

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM * BEFORE TAMEIKA LUNN-EXINOR,
OF EDWARD AND KAREN FISCHER * ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND REAL * OF THE MARYLAND OFFICE OF
ESTATE COMMISSION GUARANTY * ADMINISTRATIVE HEARINGS
FUND FOR THE ALLEGED * OAH No: DLR-REC-22-16-11751
MISCONDUCT OF MICHAEL BAUGHER* REC CASE NO: 2016-RE-030 GF

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated April 13, 2017, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 23rd day of May, 2017,

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

SIGNATURE ON FILE

5/23/17
Date

By: _____
Anne S. Cooke, Commissioner

**IN THE MATTER OF THE CLAIM OF
EDWARD FISCHER AND KAREN
FISCHER,
CLAIMANTS
v.
THE MARYLAND REAL ESTATE
COMMISSION GUARANTY FUND,
FOR THE ALLEGED MISCONDUCT
OF MICHAEL BAUGHER,
RESPONDENT**

*** BEFORE TAMEIKA LUNN-EXINOR,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
* OAH Case No.: DLR-REC-22-16-11751
* MREC Case No.: 16-RE-030GF
*
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PROPOSED DECISION

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

STATEMENT OF THE CASE

On October 11, 2015, the Claimants filed a claim for reimbursement with the Maryland Real Estate Commission (REC) Guaranty Fund (Fund) for actual monetary losses they allegedly suffered as a result of the conduct of the Respondent, who at all relevant times, was licensed as a real estate salesperson in the State of Maryland. The REC ordered that the Claimants should have a hearing to demonstrate their eligibility for an award from the Fund, and on April 7, 2016, the REC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

The OAH scheduled the hearing for October 25, 2016, at the OAH office in Hunt Valley, Maryland. A Notice of Hearing was sent to the parties on August 1, 2016. On September 21,

2016, the Claimants requested a postponement due to government business travel. On October 12, 2016, the OAH granted the Claimants' postponement request. The hearing was rescheduled for January 25, 2017. A Rescheduled Notice of Hearing was sent to the parties on October 25, 2016. The Respondent's copy of the notice was sent by first class and certified mail (return receipt requested) to his address of record with the REC. The Respondent's mail was not returned as undeliverable.

On January 25, 2017, I convened the hearing as scheduled. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010). The Claimants appeared and represented themselves. The Fund was represented by Hope Sachs, Assistant Attorney General. The Respondent failed to appear. Because the Respondent received proper notice of the hearing, I ruled that the hearing would proceed in his absence. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010).

Procedure is governed by the contested case provisions of the Administrative Procedure Act, the REC procedural regulations, and the OAH Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); Code of Maryland Regulations (COMAR) 09.11.03; COMAR 28.02.01.

ISSUES

1. Did the Claimants sustain an actual loss, compensable by the Fund, due to an act or omission of the Respondent in which money or property was obtained from the Claimants by theft, embezzlement, false pretenses, or forgery, or an act or omission that constitutes fraud or misrepresentation in the provision of real estate sales services; and, if so,
2. What amount of award are the Claimants entitled to receive from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Claimants:

- Cl. Ex. # 1 - Timeline of Events created by the Claimants, not dated
- Cl. Ex. # 2 - Spreadsheet of Rent and Deposits Collected by the Respondent and not distributed to the Claimants, not dated
- Cl. Ex. # 3 - Letter from Claimants to the Respondent, dated July 17, 2015
- Cl. Ex. # 4 - Detailed Property Statement, Summit Property Management, LLC with Brimfield Homeowners Association Invoice, March 2015
- Cl. Ex. # 5 - 2014 Year End Summary, Summit Property Management, LLC
- Cl. Ex. # 6 - Claimant Edward Fischer's Tower Federal Credit Union Bank Monthly Statements for September 1, 2013 through July 31, 2015
- Cl. Ex. # 7 - Claimants' tenant, Roxanne Hill's, Monthly Bank Statements from Susquehanna Bank for September 13, 2013 through July 13, 2015
- Cl. Ex. # 8 - Summit Property Management, Property Management and Exclusive Rental Agreement, July 25, 2001
- Cl. Ex. # 9 - Emails between the Claimants and the Respondent, February 13, 2009 through June 1, 2016
- Cl. Ex. # 10 - Various letters and emails regarding maintenance at the Claimants property:
 - Letter and check from the Claimants to Brimfield Homeowners Association with June 2016 Invoice included, June 19, 2016
 - Invoice and payment for Guttermaid, September 3, 2015
 - Check from the Claimants to Roxanne Hill in the amount of \$450.00 for garbage disposal repair, tree trimming and gutters, August 3, 2015
 - Invoice from Robert G. Bookhultz Plumbing, Inc. for \$350.00 for garbage disposal
 - Emails between the Claimants and Roxanne Hill, July 29, 2015 through August 3, 2015
 - Job Invoice from Gator's Home Improvement, May 13, 2013 with check made payable to Roxanne Hill in the amount of \$200.00, July 30, 2015
 - Letter from Fogles Refuse, LLC, August 24, 2015 with check made payable to Roxanne Hill in the amount of \$230.00, September 2, 2015
 - Invoice from Peak Power Wash, May 25, 2016 with payment, June 2, 2016
 - Invoice from Carroll Tree Services, September 28, 2016 with payment of \$1,440.00, October 3, 2016

- Letter from Brimfield Homeowners Association, May 31, 2016 with payment of \$200.00, June 11, 2016
- Roxanne Hill's August Rent Payment of \$1,500 paid directly to the Claimants

I admitted the following exhibits on behalf of the Fund:

Fund Ex. # 1 - Notice of Hearing, October 25, 2016

Fund Ex. # 2 - Licensing Information, January 20, 2017

Fund Ex. # 3 - Maryland Real Estate Commission, Complaint & Guaranty Fund Claim, October 11, 2015

No exhibits were submitted on behalf of the Respondent.

Testimony

Karen Fischer testified on behalf of the Claimants. Roxanne Hill also testified on behalf of the Claimants. The Fund did not present any testimony. No testimony was presented on behalf of the Respondent.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent was licensed by the REC as a real estate salesperson; in that capacity, he managed properties with Summit Property Management, LLC (Summit).
2. In 2001, a property on Brimfield Circle in Eldersburg, Maryland (Property) was owned by the Claimants.
3. On July 25, 2001, the Claimants entered into a Property Management and Exclusive Rental Agreement (Rental Agreement) with the Respondent and Summit. The agreement was renewed several times and remained in effect through July 17, 2015.
4. Under the Rental Agreement, the Respondent was responsible for managing the Property when it was rented by a tenant, including collecting monthly rental payments from the tenant and making monthly disbursements to the Claimants.

5. Under the Rental Agreement, the Respondent was responsible for keeping accurate records of all money received in connection with the Property, as well as all money expended in connection with the Property, and for furnishing the Claimants with that data on a monthly basis.
6. At all relevant times, the Property was rented to a tenant, Roxanne Hill, who paid the required rent to the Respondent each month. Ms. Hill has lived in the property for ten years.
7. At all relevant times, the monthly rent was \$1,500.00. The monthly property management fee was \$120.00.
8. The Respondent failed to forward the amount due to the Claimants in the months of September 2013, November 2013, February 2014, April 2014, June 2014, July 2014, August 2014, September 2014, October 2014, November 2014, December 2014, January 2015, February 2015, March 2015, May 2015, June 2015, July 2015, as well as the tenant's deposit.
9. The Claimants' loss from the Respondent's failure to forward the required amounts for the above months was \$24,740.00.

DISCUSSION

Legal Framework

A claimant may recover compensation from the Fund for an actual loss based on an act or omission by a licensed real estate salesperson that occurs in the provision of real estate brokerage services involving a transaction that relates to real estate that is located in this State. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a) (Supp. 2016). A claim must be based on an act or omission in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or an act or omission that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(iii) (Supp. 2016); COMAR 09.11.03.04A and B. The amount

recoverable from the Fund is restricted to the actual monetary loss incurred by the claimant.

COMAR 09.11.01.18.

At a hearing on the claim, the claimant bears the burden of proving entitlement to recover from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (Supp. 2016).

Background

It was undisputed that the Respondent was a licensed real estate salesperson. Starting in July 2001, he conducted acts of real estate brokerage as the property manager for a residence in Eldersburg, Maryland, owned by the Claimants. The Claimants are a military family and lived overseas until 2011. The Respondent was responsible for collecting rent from the tenant and making monthly disbursements to the Claimants. Roxanne Hill has rented the property consistently for ten years. The monthly rent was \$1,500.00. The tenant paid the Respondent the required rent each month.

Evidence to Support the Claimed Amount

The Claimant, Karen Fischer, testified that she and her husband began their business relationship with the Respondent in 2001 and they were very satisfied until 2013 when they stopped receiving rent payments. Ms. Fischer testified that miscommunication with the Respondent began in 2013, but in 2014 the Respondent assisted them with refinancing the property in question. She testified that in 2014, they only received three rent payments: January 2014, March 2014 and May 2014. In March 2015, the Claimants reached out to the Respondent about the missed payments in 2014 and requested an end of the year statement. The Respondent told the Claimants that it was an accounting issue. Ms. Fischer testified that in May 2015, the Respondent agreed to meet with the Claimants and the Respondent's accountant to discuss the missed payments; however, that meeting never occurred. The last time the Claimants spoke to the Respondent was May 17, 2015. The Claimants reviewed the history of payments from the

Respondent and determined that the Respondent had failed to send them money due for the months of September 2013, November 2013, February 2014, April 2014, June 2014, July 2014, August 2014, September 2014, October 2014, November 2014, December 2014, January 2015, February 2015, March 2015, May 2015, June 2015 and July 2015, as well as the tenant's security deposit. Ms. Fischer testified that on July 24, 2015, she sent the Respondent a letter terminating his management contract. On July 25, 2015, she contacted the tenant, Roxanne Hill, and requested that she submit her rent directly to the Claimants. The Claimants provided copies of their bank statements as well as copies of their tenant's bank statements which showed that the rent was paid by the tenant in the months in question and no money was deposited into the Claimants' accounts. Based on the Claimants' calculations of what the Respondent owed for those months, they claimed a loss of \$24,740.00.

Roxanne Hill testified that she asked the Respondent on numerous occasions if she could contact the Claimants directly and was not allowed to do so. She testified that she has lived in the property for ten years and only met the Respondent two times. She stated that the first meeting was when she signed her rental lease in 2006 and the second meeting was when the house was appraised for refinancing in 2014. She testified that she always paid her rent on time and agreed to provide the Claimants with proof of her payments to assist them with their claim.

The Fund did not dispute the assertion that the Respondent had not paid the Claimant what was required for the months at issue. The Respondent did not appear at the hearing to dispute the claim. Accordingly, I find that the Respondent failed to send the Claimant the money due for the months of September 2013, November 2013, February 2014, April 2014, June 2014, July 2014, August 2014, September 2014, October 2014, November 2014, December 2014, January 2015, February 2015, March 2015, May 2015, June 2015, July 2015 and the tenant's

deposit. The actions of the Respondent were theft from the Claimants, and thus reimbursable from the Fund.

At the hearing, the Fund took the position that the Claimants had established eligibility for an award from the Fund for the stolen payments, amounting to \$24,740.00. I conclude that the Claimants met their burden of proof to show eligibility for an award from the Fund and that the Claimants' evidence supports an actual loss of \$24,740.00.

Claim for 2013

In September 2013 and November 2013, the rent paid to the Respondent was \$3,000.00. The Respondent's management fee was \$120.00 per month. The balance due to the Claimants, which was not paid, was \$2,760.00 for 2013.

Claim for 2014

In February 2014, April 2014, June 2014, July 2014, August 2014, September 2014, October 2014, October 2014, November 2014 and December 2014, the monthly rent paid to the Respondent totaled \$13,500.00. The Respondent's management fees totaled \$1,080.00. There was a Homeowner's Association trash collection fee of \$195.00 in June 2014. The balance due to the Claimants and not paid was \$12,225.00 for 2014.

Claim for 2015

In January 2015, February 2015, March 2015, May 2015, June 2015 and July 2015, the monthly rents paid to the Respondent was \$9,000.00. The Respondent's management fees totaled \$720.00. The balance due to the Claimant and not paid was \$8,280.00 for 2015.

Tenant's Deposit

On August 15, 2016, tenant, Roxanne Hill signed a rental agreement for the Property in question and paid a deposit of \$1,475.00. The rental deposit amount was not paid to the Claimants.

Eligibility for Award

The total loss proven by the Claimant was \$24,740.00. The Claimants established eligibility for an award from the Fund of \$24,740.00 because of the Respondent's theft of money he collected on their behalf.

CONCLUSIONS OF LAW

Based on the Findings of Facts and Discussion, I conclude as a matter of law that the Claimants sustained an actual loss, compensable by the Fund, due to an act or omission of the Respondent in which money or property was obtained from the Claimants by theft, in the provision of real estate sales services. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(iii) (Supp. 2016); COMAR 09.11.03.04A and B.

I further conclude as a matter of law that the amount of award that the Claimants are entitled to receive from the Fund is \$24,740.00. COMAR 09.11.01.18.

PROPOSED ORDER

I PROPOSE that the Claim filed by the Claimants against the Maryland Real Estate Guaranty Fund be **GRANTED** in the amount of \$24,740.00.

SIGNATURE ON FILE

April 13, 2017
Date Decision Issued

Tameika Lunn-Exinor
Administrative Law Judge

TLE/cmg
#167601

IN THE MATTER OF THE CLAIM OF * **BEFORE TAMEIKA LUNN-EXINOR,**
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* * * * *

FILE EXHIBIT LIST

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