

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

V.

GREGORY BENNETT,
RESPONDENT

* BEFORE HARRIET C. HELFAND,
* ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-21-15-21283
* REC CASE NO: 2014-RE-211

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated December 8,, 2015, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of January, 2016,

ORDERED,

- A. That the Findings of Fact in the Recommended Decision be, and hereby are, AFFIRMED;
- B. That the Conclusions of Law in the Recommended Decision be, and hereby are, APPROVED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

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

MARYLAND STATE REAL ESTATE COMMISSION

SIGNATURE ON FILE

1/20/2016
Date

By: _____
Marla S. Johnson, Commissioner

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* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On June 17, 2015, the Maryland Real Estate Commission (REC or Commission) issued a Statement of Charges and Order for Hearing against Gregory Bennett (Respondent) for violating the Maryland Annotated Code, Business Occupations and Professions Article (BOP), sections 17-301(a); 17-322(b)(3), (25), (32) and (33), and 17-602(b) (2010 & Supp. 2015).¹

On September 30, 2015, I convened a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland.² Hope Sachs, Assistant Attorney General, represented the REC. Vaughn W. Royal, Esquire, represented the Respondent.

¹ On September 18, 2015, the REC issued an Amended Statement of Charges (Amended Charges) against the Respondent. The Amended Charges removed violations of section 17-322(b)(32) and (33) of the BOP, but added the penalty provisions of section 17-613. The other violations contained in the first Statement of Charges remained.

² At the time the original charges were filed, the REC also filed charges, stemming from the same events that precipitated the instant matter, against Thurman Battle, Susan Bears, and Takeenya S. Woodard. All of the cases were scheduled to be heard on September 30, 2015 and October 1, 2015. At the beginning of the hearing on September 30, 2015, the parties informed me that Mr. Battle, Ms. Bears, and Ms. Woodard had each signed Consent Orders with the REC regarding their participation in the relevant events, and placed the substance of the Consent Orders on the record. As a result, the REC withdrew its delegation of their cases from the OAH.

Procedure is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2014); the REC's Hearing Regulations, COMAR 09.11.03; and the OAH Rules of Procedure, COMAR 28.02.01.

ISSUES

1. Did the Respondent provide real estate brokerage services without possessing a real estate broker's license, in violation of BOP section 17-301?
2. Did the Respondent willfully make a misrepresentation or knowingly make a false promise or engage in conduct that demonstrates bad faith, incompetency, untrustworthiness or that constitutes dishonest, fraudulent or improper dealings in violation of BOP section 17-322(b)?
3. Did the Respondent misrepresent to the public that he was authorized to provide real estate brokerage services, in violation of BOP section 17-602?
4. Is the Respondent subject to any sanction under the BOP, and if so, what sanctions and/or penalties should be imposed?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits into evidence on behalf of the REC:

- | | |
|--------|--|
| REC #1 | Notice of Hearing, dated September 1, 2015 |
| REC #2 | Respondent's Licensing History |
| REC #3 | Amended Statement of Charges and Order for Hearing, dated September 18, 2015 |
| REC #4 | Report of Investigation, with attachments, closed November 12, 2014 |
| REC #5 | Notice to Buyer and Seller of Buyer's Rights and Seller's Obligations Under Maryland's Single Family Residential Property Condition Disclosure Law and Addendum, dated July 26, 2013 |

- REC #6 Lead Paint-Federal Disclosure; Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards, dated July 26, 2013
- REC #7 Gregory Bennett v. Maryland Real Estate Commission, et al, Court of Special Appeals of Maryland, No. 2404, September Term 2010, filed October 22, 2012 (unreported)
- REC #8 Maryland Real Estate Commission Opinion and Final Order, Case No. 2007-RE-301, dated March 5, 2014
- REC #9 Pages from website: <http://www.exitbennettrealty.com>

The Respondent did not offer any exhibits for admission into evidence.

Testimony

The REC presented the testimony of Tamiko Feltenberger (Complainant)³ and Robert A. Hall, Investigator, Department of Labor, Licensing and Regulation, REC.

The Respondent testified and presented the testimony of Susan Bears.

FINDINGS OF FACT

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

1. The Respondent was licensed in Maryland by the REC under Registration number 01-305702, beginning in 1994, originally as a real estate salesperson. In 2006, the Respondent was licensed under the same license number as a new real estate broker, and in 2008, was licensed as a real estate broker for Exit Bennett Realty (Exit Bennett).
2. On March 11, 2013, the Respondent's Maryland real estate broker's license was revoked by the REC.⁴ The 2013 revocation of the Respondent's real estate broker's license was based on

³ Ms. Feltenberger was the individual who initiated the complaint with the REC against the Respondent. At the time of the relevant events, she was known as Tamiko M. Yancey.

⁴ The Respondent implied that he remains licensed in Washington, D.C. and Virginia, but did not offer any evidence to establish his licensure in these jurisdictions.

actions involving constructive fraud in a real estate transaction and included a \$15,000.00 civil penalty.⁵

3. Although the Respondent was no longer licensed in Maryland as a real estate broker, he continued working as the owner of Exit Bennett, which operated an office in Greenbelt, Maryland. At least 250 real estate agents are affiliated with Exit Bennett.

4. In or around June 2013, the Complainant sought a real estate agent to list her rental property located on Donnell Place in District Heights, Maryland (Property), for sale.

5. On or about June 18, 2013, the Complainant engaged Takeemya Woodard, a real estate sales agent with Exit Bennett, to list the Property for sale. The Complainant initially heard of Exit Bennett from a radio ad in which Exit Bennett, identified by name as the Respondent's "team," professed to have expertise in short sales and guaranteed that if it did not sell a property within thirty days or less, it would give the seller \$1,000.00.⁶

6. Ms. Woodard met the Complainant at the Complainant's home in Upper Marlboro, Maryland, and they executed a listing agreement in which the Property was listed for sale for \$30,900.00. Ms. Woodard advised that, after reviewing comparable sales, this was a fair price for a quick sale of the Property.

7. A few days after signing the listing agreement, the Complainant checked Realtor.com on the internet to check for the Property's listing, but did not see one. She called Ms. Woodard, who told her the listing could be found on Exit Bennett's internet home page. The Complainant checked, but did not find the listing at that website, either.

⁵ Following the 2013 revocation of the Respondent's Maryland license, in March 2014, the REC denied approval for the Respondent to operate real estate continuing education courses based on a lack of good faith by holding himself out to the public as a licensed real estate broker and continuing to engage in the provision of real estate brokerage services.

⁶ The Complainant was aware that the Property was "under water," that is, it was worth less than the loan by which it was secured. Because of the value, the Complainant was seeking a "short sale" and agreed to accept a sale price insufficient to satisfy the loan on the Property.

8. On June 29, 2013, Ms. Woodard presented the Complainant with a contract of sale in which Ms. Woodard was named as the buyer, with an offer of \$18,000.00.
9. The Complainant reluctantly signed the contract of sale, but felt it was an insufficient offer. When she questioned Ms. Woodard about the propriety of her role as both the agent and buyer, Ms. Woodard stated that it was a normal occurrence that happens all of the time.
10. The Complainant continued to feel uncomfortable about the circumstances surrounding the contract of sale, particularly after determining that the Property was never listed. She spoke to Ms. Woodard about her concerns and Ms. Woodard agreed to tear up the contract of sale.
11. In early July 2013, the Complainant contacted Exit Bennett and spoke to the Respondent. The Respondent apologized for Ms. Woodard's failure to list the Property and stated that Ms. Woodard's actions were not out of the ordinary and that if Ms. Woodard were to continue handling the Property, he would "keep an eye on her" and make sure to "get it done." During the conversation, the Respondent discussed the Property listing with the Complainant, answered all of her questions, and assured her that everything would be alright. At no time during the conversation did the Respondent tell the Complainant that he was unlicensed in Maryland.
12. After the Complainant's conversation with the Respondent, Exit Bennett listed the Property. The Complainant had no further communication with Ms. Woodard.
13. After the Property was listed, the Complainant called Exit Bennett and spoke to Susan Bears, the Respondent's assistant. Ms. Bears told the Complainant that Ms. Woodard was off of the listing and that the Respondent would handle the listing with Ms. Bears' assistance. At the time, Ms. Bears' Maryland real estate agent's license had expired, and she was no longer licensed as a real estate agent in Maryland.
14. Ms. Bears sent the Complainant a new listing agreement, naming Exit Bennett as the broker and the Respondent as the listing agent. The Respondent's name and initials were present

throughout the document, which was signed under the Respondent's name as broker or authorized representative and agent.

15. Pursuant to the listing agreement and the pursuit of a short sale, the Complainant signed a letter authorizing the Respondent and Ms. Bears to discuss the mortgage on the Property with CitiMortgage, the lender.

16. All of the Complainant's further communication with Exit Bennett was with Ms. Bears.

17. The Property was eventually sold. Ms. Bears and the Complainant attended the settlement, along with the buyers of the Property. The Respondent did not attend the settlement.

18. Following the settlement, the Complainant contacted the Respondent to inquire about the \$1,000.00 promised to a seller if a property was not sold within thirty days. The Complainant was told that the \$1,000.00 guarantee did not apply to short sales.

19. On or about October 17, 2013, the Complainant filed a complaint with the REC regarding the Respondent's refusal to pay her the \$1,000.00 guarantee.

20. The Respondent eventually reached a financial agreement with the Complainant, after which the Complainant withdrew her complaint with the REC.

DISCUSSION

In this matter, the REC alleges that the Respondent has violated, and is subject to sections 17-301(a)(1) and (2); 17-322(b)(3) and (25) and 17-602(b) of the BOP. Section 17-301(a) describes the real estate licensing requirement, as follows, in pertinent part:

§ 17-301. License required.

(a) *In general.*—(1) Except as otherwise provided in this title, an individual shall be licensed by the Commission as a real estate broker before the individual may provide real estate brokerage services in the State.

...

(2) Except as otherwise provided in this title, an individual shall be licensed by the Commission as an associate real estate broker or a real

estate salesperson before the individual, while acting on behalf of a real estate broker, may provide real estate brokerage services in the State.

Md. Code Ann., Bus. Occ. & Prof. § 17-301(a)(2) (2010).

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

§ 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:

...

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

..

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

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

Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(3),(25) and (c) (Supp. 2015).

§ 17-602. Misrepresentation.

(d) Associate real estate broker and real estate salesperson.—Unless authorized under this title to provide real estate brokerage services on behalf of a real estate broker, a person may not represent to the public, by use of the title “licensed associate real estate broker” or “licensed real estate salesperson,” by other title, by description of services, methods, or procedures, or otherwise, that the person is authorized to provide real estate brokerage services in the State on behalf of that real estate broker.

Md. Code Ann., Bus. Occ. & Prof. § 17-602(b) (2010).

In addition to those found in section 17-322(c), penalties for violation of the above sections are also found in section 17-613 of the Business and Occupations Article, in pertinent part, as follows:

§ 17-613. Penalties.

...

(c) *Penalty; factors.*—(1) The Commission may impose on a person who violates any provision of this title a penalty not exceeding:

- (i) \$5,000 for a first violation;
- (ii) \$15,000 for the second violation; and
- (iii) \$25,000 for a third or subsequent violation.

Md. Code Ann., Bus. Occ. & Prof. § 17-613(c) (Supp. 2015).

In this matter, the REC contends that the Respondent violated the above sections of the BOP by misrepresenting to the Complainant, and the public in general, that he was a Maryland licensed real estate broker, and acting as such, after his licensee had been revoked.

This matter came to the attention of the REC upon the Complainant's complaint over the unpaid \$1,000.00 guarantee. Although that dispute between the Complainant and the Respondent ultimately resolved, it alerted the REC that the Respondent continued to create the impression, either overtly or covertly, that he remained licensed as a real estate broker or agent in Maryland.

REC presented the testimony of the Complainant, who described in detail the events leading up to the sale of the Property in 2013. Throughout the transaction process, from the radio ad that initially enticed the Complainant into engaging Exit Bennett to facilitate the sale, to her eventual complaint to the REC, the Complainant believed the Respondent to be a legitimate, licensed Exit Bennett broker. This impression was never contradicted by any actions by the Respondent or other Exit Bennett employees. In fact, all of the Complainant's dealings with Exit

Bennett promoted that impression: the listing contract named the Respondent as broker and agent; Ms. Bears acted on behalf of the Respondent, as his assistant; and the Respondent held himself out in the community as the licensed principal of Exit Bennett. No one at Exit Bennett ever disabused the Complainant of this belief; in fact, the Respondent's role was advertised and promoted. However, this assumed role was manifestly untrue.

Attempts by the Respondent and Ms. Bears at the hearing to refute the REC's allegation were thoroughly unconvincing. Ms. Bears' claim that she alone was entirely responsible for the Complainant's impression that the Respondent was acting as either the broker or agent in the listing of the Property was not credible. According to Ms. Bears, she prepared all of the pertinent documents, which listed the Respondent as agent and/or broker, she signed his name and placed his initials on all of these documents, and throughout the process, the Respondent had no knowledge of the listing. Ms. Bears, who claimed to act on behalf of the Respondent, also testified that she was unaware of the Respondent's licensing status, and assumed that he remained licensed in Maryland as an agent and broker. Virtually nothing stated by Ms. Bears was believable. Her demeanor at the hearing belied any notion that she was testifying truthfully. Ms. Bears' answers were terse and evasive; she consistently directed her gaze downward and maintained no eye-contact with any other participant in the hearing. Ms. Bears' testimony suggested that she may have been under substantial pressure to protect the Respondent, and was willing to "take the fall" in order to either retain her position or exonerate her employer.

The Respondent's testimony was similarly unpersuasive. Although he admitted speaking to the Complainant regarding her displeasure with Ms. Woodard's representation, the Respondent denied ever agreeing to handle the listing of the Property. The Respondent also denied ever having seen documents relating to the Property. He testified that after Ms. Woodard's exit from the case, he placed the file in Ms. Bears' mailbox, presumably to have Ms.

Bears handle the matter. However, even though Ms. Bears was the Respondent's assistant, the Respondent claimed to have been unaware that Ms. Bears was unlicensed.

Although the Respondent's Maryland license was revoked in 2013, he made no apparent attempt to disabuse either his employees, colleagues, or the public of an impression that he remained licensed in Maryland. While he argued that the radio ads citing him as a licensed agent ran on a Washington, D.C. station, he unmistakably understood that the reach of the station encompassed Maryland, where the Complainant heard the ad and came to rely on Exit Bennett's services. The Respondent is clearly listed and pictured as one of "Our Agents" on Exit Bennett's website. The Respondent testified that Exit Bennett employs 250 real estate agents; I found it particularly curious that when Ms. Woodard ceased acting as an agent for the Property, he could not find one Maryland licensed agent to take over the case, but either assigned it to Ms. Bears, who was unlicensed, or attempted to retain the listing for himself. Independent of whether the Respondent's actions were incompetent or deliberately misleading, the sloppy and disingenuous handling of the Complainant's listing clearly violated Maryland law.

By his actions related to the listing and sale of the Property, the Respondent directly or through another person willfully misrepresented that he was a licensed real estate agent or broker in Maryland. By assuring the Complainant that he would assist her in the sale of the Property and permitting his employees to use his name and authority in the transaction process, the Respondent either knowingly or constructively encouraged the perception that he was duly licensed in Maryland and routinely provided real estate services to consumers.

Penalties

Section 17-322 of the BOP provides that the Commission may reprimand, suspend or revoke a license when a licensee has violated the Article. In this matter, however, the Respondent is not a licensee, so there is no viable or current license to suspend or revoke.

However, in addition to reprimand, suspension or revocation of the license, the REC may consider other penalties. Section 17-613(c), previously cited, and section 17-322(c) of the BOP set forth additional penalties that may be imposed by the Commission, as well as penalty factors to be considered, as follows in pertinent part:

(c)(1) Instead of or in addition to reprimanding a licensee or suspending or revoking a licensee under this section, the Commission may impose a penalty not exceeding \$5,000.00 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 violation by the licensee.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c)(1),(2) (Supp. 2015).

The laws regulating real estate brokers were enacted with the intent that each would ensure consistent provision of real estate broker services and to provide the REC with the ability to protect the general public who avail themselves of brokers' services. Additionally, it is clear that some statutory or regulatory provisions prohibit or regulate actions that are fairly egregious - including predatory actions, which could lead to significant consequences to members of the general public.

In this matter, rather than engaging in a deliberate scheme of deception, the Respondent appears to have been the leader of a business that was committed to expediency. His agents and associates, Ms. Woodard and Ms. Bears, skirted legal requirements in their contacts with the Complainant. No one seemed to be aware of anyone else's licensing status or business practices. This sloppiness included contracts executed in Maryland listing the Respondent as a licensed agent or broker, in contravention of the law.

At the conclusion of her relationship with the Respondent, the Complainant was primarily concerned with the \$1,000.00 payment touted in his radio ad, which the Respondent ultimately satisfied. The Commission offered no further evidence of harm caused by the Respondent's violation. The Property eventually was sold; neither the Commission nor the Complainant alleged any loss caused by the Respondent. While there may have been potential global harm in the Respondent's actions, no specific substantial harm was shown.

The Respondent's lack of good faith was primarily demonstrated in the hearing by his consistent foisting of blame upon others, particularly Ms. Bears. As the owner of Exit Bennett, the Respondent was ultimately responsible for the operation of his business. By allowing a false impression of his licensing status, as well as promoting and condoning unlicensed work by Ms. Bears and questionable practices by Ms. Woodard, the Respondent's good faith remains in question.

The Respondent's history of previous violations includes the 2013 revocation of his license. This revocation arose from various incidents including constructive fraud and included a \$15,000.00 civil penalty. In a subsequent episode, the Commission refused to approve real estate continuing education courses offered by a business owned and operated by the Respondent essentially based on a continuing effort by the Respondent to hold himself out as a licensed real estate broker in Maryland and continuing to engage in the provision of real estate brokerage services following his revocation.

In this matter, the Commission requests the imposition of a \$20,000.00 civil penalty based on the Respondent's lack of good faith in promoting a false status as a licensed agent and broker and his history as a repeat offender, in violation of BOP sections 17-301, 17-322(b)(3) and (25), and 17-602. Had the Respondent not previously engaged in similar actions, this matter might have seemed less consequential. However, the Respondent's actions suggest a consistent

pattern of flouting the law and regulations regarding licensing and real estate transactions.

Because of the Respondent's persistence in misleadingly promoting himself as licensed when he assuredly was not, I find the Commission's assessment appropriate.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent misrepresented that he was a licensed real estate broker in Maryland when his Maryland license was revoked. Md. Code Ann., Bus. Occ. & Prof., §§ 17-301(a)(2) (2010); 17-322(b)(3) and (25) (Supp. 2015); and 17-602 (2010).

I further conclude as a matter of law, that the Respondent is subject to the imposition of a \$20,000.00 civil penalty based upon the relative seriousness of the violation and his history of previous violations. Md. Code Ann., Bus. Occ. & Prof., §§ 17-322(c)(2); 17-613(c) (Supp. 2015).

RECOMMENDED ORDER

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

1. The charges of the Commission be **UPHELD**;
2. **I FURTHER RECOMMEND** that a civil penalty in the amount of \$20,000.00 be assessed against the Respondent;
3. **I FURTHER RECOMMEND** that the Commission **ORDER** that Real Estate Commission's records and publications reflect its final decision.

December 8, 2015
Date Decision Issued

HCH/emh
#158452

SIGNATURE ON FILE

Harriet C. Helfand
Administrative Law Judge