

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

JACQUELINE D. MASON *
Respondent

* CASE NO. 2013-RE-091

And

* OAH NO. DLR-REC-24-14-09019

CLAIM OF LAVERNE AND ANTONIQUE
FOSTER AGAINST THE MARYLAND REAL*
ESTATE GUARANTY FUND

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law, and Recommended Order of the Administrative Law Judge dated December 23, 2014, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 6th day of March, 2015

ORDERED,

A. That the Findings of Fact in the recommended decision be, and hereby are, **ADOPTED**;

B. That the Conclusions of Law in the recommended decision be, and hereby are, **AMENDED** to reflect that the Claimants are entitled to reimbursement from the Real Estate Guaranty Fund in the amount of \$8,078.00;

C. That the Recommended Order be, and hereby is, **AMENDED** as follows:

ORDERED that the Respondent, Jacqueline D. Mason, shall be

assessed a civil penalty in the amount of **Five Thousand Dollars (\$5,000)**, which shall be paid to the Real Estate Commission within thirty (30) days of the date of this Order;

ORDERED that the Claimants, Laverne and Antonique Foster, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of **Eight Thousand Seventy-Eight Dollars (\$8,078.00)**;

ORDERED that all real estate licenses held by the Respondent, Jacqueline D. Mason, shall be suspended for at least six months and such suspension shall continue until the civil penalty is paid in full, and the Maryland Real Estate Guaranty Fund is reimbursed, including any interest that is payable under the law; and

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

D. Pursuant to §10-220 of the State Government Article, the Commission finds that the Recommended Decision of the Administrative Law Judge (ALJ) must be amended to include reimbursement from the Guaranty Fund, to provide a time period within which the civil penalty must be paid, and to provide that, in addition to the six-month disciplinary suspension, all real estate licenses held by the Respondent would be suspended until the civil penalty is paid in full and the Guaranty Fund is reimbursed.

The ALJ denied the entirety of Claimants' claim for reimbursement from the Guaranty Fund for 8 months of unpaid rent and legal fees associated with an eviction action filed by the

Claimants in Baltimore City District Court. In denying the Guaranty Fund claim, the ALJ apparently relied on the fact that Respondent did not benefit personally from the tenancy due to the lack of payment to anyone, including the Respondent, during the tenancy. The ALJ's interpretation of the law and regulations governing Guaranty Fund claims is incorrect.

Section 17-404(a)(2)(iii)(2) of the Business Occupations and Professions Article provides that a claimant may recover from the Guaranty Fund based on an act or omission that constitutes fraud or misrepresentation. Code of Maryland Regulations (COMAR) 09.11.03.04 sets out the statutory requirements for a claim against the Guaranty Fund. In her Recommended Decision, the Administrative Law Judge stated that "I cannot find that the Respondent unlawfully obtained money or property from the Claimants . . . [a]ccordingly, I find that the Claimants have not met their burden with respect to their Fund claim." Under this interpretation, a claimant would not be able to recover losses suffered as a result of misrepresentation or fraud unless the losses involved personal financial benefit to the licensee. This is not a requirement of the statute. The regulation, in pertinent part, provides:

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 fraud, misrepresentation, or deceit[.]

Despite the ALJ's statement to the contrary, the actual loss

suffered by the Claimants is a direct result of the originating transaction because the Respondent's actions in negotiating and entering into a lease, and failing to inform the Claimants of the lease, directly contravened the express wishes of the Claimants, who stated to the Respondent at the beginning of their agency relationship that they were not interested in leasing the property.

In order to recover from the Guaranty Fund, the Claimants were required to show what actual loss they suffered as a result of the misrepresentation of the licensee, i.e., the failure to obtain the consent of the claimants regarding the leasing of the property and to notify them of the tenancy agreed to by the Respondent. The record clearly shows that the claimants were deprived of their property and its uses for a period of months, and that they have not been compensated for this loss.

In *Hobby v. State*, 436 Md. 526 (2014), the Court of Appeals reviewed a defendant's conviction for theft based on facts that are similar to the facts at issue in this case. In *Hobby*, the defendant lived rent free for more than six months as a party to a fraudulent lease between the defendant and the owner of the property that was executed in the owner's name but without her knowledge and consent. In upholding the defendant's conviction for theft, the Court held that "we are satisfied that theft of a house may occur through occupancy or possession of the house without payment for it or its use to the lawful owner and without authorization or consent of the

lawful owner." *Id.* at 548. The *Hobby* case makes it clear that occupancy or possession of the house is a thing of value that can be the subject of theft. *Id.*

The Court held in *Hobby* that the proper method of valuation of damages in a theft case involving occupancy and possession of a house without payment to or consent from the lawful owner was the fair market value of the right to possess the house during the occupancy. *Id.* at 552. Here, the ALJ's findings of fact show that the Respondent had agreed on a monthly rental amount of \$1,000.00. We accept this as the fair market rental value of the Claimants' property in accordance with the Court's holding in *Hobby*.

The Claimants requested six months of unpaid rent in their original complaint. At the hearing, they attempted to amend their complaint to request eight months of unpaid rent, but the ALJ denied their request. The ALJ's findings of fact reflect that the tenant moved into the property in late April 2012 and vacated the property in December 2012, a period of eight months. Based on these findings of fact, the Commission finds that the Claimants are entitled to eight months of unpaid rent at the agreed-upon rate of \$1,000.00 per month, for a total of \$8,000.00.

The ALJ also denied Claimants' request for reimbursement for the court fees that were paid during the eviction action in District Court. The ALJ did not detail her rationale for denying that part of the claim pertaining to the court fees. To the extent

that she relied upon the same rationale as was used to deny the Claimants' request for reimbursement for the unpaid rent, she also made an error of law with respect to the court fees.

COMAR 09.11.01.18 provides that a claimant may not recover attorney's fees incurred in pursuing or perfecting the claim against the guaranty fund. It is clear from the record, however, that the fees in the instant case were related to a civil action filed in Baltimore City District Court. The court fees were directly related to the originating transaction because they were caused by the Respondent's failure to obtain the consent of the claimants regarding the leasing of the property and to subsequently notify them of the tenancy. The fees were not incurred in connection with the Guaranty Fund claim. Therefore, the Claimant is entitled to reimbursement from the Guaranty Fund for the court fees.

The ALJ's findings of fact do not include an itemization of the court fees incurred by the Claimants. However, in the discussion section of the Recommended Decision, the ALJ notes the Claimants' request for reimbursement for the court fees, and states in a footnote that "[t]he filing fee was actually \$38.00 and the service of process fee was \$40.00. (DLLR Ex. 4, p. 18-20.) Hence, this total should be \$88.00." After reviewing the record and noting an addition error in the ALJ's calculation, the Commission finds the Claimants have met their burden of proving actual loss with

respect to the court fees, and that the Claimants incurred a total of \$78.00, rather than \$88.00, in court fees (\$38.00 + \$40.00 = \$78.00).

E. Pursuant to COMAR 09.01.03.08 those parties adversely affected by this Proposed Order shall have 20 days from the postmark date of the Order to file exceptions and to request to present arguments on the proposed decision before this Commission. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 500 North Calvert Street, Baltimore, MD 21202.

SIGNATURE ON FILE

Maryland Real Estate Commission

MARYLAND REAL ESTATE

* BEFORE M. TERESA GARLAND,

COMMISSION

* AN ADMINISTRATIVE LAW JUDGE

v.

* OF THE MARYLAND OFFICE OF

JACQUELINE D. MASON,

* ADMINISTRATIVE HEARINGS

RESPONDENT

* OAH No.: DLR-REC-24-14-09019

and

* REC CASE No.: 13-RE-091

THE CLAIM OF LAVERNE AND

*

ANTONIQUE FOSTER,

*

CLAIMANTS,

*

AGAINST THE MARYLAND REAL

*

ESTATE COMMISSION GUARANTY

*

FUND

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* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On September 26, 2012, LaVerne and Antonique Foster (the Claimants) filed a Complaint against a licensed real estate broker, Jacqueline D. Mason (the Respondent), as well as a claim for reimbursement (the Claim) from the Maryland Real Estate Commission Guaranty Fund (the Fund) for losses they allegedly incurred as a result of the Respondent's misconduct. After investigation, the Maryland Real Estate Commission (the MREC or the Commission)

issued its February 28, 2014 Statement of Charges and Order for Hearing (Charges) against the Respondent for her alleged violations of Sections 17-322(b)(3), (22), (25), (32), and (33) of the Maryland Annotated Code's Business Occupations and Professions Article (the Business Occupations Article), as well as Code of Maryland Regulations (COMAR) 09.11.02.01C and H. The Commission's Charges further referenced the Claimants' Claim against the Fund. On March 14, 2014, the Commission forwarded the Claim and Charges to the Office of Administrative Hearings (OAH) to conduct a hearing and to issue a recommended decision and order.

On September 30, 2014, I conducted a hearing on the Charges and Claim at the OAH's Administrative Law Building in Hunt Valley, Maryland, pursuant to Section 17-408 of the Business Occupations Article. The Claimants represented themselves. The Respondent was represented by S. Kennon Scott, Esquire. The DLLR was represented by Peter Martin, Assistant Attorney General. There was no representative for the Fund.¹

The Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2014); COMAR 09.11.03; and the OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

ISSUES

The issues in this case are as follows:

1. Did the Respondent violate the following sections of the Business Occupations Article: 17-322(b)(3) (directly or through another person willfully make a misrepresentation or knowingly make a false promise); 17-322(b)(22) (fail to account for or to remit promptly money that came into her possession but belonged to another

¹ There was no explanation as to why the Fund was not represented; however, Mr. Martin did not assume the role of the Fund representative.

- person); 17-322(b)(25) (engage in conduct that demonstrates bad faith, incompetency, untrustworthiness or that constitutes dishonest, fraudulent or improper dealings);17-322(b)(32) (violate other provisions of this subtitle); and 17-322(b)(33) (violate any regulation adopted under this title or any provision of the code of ethics)?
2. Did the Respondent violate COMAR 09.11.02.01C and H (Code of Ethics regarding relations to the public)?
 3. If the Respondent committed the alleged violations or engaged in the alleged conduct, what sanction is appropriate under Section 17-322(b) and/or (c) of the Business Occupations Article?
 4. Did the Claimants sustain an “actual loss” compensable by the Fund as the result of an act or omission of the Respondent within the meaning of Section 17-404(a) of the Business Occupations Article, and if so, what should be the amount of the award?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the DLLR’s documents as the following numbered exhibits:

- DLLR Ex. 1 - Notice of Hearing, July 17, 2014
- DLLR Ex. 2 - Corrected Notice of Hearing, July 22, 2014
- DLLR Ex. 3 - Letter from Katherine F. Connelly, Executive Director, September 22, 2014, with attached records of Respondent’s license
- DLLR Ex. 4 - Letter from Ms. Connelly, with attachments, August 21, 2014
- DLLR Ex. 5 - Affidavit of Ms. Connelly, August 21, 2014

The Claimants did not submit any documents into the record.

I admitted the Respondent’s documents as the following numbered exhibits:

- Resp. Ex. 1 - E-mail, August 29, 2012
- Resp. Ex. 2 - General Addendum to Contract, dated February 27, 2012
- Resp. Ex. 3 - Exclusive Listing Contract – Sale, February 17, 2012
- Resp. Ex. 4 - E-mail, August 30, 2012

Testimony

LaVerne Foster testified on behalf of the Claimants.

The Respondent testified and presented the testimony of Shannon Fowler.

The DLLR presented the testimony of both Claimants.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent has been a licensed real estate salesperson.
2. On February 18, 2011, the Claimants signed a one-year Exclusive Listing Contract-Sale (Listing Contract) with the Respondent for the sale of their vacant house located at 2107 Echodale Avenue, Baltimore, Maryland 21214 (the Property). On November 30, 2011, the Claimant's signed a second Listing Contract, which extended the term of the agreement to June 30, 2012. (Resp. Ex. 3.)
3. The Claimants had a personal relationship with the Respondent for several years prior to engaging her to sell the Property.
4. Prior to putting the Property on the market, the Claimants and the Respondent discussed renting the Property. The Claimants did not want to rent the Property. (T. Respondent, Claimants.)
5. Between February 2011 and January 2012, there were few, if any, showings of the Property and an apparent lack of interest by potential buyers.
6. In January 2012, the Respondent had an interested buyer; however, a sale did not occur.
7. At some point, the Respondent secured the Claimants' bank's approval for a short sale contract on the Property. The sale was not finalized when the potential investor rescinded its offer due to the lengthy time required to process the bank's paperwork.

8. In February/March 2012, the Respondent attempted to have the Claimants' loan modified, without success.

9. At some point prior to April 2012, the Respondent showed the Property to Shannon Fowler (Fowler), who expressed an interest in purchasing the Property, but needed a house right away. The Respondent had a years-long personal relationship with Fowler.

10. Without the consent or knowledge of the Claimants, the Respondent gave Fowler keys to the Property, and in late April 2012, Fowler moved into the Property. Fowler and the Respondent agreed on a monthly rental in the amount of \$1,000.00.

11. The Respondent did not prepare a lease/rental agreement for the Property.

12. Fowler had the Property's utility services placed in her name.

13. Fowler paid no rent to either the Respondent or the Claimants.

14. On August 23, 2012, while retrieving an article of personal property from the Property, the Claimants discovered Fowler living in their home.

15. On August 28, 2012, the Claimants contacted the Respondent and demanded that she have Fowler vacate the Property and that the Respondent return the keys to the Property by August 31, 2012.

16. On August 30, 2012, the Claimants emailed Fowler and demanded that she vacate the Property.

17. The Respondent took no action to have Fowler vacate the Property, and Fowler refused, upon the Claimants' demand, to vacate the Property.

18. On August 31, 2012, the Claimants filed eviction proceedings in the District Court of Maryland for Baltimore City (Court) requesting possession of the Property and \$6,100.00 in damages.

19. On October 3, 2012, the Court entered a Judgment of Possession in favor of the Claimants. The Court did not award damages.

20. In December 2012, Fowler vacated the Property.

21. The Claimants never received rent from the period of time of April 2012 through December 2012 when Fowler resided in the Property. On or about September 26, 2012, the Claimants filed a Complaint against the Respondent and a Claim against the Fund.

22. On April 29, 2013, the Commission assigned the Complaint to its investigator, William F. Reynolds. Mr. Reynolds communicated with the Claimants, the Respondent and Fowler.

23. Based on the results of Mr. Reynolds' investigation, on February 28, 2014, the Commission issued its Charges against the Respondent.

24. The Claimants are seeking payment of rent for the Property from March 2012 through September 2012 and the cost of evicting Fowler. None of the monetary losses they seek to recover are sufficiently connected to the originating transaction between her and the Respondent.

25. The Claimants suffered no actual loss.

.DISCUSSION

The Charges

The Commission charges the Respondent with violating Business Occupations Article Sections 17-322(b)(3), (22), (25), (32), and (33), as well as COMAR 09.11.02.01C and H.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(b) provides:

b) 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:

* * *

(3) directly or through another person willfully makes a misrepresentation or knowingly makes a false promise;

* * *

(22) fails to account for or to remit promptly any money that comes into the possession of the licensee but belongs to another person;

* * *

(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[.]

* * *

COMAR 09.11.02.01 provides:

.01 Relations to the Public.

* * *

C. The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State.

* * *

H. For the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed.

* * *

Also, in accepting employment as an agent, a licensee has an absolute obligation to protect and promote the interests of the client. COMAR 09.11.02.02. Finally, general regulations mandate that licensees maintain adequate records of all real estate transactions engaged in by them as brokers or salespersons. COMAR 09.11.01.07.

The Claimants testified that they very clearly told the Respondent they were not interested in renting the Property. After some fits and starts with possible investors/purchasers and a failed loan modification, they believed that Fowler was interested in purchasing the

Property and, consequently, they restored water service to the Property in late April 2012.² On August 23, 2012, Claimant Antonique Foster went to the Property and found Fowler living there. After a series of curt emails between the Claimants and the Respondent, and eventually between the Claimants and Fowler, the Claimants filed eviction proceedings against Fowler, in which they prevailed. Fowler moved from the Property in December 2012. The Claimants never signed a rental agreement nor did they receive any rent for the months when Fowler occupied the Property.

The Respondent acknowledges that she did not have a rental agreement between Fowler and the Claimants. At the hearing, she stated that the Claimants had agreed to rent the Property to Fowler with the understanding that any rent Fowler paid would be credited toward closing costs. The Respondent testified that she believed Fowler would be purchasing the Property and that Fowler was attempting to secure financing for the purchase.³ The Respondent admitted at the outset of her testimony, however, that the Claimants could no longer afford the Property and they wanted to “sell and get out.” Further, the Respondent admitted that prior to marketing the Property, she and the Claimants discussed renting the Property, but the Claimants did not wish to pursue a tenancy. They wanted to sell. During Fowler’s “tenancy,” the Respondent claimed to have received no rental payments from Fowler.

With regard to the regulatory charges brought by the REC, the burden of proof is by a preponderance of the evidence. Md. Code Ann., State Gov’t § 10-217 (2009). It rests with the REC as the moving party. *Comm’r of Labor and Industry v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996).

In this case, there is no allegation of theft, fraud or embezzlement. The REC argued that the Respondent acted with untrustworthiness and in bad faith by renting the Property without the

² The Claimants were delinquent in paying the water bill and service was “cut off.” They restored service by paying the delinquent amount and bringing the account current.

³ There was no sales contract between the Claimants and Fowler.

knowledge or consent of the Claimants; misrepresented, through concealing the fact that Fowler was renting the Property; failed to provide the required documents (rental agreement) in writing; and failed to maintain adequate records of collected rents. I find that the evidence is overwhelmingly persuasive that the Respondent is in violation of the charges. Most persuasive is the Respondent's own testimony that the Claimants unequivocally did not want the property rented; yet, she gave Fowler the keys to the Property without a rental agreement and without a sales contract with the terms purportedly negotiated by the Respondent regarding the application of Fowler's rental payments to closing costs. Nothing was memorialized. The Respondent testified that she did not have Fowler sign a lease because Fowler was working with Wells Fargo Bank to obtain a mortgage. Unfortunately for the Respondent, one has nothing to do with the other.

Based on my analysis, I conclude that the REC has met its burden of establishing the charged violations. The Respondent demonstrated bad faith, dishonesty and untrustworthiness throughout her dealings with the Claimants in violation of Sections 17-322(b)(3) and (25). She also failed to account for rental money that belonged to the Claimants; that is, although Fowler failed to pay the agreed-upon monthly rent of \$1,000.00, the Respondent failed to keep an accounting of Fowler's monthly delinquencies in violation of Section 17-322(b)(22).

Further, I conclude that the Respondent violated the Code of Ethics as set forth in COMAR 09.11.02.01C, by failing to ensure the protection of the public from misrepresentation and unethical practices, when she rented the Property without the knowledge or consent of the Claimants. In addition, the Respondent violated the Code of Ethics as set forth in COMAR 09.11.02.01H, by failing to protect the Claimants by ensuring that financial obligations and commitments were in writing and that those writings expressed the exact agreement of the parties. Also, in accepting employment as an agent, the Respondent had an absolute obligation

to protect and promote the interests of the Claimants. By permitting a tenancy without a rental agreement and contrary to the express wishes of the Claimants, she neither protected nor promoted the interests of the Claimants. COMAR 09.11.02.02. Finally, general regulations mandate that licensees maintain adequate records of all real estate transactions engaged in by them as brokers or salespersons. Records were simply non-existent here. COMAR 09.11.01.07.

The REC recommended a three-month suspension of the Respondent's license and a \$5,000.00 civil penalty. Based on the Respondent's actions, I find that a three-month suspension of her license and a \$5,000.00 civil penalty is reasonable in this case.

The Guaranty Fund Claim

Section 17-404(a) governs claims brought against the Fund and sets forth, in pertinent part, the following criteria that must be established by a claimant to obtain an award:

§ 17-404. Claims against 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:

1. a licensed real estate broker;
2. a licensed associate real estate broker;
3. a licensed real estate salesperson; or
4. an unlicensed employee of a licensed real estate broker;

(ii) involve a transaction that relates to real estate that is located in the State;

and

(iii) be based on an act or omission:

1. in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or
2. that constitutes fraud or misrepresentation.

(b) *Limitation on recovery.* - The amount recovered for any claim against the Guaranty Fund may not exceed \$50,000 for each claim.

Md. Code Ann., Bus. Occ. & Prof. § 17-404(a), (b) (Supp. 2014). *See also* COMAR 09.11.03.04.

The REC shall order payment of a valid claim from the Fund for actual monetary losses suffered by a claimant not to exceed \$50,000. Md. Code Ann., Bus. Occ. & Prof. § 17-410(a), (b) (Supp. 2014); COMAR 09.11.01.18.

It is undisputed that the Respondent was a licensed salesperson involved in a transaction relating to real estate (the Property) located in this State. Thus, the claim meets the first two of the three parts of the law necessary to recover a claim against the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(1) and (2)(i) & (ii) (Supp. 2014).

The Respondent rented the Property to Fowler in contravention of the Claimants' express wishes and without their knowledge or consent. She allowed a tenant to occupy the Property without a signed lease. While I have found as a matter of fact that Fowler never paid any rent to the Respondent, I find the Respondent's failure to employ a rental agreement, and renting the Property without the Claimants' knowledge is legally sufficient to constitute misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(iii) (Supp. 2014). Thus, the Claim meets the third part of the three parts of the law necessary to recover a claim against the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(1) and (2)(i) & (ii) (Supp. 2014).

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 Claimants bear the burden of proof in this proceeding against the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e). In this case, the Claimants seek \$6,100.00 in damages.⁴ The Claimants seek payment of rent owed by Fowler for six months at \$1,000.00 per month, as well as \$100.00, which represents the Claimants' filing fee for the eviction action and service of process upon Fowler.⁵

The Claimants have not established losses which the regulation anticipates. The governing statute requires proof of 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. The Respondent did not benefit from Fowler's tenancy because Fowler paid no rent, to anyone, during her tenancy. The

⁴ Just prior to closing argument by the parties, the Claimants attempted to amend their complaint during the hearing to reflect Fowler's non-payment of eight month's rent, not six month's rent, as originally requested. I did not permit the amendment, which is moot based on my ruling on their Fund claim.

⁵ The filing fee was actually \$38.00 and the service of process fee was \$40.00. (DLLR Ex. 4, p. 18-20.) Hence, this total should be \$88.00.

Property remained at all times titled to the Claimants. I cannot find that the Respondent unlawfully obtained money or property from the Claimants. The damages sought by the Claimants are consequential to the Listing Contract they had with the Respondent and not a direct loss from the originating transaction. Accordingly, I find that the Claimants have not met their burden with respect to their Fund claim.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated Section 17-322(b)(3), (25), (31), (32) and (33) of the Business Occupations Article. Additionally, the Respondent violated the Code of Ethics as set forth in COMAR 09.11.02.01C and H, as well as 09.11.02.02 and 09.11.01.07. Therefore, she is subject to sanctions under section 17-322(b) of the Business Occupations Article.

I further conclude as a matter of law that an appropriate sanction in this case is a three-month suspension of the Respondent's real estate salesperson's license and a civil penalty of \$5,000.00. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b) &(c)(2010).

I further conclude as a matter of law that the Claimants are not entitled to an award from the Guaranty Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407; COMAR 11.09.01.18 and 09.11.03.04.

RECOMMENDED ORDER

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

ORDER that the real estate broker's salesperson of Jacqueline D. Mason, registration number 01-576769, be suspended for a period of three months; and

IMPOSE a civil penalty in the amount of \$5,000.00; and

NOT award to the Claimants funds from the Guaranty Fund; and

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

December 23, 2014
Date decision mailed

MTC/tc
152001

SIGNATURE ON FILE

M. Teresa Garland
Administrative Law Judge