

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM * BEFORE NANCY E. PAIGE,
OF WARDELL WASHINGTON * ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND REAL * OF THE MARYLAND OFFICE OF
ESTATE COMMISSION GUARANTY * ADMINISTRATIVE HEARINGS
FUND FOR THE ALLEGED * OAH No: DLR-REC-22-10-17456
MISCONDUCT OF SHAUNTE M. * REC CASE NO: 08-RE-414 GF
BARKER

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated January 7, 2011, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 16th day of February, 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, 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

2/16/11
Date

By: _____
Anne S. Cooke, Commissioner

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ESTATE GUARANTY FUND, * OF ADMINISTRATIVE HEARINGS
FOR THE ALLEGED MISCONDUCT * OAH No.: DLR-REC-22-10-17456
OF SHAUNTE M. BARKER * REC No. 08-RE-414GF

* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On January 7, 2008, Wardell Washington (Claimant) filed a claim with the Maryland Real Estate Commission (REC) Guaranty Fund (Fund) for reimbursement for actual losses in the amount of \$13,500.00, suffered as a result of alleged misconduct by Shaunte M. Barker (Respondent), a formerly-licensed real estate broker. On or about May 7, 2010, the REC transmitted the case to the Office of Administrative Hearings (OAH) for a contested case hearing.

On October 25, 2010, I conducted a hearing at the County Office Building, 1400 McCormick Drive, Largo, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-407(c)(2)(ii) (2010). Richard S. Basile, Esquire, represented the Claimant. Eric B.

London, Assistant Attorney General, represented the Fund. The Respondent appeared and represented herself.

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); COMAR 09.01.03; COMAR 09.11.03; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund?
2. What is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- Cl. #1. March 30, 2007 Contract of Sale for Vacant Recorded Lot/Land/Parcel
- Cl. #2. Brochure cover
- Cl. #3. March 30, 2007 Exclusive Buyer/Tenant Agency Agreement
- Cl. #4. March 30, 2007 check to Luis Moreno
- Cl. #5. March 1 – March 31, 2007 Washington Gas Light FCU Statement
- Cl. #6. March 30, 2007 Washington Gas Light FCU receipt
- Cl. #7. September 27, 2007 printout of email correspondence
- Cl. #8. October 20, 2010 printout of email correspondence
- Cl. #9. June 29, 2009, transcript excerpt of proceedings, *State v. Barker*, Circuit Court for Prince George's County, CJ 09-1146

Cl. #10. August 27, 2009 transcript of proceedings, *State v. Barker*, Circuit Court for Prince George's County, CJ 09-1146

Cl. #11. *State v. Barker*, Circuit Court for Prince George's County, CJ 09-1146, Docket Entries with attachments

CL #12. October 21, 2010 letter from REC to Richard Basile

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

REC #1. July 6, 2010 Notice of Hearing with certified mail receipt

REC #2. April 27, 2010 Order for Hearing

REC #3. October 18, 2010 REC licensing history

REC #4. December 31, 2007 Complaint and Guaranty Fund Claim

REC #5. January 14, 2008 letter from REC to Respondent

The Respondent did not offer any exhibits.

Testimony

The Claimant testified on his own behalf.

The Fund did not present any testimony.

The Respondent testified on her own 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 broker.
2. On or about March 30, 2007, the Claimant and the Respondent entered into a business relationship for the purpose of developing unimproved land in Prince George's County.
3. The Respondent prepared a Contract of Sale for Vacant Recorded Lot/Land/Parcel, identifying the Claimant as the purchaser of a property known as 17030 Livingston

Road, Accokeek, Maryland (the Livingston Road property). At the same time, she prepared an Exclusive Buyer/Tenant Agency Agreement between the Claimant and herself. Neither agreement was ever fully executed.

4. On March 30, 2007, the Claimant gave the Respondent a cashier's check for \$13,500.00 as a deposit on his offer to purchase the Livingston Road property for \$1,000,000.00.
5. The Respondent instructed the Claimant to make the check payable to Luis Moreno, whom she represented as the seller's trustee.
6. Luis Moreno was the Respondent's landlord. He had no role in the sale of the Livingston Road property or the business arrangement between the Claimant and the Respondent.
7. The Respondent used the Claimant's \$13,500.00 to pay her rent, which was overdue at the time.

DISCUSSION

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 that involves a transaction that relates to real estate that is located in the State. The act or omission must be one that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a) (2004); COMAR 09.11.03.04.¹ 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) (2004). The REC shall order payment of a claim by the Fund for the actual monetary loss

¹ The REC adopted COMAR 09.11.03.04 pursuant to a statutory delegation of authority. Md. Code Ann., Bus. Occ. & Prof. § 17-402(c) (2010).

(up to \$25,000) suffered by the claimant. Md. Code Ann., Bus. Occ. & Prof. § 17-410(a) & (b) (2004). Further COMAR 09.11.01.18 sets forth the parameters of an actual loss as follows:

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.

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). In the second, a licensee's act or omission constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(2); COMAR 09.11.03.04B(1).

The essential facts are not in dispute. The Claimant gave the Respondent a cashier's check for \$13,500.00 which he intended to be used as a deposit for the purchase of a parcel of land. The Respondent misled him into making the check payable to her landlord, and she used the check to pay her rent, which was then in arrears. The Respondent does not deny that she misappropriated the Claimant's funds.² She says she had no intention of defrauding him, however, and intended to pay him back out of commission she expected in another transaction. When that transaction fell through, she was unable to repay the money.

The Respondent disputes that the funds were a deposit on the land purchase, and contends that they were to be used in furtherance of a "business deal," in which she

² She was tried and found guilty of grand theft in 2009 and sentenced to ten years imprisonment, with all but twenty-four months suspended, and ordered to make restitution.

would provide business advice and the Claimant would provide financial backing. The only relevance to this disagreement, however, is whether it affects the statutory requirement that the act or omission upon which a claim against the Fund be based upon the provision of real estate brokerage services and involve a transaction that relates to real estate.

Whatever the characterization of the check that the Claimant gave the Respondent, it is clear that the Respondent was providing brokerage services related to real estate. By her own account, the intention was for the parties to acquire a parcel of property and then develop it for homes. In furtherance of this venture, the Respondent prepared a sales contract and an agency agreement. She contends that it was understood that the property would ultimately be acquired in the name of a Limited Liability Company (LLC) in which both she and the Claimant would participate. Regardless of how the property was to be acquired, the purchase contract that she prepared, showing the Claimant as buyer, specified a deposit in precisely the amount of the Claimant's check, and she agrees that the funds were to be used in furtherance of the real estate venture, not to pay her rent. The services she performed in preparing the contracts were real estate brokerage services, and any advice that she gave or agreed to give the Claimant constituted real estate services. *See* Md. Code Ann., Bus. Occ. & Prof. § 17-101(l) ("Providing real estate brokerage services" includes serving as a consultant regarding selling or buying real estate, and assisting another in the locating or obtaining real estate for purchase.)

Whatever her intention, the Respondent admittedly induced the Claimant to give her a check made payable to her landlord, which she used to pay her rent, when she

understood that the Claimant did not authorize her to use the check to pay her rent. The Respondent's actions clearly entitle the Claimant to reimbursement from the Fund for the amount of his check.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Facts and Discussion, I conclude that the Claimant is entitled to reimbursement from the Real Estate Guaranty Fund in the amount of \$13,500.00 for actual losses resulting from the fraud and misrepresentation of the Respondent. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(2) (2010); COMAR 09.11.03.04B(1).³

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 Commission be **ACCEPTED** in the amount of \$13,500.00; and that it further,

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

January 7, 2011
Date Decision Mailed

NEP/
#118779

Nancy E. Paige *by RFR*
Nancy E. Paige
Administrative Law Judge

³ The Claimant has agreed to assign to the Fund any monies he receives via restitution from the Respondent. Therefore, the restitution order does not bar his recovery from the Fund.

<p>IN THE MATTER OF THE CLAIM</p> <p>OF WARDELL WASHINGTON,</p> <p>AGAINST THE MARYLAND REAL</p> <p>ESTATE GUARANTY FUND,</p> <p>FOR THE ALLEGED MISCONDUCT</p> <p>OF SHAUNTE M. BARKER</p>	<p>* BEFORE NANCY E. PAIGE,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No.: DLR-REC-22-10-17456</p> <p>* REC No. 08-RE-414GF</p>
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FILE EXHIBIT LIST

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