

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION	*	
v.	*	
THOMAS C. BENNETT	*	CASE NO. 2009-RE-096
Respondent	*	
And	*	OAH NO. DLR-REC-24-10-08582
	*	
CLAIM OF RICHARD PRITZLAFF	*	
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 December 7, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 8<sup>th</sup> day of February, 2011

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 Thomas C. Bennett violated Md. Bus. Occ. and Prof. Art. § 17-322(b)(25), and (33); and COMAR 09.11.02.02A;

ORDERED that the Respondent Thomas C. Bennett be assessed a civil penalty in the amount of \$7,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that the claim of Richard Pritzlaff against the Maryland Real Estate Guaranty Fund in the amount of \$7,000.00 be GRANTED;

ORDERED that the Respondent Thomas C. Bennett shall be ineligible to receive a real estate license until the civil penalty is paid in full and the Guaranty Fund is repaid, together with all interest due;

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 to receive 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 FILE**

Maryland Real Estate Commission

MARYLAND REAL ESTATE	* BEFORE LATONYA B. DARGAN,
COMMISSION	* AN ADMINISTRATIVE LAW JUDGE
v.	* OF THE MARYLAND OFFICE
THOMAS C. BENNETT,	* OF ADMINISTRATIVE HEARINGS
RESPONDENT	* OAH Case No.: DLR-REC-24-10-08582
and	* MREC Case No.: 09-RE-096
CLAIM OF RICHARD PRITZLAFF,	*
CLAIMANT	*
AGAINST THE MARYLAND REAL	*
ESTATE COMMISSION GUARANTY	*
FUND	*

\* \* \* \* \*

**RECOMMENDED DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On August 25, 2008, Richard Pritzlaff (Claimant) filed a complaint with the Maryland Real Estate Commission (REC) and a claim against the REC Guaranty Fund (Fund) for losses allegedly suffered as a result of the actions of Thomas C. Bennett (Respondent), a licensed real estate broker. On January 28, 2010, the REC filed

regulatory charges against the Respondent for his dealings with the Claimant and authorized the Claimant to proceed with his claim against the Fund.

On September 9, 2010, I conducted a hearing at the Department of Agriculture in Annapolis, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010).<sup>1</sup> Kris King, Assistant Attorney General, represented the REC. Jessica Berman Kaufman, Assistant Attorney General, represented the Fund. The Claimant represented himself. The Respondent did not appear, despite receiving notice of the hearing at his last known address.<sup>2</sup>

The Administrative Procedure Act, the REC's Hearing Regulations and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009 & Supp. 2010); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

### **ISSUES**

1. Did the Respondent violate Business Occupations § 17-322(b)(25) by engaging in conduct that demonstrates bad faith, incompetency or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;
2. Did the Respondent violate Business Occupations § 17-322(33) by violating any regulation adopted under Business Occupations or any provision of the Code of Ethics;

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<sup>1</sup> Throughout this decision, Maryland Code Annotated, Business Occupations & Professions Article (2010) is referred to as "Business Occupations" and all references to this Article will be to the version published in the 2010 Replacement Volume.

<sup>2</sup> On June 9, 2010, the Office of Administrative Hearings issued a Notice of Hearing (Notice), advising the parties of the scheduled date and time of the hearing. The Notice was sent to the Respondent via regular first-class mail and certified mail, return receipt requested. On June 10, 2010, the Respondent signed the return receipt. The signed return receipt (green card) was received at the Office of Administrative Hearings on June 11, 2010. (MREC Ex. 1.)

3. Did the Respondent violate COMAR 09.11.02.02 by failing to protect and promote the interests of the Claimant and by failing to exhibit absolute fidelity to the Claimant's interests;
4. If the Respondent engaged in statutory and regulatory violations, what is the appropriate sanction; and,
5. Did the Claimant suffer an actual monetary loss as a result of the Respondent's conduct and, if so, what is the amount of the loss?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits on behalf of the REC:

MREC Ex. 1: June 9, 2010 Notice of Hearing, with attached certified mail return receipt

MREC Ex. 2: January 28, 2010 Statement of Charges and Order for Hearing

MREC Ex. 3: The Respondent's licensing and address history with the REC

MREC Ex. 4: Robert J. Oliver's July 24, 2009 Report of Investigation, with attachments

No exhibits were offered on behalf of the Claimant, the Respondent, or the Fund.

#### **Testimony**

The REC presented the testimony of the Claimant and Robert J. Oliver, REC Investigator. The Claimant testified on his own behalf and did not present any other witnesses. No one testified on behalf of the Respondent or the Fund.

### **FINDINGS OF FACT**

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

1. At all times relevant to this matter, the Respondent was licensed as a real estate agent broker. The Respondent's most recent license, No. 3567507, was issued to him on June 21, 2007 and expired on June 21, 2009.
2. At all relevant times, the Respondent was an agent with Long and Foster Real Estate, Inc.
3. The Claimant is the president of Biophilia Foundation (Biophilia). Biophilia specializes in restoring real property to more economically sound conditions for both private and corporate clients.
4. In May 2007, Biophilia owned a property in Cambridge, Maryland (the Cambridge Property) that it had restored to ecological soundness.
5. On or around May 29, 2007, the Claimant, acting on behalf of Biophilia, entered into a one-year listing agreement with the Respondent to sell the Cambridge Property. The Claimant and the Respondent executed a Seller's Authorization and a Real Estate Representation Form on that same date.
6. On or around May 29, 2007, the Claimant gave the Respondent a check in the amount of \$7,600.00. The Respondent was to use the money to advertise the Cambridge Property in various high-end real estate magazines, newspapers and periodicals, both in print and on the Internet, for a period of six months.
7. Using the \$7,600.00 payment, the Respondent advertised the Cambridge Property in accordance with his agreement with the Claimant/Biophilia.
8. As a result of the 2007 advertising campaign, three potential buyers contacted Biophilia to inquire about acquiring the Cambridge Property. Although no

final sale came of these inquiries, Biophilia and the Claimant were encouraged that an aggressive advertising campaign would eventually yield a sale.

9. On or around February 7, 2008, the Claimant paid the Respondent, via check, an additional \$7,000.00 to advertise the Cambridge Property for the remaining six month period in the listing contract.
10. At some point in March 2008, the Claimant contacted the Respondent and asked him to provide invoices related to and a status update on the second advertising campaign. Although the Respondent agreed to provide documentation demonstrating how he used the advertising money, he never did so.
11. The Respondent did not purchase any advertising spots in any publications for the Cambridge Property using the \$7,000.00 payment.
12. From March 2008 until August 2008, the Claimant made numerous attempts to contact the Respondent for an accounting of his use of the \$7,000.00 payment, but the Respondent never answered the Claimant's telephone calls or responded to his letters or e-mails.
13. The Respondent did not return the \$7,000.00 to the Claimant.
14. On or around August 7, 2008, the Claimant filed a complaint against the Respondent with the MREC.
15. In response to the Claimant's complaint, the MREC assigned Richard Oliver to investigate. As part of his investigation, Mr. Oliver interviewed the Claimant and collected pertinent documents from the Claimant related to his



dealings with the Respondent. Although Mr. Oliver made several attempts to contact the Respondent for an interview, the Respondent did not respond.

### DISCUSSION

In its Statement of Charges, the REC determined that the hearing on the regulatory charges and the monetary claim that the Claimant filed against the Fund arose from the same facts and circumstances and should be consolidated.

#### ***Regulatory charges***

The REC charged the Respondent with violating the following sections of the Maryland Real Estate Law:

**§ 17-322. Denials, reprimands, suspensions, revocations, and penalties – Grounds.**

...

(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:

...

(25) engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;

...

(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)(25) and (33).

The applicable section of the Code of Ethics that the REC charged the Respondent of violating is:

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.

COMAR 09.11.02.02A.

With regard to the regulatory charges brought by the REC, the burden of proof is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2009). It rests with the REC as the moving party. *Commissioner of Labor and Industry v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996).

The Claimant testified that he paid the Respondent \$7,000.00 to undertake a second round of advertising to sell the Cambridge Property. As the Claimant explained, the first six-month advertising period yielded three potential buyers and Biophilia believed that another aggressive campaign in additional publications could prove fruitful. It was clear from the Claimant's testimony that the reason he felt comfortable paying the Respondent an additional \$7,000.00 was precisely because the Respondent had done a prior good job. In light of this, the Respondent's conduct in taking the payment and then failing to perform the expected services is particularly egregious. The Respondent gained the Claimant's trust and goodwill and then took advantage of that by, essentially, stealing from the Claimant. The Respondent's conduct in this regard was untrustworthy, dishonest and improper, and demonstrates bad faith towards the Claimant. It was a clear violation of Business Occupations § 17-322(b)(25).

The Respondent's behavior also constitutes a violation of the REC Code of Ethics. Certainly, stealing money from a client is the antithesis of acting in a manner that protects and promotes the client's interests. The Claimant gave the Respondent \$7,000.00 for the specific purpose of advertising the Cambridge Property, which, if all went well, would effectuate a sale. By taking the money, not using it for its intended

purposes, and then failing to return the money, the Respondent acted in direct contravention of his client's interests. This is a clear violation of COMAR 09.11.02.02A and, thus, a violation of Business Occupations § 17-322(b)(33).

As a result of his actions, the Respondent is subject to sanction under Business Occupations § 17-322(c), which 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.

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

The REC recommended the imposition of a civil penalty in the amount of \$3,500.00 for each violation, for a total penalty of \$7,000.00. Given the facts of this case, the recommendation is more than appropriate. Although the Respondent has no prior disciplinary history, the violations in this case are serious. The Respondent essentially stole money from a client; he was paid to perform certain services and wholly failed to perform them. He compounded that failure by refusing to return the payment. The Respondent's conduct caused the Claimant harm, and through his conduct, the Respondent abused the good faith the Claimant previously had in him. That abuse of the

Claimant's trust was an act of bad faith on the Respondent's part. Therefore, I recommend that the REC impose a civil penalty in the amount of \$7,000.00 against the Respondent.

***Guaranty Fund Claim***

Claims for reimbursement from the Fund are governed by Business Occupations § 17-404, which states, in pertinent part:

**§ 17-404. Claims against the Guaranty Fund.**

(a)(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;

...

(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.

With respect to claims against the Fund, COMAR 09.11.03.04 further provides as follows:

**.04 Claims Against the Guaranty Fund.**

A. A guaranty fund claim shall be based on the alleged misconduct of a licensee.

B. For the purpose of a guaranty fund claim, misconduct:

(1) Is an action arising out of a real estate transaction involving real estate located in this State which causes actual loss by reason of theft or embezzlement of money or property, or money or property unlawfully obtained from a person by false pretense, artifice, trickery, or forgery, or by reason of fraud, misrepresentation, or deceit;

(2) Is performed by an unlicensed employee of a real estate broker or by a duly licensed real estate broker, associate broker, or salesperson; and

(3) Involves conduct for which a license is required by Business Occupations and Professions Article, Title 17, Annotated Code of Maryland.

COMAR 09.11.01.18 provides further:

The amount of compensation recoverable by a claimant from the Real Estate Guaranty Fund, pursuant to Business Occupations and Professions Article, Title 17, Subtitle 4, Real Estate Guaranty Fund, Annotated Code of Maryland, shall be restricted to the actual monetary loss incurred by the claimant, but may not include monetary losses other than the monetary loss from the originating transaction. Actual monetary losses may not include commissions owed to a licensee of this Commission acting in his capacity as either a principal or agent in a real estate transaction, or any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.

The Claimant bears the burden of proof in this proceeding against the Fund.

Business Occupations § 17-407(e). In this case, the Claimant seeks \$7,000.00, which is the amount of the second payment made to the Respondent for an advertising campaign.

The Claimant has established that he suffered an actual monetary loss as a result of the Respondent's actions. For the reasons already discussed, I find that the Respondent, who was a licensed real estate broker at the time, stole the \$7,000.00 from the Claimant. The Respondent was paid that money to perform a specific service. He failed to perform the service and did not return the money to the Claimant despite that failure. I therefore recommend that the Fund award the Claimant \$7,000.00.

## 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:

1. The Respondent engaged in conduct that demonstrates bad faith, incompetency, or untrustworthiness, or that constitutes dishonest, fraudulent, or improper dealings. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) (2010).
2. 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) (2010); COMAR 09.11.02.02A.
3. The Respondent is subject to sanctions for his conduct, and a \$7,000.00 civil penalty is an appropriate sanction. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2010).
4. The Claimant has established an “actual loss” recoverable from the Fund, in the amount of \$7,000.00. Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2010).

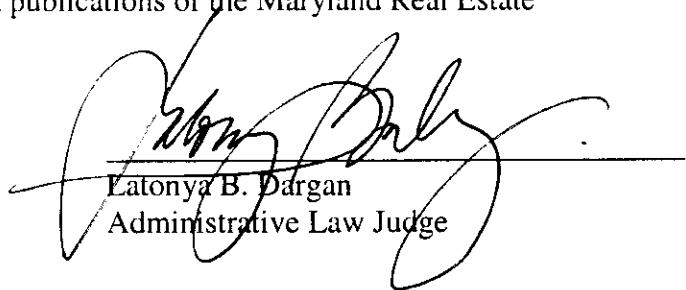
## RECOMMENDED ORDER

**I THEREFORE RECOMMEND** that the Maryland Real Estate Commission:  
**ORDER** that the Respondent pay a civil penalty of \$7,000.00; and further  
**ORDER** that the Claimant’s claim against the Guaranty Fund be allowed in the amount of \$7,000.00; and

**ORDER** that the records and publications of the Maryland Real Estate

Commission reflect this decision.

December 7, 2010  
Date Decision Mailed



Latonya B. Dargan  
Administrative Law Judge

#117280

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COMMISSION

v.

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and

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**FILE EXHIBIT LIST**

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