BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION	*	
	*	
v.		**CASE No. 646-RE-2020**
	*	
CATHERINE FLEISHMAN,		
	*	
RESPONDENT		
	*	
and		
	*	**OAH No. LABOR-REC-24-21-22472**
IN THE MATTER OF THE CLAIM[1] OF RAKIYAH HOMMES, LLC AND MATEEN ABDULLAH,	*	
	*	
CLAIMANTS		
	*	
v.		
	*	
THE MARYLAND REAL ESTATE COMMISSION GUARANTY FUND FOR THE ALLEGED MISCONDUCT OF CATHERINE FLEISHMAN,	*	
	*	
RESPONDENT	*	

* * * * * * * * * * * * * *

PROPOSED ORDER

The Findings of Fact, Proposed Conclusions of Law and Recommended Order of the Administrative Law Judge dated March 30, 2022, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 25th day of May, 2022, hereby **ORDERED**:

A. That the 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

[1] The Claim against the Maryland Real Estate Commission Guaranty Fund was settled between the parties before the Administrative Law Judge's hearing at the Office of Administrative Hearings and is not addressed in this Proposed Order.

are, **APPROVED** in part and **AMENDED** in part as follows:

...

3. A **twelve month** suspension of the Respondent's Real Estate Commission license is an appropriate sanction...

C. That the Recommended Order in the proposed decision be, and hereby is, **ADOPTED** in part and **AMENDED** in part as follows:

1. All real estate licenses held by the Respondent, **CATHERINE FLEISHMAN**, be suspended for a period of **twelve (12) months** from the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted;

2. The Respondent, **CATHERINE FLEISHMAN**, pay a civil penalty in the amount of **Five Thousand Dollars ($5,000.00)** within thirty (30 days) of the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted; and

3. All real estate licenses held by the Respondent, **CATHERINE FLEISHMAN**, 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 in full.

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 because this case presents a rare occasion where the Commission disagrees with ALJ regarding certain areas of their recommendation. The Commission agrees with the ALJ regarding the monetary penalty but requires an increase in the suspension period given the severity of the violations.

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 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

5/25/2022
Date

By: SIGNATURE ON FILE

SIGNATURE ON FILE

MARYLAND REAL ESTATE	*	**BEFORE JOHN T. HENDERSON, JR.**
COMMISSION	*	**ADMINISTRATIVE LAW JUDGE**
v.	*	**THE MARYLAND OFFICE OF**
CATHERINE FLEISHMAN,	*	**ADMINISTRATIVE HEARINGS**
RESPONDENT,	*	
And	*	**OAH No.: LABOR-REC-24-21-22472**
IN RE THE CLAIM OF RAKIYAH	*	**REC No.: 20-RE-646**
HOMES, LLC AND MATEEN	*	
ABDULLAH AGAINST THE	*	
MARYLAND REAL ESTATE	*	
GUARANTY FUND	*	

* * * * * * * * * * * * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On July 1, 2020, Rakiyah Homes, LLC and Mateen Abdullah, managing member, (collectively Claimants) filed a complaint against licensed real estate broker Catherine Fleishman, (Respondent). That same day, the Claimants also filed a claim for reimbursement from the Maryland Real Estate Guaranty Fund (Fund) for losses the Claimants allegedly sustained as a result of the Respondent's misconduct. The complaint and claim both arose out of interaction between the Claimants and the Respondent as it related to an exclusive buyer/tenant

representation agreement dated October 12, 2016 (Representation Agreement), which designated Metropolitan Realty Marketing, Inc., (the Respondent's company) as the broker for the buyer/Complainants, concerning property located on Indian Head Highway, in Fort Washington, Maryland (the Property).

The Maryland Real Estate Commission (REC or Commission) investigated the complaint and determined that charges against the Respondent were warranted and that the Claimants were entitled to a hearing on their claim. Accordingly, the Commission issued a Statement of Charges and Order for Hearing (Statement of Charges), dated September 2, 2021, against the Respondent. The Statement of Charges set forth information about the claim and alleged that the Respondent violated Business Occupations and Professions Article §§ 17-101, et seq.[1] The Statement of Charges also stated that if the charged violations are substantiated, the Commission could require the Respondent to reimburse the Fund for any amounts paid to the Claimants, and the Respondent would not be eligible for a license until the Guaranty Fund is reimbursed in full.[2] On September 28, 2021, the Commission forwarded the Statement of Charges to the Office of Administrative Hearings (OAH) to conduct a hearing.

On January 7, 2022, I held a remote video hearing initiated from the OAH in Rockville, Maryland and the parties participated from their respective locations. Code of Maryland Regulations (COMAR) 28.02.01.20B. Shara Hendler, Assistant Attorney General, Maryland Department of Labor (Labor), represented the REC on the charged violations. The Respondent appeared and represented herself. The Claimants were not represented as their issue with the Fund was settled.

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[1] All references to the Business Occupations and Professions Article pertain to the 2018 Replacement Volume & Supp. 2020.

[2] On December 27, 2021, the OAH was notified that the Claimants and the Respondent settled the claim for reimbursement from the Fund. For the purposes of this proposed decision, I am to only determine if there were regulatory violations, and if so, should there be sanctions.

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings before the Office of the Secretary of Labor, and the Rules of Procedure of the OAH govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.02, 09.01.03, and 28.02.01.

ISSUES

1. Did the Respondent fail to account for or to remit promptly any money that came into her possession but belonged to other persons?

2. Did the Respondent engage in conduct that demonstrated bad faith, incompetency, or untrustworthiness, or that constituted dishonest, fraudulent, or improper dealings?

3. If so, what sanction, if any, is appropriate?

SUMMARY OF THE EVIDENCE

Exhibits

The REC offered the following exhibits, which I admitted into evidence:

REC Ex. 1 Statement of Charges and Order for Hearing, September 2, 2021

REC Ex. 2 OAH Notice of Remote Hearing, December 28, 2021; OAH Notice of Hearing, October 20, 2021; letter to the Office of Attorney General from OAH, October 15, 2021; OAH Notice of Hearing, October 5, 2021

REC Ex. 3 REC licensing records for the Respondent and related company, printed December 1, 2021

REC Ex. 3A REC license record for the Respondent and related company, printed December 21, 2021

REC EX. 4 REC Report of Investigation, undated, with the following attachments:

- Claimants' Complaint, July 1, 2020 and July 3, 2020
- Letter from Khalid Akhtar, TI, Finance, LLC, to the Respondent, May 8, 2020
- Electronic Signature Agreement, June 2, 2017
- Settlement Agreement and Release, April 30, 2020
- General Addendum 1, page 2 of 2, March 22, 2017
- General Addendum 2, page 2 of 2, March 22, 2017
- General Addendum 2, page 1 of 2, March 22, 2017

- General Addendum 1, page 1 of 2, March 22, 2017
- Email from Marilyn Taylor to the Respondent, May 27, 2020
- Emails to and from the Respondent and Marilyn Taylor, June 2, 22, and 30, 2020
- Signed Time is of the Essence clause, March 20, 2017
- Contract of Sale for Vacant Recorded Lot/Land/Parcel, March 22, 2017
- Commercial Affidavit from the Respondent, September 9, 2020
- Letter from Michael A. DeMino, Esquire to the Claimants, September 11, 2020
- Duplicate Commercial Affidavit from the Respondent, September 11, 2020
- Exclusive Buyer/Tenant Representative Agreement, October 12, 2016
- Addendum/Termination of Buyer Agency Agreement, July 23, 2017 (2)
- Addendum, Electronic Signature Agreement, June 27, 2017 (2)
- Email from Labor to the Respondent, December 7, 2020
- Signature page for Exclusive Buyer/Tenant Representation Agreement, October 23, 2016
- Emails to and from Labor and Claimants, January 6 and 7, 2021

REC Ex. 5[3] Letter from T.I. Finance & Investment, LLC, to the Claimant, July 18, 2017

The Respondent did not offer any exhibits to admit into evidence.

Testimony

The REC presented testimony from Lucinda Rezek Sands, Administrative Officer, II, REC, and Claimant Mateen Abdullah, both to testify on the regulatory charges.

The Respondent testified on her behalf.

FINDINGS OF FACT

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

1. Since at least 2016, the Respondent was licensed as a Real Estate Broker by the REC, trading as Metropolitan Realty Marketing, Inc., (Metropolitan) under license number 634741, with no prior REC complaints.

2. The Claimant Mateen Abdullah was the managing member of Rakiyah Homes, LLC.

[3] This exhibit was mistakenly admitted at the hearing for the Claimants. However, the Claimants settled their claim with the Fund so they were no longer parties to the hearing. The exhibit is now admitted through the REC.

3. The charges against the Respondent arise from the exclusive Representation Agreement dated October 12, 2016, designating Metropolitan as the Broker for the Claimants.

4. Paragraph 7A of the Representation Agreement stated the compensation to the Broker/Respondent in the event of a sale or lease of property was three percent (3%).[4]

5. Paragraph 7A of the Representation Agreement further stated:

> The Compensation shall be deemed to have been earned by Broker and shall be due and payable to broker if:
>
> 1. During the term of this Agreement or any extension thereof (i) Buyer or any person or entity acting on Buyer's behalf executes a written agreement to purchase or lease any property, through the efforts of anyone including Buyer, in which event Buyer, within seventy-two (72) hours thereof, shall furnish Broker a copy of such written agreement; or (ii) if during the period of 7 days following the expiration or termination of this Agreement, Buyer executes a lease or written agreement to purchase any Property that Buyer inspected, made inquiry about, or negotiated to purchase or lease during the term of this Agreement or any extension thereof, in which event Buyer, within seventy-two (72) hours thereof, shall furnish Broker a copy of such written agreement;
>
> 2. Buyer defaults or voluntarily agrees to terminate a sale or lease; or
>
> 3. Buyer breaches this Agreement. . . .

(REC Ex. 4, pg. 2-14.)

6. On March 10, 2017, the Claimants entered into a Contract of Sale (Contract) for a vacant lot with a contingency addendum dated March 22, 2017.

7. The vacant lot was located on Indian Head Highway in Fort Washington, MD, Prince George's County. The sales price was six million dollars ($6,000,000.00).

8. The Seller was T.I. Finance and Investment, LLC (Seller).

9. The Contract provided for a $103,000.00 earnest money deposit (EMD).

10. The Respondent was already holding $3,000.00 of EMD on behalf of the Claimants pursuant to a prior real estate deal.

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[4] The Agreement did not define how the three percent was to by computed; i.e., from the gross purchase price of the sale or lease, etc.

11. The $100,000.000 of the EMD was deposited into the escrow account of Hunter Piel, Esquire, while the remaining $3,000.00 of the EMD was represented by the same amount already held in escrow by the Respondent on behalf of the Claimants.

12. Paragraph 1(b) of the Contract provided that the EMD "shall be held by Broker/Escrow Agent and deposited in an escrow account in accordance with the Maryland Real Estate Brokers Act. . . ."

13. Paragraph 2 of the Contract entitled Settlement states the following:

> Seller and Buyer are required and agree to make full settlement in accordance with the terms hereof on or before 125 days, or as soon thereafter as a report of the title and a survey, if required, can be secured if promptly ordered.

(REC Ex. 4, pg. 1-20.)

14. Paragraph 22 of the Contract entitled Broker's Fee, states the following:

> If not previously paid, the Party making settlement is hereby irrevocably authorized and directed to deduct and pay the brokerage fee(s) to the Broker(s) from the proceeds of sale in accordance with a separate listing contract and with the Multiple Listing Service offer of compensation to cooperating and Buyer Agents and as instructed by the Listing Broker. In the event settlement should fail to occur within the time herein set forth, the Broker(s) shall still be entitled to the brokerage fee(s) referenced above. Buyer acknowledges that he has worked with no other Agent on this property other than the Agent named herein. The seller and the Buyer each confirm that disclosure of the agency relationship as described in this contract conforms with the agency relationship previously acknowledged to in writing by them.

(REC Ex. 4, pg. 1-26.)

15. On July 23, 2017. the Claimants and the Respondent terminated their October 12, 2016 Agreement, effective June 27, 2017 and negotiated a new agreement.

16. The new agreement between the Respondent and Claimants reduced the compensation to the Respondent from three percent to two and one half percent.

17. An agreement was reached where the Respondent would receive eighty-three percent of the two and one half percent compensation so the new Buyer's Agent could receive seventeen percent of the two and one half per cent compensation.

18. The Claimants learned that their financing withdrew from the deal, therefore, they were not able to complete the purchase and they stopped making effort to satisfy all of the contingencies to the Contract.

19. On April 30, 2020, the Claimants and the Seller entered into a Settlement Agreement and Release where they agreed that the $3,000.00 of EMD held in escrow by the Respondent would be released and paid to the Claimants.

20. On May 8, 2020, the Claimants and Seller jointly signed a letter addressed to the Respondent, directing the Respondent return the $3,000.00 portion of the EMD to the Claimants.

21. The Respondent did not return the $3,000.00 of EMD to the Claimants as instructed.

22. On September 11, 2020, the Respondent, through her attorney, informed the buyer and seller that her company determined to distribute the $3,000.00 of EMD to the Respondent as part of the commission she determined was owed to her. The Respondent's attorney requested the Claimants respond within thirty days of the September 11, 2020 letter if there was objection.

23. The Claimants did not respond to the September 11, 2020 letter as their attorney advised it was not necessary due to the settlement agreement they had with the Seller of the Property.

DISCUSSION

The Regulatory Charges

The REC charged the Respondent with violating MD Code, Business Occupations & Professions, § 17-322(b)(22), (25), 31, 32 and 33; § 17-502(b)(2); § 17-505(a)(b); and § 17-532(b)(1)(iv), and (vi). COMAR 09.11.01.18, 09.11.02.01(C) and 09.11.02.02 (A).

§ 17-322 of the Business Occupations Article provides, in pertinent part:

(b) *Grounds.* – Subject to the hearing provisions of § 17-324 of this subtitle, the Commission may . . . reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

. . .

(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.

§ 17-502(b)(2) states:

(2) A real estate broker may not use trust money for any purpose other than that for which it is entrusted to the real estate broker.

§ 17-505(a) states:

(a) A real estate broker shall maintain trust money in an account authorized under this Part I of this subtitle until:

(1) the real estate transaction for which the trust money was entrusted is consummated or terminated;

(2) the real estate broker receives proper written instructions from the owner and beneficial owner directing withdrawal or other disposition of the trust money;

(3) on an interpleader filed by the real estate broker, a court orders a different disposition; or

(4) the owner or beneficial owner of the trust money fails to complete the real estate transaction for which the trust money was entrusted and the real estate broker, in the real estate broker's sole discretion, decides to distribute the trust money in accordance with subsection (b) of this section.

§ 17-505(b) states:

(b)(1) Prior to distributing the trust money under subsection (a)(4) of this section, the real estate broker shall notify both the owner and the beneficial owner that the real estate broker intends to distribute the trust money to the person who, in the good faith opinion of the real estate broker, is entitled to receive the trust money in accordance with the terms of the real estate contract which established the trust.

§ 17-532(b)(1)(iv) and (vi) states:

(b)(1) A licensee shall:

(iv) treat all parties to the transaction honestly and fairly and answer all questions truthfully;
(v) in a timely manner account for all trust money received;
(vi) exercise reasonable care and diligence; and

COMAR 09.11.01.18 states:

.18 Disposition of Deposit Monies Held by Licensees.

In any transaction in which a licensee has custody or possession of funds which belong to others, in the absence of a provision to the contrary, in the contract of sale, rental lease, option agreement, or other similar type of document, and a dispute arises as to the disposition of these funds by and between the parties to the transaction, the licensee shall:
A. Hold these funds until he or she has releases signed by all parties to the transaction authorizing disposition of the funds;
B. File a bill of interpleader in the proper court in the county or Baltimore City, as the case may be, thereby causing these funds to be deposited in the registry of this court;
C. Hold these funds until such time as one of the parties to the transaction files suit and the court in which this suit is filed orders the disbursement of these funds, whichever event under the purview of §§B and C of this regulation shall first occur; or
D. Distribute the funds in accordance with the procedure set forth in Business Occupations and Professions Article, §17-505, Annotated Code of Maryland.

Determination of penalty.

Md. Code Ann., Business Occupations & Professions § 17-322(c) states:

> (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.

COMAR 09.11.02.02A provides:

> In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction.

The REC bears the burden of establishing, by a preponderance of the evidence, that the Respondent committed the violations alleged in the Statement of Charges. COMAR 09.01.02.16A. To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so[,]" when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

The REC presented the testimony of Claimant Abdullah who testified that he met the Respondent at a networking event. He mentioned to the Respondent an opportunity to purchase vacant property to develop condos near the National Harbor. The Claimants and the Respondent entered into a buyer/tenant agreement in October 2016. According to Claimant Abdullah, the Claimants made an offer to purchase the vacant lot for $6,000,000.00 with a required EMD of $103,000.00. $3,000.00 of the EMD was designated as held by the Respondent pursuant to $3,000.00 of funds she was already holding for the Claimants pursuant to a prior project that did not close. The remaining $100,000.00 of the EMD was kept in the Seller's attorney's account.

According to Claimant Abdullah, the real estate deal fell apart about thirty days before the scheduled settlement on the Contract, because the Claimants lost their financing opportunity. Therefore, they did not make any further attempts to satisfy the contingencies required by the Contract.

Ms. Rezek, who has worked for the REC for thirty years, testified about her investigation concerning any violation of regulations by the Respondent. According to Ms. Rezek, she determined the Respondent was a licensed real estate broker in the State, that she was responsible for her escrow accounts and that she was the broker of record for the Claimants. According to Ms. Rezek, the Respondent was subject to comply with the regulations as a licensed real estate broker in the State.

The Respondent testified and admitted she held the Claimants' EMD within her escrow account. Further, when she learned the real estate deal would not go to settlement and close, she decided that the $3,000.00 of EMD should be paid to her as her earned commission. In July 2017, the Respondent withdrew the $3,000.00 EMD and paid herself for what she determined to be earned commission for services rendered to the Claimants.

The Respondent stated in her closing argument that she was "clueless" and was not aware of any regulations she may have violated. She argued she was "emotionally charged" and "felt abandoned" by the Claimants in terms of her not being compensated for the work she performed for the Claimants. She requested "leniency."

The evidence shows that the Claimants and the Respondent agreed to the Respondent serving as the Claimants' buyer's agent for the purchase of certain vacant real property. The Claimants entered into a Contract with the Seller for the purchase of a vacant lot in Prince George's County, Maryland. EMD was required and the Respondent held in her escrow account $3,000.00 of the total $103,000.00 EMD.

The Contract for the purchase of the vacant lot also had an addendum which provided for certain contingencies to be completed prior to settlement of the property. The Claimants learned they lost their financing opportunity, which prevented their ability to close on the contract. They no longer had a need to satisfy all of the contingences to the Contract. The Claimants negotiated a settlement with the Sellers whereby the sellers agreed to terminate the Contract and return the EMD to the Claimants. The Claimants' attorney, pursuant to a letter, instructed the Respondent to return the $3,000.00 EMD to the Claimants. The Respondent refused to do so arguing the $3,000.00 EMD belonged to her as her commission for serving as the Buyer's agent. The Respondent took the position that closing on the real estate contract was not necessary for her to be entitled to a commission.

The evidence also shows that the Respondent:

- Failed to remit promptly the $3,000.00 of EMD that came into her possession and belonged to the Claimants.
- Engaged in conduct that demonstrated bad faith, incompetency or untrustworthiness.
- Violated the provisions that relates to trust money.
- Violated the provisions that relates to the code of ethics.
- Used trust money for a purpose that was not entrusted to her.

In addition, the Respondent failed to exercise reasonable care and diligence by failing to comply with the Broker's Law provisions pertaining to trust account requirements. These requirements constitute the industry standard of care for trust money. Md. Code Ann., Business Occupations and Professions § 17-532(b)(1)(vi).

The remaining charges pertain to the Respondent's responsibilities under the REC's Code of Ethics, codified at COMAR 09.11.02, which provides in pertinent part, the following:

> .02 Relations to the Client.
> A. In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction.

B. In justice to those who place their interests in the licensee's care, the licensee shall endeavor always to be informed regarding laws, proposed legislation, governmental orders, and other essential information and public policies which affect those interests.

The Respondent asserted during her testimony that she was entitled to keep the EMD as an earned commission, despite knowing the money held in her care represented a portion of the $103,000.00 deposit that was to be used toward the purchase and sale of the Property. Despite requests by the Claimants' attorney, the Respondent determined that she was entitled to the money as her commission and paid herself from that money at the end of July 2017. Her actions demonstrate she failed to protect the public against unethical practices in the real estate field. Certainly, her actions were damaging to the public, including the Claimants, and to the dignity and integrity of the real estate profession. For her unethical and improper use of the EMD, she violated COMAR 09.11.02.01C.

The Code of Ethics also requires a licensee to protect and promote the interests of the client and requires absolute fidelity to the client's interest. COMAR 09.11.02.02A. The Respondent clearly violated this requirement. Her failure to return the EMD was intentional. The Respondent was told by the Claimants that the Contract would not go to settlement and she was instructed to return the EMD to the Claimants, which she refused to do. The Respondent could have, but failed to initiate interpleader proceedings as the statute allows, if she believed there was a dispute as to ownership of the EMD. Md. Code Ann., Business Occupations and Professions § 17-505(a)(3); COMAR 09.11.01.18B. Since she determined not to proceed in interpleader, she should have returned the EMD to the Claimants.

The REC has met its burden of proof with respect to the charged violations of Md. Code Ann., Business Occupations and Professions § 17-322(b)(22), (25) and § 17-532(b)(1)(v)-(vi), and COMAR 09.11.01.05, 09.11.02.01C, and 09.11.02.02A. I further conclude that the REC has also

met its burden of proof with respect to Section 17-322(b)(32), (33) of the Business Occupation and Professions Article.

Penalty

The REC argued for a revocation of the Respondent's license, or a suspension and monetary penalty as proper sanction for the Respondent's violations. The Commission is required to consider the following factors to determine the amount of the penalty imposed:

> (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.

Md. Code Ann., Business Occupations and Professions § 17-322(c)(2).

In considering the factors laid out in subsection 17-322(c)(2) for the imposition of a monetary fine, the REC argues that the violations were serious in nature and resulted in actual monetary harm to the Claimants. The REC asserts that the Respondent took money not belonging to her, held in trust by her, and if she believed there was a dispute as to ownership, she did not take the appropriate interpleader action to have the matter resolved by the Circuit Court.

As previously stated, the Respondent argued during her closing that she realizes she was "clueless" as to how she should have handled the matter, that she was emotionally charged and felt abandoned by the Claimants after the work she put into the project. She requested leniency due to her advanced age and not understanding the law.

I agree with the REC regarding the seriousness of the violations. A suspension and penalty is appropriate under facts in evidence herein. The penalty should take into account the seriousness of the violations, the harm caused by the Respondent's conduct and the bad faith she exhibited, but weighs against the factors of the lack of any previous violations and that all the violations stem from a single transaction. In addition, I have considered the purpose of a penalty, which is to deter future bad acts by a licensee but also to protect the public. *Garrity v.*

Maryland State Bd. of Plumbing, 447 Md. 359, 387-388 (2016) (citations omitted). The Respondent has no prior violations or sanctions. Nevertheless, the violations here go to the heart of the licensee's fiduciary obligation and the risk of harm to the public. For that reason, I determine that a penalty of $5,000.00 is warranted. In addition, I find that a suspension of six months is appropriate for the violations stated herein.

PROPOSED CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I propose the Commission conclude as a matter of law that:

1. The Respondent engaged in conduct that demonstrated bad faith, incompetency or untrustworthiness and that constituted dishonest, fraudulent and improper dealings in violation of § 17-322(b)(22) and (25) of the Business Occupations Article.

2. The Respondent violated COMAR 09.11.02.02A, the REC's Code of Ethics and § 17-322(b)(33) of the Business Occupations Article, by failing to protect and promote the interests of her client or by failing to act with absolute fidelity to the clients' interest.

3. A six month suspension of the Respondent's Real Estate Commission license is an appropriate sanction, as well as a monetary penalty of $5,000.00 for the violations of §§ 17-322(b)(25), (32) and (33) and 17-532 of the Business Occupations Article. *See* Business Occupations Article § 17-322(c); *and see* COMAR 09.11.01.18 and 09.11.02.02A.

RECOMMENDED ORDER

I therefore **RECOMMEND** that the Maryland Real Estate Commission **ORDER** as follows:

1. That the Respondent's real estate broker license be suspended for a period of six months;

2. That the Respondent pay a civil penalty in the amount of $5,000.00;

3. That the records and publications of the Maryland Real Estate Commission reflect this decision.

SIGNATURE ON FILE
SIGNATURE ON FI

March 30, 2022
Date Decision issued

John T. Henderson, Jr.
Administrative Law Judge

JTH/emh
#197451