

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

*

vs.

*

CASE NO. 2019-RE-203

**LYNNE B. HOLLAND,
Respondent**

*

OAH NO. DOL-REC-21-21-14869

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* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated February 7, 2022, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 16th day of July 2021, hereby **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.**

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

E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties adversely affected by this Proposed Order shall have twenty (20) days from the postmark date of the Order to file written exceptions to this Proposed Order. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 500 North Calvert Street,

Baltimore, MD 21202. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

F. Once this Proposed Order becomes final, the parties have an additional thirty (30) days in which to file an appeal to the Circuit Court for the Maryland County in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City

MARYLAND REAL ESTATE COMMISSION

2/16/2022
Date

By:

SIGNATURE ON FILE

STATE REAL ESTATE
COMMISSION

v.

LYNNE B. HOLLAND,
RESPONDENT

* BEFORE ROBERT F. BARRY,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: LABOR-REC-21-21-14869
* MREC No.: 19-RE-203

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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 10, 2021, the State Real Estate Commission (Commission or REC) charged Lynne B. Holland (Respondent), a licensed real estate salesperson, with violating various provisions of the Maryland Real Estate Brokers Act and the Commission's regulations. The charges related to the Respondent's conduct during her own attempt to purchase a property in Bowie, Maryland; her advertisements; her compliance with the Commission's continuing education requirements; and her alleged misrepresentations to the Commission's investigator. The Commission alleged that the Respondent: signed a broker's name to a residential contract of sale and later electronically signed that broker's signature to disclosures, all without the broker's knowledge or consent; failed to remit a \$2,000.00 earnest money deposit to a title company; failed to include her broker's name on advertisements; misrepresented in advertisements her authority to conduct pre-licensing classes; was not current with her continuing education requirements; and

told the Commission's investigator that she had no prior complaints against her when there were several.

On June 14, 2021, the Commission transmitted this matter to the Office of Administrative Hearings (OAH) to conduct a hearing and issue a recommended decision.

On July 15, 2021, the OAH scheduled an in-person hearing at the OAH in Rockville. On September 29, 2021, I postponed that hearing at the Complainant's request after she presented a doctor's note concerning her need to quarantine for two weeks due to possible exposure to COVID-19. I rescheduled the hearing for November 8, 2021, as a remote hearing.

On November 8, 2021, I conducted a remote hearing via videoconference from the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-324(a) (2018);¹ Md. Code Ann., State Gov't § 10-211(a) (2021); Code of Maryland Regulations (COMAR) 28.02.01.20B. Hope Sachs, Assistant Attorney General, represented the Commission. The Respondent failed to appear.²

The contested-case provisions of the Administrative Procedure Act, the Department of Labor's regulations for hearings delegated to the OAH, and the OAH Rules of Procedure govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.11.03.02; COMAR 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Respondent fraudulently or deceptively use a license?
2. (A) Did the Respondent advertise in a misleading or untruthful manner by misrepresenting her authority to teach pre-licensing real estate classes?

¹ Except as noted, all references to the Business Occupations and Professions Article are to the 2018 Replacement Volume.

² On November 4, 2021, the Respondent filed (on a copy of the Notice of Remote Hearing) a purported withdrawal of a request for a hearing, alleging that due to an unspecified illness and recent deaths in her family she could not go forward. The Respondent, however, did not request a hearing. The Commission filed charges against the Respondent, ordered a hearing on those charges, and referred the matter to the OAH to conduct that hearing. COMAR 09.01.03.03. I proceeded with the hearing in the Respondent's absence. COMAR 28.02.01.23A.

(B) Did the Respondent violate section 17-527.2 of the Business Occupations and Professions Article by failing to include in her advertisement the name of the real estate broker with whom she was affiliated?

3. Did the Respondent fail to account for or to remit promptly any money that came into her possession that belonged to another person?

4. Did the Respondent violate section 17-502 of the Business Occupations and Professions Article relating to trust money?

5. Did the Respondent engage in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings?

6. Did the Respondent complete her continuing education requirements during her July 11, 2018, through July 11, 2020, licensing term?

7. Did the Respondent violate any regulation adopted by the Commission under title 17 of the Business Occupations and Professions Article or any provision of the Commission's code of ethics?

8. What sanction, if any, should the Commission impose?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits into evidence for the Commission:

- REC #1 - Notice of Hearing on September 30, 2021
- REC #2 - Statement of Charges and Order for Hearing, June 10, 2021
- REC #3 - Respondent's Licensing History under registration number 05-644699, August 24, 2021
- REC #4 - Report of Investigation, Case Number: 203-RE-2019 (p. 1-6), with sixteen exhibits:

- (1) Complaint, received August 28, 2018 (p. 7-8)

- (2) Respondent's Licensing Status, March 5, 2020 (p. 9)
- (3) Licensing Status of Thurman L. Battle, March 10, 2020 (p. 10)
- (4) Website advertisements for The "Doc" Holland Team, printed August 27, 2018 (p. 11-14)
- (5) Respondent's Revised Official Response to Complaint, October 25, 2018; and Respondent's Official Response to Complaint, October 10, 2018 (p. 15-17)
- (6) Licensing Status of Garland J. Dabney, Prime Residential, LLC, March 3, 2020 (p. 18)
- (7) Mr. Dabney's Official Response to Complaint, April 15, 2018, with ten attachments, including emails concerning an earnest money deposit and emails between the Respondent and Mr. Dabney (p. 19-34)
- (8) Licensing Status of Roslyn K. Farley, March 10, 2020 (p. 35)
- (9) Residential Contract of Sale (p. 36-50)
- (10) Summary of the Respondent's Continuing Education Courses, March 3, 2020 (p. 51-52)
- (11) Respondent's History of Commission Complaints, March 5, 2020 (p. 53-60)
- (12) Photocopy of text message with image of check, October 30, [2017] (p. 61)
- (13) Photocopy of photograph of Pamela Nedd holding keys, undated (p. 62)
- (14) Verification of Receipt of Earnest Money Deposit (incomplete) (p. 63)
- (15) Instagram advertisement, printed August 27, 2018 (p. 64)
- (16) Emails between the Commission and the Respondent, September 24, 2018, and October 4, 2018 (p. 65-69)

Testimony

The Commission presented testimony from the following witnesses:

Josh Greene, Owner, Eastern Title and Settlement

Garland J. Dabney, Real Estate Broker, Prime Residential, LLC (Prime Residential)

Charlene Faison, the Commission's Education Director

Tovie Campbell, a Commission Investigator

FINDINGS OF FACT

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

1. At all relevant times, the Commission licensed the Respondent as a real estate salesperson under registration number 05-644699; her current license expires July 11, 2022.
2. The Respondent was affiliated with Prime Residential from October 2017 to February 13, 2018, when the Respondent became affiliated with Bennett Realty Solutions.
3. Garland Dabney is the Principal Broker for Prime Residential.
4. On June 20, 2017, the Respondent signed a residential contract of sale to purchase a property in Bowie, Maryland from Wilton Redd for \$355,000.00, with a proposed settlement date of January 15, 2018.
5. The Respondent also agreed to make an earnest money deposit of \$2,000.00 by check, which Eastern Title and Settlement would hold in escrow.
6. The Respondent was not acting on behalf of a client; she was purchasing the property and a related assisted living facility business as a business investment.
7. Joslyn K. Farley, a real estate salesperson affiliated with Fairfax Realty, Inc., the listing broker, was the seller's agent.
8. Although she was then affiliated with a different real estate broker, Exit Realty, the Respondent indicated on the residential contract of sale that Mr. Dabney was acting as the buyer's agent. The Respondent, however, provided her own cell phone number and email address instead of Mr. Dabney's. The Respondent also signed Mr. Dabney's name on the contract, but in the space for the buyer's agent's phone number.

9. The Respondent did not inform Mr. Dabney about her purchase of the property, either before or after she began her affiliation with Prime Residential; nor did she file any documents concerning the purchase in Prime Residential's file management system.

10. On October 23, 2017, when she was affiliated with Prime Residential, the Respondent electronically signed Mr. Dabney's signature to documents related to her purchase of the property: a Federal Lead Paint Sales Disclosure, a Maryland Lead Poisoning Prevention Program Disclosure, and a Notice of Rights and Obligations Under Maryland's Single Family Residential Property Condition Disclosure Law.

11. Mr. Dabney did not authorize the Respondent to represent on the residential contract of sale that he was the buyer's agent or that Prime residential was acting as a broker during the sale. Nor did Mr. Dabney authorize the Respondent to electronically sign his name to the disclosures.

12. The Respondent did not submit an earnest money deposit to Eastern Title and Settlement.

13. The Respondent ultimately did not purchase the property.

14. The first time Mr. Dabney heard about this residential contract of sale was in an email from Mr. Farley on December 8, 2017, after the parties had terminated the contract, requesting verification of an earnest money deposit.

15. Mr. Dabney attempted to get an explanation about the contract and earnest money deposit from the Respondent. The Respondent did not give Mr. Dabney a copy of the contract, and she falsely told Mr. Dabney in an email on January 3, 2018, that Mr. Greene would complete the verification of the earnest money deposit.

16. On January 8, 2018, Mr. Farley filed a complaint with the Commission against Mr. Dabney and Prime Residential, concerning the earnest money deposit.

17. On April 15, 2018, Mr. Dabney filed a response to the complaint, with ten attachments, including emails between him and the Respondent, establishing that neither Mr. Dabney nor Prime Residential was aware of or involved with the residential contract of sale.

18. During her two-year licensing period of July 11, 2018, through July 11, 2020, the Respondent completed 1.5 hours of continuing education in courses required by the Commission.

19. In August 2018, when she was affiliated with Bennett Realty Solutions, the Respondent posted an advertisement on her website – www.DocHollandteam.com – that did not include the name Bennett Realty Solutions.

20. In August 2018, the Respondent posted an advertisement on Instagram that did not include the name of her affiliated broker, Bennett Realty Solutions.

21. The Instagram advertisement solicited aspiring real estate salespersons to enroll in pre-licensing real estate classes at a “[b]eautiful, state of the art training center.” (REC #4, p. 64). The Commission has never authorized the Respondent to teach pre-licensing real estate classes.

22. The Commission has opened eight complaints (including this matter) against the Respondent between October 28, 2016, and October 2019.

23. On February 25, 2020, the Respondent told the Commission’s investigator that she had never been involved with a Commission complaint in her thirty-two years as a real estate salesperson.

DISCUSSION

The Commission may reprimand a licensee, or suspend or revoke a license if, in pertinent part, the licensee:

(2) fraudulently or deceptively uses a license;

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

(19) advertises in any misleading or untruthful manner or violates § 17-527.2 of this title;

(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;

(31) violates any provision of subtitle 5 of this title that relates to trust money;

(32) violates any other provision of this title;

(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).

The Commission charged the Respondent under these eight subsections for her conduct related to her attempt to purchase a property in Bowie, Maryland; her advertisements; her non-compliance with the Commission's continuing education requirements; and her alleged misrepresentations to the Commission's investigator concerning prior complaints of misconduct. The Commission withdrew charges under subsection 17-322(b)(3). I will focus on the remaining seven subsections.

As further explained below, I reject the Commission's charges under subsections 17-322(b)(22) and (31), the latter because the Respondent was not providing real estate broker services during her attempt to purchase property in Bowie, and the former because the Commission's charges do not allege that the Respondent possessed any non-trust money. I shall uphold the five remaining charges. I find that the Respondent violated subsection 17-322(b)(2) by her use of Mr. Dabney's real estate broker's license during the Respondent's attempt to purchase the property in Bowie. I also find that the Respondent violated subsections 17-322(b)(19), (25), (32), and (33), by her improper advertising, her failure to complete required continuing education

courses, her general improper and unprofessional conduct, and her noncompliance with Commission regulations.

I recommend that the Commission impose a significant civil penalty and revoke the Respondent's real estate salesperson license, primarily under subsections 17-322(b)(2) and (25) for her conduct related to Mr. Dabney, Mr. Farley, Mr. Greene, and the Commission. Although the Respondent was not acting on behalf of a client, her conduct affected three real estate professionals and damaged the dignity and integrity of the real estate profession.

Section 17-322(b)(2) - fraudulent or deceptive use of a license

Although the Commission argued otherwise, I find that the Respondent violated subsection 17-322(b)(2) by fraudulently using Mr. Dabney's real estate broker license.³ The statute authorizes the Commission to sanction a licensee for fraudulently or deceptively using "a" license; it does not specifically limit that use to the licensee's own license. And "license" includes, unless the context requires otherwise, a real estate broker license, an associated real estate broker license, and a real estate salesperson license. Md. Code Ann., Bus. Occ. & Prof. § 17-101(g)(2). The context does not require me to limit the term "license" in subsection 17-322(b)(2) to the Respondent's real estate salesperson license. It makes little sense to read the statute as having the limited scope suggested by the Commission, which would permit a licensee to avoid sanctions (at least under this subsection) by fraudulently or deceptively using some other real estate professional's license. The Respondent's fraudulent use of Mr. Dabney's real estate broker license, which led the seller's agent, Mr. Farley, to file a complaint against Mr. Dabney, was probably the Respondent's most egregious conduct, and it alone justifies revocation of the Respondent's real estate salesperson license.

³ At the hearing, the Commission argued that the Respondent fraudulently or deceptively used her real estate salesperson license by falsely implying in her Instagram advertisement that she had the authority to teach pre-licensing classes for aspiring real estate salespersons. I discuss the charges concerning advertising below under subsections 17-322(b)(19) and (33).

Although she was then affiliated with a different real estate broker, the Respondent indicated on the residential contract of sale that Mr. Dabney was acting as her buyer's agent. The Respondent also listed Mr. Dabney and Prime Residential as the buyer's agent's real estate broker. The Respondent, however, provided her own cell phone number and email address instead of Mr. Dabney's, and she signed Mr. Dabney's name on the contract (confusingly in the space for the buyer's agent's phone number). The Respondent did not inform Mr. Dabney about her purchase of the property, either before or after she began her affiliation with Prime Residential; nor did she file any documents concerning the purchase in Prime Residential's file management system. Later, on October 23, 2017, when she was affiliated with Prime Residential, the Respondent electronically signed Mr. Dabney's signature on a Federal Lead Paint Sales Disclosure, a Maryland Lead Poisoning Prevention Program Disclosure, and a Notice of Rights and Obligations Under Maryland's Single Family Residential Property Condition Disclosure Law, all without Mr. Dabney's authorization.

Mr. Dabney testified that the first time he heard about this residential contract of sale was in an email from Mr. Farley on December 8, 2017, after the parties had terminated the contract, requesting verification of an earnest money deposit. The contract actually indicates that Eastern Title and Settlement was holding the earnest money deposit, but it was not unreasonable for Mr. Farley to contact Mr. Dabney, whose name appeared on the contract as the buyer's agent and responsible broker. Mr. Dabney then attempted to get an explanation about the contract and the earnest money deposit from the Respondent. The Respondent did not give Mr. Dabney a copy of the contract and she falsely told Mr. Dabney in an email on January 3, 2018, that Mr. Greene would complete the verification of the earnest money deposit. Mr. Greene testified that Eastern Title and Settlement had done business with the Respondent, but it was not involved with this residential contract of sale and did not receive an earnest money deposit related to it.

On January 8, 2018, Mr. Farley filed a complaint with the Commission against Mr. Dabney and Prime Residential. On April 15, 2018, Mr. Dabney filed a response to the complaint, with ten attachments, including emails between he and the Respondent, definitively proving that neither Mr. Dabney nor Prime Residential was involved with the residential contract of sale.

I am not sure why the Respondent listed Mr. Dabney as her buyer's agent and Prime Residential as the real estate broker on the residential contract of sale when she was purchasing the property for herself. In her response to the Commission and during her interview with the Commission's investigator, the Respondent said that before she became affiliated with Prime Residential, and while she was still affiliated with Exit Realty, Mr. Dabney had recruited her and encouraged her to write any new contracts with Prime Residential. There is no corroboration of the Respondent's assertion, which doesn't even make sense, especially in the context of the Respondent purchasing a property for herself. For a contract in which the Respondent was acting as a real estate salesperson, the date of the contract would establish which brokerage the Respondent was affiliated with at the time. For this sale, I can only speculate that the Respondent was trying to earn a buyer's agent's commission on her own purchase of the property. The record does not include the listing agreement for the property or any agency representation agreements, and the Respondent did not appear for the hearing, so it is impossible know what the Respondent was trying to do. It is clear, however, that the Respondent fraudulently used Mr. Dabney's real estate broker license, and Mr. Farley, on behalf of the seller, relied on that misrepresentation, leading to a complaint against Mr. Dabney concerning a real estate transaction he had nothing to do with.

Subsection 17-322(b)(19) - advertising in a misleading or untruthful manner - and Section 17-527.2 - advertisements

Subsection 17-322(b)(19) authorizes the Commission to sanction a licensee who advertises in a misleading or untruthful manner or who violates section 17-527.2 of the Business

Occupations and Professions Article. Section 17-527.2 provides that a licensed real estate salesperson may not advertise unless: (1) the name or designated name of the licensed real estate salesperson is meaningfully and conspicuously included in the advertisement; and (2) the name of the business with which the licensed real estate salesperson is affiliated: (i) is meaningfully and conspicuously included in the advertisement. Md. Code Ann., Bus. Occ. & Prof. § 17-527.2(b). “Advertise” means the use of any oral, written, or visual advertisement by a licensed real estate salesperson, or other person on behalf of a licensed real estate salesperson. *Id.* § 17-527.2(a)(2). “Advertisement” means, unless the context requires otherwise, any oral, written, or printed media advertisement. *Id.* § 17-527.2(a)(3)(i). Additionally, the Commission’s regulations provide:

(1) the licensee in advertising shall be especially careful to present a true picture. . . .

(2) Effective October 1, 2004, . . . [a] salesperson may not use an individual telephone number or email address in an advertisement, as defined in Business Occupations and Professions Article, §17-527.2(a)(3), Annotated Code of Maryland, unless the identified telephone number of the broker or branch office manager also appears in the advertisement.

COMAR 09.11.02.01G.

In August 2018, when she was affiliated with Bennett Realty Solutions, the Respondent posted an advertisement on her website – www.DocHollandteam.com. The advertisement indicated that the Respondent was the team leader of licensed real estate persons. *See* Md. Code Ann., Bus. Occ. & Prof. §§ 17-543-544 (2018 & Supp. 2021) (defining “team” and describing the duties of a “team leader.”) The advertisement also included the photographs, names, and contact information for a mortgage broker and Mr. Greene of Eastern Title and Settlement. Contrary to the statute and regulation, the advertisement did not include any mention of Bennett Realty Solutions.

In August 2018, the Respondent also posted an advertisement on Instagram, soliciting aspiring real estate salespersons to enroll in pre-licensing classes. The Respondent and the

DocHollandTeam are the only persons or entities named in the advertisement, so the Respondent again violated the requirement to include the name of the broker with whom she was affiliated. More significantly, the Instagram advertisement is misleading in that it gives the false impression that the Respondent is authorized to teach pre-licensing real estate courses. An applicant for a real estate salesperson license must successfully complete a basic sixty hour course in real estate approved by the Commission. COMAR 09.11.01.09(a). Ms. Faison testified that the Commission has never authorized the Respondent to teach such a course, so the Respondent's advertisement implying that the Respondent can teach pre-licensing classes is misleading.

Subsections 17-322(b)(22) - failure to account for money or to remit it promptly; Subsection 17-322(b)(31) - violation of any provision of subtitle 5 that relates to trust money; and Section 17-502 - handling of trust money

The Commission argued that it can sanction the Respondent under subsection 17-322(b)(22) because she failed to account for or to remit promptly money (her own earnest money deposit) that came into her possession but belonged to another person. The Commission also argued that it can sanction the Respondent for the same conduct under subsections 17-322(b)(31) and 17-502(a) for violating statutory provisions concerning trust money. (The Commission also cited COMAR 09.11.01.06, concerning records of transactions.) I reject the Commission's arguments.

Starting with the trust money issue, I conclude that the Commission cannot sanction the Respondent under subsections 17-322(b)(31) and 17-502(a) for her conduct concerning this real estate transaction. A real estate salesperson who obtains trust money while providing real estate brokerage services promptly shall submit the trust money to the real estate broker on whose behalf the real estate salesperson provided the real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. § 17-502(a). "Trust money" means a deposit, payment, or other money that a person entrusts, on behalf of a real estate broker, to a real estate salesperson to hold for: (1) the

benefit of the owner or beneficial owner of the trust money; and (2) a purpose that relates to a real estate transaction involving real estate in the State. *Id.* § 17-502(c).

The Respondent was not “providing real estate brokerage services,” a term defined, in pertinent part, as providing, for consideration, “services for another person.” Md. Code Ann., Bus. Occ. & Prof. § 17-101(l)(1). The Respondent was not providing services for another person – she had no client. Nor was the Respondent acting on behalf of a real estate broker. The Respondent listed Mr. Dabney as her buyer’s agent on the residential contract of sale and she listed Mr. Dabney and Prime Residential as the real estate broker. According to the purported terms of the contract, Mr. Dabney was acting on the Respondent’s behalf, rather than the Respondent working on Mr. Dabney’s behalf. Moreover, when she signed the contract in June 2017, the Respondent was not affiliated with Mr. Dabney or Prime Residential, so she could not have been acting on Mr. Dabney’s behalf. The laws concerning the handling of trust money regulate the financial relationship between a real estate salesperson, a client, and a real estate broker, primarily for the protection of the client and the other party to the transaction. Those laws are inapplicable to this real estate transaction where the Respondent was acting on her own behalf.

I also conclude that the Commission cannot sanction the Respondent under subsection 17-322(b)(22), a more general provision authorizing the Commission to sanction a licensee who fails to account for or to remit promptly any money that comes into the possession of the licensee but belongs to another person. The only money at issue here is the \$2,000.00 earnest money deposit. According to the residential contract of sale, the Respondent, as the buyer, not as a real estate salesperson, was supposed to deposit a \$2,000.00 check with Eastern Title and Settlement. Mr. Greene testified that he never received such a check from the Respondent, so it is clear that the Respondent failed to remit money that arguably belonged to the seller. But, in context,

subsection 17-322(b)(22) can only apply to money other than trust money. The legislature specifically authorized the Commission, under subsection 17-322(b)(31), to sanction a real estate salesperson for statutory violations concerning trust money. The legislature, therefore, must have intended subsection 17-322(b)(22) to apply to money other than trust money. Any other reading of the statute would make subsection 17-322(b)(31) unnecessary.

Subsection 17-322(b)(25) - engaging in conduct that demonstrates bad faith, incompetency, or untrustworthiness; or which constitutes dishonest, fraudulent, or improper dealings

Subsection 17-322(b)(25) authorizes the Commission to sanction a licensee for conduct that demonstrates bad faith, incompetency, or untrustworthiness; or which constitutes dishonest, fraudulent, or improper dealings. The Respondent's fraudulent use of Mr. Dabney's license certainly demonstrates bad faith and untrustworthiness and constitutes dishonest, fraudulent, or improper dealings. The Respondent's disregard of the law and regulations concerning advertising and continuing education also demonstrate bad faith or incompetency (if, as she asserted to the Commission's investigator, the Respondent was unaware of the law and regulations concerning advertising). But the Respondent exhibited other problematic conduct, including additional conduct concerning Mr. Dabney, Mr. Greene, Mr. Farley, and the Commission.

When Mr. Dabney attempted to get an explanation about the contract and earnest money deposit from the Respondent, the Respondent did not give Mr. Dabney a copy of the contract, and she falsely told Mr. Dabney in an email on January 3, 2018, that Mr. Greene would complete the verification of the earnest money deposit. When she responded to the Commission, the Respondent disparaged Mr. Farley and asserted that Mr. Dabney was only upset with the Respondent because of the dissolution of his personal and professional relationship with the Respondent. Mr. Dabney testified that he and the Respondent had been friends. As to this matter, however, he was simply describing the Respondent's unprofessional conduct related to the residential contract of sale. Mr. Dabney presented as a consummate professional and very

credible witness. And unlike the Respondent, he testified about these matters under oath.

Similarly, Mr. Greene was very credible and his statement that he ceased doing business with the Respondent because her transactions made no sense seemed very apt concerning the residential contract of sale at issue here.

Finally, the Respondent's contempt for the Commission's requirements concerning continuing education and advertisements and, more significantly, the disciplinary process, demonstrates her bad faith and untrustworthiness.⁴

Subsection 17-322(b)(32) and 17-315 - Continuing Education

Subsection 17-322(b)(32) authorizes the Commission to sanction a licensee who violates any other provision of title 5 of the Business Occupations and Professions Article. The Commission alleged that the Respondent violated section 17-315 concerning continuing education. Subsection 17-315(a) provides that to qualify for renewal of a real estate salesperson license, a licensee shall complete at least fifteen "clock hours" of continuing education instruction, as provided in subsection 17-315(b), during the preceding two-year term. Md. Code Ann., Bus. Occ. & Prof. § 17-315(a)(1) (Supp. 2021). Subsection (b) also authorizes the Commission to approve the form and substance of the continuing education courses, and dictates certain required subject matter, including courses for real estate salespersons covering the following topics: law, regulations, court cases, and industry trends; fair housing law and regulations; ethics; and real estate brokerage relationships and disclosures. Md. Code Ann., Bus. Occ. & Prof. § 17-315(b)(1), (2) (Supp. 2021). The relevant two-year term here is July 11, 2018, through July 11, 2020, during which, according to the Commission's records and Ms. Faison's testimony, the Respondent completed only one 1.5 hour required course on fair housing law and

⁴ The Commission alleged that the Respondent misrepresented to the Commission's investigator that she had no prior complaints of misconduct. I find that the Commission failed to prove this specific allegation. The Commission's records of the prior complaints are difficult to decipher, and the Commission did not present any evidence that the Respondent was aware of the prior complaints.

regulations. (REC #4, p. 51-52). The Respondent obviously failed to comply with her profession's continuing education requirements.

Subsection 17-322(b)(33) – violations of any regulation adopted by the Commission under title 17 of the Business Occupations and Professions Article or any provision of the Commission's code of ethics – and COMAR 09.11.02.01- Relations to the Public

Subsection 17-322(b)(33) authorizes the Commission to sanction a licensee who violates any regulation adopted under title 17 of the Business Occupations and Professions, or any provision of the Commission's code of ethics. The Commission cited two regulations, COMAR 09.11.01.06, concerning records of transactions, and COMAR 09.11.01.09, concerning instruction in real estate principles and practices for salespersons. I have discussed the subject matter of these regulations above. The Commission cited two provisions of the code of ethics, COMAR 09.11.02.01G, concerning advertisements, and COMAR 09.11.02.01C, concerning relations to the public. I have discussed the regulation concerning advertisements above. That leaves COMAR 09.11.02.01C, which provides:

The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State.

I also discussed the general subject matter of this regulation above, but I believe it important to note that the Respondent obviously did not “endeavor to eliminate in the community any practices which could be damaging . . . to the dignity and integrity of the real estate profession.” The Respondent's conduct in one failed real estate transaction exasperated at least two other real estate professionals, Mr. Dabney, who terminated his professional affiliation with the Respondent, and Mr. Greene, who stopped doing business with the Respondent because her business practices did not make sense. The Respondent treated the Commission with contempt, filing a response to the charges that demonstrated no remorse and then not appearing for the

hearing. The Respondent's unprofessional conduct is the kind of thing the code of ethics is meant to deter.

Subsection 17-322(c) - sanction

Instead of or in addition to a reprimand, suspension, or revocation, the Commission may impose a penalty not exceeding \$5,000 for each violation. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c)(1). To determine the amount of the penalty imposed the Commission shall consider: the seriousness of the violation, the harm caused by the violation, the good faith of the licensee, and the history of any previous violations. *Id.* § 17-322(c)(2). In this case, the Commission argued that I should recommend the revocation of the Respondent's real estate salesperson license and a penalty of \$3,000.00 per violation. The Commission focused on the seriousness of the Respondent's violations – her conduct concerning the residential contract of sale and her failure to comply with the law and regulations concerning advertising and continuing education. The Commission conceded that despite several prior complaints against her, the Commission has not previously imposed any reprimand, suspension, or penalties against the Respondent.

There is very little guidance for my consideration of an appropriate sanction, with essentially no case law on point. (The reported cases tend to analyze the licensing consequences for criminal convictions.) I concur with the Commission's assessment of the seriousness of the Respondent's conduct, and I have noted the Respondent's complete lack of remorse. I have considered the financial ramifications of a revocation of the Respondent's license. I ultimately conclude that the Respondent's conduct warrants a revocation of her real estate salesperson license based upon the severity of the Respondent's violations and her lack of good faith. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c). I also recommend that a \$6,500.00 civil penalty is appropriate under the circumstances, with \$2,500.00 penalties for the violations of 17-322(b)(2)

and (b)(25), which included some of the same misconduct, and \$500.00 penalties for the violations of 27-322(b)(19), (32), and (33).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude that the Respondent: fraudulently or deceptively used a license; advertised in a misleading or untruthful manner and in violation of section 17-527.2 of Business Occupations and Professions Article; engaged in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings; violated section 17-315 of the Business Occupations and Professions Article; and violated regulations adopted by the Commission and provisions of the Commission's code of ethics. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(2), (19), (25), (32), and (33); 17-315(a) (2018 & Supp. 2021).

I further conclude that the Respondent did not fail to account for or to remit promptly money that came into her possession that belonged to another person or violate section 17-502 of the Business Occupations and Professions Article relating to trust money. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(22) and (31).

I further conclude that the Respondent's conduct warrants a revocation of her real estate salesperson license and a penalty of \$6,500.00 based upon the severity of the Respondent's violations and her lack of good faith. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c).

RECOMMENDED ORDER

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

1. The charges as to sections 17-322(b)(2), (19), (25), (32) and (33) of the Business Occupations and Professions Article be **UPHELD**;
2. The charges as to sections 17-322(b)(22) and (31) of the Business Occupations and Professions Article not be **UPHELD**;

3. The Respondent's real estate salesperson license be **REVOKED** for her violations of the Maryland Real Estate Brokers Act;
4. A penalty in the amount of \$6,500.00 be assessed against the Respondent; and
5. The Commission **ORDER** that the State Real Estate Commission's records and publications reflect its final decision.

February 7, 2022
Date Recommended Decision Issued

SIGNATURE ON FILE

Robert F. Barry
Administrative Law Judge

RFB/dlm
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