IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

RALPH D. CARTER, JR., Plaintiff	:	
v.	:	CIVIL NO. AMD 04-759
BRYAN P. ROSENBERG, WILLIAM W. DENT, ALL FINANCIAL SERVICES, INC., JOSEPH L. RIECK, MONUMENTAL CITY TITLE CO., LLC, and ROBERT F. DASHIELL, Defendants	:	

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MEMORANDUM OPINION

Plaintiff, Ralph D. Carter, Jr., is a resident of Washington, D.C. and a sometimes real estate investor. In 2001, responding to media advertisements, he purchased 12 residential investment properties located in Baltimore City. In this case, here based on diversity of citizenship and federal question subject matter jurisdiction, Carter has filed a multi-count complaint against the sellers of those properties, a mortgage broker, a settlement attorney, and others involved in the purchase and sale transactions, on theories of fraud, negligent misrepresentation, and violations of state and federal statutes.

Defendants Bryan P. Rosenberg, Joseph L. Rieck, and Monumental City Title Co., LLC, have defaulted. Discovery has concluded as to the remaining defendants. Now pending are motions for summary judgment filed by defendants William W. Dent ("Dent") and his mortgage brokerage business, All Financial Services, Inc. ("All Financial"), and Robert F. Dashiell, Esq. ("Dashiell"). No hearing is necessary. For the reasons stated below, the

motions shall be granted. *See* Fed.R.Civ.P. 56. Furthermore, in the unique circumstances of this case, judgment in favor of the defaulting defendants shall be entered as well.

In the light most favorable to plaintiff Carter, the record shows that in response to certain advertisements promising "no money down" and "cash back at settlement" and similar enticements appearing in the *Washington Post*, Carter came to Baltimore in pursuit of such "deals." Carter had attended one or more widely-available seminars heralding "no money down" real estate purchases and had previously purchased one or two properties in the District of Columbia.

Ultimately, during the period between September and December 2001, Carter purchased 12 residential rental properties located in Baltimore City, four of which he purchased from a company known as Millineum Properties, Inc. ("Millineum"). Defendant Dent was a co-owner of Millineum. Dent is also the owner of All Financial, a mortgage brokerage that was involved in arranging the financing of the disputed transactions.

Plaintiff does not deny that at all times, he had the opportunity to retain real estate or other professionals, e.g., an attorney, of his choosing in order to obtain advice as to the propriety and/or advisability of the proposed transactions. Although he failed to hire his own advisors, he admits that he did physically inspect all or most of the properties before entering into the disputed transactions, as described below.

The gist of plaintiff's claims against Dent and All Financial (and against the defaulting defendants as well) is that defendants defrauded plaintiff in that they made

material misrepresentations as to the market value and/or physical condition of the properties, employed false appraisals, and, contrary to certain unspecified representations, made only "cosmetic" repairs to the properties. Plaintiff claims compensatory damages, representing his alleged "overpayments" in purchasing the properties and to repair them, as well as punitive damages. Notably, however, plaintiff was able to refinance the properties shortly after he purchased them (while effecting significant equity "cash-outs" from the refinancings), and he has generally experienced a "positive cash flow" from the rental income generated by the properties. The following chart reflects the disputed purchases as to Dent/Millineum:

Property Address	**Date Purchased**	**Amount Paid**	**Amount of Lien**	**"Actual Value"**
615 Glenwood	October 1, 2001	$53,000	$42,400	$16,000
3313 Presstman	Sept. 20, 2001	$52,000	$41,600	$19,900
613 Robinson	December 2001	$59,000	$47,200	$16,501
2453 Biddle	Sept. 20, 2001	$55,000	$44,000	$17,500

Plaintiff purchased eight other properties under the same or similar circumstances from entities controlled by other defendants.

As best as can be determined from plaintiff's submissions, it appears that the "Actual Value" column noted above reflects the genuine value of the respective property as determined by a good faith, contemporary appraisal of the property. It appears that plaintiff never became aware of the genuine values at the time of his purchase but, as described below, it is clear that it would not have mattered to plaintiff even if he had seen the appraisals. (Other, allegedly "inflated" appraisals are also in the record.) The "Amount Paid"

column represents the amount that plaintiff purportedly "paid" for the properties according to the official documentation of the transactions, i.e., the HUD-1 Settlement Statements. In fact, however, consistent with plaintiff's purpose in coming to Baltimore in the first place in response to the newspaper advertisements, plaintiff actually paid considerably less than is reflected in the "Amount Paid" column. This is because (1) he not only put *no money* into any of the above transactions (he claims the HUD-1s that he signed correctly reflected that he had paid no money at settlement, but he has not produced any such documents), and indeed, (2) he departed the closings either with funds in hand or with funds in an escrow account for the purpose of making repairs to the properties. In short, the record establishes, as a matter of law, that plaintiff, either knowingly, i.e., with a criminal purpose, or perhaps, unknowingly, i.e., without a criminal purpose, participated in a "flipping scheme."* In any

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See U.S. v. McNeil, 45 Fed.Appx. 225, 2002 WL 1963335, *1 n.1 (4th Cir. Aug 26, 2002):

> A general description of what is called a criminal flipping scheme includes a buyer acquiring title or right to title to a property and then selling it to a second buyer at an increased price without disclosing on record the first buyer's true interest in the property. The illegality in the transaction comes from false representations as to value, or use, or tenancy, or condition, or like things which affect value or credit worthiness."

Indeed, it appears that defendant Bryan P. Rosenberg was sentenced in this court to federal prison for his participation in just such a flipping scheme. *See* Judgment and Commitment Order in *United States of America v. Bryan P. Rosenberg, et al*., Criminal Case no. MJG 02-0512 (D.Md. April 9, 2003).

It has not gone unnoticed that this case was filed on March 16, 2004, a mere three weeks after the Maryland Court of Special Appeals released its opinion, on February 27, 2004, in *Hoffman v. Stamper*, 155 Md.App. 247, 843 A.2d 153 (2004), *affirmed in part and reversed in part*, 385 Md. 1, 867 A.2d 276 (2005). *Hoffman* was a damages action brought by nine defrauded purchasers in one of the rash of "flipping schemes" that have overrun Baltimore City in the past decade. Plaintiff and his counsel have plainly tried to fit this case within the legal and factual

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event, as a matter of law, there was no actionable fraud perpetrated against *plaintiff*.

This is demonstrated conclusively by plaintiff's remarkably candid deposition testimony as to how the transactions actually occurred:

Q: [Y]ou said that you didn't get the purchase price of the Millineum Properties until a day or two before the closing. Is that what you said?
A: Right.
Q: How did you know– how did you decide whether you were going to purchase the property if you didn't know what you were going to pay for it?
A: *I thought I would wait until I got the price, and then if it was, if it was a little bit cost prohibitive, I just wouldn't go through with the deal. I mean, that was my, that was my logic. A little bit convoluted, but yeah, that was the way I was thinking*.
Q: Was there any discussion of the price prior to a couple of days before the settlement?
A: There was no back and forth. I mean, they called me and told me what the, what the price was . . . but no, I didn't get – there was no real give and take or discussion or, This is what you're going to pay versus that. What do you think

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[*](...continued)
framework of *Hoffman*, *but the facts of this case could not be more dissimilar from those in Hoffman*. Judge Wilner's summary of the facts in *Hoffman* for the Court of Appeals makes this point nicely:

> The basis of the plaintiffs' case, in a nutshell, was that [defendant] Beeman (1) bought *dilapidated* properties in Baltimore City at low prices, (2) then searched for *unsophisticated, low-income buyers with poor credit histories*, (3) promised them that he could sell them a renovated home *for a down payment of only $500*, (4) got those buyers *to sign contracts of sale* at significantly inflated prices upon a promise to make extensive repairs, many of which were never made, (5) arranged for the buyers to finance the purchases with 100% FHA loans obtained through [defendant] Wood, and (6) obtained those loans for the buyers in part by conspiring with Wood to have [defendant] Hoffman prepare erroneous appraisals showing the value of the homes to be at or above the grossly inflated contract price and in part by engaging in practices that clearly violated Department of Housing and Urban Development (HUD) regulations and requirements regarding the FHA program in order to consummate the transactions.

867 A.2d at 281 (emphases added). Manifestly, this case is a far cry from the particular "flipping scheme" at issue in *Hoffman* and plaintiff's fatigued effort to make it fit the *Hoffman* paradigm utterly fails.

about this price? No, we didn't go back and forth. We didn't negotiate.
Q: How did you determine that it was a good price or a bad price?
A: Well, as I said, I was waiting until I actually heard the, the price, and then if it just didn't – if it was out of whack or out of kilter, then I would definitely, you know, raise the issue then.

Plf's Depo. at 131-32 (emphasis added). As a matter of law, therefore, plaintiff's insistence that he reasonably relied on the representations of defendant Dent in deciding to enter into the disputed transactions, and that Dent's misrepresentations proximately caused him financial injury, utterly fails. *See Nails v. S & R, Inc.,* 334 Md. 398, 415, 639 A.2d 660 (1994)(elements of a claim for fraud under Maryland law).

Plaintiff's claims against defendant Dashiell fare no better. The gravamen of those claims is plaintiff's bald contention that Dashiell, as the then majority owner of Monumental City Title Co., LLC, is responsible for the acts and omissions of the Monumental employee, Harriet Taylor (a certified settlement agent who has not been joined in this case), who conducted the settlements on the disputed properties and who signed the false HUD-1s. As Dashiell argues, there are numerous fatal flaws in plaintiff's contention.

First, plaintiff has not even attempted to justify his attempt to ignore the fact that Monumental, not Dashiell, was Taylor's employer. Application of *respondeat superior* liability principles is wholly unwarranted as to Dashiell. Second, plaintiff has not demonstrated that Dashiell was involved in the disputed transactions at all beyond his preparation of certain opinion letters on the issue of ground rents requested by the various lenders and the issuance of title insurance documents. Indisputably, plaintiff never spoke to

Dashiell.

Finally, plaintiff makes a leap of logic to contend that he "paid a fee" to Dashiell (as reflected on the HUD-1s) and that, therefore, he had an attorney-client relationship with Dashiell, thereby imposing fiduciary duties upon Dashiell. This contention lacks merit both factually and legally. It is not clear that plaintiff "paid" any of the closing costs; he brought no money to any closing, he made no down payment for any purchase, and he departed the closings with cash in hand or to his credit. But even if plaintiff might be deemed to have been ultimately responsible for the payment of any closing costs, which included Dashiell's fees for services to the lender, Maryland law is plain that such allocation of the costs of a real estate closing does not effect an attorney-client relationship between a purchaser and an attorney providing services to a lender. *Cf. Flaherty v. Weinberg,* 303 Md. 116, 130-31, 492 A.2d 618, 625 (1985).

At bottom, plaintiff's claims against Dashiell, like his claims against Dent and All Financial (and indeed, all the defendants), rest on no more than abstract recitations of longstanding legal principles coupled with bald, conclusory allegations of wrongdoing. *See supra* n. *. This will not do. Plaintiff's factual submissions are striking for their paucity. There has been no showing sufficient to avoid summary judgment on the issues of duty, misrepresentation, proximate cause, or damage as to any of the defendants.

Under the circumstances, therefore, summary judgment shall be granted, not only to the appearing defendants, but judgment shall be entered in favor of the defaulting defendants

as well. *Cf. Gulf Coast Fans, Inc. v. Midwest Elecs. Imps., Inc.,* 740 F.2d 1499, 1512 (11th Cir.1984); *Frow v. De La Vega,* 15 Wall. 552, 82 U.S. 552, 21 L.Ed. 60 (1872). An Order follows.

Filed: April 7, 2005

/s/
ANDRE M. DAVIS
UNITED STATES DISTRICT JUDGE