

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

*

CASE NO. 2017-RE-493

v.

*

OAH NO. LABOR-REC-24-19-29544

**OLAYELE AJIBOYE,
Respondent**

*

*

and

*

**IN THE MATTER OF THE CLAIM
OF ANN BLAKE AGAINST
THE MARYLAND REAL ESTATE
COMMISSION GUARANTY FUND**

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PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated October 26, 2020, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 23rd day of November, 2020, hereby **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 in part and AMENDED in part as follows**:

ORDERED that once this Proposed Order becomes a Final Order and all rights to appeal are exhausted, the Claimant, ANNE BLAKE, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of **Eight Thousand Two Hundred Dollars (\$8,200.00)**;

ORDERED that the Respondent, OLAYELE AJIBOYE, pay a civil penalty in the amount of **Twelve Thousand Five Hundred Dollars (\$12,500.00)** within thirty (30 days) of the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted;

ORDERED that all real estate licenses held by the Respondent, OLAYELE AJIBOYE, 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 Maryland Real Estate Guaranty Fund is reimbursed, including any interest that is payable under the law and application for reinstatement is made; and

ORDERED that all real estate licenses held by the Respondent, OLAYELE AJIBOYE, 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 Recommended Decision of the Administrative Law Judge required modification to clarify the term of the Respondent's suspension.

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 the 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

SIGNATURE ON FILE

23 November 2020
Date

By: _____

MARYLAND REAL ESTATE

*** BEFORE JEROME WOODS, II,**

COMMISSION

*** AN ADMINISTRATIVE LAW JUDGE**

v.

*** OF THE MARYLAND OFFICE**

OLAYELE AJIBOYE,

*** OF ADMINISTRATIVE HEARINGS**

RESPONDENT

And

*** OAH No.: DLR-REC-24-19-29544**

THE CLAIM OF ANN BLAKE,

*** MREC No.: 2017-RE-493**

CLAIMANT,

AGAINST THE MARYLAND

REAL ESTATE COMMISSION

GUARANTY FUND

*** * * * ***

PROPOSED DECISION

**STATEMENT OF THE CASE
ISSUES**

**SUMMARY OF THE EVIDENCE
FINDINGS OF FACT**

DISCUSSION

CONCLUSIONS OF LAW

RECOMMENDED ORDER

STATEMENT OF THE CASE

On April 17, 2017, Ann Blake (Claimant), filed a claim with the Maryland Real Estate Commission's (MREC or Commission) Guaranty Fund (Fund) for actual monetary losses suffered as a result of the acts or omissions of Olayele Ajiboye (Respondent), allegedly committed while the Respondent acted in his capacity as a licensed real estate broker for Legends Realty Group, LLC (Legends). The Claimant also filed a complaint against the

Respondent with the MREC, the agency responsible for regulating and disciplining real estate brokers.

On August 26, 2019, the MREC issued a Statement of Charges (Charges) against the Respondent for alleged violations of the Maryland Real Estate Broker's Act (Act), Maryland Code Annotated, Business Occupations and Professions Article, section 17-101 *et. seq.* (2018 & Supp. 2020) and the provisions at Code of Maryland Regulations (COMAR) 09.11.01 and 09.11.02, enacted under the Act. The MREC further determined the Claimant was entitled to a hearing to establish her eligibility for an award from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-409(a) (2018). Accordingly, the MREC ordered a combined hearing on the Charges and the Claimant's claim against the Fund.

On August 3, 2020, I conducted a hearing by video over the Google Meet platform. Md. Code Ann., Bus. Occ. & Profs. §§ 17-324(a) and 17-408(a) (2018). John D. Hart, Assistant Attorney General, Department of Labor, (DOL), represented the MREC. The Claimant represented herself. Andrew Brouwer, Assistant Attorney General, DOL, represented the Fund. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings before the Office of the Secretary of the DOL, and the Rules of Procedure of the Office of Administrative Hearings govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.02, 09.01.03 and 28.02.01.

ISSUES

1. Did the Respondent engage in conduct that demonstrated bad faith, incompetency, or untrustworthiness or that constituted dishonest, fraudulent or improper dealings, in violation of section 17-322(b)(25) of the Act;

2. Did the Respondent fail to verify service provider licensing status, in violation of section 17-527.4(c)(1) and (2);

3. Did the Respondent violate any other provision of the Act, thereby violating section 17-322(b)(32) of the Act;

4. Did the Respondent violate any regulation adopted under the Act or any provision of the code of ethics, in violation of section 17-322(b)(33) of the Act;

5. Did the Respondent violate the Code of Ethics in COMAR 09.11.02.01C or H by failing to protect the public against fraud, misrepresentation, or unethical practices in the real estate field; including acquiring an interest in, or purchase, personally, for any member of his immediate family, for his firm, for any member of the firm, or for any entity in which he had any ownership, interest, property listed with him or his firm, without making the true position known for the listing owner?

6. Did the Respondent violate the Code of Ethics disclosure requirements for licensees selling property in COMAR 09.11.02.02D by failing to disclose his interest in the property to the Claimant?

7. If so, what is the appropriate sanction?

8. Did the Claimant sustain an actual monetary loss as a result of the Respondent's acts or omissions in his capacity as a licensed real estate broker; and,

9. If so, what is the appropriate award to the Claimant from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for the MREC:

MREC Ex. 1: Notice of Hearing, April 2, 2020

MREC Ex. 2: Notice of Hearing, February 12, 2020

MREC Ex. 3: Undeliverable Notice, March 10, 2020

MREC Ex. 4: Statement of Charges, August 26, 2019

MREC Ex. 5: Registration, July 29, 2020

MREC Ex. 6: Investigation Report, January 7, 2019 with attachments;

- **Complaint, print date April 17, 2017**
- **Maryland State Department of Assessments and Taxation (SDAT), Real Property Printout for 8905 Bold Street, Upper Marlboro, MD 20774**
- **Complainant Invoice, LiveGreen Plumbing, April 3, 2017**
- **Photographic Images of flooded basement, April 16, 2017**
- **Complainant Invoice, LiveGreen Plumbing, April 17, 2017**
- **Complainant Invoice, JCB Services April 18, 2017**
- **Property Inspection Notice, March 10, 2017**
- **Home Inspection Report, March 9, 2017**
- **Plumbing Reinspection Report, undated**
- **Database Search, undated**
- **License Database Search, November 21, 2018**
- **MIAR Contract of Sale, March 4, 2017**
- **MHIC License database search, January 7, 2019**
- **Respondent Letter in Lieu of Receipts, November 30, 2018**
- **Disclosure of License Status, March 8, 2017**
- **Respondent's Written Response, May 18, 2017**

MREC Ex. 7: Opinion and Final Order, August 20, 2018

MREC Ex. 8: Home Inspection Report, inspection date, March 9, 2017

MREC Ex. 9: Property Inspection Notice, March 10, 2017

MREC Ex. 10: Addendum of Clauses, March 6, 2017

MREC Ex. 11: Text Message chain, print date, July 31, 2020

I admitted the following exhibits for the Claimant:

CLMT Ex. 1: Work Orders, April 3 & 17, 2017; Job Invoice, April 18, 2017; Plumbing Re-Inspection Report, undated; Plumbing Inspection Notice, June 9, 2017

CLMT Ex. 2: PMC Services Estimate, September 5, 2019

CLMT Ex. 3: LongFence Invoice, April 12, 2017

CLMT Ex. 4: Letter from David Shames to Claimant, October 26, 2017

- CLMT Ex. 5: Two black and white photographs of HVAC system, July 2020
- CLMT Ex. 6: Four black and white photographs of basement bathroom, Spring 2020
- CLMT Ex. 7: Three black and white photographs of dishwasher/plumbing, April 2017
- CLMT Ex. 8: Four black and white photographs of basement ceiling, under the kitchen, July 2020
- CLMT Ex. 9: Black and white photograph of residue from plumbing clog in bathroom, April 2017
- CLMT Ex. 10: Black and white photograph of bathroom tub, April 3, 2017
- CLMT Ex. 11: Black and White photograph of bathroom, April 3, 2017
- CLMT Ex. 12: Black and white photograph of clogged basement toilet, April 3, 2017
- CLMT Ex. 13: Four black and white photographs of electrical unit, July 30, 2020
- CLMT Ex. 14: Three black and white photographs of exterior home and yard with fence exposure, April 19, 2017
- CLMT Ex. 15: Four black and white photographs of bathroom exposed plumbing, April 17, 2017

I admitted the Residential Contract of Sale, March 6, 2017 into evidence on behalf of the Respondent as Respondent Exhibit 1.

The Fund did not submit any exhibits.

Testimony

The MREC presented the following witnesses: Claimant; Umar Abdul Hamid, Investigator, MREC; and Gerald Battle, former real estate agent. The Claimant also testified on her own behalf and presented testimony from her daughter, Kimberly Macklin.¹ The Respondent testified on his behalf. No one testified on behalf of the Fund.

¹ The Claimant's regulatory testimony also served as her testimony in support of her Guaranty Fund claim.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent was a real estate broker licensed by the MREC under license number 01-319861. He was a broker for Legends. He has held his Maryland real estate license since 2005 and it expires in March 2021.
2. The Respondent is the owner of Equity Holdings International, LLC (Equity).
3. Prior to March 4, 2017, the Respondent, as the owner of Equity, sought to sell the residential property located at 8905 Bold Street, Upper Marlboro, MD 20774 (Property).
4. The Property is a two-story single family home.
5. Equity was the owner of the Property. The Respondent was the sole owner of Equity.
6. On March 4, 2017, the Respondent made an offer to the Claimant, to sell her the Property.
7. At the time the Respondent offered to sell the Claimant the Property, he did not disclose in writing to the Claimant that he had an ownership interest in the Property.
8. On March 4, 2017, the Claimant signed a Residential Contract of Sale to purchase the Property for \$300,000.00. On the Residential Contract of Sale, the printed form states, "date of offer." "March 4, 2017" is the date written on the line for date of offer.
9. The Residential Contract of Sale was signed prior to the Claimant signing the Disclosure of Licensee Status form. The Disclosure of Licensee Status was not made at the time of offer.
10. On March 5, 2017, the Respondent prepared a Disclosure of Licensee Status form. On this document, the Respondent identified the Buyer as "Ann Blake." He identified

the Seller as, "Equity Holdings International Holdings International LLC."² He also indicated his name as "Kinney Yele Ajiboye" as a Maryland real estate licensee and further checked a box indicating that he "is the seller/landlord of the property or, if the seller/landlord of the property being sold or leased is a business entity, has ownership in such business entity."³ (MREC Ex. 10).

11. On March 6, 2017, the Claimant signed the "Disclosure of Licensee Status form."

12. On March 6, 2017, the Respondent affixed his signature on the Residential Contract of Sale, establishing March 6, 2017 as the "date of contract acceptance." (MREC Ex. 6).

13. On March 6, 2017, the Respondent and the Claimant signed an Addendum of Clauses to the Residential Contract of Sale.

14. On March 9, 2017, Precise Home Inspections, performed an inspection of the Property, which included examination of the roof, exterior, general structure, electrical system, heating system, isolation/ventilation, general interior, kitchen and appliances. The inspector took pictures of all examined areas.

15. The Precise Home Inspection report does not indicate any sewer/plumbing problems although sewer/plumbing problems and defects were present throughout the house.

16. The Claimant was unaware of the plumbing problems before she moved into the Property.

17. The Respondent knew of the plumbing problems before he sold the Property but failed to disclose them to the Claimant.

18. Precise Home Inspections prepared a report of its inspection and provided it to the Claimant and Respondent.

² This is the precise wording. I am aware that Holdings International is repeated twice.

³ The Respondent acknowledged during the hearing that he sometimes uses the name "Kinney" to refer to himself.

19. On March 10, 2017, the Claimant and the Respondent signed a Property Inspection Notice for the Property. The Property Inspection Notice contains a clause that states, "Buyer has attached a copy of the entire inspection report and requests that the following list of unsatisfactory conditions be repaired or corrected by seller." (MREC Ex. 9).

20. The Property Inspection Notice for the Property includes the items noted for repair or correction by Precise Home Inspections in its report.

21. The Property Inspection Notice indicates the following was required to be repaired and that the Respondent agreed prior to closing to have all of the items repaired:

- Compressor unit was not installed to the furnace evaporator unit evaporative cooler – no air conditioning present on the date of the inspection;
- Basement bedroom duct appear to have opening at the duct surface;
- Recommend upgrade and installation of additional smoke detectors at all bedrooms and basement in a central location - upgrades are recommended for safety enhancement;
- Hall area light fixtures appear inoperable-bulb may need replacement - These items warrant attention, repair or monitoring;
- Several electrical outlets appear inoperable - Recommend further evaluation and repair;
- No wiring noted inside the panel at two circuit breakers - Recommend further evaluation by a licensed contractor;
- Furnace unit appears to be in operable and service condition. Unit has dust and appears in need of servicing (just needs cleaned out);
- Overflow pipes appear to be missing at the TPR valve of the water heater unit;
- Basement sliding glass entry door handle appears broken;
- Cracked glass noted at a front window;
- No hot water tank, pilot may need light;
- Front left side gutter appears detached at the main roof - Rear right side gutter appears detached at the rear of the main roof; and
- Buckling noted at the front and rear soffit vents. (MREC Ex. 9).

22. The Respondent as the seller and as the President of Equity, signed the Residential Contract of Sale for the Property on March 6, 2017. It is the same contract signed by the Claimant on March 4, 2017.

23. The Residential Contract of Sale states, "Seller agrees to complete repairs in sufficient time for Buyer to inspect prior to settlement. Buyer shall have the right to inspect the Property upon completion of repairs or corrective action by Seller to confirm that the Seller has performed." (Resp. Ex. 1, p. 15).

24. On March 27, 2017, the Claimant and the Respondent (for Equity) completed settlement for the Property.

25. At the time of settlement, the items on the repair list had not been repaired or corrected despite the Respondent's assertions that they would be corrected and repaired prior to closing.

26. Before settlement, the Respondent orally promised the Claimant that all of the repairs would be made subsequent to settlement.

27. The oral promise was required to be put in writing as it contained promises by the seller to the buyer regarding the Property sale.

28. On or about March 31, 2017, the Complainant moved into the Property.

29. During the evening on March 31, 2017, the master bathroom began experiencing a leak as a result of clogged plumbing. The clogged plumbing subsequently caused the basement bathroom to experience flooding. This occurred because the toilet in the master bathroom located on the top level, when flushed, bubbled and caused an overflow of water in the basement toilet and throughout various plumbing fixtures throughout the house.

30. Neither the Claimant nor any person residing with the Claimant caused the plumbing problems.

31. The basement bathroom experienced plumbing clogs which caused additional flooding.

32. The Claimant contacted her then real estate agent Gerald Battle on or about April 1, 2017 and informed him of the flooding and plumbing problems. Mr. Battle subsequently contacted the Respondent to discuss the flooding.

33. The Respondent failed to verify that the home improvement contractors working on the Property were licensed by the Home Improvement Commission to act as home improvement contractors before offering the names of the contractors and he failed to inform the Claimant of the website on which the licensing information may be found, and the date on which the licensee verified the information.

34. The Respondent informed Mr. Battle that he would send a maintenance worker identified as "Gilbert" (no last name provided) to snake the plumbing to remove any clogs.

35. Between March 27, 2017 and April 12, 2017, the Respondent sent numerous text messages to Mr. Battle confirming his commitment to fix the plumbing defects, electrical defects and the HVAC system. The text messages indicate the Respondent made the promises prior to settlement and after settlement. The Respondent's promises and assurances were not reduced to a formal contract addendum.

36. On or about April 2, 2017, Gilbert snaked the plumbing which temporarily resolved the clogs.

37. On April 3, 2017, the plumbing clogged once more.

38. On April 3, 2017, the Claimant contacted a representative from her home warranty company and discussed the clogged plumbing. The warranty company sent LiveGreen Plumbing Services, LLC (LiveGreen) to the Property to remediate the clogged plumbing.

39. On April 4, 2017, a plumber from LiveGreen snaked the plumbing main lines. After the lines were completely snaked, the plumber indicated the source of the leaks were

“wipes” clogging the plumbing. The plumber further noted that there was a broken sewer gas vent line that carried gas to the roof. The plumber did not notice any further leaks or clogs.

40. LiveGreen charged \$75.00 for the clog remediation.

41. The Claimant paid \$75.00 to LiveGreen on six separate occasions for drain clog remediation.

42. The week after April 4, 2017, the Property once more experienced clogging in the plumbing that caused flooding.

43. On April 10, 2017, Gilbert returned to the Property to resolve the plumbing clogs. At that time, Gilbert removed a section of pipe and installed a P trap to help alleviate the flooding.

44. On April 12, 2017, the Claimant obtained an estimate from LongFence for \$11,387.00 for a six-foot, wooden private fence.

45. At the time the Claimant purchased the Property, it had a chain link fence with missing components. The missing fence parts were observably missing and not hidden or obstructed at the time the Claimant purchased the Property.

46. The Respondent did not make any promises to the Claimant regarding the Property fence.

47. After Gilbert performed the work at the Property on April 10, 2017, the flooding at the Property worsened and the Property experienced significant flooding on April 15, 2017.

48. As a result of the flooding on April 15, 2017, the Claimant contacted LiveGreen for additional services to remediate the clogs and flooding.

49. On April 17, 2017, the Claimant filed a complaint against the Respondent with the MREC and filed a claim for reimbursement with the Fund for approximately \$100,000.00.

50. On April 18, 2017, the Claimant paid JCB Service \$500.00 for the work it performed to snake the waste line pipes with a camera to ascertain the source of the plumbing problems. The plumber noted on the invoice of service, "found illegal bath rough in and bottom of sewer is rotting." (MREC Ex. 6).

51. On April 18, 2017, LiveGreen Plumbing Services, LLC provided the Customer an estimate for the cost to remediate all of the plumbing issues at the Property. The cost to demolish the floors, replace the pipes and snake the drains was \$6,500.00. (CLMT Ex. 1).

52. As a result of the plumbing issues that occurred post settlement in March and April 2017, the Claimant's real estate agent, Mr. Battle, assisted her in arranging for Cornell Smith of Precise Home Inspections to conduct an additional inspection of the Property, with a focus on the septic system.

53. On a date not apparent from the evidentiary record, Mr. Smith inspected the property and found evidence of poor drainage and backup of sewage. Mr. Smith reviewed the results of the video inspection conducted by JCB Service. Mr. Smith identified the source of the plumbing problems as a "belly located in the sewer pipe which causes the poor drainage and sewage backup into the home." (MREC Ex. 9).

54. Mr. Smith prepared a re-inspection report detailing his findings and noted that "the backup has been ongoing before the sale and needed to be disclosed by the seller before the purchase/sale to the current owners. This issue is a serious matter and is an environmental hazard that could cause further damage to the property and will cause major illness to the owner/occupants currently living at the property." (MREC Ex. 9).

55. In his re-inspection report, Mr. Smith identified himself as a certified contractor for the Washington Suburban Sanitary Commission (WSSC).

56. The WSSC has no records of anyone named Cornell Smith working for them in any capacity.

57. Mr. Smith was not a WSSC contractor.

58. The Prince George's County Department of Permitting, Inspections and Enforcement, has only one permit issued for the Property. The permit is from 1977.

59. The Prince George's County Department of Public Works has no records on the Property regarding calls for service.

60. The WSSC's records indicate an unspecified leak was noted at the Property on November 15, 2017, but has no record of any other incidents at the Property.

61. On June 9, 2017, the Claimant obtained an estimate from B's Plumbing to remediate the plumbing issues in the kitchen (i.e. leaking pipes under the sink). The cost to fix was \$750.00. (CLMT Ex. 1).

62. On August 20, 2018, the MREC issued an Opinion and Final Order with regard to a Proposed Decision issued by Administrative Law Judge Joy Phillips on November 20, 2017. The underlying case involved the Respondent working in his capacity as a licensed real estate broker for Legends and a different claimant. The MREC issued a reprimand to the Respondent for his actions which violated Maryland real estate laws and assessed a civil penalty of \$5,500.00. The MREC also ordered the Claimant to reimburse the Fund in the amount of \$38,745.48.

63. On September 21, 2018, Umar Abdul-Hamid, an investigator with the DOL, began investigating the complaint and claim.

64. On October 5, 2018, Mr. Abdul-Hamid interviewed the Claimant. During the interview, the Claimant shared with the investigator the ongoing flooding and plumbing

problems and reviewed various photographs of the damage to her home. She also discussed her failed attempts to get the Respondent to remediate the problems.

65. During the investigation, Mr. Abdul-Hamid contacted the Prince George's County Department of Permitting, Inspections and Enforcement, and spoke with Robin McLean, Assistant to the Director. Ms. McLean confirmed that no permits were issued by her office for work on the Property after 1977.

66. During the investigation, Mr. Abdul-Hamid contacted the Prince George's County Department of Public Works. Michelle Lane of that department confirmed that there were no records for the Property.

67. During the investigation, Mr. Abdul-Hamid contacted the WSSC. The WSSC representative confirmed that there was no registration for Precise Home Inspections and no records for anyone named Cornell Smith as a contractor working for WSSC.

68. During the investigation, Mr. Abdul-Hamid reviewed the DOL Board of Plumbing license database. The search indicated no results or licensure for Cornell Smith.

69. On October 17, 2018, Mr. Abdul-Hamid interviewed Cornell Smith. Mr. Smith acknowledged that he was an acquaintance of the Claimant's realtor Gerald Battle. He informed Mr. Abdul-Hamid that he performed the re-inspection at no charge, as a favor for Mr. Battle. Mr. Smith could not recall the date of the inspection and had no records to confirm the date of the inspection. Mr. Abdul-Hamid gave Mr. Smith opportunities to provide verification of the re-inspection by way of documentation, but Mr. Smith did not submit any verifications.

70. Mr. Abdul Hamid interviewed the Claimant's daughter, Kimberly Macklin, on a date not apparent from the record. Ms. Macklin and the Claimant expressed to the investigator their belief that the Claimant experienced a \$100,000.00 loss as a result of the Respondent's actions for unspecified damages in addition to other damages. The investigator requested

specific verifications for how the \$100,000.00 figured was tallied. Neither the Claimant nor her daughter provided the verifications.

71. On November 2, 2018, Mr. Abdul-Hamid interviewed the Respondent. During the interview the Respondent expressed that he acquired the Property through a short sale and had no knowledge of defects in the plumbing and sewer lines. Additionally, the Respondent acknowledged that he sent Gilbert [no specified last name] to remediate the plumbing/sewer defects. He informed the investigator that Gilbert was not a licensed plumber or contractor in Maryland and that he was aware of that when he requested that Gilbert work on the Property. Additionally, the Respondent informed the investigator that he and the Claimant agreed to go to settlement on the Property with the understanding that the Seller would complete all items on the Property Inspection Notice at no cost to the Claimant.

72. During the interview with the investigator, the Respondent claimed to have secured a contractor by the name of Mario Martinez to work on the Property. The Respondent was unable to provide any licensure information for Mr. Martinez nor could he produce any receipts for any alleged work performed by Mr. Martinez. A review of the DOL license database does not indicate any licensure for Mario Martinez. A search of the DOL database for the Board of Plumbing, revealed the issuance of an apprentice license for a man named Mario Martinez, but that license expired in April 2014.

73. On September 5, 2019, PMC Services, a company that is not licensed to perform home improvement work in Maryland or any other state, provided the Claimant an estimate to perform the following:

- HVAC System: install new and outside unit \$7,218.00;
- Floors: sand, stain, and seal hardwood \$2,307.00;
- Electrical: upgrade breaker box and run new wiring \$3,800.00;

- Plumbing: repair kitchen plumbing and down stairs plumbing including broken main, \$6,284.00.

DISCUSSION

Legal Framework

Disciplinary Charges Under the Act

The MREC charged the Respondent under section 17-322 (2018) of the Act, as follows:

Denials, reprimands, suspensions, revocations, and penalties--

(b) Grounds--Subject to the hearing provisions of § 17-324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

...

(25) engages in conduct that demonstrates bad faith, incompetency, untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;

...

(32) violates any other provision of this title; [or]

(33) violates any regulation adopted under this title or any provision of the code of ethics[.]

The MREC further charged the Respondent under section 17-527.4 (2018) of the Act as follows:

Verification of service provider licensing status.

(c) **Verification required -- Home improvement contractors.** -- If a licensee offers the name of a home improvement contractor to a client, the licensee shall:

(1) annually verify that the home improvement contractor is licensed by the Home Improvement Commission under Title 8 of the Business Regulation Article to act as a home improvement contractor before offering the name to the client; and

(2) inform the client of the website on which the licensing information may be found, and the date on which the licensee verified the information.

In addition to the statutory violations, the MREC also charged the Respondent with violating the following provisions of the Code of Ethics related to the Act:

COMAR 09.11.02.01C, H.

Relation to the Public.

C. The licensee shall protect the public against fraud, misrepresentation or unethical practices in the real estate field. The licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the Commission charged with regulating the practices of brokers, associate brokers and salespersons in this state.

H. For the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed.

COMAR 09.11.02.02.

Relation to the Client.

D. Disclosure Requirement for Licensees and Employees Buying, Selling, Leasing, and Renting Property.

(1) A licensee seeking to acquire an interest in real property must disclose the licensee's licensing status in writing to the seller or lessor of the property no later than the time that an offer is submitted.

(2) The disclosure requirement of §D(1) of this regulation also applies when the licensee is acting on behalf of or representing:

(a) A member of the licensee's immediate family;

(b) An entity in which the licensee has an ownership interest;

(c) An employee of the real estate brokerage with which the licensee is affiliated; or

(d) An employee of a team or group of which the licensee is a member.

(3) A licensee seeking to sell or lease real property owned by the licensee must disclose that ownership interest in writing at the time that the property is offered for sale or lease.

(4) The disclosure requirement of §D(3) of this regulation also applies when the licensee is acting on behalf of or representing:

(a) A member of the licensee's immediate family;

(b) An entity in which the licensee has an ownership interest;

(c) An employee of the real estate brokerage with which the licensee is affiliated; or

(d) An employee of a team or group of which the licensee is a member.

(5) Written notice required by §D(3) and (4) of this regulation may be given through the multiple list service and through any other written means effective in bringing the information to the attention of prospective buyers or lessees.

Guaranty Fund Claim

Under the Act, a person may recover an award from the Fund for an actual loss as follows:

(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.

Md. Code Ann., Bus. Occ. & Profs. § 17-404(a)(2) (2018). The amount recovered for a claim made against the Fund may not exceed \$50,000.00. Md. Code Ann., Bus. Occ. & Profs. § 17-404(b) (2018).

Burden of Proof

With regard to the Charges, the MREC bears the burden of proof, by a preponderance of the evidence, to demonstrate the Respondent violated the applicable provisions of the Act and the controlling regulations. COMAR 09.01.02.16A. With regard to the claim against the Fund, the Claimant bears the burden of proof, by a preponderance of the evidence, to demonstrate she

suffered an actual loss because of the Respondent's acts or omissions. Md. Code Ann., Bus. Occ. & Profs. § 17-407(e) (2018); COMAR 09.01.02.16C. To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so" when all of the evidence is considered. *Coleman v. Anne Arundel Co. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

The Merits of the Case

Disciplinary Charges

In this case, the evidence is overwhelmingly clear that the Respondent has been dishonest when contracting with the Claimant to sell the Property and in his promises to rectify all known defects.

The evidence is unambiguously clear that the Respondent was required to disclose his ownership interest in writing at the time the property was offered for sale. Proverbially, the Respondent essentially wore two hats, i.e., he was both the Owner and the Seller's agent. He was required under the law, as recited-above, to disclose his ownership interest at the time the Property was offered for sale. The Respondent testified that he disclosed his interest at the time the Property was listed for sale in the listing made available to the public through the multiple list service. However, the Respondent offered no tangible evidence to support his assertion. What is in the evidentiary record, is a copy of the actual Residential Contract of Sale, ironically offered into evidence by both the Respondent and the Commission. This document clearly indicates March 4, 2017 as the date the Property was listed for sale. The Claimant signed this document on March 4, 2017 and the Respondent signed on March 6, 2017. A review of the Disclosure of Licensee Status, the document used by the Respondent to disclose his ownership interests, shows that it was presented after the Respondent signed the contract to the purchase the Property. The Claimant signed the document on March 6, 2017 and the Respondent signed on

March 5, 2017. Consequently, the Respondent did not disclose his ownership status in compliance with the regulations at COMAR 09.11.02.02D.

With regard to the numerous defects on the Property, the Claimant and the Respondent agree that the Respondent agreed in writing to fix the defects. The Property Inspection Notice, the document that both the Claimant and the Respondent signed, is the document that indicates thirteen conditions on the Property that required repairing or correcting. On this document, there is clear, unambiguous language that states in the very first paragraph, "Buyer and Seller are hereby notified that repairs of the Property may require that the individuals engaged to perform such repairs must be duly licensed." Further, the document states, "Buyer requests that the Seller provide any receipts or invoices for work done if applicable." The Claimant, her daughter and Mr. Battle, all testified credibly that many of the items were not completed prior to settlement. I find their collective testimonies credible because there are numerous pictures offered by both the Claimant and the Commission that indicate damage to the Property that occurred as a result of flooding from the faulty plumbing. Even though the plumbing defects were not on the original Property Inspection Notice, once the problems manifested after the Claimant took possession of the Property, the Respondent promised the Claimant and Mr. Battle he would secure the necessary licensed persons to make the repairs. The Respondent claims that the items on the Property Inspection Notice have been repaired or corrected. I do not find him credible as he has not offered receipts or invoices to corroborate his assertions and the Claimant maintains that the defects have not been repaired. With the exception of upgrading the smoke detectors, fixing broken glass and installing light bulbs, there is no evidence that the majority of the items have been repaired.

It is also very disturbing that the Investigator, Mr. Abdul-Hamid, testified that although he interviewed the Respondent and gave him ample opportunities to provide receipts and

verification of repairs for work at the Property, the Respondent has not done so. For these reasons, I do not find the Respondent credible in his assertions that he sent other licensed contractors to the Property to complete the items on the repair list.

It is undisputed that if the Respondent knew of latent defects at the Property, he was required to disclose them to the Claimant. The Respondent was the owner of the Property for over a year. I find it incredulous that the Respondent maintains he was unaware of the plumbing defects. The Respondent testified that he replaced two toilets and performed plumbing work prior to selling the Property. This is why I did not find the Respondent credible. Something was clearly wrong with the plumbing otherwise he would not have made the repairs. The Claimant and her daughter testified that when they moved in, within twenty-four hours, the upstairs toilet was flushed, sewage would come out of the other toilet and shower openings.

I will note, the fact that the Claimant and the Respondent acknowledge that persons were at the Property attempting to make repairs after settlement on behalf of the Respondent, is an acknowledgement that the Claimant is correct in her assertion that the Respondent promised that he would see to it that the repairs were made. Moreover, a review of the text messages between the Respondent and Mr. Battle confirms that the Respondent promised to ensure the repairs were made. It is more likely than not, that the Respondent made the promise in order to induce the Claimant to proceed with the transaction, i.e., buying the Property. The Respondent's assurances were not made part of the formal written contract which is a violation of COMAR 09.11.02.01C, H that requires that the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing. All of these actions indicate the Respondent dealt with the Claimant in a manner that demonstrates his behavior was untrustworthy, dishonest and fraudulent thus making him in violation of sections 17-322(b)(25), (32) and (33) of the Act in addition to the provisions of the Code of Ethics recited above.

Additionally, even though the Respondent testified and informed the investigator that an alleged contractor by the name of Mario Martinez worked at the Property and was a licensed contractor, there is no evidence that a licensed contractor by the name of Mario Martinez exists or that this alleged person made repairs at the Property. Additionally, the person identified as "Gilbert" who worked on the Property after settlement was not licensed. The Respondent acknowledged this in his interview with Mr. Abdul-Hamid. This further demonstrates the Respondent's untrustworthiness and dishonesty. For these reasons, and because there is no evidence that any of the alleged repairs at the Property were made by licensed contractors and because at least one contractor who performed some work was not licensed, the Respondent has violated section 17-527.4 of the Act.

It is also worth noting, that despite being confronted with a past case in which the MREC imposed a civil penalty, a reprimand and ordered him to reimburse the Fund for his dubious and unlawful actions as a licensed real estate broker, the Respondent essentially pretended that the case did not exist and that the MREC did not take these actions. I note this because it is further evidence of the Respondent's dishonesty despite being confronted with tangible proof in the form of a decision. Perplexingly, he still denied the outcome.

Guaranty Fund Claim

As discussed above, a claim against the Fund shall be based on an act or omission in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or an act or omission that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(b)(2)(iii) (2018). The amount of compensation recoverable by a claimant from 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. I will evaluate whether the evidence supports any actual monetary loss.

The Claimant’s claim is for \$100,000.00. The Claimant provided an estimate from PMC Services to fix the HVAC system at \$7,200.00; sand, stain and seal floors for \$2,307.00; upgrade electrical box and wiring for \$3,800.00; and repair plumbing throughout the Property for \$6,284.00. However, there is no evidence that PMC services is licensed to perform home improvement work and as a result, I cannot consider this estimate. Additionally, the LongFence estimate for \$11,387.00 cannot be considered either because the estimate is for a six-foot wooden privacy fence and not a chain link fence. The property had a chain link fence and not a six-foot wooden privacy fence. Additionally, there is no evidence that the Respondent misrepresented anything about the fence. The pictures of the fence including the missing portion of the fence make it obvious that the fence condition was apparent at the time of purchase of the Property. The fact that the Claimant would like a privacy fence for aesthetic and privacy reasons unrelated to the Respondent’s actions is not recoverable under the Fund. Additionally, the Claimant did not provide any other estimates or invoices to substantiate a recoverable amount of \$100,000.00 and there is no provision to provide funds for the aggravation and mental anguish the Claimant has experienced resulting from the transaction with the Respondent.

The Claimant has provided verifications from licensed contractors amounting to \$8,200.00 to remediate some of the defects at the Property that should have been repaired by the Respondent. Therefore, I find the Claimant has proven she is entitled to an award from the Fund for \$8,200.00 as follows:

Camera/snake for plumbing	\$500.00 (JCB Services)
Clog/Unstopped	\$450.00 (Warranty Services) (6 times at \$75.00)
Plumbing/sink:	\$750.00 (Estimate B’s Plumbing)

Plumbing/pipes/drains:	\$6,500.00 (Estimate LiveGreen)
Total:	\$8,200.00

The Fund agrees that the Claimant is only entitled to \$8,200.00. There is no evidence that the Claimant is legally entitled to any other amount from the Fund.

Disciplinary Sanctions

The MREC argued that as a result of the Respondent's violations of the Act and its applicable COMAR provisions, the appropriate sanctions is a suspension, and the imposition of a \$12,500.00 civil penalty for all of the five violations found (\$2,500 multiplied by 5 violations).

Section 17-322(c) of the Act provides as follows:

**17-322. Denials, reprimands, suspensions, revocations, and penalties--
Grounds**

(c) Penalty. --

- (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 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.
- (3) The Commission shall pay any penalty collected under this subsection into the General Fund of the State.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2018).

For the following reasons, I find that the requested suspension and civil penalties are the appropriate sanctions. The Respondent has a history of a previous violation and was reprimanded and was assessed a civil penalty of \$5,500.00. However, his actions toward the

Claimant in failing to disclose a history of plumbing issues in the Property, something he either knew or should have known, are serious. Additionally, the Respondent reneged on all assurances to fix the defects on the Property. The Claimant relied upon the Respondent's assurances that he would fix all of the defects and certainly did not expect that the Respondent would conceal or downplay the plumbing problems which were clearly present when the Property was sold. The Claimant paid \$300,00.00 for a home that is rife with serious plumbing and other identified electrical and HVAC defects. The Claimant will have to have significant work done to remediate the problems. The evidence is clear that if the Respondent were honest in dealing with the Claimant, including securing licensed workers to fix the defects and being transparent about the plumbing defects, the Claimant could have determined if she still wanted to purchase the Property. The Respondent's actions essentially robbed the Claimant of that choice and she is now stuck with Property that is far more damaged than she was aware of at the time she purchased the Property.

The sanctions reflect the Respondent's disciplinary history, and acknowledges the serious harm done both to the Claimant and to the public. The suspension and \$12,500.00 sanction is appropriate in light of the Respondent's dishonesty, fraud and misrepresentation toward the Claimant.

CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I conclude as a matter of law:

1. The Respondent engaged in conduct that demonstrated bad faith, incompetency, or untrustworthiness or that constituted dishonest, fraudulent or improper dealings. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) (2018);
2. These actions violated a provision of the Act. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(32) (2018);

3. The Respondent violated regulations adopted under the Act. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33) (2018);

4. The Respondent failed to treat the Claimant honestly and fairly, failed to verify that the home improvement contractors working on the Property were licensed by the Home Improvement Commission under Title 8 of the Business Regulation Article to act as home improvement contractors before offering the names of the contractors and he failed to inform the Claimant of the website on which the licensing information may be found, and the date on which the licensee verified the information in violation of Md. Code Ann., Bus. Occ. & Prof. § 17-527.4(c)(1), (2) (2018);

5. The Respondent failed to protect the public against fraud, misrepresentation or unethical practices in the real estate field, failed see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and failed to disclose his ownership interest in writing at the time that the Property was offered for sale in violation of COMAR 09.11.02.01C, H and COMAR 09.11.02.02D;

6. The Claimant is entitled to an award from the Fund in the amount of \$8,200.00 because she sustained an actual monetary loss as a result of the Respondent's acts or omissions in his capacity as a licensed real estate broker when the Respondent failed to disclose a condition in property he sold to the Claimant, namely, that the Property had a history of flooding and was prone to flooding. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(iii) (2018);

7. The appropriate disciplinary sanctions are a suspension and a civil penalty in the amount of \$12,500.00. Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b) and (c) (2018).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Real Estate Commission **ORDER**:

1. The Charges against the Respondent, issued on August 26, 2019, be **UPHELD**;
2. The Respondent be **SUSPENDED**;
3. The Respondent pay a civil penalty in the amount of \$12,500.00;
4. The Maryland Real Estate Commission Guaranty Fund pay to the Claimant the amount of her actual monetary loss, \$8,200.00, for the Respondent's wrongful acts or omissions;
and
5. The records and publications of the Maryland Real Estate Commission reflect this decision.

October 26, 2020
Date Decision Issued

SIGNATURE ON FILE

Jerome Woods, II
Administrative Law Judge

JW/cj
#188584