

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

VINCENT BLACKMON, *
Respondent *

* CASE NO. 2014-RE-481

And

* OAH NO. DLR-REC-24-15-22101

THE CLAIM OF RAYMOND AND JUNE *
HILL AGAINST THE MARYLAND REAL *
ESTATE GUARANTY FUND *

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law, and Recommended Order of the Administrative Law Judge dated December 3, 2015, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 28th day of January, 2016

ORDERED,

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

B. That the Conclusions of Law in the recommended decision be, and hereby are, **AMENDED** as follows:

That the Respondent violated Sections 17-322(b)(3), (4), (25), (32) and (33); and 17-532(c)(1)(iv) and (vi) of the Business Occupations and Professions Article, as well as COMAR 09.11.02.01C;

That the Respondent did not violate Sections 17-322(b)(22) and (31), or 17-502(a) of the Business Occupations and Professions

Article, or COMAR 09.11.02.02A;

That the Respondent is subject to a civil penalty pursuant to § 17-322(c) of the Business Occupations and Professions Article for the violations;

That the appropriate sanction and penalty for the Respondent in this case is a civil penalty of \$2,500;

That the Claimant is entitled to payment from the Maryland Real Estate Guaranty Fund, Business Occupations and Professions Article, Sections 17-401 through 17-412, in the amount of \$5,000.

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

ORDERED that the Respondent, Vincent Blackmon, shall be assessed a civil penalty in the amount of **Two Thousand Five Hundred Dollars (\$2,500)**, which shall be paid to the Real Estate Commission within thirty (30) days of the date of this Order;

ORDERED that the Claimants, Raymond and June Hill, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of **Five Thousand Dollars (\$5,000)**;

ORDERED that all real estate licenses held by the Respondent, Vincent Blackmon, shall be suspended until the civil penalty is paid in full, and the Maryland Real Estate Guaranty Fund is reimbursed, including any interest that is payable under the law; and

ORDERED that the records and publications of the Maryland Real

Estate Commission reflect this decision.

D. Pursuant to §10-220 of the State Government Article, the Recommended Order of the Administrative Law Judge had to be modified to provide that the Respondent pay a civil penalty within a thirty-day time period, and that his real estate licenses shall be suspended until the civil penalty is paid and the Guaranty Fund is reimbursed. The Commission believes that a penalty, rather than a reprimand, is necessary to properly reflect the serious nature of the Respondent's conduct.

The Commission does not agree with the ALJ that the harm caused by the violation is diminished because "the violation concerned a single check and a single transaction" and because "[t]here were only two victims". The Respondent knew, beginning when the Buyer first gave him the check, that there were insufficient funds to cover the check amount. The Respondent did not promptly advise the sellers or their agents of this fact. The Respondent then emailed a copy of the check to the sellers and their agent without informing them of the fact that the Buyer had insufficient funds to cover the check. Nor did the Respondent inform the sellers of the fact that the Respondent had not deposited the check in escrow as a result. At no point prior to the date of settlement did the Respondent notify the sellers of the Buyer's financial difficulties. In fact, the Respondent did not communicate at all with Claimants or their agent from August 1 to

August 30, 2012, even though the deadline for settlement was August 30.

The sellers relied on the Respondent's acts and omissions described above, which led them to believe that the check had been deposited in Respondent's escrow account and that settlement would occur on the agreed-upon date. Settlement was subsequently postponed; ultimately, Buyer's financial difficulties prevented the sale from occurring. Had Respondent notified the sellers of the Buyer's financial difficulties when Respondent was first notified of the issue on or about July 23, the sellers could have exited the contract and relisted the property. The harm caused by Respondent's acts and omissions was compounded by the fact that the contract of sale provided that the seller may retain the deposit if the Buyer defaults.

The Commission agrees that the Respondent's actions were unquestionably not in good faith. This is demonstrated by the fact that the Respondent had multiple opportunities to disclose the Buyer's financial difficulties to the sellers, and failed to do so.

The fact that the Respondent seemed contrite at the hearing is irrelevant. In past cases with similar fact patterns, the Commission has imposed a civil penalty. The penalty in these past cases was imposed through a negotiated consent order, rather than through an order following a contested case. In other words, the Respondents in past cases were also contrite, but still received a

fine.

Finally, in deciding to reprimand, rather than fine, the Respondent, the ALJ relied on at least two additional facts that have no relevance to the analysis required by Section 17-322 of the Business Occupations and Professions Article. First, the ALJ found that the Buyer was also at fault. This fact does not reduce the seriousness of the violation and the harm caused by the violation, and has no bearing on whether the licensee acted in good faith. The buyer will always be at fault in this type of case, and the ALJ erred in relying on this fact to recommend a reprimand. Second, the ALJ states that a reprimand will curb any improper conduct in the future, and then notes, in a footnote, that the Respondent will have to reimburse the Guaranty Fund. To the extent that the ALJ recommended a reprimand rather than a fine due to the existence of the Guaranty Fund claim, he erred. The existence of a Guaranty Fund claim is not one of the statutory factors that the Commission is required to consider, and the Commission does not find it to be pertinent to the analysis of whether a civil penalty is warranted.

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

Baltimore, MD 21202.

SIGNATURE ON FILE

Maryland Real Estate Commission

MARYLAND REAL ESTATE

*** BEFORE JOHN J. LEIDIG**

COMMISSION

*** AN ADMINISTRATIVE LAW JUDGE**

v.

*** OF THE MARYLAND OFFICE OF**

VINCENT BLACKMON,

*** ADMINISTRATIVE HEARINGS**

RESPONDENT,

*** OAH No.: DLR-REC-24-15-22101**

and

*** MREC No.: 2014-RE-481**

THE CLAIM OF

RAYMOND AND JUNE HILL

AGAINST THE REAL ESTATE

COMMISSION GUARANTY FUND

*** * * * ***

PROPOSED DECISION

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

STATEMENT OF THE CASE

On May 1, 2014, Raymond and June Hill (Claimants) filed a complaint with the Maryland Real Estate Commission (REC) against Vincent Blackmon (Respondent) relating to the proposed sale of 1425 Ben Doane Road, Indian Head, Maryland (Property). On the same day, the Claimants filed a claim against the Real Estate Commission Guaranty Fund (Fund) for reimbursement for losses allegedly incurred by them as a result of the Respondent's conduct.

On June 26, 2015, the REC issued a Statement of Charges and Order for Hearing against the Respondent.

I conducted a hearing on September 17, 2015 at the Office of Administrative Hearings (OAH), Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. §§ 17-324 and 17-408 (2010). Jessica Kaufman, Assistant Attorney General, represented the REC. The Respondent represented himself. The Claimants represented themselves. No one appeared to represent the Fund.

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings of the Office of the Secretary of the Department of Labor, Licensing and Regulation (DLLR), and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); Code of Maryland Regulations (COMAR) 09.01.02; COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Respondent violate the following sections of the Business Occupations Article:
 - a. 17-322(b)(22) (fail to account for or to remit promptly any money that comes into possession of the licensee but belongs to another person);
 - b. 17-322(b)(25) (engage in conduct that demonstrates bad faith, incompetency, untrustworthiness or that constitutes dishonest, fraudulent or improper dealings);
 - c. 17-322(b)(31) (violate any provision of Subtitle 5 relating to trust money);
 - d. 17-322(b)(32) (violate other provisions of this subtitle);
 - e. 17-322(b)(33) (violate any regulation adopted under this title or any provision of the code of ethics);
 - f. 17-502(a) (fail to promptly submit trust money to the real estate broker); and
 - g. 17-532(c)(1)(iv) and (vi) (fail to exercise reasonable care and diligence, treat all parties to the transaction honestly and fairly, and answer all questions truthfully)?

2. Did the Respondent violate the following sections of COMAR:
 - a. 09.11.02.01C (fail to protect the public against fraud, misrepresentation, or unethical practices in the real estate field); and
 - b. 09.11.02.02A (fail to protect and promote the interests of his client)?
3. If the Respondent violated any of the laws or regulations cited above, what sanction and/or penalty is appropriate under Section 17-322(b) and (c)?
4. Did the Claimants sustain an "actual loss" compensable by the Fund as the result of an act or omission of the Respondent within the meaning of section 17-404(a) of the Business Occupations Article, and if so, what should be the amount of the award?

SUMMARY OF THE EVIDENCE

Exhibits

The REC submitted the following exhibits that I admitted into evidence:

- REC Ex. 1 Notice of Hearing dated July 23, 2015
- REC Ex. 2 REC Transmittal, with attached Statement of Charges and Order for Hearing dated June 26, 2015
- REC Ex. 3 REC Information regarding the Respondent's licensing history
- REC Ex. 4 REC Report of Investigation dated February 18, 2015

The Respondent submitted the following exhibits that I admitted into evidence:

- Resp. Ex. 1 Email chain between Claimants' agent, Respondent, and Jose Baigorria, dated August 9, 30, and 31, 2012
- Resp. Ex. 2 Email chain between Claimants' agent, Respondent, and Jose Baigorria, dated August 30 and 31, 2012
- Resp. Ex. 3 Emails from Claimants' agent to Respondent, dated August 23, 2012
- Resp. Ex. 4 Emails between Claimants' agent and Respondent, dated August 31, 2012
- Resp. Ex. 5 Emails between Claimants' agent, Steve Williams, Buyer and Respondent, dated September 20, 2012

Resp. Ex. 6 Emails between Amie Island, Claimants' agent, and Respondent, dated August 22, 2012

The Claimants did not offer any exhibits for admission into evidence.

Testimony

The REC presented the testimony of the following witnesses: Frank E. Smith, real estate broker with Home Source; Mrs. June Hill, one of the Claimants and co-owner of the Property; Bryan Gamble, the Claimants' agent for the Sale; Robert A. Hall, the DLLR investigator assigned to the matter; and the Respondent.

The Claimants presented additional testimony from June Hill.

The Respondent testified on his own behalf.

FINDINGS OF FACT

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

1. At all times relevant, the Respondent was a licensed real estate salesperson for Home Source Residential (Home Source).
2. The Respondent holds license number 96911 with the REC.
3. On or about July 13, 2012, the Claimants entered into a Residential Contract of Sale (Contract) with Sergio Penado (Buyer) for the sale (Sale) of the Property.
4. The Respondent was the Buyer's agent for the Sale.
5. The Contract required the Buyer to deliver a deposit (Deposit) of \$5,000 at the time he signed the Contract, with the Deposit to be held in escrow by Home Source.
6. Section 33 of the Contract provides that the seller (Complainants) may retain the Deposit if (a) the Buyer defaults, and (b) the parties sign a Release of Deposit Agreement (Release).

7. The Contract further stated that settlement of the Sale would occur on or before August 30, 2012.

8. On or about July 23, 2012, the Buyer gave the Respondent a check for \$5,000.00 (Check), payable to Home Source, to pay the Deposit. The Check was written on the account of Braga Concrete LLC.

9. When the Buyer gave the Respondent the Check, he told the Respondent that the Check would not clear (i.e., there were insufficient funds to cover it) and asked the Respondent not to deposit the Check immediately. The Respondent did not promptly advise the Claimants or their agent of these facts. ✖

10. On July 26, 2012, the Respondent emailed a copy of the Check to the Claimants' agent. The subject of the email was "Earnest Money Deposit for Ben Doane." ✖

11. The Respondent did not deposit the Check within seven days after receiving it from the Buyer. The Respondent did not promptly advise the Claimants or their agent of this fact.

12. In early August 2012, the Respondent learned the Buyer was having financial difficulties and would most likely be unable to consummate the settlement on or before August 30, 2012. The Respondent did not promptly advise the Claimants or their agent of the Buyer's financial difficulties. ✖

13. The Respondent did not call, email or otherwise initiate any communication with the Claimants or their agent during the period from August 1 to August 30, 2012, even though the deadline for settlement was August 30, 2012, and despite repeated calls and emails to him by the Claimants' agent. ✖

14. In late August, the Respondent attempted to deposit the Check at least twice, but it was returned for insufficient funds. The Respondent thereafter contacted the Buyer who

agreed to deliver \$500.00 in certified funds immediately, plus \$4,500.00 in additional funds by October 12, 2012.

15. Because the Respondent withheld information from them concerning the Check and the Buyer's financial difficulties, the Claimants and their agent believed the \$5,000.00 Check had been deposited and settlement would take place on or before August 30, 2012.

16. The Sale did not settle on or before August 30, 2012.

17. By email dated August 31, 2012, the Claimants' agent notified Respondent that the Buyer was in default of the Contract because the Sale did not settle on or before August 30, 2012.

18. On September 2, 2012, the parties signed a General Addendum to extend the settlement date to September 30, 2012.

19. In September 2012, the Respondent informed the Claimants and their agent that the Check had not been deposited and that he had only received \$500.00 from the Buyer as escrow for the Sale.

20. On October 13, 2012, the parties signed another General Addendum (Second Addendum) to further extend the settlement date to March 15, 2013. In the Second Addendum, the Buyer agreed to deliver \$4,500.00 to Home Source by October 12, 2012 "to complete [the] escrow account."

21. The Buyer did not deliver \$4,500.00 to Home Source by October 12, 2012.

22. The Sale never went to settlement.

23. In October and early November 2012, the Claimants and their agent made repeated demands upon the Buyer and the Respondent to sign a Release and disburse the Deposit

to the Claimants, but the Buyer never signed the Release and Claimants did not receive any money as a result of those demands.

24. The actual loss sustained by the Claimants was \$5,000.00.

DISCUSSION

Regulatory Charges

The REC bears the burden of proving that the Respondent committed violations of laws or regulations. COMAR 09.01.02.16A. In this case, the REC alleges that while acting as the Buyer's agent, the Respondent violated the following provisions of the Business Occupations and Professions Article of the Annotated Code of Maryland:

§ 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:

- (3) directly or through another person willfully makes a misrepresentation or knowingly makes a false promise;
- (4) intentionally or negligently fails to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee or applicant deals;
- (22) fails to account for or to remit promptly any money that comes into the possession of the licensee but belongs to another person; ...
- (25) engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;
- (31) violates any provision of Subtitle 5 of this title that relates to trust money;

- (32) violates any other provision of this title;
- (33) violates any regulation adopted under this title or any provision of the code of ethics.

§ 17-502. Handling of trust money.

(a) Submission to brokers by associate brokers and salespersons. – An associate real estate broker or a real estate salesperson who obtains trust money while providing real estate brokerage services promptly shall submit the trust money to the real estate broker on whose behalf the associate real estate broker or the real estate salesperson provided the real estate brokerage services.

§ 17-532. Duties to client.

(c) In general. -

(1) A licensee shall: ...

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

(vi) exercise reasonable care and diligence.

Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(3), (4), (22), (25), (31) - (33), 17-502(a), 17-532(c)(1) (2010). The REC also alleges violations of the following sections of COMAR:

09.11.02.01 Relations to the Public

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

09.11.02.02 Relations to the Client

A. 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.

Several of the charges brought by the REC involve misrepresentation, a term that is not specifically defined in the applicable statutes and regulations. Nevertheless, Maryland recognizes two distinct types of misrepresentation: fraudulent and negligent. Fraudulent misrepresentation, also known as an action for deceit, requires proof of scienter, an intent to deceive the other party. *Martens Chevrolet, Inc. v. Seney*, 292 Md. 328, 333 (1982) (citing *Cahill v. Applegarth*, 98 Md. 493 (1904)). Negligent misrepresentation exists when all five of the following are present:

- (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.

Martens Chevrolet, 292 Md. at 337.

“Negligent misrepresentation ... depends on the existence of a duty owed by a defendant to the plaintiff. ‘Patently, the duty to furnish the correct information arises when the relationship is of the nature that one party has the right to rely upon the other for information. The precise degree of the relationship that must exist before recovery will be allowed is a question that defies generalization.’” *Cooper v. Berkshire Life Ins. Co.*, 148 Md. App. 41, 57-58 (2002), citing *Giant Food, Inc. v. Ice King, Inc.*, 74 Md. App. 183, 189 cert denied, 313 Md. 7 (1988). “[T]he most common example of the duty to speak with reasonable care is based on a business or professional relationship, or one in which there is a pecuniary interest.” *Id.* at 190 (citing *Prosser & Keeton on the Law of Torts* § 107, at 105 (5th ed. 1984, 1988 Supp.)).

Analysis

The REC presented un rebutted evidence demonstrating the Respondent was the Buyer's duly-licensed sales agent for the Contract executed July 13, 2012. REC Ex. 4 at pp. 11-39. The Contract expressly provides that the Buyer was required to deliver a deposit (Deposit) of \$5,000 at the time he signed the Contract, with the Deposit to be held in escrow by Home Source.

In addition, the Respondent admitted in his testimony that the Buyer gave him the \$5,000.00 Deposit Check on July 23, 2012, he emailed a copy of the Check to the Claimants' agent on July 26, 2012, but he did not attempt to deposit the Check until late August 2012. The Respondent also admitted that he learned in early August 2012 the Buyer was having financial difficulties and would most likely be unable to consummate the settlement on or before August 30, 2012. Further, the Respondent conceded he did not promptly advise the Claimants or their agent of the Buyer's financial difficulties, and he did not tell them until September (after the August 30, 2012 settlement deadline had already passed) that the Check had not been deposited. The Respondent stated that he knew he "broke the rules" by failing to promptly deposit the check, but explained that he was caught up in the excitement of the deal and felt as though the Buyer had misled him into believing the Buyer would have funds to cover the Check soon.

June Hill (one of the Claimants) and Bryan Gamble (the Claimants' agent) testified credibly that the Respondents' acts and omissions led them to believe that the Check had been deposited no later than July 26, 2012 (when the Respondent emailed a copy of the Check to Mr. Gamble), and that settlement would occur no later than August 30, 2012. It was reasonable for the Claimants and their agent to draw that conclusion, particularly because the Respondent was not forthcoming with information about the Buyer and the Check that was material to the Sale.

Based on the evidence, I conclude that the Respondent did violate Sections 17-322(b)(3), (4), (25), and (33); and 17-532(c)(1)(iv) and (vi) of Business Occupations and Professions

Article. Subsection (b)(3) was violated because the Respondent made an intentional and fraudulent misrepresentation to the Claimants and their agent concerning the Check. In particular, emailing a copy of the Check to the Claimants' agent on July 26, 2012, without simultaneously informing the Claimants' agent that the Check had not been deposited, was a misrepresentation. The Claimants and their agent reasonably concluded that the Check had been deposited and was held in escrow.

For similar reasons, I conclude that the Respondent violated subsection (b)(4): the failure to promptly deposit the Check is a material fact about the Property that the Respondent failed to disclose to the Claimants. The Respondent also improperly failed to promptly disclose to the Claimants the Buyer's statement that he would probably not consummate the Sale by August 30, 2012.

The Respondent violated subsection (b)(25) because his failure to promptly deposit the Check and his failure to warn the Claimants that the Buyer's financial difficulties would likely prevent the Sale from closing as scheduled demonstrate incompetence and untrustworthiness.

Further, the Respondent violated subsection (b)(33) because he failed to comply with COMAR 09.11.02.01C. Specifically, the Respondent failed to protect the public from misrepresentation by perpetrating a misrepresentation on the Claimants.

I also conclude that the Respondent violated Section 17-532(c)(1). Although this Section is primarily intended for the benefit of clients (in this case, the Respondent's client was the Buyer), the Respondent nevertheless clearly violated subsections (c)(1)(iv) and (vi) by failing to treat the Claimants honestly and fairly, and by failing to exercise reasonable care and diligence with respect to the escrow for the Sale.

With respect to the remaining charges brought by the REC, I conclude that the REC has not met its burden because there was insufficient proof that the Respondent ever came into

possession of any “trust money.” Although the Respondent did receive the Check from the Buyer, there is no evidence in the record that there were ever sufficient funds in the Braga Concrete LLC bank account to cover the Check. Also, the evidence was un rebutted that the Check was returned for insufficient funds. Thus, the evidence is inadequate to prove that the Check constituted “money” within the meaning of Section 17-501(c) (defining the term “trust money” as a “deposit, payment, or other money”) (emphasis added). Accordingly, I conclude that the Respondent did not violate Sections 17-322(b)(22) and (31), or 17-502 because those sections require proof that the Respondent failed “to account for or to remit promptly any money that comes into the possession of the licensee” and that the Respondent obtained “trust money while providing real estate brokerage services.” (Emphasis added.) Also, the REC did not produce any evidence to prove that the Respondent mishandled the \$500.00 in certified funds that the Buyer allegedly gave him in August 2012; the report of the REC investigator states that an escrow audit was performed and there were no deficiencies noted. REC Ex. 4 at p. 5.

Finally, I conclude that the Respondent did not violate COMAR 09.11.02.02A because that regulation is designed to protect the Respondent’s client (i.e., the Buyer), not the Claimants. While the regulation indicates that it does not relieve real estate professionals of their statutory obligations to other parties, it does not define, create, or provide a mechanism for enforcement of obligations to non-clients.

Sanction and Penalties

As discussed above, pursuant to section 17-322(b) of the Business Occupations and Professions Article, the REC may reprimand the Respondent, or suspend or revoke his license, for a violation of that section. The REC may also impose a penalty for such violations under section 17-322(c), which provides in pertinent part:

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

(c) Penalty. –

- (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.****
- (3) The Commission shall pay any penalty collected under this subsection into the General Fund of the State.**

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2010).

The REC requested in closing argument that I recommend a reprimand of the Respondent and a fine of \$8,000.00 (\$1,000.00 for each violation). For the following reasons, I find that a reprimand is appropriate.

The Respondent committed a very serious violation of his professional obligations: he failed to deal honestly with the Claimants and their agent. The Respondent concealed that the Buyer asked him not to immediately cash the Check, and he further concealed that the Check had not been deposited. These intentional and improper acts led the Claimants to reasonably believe that \$5,000.00 was being held in escrow by Home Source. Even worse, the Respondent concealed the truth for two months.

Without diminishing the seriousness of the Respondent's violation, it should be noted that the violation concerned a single check and a single transaction. There were only two victims, and the evidence convinces me that the Buyer was also at fault. Thus, my evaluation of

the harm caused leads me to believe that neither suspension nor revocation of the Respondent's license is appropriate.

The Respondent's actions were unquestionably not in good faith—he perpetrated an intentional misrepresentation that the \$5,000 had been deposited and honored—and they deprived the Claimants of the opportunity to evaluate, based on truthful information, whether they wished to proceed with the Sale. The Respondent's actions certainly reflect poorly on real estate professionals, because the public trusts that escrow funds are kept securely. At the same time, the Respondent seemed genuine contrite at the hearing, and I am sufficiently convinced that a reprimand, without any additional penalty under 17-322(c), will curb any improper conduct in the future.¹

The REC did not provide any evidence of prior violations by the Respondent. For all of these reasons, I conclude that a reprimand is the most appropriate sanction.

Guaranty Fund Claim

Claims for reimbursement from the Fund are governed by section 17-404 and COMAR

09.11.03.04. Section 17-404 provides on pertinent part:

§ 17-404. Recovery of compensation from Guaranty Fund

(a) *In general.* –

- (1) Subject to the provisions of this subtitle, a person may recover compensation from the Guaranty Fund for an actual loss.
- (2) A claim shall:
 - (i) be based on an act or omission that occurs in the provision of real estate brokerage services by:
 1. a licensed real estate broker;
 2. a licensed associate real estate broker;

¹ As explained below, however, the Respondent will have to reimburse the Fund for the award made herein.

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

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

(iii) be based on an act or omission:

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

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

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

.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 licensed 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.

At a hearing concerning a claim against the Fund, the burden of proof rests with the claimant to establish the validity of the claim. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2010). For the following reasons, I find that the Claimants established by a preponderance of the evidence that they are entitled to reimbursement from the Fund.

The first two requirements of section 17-404 have been met in that Respondent was a licensed real estate broker and the transaction involved real estate located in Maryland.

The third requirement has also been met because, as explained above, the acts and omissions of the Respondent constitute misrepresentation. In particular, by sending the Claimants a copy of the Buyer's Check and failing to disclose that it had not been deposited, the Respondent led the Claimants to believe that the \$5,000.00 represented by the Check were good funds that had been deposited into the Respondent's escrow account. Neither of those things was true: the Buyer had told the Respondent not to cash the Check because there were insufficient funds in the account to cover it, and the Respondent had not deposited the Check into his escrow account. Moreover, the Respondent failed to advise the Claimants or their agent of material information regarding the Buyer's financial condition that cast substantial doubt on the Buyer's ability to consummate the Sale. Furthermore, the Respondent failed to promptly inform the Claimants or their agent that the Check was returned for insufficient funds when he attempted to cash it in August 2012. The fact that the Claimants later agreed to extend the settlement date and make other arrangements for the Buyer to pay the Deposit does not excuse the misrepresentations made by the Respondent with respect to the Check and the Buyer's financial condition.

Based on the Respondent's misrepresentations, the Claimants reasonably believed in late July and early August 2012 that there was \$5,000.00 in the Respondent's escrow account as a good-faith deposit on the Sale of the Property. Further, were it not for the Buyer's improper refusal to sign a Release, the Claimants would be entitled to the entire Deposit because the Buyer defaulted under the Contract. Accordingly, I conclude that the Claimants suffered an actual monetary loss as a result of the Respondent's conduct, namely, the loss of the \$5,000.00 that the Respondent misrepresented was in the escrow account.

Therefore, I recommend the Claimant be awarded the amount of \$5,000.00 from the Fund to compensate them for actual losses sustained as a result of the acts and omissions of the Respondent.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, as follows:

1. The Respondent violated Sections 17-322(b)(3), (4), (25), (32) and (33); and 17-532(c)(1)(iv) and (vi) of the Business Occupations and Professions Article, as well as COMAR 09.11.02.01C.
2. The Respondent did not violate Sections 17-322(b)(22) and (31), or 17-502(a) of the Business Occupations and Professions Article, or COMAR 09.11.02.02A.
3. The REC should reprimand the Respondent. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b), (c).
4. The Fund should pay Claimants June and Raymond Hill their actual monetary loss, in the amount of \$5,000.00, for the Respondent's misconduct. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a) (Supp. 2014).

RECOMMENDED ORDER

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

1. The Commission's charges against the Respondent, Vincent Blackmon, under Sections 17-322(b)(3), (4), (25), (32) and (33); and 17-532(c)(1)(iv) and (vi) of Business Occupations and Professions Article, as well as under COMAR 09.11.02.01C are **UPHELD**;
2. The Commission's charges against the Respondent, Vincent Blackmon, under Sections 17-322(b)(22) and (31), or 17-502(a) of the Business Occupations

and Professions Article, as well as under COMAR 09.11.02.02 are **NOT**

UPHELD;

3. The Respondent, Vincent Blackmon, is hereby **REPRIMANDED** by the Commission.
4. The Maryland Real Estate Commission Guaranty Fund shall pay to June and Raymond Hill, their actual monetary loss, in the amount of \$5,000.00, for the Respondent's wrongful acts and omissions.
5. The Respondent, Vincent Blackmon, shall reimburse the Maryland Real Estate Commission Guaranty Fund for all sums paid to June and Raymond Hill; and
6. The Commission's records and publications shall reflect this final decision.

December 3, 2015
Date Decision Mailed

SIGNATURE ON FILE

John J. Leidig
Administrative Law Judge

JJL/emh
#159631

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
FIRST CLASS MAIL

January 28, 2016

Mr. & Mrs. Raymond Hill
150 Hoile Lane
Huntington, MD 20639

Vincent E. Blackmon
Berkshire Hathaway Home Services PenFed Realty
3410 N. High Street
Olney, Maryland 20832

**RE: Maryland Real Estate Commission vs. Vincent Blackmon and the Claim of Raymond and June Hill against the Real Estate Commission Guaranty Fund
Case No. 481-RE-2014 G.F.**

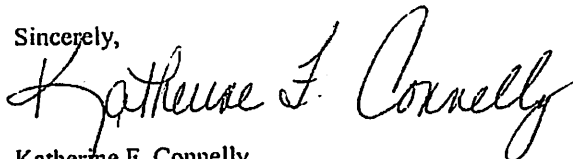
Dear Mr. & Mrs. Hill and Mr. Blackmon:

Enclosed is your copy of the Proposed Order of the Commission issued on behalf of the Maryland Real Estate Commission vs. Vincent Blackmon and the Claim of Raymond and June Hill against the Real Estate Commission Guaranty Fund heard by an Administrative Law Judge on September 17, 2015.

The Claimant(s) 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 postmark date of this letter enclosing the Proposed Order.

Should the Claimant(s) and/or Respondent(s) fail to make his 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 20 days after the postmark date on this letter and attached Proposed Order. An appeal of the Proposed Order must be filed within 30 days of the date on which the Proposed Order becomes final and may be sought in the Circuit Court of Maryland in the county in which the applicant for judicial review resides or has his principal place of business, or in the Circuit Court for Baltimore City. For more detailed information on the appeal process, please see Section 10-222, State Government Article, Annotated Code of Maryland and Maryland Rules of Procedure 7-200 through 7-210. You should also be aware that in the even you decide to file an appeal, you will be responsible for obtaining and paying for a copy of the transcript of the hearing before the Office of Administrative Hearings. You should contact the Office of Administrative Hearings to determine which reporting service will be able to provide you with the transcript.

Sincerely,



Katherine F. Connelly
Executive Director

KFC/bai

Enclosure: Copy of Proposed Order

Cc: file

PHONE: 410-230-6200 • EMAIL: d1mrec-dllr@maryland.gov • INTERNET: www.dllr.maryland.gov