

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION
V.

ANGELA T. DILLONSMITH
RESPONDENT

AND

CLAIM OF OSHA BANKS
AGAINST THE MARYLAND
REAL ESTATE COMMISSION
GUARANTY FUND

* BEFORE DEBORAH H. BUIE,
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-24-07-44423
* REC CASE NO: 2005-RE-295
*

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PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated June 13, 2008, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 16th day of July, 2008.

ORDERED,

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

and,

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

MARYLAND STATE REAL ESTATE COMMISSION

Date 7/18/08

By: Katherine J. Connelly, Exec. Director
for J. Nicholas D'Ambrosia, Commissioner

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On March 8, 2005, Osha Banks (“Claimant”) filed a complaint (the “Complaint”) with the Maryland Real Estate Commission (“REC”) complaining of acts and omissions of a licensed real estate agent, Angela T. Dillonsmith (the “Respondent”). The Claimant also filed a claim for reimbursement (the “Claim”) against the Commission’s Guaranty Fund (the “Guaranty Fund”) for losses allegedly caused by the acts and omissions of the Respondent. Based on this

complaint, the Commission determined that charges against the Respondent were warranted and filed a Statement of Charges and Order for Hearing (“Charges”) on October 1, 2007. The Charges also indicated that the Commission determined that the Claimant was entitled to a hearing on the Guaranty Fund claim and that these matters arose out of the same facts and circumstances and, therefore, should be heard and determined at the same time.

On March 18, 2008, I held a hearing at the Office of Administrative Hearings (“OAH”) in Wheaton, Maryland on the Charges against the Respondent and the Claim against the Fund. Assistant Attorney General (“AAG”) Peter Martin appeared on behalf of the Commission; the Fund was represented by AAG Hope Miller. The Claimant was represented by Donald Knepper, Esquire. At the start of the hearing, a phone call was received from OAH informing me that the Respondent was at the Administrative Law Building in Hunt Valley, Maryland. The Respondent was placed on speakerphone and she requested a postponement due to a medical condition, indicating that she had gone to the incorrect location in error. All of counsel objected to the postponement request. It was determined that the Respondent had received adequate notice, with the location properly noted, and her postponement request due to a medical condition was deemed untimely and without documentation. Respondent was directed to promptly proceed to the Wheaton OAH and the hearing was commenced in her absence¹. Respondent arrived at approximately 11:55 a.m. and she represented herself.

I heard this case pursuant to § 17-324 of the Business Occupations and Professions Article, Annotated Code of Maryland (2004).² Procedure in this case is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2004 &

¹ It should be noted that when the Respondent arrived in Wheaton she did not have a single piece of documentation or paperwork of any kind. She did not appear prepared to go forward and her lack of preparation reinforces my belief that she merely intended to delay the proceedings by showing up at the wrong location.

² Hereinafter, “the Business Occupations Article”

Supp. 2007), OAH's Rules of Procedure, COMAR 28.02.01, and the REC's Hearing Regulations, COMAR 09.11.03 and 09.01.03.

ISSUES

1. Did Respondent violate § 17-322(b)(3) of the Business Occupations Article by directly or through another person willfully making a misrepresentation or knowingly making a false promise?
2. Did Respondent violate § 17-322(b)(22) of the Business Occupations Article by failing to maintain, to account for or to remit promptly any money that came into her possession but belonged to another person?
3. Did Respondent violate § 17-322(b)(25) of the Business Occupations Article by engaging in conduct that demonstrates bad faith, incompetency, untrustworthiness or conduct that constitutes dishonest, fraudulent or improper dealings?
4. Did Respondent violate § 17-322(b)(30) of the Business Occupations Article by failing to make the disclosure or provide the consent form required by § 17-530 of the Business Occupations Article?
5. Did Respondent violate § 17-322(b)(31) of the Business Occupations Article by violating §17-502 of the Business Occupations Article, relating to the handling of trust money?
6. Did Respondent violate § 17-322(b)(33) of the Business Occupations by violating any regulation adopted under that title or any provision of the Code of Ethics?
7. Did the Claimant suffer an actual monetary loss compensable by the Guaranty Fund as a result of the conduct of the Respondent and, if so, what is the amount of the loss?

SUMMARY OF THE EVIDENCE

Exhibits

The REC submitted the following documents, which I admitted into evidence:

- | | |
|-------------|--|
| REC Ex. # 1 | Notice of Hearing, dated January 2, 2008, with attached Statement of Charges and Order for Hearing |
| REC Ex. # 2 | Notice of Hearing, dated February 7, 2008 |

- REC Ex. # 3 Department of Labor, Licensing and Regulation (“DLLR”) Occupational/Professional licensing history of Respondent, dated March 6, 2008
- REC Ex. # 4 Affidavit of Steven Long, dated February 5, 2008
- REC Ex. # 5 Affidavit of Katherine F. Connelly, dated March 14, 2008
- REC Ex. # 6 REC Report of Investigation, closed April 2, 2007, which contained the following numbered attachments:
1. Copy of complaint form
 2. Broker’s response
 3. Request for Investigation
 4. Cashier’s checks
 5. E-mail, dated December 2, 2003
 6. To Whom It May Concern letter
 7. Land Installment Contract(recorded August 4, 2004)
 8. Settlement Agreement (December 21, 2004)
 9. Check #252
 10. E-mail, dated December 2, 2003
 11. Settlement Statement (December 19, 2003)
 12. Unsigned Land Installment Contract
 13. Exclusive Buyer Agent Agreement
- REC Ex. # 7 Bank of America records, dated June 14, 2007
- REC Ex. # 8 Mercantile-Safe Deposit and Trust records, dated August 20, 2007

No additional documents were offered on behalf of the Claimant or the Fund.

Testimony

The Claimant testified on her own behalf.

The following witnesses testified on behalf of the REC: the Claimant, James Ware, Maureen Whalen, and Jack Mull. The Respondent testified on her own behalf. No witnesses were presented on behalf of the Fund.

FINDINGS OF FACT

Having considered the testimony and exhibits presented, I find the following facts by a preponderance of the evidence:

1. The Respondent has been a licensed real estate salesperson in Maryland since January 2, 2002, under license number 05-532183. The Respondent was initially employed by Re/Max Sails, Inc. in College Park, Maryland. In May 2003, she transferred to Re/Max Professionals in Bowie, Maryland and on December 12, 2003, the Respondent transferred to Re/Max One in Bowie, Maryland.
2. In October 2003, the Claimant responded to an advertisement in the Washington Post that described a program for home buyers with less than optimal credit. The Claimant called the phone number and spoke with the Respondent who referred her to a loan officer for the purposes of determining her credit score.
3. On an unknown date, but soon after the telephone conversation, the Claimant came to the Re/Max Professionals office on Laurel-Bowie Road and left recent pay stubs and two money orders for the credit repair services with an administrative assistant.
4. That afternoon, the Claimant received a call from the Respondent advising her that her credit score was low and the Claimant could receive help from the Re/Max program by allowing an investor to buy the house of her choice. The investor would sell it back to the Claimant after her credit was repaired.
5. Because the program was represented as sponsored by Re/Max, the Claimant decided to participate in the program and began looking for a house. The Claimant researched and visited properties on her own; however, she believed the Respondent was her realtor.
6. The Respondent told the Claimant the investor's fee would be \$10,000.00 and she could pay it either at the onset of the agreement or when the home is transferred from the investor to the Claimant. The Claimant intended to maintain this relationship with the

investor for only a period of one year, intending to correct her credit by then; therefore, the Claimant opted to pay the investor at the time of the property transfer.

7. The Claimant decided on a property located at 2213 Piermont Drive, Fort Washington, Maryland 20744 (“the Piermont Drive property”). The listing on the house stated the selling price as \$212,000.00.
8. In the third week of November 2003, the Claimant met the Respondent at the Re/Max Professionals office. This was the first time that the Claimant had actually met the Respondent since all other communications with her had been over the telephone.
9. At the meeting, the sales price and monthly payment were discussed. The Respondent told the Claimant that she needed to provide a 10% down payment (of the sales price) to assure the title company that she had the funds for settlement. The Respondent told the Claimant that the check would be held at the ReMax office and returned to her at settlement. The Respondent also advised the Claimant to make the cashier’s check payable to herself (the Claimant) so that there would be no risk of it being cashed by someone else.
10. On November 24, 2003, the Claimant obtained a cashier’s check for \$21,200.00; it was made payable to herself. She left the check with the receptionist at the Re/Max Professionals office (as instructed by the Respondent).
11. At this point, the Respondent had not provided the Claimant with any documentation of the purchase, written real estate agency disclosure forms, or receipt for the cashier’s check.

12. On November 26, 2003, the Respondent deposited the check into her personal account at Mercantile-Safe Deposit bank. The Claimant's signature had been forged upon the endorsement line.

13. On December 3, 2003, the Claimant met the Respondent at the Re/Max Professionals office. The Respondent presented the Claimant with a copy of an e-mail, represented as a "legally binding document," and containing information about the purchase of the Piermont property. The e-mail contained a heading as if it were being transmitted to the Claimant electronically; however it did not contain an actual e-mail address and it was hand-delivered to the Claimant. It read:

I hope this helps to reiterate what we discussed on yesterday. The terms of the investors are as follows: They will purchase the home of your choice. Once that home is secured you will be given a deposit amount to give. You will also be given your monthly payments. All maintenance will be done [by] you. Water bill, gas and electric, and hoa will be paid by you. All payments need to be paid by the first, and will be considered late on the 2nd, on the 2nd you need to add an additional \$100.00 to your payment. For all payments not received by the 6th eviction will start immediately, the agreement will be considered null and void, and all monies will be liquidated for damages. For any additional questions please call me. I want to say I am glad you were accepted as a candidate, and I look forward to working with your family. If you are unable to follow thru with this transaction your deposit of 1% will be liquidated for damages. You are responsible for the home inspection, pest inspection, and the appraisal[.] [T]hese funds are due as needed. Angela Dillonsmith...The sales price of the house would be 235,000 minus your 21,200 deposits and the balance due to investor would be 213,800 at the end of your term. Your monthly installments would be \$1747.00. The investor reserves the right to change the monthly obligation not to exceed 1% of the monthly obligation, and not to exceed twice per year, and the investor will notify you in writing before any changes are to be made.

14. The sales price was incorrectly stated as \$235,000.00 and so the Claimant refused to sign it. The Respondent promised to change the price to \$212,000.00, but cautioned the

Claimant that if she did not sign the document her \$21,200.00 deposit would be forfeited.

The Claimant relented because she believed she might lose her deposit.

15. James Ware (“Ware”) was the investor who agreed to buy the Piermont Drive property for the Claimant. The Respondent told him that the terms of his participation would be as follows: he would receive \$10,000.00 as a fee (from the Claimant), after settlement, and would be able to charge the Claimant rent in the amount of \$300 or \$400 above the mortgage payment.
16. On December 17, 2003, the Claimant gave the Respondent another check made payable to Ware for \$2,120.00, which was supposed to represent Ware’s 1% earnest deposit for the purchase. For the first time, the Claimant learned that “James Ware” was the name of the investor. The Respondent also told the Claimant that she was not required to attend the settlement.
17. On December 19, 2003, the Respondent informed the Claimant that she could move into the property. The Claimant retrieved the keys from a lockbox and moved into the property on that day.
18. Mr. Ware purchased the Piermont Drive property on December 18, 2003 for \$212,000.00. He was not made aware of the Claimant’s certified check for \$21,200.00 and he was not provided \$21,200.00 towards the purchase price; however, he was given the check for \$2,120.00 (the earnest deposit).
19. On December 18, 2003, Ware asked the Respondent for his fee and she gave him \$7,000.00 of the \$10,000.00 investor fee.

20. The Respondent directed the Claimant to drop off the first two mortgage checks (for January and February 2004) at the Re/Max office. In January 2004, the Claimant met Mr. Ware in for the first time; he visited the property to inspect it.
21. The Claimant had yet to receive a land installment contract or lease agreement or document memorializing the agreed-upon purchase price.
22. In March 2004, Mr. Ware visited the Claimant's home again and the Claimant asked him why she had never received any contract or lease agreement. Mr. Ware told her that she owed him a balance of \$3,000.00 for the investor fee and without payment he was not able to provide her with the installment agreement.
23. This information differed from the information the Claimant had received from the Respondent, i.e., she had an option to pay the fee later; the Claimant intended to pay the \$10,000.00 fee at the time that the property was transferred to her.
24. After further discussion, the Claimant showed Mr. Ware a copy of the \$21,200.00 certified check that represented his request for a 10% down payment. Mr. Ware, knowing that he had not requested the down payment (nor received it) suggested that the Claimant immediately contact her bank.
25. The Claimant contacted the Bank of America and learned that the check had been deposited in a Mercantile-Safe Deposit account, belonging to the Respondent, the day after she left it at the Respondent's office. The Claimant's signature had been forged.
26. The Claimant contacted the police. After the police contacted the Respondent, she came to the Claimant's home, with her children, and promised to return the money if the Claimant would withdraw her criminal complaint. The Respondent was crying

hysterically; she blamed the misunderstanding on Mr. Ware. The Claimant acquiesced and withdrew her complaint.

27. On April 24, 2004, Mr. Ware entered into an Exclusive Buyer Agent Agreement with the Respondent, which stated that its objective was for Mr. Ware to work as an investor “under Angela as a Buyer Agent.” The agreement was prepared on Re/Max Professionals letterhead; however, on December 12, 2003, the Respondent had transferred her license from Re/Max Professionals, located on Laurel-Bowie Road in Bowie to Re/Max One, located on Northview Drive in Bowie.
28. The Claimant continued to inquire about her contract with Mr. Ware because she had not been provided with any document indicating the purchase price and terms. In June 2004, Mr. Ware presented her with a land installment contract; the purchase price was represented as \$232,000.00 and it reflected a deposit of \$21,200.00, leaving a principal balance of \$210,800.00 and a monthly installment payment of \$1,942.00. The Claimant protested but signed the contract believing that she would at least finally have some proof of her interest in the property.
29. The Claimant called the Respondent and told her that she had signed the agreement and the Respondent told her not to record the papers at the courthouse but rather keep them in her home.
30. The Claimant did as instructed but became increasingly concerned about her property rights and so, in August 2004, she took the land installment contract to the courthouse and recorded the transaction.
31. The Respondent did not submit the \$21,200.00 check to the real estate broker, Re/Max Professionals, on whose behalf she was licensed to provide real estate brokerage services.

She also did not submit the check to Re/Max One where she transferred her license on December 12, 2003.

32. The Respondent did not provide the Claimant with the required disclosure or consent form.

33. The Respondent's representations about the terms of the purchase of the Piermont Drive property, including the investor fee, the purchase price, and the 10% deposit requirement were false.

34. On March 8, 2005, the Claimant filed a complaint with the REC. The REC opened an investigation on December 6, 2006; Jack Mull, Jr. ("Mull") was the assigned investigator.

35. Mull interviewed the Claimant, Ware, and the Respondent. The Respondent denied any role in negotiating the purchase of the Piedmont property and she denied endorsing the check and attributed any confusion surrounding the sale of the home to Ware. She also accused her sister, who has moved to Florida and is a drug abuser, of cashing the check to access the proceeds for the purchase of drugs.

36. The Respondent offered to provide Mull with her sister's phone number but she never did so.

DISCUSSION

A. Regulatory charges

On March 8, 2005, the Claimant filed a Complaint against the Respondent, who is a licensed real estate salesperson. The Claimant also filed a claim for reimbursement from the Guaranty Fund for losses allegedly incurred as a result of the conduct of the Respondent. Based on this Complaint, the Commission determined that Charges against the Respondent were warranted and that Claimant should have a hearing on the Guaranty Fund claim.

The Charges against the Respondent arose from the Claimant's attempt to purchase the Piermont Drive property through a program for buyers with less than optimal credit advertised by the Respondent in The Washington Post newspaper. The REC alleges the following:

1. The Respondent was affiliated with RE/MAX Professionals and never made her supervisors or the broker for RE/MAX Professionals aware of the program she offered in the advertisement.
2. It is further alleged that the Respondent met with the Claimant at the Re/Max Professionals office and represented to the Claimant that the investor (Ware) would purchase the Piermont property for her for \$212,000.00 and her monthly payment would be around \$1,500.00 and that Ware wanted her to pay a good faith deposit of \$21,200.00 or 10% of the purchase price.
3. It is also alleged that the Respondent directed the Claimant to obtain a cashier's check made payable to herself (the Claimant) and which would be held by Re/Max Professionals; the Claimant delivered the check, unendorsed, to the Re/Max Professional's office in an envelope marked "Angela Dillonsmith."
4. The REC also alleges that the check was deposited into the Respondent's private business account instead of the broker's escrow account.
5. It is also alleged that Ware never requested that the Claimant provide a deposit.
6. The REC further alleges that Ware purchased the Piermont property for \$212,000.00 and that based upon the Respondent's representations to him, he expected to receive a \$10,000.00 fee and a monthly profit of \$300-\$400.
7. It is further alleged that the Respondent presented to the Claimant a document indicating a purchase price of \$235,000.00 and monthly payments of \$1,747.00, which the Claimant

refused to sign. The document was represented (by the Respondent) as a land installment agreement.

8. The REC also alleges that the Claimant ultimately agreed to purchase the Piermont property for \$232,000.00 less her \$21,200.00 deposit and monthly installment payments of \$1,942.00.
9. Finally, the REC alleges that the Respondent never provided to the Claimant any written agreement memorializing the agreed-upon purchase price and monthly payment, and overall her conduct constituted bad faith, incompetence, and untrustworthiness, as well as dishonest, fraudulent and/or improper dealings.

The REC charged the Respondent with violating the following specific sections of the Business Occupations Article.

§ 17-322. License denial, suspension, or revocation

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

- ...
(3) directly or through another person willfully makes a misrepresentation or knowingly makes a false promise;
- ...
(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;
- ...
(30) fails to make the disclosure or provide the consent form required by §17-530 of this title;
- (31) violates any provision of subtitle 5 of this title that relates to trust money;
- (33) violates any regulation adopted under this title or any provision of the code of ethics [.]

§ 17-502 Handling of Trust Money.

(a) Submission to brokers by associate brokers and salespersons.—An associate real estate broker or 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 associate real estate broker or the real estate salesperson provided the real estate brokerage services.

In addition to that code section, the REC alleges that the Respondent violated the following provisions of the Code of Ethics for licensees regulated by the REC:

COMAR 09.11.02.01 Relations to the Public

...

C. 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.

H. For the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed.

COMAR 09.11.02.02 Relation 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.

If the charges are upheld, the Respondent may face suspension or revocation of her Real Estate license.³ The REC is also seeking a monetary fine, pursuant to Business Occupations Article, § 17-322(c).

³ The record will reflect, however, that the Respondent's license expired on January 2007 and the REC cannot seek a suspension or revocation.

B. Guaranty Fund Claim

On March 8, 2005, the Claimant filed a claim for reimbursement from the REC Guaranty Fund for losses allegedly incurred as a result of the conduct of the Respondent. In order to establish eligibility for any payment from the Guaranty Fund, the Claimant must establish, at a hearing, that the Claimant has suffered an actual monetary loss as a result of the conduct of an individual who was licensed by the Commission at the time of the loss. The Claimant bears the burden of establishing her entitlement to recovery, proving not only the specific amount of the loss, but also that this loss was the result of the conduct of the licensee which constituted theft, embezzlement, forgery, false pretenses, fraud or misrepresentation.

The Claimant testified on behalf of the REC and on her own behalf pursuant to her claim against the Fund. She spoke with unwavering conviction while making excellent eye contact and I found her testimony particularly credible. She recalled dates and conversations with considerable detail and provided a passionate (teary-eyed) account of a whirlwind eight-month period of confusing interactions with the Respondent. The Claimant maintained that she responded to an advertisement in the newspaper, and in subsequent phone conversations the Respondent advised her that she would not be able to qualify for a mortgage loan because of her low credit score and assured her that an investor was available to buy a property and then, when her credit was repaired, sell it to her. Meanwhile, she would pay the investor rent. She recalled that she found the Piermont property listing and it was listed at \$212,200.00; the Respondent recommended that she have the property inspected (and she did) and told her that the investor required a 10% percent deposit. The Claimant stated that she left a certified check (for \$21,200.00 and made payable to herself) with a receptionist at the Re-Max office on Laurel-Bowie Road with the understanding that it would be held in escrow at the Re/Max office and

made available at settlement. The Claimant maintained that, on December 17, 2003, she provided another check to the Respondent in the amount of \$2,120.00 that was to be the investor's 1% earnest deposit required for settlement.

The Claimant maintained that on the day of settlement, (December 18 or 19), the Respondent told her that she did not need to attend and then called her later and told her that she could pick-up the key from a lock box and move in. In addition, the Claimant was told to drop off the January and February mortgage payments directly at the Respondent's office, which, in December 2003, was no longer on Laurel-Bowie Road but was on Northview Drive in Bowie. The Claimant maintained that she did as she was instructed but during an encounter with the investor, in March 2004, when he came to inspect the property, Ware inquired about mortgage payments that he was yet to receive. At this time, as she and Ware continued to converse, she learned that everything told her by the Respondent was not accurate. She learned that Ware had not requested a 10% deposit and consequently contacted her bank wherein she discovered that the check had been presented (the day after she left it), with her name as an endorsement, and cashed at the Respondent's personal bank (Mercantile Safe and Trust). The Claimant further maintained that she never received a contract or official document outlining the terms of this investor purchase agreement and when she did finally receive a land installment agreement from Ware (in June 2004) the purchase price and monthly payment were more than the Respondent had outlined to her. The Claimant also maintained that she did not receive disclosure or consent forms, and because the investor program was represented as supported by Re/Max, she believed that it was rubberstamped and approved by the Re/Max company and was a trustworthy endeavor. In addition, the Claimant maintained that she believed the Respondent was her agent.

Finally, the Claimant testified about the basis of her claim for reimbursement from the Fund for \$39,000.00. She indicated that she was seeking the \$21,200.00 that was not properly applied to the contract price to which she had agreed (\$212,000.00) and \$10,000.00 that she had spent on home improvement, including hardwood floors, bathroom remodeling, and new appliances, drywall repair, painting, and downspout work, \$3,000.00 for attorney's fees,⁴ and \$5,000.00 for miscellaneous costs.

James Ware testified on behalf of the REC and stated that he attended a seminar in August or September 2003 for investors to purchase homes for individuals with poor credit; the Respondent was the presenter. On October 15, 2003, Ware paid the Respondent \$1,800.00 to become an investor with her program. Ware stated that the Respondent told him that he would receive \$10,000.00 to purchase a property and \$300 - \$400 each month in addition to the mortgage payment. He went to settlement on the Piermont property on December 18, 2003 and paid \$212,000.00. He received the \$2,100.00 from the Respondent after the settlement. Ware maintained that he inquired about the \$10,000.00 fee he was promised and the Respondent told him that the money was in escrow. Ware also testified that after considerable prodding, the Respondent finally gave him \$7,000.00, and he asked the owner of Re/Max One (on Northview Road) if there was an escrow account for the Piermont property. When he was told that there was not an account, he discussed his suspicions with the Claimant (during a visit to her home in March 2004) and told her to research the cashier's check. Finally, Ware maintained that he eventually terminated his business relationship with the Respondent.

Maureen Whalen ("Whalen") also testified on behalf of the REC. Whalen maintained that in 2003 she was managing the Re/Max Professionals office for Bob Blumenkrantz, who was

⁴ The Claimant has filed a civil complaint against the Respondent.

the broker; the Respondent was an agent in that office until she left in December 2003. Whalen stated that neither she nor Mr. Blumkrantz was aware of an investor program that was being operated by Re/Max Professionals and she testified that the office records do not reflect ever receiving a check for \$21,200.00 for deposit into escrow.

Jack Mull also testified on behalf of the REC. Mull was the investigator who was assigned the Complaint and he indicated that on March 9, 2007 he interviewed the Respondent. The Respondent's attorney was present and when Mull asked the Respondent about the \$21,200.00 check the Respondent told him that the check was partly representative of the \$10,000.00 investor fee that Ware requested. She denied forging the Claimant's signature and blamed it on her sister who she indicated was her office assistant. Mull testified that when he asked the Respondent if she had any documentation of the agreement with Ware for a \$10,000.00 fee or documentation of having paid him \$10,000.00, the Respondent's attorney interceded and stated that they would get in touch with him. The Respondent never did contact Mull again.

As previously noted, the Respondent arrived at the hearing late, at the conclusion of Whalen's testimony but before Mull had begun to testify. I summarized Whalen's testimony for her and gave her an opportunity to ask her any questions. After Mull's testimony, I gave the Respondent an opportunity to cross-examine him and she had no questions. I then gave her an opportunity to cross-examine the Claimant and Ware.

The Respondent testified on her own behalf; she maintained that the Piermont property transaction did not take place at the Re/Max Professionals office but at the Re/Max One office on Northview Drive. She explained how she wanted to help buyers who had poor credit ratings and she began working with investors to buy properties, but without flipping them. Toward this goal,

she obtained a tax ID number, a worker's compensation number, and a company bank account. The Respondent also testified that she was pregnant in the early fall of 2003 and experienced some medical problems that caused her to take leave from work and when she returned the purchase of the home by Ware had already taken place.

The Respondent further denied personally taking the cashier's check for \$21,200.00 indicating that it was left at her office; however, she did not dispute that the check was placed in her account. She presented conflicting statements; first she indicated that her administrative assistant deposited the check into her account and then she stated that her sister deposited it. She also disputed that she was the Claimant's agent, indicating that pursuant to her investor program, she was the investor's agent not the buyer's. The Respondent did not dispute that she included the Re/Max name in the newspaper advertisement and she did not dispute that she referred the Claimant to a loan officer at the onset to obtain a credit score. The Respondent also did not dispute that the check was not placed in either Re/Max office escrow account. She stated that she does not remember much of what occurred because she has since received a mental health diagnosis that she believes was "the cause of so many mistakes." Finally, the Respondent conceded that she does not dispute the Claimant's entitlement to \$21,200.00 "due to my negligence."

Based upon the following discussion, I find that the REC has sustained all of the Charges against the Respondent. On the issue of witness credibility, I am more persuaded by the testimony of the Claimant, Ware and Whalen than I am the testimony of the Respondent. The Respondent did not provide any supporting evidence to corroborate her contention that someone else endorsed the check and deposited it. Her testimony was vague and conflicting on many

occasions. Moreover, the supporting documents, presented by the REC, which were not challenged or disputed by the Respondent, corroborate the Charges in every respect.

I am persuaded that the Respondent informed the Claimant that the investor would purchase the Piermont property for \$212,000.00 and required \$10,000.00 as a down payment, to be applied against the sales price at settlement. Indeed, that is what Ware paid for the home; however, he was not given the \$10,000.00. Moreover, the Respondent represented that the investor program was a sanctioned Re/Max endeavor and that was not true, and the Claimant believed she was receiving the services of a highly regarded company known as Re/Max. The Respondent is in violation of Business Occupations Article, §§17-322(b)(3) and COMAR 09.11.02.01C.

The Real Estate Code of Ethics requires that all financial agreements and related information be in writing with copies provided to all parties to the transaction within a reasonable time after the agreements are reached. The writings must state the agreement in detail. COMAR 09.11.02.01. Similarly, the Code of Ethics requires that the licensee's primary responsibility is to protect the client's interests in the transaction. The Respondent never provided the Claimant with a contract that expressed the exact terms of the purchase of the Piermont property or a disclosure or consent form. The written document that was provided to the Claimant on December 2, 2003 (and was represented as an e-mail transmission even though it was not) does not meet the legal standard for a contract and moreover, the Claimant refused to sign it. Therefore, the Respondent is also in violation of §§17-322(b)(30) and (33) and COMAR 09.11.02.01H.

The Respondent does not dispute that she improperly handled the \$21,200.00 cashier's check provided by the Claimant. While I do not find her testimony credible when she states that she did not deposit it, she nevertheless admits that she did not place the check in an escrow account

and was overall negligent in the handling of the check. I am also persuaded that the Respondent represented herself as the Claimant's agent since she sent her to a loan officer to obtain a credit rating and took a down payment from her. Therefore, the Respondent is in violation of Business Occupations Article, §§17-322(b)(22) & (31); § 17-502 (a); and COMAR 09.11.02.02A.

Finally, I am persuaded that the Respondent misinformed both the investor, who became an unwitting pawn of the Respondent, and the Claimant about the financial provisions of the investor program. I find the Claimant credible when she states that she was told she could pay the \$10,000.00 at the time of the sale of the home to her (after her credit had been repaired), yet the Respondent told Ware that he would be paid \$10,000.00 after the settlement and he would be able to add \$300 -\$400 to the mortgage payment for purposes of rent. I find the Respondent in violation of §17-322(b)(25) & (33).

C. Penalties

Penalties for the violations cited by the REC are set forth in Business Occupations, § 17-322:

(c)(1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the Commission may impose a penalty not exceeding \$5,000 for each violation.

(2) To determine the amount of the penalty imposed, the Commission shall consider:

- (i) the seriousness of the violation;
- (ii) the harm caused by the violation;
- (iii) the good faith of the licensee; and
- (iv) any history of previous violations by the licensee.

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

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

....

The Respondent has violated the Code of Ethics and Business Occupations §17-322(a)(3), (22), (25), (30), (31), and (33), as well as §17-502(a). The Respondent is not currently

licensed and is therefore not subject to suspension or revocation; however, the REC is seeking a \$5,000.00 penalty for each code violation, for a total of \$20,000.00. Having already found the facts to support upholding the violations, I now need to address the factors listed in Business Occupations §17-322(c)(2) to recommend the amount of the penalty that the REC may impose.

The Respondent's actions were serious. Contracts form the basis of real property transactions, and a licensed real estate professional has a duty to protect clients. The duty is not carried out when the client is presented a nebulous proposal with incorrect information thereby prohibiting the client from making an informed choice. Moreover, the Respondent violated the core consideration of the Code of Ethics, i.e., "fidelity to the client's interest" when she forged and cashed the Claimant's check without her permission. The listing for the Piermont property indicated that the purchase price was \$212,000.00 and indeed that is what Ware paid for it. Yet, the Claimant ultimately paid \$235,000.00 because at that point she had little choice in order to properly execute her interest in the property. As such, the Claimant suffered considerable harm and there is no question that I find bad faith. The REC did not present any history of previous violations.

The REC recommendation of imposing a \$5,000.00 penalty for violations of §§17-322(a) and 17-502 (a); COMAR 09.11.02.01 and 09.11.02.02; for a total penalty in the amount of \$20,000.00, is reasonable.

D. Claimant's Guaranty Fund claim

The Claimant has the burden of proving that she is entitled to reimbursement from the Guaranty Fund. Business Occupations §17-407(e). The Claimant lost her \$21,200.00 deposit and claims that it was due to the acts or omissions of the Respondent. She also claims that she suffered a loss because of the monies she put into rehabbing the property and costs associated

with legal fees. The question now is to determine whether her claim against the Guaranty Fund should be accepted, in whole or in part.

Section 17-404 of the Business Occupations Article sets forth the criteria for recovery against the Fund:

§ 17-404. Recovery of compensation from Fund

(a)(1) Subject to the provisions of this subtitle, a person may recover compensation from the Guaranty Fund for an actual loss.

(2) A claim shall:

(i) be based on an act or omission that occurs in the provision of real estate brokerage services by:

1. a licensed real estate broker;
2. a licensed associate real estate broker;
3. a licensed real estate salesperson; or
4. an unlicensed employee of a licensed real estate broker;

(ii) involve a transaction that relates to real estate that is located in the State; and

(iii) be based on an act or omission:

1. in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or
2. that constitutes fraud or misrepresentation.

Section 17-402 (c) of the Business Occupations Article allows the REC to adopt regulations to administer the Guaranty Fund. Under that power, the REC adopted COMAR 09.11.03.04 to regulate claims against the Guaranty Fund:

.04 Claims against the Guaranty Fund.

A. A guaranty fund claim shall be based on the alleged misconduct of a licensee.

B. For the purpose of a guaranty fund claim, misconduct:

(1) Is an action arising out of a real estate transaction involving real estate located in this State which causes actual loss by reason of theft or embezzlement of money or property, or money or property unlawfully obtained from a person by false pretense, artifice, trickery, or forgery, or by reason of fraud, misrepresentation, or deceit;

(2) Is performed by an unlicensed employee of a licensed real estate broker or by a duly licensed real estate broker, associate broker, or salesperson; and

(3) Involves conduct for which a license is required by Business Occupations and Professions Article, Title 17, Annotated Code of Maryland.

In this case, there is no dispute that the basis of the claim for reimbursement of the \$21,200.00 is the “act or omission” that occurred when the Respondent misled the Claimant about the purpose of the check and then wrongfully accessed the money. The Guaranty Fund was established to make claimants whole if their real estate professionals profited from thefts, embezzlements, frauds, misrepresentations or trick, and so the Claimant is entitled to this claim. Moreover, the Respondent does not dispute that the Claimant should be awarded this amount.

However, the Fund argued that the Claimant is precluded from claiming legal fees pursuant to COMAR 09.11.01.18, and I agree. The provisions of that regulation state clearly that the amount of compensation recoverable “shall be restricted to the actual monetary loss incurred by the claimant” and may not include “any attorney’s fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.” Therefore, the \$3,000.00 for attorney fees is denied.

The Claimant is also seeking \$10,000.00 for home improvement costs. She did not present any receipts and the Fund argued that those expenses are expenses she would have incurred under any circumstances, since she benefited from the improvements while living in the home. I agree and I do not find that the home improvement expenses meet the definition of “actual monetary loss.”

Finally, the Claimant is seeking reimbursement for miscellaneous costs of \$5,000.00 and she has presented no credible evidence to support this contention. Other than an enormous amount of heartache, the Claimant has failed to establish entitlement to reimbursement for miscellaneous costs.

Accordingly, I recommend that the Guaranty Fund award the Claimant \$21,200.00 as her actual loss.

CONCLUSIONS OF LAW

For the reasons set forth above, I conclude that Respondent violated §§ 17-322(b)(3), (22), (25), (30), (31), and (33) and 17-502 of the Business Occupations Article.

I also conclude, for the reasons set forth above, that the Respondent violated the Code of Ethics. COMAR 09.11.02.01C and H and 09.11.02.02A.

I further conclude that Claimant suffered an actual monetary loss as a result of the conduct of the Respondent in the amount of \$21,200.00.

RECOMMENDED ORDER

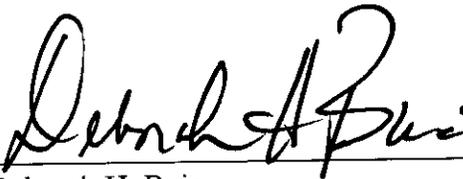
I RECOMMEND that the Maryland Real Estate Commission:

ORDER that the Respondent pay to the Maryland Real Estate Commission a civil penalty of \$20,000.00;

ORDER that the Claimant be reimbursed \$21,200.00 from the Maryland Real Estate Guaranty Fund to compensate her for the actual loss that she sustained because of the conduct of the Respondent; and

ORDER that the records and publications of the Maryland Real Estate Commission reflect this decision.

June 13, 2008
Date Decision Mailed



Deborah H. Buie
Administrative Law Judge

DHB/lh

Doc #95991

**MARYLAND REAL ESTATE
COMMISSION**

v.

ANGELA DILLONSMITH

RESPONDENT

and the

CLAIM OF OSHA BANKS

AGAINST THE MARYLAND REAL

ESTATE COMMISSION GUARANTY

FUND

*** BEFORE DEBORAH H. BUIE,**

*** AN ADMINISTRATIVE LAW JUDGE**

*** OF THE MARYLAND OFFICE OF**

*** ADMINISTRATIVE HEARINGS**

*** OAH CASE NO: DLR-REC-24-07-44423**

*** COMPLAINT NO.: 05-RE-295**

*** * * * ***

EXHIBIT LIST

Exhibits

The REC submitted the following documents, which I admitted into evidence:

- REC Ex. # 1 Notice of Hearing, dated January 2, 2008, with attached Statement of Charges and Order for Hearing
- REC Ex. # 2 Notice of Hearing, dated February 7, 2008
- REC Ex. # 3 Department of Labor, Licensing and Regulation (“DLLR”) Occupational/Professional licensing history of Respondent, dated March 6, 2008
- REC Ex. # 4 Affidavit of Steven Long dated February 5, 2008
- REC Ex. # 5 Affidavit of Katherine F. Connelly, dated March 14, 2008
- REC Ex. # 6 REC Report of Investigation, closed April 2, 2007, which contained the following numbered attachments:

1. Copy of complaint form
2. Broker's response
3. Request for Investigation
4. Cashier's checks
5. E-mail, dated December 2, 2003
6. To Whom It May Concern letter
7. Land Installment Contract(recorded August 4, 2004
8. Settlement Agreement (December 21, 2004)
9. Check #252
10. E-mail, dated December 2, 2003
11. Settlement Statement (December 19, 2003)
12. Unsigned Land Installment Contract
13. Exclusive Buyer Agent Agreement

REC Ex. # 7 Bank of America records, dated June 14, 2007

REC Ex. # 8 Mercantile-Safe Deposit and Trust records, dated August 20,
2007

No additional documents were offered on behalf of the Claimant or the Fund.