

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

*

v.

*

CASE NO. 2020-RE-245

CHARLES DUDLEY,
Respondent

*

OAH NO. LABOR-REC-212-21-11490

*

* * * * *

MARYLAND REAL ESTATE
COMMISSION

*

v.

*

CASE NO. 2020-RE-245

HOLLY WORTHINGTON,
Respondent

*

OAH NO. LABOR-REC-212-21-11491

*

* * * * *

MARYLAND REAL ESTATE
COMMISSION

*

v.

*

CASE NO. 2020-RE-469

STEPHEN GORMLEY,
Respondent

*

OAH NO. LABOR-REC-21-21-11492

*

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge ("ALJ") dated October 12, 2021, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 9th day of December, 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** in part and **AMENDED** in part as follows:

2. A civil penalty in the amount of *five hundred dollars (\$500.00)* shall be assessed against the Respondent Dudley on account of the violation of COMAR 09.11.01.23.

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

E. Pursuant to Annotated Code of Maryland, State Government Article § 10-220, the Commission finds that the Recommended Decision of the Administrative Law Judge required modification. This case presents a rare occasion where the Commission disagrees with ALJ regarding certain areas of their recommendation. The Commission agrees with the ALJ that Dudley failed to complete required continuing education; however, the consequences for that failure are more serious than the ALJ's recommended penalty suggests and thus require the above increase.

F. 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.

G. Once the 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

SIGNATURE ON FILE

12/9/2021
Date

By: _____

MARYLAND REAL ESTATE
COMMISSION

v.

CHARLES DUDLEY,
RESPONDENT

* BEFORE JOHN J. LEIDIG,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: LABOR-REC-21-21-11490
* MREC No.: 20-RE-245

* * * * *

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MARYLAND REAL ESTATE
COMMISSION

v.

HOLLY WORTHINGTON,
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* BEFORE JOHN J. LEIDIG,
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* * * * *

* * * * *

MARYLAND REAL ESTATE
COMMISSION

v.

STEPHEN GORMLEY,
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* BEFORE JOHN J. LEIDIG,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: LABOR-REC-21-21-11492
* MREC No.: 20-RE-469

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RECOMMENDED DECISION

STATEMENT OF THE CASES
SUMMARY
ISSUES
SUMMARY OF THE EVIDENCE

FINDINGS OF FACTS
DISCUSSION
CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASES

On April 8, 2021, the Maryland Real Estate Commission (MREC) issued a Statement of Charges and Order for Hearing (Charges) against Holly W. Worthington (Worthington) and Stephen Gormley (Gormley). On April 14, 2021, MREC issued Charges against Charles Dudley (Dudley).¹

The Charges allege that Worthington violated Subsection 17-320(c)(1) of the Business Occupations and Professions Article and Code of Maryland Regulations (COMAR) 09.11.05.02A.² The Charges also allege that Gormley violated Subsections 17-547(b)(3) and (c) of the Act. The Charges further alleged that Dudley violated Subsections 17-545(a) and 17-547(b)(3) and (c) of the Act, and COMAR 09.11.01.23.

On July 12, 2021, I convened a hearing at the Office of Administrative Hearings in Rockville, Maryland, and I continued the hearing by Google Meet on July 13, 2021, to hear the Respondents' closing arguments. COMAR 28.02.01.20B(1)(b). Eric B. London, Assistant Attorney General, represented MREC. Timothy G. Casey, Esquire, represented the Respondents. Procedure is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2018 & Supp. 2021); the MREC Hearing Regulations, COMAR 09.11.03; and the OAH Rules of Procedure, COMAR 28.02.01.

SUMMARY

As explained in Sections A and B of the Discussion below, the Advertisement that is at the center of this case does not violate COMAR or the Act. The Advertisement contains the

¹ Worthington, Gormley, and Dudley are collectively referred to as Respondents.

² The Real Estate Brokers Act (Act) is a comprehensive statutory scheme that regulates real estate professionals in this State. Md. Code Ann., Bus. Occ. & Prof. §§ 17-101 through 17-702 (2018).

telephone number of the broker, Compass, that is associated with the team, The Dudley Group. In addition, the team name and the broker name are directly connected in the Advertisement. The statutory term “directly connected” is ambiguous, and MREC’s contention that linkage words such as “at,” “with,” or “of” are required on team ads between the team name and the broker name does not comport with MREC’s own guidance for team ads as posted on the MREC website. A direct connection between The Dudley Group and Compass appears from the layout and the information displayed on the front of the Advertisement and from the contact information on the back of the Advertisement.

MREC’s charges against Respondents Dudley and Worthington for failure to properly supervise others—those charges being predicated on MREC’s contention that the Advertisement was improper—are without merit. See Discussion Section C.

On MREC’s remaining claim, I conclude that Respondent Dudley failed to timely complete a course on supervision. This claim is not barred by the statute of limitations. I recommend imposing a fine of \$250.00 against Respondent Dudley for this violation.

ISSUES

1. Did Respondent Dudley violate the Act or its implementing regulations:
 - a. By publishing or causing to be published an advertisement for the property known as 4720 Chevy Chase Drive, Unit #101, Chevy Chase, Maryland (Property) that did not contain the telephone number of the real estate broker or the branch office manager of the real estate broker?
 - b. By publishing or causing to be published an advertisement for the Property in which the Dudley Group name was not directly connected to the name of the broker?

- c. By failing to exercise reasonable and adequate supervision over the provision of real estate brokerage services by members of the Dudley Group by publishing, or allowing to be published, an advertisement for the Property that violated the Act?
 - d. By failing to complete a three clock-hour course, within ninety days of the effective date of Respondent Dudley becoming a team leader, that includes the requirements of broker supervision under COMAR 09.11.06.01(8)(i)?
2. Did Respondent Gormley violate the Act:
 - a. By publishing or causing to be published an advertisement for the Property that did not contain the telephone number of the real estate broker or the branch office manager of the real estate broker?
 - b. By publishing or causing to be published an advertisement for the Property in which the Dudley Group name was not directly connected to the name of the broker?
3. Did Respondent Worthington violate the Act or its implementing regulations by failing to exercise reasonable and adequate supervision over the provision of real estate services by Respondents Dudley and Gormley with respect to the publication of an advertisement for the Property?
4. If the answer to any of the foregoing questions is yes, what sanction, if any, should be imposed?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for MREC:

- | | |
|---------|--|
| MREC 1 | Notice of Hearing for Respondent Dudley, May 24, 2021 |
| MREC 1A | Notice of Hearing for Respondent Gormley, May 24, 2021 |

- MREC 2 Charges for Respondent Worthington, April 8, 2021
- MREC 3 Charges for Respondent Dudley, April 14, 2021
- MREC 3A Charges for Respondent Gormley, April 8, 2021
- MREC 4 MREC Licensing History for Respondent Worthington, printed July 9, 2021
- MREC 5 MREC Licensing History for Respondent Dudley, printed July 9, 2021
- MREC 5A MREC Licensing History for Respondent Gormley, printed July 9, 2021
- MREC 6 Report of Investigation, February 5, 2020, with attachments
- 6-1 Advertisement, undated
 - 6-2 MREC Complaint against Dudley and Worthington, October 22, 2019
 - 6-3-1 Licensing Record for Respondent Worthington, printed October 22, 2019
 - 6-3-2 Licensing Inquiry for Respondent Worthington, printed October 21, 2019
 - 6-4-1 Licensing Record for Respondent Dudley, printed October 22, 2019
 - 6-4-2 Licensing Inquiry for Respondent Dudley, printed October 10, 2019
 - 6-4-3 MREC Continuing Education report for Respondent Dudley, printed January 2, 2020
 - 6-4-4 MREC Continuing Education report for Respondent Dudley, printed October 10, 2019, at 14:49:12
 - 6-4-5 MREC Continuing Education report for Respondent Dudley, printed October 10, 2019, at 14:53:37 (page 1)
 - 6-4-6 MREC Continuing Education report for Respondent Dudley, printed October 10, 2019, at 14:53:37 (page 2)
 - 6-4-7 MREC Change Code Screen for Respondent Dudley, printed February 5, 2020
 - 6-5 Letter from Respondent Worthington to MREC, December 12, 2019, with attachments: (A) Compass Team Training November/December 2019; (B) November 17, 2019, email to agents regarding team leader training; (C) February 10, 2019, email to agents and managers regarding advertising checklist, with attachments
 - 6-6-1 Letter from Respondent Dudley to MREC, December 12, 2019

- 6-6-2 Printout from Maryland Department of Labor regarding Respondent Gormley, undated
- 6-6-3 Certificate of Completion (Supervision Course) for Respondent Dudley, course completed December 11, 2019
- 6-6-4 "The Dudley Group at Compass": Name and Logo, undated
- 6-7-1 MREC Licensing History for Respondent Gormley, printed October 15, 2019

- MREC 7 MREC Complaint against Respondent Gormley, February 26, 2020
- MREC 8 Letter from Respondent Gormley to MREC, March 9, 2020
- MREC 9 Letter from Respondent Worthington to MREC, March 11, 2020
- MREC 10 Respondent's Advertisement for property located at 4720 Chevy Chase Drive, Unit #101, Chevy Chase, MD 20815

Except as noted for RESP 18, I admitted the following exhibits for the Respondents:

- RESP 1 MREC Business Meeting Minutes for March 20, 2019
- RESP 2 MREC Business Meeting Minutes for April 17, 2019
- RESP 3 MREC Business Meeting Minutes for May 22, 2019
- RESP 4 MREC Business Meeting Minutes for December 19, 2019
- RESP 5 MREC Business Meeting Minutes for October 16, 2019
- RESP 6 MREC Business Meeting Minutes for August 19, 2020
- RESP 7 MREC Business Meeting Minutes for February 19, 2020
- RESP 8 MREC Business Meeting Minutes for January 15, 2020
- RESP 9 "Do's and Don'ts for Teams and Groups—Real Estate Commission" printed from the MREC website, undated
- RESP 10 Compass Meeting Agenda for October 23-24, 2019
- RESP 11 Compass Meeting Agenda for November 6-7, 2019
- RESP 12 Compass Meeting Agenda for January 22-23, 2020

- RESP 13 Compass Meeting Agenda for June 2-3, 2021
- RESP 14 Checklist for Real Estate Marketing Pieces, undated
- RESP 15 Compass Meeting Agenda for May 16-17, 2018
- RESP 16 Compass Meeting Agenda for June 20-21, 2018
- RESP 17 Compass Team Training for November/December 2019
- RESP 18 [offered but not admitted] Association of Real Estate License Law Officials "Supervising Broker Best Practices: A Broker's Guide to Creating a Policy and Procedure Manual," September 2012
- RESP 19 Compass Terms of Engagement, revised November 6, 2020 (v18)
- RESP 20 TTR/Sotheby's real estate advertisement from Home & Design Magazine (Summer issue 2021)
- RESP 21 TTR/Sotheby's real estate advertisement; Sandoval Team/Coldwell Banker real estate advertisement; Nathan Dart Team/RE/MAX real estate advertisement (two pages); Karen Rollings Team/EXP Realty real estate advertisement
- RESP 22 "The Commission Check," printout from MREC website, May 2019
- RESP 23 Resume for Thomas J. Lynch, undated

Testimony

MREC presented the testimony of Michael L. Kasnic, Executive Director, MREC.

The three Respondents testified at the hearing and presented testimony of Thomas J. Lynch. Mr. Lynch was accepted as an expert in real estate.

FINDINGS OF FACTS

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

1. At all relevant times, Respondent Dudley was a licensed real estate salesperson.
2. Respondent Dudley is the team leader of The Dudley Group.
3. Respondent Dudley became a team leader on May 4, 2015.
4. Respondent Dudley completed a three-hour team leader supervision course on

December 11, 2019.

5. The Dudley Group is affiliated with Compass, a real estate brokerage licensed in Maryland and other jurisdictions.

6. At all relevant times, Respondent Gormley was a licensed real estate salesperson and a member of The Dudley Group.

7. At all relevant times, Respondent Worthington was a licensed real estate broker and the registered broker of Compass.

8. Respondent Dudley supervises Respondent Gormley.

9. Respondent Worthington supervises Respondents Dudley and Gormley.

10. In May 2018, MREC created an Advertising Task Force to address concerns about real estate teams.

11. On August 15, 2018, MREC met and approved a motion stating that MREC interprets Subsection 17-547(c) of the Act to require that team advertisements contain a linkage word such as “with,” “of,” or “at” between the team name and the broker name.

12. At subsequent meetings, MREC discussed promulgating regulations relating to team advertising and making statutory changes to Section 17-547(c) of the Act. As of October 2019, however, there were no regulations relating to team advertising promulgated and there were no statutory changes to Section 17-547(c).

13. The MREC Advertising Task Force prepared a report that was given to MREC in the summer of 2019. The Task Force recommended, among other things, a best practices checklist for advertising.

14. Based on the Task Force recommendation, MREC approved an Advertising Checklist that is posted on the MREC website (part of MREC 6-5(A)).

15. The MREC Advertising Checklist does not state that a linkage word such as “with,” “of,” or “at” is required on advertisements between the team name and the broker name.

16. The only information regarding teams that appears on the Advertising Checklist is the following question under the heading "Team Advertising": "Does the advertisement include the full name of the licensee as the name appears on the license, as advertising in solely the name of the team is prohibited?"

17. The MREC website also contains a page (RESP 9) listing "Do's and Don'ts for Teams and Groups."

18. There is nothing on the "Do's and Don'ts" page stating that team advertisements must contain a linkage word such as "with," "of," or "at" between the team name and the broker name.

19. With respect to team advertising, the only relevant information contained on the Do's and Don'ts is as follows:

All Team advertising must contain:

1. The full name of the brokerage displayed in a meaningful and conspicuous way;
2. The name of at least one of the licensee members of the Team; and
3. The telephone number of the broker or the branch office manager.

The Team name in the advertisement must be directly connected to the name of the brokerage.

20. In September 2019, The Dudley Group published or caused to be published a print Advertisement for the Property that is a two-sided, single-page document, MREC 10 (Advertisement).

21. The front of the Advertisement displays only the following: The Dudley Group name (in logo format), the Compass brokerage name (in logo format), the address of the Property, and a landscape-view photograph of the front of the building in which the Property is situated.

22. The back of the Advertisement displays only the following: the address of the

Property; a description of the Property; additional photographs of the interior of the Property; the names and contact information for Respondents Dudley and Gormley; The Dudley Group name (in logo format), the Realtor logo; and a disclaimer concerning Compass' role as the brokerage.

23. The disclaimer contains Compass' telephone number in Maryland.

24. The contact information for Respondent Dudley, as it appears on the back of the Advertisement, is as follows:

Chad Dudley
Principal | The Dudley Group
Realtor @ DC/MD/VA
240-994-8625
chad.dudley@compass.com

25. Respondent Worthington conducts frequent meetings for the salespersons she supervises. These meetings provide, among other things, detailed instruction, directives, and guidance on the laws and regulations governing real estate advertising.

26. Prior to the publication of the Advertisement, Respondent Worthington distributed the Advertising Checklist and the "Do's and Don'ts for Teams and Groups", as posted on the MREC website, to the salespersons that she supervises. Her training meetings have also covered the topics set forth in the "Do's and Don'ts for Teams and Groups."

27. The Complaints against the Respondents do not allege that the Advertisement failed to contain "with," "of," or "at" between the team name and the broker name.

28. The Charges against the Respondents do not allege that the Advertisement failed to contain "with," "of," or "at" between the team name and the broker name.

DISCUSSION

A. The Advertisement contains the telephone number of Compass, the broker.

All but one³ of the claims in this case concern the two-sided, single-page print ad for the Property—the Advertisement—that was published in September 2019 (MREC 10). MREC contends that the Advertisement “does not include the telephone number of the real estate broker or the telephone number of the branch office manager of the real estate broker, at least one of which is required by the Commission.” On this basis, REC alleges that Respondents Dudley and Gormley violated section 17-547(b)(3) of the Act, which states:

§17-547. Name; advertising; connection to name of brokerage.

(b) Advertising. All advertising the team must contain:

...

(3) the telephone number of the real estate broker or branch office manager of the real estate broker.

Md. Code Ann., Bus. Occ. & Prof. § 17-547(b)(3) (2018).

The back of the Advertisement, at the bottom, states as follows:

Compass is a licensed real estate brokerage that abides by the Equal Housing Opportunity laws. Information is compiled from sources deemed reliable but is not guaranteed. All measurements and square footages are approximate. This is not intended to solicit property already listed. Compass is licensed as Compass Real Estate in DC and as Compass in Virginia and Maryland. DC office 202.386.6330. Maryland office 301.298.1001.

MREC 10 (emphasis added).

At the hearing, MREC’s counsel and MREC’s Executive Director conceded that the Advertisement contains the telephone number of Compass, the broker. MREC’s counsel contended that the font of the above-quoted statement was unreasonably small. This argument is

³ The charge that Respondent Dudley did not timely complete a supervision course is the exception.

not relevant because Section 17-547 does not require the telephone number to be printed in any particular size.

For these reasons, I conclude that the Advertisement does not violate Section 17-547(b)(3) of the Act.

B. In the Advertisement, the name of the Dudley Group is directly connected to the name of the broker, Compass.

In the Statements of Charges against Respondents Dudley and Gormley, REC contends that:

“The Dudley Group” is printed in the upper right-hand corner of the advertisement whereas the Brokerage name “Compass”, is printed in the lower left-hand corner of the advertisement. It is alleged that those 2 entities in no way appear to be related as is required by the Commission.

(Emphasis added.) On this basis, MREC alleges that Respondents Dudley and Gormley violated Section 17-547(c) of the Act, which states as follows:

§17-547. Name; advertising; connection to name of brokerage.

(c) Connection to name of brokerage.-- The team in the advertisement must be directly connected to the name of the brokerage.

Md. Code Ann., Bus. Occ. & Prof. § 17-547(c) (2018) (Emphasis added.)

The parties do not dispute the following relevant facts: (1) the only information displayed on the front of the Advertisement are The Dudley Group name (in logo format), the Compass brokerage name (in logo format), the address of the Property, and a landscape-view photograph of the front of the building in which the Property is situated; (2) Compass is the full name of a broker duly registered and licensed in Maryland; (3) The Dudley Group is affiliated with

Compass; and (4) the contact information for the principal of The Dudley Group as it appears on the back of the Advertisement is as follows:

Chad Dudley
Principal | The Dudley Group
Realtor ® DC/MD/VA
240-994-8625
chad.dudley@compass.com

The core question is whether the team name and the brokerage name as they appear in the Advertisement are “directly connected” as required by the Act. Section 17-547 of the Act does not contain a definition of what the words “directly connected” mean. Nor does it provide any clarification or any examples.

The Court of Appeals has provided a roadmap for statutory construction:

. . . the chief objective of statutory construction is to discover and effectuate the actual intent of the legislature in enacting the statute. *See Price v. State*, 378 Md. 378, 387, 835 A.2d 1221, 1226 (2003).

We begin with the plain language of the statute, and where the language of the statute is ambiguous, our task is to resolve that ambiguity, in light of the legislative intent, using all the resources and tools of statutory construction at our disposal. *See id.* Ordinary and popular understanding of the English language dictates interpretation of terminology within legislation. *See Gargliano v. State*, 334 Md. 428, 435, 639 A.2d 675, 678 (1994).

Where the language of a statute is ambiguous or unclear, we examine legislative history, prior case law, and statutory purpose. *See Melgar v. State*, 355 Md. 339, 347, 734 A.2d 712, 716 (1999). A statute is ambiguous when there are two or more reasonable alternative interpretations of the statute. *See Price*, 378 Md. at 387, 835 A.2d at 1226. Ambiguous or equivocal statutory language requires us to consider not only the ordinary meaning of words, but also to interpret how that language relates to the overall meaning, setting, and purpose of an act. *See Gargliano*, 334 Md. at 436, 639 A.2d at 678. Therefore, when interpreting unclear language within a statute, we consider both the particular and broad objectives of the legislation, in addition to the overall purpose of the statutory scheme. *See id.* at 436, 639 A.2d at 678–79. In other words, we do not view the plain language in isolation, but analyze the entire statutory scheme as a whole. *See Outmezguine v. State*, 335 Md. 20, 41, 641 A.2d 870, 880–81 (1994).

Deville v. State, 383 Md. 217 (2004).

The primary purpose of the Act is the protection of the public. See Md. Code Ann., Bus. Occ. & Prof. § 17-207 (2018).; see also *Smirlock v. Potomac Dev. Corp.*, 235 Md. 195 (1963); *Thorpe v. CARTE t/a Carte Real Estate Co.*, 252 Md. 523 (1968); *Zalis v. Blumenthal*, 254 Md. 265 (1969). MREC is charged with administering and enforcing the provisions of the Act pursuant to Section 17-209 of the Business Occupation and Professions Article. Describing the role and function of the Act, the Court of Special Appeals explained that:

The Maryland legislature has seen fit to regulate the field of real estate sales through these statutes and regulations. As a regulated profession, much like physicians, attorneys, or certified public accountants, real estate brokers have a responsibility to the public to conduct themselves in a reputable manner. These statutes set minimum guidelines for professional conduct, their purpose being to safeguard the public.

Lewis v. Long & Foster Real Estate, Inc., 85 Md. App. 754, 760 (1991).

At the hearing, MREC's Executive Director offered two alternative interpretations of the words "directly connected": he testified that based on the MREC motion passed August 15, 2018, he believed that words of linkage were required; but he also testified that that the phrase directly connected might not require linkage words but could be established by how far apart the team name appeared from and the broker name. See testimony of Kasnic, 12:02 p.m. ("I am informed by the law" and directly connected "does not mean as far apart on the page as you can possibly get."). Similarly, the Charges reference the position of the team name and the broker name on the printed page as a means of describing whether the Advertisement satisfies the "directly connected" requirement.⁴ The Respondents offered additional interpretations of

⁴ The Charges allege that "The Dudley Group" is printed in the upper right-hand corner of the advertisement whereas the Brokerage name "Compass", is printed in the lower left-hand corner of the advertisement. It is alleged that those two entities in no way appear to be related as is required by the Commission."

“directly connected”: first, that the broker name and team name are the only words on the front of the Advertisement other than the Property address and therefore the Advertisement satisfied the “direct connection” requirement; and second, that the contact information for The Dudley Group on the back of the Advertisement contained email addresses that included the broker name, Compass.

All of these interpretations are within the plain meaning of the words “directly connected.” “Directly” means “in a straightforward manner.” See Black’s Law Dictionary (11th ed. 2019) (definition 1 for “directly”). “Connected” means the act of connecting : the state of being connected: such as causal or logical relation or sequence.” Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/connection> (definition 1a for “connected”). For these reasons, I conclude that the statutory phrase “directly connected” is ambiguous.

In light of this ambiguity, *Deville, supra*, directs me to “consider both the particular and broad objectives of the legislation, in addition to the overall purpose of the statutory scheme.” MREC did not argue or present evidence that the use of linkage words would better protect the public, and there was no testimony that any member of the public was misled by the Advertisement published by the Respondents. Moreover, MREC concedes that linkage words are not addressed in the language of the statute or its implementing regulations. Even so, MREC asserts that a linkage word is required because the Commission voted to impose such a requirement at a meeting in August 2018. The documented minutes of MREC’s August 15, 2018, business meeting were not offered as evidence at the hearing, only Mr. Kasnic’s testimony. Although I gave weight to MREC’s interpretation of “directly connected,” I conclude that MREC’s interpretation is not entitled to great deference for several reasons.

The Court of Appeals addressed the issue of deference in a case involving the federal EPA's interpretation of a federal statute, the Clean Water Act:

we look to the deference that would be accorded such interpretations under federal case law. In general, when an agency exercises authority to “make rules carrying the force of law” – *i.e.*, rulemaking, adjudications, or other actions involving similarly extensive administrative procedures – the agency's interpretation warrants deference under *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). Less formal agency action may also merit *Chevron* deference depending on “the interstitial nature of the legal question, the related expertise of the Agency, the importance of the question to administration of the statute, the complexity of that administration, and the careful consideration the Agency has given the question over a long period of time.” *Barnhart v. Walton*, 535 U.S. 212, 222, 122 S.Ct. 1265, 152 L.Ed.2d 330 (2002).

Md. Dept. of Envir. v. County Comm'rs of Carroll Cty., 465 Md. 169 (2019).

MREC did not raise deference as an issue at the hearing and it did not cite any law on the subject. Moreover, MREC has offered two, inconsistent interpretations of the words “directly connected.” Prior to the hearing, MREC's issued Charges that referenced the placement of words on the Advertisement as the basis for the violation. At the hearing, by contrast, MREC took the position in this case that linkage words are required in team ads.⁵

In addition, MREC failed to show that MREC has a longstanding pattern of enforcing its interpretation of Section 17-547(c) to require linkage words in team ads. Among the evidence in this case are five team advertisements that do not contain linkage words. RESP 20 & 21. MREC did not provide any reasonable response or explanation as to whether it took regulatory action against the publishers of these ads.⁶ Nor did MREC produce evidence to show that it has

⁵ See *id.* at 206:

Even if the particular agency interpretation does not meet the criteria for *Chevron* deference, a reviewing court may defer to that interpretation based on the persuasiveness of the agency interpretation, considering factors such as “the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.” *Skidmore v. Swift & Co.*, 323 U.S. 134, 140, 65 S.Ct. 161, 89 L.Ed. 124 (1944).

⁶ I need not reach the issue raised by the Respondent as to whether MREC is selectively enforcing Section 17-547.

continuously and consistently enforced the linkage word requirement against other teams and brokers.

Official guidance that is published on MREC's website is inconsistent with MREC's position that Section 17-547(c) of the Act requires team ads to contain linkage words. Specifically, there is no mention of linkage words in the published "Do's and Don'ts for Teams and Groups" (RESP 9). The Do's and Don'ts merely reiterate the "directly connected" wording found in the Act, without any elaboration, examples, or clarification. RESP 9 at 2. Likewise, although the Advertising Checklist published on the MREC website specifically addresses the topic of Team Advertising, the Checklist says nothing about a requirement to use the words "with," "of," or "at." See also RESP 3 at 3 (MREC meeting minutes note that "Advertising task force, led by Commissioners Scott and Williams, and others, was great with developing advertising checklist."). It was reasonable for the Respondents to rely on the guidance found in the "Do's and Don'ts" and the Advertising Checklist posted on MREC's website when publishing the Advertisement.

Furthermore, the Advertisement contains the following evidence of a direct connection (i.e., a straightforward logical relation or sequence) between The Dudley Group and Compass. First, other than the address and a photograph of the Property, the only information that is displayed on the front of the Advertisement are The Dudley Group name (in logo format) and the Compass brokerage name (in logo format). Second, the email addresses for Respondents Dudley and Gormley as they appear on the back of the Advertisement are chad.dudley@compass.com and stephen.gormley@compass.com. And third, the contact information for Respondent Dudley (quoted above) contains the team name and the broker name in very close proximity to one another. Based on these factors, a reasonable person would conclude that The Dudley Group has a direct connection to Compass as the brokerage.

MREC's Complaints against the Respondents do not mention Section 17-547 at all, much less a requirement that team ads contain linkage words. Similarly, the Charges do not allege that Section 17-547(c) requires linkage words in team advertisements. In fact, the wording of the Charges is even less clear than the statute; MREC alleges that The Dudley Group and Compass "in no way appear to be related as is required by the Commission." MREC did not offer any evidence tending to show that the Respondents were aware of a requirement for linkage words as of September 2019 when the Advertisement was published. On the contrary, Respondent Worthington testified that she learned about MREC's interpretation that linkage words were required after receiving the Complaint lodged against her. MREC did not rebut this testimony.

Mr. Kasnic testified that at meetings, MREC discussed promulgating a regulation or drafting a statutory revision to Section 17-547(c) of the Act to make it easier for teams to comply with the "direct connection" requirement. Mr. Kasnic also testified that no regulation had been promulgated and that no statutory revision had been enacted as of September 2019 when the Advertisement was published. It is reasonable to infer that MREC would not have discussed promulgating regulations or making statutory changes to section 17-547 unless MREC considered those actions necessary, or at least potentially.⁷

There is no case law supporting MREC's position that linkage words are required in team advertisements. MREC did not cite any case law, and I did not locate any in my research on the topic. In sum, I conclude that the Advertisement complies with the Act's requirement that the team name be "directly connected" to the broker name.

⁷ Moreover, MREC did not offer any opinion evidence as to whether or not a regulation or statutory revision was necessary to address the "direct connection" requirement. On cross-examination, Mr. Kasnic was asked whether promulgating a regulation was necessary to require linkage words between the team name and the broker name on advertisements. MREC's counsel objected to this question on the grounds that the question called for a legal conclusion and further that MREC did not qualify Mr. Kasnic as an expert. I sustained the objection.

To address a related argument raised by MREC, I reject MREC's contention that a person reading the Advertisement would be confused by the word "Compass" as is appears on the Advertisement. At the hearing, MREC's counsel stated that he thought "Compass" was a directional instruction that appeared on the Advertisement to advise the public which way to orient the Advertisement when reading it. See Hearing recording at 11:41 a.m. I find this unpersuasive. The Advertisement shows the Compass logo. While it is true the Compass logo does have an angled line segment in the middle of the letter "O," the only reasonable way to view the picture of the Property that appears on the front of the Advertisement—a landscape-oriented view of the front of the multi-unit building—is to orient the picture in a landscape format; i.e. with the short side of the Advertisement vertical and the long side horizontal. Moreover, the word "Compass" is not an image of a compass in the sense of "any of various nonmagnetic devices that indicate direction." See definition 3b in Merriam-Webster, <https://www.merriam-webster.com/dictionary/compass>. The purpose of the Act is to protect the public, and there was no evidence that a person who viewed the ad was misled by the Compass logo. For these reasons, I find the explanation offered by REC's counsel that the word Compass would be misunderstood as anything other than the name of a duly licensed brokerage to be unreasonable.

Finally, MREC asserted that the Respondent's admitted violations in their written answers to the Charges. I reject MREC's position because the referenced statements in Respondents' answers constitute legal conclusions, and it is my role to decide legal conclusions.

C. Respondents Dudley and Worthington did not violate the supervision provisions of the Act.

MREC charges that Respondents Dudley and Worthington failed to provide adequate supervision. Worthington is charged under Section 17-320(c)(1) of the Act, which provides that "[a] real estate broker shall 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,” and under COMAR 09.11.05.02A, which provides that “[a] broker shall exercise reasonable and adequate supervision over the activities of the broker's associate brokers and salespersons.” COMAR 09.11.05.02A (2021). Dudley is charged under Section 17-545(a), which provides that “[t]he team leader shall exercise reasonable and adequate supervision over the provision of real estate brokerage services by members of the team.” Md. Code Ann., Bus. Occ. & Prof. § 17-545(a) (2018).

MREC stipulated at the hearing that the sole grounds for these charges were the publication of the Advertisement and MREC’s contention that the Advertisement violated Section 17-547 of the Act.

As explained above, I conclude that the Advertisement does not violate Section 17-547 of the Act. Accordingly, I further conclude that the charges of inadequate supervision against Respondents Dudley and Worthington are without merit. Moreover, there was overwhelming evidence that Respondents Dudley and Worthington were vigilant in the training and supervision of the salespeople within their organizations. Worthington produced detailed training materials that covered the topic of team advertising, and both she and Dudley presented as knowledgeable and conscientious professionals through their testimony at the hearing.

D. Respondent Dudley failed to complete the three-hour supervision course within ninety days of becoming a team leader.

MREC contends that Respondent Dudley violated COMAR 09.11.01.23, which provides that “[a] licensee who is designated as a broker, branch office manager, or team leader shall complete a 3 clock-hour course that includes the requirements of broker supervision under COMAR 09.11.06.01B(8)(i) within 90 days of the effective date of the designation if the licensee has not completed that course during the previous four years.”

The parties stipulated that Respondent Dudley became a team leader on May 4, 2015. They also stipulated that Respondent Dudley completed the three-hour supervision course on December 11, 2019. These stipulations are sufficient for me to conclude that Respondent Dudley violated COMAR 09.11.01.23.

Dudley's counsel argued that this charge should be dismissed because REC did not bring the charge in a timely manner. Counsel cited COMAR 09.11.01.19, which states as follows:

The Commission may summarily dismiss any complaint brought against a licensee after 3 years from the date of the written listing contract, contract of sale, lease agreement, option, or actions upon which the complaint is based, unless the Commission finds that the complainant's delay in bringing the complaint was justified and that the delay does not result in an undue burden for the licensee.

According to Dudley, the deadline for MREC to bring a complaint is three years and ninety days after Dudley became a team leader; that is, by August 2, 2018. I disagree. COMAR 09.11.01.19 refers to a complaint brought by someone other than MREC. That is not the case here. Also, when MREC filed its Complaint against Dudley on October 22, 2019, Mr. Dudley had not yet completed the required supervision course. Dudley was still in violation of COMAR 09.11.01.23 when the Complaint was filed; therefore, the Complaint was timely.

Having found the Dudley violated COMAR 09.11.01.23, I will now consider the appropriate penalty. In addition to Section 17-322(b), which allows for a reprimand, as well as suspension or revocation of the Respondent's license, Section 17-322(c) allows for a monetary penalty of \$5,000.00 for each violation. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2018) Section 17-322(c)(2) requires that four factors be considered in determining the amount of any penalty: (1) the seriousness of the violation; (2) the harm caused by the violation; (3) the good faith of the licensee; and (4) any history of previous violations by the licensee. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c)(2) (2018).

MREC noted no history of prior violations by Respondent Dudley and asked for imposition of a fine of \$3,500.00 for failure to take the required supervision course. While I agree with MREC that a team leader's completion of a three-hour course in supervision is important, Mr. Dudley's testimony demonstrated to me that he made an honest mistake and was not acting in bad faith. Moreover, Dudley took the course promptly when he realized his oversight. Furthermore, MREC did not produce evidence to show any harm caused by Mr. Dudley's educational records show that he timely completed all other courses as required. For this reason, I believe that a civil penalty of \$250.00 is an appropriate sanction.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that Respondent Dudley violated COMAR 09.11.01.23.

I further conclude as a matter of law that Respondent Dudley did not violate Sections 17-545(a) and 17-547(b)(3) and (c) of the Business Occupations and Professions Article.

I further conclude as a matter of law that Respondent Gormley did not violate Section 17-547(b)(3) and (c) of the Business Occupations and Professions Article.

I further conclude as a matter of law that Respondent Worthington did not violate Section 17-320(c)(1) of the Business Occupations and Professions Article or COMAR 09.11.05.02A.

RECOMMENDED ORDER

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

1. The charge of the Real Estate Commission against Respondent Dudley under COMAR 09.11.01.23 is hereby **UPHELD**;
2. A civil penalty in the amount of \$250.00 shall be assessed against the Respondent Dudley on account of the violation of COMAR 09.11.01.23;

3. The charges of the Real Estate Commission against Respondent Dudley under Business Occupations and Professions Article Sections 17-545(a) and 17-547(b)(3) and (c) are hereby **DENIED** and **DISMISSED**;

4. The charges of the Real Estate Commission against Respondent Gormley under Business Occupations and Professions Article Section 17-547(b)(3) and (c) are hereby **DENIED** and **DISMISSED**;

5. The charges of the Real Estate Commission against Respondent Worthington under Business Occupations and Professions Article Section 17-320(c)(1) and COMAR 09.11.05.02A are hereby **DENIED** and **DISMISSED**; and

6. The Commission shall **ORDER** that the Real Estate Commission's records and publications reflect its final decision.

October 12, 2021
Date Decision Issued

SIGNATURE ON FILE

John J. Leidig
Administrative Law Judge

JJL/ja
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