

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM * BEFORE LATONYA B. DARGAN,
 OF TASHAUNA GREENWOOD, * ADMINISTRATIVE LAW JUDGE
 CLAIMANT, * OF THE MARYLAND OFFICE OF
 AGAINST THE MARYLAND * ADMINISTRATIVE HEARINGS
 REAL ESTATE COMMISSION *
 GUARANTY FUND FOR THE * OAH NO: DLR-REC-22-13-21094
 ACTS OR OMISSIONS OF *
 KENNETH HOPKINS, RESPONDENT * MREC NO: 2012-RE-423 G.F.
 * * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated October 4, 2013, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of November, 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

11/26/13
Date

By: SIGNATURE ON FILE
Marla S. Johnson, Commissioner

<p>IN THE MATTER OF THE CLAIM OF</p> <p>TASHAUNA GREENWOOD,</p> <p>CLAIMANT</p> <p>AGAINST THE</p> <p>MARYLAND REAL ESTATE</p> <p>COMMISSION GUARANTY FUND</p> <p>FOR THE ACTS OR OMISSIONS</p> <p>OF KENNETH HOPKINS,</p> <p>RESPONDENT</p>	<p>* BEFORE LATONYA B. DARGAN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH Case No.: DLR-REC-22-13-21094</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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RECOMMENDED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
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DISCUSSION
CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On or around April 12, 2012, TaShauna Greenwood (Claimant) filed a complaint with the Maryland Real Estate Commission (MREC) Guaranty Fund (Fund) against Kenneth Hopkins (Respondent), a licensed real estate salesperson, alleging actual monetary losses as a result of the Respondent’s conduct. On May 17, 2013, the MREC ordered that the Claimant should have a hearing to demonstrate her eligibility for an award from the Fund.

On July 9, 2013, I conducted a hearing at the County Office Building for Prince George’s County in Largo, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408(a) (2010). The Claimant

represented herself. Hope Sachs, Assistant Attorney General, represented the Fund. The Respondent failed to appear.¹

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

ISSUES

Did the Claimant sustain an actual monetary loss as a result of the Respondent's conduct and, if so, what award, if any, is she entitled to from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for the Claimant:

- Cl. Ex. 1: October 4, 2010 Home Depot receipt and invoice
- Cl. Ex. 2: Wachovia Bank Statement, October 15, 2009 through November 13, 2009, with attached wire transfer confirmation
- Cl. Ex. 3: October 10, 2012 Invoice from Dr. Phil's Home Improvement Contractors
- Cl. Ex. 4: August 9, 2010 Contract of Sale between the Claimant and Universal Home Services, Inc.²
- Cl. Ex. 5: September 10, 2010 HUD-1 Settlement Statement, Universal Home Services, Inc. and Protium REO 1LP

¹ A copy of the Notice of Hearing (Notice) in this matter was sent to the Respondent by the Office of Administrative Hearings via certified and regular mail at a business address of 5847 Allentown Road, Camp Springs, MD 20746 and at a private address of 2108 Peaceful Way, Apt. 201, Odenton, MD 21113. The certified mail copies of the Notice were returned to the Office of Administrative Hearings by the United States Postal Service as "unclaimed." The regular mail copies of the Notice were not returned to the Office of Administrative Hearings by the United States Postal Service as undeliverable. As the regular mail copies of the Notice were not returned, I find that the Respondent received notice of the hearing and elected not to attend.

² The contract has several errors in it. The Property is identified as "7110 Donnell Place, #B-1 District Heights MD 20747" instead of 7206 Donnell Place, Unit B8, District Heights, MD 20747. It also indicates the Claimant paid Universal Homes \$39,500.00 by check on August 9, 2010, but the Claimant testified that she did not make such a payment. She could not explain why the contract indicated that she had.

- Cl. Ex. 6: September 10, 2010 HUD-1 Settlement Statement, Claimant and Universal Home Services, Inc.
- Cl. Ex. 7: Incorporation Information for Universal Home Services, Inc.
- Cl. Ex. 8: Maryland State Department of Assessments and Taxation Real Property Data Search Information for 7206 Donnell Place, Unit B-8, printed on October 24, 2012
- Cl. Ex. 9: Receipt from the Law Office of Stephen L. Harker to the Claimant; February 15, 2013 Maryland Redemption Statement; Page 2 of 4 of Wells Fargo Bank monthly banking statement for the period of January 29, 2013 through February 27, 2013; July 17, 2013 Account Summary for Universal Home Services, Inc.³

I admitted the following exhibits for the Fund:

- Fund Ex. 1: June 13, 2013 Notice of Undeliverable Mail
- Fund Ex. 2: June 13, 2013 Notice of Undeliverable Mail
- Fund Ex. 3: Steven Long's June 20, 2013 Affidavit
- Fund Ex. 4: June 25, 2013 Notice of Hearing
- Fund Ex. 5: MREC Licensing and Registration History for the Respondent
- Fund Ex. 6: The Claimant's March 29, 2012 MREC Fund Claim
- Fund Ex. 7: July 16, 2010 Quit Claim Deed, Sutton Funding, LLC and Protium REO 1 LP

No exhibits were submitted on behalf of the Respondent.

Testimony

The Claimant testified and presented the testimony of Detective Lowell Williams, Prince George's County Police Department, Criminal Investigations Division-Financial Crimes Unit.

The Fund did not present any witnesses. No one testified on behalf of the Respondent.

³ I left the record open until July 23, 2013 for the Claimant to submit documents related to her payment of the outstanding property tax bill for the Property. Those documents are contained in Claimant Ex. 9 and were received on July 22, 2013.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent was licensed as a real estate salesperson under MREC registration number 592715. In August 2009, the Respondent was affiliated with Trinity Realty Group, LLC.
2. The Claimant met the Respondent sometime in 2010. He was referred to her by a financial planner.
3. The Claimant eventually engaged the Respondent to act as her agent in connection with the purchase of a condominium located at 7206 Donnell Place, Unit B8, District Heights, Maryland 20747 (the Property).
4. The Property was owned by Universal Home Services, Incorporated (Universal).
5. Unbeknownst to the Claimant, the Respondent was the Director and Resident Agent for Universal, a fact he did not disclose to her during their dealings with each other.
6. In connection with the purchase of the Property, the Claimant wired \$55,000.00 to Universal between August 27, 2009 and October 20, 2009.⁴ The Claimant made a \$15,000.00 wire transfer to Universal's account, for which the Respondent was the sole signatory, on or around August 27, 2009. She made a \$40,000.00 wire transfer to the same Universal account on or around October 20, 2009.
7. On August 9, 2010, the Claimant entered into a contract with Universal for the sale of the Property. The estimated settlement date was September 9, 2010. Under the terms of the contract, Universal was supposed to perform certain renovations at the Property after settlement, as follows:

⁴ No explanation was provided to me for how or why the money was paid to Universal in 2009 but the Claimant did not meet the Respondent until 2010.

- Prime and paint complete unit with buyer's choice in paint colors,
 - Install recessed lighting in kitchen and living room,
 - Repair, prime and paint the balcony,
 - Install new kitchen cabinetry,
 - Install new kitchen countertops, and
 - Install hardwood floors at material cost
8. On August 27, 2010, the Claimant wrote a check in the amount of \$34,000.00 to the Respondent. The money was to cover the cost of the renovations specified in the contract of sale.
9. Settlement occurred on September 10, 2010 and the Claimant moved into the Property on or around September 13, 2010.
10. The renovation work specified in the contract was performed by the Respondent and subcontractors hired by him.
11. In connection with the sale of the Property to the Claimant, the Respondent was responsible for recording the deed transferring title of the Property from Universal to the Claimant. The Respondent never recorded the deed, a fact the Claimant did not learn until January 2011.
12. As a result of the Respondent's failure to record the deed, a substantial property tax bill incurred for the Property, as the title holder, an entity named Protium REO 1 LP did not continue to pay the tax bill after the September 10, 2010 settlement date.⁵

⁵ Protium REO 1LP sold the Property to Universal. It appears as though a deed was never recorded in connection with the change in ownership from Protium REO 1LP to Universal, as Protium REO 1LP is listed as the assessed owner in the documents that comprise Claimant Ex. 9.

13. On or around February 19, 2013, the Claimant paid the outstanding tax bill and arrearages in the amount of \$3,258.50.⁶

DISCUSSION

In her initial claim to the Fund, the Claimant sought reimbursement in the amount of \$59,000.00. The burden of proof in this matter is on the Claimant to establish the validity of the claim. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (Supp. 2013). The Claimant may obtain an award from the Fund for a claim based on an act or omission occurring in the provision of real estate brokerage services by a licensed real estate salesperson if the claim involves a transaction that relates to real estate located in Maryland and if the claim is based on an act or omission in which money or property was obtained from her by theft. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a) (Supp. 2013). The REC shall pay a valid claim from the Fund for actual monetary losses suffered by a claimant, not to exceed the statutory limit of \$50,000.00 for each claim.⁷ Md. Code Ann., Bus. Occ. & Prof. § 17-404(b), 17-410(b)(2) (2010 & Supp. 2013).

The Claimant argued that the Respondent stole from her because he named a contract price for the Property of \$95,000.00, when the Property was only worth \$35,000.00. Additionally, the Claimant initially asserted in her MREC claim that although she paid the Respondent \$34,000.00 to perform renovations at the Property, he did not complete the work. Finally, the Claimant argued that the tax bill substantially accrued because the Respondent failed to record the deed, and, as a result, the property tax bills were never sent to her. According to the

⁶ At the Claimant's request, I held the record open until July 23, 2013 for her to provide me with documentation demonstrating she had paid the back taxes for the Property. On July 22, 2013, I received the documents that comprise Claimant Ex. 9. There was a Post-It note attached to the documents which read, "Receipt for Payments of Back Taxes," and included in the packet of documents was page 2 of the Claimant's Wells Fargo banking statement for the period from January 29, 2013 through February 27, 2013, detailing her transaction history during those dates. While portions of the statement were redacted, there was an entry highlighted for February 21, 2013, showing a check card purchase in the amount of \$3,258.50 made to "Treasury, Prince G Upper Marlboro MD" on February 19, 2013. (Cl. Ex. 9, p. 3.) I draw the inference that this notation in the Claimant's transaction history is for the payment of the back taxes owed for the Property.

⁷ The recovery limit under Section 17-404 changed to \$50,000.00, effective July 1, 2012. 2012 Md. Laws ch. 184.

Claimant, there would not have been a tax arrearage had the Respondent recorded the deed, because the tax bill would have been sent directly to the Claimant's attention and she would have made timely and complete payments.

It is clear from the evidence that the Respondent was not completely forthright in his dealings with the Claimant. He did not disclose to her the connection between himself and Universal. I, however, am not persuaded that at least with respect to the contract price, his dealings with the Claimant amount to theft. The Claimant was interested in purchasing a house, which is how the Respondent came to be referred to her. As the buyer, the Claimant had certain responsibilities to protect her interests in any transactions, including taking steps, prior to purchasing a property, to ascertain its value. If the Claimant did not agree with the purchase price, she had time to negotiate it with the Respondent, or to seek an alternative property, particularly given the lengthy period it took to reduce the parties' agreements with each other to writing. The Claimant made a deposit on the Property in August 2009, but did not actually sign a contract of sale until August 2010. At any time during the intervening year, she could have checked the property's listing at the State Department of Assessments and Taxation website to obtain value information, or she could have hired an appraiser to assess the Property's fair market value. The Respondent, acting as Universal, may have overstated the Property's value, but the Claimant, as a prospective buyer, had a responsibility to ascertain if the offering price was reasonable.

I am also not persuaded by the Claimant's assertion, in her MREC claim, that the Respondent did not perform the renovations called for in the August 9, 2010 contract. In response to questions during the hearing, the Claimant conceded that the Respondent performed all of the renovations specified in the contract. She argued, however, that she did not believe the

renovation work was actually valued at the \$34,000.00 she paid the Respondent to perform it. Unfortunately, she did not produce any documentation to demonstrate the value of the work the Respondent performed. She did not produce any testimonial evidence as to the quality of the renovations from someone with the professional credentials and experience necessary to assess the work and offer an opinion on how well, or not, the work was performed. The Claimant may not believe the work the Respondent performed was worth \$34,000.00, but she did not produce any evidence to support that belief.

The evidence, however, does support an award to the Claimant from the Fund totaling \$3,258.50, which is the amount of money the Claimant paid to the county to clear up the property tax arrearage. The Respondent was responsible for recording the deed showing the transfer of ownership of the Property to the Claimant. Although he assured her he would take care of recording the deed, he failed to do so. As a result, the Claimant never received a property tax bill, and the property taxes were not timely paid. The Claimant demonstrated that she paid the outstanding property taxes and associated fees and interest, in the amount of 3,258.50, on February 19, 2013. (Cl. Ex. 9.)

CONCLUSIONS OF LAW

I conclude that the Claimant is eligible for reimbursement from the Real Estate Commission Guaranty Fund in the amount of \$3,258.50 for actual losses resulting from the Respondent's acts. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(1), (2) and 17-410(b); COMAR 09.11.01.18 and 09.11.03.04.

RECOMMENDED ORDER

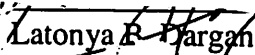
I **RECOMMEND** that the MREC ORDER:

That the Claimant's claim against the Maryland Real Estate Commission Guaranty Fund be **ACCEPTED** in the amount of \$3,258.50; and

That the records and publications of the Maryland Real Estate Commission reflect its final decision.

October 4, 2013
Date Decision Mailed

SIGNATURE ON FILE


Administrative Law Judge

LBD/kkc
#145405

<p>IN THE MATTER OF THE CLAIM OF</p> <p>TASHAUNA GREENWOOD,</p> <p>CLAIMANT</p> <p>AGAINST THE</p> <p>MARYLAND REAL ESTATE</p> <p>COMMISSION GUARANTY FUND</p> <p>FOR THE ACTS OR OMISSIONS</p> <p>OF KENNETH HOPKINS,</p> <p>RESPONDENT</p>	<p>* BEFORE LATONYA B. DARGAN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH Case No.: DLR-REC-22-13-21094</p> <p>*</p> <p>*</p> <p>*</p>
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