

THE MARYLAND REAL ESTATE COMMISSION

FINAL ORDER

IN THE MATTER OF \* BEFORE JOHN T. HENDERSON, JR.  
 THE CLAIM OF \* ADMINISTRATIVE LAW JUDGE  
 EUGENIU SCHILLER, CLAIMANT \* OF THE MARYLAND OFFICE OF  
 V. \* ADMINISTRATIVE HEARINGS  
 THE MARYLAND REAL ESTATE \*  
 COMMISSION GUARANTY FUND \* OAH NOS: DLR-REC-22-12-12276  
 FOR THE ALLEGED MISCONDUCT \*  
 OF SUE ANNE WILLISON, \* MREC NO: 2012-RE-217 G.F.  
 REAL ESTATE BROKER \*

OCT 31 2012

MARYLAND REAL ESTATE COMMISSION

\* \* \* \* \*

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated September 6, 2012, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 26th day of September, 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

September 26, 2012  
Date

By: Marla S. Johnson, Commissioner

<p><b>IN THE MATTER OF THE CLAIM OF</b></p> <p><b>EUGENIU SCHILLER,</b></p> <p><b>CLAIMANT,</b></p> <p><b>V.</b></p> <p><b>THE MARYLAND REAL ESTATE</b></p> <p><b>COMMISSION GUARANTY FUND FOR</b></p> <p><b>THE ALLEGED MISCONDUCT OF</b></p> <p><b>SUE ANN WILLISON, REAL ESTATE</b></p> <p><b>SALESPERSON,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE JOHN T. HENDERSON, JR.</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* OAH CASE No. DLR-REC-22-12-12276</b></p> <p><b>* MREC COMPLAINT No. 12- RE-217</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p>
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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 8, 2011, Eugeniu Schiller (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 Sue Ann Willison, (the Respondent) in providing real estate property management services to the Claimant for real property located at 180 Talbot Street, No. 103, Rockville, Maryland (Talbot property).

On March 7, 2012, the MREC transmitted the matter to the Office of Administrative Hearings (OAH) for a hearing concerning the Claimant's claim against the Fund. The OAH scheduled a hearing for June 11, 2012.

On April 11, 2012, the OAH mailed notice of the hearing to the Respondent by certified and regular mail to 2505 Hemingway Drive, Unit B, Frederick, Maryland 21702, her last known address of record on file with the MREC. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2012). The notice advised the Respondent of the time, place, and date of the hearing. The U.S. Postal Service returned the certified receipt to OAH on April 18, 2012. The notice was accepted for delivery at the last known address of record. The certified receipt was signed by Matt Reid on April 18, 2012, accepting delivery of the notice. Since the notice of the hearing was sent to the Respondent at her address of record with the MREC within the required time and received by someone at that address, I determined the notice was legally adequate.

On June 11, 2012 I conducted a hearing at the Office of Administrative Hearings, Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2012). The Claimant was present and represented himself. Chris King, Assistant Attorney General for the Department of Labor, Licensing and Regulation (DLLR), represented the Fund. The Respondent failed to appear for the hearing.

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?

(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 Fund:

Fund Ex. 1 Notice of Hearing, dated April 11, 2012, with two attached certified mail receipts

Fund Ex. 2 Order for hearing, dated March 7, 2012.

Fund Ex. 3 MREC licensing information for the Respondent

Fund Ex. 4 Affidavit of Steven Long, dated March 12, 2012

Fund Ex. 5 MREC Report of Investigation by Jack Mull

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

Claim Ex. 1 - Letter to the Claimant from the MREC, dated November 10, 2011

Claim Ex. 2 - West Patrick Property Solutions – Profit & Loss by Jobs for period February 15-March 10, 2011

Claim Ex. 3 - Two e-mails: 1) To the Claimant from the Respondent on July 12, 2011, and 2) to the Claimant from Karen at West Patrick Property Solutions on June 29, 2011

Claim Ex. 4 - Property Management and Exclusive Rental Agreement, dated March 10, 2010

Claim. Ex. 5 - Residential Dwelling Lease for Maryland, dated July 19, 2010

No exhibits were offered on behalf of the Respondent:

## Testimony

The Claimant testified on his own behalf.

The Fund presented the testimony of Jack Mull, Department of Labor and Licensing (DLLR) Investigator

## **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 sales person pursuant to DLLR REC license number 05-34796. Her license expired on June 28, 2011. She was also licensed under 05-527749 being affiliated with Keller Williams Home Towne Realty, Frederick Maryland at all times relevant to this matter. This license is also expired.
2. The Respondent was the sole owner, manager and resident agent for West Patrick Property Solutions, LLC (WPPS). She was the only signatory on the bank accounts that were opened and maintained by WPPS.
3. On or about March 14, 2010, the Complainant and his wife, Alina Schiller, entered into a Property Management and Exclusive Rental Agreement with WPPS. The agreement directed WPPS to rent, lease, operate and manage the Talbot property. The term of the agreement was for one year, commencing on March 14, 2010 and ending on March 31, 2011.
4. The agreement provided that the Talbot property be offered for a monthly rental of \$1,025.00.
5. The Claimant gave the Respondent \$300 to be deposited within a trust account to be used for minor maintenance expenses for the Talbot property.

6. On July 19, 2010, the Respondent, as agent for the Claimant, entered into a lease with a tenant to rent the Talbot property. The lease required the tenant to provide the Respondent with a security deposit in the sum of \$1,025 and monthly rent in the sum of \$1,025.

7. The term of the lease agreement was one year commencing on September 1, 2010 and ending on August 31, 2011.

8. The Respondent was required to collect the rents and deduct her seven percent management fee and any fee paid by her for repairs to the Talbot property. The Respondent would then send a net rental check to the Claimant in the sum of \$953.25 per month.

9. The last payment received by the Claimant was for the month of March 2011, pursuant to a check dated March 10, 2011, in the sum of \$953.25.

10. Despite several efforts to communicate and meet with the Respondent, the Claimant was not able to recover rental income due him for April 2011, May 2011, June 2011 and July 2011, from the Respondent or anyone within WPPS.

11. The Complainant discovered that the DLLR initiated an investigation into the business practices of WPPS and the Respondent. As a result of learning of the investigation, the Claimant terminated his management agreement with the Respondent and secured a new manager on August 1, 2011.

12. More than seventy claims were filed against the Respondent in fiscal year 2012. The Respondent entered into a Consent Order with MREC dated November 22, 2011. The relevant portion of the Consent Order provided that “the Respondent will not contest the Guaranty Fund claims submitted by the [current] Complainants nor any future claims filed against the Respondent that involve the Respondent’s actions while a property manager at WPPS.” The Claimant’s claim is a part of the Consent Order.

13. The Claimant did not receive from the Respondent rent for the months of April 2011, May 2011, June 2011 and July 2011; a sum of \$1,025.00 per month, or \$4,100, less the seven percent management fee due the Respondent (\$287.00). The net rent due the Claimant was \$3,813.00. In addition, the Claimant lost the maintenance deposit of \$300, for a total claim of \$4,113.00.

14. The total amount lost by the Claimant is \$4,113.00.

### **DISCUSSION**

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) (2012). Section 17-404(a) governs 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

2. forgery; or  
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) (2012). See COMAR 09.11.03.04.

The Claimant in this case contracted with the Respondent for property management and rent collection services. The Respondent's primary duty under the contract was to collect the monthly rent and deliver to the Claimant his net share of the monthly rental. The Respondent performed her duty without fail for about seven months, from September 2010 through March 2011.

When April 2011 came without a rent check delivered to him, the Claimant began a series of inquires of and meetings with the Respondent. All he received for his troubles were excuses from the Respondent. The Respondent made promises to the Claimant but never paid the money owed.

Pursuant to the investigation conducted by Mull, it was discovered that the Respondent and her company were having financial problems. Several claims were filed against her and her company for similar transgressions as reported by the Claimant. The Respondent, pursuant to the MREC Consent Order of November 22, 2011, agreed not to contest this claim herein, as well as over seventy claims filed against her.

The credible evidence herein, in the form of testimony and documents, clearly shows that the Respondent took money from the Claimant by theft, embezzlement, fraud and/or false pretenses. Due to the acts of the Respondent, the Claimant lost \$4,113.00

I find that the Claimant has shown he has suffered an actual loss of \$4,113.00 as a result of the acts of the Respondent. The Respondent was acting as a licensed real estate sales person



when she agreed to manage the Madison property and collect its rent as agent for the Claimant. The property management agreement between the Claimant and the Respondent involved property located in the State of Maryland, specifically at 180 Talbott Street, Unit 103, Rockville, Maryland . The Claimant was entitled to have his rent paid to him as agreed upon. The Respondent's failure to deliver all rent due to the Claimant in the sum of \$4,100.00, less her management fee of \$287; as well as her failure to return the maintenance deposit of \$300.00 when the Claimant terminated her services, for a total of \$4,113.00 without a legitimate basis constitutes obtaining money by theft, embezzlement, false pretenses and/or misrepresentation. Therefore, I find that the Claimant is entitled to an award of \$4,113.00.00 from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(b) (2012).

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Facts and Discussion, I conclude as a matter of law that the Claimant suffered an actual loss and is entitled to reimbursement from the Real Estate Commission Guaranty Fund in the amount of \$4,113.00.00, for actual losses resulting from the Respondent's actions. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(b) and 17-410(b)(1) (2012); COMAR 09.11.01.18 and 09.11.03.04.

#### **RECOMMENDED ORDER**

**I RECOMMEND** that the MREC **ORDER:**

That the Claimant sustained an actual loss in the sum of \$4,113.00, as a result of theft, embezzlement, false pretenses and/or misrepresentation of the Respondent; and further,

That the Claimant's claim against the Maryland Real Estate Commission Guaranty Fund be **ACCEPTED** in the amount of \$4,113.00; and further,

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

September 6, 2012  
Date Decision Mailed

SIGNATURE ON FILE

John T. Henderson, Jr.  
Administrative Law Judge

JTH/rbs  
# 135590