

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION
V.

STANLEY HOCHMAN
RESPONDENT

AND

CLAIM OF BENJAMIN F. STEELE
AGAINST THE MARYLAND
REAL ESTATE COMMISSION
GUARANTY FUND

* BEFORE YOLANDA L. CURTIN,
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-24-08-32506
* REC CASE NO: 2007-RE-3~~24~~⁴⁷BI
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* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated October 21, 2009, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 18th day of November, 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, 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

11/18/09
Date

By: Anne S. Cooke
Anne S. Cooke, Commissioner *asc*

MARYLAND REAL ESTATE

* BEFORE YOLANDA L. CURTIN,

COMMISSION

* AN ADMINISTRATIVE LAW JUDGE

v.

* OF THE MARYLAND OFFICE

STANLEY HOCHMAN,

* OF ADMINISTRATIVE HEARINGS

RESPONDENT

* OAH NO. : DLR-REC-24-08-32506

AND

* MREC NO. : 2007-RE-347

THE CLAIM OF BENJAMIN F. STEELE

*

AGAINST THE MARYLAND REAL

*

ESTATE COMMISSION GUARANTY

*

FUND

*

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES

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RECOMMENDED ORDER

STATEMENT OF THE CASE

On November 21, 2006, Benjamin F. Steele (Claimant) filed a complaint with the Maryland Real Estate Commission (REC) and a claim against the REC Guaranty Fund (Fund) for reimbursement of losses allegedly caused by the acts and omissions of a licensed real estate broker, Stanley Hochman (Respondent), in connection with the Claimant's lease of a residential property located at 8540 Stevenswood Road, Baltimore, Maryland (the Property).

On July 29, 2008, the REC filed a Statement of Charges and Order for Hearing (Charges) against the Respondent, alleging that he violated Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(4),(25), (32) & (33), 17-532(c)(1)(iv) (Supp. 2009), and Code of Maryland Regulations (COMAR) 09.11.02.02A, the Code of Ethics for individuals licensed by the REC. The REC alleges that the Respondent is subject to sanctions pursuant to Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (Supp. 2009).

I held a hearing on August 5, 2009, on the Charges and the claim at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Assistant Attorney General Peter Martin represented the REC. The Claimant was present and represented himself. The Respondent was present and represented himself. Assistant Attorney General Kris King represented the Fund.

I heard this case pursuant to section 17-408 of the Business Occupations and Professions Article (2004). Procedure in this case is governed by the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation (DLLR), and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009); COMAR 09.01.03 and 28.02.01.

ISSUES

1. Did the Respondent intentionally or negligently fail to disclose a material fact in leasing the Property;
2. Did the Respondent act in bad faith, incompetently, dishonestly, fraudulently or improperly in the lease of the Property; and if so,
3. What is the appropriate sanction?
4. Did the Claimant prove that he sustained an actual loss as a result of the Respondent's alleged misconduct?

SUMMARY OF THE EVIDENCE

Exhibits

The REC submitted the following exhibits, which were admitted into evidence:

- REC Ex. #1 Notice of Hearing, dated January 1, 2009, with attached Charges;
- REC Ex. #2 Notice of Hearing, dated April 16, 2009;
- REC Ex. #3 Respondent's licensing history with DLLR; and
- REC Ex. #4 Report of Investigation.

The Claimant submitted the following exhibits, which were admitted into evidence:

- CL Ex. #1 Public Storage receipts;
- CL Ex. #2 BGE receipts; and
- CL Ex. #3 Demand for letter payment from Howard Harris to Claimant, dated December 19, 2005.

The Respondent submitted the following exhibits, which were admitted into evidence:

- Resp. Ex. #1 BGE bill, with attached letter from Respondent to Claimant, dated June 27, 2006.

The Fund did not offer any exhibits into evidence.

Testimony

The REC presented the testimony of the following individuals:

1. The Claimant;
2. David Gaine, Baltimore County Code Enforcement Inspector;
3. Lavette Street, Baltimore County Code Enforcement Inspector; and
4. Robert Oliver, DLLR Inspector.

The Claimant and Respondent testified on their own behalf.

The Fund 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 licensed as a real estate broker with the REC.
2. The Respondent has been the property manager for the Property since 1988.
3. In August 2005, the Property was inspected by Inspector Lavette Street, after she received a complaint from the tenant who was residing at the Property.
4. In August 2005, Inspector Street found numerous code violations with the Property, including: leaking facets, missing tubspout, defective downspouts and gutters, missing smoke detectors, holes in the ceiling and walls, windows did not close or open properly, missing floor tiles, defective stove and no vents, flaking and peeling paint, exposed wiring and cables, inoperable light switches, defective garbage disposal wiring, and defective light fixtures.
5. Due to the numerous hazardous conditions at the Property, Inspector Street determined that the property was condemned and issued a Code Inspection and Enforcement Correction Notice (Code Violation Notice) to the owner of the Property, c/o the Respondent.
6. The Code Violation Notice informed the Respondent of all the repairs that were required to be done to the Property. The Code Violation Notice also informed the Respondent that the Property could not be rented until all repairs were made.
7. Inspector Street mailed and faxed the Code Violation Notice to the Respondent. She also spoke to the Respondent by telephone and informed him about the numerous violations and that the Property could not be rented until the repairs were made.

8. After the inspection of the Property, the tenant was required to vacate the Property.
9. After the inspection, Inspector Street placed a large orange notice on the front of the Property, which informed the public that the Property had been condemned.
10. Once a property is determined to be condemned by a county inspector, the orange notice cannot be removed from the property until a county inspector re-inspects the property to determine if repairs have been made and the property is suitable to rent.
11. After Inspector Street issued the Notice of Code Violation to the Respondent, the Respondent did not have the repairs made and he did not have the Property re-inspected.
12. On December 1, 2005, the Respondent and the Claimant entered into a three year lease agreement in which the Respondent rented to the Claimant the Property at a rental rate of \$1,000.00 per month.
13. The Respondent did not tell the Claimant that the Property had been condemned.
14. Pursuant to the terms of the lease agreement, the Claimant was required to pay rent commencing on January 1, 2006; however, the Claimant moved in on December 1, 2005 and he paid the Respondent \$1,000.00 rent for that month.
15. Prior to signing the lease, the Claimant did a walk-through of the Property with Clyde Harris, a contractor who recommended the Property to the Claimant and who had been doing some work at the Property.
16. At the time the Claimant did the walk-through of the Property, the Property still required extensive repair work; however, the Claimant agreed to move in and do some minor repairs.

17. The terms of the lease agreement required the Claimant to do all repair work on the Property, and he was also responsible for the gas, electric and water bills.
18. When the Claimant first moved in, he had hardwood floors installed, which cost the Claimant \$1,000.00.
19. Sometime in February 2006, a neighbor of the Claimant told him that the Property had been condemned. The Claimant called the Respondent and asked him if the Property had been condemned and the Respondent denied that such action was ever taken on the Property.
20. In the summer months of 2006, the Claimant made several complaints to the Respondent regarding the condition of the Property. In particular, the Claimant complained about water leaks, defective stove, exposed wires, and the non-working air conditioning unit.
21. Concerned that the Respondent was not addressing the repair issues with the Claimant, the Claimant refused to pay the rent due in August.
22. In August 2006, the Respondent sued the Claimant for the August rent. The parties went to court and the Claimant was ordered to place \$1,000.00 in an escrow account, which would be paid to the Respondent once certain repairs to the Property were made.
23. The Respondent received the \$1,000.00 August rental payment from the Claimant.
24. Prior to August 2006, the Claimant had paid \$1,000.00 monthly rental payments from December 2005 until July 2006 to the Respondent, for a total of \$8,000.00 in rental payments.

25. Sometime in August 2006, the Claimant confirmed that the Property had been condemned in August 2005.
26. In September 2006, the Claimant filed a law suit against the Respondent in the amount of \$1,000.00. The Claimant was awarded \$1,000.00, which the Respondent paid sometime in May 2007.
27. In September 2006, the Claimant vacated the Property because the Property had been condemned and the necessary repairs to make the Property livable had not been done.
28. In late September 2006, the Claimant filed a law suit against the Respondent in which he sought a monetary award of \$20,000.00, which included a request to have all rental fees paid from December 2005 to August 2006 reimbursed. The law suit was dismissed.
29. After the Claimant moved out of the Property, he could not find a place to live and had to move in temporarily with a friend. He was forced to rent storage space to keep his personal belongings while he lived with his friend.
30. The Claimant has spent a total of \$1,443.22 in storage fees.

DISCUSSION

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 he 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)). For the

reasons discussed below, I find that the REC met its burden of proving the Charges and the Claimant met his burden with respect to the claim.

1. The Regulatory Charges.

The REC has charged the Respondent with violating the following sections of its regulatory statute and regulations:

§ 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:

...

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

(33) violates any regulation adopted under this title or any provision of the code of ethics[.]

Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(4), (25), (32) & (33) (Supp 2009).

The REC also charged the Respondent with violating § 17-532(c)(1)(iv), which requires a licensee to “treat all parties to the transaction honestly and fairly and answer all questions truthfully[.]” Md. Code Ann., Bus. Occ. & Prof. § 17-532(c)(1)(iv) (Supp. 2009). Finally, the REC charged the Respondent with violating the Code of Ethics, COMAR 09.11.02.02A, which provides:

.02 Relations to the Client.

A. In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to

the client's interest is primary, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction.

COMAR 09.11.02.02A.

The REC contends that the Respondent knew that the Property had been condemned and could not be rented until all necessary repairs were done; nonetheless, he failed to disclose this to the Claimant and instead rented the Property to him. The REC argues that the Respondent's conduct amounted to bad faith, incompetency, dishonesty and improper dealings, which placed the Claimant in an unfavorable situation that led to litigation between the parties and a significant financial hardship to the Claimant.

The Respondent denies that he knew the Property had been condemned, although he does not dispute that the Property required extensive repairs. He argues that the Claimant was fully aware of the many repairs that had to be done, but agreed to live at the Property and make the repairs in exchange for a reduced rental fee. He further argues that the Claimant is simply attempting to gain a financial windfall by alleging a lack of knowledge regarding the many deficiencies with the Property.

The evidence presented in this matter does not support the arguments set forth by the Respondent. Instead, the documentary evidence and testimony of the witnesses establishes that the Respondent knowingly failed to disclose to the Claimant that the Property had been condemned and that it could not be rented until the repairs were made. Such lack of candor by the Respondent establishes bad faith dealings involving a real estate transaction, as well as incompetency and dishonesty.

The evidence presented by the REC establishes that the Property had been condemned because of the many repairs that had to be made before the Property could be deemed livable.

Inspector Street testified about the condition of the Property when she first inspected it in August 2005. At that time the Property had many hazardous conditions that rendered the Property uninhabitable. Consequently, the tenant had to move out, the Property had an orange condemnation notice placed on the outside, and a Notice of Code Violation was issued to the Respondent, who was the property manager and who was responsible for the Property since the owner resided out of the country. As testified to by Inspector Street, she mailed and faxed the Notice of Code Violation to the Respondent and she spoke to the Respondent on the telephone about the many deficiencies with the Property that required repairs before any tenant could move in. In addition to Inspector Street's statements to the Respondent about the condition of the Property and what had to be done before the Property was rented, the Notice of Code Violation sets forth all of the deficiencies with the Property that led to the code violations and the mandate that the repairs be completed before the Property was rented. *See REC Ex. #4 at pages 25-27.*

Yet, despite the verbal warnings by Inspector Street and the Notice of Code Violation informing the Respondent that he could not rent the Property until the repairs were made, the orange condemnation notice was removed, without the Inspector's knowledge, and the Respondent rented the Property to the Claimant without the necessary repairs made. Further, he failed to disclose to the Claimant that the Property had been condemned.

Moreover, I am not persuaded by the Respondent's claims that the Claimant knew the Property required repairs and that he agreed to make the repairs in exchange for a lower rental rate. First, the repairs that had to be made were quite extensive. While some items could possibly be fixed by the Claimant, most required the work of a contractor. The Respondent alleges that the Claimant is a contractor; however, no credible evidence was presented at the hearing to support the Respondent's baseless claim. Second, even if the Claimant agreed to make certain repairs, the

Respondent was directed by the Notice of Code Violation to not rent the Property until all the repairs had been done. As of September 2006, nine months after the Claimant moved in, the Property was in the same condition as in August 2005, when Inspector Street first deemed the Property condemned. Thus, the Respondent was obligated to make the repairs prior to anyone renting the Property.

The law imposes upon an individual licensed by the REC the obligation to disclose material information to all parties involved in a real estate transaction and to treat all parties in a real estate transaction competently, truthfully and fairly. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(4) and (25), § 17-532(c)(1)(iv) and COMAR 09.11.02.02A. The REC has established that the Respondent failed to disclose material information to the Claimant regarding the Property, as such he did not deal truthfully and fairly with the Claimant. Further, the Respondent was incompetent when he rented property to the Claimant that had been condemned and could not be rented until the repairs were completed. Lastly, as a result of his lack of candor and incompetence, he displayed improper dealings with the Claimant. Accordingly, I find that the Respondent's conduct violates section 17-322(b)(4), (25), (32) and (33) and section 17-532(c)(1)(iv) of the Business Occupations and Professionals Article, as well as COMAR 09.11.02.02A.

2. The Regulatory Sanctions.

The purpose of the REC 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). In addition to allowing for suspension, revocation or reprimand of a real estate agent, the REC can also impose a financial penalty, not exceeding \$5,000.00, for each statutory violation. Md. Code Ann., Bus. Occ. & Prof. § 17-

322(c)(1) (Supp. 2009). The REC suggested that I consider recommending a six month suspension of the Respondent's real estate license and a \$5,000.00 civil penalty.

Section 17-322(c) directs me to consider the seriousness of the violation, the harm caused by the violation, the Respondent's good faith, and any previous violations in determining the appropriate penalty. *Id.* The evidence has shown that the violations committed by the Respondent were quite serious. The Respondent withheld material information from the Claimant, which placed the Claimant in harms way. For several months the Claimant lived in a property that had been condemned by an inspector because of the extensive repairs that were required to be done before the Property was deemed livable. At no time did the Respondent share this information with the Claimant. Furthermore, the Respondent showed no good faith in his dealings with the Claimant, since he denied to the Claimant that the Property had been condemned.

Based on the above, I find that the Respondent's conduct demonstrates a complete lack of professional behavior in his dealings with the Claimant regarding a real estate transaction. As a result of his behavior, the Claimant suffered great harm – he lived in a home for several months that had hazardous conditions, he had to move out of the Property and find temporary housing, and he had to place his personal belongings in storage, since his temporary housing could not accommodate all of his belongings. Although the Respondent has not had any prior violations, I find that his misconduct warrants a \$5,000.00 civil penalty and a six month suspension of the Respondent's real estate license.

3. The Fund Claim.

The Claimant seeks \$50,000.00 from the Fund, which exceeds the \$25,000.00 maximum amount recoverable from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-410(b)(2). He argues

that he suffered a great deal of pain and suffering as a result of the Respondent's misconduct and he should be compensated for his suffering as well as his economic loss. In contrast, the Respondent argues that the Claimant is simply seeking a windfall and is not entitled to any recovery.

A person may recover from the Fund an actual loss suffered as a result of an act or omission that constitutes fraud or misrepresentation by a real estate broker or salesperson involving a real estate transaction. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a) (2004).

While I recognize the severe hardship the Claimant was placed in as a result of the Respondent's lack of fair dealings and dishonesty, the law only allows recovery for an actual loss suffered, which would include the rental amounts paid by the Claimant to the Respondent, any repairs he made to the Property and the cost of placing his personal belongings in storage. Actual loss does not include an estimated amount for pain and suffering.

The Fund does not dispute that the Claimant is entitled to recover the monies he paid for rent, the hardwood floors and the storage costs. The Fund argues, however, that the amount recovered for rent should only be for the months of January through June, since the lease commenced January 1, and the evidence only supports a finding that rent was paid through the month of June. I do not agree with the Fund regarding the amounts recoverable for the rent. Specifically, I find that the Claimant was credible in his testimony that he actually moved into the Property on December 1, 2005, which is when he had the hardwood floors installed. *See* Cl. Ex. #3. Further, he testified that he first paid rent in December 2005, and that he continued to pay \$1,000.00 monthly rent through August 2006. Subsequently, after he filed a law suit against the Respondent, he received \$1,000.00 back from the Respondent for the August rent. Thus, he paid a total of eight months rent or \$8,000.00. The Claimant's testimony about the total numbers of months he paid rent is consistent with the statements he made in the Complaint he filed in the

District Court against the Respondent on September 12, 2006, seeking return of all his rent paid. See REC #4, at page 44. Accordingly, I find that credible evidence has been presented to support the Claimant's position that he paid rent from December 2005 through August 2006.

Thus, as a result of the Respondent's misconduct, the Claimant suffered an actual loss in the amount of \$10,443.22: \$8,000 for rent; \$1,000 for the installation of the hardwood floors, since he had to move out of the Property and could not reap the benefits of his expense; and \$1,443.22 for the expense of placing his personal belongings in storage after he had to move out of the Property. Accordingly, recovery from the Fund in the amount of \$10,443.22 is appropriate.

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)(4), (25), (32) & (33), 17-532(c)(1)(iv) (Supp. 2009), and COMAR 09.11.02.02A.

I further conclude that the Respondent is subject to a fine and suspension of his license for violations of the Real Estate Law pursuant to Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (Supp. 2009).

Finally, I conclude that the Claimant is entitled to payment of \$10,443.22 from the Real Estate Guaranty Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2004).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Real Estate Commission:

ORDER that the Respondent violated Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(4), (25), (32) & (33), 17-532(c)(1)(iv) (Supp. 2009), and COMAR 09.11.02.02A;

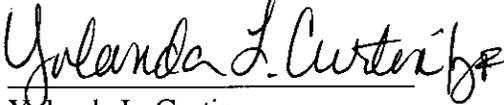
ORDER that the Respondent's real estate license be suspended for a six month period

and that he be fined in the amount of \$5,000.00 pursuant to Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (Supp. 2009);

ORDER that the Claimant's Guaranty Fund Claim against this Respondent be allowed in the amount of \$10,443.22 pursuant to Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2004); and

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

October 21, 2009
Date Decision Mailed


Yolanda L. Curtin
Administrative Law Judge

#108940
YLC/

MARYLAND REAL ESTATE	* BEFORE YOLANDA L. CURTIN,
COMMISSION	* AN ADMINISTRATIVE LAW JUDGE
v.	* OF THE MARYLAND OFFICE
STANLEY HOCHMAN,	* OF ADMINISTRATIVE HEARINGS
RESPONDENT	* OAH NO. : DLR-REC-24-08-32506
AND	* MREC NO. : 2007-RE-347
THE CLAIM OF BENJAMIN F. STEELE	*
AGAINST THE MARYLAND REAL	*
ESTATE COMMISSION GUARANTY	*
FUND	*
* * * * *	* * * * *

EXHIBIT LIST

The REC submitted the following exhibits, which were admitted into evidence:

- REC Ex. #1 Notice of Hearing, dated November 19, 2008
- REC Ex. #2 Transmittal, with attached Charges
- REC Ex. #3 Respondent’s licensing history with DLLR
- REC Ex. #4 Real Estate Listing of the Property
- REC Ex. #5 Residential Contract of Sale for the Property
- REC Ex. #6 Settlement Statement
- REC Ex. #7 Post-Settlement Escrow Agreement
- REC Ex. #8 March 17, 2006 letter from Claimant, with attachments
- REC Ex. #9 April 19, 2006 email from the Claimant to Danny Cantwell
- REC Ex. #10 Emails

REC Ex. #11 Complaint and Fund claim

REC Ex. #12 January 21, 2007 letter from Claimant to REC, with attachments

REC Ex. #13 Washington Suburban Sanitary Commission plumbing permit, with attachment

REC Ex. #14 Request for Investigation

REC Ex. #15 REC Report of Investigation, by James Stoakley

REC Ex. #16 DLLR licensing history for Milos Jiricko

The Claimant submitted the following exhibits, which were admitted into evidence:

CL Ex. #1 Service Request Detail, Department of Permitting Services

CL Ex. #2 Timeline of events

CL Ex. #3 Emails

The Respondent submitted the following exhibits, which were admitted into evidence, except as noted:

Resp. Ex. #1 Timeline of events

Resp. Ex. #2 Building Permit, with attachments

Resp. Ex. #3 Washington Suburban Sanitary Commission plumbing permit

Resp. Ex. #4 Electrical Permit

Resp. Ex. #5 Not Accepted

Resp. Ex. #6 April 12, 2006 letter

The Fund did not offer any exhibits in evidence.