

BEFORE THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM *
OF MELODY ANN NUTTER *
AGAINST THE MARYLAND REAL * CASE NO. 446-RE-2014
ESTATE GUARANTY FUND, * OAH NO. DLR-REC-22-15-04523
FOR THE ALLEGED MISCONDUCT *
OF NORMA J. HALD *

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated July 10, 2015, having been received, read and considered, it is by the Maryland Real Estate Commission, this 24th day of August, 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, **ADOPTED;**

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

as follows:

ORDERED, that the Claimants be reimbursed \$1,690.50 from the Maryland Real Estate Guaranty Fund to compensate for actual losses that they sustained because of the acts or omissions of the Respondent;

ORDERED, that the Respondent is ineligible for any Maryland Real Estate Commission license until the Respondent reimburses the Fund for all monies disbursed under this Order plus annual interest as prescribed by law;

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 provide that all real estate licenses held by the Respondent shall be suspended until the civil penalty is paid in full and the Guaranty Fund is reimbursed.

E. Pursuant to Code of Maryland Regulations (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.

Maryland Real Estate Commission

SIGNATURE ON FILE
[Handwritten signature]

IN THE MATTER OF THE CLAIM OF
MELODY ANN NUTTER,
CLAIMANT
v.
THE MARYLAND REAL ESTATE
COMMISSION GUARANTY FUND,
FOR THE ALLEGED MISCONDUCT OF
NORMA J. HALD,
RESPONDENT

* BEFORE MICHAEL J. WALLACE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
* OAH CASE No.: DLR-REC-22-15-04523
* MREC CASE No.: 446-RE-2014
*
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PROPOSED DECISION

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

STATEMENT OF THE CASE

On April 10, 2014, Melody Ann Nutter (the Claimant) filed a Complaint & Guaranty Fund Claim (the Claim) with the Maryland Real Estate Commission (the Commission) regarding the allegedly improper acts and omissions of a licensed real estate sales associate, Norma J. Hald (the Respondent). On or about December 10, 2014, the Respondent entered into a Consent Order (the Order) with the Commission. Pursuant to that Order, the Respondent agreed to pay a fine of \$3,500.00 and admitted that she violated Section 17-322(b)(25) and Section 17-532 (c)(iv) and (vi) of the Maryland Annotated Code's Business Occupations and Professions Article (the Business Occupations Article).

After an investigation, the Commission issued its January 27, 2015 Order for Hearing against the Respondent, referencing the January 14, 2015 Consent Order. On February 6, 2015, the Commission forwarded the Order for Hearing to the Office of Administrative Hearings (OAH) to conduct a hearing and to issue a proposed decision and order in this case.

On May 11, 2015, I conducted a hearing at OAH's Administrative Law Building in Hunt Valley, Maryland, pursuant to section 17-408 of the Business Occupations Article. The Claimant represented herself and the Respondent was present and was represented by Timothy G. Casey, Esquire. Assistant Attorney General Hope Sachs represented the Commission's Guaranty Fund (the Fund).

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

ISSUES

1. Did the Claimant sustain an actual loss, compensable by the Fund, due to the Respondent committing acts or omissions involving theft, embezzlement, false pretenses, forgery, fraud, or misrepresentation?
2. If so, what amount should be awarded to the Claimant from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

The Claimant submitted five exhibits for consideration as follows:

- | | |
|----------------|--|
| Claimant Ex. 1 | Attached (sic) B - Expenses in support of Guaranty Fund claim |
| Claimant Ex. 2 | Attachment C - Accrued Losses |
| Claimant Ex. 3 | Moving expenses; Vehicle rental agreement, dated December 12, 2014 |
| Claimant Ex. 4 | Storage costs; PODS Customer Care Center |

Claimant Ex. 5 Packet of other expenses of Claimant

The Respondent submitted six documents for consideration, as follows:

Respondent Ex. 1 Settlement Statement, dated December 20, 2013

Respondent Ex. 2 Settlement Statement, dated December 23, 2013

Respondent Ex. 3 Settlement Statement, dated December 23, 2013

Respondent Ex. 4 Addendum #7 to Contract of Sale, dated December 31, 2013

Respondent Ex. 5 Customer Receipt from Bank of America, dated November 25, 2013

Respondent Ex. 6 Fax Cover Sheet, dated December 28, 2013

The Fund submitted four exhibits as follows:

Guaranty Fund Ex. 1 March 26, 2015 Notice of Hearing with attached Order for Hearing

Guaranty Fund Ex. 2 The Respondent's licensing history, certified on May 6, 2015

Guaranty Fund Ex. 3 Complaint and Guaranty Fund Claim, received April 10, 2014, with attachments

Guaranty Fund Ex. 4 Consent Order, dated January 14, 2015

Testimony

The Claimant testified on her own behalf as did the Respondent. The Fund did not present any witness testimony.

PROPOSED FINDINGS OF FACT

I propose that the Commission find the following facts by a preponderance of the evidence:

1. At all relevant times, the Respondent was a licensed real estate sales agent for Long & Foster Real Estate under license number 05-307466.

2. Prior to October 21, 2013, the Claimant listed her house, located in Dunkirk, Maryland, (the Property) for sale with her Agent, the PAX Real Estate Group, Inc.
3. On October 21, 2013, Infinite Creations Inc. (Buyer) through its agent, the Respondent and Long & Foster, submitted an offer to purchase the Property for \$344,900.00.
4. As part of the terms of the offer, the Buyer was to pay a deposit in the amount of \$10,000.00, to be held in escrow by Long & Foster.
5. The Buyer's agent, Kimberly Gibson (also referred to as Kimberly Johnson), signed the contract offer on November 12, 2013 and submitted an earnest money deposit check in the amount of \$10,000.00 at that time.
6. This check was to be placed in Long & Foster's escrow account but never was.
7. The Respondent knew but did not disclose that the earnest money deposit check was not received or otherwise placed in escrow.
8. The Claimant signed the contract offer on November 18, 2013 and the contract was accepted on November 22, 2013.
9. On November 25, 2013, the Respondent emailed the Claimant's agent and advised that settlement would be scheduled for December 20, 2013 at Brennan Title Company in Prince Frederick, Maryland.
10. After settlement, the Buyer was to take immediate possession of the Property.
11. The Claimant moved from the Property on December 13, 2013 to another property that she owned in Lusby, Maryland.
12. By December 20, 2013, the Buyer had not made the purchase funds available to Brennan Title Company, the settlement agent.

13. Prior to December 20, 2013, the Respondent did not advise the settlement agent or the Claimant and her agent that none of the funds to be provided by the Buyer had been received.

14. Because no funds had been received from the Buyer, the settlement did not take place on December 20, 2013.

15. The settlement was rescheduled upon agreement of the parties to take place on December 23, 2013.

16. On that date, the Buyer still did not attend settlement and still had not provided funds to the settlement agent.

17. On December 27, 2013, the Respondent advised the Claimant's agent that she still had not received the Buyer's funds for the purchase but was working on getting proof that the Buyer had funds in her account for the purchase.

18. On December 28, 2013, the Respondent faxed an Addendum to the Contract of Sale, agreeing to move the settlement date to January 8, 2014, along with a copy of the Buyer's Bank of America withdrawal slip dated November 25, 2013 in the amount of \$500,000.00, which was intended to show that the Buyer possessed the funds for purchase of the Property.

19. The Claimant agreed to reschedule settlement and it was again rescheduled, this time for January 8, 2014.

20. On January 7, 2014, the Respondent advised the Claimant's agent that she was still waiting for receipt of the funds from the Buyer.

21. On January 8, 2014, the Buyer did not attend settlement and still had not provided purchase funds to the settlement agent.

22. On January 11, 2014, the Claimant sent a letter to her agent at PAX Real Estate stating

“...despite personal assurances by the buyer to the seller alleging bank errors, [the buyer] has not yet executed a closing. Although the agreed upon alternate dates have not been met either, [the Claimant] believes the buyers are sincere in promises to settle ‘post haste.’

‘Albeit, by this letter, [the Claimant] is making known, as of 01/11/14 she has instructed her realtor, Pax Real Estate, not to take any immediate actions which could cause the buyer, to ultimately default on their obligation.’”

23. On February 4, 2014, a Unilateral Notice of Termination under Contract of Sale form, signed by the Claimant, was sent to Long & Foster.

24. On February 7, 2014, Paul Lee, an associate broker/manager with Long & Foster, advised the Claimant’s agent that he could not locate the \$10,000.00 earnest money deposit check.

25. On April 10, 2014, the Claimant filed her Claim against the Fund for reimbursement of expenses incurred as a result of the Respondent’s failure to advise that the Buyer’s deposit check had not been deposited in the escrow account.

26. On January 14, 2015, the Commission resolved the intended regulatory action against the Respondent for her alleged failure to collect and submit the earnest money deposit of the Buyer and her failure to notify the Claimant and her agent that she (the Respondent) was not in possession of the earnest money deposit or that this deposit had not been placed in her escrow account.

27. On that date, the Respondent entered into a Consent Order with the Commission. In that Order, the Respondent agreed, among other things, that she failed to collect and submit the earnest money deposit of the Buyer and that she failed to notify the Claimant and her agent that she (the Respondent) was not in possession of the earnest money deposit or that this deposit

had not been placed in her escrow account, in violation of sections 17-322(b)(25) and 17-532(c)(1)(iv) and (vi) of the Business Occupations Article and COMAR 09.11.02.02-A.

28. On December 13, 2013, the Claimant incurred moving costs in the amount of \$730.15, including truck rental and labor.

29. The Claimant incurred storage costs in the amount of \$243.19 per month from November 26, 2013 through February 4, 2014 for a total of \$559.38 for sixty- nine days.

30. The Claimant paid taxes for the Property during the period of December 20, 2014 through February 4, 2014 at the rate of \$126.50 per month totaling \$193.97 for forty-six days.

31. The Claimant paid for insurance on the Property at the rate of \$135.00 per month for a total of \$207.00 for the period December 20, 2014 through February 4, 2014.

DISCUSSION

The Respondent consented to the payment of a \$3,500.00 fine for violating sections 17-322(b)(25) and 17-532 of the Business Occupations Article, which provide as follows:

§ 17-322. Denials, reprimands, suspensions, revocations, and penalties – Grounds

....

(b) Grounds. -- 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:

....

(25) engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings[.]

§ 17-532. Duties and Obligations of real estate licensees

Duty to promote interests of client

(c)(1) A licensee shall:

...

(iv) treat all parties to the transaction honestly and fairly and answer all questions truthfully; [and]

...

(vi) exercise reasonable care and diligence.

In addition, the Respondent was charged with violating COMAR 09.11.02.02A, which provides as follows:

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.

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

§ 17-404. Claims against the Guaranty Fund.

(a)(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;

....

(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.

....

(d) Limitations period. -- A claim under this subtitle shall be submitted to the Commission within 3 years after the claimant discovers or, by the exercise of ordinary diligence, should have discovered the loss or damage.

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.

The Claimant bears the burden of proving her entitlement to recover from the Fund.

Business Occupations Article § 17-407(e). It is undisputed that, at all relevant times, the Respondent was a licensed real estate sales person and her transactions with the Claimant related to Maryland real estate, fulfilling the requirements of sections 17-404(a)(2)(i) and (ii) of the Business Occupations Article. To prove entitlement to recovery from the Fund, the Claimant was therefore only required to prove that she incurred an actual loss based on the Respondent's acts or omissions, in which the Respondent obtained money or property by theft, embezzlement, false pretenses, or forgery, or by conduct that constituted fraud or misrepresentation.

Based on the evidence presented, I cannot find, and there is no dispute that the Respondent did not obtain money through theft, embezzlement, false pretenses, or forgery.

What is at issue is whether her actions amounted to fraud or misrepresentation.

To establish a cause of action for fraudulent concealment, a plaintiff must establish the following *elements*:

“(1) the defendant owed a duty to the plaintiff to disclose a material fact; (2) the defendant failed to disclose that fact; (3) the defendant intended to defraud or deceive the plaintiff; (4) the plaintiff took action in justifiable reliance on the concealment; and (5) the plaintiff suffered damages as a result of the defendant's concealment.”

Lloyd v. General Motors Corp., 397 Md. 108, 138 (2007)

To establish a cause of action for negligent misrepresentation, a plaintiff must establish the following:

“(1) the defendant, owing a duty of care to the plaintiff, negligently asserts a false statement; (2) the defendant intends that his statement will be acted upon by the plaintiff; (3) the defendant has knowledge that the plaintiff will probably rely on the statement, which, if erroneous, will cause loss or injury; (4) the plaintiff, justifiably, takes action in reliance on the statement; and (5) the plaintiff suffers damage proximately caused by the defendant's negligence.”

Id. at 135–36.

In this case, the evidence established that the Respondent failed to expressly notify the Claimant that an earnest money deposit check in the amount of \$10,000.00, which was supposedly received from the Buyer at the time the contract for sale of the Property was executed, was never placed in escrow. The evidence established that on October 21, 2013, the Buyer, through its agent, the Respondent and Long & Foster, submitted an offer to purchase the Claimant's Property for \$344,900.00. As part of the terms of the offer, the Buyer was to pay a deposit in the amount of \$10,000.00, which was to be held in escrow by Long & Foster. The Buyer's agent, Kimberly Johnson, signed the contract offer on November 12, 2013 and allegedly submitted an earnest money deposit check in the amount of \$10,000.00 at that time. This check was never placed into an escrow account as required by section 17-502 of the Business Occupations Article. More importantly, however, the Respondent did not disclose to the Claimant that the earnest money deposit check was not received or otherwise placed in escrow. In any event, the Claimant signed the contract offer on November 18, 2013 and the contract was accepted on November 22, 2013. Settlement was accordingly scheduled for December 20, 2013 at Brennan Title Company. The parties further agreed that immediately after settlement, the Buyer was to take immediate possession of the Property. In reliance on this provision, the Claimant moved from the Property on December 13, 2013 to another property that she owned in Lusby, Maryland.

By December 20, 2013, the Buyer had not made the purchase funds available to the settlement agent and the Respondent had not notified the Claimant, her agent or the settlement agent that the funds that were to be provided by the Buyer had not yet been received or that the deposit check had not been placed in escrow. On December 20, 2013, the settlement did not take place because no funds had been received from the Buyer. At this point the parties were on notice that the Buyer was not providing proof that she had the available funds to complete this transaction, but the Respondent indicated that she was in constant contact with the Buyer and was given assurances that proof of funds for the balance of the transaction was forthcoming. The Respondent still did not indicate that the earnest money deposit had not been received or otherwise placed in the escrow account. In reliance on the Buyer's and the Respondent's assertions, the settlement was rescheduled with the agreement of the parties, and was to take place on December 23, 2013. On that date, the Buyer still did not attend settlement and still had not provided funds to the settlement agent. On December 27, 2013 the Respondent again advised the Claimant's agent that she still had not received the Buyer's funds for the purchase but was working on getting proof that the Buyer had funds in her account for the purchase. On December 28, 2013, the Respondent faxed an Addendum to the Contract of Sale to the Claimant's agent, agreeing to move the settlement date to January 8, 2014, along with a copy of a Bank of America withdrawal slip dated November 25, 2013 in the amount of \$500,000.00 from an account that allegedly was the Buyer's. This withdrawal slip was intended to show that the Buyer possessed the funds for the purchase of the Property. This slip, however, did not contain the name of the Buyer or its agent and was dated November 25, 2013, one month previous.

Despite these setbacks, the Claimant was intent on getting the Property sold and agreed to reschedule settlement. It was again rescheduled, this time for January 8, 2014. On January 7, 2014, however, the Respondent advised the Claimant's agent that she was still waiting for receipt

of the funds from the Buyer. There was still no mention by the Respondent that the earnest money check had not been placed in escrow. On January 8, 2014, the Buyer did not attend settlement and still had not provided purchase funds to the settlement agent. The Claimant remained hopeful that the sale would go through but realized that the Buyer was “dragging its feet.” She instructed her agent not to do anything to cause the Buyer’s default under the contract in the hopes that the sale would go through. By February 4, 2014, however, the Claimant realized that the sale was not going to go through and submitted a Unilateral Notice of Termination under Contract of Sale form to Long & Foster. It was on February 7, 2014, that Paul Lee, an associate broker/manager with Long & Foster, advised the Claimant’s agent that he could not locate the \$10,000.00 earnest money deposit check.

The Respondent argued that she did not intentionally misrepresent any facts to the Claimant, her agent or the settlement agent but instead relied, in good faith, upon the assurances made by the Buyer that the Buyer would be sending the purchase money for the Property. She stated that the Buyer assured her that she (the Buyer) failed to produce proof of the funds only because she was having problems with her bank. The Respondent stated that the Claimant had expressed her interest in having the sale go forward, that she (the Respondent) was relying in good faith on the assurances made by the Buyer that she had the funds to purchase the property and that proof of such was forthcoming. The Respondent argued that the transaction did not go forward only because the Buyer did not cooperate and thus defaulted. The Respondent further argued that she was not the cause of the default or the reason for any of the Claimant’s actual losses.

The Respondent argued, in essence, that she did not engage in any conduct that constituted fraud or misrepresentation, but the evidence is clear that under COMAR 09.11.03.04, the Respondent owed a duty to the Claimant to disclose a material fact, namely, that the funds

for the deposit check and the purchase money were not available. The evidence is also clear that the Respondent, despite being aware the funds for the deposit check and the purchase money were not available, did not disclose any of this prior to the first settlement date and failed to disclose at any time until February 2014 that the deposit check had not been placed in escrow. The evidence also established that the Respondent knew that the funds were not available prior to the first settlement date and knew that the escrow check had not been deposited, because there were no funds available, but she failed to disclose this until February 2014. By the Respondent knowingly withholding this information, she clearly intended to do so despite the fact that she maintains that her intentions were good. Regardless, she still intentionally withheld this pertinent information and this action amounts to deceit. In reliance upon the Respondent's assurances, good faith or not, that the settlement would go forward on December 20, 2013, the Claimant moved from the Property on December 13, 2013 and incurred costs in doing so. Had the Respondent disclosed the fact that the Buyer still had not produced proof of the funds or that the deposit check had not been deposited in escrow before the Claimant moved, the Claimant might not have done so on December 13, 2013. The evidence, therefore, established that the Respondent misrepresented material facts to the Claimant, to the Claimant's detriment. The question remains as to whether the Claimant suffered any actual loss as a result of the Respondent's concealment.

The Claimant contended that she incurred various expenses since the date of the contract that she would not have incurred had the Respondent disclosed from the beginning that the Buyer did not have the funds to cover the deposit or the purchase price of the property. Had the Claimant known that the deposit check had not been deposited and that the Buyer did not have the purchase money available, she testified that she would not have moved when she did. The Claimant argued that she incurred costs, all in excess of \$25,000.00, because of the Respondent's

actions during this transaction. She claimed that she had moving expenses and maintenance costs as the property has sat idle since she moved, leaving it in a state of disrepair. She further claimed that she lost rental income that she could have realized from the property since she left it.

COMAR 09.11.01.18 limits a claimant's recovery to the "actual monetary loss" incurred by the claimant. In addition, the loss must arise out of a real estate transaction involving real estate located in this State which causes actual loss by reason of, among other things, fraud, misrepresentation, or deceit. COMAR 09.11.03.04.

The Claimant requested reimbursement for moving costs, maintenance on the Property, and rental income that she could have received had she rented the Property.

The Claimant bears the burden of proof to show that she sustained actual losses as a result of the Respondent's misrepresentations and deceit. The Claimant requested reimbursement for lost rental income but failed to establish that she attempted to rent the Property at any time. In fact, the Claimant admitted that she never attempted to rent the Property at any time since the execution of the contract or at any time thereafter. There is no provision that would allow me to award amounts for speculative rental income.

The Claimant also contended that she incurred expenses in maintaining the Property, and for other costs related to the Property. The Claimant, however, provided proof of expenses that were incurred beginning at the time of the contract execution through the present, claiming maintenance costs for such things as a new roof in December 2014 and for lawn care throughout 2014.

The Claimant had a duty to mitigate her losses and cannot expect the Fund to reimburse her for expenses that were incurred long after the contract with the Buyer was terminated on February 4, 2014. As mentioned above, the Claimant requested compensation for lost rental

income but she never attempted to rent the Property after she moved on December 13, 2013. Similarly, the Claimant had a duty to minimize her losses after the contract of sale was terminated on February 4, 2014. She, nonetheless, contended that she should be compensated for maintenance costs through the present date. The Guaranty Fund was not created to provide such a windfall, however. Instead, the Fund was created to place individuals who suffered actual losses on account of the wrongful actions of brokers and sales persons licensed by the Real Estate Commission back in the position that they were in prior to the actions of the broker or sales person.

The Claimant entered a contract of sale with the Buyer that was ratified on November 22, 2013. Subsequently, a deposit check was given to the Respondent at about the same time and settlement was scheduled for December 20, 2013. In preparation for this event and a move, the Claimant placed items in storage in late November and incurred moving expenses in December 2013. After relying on the assurances of the Buyer and Respondent that the settlement would indeed go forward even after being rescheduled several times, it finally became apparent to the Claimant that the contract of sale would not go forward. She then terminated the sales contract on February 4, 2014. After that date, the Claimant had a duty to mitigate her losses and put the Property back on the market. At this point, the Property was still hers to sell and hers to maintain. This is the position that she was in prior to the date of the first settlement on December 20, 2013.

The expenses that were incurred by the Claimant in anticipation of settlement and moving, as well as any expenses that she had after the first settlement date until the date that the contract of sale was terminated are, therefore, actual losses that were suffered by the Claimant as a result of the Respondent's actions.

The Claimant provided credible testimonial and documentary evidence that she had moving expenses in the amount of \$730.00, for storage of personal items from November 26, 2013 until February 4, 2014 in the amount of \$559.38, for taxes on the Property from December 20, 2013 through February 4, 2014 in the amount of \$193.97, and for homeowner's insurance for the same period in the amount of \$207.00, for a total of \$1,690.50 in expenses that can be considered actual losses since these expenses were incurred as a result of the Respondent's misrepresentation. See COMAR 09.11.03.04B(1).

CONCLUSIONS OF LAW

Based upon the foregoing Proposed Findings of Fact and Discussion, I conclude as a matter of law that the Claimant suffered an actual loss compensable by the Fund due to the Respondent committing acts or omissions involving misrepresentation and fraud; and that the Fund should pay the Claimant her actual monetary loss, in the amount of \$1,690.50, for the Respondent's wrongful acts and omissions. Business Occupations Article §§ 17-322(b)(25), 17-532, and 17-404(a)(2), and COMAR 09.11.02.02A.

PROPOSED ORDER

I PROPOSE that the Maryland Real Estate Commission ORDER as follows:

1. The Maryland Real Estate Commission Guaranty Fund shall pay to the Claimant, Melody Ann Nutter, her actual monetary loss, in the amount of \$1,690.50, for the Respondent's wrongful acts and omissions.
2. The Commission's records and publications shall reflect this proposed decision.

July 10, 2015
Date Decision Issued

MJW/da
#156502

SIGNATURE ON FILE

Michael J. Wallace
Administrative Law Judge

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
FIRST CLASS MAIL

August 24, 2015

Melody Ann Nutter
3049 Calvert Blvd.
Lusby, Maryland 20657

Timothy G. Casey, Esquire
451 Hungerford Drive, Suite 505
Rockville, Maryland 20850

**RE: In the matter of the claim of Meloday Ann Nutter against the Maryland Real Estate Guaranty Fund for the misconduct of Norma J. Hald
Case No. 446-RE-2014 GF**

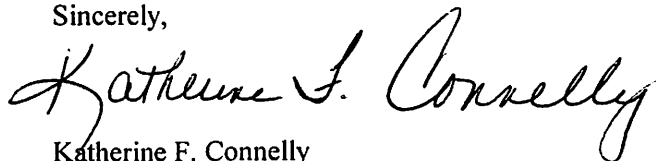
Dear Ms. Nutter and Mr. Casey:

Enclosed is your copy of the Proposed Order of the Commission issued **In the matter of the claim of Meloday Ann Nutter against the Maryland Real Estate Guaranty Fund for the misconduct of Norma J. Hald** heard by an Administrative Law Judge on May 11, 2015.

The Claimant and/or Respondent have the right to file Exceptions to the Proposed Order and to present Arguments to the Commission. Written exceptions to the Proposed Order or a request to present Arguments must be filed with the Commission within 20 days of the Claimant(s) and/or Respondent(s) receipt of this Proposed Order.

Should the Claimant and/or Respondent fail to make her and/or their Exceptions and request to present Arguments known to the Commission within the time specified, the Proposed Order of the Commission shall be deemed final and shall become effective 30 days thereafter. This additional period is to allow time should the Claimant and/or Respondent desire to file in a Court of Law.

Sincerely,



Katherine F. Connelly
Executive Director

KFC/bai

Enclosure: Copy of Proposed Order
cc: file