

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**IN THE MATTER OF THE CLAIM
OF CLAUDETTE DAVENPORT**

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OAH CASE NO. DLR-REC-22-18-32193

v.

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**THE MARYLAND REAL ESTATE
COMMISSION GUARANTY
FUND FOR THE ALLEGED
MISCONDUCT OF
WILLIAM SAVAGE**

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MREC CASE NO. 2015-RE-568

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OPINION AND FINAL ORDER

This matter came before a hearing panel of the Maryland Real Estate Commission (“Commission”) on November 18, 2020 as a result of the written exceptions filed by Respondent, William Savage, to the Commission’s Proposed Order of July 17, 2019. On March 14, 2019 Administrative Law Judge William F. Burnham (“ALJ”) held a hearing (“ALJ Hearing”) on Claudette Davenport’s (“Claimant”) Guaranty Fund Claim. The ALJ filed a Proposed Decision in which he recommended that Claimant’s claim against the Maryland Real Estate Guaranty Fund (“Fund”) be granted and Claimant be awarded \$26,008.86. On July 17, 2019, the Commission issued the Proposed Order affirming the ALJ’s Findings of Fact, approving the Conclusions of Law, and adopting the Proposed Order, with minor amendments of typographical errors.

On or about August 19, 2019, Respondent filed written exceptions to the Proposed Order. A virtual hearing on the exceptions was held November 18, 2020 (the “November 18th Hearing”) before a panel consisting of Commissioners Anne Cooke, Michelle Wilson, and Jeff Wright (the “Panel”). Hope Sachs, Assistant Attorney General, appeared as the presenter of evidence on behalf of the Commission. Respondent was represented by counsel at the November

18th Hearing. Claimant appeared without an attorney. She acknowledged her right to representation by counsel, waived that right, and proceeded *pro se*. The proceedings were electronically recorded.

PRELIMINARY MATTERS

Claimant moved to introduce additional evidence not presented at the ALJ Hearing. Respondent and the Fund opposed Claimant's motion. Pursuant to the Code of Maryland Regulations ("COMAR") 09.01.03.09 K:

Additional evidence may not be introduced unless the party seeking to introduce it demonstrates to the satisfaction of the administrative unit that the new evidence:

- (1) Is relevant and material;
- (2) Was not discovered before the ALJ hearing; and
- (3) Could not have been discovered before the ALJ hearing with the exercise of due diligence.

Claimant argued the documents met the standard. The Panel recessed to review and in accordance with the provisions of COMAR 09.01.03.09 K and after careful consideration, determined Claimant failed to establish that she could not have discovered the new evidence before the ALJ Hearing. Claimant's motion was denied.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, three exhibits, as well as the OAH file containing the exhibits which were introduced at the ALJ Hearing, were admitted and entered into evidence:

- REC Ex. 1: Hearing notices
- REC Ex. 2: Respondents' exceptions
- REC Ex. 3: Proposed Order and Proposed Decision

A transcript of the ALJ Hearing was requested by Respondent and timely provided to the Commission timely.

FINDINGS OF FACT

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

DISCUSSION

At all times relevant to this matter, Respondent William Savage was a licensed real estate associate broker.¹ FF 1.² Sometime before October 2013 Claimant contacted Respondent regarding a home located at 3242 Sequoia Avenue, Baltimore, MD (the "Property"). FF 3. The owner of the Property, Antwan Johnson, had worked with Repondent previously to sell thirty to forty other houses. FF 4. Respondent assisted both Claimant and Mr. Johnson during the transaction. FF 8-9. Respondent told Claimant the Property was fully renovated and advised Claimant she would qualify for \$10,000.00 from the Baltimore city Vacants to Values program if she purchased the Property. FF 10-11.

Respondent referred Claimant to William Horne for a home inspection prior to the sale. Mr. Horne inadequately and improperly inspected the Property. For example, issues related to water damage, mold, rotted floors, and carpeting were not addressed or recorded in his report. FF 12. Respondent never questioned Mr. Horne about discrepancies in the report, even though he did review it with Claimant and helped her draft an addendum to request some minor repairs, on doorknobs for example. FF 13-16. Respondent's assurances about the renovation and Mr. Horne's report played a significant role in Claimant's decision to proceed with purchasing the property. FF 14.

Claimant purchased the Property on December 26, 2013 but did not move in until March 2014. FF 17. Claimant immediately discovered extensive problems with the Property. *Id.* Water damage, including some from a basement flood that occurred prior to Claimant's move to the Property, required the installation of a sump pump and replacement of rotted wood and damaged

¹ The ALJ incorrectly identified the license as that of a salesperson. That typographical error was corrected by the Proposed Order.

² FF refers to the Findings of Fact in the ALJ's Proposed Decision.

carpet. She also discovered the stove was broken and had it replaced. FF 18-21. The resulting expenses totalled \$26,008.86. FF 19-21. Mr. Horne's home inspectors license was revoked as a result of the inspection he performed for Claimant. FF 22.

The ALJ found that Respondent told Claimant he could represent her while representing the seller. Respondent testified that he helped Claimant draft her offer, attended the inspection, and reviewed the inspection report with Claimant. Proposed Decision 9-10. The ALJ also found that Respondent knew the Property was not fully renovated, despite his assurances to Claimant, and that amounted to a "misrepresentation of material fact". Proposed Decision 14. The ALJ reviewed the numerous expenses Claimant argued were eligible for relief under the Fund and recommended an award encompassing the expenses detailed in the above paragraph.

In his written exceptions and at the November 18th Hearing, Respondent argued he was being held responsible for the actions of Mr. Horne, that the ALJ's discussion regarding the inspector report was flawed, especially as it related to a chimney, that "fully renovated" is not a term of art that can be held against Respondent, and thus the ALJ's recommendations were in error. Both the Assistant Attorney General and Claimant argued the recommendations of the ALJ should be upheld, pointing repeatedly to Respondent's assurances about the state of the Property and his role with respect to both seller and buyer.

BOP § 17-404(a)(1) provides that a person may recover compensation from the Fund for an actual loss. BOP § 17-404(a)(2) provides the specific criteria that must be met to award a claim against a Respondent. Respondent acted as the agent for Claimant and for the seller. It is clear from the testimony that her reliance on his assurances and assistance led to the purchase of the Property. It is also clear from the testimony and evidence that the expenses the ALJ recommended she be awarded meet the standards set for an award from the Fund. *Id.*

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, the Commission concludes as a matter of law that Claimant has established entitlement to an award from the Fund. BOP §14-404.

ORDER

The Exceptions of the Respondent, William Savage, having been considered, it is this ^{2nd} day of February, 2021 by the Maryland Real Estate Commission, hereby ORDERED:

1. That Claimant's claim against the Fund is GRANTED;
2. That Claimant, Claudette Davenport, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of \$26,008.86; and
3. That all real estate licenses held by Respondent, William Savage, shall be suspended at the cessation of the of the appeals period, thirty (30) days from the date this Final Order is mailed, until the Maryland Real Estate Guaranty Fund is repaid in full, including any interest that is payable under the law; and
4. That the records and publications of the Maryland Real Estate Commission reflect this decision.

MARYLAND REAL ESTATE COMMISSION

By: _____

SIGNATURE ON FILE

Note: A judicial review of this Final Order may be sought in the Circuit Court for the Maryland County in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.