

FINAL ORDER

JAN 04 2012

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL
ESTATE COMMISSION

IN THE MATTER OF THE CLAIM *
 OF YVETTE D. MORGAN *
 AGAINST THE MARYLAND REAL * CASE NO. 2011-RE-017
 ESTATE GUARANTY FUND, * OAH NO. DLR-REC-22-11-08531
 FOR THE ALLEGED MISCONDUCT *
 OF APRIL E. JOHNSON *

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law, and Recommended Order of the Administrative Law Judge dated September 28, 2011, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 14th day of November, 2011

ORDERED,

A. That the Findings of Fact in the recommended decision be, and hereby are, ADOPTED;

B. That the Conclusions of Law in the recommended decision be, and hereby are, ADOPTED;

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

ORDERED that the Claim of Yvette D. Morgan against the Maryland Real Estate Guaranty Fund based on the actions of April E. Johnson is granted in the amount of \$10,000.00;

ORDERED that April E. Johnson shall be ineligible to hold a

real estate license until the Fund is repaid in full together with interest as provided by law;

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

D. Pursuant to §10-220 of the State Government Article, the Commission finds the recommended order had to be amended to include the provision that April E. Johnson shall be ineligible to hold a real estate license until the Guaranty Fund is repaid in full together with the interest prescribed by law.

E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.08 those parties adversely affected by this Proposed Order shall have 20 days from the postmark date of the Order to file exceptions and to request to present arguments on the proposed decision before this Commission. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 500 North Calvert Street, Baltimore, MD 21202.

SIGNATURE ON FILE

Maryland Real Estate Commission

IN THE MATTER OF THE CLAIM OF:	*	BEFORE LORRAINE E. FRASER,
YVETTE D. MORGAN,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	*	OF THE MARYLAND OFFICE
v.	*	OF ADMINISTRATIVE HEARINGS
THE MARYLAND REAL ESTATE	*	OAH CASE No. DLR-REC-22-11-08531
COMMISSION GUARANTY FUND	*	MREC COMPLAINT No. 11-RE-017
FOR THE ALLEGED MISCONDUCT OF	*	
APRIL E. JOHNSON, REAL ESTATE	*	
BROKER,	*	
RESPONDENT	*	

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
ISSUES
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CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On July 14, 2010, Yvette D. Morgan (Claimant) filed a claim against the Maryland Real Estate Commission Guaranty Fund (Fund) for \$10,000.00. The claim was for monetary losses allegedly incurred by the Claimant as a result of the misconduct of April E. Johnson, Licensed Real Estate Broker (Respondent), in providing real estate brokerage services to the Claimant for the real property located at 1815 Robert Lewis Avenue, Upper Marlboro, Maryland.

On February 25, 2011, the MREC transmitted the matter to the Office of Administrative Hearings (OAH) for a hearing concerning the Claimant's claim against the Fund regarding the Respondent. On April 21, 2011, the OAH scheduled a hearing for July 5, 2011.

On July 5, 2010, I conducted a hearing at the Largo Government Center, 9201 Basil Court, Largo, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010). The Claimant was present and represented herself at the hearing. Hope Sachs, Assistant Attorney General for the Department of Labor, Licensing and Regulation (DLLR), represented the Fund. The Respondent failed to appear.

On April 21, 2011, the OAH mailed notice of the hearing to the Respondent by certified and regular mail to her last address on file with the MREC, 9915 Raintree Way, Clinton, Maryland 20735. The notice advised the Respondent of the date, time, and place of the hearing. The notices were returned to the OAH marked "RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." At the time the notice was mailed, the Respondent's license had been revoked by the MREC. On May 31, 2011, William Banks, an Investigator with DLLR, accessed the Motor Vehicle Administration's (MVA) computer records regarding the Respondent. The MVA's records showed that the Respondent's driving privilege was valid and identified her current address as 9915 Raintree Way, Clinton, Maryland 20735. Thus, I find that the Respondent was properly notified of the hearing.

The Administrative Procedure Act, the procedural regulations of the DLLR, and the OAH Rules of Procedure govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2011); Code of Maryland Regulations (COMAR) 09.01.02, 09.01.03, 09.11.03.02; 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

The following exhibits were admitted into evidence on behalf of the parties:

- Fund Ex. 1 Notice of hearing, 4/21/11; returned 5/3/11; notice sent via certified mail
- Fund Ex. 2 Notice of hearing, 4/21/11; returned 5/3/11; notice sent via regular mail
- Fund Ex. 3 Affidavit of William Banks, 5/31/11; the Respondent's driving record
- Fund Ex. 4 The Respondent's licensing history with DLLR
- Fund Ex. 5 Complaint and Guaranty Fund Claim, 7/14/10
- Fund Ex. 6 Notice of Summary Suspension of Real Estate Broker's License, 12/16/10
- Claimant Ex. 1 Residential Contract of Sale, 3/8/10
- Claimant Ex. 2 Check # 4228 from the Claimant to Nu Vision Realty for \$10,000, 3/19/10
- Claimant Ex. 3 MRIS listing for 1815 Robert Lewis Avenue, Upper Marlboro, 7/8/10
- Claimant Ex. 4 E-mails to and from the Claimant and Cathy Morgan, Accounting Assistant for the Respondent, 7/6/10
- Claimant Ex. 5 E-mails to and from LaRhonde Patterson, Associate Broker, Cathy Morgan, the Respondent, and the Claimant, 6/16/10 - 7/6/10; Mutual Release of Obligation Under Contract of Sale
- Claimant Ex. 6 The Claimant's Timeline of Events
- Claimant Ex. 7 Note from the Respondent to LaRhonde Patterson

Testimony

The Claimant testified and presented the testimony of LaRhonde Patterson, the Claimant's real estate agent. No other witnesses testified.

FINDINGS OF FACT

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

1. At all times relevant to this matter, the Respondent was a licensed real estate broker. On December 16, 2010, the Respondent's license was suspended and, on March 9, 2011, her license was revoked.
2. At all times relevant to this matter, the Respondent was the broker of record for Nu Vision Realty, located at 6200 Coventry Way, Clinton, Maryland.
3. On March 8, 2010, the Claimant submitted to the Respondent a Residential Contract of Sale for the property located at 1815 Robert Lewis Avenue, Upper Marlboro, Maryland 20774. The offer was for a short sale of the property.
4. Nu Vision Realty was the listing broker for 1815 Robert Lewis Avenue and the Respondent was the listing broker and seller's agent for the property.
5. LaRhonde Patterson, the Real Estate Store, LLC, acted as the Claimant's (buyer's) agent.
6. As part of the contract of sale, the Respondent asked the Claimant to pay a \$10,000.00 earnest money deposit. The deposit was to be held in escrow by Nu Vision Realty.
7. On March 19, 2010, the Claimant gave the Respondent a check for \$10,000.00 made payable to Nu Vision Realty. The check was cashed on March 22, 2010.
8. On May 14, 2010, the Respondent told Ms. Patterson that Bank of America had approved the contract of sale.

9. Ms. Patterson attempted to contact the Respondent via e-mail on May 18, 21, and 25, 2010 but received no response.
10. On May 26, 2010, Ms. Patterson asked the Respondent for a release of the contract of sale.
11. On May 27, 2010, Ms. Patterson spoke to an attorney representing Bank of America who told her that the 1815 Robert Lewis Avenue property was in foreclosure, that the Respondent had not submitted a short sale contract from the Claimant for the bank's approval, and that any short sale contract would have been rejected because of pending foreclosure proceedings.
12. On June 3, 2010, the Claimant signed a Mutual Release of Obligation Under Contract of Sale.
13. On June 9, 2010, Ms. Patterson sent to the Respondent an e-mail requesting the return of the Claimant's \$10,000.00 deposit and the Claimant's signed release. Ms. Patterson sent follow-up e-mails on June 12 and 13, 2010.
14. On June 16, 2010, the Respondent contacted Ms. Patterson and stated that she had received the e-mails but not the release. The Respondent also stated that she would refund the \$10,000.00 deposit on June 18, 2010.
15. On June 16 and 18, 2010, Ms. Patterson sent the release to the Respondent a second and third time.
16. On June 21, 2010, Ms. Patterson sent another e-mail to the Respondent asking again for the return of the \$10,000.00 deposit.

17. On June 23, 2010, the Respondent told Ms. Patterson that the seller of the property would sign the release on June 25, 2010 and that the \$10,000.00 deposit would be returned to the Claimant on that date.
18. On June 25, 2010, Ms. Patterson sent an e-mail to the Respondent asking what time that day the \$10,000.00 deposit would be returned.
19. On June 28, 2010, the Claimant called the Respondent and left a message requesting the return of the \$10,000.00 deposit.
20. On June 29, 2010, the Respondent called the Claimant and told her that she would have the seller sign the release that day and that the \$10,000.00 deposit would be ready at 3:00 p.m. on July 6, 2010.
21. On June 29, 2010, the Claimant sent an e-mail to the Respondent confirming their discussion, including a statement that the Claimant or Ms. Patterson would pick up the refund of the \$10,000.00 deposit at Nu Vision Realty, 6200 Coventry Way, Clinton, Maryland at 3:00 p.m. on July 6, 2010.
22. On June 30, 2010, the Claimant sent to the Respondent a second e-mail repeating her wish that she receive a refund of her \$10,000.00 deposit on July 6, 2010.
23. On July 6, 2010, the Respondent sent an e-mail to the Claimant stating that her accounting assistant, Cathy Morgan, had mailed the \$10,000.00 refund to The Real Estate Store.
24. On July 6, 2010, Ms. Patterson sent an e-mail to Ms. Morgan asking for the address to which she mailed the \$10,000.00 refund. Ms. Morgan did not reply.
25. Ms. Patterson never received the Claimant's \$10,000.00 refund of her deposit.
26. The Claimant never received a \$10,000.00 refund of her deposit.

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 \$25,000 for each claim.

Md. Code Ann., Bus. Occ. & Prof. § 17-404(a), (b) (2010). *See* COMAR 09.11.03.04.

The MREC shall order payment of a valid claim from the Guaranty Fund for actual monetary losses suffered by a claimant not to exceed \$25,000. Md. Code Ann., Bus. Occ. & Prof. § 17-410(a), (b) (2010); COMAR 09.11.01.18.

The Claimant in this case gave to the Respondent a check for \$10,000.00 as a deposit in conjunction with an offer to buy a property listed for sale by the Respondent. The Respondent cashed the check, which was to be held in escrow by the Respondent's company Nu Vision Realty. The Respondent did not submit the Claimant's offer to buy the property for approval by Bank of America (the lender to the owner of the property) and the property was in foreclosure proceedings. Despite numerous requests by the Claimant and her agent, Ms. Patterson, the Respondent failed to return the \$10,000.00 deposit to the Claimant.

Thus, I find that the Claimant has shown she has suffered an actual loss of \$10,000.00 as a result of the acts of the Respondent. The Respondent was acting as a licensed real estate broker when she listed the property for sale and received the Claimant's \$10,000.00 deposit. The transaction between the Claimant and the Respondent involved property located in the State of Maryland, specifically at 1815 Robert Lewis Avenue, Upper Marlboro, Maryland 20774. The Claimant was entitled to have her \$10,000.00 deposit returned to her when the sale of the property could not proceed because the property was in foreclosure proceedings. The Respondent made several promises to return the \$10,000.00 deposit to the Claimant; however, the Respondent has failed to do so. The Respondent's failure to return the \$10,000.00 deposit without a legitimate basis constitutes obtaining money by theft and false pretenses. Therefore, I find that the Claimant is entitled to an award of \$10,000.00 from the Fund.

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 \$10,000.00, 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) (2010); 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 \$10,000.00; and further,

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

September 28, 2011
Date Decision mailed

SIGNATURE ON FILE

Lorraine E. Fraser
Administrative Law Judge

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