

BEFORE THE MARYLAND REAL ESTATE COMMISSION

NOV 15 2011

MARYLAND REAL ESTATE
COMMISSION

*

v.

* CASE NO. 2008-RE-207

MARYLAND REAL
ESTATE COMMISSION

* OAH NO. DLR-REC-21-10-08809

GERRI WALKER-NURSE
Respondent

*

* * * * *

OPINION AND FINAL ORDER

This matter came before the Maryland Real Estate Commission (“Commission”) on argument on Exceptions filed by the Respondent, Gerri M. Walker-Nurse, to the Proposed Order of March 7, 2011. On January 25, 2011, Administrative Law Judge Deborah H. Buie (“ALJ”) filed a Recommended Decision and Recommended Order in which she concluded that the Respondent violated §§ 17-320(c), 17-502(b), 17-530(c) and (d), Business Occupations and Professions Article (“Bus. Occ. & Prof. Art.”), Annotated Code of Maryland and Code of Maryland Regulations (“COMAR”) 09.11.05.02A and recommended that the Respondent’s license be suspended for sixty days and that she be required to pay a \$7,500.00 civil penalty.

On March 7, 2011, the Commission issued a Proposed Order that affirmed the ALJ’s Findings of Fact and Conclusions of Law. The Commission found that the Recommended Decision of the ALJ had to be modified because the judge omitted the provision that the civil penalty be paid within a specified time and that all real estate licenses held by the Respondent would be suspended if she does not pay the full amount of the civil penalty within that time period. The Commission also added to the Proposed Order the sections of Title 17, Bus. Occ. & Prof. Art. that provide for disciplinary action against licensees who violate the requirements of supervision (§17-322(b)(27)), the

provisions of Subtitle 5 (§17-322(b)(31)), other provisions of this Title (§17-322(b)(32)), and COMAR (§17-322(b)(33)).

A hearing on the Exceptions filed by the Respondent was held by a panel of Commissioners, consisting of Commissioners Anne S. Cooke, Robin L. Pirtle and Colette P. Youngblood, on July 20, 2011. Jessica Berman Kaufman, Assistant Attorney General, represented the Commission. A transcript of the hearing before the ALJ was not provided to the Commission. The proceedings were electronically recorded.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, two exhibits, as well as the Office of Administrative Hearings' file containing exhibits which were introduced before the ALJ, were entered into evidence.

PRELIMINARY MATTERS

On March 7, 2011, the Commission forwarded a letter, with a copy of the Recommended Decision of the ALJ and the Proposed Order, to the Respondent, Gerri Walker-Nurse, at her address of record. On March 21, 2011, the Respondent filed written Exceptions to the Proposed Order with the Commission. On March 30, 2011, the Commission forwarded a letter to the Respondent, informing her that a hearing on her Exceptions would take place at 500 N. Calvert Street, Third Floor Conference Room, Baltimore, Maryland 21202 on Wednesday, July 20, 2011, at 12:30 p.m. The letter advised the Respondent that: "If the excepting party fails to appear within fifteen minutes of the scheduled time for this hearing, its exceptions will be dismissed absent extenuating circumstances." The March 30, 2011 letter from the Commission to the

Respondent was sent to her at her address of record as well as at an address she listed in her March 21, 2011 letter to the Commission. Ms. Walker-Nurse did not appear on July 20, 2011 at 12:30 p.m. for her scheduled hearing nor did she present any extenuating circumstances to the Commission to explain her absence. The Commission waited until 12:47 p.m. before commencing the hearing in Ms. Walker-Nurse's absence. Due to Ms. Walker-Nurse's failure to appear for the scheduled hearing on her Exceptions and, in accordance with the provisions of COMAR 09.11.03.01F, which provides that:

“The panel may dismiss an appeal without holding a hearing if the person who filed exceptions to the proposed order fails to appear at the scheduled time after receiving proper notice.”

the Commission dismissed Ms. Walker-Nurse's Exceptions.

FINDINGS OF FACT

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

DISCUSSION

The Respondent, Gerri Walker-Nurse, was first licensed by the Commission as a salesperson in 1996 and obtained her broker's license on February 17, 2006 as the owner and broker of Help-U-Sell Gerri Walker-Nurse and Associates. FF 1.¹

On February 26, 2007, the Complainant, Angela Will, met with the Respondent at the Help-U-Sell office and entered into a listing agreement for the sale of her property, 24303 Hughes Avenue, Chaptico, Maryland (the "Property"). FF 2. Present at the meeting was the Complainant's aunt, Ellen Marino, who was employed by the Respondent as her administrative assistant. FF 3. The Respondent was so seldom in the

¹ "FF" refers to the ALJ's Findings of Fact.

office that Ms. Marino had suggested that she obtain a license so that she could answer the numerous questions she frequently fielded from interested clients. FF 3. Ms. Marino became a licensed real estate agent in January, 2007; however she remained a salaried employee with the job title of “administrative assistant”, her duties did not change, and she did not receive commissions as an agent. FF 3.

The brokerage agreement between the parties indicated that the broker compensation was \$4,950.00 with cooperating broker compensation set at three percent. The agent is noted as “Ellen”. FF 4. On July 23, 2007, Ms. Marino presented a contract offer to the Complainant for \$215,000.00. The contract offer was prepared by the Respondent. A disclosure entitled *Understanding Whom Real Estate Agents Represent* was among the documents included with the contract offer. That disclosure indicated that the Respondent was acting as a seller agent. FF 5. The Complainant accepted the offer. FF 5.

The contract called for the buyers to provide an initial deposit of \$1,000.00 to be deposited by the Respondent in a non-interest bearing account. FF 6. The Respondent presented the signed contract to the buyers. FF 7. The Respondent was also working with the buyers in her capacity as a loan officer with another business enterprise and was trying to obtain approved financing. FF 8.

There was no other agent involved in the transaction. FF 9. The Respondent represented both the buyer and the seller. FF 9. The Respondent did not execute a dual agency agreement. FF 10.

On July 25, 2007, the Respondent created a document entitled "Estimated Settlement Costs". The document indicated that seller charges included \$8,600.00 to be paid to the Respondent for a "marketing bonus". FF 11. The Complainant did not agree to an increase in the broker fee and her aunt brought the change to the Complainant's attention. FF 12. When the Complainant refused to accept the change, on August 1, 2007, the Respondent notified the Complainant that the buyers wanted out of the contract and the Respondent presented a written release to the Complainant. FF 12. The Complainant inquired about the \$1,000.00 deposit and ultimately discovered that the money was never collected from the buyers. FF 13. At the same time these events were occurring, the Respondent's husband, the office manager, informed Ms. Marino that they were letting her go because the business was not surviving. FF 14.

On August 1, 2007, Ms. Marino visited the offices of Help-U-Sell to pick up her last paycheck and saw the buyers in the office. FF 15. The buyers told her they were withdrawing their offer for the Property because the Respondent had obtained a "higher loan than anticipated" for them; therefore, they were buying another property and no longer obligated to pay the earnest deposit. FF 15.

The Respondent stopped communicating with both the Complainant and Ms. Marino after the release from the contract and the Complainant never received an explanation of why the buyers wanted a release. FF 16. The Complainant persisted with inquiries about the \$1,000.00 and, after being given different explanations, on August 6, 2007, she visited the office and received the \$1,000.00. FF 17.

On May 27, 2009, the Commission's investigator, Mr. Mull, interviewed the Respondent in the presence of her attorney. The Respondent denied any involvement

with the contract for the Property and maintained that Ms. Marino was solely responsible for that contract. She further stated that she did not remember preparing the Estimated Settlement Costs sheet that reflected the \$8,600.00 and again suggested that Ms. Marino was responsible. The Respondent also stated that because the contract was the responsibility of Ms. Marino, it was she who should have collected the \$1,000.00 deposit. FF 18.

During the interview, while placing the blame on Ms. Marino for being the dual agent, the Respondent did admit that she did not properly supervise Ms. Marino. She stated, "I normally review all the contracts that come through my office, but I admit that I let this one slip by me." FF 19.

The Complainant was never able to sell the Property and, at the time of the hearing before the ALJ, was using it as a rental property. FF 20.

A "dual agent" is defined in § 17-530(a), Bu. Occ. & Prof. Art. as:

"...a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who acts as an agent for both the seller and the buyer or the lessor and the lessee in the same real estate transaction."

Although a real estate licensee is generally prohibited from acting as a dual agent, if a licensed real estate broker or a designee of the broker obtains the written informed consent of all parties to the transaction, the broker may act as a dual agent in the transaction provided that the broker assigns an affiliated, licensed associate broker or licensed salesperson to act as the intra-company agent on behalf of the seller and another affiliated, licensed associate broker or licensed salesperson to act as the intra-company agent on behalf of the buyer. (§17-530(c) and (d), Bus. Occ. & Prof. Art.) The

Understanding Whom Real Estate Agents Represent disclosure form, included among the contract offer documents, indicated that the Respondent was acting as a seller agent. However, the evidence and testimony presented to the ALJ support a finding that the Respondent represented both the seller and the buyer in the transaction; that there was no other agent involved in the transaction; and that the Respondent did not execute a dual agency agreement or obtain the written informed consent of all the parties to the transaction as required by the provisions of §17-530(c) and (d), Bus. Occ. & Prof. Art. The Commission, therefore, concludes that the Respondent violated the provisions of §17-530(c) and (d) and § 17-322(b)(32), Bus. Occ. & Prof. Art.

During her interview with the Commission's investigator, the Respondent alleged that Ms. Marino, a licensed real estate salesperson and her employee, was solely responsible for the contract in question. She attempted to portray Ms. Marino as the dual agent and to blame Ms. Marino for failing to collect the \$1,000.00 deposit. The Respondent, in her attempt to shift the blame to Ms. Marino for the failure to comply with dual agency requirements, did admit to the investigator that: "I normally review all contracts that come through my office, but I admit that I let this one slip by me." Further, testimony at the hearing before the ALJ established that the Respondent was seldom in the office to provide information to prospective clients or to supervise the provision of real estate brokerage services by Ms. Marino on her behalf. The Commission, therefore, concludes that the Respondent violated the provisions of § 17-320(c), 17-322(b)(27) and 17-322(b)(33), Bus. Occ. & Prof. Art., as well as COMAR 09.11.05.02A.

The contract, which was signed and accepted on July 23, 2007, provided for a deposit of \$1,000.00 from the buyers at the time the contract was executed. A licensed

real estate broker is required to deposit trust money, in an account that is maintained by the real estate broker separately from the real estate broker's own accounts and solely for trust money, not more than seven business days after the acceptance of a contract of sale by both parties. (§17-502(b), Bus. Occ. & Prof. Art.) Testimony and the lack of credible evidence to the contrary at the hearing before the ALJ supports a conclusion that the \$1,000.00 deposit, was not collected from the buyers and deposited in a non-interest bearing account by the Respondent, as the contract provided, within seven business days. The Commission, therefore, concludes that the Respondent violated the provisions of §§17-502(b) and 17-322(b)(31), Bus. Occ. & Prof. Art.

Instead of or in addition to reprimanding, suspending or revoking a real estate license for violations of the above cited statutes, Bus. Occ. & Prof. Art. §17-322(c) permits the assessment of up to a \$5,000.00 penalty per violation. To determine the amount of the penalty to be imposed, the Commission is required to consider the following criteria:

- 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.

Although the Respondent has no history of prior violations, the Commission finds that the violations in this case are very serious. The Respondent failed to comply with the requirements of the law regarding the timely handling of trust money and her failure caused a delay in the remittance of the funds to the Claimant. Further, statutory requirements regarding dual agency are meant to prevent the possibility of unfairness to

one party to a transaction that can arise when one party is represented by an agent and the other party is represented by that agent's broker and boss. The Respondent's failure to obtain a written, informed consent from the buyers and seller to a dual agency and to arrange for another real estate licensee within her agency to act as an intra-company agent on behalf of one of the parties to the transaction deprived the parties of the degree of fairness which the public expects and the law mandates in a real estate transaction.

Further, the Respondent's failure to properly trust the deposit money and to comply with dual agency requirements caused harm to the reputation of the real estate industry and violated the trust which the public accords to real estate licensees. In addition, the Respondent's acknowledged failure to exercise reasonable and adequate supervision over the provision of real estate brokerage services by her employees also subjected the public to potential harm. The Respondent's actions during the course of the transaction at issue, as well as her attempts to shift the responsibility for the statutory violations regarding the deposit of the trust money and the dual agency issue, indicate her lack of good faith.

Having evaluated each of the above listed factors for determining a penalty for violations of §§17-320(c), 17-502(b), 17-530(c) and (d), 17-322(b)(27), (31), (32), and (33), Bus. Occ. & Prof. Art. and COMAR 09.11.05.02A, the Commission concludes that the appropriate penalty is a sixty days suspension of all real estate licenses held by the Respondent and a civil penalty in the amount of \$7,500.00.

CONCLUSIONS OF LAW

Based upon the ALJ's Findings of Fact, which have been affirmed by the Commission, and the foregoing Discussion, the Commission concludes, as a matter of law, that:

1. The Respondent, Gerri M. Walker-Nurse, violated Bus. Occ. & Prof. Art., §§ 17-320(c), 17-502(b), 17-530(c) and (d), 17-322(b)(27), (31), (32), and (33) and COMAR 09.11.05.02A; and

2. The Respondent, Gerri M. Walker-Nurse, is subject to the penalties prescribed in Bus. Occ. & Prof. Art., §17-322(c) for these violations, and the suspension of all real estate licenses held by her and a \$7,500.00 civil penalty are appropriate sanctions.

ORDER

It is this 11th day of October, 2011, by the Maryland Real Estate Commission, **ORDERED:**

1. That the Respondent, Gerri M. Walker-Nurse, violated Bus. Occ. & Prof. Art. §§17-320(c), 17-502(b), 17-530(c) and (d), 17-322(b)(27), (31), (32), and (33) and COMAR 09.11.05.02A;

2. That all real estate licenses held by the Respondent, Gerri M. Walker-Nurse, are hereby **SUSPENDED** for sixty (60) days;

3. That the Respondent, Gerri M. Walker-Nurse, be assessed a civil penalty in the amount of **Seven Thousand Five Hundred Dollars (\$7,500.00)** which shall be paid within thirty (30) days of the date of this ORDER;

4. That all real estate licenses held by the Respondent, Gerri M. Walker-Nurse, shall be suspended if the civil penalty is not paid in full within the thirty (30) day time

period, and that this suspension is in addition to the sixty (60) day disciplinary suspension; and

5. 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 of Maryland 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.

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

GERRI WALKER-NURSE
Respondent

* CASE NO. 2008-RE-207

* OAH NO. DLR-REC-21-10-08809

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PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated January 25, 2011, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 7th day of March, 2011

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, AFFIRMED;

C. That the Recommended Order be, and hereby is, AMENDED as follows:

ORDERED that the Respondent Gerri Walker-Nurse violated Md. Bus. Occ. and Prof. Art. §17-320(c), §17-322(b)(27), (31), (32), and (33), §17-502(b), §17-530(c) and (d), and COMAR 09.11.05.02A;

ORDERED that all real estate licenses held by the Respondent Gerri Walker-Nurse be suspended for 60 days;

ORDERED that the Respondent Gerri Walker-Nurse be assessed a civil penalty in the amount of \$7,500.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that all real estate licenses held by the Respondent Gerri Walker-Nurse shall be suspended if the civil penalty is not paid in full within the 30-day time period, and that this suspension is in addition to the 60-day disciplinary suspension.

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

D. Pursuant to §10-220 of the State Government Article, the Commission finds that the Recommended Decision of the Administrative Law Judge had to be modified because the judge omitted the provision that the civil penalty be paid within a specified time period and that all real estate licenses held by the Respondent would be suspended if she does not pay the full amount of the civil penalty within that time period. The Commission also added to the Proposed Order the sections of Title 17 that provide for disciplinary action against licensees who violate the requirements of supervision (§17-322(b)(27)), the provisions of Subtitle 5 (§17-322(b)(31)), other provisions of this Title (§17-322(b)(32)), and COMAR (§17-322(b)(33)).

E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.08 those parties adversely affected by this Proposed Order shall have 20 days from the postmark date of the Order to file exceptions and to request to present arguments on the proposed decision before this Commission. The exceptions should be sent to

the Executive Director, Maryland Real Estate Commission, 3rd Floor,
500 North Calvert Street, Baltimore, MD 21202.

SIGNATURE ON FILE

Maryland Real Estate Commission

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MARYLAND REAL ESTATE

* BEFORE DEBORAH H. BUIE,

COMMISSION

* AN ADMINISTRATIVE LAW JUDGE

v.

* OF THE MARYLAND OFFICE OF

GERRI WALKER-NURSE,

* ADMINISTRATIVE HEARINGS

RESPONDENT

* OAH CASE NO.: DLR-REC-21-10-08809

* REC COMPLAINT NO: 2008-RE-0207

* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On September 14, 2007, Angela Will¹ (Complainant) filed a complaint with the Maryland Real Estate Commission (Commission or REC), an administrative unit of the Department of Labor, Licensing and Regulation (DLLR), against Gerri Walker-Nurse (Respondent), a licensed real estate owner of Help-U-Sell Gerri Walker-Nurse and Associates, Realtors. On January 19, 2010, the REC issued a Statement of Charges and Order for Hearing against the Respondent.

On November 9, 2010, I conducted a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2010) (Business Occupations Article). Hope Sachs, Assistant Attorney General, represented the Commission. Neither the Respondent nor anyone authorized to represent her appeared.²

¹ Throughout the file, the Complainant is also referred to by her maiden name "Parrella."

² See Part I of Discussion, below.

The Administrative Procedure Act, the procedures for Administrative Hearings of the Office of the Secretary of the DLLR, the procedures for Hearings of the Commission, and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§10-201 through 10-226 (2009 & Supp. 2010); Code of Maryland Regulations (COMAR) 09.01.02, 09.01.03, 09.11.03, and 28.02.01.

ISSUES

The issues are whether the Respondent violated the real estate law and, if so, whether the REC may suspend the Respondent and impose a civil penalty.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Commission:

- REC #1 Notice of Hearing, dated September 13, 2010
- REC #2 Notice of Hearing, dated September 13, 2010, returned undeliverable/refused
- REC #3 Notice of Hearing, dated September 13, 2010, returned undeliverable/refused
- REC #4 Affidavit of Steven Long
- REC #5, 6 & 7 Printouts of the Respondent's REC Licensing History, dated November 1, 2010
- REC #8 Statement of Charges/Order for Hearing, dated January 19, 2010
- REC #9 Report of Investigation, June 4, 2009

The Respondent was not present at the hearing; therefore, no additional exhibits were presented.

Testimony

The Commission presented the testimony of Angela Will, Complainant; Ellen Marino; and Jack Mull, DLLR investigator.

FINDINGS OF FACT

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

1. The Respondent first obtained her broker's license on February 17, 2006 as the owner and broker of Help-U-Sell Gerri Walker-Nurse and Associates. She was first licensed as a salesperson in 1996.
2. On February 26, 2007, the Complainant met with the Respondent at the Help-U-Sell office and entered into a listing agreement for the sale of her property, 24303 Hughes Avenue, Chaptico, Maryland (the Property).
3. Present at the meeting was the Complainant's aunt, Ellen Marino, who was employed by the Respondent as her administrative assistant. Ms. Marino had become a licensed real estate agent in January 2007. The Respondent was so seldom in the office that Ms. Marino suggested she obtain a license so that she could answer the numerous questions that she frequently fielded from interested clients. Ms. Marino, however, was a salaried employee with a job title of "administrative assistant" and even after obtaining her license, her duties did not change and she did not receive commissions as an agent.
4. The brokerage agreement between the parties indicated that the broker compensation was \$4,950.00 with cooperating broker compensation set at three percent. The agent is noted as "Ellen."
5. On July 23, 2007, Ms. Marino presented a contract offer to the Complainant for \$215,000.00. The contract offer was prepared by the Respondent. A disclosure entitled *Understanding Whom Real Estate Agents Represent* was amongst the documents

included with the contract offer. That disclosure indicated that the Respondent was acting as a seller agent. The Complainant accepted the offer.

6. The contract called for the buyers to provide an initial deposit of \$1,000.00 to be deposited by the Respondent in a non-interest bearing account.
7. The Respondent presented the signed contract to the buyers.
8. The Respondent was also working with the buyers in her capacity as a loan officer with another business enterprise and was trying to obtain approved financing.
9. There was no other agent involved in the transaction. The Respondent represented both the buyer and the seller.
10. The Respondent did not execute a dual agency agreement.
11. On July 25, 2007, the Respondent created a document entitled "Estimated Settlement Costs." The document indicated that seller charges included \$8,600.00 to be paid to the Respondent for a "marketing bonus."
12. The Complainant did not agree to an increase in the broker fee and her aunt brought the change to the Complainant's attention. When the Complainant refused to accept the change, on August 1, 2007, the Respondent notified the Complainant that the buyers wanted out of the contract and the Respondent presented a written release to the Complainant.
13. The Complainant inquired about the \$1,000.00 deposit and ultimately discovered that the money was never collected from the buyers.
14. Simultaneously to these events occurring, the Respondent's husband, the office manager, informed Ms. Marino that they were letting her go because the business was not surviving.

15. On August 1, 2007, Ms. Marino visited the offices of Help-U-Sell to pick up her last paycheck. She saw the buyers in the office; they told her that they were withdrawing their offer for the Property because the Respondent had had obtained them a "higher loan than anticipated;" therefore, they were buying another property and no longer was obligated to pay the earnest deposit.
16. The Respondent stopped communicating with both the Complainant and Ms. Marino after the release from the contract and the Complainant never received an explanation about why the buyers wanted a release.
17. The Complainant persisted with inquiries about the \$1,000.00 and after being given different explanations, on August 6, 2007, she visited the office and received the \$1,000.00.
18. On May 27, 2009, the REC investigator, Mr. Mull, interviewed the Respondent in the presence of her attorney. The Respondent denied any involvement with the contract for the Property and maintained that Ms. Marino was solely responsible for that contract. She further stated that she did not remember preparing the Estimated Settlement Costs sheet that reflected the \$8,600.00 and again suggested that Ms. Marino was responsible. The Respondent also stated that because the contract was the responsibility of Ms. Marino, it was she should have collected the \$1,000.00 deposit.
19. During the interview, while placing the blame on Ms. Marino for being the dual agent, the Respondent did admit that she that she did not properly supervise Ms. Marino. She stated, "I normally review all the contracts that come through my office, but I admit that I let this one slip by me."
20. The Complainant was never able to sell the Property and is currently using it as a rental property.

DISCUSSION

The Respondent's Failure to Appear

Section 17-324 of the Business Occupations Article provides that before the Commission can take any final action against an individual, the individual must be personally served with a hearing notice or the hearing notice must be sent by certified mail at least ten days prior to the hearing to the individual's last known business address. Md. Code Ann., Bus. Occ. & Prof. § 17-324(d) (2010). If the individual, after receiving proper notice of the hearing, fails or refuses to appear, the Commission may hear and determine the matter despite the individual's absence. Md. Code Ann., Bus. Occ. & Prof. § 17-324(f) (2010).

The record demonstrates that the OAH sent a Notice of Hearing to the Respondent by certified and first class mail, to her address of record with the Commission, more than ten days prior to the hearing. REC Ex. #1. State property records reflect that the address is the Respondent's principal residence. REC Ex. #4. The Respondent refused to accept the certified mail on September 24, 2010. REC Exs. #2 and 3. The Respondent received proper notice of the hearing and failed to appear; therefore, the Commission was entitled to proceed in the Respondent's absence. Md. Code Ann., Bus. Occ. & Prof. § 17-324(d), (f) (2010).

Statutory and Regulatory Violations

The Commission charged the Respondent with violating sections 17-320(c), 17-502(b) and 17-530 (c)& (d) of the Business Occupations and Professions Article, as well as COMAR 09.11.05.02. The Commission may reprimand any licensee, or suspend or revoke a licensee for numerous reasons delineated in law. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(2010). The Commission is seeking a sixty-day suspension of the Respondent's real estate license for the following reasons.

The Commission may suspend a licensee who fails to have the sellers and buyers complete a dual agency agreement when one is required. §§ 17-322(b)(30) and 17-530 (2010). A dual agent “means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who acts as an agent for both the seller and the buyer or the lessor and the lessee in the same real estate transaction.” § 17-530(a)(5). A real estate agent must obtain the written informed consent of all of the parties to a real estate transaction to act as a dual agent. §§ 17-530(c) and (d)(1)(i) and (ii). The importance of the informed consent is obvious and cannot be overstated: it protects the parties and the real estate agent from inherent conflict of interest.

The Respondent told Mr. Mull that she was not the seller agent for the Complainant but, rather, Ms. Marino was the listing agent and she had no idea how the buyers were located. The evidence, however, does not support the Respondent’s assertions. Both the Complainant and Ms. Marino testified that the Respondent appeared to be the only agent dealing with the buyers; specifically, the Respondent would act as the bridge for all communication between the parties. Both women were very straightforward during their testimony, made excellent eye contact, and did not attempt to exaggerate the facts. I found both to be very credible. Moreover, the Respondent never told Mr. Mull that the Buyers had another agent or that they were representing themselves. Accordingly, I find that the Respondent did not obtain a dual agency agreement although she was obligated to do so.

The Commission may also suspend a licensee who engages in dishonest or improper dealings relating to trust money, demonstrating bad faith. §§ 17-322(b)(31) and 17-502(b)(1)(2010).

Section 17-502 of the Business Occupations Article provides, in pertinent part:

(b)(1) Except as otherwise provided in subsection (c) of this section, a real estate broker promptly, but not more than 7 business days after the acceptance of a contract of sale by both parties, shall deposit trust money in an account that is maintained by the real estate broker:

- (i) separately from the real estate broker's own accounts; and
- (ii) solely for trust money.

Md. Code Ann., Bus. Occ. & Prof. § 17-502(b) (2010).

The evidence is overwhelming that the Respondent did not receive the \$1,000.00 deposit from the buyers at the time the contract was executed as she represented to the Complainant. I am persuaded by Ms. Marino's testimony when she maintains that, when she saw the buyers at the office on August 1, 2007, they told her they had been qualified for a bigger house so there was no need to provide the earnest money. The contract had been signed and accepted on July 23, 2007 and there is no credible evidence that the earnest money was deposited in a non-interest bearing account as the contract provided, within seven business days as required by § 17-502(b)(1).

Accordingly, the Respondent violated the regulations, and in turn the statute, as charged.

Finally, the REC may suspend a licensee who fails to adequately supervise those whom she employs or with whom she has contractual arrangements. COMAR 09.11.05.02A; §§ 17-322(b)(27) and 17-320(c)(1)(2010).

Section 17-603 of the Business Occupations Article provides, in pertinent part:

(b) A real estate broker may not retain an unlicensed individual to provide real estate brokerage services on behalf of the real estate broker.

Md. Code Ann., Bus. Occ. & Prof. § 17-603(b) (2010).

COMAR 09.11.05.02, regarding the requirement of supervision, provides:

A. A broker shall exercise reasonable and adequate supervision over the activities of the broker's associate brokers and salespersons.

The Respondent acknowledged to the REC investigator that she did not properly supervise Ms. Marino. While this admission was self-serving in her attempt to shift blame for the dual agency to Ms. Marino, I find that her failure to supervise has been further established from the totality of the evidence presented. The Complainant testified that she had little to no contact with the Respondent other than the initial contract offer and the request for her to sign the release nine days later. Ms. Marino testified that the Respondent was seldom in the office to provide information to prospective clients.

Accordingly, the Respondent violated the regulations and related statute, as charged.

May the REC impose a \$7,500.00 civil penalty in addition to the disciplinary suspension?

Business Occupations Article § 17-322(c) (2010) governs the imposition of monetary penalties and provides, in pertinent part, as follows:

(c) *Penalty.* – (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....

The statute is designed to protect the public from professional wrongdoing. The requirements to treat all parties to a transaction honestly and fairly, to properly supervise those acting on your behalf, and to handle deposit monies properly, are not a matter of judgment; these mandates are imposed upon a real estate broker by statute and regulation. These requirements go to the essence of what the public should be able to expect from real estate licensees. At the hearing, the Commission argued that the Respondent's actions were serious and they caused harm to the Complainant. She was never able to sell her property and had to practically beg to

obtain the earnest money she was entitled to. In addition, the Respondent has refused to participate in these proceedings, thereby demonstrating bad faith.

Accordingly, a civil penalty is warranted. The Commission recommended a total penalty of \$7,500.00 for all of the above-stated violations and I find the recommendation reasonable.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated Business Occupations Article §§ 17-320(c); 17-502(b); 17-530(c) & (d) and the Real Estate Commission Code of Ethics, COMAR 09.11.05.02A.

I further conclude as a matter of law that the Maryland Real Estate Commission may suspend the Respondent's license for sixty days and may impose on her a monetary penalty of \$7,500.00. Md. Code Ann., Bus. Occ. & Prof. §§17-322(b)(25), (27), (30),(31) and (33) and 17-322(c) (2010).

RECOMMENDED ORDER

IT IS THEREFORE **RECOMMENDED** that the Maryland Real Estate Commission:

ORDER that Respondent Gerri Walker-Nurse's license be suspended for sixty days and she be required to pay a \$7,500.00 civil penalty for violating the provisions of the Business Occupations Article and the Real Estate Commission Code of Ethics; and,

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

January 25, 2011
Date Decision Mailed

DHB/lh
#119740

SIGNATURE ON FILE

Deborah H. Buie
Administrative Law Judge

JUNE 1