

FINAL ORDER

MAR 01 2011

BEFORE THE MARYLAND REAL ESTATE COMMISSION
MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

ASHOK K. BHAGI
Respondent

* CASE NO. 2008-RE-347

* OAH NO. DLR-REC-21-10-08349

*

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated November 18, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 5th day of December, 2010

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, AFFIRMED;

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

ORDERED that the Respondent Ashok K. Bhagi violated Md. Bus. Occ. and Prof. Art. §§17-322(b)(32); 17-320(c)(1); 17-603(b); and COMAR 09.11.05.02;

ORDERED that the Respondent Ashok K. Bhagi be, and hereby is, REPRIMANDED;

ORDERED that the Respondent Ashok K. Bhagi be assessed a civil penalty in the amount of \$2,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that all real estate licenses held by the Respondent Ashok K. Bhagi shall be suspended unless the civil penalty is paid in full within the 30-day period, and shall remain suspended until it is paid.

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 Recommended Decision of the Administrative Law Judge had to be modified because the judge omitted the provisions that the civil penalty had to be paid within 30 days, and that all real estate licenses held by the Respondent would be suspended unless the penalty is paid in full by that time. The Commission also increased the penalty from \$1,000 to \$2,000. The Respondent, who did not appear at the hearing, provided a written response to the Commission stating that he was unaware of Mr. Urteaga's involvement in this transaction because his name did not appear on any of the documents. As the broker, it was the Respondent's obligation to have procedures in place to insure that, when an agent handles a transaction for another agent, this information is recorded and can be retrieved by the broker. Had a consumer contacted the broker to inquire about the transaction, the Respondent would not have known what agent to discuss the matter with. He also did not have a procedure to track license expiration

dates of the licensees affiliated with him. Had such a system existed, Mr. Urteaga's Maryland license would not have been allowed to lapse for a year, or he would have known that he could not handle a Maryland transaction for another licensee because he no longer held a valid Maryland license. While the responsibility of maintaining a license falls primarily on the licensee, the broker, who is responsible for all the licensees affiliated with that brokerage, and who is required to display the license certificates of those licensees, is also answerable when licenses are allowed to lapse and no system of follow-up exists. For these reasons, the Commission believes that a fine in the amount of \$2,000, as well as a reprimand, is the appropriate penalty.

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.

J. M. [unclear]
M
[unclear]

(COMMISSIONER'S SIGNATURE
APPEARS ON ORIGINAL ORDER)

[unclear]
on
[unclear]

MARYLAND REAL ESTATE

* BEFORE DEBORAH H. BUIE,

COMMISSION

* AN ADMINISTRATIVE LAW JUDGE

v.

* OF THE MARYLAND OFFICE OF

ASHOK K. BHAGI

* ADMINISTRATIVE HEARINGS

IKON REALTY, INC.

* OAH CASE NO.: DLR-REC-21-10-08349

* REC COMPLAINT NO.: 2008-RE-347

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE

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RECOMMENDED ORDER

STATEMENT OF THE CASE

On November 26, 2007, Alexander Karavasilis (Complainant) filed a complaint with the Maryland Real Estate Commission (Commission or REC) against Ashok Bhagi (Respondent Bhagi), a real estate broker, and Jaime Urteaga (Respondent Urteaga), a real estate salesperson, regarding the sale of residential property (the Property) at 8913 Old Frederick Road, Ellicott City, Maryland. After an investigation, the Commission issued a Statement of Charges against the Respondent Bhagi and Order for Hearing, dated December 29, 2009.¹

On August 24, 2009, I held a hearing at the Laurel Executive Center, 312 Marshall Avenue, Laurel, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-324 (2010). Assistant

¹ This matter was consolidated, for hearing purposes, with the regulatory case against Respondent Urteaga, a real estate salesperson affiliated with Ikon Realty. The Urteaga charges are addressed in a separate decision (OAH Case No. DLR-REC-21-10-08344).

Attorney General Jessica Kaufman represented the Commission, but the Respondent failed to appear. The Commission provided persuasive evidence² that timely notice of the hearing date had been sent to the Respondent's address of record and not returned by the United States Postal Service, and I, therefore, proceeded to hear the case in the Respondent's absence. *See* Business Occupations Article §§ 17-324(f); Code of Maryland Regulations (COMAR) 09.01.02.09.

The Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the Office of Administrative Hearings govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); COMAR 09.01.03; COMAR 09.11.03.02; and COMAR 28.02.01.

ISSUES

1. Did the Respondent violate section 17-320(c) and 17-603(b) of the Business Occupations and Professions Article and COMAR 09.11.05.02 by failing to exercise reasonable and adequate control over the activities of Respondent Urteaga, one of his salespersons?

2. If the Respondent committed either of the violations set forth above, what sanctions are appropriate under Section 17-322(b) and (c) of the Business Occupations and Professions Article?

SUMMARY OF THE EVIDENCE

Exhibits³

The only exhibits submitted were the following Commission documents, all of which were admitted into evidence:

REC #1 - Notices of Hearing, dated June 10, 2010

² *See* REC Ex. ## 1 & 3.

³ All of the REC exhibits were also admitted as evidence in support of the Commission's case against Respondent Bhagi (See DLR-REC-21-10 08349)

- REC #2 - REC Licensing Information on Respondent Bhagi, dated July 12, 2010⁴
- REC #3 - Notice of Hearing, dated June 10, 2010
- REC #4 - REC Licensing Information on the Respondent, dated July 12, 2010
- REC #5 - Report of Investigation, with attachments

Testimony

The Commission presented the testimony of Mary Kroden, Pamela Stevens, and Jennifer Grimes, Investigator, REC. No testimony was presented on the Respondent's behalf.

FINDINGS OF FACT

Having considered the evidence presented, I find the following facts by a preponderance of the evidence:

1. Respondent Bhagi is the real estate broker of record for Ikon Realty, Inc. His current license number is 01-5743 and it expires on August 24, 2011.
2. Respondent Urteaga held a license issued by the Commission as a real estate agent from April 4, 2006 until November 25, 2006; when he failed to renew the license, it expired. Respondent Urteaga's license was renewed on December 4, 2007.
3. Respondent Urteaga performed real estate brokerage services from August 2007 through October 2007 on behalf of Ikon Realty, Inc. On August 30, 2007, he showed the Property to the buyers and prepared the buyer's contract offer to purchase the Property, and on October 2, 2007, Respondent Urteaga attended settlement with the buyers.
4. At the time that Respondent Urteaga provided the real estate brokerage services for the buyers of the Property, he was not licensed as a real estate salesperson.

⁴ The Commission supplemented REC Ex.2 with the submission of an updated history, dated August 27, 2010.

5. Respondent Urteaga was also licensed in Virginia and conducted the great majority of his real estate business in that state. He handled the transaction related to the purchase of the Property at the request of a colleague, J. Callao, (a licensed sales agent) who had travel plans to be out of the country.

6. Respondent Urteaga was forthright with the listing agent by telling her that he was handling the transaction for J. Callao and that Callao would be receiving the commission.

7. Respondent Urteaga's name did not appear on the purchase contract nor did he receive a commission.

8. Respondent Bhagi responded to the Commission's charges in a letter, dated February 5, 2008. He stated that because Respondent Urteaga's name did not appear on any of the documents he was unaware of his involvement in the sale.

DISCUSSION

The Commission charged the Respondent with violating sections 17-320(c) and 17-603(b) of the Business Occupations and Professions Article, as well as COMAR 09.11.05.02.

The relevant portions of the law and regulation are as follows:

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

(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:

...

(27) violates § 17-320(c) of this subtitle by failing as a real estate broker to exercise reasonable and adequate supervision over the provision of real estate brokerage services by another individual on behalf of the broker

...

(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).

Section 320(c)(1) of the Business Occupations Article provides:

A real estate broker shall exercise reasonable and adequate supervision over the provision of real estate brokerage services by any other individual, including an independent contractor on behalf of the broker.

Md. Code Ann., Bus. Occ. & Prof. § 17-320(c)(1) (2010).

In addition, Section 17-603 of the Business Occupations Article provides, in pertinent part:

(b) A real estate broker may not retain an unlicensed individual to provide real estate brokerage services on behalf of the real estate broker.

Md. Code Ann., Bus. Occ. & Prof. § 17-603(b) (2010).

COMAR 09.11.05.02, regarding the requirement of supervision, provides in pertinent part:

A. A broker shall exercise reasonable and adequate supervision over the activities of the broker's associate brokers and salespersons.

The Commission contended that the Respondent, as broker of record associated with a Contract of Sale for the Property, failed to adequately supervise the salesperson, Respondent Urteaga, who provided real estate brokerage services on behalf of his company without a license.

Respondent Bhagi did not attend the hearing; however, he wrote a letter, dated February 5, 2008, in response to the Commission's charges, and it was attached to the Commission's investigative report. He states in the letter that because Respondent submitted the contract under J. Callao's name there was no "trigger" for him to be alerted to Respondent Urteaga's involvement. He further maintained that because the matter had already gone to settlement by the time the violation was brought to his attention, all he could do was tell Respondent Urteaga to renew his license, which he did immediately.

I am somewhat persuaded by the Respondent's assertions which tend to mitigate the Commission's charges. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2010) provides for the imposition of monetary penalties and states, in pertinent part, as follows:

(c) *Penalty.* – (1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the Commission may impose a penalty not exceeding \$5,000 for each violation.

(2) To determine the amount of the penalty imposed, the Commission 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....

The Commission noted that, because the property went to settlement as scheduled, the parties suffered no harm as a result of Respondent Urteaga's actions. However, the Commission suggests that the public maintains an expectation that licensees are properly licensed in good faith, and consequently, the Respondent should be issued a reprimand and be fined \$2,000.00.

I have weighed all of the relevant factors and I find the following: the violation is serious but because there was no harm to the parties; the violation occurred over a relatively brief period of time, i.e., a little more than 30 days (from contract date to settlement); and as the Respondent correctly states in his response, the unlicensed agent's name does not appear on any of the transaction documents, Respondent Bhagi should be reprimanded and subject to a fine of \$1,000.00. I note that while the Respondent has been sanctioned in the past, the record is silent as to the nature of that violation.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, the ALJ concludes as a matter of law that the Respondent is subject to sanction under sections 17-320(c)(1), 17-603(b), and 17-322(b) of the Business Occupations and Professions Article and COMAR 09.11.05.02 by failing

to exercise reasonable and adequate control over the activities of Respondent Urteaga, an individual working out of his office.

As a result, a reprimand and \$1,000.00 civil statutory fine is an appropriate sanction. Md. Code Ann., Bus. Occ. & Prof. §17-322(b).

RECOMMENDED ORDER

I THEREFORE RECOMMEND that the Maryland Real Estate Commission:

ORDER, that the Respondent be reprimanded and pay a civil statutory fine of \$1,000.00; and further

ORDER, that the records and publications of the Commission reflect its final decision.

ADMINISTRATIVE LAW JUDGE'S SIGNATURE
APPEARS ON ORIGINAL ORDER

November 18, 2010
Date Decision Mailed

DORAN R. DUKE
Administrative Law Judge

DHB
117994

DLLR

STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION

MARTIN O'MALLEY, Governor
ANTHONY G. BROWN, Lt. Governor
ALEXANDER M. SANCHEZ, Secretary

Division Occupational & Professional Licensing
Stanley J. Botts, Commissioner

DLLR Home Page: www.dllr.state.md.us/license/occp/ocprof/rcomm.html
MREC E-mail: mrec@dllr.state.md.us

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
FIRST CLASS MAIL

January 3, 2011

Mr. Ashok K. Bhagi
5709 Windsor Gate Lane
Fairfax, VA. 22030

RE: Maryland Real Estate Commission v. Ashok K. Bhagi
Case No. 2008-RE-347

Dear Mr. Bhagi:

Enclosed is the copy of the Proposed Order of the Commission issued on behalf of MREC v. Ashok K. Bhagi heard by an Administrative Law Judge on August 24, 2009.

You have the right to file Exceptions to the Proposed Order and to present Arguments to the Commission. Written exceptions to the Proposed Order or a request to present Arguments must be filed with the Commission within 25 days of the date of this letter.

If you should fail to make your Exceptions and request to present Arguments known to the Commission within the time specified, the Proposed Order of the Commission shall be deemed final and shall become effective 30 days thereafter. This additional period is to allow time should you desire to file in a Court of Law.

Sincerely

(COMMISSIONER'S SIGNATURE
APPEARS ON ORIGINAL ORDER)

Stanley J. Botts
Executive Director

KFC/bai

Enclosure: Copy of Proposed Order

