BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION	*	
	*	**CASE NO. 578-RE-2021**
v.	*	**OAH NO. DOL-REC-24-23-14436**
WALEEDA TAYLOR-BUTLER, Respondent	*	
and	*	
IN THE MATTER OF THE CLAIM OF DARCELL AND MICHAEL WILLIAMS-CREEK AGAINST THE MARYLAND REAL ESTATE COMMISSION GUARANTY FUND	*	

* * * * * * * * * * * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated October 5, 2023, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of December 2023, hereby **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, **APPROVED.**

C. That the Recommended Order in the recommended decision be, and hereby is, **ADOPTED.**

D. That the records, files, and documents of the Maryland Real Estate Commission reflect this decision.

E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties adversely affected by this Proposed Order shall have twenty (20) days from the postmark date of the Order to file written exceptions to this Proposed Order. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 1100 N. Eutaw Street, Baltimore, MD 21201. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

F. Once this Proposed Order becomes final, the parties have an additional thirty (30) days in which to file an appeal to the Circuit Court for the Maryland County in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City

MARYLAND REAL ESTATE COMMISSION

12/20/23
Date

By: **SIGNATURE ON FILE**

MARYLAND REAL ESTATE	*	**BEFORE SUSAN H. ANDERSON,**
COMMISSION	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE**
WALEEDA TAYLOR-BUTLER,	*	**OF ADMINISTRATIVE HEARINGS**
RESPONDENT	*	
AND	*	
THE CLAIM OF DARCELL AND	*	
MICHAEL WILLIAMS-CREEK,	*	
CLAIMANTS,	*	
AGAINST THE MARYLAND	*	**OAH No.: LABOR-REC-24-23-14436**
REAL ESTATE COMMISSION	*	**MREC No.: 578-RE-~~2221~~ 2021**
GUARANTY FUND	*	

* * * * * * * * * * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On August 27, 2021, Darcell and Michael Williams-Creek (Claimants)[1] filed a Complaint against Waleeda Taylor-Butler, a licensed real estate broker (Respondent), for alleged violations of the Maryland Real Estate Brokers Act (Act),[2] and the provisions at Code of Maryland Regulations (COMAR) 09.11.02.01C and 09.11.02.03A, enacted under the Act. The Claimants

[1] References to "the Claimants," in the plural, are to Michael and Darcell Williams-Creek. References to "the Claimant," in the singular, are to Darcell Williams-Creek.
[2] Md. Code Ann., Bus. Occ. & Prof. §§ 17-101 to -702 (2018 & Supp. 2022).

also filed a claim (Claim) with the Maryland Real Estate Commission's (REC) Guaranty Fund (Fund) to recover compensation of $20,445.00 for an alleged actual loss resulting from an act or omission of the Respondent.

On May 4, 2023, after an investigation, the REC determined that the charges against the Respondent were warranted and issued a Statement of Charges (Charges) against the Respondent. The Charges alleged that the Respondent had violated sections 17-322(b)(25), (32), and (33) of the Business Occupations and Professions Article as well as COMAR 09.11.02.01C and 09.11.02.02A when she failed to timely disclose that she was the owner as well as the selling agent for the property located at 4404 Chatham Road in Baltimore, Maryland (Property).[3] The Charges further alleged that the Respondent's actions and/or inactions caused unnecessary expense to the Claimants because she did not competently and responsibly perform her duties when she failed to address problems that were supposed to have been resolved prior to the settlement on the Property. Finally, the Charges alleged that the Respondent's actions and/or inactions demonstrated bad faith, incompetency or untrustworthiness and constituted dishonest, fraudulent, or improper dealings. The Charges advised the Respondent that if the charged violations were substantiated, the REC could issue the Respondent a reprimand, license suspension, or license revocation instead of, or in addition to, imposing a fine for each violation. The REC further determined that the Claimants were entitled to a hearing to establish eligibility for an award from the Fund. Accordingly, the REC ordered a combined hearing on the Charges and the Claim and, on May 10, 2023, forwarded the case to the Office of Administrative Hearings (OAH) to conduct a hearing.[4]

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[3] At the hearing, the attorney for the REC advised that the REC was dropping the charge with regard to 17-322(b)(32) ("violates any other provision of this title."). Therefore, I will not address it further.
[4] Bus. Occ. & Prof. § 17-409 (2018).

On July 28, 2023, I held a hearing at the OAH in Hunt Valley, Maryland.[5] Mackenzie Read, Assistant Attorney General, Maryland Department of Labor (Department), represented the REC on the charged violations of law. Jessica Kaufman, Assistant Attorney General, Department, represented the Fund. The Claimants represented themselves. The Respondent represented herself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, the REC's procedural regulations, and the Rules of Procedure of the OAH govern procedure.[6]

ISSUES

1. Did the Respondent violate Business Occupations and Professions Article section 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 and Professions Article section 17-322(b)(33) by violating any regulation adopted under title 17 or any provision of the code of ethics?

3. Did the Respondent violate COMAR 09.11.02.01C by failing to protect the public against fraud, misrepresentation, or unethical practices in the real estate field?

4. Did the Respondent violate COMAR 09.11.02.02A by failing to fulfill her statutory obligations to the Claimants?

5. If so, what is the appropriate sanction?

6. Did the Claimants sustain an actual loss, compensable by the Fund, due to an act or omission of the Respondent in the provision of real estate brokerage services that constitutes dishonest, fraudulent or improper dealings?

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[5] Bus. Occ. & Prof. §§ 17-324(a), 17-408(a) (2018).
[6] Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 09.11.03; COMAR 28.02.01.

7. If so, what amount should be awarded to the Claimants from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the REC:

REC Ex. 1 - Notice of Hearing, June 14, 2023; Statement of Charges and Order for Hearing, May 4, 2023

REC Ex. 2 - Respondent's licensing history with the REC, printed July 3, 2023

REC Ex. 3 - REC's Report of Investigation, closed October 27, 2022, pp. 1-7, with the following attachments:

- Exhibit list, p. 8
- Contact list, p. 9
- REC Complaint & Guaranty Fund Claim, received August 27, 2021, pp. 10-13
- Email from Claimant to Ali Velasco, December 29, 2020, p. 14
- Residential Contract of Sale, date of offer June 13, 2020, pp. 15-47
- Email from the Claimant with photos, January 2, 2021, pp. 48-65
- Certificate of Occupancy, issued October 26, 2020, p. 66
- Atlantic Coast Inspection Services DBA National Property Inspections, Property Report, August 12, 2020, pp. 67-172
- REC Registration information for the Respondent, printed August 30, 2021, p. 173
- Letter from Michael Ryan to the Respondent, February 17, 2021, pp. 174-175
- Estimate from H&K Plumbing, April 28, 2021, p. 176
- Job Invoice from United Stars LLC, December 28, 2020, p. 177
- Email from the Respondent to Dawn Mazzaferro, REC, with written response to Complaint with attachments, October 14, 2021, pp. 178-204
- Email from Ali Velasco to the REC, October 27, 2022, forwarding emails from November 17, 2020, pp. 205-209

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1 - Matrix for 4404 Chatham Road, printed June 30, 2023

Neither the Fund nor the Claimants offered any exhibits.

Testimony

The REC presented the testimony of Jillian Lord, Assistant Executive Director, REC, and Darcell Williams-Creek.

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present any witnesses.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the REC licensed the Respondent as a broker of The Agency Maryland LLC.[7]

2. The Respondent has been involved in purchasing, rehabbing, and then reselling homes in Baltimore City for a number of years.

3. The Respondent is the principal of LTB Management, LLC (LTB).

4. In or about 2019, the Respondent, through her company, LTB, purchased the property at 4404 Chatham Road in Baltimore (Property).

5. After the Respondent had made some unknown repairs to the Property, she placed it on the market on September 9, 2019. She temporarily took the Property off the market between October 3, 2019, and April 2, 2020.[8]

6. The Respondent relisted the Property on April 2, 2020. At that time, work was still being done on the Property. The Respondent used all licensed tradespeople to perform the work.

7. The Claimants made an offer on the Property on June 13, 2020. The offer was accepted on June 16, 2020. On the Maryland Property Disclaimer Statement, the Respondent indicated that she had no actual knowledge of any latent defects.[9]

8. The initial proposed settlement date was July 17, 2020.[10]

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[7] REC Ex. 2.
[8] Resp. Ex. 1.
[9] REC Ex. 3, p. 35.
[10] *Id.*, p. 15.

9. When the offer was accepted, the Respondent was still having work done on the house. Therefore, she agreed to allow the Claimants to have the Property inspected within seven days of the Respondent notifying them that it was ready for inspection.[11]

10. The Respondent filed for and received the proper permits for the renovation work and all work passed inspection.

11. The Respondent did not include a Disclosure of Licensee Status (Disclosure) with the Contract of Sale (Contract).

12. On August 12, 2020, Atlantic Coast Inspection Services DBA National Property Inspections (National Property) inspected the Property. At the time of the inspection, the inspector noted a number of issues that should be repaired.[12] He also noted that he did not inspect the main water line as part of the inspection.[13]

13. The inspector further indicated that he had been unable to inspect the electrical panel because an electrician was working on it. His report reflected that the existing panel was rated at 100 AMPS, and he suggested that an electrical contractor give an opinion as to whether the panel should be upgraded to 200 AMPS.[14]

14. On August 18, 2020, the Respondent agreed to pay for a reinspection and to repair some of the items cited in the inspector's report. Specifically, she agreed to tighten the front exterior right handrail; unclog the exterior drain; repair/replace support beams under front porch; add a tubular extension to the front left downspout; add a rain cap and repair loose bricks in chimney; repair holes in siding and soffit; cover and/or secure all loose wiring; install a new Temperature/Pressure Relief Valve on the water heater; add a dryer vent cover; activate disposal; install high-loop/cross-flow protection on dishwasher; repair kitchen wall damage; tighten the

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[11] *Id.*, p. 18.
[12] *Id.*, pp. 67-172.
[13] *Id.*, p. 105.
[14] *Id.*, 103.

loose toilet in primary/hall bath; repair the bathroom exhaust fan; repair the drywell in bedroom ceiling; regrade the area in the front right of the house; replace the broken basement window; install an injector pump and vent cover for plumbing; install laundry facilities for second inspection; remove unused oil tank; remove nails from the right window in dining room; and install a panel cover in the first bedroom to the left.[15]

15. On September 21, 2020, the parties agreed to extend the settlement date to October 21, 2020, and the Respondent agreed to contribute two percent of the sales price towards the Claimants' closing costs.[16]

16. On October 19, 2020, the parties agreed to extend the settlement date to November 5, 2020.[17]

17. The inspector conducted a follow-up inspection on October 27, 2020, and indicated that several of the issues he noted in his August 12, 2020 report had not been rectified. The Respondent had not agreed to correct all the items listed in the August 12, 2020 report. However, of the items she had agreed to correct, several had not been completed as of the date of the second inspection. Specifically:

a. **Support beams under the front porch**: the Respondent had replaced the vertical posts with larger posts secured in concrete, but the horizontal beams were not secured to the post and the structure above with brackets to properly anchor the beams, nor were certain junctures secured with hangers;[18]
b. **Holes in the Siding and Soffit**: not repaired;
c. **Basement window**: not fully corrected;
d. **Abandoned Oil Tank**: not removed;
e. **Kitchen wall**: blemish not repaired;
f. **Dining room window**: nails still in place preventing window from being opened;
g. **Water damage on Master bedroom ceiling**: not corrected.[19]

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[15] *Id.*, p. 186.
[16] *Id.*, p. 27.
[17] *Id.*, p. 28.
[18] *Id.*, pp. 82-83.
[19] *Id.*, pp. 67-172.

18. At the time of the re-inspection, the inspector also reiterated that he believed an electrician should assess the electrical panel to determine if 100 AMPS was sufficient to support the electrical infrastructure in the house. He noted no problems with the plumbing.[20]

19. The Claimants did not request an assessment of the electrical panel.

20. On a date not reflected in the record, an FHA appraiser conducted an inspection and appraisal of the Property.

21. On November 6, 2020, the parties agreed to extend the settlement date to November 19, 2020, to give the Respondent time to make repairs required by the FHA appraiser. Specifically, the Respondent agreed to complete the installation of a hot water heater; install handrails in the basement exit well and interior stairs both from the basement to the main level of the home and from the second level of the home to the attic; remove the remains of concrete foundation from garage and regrade; remove all trash, debris, and vegetation from the side and rear yards and adjacent to foundation at rear; properly grade/seed/sod the rear of Property; and finish the threshold at the front door.[21]

22. Also on November 6, 2020, the Respondent agreed to repair the exterior holes in the siding and soffit, and to repair the Master bedroom ceiling and to credit the Claimants $500.00 to repair the broken/non-operational windows.[22]

23. The Claimants settled on the Property on November 17, 2020.[23] At the settlement table, for the first time, the Respondent produced a Disclosure stating that the Respondent was also the owner of the Property. The Disclosure reflected that the Respondent had signed it on August 1, 2020.[24]

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[20] *Id.*, p. 103.
[21] *Id.*, p. 31.
[22] *Id.*, p. 32.
[23] There is no explanation in the record as to why the settlement occurred on November 17, 2020, rather than the agreed date of November 19, 2020.
[24] *Id.*, p. 26.

24. The Claimants executed an Amendment/Addendum on November 17, 2020, indicating that neither they nor their agent had received the Disclosure prior to November 17, 2020.[25]

25. After moving in, the Claimants discovered there were electrical and plumbing issues. Specifically, sometime in December 2020, on a date not reflected in the record, the Claimants discovered that the laundry area in the basement had flooded with what appeared to be water and mud. On December 28, 2020, a plumber from United Stars LLC (United Stars) came out and determined that the main utility line was clogged, which was causing waste water to back up into the washing machine. What had appeared to be water and mud was in fact waste water containing sewage. He tried to snake the line from the clean out in the basement but could only go approximately four feet because the pipe appeared to be packed with dirt. The plumber recommended digging up the pipe because he suspected that there were either cracks or breaks in the main utility line that would need to be fixed in order for the waste water in the house to drain properly. The Claimants paid United Stars $310.00 for this visit.[26]

26. Another plumbing contractor reviewed the situation on December 29, 2020, and seconded the first plumber's opinion that there may have been a broken pipe underground.

27. The Claimants also discovered that whenever anything was plugged into an outlet in one of the two bedrooms "on the right," the electricity would shut off.

28. On April 28, 2021, the Claimants got an estimate from H&K Plumbing to dig up and replace the main sewer line in the amount of $20,000.00.[27]

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[25] *Id.*, p. 29.
[26] *Id.*, p. 177. The REC's Report of Investigation reflects that the Claimants submitted an invoice from United Stars totaling $445.00. However, the invoice from United Stars shows a bill for $310.00. The REC did not explain the discrepancy.
[27] *Id.*, p. 176.

DISCUSSION

THE REGULATORY CHARGES

The Legal Standard and the Burden of Proof

The REC contended in its Charges that the Respondent violated the following provisions of the Business and Occupations and Professions Article:

> (b) 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;[28]
>
> . . . .

The REC further contended that the Respondent violated COMAR 09.11.02.01C and COMAR 09.11.02.02A, which provide as follows:

> 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.[29]
>
> 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.[30]

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[28] Bus. Occ. & Prof. § 17-322(b)(25) and (33) (Supp. 2022).
[29] COMAR 09.11.02.01C.
[30] COMAR 09.11.02.02A.

If a licensee is found to have violated any of the provisions of the Act, Section 17-322(c) of the Act allows for the imposition of a penalty in addition to the imposition of a reprimand or the suspension or revocation of a license:

> (c)(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.
>
> (3) The Commission shall pay any penalty collected under this subsection into the General Fund of the State.
>
> (4) The Commission may not impose a fine based solely on a violation of subsection (b)(35) of this section.[31]

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim.[32] To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered.[33] In this case, the REC bears the burden to prove by a preponderance of the evidence that the Respondent committed the violations alleged in the Charges and that the proposed reprimand and civil penalties are appropriate.[34]

For the reasons that follow, I find that the REC has proven that the Respondent's conduct violated sections 17-322(b)(25), (33) of the Act, as well as COMAR 09.11.02.01C and COMAR 09.11.02.02A.

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[31] Bus. Occ. & Prof. § 17-322(c) (Supp. 2022).
[32] State Gov't § 10-217 (2021); COMAR 28.02.01.21K.
[33] *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).
[34] COMAR 28.02.01.21K(1), (2)(a).

The Positions of the Parties

The REC argued that the Respondent concealed her ownership interest in the Property, that she acted in bad faith, failed to protect the public, and disregarded her obligations with regard to the Claimants. The REC maintained that this behavior on the part of the Respondent caused serious harm to the Claimants and recommended that I uphold the charges and impose a reprimand and a $1,000.00 fine for each of the four violations alleged.

The Respondent conceded that she had not timely provided the Claimants with the Disclosure advising of her ownership interest in the Property. However, she pointed to the initial MLS listing, which indicated under the Disclosures section: "Agent Related to Owner, Other, Owner RE Licensee, Prop Disclaimer, Prop Disclosure,"[35] as proof that she had no nefarious intent and that her failure was because she "had a lot going on" and "slipped" on some things. The Respondent asserted that she had no knowledge of any issues with the plumbing or electrical at the Property as she had never lived there and had never been advised of any problems. Further, she obtained the appropriate permits, used all licensed tradespeople to renovate the Property, and the work done passed the requisite inspections required under the permitting process.

Analysis

<u>The Failure to Provide the Disclosure with the Contract was a Material Omission</u>

The REC argued that the Respondent had a legal obligation to disclose her ownership interest in the Property in the Contract and failed to do so. It is undisputed that the Respondent did not include a Disclosure in the Addenda/Disclosure section of the Contract, which she signed on behalf of LTB on June 15, 2020.[36] The Respondent asserted that she provided the Disclosure to the Claimants' agent on or around August 1, 2020, when she signed it. However, that claim is

[35] Resp. Ex. 1.
[36] REC Ex. 3, p. 18.

not supported by the evidence. Emails from the Claimants' agent to his real estate broker on November 17, 2020 make clear that neither the agent nor the Claimants were aware of the Respondent's ownership interest until the date of closing.[37] Further, the Claimants refused to sign the Disclosure and even executed an addendum specifically stating that they were first informed of the Respondent's ownership interest at the time of closing and refused to sign the Disclosure because they felt that the Respondent had purposefully not disclosed the interest to have an advantage in the negotiations and in the entire transaction.[38]

This was a material omission on the part of the Respondent. In omitting this information, she deprived the Claimants of relevant information they should have been able to consider when negotiating the sale. At the least, this was a required disclosure failure and a breach of duty the Respondent owed to the Claimants, which constitutes incompetency. This omission therefore constituted a violation of sections 17-322(b)(25) and (33) (conduct constituting incompetency and violating any regulation adopted under this title); COMAR 09.11.02.01C (conduct that could be damaging to the dignity and integrity of the real estate profession); and COMAR 09.11.02.02A (violating an obligation owed to the Claimants).

The Omission was Not Intentional

This, however, does not end the inquiry. In order to determine whether civil penalties are warranted, I must determine if the omission was due to bad faith or untrustworthiness or constitutes dishonest, fraudulent, or improper dealings. Clearly, if the Respondent intentionally hid her ownership interest in the property in order to give herself an advantage over the Claimants in the negotiations, such conduct would constitute bad faith, dishonest and improper dealings, and be unethical. That alone would justify the imposition of a civil penalty simply to discourage such behavior going forward.

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[37] *Id.*, pp. 205-208.
[38] *Id.*, p. 29.

However, the REC failed to rebut the Respondent's credible evidence that this omission was simply an oversight on her part. The Respondent pointed out that the original MLS listing included the following disclosure: "Agent Related to Owner, Other, Owner RE Licensee. . .".[39] While the REC is correct that this is not sufficient to fulfill the Respondent's obligation to include the Disclosure with the Contract, it also tends to show that the Respondent's failure to include the Disclosure was not due to any nefarious reason. The REC argued that the MLS listed two agents, the Respondent and Ayesha Leonard, and therefore it would not have been clear to the Claimants which one had the ownership interest. However, had the Claimants' agent carefully reviewed the MLS listing, he would have seen that one of the agents either had an ownership interest in the Property or was related to someone who did and could have clarified the situation.

In explaining the oversight, the Respondent testified that at the time of this transaction, she was overwhelmed. It was during the early stages of the COVID pandemic and there were supply chain issues and problems with getting workers to complete the work on the Property. She conceded that she needs to slow down so that things like these "slips" do not occur in the future. Those circumstances do not excuse the Respondent's omission; however, they help to mitigate it. This testimony, coupled with the fact that the MLS listing always reflected that one of the listing agents was either related to the owner or was in fact the owner of the Property, shows that it is more likely than not the omission, though a breach of her duty to the Claimants, was not intentional.

The Claimants Did Not Suffer Serious Harm as a Result of the Omission

The REC alleged that Claimants suffered serious harm because the entire transaction was rushed and the Respondent failed to make all promised repairs to the Property, which then

[39] Resp. Ex. 1.

caused problems after settlement.[40] The REC specifically cited to the plumbing and electrical issues and asserted that had the Respondent competently and responsibly performed her duties, the Claimants would not have incurred unnecessary expense to rectify these problems.

These allegations are not supported by the record. I first note that while the REC conflates the plumbing and electrical problems with the failure to make the promised repairs, the evidence shows that the Respondent never agreed to make any repairs relating to the plumbing or the electrical system.[41]

With regard to the plumbing, the National Property report specifically states that, "Based on the limited visibility available in the finished areas, no issues were found pertaining to the main plumbing system."[42] It further notes that "[m]ain utility line, septic systems and gray water systems are excluded from this Inspection."[43]

With regard to the electrical system, it could not be inspected at the first inspection because an electrician was still working on it. The Report noted only two issues with the electrical system. One was that the lights in the Master Bathroom went off when the GFCI was tripped, and that the inspector recommended that the GFCI outlet be repaired.[44] The other was that the inspector questioned whether the 100 AMP service was sufficient to support the electrical infrastructure of the home and he recommended that a qualified electrician be brought in to render an opinion.[45] There was nothing in any of the Addendums requiring the Respondent to fix the GFCI outlet[46] and there is no evidence the Claimants requested an opinion on the sufficiency of the electrical system from a qualified electrician.

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[40] *See* Statement of Charges and Order for Hearing.
[41] REC Ex. 3, pp. 31, 183-186.
[42] *Id.*, p. 105.
[43] *Id.*
[44] *Id.*, p. 120.
[45] *Id.*, p. 103.
[46] *See, Id.*, pp. 31, 183-186.

The updated inspection did not note any new issues with the electrical system. In fact, in her Complaint, the Claimant described the electrical issues as follows:

> The second issue is the electric. Now upstairs in the two bedrooms on the right, anytime we plug up anything in them, the electricity would go out and we would have to go into the basement and figure out which room is which in the electrical panel to turn them back on. (Even though they stated in the inspection report that issue was fixed).[47]

It appears from the Claimant's statement that this issue was noted but the inspector advised at an unknown time that it had been fixed. The REC presented no evidence to show that the Respondent knew it had not been fixed or misrepresented the status of the electrical system.

The REC also presented no evidence to show that the Respondent had any reason to know about issues with either the plumbing or the electrical system. The Respondent owned the Property, but she did not reside there. The Respondent did not perform the work herself; she used licensed tradespeople to perform the work and all work passed the required City inspections. Moreover, the Claimants had two home inspections completed, as well as an FHA inspection and appraisal. It appears from the record that none of the inspections flagged either plumbing or electrical issues.

I further find no merit with respect to the REC's claim that the Respondent's failure to make all agreed-upon repairs prior to settlement constituted fraud or misrepresentation. As the Supreme Court of Maryland[48] explained, fraud "cannot be predicated on statements which are promissory in their nature, and therefore an action for deceit will not lie for the unfulfillment of promises or the failure of future events to materialize as predicted."[49] As the Court further explained, "failure to fulfill a promise is merely a breach of contract…".[50]

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[47] *Id.*, p. 11.
[48] Effective December 14, 2022, the Court of Appeals was renamed the Supreme Court of Maryland.
[49] *Appel v. Hupfeld*, 198 Md. 374, 379 (1951).
[50] *Id.*

However, there is an exception to this general rule – fraud may still be found if there is evidence of an intent not to perform at the time the promise was made.[51] But in the instant case, the REC failed to present any evidence to show that the Respondent did not intend to perform the repairs listed in the various Addenda or that she ever represented to the Claimants that all of the repairs had been completed. In fact, each Addendum following the initial agreed-upon repair work shows a greatly reduced repair list[52] as well as additional agreements to make repairs requested by the FHA appraiser.[53] Moreover, the Claimants performed a final walk through prior to settlement and did not note any issues that had either not been repaired or needed to be resolved prior to settlement. As the Appellate Court of Maryland[54] has stated, "the allegation of an intention not to perform must be predicated on sufficient facts and not be phrased in merely conclusory terms."[55] The REC offered no such facts in this case.

Finally, I find no merit to the REC's assertion that the transaction was rushed. The Claimants put in an offer in June 2020. The date of settlement was extended several times; the initial proposed settlement date was July 17, 2020[56] and the actual settlement did not take place until November 17, 2020. During that time, the Claimants had two home inspections performed as well as an FHA appraisal completed. The Claimants had more than adequate opportunity to fully inspect the Property and require that repairs be made.

<u>The Appropriate Sanction is a Reprimand</u>

Based upon the record as a whole, I find that the appropriate sanction in this case is the imposition of a reprimand. While the Fund argued for the imposition of a $1,000.00 fine for each violation alleged, it did not explain its rationale for this. It did not analyze any of the

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[51] *See, e.g., Finch v. Hughes Aircraft Co.*, 57 Md.App. 190 (1984).
[52] REC Ex. 3, pp. 31, 183-186.
[53] I note that the FHA appraiser's report is not in evidence.
[54] Effective December 14, 2022, the Court of Special Appeals was renamed the Appellate Court of Maryland.
[55] *Sims v. Ryland Group, Inc.*, 37 Md.App. 470, 472 (1977).
[56] REC Ex. 3, p. 15.

statutory factors. Moreover, its argument was predicated upon the fact that it believed the Respondent fraudulently failed to disclose her ownership interest in the property, and that this failure caused great harm to the Claimants. As discussed above, I do not find that the evidence supports a fraudulent intent or that the failure caused serious harm to the Claimants. Moreover, the REC presented no evidence showing that the Respondent had any violations in the past. For all of those reasons, I find that a civil penalty is not warranted and that a reprimand sufficiently addresses the unintentional violations in this case committed by a first-time offender who has held a license since 2001.[57]

THE FUND CLAIM

The Legal Standard and the Burden of Proof

A person may recover compensation from the Fund for an actual loss based on certain types of acts or omissions in the provision of real estate brokerage services by a licensee. A licensee "means a licensed real estate broker, a licensed associate real estate broker, or a licensed real estate salesperson."[58]

The provision of real estate brokerage services is defined as follows:

> (l) "Provide real estate brokerage services" means to engage in any of the following activities:
> (1) for consideration, providing any of the following services for another person:
> (i) selling, buying, exchanging, or leasing any real estate; or
> (ii) collecting rent for the use of any real estate;
> (2) for consideration, assisting another person to locate or obtain for purchase or lease any residential real estate;
> (3) engaging regularly in a business of dealing in real estate or leases or options on real estate;
> (4) engaging in a business the primary purpose of which is promoting the sale of real estate through a listing in a publication issued primarily for the promotion of real estate sales;
> (5) engaging in a business that subdivides land that is located in any state and sells the divided lots; or

[57] REC Ex. 2.
[58] Bus. Occ. & Prof. § 17-101(k) (2018).

(6) for consideration, serving as a consultant regarding any activity set forth in items (1) through (5) of this subsection.[59]

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.[60]

The amount recovered for any claim against the Fund may not exceed $50,000.00 for each claim.[61]

The Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence.[62] To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered.[63] For the following reasons, I find the Claimants have failed to meet their burden of proof.

The Positions of the Parties

The Claimants contended that the Respondent not only purposefully concealed her ownership of the Property, but also failed to have the electrical and plumbing work done in a workmanlike manner. The Claimants further asserted that the Respondent failed to disclose the cracked main utility line, a latent defect, that she was charged with disclosing.

The Respondent argued that she was not aware of any problems with either the plumbing or the electrical system. She further maintained that she used only licensed tradespeople to

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[59] *Id.* § 17-101(l).
[60] *Id.* § 17-404(a)(2).
[61] *Id.* § 17-404(b).
[62] Bus. Occ. & Prof. § 17-407(e) (2018); State Gov't § 10-217.
[63] *Coleman*, 369 Md. at 125 n.16.

complete the renovation work, she properly obtained all permits, and the work all passed the required City inspections. The Respondent contended that she cannot be liable for the cracked main utility line as she had no way of knowing about it.

Analysis

The Claimants provided no proof the Respondent personally performed any of the renovation work on the property. Nor did they present any proof that the Respondent, during the short period of time she owned the Property, knew or should have known of a cracked pipe in the main utility line or that the crack was so significant that the pipe would need to be dug up and replaced, and then failed to disclose it. Neither report by the Claimants' home inspector referenced any issues with the main utility line. In fact, the report specifically advised that the home inspector did not inspect the main utility line.

Moreover, although the inspection and report are not included in the record, the evidence shows that there was also an FHA inspection and appraisal. It is notable that an FHA appraiser is required to observe the condition of the plumbing, heating, and electrical systems as well as to operate the systems and review their performance. If the appraiser cannot determine if one or all of the systems is working properly, the appraiser may require electrical, plumbing, or heating/cooling certifications. The appraiser is required to examine the electrical system, operate a sample of switches in the house, and report any deficiencies or whether the amperage and panel size appears adequate for the house. Finally, if the plumbing system "does not function to supply water pressure, flow and waste removal" the appraiser is required to so notify the mortgagee.[64]

I found the Respondent's testimony that she was unaware of any problems with the plumbing or the electrical system credible. She did not reside at the Property, she did not perform the work herself, and she relied on the representations of the licensed tradespeople and the City inspectors that

[64] *See* FHA Single Family Housing Policy Handbook Update 14, last revised 08/09/2023, pp. 595-596. *https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.1hsgh-080923.pdf*, (last visited October 3, 2023)

all work was done properly and according to code. Additionally, none of the issues were uncovered by the two home inspections or the FHA inspection and appraisal. In short, there is no evidence to suggest that the Respondent knew or had any reason to know about the cracked main utility line. Any assertion otherwise, without some concrete evidence, is mere conjecture.

While I agree that had the Claimants known of the issue prior to the sale, they could have made a more informed decision in purchasing the property, I find no evidence in the record that the Respondent, at the time of the sale, possessed or should have possessed the knowledge which would have allowed the Claimants to make that informed decision.

In order to prove their claim, the Claimants must demonstrate that when all of the evidence is considered, is it more likely than not the Respondent was or should have been aware of the crack and intentionally or negligently failed to disclose this information. After considering all of the evidence, I find there is insufficient evidence to support the Claimants' contention that the Respondent knew or should have known of the crack in the main utility line and purposely or negligently failed to disclose this issue. Thus, there is no evidence to show that the Respondent's omission was due to fraud or misrepresentation and therefore no basis to recommend the Fund pay their claim. Accordingly, the Claimants' claim against the Fund should be denied.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Respondent violated sections 17-322(b)(25) and (33) of the Business Occupations and Professions Article, COMAR 09.11.02.01C and COMAR 09.11.02.02A when she failed to timely disclose her ownership interest in the Property she sold to the Claimants. Consequently, I conclude that the Respondent is subject to a reprimand.[65]

[65] Bus. Occ. & Prof. §§ 17-322(b)(25) and (33); COMAR 09.11.02.02A.

I further conclude that the Claimants did not demonstrate by a preponderance of the evidence that they sustained an actual loss compensable by the Fund due to an act or omission of the Respondent in the provision of real estate brokerage services.[66]

RECOMMENDED ORDER

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

That the Charges against the Respondent relating to sections 17-322(b)(25) and 17-322(b)(33), COMAR 09.11.02.01C and COMAR 09.11.02.02A be **UPHELD;**

ORDER that the Respondent be issued a reprimand; and

ORDER that the Maryland Real Estate Commission Guaranty Fund deny the Claimants' Claim; and

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

SIGNATURE ON FILE

October 5, 2023
Date Decision Issued

Susan H. Anderson
Administrative Law Judge

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[66] Bus. Occ. & Prof. § 17-404.