

**BEFORE THE MARYLAND REAL ESTATE COMMISSION**

**MARYLAND REAL ESTATE  
COMMISSION**

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**MREC CASE NO. 2015-RE-220**

v.

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**KEVIN MOODY,  
Respondent**

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**OAH CASE NO. DLR-REC-24-18-05959**

**and**

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**IN THE MATTER OF THE CLAIM  
OF ROY AND CRYSTAL HARRELL,  
CLAIMANTS, AGAINST THE  
MARYLAND REAL ESTATE  
COMMISSION GUARANTY FUND**

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**OPINION AND FINAL ORDER**

This matter came before the Maryland Real Estate Commission (“Commission”) on argument on Exceptions filed by Respondent, Kevin Moody, to the Proposed Order of March 26, 2019. Administrative Law Judge Stephen W. Thibodeau (“ALJ”) filed a Proposed Decision in which he recommended that Claimants’ claim against the Maryland Real Estate Guaranty Fund (the “Fund”) be granted and Claimants be awarded \$15,865.00. The ALJ further recommended that Respondent be reprimanded and that Respondent pay a \$1,500.00 civil penalty. The Commission issued the Proposed Order adopting and amending the ALJ’s Findings of Fact, adopting the Conclusions of Law, and adopting and amending the Recommended Order. The Proposed Order also ordered that the records, files, and documents of the Commission reflect its decision.

A hearing on Respondent's Exceptions was held October 16, 2019 by a panel consisting of Commissioners John Nicholas D'Ambrosia, Anne Cooke and Kambon Williams. Hope Sachs, Assistant Attorney General, appeared as the presenter of evidence on behalf of the Commission. Claimants were represented by H. Andrew Reckson, Esquire. Respondent was represented by Gerard G. Magrogan, Esquire. A transcript of the hearing before the ALJ was not provided to the Commission nor was any request made to introduce additional evidence. was submitted to the Commission. The proceedings were electronically recorded.

### **SUMMARY OF THE EVIDENCE**

On behalf of the Commission, four exhibits as well as the Office of Administrative Hearings' file containing the exhibits which were introduced at the hearing before the ALJ, were entered into evidence. Neither Claimants nor Respondent presented additional admissible evidence.

### **FINDINGS OF FACT**

The Commission adopts the Findings of Fact recommended by the ALJ with prior noted amendments.

### **DISCUSSION**

At all times relevant to this matter, Respondent Kevin Moody ("Respondent") was a licensed real estate broker. FF1<sup>1</sup> Respondent's trade name as a realtor is KBM Realtors, Inc. *Id.* In addition, Respondent is President and Chief Executive Officer of KCE, Inc. (KCE), a 501 (c) (3) non-profit corporation that is engaged in the business of purchasing and renovating foreclosed homes for resale. FF2. KCE purchased the property at 3402 Rickey Avenue ("the Property") and shortly thereafter begin renovations. FF 3.

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<sup>1</sup> "FF" refers to the ALJ's Findings of Fact.

On November 19, 2013, the Prince George's County Department of Permitting, Inspections and Enforcement ("Department") issued a stop work order to Respondent for renovations on the Property for failure to obtain permits from the County. FF 4. Approximately a week later, Respondent obtained a permit from the Department to perform renovations on the Property after submitting an application for permit. FF 5. He listed Joe Solis as the contractor and KCE as the homeowner. *Id.* The scope of the permit provided for general interior renovation, including kitchen, doors, windows, and drywall replacement at the Property. *Id.*

On April 5, 2014, Roy and Crystal Harrell ("Claimants") entered into a Contract of Sale to purchase the Property for \$244,500.00. FF 9. Three days later, on April 8, 2014, the Contract was accepted. *Id.* Prior to the Contract's acceptance, the Department issued a notice of violation to KCE and Respondent on March 25, 2014 for renovations at the Property noting the following violations required corrective action by April 25, 2014:

- Obtaining required permits for renovations being performed at the Property, including but not limited to the building;
- Paying special investigation fees totaling \$250.00;
- Obtaining the required electrical permit for all electrical work being performed at the Property;
- Obtaining all required inspections for work performed once the necessary permits were issued; and
- Stopping all work until all the issues listed in the notice of violation were resolved.

FF10. Respondent did not inform Claimants of the stop work order issued on November 19, 2013, or of the March 25, 2014 notice of violation prior to the Contract acceptance on April 8, 2014. FF 11.

On May 10, 2014, Respondent emailed Claimants' agent, Marita Joseph, indicating that the renovation work on the Property was progressing and included several photographs. FF 12. The email also indicated that Claimants needed to schedule a home inspection. *Id.* Ms. Joseph forwarded the email to Claimants. *Id.*

On May 23, 2014, Sylvester Colbert, an inspector for the Department, executed an affidavit for injunctive relief against KCE for failure to take corrective action related to a January 17, 2014 inspection of the Property that resulted in the March 25, 2014 violation notice. FF 13. The next day, a home inspection of the Property was conducted on behalf of Claimants which resulted in several recommendations:

- Repair and replace the roof coverings because of excess moss and algae growth;
- Install a downspout extension and a buried drain to carry water away from the home at the left corner rear of the home;
- Replace the screen on the storm door, main entry;
- Install window well covers at all window wells;
- Fill the steps where they meet the wall for the rear entry stairs;
- Replace the asphalt drive at the front of the home due to settlement cracks
- Regrade the property at the rear and right side of the home;
- Repair the concrete steps at the front of the home due to settlement cracks;
- Caulk along the floor of the basement bathroom;
- Repair the leaks to the waste line in the master bath sink;
- Label all breakers on the main electrical panel;
- Repair a three-prong outlet in the master bedroom that was inoperable;
- Repair a loose three-prong outlet in the basement den;
- Secure the electrical wiring in the attic;
- Have a qualified chimney sweep inspect the chimney liner and;
- Repair the exhaust fan and vents for the master bath and hall bath to vent outside the home instead of into the attic.

FF 14.

On May 29, 2014, Respondent agreed to take the following corrective actions as requested by Claimants prior to settlement on the Property and pursuant to the home inspection:

- Repair of the plumbing waste line leak under the sink in the master bathroom;
- Repair of the three-prong electric outlet on the rear wall of the master bathroom;
- Downspout extension and bury drain line away from home at left corner facing rear of home;
- Screen placement on main entry storm door;
- Replacement of missing window well covers at all window wells;
- Fill-in of rear entry stairs where steps meet wall;
- Drainage correction of negative slope towards rear of home and right side;
- Labeling of main panel breakers identifying location; and
- Venting of exhaust fan of master and hall bath out of attic to the outside.

FF 15.

On June 10, 2014, the Department issued an electrical permit to KCE for the Property. FF 16. The next day, the Department issued a correction order related to the electrical work. *Id.* On June 12, the final approval for the overall permit for the Property was issued. *Id.* Respondent sent the correction order to Ms. Joseph. FF 17. He promised her that the work in the correction order would be completed prior to the settlement. *Id.* That same day, Claimants settled on the Property. FF 18.

On June 13, 2014, Claimants' agent emailed Respondent indicating that Mr. Solis had not returned to the Property to perform the requested repairs. FF 19. On June 16, 2014, Ms. Joseph again emailed Respondent indicating that the venting of the exhaust fan to the outside of the home had not been completed as agreed prior to settlement. FF 20. In response, Respondent only stated that he had discussed the matter with Claimant Roy Harrell. *Id.* On June 19, 2014, representatives from the Department emailed Claimants and requested to inspect the Property to ensure it met minimum code compliance. FF 21. On the same day, Claimants hired a plumber to perform repair work related to a leak in the main floor bathroom of the Property. FF 22.

After moving into the home, Claimants were informed by a neighbor, Richard Falz, that a stop work order had been placed on the Property in November 2013. FF 23. He also told Claimants that despite the stop work order that work had not been stopped, but continued. *Id.* He also stated that in his opinion as a licensed home improvement contractor that the quality of renovation work performed on the Property was poor. *Id.*

On July 22, 2014, Prince George's County, Maryland filed lawsuit seeking an injunction against KCE in the District Court for Maryland for Prince George's County for alleged code violation. FF 24. The matter was appealed to the Circuit Court for Prince George's County and

dismissed as a result of the County's failure to establish "a sufficient nexus for the Court to issue an injunction against KCE." *Id.*

On March 20, 2015, the Department issued a notice of violation to Claimants and Respondent for corrective action related to the Property. FF 25. The notice required that the following action be performed no later than April 20, 2015:

- Obtain all required Prince George's County permits, building for the interior and exterior renovation, and HVAC for ductwork and furnace installation work, or remove same;
- Obtain the required Prince George's County electrical permit for all work performed at the above reference property, or remove same;
- Remove all drywall installed without the required inspections to expose concealed framing, insulation, and ductwork;
- Call for all the required inspections, framing, plumbing, close in, electrical rough in, HVAC, and final inspection; and
- Pay special investigation fees totaling \$250.00

*Id.*

Because the corrective action in its March 25, 2014 notice of violation was not performed by Claimants or Respondent, Prince George's County filed a lawsuit on January 8, 2016, in the District Court of Maryland for Prince George's County against Claimants and Respondent. FF 26. A Show Cause Order was issued on May 16, 2016. *Id.* The lawsuit was dismissed on July 20, 2016. *Id.* The corrective actions cited in the March 20, 2015 notice of violation was not performed as of November 25, 2018. FF 27. At no point during the renovation did Respondent secure a plumbing permit or HVAC permit from the Department to perform work on the Property. FF 28. Furthermore, as of November 25, 2018, the plumbing and HVAC work listed on the May 24, 2014 conditions notice that Respondent agreed to repair was incomplete. FF 29. In addition to the leak in the main bathroom, which caused the leak into the lower level bathroom, there was mold present in the basement of the home due to improper HVAC venting, as well as paint peeling in the main bathroom due to the improper HVAC venting. *Id.*

## Regulatory Violations

Maryland Code Annotated, Business and Occupations (“BOP) Article § 17-322 (b) (4) provides,

(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:

(4) Intentionally or negligently fails to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee or applicant deals ....

A “material fact” is one on which a reasonable person would rely in making a decision or choosing a course of action. *See e.g. Wilkins Square LLLP and Stone and Associates Inc. v. W.C. Pinkard & Co. t/a Colliers Pinkard*, 419 Md. 173, 192 (2011) (“A real estate broker has a duty to disclose to his or her principal all facts or information which may be relevant or material in influencing the judgment or action of the principal in the matter”); *Gross v. Sussex, Inc.*, 332 Md. 247, 258 (1993) (“A fact is material if its existence or non-existence is a matter to which a reasonable man would attach importance in determining his choice of action in the transaction”). *See also Nahigian v. Juno-Loudon, LLC*, 677 F. 3d 579, 589 (4<sup>th</sup> Cir. 2012) (“a good definition of a material fact is one that would have influenced a reasonable purchaser’s decision to enter into the contract for sale”).

In his Exceptions, Respondent maintains that the stop work order and notices of violation regarding ongoing renovation issues were addressed and therefore were pre-contractual. He further maintains that because the permitting, correction order and other notices were addressed as of the date of the contract they were not “material facts” and did not need to be disclosed.

Claimants testified that if they had known about the violation notices (*i.e.* the November 13, 2013 stop work order and the March 25, 2014), they would not have engaged in the Contact to purchase the Property. (Proposed Decision, p. 15). In other words, according to Claimants, the

stop work order and notice of violation were relevant in influencing Claimants' judgment in whether to enter the Contract. Accordingly, the stop work order and the violation were material facts and Respondent was required to disclose them to Claimants. Additionally, despite Respondent's contention that all permit issues were pre-contractual, (Exceptions, at 3) at no point during the renovation did Respondent secure a plumbing permit or HVAC permit from the Department to perform work on the Property. FF 28. Indeed, this is a material fact that should have been disclosed. Furthermore, despite his position before this Commission, Respondent revealed the June 11 correction notice to Claimants, which demonstrates that he knew or should have known such information was required to be disclosed to Claimants.

Subsection (b) (25) provides that the Commission may impose discipline on a licensee that "engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings." Respondent testified that he did not know whether the contractor he hired to perform the renovations on the Property was a licensed home improvement contractor. FF 6. In fact, there was no evidence that the individual was properly licensed as a home improvement contractor in the State of Maryland. *Id.* Respondent is a Chief Executive Officer of a company that is in the business of purchasing and renovating foreclosed properties for resale. Additionally, he has been a licensee in the industry for over twenty (20) years. Indeed, it was reasonable for the ALJ to conclude that Respondent's failure to insure that the home improvement contractor he used in his business to perform renovation work at the Property was licensed was evidence of incompetence of his duties. Further evidence of incompetence is the fact that Respondent could not recall the name of the company he hired to perform the renovation work. Finally, as the ALJ stated, Respondent's lack of knowledge of the permitting process in the County where he purchased and renovated houses is additional evidence



of incompetence. See *Sugarloaf Citizens Associations v. Frederick County Bd. of Appeals*, 227 Md. App. 536, 546 (2016) (quoting *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 (1998)) (substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion”).

Code of Maryland Regulations (“COMAR”) 09.11.02.01C states that a licensee shall protect the public against misrepresentation, or unethical practices in the real estate field. As the ALJ properly noted, because Respondent negligently failed to disclose a material fact, *i.e.*, stop work order, violation notice, correction orders, and permit issues, he also engaged in negligent misrepresentation in the sale of Property to Claimants. See *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 135-136 (2007) (negligent misrepresentation can include failure to disclose). See generally *Gross v. Sussex, Inc.*, 332 Md. 247, 256 (1993).

Respondent maintains that disciplinary action against him for violation of COMAR 09.11.02.01C is duplicative in that the violation is for the same conduct on which a violation of BOP § 17-322 (b) (4) is premised and is a violation of his due process rights exposing him to “double penalties.” He takes issue with the ALJ’s conclusion that because he negligently failed to disclose a material fact, he also engaged in negligent misrepresentation in the sale of Property. (Proposed Decision, at 17). In short, Respondent appears to make a Double Jeopardy Clause argument.

The Court of Appeals has held that “penalties imposed on licensed individuals for violating provisions attendant to that license are outside of the reach of the Double Jeopardy Clause because those penalties are directed toward protecting the public, and are therefore remedial, rather than punitive.” *Garrity v. Maryland State Bd. of Plumbing*, 447 Md. 359, 387 (2016). See also *Spencer*

*v. Md. State Bd. of Pharmacy*, 380 Md. 515, 534 (2004) (“The Board [of Pharmacy]’s enforcement of its licensing and disciplinary requirements serve purposes essential to the protection of the public, which are deemed remedial, rather than punitive, and therefore are not subject to double jeopardy principles.”); *Ward v. Dept. of Pub. Saf. & Cor. Services*, 339 Md. 343, 350 (1995) (holding that where the purpose of the penalty is remedial, it is not punishment for double jeopardy purposes). See generally *McDonnell v. Comm’n on Med. Discipline*, 301 Md. 426, 436, (1984) (explaining that the “purpose of disciplinary proceedings against licensed professionals is not to punish the offender but rather as a catharsis for the profession and a prophylactic for the public”). Accordingly, the real estate licensing discipline statute generally serves a remedial purpose and consequently does not implicate the Double Jeopardy Clause/double penalty clause. *Garrity*, 447 Md. at 387.

For violations of BOP §§ 17-322(b) (4), (25), (33), as well as COMAR 09.11.02.01C, the Respondent is subject to sanctions under BOP § 17-322(c), which permits the imposition of a penalty, not exceeding \$5,000 for each violation. To determine the amount of the penalty to be imposed, BOP § 17-322(c) requires the Commission to consider the following:

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.

The violations committed by Respondent were very serious. He failed to disclose to the Claimants that a stop work order was issued for the Property, that there was a numerous notice of violations and permit violations. FF 3, 5, 10. Additionally, Respondent used an unlicensed contractor to perform the renovations on the Property. FF 6. Respondent did not perform corrective

actions that he agreed to perform including the leak in the main bathroom, mold in the basement and HVAC venting. FF 29. These actions caused financial harm to Claimants who were forced to hire a plumber to repair work related to a leak in the main floor bathroom of the Property as well as other repairs. FF 22. Respondent's conduct with regard to Claimants clearly lacked good faith. Respondent, a President and CEO of a business that purchases and renovates properties for resale, did not remember the name of the company performing the renovation work and failed to insure that the home improvement contractor that performed renovation work on the Claimants home was licensed. Additionally, Respondent showed lack of good faith by failing to perform the work that he promised to perform on the bathroom and the HVAC. As a countervailing factor, the Commission notes that Respondent has had no prior violations in his twenty year licensee history. Based upon all the factors, the Commission agrees with the ALJ that based on the above-cited factors, that the appropriate sanction is a civil penalty of \$1,500.00.

#### The Guaranty Fund

BOP § 17-404 (a) (2) (iii) analysis is two-fold. First, the analysis requires that a claim shall be based on an action or omission. The ALJ made a determination that Respondent's action constituted an omission. Specifically, the ALJ found that Respondent failed to disclose the March 25, 2014 notice of violation. Thus, "there was an omission by Respondent in the provision of real estate service." (Proposed Decision, at 20).

Second, § 17-404 requires that as a result of the omission, money or property must be obtained from a person by theft, embezzlement, false pretenses or forgery; *or* constitute fraud or misrepresentation. The ALJ determined that Respondent's actions of failing to disclose his use of unlicensed home improvement contractors, misrepresenting that the renovations were being

competently performed and completed, agreeing to remedy certain issues, including plumbing and HVAC duct work, prior to settlement, constituted negligent misrepresentation. (Proposed Decision, at 20-21). Accordingly, the ALJ made a determination that the two-fold test for reimbursement from the Guaranty Fund was met.

Respondent, on the other hand, maintains that in order to receive reimbursement from the Fund, there must be evidence of theft, embezzlement, false pretenses, forgery, fraud or misrepresentation. He contends that the negligence finding by the ALJ is insufficient to garner an award from the Fund. He further argues that mere negligence or incompetence is insufficient.

Maryland recognizes two forms of misrepresentation: fraudulent misrepresentation and negligent misrepresentation. Fraudulent misrepresentation is not relevant in this case because the ALJ found the evidence did not support a conclusion that the omission constituted fraud. (Proposed Decision, at 20). Negligent misrepresentation occurs when the defendant: (1) owes a duty of care to the plaintiff; (2) intends that his statement will be acted upon by the plaintiff; (3) has knowledge that the plaintiff will probably rely on the statement, which if erroneous will cause loss or injury; (4) plaintiff justifiably takes action in reliance on the statement and (5) suffers damage proximately caused by the defendant's negligence. *White v. Kennedy Krieger Institute, Inc.*, 221 Md. Ap. 601, 641 (2015). *See also Lloyd v. General Motors Corp.*, 397 Md. 108, 135-36 (2007). *And see Virginia Dare Stores v. Schuman*, 175 Md. 287 (1938) (Maryland first recognized negligent misrepresentation as a tort action separate from deceit).

It is well established that Respondent as a licensee, owed a duty of care to Claimants. *See* Md. Code Ann., BOP & § 17-322 (b) (4) (brokers are required to act truthfully and honestly in their dealings with the public and to disclose all material facts relevant to the property); *Weisman*

v. *Connors*, 312 Md. 428, 448 (1988) (duty of care is also established by special relationship including contractual privity). Second, Respondent held himself out as knowledgeable in the field of renovating properties by virtue of being President and CEO of a company specializing in purchasing, selling and renovating homes. Third, Respondent knew that Claimants were taking a course of action, *i.e.*, purchasing the house, based on the agreement to cure certain issues prior to settlement, including plumbing issues, proper venting, and HVAC duct work. FF 17. Fourth, as a result, Claimants were justified in purchasing the Property in reliance on Respondent's actions, promised action and lack of disclosure of any issues with the Property. Finally, the evidence presented, accepted and found reimbursable by the ALJ was that Claimants suffered damage proximately caused by Respondent's negligence in the amount of \$15,865.00.

#### **CONCLUSIONS OF LAW**

1. Business and Professions Article § 17-322 (b) provides the Commission with the authority to impose sanctions for violations of any provision of Title 17 of the Business and Occupations Article.

2. Respondent, Kevin Moody, violated BOP § 17-322 (b) (4) when he failed to disclose to Claimants the November 13, 2013 stop work order, the March 25, 2014 violation and permit violations.

3. Respondent, Kevin Moody, engaged in conduct that demonstrates bad faith, incompetency, or untrustworthiness, or that constitutes dishonest, fraudulent, or improper dealings in violation of BOP § 17-322 (b) (25), when he hired unlicensed contractors to perform renovations, misrepresented that the renovations were being competently performed and completed as agreed and promised;

4. Respondent, Kevin Moody, violated BOP § 17-322 (b) (33) and COMAR 09.11.02.01C by engaging in negligent misrepresentation in the sale of the Property which was damaging to the public and to the dignity and integrity of the real estate profession when he failed to disclose material facts to the Claimants.

5. Based upon the foregoing Findings of Fact and Discussion, the Commission concludes as a matter of law that Claimants' claim against the Guaranty Fund is

based on an act or omission that occur[ed] in the provision of real estate brokerage services by ... a licensed real estate broker [and] ... involve[d] a transaction that relates to real estate that is located in the State.

BOP § 17-404(a) (2) (i), (ii). The Commission further concludes that the omission committed by Respondent constituted a "misrepresentation." BOP § 17-404 (a) (2) (iii).

### ORDER


The Exceptions of Respondent Kevin Moody, having been considered, it is this 6<sup>th</sup> day of January, 2020 by the Maryland Real Estate Commission, hereby ORDERED:

1. That Respondent, Kevin Moody, be and is hereby **REPRIMANDED**;
2. That Respondent, Kevin Moody, shall be assessed a civil penalty in the amount of **one thousand five hundred dollars (\$1,500.00)** which shall be paid to the Maryland Real Estate Commission within thirty (30) days of the date this Final Order;
3. That all real estate licenses held by Respondent, Kevin Moody, shall be suspended until the civil penalty imposed on him is paid in full;

4. That Claimants, Roy and Crystal Harrell, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of **Fifteen Thousand Eight Hundred Sixty Five Dollars (\$15,865.00)**; and

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

MARYLAND REAL ESTATE COMMISSION

  
By Jol Anne Coke  
Commissioner

**NOTE:** A judicial review of this Final Order may be sought in the Circuit Court of Maryland in which the Appellant resides or has his 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.