

**THE MARYLAND REAL ESTATE COMMISSION**

MARYLAND REAL ESTATE	*	BEFORE SUSAN H. ANDERSON
COMISSION	*	AN ADMINISTRATIVE LAW JUDGE.
v.	*	OF THE MARYLAND OFFICE
TRICIA CHURCHEY,	*	OF ADMINISTRATIVE HEARINGS
RESPONDENT	*	
AND	*	
THE CLIAM OF SAMUEL AND	*	
LAURA CUSHMEN	*	
CLAIMANTS	*	
AGAINST THE MARYLAND	*	OAH No.: LABOR-REC-24-24-13354
REAL ESTATE COMMISSION	*	MREC No.: 155-RE-2022
GUARANTY FUND		

\* \* \* \* \*

**PROPOSED DECISION**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated November 20, 2024, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 13th day of December 2024, 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, ADOPTED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;
- D. That the records, files and documents of the Maryland State Real Estate Commission reflect this decision.
- E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties adversely affected by this Proposed Order shall have twenty (20) days from the postmark

date of the Order-to file written exceptions to this Proposed Order. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 1100 N Eutaw St, Baltimore, MD 21201. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

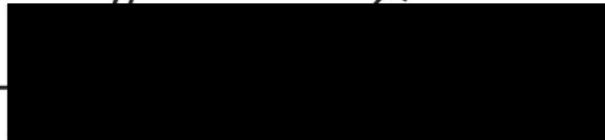
F. Once the Proposed Order becomes final, the parties have an additional thirty (30) days in which to file an appeal to the Circuit Court for the Maryland County in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City.

MARYLAND STATE REAL ESTATE COMMISSION

Date

12/13/24

By: \_\_\_\_\_



\* BEFORE SUSAN H. ANDERSON,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS

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\* OAH No.: LABOR-REC-24-24-13354

\* MREC No.: 155-RE-2022

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## STATEMENT OF THE CASE ISSUES

**SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION**

**PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER**

### STATEMENT OF THE CASE

On or about August 27, 2021, Samuel and Laura Cushman (Claimants) filed a Complaint against Tricia Churchey, a licensed real estate salesperson (Respondent), for alleged violations of the Maryland Real Estate Brokers Act (Act),<sup>2</sup> and the provisions at Code of Maryland Regulations (COMAR) 09.11.02, enacted under the Act. The Claimants also filed a claim

<sup>1</sup> I will refer to Mr. and Mrs. Cushman collectively as the Claimants throughout this decision. Mrs. Cushman did not testify at the hearing; therefore, when I refer to the Claimant, I am referring to Mr. Cushman.

<sup>2</sup> Md. Code Ann., Bus. Occ. & Prof. §§ 17-101 to -702 (2018 & Supp. 2024).



(Claim) with the Maryland Real Estate Commission's (REC) Guaranty Fund (Fund) to recover compensation of \$2,100.00<sup>3</sup> for an alleged actual loss resulting from an act or omission of the Respondent.

On April 30, 2024, after an investigation, the REC determined that charges against the Respondent were warranted and issued a Statement of Charges (Charges) against her. The Charges alleged that the Respondent had violated section 17-322(b)(2) of the Business Occupations and Professions Article as well as COMAR 09.11.02.02 when she failed to disclose a known latent defect, specifically, a roof leak, of which she and the seller were aware when she acted as the seller's agent for the property located at 627 Trafalgar Drive in Hagerstown, Maryland (Property).<sup>4</sup> The Charges advised the Respondent that if the charged violations were substantiated, she could face a reprimand, a suspension or revocation of her license, as well as a monetary penalty of up to \$5,000.00 for each violation of the Act. The REC further determined that the Claimants were entitled to a hearing to establish eligibility for an award from the Fund. Accordingly, the REC ordered a combined hearing on the Charges and the Claim and, on May 14, 2024, forwarded the case to the Office of Administrative Hearings (OAH) to conduct a hearing.<sup>5</sup>

On September 17, 2024, I held a hearing at the OAH in Hunt Valley, Maryland.<sup>6</sup> Jonathan Phillips, Assistant Attorney General, Maryland Department of Labor (Department), represented the REC on the charged violations of law. Catherine Villareale, Assistant Attorney

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<sup>3</sup> There is conflicting information in the record as to the amount of the Claim. On the first page of the original Complaint, the Guaranty Fund Claim is listed as \$1,000.00. See REC Ex. 4, p. 13. However, a third page of the Complaint indicated that the Guaranty Fund Claim was \$2,100.00. See REC Ex. 4, p. 15. On February 13, 2023, the Claimant advised the REC investigator that he had cancelled checks in the amount of \$2,000.00 and that he would continue to search for receipts. See REC Ex. 4, p. 42. At the hearing, the Claimants maintained their actual loss was in the amount of \$2,100.00.

<sup>4</sup> The Charges initially asserted that there were two roof leaks: one in the kitchen and one over the garage. However, at the hearing, the REC indicated it was not pursuing the Charges with regard to the roof leak over the garage. Therefore, I will not address it further.

<sup>5</sup> Bus. Occ. & Prof. § 17-409 (2018).

<sup>6</sup> Bus. Occ. & Prof. §§ 17-324(a), 17-408(a) (2018).

General, Department, represented the Fund. The Claimants represented themselves. The Respondent represented herself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, the REC's procedural regulations, and the Rules of Procedure of the OAH govern procedure.<sup>7</sup>

### ISSUES

1. Did the Respondent violate section 17-322(b)(2) of the Business Occupations and Professions Article by fraudulently or deceptively using her license?
2. Did the Respondent violate COMAR 09.11.02.02 by failing to fulfill her statutory obligations towards the Claimants?
3. If so, what is the appropriate sanction?
4. Did the Claimants sustain an actual loss, compensable by the Fund, due to an act or omission of the Respondent in the provision of real estate brokerage services that constitutes fraud/misrepresentation?
5. If so, what amount should be awarded to the Claimants from the Fund?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits offered by the REC:

- REC Ex. 1 - Notice of Hearing, June 7, 2024, with attached subpoenas
- REC Ex. 2 - Transmittal for [Department] Real Estate Commission, May 10, 2024
- REC Ex. 3 - Statement of Charges and Order for Hearing, April 30, 2024
- REC Ex. 4 - Report of Investigation, March 1, 2023, pp. 1-12,<sup>8</sup> with the following attachments:
  - [REC] Online Complaint Form, August 27, 2021, pp. 13-15
  - Residential Contract of Sale, date of offer: September 8, 2020, pp. 16-26

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<sup>7</sup> Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2024); COMAR 09.01.03; COMAR 09.11.03; COMAR 28.02.01.

<sup>8</sup> This is the only REC Exhibit with page numbers.



- Conventional Financing Addendum, September 8, 2020, pp. 27-28
- Priority Buyer Preapproval Letter, September 10, 2020, p. 29
- Maryland Residential Property Disclaimer Statement, September 8, 2020, p. 30
- Maryland Homeowners Association Act Disclosure to Buyer and Transmittal of Documents, September 8, 2020, pp. 31-32
- Authorization and Agreement to Negotiate Contract/Lease and Conduct Transaction Electronically, September 8, 2020, p. 33
- Notice to Buyer and Seller of Buyer's Rights and Seller's Obligations Under Maryland's Single Family Residential Property Condition Disclosure Law, September 8, 2020, pp. 34-36
- As Is Addendum, September 8, 2020, p. 37
- Inclusions/Exclusions and Utilities Addendum to Exclusive Right to Sell Residential Brokerage Agreement, September 2, 2020, p. 38
- State of Maryland [REC] Understanding Whom Real Estate Agents Represent, September 2, 2020, pp. 39-40
- Affiliated Business Arrangement Notice, September 2, 2020, p. 41
- Emails between Diane Carson, Department, and the Claimant, various dates between January 24, 2023, and February 14, 2023, p. 42
- MLS Listing, closed October 22, 2020, pp. 43-44
- Residential Contract of Sale, September 8, 2020, p. 45
- Notes from conversation with Mike Selbert, undated, p. 46
- Letter from the REC to the Respondent, November 30, 2021, p. 47
- Signed statement of Warren (Wes) Churchey, undated, p. 48
- Signed statement from the Respondent, undated, p. 49
- Emails between the Respondent and Audra Jacobs, July 11, and 19, 2021, p. 50
- MLS Listing, undated, p. 51
- Letter from the REC to Taylor Bowen, Berkshire Hathaway Homeservices, November 30, 2021, p. 52
- To Whom It May Concern letter from Mr. Bowen to the REC, December 22, 2021, pp. 53-55
- Signed statement of Warren (Wes) Churchey, undated, p. 56<sup>9</sup>
- Signed statement of the Respondent, undated, p. 57<sup>10</sup>
- Emails between the Respondent and Ms. Jacobs, July 11, and 19, 2021, p. 58<sup>11</sup>
- Screenshot of text messages between Ms. Jacobs and the Respondent, September 8, 2020, p. 59
- Screenshots, various pages, REC licensing information for the Respondent, pp. 60-64

REC Ex. 5 - REC Licensing history for the Respondent, printed September 5, 2024

The Fund did not offer any exhibits into evidence.

The Claimants did not offer any exhibits into evidence.

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<sup>9</sup> This is a duplicate of p. 48.

<sup>10</sup> This is a duplicate of p. 49

<sup>11</sup> This is a duplicate of p. 50.

The Respondent did not offer any exhibits into evidence.

Testimony

The REC presented the following witness: Diane Carson, real estate investigator; the Claimant; and Audra Jacob, the Claimants' real estate agent for the transaction that is the subject of this case.

The Fund did not present any witnesses.

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

**PROPOSED FINDINGS OF FACT**

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

1. At all times relevant to the subject of this hearing, the REC licensed the Respondent as a real estate salesperson.<sup>12</sup>
2. The Respondent and her husband, Warren (Wes) Churchey, are the developers and builders of Greenwich Park Homes, a community they started in 2001. The Property is located in the community.<sup>13</sup>
3. In or about 2018, the owner of the Property, Anne Ramirez, who had moved out of state, hired the Respondent as her seller's agent. Before the Property sold, Mike Selbert approached the Respondent about renting the Property for a year with an option to buy at the end of the year. Ms. Ramirez reluctantly agreed.
4. After the first year was up, Mr. Selbert told Ms. Ramirez and the Respondent that he was not in a position to buy the Property but would like another year's lease. Again, Ms. Ramirez reluctantly agreed.<sup>14</sup>

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<sup>12</sup> REC Ex. 5.

<sup>13</sup> REC Ex. 4, p. 49.

<sup>14</sup> REC Ex. 4, p. 49.



5. At the end of the second year, Mr. Selbert asked for a lease for another year. Ms. Ramirez, who wanted to sell the Property as she did not want to be a landlord, refused and asked him to move out at the end of his lease period.<sup>15</sup>

6. In or around March 2020, Mr. Selbert contacted Ms. Ramirez to report that there was water on the garage floor following a heavy thunderstorm. Ms. Ramirez contacted the Respondent and asked that her husband go and investigate the source of the leak.

7. Mr. Churchey investigated but saw no water on the garage floor. Mr. Selbert told Mr. Churchey that water was coming out of one of the can lights in the kitchen ceiling. Upon investigating, Mr. Churchey saw that there was a stove vent with an exhaust pipe that vented out through the roof. The light in the kitchen was directly next to this pipe. Mr. Churchey saw no obvious problems with the roof and detected no signs of water infiltration, such as water stains. He theorized that during the driving rain, rain had gotten under the flapper on top of the vent pipe, run down the pipe and resulted in the water Mr. Selbert observed.<sup>16</sup>

8. Mr. Churchey did not perform any maintenance or repair anything during his visit to the Property.<sup>17</sup>

9. Mr. Churchey did not tell Mr. Selbert that the house would need a new roof, nor did he advise Ms. Ramirez that the house would need a new roof.

10. Two other homeowners had similar issues following the March 2020 storm. Mr. Churchey investigated and determined that one of them was attributable to the rain being blown sideways and getting under the flapped opening of a bath vent, allowing water into the home.

11. This incident was the only time Ms. Ramirez told the Respondent about any water intrusion or leaks at the Property and the only time Mr. Churchey visited the Property for the issue.

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<sup>15</sup> REC Ex. 4, p. 49.

<sup>16</sup> REC Ex. 4, p. 48.

<sup>17</sup> REC Ex. 4, p. 48.



12. Mr. Selbert moved out of the Property in June 2020. In or about September 2020, the Respondent listed the Property for sale "as is."<sup>18</sup>

13. On September 8, 2020, the Claimants, through their realtor, Audra Jacob, put in an offer on the Property to purchase it "as is" with a home inspection and the right to terminate the offer if the Claimants were dissatisfied with the results of the inspection.<sup>19</sup>

14. The home inspection revealed only minor issues. The inspector noted that there was evidence of a roof leak in the attic over the garage but characterized it as an inactive leak.

15. The Claimants went through with the purchase of the Property on October 21, 2020.

16. The Claimants did not move into the Property right away. They first had some floors replaced and then moved, sometime in or about November 2020.

17. Shortly after moving in, the Claimants noted water on the floor in front of the dishwasher. The Claimants switched the dishwasher soap they were using, and the problem did not recur.

18. On a date unclear from the record, but after the incident with the possible dishwasher leak, after a particularly heavy rainstorm, the Claimants noticed water dripping from the kitchen ceiling. A roofer replaced some shingles on the roof and the Claimants had the kitchen ceiling repaired and repainted and the leak did not recur.

19. Sometime later, the Claimants noted a second leak in the garage. A roofer replaced some more shingles and advised the Claimants that the roof would need to be replaced in the next two to three years.

20. In or about July 2021, Mr. Selbert was visiting the Claimants' neighbor, who had become a friend of his. He came over to meet the Claimants and asked if they were having any

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<sup>18</sup> REC Ex. 4, p. 37.

<sup>19</sup> REC Ex. 4, p. 37.

problems with the roof. Mr. Selbert reported that when he was a tenant, Mr. Churchey had come over to examine the leak, had done something up on the roof, and then advised Mr. Selbert that he would eventually need a new roof.

21. After Mr. Selbert's visit, the Claimants and Ms. Jacob reviewed the Disclaimer/Disclosure from the Contract of Sale and saw there were no disclosures of any issues with the roof leaking. Ms. Jacob contacted the Respondent, who indicated that she was unaware of any ongoing leak problem and reminded Ms. Jacob that the Claimants had the Property inspected before the purchase and the home inspector had not noted any concerns about any leaks.<sup>20</sup>

22. The Claimants then filed the Complaint with the REC.<sup>21</sup>

23. On a date not reflected in the record, but after the Claimants filed their Complaint, they replaced the roof on the Property.

## **DISCUSSION**

### **THE REGULATORY CHARGE**

#### ***The Legal Standard***

The REC contended in its Charges that the Respondent:

(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:

....

(2) fraudulently or deceptively uses a license;

....<sup>22</sup>

The alleged violation of section 17-322(b)(2) is based on COMAR 09.11.02.02A. That provision requires that "[i]n accepting employment as an agent, the licensee shall protect and

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<sup>20</sup> REC Ex. 4, p. 50.

<sup>21</sup> REC Ex. 4, pp. 13-15.

<sup>22</sup> Bus. Occ. & Prof. § 17-322(b)(2) (Supp. 2024).

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."

Moreover, regardless of whom the licensed real estate salesperson represents, she has an obligation to disclose any known material facts, or facts that should have been known through a reasonable inspection, regarding the real estate property.<sup>23</sup> **"A fact is material if its existence or nonexistence is a matter to which a reasonable man would attach importance in determining his choice of action in the transaction, or the maker of the misrepresentation knows that its recipient is likely to regard the fact as important although a reasonable man would not so regard it."**<sup>24</sup> An individual must justifiably act in reliance on the misrepresentation of material fact for a claim to be actionable.<sup>25</sup>

### ***The Burden of Proof***

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim.<sup>26</sup> To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered.<sup>27</sup> In this case, the REC bears the burden to prove by a preponderance of the evidence that the Respondent committed the violations alleged in the Charges.<sup>28</sup>

For the reasons that follow, I find that the REC has failed to meet its burden.

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<sup>23</sup> *Lopata v. Miller*, 122 Md. App. 94 (1998).

<sup>24</sup> *Maryland Real Estate Comm'n v. Garceau*, 234 Md. App. 324, 357 (2017) (bold in original).

<sup>25</sup> *See id.*

<sup>26</sup> State Gov't § 10-217 (2021); COMAR 28.02.01.21K.

<sup>27</sup> *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

<sup>28</sup> COMAR 28.02.01.21K(1), (2)(a).



### ***The Positions of the Parties***

The REC asserted that evidence shows the Respondent was aware of ongoing problems with a leak in the roof at the Property but failed to disclose it to the Claimants. The REC contended that the roof leak constituted a latent defect,<sup>29</sup> which the Respondent was obligated to disclose to the Claimants. As such, the REC maintained that the Respondent violated section 17-322(b)(2) of the Business Occupations and Professions Article and requested that I impose a reprimand and a fine in the amount of \$2,000.00.

The Respondent denied being aware of any ongoing problem with a roof leak. She contended that she was only aware of one incident which was attributed to unusually heavy rain that wind blew sideways, apparently causing water to infiltrate the roof vent through a flapped opening. The Respondent asserted that had she been aware of an ongoing issue, she would either have told Ms. Ramirez to fix it before putting the house on the market, or to disclose it if she chose not to repair it.

### ***Analysis***

The REC's case hinges principally on the various hearsay statements of Mr. Seibert, who, although subpoenaed, did not appear for the hearing. The Claimant was a credible witness. He testified honestly, admitting when he did not know something, even something material to his claim, such as who performed the repair work or when it was done. However, he was relaying information given to him by a third party. And the information Mr. Seibert relayed to the various people involved in the case varied with regard to some important details.

Chiefly, the account of Mr. Seibert's statements was inconsistent about whether he had contacted Ms. Ramirez more than once about a leak. When he spoke with the Respondent, he

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<sup>29</sup> A latent defect is a material defect "in real property. . . that (1) A purchaser would not reasonably be expected to ascertain or observe by a careful visual inspection of the real property; and (2) Would pose a direct threat to the health or safety of: (i) The purchaser; or (ii) An occupant of the real property, including. . . an invitee of the purchaser." Md. Code Ann., Real Prop. § 10-702(a) (2023).

stated that he had called Ms. Ramirez once.<sup>30</sup> When he spoke with Taylor Bowen, the broker for whom the Respondent works, he relayed that he had experienced two leaks during his tenancy but could not recall if he had notified Ms. Ramirez about both, or just one.<sup>31</sup> When Mr. Seibert spoke with the REC investigator, he told her that he had reported two leaks to Ms. Ramirez.<sup>32</sup> The first time, she sent Mr. Churchey out to examine the leak; Mr. Seibert told the REC investigator that he did not recall whether anyone came out after his second call to Ms. Ramirez.<sup>33</sup> When Mr. Seibert spoke to Ms. Jacob, he told her that the roof had leaked, he had advised the owner, and Mr. Churchey had come out and done "something" and then told him the roof would need to be replaced in the next year or so.<sup>34</sup> I note that even if Mr. Seibert did tell Ms. Ramirez about both leaks, that does not prove that the information was relayed to the Respondent. In light of these discrepancies and the fact that Mr. Seibert did not offer testimony under oath, and he was not subject to cross-examination, I give his statements little weight.

In contrast, the Respondent testified credibly, in conformity with her written statement to the REC investigator, that Ms. Ramirez only told her of one incident regarding a water leak at the Property. The Respondent explained that her husband went to investigate and did not see any issue with the roof; she explained that he posited that the water coming in was from unusually heavy wind-driven rain getting under the flapped opening of the roof vent and entering the house that way. In Mr. Churchey's statement to the REC investigator, he recounted that two other homeowners also called with similar concerns after the same heavy rainfall and that he determined that the same thing had occurred with one of them, except in that case, the water came in through the flapped opening of a bath vent.<sup>35</sup>

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<sup>30</sup> REC Ex. 4, p. 49.

<sup>31</sup> REC Ex. 4, p. 54.

<sup>32</sup> REC Ex. 4, p. 6.

<sup>33</sup> REC Ex. 4, p. 6.

<sup>34</sup> REC Ex. 4, p. 46; also, testimony of A. Jacob.

<sup>35</sup> REC Ex. 4, p. 48.



I found the Respondent to be a credible witness. She persuasively testified that she did not know that any water had gotten into the Property more than one time, which was attributed to an unusual set of circumstances (i.e., the rain and wind that blew the rain sideways) and not to any defect. The Respondent explained that had she known that there were any additional incidents of leaking, she would have advised Ms. Ramirez that she needed to fix whatever the problem was before listing the house, or at least disclose it if she chose not to repair it.

I note that the home inspection did not uncover any problem with the roof over the kitchen. While a home inspection does not relieve the seller or the Respondent from the obligation to disclose any known latent defect, I find it more likely than not had there been an ongoing problem, there would have been some indication of that uncovered during the inspection. Also, the fact that the Claimants eventually replaced the roof does not mean there was a defect in the existing roof at the time of the purchase. The Claimants put on no evidence as to the age of the roof or its condition at the time of the home inspection. Roofs wear out and eventually need to be replaced and there is no evidence in this record to show that the roof was replaced due to anything other than normal wear and aging.

The evidence as presented is simply insufficient to show that the Respondent was aware of a latent defect with regard to the Property. As far as she knew, the water intrusion was a one-time occurrence for which there was a logical explanation that did not involve a defect in the roof. The Respondent was under no obligation to seek out defects in the Property.<sup>36</sup> Accordingly, I find the Respondent did not fail to disclose a material, latent defect, and the REC has failed to meet its burden of showing that she violated section 17-322(b)(2) or COMAR 09.11.02.02.

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<sup>36</sup> See *Herbert v. Saffell*, 877 F.2d 267 (4th Cir. 1989) (citing *Fowler v. Benton*, 229 Md. 571, 583-84 (1962)).



As I conclude that the Respondent did not violate either the statute or regulation charged, I need not address sanctions.

## **THE FUND CLAIM**

### ***The Legal Standard***

A person may recover compensation from the Fund for an actual loss based on certain types of acts or omissions in the provision of real estate brokerage services by a licensee. A licensee “means a licensed real estate broker, a licensed associate real estate broker, or a licensed real estate salesperson.”<sup>37</sup>

The provision of real estate brokerage services is defined as follows:

(l) “Provide real estate brokerage services” means to engage in any of the following activities:

(1) for consideration, providing any of the following services for another person:

(i) selling, buying, exchanging, or leasing any real estate; or

(ii) collecting rent for the use of any real estate;

(2) for consideration, assisting another person to locate or obtain for purchase or lease any residential real estate;

(3) engaging regularly in a business of dealing in real estate or leases or options on real estate;

(4) engaging in a business the primary purpose of which is promoting the sale of real estate through a listing in a publication issued primarily for the promotion of real estate sales;

(5) engaging in a business that subdivides land that is located in any state and sells the divided lots; or

(6) for consideration, serving as a consultant regarding any activity set forth in items (1) through (5) of this subsection.<sup>38</sup>

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

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<sup>37</sup> Bus. Occ. & Prof. § 17-101(k) (Supp. 2024).

<sup>38</sup> *Id.* § 17-101(l) (Supp. 2024).

- (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.<sup>39</sup>

The amount recovered for any claim against the Fund may not exceed \$50,000.00 for each claim.<sup>40</sup>

### ***The Burden of Proof***

The Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence.<sup>41</sup> To prove a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered.<sup>42</sup> For the reasons that follow, I find the Claimants have failed to meet their burden.

### ***Analysis***

In this case, the Claimants have met the first part of their burden of proving the validity of their claim. The Respondent is a licensed real estate salesperson, and the transaction involves the sale of real estate in Maryland. However, where the Claim fails is in the requirement that a Claim stem from an act or omission that constitutes fraud or misrepresentation. As previously discussed, there is no evidence to support a finding that the Respondent engaged in misrepresentation when she did not inform the Claimants about a roof leak as she believed it was a one-time incident not attributable to any problem with the roof itself. Therefore, I need not address whether the Claimants suffered any actual monetary loss.

Nevertheless, for the sake of completeness, I will note that even had the Claimants proven that the Respondent engaged in misrepresentation with regard to the sale of the Property, they still would not be entitled to any relief. As counsel for the Fund pointed out, the Claimants failed to offer any specifics about their alleged loss. They produced no receipts for the work that

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<sup>39</sup> *Id.* § 17-404(a)(2).

<sup>40</sup> *Id.* § 17-404(b).

<sup>41</sup> Bus. Occ. & Prof. § 17-407(e) (2018); State Gov’t § 10-217.

<sup>42</sup> *Coleman*, 369 Md. at 125 n.16.

was done, could not pinpoint the timeframe in which the work was done, nor could the Claimant recall who he hired to do the repair work. The only testimony provided was that they paid “around” \$2,100.00: about \$1,900.00 for the roof repair and about \$200.00 for the repair and repainting of the kitchen ceiling.

Accordingly, the Claimants have failed to show that they sustained an actual loss compensable by the Fund as a result of the Respondent’s acts or omissions. Specifically, the Claimants have failed to prove that the Respondent made an intentional or negligent misrepresentation upon which the Claimants relied and which resulted in an actual loss to them.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Respondent did not violate section 17-322(b)(2) of the Business Professions and Occupations Article or COMAR 09.11.02.02.<sup>43</sup>

Consequently, I conclude that the Respondent is not subject to any disciplinary sanctions.

I further conclude that the Claimants did not demonstrate by a preponderance of the evidence that they sustained an actual loss compensable by the Fund due to an act or omission of the Respondent in the provision of real estate brokerage services.<sup>44</sup>

### **RECOMMENDED ORDER**

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

The Charges against the Respondent be **DISMISSED** and

**ORDER** that the Maryland Real Estate Commission Guaranty Fund deny the Claimants’ claim; and

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<sup>43</sup> Bus. Occ. & Prof. § 17-322(b)(2) (Supp. 2024); COMAR 09.11.02.02; *Lopata v. Miller*, 122 Md. App. 94 (1998); *Maryland Real Estate Comm’n v. Garceau*, 234 Md. App. 324 (2017).

<sup>44</sup> Bus. Occ. & Prof. § 17-404(a)(2) (2018); 17-407(e) (2018).



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

November 20, 2024  
Date Decision Issued

  
Susan H. Anderson  
Administrative Law Judge

SHA/kh  
#214020

**MARYLAND REAL ESTATE**

**COMMISSION**

**v.**

**TRICIA CHURCHEY,**

**RESPONDENT**

**AND**

**THE CLAIM OF SAMUEL AND**

**LAURA CUSHMAN,**

**CLAIMANTS,**

**AGAINST THE MARYLAND**

**REAL ESTATE COMMISSION**

**GUARANTY FUND**

**\* BEFORE SUSAN H. ANDERSON,**

**\* AN ADMINISTRATIVE LAW JUDGE**

**\* OF THE MARYLAND OFFICE**

**\* OF ADMINISTRATIVE HEARINGS**

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**\* OAH No.: LABOR-REC-24-24-13354**

**\* MREC No.: 155-RE-2022**

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**FILE EXHIBIT LIST**

**Exhibits**

I admitted the following exhibits offered by the REC:

REC Ex. 1 - Notice of Hearing, June 7, 2024, with attached subpoenas

REC Ex. 2 - Transmittal for [Department] Real Estate Commission, May 10, 2024

REC Ex. 3 - Statement of Charges and Order for Hearing, April 30, 2024

REC Ex. 4 - Report of Investigation, March 1, 2023, pp. 1-12,<sup>45</sup> with the following attachments:

- [REC] Online Complaint Form, August 27, 2021, pp. 13-15
- Residential Contract of Sale, date of offer: September 8, 2020, pp. 16-26
- Conventional Financing Addendum, September 8, 2020, pp. 27-28
- Priority Buyer Preapproval Letter, September 10, 2020, p. 29
- Maryland Residential Property Disclaimer Statement, September 8, 2020, p. 30

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<sup>45</sup> This is the only REC Exhibit with page numbers.

- Maryland Homeowners Association Act Disclosure to Buyer and Transmittal of Documents, September 8, 2020, pp. 31-32
- Authorization and Agreement to Negotiate Contract/Lease and Conduct Transaction Electronically, September 8, 2020, p. 33
- Notice to Buyer and Seller of Buyer's Rights and Seller's Obligations Under Maryland's Single Family Residential Property Condition Disclosure Law, September 8, 2020, pp. 34-36
- As Is Addendum, September 8, 2020, p. 37
- Inclusions/Exclusions and Utilities Addendum to Exclusive Right to Sell Residential Brokerage Agreement, September 2, 2020, p. 38
- State of Maryland [REC] Understanding Whom Real Estate Agents Represent, September 2, 2020, pp. 39-40
- Affiliated Business Arrangement Notice, September 2, 2020, p. 41
- Emails between Diane Carson, Department, and the Claimant, various dates between January 24, 2023, and February 14, 2023, p. 42
- MLS Listing, closed October 22, 2020, pp. 43-44
- Residential Contract of Sale, September 8, 2020, p. 45
- Notes from conversation with Mike Selbert, undated, p. 46
- Letter from the REC to the Respondent, November 30, 2021, p. 47
- Signed statement of Warren (Wes) Churchey, undated, p. 48
- Signed statement from Respondent, undated, p. 49
- Emails between the Respondent and Audra Jacobs, July 11, and 19, 2021, p. 50
- MLS Listing, undated, p. 51
- Letter from the REC to Taylor Bowen, Berkshire Hathaway Homeservices, November 30, 2021, p. 52
- To Whom It May Concern letter from Mr. Bowen to the REC, December 22, 2021, pp. 53-55
- Signed statement of Warren (Wes) Churchey, undated, p. 56
- Signed statement of the Respondent, undated, p. 57
- Emails between the Respondent and Ms. Jacobs, July 11, and 19, 2021, p. 58
- Screenshot of text messages between Ms. Jacobs and the Respondent, September 8, 2020, p. 59
- Screenshots, various pages, REC licensing information for the Respondent, pp. 60-64

REC Ex. 5 - REC Licensing history for the Respondent, printed September 5, 2024

The Fund did not offer any exhibits into evidence.

The Claimants did not offer any exhibits into evidence.

The Respondent did not offer any exhibits into evidence.