

FINAL ORDER

JUN 19 2012

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL
ESTATE COMMISSION**

MARYLAND REAL ESTATE COMMISSION *

v. *

ABIDEMI B. COKER *
Respondent *

* CASE NO. 2010-RE-418

And *

* OAH NO. DLR-REC-24-11-14653

CLAIM OF ISIDRO GRACIA ORELLANA *
AGAINST THE MARYLAND *
REAL ESTATE GUARANTY FUND *

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated February 15, 2012, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 17th 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, AFFIRMED;

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

ORDERED that the Respondent Abidemi B. Coker, violated Md. Bus. Occ. and Prof. Art. § 17-322(b)(3), (14(ii)), (22), (25), (32), and (33); § 17-532(c)(1)(i-v), (v), (vi); and COMAR

09.11.01.16, 09.11.02.01C and H, and 09.11.02.02A;

ORDERED that all real estate licenses held by the Respondent Abidemi B. Coker are REVOKED;

ORDERED that the Respondent Abidemi B. Coker be assessed a civil penalty in the amount of \$20,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that the claim of Isidro Gracia Orellana against the Maryland Real Estate Guaranty Fund be GRANTED in the amount of \$10,000.00.

ORDERED that the Respondent Abidemi B. Coker shall be ineligible for a real estate license until the civil penalty is paid in full and the Guaranty Fund is repaid, together with all interest due;

ORDERED that the records and publications of the Maryland Real Estate Commission reflect this decision.

D. Pursuant to §10-220 of the State Government Article, the Commission finds that the Recommended Order of the Administrative Law Judge had to be modified to provide a time period within which the civil penalty must be paid.

E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.08 those parties adversely affected by this Proposed Order shall have 20 days from the postmark date of the Order to file exceptions and to request to present arguments on the proposed decision before this Commission. The exceptions should be sent to

the Executive Director, Maryland Real Estate Commission, 3rd Floor,
500 North Calvert Street, Baltimore, MD 21202.

SIGNATURE ON FILE

Maryland Real Estate Commission

for Anne S. Cooke, Chairman

MARYLAND REAL ESTATE
 COMMISSION
 and
 ISIDRO GRACIA ORELLANA,
 CLAIMANT
 v.
 ABIDEMI B. COKER,
 RESPONDENT

* BEFORE ANNO UNCLINID
 * AN ADMINISTRATIVE JUDGE
 * OF THE MARYLAND REAL ESTATE COMMISSION
 * ADMINISTRATIVE HEARINGS
 *
 * OAH No.: DLR-REC-24-11-14653
 * REC CASE No.: 2010-RE-418
 *

FINAL ORDER

JUN 19 2012

* * * * *

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 April 8, 2010, Isidro Garcia Orellano (Claimant) filed a Complaint against Abidemi B. Coker (Respondent), as well as a claim for reimbursement (the Claim) from the Maryland Real Estate Guaranty Fund (the Fund) for losses the Claimant allegedly incurred as a result of the Respondent's misconduct. After investigation, the Maryland Real Estate Commission (the REC or the Commission) issued a March 30, 2011 Statement of Charges and Order for Hearing against the Respondent for his alleged violations of sections 17-322(b)(3), (14)(i), (22), (25), (32) and (33); 17-322(c) and 17-532(c)(iv)-(vi) of the Maryland Annotated Code's Business Occupations and Professions Article (the Business Occupations Article) (2010 & Supp. 2011).¹

¹ Unless otherwise noted, all references are to the Business Occupations and Professions Article of the Maryland

as well as the Code of Maryland Regulations (COMAR) 09.11.01.16, 09.11.02.01C, 09.11.02.01H and 09.11.02.02A. The Hearing Order further referenced the Claimant's Claim against the Fund. On April 6, 2011, the Commission forwarded the Claim and the Charges to the Office of Administrative Hearings (OAH) for a hearing.

On November 28, 2011,² I conducted the hearing at the Largo Government Center, 9201 Basil Court, Largo, Maryland, pursuant to section 17-408 of the Business Occupations Article. The Claimant represented himself. Assistant Attorney General Jessica Kaufman represented the Commission, and Assistant Attorney General Kris King represented the Fund. The Respondent failed to appear. As the Commission provided persuasive evidence³ that timely notice of the hearing had been sent to the Respondent's then current address of record, as well as his current address of record with the Maryland Motor Vehicle Administration (MVA), I proceeded to hear the case in his absence. See Business Occupations Article § 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 (DLLR), COMAR 09.01.03, and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

ISSUES

The issues in this case are as follows:

1. Did the Respondent violate Business Occupations Article § 17-322(b)(3) by willfully making a misrepresentation or knowingly making a false promise?
2. Did the Respondent violate Business Occupations Article § 17-322(b)(14)(i) by acting as the real estate broker and failing to provide the Claimant with the contract of sale?

Annotated Code (2010 & Supp. 2011)

² The hearing was originally scheduled for August 18, 2011, but was postponed by the OAH Clerk's Office due to a clerical error.

³ See REC Ex. # 1 & 4.

3. Did the Respondent violate Business Occupations Article § 17-322(b)(22) by failing to account for or to promptly remit to the Claimant money that came into the Respondent's possession but belonged to the Claimant?

4. Did the Respondent violate Business Occupations Article § 17-322(b)(25) by engaging in conduct that demonstrated bad faith, incompetency, untrustworthiness or that constituted dishonest, fraudulent or improper dealings?

5. Did the Respondent violate Business Occupations Article § 17-322(b)(32) by failing to comply with all applicable laws and regulations?

6. Did the Respondent violate Business Occupations Article § 17-322(b)(33), by violating the provisions of the Code of Ethics set forth in COMAR 09.11.02.02A?

7. Did the Respondent violate Business Occupations Article 7-532(c)(1)(iv)-(vi), by failing to treat all parties honestly and fairly or by failing to answer all questions truthfully; timely account for all trust money received; and, exercise reasonable care and diligence?

8. What, if any, sanctions and or penalties should be imposed against the Respondent?

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

SUMMARY OF THE EVIDENCE

Exhibits:

The Commission submitted the following documents, which I admitted into evidence as the following numbered exhibits:

1. Rescheduled Notice of Hearing, with attached Commission's Statement of Charges and documentation regarding attempts to deliver
2. The Commission's referral of the case to OAH, with attached Statement of Charges
3. Respondent's Licensing History

4. Email with information from the MVA regarding Respondent's addresses of record
5. REC Report of Investigation, December 20, 2010
6. Letter from REC to Respondent, April 16, 2010

The Claimant did not offer any documents for admission into evidence.

As the Respondent failed to appear, no documents were admitted on his behalf.

Testimony

The Commission presented the testimony of Phillip Chernitzer, Real Estate Broker, REO Real Estate; Robert Oliver, an REC investigator; and the Claimant. The Claimant also 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 as a real estate salesperson on March 10, 2004. On February 3, 2009, the Respondent became a licensed real estate broker and his license expired on March 3, 2011.
2. On October 2, 2009, a property located at 1514 Roosevelt Avenue, Hyattsville, Maryland (the property) was listed for sale. The Listing Agent was Phillip Chernitzer. The list price was \$37,600.
3. The Claimant was interested in purchasing an investment property. A friend of the Claimant's referred him to the Respondent and the Respondent told the Claimant he would assist him in purchasing an investment property.
4. The Claimant and the Respondent viewed the property twice.
5. The Claimant and the Respondent discussed the price that they should offer; the

Respondent suggested that the Claimant offer \$44,000.00 or \$45,000.00. The Claimant told the Respondent he wanted to offer \$40,000.00.

6. On or about October 28, 2009, the Respondent came to the Claimant's house and met with him and his wife. He presented the Respondent and his wife with a Residential Contract of Sale (contract) offering the seller \$40,000.00 for the property. The Respondent told the Claimant that it would be better if only the Claimant's wife, Alba Y. Diaz signed the contract. Ms. Diaz signed the contract offering \$40,000.00 for the property. The Respondent told the Claimant that he did not have a copy of the contract but he would bring the Claimant a copy of the contract the next day. The Respondent never gave the Claimant or his wife a copy of the contract.

7. The Respondent did not ask the Claimant or his wife to sign a Buyer's Broker Agreement. The Respondent never gave the Claimant or his wife a Buyer's Broker Agreement.

8. The Claimant gave the Respondent \$15,000.00 cash for an earnest money deposit on the property. The Respondent said he did not have receipts to give the Claimant for his cash. The Claimant typed a cash receipt and asked the Claimant for his driver's license; he made a photocopy of the Claimant's driver's license on the receipt.

9. On October 28, 2009, the Respondent emailed Mr. Chernitzer an offer for the property by sending him a contract. The contract was sent as a scanned attachment to the email and listed the buyer as Alba Y. Diaz with an offered sales price of \$45,000.00. A copy of a check was also sent as a scanned attachment; the payor was First Choice Realty, Inc., the Respondent's real estate brokerage, and the amount of the check was for \$2,000.00.

10. Mr. Chernitzer sent the Respondent an email questioning why the earnest money deposit was drawn on the Respondent's firm's account and not from the buyer. Mr. Chernitzer also informed the Respondent that the buyer would need to show proof of funds because the seller was only interested in a cash sale.

11. The Respondent did not respond to Mr. Chernitzer's email and Mr. Chernitzer left

voice mail messages for the Respondent containing the same information about the need to show proof of ability to purchase the property with cash. The Respondent left a voice mail for Mr. Chernitzer that he would get a bank addendum signed from the prospective buyer.

12. Mr. Chernitzer left a voice mail message for the Respondent that unless he heard from the Respondent by November 4, 2009, the seller would move on. The Respondent did not give this information to the Claimant and he never responded to the voice mail message. The property was eventually sold to another buyer.

13. On November 10, 2009, the Respondent told the Claimant that another buyer was interested in the property but if the Claimant put down another \$5,000.00 in cash, the Claimant would get the property. The Claimant gave the Respondent \$5,000.00 in cash and asked the Respondent to write this additional information about the \$5,000.00 on the original cash receipt.

14. The Respondent told the Claimant that they would go to settlement the following week. When the following week came, the Respondent told the Claimant there had been a delay but that they would go to settlement the next week. This continued until the beginning of January 2010 when the Claimant checked with another realtor who informed the Claimant that the property was either under contract to someone else or had been sold.

15. The Claimant contacted the Respondent and told the Respondent he heard the property had been sold. The Respondent told him he would help the Claimant purchase another property. The Claimant told the Respondent that he had no intention of dealing with him any more and he wanted his money back. The Respondent told the Claimant he would give him back his money.

16. The Claimant called the Respondent again to arrange when he would get his money back but the Respondent did not answer his call.

17. Sometime between January 4 and January 6, 2010, the Claimant went to the Respondent's office. The Claimant told the Respondent that unless he reimbursed his money he

would file a report with the police. The Respondent told the Claimant he did not have his money but his sister would reimburse him.

18. The Claimant met the Respondent and a woman, Ms. Ayanda, who the Respondent said was his sister, in a parking lot at 450 Riverdale Road. The Claimant did not have any conversation with Ms. Ayanda.

19. The Respondent gave the Claimant four checks with dates approximately one week apart, in the amount of \$5,000.00 each, drawn on the account of Modupe K. Ayanda with Branch Banking & Trust Company (BB&T) and made payable to the Claimant. The address on the checks was the same as the Respondent's address on record with the Commission.

20. The Claimant cashed the first two checks. When the Claimant attempted to cash the third check, number 1026, dated January 29, 2010, it was returned for insufficient funds. The Claimant's bank charged him \$35.00 for presenting the check that was returned for insufficient funds. Rather than trying to cash the fourth check (number 1027, dated February 7, 2010), the Claimant took it to BB&T and was informed that there were insufficient funds to cover the check or that the account holder had closed the account.

21. The Claimant tried to contact the Respondent by telephone. The Respondent did not return his telephone calls. The Claimant also tried to contact Ms. Ayanda but she became angry and he did not pursue further contacts with her.

22. On April 8, 2010, the Claimant filed a complaint with the Commission.

23. The Respondent never paid the Claimant the \$10,000.00.

24. On April 16, 2010, the Commission sent the Respondent a letter advising him that the Commission had received a written claim from the Claimant and that he must respond to the claim within twenty business days. The letter was sent to the Respondent's business address as reflected in the Commission's records.

25. The Respondent did not respond to the Commission's letter.

26. On May 25, 2010, the Commission sent the Respondent a letter advising him that he had failed to respond and that he was being given an additional ten days to file a response. The letter was sent to the Respondent's business address as reflected in the Commission's records.

27. The Respondent did not respond to the Commission's second letter.

28. On December 8, 2010, Robert J. Oliver, an investigator with the Commission, contacted the Respondent by telephone. An in-person interview was scheduled for December 9, 2010, but the Respondent told Mr. Oliver that he would be out of the country until sometime in January 2011, so Mr. Oliver spoke with the Respondent by telephone.

29. The Respondent told Mr. Oliver that he did not enter into any agreement with the Claimant to look for properties, he received no money from the Claimant, that Ms. Ayanda borrowed money from the Claimant and was supposed to repay him, that he was not related to Ms. Ayanda and that they were only friends.

30. Ms. Ayanda never responded to requests from Mr. Oliver to talk about the case.

31. On April 22, 2011, the OAH sent a Notice of Hearing (notice) to the parties scheduling a hearing in this matter for August 18, 2011. 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. This address was also the same address appearing on the copy of the Respondent's Maryland MVA driver's license. (REC Ex. #5, attachment 3). The certified letter was returned by the US Postal Service as "unable to forward." The notice sent by regular mail was not returned.

32. On August 29, 2011, the OAH sent the parties a notice re-scheduling the hearing to November 28, 2011. 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. This address was also the same address appearing on the copy of the Respondent's Maryland MVA driver's license. (REC Ex. #5, attachment 3). The certified letter was returned by the US

Postal Service as "vacant; unable to forward." The notice sent by regular mail was not returned.

33. On October 24, 2011, the OAH sent the Respondent a copy of the notice to a new address the Commission obtained from the Maryland MVA. This notice was returned by the US Postal Service as "unable to forward." The notice sent by regular mail was not returned.

DISCUSSION

The Respondent's Violation of Statutes and Regulations

The Commission's power to regulate licensees, as pertinent to this case, is as follows:

(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;

...
(14) for any transaction which the licensee has served as or on behalf of a real estate broker, fails to furnish promptly to each party to the transaction a copy of:

...
(ii) the contract of sale;

...
(22) fails to account for or to remit promptly any money that comes into the possession of the licensee but belongs to another person;

...
(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[.]

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

After carefully considering all of the evidence, I conclude that the Respondent's conduct violated section 17-322(b)(3) by willfully making a misrepresentation or knowingly making a false promise. The evidence is clear that the Respondent agreed to represent the Claimant as a real estate broker in purchasing the property. The Claimant credibly testified that he gave

permission to the Respondent to make an offer of \$40,000.00 but the documentation shows that the Respondent instead submitted an offer of \$45,000.00. (REC Ex. #5, attachment 5). The evidence is also clear that the Respondent misrepresented the status of the transaction by telling the Claimant on November 10, 2009, that he needed to give him \$5,000.00 more to make sure the property was his and that there was another interested buyer. The Respondent knew his statements to the Claimant on November 10th were false because he was told by the seller's agent that if documentation of available funds was not submitted by November 4, 2009, the seller would "move on" and the Claimant's offer was rejected.

The Respondent also violated Business Occupations Article § 17-322(b)(14)(ii) by acting as the real estate broker and failing to provide the Claimant with a copy of the contract of sale. The Respondent's failure to provide the Claimant with a copy of the contract and his submission of a contract that was not agreed to by the Claimant or his wife, was also a violation of the Code of Ethics, COMAR 09.11.02.01H.

The Respondent's action was particularly egregious in this case because the Claimant testified that the contract the Respondent submitted to the seller's agent was not the one his wife signed. The Claimant emphatically testified that, although the Respondent suggested he offer \$44,000.00 or \$45,000.00, neither his wife nor he authorized an offer of \$45,000.00, and that it was not his wife's signature on the contract the Respondent sent to the seller's agent. I found the Claimant's testimony credible as he was straightforward and clear about the limits of his recollection. Also, key elements of his testimony, such as his giving a cash deposit or earnest money to the Respondent, were corroborated by documentation.

In addition, the Respondent violated Business Occupations Article § 17-322(b)(22) by failing to account for or to promptly remit to the Claimant money that came into the Respondent's possession but belonged to the Claimant. When the Claimant confronted the Respondent after he learned from another real estate agent that the property had been sold, the

Respondent assured the Claimant that he would help him purchase another property. The Claimant testified that he did not trust the Respondent any more and he asked him for his money back. The Claimant further testified that the Respondent was not responsive to his requests until he threatened to go to the police. The Respondent agreed to give the Claimant his money back but told him he did not have it but would have his sister reimburse the Claimant. The Claimant only received \$10,000.00 of the \$20,000.00 cash that he gave to the Respondent as the earnest money deposit for the property.

Finally, the Respondent violated Business Occupations 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's submission of a contract offer for a price not agreed to by the Claimant, asking the Claimant for \$20,000.00 as an earnest money deposit, offering only \$2,000.00 to the seller's agent as an earnest money deposit, failing to immediately remit to the Claimant his money, only eventually reimbursing him \$10,000.00, and fabricating explanations to the Commission's investigator, all demonstrate bad faith, incompetency, untrustworthiness, dishonesty on the part of the Respondent, and fraudulent or improper dealings. The Respondent's conduct was also a violation of the Code of Ethics that required the Respondent to protect and promote the interests of his client (the Claimant).
COMAR 09.11.02.02A.

The Respondent's conduct towards the Claimant and the seller's agent also violated Business Occupations Article § 17-532(c)(iv)-(vi), which required the Respondent to treat all parties to the transaction honestly and fairly, answer all questions truthfully, timely account for all trust money received and exercise reasonable care and diligence.

The Commission also charged the Respondent with violating the Code of Ethics for failing to respond to the Commission within twenty days of receipt of a written inquiry directed to the Respondent by the Commission. COMAR 09.11.01.16. The Respondent ignored both the

April 16, 2010 and May 25, 2010 letters sent to him by the Commission. When the investigator for the Commission spoke with the Respondent by telephone on December 8, 2010, the Respondent told the investigator that he "provided a complaint response to 'some lady' at MREC." (REC Ex. 5, p. 3). The Respondent's vague and self-serving statement to the investigator does not refute the investigator's sworn testimony that the Commission did not receive a response from the Respondent. The Respondent's cavalier attitude in addressing the serious charges against him continued with his failure to appear for this hearing.

The Respondent also violated the other provisions of the Code of Ethics as alleged by the Commission. COMAR 09.11.02.01C provides that the Respondent shall protect the public against fraud, misrepresentation or unethical practices in the real estate field. In this case, not only did the Respondent fail to protect the public, he was the one who engaged in the fraud, misrepresentation and unethical practices.

COMAR 09.11.02.01C also required the Respondent to "assist the Commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State." The evidence is overwhelming that the Respondent violated this requirement by failing to respond to the Commission's letters and then fabricating answers to the investigator's questions. In addition to claiming that he had filed a response, the Respondent also told the investigator he never entered into any agreement to assist the Claimant and never looked for any property on the Claimant's behalf. This was clearly contradicted by the fact that the Respondent submitted an offer to the seller's agent for the property on behalf of the Claimant (REC Ex. #5, attachment 5) and took \$20,000.00 in cash from the Claimant. Although the Respondent told the investigator that Ms. Ayanda borrowed money from the Claimant, and that was why she paid him back from checks written on her account, his story is contradicted by the receipt that the Claimant had the foresight to make using the Respondent's driver's license. (REC Ex. #5, attachment 3). Additionally, the Respondent was inconsistent when asked how he knew Ms. Ayanda borrowed

money from the Claimant; first, he said that he was present when it happened but later he told the investigator he called Ms. Ayanda when he received the complaint.

The investigator also asked the Respondent about his relationship with Ms. Ayanda. He told the investigator they were only friends and he was not related to her in any way. The Respondent previously told the Claimant that Ms. Ayanda was his sister. The Claimant had no reason to misrepresent what the Respondent told him. The Claimant testified convincingly he did not care what their relationship was; he was only interested in getting his money back. Regardless of the true relationship between the Respondent and Ms. Ayanda, it was clearly more than what he told the investigator because the address on Ms. Ayanda's checks (REC #5, attachment 4) was the same address as reflected on the Respondent's Maryland MVA driving record (REC #4).

Regulatory Sanctions/Penalties

Counsel for the Commission argued that the Respondent's license should be revoked despite the fact that his license is currently expired because he could decide to re-apply for a license. Based on the seriousness of the Respondent's violations, the Commission has met its burden in proving that the Respondent's license as a real estate broker should be revoked to protect the public and the real estate industry.

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 Occupations Article permits assessment of up to a \$5,000.00 monetary penalty,⁴ per violation, 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.

⁴ Business Occupations Article 17-322(c)(3) provides that the Commission "shall pay any penalty collected under this subsection into the General Fund of the State."

In this case, Counsel for the Commission noted that the Respondent was charged with twelve violations. She requested, however, that a \$20,000.00 penalty be imposed against the Respondent.

As discussed above, the seriousness of the Respondent's violations is severe and the resulting harm was also severe. He sent the seller's agent a contract for the property that contained a different sales price than the Claimant agreed to and never provided the Claimant with a copy of the contract. He took \$20,000.00 from the Claimant, agreed to repay him but only reimbursed him \$10,000.00. Finally, the Respondent fabricated stories to the investigator to cover up his misconduct and to blame another person for his fraud. The Claimant testified that as a result of his dealings with the Respondent, he has lost trust in people. I have weighed the loss of trust caused by the Respondent's fraudulent behavior heavily against the Respondent in upholding the Commission's request for a \$20,000.00 penalty.

In addition, the Respondent has demonstrated absolutely no good faith in his interactions with the Claimant, with another real estate professional, or with the Commission and the investigator. 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.

Guaranty Fund Claim

Claims for reimbursement from the Fund are governed by section 17-404 of the Business Occupations Article, which states, in pertinent 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:

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.

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 fraud. The Claimant gave the Respondent \$20,000.00 in cash towards the purchase of a property for which the Respondent was acting as the buyer's agent. The Respondent did not deposit the Claimant's monies in an escrow account. The Respondent clearly never intended to make the seller's agent aware of the fact that the Claimant had given him \$20,000.00 cash as an earnest money deposit because he scanned a copy of a check on his real estate brokerage account for only \$2,000.00. Further, despite the fact that the seller's agent informed the Respondent that the seller would move on and reject the

Claimant's offer if he did not receive bank statements by November 4, 2009, the Respondent did not communicate this information to the Claimant. Instead, on November 10, 2009, six days after the deadline set by the seller, the Respondent asked the Claimant to give him \$5,000.00 more in cash to make sure he got the property. Once the Claimant realized that the Respondent had not been truthful to him about the status of the property, he demanded the Respondent to return his money. The Respondent did not promptly remit the Claimant's monies and only agreed to work out a repayment arrangement when the Claimant told him he would go to the police. Although the Respondent told the Claimant that Ms. Ayanda would reimburse him for the \$20,000.00, only two of the four checks Ms. Ayanda gave to the Claimant on the Respondent's behalf had sufficient funds; the Claimant incurred an actual loss of \$10,000.00.

CONCLUSIONS OF LAW

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

1. The Respondent violated Business Occupations Article § 17-322(b)(3) by willfully making misrepresentations and knowingly making false promises;
2. The Respondents violated Business Occupations Article § 17-322(b)(14)(ii) and COMAR 09.11.02.01H by acting as the real estate broker and failing to provide the Claimant with the contract of sale;
3. The Respondent violated Business Occupations Article § 17-322(b)(22) by failing to account for or to promptly remit to the Claimant money that came into the Respondent's possession but belonged to the Claimant;
4. The Respondent violated Business Occupations Article § 17-322(b)(25) and COMAR 09.11.02.01C and 09.11.02.02A, by engaging in conduct that demonstrated bad faith, incompetency, untrustworthiness and that constituted

dishonest, fraudulent or improper dealings;

5. The Respondent violated Business Occupations Article § 17-322(b)(32) and (33) by failing to comply with all applicable laws and regulations;
6. The Respondent violated the provisions of the Code of Ethics set forth in COMAR 09.11.01.16, by failing to respond to the Commission's written inquiries;
7. The Respondent violated Business Occupations Article § 7-532(c)(1)(iv)-(vi), by failing to treat all parties honestly and fairly and by failing to answer all questions truthfully; by failing to timely account for all trust money received; and, by failing to exercise reasonable care and diligence;
8. The Respondent's license as a real estate broker should be revoked and he should be assessed a \$20,000.00 penalty; and,
9. The Fund should pay the Claimant his actual monetary loss, in the amount of \$10,000.00 for the misconduct of the Respondent.

RECOMMENDED ORDER

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

1. The Commission's charges against the Respondent, under Business Occupations Article and Professions Article §§17-322(b)(3), (14)(ii), (22), (25), (32) and (33) and 17-532(c)(1)(iv), (v) and (vi), as well as COMAR 09.11.01.16, COMAR 09.02.01C and H, and COMAR 09.11.02.02A, are **AFFIRMED**.
2. The Respondent's license is hereby **REVOKED**.
4. The Respondent shall pay to the Commission a monetary penalty of \$20,000.00.
5. The Fund shall pay the Claimant his actual monetary loss in the amount of \$ 10,000.00 for the Respondent's fraud, misrepresentation or deceit.

7. The Respondent shall be ineligible for an REC license until he pays his monetary penalty to the Commission and reimburses the Fund for the full amount of the award paid to the Claimants by the Fund, plus annual interest of at least ten percent; and
9. The Commission's records and publications shall reflect this final decision.

February 15, 2012
Date decision mailed

ACK/bs
130106

SIGNATURE ON FILE
Ann C. Kehinde
Administrative Law Judge