

**BEFORE THE MARYLAND REAL ESTATE COMMISSION**

**MARYLAND REAL ESTATE  
COMMISSION** :

: **REC Case No. 2012-RE-113**

v.

: **OAH No. DLR-REC-24-12-39891**

**DEBRA MEAD**

**Respondent** :

**and**

**CLAIM OF JILL AND FRANK** :

**EMERSON AGAINST THE**

**MARYLAND REAL ESTATE** :

**GUARANTY FUND**

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**OPINION AND FINAL ORDER**

This matter came before the Maryland Real Estate Commission (“Commission”) on argument on Exceptions filed, on or about July 26, 2013, by the Respondent, Debra Mead, to the Proposed Order of July 5, 2013. On April 9, 2013, Administrative Law Judge Michael W. Burns (“ALJ”) filed a Recommended Decision and Recommended Order in which he recommended that the Respondent’s real estate agent/broker license be suspended for a period of six months for violating Sections 17-322 (b) (22), 17-322 (b) (25) and 17-322 (b) (33), Business Occupations and Professions Article, *Annotated Code of Maryland* (“Md. Bus. Occ. & Prof. Art.”) as well as

Code of Maryland Regulations (“COMAR”) 09.11.02.01C., 09.11.02.01H. and 09.11.02.02A. ; that the Respondent pay a civil penalty of \$5,000.00; that the Claimants’ claim against the Maryland Real Estate Guaranty Fund (“Fund”) be allowed in the amount of \$2,900.91; that the Respondent be ineligible for any real estate broker’s or salesperson’s license until such time as the Respondent reimburses the Fund for all monies disbursed under the Recommended Order plus annual interest of ten percent (10%); and that the records and publications of the Maryland Real Estate Commission reflect that decision.

On July 5, 2013, the Commission issued a Proposed Order that affirmed the ALJ’s Findings of Fact and amended the Conclusions of Law to increase the amount of the award from the Guaranty Fund from the recommended amount of \$2,900.91 to \$3,393.91. The Recommended Order was amended as follows:

“ORDERED that the Respondent Debra Mead violated Md. Bus. Occ. And Prof. Art. , §§ 17-322 (b) (22), (25), and (33); and COMAR 09.11.02.01C. and H. and 09.11.02.02A;

ORDERED that all real estate licenses held by the Respondent Debra Mead shall be suspended for six months;

ORDERED that the Respondent Debra Mead shall be assessed a civil penalty in the amount of \$5,000.00, which shall be paid to the Real Estate Commission within thirty (30) days of the date of this Proposed Order;

ORDERED that the Claimants Jill and Frank V. Emerson be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of \$3,393.91;

ORDERED that all real estate licenses held by the Respondent Debra Mead shall be suspended until the civil penalty is paid in full, and the Maryland Real Estate Guaranty Fund is

reimbursed, including any interest that is payable under the law, and that this suspension is in addition to the disciplinary suspension;

ORDERED that the records and publications of the Maryland Real Estate Commission reflect this decision.”

A hearing on the Exceptions filed by the Respondent was held by a panel of Commissioners, consisting of Commissioners J. Nicholas D’Ambrosia, Marla S. Johnson, and Colette P. Youngblood on October 16, 2013. Jessica Kaufman, Assistant Attorney General, represented the Commission. The Respondent, who was present but did not testify, was represented by Timothy G. Casey, Esquire. A transcript of the hearing before the ALJ was provided to the Commission. The proceedings were electronically recorded.

### **SUMMARY OF THE EVIDENCE**

On behalf of the Commission, four exhibits, as well as the Office of Administrative Hearings’ file, containing the exhibits which were entered into evidence at the hearing before the ALJ, were entered into the Exceptions’ hearing record.

### **PRELIMINARY MATTERS**

The Respondent based her Exceptions on three arguments:

1. The Respondent’s alleged “taking of improper fees from the Claimants and the failure to return the tenant’s security deposit” do not constitute the “providing of real estate brokerage services” as defined in §17-101 (1), Md. Bus. Occ. & Prof. Art., but are activities conducted by the Respondent in the capacity of being a property manager, said activities being conducted while managing the real estate for the owners.<sup>1</sup> The Respondent contended that her

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<sup>1</sup> Exceptions to Proposed Order, pp. 1-3.

activities were excepted from the Commission's jurisdiction since they did not constitute providing real estate brokerage services.

2. The ALJ erroneously found that the Respondent "kept \$2,928.00 of the security deposit funds in payment for these claimed management fees". The Respondent sought to introduce correspondence from Revere Bank to show that the security deposit funds are still in the original escrow account.<sup>2</sup>

3. The Respondent acted on the advice of her attorney in disbursing the security deposit funds in the manner that she did and that she had no intent to defraud. The Respondent also contended that the retention of a twelfth month of management fees was an oversight and her intention was not fraudulent. Further, the Respondent has held an active real estate license since 1979 without a complaint or a violation noted on her record. The Respondent contended that these factors should have been taken into consideration in assessing any sanction against the Respondent.<sup>3</sup>

Ms. Kaufman argued that the ALJ's Findings of Fact are supported by substantial evidence and specifically referenced the Respondent's indication on pages 69 and 83 of the transcript of the ALJ's hearing that she did not dispute the facts although she denied any intent to defraud. She pointed out that the facts disclosed that when the management agreement for the property in question was properly terminated in March, 2011, the owner of the property requested the Respondent to return the security deposit to the tenants. Instead, the Respondent contended that she was due additional management fees and did not return the security deposit as requested in writing. At the time of the hearing before the ALJ, no security deposit funds had been returned to the tenant. Ms. Kaufman stated that while employees of apartment owners, who

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<sup>2</sup> Exceptions to Proposed Order, p. 4.

<sup>3</sup> Exceptions to Proposed Order, p. 5.

are responsible for leasing space, collecting rent and other activities related to the day-to day functioning of the property, are exempt from licensure requirements, the Commission still has the authority to sanction its licensees for improper conduct in the provision of real estate brokerage services. She argued that the exception to licensure found in §17-301 (b) (4), Md. Bus. Occ. & Prof. Art. was based on the legislative desire to exempt employees of owners of apartment buildings from licensure requirements.<sup>4</sup> Ms. Kaufman further argued that, as noted in 58 Op. Atty. Gen 597 (1972), it is clear that the exception to licensure does not apply to a person whose regular business is the provision of real estate brokerage services.

The Commission finds that the Respondent was a licensed real estate broker performing management and leasing services. The Commission notes that §17-101 provides, in pertinent part, as follows:

(i) “Licensed real estate broker” means, unless the context requires otherwise, a real estate broker who is licensed by the Commission to provide real estate brokerage services.

. . . . .

(k) “Licensee” means a licensed real estate broker, a licensed associate real estate broker, or a licensed real estate salesperson.

. . . . .

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

. . . . .

(n) “Real estate broker” means an individual who provides real estate brokerage services.

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<sup>4</sup> Ms. Kaufman referred to 79 Op. Atty. Gen. 393 (1994) as well as *Weil v. Lambert*, 183 Md. 233, 37 A.2d 312 (1944) and an unpublished opinion of the Attorney General (Opinion No. 79-063-November 19, 1979) which are referenced therein in support of her argument.

The Commission finds that the Respondent was a licensed real estate broker who, for consideration, engaged in the leasing of the subject property as well in the collection of rent for the use of the subject property. Therefore, the Commission concludes that the Respondent, as a licensed real estate broker, provided real estate brokerage services in this case and is subject to the jurisdiction of the Commission. See Nelson v. Real Estate Comm'n., 35 Md. App. 334, 339, *cert. denied* 280 Md. 733 (1977).

The Commission denied the Respondent's request to admit additional evidence from Revere Bank, dated July 24, 2013, because the additional evidence did not meet the requirements of COMAR 09.01.03.09K.:

**COMAR 09.01.03.09K.**

Additional evidence may not be introduced unless the party seeking to introduce it demonstrates to the satisfaction of the administrative unit that the new evidence:

- (1) Is relevant and material;
- (2) Was not discovered before the ALJ hearing; and
- (3) Could not have been discovered before the ALJ hearing with the exercise of due diligence.

The Commission concludes that the information contained in the Revere Bank statement, attached as Exhibit A to the Respondent's Exceptions, could have been discovered before the ALJ's hearing with the exercise of due diligence and, therefore, was not admissible at the Exceptions' hearing.<sup>5</sup>

The Commission also concludes that the ALJ considered the Respondent's contention that, feeling she was entitled to additional management fees, and based on the advice of her attorney, she did not return any funds to the tenant, instead keeping \$2,928.00 from the security

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<sup>5</sup> The Commission also notes that the security deposit funds were originally deposited in Chevy Chase Bank in account #113-502391-3 prior to being withdrawn from the account by the Respondent. See transcript of the ALJ's hearing page 96 and REC Exhibit 4 at the ALJ's hearing, page 2.

deposit.<sup>6</sup> The Commission further concludes that the ALJ also considered the fact that the Respondent had no prior history of sanctions/violations in determining the appropriate sanctions for her conduct.<sup>7</sup>

### **FINDINGS OF FACT**

The Commission adopts the Findings of Fact recommended by the ALJ.

### **DISCUSSION**

At all times relevant to this matter, the Respondent, Debra Mead, was a licensed real estate broker. FF 1.<sup>8</sup> The Respondent's most recent license, number 4090275, was issued to her on February 18, 2011 and expired on March 30, 2013. FF 1. In March, 2010, and at all times relevant to this matter, the Respondent worked as a real estate broker/agent with, and was the owner of, Rollinmead Realty, Inc. ("Rollinmead"), P. O. Box 3493, Gaithersburg, Maryland 20878. FF 2.

On or about March 21, 2010, the Claimants, as the owner of a property located at 138 Thurgood Street, Gaithersburg, Maryland 20878 (the "Property"), entered into a Property Management and Exclusive Rental Agreement ("Agreement") with Rollinmead and with the Respondent in her role as the broker/agent of Rollinmead. FF 3. The Agreement directed the Respondent to rent, lease, operate, and manage the Claimant's Property for a period of 12-36 months. FF 3. The Agreement authorized the Respondent to offer the Property for rent; to make necessary and proper maintenance, repairs, cleaning, and decorations in and to the Property; and to provide management services for the Property. FF 4. The Claimants agreed to pay the Respondent a leasing fee in the amount of one month's rent when a tenant was obtained and a

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<sup>6</sup> Recommended Decision of the ALJ, pp. 11 and 14.

<sup>7</sup> Recommended Decision of the ALJ, p. 18.

<sup>8</sup> "FF" refers to the ALJ's Findings of Fact.

lease was executed for one, two, or three years. FF 5. In addition to the leasing fee, the Claimants agreed to pay the Respondent a management fee of 8% of all gross rentals charged to the tenant per month for management services. FF 6. In the event the Claimants terminated the agreement prior to the expiration of any tenancy created thereunder, the Respondent was to be paid an amount equal to 8% of the rents due from the effective date of the termination to the end of any unexpired lease term. FF 7.

Pursuant to that Agreement, on or about June 28, 2010, the Respondent entered into a Single Family Dwelling Lease, Montgomery County, ("Lease") with Elizabeth Shiner ("Tenant") for occupancy as the tenant of the Property for eleven months beginning July 1, 2010 and ending on May 31, 2011. FF 8. The Tenant agreed to a monthly rent of \$3,050.00 and paid the Respondent the total amount of the rent due on the lease, \$33,550.00, in advance. FF 9. The Lease required the tenant to pay a security deposit in the amount of \$3,400.00. FF 10.

On or about June 30, 2010, the Respondent deposited the Tenant's \$3,400.00 security deposit funds into a certificate of deposit account identifying the account holders as " Elizabeth Todd Shiner, escrow account; and Rollinmead Realty, Inc., escrow agent. In July, 2010, the Respondent distributed \$3,050.00 to herself from the Tenant's rent proceeds, which consisted of the leasing fee due under the Agreement, and also distributed \$2,928.00 from the Tenant's rent proceeds, which consisted of twelve months of management fees for the Property. FF 12. The Respondent was only entitled to eleven months of management fees for the Property per her Agreement with the Claimants. FF 13.

On March 4, 2011, the Claimants notified the Respondent that, having found her property management services to be unsatisfactory, they were terminating the Agreement effective



March 28, 2011. FF 14. The Claimants requested that the Respondent return the security deposit to the Tenant within twenty-four days. FF 14. The Claimants terminated the Agreement properly pursuant to the terms of the Agreement. FF 15. As of the effective date of the termination of the agreement, there were no further rents due from the Tenant through the end of the unexpired lease term. FF 16.

On or about April 19, 2011, the Respondent withdrew the security deposit funds from the certificate of deposit at the bank and distributed the \$3,427.09 (which included the security deposit of \$3,400.00 plus accrued interest of \$27.09) to herself. FF 17. The Respondent, claiming to be due another twelve months of management fees, kept \$2,928.00 of the security deposit funds in payment for these claimed management fees. FF 18.

On or about May 14, 2011, the Respondent sent the Claimants a check for \$499.09, representing the security deposit, plus the interest, minus her alleged management fee (\$3,400.00 plus \$27.09 minus \$2,928.00 equals \$499.09). FF 19. The Respondent did not return any of the security deposit to the Tenant when she dispersed the security deposit funds as described above. FF 20. Neither the Claimants nor the Tenant provided the Respondent with any authorization, in writing or otherwise, regarding the release of the security deposit funds, other than the Claimants' instruction to return the funds to the Tenant, including, in particular, any authorization for the Respondent to appropriate or convert the security deposit funds to her own use. FF 21. As of the effective date of the termination of the Agreement, having been already paid the property management fee for the entire initial eleven-month rental term, the Respondent was not entitled to any further payments from the Claimants under the Agreement. FF 22.

At some point on or before June 1, 2011, the Claimants engaged the services of attorney Gerald J. O'Brien to recover the \$2,900.91 (the balance of the \$3,400.00 security deposit)

retained by the Respondent as a management fee. FF 23<sup>9</sup>. Having been unsuccessful in their attempt to recover the funds retained by the Respondent, on September 20, 2011, the Claimants filed a complaint with the Commission against the Respondent, and filed a claim regarding funds retained by the Respondent with the Fund. FF 24. The Respondent has not paid any of the amounts retained by her as additional management fees or any of the security deposit to the Claimants other than the \$499.09 noted. FF 25. The Respondent has not paid any of the amounts retained by her as additional management fees or any of the security deposit to the Tenant. FF 26.

Based upon the evidence and testimony presented at the hearing before the ALJ, it is clear that upon the termination of the Agreement on March 28, 2011, the Respondent had been paid all of the management fees due to her for the entire lease term and was, therefore, not entitled to any further payments. It is also clear that the Claimants requested the Respondent to return the security deposit to the tenant within twenty-four days of the notice to terminate the Agreement. Nonetheless, because the Respondent felt that she was entitled to additional management fees under the Agreement because the tenant was remaining in the Property for at least one more year, and allegedly based upon the advice of her attorney, the Respondent did not return the entire security deposit to the tenant. Instead, the Respondent kept \$2,928.00 from the security deposit to pay herself for the additional management fees she believed were due to her and forwarded the remaining security deposit funds of \$499.09 to the Claimants. The ALJ, in his decision, noted that the Respondent admitted that there was no statement referring to the

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<sup>9</sup> The \$2,900.91 figure represents the \$3,400.00 original security deposit amount minus the \$499.00 sent to the Claimants by the Respondent. This is the amount the Claimants sought from the Respondent before they filed their claim with the Fund and is the amount from the security deposit withheld by the Respondent which they seek from the Fund, along with attorney's fees in the amount of \$493.00, for a total Fund claim of \$3,393.91. The \$2,900.91 figure does not, however, include the \$27.09 interest which accrued on the security deposit. There was no explanation given by the Claimants why they did not also claim this \$27.09 in interest as well, but they did not do so in their claim.

disbursement of the security deposit in the Agreement and that she had no authority from either the Claimants or the tenant to disperse any of the security deposit to herself.<sup>10</sup> The ALJ also noted the Respondent's admission in her testimony that she had not returned the \$2,928.00 to either the Claimants or the tenant.<sup>11</sup> The ALJ further noted that it was clear from the Respondent's attitude and testimony at the hearing that she believed that she had done nothing improper in taking the security deposit and dispersing the funds in the manner that occurred in this case. He found her explanation for taking the extra month fee for management services as a "clerical error" to be "completely unbelievable and without credibility".<sup>12</sup> He also noted the lack of evidence that the Respondent, who admitted she should not have taken the twelfth month management fee of \$244.00 had ever returned the extra month fee for management services to the Claimants.<sup>13</sup>

Based upon the evidence and testimony in this case, the Commission concludes that the Respondent's actions constitute violations of §§ 17-322 (b) (22), (25) and (33) as well as COMAR 09.11.02.01C. and H. and COMAR 09.11.02.02A. The Respondent failed to comply with the Claimants' instructions to remit the security deposit to the tenant. Instead, the Respondent distributed \$499.09 to the Claimants and kept the remaining \$2,928.00 for an unearned and unjustified management fee. The Respondent thus failed in her duty to promptly remit the security deposit in her possession to the tenant as was her instructions from the Claimants and her duty. The Respondent, therefore, violated § 17-322 (b) (22), Md. Bus. Occ. and Prof. Art.

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<sup>10</sup> Recommended Decision of the ALJ, p. 14.

<sup>11</sup> Recommended Decision of the ALJ, p. 15.

<sup>12</sup> Recommended Decision of the ALJ, p. 15.

<sup>13</sup> Recommended Decision of the ALJ, pp. 15 and 16.

The Respondent also paid herself an extra month of management fees without authority and has failed to return the extra month's fee of \$244.00 to the Claimants. The Respondent also failed to forward the security deposit to the tenant as instructed by the Claimants and kept \$2,928.00 for herself from the security deposit without any authority to do so from the Claimants or the tenant. The Respondent's actions and conduct demonstrate bad faith, incompetency and untrustworthiness and constitute dishonest, fraudulent and improper dealings in violation of § 17-322 (b) (25).

The Respondent also violated the following provisions of the Code of Ethics: COMAR 09.11.02.01C. and H. and COMAR 09.11.02.02A. The violations of the Code of Ethics also constitute a violation of § 17-322 (b) (33). Specifically, the Respondent's actions failed to protect the public from fraud, misrepresentation and unethical practices in the real estate field and constituted practices which were damaging to the Claimants and the tenant and to the dignity and integrity of the real estate profession. Thus, the Respondent violated COMAR 09.11.02.01C.

COMAR 09.11.02.01H. requires a licensee to see that financial obligations and commitments regarding real estate transactions are in writing and express the exact agreement of the parties and that copies of these agreements be placed in the hands of all involved parties within a reasonable time after the agreements are executed. There was no written agreement that permitted the Respondent to disperse the security deposit to herself rather than to the tenant and there was no written agreement that permitted the Respondent to pay herself more than a management fee for the eleven months lease term as occurred in this case. Thus, the Respondent clearly violated COMAR 09.11.02.01H.

The Respondent entered into an agreement to provide services to the Claimants but did not protect and promote the interests of her clients. Rather, she acted in a manner which was detrimental to the best interest of her clients. Further, the Respondent had a statutory obligation, in regards to the security deposit, to the tenant and failed in that obligation as well. The Respondent retained funds, which were not hers to take, from both the Claimants and the tenant. The Respondent's violation of her duty to protect and promote the interests of her client as well as her violation of her duty to return the security deposit to the tenant, as instructed by the Claimants constitute a violation of COMAR 09.11.02.02A.

For the violations of §§ 17-322 (b) (22), (25) and (33) as well as the violations of COMAR 09.11.02.01C. and H. and COMAR 09.11.02.02A, the Respondent is subject to sanctions under § 17-322 (c), Md. Bus. Occ. and Prof. Art. which permits the imposition of a penalty, not exceeding \$5,000.00 for each violation, instead of or in addition to reprimanding a licensee or suspending or revoking a license.

To determine the amount of the penalty to be imposed, the Commission is required to consider the following:

- (1) the seriousness of the violation;
- (2) the harm caused by the violation;
- (3) the good faith of the licensee; and
- (4) any history of previous violations by the licensee.

The Commission finds that the Respondent does not have a history of previous violations; however, her violations of the law and of regulations cannot be justified and are very serious. The Respondent took possession of a security deposit and dispensed \$2,928.00 of it to herself without any authority from the Claimants or the tenant to do so. She also improperly paid herself

an extra month's management fee and has not returned that fee to the Claimants. The harm to the Claimants is apparent: They were required to make up the difference in the security deposit which was due to the tenant. The tenant was also harmed since it was her security deposit which was taken by the Respondent and never returned to her by the Respondent. The actions of the Respondent, who claimed in her Exceptions to have held an active real estate license since 1979, in regard to the security deposit and extra month's management fee indicate her lack of good faith in this matter. The Respondent's indifference to, or lack of knowledge of, the law and regulations applicable to the facts of this case is particularly disturbing in an individual who has been licensed by the Commission for more than thirty years.

Based upon its evaluation of the foregoing factors, the Commission concludes that the suspension of all real estate licenses held by the Respondent for a period of six months and the imposition of a civil penalty in the amount of \$5,000.00 are appropriate sanctions in this case.

The Claimants seek \$3,393.91 as an award from the Fund, which includes the \$2,900.91 balance of the tenant's original \$3,400.00 security deposit and \$493.00 in attorney's fees in attempting to recover the security deposit.

Claims for reimbursement from the Fund are governed by § 17-404, Md. Bus. Occ. and Prof. Art., which states, in pertinent part:

**§ 17-404**

(a)(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;

. . . . .

- (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.

With respect to claims against the Fund, COMAR 09.11.03.04 and 09.11.01.18 further provide:

**COMAR 09.11.03.04**

- A. A guaranty fund claim shall be based on the alleged misconduct of a licensee.
- B. For the purpose of a guaranty fund claim, misconduct:
  - (1) Is an action arising out of a real estate transaction involving real estate located in this State which causes actual loss by reason of theft or embezzlement of money or property, or money or property unlawfully obtained from a person by false pretense, artifice, trickery, or forgery, or by reason of fraud, misrepresentation, or deceit.
  - (2) Is performed by an unlicensed employee of a real estate broker or by a duly licensed real estate broker, associate broker, or salesperson; and
  - (3) Involves conduct for which a license is required by Business Occupations and Professions Article, Title 17, Annotated Code of Maryland.

**COMAR 09.11.01.18**

The amount of compensation recoverable by a claimant from the Real Estate Guaranty Fund, pursuant to Business Occupations and Professions Article, Title 17, Subtitle 4, Real Estate Guaranty Fund, Annotated Code of Maryland, 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 his 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.

It is undisputed that the Respondent was a licensed real estate broker involved in a transaction (i.e., the Agreement) relating to real estate (the Property) located in this State. The claim of the Claimants therefore meets the first two of the three parts of the law necessary to recover a claim against the Fund. It has also been proven that the Respondent obtained, without any basis, \$244.00 as a management fee from the Claimants and took \$2,928.00 from the tenant's security deposit, without any authority or basis, leaving the Claimants to make up the difference due to the tenant for the security deposit. The Respondent, therefore, obtained money from both the Claimants and the tenant by acts and omissions which constituted embezzlement and/or theft, as well as fraud and misrepresentation, fulfilling the third requirement for recovery of a claim against the Fund.

The Claimants have also established that they suffered an actual monetary loss, from the originating transaction, as a result of the Respondent's actions. The Respondent took \$2,928.00 from the \$3,400.00 security deposit to pay herself and sent the balance of the security deposit (\$499.09) to the Claimants. The Claimants paid \$2,900.91 to make up the difference in the tenant's security deposit under the lease.<sup>14</sup> The Claimants also paid \$493.00 in attorney's fees in an unsuccessful attempt to recover the funds retained by the Respondent. Since the attorney's fees were incurred in an attempt to vindicate rights, which arose from the originating transaction, outside the claim process, those fees are also an actual monetary loss sustained by the Claimants as a result of Respondent's actions. Therefore, the Commission concludes that the Respondent directly caused the Claimants a loss of \$3,393.91 which is recoverable from the Fund.

### **CONCLUSIONS**

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<sup>14</sup> As noted by the ALJ, the Claimants did not include the \$27.09 interest which had accrued on the security deposit in their claim. Proposed Order – p. 8, footnote 5.



Based upon the Findings of Fact and foregoing Discussion, the Commission concludes, as a matter of law that:

1. The Respondent, Debra Mead, violated § 17-322 (b) (22), Md. Bus. Occ. and Prof. Art., by failing to account for or remit promptly money which came into her possession but belonged to another person (the Claimants and the tenant).

2. The Respondent, Debra Mead, violated § 17-322 (b) (25), Md. Bus. Occ. and Prof. Art. by engaging in conduct that demonstrated bad faith, incompetency and untrustworthiness and that constituted dishonest, fraudulent, or improper dealings with the Claimant and the tenant.

3. The Respondent, Debra Mead, violated COMAR 09.11.02.01C. by failing to protect the public against fraud, misrepresentation, or unethical practices in the real estate field by her taking of improper management fees from the Claimants and her failure to return the tenant's security deposit.

4. The Respondent, Debra Mead, violated COMAR 09.11.02.01H. by failing to make certain that financial obligations and commitments regarding the real estate transaction involving the Property were in writing, expressing the exact agreement of the parties, and that copies of those agreements were placed in the hands of all parties involved within a reasonable time after the agreements were executed.

5. The Respondent, Debra Mead, violated COMAR 09.11.02.02A. by failing to protect and promote the interests of her client, the Claimants, and by failing in her statutory obligations to the tenant, by her taking of improper fees from the Claimants and by her failure to return the tenant's security deposit.

6. The Respondent, Debra Mead's, violations of COMAR 09.11.02.01 C. and H. and

COMAR 09.11.02.02A. also constitute a violation of § 17-322 (b) (33), Md. Bus. Occ. and Prof. Art.

7. The Respondent, Debra Mead, is subject to sanctions for her conduct and a six months suspension of all real estate licenses which she holds and a \$5,000.00 civil penalty are appropriate sanctions. § 17-322 (c), Md. Bus. Occ. and Prof. Art.

8. The Claimants, Jill and Frank Emerson, have established an “actual loss” recoverable from the Guaranty Fund, in the amount of \$3,393.91. § 17-404, Md. Bus. Occ. and Prof. Art.

### **ORDER**

The Exceptions of the Respondent, Debra Mead, having been considered, it is this 13<sup>th</sup> day of January, 2014 by the Maryland Real Estate Commission, **ORDERED:**

1. That the Respondent, Debra Mead, violated Md. Bus. Occ. and Prof. Art., §§ 17-322 (b) (22), (25) and (33); and COMAR 09.11.02.01C. and H. and COMAR 09.11.02.02A;

2. That all real estate licenses held by the Respondent, Debra Mead, shall be **SUSPENDED** for six months;

3. That the Respondent, Debra Mead, shall be assessed a civil penalty in the amount of **Five Thousand Dollars (\$5,000.00)**, which shall be paid to the Real Estate Commission within thirty (30) days of the date of this Order;

4. That the Claimants, Jill and Frank V. Emerson, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of **Three Thousand Three Hundred Ninety-Three Dollars and Ninety-One Cents (\$3,393.91)**;

5. That all real estate licenses held by the Respondent, Debra Mead, shall be suspended until the civil penalty is paid in full, and the Maryland Real Estate Guaranty Fund is reimbursed,

including any interest that is payable under the law, and that this suspension is in addition to the disciplinary suspension; and

6. That the records and publications of the Maryland Real Estate Commission reflect this decision.

**MARYLAND REAL ESTATE COMMISSION**

By: SIGNATURE ON FILE

**Note:** A judicial review of this Final Order may be sought in the Circuit Court of Maryland in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.