

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

*

v.

**CHERON RAMPHAL,
Respondent**

*

CASE NO. 2016-RE-243

*

OAH NO. DLR-REC-24-19-22426

*

and

*

**IN THE MATTER OF THE CLAIM
OF JACQUELINE ANDERSON-DADE
AGAINST THE MARYLAND REAL
ESTATE COMMISSION
GUARANTY FUND**

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* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated December 26, 2019, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 15th day of January, 2020, hereby **ORDERED**:

A. That the Findings of Fact in the proposed decision be, and hereby are, **AFFIRMED**.

B. That the Proposed Conclusions of Law in the proposed decision be, and hereby are, **APPROVED**.

C. That the Recommended Order in the proposed decision be, and hereby is, **ADOPTED**.

D. That the records, files, and documents of the Maryland Real Estate Commission reflect this decision.

E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties adversely affected by this Proposed Order shall have twenty (20) days from the postmark date of the Order to file written exceptions to this Proposed Order. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 500 North Calvert Street, Baltimore, MD 21202. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

F. Once the Proposed Order becomes final, the parties have an additional thirty (30) days in which to file an appeal to the Circuit Court for the Maryland County in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City

MARYLAND REAL ESTATE COMMISSION

SIGNATURE ON FILE

By: _____

12/26/19
Date

SIGNATURE ON FILE

MARYLAND REAL ESTATE
COMMISSION

v.

CHERON RAMPHAL,
RESPONDENT,
and

IN RE CLAIM OF JACQUELENE
ANDERSON-DADE AGAINST THE
MARYLAND REAL ESTATE
GUARANTY FUND

* BEFORE TAMEIKA LUNN-EXINOR,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: LABOR-REC-24-19-22426
* REC CASE No.: 2016-RE-243

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On November 2, 2015, Jacqueline Anderson-Dade (Claimant) filed a complaint (Complaint) against licensed real estate salesperson Cheron Ramphal (Respondent). That same day, the Claimant also filed a claim (Claim) for compensation from the Real Estate Commission Guaranty Fund (Fund) for losses the Claimant allegedly sustained as a result of the Respondent's misconduct. The Complaint and Claim both arose out of a contract of sale entered into by the

Claimant on or about September 25, 2015 for the purchase of 14517 Fairdale Road in Silver Spring, Maryland (the Property).

On or about July 2, 2019, after an investigation, the Maryland Real Estate Commission (REC or Commission) determined that charges against the Respondent were warranted and that the Claimant was entitled to a hearing of her Claim and, accordingly, the Commission issued a Statement of Charges and Order for Hearing (Statement of Charges) against the Respondent. The Statement of Charges set forth information about the Claim and further alleged that the Respondent violated subsections 17-322(b)(3), (b)(25), (b)(32), and (b)(33) and subsection 17-532(c)(iv)¹ of the Business Occupations and Professions article (Business Occupations Article) of the Maryland Code and that she also violated sections 09.11.02.01C, H and 09.11.02.02A of the Code of Maryland Regulations (COMAR). The Statement of Charges advised the Respondent that if the charged violations were substantiated, the Commission could sanction her by, among other things, suspending or revoking her real estate license and imposing a monetary fine. On July 8, 2019, the Commission forwarded the Statement of Charges to the Office of Administrative Hearings (OAH) to conduct a hearing.

On September 26, 2019, I conducted the hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Profs. §§ 17-324(a) and 17-408(a). Hope M. Sachs, Assistant Attorney General, Department of Labor² (Department), represented the REC on the charged

¹ In its July 2019 Statement of Charges, the REC listed a violation of subsection 17-532(c)(1)(iv) and recited the statutory language. The provision cited is now found, verbatim, at subsection 17-532(b)(1)(iv). I cite to the current, 2019, codification throughout because that is the version in effect when the REC filed its Statement of Charges and because current law generally applies to both the regulatory and fund claims. *See Hawker v. New York*, 170 U.S. 189 (1898) (holding that in the interest of protecting the public, an agency regulating a profession may give consideration to past conduct, predating the effective date of the law at issue, in determining fitness for the profession); *Landsman v. Maryland Home Improvement Comm'n*, 154 Md. App. 241, 255 (2003) (explaining that the right to compensations from a statutorily-created fund is subject to change “at the whim of the legislature” and is not bound by the usual presumption against retrospective application of statutory amendments); *see also Maryland Bd. of Social Exam'rs v. Chertkov*, 121 Md. App. 574 (1998) (observing that disciplinary actions of professional licensing boards are for the protection of the public and not punishment).

² On July 1, 2019, the Maryland Department of Labor, Licensing and Regulation became the Department of Labor.

violations of law. Shara Hendler, Assistant Attorney General with the Department, represented the REC on the claim for compensation from the Fund. The Claimant represented herself. The Respondent failed to appear and was not represented at the hearing.³

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings before the Office of the Secretary of the Department, and the Rules of Procedure of the OAH govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 and Supp. 2019); COMAR 09.01.02; COMAR 09.01.03; COMAR 28.02.01.

ISSUES

1. In connection with the sale of the Property, did the Respondent violate the Business Occupations Article, subsections 17-322(b)(3), (b)(25), (b)(32), (b)(33) and 17-532(c)(iv), or COMAR 09.11.02.01C, H and 09.11.02.02A?
2. If the Respondent violated any of these statutory or regulatory provisions, what is the appropriate sanction?
3. Has the Claimant established a compensable claim against the Fund under section 17-404 of the Business Occupations Article; and, if so, what is the appropriate award?

SUMMARY OF THE EVIDENCE

Exhibits

The REC offered the following exhibits, which I admitted into evidence:

REC Ex. 1 - Statement of Charges and Order for Hearing, dated July 2, 2019

REC Ex. 2 - Notice of Hearing, dated July 29, 2019

³ On July 29, 2019, the OAH sent a Notice of Hearing to the Respondent via certified mail-return receipt to her address of record. The green card for the return receipt was signed upon receipt and returned to the OAH on August 6, 2019. On September 25, 2019, the Respondent requested a postponement of the hearing scheduled for September 26, 2019. On September 25, 2019, I denied the Respondent's emergency postponement request for lack of good cause. COMAR 28.02.01.16D On September 25, 2019, the OAH contacted the Respondent and informed her that her request for postponement was denied. I find that the Respondent received proper notice of the hearing and failed to appear.

REC Ex. 3 - Department of Labor, Licensing and Regulation⁴, Registration; Real Estate Commission printout, printed August 22, 2019

REC Ex. 4 - Report of Investigation (pp. 1-16), completed February 6, 2019, with the following attachments:⁵

1. Complaint and Guaranty Fund Claim, dated November 6, 2015 (pp. 17-19)
2. Regional Sales Contract, signed October 3, 2015 with attached disclosures, addendums, and reports (pp. 20-76)
3. Affidavit of Claimant, In the District Court of Maryland for Montgomery County, 0601-0015500-2015, Jacqueline Anderson-Hunte⁶ vs. Cheron Ramphal, dated November 19, 2015 (pp. 77-78)
4. Respondent's Motion for Reconsideration or In the Alternative, Motion for New Trial, In the District Court of Maryland for Montgomery County, 0601-0015500-2015, Jacqueline Anderson-Hunte vs. Cheron Ramphal, dated November 13, 2015 (pp. 79-83)
5. Notice of Denial of Request for Postponement, In the District Court of Maryland for Montgomery County, 0601-0015500-2015, Jacqueline Anderson-Hunte vs. Cheron Ramphal, dated November 3, 2015 (pg. 84)
6. Notice of Trial, In the District Court of Maryland for Montgomery County, 0601-0015500-2015, Jacqueline Anderson-Hunte vs. Cheron Ramphal, dated October 9, 2015 (pg. 85)
7. Notice of Trial, In the District Court of Maryland for Montgomery County, 0601-0015500-2015, Jacqueline Anderson-Hunte vs. Cheron Ramphal, dated October 9, 2015 (pg. 86)
8. Motion for Continuance, In the District Court of Maryland for Montgomery County, 0601-0015500-2015, Jacqueline Anderson-Hunte vs. Cheron Ramphal, dated October 20, 2015 (pg. 87)
9. Complaint/Wrongful Detainer or Grantor in Possession, In the District Court of Maryland for Montgomery County, 0601-0015500-2015, Jacqueline Anderson-Hunte vs. Cheron Ramphal, dated October 7, 2015 (pg. 88)
10. Washington Gas Collection Alert Notice, dated August 7, 2015 (pg. 89)
11. Credit Bureau Collection Services, Inc. Invoice, dated August 4, 2015 (pg. 90)
12. Email correspondence between Claimant and Respondent, dated June 10, 2015 (pg. 91)
13. Washington Suburban Sanitary Commission (WSSC), Water and Sewer Bill, dated July 29, 2015 (pp. 92-93)
14. Email correspondence between Claimant and Respondent, dated January 28, 2015 and January 15, 2015 (pp. 94-101)
15. Holy Cross Health, Medical Records for Claimant, dated October 23, 2015 (pp. 102-107)

⁴ Despite the July 1, 2019 agency name change, this document is entitled with the old name.

⁵ Several of the attachments were duplicative. As the REC sequentially numbered the attachments, I have nonetheless separately listed each attachment.

⁶ Jacqueline Anderson-Hunte is the Claimant's former married name. At the time of the hearing, her name had been changed to Jacqueline Anderson-Dade.

16. Regional Sales Contract, dated September 29, 2015 (pg. 108)
17. Metropolitan Regional Information Systems, Inc. (MRIS) Property Listing, dated September 29, 2015 (pp. 109-111)
18. Letter from Claimant to Wells Fargo, dated September 28, 2015 (pg. 112)
19. Email correspondence between Claimant and Henry Yawson, dated September 28, 2015 (pg. 113)
20. Letter from Claimant to Respondent, dated October 5, 2015 (pp. 114-115)
21. Complaint/Wrongful Detainer or Grantor in Possession, In the District Court of Maryland for Montgomery County, 0601-0015500-2015, Jacqueline Anderson-Hunte vs. Cheron Ramphal, dated October 7, 2015 (Duplicate)(pg. 116)
22. Notice of Trial, In the District Court of Maryland for Montgomery County, 0601-0015500-2015, Jacqueline Anderson-Hunte vs. Cheron Ramphal, dated October 9, 2015 (Duplicate)(pg. 117)
23. Email correspondence between Claimant and Henry Yawson, dated October 16, 2015 (pg. 118)
24. Motion for Continuance, In the District Court of Maryland for Montgomery County, 0601-0015500-2015, Jacqueline Anderson-Hunte vs. Cheron Ramphal, dated October 20, 2015 (Duplicate)(pg. 119)
25. Notice of Denial of Request for Postponement, In the District Court of Maryland for Montgomery County, 0601-0015500-2015, Jacqueline Anderson-Hunte vs. Cheron Ramphal, dated November 3, 2015 (Duplicate)(pg. 120)
26. District Court for Montgomery County Case Search printout , 0601-0015500-2015, Jacqueline Anderson-Hunte vs. Cheron Ramphal, printed October 25, 2018 (pp. 121-122)
27. Respondent's Motion for Reconsideration or In the Alternative, Motion for New Trial, In the District Court of Maryland for Montgomery County, 0601-0015500-2015, Jacqueline Anderson-Hunte vs. Cheron Ramphal, dated November 13, 2015 (Duplicate)(pp. 123-130)
28. Notice of Denial of Request for New Trial, In the District Court of Maryland for Montgomery County, 0601-0015500-2015, Jacqueline Anderson-Hunte vs. Cheron Ramphal, dated November 17, 2015 (pg. 131)
29. Affidavit of Claimant, In the District Court of Maryland for Montgomery County, 0601-0015500-2015, dated November 19, 2015 (Duplicate)(pp. 132-133)
30. Email correspondence between Claimant and her attorney, dated November 23, 2015 (pg. 134)
31. Email correspondence between Claimant and her attorney, dated December 4, 2015 (pg. 135)
32. Email correspondence between Claimant and the REC, dated November 20 2015 (pp. 136-139)

33. REC Complaint Information, printed January 30, 2019 (pg. 140)
34. Email correspondence between Claimant and Respondent, dated May 28, 2015 (pg. 141)
35. Email correspondence between Claimant and the REC, dated January 29, 2019 and January 30, 2019 (pp. 142-143)
36. Letter from REC to Tristar Realty, Inc., dated November 2, 2015 (pg. 144)
37. Letter from Tristar Realty, Inc. to REC, dated October 14, 2015 (pg. 145)
38. Letter from REC to Respondent, dated November 2, 2015 (pg. 146)
39. Letter from Respondent's attorney to REC, dated November 29, 2015 (pp. 147-148)
40. REC Inquiry of Respondent, printed November 28, 2018 (pg. 149)
41. REC Inquiry of Respondent's Occupational/Professional License History, printed September 11, 2017 (pg. 150)
42. REC Inquiry of Respondent, printed January 30, 2019 (pg. 151)
43. REC Complaint Information, printed January 30, 2019 (Duplicate) (pg. 152)
44. Maryland Attorney Listing Search, printed January 30, 2019 (pg. 153)
45. Virginia State Bar, Attorney Record Search, printed February 5, 2019 (pg. 154)
46. District of Columbia Courts, Attorney Search, printed January 30, 2019 (pp. 155-158)

The Respondent did not submit any exhibits for admission into evidence.

The Claimant offered the following exhibit, which I admitted into evidence:

Clmt. Ex. 1 - Handwritten list of expenses, undated

Clmt. Ex. 2 – WSSC Water and Sewer Bill, dated November 23, 2015; and Credit Bureau Collection Services, Inc. Invoice, dated October 9, 2015

The Fund did not offer any exhibits for inclusion in the record.

Testimony

The REC presented testimony from Diane Carson, its real estate investigator, and Claimant Jacqueline Anderson-Dade.

The Claimant testified on her own behalf.

The Fund did not present any witnesses.

FINDINGS OF FACT

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

1. The Respondent has been a licensed real estate agent in Maryland since 2012 and has had no prior complaints filed against her with the REC.
2. At all relevant times, the Respondent was affiliated with Tristar Realty, Inc.
3. The Claimant was friends with the Respondent's mother, Norma Raguath, and became acquainted with the Respondent.
4. In 2013, the Claimant hired the Respondent to assist with the sale of the Property.
5. In 2013, the Claimant sent the listing agreement for the Property to her ex-husband⁷ who refused to sell the Property if the Respondent was involved in the sale of the Property.
6. The Claimant's ex-husband did not trust the Respondent.
7. In 2013, the Claimant changed her listing agent to Mr. Richards⁸ who was also affiliated with Tristar Realty, Inc. The Respondent remained involved with the Property as a buyer's agent.
8. At the end of 2013, Mr. Richards removed himself from the sale of the Claimant's property due to interventions by the Respondent and her boyfriend, Paul Jaikaran.
9. In the beginning of 2014, the Claimant hired Henry Yawson as her listing agent for the Property.
10. In the beginning of 2014, the Claimant moved out of the Property.
11. In June 2014, the Claimant traveled to Guyana to handle the funeral arrangements for her mother.

⁷ The Claimant's divorce was finalized in 2008.

⁸ The Claimant did not provide any information regarding Mr. Richards' first name.

12. In June 2014, the Respondent suggested that the Claimant rent the property for \$1,500.00 per month with an option to buy. The Respondent found a renter – Deblyn Wete. The Respondent agreed to be the Claimant’s property manager during the rental which entailed the Respondent collecting the rent and sending it to the Claimant.

13. There was no rental agreement with Deblyn Wete. The Claimant did not meet Deblyn Wete or have any direct communication with her.

14. There was no property management agreement with the Respondent.

15. The utility bills for the property remained in the Claimant’s name but the renter was responsible for paying the utilities.

16. In July 2014, Deblyn Wete moved into the Claimant’s property as renter for \$1,500.00 per month.

17. Between July 2014 and May 2015, the Claimant received a total of \$7,650.00 towards the rental of the Property.

18. In June 2015, Deblyn Wete moved out of the Property.

19. In June 2015, the Claimant was owed a balance of \$8,850.00 in rent for the time that Deblyn Wete lived in the Property.

20. Between 2013 and June 2015, three closing dates were scheduled and cancelled for the Property⁹.

21. On June 19, 2015, the Claimant discovered the Respondent moved into the Property. The Claimant recognized the Respondent’s mom’s furniture in the Property.

22. The Claimant did not give the Respondent permission to move into the Property.

⁹ It is unclear from the documents and testimony provided who scheduled and cancelled the three closing dates between 2013 and 2015.

23. On June 26, 2015, the day before the Claimant's wedding, the Respondent came to the Claimant's home and gave her \$3,000.00 in cash. The Respondent told the Claimant that as of June 19, 2015, the Property no longer belonged to the Claimant.

24. In September 2015, the Claimant rehired Henry Yawson as her listing agent for the Property and he advised her on what steps to take to have the Respondent removed from the Property.

25. On September 24, 2015, the Property listing was updated by Mr. Yawson.

26. On September 29, 2015, a Regional Sales Contract was executed between the Claimant and Tsegereda Beyene for \$500,000.00 in cash.

27. In October 2015, the Claimant and Mr. Yawson went to the Property. The Respondent removed the sale sign and the Claimant's keys did not work.

28. On October 5, 2015, the Claimant sent a letter to the Respondent demanding entry to the Property and demanding the Respondent vacate the Property. The Respondent did not respond to the October 5, 2015 letter.

29. In October 2015, the Claimant and her husband met with the Cindy Sinanan, Broker of Record for Tristar Realty, Inc., and Mr. Yawson to discuss the Property and the actions of the Respondent.

30. On October 7, 2015, Claimant began a wrongful detainer action in the District Court for Montgomery County in an effort to have the Respondent removed from the Property.

31. On October 14, 2015, Tristar Realty, Inc. reported the Respondent to the REC and returned her real estate license to the REC.

32. On December 23, 2015, the Respondent moved out of the Property.

33. The Respondent accrued a Gas and Electric bill in the amount of \$1,684.33 that she did not pay before vacating the property.

34. The District Court for Montgomery County scheduled a January 18, 2016 eviction date for the Property.

35. On January 29, 2016, the sale of the Property was completed.

DISCUSSION

The Regulatory Charges

The REC charged the Respondent with violating subsections 17-322(b)(3), (b)(25), (b)(32), (b)(33) and (c) and subsection 17-532(c)(iv) of the Business Occupations Article, and subsections 09.11.02.01C, H and 09.11.02.02A of COMAR. Section 17-322 of the Business Occupations Article provides, in pertinent part:

(b) 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:

...

(3) directly or through another person willfully makes a misrepresentation or knowingly makes a false promise;

...

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

...

(32) violates any other provision of this title; [or]

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

...

(c) 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.

Section 17-532 of the Business Occupations Article provides, as relevant here:

(b)(1) A licensee shall:

(iv) treat all parties to the transaction honestly and fairly and answer all questions truthfully; [and]

...

(vi) exercise reasonable care and diligence[.]

COMAR 09.11.02.01 provides, as pertinent here:

C. The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State.

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.

Finally, COMAR 09.11.02.02 provides, as pertinent here:

A. In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction.

The REC bears the burden of establishing, by a preponderance of the evidence, that the Respondent committed the violations alleged in the Statement of Charges. COMAR 09.01.02.16A. To prove something by a “preponderance of the evidence” means “to prove that something is more likely so than not so[.]” when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

There was no dispute as to the essential facts in this case. The REC submitted a licensing history showing that the Respondent was licensed as a real estate agent since 2012. The REC also noted that the Respondent was not the subject of any prior complaints. The documents also establish that the Respondent was affiliated with Tristar Realty, Inc.

The documents in evidence and the testimony, notably from the Claimant, establish that the Claimant met the Respondent through the Respondent's mother. The Claimant testified that the Respondent's mother was like family to her and took her into her home when she was devastated about her divorce in 2008. The Claimant testified that she and her former husband were warned by people that the Respondent could not be trusted and she was labeled as sneaky. Despite the warning from other people, the Claimant testified that in 2013 she accepted the Respondent's help in selling the Property. The Claimant testified that the Court ordered her to sell the Property as a part of the divorce. The Claimant's former husband would not sign the Listing Agreement prepared by the Respondent because he did not trust the Respondent. The Claimant testified that she hired Mr. Richards as her listing agent and the Respondent became a buyer's agent for the Property in 2013. However, Mr. Richards removed himself from the sales process due to intervention by the Respondent and the Respondent's boyfriend, Paul Jaikaran.

The Claimant testified that at the end of 2013, she hired Henry Yawson as her listing agent and he was also affiliated with Tristar Realty, Inc. The Claimant moved out of the Property in 2013 and the house was empty. The Claimant testified the Respondent told her that although Mr. Yawson was her listing agent, she should not talk to Mr. Yawson too much. The Claimant stated that she trusted the Respondent and only met Mr. Yawson one time in her front yard when he was putting up the For Sale sign. The Claimant did not have a contract with Mr. Yawson and the Respondent brought all prospective buyers to the Property. The Claimant stated

that her mother died in Guyana in June 2014 and the Claimant traveled to take care of the funeral. She stated that before she left, the house did not sell so the Respondent suggested that the Claimant rent the Property with an option to buy. The Respondent told the Claimant that the Property would be rented by a recent divorcee who was employed as a pharmacist and could not afford to rent a place due to her poor credit score. The Claimant stated that she returned from Guyana in July 2014 and agreed to rent the Property to Deblyn Wete. There was no rental agreement and the Claimant did not meet Ms. Wete. The Claimant agreed to allow the Respondent to collect the rent and send it to her. There was no property management agreement. The Claimant and the Respondent also agreed that the renter would be responsible for the utility bills. The Respondent requested that the Claimant not have direct contact with Ms. Wete and the Claimant testified that she continued to trust the Respondent.

The Claimant testified that Ms. Wete moved into the Property in July 2014 and the Claimant received either full rent or partial rent in July, August, September, October and November of 2014. The Claimant stated that she received no rent payment from December 2014 through May 2015. The Claimant testified that the Respondent informed her that Ms. Wete lost her job in October 2014 and could no longer afford the \$1,500.00 rent. Ms. Wete moved out of the Property in June 2015. The Claimant calculated that she is owed \$8,850.00 in unpaid rent for the Property. The Claimant had no contact with Ms. Wete until July 2017 when Ms. Wete showed up at her home asking the Claimant if she filed suit against Ms. Wete for back rent and the Claimant told her that she did not file any claims against her. Ms. Wete told the Claimant that she was not a divorcee as the Respondent claimed and that she met the Respondent through the Respondent's credit repair business. Ms. Wete told the Claimant that she paid the Respondent \$12,000.00 to repair her credit but when her credit was not repaired, the Respondent

agreed to apply the \$12,000.00 to her rent. The Claimant testified that she did not receive the \$12,000.00 from the Respondent.

The Claimant testified that her personal and professional relationship with the Respondent was strained since the Property was not selling and there was no rental income. The Claimant testified that in June 2015, after Ms. Wete moved out of the Property, the Claimant received a phone call from a co-worker asking her if she sold the Property. The Claimant told her co-worker that she did not sell the Property and her co-worker informed her that her son who works at a moving company, moved a woman and her two children into the Claimant's Property. The Claimant stated that by June 2015, three potential closings for the Property were cancelled. The Claimant testified that she immediately called the Respondent and the Respondent denied that she had moved into the Property. The Claimant testified that on June 19, 2015, she went to the Property and a man answered the door and showed her the repairs that he made to the Property. The Claimant testified that while in the Property she recognized the furniture as belonging to the Respondent's mother. The Claimant called the Respondent while she was in the Property and the Respondent told her that she placed some of her mother's furniture in the Property for staging. Claimant did not believe Respondent and decided to stop calling her and accepting her phone calls.

The Claimant testified that the next time she saw the Respondent was the day before the Claimant's wedding, June 26, 2015. The Claimant stated that the Respondent met her in the driveway of her home while she was leaving to meet with the wedding caterer. The Claimant testified that the Respondent told her that as of June 19, 2015, the Claimant no longer owned the Property and the Respondent handed her \$3,000.00 in cash to use for whatever she needed it for. The Claimant stated that she and her fiancé were struggling to finalize payments for the wedding

so she took the money and utilized it towards her caterer bill. The Respondent also told the Claimant that the Claimant gave her permission to live in the Property. The Claimant vehemently denied giving the Respondent permission to move into the Property.

The Claimant testified that she spoke with her manager at work about the Respondent and he suggested that she contact the police. The Claimant stated that she did not want to get the police involved and she continued to pray about the Respondent and the Property. The Claimant stated that out of blue in September 2015, Mr. Yawson contacted her to get a status on the Property. Mr. Yawson explained that he was away in Africa for a few months and upon his return he tried to contact the Respondent to get an update on the Property with no response. The Claimant told Mr. Yawson that the Respondent moved into the Property without her permission and Mr. Yawson came to the Claimant's home for a meeting. The Claimant testified that she hired Mr. Yawson again as her listing agent and followed his advice. The Claimant stated that in early October 2015, she and Mr. Yawson went to the Property and noticed that the sale sign was removed and the locks had been changed. The Claimant testified that on October 5, 2015, she sent a letter to the Respondent letting her know that she did not have permission to live in the property, asking her to leave and to give the Claimant access to the Property. The Claimant stated that she proceeded by filing a lawsuit in the District Court for Montgomery County to regain access to her Property.

The Claimant stated that she also met with the Respondent's broker at Tristar Realty, Inc. who reported the Respondent to the REC. The Claimant testified that she feared for her safety throughout the court case because the Respondent had a common friend contact her and tell her that she was going to report an alleged fraudulent act by the Claimant to the Claimant's employer, the World Bank. The Claimant stated that the Respondent hired an attorney to assist

her with the REC and court matters and that an eviction from the Property was scheduled for January 18, 2016. The Claimant testified that on December 23, 2015, her former neighbor called her and informed her that the Respondent was moving out of the Property. The Claimant sold the Property on January 29, 2016.

Under these circumstances, I find that the Respondent's failure to communicate truthfully with the Claimant, failure to properly manage the Property as a rental property, and moving into the Claimant's Property without permission, violate subsections 17-322(b)(3), (b)(25), (b)(32) and (b)(33) and subsection 17-532(b)(1)(iv) of the Business Occupations Article and COMAR 09.11.02.01C and 09.11.02.02A. I further find that the Respondent's failure to draft a formal property management agreement with the Claimant or a lease agreement for the rental of the Property violates COMAR 09.11.02.01H. In its investigation report, the REC has also established violations of subsections 17-322(b)(3), (b)(25), (b)(32) and (b)(33) and subsection 17-532(b)(1)(iv) of the Business Occupations Article and COMAR 09.11.02.01C, H and 09.11.02.02A..

The REC urges the imposition of \$30,000 in civil penalties and revocation of the Respondent's license, pursuant to subsection 17-322(c) of the Business Occupations Article. Section 17-322(c) of the Business Occupations Article does not provide guidance concerning the appropriate level of sanction—reprimand, suspension, or revocation—though it does provide guidance concerning the appropriate monetary penalty.

The Statement of Charges notes that the charges may result in a reprimand, a suspension, or revocation of the Respondent's license and does not specify or attempt to support a specific sanction. In requesting, at the hearing, that the Respondent's license be revoked, the REC explained that the actions of the Respondent were egregious in nature and ruined the trust

relationship between an agent and a client. There was no indication that the REC considered and rejected a lesser sanction than revocation. I have considered the factors identified in the monetary penalty provision, section 17-322(c) of the Business Occupations Article, in evaluating the appropriateness of a reprimand, suspension, or revocation, as I find that those considerations are relevant in this matter because the violations are serious and implicate the Respondent's competency, ethics, diligence, trustworthiness, and caused monetary damage to the Claimant. The Respondent cannot be trusted as a real estate agent and her action were a detriment to the profession.

I have upheld all of the charged violations as the facts are not in dispute in this matter. I find it appropriate to recommend that the REC impose revocation of the Respondent's license, which acknowledges the serious nature of the harm done and the acute level of incompetence exhibited.

In considering the factors laid out in subsection 17-322(c)(2) for the imposition of a monetary fine, the REC argues that the violations were serious in nature and resulted in actual monetary harm to the Claimant. The REC urges that each statutory or regulatory violation warrants a separate \$5,000.00 fine. I agree with the REC's monetary fine in this matter because of the length of time the Respondent deceived the Claimant - two years. From 2013 to 2015, the Respondent continuously misled the Claimant, who trusted the Respondent and believed that the Respondent was protecting her best interest. The result of their business relationship was the Respondent moving into the Property and lying about it. In these circumstances, a penalty of \$30,000.00 is recommended as both substantial and appropriate.

The Guaranty Fund Claim

Section 17-404 of the Business Occupations Article governs 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:

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

With respect to claims against the Fund, COMAR 09.11.01.14 states:

The amount of compensation recoverable by a claimant from the Real Estate Guaranty Fund . . . shall be restricted to the actual monetary loss incurred by the claimant, 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 the licensee's 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.

This regulation specifically ties any recovery from the Fund to the "originating transaction" and it is a reasonable interpretation of the term "actual loss," which is employed in section 17-404(a)(1) of the Business Occupations Article. *See Marriott Employees Fed. Credit Union v. Motor Vehicle Admin.*, 346 Md. 437 (1997) (the consistent and long-standing

construction given a statute by the agency charged with administering it is entitled to great deference, as the agency is likely to have expertise and practical experience with the statute's subject).

Under section 17-407(e) of the Business Occupations Article, the Claimant bears the burden of proof to establish her claim for recovery from the Fund. The burden of proof is by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.01.02.16C.

There is no dispute that the Property is located in the State. The Respondent's licensing status was established by the documents in evidence. The testimony and documents establish that the Respondent failed to communicate truthfully with the Claimant, failed to properly manage the Property as a rental property, moved into the Claimant's Property without permission, and failed to place the rental agreement or property management agreement into writing. The Claimant was selling her primary residence and she had no business or familial relationship with the Respondent that would disqualify her from recovery. *See* Md. Code Ann., Bus. Occ. & Prof. § 17-404(c).

The Fund, however, provides a limited mechanism for recovery against a licensed real estate agent; there must be an act or omission by which money or property is obtained by, as potentially relevant here, false pretenses that constitute "fraud or misrepresentation." A claim of fraud requires a showing that the person made a false representation, with either knowledge of the falsity or reckless indifference as to its truth, for the purposes of defrauding the other party, and the other party reasonably relied upon the false representation and had the right to do so. *See Moscarillo v. Prof'l Risk Mgmt. Servs., Inc.*, 398 Md. 529, 544 (2007). I find the evidence

strongly supports the conclusion, by a preponderance of the evidence, that actions of the Respondent constituted fraud.

Recovery is also permitted from the Fund if the act or omission complained of constitutes misrepresentation. A claim of negligent misrepresentation requires a showing that a party, owing a duty of care, negligently asserts a false statement, and intends the statement to be acted on by the other party, with knowledge that reliance will cause loss to that other party, who takes action on the misrepresentation and sustains loss. *Balfour Beatty Infrastructure, Inc. v. Rummel Klepper & Kahl, LLP*, 451 Md. 600, 627 n.18 (2017). The Respondent's conduct, detailed above, falls within the scope of negligent misrepresentation and the Claimant relied on the Respondents' misrepresentations, to her detriment.

The Claimant sought to recover for (1) \$2,215.00 for court filings, attorney fees, loss wages for the Claimant and her spouse, cost of gas to travel and a portion of a hospital visit; (2) \$3,854.93 for WSSC, BGE and Gas utility bills; and (3) \$8,850.00 in past due rent payment from Deblyn Wete. As noted above, a claim against the Fund may not include monetary losses other than the monetary loss from the originating transaction. COMAR 09.11.01.15 states as follows:

The amount of compensation recoverable by a claimant . . . , 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 the licensee's 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.

This regulation bars the Claimant from recovering for her court filing fees, loss wages, travel and attorney's fees.

The Claimant's testimony and documents established that there was a gas and electric bill in the amount of \$1,684.33 that was accrued during the time when Deblyn Wete was renting the Property. The other utility bills could not be connected to the timeframe of the rental. There is also sufficient and unrefuted evidence that the Claimant is owed \$8,850.00 in unpaid rent from the period of July 2014 to June 2015 which is the period in which the Respondent was acting as the property manager for the Property. Based on this information, the Claimant is entitled to recover \$10,534.33¹⁰ from the Fund as her actual loss.

PROPOSED CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated subsections 17-322(b)(3), (b)(25), (b)(32), (b)(33) and (c) and subsection 17-532(c)(iv) of the Business Occupations Article, and subsections 09.11.02.01C, H and 09.11.02.02A of COMAR. I further conclude that the REC should revoke the Respondent's real estate agent's license and impose a total sanction of \$30,000.00. Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b), (c) (Supp. 2019).

Based on the Findings of Fact and Discussion, I conclude as a matter of law that the Claimant is entitled to an award from the Fund in the amount of \$10,534.33 for the actual loss she sustained as a result of fraud on the part of and misrepresentations made by the Respondent, in her capacity as a licensed real estate salesperson, in connection with the sale of the Property. Md. Code Ann., Bus. Occ. & Prof. § 17-404 (Supp. 2019); COMAR 09.11.01.15.

¹⁰ \$8,850.00 + \$1,684.33 = \$10,534.33

RECOMMENDED ORDER

I therefore **RECOMMEND** that the Maryland Real Estate Commission **ORDER** as follows:

- (1) That the Respondent's real estate agent license be revoked;
- (2) That the Respondent pay a civil penalty in the amount of \$30,000.00;
- (3) The Maryland Real Estate Commission Guaranty Fund pay the Claimant \$10,534.33 as the amount of her actual loss from the Respondent's wrongful acts or omissions;
and
- (4) That the records and publications of the Maryland Real Estate Commission reflect this decision.

December 26, 2019
Date Decision Issued

SIGNATURE ON FILE

Tameika Lunn-Exinor
Administrative Law Judge

TLE/sw
#183498

ARTICLE 10

anyone who... that the...
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SIGNATURE ON FILE

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