

FINAL ORDER

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MAY 07 2012

MARYLAND REAL
ESTATE COMMISSION

IN THE MATTER OF THE CLAIM *
OF DAVID MIRANDA *
AGAINST THE MARYLAND REAL * CASE NO. 2010-RE-384
ESTATE GUARANTY FUND. * OAH NO. DLR-REC-22-11-33042
FOR THE ALLEGED MISCONDUCT *
OF ERRIKA R. JONES aka *
ERRIKA R. HAMEED *

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law, and Recommended Order of the Administrative Law Judge dated January 31, 2012, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 9th day of March, 2012

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 David Miranda against the Maryland Real Estate Guaranty Fund based on the actions of Errika R. Jones (aka Errika R. Hameed) is granted in the amount of \$5,000.00:

ORDERED that Errika R. Jones (aka Errika R. Hameed) 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 Errika R. Jones (aka Errika R. Jones) 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

John Lane S. Cooke, Chair

IN THE MATTER OF THE CLAIM OF:	* BEFORE JOHN T. HENDERSON, JR.
DAVID MIRANDA,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
v.	* OF ADMINISTRATIVE HEARINGS
THE MARYLAND REAL ESTATE	* OAH CASE No. DLR-REC-22-11-33042
COMMISSION GUARANTY FUND	* MREC COMPLAINT No. 10-RE-384
FOR THE ALLEGED MISCONDUCT OF	*
ERRIKA R. JONES, REAL ESTATE	*
BROKER,	*
RESPONDENT	*

* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On March 15, 2010, David Miranda (the Claimant) filed a claim against the Maryland Real Estate Commission Guaranty Fund (the Fund) for \$5,000.00. The claim was for monetary losses allegedly incurred by the Claimant as a result of the misconduct of Errika R. Jones, aka, Errika R. Hammed, Licensed Real Estate Broker (the Respondent), in providing real estate brokerage services to the Claimant for real property located at 111 El Camino Way, Fort Washington, Maryland 20744.

On July 1, 2011, the Maryland Real Estate Commission (MREC) transmitted the matter to the Office of Administrative Hearings (OAH) for a hearing concerning the Claimant's claim against the Fund. On August 29, 2011, the OAH scheduled a hearing for November 15, 2011.

On November 15, 2011, after determining that proper notice was provided to the Respondent, I conducted a hearing at the Largo Government Center, 9201 Basil Court, Largo, Maryland. 20774. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010). The Claimant represented himself at the hearing. Jessica Berman Kaufman, Assistant Attorney General for the Department of Labor, Licensing and Regulation (DLLR), represented the Fund. The Respondent was not present.

The Administrative Procedure Act, the procedural regulations of the DLLR, and the OAH Rules of Procedure govern 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

I admitted the following exhibits into evidence on behalf of the Fund:
Fund Ex. 1 Notice of Hearing, dated August 29, 2011 with attachments

- Fund Ex. 2 Transmittal for REC hearing, dated June 27, 2011 with attachments
- Fund Ex. 3 Record of licensing and address information for the Respondent, dated October 13, 2011
- Fund Ex. 4 Affidavit of Steven Long, dated October 18, 2011
- Fund Ex. 5 Circuit Court for Prince George's County Case Information report regarding the Respondent
- Fund Ex. 6 MREC Report of Investigation
- Fund Ex. 7 Letter from the Respondent, dated March 29, 2010
- Fund Ex. 8 Supplemental Report by Investigator Robert Hall, dated April 27, 2011

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

- Claimant Ex. 1 Residential Contract of Sale, dated March 22, 2008
- Claimant Ex. 2 Andrews Federal Credit Union check for \$5,000.00, payable to Chase dated March 24, 2008
- Claimant Ex. 3 Navy Federal Credit Union request to the Claimant to sign and fax documents to expedite processing of his loan, with attached Activity Schedule

No exhibits were offered by the Respondent.

Testimony

The Claimant testified and presented the testimony of his wife, Honoria Soriano Miranda (wife).

No witnesses testified on behalf of the Fund.

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 pursuant to D.I.L.R REC license number 3892228. Her license expired on July 23, 2010.

2. On March 22, 2008, the Claimant and his wife entered into a Residential Contract for the Sale of Real Property located at 111 El Camino Way, Ft. Washington, Maryland (the property). He and his wife agreed to purchase the property from the Respondent and Gwendolyn Jones (Respondent's mother) for the sum of \$200,000.00.

3. The Respondent intended a short sale of the property after her father's death on February 26, 2006. She was paying the mortgage until it became financially impossible for her to continue. Chase Home Mortgage (the bank) held the mortgage on the property. The property was in foreclosure proceedings when the contract for purchase was signed on March 22, 2008.

4. Public record discloses the legal title to the property transferred as follows:

<u>Seller:</u> FEDERAL NATIONAL MORTGAGE ASS	<u>Date:</u> 06/25/2009	<u>Price:</u> \$214,000
<u>Type:</u> NON-ARMS LENGTH OTHER	<u>Deed1:</u> /30742/ 00515	<u>Deed2:</u>
<u>Seller:</u> JONES, GWENDOLYN	<u>Date:</u> 02/24/2009	<u>Price:</u> \$322,064
<u>Type:</u> NON-ARMS LENGTH OTHER	<u>Deed1:</u> /30388/ 00350	<u>Deed2:</u>
<u>Seller:</u> JONES, JOHNNIE E SR	<u>Date:</u> 02/06/2007	<u>Price:</u> \$353,000
<u>Type:</u> ARMS LENGTH IMPROVED	<u>Deed1:</u> /00000/ 00000	<u>Deed2:</u>

5. Johnnie E. Jones, Sr., is the Respondent's father, who died on February 26, 2006. Gwendolyn Jones is the Respondent's mother. The Respondent did not hold legal title to the property on March 22, 2008.

6. The contract was contingent upon the Claimant and his wife securing a written commitment for a conventional loan of \$200,000.00 secured by the property. An earnest money deposit of \$5,000.00 was required pursuant to the contract.

¹ This record is from the Maryland Department of Assessment and Taxation, Real Property Data Search, Prince George's County, concerning the subject real property. It appears that the Respondent did not hold legal title to the property. If she did not hold legal title, then she did not have authority to sign the contract for sale as a "seller." The deed to the property was not presented at the hearing.

7. The Respondent represented to the Claimant and his wife that she was a licensed real estate agent and would handle the transaction in her professional capacity. She was an agent for Exit Tri-County Realty located in Prince George's County, Maryland.

8. On March 24, 2008, the Claimant and his wife paid the earnest money deposit of \$5,000.00 in the form of cashier's check number 522174966, drawn on Arlington Federal Credit Union (the credit union) and made payable to the order of "Chase," at the direction of the Respondent.

9. The Respondent did not place the deposit into an escrow account as required by the contract nor did she send a copy of the contract to her brokerage company. She did not perform any realty functions associated with the sale of the property through her brokerage firm.

10. The deposit check was deposited by the Respondent on April 3, 2008, into an Industrial Bank account in the name of "Chase Investments" which was owned and controlled by the Respondent.

11. In efforts to perform the contract, the Claimant and his wife sought a loan from their credit union. The credit union made attempts to contact the Respondent to discuss the terms of the contract. The Respondent did not respond to the credit union's attempts to contact her. There was no listing broker for the property.

12. On May 7, 2008 the credit union cancelled the Claimant's mortgage loan application due to inactivity.

13. The bank refused to stay the foreclosure proceedings for \$200,000 but agreed to do so for \$270,000.00.

14. The Respondent sought a counter-offer of the sale and asked the Claimant and his wife to purchase the property for \$270,000.00.

15. The Claimant and his wife did not want to purchase the property for \$270,000. They rejected the counter-offer and demanded the return of their \$5,000.00 deposit.

16. The Respondent represented to the Claimant and his wife that the deposit would not be returned by the bank because the bank considered the contract to be in breach. She represented that each of them. (Respondent, Claimant and his wife) lost money.

17. On April 23, 2009, the Claimant requested the return of his deposit by sending an email to Gill Poudrier, Owner/CFO for Exit Tri-County Realty (Exit).

18. On April 24, 2009, Poudrier responded and advised that the Respondent no longer worked as an agent for Exit having been terminated on June 29, 2008.

19. Neither Exit nor the Respondent's subsequent brokerage company, Taylor Properties had any record of the contract dated March 22, 2008.

20. The Claimant never received a refund of his \$5,000.00 deposit.

DISCUSSION

On August 29, 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, 2010 Alice Avenue, 104, Oxon Hill, MD 20745. The notices advised the Respondent of the date, time, and place of the hearing. The notices were returned to the OAH marked "UNCLAIMED" and "RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." At the time the notices were mailed, the Respondent's MREC license had expired. Three additional notices were then sent to the Respondent at the following addresses: 12806 Odens Bequest Drive, Bowie, MD 20720; 6521 Bock Road, Oxon Hill, MD 20745; and 11503 Old Lottsford Road, Mitchellsville (sic), MD 20721. These notices were all returned to the OAH as being Undeliverable as Addressed and Unable to Forward. Steven Long, Assistant Executive Director

of the MREC, accessed the Motor Vehicle Administration's (MVA) computer records regarding the Respondent on October 14, 2011. The MVA's records showed that the Respondent's driving privilege was valid and identified her current address as 12806 Bequest Drive, Bowie, MD 20720-5614. Notice of the scheduled hearing was properly provided to the Respondent.

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(c) (2010). Section 17-404(a) governs claims brought against the Fund and sets forth, in pertinent part, the following criteria that must be established by a claimant to obtain an award:

§ 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 the Respondent a check for \$5,000.00 as an earnest money deposit toward the purchase of real property. The Respondent accepted the deposit and represented to the Claimant and his wife that it would be held in escrow pending settlement on the sale. She led them to believe that Chase Home Mortgage bank was holding the deposit check. That was not the truth.

The Respondent deposited the funds into the Industrial Bank of Washington in an account titled to "Chase Investments." That account was owned and controlled by the Respondent. She never intended to deposit the funds into a non-interest bearing escrow account as the contract and regulations require. COMAR 09.11.01.07.

The Respondent was unsuccessful in her efforts to convince the mortgage bank to stay the foreclosure proceedings against the property and allow the Claimant and his wife to proceed with the contract of sale for \$200,000.00. The Respondent should have returned the deposit money to the Claimant when he rejected the counter-offer of \$270,000.00 and requested the return of the \$5,000.00 deposit.

I find that the Claimant has shown he has suffered an actual loss of \$5,000.00 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 \$5,000.00 deposit. The transaction between the Claimant and the Respondent involved property located in the State of Maryland, specifically at 111 El Camino Way, Fort Washington, Maryland 20744. The Claimant was entitled to have his \$5,000.00 deposit returned to him when the sale of the property could not

proceed because the property was in foreclosure. The Respondent's failure to return the \$5,000.00 deposit without a legitimate basis constitutes obtaining money by false pretenses and/or misrepresentation. Therefore, I find that the Claimant is entitled to an award of \$5,000.00 from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Facts and Discussion, I conclude as a matter of law that the Claimant suffered an actual loss and is entitled to reimbursement from the Real Estate Guaranty Fund in the amount of \$5,000.00, 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 \$5,000.00; and further,

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

January 31, 2012
Date Decision Mailed

JTH/rbs
128298

SIGNATURE ON FILE

John T. Henderson, Jr.
Administrative Law Judge

IN THE MATTER OF THE CLAIM OF:	* BEFORE JOHN T. HENDERSON, Jr.
DAVID MIRANDA,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
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FOR THE ALLEGED MISCONDUCT OF	*
ERRIKA JONES, REAL ESTATE	*
BROKER,	*
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* * * * *

FILE EXHIBIT LIST

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