

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE \* BEFORE DANIA AYOUBI,  
COMMISSION \* ADMINISTRATIVE LAW JUDGE  
V. \* OF THE MARYLAND OFFICE OF  
STEPHANIE SMITH, \* ADMINISTRATIVE HEARINGS  
RESPONDENT \* OAH No: DLR-REC-21-22-29902  
\* REC CASE NO: 2021-RE-190

\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated September 1, 2023, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 23rd day of November, 2023,

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, APPROVED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

- D. That the records, files and documents of the Maryland State Real Estate Commission reflect this decision.

MARYLAND STATE REAL ESTATE COMMISSION

**SIGNATURE ON FILE**

By  \_\_\_\_\_  
Donna Morgan, Commissioner

12/4/2023  
Date

MARYLAND REAL ESTATE  
COMMISSION

v.

STEPHANIE SMITH,  
RESPONDENT

\* BEFORE DANIA AYOUBI,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: LABOR-REC-21-22-29902  
\* REC No.: 21-RE-190

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSION OF LAW  
PROPOSED ORDER

**STATEMENT OF THE CASE**

On November 16, 2022, the Maryland Real Estate Commission (REC) issued a Statement of Charges against Stephanie Smith (Respondent), a real estate broker licensed in Maryland. Following its investigation, the REC charged the Respondent with violating section 17-322(b)(33) of the Business Occupations and Professions Article of the Maryland Code and Code of Maryland Regulations (COMAR) 09.11.02.01D when serving as the listing broker for a residence for sale. The Statement of Charges advised the Respondent that if the charged violations were established following a hearing, the REC would seek a reprimand, suspension, or revocation of any real estate license the Respondent holds, along with a fine of up to \$5,000.00 per violation. The Statement of Charges included an Order for Hearing to allow the Respondent an opportunity to answer the Statement of Charges. On November 30, 2022, the REC forwarded

the case to the Office of Administrative Hearings (OAH) to schedule and conduct a hearing. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2018).

Accordingly, on December 8, 2022, the OAH issued a Notice of Hearing to the parties, advising them of a hearing scheduled for February 7, 2023. On February 2, 2023, the OAH received the REC's Motion to Consolidate for Hearing (Motion) this case with case LABOR-REC-21-22-29900 (case 22-29900), in which the REC charged Erin Pumphrey, the agent of the buyer purchasing the residence that the Respondent had listed for sale, with violations stemming from the same transaction. On February 6, 2023, I granted the Motion and postponed case 22-29902 to allow for a single consolidated hearing to be held on June 13, 2023.<sup>1</sup>

On June 13, 2023, I held a remote hearing by the Webex videoconferencing platform as scheduled.<sup>2</sup> Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2018); COMAR 28.02.01.20B(1)(b). MacKenzie Read, Assistant Attorney General, Maryland Department of Labor (Department), represented the REC. The Respondent represented herself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, the REC's procedural regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 09.11.03; COMAR 28.02.01.

### **ISSUES**

1. Did the Respondent violate section 17-322(b)(33) of the Business Occupations and Professions Article and COMAR 09.11.02.01D by failing to make a reasonable effort to ascertain all material facts concerning a residence for sale for which the Respondent served as the listing broker?

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<sup>1</sup> Though the hearing was consolidated, I have issued separate decisions for each respondent.

<sup>2</sup> Upon the Respondent's request, I converted the in-person hearing to a remote hearing. COMAR 28.02.01.20B.

2. If so, what is the appropriate sanction?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits offered by the REC:

MREC. Ex. 1 – Letter granting the parties’ joint request for remote hearing, January 18, 2023, with the following attachment:

- Notice of Hearing, December 8, 2022

MREC. Ex. 2 – Statement of Charges and Order for Hearing against Respondent Pumphrey, November 16, 2022

MREC. Ex. 3 – Statement of Charges and Order for Hearing against the Respondent, dated November 16, 2022, with the following attachment:

- DLLR<sup>3</sup> hearing cover sheet

MREC. Ex. 4 – REC Report of Investigation, undated, with the following attachments:

- DLLR REC online complaint form, March 27, 2019
- Residential contract of sale, signed October 30, 2017
- Invoice from Phelps Water Co., April 12, 2018
- Invoice from Phelps Water Co., March 20, 2018
- Estimate from Robert F. Beall & Sons, Inc., October 31, 2018
- Proposed contract from Allied Well Drilling, October 26, 2018
- Correspondence from the Anne Arundel County Department of Health to Kaiyla Fowler, October 23, 2018
- Estimate from Phelps Water Co., November 1, 2018
- Receipt from Anne Arundel County Inspection and Permits, June 29, 2018
- Email correspondence from the Respondent to the REC, September 9, 2019
- Email correspondence between the Respondent and the REC, January 22, 2020
- Listing details for 335 Beach Ave, undated
- Correspondence from the Law Offices Eccleston and Wolf, P.C., to the REC, September 20, 2019
- Listing for 335 Beach Ave, Pasadena, MD 21122, undated
- Correspondence from the Respondent to the REC, May 31, 2019
- Listing for 335 Beach Ave, Pasadena, MD 21122, undated
- Email correspondence between Respondent Pumphrey and the REC, June 30 and 31, 2020
- Email correspondence between Respondent Pumphrey and the Hampton Law Group LLC, and the Hampton Law Group LLC and the Harborside Properties LLC, November 14-16, 2017

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<sup>3</sup> Department of Labor, Licensing and Regulation.

- Text message correspondence between Respondent Pumphrey and Kaiyla Fowler, November 15 and 19, 2017

MREC. Ex. 5 – REC Complaint & Guaranty Fund Claim, September 28, 2021

MREC. Ex. 6 – The Respondent's written response to the REC, October 14, 2020, with the following attachment:

- Email correspondence between the Respondent and the REC, October 14, 2020

MREC. Ex. 7 – Respondent Pumphrey's licensing history, June 6, 2023

MREC. Ex. 8 – The Respondent's licensing history, June 6, 2023

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1 - MLS<sup>4</sup> listing agreement between Select Premium Properties, Inc. (SPP) and Great Lakes Developers LLC, September 11, 2017, with the following attachment:

- Listing for 335 Beach Ave, Pasadena, MD 21122, undated

Resp. Ex. 2 - MRIS<sup>5</sup> residential full listing for 335 Beach Ave, Pasadena, MD 21122, September 11, 2017

Resp. Ex. 3 - BRIGHT report for 335 Beach Ave, Pasadena, MD 21122, undated

Resp. Ex. 4 - Email correspondence from SPP to Great Lakes Developers LLC, September 11, 2017

### Testimony

The REC presented the testimony of: Kaiyla Fowler, homebuyer; and Lucinda Rezek, Paralegal, REC.

The Respondent testified and did not present other witnesses.

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<sup>4</sup> Multiple Listing Network.

<sup>5</sup> Metropolitan Regional Information Systems, Inc.

## PROPOSED FINDINGS OF FACT

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

1. The Respondent has been a real estate broker licensed in the state of Maryland since August 2011. At all relevant times, the Respondent was affiliated with SPP, located in Wilmington, North Carolina, where the Respondent resides.

2. Great Lakes Developers LLC (Seller) purchased and improved a residence at 335 Beach Avenue, Pasadena, Maryland 21122 (Property) and in September 2017 was seeking to resell the Property. As a development company, the Seller never lived in the Property.

3. On September 11, 2017, the Seller entered into a listing agreement with SPP for SPP to list the Property for sale in the MLS for a flat fee of \$195.00. SPP agreed to act only as a limited-service representative to the Seller and not as a standard agent. By the terms of the listing agreement, SPP did not act for the Seller or represent the Seller in the sale of the Property.

4. The Seller provided to the Respondent the listing content. The Respondent did not verify the information. After preparing the details of the MLS listing, on September 11, 2017, the Respondent emailed a copy to the Seller to review for accuracy. The Seller did not respond or request that any changes be made. Thereafter, the Respondent listed the Property for sale in the MLS.

5. The MLS listing for the Property incorrectly disclosed the Property's water source as public and the sewer as a public sewer. In fact, the Property is serviced by a private well and septic system.

6. On October 27, 2017, with the assistance of Respondent Pumphrey as the buyer's agent, Kaiyla Fowler made an offer to purchase the Property. The residential contract of sale was ratified on October 30, 2017.

7. In late December 2017, settlement was held. That day, Ms. Fowler moved into the Property and attempted to have the water turned on and the water account transferred to her name. Ms. Fowler was informed by Anne Arundel County (County) that it does not service the Property and that the Property's water source is well water. Thereafter, Ms. Fowler learned of the Property's septic system.

8. The existing well system was not adequate to provide water to the two bathrooms on the Property. Accordingly, in March and April 2018, Ms. Fowler sought the recommendation of Phelps Water Co., which explained that the original hand-dug well was dry and that a new well would have to be drilled. In October 2018, Ms. Fowler obtained an estimate from Allied Well Drilling in the amount of \$15,275.00.

9. On October 23, 2018, the County Department of Health notified Ms. Fowler that the Property did not meet the minimum design requirements of the County plumbing code for on-site sewage disposal. The County Department of Health also granted a variance for the Property to have a conventional speculative sewage disposal system as a repair to the existing failing septic system. Later that month, Ms. Fowler obtained an estimate from Robert F. Beall & Sons, Inc. to repair the septic system.<sup>6</sup>

10. Ms. Fowler was unable to afford the well and septic repairs. Finding the Property unlivable, she moved out in February 2020 and sold the Property as-is.

11. On March 27, 2019, Ms. Fowler filed a complaint with the REC against both the Respondent and Respondent Pumphrey.<sup>7</sup>

12. Following its investigation, the REC filed a complaint against the Respondent on September 28, 2020.

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<sup>6</sup> With a grant from the Bay Restoration Fund (BRF), the estimate totaled \$9,775.00. Without a BRF grant, the estimate totaled \$21,680.00.

<sup>7</sup> Although Ms. Fowler's complaint included a claim against the REC's Guarantee Fund in the amount of \$45,400.00, this case is only with respect to the regulatory charges against the Respondent.

## DISCUSSION

### *Applicable Law*

The REC contends that the Respondent violated section 17-322(b)(33) of the Business Occupations and Professions Article and COMAR 09.11.02.01D. Section 17-322(b)(33) provides that, “[s]ubject to the hearing provisions of [section 17-324], the [REC] may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee . . . violates any regulation adopted under this title or any provision of the code of ethics . . . .” Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33) (Supp. 2022). COMAR 09.11.02.01D, which sets forth the REC’s code of ethics, regulates relations to the public and states, “[t]he licensee shall make a reasonable effort to ascertain all material facts concerning every property for which the licensee accepts the agency, in order to fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of material facts.”

In determining the appropriate sanction for a violation, section 17-322 states, in relevant part:

- (c)(1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the [REC] may impose a penalty not exceeding \$5,000 for each violation.
- (2) To determine the amount of the penalty imposed, the [REC] 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.
- (3) The [REC] shall pay any penalty collected under this subsection into the General Fund of the State.
- (4) The [REC] may not impose a fine based solely on a violation of [section 17-322(b)(35)].<sup>[8]</sup>

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (Supp. 2022).

### *Burden of Proof*

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<sup>8</sup> Section 17-322(b)(35) concerns an “applicant or licensee . . . [who] has been disciplined under a real estate licensing law of another jurisdiction.”



When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. Md. Code Ann., State Gov't § 10-217 (2021); COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). In this case, the REC bears the burden to prove by a preponderance of the evidence that the Respondent violated section 17-322(b)(33) and COMAR 09.11.02.01D.

#### *Parties' Positions*

The REC argued that the Respondent violated section 17-322(b)(33) of the Business Occupations and Professions Article and COMAR 09.11.02.01D by failing to ascertain whether the Property was serviced by well water and a septic system. As the listing broker, the REC asserted, the Respondent was responsible for documenting that the Property's utilities included public water and sewer in the MLS listing despite the fact that the Property had well water and a septic system. The REC argued that it was the Respondent's responsibility to make reasonable efforts to ascertain all material facts concerning the Property, including the water source and sewerage system. As a result of the Respondents' failure to do so, the REC argued that error and misrepresentation occurred in this case.

With respect to the Respondent's serving as a limited-service listing agent, the REC argued that while that may contractually relieve her of certain obligations, the Respondent is not relieved of her duty under COMAR 09.11.02.01D of making a reasonable effort to ascertain all material facts, which in this case included determining whether the Property was serviced by public water and sewer. By accepting agency for the Property, the REC asserted that the Respondent was

subject to that duty and should have at a minimum consulted with the public records to verify the information provided by the Seller.

Considering the applicable factors, the REC argued that a reprimand and a civil penalty in the amount of \$3,000.00 is warranted in this case. Notwithstanding that the violation was innocuous on its face, there was no evidence of bad faith, and the Respondent had no history of violations, the REC argued, the harm caused to Ms. Fowler, including the distress and hardship she faced that ultimately led her to sell the Property justify the imposition of a penalty.

The Respondent argued that she served as a limited-service listing agent. The MLS listing was marked as an “entry only” listing and the agent remarks stated that the buyer should verify all listing information. The Respondent argued that the Seller was shown a copy of the listing to verify that all the information was accurate, which the Seller was required to do under the listing agreement and to notify the Respondent of any necessary changes. The Respondent contended that the public records are not always accurate and that it is very reasonable to depend on a seller’s knowledge of a property over any conflict with the public records. Particularly in the case of a renovation, the Respondent argued, the water and sewer could have been updated and the public records may not have reflected that change.

### *Analysis*

#### Violations

The record demonstrates that in September 2017, the Respondent, through SPP, agreed to list the Property for sale in the MLS listing. As the Respondent testified, though she agreed to list the Property for sale, the agreement was for SPP to act only as a limited-service representative to the Seller and not as a standard Seller’s agent. Accordingly, the Respondent did not agree to, for example, field and respond to inquiries from or show the Property to

potential buyers. The Respondent's business model is to, for a small fee, offer these limited services to sellers in various jurisdictions, including Maryland.

The listing agreement itself also made clear the limited nature of this relationship and put the onus on the Seller to provide accurate information. In relevant part, the listing agreement stated, "[the Seller] acknowledges that [the Respondent] intends to rely upon the accuracy of all information furnished by the [Seller] and the [Respondent] does not verify information provided by the [Seller]." (Respondent's Ex. 1, p. 2). Further, the listing agreement required that the Seller "immediately review MLS listing for errors or inaccuracies, and request revision for any corrections needed," and stated that the Respondent "is not responsible for any inaccuracies or clerical errors in MLS listings." (Respondent's Ex. 1, p. 3).

Notwithstanding the terms of this contractual arrangement, as a real estate broker licensed and operating in Maryland, the Respondent was not relieved of her statutory, regulatory, and ethical obligations. *See Krakauer v. Dish Network, L.L.C.*, 925 F.3d 643, 660 (4th Cir. 2019) ("parties cannot avoid the legal obligations of agency by simply contracting out of them"). The listing agreement itself acknowledged certain obligations of the Respondent, including "disclos[ure of] material facts regarding the Property and/or the transaction." (Respondent's Ex. 1, p. 1). Specifically, to comply with COMAR 09.11.02.01D, the Respondent was required to make a reasonable effort to ascertain all material facts concerning the Property to fulfill her obligation to avoid error, exaggeration, misrepresentation, or concealment of material facts. The evidence establishes that the Respondent failed to do so in this case.

Preliminarily, whether a property is serviced by public water and sewer or well water and a septic system is a material fact, which the Respondent did not dispute. On this record, the Respondent cannot be said to have made any effort, let alone a reasonable one, to ascertain all material facts concerning the Property. The evidence demonstrates that the Seller provided the

Respondent with the Property information. The Respondent prepared the MLS listing and provided it to the Seller for feedback. Having received none, the Respondent listed the Property in the MLS. Per the listing agreement, the Respondent relied upon the accuracy of the information furnished by the Seller. The Respondent acknowledged that she did not verify that information, for example, by consulting the public records before listing the Property in the MLS because it was not her practice to do so at the time. The Respondent explained that she now has new policies in place to compare the public records to the information that a seller has provided and to address any discrepancies.

The Respondent testified that public records are “notoriously wrong” and argued that it is very reasonable to depend on a seller’s knowledge of a property over any conflict with the public records. Though that may be the case, here, there is no evidence to suggest that the Respondent made any effort to consult the public records to determine whether there was any such conflict. Further, because the Seller was a development company that had purchased and improved the Property to resell it and never lived in the Property, any deference that the Respondent may normally afford to a seller’s knowledge of a property was unwarranted under the circumstances.

Based on the Respondent’s failure to make a reasonable effort to ascertain all material facts concerning the Property, which resulted in error and misrepresentation, I conclude that the Respondent violated section 17-322(b)(33) of the Business Occupations and Professions Article and COMAR 09.11.02.01D.

Sanction

Next, I must consider the question of an appropriate sanction. The REC argued that the Respondent should be subject to a reprimand and a civil penalty of \$3,000.00. Based on the circumstances, I conclude that a reprimand of the Respondent is appropriate. As explained above,

the Respondent violated the REC's code of ethics and compromised her obligation to avoid error and misrepresentation. Accordingly, a reprimand is warranted based on this record.

As section 17-322(c)(1) makes clear, in addition to a reprimand, a licensee may face a penalty of up to \$5,000 for each violation. Weighing the factors to determine the amount of a penalty, on this record, I conclude that the evidence supports the assessment of a \$500.00 civil penalty in this case.

Factor one considers the seriousness of the violation. The REC characterized the violation as innocuous on its face; however, this fails to consider that, at the time, the Respondent had been operating as a licensed real estate broker in Maryland for over six years. Additionally, the Respondent's agreement to act only as a limited-service representative to the Seller and exclusive reliance on the Seller for all information regarding the Property without any verification presented an inherent risk that ultimately compromised the Respondent's obligation to avoid error and misrepresentation. For these reasons, I conclude that the seriousness of the violation is heightened.

The REC argued that the second factor, which considers the harm caused by the violation, singularly warrants a civil penalty assessment in the amount of \$3,000.00. The REC argued that Ms. Fowler faced distress and hardship that ultimately led her to sell the Property. Ms. Fowler testified that if she had known the Property was on private water and septic, she would not have purchased it. Undoubtedly, Ms. Fowler was greatly inconvenienced by gathering information about what repairs would need to be made to the Property and obtaining quotes to replace the well and septic systems, as well as later having to move from the Property. However, Ms. Fowler ultimately did not financially undertake making those repairs and replacements and sold the Property as-is. No evidence was presented to indicate whether Ms. Fowler suffered a financial loss as a result.

With respect to factor three, which considers the good faith of the licensee, and factor four, which considers any history of previous violations by the licensee, respectively, the REC conceded that there is no evidence of bad faith and that the Respondent has no history of violations.

Considering the factors, I conclude that the seriousness of the violation (factor one) weighs in favor of assessing a penalty against the Respondent in the amount of \$500.00.

**PROPOSED CONCLUSION OF LAW**

I conclude that the Respondent violated section 17-322(b)(33) of the Business Occupations and Professions Article of the Maryland Code and COMAR 09.11.02.01D by failing to make a reasonable effort to ascertain all material facts concerning the Property. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33) (Supp. 2022); COMAR 09.11.02.01D.

**PROPOSED ORDER**

I **RECOMMEND** that the Maryland Real Estate Commission **ORDER**:

The charges against the Respondent for violating section 17-322(b)(33) of the Business Occupations and Professions Article of the Maryland Code and COMAR 09.11.02.02A be **UPHELD**; and

That the Respondent be subject to a **REPRIMAND** and a **PENALTY** in the amount of \$500.00 as an appropriate sanction.

September 1, 2023  
Date Decision Issued

**SIGNATURE ON FILE**

\_\_\_\_\_  
Dania Ayoubi  
Administrative Law Judge

DLA/ckc  
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