that it later learned that Ms. Miles's may have suffered an aneurysm. The Respondent testified that Ms. Miles had become senile.

testimony, his tone was strong and emphatic; his testimony was clear and concise, and his countenance was confident and self-assured. I believe he was telling the truth, and I give his testimony significant weight. Therefore, in balancing the weight of the Respondent's direct testimony against the weight of the Commission's hearsay evidence, I find that the Commission has failed to prove that the Respondent received any portion of the $18,000.00 as consideration for his role in the transaction that led to the Lease.[36]

The Commission argued that the Respondent obtained an economic benefit from the transaction for two reasons. First, the Commission argued that the Respondent stood to benefit economically if the Flam Property were later sold. The Commission did not specifically identify any evidence that supported this argument of a future benefit, and, after my review of the record, I am not persuaded that the record supports such a finding. Accordingly, I find that the evidence does not support that the Respondent's services during the transaction that led to the Lease were provided in exchange for any promise or reasonable expectation of a future economic benefit.

Second, the Commission argued that the Respondent actually benefitted from the transaction because he convinced the Claimant to make an investment in some unidentified venture in the form of a check to Ms. Miles for $3,000.00 that she deposited in Choosing Hope's bank account. The Commission relied on Mr. Orbits's description of how the Choosing Hope bank account functioned. He reported the following:

> In approximately April of 2006, . . . [the Respondent] made [Ms. Miles] the CEO of [Choosing Hope]. [The Respondent] told [Ms.] Miles that he wanted [Ms.] Miles to sign all the checks being paid out by [Choosing Hope]. In the months to come, [the Respondent] made the deposits to the [Choosing Hope] account. [The Respondent] would either deposit cash or checks. The checks were always made out to [the Respondent's fiancée]. If [the Respondent] needed to pay out money, he would first put the money into the [Choosing Hope] account, and then have [Ms.] Miles sign a [Choosing Hope] check. [The Respondent] would give the check to

[36] In reaching my credibility determination, I considered the Respondent's obvious bias and my assessment that some of his other testimony was unbelievable.

> [the Respondent]. If she knew the amount, she wrote it on the check, if not them [sic] [the Respondent] would write it in. [The Respondent] always wrote in the name of who was being paid. Since [Ms.] Miles was the CEO she received all the bank account statements, which she currently has in her files.

MREC 4, Report, pages 18-19.

The record shows that on October 16, 2006, the Claimant issued a check to "Eleanor Miles" for "Investment" in the amount of $3,000.00. Ms. Miles deposited the check in Hope Ministries' bank account. MREC 4, Attachment Exhibit 9. No evidence, however, connects this check to the services that the Respondent may have provided during the lease of the Flam Property. In fact, when asked whether this investment had anything to do with the Flam Property, the Claimant testified: "At this point I really don't know for sure if it did or not. It was an investment so maybe not. I'm not sure." I, therefore, find that the evidence does not support a finding that the Respondent benefitted from Claimant's payment of $3,000.00 to Ms. Miles in October 2006 or that the $3,000.00 investment check was consideration for the Respondent's services during the transaction that led to the signing of the Lease.

As discussed above, the Commission's charges against the Respondent based on sections 17-322(b)(3), (25), (30), (32), and (33) and 17-530(b)(1) require that the Commission prove that the Respondent "provided real estate services," which includes the necessary element of "for consideration." Because I have determined that the record does not support a finding of "for consideration," I conclude, and must recommend that the Commission conclude, that the Respondent is not subject to sanctions under those sections of Article 17. I also note here that Section 17-530(b)(1) Business Occupations and Professions Article only applies to "[a] licensee who participates in a residential real estate transaction as a seller's agent, buyer's agent, or as a cooperating agent[.]" I also conclude that the Respondent did not violate the requirements of this section of Title 17 based on the Counseling Form of Intent. I further conclude that because

"providing real estate brokerage services" is a necessary element of a violation of COMAR 09.11.02.01, I cannot recommend that the Commission find that the Respondent has violated COMAR 09.11.02.01H.[37]

The Guaranty Fund Claim

Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2010) states, as follows:

> **§ 17-404. Claims against the Guaranty Fund**
>
> (a) *In general.* — (1) Subject to the provisions of this subtitle, a person may recover compensation from the Guaranty Fund for an actual loss.
>
> (2) A claim shall:
>
> (i) be based on an act or omission that occurs in the provision of real estate brokerage services by:
>
> 1. a licensed real estate broker;
> 2. a licensed associate real estate broker;
> 3. a licensed real estate sales person; or
> 4. an unlicensed employee of a licensed real estate broker;
>
> (ii) involve a transaction that relates to real estate that is located in the State; and
>
> (iii) be based on an act or omission:
>
> 1. in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or
> 2. that constitutes fraud or misrepresentation.

COMAR 09.11.03.04 states, as follows:

> **.04 Claims Against the Guaranty Fund.**
>
> A. A guaranty fund claim shall be based on the alleged misconduct of a licensee.
>
> B. For the purpose of a guaranty fund claim, misconduct:
>
> (1) Is an action arising out of a real estate transaction involving real estate located in this state which causes actual loss by reason of theft or embezzlement of money or property, or money or property unlawfully obtained from a person by false pretense, artifice, trickery, or forgery, or by reason of fraud, misrepresentation, or deceit;

[37] Based on these conclusions, it is not necessary for me to determine whether the role that the Respondent played in the transaction that led to the Lease constituted substantive violations of the foregoing sections of Title 17 or COMAR.

(2) Is performed by an unlicensed employee of a licensed real estate broker or by a duly licensed real estate broker, associate broker, or sales-person; and

(3) Involves conduct for which a license is required by Business Occupations and Professions Article, Title 17, Annotated Code of Maryland.

A conclusion that a claimant is entitled to reimbursement from the Fund for an actual loss requires that the licensee's misconduct occur during the course of the provision of real estate brokerage services. As a result, I also cannot recommend that the Commission award the Claimant reimbursement from the Fund. As discussed above, a necessary element of "provide real estate services" is that a licensee provides an enumerated service "for consideration." Because I have concluded that the Commission failed to prove that necessary element, I must also find the Claimant has not proven that she suffered an actual loss based on the Respondent's provision of real estate brokerage services.

CONCLUSIONS OF LAW

I conclude the following:

A. The Respondent did not violate Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(3), (25), (30), (32), and (33) (2010).

B. The Respondent did not violate Md. Code Ann., Bus. Occ. & Prof. § 17-530(b)(1) (2010).

C. The Claimant did not suffer an actual loss compensable under Md. Code Ann., Bus. Occ. & Prof. §§ 17-404 (2010).

RECOMMENDED ORDER

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

A. Dismiss the charges against the Respondent based on an alleged violation of Md. Code Ann., Bus. Occ. & Prof. §§ 17-322 and 17-530 and COMAR 09.11.02.01H;

B. Dismiss the claim against the Respondent under Md. Code Ann., Bus. Occ. & Prof. § 17-404 and COMAR 09.11.03.04; and

C. Have the records and publications of the Maryland Real Estate Commission reflect this decision.

November 15, 2010
Date Decision Mailed

Michael D. Carlis
Administrative Law Judge

MDC/cmh
#117761

MARYLAND REAL ESTATE	*	**BEFORE MICHAEL D. CARLIS,**
COMMISSION	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE OF**
RONNIE MOORE,	*	**ADMINISTRATIVE HEARINGS**
RESPONDENT	*	
AND	*	
THE CLAIM OF LINDA D. DABNEY	*	
AGAINST THE	*	
REAL ESTATE COMMISSION	*	**OAH CASE No: DLR-REC-24-09-44023**
GUARANTY FUND	*	**COMPLAINT No.: 2008-RE-500**

* * * * * * * * * * * * *

EXHIBITS

The following were admitted for the Commission:

MREC 1: Notice of Hearing and Statement of Charges;

MREC 2: Transmittal, with attached Statement of Charges and Order for Hearing (Charges);

MREC 3: The Respondent's licensing history; and

MREC 4: Statement of Authentication and Report of Investigation, with attachments.

The following were admitted for the Claimant:

Claimant #1: Check to E. Miles, dated October 16, 2006;

Claimant #2: Check to E. Miles, dated September 14, 2006;

Claimant #3: Home Comfort Retail Installment Agreement, dated February 12, 2007;

Claimant #4: Carpet Purchase Order, dated January 26, 2007;

Claimant #5: Letter to the Claimant, dated October 10, 2007;

Claimant #6: Contractor Agreement, dated February 4, 2007;

Claimant #7: Home Depot Credit Card information;

Claimant #8: Home Depot receipts and credit card information;

Claimant #9: Citi Professional Cash Card information and letter to the Respondent, dated December 5, 2007; and

Claimant #10: Citi Diamond Preferred Rewards Card information and letter to the Respondent, dated November 29, 2007.