

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

TONYA PETERSON, *

RESPONDENT *

OAH NO. DLR-REC-24-18-08847

AND *

MREC NO.: 14-RE-341

THE CLAIM OF PATRICIA L. MEZU, *

CLAIMANT *

AGAINST THE REAL ESTATE *

GUARANTY FUND, FOR THE *

ALLEGED MISCONDUCT OF *

TONYA PETERSON *

*** * * * ***

OPINION AND FINAL ORDER

This matter came before a hearing panel of the Maryland Real Estate Commission (“Commission”) on June 19, 2019 (“June 19th Hearing”) as a result of written exceptions filed by Claimant, Patricia L. Mezu, to the Commission’s Proposed Order of December 10, 2018. On May 22, 2018, Administrative Law Judge Robert F. Barry (“ALJ”) held a hearing (“ALJ Hearing”) on Claimant’s Complaint and Guaranty Fund Claim. On August 20, 2018, the ALJ filed a Proposed Decision in which he recommended that Claimant’s claim against the Maryland Real Estate Guaranty Fund (“Fund”) be denied. The ALJ further recommended that Respondent’s license be revoked and a \$7,000 civil penalty be imposed against Respondent. On December 10, 2018, the Commission issued the Proposed Order affirming the ALJ’s Proposed Findings of Fact, with minor amendments, approving the Proposed Conclusions of Law, and adopting the Proposed Order.

On December 21, 2018, Claimant filed written exceptions to the Commissions' Proposed Order. The exceptions was heard at the June 19th Hearing by a panel consisting of Commissioners Anne Cooke, Kambon Williams, and Jeff Wright. Hope Sachs, Assistant Attorney General, appeared as the presenter of evidence on behalf of the Commission and the Fund. Claimant appeared at the June 19th Hearing represented by Richard J. Hackerman, Esq. Respondent, Tonya Peterson, did not appear at the June 19th Hearing. The proceedings were electronically recorded.

SUMMARY OF THE EVIDENCE

Claimant submitted a transcript of the ALJ Hearing which was entered into the record pursuant to Code of Maryland Regulations ("COMAR") 09.01.03.09G(5). Neither Claimant nor Respondent presented additional evidence. On behalf of the Fund, five exhibits, as well as the Office of Administrative Hearings' file containing the exhibits which were introduced at the ALJ Hearing, were entered into evidence:

REC Ex. 1: December 11, 2018 letter from Commission enclosing the ALJ'S August 20, 2018 Proposed Decision (the "Proposed Decision") and the Commission's December 10, 2018 Proposed Order (the "Commission's Proposed Order").

REC Ex. 2: Claimant's December 21, 2018 Exceptions to the Proposed Decision and Request for Hearing to Present Argument (the "Exceptions").

REC Ex. 3: January 2, 2019 letter from Commission setting the Exceptions for a hearing on February 20, 2019.

REC Ex. 4: February 8, 2019 letter from Commission rescheduling the Exceptions for a hearing on April 17, 2019.

REC Ex. 5: February 13, 2019 letter from Commission rescheduling the Exceptions for a hearing on June 19, 2019.

FINDINGS OF FACT

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

DISCUSSION

At all times relevant to this matter, Respondent Tonya Peterson was a licensed real estate salesperson. FF. 1.¹ Sometime in 2008 Respondent and Claimant met and Respondent began to provide property management services for Claimant for her property located at 1219 Northern Lights Dr., Upper Marlboro, Maryland (the "Property"). FF. 8, 13. In August of 2008 Respondent's mother and Claimant entered into a two year lease agreement for the Property (the "Lease"). FF. 9. At some point in 2009 Claimant fell behind on her mortgage payments. FF. 16. In September of 2009 Respondent and Claimant entered into an agreement whereby Respondent would hold the rent money due to Claimant under the Lease and use the funds in the event the Property was sold in a short sale (the "Escrow Agreement"). FF. 17. The last rent payment received by Claimant was in approximately October 2009. FF. 15. Respondent's mother moved out sometime in late 2009 or early 2010. FF. 21. The Lease expired July 31, 2010. FF. 9.

There are additional facts detailed in the Proposed Decision, including lawsuits and lien actions for unpaid homeowners association ("HOA") dues and sewer and water facilities charges, Claimant's bankruptcy, and her discovery of a person and documents in the Property indicating both Respondent and others were living in the Property without permission. FF. 34-35, 38-40. However, the Commission has determined that the monies at issue in this matter are the rent payments² not paid to Respondent after October 2009 and thus the facts applicable to this discussion of Claimant's Exceptions pertain solely to the Lease.

¹ "FF" refers to the ALJ's Findings of Fact in the Proposed Decision.

² The Commission agrees with the ALJ that other monies claimed by Claimant, i.e. HOA dues, water charges, etc., were not required to be paid by the tenant under the Lease and are thus not recoverable from the fund and not at issue.

As a result of its review of the Proposed Decision, the Commission issued the Proposed Order, ordering that Respondent's license be revoked and a civil penalty of \$7,000 be imposed against her. The Commission also ordered that Claimant's claim against the Fund be denied.

Claimant took exception to the Commission's Proposed Order, specifically the ALJ's Findings of Fact and the Fund award denial. She argued the ALJ misinterpreted the statute of limitations when denying her claim against the Fund and that she was thus entitled to \$50,000, the maximum available under Annotated Code of Maryland, Business Occupations and Professions Article ("BOP") § 17-404(b). No exception was made to the order that Respondent's license be revoked or the \$7,000 civil penalty.

BOP § 17-404(d) provides:

[a] claim under this subtitle *shall* be submitted to the Commission within 3 years after the claimant discovers or, by the exercise of ordinary diligence, should have discovered the loss or damage. (emphasis added.)

Although the Commission disagrees with the ALJ on the specific date, the Commission does agree that the three (3) year limitations period had expired before Claimant filed. The ALJ determined the three (3) year limitations period began to run in October of 2010. Proposed Decision p. 23.

Based on its review of the exhibits, the OAH file, and the June 19th Hearing, the Commission disagrees and finds instead that the three (3) year limitations period began to run on July 31, 2010, the date the lease at issue expired. FF. 9. Because the only monies at issue are the missing rent payments, the Commission does not consider any relationship between the Claimant and Respondent past the lease's expiration to be germane to its determination. The lease expired July 31, 2010. FF. 9. As of that date, the Claimant had not received approximately nine (9) months of rent payments, the last being due July 1, 2010, she knew the lease was expired, and

cannot claim reliance on the Escrow Agreement passed that date of expiration, since it was tied to the Lease. FF. 9, 15, 17. All property management duties required under the Lease by Respondent to Claimant expired July 31, 2010 and there was no listing or other agreement between the Respondent and Claimant after July of 2010. FF. 9, 19. All relevant real estate brokerage services ceased as of July 31, 2010. Claimant would, or should, have "discovered the loss or damage" by that date. BOP § 17-404(d). She was thus required by BOP § 17-404(d) to file her claim by July 31, 2013. Her claim was filed January 28, 2014, six (6) months after the limitations period expired, and is thus barred.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, the Commission concludes as a matter of law that Respondent violated BOP §§17-322(b)(32) and (33). The Commission further concludes as a matter of law that as a result of the violations, Respondent's real estate salesperson license is revoked and a civil penalty of \$7,000 is imposed against her.

In addition, the Commission concludes as a matter of law that Claimant is not entitled to an award from the Fund because she filed her claim outside the three (3) year limitations period required by BOP § 17-404(d) and her claim is thus denied.

ORDER

The exceptions of Claimant, Patricia L. Mezu, having been considered, it is this 17th day of July, 2019 by the Maryland Real Estate Commission, hereby **ORDERED**:

1. That all real estate licenses held by Respondent, Tonya Peterson, be and hereby are revoked thirty (30) days from the date this Final Order is mailed and all rights to appeal are exhausted;

2. That Respondent, Tonya Peterson, shall be assessed a civil penalty in the amount of seven thousand dollars (\$7,000) which shall be paid to the Maryland Real Estate Commission within thirty (30) days of the date this Final Order is mailed and all rights to appeal are exhausted;

3. That Claimant Patricia L. Mezu's claim against the Maryland Real Estate Guaranty Fund is DENIED; and

4. That the records and publications of the Maryland Real Estate Commission reflect this decision.

MARYLAND REAL ESTATE COMMISSION

By: _____

SIGNATURE ON FILE

Note: A judicial review of this Final Order may be sought in the Circuit Court for the Maryland County in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.

BEFORE THE MARYLAND REAL ESTATE COMMISSION

STATE REAL ESTATE COMMISSION

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v.

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RESPONDENT

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PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Proposed Decision of the Administrative Law Judge dated August 20, 2018, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 10 day of December, 2018

ORDERED,

A. That the Findings of Fact in the Proposed Decision be, and hereby are, **AMENDED** as follows:

30. The Claimant's bankruptcy was discharged in or about February 2011, with the Claimant being discharged from any personal financial liability for any deficiency on the first or second lien;

B. That the Conclusions of Law in the Proposed Decision be, and hereby are, **APPROVED**;
and,

C. That the Proposed Order in the Proposed Decision be, and hereby is **ADOPTED**

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

10 December 2018
Date

MARYLAND STATE REAL ESTATE COMMISSION
By: 
SIGNATURE ON FILE

STATE REAL ESTATE COMMISSION

v.

TONYA PETERSON,

RESPONDENT

AND

THE CLAIM OF PATRICIA MEZU,

CLAIMANT,

AGAINST THE REAL ESTATE

GUARANTY FUND,

FOR THE ALLEGED MISCONDUCT

OF TONYA PETERSON

* BEFORE ROBERT F. BARRY,
* ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DLR-REC-24-18-08847
* MREC No.: 14-RE-341

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On January 28, 2014, Patricia Mezu (Claimant) filed a complaint with the State Real Estate Commission (Commission) against Tonya Peterson (Respondent), a licensed real estate salesperson, concerning the Respondent’s acts related to residential real estate located in Prince George’s County, Maryland. On that same date, the Claimant filed a claim against the Real Estate Guaranty Fund (Guaranty Fund) to recover compensation for an alleged actual loss that occurred due to the Respondent’s acts related to that same residential real estate.

On March 12, 2018, the Commission, by Michael L. Kasnic, Executive Director, issued an Order for Hearing concerning the Commission's regulatory charges and the Claimant's claim against the Guaranty Fund. On March 16, 2018, the Commission referred this case to the Office of Administrative Hearings (OAH) for a combined hearing on the regulatory charges and the claim against the Guaranty Fund.

On May 22, 2018, I conducted a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-324; 17-407(c); 17-408, and 17-409 (2010 & Supp. 2017). Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Commission in relation to the regulatory charges. The Respondent represented herself. Attorney Richard Hackerman represented the Claimant. Andrew Brouwer, Assistant Attorney General, Department, represented the Guaranty Fund.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); the Department's and the Commission's procedural regulations, Code of Maryland Regulations (COMAR) 09.01.03 and 09.11.03; and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

ISSUES

Regulatory Charges

1. Did the Respondent violate the following provisions of section 17-322 of the Business Occupations and Professions Article?
 - a. 17-322(b)(3) (directly or through another person willfully make a misrepresentation or knowingly makes a false promise);
 - b. 17-322(b)(4) (intentionally or negligently fail to disclose to any person with whom the licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee deals);

- c. 17-322(b)(25) (engage in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings);
- d. 17-322(b)(32) (violate any other provision of title 17 of the Business Occupations and Professions Article, specifically, sections 17-532(c)(1)(iii), (iv), and (vi)); and
- e. 17-322(b)(33) (violate any regulation adopted under title 17 of the Business Occupations and Professions Article, or any provision of the code of ethics, specifically, COMAR 09.11.01.07; COMAR 09.11.01.12; COMAR 09.11.02.01C; COMAR 09.11.02.01H; and COMAR 09.11.02.02D).

2. What sanction, if any, is appropriate under section 17-322(b) or (c) of the Business Occupations and Professions Article?

Claim Against the Guaranty Fund

3. Did the Claimant sustain an actual loss resulting from an act that occurred in the provision of real estate brokerage services by the Respondent, a licensed real estate salesperson, which involved a transaction relating to real estate located in the State, and by which the Respondent obtained the Claimant's money or property by theft, embezzlement, false pretenses, or forgery; or by fraud or misrepresentation?

4. If so, what compensation is the Claimant due from the Guaranty Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted four exhibits into evidence for the Commission:

- REC #1 - Notice of Hearing
- REC #2 - Statement of Charges and Order for Hearing, March 12, 2018
- REC #3 - Information concerning the Respondent's real estate salesperson's license

REC #4 - Report of Investigation, with the following documents:

- Summary of Investigation and Exhibit List (1-10)
- Complaint and Guaranty Fund Claim, January 28, 2014 (11-14)
- New Home Orientation, Richmond American Homes; and Financial Transactions – 7/23/13, Heritage Glen Homeowners Association (15-23)
- Letter from Cindy B. Sinanan, Broker, Tristar Realty, Inc. (Tristar), February 6, 2014 (24)
- Information concerning the Respondent's real estate salesperson's license (25-40)
- State Department of Assessments and Taxation information (41)
- E-mails among the Respondent, the Commission, and Ms. Sinanan, November and December 2014 (42-51)
- Letter from the Respondent to the Commission, March 13, 2014 (52-54)
- Single Family Dwelling Lease between the Claimant and the Respondent's mother, August 1, 2008 (55-64)
- Agreement between the Claimant and the Respondent, September 29, 2009 (65)
- Letter from Branch Banking and Trust Company (BB&T), to the Claimant, September 29, 2010 (66)
- E-mail from the Respondent to the Commission, December 16, 2014, with copies of e-mails among the Respondent, BB&T, and Sean Logan, the Claimant's bankruptcy trustee, October 26, 2010 (67-68)
- Letter from Louis M. Pope, Broker of Record, Century 21 Trademark Realty (Century 21), to the Commission, December 8, 2014 (69-70), with
 - Information concerning the Respondent's real estate salesperson's license (71)
 - E-mail from the Respondent to Mr. Pope, December 9, 2014, with copies of e-mails among the Respondent, BB&T, and

Sean Logan, the Claimant's bankruptcy trustee, October 26, 2010 (72-74)

- Letter from the Respondent to Mr. Pope, December 8, 2014 (75-77)

I admitted five exhibits into evidence on behalf of the Respondent:

- RESP. #1 - Metropolitan Regional information Systems Inc. (MRIS) listing for the Property, list date February 17, 2010
- RESP #1A¹ - MRIS listing for the Property, list date August 7, 2007, withdrawn September 16, 2007, with Osita Unije of Fairfax Realty, Inc., as listing agent or broker
- RESP. #2 - Letter from Branch Banking and Trust Company (BB&T) to the Claimant, September 29, 2010
- RESP. #3 - E-mails from the Respondent to Alan Sherer, Office Manager, Century 21, January 23, 2011 and February 6, 2011
- RESP. #4 - E-mail from the Respondent to Sean C. Logan, Bankruptcy Trustee, and Jennifer Grant, Default Relationship Manager, BB&T, September 29, 2010;
E-mails between the Respondent and Sean C. Logan, Bankruptcy Trustee, October 11, 25, and 26, 2010

I admitted eighteen exhibits into evidence on behalf of the Claimant:

- CLAIM #1 - Agreement between the Claimant and the Respondent, September 29, 2009
- CLAIM #2 - Maryland Case Search – Case Information: District Court of Maryland for Prince George's County, Case No.: 050200028182012, Heritage Glen Community Association v. Claimant
- CLAIM #3 - Photocopies of driver's license and earnings statements of Kosanayi Chikerema
- CLAIM #4 - Photocopy of the Respondent's Maryland Certificate of Title for a 2001 Mercedes Benz
- CLAIM #5 - Respondent's Last Will and Testament, November 30, 2011

¹ During the hearing, I sustained objections to the admission of this document on the grounds of relevance. Having subsequently reviewed the record, I now find the document to be relevant to the Claimant's initial purchase of the Property.

- CLAIM #6 - Envelope addressed to the Respondent at the Property, postmarked August 20, 2012
- CLAIM #7 - Last Will and Testament of the Respondent's brother
- CLAIM #8 - Envelope addressed to the Respondent at the Property, postmarked August 16, 2012
- CLAIM #9 - Envelope addressed to Darnell A. Jones at the Property, October 17, 2012
- CLAIM #10 - Envelope addressed to the Claimant from Scott Commodore
- CLAIM #11 - Envelope addressed to the Respondent at the Property from The Johns Hopkins Hospital
- CLAIM #12 - Envelope addressed to the Respondent's brother at the Property from Verizon
- CLAIM #13 - Notice of Intention to Create a Lien, Pickett & Oliverio, LLP, to the Claimant, April 11, 2013, with Resident transaction Report; Statement of Account – Heritage Glen Homeowners Association, July 18, 2013; Breakdown of Legal Fees; Financial Transactions; and Assessment Worksheet
- CLAIM #14 - Claimant's Check Register for eleven checks: numbers 1169, 1204, 1205, 1214, 1229, 1254, 1264, 1272, 1280, 1290, 1292
Claimant's Transaction Statement for check number 1303
- CLAIM #15 - Claimant's Check Register for two checks: numbers 1242 and 1268
- CLAIM #16 - Claimant's Check Register for seven checks: numbers 1187, 1196, 1209, 1220, 1237, 1257, 1278
- CLAIM #17 - Claimant's Check Register for eight checks: numbers 1182, 1192, 1195, 1210, 1222, 1245, 1267, 1279
- CLAIM #18 - Maryland Case Search – Case Information: Circuit Court for Prince George's County, Case No.: CAEF13-27405, WBGLMC v. Claimant

The Fund did not submit any exhibits.

Testimony

The Claimant and Jennifer Grimes, Investigator, testified on behalf of the Commission.²

The Respondent testified on her own behalf as to the regulatory charges and the claim against the Guaranty Fund.

The Claimant testified on behalf of her claim against the Guaranty Fund.

The Guaranty Fund did not present any testimony.

PROPOSED FINDINGS OF FACT

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

1. The Commission has licensed the Respondent as a real estate salesperson under registration number 05-579345 since April 11, 2003. The Respondent's current registration expires on April 11, 2019.
2. From March 13, 2008 through January 10, 2012, the Respondent was affiliated with Century 21, with Louis M. Pope as the broker of record and Alan Sherer as the office manager.
3. From January 10, 2012 through April 16, 2015, the Respondent was affiliated with Tristar Realty, with Cindy B. Sinanan as the broker of record.
4. Ms. Sinanan terminated the Respondent's affiliation with Tristar Realty based on the Respondent's response to the Commission during its investigation of the Claimant's complaint.
5. On or about August 10, 2007, the Claimant purchased new residential real estate located at 1219 Northern Lights Drive, Upper Marlboro, Maryland (Property) as an investment property.

² I mistakenly permitted the Claimant's attorney to cross-examine the Claimant during the Commission's presentation of the regulatory charges against the Respondent. *See* Md. Code Ann., Bus. Occ. & Prof. § 17-409(b) (2010). I find that the Respondent was not prejudiced by my error because these documents are relevant to the regulatory charges and consistent with information contained in the Commission's Report of Investigation.

6. The Claimant paid \$575,000.00 for the Property, which she financed with two loans, a first with BB&T and a second with Wells Fargo.

7. The Claimant initially attempted to sell the Property for \$660,000.00, but then rented the Property to a tenant.

8. In 2008, the Claimant met the Respondent, who initially helped the Claimant remove the then non-paying tenant from the Property.

9. On August 1, 2008, the Claimant, with the Respondent acting as her agent, entered into a lease agreement with the Respondent's mother, Brenda Savoy, whereby the Respondent's mother would lease the Property for two years at \$3,200.00 per month.

10. The Claimant knew that Ms. Savoy was the Respondent's mother.

11. According to the terms of the lease, the Property would be used for residential purposes and be occupied by no more than five persons, including children. The lease further provided: "The following persons and no others, except after-born children, are authorized by Landlord to reside within the demised premises: [Respondent's mother], Terita Savoy, Marie Savoy." (REC #4, 57).

12. According to the terms of the lease, the Respondent would be entitled to a brokerage fee of six percent of the sales price if the Property were sold to the Respondent's mother during her tenancy or within sixty days after the termination of her tenancy.

13. According to the terms of the lease, the Respondent would manage the Property during the tenancy.

14. At some point during her mother's tenancy, the Respondent moved into the Property.

15. The Respondent's mother paid rent directly to the Claimant for approximately fourteen months.

16. Sometime in 2009, the Claimant defaulted on her loan payments on the Property.

17. On September 29, 2009, the Claimant and the Respondent signed the following agreement:

Rent payments in the amount of \$3200.00 (thirty-two) hundred dollars, will be held in escrow during the short sale/loan modification negotiations.

If the loan becomes modified, rent payments will resume, according to the lease terms.

In the event of a short sale, the sum of 3.5% of the sales/purchase price will be refunded, at the time of settlement.

Both parties agree to the above terms.

(L.D. #4, 65).

18. The Respondent did not establish an escrow account for her mother's rent payments; nor did she use her broker's escrow account for her mother's rent payments.

19. The Claimant did not sign a listing agreement for the sale of the Property with the Respondent or Century 21.

20. The Respondent's mother made an offer to purchase the Property, but BB&T would not accept the offer as a short sale.

21. In late 2009 or early 2010, the Respondent's mother moved out of the Property; the Respondent, however, continued to live in the Property.

22. On February 17, 2010, Mr. Sherer, the officer manager at Century 21, listed the Property on the MRIS for a potential short sale at \$418,000.00.

23. On June 22, 2010, Prudencia Ashu and Paul Agirka offered to purchase the Property.

24. Sometime between June 22, 2010 and September 14, 2010, the Claimant and the Respondent met at an Olive Garden to review contracts of sale, including the one submitted by Ms. Ashu and Mr. Agirka.

25. The Respondent negotiated with the attorney for Wells Fargo for a release of the second lien on the Property for \$2,500.00. Wells Fargo, however, did not agree to waive the deficiency on its note.

26. On or about September 14, 2010, the Claimant filed for bankruptcy under chapter 7 of title 11 of the United States Code.

27. On September 29, 2010, BB&T approved a short sale of the Property for \$415,000.00.

28. The Respondent negotiated directly with Sean C. Logan, the Claimant's bankruptcy trustee, concerning the short sale. The Respondent sought to be retained by the trustee and approved by the bankruptcy court as a real estate salesperson so that she could earn a commission upon a short sale of the Property by the bankruptcy trustee.

29. The bankruptcy trustee did not agree to the short sale of the Property by September 30, 2010, the date by which the short sale had to go to settlement.

30. The Respondent's bankruptcy was discharged in or about February 2011, with the Claimant being discharged from any personal financial liability for any deficiency on the first or second lien.

31. Sometime in 2010 or 2011, the Respondent rented the basement of the Property to Scott Commodore for \$1,000.00 per month.

32. In 2010 through late 2012, the Respondent allowed others, including her family members, to live in the Property and she rented rooms in the Property to others.

33. The Respondent continued to pay for utilities for the Property.

34. On January 25, 2012, the Heritage Glen Community Association (Heritage Glen) filed a civil action against the Claimant for unpaid homeowner's association dues, beginning January 1, 2011. Heritage Glen served notice of the civil action on the Claimant on or about August 6, 2012.

35. Heritage Glen obtained an affidavit judgment against the Claimant on October 12, 2012 in the amount of \$1,445.00, plus attorney fees of \$300.00, and costs of \$28.00. The Claimant satisfied the judgment on October 23, 2012.

36. In late 2012, the Claimant spoke with the Respondent by phone, asking the Respondent what she knew about the unpaid homeowner's association dues. The Respondent told the Claimant that she would leave money for the Claimant at the Property.

37. In late 2012, the Respondent moved out of the Property.

38. In late 2012 or early 2013, the Claimant went to the Property, where she found personal property belonging to Kotsanayi Chikeremba (driver's license and earnings statements), the Respondent (certificate of title to a vehicle, last will and testament, and envelopes), the Respondent's brother, Terrence (last will and testament and envelope), and Darnell Jones (envelope).

39. The Claimant also found Mr. Commodore living in the basement. The Claimant allowed Mr. Commodore to continue to reside at the Property in return for rent payments.

40. On April 11, 2013, the Heritage Glen Front Foot Benefit Company, LLC, by an attorney, notified the Claimant of its intention to establish a lien against the Property for unpaid water and sewer charges.

41. In 2012 and 2013, the Claimant paid utilities for the Property.

42. On September 20, 2013, the substitute trustees for the secured party holding the first lien on the Property filed a foreclosure action in the Circuit Court for Prince George's County (Court).

43. On or about December 10, 2013, the Property was sold at a foreclosure auction. The Court ratified the sale on March 14, 2014.

DISCUSSION

Regulatory Charges

Section 17-322(b) of the Business Occupations and Professions Article provides, in pertinent part, that the Commission may reprimand any licensee, or suspend or revoke a license if, in pertinent part, the licensee:

(3) directly or through another person willfully makes a misrepresentation or knowingly makes a false promise;

(4) intentionally or negligently fails to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee or applicant deals;

(25) engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;

(32) violates any other provision of this title;

(33) violates any regulation adopted under this title or any provision of the code of ethics[.]

The Commission charged the Respondent with violating these five sub-sections of the statute, with three violations of other provisions of title 17 under sub-section (b)(32) and five violations of regulations under sub-section (b)(33), for a total of eleven violations. The Commission asked that I recommend the revocation of the Respondent's license and the imposition of a \$2,000.00 penalty for each of the eleven violations.

I will initially analyze the Commission's allegations concerning sub-section (b)(25), which is the sub-section that best addresses the Respondent's conduct. I will address separately the Commission's other allegations, including those under sub-sections (b)(32) and (b)(33).

The evidence presented concerning the regulatory charges overwhelmingly established that the Respondent violated sub-section (b)(25) by engaging in conduct that demonstrated bad faith or untrustworthiness, or that constituted dishonest, fraudulent, or improper dealings. The Respondent, having gained access to the Property in her role as the Claimant's leasing agent and salesperson, took advantage of the Claimant's lack of attention to the Property to live in the Property herself, to allow her family members to live in the Property, and to rent portions of the Property to others, all without the Claimant's knowledge. By living in the Property without the Claimant's knowledge or authorization, the Respondent committed the crime of theft. *See Hobby v. State*, 436 Md. 526, 548 (2014) (theft of a house may occur through occupancy or possession of the house, without payment for it or its use to the lawful owner and without authorization or consent of the lawful owner). The Respondent's egregious conduct warrants the revocation of her real estate salesperson license.

The Commission presented testimony from the Claimant and its investigator, Ms. Grimes. The Claimant testified that when she eventually went to the Property in late 2012 or early 2013, she found personal property belonging to the Respondent (certificate of title to a vehicle, last will and testament, and envelopes) in the master bedroom of the Property. The Respondent's last will and testament was dated November 30, 2011 and the envelopes, from Verizon, The Johns Hopkins Hospital and U-Haul envelopes were addressed to the Respondent at the Property. The envelope from U-Haul was postmarked August 16, 2012. The Claimant also found the Respondent's brother's undated last will and testament, as well as personal property belonging to others.

Both the Claimant and Ms. Grimes testified concerning Mr. Commodore's unauthorized tenancy in the basement of the Property. The Claimant testified that she met Mr. Commodore at the Property and he told her that he rented the basement from the Respondent, who lived on the main floor of the Property, for \$1,000.00 per month. Mr. Commodore indicated that he thought that the Respondent owned the Property. Ms. Grimes testified that she interviewed Mr. Commodore in February 2017, and that he again indicated that he rented the basement from the Respondent, who he thought was the owner of the Property. Mr. Commodore reported that the Respondent and others, including the Respondent's boyfriend, lived in the Property and that eventually the Respondent moved out, telling Mr. Commodore that she had sold the Property.

The Respondent denied living in the Property, allowing her boyfriend or other family members to live in the Property, or renting out portions of the Property to others. The Respondent's testimony was simply not credible. She conceded that she lived in the Property during her mother's tenancy, but claimed that she moved out of the Property when her mother moved out in late 2009. The Respondent attempted to explain the presence of her personal property, including her last will and testament dated November 30, 2011 and the letter from U-Haul postmarked August 16, 2012, in the Property when the Claimant went to the Property in late 2012 or early 2013. The Respondent asserted that she often came to the Property in 2011 and 2012 to check on its maintenance and to prepare it for sale. She said that she brought important papers, such as her last will and testament, with her to work on, and eventually left her important papers in a box in the garage at the Property. The Respondent also testified that she continued to pay utilities and maintenance on the Property from 2010 through 2012 as part of her continuing efforts to sell the Property.

The Respondent's testimony concerning her personal papers and maintenance of the Property was unconvincing. There is no indication that the Respondent did anything to attempt to

sell the Property after the failed short sale in October 2010, so she had no reason to be at the Property after that, let alone being a regular presence in the Property throughout 2011 and 2012. The more logical explanation for the Respondent's personal papers to be at the Property and for the Respondent to have paid utilities and maintenance on the Property, which the Respondent testified amounted to approximately \$500.00 per month for almost two years, was because she was living in the Property and renting portions of the Property to others.

It makes no sense for the Respondent to have paid more than \$10,000.00 to maintain the Property when \$10,000.00 would have been a large portion of any commission she could have earned on a short sale of the Property.

The Respondent's testimony concerning Mr. Commodore made even less sense than her testimony about her personal papers and maintenance of the Property. The Respondent denied renting the basement to Mr. Commodore. She conceded that she met Mr. Commodore when she helped him sell his own house, but then claimed ignorance of how he came to be living in the basement of the Property. The Respondent asserted that Mr. Commodore lied to the Claimant and to the Commission's investigator when he reported that he rented the basement from the Respondent. Thus, according to the Respondent, a man known to her moved into the basement of the Property without her knowledge and then remained there undetected even while, according to her own testimony, the Respondent spent so much time at the Property her personal papers were stored there.

In short, the Respondent, contrary to her client's interests, treated the Property as her own. Her testimony that in late 2010 through late 2012 she was diligently attempting to sell the Property as a short sale is not supported by any objective evidence. The Respondent took advantage of the situation to live in the Property and to profit from her unauthorized possession of the Property by renting portions of the Property to others. In the language of sub-section

(b)(25), the Respondent's conduct exhibited bad faith, untrustworthiness, dishonesty, fraud, and improper dealings.

The Respondent's conduct in relation to the September 29, 2009 agreement also constituted improper dealings. The Respondent, despite her signature appearing below the phrase "Both parties agree to the above terms," insisted there was no agreement, just an outline of hypothetical obligations among the Claimant, the Respondent, and, despite her not signing the agreement, the Respondent's mother. The September 29, 2009 agreement is indeed an agreement, but it is one in which the Respondent abandons her fiduciary duty to the Claimant in favor of her mother. There is no reason for the Claimant and the Respondent to be reaching an agreement as to the Respondent's mother's rent payments. Any agreement concerning the Respondent's mother's rent payments should have been between the Claimant and the Respondent's mother. The Respondent was the Claimant's agent, but the agreement does more to protect the Respondent's mother, who is attempting at that point to break her lease with the Claimant. The Respondent testified that the agreement came about because the Claimant could no longer make her mortgage payments, or, according to the Respondent, keep her end of the deal. This deal, according to the Respondent, was for the Respondent's mother to pay \$3,200.00 rent and for the Respondent to use that \$3,200.00 and additional money to make her mortgage payments. The Claimant, the Respondent, and the Respondent's mother had no such deal. The Respondent's mother was the Claimant's tenant and the Respondent and her mother had no interest or say in what the Claimant did in relation to her mortgages. The written agreement, by allowing the Respondent's mother to divert her rent payments to an escrow account, worked to the detriment of the Claimant, especially when the Respondent's mother made no further rent payments.

Sub-section (b)(3) prohibits a licensee from willfully making a misrepresentation or knowingly making a false promise. I find that the Respondent made a misrepresentation and false promise based upon the September 29, 2009 agreement. The Respondent misrepresented that her mother would continue to make rent payments that would be placed in an escrow account when the Respondent knew that her mother was moving out of the Property. The promise of an escrow account was a ruse to allow the Respondent's mother to break her lease with the Claimant.

Sub-section (b)(4) prohibits a licensee from intentionally or negligently failing to disclose to any person with whom the licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee deals. The Respondent violated this sub-section many times over. For example, the Respondent failed to disclose to the Claimant that her mother was no longer paying rent; failed to disclose to Mr. Commodore that she did not have the authority to rent the Property; and failed to disclose to her own broker what she was doing with the Property.³

Sub-section (b)(32) prohibits a licensee from violating any other provision title 17 of the Business Occupations and Professions Article. The Commission charged the Respondent with violations of three provisions of section 17-532(c)(1) of the Business Occupations and Professions Article, related to a real estate salesperson's duties to a client:

- 17-532(c)(1)(iii) (a licensee shall disclose to the client all material facts as required under § 17-322 of this title);
- 17-532(c)(1)(iv) (a licensee shall treat all parties to the transaction honestly and fairly and answer all questions truthfully); and

³ Louis Pope, the broker of record for Century 21, reported to the Commissioner's investigator that his office had no records concerning the Property. The Respondent presented a MRIS listing for the Property, purportedly listed by Alan Sherer, Century 21's office manager, which tends to show some knowledge on the part of the Respondent's broker, but I am convinced that the Respondent did not inform her broker of the extent of her conduct in relation to the Property.

- 17-532(c)(1)(vi) (a licensee shall exercise reasonable care and diligence).

The Commission did not explain what material facts the Respondent failed to disclose pursuant to sub-section 17-532(c)(1)(iii) that was not already covered by sub-section (b)(4) discussed above. The Respondent violated sub-section 17-532(c)(1)(iii), but I decline to subject her to a second penalty for the same conduct. The Respondent also violated sub-section 17-532(c)(1)(iv) by not treating the Claimant honestly and fairly in regards to the September 29, 2009 agreement. I decline, however, to subject the Respondent to a second penalty for the same conduct.

The Respondent violated sub-section 17-532(c)(1)(vi) by her generally reckless and criminal conduct in relation to the Property, but I again decline to subject the Respondent to a second penalty for conduct that is already covered under section 17-322.

As to sub-section (33), the Commission charged the Respondent with violations of five regulations, including three violations of the code of ethics. At the time relevant in this case, the Commission's general regulations required a licensee to maintain adequate records of all real estate transactions engaged in as a licensed real estate salesperson. COMAR 09.11.01.07.⁴ The Commission cited the Respondent's failure to produce a listing agreement with the Claimant or any contracts of sale. The Commission's investigator sought copies of those documents during her investigation in late 2014, at a time in which the Respondent should have easily produced such records. The Respondent's broker told the investigator that his office had no records concerning the Property. At the hearing, the Respondent produced e-mails to which documents

⁴ The Commission's current general regulations confusingly contain a regulation titled "Records of Transactions," that does not say anything about records of transactions. COMAR 09.11.01.05. The language of former COMAR 09.11.01.07 that I paraphrased above was deleted when the Commission revised its general regulations effective June 1, 2017. 44:2 Md. R. 109-111; 44:8 Md. R. 401.

were supposed to have been attached, but she did not present those attachments. The Respondent failed to maintain adequate records of all her transactions related to the Property.

At the time relevant in this case, the Commission's general regulations required all residential listing contracts, listing real property for sale, rental, lease, or exchange, either exclusive or open, to be in writing and signed, with a copy of the contract given to the seller or owner before the licensee advertises, shows, or offers the property. COMAR 09.11.01.12.⁵ The Claimant testified that she never received a copy of a listing agreement or copies of any of the contracts for sale prepared by the Respondent. The Respondent produced no records, which, as discussed above, she was required to keep, to refute the Claimant's testimony.

The Commission's code of ethics states, in pertinent part, that a licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field; and endeavor to eliminate in the community any practices that could be damaging to the public or to the dignity and integrity of the real estate profession. COMAR 09.11.02.01C. For all of the reasons stated above concerning the Respondent's conduct, I find that the Respondent violated this ethical code based on her unauthorized use and possession of the Property and her improper dealings in regards to the September 29, 2009 agreement.

The Commission's code of ethics states that for the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed. COMAR 09.11.02.01H. It is not clear from the record which financial obligations and commitments regarding the Property the Commission

⁵ The Commission's current general regulations include this same provision as COMAR 09.11.01.09.

is referring to in this charge; therefore, I find that the Commission has not proven a violation of this regulation.

At the time relevant in this case concerning the Respondent's mother's rental agreement with the Claimant, the Commission's code of ethics stated that if a licensee acquired an interest in a property for any member of the licensee's immediate family, the licensee had to disclose that family relationship in writing to all parties to the transaction. COMAR 09.11.02.02D.⁶ The Respondent did not disclose her relationship to her mother in writing, but the Claimant was aware that her tenant was the Respondent's mother.

In summary, I find that the Commission established that the Respondent violated ten of the eleven violations alleged in the Statement of Charges.

Penalty

Section 17-322(c) of the Business Occupations and Professions Article provides no specific guidance concerning the issue of whether to reprimand, suspend, or revoke a license, but does provide guidance concerning the appropriate penalty:

(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 \$5,000.00 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.

The Respondent's conduct concerning the Property was criminal and obviously very serious. She took advantage of the Claimant's situation and neglect of the Property to profit by

⁶ The Commission amended this regulation, effective March 9, 2012. 39:5 Md. R. 381.

living rent-free in the Property and renting out portions of the Property to others. The Respondent put the interests of her mother above her fiduciary duties to her client, the Claimant. The Commission should no doubt revoke the Respondent's real estate salesperson's license. Any lesser sanction would be inappropriate in light of the egregious nature of the Respondent's conduct.

As to the penalty, at least some of the Respondent's violations, especially those concerning her untrustworthiness and dishonesty, were very serious. Moreover, the Respondent exhibited absolutely no good faith in addressing the charges against her. Her testimony was not credible and throughout the hearing she blamed the Claimant for the entire situation, without once acknowledging the criminal nature of her own conduct. Under the circumstances, as explained below concerning the claim against the Guaranty Fund, the Respondent's conduct did not greatly harm the Claimant. The Respondent has no history of previous violations.

I find it appropriate to recommend that the Commission impose the maximum penalty of \$5,000.00 for the Respondent's violation of section 17-322(b)(25); \$1,000.00 penalties for the Respondent's violations of section 17-322(b)(3) and (b)(4); but no additional penalties for her other violations, which essentially covered conduct already penalized.

Claim Against the Guaranty Fund

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 Commission’s regulation ties any recovery from the Guaranty Fund to a specific “originating transaction. The Commission’s regulation represents a reasonable interpretation of the statutory term “actual loss.” *Marriott Employees Federal Credit Union v. Motor Vehicle Administration*, 346 Md. 437 (1997) (the consistent and long-standing construction given a statute by the agency charged with administering it is entitled to great deference, as the agency is likely to have expertise and practical experience with the statute’s subject).

The Claimant bears the burden of proving her entitlement to recover compensation from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (Supp. 2017). As explained below, the Claimant did not meet her burden of proof that she is entitled to recover compensation from the Guaranty Fund.

The Claimant asserted that she had an actual monetary loss of \$180,387.57, consisting of fifty-four months (October 1, 2009 through March 1, 2014) of the \$3,200.00 rental value of the Property, homeowner’s association dues, and utilities. The bulk of the Claimant’s claim against

the Guaranty Fund can be denied because most of the Claimant's alleged monetary loss was not related to any "originating transaction." The only documented transactions in the record are the lease agreement between the Claimant and the Respondent's mother and the September 29, 2009 agreement between the Claimant and the Respondent. The two-year lease agreement expired on July 31, 2010 and the September 29, 2009 agreement, the meaning of which is difficult to determine, was also tied to the remaining term of the lease because it contemplated placing the remaining rent payments in an escrow account pending a loan modification or a short sale. Assuming for the purpose of analyzing the Claimant's claim against the Guaranty Fund that the Claimant signed a listing agreement with the Respondent to have the Respondent market the Property for a short sale, the Claimant had no loss related to such a listing agreement. First, there was no short sale and, second, by late September or early October 2010, after the Claimant had filed for bankruptcy and the Respondent, upon her own initiative, dealt with the bankruptcy trustee who had legal authority to sell the Property, the Claimant had reason to believe that the Respondent was attempting to sell the Property. The Claimant did not go to the Property between late 2010 and late 2012 or early 2013 and she did not have any contact with the Respondent during that period. The Claimant's alleged monetary losses due to events after late 2010 were based on the Respondent's criminal conduct, not on any real estate transaction. In other words, by late October 2010, the Respondent was not providing real estate brokerage services to the Claimant, which is a prerequisite to recover compensation from the Guaranty Fund.

This same analysis applies to the Claimant's request for reimbursement for payments she made for front foot benefits, homeowner's association dues, and utilities. The Claimant presented check registers for five checks payable to the Heritage Glen Front Foot Benefit, dated August 30, 2012 through July 12, 2013, and a transaction statement for one check, dated September 5, 2013. She presented a letter from an attorney for Heritage Glen Front Foot Benefit,

dated April 11, 2013, requesting front foot benefit (water and sewer fees) payments for from January 1, 2012. This time period is well after the Respondent was providing real estate brokerage services to the Claimant. (Moreover, there is nothing in the record establishing that the Respondent was ever obligated to pay for any front foot benefits.)

On October 12, 2012, Heritage Glen obtained an affidavit judgment against the Claimant in the amount of \$1,445.00, plus attorney fees of \$300.00, and costs of \$28.00, for unpaid homeowner's association dues for January 1, 2011 through 2012. The Claimant satisfied the judgment on October 23, 2012. The Claimant presented check registers for six checks for \$55.00 from December 24, 2102 through September 23, 2013. The Claimant alleged that the Respondent, perhaps in her role as the Claimant's property manager, had promised to pay homeowner's association fees, perhaps out of her mother's rent during the tenancy. There is, however, no provision in the lease requiring the Respondent to pay homeowner's association dues and the Claimant presented no written agreement requiring the Respondent to do so. The homeowner's association dues were always the Claimant's responsibility and that responsibility never transferred to the Respondent. For purposes of the claim against the Guaranty Fund, the homeowner's association dues for January 2011 through 2012 were accrued after the Respondent was providing real estate brokerage services to the Claimant, and are not covered under the Guaranty Fund.

The Claimant also alleged as losses payments she made to PEPCO, Washington Gas and Washington Suburban Sanitation Commission (WSSC). She presented check registers for eight checks to PEPCO from October 14, 2012 through approximately May 2013; check registers for seven checks to Washington Gas from November 2, 2012 through June 1, 2013 (after the Respondent had moved out and while the Respondent was renting the basement of the Property, which was in foreclosure, to Mr. Commodore), and one check register for a check to WSSC on

May 16, 2013. For purposes of the claim against the Guaranty Fund, the Claimant's payments for utilities for dates in 2012 and 2013 were accrued after the Respondent was providing real estate brokerage services to the Claimant, and are not covered under the Guaranty Fund.

The only relevant period in the Claimant's claim against the Guaranty Fund that is related to a real estate transaction is the period from October 1, 2009 through July 31, 2010, the remaining ten months of the rental agreement for which the Respondent's mother paid no rent. The Respondent's potential responsibility for her mother's rent payments stems from her role, described above, in helping her mother break the lease with the Claimant.

Ultimately, however, I conclude that the Claimant's claim against the Guaranty Fund is barred by the applicable statute of limitations, which the Respondent raised, somewhat inartfully, as an issue. A claim against the Guaranty Fund "shall be submitted to the Commission within 3 years after the claimant discovers or, by the exercise of ordinary diligence, should have discovered the loss or damage." Md. Code Ann., Bus. Occ. & Prof. § 17-17-404(d); COMAR 09.11.01.18. In *Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435 (2000), a case involving a civil action based on a home builder's alleged breach of an implied warranty under section 10-203 of the Real Property Article, the Court of Appeals interpreted the language of the applicable statute of limitations. Section 10-204 of the Real Property Article, provides, in pertinent part: "Any action arising under this subtitle shall be commenced within two years after the defect was discovered or should have been discovered." Md. Code Ann., Real Prop. § 10-204(d) (2015). The court held that the plaintiffs' cause of action arose when they first noticed their driveways peeling and scaling in March 1994 after ice and snow removal, and not in August 1994 when they discovered that the peeling and scaling may have been caused by problems with the home builder's poured concrete, rather than the ice and snow removal. The court, citing *Poffenberger v. Risser*, 290 Md. 631 (1981), held that the clock for a statute of

limitations based on the “discovered or should have discovered” date begins to run when a claimant gains knowledge of facts sufficient to put him on “inquiry notice.” *Lumsden* 358 Md. at 444-447. The court reasoned that the peeling and scaling had put the plaintiffs on notice of facts which ought to have put a person of ordinary prudence on inquiry to make an investigation into the cause of the peeling and scaling, and concluded that the plaintiffs’ claims, filed on April 8, 1996, more than two years from March 1994, were time-barred. *Id.* at 452.

Section 17-404(d) is a “discovery rule” or “inquiry notice” statute of limitations. The Claimant, by the exercise of ordinary diligence, should have known of the basis for her claim against the Guaranty Fund no later than late October 2010. By that time, the Respondent’s mother had failed to pay ten months of rent, the Respondent had made no accounting of any escrow account, and the Respondent was no longer attempting to sell the Property on behalf of the Claimant. The Claimant was on notice to inquire about what the Respondent was doing. Instead, the Claimant did nothing in regards to the Property for approximately two years and then did not file her claim against the Guaranty Fund until January 28, 2014, more than three years after late October 2010. The Claimant is not eligible for reimbursement from the Guaranty Fund for any loss attributable to the lease agreement or the September 29, 2009 agreement.

PROPOSED CONCLUSIONS OF LAW

Regulatory Charges

Based on the proposed findings of facts and discussion, I conclude that the Respondent violated five sub-sections of section 17-322 of the Business Occupations and Professions Article, with two violations of sub-section (b)(32) (sections 17-532(c)(1)(iv) and (vi)); and five violations of sub-section (b)(33). I further conclude that the Commission should revoke the Respondent’s real estate salesperson’s license, and impose a total penalty of \$7,000.00. Md. Code Ann., Bus. Occ. & Prof. §§ 17-322 (Supp. 2017).

Claim Against the Guaranty Fund

Based on the proposed findings of facts and discussion, I conclude that the Claimant did not sustain an actual loss resulting from an act that occurred in the provision of real estate brokerage services by the Respondent, a licensed real estate salesperson, which involved a transaction relating to real estate located in the State, and by which the Respondent obtained the Claimant's money or property by theft, embezzlement, false pretenses, or forgery; or by fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404 (Supp. 2017); COMAR 09.11.03.04.

PROPOSED ORDER

I **PROPOSE** that the State Real Estate Commission revoke the Respondent's real estate salesperson's license and impose a penalty of \$7,000.00.

I further **PROPOSE** that the Real Estate Guaranty Fund deny the Claimant's claim against the Real Estate Guaranty Fund.

August 20, 2018
Date Decision Issued

RFB/emcl
#175015

SIGNATURE ON FILE

Robert F. Barry
Administrative Law Judge