

MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

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v.

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CASE NO. 2015-RE-340

MUHAMMAD M. ZULQURNAIN

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OAH NO. DLR-REC-21-17-39078

RESPONDENT

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OPINION AND FINAL ORDER

This case comes before the Real Estate Commission (“Commission”) on argument on Exceptions filed by Respondent, Muhammad M. Zulqurnain, to the Proposed Order of March 15, 2018. Administrative Law Judge Douglas E. Koteen (“ALJ”) filed a Recommended Decision and Order in which he recommended that pursuant to Section 17-322 (c), Maryland Annotated Code, Business Occupations and Professions Article, (“BOP”), Respondent pay a civil penalty of \$5,000 and that Respondent be reprimanded.

On April 18, 2018, the Commission issued a Proposed Order affirming the ALJ’s Findings of Fact, approving the Conclusions of Law and adopting the Recommended Order in the Recommended Decision.

A hearing was held by a panel of Commissioners consisting of Commissioners Kambon R. Williams, Anne S. Cooke and Jeff Wright. Andrew Brouwer, Assistant Attorney General, appeared as the Presenter of evidence on behalf of the Commission.

The proceedings were electronically recorded. Respondent appeared and acknowledged that he waived his right to representation at the hearing.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, four exhibits including the Office of Administrative Hearings' folder containing the exhibits which were introduced at the hearing before the ALJ, were entered into evidence. Respondent presented no exhibits.

FINDINGS OF FACT

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

DISCUSSION

The Respondent, Muhammad Zulqurnain, a licensed real estate broker since January 2005, FF¹ 1, represented Usman and Muhammad Ismail (Buyers) in their endeavor to purchase property located at 2915 Louisiana Avenue, Halethorpe, Maryland 21227 (Property). FF 2. The Seller initially rejected the Buyers contract. On August 18, 2014, the Buyers submitted a Residential Contract of Sale (Contract) which was accepted. FF 3, 4. The Buyers signed the Contract the next day on August 19, 2014 and the Seller signed it on August 20, 2014. FF 4. Additionally, the Buyers paid \$1,000.00 for an initial escrow money deposit (EMD) on the Contract in the form of a check paid to Prime Real Estate. FF 5. Per the Contract, the Respondent placed the EMD in a non-interest bearing account pending the sale of the Property. FF 5.

After an inspection of the Property, the Buyers requested that repairs be made to the drainage system around the house to improve the water flow. FF 6. The Seller agreed to make the repairs. *Id.*

¹ "FF" refers to the ALJ's Findings of Fact

The Buyers decided not to purchase the Property.² On September 3, 2014, the Respondent sent the Seller a release signed by both the Buyers and the Respondent requesting release of the EMD funds to the Buyers. FF 8. The next day, the Seller's agency, via email, advised that the Seller would not sign the release and did not agree to release of the EMD funds to the Buyers. FF 9. The Seller's agent also advised that if the Buyers wished to terminate the contract, the Buyers should submit a unilateral release identifying the term of the contract that would support the request for release. *Id.*

On September 12, 2014, the Seller prepared and signed a Unilateral Notice of Termination Under Contract of Sale and Mutual Release of Deposit Agreement (Agreement) claiming that the Buyers were in default or breach of contract by failing to pursue financing diligently under section 28 of the Contract. FF 10. The Buyers did not sign the Agreement. *Id.*

On September 18, 2014, the Respondent advised the Seller's agent that the Buyers did not intend to proceed with the purchase of the Property and requested that the Seller's agent have the Seller sign the release so that the EMD could be released to the Buyers. FF 11. The Seller's agent notified the Respondent that the Seller would not sign the release of the EMD funds to the Buyers. *Id.* The Seller's agent, however, requested that the Buyers sign the Agreement disbursing the EMD funds to the Seller. FF 12.

In October 2014, the Seller sold the Property to another buyer. FF 14. On December 26, 2014, the Seller's agent contacted the Respondent requesting that the Buyers submit a signed release of the EMD to the Seller. FF 15. The parties were unable

² The Buyers believed, based upon the water drainage issue, that the Seller might be involved in a flipping scam.

to come to an agreement as to disbursement of the EMD; neither signing the drafted release of the other party FF 16.

On December 30, 2014, the Respondent notified the Seller's agent that he released the EMD funds to the Buyers. FF 17. Specifically, he stated, "after careful deliberation, the emd deposit was released to the client." (REC Exhibit 4, p.11) The Respondent did not provide Seller with a thirty-day notice advising Seller in advance of his intent to release the EMD to the Buyers before releasing the funds. *Id.*

Code of Maryland Regulations (COMAR) 09.11.02.02A provides that "in accepting employment as an agent, the licensee shall protect and promote the interest of the client." While this obligation of absolute fidelity to the client's interest is primary, it does not relieve the licensee from the statutory obligations toward the other parties in the transaction. BOP § 17-505 requires that a real estate broker must maintain trust money in an account until the broker "receives proper written instruction from the owner and beneficial owner directing withdrawal or other disposition of the trust money."

The parties never came to an agreement as to the disbursement of the money. FF16. The Respondent acknowledged that the Seller refused to sign the Buyers' release and requested instead that the EMD funds be released to the Seller. Furthermore, in an email, the Respondent acknowledged that the EMD funds could not be released until both parties signed. (REC Exhibit 4, p. 10) Moreover, the Respondent was unable to produce the thirty-day notice he alleged that he sent as required by law. Additionally, the Seller's agent stated that she never received such a letter. (REC Exhibit 4, p. 2. Therefore, the Respondent had an obligation to the parties to maintain the trust money until there was an agreement regarding disbursement.

To determine the amount of the penalty to be imposed, BOP § 17-322(c) requires the Commission to consider the following:

1. the seriousness of the violation;
2. the harm caused by the violation;
3. the good faith of the licensee; and
4. any history of previous violations by the licensee.

The Commission finds that the improper handling of trust money is serious. The Respondent failed to comply with the requirement of the law regarding the handling of money held in trust for the benefit of others. The Respondent's failure to handle the trust funds in accordance with the provisions of the law caused harm to the reputation of the real estate industry and violated the trust which the public accords to real estate licensees who handle their funds. Further, the Respondent's release of the trust money despite his actual knowledge, (REC Exhibit 4, p. 10), of a lack of agreement between the parties shows a lack of good faith. The Respondent has been a licensed by the Commission for thirteen (13) years and there is no record of any other violations

With respect to the sanction, the ALJ recommended a fine of Five Thousand Dollars (\$5,000.00), the Commission has reviewed the recommendation of the ALJ and, in exercising its independent judgment, believes that a modification of the sanction recommended by the ALJ is warranted and would impose a sanction which it feels is more appropriate under the circumstances. *See Board of Physicians v. Elliott*, 170 Md. App. 369, 383 (2006) (when an agency, delegates to an ALJ the limited task of making only *proposed* findings of fact and/or *proposed* conclusions of law, the agency is ordinarily at liberty, in making its own independent final decision). *See also Dept. of*

Health and Mental Hygiene, 100 Md. App. 283, 300 (1994) (the agency is presumed to have broad experience and expertise in the area and it is the agency to which the legislature has delegate administration of the statute). Accordingly, the Commission concludes that the appropriate penalty in addition to the reprimand is a civil penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500.00).

CONCLUSIONS OF LAW

Based upon the ALJ's Findings of Fact, which have been adopted by the Commission, and the foregoing Discussion, the Commission concludes, as a matter of law, that:

1. The Respondent, Muhammad M. Zulqurnain, violated BOP § 17-505 (a)(2) by disbursing money to his client without receiving "proper written instruction from the owner and beneficial owner directing withdrawal or other disposition of the trust money."
2. The Respondent, violated COMAR 09.11.02.02A and failed to protect the interests of all parties to the real estate transaction by failing to get a proper written authorization from all parties to the real estate transaction prior to disposing of the trust money.

ORDER

The Exceptions of the Respondent having been considered, it is this

19th day of September 2018:

ORDERED THAT:

1. The Respondent, Muhammad M. Zulqurnain, violated Md. Bus. Occ. & Prof. Art. Section 17-505 (a)(2) and COMAR 09.11.02.02A;
2. The Respondent shall be **REPRIMANDED**;
3. The Respondent, Muhammad M. Zulqurnain be assessed a civil penalty in the amount of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)- (ONE THOUSAND TWO HUNDRED FIFTY DOLLARS** in violation of BOP § 17-505 (a)(2) and **ONE THOUSAND TWO HUNDRED FIFTY DOLLARS** in violation of COMAR 09.11.02.02A) which shall be paid within thirty (30) days of the date of this Order;
4. That Respondent, Muhammad M. Zulqurnain, shall be ineligible to hold any real estate license issued by the Maryland Real Estate Commission until the civil penalty is paid in full; and
5. The records and publications of the Maryland Real Estate Commission reflect this decision.

MARYLAND REAL ESTATE COMMISSION

By: SIGNATURE ON FILE

