

**BEFORE THE MARYLAND REAL ESTATE COMMISSION**

**MARYLAND REAL ESTATE  
COMMISSION**

\*

CASE NO. 2020-RE-003

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v.

\*

**THURMAN BATTLE,  
Respondent**

OAH NO. DOL-REC-21-22-07620

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\* \* \* \* \*

**PROPOSED ORDER**

The Proposed Findings of Fact, Proposed Conclusions of Law and Recommended Order of the Administrative Law Judge dated January 3, 2023, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 26<sup>th</sup> day of January, 2023, hereby **ORDERED:**

A. That the Proposed Findings of Fact in the proposed decision be, and hereby are, **AFFIRMED.**

B. That the Proposed Conclusions of Law in the proposed decision be, and hereby are, **APPROVED.**

C. That the Recommended Order in the proposed decision be, and hereby is, **ADOPTED in full and AMENDED via the following additions:**

**ORDERED** that all real estate licenses held by the Respondent, **THURMAN BATTLE**, shall be suspended from the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted and shall not be reinstated until the civil penalty is paid;

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

manner. A fine of \$2,000.00 and a reprimand are reasonable, in light of the Respondent's prior violation.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Respondent violated section 17-322(b)(33) of the Act. Bus. Occ. & Prof. § 17-322(b)(33) (Supp. 2022).

Consequently, I conclude that the Respondent is subject to the disciplinary sanction of a reprimand. Bus. Occ. & Prof. § 17-322(b) (Supp. 2022).

I further conclude that the Respondent is subject to a monetary penalty of \$2,000.00. Bus. Occ. & Prof. § 17-322(c) (Supp. 2022).

**RECOMMENDED ORDER**

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

The Charge against the Respondent based on a violation of COMAR 09.11.05.02A be **UPHELD;**

That the Respondent is subject to sanctions;

The Respondent be **REPRIMANDED;** and

The Respondent pay a monetary penalty of \$2,000.00.

January 3, 2023  
Date Decision Issued

\_\_\_\_\_  
Jennifer L. Gresock  
Administrative Law Judge

JLG/dlm  
#202543

**MARYLAND REAL ESTATE  
COMMISSION**

**v.**

**THURMAN BATTLE,  
RESPONDENT**

**\* BEFORE JENNIFER L. GRESOCK,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: LABOR-REC-21-22-07620  
\* MREC No.: 20-RE-003**

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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On or about July 2, 2019, Michael Showalter, Christina Ittenbach, and Tina Biggs (Complainants)<sup>1</sup> filed a Complaint against Takonia Person, a licensed real estate salesperson, for alleged violations of the Maryland Real Estate Brokers Act (Act), Md. Code Ann., Bus. Occ. & Prof. §§ 17-101 to -702 (2018 & Supp. 2022) and implementing regulations. On March 24, 2022, after an investigation, the Real Estate Commission (REC) determined that charges against Ms. Person were warranted, but also that charges against the licensed real estate broker, Thurman Battle (Respondent), were warranted for alleged violations of the Act and Code of Maryland Regulations (COMAR) 09.11.05.02. On March 25, 2022, the REC issued a Statement of Charges (Charges) against the Respondent.

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<sup>1</sup> Michael Showalter is identified in the record as a manager at Re/Max One. Ms. Ittenbach and Ms. Biggs (Re/Max One) are the seller and her real estate salesperson, respectively, in the transaction at issue in this case.

The Charges advised the Respondent that if the charged violations were substantiated, the REC would seek a reprimand, suspension, or revocation of any real estate license the Respondent holds, along with a fine of up to \$5,000.00 per violation. Accordingly, the REC ordered a hearing on the Charges and, on April 1, 2022, forwarded the case to the Office of Administrative Hearings (OAH) to conduct a hearing. Bus. Occ. & Prof. § 17-324 (2018).<sup>2</sup>

On October 13, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Occ. & Prof. §§ 17-324(a) (2018). Hope Sachs, Assistant Attorney General, Maryland Department of Labor (Department), represented the REC. I consolidated the hearing for Ms. Persons with the hearing for the Respondent. Ms. Person appeared and represented herself; however, the Respondent did not appear.<sup>3</sup>

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, the REC's procedural regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 09.11.03; COMAR 28.02.01.

### ISSUES

1. Did the Respondent violate COMAR 09.11.05 by failing to exercise reasonable and adequate supervision over the activities of a real estate salesperson providing brokerage services on his behalf?
2. If so, what is the appropriate sanction?

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<sup>2</sup> Delegation Letter from Dep't of Labor, Licensing & Regulation to Md. Office of Admin. Hearings (Oct. 9, 2015) (on file at OAH); COMAR 09.11.03.02 ("Except as otherwise provided in Regulation .03 of this chapter, all contested case hearings delegated to the Office of Administrative Hearings are governed by COMAR 09.01.03."); COMAR 09.01.03.08C (providing the proposed decision shall comply with the APA); State Gov't § 10-205(e)(1)(ii).

<sup>3</sup> When an individual against whom action is contemplated fails or refuses to appear, the matter may nevertheless be heard and determined. Bus. Occ. & Prof. § 17-324(f); COMAR 28.02.01.23A. The record reflects a signature confirming delivery of the Notice of Hearing to the Respondent on July 14, 2022. Additionally, Ms. Person stated that she understood from the Respondent that, due to age and health concerns, he may have intended to request that he be permitted to participate in the hearing by telephone. However, the OAH received no such request.

## SUMMARY OF THE EVIDENCE

### Exhibits

I admitted the following exhibits offered by the REC:

- REC Ex. 1 Notices of Hearing (Ms. Person), dated April 27, 2022, and July 11, 2022, with attached Statement of Charges and Order for Hearing
- REC Ex. 2 Notices of Hearing (Respondent), dated April 27, 2022, and July 11, 2022, with attached Statement of Charges and Order for Hearing
- REC Ex. 3 Licensing History (Ms. Person), printed June 27, 2022
- REC Ex. 4 Licensing History (Respondent), printed June 27, 2022
- REC Ex. 5 Report of Investigation, closed on April 30, 2021<sup>4</sup>

The Respondent did not attend the hearing and thus did not offer exhibits.

### Testimony

The REC presented the testimony of Tina Marie Biggs, Complainant. Ms. Person testified on her own behalf and did not present other witnesses. There were no other witnesses.

## PROPOSED FINDINGS OF FACT

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

1. At all times relevant, Ms. Person was licensed by the REC as a real estate salesperson with Bennett Realty Solutions.
2. At all times relevant, the Respondent was licensed as a broker by the REC and employed by Bennett Realty Solutions.
3. At all times relevant, Ms. Person worked as a salesperson under the supervision of the Respondent.
4. In the course of conducting real estate sale transactions, Ms. Person allowed her assistants to send emails using her individual professional email account.

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<sup>4</sup> This report includes twenty different documents; the pages are number with the document number followed by the page of that document. For example, page 1-40 refers to page 40 of the first document, page 20-2 refers to page 2 of the 20<sup>th</sup> document and so on.

5. The Respondent did not provide training to Ms. Person on the appropriate use of a real estate salesperson's email account by others, such as assistants.

6. On May 23, 2019, Christina Ittenbach entered into a Residential Contract of Sale (Contract) to sell her home, located at 12645 Hillsmeade Station Drive in Bowie, Maryland, to Sonya Phyll.

7. Ms. Person was the agent for Ms. Phyll, the buyer.

8. The Contract included a Seller Contribution Addendum reflecting an agreed-upon seller contribution of 1.5% of the sales price.

9. The agreed-upon settlement date was July 3, 2019.

10. All signatures in the Contract for both buyer and seller were executed electronically.

11. On June 25, 2019, the processor for the lender sought additional documentation from Ms. Person as part of the loan approval process. One of the requested items was an executed Seller Contribution Addendum.

12. That same day, via an emailed attachment, Ms. Person submitted a Seller Contribution Addendum to the lender reflecting a seller contribution of 3.0% of the sales price. The Addendum included non-electronic, handwritten signatures for both Ms. Ittenbach (the seller) and Ms. Phyll (the buyer), each dated June 25, 2019.

13. Neither Ms. Ittenbach nor Ms. Phyll signed the June 25, 2019 Addendum.

14. Ms. Person forged the signatures of Ms. Ittenbach and Ms. Phyll on the June 25, 2019 Addendum.

15. In 2015, the Respondent and the REC executed a Consent Order and Settlement Agreement, in which he conceded a statutory violation due to an admitted failure to exercise

reasonable and adequate supervision over the provision of real estate brokerage services by any other individual including an independent contractor on behalf of the broker.<sup>5</sup>

### **DISCUSSION**

The REC contends that the Respondent, a licensed real estate broker, violated COMAR 09.11.05.02A, which requires a broker to “exercise reasonable and adequate supervision over the activities of the broker’s salespersons.” The relevant part of COMAR 09.11.05.01 defines supervision by a broker as “direction and review” of “professional real estate activities by associate brokers, designated sales managers and salespersons associated with that brokerage . . . .” The REC argues that Ms. Person, a salesperson under the supervision of the Respondent, forged the signatures of the buyer and seller on a document requested by the loan processor during the loan approval process, and that she allowed her assistants to send emails from her own individual professional email address, without oversight. It is the REC’s position that the Respondent should have corrected Ms. Person’s actions in these incidents and provided proper training regarding the use of a professional email address.

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. State Gov’t § 10-217 (2021); COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). In this case, the REC bears the burden to prove by a preponderance of the evidence that the Respondent committed the violation alleged in the Charges. COMAR 28.02.01.21K(1), (2)(a). I find that the REC has met this burden.

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<sup>5</sup> The October 2015 Consent Order and Settlement Agreement cites to section 17-320(c) of the Business Occupations and Professions Article. (REC Ex. 5, pp. 20-1 through 20-3.)

First, I find that the REC established that the Respondent is a licensed real estate broker. (REC Ex. 4.) A licensed real estate broker is an individual licensed by the REC to provide real estate brokerage services. Bus. Occ. & Prof. § 17-101(i). Based on the evidence presented at the consolidated hearing for the Respondent and Ms. Person, I have proposed that Ms. Person's actions be found in violation of subsections 17-322(b)(3), (25), and (33) of the Business Occupation and Professions Article.<sup>6</sup> My conclusion is based on substantial evidence that Ms. Person generated a false Addendum reflecting a 3.0% seller contribution and signed the names of both the seller and the buyer. Consistent with Ms. Biggs' testimony, the Contract included only electronic signatures; in contrast, the June 25, 2019 Addendum had handwritten signatures. Ms. Biggs also credibly testified that Ms. Person admitted to her that she created the Addendum; while Ms. Biggs did not recall Ms. Person saying she had also included false signatures, Ms. Biggs acknowledged that the email she wrote on the same date as that conversation explicitly said as much, and that the email was written specifically to accurately memorialize her conversation with Ms. Person. Additionally, the record contains email responses from both the buyer and the seller to Ms. Biggs confirming that the signatures on the Addendum are not theirs.

I also found that Ms. Persons violated of COMAR 09.11.02.02A, as her dishonest and deceptive behavior jeopardized the integrity of the transaction, contrary to the interests of both her own client and the seller. This is a violation of section 17-322(b)(33) of the Business Occupation and Professions Article. (Section 17-322(b)(33) applies when there has been a "violat[ion] of any regulation adopted under this title or any provision of the code of ethics . . . ."; COMAR 09:11.02.02A is contained within the Code of Ethics chapter of the subtitle.)

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<sup>6</sup> My proposed decision in OAH case number LABOR-REC-21-22-07618 includes my proposed findings of fact, proposed conclusions of law, and recommendation regarding Ms. Person. I also include in that decision a fuller summary and analysis of the evidence supporting my findings regarding Ms. Person.



There is no dispute that Ms. Persons operated as a licensed real estate salesperson under the supervision of the Respondent; Ms. Person testified to this without contradiction.<sup>7</sup>

Additionally, Ms. Person testified that signed real estate sales contracts were reviewed by a supervisor at the brokerage, though she did not provide any specific information about supervisory review of the contract between Ms. Ittenbach and Ms. Phyll that gave rise to the charges against Ms. Person. She noted that a supervisor would typically flag anything problematic as part of that review. Ms. Person also testified that while the Respondent's brokerage provides frequent trainings (some on a weekly basis, and some monthly), she could not recall any trainings regarding the tasks that assistants are permitted to do – or not permitted to do – on a salesperson's behalf.

As Ms. Person's violations occurred while she was under the supervision of the Respondent, the broker on behalf of whom she was providing services, I find the REC has proven that the Respondent violated COMAR 09.11.05.02A by failing to provide sufficient direction as well as review. Even a cursory review of the documents handled by Ms. Person in the Ittenbach/Phyll transaction would have revealed the oddity of handwritten signatures on the Addendum while all other signatures were electronic, and should have prompted further inquiry. Additionally, whether Ms. Person's assistants had any role in preparing and submitting the forged Addendum to the loan processor or not, Ms. Person testified that she had not received any direction or training on the appropriate use of her individual professional email account and was apparently regularly engaging in the problematic practice of allowing assistants to use that account without oversight.

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<sup>7</sup> A real estate salesperson is an "individual who, while affiliated with and acting on behalf of a real estate broker, provides real estate brokerage services." Bus. Occ. & Prof. § 17-101(o).

### Disciplinary Sanctions

Under section 17-322(b)(33) of the Business Occupation and Professions Article, a regulatory violation is a violation of the Act. With regard to sanctions for violations of the Act, section 17-322(c) provides as follows:

(c)(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.

(3) The Commission shall pay any penalty collected under this subsection into the General Fund of the State.

(4) The Commission may not impose a fine based solely on a violation of subsection (b)(35) of this section.

Bus. Occ. & Prof. § 17-322(c) (Supp. 2022).

The REC requested that the Respondent be reprimanded and that he be fined \$2,000.00 for the violation. With regard to the factors cited above, the REC noted that the reliability of an agent and associated broker is paramount, and thus contended that the violation was serious. Additionally, the REC argued that while the seller contribution amount was ultimately corrected and thus did not lead to monetary harm, there was nonetheless harm in the form of a loss of trust by the parties in the integrity of the transaction. The REC also cited a 2015 Consent Order and Settlement Agreement, which includes the Respondent's admission of a prior violation of the same regulatory provision.

The Department justified its request for a reprimand and fine. The Respondent committed the cited violation and compromised the integrity of the transaction. He failed to provide the supervision necessary to ensure that his agents were conducting business in a trustworthy

manner. A fine of \$2,000.00 and a reprimand are reasonable, in light of the Respondent's prior violation.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Respondent violated section 17-322(b)(33) of the Act. Bus. Occ. & Prof. § 17-322(b)(33) (Supp. 2022).

Consequently, I conclude that the Respondent is subject to the disciplinary sanction of a reprimand. Bus. Occ. & Prof. § 17-322(b) (Supp. 2022).

I further conclude that the Respondent is subject to a monetary penalty of \$2,000.00. Bus. Occ. & Prof. § 17-322(c) (Supp. 2022).

**RECOMMENDED ORDER**

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

The Charge against the Respondent based on a violation of COMAR 09.11.05.02A be **UPHELD;**

That the Respondent is subject to sanctions;

The Respondent be **REPRIMANDED;** and

The Respondent pay a monetary penalty of \$2,000.00.

**SIGNATURE ON FILE**

January 3, 2023  
Date Decision Issued

\_\_\_\_\_  
Jennifer L. Gresock  
Administrative Law Judge

JLG/dlm  
#202543