

**BEFORE THE MARYLAND REAL ESTATE COMMISSION**

**IN THE MATTER OF THE CLAIM** :  
**OF SONYA BYNUM, CLAIMANT** : **OAH NO. DLR-REC-22-13-04594**  
**V.** :  
**THE MARYLAND REAL ESTATE** : **MREC NO. 2012-RE-116 G. F.**  
**COMMISSION GUARANTY FUND** :  
**FOR THE ALLEGED MISCONDUCT** :  
**OF GEORGE E. MITCHELL,** :  
**RESPONDENT** :  
: : : : : : : : : : : :

**OPINION AND FINAL ORDER**

This matter came before the Maryland Real Estate Commission (“Commission”) on argument on Exceptions filed, on or about September 9, 2013, by the Claimant, Sonya Bynum, to the Proposed Order of August 21, 2013. On August 5, 2013, Administrative Law Judge Brian Zlotnick (“ALJ”) filed a Recommended Decision and Recommended Order in which he recommended that the Claimant’s claim against the Maryland Real Estate Guaranty Fund be accepted in the amount of \$2,039.10 and that the Commission’s records and publications reflect its final decision.

On August 21, 2013, the Commission issued a Proposed Order that affirmed the ALJ’s Findings of Fact; approved the ALJ’s Conclusions of Law; and adopted the ALJ’s Recommended Decision. The Proposed Order also ordered that the records, files and documents of the Maryland Real Estate Commission reflect its decision.

A hearing on the Exceptions filed by the Claimant 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 Claimant, Sonya Bynum appeared, waived her right to be represented by counsel, and presented oral argument. A transcript of the hearing before the ALJ was not provided to the Commission. The Respondent, George E. Mitchell, did not appear at the Exceptions' hearing. Mr. Mitchell was notified of the Exceptions' hearing by letter dated September 23, 2013, which was mailed to his address of record with the Commission. The proceedings were electronically recorded.

### **SUMMARY OF THE EVIDENCE**

On behalf of the Commission, three 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.

### **FINDINGS OF FACT**

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

### **DISCUSSION**

At all times relevant to this matter, the Respondent, George E. Mitchell, was a Licensed Real Estate Salesperson, registration number 52578, trading as Real Estate Around America, located in Gwynn Oak, Maryland. FF 1<sup>1</sup>. On February 3, 2011, the Respondent entered into an agreement ("Contract") with the Claimant in which he agreed to rent, lease, operate and manage

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<sup>1</sup> "FF" refers to the ALJ's Findings of Fact.

the Claimant's rental property located at 8200 Rosaryville Road, Upper Marlboro, Maryland (the "Property"). FF 2. The Claimant agreed to pay the Respondent a leasing fee of \$1,650.00 for obtaining a tenant for a one year lease of the Property. FF 2. The Claimant also agreed to pay the Respondent a management fee of 10% of all gross rental income collected by the Respondent per month. FF 2.

The Claimant authorized the Respondent to maintain the Property through proper maintenance, repairs, cleaning and decorations inside the Property including the purchase of any incidental supplies at the Claimant's expense. FF 3. The Claimant deposited \$500.00 with the Respondent to pay for routine repairs and work above and beyond routine property management duties. FF 4. The Contract specified that except in the event of emergencies, expenditures exceeding \$300.00 would be made by the Respondent only after being authorized by the Claimant to make such expenditures. FF 4. Expenses for the Property's appliances, hot water heaters, furnaces and other repairs, replacements or improvements were to be billed to the Claimant at actual contract costs to the Respondent plus a 10% fee for administrative work and supervision. FF 5. The Contract indicates that the Claimant shall hold all security deposits. FF 6.

On February 7, 2011, the Claimant paid the Respondent \$2,250.00 to make necessary repairs to the Property. FF 7. The Respondent's administrative fee for this work was \$225.00. FF 7.

Tyra Murrow ("Murrow") moved into the Property in March, 2011 and paid a security deposit of \$1,650.00 and the first month's rent, which was also \$1,650.00 to the Respondent. FF 8. Murrow also made monthly rent payments of \$1,650.00 for the months of April, May, June

and July, 2011 and those payments were made to the Respondent. FF 8. Murrow paid her August, 2011 rent and all subsequent rent payments directly to the Claimant. FF 8.

On February 7, 2011, the Claimant paid the Respondent \$2,500.00 to make repairs to the Property. FF 9. The Claimant received the following payments from the Respondent:

\$ 985.00      May, 2011 payment

\$1,485.00      June, 2011 payment

\$1,185.00      August, 2011 payment FF 10.

The Respondent paid for repairs for the Property totaling \$1,369.00. FF 11. In accordance with the Contract, the Respondent is entitled to a 10% administrative fee for all repairs to the property resulting in an administrative fee of \$136.90. FF 11. The Respondent's 10% management fee for all rental income for the period of March, 2011 through July, 2011 was \$825.00 (\$8,250.00 gross rent X 10%). FF 12.

The Respondent and the Claimant terminated the Contract by signing a Release of Obligation Agreement on August 26, 2011. FF 13.

Claims for reimbursement from the Guaranty Fund are governed by Md. Bus. Occ. & Prof. Art., § 17-404, which provides, 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:

. . .

3. a licensed real estate salesperson;

. . .

(ii) involves a transaction that relates to real estate that is located in the State;  
and

(iii) be based on an act or omission

. . .

2. that constitutes fraud or misrepresentation.

COMAR 09.11.03.04 further provides, with respect to claims against the Guaranty Fund:

**04. Claims Against the Guaranty Fund.**

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 or 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 provides:

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.

The Claimant bears the burden of proof in a proceeding seeking an award from the Guaranty Fund. Md. Bus. Occ. & Prof. Art., § 17-407 (e).

The Respondent paid the Claimant only \$3,655.00 in partial payment of the rents he had collected for March through July, 2011, despite the fact that he had collected rents totaling \$8,250.00 during that time period for the Claimant. The Respondent was entitled to a 10% management fee for collecting those rents or \$825.00. The Respondent was also entitled to a leasing fee of \$1,650.00.

The ALJ concluded that the Respondent's contention that he had deducted his repair expenses from the rent was not credible. The ALJ noted the Respondent's failure to provide the Claimant with any receipts for purchases made or payments made to any contractor for repairs to the Property, despite numerous e-mail requests for such receipts from the Claimant. The ALJ also found that the Respondent never presented any receipts for repairs made to the Property which would have required him to retain the entire security deposit. He further found that the Claimant conceded that the Respondent did pay for some repairs to the property and the evidence presented indicated that the total cost of those repairs was \$1,369.00. The Respondent was therefore entitled to a 10% administrative fee of \$136.90 for those repairs.

Based on the evidence and testimony presented at the hearing before the ALJ, the Commission concludes that the Respondent, through fraud and misrepresentation, improperly retained the security deposit, portions of rental income, and monies paid for repairs which were not performed on the Property. The Commission further concludes that the Respondent was a licensed real estate salesperson, at all relevant times, and that the transactions in question involved the provision of real estate brokerage services for a property located in this State. Therefore, the Claimant is entitled to compensation from the Fund for her actual loss. Md. Bus. Occ. & Prof. Art. §§ 17-404(a) (1) and (2) and COMAR 09.11.01.18 and 09.11.03.04.

After reviewing the ALJ's Findings of Fact and Discussion, and the Claimant's Exceptions, the Commission concludes that the Claimant's actual losses should be calculated as follows: The Commission concludes that the Respondent received the following payments from the Claimant and the following rents from the Property's tenant:

\$ 2,250.00	Funds to perform repairs
\$ 1,650.00	Security Deposit
\$ 8,250.00	Rents for March-July, 2011
<u>\$ 500.00</u>	Deposit for repairs
\$12,650.00	

The Commission further concludes that the following amounts were due to the Respondent from the Claimant:

\$ 1,369.00	Repairs performed
\$ 136.90	Administrative fee for repairs performed (10% of \$1,369.00)
\$ 1,650.00	Leasing fee
<u>\$ 825.00</u>	Management fee for rent collection (10% of \$8,250.00)
\$3,980.90	

The Commission also concludes that the Respondent paid to the Claimant a total of \$3,655.00 in rents which he collected.

Therefore, the Commission calculates the amount of the Claimant's claim which constitutes an actual loss due to the fraud of the Respondent as follows:

\$12,650.00	Total amount paid by or due to Claimant
<u>-\$ 3,980.90</u>	Total amount due to Respondent
<u>\$ 8,669.10</u>	Amount due to Claimant before deduction of rents received
\$ 8,669.10	Amount due to Claimant before deduction of rents received
<u>-\$3,655.00</u>	Rents received by Claimant from Respondent
<b><u>\$5,014.10</u></b>	<b>Claimant's Actual Loss</b>

Accordingly, the Commission concludes that the Claimant is entitled to reimbursement from the Fund in the amount of \$5,014.10.

**CONCLUSIONS OF LAW**

Based upon the ALJ's Findings of Fact and Discussion, the foregoing Discussion, and the Claimant's Exceptions, the Commission concludes that the Claimant has established an actual loss in the amount of \$5,014.10 and is entitled to reimbursement from the Maryland Real Estate Commission Guaranty Fund in the amount of \$5,014.10 for her actual loss resulting from the Respondent's actions in the provision of real estate brokerage services in this State that involved fraud and resulted in the theft of monies due and owing to the Claimant. Md. Bus. Occ. & Prof. Art. §§ 17-404(a) (1) and (2) and 17-410, and COMAR 09.11.01.18 and 09.11.03.04.

**ORDER**

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



1. That the claim of Sonya Bynum against the Maryland Real Estate Commission Guaranty Fund is **GRANTED** in the amount of **FIVE THOUSAND FOURTEEN DOLLARS AND TEN CENTS (\$5,014.10)**;
2. That the Respondent, George Mitchell, shall be ineligible for a license issued by the Commission until the Maryland Real Estate Commission Guaranty Fund is repaid, together with all interest due; and
3. That the records, files and documents of the Maryland Real Estate Commission shall 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.

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE \* BEFORE BRIAN ZLOTNICK,  
CLAIM OF SONYA BYNUM \* ADMINISTRATIVE LAW JUDGE  
CLAIMANT, \* OF THE MARYLAND OFFICE OF  
V. . \* ADMINISTRATIVE HEARINGS  
THE MARYLAND REAL ESTATE \*  
COMMISSION GUARANTY FUND \* OAH NOS: DLR-REC-22-13-04594  
FOR THE ALLEGED MISCONDUCT \*  
OF GEORGE E. MITCHELL \* MREC NO: 2012-RE-116 G.F.  
RESPONDENT \*  
\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated August 5, 2013, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 21st day of August, 2013,

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

8/21/2013  
Date

By: Marla S. Johnson  
Marla S. Johnson, Commissioner

<p><b>IN THE MATTER OF THE CLAIM OF</b></p> <p><b>SONYA BYNUM,</b></p> <p><b>CLAIMANT,</b></p> <p><b>v.</b></p> <p><b>THE MARYLAND REAL ESTATE</b></p> <p><b>COMMISSION GUARANTY FUND FOR</b></p> <p><b>THE ALLEGED MISCONDUCT OF</b></p> <p><b>GEORGE MITCHELL, LICENSED</b></p> <p><b>SALESPERSON,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE BRIAN ZLOTNICK,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* OAH CASE No.: DLR-REC-22-13-04594</b></p> <p><b>* MREC COMPLAINT No. : 2012-RE-116</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p>
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**RECOMMENDED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On September 29, 2011, Sonya Bynum (Claimant) filed a complaint with the Maryland Real Estate Commission (MREC) and a claim against the Maryland Real Estate Commission Guaranty Fund (Fund). The claim was for monetary losses allegedly incurred by the Claimant as a result of the misconduct of George Mitchell, Licensed Real Estate Salesperson (Respondent). On January 23, 2012, MREC transmitted the matter to the Office of Administrative Hearings (OAH) for a hearing regarding the Claimant’s claim against the Fund.

I held a hearing on May 14, 2013, at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010). The Claimant appeared and represented herself. The Fund was represented by Hope Sachs, Assistant Attorney General. The Respondent appeared and represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

### ISSUES

- 1) Did the Claimant sustain an actual loss as a result of an act or omission of the Respondent that constitutes theft, embezzlement, false pretenses, forgery, misrepresentation, or fraud?
- 2) If the Claimant sustained an actual loss, what is the amount compensable by the Fund?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits into evidence on behalf of the Claimant:

- Cl. Ex. # 1 - A list of transactions between the Claimant and the Respondent
- Cl. Ex. # 2 - E-mails dated October 31, 2012, November 19, 2010 and February 8, 2011
- Cl. Ex. # 3 - Contract between the Claimant and the Respondent, dated February 3, 2011
- Cl. Ex. # 4 - E-mail from the Respondent to the Claimant, dated March 3, 2011
- Cl. Ex. # 5 - E-mail from the Respondent to the Claimant, dated March 20, 2011
- Cl. Ex. # 6 - E-mail from the Claimant to the Respondent, dated February 17, 2011
- Cl. Ex. # 7 - E-mail from Respondent to the Claimant, dated March 20, 2011 with a handwritten notation from the Claimant
- Cl. Ex. # 8 - E-mail from the Claimant to the Respondent, dated April 14, 2011 with Claimant's handwritten notation
- Cl. Ex. # 9 - E-mail from the Respondent to the Claimant with attached April 14, 2011 e-mail and Claimant's handwritten notation
- Cl. Ex. # 10 - E-mail from the Respondent to the Claimant, dated April 20, 2011 with an attached March 14, 2011 e-mail from the Claimant to the Respondent.
- Cl. Ex. # 11 - E-mail from the Respondent to the Claimant, dated May 3, 2011 with attached May 3, 2011 and May 2, 2011 e-mails and Claimant's handwritten notation

- Cl. Ex. # 12 - E-mail from the Respondent to the Claimant, dated May 8, 2011 with attached May 7, 2011 e-mail from the Claimant to the Respondent and Claimant's handwritten notation
- Cl. Ex. # 13 - E-mail from the Respondent to the Claimant, dated June 10, 2011 with attached June 9, 2011 e-mail from the Claimant to the Respondent
- Cl. Ex. # 14 - E-mail from the Respondent to the Claimant, dated July 13, 2011 with attached July 13, 2011 e-mail from the Claimant to the Respondent
- Cl. Ex. # 15 - E-mail from the Claimant to the Respondent, dated July 20, 2011
- Cl. Ex. # 16 - Series of e-mails from Tyra Murrow to the Claimant, dated July 25, 2011 and July 29, 2011
- Cl. Ex. # 17 - American Home Shield Protection Plan invoice
- Cl. Ex. # 18 - E-mail from a contractor to the Claimant, dated November 8, 2011
- Cl. Ex. # 19 - Release of Obligation Agreement, dated August 25, 2011

I admitted the following exhibits into evidence on behalf of the Fund:

- Fund Ex. # 1 - Notice of Hearing, March 5, 2013; Order for Hearing and Guaranty Fund Claim, dated January 22, 2013
- Fund Ex. # 2 - Licensing record of the Respondent
- Fund Ex. # 3 - Complaint and Claim form, filed September 29, 2011

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

- Resp. Ex. # 1 -E-mails between the Claimant and the Respondent, dated February 17, 2011

### Testimony

The Claimant testified on her own behalf and presented the testimony of Tyra Murrow, tenant. The Fund did not present any testimony. The Respondent testified on his own behalf and did not present any witnesses.

### **FINDINGS OF FACT**

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

1. At all times relevant to this matter, the Respondent was a Licensed Real Estate Salesperson, registration number 52578, trading as Real Estate Around America, located in Gwynn Oak, Maryland.
2. On February 3, 2011, the Respondent entered into an agreement (Contract) with the Claimant in which he agreed to rent, lease, operate and manage the Claimant's rental property located

at 8209 Rosaryville Road, Upper Marlboro, Maryland (Property). The Claimant agreed to pay the Respondent a leasing fee of \$1,650.00 for obtaining a tenant for a one year lease of the Property. The Claimant also agreed to pay the Respondent a management fee of 10% of all gross rental income collected by the Respondent per month.

3. The Claimant authorized the Respondent to maintain the Property through proper maintenance, repairs, cleaning and decorations inside the Property including the purchase of any incidental supplies at the Claimant's expense. Claimant deposited \$500.00 with the Respondent to pay for routine repairs and work above and beyond routine property management duties.
4. The Contract specified that except in the event of emergencies, expenditures exceeding \$300.00 would be made by the Respondent only after being authorized by the Claimant to make such expenditures.
5. Expenses for the Property's appliances, hot water heaters, furnaces and other repairs, replacements or improvements are billed to the Claimant at actual contract costs to the Respondent plus a 10% fee for administrative work and supervision.
6. The Contract indicates that the Claimant shall hold all security deposits.
7. On February 7, 2011, the Claimant paid the Respondent \$2,250.00 to make necessary repairs to the Property. The Respondent's administrative fee for this work was \$225.00.
8. Tyra Murrow (Murrow) moved into the Property in March 2011 and paid a security deposit of \$1,650.00 and the first month's rent, which was also \$1,650.00, to the Respondent. Murrow also made monthly rent payments of \$1,650.00 for the months of April, May, June and July 2011 and those payments were made to the Respondent. Murrow paid her August 2011 rent and all subsequent rent payments directly to the Claimant.

9. On February 7, 2011, the Claimant paid the Respondent \$2,500.00 to make repairs to the Property.

10. The Claimant received the following payments from the Respondent:

- \$985.00 – May 2011 payment
- \$1,485.00 – June 2011 payment
- \$1,185.00 – August 2011

11. The Respondent paid for repairs for the Property totaling \$1,369.00. In accordance with the Contract, the Respondent is entitled to a 10% administrative fee for all repairs to the property resulting in an administrative fee of \$136.90.

12. The Respondent's 10% management fee for all rental income for the period of March 2011 through July 2011 was \$825.00 (\$8,250.00 gross rent X 10%).

13. The Respondent and the Claimant terminated the Contract by signing a Release of Obligation Agreement on August 26, 2011.

## DISCUSSION

### Legal Background

A person may recover compensation from the Fund for an actual loss based on an act or omission that occurs in the provision of real estate brokerage services by a licensed real estate broker or a licensed real estate salesperson during a transaction related to real estate located in the State. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(i), (ii) (Supp. 2012). For misconduct to be compensable, the act or omission must constitute either theft, embezzlement, false pretenses, forgery, fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(2)(iii) (Supp. 2012); COMAR 09.11.03.04. At a hearing concerning a claim against the Fund, the burden of proof shall be on the claimant to establish the validity of the claim. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (Supp. 2012). The REC shall order payment of a

claim by the Fund for the actual monetary loss, up to \$25,000.00, suffered by the claimant. Md. Code Ann., Bus. Occ. & Prof. § 17-410(a), (b) (2010).

COMAR 09.11.01.18 sets forth the parameters of an actual loss as follows:

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.

The statute includes the following relevant definitions at section 17-101 of the Business Occupations and Professions Article:

(a) In general. – In this title the following words have the meanings indicated.

...

(i) Licensed real estate broker. – “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.

(j) Licensed real estate salesperson. – “Licensed real estate salesperson” means, unless the context requires otherwise, 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.

...

(l) Provide real estate brokerage services. – “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;

(2) for consideration, assisting another person to locate or obtain for purchase or lease any residential real estate;

...

(m) Real estate. –

(1) “Real estate” means any interest in real property that is located in this State or elsewhere.

...

Md. Code Ann., Bus. Occ. & Prof. § 17-101 (2010).



### Evidence of Actual Loss

On February 3, 2011, the Claimant entered into the Contract with the Respondent in which the Respondent agreed to rent and manage the Property. The Respondent obtained a tenant for the Property and that tenant began paying rent in March 2011. The Contract allowed the Respondent to make repairs to the Property as part of his management duties. Yet, after Murrow began making rent payments, those payments were not fully deposited into the Claimant's account. The Respondent contended that he deducted his repair expenses from the rent in accordance with the Contract. I do not find the Respondent to be credible regarding the expenses he incurred for repairs. The Respondent failed to provide the Claimant with any receipts for any purchases made or payments to any repair contractors for the Property. The Claimant in numerous e-mails to the Respondent requested those receipts to verify any repair expenses incurred by the Respondent. I find that the Respondent through fraud and misrepresentation, retained portions of the rent that were due to the Claimant.

During the Contract period, Murrow made five monthly rent payments in the amount of \$1,650.00 to the Respondent for the months of March 2011 through July 2011 totaling \$8,250.00. The Respondent also kept the security deposit of \$1,650.00 claiming that he needed these funds to pay for repairs to the property. Again, the Respondent never presented any receipts for repairs made to the property that required him to retain the entire security deposit. The Respondent sent a series of e-mails to the Claimant detailing the costs of repairs but those emails lacked any attached receipts to verify those costs. At the hearing the Claimant conceded that the Respondent did pay for repairs to the Property and I find that the evidence presented indicated that the total cost of those repairs was \$1,369.00. I conclude that the testimony of the Claimant and the supporting documentation were credible and consistent and established the Respondent's misconduct in retaining rental income that exceeded his contractual rights.

The Claimant and the Respondent referenced three \$500.00 payments made by the Claimant to the Respondent during the period of October 2010 to January 29, 2011 to facilitate the removal of a non-paying tenant from the Property. As these transactions occurred prior to the February 3, 2011 execution of the Contract, they will not be considered in this decision.

Additionally, based on the evidence, there is no dispute that the Respondent was a licensed real estate broker at all relevant times and that the transactions in question involved real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. §§ 17-101(l), 17-404(a) (2010 & Supp. 2012). The Respondent was a licensed real estate broker from June 2000 until his license was suspended on June 18, 2012, and revoked on July 1, 2012. (GF Ex. 2). The Respondent was providing real estate brokerage services when, for consideration, he assisted the Claimant in finding a tenant for the Property and then managing that Property by collecting rent and making necessary repairs. Md. Code Ann., Bus Occ. & Prof. § 17-101(l) (2010). The Respondent's actions in failing to remit rental income that was due to the Claimant and retaining those funds for his personal use amount to theft of the Claimant's money and fraud. Therefore, the Claimant is entitled to compensation from the Fund for her actual loss. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(1) and (2) (Supp. 2012); COMAR 09.11.03.04.

#### Amount of Actual Loss

The statute permits a claimant to recover compensation from the Fund for an actual loss up to a maximum of \$25,000.00 for any claim. Md. Code Ann., Bus. Occ. & Prof. § 17-410(b)(2). The statute further provides that the REC may order payment by the Fund "only for the actual monetary loss suffered by the claimant as a result of a claim proven by the claimant." Md. Code Ann., Bus. Occ. & Prof. § 17-410(b)(1). The regulations also provide that the compensation recoverable from the Fund is "restricted to the actual monetary loss incurred by the claimant," is limited to "the monetary loss from the originating transaction," and "may not

include commissions owed to a licensee ... acting in his capacity as a principal or agent in a real estate transaction....” COMAR 09.11.01.18.

In this case, the Claimant seeks to recover \$8,855.00 for rent payments due after repair expenses. The Fund agreed that the Claimant was entitled to reimbursement; however, it could not determine the amount of reimbursement. I find that as the Contract was terminated in August 2011 and since the Claimant was paid the August 2011 rent directly by Murrow, that the only rental payments that were due from the Respondent to the Claimant were for the months of March 2011 through July 2011. Therefore, the following calculations are necessary to determine the Claimant’s actual loss:

Rental Income for March 2011 through July 2011 -	\$8,250.00
Minus Respondent’s costs for repairs to the Property -	-\$1,369.00
Minus Respondent’s management fee -	-\$ 825.00
Minus Rental payments received by the Claimant -	- 3,655.00
Minus Respondent’s administrative fee -	<u>-\$ 361.90</u>

Amount of Rent retained by Respondent that was due to the Claimant - **\$2,039.10**

Accordingly, I conclude that the Claimant is entitled to reimbursement from the Fund in the amount of \$2,039.10.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Facts and Discussion, I conclude that the Claimant is entitled to reimbursement from the Real Estate Guaranty Fund in the amount of \$2,039.10 for actual losses resulting from the Respondent’s actions in the provision of real estate brokerage services that involved theft and fraud. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(1), (2), 17-410(b), 17-101(l) (2010 & Supp. 2012); COMAR 09.11.01.18; 09.11.03.04.

### **RECOMMENDED ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, I hereby **RECOMMEND** that the Maryland Real Estate Commission:

**ORDER** that the Claimant's claim against the Maryland Real Estate Guaranty Fund be **ACCEPTED** in the amount of \$2,039.10; and that it further,

**ORDER** that the records and publications of the Maryland Real Estate Commission reflect its final decision.

August 5, 2013  
Date Decision Mailed

BZ/emh  
#144253

**SIGNATURE ON FILE**

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Brian Zlotnick  
Administrative Law Judge

**IN THE MATTER OF THE CLAIM OF  
SONYA BYNUM,**

**CLAIMANT,**

**v.**

**THE MARYLAND REAL ESTATE  
COMMISSION GUARANTY FUND FOR  
THE ALLEGED MISCONDUCT OF  
GEORGE MITCHELL, LICENSED  
SALESPERSON,**

**RESPONDENT**

**\* BEFORE BRIAN ZLOTNICK,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH CASE No.: DLR-REC-22-13-04594  
\* MREC COMPLAINT No. : 2012-RE-116  
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**FILE EXHIBIT LIST**

I admitted the following exhibits into evidence on behalf of the Claimant:

- Cl. Ex. # 1 - A list of transactions between the Claimant and the Respondent
- Cl. Ex. # 2 - E-mails dated October 31, 2012, November 19, 2010 and February 8, 2011
- Cl. Ex. # 3 - Contract between the Claimant and the Respondent, dated February 3, 2011
- Cl. Ex. # 4 - E-mail from the Respondent to the Claimant, dated March 3, 2011
- Cl. Ex. # 5 - E-mail from the Respondent to the Claimant, dated March 20, 2011
- Cl. Ex. # 6 - E-mail from the Claimant to the Respondent, dated February 17, 2011
- Cl. Ex. # 7 - E-mail from Respondent to the Claimant, dated March 20, 2011 with handwritten notation from the Claimant
- Cl. Ex. # 8 - E-mail from the Claimant to the Respondent, dated April 14, 2011 with Claimant's handwritten notation
- Cl. Ex. # 9 - E-mail from the Respondent to the Claimant with attached April 14, 2011 e-mail and Claimant's handwritten notation
- Cl. Ex. # 10 - E-mail from the Respondent to the Claimant, dated April 20, 2011 with an attached March 14, 2011 e-mail from the Claimant to the Respondent.
- Cl. Ex. # 11 - E-mail from the Respondent to the Claimant, dated May 3, 2011 with attached May 3, 2011 and May 2, 2011 e-mails and Claimant's handwritten notation
- Cl. Ex. # 12 - E-mail from the Respondent to the Claimant, dated May 8, 2011 with attached May 7, 2011 e-mail from the Claimant to the Respondent and Claimant's handwritten notation

- Cl. Ex. # 13 - E-mail from the Respondent to the Claimant, dated June 10, 2011 with attached June 9, 2011 e-mail from the Claimant to the Respondent
- Cl. Ex. # 14 - E-mail from the Respondent to the Claimant, dated July 13, 2011 with attached July 13, 2011 e-mail from the Claimant to the Respondent
- Cl. Ex. # 15 - E-mail from the Claimant to the Respondent, dated July 20, 2011
- Cl. Ex. # 16 - Series of e-mails from Tyra Murrow to the Claimant, dated July 25, 2011 and July 29, 2011
- Cl. Ex. # 17 - American Home Shield Protection Plan invoice
- Cl. Ex. # 18 - E-mail from a contractor to the Claimant, dated November 8, 2011
- Cl. Ex. # 19 - Release of Obligation Agreement, dated August 25, 2011

I admitted the following exhibits into evidence on behalf of the Fund:

- Fund Ex. # 1 - Notice of Hearing, March 5, 2013; Order for Hearing and Guaranty Fund Claim, dated January 22, 2013
- Fund Ex. # 2 - Licensing record of the Respondent
- Fund Ex. # 3 - Complaint and Claim form, filed September 29, 2011

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

- Resp. Ex. # 1 -E-mails between the Claimant and the Respondent, dated February 17, 2011