

BEFORE THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM *
OF DENISE MARIE THOMPSON, *
CLAIMANT *

CASE NO. 2019-RE-104

v. *

OAH NO. DLR-REC-22-18-36265

THE MARYLAND REAL *
ESTATE COMMISSION *
GUARANTY FUND FOR THE *
ALLEGED MISCONDUCT OF *
DUANE FARLEY, RESPONDENT *

* * * * *

PROPOSED ORDER

The Findings of Fact, Proposed Conclusions of Law and Recommended Order of the Administrative Law Judge dated April 5, 2019, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 22 day of MAY, 2019, hereby **ORDERED:**

A. That the Findings of Fact¹ in the proposed decision be, and hereby are **ADOPTED in part and AMENDED in part as follows:**

13. n.9 “For December 2017, the respondent deducted the \$119.60 management fee from the \$1,495.00 monthly rent equaling \$1,375.40 owed to the Claimant. Thus, $\$1,375.40 + \dots = \$5,875.40$.”²

¹ On pages 3-4 of the proposed decision the Administrative Law Judge identifies exhibits admitted into evidence. For clarification purposes the Commission notes that the “MREC Transmittal and Hearing Order”, identified as GF Ex.3 is dated November 9, 2018, not November 6, 2018. See proposed decision p. 2 and GF Ex. 3.

² The Commission notes this same calculation/typographical occurs in the Discussion section of the proposed decision:

DISCUSSION. 1st full sentence, page 13: The Claimant requested the fund reimburse her for the unpaid rents in the following manner: \$1,375.40 for December (\$1,495 minus a \$119.60 management fee) ... the Claimant is entitled to a \$5,860.40 reimbursement

DISCUSSION. Last paragraph before “Proposed Conclusions of Law”, page 15: “... the Claimant is entitled to ... \$5,860.40 rents owed + ... = \$7,626.56.”

B. That the Proposed Conclusions of Law in the proposed decision be, and hereby are, **ADOPTED in part and AMENDED in part as follows:**

Last paragraph: "... the amount of the award the Claimant is entitled to receive from the Fund is \$7,626.56."

C. That the Recommended Order in the proposed decision be, and hereby is, **ADOPTED in part and AMENDED in part as follows:**

ORDERED that once this Proposed Order becomes a Final Order and all rights to appeal are exhausted, the Claimant, Denise Marie Thompson, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of **Seven Thousand Six Hundred Twenty Six Dollars and Fifty Six Cents (\$7,626.56.);**

ORDERED that all real estate licenses held by the Respondent, Duane Farley, 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 Maryland Real Estate Guaranty Fund is reimbursed, including any interest that is payable under the law and application for reinstatement is made;

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 proposed decision of the Administrative Law Judge required modification because of a minor typographical/calculation error which led to a \$0.40 discrepancy.

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

Executive Director, Maryland Real Estate Commission, 3rd Floor, 500 North Calvert Street, Baltimore, MD 21202. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

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

5/22/2019
Date

MARYLAND REAL ESTATE COMMISSION

By: **SIGNATURE ON FILE**

IN THE MATTER OF THE
CLAIM OF DENISE MARIE
THOMPSON,
CLAIMANT

v.

MARYLAND STATE
REAL ESTATE COMMISSION,
REAL ESTATE GUARANTY FUND,
FOR THE ALLEGED MISCONDUCT
OF DUANE FARLEY
RESPONDENT

* BEFORE NICOLAS ORECHWA,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS

*

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* OAH No.: DLR-REC-22-18-36265

* REC No.: 19-RE-104

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On August 13, 2018, Denise Marie Thompson (Claimant) filed a complaint against Duane Farley (Respondent).¹ The Claimant also filed a claim with the MREC Guaranty Fund (MREC or Fund), in which she alleged she sustained monetary losses as a result of the Respondent's acts or omissions. Specifically, the Claimant alleged Respondent, acting in her

¹ On her Complaint, the Complainant also listed Samuel Freeman (Freeman) as Licensee#2. (GF Ex. 1) However, Freeman is neither listed on the Fund's hearing order, nor on the Funds transmittal form to the Office of Administrative Hearings (OAH). Additionally, none of the hearing participants presented evidence Freeman possesses or possessed a Maryland real estate license. Accordingly, I will focus this decision solely on Respondent Duane Farley.

capacity as the property manager for property owned by the Claimant, failed to reimburse the Claimant for various monies to which the Claimant was rightfully entitled. On November 9, 2018, the MREC ordered the Claimant should have a hearing to establish her eligibility for an award from the Fund. On or about November 21, 2018, the MREC forwarded the matter to the OAH for a hearing.

On February 11, 2019, I conducted a hearing at OAH headquarters in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2018). The Claimant appeared and was represented by Philip Kotschenreuther, Esquire. Jacob Deaven appeared on behalf of the personal representative of the Respondent's estate.² Nicholas Sokolow, Assistant Attorney General, Department of Labor, Licensing and Regulation, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the Department's and the MREC's procedural regulations, and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); Code of Maryland Regulations (COMAR) 09.01.03 and 09.11.03; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual monetary loss as a result of the Respondent's conduct which constituted theft, embezzlement, forgery, false pretenses, fraud, or misrepresentation; and, if so,
2. What is the actual amount of the loss?

² The Respondent is deceased. For the sake of simplicity, I will refer to her as the Respondent for the balance of this decision. The parties entered into a stipulation on the record that the Respondent's Estate received proper service.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for the Claimant:

- CL Ex. 1: Exclusive Residential Right to Lease Brokerage Agreement, July 16, 2010
- CL Ex. 2: Management Agreement, July 16, 2010
- CL Ex. 3: Residential Dwelling Lease, April 1, 2016 (Anderson lease)
- CL Ex. 4: Renewal of Residential Dwelling Lease, July 17, 2017
- CL Ex. 5: Letter from Respondent to her customers, February 27, 2018
- CL Ex. 6: Respondent's Accounting Statement for Claimant's Property, January 1, 2018 through March 24, 2018
- CL Ex. 7: Check #1071 from Cheryl Alexander (Alexander) to Respondent, January 12, 2018
- CL Ex. 8: Check #1021 from Alexander to Respondent, February 16, 2018
- CL. Ex. 9: Photocopy of three money orders, all dated March 16, 2018
- CL Ex. 10: E-mails between Claimant and Alexander, June 4, 2018³
- CL Ex. 11: Alexander's APGFCU Bank Statement, January 1, 2018 through January 30, 2018
- CL Ex. 12: Alexander's APGFCU Bank Statement, February 1, 2018 through February 28, 2018
- CL Ex. 13: Claimant's APGFCU Bank Statements, February 1, 2018 through January 31, 2019
- CL Ex. 14: Summary of Amounts owed to Claimant by Respondent
- CL Ex. 15: Summary of interest earned on security deposit⁴

³ The actual correspondents on the exhibit are the Claimant and Cheryl Barnes-Douglas. In her testimony, the Claimant identified Cheryl Barnes-Douglas as Alexander.

⁴ Admitted only for the purpose of calculating interest on the security deposit.

I admitted the following exhibits for the Fund:

- GF Ex. 1: Claimant's Original Complaint, August 13, 2018
- GF Ex. 2: Respondent's MREC Licensing History
- GF Ex. 3: MREC Transmittal and Hearing Order, November 6, 2018
- GF Ex. 4: Notice of Hearing, January 16, 2019
- GF Ex. 5: Letter from MREC to Respondent, August 17, 2018

The Respondent did not submit any exhibits.

Testimony

The Claimant testified and did not present other witnesses. The Respondent and the Fund did not present witnesses.

FINDINGS OF FACT

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

1. At all times relevant, Respondent was a real estate broker licensed by the MREC under License #0148951. In particular, the Respondent managed properties on behalf of owners who rented their properties to third parties.
2. At all times relevant the Claimant owned a residence located at 1439 Primrose Place in Belcamp, Maryland (Primrose Place).
3. On July 16, 2010, the Claimant and the Respondent entered into an Exclusive Residential Right to Lease Brokerage Agreement (Lease Brokerage Agreement) with regard to Primrose Place. The Lease Brokerage Agreement remained in full force and effect until April 1, 2018.
4. Also on July 16, 2010, the Claimant and Respondent entered into a Property Management Agreement with regard to Primrose Place. The Property Management Agreement remained in full force and effect until April 1, 2018.

5. At all times relevant, the Respondent managed Primrose Place per the terms of the Lease Brokerage Agreement and the Property Management Agreement.

6. The Property Management Agreement obligates the Claimant to deposit a \$200.00 repair escrow with the Respondent, to cover costs and expenses over and above anticipated rents to be collected. The Claimant deposited the \$200.00 repair escrow with the Respondent.

7. On April 1, 2016, Alexander⁵ signed a lease to rent Primrose Place. The lease obligated Alexander to pay \$1,495.00 per month in rent. The lease commenced on April 15, 2016, and ended on April 31, 2017. Per the terms of the lease, Alexander paid a security deposit in the amount of \$1,495.00. Per the terms of the Property Management Agreement, the Respondent held the security deposit in an escrow account.

8. On July 17, 2017, Alexander signed a Renewal of Residential Dwelling Lease (Renewal). The Renewal extended the original lease to the following terms: May 1, 2017, until April 30, 2018. The terms of the Renewal obligated Alexander to pay \$1,495.00 per month in rent.

9. Through the terms of the Renewal and Management Agreement, Alexander paid the rent of Primrose Place directly to the Respondent. The Respondent, after retaining a management fee of eight percent per month of the base monthly rent,⁶ then paid the Claimant the balance of the rental proceeds.

⁵ Alexander signed the lease with another tenant named Royal Douglas (Douglas). However, as shall be discussed further, only payments on the lease made by Alexander are at issue in this matter. Therefore, for the sake of simplicity I will simply refer to Alexander when referring to the tenants of Primrose Place.

⁶ Eight percent of the base monthly rental of \$1,495.00 is \$119.60.

10. Alexander made rent payments to the Respondent for the following months in the following amounts:

- December 2018 \$1,495.00
- January 2018 \$1,500.00⁷
- February 2018 \$1,500.00
- March 2018 \$1,500.00

11. The Respondent did not provide management services for the months of January, February and March 2018.

12. On February 27, 2018, the Respondent sent the Claimant⁸ a letter advising she was closing her business as of April 1, 2018. The Respondent died on June 24, 2018.

13. The Respondent did not pay the Claimant the rent due per the Property Management Agreement for December 2017, January 2017, February 2018 and March 2018. The Respondent owed the Claimant \$5,875.40 for those months.⁹

14. The \$1,495.00 security deposit incurred interest at the rate of 0.125 percent per month from April of 2016 through December of 2017 and 0.1525 percent per month from January 2018 through February 2019. From April 2016 through February 2019, the security deposit incurred \$71.16 in interest. The Respondent failed to return the security deposit to the Claimant with interest.

15. The Respondent did not return the Claimant's \$200.00 cost and expense deposit.

⁷ The lease and renewal obligated Alexander to pay \$1,495.00 per month. It is unclear why she paid \$1,500.00 for January, February and March 2018.

⁸ The Respondent sent the letter to "Our Dear and Valued Customers." (CL Ex. 5.)

⁹ For December 2017, the Respondent deducted the \$119.60 management fee from the \$1,495.00 monthly rent equaling \$1,375.40 owed to the Claimant. The Respondent did not deduct the management fee for January, February and March of 2018. Thus, \$1,375.00 + \$1,500.00 + \$1,500.00 + \$1,500.00 = \$5,875.00

DISCUSSION

Legal Framework

Section 17-404(a) of the Business Occupations and Professions Article provides the criteria for a person to recover compensation from the Guaranty Fund:

- (a) (1) Subject to the provisions of this subtitle, a person may recover compensation from the Guaranty Fund for an actual loss.
- (2) 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;
 - 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.

The amount recovered for any claim against the Guaranty Fund “shall be restricted to the actual monetary loss incurred by the claimant, but may not include monetary losses other than the monetary loss from the originating transaction.” COMAR 09.11.01.14. The Claimant bears the burden of proving his entitlement to recover compensation from the Guarantee Fund by a preponderance of the evidence. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2018). To prove something by a “preponderance of the evidence” means “to prove that something is more likely so than not so” when all of the evidence is considered. *Coleman v. Anne Arundel Co. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). Under this standard, if the supporting and opposing

evidence is evenly balanced on an issue, the finding on that issue must be against the party who bears the burden of proof. *Id.* For the reasons articulated below, I find the Claimant has satisfied her burden.

The Merits of the Case

Arguments of the Parties

Neither the Respondent nor the Fund presented a case. In support of her claim, the Claimant testified that she and the Respondent entered into a Property Management Agreement whereby the Respondent would manage Primrose Place as a rental property. Per the terms of the Property Management Agreement, the Claimant deposited \$200.00 into the Respondent's escrow account to cover costs and expenses over and above rents collected. At the same time, the Claimant entered into a Management Lease Agreement with the Respondent which authorized the Respondent to lease Primrose place as a rental. Per the terms of those agreements, the Respondent rented Primrose Place to Anderson in April of 2016. Per the terms of her lease, Anderson gave the Respondent \$1,475.00 as a security deposit.

In February of 2018, the Respondent advised the Claimant by letter that she was closing her property management business as of April 1, 2018. The Respondent received rents from Anderson for December 2017, January 2018, February 2018 and March 2018. However, the Respondent never paid the Claimant her share of those rents per the terms of the Property Management Agreement. The Respondent never returned the two hundred dollar deposit into her escrow account to cover costs, and never returned Anderson's deposit – thus making the Claimant, as the property owner, personally liable to Anderson for the return of the deposit.

Analysis

There is no dispute the Respondent is a licensed real estate broker, and that Primrose Place is located in the State of Maryland. There is further no dispute that the agreements into which the Claimant and the Respondent entered concern Primrose Place. The issues I must glean from the evidence concern whether the Respondent committed “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.” Md. Code Ann., Bus. Occ. & Prof. 17-404(a) I find the Claimant suffered the following actual losses due to the Respondent’s acts or omissions all of which constitute misrepresentation:

The \$200.00 repair escrow deposit

Article 6.2 of the Property Management Agreement entitled “Repair/Expense Escrow” reads as follows: “[The Claimant] shall initially deposit the sum of Two Hundred Dollars (\$200.00) to cover costs of expenses over and above anticipated rents to be collected, and further agrees to make additionally (sic) deposits, if deemed necessary, during the term of this agreement.” (Emphasis added) While the Claimant did not present any documentation she deposited the \$200.00 in the Respondent’s escrow account, I find based on her testimony and the documents she provided that she made the deposit. First, I found the Claimant to be an overall credible witness. She testified clearly and concisely. She supported much of her testimony with documentation. In support of her position regarding the \$200.00 escrow deposit, she presented the last statement she received from the Respondent for the period of January 1, 2018 through March 24, 2018. (CL Ex. 6.) The statement shows a balance of \$200.00 owed to the Claimant as of March 24, 2018, after the Respondent allegedly paid the Claimant \$2,875.40 in rents owed. Thus, the Claimant clearly deposited \$200.00.

As noted above, the Property Management Agreement designates the \$200.00 as a deposit (as opposed to a fee) to be maintained during the term of the agreement. Thus, I find the terms of the Property Management Agreement obligated the Respondent to return the \$200.00 to the Claimant upon termination of the Property Management Agreement. Paragraph 8.2 of the Property Management Agreement entitled "Termination for Cause by Agent" reads in full as follows:

This Agreement will terminate immediately without further action from [the Respondent] in the event [the Owner] breaches any of its obligations to [the Respondent] under the terms of this Agreement (herein defined to be "Default"), and fails to cure such Default within thirty (30) days after receipt of written notice from [the Respondent] specifying the nature of such Default.

Notice of Termination by [the Respondent] shall be sent to [the Claimant], mailed postage prepaid, by both "regular first class mail" and separately by "certified, return receipt requested" mail.

In her letter dated February 27, 2018, the Respondent advised the Claimant she would be closing her office as of April 1, 2018. (CL Ex. 5.) While she does not the assert the Claimant is in default of the Property Management Agreement, the Respondent provided notice in her February 27, 2018 letter that she was closing her business as of April 1, 2018. (CL Ex. 5.) I therefore find the Property Management Agreement terminated as of April 1, 2018, by virtue of the closure of the Respondent's office. Paragraph 8.3 of the Property Management Agreement entitled "Final Accounting" reads: "Upon termination of this agreement **for any reason**, [the Respondent] shall deliver to [the Claimant] all records, contracts, leases, unpaid bills, outstanding sums of monies (**i.e., repair escrow, security deposit, etc.**), and any other papers or documents which are in [the Respondent's] possession and which relate to the Property." [Emphasis added]

Accordingly, I find the Respondent's termination of the Property Management Agreement obligated her to return the \$200.00 repair escrow deposit to the Claimant. In support of her position, the Claimant entered all her bank statements from February 1, 2018 through January 31, 2019 into evidence. (CL Ex. 13.) With the exception of one deposit February 10, 2018, which is an ATM transfer (and predating the Respondent's March 24, 2018 statement), the Claimant's statements contain no \$200.00 deposit. Thus, I find the Respondent did not refund the Claimant her \$200.00 repair escrow deposit.

I find the Respondent committed an act or omission by failing to return the \$200.00 repair escrow deposit to the Claimant. I further find the Respondent committed that act or omission through misrepresentation. Misrepresentation is defined as "The act or an instance of making a false or misleading assertion about something [usually] with the intent to deceive. The word denotes not just written or spoken words but also any other conduct that amounts to a false assertion." Black's Law Dictionary (10th ed. 2014) I find the Respondent's failure to return the \$200.00 repair escrow deposit despite agreeing to do so pursuant to the Property Management Agreement constitutes a misrepresentation, and the Claimant incurred an actual loss. Accordingly, I find the \$200.00 repair escrow to be compensable by the Fund.

December 2017 and January, February and March 2018 rents

Paragraph 3.4 of the Property Management Agreement entitled "Collection of Rents" reads as follows:

[The Respondent] will endeavor to collect all rents and other charges which may become due to [the Claimant] at any time from any tenant. All monies so collected shall be deposited in the Operating Account of [the Respondent]. [The Respondent] shall remit to [the Claimant] or deposit in [the Claimant's] designated account all sums in excess of those required to operate the Property (i.e., monthly management fees, repair escrow funds, costs of necessary repairs, etc.) on or before the fifteenth (15th) day of each month, provided rents received from the Tenant are available that day.

The Claimant contended the Respondent did not remit rents received for December 2017 and January, February and March 2018. In support of that contention, the Claimant provided documentation which reflected Anderson paid rents to the Respondent for those months. (CL Exs. 6, 7, 8 and 9) Claimant Exhibit 6 is a statement from the Respondent showing receipt of Anderson's December 2017 rent payment in the amount of \$1,495.00. Claimant Exhibits 7 and 8 are checks dated January 12, 2018, and February 16, 2018, respectively showing Anderson paid rent in the amount of \$1,500.00 for January and February 2018.¹⁰ Claimant Exhibit 9 shows three money orders, each \$500.00 and dated March 16, 2018, which Anderson told the Claimant she sent to the Respondent for March 2018 rent.

I find the Claimant's documentation credibly reflects the following rent payments by Anderson to the Respondent: \$1,475.00 for December 2017; \$1,500.00 for January 2018; \$1,500.00 for February 2018 and \$1,500.00 for March 2018. Thus, I find Paragraph 3.4 of the Property Management Agreement obligated the Respondent to remit those rent payments to the Claimant. The Claimant presented credible evidence in the form of her bank statements from February 1, 2018 through January 31, 2019 (CL 13) which reflect no deposits of any of these rent amounts into the Claimant's account.¹¹

I find the Respondent committed an act or omission by failing to remit the December 2017, January 2018, February 2018 and March 2018 rents to the Claimant per the terms of the Property Management Agreement. I further find the Respondent committed that act or omission through misrepresentation as defined above. I find the Respondent's act of failing to return the rents collected despite agreeing to do so pursuant to paragraphs 3.4 and 8.3 of the Property Management Agreement constitutes a misrepresentation as a consequence the Claimant suffered

¹⁰ Claimant's Exhibits 11 and 12 are Anderson's Bank Statements for January and February of 2018 which show the Respondent deposited the checks set forth in Claimant's Exhibits 7 and 8.

¹¹ The last line item of the Respondent's January 1, 2018 to March 24, 2018 statement reflects a payment of \$2,874.40 to the Claimant. However, the Claimant testified she did not receive that payment and her bank records reflect no such deposit.

an actual loss. The Claimant requested the fund reimburse her for the unpaid rents in the following manner: \$1,375.00 for December (\$1,495.00 minus a \$119.60 management fee), \$1,495.00 for January 2018; \$1,495.00 for February 2018 and \$1,495.00 for March 2018. While the Claimant is not deducting a management fee for January, February and March 2018, I find that to be appropriate. The evidence reflects the Claimant received no benefit of the Respondent's management services for those months. Thus, I do not find the Respondent was entitled to retain the management fee for those months. Accordingly, I find the Claimant is entitled to a \$5,860.00 reimbursement from the fund for the unreimbursed rent.

\$1,495.00 Security Deposit plus interest

Paragraph 3 of the Anderson lease obligates her to provide a \$1,495.00 security deposit upon the signing of the lease. (CL Ex. 3) The last page of the lease is a security deposit receipt showing Anderson paid the \$1,495.00 security deposit. Paragraph 3.5 of the Property Management Agreement entitled "Security Deposits" reads: "Monies collected from the Tenant for the required Security Deposit will be held by [the Respondent] in a Security Deposit escrow account so as to comply with the Landlord/Tenant Security Deposit Law of the State of Maryland." As noted above, paragraph 8.3 of the Property Management Agreement obligates the Respondent to return the security deposit upon its termination. The Respondent terminated the Property Management Agreement as of April 1, 2018. However, she did not return the security deposit to either Anderson or the Claimant. Again, the Claimant provided February 1, 2018 through January 31, 2019 (CL Ex. 13), none of those statements reflect a return of the security deposit.

I find the Respondent committed an act or omission by failing to return the security deposit to the Claimant per the terms of the Property Management Agreement.¹² I further find the Respondent committed that act or omission through misrepresentation as defined above. I find the Respondent's act of failing to return the security deposit, despite agreeing to do so pursuant to paragraphs 3.5 and 8.3 of the Property Management Agreement, constitutes a misrepresentation. Because the Respondent failed to return the security deposit to the Claimant, the Claimant must pay Anderson out of her own funds. Therefore, I find the Claimant suffered an actual loss. Thus, I find the Claimant is entitled to reimbursement from the fund of \$1,495.00 representing the principal amount of the security deposit.

The Claimant additionally requested reimbursement for interest due on the security deposit. In support of her claim, the Claimant offered a chart which presents a calculation of \$71.16 in interest accrued on the security deposit from April 2016 (the month Anderson signed the lease) until February of 2019. (CL Ex. 15) Maryland Real Property Article Section 8-203(e) entitled "Return of Security Deposit with Interest" reads in pertinent part as follows:

(e)(1) Within 45 days after the end of the tenancy, the landlord shall return the security deposit to the tenant together with simple interest which has accrued at the daily U.S. Treasury yield curve rate for 1 year, as of the first business day of each year, or 1.5% a year, whichever is greater, less any damages rightfully withheld.

(2)(i) Except as provided in subparagraph (ii) of this paragraph, interest shall accrue at monthly intervals from the day the tenant gives the landlord the security deposit. Interest is not compounded.

¹² While the Respondent technically would return the security deposit back to Anderson, there is no evidence she returned the security deposit to Anderson. Anderson's bank statements do not reflect the Respondent returned the security deposit to her. The Respondent's estate did not contest the fact the Respondent did not return the security deposit. The fact the Respondent failed to return the security deposit renders the Claimant, as owner of the property, personally liable for its return to Anderson.

(ii) No interest is due or payable:

1. Unless the landlord has held the security deposit for at least 6 months; or
 2. For any period less than a full month.
- (3) Interest shall be payable only on security deposits of \$50 or more.

The Respondent commenced holding the security deposit in April 2016, thus, I find she held it for over six months. Additionally, the security deposit exceeds fifty dollars. Thus, I find the Claimant is entitled to interest on the security deposit. The Claimant did not testify in detail about how she arrived at the \$71.16 in interest. However, her chart reveals she initially utilized a rate of 1.5 percent per annum from April of 2016 through December of 2017. She then utilized a rate of 1.83 percent per annum from January 2018 through February 2019. I find the rates she used comport with the above cited provisions of the Real Property Article. At the hearing, neither the Fund nor the Respondent disputed the requested interest amount. Thus, I shall recommend the Fund reimburse the Claimant for \$71.16 in interest accrued on the security deposit from April 2016 through February 2019.

In light of the above, I find the Claimant is entitled to the following reimbursement from the Fund: \$200.00 (repair escrow) + \$5,860.00 rents owed + \$1,495.00 (security deposit) + \$71.16 (interest on the security deposit) = \$7,626.16.

PROPOSED CONCLUSIONS OF LAW

Based on the Findings of Facts and Discussion, I conclude that the Claimant has established by a preponderance of the evidence that she sustained an actual loss compensable by the Guaranty Fund resulting from an act or omission in the provision of real estate brokerage services that constitutes false pretenses, fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2) (2018).

I further conclude as a matter of law that the amount of the award the Claimant is entitled to receive from the Fund is \$7,626.16. Md. Code Ann., Bus. Occ. § 17-404(b) (2018); COMAR 09.11.01.14.

PROPOSED ORDER

I **PROPOSE** that the Claim filed by the Claimant against the Maryland Real Estate Guaranty Fund be **GRANTED** in the amount of \$7,626.16;

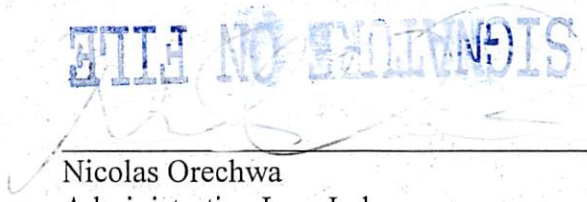
I further **PROPOSE** that the Maryland Real Estate Commission Guaranty Fund shall pay to the Claimant her actual monetary loss in the amount of \$7,626.16 for the Respondent's wrongful acts and omissions;

I further **PROPOSE** that the Respondent shall be ineligible for any Maryland Real Estate Commission license until the Respondent reimburses the Fund for all monies disbursed under this Order plus annual interest of at least ten percent, as set by the Commissioner pursuant to Section 17-411(a) of the Business Occupations and Professions Article of the Maryland Annotated Code; and

I further **PROPOSE** that the Commission's records and publications shall reflect this proposed decision.

April 5, 2019
Date Decision Issued

FILE NO EXHIBITS SIGNATURE ON FILE



Nicolas Orechwa
Administrative Law Judge

NO/sw
#178382