BEFORE THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM OF CLAYTON AND LAUREN ANDERSON, CLAIMANTS	*	
		CASE NO. 2018-RE-467
v.	*	
		OAH NO. DLR-REC-22-18-36437
THE MARYLAND REAL ESTATE COMMISSION GUARANTY FUND FOR THE ALLEGED MISCONDUCT OF DUANE FARLEY, RESPONDENT	*	

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

PROPOSED ORDER

The Findings of Fact, Proposed Conclusions of Law and Recommended Order of the Administrative Law Judge dated April 26, 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 Fact[1] 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

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[1] On pages 3-5 of the proposed decision the Administrative Law Judge identifies exhibits admitted into evidence. For clarification purposes the Commission notes that in addition to the document identified as CL Ex. 2I, "Residential Dwelling Lease, December 2, 2013", CL Ex. 2I also includes: (1) Understanding Whom Real Estate Agents Represent notice; (2) an addendum to the said Residential Dwelling Lease; and (3) a letter from Perry W. Lericos to Farley Realty dated July 10. 2015. Furthermore the email from Harford restoration to Claimants identified in CL Ex. 2V is dated March 2, 2018 and includes an email between Claimants dated March 5, 2018.

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 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

MARYLAND REAL ESTATE COMMISSION

5/22/2019
Date

By: SIGNATURE ON FILE

IN THE MATTER OF THE	*	**BEFORE NICOLAS ORECHWA,**
CLAIM OF CLAYTON AND	*	**AN ADMINISTRATIVE LAW JUDGE**
LAUREN ANDERSON,	*	**OF THE MARYLAND OFFICE**
CLAIMANTS	*	**OF ADMINISTRATIVE HEARINGS**
v.	*	
MARYLAND STATE	*	
REAL ESTATE COMMISSION,	*	
REAL ESTATE GUARANTY FUND,	*	
FOR THE ALLEGED MISCONDUCT	*	
OF DUANE FARLEY,	*	**OAH No.: DLR-REC-22-18-36437**
RESPONDENT	*	**REC No.: 18-RE-467**

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

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 April 6, 2018, Clayton and Lauren Anderson (Claimants)[1] filed a complaint against Duane Farley, Real Estate Broker (Respondent).[2] The Claimants also filed a claim with the

[1] The Claimants are Husband and Wife. Clayton Anderson testified that the subject property is a premarital asset titled in his name. Clayton Anderson is active military and was deployed out of the area during a portion of the time period subject to this case. At various points in the testimony, Lauren Anderson testified that she obtained a power of attorney to act on behalf of Clayton Anderson while he was deployed. However, for the sake of simplicity, I will refer to all acts by Clayton and Lauren Anderson either individually or collectively as the acts of the Claimants.

[2] On their complaint, the Claimants also listed Samuel Freeman (Freeman) as Licensee #2. (GF Ex. 6.) However, Freeman is neither listed on the Fund's hearing order, nor on the Fund's transmittal form to the Office of Administrative Hearings (OAH). Additionally, none of the hearing participants presented evidence Freeman possesses or possessed a Maryland real estate license. Accordingly, I will focus this decision solely on Respondent Duane Farley.

Maryland Real Estate Commission (Commission) Guaranty Fund (MREC or Fund), in which they alleged they sustained monetary losses as a result of the Respondent's acts or omissions. Specifically, the Claimants alleged the Respondent, acting in her capacity as the property manager for property owned by the Claimant Clayton Anderson, failed to reimburse the Claimants for various monies to which the Claimants were rightfully entitled. On November 9, 2018, the MREC ordered the Claimants should have a hearing to establish their eligibility for an award from the Fund. On November 21, 2018, the MREC forwarded the matter to the OAH for a hearing.

On February 15, 2019, at 9:30 a.m., I conducted a hearing at the OAH headquarters in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2018).[3] The Claimants appeared without counsel. Nicholas Sokolow, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting fifteen minutes, neither the Respondent nor anyone on her behalf appeared at the hearing or requested a postponement.

On January 16, 2019, the OAH mailed notice of the hearing to the Respondent by certified and regular mail to The Estate of Duane Farley,[4] c/o Thomas Kokolis and Jacob Deaven, Parker, Simon & Kokolis, LLC, 110 North Washington Street, Suite 500, Rockville, Maryland 20850, the Respondent's last known address of record on file with the MREC. Md. Code Ann., Bus. Reg. § 17-408(c) (2015).[5] The notice advised the Respondent of the time, place,

[3] Unless otherwise noted, all references hereinafter to the Business Occupations and Professions Article are to the 2018 Replacement Volume of the Maryland Annotated Code.

[4] 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 Respondent's estate as the Respondent for the balance of this decision.

[5] "The Commission may not proceed with the hearing unless the records of the Commission show that all notices required under this subtitle were sent to each licensee and each unlicensed employee alleged to be responsible for the act or omission giving rise to the claim." Bus. Occ. § 17-408(c).

and date of the hearing. The United States Postal Service (USPS) did not return the notice as unclaimed or undeliverable. Therefore, I determined that the Respondent received proper notification, but failed to appear for the hearing. As a result, I found it appropriate to proceed in the Respondent's absence. Bus. Occ. & Prof. § 17-408(c); 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); COMAR 09.01.03; COMAR 09.11.03; and COMAR 28.02.01.

ISSUES

1. Did the Claimants sustain an actual monetary loss as a result of the Respondent's conduct, which constituted theft, embezzlement, forgery, false pretenses, fraud, or misrepresentation; and, if so,

2. What is the amount of the actual loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for the Claimants:

CL Ex. 1: Claimants' Timeline

CL Ex. 2A: DLLR Online Complaint Receipt Form, April 6, 2018

CL Ex. 2B: E-mail from Lauren Anderson to the Fund, April 17, 2018

CL Ex. 2C: E-mail from Dawn Mazzaferro to the Claimants, April 9, 2018

CL Ex. 2D: The Claimants' Complaint narrative, April 16, 2018

CL Ex. 2E: Better Business Bureau Complaint Form, April 6, 2018

CL Ex. 2F: Property Management Agreement, June 22, 2010

CL Ex. 2G: Letter from the Claimants to Harford County Water and Sewer, June 2010[6]

CL Ex. 2H: Water Bill, May 15, 2012

CL Ex. 2I: Residential Dwelling Lease, December 2, 2013

CL Ex. 2J: Letter from Samuel Freeman to Jerry Davis, August 25, 2014

CL Ex. 2K: E-mails between the Claimants and the Respondent, February 2016

CL Ex. 2L: Letter from the Respondent to her customers, February 27, 2018

CL Ex. 2M: Letter from the Respondent to her customers, March 9, 2018

CL Ex. 2N: Written record of telephone conversation between Lauren Anderson and Samuel Freeman, March 7, 2018

CL Ex. 2O: Phone records

CL Ex. 2P: Summary Exhibit

CL Ex. 2Q: Unit Statement from the Respondent, January 1, 2017 through February 27, 2018

CL Ex. 2R: Tenant Statement from the Respondent, January 1, 2017 through February 27, 2018

CL Ex. 2S: Printout from Maryland Case Search

CL Ex. 2T: Unit Statement from the Respondent, September 1, 2017 to April 1, 2018

CL Ex. 2U: Payment receipt from Harford County Utilities, March 7, 2018

CL Ex. 2V: E-mail from Harford Restoration to the Claimants, March 5, 2018

CL Ex. 2W: Various photographs

CL Ex. 2X: Power of Attorney, March 5, 2018

CL Ex. 2Y: E-mail from Lauren Anderson to the Respondent, April 16, 2018

[6] The date of the letter does not contain a specific day.

I admitted the following exhibits for the Fund:

GF Ex. 1: Notice of Hearing, January 16, 2019

GF Ex. 2: Respondent's Licensing History

GF Ex. 3: Affidavit of Jillian Lord, January 15, 2019

GF Ex. 4: Printout from the Maryland Register of Wills

GF Ex. 5: Hearing Order, November 9, 2018

GF Ex. 6: Cover letter with Complainant's Online Complaint, May 2, 2018

The Respondent did not offer any exhibits.

Testimony

The Claimants testified. 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 Clayton Anderson owned a residence located at 1717-A Fountain Rock Way, Edgewood, Maryland 21040 (Fountain Rock).

3. On June 22, 2010, the Claimants and the Respondent entered into a Property Management Agreement with regard to Fountain Rock. The Respondent managed Fountain Rock per the terms of the Property Management Agreement, which remained in full force and effect until April 1, 2018.

4. 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.

5. On December 1, 2013, Jerry Davis (Davis) signed a lease (lease or Davis lease) to rent Fountain Rock.[7] The initial term of the lease spanned from December 1, 2013, until November 30, 2014. The lease obligated Davis to pay $695.00 per month in rent.

6. Per the terms of the lease Davis stayed at Fountain Rock month to month after November 30, 2014. He remained at Fountain Rock as a tenant through August of 2017.

7. Per the terms of the lease, Davis paid his monthly rent directly to the Respondent. The Property Management Agreement obligated the Respondent to pay the Claimants rents collected after deduction of a ten percent management fee.

8. The Claimants received all net rental proceeds due from the Respondent through August of 2017. After August of 2017, Davis stopped paying rent.

9. After August of 2017, the Claimants contacted the Respondent several times about rent payments and the status of the property. The Respondent did not respond to the Claimants.

10. Davis utilized Fountain Rock as a venue for illicit drug use and debauchery, and allowed it to fall into a state of disrepair and uncleanliness.

11. Davis did not pay any rent after August 2017 and died of a drug overdose in January of 2018. At some point between August 2017 and his death, Davis abandoned Fountain Rock. After Davis abandoned Fountain Rock, derelicts used it without the Claimants' authorization.

12. The Claimants paid $750.00 to clean up and make various repairs to Fountain Rock.

[7] Another person, Denise Willoughby (Willoughby), signed the lease at the same time as Davis. The Claimant Clayton Anderson testified that he later removed Willoughby from the lease. Based on the evidence and testimony, Willoughby played no role in the issues before me, and thus for the sake of simplicity. I shall only refer to Davis when referring to the tenancy associated with the December 1, 2013 lease.

13. The lease obligated Davis to pay the water and electric bills. At some point Davis stopped paying those bills, and the utility companies shut off the water and electricity to Fountain Rock.

14. The lease obligated Davis to make a security deposit of $695.00. The Property Management Agreement obligated the Respondent to hold the Security Deposit in an escrow account to be returned to Davis upon expiration of the lease. Davis paid the Respondent $695.00 as a security deposit, which the Respondent deposited in her escrow account. After she closed her business, the Respondent did not return the security deposit to either Davis's estate or to the Claimants.

15. The Property Management Agreement obligated the Claimants to deposit $200.00 with the Respondent for incidental repairs ($200.00 repair deposit). The Claimants provided the Respondent with the $200.00 repair deposit. When she closed her business, the Respondent neither returned the $200.00 repair deposit nor provided an accounting of its use.

DISCUSSION

The Respondent's Failure to Appear

The Respondent died on June 24, 2018. (GF Ex. 5.) The OAH scheduled the hearing in this case for Friday, February 15, 2019, at the OAH offices in Hunt Valley, Maryland. The OAH originally mailed a notice of the hearing (Notice) 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 USPS returned the Notice sent by certified mail to the OAH as "moved left no address, unable to forward, return to sender." The USPS also 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 searched the Maryland Register of Wills for an estate opened on behalf of the Respondent. The search yielded an estate opened on behalf of the Respondent on or about October 15, 2018. The search also revealed the estate's personal representative to be Thomas J. Kokolis, Esquire, 110 North Washington Street, Suite 500, Rockville, Maryland 20850. Mr. Kokolis's attorney is listed as Jacob Deaven, Esquire, also located at 110 North Washington Street, Suite 500, Rockville, Maryland 20850.[8] On January 15, 2019, Mr. Brouwer sent a letter to the OAH notifying the clerk of the address of the Respondent's personal representative and instructing the clerk to send a notice of hearing to that address.[9] 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 to that address by first-class mail.

As someone signed for the Notice sent by certified mail 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 or anyone on the Respondent'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

[8] All information concerning Mr. Brouwer's search of the estate and the results of that search is contained in GF Ex. 6.
[9] Mr. Brouwer provided an 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."

prior to the hearing to the individual's last known business address. Bus. Occ. & Prof. § 17-324(d)(1). 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. *Id.* §§ 17-324(f), 17-408(c). The address used to notify the Respondent of the hearing is the address of the Respondent's personal representative, as determined by Mr. 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 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 Fund "shall be restricted to the actual monetary loss incurred by the Claimants, but may not include monetary losses other than the monetary loss from the originating transaction." COMAR 09.11.01.14. The Claimants bear the burden of proving their entitlement to recover compensation from the Fund by a preponderance of the evidence. Bus. Occ. & Prof. § 17-407(e). 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 Cty. 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 Claimants have satisfied their burden with regard to the security deposit and the $200.00 repair deposit.

The Merits of the Case

Arguments of the Parties

Neither the Respondent nor the Fund presented any evidence to be considered. In support of their claim, the Claimants testified that they entered into a Property Management Agreement with the Respondent whereby the Respondent would manage Fountain Rock as a rental property. Davis signed a lease, paid a security deposit of $695.00, commenced living in Fountain Rock in December of 2013, and paid rent of $695.00 per month thereafter. Per the terms of the Property Management Agreement, the Respondent deducted a ten percent management fee from the monthly rent received and remitted the balance to the Claimants.

Davis still leased and resided at Fountain Rock as of August of 2017. However, he only paid the Respondent partial rent for August of 2017, and, in turn, the Respondent only paid the Claimants partial net rent proceeds for that month. The Respondent did not acknowledge the

Claimants' inquiries as to the unpaid August 2017 rent. The Claimants researched public records and learned that as of September 2017, Davis possibly lived at an address on Jacob Street in Edgewood, Maryland.

After months of trying to contact Davis and the Respondent, the Claimants finally contacted Davis's sister-in-law. The sister-in-law told the Claimants that Davis died of a drug overdose in January of 2018. She confirmed Davis moved out of Fountain Rock months prior to his death. She added that both before and after leaving, Davis allowed Fountain Rock to be occupied by drug addicts and degenerates. People living near Fountain Rock characterized it as the "crack house" of the neighborhood. Davis failed to pay the electricity and water bills at Fountain Rock, and thus those utility providers disconnected those services. Water leaked from the garage of Fountain Rock, and this possibly contributed to a $2,290.59 water bill, which Davis did not pay. Additionally, Davis failed to clean or otherwise care for the property and left it in appalling condition.

In the winter of 2018, the Respondent notified the Claimants she would close her business on April 1, 2018. The Respondent did not return the $695.00 security deposit to either Davis's estate or the Claimants. Additionally, the Respondent did not return a $200.00 repair deposit the Claimants provided per the terms of the Property Management Agreement. If the Respondent used the funds from either deposit, she did not provide the Claimants with an accounting of their use.

The Claimants testified the condition in which Davis left Fountain Rock devastated them financially. Cleaning up and repairing the property cost them $750.00. They estimated they lost $4,170.00 in rental income because the Respondent did not secure a new tenant when Davis left.

Although the Claimants maintained current mortgage payments, the lack of rental income made that difficult. Due to the decline in property values in the area, coupled with the property's poor condition, the Claimants decided further investment in Fountain Rock was a poor use of their personal resources. Thus, they opted to commence the process of entering into a Deed in Lieu of Foreclosure with the property's mortgage holder.

Analysis

There is no dispute the Respondent is a licensed real estate broker, Fountain Rock is located in the State of Maryland, and the agreements into which the Claimants and the Respondent entered concern Fountain Rock. The issues to be decided are 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." Bus. Occ. & Prof. § 17-404(a). I shall address each of the Claimants' allegations separately below:

The $200.00 repair escrow deposit

Article 6.2 of the Property Management Agreement, entitled "Repair/Expense Escrow," reads as follows: "[The Claimants] shall initially deposit the sum of Two Hundred Dollars ($200.00) to cover costs of expenses over and above anticipated rents to be collected, and further [agree] to make additionally [sic] deposits, if deemed necessary, during the term of this agreement." (CL Ex. 2F) (emphasis added). While the Claimants did not present any documentation they deposited the $200.00 in the Respondent's escrow account, I find based on the Claimants' testimony, as well as the documents in evidence, that they made the deposit. First, I found both Claimants to be credible witnesses overall. While this component of their testimony lacked supporting documentation, they consistently provided and referenced supporting

documentation for other components of their testimony (e.g., efforts to communicate with the Respondent). Thus, I find if they had access to documentation to support their claim for the $200.00 repair escrow, they would have provided that documentation.

As noted above, the Property Management Agreement designates the $200.00 as a deposit (as opposed to a fee) to be maintained during the term of the agreement. Thus, I find the terms of the Property Management Agreement obligated the Respondent to return the $200.00 to the Claimants upon termination of the Property Management Agreement. Paragraph 8.2 of the Property Management Agreement, entitled "Termination for Cause by Agent," reads in full as follows:

> This Agreement will terminate immediately without further action from [the Respondent] in the event [the Claimants] [breach] any of its obligations to [the Respondent] under the terms of this Agreement (herein defined to be "Default"), and fails to cure such Default within thirty (30) days after receipt of written notice from [the Respondent] specifying the nature of such Default.
>
> Notice of Termination by [the Respondent] shall be sent to [the Claimants], mailed postage prepaid, by both "regular first class mail" and separately by "certified, return receipt requested" mail.

In her letter dated February 27, 2018, the Respondent advised the Claimants she would be closing her office as of April 1, 2018. (CL Ex. 2L.) While the Respondent does not assert the Claimants are in default, I find the Property Management Agreement terminated as of April 1, 2018 by virtue of the closure of the Respondent's office. Paragraph 8.3 of the Property Management Agreement, entitled "Final Accounting," reads: "Upon termination of this agreement **for any reason**, [the Respondent] shall deliver to [the Claimants] all records, contracts, leases, unpaid bills, outstanding sums of monies (**i.e., repair escrow, security deposit, etc.**), and any other papers or documents which are in [the Respondent's] possession and which relate to the Property." (emphasis added). Accordingly, I find the Respondent's termination of the Property Management Agreement obligated her to return the $200.00 repair escrow deposit to the

Claimants. For the reasons set forth above, I find the Claimants' testimony that the Respondent neither returned nor accounted for the $200.00 repair escrow credible. Thus, I find they incurred an actual loss in the amount of $200.00.

I find the Respondent committed an act or omission by failing to return the $200.00 repair escrow deposit to the Claimant. I further find the Respondent committed that act or omission through misrepresentation. Misrepresentation is defined as "[t]he 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 failure to return the $200.00 repair escrow deposit despite agreeing to do so pursuant to the Property Management Agreement constitutes a misrepresentation. Accordingly, I find the $200.00 repair escrow to be compensable by the Fund.

$695.00 Security Deposit plus interest

Paragraph 3 of Davis's lease obligates him to provide a $695.00 security deposit upon the signing of the lease. (CL Ex. 2I.) The last page of the lease is a security deposit receipt showing Davis paid the $695.00 security deposit. Paragraph 3.5 of the Property Management Agreement, entitled "Security Deposits," reads: "Monies collected from the Tenant for the required Security Deposit will be held by [the Respondent] in a Security Deposit escrow account so as to comply with the Landlord/Tenant Security Deposit Law of the State of Maryland." (CL Ex. 2F.) As noted above, paragraph 8.3 of the Property Management Agreement obligates the Respondent to return the security deposit upon its termination. The Respondent terminated the Property Management Agreement as of April 1, 2018. Considering the totality of the evidence presented, I find the Respondent did not return the security deposit to the Claimants. As noted above, I found the Claimants' testimony credible. They testified consistently and supported their testimony with

documentation when possible. They provided a variety of documentation to support their contention that the Respondent failed to communicate with them adequately or address their concerns beginning in the early fall of 2017. (*See, e.g.*, CL Exs. 2O and 2Y.) I find the Respondent's failure to even communicate with the Claimants lends significant credence to their claim she did not return the $695.00 security deposit. Thus, I find the Claimants incurred an actual loss in the amount of $695.00 with regard to the security deposit.

I find the Respondent committed an act or omission by failing to return the security deposit to the Claimants per the terms of the Property Management Agreement.[10] I further find the Respondent committed that act or omission through misrepresentation as defined above. I find the Respondent's act of failing to return the security deposit despite agreeing to do so pursuant to paragraphs 3.5 and 8.3 of the Property Management Agreement constitutes a misrepresentation. Because the Respondent failed to return the security deposit to the Claimants, the Claimants must pay Davis or Davis's estate out of their own funds. They cannot utilize the security deposit to make repairs. Thus, I find the Claimants are entitled to reimbursement from the fund of $695.00, representing the principal amount of the security deposit.

The Claimants additionally requested reimbursement for interest due on the security deposit. The last page of the Davis lease is entitled "Security Deposit Receipt." That page reads in pertinent part as follows:

> Within thirty (30) days of its receipt, the security deposit shall be deposited by [the Respondent] in a Federally insured Maryland banking or savings institution, which does business in Maryland, in an interest-bearing account devoted exclusively to security deposits or, upon [the Respondent's] election, in an insured certificate of deposit at a branch of a Federally insured banking or savings institution located in Maryland, or in securities issued by the Federal Government or the State of Maryland. Within forty-five (45) days after the end of the tenancy, [the Respondent] shall return the security deposit to Tenant, by first class mail addressed to Tenant's last known address, together with simple interest which has

[10] While the Respondent technically would return the security deposit back to Davis, there is no evidence she returned the security deposit to Davis or his estate. Pursuant to the terms of the lease, the fact the Respondent failed to return the security deposit renders the Claimants, as owners of the property, personally liable for its return to Davis.

> accrued in the amount of three percent (3%) per annum. . . . Interest shall accrue at six month intervals from the day Tenant gives the security deposit. Interest shall not be compounded.

Davis paid the security deposit on December 2, 2013. Three percent of $695.00 is $20.85 or, in other words, $20.85 per annum. However, per the terms of the receipt, interest accrues in six month intervals, or $10.44 every six months. I find the following six month intervals transpired and interest accrued since Davis paid the security deposit:

Six Month Interval	**Interest Accrued**
December 2, 2013 to June 2, 2014	$10.42
June 2, 2014 to December 2, 2014	$10.42
December 2, 2014 to June 2, 2015	$10.42
June 2, 2015 to December 2, 2015	$10.42
December 2, 2015 to June 2, 2016	$10.42
June 2, 2016 to December 2, 2016	$10.42
December 2, 2016 to June 2, 2017	$10.42

June 2, 2017 to December 2, 2017	$10.42
December 2, 2017 to June 2, 2018	$10.42
June 2, 2018 to December 2, 2018	$10.42
Total Interest Accrued[11]	$104.20

Thus I shall recommend the Fund reimburse the Claimant for $695.00 for the principal balance on the security deposit plus $104.20 for interest accruing per the terms of the security deposit receipt. This equates to a total award recommendation for the security deposit of $799.20.

$750.00 Restoration Costs

The Claimants paid $750.00 to repair and restore Fountain Rock after Davis allowed it to be damaged and fall into disrepair. The Claimants contend that had the Respondent adequately performed her duties under the Property Management Agreement, she would not have allowed Fountain Rock to fall into such disrepair. While I sympathize with the Claimants, I do not find they met their burden on this issue.

Paragraph 3.1 of the Property Management Agreement, entitled "Management," reads: "To the extent herein provided and subject to the terms and conditions herein set forth, [the Respondent] shall manage, operate, and maintain the property in an efficient and satisfactory

[11] Because the time between December 2, 2018 and February 15, 2019 (the date I closed the record) is less than six months, I find no includable interest accrued during that period.

manner." Paragraph 3.3 of the Property Management Agreement, entitled "Compliance with Laws, Ordinances, etc...," reads:

> [The Respondent] shall be responsible for management, operation and maintenance of the Property in compliances [sic] with federal, state and municipal and condominium or homeowner association laws, ordinances and regulations relative to leasing, management, repair and maintenance of the Property. [The Respondent] shall promptly remedy any violation of any such laws, ordinance, rules or regulation which comes to [her] attention to the extent such remedy is within the control of [the Respondent]; provided, however, that [the Respondent's] responsibilities shall be limited to funds made available by [the Claimants] to cause such compliances.

I do not find the Property Management Agreement contemplates the Respondent be responsible for all the misdeeds of a tenant. While it certainly obligates the Respondent to maintain and care for the property, I do not find it obligates the Respondent to check-in on the condition of the property on any regular basis. In fact, Article Four of the Property Management Agreement, entitled "Insurance," obligates the Claimants to maintain an insurance policy on Fountain Rock against "physical damage to the property and against liability for loss, damage or injury." I therefore find the Property Management Agreement contemplates the assumption of risk on the part of the Claimants in renting Fountain Rock to third parties.

It is unknown exactly when Fountain Rock fell into the disrepair necessitating the $750.00 in repairs. Moreover, it is unknown when the disrepair came to the Respondent's attention. Davis abandoned Fountain Rock on or around September 2017 and stopped paying rent after August of 2017. Thus, the Respondent was not even collecting a property management fee after August of 2017. At the hearing, the Claimants provided a series of photographs that depict Fountain Rock in a state of squalor. (CL Ex. 2W.) While it is certainly arguable the Respondent knew or should have known about Fountain Rock's condition, the Claimants provided no evidence of when the Respondent acquired or should have acquired that knowledge.

Therefore, I do not find the Claimants provided evidence that rises to the level of an act, omission, or misrepresentation on the part of the Respondent. Accordingly, I shall decline to recommend the Fund award the Claimants the $750.00 for repairs.

$2,290.59 Water Bill

During the pendency of his lease of Fountain Rock, Davis incurred a $2,290.59 water bill. Davis did not pay the water bill, and the Claimants ended up having to pay the water bill after the Respondent failed to timely forward the bill to Davis. Paragraph thirty eight of the lease obligates Davis to pay the water bill. (CL Ex. 2I, at 6.) No language in the Property Management Agreement or the lease obligates the Respondent to pay the water bill (or any utility bill) if Davis fails to pay. While the Respondent may have acted unprofessionally, I find the Respondent committed no act, omission, or misrepresentation compensable by the Fund. Accordingly, I shall decline to recommend the Fund award the Claimants the $2,290.59 for the water bill.

$4,170.00 in lost rent

The Claimants contended that because Davis abandoned Fountain Rock in September 2017, they lost six months[12] of rental income, or $4,170.00, due to the Respondent's failure to rent the property. Pursuant to paragraph 3.8 of the Property Management Agreement, the Claimants did employ the Respondent to procure tenants for Fountain Rock. However, I do not find the Claimants met their burden on this issue. As noted above, the Claimants presented no evidence the Respondent knew Davis abandoned the property at any given time, certainly not as early as September 2017.[13] Moreover, the Claimants' contention in this regard is speculative. It presupposes the fact Fountain Rock would have been rented from September 2017 through March 2018 and that the tenant would have paid $695.00 in rent in full each of those months.

[12] The six months represents the time from when Davis abandoned the property until the time when the Claimants learned Davis abandoned the property and died. The amount of $4,170.00 is the monthly rent of $695.00 paid by Davis multiplied by six.
[13] As noted, Davis stopped paying rent after August 2017, a fact the Respondent would have known. However, the fact Davis stopped paying rent does not necessarily mean he abandoned the property.

I find the Respondent committed no act, omission, or misrepresentation compensable by the Fund. Accordingly, I shall decline to recommend the Fund award the Claimants $4,170.00 for lost rent.

In light of the above, I find the Claimants are entitled to the following reimbursement from the Fund: $200.00 (repair escrow) + $799.20 (security deposit principal and interest) = $999.20.

PROPOSED CONCLUSIONS OF LAW

Based on the Findings of Facts and Discussion, I conclude that the Claimants have established by a preponderance of the evidence that they sustained an actual loss compensable by the Guaranty Fund resulting from the Respondent's act or omission in providing real estate brokerage services that constitutes 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 Claimants are entitled to receive from the Fund is $999.20. Md. Code Ann., Bus. Occ. § 17-404(b) (2018); COMAR 09.11.01.14.

RECOMMENDED ORDER

I **PROPOSE** that the Claim filed by the Claimants against the Maryland Real Estate Commission Guaranty Fund be **GRANTED** in the amount of $999.20;

I further **PROPOSE** that the Maryland Real Estate Commission Guaranty Fund pay to the Claimants their actual monetary loss in the amount of $999.20 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 Commission 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 reflect this proposed decision.

SIGNATURE ON FILE

April 26, 2019
Date Decision Issued

Nicolas Orechwa
Administrative Law Judge

NO/sw
#179202