

BEFORE THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM *
OF WILLIAM AND GLORIA ARNOLD *
AGAINST THE MARYLAND REAL * CASE NO. 2013-RE-260
ESTATE GUARANTY FUND, * OAH NO. DLR-REC-22-13-45755
FOR THE ALLEGED MISCONDUCT *
OF RONALD ANDERSON *

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated May 8, 2014, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 18th day of June, 2014

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 to state that the Claimants suffered an actual loss compensable by the Fund in the amount of \$10,700.00;

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

ORDERED, that the Claimants be reimbursed \$10,700.00 from the Maryland Real Estate Guaranty Fund to compensate for actual losses that they sustained because of the acts or omissions of the

Respondent;

ORDERED, that the Respondent is ineligible for any Maryland Real Estate Commission license until the Respondent reimburses the Fund for all monies disbursed under this Order plus annual interest as prescribed by law;

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 Commission finds the Claimants are entitled to reimbursement from the Guaranty Fund in the amount of \$10,700.00. The Administrative Law Judge ("ALJ") recommended that the award be in the amount of \$10,430.00 after deducting the \$90.00 per month management fee that was provided for in the Property Management Agreement. He cited COMAR 09.11.01.18, which states that actual monetary losses may not include commissions owed to the licensee in a transaction.

However, according to the Agreement, the Respondent was entitled to receive ten percent of the rent collected each month as compensation for his services. For the three months in question the Respondent failed to provide the agreed-on services - he did not remit the rent to the owners, and he failed to reply to attempts by the tenant to contact him regarding a plumbing problems. Having failed to provide the required services, he was not entitled to receive compensation. Therefore, the amount of \$270.00 should not have been deducted from the claim.

E. Pursuant to Code of Maryland Regulations (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

IN THE MATTER OF THE CLAIM OF	*	BEFORE MICHAEL W. BURNS,
WILLIAM ARNOLD AND GLORIA	*	AN ADMINISTRATIVE LAW JUDGE
ARNOLD,	*	OF THE MARYLAND OFFICE
CLAIMANTS,	*	OF ADMINISTRATIVE HEARINGS
AGAINST THE MARYLAND REAL	*	OAH No. DLR-REC-22-13-45755
ESTATE GUARANTY FUND,	*	REC No. 13-RE-260GF
FOR THE ALLEGED MISCONDUCT	*	
OF RONALD ANDERSON	*	
* * * * *		

RECOMMENDED DECISION

STATEMENT OF THE CASE
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CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On March 11, 2013, William and Gloria Arnold (Claimants) filed a claim with the Maryland Real Estate Guaranty Fund (Fund), established by the Maryland Real Estate Commission (REC), for reimbursement of actual losses in the amount of \$10,800.00, allegedly suffered as a result of the misconduct of Ronald Anderson (Respondent), a licensed real estate salesperson at all relevant times.¹ On November 25, 2013, the REC transmitted the case to the Office of Administrative Hearings (OAH) for a contested case hearing.

On March 7, 2014, I conducted a hearing at the Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-

¹ The Respondent's license expired on June 16, 2013.

407(c)(2)(ii) (2010). The Claimants were present and were represented by James D. Green, Esquire. Jessica Kaufman, Assistant Attorney General, represented the Fund. Despite due and proper notice, the Respondent failed to appear at the hearing or to request a postponement.² Pursuant to applicable law, I proceeded to hear the case in the Respondent's absence.³

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings of the Department of Labor, Licensing and Regulation (DLLR), and the Rules of Procedure of the OAH govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013); Code of Maryland Regulations (COMAR) 09.01.03; 09.11.03; and 28.02.01.

ISSUES

1. Did the Claimants sustain an actual loss compensable by the Fund?
2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following documents into evidence on behalf of the Claimants:

CL #1 Property Management Agreement, undated;

CL #2 Non-Management Deed of Lease for Maryland, with attachments, signed various dates;

CL #3 Lease Option to Purchase Agreement, dated September 29, 2010;

² On January 24, 2014, the OAH sent notice of the March 7, 2014 hearing, by both certified and first class mail, to the Respondent's address of record with the Commission. The green certified mail return card was signed by the Respondent on February 4, 2014, and was returned to the OAH by the United States Postal Service (USPS). (*See* Fund Ex. # 1). The first class mail sent to the Respondent was not returned by the USPS to the OAH.

³ Section 17-324 of the Business Occupations Article provides that the Commission can take any final action against an individual if that individual has been personally served with a hearing notice or the hearing notice has been sent certified mail notice at least ten days prior to the hearing to the individual's last known business address. Md. Code Ann., Bus. Occ. & Prof. § 17-324(d) (2010); COMAR 09.01.02.07A. If the individual, after receiving due notice of the hearing, fails or refuses to appear, the Commission may hear and determine the matter despite the individual's absence. Md. Code Ann., Bus. Occ. & Prof. § 17-324(f) (2010).

CL #4 Specific Power of Attorney, signed September 30, 2010;

CL #5 Bank Account Information statement, with attached bank statement for period
March 27, 2009 thru April 28, 2009;

CL #6 Letter from William Arnold to Ron Anderson, dated October 9, 2012;

CL #7 Summary, dated February 25, 2014; and

CL #8 Signed copy of CL #3.

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

GF #1. Notice of Hearing, dated January 24, 2014, with green certified mail return cards;

GF #2. Order for Hearing, dated August 21, 2013;

GF #3. Respondent's Licensing History, printed February 24, 2014;

GF #4. Complaint and Guaranty Fund Claim, received by the REC March 11, 2013; and

GF #5. Order Granting Relief From Stay, In Re Rosemarie Oberman, United States
Bankruptcy Court for the District of Maryland, entered February 25, 1993

The Respondent was not present and no exhibits were offered on his behalf.

Testimony

The Claimants, William and Gloria Arnold, testified on their own behalf. The Fund did not offer any testimony. No testimony was offered on the Respondent's behalf.

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 salesperson.
His License number was 4248022.
2. The Respondent's license expired on June 16, 2013.
3. Claimants William and Gloria Arnold are husband and wife.

4. Claimant Gloria Anderson is the owner of record of a property located at 8026 Kavenaugh Road, Dundalk, Maryland 21222 (Property).
5. The Claimants sought assistance in renting and managing the Property in 2009.
6. The Claimants met with the Respondent in 2009 regarding the Respondent managing the Property.
7. At the time of the meeting noted in Finding of Fact (FOF) number six, the Respondent was affiliated with Long and Foster Real Estate, Inc. and also owned an entity known as Innovations Home Management Incorporated (Innovations).
8. On or about April 2, 2009, the Claimants and the Respondent, in his capacity as agent of Innovations, entered into a Property Management Agreement (the Management Agreement). The Management Agreement directed the Respondent to rent, lease, collect, forward rents, operate and manage the Property.
9. Pursuant to the Management Agreement, the Respondent was to receive ten percent of the rent collected each month for his real estate services.
10. On or about September 29, 2010, the Claimants entered into a Residential Deed of Lease (Lease) renting the Property for a term commencing on November 1, 2010 and ending on October 31, 2012, to Kim Parrish and Antwine Jenkins (the Tenants)⁴. Pursuant to the Lease, the Tenants were to pay \$900.00 per month rent, delivered to the Respondent. The Tenants also paid a security deposit of \$900.00, which was held by the Respondent.
11. On or about September 30, 2010, Claimant Gloria Arnold entered into a Specific Power of Attorney (Power of Attorney) agreement with the Respondent regarding managing the Property.

⁴ The Lease provided for the Tenants to actually take possession of the Property on October 15, 2010, with a rent due of \$473.42 for the period October 15, 2010 through October 31, 2010.

12. On or about November 1, 2010⁵, the Tenants entered into a Lease Option to Purchase Agreement (Option to Purchase Agreement) with the Claimants regarding the Property for the period November 1, 2010 through October 31, 2012. Under this Option to Purchase Agreement, the Tenants were to pay \$200.00 per month, in addition to the rent for the Property, to be credited toward the purchase of the Property at the time of settlement if the Tenants exercised their right to purchase the Property. The \$200.00 per month payments were not refundable to the Tenants and were to be kept by the Claimants if the Tenants did not purchase the Property pursuant to the Option to Purchase Agreement.
13. The Respondent collected and held twenty-three months of the \$200.00 payments, which totaled \$4,600.00.
14. The Respondent was to be the agent for the sale of the Property to the Tenants if it actually took place.
15. On or about April 9, 2009, the Claimants sent the Respondent a check in the amount of \$2,500.00 to serve as an escrow account for property repairs (Repair Account) that might be needed in the future. The Respondent held that Repair Account.
16. No funds were expended from the Repair Account for the Property.
17. The Tenants made their rental payments and option to purchase payments in a timely manner to the Respondent throughout the relevant period of time.
18. The Claimants had difficulty with the Respondent regarding obtaining monies due them that were collected by the Respondent throughout the period of their agreements with the Respondent.

⁵ Although the date on the Option to Purchase Agreement is November 1, 2010, the parties signed the document on various dates including September 30, 2010 and October 3, 2010. (CL X8).

19. The Claimants had difficulty contacting the Respondent during the period of their agreements with the Respondent. This included the Respondent failing to answer or return telephone calls and electronic mail (email) messages.
20. The Respondent failed to reply to attempts by Tenant Jenkins to contact him regarding a plumbing problem at the Property from July through September, 2012.
21. On or about September 28, 2012, the Claimants went to the Respondent's office and attempted to collect the check for Property rental they were due for the period July through September, 2012 and discovered that the Respondent no longer worked at that location.
22. As a result of the Respondent's failure to properly fulfill his duties under the Management Agreement, including remitting funds due the Claimants, the Claimants dismissed the Respondent from managing the Property by way of a letter dated October 9, 2012.
23. The Claimants requested the Respondent remit funds to them in the October 9, 2012 letter in the amount of \$10,700.00.
24. The Respondent has failed to remit funds to the Claimants as follows:
 - a. Tenants security deposit = \$ 900.00
 - b. repair escrow fund = \$2,500.00
 - c. option to purchase payments made
by Tenants, 23 months X \$200.00 = \$4,600.00
 - d. rental payments on Property for
July, August, and September, 2012 = \$2,700.00

TOTAL = \$10,700.00

25. The rental payments included in FOF number twenty-four include \$270.00 (three months of ten percent of \$900.00 equaling \$90.00 per month) in fees due to the Respondent under the Management Agreement.

DISCUSSION

Bankruptcy Issue

The Respondent was granted a Chapter 7 bankruptcy stay by the United States Bankruptcy Court for Maryland on or about October 5, 2012. The REC argues that prior rulings of the United States Bankruptcy Court have found that the filing of bankruptcy by a party, or the granting of a stay by the Bankruptcy Court to a party, in these types of Fund cases do not preclude a claimant from pursuing, and recovering, claims from the Fund.

The REC is correct. The Claimants are not precluded from pursuing this claim against the Fund because of the Respondent's filing of bankruptcy and/or the granting of a stay by the Bankruptcy Court. *See, In Re Rosemarie Oberman*, No. 92-15732SD, Order Granting Relief from Stay, (U.S. Bankr. Ct. D. Md, February 25, 1993); 11 U.S.C. §362(b)(4).

Applicable Law

A person may recover compensation from the Fund for an actual loss based on an act or omission that occurs in the provision of real estate brokerage services by a licensed real estate broker or licensed real estate salesperson that involves a transaction related to real estate located in the State. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(i), (ii) (2010). For misconduct to be compensable, the act or omission must constitute either theft, embezzlement, false pretenses, forgery, fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(2)(iii), 17-402(c) (2010); COMAR 09.11.03.04. At a hearing concerning a claim against the Fund, the burden of proof shall be on the claimant to establish the validity of the claim. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2010). The REC shall order payment of a claim by the Fund for

the actual monetary loss, up to \$50,000.00, suffered by the claimant. Md. Code Ann., Bus. Occ. & Prof. § 17-410(a), (b) (Supp. 2013).

Two categories of acts or omissions may give rise to an actual loss. In the first, money or property is obtained by a licensee by theft, embezzlement, false pretenses or forgery. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(1). The second category involves a licensee's act or omission that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(2); COMAR 09.11.03.04B(1).

The statute includes the following relevant definitions at section 17-101 of the Business Occupations and Professions Article:

(a) *In general.*- In this title the following words have the meanings indicated.

...

(j) *Licensed real estate salesperson.*- "Licensed real estate salesperson" means, 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.

...

(l) *Provide real estate brokerage services.*- "Provide real estate brokerage services" means to engage in any of the following activities:

(1) for consideration, providing any of the following services for another person:

- (i) selling, buying, exchanging, or leasing any real estate; or
- (ii) collecting rent for the use of any real estate;

...

(m) *Real estate.*-

(1) "Real estate" means any interest in real property that is located in this State or elsewhere.

Md. Code Ann., Bus. Occ. & Prof. § 17-101 (2010).

COMAR 09.11.03.04 addresses claims against the guaranty fund as follows:

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.

Merits Discussion

The essential facts in this proceeding are not in dispute. The Claimants executed a property management and leasing agreement with the Respondent to lease and manage the Claimants' Property. Tenants were secured for the Claimants' Property and a lease agreement was signed. In addition, a Lease Option to Purchase Agreement was signed between the Claimants and the Tenants which provided for additional payments of \$200.00 per month by the Tenants to the Respondent to be held under that agreement. Pursuant to those leases, the Respondent collected rent, a security deposit, the \$200.00 monthly option payments and a repair escrow deposit of \$2,500.00 for use in repairing the Property. These undertakings constituted the performance of real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. § 17-101(l). There is also no dispute that the Respondent was licensed by the REC at all relevant times and that the transactions in question involved an interest in real property within the State. Md. Code Ann., Bus. Occ. & Prof. § 17-101(l).

The evidence established that the Respondent collected and held a \$900.00 security deposit from the Tenants. He collected and held a repair escrow deposit of \$2,500.00 from the Claimants. There is no evidence the Respondent spent any of those funds on repairs to the Property. He collected and held the \$200.00 monthly Option to Purchase Agreement payment from the Tenants from November, 2010 through September, 2012, a total of twenty-three months of payments, totaling \$4,600.00. Finally, the Respondent collected and held \$900.00 per month in rent payments from the Tenants in July, August and September of 2012 – a total of \$2,700.00

- but failed to remit any portion to the Claimants for those months as required by the Management Agreement. The Respondent has, therefore, withheld a total of \$10,700.00 from the Claimants. The Respondent's failure to remit these funds - the security deposit, the repair escrow funds, the option to purchase payments and the rental payments - to the Claimants upon their request amounted to theft of the Claimants' money, and they are, therefore, entitled to compensation from the Fund for their actual loss in that regard as is appropriate. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(2), 17-402(c); COMAR 09.11.03.04.

There is one issue remaining to be considered regarding the \$10,700.00 withheld by the Respondent and the amount due the Claimants as their actual loss. The Claimants seek reimbursement of the full rental amounts from the Respondent, without deduction of the management fees provided for in the Management Agreement. The Fund's representative points out, however, that pursuant to COMAR 09.11.01.18, the amount of compensation recoverable by a claimant from the Real Estate Guaranty Fund "shall be restricted to the actual monetary loss incurred by the claimant" and that actual monetary losses "may not include commissions owed to a licensee of the Commission acting in his capacity as either a principal or agent in a real estate transaction" and that the Claimants are not, therefore entitled to recover the management fee amounts due the Respondent (\$270.00) under the Management Agreement.

Regrettable as it may be in these circumstances, the management fees of \$270.00 - \$90.00 per month (ten percent of the monthly rent of \$900.00) for the three months at issue herein -which were due the Respondent under the Property Management Agreement are covered by the provisions of COMAR 09.11.01.18 and cannot be recovered by the Claimants from the Fund.

Accordingly, I recommend that the Claimants are entitled to reimbursement from the Fund in the amount of \$10,430.00 – for the rents due them minus fees owed the Respondent

(\$2,430.00); for the twenty-three \$200.00 monthly option to purchase payments (\$4,600.00) collected by the Respondent; for the \$900.00 security deposit collected from the Tenants by the Respondent; and, for the \$2,500.00 repair escrow deposit collected from the Claimants by the Respondent. The Fund's representative recommended an award from the Fund in this amount at the hearing as well.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude that the Claimants are entitled to reimbursement from the Real Estate Guaranty Fund in the amount of \$10,430.00 for actual losses resulting from the Respondent's theft. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(2)(iii)1., 17-410(b) (2010); COMAR 09.11.01.18, 09.11.03.04.

RECOMMENDED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I hereby **RECOMMEND** that the Maryland Real Estate Commission:

ORDER that the Claimant's claim against the Maryland Real Estate Guaranty Fund be **ACCEPTED** in the amount of \$10,430.00; and that it further,

ORDER that the records and publications of the Maryland Real Estate Commission reflect its final decision in this matter.

May 8, 2014
Date Decision Issued

MWB/bp
148540

SIGNATURE ON FILE

Michael W. Burns
Administrative Law Judge