

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION \*

v. \*

KATIA LUBIN  
Respondent

\* CASE NO. 2012-RE-373

\* OAH NO. DLR-REC-21-13-12606

\*

\* \* \* \* \*

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated September 12, 2013, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 16 day of December, 2013,

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, ADOPTED

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

ORDERED that the Respondent Katia Lubin violated Md. Bus. Occ. and Prof. Art. §17-322(b)(3), (25), and (33), and COMAR 09.11.02.01C;

ORDERED that all real estate licenses held by the Respondent Katia Lubin be and hereby are SUSPENDED for thirty days;

ORDERED that the Respondent Katia Lubin 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 Katia Lubin shall be suspended if the civil penalty is not paid in full within the 30-day time period, and that this suspension is in addition to, and not in lieu of, the disciplinary suspension.

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 ("ALJ") had to be modified because the ALJ omitted the provision that the civil penalty be paid within a specified time period and that all real estate licenses held by the Respondent would be suspended if she does not pay the full amount of the civil penalty within that time period.

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.

STAMPED SIGNATURE ON FILE  
Maryland Real Estate Commission

**MARYLAND REAL ESTATE  
COMMISSION**

**v.**

**KATIA LUBIN,  
RESPONDENT**

**\* BEFORE KIMBERLY A. FARRELL,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH Case #: DLR-REC-21-13-12606  
\* REC Case #: 2012-RE-373**

\* \* \* \* \*

**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 March 28, 2013, the Maryland Real Estate Commission (REC or Commission) issued Statements of Charges and Orders for Hearing against each of three Respondents in related matters. Oluseun Ogunfowokan (Respondent A)<sup>1</sup> was alleged to have violated Maryland Annotated Code, Business Occupations and Professions (BOP) Article, sections 17-301(a)(2), 17-322(b)(32), and 17-601(b) (2010).<sup>2</sup> Katia Lubin (Respondent B) was alleged to have violated BOP sections 17-322(b)(3), (25), (32) and (33), and Code of Maryland Regulations (COMAR) 09.11.02.01-C.<sup>3</sup> Gerard Occhiuzzo (Respondent C) was alleged to have violated BOP section 17-322(b)(33), and COMAR 09.11.02.01-C and 09.11.05.02B.<sup>4</sup>

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<sup>1</sup> Respondent A's OAH file number is DLR-REC-21-13-12607.

<sup>2</sup> All references to BOP are to the 2010 volume and the 2012 Supplement.

<sup>3</sup> Respondent B's OAH file number is DLR-REC-21-13-12606.

<sup>4</sup> Respondent C's OAH file number is DLR-REC-21-13-12608.

On May 30, 2013, the REC issued Amended Statements of Charges and Orders for Hearing against each of the three Respondents. Respondent A's amended Statement of Charges added an allegation of his violating BOP section 17-322(b)(25). Respondent B's amended Statement of Charges deleted the allegation that she violated BOP section 17-322(b)(32). Respondent C's amended Statement of Charges added allegations of his having violated BOP sections 17-320(d)(1) and 17-322(b) subsections (32) and (34).

On June 28, 2013, I convened a hearing at the Department of Agriculture's building located in Annapolis, Maryland. The three files were consolidated for hearing purposes; however, a separate decision is issuing as to each Respondent. Peter Martin, Assistant Attorney General, represented the REC. The Respondents each appeared pro se.

Procedure is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009 & Supp. 2012); the MREC's Hearing Regulations, COMAR 09.11.03; and OAH Rules of Procedure, COMAR 28.02.01.

### ISSUES

The issues as to Respondent B are as follows:

1. Did Respondent B directly or through another person willfully make a misrepresentation or knowingly make a false promise in violation of BOP section 17-322(b)(3)?
2. Did Respondent B engage in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings in violation of BOP section 17-322(b)(25)?
3. Did Respondent B fail to comport with the REC's Code of Ethics which requires a licensee to "protect the public against fraud, misrepresentation, or unethical practices in the real estate field;" to "endeavor to eliminate in the community any practices which could be damaging

to the public or to the dignity and integrity of the real estate profession;” and to “assist the commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State”? COMAR 09.11.02.01.

4. Did Respondent B violate any regulation adopted under title 17 of the BOP article or any provision of the code of ethics in violation of BOP section 17-322(b)(33)?

5. Is Respondent B subject to any sanction, and if so, what sanctions and/or penalties should be imposed?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

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

- |         |  |
|---------|--|
| REC #1  | Notice of Hearing as to Respondent B, April 5, 2013, with attached Statement of Charges and Order for Hearing, March 28, 2013  |
| REC #2  | Cover letter to Respondent B, May 31, 2013, and attached Amended Statement of Charges and Order for Hearing dated May 30, 2013 |
| REC #3  | REC records regarding licensure for Respondent B   |
| REC #4  | Notice of Hearing as to Respondent A, April 5, 2013, with attached Statement of Charges and Order for Hearing, March 28, 2013  |
| REC #5  | Cover letter to Respondent A, May 31, 2013, and attached Amended Statement of Charges and Order for Hearing dated May 30, 2013 |
| REC #6  | Cover letter to Respondent A, June 3, 2013, sent to a different address  |
| REC #7  | REC records regarding licensure for Respondent A   |
| REC #8  | Notice of Hearing as to Respondent C, April 5, 2013, with attached Statement of Charges and Order for Hearing, March 28, 2013  |
| REC #9  | Cover letter to Respondent C, May 31, 2013, and attached Amended Statement of Charges and Order for Hearing dated May 30, 2013 |
| REC #10 | REC records regarding licensure for Respondent C   |
| REC #11 | Report of Investigation, received June 9, 2009   |
| REC #12 | Email from Carrie Conn of Rhino Settlement Services, Inc. to Jorge Valle Sanchez, May 28, 2009                                 |
| REC #13 | Fax sent from Fairfax Realty to “Tina,” May 4, 2009  |
| REC #14 | Fax sent from Avison Residential Solutions, L.L.C. to “Katia Lubin,” May 8, 2009   |

- REC #15 Report of Investigation, marked closed October 10, 2012<sup>5</sup>
- REC #16 Printout of DLLR's Division of Occupational and Professional Licensing's "Guidelines for the Use of Unlicensed Employees – Maryland Real Estate Commission"

Respondent C offered one exhibit which I admitted into evidence:

- RESP #1 Email from the REC to Respondent C, September 24, 2012, and his undated response to the questions posed by the REC

Neither Respondent A nor Respondent B offered any exhibits for consideration.

### Testimony

The REC presented the testimony of Jorge Valle Sanchez, Tina Herold-Byrd, and Jennifer Grimes, an investigator for the REC. Respondents A and C testified. (Respondent B elected not to testify.) No other witnesses were called.

### **FINDINGS OF FACT**

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

1. Respondent A was a real estate salesperson licensed by the REC under salesperson's number 520771 beginning in 1999. He had various transfers and renewals or reinstatements of his license through April 19, 2007, when his license expired. His license was not renewed after that time.<sup>6</sup>
2. From 2001 through the expiration of his license, Respondent A was affiliated with Fairfax Realty located at 1725 Elton Road in Rockville, Maryland (Fairfax).

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<sup>5</sup> The original investigation was opened upon receipt of a Complaint and Guaranty Fund Claim by Jorge Valle Sanchez. JVS later withdrew his complaint. Later still, the REC generated its own complaint and reopened or restarted the investigation. Thus, there are two Reports of Investigation with different dates. They are in evidence as REC #11 and REC #15.

<sup>6</sup> Respondent A could not and can not renew his license due to an outstanding tax debt.

3. Fairfax had more space than it needed so it rented out space to other persons or businesses. Respondent A leased space from Fairfax after the expiration of his license and maintained an office there even though he was no longer affiliated with the realty company.
4. Respondent A uses the nickname "Olu."
5. Respondent A's native language is not English and he speaks English with a very heavy accent.
6. Respondent B is a real estate salesperson licensed by the REC under salesperson's number 575570 beginning in October 2003. Her current license has an expiration date of October 21, 2013.
7. Respondent B's first name is Katia.
8. Respondent B has been affiliated with Fairfax since she obtained her license.
9. Respondent B has a full-time job working for SunTrust Bank which is located across the street from Fairfax, where she works part-time, usually in the evening.
10. Respondents A and B knew each from years of working in the same office.
11. Respondent B hired Respondent A to work as her unlicensed assistant. Respondent B gave \$500.00 gift certificates to Respondent A for his assistance.
12. Respondent C is a real estate broker licensed by the REC under broker's number 503038. He was first licensed as a real estate professional in Maryland in September 1994. His current license has an expiration date of January 2, 2015.
13. Respondent C moved from another branch of Fairfax to the Elton Road office on or about December 11, 2008. His title at the time of the events in this case was branch manager. At the time, approximately 450 salespersons were affiliated with the branch. REC #11, pg. 7.

14. In 2009, JVS, a licensed salesperson affiliated with Ensley Realty at the time of these events, represented the buyers in a residential real estate transaction for the purchase of a residential property (the property) in Severn, Maryland.

15. Respondent B was the listing agent for the property. The property was one of about three listings the Respondent had in 2009.

16. When JVS tried to make contact with Respondent B regarding the property, JVS very pointedly asked to speak with Respondent B. Respondent A identified himself as Respondent B - specifically, he identified himself as "Katia."

17. Respondent A answered questions about the property posed by JVS. Respondent A also rejected a request by the buyers for certain home repairs to be made a part of the contract after the home inspection was completed. In the course of conversations with JVS, Respondent A answered questions about the listing, title issues, financing, attributes and amenities of the property, and closing details; he negotiated parts of respective commissions; and he represented that he personally had spoken with the sellers about certain issues.

18. In addition to this personal phone contact, in connection with the sale of the property, Respondent A sent faxes which he signed with Respondent B's name on the following dates:

- April 6, 2009 fax to JVS (states it is from Respondent B in the transmittal information, also is signed with Respondent B's name and the title "Realtor"; the contact information provided (telephone numbers and email address) is that of Respondent A) (REC 11, pg. 75.)
- April 22, 2009 fax to JVS (states it is from "[Respondent B] – Realtor" and is signed with Respondent B's name; the body of the letter asked JVS to "please review and call me for discussion...Call me, please on [Respondent A's phone number]"). (REC #11, pg.77.)
- April 27, 2009 fax to JVS (states it is from Respondent B and is signed with Respondent B's name; the body of the fax says to "fax or email to me at [Respondent A's email address.]") (REC 11, pg. 78.)



- May 4, 2009 fax to JVS states it is from Respondent B and is signed with Respondent B's name. (REC #11, pg. 79.)

19. At some point Respondent A advised JVS that besides "Katia," he also went by the nickname "Olu."

20. Tina Herold-Byrd (TH-B) was the senior loan officer for the transaction involving the sale of the property. She had an unusual amount of contact with the person holding himself out to be the seller's agent. The person she spoke with always was the same – TH-B recognized the voice. Most times the person identified himself as "Katia," but, on a couple of occasions, the person identified himself as "Olu." It was confusing to TH-B, who discussed the issue of the various names and the seemingly incongruent genders with JVS and with a woman named Carrie Conn (Conn) who worked for Rhino, the title company involved with the transaction.

21. Conn had also spoken with Respondent A, who identified himself to her by Respondent B's first name and also by "Olu." Conn and Respondent A also sent email and faxes back and forth during the course of the transaction. Respondent A always identified himself on these documents as Respondent B.

22. Eventually TH-B asked Respondent A directly how he would prefer to be addressed and he responded that she should use the name "Katia" in addressing him.

23. Subsequently, when TH-B came to believe that Respondent A had been pretending to be Respondent B, she confronted him. Respondent A admitted to TH-B that he had been pretending to be Respondent B.

24. TH-B was particularly upset by the deception because throughout the course of the real estate deal, Respondent A kept making unreasonable requests of TH-B, such as that she personally call and counsel the sellers, who were becoming increasingly difficult to deal with due to a divorce occurring between them. Respondent A also asked TH-B to reduce her commission

and to overlook problems that surfaced during the inspection of the property. TH-B went out of her way to help Respondent A, thinking it was Respondent B, and TH-B was livid when she found out Respondent A had been lying to her throughout the course of the transaction.

25. By this time JVS was considering making a complaint about Respondents A, B, C, and others persons as well, because he had come to realize that Respondent A had been acting as Respondent B.

26. JVS contacted Respondent C on May 21, 2009, to complain that Respondent A (who JVS believed to be Respondent B) had not sent necessary documents to facilitate closing on the property.

27. On May 26, 2009, JVS spoke with other personnel at Fairfax. He was advised that Olu Ogun<sup>7</sup> was not an agent, but was an assistant to Respondent B.

28. On May 27, 2009, JVS called Fairfax and asked to speak with Respondent C. JVS was transferred to Respondent C's voicemail.

29. On June 4, 2009, Respondent C called JVS. During the course of the conversation Respondent C acknowledged that Respondent A did not have any license from the REC.

30. Meanwhile, Respondent A kept trying to persuade TH-B to speak with JVS to try to talk JVS out of filing any complaint. Respondent A became emotional while talking to TH-B, explaining to her that he was not licensed because of his tax problem and that he had a family to support. He also told her that Respondent B permitted him to use her name while she was out of the country.

31. In addition to phone contact between TH-B and Respondent A, they also exchanged faxes on which Respondent A identified himself as Respondent B.

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<sup>7</sup> This abbreviated form of Respondent A's full name appears several places in the evidence. For example, in Respondent B's undated correspondence to the Commission, she referred to Respondent A as "Mr. Oluseun Ogunfowokan (a.k.a.) Mr. Olu Ogun." REC #11, pg. 66.

32. When interviewed by an investigator for the REC on October 6, 2010, Respondent A admitted to sending the faxes in the above findings of fact. He also acknowledged preparing the listing agreement, preparing the HOA material, and preparing a contract addendum extending the settlement date on the property. During the same interview he denied ever identifying himself as Respondent B, saying that he always answered the phone, "Katia's office," and that others must have misunderstood what he was saying due to his accent. Respondent A confirmed that it was his cell phone number listed in the faxes as the contact number for Respondent B as well as his email address that appeared in the faxes as a contact address for Respondent B.

33. When interviewed by an investigator for the REC on October 6, 2010, Respondent B failed to bring her file regarding the sale of the property as she had been instructed to do. She stated that she had prepared the listing agreement, but, when shown a copy of that document, she retracted her original statement and advised that Respondent A had filled out the listing agreement. She acknowledged that Respondent A was her unlicensed assistant, and that he had permission to answer calls about showing the property, answer questions about listed properties, and to send faxes and emails on her behalf. She stated that her instructions to Respondent A with respect to phone calls were that he was to answer her phone with the phrase "Katia's office" and to always indicate that he was calling on her behalf.

34. JVS and Respondent B never spoke to each other during the course of the real estate transaction.

35. Fairfax has a written policy governing the use of unlicensed assistants. That policy reads:

A Sales Associate shall not engage or hire the services of an unlicensed personal assistant without the express prior written consent of the Managing Broker. If authorized to hire or engage the services of an unlicensed personal assistant, it is the responsibility of the Agent to take all steps necessary to ensure that the unlicensed personal assistant does not perform any act or engage in any conduct for which a real estate salesperson's license would otherwise be required under

the laws of the licensee's jurisdiction. The assistant must attend a Real Estate Professional Assistant Class offered by NVAR or a similar class that may be offered by the Fairfax Realty Inc. training department. A potential assistant will not be approved by a Managing Broker without completing this course.

REC #15, pg. 3.

36. Respondent B was aware of the policy, but did not follow it.
37. Respondent A was aware of the policy but did not follow it.
38. Respondent C was aware of the policy.
39. Respondent C had looked into trying to locate an appropriate class for real estate assistants. He could not find any class in existence and had initiated discussion on creating a class.
40. Respondent B acknowledges that Respondent C "always spelled out the acceptable duties of an unlicensed assistant." REC #15, pg. 4 (real estate investigator's report of interview with Respondent B).
41. Respondent C became aware during the transaction at issue in this case that Respondent A was acting as Respondent B's unlicensed assistant. Respondent C had never been notified of the business arrangement and he did not approve Respondent A to serve as Respondent B's unlicensed assistant.
42. Respondent A was the only unlicensed assistant in the office.
43. No managing broker had ever approved Respondent A as an unlicensed assistant for Respondent B.
44. Upon learning of the original complaint, Respondent C:
  - discussed the matter with Respondent B, who insisted that Respondent A was not improperly acting as a licensed real estate agent, and was not misrepresenting himself as Respondent B;

- reviewed with Respondent B the guidelines for unlicensed employees;<sup>8</sup>
- discussed the matter with Respondent A, who assured him that he was not identifying himself improperly as Respondent B or as a licensed real estate salesperson;
- contacted Conn to ask her to provide a statement about her interaction with Respondent A;
- after gathering information about the matter, advised Respondent A that he could no longer serve as an assistant to anyone in the office; and
- added additional conditions to the policy regarding unlicensed assistants, including that he (Respondent C) must sign off on any agreement involving use of an unlicensed assistant and he conducts monthly consultations with any unlicensed assistants.

45. Respondent C was familiar with the “Guidelines for the Use of Unlicensed Employees” before he came to the Elton Road branch of Fairfax. He had used it at his previous location to advise real estate professionals under his supervision.

46. Respondents A and B were also familiar with the “Guidelines for the Use of Unlicensed Employees” prior to Respondent B hiring Respondent A as her unlicensed assistant.

47. As branch manager, Respondent C held meetings to educate and update the real estate professionals in the office. The meetings were sometimes monthly and sometimes were every other month. Respondent C instructed those in attendance to sign the attendance sheets and he kept the attendance sheets as records.

48. Respondent B either did not attend the meetings or did not sign the attendance sheets.

49. Respondent C was routinely available in person and by phone to answer questions from or to consult with real estate professionals affiliated with Fairfax’s Elton Road office.

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<sup>8</sup> “Guidelines for the Use of Unlicensed Employees” is a publication available from the Department of Labor, Licensing and Regulation. It is available online at <http://www.dllr.state.md.us/license/mrec/mrecdodnts.shtml>, and was admitted into evidence as REC #16. The guidelines have not been updated or changed since the date of the events in this case.

## DISCUSSION

The best that could possibly be said for Respondent B is that she hired an unlicensed assistant and then gave him carte blanche to act on her behalf, deliberately turning a blind eye to whatever inappropriate activities he undertook. The alternative would be that Respondent B actually instructed Respondent A to undertake inappropriate activity on her behalf. It is difficult to say which is the case, and I suspect it is mostly the former and a bit of the latter. The reason it is difficult to sort out exactly what Respondent B did and did not do is because she was so removed from the real estate transaction regarding the property. She never spoke with JVS, the seller's agent, although JVS thought he was dealing with Respondent B. She had no contact with the lender or with the title company representative. She did not produce her file on the transaction when requested to do so by the REC interviewer. Respondent C was Respondent B's supervisor, but had little actual knowledge of the specifics of this real estate transaction. Finally, Respondent B elected not to testify.

The REC charged Respondent B with willfully making a misrepresentation or knowingly making a false promise directly or through another person. BOP section 17-322(b)(3). Respondent B is responsible for all the actions of Respondent A in this matter. He was compensated to act as her personal unlicensed assistant. As detailed in the Statement of Facts, Respondent A's willful misrepresentations were many.

Respondent B had a full-time job elsewhere. She worked part-time as a real estate salesperson, mostly in the evenings. During the year in question, she had about three listings and she told the REC's investigators she had two or three contracts that year. REC #11, pg. 8. This deal was one of only two or three contracts she had in the entire year, but she asserts that she had almost no knowledge about what Respondent A was doing. The fair inference is that

Respondent B wanted the deal to go through, Respondent A wanted the deal to go through, and Respondent B did not adequately control the actions her assistant took to accomplish their mutual goal. Respondent B stated in her undated written response to the REC that she and Respondent A were both aware of the proper duties for an unlicensed assistant. REC #11, pg. 69. Respondent B later wrote to the REC stating, “[Respondent C] always spelled out the acceptable duties of an unlicensed assistant.” She further stated that she had in turn relayed the information to Respondent A. REC #15, pg. 4. Respondent B also told the REC that she was familiar with the “Guidelines on the Use of Unlicensed Employees” prior to hiring Respondent A. REC #15, pg 4. Respondent B was not unaware of the limitations that applied to unlicensed assistants, she simply did not ensure that her unlicensed assistant followed the rules. In so doing, Respondent B engaged in conduct that demonstrated, at the least, incompetency, untrustworthiness, and improper dealings in violation of BOP section 17-322(b)(25).<sup>9</sup>

The REC’s Code of Ethics is found in COMAR 09.11.02. Respondent B is charged with having violated COMAR 09.11.02.01C which reads:

C. The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State.

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<sup>9</sup> Respondent B did not testify before me, but in her closing argument she stated that she did not know she was supposed to have a written agreement with her unlicensed assistant under Fairfax policy. I do not credit this information. Respondent B could have testified about this, but chose not to do so. But even if I did credit the information, it does not benefit Respondent B. Fairfax had a general policy – it did not address the nuts and bolts of what an unlicensed assistant may and may not do. The DLLR’s “Guidelines for the Use on Unlicensed Assistants” is a practical list of sixteen things an unlicensed employee could properly do and twelve things an unlicensed employee may not do. Among the those things an unlicensed employee may not do: answering questions on listings, titles, financing, and closings; discussing a contract with anyone outside the brokerage; negotiating or agreeing to an commission; discussing the attributes or amenities of a property; and holding oneself out, orally or in writing, as being licensed or affiliated with a particular company or real estate broker as a licensee. REC #16.

Respondent B did not protect the public against misrepresentation or unethical practices. Despite knowing there were guidelines for the use of unlicensed assistants, Respondent B used an unlicensed assistant who strayed very far from the limited duties he was permitted to undertake. Respondent B had to have known, for example, that Respondent A was having some type of conversations with JVS about the property, because Respondent A herself never spoke with JVS. Respondent B accepted a lower commission to try to help the deal go through. She did not negotiate with anyone or discuss the lower commission with anyone except Respondent A. Respondent B knew or should have known that Respondent A was negotiating on the issue of the commission, and on other matters, such as the change in the price of the offer and the problems that were uncovered in the inspection. I note also that there was conflicting testimony about whether Respondent B might even have been out of the country during part of the time when this deal was being negotiated. The REC mentioned in closing the possibility that Respondent B might not have been available. I make no finding on this issue, because the evidence was not clear, even with the standard being a mere preponderance of the evidence.

Respondent B failed to comport with the REC's Code of Ethics. That constitutes a violation of BOP section 17-322(b)(33). This, in addition to the violations of BOP section 17-322 subsections (b)(3) and (b)(25), subjects Respondent B to sanctions and/or penalties. For a violation of any subsection of BOP section 17-322, the REC may reprimand a licensee or suspend or revoke a license. BOP section 17-322(b). Further, pursuant to BOP section 17-322(c) the Commission also has the following option:

(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 REC recommended a thirty-day suspension for Respondent B. I find the recommendation generous in view of her abdication of her duties to supervise her own personal assistant, her mediocre level of cooperation with the REC's investigation, and her decision not to testify at the hearing. Nevertheless, a thirty-day suspension should make clear to Respondent B the magnitude of her errors in relying too heavily on an unlicensed assistant. It should also serve to focus her attention on the duties she owes other participants in the process and the necessity of protecting others and herself from dishonest dealings of any sort.

The Commission also recommended a penalty of \$2,000.00. The Commission may impose a penalty of \$5,000.00 for each violation of BOP section 17-322(b). As the Respondent violated three subsections of that statute, the Commission could have suggested a much higher penalty. In evaluating the amount of penalty that should be imposed, I consider the listed statutory factors. The first is the seriousness of the violation. Respondent A's conduct in misrepresenting himself to numerous people is reprehensible. In earlier statements and interviews, Respondent B maintained that she had properly instructed Respondent A and that Respondent A had not acted improperly, it was only that others misunderstood him. Although she did not plainly say so, her closing argument in this case appeared to concede that Respondent A had been using her name, although not with her knowledge. The problem is that it was her duty to have knowledge and control of everything Respondent A was doing in this real estate transaction. Respondent B only had a couple listings and she only had a couple of contracts in

that entire year. She should have been able to keep track of what her paid assistant was doing on her behalf.

The next factor to consider is the harm caused by the violation. The harm here was limited to the fairly small group of professionals directly involved in the transaction, and perhaps included the buyers, but the fact that the circle of harm was limited was coincidental and in no part due to care on the part of Respondent B.

The third consideration is the good faith exhibited by the licensee. Respondent B did not act in good faith during the real estate transaction itself. She attended the hearing but chose not to offer any explanation for her actions. There is little good faith evident in Respondent B's actions. Respondent B has no history of prior disciplinary proceedings or violations. After weighing all these factors, I find that a penalty of \$2,000.00 is appropriate.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that Respondent B directly or through another person willfully made a misrepresentation in violation of BOP section 17-322(b)(3).

I conclude as a matter of law that Respondent B engaged in conduct that demonstrated incompetency and untrustworthiness and that constituted improper dealings in violation of BOP section 17-322(b)(25).

I conclude as a matter of law that Respondent B failed to comport with the REC's Code of Ethics which requires a licensee to "protect the public against fraud, misrepresentation, or unethical practices in the real estate field;" to "endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate

profession;” and to “assist the commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State”? COMAR 09.11.02.01.

I conclude as a matter of law that Respondent B’s failure to comport with COMAR 09.11.02.01 constitutes a violation of BOP section 17-322(b)(33).

I conclude as a matter of law that these violations justify a thirty-day suspension of Respondent B’s license to act as a real estate salesperson. BOP section 17-322(b).

I further conclude as a matter of law that these statutory violations justify imposing monetary penalty of \$2,000.00. BOP section 17-322(c).

**RECOMMENDED ORDER**

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

The Commission’s Amended Charges against Respondent B under section 17-322(b)(3), (25) and (32) and COMAR 09.11.02.01 are **AFFIRMED**; the Commission **ORDER** that Respondent B’s license as a real estate salesperson be suspended for thirty days; the Commission **ORDER** that Respondent B pay a civil penalty in the amount of \$2,000.00; and, the Commission **ORDER** that its records and publications reflect its final decision.

September 12, 2013  
Date Decision Issued

**SIGNATURE ON FILE**

\_\_\_\_\_  
Kimberly A. Farrell  
Administrative Law Judge

KAF/kkc  
Document #144867

**MARYLAND REAL ESTATE  
COMMISSION**

**v.**

**KATIA LUBIN,  
RESPONDENT**

**\* BEFORE KIMBERLY A. FARRELL,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH Case #: DLR-REC-21-13-12606  
\* REC Case #: 2012-RE-373**

**\* \* \* \* \***

**FILE EXHIBIT LIST**

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

- REC #1 Notice of Hearing as to Respondent B, April 5, 2013, with attached Statement of Charges and Order for Hearing, March 28, 2013
- REC #2 Cover letter to Respondent B, May 31, 2013, and attached Amended Statement of Charges and Order for Hearing dated May 30, 2013
- REC #3 REC records regarding licensure for Respondent B
- REC #4 Notice of Hearing as to Respondent A, April 5, 2013, with attached Statement of Charges and Order for Hearing, March 28, 2013
- REC #5 Cover letter to Respondent A, May 31, 2013, and attached Amended Statement of Charges and Order for Hearing dated May 30, 2013
- REC #6 Cover letter to Respondent A, June 3, 2013, sent to a different address
- REC #7 REC records regarding licensure for Respondent A
- REC #8 Notice of Hearing as to Respondent C, April 5, 2013, with attached Statement of Charges and Order for Hearing, March 28, 2013
- REC #9 Cover letter to Respondent C, May 31, 2013, and attached Amended Statement of Charges and Order for Hearing dated May 30, 2013
- REC #10 REC records regarding licensure for Respondent C
- REC #11 Report of Investigation, received June 9, 2009
- REC #12 Email from Carrie Conn of Rhino Settlement Services, Inc. to Jorge Valle Sanchez, May 28, 2009
- REC #13 Fax sent from Fairfax Realty to "Tina," May 4, 2009
- REC #14 Fax sent from Avison Residential Solutions, L.L.C. to "Katia Lubin," May 8, 2009
- REC #15 Report of Investigation, marked closed October 10, 2012
- REC #16 Printout of DLLR's Division of Occupational and Professional Licensing's "Guidelines for the Use of Unlicensed Employees – Maryland Real Estate Commission"

Respondent C offered one exhibit which I admitted into evidence:

RESP #1      Email from the REC to Respondent C, September 24, 2012, and his  
undated response to the questions posed by the REC

Neither Respondent A nor Respondent B offered any exhibits for consideration.