

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION
V.

JOSEPH O. LEE
RESPONDENT

* BEFORE JENNIFER M. CARTER JONES,
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS

* OAH No: DLR-REC-21-17-07818
* REC CASE NO: 2016-RE-170

FINAL ORDER
NOV 30 2017
MARYLAND REAL ESTATE COMMISSION

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated July 27, 2017, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 16th day of August, 2017,

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

8-16-2017
Date

By: J. Nicholas D'Ambrosia, Commissioner

FINAL ORDER

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* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On March 13, 2017, the Maryland Real Estate Commission (REC or Commission) issued a Statement of Charges and Order for Hearing against Joseph O. Lee (Respondent) for violating the Maryland Annotated Code, Business Occupations and Professions Article (BOP), section 17-322(b)(25) and (33) (2015)¹ and Code of Maryland Regulations (COMAR) 09.11.01.16.²

On May 9, 2017, I convened a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Hope Sachs, Assistant Attorney General, represented the REC. The Respondent failed to appear for the hearing.

On March 22, 2017, the OAH sent a Notice of Hearing by certified mail to the Respondent at his address of record: 2624 Kirklin Street, Falls Church, Virginia. The Notice of Hearing advised the Respondent of the date, time, and location of the hearing and that a party's

¹ Unless otherwise noted, all references to the BOP Article are to the 2015 volume.
² Chapter 09.11.01 was revised, effective June 1, 2017. This regulation is now codified at COMAR 09.11.01.12 without substantive change.

failure to appear could result in a decision against that party. On March 24, 2017, the Respondent signed the certified mail receipt and accepted delivery of the Notice of Hearing. In addition, the Notice of Hearing was sent to the Respondent's address via regular mail and that mail was not returned by the U.S. Postal Service as undeliverable. Thus, I find the Respondent received the Notice of Hearing and I granted the REC's request to proceed in the Respondent's absence.
COMAR 09.01.02.09; COMAR 28.02.01.23.

Procedure is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't, §§ 10-201 through 10-226 (2014 & Supp. 2016); the REC's Hearing Regulations, COMAR 09.11.03; and the OAH Rules of Procedure, COMAR 28.02.01.

ISSUES

1. Did the Respondent act in bad faith or in an incompetent or untrustworthy manner, or engage in dishonest, fraudulent, or improper dealings in the provision of real estate services?
2. Did the Respondent fail to timely reply to a written inquiry from the Commission in violation of COMAR 09.11.01.16?
3. Did the Respondent violate any other provision of Title 17 of the BOP?
4. Is the Respondent subject to any sanction under the BOP, and if so, what sanctions and/or penalties should be imposed?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits into evidence on behalf of the REC:

- | | |
|--------|--|
| REC #1 | OAH Notice of Hearing, dated March 22, 2017 |
| REC #2 | Respondent's Licensing History |
| REC #3 | Statement of Charges and Order for Hearing, dated March 13, 2017 |

- REC #4 Commission Complaint, dated September 28, 2015
- REC #5 Consent Order, Commonwealth of Virginia Real Estate Board, dated November 14, 2013, and Virginia Real Estate Board Report of Findings, dated March 11, 2013
- REC #6 Letter from the Commission to the Respondent, dated September 28, 2014
- REC #7 Notice of Complaint (Final Notice) letter from the Commission to the Respondent, dated October 28, 2015, with attached Certified Mail Receipt and green card, signed by the Respondent on November 2, 2015
- REC #8 Email from Commission Paralegal Lucinda Rezek Sands³ to the Respondent, dated February 24, 2016
- REC #9 Commission Report of Investigation, dated May 6, 2016

As the Respondent failed to appear for the hearing, he did not offer any exhibits for admission into evidence.

Testimony

The REC presented the testimony of Lucinda Rezek, Commission Paralegal.

As the Respondent failed to appear for the hearing, he did not present any testimony.

FINDINGS OF FACT

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

1. In December 2005, the Respondent was licensed by the REC as a real estate broker in Maryland under Registration number 01-611265.
2. The Respondent renewed his Maryland license on or about August 14, 2013. That license expired on August 17, 2015.
3. In November 2013, the Respondent also held a Virginia Real Estate Broker License.
4. On November 14, 2013, the Respondent signed a Consent Order with the Commonwealth of Virginia Real Estate Board. In the Consent Order, the Respondent

³ At the hearing, Ms. Rezek Sands was identified as Lucinda Rezek. Accordingly, for the balance of this decision, I shall refer to her as Lucinda Rezek.

acknowledged and admitted that he violated regulations of the Virginia Real Estate Board and he agreed to the revocation of his Virginia Real Estate Broker License.

5. On August 10, 2015, the Respondent submitted an online application to renew his Maryland Real Estate Broker License.

6. The online application requires applicants to answer the following question: "Have you ever had a real estate license denied, suspended, or revoked in Maryland or any other state?"

7. If an applicant answers that question in the affirmative, then he is not permitted to complete the online application.

8. The Respondent answered "no" to the question.

9. The Commission granted a renewed license to the Respondent based upon his answers on the August 10, 2015 online renewal application.

10. By letter dated September 28, 2015, the Commission advised the Respondent the REC had filed a complaint against him and advised him he must provide to the Commission a written response to the complaint within twenty days.

11. The Respondent did not file a written response to the REC's complaint within twenty days.

12. By letter dated October 28, 2015, titled "Notice of Complaint (Final Notice),"⁴ the Commission notified the Respondent he failed to respond to its September 28, 2015 letter within twenty days and advised him that the Commission was giving him ten additional days to respond to the issues raised in the complaint.

13. The Commission sent its October 28, 2015 Notice of Complaint to the Respondent via certified mail. On November 2, 2015, the Respondent signed the green card verifying he received the Notice of Complaint.

⁴ REC #7.

14. The Respondent did not respond to the Commission's October 28, 2015 Notice of Complaint.
15. On February 28, 2016, Commission Paralegal Lucinda Rezek sent an email to the Respondent advising him the Commission had not received any response from him. She also left a voicemail message advising the same on April 29, 2016.
16. The Respondent did not respond to Ms. Rezek's email or voicemail.
17. On May 2, 2016, Ms. Rezek spoke with the Respondent by telephone and the Respondent told Ms. Rezek he would send his response to her work email address.
18. When she did not receive the Respondent's response, Ms. Rezek again called the Respondent and left him a voicemail message that she did not receive an emailed response.
19. The Respondent never responded to the Commission's complaint.

DISCUSSION

In this matter, the REC alleges that the Respondent has violated, and is subject to sections 17-322(b)(25) and (33) of the BOP and COMAR 09.11.01. Section 17-322 dictates the REC's power to regulate licenses. As relevant, that section provides as follows:

§ 17-322. Denials, reprimands, suspensions, revocations, 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:

...

(25) engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings.

(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 suspending or revoking a license, the Commission may impose a penalty not exceeding \$5,000.00 for each violation.

COMAR 09.11.01.16 mandates that licensees must reply in writing to the Commission within twenty days of receipt of written inquiries directed to the licensee by the Commission. Failure to reply can be considered as an additional violation of BOP section 17-322(b)(25).

In this matter, the REC presented evidence that on November 14, 2013, the Respondent signed a Consent Order with the Commonwealth of Virginia Real Estate Board. In the Consent Order, the Respondent acknowledged and admitted that he violated regulations of the Virginia Real Estate Board and he agreed to the revocation of his Virginia Real Estate Broker License.

The REC further presented evidence that on August 10, 2015, the Respondent submitted an online application to renew his Maryland license, on which he stated that he never had a real estate license denied, suspended or revoked in Maryland or any other state. As a result of his answers on the renewal application, the Commission issued the Respondent a renewed Maryland license.

Ms. Rezek testified that if an applicant answers “yes” to the question of whether his license has ever been denied, suspended or revoked, the Commission online license renewal application software will not allow the applicant to complete the application. Rather, the applicant is directed to contact the Commission to learn how to proceed. According to Ms. Rezek, this mechanism is intended to allow the Commission an opportunity to obtain information from the applicant regarding the circumstances of the suspension, denial or revocation. Because the Respondent answered “no” to the question about any prior suspensions, denials or revocations, he precluded the Commission from learning the nature of his revocation in Virginia prior to renewing his Maryland license.

According to the evidence presented by the Commission, the Respondent also failed to respond to letters it sent him on September 28, 2015 and October 28, 2015. The September 28, 2015 letter advised the Respondent that a complaint had been filed against him with the Commission, and by regulation, he was required to file a written response to the Complaint within twenty business days of the date of the letter. That letter also advised the Respondent that his failure to respond to the Complaint could result in formal proceedings against him, suspension, and a fine of up to \$5,000.00.

Ms. Rezek testified that the Respondent neither responded to the September 28 and October 28, 2015 letters, nor responded to a February 24, 2015 email message or an April 29, 2016 message Ms. Rezek left on his voicemail. According to Ms. Rezek, she reached the Respondent by telephone on May 2, 2016 and the Respondent told her that he would email his response to her, however he did not do so.

As the Respondent failed to appear for the hearing before me, no evidence of record rebuts that presented by the Commission. Accordingly, I conclude that the Respondent violated BOP section 17-322(b)(25) when he answered "no" to the question on his renewal application asking if any real estate license he held had ever been suspended, denied or revoked. I further conclude that the Respondent violated COMAR 09.11.01.16 when he failed to respond to the Commission's complaint within twenty days. Failure to respond can be considered as an additional violation of BOP section 17-322(b)(25).

Section 17-322 of the BOP provides that the Commission may reprimand, suspend or revoke a license when a licensee has violated its provisions. According to that section, in addition to reprimand, suspension or revocation of the license, the REC may also impose a penalty of up to \$5,000.00 for each violation of the Article. Section 17-613(c), previously cited, of the BOP clarifies the additional penalties that may be imposed by the Commission.

§ 17-613. Penalties.

...

(c) *Penalty; factors.*—(1) The Commission may impose on a person who violates any provision of this title a penalty not exceeding:

- (i) \$5,000 for a first violation;
- (ii) \$15,000 for the second violation; and
- (iii) \$25,000 for a third or subsequent violation.

Md. Code Ann., Bus. Occ. & Prof. § 17-613(c).

The considerations the Commission must undertake when imposing a sanction include the following:

- (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 violation by the licensee.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c)(2).

The laws regulating real estate brokers were enacted with the intent that each would ensure consistent provision of real estate services and to provide the REC with the ability to protect the general public who avail themselves of brokers' services.

It is clear that the Respondent acted to deceive the REC when he failed to report on his online broker license renewal application that his Virginia Real Estate Broker License had been revoked. The Respondent signed the consent order, agreeing to the revocation of his Virginia license on November 14, 2013, less than two years before the date he submitted his renewal application to the Commission on September 28, 2015. It would be unreasonable to conclude that the Respondent simply “forgot” his Virginia license revocation.

The Respondent's actions prevented the REC from carrying out its responsibility to protect Maryland citizens from any losses they might experience as a result of the Respondent's actions.

The Respondent further frustrated the situation when he failed to respond to the Complaint against him. He did not respond to at least two phone calls and one email from Ms. Rezek. Although, Ms. Rezek was finally able to reach the Respondent by telephone and he told her he would email her his response, he did not do so. I conclude the Respondent's failure to respond to the Commission's Complaint further hampered its ability to fully investigate the nature and the impact of the Respondent's actions.

Accordingly, I conclude that the Respondent's actions: lying on his online renewal application and failing/refusing to respond to the Commission's Complaint against him were serious and displayed a clear lack of good faith. Of course, the maximum extent of the potential harm the Respondent's actions could have caused is unknown. However, he did not appear and offer evidence to mitigate the evidence produced by the Commission that he lied on his application and avoided responding to the Commission's consistent requests for a response to its Complaint. I conclude his lack of willingness to abide by the statutory and regulatory requirements for licensed real estate brokers amplifies the potential harm he could have caused to those seeking his services in this State.

The Commission requests revocation of the Respondent's Maryland Real Estate Broker License and the imposition of a \$10,000.00 civil penalty for his actions based upon the seriousness of those actions, his lack of good faith, and the potential resulting harm of his actions. For the reasons stated above, I find the Commission's assessment appropriate.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent acted in bad faith and in an incompetent or untrustworthy manner, and engaged in dishonest, fraudulent, and improper dealings in the provision of real estate services. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) (2015). I further conclude that the Respondent failed to timely reply to a written inquiry from the Commission, COMAR 09.11.01.16, which constitutes an additional violation under section 17-322(b). Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) (2015).

I further conclude as a matter of law, that the Respondent is subject to the revocation of his Maryland Real Estate Broker License and the imposition of a \$10,000.00 civil penalty based upon the relative seriousness of the violations, the potential harm of the Respondent's actions and his lack of good faith. Md. Code Ann., Bus. Occ. & Prof., §§ 17-322(c)(2); 17-613(c) (Supp. 2015).

RECOMMENDED ORDER

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

1. The charges of the Commission be **UPHELD**;
2. **I FURTHER RECOMMEND** that the Respondent's Real Estate Broker License be **REVOKED**;
3. **I FURTHER RECOMMEND** that a civil penalty in the amount of \$10,000.00 be assessed against the Respondent;

4. I FURTHER RECOMMEND that the Commission ORDER that Real Estate Commission's records and publications reflect its final decision.

SIGNATURE ON FILE

July 27, 2017
Date Decision Issued

JCJ/emh
#169165

Jennifer M. Carter Jones
Administrative Law Judge