

MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

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V.

*** OAH NO. DLR-REC-24-15-33273**

**RUSSELL W. BROWN
RESPONDENT**

*

AND

*** REC CASE NO. 2015-RE-023**

**CLAIM OF DONNA AND JOHN
RAMSEY AGAINST THE MARYLAND
REAL ESTATE COMMISSION
GUARANTY FUND**

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OPINION AND FINAL ORDER

This matter came before the Maryland Real Estate Commission (“Commission”) on argument on Exceptions filed, on or about April 6, 2016 by the Respondent, Russell W. Brown to the Proposed Order of March 17, 2016. On March 7, 2016 Administrative Law Judge William J. D. Somerville, III (“ALJ”) filed a Recommended Decision and Recommended Order in which he recommended that the Respondent’s license be revoked; that the Respondent pay a civil penalty of \$25,000.00; and that the Maryland Real Estate Guaranty Fund pay \$8,854.92 to the Claimants.

On March 17, 2016, the Commission issued a Proposed Order that affirmed the ALJ’s Findings of Fact; approved the ALJ’s Conclusions of Law; and adopted the Recommended Order in the Recommended Decision of the ALJ.

A hearing on the Exceptions filed by the Respondent was held by a panel of Commissioners, consisting of Commissioners Anne S. Cooke, James Reeder and Jeff Wright on July 20, 2016. Jessica Berman Kaufman, Assistant Attorney General, represented the

Commission. The Respondent acknowledged that he had a right to representation by counsel at the Commission's hearing but waived that right. The proceedings were electronically recorded. A transcript of the hearing before the ALJ was not provided to the Commission by the Respondent.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, five exhibits, as well as the Office of Administrative Hearings' file, containing the exhibits which were entered into evidence at the hearing before the ALJ, were entered into the Exceptions' hearing record.

FINDINGS OF FACT

The Commission adopts the Findings of Fact recommended by the ALJ.

DISCUSSION

At all relevant times, the Respondent, Russell W. Brown, was a real estate salesperson licensed by the Commission. FF 1.¹ On September 22, 2013, the Respondent met with the Claimants and they signed a listing agreement in which Timothy Thomas t/a ReMax Leading Edge would be the Claimants' broker to sell their residence at 207 Creek's End Lane in Stevensville. The Respondent and the Respondent's daughter, Heather Bold, would act as sellers' agents to market and sell the Claimants' property for a sales price of \$399,900.00. The term of the listing agreement was 180 days, and after 180 days either party could terminate the agreement with a 30-day notice. If the property were to be sold, the broker would receive 3.5% of the sales price plus \$495.00. The agreement referenced an agency disclosure statement in which the Respondent and his daughter, Heather Bold, were listed as sellers' agents. The Claimants also agreed to dual agency of buyer's and sellers' agents within the same sales team at

¹ "FF" refers to the ALJ's Findings of Fact.

the brokerage as long as the broker would designate one team member as a sellers' agent and another as a buyer's agent. FF 2.

A market analysis that the Respondent gave to the Claimants indicated that the property was worth \$370,000.00 to \$380,000.00. FF 3. The property did not sell. FF 4.

On November 22, 2013, the Respondent pieced together and prepared a contract of sale on the subject property. FF 5. On November 23, 2015, the Respondent's financial status was as follows:

- He had filed a bankruptcy case on May 8, 2012.
- He had filed a Chapter 7 bankruptcy case on March 25, 2013.
- He had \$463,000.00 in assets and over \$2.4 million in liabilities.
- His debt was discharged on July 11, 2013.
- As of March 28, 2013, his residence was being foreclosed upon.
- He had eleven outstanding judgments. FF 6.

On November 23, 2013, the Respondent and his wife, Judith T. Brown also a licensed real estate agent, went to the Claimants' residence with a stack of papers consisting of a relatively short contract of sale and many, many amendment documents; the Respondent and his wife intended to purchase the Claimants' property. The Respondent offered \$370,000.00 and an earnest money deposit of \$5,000.00 to be paid by check to an escrow account at the ReMax Leading Edge brokerage. The settlement date was to be on June 2, 2014. The remaining \$365,000.00 was to be paid, not through a mortgage loan, but in cash. FF 7.

The Claimants were impressed that their real estate agent thought so highly of their property that he would buy it himself. They were not told of the buyers' financial status. They accepted the offer. FF 8. The Claimants began signing the many documents associated with, or

incorporated into, the sales contract. FF 9. The Respondent did not fully and adequately explain to the Claimants what they were signing. FF 10. At the time of the signing, the Respondent's wife distracted the Claimants. She got up from the table and began measuring windows and complimenting the house, among other things. FF 11.

In various attachments, disclosures, and addenda to the contract document prepared by the Respondent and signed by the Claimants, the Respondent had changed the settlement date to no specified date; the Respondent allowed himself 60 days to obtain an appraisal, even though it was a cash deal and no mortgage lender was involved; the Respondent gave himself 14 days to have the property inspected; the Respondent changed the payment terms from a cash deal to a "land installment contract" in which the Respondent was to assume the Claimants' mortgage loan and escrow account payments; and the Respondent changed the earnest money deposit term of \$5,000.00 to no deposit at all. FF 12.

At that time, the Respondent also had the Claimants sign a disclosure form on which only his daughter was listed as the Claimants' agent, and he had hand written "no agency exists". With regard to that agency disclosure document, the Respondent explained to the Claimants that because he was buying the property, there might be a conflict of interest so he would have his daughter, Heather Bold, handle the transaction. FF 13.

At the time of signing the many papers, the Claimants fully trusted the Respondent to be acting in their interest, and they believed him when he implicitly, if not specifically, assured them that he could pay for the property. The Respondent was not acting in their interest. FF 14.

At no time was the Claimants' mortgage loan assumable. At all times relevant, the Respondent knew that the mortgage loan was not assumable. FF 15. After the Claimants signed

all of the papers, the Respondent continued to market the property as if he were the Claimants' agent. He did so to "mitigate damages". FF 16.

On November 29, 2013, six days after signing the many contract documents with the Respondent, the Claimants signed a purchase agreement with Ryan Homes in Delaware. By that agreement, the Claimants were to have Ryan Homes build them a new house in a subdivision in Delaware. The purchase price was \$316,875.00. The Claimants paid \$6,000.00 in a non-refundable deposit, and had no contingency, whatsoever, in the contract. Settlement was to be in April, 2014. FF 17. Relying on their deal with the Respondent, the Claimants withdrew money from their respective §401(k) retirement accounts, at a substantial tax penalty, in order to proceed with the purchase in Delaware. FF 18. In order to purchase the new home, the Claimants relied on receiving about \$20,000.00 in proceeds from the sale to the Respondent of their existing home. The Respondent had represented to them that at settlement they would receive \$21,930.00. FF 19.

On December 6, 2013, the Claimants "locked in" the terms of a mortgage loan for the new home in Delaware. The loan amount would be \$239,992.00 at 4.125% over 30 years. The mortgage company was NVR Mortgage Finance, Inc., a company associated with Ryan Homes. The Claimants paid \$455.00 to apply for the loan on that date, and paid \$2,399.92 soon thereafter to "lock in" the terms. Those amounts were not refundable. FF 20. At the request of Ryan Homes, the Claimants asked the Respondent for assurance that he could purchase their existing property. At no time did the Respondent give the Claimants any documentation showing his ability to pay. FF 21.

In February 2014, the Claimants telephoned the Respondent and asked about his source of funding the purchase. The Respondent told them he was selling his home. In reality, he was

negotiating with his mortgage lender or servicer in an effort to short sell his residence in order to pay off a portion of his mortgage loan on which he had defaulted. At that time, the Respondent's property was the subject of foreclosure proceedings. Sale of that property could produce no funds to buy the Claimants' residence. FF 22.

On March 22, 2014, the listing agreement between the Respondent and the Claimants expired. FF 23. On April 8, 2014, the Respondent's residence was sold at a foreclosure sale. FF 24. As of May 13, 2014, the Claimants still believed the Respondent and his daughter, Heather Bold, were their agents. FF 25.

At no time did the Respondent disclose to, or notify, the Claimants of a time or place for settlement. No title company contacted the Claimants. FF 26. At no time did the Respondent order a home inspection or an appraisal of the Claimants' residence. FF 27.

The Respondent did not go to settlement on the Claimants' existing residence. FF 28. The Claimants did not settle on the new home in Delaware; the Claimants lost money on these intertwined transactions. FF 29.

On or about July 14, 2014, the Claimants filed with the Commission a complaint against the Respondent and a claim against the Maryland Real Estate Guaranty Fund. FF 30.

The Respondent was charged with violating Section 17-322(b)(3), Maryland Business Occupations and Professions Article, Annotated Code of Maryland ("Md. Bus. Occ. & Prof. Art.") which prohibits a licensee from directly or through another person willfully making a misrepresentation or knowingly making a false promise. The Respondent, who was a licensee willfully made a number of misrepresentations to the Claimants. Specifically, when the Respondent and his wife had the Claimants sign numerous documents on November 23, 2013, the Respondent knew that he was not in a financial position to purchase the property for cash or

by assuming a mortgage loan which was not assumable. Nonetheless, he willfully misrepresented that he could purchase the property for cash. He also willfully misrepresented that he would pay a \$5,000.00 cash deposit to the ReMax escrow account despite being unable to do so. The Respondent willfully misrepresented in the documents that he was not the Claimants' agent but continued to act as an agent to "mitigate damages". He also willfully misrepresented that he would obtain an appraisal of the property but never intended to do so nor actually did so.

The Respondent was also charged with violating Section 17-322 (b)(25) Md. Bus. Occ. & Prof. Art., to wit: engaging in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings. The Respondent engaged in conduct that demonstrates bad faith, lack of trustworthiness, and dishonest or improper dealings in several ways: He attempted to purchase or, at least, acted as if he was attempting to purchase the property from his principals, the Respondents. In addition to this conflict of interest, he did or failed to do things in an effort to misinform, hide transactional information and trick the Respondents. Although he communicated to the Respondents that he was going to purchase the property for cash and provide a \$5,000.00 earnest money deposit when he had the Respondent sign documents, the contract of sale document did not reflect those terms.

The Respondent licensee has also failed to "treat all parties to the transaction honestly and fairly and answer all questions truthfully" as required by Section 17-532(c)(1)(iv), Md. Bus. Occ. & Prof. Art.. The Respondent violated this section in a number of ways: When the Claimants inquired of the Respondent how he was going to pay for their property, he told the Claimants that he was selling his residence when, in actuality, the residence was being foreclosed upon and he was attempting to negotiate a short sale with his lender. The short sale would not

have provided him with any funds to purchase the Claimants' property. He also failed to treat the Claimants honestly and fairly when he: 1) did not disclose his financial situation; 2) tried to purchase the Claimants' property despite lacking the financial means to do so; 3) failed to explain to the Claimants the many documents he provided to them at the time the contract of sale was signed; 4) included in the many contract amendment documents, documents which consisted of major amendments to the simple terms of the contract of sale; and 5) misrepresented that all real estate sales required a home inspection and/or an appraisal yet failed to order either. It should also be noted, as referenced by the ALJ that the Respondent did not obtain any pre-approval document or other kind of assurance for the Claimants that he could pay for their property despite the fact that he testified that he would have demanded such documents if a selling client of his were to receive a cash offer.

The Respondent was also required to protect the public against fraud, misrepresentation, or unethical practices in the real estate field. He was also required to endeavor to eliminate practices that could be damaging to the dignity and integrity of the real estate profession and to promote the interests of his clients. See Code of Maryland Regulations ("COMAR") 09.11.02.01C and 02A. and Section 17-322(b)(33), Md. Bus. Occ. & Prof. Art. The Respondent, instead of protecting the public against misrepresentations, perpetrated misrepresentations. He engaged in practices which were damaging to the dignity and integrity of the real estate profession. Rather than protecting or promoting the interests of his clients, the Claimants, he exploited them in favor of his own interests.

For violations of Sections 17-322 (b)(3), (25), (33); 17-532(c)(1)(iv); and COMAR 09.11.2.01C and .02A, the Respondent is subject to sanctions under Section 17-322(c), Md. Bus. Occ. & Prof. Art. which permits the imposition of a penalty, not exceeding \$5,000 for each

violation, instead of or in addition to reprimanding a licensee or suspending or revoking a license.

To determine the amount of the penalty to be imposed, the Commission is required to consider the following:

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

The violations committed by the Respondent were very serious. They caused significant financial harm to the Claimants (See Findings of Fact 17, 18, 20 and 29) as well as harm to the reputation of the real estate profession (See Findings of Fact 21, 22, 28, 29, and 30). The Respondent's conduct in regard to the Claimants lacked good faith. The Commission notes the Respondent's misrepresentations, willingness to engage in conflicts of interest in regard to his principals and his broker and his exploitation of his principals. The Respondent had two prior cases before the Commission in which no violations were found. The Commission concludes, based on the above-cited factors, that the appropriate sanction is revocation of the Respondent's real estate salesperson license.

In regard to a monetary penalty, five incidents of statute-violating conduct occurred:

- 1) the untrustworthy presentation of the terms of the contract;
- 2) the Respondent's failure to disclose what he knew about himself as a buyer;
- 3) the Respondent's failure to explain the terms of the full contract;
- 4) the Respondent's misrepresentation regarding acting in his client's interests; and

- 5) the Respondent's misrepresentation regarding a source of funding for the purchase of the Claimant's property.

The Commission concludes that the appropriate monetary sanction for the Respondent's violations is \$5,000 for each incident for a total monetary penalty of \$25,000.00

Section 17-404, Md. Bus. Occ. & Prof. Art. provides that a person may recover compensation from the Guaranty Fund for an actual loss. 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 salesperson; or
 - 4. an unlicensed employee of a licensed real estate broker;
- (ii) 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.

The amount which may be recovered for any claim against the Guaranty Fund may not exceed \$50,000.00 for each claim. (Section 17-404(b), Md. Bus. Occ. & Prof. Art.)

COMAR 09.11.01.18 provides that recovery from the Guaranty Fund is restricted to "the actual monetary loss incurred by the claimant, but may not include monetary losses other than the monetary loss from the originating transaction. Actual monetary losses may not include commissions owed to a licensee of this Commission acting in his capacity as either a principal or

agent in a real estate transaction, or any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.

Under the statute a claimant must prove a loss based on an act or omission of a licensed salesperson, involving a transaction that relates to real estate in Maryland and based on acts or omissions that constitute misrepresentation.

Applying the elements of proof found in Section 17-404(a), Md. Bus. & Occ. & Prof. Art., the Commission finds that the Respondent was a licensed real estate salesperson and the subject real estate transaction related to real estate located in Maryland. The acts or omissions attributable to the Respondent were the many misrepresentations and failures to disclose information to the Claimants. Those acts or omissions constituted the misrepresentation which is a required element or proof for recovery from the Guaranty Fund. The Claimants reasonably relied on the Respondent's misrepresentations and omissions when they withdrew money from their §401(k) accounts and had to pay an undetermined amount in tax penalties. They reasonably relied on the Respondent's misrepresentations and omissions when they paid \$6,000.00 to Ryan Homes for a non-refundable deposit on their new home and when they paid \$455.00 and \$2,399.92 to apply for a loan and to "lock in" a loan rate for their new home

The Commission finds that in relying on the misrepresentations and omissions of the Respondent, the Claimants lost not only the \$6,000.00 deposit to Ryan Homes, but also the amounts which they paid to Ryan Homes' subsidiary, NVR Mortgage Finance, Inc. in seeking a loan for their new home. Therefore the total amount of the Claimants' "actual" loss is \$8,854.92 and the Commission concludes that the Claimants should be awarded that amount from the Guaranty Fund.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, the Commission concludes, as a matter of law, that:

1. The Respondent, Russell W. Brown, violated the provisions of Section 17-322(b)(3) based on the facts that he directly and willfully made a number of misrepresentations to the Claimants.

2. The Respondent, Russell W. Brown, violated the provisions of Section 17-322(b)(25) by engaging in conduct that demonstrated bad faith, incompetency and untrustworthiness and that constituted dishonest, fraudulent, or improper dealings with the Claimants.

3. The Respondent, Russell W. Brown, violated the provisions of COMAR 09.11.02.01C. and .02A by failing to protect the public against fraud, misrepresentation or unethical practices, by engaging in conduct which was damaging to the dignity and integrity of the real estate profession and by failing to protect and promote the interests of his clients and by so doing violated the provisions of Section 17-322(b)(33), Md. Bus. Occ. & Prof. Art.

4. The Respondent, Russell W. Brown, violated the provisions of Section 17-532(c)(1)(iv) by failing to treat all parties to the subject transaction honestly and fairly and by failing to answer all questions truthfully.

5. The Respondent, Russell W. Brown, is subject to sanctions for his conduct and the revocation of all real estate licenses which he holds and a \$25,000.00 civil penalty are appropriate sanctions.

6. The Claimants, Donna and John Ramsey, have established an "actual loss" recoverable from the Guaranty Fund, in the amount of \$8,854.92. Section 17-404, Md. Bus. Occ. & Prof. Art.

ORDER

The Exceptions of the Respondent, Russell W. Brown, having been considered, it is this 15th day of August, 2016 by the Maryland Real Estate Commission, **ORDERED:**

1. That the Respondent, Russell W. Brown, violated Md. Bus. Occ. & Prof. Art., §§ 17-322(b) (3), (25), and (33) and 17-532(c)(1)(iv) and COMAR 09.11.02.01C and .02A;
2. That all real estate licenses held by the Respondent, Russell W. Brown, shall be **REVOKED;**
3. That the Respondent, Russell W. Brown, shall be assessed a civil penalty in the amount of **Twenty-five Thousand Dollars (\$25,000.00)** which shall be paid to the Real Estate Commission within thirty (30) days of the date of this Order;
4. That the Claimants, Donna and John Ramsey, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of **Eight Thousand Eight Hundred Fifty-Four Dollars and Ninety-Two Cents (\$8,854.92);**
5. That all real estate licenses held by the Respondent, Russell W. Brown, shall remain revoked and the Respondent shall not be eligible to apply for any real estate license until the civil penalty is paid in full, and the Maryland Real Estate Guaranty Fund is reimbursed, including any interest that is payable under the law; and that this revocation is in addition to the disciplinary revocation; and
6. That the records and publications of the Maryland Real Estate Commission reflect

this decision.

MARYLAND REAL ESTATE COMMISSION

SIGNATURE ON FILE

By: _____

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



DEPARTMENT OF LABOR, LICENSING AND REGULATION

500 North Calvert Street
3rd Floor
Baltimore, MD 21202

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
FIRST CLASS MAIL

August 15, 2016

John Sica, Esquire
9099 Ridgefield Drive, Suite 103
Frederick, Maryland 21701

Russell William Brown
Apex Realty LLC
2411 Crofton Lane, Suite 24
Crofton, Maryland 21114

**RE: MREC vs. Russell W. Brown and Claim of Donna and John Ramsey against the Maryland Real Estate Guaranty Fund
Case No. 023-RE-2015 GF**

Dear Mr. Sica and Mr. Brown:

Enclosed is your copy of the Final Order of the Commission, issued in **MREC vs. Russell W. Brown and Claim of Donna and John Ramsey against the Maryland Real Estate Guaranty Fund**, which was heard by a panel of Commissioners on July 20, 2016.

Any person aggrieved by a final decision of the Commission in a contested case may take an appeal as allowed in §10-222 of the State Government Article. Procedures for appeal are those set forth in Maryland Rule 7-201 et seq. You have 30 days from the date of this letter to file a petition for judicial review in a Circuit Court. Please note that Maryland Rule 7-206 provides for the cost of preparing a transcript to be paid by the appellant.

Very truly yours,

Katherine F. Connelly,
Executive Director

KFC/bai

Enclosures: Final Order
cc: Bryan C. Gleason, Broker

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