

<p><b>IN THE MATTER OF THE CLAIM OF</b></p> <p><b>RUDOLPH MAGYAR,</b></p> <p><b>CLAIMANT,</b></p> <p><b>V.</b></p> <p><b>THE MARYLAND REAL ESTATE</b></p> <p><b>COMMISSION GUARANTY FUND FOR</b></p> <p><b>THE ALLEGED MISCONDUCT OF</b></p> <p><b>SUE A. WILLISON, LICENSED REAL</b></p> <p><b>ESTATE SALESPERSON,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE MARINA L. SABETT,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* OAH CASE No.: DLR-REC-22-12-12474</b></p> <p><b>* MREC COMPLAINT No. : 11-RE-455GF</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p>
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**RECOMMENDED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
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RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On May 24, 2011, Rudolph Magyar (Claimant) filed a complaint with the Maryland Real Estate Commission (MREC) and a claim against the Maryland Real Estate Commission Guaranty Fund (Fund). The claim was for monetary losses allegedly incurred by the Claimant as a result of the misconduct of Sue A. Willison, Licensed Real Estate Salesperson (Respondent). On March 9, 2012, the MREC transmitted the matter to the Office of Administrative Hearings (OAH) for a hearing regarding the Claimant's claim against the Fund.

I held a hearing on July 5, 2012, at the OAH in Wheaton, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010). The Claimant represented himself but appeared telephonically, without objection, from his location in Albuquerque, New Mexico. Although the OAH issued an April 11, 2012 notice of this hearing to the Respondent by regular mail and by certified mail received and signed for at the Respondent's address of record on April 18, 2012, the Respondent did not appear. By Consent Order dated November 22, 2011, the Respondent may not contest the claim filed by the Claimant.<sup>1</sup> Kris King, Assistant Attorney General, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

### **ISSUES**

(1) Did the Claimant sustain an actual loss as a result of an act or omission of the Respondent that constitutes theft, embezzlement, false pretenses, forgery, misrepresentation, or fraud?

(2) If the Claimant sustained an actual loss, what is the amount of actual loss compensable by the Fund?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

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

Fund Ex. 1 A Notice of Hearing, dated April 11, 2011, with attached Certified Mail Receipts confirming delivery of the Notice on the Respondent and the Claimant

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<sup>1</sup> A more detailed discussion of the contents of the Consent Order and the circumstances leading to its entry are discussed *infra* in the Findings of Fact and Discussion.

- Fund Ex. 2 Order for Hearing, dated March 7, 2012
- Fund Ex. 3 DLLR license registration information for the Respondent, dated July 3, 2012 (A and B)
- Fund Ex. 4 Affidavit of Steven Long, Assistant Executive Director of the MREC, dated March 12, 2012
- Fund Ex. 5 MREC Report of Investigation, dated January 16, 2012, with attachments

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

- CL Ex. 1 Letter from the Claimant to ALJ Sabett enclosing various exhibits for the hearing, dated June 10, 2012
- CL Ex. 2 Tenant Confidential Data Sheet with various handwritten notes
- CL Ex. 3 Money Order Receipts
- CL Ex. 4 PeopleSoft printout, dated May 18, 2011
- CL Ex. 5 Various e-mail correspondences between the Claimant and Respondent between April 23, 2011 and May 18, 2011, and West Patrick Rental Property Company Profit and Loss statement for January 18 through February 14, 2011, dated February 21, 2011
- CL Ex. 6 Water bill in the amount of \$134.85 for 8027 Waterview Court, Frederick, Maryland 21704
- CL Ex. 7 Various receipts

No exhibits were admitted on behalf of the Respondent.

### Testimony

The Claimant testified on his own behalf. No testimony was offered on behalf of the Respondent. The Fund presented the testimony of Jack L. Mull, Jr., an investigator of behalf of the MREC.

### FINDINGS OF FACT

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

1. At all times relevant to this matter, the Respondent was a Licensed Real Estate Salesperson, registration number 05 527749, and worked on behalf of West Patrick Property Solutions, LLC (West Patrick), a property management company located in Frederick, Maryland.
2. On or around December 1, 2009, the Claimant, as the owner of a property located at 8207 Waterview Court, Frederick, Maryland 21701 (Waterview property), entered into a Property Management and Exclusive Rental Agreement (Agreement) with the Respondent in her role as the agent of West Patrick. The Agreement directed the Respondent to rent, lease, operate and manage the Claimant's Waterview property.
3. The Respondent's management fee under the Agreement was the greater of \$80.00 or 8% of the total gross rents collected for each month.
4. Pursuant to that Agreement, on or around August 9, 2010, the Respondent entered into a Residential Dwelling Lease for Maryland (Lease) with Perla Pulido for occupancy as a tenant of the Waterview property for one year beginning August 9, 2010.
5. The Lease required Ms. Pulido to provide the Respondent with a security deposit in the amount of \$1,550.00 and monthly rent in the amount of \$1,550.00.
6. The tenant paid the security deposit and her monthly rent required under the Lease, including her rent payments for April and May 2011, to the Respondent.
7. Under the Agreement, the Respondent was entitled to 8% of the total of gross rents collected in each month as a property management fee.
8. Accordingly, for the gross rent collected at a rate of \$1,550.00 per month for the months of April and May, the Respondent was entitled to 8% of \$1,550.00 as a property management fee for each month, which equals \$124.00. Accordingly, for both April and May 2011, the Respondent was entitled to a total management fee of \$248.00.

9. The Respondent improperly withheld \$2,852.00 from the Claimant, which reflects the \$3,100.00 in gross rents collected for the months of April and May 2011 for the Waterview property, minus the \$248.00, the total property management fee for April and May 2011.
10. The tenant of the Waterview property has not made her own claim for the \$1,550.00 security deposit, and the security deposit was never transferred to the Claimant or anyone acting on the Claimant's behalf.
11. The tenant transmitted \$134.85 to the Respondent on or about May 5, 2011 to pay a water bill for the Waterview property; however, the Respondent never paid such bill.
12. The sum of the \$2,852.00 due to the Claimant for the April and May 2011 net rent proceeds for the Waterview property, the tenant's \$1,550.00 security deposit, and \$134.85 paid to the Respondent to the tenant totals \$4,536.85.
13. The Respondent improperly withheld \$4,536.85 from the Claimant.
14. The Respondent was the only signatory on the bank accounts opened and maintained by West Patrick and she held 100% ownership of West Patrick.
15. On November 22, 2011, the Respondent entered into a Consent Order with the MREC in which she admitted that she violated Section 17-322(b)(22) of the Business Occupations and Professions Article of the Maryland Annotated Code as to the Claimant (and many others like her) when she failed "to promptly account for or remit money that came into her possession, but belonged to another person." Consent Order at paragraph 5 and Appendix "A", Fund Ex. 5, at attachment 5.
16. Under the Consent Order, the Respondent further waived any right to participate in the hearing of this matter and waived her right to contest or appeal any decision by the MREC that involves a claim arising out of her "actions while a property manager at West Patrick Solutions." *Id.* at page 3.

17. Further, under the Consent Order the Respondent may not “apply to the [MREC] in the future for a license to engage in the provision of or assist in the provision of real estate brokerage services in the State.” Id.

### DISCUSSION

The burden of proof at a hearing on a claim against the Fund is on the “claimant to establish the validity of the claim.” Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2010).

Section 17-404(a) of the same statute governs all claims brought against the Fund and sets forth, in pertinent part, the following criteria that must be established by a claimant to obtain an award:

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

(a) *In general.*-(1) Subject to the provisions of this subtitle, a person may recover compensation from the Guaranty Fund for an actual loss.

(2) A claim shall:

(i) be based on an act or omission that occurs in the provision of real estate brokerage services by:

1. a licensed real estate broker;
2. a licensed associate real estate broker;
3. a licensed real estate salesperson; or
4. an unlicensed employee of a licensed real estate broker;

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

(iii) be based on an act or omission:

1. in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or
2. that constitutes fraud or misrepresentation.

(b) *Limitation on recovery.*- The amount recovered for any claim against the Guaranty Fund may not exceed \$50,000 for each claim.

Md. Code Ann., Bus. Occ. & Prof. § 17-404(a), (b) (Supp. 2012). See COMAR 09.11.03.04.

For the reasons that follow, the Claimant is entitled to an award of \$4,536.85 for the actual monetary losses she suffered as the result of the acts or omissions of the Respondent in the instant case. Md. Code Ann., Bus. Occ. & Prof. § 17-410(a), (b) (2010); COMAR 09.11.01.18.

By Consent Order dated November 22, 2011, the Respondent admitted that she violated Section 17-322(b)(22) of the Business Occupations and Professions Article of the Maryland Annotated Code as to the Claimant (and many others like her) when she failed “to promptly account for or remit money that came into her possession, but belonged to another person.” Consent Order at paragraph 5 and Appendix “A”, Fund Ex. 5, at attachment 5. Under that Order, the Respondent further waived any right to participate in the hearing of this matter and waived her right to contest or appeal any decision by the Commission that involves a claim arising out of her “actions while a property manager at West Patrick Solutions.” *Id.* at page 3.

The Respondent, as an agent of West Patrick, entered into an Agreement with the Claimant in this case on or around December 1, 2009, to rent, lease, operate and manage the Claimant’s Waterview property located in Frederick, Maryland. The Respondent’s management fee under the Agreement was the greater of \$80.00 or 8% of the total gross rents collected for each month. Agreement, Fund Ex. 5, at attachments 3.

Pursuant to the Agreement, on or around August 9, 2010, the Respondent entered into a Lease with Perla Pulido for a one-year occupancy term as a tenant of the Waterview property beginning August 9, 2011. Lease, Fund Ex. 5, at attachment 4. The Lease required Ms. Pulido to provide the Respondent with a security deposit in the amount of \$1,550.00 and monthly rent in the amount of \$1,550.00. *Id.*

At the hearing, Mr. Jack Mull, Jr., an investigator on behalf of the MREC and a witness for the Fund, testified that he investigated the Claimant’s claim against the Respondent. Specifically, Mr. Mull testified that through his investigation, the Claimant had verified to Mr. Mull that the tenant had paid her security deposit, the rent in the amount of \$1,550.00 per month for the months of April and May 2011, and a \$134.85 water bill for the Waterview property directly to the Respondent. Fund Ex. 5.

Similarly, the Claimant presented e-mail correspondence between he and the Respondent evidencing the Respondent's receipt of the April and May rent proceeds from the tenant as well as the \$134.85 that the tenant paid to the Respondent to pay the water bill for the Waterview property, a water bill that the Respondent never paid. The Claimant testified at the hearing that he verified with the tenant that her \$1,550.00 security deposit was never returned to her and that she had no claim against the Respondent or the Fund for the return of that amount. Indeed, when the tenant ultimately moved out of the Waterview property, the Claimant credibly testified that he paid the tenant \$1,550.00 out of his own pocket to reimburse her for her security deposit. Although there may be additional security deposits that the tenant paid to the Respondent, the Claimant was unsure if the tenant had a separate claim for such deposits and he had not reimbursed the tenant beyond the \$1,550.00 security deposit in any event. Accordingly, any additional security deposits are not appropriate to claim in the instant case. CL Ex. 5.

The Claimant argued that because the Respondent failed to properly transmit the rent proceeds and pay the water bill for the Waterview property, the Respondent was not entitled to her 8% management fee for April and May 2011. Any recovery to which he may entitled from the Fund, however, 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 an agent in a real estate transaction..." COMAR .09.11.01.18. Accordingly, while the Claimant proved at the hearing that under the Agreement the Claimant was entitled to the net rent proceeds, he did not prove that the Respondent was not entitled to her 8% management fee under the Agreement. Moreover, the Fund correctly argued at the hearing that under COMAR .09.11.01.18 (excerpted above), the Claimant would not be entitled to recover the Respondent's management fees from the Fund as such fees would be considered a monetary loss beyond the originating transaction..



Given the testimony of the Claimant and Mr. Mull, I find that the evidence sufficiently establishes that the tenant paid directly to the Respondent the rent for the Waterview property in the amount of \$1,550.00 per month for the months of April and May 2011, the \$1,550.00 security deposit and \$134.85 for payment of the Waterview property water bill. I further find that the Respondent failed to transmit the net rent proceeds, the security deposit or the money for the water bill to the Claimant or anyone acting on his behalf. I also find that the tenant was reimbursed for her security deposit in the amount of \$1,550.00 by the Claimant and not the Respondent, and that the Respondent never transmitted any funds to pay the water bill for the Waterview property. Although I do find that the Respondent was entitled to her management fee for April and May 2011 in the amount of \$248.00, I find that she wrongfully withheld from the Claimant the amount of \$2,852.00 in net rent proceeds for the Waterview property for the months of April and May 2011. Finally, I find that the sum of the \$2,853.00 in net rent proceeds, the \$1,550.00 security deposit, and the \$134.85 paid to the Respondent by the tenant for the water bill is \$4,536.85, and is the amount that the Claimant is entitled to recover from the Fund.

\$3100.00	Gross rent for April/May 2011
<u>- \$ 248.00</u>	<u>8% of gross rent for April/May 2011</u>
\$2852.00	Net rent proceeds
\$1550.00	Security Deposit
<u>+ \$ 134.85</u>	<u>Water bill amount paid by tenant to Respondent</u>
\$4536.85	

The Fund also suggested at the hearing that the Claimant is entitled to an award of \$4,536.85 from the Fund in this case.

**CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Facts and Discussion, I conclude as a matter of law that the Claimant is entitled to reimbursement from the Real Estate Guaranty Fund in the amount of \$4,536.85 for actual losses resulting from the Respondent's actions. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(1), (2) and 17-410(b)(1); COMAR 09.11.01.18 and 09.11.03.04.


**RECOMMENDED ORDER**

I **RECOMMEND** that the MREC **ORDER**:

That the Claimant's claim against the Maryland Real Estate Guaranty Fund be **ACCEPTED** in the amount of \$4,536.85; and

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

September 26, 2012  
Date Decision Mailed

  
SIGNATURE ON FILE  
Marina L. Sabett  
Administrative Law Judge

MLS/lh  
# 137632