

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

MONICA RICE
Respondent

* CASE NO. 2008-RE-874

* OAH NO. DLR-REC-21-10-04966

*

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated December 2, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 7th day of February, 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 Monica Rice violated Md. Bus. Occ. and Prof. Art. §17-322(b)(33); and COMAR 09.11.02.01H and 09.11.02.02A;

ORDERED that the Respondent Monica Rice be and hereby is REPRIMANDED;

ORDERED that the Respondent Monica Rice be assessed a civil penalty in the amount of \$1,000.00, 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 Monica Rice shall be suspended if the civil penalty is not paid in full within the 30-day time period.

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.

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

MARYLAND REAL ESTATE

* BEFORE DEBORAH H. BUIE,

COMMISSION

* AN ADMINISTRATIVE LAW JUDGE

v.

* OF THE MARYLAND OFFICE OF

MONICA RICE,

* ADMINISTRATIVE HEARINGS

RESPONDENT

* OAH CASE NO.: DLR-REC-21-10-04966

* REC COMPLAINT NO: 2008-RE-0874

* * * * *

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 June 19, 2008, Shantessa Tate (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 Dexter Qualls, a real estate salesperson associated with Real Estate Professionals, Inc. and seller’s agent for the sale of a property (the Property) located at 1648 Ruxton Avenue, Baltimore, Maryland 21216. After initiating an investigation, the Commission issued a Statement of Charges and Order for Hearing against Monica Rice (Respondent), a real estate salesperson associated with Re/Max Sails, Inc. and buyer’s agent for the Property.

On September 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). Peter Martin, Assistant Attorney General, represented the Commission. The Respondent appeared and represented herself.

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

- 1) Did the Respondent violate the provisions of the REC Code of Ethics at COMAR 09.11.02.01H and 09.11.02.02A; and, if so,
- 2) What is the appropriate sanction, pursuant to Business Occupations Article § 17-322(b)(33) and (c)?

SUMMARY OF EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Commission:

- | | |
|--------|--|
| REC #1 | Notice of Hearing, dated June 28, 2010 |
| REC #2 | Cover letter, dated August 16, 2010 |
| REC #3 | Printout of the Respondent's REC Licensing History, dated May 13, 2010 |
| REC #4 | Report of Investigation, March 19, 2009 |
| REC #5 | Complaint, dated June 19, 2008 |

The Respondent did not submit any exhibits.

Testimony

The Commission presented the testimony of Dexter Qualls and Shantessa Tate. The Respondent testified on her own behalf and did not present any other witnesses.

FINDINGS OF FACT

After considering the evidence, I find the following facts by a preponderance of the evidence:

1. On January 16, 2001, the Respondent was originally licensed as a real estate agent in Maryland. The Respondent held a valid real estate agent license at all times relevant to this matter.
2. At all times relevant to this matter, the Respondent was employed with ReMax Sails, Inc., as a real estate salesperson.
3. The Complainant was the buyer of the Property.
4. The Respondent acted as the Complainant's agent for the purchase of the Property.
5. On June 23, 2006, the Complainant submitted an offer to purchase the Property for \$117,707.00. At the time of the contract offer, the Property was still undergoing major renovations; however, the Complainant liked the particulars of the Property so much (e.g. it was an end of group) that she was willing to proceed with its purchase, pending the completion of the repairs.
6. The contract stipulated that a home warranty would be provided.
7. On August 18, 2006, a home inspection was conducted. The renovations were not yet complete; however, an inspection summary list was prepared and provided to the seller, indicating the buyer's wish list for repairs.
8. No signatures were on the inspection summary list. No addendum was ever prepared indicating the Complainant's request for repairs.
9. The agreement to repair between the buyer and seller was verbal only. The primary repair concern the Complainant had was in reference to the rear deck. She requested that the support beams be replaced.

10. The seller of the Property agreed to pay the Complainant \$750.00 at settlement for the cost of the deck repair. Again, the agreement was verbal and not in writing. The verbal agreement did not include any waivers.
11. The property went to settlement on September 27, 2006 and a walk through was conducted in the morning prior to settlement. All of the repairs were not completed, but the Complainant was eager to settle and she received assurances from the Respondent that the work would be completed within 30 days.
12. The support beams on the deck were not yet done; after settlement, the Complainant was presented with an addendum stating that two deck beams were to be replaced/repared, one at the expense of the seller and the other at the expense of the Respondent.
13. The Complainant was not provided the \$750.00 at settlement. Approximately two weeks after settlement, the seller's agent delivered the check to the Complainant along with a Hold Harmless Agreement.
14. The Complainant refused to sign the agreement and refused the check. It was returned to the seller.
15. The Complainant never received the \$750.00.
16. The Complainant never received a home warranty as promised by the contract.
17. On November 15, 2006, the Complainant filed a complaint against the seller's agent, Dexter Qualls (Qualls). After interviewing Qualls and the Complainant, the Commission filed charges against the Respondent.
18. The Respondent has had no previous statutory or regulatory violations.

DISCUSSION

Statutory and Regulatory Provisions

The Commission charged the Respondent with violating the REC Code of Ethics at COMAR 09.11.02. The applicable sections provide as follows:

.01 Relations to the Public.

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; and

.02 Relations to the Client.

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

As a result of the alleged violations, the Commission states that the Respondent is subject sanction permitted by Business Occupations Article § 17-322 (2010). The relevant portions of the statute provides as follows:

§ 17-322. Denials, reprimands, suspensions, revocation and penalties – Grounds...

(b) *Grounds.* – 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:

...

(33) violates any regulation adopted under this title or any provision of the code of ethics;

...

(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 \$5,000.00 for each violation.

The Merits of the Instant Case

The Commission's charges arise out of a residential contract of sale for the Complainant's home. There is no dispute that at the time of the transaction the Respondent was licensed by the Commission as a real estate agent and she was affiliated with ReMax Sails Realty. The Commission argued that the Respondent acted incompetently when she failed to include a repair addendum in writing and, by failing to do so, she did not protect the interest of all her client. I find that the evidence overwhelmingly supports the Commission's charges.

The Respondent admitted at the hearing that perhaps she should not have permitted the Complainant to proceed to settlement with repair issues still unresolved. She asserted, however, that the Complainant was so eager to settle on the property that she allowed it to settle against her best judgment. Finally, the Respondent indicated that in 2006, she was experiencing two personal tragedies, one involving a cancer diagnosis, and she may have been more unfocused than usual.

In response to the Complaint, on January 10, 2007, the Respondent sent a letter to the Commission stating, "...Ms. Tate does have a right to complain. She did not receive her money that was due to her nor were the repairs made that should have been." She also stated, "she was not given her home warranty which was clear[ly] stated in the listing."

Consequently, the Respondent does not dispute that by failing to put the repair addendum in writing she did not protect the buyer's interest. Indeed, the Complainant actually never received the money for repair of the deck. At the hearing, the Commission conceded that the Respondent's actions were negligent and not the result of an intentional act.

Accordingly, I find the Respondent's conduct violated COMAR 09.11.02.01(H) and 09.11.02.02A. She is, therefore, subject to sanction pursuant to Business Occupations Article § 17-322(b)(33) and (c).

The statute is designed to protect the public from professional wrongdoing, whether or not a real estate agent's actions were deliberate. An incompetent real estate agent can be as detrimental to society as a fraudulent one. At the hearing, the Commission requested that a reprimand be issued and a \$2,000.00 fine. The Respondent stated that she can not afford a \$2,000.00 fine because she is a single parent and does not earn top sales dollars as a sales agent.

The statute and regulations seek to protect the public's expectation of a certain level of competency on the part of paid professionals. It was the duty and obligation of the Respondent to know that in order for the repair addendum to be enforceable, the agreement had to be written into the contract of sale.

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....

Although the Respondent has no prior history of violations, her actions in this case are serious violations that caused harm to the Complainant. On the other hand, the Respondent acted in good faith. In addition, it is significant that the Complainant did not file a complaint against the Respondent, who was her agent, but rather the complaint was filed against the seller's agent. Although, when she testified at the hearing, the Complainant expressed disappointment at the Respondent's lapses, at the time that the events occurred, she must have felt more aggrieved by the seller's agent than the Respondent.

Consequently, I find that a fine of \$2,000.00 is not warranted. Accordingly, I recommend a total penalty of \$1,000.00 for the violations of COMAR 09.11.02.01H and 09.11.02.02A. In addition to the civil penalty, I recommend a reprimand.

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 §17-322(b)(33) and COMAR 09.11.02.02H and 09.11.02.02A.

I further conclude as a matter of law that the Maryland Real Estate Commission may reprimand the Respondent and may impose on her a monetary penalty of \$1,000.00. Md. Code Ann., Bus. Occ. & Prof. §§17-322(b)(33), 17-322(c) (2010).

RECOMMENDED ORDER

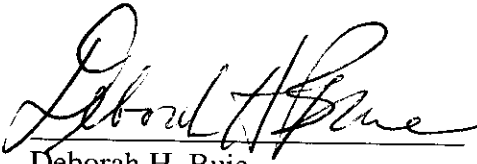
IT IS THEREFORE **RECOMMENDED** that the Maryland Real Estate Commission:

ORDER that Respondent Monica Rice be reprimanded and required to pay a \$1,000.00 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.

December 2, 2010
Date Decision Mailed

#118284


Deborah H. Buie
Administrative Law Judge