

**BEFORE THE MARYLAND REAL ESTATE COMMISSION**

**MARYLAND REAL ESTATE  
COMMISSION**

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**CASE NO. 2019-RE-586**

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v.

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**OAH NO. DOL-REC-21-22-29900**

**ERIN PUMPHREY,  
Respondent**

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\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated September 1, 2023, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 1<sup>st</sup> day of January, 2024, hereby

**ORDERED:**

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

B. That the Conclusions of Law in the recommended decision be, and hereby are, **APPROVED.**

C. That the Recommended Order in the recommended decision be, and hereby is, **AMENDED as follows:**

**ORDERED** that the charges against the Respondent, Erin Pumphrey, for violating section 17-322(b)(33) of the Business Occupations and Professions Article of the Maryland Code and COMAR 09.11.02.02A be **UPHELD;**

**ORDERED** that the Respondent, Erin Pumphrey, be subject to a **REPRIMAND;**

**ORDERED** that the Respondent, Erin Pumphrey, pay a civil penalty in

the amount of **Five Hundred Dollars (\$500.00)** within thirty (30 days) of the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted;

**ORDERED** that all real estate licenses held by the Respondent, Erin Pumphrey, shall be suspended from the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted and shall not be reinstated until the civil penalty is paid;

D. That the records, files, and documents of the Maryland Real Estate Commission reflect this decision.

E. Pursuant to Annotated Code of Maryland, State Government Article § 10-220, the Commission finds that the Recommended Decision of the Administrative Law Judge (“ALJ”) required modification. This case presents a rare occasion where the Commission disagrees with the ALJ regarding certain areas of their recommendation. The Commission agrees with the ALJ’s conclusion with respect to the violation of COMAR 09.11.02.02A and section 17-322(b)(33) of the Business Occupations and Professions Article. However, the Commission disagrees with the ALJ with respect to the recommended penalty. More specifically, the Commission believes that a civil (monetary) penalty is warranted. The Respondent was clearly aware that her client did not wish to purchase a home with a well or a septic system. Yet, when advised by the seller’s representative, in response to her own inquiry, that a roof cover in the backyard of the property covered a well pump and holding tank, the Respondent failed to convey that information to her client. The Commission acknowledges that the Respondent was inexperienced, that there was no evidence of bad faith, and that Respondent had no history of violations. Nevertheless, these factors are outweighed by the seriousness of the violation and the harm caused. The Respondent’s failure to provide the information to her client was clearly

contrary to her client's interests. The information was clearly important, and the violation cannot be considered as merely innocuous. Moreover, the harm caused is readily apparent from the fact that the Complainant ultimately sold the property rather than incur substantial costs associated with digging a new well and repairing the septic system. Thus a \$500.00 civil penalty in addition to a reprimand is warranted.

F. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties adversely affected by this Proposed Order shall have twenty (20) days from the postmark date of the Order to file written exceptions to this Proposed Order. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 1100 N. Eutaw Street, Baltimore, MD 21201. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

G. Once this Proposed Order becomes final, the parties have an additional thirty (30) days in which to file an appeal to the Circuit Court for the Maryland County in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City

MARYLAND REAL ESTATE COMMISSION

01/31/2024  
Date

By: SIGNATURE ON FILE

MARYLAND REAL ESTATE  
COMMISSION

v.

ERIN PUMPHREY,  
RESPONDENT

\* BEFORE DANIA AYOUBI,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: LABOR-REC-21-22-29900  
\* REC No.: 19-RE-586

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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On November 16, 2022, the Maryland Real Estate Commission (REC) issued a Statement of Charges against Erin Pumphrey (Respondent), a real estate salesperson licensed in Maryland. Following its investigation, the REC charged the Respondent with violating section 17-322(b)(33) of the Business Occupations and Professions Article of the Maryland Code and Code of Maryland Regulations (COMAR) 09.11.02.02A when representing the buyer in a residential contract of sale. The Statement of Charges advised the Respondent that if the charged violations were established following a hearing, the REC would seek a reprimand, suspension, or revocation of any real estate license the Respondent holds, along with a fine of up to \$5,000.00 per violation. The Statement of Charges included an Order for Hearing to allow the Respondent an opportunity to answer the Statement of Charges. On November 30, 2022, the REC forwarded

the case to the Office of Administrative Hearings (OAH) to schedule and conduct a hearing. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2018).

Accordingly, on December 8, 2022, the OAH issued a Notice of Hearing to the parties, advising them of a hearing scheduled for February 6, 2023. On January 2, 2023, the Respondent requested that the hearing be postponed on the basis that she would soon be beginning new employment and could not request leave for ninety days. Upon the Respondent providing documentation to support her request, the OAH granted a postponement on February 2, 2023.

On February 2, 2023, the OAH received the REC's Motion to Consolidate for Hearing (Motion) this case with case LABOR-REC-21-22-29902 (case 22-29902), in which the REC charged Stephanie Smith, the listing broker for the subject property under the residential contract of sale, with violations stemming from the same transaction. On February 6, 2023, I granted the Motion and ordered the parties to hold June 13, 2023, at 9:30 a.m. for a single consolidated hearing.<sup>1</sup>

On February 10, 2023, the OAH issued to the parties a Notice of Remote Hearing (Notice) to be held on June 13, 2023, at 9:30 a.m.<sup>2</sup> The Notice was mailed by certified mail return receipt requested to the Respondent's address on file with the OAH. The United States Postal Service did not return the Notice to the OAH.<sup>3</sup> The Respondent did not notify the OAH of any change of mailing address and made no request for postponement prior to the hearing. COMAR 28.02.01.03E; COMAR 28.02.01.16.

On June 13, 2023, I held a remote hearing by the Webex videoconferencing platform as scheduled. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2018); COMAR 28.02.01.20B(1)(b). MacKenzie Read, Assistant Attorney General, Maryland Department of Labor (Department),

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<sup>1</sup> Though the hearing was consolidated, I have issued separate decisions for each respondent.

<sup>2</sup> Upon Respondent Smith's request, I converted the in-person hearing to a remote hearing. COMAR 28.02.01.20B.

<sup>3</sup> The return receipt for the Notice mailed to the Respondent was signed for by Elizabeth Jennings and dated delivered on February 13, 2023.

represented the REC. After waiting fifteen minutes, neither the Respondent nor a representative of the Respondent appeared for the hearing. I determined that the Respondent received proper notice and proceeded with the hearing. COMAR 28.02.01.23A; COMAR 28.02.01.05A, C.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, the REC's procedural regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 09.11.03; COMAR 28.02.01.

### **ISSUES**

1. Did the Respondent violate section 17-322(b)(33) of the Business Occupations and Professions Article and COMAR 09.11.02.02A by failing to protect and promote the interests of her client in a residential contract of sale?
2. If so, what is the appropriate sanction?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits offered by the REC:

MREC. Ex. 1 – Letter granting the parties' joint request for remote hearing in case 22-29902, January 18, 2023, with the following attachment:

- Notice of Hearing, December 8, 2022

MREC. Ex. 2 – Statement of Charges and Order for Hearing against the Respondent, November 16, 2022

MREC. Ex. 3 – Statement of Charges and Order for Hearing against Respondent Smith, dated November 16, 2022, with the following attachment:

- DLLR<sup>4</sup> hearing cover sheet

MREC. Ex. 4 – REC Report of Investigation, undated, with the following attachments:

- DLLR REC online complaint form, March 27, 2019
- Residential contract of sale, signed October 30, 2017
- Invoice from Phelps Water Co., April 12, 2018
- Invoice from Phelps Water Co., March 20, 2018

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<sup>4</sup> Department of Labor, Licensing and Regulation.

- Estimate from Robert F. Beall & Sons, Inc., October 31, 2018
- Proposed contract from Allied Well Drilling, October 26, 2018
- Correspondence from the Anne Arundel County Department of Health to Kaiyla Fowler, October 23, 2018
- Estimate from Phelps Water Co., November 1, 2018
- Receipt from Anne Arundel County Inspection and Permits, June 29, 2018
- Email correspondence from Respondent Smith to the REC, September 9, 2019
- Email correspondence between Respondent Smith and the REC, January 22, 2020
- Listing details for 335 Beach Ave, undated
- Correspondence from the Law Offices Eccleston and Wolf, P.C., to the REC, September 20, 2019
- Listing for 335 Beach Ave, Pasadena, MD 21122, undated
- Correspondence from the Respondent to the REC, May 31, 2019
- Listing for 335 Beach Ave, Pasadena, MD 21122, undated
- Email correspondence between the Respondent and the REC, June 30 and 31, 2020
- Email correspondence between the Respondent and the Hampton Law Group LLC, and the Hampton Law Group LLC and the Harborside Properties LLC, November 14-16, 2017
- Text message correspondence between the Respondent and Kaiyla Fowler, November 15 and 19, 2017

MREC. Ex. 5 – REC Complaint & Guaranty Fund Claim, September 28, 2021

MREC. Ex. 6 – Respondent Smith’s written response to the REC, October 14, 2020, with the following attachment:

- Email correspondence between Respondent Smith and the REC, October 14, 2020

MREC. Ex. 7 – The Respondent’s licensing history, June 6, 2023

MREC. Ex. 8 – Respondent Smith’s licensing history, June 6, 2023

The Respondent did not attend the hearing and therefore offered no exhibits.

Testimony

The REC presented the testimony of: Kaiyla Fowler, homebuyer and the Respondent’s former client; and Lucinda Rezek, Paralegal, REC.

The Respondent did not attend the hearing and therefore presented no testimony.

## PROPOSED FINDINGS OF FACT

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

1. The Respondent has been a real estate salesperson licensed in the state of Maryland since January 2017.
2. In late 2017, the Respondent assisted her client, Kaiyla Fowler, in purchasing a home at 335 Beach Avenue, Pasadena, Maryland 21122 (Property). At the time, the Respondent was affiliated with Exit Landmark Realty. As a relatively new real estate salesperson, this was the third transaction that the Respondent had been involved with and the first transaction that the Respondent independently handled. Ms. Fowler was a first-time homebuyer.
3. The MLS<sup>5</sup> listing for the Property incorrectly disclosed the Property's water source as public and the sewer as a public sewer. In fact, the Property is serviced by a private well and septic system.
4. On October 27, 2017, with the assistance of the Respondent as the buyer's agent, Ms. Fowler made an offer to purchase the Property from Great Lakes Developers LLC (Seller), which had purchased and improved the Property and was seeking to resell it. As a development company, the Seller never lived in the Property.
5. On October 30, 2017, the Seller and Ms. Fowler ratified the residential contract of sale.
6. In early to mid November 2017, a home inspection was conducted in connection with the sale of the Property. During the inspection, the Respondent noticed a water softener system in the basement as well as what appeared to be a roof cover on the ground in the backyard.

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<sup>5</sup> Multiple Listing Network.



7. On November 14, 2017, the Respondent emailed the Seller's representative inquiring:

[Ms. Fowler] and me both were wondering if the sellers knew what the black roof cover on the ground in the back was? Its [sic] is shingled and has siding under the shingles. I know there used to be a hot tub back there and was thinking that is where i[t] was? It's no big deal, we were just curious because we didn't want to damage the covering.

(REC Ex. 4, p. 51).

8. On November 15, 2017, the Respondent sent a text message to Ms. Fowler stating, "The inspection is good to go! [The seller's representative] said she's waiting for a response about the black cover out Back." (REC Ex. 4, p. 56).

9. On November 16, 2017, the Seller's representative emailed the Respondent stating, "From our director of construction: 'The black roof cover in the back yard is the cover that houses the well pump and holding tank. All is brand new. We can open it up if they would like to see.'" (REC Ex. 4, p. 55).

10. On November 19, 2017, Ms. Fowler sent a text message to the Respondent inquiring about the status of the Property and whether the Respondent had heard back. The Respondent replied, "I did Friday . . . settlement is the 11th & the black covering is where the old hot tub was. (At least that's what they told me)." (REC Ex. 4, p. 56).

11. In late December 2017, settlement was held. That day, Ms. Fowler moved into the Property and attempted to have the water turned on and the water account transferred to her name. Ms. Fowler was informed by Anne Arundel County (County) that it does not service the Property and that the Property's water source is well water. Thereafter, Ms. Fowler learned of the Property's septic system.

12. The existing well system was not adequate to provide water to the two bathrooms on the Property. Accordingly, in March and April 2018, Ms. Fowler sought the recommendation of Phelps Water Co., which explained that the original hand-dug well was dry and that a new

well would have to be drilled. In October 2018, Ms. Fowler obtained an estimate from Allied Well Drilling in the amount of \$15,275.00.

13. On October 23, 2018, the County Department of Health notified Ms. Fowler that the Property did not meet the minimum design requirements of the County plumbing code for on-site sewage disposal. The County Department of Health also granted a variance for the Property to have a conventional speculative sewage disposal system as a repair to the existing failing septic system. Later that month, Ms. Fowler obtained an estimate from Robert F. Beall & Sons, Inc. to repair the septic system.<sup>6</sup>

14. Ms. Fowler was unable to afford the well and septic repairs. Finding the Property unlivable, she moved out in February 2020 and sold the Property as-is.

15. On March 27, 2019, Ms. Fowler filed a complaint with the REC against both the Respondent and Respondent Smith.<sup>7</sup>

## **DISCUSSION**

### *Applicable Law*

The REC contends that the Respondent violated section 17-322(b)(33) of the Business Occupations and Professions Article and COMAR 09.11.02.02A. Section 17-322(b)(33) provides that, “[s]ubject to the hearing provisions of [section 17-324], the [REC] may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee . . . violates any regulation adopted under this title or any provision of the code of ethics . . . .” Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33) (Supp. 2022). COMAR 09.11.02.02A, which sets forth the REC’s code of ethics, regulates relations with a client and

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<sup>6</sup> With a grant from the Bay Restoration Fund (BRF), the estimate totaled \$9,775.00. Without a BRF grant, the estimate totaled \$21,680.00.

<sup>7</sup> Although Ms. Fowler’s complaint included a claim against the REC’s Guarantee Fund in the amount of \$45,400.00, this case is only with respect to the regulatory charges against the Respondent.

states, “[i]n accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to the client’s interest is primary, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction.”

In determining the appropriate sanction for a violation, section 17-322 states, in relevant part:

- (c)(1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the [REC] may impose a penalty not exceeding \$5,000 for each violation.
- (2) To determine the amount of the penalty imposed, the [REC] shall consider:
  - (i) the seriousness of the violation;
  - (ii) the harm caused by the violation;
  - (iii) the good faith of the licensee; and
  - (iv) any history of previous violations by the licensee.
- (3) The [REC] shall pay any penalty collected under this subsection into the General Fund of the State.
- (4) The [REC] may not impose a fine based solely on a violation of [section 17-322(b)(35)].<sup>[8]</sup>

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (Supp. 2022).  
*Burden of Proof*

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. Md. Code Ann., State Gov’t § 10-217 (2021); COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). In this case, the REC bears the burden to prove by a preponderance of the evidence that the Respondent violated section 17-322(b)(33) and COMAR 09.11.02.02A.

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<sup>8</sup> Section 17-322(b)(35) concerns an “applicant or licensee . . . [who] has been disciplined under a real estate licensing law of another jurisdiction.”

### *Parties' Positions*

The REC argued that the Respondent violated section 17-322(b)(33) of the Business Occupations and Professions Article and COMAR 09.11.02.02A by failing to inform her client, Ms. Fowler, that the Property is serviced by a private well and septic system. Notwithstanding the incorrect disclosure in the listing, the REC argued that the Respondent knew or should have known that the Property was not served by public water or sewer when she received email correspondence from the Seller's representative indicating that there was a well pump and holding tank on the Property. The REC argued that the Respondent had a duty to inform Ms. Fowler of this error or misrepresentation in the listing and ultimately failed to protect and promote the best interests of her client.

Considering the applicable factors, the REC argued that a reprimand and a civil penalty in the amount of \$3,000.00 is warranted in this case. Notwithstanding that the violation was innocuous on its face, there was no evidence of bad faith, and the Respondent had no history of violations, the REC argued, the harm caused to Ms. Fowler, including the distress and hardship she faced that ultimately led her to sell the Property justify the imposition of a penalty.

### *Analysis*

#### Violations

The uncontroverted evidence demonstrates that in late 2017, the Respondent represented her client, Ms. Fowler, as the buyer's agent in purchasing the Property. The Respondent had become a licensed real estate salesperson earlier that year and had not yet had much experience as an agent. In fact, this was the third transaction that the Respondent had been involved with and the first transaction that the Respondent independently handled. Further, Ms. Fowler was a first-time homebuyer.

Ms. Fowler testified that she first learned of the Property through an online search and informed the Respondent about her interest in the Property. Ms. Fowler explained that a home served by well water and septic was a “disqualifier” for her, of which the Respondent was aware. Based on the Property listing, which disclosed the water source as public and the sewer as a public sewer, both Ms. Fowler and the Respondent reasonably understood the Property to be served by public water and sewer. Therefore, neither one of them had reason to suspect that the black roof cover in the backyard of the Property housed the Property’s well pump and holding tank.

Upon inquiring about this black roof cover, the Respondent was notified by the Seller’s representative that it covered a well pump and holding tank. Perhaps the Respondent failed to understand this to mean that there was a well and septic system on the Property and that it was not in fact served by public water and sewer. Even assuming that was the case, the Respondent should have, at a minimum, conveyed this information to Ms. Fowler. However, she failed to do so. Further, the Respondent misinformed Ms. Fowler that the black roof cover is where a hot tub was once situated on the Property.

Based on her failure to convey this information to and misinforming Ms. Fowler, and what can be characterized as a general lack of diligence in her communication, the Respondent failed to protect and promote the interests of her client. For these reasons, I conclude that the Respondent violated section 17-322(b)(33) of the Business Occupations and Professions Article and COMAR 09.11.02.02A.

### Sanction

Accordingly, next I must consider the question of an appropriate sanction. The REC argued that the Respondent should be subject to a reprimand and a civil penalty of \$3,000.00. Based on the circumstances, I conclude that a reprimand of the Respondent is appropriate. As a relatively new real estate salesperson at the time, the Respondent was inexperienced and perhaps not yet well-equipped to independently represent a home buyer. The Respondent violated the REC's code of ethics and compromised her obligation of fidelity to the client's interests. Accordingly, a reprimand is warranted based on this record.

As section 17-322(c)(1) makes clear, in addition to a reprimand, a licensee may face a penalty of up to \$5,000 for each violation. Considering the factors to determine the amount of a penalty, on this record, I conclude that the evidence does not support the assessment of a civil penalty. With respect to factors one (the seriousness of the violation), three (the good faith of the licensee), and four (any history of previous violations by the licensee), respectively, the REC conceded that the violation was innocuous on its face, there is no evidence of bad faith, and the Respondent has no history of violations. The REC argued that the second factor, which considers the harm caused by the violation, singularly warrants a civil penalty assessment in the amount of \$3,000.00.

The REC argued that Ms. Fowler faced distress and hardship that ultimately led her to sell the Property. Ms. Fowler testified that if she had known the Property was on private water and septic, she would not have purchased it. Undoubtedly, Ms. Fowler was greatly inconvenienced by gathering information about what repairs would need to be made to the Property and obtaining quotes to replace the well and septic systems, as well as later having to move from the Property. However, Ms. Fowler ultimately did not financially undertake making those repairs and replacements and sold the Property as-is. No evidence was presented to indicate whether Ms.



Fowler suffered a financial loss as a result. Therefore, without more and on this record, I cannot conclude that the harm caused by the violation weighs in favor of assessing a penalty against the Respondent.

**PROPOSED CONCLUSION OF LAW**

I conclude that the Respondent violated section 17-322(b)(33) of the Business Occupations and Professions Article of the Maryland Code and COMAR 09.11.02.02A by failing to protect and promote the interests of her client in a residential contract of sale. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33) (Supp. 2022); COMAR 09.11.02.02A.

**PROPOSED ORDER**

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

The charges against the Respondent for violating section 17-322(b)(33) of the Business Occupations and Professions Article of the Maryland Code and COMAR 09.11.02.02A be **UPHELD**; and

That the Respondent be subject to a **REPRIMAND** as an appropriate sanction.

September 1, 2023  
Date Decision Issued

**SIGNATURE ON FILE**

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Dania Ayoubi  
Administrative Law Judge

DLA/ckc  
#207085