

# FINAL ORDER

## BEFORE THE MARYLAND REAL ESTATE COMMISSION

MAY 07 2012

MARYLAND REAL ESTATE  
COMMISSION

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MARYLAND REAL  
ESTATE COMMISSION

v.

\* CASE NO. 2010-RE-399

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SUSAN T. GREEN  
Respondent

And

\* OAH NO. DLR-REC-24-10-31520

CLAIM OF DOROTHY MORGAN  
AGAINST THE MARYLAND REAL  
ESTATE GUARANTY FUND

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\* \* \* \* \*

### OPINION AND FINAL ORDER

This matter came before the Maryland Real Estate Commission ("Commission") on argument on Exceptions filed by the Respondent, Susan T. Green, to the Proposed Order of September 21, 2011. On June 6, 2011, Administrative Law Judge William J. D. Somerville, III ("ALJ") filed a Proposed Decision and Recommended Order in which he recommended that the Respondent's real estate license be revoked; that the Respondent pay a civil penalty of \$5,000.00; and that the claim of Dorothy Morgan against the Maryland Real Estate Guaranty Fund ("Fund") be allowed in the amount of \$1,700.00.

On September 21, 2011, the Commission issued a Proposed Order that affirmed the Findings of Fact and Conclusions of Law in the Proposed Decision of the ALJ. In its Proposed Order, the Commission amended the Recommended Order as follows:

"ORDERED that the Respondent Susan T. Green violated Md. Bus. Occ. and Prof. Art. § 17-322 (b) (25) and (31), and § 17-502 (a);

ORDERED that the Respondent Susan T. Green did not violate Md. Bus. Occ. and Prof. Art. § 17-322 (b) (33) and COMAR 09.11.02.01H;

ORDERED that all real estate licenses held by the Respondent Susan T. Green be REVOKED;

ORDERED that the Respondent Susan T. Green be assessed a civil penalty in the amount of \$5,000.00 which shall be paid within thirty (30) days of the date of this Proposed Order.

ORDERED that the Claimant Dorothy Morgan be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of \$1,700.00;

ORDERED that the Respondent Susan T. Green shall be ineligible to hold a real estate license until the civil penalty is paid in full, and the Maryland Real Estate Guaranty Fund is reimbursed, including any interest that is payable under the law;

ORDERED that the records and publications of the Maryland Real Estate Commission reflect this decision.”

A hearing on the Exceptions filed by the Respondent was held by a panel of Commissioners, consisting of Commissioners Robin L. Pirtle, Anne S. Cooke, and Georgiana S. Tyler, on January 18, 2012. Peter Martin, Assistant Attorney General, represented the Commission. Ms. Green waived her right to counsel at the hearing. A transcript of the hearing before the ALJ was not provided by the Respondent for the Commission’s review. The proceedings were electronically recorded.

#### **PRELIMINARY MATTERS**

At the Exceptions’ hearing, Ms. Green acknowledged that she had waived her right to representation by legal counsel. She requested that her broker, Candice Friday,

who was in attendance at the hearing, be permitted to represent her. Mr. Martin objected to this request on the grounds that Ms. Friday is not an attorney. The Commission notes that Ms. Green was notified in the Commission's letter to her of October 13, 2011, regarding the scheduled date for her Exceptions' hearing, that:

" . . . . .

A party may be represented by an attorney licensed to practice law in Maryland. If you wish to hire an attorney to represent you, you should arrange legal representation prior to the hearing, and as soon as possible.

" . . . . ."

Based on the Code of Maryland Regulations (COMAR) .09.01.02.08 and the fact that Ms. Green had been notified in advance that if she desired legal representation at her Exceptions' hearing that representation must be provided by an attorney licensed to practice law in Maryland, the Commission denied Ms. Green's request to be represented by her broker, who is not an attorney.

Ms. Green also complained that she had submitted documents to the Commission and expected them to be presented at her hearing before the ALJ. Mr. Martin questioned Ms. Green's assumption that the Commission, which had charged her with violations, would present evidence on her behalf at a hearing on the charges. The Commission concluded that the burden was on Ms. Green to present any available evidence in her defense at the hearing before the ALJ and determined that such evidence was not admissible at the Exceptions' hearing based on the provisions of COMAR 09.01.03.09 K which provides:

"Additional evidence may not be introduced unless the party seeking to introduce it demonstrates to the satisfaction of the administrative unit that the new evidence:

- (1) Is relevant and material;

- (2) Was not discovered before the ALJ hearing; and
- (3) Could not have been discovered before the ALJ hearing with the exercise of due diligence.”

Specifically, the Commission concludes that the evidence in question was available to Ms. Green before the ALJ hearing and could have been presented by her at that hearing.

### **SUMMARY OF THE EVIDENCE**

On behalf of the Commission, four exhibits, as well as the exhibits which were entered into the record at the hearing before the ALJ, were entered into evidence at the Exceptions’ hearing.

### **FINDINGS OF FACT**

The Commission adopts the Findings of Fact recommended by the ALJ.

### **CONCLUSIONS OF LAW**

The Commission adopts the ALJ’s Conclusions of Law.

### **DISCUSSION**

At all times relevant to this matter, the Respondent was a licensed real estate salesperson associated with a real estate brokerage known as “Coastal Realty, Maryland”. FF 1<sup>1</sup>. On September 25, 2009, Charles H. Seivert General Contractors, Inc., the owner of a lot or parcel in Anne Arundel County, known as “279 North Drive” (the “Property”) entered into a listing agreement with the Respondent and her broker, Coastal Realty, Maryland. FF 2. One term of the

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<sup>1</sup>“FF” refers to the ALJ’s Findings of Fact.

listing agreement was that the Respondent would earn no commission if the Respondent were to sell the property through a "building package" by which the Respondent would also be the builder. FF 2.

Sometime before October 5, 2009, the Claimant and the Respondent began negotiating, by e-mail, an agreement for the Respondent and the Respondent's husband to build a house on the Property. FF 3. On October 10, 2009, the Claimant and the Respondent entered into a new home construction contract in which the Respondent's building company would build a new house on the Property provided that, among other things, the Claimant could purchase the lot from the owner for \$229,000.00. FF 4. On October 19, 2009, the Claimant asked the Respondent, in an e-mail message, whether the Respondent would negotiate on the Claimant's behalf with the owner of the Property. FF 5. In a subsequent e-mail message that day, the Claimant asked the Respondent: "Acting as our agent, what do you think is a reasonable offer for the lot?" FF 5. The Respondent offered the Claimant some comparable property prices. FF 5. On October 22, 2009, the Respondent presented the owner with the Claimant's offer of \$250,000.00 for the lot. FF 6. On October 27, 2009, the Claimant notified the Respondent that her offer of \$250,000.00 had expired. FF 7. On October 28, 2009, the Respondent told the Claimant by e-mail that the owner would take \$260,000.00 for the Property. FF 8. On November 3, 2009, the Claimant wrote in an e-mail message to the Respondent that she had accepted the price, would sign a contract, and would send a \$2,500.00 deposit. FF 9.

On November 4, 2009, the Claimant executed a contract of sale document for the Property. At that time, the Claimant sent the Respondent a check in the amount of \$2,500.00 as a trust money deposit on the Property. On the memorandum line of the check, the Claimant had written, "Deposit on land 279 North Drive". The proposed purchase price was \$260,000.00. The transaction was contingent upon the Claimant obtaining a building loan. An addendum to the contract document said that no commission would be paid to Coastal Realty, Maryland on the purchase of the Property. FF 10.

The Respondent deposited the Claimant's check into her personal account and did not submit the money or the contract document to her broker, Coastal Realty, Maryland. FF 11.

On November 21, 2009, someone signed the name of the Claimant on a contract addendum document that was drafted on letterhead stationary of Charles H. Seivert General Contractors, Inc. The Claimant did not sign that document. FF 12. Upon seeing the bogus signature on the addendum document, the Property owner, Charles H. Seivert General Contractor, Inc., cancelled the listing agreement with the Respondent. FF 12, 13.

The Claimant had trouble obtaining financing. FF 14. On December 9, 2009, the Respondent wrote in an e-mail message to the Claimant that if she did not hear from the Claimant by December 15, 2009 with regard to success in obtaining financing, she would prepare a release document so that she could return the deposit money to the Claimant. FF 15. On December 14, 2009, the Claimant asked the Respondent to return the deposit because the Claimant could

not obtain financing. FF 16. On or about December 17, 2009, the Claimant submitted a release document to the Respondent in an attempt to get her deposit back. FF 17. On January 19, 2010, the Respondent sent an e-mail message to the Claimant stating that she would send the deposit money by certified mail on the next day, despite not having in her possession a signed release document from the owner of the Property. FF 18.

The Respondent sent the Claimant a check for \$800.00 and when contacted by the Claimant, the Respondent told the Claimant that she would keep the balance of \$1,700.00 for "expenses" such as building permits. FF 19. After receiving the check and the explanation, the Claimant asked the Respondent for invoices to show the expenses. FF 20. No building permit had been issued associated with the Property. The Respondent did not forward any documentation of expenses to the Claimant. FF 21. The Claimant complained to the Commission on or about March 19, 2010. FF 22.

It is apparent from the facts of this case that the Respondent was acting as a real estate salesperson for the owner of the Property from September 25, 2009, when the listing agreement was entered into by the owner of Property with the Respondent and her broker, until November 21, 2009, when the owner cancelled the listing agreement. During that time she accepted a \$2,500.00 deposit on the Property from the Claimant. Md. Bus. Occ. and Prof. Art., § 17-502 (a) provides:

"An associate real estate broker or a real estate salesperson who obtains trust money while providing real estate brokerage services promptly shall submit the trust money to the real estate broker on whose behalf the associate real estate broker or the real estate salesperson provided the real estate brokerage services."

The Respondent, therefore, was required by Md. Bus. Occ. and Prof. Art., § 17-502 (a) to submit the \$2,500.00 to her broker, Coastal Realty, Maryland, for deposit in a trust account maintained by the broker. The Respondent did not submit the underlying contract nor the \$2,500.00 deposit to her broker. Instead, the Respondent deposited the Claimant's \$2,500.00 deposit check into her personal account. This conduct was a clear violation of Md. Bus. Occ. and Prof. Art., § 17-502 (a) as well as § 17-322 (b) (31), which prohibits the violation of any provision of Subtitle 5 of Title 17 that relates to trust money.

In addition, the Commission concludes that the Respondent's conduct in intentionally keeping deposit money which should have been submitted to her broker for deposit in a trust account was a violation of Md. Bus. Occ. and Prof. Art., § 17-322 (b) (25) which prohibits a licensee from engaging in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings. If the Respondent kept the deposit money because she did not understand that it should be submitted to her broker, she was incompetent in providing real estate brokerage services. If she intentionally kept the deposit money knowing that it should be submitted to her broker, she demonstrated untrustworthiness in the provision of real estate brokerage services. The Respondent's conduct in keeping \$1,700.00 of the deposit money after the transaction failed due to the Complainant's inability to obtain financing and her attempts to rationalize her actions by claiming that she was entitled to undocumented "expenses" incurred relating to the construction of a new home on the Property further support the Commission's conclusion that the



Respondent demonstrated untrustworthiness or dishonest and improper dealings in the provision of real estate brokerage services.

Instead of or in addition to reprimanding, suspending or revoking a real estate license for the above cited violations, Md. Bus. Occ. and Prof. Art., § 17-322 (c) permits the assessment of up to a \$5,000.00 penalty per violation. To determine the amount of the penalty to be imposed, the Commission is required to consider the following criteria:

- 1) the seriousness of the violation;
- 2) the harm caused by the violation;
- 3) the good faith of the licensee; and
- 4) any history of previous violations by the licensee.

Although the Respondent has no history of prior violations, the Commission finds that the violations in this case are extremely serious. The Respondent failed to comply with the requirements of the law regarding the handling of deposit money which was to be held in trust. The Respondent's failure to handle the deposit money in accordance with the provisions of the law caused harm to the reputation of the real estate industry and violated the trust which the public accords to real estate licensees who handle their funds. Further, the Respondent's actions in converting \$1,700.00 of the deposit money to her own use caused monetary harm to the Claimant. The Respondent's actions also reveal a lack of trustworthiness and good faith in dealing, as a licensed real estate salesperson, with the public. By her actions, the Respondent has demonstrated that she cannot be trusted to handle trust funds being held pursuant to Title 17, Md. Bus. Occ. and Prof. Art. Therefore, the Commission concludes, based on an evaluation of the

criteria noted above, that the appropriate disciplinary sanctions in this case are the revocation of all real estate license held by the Respondent, Susan T. Green, and the imposition of a \$5,000.00 civil penalty.

The Claimant filed a claim for reimbursement from the Maryland Real Estate Commission Guaranty Fund ("Fund"). Claims for reimbursement from the Fund are governed by Md. Bus. Occ. & Prof. Art., § 17-404, which provides, in pertinent part:

**§17-404.**

(a) (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;

. . . .

(ii) involve a transaction that relates to real estate that is located in the State; and

(iii) be based on an act or omission:

. . . .

2. that constitutes fraud or misrepresentation.

With respect to claims against the Fund, COMAR 09.11.03.04 further provides:

**04. Claims Against the Guaranty Fund.**

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 pretenses, artifice, trickery, or forgery, or by reason of fraud, misrepresentation, or deceit.

(2) Is performed by an unlicensed employee of a 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.

**COMAR 09.11.01.18** provides further:

The amount of compensation recoverable by a claimant from the Real Estate Guaranty Fund, pursuant to Business Occupations and Professions Article, Title 17, Subtitle 4, Real Estate Guaranty Fund, Annotated Code of Maryland, shall be restricted to the actual monetary loss incurred by the claimant, but may not include monetary losses other than monetary loss from the originating transaction. Actual monetary losses may not include commissions owed to a licensee of this Commission acting in his capacity as either a principal or agent in a real estate transaction, or any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.

The Claimant seeks reimbursement of \$1,700.00 of the \$2,500.00 deposit that the Respondent failed to return to her when the real estate transaction involving the Property was cancelled. The Commission concludes that the Claimant sustained an actual loss in the amount of \$1,700.00 based on the misrepresentation of the Respondent, a licensed real estate salesperson, that the \$2,500.00 would be treated as a refundable trust money deposit. Instead, the Respondent treated the \$2,500.00 deposit as money she personally was entitled to in connection with a new home construction contract related to the Property. This misrepresentation was made during the course of a transaction which involved real estate located in the State of Maryland. The Claimant established that she has suffered an actual monetary loss of \$1,700.00. Therefore, the Commission concludes that the Claimant is entitled to an award of \$1,700.00 from the Fund.

## CONCLUSIONS OF LAW

Based upon the ALJ's Findings of Fact, which have been adopted by the Commission and the foregoing Discussion, the Commission concludes, as a matter of law, that:

1. The Respondent engaged in conduct that demonstrates bad faith, incompetency, or untrustworthiness, or that constitutes dishonest, fraudulent, or improper dealings in violation of Md. Bus. Occ. and Prof. Art., § 17-322 (b) (25).
2. The Respondent violated Md. Bus. Occ. and Prof. Art., § 17-502(a), by failing to submit the Claimant's \$2,500.00 trust money deposit to her broker.
3. The Respondent's violation of Md. Bus. Occ. and Prof. Art., § 17-502(a) constitutes a violation of Md. Bus. Occ. and Prof. Art., § 17-322 (b) (31).
4. The Respondent is subject to sanctions for her conduct, and the Commission concludes that the revocation of all real estate licenses held by the Respondent as well as a civil penalty of Five Thousand Dollars (\$5,000.00) are appropriate sanctions. Md. Bus. Occ. and Prof. Art., § 17-322 (c).
5. The Claimant has established an actual loss recoverable from the Fund in the amount of One Thousand Seven Hundred Dollars (\$1,700.00). Md. Bus. Occ. and Prof. Art., § 17-404.

## ORDER

The Exceptions of the Respondent, Susan T. Green, having been considered, it is this 5th day of April, 2012 by the Maryland Real Estate Commission, **ORDERED:**

1. That the Respondent, Susan T. Green, violated Md. Bus. Occ. and Prof. Art.,

§ 17-322 (b) (25) and (31); and § 17-502 (a);

2. That the Respondent, Susan T. Green, did not violate Md. Bus. Occ. and Prof. Art., § 17-322 (b) (33) and COMAR 09.11.02.01H.

3. That all real estate licenses held by the Respondent, Susan T. Green, be **REVOKED**;

4. That the Respondent, Susan T. Green, be assessed a civil penalty in the amount of **Five Thousand Dollars (\$5,000.00)**, which shall be paid within thirty (30) days of the date of this Order;

5. That the claim of Dorothy Morgan against the Maryland Real Estate Guaranty Fund be **GRANTED** in the amount of **One Thousand Seven Hundred Dollars (\$1,700.00)**;

6. That the Respondent, Susan T. Green, shall be ineligible for a real estate license until the civil penalty is paid, and the Maryland Real Estate Guaranty Fund is repaid in full, together with any interest that is due; and

7. That the records and publications of the Maryland Real Estate Commission reflect this decision.

**MARYLAND REAL ESTATE COMMISSION**

SIGNATURE ON FILE  
By: [Signature]  
for: [Signature] [Signature]

**Note:** A judicial review of this Final Order may be sought in the Circuit Court of Maryland in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION \*

v. \*

SUSAN T. GREEN  
Respondent

\* CASE NO. 2010-RE-399

And

\* OAH NO. DLR-REC-24-10-31520

CLAIM OF DOROTHY MORGAN  
AGAINST THE MARYLAND  
REAL ESTATE GUARANTY FUND

\* \* \* \* \*

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated June 6, 2011, having been received, read and considered, it is, by the Maryland Real Estate Commission, this *31st* day of *September* 2011

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, AFFIRMED;

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

ORDERED that the Respondent Susan T. Green violated Md. Bus. Occ. and Prof. Art. § 17-322(b)(25) and (31), and § 17-502(a).

ORDERED that the Respondent Susan T. Green did not violate

Md Bus. Occ and Prof. Art. § 17-322(b)(33) and COMAR  
09.11.02.01H:

ORDERED that all real estate licenses held by the Respondent Susan T. Green be REVOKED;

ORDERED that the Respondent Susan T. Green be assessed a civil penalty in the amount of \$5,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that the Claimant Dorothy Morgan be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of \$1,700.00;

ORDERED that the Respondent Susan T. Green shall be ineligible to hold a real estate license until the civil penalty is paid in full, and the Maryland Real Estate Guaranty Fund is reimbursed, including any interest that is payable under the 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 that the Recommended Decision of the Administrative Law Judge had to be modified to provide a time period within which the civil penalty must be paid, and to provide that the Respondent would be ineligible for a real estate license until the civil penalty is paid in full and the Guaranty Fund is reimbursed

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

*for Anne P. Cooke, Chairman*



MARYLAND REAL ESTATE  
COMMISSION

v.

SUSAN T. GREEN,  
RESPONDENT

&

THE CLAIM OF DOROTHY

MORGAN, CLAIMANT,

AGAINST THE MARYLAND REAL  
ESTATE COMMISSION GUARANTY  
FUND

\* BEFORE WILLIAM SOMERVILLE,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS

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\* OAH Case No.: DLR-REC-24-10-31520

\* MREC Case No.: 10-RE-399GF

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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On March 26, 2010, Dorothy Morgan (Claimant) filed a complaint with the Maryland Real Estate Commission (REC or Agency) and a claim against the REC Guaranty Fund (Fund) for losses she alleges she suffered as a result of the actions of Susan T. Green (Respondent), a licensed real estate salesperson. On August 25, 2010, the REC issued regulatory charges against the Respondent and authorized the Claimant to proceed with her claim against the Fund.

On March 7, 2011, I conducted a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010).<sup>1</sup> Jessica Berman Kaufman, Assistant Attorney General, represented the REC and Hope M. Sachs, Assistant Attorney General, represented the Fund. The Claimant represented herself and the Respondent represented herself.

The Administrative Procedure Act, the REC's Hearing Regulations and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009 & Supp. 2010); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

### ISSUES

1. Did the Respondent violate sections 17-322(b)(25) (bad faith or untrustworthiness); (31) (mishandling trust money under section 17-502 of the Business Occupations Article); (32) (violation of any other statute in title 17); or (33) (violation of the code of ethics found in agency regulations) of the Business Occupations Article?
2. Did the Claimant suffer an "actual monetary loss" as a result of the conduct of the Respondent and, if so, what is the amount of the loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

The REC offered the following exhibits, which were admitted into evidence as REC

#### Exhibits:

1. Notice of Hearing and Order for Hearing
2. Transmittal sheet and Order For Hearing
3. Licensing History of the Respondent

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<sup>1</sup> Throughout this decision, Maryland Code Annotated, Business Occupations & Professions (2010) is referred to as "Business Occupations."

4. Report of Investigation by Lucinda Sands, with attachments

The Claimant offered the following documents which were admitted into evidence as Claimant's Exhibits:

1. Print-out of computer screen showing "no permits found" for the property in issue, undated
2. Copy of Check, no. 1001
3. String of e-mail messages

The Respondent offered the following documents which were admitted into evidence as Respondent's exhibits:

1. Location Survey, 11-19-09
2. Print-out of a computer screen from ePlans.com, printed on 2-10-11

#### Testimony

The REC presented the testimony of the Claimant and Lucinda Sands, an REC Investigator. The Claimant testified in her case. The Respondent testified in her case. The Fund did not present the testimony of any witnesses.

#### FINDINGS OF FACT

After considering the testimony, demeanor evidence, and other evidence presented, 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 associated with a real estate brokerage entity known as "Coastal Realty, Maryland."
2. On September 25, 2009, the owner of a lot or parcel in Anne Arundel County, known as "279 North Drive," entered into a listing agreement with the Respondent and her broker, Coastal Realty, Maryland. The owner was Charles H. Seivert General

Contractors, Inc., and one term of the listing agreement was that the Respondent would earn no commission if the Respondent were to sell the property through a "building package" by which the Respondent would also be the builder.

3. Sometime before October 5, 2009, the Claimant and the Respondent began negotiating by e-mail an agreement for the Respondent and the Respondent's husband to build a house on that certain lot, or parcel, known as 279 North Drive in Anne Arundel County.
4. On October 10, 2009, the Claimant and Respondent entered into a new home construction contract in which the Respondent's building company would build a new house on the lot known as 279 North Drive in Anne Arundel County, provided that, among other things, the Claimant could purchase the lot from the owner for \$229,000.
5. On October 19, 2009, the Claimant asked the Respondent in an e-mail message whether the Respondent would negotiate on the Claimant's behalf with the owner of the lot. In a subsequent e-mail message that day, the Claimant asked the Respondent, "Acting as our agent, what do you think is a reasonable offer for the lot?" The Respondent offered the Claimant some comparable property prices.
6. On October 22, 2009, the Respondent presented the owner with the Claimant's offer of \$250,000 for the lot.
7. On October 27, 2009, the Claimant notified the Respondent that her offer of \$250,000 had expired.
8. On October 28, 2009, the Respondent told the Claimant by e-mail that the owner would take \$260,000 for the lot.

9. On November 3, 2009, the Claimant wrote in an e-mail message to the Respondent that she had accepted the price, would sign a contract, and would send a \$2,500 deposit.
10. On November 4, 2009, the Claimant executed a contract of sale document for the parcel known as 279 North Drive. At that time, the Claimant sent the Respondent a check in the amount of \$2,500 as a trust money deposit on the property; on the memorandum line of the check the Claimant had written, "Deposit on land 279 North Drive." The proposed purchase price was \$260,000. The transaction was contingent upon the Claimant obtaining a building loan. (REC Ex. 4) An addendum to the contract document said that no commission would be paid to Coastal Realty, Maryland, on the lot purchase. (REC Ex. 4)
11. The Respondent deposited the Claimant's check into her personal account; she did not submit the money to her broker, Coastal Realty, Maryland. She also did not submit the contract document to her broker, Coastal Realty, Maryland.
12. On November 21, 2009, someone signed the name of the Claimant on a contract addendum document that was drafted on letterhead stationary of Charles H. Seivert General Contractor, Inc.; the Claimant did not sign that document.
13. Upon seeing the bogus signature on the addendum document, the lot owner, Charles H. Seivert General Contractor, Inc., cancelled the listing agreement with the Respondent.
14. The Claimant had trouble obtaining financing.
15. On December 9, 2009, the Respondent wrote in an e-mail message to the Claimant that if she did not hear from the Claimant by December 15, 2009, with regard to

- success in obtaining financing, then she would prepare a release document so that she could return the deposit money to the Claimant. (Claimant's Ex. 3)
16. On December 14, 2009, the Claimant asked the Respondent to return the deposit because the Claimant could not obtain financing.
  17. On or about December 17, 2009, the Claimant submitted a release document to the Respondent in an attempt to get her deposit back.
  18. About a month later, on January 19, 2010, the Respondent sent an e-mail message to the Claimant saying that she would send the deposit money by certified mail on the next day, despite not having in her possession a signed release document from the lot owner.
  19. The Respondent sent to the Claimant a check for \$800. When contacted by the Claimant, the Respondent told the Claimant that she would keep the balance of \$1,700 for "expenses," such as building permits.
  20. After the Claimant received the check and the explanation, she asked the Respondent for invoices to show the expenses.
  21. No building permit had been issued associated with the property. The Respondent did not forward any documentation of expenses to the Claimant.
  22. On or about March 19, 2010, the Claimant complained to the REC.

## DISCUSSION

### Burdens

No statute or regulation directly addresses which party has the burdens of production and persuasion<sup>2</sup> in a case in which the Agency seeks to sanction a licensee. See Md. Code Ann., Bus.

<sup>2</sup> Maryland law has long recognized that the "burden of proof" is more precisely discussed in terms of a burden of production and a burden of persuasion. Since before 1999, a third such burden has been addressed in Maryland, that being the "burden to plead." *Owens-Corning v. Walarka*, 125 Md. App. 313, 325 (1999), citing *Lynn McLain*, *Maryland Evidence* § 300.1, at 132 (1987).

Occ. & Prof. §§ 17-323 and 17-324 (explaining some notice requirements but not setting forth any burdens of proof). Generally, the party asserting the affirmative of a proposition has the burdens to prove that proposition. In *Comm'r of Labor & Industry v. Bethlehem Steel*, 344 Md. 17, 34 (1996), the Court held "that the burden of proof is generally on the party asserting the affirmative of an issue before an administrative body." With regard to the Agency's regulatory case against the Respondent, the Agency is asserting that the Respondent violated portions of several statutes; I conclude that the Agency has the burdens of proof in the regulatory case.

With regard to the Claimant's case against the Fund, it is clear that the Claimant shoulders the burdens of production and persuasion. The burdens are on the "claimant to establish the validity of the claim." Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2010). With regard to elements of proof in a case against the Fund, the statute, Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2010), governs all claims brought against the Fund, and sets forth criteria that must be established by the Claimant in order to obtain reimbursement.

With regard to the standard of proof, the statutes make it clear that the standard is by a preponderance of the evidence. Md. Code Ann., Bus. Occ. & Prof. § 17-324(b) (referring to Maryland's Administrative Procedures Act).

#### Regulatory Charges

The REC charged the Respondent with violating the following sections of the Business Occupations Article.:

**§ 17-322. Denials, reprimands, suspensions, revocations, and penalties – Grounds.**

...

(b) *Grounds*.--Subject to the hearing provisions of § 17-324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

...

(25) engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;

...

(31) violates any provision of Subtitle 5 of this title

...

(32) violates any other provision of this title;

...

(33) violates any regulation adopted under this title or any provision of the code of ethics [.]

Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25), (31), (32) and (33).

**§ 17-502. Handling Trust Money.**

(a) Submission to brokers by associate brokers and salespersons. -- An associate real estate broker or a real estate salesperson who obtains trust money while providing real estate brokerage services promptly shall submit the trust money to the real estate broker on whose behalf the associate real estate broker or the real estate salesperson provided the real estate brokerage services.

Md. Code Ann., Bus. Occ. & Prof. § 17-502.

The REC also charged the Respondent with violating a portion of the Agency's code of ethics:

**01. Relations to the Public**

H. For the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed.

COMAR 09.11.02.01H.

**Deposit Money and the Contract of Sale**

It is clear in this case that the Respondent was obligated to be, and was acting as a real estate salesperson for the owner of the lot from September 25, 2009, until the time when the



owner of the lot decided that he did not trust the Respondent any longer and canceled the listing agreement on November 21, 2009. (Findings of Fact 12 and 13.) As the owner's real estate salesperson, and as an employee of the real estate broker, the Respondent was obligated by section 17-502 of the Business Occupations Article, to submit the deposit money check to the broker. The Respondent did not submit the money to her broker and she did not submit the contract to her broker. Clearly, she violated section 17-502. That conduct also qualifies as conduct, under the facts and circumstances of this case, which demonstrates untrustworthiness if she intentionally kept the money knowing that it was to be submitted, or incompetence if she did not understand that the money was to be submitted to her broker. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25). That conduct can also be the basis of the conclusion that the "catch-all" provisions of sections 17-322(b)(31) (violates any provision of Subtitle 5) and (32) (violates any other provision) are satisfied.<sup>3</sup>

The Respondent argues that she was not acting as a real estate salesperson at the time of this transaction such that the statutory scheme did not apply to her in this case. I am not so persuaded. Merely having a conflicting,<sup>4</sup> companion role as a builder does not eliminate a person's status and responsibilities as a real estate salesperson in a transaction.

#### Returning the Deposit Money

Once the transaction crumbled, the Respondent did not return the entire deposit amount to the Claimant. (Findings of Fact 15 - 17.) She kept \$1,700 of the deposit and attempted to rationalize that amount as "expenses" incurred under the ancillary new home construction contract. The trust money deposit should have been returned under the terms of the real estate

<sup>3</sup> With regard to the Code of Ethics provision found in COMAR 09.11.02.01H, that provision does not appear to contemplate that a broker is a separate party to the transaction, or a party "involved." I did not find that the Respondent failed to place contract documents in the hands of parties to the transaction. That provision, therefore, does not apply.

<sup>4</sup> Her co-role as the builder in the transactions appeared to conflict with the interests of the owner of the lot as well as with those of the broker.

sales contract, and it should have been placed in, and returned from, the broker's trust money account. Expenses the Respondent might, or might not have personally incurred under another contract are not relevant. Even if, however, evidence of expenses incurred on the ancillary contract were relevant, no permits were issued and the Respondent offered no credible testimony or documentation demonstrating expenses of \$1,700 under the ancillary new home construction contract.

I conclude that the Agency has demonstrated that by retaining that portion of the deposit money associated with the contract of sale, the Respondent engaged in conduct that demonstrated untrustworthiness, or dishonest and improper dealings. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25).

The Respondent argues, unpersuasively, that the \$1,700 she kept represented her time, site work, and house plans. She also argues that, eventually, she would have given all the deposit money back to the Claimant if she could have passed those costs on to a subsequent buyer, but that the lot owner would not "go through with" another transaction. That argument shows lack of trustworthiness and is otherwise unpersuasive.

#### **Regulatory Sanctions**

The Respondent is subject to sanction under section 17-322(c) of the Business Occupations Article. Section 17-322(c) of the Business Occupations Article provides for the imposition of monetary penalties and states, in pertinent part, as follows:

*(c) Penalty. –*

(1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the Commission may impose a penalty not exceeding \$5,000 for each violation.

(2) To determine the amount of the penalty imposed, the Commission shall consider:

- (i) the seriousness of the violation;

- (ii) the harm caused by the violation;
- (iii) the good faith of the licensee; and
- (iv) any history of previous violations by the licensee.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c).

The REC recommended the imposition of a civil penalty of \$5,000 and revocation of the Respondent's real estate license. The evidence in this case supports the recommended sanctions. The violations that the Respondent committed were serious. She converted the trust money deposit to her own use. She failed to submit the deposit to her broker. She tried to rationalize that through an ancillary new home construction contract she had a right to the deposit money which should have been held in trust by her broker. She caused \$1,700 worth of monetary harm to the Claimant. She caused the Claimant to lose trust in a licensed real estate salesperson. She caused the lot owner to lose trust in a licensed real estate salesperson. She caused her broker not to trust her. She has not shown good faith in the transactions. She has no previous violations on her record. Based upon the facts and circumstances of this case, I cannot determine that the recommended sanctions are arbitrary and capricious or would be an abuse of the Agency's discretion. *Md. Aviation Admin. v. Noland*, 386 Md. 556, 581-82 (2005).

#### **Guaranty Fund Claim**

Claims for reimbursement from the Fund are governed by section 17-404 of the Business Occupations Article, which states, in pertinent part:

#### **§ 17-404. Claims against the Guaranty Fund.**

(a)(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:

3. a licensed real estate salesperson;

(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.

With respect to claims against the Fund, COMAR 09.11.03.04 further provides as

follows:

**.04 Claims Against the Guaranty Fund.**

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 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.

COMAR 09.11.01.18 provides further:

The amount of compensation recoverable by a claimant from the Real Estate Guaranty Fund, pursuant to Business Occupations and Professions Article, Title 17, Subtitle 4, Real Estate Guaranty Fund, Annotated Code of Maryland, shall be restricted to the actual monetary loss incurred by the claimant, but may not include monetary losses other than the monetary loss from the originating transaction. Actual monetary losses may not include commissions owed to a licensee of this Commission acting in his capacity as either a principal or agent in a real estate transaction, or any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.

As noted above, the Claimant bears the burdens of production and persuasion in this proceeding against the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e). In this case, the Claimant seeks reimbursement for \$1,700 of the \$2,500 trust money deposit that the Respondent failed to return to her when the real estate transaction was cancelled. The Fund did not dispute the claim for that amount of actual monetary loss.

In this case, the Claimant clearly proved that the \$1,700 was taken by the Respondent, and not returned, through an act of a licensed salesperson that involved a property in Maryland and that constituted a misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404. The Respondent misrepresented to the Claimant, among other things, that the \$2,500 trust money deposit would be treated as a refundable trust money deposit associated with the real estate contract of sale, when in fact the Respondent treated the money as money she personally earned through the ancillary new home construction contract. The Claimant has established that she suffered an actual monetary loss of \$1,700.

#### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the REC demonstrated by a preponderance of the evidence that:

A. The Respondent, as a licensed sales person, engaged in conduct that demonstrates bad faith, incompetency, or untrustworthiness, or that constitutes dishonest, fraudulent, or improper dealings. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25).

B. The Respondent violated a provision of Subtitle 5 relating to trust money. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(31); Md. Code Ann., Bus. Occ. & Prof. § 17-502.

C. The Respondent violated section 17-322(b)(32) of the Business Occupations Article by engaging in conduct that violated any other provision of the title.

D. The REC did not demonstrate that Respondent violated the regulations adopted under the Business Occupations Article which are the code of ethics. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33); COMAR 09.11.02.01H.

E. The Respondent is subject to sanctions for the conduct and revocation of her license and a \$5,000 civil penalty are appropriate sanctions. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c).

I also conclude that the Claimant has established by a preponderance of the evidence an "actual monetary loss" recoverable from the Fund, in the amount of \$1,700. Md. Code Ann., Bus. Occ. & Prof. § 17-404; COMAR 09.11.03.04.

**RECOMMENDED ORDER**

**I THEREFORE RECOMMEND** that the Maryland Real Estate Commission:

**ORDER** that the Respondent's real estate license be revoked; and further

**ORDER** that the Respondent pay a civil penalty of \$5,000; and further

**ORDER** that the Claimant be reimbursed from the Guaranty Fund in the amount of \$1,700; and further

**ORDER** that the records and publications of the Maryland Real Estate Commission reflect this decision.

June 6, 2011  
Date Decision Issued

**SIGNATURE ON FILE**

\_\_\_\_\_  
William J.D. Somerville III  
Administrative Law Judge

Doc #122915

MARYLAND REAL ESTATE  
COMMISSION

v.

SUSAN T. GREEN,  
RESPONDENT

&

THE CLAIM OF DOROTHY  
MORGAN, CLAIMANT,  
AGAINST THE MARYLAND REAL  
ESTATE COMMISSION GUARANTY  
FUND

\* BEFORE WILLIAM SOMERVILLE,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS

\*

\*

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\*

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\* OAH Case No.: DLR-REC-24-10-31520

\* MREC Case No.: 10-RE-399GF

\* \* \* \* \*

**FILE EXHIBIT LIST**

The REC offered the following exhibits, which were admitted into evidence as REC

Exhibits:

1. Notice of Hearing and Order for Hearing
2. Transmittal sheet and Order For Hearing
3. Licensing History of the Respondent
4. Report of Investigation by Lucinda Sands, with attachments

The Claimant offered the following documents which were admitted into evidence as

Claimant Exhibits:

1. Print-out of computer screen showing "no permits found" for the property  
in issue, undated
2. Copy of Check, no. 1001

3. String of e-mail messages

The Respondent offered the following documents which were admitted into evidence as

Respondent's exhibits:

1. Location Survey, 11-19-09
2. Print-out of a computer screen from ePlans.com, printed on 2-10-11