

FINAL ORDER

JUN 21 2011

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL  
ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION \*

v. \*

WILLIAM LAWSON  
Respondent

\* CASE NO. 2009-RE-250

\* OAH NO. DLR-REC-21-10-26144

\*

\* \* \* \* \*

PROPOSED ORDER

The Findings of Fact, Conclusions of Law, and Recommended Order of the Administrative Law Judge dated March 7, 2011, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 26 day of MAY, 2011

**ORDERED,**

A. That the Findings of Fact in the recommended decision be, and hereby are, **AMENDED** as follows:

15. After Evans abandoned the property, the Complainant spoke with the Respondent and authorized him to look for a new tenant.

17. The Respondent did not inform the Complainant that he had rented the property to Rhames.

B. That the Conclusions of Law in the recommended decision be, and hereby are, **AMENDED** as follows:

The Respondent violated Sections 17-322(b)(25), (32), and

(33), and 17-532(c) of the Business Occupations and Profession Article, Ann. Code of Maryland, and COMAR 09.11.02.01H and 09.11.02.02A. He is subject to sanctions under Section 17-322(c).

The appropriate sanction in this case is the revocation of the Respondent's real estate salesperson's license.

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

**ORDERED** that the Respondent William Lawson violated Md. Bus. Occ. and Prof. Art. §§17-322(b)(25), (32), and (33); 17-532(c); and COMAR 09.11.02.01H and 09.11.02.02A;

**ORDERED** that all real estate licenses held by the Respondent William Lawson be, and hereby are, **REVOKED**;

**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 Findings of Fact, Conclusions of Law, and Recommended Decision of the Administrative Law Judge had to be modified. Finding of Fact 15 as written states that the Complainant/owner was authorized by the Respondent/licensee to look for a new tenant. This was clearly incorrect because the Respondent had been hired by the Complainant to manage his property for the purposes of renting it. (See Finding of Fact 5) Finding of Fact 17 as written says that the Respondent did not inform the Respondent of the property rental. This is a clear error. From

the other Findings of Fact, it is obvious that the person who was not informed was the Complainant/owner.

The Conclusions of Law had to be revised because the judge omitted the violations of Section 17-322 that he had found based on the evidence presented. (See pages 8 and 9 of the Recommended Decision)

The Recommended Order had to be amended because it omitted the findings of violations that should be included in the Order.

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 DAVID HOFSTETTER,

COMMISSION

\* AN ADMINISTRATIVE LAW JUDGE

v.

\* OF THE MARYLAND OFFICE OF

WILLIAM LAWSON,

\* ADMINISTRATIVE HEARINGS

RESPONDENT.

\* OAH CASE No.: DLR-REC-21-10-26144

\* MREC FILE No: 09-RE-250

\* \* \* \* \*

**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 or about November 21, 2008, Edith Vincent-Wright (Complainant) filed a complaint with the Maryland Real Estate Commission (REC or Commission), an administrative unit of the Department of Labor, Licensing and Regulation (DLLR), against William Lawson, a licensed real estate agent. On July 14, 2010, the REC issued a Statement of Charges and Order for Hearing against the Respondent.

On December 6, 2010, I conducted a hearing at the Prince George's County Office Building in Largo, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2010) (Business Occupations Article.) Hope Sachs, Assistant Attorney General, represented the REC. Adil Qaiyumi, Esquire, represented the Respondent.

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 Rules of Procedure of the Office of Administrative Hearings (OAH) 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 COMAR 28.02.01.

### **ISSUES**

- 1) Did the Respondent violate sections 17-322(b)(25), (32) or (33) and/or 17-532(c)(1)(iv) of the Business Occupations Article?
- 2) Did the Respondent violate COMAR 09.11.02.01H and/or COMAR 09.11.02.02A?
- 3) If the Respondent committed the violations or engaged in the conduct, what sanction is appropriate under section 17-322(b) of the Business Occupations Article?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits on behalf of the REC:

REC Ex. #1 Notice of Hearing, dated September 15, 2010

REC Ex. #2 Licensing history, dated November 17, 2010

REC Ex. #3 Statement of Charges and Order for Hearing, dated July 14, 2010

REC Ex. #4 Report of Investigation (with attachments), dated March 11, 2010

The Respondent did not offer any exhibits.

#### **Testimony**

The following persons testified on behalf of the REC:

- Edith Vincent-Wright, Complainant
- Robert Oliver, REC Investigator

The Respondent testified on his own behalf and called no other witnesses.

## FINDINGS OF FACT

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

1. At all relevant times, the Respondent was a licensed real estate salesperson in Maryland, holding license number 3724788.
2. At all times relevant, the Complainant owned a home at 5542 Rockfish Way, Clinton, Maryland (the Property).
3. In 2007, the Complainant was living in Texas and seeking to rent the Property.
4. At all times relevant, the Respondent was employed by Fairfax Realty, Inc., (Fairfax) as a real estate salesperson.
5. On August 19, 2007, the Respondent and the Complainant entered into a Property Management Agreement (the Agreement) for the purposes of renting and managing the Property. The Agreement was prepared by the Respondent.
6. Prior to the execution of the Agreement, the Respondent told the Complainant that he was employed by and acting on behalf of Fairfax and that Fairfax handled rental and property management matters such as the Complainant required. He gave the Complainant a business card indicating that he worked for Fairfax.
7. The Agreement contained a provision stating, "Fairfax Realty, Inc. to be paid \$125 administration fee when lease is ratified." REC Ex. 4. No such fee was ever received by Fairfax.
8. The signature page of the Agreement identifies the "Broker/Property Manager" as one of the parties to the Agreement and the other party as the Complainant. The "Broker/Property Manager" is identified as "Fairfax Realty, Inc." Beneath the line identifying Fairfax as the "Broker/Property Manger," the Agreement is signed as follows:

“By: [signature of the Respondent] Agent.” REC Ex. 4.

9. In entering into the Agreement with the Complainant, the Respondent was not acting on behalf of Fairfax. Fairfax was not aware of the Agreement or the Respondent’s contact with the Complainant and did not approve or ratify the Respondent’s actions.

10. Fairfax does not provide rental or property management services.

11. The Respondent’s employment contract with Fairfax contains a provision which states: “You are not permitted to conduct any business or personal transactions through [Fairfax] for any purpose. This may result in an immediate termination. This shall include property management, etc. Do not use [Fairfax’s] name, signs, letterhead, stationery, or company logo for any of these non-related services or businesses.” REC Ex. 4.

12. On October 10, 2007, a one-year lease for the Property was executed by the Respondent, acting on behalf of the Complainant, and Aaron Evans, to whom the Property was rented. The Complainant was aware of and approved of the lease.

13. The Complainant received all rental payments from the Property until March 2008.

14. In March 2008, Evans abandoned the property and stopped paying rent.

15. After Evans abandoned the property, the Complainant spoke with the Respondent who authorized him to look for a new tenant.

16. On June 11, 2008, the Respondent signed a lease for the Property with William Rhames. The Respondent signed the lease with language stating that he was signing “for” the Complainant.

17. The Respondent did not inform the Respondent that he had rented the property to Rhames.

18. Prior to signing the lease with Rhames, the Respondent did not tell the Complainant that he had interviewed Rhames or was considering him as a tenant.
19. The lease with Rhames provided that the monthly rent for the Property would be \$1,500.00 but that the June 2008 rent would be pro-rated to \$650.00. The lease also provided that Rhames would pay a security deposit of \$1,500.00.
20. At some point in late June or early July, 2008, Complainant returned to Maryland for a visit, went to the Property and saw that someone was living there.
21. After learning that someone was living in the Property, the Complainant called the Respondent to ask him why someone was living at the Property. The Respondent told the Complainant that he had rented the property. The Respondent told the Complainant that he was using the rent paid by Rhames to pay for repairs he said he had made to the Property after Evans had moved out.
22. The Respondent received the security deposit, the pro-rated June rent and the July and August rent from Rhames, totaling approximately \$5,100.00.
23. After repeated demands, the Respondent returned \$2,580.00 to the Complainant, but refused to return the entire amount, claiming that he needed it to pay for repairs he had paid for out of pocket after Evans abandoned the property.
24. The Complainant severed her relationship with the Respondent in August 2008.
25. The Complainant never received rent from Rhames until September or October 2008, but then received rent from Rhames until the end of the lease.



## DISCUSSION

### Alleged Violations

The REC alleged that the Respondent falsely represented to the Complainant that Fairfax was a company which provided property management services and that he was authorized to handle property management on behalf of Fairfax. The REC also alleged that he signed a lease on June 11, 2008 without the Complainant's knowledge or approval and that he collected and retained rental payments from that lease. REC Ex. 3. The Commission alleged that the Respondent's conduct demonstrated bad faith, incompetency, and/or untrustworthiness, and constituted dishonest, fraudulent, and/or improper dealings.<sup>1</sup> *Id.* The Commission charged the Respondent with violating sections 17-322(b)(25), (32), (33) and 17-532 (c)(1)(v) of the Business Occupations Article and COMAR 09.11.02.01H and COMAR 09.11.02.02A. *Id.* at 3-5.

### Applicable Law

The Commission's power to regulate licensees, as pertinent to this case, is as follows:

...  
(b) 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;

...  
(32) violates any other provision of this title;

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

Md. Code Ann., Bus. Occ. & Prof. § 17-322(b) (2010).

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<sup>1</sup> Such conduct is a basis for sanctions under section 17-322(b)(25) of the Business Occupations Article.

In addition, Md. Code Ann., Bus. Occ. & Prof. § 17-532(c) (2010) provides in relevant part:

(c) In general.

(1) A licensee shall:

...

(iv) treat all parties to the transaction honestly and fairly and answer all questions truthfully

Also relevant to this matter is COMAR 09.11.02.01 and .02, which is part of the real estate licensee's Code of Ethics and which provides in pertinent part:

.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.

.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.

For the following reasons, I find that the REC established by a preponderance of the evidence that the Respondent (1) engaged in conduct that demonstrated bad faith, incompetency, and untrustworthiness, and that constituted dishonest, fraudulent, and improper dealings; and (2) violated COMAR 09.11.02.01H and COMAR 09.11.02.02A. I find that the Respondent is therefore subject to regulatory sanctions.

Conduct Sanctionable under Section 17-322(b)(25) and Section 17-532(c)

The Respondent's conduct in connection with this transaction is permeated with bad faith, incompetence, and untrustworthiness, justifying sanctions under section 17-322(b)(25) of the Business Occupations Article. The same conduct establishes that the Respondent did not treat the Respondent "honestly and fairly" and "answer all questions truthfully" as required by Section 17-532(c)(1)(iv).

The evidence reveals that the Respondent induced the Complainant to enter into the Agreement with him by falsely stating that Fairfax performed property management services and that he was authorized to act on behalf of Fairfax. Having established a relationship with the Complainant based on this lie, the Respondent rented the Property in June 2008 without the owner's knowledge or permission. In renting the Property to Rhames, it is clear that the Respondent's purpose was not to further his client's best interests but, rather, to steal from her. He collected rent from the tenant and did not turn over any of that rent to the owner of the Property.<sup>2</sup> Indeed, he did not even tell her that the Property had been rented until he suffered the bad luck of having the Respondent return to the state and inspect the Property. Although the Respondent testified that he "was going to" tell Complainant everything, he offered no explanation for his delay in doing so. Indeed, there is no reasonable explanation for his actions except that he intended to keep the Complainant in the dark for as long as possible and, in the mean time, collect and pocket rent on a property he did not own. The Respondent argued that he did not turn over the funds from Rhames because he was paying himself back for repairs he had made when Evans "trashed" the Property before abandoning it. This argument is not credible for

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<sup>2</sup> He eventually paid some, though not all, of the rental monies to the Respondent after repeated demands. I also note that the evidence is unclear as to the total amount the Respondent received from Rhames and is similarly unclear as to whether the Complainant began receiving Rhames' rent payments in September or October 2008. These ambiguities do not effect my determinations in this case.

two reasons. First, the Respondent offered no proof (for example photographs or estimates from contractors) of damage allegedly done by Rhames. Nor did he offer any proof (such as cancelled checks or credit card statements) of any payments he made to repair the alleged damage. Second, even if the Respondent did pay for repairs to the Property, there is no conceivable reason why he wouldn't have discussed this in advance with the Complainant and received her authorization to do so. Such a discussion would have undoubtedly included issues such as whether the Complainant would pay directly for the repairs or, if the Respondent were to advance the funds, how he would be repaid. The fact that there is no proof of any significant damage caused by Evans, no proof of any payments which the Respondent made to repair such damage, and no evidence that he discussed with the Complainant the alleged repair payments, causes me to conclude that the Respondent's testimony on this issue is not credible.

#### Violations of the Code of Ethics

I also find that, based upon the same conduct by the Respondent, the Commission has proven violations of COMAR 09.11.02.01H and COMAR 09.11.02.02A . Regarding COMAR 09.11.02.01H , the Respondent did not see to it that the written agreement between the parties "expressed the exact agreement of the parties." The Complainant thought she was entering into a transaction with Fairfax and that the Respondent was acting as its agent. The Respondent, of course, knew full well that this was not the case. By presenting the Complainant with a written contract falsely stating that Fairfax was a party to the Agreement, the Respondent violated COMAR 09.11.02.01H.

Regarding COMAR 09.11.02.02A, the Respondent failed utterly to "protect and promote the interests of the client." Moreover, his failure was not a result of negligence or inattention; it was deliberate and willful. By failing to inform the Respondent of the lease with Rhames or to

submit the rent and security deposit payment to her, he advanced his own interests at the expense of his client's interests.

By violating these provisions of the Code of Ethics, the Respondent has also violated section 17-322(b)(32) and (33) which, provide that violation of other sections of the statute, including the Code of Ethics, subjects a licensee to sanctions.

### Sanctions

With regard to sanctions, section 17-322(b) of the Business Occupations Article provides in pertinent part as follows:

(b) 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 [.]

Md. Code Ann., Bus. Occ. & Prof. § 17-322(b) (2010).

The Commission is also authorized to impose civil monetary payments pursuant to section 17-322(c).

At the hearing before me, counsel for the Commission argued that an appropriate sanction would be a reprimand and a civil penalty of \$2,500.00. In my view, this proposed sanction would be extraordinarily lenient and does not reflect either the seriousness of the Respondent's violations or their willful nature.

The violations in this case were egregious. They harmed not only the Complainant, but, by contributing to the erosion of public trust, the entire profession. The requirement that licensees not engage in conduct that demonstrates bad faith, incompetency, and untrustworthiness, or that constitutes dishonest, fraudulent, and improper dealings, is not a matter of judgment; it is imposed by statute and regulation. It goes to the essence of what the public, as well as other brokers and agents, should be able to expect from real estate licensees.

The Respondent did not present any evidence or argument to suggest that he understands that he committed serious violations. Rather, he seemed to believe that he acted properly and that he was the victim in this case because he supposedly lost money on the alleged repairs made after the first tenant moved out. Clearly, the Respondent either does not understand the statutory and ethical obligations attendant upon him as a licensee or thinks that they do not apply to him. I therefore conclude that revocation of the Respondent's real estate salesperson's license is appropriate in this case.

### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated COMAR 09.11.02.01H and COMAR 09.11.02.02A, and is subject to sanctions under section 17-322(b)(25) (32) and (33) of the Business Occupations Article.

I further conclude as a matter of law that an appropriate sanction in this case is the revocation of the Respondent's real estate salesperson's license. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b) (2010).

### RECOMMENDED ORDER

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

**ORDER** that the real estate salesperson's license of the Respondent, William Lawson, registration number 3724788, be **REVOKED**; and

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

March 7, 2011  
Date Decision Mailed

#120824  
DH/rs

SIGNATURE ON FILE

David Hofstetter  
Administrative Law Judge

MARYLAND REAL ESTATE

\* BEFORE DAVID HOFSTETTER,

COMMISSION

\* AN ADMINISTRATIVE LAW JUDGE

v.

\* OF THE MARYLAND OFFICE OF

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RESPONDENT

\* OAH CASE No.: DLR-REC-21-10-26144

\* MREC FILE No: 09-RE-250

\* \* \* \* \*

**FILE EXHIBIT LIST**

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