BEFORE THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM OF TABITHA JONES, CLAIMANT	*	
	*	**CASE NO. 2017-RE-397**
v.	*	**OAH NO. DLR-REC-22-18-28146**
THE MARYLAND REAL ESTATE COMMISSION GUARANTY FUND FOR THE ALLEGED MISCONDUCT OF TODD STROHMAN, RESPONDENT	*	

* * * * * * * * * * * * * *

PROPOSED ORDER

The Findings of Fact, 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 Fact in the proposed decision be, and hereby are, **ADOPTED.**[1]

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

I conclude as a matter of law....

I further conclude as a matter of law that the amount of the award the Claimant is entitled to receive from the fund is $16,216.00. Md. Code Ann. Bus. Occ. § 17-404(b) 2018; COMAR 09.11.01.14.

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

[1] The Commission notes that on page 5 of the proposed decision the Administrative Law Judge refers to COMAR 09.11.03.04 A and B. That COMAR provision was repealed and the reference is therefore stricken from the proposed decision as the Commission concludes its inclusion was a harmless error.

ORDERED that once this Proposed Order becomes a Final Order and all rights to appeal are exhausted, the Claimant, **Tabitha Jones**, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of **Sixteen Thousand Two Hundred Sixteen Dollars ($16,216.00)**; and

ORDERED that all real estate licenses held by the Respondent, **Todd Strohman**, 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 the Commission confirmed the licensing status[2] of a contractor.

F. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties adversely affected by this Proposed Order shall have twenty (20) days from the postmark date of the Order to file written exceptions to this Proposed Order. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 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

[2] The Commission notes that while the contractor at issue in the proposed decision, G&E Contractors, was licensed at the time Claimant filed her claim, that license was terminated in June of 2017.

resides or has his/her principal place of business, or in the Circuit Court for Baltimore City.

MARYLAND REAL ESTATE COMMISSION

SIGNATURE ON FILE

5/22/2019
Date

By: [illegible]

SIGNATURE ON FILE

IN THE MATTER OF THE CLAIM OF	*	**BEFORE LAURIE BENNETT,**
TABITHA JONES,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
v.	*	**OF ADMINISTRATIVE HEARINGS**
THE MARYLAND REAL ESTATE	*	
COMMISSION GUARANTY FUND,	*	
FOR THE ALLEGED MISCONDUCT	*	**OAH No. DLR-REC-22-18-28146**
OF TODD STROHMAN,	*	**MREC No. 17-RE-397GF**
RESPONDENT	*	

* * * * * * * * * * * * *

PROPOSED DECISION

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ISSUES
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PROPOSED ORDER

STATEMENT OF THE CASE

On or about January 20, 2017, Tabitha Jones (Claimant) filed a claim for reimbursement with the Maryland Real Estate Commission (MREC) Guaranty Fund (Fund) for a monetary loss incurred as a result of the alleged conduct of Todd Strohman (Respondent), a real estate salesperson in the State of Maryland. On August 31, 2018, the MREC ordered the Claimant is entitled to a hearing to demonstrate her eligibility for an award from the Fund. On September 4, 2018, the MREC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On September 26, 2018, the OAH issued a Notice of Hearing (Notice) to the parties at their respective addresses of record, scheduling a hearing for November 9, 2018. The United

States Postal Services (USPS) returned the Respondent's first class and certified mail marked undeliverable as addressed.

On November 1, 2018, the MREC gave the OAH a new address for the Respondent: 15 Iron Mill Garth, Cockeysville, MD 20130. On November 16, 2018, the OAH issued new notices of hearing to the parties at their addresses of record. As to the Respondent, the USPS did not return the first class mail and returned the certified mail marked unclaimed and unable to forward.

On January 18, 2019, I convened the hearing as scheduled. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2018). The Claimant represented herself. Shara Hendler, Assistant Attorney General, represented the Fund. The Respondent failed to appear at the hearing or request a postponement despite the issuance of proper notice to his address of record by first class and certified mail, return receipt requested.

Before the MREC can take any final action against an individual, the individual must be personally served with a hearing notice or the hearing notice must be sent by certified mail at least ten days prior to the hearing to the individual's last known business address. Md. Code Ann., Bus. Occ. & Prof. § 17-324(d)(1) (2018). If the individual, after receiving proper notice of the hearing, fails or refuses to appear, the Commission may hear and determine the matter despite the individual's absence. Md. Code Ann., Bus. Occ. & Prof. §§ 17-324(f), 17-408(c) (2018). The address used to notify the Respondent of the rescheduled hearing is the Respondent's address of record with the REC. Therefore, I conclude that the Respondent was properly notified of the hearing and nevertheless failed to appear. As a result, I determined that it was appropriate to proceed with the hearing in his absence.

The procedure is governed by the contested case provisions of the Administrative Procedure Act, the MREC procedural regulations, and the OAH Rules of Procedure. Md. Code

Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); Code of Maryland Regulations (COMAR) 09.11.03; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss, compensable by the Fund, due to an act or omission of the Respondent in which money or property was obtained from the Claimant by theft, embezzlement, false pretenses, or forgery, or an act or omission that constitutes fraud or misrepresentation in the provision of real estate sales services?
2. If so, what amount of award is the Claimant entitled to receive from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits the Claimant offered:

1. Photograph
2. Photograph
3. Photograph
4. Photograph
5. Photograph
6. Photograph
7. Photograph
8. Photograph
9. Photograph
10. Photograph
11. Photograph
12. Photograph
13. Photograph
14. Photograph
15. Photograph
16. Photograph
17. Letter from Pamela Caple and Morris Caple, March 20, 2017
18. Proposal from ValueDry, January 1, 2017
19. G&E Contractors estimate, not dated
20. Text Messages between the Respondent and the Claimant, December 6 – 9, 2016

I admitted the following exhibits the Fund offered:

1. Order for Guaranty Fund Hearing, August 31, 2018
2. Notices of Hearing, November 16, 2018; Notice of Hearing, September 26, 2018; affidavit from Charles Corbin, October 31, 2018

3. Complaint and Guaranty Fund Claim, received by the MREC January 20, 2017
4. REC Registration Inquiry and Professional License History, printed October 22, 2018

Testimony

The Claimant testified on her own behalf and did not present other witnesses. The Fund did not present any witnesses.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent was licensed by the MREC as a real estate salesperson. The Respondent's license expired on February 16, 2018.

2. The Respondent was the listing agent and part owner of property located at 3104 Woodring Avenue, Baltimore, Maryland (Property), when he renovated the Property and sold it to the Claimant.

3. The Respondent did not reveal to the Claimant any water infiltration or mold in the Property.

4. The renovation included converting the Property from apartments to a single-family, semi-detached home. The Respondent finished part of the basement with drywall and flooring.

5. The Claimant had a home inspection completed on the Property before she purchased the house. The inspection did not reveal water infiltration in the basement.

6. The Claimant went to settlement on October 21, 2016.

7. The Claimant moved into the Property in October 2016.

8. A driveway separates the Property from a residence owned by neighbors, Pamela and Morris Caple.

9. In November 2016, the Claimant noticed water leaking from under the finished part of the basement floor. The Claimant initially thought she had spilled something, but every time it rained, water appeared.

10. The Claimant lifted up the flooring on the finished part of the basement and discovered water. The Claimant's friend tore out drywall which revealed mold. Water seeped up through a basement wall and through the basement floor.

11. A water mark appeared on a load bearing pole under the basement steps.

12. The Claimant contacted the Respondent, who said he would put her in touch with his contractors. When the Claimant did not hear from the Respondent after two days, she called him and he said she had occupied the house for long enough that the problem was hers.

DISCUSSION

A claimant may recover compensation from the Fund for an actual loss based on an act or omission by a licensed real estate salesperson that occurs in the provision of real estate brokerage services involving a transaction that relates to real estate located in this State. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a) (2018). A claim must be based on an act or omission in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or an act or omission that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(iii) (2018); COMAR 09.11.03.04A and B. The amount recoverable from the Fund is restricted to the actual monetary loss incurred by the claimant, and may only include monetary losses from the originating transaction. COMAR 09.11.01.14. At a hearing on the claim, the Claimant bears the burden of proving entitlement to recovery from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2018).

The Claimant testified and presented documentary evidence to support her claim. The Claimant was credible in her account of water in her basement. Her account is supported by

photographs and a letter from her next door neighbors who made certain observations at the Property. The Claimant did not appear to embellish any details of her ordeal and she admitted facts that were not in her favor (which I will discuss later). Because the Respondent did not contest the Claimant's evidence, I accept her evidence at face value.

The Respondent did not reveal any water infiltration or damage to the basement to the Claimant at the time of the sale. It is true, as the Claimant testified, her home inspector did not see any evidence of water damage, even though a contractor subsequently told the Claimant water markings were on a load bearing pole behind the stairs. On the other hand, drywall in the finished part of the basement concealed water markings and significant mold damage that are highly suggestive of pre-existing damage.

The evidence includes a letter from the Claimant's next door neighbors about the existence of water in the Property before the Claimant purchased it. They wrote, in pertinent part, they:

> had the opportunity to view the property prior to the start of the major renovations [by the Respondent]. When we entered the basement of the property we observed water sitting on the floor that covered at least two thirds of the entire area. Water was along the entire back wall (north) and ran along the outside (west) wall to the front, and on the basement floor during the renovation period. We were able to see the water through the basement window.

Clmt. Ex. 17. The neighbors' observations corroborate the Claimant's assertion the Respondent's renovations concealed the water infiltration. I find it more likely than not the Respondent concealed the infiltration and mold.

A seller must disclose "latent defects" in real property or an improvement to real property that:

> (1) A purchaser would not reasonably be expected to ascertain or observe by a careful visual inspection of the real property; and

(2) Would pose a direct threat to the health or safety of:

(i) The purchaser; or

(ii) An occupant of the real property, including a tenant or invitee of the purchaser.

Md. Code Ann., Real Prop. § 10-702 (Supp. 2018).

The Claimant could not reasonably expect to ascertain or observe water damage behind a wall the Respondent erected. The water damage caused a proliferation of mold that poses a direct threat to the Claimant's health or safety. Md. Code Ann., Real Prop. § 10-702. At the very least, by concealing the water infiltration and mold, the Respondent obtained money from the Claimant by false pretenses or an act or omission that constitutes misrepresentation.

The next question is amount of the Claimant's loss. The Claimant is seeking in excess of $17,000.00. She offered two repair estimates totaling just $16,216.00. One is from G&E Contractors for a total of $9,416.00. This estimate is to demolish the damaged section of the basement, install new drywall, paint the walls, and replace the floor. The estimate does not include any waterproofing service or other service to guard against future water infiltration. The other estimate is from ValueDry for $6,800.00 demolition and waterproofing service but no new drywall, floor, or paint. Together these services will repair the Claimant's loss.

The Fund questions whether G&E Contractors is a licensed home improvement contractor. A license is necessary to provide home improvement services. Md. Code Ann., Bus. Reg. § 8-301(a) (2015). If G&E Contractors is licensed, I recommend that Fund reimburse the Claimant for the cost of its estimate; if not, I recommend reimbursement only for the ValueDry estimate. The Fund agrees that if the Claimant is eligible for reimbursement at all, the value of the loss must come from a licensed contractor.

CONCLUSIONS OF LAW

I conclude as a matter of law that the Claimant proved by a preponderance of the evidence that she sustained an actual loss, compensable by the Fund, due to an act or omission of the Respondent in which money or property was obtained by theft, embezzlement, false pretenses, or forgery; or that constitutes fraud or misrepresentation in the provision of real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. § 17-404 (Supp. 2018); COMAR 09.11.01.14.

I further conclude as a matter of law that the amount of the award the Claimant is entitled to receive from the Fund is $16,216.00, if G&E Contractors is a licensed contractor, and, if not, $6,800.00. 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 $16,216.00, if G&E Contractors is a licensed contractor, and, if not, $6,800.00.

I further **PROPOSE** that the Respondent is ineligible for reinstatement of his real estate licensee until he:

(1) repays in full:

(i) the amount paid by the Guaranty Fund; and

(ii) the interest due under § 17-411(a)(2) of this subtitle; and

(2) applies to the Commission for reinstatement of the license.

Md. Code Ann., Bus. Occ. § 17-412 (2018).

SIGNATURE ON FILE

April 5, 2019
Date Proposed Decision Issued

Laurie Bennett
Administrative Law Judge

LB/kdp
177840

SIGNATURE ON FILE