

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

*

v.

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CASE NO. 2018-RE-129

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OAH NO. LABOR-REC-21-20-00079

**KENNETH EVERETT,
Respondent**

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OPINION AND FINAL ORDER

This matter came before a hearing panel of the Maryland Real Estate Commission (“Commission”) on April 20, 2022, as a result of written exceptions filed by Respondent, Kenneth Everett, to the Commission’s Proposed Order of April 21, 2021. On December 17, 2020, Administrative Law Judge Jennifer L. Gresock (“ALJ”) convened a virtual hearing (“ALJ Hearing”) on the complaint filed against Respondent. The ALJ filed a Recommended Decision, dated March 9, 2021, in which she recommended that Respondent be found to be in violation of the Maryland Real Estate Brokers Act, Title 17 of the Business and Occupations Article of the Maryland Code (“BOP”) and that as a result he be reprimanded, and a monetary penalty be issued against him. On April 21, 2021, the Commission issued the Proposed Order affirming the ALJ’s Findings of Fact, approving the Conclusions of Law, and adopting the Recommended Order.

On or about May 20, 2021, Respondent filed written exceptions to the Proposed Order. A virtual hearing on the exceptions was held April 20, 2022 (“April 20th Hearing”) before a panel consisting of Commissioners Marla Johnson, Demetria Scott, and Michelle Wilson. Justin Dunbar, Assistant Attorney General, appeared as the presenter of evidence on behalf of the Commission. Respondent appeared, without an attorney. He acknowledged his right to

representation by counsel but waived that right and proceeded *pro se*. The proceedings were electronically recorded.

PRELIMINARY MATTERS

At the April 20th Hearing, Respondent requested a postponement saying he needed more time to seek legal counsel. The presenter of evidence opposed Respondent's request. The Panel recessed to review and after careful consideration, determined Respondent had had ample time to seek legal counsel, the hearing had already been postponed numerous times, and failed to explain why he had not yet been able to do so.

Respondent also moved to introduce additional evidence. The presenter of evidence opposed Respondent's motion. Pursuant to the Code of Maryland Regulations ("COMAR") 09.01.03.09 K:

Additional evidence may not be introduced unless the party seeking to introduce it demonstrates to the satisfaction of the administrative unit that the new evidence:

- (1) Is relevant and material;
- (2) Was not discovered before the ALJ hearing; and
- (3) Could not have been discovered before the ALJ hearing with the exercise of due diligence.

The Panel recessed to review and after careful consideration, determined the evidence was inadmissible because Respondent failed to argue, let alone prove, that the evidence was not or could not have been discovered before the ALJ hearing.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, three exhibits, as well as the OAH file containing the exhibits which were introduced at the ALJ Hearing, were admitted and entered into evidence:

- REC Ex. 1: Proposed Order and Recommended Decision
- REC Ex. 2: Respondent's exceptions
- REC Ex. 3: May 26, 2021, Commission hearing notices
- REC Ex. 4: September 30, 2021, Commission hearing notices
- REC Ex. 5: January 25, 2022, Commission hearing notices

FINDINGS OF FACT

The Commission adopts the Findings of Fact recommended by the ALJ.

DISCUSSION

At all relevant times, Respondent was a licensed real estate salesperson. FF 1.¹ In July of 2017 Respondent, then affiliated with United Real Estate, represented Vicki Butler in her search for a new home, which led them to 221 Surrey Circle Drive in Fort Washington, MD (the "Property"). FF 2-3. The sellers were represented by Danielle Best-Williams. FF 4. On July 31, 2017, a contract of sale for the Property was ratified. FF 5.

In the weeks that followed a home inspection was scheduled and then canceled numerous times and eventually took place August 14, 2017. FF 6-19. Respondent never drew up a home inspection extension request or addendum to extend the deadline. FF 17. Based on the home inspection report Ms. Butler drew up an extensive list of requested repairs and provided it to Respondent. FF 20-21. Respondent never provided the complete list to the sellers or their agent. FF 22. After not hearing back from Respondent Ms. Butler became concerned and eventually told him she wished to terminate the contract. FF 23. Respondent assured Ms. Butler he was speaking with, and would again speak to, Ms. Best-Williams but eventually forwarded an email which indicated he was not making her concerns known. FF 24-26. On September 2, 5, and 6, 2017 Ms. Butler emailed Respondent but never heard back. FF 27. On September 7, 2017, Ms. Butler notified Ms. Best-Williams, copying Respondent, that she wished to terminate the contract and eventually agreed to split her \$2,000.00 with the sellers. FF 29. Both Ms. Butler and the sellers filed complaints against Respondent. FF 30-31.

¹ FF refers to the Findings of Fact in the ALJ's Recommended Decision.

The Commission is required to “administer and enforce the provisions” of the Maryland Real Estate Brokers Act (the “Brokers Act”). BOP § 17-209. In this matter the ALJ has recommended the Commission find that the allegations against Respondent amount to violations of BOP §§ 17-322(b) (25) and (33) as well as COMAR 09.11.02.02A and that as a result the Respondent should be reprimanded, and a monetary penalty should be imposed. The Commission agrees with the ALJ.

In written exceptions and at the April 20th Hearing, Respondent insisted he was professional and caring and never left his client out of the loop. He claimed the breakdown of the deal was Ms. Best-William’s fault because she was being unreasonable. Respondent insisted he had an agreement with Ms. Best-Williams which extended the time for inspection but conceded that it was verbal, and nothing was reduced to writing. When asked by the Panel if he had done the paperwork by the book in this transaction, he admitted he had not and then claimed he had not known it was required, despite touting his decades long experience as a licensee.

The presenter of evidence pointed to Respondent’s duty to protect his client and the public, noting the actions of any 3rd party were irrelevant. Respondent failed to get an extension in writing and in so doing, the presenter of evidence argued, violated the relevant provisions of the brokers Act and COMAR.

The Commission was not moved by Respondent’s exceptions. BOP § 17-322(b)(25) provides that a licensee is in violation of the Brokers Act when he “engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings.” Respondent’s dealings with all parties were in bad faith, untrustworthy, dishonest, fraudulent, and improper. He lied to his client and there are indications he was dishonest with Ms. Best-Williams as well. Despite his assurances to his client, he did not

act in her interests and was most untrustworthy. In addition, under COMAR 09.11.02.02A Respondent is required to:

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.

All of the above facts and discussion make it clear that Respondent did not protect or promote his client's interests, nor did he meet his statutory obligations to the other parties in the transaction and is in violation of COMAR 09.11.02.02A and therefore BOP § 17-322(b)(33) which prohibits violations of the Commission's regulations.

Finally, the Recommended Decision includes no facts or discussion to indicate Respondent took responsibility for his actions, made any attempt at apology, or exhibited remorse. At the April 20th Hearing, Respondent was defensive and evasive and remained unapologetic and unremorseful.

Respondent's actions were egregious and amount to violations necessitating a reprimand and monetary penalty of \$5,000.00.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, the Commission concludes as a matter of law that Respondent violated BOP § 17-322(b) (25) and (33) as well as COMAR 09.11.02.02A and a reprimand and imposition of a monetary penalty are appropriate sanctions.

ORDER

The Exceptions of the Respondent, Kenneth Everett, having been considered, it is this 19th day of July 2022 by the Maryland Real Estate Commission, hereby ORDERED:

1. That Kenneth Everett be REPRIMANDED;

2. That Respondent Kenneth Everett shall pay a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) within thirty (30) days from the date all rights to appeal are exhausted; and

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

MARYLAND REAL ESTATE COMMISSION
SIGNATURE ON FILE

By: _____

Note: A judicial review of this Final Order may be sought in 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. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.

SIGNATURE ON FILE