

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM * BEFORE LAURIE BENNETT,
OF VANESSA PENDLETON * 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-22-10-08818
MISCONDUCT OF EMMANUEL * REC CASE NO: 2008-RE-545
EKEE, REAL ESTATE SALESPERSON *

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated August 4, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 29th day of September, 2010,

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

Date 9/30/10

B:  _____
(COMMISSIONER'S SIGNATURE APPEARS ON ORIGINAL ORDER)



THE CLAIM OF VANESSA PENDLETON * BEFORE LAURIE BENNETT,
 AGAINST THE MARYLAND * AN ADMINISTRATIVE LAW JUDGE
 REAL ESTATE COMMISSION * OF THE MARYLAND OFFICE
 GUARANTY FUND FOR * OF ADMINISTRATIVE HEARINGS
 THE ALLEGED MISCONDUCT OF * OAH NO.: DLR-REC-22-10-08818
 EMMANUEL EKEE, REAL ESTATE * MREC NO.: 08-RE-545
 SALESPERSON *

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RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On March 5, 2008, Vanessa Pendleton (Claimant) filed a complaint with the Maryland Real Estate Commission (Commission) and, on that same date, filed a claim against the Commission’s Guaranty Fund (Fund) for reimbursement of \$25,000.00 for actual losses suffered as a result of the alleged misconduct by Emmanuel Ekee (Respondent) in the Respondent’s capacity as a licensed real estate salesperson. On February 26, 2010, the Commission issued an Order for Hearing and transmitted the matter to the Office of Administrative Hearings (OAH) on March 11, 2010 for further proceedings.

I held a hearing on the Claimant’s Fund claim on July 20, 2010 in Largo, Maryland. Md. Code Ann., Bus. Occ. § 17-408 (2004). The Claimant represented herself. The Respondent failed to

appear after proper notice to his address of record. Assistant Attorney General Hope Sachs represented the Fund.

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

ISSUE

Did the Claimant sustain an actual loss that is compensable by the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimant's behalf:

Clmt. Ex. 1 Addendum to Contract, January 30, 2007

Clmt. Ex. 2 Letter from Shirley Adams, not dated

Clmt. Ex. 3 Inspection Report, January 29, 2007

Clmt. Ex. 4 Inspection Report, January 30, 2008

Clmt. Ex. 5 Proposal, August 11, 2009

Clmt. Ex. 6 Residential Contract of Sale, signed by the Claimant on January 23, 2007

and by the Respondent on January 24, 2007

Clmt. Ex. 7 Special Addendum, signed by the Claimant on January 23, 2007 and by the Respondent on December 6, 2006

I admitted the following exhibits on the Fund's behalf:

Fund Ex. 1 Notice of Hearing, April 28, 2010; certified mail green card, signed by the Respondent on an unspecified date

Fund Ex. 2 Order for Hearing, February 26, 2010

Fund Ex. 3 Licensing history

Fund Ex. 4 Claim form, March 5, 2006

Testimony

The Claimant testified in her own behalf. The Fund did not call any witnesses.

FINDINGS OF FACT

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

1. Since 1999, the Respondent held a valid real estate salesperson's license. The Commission most recently renewed the Respondent's license on October 15, 2007, and it had a scheduled expiration date of February 22, 2009.
2. The Respondent was the listing agent on property known as 4104 Shell Street, Capitol Heights, Maryland (the Property). The seller was Legacy Funding, LLC (Legacy). The Respondent is affiliated with Legacy.
3. On January 23 2007, the Claimant signed a residential sales contract to purchase the Property, and the Respondent signed the next day.
4. On January 29, 2007, the Claimant had the Property inspected by U.S. Inspect, professional home inspectors. The inspection revealed numerous defects in the Property. Some defects were serious. For example, several outlets had reversed polarity, which can damage electronic equipment and which pose a safety hazard.
5. January 30, 2007 and February 1, 2007 respectively, the Claimant and the Respondent signed an Addendum to Sales Contract, in which the Respondent agreed to have a licensed, bonded contractor make specified repairs to the Property. The Respondent agreed, for example, to correct the reversed polarity of the electrical outlets.

6. On January 29, 2008, U.S. Inspect inspected the Property again. The inspection revealed that the Respondent had made some repairs to the roof, but he had not made the other repairs. As to the roof repairs, the Respondent did not make them in a professional manner and they are merely temporary in nature.

7. On August 11, 2009, the Claimant obtained an estimate from Lee West, General Contractor, for repairs to the Property. The estimate includes some repairs that the Respondent agreed to do but also other repairs.

8. The Claimant is not the Respondent's spouse or his personal representative.

DISCUSSION

A person may recover compensation from the Fund for an actual loss resulting from "an act or omission that occurs during the provision of real estate brokerage services by a licensed real estate salesperson." Md. Code Ann., Bus. Occ. § 17-404(a)(2)(i)(3); COMAR 09.11.03.04. An act or omission includes misrepresentation. Md. Code Ann., Bus. Occ. § 17-404(a)(2)(iii)(2). Finally, the transaction shall pertain to real estate in Maryland. Md. Code Ann., Bus. Occ. § 17-404(a)(2)(ii). The burden of proof rests with the claimant to establish the validity of his or her claim. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2004). I find that the Claimant has shown that she is entitled to recover actual losses from the Fund. I have set out the reasons for my conclusions in detail below.

The Claimant argued that I should recommend that the Fund award her \$25,000.00 because the Respondent, a licensed real estate salesperson, failed to abide by an agreement to make repairs to the house she purchased. She testified that she does not have the money to make the repairs and as a result the Property has fallen into even worse repair than when she bought it. The Claimant

purchased the property for \$275,000.00 and, according to the Claimant, the house is in such poor condition that she has been unable to resell it even for \$160,000.00.

The Claimant described the condition of the house in significant detail. Water is leaking under the house and, as a result, emits a “nasty” smell; the back room and laundry ducts are crushed; the dishwasher is not plumbed properly; the faucet is plumbed backwards; water is leaking through the roof into a fixture; gnats have invaded the house due to sitting water; etc. The Claimant testified that the Respondent had remodeled the property before she expressed an interest in it, and she subsequently learned that he used unlicensed contractors.

It is not for me to decide whether the Respondent used unlicensed contractors, as that matter is immaterial to the claim at issue. Instead, I must decide whether the Respondent, in his capacity as a real estate salesperson, represented to the Claimant that he would make certain repairs, and if so, whether he made those repairs. I conclude that the Respondent did represent to the Claimant that he would make repairs to the property, and did not complete those repairs. Therefore, the Claimant is eligible for reimbursement from the Fund for actual losses suffered as a result of Respondent’s misrepresentations. The remaining question is the value of the Claimant’s loss.

To establish the value of her loss, the Claimant presented a detailed proposal from a general contractor, Lee West. (Clmt. Ex. 5.) The proposal includes some repairs that the Respondent agreed to make but also other repairs. To the extent the proposal includes an estimate for making repairs that the Respondent agreed to make, the Claimant is eligible for reimbursement from the Fund. With that in mind, I will do a line by line comparison of Mr. West’s proposal with the

Respondent's agreement. Mr. West's proposal is noted in italics as follows:

1. *Master bedroom 1st floor: Install light fixture and switch in closet*

The Respondent did not agree to perform this work.

2. *Master Bathroom: replace drain pipe in tub; install GFCI*

The Respondent did not agree to install a GFCI. He did agree to "correct slow draining 1st floor rear bathtub," which more likely than not is the drain pipe referenced in Mr. West's proposal.

3. *Half Bathroom: Secure sink to vanity, snake drain, install vent pipe allowing air in the line*

The Respondent did not agree to perform this work.

4. *Main Bathroom: Install shelving in linen closet; replace wax ring and tighten toilet to floor; install a vent in ceiling for ventilation*

The Respondent did not agree to install shelving or a ceiling vent, or replace the wax ring on the toilet. He did agree to "secure lower level toilet bases at its floor level," which is more likely than not the equivalent of tightening the toilet to the floor.

5. *Kitchen and appliances: Replace damaged tile in hall area of kitchen; correctly connect the kitchen faucet; repair or place plumbing under counter due to drain slope error; install an air gap on top of counter from dishwasher; install GFCI above counter; snake drain line; move switch to garbage disposal behind stove and install over counter near sink; trace unknown switches or remove*

The Respondent did not agree to do any of this work, except repairing the kitchen faucet supply lines.

6. *Living room: repair damaged ceiling caused by roof leak and replace drywall tape and finish; remove register underneath carpet and repair floor; install larger return register*

The Respondent did not agree to do this work

7. *Laundry room: Install duct and register*

The Respondent did not agree to install ducts. He did agree to install "supply registers at

vents where needed,” which I find includes the laundry room as referenced in Mr. West’s proposal.

8. *2nd bedroom on first level: Repair damaged ceiling due to leaky room*

The Respondent did not agree to do this work.

9. *3rd bedroom second level: Add two electric receptacles in wall*

The Respondent did not agree to do this work.

10. *4th bedroom second level: Add two electric receptacles in wall*

The Respondent did not agree to do this work.

11. *Basement: Replace light switch at top of stair; install hand rail; install baluster where needed; install floor tile*

The Respondent agreed only to install a handrail at the basement stairs.

12. *Plumbing system: Replace waste pipe and slope properly, the drain/waste/vent piping leaks under the kitchen master bath and laundry rooms allowing exhaust gases and/waste matter into the dwelling, in turn causing health issues; insulate water supply pipes in crawl space to prevent freezing; install outside bib faucets one on each side of the dwelling and insulate pipes; correct the connection of the hot water heater vent pipe to the proper pitch; correct the connection of the furnace vent pipe to allow proper vent flow separate of the hot water heater; as the system is connected it could cause back drafting problems; replace heating distribution duct due to crushed area in supply pipe; replace missing registers to control air flow*

The Respondent agreed to insulate pipes in the crawl space, to provide proper slope to waste pipes in the crawl space, to correct piping leads at the drain/waste/vent under the sink, which I conclude is, with minor exception, the work referenced in Mr. West’s proposal.

13. *Surface water control system: Efflorescence is apparent in the crawl space of the foundation walls. This build-up mineral deposit is evidence of water penetration through the foundation walls. This problem is normally remedied by better control of surface water. Proper grading of soil around the house and improvements in the roof drainage system will most likely reduce or eliminate this condition.*

The Respondent did not agree to re-grade the soil around the house. I will discuss the roof under Item 16.

14. *Electrical system: Check all smoke detectors throughout house and replace or repair; correct wiring error throughout entire house including but not excluding living room, dining room, bedrooms, kitchen, bathrooms, closets, basement, attic, hall, laundry room and exterior of house as well*

The Respondent agreed to ensure that all smoke detectors are working. The Respondent did not agree to correct a wiring error, “except that he agreed to have a licensed electrician insure proper grounding of all electrical outlets” and “make operable outlet at bedroom rear wall...[and c]orrect reverse polarity at living room outlets.” Although Mr. West did not explain what he meant by “wiring error,” because I do not have evidence of any other major electrical problems, I conclude that his proposal includes the work that the Respondent agreed to do.

15. *Structure: The roof sheathing is beginning to buck, and sag and needs replacement or repair.*

See Item 16.

16. *Roof: It appears some repairs have been made to the roof but should be considered temporary. The entire roof should be replace[d] do [sic] to some sagging and or buckling as a result of a leaky roof and now a patch roof. Replacement would include replacement of gable studs where needed, collar beams where needed flashing, roof sheathing 4X8X3.4 tar paper, asphalt shingles with (know [sic] less then twenty year life rating), fascia, soffia¹, gutters and down spout. Both chimneys will be pointed up after removing the deteriorated mortar joints.*

The Respondent did not agree to replace the entire roof, but he did agree to replace all missing gutters and correct gutters that do not slope properly, to replace downspouts where needed, to correct roof sheathing that is sagging or buckling, to replace damaged shingles and to secure all nails to the room, to install flashing where needed and to remove deteriorated mortar and to point mortar points at chimney. Thus, there is significant overlap between what the Respondent agreed to do and what is included in Mr. West’s proposal.

¹ I assume Mr. West meant to say “soffit.”

17. *Site: Replace three sections of wooden fencing approx 6'x6'x5/8; install handrail at entrance of steps to top of porch on both side of steps*

The Respondent only agreed to install a handrail at the front steps.

18. *Exterior: The exterior vinyl trim is poorly installed and needs replacement of Trim/J channel and vinyl corner to match and prevent water infiltration; replace board at bottom of kitchen window with matching vinyl siding to prevent water infiltration; caulk and seal any opening where mechanicals enter or exit through siding*

The Respondent only agreed to install the J channel at the front porch.

19. *Detached Garage: Replace roof on detached garage due to leaking to match the house, including gable studs where needed, collar beams where needed, flashing, roof sheathing, tar paper, asphalt shingles (no less than twenty year life rating), fascia, soffia, [sic] gutters and down spouts*

The Respondent did not agree to do any work to the detached garage.

20. *Interior: Labor and material drywall tape and finish; repair or placement of damaged vinyl floor tile, adhesive.*

The Respondent did not agree to do this work.

As to the items that are in Mr. West's proposal, the Claimant is eligible for reimbursement, if I can determine the cost of making the repairs. Mr. West did not break down the cost for each item, although he stated the cost for broad categories of repairs, such as electrical, plumbing, etc. It is surely difficult then to determine the specific cost of the repairs the Respondent agreed to make within a certain broad category. On the other hand, it would be unfair to the Claimant, who has suffered a great loss at the Respondent's hands,² to find that she is not eligible for any award. Thus, I have carefully examined Mr. West's proposal carefully to determine the extent to which a broad category includes work that the Respondent did not agree to make and have apportioned the rest to

² Most of the Claimant's loss is not compensable by the Fund, including, for example, the loss in value of her house, the foul odor caused by water seepage, the infestation of gnats, etc.

the cost of making the Respondent's repairs. With that analysis at hand, the Claimant is eligible for reimbursement as follows:

Exterior ³	\$10,000.00
Plumbing	\$ 7,000.00
Electrical System	\$ 4,000.00
<u>HVAC System</u>	<u>\$ 500.00</u>
TOTAL	\$21,500.00

Finally, the Respondent agreed to do the following work that is not referenced in Mr. West's proposal:

- filling exterior holes that penetrate the house;
- properly pitching the water heated vent connector that connects to the furnace vents;
- changing water heat vent piping that uses a T fitting with a Y fitting connector; and
- Repairing/replacing crushed heating distribution duct work at crawl space.

Without an estimate for repairing these items, I cannot determine the value of the Claimant's loss.

Therefore, as to these items, I cannot recommend reimbursement from the Fund.

CONCLUSIONS OF LAW

I conclude that the Claimant sustained an actual loss that is compensable by the Fund.

Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2004) and COMAR 09.11.03.04.

RECOMMENDED ORDER

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

ORDER, that the Claimant be reimbursed \$21,500.00 from the Maryland Real Estate Guaranty Fund to compensate her for actual losses that she sustained because of the Respondent's conduct of the Respondent, and further,

³ The exterior includes repairs to the roof, the gutters, the J channel and the handrail.

ORDER, that the Respondent is ineligible for any Maryland Real Estate Commission license until the Respondent reimburses the Fund for all monies disbursed under this Order plus annual interest of at least ten percent, as set by the Commission (Md. Code Ann., Bus Occ. & Prof. § 17-411(a)(2) (2004)), and further,

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

ADMINISTRATIVE LAW JUDGE'S SIGNATURE
APPEARS ON ORIGINAL ORDER

August 4, 2010
Date Decision Mailed

Laurie Bennett
Administrative Law Judge

LB/tc
#115434

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FILE EXHIBIT LIST

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