

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

RALPH WATKINS
Respondent

* **CASE NO. 2006-RE-131**

And

* **OAH NO. DLR-REC-24-08-17740**

CLAIM OF MICHELE A. DENNY
AGAINST THE MARYLAND REAL
ESTATE GUARANTY FUND

*
*
*

* * * * *

OPINION AND FINAL ORDER

This matter came before the Commission for argument on Exceptions filed by the Respondent, Ralph Watkins, to the Proposed Order of March 20, 2009. On February 20, 2009, Administrative Law Judge Thomas G. Welshko (“ALJ”) filed a Recommended Decision and Recommended Order in which he recommended that the Respondent pay a civil statutory penalty of \$3,000.00 and that the Claimant, Michele A. Denny, be reimbursed \$3,300.00 from the Maryland Real Estate Guaranty Fund to compensate her for actual losses that she sustained because of the conduct of the Respondent.

On March 20, 2009, the Maryland Real Estate Commission (“Commission”) issued a Proposed Order that affirmed the ALJ’s Findings of Fact; affirmed the ALJ’s Conclusions of Law and amended the Recommended Order. In amending the Recommended Order, the Commission ordered that in addition to the recommendations of the ALJ regarding the penalty imposed on the Respondent and the award to the Claimant from the Maryland Real Estate Guaranty Fund, all real estate licenses held by the Respondent, Ralph Watkins, be revoked and he be ineligible for a license in the future

until the civil penalty is paid and the Guaranty Fund is reimbursed. The Respondent filed Exceptions to the sanctions which were received by the Commission on April 14, 2009.

A hearing was held by a panel of Commissioners consisting of Commissioners J. Nicholas D'Ambrosia, Surina A. Jordan and Marla S. Johnson on June 17, 2009. The Respondent appeared at the hearing and waived his right to representation. The Claimant did not appear at the Exceptions hearing. Susan M. Cherry, Assistant Attorney General, represented the Commission. The proceedings were electronically recorded. A transcript of the hearing before the ALJ was not provided by the Respondent.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, four exhibits, including the file of the Office of Administrative Hearings, which included exhibits from the hearing before the ALJ, were entered into evidence.

FINDINGS OF FACT

The Commission adopts the Findings of Fact recommended by the ALJ.

CONCLUSIONS OF LAW

The Commission adopts the Conclusions of Law recommended by the ALJ.

DISCUSSION

The Claimant, Michele A. Denny, filed a complaint with the Maryland Real Estate Commission ("MREC") as well as a claim against the MREC Guaranty Fund ("Fund") seeking reimbursement of \$3,300 for actual losses suffered for the alleged misconduct of the Respondent related to the provision of real estate services. After an investigation of the Claimant's complaint, the MREC issued a Statement of Charges and Order for Hearing on April 14, 2008. A combined hearing to adjudicate the regulatory

charges and the claim against the Fund was held on January 7, 2009 at the Office of Administrative Hearings. Although properly notified of the hearing by first class and certified mail, the Respondent failed to appear. After making the determination that the Respondent had received appropriate notice of the hearing, the ALJ elected to proceed in the Respondent's absence under Section 17-324(f) of the Md. Business Occupations & Professions Article ("Md. Bus. Occ. & Prof. Art."), and Section 10-209 of the State Government Article, *Annotated Code of Maryland*.

During the summer and fall of 2005, the Respondent was a real estate salesperson for Century 21/Advantage Realty in Lanham, Maryland. FF2¹. In July, 2005, Tammy Fletcher (then known as Tammy Lee) sought the services of the Respondent as a buyer's agent to facilitate her purchase of real property in Prince George's County, Maryland and the Claimant engaged Jim Schaecher as her real estate agent to facilitate the sale of her condominium at 13400 Lord Dubore Place, Upper Marlboro, Maryland (the "Property"). FF3,4. On or about July 16, 2005, the Respondent submitted an offer to Mr. Schaecher on behalf of Ms. Fletcher. FF6. Ms. Fletcher submitted a check for \$3,000.00, made payable to "Century 21" as a good faith deposit in relation to her offer to purchase the Property. FF7. The Claimant accepted Ms. Fletcher's offer and both the Claimant and Ms. Fletcher signed the Contract of Sale ("Contract") on August 9, 2005 with a specified settlement date of August 31, 2005. FF8,9. Ms. Fletcher's good faith deposit check was returned by her bank as non-payable because of insufficient funds on or about August 24, 2005 and the office manager for Century 21 conveyed this information to Respondent. FF10. The Respondent never informed the Claimant or her agent that the good faith

deposit check has been returned for insufficient funds. FF10. Mr. Schaecher made numerous, unsuccessful phone calls to the Respondent as the settlement date approached and finally contacted the Century 21 office manager explaining his difficulty in reaching the Respondent. FF 11, 12. The Respondent then called Mr. Schaecher on August 30, 2005; told him that Ms. Fletcher was not cooperating with her lender; and requested that the August 31, 2005 settlement be postponed. FF 13. To demonstrate Ms. Fletcher's good faith, he offered to make the good faith deposit nonrefundable if settlement did not take place. He made this offer even though he knew that Ms. Fletcher's check had been returned for insufficient funds. On behalf of his client, Mr. Schaecher agreed to an extension of the settlement date based on the Respondent's offer. FF 13. A contract addendum to make the good faith deposit nonrefundable to the buyer in the event settlement did not take place was prepared by Mr. Schaecher, signed by the Claimant and sent by facsimile to the Respondent. FF 14. Settlement was rescheduled for September 12, 2005. FF 15. On September 2, 2005, Flagstar Bank notified Mr. Schaecher that Ms. Fletcher could not qualify for a mortgage loan due to her failure to submit requested documentation to the lender. FF 16. Ms. Fletcher contacted Mr. Schaecher some time between September 1 and September 5, 2005 and requested a recommendation for another mortgage lender. He recommended that she apply for a loan with Amerifund Mortgage. Between August 31, 2005 and September 13, 2005, Respondent called either Mr. Schaecher or Sherrie Choporis (who was monitoring developments while Mr. Schaecher was on vacation) and reported that everything was "going great" in regard to Ms. Fletcher's attempts to obtain a mortgage. FF. 18, 19. Ms. Fletcher could not obtain financing through Amerifund Mortgage and settlement again

¹ "FF" refers to the ALJ's Findings of Fact.

did not take place. FF 20. The Respondent's request to extend the settlement date a second time was denied by Mr. Schaecher and the Claimant because they had learned that Ms. Fletcher had failed to complete all of the necessary documents required to process her loan with Amerifund Mortgage and the Claimant declared the contract void as of September 13, 2005. FF 21, 22. The Claimant requested that the \$3,000.00 good faith deposit be released to her under the terms of the August 31, 2005 Contract Addendum by means of a letter that was sent by facsimile to the Respondent's real estate office on September 13, 2005. FF 22. A follow-up facsimile letter was sent to the Respondent's broker, Paul Nettleford, requesting the \$3,000.00 good faith deposit be remitted to the Claimant on September 21, 2005 but Mr. Schaecher did not receive a response. FF23. On October 3, 2005, Mr. Schaecher was informed during a telephone conversation with Century 21/Advantage Realty's office manager, Lori Trose, that Ms. Fletcher's check had been returned for insufficient funds. FF 24. On October 4, 2005, Mr. Schaecher sent a facsimile letter to Mr. Nettleford regarding the insufficient funds deposit check and Mr. Nettleford responded that neither he nor the Respondent has notified Mr. Schaecher or the Claimant because his office had assumed that the Contract had expired. FF 25. In order to facilitate the sale of the Property, the Claimant had to pay \$150.00 for documents from her condominium association and another \$150.00 to her home owners' association. Although she requested the Respondent to return those documents so she would not have to pay for duplicates, he did not return them. FF 26.

It is clear from the facts that the offer made by the Respondent to make the good faith deposit non-refundable if the Claimant agreed to extend the settlement date and settlement did not take place was spurious. When the offer was made, the Respondent

already knew that Ms. Fletcher's good faith deposit check had been returned for insufficient funds but did not communicate this information to Mr. Schaecher or the Claimant. Not realizing that there were no funds in escrow to disburse, Mr. Schaecher and the Claimant agreed to the extension of the settlement date, an agreement which was memorialized in a contract addendum.

When the sale of the Property did not occur on the second settlement date, Mr. Schaecher learned that there was no good faith money to disburse because the bank had returned Ms. Fletcher's check for insufficient funds prior to the signing of the contract addendum extending the settlement date. When the Claimant attempted to retrieve documents she had paid for and which were necessary for her to sell the Property from the Respondent, the Respondent failed to return them.

Based on the facts, the Commission concludes that Respondent did not make any attempts to have Ms. Fletcher's good faith deposit check cashed until late August, 2005, approximately one week before the first scheduled settlement date. The check came into his possession in mid-July, 2005. Thus, the Commission concludes that the Respondent violated Section 17-322(b)(22) of the Md. Bus. Occ. & Prof. Art. because he failed to promptly account for the \$3,000.00 check that came into his possession as a good faith deposit.

The Respondent also violated Section 17-322(b)(25) of the Md. Bus. Occ. & Prof. Art. by engaging in dishonest and bad faith dealings with Mr. Schaecher and the Claimant. Instead of advising the Claimant and her real estate agent that the good faith deposit had been returned for insufficient funds, the Respondent attempted to keep the

transaction moving by offering to make the non-existent deposit non-refundable if the settlement date was extended.

Further, the Respondent's conduct indicates that he was primarily concerned about his own interests and did not take into account the interests of all parties to the real estate transaction. Therefore, the Commission concludes that the Respondent violated Section 322(b)(33) of the Md. Bus. Occ. & Prof. Art. and Code of Maryland Regulations ("COMAR") 09.11.02.02A which requires that licensed real estate agents and brokers take into account the interests of all parties to a real estate sales transaction.

Finally, the Commission concludes that the Respondent violated Section 17-532(c)(iv)(v) and (vi) because he did not treat all parties to the transaction fairly; he answered questions dishonestly when he reported that everything was "going great" in regard to Ms. Fletcher obtaining a mortgage; he did not account for trust money in a timely manner; and he failed to exercise reasonable care and diligence. The reasons for this conclusion, with the exception of exercising reasonable care and diligence have already been discussed. The Commission notes the inability of Mr. Schaecher to contact the Respondent prior to the first scheduled settlement as an indication of the Respondent's inattentiveness to the transaction and of his failure to exercise "reasonable care and diligence".

In determining the amount of the penalty imposed, Section 17-322(c)(2) Md. Bus. Occ. & Prof. Art. cites the following factors to be considered:

1. the seriousness of the violation;
2. the harm caused by the violation;
3. the good faith of the licensee; and

4. any history of previous violations by the licensee.

The violations committed by the Respondent are serious. Evidence presented at the hearing before the ALJ disclosed that the Respondent knew that the prospective buyer's good faith deposit has been returned for insufficient funds but he did not reveal that information to the Claimant or her agent. Instead, the Respondent offered to make the deposit non-refundable as an incentive to having the seller extend the settlement date despite knowing that there were no funds in escrow to disburse to the buyer if the settlement did not occur.

The Respondent's actions also caused harm: The buyer lost the \$3,000.00 she expected to receive under the contract addendum and she had to place the Property on the market again. She incurred the expense of obtaining another set of homeowners' association and condominium association documents at a cost of \$300.00.

The Respondent has shown a lack of good faith. He engaged in a bogus transaction in regard to the good faith deposit which caused harm not only to the seller but also to the reputation of the real estate profession.

This was the first time charges have been filed against the Respondent by the MREC. Nonetheless, when a real estate salesperson engages in such egregious behavior as occurred in this case, an appropriate penalty must be imposed. In this instance, the Respondent's untrustworthy behavior indicates that he should not be permitted to engage in future deceitful activities which encourages distrust of the real estate profession by the public. Therefore, revocation of his license is the only appropriate sanction. In addition, due to the serious nature of the offense and the dishonesty attendant to it, a monetary penalty in the amount of \$750.00 is also appropriate for each violation, of Md. Bus. Occ.

& Prof. Art., i.e. a \$750.00 penalty for violation of Section 17-322(b)(22); a \$750.00 violation for violation of Section 17-322(b)(25); a \$750.00 penalty for violation of Section 17-322(b)(33) (including the violation of COMAR 09.11.02.02A); and a \$750.00 penalty for violation of Section 17-532(c). Thus the total civil penalty is \$3,000.00.

The Claimant has also made a claim against the Maryland Real Estate Commission Guaranty Fund which is governed by section 17-404 of the Md. Bus. Occ. & Prof. Art. and COMAR 09.11.03.04F. The Claimant has met the criteria for an award from the fund.

There is no dispute that the Respondent was a licensed real estate salesperson at the time of the incident in question (Section 17-404(a)(2)(i)(3)) nor that the transaction at issue involved real property located in Maryland (Section 17-404(a)(2)(ii)). Further, the acts of the Respondent involved false pretenses and misrepresentation in that he knew that the funds were not available but nonetheless made an offer to make the \$3,000.00 good faith deposit non-refundable in the event the transaction did not occur. Claimant's reliance on these false pretenses and misrepresentation caused the Claimant to lose the \$3,000.00 to which she should have been entitled when the settlement fell through. (Section 17-404(a)(2)(iii)(2) and COMAR 09.11.03.04). In addition, the Claimant sustained an additional loss when she was required to purchase a duplicate set of homeowners' association and condominium association documents, at a total cost of \$300.00 in order to accomplish a future sale of the Property when the Respondent did not return the original set of those documents to her. This expense also stemmed from the misrepresentation of the Respondent. Therefore, the Commission concludes that the Claimant should be reimbursed a total of \$3,300.00 from the Fund.

ORDER

It is this 10th day of July, 2009 **ORDERED** that:

1. The Respondent, Ralph Watkins, violated Md. Bus. Occ. and Prof. Art. Section 17-322(b)(22), (25), and (33); Section 17-532(c)(1)(iv), (v), and (vi); and COMAR 09.11.02.02A.
2. That all real estate licenses held by the Respondent, Ralph Watkins, are **REVOKED**;
3. That the Respondent, Ralph Watkins, be assessed a civil penalty in the amount of \$3,000.00, which shall be paid within thirty (30) days of the date of this Order;
4. That the claim of Michele A. Denny against the Maryland Real Estate Guaranty Fund in the amount of \$3,300.00 be **GRANTED**;
5. That the Respondent, Ralph Watkins, shall not be eligible to receive a real estate license in the future unless the civil penalty has been paid in full and the Guaranty Fund has been reimbursed;
6. That the records and publications of the Maryland Real Estate Commission reflect this decision.

MARYLAND REAL ESTATE COMMISSION

By: *Suzanne A. Jordan*
Chairman

NOTE: A judicial review of this Final Order may be sought in the Circuit Court of Maryland in which the Respondent resides or has his principal place of business, or in the Circuit Court for Baltimore City. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.



BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

RALPH WATKINS *
Respondent *

CASE NO. 2006-RE-131

And *

OAH NO. DLR-REC-24-08-17740

CLAIM OF MICHELE A. DENNY *
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 20, 2009, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of March, 2009

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 Ralph Watkins violated Md. Bus. Occ. and Prof. Art. § 17-322(b)(22), (25), and (33); § 17-532(c)(1)(iv), (v), and (vi); and COMAR 09.11.02.02A;

ORDERED that all real estate licenses held by the Respondent Ralph Watkins are **REVOKED**;

ORDERED that the Respondent Ralph Watkins be assessed a civil penalty in the amount of \$3,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that the claim of Michele A. Denny against the Maryland Real Estate Guaranty Fund in the amount of \$3,300 be **GRANTED**;

ORDERED that the Respondent Ralph Watkins shall not be eligible to receive a real estate license in the future unless the civil penalty has been paid in full and the Guaranty Fund has been reimbursed;

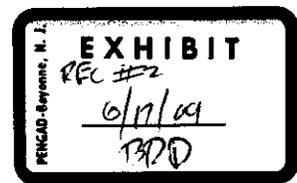
ORDERED that the records and publications of the Maryland Real Estate Commission reflect this decision.

D. Pursuant to §10-220 of the State Government Article, the Commission finds that the Recommended Decision of the Administrative Law Judge had to be modified to provide that all real estate licenses held by the Respondent Ralph Watkins be revoked. The Judge stated in the Discussion section of his Recommended Decision that "revocation is the only appropriate sanction." However, he did not include this sanction, or any

other action against Mr. Watson's real estate license, in the Recommended Order. The language in this Proposed Order corrects that error. The Judge in his Recommended Order also made a minor mistake in citing the statutory provisions that he found Mr. Watkins had violated. In his Conclusions of Law and his Discussion section, he lists § 17-532(c)(1)(iv), (v), and (vi). In the proposed order, he finds a violation of 17-532(c)(1)(iv), (v), and (v). The proposed order corrects this obvious error.

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.

Katherine A. Connelly, Exec. Dir.
for Commissioner *James W. Jordan*
Maryland Real Estate Commission



THE MARYLAND REAL ESTATE * BEFORE THOMAS G. WELSHKO,
COMMISSION * AN ADMINISTRATIVE LAW JUDGE
v. * OF THE MARYLAND OFFICE
RALPH WATKINS, SALESPERSON, * OF ADMINISTRATIVE HEARINGS
RESPONDENT * OAH NO.: DLR-REC-24-08-17740
AND THE CLAIM OF MICHELE A. * MREC NO.: 2006-RE-131
DENNY, *
CLAIMANT *
AGAINST THE MARYLAND *
REAL ESTATE COMMISSION *
GUARANTY FUND *
FOR ALLEGED VIOLATIONS OF *
RALPH WATKINS, SALESPERSON *
* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On October 12, 2005, Michele A. Jackson (now Michele A. Denny) (Claimant) filed a complaint with the Maryland Real Estate Commission (MREC) and, on that same date, a claim against the MREC Guaranty Fund (Fund) for reimbursement of \$3,300.00 for actual losses suffered as a result of alleged misconduct by the Respondent related to his

representation of Tammy Fletcher (Buyer) as a buyer's agent in a real estate sales transaction involving the Claimant as seller.

Based on its investigation of the Claimant's complaint, the REC issued a Statement of Charges and Order for Hearing (Statement of Charges) against the Respondent on April 14, 2008.

I held a combined hearing to adjudicate the regulatory charges and the Fund claim on January 7, 2009 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. §§ 17-324(a) and 17-408 (2004). Assistant Attorney General Jessica B. Kaufman represented the MREC. The Claimant was present and represented herself. Assistant Attorney General Hope Sachs represented the Fund.

The Respondent failed to appear. Ms. Kaufman offered documentation that showed that he had been properly served. On October 3, 2008, the OAH sent the notice of the hearing by first class and certified mail to the Lanham, Maryland address for the Respondent on file with the MREC. The notice advised the Respondent of the time, place and date of the hearing. The Postal Service returned a green return-receipt card to the OAH. It did not return the first class mailing. Since the OAH received documentation that the notice had reached the Respondent's last known address of record, I determined that the Respondent had appropriate notice of the hearing. Therefore, I directed that the case proceed in the Respondent's absence under section 17-324(f) of the Business Occupations Article and section 10-209 of the State Government Article.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2008); COMAR 09.01.03 and 28.02.01.

ISSUES

1. Did the Respondent fail to account for the buyer's good faith deposit that he ostensibly placed in escrow for the benefit of the Claimant/seller?
2. Did the Respondent engage in conduct that demonstrated bad faith, incompetency or untrustworthiness or that constituted dishonest, fraudulent or improper dealings?
3. Did the Respondent fail to represent the interests of the Claimant/seller in contravention of the Code of Ethics governing real estate brokers, assistant brokers and salespersons?
4. Did the Respondent fail to treat all parties in the real estate transaction at issue honestly and fairly or fail to answer all questions truthfully?
5. Did the Respondent fail to account for trust money that he received in a timely manner?
6. Did the Respondent fail to exercise reasonable care and diligence?
7. If the Respondent committed violations of the Maryland Real Estate Law, what is the appropriate sanction for his misconduct?
8. Did the Claimant sustain an actual loss compensable by Fund and, if so, what is the amount of that actual loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted five exhibits on behalf of the MREC and no other exhibits on behalf of the Claimant, Respondent, or the Fund. I have attached a complete Exhibit List as an Appendix to this decision.

Testimony

The Claimant, Jim Schaecher, selling agent, and Robert Oliver, Investigator with the MREC, testified for the MREC. The Claimant also testified on her own behalf.

FINDINGS OF FACT

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

1. At all times relevant, the Respondent held a valid real estate salesperson's license. The MREC issued that license to the Respondent on May 15, 2007, and it has a scheduled expiration date of April 22, 2011. (REC Ex. 3.)
2. In the summer and fall of 2005, the Respondent acted as a real estate salesperson for Century 21/Advantage Realty in Lanham, Maryland. Paul Nettleford was the broker of record for that firm. (Test. Oliver; REC Ex. 5, narrative.)
3. In July 2005, Tammy Fletcher (then known as Tammy Lee) sought the services of the Respondent as a buyer's agent to facilitate her prospective purchase of real property in Prince George's County, Maryland. (Test. Oliver; REC Ex. 5, narrative.)
4. In July 2005, the Claimant engaged Jim Schaecher as her real estate sales agent to assist her with the sale of her property, a condominium unit located at 13400 Lord Dunbore Place, Upper Marlboro, Maryland (the Property). Mr. Schaecher is an agent for Realty Executives of Annapolis. (Test. Cl.)

5. In July 2005, Tammy Fletcher's parents were renting the Property from the Claimant. (Test. Cl. and Oliver.)

6. On or about July 16, 2005, the Respondent submitted an offer to purchase the Property to Mr. Schaecher on behalf of Ms. Fletcher. The proposed purchase price was \$205,000.00. (Test Cl.)

7. At the time of her offer, Ms. Fletcher submitted a check for \$3,000.00, made payable to "Century 21" as a good faith deposit in relation to her proposed purchase of the Property. (Test. Cl. and Schaecher; REC Ex. 5-5.)

8. The Claimant accepted Ms. Fletcher's offer. She signed a Residential Contract of Sale (Contract) on August 9, 2005; Ms. Fletcher signed the Contract on August 11, 2005. (Test. Cl.; REC Ex. 5-4.)

9. The Contract specified that the settlement date for the Property was August 31, 2005. (REC Ex. 5-4.)

10. On or about August 24, 2005, Ms. Fletcher's bank returned Ms. Fletcher's good faith deposit check as non-payable because of insufficient funds. Contemporaneously with the check's return, Lori Trose, the office manager for Century 21/Advantage Realty, told the Respondent that Ms. Fletcher's check had bounced, but the Respondent never communicated this information to the Claimant or her agent. (Test. Schaecher and Oliver; REC Ex. 5-5.)

11. As the settlement date approached, Mr. Schaecher attempted to reach the Respondent by telephone, but was unsuccessful. He made about twenty calls to the Respondent in the days preceding settlement, which the Respondent never returned. (Test. Schaecher; REC Ex. 5, narrative.)

12. On August 30, 2005, the day before settlement, Mr. Schaecher reached Lori Trost and explained to her that he was having difficulty in making contact with the Respondent. The Respondent called Mr. Schaecher that evening and apologized for not returning his calls. (Test. Schaecher; REC Ex. 5, narrative.)

13. During their telephone conversation on the evening of August 30, 2005, the Respondent told Mr. Schaecher that Ms. Fletcher was not cooperating with her lender, Flagstar Bank. He asked that the August 31, 2005 settlement be postponed, and, to demonstrate Ms. Fletcher's good faith, he offered to make the good faith deposit nonrefundable if settlement did not take place. He made this offer, even though he knew that Ms. Fletcher's check had bounced. Mr. Schaecher, on behalf of the Claimant, agreed to the settlement date extension under these conditions. (Test. Schaecher; REC Ex. 5, narrative.)

14. Mr. Schaecher prepared a contract addendum to make the good faith deposit nonrefundable to the buyer in the event that settlement did not take place. He had the Claimant sign it and then sent it by facsimile to the Respondent. (REC Ex. 5, narrative and REC Ex. 5-7.)

15. The parties rescheduled settlement for September 12, 2005. (Test. Cl. and Schaecher; REC Ex. 5-8.)

16. On September 2, 2005, Joelann T. McCracken of Flagstar Bank sent an e-mail to Mr. Schaecher in which she indicated that Ms. Fletcher could not qualify for a mortgage loan because of her failure to submit all documentation requested by the lender. (Test. Schaecher; REC Ex. 5-8.)

17. Some time between September 1 and September 5, 2005, Ms. Fletcher called Mr. Schaecher. She told Mr. Schaecher that she was frustrated with the Respondent and Flagstar Bank and wanted Mr. Schaecher to recommend a mortgage lender to her. Mr. Schaecher recommended that Ms. Fletcher apply for a loan with Amerifund Mortgage. (Test. Schaecher; REC Ex. 5, narrative.)

18. During the next several days, Mr. Schaecher was on vacation; Sherrie Choporis monitored developments related to the prospective sale of the Property while Mr. Schaecher was away from his office. (Test. Oliver; REC Ex. 5, narrative.)

19. Between August 31, 2005 and September 13, 2005, the Respondent called either Mr. Schaecher or Ms. Choporis and reported everything was "going great" with regard to Ms. Fletcher obtaining her mortgage loan. (REC Ex. 5, narrative.)

20. Because Ms. Fletcher could not obtain financing through Amerifund Mortgage, settlement once again did not take place on the appointed date. (Test. Cl., Schaecher and Oliver; REC Ex. 5, narrative.)

21. On September 13, 2005, the Respondent called Ms. Choporis and asked to have the settlement date extended a second time. Mr. Schaecher and the Claimant refused to extend the settlement date again because they learned from Amerifund Mortgage that Ms. Fletcher had failed to complete all necessary documents required to process her loan. (Test. Schaecher and Cl.; REC Ex. 5, narrative.)

22. The Claimant declared the Contract void as of September 13, 2005 and requested that the \$3,000.00 good faith deposit be released to her under the terms of the August 31, 2005 Contract Addendum. The Claimant made this request by means of a

facsimile letter that Sherrie Choporis sent to the Respondent's real estate office on September 13, 2005. (Test. Cl.; REC Ex. 5, narrative and REC Ex. 5-9.)

23. On September 21, 2005, Mr. Schaecher sent a follow-up facsimile letter to the Respondent's broker, Paul Nettleford, in which he asked for the \$3,000.00 good faith deposit to be remitted to the Claimant. Mr. Schaecher received no response from Mr. Nettleford. (REC Ex. 5, narrative and REC Ex. 5-10.)

24. On October 3, 2005, Mr. Schaecher spoke by telephone to Century 21/Advantage Realty office manager Lori Trose. Ms. Trose informed Mr. Schaecher that Ms. Fletcher's check had been returned for insufficient funds. (Test. Schaecher and Oliver, REC Ex. 5, narrative)

25. On October 4, 2005, Mr. Schaecher sent a facsimile letter to Paul Nettleford related to the insufficient funds deposit check. Mr. Nettleford responded that neither he nor the Respondent notified Mr. Schaecher or the Claimant because his office had assumed the Contract had expired. (Test. Schaecher; REC Ex. 5-11)

26. To facilitate the sale of her condominium, the Claimant had to pay \$150.00 for documents from her condominium association and another \$150.00 to her home owners' association. She asked the Respondent to return those documents so she would not have to pay for duplicates when she ultimately found a new buyer. The Respondent did not return those documents to the Claimant. (Test. Cl.)

27. On October 12, 2005, the Claimant filed a complaint against the Respondent with the MREC and a claim for reimbursement of \$3,300.00 with the MREC Guaranty Fund. (Test. Cl.; REC Ex. 2)

DISCUSSION

Upon the foregoing Findings of Fact, I find by a preponderance of the evidence that the MREC has proven the charges it issued against the Respondent. I further find that the Claimant has shown that she is entitled to recover actual losses from the Fund. I have set out the reasons for my conclusions in detail below.

I. Regulatory Charges.

The MREC charged the Respondent with violations of the statutory and regulatory sections governing licensed real estate brokers and agents. The sections of the law that the Respondent allegedly violated are set out below:

§ 17-322. Denials, reprimands, suspensions, revocations, and penalties - Grounds.

(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:

(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;

(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)(22), (25), and (33) (Supp. 2008).

§ 17-532. Denials, reprimands, suspensions, revocations, and penalties - Grounds.

(c)(1) A licensee shall:

(iv) treat all parties to the transaction honestly and fairly and answer all questions truthfully;

- (v) in a timely manner account for all trust money received;
- (vi) exercise reasonable care and diligence; . . .

Md. Code Ann., Bus. Occ. & Prof. § 17-532(c)(1) (Supp. 2008).

COMAR 09.11.02.02A (Code of Ethics) states:

.02 Relations to the Client.

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 REC, as the moving party, has the burden of proof by a preponderance of the evidence to demonstrate that the Respondent violated the statutory and regulatory sections at issue. Section 10-217 of the Maryland State Government Article; *Commissioner of Labor and Industry v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) citing *Bernstein v. Real Estate Comm'n*, 221 Md. 221, 231 (1959).

The facts of this case are both straightforward and undisputed. In the summer of 2005, the Claimant engaged Jim Schaecher as her agent to assist her in the sale of the Property, a condominium unit located at 13400 Lord Dunbore Place, Upper Marlboro, Maryland. On or about July 16, 2005, the Respondent, on behalf of his client, Tammy Fletcher, submitted a contract to Mr. Schaecher to buy the Property. The Claimant also provided a check for \$3,000.00 as a good faith deposit (also known as an earnest money deposit or EMD) with the Contract. She made the check payable to her real estate broker, "Century 21," and it was assured that Century 21/Advantage Realty, the Respondent's brokerage, would hold those funds in its escrow account until the parties completed the sale.

Ms. Fletcher, however, was dilatory in obtaining financing to purchase the Property. She did not complete the necessary paperwork to secure a mortgage loan from her first prospective lender, Flagstar Bank, and did not provide adequate documentation to her second prospective lender, Amerifund Mortgage. This resulted, first, in the Respondent's request for an extension of the first scheduled settlement date, August 31, 2005, to September 12, 2005. Ultimately, Ms. Fletcher did not obtain financing, so she was unable to complete the purchase. Moreover, on August 24, 2005, her bank returned her EMD check for insufficient funds. Given that the Respondent's office manager learned that Ms. Fletcher's check had bounced as of that date, I conclude that the Respondent also was aware of her check's status either as early as August 24, 2005, but no later than August 30, 2005.

On the evening of August 30, 2005, after many futile attempts to reach the Respondent over the prior two weeks, Mr. Schaecher finally reached the Respondent by telephone and spoke with him regarding the sale of the Property, which was supposed to take place the next day. The Respondent advised Mr. Schaecher about Ms. Fletcher's problems in obtaining financing. It was during this call that he requested an extension of the settlement date. As an incentive to convince Mr. Schaecher and the Claimant to agree to extend the settlement date, the Respondent offered to make the EMD nonrefundable to the buyer should the settlement not occur.

The offer made by the Respondent was a knowingly bogus; the Respondent already knew that Ms. Fletcher's EMD check had bounced when he made the offer and did not communicate this information to Mr. Schaecher or the Claimant. Not realizing there were actually no funds in escrow to disburse to the Claimant if the transaction failed,

Mr. Schaecher and the Claimant agreed to the settlement date extension. Mr. Schaecher drafted an addendum to the Contract extending the settlement date and declaring the EMD nonrefundable. Both parties ultimately signed the addendum.

When the sale of the Property to Ms. Fletcher ultimately did fail, the Claimant demanded that the Respondent release the deposit money to her. Facsimile letters sent to the Respondent's real estate office in this regard on September 13 and September 21, 2005 went unanswered. Finally, on October 3, 2005, Mr. Schaecher learned from the Respondent's office manager that there was no deposit money available to disburse because Ms. Fletcher's bank had returned her check for insufficient funds. Additionally, when the Claimant attempted to retrieve documents she had paid for that were necessary for her to sell her property to another buyer, the Respondent failed to return them.

Based on these facts, I conclude that the Respondent violated section 17-322(b)(22) of the Business Occupations Article because he failed to promptly account for the \$3,000.00 check that came into his possession in July 2005. The evidence suggests that the Respondent did not make any attempt to have Ms. Fletcher's EMD check cashed until only a week before the original settlement date. Had he attempted to cash that check sooner, he might have realized that Ms. Fletcher was not an ideal candidate to go forward with a home purchase and could have withdrawn her offer, minimizing any harm to the Claimant.

I conclude that the Respondent violated section 17-322(b)(25) of the Business Occupations Article by engaging in dishonest and bad faith dealings with the Claimant and her real estate agent. As noted, when he learned that Ms. Fletcher's EMD

check had bounced about a week before settlement, he did not notify the Claimant's agent or the Claimant. Instead, he dissembled in an attempt to keep this doomed transaction going. To emphasize, it was *the Respondent* who suggested to Mr. Schaecher that the EMD deposit be made nonrefundable to the buyer so that it was available to pay to the Claimant/seller in the event that the transaction did not take place, when he knew there was no deposit money to pay in that eventuality.

I further conclude that the Respondent violated section 17-322(b)(33) of the Business Occupations Article by violating COMAR 09.11.02.02A, which demands that licensed real estate agents and brokers take into account the interests of all parties to a real estate sales transaction. The Respondent's conduct indicates that he was primarily concerned with his own interests and did not care about the consequences of his actions as they related to the other parties.

Finally, I conclude that the Respondent violated section 17-532(c)(iv), (v) and (vi) because he did not treat all parties to this transaction fairly, answered questions dishonestly, did not account for trust money in a timely manner and failed to exercise reasonable care and diligence. I have discussed the reasons for my conclusions with respect to the other violations and need not repeat them here as they relate to section 17-532(c). Nevertheless, with particular regard to "reasonable care and diligence," I note that Mr. Schaecher's inability to reach the Respondent during the immediate two weeks prior to the first scheduled settlement date of August 31, 2005 specifically demonstrates the Respondent's inattentiveness to what was occurring (or not occurring) with this prospective real estate sales transaction.

II. Penalties.

Section 17-322(c) of the Business Occupations Article provides that a licensee may be reprimanded or have his/her Real Estate Agent's, Associate Broker's or Broker's license suspended or revoked for violations of the Maryland Real Estate law. Section 17-322(c)(1) provides that instead of or in addition to reprimanding a licensee or suspending or revoking a Real Estate license, the MREC may impose a civil penalty not to exceed \$5,000.00. Section 17-322(c)(2) lists the factors that must be considered in imposing a civil penalty:

(2) To determine the amount of the penalty imposed, the Commission shall consider:

- (i) the seriousness of the violation;
- (ii) the harm caused by the violation;
- (iii) the good faith of the licensee; and
- (iv) any history of previous violations by the licensee.

The violations that the Respondent committed are serious. The evidence presented by the MREC specifically shows that he knew the prospective buyer's deposit check had bounced at least as early as August 24, 2005, but no later than August 30, 2005. Yet, with this knowledge, he insisted on making the deposit nonrefundable to the buyer as an incentive for the seller to continue with the home purchase. Consequently, the Respondent offered this incentive under false pretenses. The harm caused by the violation was two-fold: first, the buyer lost the \$3,000.00 she thought she was entitled to under the contract addendum and second, she had to put her condominium on the market again after the aborted sale. She sold it at a price less than the \$205,000.00 offered by Ms. Fletcher and had to incur the expenses of obtaining new home owners' association

and condominium owners' association documents. The Respondent has not shown any good faith. He not only engaged in a bogus transaction, but he also failed to appear for this hearing to answer the MREC's charges. The Respondent has had no previous violations.

Despite this being the Respondent's first instance of having charges filed against him, the MREC, nevertheless, asked that his license be revoked and that he pay a civil penalty totaling \$3,000.00. I agree. The Respondent's activities here strongly suggest he is untrustworthy. When a licensed real estate agent so egregiously betrays the trust of the parties, even in a single transaction, as is the case here, he encourages distrust of all real estate agents by the public, which diminishes the trust placed in the real estate sales profession as a whole. Simply stated, the MREC should not permit the Respondent to engage in future deceitful activities with the imprimatur of a license. Thus, revocation is the only appropriate sanction. Moreover, it is also proper for the MREC to seek a monetary penalty based on the Respondent's egregious violations. Therefore, I recommend a \$750.00 penalty for his violation of section 17-322(b)(22), a \$750.00 penalty for his violation of section 17-322(b)(25), a \$750.00 penalty for his violation of section 17-322(b)(33) (which includes COMAR 09.11.02.02A) and a \$750.00 penalty for his violation of section 17-532 as a whole for a total civil penalty of \$3,000.00 (\$750.00 x 4).

Guaranty Fund

Claims for reimbursement from the Fund are governed by section 17-404 of the Maryland Business Occupations Article and COMAR 09.11.03.04F, which state as follows:

§ 17-404. Claims against the Guaranty Fund.

(a) *In General.* -- (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;
2. a licensed associate real estate broker;
3. a licensed real estate salesperson; or
4. an unlicensed employee of 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.

Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2004).

COMAR 09.11.03.04 Claims Against the Guaranty Fund.

...

F. Misconduct.

(1) A Guaranty Fund claim shall be based on alleged misconduct of a licensee.

(2) Misconduct for the purpose of a Guaranty Fund claim shall be 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 performed by an unlicensed employee of a real estate broker or by a duly licensed real estate broker or salesperson for which that license is required by Business Occupations Article, Title 17, Annotated Code of Maryland.

G. Parties to the proceeding shall include the claimant or claimants, and the licensees alleged to be responsible for the harm stated in the claim. . .

It is undisputed that the Respondent is licensed real estate sales person (section 17-404(a)(2)(i)(3)), and that the transaction at issue involved real property in Prince George's County, Maryland (section 17-404(a)(2)(ii)). Additionally, I conclude that the Respondent committed acts involving misrepresentation and false pretense, which caused the Claimant to lose the benefit of the bargain she made with the buyer—that is, to retain the buyer's \$3,000.00 deposit should the transaction fall through (section 17-404(a)(2)(iii)2. and COMAR 09.11.03.04F(2)). As I described in detail above, it was the *Respondent* who suggested that the buyer's deposit be made nonrefundable, even though in all probability he knew five days earlier that the buyer's bank had returned the buyer's deposit check for insufficient funds. Clearly, at the very least, the Respondent engaged in acts of false pretense or artifice.

The Claimant asserted, however, that she sustained an additional loss. Because the property she was selling was a condominium, she had to pay \$150.00 for documents from her condominium association and another \$150.00 to her home owners' association to clear the way for her condominium unit to be sold. She asked the Respondent to return those documents so she would not have to pay for duplicates when she ultimately sold the property. The Respondent never returned those documents, so she was required to obtain new documents at the same cost. Inasmuch as this expense also stemmed from

the same misdeeds of the Respondent, I conclude that this \$300.00 expense is also part of the Claimant's actual loss.

Therefore, I recommend that the Fund reimburse the Claimant \$3,300.00, based on the Respondent's misconduct.

CONCLUSIONS OF LAW

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

1. The Respondent violated section 17-322(b)(22) of the Business Occupations Article by failing to promptly account for the \$3,000.00 check that came into his possession in July 2005.

2. The Respondent violated section 17-322(b)(25) of the Business Occupations Article by engaging in conduct that demonstrated both bad faith and untrustworthiness and also by engaging in conduct that constituted improper dealings.

3. The Respondent violated section 17-322(b)(33) of the Business Occupations Article and COMAR 09.11.02.02A by failing to abide by the Code of Ethics governing Real Estate agents and brokers by engaging in fraud, misrepresentation or unethical practices in the real estate field and by failing to promote the interests of both his client, the buyer, and the Claimant, the seller.

4. The Respondent violated section 17-532(c)(iv), (v) and (vi) of the Business Occupations Article because he did not treat all parties to the transaction at issue fairly, answered questions dishonestly, did not account for trust money in a timely manner and failed to exercise reasonable care and diligence.

5. The Respondent is subject to sanction based on his violations of the Real Estate law pursuant to Business Occupations Article section 17-322(c)(2).

6. The Claimant sustained an actual loss compensable by the Fund based on the Respondent's use of false pretense and artifice as an incentive to have the Claimant continue with the transaction at issue. Business Occupations Article section 17-404 and COMAR 09.11.03.04F and G.

RECOMMENDED ORDER

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

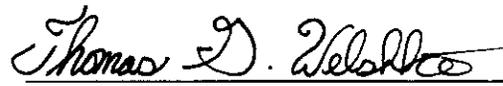
ORDER, that the Respondent violated sections 17-322(b)(22), (25), and (33) and 17-532(c)(1)(iv), (v) and (v) of the Business Occupations Article and COMAR 09.11.02.02A, and be it further,

ORDERED, that the Respondent pay a civil statutory penalty to the Maryland Real Estate Commission in the amount of \$3,000.00; and be it further,

ORDERED, that the Claimant be reimbursed \$3,300.00 from the Maryland Real Estate Guaranty Fund to compensate him for actual losses that she sustained because of the conduct of the Respondent, and be it further,

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

February 20, 2009
Date Decision Mailed


Thomas G. Welshko
Administrative Law Judge

#102053

THE MARYLAND REAL ESTATE	*	BEFORE THOMAS G. WELSHKO,
COMMISSION	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE
RALPH WATKINS, SALESPERSON,	*	OF ADMINISTRATIVE HEARINGS
RESPONDENT	*	OAH NO.: DLR-REC-24-08-17740
AND THE CLAIM OF MICHELE A.	*	MREC NO.: 2006-RE-131
DENNY,	*	
CLAIMANT	*	
AGAINST THE MARYLAND	*	
REAL ESTATE COMMISSION	*	
GUARANTY FUND	*	
FOR ALLEGED VIOLATIONS OF	*	
RALPH WATKINS, SALESPERSON	*	
* * * * *	*	

FILE EXHIBIT LIST

MREC's Exhibits:

1. October 3, 2008 Notice of Hearing
2. April 14, 2008 Statement of Charges and Order for Hearing
3. December 1, 2008 Licensing Record for the Respondent
4. April 24, 2007 Request for Investigation
5. August 21, 2007 Investigation Report of MREC Investigator Robert Oliver, which includes a narrative and the following attachments:

- (1) October 12, 2005 Complaint and Guaranty Fund Claim Form
- (2) November 8, 2005 Statement of Jim Schaecher, Broker, Realty Executives of Annapolis
- (3) February 1, 2006 Statement of Paul A. Nettleford, Broker, Century 21 Advantage Realty
- (4) August 9, 2005 Contract of Sale and August 11, 2005 Contract of Sale Addendum
- (5) Copy of Buyer's July 16, 2005 Deposit Check
- (6) August 9, 2005 General Addendum
- (7) August 31, 2005 Addendum to Contract
- (8) Facsimile letter from Flagstar Mortgage to Jim Schaecher, which notified Mt. Schaecher that the property did not go to settlement on August 31, 2005 due to the lack of information to process the Claimant's mortgage loan application
- (9) Claimant's September 13, 2005 request to the buyer, sent care of the Respondent, for the release of the buyer's \$3,000.00 deposit check because the property did not go to settlement on September 12, 2005
- (10) September 21, 2005 and October 4, 2005 letters from Jim Schaecher to Paul E. Nettleford regarding the lack of response to the Claimant's letter requesting payment of the buyer's deposit
- (11) October 4, 2005 letter from Paul E. Nettleford to John Harrison and Jim Schaecher related to the buyer's failure to pay the Respondent the amount of her deposit
- (12) October 28, 2005 letter from the Respondent to Paul E. Nettleford combined with Mr. Nettleford's October 17, 2005 letter to the Claimant

Claimant, Respondent and Fund's Exhibits:

The Claimant, Respondent and Fund did not submit additional exhibits as they relied on exhibits that the MREC used in its case.