

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION
V.

JOHN O. TAYLOR
RESPONDENT

AND

CLAIM OF RICHARD SHETRONE

AGAINST THE REAL ESTATE
COMMISSION GUARANTY FUND

* BEFORE LATONYA B. DARGAN,
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-24-08-37444
* REC CASE NO: 2008-RE-462

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated June 23, 2009, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 15th day of July, 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

7/15/09

Date

By: 

Surina A. Jordan, Commissioner

MARYLAND REAL ESTATE	* BEFORE LATONYA B. DARGAN,
COMMISSION	* AN ADMINISTRATIVE LAW JUDGE
v.	* OF THE MARYLAND OFFICE
JOHN O. TAYLOR,	* OF ADMINISTRATIVE HEARINGS
RESPONDENT	* OAH Case No.: DLR-REC-24-08-34744
and	* MREC Case No.: 08-RE-462
CLAIM OF RICHARD SHETRONE,	*
CLAIMANT	*
AGAINST THE MARYLAND REAL	*
ESTATE COMMISSION GUARANTY	*
FUND	*

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On January 29, 2008, Richard Shetrone (Claimant) filed a complaint with the Maryland Real Estate Commission (REC) and a claim against the REC Guaranty Fund (Fund) for losses allegedly suffered as a result of the actions of John O. Taylor (Respondent), a licensed real estate salesperson. On August 29, 2008, the REC filed

regulatory charges against the Respondent for his dealings with the Claimant and authorized the Claimant's claim against the Fund.

On March 25, 2009, the Respondent entered into a Consent Order and Settlement Agreement (Consent Order) with the REC wherein the Respondent admitted to violating Business Article § 17-322(b)(31) (violating the provisions of Subtitle 5 related to trust money) and § 17-502(a) (failing to submit trust money to real estate broker). Under the Consent Order, the Respondent received a formal reprimand on the regulatory charges and expressly waived his right to a hearing on the regulatory charges and his right to participate in the hearing on the Claimant's Fund claim.

On March 26, 2009, I conducted a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2004).¹ Jessica B. Kaufman, Assistant Attorney General, represented the REC and the Fund. The Claimant represented himself. Pursuant to the Consent Order, the Respondent waived his presence and participation at the hearing. The Claimant represented himself.

The Administrative Procedure Act, the REC's Hearing Regulations and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2004 & Supp. 2007); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

ISSUE

Did the Claimant suffer an "actual loss" compensable under Business Article § 17-404 as a result of the Respondent's alleged misconduct and, if so, what award should be granted from the Fund?

¹ Throughout this decision, Maryland Code Annotated, Business Occupations & Professions (2004 & Supp. 2007) is referred to as "the Business Article."

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Claimant:

- Claimant Ex. 1: April 11, 2007 Residential Contract of Sale for 14007 Old Hanover Road, Baltimore, MD 21136
- Claimant Ex. 2: July 24, 2007 Residential Contract of Sale for 14007 Old Hanover Road, Baltimore, MD 21136
- Claimant Ex. 3: Photocopies of checks signed by Banji Tumi
- Claimant Ex. 4: Debra L. Barrett's December 2007² letter to the Claimant, with attachments
- Claimant Ex. 5: Ronald D. Mellott's December 3, 2007 letter to Debra Barrett

I admitted the following exhibits on behalf of the REC:

- REC Ex. 1: Notice of Hearing
- REC Ex. 2: Hearing transmittal with attached Statement of Charges and Order for Hearing
- REC Ex. 3: The Respondent's licensing history
- REC Ex. 4: The Claimant's January 24, 2008 complaint and claim
- REC Ex. 5: March 25, 2009 Consent Order and Settlement Agreement
- REC Ex. 6: REC Investigator Lucinda Rezek's investigation report, with attachments

No exhibits were submitted on behalf of the Fund.

Testimony

The Claimant testified on his own behalf and did not present any other witnesses.

No one testified on behalf of the REC or the Fund.

² The letter does not contain a specific date beyond the month and year.

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 duly licensed real estate salesperson. The Respondent's most recent license was issued to him on May 21, 2007 and expired on June 2, 2008. (REC Ex. 3.)
2. The Respondent was affiliated with RE/MAXTM-Colonial Homes, Inc. (RE/MAX), a real estate franchise located in Fort Washington, Maryland. (REC Ex. 3, 5.)
3. At all times relevant to this matter, the Claimant was the owner of 14007 Old Hanover Road, Baltimore MD (Property). (T.³ Claimant; Claimant Ex. 1, 2; REC Ex. 4.)
4. On or around April 11, 2007, the Claimant entered into a contract of sale on the Property with Banji Tumi, a prospective buyer.⁴ The Respondent acted as the buyer's agent for the transaction. (Claimant Ex. 1; REC Ex. 5.) Settlement was scheduled for May 31, 2007.
5. Under the contract terms, Mr. Tumi was to pay a \$1,000.00 earnest money deposit. (Claimant Ex. 1.)
6. The Respondent told the Claimant that he collected the deposit from Mr. Tumi and gave the deposit to his broker at RE/MAX for placement in escrow. (T. Claimant; REC Ex. 5.)
7. The Respondent never gave the \$1,000.00 deposit to his broker for placement in escrow. (Claimant Ex. 5; REC Ex. 5.)

³ The abbreviation "T" stands for "testimony."

⁴ Under the contract's terms, the Claimant was permitted to keep the Property listed on the market until settlement actually occurred.

8. Settlement never occurred on the contract between the Claimant and Mr. Tumi. (T. Claimant; REC Ex. 4, 5.)
9. On July 24, 2007, the Respondent, again acting as the buyer's agent, presented the Claimant with an offer from Late F. Lawson. On that same date, the Claimant entered into a contract with Mr. Lawson. (Claimant Ex. 2, REC Ex. 5.) Settlement was scheduled for August 30, 2007.
10. Under the contract terms, Mr. Lawson was to pay a \$3,000.00 earnest money deposit. (Claimant Ex. 2.)
11. The Claimant and Mr. Lawson specifically agreed that if the contract on the Property did not go to settlement by August 30, 2007, then Mr. Lawson forfeited the earnest money deposit to the Claimant. (Claimant Ex. 4, p. 4.)
12. The Respondent told the Claimant that he collected the deposit from Mr. Lawson and gave it to his broker at RE/MAX for placement into escrow. (REC Ex. 5.)
13. The Respondent never gave the \$3,000.00 deposit to his broker at RE/MAX. (Claimant Ex. 5; REC Ex. 5.)
14. Settlement never occurred on the contract between the Claimant and Mr. Lawson. (T. Claimant; REC Ex. 5.)
15. On or around November 30, 2007, Debra Barrett, the Claimant's listing agent, contacted RE/MAX and requested that the deposit monies from the failed Tumi and Lawson contracts be turned over to the Claimant.

16. On or around December 3, 2007, Ronald Mellott, owner of and broker with the RE/MAX franchise, advised Ms. Barrett that the franchise had no record of the Respondent's listings, sales or escrow monies. (Claimant Ex. 5.)

DISCUSSION

In its Statement of Charges, the REC determined that the regulatory charges and the monetary claim filed against the Fund by the Claimant arose from the same facts and circumstances and should be consolidated for hearing at the same time. The March 25, 2009 Consent Order (REC Ex. 5) addressed and resolved the regulatory charges against the Respondent. The only remaining issue before me, therefore, is whether the Claimant suffered a monetary loss as a result of the Respondent's violations of the Business Article.

Claims for reimbursement from the Fund are governed by Business Article § 17-404 which states, in pertinent part, as follows:

§ 17-404. Claims against the Guaranty Fund.

(a) *In general.* -- (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) involve 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.

Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2004).

With respect to claims against the Fund, COMAR 09.11.03.04 further provides as follows.

.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 of 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 further:

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 this proceeding against the Fund.

Business Article § 17-407(e) (2004). In this case, the Claimant presented the contracts involving the prospective sale of the Property to Mr. Tumi and Mr. Lawson, respectively.

Those contracts clearly identify the Respondent as the buyer's agent for each transaction. The Claimant's uncontroverted testimony is that the Respondent stated that he collected the earnest money deposits and turned them over to his broker at RE/MAX for placement into an escrow account. In the case of each transaction, the Respondent wholly failed to turn the deposits over to his broker for placement into escrow. As a direct result of the Respondent's misrepresentations about and improper handling of the deposits, the Claimant was deprived of the opportunity to claim the deposits when the transactions fell through.

The Fund did not dispute that the Respondent's actions resulted in a loss to the Claimant. The record supports a finding that the Claimant's losses were incurred as a result of the Respondent's conduct. Accordingly, I find that the Claimant is entitled to reimbursement from the Fund in the amount of \$4,000.00.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that as a result of the Respondent's misconduct the Claimant suffered an "actual loss" compensable under Business Article § 17-404 and the Claimant is entitled to an award from the REC Guaranty Fund in the amount of \$4,000.00.

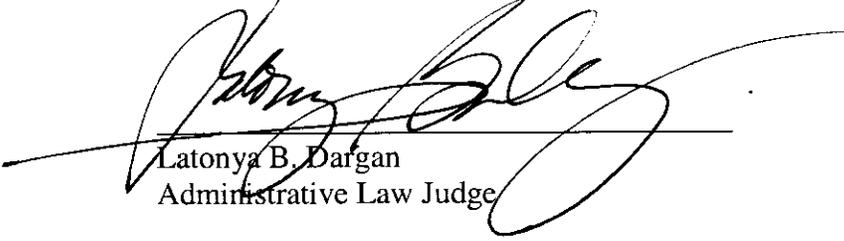
RECOMMENDED ORDER

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

1. The Claimant be reimbursed \$4,000.00 from the Fund; and,

2. The Commission **ORDER** that REC's records and publications reflect its final decision.

June 23, 2009
Date Decision Mailed



Latonya B. Dargan
Administrative Law Judge

#106368

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