

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

V.

DUANE TUCKER,
RESPONDENT

and

IN RE THE CLAIM OF TIMOTHY

ATCHISON AGAINST THE

MARYLAND REAL ESTATE

GUARANTY FUND

* BEFORE WILLIAM F. BURNHAM,
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: LABOR-REC-21-23-31463
* MREC NO: 2022-RE-207

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated August 2, 2024, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 6th day of September, 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, 500

North Calvert Street, Baltimore, MD 21202. 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

9/5/24
Date

By: 
Sandy Olson, Commissioner

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* BEFORE WILLIAM F. BURNHAM,
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PROPOSED DECISION

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

STATEMENT OF THE CASE

On October 14, 2021, Timothy Atchison (Claimant) filed a complaint against licensed real estate salesperson Duane Tucker (Respondent), affiliated with Blue Star Real Estate, LLC. That same day, the Claimant also filed a claim for compensation from the Maryland Real Estate Guaranty Fund (Fund) for losses the Claimant alleges he sustained because of the Respondent's misconduct. The complaint and claim both arose out of interaction between the Claimant and the Respondent as it related to a property located on North Castle Street in Baltimore, Maryland

(Property);¹ the address of a property owned by the Claimant at the times relevant to this case as detailed below.

The Maryland Real Estate Commission (REC or Commission) investigated the complaint and determined that charges against the Respondent were warranted, and that the Claimant was entitled to a hearing on his claim. Accordingly, the Commission issued a Statement of Charges and Order for Hearing (Statement of Charges), dated September 28, 2023, against the Respondent. The Statement of Charges set forth information about the claim and alleged that the Respondent violated sections 17-322(b)(3), (25), (32), and (33) of the Business Occupations and Professions Article of the Maryland Annotated Code (Business Occupations Article)² and that he also violated sections 09.11.02.01C and 09.11.02.02A of the Code of Maryland Regulations (COMAR). The Statement of Charges advised the Respondent that if the charged violations are substantiated, the Commission could sanction him by reprimand, or by suspending or revoking his real estate broker's license and could, in addition to or instead of those actions, impose a monetary penalty of \$5,000.00 per violation. On November 7, 2023, the Commission forwarded the Statement of Charges to the Office of Administrative Hearings (OAH) to conduct a hearing.

On May 13, 2024, I conducted the hearing via the Webex videoconferencing application. *See Md. Code Ann., Bus. Occ. & Prof. §§ 17-324 and 17-408.* Hope Sachs, Assistant Attorney General, Maryland Department of Labor (Labor), represented the REC with respect to prosecuting the administrative charges. The Claimant represented himself. The Respondent represented himself. Jonathan Phillips, Assistant Attorney General, Labor, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings before the Office of the Secretary of Labor, and the Rules of Procedure

¹ The full address is contained in the record.

² All references to the Business Occupations Article are to the 2018 Replacement Volume and 2023 Supplement.

of the OAH govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 and Supp. 2023); COMAR 09.01.02; COMAR 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Respondent willfully make a misrepresentation or knowingly make a false promise in violation of Business Occupations Article § 17-322(b)(3)?³
2. Did the Respondent engage in conduct that demonstrated bad faith, incompetency, or untrustworthiness, or that constituted dishonest, fraudulent, or improper dealings in violation of Business Occupations Article § 17-322(b)(25)?
3. Did the Respondent violate COMAR 09.11.02.02A, the REC's Code of Ethics (Code), by failing to protect and promote the interests of his client or by failing to act with absolute fidelity to the client's interest, which would also violate the Code and the Business Occupations Article § 17-322(b)(33)?
4. If the Respondent violated any of these provisions or any other provision of Title 17, what sanction, if any, is appropriate?⁴
5. Has the Claimant established a compensable claim against the Fund under section 17-404 of the Business Occupations Article?
6. If the Claimant has established a compensable claim, what is the appropriate award?

SUMMARY OF THE EVIDENCE

Exhibits

The REC offered the following exhibits, which I admitted into evidence:

- | | |
|--------|--------------------------------------------------------------------------------|
| REC #1 | Notice of Hearing generated by the OAH, March 1, 2024; Subpoena, March 7, 2024 |
| REC #2 | Statement of Charges and Order for Hearing, September 28, 2023 |

³ Title 17 of the Business Occupations and Professions Article constitutes the Maryland Real Estate Brokers Act, (Act).

⁴ The Statement of Charges also charged a violation of Business Occupations Article § 17-322(b)(32) which provides that a licensee's real estate license is subject to sanction if he "violates any other provision of this title."

- REC #3 REC licensing records for the Respondent and related companies, printed April 23, 2024
- REC #4 REC, Report of Investigation, closed July 27, 2023, with the following attachments:
- Contact List, undated/unnumbered
 - Complaint filed with the REC, October 14, 2021 (1 to 1-6)⁵
 - Email from J. Nixon to the REC with receipts and police reports, May 24, 2023; (2 to 2-7)
 - Licensing history of the Respondent, printed December 28, 2021 (3 to 3-2)
 - Points of Rebuttal, January 27, 2022 (4 to 4-2)
 - Response from Blue Star Real Estate Broker, John Keller, January 27, 2022 (5)
 - Email chain, various dates (6 to 6-1)
 - Text messages, various dates (7 to 7-35)
 - Rental Application, submitted June 4, 2021 (8 to 8-5)
 - Residential Dwelling Lease, June 18, 2021 (9 to 9-13)
 - Property Management Agreement, August 1, 2021 (10 to 10-3)
 - Email chain, various dates (11 to 11-2)
 - Email chain, various dates (12 to 12-2)
 - Email from J. Nixon to the REC, July 19, 2023 (13)
 - Email chain, various dates (14 to 14-2)

The Claimant did not offer any exhibits for inclusion in the record.

The Respondent did not offer any exhibits for inclusion in the record.

The Fund did not offer any exhibits for inclusion in the record.

Testimony

The REC presented testimony from the Claimant on the regulatory charges. The Claimant also testified on his own behalf in support of his claim. The Respondent testified on his own behalf regarding the regulatory charges and the claim. The Fund did not present any testimony.

⁵ The exhibit and attachments were pre-numbered by the Commission.

PROPOSED FINDINGS OF FACT

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

1. Since 2016, the Respondent was licensed as a Real Estate Broker by the REC under license number 05 656027 with no prior REC complaints.
2. The Respondent was a salesman for broker Blue Star Real Estate, LLC.
3. At the relevant times, the Claimant and his wife were owners of JuniorX2 LLC (Junior). They formed the company to purchase real estate. At the relevant times, the Claimant and his wife did not live in Maryland.
4. At the relevant times, the Claimant wanted to invest in Baltimore properties and colleagues referred him to the Respondent.
5. In or around October 2019, Junior purchased the Property, through a different real estate agent, and rehabilitated the Property to sell it. The rehabilitation took about one year and three months. The improvements to the Property included a security system that alerted the Claimant of activity at the Property.
6. The Respondent assisted in the rehabilitation.
7. The Respondent listed the Property for sale. There were several offers, but no sale was accomplished.
8. The Respondent suggested that the Claimant rent the Property instead of selling the Property.
9. By an oral agreement (Contract) between the Claimant and the Respondent, the Respondent was to obtain renter applications and the Claimant was to personally vet any prospective tenant. The Respondent submitted four or five potential applications for tenants to the Claimant. For reasons such as income and credit, the Claimant rejected all the Respondent's submissions.

10. After he reviewed the applications, the Claimant requested further information for one of the applicants (Ms. Jones)⁶ in order to meet his qualifications for renting the Property. The Respondent never provided additional information.

11. On several occasions beginning on or about June 18, 2021, the Property's security system notified the Claimant of activity at the Property, such as an open door. The Respondent told the Claimant that it was due to the Respondent showing the property. The notifications became more regular and occurred at odd hours of the day and night.

12. The Claimant did not give the Respondent authority to lease the Property.

13. On or about June 18, 2021, the Respondent executed a lease (Lease) with Ms. Jones to rent the Property for one year. The total rent was \$16,200.00 in equal monthly payments of \$1,350.00.

14. The Respondent informed Ms. Jones that he was the property manager for the Property. (*See* REC #9, 9-6).

15. On June 30, 2021, the Claimant again told the Respondent he needed more information about Ms. Jones before renting the Property and asked the Respondent if anyone lived in the Property.

16. On July 8, 2021, the Department of Housing and Community Development issued a Baltimore City Rental License Inspection Form for the Property indicating that it passed rental inspection.

17. On July 29, 2021, the Claimant again asked the Respondent if he had moved someone into the Property.

⁶ Ms. Jones is not a party to this case and her first name is omitted for privacy. REC exhibits contain her full name.

18. On or about July 30, 2021, the Respondent admitted to the Claimant that he rented the Property to Ms. Jones. The Respondent provided a copy of the June 18, 2021 Lease to the Claimant.

19. The Claimant never signed the Lease. The Claimant never received any security deposit or rental payment.

20. On or about August 1, 2021, the Respondent presented the Claimant with a Property Management Agency Agreement whereby the Respondent would manage the Property. Although the Respondent and Claimant attempted to negotiate a property management agreement, they never entered into an agreement.

21. On August 25, 2021, the Respondent informed the Claimant he collected \$4,050.00 from Ms. Jones. He indicated that \$1,350.00 of that sum was his fee for renting the Property; \$500.00 was for HVAC⁷; and \$120.00 was for the Baltimore City inspection fee. The Respondent told the Claimant the balance owed to the Claimant was \$2,800.00.

22. At some point, the Property fell into the hands of squatters.

23. The Claimant took legal action to evict the squatters.

24. The Claimant discovered that all the appliances in the Property were damaged or removed (e.g. the microwave, stove, dish washer, were damaged. The refrigerator, dryer, and washing machine were missing). The Claimant hired a company to remove the belongings of squatters.

25. The junk removal service cost the Claimant \$1,316.00.

26. When initially renovating the Property, the Claimant paid the following sums for the damaged and missing appliances:

⁷ Heating ventilation and air conditioning.

Appliance	Cost	Insurance ⁸	Tax ⁹
Oven	\$497.70	\$75.00	\$28.64
Microwave	\$248.00	\$50.00	\$14.90
Washer	\$597.60	\$90.00	See below
Dryer	\$597.60	\$90.00	\$71.72 ¹⁰
Refrigerator	\$1,397.70	\$130.00	\$76.39
Dishwasher	\$527.40	\$75.00	\$33.62
Total all columns			\$4,601.27

DISCUSSION

The Regulatory Charges

The REC charged the Respondent with violating sections 17-322(b)(3), (25), (32), and (33) of the Business Occupations Article, COMAR 09.11.02.01C and COMAR 09.11.02.02A.

Section 17-322 of the Business Occupations Article provides, in pertinent part:

(b) *Grounds.* – Subject to the hearing provisions of § 17-324 of this subtitle, the Commission may . . . 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;

. . .
(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.

⁸ The Claimant paid for three-year protection plans on all the appliances. (See REC #2, 2-2 to 2-4).

⁹ Based upon the documentation, the Claimant's sales tax rate was five percent. Where provided, I use the sales tax in REC exhibit number two. Where not provided, I calculated it. (See REC #2, 2-2 to 2-4).

¹⁰ Washer and dryer costs combined. (See REC #2, 2-3).

Determination of penalty

- (c)(1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the Commission may impose a penalty not exceeding \$5,000 for each violation.
- (2) To determine the amount of the penalty imposed, the Commission shall consider:
 - (i) the seriousness of the violation;
 - (ii) the harm caused by the violation;
 - (iii) the good faith of the licensee; and
 - (iv) any history of previous violations by the licensee.

COMAR 09.11.02.01C provides:

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.

COMAR 09.11.02.02A provides:

In accepting employment as an agent, the licensee shall protect and 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.

The REC bears the burden of establishing, by a preponderance of the evidence, that the Respondent committed the violations alleged in the Statement of Charges. COMAR 09.01.02.16A. To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

This discussion begins with the Contract between the Claimant and the Respondent. The evidence shows that the Claimant and the Respondent agreed to the Respondent's gathering potential tenant rental applications for the Claimant to screen. Initially, the Respondent gathered applications and presented them to the Claimant. The Claimant rejected all the applications and

asked the Respondent to provide additional information for the application submitted by Ms. Jones. The Respondent never provided any additional information.

Instead, the Respondent drafted a rental agreement, the Lease, with Ms. Jones on or about June 18, 2021. The Respondent thereafter collected \$4,050.00 from Ms. Jones. When the Claimant was alerted by his security system that there was activity in the Property, the Respondent told the Claimant it was due to his showing the Property. Although the Respondent told the Claimant that the increased activity was due to his having shown the Property, it was because the Respondent had executed the Lease with Ms. Jones on or about June 18, 2021, and she was living there. In the Lease, the Respondent told Ms. Jones that he was the property manager for the Property. (REC #9). The Respondent collected a security deposit and rental payments from Ms. Jones without informing the Claimant that he had rented the Property. The Respondent did not inform the Claimant that he rented the Property until approximately July 30, 2021.

The Claimant testified that he wanted to invest in Baltimore properties and bought the Property in 2019 through a different broker. Because he was looking for additional Baltimore properties, he worked with the Respondent. According to the Claimant it took him one year and three months to rehabilitate the Property. The rehabilitation process involved purchasing appliances. The Claimant paid \$4,601.27 for the appliances for the Property. (REC #2, 2 to 2-4).

The Respondent was only authorized to sell the Property. The Respondent secured several offers for purchase of the Property but none of them "went through." (Test. Cl.). The Claimant testified that the Respondent suggested that he rent the Property, and the Respondent was supposed to procure tenant applications for the Claimant to approve. According to the Claimant, the agreement was that he would review any application for a tenant and approve any

tenant before the tenant moved into the Property. Although the Respondent secured four or five applications, they were unsatisfactory to the Claimant due to income and/or credit issues of the potential tenants. The Claimant testified that he was considering one of the applications, that of Ms. Jones, for further consideration. He wanted more information, and requested that the Respondent get the additional information, but the Respondent never did. In his testimony, the Claimant referenced a June 30, 2021 text exchange between himself and the Respondent. (REC #7, 7-7).

In the text, the Respondent asked the Claimant how he felt about “that last app.” And the Claimant responded that he thought “[h]er history” was not “solid.” (REC #7, 7-7). The Claimant testified that this exchange related to Ms. Jones’s application to rent the Property, and that the Respondent knew he was not comfortable with Ms. Jones renting the Property. According to the Claimant, around June 18, 2021, he began receiving alerts from the Property’s security system that there was activity at the Property. The Respondent told him that it was due to the Respondent showing the Property. The activity increased and was at odd hours. The Claimant testified he confronted the Respondent about the activity, and, in late July 2021, the Respondent admitted that he had rented the Property to Ms. Jones. According to the Claimant, the Respondent attempted to provide him with a deposit for rental of the Property, but the Claimant refused to take the money because he did not want to appear to condone the rental. The Claimant contended that he and his wife, as owners of Junior, did not approve the Lease or the tenant.

The Claimant further testified that he attempted to work out an agreement with the Respondent to “mitigate” the “illegally placed tenant,” but no agreement could be reached. The Claimant indicated that he came to Baltimore to interview the tenant, but she did not appear for the interview. The Claimant testified that sometime after the Property was rented to Ms. Jones,

squatters took over the Property and he was forced to take legal action to get them evicted. When the Claimant finally gained access to the Property, he discovered all the appliances he purchased during his rehabilitation of the Property were damaged or missing. The Claimant reiterated that he never signed a lease or property management agreement, and never agreed to rent the Property to Ms. Jones and argued that the Respondent was directly responsible for placing Ms. Jones in the Property and the damages that resulted.

The Respondent testified that he established a relationship with the Claimant based on trust. The Respondent testified that he cleaned up the block surrounding the Property and got it “staged” for sale. Although the Respondent secured an offer at full price within ten days, the Claimant would not “fix things,” so the Respondent went about getting the Property set for rental, because the Claimant asked him to do so. According to the Respondent, the Respondent never wanted to be a landlord, he wanted to sell the Property for the Claimant.

The Respondent testified that he went forward with the rental because he believed he had the Claimant’s permission to do so. He further believed that the proposed management agreement made him responsible for the Property and tenant, and he wanted no such responsibility because he did not “do rentals at all.” He testified that he believed the Claimant would sign the Lease when he returned from an overseas trip, as best he could “recollect.” The Respondent corrected his testimony on cross examination and stated that the Claimant returned from his trip in May 2021, before the Lease was drafted.

Regarding Ms. Jones’s application, the Respondent testified that he knew the Claimant had “some questions about the file” and they discussed it “one and a half times.” The Respondent testified that the Claimant said no to the application he submitted before Ms. Jones’s application, but the Claimant did not say no to Ms. Jones’s application. Although he did not have “black and white evidence,” the Respondent testified that he spoke to the Claimant who

told him to “get it done.” He only signed the Lease as the property manager because he knew the Claimant did not want to be a landlord and the Respondent thought he would stay on in “some capacity” after they got everything “straightened out.”

The Respondent testified that he received a \$2,700.00 money order when the Lease was signed and it “might have been made out to [him].” He stated that he tried to provide money to the Claimant, but the Claimant would not take it and told him to keep it. The Respondent testified he was “unsure” if he deposited the money, and testified the Claimant offered him eighteen percent instead of the normal ten percent for him to manage the Property. He reiterated that the agreements between himself and the Claimant were built upon trust and not reduced to writing, and business was conducted ninety-five percent by telephone and in-person meetings versus a “black and white agreement.” The Respondent argued that the Claimant referred business to him following the Claimant’s dealings with Property, so he could not have been unprofessional if the Claimant was willing to refer people to him. He further argued that he has been in the real estate business for eleven years and licensed for eight. He helped “countless” individuals sell houses and has tried to stay away from rentals “as much as possible.” He received customer service awards in 2021 and 2022 and has mentored “countless” agents on how to be successful even though he has “made some mistakes.”

The REC argued the facts supported its allegations that the Respondent violated section 17-322(b)(25) of the Business Occupations Article because the Respondent acted in an untrustworthy manner, in bad faith, and fraudulently when he allowed Ms. Jones to move into the Property without a signed rental agreement. (*See* REC # 9). Even if Ms. Jones had signed it, and she did not, the Lease was still invalid because the Claimant never signed it. The REC argued that the Respondent, as the licensee, should “know better.” He had no authorization from

the Claimant, and knew he had no authorization. There was no signed document, but he allowed Ms. Jones to move into the Property.

Next, the REC argued the Respondent violated section 17-322(b)(3) of the Business Occupations Article because he represented to the Claimant that he would follow the procedures to allow the Claimant to vet potential tenants, e.g. that the Claimant would have the final say on who moved in after review of applications. The REC argued the Respondent violated section 17-322(b)(25) of the Business Occupations Article because the Claimant believed the Respondent would protect his interest in the Property and not allow someone to move in without the Claimant's authorization. The REC also argued that the Respondent violated COMAR 09.11.02.01C¹¹ when he failed to get authorization from the Claimant when the Respondent found a potential tenant. Additionally, he violated COMAR 09.11.02.02A¹² when he leased the Property to Ms. Jones after the Claimant expressly told him not to do so, therefore his actions did not protect or promote the interest of the Claimant.

The REC proposed that the Respondent be penalized by a reprimand and a \$500.00 fine for each of the four violations the REC enumerated in its Statement of Charges and arguments. The REC fashioned its recommendation by considering the factors under section 17-322(c) of the Business Occupations Article. The REC acknowledged the Respondent had no other history of complaints since his licensure. The REC recommended the reprimand and a total fine of \$2,000.00.

The Respondent agreed to provide real estate broker services to the Claimant. The Respondent attempted to sell the Property and, when that did not occur, agreed to send the

¹¹ "The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field...."

¹² "In accepting employment as an agent, the licensee shall protect and 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."

Claimant applications for rental of the Property. The Respondent and Claimant agreed that the Claimant would vet the applications and potential tenants and make the final decision of who could be a tenant. There was no evidence to the contrary and I believe the Claimant's testimony that the Respondent agreed to allow him to make the final decision on who could be a tenant, if anyone.

The Respondent found several potential tenants. The Claimant rejected all of them. Although the Respondent testified that he had the Claimant's authorization to lease the Property to Ms. Jones, there is no other evidence in the record to that effect, and the Respondent was not credible in his recollection of events. He testified that the Claimant told him to get it done and he thought the Claimant would sign the Lease upon his return from overseas. The Respondent corrected himself and testified that the Claimant had already returned the month before he negotiated the Lease with Ms. Jones. The Lease was not signed by Ms. Jones, although the Respondent testified that he may have signed the Lease elsewhere. (*See* REC #9). Nevertheless, I agree with the REC that even had the tenant signed it, the Claimant never did, and it was not made in accordance with the Contract. It is more likely than not that the Claimant told the Respondent no, and the Respondent acted without permission to lease the Property.

The Respondent collected a security deposit and rent from Ms. Jones but could not recall whether the money order payment was made out to him and could not recall whether he ever deposited the payment. However, on August 25, 2021, the Respondent informed the Claimant that he collected \$4,050.00 from Ms. Jones. (*See* REC #7, 7-26). At that time, he indicated that \$1,350.00 of that sum was his fee for renting the Property; \$500.00 was for HVAC; and \$120.00 was for the Baltimore City inspection fee. (*Id.*). The Respondent told the Claimant the balance owed to the Claimant was \$2,800.00. (*Id.*). This was over two months after the date of the Lease, June 18, 2021. (*See* REC #9).

For the foregoing reasons, I find the REC has proven by a preponderance of the evidence that the Respondent acted in a manner demonstrating bad faith, incompetency, and untrustworthiness. For the same reasons, I find the Respondent's conduct was dishonest and fraudulent and he engaged in improper dealings. Business Occupations Article § 17-322(b)(25). Although the REC made no argument specific to sections 17-322(b)(3), (32), and (33) of the Business Occupations Article, I find the Respondent violated each of these statutory provisions for the same reasons, based on the allegations in the Statement of Charges and the evidence in the record.

The REC also charged the Respondent with violating COMAR 09.11.02.01C and .02A, which requires the Respondent to protect the public against fraud, misrepresentation and unethical practices and protect and promote the interests of the client. The Respondent owed the Claimant an obligation of absolute fidelity and failed in every respect set forth above to promote the interest of the Claimant. The Respondent agreed to the Contract and knew that he was not authorized to lease the Property to Ms. Jones. The Respondent chose to draft a lease agreement naming himself the property manager, and kept it secret from the Claimant for over a month. He collected money from the tenant he allowed to move in and in his words would "straighten" it out later. In doing so, he misrepresented his role and wholly failed to adequately protect and promote the interest of the Claimant.

Given the foregoing, a reprimand is appropriate, and I recommend that sanction. With regard to a monetary penalty, the Respondent has no history of prior violations. The Respondent failed to adhere to the terms of his verbal Contract with the Claimant, unethically committed fraud and misrepresentation as well as failed to protect and promote the Claimant's interests. The Commission notified the Respondent that he was subject to "a monetary fine of up to \$5,000.00 per violation." (REC #2). The maximum possible monetary penalty for four violations is

\$20,000.00. The REC suggested a total of \$2,000.00 for the violations of sections 17-322(b)(25) of the Business Occupations Article, and COMAR 09.11.01.01C and 09.11.02.02A.

Section 17-322(c) of the Business Occupations Article provides the penalty for the alleged violations in this case. The maximum penalty is \$5,000.00 for each violation under this section. Business Occupations Article § 17-322(c). The REC's requested \$500.00 penalty for the Respondent's engagement in conduct exhibiting bad faith, incompetency, untrustworthiness and dishonest, fraudulent and improper dealings with the Claimant is proper under the facts of this case. Business Occupations Article § 17-322(b)(25). The Respondent additionally violated sections 17-322(3), (32), and (33) of the Business Occupations Article and COMAR 09.11.02.02A. Because penalties under section 17-322(c) apply to any violation of another provision of Title 17 of the Business Occupations Article, I find the \$500.00 penalty requested by the REC appropriate for the Respondent's violations. *See* Business Occupations Article § 17-322(b)(32). Finally, a violation of COMAR 09.11.02.02A is a violation of the Code and therefore a basis for a penalty under the Business Occupations Article. *See* Business Occupations Article § 17-322(b)(33). Therefore, I find a monetary penalty of \$500.00 appropriate under section 17-322(c) of the Business Occupations Article for a total penalty of \$2,000.00.

The Guaranty Fund Claim

Section 17-404 of the Business Occupations Article governs claims brought against the Fund. A claimant may recover compensation from the Fund for an actual loss based on an act or omission by a licensed real estate broker that occurs in the provision of real estate brokerage services involving a transaction that relates to real estate located in this State. Business Occupations Article § 17-404(a).

Business Occupations Article section 17-404 provides in pertinent part that:

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;

...

(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.

Therefore, a claim must be based on an act or omission in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or an act or omission that constitutes fraud or misrepresentation. Business Occupations Article § 17-404(a)(2)(iii); COMAR 09.11.03.04A and B.

With respect to claims against the Fund, COMAR 09.11.01.15 states as relevant to this case:

The amount of compensation recoverable by a claimant from the [Fund] ... 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.

Under Section 17-407(e) of the Business Occupations Article, the Claimants bear the burden of proof to establish their claim for recovery from the Fund. The burden of proof is by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2021); COMAR 09.01.02.16C. The Claimant proved by a preponderance of the evidence that he suffered an actual loss caused by the act or omission of the Respondent. The Fund argued that the Respondent obtained the security deposit and rent from Ms. Jones through misrepresentation, and the appliance damage and junk removal costs flowed from that misrepresentation. The Fund recommended compensation.

There is no dispute the Property is located in the State and there is no dispute the Respondent was a licensed real estate broker at the time of the events at issue. The Claimant agreed to rent the Property and has no business or familial relationship with the Respondent that would disqualify him from recovery. *See Business Occupations Article § 17-404(c)*. There is an allegation of theft, false pretenses, fraud and misrepresentation and, as described *infra*, there is evidence to support such findings. I conclude there was proof by a preponderance of the evidence of theft, false pretenses, fraud, and misrepresentation by the Respondent.

The Lease the Respondent drafted contemplated that the Property be rented for \$1,350.00 per month and a included a \$2,700.00 security deposit. The Respondent collected at least \$4,050.00 from the tenant that he impermissibly allowed to move into the Property.

Ms. Jones moved into the property and at some point, allowed squatters to move into the Property and take or destroy the Property's appliances.

The Respondent never returned the \$4,050.00. In addition, the Claimant lost all the appliances in the Property to theft or destruction because the Respondent fraudulently allowed Ms. Jones to lease the Property. The total amount the Claimant paid for the appliances was \$4,601.27. The Claimant was obliged to pay \$1,316.00 to remove Ms. Jones's and the squatters' belongings that were left behind when he was finally able to secure the Property. The Fund is set up to provide compensation for these types of losses. In this case, the Claimant proved by a preponderance of the evidence that he is entitled to compensation from the Fund in the amount that the Respondent collected from Ms. Jones and the amount he paid for the stolen and destroyed appliances and the amount paid to remove Ms. Jones's and the squatters' belongings. The total amount the Claimant lost due to the Respondent's actions is \$9,967.27.

The Fund may not reimburse more than \$50,000.00 for each claim. *Business Occupations Article § 17-404(b)*. The Claimant's claim falls below that amount.

PROPOSED CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I propose the Commission conclude as a matter of law that:


1. The Respondent directly and willfully made misrepresentations, and knowingly made a false promise in violation of section 17-322(b)(3) of the Business Occupations Article.
2. The Respondent engaged in conduct that demonstrated bad faith, incompetency or untrustworthiness and that constituted dishonest, fraudulent and improper dealings in violation of section 17-322(b)(25) of the Business Occupations Article.
3. The Respondent violated COMAR 09.11.02.02A, the REC's Code of Ethics and section 17-322(b)(33) of the Business Occupations Article, by failing to protect and promote the interests of his client or by failing to act with absolute fidelity to the client's interest.
4. A reprimand of the Respondent's Real Estate Commission license is an appropriate sanction, as well as a monetary penalty of \$2,000.00, which represents \$500.00 for each of the violations of sections 17-322(b)(3), (25), (32), and (33) of the Business Occupations Article. *See Business Occupations Article § 17-322(c); and see COMAR 09.11.02.01C; COMAR 09.11.02.02A.*
5. The Claimant established a compensable claim against the Fund under section 17-404 of the Business Occupations Article in the amount of \$9,967.27 representing rental income, the security deposit, and the costs to replace the Complainant's appliances and remove Ms. Jones's and the squatters' belongings.

RECOMMENDED ORDER

I therefore **RECOMMEND** that the Maryland Real Estate Commission **ORDER** as follows:

1. That the Respondent's real estate broker license be reprimanded;
2. That the Respondent pay a civil penalty in the amount of \$2,000.00;
3. The Maryland Real Estate Commission Guaranty Fund pay the Claimants' claim of \$9,967.27; and
4. That the records and publications of the Maryland Real Estate Commission reflect this decision.

August 2, 2024
Date Decision Issued


William F. Burnham
Administrative Law Judge

WFB/emh
#213230

MARYLAND REAL ESTATE
COMMISSION

v.

DUANE TUCKER,
RESPONDENT,

And

IN RE THE CLAIM OF TIMOTHY
ATCHISON AGAINST THE
MARYLAND REAL ESTATE
GUARANTY FUND

* BEFORE WILLIAM F. BURNHAM,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
*
* OAH No.: LABOR-REC-24-23-31463
* REC No.: 22-RE-207

* * * * *

FILE EXHIBIT LIST

The REC offered the following exhibits, which I admitted into evidence:

- REC #1 Notice of Hearing generated by the OAH, March 1, 2024; Subpoena, March 7, 2024
- REC #2 Statement of Charges and Order for Hearing, September 28, 2023
- REC #3 REC licensing records for the Respondent and related companies, printed April 23, 2024
- REC #4 REC, Report of Investigation, closed July 27, 2023, with the following attachments:
- Contact List, undated/unnumbered
 - Complaint filed with the REC, October 14, 2021 (1 to 1-6)¹
 - Email from J. Nixon to the REC with receipts and police reports, May 24, 2023; (2 to 2-7)
 - Licensing history of the Respondent, printed December 28, 2021 (3 to 3-2)
 - Points of Rebuttal, January 27, 2022 (4 to 4-2)
 - Response from Blue Star Real Estate Broker, John Keller, January 27, 2022 (5)
 - Email chain, various dates (6 to 6-1)
 - Text messages, various dates (7 to 7-35)
 - Rental Application, submitted June 4, 2021 (8 to 8-5)
 - Residential Dwelling Lease, June 18, 2021 (9 to 9-13)
 - Property Management Agreement, August 1, 2021 (10 to 10-3)

¹ The exhibit and attachments were pre-numbered by the Commission.

- Email chain, various dates (11 to 11-2)
- Email chain, various dates (12 to 12-2)
- Email from J. Nixon to the REC, July 19, 2023 (13)
- Email chain, various dates (14 to 14-2)

The Claimant did not offer any exhibits for inclusion in the record.

The Respondent did not offer any exhibits for inclusion in the record.

The Fund did not offer any exhibits for inclusion in the record.