

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

V.

ROBERT BOSTICK
RESPONDENT

AND

CLAIM OF SONYA HULL
AGAINST THE MARYLAND
REAL ESTATE COMMISSION
GUARANTY FUND

* BEFORE A.J. NOVOTNY, JR.,
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-24-08-47336
* REC CASE NO: 2006-RE-082
*

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated December 16 2009, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of January, 2010,

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

1/20/2010
Date

By: Anne S. Cooke
Anne S. Cooke, Commissioner *Rjc*

MARYLAND REAL ESTATE	* BEFORE A. J. NOVOTNY, JR.,
COMMISSION	* AN ADMINISTRATIVE LAW JUDGE
v.	* OF THE MARYLAND OFFICE
ROBERT BOSTICK, RESPONDENT,	* OF ADMINISTRATIVE HEARINGS
AND	* OAH NO. : DLR-REC-24-08-47336
CLAIM OF SONYA HULL AGAINST	* MREC NO. : 2006-RE-082
THE MARYLAND REAL ESTATE	*
COMMISSION GUARANTY FUND	*

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On August 9, 2005, Sonya T. Hull (Claimant) filed a complaint with the Maryland Real Estate Commission (REC) and a claim against the REC Guaranty Fund (Fund). The claim was for losses allegedly caused by acts and omissions of a licensed real estate agent, Robert L. Bostick, T/A Investor’s Realty (Respondent).

On December 4, 2008, the REC filed a Statement of Charges and Order for Hearing against the Respondent, alleging violations of sections 17-322(b)(3), (25), (32), and (33), 17-530(b)(1) and (4), 17-532(c)(1)(iv) and (vi) of the Maryland Real Estate Brokers Act¹ (the Act) as well a

¹ Md. Code Ann., Bus. Occ. & Prof. §§ 17-101 through 17-702 (2004 & Supp. 2009).

violations of the REC Code of Ethics, Code of Maryland Regulations (COMAR) 09.11.02.01C and H, 09.11.02.02D. Md. Code Ann., Bus. Occ. & Prof. §§ 17-322, 17-530, and 17-532 (2004 & Supp. 2009).

I held a hearing on September 21, 2009, on the claim and charges, at the Office of Administrative Hearings (OAH), Hunt Valley, Maryland. Assistant Attorney General Jessica A. Kauffman represented the REC. The Claimant was represented by John Willis, Esquire. The Respondent represented himself. Peter Martin, Assistant Attorney General, represented the Fund. At the end of the evidence, I left the record open for seven days to allow the Respondent to submit a clear copy of the document identified as Resp. # 5. The copy was not submitted.

The case was heard pursuant to sections 17-324 and 17-408 of the Act. Procedure is governed by the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009); COMAR 09.01.03 and 28.02.01.

ISSUES

1. Did the Respondent violate the Act and/or the REC Code of Ethics, and if so, what is the appropriate sanction?
2. Did the Claimant sustain an actual loss as a result of misconduct by the Respondent, and if so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following documents offered on behalf of the REC:

REC Ex. # 1 - Notice of hearing, dated May 4, 2009

- REC Ex. # 2 - Transmittal from the REC to the OAH along with December 4, 2008 Statement of Charges and Order for Hearing
- REC Ex. # 3 - REC Registration History for Respondent
- REC Ex. # 4 - REC Report of Investigation closed February 6, 2008, by W. F. Reynolds, with attachments
- REC Ex. # 5 - Supplemental REC Report of Investigation closed August 13, 2008, by W. F. Reynolds, with attachments

I admitted the following documents offered on behalf of the Claimant:

- CLT Ex. # 1 – Notice of foreclosure, dated December 19, 2005
- CLT Ex. # 2 – Foreclosure Accounting Sheet, undated
- CLT Ex. # 3 – Deed of Sale by Substitute Trustees based upon sale January 3, 2006
- CLT Ex. # 4 – Deed of Sale, dated October 24, 2006

I admitted the following documents offered on behalf of the Respondent:

- RESP. Ex. #1 – Real Estate Sale Agreement, dated September 13, 2004
- RESP. Ex. #2 – Handwritten notes, dated September 9, 2004
- RESP. Ex. #3 – Letter of Agreement and Addendum, dated September 13, 2004
- RESP. Ex. #4 – Letter to Respondent, dated July 20, 2005
- RESP. Ex. #5 – Not Admitted (Illegible front and back of a check # 5046924581)
- RESP. Ex. #6 – Settlement Statement, dated October 1, 2004
- RESP. Ex. #7 – Property Listing, \$184,900.00, undated
- RESP. Ex. #8 – Property Listing, \$125,000.00, undated
- RESP. Ex. #9 – Discharge in Bankruptcy, dated February 3, 2005

Witnesses

The REC presented testimony from the Claimant; Buddy Steward, the Claimant's fiancée; and William F. Reynolds, the REC investigator. The Claimant did not present any additional testimony. The Respondent testified on his own behalf. The Fund did not present any witnesses.

FINDINGS OF FACT

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

1. At all times relevant to this case, the Respondent was a licensed real estate broker.
2. The Claimant was the owner of a house and lot located at 1532 Kirkwood Road in Gwynn Oak, Maryland (the Property).
3. The Property was subject to a mortgage held by Household Finance Company (Household).
4. The property was in need of some repairs and renovations.
5. In September 2004, the Claimant was considering the possibility of bankruptcy due to becoming disabled, and decided to sell the property. She desired a fast sale.
6. Based upon an advertisement in a local newspaper that "We Buy Houses," the Claimant contacted the Respondent.
7. The Claimant and Respondent first met at the Property on September 9, 2004, and again on September 13, 2004. Ultimately, the Respondent offered that "Win Win Enterprises" (Win Win), a Limited Liability Corporation, (LLC) would buy the Property and the Claimant would receive \$5,000.00 over the cost of the outstanding loan and expenses.
8. The Claimant and Respondent also agreed that \$700.00 would be deducted from the \$5,000.00 that she was to receive for the costs of repairs and renovations.

9. The Claimant and Respondent further agreed, although not in the form of a contract, that although the mortgage would remain in the Claimant's name for three months, the Respondent would pay off the mortgage held by Household.
10. The Respondent did not explain to the Claimant that because the mortgage would remain in her name, the sale of the Property was "subject to" that mortgage.
11. The sale of the Property from the Claimant to the 1532 Kirkwood Road Land Trust, an LLC, was on October 1, 2004. At settlement, the Claimant received \$3,048.61, an amount less than she expected because of a deduction for unpaid property taxes.
12. At settlement, the settlement sheet disclosed that from the contract sales price of \$119,300.00, there was deducted \$115,849.96 for the "Existing loan(s) taken subject to."
13. The mortgage held by Household was not paid from the settlement monies.
14. On December 21, 2004, the Respondent, via Win Win, one of his LLCs, rented the Property to a tenant, with the option to purchase.
15. The Respondent initially used a portion of the rent to pay Household for the Claimant's mortgage on the Property.
16. When the tenant stopped paying rent, the Respondent stopped paying the mortgage and the property ultimately went to foreclosure.
17. The Property was sold at foreclosure for \$125,000.00 on January 3, 2006.
18. At some point in the prior to settlement, the Respondent disclosed to the Claimant that he was the owner of Win Win. The Respondent also disclosed at some point that he was a real estate agent.
19. Win Win owned the 1532 Kirkwood Road Land Trust LLC, and the Respondent owns Win Win.

20. The Respondent did not disclose to the Claimant that he was acting as buyer's agent for Win Win and actually purchasing the Property for himself, through another LLC company that he owned, the "1532 Kirkwood Road Land Trust."

DISCUSSION

The Claimant explained that she wanted to sell the Property quickly because she had recently become disabled and was facing possible bankruptcy. She testified that she responded to an advertisement in a local newspaper and telephoned. The Respondent came to the Property and after a second visiting, offered to buy the property and told the Claimant she would receive \$5,000.00 over the mortgage owed. The Claimant testified that they agreed that the Respondent would pay the mortgage until the Property was resold. According to the Claimant, the Respondent estimated that it would be about three months. She testified that she had received nothing in writing and at the time of the contract, she did not know that the Respondent was a real estate agent acting for the buyer or that he owned Win Win. The Claimant explained further that she first learned someone other than Win Win was buying the Property at the settlement. The Claimant further testified that the Respondent never explained to her what a sale "subject to" the mortgage meant. Lastly, she explained that the Respondent made the mortgage payments for a while then stopped and the Property went into foreclosure.

I found the Claimant to be credible. Buddy Steward generally confirmed the Claimant's testimony beginning with the second meeting with the Respondent on September 13, 2004. I found him credible as to his recollection of his participation at the time.

William Reynolds, the REC investigator, was clear and concise and his report was accurate as he could be with the limited information that he could gather from the parties.

I did not find the Respondent credible. His testimony was evasive and simply too self serving. In essence, he testified that he did everything correctly, explained everything and acted reasonably, but the other evidence does not sustain his position. At times, the Respondent alternated his testimony from himself to Win Win to the 1532 Kirkwood Road Land Trust. Although he did not state it as so, the evidence is clear that the Respondent is all three identities interchangeably. The Respondent admitted that *he* began paying the mortgage at settlement (the sale was to the 1532 Kirkwood Road Land Trust), but then *he* could not continue paying the mortgage because the tenant in the Property (by a lease with Win Win) stopped paying the rent. The Respondent argued that he disclosed to the Claimant that he was a real estate agent and, as proof, noted that it was written on the sales contract. The Respondent admitted that he did not disclose his relationship with the 1532 Kirkwood Road Land Trust LLC.

The Regulatory Charges

The Act provides that the REC may deny a license, reprimand a licensee, or suspend or revoke the license if the licensee violated provision of the act. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b) (Supp. 2009).

The REC charged that the Respondent violated section 17-322(b)(3) of the Act by willfully making a false representation or making a false promise. Based on the evidence presented, it is clear that the Respondent made false misrepresentation/promises to the Claimant when he promised to pay the mortgage to Household, but did not and the property went into foreclosure. I conclude that the Respondent violated the Act. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(3) (Supp. 2009).

The REC charged that the Respondent violated section 17-322(b)(25) of the Act by engaging in conduct that demonstrates bad faith, incompetency, untrustworthiness or that

constitutes dishonest, fraudulent or improper dealings. I find that the Respondent engaged bad faith, untrustworthiness and improper dealings as evidenced by the entire scheme to buy the Property through his various LLCs, mislead the Claimant on the nature of the proceedings, and to attempt to hide his manipulations through multiple LLCs. The Respondent was clearly untrustworthy and dishonest when he failed to disclose his relationship as the actual buyer, his failure to continue to honor his promise to pay the mortgage, and his manipulation of the Claimant so that if things went amiss with the resale, the Claimant would bear the onus of a foreclosure. The Respondent's actions were in violation of the Act. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) (Supp. 2009).

The Act provides, at section 17-322 (b)(32) & (33), that the REC may take action against a licensee who violates any other provision of the Act or any regulation adopted under the Act. The REC's Code of Ethics is found at COMAR 09.11.02. The REC charged the Respondent with violations of various other provisions of the Act and of the regulations, which I will address separately.

The Act requires a licensee who participates in a residential real estate transaction to disclose in writing who the licensee represents and, in the case of acting as a buyer's agent, the Act reaffirms that general obligation. Md. Code Ann., Bus. Occ. & Prof. § 17-530(b)(1) & (4) (2004). The REC charged the Respondent with violating the Act by failure to disclose to the Claimant that he was the buyer's agent for one of his LLCs, but actually acting as the buyer's agent for himself, and hiding that position through his LLCs. The evidence is clear that the Respondent did not disclose his position to the Claimant in any manner, much less in writing as required, and as such, violated the Act. Md. Code Ann., Bus. Occ. & Prof. § 17-530(b)(1) & (4) (2004).

The Act places certain and specific duties upon a licensee to a client. Those duties are, among other things to treat all parties to the transaction honestly and fairly and to answer all questions truthfully, as well as to exercise reasonable care and diligence. Md. Code Ann., Bus. Occ. & Prof. § 17-532(c)(iv) & (vi) (Supp. 2009). Again, as noted above, the Respondent failed to disclose his true position as buyer's agent and buyer, he did not explain the transaction, especially the parts about the mortgage remaining with the Claimant, nor did he continue on his agreement to pay the mortgage, which led to the foreclosure and adverse affect on the Claimant's credit history. I conclude that the Respondent's actions violated the Act as charged. Md. Code Ann., Bus. Occ. & Prof. § 17-532(c)(iv) & (vi) (Supp. 2009).

Along with charges that the Respondent violated the Act, the REC charged the Respondent with violating the Code of Ethics. COMAR 09.11.02.01C provides that a licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. It further provides that a licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession.

In this case, it is overwhelmingly clear that the Respondent violated his duties. The Respondent's manipulations in the sale of the Property to himself through his undisclosed LLCs, his failure to explain the proceeding, such as the ramifications of a sale "subject to" a mortgage, and his failure to complete his obligations to pay the mortgage are clear examples of unethical practices and practices that could be damaging to the dignity and integrity of the real estate profession. The evidence is clear that the respondent took unethical advantage of a gullible, unknowledgeable person for his own gain. I find that the Respondent violated COMAR 09.11.02.01C, and as such violated the Act. Md. Code Ann., Bus. Occ. & Prof. §17-322(b)(33) (Supp. 2009).

The REC charged the Respondent with violating COMAR 09.11.02.01H, which requires:

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.

The evidence is clear that the Respondent did not provide copies of the financial obligations and commitments to the Claimant. The only written notation of the agreement that the Respondent would pay the Claimant's mortgage was in the form of handwritten notes taken by the Claimant at their meeting on September 13, 2004. Although there was nothing more in writing, the agreement was acknowledged by virtue of the Respondent actually paying the mortgage for several months after the sale on October 1, 2004.

I conclude that because the Respondent failed to express the exact agreement of the parties to the sale of the Property in writing, he violated COMAR 09.11.02.01H, and hence, violated the Act. Md. Code Ann., Bus. Occ. & Prof. §17-322(b)(33) (Supp. 2009).

Lastly, the REC charge the Respondent with Violating COMAR 09.11.02.02D(1), which provides:

The licensee may not acquire an interest in, or purchase, personally, for any member of the licensee's immediate family, for the licensee's firm, for any member of the firm, or for any entity in which the licensee has any ownership interest, property listed with the licensee or the licensee's firm without making the licensee's true position known to the listing owner. In selling or leasing property in which the licensee, the licensee's firm, or any member of the licensee's immediate family or the licensee's firm has an ownership interest, the licensee shall reveal that interest in writing to all parties to the transaction.

The Respondent never disclosed that Win Win owned the 1532 Kirkwood Road Land Trust LLC, or that he owns Win Win and that he, the Respondent, was buying the Property for himself, via his LLCs. The evidence is overwhelming that the Respondent

violated COMAR 09.11.02.02D(1), and hence violated the Act. Md. Code Ann., Bus. Occ. & Prof. §17-322(b)(33) (Supp. 2009).

Lastly, I note that in its Statement of Charges and Order for Hearing the REC alleged violation of the Act and improper deals relating to the rental of the property to a tenant subsequent to the sale on October 1, 2004. Although the record has references to information from the tenant which may or may not sustain some allegations, since the tenant has virtually disappeared, I do not find sufficient reliable evidence to sustain any allegation with regard to the Standard Real Estate Rental Agreement and Option to Purchase negotiated in December 2004.

The Appropriate Regulatory Sanction

Section 17-322(b) of the Act allows the REC to impose a reprimand or other disciplinary action for violations of statutory requirements. Md. Code Ann., Bus. Occ. & Prof. §17-322(b) (Supp. 2009). At the hearing, the REC asked that revocation be recommended, as well as \$10,000.00 in fines. The Respondent recommended a reprimand and possibly a ninety day suspension.

I conclude that the REC has amply shown the appropriateness of revocation. The Respondent's failure disclose his relationship to or as the buyer, his failure to explain and failure to reduce the agreements into writing, and his overall handling of the matter clearly demonstrates his willingness to ignore the Code of Ethics, as well as his bad faith, untrustworthiness, dishonesty, and disregard for effect on the integrity and dignity of the profession. As such, the Respondent's actions warrant the harshest sanction.

Section 17-322(c)(1) of the Act also allows the REC to impose a financial penalty, not exceeding \$5,000.00, for every violation of section 17-322. Md. Code Ann., Bus. Occ. & Prof. §17-322(c)(1) (Supp. 2009). Section 17-322(c)(2) directs me to consider the seriousness of the

violation, the harm caused by the violation, the good faith of the licensee, and any history of previous violations in determining the appropriate penalty. Md. Code Ann., Bus. Occ. & Prof. §17-322(c)(2) (Supp. 2009). At the hearing, the REC asked for an overall civil penalty of \$10,000.00

The violations were serious. They all relate to the Respondent failing to deal honestly, ethically and in good faith with the Claimant. The violations, if made known, could easily cause harm to the public and the real estate profession, because the Respondent's dishonesty as a licensee reflects poorly on the profession. The harm done to the Claimant is not strictly monetary: it includes the onus of having a foreclosure on her credit history. In weighing these factors, I conclude that the requested revocation should be granted. Although it was unspecified as to the particular violation, I conclude that the requested penalty of \$10,000.00 should be assessed and applied to each violation jointly and severally, applied concurrently for a total civil penalty of \$10,000.00.

Guaranty Fund Claim

The Claimant bears the burden of proof in her claim against the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e)(2004). The Claimant must show that the Respondent committed an act or omission, occurring in the provision of real estate brokerage services, (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. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(2004). Payment may only be made for the "actual monetary loss" suffered by the Claimant as a result of the claim. Md. Code Ann., Bus. Occ. & Prof. § 17-410(b)(1)(2004); *see also*, COMAR 09.11.01.18.

There was no evidence that the Respondent obtained any money or any property from the Claimant by theft, embezzlement, false pretenses, or forgery. To prove her claim, therefore, the Claimant must show that she suffered an actual monetary loss as a result of the Respondent's fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(2004).

The Claimant submitted, in essence, a liquidated claim for \$25,000.00. She admitted that she had no literal out of pocket loss, but lamented that there is a foreclosure on her record and that she could probably have sold the property at a later time if she fixed it up, for significantly more. The Claimant sought recovery for lost equity because, if she had held the Property, she may have been able to sell it for a higher price.

The Claimant did not prove eligibility for her claim of \$25,000.00 or any other amount. The evidence shows that the Claimant got what she bargained for by way of a selling price, less the unexpected subtraction of back taxes at settlement. The Claimant has presented nothing, aside from possibly seller's remorse, for agreeing to sell the property for \$5,000.00 more than she owed on it. The Claimant admitted that she wanted the Property sold as a quick sale. Moreover, the Claimant has not documented a higher fair market value for the Property at the time of sale, nor has she verified any improper inducement or duress on the part of the Respondent to sell for the contract price. The Claimant did not demonstrate a specific monetary loss that she suffered from the subsequent foreclosure. As such, I recommend that the claim against the Fund be denied.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law that the Respondent violated the Business Occupations and Professions Article, sections 17-322(b)(3),(25),(32) & (33); 17-530(b)(1) & (4); 17-532 (c)(iv) & (vi), as well as COMAR 09.11.02.01C & .01H; COMAR 09.11.02.02(1).

I further conclude that the Respondent is subject to his license being revoked and that he be subject to \$5,000.00 in civil penalties for the said violations of the Maryland Real Estate Brokers Act. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b) and (c)(1) (Supp. 2009).

Finally, I conclude that the Claimant is not entitled to payment from the Maryland Real Estate Commission Guaranty Fund. Md. Code Ann., Bus. Occ. & Prof. §§ 17-401 through 17-412 (2004).

RECOMMENDED ORDER

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

ORDER that the Respondent violated the Maryland Business Occupations and Professions Article, sections 17-322, 530 & 532, as well as COMAR 09.11.02.01C & .01H; COMAR 09.11.02.02(1);

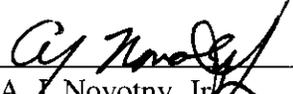
ORDER that the Respondent's Real Estate broker's License be revoked. Md. Code Ann., Bus. & Occ. Prof. § 17-322(c) (Supp. 2009);

ORDER that the Respondent be subject to \$10,000.00 in civil penalties. Md. Code Ann., Bus. & Occ. Prof. § 17-322(c)(1) (Supp. 2009);

And ORDER that the Claimant's Guaranty Fund claim against the Respondent be dismissed. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(2); 407(e), 410(b)(1) (2004); and

ORDER that the records and publications of the Real Estate Commission reflect the final decision.

December 16, 2009
Date Decision Mailed



A. J. Novotny, Jr.
Administrative Law Judge

DOC #110012