

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION
V.

BRYAN HARLEE
RESPONDENT

AND

CLAIM OF MYKELL HATCHER-
MCLARIN AND SHEILA HATCHER
AGAINST THE MARYLAND
REAL ESTATE COMMISSION
GUARANTY FUND

* BEFORE LATONYA B. DARGAN
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-24-17-06837

* REC CASE NO: 2017 RE-026
*

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated September 1, 2017, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 18th day of October , 2017,

ORDERED,

- A. That the Findings of Fact in the Recommended Decision be, and hereby are, AFFIRMED;
- B. That the Conclusions of Law in the Recommended Decision be, and hereby are, APPROVED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

D. That the records, files and documents of the Maryland State Real Estate Commission reflect this decision.

MARYLAND STATE REAL ESTATE COMMISSION

SIGNATURE ON FILE

10/24/17
Date

By: _____
J. Nicholas D'Ambrosia, Commissioner

SIGNATURE ON FILE

MARYLAND REAL ESTATE
COMMISSION

v.

BRYAN HARLEE,
RESPONDENT

And

THE CLAIM OF
MYKELL HATCHER-McLARIN
& SHEILA M. HATCHER,
CLAIMANTS,
AGAINST THE MARYLAND
REAL ESTATE COMMISSION
GUARANTY FUND

* BEFORE LATONYA B. DARGAN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS

* OAH No.: DLR-REC-24-17-06837
* MREC No.: 2017-RE-026

* * * * *

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 August 17, 2016, Mykell Hatcher-McLarin, acting on behalf of herself and Sheila Hatcher¹ (Claimants), filed a claim with the Maryland Real Estate Commission's (MREC) Guaranty Fund (Fund) for actual monetary losses suffered as a result of the acts or omissions of

¹ Sheila Hatcher is Mykell Hatcher-McLarin's mother.

Bryan Harlee (Respondent), allegedly committed while the Respondent acted in his capacity as a licensed real estate broker, affiliated with First Trust Realty, LLC (First Trust). The Claimants also filed a complaint against the Respondent directly with the MREC.

On March 6, 2017, the MREC issued a Statement of Charges (Charges) against the Respondent for alleged violations of the Maryland Real Estate Broker's Act (the Act), Maryland Code Annotated, Business Occupations and Professions Article, Section 17-101 *et. seq.* (2010 and Supp. 2016), 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 Claimants were entitled to a hearing to establish their eligibility for an award from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-409(a) (2010). Accordingly, the MREC ordered a combined hearing on the Charges and the Claimants' claim against the Fund.

On June 7, 2017, I conducted a hearing at the Maryland Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Profs. §§ 17-324(a) and 17-408(a) (2010). Jessica Kauffman, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the MREC. The Claimants represented themselves. Hope Sachs, Assistant Attorney General, DLLR, represented the Fund. The Respondent failed to appear.²

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings before the Office of the Secretary of the DLLR, and the Rules of Procedure of the OAH govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 and Supp. 2016); COMAR 09.01.02, 09.01.03 and 28.02.01.

² The Respondent's failure to appear and the procedural implications are discussed more fully below.

ISSUES

1. Did the Respondent violate the provisions of Section 17-322 of the Act;
2. Did the Respondent violate the provisions of Section 17-502 of the Act;
3. Did the Respondent violate the provisions of Section 17-505 of the Act;
4. Did the Respondent violate the provisions of Section 17-507 of the Act;
5. Did the Respondent violate the provisions of Section 17-532 of the Act;
6. Did the Respondent violate COMAR 09.11.02.01C &H, and 09.11.02.02A;
7. If so, what is the appropriate sanction;
8. 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,
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:

- REC Ex. 1: Notice of Hearing, issued on March 13, 2017
- REC Ex. 2: Transmittal, with attached March 6, 2017 Order for Hearing
- REC Ex. 3: Respondent's MREC Licensing History
- REC Ex. 4: Lucinda Rezek-Sands³ Report of Investigation, with the following attached documents:
- Mykell Hatcher-McLarin's August 16, 2016 complaint, submitted via the Internet
 - The Claimants' July 30, 2016 hand-written complaint
 - Business Cards: Ruth A. Sliviak, ICS-Insurance Brokers; Martinez A. Harlee, Recovery Financial Services, LLC
 - Residential Contract of Sale, June 18, 2014, with attached addenda and Notices of Rights
 - Photocopy of Cashier's Check No. *****0722, in the amount of \$10,000.00 and payable to First Trust Realty

³ At the time she prepared her investigative report, Ms. Rezek-Sands went by "Lucinda Rezek."

- Statement of Home Loan Account for Linda C. White, July 16, 2014
- Letter from BWW Law Group to the Occupants of 2730 Harford Road, April 22, 2016
- Notice to Vacate, May 5, 2016
- Mykell Hatcher-McLarin's letter to the Respondent, June 13, 2016
- Mutual Release of Deposit Agreement & Mutual Release of Obligation Under Contract of Sale, executed on July 7, 2016
- The Respondent's letter to Katherine F. Connelly, MREC, September 28, 2016, with attachments

The Claimant, the Respondent, and the Fund did not submit any exhibits.

Testimony

The MREC presented the following witnesses: Sheila Hatcher, Mykell Hatcher-McLarin, and Lucinda Rezek-Sands, Administrative Assistant, MREC. No one testified on behalf of either the Respondent or the Fund.

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.
2. At all relevant times, Claimant Sheila Hatcher resided at 2730 Harford Road, Baltimore, Maryland (the Property). The Property had been owned by a member of the Claimants' family for several decades when, at some point prior to June 18, 2014, the family sold the Property to Linda White⁴ to obtain necessary funds for Ms. Hatcher's mother, who had become disabled, to pay for around-the-clock care.
3. On or around June 18, 2014, Ms. White entered into a residential contract of sale with the Claimants for the Property. The Respondent was involved as Ms. White's real estate broker.
4. The agreement between the Claimants and Ms. White was for the Claimants to purchase the property as a short sale (i.e., a sale where the Claimants purchase the

⁴ Ms. White subsequently vacated the Property and leased it to Claimant Hatcher as a tenant.

Property for an amount that is less than any encumbrances on the Property, such as a mortgage). As a short sale, the Claimants' offer to Ms. White had to be approved by her bank, Bank of America, for the offer to be finalized.

5. Under the contract, the sale price for the Property was \$8,000.00. The contract was ratified by Ms. White and Claimant Hatcher-McLarin on June 20, 2014.
6. Under the contract terms, the Claimants paid an earnest money deposit of \$500.00, which was to be placed by the Respondent into an escrow account at First Trust Realty.
7. Under the contract, settlement was initially scheduled for July 18, 2014, but final settlement was contingent upon the seller's bank approving the Claimants' offer.
8. At some point in or around July 2014, Ms. White and the Claimants agreed to extend the settlement date under the contract of sale to July 15, 2015.⁵
9. At some point after June 20, 2014, but before the July 18, 2014 settlement date, the Respondent advised the Claimants they needed to pay \$10,000.00 to finalize the sale. Although the sale price was only \$8,000.00, the Respondent explained the additional \$2,000.00 was to ensure "any monies due to him from the sale were accounted for." (T.⁶ Sheila Hatcher.)
10. The Respondent neither prepared, nor presented to the Claimants, any written documents related to the change in the contract price from \$8,000.00 to \$10,000.00.
11. The Claimants secured a cashier's check in the amount of \$10,000.00 made payable to First Trust. Claimant Hatcher gave the check directly to one of the Respondent's associates, an individual named Mr. Redmond.

⁵ No one explained the reason for the extension, but I draw the reasonable inference it was done to account for the fact the approval of a third party – Bank of America – was necessary to finalize the sale.

⁶ The abbreviation "T" stands for testimony.

12. At some point after April 2015, the Respondent told the Claimants the sale offer was not accepted by Bank of America.
13. As of April 2015, Bank of America had not rejected the Claimants' sale offer for the Property, but rather, had asked the Respondent to provide certain documents so it could complete its review to determine if the offer met its underwriting standards for a short sale.
14. At some point between April 2015 and August 7, 2015, a friend of the Claimants advised them the Property was to be sold at a foreclosure auction scheduled for August 7, 2015.⁷ Claimant Hatcher contacted the Respondent, who advised her he could, acting on her behalf, attempt to purchase the Property at the auction, but he would need at least \$2,500.00 for the opening bid. Claimant Hatcher inquired why the Respondent needed any additional money from the Claimants when he was already holding the \$10,000.00 deposit. The Respondent did not provide Claimant Hatcher with an explanation.
15. On or around August 7, 2015, the Property was sold at foreclosure auction. The sale was ratified by court order on October 7, 2015.
16. On June 13, 2016, Claimant Hatcher-McLarin sent a letter to the Respondent, advising the Property was sold at foreclosure auction and requesting a return of the \$10,000.00 deposit. The Respondent never replied to the letter.
17. The Claimants made multiple attempts to contact the Respondent and request a refund of the \$10,000.00 deposit. The Respondent did not respond to the Claimants' communication efforts.

⁷ It is not clear from a review of the record why Claimant Hatcher, who was residing at the Property, was not formally notified, as an occupant of the Property, of the impending foreclosure sale.

18. On or around July 6, 2016, Ms. White entered into a mutual release of deposit agreement with Claimant Hatcher-McLarin. Under the agreement, Ms. White and Claimant Hatcher-McLarin jointly directed the Respondent to release the \$10,000.00 deposit back to the Claimants.
19. Despite the existence of the release and despite the Claimants advising him of the existence of the release, the Respondent did not return the \$10,000.00 to either Claimant. They made repeated requests both in writing and, on at least one occasion, in person, for him to do so, but he did not. The only explanation the Respondent provided to the Claimants for why he continued to retain the \$10,000.00 was a claim he was “going through real estate procedures,” without further elaboration. (T. Sheila Hatcher.)
20. On or around August 1, 2016, the Claimants filed a complaint and claim with the MREC. Lucinda Rezek-Sands was assigned to conduct the complaint investigation. As part of her investigation, Ms. Rezek-Sands interviewed the Claimants and the Respondent and obtained from the Claimants copies of all available relevant documents they possessed. Ms. Rezek-Sands asked the Respondent to provide any documents in his possession related to the \$10,000.00 deposit, including verification the money was deposited into an escrow or other trust account.
21. The only paperwork the Respondent ever produced related to Ms. Rezek-Sands’ specific request about the \$10,000.00 deposit was a bank statement for his business checking account, showing a balance of approximately \$11,000.00.
22. The Respondent told Ms. Rezek-Sands he did not return the \$10,000.00 to the Claimants because Ms. White was not willing to release the funds. This assertion was not true.

DISCUSSION

Legal Framework

Disciplinary Charges Under the Act

The MREC charged the Respondent under Section 17-322(b) (Supp. 2016) of the Act, as follows:

Grounds for Discipline

(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;

...

(31) violates any provision of Subtitle 5 of this title that relates to trust money;

(32) violates any other provision of this title

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

The MREC additionally charged the Respondent with violating the following provisions of Subsection 5 of the Act:

§ 17-502. Handling of trust money.

(b)(1) Except as otherwise provided in subsection (c) of this section, a real estate broker promptly, but not more than 7 business days after the acceptance of a contract of sale by both parties, shall deposit trust money in an account that is maintained by the real estate broker:

- (i) separately from the real estate broker's own accounts; and
- (ii) solely for trust money.

(2) A real estate broker may not use trust money for any purpose other than that for which it is entrusted to the real estate broker.

§ 17-505. Maintenance and disposition of trust money.

a) A real estate broker shall maintain trust money in an account authorized under this Part I of this subtitle until:

- (1) the real estate transaction for which the trust money was entrusted is consummated or terminated;

(2) the real estate broker receives proper written instructions from the owner and beneficial owner directing withdrawal or other disposition of the trust money[.]

§ 17-507. Maintenance of records.

(a) Each real estate broker shall maintain all records of trust money in a secured area within the office of the broker.

The MREC further charged the Respondent under Section 17-532(c)(1) (Supp. 2016) of the Act as follows:

Duties to client.

(c)(1) A licensee shall:

...

(iv) treat all parties to the transaction honestly and fairly and answer all questions truthfully;

...

(vi) exercise reasonable care and diligence[.]

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

Relations 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 09.11.02.01.

Relations to the Client.

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.

COMAR 09.11.02.02.

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) (Supp. 2016). 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).

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 09.01.02.16(a). With regard to the claim against the Fund, the Claimants bears the burden of proof, by a preponderance of the evidence, to demonstrate they

suffered an actual loss because of the Respondent's acts or omissions. Md. Code Ann., Bus. Occ. & Profs. § 17-407(e) (Supp. 2016); COMAR 09.01.02.16(c). 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 Respondent's Failure to Appear

The Act provides that if, "after due notice, the individual against whom the action is contemplated fails or refuses to appear, nevertheless the [MREC] may hear and determine the matter." Md. Code Ann., Bus. Occ. & Profs. § 17-324(f) (2010). On March 13, 2017, the OAH sent a Notice of Hearing (Notice) to the parties at their addresses of record. None of the parties' copies of the Notice were returned to the OAH as undeliverable by the United States Postal Service. Additionally, none of the parties requested a postponement of the scheduled hearing. I found the Respondent failed to appear for the hearing and I proceeded in his absence.

The Merits of the Case

Disciplinary Charges

Violations Under the Act

The evidence overwhelmingly demonstrates the Respondent, through his conduct related to the potential sale of the Property, violated each of the provisions of the Act under which the MREC issued charges. At no point, in either his dealings with the Claimants or in his responses to the MREC's investigative inquiries, did the Respondent conduct himself in a trustworthy, reliable, or professionally responsible manner. The Respondent essentially stole \$10,000.00 from the Claimants. He told them he required \$2,000.00 above the agreed-upon contract sale price of \$8,000.00 to "finalize" the sale and to ensure any fees associated with his services were covered. He did not reduce anything about the additional \$2,000.00 to writing for the Claimants,

which would have provided them a proper accounting of the money's purpose and outlined any recourse they had related to the money should the sale fall through. The Respondent further failed to deposit the \$10,000.00 into an escrow or other trust-type account. In his response to Ms. Rezek-Sands, the Respondent produced documents related to *his* business account, but he never produced anything to demonstrate he placed the Claimants' money in an escrow/trust account.

The Respondent compounded this questionable conduct by misleading the Claimants with respect to why he would not return the \$10,000.00 to them. Claimant Hatcher testified the only thing the Respondent said when she asked him to return the \$10,000.00 was a claim he was "going through real estate procedures," made without further elaboration. The Respondent also provided a dishonest response to Ms. Rezek-Sands' inquiry about his failure to give the money back to the Claimants. As Ms. Rezek-Sands explained, the Respondent advised her that Ms. White would not release the funds. At the time he communicated this rationale, Ms. Rezek-Sands was already aware of the release and had a copy of it in her possession. As a result, she knew the Respondent was not being truthful with her.

The Respondent also utterly failed in his duties to the Claimants (and Ms. White) to engage in any meaningful negotiations related to the short sale offer. The documents the Respondent provided to the MREC included electronic mail correspondence between the Respondent and Bank of America. Contrary to the Respondent's assertion to the Claimants that Bank of America rejected the \$8,000.00 offer under the contract, Bank of America actually asked the Respondent for additional documentary information. *See* REC Ex. 4, Attachment No. 11. The Respondent never obtained the additional information from either the Claimants or Ms. White, nor did he provide anything to Bank of America in response to its request. As a result, Bank of America proceeded to a foreclosure auction of the Property, the result of which was a

third party obtaining ownership of the Property. This outcome was the opposite of the Claimants' intention to return the Property to the ownership of their family.

By failing to properly deposit the \$10,000.00 into an escrow or other trust-type account, the Respondent violated Sections 17-322(b)(31) (Supp. 2016), 17-502(b)(1), and 17-505(a) of the Act. By failing to maintain any records related to the \$10,000.00, including records related to where it was deposited and how it was used, the Respondent violated Section 17-507 of the Act. Through his misrepresentations to the Claimants about (i) the status and location of the \$10,000.00, (ii) Bank of America's actual response to the short sale offer, and (iii) his failure to return the \$10,000.00 to the Claimants at their request, the Respondent violated Sections 17-322(b)(25) (Supp. 2016) and 17-532(c) (Supp. 2016) of the Act.

Violations Under COMAR

The evidence overwhelmingly demonstrates the Respondent violated his obligations under the MREC's Code of Ethics. He did not protect the Claimants against fraud, as he is required to do under COMAR 09.11.02.01C. On the contrary, he perpetuated fraud against the Claimants when he obtained an additional \$2,000.00 from them for a specious, vaguely-defined reason. He continued to defraud the Claimants by refusing to return the entire \$10,000.00 to them and explaining his refusal to do so with the clearly bogus explanation of "going through with real estate procedures."

The Respondent also violated COMAR 09.11.02.02H because he did not protect the Claimants' interests by reducing to writing all the terms related to this real estate transaction. Specifically, the Respondent did not commit to writing an explanation for why he requested an additional \$2,000.00, above the contract price, from the Claimants. He also failed to reduce to writing an explanation for what would happen to the additional \$2,000.00 in the event the sale contract was not fulfilled.

In all of the Respondent's dealings with the Claimants he acted in a manner that was contrary to COMAR 09.11.02.02, because he violated his statutory obligations to behave in a competent, honest, and trustworthy manner towards them. By violating these provisions of the MREC's Code of Ethics, the Respondent also violated Section 17-322(b)(33) (Supp. 2016) of the Act.

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) (Supp. 2016). 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." 09.11.01.14.

The Claimants' claim was for \$10,000.00, which represents the money they gave to the Respondent in anticipation of the sale of the Property from Ms. White to them. The Claimants presented ample evidence to demonstrate the Respondent, acting in his capacity as a licensed real estate broker, took the money from them, failed to deposit it into an escrow or other trust-type account, and refused to return the money to them after multiple requests that he do so. Based on the evidence, I find there is no viable reason for the Respondent's failure and refusal to return the \$10,000.00 to the Claimants. On the contrary, the evidence demonstrates the Respondent kept the money for his own purposes.

I find the Claimants are entitled to an award from the Fund. The evidence demonstrates it is more likely than not the Respondent stole money from the Claimants. The Respondent's actions constitute embezzlement, as he took money that was not his to take and likely used it in

ways he was not authorized to do; had the Respondent treated the money in the manner he was authorized to do, he would have been able to promptly return it to the Claimants once the sale of the Property fell through and the Claimants asked for a refund. The Respondent blatantly lied to the Claimants about the whereabouts of the money. He claimed he could not return it because he was "going through real estate procedures," even though he had not taken any meaningful action to negotiate the short sale with Bank of America, and eventually, the Property was *sold at foreclosure*. There were no "real estate procedures," other than the finalization of the contract between the Claimants and Ms. White, for which the Respondent was authorized to use the money. The Respondent's misrepresentations to the Claimants support the reasonable inference I draw that he used the money for his own purposes even though it was not his money to use. As a result of the Respondent's embezzlement, misrepresentations and theft, the Claimants sustained an actual monetary loss totaling \$10,000.00, and they are entitled to an award from the Fund in that amount.

Disciplinary Sanctions

The MREC argued that as a result of the Respondent's numerous violations of the Act and its applicable COMAR provisions, the appropriate sanctions are the revocation of his real estate broker's license and the imposition of an \$16,000.00 civil penalty.

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) (Supp. 2016). For the following reasons, I find that revocation of the real estate broker's license and an \$16,000.00 civil penalty are the appropriate sanctions.

The Respondent's conduct in this case is egregious. He embezzled money from the Claimants. He then made repeated and deliberate misrepresentations to the Claimants in order to hide the fact that he embezzled money from them. The Respondent did not deal with the Claimants honestly or in good faith at any point after he was given the \$10,000.00 cashier's check. He was also dishonest in his responses to the MREC, even as he attempted to create the appearance of cooperation.

Although the Respondent does not have a prior disciplinary history, the ongoing egregiousness of his conduct in his dealings with the Claimants cancels out that particular mitigating factor. The Claimants were harmed by the Respondent's misconduct; they were cheated out of \$10,000.00 to which they were fully entitled when the contract of sale did not go through. The Respondent has demonstrated by his conduct that he does not respect his fiduciary obligations, as articulated in both the Act and in the Code of Ethics which governs the behavior of real estate agents and brokers. The nature of the violations committed by the Respondent supports the recommended civil money penalty and the recommended revocation of his real estate broker's license.

CONCLUSIONS OF LAW

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

1. The Respondent violated the provisions of Section 17-322(b)(25), (31), (32), and (33) (Supp. 2016) of the Act;
2. The Respondent violated the provisions of Section 17-502(b) of the Act;
3. The Respondent violated the provisions of Section 17-505(a) of the Act;
4. The Respondent violated the provisions of Section 17-507 of the Act;
5. The Respondent violated the provisions of Section 17-532(c) (Supp. 2016) of the Act;
6. The Respondent violated COMAR 09.11.02.01C & H (Relations to the public), and 09.11.02.02A (Relations to the Client);
7. The Claimants are entitled to an award from the Fund in the amount of \$10,000.00 because they 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 obtained money from the Claimants through embezzlement and theft, in violation of Section 17-404 (Supp. 2016) of the Act; and,
8. The appropriate disciplinary sanctions, under Section 17-322(c) of the Act, are revocation of the Respondent's real estate broker's license and the imposition of a civil penalty in the amount of \$16,000.00.

RECOMMENDED ORDER

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

1. The charges against the Respondent, issued on, be **UPHELD**;
2. The Respondent's real estate broker's license, issued under Registration No. 576213, be **REVOKED**;
3. The Respondent pay a civil penalty in the amount of \$16,000.00;

4. The Maryland Real Estate Commission Guaranty Fund pay to the Claimants the amount of their actual monetary loss, \$10,000.00, for the Respondent's wrongful acts or omissions; and,
5. The records and publications of the Maryland Real Estate Commission reflect this decision.

SIGNATURE ON FILE

September 1, 2017
Date Decision Issued

Latonya B. Dargan
Administrative Law Judge

LBD/cmg
#169678

SIGNATURE ON FILE