

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM * BEFORE ANN C. KEHINDE
 OF GARY NGO AND SANDY TANG * ADMINISTRATIVE LAW JUDGE
 CLAIMANTS * OF THE MARYLAND OFFICE OF
 AGAINST THE MARYLAND * ADMINISTRATIVE HEARINGS
 REAL ESTATE COMMISSION *
 GUARANTY FUND FOR THE * OAH NO: DLR-REC-22-15-37177
 ALLEGED MISCONDUCT OF *
 MICHAEL BAUGHER, RESP. * MREC NO: 2015-RE-630 G.F.
 * * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated May 18, 2016, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 15th day of June, 2016.

ORDERED,

- A. That the Findings of Fact in the Recommended Decision be, and hereby are, AFFIRMED;
- B. That the Conclusions of Law in the Recommended Decision be, and hereby are, APPROVED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

D. That the records, files and documents of the Maryland State Real Estate Commission reflect this decision.

MARYLAND STATE REAL ESTATE COMMISSION

SIGNATURE ON FILE

6/15/2016
Date

By: _____
Marla S. Johnson, Commissioner

**IN THE MATTER OF THE CLAIM OF
GARY NGO AND SANDY TANG,
CLAIMANTS,**

v.

**THE MARYLAND REAL ESTATE
COMMISSION GUARANTY FUND
FOR THE ALLEGED MISCONDUCT OF
MICHAEL BAUGHER, A LICENSED
REAL ESTATE SALESPERSON,
RESPONDENT**

*** BEFORE ANN C. KEHINDE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
*
* OAH CASE No.: DLR-REC-22-15-37177
* MREC COMPLAINT No.: 15-RE-630
*
*
*
*

* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On June 25, 2015, Gary Ngo and Sandy Tang (Claimants) filed a complaint with the Maryland Real Estate Commission (Commission)¹ in which they claimed compensation from the

¹ The Commission is part of the Department of Labor, Licensing, and Regulation (Department). Md. Code Ann., Bus. Occ. & Prof. § 17-201 (2010).

Commission Guaranty Fund (Guarantee Fund). The Claimants sought \$6,150.00² for an actual loss allegedly caused by the misconduct of Michael Baugher (Respondent), a licensed real estate salesperson³ who was acting as an agent for Summit Property Management, LLC. On October 15, 2015, the Claimant sought permission from the Commission to amend the amount sought to \$9,583.50.

On October 19, 2015, the Commission ordered a hearing on the claim. On October 22, 2015, the Commission transmitted the case to the Office of Administrative Hearings (OAH) for a hearing.

On February 22, 2016, I convened a hearing at the OAH in Kensington, Maryland. The Claimant (Mr. Ngo) was present; Marcell Solomon, Esquire, presented the Claimants' case. The Respondent did not appear.⁴ Peter Martin, Assistant Attorney General, Office of the Attorney General, represented the Fund.

The Administrative Procedure Act, the Department's procedural regulations, and the OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 09.01.02, 09.01.03, and 09.11.03; COMAR 28.02.01.

ISSUES

The issues are:

A. Whether the Claimants sustained an actual loss as a result of an act or omission of the

² This amount was amended at the hearing to \$21,366.30.

³ A "licensed real estate salesperson" is, "unless the context requires otherwise, a real estate salesperson who is licensed by the Commission to provide real estate brokerage services on behalf of a licensed real estate broker with whom the real estate salesperson is affiliated." Md. Code Ann., Bus. Occ. & Prof. § 17-101(j) (2010). "Provide real estate brokerage services" means, among other things, "collecting rent for the use of any real estate." *Id.* § 17-101(l)(1)(ii).

⁴ The case file and GF. 1A-C establish that the Respondent received proper notice of the hearing. *See* Md. Code Ann., State Gov't § 10-208 (2014); Code of Maryland Regulations (COMAR) 28.02.01.05; COMAR 09.01.02.05; *Golden Sands Club Condo. v. Waller*, 313 Md. 484, 496-98 (1988).

Respondent that constitutes theft, embezzlement, false pretenses, forgery, misrepresentation, or fraud; and, if so,

B. What amount of compensation from the Guaranty Fund, if any, should the Claimants receive?

SUMMARY OF THE EVIDENCE

Exhibits

The following exhibits were admitted for the Commission:

GF 1: Notice of Hearing, dated November 20, 2015 and Order for Hearing, dated October 19, 2015

GF 2: Letter from Commission to Respondent, dated January 5, 2016 and response from Taylor Properties, dated January 7, 2016

GF 3: Affidavit of Steven Long, dated December 8, 2015

GF 4: Respondent's licensing record

GF 5: Complaint and Guaranty Fund Claim, dated June 26, 2015

GF 6: Letter amending the claim amount to \$9,583.50, dated October 15, 2015

The following exhibits were admitted for the Claimants:

Claimants 1: Property Management and Exclusive Rental Agreement, dated April 18, 2012

Claimants 2: Letter from Respondent to Claimants, dated May 29, 2012, with attached Standard Residential Dwelling Lease, dated May 17, 2012

Claimants 3: Rental Lease Amendment, dated May 17, 2012

Claimants 4: Extension of Leave for six months, dated November 25, 2013

Claimants 5: Complaint Form, dated June 26, 2015 (same as GF 5)

Claimants 6: Mobile phone text messages between Respondent and Claimant, between dates of March 19, 2015 and June 11, 2015

Claimants 7: Copy of check number 2018 from Claimant to David Sanchez, in the amount of \$3,433.50.

Testimony

Mr. Ngo testified for the Claimants.⁵

The Guaranty Fund offered no witnesses.

FINDINGS OF FACT

I find the following by a preponderance of the evidence:

1. At all times relevant to this decision, the Commission licensed the Respondent as a Real Estate Salesperson under registration number 589648. In 2012, the Respondent was affiliated with Spicer Real Estate. In January of 2014, the Respondent was affiliated with Taylor Properties.
2. In April of 2012, the Respondent represented himself as an agent for Summit Property Management, LLC. On April 18, 2012, Summit Property Management, LLC, entered into a Property Management and exclusive Rental Agreement (Agreement) with the Claimants to lease the Claimants' property located at 14206 Plum Way, Silver Spring, MD 20906 (the Property).
3. Under the Agreement, the Respondent agreed to manage the Property for a fee of eight per cent of the total rent. The Respondent was to collect rent from the tenants and remit the rent to the Claimants.
4. On May 29, 2012, the Respondent informed the Claimants that he had leased the Property to new tenants. The Respondent informed the Claimants that the amount of the monthly rent for the Property was \$2,150.00, and that he collected a security deposit from the tenants in the amount of \$2,150.00 plus a pet security deposit of \$1,000.00, for a total of \$3,150.00.
5. In November 2013, the Respondent negotiated an extension of the lease for six months but decreased the monthly rent to \$2,050.00. The reason for the decrease in the monthly rental amount was that the tenants complained that they had high utility bills due to the old appliances,

⁵ Hereafter, I will refer to Mr. Ngo as the Claimant.

etc., in the Property. The Claimants agreed to decrease the rent charged by \$100.00 per month to offset the tenant's high utility costs.

6. On April 8, 2014, the Respondent negotiated an extension of the lease for one year (i.e., until May 31, 2015) at the same monthly rate of \$2,050.00.

7. In February 2015, the Respondent was late in remitting the rent payment to the Claimants. The Respondent remitted the February 2015 rent to the Claimants at the end of March 2015.

8. The Respondent did not remit payments to the Claimants according to the Agreement for the months of March 2015, April 2015 and May 2015, a total of \$6,150.00.

9. The Claimants repeatedly contacted the Respondent by telephone and text messages to inquire about not having received rental payments. The Respondent did not respond.

10. The Claimants contacted the tenants who were unaware that the Claimants had decided not to renew the lease at the end of May 2015.

11. After the tenants moved out, they contacted the Claimants for the return of their security deposit because the Respondent did not return it to them. The Claimants made attempts to contact the Respondent about the security deposit without success.

12. On or about September 7, 2015, after receiving a demand from the tenants' attorney for return of the security deposit, the Claimants gave the tenants a check for the amount of the security deposit, plus interest, a total of \$3,433.50.

DISCUSSION

Review of the Relevant Law

The burden of proof is on the "claimant to establish the validity of the claim." Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (Supp. 2015).⁶ The burden is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.01.02.16C.

⁶ All subsequent citations to the Business Occupations and Professions Article shall be to sections only:

Section 17-404 governs claims against the Guaranty Fund and provides as follows:

§ 17-404. Claims against Guaranty Fund.

(a) *In general.* — (1) Subject to the provisions of this subtitle, a person may recover compensation from the Guaranty Fund for an actual loss.

(2) A claim shall:

(i) be based on an act or omission that occurs in the provision of real estate brokerage services by:

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

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

(iii) be based on an act or omission:

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

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

See also COMAR 09.11.03.04 (using “misconduct” interchangeably with “act or omission” as used in section 17-404(a)(2)(i) above).

COMAR 09.11.01.18 provides:

The amount of compensation recoverable by a claimant from the Real Estate Guaranty Fund, pursuant to Business Occupations and Professions Article, Title 17, Subtitle 4, Real Estate Guaranty Fund, Annotated Code of Maryland, shall be restricted to the actual monetary loss incurred by the claimant, but may not include monetary losses other than the monetary loss from the originating transaction. Actual monetary losses may not include commissions owed to a licensee of this Commission acting in his capacity as either a principal or agent in a real estate transaction, or any attorney’s fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.

Summary of the Evidence

The Claimant testified that he and his aunt own the Property. He further testified that he did not have any problems with the Respondent’s management of the Property until February 2015 when the Respondent had multiple excuses as to why he was late in remitting the February rent, including that there was something wrong with his bank account and that his secretary forgot to mail the check. Although the Respondent eventually remitted the February 2015 rent, he never gave the Claimants the rent he collected for March, April and May 2015. Further, the evidence was uncontested that although the Respondent collected a security deposit in the

amount of \$3,150.00 and stated he was holding it for the tenants; he never gave the tenants their security deposit back. When the tenants' attorney wrote to the Claimants and threatened to sue for the return of the security deposit, the Claimant testified that he wrote the tenants a check to pay them the security deposit despite the fact that the money for the security deposit was never in the Claimants' possession. In total, the Respondent collected \$6,150.00 in rent that he never remitted to the Claimants. The Claimants provided proof that they paid the security deposit, plus interest, or \$3,433.50, to the tenants, in order to reimburse the tenants for their security deposit (Claimants 7), even though they were never in possession of the monies paid by the tenant for the security deposit.

Analysis

As discussed above, the Respondent did not contest the claim. Therefore, the Claimant's testimony and supportive exhibits were not refuted. Accordingly, I find that the Claimants and the Respondent were parties to the Agreement from April 2012 through May 2015. I also find that the Respondent, a licensed real estate salesperson, managed the Property from April 2012 through May 2015. I further find that pursuant to the Agreement, the Respondent was obligated to pay the Claimants \$6,150.00 from rental fees collected as well as \$3,433.50 to reimburse them for the security deposit the Claimants paid the tenants. Finally, I find that as a result of the Respondent's misconduct, which included theft and misrepresentation, the Respondent caused the Claimants an actual loss of \$9,583.50.

CONCLUSIONS OF LAW

I conclude the following:

- A. The Claimants suffered an actual loss as a result of the Respondent's misconduct.

Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2) (Supp. 2015); COMAR 09.11.03.04.

B The Claimants are entitled to compensation from the Guaranty Fund in the amount of \$9,583.50. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(b), 17-410(b) (Supp. 2015); COMAR 09.11.01.18.

RECOMMENDED ORDER

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

A. The Guaranty Fund award the Claimants \$9,583.50.

B. The Respondent is ineligible for a license until he, at a minimum, (i) repays in full the amount paid by the Guaranty Fund to the Claimants, plus interest, and (ii) applies to the Commission for reinstatement or reissuance of a license.

C. The records and publications of the Maryland Real Estate Commission shall reflect its final decision

May 18, 2016
Date Decision Issued

SIGNATURE ON FILE
Ann C. Kehinde
Administrative Law Judge

ACK/emh
#162476