

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**IN THE MATTER OF THE CLAIM *
OF JOHN DIFABIO, *
CLAIMANT ***

CASE NO. 2022-RE-102

V. *

**THE MARYLAND REAL ESTATE *
COMMISSION GUARANTY FUND *
FOR THE ALLEGED MISCONDUCT *
OF THE ESTATE OF ERIC FORD, *
RESPONDENT ***

OAH NO. DOL-REC-22-22-26215

* * * * *

PROPOSED ORDER

The Proposed Findings of Fact, Proposed Conclusions of Law and Recommended Order of the Administrative Law Judge dated February 27, 2023, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 24 day of April 2023, hereby **ORDERED:**

A. That the Proposed 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 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, **JOHN DIFABIO**, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of **Seven Thousand Seven Hundred Seventeen Dollars and Fifty Cents (\$7,717.50)**; and

ORDERED that all real estate licenses held by the Respondent, **ERIC FORD**, 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.

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 to clarify interest on the 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

SIGNATURE ON FILE

By: _____

Date

4/24/23

IN THE MATTER OF THE CLAIM

OF JOHN DIFABIO,

CLAIMANT

v.

THE MARYLAND REAL ESTATE

COMMISSION GUARANTY FUND,

FOR THE ALLEGED MISCONDUCT

OF THE ESTATE OF ERIC FORD,

RESPONDENT

*** BEFORE JOY L. PHILLIPS,**

*** AN ADMINISTRATIVE LAW JUDGE**

*** OF THE MARYLAND OFFICE**

*** OF ADMINISTRATIVE HEARINGS**

*** OAH No.: LABOR-REC-22-22-26215**

*** REC No.: 22-RE-102**

PROPOSED DECISION

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RECOMMENDED ORDER

STATEMENT OF THE CASE

On December 22, 2021, John DiFabio (Claimant) filed a Complaint and Guaranty Fund Claim (Claim) with the Maryland Real Estate Commission (REC), under the jurisdiction of the Department of Labor (Department), to recover compensation from the Real Estate Guaranty Fund (Fund) for an alleged actual loss resulting from an act or omission of The Estate of Eric Ford (Respondent), a licensed real estate broker, 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. 2022)¹ and the provisions at Code of Maryland Regulations (COMAR) 09.11.01 and 09.11.02, enacted under the Act. This matter involves the Claimant's claim for reimbursement from the Fund for losses incurred as a result of the alleged conduct of the Respondent, now deceased, in his capacity as a real estate broker, acting as the Claimant's property manager for properties owned by the Claimant.

On October 19, 2022, the Executive Director of the REC issued a Hearing Order on the Claim and, on October 24, 2022, forwarded the case to the Office of Administrative Hearings (OAH) for a hearing.

On January 27, 2023, I held a hearing by video. Md. Code Ann., Bus. Occ. & Prof. § 17-408(a) (2018); COMAR 28.02.01.20B(1)(b). Jonathan P. Phillips,² Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. Neither the Respondent nor anyone authorized to represent the Respondent appeared.

On November 3, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by regular United States mail and certified mail to the Respondent's address on record with the OAH, The Estate of Eric Ford (Antietam³ Property Management), 151 S. Prospect Street, Hagerstown, MD 21740. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for January 27, 2023, at 10:00 a.m., in Webex room number 129 667 2295. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you." The Notice sent by regular mail and by certified mail was returned to the OAH as undeliverable or unclaimed.

¹ Unless otherwise noted, all references hereinafter to the Business Occupations and Professions Article are to the 2018 Replacement Volume of the Maryland Annotated Code.

² Mr. Phillips and I are not related. This is the first time we have even met.

³ This was spelled Antietum in the address, but the typographical error did not impact the failure to deliver the Notice.

The REC located additional addresses for the Respondent and notified the OAH. Accordingly, on January 18, 2023, a new Notice was sent by regular and certified mail to the following addresses: Estate of Eric D. Ford, c/o Tammie Ford, 151 S. Prospect Street, Hagerstown, MD 21740; and Antietam Property Management, LLC, c/o David C. Weaver, Esquire – Resident Agent, Law Office of Weaver & Fitzpatrick, 131 West Patrick Street, Frederick, MD 21701; Antietam Property Management, LLC, 19833 Leitersburg Pike, Hagerstown, MD 21742; and Tammie Ford, 19833 Leitersburg Pike, Suite 3, Hagerstown, MD 21742. The Notice sent by certified mail to Antietam Property Management, LLC, 19833 Leitersburg Pike, Hagerstown, MD 21742, was returned as unclaimed.

The Fund's representative reported at the hearing that he spoke with David Weaver, Esquire, representing Tammie Ford, the Respondent's widow, and the Respondent. Ms. Ford had been subpoenaed to be at the hearing. Mr. Weaver said that Ms. Ford was aware of the Claim and asked to be excused from appearing at the hearing. Mr. Weaver represented that the Respondent was fully aware of the basis for the Claim and would not be contesting it.

I determined that the Respondent received proper notice, and, after waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. COMAR 28.02.01.23A; COMAR 28.02.01.05A, C.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, the REC's procedural regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 09.11.03; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss, compensable by the Fund, due to an act or omission of the Respondent that constitutes fraud or misrepresentation in the provision of real

estate brokerage services or in which money or property was obtained from the Claimant by theft, embezzlement, false pretenses, or forgery?

2. If so, what amount should be awarded to the Claimant from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibit offered by the Claimant:

Clmt. Ex. 1 - Letter from Rhonda Douglas, Antietam Property Management, to MCG Properties, LLC, August 5, 2021

As the Respondent failed to appear, I admitted no exhibits offered by the Respondent.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Remote Hearing, November 3, 2022

Fund Ex. 2 - Order for Hearing, October 19, 2022

Fund Ex. 3 - Claim and Guaranty Fund Complaint form, December 2, 2021

Fund Ex. 4 - REC licensing information, accessed January 25, 2023

Testimony

The Claimant testified and did not present other witnesses.

The Respondent was not present and presented no testimony.

The Fund presented no testimony.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the Respondent was licensed by the REC as broker under license 01-626548.

2. Sometime prior to five years before the hearing, the Claimant and the Respondent entered into an agreement whereby the Respondent's property management company, Antietam

Property Management, would manage the Claimant's rental properties in Hagerstown, Maryland.

The properties were located on Lee, Jonathan, and High Streets.

3. As part of the property management agreement, the Respondent held security deposits and escrow money for the Claimant's properties as follows:

- \$3,587.50 for five properties on Lee St.
- \$1,737.50 for two properties on Jonathan St.
- \$1,192.00 for one property on High St.
- \$1,200.00 held in a general escrow account
- Total: \$7,717.50

4. On August 5, 2021, Rhonda Douglas, an employee of Antietam Property Management, wrote a letter to the Claimant explaining that the Respondent had died unexpectedly. Ms. Douglas explained there were insufficient funds in the accounts held for security deposits and escrows to reimburse the Claimant for the money the Respondent was holding for the Claimant's properties. She recommended the Claimant contact the REC for reimbursement.

5. The Claimant had no familial relationship or business relationship with the Respondent other than the rental of the properties.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Occ. & Prof. § 17-407(e); State Gov't § 10-217. To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

A person may recover compensation from the Fund for an actual loss based on certain types of acts or omissions in the provision of real estate brokerage services by a licensee. A licensee “means a licensed real estate broker, a licensed associate real estate broker, or a licensed real estate salesperson.” Bus. Occ. & Prof. § 17-101(k).

The provision of real estate brokerage services is defined, in pertinent part, as follows:

(1) “Provide real estate brokerage services” means to engage in any of the following activities:

(1) for consideration, providing any of the following services for another person:

....

(ii) collecting rent for the use of any real estate;

....

(6) for consideration, serving as a consultant regarding any activity set forth in items (1) through (5) of this subsection.

Id. § 17-101(l).

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.

Id. § 17-404(a)(2). The amount recovered for any claim against the Fund may not exceed \$50,000.00 for each claim. *Id.* § 17-404(b).

The Claimant established that he paid the Respondent \$7,717.50 in monies to be held in escrow while the Respondent managed the Claimant’s properties, and that the money was missing after the Respondent died. An employee of the Respondent’s company wrote to the Claimant on August 5, 2021, to inform him that after Mr. Ford’s death, it was discovered the

money being held in escrow for the Claimant was missing from the accounts. She urged the Claimant to contact the REC “regarding the monies to which you are entitled.” (Clmt. Ex. 1). The Respondent, who held a valid broker’s license, failed to refute the Claimant’s testimony and evidence.

The amount of the Claim is less than the statutory maximum. The testimony established there is no absolute bar to the Claimant being reimbursed by the Fund due to, for example, his relationship with the Respondent or the Respondent’s family, the length of time in which he filed his claim (in this case, he filed the Claim less than three years after he learned of the Respondent’s death and lack of funds from the account, *see* Bus. Occ. & Prof. § 17-404(d); COMAR 09.11.01.19), or the location of the property, which is in Maryland. Actual monetary losses may not include commissions owed or any attorney’s fees incurred in pursuing the claim. COMAR 09.11.01.15. These amounts were not sought by the Claimant.

The Fund agreed that the Claimant suffered an actual loss because of the Respondent’s acts or omissions that constituted theft and embezzlement and that the Claimant was entitled to reimbursement from the Fund in the amount of \$7,717.50. I also conclude the Claimant should be reimbursed in that amount.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has established by a preponderance of the evidence that he sustained an actual and compensable loss due to an act or omission of the Respondent that constitutes theft or embezzlement in the provision of real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. §§ 17-101(k) and (l) and 404(a) and (b) (2018).

I further conclude that the Claimant is entitled to recover \$7,717.50 from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-404(b) (2018); COMAR 09.11.01.19.

RECOMMENDED ORDER

I **RECOMMEND** that the claim filed by the Claimant against the Maryland Real Estate Commission Guaranty Fund be **GRANTED**.

I further **ORDER**:

1. The Guaranty Fund award the Claimant \$7,717.50.
2. The Respondent shall reimburse the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Real Estate Commission.⁴
3. The Respondent's license is suspended. The Maryland Real Estate Commission may not reinstate the Respondent's license until the Respondent repays in full the amount paid by the Guaranty Fund, plus interest, and the Respondent applies to the Real Estate Commission for reinstatement of the license.⁵
4. The records and publications of the Maryland Real Estate Commission reflect this decision.

SIGNATURE ON FILE

February 27, 2023
Date Decision Issued

Joy L. Phillips
Administrative Law Judge

JLP/dlm
#203180

⁴ Md. Code Ann., Bus. Occ. & Prof. § 17-411(a) (2018).

⁵ Md. Code Ann., Bus. Occ. & Prof. § 17-412(a), (b) (2018).