

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

v.

HOWARD SCOTT LOKEY,
Respondent

and

IN THE MATTER OF THE CLAIM
OF DAVID OLTHOF AND
SHANNON OLTHOF AGAINST
THE MARYLAND REAL ESTATE
COMMISSION GUARANTY FUND

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CASE NO. 2019-RE-498

OAH NO. LABOR-REC-24-20-01671

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PROPOSED ORDER

The Findings of Fact, Proposed Conclusions of Law and Recommended Order of the Administrative Law Judge dated June 1, 2020, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 16th day of July, 2022, hereby **ORDERED:**

A. That the Findings of Fact¹ in the proposed decision be, and hereby are, **AFFIRMED.**

B. That the 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

¹ On page 4 of the proposed decision the Administrative Law Judge lists exhibits admitted at the hearing. The Complaint included as part of attachment #1 to Exhibit REC #4 is listed as dated January 9, 2019 but is actually dated February 2, 2019. The Commission corrects this harmless typographical error for clarification purposes only.

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

7/16/20
Date

MARYLAND REAL ESTATE COMMISSION

SIGNATURE ON FILE

By: _____

MARYLAND REAL ESTATE
COMMISSION

v.

HOWARD SCOTT LOKEY,
RESPONDENT,

And

IN RE THE CLAIM OF DAVID
OLTHOF AND SHANNON OLTHOF
AGAINST THE MARYLAND REAL
ESTATE GUARANTY FUND

* BEFORE WILLIAM F. BURNHAM,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
*
* OAH No.: LABOR-REC-24-20-01671
* REC No.: 2019-RE-498

* * * * *

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 February 2, 2019, David Olthof (D. Olthof) and Shannon Olthof (S. Olthof) (collectively Claimants) filed a complaint against licensed real estate broker Howard Scott Lokey (Respondent). That same day, the Claimants also filed a claim for compensation from the Maryland Real Estate Guaranty Fund (Fund) for losses the Claimants allegedly sustained as a result of the Respondent's misconduct. The complaint and claim both arose out of interaction between the Claimants and the Respondent as it related to 15 Moon Maiden Court, Walkersville,

Maryland (Property), the address of a home owned by the Claimants at the times relevant to this case as detailed below.

The Maryland Real Estate Commission (REC or Commission) investigated the complaint and determined that charges against the Respondent were warranted and that the Claimants were entitled to a hearing on their claim. Accordingly, the Commission issued a Statement of Charges and Order for Hearing (Statement of Charges), dated December 17, 2019, against the Respondent. The Statement of Charges set forth information about the claim and alleged that the Respondent violated sections 17-322(b)(25), (32), (33), and 17-532 of the Business Occupations and Professions Article of the Maryland Annotated Code (Business Occupations Article)¹ and that he also violated sections 09.11.01.16 and 09.11.02.02A of the Code of Maryland Regulations (COMAR). The Statement of Charges advised the Respondent that if the charged violations are substantiated, the Commission could sanction him by reprimand, or by suspending or revoking his real estate broker's license and could, in addition to or instead of those actions, impose a monetary penalty of \$5,000.00 per violation. On December 27, 2019, the Commission forwarded the Statement of Charges to the Office of Administrative Hearings (OAH) to conduct a hearing.

On March 12, 2020, I conducted the hearing at the OAH in Hunt Valley, Maryland. Business Occupations Article §§ 17-324(a) and 17-408(a). Hope Sachs, Assistant Attorney General, Maryland Department of Labor (Labor), represented the REC on the charged violations. The Respondent failed to appear after proper notice.² The Claimants represented themselves. Robert McCray, Assistant Attorney General, Labor, represented the Fund.

¹ All references to the Business Occupations Article are to the 2018 Replacement Volume and 2019 Supplement.

² The notice was mailed to the Respondent's address of record, Premium Realty Associates, 419 Lee Place, Frederick, Maryland 21702, and was not returned. COMAR 28.02.01.05C. After waiting over fifteen minutes, I proceeded the Respondent's absence. COMAR 28.02.01.23A.

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings before the Office of the Secretary of Labor, 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. Did the Respondent engage in conduct that demonstrated bad faith, incompetency, or untrustworthiness, or that constituted dishonest, fraudulent, or improper dealings in violation of Business Occupations Article § 17-322(b)(25), including failure to reply to the Commission in writing?³
2. Did the Respondent violate COMAR 09.11.02.02A, the REC's Code of Ethics (Code), by failing to protect and promote the interests of his client or by failing to act with absolute fidelity to the client's interest, which would violate the Code and also Business Occupations Article § 17-322(b)(33)?
3. If the Respondent violated any of these provisions or any other provision of Title 17, what sanction, if any, is appropriate?⁴
4. Have the Claimants established a compensable claim against the Fund under section 17-404 of the Business Occupations Article?
5. If the Claimants have established a compensable claim, what is the appropriate award?

³ The Commission cited COMAR 09.11.01.16.

⁴ The Statement of Charges also charged a violation of Business Occupations Article § 17-322(b)(32) which provides that a licensee's real estate license is subject to sanction if he "violates any other provision of this title."

SUMMARY OF THE EVIDENCE

Exhibits

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

- REC #1 Notice of Hearing generated by the OAH, January 30, 2020
- REC #2 Statement of Charges, December 17, 2019
- REC #3 REC licensing records for the Respondent and related companies, printed March 10, 2020
- REC #4 REC, Report of Investigation, closed August 2, 2019, with the following attachments:
 - #1 Complaint filed with the REC on January 9, 2019 (pp. 1/1 to 1/2)⁵
Email from D. Olthof to Respondent, September 27, 2018) (p. 1/3)
Email from D. Olthof to Respondent, September 21, 2018) (p. 1/4)
Residential Lease (Lease), December 30, 2017 (pp. 1/5 to 1/18)
"Understanding Whom Real Estate Agents Represent," undated
(pp. 1/19 to 1/20)
Lead Paint Disclosure, December 30, 2017 (pp. 1/21 to 1/23)
Wells Fargo account statement, p. 6 of 8, August 1, 2018 to August 30, 2018 (p. 1/24)
Wells Fargo account statement, p. 3 of 8, June 30, 2018 to July 31, 2018 (p. 1/25)
M&T Bank default notice, January 3, 2019 (p. 1/26)
REC licensing records for the Respondent and related companies, printed April 22, 2019 (p. 1/27)
 - #2 Letter from the DLLR⁶ to the Respondent, April 22, 2019, (unnumbered)
Letter from the DLLR to the Respondent, May 22, 2019 (p. 2/1)
Email from Patrick Richardson to Lucinda Rezek, July 8, 2019 (p. 2/2)

The Claimant offered the following exhibit, which I identified for the record and/or admitted into evidence as noted:

- CL #1 Email from Respondent to D. Olthof, November 4, 2017 (not admitted)
First United Bank & Trust payment confirmation, February 15, 2017 (not admitted)
Email from D. Olthof to the Respondent, September 27, 2018 (admitted)
Email from D. Olthof to the Respondent, September 21, 2018 (admitted)
Glad Towne Community Association notice to the Claimants, August 22, 2018 (not admitted)
Email from D. Olthof to the Respondent, September 12, 2018 (not admitted)
Email from D. Olthof to the Respondent, January 9, 2017 (not admitted)

⁵ The exhibit and attachments were pre-numbered by the Commission.

⁶ On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation (DLLR) became the Department of Labor.

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

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

Testimony

The REC presented testimony from the Claimant and Brenda Iman, Administrative Officer II, Paralegal Investigator, on the regulatory charges. The Claimants also testified on their own behalf in support of their claim. Neither the Respondent nor the Fund presented any testimony.

FINDINGS OF FACT

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

1. Since 1985, the Respondent was licensed as a Real Estate Broker by the REC under license number 77479 with no prior REC complaints.
2. The Respondent was the owner and the broker of record for Premium Realty Associates, T/A Rental Services Group (Rental Services).
3. In or around the fall of 2016, the Claimants engaged the Respondent to manage rental of the Property (Contract).⁷
4. The Respondent located a tenant sometime in 2016 and tenants who signed the Lease for the Property on December 30, 2017.⁸ The rent was \$1,525.00 per month, and required the tenant pay Rental Services a \$1,500.00 security deposit and a \$750.00 pet deposit.
5. The Respondent deposited the monthly rent to the Claimants' Wells Fargo bank account minus a management fee of \$122.00 and occasional expenses.

⁷ Whether the Contract was written or oral was not confirmed during the hearing.

⁸ The tenant or tenants in the Property before the Lease was signed were not identified. The Lease provides that it is for the period of January 1, 2018 to December 31, 2019. I presume the period to be a typographical error because the total rent was listed as \$18,300.00 which amounts to \$1,525.00 per month for twelve months, and testimony indicated that the Lease was a twelve-month lease.

6. The Respondent made regular monthly deposits of \$1,403.00 into the Claimants' bank account until August 2018. The August 2018 payment was late.

7. The Respondent made no payment to the Claimants in September 2018.

8. The Claimants tried to contact the Respondent by phone, email, and text, but the Respondent did not return the Claimants' messages.

9. The Respondent contacted the Claimants in late September 2018 and told them his bank account had been compromised. The Respondent thereafter stopped communicating with the Complainants.

10. The Respondent made no payment to the Claimants in October 2018.

11. The Claimants tried to contact the tenants in person, but the tenants were not at home.

12. The Respondent made no payment to the Claimants in November 2018.

13. The Respondent made no payment to the Claimants in December 2018.

14. The Respondent did not return the \$1,500.00 security deposit.

15. The Respondent did not return the \$750.00 pet deposit.

16. The tenants moved from the Property after December 2018.

17. The Respondent owed the Claimants a total of \$7,862.00 from rent he collected and the security and pet deposits.

18. The Claimant filed a complaint with the REC on February 2, 2019.

19. The REC sent the Respondent letters on April 22, 2019 and May 22, 2019 requesting a response to the complaint. The Respondent never replied to either letter.

20. The REC scheduled an audit of Rental Services for July 2, 2019 and sent an auditor to the address on file with the Commission to examine the Respondent's financial

records. The Respondent was not at his business address and the property at the address on file with the Commission appeared vacant.

DISCUSSION

The Regulatory Charges

The REC charged the Respondent with violating sections 17-322(b)(25), (b)(32), (b)(33) and 17-532 of the Business Occupations Article, COMAR 09.11.01.16 and COMAR 09.11.02.02A. Section 17-322 of the Business Occupations Article provides, in pertinent part:

(b) *Grounds.* – Subject to the hearing provisions of § 17-324 of this subtitle, the Commission may . . . 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;

...

(32) violates any other provision of this title;

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

Determination of penalty

(c) (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.

COMAR 09.11.02.02A provides:

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).

The Commission cited a version of COMAR 09.11.01.16 that was in effect from June 1990 until it was revised in 2017. After the 2017 revision, COMAR 09.11.01.16 was titled “Use of Trade Names.” The Commission cited COMAR 09.11.01.16 in its Statement of Charges as providing the following:

Form of Licensee’s Reply to Commission’s Inquiries.

A Licensee shall reply in writing to the Commission within 20 days of receipt of written inquiries directed to the licensee by the Commission. Failure to reply in this way may be considered by the Commission to be a violation of Business Occupations and Professions Article, 17-322(b)(25),⁹ Annotated Code of Maryland, for which the revocation or suspension of the license can be imposed.

The COMAR provision presently in effect that addresses a licensee’s failure to respond to the Commission is COMAR 09.11.01.13. It provides:

Failure to Respond.

- A. If an applicant or licensee receives from the Commission a written communication requesting a response, the applicant or licensee shall respond in writing within 30 days of the date of the mailing.
- B. The Commission shall send a written communication by first-class mail to the last known address furnished to the Commission by the applicant or licensee.
- C. It is a responsibility of an applicant or licensee to notify the Commission in writing if there has been a change in applicant’s or licensee’s address.

⁹ The former COMAR 09.11.01.16 that addressed the failure of a licensee to reply to the Commission cited Business Occupations Article § 16-322(a)(25). The Commission cited the section of the Business Occupations Article that a licensee now violates if he fails to respond to the Commission. See COMAR 09.11.01.13.

D. Failure to respond as required by this regulation may be considered by the Commission to be a violation of Business Occupations and Professions Article, §17-322(b), Annotated Code of Maryland.

Because the Commission alleges that the Respondent failed to respond to its notices related to the Claimant's complaint, I will presume the REC alleged the Respondent failed to comply with COMAR 09.11.01.13 because that section addresses the failure of a licensee to respond to a written communication of the REC that requires a response.

This discussion begins with the Contract between the Claimant and the Respondent. The undisputed evidence shows that the Claimant and the Respondent agreed to the Respondent's management of the Property. The Contract was made in or about the fall of 2016 and the Respondent drafted a rental agreement, the Lease, with the tenants in December 2017. The Respondent agreed to manage the Property and collect a management fee of \$122.00, or eight percent of the rent collected. All the money collected in rental payments was due to the Claimant on a monthly basis, minus the management fee, and the security deposit and pet deposit were supposed to be deposited in an account devoted exclusively to security deposits. See REC #4 Att. 1 (pp. 1/6 to 1/8).

D. Olthof testified the Respondent was referred to them through an agent with whom they had a previous relationship. He testified the Respondent remitted rental payments to the Claimants from December 2016 to 2017 and then secured new tenants for 2018. The rent was \$1,525 per month and the Respondent earned a management fee of \$122.00 per month. The balance of the rent the Respondent collected was to be deposited in the Claimants' bank account. He testified the Respondent failed to pay on time in August 2018 and the result was that the Claimants could not pay the Property mortgage on time and a late fee resulted. The Respondent finally made the August 2018 payment on the 27th of the month and that was the last payment the Claimants received.

According to D. Olthof, attempts to reach the Respondent were met with full voicemail and no return calls or texts. When the Respondent finally reached out in late September 2018, he told the Claimants that his bank account had been compromised and he would make payments and reimburse the Claimants for late fees. The Claimants testified he never paid for rents he collected in September, October, November or December 2018 and the financial strain was an "extreme hardship." They tried to tell the tenants not to pay the Respondent but were unsuccessful in contacting them.

The Claimants testified the Respondent kept the \$1,500.00 security deposit and the pet deposit of \$750.00. S. Olthof testified the Claimants paid the tenants for the deposits the Respondent collected after carpets were cleaned when the tenants moved in December 2018.

Ms. Iman testified the REC mailed the Respondent a notice of the complaint on April 22, 2019. Ms. Iman testified the Respondent had twenty days in which to respond in writing to the REC regarding the complaint. According to Ms. Iman, the Respondent never provided any answer to the REC's April 2019 notice, so the REC sent a second letter marked final notice on May 22, 2019.

Ms. Iman referenced the letters that informed the Respondent he was obligated to respond in writing to the REC regarding the Claimant's complaint. The REC provided an extra ten days from the date of the second letter for the Respondent to provide a written response and informed the Respondent he was subject to suspension or revocation of his license and up to a \$5,000.00 fine. Ms. Iman testified the REC never received any response from the Respondent and the Commission scheduled an audit of Rental Services for July 2, 2019. The Respondent was not present at his business address on July 2, 2019, and according to the auditor, Patrick Richardson, the property seemed vacant and under repair. *See* REC #4 Att. 2 (p. 2/2). It appeared to the

Commission the Respondent closed his brokerage without telling the Commission and without returning the Claimant's proceeds under the Contract.

The REC argued the facts supported its allegations that the Respondent violated section 17-322(b)(25) of the Business Occupations Article because the Respondent acted untrustworthy, in bad faith, and fraudulently when he improperly withheld the money due the Claimants under the Contract.

Next, the REC argued the Respondent violated section 17-532(b)(1)(vi) of the Business Occupations Article because he collected money for the September, October, November, and December 2018 rent but did not remit any of it to the Claimants; therefore, he exercised no reasonable care or diligence. In addition, according to the REC's argument, the Respondent violated COMAR 09.11.01.16 because he never responded in any respect to either notice. Finally, the REC argued the Respondent was in violation of COMAR 09.11.02.02A because the actions described did not protect or promote the interest of the Claimants. Therefore, the Respondent did not in any way promote or protect the Claimants' interests.

The REC proposed that the Respondent be penalized by revocation of his license and a \$5,000.00 fine for each of the violations the REC enumerated in its arguments. The REC fashioned its recommendation by considering the factors under section 17-322(c) of the Business Occupations Article and determining the Respondent's collection of rent and deposits without remitting to the Claimants were very serious, caused "a lot of" financial harm to the Claimants, and demonstrated bad faith by his keeping the Claimants' funds, ignoring the Commission, and failing to appear for the hearing. The REC acknowledged the Respondent had no other history of complaints since his licensure in 1985. The REC recommended the revocation of the Respondent's license and a total fine of \$20,000.00.

The Respondent agreed to the Contract and promised to provide real estate broker services to the Claimant for a management fee. The Respondent was paid a security deposit, pet deposit, and rent under the Lease. He forwarded collected rents to the Claimant in 2016, 2017 and part of 2018. He failed to disburse any of the September, October, November, and December 2018 rent collected to the Claimants. The Respondent kept the rent he collected. His actions caused severe economic hardship for the Claimants. I believe by a preponderance of evidence the Claimants' testimony the tenants paid the \$1,500.00 security deposit and \$750.00 pet deposit because the Lease corroborates the Claimants' testimony. The Respondent further kept the \$1,500.00 security deposit and \$750.00 pet deposit Rental Services was paid before the tenants moved in the Property.

For the foregoing reasons, I find the REC has proven by a preponderance of the evidence that the Respondent acted in a manner demonstrating bad faith, incompetency, and untrustworthiness. For the same reasons, I find the Respondent's conduct was dishonest and fraudulent and he engaged in improper dealings. Business Occupations Article § 17-322(b)(25). Although the REC made no argument specific to sections 17-322(b)(32) and (33) of the Business Occupations Article, I find the Respondent violated each of these statutory provisions for the same reasons, based on the allegations in the Statement of Charges and the evidence in the record.

The REC also charged the Respondent with violating COMAR 09.11.02.02A, which requires the Respondent protect and promote the interests of the client. The Respondent owed the Claimant an obligation of absolute fidelity and failed in every respect set forth above to promote the interest of the Claimant. The Respondent agreed to the Contract and knew that he kept the money he should have disbursed to the Claimants. The Respondent chose to steal the rental payments, the security deposit, and the pet deposit and took money from the tenants that

the Claimants had to repay. In doing so, he wholly failed to adequately protect and promote the interest of the Claimants.

Finally, the REC cited the outdated COMAR section for its proposition that the Respondent was required to address the Claimants' complaint within twenty days of the REC's April 22, 2019 notice letter. The Respondent never responded at all to the REC's letters. The Respondent knew the REC threatened to reprimand him or suspend or revoke his license if he did not reply; nevertheless, he failed to reply. If he closed his business or moved, he did not tell the REC because the REC continued to try and reach him at his business address that was still registered with the REC. *See REC #3; and see COMAR 09.11.01.13C* ("It is a responsibility of an applicant or licensee to notify the Commission in writing if there has been a change in applicant's or licensee's address"); *COMAR 09.11.01.08* ("When a licensed broker changes business location, the licensed broker shall notify the Commission in writing within 10 days"). In addition, although twenty days was an incorrect timeframe for the Respondent to reply, the REC gave the Respondent thirty days to reply when the times in the first and second notices are combined, so the Respondent actually had thirty days to respond, failed to do so, and therefore, suffered no prejudice as a result of the twenty-day notice.¹⁰

Given the foregoing, a revocation is appropriate, and I recommend that sanction. With regard to a monetary penalty, the Respondent has no history of prior violations. The Respondent failed to adhere to the terms of his Contract with the Claimant, failed to protect and promote the Claimant's interests, and failed to respond in any way to the Commission. The Commission notified the Respondent that he was subject to "a monetary fine of up to \$5,000.00 per

¹⁰ No argument was presented that the incorrect response time had any effect on the Respondent's failure to reply to the Commission.

violation.”¹¹ The maximum possible monetary penalty for four violations is \$20,000.00. The REC suggested a total of \$20,000.00 for the violations of sections 17-322(b)(25) and 17-532(b)(1)(vi) of the Business Occupations Article, and COMAR 09.11.01.16 and 09.11.02.02A.

Section 17-322(c) of the Business Occupations Article provides the penalty for the alleged violations in this case. The maximum penalty is \$5,000.00 for each violation under this section. Business Occupations Article § 17-322(c). The REC’s requested \$5,000.00 penalty for the Respondent’s engagement in conduct exhibiting bad faith, incompetency, untrustworthiness and dishonest, fraudulent and improper dealings with the Claimant is proper under the facts of this case. Business Occupations Article § 17-322(b)(25). The REC’s request for \$5,000.00 for failure to respond to its written communications is a request under COMAR 09.01.01.13 and that section provides that a violation is akin to violation of the section 17-322(b)(25) of the Business Occupations Article and is therefore proper. The Respondent additionally violated section 17-532 of the Business Occupations Article and COMAR 09.11.02.02A. Because penalties under section 17-322(c) apply to any violation of another provision of Title 17 of the Business Occupations Article, I find the \$5,000.00 penalty requested by the REC appropriate for the Respondent’s section 17-532 violation. *See* Business Occupations Article § 17-322(b)(32). Finally, a violation of COMAR 09.11.02.02A is a violation of the Code and therefore a basis for a penalty under the Business Occupations Article. *See* Business Occupations Article § 17-322(b)(33). Therefore, I find a monetary penalty of \$5,000.00 appropriate under section 17-322(c) of the Business Occupations Article.

¹¹ The REC notified the Respondent in its letters that the Respondent was subject to “a fine up to \$5,000.00 and/or a suspension of your license.” REC #4 Att. 2 (pp. 2/1). The Statement of Charges informed the Respondent the hearing could result in “a reprimand, or the suspension or revocation” of his license and in addition, “a monetary fine of up to \$5,000.00 per violation.” REC #2.

The Guaranty Fund Claim

Section 17-404 of the Business Occupations Article governs claims brought against the Fund. A claimant may recover compensation from the Fund for an actual loss based on an act or omission by a licensed real estate broker that occurs in the provision of real estate brokerage services involving a transaction that relates to real estate located in this State. Business Occupations Article § 17-404(a).

Business Occupations Article section 17-404 provides in pertinent part that:

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:

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.

Therefore, a claim must be based on an act or omission in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or an act or omission that constitutes fraud or misrepresentation. Business Occupations Article § 17-404(a)(2)(iii); COMAR 09.11.03.04A and B.

With respect to claims against the Fund, COMAR 09.11.01.15 states as relevant to this case:

The amount of compensation recoverable by a claimant from the [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.

Under Section 17-407(e) of the Business Occupations Article, the Claimants bear the burden of proof to establish their 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. The Claimants proved by a preponderance of the evidence that they suffered an actual loss caused by the act or omission of the Respondent. The Fund recommended compensation.

There is no dispute the Property is located in the State and there is no dispute the Respondent was a licensed real estate broker at the time of the events at issue. The Claimants agreed to rent the Property and have no business or familial relationship with the Respondent that would disqualify them from recovery. *See Business Occupations Article § 17-404(c)*. There is an allegation of theft, false pretenses, fraud and misrepresentation and, as described *infra*, there is evidence to support such findings. I conclude there was proof by a preponderance of the evidence of theft, false pretenses, fraud, and misrepresentation by the Respondent.

The Lease contemplated that the Property be rented for \$1,525.00 per month and a \$1,500.00 security deposit and a \$750.00 pet deposit be secured. It was expected that the Respondent would pay the Claimants the rent he collected each month, minus a \$122.00 management fee, and maintain the deposits in an account “devoted exclusively to security deposits” and bearing interest.¹²

The Respondent kept the rent from September through December 2018, or \$5,612.00. The Respondent never returned the \$1,500.00 security deposit or \$750.00 pet deposit. The total amount the Claimants lost due to the Respondent’s actions is \$7,862.00. The Fund is set up to provide compensation for these types of losses. In this case, the Claimants have proved by a preponderance of the evidence that they are entitled to compensation from the Fund in the amount of the security deposit, the pet deposit, and their monthly disbursements under the Contract.

¹² The pet deposit does not specifically address where the money was to be held, but because it is a deposit it must be held by the Respondent.

PROPOSED CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I propose the Commission conclude as a matter of law that:

1. The Respondent engaged in conduct that demonstrated bad faith, incompetency or untrustworthiness and that constituted dishonest, fraudulent and improper dealings in violation of section 17-322(b)(25) of the Business Occupations Article.
2. The Respondent violated COMAR 09.11.02.02A, the REC's Code of Ethics and section 17-322(b)(33) of the Business Occupations Article, by failing to protect and promote the interests of his client or by failing to act with absolute fidelity to the clients' interest.
3. The Respondent violated COMAR 09.11.01.13 and section 17-322(b)(25) of the Business Occupations Article by failing to respond in any manner to the REC's notice letters regarding the Claimants' complaint.
4. A revocation of the Respondent's Real Estate Commission license is an appropriate sanction, as well as a monetary penalty of \$20,000.00, which represents \$5,000.00 for each of the violations of sections 17-322(b)(25), (32) and (33) and 17-532 of the Business Occupations Article. *See* Business Occupations Article § 17-322(c); *and see* COMAR 09.11.01.13; COMAR 09.11.02.02A.
5. The Claimants established a compensable claim against the Fund under section 17-404 of the Business Occupations Article in the amount of \$7,862.00 representing four months' rental income, the security deposit and the pet deposit.

RECOMMENDED ORDER

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

1. That the Respondent's real estate broker license be revoked;
2. That the Respondent pay a civil penalty in the amount of \$20,000.00;
3. The Maryland Real Estate Commission Guaranty Fund pay the Claimants' claim of \$7,862.00; and
4. That the records and publications of the Maryland Real Estate Commission reflect this decision.

June 1, 2020
Date Decision Issued

SIGNATURE ON FILE

William F. Burnham
Administrative Law Judge

WFB/emh
#186119