

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

*

* **CASE NO. 2017-RE-593**

v.

*

* **OAH NO. DOL-REC-24-22-00677**

**GARRY D. BARNES,
Respondent**

*

and

*

**IN THE MATTER OF THE CLAIM
OF TIMOTHY & DEIDRA BRYANT
AGAINST THE MARYLAND REAL
ESTATE COMMISSION
GUARANTY FUND**

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PROPOSED ORDER

The Findings of Fact, Proposed Conclusions of Law and Recommended Order of the Administrative Law Judge dated August 2, 2022, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 22nd day of September, 2022, hereby

ORDERED:

A. That the Findings of Fact in the proposed decision be, and hereby are,

AFFIRMED.

B. That the Proposed Conclusions of Law in the proposed decision be, and hereby

are, **APPROVED.**

C. That the Recommended Order in the proposed decision be, and hereby is,

ADOPTED in part and AMENDED in part as follows:

ORDERED that Respondent, **GARRY D. BARNES**, be

REPRIMANDED;

ORDERED that once this Proposed Order becomes a Final Order and all

rights to appeal are exhausted, Claimants, **TIMOTHY & DEIDRA BRYANT**, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of **Three Thousand Five Hundred Dollars (\$3,500.00)**;

ORDERED that Respondent, **GARRY D. BARNES**, 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;

ORDERED that all real estate licenses held by Respondent, **GARRY D. BARNES**, 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 Respondent, **GARRY D. BARNES**, 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 Recommended Order suspensions related to the civil penalty and guaranty fund award.

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, 1100 N. Eutaw Street, Baltimore, MD 21201. 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

By: SIGNATURE ON FILE

Date

MARYLAND REAL ESTATE
COMMISSION

v.

GARRY D. BARNES,
RESPONDENT,
and

IN RE: CLAIM OF TIMOTHY AND
DEIDRA BRYANT AGAINST
THE MARYLAND REAL ESTATE
GUARANTY FUND

* BEFORE STEPHEN W. THIBODEAU,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: LABOR-REC-24-22-00677
* REC No.: 2017-RE-593

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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 or about June 7, 2017, Timothy and Deidra Bryant (Claimants) filed a complaint against Garry D. Barnes (Respondent) with the Maryland Real Estate Commission (REC or Commission) for alleged violations of the Maryland Real Estate Broker's Act, Maryland Code Annotated, Business Occupations and Professions Article, section 17-101 *et. seq.* (2018 & Supp. 2021) and the provisions at Code of Maryland Regulations (COMAR) 09.11.02, enacted under the Maryland Real Estate Broker's Act. The Claimants also filed a claim for reimbursement from the REC Guaranty Fund (Fund) for losses incurred as a result of the alleged conduct of the

Respondent. On December 23, 2021, the REC issued a Statement of Charges and Order for Hearing, setting forth regulatory charges (Charges) against the Respondent and ordering a consolidated hearing on the Charges and the Claimants' claim against the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-409(a) (2018).

On May 4, 2022, I held a hearing at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Profs. §§ 17-324(a), 17-408(a) (2018); COMAR 28.02.01.20. Hope Miller Sachs, Assistant Attorney General, Department of Labor, represented the REC. The Claimants represented themselves through Claimant Timothy Bryant. The Respondent represented himself. Eric B. London, Assistant Attorney General, Department of Labor, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the Maryland Real Estate Broker's Act, the procedures for Administrative Hearings before the Office of the Secretary of the Department of Labor, 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 (2021); Md. Code Ann., Bus. Occ. & Prof. §§ 17-101 through 17-702 (2018 & Supp. 2021); 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 sections 17-322(b)(25) of the Business Occupations and Professions Article;

2. Did the Respondent fail to protect and promote the interests of a client, in violation of COMAR 09.11.02 ("the Code of Ethics"); and

3. 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;

4. If so, what is the appropriate sanction?
5. Did the Claimants 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,
6. If so, what is the appropriate award to the Claimants from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

The REC offered the following exhibits, which I admitted into evidence:

- REC Ex. 1 Notice of Hearing, January 26, 2022; letter to the parties dated April 4, 2022, resetting hearing date for May 4, 2022
- REC Ex. 2 Statement of Charges and Order for Hearing, December 23, 2021
- REC Ex. 3 REC Licensing History for the Respondent, printed March 14, 2022
- REC Ex. 4 REC Report of Investigation (pp. 1-6), completed September 9, 2021, with the following attachments:
- Complaint and Guaranty Fund Claim Form, with attachments (pp. 7-183), June 7, 2017
 - Licensing History for the Respondent (pp. 184-185), printed May 17, 2019
 - Respondent's written response to the Complaint (pp. 186-206), September 28, 2017
 - Respondent's additional responses to the REC Investigator questions (pp. 207-209), undated
 - Claimants' additional responses to REC Investigator questions (pp. 210-211), September 8, 2021

The Respondent offered the following exhibit, which I admitted into evidence:

- Resp. Ex. 1 Draft Inclusions/Exclusions Agreement for fixtures and furniture, January 2017

The Claimants offered the following exhibits, which I admitted into evidence:

- Clmt. Ex. 1 Best Buy receipt for receiver, HDMI cable, and surge protector, December 24, 2018
- Clmt. Ex. 2 Amazon receipts for home theatre equipment, February and December 2018
- Clmt. Ex. 3 Photo of home theatre in basement of the Property, taken by the Claimant, Timothy Bryant, April 2022

Clmt. Ex. 4 Photo of wall in the Property, taken by the Claimant, Timothy Bryant, April 2022

Clmt. Ex. 5 Best Buy receipt for washer and dryer and related components, July 3, 2017

Clmt. Ex. 6 Best Buy receipt for dishwasher, April 26, 2021

Testimony

The REC presented testimony from the Claimant, Timothy Bryant; Van Johnson, the Claimants' real estate agent; and Roderick Dotson, Investigator for the REC.

The Claimants presented testimony from the Claimant, Timothy Bryant.

The Respondent testified on his own behalf.

The Fund did not present any witnesses.

FINDINGS OF FACT

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

1. The Respondent is a licensed real estate salesperson in Maryland. The Respondent was first licensed in 2013.
2. At all times relevant to this proceeding, the Respondent was the listing agent for 6305 Langdon Lane, Lanham, Maryland (Property) and was working for an entity known as Tristar Realty.
3. In 2016, the Claimants were seeking to buy a home, and were represented by Van Johnson (Buyer's Agent) in their home search.
4. In 2016, the Property was listed for sale as a short sale requiring third-party approval, and the Claimants sought to purchase the Property.
5. On December 22, 2016, the Claimants, through the Buyer's Agent, made an offer of \$450,000.00 to purchase the Property.

6. The Claimants executed a sale agreement (Agreement or Contract) for the Property on December 26, 2016. The Agreement was signed by the Claimants, the Buyer's Agent, the Respondent, and Karen Jackson (Seller).

7. At all times relevant to this proceeding, the Seller was out of the country and generally unavailable to the Respondent.

8. Paragraph 13 of the Agreement ("Inclusions/Exclusions") notes that the purchase price included "all permanently attached fixtures, including all smoke detectors," and includes "now existing items which may be considered personal property, whether installed or stored upon the property, are included if the box below is checked." (REC Ex. 4, p. 106).

9. Under Paragraph 13 of the Agreement, the following boxes were checked as being included items in the purchase: clothes dryer; clothes washer; drapery/curtain rods; refrigerator; and shades/blinds.

10. Under Paragraph 13 of the Agreement, in the section titled "Additional Inclusions (Specify)," the following note is added: "See Inclusions/Exclusions Addendum" (Addendum).

11. The Addendum, dated December 27, 2016, provided the following items would be included in the sale of the Property: alarm system; ceiling fan; cooktop; dishwasher; exhaust fans; existing wall to wall carpet; fireplace screen/doors; furnace humidifier; garage door opener; garbage disposer; screens; storm doors; storm windows; stove or range; and wall oven. (REC Ex. 4, p. 209).

12. On January 30, 2017, the Seller and the Respondent presented the Claimants and the Buyer's Agent with a copy of a second inclusions/exclusions addendum (Second Addendum). The Second Addendum provided that the following items were excluded from the sale of the Property: clothes washer; clothes dryer; drapery curtain rod; drapery; shades/blinds;

Thermador refrigerator, JennAir gas stove top; double oven; dishwasher; theatre projector; theatre projection screen; and theatre audio equipment. (REC Ex. 4, p. 208).

13. The Second Addendum also provided for the sale of certain personal property from the Seller to the Claimants for \$6,500.00, including the shades/blinds; Thermador refrigerator; JennAir gas stove top; double oven; theatre projection screen; theatre audio equipment; theatre projector; pool table and accessories; and chandeliers/wall lighting fixtures.

14. On February 1, 2017, the Claimants agreed to the Second Addendum, with the following modifications made by the Buyer's Agent: deletion of the stove top and double oven as an exclusion, because they were already included in the original Agreement and Addendum; deletion of a dishwasher because there was not one at the Property; and as part of the \$6,500.00 purchase of personal property, inclusion of the following items: front room furniture; grill; clothes washer; and clothes dryer.

15. The Second Addendum included a provision for the Claimants to deposit \$3,250.00 of the \$6,500.00 within twenty-four hours of third-party approval of the Contract and the remaining amount would be brought to settlement.

16. The Second Addendum was attached to the Contract to incorporate it as part of the Contract.

17. In early February 2017, during the inspection and appraisal phase of the transaction, several issues arose related to the Property, including the removal of items from the Property that were intended to be included in the sale. The Buyer's Agent reached out to the Respondent on several occasions to clarify what was included and excluded in the sale, but did not reach a final agreement. The Buyer's Agent noted several times that the dishwasher, stove, and wall oven should convey with the Property because they were included in the Contract.

18. On February 15, 2017, the Buyer's Agent delivered a cashier's check from the Claimants, in the amount of \$3,250.00, to the Respondent to execute the provisions of the Second Addendum. The check was held for third-party approval per the terms of the Second Addendum.

19. On February 25, 2017, the Buyer's Agent discovered that a yard sale was being held at the Property and managed by Lolita Lee, a representative of the Seller.¹

20. The Claimants attended the yard sale and discovered that several of the items included as part of the Contract were being sold at the yard sale. The Claimants paid Ms. Lee a total of \$3,500.00 for the refrigerator, stove top, oven, and shades and blinds to ensure those items were not sold to another party at the yard sale. (REC Ex. 4, pp. 35-36).

21. On March 13, 2017, the Respondent offered the Claimants \$2,500.00 "to be deemed total compensation for any and all items" pertaining to the Property and its sale. (REC Ex. 4, p. 18). The offer noted that it was payment to include "any and all household items, fixtures, appliances, repairs, household goods, interior and exterior alike, and any and all items pertaining to the sale of said property." The Claimants did not accept the Respondent's offer.

22. Final settlement on the Property occurred in April 2017.

DISCUSSION

Burden of Proof

With regard to the Charges, the REC bears the burden of proof, by a preponderance of the evidence, to demonstrate that 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 Claimants bear the burden of proof, by a preponderance of the evidence, to demonstrate they

¹ Other than being identified as a "representative" of the Seller, Ms. Lee's relationship to the Seller was not otherwise explained.

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 Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

For the reasons that follow, I find that the REC has met its burden. I further find that the Claimants have met their burden.

The Regulatory Charges

The REC charged the Respondent with violating subsections 17-322(b)(25) and (b)(33) of the Business Occupations Article, and subsections 09.11.02.01C and 09.11.02.02A of COMAR. Section 17-322 of the Business Occupations Article provides, in pertinent part:

(b) 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, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;

...

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

COMAR 09.11.02.01 provides, as pertinent here:

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.

Finally, COMAR 09.11.02.02 provides, as pertinent here:

A. In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to the client's

interest is primary, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction.

1. 17-322(b)(25) charge (Conduct Demonstrating Bad Faith, Incompetency, or Untrustworthiness)

At a minimum, the REC demonstrated that the Respondent engaged in conduct that demonstrated his incompetency with respect to the sale of the Property. Three different versions of what was to be included or excluded from the sale of the Property were provided to the Claimants, none of which appeared to be correct. Indeed, the Buyer's Agent attempted to clarify on several occasions what was included and what was not, and did not receive a straight answer. This affected the inspection and appraisal of the property and delayed settlement.

Moreover, the Respondent did not appear to have a clear line of communication with the Seller, who was out of the country during the transaction. Indeed, the Respondent testified that the Seller was often hard to reach. The Respondent also stated that he was unaware of all of the actions taken by Ms. Lee to sell off several pieces of personal property from the Property prior to settlement, and was also unaware of the yard sale selling many of the goods that were to be included in the Contract.

Despite representing himself as an agent for the Seller, the Respondent did not have a clear understanding of the Seller's wishes with respect to the sale of the Property, in particular what was to be included and excluded in the sale. The Respondent, therefore, misrepresented himself as an agent of the Seller's intentions while dealing with the Claimants and the Buyer's Agent.

The Respondent's admitted ignorance of the desires, as he put it, of an "absentee seller," demonstrated his overall incompetence. The REC therefore met its burden to demonstrate a violation by the Respondent under subsection 17-322(b)(25) of the Business Occupations Article.

2. Alleged COMAR violations

The REC charged the Respondent with violating two sections of COMAR: 09.11.02.01C and 09.11.02.02A. These charges are brought through subsection 17-322(b)(33) of the Business Occupations Article, which allows for charges for violations of applicable regulations and the REC licensee's code of ethics.

Pursuant to COMAR 09.11.02.01C, the REC argues that the Respondent failed to protect the Claimants from unethical practices in the real estate field, and failed to eliminate practices that could be damaging to the public in the field of real estate. Indeed, the Respondent's incompetence created a great deal of confusion for the Claimants and the Buyer's Agent in the sale of the Property, and the Respondent's failure to clarify what was included in the sale of the Property, or to engage the Seller to ensure that items were not sold that were already included in the Contract, reflects poorly on the public image of real estate salespersons. As such, the REC has met its burden with respect to demonstrating the Respondent violated COMAR 09.11.02.01C.

In addition, the REC charges the Respondent with violation of COMAR 09.11.02.02A, in particular the provision that states a licensee is not relieved from statutory obligations towards other parties in a given transaction. Here, the REC argues that while this COMAR provision seems to place emphasis on a licensee promoting the interest of a client first and foremost, a licensee must also ensure it complies with the law in his or her dealings with other parties to a transaction. The REC's argument, therefore, is while the Respondent was attempting to represent the Seller in the transaction involving the Property, he ignored his statutory obligations with respect to the Claimants.

There can be no doubt that, given my findings in relation to the statutory charge in this case, the Respondent did neglect his statutory obligations to the Claimants. However, because I

have found that violation already, it would be superfluous to find another violation merely on the basis that the Respondent violated those statutory obligations. As such, I decline to find a violation of COMAR 09.11.02.02A.

The REC has recommended the Respondent receive a reprimand and a \$1,500.00 fine for each violation. This is substantially less than the \$5,000.00 per violation the REC can seek in terms of a fine against the Respondent. Given that the Respondent's violations were mainly a result of his incompetence, I agree with the REC's recommendation. As such, I will recommend the Respondent receive a reprimand for the two violations and a total fine of \$3,000.00.

The Guaranty Fund Claim

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

- (a) Actual losses-
 - (1) Subject to the provisions of this subtitle, a person may recover compensation from the Guaranty Fund for an actual loss.
 - (2) A claim shall:
 - (i) be based on an act or omission that occurs in the provision of real estate brokerage services by:
 - 1. a licensed real estate broker;
 - 2. a licensed associate real estate broker;
 - 3. a licensed real estate salesperson; or
 - 4. an unlicensed employee of a licensed real estate broker;
 - (ii) involve a transaction that relates to real estate that is located in the State; and
 - (iii) be based on an act or omission:
 - 1. in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or
 - 2. that constitutes fraud or misrepresentation.
- (b) The amount recovered for any claim against the Guaranty Fund may not exceed \$50,000 for each claim.

With respect to claims against the Fund, COMAR 09.11.01.15 states:

The amount of compensation recoverable by a claimant from the Real Estate 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. Actual monetary losses may not include commissions owed to a licensee of this Commission acting in the licensee's capacity as either a principal or agent in a real estate transaction, or any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.

This regulation specifically ties any recovery from the Fund to the "originating transaction" and it is a reasonable interpretation of the term "actual loss," which is employed in section 17-404(a)(1) of the Business Occupations Article. *See Marriott Employees Fed. Credit Union v. Motor Vehicle Admin.*, 346 Md. 437, 445 (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.").

In this case, there is no dispute that the Property is located in the State. The Respondent's licensing status was established by the documents in evidence. The Claimants purchased the Property as their residence, and they have no business or familial relationship with the Respondent that would disqualify them from recovery. *See Md. Code Ann., Bus. Occ. & Prof. § 17-404(c).*

The Fund, however, provides a limited mechanism for recovery against a licensed real estate agent; there must be an act or omission by which money or property is obtained by, as potentially relevant here, false pretenses that constitute "fraud or misrepresentation." A claim of fraud requires a showing that the person made a false representation, with either knowledge of the falsity or reckless indifference as to its truth, for the purposes of defrauding the other party, and the other party reasonably relied upon the false representation and had the right to do so. *See Moscarillo v. Prof'l Risk Mgmt. Servs., Inc.*, 398 Md. 529, 544 (2007). I find the evidence does not support a conclusion, by a preponderance of the evidence, that the Respondent made any act or omission that constituted fraud.

In contrast, a claim of negligent misrepresentation requires a showing that a party, owing a duty of care, negligently asserts a false statement, and intends the statement to be acted on by the other party, with knowledge that reliance will cause loss to that other party, who takes action on the misrepresentation and sustains loss. *Balfour Beatty Infrastructure, Inc. v. Rummel Klepper & Kahl, LLP*, 451 Md. 600, 627 n.18 (2017). Negligent misrepresentation can include a negligent failure to disclose. *See Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 135-36 (2007). Here, the Respondent negligently misrepresented the Seller's intentions as to which personal property and fixtures were included in the sale of the Property, resulting in a monetary loss to the Claimants when they had to purchase several of those items at the February 25, 2017, yard sale.

After adopting the Second Addendum on February 1, 2017, the Seller, through the Respondent, attempted to amend the Contract again to exclude the dishwasher, stove, and wall oven. On February 2, 2017, and again on February 15, 2017, the Buyer's Agent put the Respondent on notice that the Claimants intended to enforce the original Contract by including those items at the time of settlement. The Respondent did not disagree with the Buyer's Agent, but on February 25, 2017, those items were put up for sale at the yard sale.

The Respondent claims he had no knowledge of the yard sale or Ms. Lee's or the Seller's intentions at the time of the yard sale, and he was not otherwise present at the yard sale. It was at this sale that the Claimants had to pay an additional \$3,500.00 to ensure that several items that were already listed as being included, either in the Agreement or subsequent inclusion addendums, were not sold to another party. However, I do not find the Respondent credible in this regard.

Simply stated, several weeks after the Claimants paid Ms. Lee \$3,500.00 to retain the refrigerator, wall oven, stove, and blinds, the Respondent offered the Claimant \$2,500.00 as compensation for the items related to the sale of the Property. While the Respondent stated he

did this because the Claimants began “harassing” him for money, this does not explain why he made such an explicit offer to cover the cost of household items, including appliances. Indeed, the specificity of the Respondent’s offer demonstrates he knew or should have known that he made misrepresentations regarding the Contract and the included items and wanted to partially compensate the Claimants for their loss.

For their part, the Claimants provided several receipts for many other items they thought were included in the Contract, such as home theatre equipment, a washer and dryer, and a dishwasher. However, I cannot find the Claimants suffered an actual loss for those items, because there was no clear misrepresentation, intentional or otherwise, related to those items. The Agreement and related addendums did not make it clear that those items would conclusively be included in the sale of the Property. The items the Claimants were forced to purchase at the yard sale were definitely included, and the Claimants suffered an actual loss when they had to purchase those items and expended extra funds to do so. As a result, I propose that the Claimants received compensation in the amount of \$3,500.00 from the Fund for their actual loss.

PROPOSED CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated subsection 17-322(b)(25) of the Business Occupations Article, and subsection 09.11.02.01C of COMAR. I further conclude that the REC should reprimand the Respondent and impose a total sanction of \$3,000.00 . Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b), (c) (2018).

Based on the Findings of Fact and Discussion, I conclude as a matter of law that the Claimants are entitled to an award from the Fund in the amount of \$3,500.00 for the actual loss they sustained as a result of misrepresentations made by the Respondent, in his capacity as a

licensed real estate salesperson, in connection with the sale of the Property. Md. Code Ann.,
Bus. Occ. & Prof. § 17-404 (2018); COMAR 09.11.01.15.

RECOMMENDED ORDER


I therefore **RECOMMEND** that the Maryland Real Estate Commission **ORDER** as follows:

- (1) That the Respondent be reprimanded;
- (2) That the Respondent pay a civil penalty in the amount of \$3,000.00;
- (3) The Maryland Real Estate Commission Guaranty Fund pay the Claimants

\$3,500.00 as the amount of their actual loss from the Respondent's wrongful acts or omissions;
and

- (4) That the records and publications of the Maryland Real Estate Commission reflect this decision.

August 2, 2022
Date Decision Issued



Stephen W. Thibodeau
Administrative Law Judge

SWT/dlm
#199942