

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE  
COMMISSION

V.

THURMAN L. BATTLE,  
RESPONDENT

\* BEFORE MARC NACHMAN,  
\* ADMINISTRATIVE LAW JUDGE,  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH No: LABOR-REC-21-23-16882  
\* MREC NO: 2021-RE-241 G.F.

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V.

WILLIAM CATLETT,  
RESPONDENT

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\* ADMINISTRATIVE LAW JUDGE,  
\* OF THE MARYLAND OFFICE OF  
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\* OAH No: LABOR-REC-21-23-16556  
\* MREC No.: 2021-RE241

\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated December 6, 2023, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 18th day of January, 2024, ORDERED,

- A. That the Findings of Fact in the Recommended Decision be, and hereby are, ADOPTED;
- B. That the Conclusions of Law in the Recommended Decision be, and hereby are, ADOPTED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;
- D. That the records, files and documents of the Maryland State Real Estate Commission reflect this decision.



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**RECOMMENDED DECISIONS**

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

**STATEMENT OF THE CASE**

On December 1, 2021, the Maryland Real Estate Commission (MREC or Commission) issued a Statement of Charges and Order for Hearing against Thurman L. Battle (Respondent Broker), a licensed real estate broker, for violating Maryland Annotated Code, Business

Occupations and Professions Article (Bus. Occ. & Prof.),<sup>1</sup> sections 17-320(c)(1), 17-322(b) (4), (27), (32) and (33), 17-603 (b), as well as Code of Maryland Regulations (COMAR)

09.11.02.01H.

On December 1, 2021, the Commission issued a second, separate Statement of Charges and Order for Hearing against William Catlett (Respondent Agent), a licensed real estate agent working in the Respondent Broker's agency, for violating sections 17-322(b) (4), (25), (32) and (33), and 17-532 of the Act, as well as COMAR 09.11.0201H and 09.11.02.02A

On September 7, 2023, I convened an in person hearing at the Maryland Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland. COMAR 28.02.01.20B(1)(b). Ernie Dominguez, Assistant Attorney General, represented the MREC. The Respondent Broker represented himself. The Respondent Agent failed to appear; the conduct of the Respondent Agent's case will be discussed below.

Procedure is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 and Supp. 2023); the MREC Hearing Regulations, COMAR 09.11.03; and the OAH Rules of Procedure, COMAR 28.02.01.

### **ISSUES**

1. Did the Respondent Broker violate the following sections of the Maryland Real Estate Brokers Act or its implementing regulations:<sup>2</sup>

- Section 17-320(c)(1) (regarding the supervision over real estate broker services)
- Section 17-322(b) (4), (27), (32) and (33) (listing grounds for discipline)

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<sup>1</sup> Sections of Title 17 of the Business Occupations and Professions article will be cited as the "Maryland Real Estate Brokers Act" or the "Act." Md. Code Ann., Bus. Occ. & Prof. § 17-701. Unless otherwise specified, any reference will be to the 2018 volume of the Business and Occupations article.

<sup>2</sup> The specific violations are described and discussed in detail on page 10, below.

- Section 17-603(b) (regarding unlicensed individuals); and
- COMAR 09.11.02.01H (the MREC Code of Ethics).

If so, what sanction, if any, should be imposed?

2. Did the Respondent Agent violate the following sections of the Maryland Real Estate Brokers Act or its implementing regulations:

- Section 17-322(b) (4), (25), (32) and (33) (listing grounds for discipline)
- Section 17-532(b)(1)(vi) (regarding the duty to promote the interest of clients);
- and
- COMAR 09.11.02.01H and 09.11.02.02A (the MREC Code of Ethics).

If so, what sanction, if any, should be imposed?

### SUMMARY OF THE EVIDENCE

#### **Common Exhibits**

The MREC submitted the following exhibits which were admitted into evidence:

MREC Ex. 1 Notice of Hearing, dated July 11, 2023

MREC Ex. 2 Letter from the MREC to the Respondent Broker, dated February 10, 2021

MREC Ex. 3 Statement of Charges and Order for Hearing, Complaint No. 2021-RE-241, dated June 9, 2023 (Respondent Broker)

MREC Ex. 4 Licensing information for Respondent Broker, prepared June 12, 2023

MREC Ex. 5 Complaint filed by the Van Thanh Vu (the Complainant) against Respondents Broker and Agent and Tierra Taylor<sup>3</sup>

MREC Ex. 6 Residential Contract of Sale (Contract) to sell the Complainant's property (Property), dated August 30, 2020.

MREC Ex. 7 Letter from the Respondent Broker to the MREC, dated May 7, 2021

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<sup>3</sup> As discussed below, Ms. Taylor is not a licensed real estate agent in Maryland,

The MREC submitted the following additional exhibits which were admitted into evidence in the case against Respondent Agent:

MREC Ex. 8 Statement of Charges and Order for Hearing, Complaint No. 2021-RE-241, dated June 9, 2023 (Respondent Agent).

The Respondent Broker did not submit any exhibits to be admitted into evidence.

The Respondent Agent did not submit any exhibits to be admitted into evidence, as he failed to appear for the hearing.

**Testimony**

The MREC presented the testimony of the Complainant.

The Respondent Broker testified on his own behalf. The Respondent Agent did not appear at the hearing and consequently did not present the testimony of any witnesses.

**FINDINGS OF FACT**

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

1. At all times relevant, the Respondent Broker was the licensed broker of record for Bennett Realty Solutions. He was also a licensed real estate broker in the District of Columbia.
2. At all times relevant, Respondent Agent was a licensed real estate agent working for the Respondent Broker in his office in Maryland.
3. At all times relevant, Ms. Taylor was not licensed to provide real estate sales or purchasing services in Maryland.
4. Ms. Taylor was a licensed real estate agent in the District of Columbia.
5. Ms. Taylor worked with Respondent Agent in the Respondent Broker's District of Columbia real estate office.

6. The Complainant owned the Property, located in Prince George's County, Maryland.
7. The Complainant was selling the Property without the use of a seller's agent.
8. Ms. Taylor contacted the Complainant about selling the Property. She represented to the Complainant that she was working with the Respondent Agent and had a buyer for the Property.
9. Ms. Taylor presented the Complainant with the filled out Contract that was dated August 30, 2020, that was already signed by Shadonna and Marvin Scott (Buyers).
10. The purchase price on the Contract was \$370,000.00.
11. The Respondent Agent was listed as the Sales Associate on the Contract.
12. The Respondent Broker was listed as the Broker of Record on the Contract.
13. They were designated as the "Buyer Agent."
14. The Contract stated that the Buyers paid a non-refundable earnest money deposit (EMD) of \$3,700.00, which was being held by Home First Title Group, LLC (Home First).
15. In fact, the Buyers had not paid any EMD to anyone.
16. The Contract contained a home inspection addendum.
17. When the Buyers failed to exercise their rights under the addendum, the Complainant became suspicious and contacted the Respondent Agent, whose name was on the Contract.
18. The Respondent Agent did not return the Complainant's phone calls, but instead sent her a release form on September 15, 2020, asking her to sign and release the Buyers from the Contract, returning to them their EMD, and exculpating the Respondent Agent.
19. Not having received a satisfactory response from the Respondent Agent, she contacted the Respondent Broker.

20. At first, the Respondent Broker ignored her inquiries, too.

21. Neither Respondent advised the Complainant that the Buyers had not made an EMD. This was a material aspect of the Contract.

22. Because the Property was off the market while these events occurred, the Complainant lost time and opportunities to sell the Property and was not able to pursue the EMD as a result of the Buyers' breach.

### DISCUSSION

#### **Applicable law - Charges**

After a hearing, the MREC may deny a real estate license or reprimand, suspend or revoke a real estate license. Section 17-322 of the Act sets out the grounds for such action; those cited by the MREC in this case are cited in the Issues and discussed at length beginning on page 10 of this decision. Violations of other listed statutes and regulations are additional grounds for sanctions under sections 17-322(b)(32) and (33) (violations of any provision of the Act or its regulations, including the MREC Code of Ethics).

Section 17-322(c) of the Act authorizes the MREC to "impose a penalty not exceeding \$5,000 for each violation," instead of, or in addition to, other sanctions.

The MREC bears the burden to prove, by a preponderance of the evidence, that the Respondents committed the alleged violations. State Gov't § 10-217 (2021); COMAR 28.02.01.21K(1), (2)(a). To prove something by a "preponderance of the evidence" means "to prove that something 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).

## **Respondent Agent's Failure to Appear**

Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice.<sup>4</sup> COMAR 28.02.01.23A. The MREC charges and the OAH hearing notice were sent to the Respondent Agent's address of record and there was no indication that either was returned by the United States Postal Service as undeliverable. After waiting more than twenty minutes, I convened the hearing as scheduled.

I also chose to proceed despite the Respondent Agent's failure to appear, as the Respondent's Statement of Charges and Order for Hearing did not address the consequences of a default, but instead read:

The Respondent is advised that these charges, *if established, following a hearing*, may result in a reprimand, or the suspension or revocation of any Real Estate license the Respondent currently holds. In addition, the Commission may impose a monetary fine of up to \$5,000 per violation.

MREC Ex. 8 (emphasis added). Because the Respondent Agent was promised a hearing, with the intrinsic chance that the MREC might not "establish" the charges, I found it appropriate to conduct this hearing.

### **Positions of the Parties:**

The MREC contends that the Respondent Agent worked with Ms. Taylor, a person not licensed to provide real estate sales or services in Maryland, to negotiate and present the Complainant a Contract for the sale of her Property, located in Maryland. The Respondent Agent placed his name on the Contract, concealing the fact that the person dealing with the Complainant was unlicensed in Maryland.

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<sup>4</sup> I am also cognizant of COMAR 09.01.03.05B, which states that in a hearing delegated to the OAH by the Department of Labor "[a] motion to dismiss or any other dispositive motion may not be granted by the ALJ without the concurrence of all parties." No default was sought, and I proceeded with the hearing.

Not only did the Respondent Agent enlist the services of an D.C. licensed agent, but the Contract terms required a \$3,700.00 EMD that was never collected, and reflected that the deposit had been paid, that it was being held in escrow, and that it was non-refundable.

The MREC contends that the Complainant only became aware that there was no EMD collected when she sought to pursue it as a result of the Buyers' breach.

The MREC further contends that the Respondent Broker failed to provide reasonable and adequate supervision over the licensees providing real estate brokerage services on behalf of his brokerage, including Ms. Taylor who worked in his D.C. office as an agent who was only licensed in that jurisdiction. The MREC also contends that the Respondent Broker did not monitor real estate contracts procured by his office for an addendum that the MREC contends was required by law and that would have exposed the lack of the EMD in this Contract well before the Buyers' breach.

The Respondent Broker's position is that he was unaware that the Respondent Agent was working with the unlicensed individual in preparing the Buyers' Contract to purchase the Property. He claims that he could not have known the conduct of the Respondent Agent, as well as Ms. Taylor, who he also employed as an agent in his D.C. office. He claims that he reprimanded both of them after the event. He also claimed not to be aware of the required escrow addendum.

The Respondent Agent did not appear at the hearing, so he presented no defense to the charges.

For the following reasons, I find that the MREC has met its burden of proof as to charges against both Respondents.

## **The Real Estate Transaction**

The MREC presented testimony of the Complainant. Her testimony was very clear, uncomplicated and direct, presented without hesitation or equivocation. Her narrative was internally and externally consistent (i.e., consistent within itself and with the documentary evidence presented at the hearing). I found the Complainant to be a very credible and sincere witness, who had nothing to gain by exaggeration.

The Respondent Agent was not present to testify, and the Respondent Broker claims to have had no knowledge of the events leading up to his first contact with the Complainant, which was after the Contract was breached and the EMD was found not to have been collected. Therefore, I consider the Complainant's testimony both credible and uncontroverted.

The Complainant testified consistently with her Complaint and the evidence presented at the hearing. MREC Ex. 5. The Complainant was the owner of the Property, located in Prince George's County, Maryland, and sought to sell it without using a seller's agent. The Complainant was contacted by Ms. Taylor, who represented to the Complainant that she was a real estate agent and a partner with the Respondent Agent. Ms. Taylor told the Complainant she represented the Buyers, and presented the Complainant with the ratified Contract to purchase the Property for \$370,000.00, which the Buyers had already signed; the Contract was dated August 30, 2020. MREC Ex. 6. The Complainant then signed the Contract. The Respondent Agent had already signed as the Sales Associate, Buyer Agent.

The Contract called for a EMD in the amount of \$3,700.00, which was to be held in escrow by Home First. The Contract did not, however, contain a separate written escrow deposit agreement that the MREC contends was to be signed by the parties, as required under the Maryland Annotated Code, Real Property Article section 10-802 (2023).

Despite the Contract terms, neither of the Respondents collected or deposited any EMD into any escrow account, as there was none. Neither Respondent advised the Complainant that the Buyers did not pay an EMD.

The Contract also had a home inspection addendum. When the deadline passed for the scheduling and completion of the home inspection called for in the Contract, the Complainant contacted Respondent Agent, whose name was on the Contract as the Buyers' agent. He did not return her calls. Instead of answering her inquiries, on September 15, 2020, the Respondent Agent sent the Complainant a release form so that the Complainant would release Buyers from the Contract. The Complainant tried to ask the Respondents why he was asking her to sign a release, which would release the Respondents from any further obligation, release the Buyers from the Contract and allow them to keep the EMD (which the Complainant did not yet know had not been collected).

The Complainant then contacted the Respondent Broker, whose name was also on the Contract as the Broker of Record. Neither Respondent communicated with her. The Complainant claims that the Respondents acted "like there has never been a ratified contract." MREC Ex. 5.

The Complainant confirmed that these acts caused her to lose time and opportunities when she was trying to sell the Property.

### **Analysis**

Based on the Respondents' respective licenses and their alleged acts or omissions, the Commission brought the following charges against the Respondents.

Charges are listed for one or both Respondents as indicated below:

Respondent Broker	Respondent Agent
<p style="text-align: center;"><b>Supervision over real estate brokerage services</b></p> <p>Md. Code Ann., Bus. Occ. &amp; Prof. § 17-320            ...            (c)(1) A real estate broker shall exercise reasonable and adequate supervision over the provision of real estate brokerage services by any other individual, including an independent contractor, on behalf of the broker.</p>	
<p><b>Grounds for discipline</b></p> <p>Md. Code Ann., Bus. Occ. &amp; Prof. § 17-322            ...            (b) Subject to the hearing provisions of § 17-324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:</p>	
<p>(4) intentionally or negligently fails to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee or applicant deals;</p>	
<p>(27) violates § 17-320(c) of this subtitle by failing as a real estate broker to exercise reasonable and adequate supervision over the provision of real estate brokerage services by another individual on behalf of the broker;</p>	
	<p>(25) engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;</p>

(32) violates any other provision of this title;

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

**Unlicensed individuals**

Md. Code Ann., Bus. Occ. & Prof. § 17-603

...

(b) A real estate broker may not retain an unlicensed individual to provide real estate brokerage services on behalf of the real estate broker.

**Duty to promote interests of client**

Md. Code Ann., Bus. Occ. & Prof. § 17-532

...

(b)(1) A licensee shall:

...

(vi) exercise reasonable care and diligence....

REC Code of Ethics

COMAR 09.11.02.01

...

H. 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.

COMAR 09.11.02.02

A. In 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.

The Respondent Agent was the major source of violations of the Act. The Respondent Agent knowingly allowed or asked an unlicensed individual, Ms. Taylor, to place his name on the Contract as the Buyer's agent, evidenced by his signature on the Contract. The Respondent Agent either inserted or signed his name in at least four places on the Contract. The Contract terms included the Buyers' obligation to make an EMD of \$3,700.00, which was never collected or deposited. The Complainant contacted a representative at Home First, who had no information about the deposit, which it never received from the Buyers, either of the Respondents, or Ms. Taylor. When the Complainant questioned him after the Buyers defaulted on their contractual obligation (by failing to schedule the home inspection), he sent the Complainant a release protecting not only the Buyers, but also protecting himself.

The Respondent Agent violated section 17-322(b)(4) of the Act because he intentionally failed to disclose to the Complainant material facts that he knew that related to the property he was dealing with – 1) he knew that the Buyers paid no EMD; and 2) when the Buyers defaulted, he tried to keep that fact from the Complainant. His dealings with the Complainant were dishonest, fraudulent and improper, and asking the Complainant to sign a release exculpating him, further showed that he was untrustworthy and had acted in bad faith. The Respondent Agent's conduct squarely fits the Act's prohibition against "bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings" prohibited by section 17-322(b)(27).

After receiving the Contract from Ms. Taylor, he failed to exercise “reasonable care and diligence” to assure that the EMD was paid. Maryland Real Estate Brokers Act, section 17-532(b)(1)(vi).<sup>5</sup>

Not only did the Respondent Agent’s conduct violate the provisions of the Act under section 17-322(b)(32), but it clearly violated two provisions of the regulations – the REC Code of Ethics – by 1) failing to protect all parties to the transaction by failing to accurately express the parties’ financial obligations and commitments under the Contract, i.e., that the Buyers were committed to pay a \$3,700.00 EMD, which they never did under COMAR 09.11.02.01H; and 2) even if the lack of the EMD was arguably in the Buyers’ interest because they benefited by not paying and then losing the EMD when they breached the Contract, it was dishonest and done in bad faith and did not relieve him of his statutory obligations towards the Complainant, addressed above, in violation of COMAR 09.11.02.02A.

The charges against the Respondent Broker are not as straightforward. The Respondent Broker was obligated, under section 17-320 of the Act to “exercise reasonable and adequate supervision” over those who provided real estate brokerage services on his brokerage’s behalf. *See also* §17-322(b)(27) of the Act. The Respondent Agent provided real estate services for the brokerage under section 17-101(l)(1)(i) of the Act when he prepared, signed and presented the Buyers’ contract to the Complainant through Ms. Taylor. He did so on behalf of the Respondent Broker’s brokerage, using the brokerage contract and listing the Respondent Broker as the

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<sup>5</sup> A more apt charge would have been:

- iii) disclose to the client all material facts as required under § 17-322 of this title;
- (iv) treat all parties to the transaction honestly and fairly and answer all questions truthfully....

However, those sections were not cited in the Respondent Agent’s Statement of Charges and Order for Hearing. MREC Ex. 8.

broker. Nevertheless, the Respondent Broker testified that he was unaware that there even was a Contract until the Complainant called him.

A shortfall of the MREC's case was the lack of evidence – or an expert to testify - about what “reasonable and adequate supervision” would be required to prevent this situation. Nevertheless, at a minimum, the Respondent Broker should have had some manner of tracking contracts for which his office was responsible. He provided no evidence of this practice, making his agents responsible for his obligations and responsibility to ensure the EMD was collected and deposited, as per the Contract. MREC Exs. 6 and 7. He did not review the Contract,

The Respondent Broker made a strong argument that he could not have known that Ms. Taylor, working with the Respondent Agent in Maryland, provided unlicensed real estate brokerage services for his brokerage. He claimed to have “reiterated to all agents that this is a violation and will not be tolerated,” but his response to the gross violation showed minimal management or supervision, which was hardly adequate: “Both [Respondent Agent] and Ms. Taylor have been reprimanded for their actions.” MREC Ex. 7. The MREC proved that the Respondent Broker failed to adequately supervise his agents in violation of sections 17-320(c)(1) and 17-322(b)(27) of the Act.<sup>6</sup>

The Respondent Broker's inattention to the Complainant's inquiries after the Buyers' breach, and his apparent lack of transparency in failing to explain the unlicensed agent and the lack of an EMD, were intentional failures to disclose to the Complainant material facts he knew or by his inattention should have known that relate to the Contract for the Property, in violation of sections 17-322(b)(4) of the Act.

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<sup>6</sup> I do not find that the Respondent Broker violated section 17-603 of the Act as the Respondent Broker did not “retain an unlicensed individual” to provide these services. Although Ms. Taylor worked as a licensed agent in his D.C. office, he did not retain her for those services in Maryland. This does not, however, exculpate the Respondent Broker for failing to supervise either her or the Respondent Agent, in violation of sections 17-320 and 17-322(b)(27) of the Act.

The MREC asserts that the Respondent Broker failed to assure that an addendum to the Contract to recognize the EMD was included in the Contract. The statute that the MREC cites is section 10-802 of the Real Property article, which concerns written agreements between purchasers, sellers, and escrow agents:

(c) When an escrow agent agrees to hold trust money, the escrow agent shall enter into a written agreement with the purchaser and seller of the residential real estate that contains the following information:

- (1) The amount of the trust money delivered to the escrow agent;
- (2) The date the trust money was delivered to the escrow agent;
- (3) The responsibility of the escrow agent to notify the purchaser and seller of trust money returned due to dishonored funds;
- (4) The conditions under which the escrow agent may release the trust money; and
- (5) The process to address disputes over the release of the trust money.

However, the statute is directed towards escrow agents, and not towards the individuals such as the Respondent Broker:

(b) This section does not apply to:

- (1) Banks, trust companies, savings and loan associations, savings banks, or credit unions;
- (2) A homebuilder registered under Title 4.5 of the Business Regulation Article who is engaged in the initial sale of residential real estate; or
- (3) *A real estate salesperson, associate real estate broker, or real estate broker licensed under Title 17 of the Business Occupations and Professions Article.*

Emphasis added. I was directed towards no statute or regulation that required a licensed real estate professional to require a sales contract to include this addendum if applicable.<sup>7</sup>

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<sup>7</sup> The Contract did not necessarily require an addendum, although the mechanism for such an agreement is not clearly stated on the "Maryland Realtor's Residential Contract of Sale," the form on which the Contract was written:

(C) All deposits will be held in escrow by : \_\_\_\_\_  
(If not a Maryland real estate broker, the parties shall execute a separate written escrow deposit agreement that complies with Section 10-802 of the Real Property Article....)

MREC Ex. 6. The MREC did not present a witness to explain the operation of that law.

**Sanctions under section 17-322(c) of the Business Occupations and Professions article**

The MREC made no recommendations regarding the sanction or monetary penalty. Instead, the MREC left that determination to my discretion. The Respondent Broker sought leniency due to his lack of any prior violations, and no prior violations were shown. He also asserted that he was unaware of Ms. Taylor's and the Respondent Agent's actions, and had no way of knowing what they were doing.

In determining the sanction to be imposed for a violation of section 17-322(c) of the Act – including the possibility of a license reprimand, suspension or revocation by the MREC – the following criteria are to be considered in assessing any penalty, which cannot exceed \$5,000.00 per violation:

- (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.

These elements have been discussed above in the context of the transaction, but will be summarized here.

Regarding the Respondent Agent, the violations were serious. He used an unlicensed individual to front for him with the Complainant. He sanctioned Ms. Taylor's involvement by signing the Contract after Ms. Taylor negotiated it but before she presented it to the Complainant. He hid in the shadows while the Contract went awry and then attempted to extricate himself from liability for failing to collect the EMD, lying about its existence.

The harm the Respondent Agent caused the Complainant was great. He delayed her sale and caused her to lose her rights under the Contract to pursue the EMD on the Buyers' breach. He also sullied the reputation of the industry.

As he failed to appear for the hearing, I have no way to assess the Respondent Agent's good faith, which is a mitigating element of the sanctions. There is no evidence of Respondent Agent's history of prior violations, but this transaction presented major violations.

I recommend that the Respondent Agent's license be revoked and that the maximum monetary penalty of \$5,000.00 be assessed.

Regarding the Respondent Broker, the violations were serious, but his involvement – although less than careful – was peripheral; but without them, the violations would never have occurred. Nevertheless, the Respondent Broker failed to reasonably and adequately supervise his agents. It is troublesome, however, to say *what* he was required to have done, as there was no evidence of what “reasonable” supervision would entail. Nevertheless, the Contract was signed by his agent on behalf of his brokerage, and he failed to monitor the Contract.

But even after the Complainant brought the matter to his attention, he failed to act timely or effectively. The harm the Respondent Broker caused to the Complainant was great, but not as great as that of the Respondent Agent who actively perpetuated the fraud.

The Respondent Agent did not act in good faith towards the Complainant when she first complained to him, but he seemed contrite at the hearing. There is no evidence of Respondent Agent's history of prior violations, but this transaction was troublesome.

I recommend that the Respondent Agent be reprimanded and that he be assessed a monetary penalty of \$1,850.00, half the value of the EMD, to recognize his culpability in the transaction.

## CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that

1. The Respondent Broker violated the following Maryland Real Estate Brokers Act or its implementing regulations:

- Section 17-320(c)(1) and 17-322(b)(27)(regarding the supervision over real estate broker services);
- Section 17-322(b) (4), (32) and (33) (various grounds for discipline); and
- COMAR 09.11.02.01H (the REC Code of Ethics).

I do not find that the Respondent Broker violated Section 17-603 (b) (regarding *retaining* unlicensed individuals).

I further conclude that the Respondent Broker should be reprimanded as an appropriate sanction, and the Respondent Broker should be subject to the imposition of a \$1,850.00 civil penalty. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2018 & Supp. 2023).

2. The Respondent Agent violated the following Maryland Real Estate Brokers Act or its implementing regulations:

- Section 17-322(b) (4), (25), (32) and (33) (various grounds for discipline);
- Section 17-532(b)(1)(vi) (failure to exercise reasonable care and diligence); and
- COMAR 09.11.02.01H and 09.11.02.02A (the REC Code of Ethics).

I further conclude that a revocation of the Respondent Agent's real estate license is an appropriate sanction, and the Respondent Agents should be subject to the imposition of a \$5,000.00 civil penalty. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2018 & Supp. 2023).

**RECOMMENDED ORDER**

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

1. The charges of the Real Estate Commission against the Respondent Broker under the Business Occupations and Professions Article Sections 17-302(c)(1), 17-322(b) (4), (27), (32) and (33), and the REC Code of Ethics (COMAR 09.11.02.01H) shall be **UPHELD**;
2. The Respondent Broker shall be **REPRIMANDED** based on his violations of the Maryland Real Estate law;
3. A civil penalty in the amount of \$1,850.00 shall be assessed against the Respondent Broker; and
4. The charges of the Real Estate Commission against the Respondent Agent under the Business Occupations and Professions Article Sections 17-322(b)(4), (25), (32) and (33), and 17-532(b)(1)(vi), and the REC Code of Ethics (COMAR 09.11.02.01H and 9.11.02.02A) shall be **UPHELD**;
5. The Respondent Agent's real estate license shall be **REVOKED** based on his violations of the Maryland Real Estate law;
6. A civil penalty in the amount of \$5,000.00 shall be assessed against the Respondent Agent; and
7. The Commission shall **ORDER** that the Maryland Real Estate Commission's records and publications reflect its final decision.

December 6, 2023  
Date Decision Issued

MN/sh  
#208794

**SIGNATURE ON FILE**

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Marc Nachman  
Administrative Law Judge