

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE * BEFORE NANCY E. PAIGE,
COMMISSION * ADMINISTRATIVE LAW JUDGE
V. * OF THE MARYLAND OFFICE OF
DANIELLE SMITH * ADMINISTRATIVE HEARINGS
RESPONDENT * OAH No: DLR-REC-21-09-35406
* REC CASE NO: 2007-RE-664

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated October 15, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 8th day of December, 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

Date 12/8/10

By: 

(COMMISSIONER'S SIGNATURE APPEARS ON ORIGINAL ORDER)



MARYLAND REAL ESTATE

* BEFORE NANCY E. PAIGE,

COMMISSION

* AN ADMINISTRATIVE LAW JUDGE

v.

* OF THE MARYLAND OFFICE

DANIELLE SMITH,

* OF ADMINISTRATIVE HEARINGS

RESPONDENT

* OAH Case No.: DLR-REC-21-09-35406

* MREC Case No.: 2007-RE-664

* * * * *

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 May 15, 2007, Abolaji Ijaola Adu¹ (Complainant) filed a complaint with the Maryland Real Estate Commission (REC) concerning Danielle Smith (Respondent), a licensed real estate salesperson. On September 14, 2009, the REC filed regulatory charges against the Respondent.

On August 25, 2010, I conducted a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010). Kris King, Assistant Attorney General, represented the REC. The Respondent did not appear.²

¹ There are various spellings of the Complainant's name in the file. This is the spelling used on documents prepared or signed by the Complainant.

² By letter dated June 17, 2010, the Respondent informed the OAH that she no longer resided in Maryland and was therefore unable to attend the hearing. She did not request a postponement or telephonic hearing, but asked that the hearing proceed in her absence. She suggested that a reprimand was the appropriate discipline for the alleged infractions.

The Administrative Procedure Act, the REC Hearing Regulations and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

ISSUES

1. Did the Respondent violate section 17-322(b)(14) of the Business Occupations & Professions Article by failing to provide each party to a transaction with a copy of the listing contract?
2. Did the Respondent violate section 17-322(b)(33) of the Business Occupations & Professions Article by violating a regulation adopted under Title 17 of the Business Occupations & Professions Article?
3. Did the Respondent violate COMAR 09.11.01.12 by failing to enter into a written listing contract with the seller and failing to provide a copy of such a contract to the seller before advertising, showing or listing the property?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the REC:

- REC Ex.1 - Notice of Hearing, dated May 25, 2010, for July 30, 2010, with signed certified mail receipt
- REC Ex.2 - June 22, 2010 letter from OAH to Respondent
- REC Ex. 3 - June 17, 2010 letter from Respondent to OAH
- REC Ex. 4 - September 14, 2010 Statement of Charges and Order for Hearing
- REC Ex. 5 - Respondent's licensing history with the REC
- REC Ex. 6 - Full Listing, 7715 Greymont Street, Hyattsville, Maryland
- REC Ex. 7 - December 30, 2008 Report of Investigation, with the following attachments:

1. May 15, 2007 Complaint and Guaranty Fund Claim, with attachments
2. June 6, 2007 email from Respondent to "samigjoka"
3. June 8, 2007 letter from William Whittman to REC
4. February 11, 2006 Buyer's Broker Agreement
5. March 5, 2007 Residential Contract of Sale
6. March 8, 2007 Check Image – Front and Back
7. March 5, 2007 Addendum to Sales Agreement
8. March 12, 2007 Addendum to Sales Agreement
9. Affidavit of Grantee(s) as First-Time Maryland Homebuyer(s)
10. Settlement Statement
11. March 27, 2007 Agreement of Release

The Complainant did not offer any exhibits.

Testimony

The REC presented the testimony of the Complainant and Robert Oliver, a REC investigator.

FINDINGS OF FACT

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

1. The Respondent was a licensed real estate salesperson under registration number 05-528291 at all relevant times.
2. The Respondent listed the property known as 7715 Greymont Street, Hyattsville, Maryland for sale with Maryland Regional Information Systems, Inc. (MRIS). The listing identifies her as listing agent and states that her broker is Long & Foster Real Estate, Inc., in Mitchellville, Maryland.

3. The Respondent did not have a written listing agreement with the owner of the property. She was not affiliated with Long & Foster Real Estate.
4. The Complainant entered into a contract of sale with the owner of the property. The contract identifies the Respondent as a sales associate of Long & Foster Real Estate and identifies Long & Foster as listing broker. Long & Foster was not involved in the transaction.
5. The Respondent participated on behalf of the seller in the negotiation of the contract.
6. Neither the seller nor the Respondent appeared for settlement at the designated time. The Complainant terminated the contract subsequently and secured the return of her deposit.

DISCUSSION

The Complainant in this case was the contract purchaser of residential property. The seller was represented in the transaction by the Respondent. The sale did not close, and after cancelling the contract, the Complainant filed a Complaint and Guaranty Fund Claim with the REC.³

REC'S Statement of Charges

The REC charged the Respondent with violating sections 17-322(b)(14) and (33) of the Business Occupations and Professions Article (the Article), as well as COMAR 09.11.01.12. Section 17-322 of the Article authorizes the REC to reprimand a licensee, or suspend or revoke a licensee's license for violation of any of the listed subsections. In addition to or in lieu of a reprimand, suspension, or revocation, the REC may impose a penalty not exceeding \$5,000.00 for each violation of section 17-322.

³ Only regulatory charges were forwarded to the OAH for hearing. No evidence respecting the Guaranty Fund Claim was proffered.

Section 17-322(b)(14) requires a licensee to furnish to each party to a transaction in which he or she has acted as or on behalf of a real estate broker, a copy of the listing contract to sell real property. Such a contract is required to be in writing and signed before the licensee advertises, shows or offers the property. COMAR 09.11.01.12. It is undisputed that the Respondent had no listing contract with the owner of the property in question. She told the REC investigator that the sale was an owner's sale and that she was just the listing agent, but that when the seller was unable to deal effectively with the Complainant's agent, she intervened. Whatever the reason, it is clear that the Respondent participated in the negotiation of the contract, and that she listed the property with MRIS, identifying herself as the listing agent, and identifying Long & Foster, Inc., as the broker. She therefore violated both the cited statute and the regulation.

Section 17-322 (b)(33) permits the REC to discipline a licensee for violation of any regulation adopted under Title 17. Since the Respondent violated the regulation requiring written listing contracts, she also violated this sub-section.

It is also clear that the Respondent was not affiliated with Long & Foster at the time of the transaction in issue. She told the REC investigator that she had informed the Complainant's agent that she was in the process of transferring from Fairfax Realty, Inc., and had contacted Long & Foster, where she had worked previously, about the possibility of returning. In the interim, however, she received a better offer and never went to Long & Foster. A representative of Long & Foster confirmed the substance of these conversations to the REC investigator.

The Respondent told the investigator that the contract of sale was prepared by the Complainant's agent. It identified Long & Foster Real Estate as the listing broker and the Respondent as sales associate, "acting as listing broker and seller agent." She said she advised

the Complainant's agent that she was not yet working for Long & Foster, but the agent said it was "not important," and the contract was never corrected.

The Complainant testified that she and her agent went to the title company for settlement at the appointed time. Neither the seller nor the Respondent appeared for settlement, and efforts to reach them were unsuccessful. The Complainant testified that she became suspicious and decided to terminate the contract. She received a refund of her deposit from the title company.

It is not entirely clear why the contract did not settle. Although the Complainant testified that she was never told why the settlement did not proceed, according to the investigator's report she said she was told by the title company, while at the settlement table, that the seller did not have enough money for closing. She also told the investigator that her agent was going to contribute some of her commission toward closing costs, but was unable to reach the seller or Respondent to pursue this possibility.

The Respondent told the investigator that she had requested an extension of the contract to allow the seller to resolve a claim by his mortgage company for an insurance premium, as well as a claim for an old unpaid water bill. She said the Complainant refused to extend the contract and allowed it to expire.

Sanctions

Section 17-322(c) of the Article provides for the imposition of monetary penalties as follows:

(c) *Penalty*. – (1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the Commission may impose a penalty not exceeding \$5,000 for each violation.

(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 REC recommended a reprimand and a monetary penalty in the amount of \$500.00. It argued that the monetary penalty was justified by the confusion caused by the Respondent's incorrect identification with Long & Foster. The REC claimed that the confusion caused by the Respondent, and the inability to determine who the broker was, constituted harm to the public. The evidence does not support this conclusion. While it may be that the Complainant's inability to reach the Respondent on the date of settlement contributed to the inability to resolve outstanding issues and bring the contract to settlement, it does not follow that the lack of a listing contract was a significant factor in this failure to communicate.

The record reflects frequent communication between the Complainant's agent and the Respondent that resulted in a contract of sale, as well as at least one, and possibly two extensions of the settlement date on behalf of the Complainant. Despite any confusion as to who the Respondent worked for, the Complainant's agent had dealt with the Respondent successfully up to the date of settlement.

Additionally, the Respondent's representation to the investigator that she had advised the Complainant's agent that she was in the process of leaving her current brokerage and was not yet affiliated with Long & Foster is not contradicted. Thus, while the lack of a written listing agreement is clearly a violation, and the representation that the Respondent was affiliated with Long & Foster was clearly false, neither seems to have had any impact on the transaction in question.

Thus, the evidence of harm as a result of the Respondent's failure to enter into a written listing contract or to otherwise clarify which broker she was affiliated with is scant, at best. While the lack of a written listing contract could have had serious consequences, it appears to have had no impact on the events in question. There is no evidence of bad faith, and the Respondent has no history of prior violations. The Respondent's misstatement of her affiliation

with Long & Foster did result in Long & Foster becoming unnecessarily involved in the investigation, requiring it to establish its lack of connection with the dispute. The Respondent was not, however, charged with any violation specifically addressing the misstatement of her affiliation. Therefore, I conclude that a reprimand is the appropriate penalty for Respondent's violation of the requirement for a written listing contract.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude that the Respondent violated sections 17-322(b)(14) and (33) of the Business Occupations and Professions Article, and COMAR 09.11.01.12 by failing to enter into a written listing contract with the seller before advertising, showing or listing the property, and failing to provide a copy of such a contract to the parties to the sale. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(14) and (33) (2010); COMAR 09.11.01.12.

I further conclude that the Respondent is subject to sanctions for her conduct, and that a reprimand is the appropriate sanction. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2010).

RECOMMENDED ORDER

I THEREFORE RECOMMEND that the Maryland Real Estate Commission:

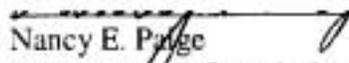
ORDER that the Respondent violated section 17-322(b) (14) and (33) of the Business Occupations and Professions Article and COMAR 09.11.01.12; and

ORDER, that the Respondent be reprimanded; and further

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

ADMINISTRATIVE LAW JUDGE'S SIGNATURE
APPEARS ON ORIGINAL ORDER

October 15, 2010
Date Decision Mailed


Nancy E. Pruge
Administrative Law Judge

MARYLAND REAL ESTATE

* BEFORE NANCY E. PAIGE,

COMMISSION

* AN ADMINISTRATIVE LAW JUDGE

v.

* OF THE MARYLAND OFFICE

DANIELLE SMITH,

* OF ADMINISTRATIVE HEARINGS

RESPONDENT

* OAH Case No.: DLR-REC-21-09-35406

* MREC Case No.: 2007-RE-664

* * * * *

FILE EXHIBIT LIST

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DLLR
STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION

MARTIN O'MALLEY, Governor
ANTHONY G. BROWN, Lt. Governor
ALEXANDER M. SANCHEZ, Secretary

Division Occupational & Professional Licensing
Stanley J. Botts, Commissioner

DLLR Home Page: www.dllr.state.md.us/license/occp/comm.html
MREC E-mail: mrec@dllr.state.md.us

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
FIRST CLASS MAIL

December 8, 2010

Ms. Danielle S. Smith
1309 Kings Heather Drive
Mitchellville, Maryland 20721

RE: Maryland Real Estate Commission v. Danielle S. Smith
Case No. 2007-RE-664

Dear Ms. Smith:

Enclosed is the copy of the Proposed Order of the Commission issued on behalf of MREC v. Danielle S. Smith heard by an Administrative Law Judge on August 25, 2010.

You have the right to file Exceptions to the Proposed Order and to present Arguments to the Commission. Written exceptions to the Proposed Order or a request to present Arguments must be filed with the Commission within 25 days of the date of this letter.

If you should fail to make your Exceptions and request to present Arguments known to the Commission within the time specified, the Proposed Order of the Commission shall be deemed final and shall become effective 30 days thereafter. This additional period is to allow time should the Claimant(s) and/or Respondent(s) desire to file in a Court of Law.

Sincerely,

(COMMISSIONER'S SIGNATURE
APPEARS ON ORIGINAL ORDER)

Stanley J. Botts
Executive Director

KFC/bai

Enclosure: Copy of Proposed Order

