

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION
V.

RONALD ST. PIERRE
RESPONDENT

AND

CLAIM OF RONALD SWEENEY,
CLAIMANT

AGAINST THE MARYLAND REAL
ESTATE COMMISSION
GUARANTY FUND

* BEFORE MARY SHOCK,
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-24-11-30535
* MREC NO: 2011-RE-013 G.F.

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated April 2, 2012, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 18th day of April, 2012.

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

MARYLAND STATE REAL ESTATE COMMISSION

SIGNATURE ON FILE

4/18/12
Date

By: jsj Marla S. Johnson, Commissioner U 11

MARYLAND REAL ESTATE
COMMISSION

and

ROBERT SWEENEY,
CLAIMANT

v.

RONALD ST. PIERRE
RESPONDENT

* BEFORE MARY SHOCK,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
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* OAH No: DLR-REC-24-11-30535¹
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* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On July 12, 2010, Robert Sweeney (Claimant) filed a Complaint against Ronald St. Pierre (Respondent), and a claim for reimbursement from the Maryland Real Estate Guaranty Fund (Fund) for losses the Claimant allegedly incurred as a result of the Respondent's misconduct. On July 27, 2011, the Maryland Real Estate Commission (REC) issued a Statement of Charges and Order for Hearing against the Respondent for his alleged violations of the Maryland Annotated Code's Business Occupations and Professions Article, sections 17-322(b)(3), (25), (32) and (33), and 7-532(c)(1)(vi) (2010 & Supp. 2011), and the Code of Maryland Regulations (COMAR)

¹This hearing was consolidated with the case of Donna Allen and Eugene Sibley, OAH Case No: DLR-REC-24-11-30541. The cases involve the same transaction. All the evidence entered into this case was also entered into the companion case. A separate decision will be issued in each case.

09.11.02.01C and H and 09.11.02.02A. The Hearing Order further referenced the Claimant's claim against the Fund. On August 2, 2011, the REC forwarded the Charges and claim to the Office of Administrative Hearings (OAH) for a hearing.

On March 7, 2012,² I conducted the hearing at the Calvert County District Court Building in Prince Frederick, Maryland, in accordance with section 17-408 of the Business Occupations and Professions Article. The Claimant represented himself. Assistant Attorney General Jessica Kaufman represented the REC. Assistant Attorney General Kris King represented the Fund. The Respondent failed to appear. The REC provided evidence that timely notice of the hearing had been sent to the Respondent's address of record and his home address. I proceeded to hear the case in his absence. *See* Md. Code Ann., Bus. Occ. & Prof. § 17-324(f); COMAR 09.01.02.09.

The Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009 & Supp. 2011), the procedural regulations of the Department of Labor, Licensing and Regulation, COMAR 09.01.03, and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

ISSUES

1. Did the Respondent violate section 17-322(b)(3) of the Business Occupations and Professions Article, by willfully making a misrepresentation or knowingly making a false promise?
2. Did the Respondent violate section 17-322(b)(25) of the Business Occupations and Professions Article, by engaging in conduct that demonstrated bad faith, incompetency, or untrustworthiness, or that constitutes dishonest, fraudulent, or improper dealings?

² The hearing was originally scheduled for February 6, 2012, but was postponed to allow the REC to serve the hearing notice on the Respondent at his home address.

3. Did the Respondent fail to exercise reasonable care and diligence toward a client as required by section 7-532(c)(1)(vi) of the Business Occupations and Professions Article and, thereby, violate a provision of the title governing real estate brokers under section 17-322(b)(32) of the Business Occupations and Professions Article?

4. Did the Respondent violate section 17-322(b)(33) of the Business Occupations and Professions Article, by violating the provisions of the Code of Ethics set forth in COMAR 09.11.02.01C and H, and by violating his duties to a client as set forth in 09.11.02.02A?

5. If so, what, if any, sanctions and/or penalties should the REC impose against the Respondent?

6. What, if any, amount should be awarded to the Claimant from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

The REC submitted the following documents, which I admitted into evidence:

- REC #1 Notice of Hearing, December 9, 2011, Return Receipts for Certified Mail, December 12, 13 and 20, 2011
- REC #2 REC Transmittal, undated, Statement of Charges and Order for Hearing, D. Allen, July 28, 2011
- REC #3 Notice of Hearing, December 9, 2011, and Notice of Hearing, November 4, 2011, Return Receipts for Certified Mail, December 15 and 21, 2011
- REC #4 Transmittal, undated, Statement of Charges and Order for Hearing, R. Sweeney, July 27, 2011
- REC #5 Letter from Claimant to REC with statement of attorneys' fees, February 8, 2011
- REC #6 Respondent's Licensing information, December 8, 2011
- REC #7 Notice of Hearing, February 8, 2012, Return Receipts for Certified Mail, February 13 and 24, 2012
- REC #8 REC Report of Investigation, Robert A. Hall, Investigator, March 9, 2011
- REC #9 Champion Realty documentation of contract for sale of subject property and communications with Respondent, August 23, 2009 through October 15, 2009

The Claimant submitted the following documents, which I admitted into evidence:

- CL #1 Bills for Services Rendered, Stevart & Stevart, April 30, 2010 and February 8, 2011

- CL #2 State Farm Insurance Companies, Notice of Payment Due, February 24, 2010
CL #3 Real Estate tax bill, 2009

The Claimants (Donna Allen and Eugene Sibley) submitted the following documents, which I admitted into evidence:

- CLS #1 Chesapeake Real Estate Analysts, Inc., Invoice, September 27, 2009
CLS #2 Christopher L. Beard, Statement of Professional Services Rendered, June 7, 2010
CLS #3 Master Home Inspectors, Inc., Home Inspection Report, September 5, 2009
CLS #4 Gallagher's Termite Bureau, Wood Destroying Insect Inspection Report, October 7, 2009
CLS #5 Ardmore Exterminating Corporation, Invoice, June 22, 2010
CLS #6 Chesapeake Real Estate Analysts, Inc., Invoice, June 16, 2010
CLS #7 Agreement, Donna Allen and Doug Rivenback, June 7, 2010

Testimony

The REC presented the testimony of the following witnesses:

1. The Claimant;
2. Donna Allen;
3. Robert A. Hall, REC Investigator;
4. Virginia Diaz-Harris, Champion Realty;
5. Patricia Savani, Champion Realty.

The Claimant testified on his own behalf in support of his claim.

The Respondent failed to appear; no witnesses testified on his behalf.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent was a licensed real estate broker. The Respondent was originally licensed on April 6, 1993. His license expires on September 2, 2012.

(REC #6)

2. In August 2008, the Respondent listed for sale property located at 4017 14th Street, Chesapeake Beach, Maryland, for a price of \$189,000.00. (REC #8) The property was owned by the Claimant and his brother.

3. On August 23, 2008, Eugene Sibley and Donna Allen, through their agent, Virginia Diaz-Harris, Champion Realty, offered to purchase the property for \$173,000.00, and submitted a contract. The contract included a Veterans' Administration (VA) Financing Addendum. (REC #9)

4. On August 25, 2009, Ms. Diaz-Harris sent a loan preapproval letter and information from Mr. Sibley's and Ms. Allen's lender to the Respondent. (REC #9)

5. On August 28, 2009, the Claimant, with power of attorney for his brother, accepted the offer by signing the contract. Settlement was scheduled for October 15, 2009. (REC #9)

6. On September 10, 2009, Ms. Diaz-Harris prepared two general addenda. The first provided that in lieu of making home inspection repairs the Claimant would give Mr. Sibley and Ms. Allen \$5,000.00 at settlement. The second provided that the parties would remove the contingency for the sale and closing of Mr. Sibley's and Ms. Allen's property in Bowie, Maryland. No party to the contract signed the Addendums. (REC #9)

7. On September 14, 2009, the Respondent, as buyer's agent for Steven Duffy, offered to purchase the Claimant's property. The Respondent prepared a second contract for the sale. (REC #8)

8. On September 14, 2009, the Respondent presented the Duffy contract to the Claimant. The Claimant questioned the Respondent about the Sibley-Allen contract. The Respondent told the Claimant that he had tried to contact Ms. Diaz-Harris about the Sibley-Allen contract, but she had not responded. He stated that because Mr. Sibley, Ms. Allen and Ms. Diaz-Harris had not followed through on the contract as required by law, the contract was dead. When the Claimant questioned the Respondent further on the legality of the contract, the Respondent told the Claimant that he had been a broker for eighteen years and in the real estate business for

thirty years. The Respondent told the Claimant that the first contract was not effective and that he should sign the second contract with Mr. Duffy.

9. On September 14, 2009, the Claimant signed the second contract. (REC #8)

10. On September 16, 2009, the Respondent told Ms. Diaz-Harris that the Sibley-Duffy contract was null and void. Ms. Diaz-Harris emailed the Respondent stating that Mr. Sibley and Ms. Allen intended to continue with the purchase of the property. (REC #9)

11. The Respondent did not send a release from the contract to Mr. Sibley, Ms. Allen, or Ms. Diaz-Harris and did not receive a release either orally or in writing,

12. On October 8, 2009, Mr. Duffy filed a Notice of Lis Pendens against the property seeking specific performance and claiming an interest in the property. (REC #8)

13. On October 15, 2009, closing on the property under the Sibley-Allen contract proceeded. Those in attendance included: the Respondent; the Claimant; Mr. Sibley; Ms. Allen; Mr. Sibley's and Ms. Allen's attorney; Ms. Diaz-Harris; a settlement officer; a title attorney; and a loan officer. (REC #8)

14. On October 15, 2009, the Claimant, Mr. Sibley, and Ms. Allen were unable to close on the property because of the Notice of Lis Pendens.

15. The Claimant retained an attorney to file and pursue a temporary restraining order, preliminary injunction, permanent injunction and declaratory judgment against Mr. Duffy. The Claimant incurred \$10,925.25 in attorney's fees and costs. (CL #1)

16. The Claimant retained an attorney to defend him in legal proceedings filed by Mr. Duffy. He incurred \$1,910.00 in attorney's fees for those legal services. (CL #1)

17. On or about October 26, 2009, the Claimant, Mr. Sibley and Ms. Allen entered into a pre-settlement occupancy agreement and Mr. Sibley and Ms. Allen moved into the home. (CLS #2))

18. On May 11, 2010, the Circuit Court for Calvert County ordered that the Notice of Lis Pendens be stricken and removed. (REC #8)

19. On June 24, 2010, the Claimant, Mr. Sibley and Ms. Allen settled on the property.

20. Between October 15, 2009, the date of the proposed sale, and June 24, 2010, the closing, the Claimant paid for homeowner's insurance coverage in the amount of \$367.92. (CL #2)

21. The Claimant paid property taxes in the amount of \$1,977.27, for the time between the first settlement date in October 2009 and when Mr. Sibley and Ms. Allen moved into the home. (CL #3)

22. On September 22, 2010, after the REC notified the Respondent of the Claimant's complaint, the Respondent told the REC that the Sibley-Allen contact had many stipulations and contingencies and that Ms. Diaz-Harris failed to communicate with him. He stated that he waited weeks and received no updates from Ms. Diaz-Harris on the contingencies despite leaving many voicemail messages. (REC #8, Attachment 9)

23. On December 9, 2011, the OAH sent a Notice of Hearing (notice) to the parties scheduling a hearing in this matter for February 6, 2012. The notice to the Respondent was sent to the address supplied by the Commission; the last known address of record supplied by the Respondent to the Commission.

24. On February 6, 2012, the hearing was postponed to permit the REC to serve the Respondent with the notice at his home address.

25. On February 8, 2012, the OAH sent the parties a notice re-scheduling the hearing to March 7, 2012. The notice to the Respondent was sent to both his business address of record and his last known home address, by certified and regular mail. The certified letter sent to the Respondent's home address was returned by the U.S. Postal Service as "Unclaimed." The certified

letter sent to the Respondent at his business address with the REC was accepted and signed for by office staff. The notice sent by regular mail to the Respondent's home was returned; the notice sent to his business address was not returned.

DISCUSSION

I. Statutes and Regulations

Maryland law authorizes the REC to license and regulate real estate professionals. The REC may take action on a professional's license and penalize a licensee for misconduct. The law relevant to this case states:

(b) *Grounds.* - 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:

...

(3) directly or through another person willfully makes a misrepresentation or knowingly makes a false promise;

...

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

...

(32) violates any other provision of this title;

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

(c) *Penalty.* - (1) Instead of or in addition to suspending or revoking a license, the Commission may impose a penalty not exceeding \$5,000.00 for each violation.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(b) and (c) (2010).

Additionally, Maryland law provides that real estate brokers have a duty to their clients to exercise reasonable care and diligence. Md. Code Ann., Bus. Occ. & Prof. § 17-532(c)(1)(vi) (2010).

Finally, Maryland regulations include a Code of Ethics for real estate professionals. That code requires brokers to protect the public against fraud, misrepresentation, or unethical

practices, and to endeavor to eliminate practices that could be damaging to the public or the integrity of the profession. COMAR 09.11.02.01C. Under the Code of Ethics, real estate professionals are also required to ensure that obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement. COMAR 09.11.02.01H. Also, in accepting employment as an agent, a licensee has an absolute obligation to protect and promote the interests of the client. COMAR 09.11.02.02.

The Respondent in the present case instructed the Claimant to sign two contracts for one property. The Claimant testified that he questioned the Respondent about the legality of signing the Duffy contract, but the Respondent repeatedly assured him that the Sibley-Allen contract was dead. The Respondent gave the Claimant these assurances despite his failure to obtain a release from Mr. Sibley, Ms. Allen, or Ms. Diaz-Harris, their real estate agent.

Additionally, the Respondent told the Claimant, and later the REC, that Ms. Diaz-Harris failed to contact him about the Sibley-Allen contract when he made repeated attempts to clarify contingencies, and that is why he believed the contract was void. Ms. Diaz-Harris testified that she telephoned the Respondent numerous times. The Respondent failed to appear at the hearing to refute Ms. Diaz-Harris's testimony. I believed Ms. Diaz-Harris's testimony that she was in contact with the Respondent and that there were no contingencies that would have voided the contract. I conclude that the Respondent's conduct violated section 17-322(b)(3); he willfully misrepresented the status of the Sibley-Allen contract.

Further, the Respondent violated Business Occupations and Professions article § 17-322(b)(25) by engaging in conduct that demonstrated bad faith, incompetency, untrustworthiness or that constituted dishonest, fraudulent or improper dealings. The Respondent stood to earn more commissions on the Duffy contract as both seller's and buyer's agent. He therefore had a financial motive to encourage the Claimant to sign a second contract when he knew or should

have known that the Sibley-Allen contract was still in effect, or that there existed a legal argument that the first contract was valid. The Respondent was at the least incompetent when he assured the Claimant that he was free to sign the Duffy contract. His conduct was more serious, however, and demonstrates bad faith and improper dealings. He told the Claimant that he had been a broker for eighteen years and in the real estate business for thirty years; he pushed the Claimant to rely on his advice, which, as stated above, he knew or reasonably should have known was incorrect.

The Respondent, by failing to abide by his duty to the Claimant to exercise reasonable care and diligence, violated section 17-532(c)(1)(vi) of the Business Occupations and Professions article. In turn, he is subject to action on his license and a penalty under section 17-322(b)(32) and (c) of the article.

The Respondent's conduct in this transaction violated the Code of Ethics for real estate professionals. The Respondent was required to protect and promote the public against fraud, misrepresentation and unethical practices. COMAR 09.11.02.01C. Instead of protecting the public, he misrepresented the status of the first contract and harmed the Claimant, Mr. Sibley, Ms. Allen, and maybe Mr. Duffy, as a result. He also damaged the integrity of the real estate profession. The Respondent failed to obtain a written waiver or release from Mr. Sibley and Ms. Allen to clear the first contract before he offered the same property to Mr. Duffy in violation of the regulation requiring that all terms of an agreement be in writing. COMAR 09.11.02.01H. Finally, the Respondent failed to protect and promote the interests of his client, the Claimant. The regulations governing real estate professionals provide that a broker has an obligation of absolute fidelity to his or her client, that a client's interest is primary. Those are strong words which the Respondent ignored when he advised the Claimant to sign a second contract for the

property under which the Respondent stood to financially benefit because he was both the seller's and buyer's agent. COMAR 09.11.02.02A.

By violating the real estate professionals' Code of Ethics and regulations governing a broker's duties to a client, the Respondent is subject to action on his license and a penalty under section 17-322(b)(33) and (c) of the Business Occupation and Professions article.

II. Regulatory Sanctions and Penalties

Instead of or in addition to reprimanding, suspending or revoking a real estate license for his or her violation of the above statutes and regulations, section 17-322(c) of the Business Profession and Occupations Article permits the REC to assess a monetary penalty of up to \$5,000.00 for each violation of the law, applying the following criteria:

- (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.

In this case, the Respondent was charged with four violations of the law. Counsel for the REC recommended revocation of the Respondent's license and a penalty of \$2,000.00 for each violation.

As discussed above, the Respondent's violations were severe and the harm he caused was also severe. As the result of obtaining two contracts for one property, all the parties to the transactions were swept up into legal proceedings to determine their rights. The parties were delayed in selling and buying the property for eight months. The Claimant testified that he wanted to sell the house in order to help his mother with her expenses in a nursing home; he was unable to do so.

In addition, the Respondent has failed to demonstrated good faith in his interactions with the Claimant, other parties to the contracts, and with another real estate professional. He failed to appear at the hearing and therefore did not present any possible mitigation for me to consider.

The fact that the Respondent has no prior violations does not outweigh all the other factors that heavily weigh in the favor of a monetary penalty.

Based on the Respondent's actions, I find that revocation of his license and an \$8,000.00 penalty is reasonable in this case.

III. Guaranty Fund Claim

Claims for reimbursement from the Fund are governed by section 17-404 of the Business Professions and Occupations Article, which states in part as follows:

§ 17-404. Claims against the Guaranty Fund.

(a)(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;

...

(ii) involve a transaction that relates to real estate that is located in the State; and

(iii) be based on an act or omission:

...

2. that constitutes fraud or misrepresentation.

With respect to claims against the Fund, COMAR 09.11.03.04 further provides 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;

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

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

The Claimant bears the burden of proof in his claim against the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e). I conclude that the Claimant has proven that he incurred damages as a consequence of the Respondent's misrepresentation.

The Claimant was required to retain an attorney to file a lawsuit in response to Mr. Duffy's Lis Pendens action, and to defend against actions filed by Mr. Sibley and Ms. Allen. Additionally, between the October 15, 2009 settlement date on the Sibley-Allen contract and the final settlement on June 24, 2010, the Claimant covered homeowner's insurance and property taxes. He also paid a small utility bill incurred before Mr. Sibley and Ms. Allan moved into the home.

The Claimant presented bills for legal services totaling \$12,835.25. (CL #1) He presented a bill for homeowner's insurance in the amount \$275.26, and testified that he paid an additional amount of \$92.66 for a total cost of \$367.92. (CL #2) For property taxes, the Claimant presented an annual bill totaling \$2,791.46. He testified that he paid the bill for October 15, 2009 through June 30, 2010 and he subtracted penalties, paying a total of \$1,977.27. (CL #3). Based on the documentary evidence and the Claimant's testimony, I find that his losses total \$15,192.94 as follows:

Attorney's fees	\$12,835.25
Insurance	367.92
Taxes	1,977.27
Utilities	<u>12.50</u>
Total	\$15,192.94

CONCLUSIONS OF LAW

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

1. The Respondent violated section 17-322(b)(3) of the Business Occupations and Professions Article by willfully making misrepresentations and knowingly making false promises;
2. The Respondent violated section 17-322(b)(25) of the Business Occupations and Professions Article by engaging in conduct that demonstrated bad faith, incompetency, untrustworthiness and that constituted dishonest, fraudulent or improper dealings;
3. The Respondent violated section 17-532(c)(1)(vi) of the Business Occupations and Professions Article by failing to exercise reasonable care and diligence toward his client and is subject to sanctions under Business Occupations and Professions Article § 17-322(b)(32).
4. The Respondent violated the provisions of the Code of Ethics set forth in COMAR 09.11.01.01C and H, and the regulations governing his duties toward a client under COMAR 09.11.02.02A, and is subject to sanctions under Business Occupations and Professions Article section 17-322(b)(33).
5. The Respondent's license as a real estate broker should be revoked and he should be assessed a \$8,000.00 penalty; and,
6. The Fund should pay the Claimant his actual monetary loss in the amount of \$15,192.94 for the misconduct of the Respondent.

RECOMMENDED ORDER

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

1. The Real Estate Commission's charges against the Respondent, under Business Occupations and Professions Article §§17-322(b)(3), (25), (32) and (33) and 17-532(c)(1)(vi), and COMAR 09.02.01C and H and 09.11.02.02A, are **AFFIRMED;**
2. The Respondent's license is hereby **REVOKED;**
3. The Respondent shall pay to the Real Estate Commission a monetary penalty of \$8,000.00;
4. The Fund shall pay the Claimant his actual monetary loss in the amount of \$15,192.94 for the Respondent's misrepresentation;
5. The Respondent shall be ineligible for a license until he pays the monetary penalty to the Real Estate Commission and reimburses the Fund for the full amount of the award paid to the Claimant by the Fund, plus annual interest of at least ten percent; and
6. The Real Estate Commission's records and publications shall reflect this final decision.

April 2, 2012 _____
Date decision mailed

MKS/kc
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SIGNATURE ON FILE

Mary Shook
Administrative Law Judge