

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

*

v.

**ANDREW OSAZUWA,
Respondent**

*

CASE NO. 2016-RE-363

*

OAH NO. DLR-REC-24-19-24207

*

and

*

**IN THE MATTER OF THE CLAIM
OF CAMILLA, HERMAN, AND LINDA
WHITEHEAD 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 January 6, 2020, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 15th day of JANUARY, 2020, 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 Proposed Order in the proposed decision be, and hereby is, **ADOPTED.**

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

E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties

adversely affected by this Proposed Order shall have twenty (20) days from the postmark date of the Order to file written exceptions to this Proposed Order. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 500 North Calvert Street, Baltimore, MD 21202. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

F. Once 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

11/15/20
Date

MARYLAND REAL ESTATE COMMISSION

By: SIGNATURE ON FILE

SIGNATURE ON FILE

STATE REAL ESTATE COMMISSION	* BEFORE MICHELLE W. COLE,
V.	* ADMINISTRATIVE LAW JUDGE
ANDREW OSAZUWA,	* OF THE MARYLAND OFFICE
RESPONDENT	* OF ADMINISTRATIVE HEARINGS
AND	* OAH No.: LABOR-REC-24-19-24207
THE CLAIM OF CAMILLIA, HERMAN	* MREC No.: 2016-RE-363
AND LINDA WHITEHEAD,	*
CLAIMANTS,	*
AGAINST THE REAL ESTATE	*
GUARANTY FUND,	*
FOR THE ALLEGED MISCONDUCT	*
OF ANDREW OSAZUWA	*

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
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PROPOSED ORDER

STATEMENT OF THE CASE

On January 17, 2016, Camillia, Herman, and Linda Whitehead (Claimants) filed a complaint with the State Real Estate Commission (Commission) against Andrew Osazuwa (Respondent), a licensed real estate salesperson, concerning the Respondent’s conduct in relation to residential real estate the Claimants purchased in Baltimore, Maryland. On that same date, the Claimants filed a claim against the Real Estate Guaranty Fund (Guaranty Fund) to recover

compensation for an alleged actual loss that occurred due to the Respondent's acts or omissions related to that same residential real estate.

On July 24, 2019, the Commission, by Michael L. Kasnic, Executive Director, issued an Order for Hearing concerning the Commission's regulatory charges and the Claimants' claim against the Guaranty Fund. On July 29, 2019, the Commission referred this case to the Office of Administrative Hearings (OAH) for a combined hearing on the regulatory charges and the claim against the Guaranty Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-323(d)(2) (2018) (regulatory charges); *id.* § 17-407(c)(2)(ii) (Guaranty Fund claim).¹

On October 8, 2019, I conducted a hearing at the OAH in Hunt Valley, Maryland. *Id.* § 17-324 (regulatory charges); *id.* §§ 17-407(e), 17-408 (Guaranty Fund claim); *id.* § 17-409 (joinder of regulatory charges and Guaranty Fund claim). Shara Hendler, Assistant Attorney General, Department of Labor (Department), represented the Commission in relation to the regulatory charges. Camillia Whitehead (Ms. Whitehead) spoke on behalf of the Claimants. Nicholas Sokolow, Assistant Attorney General, Department, represented the Guaranty Fund.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2019); the Department's and the Commission's procedural regulations, Code of Maryland Regulations (COMAR) 09.01.03 and 09.11.03; and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

ISSUES

Regulatory Charges

1. Did the Respondent violate the following provisions of section 17-322 of the Business Occupations and Professions Article?
 - a. 17-322(b)(3) (directly or through another person willfully make a misrepresentation or knowingly make a false promise);

¹ All references to the Business Occupations and Professions Article are to the 2018 Replacement Volume.

- b. 17-322(b)(25) (engage in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings);
- c. 17-322(b)(32) (violate any other provision of title 17 of the Business Occupations and Professions Article); or
- d. 17-322(b)(33) (violate any regulation adopted under title 17 of the Business Occupations and Professions Article, or any provision of the code of ethics, specifically: COMAR 09.11.02.01H (a 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); and COMAR 09.11.02.02A (a licensee shall protect and promote the interests of the client)).

2. What sanction, if any, is appropriate under section 17-322(b) or (c) of the Business Occupations and Professions Article?

Claim Against the Guaranty Fund

3. Did the Claimants sustain an actual loss resulting from an act that occurred in the provision of real estate services by the Respondent, a licensed real estate salesperson, which involved a transaction relating to real estate located in the State, and by which the Respondent obtained the Claimant's money or property by theft, embezzlement, false pretenses, forgery, fraud or misrepresentation?

4. If so, what compensation is the Claimant due from the Guaranty Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Commission:

REC Ex. 1 Statement of Charges and Order for Hearing, July 24, 2019

REC Ex. 2 Notice of Hearing, August 20, 2019

REC Ex. 3 Information concerning the Respondent's real estate salesperson's license, printed September 30, 2019

REC Ex. 4 Amended Report of Investigation,² with the following documents:

- Summary of Investigation and Exhibit List (pgs. 1-9)
- Complaint and Guaranty Fund Claim, January 17, 2016 (pgs. 10-14)
- Estimate from Beltway Builders, Inc., March 19, 2018 (pg. 15)
- Estimate from Storm Waterproofing LLC, March 24, 2018 (pg. 16)
- Report of Investigation, closed April 10, 2018 (pgs. 17-19)
- Panel Review Decision, August 15, 2018 (pg. 20)
- Supplemental Report, closed December 21, 2018 (pgs. 21-24)
- Department Inquiry Screens, printed August 29, 2019 (pgs. 25-26)
- Email correspondence from Ms. Hendler to Ms. Balis, undated (pg. 27)
- Residential Listing and Tax Record, March 11, 2016 (pgs. 28-31)
- Residential Brokerage Agreement, June 1, 2015 (pgs. 32-41)
- Understanding Whom Real Estate Agents Represent, April 1, 2015 (pgs. 42-43)
- Disclosure and Disclaimer Statement, June 1, 2015 (pgs. 44-46)
- Disclosure of Licensee Status, April 1, 2015 (pg. 47)
- Residential Contract of Sale, July 12, 2015 (pgs. 48-57)
- Property Inspections Addendum, July 10, 2015 (pgs. 58-61)
- Notice to Buyer and Seller of Rights and Obligations, July 10, 2015 (pgs. 62-63)
- General Addendum to Contract of Sale, July 10, 2015 (pgs. 64-66)
- Disclosures, July 10, 2015 (pgs. 67-69)
- Long & Foster Notice of Licensure Status, signed July 10 and July 12, 2015 (pg. 70)
- TDE Home Services Inspection Report, July 20, 2015 (pgs. 71-93)
- Addendum to Sales Contract, July 22, 2015 (pg. 94)
- Addendum to Sales Contract, July 23, 2015 (pg. 95)
- Extension of Contract Terms, August 3, 2015 (pg. 96)
- Email correspondence between Ms. Whitehead, the Respondent, and Ms. Ward, various dates (pgs. 97-100)
- Letter from Ms. Whitehead to Delta Exclusive Realty, LLC (Delta), November 17, 2015 (pg. 101)
- Email correspondence from Delta to Commission, March 11, 2016 (pg. 102)
- Case Activity Listing, printed March 17, 2016 (pgs. 103-107)
- Email correspondence from the Respondent to the Commission, March 21, 2016 (pg. 108)
- Invoices and Delivery Slip, various dates (pgs. 109-124)
- Payment Summary, printed December 4, 2018 (pgs. 125-128)
- Photographs, undated (pgs. 129-147)

² Michelle Macer conducted an investigation and submitted a report to the Commission. When the Commission review panel requested additional investigation, Ms. Macer was no longer employed by the Commission. Tovie Balis was assigned the case and conducted additional investigation of the claim and submitted an amended supplemental report.

- Email correspondence from Ms. Macer to the Respondent, March 22, 2018-March 26, 2018 (pgs. 148-155)
- Email correspondence between Ms. Ward, Ms. Whitehead, and the Respondent, various dates (pgs. 156-161)
- Email correspondence from Delta to the Respondent, October 9, 2015 (pg. 162)
- Email correspondence between Ms. Whitehead, Mr. Akwara and the Respondent, with attachments, printed January 18, 2016 (pgs. 163-168)
- Email correspondence between Ms. Whitehead, Mr. Akwara and the Respondent, printed January 17, 2016 (pgs. 169-171)
- Report pages and Exhibit List, undated (pgs. 172-174)
- Printed text message screens, printed January 18, 2016, January 24, 2016, and January 26, 2016 (pgs., 175-185)

I admitted the following exhibit on behalf of the Guaranty Fund:

GF Ex. 1 Commission Online Complaint Form, January 17, 2016

I did not admit any exhibits on behalf of the Claimants or the Respondent.

Testimony

Tovie Balis, Commission Investigator, and Ms. Whitehead testified on the Commission's behalf. Ms. Whitehead testified on behalf of the Claimants in the case against the Guaranty Fund. The Guaranty Fund did not present any testimony. The Respondent failed to appear for the hearing and did not present any witnesses.

PROPOSED FINDINGS OF FACT

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

1. The Commission has licensed the Respondent as a real estate salesperson since February 11, 2010 under license numbers 02-531348 and 05-635749 (8/29/19). The Respondent's current registration expires on November 6, 2020.
2. At all times relevant to this matter, the Respondent was a real estate agent for Delta Exclusive Realty, LLC (Delta).
3. The Respondent was also an owner of REIP Venture 8, LLC (REIP), the seller of 5504 Hilltop Avenue (Property), residential real estate located in Baltimore, Maryland.

4. On June 1, 2015, Delta and REIP entered into an Exclusive Right to Sell Residential Brokerage Agreement for sale of the Property.

5. REIP completed the Maryland Residential Property Disclosure and Disclaimer Statement. It checked "No" to the question of whether the seller had knowledge of any leaks or evidence of moisture. (REC 4 at 45).

6. The listing advertised the Property as "newly remodeled" with "4 finished levels," including a "finished basement." (REC 4 at 28-29). The listing price was \$135,000.00.

7. On July 10, 2015, Ms. Whitehead signed a Residential Contract of Sale (Contract) for purchase of the Property, with a settlement date of August 7, 2015. The purchase price for the Property was \$140,000.00.

8. On July 20, 2015, Tim Demski, a licensed home inspector with TDE Home Services, conducted a home inspection of the Property.

9. During his inspection, Mr. Demski observed several items for which he recommended repairs, including:

- Minor cracks in the concrete walkway – Monitor for future repair
- Daylight shining through between door and frame at basement door – Repair weather stripping
- Gas service lines – Remove old gas lines
- First floor kitchen cabinets – Adjust doors for proper operation
- Interior second level bathroom door – Adjust door for proper operation
- Interior vinyl replacement windows – Adjust windows for proper operation
- Doorbell not installed – Install doorbell for convenience

(REC 4 at 78-93).

10. Mr. Demski observed several items for which he recommended immediate repair, due to safety concerns or defective condition, including:

- Main basement sump pump – Submerged – Sump pump should be installed on dedicated circuit with proper GFCI protected receptacle
- Main floor powder room – Install GFCI protected receptacle
- Basement laundry room – Install GFCI protected receptacle and devices

- Living room 110 VAC outlets and lighting circuits – No power – Repair outlet
- Third floor master bedroom – Unable to operate lights from stairwell – Install additional 3-way switch

(REC 4 at 78-92). Based on the items which presented a safety concern, Mr. Demski refused to sign off on the final inspection.

11. On August 1, 2015, the Contract was amended to add Herman and Linda Whitehead's names as additional buyers.

12. On August 1, 2015, the Claimants and REIP agreed that the following repairs would be completed "at least 5 days before settlement":

- Clean debris off the front porch roof
- Dedicated circuit with proper GFCI protected receptacle for the sump pump
- GFCI receptacle in the main floor powder room
- Adjust door of cabinets for proper operation
- Repair outlet in living room – no power
- Adjust bathroom door on second floor level for proper operation
- Windows – repair all windows denoted with dot marks in the living room, bedroom, staircase
- Basement laundry room – 110 VAC outlets and lighting circuits – install GFCI protected devices for safety
- Washer & Dryer GFCI protected receptacle required for 120v laundry appliances
- Minor cracks noted walkway – fill in needed
- Repair weather stripping at basement door – daylight shining through between door and frame
- Gas service lines – black iron pipe – remove old gas lines above electrical panel
- Install the 3-way light switch in 3rd-floor master – unable to operate lights from the stairwell
- Install doorbell

(REC 4 at 4-5). The settlement date was extended to August 14, 2015.

13. As of August 14, 2015, the date of settlement, two living room windows and one basement window were not repaired, cracks remained in the concrete walkway, and weather stripping had not been applied to close the gap at the basement door.

14. The Respondent agreed to complete the remaining repairs after settlement.

15. After settlement, Ms. Whitehead contacted her agent and the Respondent to inquire of the status of repairs.

16. Shortly after settlement, the Claimants observed water pooling in the basement when it rained.

17. On September 10 and September 30, 2015, Ms. Whitehead contacted her agent and the Respondent to complain about water in the basement.

18. The Respondent sent various “handymen”³ to the Property to complete repairs between September 2015 and December 2015. None of the handymen were licensed.

19. The Respondent sent Carlos Rosa to work on the basement. As of October 2015, only one of the basement walls was waterproofed and the water did not drain to the sump pump.

20. In December 2015, Mr. Rosa installed a new sump pump and conducted waterproofing of the basement walls which were not waterproofed prior to settlement. However, water continued to enter the basement and the new sump pump did not drain the water.

21. Ms. Whitehead continued to contact the Respondent about water in the basement and remaining repairs. She sent emails and texts to the Respondent, but received no response.

22. As part of the Commission’s investigation of this matter, the Respondent submitted answers to a questionnaire prepared by Licensing and Regulation Investigator Michelle Macer. The Respondent affirmed that all repairs on the inspection addendum were completed prior to settlement; that he became involved with the waterproofing of the house even though it was not listed on the addendum as a repair item “out of good faith”; and that no agreement was reached at settlement “that the repairs that hadn’t been completed would be completed after settlement.” (REC 4 at 153-54).

³ This was a term used by the Respondent when he completed the Commission’s questionnaire.

23. The cost to waterproof and install a proper drainage system in the basement is \$5,000.00.

24. The cost to replace the cracked cement is \$1,823.00.

DISCUSSION

Regulatory Charges

Section 17-322(b) of the Business Occupations and Professions Article provides that the Commission may reprimand any licensee, or suspend or revoke a license if, in pertinent part, the licensee:

(3) directly or through another person willfully makes a misrepresentation or knowingly makes a false promise;

(25) engages in conduct that demonstrates bad faith, incompetency, or 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 Commission charged the Respondent with violating the above four subsections of the statute. All of the charges relate to the Respondent's alleged misrepresentations regarding the conditions of the Property, specifically the cracked walkway and waterproofing of the basement, and his promise to complete repairs following settlement. The Commission asked that I recommend a reprimand of the Respondent's real estate salesperson's license and the imposition of a \$3,000.00 to \$5,000.00 penalty for the violations.

Initially, I recommend that the Commission dismiss the charge under Section 17-322(b) (32), which addresses violations of other provisions of title 17. Because the Commission did not cite the Respondent with violating any other provisions of title 17, this charge should be dismissed.

As to the remaining charges, I recommend that the Commission sanction the Respondent for violating sections 17-322(b)(3), (b)(25), and (b)(33). The evidence was undisputed in this case. Investigator Balis reviewed her report setting out her investigation of the Claimants' complaint. She reviewed documents, including the Respondent's questionnaire responses and settlement papers for the Property. The record which supports her testimony was admitted into evidence. (REC 4). Ms. Whitehead recounted the events surrounding her purchase of the Property for her parents. She reviewed the home inspection report and identified several problems with the Property that needed to be repaired. She indicated that several items noted in the Addendum as repair items were not corrected prior to settlement, including adjustment of windows and cracks in the walkway. She maintained that the Respondent indicated that these repairs would be made after settlement. She further described problems she and her parents experienced shortly after settlement due to improper waterproofing of the basement walls and poor drainage to the sump pump. She presented a home inspection report and photographs to support her testimony.

The evidence establishes that the Respondent violated section 17-322(b)(3). The Respondent misrepresented the condition of the Property and report of repairs to the Claimants and the Commission. He reported that there were no leaks and that the basement was waterproofed when only one wall was waterproofed prior to settlement and the basement walls leaked whenever it rained. I find it unlikely that the Respondent was unaware of the condition of the basement since the flooding became apparent to the Claimants upon the first rain after they moved into the Property. The Respondent also promised to make certain repairs prior to settlement, including filling cracks in the cement walkway, adjusting interior windows, and

closing a gap at the basement door. The Respondent did not make any of these repairs. Finally, in the questionnaire that he submitted to the Commission, the Respondent reported that all items requiring repairs listed in the Addendum were completed prior to settlement. Ms. Whitehead's testimony and the documentary evidence contradict this statement. Thus, I find that the Respondent also willfully misrepresented facts to the Commission. To the extent that the Respondent explained in the questionnaire his reason for not making repairs to the concrete – that the home inspection report identified the cracks as an item to “monitor” for future repair, not requiring immediate repair, the Addendum to the Contract included filling in the cracks of the cement walkway as an item requiring repair prior to settlement.

The same conduct discussed above constitutes bad faith, incompetency, and untrustworthiness under section 17-322(b)(25) and unethical practices under section 17-322(b)(33). The Commission charged the Respondent with violations of two regulations under subsection (b)(33), specifically: COMAR 09.11.02.01H (a 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 COMAR 09.11.02.02A (a licensee shall protect and promote the interest of the client, but is not relieved of his statutory duties to other parties to the transaction). I find that the Respondent violated COMAR 09.11.02.01H by failing to reduce the agreement regarding remaining repairs, which were to be completed following settlement, to writing. I further find, based on the evidence already discussed, that the Respondent failed to protect the interests of the buyers and general public based on his misrepresentation of the condition of the Property and his failure to make good on his false promise to make repairs.

Regulatory Charges Penalty

Section 17-322(c) of the Business Occupations and Professions Article provides no specific guidance concerning the issue of whether to reprimand, suspend, or revoke a license, but does provide guidance concerning the appropriate penalty:

(c)(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 \$5,000.00 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.

The Respondent's conduct concerning the violations was serious as it involved misrepresentations regarding material facts that impacted the value of the home. The Claimants purchased the Property for an amount over the listing price based on the Respondent's representations. Ms. Whitehead reported that the basement was not usable space because of the flooding. She presented photographs showing damage to personal items which were in boxes in the basement when the basement flooded. As such, I conclude that the Claimants were harmed. As discussed above, the Respondent did not act in good faith because he intentionally failed to inform the Claimants and their real estate agent about the conditions of the Property before accepting the Claimant's offer above the asking price. The Respondent has no history of previous violations.

The Commission's recommendation of a reprimand of the Respondent's real estate salesperson's license is appropriate in light of the Respondent's conduct. As to the penalty, I

find it appropriate to recommend that the Commission impose a penalty of \$1,000.00 for each statutory violation, for a total penalty of \$3,000.00. I consider that amount to be adequate to ensure that the Respondent will conform his conduct to the statutory and regulatory requirements of his profession.

Claim Against the Guaranty Fund

A person may recover compensation from the Guaranty Fund for an actual loss that is based on an act or omission by a licensed real estate sales person that occurs in the provision of real estate brokerage services involving a transaction that relates to real estate that is located in this State. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a) (2018). A claim 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 that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(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.

The Claimants bear the burden of proving their entitlement to recover from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2018). Based on the evidence, I conclude that the Claimants have met their burden in this case.

The Claimants made several allegations of misconduct by the Respondent involving his material misrepresentation that the basement was a “finished basement” and that repairs identified in the Addendum to the contract would be completed prior to settlement. Ms. Whitehead explained that she purchased the home for her parents and relied on the Respondent’s representations regarding the condition of the Property. REIP listed the Property as “newly

remodeled” with “4 finished levels,” including a “finished basement.” (REC 4 at 28-29). Ms. Whitehead stated that she believed that the problems identified in the home inspection report and included in the Addendum would be completed by the Respondent, as promised. She noted the additional problems she and her parents observed after they moved into the Property, which she stated she believed would also be corrected by the Respondent. She explained that the Respondent arranged for some of the repairs to be made, but stopped responding to her requests before all repairs were completed. Ms. Whitehead provided photographs and documentation showing the condition of the Property and detailing the repairs which, according to the Claimants, the Respondent agreed to complete prior to settlement. The Claimants also provided estimates for making repairs to the cracked cement and basement.

I found Ms. Whitehead to be a very credible witness. She explained that she relied on the Respondent’s representations as a professional. Based on these representations, she believed that all repairs and defects would be corrected following settlement. She stated that she would not have settled had she known that she needed additional assurances to make sure that repairs would be made. Further, Ms. Whitehead supported her testimony with a detailed accounting of the deficiencies she and her parents observed soon after settlement, what repairs were made, and what repairs remained after the Respondent stopped communicating with her.

As a prerequisite to establishing a claim from the Guaranty Fund, a claimant must establish that the claim is based on an act or omission occurring in the provision of real estate brokerage services. This includes the actions of a licensed real estate salesperson, which is defined as “a real estate salesperson who is licensed by the Commission to provide real estate brokerage services on behalf of a licensed real estate broker with whom the real estate

salesperson is affiliated. Md. Code Ann., Bus. Occ. & Prof. § 17-101(j) (2018). Under the law, real estate brokerage services are defined as follows:

(l) “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:

(i) selling, buying, exchanging, or leasing any real estate

Md. Code Ann., Bus. Occ. & Prof. § 17-101(l)(1)(i) (2018).

It is undisputed that the Respondent is a licensed real estate salesman providing real estate brokerage services related to the sale of the Property. He also was an owner of REIP, the seller of the Property. He hired contractors to perform repairs to the Property, including waterproofing the basement and completing repairs listed on the Addendum. He then represented Delta and REIP in negotiations for the sale to the Claimants.

The evidence further shows that the Claimants purchased the Property based on the Respondent’s representations in his role as a licensed real estate salesperson in the sale of the Property. REIP listed the Property as “newly remodeled” with “4 finished levels,” including a “finished basement.” (REC 4 at 28-29). The Claimants had an inspection of the Property before settlement that revealed certain deficiencies, including windows that needed adjustment, installing GFCI protected receptacles, and repairing cracks in the concrete. The Claimants and the Respondent signed an Addendum setting forth a list of repairs to be completed prior to settlement, including repairing the cement. Additionally, Ms. Whitehead alerted the Respondent to defects in the waterproofing and drainage system in the basement soon after settlement. The Respondent initially sent Mr. Rosa to address the Claimants’ complaint, but stopped communication when the problems persisted. Based on this evidence, I conclude that the Respondent misrepresented that the Property had four “finished” levels, including a “finished basement,” and that certain repairs would be completed.

The Claimants have established that, due to the Respondent's acts or omissions involving misrepresentation, they have suffered an actual loss. The cost to repair the cracked cement amounts to \$1,823.00.⁴ (REC 4 at 15). The cost to waterproof the basement and install a proper drainage system is \$5,000.00. (*Id.* at 16). Accordingly, I recommend that the Claimants be entitled to \$6,823.00 (\$1,823.00 + \$5,000.00) in actual monetary loss for the Respondent's wrongful acts and omissions.

PROPOSED CONCLUSIONS OF LAW

Regulatory Charges

Based on the Proposed Findings of Fact and Discussion, I conclude that the Respondent violated three subsections of section 17-322 of the Business Occupations and Professions Article. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(3), (25), (33) (2018).

I further conclude that the Respondent violated COMAR 09.11.02.02A.

I further conclude that the Respondent violated COMAR 09.11.02.01H.

I further conclude that the Commission should reprimand the Respondent's real estate salesperson's license, and impose a total penalty of \$3,000.00. Md. Code Ann., Bus. Occ. & Prof. § 17-322.

Claim Against the Guaranty Fund

Based on the Proposed Findings of Fact and Discussion, I conclude that the Claimants have established by a preponderance of the evidence that they sustained an actual loss compensable by the Guaranty Fund resulting from an act or omission in the provision of real estate brokerage services that constitutes false pretenses, fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2) (2018).

⁴ The Claimants presented to the Commission an estimate for \$3,725.00, which included optional costs for installing a spiral balance (\$120.00) and replacing a window (\$1,782.00). The cost to replace the cracked cement is \$1,823.00 (\$3,725.00 - \$1,782.00 - \$120.00 = \$1,823.00).

I further conclude as a matter of law that the amount of the award the Claimants are entitled to receive from the Fund is \$6,823.00. Md. Code Ann., Bus. Occ. § 17-404(b) (2018).

PROPOSED ORDER

I **PROPOSE** that the State Real Estate Commission reprimand the Respondent's real estate salesperson's license and impose a penalty of \$3,000.00;

I further **PROPOSE** that the Claim filed by the Claimants against the Maryland Real Estate Guaranty Fund be **GRANTED** in the amount of \$6,823.00;

I further **PROPOSE** that the Maryland Real Estate Commission Guaranty Fund shall pay to the Claimants their actual monetary loss in the amount of \$6,823.00 for the Respondent's wrongful acts and omissions;

I further **PROPOSE** that the Respondent shall be ineligible for any Maryland Real Estate Commission license until the Respondent reimburses the Fund for all monies disbursed under this Order plus annual interest of at least ten percent, as set by the Commissioner pursuant to Section 17-411(a) of the Business Occupations and Professions Article of the Maryland Annotated Code; and

I further **PROPOSE** that the Commission's records and publications shall reflect this proposed decision.

January 6, 2020
Date Decision Issued

MWC/dlm
#183841

SIGNATURE ON FILE

Michelle W. Cole
Administrative Law Judge

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SECTION 1

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