

THE MARYLAND REAL ESTATE COMMISSION

FINAL ORDER

IN THE MATTER OF

*

BEFORE JOHN T. HENDERSON, JR.,

SEP 31 2012

THE CLAIM OF

*

ADMINISTRATIVE LAW JUDGE

MARYLAND REAL

FRANZ RASSMAN, CLAIMANT

*

OF THE MARYLAND OFFICE OF

ESTATE COMMISSION

V.

*

ADMINISTRATIVE HEARINGS

THE MARYLAND REAL ESTATE

*

COMMISSION GUARANTY FUND

*

OAH NOS: DLR-REC-22-12-12278

FOR THE ALLEGED MISCONDUCT

*

OF SUE ANNE WILLISON,

*

MREC NO: 2012-RE-026 G.F.

REAL ESTATE BROKER

*

* * * * *

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

By:

Marla S. Johnson, Commissioner

September 26, 2012

Date

IN THE MATTER OF THE CLAIM OF	*	BEFORE JOHN T. HENDERSON, JR.
FRANZ RASSMAN,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	*	OF THE MARYLAND OFFICE
v.	*	OF ADMINISTRATIVE HEARINGS
THE MARYLAND REAL ESTATE	*	OAH CASE No. DLR-REC-22-12-12278
COMMISSION GUARANTY FUND	*	MREC COMPLAINT No. 12-RE-026
FOR THE ALLEGED MISCONDUCT OF	*	
SUE ANN WILLISON, LICENSED	*	
SALESPERSON	*	
RESPONDENT	*	

* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On July 29, 2011, Franz Rassman (the Claimant) filed a claim against the Maryland Real Estate Commission Guaranty Fund (the Fund) for \$3,600.00. 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 336 Madison Street, Frederick, Maryland (Madison property).

On March 9, 2012, the Maryland Real Estate Commission (MREC) transmitted the matter to the Office of Administrative Hearings (OAH) for a hearing concerning the Claimant's claim against the Fund. On April 11, 2012, 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 221702, 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 17, 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 OAH office in Wheaton, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2012). The Claimant represented himself. Chris King, Assistant Attorney General for the Department of Labor, Licensing and Regulation (DLLR), represented the Fund. The Respondent was not present.

The Administrative Procedure Act, the procedural regulations of the DLLR, and the OAH Rules of Procedure govern 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
- Fund Ex. 2 DLLR's Order for Hearing, dated March 7, 2012
- Fund Ex. 3 Licensing Information for the Respondent
- Fund Ex. 4 Affidavit of Steven Long
- Fund Ex. 5 REC's Report of Investigation, closed December 12, 2011
- Fund Ex. 6 Fax from Silverman, Thompson & White (4 pages), dated November 28, 2011

No other exhibits were offered into the record.

Testimony

The Claimant testified on his own behalf. The Fund's representative presented its case, with testimony provided by Jack L. Mull, Jr., Licensing and Real Estate Investigator for MREC (Mull).

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.
2. 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.

3. The Respondent, having assisted the Claimant in purchasing real property located at 336 Madison Street, Frederick, MD 21701 (the Madison property), agreed to manage and collect the rent from the property as agent for the Claimant. The Madison property is owned by Takoma Company, which is owned by the Claimant and his wife.¹

4. On or about August 13, 2010, the Claimant, by and through the Respondent as his agent, entered into a Residential Dwelling Lease agreement with two tenants. The lease required the tenants to provide the Respondent with a security deposit in the amount of \$1,200.00 and pay monthly rent in the amount of \$1,200.00. The lease term was one year and nineteen days, commencing on August 13, 2010 and ending on August 31, 2011.

5. Sometime after August 13, 2010, the Respondent established West Patrick Property Solutions, LLC (WPPS) as a real estate management company. She was the sole owner, managing and resident agent for WPPS. She was the only signatory on the bank accounts that were opened and maintained by WPPS.

6. On or about November 22, 2010, the Claimant entered into a Property Management and Exclusive Rental Agreement with WPPS. The agreement directed WPPS to rent, lease, operate and manage the Madison property.

7. The management agreement provided that the Madison property would be offered for rent at an amount of \$1,200.00 per month. The term of the management agreement was one year beginning on December 1, 2010 and ending November 30, 2011.

8. The Respondent was required to collect the rents and deduct for her benefit a management fee of eight percent. She was also allowed to deduct reimbursement for monies

¹ Although the Claimant filed his claim as an individual for a business transaction conducted by the Respondent and Takoma Company, I determined that since Takoma Company is solely owned by the Claimant and his wife, the Claimant, individually, has standing to pursue his claim against the Respondent. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(1) (2012).

paid for repairs to the Madison property. The Respondent would then send a monthly net rental check to the Claimant.

9. Beginning March 2011 and again occurring in April 2011 and May 2011, the Respondent collected the monthly rent from the tenants of the Madison property, but did not remit the portion of the net rental income due to the Claimant.

10. Despite several efforts to communicate and meet with the Respondent, the Claimant was not able to recover the net rental income due him from the Respondent or anyone within WPPS; therefore, the Claimant terminated the property management agreement with WPPS.

11. The Claimant switched management companies and was required to replace the tenant security deposit of \$1,200.00, which was not recovered from the Respondent.

12. The Claimant did not receive from the Respondent rent for the months of March 2011, April 2011 and May 2011; a sum of \$1,200.00 per month, or \$3,600.00, less the eight percent management fee due the Respondent (\$288.00). The net rent due the Claimant was \$3,312.00. In addition, the Claimant lost the \$1,200.00 security deposit the Respondent never paid back to the Claimant or the tenants.

13. The Claimant's original claim with MREC was \$3,600.00 representing rent at \$1,200 per month for the months of March 2011, April 2011 and May 2011. The Claim is amended to include the rent deposit paid by the Claimant to a new management company, in the sum of \$1,200.00 for a claim of \$4,800.00, less the management fee due the Respondent of \$288.00.

14. The total amount lost by the Claimant is \$4,512.00.

15. 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.

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 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) (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 income. The Respondent performed her contractual duty for about seven months, from August 2010 through February 2011. During the period of August 2010, through October 2010, the Respondent, as an individual real estate sales person, performed management duties without the benefit of her company, WPPS. Thereafter, WPPS served as the property manager for the Claimant, having the responsibility of collecting the rent from the Madison property.

The Respondent did not deliver a rent check to the Claimant in March, 2011. As a result, 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 Complaint 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 the 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.

I find that the Claimant has shown he has suffered an actual loss of \$4,512.00 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 336 Madison Street, Frederick, Maryland 21701. 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 \$3,600.00, less her management fee of \$288; as well as her failure to return the tenant deposit of \$1,200.00 when the Claimant terminated her services, for a total of \$4,512.00 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 \$4,512.00 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 \$4,512.00, 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 \$4,512.00 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 \$4,512.00.00; and further,

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

September 6, 2012
Date Decision Mailed

JTH/rbs
135610

SIGNATURE ON FILE

John T. Henderson, Jr.
Administrative Law Judge