

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**IN THE MATTER OF THE CLAIM
OF RANJAY SINGH, CLAIMANT**

*

CASE NO. 2018-RE-397

v.

*

OAH NO. DLR-REC-22-18-36432

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

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PROPOSED ORDER

The Findings of Fact, Proposed Conclusions of Law and Recommended Order of the Administrative Law Judge dated March 27, 2019, having been received, read and considered, it is, by the Maryland Real Estate Commission (the "Commission"), this 22 day of May, 2019, hereby **ORDERED**:

A. That the Findings of Fact¹ in the proposed decision be, and hereby are, **ADOPTED**.

B. That the Proposed Conclusions of Law in the proposed decision be, and hereby are, **ADOPTED**.

C. That the Recommended Order in the proposed decision be, and hereby is, **ADOPTED**.

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

E. 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

¹ The Commission notes that on page 6 of the proposed decision the Administrative Law Judge states "OAH scheduled the hearing in this case for Wednesday February 13, 2019." It was actually scheduled for, and held on, Thursday February 14, 2019. See, proposed decision p. 2 and GF Ex. 2.

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.

F. Once this 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

5/23/2019
Date

MARYLAND REAL ESTATE COMMISSION

By: SIGNATURE ON FILE

IN THE MATTER OF
CLAIM OF RANJAY SINGH,
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-22-18-36432
* REC No.: 18-RE-397GF

* * * * *

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 February 27, 2018, Ranjay Singh (Claimant) filed a complaint against Duane Farley (Respondent). The Claimant also filed a claim with the MREC Guaranty Fund (MREC or Fund), in which he alleged he sustained monetary losses as a result of the Respondent's acts or omissions. Specifically, the Claimant alleged the Respondent, acting in her 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 January 2, 2019, the MREC

ordered the Claimant should have a hearing to establish his eligibility for an award from the Fund. On November 21, 2018, the MREC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 14, 2019, at 10:30 am, I conducted a hearing at the OAH headquarters in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2018). The Claimant appeared without counsel. Shara Hendler, Assistant Attorney General, Department of Labor, Licensing and Regulation, represented the Fund. After waiting over fifteen minutes neither the Respondent nor anyone on her behalf appeared at the hearing or requested a postponement.

On January 16, 2019, the Office of Administrative Hearings (OAH) mailed notice of the hearing to the Respondent by certified and regular mail to The Estate of Duane Farley,¹ c/o Thomas Kokolis and Jacob Deaven, Parker, Simon & Kokolis, LLC, 110 North Washington Street, Suite 500, Rockville, Maryland 20540, the last known address of record on file with the MREC. Md. Code Ann., Bus. Reg. § 8-312(d) (2015).² The notice advised the Respondent of the time, place, and date of the hearing. The United States Postal Service (USPS) did not return the notice as unclaimed or undeliverable. On January 22, 2019, the OAH received the signed³ return receipt for the notice. I received no forwarding order or other correspondence from the Respondent to identify other alternative addresses. Therefore, I determined that the Respondent received proper notification, but failed to appear for the hearing. As a result, I found it

¹ As set forth in further detail below, the Respondent is deceased and all correspondence and interaction with regard to the Claim concerns the Respondent's estate. However, for the sake of simplicity, I will simply refer to the Estate as the Respondent for the balance of this decision.

² "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." Md. Code Ann., Bus. Reg. § 8-312(d) (2015).

³ The person who signed the return receipt is M. Fuentes.

appropriate to proceed in the Respondent's absence. After waiting over fifteen minutes for the Respondent to appear, I proceeded with the hearing. Md. Code Ann., Bus. Occ. & Prof. § 17-408(c) (2018). Code of Maryland Regulations (COMAR) 28.02.01.23A.

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 compensable by the Guaranty Fund resulting from an act or omission by the Respondent in the provision of real estate brokerage services which constituted theft, embezzlement, forgery, false pretenses, fraud, or misrepresentation? If so,
2. What is the actual amount of the loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for the Claimant:

- CL Ex. 1: Summary of payments from the Respondent to the Claimant June 2015 through July 2018
- CL Ex. 2: Property Management Agreement, April 8, 2015
- CL Ex. 3: Lease, June 12, 2015
- CL Ex. 4: Letter from Respondent, March 9, 2018
- CL Ex. 5: Letter from John Tselepis, CPA, March 12, 2018
- CL Ex. 6: Document entitled "Letter to Farley Property Management," May 15, 2018, with various attachments

I admitted the following exhibits for the Fund:

GF Ex. 1: Amended Hearing Order, January 2, 2019

GF Ex. 2: Notice of Hearing, January 16, 2019

GF Ex. 3: Respondent's Licensing History

The Respondent did not offer any exhibits.

Testimony

The Claimant testified on his own behalf. 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, the 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 1466 Harford Square Drive, Edgewood, Maryland 21040 (Harford Square).

3. On April 8, 2015, the Claimant and Respondent entered into a Property Management Agreement with regard to Harford Square. At all times relevant, the Respondent managed Harford Square per the terms of the Property Management Agreement which remained in full force and effect until April 1, 2018.

4. On June 12, 2015, Regina Carter (Carter) signed a lease (lease or Carter lease) to rent Harford Square. The time period of the lease spanned from June 19, 2015, until June 30, 2017. The Respondent collected rent payments from Carter during the pendency of the Carter lease. The Property Management Agreement allowed the Respondent to collect a management

fee of \$110.07 per month, and obligated her to pay the balance of the monthly rent to the Claimant.

5. Carter resided in Harford Square from June 2015 until July 2018.⁴ Carter consistently paid her rent late. The terms of the lease obligated Carter to pay five percent of late rent due as a penalty. Carter abandoned Harford Square in July 2018.

6. During 2015 and 2016 the Respondent complied with the terms of the Property Management Agreement, and communicated with the Claimant.

7. From June until December 2017, the Respondent did not adequately communicate with the Claimant. The Respondent breached the terms of the Property Management Agreement by, among other things, failing to collect rent on time, failing to collect late fees and failing to file for eviction in court. The Respondent did not provide a termination notice to Carter prior to July 2017, thus allowing Carter to remain in the residence under the terms of the lease until at least July 2018.

8. From June until December 2017, the Respondent deducted the management fee of \$110.07 per month from the rent received from Carter.

9. From January 2017 until December 2017, Carter paid the Respondent \$14,245.00 in rent. The Property Management Agreement obligated the Respondent to pay the Claimant \$12,731.44 in net rent proceeds for January until December 2017.

10. From January 2017 until December 2017, the Respondent only deposited \$8,836.01 in net proceeds into the Claimant's account.

11. From January 1, 2018, until Carter abandoned Harford Square, the Respondent did not collect a management fee from the Claimant.

⁴ The lease contained an extension clause which allowed its term to carry over an additional year at the conclusion of its term if neither party provides notice to terminate the lease prior to June 30, 2017.

12. On or about April 1, 2018, the Respondent closed her business and terminated the Property Management Agreement as of that date. The Respondent died on June 24, 2018.

13. The lease obligated Carter to provide a security deposit in the amount of \$1,295.00. Carter provided that security deposit which the Respondent deposited in her escrow account. The Respondent did not return the security deposit to either Carter or the Claimant when she closed her business. The Claimant paid the \$1,295.00 security deposit out of his own pocket.

DISCUSSION

The Respondent's Failure to Appear

Per the MREC's hearing order, the Respondent died on June 24, 2018. (GF Ex. 1) The OAH scheduled the hearing in this case for Wednesday, February 13, 2019, at the OAH offices in Hunt Valley, Maryland. The OAH originally mailed a Notice of the hearing to the parties on November 29, 2018. The OAH sent the Respondent's copy of the Notice by first-class and certified mail (return receipt requested) to 327 South Union Avenue, Havre De Grace, Maryland 21078, the Respondent's address of record with the MREC when she was alive. The OAH addressed the Notice to the attention of the Respondent's estate. The OAH sent the Notice by certified mail and the United States Postal Service (USPS) returned it to the OAH as "moved left no address, unable to forward, return to sender." The USPS returned the Notice sent by regular first class mail as "moved, unable to forward."

On or about January 15, 2019, Assistant Attorney General Andrew Brouwer (Brouwer) identified the personal representative of the Respondent's estate to be Thomas J. Kokolis, Esquire (Kokolis), 110 North Washington Street, Suite 500, Rockville, Maryland 20850. Kokolis's attorney is listed as Jacob Deaven, Esquire, also located at 110 North Washington

Street, Suite 500, Rockville, Maryland 20850. On January 15, 2019, Brouwer sent a letter to the OAH notifying the clerk of the address of the Estate's personal representative and instructing the clerk to send Notice to that address.⁵ On January 16, 2019, the OAH sent notice by first-class and certified mail (return receipt requested) to "The Estate of Duane Farley, C/O Thomas Kokkolis (sic) and Jacob Deaven, Parker, Simon & Kokkolis (sic), LLC, 110 N. Washington Street, Suite 500, Rockville, MD 20850." On January 25, 2019, the OAH received the green return receipt from the USPS which the recipients signed on January 22, 2019. The USPS did not return the notice the OAH sent by first class mail.

As the USPS did not return the certified notice and someone signed for it on behalf of the personal representative of the Respondent's Estate, I find that the Respondent received proper notice of the hearing. At no time did the Respondent's Estate or anyone on the Respondent's Estate's behalf request a postponement of the hearing.

Section 17-324 of the Business Occupations and Professions Article provides that before the Commission 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 hearing is the address of the Respondent's personal representative as determined by Brouwer on behalf of the MREC. I therefore find it is the Respondent's address of record with the MREC. Accordingly, I conclude that the Respondent received proper notice of

⁵ Brouwer also provided another alternate address for the Respondent of P.O. Box 426, 42 Neptune Drive, Joppa, Maryland 21085. The OAH sent notice to that address which the USPS returned as "unclaimed, unable to forward."

the hearing, but nevertheless failed to appear. As a result, I determined that it was appropriate to proceed with the hearing despite the Respondent's failure to appear.

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 his burden.

The Claimant’s Subpoenas

On or about January 16, 2019, the Claimant requested the OAH issue subpoenas to two individuals: John Tselepis (Tselepis) and Samuel Freeman (Freeman). The OAH sent the subpoenas to Tselepis and Freeman⁶ by first class mail to their addresses as provided by the Claimant. COMAR 28.02.01.14C(1)(c). Neither Tselepis nor Freeman appeared at the hearing. At the beginning of the hearing, the Claimant questioned how to proceed in their absence. I offered the Claimant two options: 1) to proceed with his case in their absence; or 2) to request a postponement, which I would entertain subject to hearing the position of the Assistant Attorney General. The Claimant opted to proceed with the hearing without Tselepis and Freeman. Section 9-1605(d)(2)(i) of the State Government Article reads: “An administrative law judge may apply, upon affidavit, to any judge of a circuit court for an order, returnable in not less than 2 nor more than 5 days, to show cause why a person should not be committed to jail for refusal to comply with an order issued under paragraph (1)⁷ of this subsection..” However, I may not enforce any subpoena pursuant to this provision unless I have proof of service by certified mail or personal delivery. COMAR 28.02.01.14C(3). In this case, both subpoenas lack such proof of service.

⁶ The Claimant requested OAH send Freeman’s subpoena to attorney Brian Young (Young) at the address of Young’s law office. On January 29, 2019, the OAH received a letter from Young wherein Young, to paraphrase, denied being an agent authorized to accept service on behalf on Freeman. I find based upon Young’s letter that Freeman did not receive proper service and, thus, was not subject to OAH’s subpoena.

⁷ Paragraph 1 reads: “Without good cause, a person may not refuse an order by any administrative law judge to: (i) appear for a hearing....”

Thus, assuming both Tselepis and Freeman received valid service in the first place, I could not have enforced the subpoenas even if the Claimant had so requested.

The Merits of the Case

Arguments of the Parties

Neither the Respondent nor the Fund presented a case. In support of his claim, the Claimant testified that he entered into a Property Management Agreement with the Respondent in April of 2015. In June of 2015, Carter signed the lease and commenced living in Harford Square. From 2015 until June 2017 the Respondent performed adequately under the terms of the Property Management Agreement. However, beginning in June 2017, the Respondent began to breach various terms of the Property Management Agreement. For example, from the time the Carter lease commenced, Carter consistently paid her rent late. Beginning in June 2017, the Respondent only sporadically enforced the late rent penalty on the Carter lease. When Carter became substantially behind in her rent, the Respondent failed to initiate eviction proceedings. Further, the Respondent failed to provide Carter notice that she was terminating the lease and therefore allowed the lease to carry over another year under the same terms. Thus, the Claimant took the position that the Respondent did not perform her management duties under the Property Management Agreement. As a result, the Claimant argued the Respondent did not earn the \$110.07 property management fee she deducted from the rent proceeds for June through December of 2017.

Additionally, the Respondent failed to pay the Claimant the rent proceeds to which he was entitled. The Respondent provided a statement to the Claimant which reflected \$12,731.44 paid to the Claimant in 2017. (CL Ex. 6.) However, the Respondent only deposited \$8,836.01 into the Claimant's bank account in 2017. (CL Ex. 6.)

Finally, Carter provided the Respondent a \$1,295.00 security deposit per the terms of the lease. The Respondent did not return the deposit to either Carter or the Claimant after Carter abandoned Harford Square in July of 2018. The Claimant had to return the security deposit to Carter out of his own resources.

Analysis

There is no dispute the Respondent is a licensed real estate broker and that Harford Square is located in the State of Maryland. There is further no dispute that the agreements into which the Claimant and the Respondent entered concern Harford Square. The issues I must glean from the evidence the Claimant presented 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) (2018). I shall address each of the Claimant’s allegations separately below:

The Management Fee for June 2017 through December 2017

At the hearing, the Claimant testified he entered into a Property Management Agreement with the Respondent in 2015. To substantiate that, the Claimant entered a Property Management Agreement dated April 8, 2015, into evidence. (CL Ex. 2.) That Property Management Agreement does identify the Claimant and Respondent as the parties to the agreement. It also identifies Harford Square as the subject property. However, the Claimant only provided the first page of the Property Management Agreement.⁸ Thus, the particulars of the Property Management Agreement are missing. The page the Claimant did provide does not include any provisions concerning the management fee. Thus, the only evidence of the existence of the management fee is the testimony of the Claimant.

⁸ In addition to the first page of the Property Management Agreement, the exhibit also includes an addendum to the Property Management Agreement and an Exclusive Right to Lease Brokerage Agreement. Neither of those documents contain provisions with regard to the standard management fee.

Despite that evidentiary shortcoming, I find the Property Management Agreement contained a provision that allowed the Respondent to collect a \$110.07 fee per month for managing Harford Square. I found the Claimant to be a credible witness. The Claimant provided documentation to substantiate his claims. As further indication of the Claimant's credibility, he attempted to support his assertions by issuing subpoenas to Freeman and Tselepis. The claims the Claimant did make are reasonable. For example, the Claimant acknowledged the Respondent performed adequately under the terms of the Property Management Agreement up until June 2017 and, thus, earned her fee. The Claimant also acknowledged that the Respondent collected no management fee after December 2017. Neither the Respondent nor the Fund presented any evidence which would lead me to believe the Claimant had motivation to embellish his allegations or claim amount. I further find Claimant's testimony that Carter consistently failed to pay her rent timely credible as well. This testimony is supported by the Respondent's statement for the period of September 1, 2017, through April 1, 2018 which references the issuance of failure to pay rent notices. While the Respondent may have issued notices, the statement does not reference the collection of any fees for late rent per the terms of the lease. The statement does reflect the Respondent collected the \$110.07 management fee for the months of September through December 2017. While the Claimant did not provide a statement for the months of June through August of 2017, I find no reason to believe the Respondent failed to collect late rent fees but continued to charge the management fee for those months as well. Additionally, in light of Carter's abysmal record of late rent payments, I find the Respondent owed the Claimant a fiduciary duty under the Property Management Agreement, to provide proper notice to Carter per the terms of the lease that she would terminate the lease at its end date of July 2017. The

Respondent failed to do that, thus entitling Carter to remain in Harford Square another year per the terms of the lease.

I find the Respondent committed an act or omission by failing to collect fees from Carter as a result of her late rent payments and by allowing the lease to extend another year. 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 agreement to manage Harford Square and subsequent failure to collect late rent fees or diligently remove an obviously deadbeat tenant when afforded the opportunity constitutes a misrepresentation. The Claimant never received the benefit of the management fees the Respondent deducted from the rents received from Carter. I find the Respondent received no benefit of the Respondent’s management services for the months of June through December 2017. In spite of that, the Respondent kept the \$110.07 per month as a management fee for those six months. Thus, on this issue, I find the Claimant incurred an actual loss of \$660.42. Accordingly, I find the \$660.42 in management fees for June through December 2017 to be compensable by the Fund.

The Respondent’s failure to pay the Claimant \$12,731.44 in rent proceeds owed for 2017

The Claimant provided a statement from the Respondent for the period of January 2017 through December 2017. (CL Ex. 6) In that statement, the Respondent asserts a payment to the Claimant of \$12,731.44 for net rent proceeds after the application of various fees.⁹ I find the Respondent’s assertion in the statement that she paid the Claimant \$12,731.44 in net rent proceeds an admission on her part that she owed the Claimant that amount for 2017. Other than

⁹ The various fees include legal costs, maintenance and the management fees addressed above.

contesting the management fee for June through December of 2017, as addressed above, the Claimant did not contest that the Respondent owed him \$12,731.44 in net rent proceeds for 2017. Thus, I find the Respondent owed the Claimant \$12,731.44 in net rent proceeds for 2017.¹⁰

However, the Claimant testified he only received \$8,836.01 in net rent proceeds from the Respondent in 2017. In support of this testimony he provided a summary showing all deposits the Respondent made to his account in 2017. (CL Ex. 6) Those deposits are as follows:

- \$79.79 on February 8, 2017
- \$5,730.71 on May 31, 2017
- \$2,240.96 on August 11, 2017
- \$784.65 on December 26, 2017

While the Claimant did not provide his actual bank statements to substantiate this portion of his claim, for the reasons stated above, I found him credible overall. With regard to this issue, he presented specific payments on specific dates. Therefore, I find the Respondent only deposited \$8,836.01 in his account in 2017. Thus, I find the Claimant suffered an actual loss of \$3,895.43.

I find the Respondent committed an act or omission by failing to pay the Claimant the \$3,895.43 in net rent proceeds for 2017. I further find the Respondent committed that act or omission through misrepresentation as defined above. I find the Respondent's failure to pay the Claimant the net rent proceeds, despite agreeing to do so per the Property Management Agreement constitutes a misrepresentation.

The \$1,295.00 Security Deposit

The lease identifies the Respondent as the owner of Harford Square and Carter as the tenant. The lease obligates the tenant to deposit a \$1,295.00 security deposit into the owner's escrow account. The Claimant did not present any documentary evidence that Carter gave the

¹⁰ This is prior to "crediting back" the management fee for June through December 2017 as addressed above.

Respondent the security deposit. However, taken the totality of evidence in this case, I find it credible that the Respondent received the security deposit from Carter. Carter signed the lease in June of 2015. The Claimant testified that the Respondent performed her duties under the Property Management Agreement in 2015 and 2016. Thus, I find the Respondent collected the security deposit when Carter signed the lease. The Claimant testified that the Respondent did not return the security deposit to Carter when she abandoned the property. I find this testimony credible as well. The Claimant presented evidence that the Respondent abandoned her obligations under the Property Management Agreement long before Carter abandoned the property. She did not collect late fees, she did not engage in efforts to evict Carter and she did not even collect management fees in 2018. Additionally, per the Respondent's February 27, 2018 letter, she closed her business as of April 1, 2018. Thus, I find she did not return the security deposit to Carter.

It is arguable that the Respondent may not have been able to return the security deposit to Carter because Carter abandoned Harford Square. However, since the Respondent terminated the Property Management Agreement as of April 1, 2018, I find she no longer was the "owner" under the terms of the Carter lease. Thus, the Claimant, as the true owner of Harford Square bore the obligation of the return of the security deposit to Carter. The Claimant testified that because the Respondent did not return the security deposit to him, he needed to pay Carter the security deposit out of his own resources.¹¹ The Claimant presented no documentary evidence he did this. However, as noted above, I found his testimony to be overall credible and find he had no motivation to be untruthful about the security deposit. I therefore find he suffered an actual loss of \$1,295.00 with regard to the security deposit.

¹¹ The Claimant testified he returned some of the security deposit to Carter but not all. He applied the remaining amount to repairs to Harford Square he would have otherwise used the security deposit funds to make.

I find the Respondent committed an act or omission by failing to return the security deposit to the Claimant upon closing her business. I further find the Respondent committed the act or omission through misrepresentation as defined above. I find the Respondent's act of failing to return the security deposit to the Claimant, so the Claimant could honor the terms of the lease, constituted a misrepresentation per the terms of the Property Management Agreement.¹² Thus, I find the Claimant is entitled to reimbursement from the fund of \$1,295.00 representing the principal amount of the security deposit.

In light of the above, I find the Claimant is entitled to the following reimbursement from the Fund: \$660.42 (the unearned management fees for June 2017 through December 2017) + \$3,895.43 in rents proceeds owed for 2017 + \$1,295.00 (security deposit) = \$5,850.85. Accordingly, I shall recommend the Fund award the Claimant her original complaint amount of \$5,850.85.

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 the Claimant 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 \$5,850.85. Md. Code Ann., Bus. Occ. § 17-404(b) (2018); COMAR 09.11.01.14.

¹² Again, the Claimant unfortunately did not provide the entire Property Management Agreement. (CL Ex. 1) However, I find based on a review of the pages the Claimant did provide, as well as the credible testimony of the Claimant and Thomas, that the Respondent had a fiduciary duty under the Property Management Agreement to return the security deposit to the Claimant upon the closure of her business.

RECOMMENDED ORDER

I **PROPOSE** that the Claim filed by the Claimant against the Maryland Real Estate Guaranty Fund be **GRANTED** in the amount of \$5,850.85;


I further **PROPOSE** that the Maryland Real Estate Commission Guaranty Fund shall pay to the Claimant the actual monetary loss in the amount of \$5,850.85 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.

March 27, 2019
Date Decision Issued

SIGNATURE ON FILE



Nicolas Orechwa
Administrative Law Judge

NO/sw
#178683