

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

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CASE NO. 2018-RE-487

v.

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OAH NO. DOL-REC-21-23-16896

**JUNE HOLMES,
Respondent**

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OPINION AND FINAL ORDER

This matter came before a hearing panel of the Maryland Real Estate Commission (“Commission”) on June 12, 2024 as a result of written exceptions filed by Respondent, June Holmes (“Respondent”), to the Commission’s Proposed Order of January 29, 2024. On September 8, 2023, Administrative Law Judge (“ALJ”) Stephen W. Thibodeau convened a hearing (“ALJ Hearing”) on the charges against the Respondent. On November 30, 2023, the ALJ filed a Proposed Decision in which he recommended the Respondent be found to have violated the Maryland Real Estate Brokers Act (“the Brokers Act”), Title 17 of the Business and Occupations Article of the Maryland Code (“BOP”), and that as a result she be reprimanded and a monetary penalty in the amount of \$6,000.00 be assessed against her.

On or about February 27, 2024, Respondent filed written exceptions to the Proposed Order. A virtual hearing on the exceptions was held June 12, 2024, (“June 12th Hearing”) before a panel consisting of Commissioners Donna Horgan, Michael Lord, and Kambon Williams (“Panel”). Hope Sachs, Assistant Attorney General, appeared as the Presenter of Evidence on behalf of the Commission. Respondent appeared *pro se*. The proceedings were electronically recorded.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, three exhibits, as well as the OAH file containing the exhibits which were introduced at the ALJ Hearing, and the transcripts of the ALJ hearing (which Respondent had requested), were admitted and entered into evidence:

- REC Ex. 1: The Commission's hearing notices
- REC Ex. 2: A Cover Letter dated January 29th, 2024, together with the Commission's Proposed Order and the ALJ's Recommended Decision.
- REC Ex. 3: Respondent's exceptions

Aside from the hearing transcripts, the Respondent sought to introduce various documents, including several letters of reference, two unsigned settlement sheets (HUD-1 forms), and copies of email correspondence related to the transaction at issue. The panel admitted the letters of reference but declined to admit the other documents. The settlement sheets and email correspondence were available at the time of the ALJ hearing and there is no reason why they could not have been admitted into evidence at the hearing. There is nothing to indicate they were not discovered before the ALJ hearing or that would suggest they were not discoverable before the ALJ hearing. Indeed, the Respondent is included in the email correspondence – in some cases as the sender. And as the sellers' agent, she would certainly be expected to know of the settlement sheets. Thus they do not satisfy the standard for admitting new evidence at an exception hearing. *See*, COMAR 09.01.03.09K.¹

FINDINGS OF FACT

The Commission adopts the Findings of Fact recommended by the ALJ.

DISCUSSION

In his recommended decision, the ALJ set forth the facts in detail and his proposed

¹ While the panel did not admit the additional documents, a signed version of the settlement sheet with a printed date of April 5, 2018, can be found in the hearing case file, and thus is part of the record; and several of the emails are also part of the hearing record.

Findings of Fact are incorporated herein. By way of summary, at the relevant times, the Respondent was licensed by the Commission as a real estate salesperson. FF 1. She acted as the selling agent for the sale of a property listed for sale with her brokerage. FF 2. The buyer's agent, associated with the same brokerage, sent the buyer's earnest money deposit ("EMD") to the title company, and sometime afterward the check bounced. FF 5 and 6. After a change in the closing date, requested by the buyer, the Complainant (one of the sellers) became aware – approximately three days before the new closing date – that the buyer's first EMD check had bounced. FF 9-12. The Respondent did not convey this information to the seller/Complainant prior to the closing. FF. 12. Nor did the Respondent confirm whether a second EMD check had cleared. FF 12. The parties proceeded to the closing. But the buyer did not show up, and the title company informed the Complainant that the buyer's second EMD check had failed to clear. FF 13.

That facts in this case are straightforward. As the ALJ noted in his recommended decision, "...the Respondent affirmed that she was aware that the Buyer's first EMD check bounced ... and that she did not inform the Complainant of that fact prior to closing." PD at 7. Moreover, as explained by the ALJ, both the Respondent and the Buyer's agent "...were made aware that the Buyer may not have been operating in good faith several weeks before the scheduled closing when the first EMD check bounced." PD at 8. Despite knowing this, they "...proceeded with the transaction as if nothing unusual had occurred ... never confirming if that [second] check had cleared...." PD at 8. In short, the Respondent failed to inform the seller that the buyer's first EMD check had bounced. Knowing that the first check had bounced, the Respondent proceeded with prosecuting the transaction without confirming if the buyer's second EMD check had cleared.

In her written exceptions, and in her testimony at the June 12th hearing, the Respondent

acknowledged being aware of the buyer's first check bouncing. She did not dispute not enquiring about whether the second check had cleared, explaining that she "believed that everything was in order" and that she had "...operated under the belief that all necessary requirements for the settlement had been met." In her rebuttal argument, the Respondent explained that she had "relied on the title company that things were moving smoothly; they said we were good to go."

The Respondent also highlighted her previous unblemished record and explained that this was an "isolated incident."

The Respondent clearly regrets her actions. She acknowledged at the June 12th hearing that she should have said something regarding the first check. The Respondent had a clear duty to inform the Complainant that the first EMD check had bounced. Such information clearly constitutes a material fact that a reasonable seller would expect to be informed of. Moreover, given the first check's bouncing it was unreasonable on the Respondent's part to simply assume that a second check had been provided and cleared. In this situation, a reasonable salesperson would and should enquire about such a fact. It is the agent's responsibility to find out if the EMD was deposited and that the check cleared.

This leaves the question of the penalty. The ALJ recommended a reprimand and a \$6,000.00 monetary penalty, which the Commission adopted in its Proposed Order. A reprimand is well within the Commission's authority and is appropriate given the nature of the charges. Furthermore, under BOP § 17-322(c) the Commission is empowered to issue a penalty not exceeding \$5,000.00 for each violation. \$6,000.00 is significantly below the \$10,000.00 monetary penalty that could have been imposed. Moreover, a suspension for a specific term could also have been imposed; and the ALJ considered Respondent's lack of previous violations in considering his recommended penalty.

Nevertheless, having considered Respondent's exceptions and her arguments at the June 12th hearing, the Commission believes a smaller civil (monetary) penalty is warranted. The Respondent's actions were unquestionably serious. As the ALJ noted in his recommended decision, "...withholding crucial information from her client regarding the buyer's apparent lack of funds went to the heart of whether the sale of the Property would occur." PD at 10. Moreover, Respondent's actions involved harm to both the sellers and the profession. As the ALJ noted, the harm "...goes beyond the monetary transaction involved with the sale of the Property. It also involves the reputational damage in the public eye for the profession." PD at 11. At the same time, however, the Commission is impressed by the letters of reference provided by the Respondent and recognizes her previous clean record. Moreover, while two offenses undisputably occurred, they involve essentially a single course of conduct with respect to the EMD. Therefore, the Commission determines that a \$3,000.00 monetary penalty (\$1,500.00 for each statutory offense) and reprimand are warranted.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, the Commission concludes as a matter of law that Respondent violated BOP § 17-322(b) (4), COMAR 09.11.02.02A, and as a result of the COMAR violation, BOP § 17-322(b) (33), and that a reprimand and \$3,000.00 monetary penalty are appropriate sanctions.

ORDER

The Exceptions of the Respondent, June Holmes, having been considered, it is this 12th day of September, 2024 by the Maryland Real Estate Commission, 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 and approved in the Proposed Order be, and hereby are, **AFFIRMED IN PART and AMENDED SOLELY WITH RESPECT TO THE AMOUNT OF THE CIVIL PENALTY as follows:**

That the Respondent, June Holmes, is subject to a monetary penalty of \$3,000.00

C. That the Commission's Proposed Order be, and hereby is, **AMENDED as follows:**

ORDERED that the Charges against the Respondent, June Holmes, as they pertain to BOP §§ 17-322(b) (4) and (33) and COMAR 09.11.02.02A, are **UPHELD;**

ORDERED that the Respondent, June Holmes, be reprimanded by the Maryland Real Estate Commission;

ORDERED that the Respondent, June Holmes, pay a civil penalty in the amount of **Three Thousand Dollars (\$3,000.00)** within thirty (30 days) of the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted;

ORDERED that all real estate licenses held by the Respondent, June Holmes, shall be suspended from the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted and shall not be reinstated until the civil penalty is paid; and

ORDERED that the charge under subsection 17-322(b)(32) is **DISMISSED.**

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

MARYLAND REAL ESTATE COMMISSION

By: _____

Note: A judicial review of this Final Order may be sought in 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. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.