

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE \* BEFORE ZUBERI BAKARI WILLIAMS,  
 CLAIM OF DELVENE \* ADMINISTRATIVE LAW JUDGE  
 PURRIER, CLAIMANT, \* OF THE MARYLAND OFFICE OF  
 V.. \* ADMINISTRATIVE HEARINGS  
 THE MARYLAND REAL ESTATE \*  
 COMMISSION GUARANTY FUND \* OAH NOS: DLR-REC-22-12-14217

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FOR THE ALLEGED MISCONDUCT \*  
 OF CARREN A. PULLEY, \* MREC NO: 2011-RE-293 G.F.  
 RESPONDENT \*

\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated January 18, 2013, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 21st day of February, 2013,

ORDERED,

- A. That the Findings of Fact in the Recommended Decision be, and hereby are, AFFIRMED;
- B. That the Conclusions of Law in the Recommended Decision be, and hereby are, APPROVED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

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

MARYLAND STATE REAL ESTATE COMMISSION

2/20/2013  
Date

By: SIGNATURE ON FILE  
Marla S. Johnson, Commissioner



I held a hearing on October 22, 2012, at the OAH offices at Westfield North, Ste. 205, 2730 University Blvd., West, Wheaton, MD 20902. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010). Marc Friedman, Esquire, represented the Claimant, who was present. The Respondent failed to appear, despite notice to her address of record by certified and first class mail. Jessica Kaufman, Assistant Attorney General, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation (DLLR), and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

### **ISSUES**

(1) Did the Claimant sustain an actual loss as a result of the Respondent's act or omission that constitutes theft, embezzlement, false pretenses, forgery, misrepresentation, or fraud?

(2) If the Claimant sustained an actual loss compensable by the Fund, what is the amount?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits offered by the REC Guaranty Fund:

REC Ex. 1. Notices sent to Respondent from OAH and MREC, before August 10, 2012;

REC Ex. 2. Transmittal for DLLR/MREC and Statement of Charges, dated March 13, 2012;

REC Ex. 3. Licensing Record for Respondent from DLLR, dated March 19, 2012;

REC Ex. 4. MREC Complaint and Guaranty Fund Claim, dated November 22, 2010;

REC Ex. 5. Email from Jessica Kaufman, Assistant AG, DLLR , to Respondent , dated October 19, 2012.

I admitted the following exhibits offered by the Claimant:

Cl. Ex. 1. MREC Order revoking Respondent's license and several attached documents, dated January 20, 2011;

Cl. Ex. 2. MREC Complaint and Guaranty Fund Claim form and several attached documents, dated November 11, 2010;

Cl. Ex. 3. Statement from Chevy Chase Bank, dated March 23, 2009

### Testimony

The Claimant testified on her own behalf and presented the testimony of Nicole Gifford (employer), Geraldine Muirhead (sister), Otis Brown (nephew), Curdel Russell (daughter), and Caswell Muirhead (brother-in-law).

### **FINDINGS OF FACT**

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

1. At all times relevant to this matter, the Respondent was licensed by the MREC as a Real Estate Salesperson (License #629972) and was associated with Century 21 Advantage Realty.

2. The Respondent was the listing and selling agent for property located at 6611 23<sup>rd</sup> Avenue in Hyattsville, MD (the Hyattsville Property).

3. In February 2009, the Claimant was interested in purchasing a home. The Respondent was a member of her church and offered her real estate agent services.

4. On February 20, 2012, the Claimant and her sister, Curdel Russell, and brother-in-law, Caswell Russell, went with the Respondent to look at the Hyattsville Property. After

viewing the property, the Claimant told the Respondent she wanted to purchase the house. The Respondent took the Claimant's personal background information to run a credit check.

5. The list price for the Hyattsville Property was \$119,000.00.

6. The Respondent told the Claimant to make an offer of \$120,000.00 so that she would be sure to get the property.

7. On February 24, 2009, the Claimant and Respondent entered into a buyer broker agreement to purchase the Hyattsville Property. The Claimant signed the agreement. However, the agreement was not signed by the Respondent or other broker representative.

8. That same day, the Claimant paid the Respondent \$460.00 fee in cash for doing the paperwork associated with the offer.

9. The Respondent told the Claimant that her credit checked out and that she qualified for a loan up to \$250,000.00 from the Respondent's brother, a loan officer with Bank of America.

10. On March 1, 2009, the Respondent met with the Claimant at her sister's house. The Respondent told the Claimant that because the house was in foreclosure, the Claimant would have to participate in a short sale process. The Respondent also told the Claimant to increase her bid to \$125,000.00 because another person was bidding on the house. The Claimant agreed and increased her bid.

11. The Respondent told the Claimant that she had to give her a deposit of \$6,000.00, which constituted the difference of the list price of the house and her bid. The Respondent told the Claimant that she would place the money in escrow and that if for any reason the house was not purchased, the money would be automatically returned to the Claimant. The Claimant's sister gave a \$5,000.00 check on Claimant's behalf. However, the Respondent stated that she needed two separate checks totaling \$6,000.00: one check for \$5,000.00 made payable to Ounce

of Prevention Health Seminar (OAPHS), a non profit religious organization owned by the Respondent, and a second check for \$1,000.00 made payable to Century 21. The Claimant's sister wrote out both of those checks accordingly.

12. On March 18, 2009, the Respondent called the Claimant and told her that the bank rejected her offer. The Respondent told her to increase her offer again by \$5,000.00 to \$130,000.00. The Claimant increased her offer accordingly.

13. In April 2009, the Respondent called the Claimant again and told her the bank rejected her offer and told her to increase her offer by another \$5,000.00. The Claimant stated that she could not afford to increase the bid for that amount, but could borrow \$4,000.00 from her sister. The Respondent agreed and the Claimant increased her bid to \$134,000.00.

14. The Claimant gave the Respondent \$4,000.00 in cash, which constituted the difference increase in bid price.

15. From April through early May, the Respondent assured the Claimant that she had won the bid on the Hyattsville Property and to not worry.

16. On May 24, 2009, the Respondent told the Claimant that the bank had changed its mind and decided not to sell the Hyattsville Property and the house was no longer on the market.

17. The Respondent told the Claimant that there was another house available at 6808 Ingraham Street, Riverdale, MD 20737 (the Riverdale Property). The Claimant went to look at the house and wanted to bid on it.

18. The list price of the Riverdale Property was \$145,000.00.

19. The Claimant paid the Respondent \$5,000.00 toward the Riverdale property. The Claimant asked for a receipt, but the Respondent never provided her with one.

20. In June 2009, the Claimant paid the Respondent \$847.00 toward insurance.

21. The Respondent told the Claimant that she had won the bid on the house and that everything was going smoothly.

22. On August 31, 2009, the Respondent called the Claimant and told her that closing on the Riverdale Property was set for September 30, 2009.

23. On September 17, 2009, the Respondent told the Claimant that she had to take her to see a Bank of America loan manager in order to secure a loan. The Claimant stated that the Respondent previously told her she already had a loan, but went to meet with the loan manager anyway. The loan manager stated that there was an error in the loan paperwork and it would have to be fixed before a closing could occur.

24. On November 19, 2009, the Respondent called the Claimant and told her that she had the new ratified contract for the Riverdale Property. However, the Respondent would not provide a new closing date or location. The Claimant did not hear anything back from the Claimant for several weeks.

25. In early December 2009, the Claimant found out through an internet search that the property was going to auction on December 8, 2009. The Claimant's nephew, Otis Brown, attended the auction to find out what was going on. Mr. Brown found out that there was never any contract on the Riverdale Property and that if it did not sell at auction, it would go back to the bank.

26. The Claimant never heard from the Respondent again.

27. The Respondent's brother, the loan officer, had never heard of the Claimant and never approved a loan for her.

28. Century 21 had no paperwork or contract concerning the Claimant or the Hyattsville and Riverdale Properties.

29. The Claimant has never returned any of the money taken by the Respondent.

30. Several judgments have been filed against the Respondent. Her bank accounts and wages from Century 21 are being garnished.

31. Subsequent to the Claimant's dealings with the Respondent, the MREC revoked the Respondent's Real Estate license.

### DISCUSSION

The Claimant is seeking reimbursement of \$22,307.00 from the Fund for a loss she suffered at the Respondent's hands. The burden of proof at a hearing on a claim against the Fund is on the "claimant to establish the validity of the claim." Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2010). A claim is valid if it is based on the licensee's 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)(iii) (Supp. 2012); COMAR 09.11.03.04.

Furthermore, the amount recovered for any claim against the Guaranty Fund may not exceed \$25,000.00 for each claim. Md. Code Ann., Bus. Occ. & Prof. § 17-410(b). A claim is limited to one's actual losses and may not include attorney's fees and commissions owed to a licensee. COMAR 09.11.01.18.

For the reasons that follow, I find that the Claimant has met her burden of proving eligibility to recover \$22,307.00 from the Fund for the actual monetary losses she suffered as the result of the Respondent's acts.

The facts of this case are simple. The Claimant wanted to buy a house. She used the services of the Respondent, a member of her church who was a real estate agent and whom she trusted. The Respondent accepted a residential sales contract for the Hyattsville and Riverdale Properties and over the course of a year received several payments from the Claimant to purchase those properties. However, the credible evidence shows that the Respondent lied to the



Claimant and did not perform any of the actions for which she collected money. The Fund's investigator interviewed the Respondent's employer at Century 21, who stated that they had no paperwork on any of the two properties. Shockingly, they did not even have the Claimant's name in any of their records. Moreover, the Respondent's brother, a loan officer, stated to Caswell Muirhead that he never approved the Claimant for any loan as the Respondent claimed. Last, although the Respondent told the Claimant that she was closing on the Riverdale Property, the property was auctioned on December 8, 2009 and never had any contracts on it. The Respondent's conduct is the very definition of fraud and misrepresentation. Because the Respondent failed to appear for the hearing, the facts, as the Claimant presented them, are uncontested and the Respondent has not offered any justification for her actions.

The Fund conceded at the hearing that the Claimant is eligible for reimbursement from the Fund for the Respondent's acts of misrepresentation stated above. The Fund further recommended that the Claimant is entitled to the amount she paid to the Respondent, \$22,307.00.

As such, this amount constitutes:

Hyattsville Property

\$ 460.00	–	To start the Paperwork and Document Fees
\$6,000.00	–	Earnest money deposit
\$5,000.00	–	Contract price bid increase to \$130,000.00
\$5,000.00	–	Check to the Respondent's non profit
<u>\$1,000.00</u>	–	<u>Check to Century 21</u>
<b>\$17,460.00</b>		

Riverdale Property

\$4,000.00	–	Earnest money deposit
<u>\$847.00</u>	–	<u>Insurance (June)</u>
<b>\$4,847.00</b>		

The only payment amount the Fund excluded the Claimant's request was the \$500.00 paid for the inspection and \$500.00 paid for appraisal. I agree that this should be admitted because there was not credible evidence adduced at the hearing that the inspection or the appraisal did not take place.

**CONCLUSIONS OF LAW**

I conclude that the Claimant is eligible for reimbursement from the Real Estate Guaranty Fund in the amount of \$22,307.00 for actual losses resulting from the Respondent's acts. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(1), (2) and 17-410(b); COMAR 09.11.01.18 and 09.11.03.04.

**RECOMMENDED ORDER**

I **RECOMMEND** that the MREC **ORDER**:

That the Claimant sustained an actual loss in the sum of \$22,307.00, as a result of theft, embezzlement, false pretenses and/or misrepresentation of the Respondent; and further,

That the Claimant's claim against the Maryland Real Estate Guaranty Fund be **ACCEPTED** in the amount of \$22,307.00; and

That the records and publications of the Maryland Real Estate Commission reflect its final decision.

January 18, 2013  
Date Decision Mailed

ZBW/emh  
#139553

**SIGNATURE ON FILE**

Zuberi Bakari Williams /  
Administrative Law Judge