

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

FRANCIS X. BREWIS, JR. *
Respondent

CASE NO. 2007-RE-199

* OAH NO. DLR-REC-24-08-38488

AND *

CLAIM OF APRIL M. HUGHES *

AGAINST THE MARYLAND REAL *

ESTATE COMMISSION *

GUARANTY FUND *

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated May 11, 2009, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 29th day of June, 2009,

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, **AMENDED** as set forth below;

C. That the Recommended Order be, and hereby is, **AMENDED** as

follows:

ORDERED that the Respondent Francis X. Brewis, Jr. violated Md. Bus. Occ. and Prof. Art. § 17-322(b)(3), (4), (25), (32), and (33), § 17-532(c)(1)(iv) (2004), and COMAR 09.11.02.01C and D, and 09.11.02.02A;

ORDERED that the Respondent Francis X. Brewis, Jr. did not violate Md. Bus. Occ. and Prof. Art. § 17-532(c)(1)(iii) (2004), and COMAR 09.11.02.02H;

ORDERED that the Respondent Francis X. Brewis, Jr. be assessed a civil penalty in the amount of \$15,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that the Respondent Francis X. Brewis, Jr. shall be ineligible for licensure by the Real Estate Commission until he has paid in full the \$15,000.00 civil penalty;

ORDERED that the Claimant April M. Hughes receive a payment from the Guaranty Fund in the amount of \$19,555.00 as a result of the actions of the Respondent;

ORDERED that the Respondent Francis X. Brewis, Jr. shall be ineligible for licensure by the Real Estate Commission until the Guaranty Fund has been repaid in full, including any interest that has accrued on the payout;

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

D. Pursuant to §10-220 of the State Government Article, the Commission finds that the Conclusions of Law reached by the

Administrative Law Judge and the Recommended Order had to be amended to reflect the proper interpretation of COMAR 09.11.02.02A. The Judge stated in her decision, on page 8, that this provision of the Code of Ethics does not apply because the Claimant was not the Respondent's client. This is not the interpretation of the Commission. The Commission views this regulation as a directive to the licensee that the licensee's obligations to his or her client do not obviate the need to fulfill the statutory obligations to other parties to the transaction. For example, a licensee representing a seller owes a duty of loyalty to that person, but still must disclose all material information relating to the property that the licensee knows or should know to the buyer. The reading suggested by the Judge would cause the second sentence of the regulation to be without any effect. An interpretation that restricts the application of the second part of the regulation to charges relating to a licensee's relationship with his client is unduly restrictive, and does not accord with the long-standing position of the Commission. Accordingly, the Commission holds that, under the facts of this case, the licensee has violated COMAR 09.11.02.02A.

The Commission has also changed the recommended order to provide that the licensee is ineligible for a license until the civil penalty has been paid, and the Guaranty Fund reimbursed.

E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.08 those parties adversely affected by this Proposed Order shall have 20 days from the postmark date of the Order to file

exceptions and to request to present arguments on the proposed decision before this Commission. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 500 North Calvert Street, Baltimore, MD 21202.


Maryland Real Estate Commission

MARYLAND REAL ESTATE	* BEFORE MARY R. CRAIG,
COMMISSION	* AN ADMINISTRATIVE LAW JUDGE
v.	* OF THE MARYLAND OFFICE
FRANCIS X. BREWIS, JR.,	* OF ADMINISTRATIVE HEARINGS
RESPONDENT	* OAH NO. : DLR-REC-24-08-38488
AND	* MREC NO. : 2007-RE-199
CLAIM OF APRIL M. HUGHES	*
AGAINST THE MARYLAND REAL	*
ESTATE COMMISSION	*
GUARANTY FUND	*

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On September 25, 2006, April M. Hughes (the Claimant) filed a complaint (the Complaint) with the Maryland Real Estate Commission (REC) and a claim (the Claim) against the REC Guaranty Fund (the Fund) for reimbursement of losses allegedly caused by the acts and omissions of a licensed real estate agent, Francis X. Brewis, Jr. (Respondent). The Claimant alleged that she sustained losses in connection with the purchase of residential real estate located at 1402 S. Carey Street in Baltimore, Maryland (the Property).

On September 17, 2008, the REC filed a Statement of Charges and Order for Hearing (Charges) against the Respondent, alleging that he violated the Maryland Real Estate Brokers Act (the Act), Md. Code Ann., Bus. Occ. & Prof. §§ 17-101 to 702,¹ and the Code of Ethics for individuals licensed by the REC, Code of Maryland Regulations (COMAR) 09.11.02.01 & .02. The gist of the Charges is that the Respondent falsely represented to the Claimant that the Property had a new roof and a roof warranty. The REC further charged the Respondent with filing a false statement with the REC in response to the Claim. The REC sought sanctions against the Respondent pursuant to section 17-322(c) of the Act.

I held a hearing on March 11, 2009, on the Charges and the Claim at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland.² Assistant Attorney General Jessica A. Kauffman represented the REC. The Claimant represented herself. The Respondent failed to appear for the hearing after proper notice.³ Eric B. London, Assistant Attorney General, represented the Fund.

I heard this case pursuant to section 17-408 of the Act. Procedure in this case is governed by the 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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2008); COMAR 09.01.03 and 28.02.01.

¹ Chapter 274, Acts 2007, effective October 1, 2007, reenacted § 17-322(b)(3), (4) & (25) and (b)(33), and Chapter 282, Acts 2008, effective October 1, 2008, reenacted § 17-532, both without changing the text in the 2004 volume. All subsequent references are to sections of the Business Occupations and Professions Article of the Maryland Annotated Code (2004), unless otherwise stated.

² I held the record open until March 25, 2009. *See* n. 4.

³ The copies of the notice of hearing mailed to the Respondent's address of record with the REC were returned to the OAH unclaimed. The notice of hearing mailed to the Respondent's address of record with the Maryland Motor Vehicle Administration, from whom he holds a valid Maryland driver's license, was not returned to the OAH. *See* REC Ex. 1 & 4.

ISSUES

1. Did the Respondent violate the Act or the REC Code of Ethics?
2. Should the Respondent be subject to a civil penalty pursuant to section 17-322(c) of the Act?
3. Did the Claimant prove that she sustained an actual loss as a result of the Respondent's alleged misconduct?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following documents offered on behalf of the REC:

- REC 1 January 6, 2009 Notice of Hearing; January 30, 2009 Memorandum regarding unclaimed correspondence; certified mail envelope marked "Return to Sender, Unclaimed, Unable to Forward"
- REC 2 Transmittal for REC to OAH; Hearing Cover Sheet; Statement of Charges dated September 17, 2008
- REC 3 REC Registration History for Respondent
- REC 4 Maryland Motor Vehicle Administration record regarding Respondent's address
- REC 5 Metropolitan Regional Information Systems, Inc. (MRIS) listing for the Property
- REC 6 REC Report of Investigation with the following documents attached:
 - A. Guaranty Fund Claim
 - B. Contract of Sale
 - C. Home Inspection Report
 - D. Advance Moisture Protection, Inc. (Advance) Invoice
 - E. Response from Deborah Barnett
 - F. Response from Respondent
 - G. Kelbie Home Improvement Roofing Proposal

I admitted the following exhibits offered by the Claimant:

- Cl. 1 March 10, 2009 Plastering Specialties, LLC Estimate

Cl. 2 March 17, 2009 Estimate from A#1 Abatement, Inc.⁴

The Fund offered no exhibits for admission into evidence.

Witnesses

The following witnesses testified in support of the Claim and on behalf of the REC: the Claimant; Timothy J. Nichols of Advance; and James Stoakley, Investigator, REC.⁵

The Fund presented no witnesses.

FINDINGS OF FACT

Having considered all of the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Respondent was licensed by the REC as a real estate agent from December 3, 1998 until November 27, 2007, under REC license # 518345. The Respondent has no prior disciplinary violations. The Respondent's license expired on November 27, 2007, and has not been renewed.
2. On June 29, 2005, the Claimant entered into a contract (Contract) to purchase the Property from Delorean, LLC (Seller).
3. The Respondent was the managing member of the Seller, a limited liability company.
4. The Contract provided that the Claimant had the right to have the Property, including the roof, inspected at her own expense prior to settlement. It further provided that, within five days of notice from the Claimant to the Seller of an unfavorable inspection report, the Seller could elect to repair, at its expense,

⁴ I held the record open to permit the Claimant to supply an estimate of the cost to abate mold, which developed in the house due to unrepaired roof issues. The Claimant filed the document on March 18, 2009. I permitted the Fund and the REC an opportunity to object to the admission of this exhibit. Neither objected, and I admitted it.

⁵ Mr. Nichols testified by telephone. COMAR 28.02.01.17B.

the defective items listed in the inspection report; if he chose not to repair all listed defects, the Claimant could elect to terminate the Contract.

5. The Respondent was the listing and selling real estate agent for the Property; the Claimant's real estate agent was Deborah Barnett.
6. The Respondent prepared and submitted for publication with the MRIS a listing offering the Property for sale to the public. The listing described the condition of the Property as "new total rehab."
7. On July 21, 2005, Michael Kemper, a home inspector hired by the Claimant, performed an inspection of the Property, including the roof. The inspection found that the roof was ponding, i.e., holding water, and that the sheathing on the roof was weak.
8. Ms. Barnett forwarded the home inspection report to the Respondent and informed him that the Claimant would not go to settlement with the roof in the poor condition described in the home inspection.
9. The Respondent told Ms. Barnett that the Sellers had installed a new roof at the Property and that the roofing company gave the Seller a warranty to cover any necessary repairs, a copy of which was at the Property. The Claimant was satisfied that the roof would not be a problem, so she agreed to purchase the Property.
10. The Claimant would not have settled on the Property without the Respondent's representations to her (through Ms. Barnett) about the roof and warranty.
11. The Claimant settled on the Property on July 29, 2005, and moved into it

shortly thereafter.

12. The Respondent received a commission from the sale of the Property, and the Seller benefitted financially from the proceeds of the sale.
13. In February 2006, the roof began to leak, damaging the ceiling and walls in the rooms on the top floor of the Property.
14. The Claimant called the Respondent many times, leaving messages for him to call her.
15. After failing to return the telephone messages left for him by the Claimant, the Respondent finally called the Claimant back and, shortly thereafter, visited the Property in March 2007. He walked through the house, as the Claimant pointed out the water-damaged areas.
16. The Respondent gave the Claimant a document that he falsely identified as an August 25, 2004 contract with Advance for a new roof. He told the Claimant that Advance had placed a new roof on the Property prior to settlement, and that the document was proof of it. He stated that Advance had issued a ten year material and labor guarantee on the roof.
17. The Claimant called Advance and learned that the document the Respondent had given her was an estimate from Advance for roof repairs. Advance did not repair or replace the roof; consequently, Atlantic did not warrant the roof for any time period.
18. The Claimant paid \$600.00 on June 28, 2006 for emergency roof repairs at the Property.
19. The cost to place a new roof on the Property would be \$8,525.00.

20. The cost to repair the portions of the interior of the Property damaged by the leaking roof would be \$8,480.00.
21. Mold developed inside the Property due to the water that leaked in from the roof. The Claimant could not afford to repair the roof, so the mold grew. The cost to abate the mold is \$1,950.00.
22. The Claimant has not been able to repair the roof or the moisture damage to the interior of the house, due to lack of funds.
23. Upon receiving the Claim, the Respondent sent the REC a copy of the August 25, 2004 Advance estimate, falsely representing that it was the contract for a new roof installed on the Property by Advance, with a ten year material and labor warranty.

DISCUSSION

Because the Claim against the Fund and the Charges arose from the same facts and circumstances, I heard them in one proceeding. Accordingly, I considered the evidence presented in this case in determining the merits of both the regulatory Charges and the Fund Claim.

The REC, as the moving party on the Charges, has the burden of proving that the Respondent violated the statutory and regulatory sections at issue; the Claimant, as the moving party on the Claim, has the burden of proving that she suffered an actual loss as the result of the Respondent's misconduct, all by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2004); *Maryland Comm'r of Labor and Industry v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) (quoting *Bernstein v. Real Estate Comm.*,

221 Md. 221, 231 (1959)). I find that the REC met its burden of proving some of the Charges and the Claimant met hers with respect to the Claim.

The Regulatory Charges

The REC charged the Respondent with violating numerous provisions of the Act. I conclude that the REC proved all of the alleged statutory violations except the following. With respect to the alleged violation of section 17-532(c)(1)(iii), I conclude that the section is inapplicable to the facts of this case. Section 17-532(c)(1)(iii) requires a licensee to disclose all material facts to a client. The Property was owned by the Seller, of which the Respondent was the managing member. There is no evidence that the Respondent failed to disclose anything to the other members of the limited liability company. The Claimant was not the Respondent's client; she had her own, independent real estate agent. I, therefore, conclude that the REC failed to prove that the Respondent violated Section 17-532(c)(1)(iii).

With respect to the alleged violation of section 17-322(b)(33), making it illegal for a licensee to violate the Code of Ethics adopted by the REC, the REC failed to prove two of the alleged violations of the Code of Ethics. COMAR 09.11.02.02A, the portion of the Code of Ethics pertaining to relations with a licensee's client, cautions that the duty to one's client "does not relieve the licensee from the statutory obligations towards the other parties to the transaction." Again, the Claimant was not the Respondent's client. Furthermore, the Respondent did not attempt to use his obligations to the Seller to excuse his failure to be truthful toward the Claimant. I conclude that the REC failed to prove that the Respondent violated section 17-322(b)(33) with respect to COMAR 09.11.02.02A.

The portion of the Code of Ethics pertaining to a licensee's relations to the public, COMAR 09.11.02.01, contains one provision which the REC alleged (but failed to prove) that the Respondent violated. COMAR 09.11.02.01H provides as follows:

For the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, express 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.

The REC did not detail in the Charges the manner in which the Respondent allegedly violated this provision. There was no explanation at the hearing about this matter. After reviewing all the evidence, I can find no violation of this provision. I conclude that the REC failed to prove that the Respondent violated section 17-322(b)(33) with respect to COMAR 09.11.02.01H.

The REC has charged the Respondent with violating the additional following sections of the Act and Code of Ethics:

§ 17-322. Denials, reprimands, suspensions, revocations, and penalties – Grounds.

...

(b) *Grounds.*- Subject to the hearing provisions of § 17-324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

...

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

(4) intentionally or negligently fails to disclose to any person with whom the . . . licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee . . . deals;

...

(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 other provision of the code of ethics. . . .

The remaining alleged section 17-322(b)(33) violations of the REC's Code of Ethics involve COMAR 09.11.02.01, which provides as follows:

01. Relations to the Public.

...

C. The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State.

D. The licensee shall make reasonable effort to ascertain all material facts concerning every property for which the licensee accepts the agency, in order to fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of material facts.

The REC also charged the Respondent with violating section 17-532(c)(1)(iv) by failing to "treat all parties to the transaction honestly and fairly and answer all questions truthfully."

The REC proved all of those violations. The Respondent did not appear at the hearing to contest the Charges, so the REC's and the Claimant's evidence was un rebutted. The Respondent made misrepresentations regarding the roof and the roof warranty to Ms. Barnett prior to settlement, to the Claimant after settlement, and to the REC in his letter responding to the Claim. It is abundantly clear from the evidence in this case that the Respondent lied about the roof repair and the roof warranty.

First, he made an untrue statement to induce the Claimant to settle on the Property

by assuring Ms. Barnett that the roof was new and that a warranty would cover any necessary repairs. That was a blatant falsehood because the roof needed repairs and none had been performed by the Seller. As the listing and selling agent for a house owned by the limited liability company of which he was the managing member, the Respondent knew that he was being deceitful about the condition of the roof on the Property and the warranty. He misled the Claimant in order to sell the Property, obtain the proceeds and collect a commission.

Having induced the Claimant to buy the Property through false statements, the Respondent lied again after the Claimant moved in and the roof leaked. The Respondent gave the Claimant a document, actually an estimate for a new roof, misrepresenting it to be the Seller's contract for a roof. It is difficult to imagine how the Respondent expected that to satisfy the Claimant, since he knew that, with one telephone call to Advance, the Claimant would learn the truth. Regardless, the Respondent told the Claimant a bold-faced lie about an important matter, intending to deceive her.

The Respondent's mendacity was further evident when he responded to the REC's inquiry. Knowing that his conduct was under scrutiny by the licensing agency, the Respondent nonetheless sent the REC the Advance proposal, misrepresenting it as proof of a new roof, with a ten year warranty. The public surely has the right to expect much more from an individual licensed by the REC, and the regulations demand that the Respondent assist the REC in its work. COMAR 09.11.02.01C. The REC amply proved that the Respondent violated the Act by these willful misrepresentations, bad faith, untrustworthiness, dishonesty, failure to disclose material facts, and refusal to assist with the REC's investigation. In short, the REC proved that the Respondent lied to Ms.

Barnett, the Claimant and the REC and that he intentionally cheated the Claimant.

The Appropriate Regulatory Sanction

The purpose of the regulatory statute is to “protect the public in its dealings with real estate brokers, to place a duty of good faith and fair dealing on real estate brokers.” *Gross v. Sussex Incorporated*, 332 Md. 247, 274 (1993). The Respondent is not licensed, so the REC does not seek suspension or revocation of any license or reprimand under section 17-322(b). Section 17-322(c)(1) of the Act allows the REC to impose a financial penalty, not exceeding \$5,000.00, for every violation of section 17-322. The REC sought an \$11,000.00 penalty against the Respondent, reasoning that, in light of the fact that he had no prior violations of the Act, a \$1,000.00 sanction is appropriate for each of the eleven statutory subsections and regulations set forth in the Charges. In my view, the amount of the penalty should be proportionate to the wrongs committed, not the number of code sub-sections and regulations violated.

Section 17-322(c)(2) directs me to consider the seriousness of the violation, the harm caused by the violation, the good faith of the licensee, and any history of previous violations in determining the appropriate penalty. Of those factors, the only one in the Respondent’s favor is the absence of previous violations. There is no evidence of good faith; all of the evidence portrays the Respondent as a greedy, deceitful person. His multiple misrepresentations are serious violations of the standards rightfully expected of all licensed real estate agents in Maryland.

The Respondent’s conduct caused the Claimant serious harm. She did everything she could: hired a real estate agent to protect her interests; paid for a home inspection prior to settlement; and availed herself of her right to demand repairs from the Seller

when the inspection showed a roof problem. None of those efforts protected her because the Respondent lied to her (through her agent). Once she moved in and experienced the leaking roof, the Claimant experienced the stress of living with the leak, which gradually caused more and more damage to her house. It is easy to appreciate her distress as the home she just purchased was continually damaged, while she lived in it, unable to repair it due to a lack of funds.

I propose that the REC impose a penalty of \$15,000.00 on the Respondent for his egregious violations of the law in this case. That amounts to \$5,000.00 for each of the three separate, serious misrepresentations he made about the roof. Even though this is his first disciplinary case, the violations were serious and repeated. In my opinion, they warrant a substantial penalty.

Guaranty Fund Claim

The Claimant bears the burden of proof in her Claim against the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e). Claims for reimbursement from the Fund are governed by section 17-404 of the Act. COMAR 09.11.03.04 further provides guidance with respect to claims against the Fund. The Claimant satisfied all of the requirements for recovery against the Fund.

Section 17-410(b)(1)(2004) of the Act provides that “[t]he Commission may order payment by the Guaranty Fund only for the actual monetary loss suffered by the claimant as a result of the claim proven by the claimant.” See COMAR 09.11.01.18 (Fund recovery limited to actual monetary loss). The term “actual loss” is not defined in the statute, regulation or any reported appellate decision. Interpreting it in the context of the

statute, it means an economic loss suffered by the Claimant as a result of proven misconduct by the Respondent.

The Claimant originally sought \$10,000.00 from the Fund, amended without objection at the hearing to \$19,555.00, calculated as follows:

\$600.00	Temporary roof repairs
\$8,525.00	Cost to repair roof permanently
\$8,480.00	Cost to repair interior damage
<u>\$1,950.00</u>	Cost to remediate mold
\$19,555.00	Total Claim

This amount is less than \$25,000.00, the maximum that may be awarded for a single Fund claim. Md. Code Ann., Bus. Occ. & Prof. § 17-410(b)(2). The Claim is premised on the same facts that, as I have already discussed, proved that the Respondent engaged in fraud with respect to the regulatory action. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a). For the reasons set forth below, I conclude that the Claimant has met her burden on the total Claim.

The Claimant bought the Property in reliance on the Respondent's misrepresentations that it had a new roof with a warranty to protect her if the roof leaked. It is undisputed that no such repairs were made and that no such warranty existed. It is further undisputed that the roof leaked, damaging the interior of the house and allowing mold to grow. I conclude that the Claimant is entitled to recover \$19,555.00, the amount necessary to reimburse her for temporary roof repairs and to permanently repair the roof so that the Property will be in the condition it should have been, absent the Respondent's

misrepresentations.⁶

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondent violated Md. Code Ann., Bus Occ. & Prof. §§ 17-322(b)(3), (4), (25), (32) & (33), 17-532(c)(1)(iv) (2004) and COMAR 09.11.02.01C & D by making false statements and intentional misrepresentations about roof repairs and a roof warranty.

I further conclude that the REC failed to prove that the Respondent violated Md. Code Ann., Bus. Occ. & Prof. § 17-532(c)(1)(iii) (2004), COMAR 09.11.02.02A, or COMAR 09.11.02.01H.

I further conclude that the Respondent is subject to a \$15,000 fine for violations of the Maryland Real Estate Brokers Act pursuant to Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2004).

Finally, I conclude that the Claimant is entitled to payment of \$19,555.00 from the Maryland Real Estate Commission Guaranty Fund pursuant to Md. Code Ann., Bus. Occ. & Prof. §§ 17-401 through 17-412 (2004) and COMAR 09.11.01.18, 09.11.03.04.

RECOMMENDED ORDER

I RECOMMEND that the Maryland Real Estate Commission:

ORDER that the Respondent violated Md. Code Ann., Bus Occ. & Prof. §§ 17-322(b)(3), (4), (25), (32) & (33), 17-532(c)(1)(iv) (2004) and COMAR 09.11.02.01C & D;

ORDER that the Respondent be fined in the amount of \$15,000.00 pursuant to Md. Code Ann., Bus. & Occ. Prof. § 17-322(c) (2004);

⁶ At the end of the hearing the Fund recommended that the Claimant be allowed to recover \$17,605.00, because, as of that date, she did not have a written estimate for mold remediation. Since the Fund did not object to the admission of the mold remediation estimate, I assume that it does not object to the proposed Fund award of \$19,555.00, which includes that estimate.

ORDER that the Claimant's Guaranty Fund Claim against the Respondent be allowed in the amount of \$19,555.00 pursuant to Md. Code Ann., Bus. Occ. & Prof. §§ 17-401 through 17-412 (2004), COMAR 09.11.01.18, 09.11.03.04; and

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

May 11, 2009
Date Decision Mailed


Mary R. Craig
Administrative Law Judge

MRC/rs
DOC #104557

MARYLAND REAL ESTATE	* BEFORE MARY R. CRAIG,
COMMISSION	* AN ADMINISTRATIVE LAW JUDGE
v.	* OF THE MARYLAND OFFICE
FRANCIS X. BREWIS, JR.,	* OF ADMINISTRATIVE HEARINGS
RESPONDENT	* OAH NO. : DLR-REC-24-08-38488
AND CLAIM OF	* MREC NO. : 2007-RE-199
APRIL M. HUGHES AGAINST THE	*
MARYLAND REAL ESTATE	*
COMMISSION GUARANTY FUND	*
* * * * *	* * * * *

EXHIBIT LIST

I admitted the following documents offered on behalf of the REC:

- REC 1 January 6, 2009 Notice of Hearing; Memorandum dated January 30, 2009 regarding unclaimed correspondence; certified mail envelope marked "return to sender, unclaimed, unable to forward"
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 - J. Home Inspection Report
 - K. Invoice: Advance Moisture Protection
 - L. Response from Deborah Barnett
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 - N. Kelbie Home Improvement Roofing Proposal

I admitted the following exhibits offered by the Claimant:

- Cl. 1 Plastering Specialties, L.L.C. Estimate, dated March 10, 2009
- Cl 2 Estimate from A#1 Abatement, Inc., dated March 17, 2009

The Fund offered no exhibits for admission into evidence.