

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF	*	BEFORE MARINA L. SABETT,
THE CLAIM OF MARK AND	*	ADMINISTRATIVE LAW JUDGE
VICTORIA DOLS, CLAIMANTS	*	OF THE MARYLAND OFFICE OF
V.	*	ADMINISTRATIVE HEARINGS
THE MARYLAND REAL ESTATE	*	
COMMISSION GUARANTY FUND	*	OAH NOS: DLR-REC-22-12-12269
FOR THE ALLEGED MISCONDUCT	*	
OF SUE ANNE WILLISON,	*	MREC NO: 2011-RE-501 G.F.
REAL ESTATE BROKER	*	
* * * * *	*	* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated September 21, 2012, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 17th day of October, 2012,

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

SIGNATURE ON FILE

By: _____
Marla S. Johnson, Commissioner

Date

**IN THE MATTER OF THE CLAIM OF
MARK A. and VICTORIA L. DOLS,
CLAIMANTS,**

V.

**THE MARYLAND REAL ESTATE
COMMISSION GUARANTY FUND FOR
THE ALLEGED MISCONDUCT OF
SUE A. WILLISON, LICENSED REAL
ESTATE SALESPERSON,
RESPONDENT**

*** BEFORE MARINA L. SABETT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH CASE No.: DLR-REC-22-12-12269
* MREC COMPLAINT No. : 11-RE-501GF
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RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On June 27, 2011, Mark A. and Victoria L. Dols (Claimants) filed a complaint with the Maryland Real Estate Commission (MREC) and a claim against the Maryland Real Estate Commission Guaranty Fund (Fund). The claim was for monetary losses allegedly incurred by the Claimant as a result of the misconduct of Sue A. Willison, Licensed Real Estate Salesperson (Respondent). On March 9, 2012, the MREC transmitted the matter to the Office of Administrative Hearings (OAH) for a hearing regarding the Claimants' claim against the Fund.

I held a hearing on June 26, 2012 at the Office of Administrative Hearings (OAH) in Wheaton, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010). The Claimants represented themselves. The Respondent did not appear and by Consent Order dated November 22, 2011, may not contest the claims filed by the Claimants.¹ 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, 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. 2011); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

ISSUES

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

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

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits into evidence on behalf of the Fund:

Fund Ex. 1 A Notice of Hearing, dated April 13, 2011, with attached Certified Mail Receipt confirming delivery of the Notice on the Respondent

Fund Ex. 2 Order for Hearing, dated March 7, 2012, and the transmittal to the OAH regarding same

¹ A more detailed discussion of the contents of the Consent Order and the circumstances leading to its entry are discussed *infra* in the Findings of Fact and Discussion.

- Fund Ex. 3 DLLR license registration information for the Respondent, dated June 1, 2012
- Fund Ex. 4 Affidavit of Steven Long, Assistant Executive Director of the MREC, dated March 12, 2012
- Fund Ex. 5 Claimants' MREC Complaint and Guaranty Fund Claim, dated June 18, 2011 and received by the MREC on June 27, 2011
- Fund Ex. 6 Consent Order between the MREC and the Respondent, Case Nos.: 2012- RE-002, *et al*, dated November 22, 2011
- Fund Ex. 7 MREC Report of Investigation, dated January 16, 2012, with attachments

I admitted the following exhibits into evidence on behalf of the Claimants:

- Claim Ex. 1 Various Owners' Statements provided by West Patrick to the Claimants supposedly reflecting various amounts transmitted by West Patrick to the Claimants for the rental of the Deer Park Road property in 2010, with handwritten notes
- Claim Ex. 2 Spreadsheet prepared by the Claimants regarding receipt of income and expenses for the Deer Park Road property between August 18, 2010 and February 25, 2011, with handwritten notes
- Claim Ex. 3 Facsimile from West Patrick to Peter Van Hecke, with a fax line dated May 9, 2011, attaching excerpts from Sun Trust Bank account statements and providing handwritten notes
- Claim Ex. 4 Spreadsheet prepared by the Claimants regarding receipt of income and expenses for the Deer Park Road property between August 17, 2010 and May 9, 2011, with handwritten notes by the Claimants
- Claim Ex. 5 Receipt in the amount of \$300.00 paid by the Claimants to West Patrick as a maintenance deposit, dated June 30, 2010

No exhibits were admitted on behalf of the Respondent.

Testimony

The Claimant Victoria Dols testified on behalf of the Claimants. No testimony was offered on behalf of the Respondent. The Fund presented the testimony of Jack L. Mull, Jr., an investigator of behalf of the MREC.

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 a Licensed Real Estate Salesperson, registration number 05 527749, and worked on behalf of West Patrick Property Solutions, LLC (West Patrick), a property management company located in Frederick, Maryland.
2. On or around June 1, 2010, the Claimants, as the owners of a property located at 1456 Deer Park Road, Finksburg, Maryland 21048 (Deer Park Road property), entered into a Property Management and Exclusive Rental Agreement (Agreement) with the Respondent in her role as the agent of West Patrick. The Agreement directed the Respondent to rent, lease, operate and manage the Claimants' Deer Park Road property. The Respondent's leasing fee under the Agreement was 75% of the first month's full rent. The Respondent's management fee under the Agreement was the greater of \$80.00 or 8% of the total gross rents collected for each month.
3. Pursuant to that Agreement, on or around June 30, 2010, the Respondent entered into a Residential Dwelling Lease for Maryland with Tiffany Klein for occupancy as a tenant of the Deer Park Road property beginning July 15, 2010.
4. The Lease required Ms. Klein to provide the Respondent with a security deposit in the amount of \$1,650.00 and monthly rent in the amount of \$1,650.00.
5. At no time did the Respondent indicate that the tenant had failed to pay her rent for the Deer Park Road property in period July 2010 through May 2011. The tenant also verbally confirmed to the Claimants that she paid her rent for that period.
6. In the spring of 2011, the Claimants asked the Respondent for an accounting of the net rents she paid to the Claimants because they were not receiving the net rent proceeds that they had

anticipated from the Deer Park Road property under the Agreement. The Respondent failed to respond to repeated e-mails and telephone calls.

7. On or around May 9, 2011, the Claimants' attorney sent a letter to West Patrick demanding payment of the April and May net rents for the Deer Park Road property and proof of payment for the previous months.
8. Between the months of July 2010 through May 2011, the Respondent received \$17,351.61 in gross rent payments from the tenant. This number includes the \$851.61 that the tenant paid for the July rent, which was prorated for occupancy beginning July 15, 2010, and gross rent in the amount of \$1,650.00 per month for August 2010 through May 2011.
9. Under the Agreement with the Claimants, the Respondent was entitled to \$2,637.50 in lease and management fees under the Agreement between July 2010 and May 2011 for her rental and management of the Deer Park Road property. This amount is the sum of: a leasing fee of \$1,237.50; a management fee of \$80.00 for July 2010; and a management fee in the amount of \$132.00 per month for the months of August 2010 through May 2011.
10. The \$17,351.61 in gross rent minus the \$2,637.50 in total lease and management fees, equals \$14,714.11, which is the amount that the Claimants should have received from the Respondent in net rent under the Agreement.
11. The Claimants only received \$9,679.18 in net rent for the Deer Park Road property for the period between July 2010 and May 2011. Under the terms of the Agreement, the Respondent improperly withheld \$5,034.93 from the Claimants.
12. Additionally, the Respondent failed to return to the Claimants a \$300.00 maintenance security deposit and the tenant's \$1,650.00 security deposit. The tenant has neither requested nor received her security deposit.

13. The Respondent improperly withheld \$6,984.93 from the Claimants, which reflects the sum of the Claimants' \$5,034.93 loss in net rent, the \$300.00 maintenance security deposit and the tenant's \$1,650.00 security deposit.
14. The Claimants terminated their Agreement with the Respondent on or around May 18, 2011.
15. The Respondent was the only signatory on the bank accounts opened and maintained by West Patrick and she held 100% ownership of West Patrick.
16. On November 22, 2011, the Respondent entered into a Consent Order in which she admitted that she violated Section 17-322(b)(22) of the Business Occupations and Professions Article of the Maryland Annotated Code as to the Claimants (and many others like them) when she failed "to promptly account for or remit money that came into her possession, but belonged to another person." Consent Order at paragraph 5 and Appendix "A", Fund Ex. 6.
17. Under the Consent Order, she further waived any right to participate in the hearing of this matter and waived her right to contest or appeal any decision by the Commission that involves a claim arising out of her "actions while a property manager at West Patrick Solutions." Id. at page 3.
18. Further, under the Consent Order the Respondent may not "apply to the Commission in the future for a license to engage in the provision of or assist in the provision of real estate brokerage services in the State." Id. at page 3.

DISCUSSION

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).

Section 17-404(a) of the same statute governs all claims brought against the Fund and sets forth, in pertinent part, the following criteria that must be established by a claimant to obtain an award:

§ 17-404. Claims against Guaranty Fund.

(a) *In general.*-(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; or
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.

(b) *Limitation on recovery.*- The amount recovered for any claim against the Guaranty Fund may not exceed \$25,000 for each claim.²

Md. Code Ann., Bus. Occ. & Prof. § 17-404(a), (b) (Supp. 2010). *See* COMAR 09.11.03.04.

The MREC shall order payment of a valid claim from the Guaranty Fund for actual monetary losses suffered by a claimant not to exceed \$25,000.00³ Md. Code Ann., Bus. Occ. & Prof. § 17-410(a), (b) (2010); COMAR 09.11.01.18. For the reasons that follow, the Claimants are entitled to an award of \$6,984.93 for the actual monetary losses they suffered as the result of the acts or omissions of the Respondent in the instant case.

By Consent Order dated November 22, 2011, the Respondent admitted that she violated Section 17-322(b)(22) of the Business Occupations and Professions Article of the Maryland

² The recovery limit under Section 17-404 has changed to \$50,000.00 effective July 1, 2012. 2012 Md. Laws ch. 184.

³ *See supra* footnote 2.

Annotated Code as to the Claimants (and many others like them) when she failed “to promptly account for or remit money that came into her possession, but belonged to another person.”

Consent Order at paragraph 5 and Appendix “A”, Fund Ex. 6. Under that Order, she further waived any right to participate in the hearing of this matter and waived her right to contest or appeal any decision by the Commission that involves a claim arising out of her “actions while a property manager at West Patrick Solutions.” *Id.* at page 3.

The Respondent, as an agent of West Patrick, entered into an Agreement with the Claimants in this case on or around June 1, 2010, to rent, lease, operate and manage the Claimants’ Deer Park Road property located in Finksburg, Maryland. The Respondent’s leasing fee under the Agreement was 75% of the first month’s full rent. Lease Agreement, at attachment 4 to Fund Ex. 7. The Respondent’s management fee under the Agreement was the greater of \$80.00 or 8% of the total gross rents collected for each month. *Id.*

Pursuant to the Agreement, on or around June 30, 2010, the Respondent entered into a Residential Dwelling Lease for Maryland with Tiffany Klein for occupancy as a tenant of the Deer Park Road property beginning July 15, 2010. The Lease required Ms. Klein to provide the Respondent with a security deposit in the amount of \$1,650.00 and monthly rent in the amount of \$1,650.00.

At the hearing, Claimant Victoria Dols testified that in the spring of 2011, the Claimants asked the Respondent for an accounting of the net rents she paid to the Claimants because they were not receiving the net rent proceeds from the Deer Park Road property as they had anticipated under the Agreement. The Respondent failed to respond to repeated e-mails and telephone calls regarding this issue. The Respondent also failed to forward the net rent proceeds for the months of April and May 2011. Claimant Dols further testified that (1) at no time did the

Respondent indicate that the tenant had failed to pay her rent or security deposit and (2) the tenant verified to the Claimants that all of her rent for July 2010 through May 2011 and the security deposit had been paid to the Respondent. Claimant Dols also confirmed with the tenant that the tenant had never asked for nor received a refund of her security deposit. The Claimants terminated their Agreement with the Respondent on or around May 18, 2011. Attachment 5 to Fund Ex. 7.

Claimant Dols' testimony was further supported by an accounting spreadsheet she and/or her husband prepared dated May 9, 2011 contemporaneously documenting the monies received from the Respondent (or lack thereof) for the Deer Park Road property. Claim Ex. 4. The sworn claim and supporting documentation that the Claimants submitted to the Fund regarding this matter is also consistent with this spreadsheet. Claimants' Complaint and Claim to the Fund, at attachment 2 to Fund Ex.7. Claimant Dols also produced a receipt dated June 30, 2010 for a \$300.00 maintenance deposit the Claimants paid to West Patrick. Claim Ex. 5. She testified that neither the \$300.00 maintenance deposit nor the tenant's \$1,650.00 security deposit had ever been refunded to her or her husband.

Based on the uncontroverted testimony of Claimant Dols and the supporting documentation described above, between the months of July 2010 through May 2011, the Respondent received \$17,351.61 in gross rent payments from the tenant. This number includes the \$851.61 that the tenant paid for the July rent, which was prorated for occupancy beginning July 15, 2010, and gross rent in the amount of \$1,650.00 per month for August 2010 through May 2011.

Under the Agreement with the Claimants, the Respondent was entitled to \$2,637.50 in lease and management fees under the Agreement between July 2010 and May 2011 for her rental

and management of the Deer Park Road property. This amount is the sum of: a leasing fee of \$1,237.50; a management fee of \$80.00 for July 2010; and a management fee in the amount of \$132.00 per month for the months of August 2010 through May 2011. The \$17,351.61 in gross rent minus the \$2,637.50 in total lease and management fees, equals \$14,714.11, which is the amount that the Claimants should have received from the Respondent in net rent under the Agreement.

The Claimants only received \$9,679.18 in net rent for the Deer Park Road property for the period between July 2010 and May 2011. Under the terms of the Agreement, the Respondent improperly withheld \$5,034.93 from the Claimants. Additionally, the Respondent failed to return to the Claimants their \$300.00 maintenance security deposit and the tenant's \$1,650.00 security deposit. The Respondent admitted in a signed and sworn affidavit dated July 17, 2011 that she was the sole owner of West Patrick and the only signatory on the bank accounts opened and maintained by West Patrick. Fund Ex. 7, at attachment 2a.

Accordingly, I find that the Respondent improperly withheld \$6,984.93, which reflects the sum of the Claimants' loss in net rent, the \$300.00 maintenance security deposit and the tenant's \$1,650.00 security deposit. As of the date of the hearing, neither the Claimants (nor anyone acting on their behalf) had received the \$6,984.93 owed to them by the Respondent. I further find that under the terms of the Consent Order, the Claimants have met all other criteria to establish entitlement to an award from the Fund regarding their Deer Park Road property located in Finksburg, Maryland. The Fund agreed at the hearing that the Claimants were entitled to an award of \$6,984.93 from the Fund in this case.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Facts and Discussion, I conclude as a matter of law that the Claimants are entitled to reimbursement from the Real Estate Guaranty Fund in the amount of \$6,984.93 for actual losses resulting from the Respondent's actions. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(1), (2) and 17-410(b)(1) ; COMAR 09.11.01.18 and 09.11.03.04.

RECOMMENDED ORDER

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

That the Claimants' claim against the Maryland Real Estate Guaranty Fund be **ACCEPTED** in the amount of \$6,984.93; and

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

September 21, 2012
Date Decision Mailed

SIGNATURE ON FILE

Marina L. Sabett
Administrative Law Judge

MLS/lh
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