

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF	*	BEFORE ANN C. KEHINDE,
THE CLAIM OF	*	ADMINISTRATIVE LAW JUDGE
ALICIA ALDERSON, CLAIMANT	*	OF THE MARYLAND OFFICE OF
V.	*	ADMINISTRATIVE HEARINGS
THE MARYLAND REAL ESTATE	*	
COMMISSION GUARANTY FUND	*	OAH NOS: DLR-REC-22-11-47474
FOR THE ALLEGED MISCONDUCT	*	
OF MORI LANGSHAW,	*	MREC NO: 2011-RE-181 G.F.
REAL ESTATE BROKER	*	
* * * * *	*	* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated September 11, 2012, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 17th day of October, 2012,

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

10/17/2012
Date

By: 
Marla S. Johnson, Commissioner

**IN THE MATTER OF THE CLAIM OF
ALICIA ALDERSON,
CLAIMANT,
V.
THE MARYLAND REAL ESTATE
COMMISSION GUARANTY FUND FOR
THE ALLEGED MISCONDUCT OF
MORI LANGSHAW, REAL ESTATE
BROKER,
RESPONDENT**

*** BEFORE ANN C. KEHINDE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH CASE No. DLR-REC-22-11-47474
* MREC COMPLAINT No. 11-RE-181
*
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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 November 18, 2010, Alicia Alderson (Claimant) filed a complaint with the Maryland Real Estate Commission (MREC) and a claim against the Maryland Real Estate Commission Guaranty Fund (Fund). The claim was for monetary losses allegedly incurred by the Claimant as a result of the misconduct of Mori Langshaw, a formerly licensed real estate broker (Respondent), in providing real estate brokerage services to the Claimant for the real property located at 307 Jennie Run Drive, LaPlata, Maryland.

On November 14, 2011, the MREC transmitted the matter to the Office of Administrative Hearings (OAH) for a hearing on the Claimant's claim against the Fund. On April 27, 2012, the OAH scheduled a hearing for June 5, 2012 and sent Hearing Notices to the Claimant, the Respondent, and MREC.

On June 5, 2012, I conducted a hearing at the LaPlata Public Library, 2 Garrett Avenue, LaPlata, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010).¹ The Claimant represented herself. Eric B. London, Assistant Attorney General for the Department of Labor, Licensing and Regulation (DLLR), represented the Fund. Neither the Respondent nor anyone authorized to represent him appeared, and after waiting at least fifteen minutes, we proceeded in the Respondent's absence.²

The Administrative Procedure Act, the procedural regulations of the DLLR, and the OAH Rules of Procedure govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2011); Code of Maryland Regulations (COMAR) 09.01.02, 09.01.03, 09.11.03.02; and 28.02.01.

ISSUES

(1) Did the Claimant sustain an actual loss as a result of an act or omission of the Respondent that constitutes theft, embezzlement, false pretenses, forgery, misrepresentation, or fraud?

¹ The hearing was originally scheduled for April 23, 2012, but rescheduled to June 5, 2012, at the request of the Office of the Attorney General because it had not received the file from its client and was not prepared for the hearing. On May 10, 2012, the OAH received a letter stating that a rescheduled Notice of Hearing was received by the Respondent and requesting a postponement due to the Respondent being out of town on the date of the rescheduled hearing. The request for a postponement was not accompanied by any documentation showing the Respondent would be out of town on the hearing date and therefore unavailable for the hearing. On May 15, 2012, the OAH notified the Respondent that his request was denied due to a lack of supporting documentation. The Respondent did not submit any documentation or have any further correspondence with the OAH.

² At the Claimant's request, I left the record open until June 19, 2012, to submit documents regarding her amended claim. The Claimant timely submitted a copy of her SunTrust Account Statement, which I admitted as Claimant's Ex. 7, and there was no response from the Fund. The record closed on June 19, 2012.

(2) If the Claimant sustained an actual loss, what is the amount of actual loss compensable by the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits into evidence on behalf of the Claimant:

- Claimant Ex. 1 Email from Respondent to Claimant, dated August 2, 2010
- Claimant Ex. 2 Contract of Sale, dated July 19, 2010
- Claimant Ex. 3 Agreement and Release, dated August 1, 2010
- Claimant Ex. 4 Emails between Claimant and Felicia Taylor
- Claimant Ex. 5 HUD-1
- Claimant Ex. 6 Emails between Claimant, Felicia Taylor and Cynthia Gordon-Nicks
- Claimant Ex. 7 SunTrust Account Statement for 11/18/2010 to 12/17/2010

I admitted the following exhibits into evidence on behalf of the Fund:

- Fund Ex. 1 Notice of Rescheduled Hearing, dated April 27, 2012
- Fund Ex. 2 Letter requesting postponement from Respondent, dated May 9, 2012
- Fund Ex. 3 Denial of postponement request, dated May 15, 2012
- Fund Ex. 4 Respondent's Licensing History
- Fund Ex. 5 Order for Hearing, dated November 3, 2011
- Fund Ex. 6 Fund Claim, dated November 3, 2010 and received November 18, 2010
- Fund Ex. 7 Letter to Respondent from Fund, dated November 19, 2010
- Fund Ex. 8 Report of Investigation, prepared by Robert A. Hall, dated April 27, 2011

No exhibits were offered on behalf of the Respondent.

Testimony

The Claimant testified on her own behalf. The Fund called Robert A. Hall, Investigator, MREC to testify.

FINDINGS OF FACT

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

1. At all times relevant to this matter, the Respondent was a Licensed Real Estate broker, registration number 05 607373. The Respondent's license was due to expire on October 19, 2011 but he surrendered it prior to its expiration.
2. In 2010, the Claimant was interested in selling her house at 307 Jennie Run Drive, LaPlata, Maryland, so that she could purchase a larger house for her family. The Claimant met the Respondent through Facebook and he offered to buy her property on behalf of Melco Investments, LLC for \$155,779.00, subject to the Claimant's existing mortgage. The Respondent told the Claimant that she would receive \$5,000.00 at closing. The Claimant and Respondent signed a Real Estate Purchase Agreement containing these terms on July 19, 2010.
3. On or about July 28, 2010, the Claimant went to settlement in this matter, and the amount due to the Claimant was re-negotiated to \$3,717.00. An Agreement and Release was signed by the Claimant on or about August 1, 2010.
4. At the settlement, the Claimant signed a document entitled, "Important Considerations in a 'Subject To' Sale." This document informed the Claimant that the buyer would pay the seller's mortgage and the seller authorized the buyer to contact the lender and have full access to loan information but that the seller's name would remain on the mortgage.

5. **The Respondent never paid the Claimant \$3,717.00. The Respondent transferred the property to CGN Ventures, LLC.**
6. **The Claimant continued searching for another property to purchase but when she applied for a mortgage she was declined as the mortgage on the 307 Jennie Run Drive property was still in her name.**
7. **In November 2010, the Claimant contacted Cynthia Gordon-Nicks, CGN Ventures, LLC, and asked to buy the property back. After a series of negotiations, the Claimant agreed to pay a sales price of \$155,488.58. The Claimant also agreed to pay \$8,500.00 to Ms. Gordon-Nicks to reimburse her for improvements CGN Ventures made to the property and for closing costs (\$3,496.44) for a total of \$11,996.44. On or about December 9, 2010, the Claimant and CGN Ventures settled on the property after the Claimant wired \$11,996.44 to CGN Ventures, LLC, on that same date.**
8. **After the Claimant purchased the property back from CGN Ventures, LLC, she was able to proceed with a Short Sale with the assistance of DeWayne Upchurch, a licensed real estate agent.**
9. **On November 18, 2010, the Claimant filed a claim with the Fund for \$3,717.00.**
10. **On April 27, 2012, the OAH sent a Hearing Notice to the Respondent at 11300 Riverview Road, Ft. Washington, MD 20744. This address is the same address provided by the Respondent and listed in the Commission's licensing records.**
11. **The Hearing Notice contained the following statement: "FAILURE TO APPEAR MAY RESULT IN DISMISSAL OF YOUR CASE OR A DECISION AGAINST YOU."**
12. **On May 10, 2012, the OAH received a letter on behalf of the Respondent requesting a postponement due to the Respondent being out of town on the date of the rescheduled**

hearing. The request for a postponement was not accompanied by any documentation showing the Respondent would be out of town on the hearing date and therefore unavailable for the hearing. On May 15, 2012, the OAH notified the Respondent that his request was denied due to a lack of supporting documentation. The Respondent did not submit any documentation or have any further correspondence with the OAH.

DISCUSSION

Respondent's failure to appear

The MREC must give the claimant and a licensed real estate broker "alleged to be responsible for the act or omission giving rise to the claim an opportunity to participate in the hearing" by giving notice of the hearing to the parties. Md. Code Ann., Bus. Occ. & Prof. § 17-408(a) and (b) (2010). In this case, the MREC presented proof that a Hearing Notice, dated April 27, 2012, was sent to the Respondent at 11300 Riverview Road, Ft. Washington, MD 20744. (Fund Ex. 1). This address was the same address listed on the MREC's licensing records (Fund Ex. 4).

The Respondent must have received the Notice of Hearing in order for him to request a postponement.³ On May 15, 2012, the OAH denied the requested postponement because the Respondent did not supply any documentation of out-of-town business travel that purportedly conflicted with the hearing date. The denial provided the Respondent with sufficient time to either supply the required documentation or to make arrangements to appear at the hearing.

I permitted the hearing to proceed as the MREC presented satisfactory proof that the "records of the MREC show that all notices required under this subtitle were sent to each

³ Although the letter speaks about the Respondent in the third person, there is no printed name at the bottom of the letter and the signature is illegible but appears to contain the initials of an "M" and a "L." The letter also states that "We are respectfully requesting a rescheduling of this hearing..." so I infer that if the author of the letter was not the Respondent, the author nevertheless communicated the hearing date to the Respondent and was asked to request a postponement on his behalf.

licensee and each unlicensed employee alleged to be responsible for the act or omission giving rise to the claim.” Md. Code Ann., Bus. Occ. & Prof. § 17-408(c) (2010).

Claimant’s Guaranty Fund claim

The burden of proof at a hearing on a claim against the Fund is on the “claimant to establish the validity of the claim.” Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2010). Section 17-404(a) of the same statute governs all claims brought against the Fund and sets forth, in pertinent part, the following criteria that must be established by a claimant to obtain an award:

§ 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 \$25,000 for each claim.

Md. Code Ann., Bus. Occ. & Prof. § 17-404(a), (b) (2010). *See* COMAR 09.11.03.04.

The MREC shall order payment of a valid claim from the Fund for actual monetary losses suffered by a claimant not to exceed \$25,000. Md. Code Ann., Bus. Occ. & Prof. § 17-410(a), (b) (2010); COMAR 09.11.01.18.

The Claimant initially argued that she was entitled to an award from the Fund in the amount of \$3,717.00 – the amount the Respondent agreed to pay the Claimant at settlement on July 28, 2010, and never did. During the hearing, the Claimant amended her claim to include the \$11, 996.44 she paid to CGN Ventures, LLC, so that she could buy her house back on December 9, 2010.

The Fund argued that the Claimant established entitlement to an award of \$3,717.00 but not the additional \$11,996.44. Counsel argued that the Respondent misrepresented the transaction to the Claimant and never paid her the amount he promised to remit to her (\$3,717.00). I agree that the Claimant has proven she is entitled to an award of \$3,717.00 from the Fund. The Respondent agreed to pay the Claimant this amount in a document that was executed on August 1, 2010. (Claimant's Ex. 3). I found the Claimant's testimony credible that the Respondent never paid her this amount. The Respondent did not appear at the hearing and therefore was not able to offer any evidence to counter the Claimant's assertion that she was not paid. Although the Respondent told the MREC Investigator that he was not acting as a real estate agent in the matter -- but was instead acting as an investor -- the Respondent's self-serving statements after the fact do not absolve him of his misconduct at the time of the transaction. He clearly used his role as a licensed real estate agent to encourage the Claimant to sell her house to him. He presented the Claimant with a Real Estate Purchase Agreement that had the following statement on the top: "I understand that Mori Langshaw is a licensed real estate agent in the state of Maryland." (Attachment 2 to Fund Ex. 8).

The Claimant testified that when she tried to purchase another property after the settlement she became aware that that her name was still on the property's mortgage. I found the Claimant's testimony credible that she relied on what the Respondent told her about the deal and

that she did not read the documents she was signing. Nevertheless, if she had read the documents, she would have learned that her name would remain on the mortgage. At the settlement, the Claimant signed a document entitled, "Important Considerations in a 'Subject To' Sale." The first paragraph of this document, states in pertinent part, "the buyer will pay the seller's mortgage, and the seller has authorized the buyer to contact the lender and have full access to loan information. The seller's name remains on the loan, but the buyer will pay it." (Attachment 3 to Fund Ex. 8).

In addition to the fact that the Claimant was informed by the paperwork she signed at the settlement that her name would remain on the mortgage after she sold her house, I also agree with the Fund that the Claimant's decision to buy back her property so that she could then Short Sale it was not part of her original transaction with the Respondent. Although I am not unsympathetic to the dilemma the Claimant faced, buying back the property was not the only option she had. Even if I were to accept the argument that the Claimant had to buy back the property because of the Respondent's misconduct, most of the \$11,996.44 the Claimant paid was not toward the closing costs of the second settlement with CGN Ventures, LLC; instead, \$8,500.00 of the total was to reimburse CGN Ventures, LLC, for the improvements it made to the property during the time it owned the property and was paying the mortgage.

The Fund may only reimburse claimants for actual monetary losses that occur as the result of the misconduct of a licensed real estate agent. The Claimant has demonstrated that she is entitled to \$3,717.00, because that amount was never paid to her by the Respondent, a licensed real estate agent, who had agreed to pay her this amount at settlement. She has not established entitlement to the \$11,996.44 from a subsequent transaction in which the Respondent was not involved.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Facts and Discussion, I conclude as a matter of law that the Claimant is entitled to reimbursement from the Fund in the amount of \$3,717.00, for actual losses resulting from the Respondent's actions. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(1), (2) and 17-410(b)(1) (2010); COMAR 09.11.01.18 and 09.11.03.04.

RECOMMENDED ORDER

I RECOMMEND that the Commission ORDER:

That the Claimant's claim against the Maryland Real Estate Commission Guaranty Fund be ACCEPTED in the amount of \$3,717.00; and further,

That the Respondent shall be ineligible for any Maryland Real Estate Commission license until he reimburses the Fund for the full amount of the award paid to the Claimant by the Fund, plus annual interest of at least ten percent; and

That the records and publications of the Maryland Real Estate Commission reflect its final decision.

September 11, 2012
Date Decision Mailed

SIGNATURE ON FILE

Ann C. Kehinde
Administrative Law Judge

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