

**BEFORE THE MARYLAND REAL ESTATE COMMISSION**

MARYLAND REAL ESTATE  
COMMISSION

\*

v.

\*

CASE NO. 2017-RE-100

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OAH NO. DLR-REC-24-18-37960

\*

MICHAEL HODDINOTT,  
Respondent

and

\*

IN THE MATTER OF THE CLAIM  
OF TYESHA WITWORTH AGAINST  
THE MARYLAND REAL ESTATE  
COMMISSION GUARANTY FUND

\*

\*

\* \* \* \* \*

**PROPOSED ORDER**

The Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order of the Administrative Law Judge dated May 28, 2019, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 19 day of June, 2019, hereby **ORDERED**:

- A. That the Proposed Findings of Fact<sup>1</sup> 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 Proposed Order in the proposed decision be, and hereby is, **ADOPTED in part AMENDED in part as follows:**

**ORDERED** that claimant Tyesha Witworth's claim against the Maryland

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<sup>1</sup>The Commission notes that on page 6 of the proposed decision the Administrative Law Judge identifies the Claimant's (Cl.) exhibits. Cl. Exhibit 5 is listed as emails and Cl. Exhibit 6 is listed as the MRIS listing for the Property, close date October 9, 2015. The Commission notes that the emails can actually be found in Cl. Exhibit 6 while the MRIS listing is Cl. Exhibit 5, a harmless typographical error requiring correction for clarity only. On page 8, at the end of Paragraph 11 the Administrative Law Judge cites to REC #15. There is however no exhibit 15 throughout the exhibits and the Commission strikes reference to it as a harmless typographical error.

Real Estate Commission Guaranty fund is DENIED;

**ORDERED** that Respondent, Michael Hoddinott, be reprimanded;

**ORDERED** that the Respondent, Michael Hoddinott, pay a civil penalty in the amount of **Three Thousand Dollars (\$3,000.00)** within thirty (30 days) of the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted; and

**ORDERED** that all real estate licenses held by the Respondent, Michael Hoddinott, 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 civil penalty is paid;

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 it omitted from the Proposed Order a provision suspending the Respondent's license until the civil penalty is paid in full.

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 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

MARYLAND REAL ESTATE COMMISSION

6-19-2019  
Date

By: SIGNATURE ON FILE

STATE REAL ESTATE COMMISSION

v.

MICHAEL HODDINOTT,

RESPONDENT

AND

THE CLAIM OF

TYESHA WHITWORTH,

CLAIMANT,

AGAINST THE REAL ESTATE

GUARANTY FUND,

FOR THE ALLEGED MISCONDUCT

OF MICHAEL HODDINOTT

\* BEFORE ROBERT F. BARRY,  
\* ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: DLR-REC-24-18-37960  
\* MREC No.: 17-RE-100

\* \* \* \* \*

**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 September 15, 2016, Tyesha Whitworth (Claimant) filed a complaint with the State Real Estate Commission (Commission) against Michael Hoddinott (Respondent), a licensed real estate salesperson, concerning the Respondent's conduct in relation to residential real estate the Claimant purchased in Baltimore. 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 or omissions related to that same residential real estate.

On September 25, 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 December 3, 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. Md. Code Ann., Bus. Occ. & Prof. § 17-323(d)(2) (2018) (regulatory charges); *id.* § 17-407(c)(2)(ii) (Guaranty Fund claim).<sup>1</sup>

On February 26, 2019, I conducted a hearing at the OAH in Hunt Valley, Maryland. *Id.* § 17-324 (regulatory charges); *id.* §§ 17-407(e) and 17-408 (Guaranty Fund claim); and *id.* § 17-409 (joinder of regulatory charges and Guaranty Fund claim). Shara Hendler, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Commission in relation to the regulatory charges. The Respondent represented himself. The Claimant represented herself. Hope Sachs, 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. 2018); 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?

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<sup>1</sup> All references to the Business Occupations and Professions Article are to the 2018 Replacement Volume.

- a. 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);
- b. 17-322(b)(25) (engage in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings);
- c. 17-322(b)(32) (violate any other provision of title 17 of the Business Occupations and Professions Article); and
- d. 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 09.11.02.01C (a licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field); COMAR 09.11.02.01D (a licensee shall make a reasonable effort to ascertain all material facts concerning every property for which the licensee accepts the agency); and COMAR 09.11.02.02A (a licensee shall protect and promote the interest of the client)).

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 five exhibits into evidence for the Commission:

- REC #1 - Statement of Charges and Order for Hearing, September 25, 2018
- REC #2 - Notice of Hearing
- 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 (1-9)
  - Complaint and Guaranty Fund Claim, September 15, 2016 (10-13)
  - Metropolitan Regional Information Systems, Inc. (MRIS) listing for 1214 Woodbourne Avenue, Baltimore, MD 21239 (Property) (14-16)
  - Residential Contract of Sale, date of offer, August 11, 2015 (17-48)
  - Settlement Statement (HUD-1) (49-51)
  - Disclosure of Information on Lead-Based Paint (52)
  - Property Inspection Report, Authority Inspections LLC (53-83)
  - Receipts (84)
  - Photographs (85-87)
  - Estimate, BLC Construction and Cox Roofing, September 6, 2016 (88-93)
  - E-mails between the Respondent and Maria Frey, the Claimant's real estate agent, April 29, 2016, and May 3, 2016 (94-96)
  - Estimate, AROCON Roofing and Construction, November 16, 2016 (97-100)
  - Thumbnail photographs (101-103)
  - Photographs (104-110)

- Information concerning the Respondent's real estate salesperson's license (111)
- Respondent's response to the Commission (112-113)
- Information concerning the Respondent's real estate salesperson's license (114)
- Response to the Commission from Kelly Snow, the Respondent's real estate broker (115)
- Information concerning Ms. Snow's real estate broker's license (116)
- Information concerning the home improvement license of Infinity Construction LLC (117-118)
- Acknowledgement, Baltimore Window Factory, April 21, 2015 (119-120)
- Estimate, Advantage Home Exteriors, November 15, 2016 (121)
- Estimate, Phil DiBello Family Roofing (122)
- Request for investigation, December 6, 2017 (123)
- Information concerning Maria Frey's real estate salesperson license (124)
- Information concerning the home improvement licenses of Infinity Construction-LLC and Luis Funez Campos (125-128)
- E-mails among between the Commission, Kelly Snow, the Respondent, and others, October 28, 2016, through December 4, 2016 (129-137)
- Void Invoice, Infinity Construction LLC (138)
- Supplemental Report (139-140)

REC #5 - Deed of Assignment, April 10, 2015

I admitted two exhibits into evidence for the Respondent:

RESP. #1 - Roofing Inspection Form, Advantage Home Exteriors, November 14, 2016



RESP. #2 - MRIS listing for the Property, close date, April 10, 2015

I admitted eight exhibits (the Claimant withdrew one exhibit) into evidence for the

Claimant:

CLAIM #1 - Excerpt from the Claimant's Complaint and Guaranty Fund Claim

CLAIM #2 - Receipts, April 20 and 30, 2016

CLAIM #3 - Withdrawn

CLAIM #4 - Photographs

CLAIM #5 - E-mails between the Respondent and the Claimant's real estate agent, April 29, 2016, and May 3, 2016

CLAIM #6 - MRIS listing for the Property, close date, October 9, 2015

CLAIM #7 - Estimate, Homefix Custom Remodeling, December 18, 2018

CLAIM #8 - Estimate, BLC Construction and Cox Roofing, September 6, 2016

CLAIM #9 - Estimate, BLC Construction and Cox Roofing, December 12, 2018

The Fund did not submit any exhibits.

### Testimony

The Claimant and Robert Dotson, Jr., Investigator, testified for the Commission.

The Respondent testified for himself as to the regulatory charges and the claim against the Guaranty Fund.

The Claimant testified for herself as to her claim against the Guaranty Fund. She also presented testimony from her buyer's real estate agent, Maria Frey.

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 05-644315 since May 7, 2012. The Respondent's current registration expires on May 7, 2020.
2. The Respondent is affiliated with Better Choice Real Estate, with Kelly Snow as his broker of record.
3. On or about April 10, 2015, the Respondent purchased residential real estate – a row house located at 1214 Woodbourne Avenue, Baltimore, Maryland (Property) – for \$55,000.00 as an investment property.
4. The MRIS listing for the Property when the Respondent purchased it listed the ownership interest in the Property as fee simple.
5. The Respondent prepared the deed of assignment for the purchase, which included an assignment of the “lot of ground . . . subject to the payment of the annual rent of \$96.00 payable half-yearly on the 24<sup>th</sup> days of February and August in each and every year.” (REC #5).
6. When he purchased the Property it was subject to a ground lease and the Respondent knew or should have known that the Property was subject to a ground lease.
7. The ground lease holder was and still is Johanna Catanzaro.
8. The Respondent renovated the Property.
9. Luis Funes Campos, a then-unlicensed contractor, performed some of the renovations on the Property. (Mr. Funes Campos obtained a home improvement salesman/contractor license with a trade name of Infinity Construction LLC, effective November 30, 2016.)

10. On July 11, 2015, when the Respondent listed the Property on the MRIS, he indicated that he owned the Property in fee simple.

11. On the MRIS, the Respondent remarked wrote: "WOW! This is an incredibly well done complete renovation throughout, beautiful custom kitchen with granite countertops and breakfast bar, soft close cabinets, stainless appliances and porcelain tile and nice deck. Gorgeous finished basement that walks out ground level through work room to large patio and parking pad. New roof, windows, trim, two panel doors. THIS ONE WON'T LAST LONG, COME SEE." (REC #4, #15).

12. The Claimant's buyer's real estate agent, Maria Frey, pursuant to the Claimant's preferences, searched on the MRIS for properties for the Claimant that were fee simple ownership and renovated.

13. On August 11, 2015, the Claimant offered to purchase the Property for \$152,000.00, with a settlement date of October 2, 2015, or sooner if agreed to by the parties.

14. The residential contract of sale, prepared by Ms. Frey, indicated that the Property was being conveyed in fee simple; it did not include a Property Subject to Ground Rent Addendum.

15. The residential contract of sale contained a home inspection contingency.

16. The Respondent accepted the residential contract of sale on August 16, 2015, with a scheduled settlement date of October 2, 2015.

17. On August 26, 2015, John James, a licensed home inspector with Authority Inspections LLC, conducted a home inspection of the Property, with the Claimant and Ms. Frey present.

18. During his inspection, Mr. James mounted the roof of the Property; he noted no concerns with the roof's asphalt shingles and reported the roof and flashing to be in good condition.

19. During a review of prior tax assessments on the Property, Ms. Frey discovered that the Respondent did not own the Property in fee simple, but rather subject to a ground lease.

20. The Claimant, Ms. Frey, the Respondent, and Ms. Snow discussed the ground rent issue, and after they were unable to ascertain the identity of the ground lease holder, they proceeded to settlement, with the Respondent paying the Claimant \$500.00 toward her potential redemption of the ground lease.

21. In April 2016, the Claimant's roof leaked into two adjoining bedrooms. The Claimant had Ken, a handyman, make temporary repairs for \$1,000.00.

22. While performing his repairs, Ken lifted up shingles on one area of the Claimant's roof to reveal roofing planks of differing lengths and ages, some of which were intact and some of which were splintered or disintegrated. The smaller pieces of wood plank were located at the edge of the Appellant's roof where it meets the roof of the adjacent row house.

23. The Claimant, Ms. Frey, the Respondent, and Ms. Snow discussed the roof leak, but ultimately the Respondent declined to replace the roof as requested by the Claimant.

24. In September 2016, the Claimant received two estimates, one from BLC Construction/Cox Roofing for \$6,575.00, and one from Phil DiBello Family Roofing for \$6,500.00, for a complete roof replacement.

25. In December 2018, the Claimant received two estimates, one from BLC Construction/Cox Roofing for \$7,364.00, and one from Homefix Custom Remodeling for \$7,149.40, for a complete roof replacement.

## DISCUSSION

### Regulatory Charges

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

(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 the above four sub-sections of the statute. As to sub-section (b)(32), however, the Commission did not cite the Respondent with violating any other provisions of title 17, so I recommend that the Commission dismiss that charge. The Commission charged the Respondent with violations of three regulations under sub-section (b)(33), specifically: COMAR 09.11.02.01C (a licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field); COMAR 09.11.02.01D (a licensee shall make a reasonable effort to ascertain all material facts concerning every property for which the licensee accepts the agency); and COMAR 09.11.02.02A (a licensee shall protect and promote the interest of the client, but is not relieved of his statutory duties to other parties to the transaction). All of the charges relate to the Respondent's alleged failure to disclose to the Claimant, the Claimant's real estate agent, and, through the MRIS, the general public, that the Property was subject to a ground lease. The

Commission asked that I recommend a reprimand of the Respondent's real estate salesperson's license and the imposition of a \$4,000.00 penalty for the violations.

As explained below, I recommend that the Commission sanction the Respondent for violating sub-sections (b)(4), (b)(25), and (b)(33), the latter for violations of COMAR 09.11.02.01C and COMAR 09.11.02.02A. The evidence presented concerning the regulatory charges established under sub-section (b)(4) that the Respondent intentionally failed to disclose to the Claimant before and after accepting the Claimant's offer on the Property that the Property was subject to a ground lease, information that the Respondent knew or should have known. This same conduct demonstrated under sub-section (b)(25) the Respondent's bad faith and incompetency, and, under sub-section (b)(33), COMAR 09.11.02.01C, and COMAR 09.11.02.02A, his failure to protect the public against misrepresentation and unethical practices.

As noted above, 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 existence of the ground lease was a material fact relating to the Property. Residential ground leases, which are covered in subtitle eight of title eight of the Real Property Article, and which have been the subject of recent publicity, legislative action, and litigation, affect a homeowner's ownership interest in the property. *See State v. Goldberg*, 437 Md. 191 (2014) (statute affecting ground lease holders' rights violated State constitutional prohibition on retrospective abrogation of vested rights). By definition, a ground lease holder maintains a reversionary interest in the land on which a home sits. Md. Code Ann., Real Prop. § 8-801(c) (2015). Any reasonable purchaser of a home would want to know whether another person has an ownership interest in their home. As to the Respondent's conduct, the preponderance of evidence in the record supports a finding that the Respondent intentionally misrepresented his ownership interest in the

Property, perhaps not initially when he listed the Property on the MRIS, which plausibly might have been an act of negligence, but certainly when he accepted the Claimant's offer to purchase the Property.

By August 16, 2015, the date that the Respondent accepted the Claimant's offer, the Respondent knew or should have known that the Property was subject to a ground lease. The most telling evidence on this point is the deed of assignment prepared by the Respondent when he purchased the Property, which clearly indicated that the Property, like many properties in Baltimore, was subject to a ground lease. There was additional evidence concerning the Respondent's awareness of the ground lease. The Claimant testified that Ms. Catanzaro, the holder of the ground lease, told her that she was aware that the Respondent owned the Property and that ground rent had been paid in August 2015. The Respondent testified that he did not know who held the ground lease, and he denied knowledge of any payments of ground rent since he purchased the Property. The Respondent suggested that any recent payment of ground rent must have resulted from transactions during settlement when he purchased the Property, but no one testified whether the Respondent's suggestion was even plausible. Ms. Snow, who was present during the hearing, but not called as a witness by any of the parties, provided a statement to the Commission's investigator, in which she stated that she discovered during a file review in July 2015, before the Respondent even listed the Property on the MRIS, that the Property was subject to a ground lease and counseled the Respondent about the importance of discovering and disclosing the existence of a ground lease. The Respondent testified that Ms. Snow at some point counseled him generally about ground rent, but he denied that this was in reference to the Property. While the matters of what Ms. Catanzaro said to the Claimant and when Ms. Snow spoke to the Respondent about ground leases are somewhat in dispute, I find it implausible, based primarily on his preparation of the deed when he purchased the Property, that the

Respondent, as a homeowner and as a real estate agent, was unaware that the Property was subject to a ground lease when he accepted the Claimant's offer.

The Respondent argued that he had no incentive to misrepresent his ownership interest in the Property because the existence of the ground lease would eventually come to light before any settlement. I agree that any incentive to misrepresent his ownership on the MRIS, perhaps to make the Property more marketable, was minimal. I conclude, however, that the Respondent's motivation for not disclosing the existence of the ground lease when he accepted the Claimant's offer was that he did not want to risk losing that offer. The Respondent counted on the Claimant and Ms. Frey either overlooking the existence of the ground lease, or, as actually happened, reaching a monetary settlement about the ground lease and proceeding to settlement. If the Claimant's roof had not leaked, it is likely that the issue concerning the ground lease would never have come to the Commission's attention.

The same conduct discussed above constitutes bad faith and incompetency under sub-section (b)(25) and unethical practices under sub-section (33) and COMAR 09.11.02.01C and COMAR 09.11.02.02A. The former regulation requires a real estate agent to protect the public from unethical practices, and the latter regulation requires a real estate agent to protect and promote the interests of his client, but does not relieve the real estate agent from his statutory obligations to third parties, such as disclosure of material facts.

Based on the circumstances of this case and my finding that the Respondent acted intentionally, I do not find that the Respondent violated sub-section (b)(33) as to COMAR 09.11.02.01D. That regulation tasks a real estate agent with ascertaining material facts concerning a property. As noted above, I find that the Respondent knew that the Property was subject to a ground lease, so this was not a case of the Respondent's ignorance of a material fact,



but rather his failure to bring that material fact to the attention of the Claimant and her real estate agent.

In summary, I find that the Commission established that the Respondent violated sub-sections (b)(4), (b)(25), and (b)(33), with violations of two regulations under sub-section (b)(33).

### 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 ground lease was serious. A buyer's ownership interest in residential real estate, especially in Baltimore, is a basic, material fact that every seller, buyer, and real estate agent needs to know when negotiating a sale. In this case, I conclude that the Claimant was not harmed. She knew about the ground lease before settlement and, according to testimony at the hearing, could have rescinded her offer on the Property. The Claimant then negotiated for \$500.00 towards her potential redemption of the ground lease. As discussed above, the Respondent did not act in good faith because he intentionally failed to inform the Claimant and her real estate agent about the ground lease before accepting the Claimant's offer on the Property. The Respondent has no history of previous violations.

The Commission's recommendation of a reprimand of the Respondent's real estate salesperson's license is appropriate in light of the Respondent's conduct. As to the penalty, I find it appropriate to recommend that the Commission impose a penalty of \$1,000.00 for each statutory violation, for a total penalty of \$3,000.00. I consider that amount to be adequate to ensure that the Respondent will conform his conduct to the statutory and regulatory requirements of his profession.

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 Emps. Fed. Credit Union v. Motor Vehicle Admin.*, 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).

As a matter of statutory construction I conclude that misrepresentation for a claim against the Guaranty Fund, unlike for regulatory charges, requires intentional misrepresentation. When read in context with the five terms preceding misrepresentation – theft, embezzlement, false pretenses, forgery, and fraud – which all require intent to steal or defraud, any misrepresentation must also contain an element of an intent to steal or defraud.

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

In her claim against the Guaranty Fund, the Claimant sought \$1,000.00 for “temporary repair to stop the leak until I can get the entire roof replaced” and \$6,000.00 “for complete new roof and to replace rotted wood underneath.” (CLAIM #1). In its Order for Hearing, the Commission noted that the Claimant alleged that the MRIS listing stated that the Property included a new roof, and a few months after settlement the roof began leaking, requiring repairs and replacement. The Commission also noted that the Claimant alleged that the Respondent had used an unlicensed contractor to install a roof during renovations of the Property. Based on Ms. Frey’s initial allegation concerning the roof and the Claimant’s presentation at the hearing, the

Claimant's actual assertion is that during the renovation of the Property the Respondent used an unlicensed contractor, who installed new shingles without replacing some or all of the existing roofing planks. The Claimant essentially asserted that a new roof necessarily means, at least, new planks (or other decking), new felt, and new shingles. As evidence, the Claimant presented photographs of one area of her roof where shingles had been pulled up to reveal roofing planks of differing lengths and ages, some of which were intact and some of which were splintered or disintegrated. The smaller pieces of wood plank were installed at the edge of the Appellant's roof where it meets the roof of the neighboring row house. The Claimant inferred that the rest of the planks on her roof were similar to the planks exposed in these photographs.

In his response to the Commission and in his testimony, the Respondent asserted that he paid Luis Funes Campos, whom the Respondent believes had an affiliation with Brothers Roofing, \$2,500.00 in cash to install a new roof on the Property. The Respondent testified that he did not have a contract with Mr. Funes Campos or a receipt for any payment to him. The Respondent expressed his belief that Mr. Funes Campos replaced old roofing planks as necessary before he installed new shingles. On separate occasions, the Claimant and the Commission's investigator spoke with Mr. Funes Campos, who denied installing the roof or, to the investigator, doing any work on the Property. The Commission obtained invoices from Baltimore Window Factory, dated April 21, 2015, and May 1, 2015, for windows for the Property in the name of Mr. Funes Campos. On this evidence, I conclude that Mr. Funes Campos installed the roof, and denied doing so because at the time he performed the work he was an unlicensed contractor.

On the record in this case, I concur with the Guaranty Fund's argument that there is insufficient proof of the condition of the planks on the rest of the roof and, more significantly, insufficient proof that the Respondent was aware of any problems with the roof installed by Mr. Funes Campos. The Respondent's assertion that the Property had a new roof was not an

intentional misrepresentation. Assuming that Mr. Funes Campos did not replace planks that he should have, there is no evidence in the record to indicate that the Respondent knew about any deficiencies in Mr. Funes Campos's work. The Claimant's understanding of a new roof is one with new planks (or other sheathing), new felt, and new shingles. The Respondent's understanding of a new roof might have been less comprehensive, essentially new shingles over existing and repaired planks. That the Respondent and the Claimant had different understandings of what a new roof is does not mean that the Respondent misrepresented the condition of the roof in the MRIS. Perhaps the Respondent could have been more diligent in supervising Mr. Funes Campos, but the Claimant's claim against the Guaranty Fund does not turn on the quality of Mr. Funes Campos's work or the Respondent's performance as the general contractor for the renovations. The Claimant had to prove an intentional misrepresentation concerning the roof, which she did not do.

### **PROPOSED CONCLUSIONS OF LAW**

#### **Regulatory Charges**

Based on the proposed findings of facts and discussion, I conclude that the Respondent violated three sub-sections of section 17-322 of the Business Occupations and Professions Article, with two violations of two regulations under sub-section (b)(33). Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(4), (25), (33), and COMAR 09.11.02.01C and COMAR 09.11.02.02A. All of the violations relate to the Respondent's intentional failure to disclose to the Claimant and her real estate agent that the Property was subject to a ground lease. I further conclude that the Commission should reprimand the Respondent's real estate salesperson's license, and impose a total penalty of \$3,000.00. Md. Code Ann., Bus. Occ. & Prof. § 17-322.

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; COMAR 09.11.03.04.

**PROPOSED ORDER**

I **PROPOSE** that the State Real Estate Commission reprimand the Respondent's real estate salesperson's license and impose a penalty of \$3,000.00.

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

May 28, 2019  
Date Decision Issued

RFB/kdp  
#180104

**SIGNATURE ON FILE**

Robert F. Barry  
Administrative Law Judge