

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM	*	BEFORE DOUGLAS E, KOTEEN,
OF ROBIN RINEARSON	*	ADMINISTRATIVE LAW JUDGE
, CLAIMANTS	*	OF THE MARYLAND OFFICE OF
AGAINST THE MARYLAND REAL	*	ADMINISTRATIVE HEARINGS
ESTATE COMMISSION GUARANTY	*	
FUND FOR THE ALLEGED	*	OAH No: DLR-REC-22-17-10130
MISCONDUCT OF	*	REC CASE NO: 328-RE-2016 GF
MICHAEL BAUGHER	*	

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated October 12, 2017, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 15th day of November, 2017,

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

11-15-2017
Date

By: Nicholas D'Ambrosia, Commissioner

SIGNATURE ON FILE

IN THE MATTER OF THE CLAIM OF
ROBIN RINEARSON,

CLAIMANT

v.

THE MARYLAND REAL ESTATE
COMMISSION GUARANTY FUND,
FOR THE ALLEGED MISCONDUCT
OF MICHAEL BAUGHER,
RESPONDENT

* BEFORE DOUGLAS E. KOTEEN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH Case No. DLR-REC-22-17-10130
* MREC Case No. 16-RE-328GF

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On or about July 18, 2016, Robin Rinearson (Claimant) filed a claim for reimbursement with the Maryland Real Estate Commission (REC) Guaranty Fund (Fund) for an actual monetary loss incurred as a result of the alleged conduct of Michael Baugher (Respondent), who was licensed as a real estate salesperson in the State of Maryland. The REC ordered that the Claimant was entitled to a hearing to demonstrate her eligibility for an award from the Fund, and on March 30, 2017, the REC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

- 1316, dated August 1, 2014; Check No. 1319, dated September 1, 2014; Check No. 1329, dated September 30, 2014; Check No. 1342, dated November 1, 2014; and Check No. 1349, dated December 1, 2014 (13 pages);
- CL Ex. 10. Letter from Elizabeth J. McInturff, Esquire, to Respondent, dated March 25, 2015 (2 pages); and
- CL. Ex. 11. District Court of Maryland for Montgomery County, Rinearson v. Baugher, Civil Case No. 0602-0014606-2015, Affidavit Judgment, dated April 18, 2016 (1 page).

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1. REC Order for Hearing, dated March 24, 2017 (4 pages);
- GF Ex. 2. REC Complaint and Guaranty Fund Claim from Claimant, received July 18, 2016 (2 pages);
- GF Ex. 3. Notice of Hearing, dated May 12, 2017, for Hearing of July 24, 2017, with attached address list (2 pages);
- GF Ex. 4. REC Registration Inquiry and Professional License History, dated July 12, 2017 (3 pages); and
- GF Ex. 5. Affidavit of William Banks, dated July 14, 2017 (1 page).

- Amendment/Addendum, signed May 3 and 5, 2014; and attached cover letter from Respondent, dated March 3, 2015 (13 pages);
- CL. Ex. 3. Not Sufficient Funds (NSF) Statement for Check No. 7931, dated March 3, 2014 (1 page);
 - CL. Ex. 4. Not Sufficient Funds (NSF) Statement for Check No. 8082, dated June 30, 2014 (1 page);
 - CL. Ex. 5. Cashier's Check No. 019489, dated August 5, 2014 (1 page);
 - CL. Ex. 6. Detailed Property Statement from Summit Property Management, LLC, to Claimant, dated February 2014 (1 page);
 - CL. Ex. 7. E-mail chain for Claimant, Respondent, and Teri Rainville-Scott, dated May 23, 2014 through August 11, 2014 (15 pages);
 - CL. Ex. 8. Detailed Property Statement from Summit Property Management, LLC, to Claimant, dated May 2014 (1 page);
 - CL. Ex. 9. E-mail chain for Claimant and Teri Rainville-Scott, dated February 6-7, 2015; with attached copies of Check No. 1279, dated January 1, 2014; Check No. 1284, dated February 1, 2014; Check No. 1292, dated March 1, 2014; Record of Bank of America payments, dated April 9, 2014 and May 13, 2014; Copies of Check No. 1306, dated June 1, 2014; Check No. 1312, dated July 1, 2014; Check No. 1316, dated August 1, 2014; Check No. 1319, dated September 1, 2014; Check No. 1329, dated September 30, 2014; Check No. 1342, dated November 1, 2014; and Check No. 1349, dated December 1, 2014 (13 pages);
 - CL Ex. 10. Letter from Elizabeth J. McInturff, Esquire, to Respondent, dated March 25, 2015 (2 pages); and
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- GF Ex. 3. Notice of Hearing, dated May 12, 2017, for Hearing of July 24, 2017, with attached address list (2 pages);
- GF Ex. 4. REC Registration Inquiry and Professional License History, dated July 12, 2017 (3 pages); and
- GF Ex. 5. Affidavit of William Banks, dated July 14, 2017 (1 page).

No other exhibits were admitted into evidence.

Testimony

The Claimant testified on her own behalf. The Fund did not present any testimony. No testimony was presented on behalf of the Respondent.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent was licensed by the REC as a real estate salesperson. His license became effective on April 26, 2004 and expired on April 26, 2016.
2. The Respondent was employed with Spicer Real Estate in Rockville, Maryland in his capacity as a licensed real estate salesperson. (CL Ex. 1).
3. The Respondent was also employed with Summit Property Management, LLC, (SPM) as an Agent/Property Manager in Silver Spring, Maryland. (CL Ex. 1).
4. The Claimant is a resident of Falls Church, Virginia. At all relevant times, she owned a single-family residence at 4001 Old Columbia Pike, Ellicott City, Maryland 21043 (Property).
5. The Claimant receives rental income for the Property. The Claimant has a mortgage on the Property with a monthly mortgage payment of \$1,800.00.
6. On August 13, 2009, the Claimant and the Respondent, through SPM, entered into a Property Management and Exclusive Rental Agreement (Agreement) with respect to the Property. The Claimant designated SPM as her Agent for the purpose of finding suitable tenants, collecting rent, and generally performing property management services. The Agreement was for one year and provided that it would renew for annual periods unless either party notified the other in writing of the intention to terminate the Agreement at least sixty days before any annual renewal date. (CL Ex. 1).
7. The Agreement provided that when a tenant was obtained and a leasing agreement executed for the Property, the Agent would receive a "leasing fee" equal to one month's rent for a one year, two year, or three year lease. It further provided that where the Agent was required to negotiate and/or have executed a lease renewal or extension, then a fee of twenty-five percent

(25%) of the first month's rent, or "tbd [to be determined]," would be paid to the Agent for each year the lease was renewed or extended. (CL Ex. 1).

8. The Agreement also provided that the Agent would receive a "management fee" of eight percent (8%) of all gross rentals charged to the tenant per month as compensation for property management services. (CL Ex. 1).

9. Under the Agreement, the Respondent was responsible for managing the Property while it was rented, including collecting monthly rental payments from a tenant and making monthly disbursements to the Claimant as the owner of the Property. The Agent was also responsible for depositing a tenant's security deposit in a bank account labeled as an escrow account, and that was bearing interest. At the end of the lease, the Agent was required to pay a tenant the security deposit, together with simple interest, less any damages properly withheld. The Agent agreed to use diligence in managing the Property. (CL Exs. 1, 2).

10. The Respondent obtained a tenant for the Property, Teri Rainville-Scott (Tenant), for the period May 4, 2013 through April 30, 2014. The monthly rent was \$1,975.00 and the security deposit was also \$1,975.00. The Tenant executed the lease on May 3, 2013. A pro rata amount of rent was due for the first month in May 2013. (CL Ex. 2).

11. On May 3, 2014, the Tenant and Respondent agreed to extend the lease for fourteen additional months for the period May 1, 2014 through June 30, 2015. The monthly rental amount remained at \$1,975.00. (CL Ex. 2).

12. The Tenant made timely rental payments by checks payable to SPM each month during the period from January through August 2014. (CL Ex. 9). The Tenant paid the full rental amount of \$1,975.00 each month, less certain deductions for repair expenses. The Tenant paid the full rental amount of \$1,975.00 to SPM for each month in 2014, except for July 2014,

when the Tenant issued a rent check to SPM in the amount of \$1,953.84, which reflected a deduction of \$21.16 for certain repair expenses. (CL Ex. 9).

13. The Respondent failed to forward the Tenant's monthly rental payments (less authorized deductions) to the Claimant for the following six months in 2014: January 2014, March 2014, April 2014, June 2014, July 2014, and August 2014.

14. The Respondent disbursed rental payments to the Claimant for the months of February and May 2014. The Respondent forwarded a rental payment to the Claimant for the February 2014 rent in the amount of \$1,808.12, by check dated March 3, 2014. This included authorized deductions of \$158.00 for the management fee and \$8.88 for maintenance charges. (CL Exs. 3, 6).

15. The Claimant deposited this check in her bank on March 3, 2014. However, the bank returned this check in May 2014 due to there being insufficient funds in the SPM account. The bank charged the Claimant \$20.00 for a not sufficient funds (NSF) fee. On May 23, 2014, the Claimant contacted the Respondent by email and requested a new disbursement check for the February 2014 rent, plus the \$20.00 NSF fee, due to the bounced check. (CL Ex. 7).

16. The Respondent issued a new check to the Claimant on June 30, 2014 in the amount of \$1,828.12 covering the February 2014 rent and NSF fee. On July 23, 2014, the bank returned the new check to the Claimant, again due to NSF. (CL Ex. 4). By email dated July 23, 2014, the Claimant contacted the Respondent and again requested disbursement of the February 2014 rent in the amount of \$1,828.12 due to return of the second check for NSF, plus an additional NSF fee of \$20.00. (CL Ex. 7).

17. On August 5, 2014, the Respondent issued a cashier's check to the Claimant in the amount of \$1,828.12, again covering the February 2014 rent and the NSF fee. When issuing the cashier's check, the Respondent failed to include payment for the second \$20.00 NSF fee.

18. The Respondent provided the Claimant with a disbursement check for the May 2014 rent, in the amount of \$555.47, by check number 8025. This check included authorized deductions of \$158.00 for the Respondent's management fee, \$253.95 for repair of the dryer, \$79.95 to assess mechanical problems with the refrigerator, and \$927.63 to replace the refrigerator. (CL Exs. 3, 6). The disbursement check for the May 2014 rent did not bounce.

19. In July and August 2014, the Claimant notified the Respondent by email on several occasions that she had not received most of the 2014 disbursements of rent for the Property, aside from payments for the February and May 2014 rent. She also noted the two bounced checks. She requested prompt reimbursement of the unpaid rental disbursements. (CL Ex. 7).

20. On August 5, 2014, the Claimant notified the Respondent by email that she had advised the Tenant to send all further rent checks directly to her and not to the Respondent at SPM. She also notified the Respondent that she considered him to be in breach of the Agreement to perform property management services. (CL Ex. 7).

21. On August 11, 2014, the Claimant notified the Respondent by email that she was suspending the Respondent and SPM from further management duties and would not pay the Respondent a management fee due to his failure to forward the rental payments. (CL Ex. 7).

22. The Tenant paid all further rent payments directly to the Claimant, beginning with the September 2014 rent. (CL Ex. 9).

23. The Tenant continued to reside in the Property through June 2016. The Claimant refunded the Tenant's security deposit by allowing her to reside in the Property during June 2016 without charging her rent for that month. The Respondent never charged the Tenant for any damages to the Property, failed to refund the Tenant's security deposit of \$1,975.00, and never forwarded the security deposit funds to the Claimant.

24. The Respondent stopped performing his duties as a property manager for the Property in January 2014, when he failed to disburse rental checks to the Claimant beginning in January 2014, bounced the disbursement check for the February 2014 rent two times, failed to arrange timely repairs to the Property, failed to refund the security deposit to the Tenant or disburse the security deposit funds to the Claimant, and failed to respond to numerous inquiries from the Claimant regarding his acts and omissions as property manager.

25. The Claimant's actual loss from the Respondent's acts and omissions is \$13,803.84. This includes the Respondent's failure to forward rental disbursements for the Property to the Claimant for six months, which include January, March, April, June, July, and August 2014, less authorized expense deductions, and the Respondent's failure to forward the security deposit to the Tenant or Claimant.

DISCUSSION

The Respondent's Failure to Appear

The OAH scheduled the hearing in this case for Monday, July 24, 2017, at the OAH's office in Kensington, Maryland. On May 12, 2017, the OAH mailed a Notice of Hearing (Notice) to the parties. The OAH sent the Respondent's copy of the Notice by first class and certified mail (return receipt requested) to 307 Valley Brook Drive, Silver Spring, Maryland 20904, the Respondent's address of record with the REC. (GF Ex. 4). The United States Postal Service did not return to the OAH either the first class or certified mail copies of the Notice that were sent to the Respondent's address of record. The Domestic Return Receipt (Green Card) for the certified mail copy of the Notice that was sent to the Appellant was not returned to the OAH. In addition, the Appellant did not request a postponement of the hearing.

On or about July 14, 2017, the REC confirmed with the Motor Vehicle Administration (MVA) that the Respondent's address on Valley Brook Drive in Silver Spring, Maryland was the Respondent's current address of record. (GF Ex. 5).

As the Notices sent to the Respondent were not returned, and the Appellant did not request a postponement of the hearing, I find that the Respondent was sent proper notice of the hearing, even though the Green Card was not returned to the OAH.

Section 17-324 of the Business Occupations and Professions Article (BOP) provides that before the Commission can take any final action against an individual, the individual must be personally served with a hearing notice or the hearing notice must be sent by certified mail 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)(1) (2010). If the individual, after receiving proper 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), 17-408(c) (2010). The address used to notify the Respondent of the hearing is the Respondent's address of record with both the REC and the MVA. Therefore, I conclude that the Respondent was sent proper notice of the hearing, but nevertheless failed to appear. As a result, I determined that it was appropriate to proceed with the hearing despite the Respondent's failure to appear.

Legal Framework

A claimant may recover compensation from the Fund for an actual loss based on an act or omission by a licensed real estate salesperson that occurs in the provision of real estate brokerage services involving a transaction that relates to real estate located in this State. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a) (Supp. 2017). A claim must be based on an act or omission in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or an act or omission that constitutes fraud or misrepresentation. Md. Code Ann., Bus.

Occ. & Prof. § 17-404(a)(2)(iii) (Supp. 2017); COMAR 09.11.03.04A and B. The amount recoverable from the Fund is restricted to the actual monetary loss incurred by the claimant, and may only include monetary losses from the originating transaction. COMAR 09.11.01.14.

Section 17-101(j) of the BOP provides that a real estate salesperson licensed by the REC may provide real estate brokerage services on behalf of a licensed real estate broker with whom the real estate salesperson is affiliated. Section 17-101(l) of the BOP provides that real estate brokerage services include leasing any real estate, collecting rent for the use of any real estate, and engaging regularly in a business of dealing in real estate or leases on real estate. Md. Code Ann., Bus. Occ. & Prof. § 17-101(j), (l) (2010).

At a hearing on the claim, the Claimant bears the burden of proving entitlement to recovery from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (Supp. 2017).

Background and Analysis

The Respondent was a licensed real estate salesperson at all times relevant to this matter. He was employed by Spicer Real Estate in Rockville, Maryland, where he was affiliated with a licensed real estate broker. (CL Ex. 1). Pursuant to the August 13, 2009 Agreement with the Claimant, the Respondent was engaged in real estate brokerage services when he contracted to perform property management services related to the Property on behalf of SPM. Under the Agreement with the Claimant, the Respondent was responsible for collecting rent from the Tenant, depositing the rent payments (less any authorized deductions) into an escrow account, and forwarding the rental disbursements to the Claimant on a monthly basis. These acts all constitute real estate brokerage services under section 17-101(l) of the BOP. The Tenant's monthly rent for the Property was \$1,975.00. The Respondent was also required to collect, place in escrow, and disburse the security deposit that was equal to one month's rent. The Agreement provided that the Respondent was entitled to a leasing fee equal to the first month's rent when a

tenant was secured and a lease executed for a one, two, or three-year term. The Respondent secured the Tenant in 2013 and the Tenant extended the lease in 2014. According to the terms of the Agreement, and absent a specific financial arrangement regarding extension of the lease, the Respondent was not entitled to a leasing fee in 2014. The Agreement also provided that the Respondent was entitled to a monthly management fee of eight percent of the rent, or \$158.00. (CL Ex. 2).

The Claimant testified that the Respondent had contracted with the Claimant since about 2009 to provide property management services, and that the business relationship had progressed without problems until 2014. The Claimant executed the Agreement with the Respondent on or about August 13, 2009. The Agreement provided that it would renew annually, unless either party provided timely notice (sixty days) of their intent to terminate the Agreement. As a result, the Agreement remained in effect until the Claimant terminated it in writing in August 2014 due to the Respondent's breach of contract over the course of 2014. (CL Exs. 1, 7).

On or about May 23, 2014, the Claimant discovered that the check the Respondent sent her in March 2014 as disbursement for the February rent had bounced. The Respondent delayed in replacing this check, but finally issued a new rental check to the Claimant on June 30, 2014 to cover the February 2014 rent. This check included a \$20.00 NSF fee that the bank charged the Claimant. On or about July 23, 2014, the Claimant learned that this replacement check had also bounced. While investigating the two bounced checks, the Claimant discovered that she had received only two disbursements of rent during calendar year 2014 (for the February and May 2014 rent). (CL Exs. 6, 8). The Claimant contacted the Respondent to inquire about this issue on several occasions, but received no response.

On August 11, 2014, the Claimant finally received a cashier's check for the February 2014 rent to replace the two bounced checks. (CL Ex. 5). However, the Respondent did not

provide the Claimant with any disbursements of rent for the Property for the months of January, March, April, June, July, and August 2014. On August 11, 2014, the Claimant notified the Respondent in writing of his failure to disburse the rental checks, and the Claimant requested prompt payment. (CL Ex. 7). In this written notification, the Claimant also addressed the Respondent's two bounced checks, and his delay and failure to handle maintenance issues at the Property. The Claimant advised the Respondent that she was suspending the Agreement due to these multiple problems which she considered as the Respondent's breach of the Agreement. (CL Ex. 7).

In her Guaranty Fund claim, the Claimant seeks six months of unpaid rental disbursements at \$1,975.00 per month, an additional \$1,975.00 for the security deposit that was never returned to the Tenant or Claimant, and \$101.00 in court costs for the case she filed in the District Court of Maryland for Montgomery County (District Court) seeking recovery of her losses.¹ Based on the total of these charges, the Claimant seeks to recover \$13,926.00 from the Fund. (GF Ex. 2). The Claimant also argued that the Respondent was not entitled to his management fee under the Agreement beginning in January 2014 because he ceased performing his property management duties beginning in January 2014, when he began failing to forward the rental disbursements.

The Claimant testified credibly about her numerous attempts to contact the Respondent in May through August 2014 to address the bounced checks and delinquent rental disbursements. She also submitted into evidence numerous emails demonstrating her efforts to contact the Respondent, address the bounced checks, and request prompt payment of the delinquent rental disbursements. Aside from repaying the bounced checks for the February 2014 rent, the Respondent failed to respond to the Claimant's inquiries and failed to make the required

¹ The Claimant received an Affidavit Judgment against the Respondent in District Court on April 18, 2016 in the amount of \$13,926.00. However, she has never recovered any funds from this judgment. (CL Ex. 11).

payments. The Claimant explained that she subsequently sent written notification to the Respondent of her intent to cancel the Agreement due to the Respondent's breach of contract, and regarding her intent to have the Tenant make future rental payments directly to the Claimant. The Claimant submitted email documents to confirm her written notice to the Respondent concerning these issues. (CL Exs. 7, 9). The Claimant explained that, in addition to the rental payments, she also seeks reimbursement from the Respondent for the security deposit. The Claimant explained that she repaid the security deposit to the Tenant by allowing her to live rent free in the Property in June 2016, the final month that she resided there.

The Claimant notified the Respondent in writing on August 5, 2014 that she considered him to have breached the Agreement regarding his property management duties. On August 11, 2014, she notified the Respondent that she was suspending the Agreement until further notice because of the Respondent's breach and failure to carry out the property management services. She also requested prompt repayment to avoid legal action. (CL Ex. 7). The Claimant followed up with a letter from her attorney, dated March 25, 2015, outlining the Respondent's breach of the Agreement and seeking repayment of the delinquent funds. (CL Ex. 10). The Respondent failed to respond to the Claimant's numerous inquiries, emails, and correspondence. The Respondent failed to appear at the hearing and has never explained the reasons for his breach.

The Claimant also submitted documents which demonstrate that the Tenant made timely rental payments to the Respondent during the period from January through August 2014, and subsequently made timely rental payments directly to the Claimant, beginning in September 2014. (CL Exs. 7, 9).

The Fund agreed that the Tenant made timely payments of the monthly rent to SPM in 2014, but that the Respondent failed to disburse the rental payments to the Claimant for six separate months during 2014. The Fund also agreed that the Respondent failed to account for the

Tenant's security deposit, which was equal to one month's rent. The Fund, therefore, acknowledged that the Claimant suffered an actual loss of six months' rent, plus an additional amount for the unpaid security deposit. The Fund claimed that the total of seven months' rent was properly reduced by \$158.00 to cover the management fee for January 2014, and by an additional amount of \$21.16 in expenses that the Tenant properly withheld from her July 2014 rental payment. The Fund claimed that the Claimant was not entitled to the court costs she was seeking because they did not arise from the original transaction and were, therefore, barred under the regulations. COMAR 09.11.01.14.

Therefore, the Fund argued that the Claimant was entitled to an award from the Fund of \$13,645.84 after these deductions were made. The Fund argued that the Respondent was entitled to his management fee of \$158.00 for January 2014 because it claimed that the Respondent did not cease acting as a property manager until February 2014. The Fund also argued that the legal theory supporting the Claimant's recovery from the Fund was based on misrepresentation by the Respondent, but not due to theft or embezzlement. The Fund claimed that the Respondent had misrepresented his intention to perform property management duties for the Property because he ceased performing those duties in or about February 2014 despite his agreement to do so. The Fund argued that theft or embezzlement did not apply here because the Claimant failed to prove on this record that the Respondent had the intent to steal or embezzle the funds.

Basis and Amount of Recovery

I conclude that the Claimant has proven that she is entitled to an award from the Fund due to the Respondent's acts and omissions in his capacity as a licensed real estate salesperson, based on his failure to provide property management services to the Claimant for the Property. I also conclude that the Claimant has proven that the Respondent engaged in misrepresentation when he contracted to provide property management services to the Claimant and failed to do so

for at least six months in 2014. Md. Code Ann., Bus. Occ. & Prof. §§ 17-101(j), (l), (o), 17-404(a)(2)(iii) (2010 & Supp. 2017).

I conclude that the Claimant is entitled to recover from the Fund for six months of rental payments based on the monthly rent of \$1,975.00. This is warranted based on the Respondent's failure to disburse rental payments to the Claimant during the months of January, March, April, June, July, and August 2014. The evidence demonstrates that the Tenant made timely rental payments to the Respondent's property management company, SPM, from January through August 2014, but that the Respondent failed to forward the rental payments to the Claimant during the six months listed above as required by the Agreement. The evidence reflects that the Respondent did forward rental payments to the Claimant, less proper deductions, for the months of February and May 2014. Reimbursement for the six months of rental payments is properly reduced by \$21.16 to reflect the expenses the Tenant properly deducted from her July 2014 rental payment. (CL Ex. 9).

The Claimant is also entitled to reimbursement for the cost of the security deposit, which was equal to one month's rent of \$1,975.00. The Respondent was required to collect and maintain the security deposit in an escrow account, and to promptly repay the full amount at the end of the lease unless he provided written notification to the Tenant of damages that would authorize withholding all or a portion of the security deposit. The Claimant proved that the Respondent failed to repay the security deposit to the Tenant or Claimant, and failed to notify the Tenant of any damages to the Property. The Claimant is entitled to reimbursement for the security deposit because she explained that she repaid the security deposit to the Tenant by permitting her to live rent free in June 2016, the last month of her tenancy.

I also conclude that the Respondent is not entitled to be paid a management fee for any month in 2014, beginning in January 2014, when he ceased performing his property management duties under the Agreement.² Beginning in January 2014, the Respondent failed to disburse rental payments to the Claimant in a timely and regular manner, bounced two disbursement checks, improperly failed to maintain an escrow account and refund the security deposit, and failed to perform maintenance duties on the Property in a timely manner, as required under the Agreement.

The Claimant is not entitled to reimbursement for court costs because such costs did not arise from the originating transaction and are not actual monetary losses under the statute or regulations. Md. Code Ann., Bus Occ. & Prof. § 17-404(a) (Supp. 2017); COMAR 09.11.01.14. The Claimant did not request recovery for any NSF fees or for interest arising from the security deposit, so I have not considered such additional costs.

The Claimant is entitled to recover for her actual loss from the Respondent's acts or omissions based on misrepresentation, as follows:

Failure to disburse rental payments for six months: (\$1,975.00 x 6) (January, March, April, June, July, and August 2014)	\$11,850.00
Failure to disburse security deposit:	+ \$ 1,975.00
Deduction for Property expenses (July 2014)	- \$ <u>21.16</u>
Actual Loss:	\$13,803.84

Therefore, the Claimant is entitled to an award from the Fund in the amount of \$13,803.84 for her actual loss based on the Respondent's misrepresentation in the provision of real estate brokerage services.

² The Respondent is also not entitled to a leasing fee under the Agreement in 2014 as addressed above because the Tenant merely extended the lease in May 2014 for an additional fourteen months and the parties failed to reach an agreement for a leasing fee under the "to be determined" contingency set forth in the Agreement. (CL Ex. 1).

CONCLUSIONS OF LAW

Based on the above Findings of Fact and Discussion, I conclude as a matter of law that the Claimant sustained an actual loss, compensable by the Fund, due to an act or omission of the Respondent in which money or property was obtained from the Claimant by misrepresentation in the provision of real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(iii) (Supp. 2017). I further conclude as a matter of law that the amount of the award that the Claimant is entitled to receive from the Fund is \$13,803.84. COMAR 09.11.01.14.

PROPOSED ORDER

I PROPOSE that the Claim filed by the Claimant against the Maryland Real Estate Guaranty Fund be GRANTED in the amount of \$13,803.84.

SIGNATURE ON FILE

October 12, 2017
Date Proposed Decision Issued

Douglas E. Koteen
Administrative Law Judge

DEK/da
170165

SIGNATURE ON FILE

<p>IN THE MATTER OF THE CLAIM OF</p> <p>ROBIN RINEARSON,</p> <p>CLAIMANT</p> <p>v.</p> <p>THE MARYLAND REAL ESTATE</p> <p>COMMISSION GUARANTY FUND,</p> <p>FOR THE ALLEGED MISCONDUCT</p> <p>OF MICHAEL BAUGHER,</p> <p>RESPONDENT</p>	<p>* BEFORE DOUGLAS E. KOTEEN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH Case No. DLR-REC-22-17-10130</p> <p>* MREC Case No. 16-RE-328GF</p> <p>*</p> <p>*</p> <p>*</p>
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FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the Claimant:

- CL. Ex. 1. Property Management and Exclusive Rental Agreement between Claimant and Summit Property Management, LLC, signed August 24, 2009 (7 pages);
- CL. Ex. 2. Summit Property Management Standard Residential Dwelling Lease between Summit Property Management, LLC, and Teri Rainville-Scott, Tenant, dated May 3, 2013; with attached Maryland Lead Paint Disclosure and Notice Statement, signed June 28, 2010, June 24, 2010, and May 3, 2013; and Amendment/Addendum, signed May 3 and 5, 2014; and attached cover letter from Respondent, dated March 3, 2015 (13 pages);
- CL. Ex. 3. Not Sufficient Funds (NSF) Statement for Check No. 7931, dated March 3, 2014 (1 page);
- CL. Ex. 4. Not Sufficient Funds (NSF) Statement for Check No. 8082, dated June 30, 2014 (1 page);
- CL. Ex. 5. Cashier's Check No. 019489, dated August 5, 2014 (1 page);
- CL. Ex. 6. Detailed Property Statement from Summit Property Management, LLC, to Claimant, dated February 2014 (1 page);
- CL. Ex. 7. E-mail chain for Claimant, Respondent, and Teri Rainville-Scott, dated May 23, 2014 through August 11, 2014 (15 pages);
- CL. Ex. 8. Detailed Property Statement from Summit Property Management, LLC, to Claimant, dated May 2014 (1 page);
- CL. Ex. 9. E-mail chain for Claimant and Teri Rainville-Scott, dated February 6-7, 2015; with attached copies of Check No. 1279, dated January 1, 2014; Check No. 1284, dated February 1, 2014; Check No. 1292, dated March 1, 2014; Record of Bank of America payments, dated April 9, 2014 and May 13, 2014; Copies of Check No. 1306, dated June 1, 2014; Check No. 1312, dated July 1, 2014; Check No.