

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

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OAH CASE NO. DLR-REC-21-18-28098

v.

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**KENNY DEBRICK,
Respondent**

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MREC CASE NO. 2017-RE-071

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OPINION AND FINAL ORDER

This matter came before a hearing panel of the Maryland Real Estate Commission (“Commission”) on July 17, 2019 as a result of the written exceptions filed by Respondent, Kenny Debrick, to the Commission’s Proposed Order of April 23, 2019. On December 12, 2018 Administrative Law Judge Daniel Andrews (“ALJ”) held a hearing (“ALJ Hearing”) on the regulatory charges against Respondent. The ALJ filed a Recommended Decision in which he recommended that Respondent be reprimanded and that five (5) civil penalties be issued against him. On April 23, 2019, the Commission issued the Proposed Order adopting the Recommended Decision but increased the five (5) civil penalties.

On May 17, 2019, Respondent filed written exceptions to the Proposed Order. A hearing on the exceptions was held July 17, 2019 (the “July 17th Hearing”) by a panel consisting of Commissioners Karen Baker, Marla Johnson, and Demetria Scott. Hope Sachs, Assistant Attorney General, appeared as the presenter of evidence on behalf of the Commission and the Fund. Respondent did not appear.

PRELIMINARY MATTERS

Notice of the July 17th Hearing was sent to the address Mr. Debrick sent his written exceptions from, via both certified and regular mail. Although the certified mail was unclaimed,

the regular mail was not returned. The Court of Special Appeals has previously held that the notice of hearing sent to a licensee was sufficient when sent via both certified and regular mail to the last known address the licensee provided to the agency. *Maryland State Bd. Of Nursing v. Sesay*, 224 Md. App. 432 (2015). Therefore, reasonable notice of the July 17th Hearing was provided to Respondent.

The July 17th Hearing was scheduled for 1:30 P.M. The panel waited more than fifteen (15) minutes and commenced the hearing shortly before 1:50 P.M. Respondent never appeared nor did he make any contact with the Commission about his absence.

SUMMARY OF THE EVIDENCE

On behalf of the Fund, three exhibits, as well as the Office of Administrative Hearings' file containing the exhibits which were introduced at the ALJ Hearing, were entered into evidence:

- REC Ex. 1: April 23, 2019 letter from Commission to Respondent enclosing Proposed Order by Commission, dated April 23, 2019, and Recommended Decision by ALJ Daniel Andrews, dated March 12, 2019.
- REC Ex. 2: Respondent's written exceptions dated May 17, 2019
- REC Ex. 3: May 22, 2019 notice of July 17th Hearing.

No additional evidence was submitted.

FINDINGS OF FACT

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

DISCUSSION

At all times relevant to this matter, Respondent Kenny Debrick was a licensed real estate salesperson. FF 1.¹ In January 2016 Danene Taylor (Complainant) and Jeffrey Sheckells entered into a brokerage agreement with Re/Max, with Respondent as listing agent, for the property they owned on Saint Monica Drive in Baltimore, Maryland (the "Property"). FF 3-4. In July of 2016 a

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

residential contract of sale for the Property was entered into but less than two weeks later, on July 21, 2016, the buyer notified Respondent of her intent to withdraw. FF 5, 7. From July 21, 2016 to August 10, 2016 the buyer's agent attempted to contact the Respondent to no avail. FF 9. The Complainant was not made aware of the withdrawal until August 6, 2016. FF 8. The fully executed release was eventually received by the buyer's agent on August 10, 2016. FF 10.

On August 15, 2016, the Complainant filed a complaint with the Commission. FF 11. When asked by the Commission to explain the delay, Respondent claimed he had informed the Complainant's brother, Sheckells of the withdrawal and of his plan to convince the buyers to remain with the contract. FF 12. Sheckells denied that he had ever had contact with Respondent. FF 13. Testimony at the ALJ Hearing was provided by Lucinda Rezek, a paralegal with the Commission. There were no other witnesses and Respondent did not appear at the ALJ Hearing. Recommended Decision pp. 2, 4.

As a result of its review of the Recommended Decision, the Commission issued the Proposed Order, explaining that this case presents "a rare occasion where the Commission disagrees with the weight given by the ALJ to certain evidence in the record." Proposed Order p.2. The Commission agreed with the ALJ that the "violations found to have been committed by the Respondent are serious violations" but found that his actions were an extreme violation of his "duty and obligation to all parties to the transaction to act honestly and fairly and exercise reasonable care and diligence" and that his lack of previous disciplinary history was inconsequential. *Id.* Pursuant to MD. CODE ANN., BUS. OCC. & PROF. ("BOP") § 17-322 (c)(1) "the Commission may impose a penalty not exceeding \$5,000 for each violation." The Commission is required to consider the following factors:

- (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.

Id. at (c)(2). All four factors were taken into consideration by the Commission and that review necessitated an increase in the penalties, from \$100.00 per violation, to \$2,000.00 per violation, still less than half the maximum.

Respondent took exception to the increased fines. He presented three arguments in his written exceptions. First, Respondent alleged that Sheckells' contention that he had no contact with Respondent was false. Second, Respondent urged more weight be given to the ALJ's position on harm, claiming Claimant ultimately did sell the Property for a good price, with another brokerage. Finally, Respondent argued the increase from \$500.00 per violation to \$2,000.00 per violation was inconsistent with previous Commission disciplinary action against other licensees and that he could present references and testimony from more than 100 satisfied clients.

The Commission is unmoved. First, "if the transcript [of the ALJ hearing] has not been filed or ... made part of the record of the case, the parties ... may not refer to any testimony ... which was not incorporated into the ALJ's findings of fact or conclusions of law." Code of Maryland Regulations ("COMAR") 09.01.03.09 I. Respondent's claim in his written exceptions about his relationship with Sheckells is directly contradicted by the ALJ's findings of fact. No transcript, which may or may not support Respondent's claim, was entered into the record. Thus the Commission adopted the ALJ's findings of fact regarding Mr. Sheckells.

In addition, COMAR 09.01.03.09 K. provides that additional evidence may not be introduced unless it is established that the additional 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.

Although Respondent did not make a written request to introduce new evidence as required by 09.01.03.09 L., the factual allegations about his relationship with Sheckells and the 100 clients in his written exceptions are presented as new evidence. Respondent failed to offer any argument about whether his attempt to introduce that information complied with the requirements of 09.01.03.09 K. To that end, the Commission did not consider either factual allegation in making its decision. Furthermore, Respondent's allegation about the incongruity of the civil penalties issued against him and those in other matters are presented without context and without citation.

As described above, the Commission considered the four factors required by BOP § 17-322 (c)(2) and found that the seriousness of the violations and the harm caused by the violations, despite the lack of disciplinary history, warranted an increase of each of the five (5) civil penalties. Nothing in Respondent's written exceptions nor any presentation at the July 17th Hearing persuades the Commission otherwise.

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), (b)(32), (b)(33); 17-532(b) and COMAR 09.11.02.01 C and COMAR 09.11.02.02 A, for a total of five violations and that each violation is subject to a \$2,000.00 civil penalty pursuant to § 17-322 (c)(1)-(2).

ORDER

The exceptions of Respondent Kenny Debrick having been considered, it is this 14th day of August, 2019 by the Maryland Real Estate Commission, hereby **ORDERED**:

1. That the charges of the Commission be **UPHELD**;
2. That the Respondent, **KENNY DEBRICK**, be **REPRIMANDED** based on his violations;

3. That the Respondent, **KENNY DEBRICK**, be assessed a civil penalty in the amount of **Ten Thousand Dollars (\$10,000.00)** which shall be paid to the Maryland Real Estate Commission within thirty (30) days of the date this Final Order is mailed and all rights to appeal are exhausted;

4. That all real estate licenses held by the Respondent, **KENNY DEBRICK**, shall be suspended from the date this Final Order is mailed and all rights to appeal are exhausted, until the civil penalty is paid in full; 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 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