

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0562

September Term, 2013

MARYAM REZAIE

v.

MARYLAND REAL ESTATE
COMMISSION, et al.

Eyler, Deborah S.,
Wright,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: January 6, 2015

On May 14, 2012, the Maryland Real Estate Commission, an administrative unit of the Department of Labor, Licensing and Regulation (hereinafter “the Commission”), after adopting the factual findings of an administrative law judge (ALJ), ordered that Maryam Rezaie’s real estate license be revoked, imposed a civil penalty in the amount of \$20,000.00 against Ms. Rezaie and ruled that Ms. Rezaie could not hold a real estate license until the civil penalty was paid in full. Dissatisfied with all of these rulings, Ms. Rezaie filed a Petition for Judicial Review in the Circuit Court for Montgomery County.

On October 10, 2012, which was approximately four months after the petition was filed, Ms. Rezaie filed a motion to remand the case to the Commission so that the Commission could consider newly discovered evidence. The circuit court, on April 8, 2013, conducted a hearing in regard to the motion to remand and the petition for judicial review. On April 23, 2013, in a written opinion and order, the circuit court denied the motion to reopen and affirmed the decision of the Commission. This timely appeal followed, in which Ms. Rezaie raises two questions:

- 1) Did the trial judge abuse his discretion when he refused to consider the new evidence proffered by [a]ppellant?
- 2) Did the trial judge err when he affirmed the decision of the Commission?

We shall answer both questions in the negative.

I. BACKGROUND¹

Before her license was revoked, Maryam Rezaie was a licensed real estate broker in Maryland. She was also the principal broker associated with Metropolitan Fine Properties, Inc. (hereinafter “Metropolitan”). Ali Varkiani, the husband of Ms. Rezaie, was, at all times here relevant, an agent of Metropolitan. Additionally, Mr. Varkiani was also a mortgage broker, who owned a company called EZ Mortgage Bank. The offices of both Metropolitan and EZ Mortgage Bank were located in the home in which Ms. Rezaie and Mr. Varkiam resided.

In 2007, Frozan and Ahmad Babazadeh (hereinafter “the complainants”) met with Mr. Varkiani, who spoke Farsi, which was the native tongue of the complainants. The complainants told Mr. Varkiani that they wished to purchase a home, even though their credit was not very good. They also told Mr. Varkiani that they only had \$30,000.00 to invest toward the purchase of a home.

Mr. Varkiani showed the complainants a house located at 21113 Cozy Court in Gaithersburg, Maryland. With Mr. Varkiani’s assistance, the complainants made a \$970,000.00 offer on the home. The offer was accepted on July 30, 2007, which was the same date that a contract was signed by the complainants to purchase the home for the aforementioned amount. The complainants made a \$20,000.00 earnest money deposit at the

¹The facts summarized in Part I, are based on facts considered by the ALJ.

time the contract was signed. Settlement on the home was set for September 28, 2007. The contract, however, was contingent upon the complainants obtaining financing.

At the time that the sales contract was signed, the complainant made it clear to Mr. Varkiani that the \$20,000.00 they deposited was practically all the money they had and that they did not want to lose it. They also told him that if they were not going to be able to obtain a loan to purchase the Cozy Court property, they wanted to be released from the contract so they would not lose their earnest money deposit.

Mr. Varkiani completed a financial information sheet for the Babazadehs in which he represented their income and assets. According to Mr. Babazadeh's later testimony, the representations as to assets and income were greatly inflated. Nevertheless, Mr. and Mrs. Babazadeh signed the information sheet because Mr. Varkiani told them to do so.

On August 15, 2007, Metropolitan received a conditional approval letter from a lender known as American Affordable Homes. The conditional approval letter stated that Ms. Babazadeh would be the person to whom the loan was to be made because she had better credit than her husband. After the lender's August 15, 2007 letter was received, Mr. Varkiani advised Mr. Babazadeh that their loan was in jeopardy because the lender insisted that additional funding was needed. Mr. Varkiani suggested that the Babazadehs have friends or family members deposit \$40,000.00 into their account.

On August 31, 2007, Mr. Varkiani presented an addendum to the complainants. The addendum provided that the settlement date was extended to no later than October 30, 2007,

that Leyla Divanbeigi² would be added to the contract as a buyer and that the Babazadehs were removing their “Financing Contingency” from the contract. Mr. Varkiani told the complainants that the removal of the “Financing Contingency” meant that their loan would be approved. Both the Babazadehs and the sellers signed the addendum.

Despite Mr. Varkiani’s assurances to the complainants, the Babazadehs were unable to obtain financing and, as a consequence, settlement did not take place on October 30, 2007. Nevertheless, according to Mr. Babazadeh’s testimony, after October 30, 2007, Mr. Varkiani continued to assure the complainants that he was trying to get their loan approved. The Babazadehs, in turn, told Mr. Varkiani that they would rather be released from the contract than lose their \$20,000.00 deposit.

On November 6, 2007, Ms. Rezaie transferred the \$20,000.00 deposit, which was in her escrow account, to the sellers. The sellers, on December 1, 2007, signed a “release of contract.” Under that document, the buyers and sellers agreed to release each other from the contract. The release did not mention the Babazadeh’s deposit money. Mr. Babazadeh told Mr. Varkiani that he would sign a release only upon the return of the \$20,000.00. Nevertheless, on February 12, 2008, Mr. and Mrs. Babazadeh signed the release.

²Mr. Babazadeh testified that he did not know Ms. Divanbeigi, but knew that she was married to a friend, Ali Hootkany. But, in a document Mr. Babazadeh signed on November 21, 2007, he described Ms. Divanbeigi as his “stepsister.” In any event, Mr. Varkiani told the complainants that Ms. Divanbeigi was added to the contract to help them get financing, or in case something went wrong with their loan.

Seventeen days later, on February 29, 2008, Mr. Babazadeh sent an email to Ms. Rezaie asking why the \$20,000.00 had not been returned. The next day, Ms. Rezaie sent an email to Mr. Babazadeh advising him that the \$20,000.00 earnest money deposit had been released to the sellers in November 2007 because the complainants had failed to “provide the required funds to secure a loan toward purchasing the subject property.” The email also advised that as a result of the failure to obtain financing, the complainants were in default. Ms. Rezaie concluded her February 29, 2008 email by stating “[a]s a courtesy, I offered to compensate you on your next real estate purchase up to \$20,000.00 or my potential commission, whichever is less.”

Ahmad Babazadeh wrote the Commission to complain about Ms. Rezaie’s actions on March 14, 2008. His complaint was that Ms. Rezaie, without his authorization, had disbursed the \$20,000.00 earnest money deposit to the sellers. In his letter, he stressed that the release he signed did not mention the \$20,000.00 deposit.

On April 25, 2008, Ms. Rezaie filed a written response to an inquiry by the Commission. In her response she said, *inter alia*, that the \$20,000.00 earnest money deposit was transmitted to the sellers with the agreement of “[a]ll parties.”

The matter was investigated by Jack Mull, an employee of the Commission. As part of his investigation, Mr. Mull interviewed the complainants, Ms. Rezaie, and Linda Doser, the agent for the sellers of the Cozy Court property. Ms. Doser told Mr. Mull that she remembered an agreement releasing the \$20,000.00 deposit but was unable to find a copy of

the release in her files. She also told Mr. Mull that it was “evident from the beginning that the buyers were going to have difficulty getting funding, yet [Ms.] Rezaie and Varkiani continued to pursue the transaction, which ultimately put their clients’ earnest funds in jeopardy.”

On July 1, 2010, the Commission issued a Statement of Charges and Order for Hearing against Ms. Rezaie. She was charged with violating the following sections of Md. Code (2010), Business Occupations Article, viz.: Section 17-322(b)(25) (engaging in conduct that demonstrates bad faith, incompetency, untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings); Section 17-322(b)(31) (violating any provision of subtitle 5 of section 17 that relates to trust money); Section 17-322(b)(32) (violates other provisions of this subtitle); and Section 17-322(b)(33) (violates any regulation adopted under this title or any provision of the code of ethics); and Section 17-505(a) and (b) (violates rules regarding maintenance and distribution of trust money). In addition, Ms. Rezaie was charged with violating COMAR 09.11.02.01C and (H) (Code of Ethics regarding relations to the public and/or COMAR 09.11.02.02A (Code of Ethics regarding relations to the client). The matter was referred to the Office of Administrative Hearings (OAH), which assigned Susan Sinrod to hear the case.

ALJ Sinrod conducted a hearing on January 7, 2011 at which she heard the testimony of the complainants, Mr. Mull, and Ms. Rezaie. The central issue at the hearing was whether the complainants had given Ms. Rezaie permission to turn over the \$20,000.00 earnest money

deposit to the sellers. The complainants testified that they never authorized Ms. Rezaie to release the \$20,000.00 and that they didn't even find out that the money had been released until February, 2008. Ms. Rezaie testified that she was "one hundred percent sure" that the complainants signed a release of the \$20,000.00 deposit but, unfortunately, she could not locate a copy of that release. In summing up the testimony of Mr. Babazadeh that she found important, the ALJ said:

Mr. Babazadeh testified that he and his wife trusted Mr. Varkiani, they felt comfortable with him as their agent because he spoke Farsi. When the Complainants first discussed the prospect of buying the Cozy Court home with Mr. Varkiani, the Complainants told him that their income was approximately \$60,000.00 and their credit history was not very good. However, Mr. Varkiani completed their loan application, which indicated that their income was \$123,000.00, and that they had \$62,000.00 in the bank. According to Mr. Babazadeh, this information was simply untrue. . . . All along, Mr. Varkiani assured the Complainants that they could obtain financing, and that their \$20,000.00 earnest money deposit was safe.

When Mr. Varkiani prepared and presented the addendum to the Complainants for signature, the finance contingency had been removed. Mr. Varkiani instructed the Complainants to sign the addendum because the financing was going to be approved. The addendum also added Leila Divanbeigi to the contract, a person the Complainants did not even know. The Complainants did not discover until February 2008 that the \$20,000.00 had been released to the sellers in November, 2007. According to Mr. Babazadeh, neither Complainant signed anything authorizing the release of the \$20,000.00 to the sellers.

Mr. Babazadeh also testified that he had seen the Respondent from time to time when he went to Metropolitan's office, but they mostly dealt with Mr. Varkiani. The Complainants did not know that the Respondent was the primary broker of Metropolitan. Mr. Babazadeh maintained that the Respondent did not supervise Mr. Varkiani in any of the transactions regarding the Cozy Court purchase.

The ALJ, in her written opinion, made certain important credibility assessments, viz.:

I did not find the Respondent to be credible for several reasons. First, she lacked proximity to the actual facts; she was hardly involved with the Complainants at all. Further, she misrepresented the facts when she spoke to Mr. Mull. The evidence established that Mr. Varkiani consistently represented to the Complainants that he was a mortgage broker and he was going to obtain a loan for them. However, in her testimony and in her interview with Mr. Mull, she insisted that Mr. Varkiani was not acting as a mortgage broker for the Complainants, she represented that he did not even open a file for the Complainants in his capacity as a mortgage broker. Additionally, in her testimony and in her interview with Mr. Mull, she stated that she was “100% sure” that the Complainants signed a release of the \$20,000.00. Both the Complainants’ credible testimony, and the lack of evidence that a written release actually existed either in the Respondent’s possession or that of the listing agent Ms. Doser, leaves me convinced that a release of the \$20,000.00 was never executed.

II. THE RECOMMENDED DECISION OF THE ALJ AND THE FINAL DECISION OF THE COMMISSION

Ultimately, the ALJ concluded that Ms. Rezaie had committed “serious” violations of applicable provisions of the Business Occupations & Professional Article and the Code of Maryland Regulations and that those violations had “caused significant harm to the Complainants.” The ALJ recommended that Ms. Rezaie’s real estate license be suspended for four months and that a \$4,000.00 fine be imposed.

Ms. Rezaie filed exceptions to the ALJ’s recommended decision. On May 14, 2012, the ALJ’s decision was reviewed by the Commission. The Commission adopted the ALJ’s Findings of Facts and Conclusions of Law but modified the recommended decision by ordering: 1) That Ms. Rezaie’s real estate license be revoked; 2) That Ms. Rezaie pay a

\$20,000.00 civil penalty and 3) that, until the penalty was paid in full, Ms. Rezaie would be ineligible to hold a Maryland real estate license.

III. PETITION FOR JUDICIAL REVIEW

On June 13, 2012, Ms. Rezaie, *pro se*, filed a hand written Petition for Judicial Review. On September 24, 2012, the Commission filed a Motion to Dismiss Ms. Rezaie's Petition. Movant pointed out that Md. Rule 7-207(a) required the petitioner to file a memorandum setting forth a concise statement of the question(s) presented for review, a statement of facts material to those question(s), including citations of authority and references to pages of the record and exhibits relied upon within 30 days after the clerk sends notice of the filing of the record. According to the Commission, the clerk sent such a notice to the parties on July 9, 2012, but Ms. Rezaie had failed to file the required memorandum by the due date, i.e., Wednesday, August 8, 2012. The circuit court, in an order dated October 5, 2012, but not docketed until October 11, 2012, dismissed the petition for judicial review. But one day before the aforementioned order was docketed, Ms. Rezaie, by counsel, filed an opposition to the motion to dismiss. The opposition stated, in material part, the following:

As Respondents correctly point out in their Motion, under Rule 7-207, Petitioner was required to file a Memorandum in early August. At that time, Petitioner was representing herself *pro se* and did not truly understand the procedures of the Court. At about that time, Petitioner located a certain key document - namely, the "General Addendum which was a release signed by the Complainant in the case below - which completely undermines his testimony. In fact, this document demonstrates that the evidence on which the decision below was based was perjured.

Thereafter, Petitioner contacted and ultimately retained undersigned counsel to address this issue. In view of the circumstances, it took some time to locate [sic] a sufficient number of known signatures of the Complainant to permit evaluation of the signatures and to retain a document examiner to properly examine these documents. The document examiner, Mr. Gideon Epstein of Rockville, Maryland, has now concluded that the Complainant's signature on the General Addendum (i.e. the release) is genuine. As a result, it is clear that the testimony below was perjured, and Petitioner has concurrently filed a Motion to Remand.

Consequently, Petitioner's failure to timely file a Memorandum should be excused and Respondent's Motion to Dismiss be denied, and the contemporaneous Motion to Remand should be granted.

Ms. Rezaie's Motion To Remand, which was docketed on the same date as her opposition to the motion to dismiss, was, like the opposition, based entirely on the recent discovery of the General Addendum. In Ms. Rezaie's "declaration" she stated:

My name is Maryam Rezaie. I am over the age of 21, and I have personal knowledge regarding all of the facts stated herein.

1) My business address is 11301 River Road, Potomac, MD 20854. From 2003 to 2011, I operated Metropolitan Fine Properties, Inc., as a real estate company.

2) The issue in this case revolves around whether in the transaction which is the subject of this case I released my clients' Earnest Money Deposit (EMD) to the Sellers without their permission.

3) My clients, Mr. & Mrs. Babaz[a]deh, claimed that they had not authorized the release of the funds to the sellers. I maintained that they had in fact authorized it in writing, but at the time of the hearing before the Commission, I was unable to find a copy of the authorization in my files.

4) This summer after the [Commission] ruled in this case and this appeal was filed, I reviewed some old files which were stored in my home. During the course of this review I found the original of the release in question; it is entitled

“General Addendum.” This release shows that the Babaz[a]dehs actually signed the authorization and their testimony to the contrary is false.

5) I have had a handwriting analysis of the document performed by Mr. Gideon Epstein of Rockville. Mr. Epstein is a well known document examiner. Mr. Epstein’s analysis confirms that the signatures on this document are those of the Babaz[a]dehs. I have attached a copy of Mr. Epstein’s Report and the handwriting samples used in performing the analysis.

I solemnly affirm under the penalties of perjury that the contents of the foregoing declaration are true to the best of my knowledge, information, and belief.

The report of Mr. Epstein attached to the declaration shows that in Mr. Epstein’s expert opinion the “General Addendum” dated November 7, 2007 (i.e., one day after the \$20,000.00 deposit was released) was signed by Ahmad Babazadeh. The expert gave no opinion as to the validity of Mrs. Babazadeh’s signature.

The General Addendum in question reads:

General Addendum

In regard to our meeting on 11/2/2007, the following list will be part of the sales contract on the property located at: 21113 Cozy Court, Gaithersburg, MD 20882:

1. [Leyla] Divanbeigi will be added to the sales contract of the subject property.
2. The \$20,000.00 EMD will be held by Sellers.
3. EMD is non-refundable if The Parties specifically release Seller, Buyer, Broker(s) and Agents of the Broker(s) and Escrow Agent, if any, from any and all responsibility, liability, claim and/or complaint in connection with said Contract of sale.³

³We note that a release of all parties was not signed by the sellers until December 1,
(continued...)

4. The sales contract does NOT need to reflect new settlement date for a period of 14 days if not closed on/before 11/10/2007.

All terms and conditions of the sales contract stay the same & in full force.

On December 21, 2012, a circuit court judge, treating Ms. Rezaie's motion to alter or amend as a motion for reconsideration of the order dismissing the petition for judicial review, granted that motion and also granted Ms. Rezaie leave to file a memorandum of law in support of her petition for judicial review. On the same date, however, the court denied Ms. Rezaie's motion to Remand the case to the Commission.

On April 8, 2013, the circuit court held a hearing concerning the Petition for Judicial Review. Two questions were presented at that hearing, viz.: 1) was there substantial evidence to support the Commission's findings of fact, legal conclusions, and the appropriateness of the sanctions imposed; and 2) should the court consider Ms. Rezaie's additional evidence (i.e., the alleged "release") under Maryland Code (2009 Repl. Vol.), State Government Article, Section 10-222(f)(2)? In a written opinion, the trial judge concluded that there was substantial evidence to support the Commission's decision and that, under the circumstances, the court should not consider evidence not presented to the Commission.

³(...continued)

2007, which was more than three weeks after Ms. Rezaie turned over the deposit money to the sellers.

IV. ANALYSIS

A. Ms. Rezaie's First Argument

Appellant contends that the trial judge abused his discretion⁴ when he refused to consider the new evidence that Ms. Rezaie presented. As the trial judge recognized, the issue of whether he should consider the General Addendum, which was not presented to the ALJ or to the Commission, was governed by Section 10-222 of the State Government Article. The section in question concerns judicial review of the decision of an agency, like the Commission. Subsection (f) reads:

(f) *Additional evidence before agency.* – (1) Judicial review of disputed issues of fact shall be confined to the record for judicial review supplemented by additional evidence taken pursuant to this section.

(2) The court may order the presiding officer to take additional evidence on terms that the court considers proper if:

(i) before the hearing date in court, a party applies for leave to offer additional evidence; and

(ii) the court is satisfied that:

1. the evidence is material; and

2. there were good reasons for the failure to offer the evidence in the proceeding before the presiding officer.

(3) On the basis of the additional evidence, the final decision maker may modify the findings and decision.

(4) The final decision maker shall file with the reviewing court, as part of the record:

(i) the additional evidence; and

(ii) Any modifications of the findings or decision.

⁴An “[a]buse of discretion occurs ‘where no reasonable person would take the view adopted by the [trial] court’ or when the court acts ‘without reference to any guiding rules or principles.’” *Powell v. Breslin*, 430 Md. 52, 62 (2013) (citations omitted).

In regard to the issue as to whether additional evidence should be admitted, the trial judge began his analysis by stating:

Petitioner asks this Court to accept additional evidence that was not before the Commission. The additional evidence that the Petitioner seeks to introduce is a document entitled "General Addendum" that, Petitioner represents, gives Petitioner permission to release the \$20,000.00 deposit. Typically, judicial review of administrative decisions are limited to an evaluation of the record, but the Court has authority to accept additional evidence if that additional evidence satisfies the test set forth in Md. State Gov't. Code Ann., § 10-222(f). Specifically, after the movant applies for leave to offer the additional evidence prior to the hearing date in court, the Court must find that: (i) the evidence is material, and (ii) there were good reasons for the failure to offer the evidence in the proceeding before the presiding officer.

The statute does not set forth a strict pleading requirement with regard to the application to offer additional evidence. Thus, the Court will deem the Petitioner's discussion of the additional evidence in the Memorandum on Petition for Review as satisfying the application requirement. Next, the Court will evaluate the two factual elements in the statute to determine if the additional elements will be satisfied. Since these elements are written in the conjunctive, both need to be satisfied in order for the Court to accept the additional evidence.

The trial judge found that the additional evidence, i.e., the General Addendum, was material, and therefore it satisfied the first prong. The trial judge's decision continued:

The second prong in the factual determination requires that the Court delve into the reasons for the failure to offer the evidence at the original proceeding. Petitioner states in her Memorandum that she found this document while going through other files in her office in the summer of 2012. This discovery occurred more than a year after the initial hearing and more than six months after Petitioner filed her Exceptions to the Proposed Order. The document is dated November 7, 2007, and the Commission released its Opinion and Final Order on May 14, 2012. The Petitioner admits to having deficient recordkeeping practices and admits to being negligent in not filing the Babazadeh's release in their file. It is persuasive to the Court that, given the heavy reliance on this document in the arguments before the Commission and

the assertion that this document will not only alter the credibility findings of the Commission but will ultimately change the outcome of the case, the Petitioner did not perform a full sweep of her office in an attempt to locate it. Therefore, given the timing of the discovery of the General Addendum, the circumstances surrounding its discovery, and the Petitioner's failure to present relevant testimonial evidence at the Court's April 8, 2013 hearing, the Court will not find that there were good reasons for the failure to offer the evidence in the proceeding before the presiding officer and will not accept the additional evidence.

In support of her contention that the circuit court abused its discretion when it refused to consider newly discovered evidence, the appellant devotes approximately five pages of her brief to cover that subject. Almost all of the discussion, however, concerns the great relevance of the newly discovered evidence. This was unnecessary because the trial judge agreed with appellant as to that point. But, as the trial judge pointed out, the test as to whether newly discovered evidence should be considered has two prongs and both prongs must be established by a preponderance of the evidence in order for the new evidence to be considered.

In regard to the second prong, appellant says very little. She simply argues that one "would assume" from the opinions of the Commission and the circuit court "that it is unheard of for contractual documents to be lost or misplaced," even though, in actuality, "it is not an uncommon event in the course of property transactions for the papers to be lost or misplaced." As proof of how common it is to misplace important documents, appellant directs our attention to the fact that the General Assembly has passed a statute to cover such occurrences,

i.e., Md. Code (2002 Repl. Vol.) Commercial Law Article, section 3-309, which concerns enforcement of lost, destroyed or stolen instruments.

Contrary to appellant's argument, the circuit court's opinion did not evidence a belief, one way or another, as to how common it was for a real estate broker to lose important documents. The point that the trial judge made was that Ms. Rezaie did not present any evidence indicating that she had used due diligence in trying to find the document prior to the hearing before the Commission. That point was well taken. There was no evidence that at any time before the summer of 2012 that appellant did anything to find the document except to look in the Babazadeh file. In fact, there was no evidence that at the time the General Addendum was found that Ms. Rezaie was even searching for it. Under such circumstances, the trial judge did not "abuse his discretion" when he found that appellant had not met the "good reason" prong of the test set forth in section 10-222(f) of the State Government Article.

In addition to what has already been discussed, appellant does make a second argument that at least mentions the "abuse of discretion" standard. Appellant argues:

As noted, the purpose of the statutory provision which allows a court to consider new evidence on review is to protect against unjust results and perjured testimony. While the Circuit Court had discretion to consider or not consider the new evidence, in view of the clear proof that the decision of the [Commission] was based on perjured testimony and in view of the harsh effect of the decision on Appellant, it was an abuse of discretion on the part of the Circuit Court for it to have refused to consider that evidence.

The above argument, when reduced to its essence, is just another way of saying that the evidence that was excluded was material. The argument has nothing to do with whether

Ms. Rezaie had met her burden of proving that she had a good reason for not producing the document before the Commission.

B. Second Question Presented

Appellant argues that the circuit court “abused its discretion” when it affirmed the decision of the Commission. In a case like this, where we are reviewing the final decision in a contested case held before an administrative agency, the circuit court’s role “ is limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Maryland Aviation Administration v. Noland*, 386 Md. 556, 571-72 (2005) (quotations and citation omitted).

Appellant does not contend that the Commission’s decision was premised upon an erroneous conclusion of law. Moreover, appellant does not explicitly contend that the Commission’s decision was not based upon substantial evidence. Instead, the only criticism of the Commission’s decision is expressed by appellant as follows:

This document [the release] and its existence or non-existence is essential to [the Commission’s] case and the Complainants not surprisingly claim they never signed it and were unaware of the transfer of funds. The only non-party witness quoted in the transcript is Linda Doser who was the sellers’ agent. Ms. Doser had no interest in the outcome of this proceeding and had no interest other than to tell the truth about it. Her statement to Mr. Mull was very clear that there had been a release and it had been executed by Complainants in her presence. Her testimony through Mr. Mull is clearly the most believable here, and it should have been credited.

Ms. Doser did not testify at the hearing before the ALJ. The ALJ did hear the testimony of Mr. Mull, who said that Ms. Doser told him that “she recalled an agreement releasing the \$20,000.00” but she was unable to find a copy of such a document in her files. The ALJ, as previously stated, determined that the Babazadehs were telling the truth when they testified that they did not sign a release. The Commission adopted the ALJ’s factual finding.

When a circuit court judge determines whether there exists substantial evidence to support a decision of an agency, that judge must take the evidence in the light most favorable to the party that prevailed below. *Maryland Aviation Administration*, 386 Md. at 571. Moreover, in deciding whether there is substantial evidence to support the finding of an agency, “it is the agency’s province to resolve conflicting evidence[.]” *CBS Inc. v. Comptroller*, 319 Md. 687, 698 (1990) (quoting *Ramsay, Scarlett & Co. v. Comptroller*, 302 Md. 825, 834-35 (1985)). Therefore, it was well within the right of the ALJ and the Commission to accept as true the testimony of the complainants rather than the hearsay testimony of Ms. Doser as related by Mr. Mull. Accordingly, taking the evidence in the light most favorable to the Commission, there was substantial evidence before the Commission to support its findings that the Babazadehs did not sign a release.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.