

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

*

v.

*

CASE NO. 2022-RE-760

**COARD BENSON,
Respondent**

*

OAH NO. DOL-REC-24-24-12412

*

AND

*

**THE CLAIM OF RODNEY &
JOY BURBACH,
Claimants,**

*

*

**AGAINST THE MARYLAND
REAL ESTATE COMMISSION
GUARANTY FUND**

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PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated December 3, 2024, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 21st day of April, 2025, 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,
AMENDED as follows:

ORDERED, that the Charge of a violation of Md. Code Ann., Bus. Occ. & Prof. Section 17-322(b)(25) against the Respondent be **DISMISSED**; and

ORDERED, that the Charge of a violation of Md. Code Ann., Bus. Occ. & Prof. Section 17-322(b)(33) and COMAR 09.11.02.02A be **UPHELD**; and

ORDERED, that a **REPRIMAND** be placed on the Respondent's license; and

ORDERED, that the Claimants' claim against the Maryland Real Estate Commission Guaranty Fund be **DENIED**.

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

E. Pursuant to Annotated Code of Maryland, State Government Article § 10-220, the Commission finds that the Recommended Decision of the Administrative Law Judge required modification because the Administrative Law Judge's Recommended Order contained a typographical error. The fourth line of the Recommended Order clearly should have stated that the charged violation of Section 17-322(b)(33) was upheld rather than referring to subsection (b)(25). The charge pertaining to subsection (b)(25) was addressed in the preceding clause. The error is readily apparent from the Administrative Law Judge's discussion and proposed conclusions of law. All other parts of the Recommended Order are adopted without change.

F. 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, 100 S. Charles Street, Tower One, Baltimore, MD 21201. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

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

4/18/25
Date

By: Bonnie Hargan

MARYLAND REAL ESTATE
COMMISSION

v.

COARD BENSON,
RESPONDENT

AND

THE CLAIM OF RODNEY & JOY
BURBACH,

CLAIMANTS,

AGAINST THE MARYLAND
REAL ESTATE COMMISSION
GUARANTY FUND

* BEFORE SUSAN A. SINROD,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS

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* OAH No.: LABOR-REC-24-24-12412

* MREC No.: 22-RE-760

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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 May 31, 2022, Rodney and Joy Burbach (Claimants)¹ filed a Complaint against Coard Benson, a licensed associate real estate broker (Respondent), for alleged violations of the Maryland Real Estate Brokers Act (Act), Md. Code Ann., Bus. Occ. & Prof.

¹ Where necessary, I will refer to the Claimants individually as Mr. Burbach and Ms. Burbach.

§§ 17-101 to -702 (2018 & Supp. 2024), and the provisions at Code of Maryland Regulations (COMAR) 09.11.02.02a, enacted under the Act. The Claimants also filed a claim (Claim) with the Maryland Real Estate Commission's (REC) Guaranty Fund (Fund) to recover compensation in the amount of \$43,746.25 for an alleged actual loss resulting from an act or omission of the Respondent.

On April 8, 2024, 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 set forth that the Respondent engaged in conduct that demonstrated bad faith, incompetency, or untrustworthiness in violation of Section 17-322(b)(25) of the Act; that he violated a regulation or provision of the code of ethics in violation of Section 17-322(b)(33) of the Act; and failed to protect and promote the interests of his client in violation of COMAR 09.11.02.02A, a regulation under the Code of Ethics. The Charges advised the Respondent that if the charged violations were substantiated, it could result in suspension or revocation of his license, and a monetary fine of up to \$5,000.00 per 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 April 12, 2024, forwarded the case to the Office of Administrative Hearings (OAH) to conduct a hearing. Bus. Occ. & Prof. § 17-409 (2018).

On September 11, 2024, I conducted a hearing at the OAH in Salisbury, Maryland. Bus. Occ. & Prof. §§ 17-324(a), 17-408(a) (2018). Catherine Villareale, Assistant Attorney General, represented the REC on the charged violations of law and represented the Fund. Michael Russo, Esquire, represented the Claimants. Gerard G. Magrogan, Esquire, represented the Respondent.

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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2024); COMAR 09.01.03; COMAR 09.11.03; COMAR 28.02.01.

ISSUES

1. Did the Respondent violate Section 17-322(b)(25) of the Business Occupations and Professions Article?
2. Did the Respondent violate Section 17-322(b)(33) of the Business Occupations and Professions Article?
3. Did the Respondent violate COMAR 09.11.02.02?
4. If the Respondent violated any of the aforementioned statutes or the regulation, what is the appropriate sanction?
5. 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 fraud or misrepresentation?
4. 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:²

- | | |
|--------------|--|
| MREC Ex. #1- | Statement of Charges and Order for Hearing, dated April 8, 2024 |
| MREC Ex. #2- | Notice of Hearing, dated June 5, 2024 |
| MREC Ex. #3- | Respondent's Licensing History, as of September 10, 2024 |
| MREC Ex. #4- | REC Report of Investigation, closed on September 28, 2023, with the following attachments: |
| | 1 Complaint, dated May 31, 2022 |
| | 2 Response to Complaint by Douglas Walker, Esquire, dated September 9, 2022 |

² The REC pre-marked these exhibits as "MREC" exhibits.

- 3 Letter from Michael N. Russo, Esquire to the REC, dated
June 20, 2022
- 4 Respondent's Licensing History, as of August 11, 2022
- 5 Licensing History of Sheila A. Washburn, as of
September 13, 2023
- 6 Residential Contract of Sale, dated July 29, 2021
- 7 Deed, dated September 27, 2021
- 8 Certificate of Exemption from Withholding Upon Disposition of
Maryland Real Estate Affidavit of Residence or Principal
Residence, dated July 27, (year illegible), for Ms. Burbach;
Certificate of Exemption from Withholding Upon Disposition of
Maryland Real Estate Affidavit of Residence or Principal
Residence, dated July 27, 2021, for Mr. Burbach
- 9 Owner's/Borrower's Affidavit issued by First American Title
Insurance Company, dated September 27, 2021, with title
insurance information attached
- 10 Map of the Claimants' property, created August 28, 2018; United
States Department of Agriculture (USDA) Notice of Contract
Approval, dated August 29, 2018; Conservation Reserve Program
(CRP) Contract, for the period of August 1, 2018, through
September 30, 2032; letter from the USDA to Mr. Burbach, dated
September 7, 2018; USDA Cost-Share Agreement, dated
September 7, 2018; Continuation Sheet for Cost-Share Agreement,
undated; USDA Cost-Share Agreement, dated August 28, 2018;
USDA Cost-Share Performance Certification and Payment,
undated; letter from the USDA to Mr. Burbach, dated
August 28, 2018; Vicinity Map, undated; Conservation Plan,
signed May 24, 2018; letter from the USDA Farm Service Agency
to Mr. Burbach, dated July 14, 2020; Report of Commodities,
Farm Summary, dated July 7, 2020; letter from the USDA Farm
Service Agency to the Claimants, dated October 15, 2021; letter
from the USDA Farm Service Agency to the Claimants, dated
October 15, 2021 (not a duplicate of the prior letter); letter from
the USDA Farm Service Agency to Mr. Burbach, dated
December 21, 2021; Conservation Reserve Program Contract, for
the period of February 1, 2018, to September 30, 2032; CRP
Refund Worksheet Estimate, undated; Appendix to Form CRP-1,
Initial Notification Letter, dated December 28, 2021; Receivable
Statement, dated December 28, 2021; Bank of America Account
Activity Transaction Details, for checks posted on
February 16, 2022, and February 17, 2022³
- 11 Notice to Buyer and Seller of Buyer's Rights and Seller's
Obligations Under Maryland's Single Family Residential Property
Condition Disclosure Law, dated November 25, 2020; Maryland
Residential Property Disclosure and Disclaimer Statement, dated

³ There were multiple copies of some of the documents in this exhibit. Where that occurred, I only listed the document once.

- November 25, 2020; Disclosure of Leased Items Addendum to Residential Contract of Sale, dated November 25, 2020; Conservation Easement Addendum, dated November 3, 2020; Inclusions/Exclusions and Utilities Addendum to Exclusive Right To Sell Residential Brokerage Agreement, dated November 25, 2020; Right to Farm Real Estate Transfer Disclosure Statement, dated November 25, 2020; Settlement Statement, dated September 27, 2021
- 12 Email from Nathan Jackson to Douglas Walker, printed September 22, 2023

I admitted the following exhibits offered by the Claimants:

- Cl. Ex. #1- Emails between the Claimants and the Respondent, dated November 8 and 9, 2021
- Cl. Ex. #2- Email from Mr. Burbach to the Respondent, dated October 20, 2021
- Cl. Ex. #3- Emails between the Respondent, Mr. Burbach, Georgi Chauvin, Allan Greenberg, and Jimmy Robinson, various dates
- Cl. Ex. #4- Emails between the Claimants, the Respondent, Jimmy Robinson, and Richard Huffman, dated November 19, 20, and 21, 2021
- Cl. Ex. #5- Emails between the Respondent and Allan Greenberg and Richard Huffman with copies to multiple parties, various dates
- Cl. Ex. #6- Emails between the Respondent and the Claimants, dated December 3, 2021
- Cl. Ex #7- Emails between the Respondent, the Claimants, and others, dated December 14, 2021

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. #1- Exclusive Right to Sell Residential Brokerage Agreement, dated November 25, 2020
- Resp. Ex. #2- Addendum to Exclusive Listing Agreement, dated July 17, 2021

Testimony

The REC presented the following witnesses:

1. Mr. Burbach
2. The Respondent

Ms. Villareale did not present any witnesses for the Fund.

The Claimant Mr. Burbach testified on behalf of the Claimants and did not present other witnesses.

The Respondent testified and did not present other 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 Respondent maintained a license with the REC as an associate broker. The Respondent is currently an associate broker with Benson and Mangold LLC.
2. At all relevant times, the Claimants were the owners and sellers of property located at 1747 Town Point Road in Cambridge, Maryland (Property).
3. On January 24, 2018, the Claimants entered into a Conservation Reserve Program Contract with the USDA Farm Service Agency. The Contract period extended from February 1, 2018, through September 30, 2032. In July 2018,⁴ the Claimants entered into another Conservation Reserve Program Contract with the Farm Service Agency, the contract period for which extended from August 1, 2018, through September 30, 2032 (CRP Contracts). In the CRP Contracts, the USDA agreed to compensate the Claimants annually in exchange for the Claimants' agreement to the maintenance and upkeep of two ponds on the Property.
4. The CRP Contracts required the Claimants to refund all monies paid by the USDA if they sold the Property and the new buyers refused to continue the CRP Contracts.
5. The Claimants also received rent payments from a farmer who utilized a portion of the Property for farming.
6. The Property was also encumbered by a Maryland Conservation Easement.

⁴ The Claimants and the Farm Service Agency representative signed this contract on various dates in July and the document itself is not dated.

7. The Claimants and the Respondent entered into a listing agreement for the sale of the Property on November 27, 2020. The listing agreement did not include a requirement that the Respondent ensure that any buyer is obligated to assume the CRP Contracts.

8. The listing agreement included a Conservation Easement Addendum, which discusses a Buyer's right to rescind any real estate contract if the Buyer does not receive notice of the Conservation Easement prior to entering into a real estate contract.

9. On November 27, 2020, the Respondent listed the Property for sale.

10. On July 29, 2021, the Claimants entered into a Residential Contract of Sale (Sale Contract) with Richard and Dawn Huffman (Buyers). The Sale Contract did not include any obligation for the Buyers to assume the CRP Contracts.

11. On July 29, 2021, the Claimants and the Buyers also signed a General Addendum (July Addendum) which stated:

All parties hereby agree that this contract shall be contingent upon the buyers (sic) satisfaction with a review of any and all conservation easements on the property. In the absence of the buyers notifying the sellers within 21 days of contract acceptance of the buyers (sic) intent to terminate the contract based on this review, this contingency shall automatically be deemed waived and satisfied.

12. The Claimants did not have any discussion with the Respondent regarding any obligation of the Buyers to assume the CPD Contract prior to executing the Sale Contract.

13. On September 26, 2021, the day before the settlement of the sale of the Property, the Respondent had the Claimants and the Buyers sign a General Addendum (September Addendum) which stated:

Buyer and Seller hereby agree that Seller shall pay to [B]uyer prorated rents from the date of the Settlement until the end of the calendar year. Seller's receipt of land rent from farmer (annual rent payment expected 11/23/21 in the amount of \$6,138) and the [CRP] rent from USDA (annual rent expected 10/20 in the amount of \$3,469). Said prorations come to \$16.8 per day for farm leas[e] and \$9.5 per day for [CRP] contract. Given 95 days from Settlement to end of year, seller shall be paying Buyer \$2,498 in total.

Upon Settlement, Seller shall deliver written notice of the sale to the Farmer and USDA so that 2022 and future rent payments will be delivered to Buyer.

Buyer acknowledges the rental agreement with the farmer is verbal.

Buyer acknowledges receipt of the attached [CRP] contract which carries through 2032.

14. At the time the Claimants signed the September Addendum, the Respondent incorrectly informed the Claimants that the CRP Contracts run with the land.

15. The settlement for the sale of the Property occurred on September 27, 2021.

16. Pursuant to the CRP contracts, the Buyers had ninety days from the date of settlement to decide if they would stay in the CRP program.

17. In November 2021, the Buyers completed and submitted the documentation for transfer of the CRP Contracts. On December 9, 2021, the Buyers informed the Claimants that the Buyers did not qualify to participate in the CRP and would not be assuming the CRP Contracts. Their adjusted gross income was too high for them to receive the monetary awards from the CRP Contracts.

18. As a result, the Claimants were required to pay \$43,851.76 back to the USDA.

DISCUSSION

LEGAL FRAMEWORK FOR REGULATORY CHARGES

The REC contended in its Charges that the Respondent failed to ensure that the Buyers were obligated to assume and continue with the CRP Contracts. As a result, the Claimants suffered a monetary loss in the amount of \$43,851.76 they were required to repay to USDA. The REC found the Respondent to be in violation of the following:

(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;

Bus. Occ. & Prof. § 17-322(b)(25) and (33) (Supp. 2024).

The REC also charged the Respondent with a violation of COMAR 09.11.02.02A, a provision of the Code of Ethics, which states:

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.

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. State Gov't § 10-217 (2021); COMAR 28.02.01.21K. 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. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). 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. COMAR 28.02.01.21K(1), (2)(a).

POSITIONS OF THE PARTIES

The REC argued that the Respondent misrepresented to the Claimants that the CRP Contracts run with the land. According to the REC, the Claimants relied on his representations and ended up having to pay fines and penalties as a result. The REC maintained that the evidence established that the Respondent did, in fact, believe that the July Addendum and the September Addendum obligated the Buyers to continue the CRP Contracts, and that the Claimants expected that to be the case. Thus, he failed to promote and protect their interests with absolute fidelity as the Code of Ethics requires.

The Respondent argued that he never assumed responsibility to address the CRP Contracts in the listing agreement. The Claimants only told the Respondent after the Contract was ratified that transfer of the CRP Contracts was a requirement for the Claimants' sale of the Property. The Respondent argued that he was required to act in accordance with the terms of the brokerage listing agreement, which he did. Any statement he may have made regarding the CRP Contracts running with the land did not cause the Claimants' monetary loss, because that statement was not made until the day before settlement, long after the signing of the Sale Contract.

Mr. Burbach testified that when the Claimants first hired the Respondent to list the Property, they had basic discussions about the sale but did not discuss the CRP Contracts at that time. They chose the Respondent because he had more listings of big properties in the area than anyone else. They thought he was familiar with the complicated issues that could arise with CRP Contracts. The Claimants were aware that a purchaser of the Property would need to continue the CRP Contracts, or the Claimants would incur substantial penalties. The Claimants provided the Respondent with the CRP documents shortly after they signed the listing agreement, prior to the execution of the Sale Contract. Mr. Burbach testified that the issue of the CRP Contracts did not come up in discussion with the Respondent until it was evident that there might be a problem. On September 26, 2021, the day before settlement, the Respondent asked the Claimants to sign the September Addendum to "tidy things up." It was at that time that Mr. Burbach told the Respondent that the Buyers needed to assume the CRP Contracts and the Respondent told the Claimants that they run with the land. It was the understanding of the Claimants that the September Addendum required the Buyers to continue the CRP Contracts.

After the settlement on September 27, 2021, the Buyers had ninety days to elect to continue the CRP Contracts. The Claimants communicated with the Respondent by email

frequently to inquire as to the status of the Buyers' assumption of the CRP Contracts. The Respondent represented that he would keep on top of the situation. The Buyers appeared to be moving in the direction of assuming the CRP Contracts when, at the last minute, the Buyers withdrew from the process because their income was too high to receive the monetary awards that accompany the CRP Contracts. This occurred in December 2021. The Respondent urged the Buyers to continue the CRP Contracts anyway, to no avail. The Claimants later discovered that the Buyers were under no obligation to assume the CRP Contracts. Mr. Burbach conceded that he read and signed the Sale Contract but did not seek any legal advice prior to doing so, despite the bold-type writing at the top of the first page of the Sale Contract that the Contract was legally binding and legal advice should be sought if any provisions of the Sale Contract are misunderstood.

The Respondent testified that the Claimants gave him information regarding the CRP Contracts after the listing agreement was signed. He did not have any conversations with them about it. He denied ever telling them that the CRP Contracts run with the land, or that the Buyers were obligated to continue the CRP Contracts. They never had a conversation about making it an obligation. The Respondent has been involved in at least six prior real estate contracts with the involvement of CRP Contracts. The Respondent denied that there was ever any conversation with the Claimants or a request, prior to execution of the listing agreement or the Sale Contract, that the Respondent ensure that the Buyers agreed to follow through with the CRP Contracts.

The Respondent conceded that in other similar transactions he has handled, the buyers always assumed the CRP contract, so he never had this problem arise. In the Respondent's training and experience with real estate, he makes it a practice never to endeavor to explain the details of a contract to a client. He cannot give legal advice. He encourages his clients to seek

legal advice if they have any questions. It was the Buyers' agent, not the Respondent, who drafted the Sale Contract. Regarding the September Addendum, the Respondent indicated that he had the Buyers and the Claimants execute it the day before settlement to clarify their agreement regarding prorated rents. The reason the Respondent continued to urge the Buyers to continue the CRP Contracts after settlement was because he cared and wanted to try to resolve the matter for the Claimants. However, he never thought or represented that the Buyers were contractually obligated to assume the CRP Contracts.

ANALYSIS OF THE DISCIPLINARY CHARGES

This case centers around significant miscommunication. The Respondent and Mr. Burbach both testified that they never conversed or communicated prior to the day before settlement about a requirement that the Buyers be obligated to assume the CRP Contracts. After they signed the listing agreement, the Claimants forwarded documentation surrounding the CRP Contracts to the Respondent, but the first time a conversation ensued about any obligation of the Buyers was after the execution of the Sale Contract. The July Addendum rendered the Sale Contract contingent upon the Buyers' review of conservation easements. REC Ex. #4, p. 6.12. It mentions only the conservation easements, which are different from the CRP Contracts. The CRP Contracts are actual contracts between the Claimants and the USDA. They are not recorded instruments like a conservation easement. The July Addendum did not obligate the Buyers to do anything; it merely advised the Buyers that the Sale Contract was contingent on the Buyers' review of and satisfaction with the Conservation Easement. REC Ex. #4, p. 6.12. The September Addendum reflected an agreement between the Buyers and the Claimants regarding pro-rated rent to be paid to the Buyers from both the CRP Contract payments and from the farmer who leased the Property for farming. REC Ex. #4, p. 6.13. It did not obligate the Buyers to do anything. REC. Ex. #4, p. 6.13. There is no evidence in the record of any communication

regarding the Buyers' assumption of the CRP Contract or any such obligation until after the settlement. Mr. Burbach agreed that it only came up when the Claimants became concerned after the settlement that the Buyers had not begun to move forward with the process of assuming the CRP Contracts.

The Respondent knew generally about the existence of the CRP Contracts when he received the documentation from the Claimants shortly after they executed the listing agreement. It was clear from the Respondent's testimony, however, that he has dealt with CRP Contracts previously but was not aware of their contents or the penalties for discontinuation. The listing agreement did not require the Respondent to ensure that any sale of the Property was contingent on a buyer's acceptance of the CRP Contracts, nor does the Sale Contract. Resp. Ex. #1; REC Ex. #4, pp. 6-1 to 6-24. There was an expectation that the Claimants, by executing both the listing agreement and the Sale Contract, understood their contents. I agree with the Respondent's assertion that he should not be giving legal advice, and the legalities of contracts and any associated addenda are not required to be within his knowledge base. It was not the responsibility of the Respondent to ensure the Claimants' understanding of their legally binding nature.⁵

However, in representing the Claimants with fidelity, the Respondent had an obligation to understand the components of the sale of the Property. He was unaware of what would happen if the Buyers failed to continue the CRP Contracts; he never had that experience previously, and he did not review the documents he obtained from the Claimants that gave the details of their requirements. He did not understand how the process worked. I conclude that the Claimants

⁵ The REC argued that a December 14, 2021 draft email that the Respondent proposed to send to the Buyers established that the Respondent also thought the Buyers were obligated to assume the CRP Contracts. The draft email refers to a "contractual obligation related to acreage in CRP." The Respondent countered that the statement was meant to reference the Claimants' obligation under the CRP Contracts. It is difficult to tell from the wording of the draft email exactly what the Respondent meant, but I am not convinced by reading it that it established that the Respondent thought the Claimants were contractually obligated to assume the CRP Contracts.

were the root cause of the failure to ensure that any buyer would agree to assume the CRP Contracts due to their lack of communication of this requirement to the Respondent. Nevertheless, the Respondent should have become knowledgeable regarding how the CRP contract process may have affected the sale of the Property. The September Addendum set forth that the pro-rated USDA payments would be forwarded to the Buyers and that the CRP Contracts extended until 2032. Regardless, based on the listing agreement and the Sale Contract, the Respondent was under no obligation to make the Buyers' acceptance of the CRP Contracts a contingency of the sale, nor did he have any timely knowledge of the Claimants' intent that any contract for the sale of the Property contain that requirement.

Based on this analysis I cannot conclude that the Respondent violated Section 17-322(b)(25). He did not demonstrate bad faith; the evidence is convincing that he did not try to deceive the Claimants. I cannot conclude, given the lack of communication on the part of the Claimants, that he demonstrated incompetence, untrustworthiness, or that he was dishonest, fraudulent, or engaged in improper dealings. I conclude that he could have acted to better promote and protect the interests of the Claimants and act with absolute fidelity. His failure to endeavor to understand the nuances of the transaction and explore any possible ramification to the sale of the Property constituted a failure to promote and protect the interests of the Claimants, in violation of the Code of Ethics, COMAR 09.11.02.02A. This also constituted a violation of Section 17-322(b)(33).

DISCIPLINARY SANCTION

Section 17-322(c) of the Act provides as follows:

(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.

Bus. Occ. & Prof. § 17-322(c) (Supp. 2024).

The REC requested that the Respondent receive a reprimand, and the imposition of a \$4,000.00 civil penalty. I conclude that a reprimand, but not a civil penalty, is proper, based on my analysis herein. Due to the lack of timely communication on the part of the Claimants, the Respondent was not obligated to make the assumption of the CRP Contracts a contingency of the sale. His failure to obtain a better understanding of the legal ramifications of the sale did not cause the Claimants' loss. Neither the listing agreement nor the Sale Contract mentioned the CRP Contracts or required a contingency related thereto. His lack of action constituted a failure to fully protect and promote the Claimants' interest, which warrants a reprimand. However, the Claimants did not make their intentions clear to the Respondent until after execution of the Sale Contract, and at that point, there was no legal requirement for the Buyers to assume the CRP Contracts.

FUND CLAIM

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." Bus. Occ. & Prof. § 17-101(k) (Supp. 2024).

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

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

Id. § 17-101(l) (Supp. 2024).

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.

Id. § 17-404(a)(2). The amount recovered for any claim against the Fund may not exceed \$50,000.00 for each claim. *Id.* § 17-404(b).

The Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Occ. & Prof. § 17-407(e) (2018); State Gov’t § 10-217 (2021). 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. *Coleman*, 369 Md. at 125 n.16.

The Claimants argued that the Buyers' assumption of the CRP Contracts should have been included as part of the Sale Contract. They maintained that the Respondent thought the transfer of the CRP Contracts was part of the Maryland Conservation Easement and the transfer was automatic, and just before settlement when he realized it was not, he drafted the September Addendum. The Claimants argued that they thought that the Buyers had an obligation to assume the CRP Contracts.

The Fund argued that the Respondent negligently misrepresented to the Claimants that the CRP Contracts would transfer to the Buyers, and that negligent misrepresentation is encompassed within the meaning of misrepresentation set forth in Section 17-404(a)(2) of the Business Occupations & Professions Article. The Fund maintained that this negligent misrepresentation caused the Claimants' loss of \$43,746.25 and recommended this award from the Fund.

Based on my analysis, the evidence did not establish that the Respondent made any misrepresentation that caused the Claimants' loss. The Claimants admitted to neglecting to inform the Respondent that the assumption of the CRP Contracts was a requirement of the sale. Although they provided the Respondent documentation regarding the CRP Contracts shortly after execution of the listing agreement, Mr. Burbach conceded that there was no discussion about any such requirement until after the execution of the Sale Contract. At that point, the Buyers were not obligated to assume the CRP Contracts. I believed Mr. Burbach that the Respondent told him that the CRP Contracts run with the land, but that occurred the day before settlement when the Claimants signed the September Addendum. While I am convinced that the Respondent did not understand the nature of the CRP Contracts and should have obtained more information, the parties agreed, and the evidence established, that the Claimants did not communicate to the Respondent prior to execution of the Sale Contract that the Buyers'

assumption of the CRP Contracts was a requirement for the sale. Therefore, any such misrepresentation the Respondent may have made the day before settlement did not cause the Claimants' loss. The Claimants' failure to communicate caused their loss. Therefore, I conclude that they are not entitled to an award from the Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the REC established that the Respondent violated COMAR 09.11.02.02A of the Code of Ethics by his failure to promote and protect the interests of the Claimants by not endeavoring to understand the nuances and components of the sale of the Property.

Consequently, I conclude that the Respondent is subject to a disciplinary reprimand. Md. Code Ann., Bus. Occ. & Prof. § 17-322(33); COMAR 09.11.02.02A.

I further conclude that the Respondent did not violate Section 17-322(25) of the Business Occupations & Professions Article by demonstrating bad faith, incompetency, or untrustworthiness that constituted dishonest, fraudulent, or improper dealing.

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. Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2018).

RECOMMENDED ORDER

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

The Charge of a violation of Md. Code Ann., Bus. Occ. & Prof. Section 17-322(b)(25) against the Respondent be **DISMISSED**; and

The Charge of a violation of Md. Code. Ann., Bus. Occ. & Prof. Section 17-322(b)(25) and COMAR 09.11.02.02A be **UPHELD**; and

The Respondent be subject to 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.

December 3, 2024
Date Decision Issued

SAS/at
#215135

Susan Sinrod

Susan A. Sinrod
Administrative Law Judge

MARYLAND REAL ESTATE
COMMISSION

v.

COARD BENSON,
RESPONDENT

AND

THE CLAIM OF RODNEY & JOY
BURBACH,
CLAIMANT,

AGAINST THE MARYLAND
REAL ESTATE COMMISSION
GUARANTY FUND

* BEFORE SUSAN A. SINROD,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS

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* OAH No.: LABOR-REC-24-24-12412

* MREC No.: 22-RE-760

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FILE EXHIBIT LIST

I admitted the following exhibits offered by the REC:

- MREC Ex. #1- Statement of Charges and Order for Hearing, dated April 8, 2024
- MREC Ex. #2- Notice of Hearing, dated June 5, 2024
- MREC Ex. #3- Respondent's Licensing History, as of September 10, 2024
- MREC Ex. #4- REC Report of Investigation, closed on September 28, 2023, with the following attachments:
- 1 Complaint, dated May 31, 2022
 - 2 Response to Complaint by Douglas Walker, Esquire, dated September 9, 2022
 - 3 Letter from Michael N. Russo, Esquire to the REC, dated June 20, 2022
 - 4 Respondent's Licensing History, as of August 11, 2022
 - 5 Licensing History of Sheila A. Washburn, as of September 13, 2023
 - 6 Residential Contract of Sale, dated July 29, 2021

- 7 Deed, dated September 27, 2021
- 8 Certificate of Exemption from Withholding Upon Disposition of
Maryland Real Estate Affidavit of Residence or Principal
Residence, dated July 27, (year illegible), for Ms. Burbach;
Certificate of Exemption from Withholding Upon Disposition of
Maryland Real Estate Affidavit of Residence or Principal
Residence, dated July 27, 2021, for Mr. Burbach
- 9 Owner's/Borrower's Affidavit issued by First American Title
Insurance Company, dated September 27, 2021, with title
insurance information attached
- 10 Map of the Claimants' property, created August 28, 2018; United
States Department of Agriculture (USDA) Notice of Contract
Approval, dated August 29, 2018; Conservation Reserve Program
(CRP) Contract, for the period of August 1, 2018, through
September 30, 2032; letter from the USDA to Mr. Burbach, dated
September 7, 2018; USDA Cost-Share Agreement, dated
September 7, 2018; Continuation Sheet for Cost-Share Agreement,
undated; USDA Cost-Share Agreement, dated August 28, 2018;
USDA Cost-Share Performance Certification and Payment,
undated; letter from the USDA to Mr. Burbach, dated
August 28, 2018; Vicinity Map, undated; Conservation Plan,
signed May 24, 2018; letter from the USDA Farm Service Agency
to Mr. Burbach, dated July 14, 2020; Report of Commodities,
Farm Summary, dated July 7, 2020; letter from the USDA Farm
Service Agency to the Claimants, dated October 15, 2021; letter
from the USDA Farm Service Agency to the Claimants, dated
October 15, 2021 (not a duplicate of the prior letter); letter from
the USDA Farm Service Agency to Mr. Burbach, dated
December 21, 2021; Conservation Reserve Program Contract, for
the period of February 1, 2018, to September 30, 2032; CRP
Refund Worksheet Estimate, undated; Appendix to Form CRP-1,
Initial Notification Letter, dated December 28, 2021; Receivable
Statement, dated December 28, 2021; Bank of America Account
Activity Transaction Details, for checks posted on
February 16, 2022, and February 17, 2022⁶
- 11 Notice to Buyer and Seller of Buyer's Rights and Seller's
Obligations Under Maryland's Single Family Residential Property
Condition Disclosure Law, dated November 25, 2020; Maryland
Residential Property Disclosure and Disclaimer Statement, dated
November 25, 2020; Disclosure of Leased Items Addendum to
Residential Contract of Sale, dated November 25, 2020;
Conservation Easement Addendum, dated November 3, 2020;
Inclusions/Exclusions and Utilities Addendum to Exclusive Right
To Sell Residential Brokerage Agreement, dated November 25,
2020; Right to Farm Real Estate Transfer Disclosure Statement,

⁶ There were multiple copies of some of the documents in this exhibit. Where that occurred, I only listed the document once.

- dated November 25, 2020; Settlement Statement, dated September 27, 2021
- 12 Email from Nathan Jackson to Douglas Walker, printed September 22, 2023

I admitted the following exhibits offered by the Claimants:

- Cl. Ex. #1- Emails between the Claimants and the Respondent, dated November 8 and 9, 2021
- Cl. Ex. #2- Email from Mr. Burbach to the Respondent, dated October 20, 2021
- Cl. Ex. #3- Emails between the Respondent, Mr. Burbach, Georgi Chauvin, Allan Greenberg, and Jimmy Robinson, various dates
- Cl. Ex. #4- Emails between the Claimants, the Respondent, Jimmy Robinson, and Richard Huffman, dated November 19, 20, and 21, 2021
- Cl. Ex. #5- Emails between the Respondent and Allan Greenberg and Richard Huffman with copies to multiple parties, various dates
- Cl. Ex. #6- Emails between the Respondent and the Claimants, dated December 3, 2021
- Cl. Ex. #7- Emails between the Respondent, the Claimants, and others, dated December 14, 2021

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. #1- Exclusive Right to Sell Residential Brokerage Agreement, dated November 25, 2020
- Resp. Ex. #2- Addendum to Exclusive Listing Agreement, dated July 17, 2021