

FINAL ORDER

JUL 03 2012

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL
ESTATE COMMISSION**

MARYLAND REAL ESTATE COMMISSION *

v. *

KEITH A. RANDLETT *
Respondent *

* CASE NO. 2010-RE-393

And *

* OAH NO. DLR-REC-24-11-38847

CLAIM OF ANTHONY AND *
NICOLE SVEZZESE *
AGAINST THE MARYLAND *
REAL ESTATE GUARANTY FUND *

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated March 29, 2012, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 8th day of May, 2012

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 Keith A. Randlett violated Md. Bus. Occ. and Prof. Art. § 17-322(b)(3), (4), (22), (25) and (33); and COMAR 09.11.01.16, 09.11.02.01C and H, and 09.11.02.02A;

ORDERED that all real estate licenses held by the Respondent Keith A. Randlett be REVOKED;

ORDERED that the Respondent Keith A. Randlett be assessed a civil penalty in the amount of \$5,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that the Claimants Anthony and Nicole Svezese be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of \$25,000.00;

ORDERED that the Respondent Keith A. Randlett shall be ineligible to hold a real estate license until the civil penalty is paid in full, and the Maryland Real Estate Guaranty Fund is reimbursed, including any interest that is payable under the law;

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 to provide a time period within which the civil penalty must be paid, and to provide that the Respondent would be ineligible for a real estate license until the civil penalty is paid in full and the Guaranty Fund is reimbursed.

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 FII

Maryland Real Estate Commission.

MARYLAND REAL ESTATE

*** BEFORE GERALDINE A. KLAUBER,**

COMMISSION

*** AN ADMINISTRATIVE LAW JUDGE**

and

*** OF THE MARYLAND OFFICE OF**

ANTHONY and NICOLE SVEZZESE,

*** ADMINISTRATIVE HEARINGS**

CLAIMANTS

*** OAH No.: DLR-REC-24-11-38847**

v.

*** REC CASE No.: 10-RE-393**

KEITH A. RANDLETT,

RESPONDENT

*** * * * ***

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 24, 2010, Anthony and Nicole Svezese (the Claimants) filed a complaint against a licensed real estate salesperson, Keith A. Randlett (the Respondent), as well as a claim for reimbursement (the Claim) from the Maryland Real Estate Guaranty Fund (the Fund) for losses the Claimants allegedly incurred as a result of the Respondent’s misconduct. After conducting an investigation, the Maryland Real Estate Commission (the REC or the Commission) issued a June 27, 2011 Statement of Charges and Order for Hearing against the Respondent for his alleged violations of sections 17-322(b)(32) and (33); 17-322(c)¹ and

¹ In the Commission’s Hearing Order and Charges, it alleges that each of the Respondents “violated, and is subject to” Business Occupations Article §17-322(c), which is the portion of the statute that refers to the monetary penalties for violations of subsection (b) of that statute.

17-532(c)(1)(iv), (vi) and (vii) of the Maryland Annotated Code's Business Occupations and Professions Article (the Business Occupations Article), as well as Code of Maryland Regulations (COMAR) 09.11.01.16, 09.11.02.01C, 09.11.02.01H and 09.11.02.02A.² The Hearing Order further referenced the Claimants' Claim against the Fund.

I held a hearing on the Charges and the Claim on January 17, 2012 at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland. Assistant Attorney General Kris King represented the REC. The Claimants and the Respondent represented themselves. Assistant Attorney General Hope Sachs represented the Fund.

I heard this case pursuant to Md. Code Ann., Bus. Occ. & Prof. § 17-408. Procedure in this case is governed by the provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation (DLLR), and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2011); COMAR 09.01.03 and 28.02.01.

ISSUES

The issues in this case are as follows:

1. Did the Respondent either directly or through another person, willfully make a misrepresentation or knowingly make a false promise in violation of Business Occupations Article § 17-322(b)(3)?
2. Did the Respondent violate Business Occupations Article § 17-322(b)(4), by intentionally or negligently failing to disclose to any person with whom the Respondent dealt a material fact that the Respondent knew or should have known and that related to the property with which the Respondent dealt?

² In the Commission's Hearing Order and Charges, it alleges that the Respondent violated COMAR 09.11.02.02D(1). At the hearing, the Commission dropped this charge.

3. Did the Respondent violate Business Occupations Article § 17-322(b)(22), by failing to account for or remit promptly any money that came into possession of the Respondent but belongs to another person?

4. Did the Respondent violate Business Occupations Article § 17-322(b)(25), by engaging in conduct that demonstrated bad faith, incompetency, or untrustworthiness or that constituted dishonest, fraudulent or improper dealings?

5. Did the Respondent violate Business Occupations Article § 17-322(b)(33), by violating the provisions of the Code of Ethics set forth in COMAR 09.11.02.01C?

6. Did the Respondent violate the provisions of COMAR 09.11.01.16 by failing to reply to the Commission within twenty days of receipt of written inquiries directed to him by the Commission?

7. Did the Respondent violate Business Occupations Article § 17-322(b)(33), by violating the provisions of the Code of Ethics set forth in COMAR 09.11.02.01H?

8. Did the Respondent violate Business Occupations Article § 17-322(b)(33), by violating the provisions of the Code of Ethics set forth in COMAR 09.11.02.02A?

9. What, if any, sanctions and or penalties should be imposed against the Respondent?

10. What, if any, amount should be awarded to the Claimants from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits:

The Commission submitted the following documents, which I admitted into evidence as the following numbered exhibits:

REC #1 Notice of Hearing issued on October 18, 2011 to Claimants returned by the U.S. Postal Service; Statement of Charges and Order for Hearing

REC #2 Respondent's REC licensing history

- REC #3 Respondent's bank records from PNC Bank
- REC #4 Report of Investigation prepared by Robert J. Oliver, Investigator
- REC #5 E-mail chain between the Respondent and Stephanie Yungmann regarding lender and title issues
- REC #6 November 2, 2009 letter from Timothy Kotroco to Claimant
- REC #7 October 23, 2007 Application for Permit with 10 attachments
- REC #8 April 29, 2010 Notice of Complaint to Respondent with attached envelope returned by U.S. Postal Service
- REC #9 March 26, 2010 Notice of Complaint to Respondent
- REC #10 Print-out of news article from WBALTV.com

The Respondent submitted the following document for admission into evidence:

- Resp #1 October 19, 2007 Assignment of Contract

The Claimants submitted the following document for admission into evidence:

- Cl #1 June 30, 2005 Findings of Fact and Conclusion of Law of the Zoning Commissioner of Baltimore County

Testimony

The following witnesses testified on behalf of the Commission:

Anthony Svezese, Claimant

Joseph Banick, Broker, Re/Max Realty Elite

Michael Jenkins, Owner, Jenkins Builders, LLC

Stephanie Yungmann, Salesperson, Zip Realty

Douglas Swam, Supervisor, Baltimore County Permits Office

Robert Oliver, REC Investigator

The Claimant, Anthony Svezese, testified in support of the claim.

The Respondent testified on his own behalf.

FINDINGS OF FACT

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

1. The Respondent has been licensed by the REC as a real estate salesperson since July 1985, under REC license # 0580650.
2. Titan Homes, LLC (Titan Homes) was organized and registered with the Maryland State Department of Assessment and Taxation (SDAT) on March 5, 2007. The Respondent was listed as the Resident Agent and signed the documents as the owner of Titan Homes. Titan Homes subsequently forfeited its corporate charter with SDAT on October 2, 2009. (REC #4, attachment 11)
3. On March 14, 2007, the property known as lot #4 Erika Marie Way or 8211 Erika Marie Way, Rosedale, Maryland (the Property) was listed for sale. The Property was one of five lots in the subdivision.
4. The Claimants were interested in purchasing property in a new community on which a home could be constructed. The Claimants became aware of the Property through their real estate agent, Stephanie Yungmann of Zip Realty.
5. The Claimants viewed the Property on August 15, 2007. The Respondent was present when the Claimants viewed the Property and represented to the Claimants that if they purchased the Property, construction on a new home could begin shortly after settlement and that Titan Homes would be the builder.
6. The Respondent showed the Claimants a model home built by Titan Homes in another community. The Respondent told the Claimants that he was on the board of Titan Homes, but did not disclose that he was the owner of Titan Homes.

7. On August 15, 2007, the Claimants met with the Respondent at the location of Re/Max Elite Realty and provided the Respondent with a deposit of \$1,000.00. The deposit check was made out to Titan Homes. (REC #4, attachment 8)
8. On August 24, 2007, the Claimants, through their real estate agent, submitted an offer to purchase the Property. Re/Max Elite was listed as the listing broker and the Respondent as the sales associate. (REC #4, attachment 3)
9. On August 25, 2007, the Claimants paid the Respondent an additional deposit of \$4,000.00 by personal check dated August 25, 2007 and made payable to Titan Homes. (REC #4, attachment 8)
10. On August 25, 2007, the Claimants and the Respondent entered into an Unimproved Land Contract of Sale (the Contract) for Lot #4, Erika Marie Way, for the purchase price of \$160,000.00. The Contract stated that deposits would be held in escrow by Titan Homes. (REC #4, attachment 3)
11. The Contract named the listing broker as Re/Max Elite. Joseph Banick is the broker of record for Re/Max Elite. Re/Max Elite did not receive the Contract between the Claimants and the Respondent. Re/Max Elite did not receive any of the deposit monies paid by the Claimants towards the Contract. Mr. Banick of Re/Max Elite was not aware of the Contract or Agreement until the matter was brought to his attention through a news report. (Banick testimony)
12. Re/Max Elite's office policy at the time of the contract required that if the broker was not holding the deposit in an escrow account that an additional escrow agreement be entered into by the parties. (Banick testimony)

13. The Contract provided that the deposit would be held in escrow by Titan Homes. The Respondent did not execute an additional escrow agreement with the Claimants.
(REC #4, attachment 3)
14. The Respondent submitted the Claimants' deposit into his own personal account.
(REC #3, page 2)
15. The Contract stated the settlement was to take place on September 28, 2007.
16. On August 25, 2007, the Claimants entered into a New Home Construction Agreement (the Agreement) with Titan Homes for the construction of a home on the Property for the price of \$235,825. The Respondent signed the Agreement on behalf of Titan Homes. (REC #4, attachment 6)
17. The Agreement provided that work on the Claimants' home would be substantially complete within five months of the commencement of the work. (REC #4, attachment 6)
18. At the time the Claimants entered into the Agreement, the Respondent represented that the lot was buildable and that construction would begin within seven to ten days after settlement. (REC #4, attachment 6)
19. On August 25, 2007, the Claimants and Respondent executed an addendum to Agreement that required Titan Homes to obtain all of the necessary permits to construct the Claimants' home and to pay all of the Claimants' construction loan interest payments and fees during the construction process. (REC # 4, attachment 7)
20. At the time that the Claimants entered into the Agreement, the Respondent represented to the Claimants that it was possible that Jenkins Builders, LLC (Jenkins) would be constructing the home on behalf of Titan Homes.

21. On October 19, 2007, Titan Homes and Jenkins executed a document assigning the Agreement (Assignment) to Jenkins. The Respondent signed the Assignment as President of Titan Homes. The Assignment incorrectly listed the address of the property as 8215 Erika Marie Way. The Claimants did not sign the Assignment. (Resp. #1)
22. The Agreement's provisions precluded assignment of the Agreement. (REC #4, attachment 6, paragraph 17.5)
23. Prior to entering into the Contract and the Agreement, the Claimants were preapproved by National City Mortgage (the Lender)³ for a \$400,000.00 loan to cover the lot and the home construction.
24. The Claimants refinanced their existing home in order to cover settlement costs for the Property.
25. In order to go to settlement, the lender required an appraisal of the Property, the Builder's draw schedule and a building permit.
26. Although the Contract stated that settlement would occur on September 28, 2007, settlement was delayed because the Claimants' lender would not settle on their construction loan without a building permit.
27. The Claimants informed the Respondent that if settlement did not occur by October 30, 2007, they would walk away from the deal. The Claimants proceeded to settlement on October 31, 2007 because they were informed that Respondent had submitted the necessary building permit.

³ At a later date, National City was purchased by PNC Bank.

28. The lender initially received what was purported to be a legitimate building permit. The permit submitted to the lender contained the wrong address, 8215 Erika Marie Way and the lender rejected it. (REC #3, p. 57)
29. On October 23, 2007, the Respondent sent Ms. Yungmann an e-mail stating that he had provided the lender with necessary building permit. (REC #5)
30. On October 24, 2007, the Respondent applied for a building permit for the Lot #4 Erika Marie Way. (REC #7, p. 1)
31. No building permits for the Property were ever issued by the Baltimore County Office of Permits and Development Management. (Swam testimony; REC #6)
32. The Respondent provided the lender with a fraudulent building permit for the Property that had an issuance date of October 3, 2007. (REC #3, p. 100)
33. On October 31, 2007, upon submission of the fraudulent permit for the Property, the Claimants settled on the lot and the construction loan. The total amount of the loan was \$332,000.00. In addition to their \$5,000.00 deposit, the Claimants paid \$69,107.73 at closing. (REC #4, attachment 10)
34. At closing, the Respondent again represented to the Claimants that construction would begin within seven to ten days.
35. The Claimants subsequently contacted the Respondent in November 2007 to inquire about the failure to start construction on the home. The Respondent blamed the delay on the Baltimore County Office of Permits and Development Management.
36. In November 2007, the Claimants contacted Baltimore County Department of Permits and Development Management and learned that no building permit was ever issued for the Property and that the failure to issue a permit was due to the Respondent's

failure to provide construction of the required storm water management infrastructure at the site. (REC #6)

37. On March 14, 2008, the Respondent made one interest payment on the Claimants' construction loan. The Claimants began to make interest payments themselves in April 2008 in order to avoid foreclosure on the Property. The Claimants made payments totaling \$9,267.74. (REC #3, pgs. 3-16)
38. In January 2009, the Respondent filed for bankruptcy in the United States Bankruptcy Court for the District of Maryland, Baltimore Division (Bankruptcy Court), Case No. 09-00243. On November 18, 2009, the Bankruptcy Court entered an Order Granting Motion for Entry of Default Judgment against the Respondent in favor of the Claimants in the amount of \$176,984.28. The judgment remains unsatisfied.
39. On March 24, 2010, the Claimants filed a complaint with the Commission against the Respondent and also filed a claim for reimbursement from the Fund. (REC #4, attachment 1)
40. On March 26, 2010, the Commission sent a Notice of the Complaint to the Respondent's business address of record via United States Postal Service mail. The notice mandated that the Respondent provide the Commission with a written response within 20 business days. The Respondent did not file a response as directed. (REC #9)
41. On April 29, 2010, the Commission sent a final Notice of Complaint to the Respondent's business address of record via United States Postal Service mail. The Commission's final notice advised that the Respondent had ten days from the date of the letter to respond to the issues in the Complaint and forward the response to the Commissioner. (REC #8)

42. The Respondent received notice of the Complaint from the REC, but he never filed a response to the Complaint.

DISCUSSION

Because the Claim against the Fund and the Charges arose from the same facts and circumstances, I heard them in one proceeding. Accordingly, I considered the evidence presented in this case in determining the merits of both the regulatory Charges and the Fund Claim.

The REC, as the moving party on the Charges, has the burden of proving that the Respondent violated the statutory and regulatory sections at issue; the Claimants, as the moving parties on the Claim, have the burden of proving that they suffered an actual loss as the result of the Respondent's misconduct, all by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2009); *Maryland Comm'r of Labor & Industry v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) (quoting *Bernstein v. Real Estate Comm'n*, 221 Md. 221, 231 (1959)). I find that the REC met its burden of proving all of the Charges and the Claimants met their burden with respect to the Claim.

Regulatory Charges

At all times relevant to this matter the Respondent was licensed by the REC as a real estate sales person and was affiliated with Re/Max Elite. The REC has filed charges against the Respondent that arise from an Unimproved Land Contract of Sale for lot #4 Erika Marie Way on August 25, 2007 between the Respondent and the Claimants. The Respondent acted as the listing agent in the transaction. The REC has charged the Respondent with violating several provisions of the Maryland Business Occupations Article as well the regulations regarding licensed real estate sales persons in connection with the sale of the Property to the Claimants.

For the reasons discussed below, the REC has established by a preponderance of the evidence that the Respondent violated section 17-322 (b) (3) of the Business Occupations and Professions Article which states:

(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:

...

(3) directly or through another person willfully makes a false representation or knowingly makes a false promise;

In 2005, the Respondent had purchased the Property, along with other lots in the community, with the intent to sell the lots and build new homes for consumers. The Claimants were interested in purchasing a lot on which they could construct their “dream home” and through their real estate agent, Ms. Yungmann, they learned of the Property. In August 2007, the Claimants viewed the lot with the Respondent and told the Respondent they intended to immediately commence home construction on the lot. The Respondent showed the Claimants the plans for the subdivision and showed them the corner lot that they were interested in purchasing.

In his quest to sell the Property to the Claimants, the Respondent made several misrepresentations to the Claimants. At his first meeting with the Claimants in August 2007, the Respondent represented to the Claimants that he would obtain necessary permits and that construction on the home would begin within seven to ten days after settlement. He told the Claimants that construction had begun on another house in the subdivision and that their home would be next. These were blatant misrepresentations.

The Respondent knew from the very beginning of his negotiations with the Claimants that the required infrastructure and its associated cost was an obstacle to obtaining the building permits necessary for construction; yet, the Respondent told the Claimants construction could begin immediately. The Respondent established through his own testimony that he knew as early as 2005 that an inhabitable home could not be built on the Property because he had not met

Baltimore County's requirements regarding the construction of storm water management.

According to the Respondent, when he purchased the lots in 2005 he had a meeting with the County Public Works Chief Engineer, Bob Bowling, wherein an agreement was reached regarding the necessary infrastructure that needed to be in place in order for a building permit to be issued for the Property and the cost associated with the construction was reasonable. The Respondent further alleged that in late 2006 Dennis Kennedy took over for Bob Bowling as Chief Engineer for Baltimore County Public Works and the agreement that had previously been reached with Mr. Bowling was voided and the County subsequently mandated more stringent, costly requirements. The Respondent testified that the original required improvements were estimated to have cost him \$30,000.00, but by the time the Claimants' home was due to be constructed the cost had risen to \$225,000.00. Despite this knowledge, the Respondent continued to represent that construction could begin in seven to ten days.

The Respondent also misrepresented to the Claimants and their lender that he had obtained a building permit. In order to close the loan and proceed to settlement, the lender required that the Claimants provide an appraisal, a draw schedule and a building permit. The documents received by the REC investigator from PNC during the course of the investigation included a building permit with an issuance date of September 30, 2007 (REC #3, p. 57) and with the incorrect address of 8215 Ericka Marie Way. Subsequent to the submission of the 8215 Erika Marie Way permit, a second permit purportedly came into existence with a correct address for the Property and with an issuance date of October 10, 2007. The lender closed the loan based on this October 10, 2007 building permit for the Property. The evidence, however, establishes that Baltimore County never issued a building permit for the Property.

The REC presented testimony from Douglas Swam, the Supervisor of the Baltimore County Permit Office, who testified unequivocally that a permit had never been issued for the

Property. He testified that the Respondent submitted an application for a building permit on October 23, 2007 (REC #7, p. 100), but that a building permit was never issued. In addition to the testimony of Mr. Swam, the REC submitted a letter from Mr. Swam, dated September 4, 2008, to the Respondent informing him that the application for the building permit for the Property was on hold for six months and was not approved because the public service and sediment control agencies had not yet approved the application. The letter further stated that the application would be cancelled on October 6, 2008. (REC #7) The Claimants learned in November 2009 through a letter from the Director of Permits and Development Management for Baltimore County that no building permits had ever been issued for the Property due to the failure of the Respondent to construct the required storm water management infrastructure on the site. (REC #6)

The Respondent testified that he believed the building permit issue had been resolved as of the date of settlement and that it was not until sometime after settlement that he learned of the bogus permit. The Respondent denied any responsibility for sending the permits to the lender, and contended that he never even saw the permits that were sent to the lender. The Respondent attempted to deflect responsibility on to Merritt Development Consultants, a consulting firm that he allegedly retained to obtain the permits.

The Respondent's denial of responsibility and his attempt to place the blame on another entity is wholly unconvincing. The Respondent's signature appears on the October 23, 2007 application and the Claimants' real estate agent, Ms. Yungmann, testified that she had discussions with the Respondent for weeks about the need for a required permit. These discussions culminated in an e-mail that she received from the Respondent on October 24, 2007, the day after he filed for a permit, which stated, "I have provided the lender with the correct permit as well as a certification regarding the correct address." (REC #5, p. 3) Additionally, the

Respondent offered no documentation or testimony regarding any alleged contact between him and Merritt Development Consultants which supports a finding he had been informed that a permit had been obtained and forwarded to the lender on his behalf.

Even if one were to believe that the Respondent never saw the permit with an issue date of October 3, 2010, the Respondent was also unable to explain how he could believe that a building permit could be issued on October 24, 2007, just one day after he filed the application for the permit. The Respondent is clearly responsible for misrepresenting the existence of the building permit.

The Respondent further misrepresented to the Claimants that he would make interest payments on the Claimants' construction loan. The Claimants had been pre-approved for a \$400,000.00 loan with National City Mortgage (now PNC) to cover the purchase of the lot and the construction of the home. When the Claimants obtained the loan from National City it was drafted as a construction loan with interest only payments that would convert to a permanent thirty year fixed loan upon completion of construction. The Claimants would then take over the loan payments, which would have been approximately \$2,000.00 per month. The Respondent represented to the Claimants that he would make their loan payments during construction, but he made just one payment on Claimants' loan on March 14, 2008 in the amount of \$671.64 (REC #3, p. 2). The Claimants made all subsequent payments from April 2008 through May 2009 in an effort to prevent foreclosure.

The Respondent not only made misrepresentations to the Claimants, he also failed to disclose material facts to the Claimants that related to the Property violation of section 17-322 (b)(4) which states:

(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:

...

(4) intentionally or negligently fails to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which licensee or applicant deals:

The Respondent presented the sale of the Property as a package deal that would include the construction of a custom home on the lot. The Respondent informed the Claimants that Titan Homes was the builder, but he never disclosed the material fact that he was a principle in Titan Homes. The Respondent accepted the deposit on behalf of Titan Homes and placed it in his personal account.

Intertwined with the Respondent's misrepresentations that the lot was ready for construction was the Respondent's failure to disclose to the Claimants that the issuance of a building permit by Baltimore County was contingent upon the Respondent's construction of the required storm water management system. As previously discussed, the Respondent was aware as early as 2005 that he was responsible for the required infrastructure additions before a building permit could be approved. The Respondent had no explanation for failing to provide the Claimants with this vital information and, based on his lack of any explanation, it is reasonable to infer that the Respondent deliberately failed to do so because he wanted (and needed) to sell the property to obtain funds to keep his enterprise afloat.

It is apparent that the Respondent's numerous misrepresentations to the Claimants regarding the Property's readiness for construction, his failure to make material disclosures to the Claimants and his providing false documents to the Claimants' lender in order to proceed to closing is conduct that "demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings." Such conduct is a violation of section 17-322 (b)(25).

The Respondent's handling of the Claimants' deposit was a violation of section 17-322 (b)(22) of the Business Occupations Article which states:

(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:

...
(22) fails to account for or to remit promptly any money that comes into the possession of the licensee but belongs to another person;

The Respondent represented that the transaction was being brokered by Re/Max Elite. The Contract named the listing broker as Re/Max Elite and the Respondent met the Claimants and their agent at the offices of Re/Max Elite on at least two occasions after normal business hours. The Respondent used the offices of Re/Max Elite on several occasions during the negotiations with the Claimants. Mr. Banick testified that when his firm is named as the listing broker, all the sales documents and paperwork must be submitted to the broker within 48 hours of the signing for review and retention. He further testified that he was unaware of the contract between the Respondent and the Claimants. He testified that he never received any documents or escrow money associated with the sale and did not learn that Re/Max Elite was named as the listing broker until the REC contacted him regarding the Claimants' complaint. Mr. Banick stated that where Re/Max Elite is listed as the broker, it is office policy that an additional escrow agreement be executed. The Respondent did not execute a separate agreement and the escrow money was placed in his personal account. Mr. Banick stated that Re/Max Elite ultimately terminated the Respondent in March 2008 for not abiding by the terms of the independent contracting agreement. The Respondent's representation that Re/Max Elite was the broker required the Respondent to comply with the broker's policy of placing the deposit into escrow or executing a separate escrow agreement, which the Respondent failed to do. The Respondent's handling of the Claimants' deposit by depositing it into his personal account was also a violation of section 17-322 (b)(22).

The REC also charged the Respondent with violating portions of the Agency's code of ethics pertaining to brokers, associate brokers and salespersons. Specifically, COMAR

09.11.02.01C and H and COMAR 09.11.02.02A. The undisputed evidence is that the Respondent failed to provide the broker with copies of the Contract and Agreement. The Respondent's failure to provide the broker with the agreements is a violation of a provision of the Commission's code of ethics, specifically COMAR 09.11.02.01H, which states:

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 amount of time after the agreements are executed.

For the reasons discussed, the Respondent's action associated with the sale of the Property to the Claimants was clearly in violation of the following additional provisions of the Code of Ethics. COMAR 09.11.02.01C and COMAR 09.11.02.02A provide:

01. Relations to the Public

...

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

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.

The Respondent engaged in dishonest and fraudulent behavior in an attempt to make a sale and protect his financial interest to the detriment of the Claimants. His behavior caused significant financial loss and emotional strain on the Claimants and brought the entire real estate profession into public disrepute. In addition to causing significant harm to a member of the public, the Respondent displayed lack of good faith in dealing with the REC after the Claimants filed a complaint. The Respondent violated COMAR 09.11.01.16, which provides:

A licensee shall reply to the Commission within 20 days of receipt of written inquiries directed to the licensee by the Commission. Failure to reply in this way may be considered by the Commission to be a violation of Business Occupations and Professions Article, §17-322(a)(25), Annotated Code of Maryland, for which revocation or suspension can be imposed.

On March 24, 2010, the Claimants filed a complaint with the REC against the Respondent. On March 26, 2010, the REC sent via mail to the Respondent's business address of record a Notice of Complaint along with a copy of the Claimants' complaint. This notice mandated that the Respondent provide a written response to the Complaint to the REC within twenty business days. The notice further informed the Respondent that failure to provide a response within the twenty days was a violation of the law that could result in proceedings leading to suspension or revocation of his real estate license and a fine. The Respondent failed to submit to the REC a response to the March 26, 2010 notice. On April 29, 2010 the REC sent via mail to the Respondent's business address of record a final Notice of Complaint to his address of record. This time the Notice was returned by the U. S. Postal Service for an insufficient address. The Respondent never submitted a response to the REC. Although the Final Notice was returned by the Postal Service, the Respondent acknowledged during course of the REC's investigation and again at the hearing that he had received correspondence from the REC about the Complaint, but that he did not know why he had not responded. The Respondent could not produce any copies of the responses or proof that a response had been transmitted to the REC. The Respondent's failure to cooperate with the REC and file a response is a violation of the regulation. The violation of this regulation subjects the Respondent to disciplinary action under section 17-322 (33) which address a violation of any regulations adopted under the title or the provisions of the code of ethics.

Regulatory Sanctions/Penalties

Counsel for the REC argued that the Respondent's license should be revoked and a \$5,000.00 fine imposed pursuant to section 17-322(c) of the Business Occupations Article, which permits, instead of or in addition to reprimanding, suspending or revoking a real estate license for violation of the statutes and regulations assessment of up to a \$5,000.00 monetary penalty, per violation, applying the following criteria:

- (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.

In this case, Counsel for the REC noted that the Respondent was charged with several violations and could be fined under each one, but he was only requesting a \$5,000.00 penalty in light of the request for revocation.

The seriousness of the Respondent's violations is severe and the resulting harm was severe. His misrepresentations and non-disclosures to the Claimants regarding the readiness of the Property for construction, the status of the building permits and his submission of false a building permit to the Claimants' lender induced the Claimants to purchase the Property that they clearly would not have purchased had the Respondent's misrepresentations not been made. The Respondent's inducement also included the false promise that he would make the loan payments on behalf of the Claimants until construction was completed. As a result, the Claimants were left with a property upon which they could not build a home and for which they could not make loan payments. They ultimately lost the Property and their existing home to foreclosure.

The Respondent has demonstrated a total lack of good faith in his interactions with the Claimant and with the REC. He has taken no responsibility for his actions and has attempted to place the blame on the Merritt Development Consultants, the Baltimore County Permits Office and even the Claimants. He failed to cooperate with the REC as he never filed a written

response to the Claimants' complaint and failed to offer a reason for doing so. At the hearing he offered no mitigating factors for me to consider.

I have weighed the loss of trust and the harm caused by the Respondent's fraudulent behavior heavily against the Respondent in upholding the REC's request for revocation and a \$5,000.00 penalty.

Guaranty Fund Claim

The burden of proof at a hearing regarding a claim against the Fund is on the "claimant to establish the validity of the claim." Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2010). Section 17-404(a) of the same statute governs all claims brought against the Fund and sets forth, in pertinent part, the following criteria that must be established by a claimant to obtain an award:

§ 17-404. Claims against Guaranty Fund.

(a) *In general.*-(1) Subject to the provisions of this subtitle, a person may recover compensation from the Guaranty Fund for an actual loss.

(2) A claim shall:

(i) be based on an act or omission that occurs in the provision of real estate brokerage services by:

1. a licensed real estate broker;
2. a licensed associate real estate broker;
3. a licensed real estate salesperson; or
4. an unlicensed employee of a licensed real estate broker;

(ii) involve a transaction that relates to real estate that is located in the State; and

(iii) be based on an act or omission:

1. in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or
2. that constitutes fraud or misrepresentation.

(b) *Limitation on recovery.*- The amount recovered for any claim against the Guaranty Fund may not exceed \$25,000 for each claim.

Md. Code Ann., Bus. Occ. & Prof. § 17-404(a), (b) (2010). See COMAR 09.11.03.04.

The REC shall order payment of a valid claim from the Fund for actual monetary losses suffered by a claimant not to exceed \$25,000. Md. Code Ann., Bus. Occ. & Prof. § 17-410(a), (b) (2010); COMAR 09.11.01.18.

The Claimants seek reimbursement from the Fund in the maximum amount. The Claimants assert that they are entitled to reimbursement because the Respondent, a licensed real estate salesperson, misrepresented to them that the Property was ready for the construction of a home and that construction on the home would begin within seven to ten days after settlement. The Claimants further asserted that the Respondent represented to them that he would ensure that all necessary permits were obtained and the he would make payment on the interest of the construction loan until it was converted to a permanent loan. For the reasons already discussed in the portion of this decision regarding the Respondent's statutory and regulatory violations, the Respondent made these misrepresentations in order to obtain a contract to purchase the Property and have a home built from the Claimants.

The Claimants reasonably relied on the Respondent's misrepresentations to their detriment. The Respondent held himself out as a reputable salesperson associated with a reputable broker, Re/Max Elite, and the Claimants had no reason to doubt his word. The Claimants entered into the Contract and the Agreement believing that construction on their home would begin immediately and that Respondent would cover the loan payments while construction was ongoing. The Property, in fact, was not ready for home construction as the Respondent was unable to obtain the building permit and the Respondent made just one loan payment on the Claimants' behalf before the Claimants took over the payments themselves. When the Respondent stopped making payment on the loan, the lender converted the loan to a "lot only" loan with a two year term. The Claimants made the interest payments on the loan for two years, but at the end of the two years, the Claimants owed a balance of \$110,000.00 on the

lot for which they could not make the payment and which recently appraised for \$15,000. The Claimants had planned to sell their current home, but when the real estate market deteriorated, the Claimants were unable to sell their existing home and were responsible for payments on two properties. Foreclosure proceedings were initiated on both properties. On May 26, 2011, the Claimants obtained a judgment against the Respondent in bankruptcy court in the amount of \$176,984.28. The Respondent has made no payment to the Claimants on this judgment. The Claimants requested, on the REC claim form, reimbursement in the amount of \$145,000. The Claimants have established that they are entitled to reimbursement from the Fund in the amount of \$25,000.00, the maximum amount allowable.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Real Estate Commission demonstrated by a preponderance of the evidence that:

A. The Respondent violated § 17-322(b)(3) of the Business Occupations Article by directly or through another person willfully making misrepresentations or knowingly making a false promise.

B. The Respondent violated section 17-322(b)(4) of the Business Occupations Article by intentionally or negligently failing to disclose to any person with whom the Respondent dealt a material fact that the Respondent knew or should have known and that related to the property with which the Respondent dealt.

C. The Respondent violated section 17-322(b)(22) by failing to account for or remit promptly any money that come into the possession of the Respondent but belonged to another person.

D. The Respondent violated section 17-322(b)(25) by engaging in conduct that demonstrated bad faith, incompetency, or untrustworthiness or that constituted dishonest, fraudulent or improper dealings.

E. The Respondent violated regulations adopted under the Business Occupations Article and a provision of the code of ethics. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33); COMAR 09.11.02.01.16; COMAR 09.11.02.02.01C and H and COMAR 09.11.02.02A.

F. The Respondent is subject to sanctions for his conduct, and that a revocation of his license and a \$5,000.00 civil penalty are appropriate sanctions. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c).

G. The Claimants have established an "actual loss" recoverable from the Fund, in the amount of \$25,000.00. Md. Code Ann., Bus. Occ. & Prof. § 17-404.

RECOMMENDED ORDER

I THEREFORE RECOMMEND that the Maryland Real Estate Commission:

ORDER that the Respondent's real estate license be revoked; and further

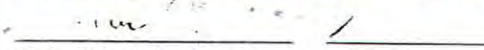
ORDER that the Respondent pay a civil penalty of \$5,000; and further

ORDER that the Claimant's claim against the Guaranty Fund be allowed in the amount of \$25,000.00; and

ORDER that the records and publications of the Maryland Real Estate Commission reflect this decision.

March 29, 2012
Date Decision Issued

SIGNATURE ON FILE


Geraldine A. Klauber
Administrative Law Judge

GAK/fe
#129714

MARYLAND REAL ESTATE

*** BEFORE GERALDINE A. KLAUBER,**

COMMISSION

*** AN ADMINISTRATIVE LAW JUDGE**

and

*** OF THE MARYLAND OFFICE OF**

ANTHONY and NICOLE SVEZZESE,

*** ADMINISTRATIVE HEARINGS**

CLAIMANTS

*** OAH No.: DLR-REC-24-11-38847**

v.

*** REC CASE No.: 10-RE-393**

KEITH A. RANDLETT,

RESPONDENT

*** * * * ***

FILE EXHIBIT LIST

The Commission submitted the following documents, which I admitted into evidence as the following numbered exhibits:

- REC #1 Notice of Hearing issued on October 18, 2011 to Claimants returned by the U.S. Postal Service; Statement of Charges and Order for Hearing
- REC #2 Respondent’s REC licensing history
- REC #3 Respondent’s bank records from PNC Bank
- REC #4 Report of Investigation prepared by Robert J. Oliver, Investigator
- REC #5 E-mail chain between the Respondent and Stephanie Yungmann regarding lender and title issues
- REC #6 November 2, 2009 letter from Timothy Kotroco to Claimant
- REC #7 October 23, 2007 Application for Permit with 10 attachments
- REC #8 April 29, 2010 Notice of Complaint to Respondent with attached envelope returned by U.S. Postal Service
- REC #9 March 26, 2010 Notice of Complaint to Respondent
- REC #10 Print-out of news article from WBALTV.com