

BEFORE THE MARYLAND REAL ESTATE COMMISSION

NOV 03 2011

MARYLAND REAL ESTATE
COMMISSION

*

v.

* CASE NO. 2008-RE-359

MARYLAND REAL
ESTATE COMMISSION

GERRI M. WALKER-NURSE
Respondent

*

* OAH NO. DLR-rec-24-10-08361

And

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CLAIM OF DARRELL DISQUE
AGAINST THE MARYLAND REAL
ESTATE GUARANTY FUND

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OPINION AND FINAL ORDER

This matter came before the Maryland Real Estate Commission (“Commission”) on argument on Exceptions filed by the Respondent, Gerri M. Walker-Nurse, to the Proposed Order of February 24, 2011. On December 17, 2010, Administrative Law Judge Daniel Andrews (“ALJ”) filed a Proposed Decision and Recommended Order in which he recommended that the Respondent’s license be revoked and that the Claimant be awarded \$2,500.00 from the Maryland Real Estate Guaranty Fund (“Fund”).

On February 24, 2011, the Commission issued a Proposed Order that adopted the ALJ’s Findings of Fact. The Commission found that the Conclusions of Law had to be amended due to the ALJ’s incorrect application of the law regarding the Guaranty Fund and to provide for a civil penalty. The Commission amended the ALJ’s Conclusions of Law as follows: 1) That the Respondent violated Sections 17-322(b)(22), (25), (31), and (33), 17-502(b)(2) and 17-505, Business Occupations and Professions Article, Annotated Code of Maryland (“Bus. Occ. & Prof. Art.”), and Code of Maryland Regulations

("COMAR") 09.11.02.01C; 2) That the Respondent is subject to the penalties prescribed in Section 17-322(c), Bus. Occ. & Prof. Art. for those violations; and 3) That the Claimant is entitled to payment from the Maryland Real Estate Guaranty Fund in the amount of \$4,100.00.

In its Proposed Order, the Commission ordered: 1) That the Respondent violated Md. Bus. Occ. & Prof. Art. §§ 17-322(b)(22), (25), (31), and (33); 17-502(b)(2) and 17-505; and COMAR 09.11.02.01C; 2) That all real estate licenses held by the Respondent are revoked; 3) That the Respondent is assessed a civil penalty in the amount of \$10,000.00 which shall be paid within thirty (30) days of the date of the Proposed Order; 4) That the claim of Darrell Disque against the Maryland Real Estate Guaranty Fund is granted in the amount of \$4,100.00; 5) That the Respondent shall be ineligible for a real estate license until the Guaranty Fund is repaid in full, together with interest as provided for by law, and the civil penalty is paid; and 6) That the records and publications of the Maryland Real Estate Commission reflect that decision.

The Commission also noted several errors in the Discussion section of the Proposed Decision. On pages 11 and 12, in two instances, the ALJ used the word "Claimant" when he intended to refer to the Respondent, and twice referred to the "Respondent" when he intended to refer to the Claimant. These errors are found in the last paragraph on page 11 (Claimant instead of Respondent) and the first three lines of page 12 (Respondent instead of Claimant). These errors are apparent when this paragraph is compared to the Findings of Fact.

A hearing on the Exceptions filed by the Respondent was held by a panel of Commissioners, consisting of Commissioners Anne S. Cooke, Robin L. Pirtle and Colette

P. Youngblood, on July 20, 2011. Jessica Berman Kaufman, Assistant Attorney General, represented the Commission. Steven Sunday, Esquire represented the Claimant, Darrell Disque. A transcript of the hearing before the ALJ was not provided to the Commission. The proceedings were electronically recorded.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, five exhibits, as well as the Office of Administrative Hearings' file containing exhibits which were introduced before the ALJ, were entered into evidence.

PRELIMINARY MATTERS

On March 10, 2011, the Commission forwarded a letter, with a copy of the Proposed Decision of the ALJ and the Proposed Order of the Commission, to the Respondent, Gerri Walker-Nurse, at her address of record. On March 21, 2011, the Commission received a letter from the Respondent filing Exceptions to the Proposed Order. On March 30, 2011, the Commission forwarded a letter to the Respondent, informing her that a hearing on her Exceptions would take place at 500 N. Calvert Street, Third Floor Conference Room, Baltimore, Maryland 21202 on Wednesday, July 20, 2011, at 12:30 p.m. The letter advised the Respondent that: "If the excepting party fails to appear within fifteen minutes of the scheduled time for this hearing, its exceptions will be dismissed absent extenuating circumstances." The March 30, 2011 letter from the Commission to Ms. Walker-Nurse was sent to her at her address of record as well as at an address she listed in her March 21, 2011 letter to the Commission. Ms. Walker-Nurse did not appear on July 20, 2011 at 12:30 p.m. for her scheduled hearing nor did she present any extenuating circumstances to the Commission to explain her absence. The

Commission waited until 12:47 p.m. before commencing the hearing in Ms. Walker-Nurse's absence. Due to Ms. Walker-Nurse's failure to appear for the scheduled hearing on her Exceptions and, in accordance with the provisions of COMAR 09.11.03.01F, which provides that:

"The panel may dismiss an appeal without holding a hearing if the person who filed exceptions to the proposed order fails to appear at the scheduled time after receiving proper notice."

the Commission dismissed Ms. Walker-Nurse's Exceptions.

FINDINGS OF FACT

The Commission adopts the Findings of Fact recommended by the ALJ.

DISCUSSION

On October 10, 2006, the Claimant, Darrell Disque, was the owner of a residential property located at 1090 Westfield Drive, Prince Frederick, Maryland ("the Property"). FF 1.¹ On the same date, the Claimant entered into a Residential Contract of Sale ("the Contract") with the Respondent, Gerri Walker-Nurse, and her husband Stephen Miller. FF 2. The Contract required the Claimant to sell the Property to the Respondent for \$1,420,000.00 with a settlement date of November 10, 2006. FF 2.

Throughout the real estate transaction, the Respondent acted as the real estate broker and agent. FF 3. As of the Contract date, the Respondent was licensed by the Commission as a real estate broker under registration number 0507999. FF 4. She was also registered with the Commission as the owner and broker of Help-U-Sell Gerri Walker-Nurse and Associates. FF 4. At the time of the hearing before the ALJ, the

¹ "FF" refers to the ALJ's Findings of Fact.

Respondent was licensed with the REC under registration number 35651 and was associated with Wyndham Vacation Ownership, Inc. FF 4.

The Contract required the Respondent to provide an initial down payment of \$10,000.00, which would be held in the escrow account owned by Help-U-Sell. FF 5. The Respondent agreed to apply for financing, which was already accomplished at the time the Contract was executed. FF 6. The Contract also provided that if a written financing agreement was not obtained within fifteen days of the Contract date of October 10, 2006, the Claimant, at his election and upon written notice to the Respondent, may declare the Contract null and void and all deposits shall be disbursed in accordance with the Deposit paragraph of the Contract. FF 6. Under a Default provision in the contract, it is stated that “if [the Respondent] fails to make full settlement or is in default due to the [Respondent’s] failure to comply with the terms, covenants and conditions of the Contract, the Deposit(s) may be retained by the [Claimant] as long as a release of Deposit agreement is signed and executed by all parties, expressing that said Deposit(s) may be retained by the [Claimant]”. FF 7. Under a Deposit provision in the contract, “[in] the event the Contract is terminated or settlement does not occur, the [Respondent and Claimant] agree that the Deposit shall be disbursed by the Broker only in accordance with the release of Deposit agreement executed by the [Respondent and Claimant.]” FF 8.

On October 10, 2006, the Respondent issued a check in the amount of \$10,000.00, payable to Help-U-Sell, with a notation of “earnest money”. FF 9. On November 10, 2006, the Claimant and Respondent amended the Contract to extend the settlement date to November 28, 2006; removed the Respondent’s husband, Stephen Miller, from the

Contract; and made all earnest money (the \$10,000.00) completely non-refundable if the Respondent failed to perform under the Contract for any reason. FF 10. At some undetermined point in time, but at least around January 3, 2007, the Claimant and Respondent extended the Contract settlement date to January 4, 2007, with all other terms to remain the same. FF 11.² On January 4, 2007, the Respondent could not settle because she had not obtained full financing of the Contract's purchase price. FF 12. On January 5, 2007, by written notice to the Respondent, the Claimant declared the Contract null and void and demanded that the Respondent pay the Claimant "the non-refundable earnest money of \$10,000.00". FF 13. On January 5, 2007, the Respondent e-mailed the Claimant's real estate agent and stated that she was not giving up the \$10,000.00. FF 14. After January 5, 2007, the Respondent failed to pay the Claimant the \$10,000.00 deposit money as required by the Contract. FF 15. On February 25, 2008, following an audit of the Respondent's escrow account, the Respondent did not have \$10,000.00 worth of escrow deposits maintained in the account. FF 16. After obtaining a District Court judgment in the amount of \$10,000.00 against the Respondent, on November 7, 2008, by a garnishment of the Respondent's wages or commission fees, the Claimant was able to collect \$7,500.00. FF 17. On June 21, 2009, the Respondent told Jack Mull, an investigator with the Commission, that she had paid the full amount of the deposit money to the Claimant. FF 18. On August 4, 2009, the Respondent admitted that she had not paid the full amount of money owed to the Claimant and stated that she was not going to

² The ALJ noted in footnote 6 of the Proposed Decision that the Addendum extending the settlement date was undated and unnumbered. However, there was a facsimile transmission date on the document of January 3, 2007.

pay the Claimant “a dime”. FF 19, PD p.10³. The Claimant’s actual loss consists of the \$2,500.00 loss remaining from the \$10,000.00 plus \$1,500.00 in attorney’s fees and \$100.00 in court costs related to the District Court case he was forced to pursue. PO, p. 3.⁴

The evidence presented at the hearing before the ALJ demonstrated that the Respondent failed to perform under the Contract and, therefore, the deposit money was payable to the Claimant upon written notice to the Respondent, which occurred on January 5, 2007. Thereafter, in her capacity as a licensed real estate broker, the Respondent failed to promptly remit the deposit money to the Claimant in violation of Bus. Occ. & Prof. Art., § 17-322(b)(22).

The evidence presented at the hearing before the ALJ also established that, after the Respondent failed to settle on the date set in the Contract, the Claimant had declared the Contract null and void and made demand for the payment of the non-refundable deposit pursuant to the terms of the Contract addendum. In response to the Claimant’s demand, the Respondent advised the Claimant’s real estate agent that she was not giving up the deposit and removed the \$10,000.00 deposit from her business’ escrow account. A subsequent audit by a Commission auditor disclosed that the \$10,000.00 deposit was not in the Respondent’s business escrow account. Thus, the Respondent violated Bus. Occ. & Prof. Art., §§ 17-322(b)(31), 17-502(b)(2), and 17-505(a)(1) by failing to maintain trust money in an authorized trust account until the real estate transaction for which the trust money was entrusted was consummated or terminated and by using the

³ “PD” refers to the ALJ’s Proposed Decision.

⁴ “PO” refers to the Commission’s Proposed Order.

money for a purpose other than that for which it was entrusted to her in her capacity as a real estate broker.

Further, despite the clear terms of the Contract's addendum, which made the \$10,000.00 completely non-refundable if the Respondent failed to perform under the Contract, the Respondent never voluntarily paid the money to the Claimant. After being notified that the Claimant had made demand for payment of the non-refundable deposit, the Respondent informed the Claimant's real estate agent that she was not going to pay the money and withdrew the money from her business escrow account. After a claim was filed with the Commission by the Claimant, the Respondent falsely informed the Commission's investigator that she had returned the \$10,000.00. The Claimant subsequently informed the Commission staff that she was not giving the Claimant a single dime.

Based upon the Respondent's actions involving the escrow money; her statements that she did not intend to pay the non-refundable deposit to the Claimant despite the express terms of the Contract addendum which required her to do so; and her untruthful statement to the Commission's investigator, the Commission concludes that the Respondent engaged in conduct that demonstrates bad faith, untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings in violation of Bus. Occ. & Prof. Art., § 17-322(b)(25). Further, the Commission concludes that the Respondent violated COMAR 09.11.02.01C and Bus. Occ. & Prof. Art. ,§17-322(b)(33) by failing to protect the public against fraud, misrepresentation, or unethical practices in the real estate field and by engaging in actions which were damaging to the public and to the dignity and integrity of the real estate profession.

Instead of or in addition to reprimanding, suspending or revoking a real estate license for violations of the above cited statutes, Bus. Occ. & Prof. Art., §17-322(c) permits the assessment of up to a \$5,000.00 penalty per violation. To determine the amount of the penalty to be imposed, the Commission is required to consider the following criteria:

- 1) the seriousness of the violation;
- 2) the harm caused by the violation;
- 3) the good faith of the licensee; and
- 4) any history of previous violations by the licensee.

Although the Respondent has no history of prior violations, the Commission finds that the violations in this case are extremely serious. The Respondent failed to comply with the requirements of the law regarding the handling of a large sum of money held in trust. The Respondent's failure to properly remit the money held in trust to the Claimant caused harm to the reputation of the real estate industry and violated the trust which the public accords to real estate licensees who handle trust funds. The Respondent's actions also caused serious harm to the Claimant, who failed to obtain the \$10,000.00 which was owed to him by the Respondent under the terms of the Contract addendum, and who was required to expend his own financial resources to seek a District Court judgment and to pursue the money through collection. The evidence presented makes it clear that the Respondent had no intention of ever voluntarily paying the deposit money which she owed to the Claimant and established the Respondent's lack of good faith in her dealings with the Claimant and with the trust money. The Respondent's lack of truthfulness during the Commission's investigation is further evidence of her lack of good faith. By

her actions, the Respondent has demonstrated that she cannot be trusted to deal with the public as a licensee of the Commission. Therefore, the Commission concludes, based on an evaluation of the criteria set forth above, that the appropriate sanctions in this case are the revocation of all real estate licenses held by the Respondent, Gerri M. Walker-Nurse and the imposition of a civil penalty in the amount of \$10,000.00.

Claims for reimbursement from the Real Estate Guaranty Fund are governed by Bus. Occ. & Prof. Art., §17-404, which states, in pertinent part:

(a)(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;

(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 \$25,000.00 for each claim.

COMAR 09.11.03.04 further provides, with respect to claims against the Fund:

A. A guaranty fund claim shall be based on the alleged misconduct of a licensee.

B. For the purpose of a guaranty fund claim, misconduct:

(1) Is an action arising out of a real estate transaction involving real estate located in this State which causes actual loss by reason of theft or

embezzlement of money or property, or money or property unlawfully obtained from a person by false pretense, artifice, trickery, or forgery, or by reason of fraud, misrepresentation, or deceit;

(2) Is performed by an unlicensed employee of a licensed real estate broker or by a duly licensed real estate broker, associate broker, or salesperson; and

(3) Involves conduct for which a license is required by Business Occupations and Professions Article, Title 17, Annotated Code of Maryland.

In addition, COMAR 09.11.01.18 addresses the issue of the amount of recovery from the Fund:

The amount of compensation recoverable by a claimant from the Real Estate Guaranty Fund, pursuant to Business Occupations and Professions Article, Title 17, Subtitle 4, Real Estate Guaranty Fund, Annotated Code of Maryland, shall be restricted to the actual monetary loss incurred by the claimant, but may not include monetary losses other than the monetary loss from the originating transaction. Actual monetary losses may not include commissions owed to a licensee of this Commission acting in his capacity as either a principal or agent in a real estate transaction, or any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.

The Claimant filed a claim against the Guaranty Fund seeking compensation for his loss of \$10,000.00 due to the conduct of the Respondent. In addition, the Claimant sought compensation from the Fund for the costs he incurred in using an attorney to obtain the District Court judgment and any interest accrued on the unpaid deposit money.

The Claimant met his burden of proof to establish a claim against the Fund under Bus. Occ. & Prof. Art., §17-404 and COMAR 09.11.03.04. The Respondent is a licensed real estate broker and acted in that capacity when entering into the Contract for the purchase of the Claimant's real estate, which is located in the State. Pursuant to the terms of the Contract and Contract Addendum, the Respondent was required to deposit \$10,000.00 to her escrow account and to pay that sum to the Claimant if she was unable

to perform under the Contract. The Respondent was unable to perform on the date set for settlement (January 4, 2007) because she did not have full financing for the purchase price of the Property. The evidence at the hearing before the ALJ established that the Respondent improperly removed the \$10,000.00 deposit money from the escrow account and never paid the money to the Claimant. Further, the evidence also established that the Respondent had no intention of ever voluntarily paying the deposit money to the Claimant.

The Claimant pursued a civil action against the Respondent in District Court and obtained a judgment against the Respondent in the amount of \$10,000.00. On November 7, 2008, the Claimant was able to collect \$7,500.00 of the judgment through a garnishment of the Respondent's wages or commissions. Thus, the unpaid balance of the \$10,000.00 is \$2,500.00.

The Commission finds that the Claimant incurred legal fees in the amount of \$1,500.00 and court costs of \$100.00 in order to obtain the District Court judgment. Although COMAR 09.11.01.18 precludes a claimant from recovering from the Guaranty Fund "...any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.", the legal fees and court costs incurred by the Claimant were not incurred in connection with pursuing or perfecting a claim against the Guaranty Fund. Rather, the legal fees and court costs were incurred by the Claimant in order to recoup the actual loss he sustained as a result of the actions of the Respondent and are compensable by the Fund. The Commission concludes that the total actual monetary loss incurred by the Claimant and compensable by the Fund is \$4,100.00 which consists of the loss remaining from the \$10,000.00 deposit (\$2,500.00) plus the attorney's fees (\$1,500.00)

and court costs (\$100.00) incurred because the Claimant was forced to resort to the legal system in order to recoup his loss due to the actions of the Respondent. The Commission further concludes that the ten percent interest sought by the Claimant on the unpaid \$10,000.00 from June 1, 2007 through April 7, 2008 as well as on the unpaid principal balance from November 8, 2008 through September 20, 2010 is not an actual monetary loss from the originating transaction and is not compensable from the Guaranty Fund.

CONCLUSIONS OF LAW

Based upon the ALJ's Findings of Fact, which have been adopted by the Commission, and the foregoing Discussion, the Commission concludes, as a matter of law, that:

1. The Respondent, Gerri M. Walker-Nurse, violated Bus. Occ. & Prof. Art., §§ 17-322(b)(22), (25), (31), and (33), 17-502(b)(2) and 17-505; and COMAR 09.11.02.01C;

2. The Respondent, Gerri M. Walker-Nurse, is subject to the penalties prescribed in Bus. Occ. & Prof. Art., § 17-322 (c) for these violations, and the revocation of all real estate licenses held by her and a \$10,000.00 civil penalty are appropriate sanctions; and

3. That the Claimant, Darrell Disque, is entitled to payment from the Maryland Real Estate Guaranty Fund, Bus. Occ. & Prof. Art., §§ 17-401 through 17-412, in the amount of \$4,100.00.

ORDER

It is this 3rd day of October, 2011, by the

Maryland Real Estate Commission, **ORDERED:**

1. That the Respondent, Gerri M. Walker-Nurse, violated Bus. Occ. & Prof. Art., §§ 17-322(b)(22), (25), (31), and (33), 17-502(b)(2), and 17-505; and COMAR 09.11.02.01C;

2. That all real estate licenses held by the Respondent, Gerri M. Walker-Nurse, are hereby **REVOKED**;

3. That the Respondent, Gerri M. Walker-Nurse, be assessed a civil penalty in the amount of **Ten Thousand Dollars (\$10,000.00)** which shall be paid within thirty (30) days of the date of this ORDER;

4. That the Claimant, Darrell Disque, be reimbursed in the amount of **Four Thousand One Hundred Dollars (\$4,100.00)** from the Maryland Real Estate Guaranty Fund to compensate him for the actual loss sustained by the Claimant due to the conduct of the Respondent;

5. That the Respondent, Gerri M. Walker-Nurse, shall be ineligible to hold any license issued by the Maryland Real Estate Commission until the Maryland Real Estate Guaranty Fund is repaid in full, together with annual interest of ten percent (10%), pursuant to Md. Code Ann., Bus. Occ. & Prof. Art., §§ 17-411(a) and 17-412 and the civil penalty is paid; and

6. That the records and publications of the Maryland Real Estate Commission reflect this decision.

MARYLAND REAL ESTATE COMMISSION

By: Katherine J. Connelly, Sec. Del.
for Anne S. Cooke

Note: A judicial review of this Final Order may be sought in the Circuit Court of Maryland in which the Appellant resides or has his/her principal place of business, or in

the Circuit Court for Baltimore City. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION
v.

GERRI M. WALKER-NURSE
Respondent

And

CLAIM OF DARRELL DISQUE
AGAINST THE MARYLAND
REAL ESTATE GUARANTY FUND

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CASE NO. 2008-RE-359

OAH NO. DLR-REC-24-10-08361

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PROPOSED ORDER

The Findings of Fact, Conclusions of Law, and Recommended Order of the Administrative Law Judge dated December 17, 2010 having been received, read and considered, it is, by the Maryland Real Estate Commission, this 24th day of February, 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, AMENDED as follows:

That the Respondent violated Business Occupations and Professions Article, §§ 17-322(b)(22), (25), (31), and (33), 17-502(b)(2), and 17-505; and COMAR 09.11.02.01C;

That the Respondent is subject to the penalties prescribed in Section 17-322(c) for these violations; and

That the Claimant is entitled to payment from the Maryland Real Estate Guaranty Fund, Business Occupations and Professions Article, Sections 17-401 through 17-412, in the amount of \$4,100.00

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

The Real Estate Commission ORDERS that:

The Respondent Gerri M. Walker-Nurse violated Md. Bus. Occ. and Prof. Art. §§ 17-322(b)(22), (25), (31), and (33); 17-502(b)(2); and 17-505; and COMAR 09.11.02.01C;

All real estate licenses held by the Respondent Gerri M. Walker-Nurse are revoked;

The Respondent Gerri M. Walker-Nurse is assessed a civil penalty in the amount of \$10,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

The claim of Darrell Disque against the Maryland Real Estate Guaranty Fund is granted in the amount of \$4,100;

The Respondent Gerri M. Walker-Nurse shall be ineligible for a real estate license until the Guaranty Fund is repaid in full, together with interest as provided for by law, and the civil penalty is paid.

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 that the Conclusions of Law had to be amended due to the Administrative Law Judge's incorrect application of the law regarding the Guaranty Fund, and to provide for a civil penalty.

The Claimant requested reimbursement for attorney's fees and court costs incurred in obtaining a District Court judgment against the Respondent when she refused to pay him the deposit money. The regulation, COMAR 09.11.01.18, states that a claimant may not recover from the Fund "any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund." This claim was not for fees incurred in connection with the claim against the Fund. The Commission has consistently allowed attorney's fees where the claimant was forced to resort to the legal system in order to recoup a loss or to establish legal rights affected by the actions of the licensee. The only attorney's fees that are excluded are those for the claims process before the Commission itself. Thus, the Claimant is entitled to \$1,500 in attorney's fees and \$100 in court costs related to the District Court case he was forced to pursue. Combined with the loss remaining from the \$10,000 deposit, he is entitled to a total payment from the Guaranty Fund of \$4,100.

The judge rejected the Commission's request at the hearing for a civil penalty in the amount of \$10,000, stating that it was "unclear what benefit, if any, a civil penalty would have on modifying the Respondent's conduct or the conduct of other licensed real estate agents and brokers", in light of his decision to revoke the Respondent's real estate license. Section 17-322(c)(2) directs the Commission to consider four factors in determining the amount of the penalty to be imposed. The considerations are not

those stated by the judge, that is, modifying the conduct of the Respondent or other licensees, but rather that it reflect the seriousness of the violation, the harm caused by the violation, the good faith of the licensee, and any history of previous violations by the licensee. The Commission finds that all of these factors warrant a civil penalty in the amount of \$10,000.

The Commission has also noted several errors in the Discussion section of the proposed decision that could cause confusion. On pages 11 and 12, in two instances, the judge used the word "Claimant" when he intended to refer to the Respondent, and twice referred to the "Respondent" when he intended to refer to the Claimant. These errors are found in the last paragraph on page 11 (Claimant instead of Respondent) and the first three lines of page 12 (Respondent instead of Claimant). These errors are apparent when this paragraph is compared to the Findings of Fact.

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.

Katherine J. Connelly, Exec. Dir.
Maryland Real Estate Commission
for Anne S. Cooke, Chair

MARYLAND REAL ESTATE
COMMISSION

v.

GERRI M. WALKER-NURSE,
RESPONDENT

and

CLAIM OF DARRELL DISQUE,
CLAIMANT

AGAINST THE MARYLAND REAL
ESTATE COMMISSION GUARANTY
FUND

* BEFORE DANIEL ANDREWS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS

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* OAH Case No.: DLR-REC-24-10-08361

MREC Case No.: 08-RE-359

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On December 4, 2007, Darrell Disque, (Claimant) filed a complaint with the Maryland Real Estate Commission (REC) and a claim against the REC Guaranty Fund (Fund) for losses allegedly suffered as a result of the actions of Gerri M. Walker-Nurse (Respondent), a licensed real estate broker. On September 15, 2009, the REC filed a Statement of Charges and Order for Hearing, alleging statutory and regulatory violations by the Respondent related to a real estate

transaction involving the Claimant and authorized the Claimant to proceed with his claim against the Fund.

On September 21, 2010, I conducted a hearing at the Calvert County District Court, Multi-Service Center in Prince Frederick, Maryland. Md. Code Ann., Bus. Occ. & Prof. §§ 17-324 and 17-408 (2010).¹ Assistant Attorney General Jessica B. Kaufman represented the REC. The Claimant was represented by Steven Sunday, Esquire. Assistant Attorney General Hope Sachs represented the Fund. The Respondent represented herself.

The Administrative Procedure Act, the REC's Hearing Regulations and the Office of Administrative Hearings (OAH) Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

ISSUES

1. Did the Respondent violate BO § 17-322(b)(22) by failing to account for or to remit promptly any money that comes into the possession of the licensee but belongs to another person?
2. Did the Respondent violate BO § 17-322(b)(25) by engaging in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent or improper dealings?
3. Did the Respondent violate BO §§ 17-322(b)(31) and 17-505(b)(2), by using trust money for any other purpose other than that for which it is entrusted to the Respondent?²
4. Did the Respondent violate BO §§ 17-322(b)(31) and 17-507(a)(1), by failing to maintain trust money in an account authorized under Title 17 of the Business Occupation Article Subpart 5 until the real estate transaction for which the trust money was entrusted in consummated or terminated.

¹ All references in the remainder of this Proposed Decision are to the Business Occupations and Professions Article (BO) as contained in the 2010 replacement volume.

² Pursuant to BO § 17-501(c) "trust money" means a deposit, payment, or other money that a person entrusts to a real estate broker... to hold for: (1) the benefit of the owner ...; and (2) a purpose that relates to a real estate transaction involving real estate in the State.

5. Did the Respondent violate BO §§ 17-322(b)(33) and COMAR 09.11.02.01C by failing to protect the public against fraud, misrepresentation, or unethical practices in the real estate field; by failing 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, by failing to assist the REC with regulating the practices of brokers?
6. Did the Claimant suffer an actual monetary loss as a result of the conduct of the Respondent and, if so, what is the amount of the loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the REC:

- REC # 1 Notice of Hearing, dated June 11, 2010, for a hearing scheduled on September 21, 2010, with attached Statement of Charges and Order for Hearing dated September 15, 2009
- REC # 2 Department of Labor, Licensing, and Regulation (DLLR) Transmittal, DLLR Hearing Cover Sheet, and Statement of Charges and Order for Hearing dated September 15, 2009
- REC # 3 DLLR, REC Licensing History for Respondent
- REC # 4 REC Report of Investigation with the following attachments³:
 - Attachment 1 REC Complaint and Guaranty Fund Claim filed by Claimant
 - Attachment 2 Letter from Respondent dated December 15, 2007
 - Attachment 4 Residential Contract of Sale between Claimant and Respondent dated October 10, 2006
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 - Attachment 7 Addendum # (unnumbered) extending contract closing date to January 4, 2007

³ The REC pre-marked its exhibits and the related attachments. Attachment 3 was not offered into evidence.

- Attachment 8 Letter from Dawn Riley, Long & Foster Realtors, to Respondent, dated January 5, 2006⁴
- Attachment 9 Matrix Property Listing computer printout dated December 18, 2007
- Attachment 10 District Court of Maryland for Calvert County (District Court) Complaint
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- Attachment 18 Series of emails between Respondent and the Claimant's realtor, Dawn Riley

I admitted the following exhibit on behalf of the Claimant:

CL # 1 Interest Worksheet

The Respondent and Fund did not submit any exhibits into evidence.

Testimony

⁴ Based upon the closing date stated in REC # 7, this letter appears to state the year of 2006 as a typographical error.

The REC presented testimony from the Claimant; Dawn Riley, Claimant's real estate agent; and Patrick Richardson, a financial auditor for the REC. The Claimant did not present any additional testimony. The Respondent testified on her own behalf and presented the testimony of her husband, Stephen Miller. The Fund did not present any testimony.

FINDINGS OF FACT

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

1. On October 10, 2006, the Claimant was the owner of a residential property located at 1090 Westfield Drive, Prince Frederick, Maryland (the Property).
2. On this same date, the Claimant entered into a Residential Contract of Sale (the Contract) with the Respondent and her husband, Stephen Miller. The Contract required the Claimant to sell the Property to the Respondent for \$1,420,000.00 with a settlement date on November 10, 2006.
3. Throughout the real estate transaction, the Respondent acted as the real estate broker and agent.
4. As of the Contract date, the Respondent was licensed by the REC as real estate agent under registration number 0507999. The Respondent was also registered with the REC as the owner and broker of Help-U-Sell Gerri Walker-Nurse and Associates.⁵ The Respondent has been licensed by the REC since 1996. Currently, she is licensed with the REC under registration number 35651 and associated with Wyndham Vacation Ownership, Inc.
5. The Contract required the Respondent to provide an initial down payment of \$10,000.00, which would be held in the escrow account owned by Help-U-Sell.

⁵ The Respondent has used various names throughout her REC licensing history including: Gerri Monique Miller, Gerri Walker-Nurse, Gerri M. Walker-Nurse, Gerri M. Walker, and Gerri Walker.

6. The Respondent agreed to apply for financing, which was already accomplished at the time the Contract was executed. However, the Contract also provided that if a written financing agreement is not obtained within fifteen days of the Contract date (October 10, 2006), the Claimant, at his election and upon written notice to Respondent, may declare the Contract null and void and all deposits shall be disbursed in accordance with the Deposit paragraph of the Contract.

7. Under a Default provision in the contract, it states that "if [the Respondent] fails to make full settlement or is in default due to the [Respondent's] failure to comply with the terms, covenants and conditions of the Contract, the Deposit(s) may be retained by the [Claimant] as long as a release of Deposit agreement is signed and executed by all parties, expressing that said Deposit(s) may be retained by the [Claimant]".

8. Under a Deposit provision in the contract, "[i]n the event the Contract is terminated or settlement does not occur, the [Respondent and Claimant] agree that the Deposit shall be disbursed by the Broker only in accordance with the release of Deposit agreement executed by the [Respondent and Claimant]." (REC Ex. 4, Attachment 4).

9. On October 10, 2006, the Respondent issued a check in the amount of \$10,000.00, payable to Help-U-Sell, with a notation of "earnest money."

10. On November 10, 2006, the Claimant and Respondent amended the Contract to extend the settlement date to November 28, 2006, removed the Respondent's husband, Stephen Miller, from the Contract, and made all earnest money (the \$10,000.00) completely non-refundable if the Respondent fails to perform under the Contract for any reason.

11. At some undetermined point in time, but at least around January 3, 2007, the Claimant and Respondent extended the Contract settlement date to January 4, 2007, with all other terms to remain the same.⁶ (REC Ex. 4, Attachment 7).

12. On January 4, 2007, the Respondent could not settle the Contract because she had not obtained full financing of the Contract's purchase price.

13. On January 5, 2007, by written notice to the Respondent, the Claimant declared the Contract null and void and demanded the Respondent pay the Claimant "the non-refundable earnest money of \$10,000.00." (REC Ex. 4, Attachment 8).

14. On January 5, 2007, the Respondent e-mailed the Claimant's real estate agent and stated that she was not giving up the \$10,000.00.

15. After January 5, 2007, the Respondent failed to pay the Claimant the \$10,000.00 deposit money as required by the Contract.

16. On February 25, 2008, following an audit of the Respondent's escrow account, the Respondent did not have \$10,000.00 worth of escrow deposits maintained in the account.

17. After obtaining a District Court judgment in the amount of \$10,000.00 against the Respondent, on November 7, 2008, by a garnishment of the Respondent's wages or commission fees, the Claimant was able to collect \$7,500.00.

18. On June 21, 2009, the Respondent told Jack Mull, an investigator with the REC, that she had paid in full to the Claimant the deposit money.

19. On August 4, 2009, the Respondent admitted that she had not paid the full amount of money owed to the Claimant and stated that she was not going to pay the Claimant "a dime."

20. The Claimant's actual loss is \$2,500.00.

⁶ The Addendum extending the settlement date is undated and unnumbered. However, there is a facsimile transmission date on the document of January 3, 2007.

DISCUSSION

The Regulatory Charges

The REC is authorized to reprimand a licensee, or suspend or revoke a licensee's license for any violation of any of the subsections found under BO §17-322. In addition to or in lieu of a reprimand, suspension, or revocation, the REC may impose a \$5,000.00 penalty for each violation of section 17-322. The specific subsections which the REC has charged the Respondent with violating are:

BO § 17-322. Denials, reprimands, suspensions, revocations, and penalties – Grounds.

....

(b) *Grounds*.--Subject to the hearing provisions of § 17-324 of this subtitle, the [REC] may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

...

(22) fails to account for or to remit promptly any money that comes into the possession of the licensee but belongs to another person;

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

...

(31) violates any provision of Subtitle 5 of this title that relates to trust money;

(32) violates any other provision of this title;⁷

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

The REC also charged the Respondent with two violations under subtitle 5 of title 17 (Real Estate Brokers) including:

BO § 17-502(b)(2) - A real estate broker may not use trust money for any purpose other than that for which it is entrusted to the real estate broker;

⁷ The REC's case was directed toward the balance of the cited statutory and regulatory charges and no specific allegation or evidence was presented directing the ALJ toward any other provision of the Real Estate Title. Therefore, I find this charge unsupported and that the Respondent did not commit a violation of BO § 17-322(32).

and

BO § 17-505(a)(1) - A real estate broker shall maintain trust money in an account authorized under this Part I of this subtitle until the real estate transaction for which the trust money was entrusted is consummated or terminated;

In addition to the above statutory violations, the REC also charged the Respondent with a violation of COMAR 09.11.02.01C which states:

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.

Analysis

The REC contends that the Respondent violated the above statutory and regulatory provisions because, as a licensed real estate broker, she failed to maintain \$10,000.00 worth of deposit monies in her escrow account and failed to pay this money to the Claimant as required under the Contract.

The Respondent did not challenge much of the REC's evidence. However, she did argue that she was not required to pay the Claimant any money under the Contract and asserts that it was the Claimant who defaulted under the Contract. However, the Respondent did not clearly explain the basis of her position except to claim that the property did not appraise.⁸

Nevertheless, pursuant to the Contract addendum, dated November 10, 2007, it states in clear terms that if the Respondent fails to perform under the Contract for any reason the \$10,000.00 deposit money is non-refundable. When this addendum is read in conjunction with the Deposit and Default provisions of the Contract, it is plain that the deposit money was payable to the Claimant if the Respondent could not proceed with closing on January 4, 2007.

⁸ Although not directly relevant to this case, it appears that a financial institution appraised the Claimant's property at a value less than the purchase price agreed upon between the parties .

Additionally, during the hearing, the Respondent's husband testified that they (the Respondent and himself) had only obtained one million dollars worth of financing and were short of the full purchase price. Further, the Respondent's husband testified that on January 4, 2007 he was on the phone with the Claimant asking for more time to get financing. Moreover, on August 4, 2009, Jack Mull, an investigator for the REC, spoke with the Respondent to discuss an issue related to a District Court judgment obtained by the Claimants against the Respondent. During this conversation, the Respondent stated 'I'm not giving [the Claimant] a single dime! I didn't default on the contract; he did. I couldn't get financing because the house did not appraise ...' Based on this evidence, I am satisfied that the Respondent did fail to perform under the Contract and the deposit money was payable to the Claimant upon written notice to the Respondent, which occurred on January 5, 2007. However, after January 5, 2007, the Respondent, in her capacity as the licensed real estate broker, failed to promptly remit the deposit money belonging to the Claimant in violation of BO § 17-322(b)(22).

On February 25, 2008, Patrick Richardson, a financial auditor for the REC, performed an audit of the Respondent's business escrow account. During the audit it was discovered that the \$10,000.00 deposit was no longer in the Help-U-Sell escrow account. In explanation for the monies absence from the escrow account, the Respondent stated that she had removed the funds from the escrow account shortly after January 5, 2007 because the Claimant declared the Contract null and void and had taken the property off the market. Additionally, in an e-mail from the Respondent to the Claimant's realtor, Dawn Riley, the Respondent stated that she was not giving up the \$10,000.00, adding "that was only if [the Respondent] could not get the financing. I guess [the Respondent] will see [the Claimant] in court." (REC Ex. 4, Attachment 18). Collectively, this evidence establishes that the Respondent failed to maintain deposit money

in her escrow account until the real estate transaction for which the trust money was entrusted is consummated or terminated and used the money for a purpose other than that for which it is entrusted to the real estate broker. Consequently, the Respondent committed violations of BO § 17-322(b)(31); BO § 17-502(b)(2); and BO § 17-505(a)(1).

Despite the very clear terms of the Contract's addendum requiring the Respondent to pay the Claimant the \$10,000.00 if she cannot perform under the Contract, the Respondent never voluntarily paid the Claimant the money. On January 5, 2007, the Claimant requested the deposit money be paid pursuant to the Contract. On this same date, the Respondent e-mailed the Claimant's real estate agent and stated that she was not going to pay the \$10,000.00 deposit. Shortly afterwards, the Respondent withdrew the money from her escrow account. After a REC claim was filed, on June 16, 2009, the Respondent told Jack Mull, an investigator for the REC, that she had gone to court with the Claimant and returned the \$10,000.00. After discovering that the Claimant obtained a District Court judgment against the Respondent, which remained unpaid, Mr. Mull re-interviewed the Respondent on August 4, 2009. On this date, the Respondent told Mr. Mull that she was not giving the Claimant a single dime.

The above facts support a finding that the Respondent engaged in conduct that demonstrates bad faith, untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings. Although the Claimant may have believed that the Claimant was the party who defaulted under the Contract, the express terms of the Contract indicate that the deposit money is payable to the Claimant upon the Respondent's failure to perform under the Contract for any reason. Further, it is clear that the Respondent did not have full financing of the Contract's purchase price on the day of settlement. After this point, even if the Claimant believed her position to be correct, she still removed the money from the escrow account knowing that the

Respondent believed he was owed the money under the Contract. Even before removing the money from the escrow account, the Respondent made it very clear that she would never pay the Respondent the deposit. The Respondent's conduct caused the Claimant to take legal action in the District Court and successfully obtain a judgment against the Respondent. During this time period, a REC investigation occurred during which the Respondent was not truthful to the REC investigator about whether or not she paid the Claimant the full amount of deposit money. Finally, once the Respondent was questioned about the status of the unpaid judgment, the Respondent reiterated her original position that she was not going to pay the Claimant a dime. Based upon the Respondent's conduct involving the escrow money, her statements of never paying the deposit money to the Claimant, and her untruthful statement to the REC investigator, the Respondent had no intention of acting in good faith under the Contract, which she created on her own behalf as a licensed real estate broker. Therefore, I find that Respondent acted in a manner which demonstrates bad faith, untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings in violation of BO § 17-322(25). Based upon the same facts and analysis, including that her untruthful statement to the REC investigator, which constitutes a failure to assist the REC with regulating the practices of real estate brokers, I find that the Respondent also committed a violation of BO § 17-322(33) and COMAR 09.11.02.01C.

Under BO § 17-322(b), the REC may reprimand, suspend or revoke the Respondent's REC license. Further, pursuant to BO § 17-322(c), "[i]nstead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the [REC] may impose a penalty not exceeding \$5,000 for each violation. To determine the amount of the penalty imposed, the REC 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. BO § 17-322(c)(2).

For the above violations, the REC seeks to revoke the Respondent's license and impose a \$10,000.00 civil penalty. The Respondent does not have any prior REC violations. However, the violations in this case are serious because they represent a clear and obvious violation the BO related to trust money. The evidence easily established that the Respondent failed to properly remit the deposit money to the Claimant as required under the Contract. The evidence also established that the Respondent had no intention of ever voluntarily paying the deposit money. Thus, the evidence established that the Respondent lacked any good faith in her dealing with the Claimant and the trust money. As a result of the Respondent's conduct, she has caused serious harm because the Claimant suffered significant financial losses, including the failure to obtain the \$10,000.00 owed under the Contract. Additionally, the Respondent has increased the Claimant's loss by causing the Claimant to expend his own financial resources to seek a District Court judgment and then pursue the deposit money through collection. When balancing the Respondent's conduct related to the Contract and her conduct in dealing with the REC, I conclude that a revocation of her license is appropriate. A person who does not in good faith deal with the public or with REC should not be trusted with a REC license.

As noted earlier, the REC is permitted to seek a \$5,000.00 civil penalty for each violation. Previously, I found the Respondent committed five violations of the BO. Thus, the REC could seek a civil penalty of \$25,000.00; instead the REC recommended a \$10,000.00 civil penalty, which appears reasonable. Nevertheless, having determined the Respondent's license should be revoked, it is unclear what benefit, if any, a civil penalty would have on modifying the

Respondent's conduct or the conduct of other licensed real estate agents and brokers. Thus, I find a civil penalty of any amount is inappropriate.

Fund Claim

Claims for reimbursement from the Fund are governed by BO §17-404, which states, in pertinent part:

(a)(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;

...

(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 \$25,000 for each claim.

With respect to claims against the Fund, COMAR 09.11.03.04 further provides as follows:

A. A guaranty fund claim shall be based on the alleged misconduct of a licensee.

B. For the purpose of a guaranty fund claim, misconduct:

(1) Is an action arising out of a real estate transaction involving real estate located in this State which causes actual loss by reason of theft or embezzlement of money or property, or money or property unlawfully obtained from a person by false pretense, artifice, trickery, or forgery, or by reason of fraud, misrepresentation, or deceit;

(2) Is performed by an unlicensed employee of a licensed real estate broker or by a duly licensed real estate broker, associate broker, or salesperson; and

(3) Involves conduct for which a license is required by Business Occupations and Professions Article, Title 17, Annotated Code of Maryland.

Additionally, COMAR 09.11.01.18 addresses the issues surrounding recovery from the

Fund:

The amount of compensation recoverable by a claimant from the Real Estate Guaranty Fund, pursuant to Business Occupations and Professions Article, Title 17, Subtitle 4, Real Estate Guaranty Fund, Annotated Code of Maryland, shall be restricted to the actual monetary loss incurred by the claimant, but may not include monetary losses other than the monetary loss from the originating transaction. Actual monetary losses may not include commissions owed to a licensee of this Commission acting in his capacity as either a principal or agent in a real estate transaction, or any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.

Finally, the Claimant bears the burden of proof in his case against the Fund. BO § 17-407(e).

The Claimant filed a claim against the Fund seeking compensation for his loss of \$10,000.00 due to the conduct of the Respondent. Additionally, the Claimant seeks compensation from the Fund for the related costs he incurred in using an attorney to obtain the District Court judgment and any interest accrued on the unpaid deposit money.

The Claimant met his burden of proof to establish a claim against the Fund under BO § 17-404 and COMAR 09.11.03.04. As discussed earlier, the Respondent is a licensed real estate broker and acted in this capacity to enter into the Contract for the purchase of the Claimant's residential property. During the contract process, the Respondent was required to deposit \$10,000.00 into her escrow account and pay this money to the Claimant if she was unable to perform under the Contract. On January 4, 2007, the Respondent could not perform under the Contract because she did not have full financing for the Contract's purchase price. The evidence

also established that the Respondent removed the \$10,000.00 deposit money from the escrow account and never paid the money to the Claimant. The evidence also established that the Respondent had no intention of ever voluntarily paying to the Claimant the deposit money. These facts establish a compensable claim from the Fund by the Claimant.

As indicated earlier, the Claimant pursued a civil action against the Respondent and obtained a District Court judgment against the Respondent. On November 7, 2008, the Claimant was able to collect \$7,500.00 as a garnishment against the Respondent's wages or commissions. Thus, as of the hearing in this matter, the unpaid balance of the Claimant's losses from the original real estate transaction is \$2,500.00. Thus, the outstanding amount of the Claimant's actual loss is \$2,500.00.

The Claimant also seeks additional compensation for attorney fees and interest on the unpaid deposit money. Specifically, the Claimant seeks \$1,500.00 in attorney fees and \$100.00 in costs to obtain the District Court judgment. The Claimant also seeks ten percent interest on the unpaid \$10,000.00, from June 1, 2007 through April 7, 2008, for a total of \$438.36. Finally, after collecting \$7,500.00, which counsel for the Claimant applied first toward attorney fees, interest, and costs, it is alleged that the unpaid principal balance owed by the Respondent is \$4,538.36. Based on this unpaid principal balance, the Claimant seeks ten percent interest from November 8, 2008 through September 20, 2010, for a total amount of \$849.23. In total, for the unpaid principal balance of \$4,538.36 and the related interest, the Claimant seeks \$5,387.59.

After reviewing the applicable statute and regulation, I conclude that the Claimant's claim against the Fund for attorney fees, cost in filing a claim in District Court, and the interest on any unpaid deposit money is not compensable from the Fund. COMAR 09.11.03.04 specifically states that the amount of compensation recoverable by a claimant from the Fund

shall be restricted to the actual monetary loss incurred by the claimant [and] may not include monetary losses other than the monetary loss from the originating transaction. This regulation also states that actual monetary losses may not include any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund. Since the regulation limits the claimant's actual loss to the original transaction and specifically excludes other monetary losses including attorney fees, I conclude that the only compensable actual loss suffered by the Claimant is the \$10,000.00 deposit money which the Respondent failed to remit to the Claimant under the Contract. Since the Claimant has already collected \$7,500.00, the Claimant's unpaid actual loss compensable by the Fund is \$2,500.00

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Real Estate Commission demonstrated by a preponderance of the evidence that the Respondent, a licensed real estate broker:

1. Violated BO §17-322(b)(22) by failing to account for and promptly remit any money that comes into the possession of the Respondent, a licensed real estate broker, but belongs to another.
2. Violated BO §17-322(b)(25) by engaging in conduct that demonstrates bad faith or untrustworthiness or that constitutes dishonest or improper dealings.
3. Violated BO §§ 17-322(b)(31) and 17-502(b)(2) by using trust money for any purpose other than that for which it is entrusted to the real estate broker.
4. Violated BO §§17-322(b)(31) and 17-505 by failing to maintain trust money in an account authorized trust account until the reason the trust money was entrusted is consummated or terminated.

5. Violated BO §17-322(b)(33) and COMAR 09.11.02.01C by failing to protect the public against fraud, misrepresentation, or unethical practices in the real estate field; and by failing 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.

6. For all these violations, the Respondent's real estate broker license is subject to revocation. BO §17-322.

7. The Claimant suffered an actual monetary loss compensable by the Fund as a result of the conduct of the Respondent in the amount of \$2,500.00. BO §17-404(a); COMAR 09.11.03.04; COMAR 09.11.01.18.

RECOMMENDED ORDER


I THEREFORE RECOMMEND that the Maryland REC:

ORDER, that the Respondent's license be revoked; and further

ORDER, that the Claimant be awarded \$2,500.00 from the Fund; and that it further

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

December 17, 2010
Original Date Decision Mailed


Daniel Andrews
Administrative Law Judge

DA/ch
#118412

MARYLAND REAL ESTATE	* BEFORE DANIEL ANDREWS,
COMMISSION	* AN ADMINISTRATIVE LAW JUDGE
v.	* OF THE MARYLAND OFFICE
GERRI M. WALKER-NURSE,	* OF ADMINISTRATIVE HEARINGS
RESPONDENT	*
and	*
CLAIM OF DARRELL DISQUE,	*
CLAIMANT	*
AGAINST THE MARYLAND REAL	*
ESTATE COMMISSION GUARANTY	* OAH Case No.: DLR-REC-24-10-08361
FUND	MREC Case No.: 08-RE-359

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the REC:

- REC # 1 Notice of Hearing, dated June 11, 2010, for a hearing scheduled on September 21, 2010, with attached Statement of Charges and Order for Hearing dated September 15, 2009
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