

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM \* BEFORE NICOLAS ORECHWA,  
OF BETTY PATTON, \* ADMINISTRATIVE LAW JUDGE  
CLAIMANT \* OF THE MARYLAND OFFICE OF  
V. \* ADMINISTRATIVE HEARINGS  
THE MARYLAND REAL ESTATE \*  
COMMISSION GUARANTY FUND \* OAH NO: DLR-REC-22-18-36404  
FOR THE ALLEGED MISCONDUCT \*  
OF DUANE FARLEY, \* MREC NO: 2018-RE-625 G.F.  
RESPONDENT  
\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated March 25, 2019, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 17th day of April, 2019.

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 in the Recommended Decision be, and hereby is, ADOPTED;
- D. That the records, files and documents of the Maryland State Real Estate Commission reflect this decision.
- E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties adversely affected by this Proposed Order shall have twenty (20) days from the postmark date of the Order to file written exceptions to this Proposed Order. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 500 North Calvert Street, Baltimore, MD 21202. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

F. Once the Proposed Order becomes final, the parties have an additional thirty (30) days in which to file an appeal to the Circuit Court for the Maryland County in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City.

MARYLAND STATE REAL ESTATE COMMISSION

**SIGNATURE ON FILE**

4-17-2019  
Date

By: \_\_\_\_\_  
Anne S. Cooke, Commissioner

**IN THE MATTER OF**  
**CLAIM OF BETTY PATTON,**  
**CLAIMANT**  
**v.**  
**MARYLAND STATE**  
**REAL ESTATE COMMISSION,**  
**REAL ESTATE GUARANTY FUND,**  
**FOR THE ALLEGED MISCONDUCT**  
**OF DUANE FARLEY,**  
**RESPONDENT**

**\* BEFORE NICOLAS ORECHWA,**  
**\* AN ADMINISTRATIVE LAW JUDGE**  
**\* OF THE MARYLAND OFFICE**  
**\* OF ADMINISTRATIVE HEARINGS**  
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**\* OAH No.: DLR-REC-22-18-36404**  
**\* REC No.: 18-RE-625GF**

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On June 21, 2018, Betty Patton (Claimant) filed a complaint against Duane Farley, Real Estate Broker (Respondent).<sup>1</sup> The Claimant also filed a claim with the Maryland Real Estate Commission (MREC) Guaranty Fund (MREC or Fund), in which she alleged she sustained monetary losses as a result of the Respondent's acts or omissions. Specifically, the Claimant

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<sup>1</sup> In her Complaint, the Claimant listed Samuel Freeman (Freeman) as Licensee. (GF Ex. 3.) However, Freeman is neither listed on the Fund's Hearing Order nor on the Fund's transmittal form to the Office of Administrative Hearings (OAH). Additionally, none of the parties presented evidence Freeman possesses or possessed a Maryland real estate license. At the hearing, the Fund acknowledged Duane Farley to be the appropriate Respondent. Accordingly, I will focus this decision solely on Respondent Duane Farley as directed by the Fund's Hearing Order.

alleged the Respondent, acting in her capacity as the property manager for property owned by the Claimant, failed to reimburse the Claimant for various monies to which the Claimant was rightfully entitled. On November 9, 2018, the MREC ordered the Claimant should have a hearing to establish her eligibility for an award from the Fund. On November 21, 2018, the MREC forwarded the matter to the OAH for a hearing.

On February 13, 2019, at 10:30 a.m., I conducted a hearing at the Office of Administrative Hearings (OAH) headquarters in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2018).<sup>2</sup> The Claimant appeared without counsel. Andrew Brouwer, Assistant Attorney General, Department of Labor, Licensing and Regulation, represented the Fund. As of 11:00 a.m., neither the Respondent nor anyone on her behalf appeared at the hearing or requested a postponement.

On January 16, 2019, the OAH mailed a notice of the hearing to the Respondent by certified and regular mail to The Estate of Duane Farley,<sup>3</sup> c/o Thomas Kokolis and Jacob Deaven, Parker, Simon & Kokolis, LLC, 110 North Washington Street, Suite 500, Rockville, Maryland 20540, the Respondent's last known address of record on file with the MREC. Md. Code Ann., Bus. Reg. § 8-312(d) (2015).<sup>4</sup> The notice advised the Respondent of the time, place, and date of the hearing. The United States Postal Service (USPS) did not return the notice as unclaimed or undeliverable. On January 22, 2019, the OAH received the signed<sup>5</sup> return receipt for the notice. I received no forwarding order or other correspondence from the Respondent to identify alternative addresses. Therefore, I determined that the Respondent received proper notification, but failed to appear for the hearing. As a result, I found it appropriate to proceed in

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<sup>2</sup> Unless otherwise noted, all citations to this article are to the 2018 version.

<sup>3</sup> As set forth in further detail below, the Respondent is deceased and all correspondence and interaction with regard to the Claim concerns the Respondent's estate. However, for the sake of simplicity, I will simply refer to the Estate as the Respondent for the balance of this decision.

<sup>4</sup> "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." Md. Code Ann., Bus. Reg. § 8-312(d) (2015).

<sup>5</sup> The person who signed the return receipt is M. Fuentes.

the Respondent's absence. After waiting thirty minutes for the Respondent to appear, I proceeded with the hearing. Md. Code Ann., Bus. Occ. & Prof. § 17-408(c) (2018), Code of Maryland Regulations (COMAR) 28.02.01.23A.

The contested case provisions of the Administrative Procedure Act, the Department's and the MREC's procedural regulations, and the OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 09.01.03 and 09.11.03; COMAR 28.02.01.

### **ISSUES**

1. Did the Claimant sustain an actual monetary loss as a result of the Respondent's conduct which constituted theft, embezzlement, forgery, false pretenses, fraud, or misrepresentation; and, if so,
2. What is the amount of the actual loss?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits for the Claimant:

- CL Ex. 1: Property Management Agreement, March 2, 2006
- CL Ex. 2: Letter from Respondent to Customers, February 27, 2018
- CL Ex. 3: Letter from Respondent to Customers, March 9, 2018, with attached letter from John Tselepis, CPA, March 12, 2018
- CL Ex. 4: Residential Dwelling Lease, June 23, 2016
- CL Ex. 5: Copies of various checks and receipts

I admitted the following exhibits for the Fund:

- GF Ex. 1: Hearing Order, November 9, 2018
- GF Ex. 2: Notice of Hearing, January 16, 2019
- GF Ex. 3: Cover letter with Claimant's Complaint, August 17, 2018

GF Ex. 4: Respondent's Licensing History

GF Ex. 5: Affidavit of Jillian Lord, January 15, 2019

GF Ex. 6: Printout from the Maryland Register of Wills

The Respondent did not offer any exhibits.

### Testimony

The Claimant testified and called Joseph Thomas Patton (Joseph) as a witness. The Respondent and the Fund did not present witnesses.

### **FINDINGS OF FACT**

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

1. At all times relevant, the Respondent was a real estate broker licensed by the MREC under License #0148951. In particular, the Respondent managed properties on behalf of property owners who rented to third parties.
2. At all times relevant, the Claimant owned a residence located at 400H Aggies Circle, Unit 8, Bel Air, Maryland (Aggies Circle).
3. On March 2, 2006, the Claimant and the Respondent entered into a Property Management Agreement with regard to Aggies Circle. The Respondent managed Aggies Circle per the terms of the Property Management Agreement which remained in full force and effect until April 1, 2018.
4. On or about April 1, 2018, the Respondent closed her business and terminated the Property Management Agreement. The Respondent died on June 24, 2018.
5. On June 23, 2016, Jason Britton (Britton) signed a lease (lease or Britton lease) to rent Aggies Circle. The time period of the lease spanned from July 1, 2016, until June 30, 2017. After the expiration of the lease on June 30, 2017, Britton exercised his right under the terms of

the lease to remain a tenant on a month-to-month basis. As of the date of the hearing, Britton was still a tenant at Aggies Circle under the same lease.

6. The lease obligated Britton to pay \$1,295.00 per month in rent. Britton paid his rent to the Respondent per the terms of the lease. The Property Management Agreement obligated the Respondent to pay the Claimant rents collected after the deduction of an eight percent management fee.

7. Britton made the following rent payments to the Respondent:

- March 2018 -- \$1,295.00
- April 2018 -- \$1,295.00
- May 2018 -- \$1,295.00
- June 2018 -- \$1,295.00

The Respondent did not reimburse the Claimant for these rental payments.

8. The lease obligated Britton to provide a security deposit of \$1,295.00. The Property Management Agreement obligated the Respondent to hold the security deposit in an escrow account and return it to Britton upon expiration of the lease. Britton paid the Respondent \$1,295.00 as a security deposit which the Respondent deposited in her escrow account. The Respondent did not return the security deposit to Britton or the Claimant.

9. The Property Management Agreement obligates the Claimant to deposit \$200.00 with the Respondent to cover repair costs and expenses over and above anticipated rents to be collected (repair escrow). The Claimant deposited \$200.00 with the Respondent.

10. The Respondent neither returned the \$200.00 to the Claimant nor provided an accounting of the use of the deposit.

## DISCUSSION

### *The Respondent's Failure to Appear*

Per the MREC's hearing order, the Respondent died on June 24, 2018. (GF Ex. 1.) The OAH scheduled the hearing in this case for Wednesday, February 13, 2019, at the OAH offices in Hunt Valley, Maryland. The OAH originally mailed a notice of the hearing to the parties on November 29, 2018. The OAH sent the Respondent's copy of the Notice by first-class and certified mail (return receipt requested) to 327 South Union Avenue, Havre De Grace, Maryland 21078, the Respondent's address of record with the MREC when she was alive. The OAH addressed the Notice to the attention of the Respondent's estate. The OAH sent the Notice by certified mail and the USPS returned it to the OAH as "moved left no address, unable to forward, return to sender." The USPS also returned the Notice sent by regular first class mail as "moved, unable to forward."

On or about January 15, 2019, Assistant Attorney General Andrew Brouwer searched the Maryland Register of Wills for an estate opened on behalf of the Respondent. The search yielded an estate opened on behalf of the Respondent on or about October 15, 2018. The search also revealed the estate's personal representative to be Thomas J. Kokolis, Esquire, 110 North Washington Street, Suite 500, Rockville, Maryland 20850. Mr. Kokolis's attorney is listed as Jacob Deaven, Esquire, also located at 110 North Washington Street, Suite 500, Rockville, Maryland 20850.<sup>6</sup> On January 15, 2019, Mr. Brouwer sent a letter to the OAH notifying the clerk of the address of the estate's personal representative and instructing the clerk to send the Notice to that address.<sup>7</sup> On January 16, 2019, the OAH sent notice by first-class and certified mail (return receipt requested) to "The Estate of Duane Farley, C/O Thomas Kokkolis (sic) and Jacob

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<sup>6</sup> All information concerning Mr. Brouwer's search of the Estate and the results of that search is contained in GF Ex. 6.

<sup>7</sup> Mr. Brouwer also provided another alternate address for the Respondent of P.O. Box 426, 42 Neptune Drive, Joppa, Maryland 21085. The OAH sent notice to that address which the USPS returned as "unclaimed, unable to forward."



Deaven, Parker, Simon & Kokkolis (sic), LLC, 110 N. Washington Street, Suite 500, Rockville, MD 20850.” On January 25, 2019, the OAH received the green return receipt from the USPS which the recipients signed on January 22, 2019. The USPS did not return the Notice the OAH sent to that address by first class mail.

As someone signed for the certified mail Notice on behalf of the personal representative of the Respondent’s Estate, I find that the Respondent received proper notice of the hearing. At no time did the Respondent or anyone on the Respondent’s behalf request a postponement of the hearing.

Section 17-324 of the Business Occupations and Professions Article provides that before the Commission can take any final action against an individual, the individual must be personally served with a hearing notice or the hearing notice must be sent by certified mail at least ten days prior to the hearing to the individual’s last known business address. Md. Code Ann., Bus. Occ. & Prof. § 17-324(d)(1) (2018). If the individual, after receiving proper notice of the hearing, fails or refuses to appear, the Commission may hear and determine the matter despite the individual’s absence. Md. Code Ann., Bus. Occ. & Prof. §§ 17-324(f), 17-408(c) (2018). The address used to notify the Respondent of the hearing is the address of the Respondent’s personal representative as determined by Mr. Brouwer on behalf of the MREC. I therefore find it is the Respondent’s address of record with the MREC. Accordingly, I conclude that the Respondent received proper notice of the hearing, but nevertheless failed to appear. As a result, I determined that it was appropriate to proceed with the hearing despite the Respondent’s failure to appear.

***Legal Framework***

Section 17-404(a) of the Business Occupations and Professions Article provides the criteria for a person to recover compensation from the Guaranty Fund:

- (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;
  - 2. a licensed associate real estate broker;
  - 3. a licensed real estate salesperson;
  - 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.

The amount recovered for any claim against the Guaranty Fund “shall be restricted to the actual monetary loss incurred by the claimant, but may not include monetary losses other than the monetary loss from the originating transaction.” COMAR 09.11.01.14. The Claimant bears the burden of proving her entitlement to recover compensation from the Guarantee Fund by a preponderance of the evidence. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2018). To prove something by a “preponderance of the evidence” means “to prove that something is more likely so than not so” when all of the evidence is considered. *Coleman v. Anne Arundel Co. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). Under this standard, if the supporting and opposing evidence is evenly balanced on an issue, the finding on that issue must be against the party who bears the burden of proof. *Id.* For the reasons articulated below, I find the Claimant has satisfied her burden.

## *The Merits of the Case*

### *Arguments of the Parties*

Neither the Respondent nor the Fund presented any evidence to be considered. In support of her claim, the Claimant testified that she and the Respondent entered into a Property Management Agreement whereby the Respondent would manage Aggies Circle as a rental property. Britton signed a lease, paid a security deposit, commenced living in Aggies Circle at the beginning of July 2016, and paid his rent per the terms of the lease thereafter. The Respondent deducted an eight percent management fee from the monthly rent received and remitted the balance to the Claimant.

In the spring of 2018, the Respondent notified the Claimant she would be closing her business effective April 1, 2018. The Claimant received no rental payments from the Respondent for the months of March, April, May and June 2018. The Claimant attempted on various occasions to speak with the Respondent or someone in her office about the missing rental payments, but was not able to reach anybody. Additionally, Britton paid the Respondent \$1,295.00 as a security deposit when he commenced living at Aggies Circle. The Respondent did not return the security deposit to the Claimant when she closed her business. The Claimant also alleged the Respondent neither accounted for, nor returned, a \$200.00 repair escrow she deposited per the terms of the Property Management Agreement.

### *Analysis*

There is no dispute the Respondent is a licensed real estate broker, Aggies Circle is located in the State of Maryland, and the agreements into which the Claimant and the Respondent entered concern Aggies Circle. The issues to be decided are whether the Respondent committed “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.” Md.

Code Ann., Bus. Occ. & Prof. 17-404(a). I shall address each of the Claimant's allegations separately below.

*The Two Hundred Dollar Deposit*

The Claimant testified she entered into a Property Management Agreement with the Respondent and entered a Property Management Agreement into evidence dated March 2, 2006. (CL Ex. 1.) That Property Management Agreement does identify the Claimant and Respondent as the parties to the agreement. It also identifies Aggies Circle as the subject property and acknowledges that the Claimant "hereby employs [the Respondent] to lease and manage [Aggies Circle]." However, the Claimant only provided the first and last pages of the Property Management Agreement. Thus, the particulars of the Property Management Agreement are missing. The pages the Claimant did provide do not contain any provisions concerning the \$200.00 repair escrow. Thus, the only evidence of the existence of the \$200.00 repair escrow is the testimony of the Claimant.

Despite that evidentiary shortcoming, I accept the Claimant's testimony that the Property Management Agreement contained a provision that required the Claimant to pay the \$200.00 repair escrow to the Respondent. I further find the Claimant paid the \$200.00 escrow, and that the Respondent failed to account for the \$200.00 escrow and return it to the Claimant upon the closure of her property management business. I found the Claimant and Joseph (her son) to be credible witnesses. They provided documentation to support the majority of their claims. Neither the Respondent nor the Fund presented any evidence indicating the Claimant embellished her allegations or claim amount.

I find the Respondent committed an act or omission by failing to return the \$200.00 repair escrow to the Claimant. I further find the Respondent committed that act or omission through misrepresentation. Misrepresentation is defined as, "The act or an instance of making a false or

misleading assertion about something [usually] with the intent to deceive. The word denotes not just written or spoken words but also any other conduct that amounts to a false assertion.” Black's Law Dictionary (10th ed. 2014). I find the Respondent's failure to return the \$200.00 repair escrow despite agreeing to do so pursuant to the Property Management Agreement constitutes a misrepresentation. The Claimant never received the \$200.00 repair escrow to which she was entitled, thus she sustained an actual loss. Accordingly, I find the \$200.00 repair escrow to be compensable by the Fund.

*The Respondent's failure to pay the March, April, May, and June 2018 rents*

The Claimant presented evidence that Britton signed a lease on Aggies Circle in June of 2016 and that the initial term of the lease spanned from July 2016 until July 2017. The lease contains a provision allowing Britton to remain on the lease on a month-to-month basis after the end of its initial term. The Claimant testified that Britton lived at Aggies Circle beginning in July of 2016 and has resided there since. Britton pays his rent timely and in full each month.

While the Property Management Agreement (CL Ex. 1) does not set forth the specific agreement between the Claimant and the Respondent as to the protocol by which Britton paid his rent, the evidence is clear he paid it to the Respondent and not the Claimant. The lease itself defines “owner” as “[The Respondent], as agent for Owner.” (CL Ex. 4.) The tenant is defined as Britton. The lease then obligates the tenant to pay the owner the monthly rent of \$1,295.00. The Claimant also provided checks and receipts showing Britton paid the Respondent his rent in full for March, April and May of 2018. While the Claimant did not provide the portions of the Property Management Agreement which delineate the property management fee and the disbursement of rent proceeds, she testified the fee was eight percent per monthly rental payment. For the reasons noted above, I found the Claimant to be a credible witness. Accordingly, I find the Property Management Agreement contained a clause allowing the Respondent to deduct eight

percent of the monthly rental income as a property management fee. Eight percent of the monthly rent payment of \$1,295.00 is \$103.60. Thus, the Property Management Agreement required the Respondent to reimburse the Claimant \$1,191.40 of the rent received from Britton. Three months of those reimbursements equate to a sum of \$3,574.20.

The Claimant further testified that Britton paid his June 2018 rent to the Respondent and the Respondent failed to reimburse to the Claimant. However, unlike the March, April, and May 2018 rents, the Claimant provided no documentation that Britton paid the Respondent the June 2018 rent. Nevertheless, I find the Claimant's testimony that Britton paid the Respondent the June 2018 rent credible.<sup>8</sup> The documentary evidence the Claimant did present illustrates a clear pattern of Britton making timely rent payments to Respondent through May 2018. I find from the evidence presented that Britton paid his rent timely. Moreover, both the Claimant and Joseph testified that the Respondent ceased communicating before Britton paid his June rent. Thus, it is reasonable to infer from the evidence that Britton lacked knowledge as late as June 2018 that the Respondent ceased operations, especially since the documents show he paid the Respondent his rent in May 2018. (CL Ex. 5.)

Accordingly, I find Britton's hearsay statement concerning the June 2018 rent reliable. *Kade v. Charles Hickey School*, 80 Md. App. 721 (1989). Thus, I find the Britton paid the Respondent \$1,295.00 for his June 2018 rent. I find the Property Management Agreement obligated the Respondent to reimburse that rent to the Claimant minus an eight percent (\$103.60) management fee. Thus, I find the Property Management Agreement required the Respondent to pay the Claimant \$1,191.40 for her share of the June 2018 rent.

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<sup>8</sup> The Claimant based this assertion on the fact Britton told her he paid the Respondent the June rent.

I find the Respondent committed an act or omission by failing to pay the Claimant her share of the rent proceeds for March, April, May, and June 2018 per the terms of the Property Management Agreement. I further find the Respondent committed that act or omission through misrepresentation as defined above. I find the Respondent's failure to pay the Claimant her share of the rental proceeds, despite agreeing to do so per the Property Management Agreement, constitutes a misrepresentation. Because the Claimant never received the rental proceeds from the Respondent, I find she sustained an actual loss.

In her complaint, the Claimant requested reimbursement of \$6,235.00 from the Fund. She testified that her claim included the rental payments due to her under the Property Management Agreement for March, April, May, and June 2018; four payments of \$1,191.00, or \$4,765.00 in total. In its closing argument, the Fund suggested that due to the Respondent's lack of communication with the Claimant, coupled with the closure of her business on April 1, 2018, the Respondent arguably provided no services to the Claimant per the terms of the Property Management Agreement from March through June of 2018. Because the Claimant did receive any services from the Respondent during those months, her actual loss per month was the full rental amount of \$1,295.00 per month, not \$1,191.40. Thus, her actual loss for March, April, May, and June of 2018 would be \$5,180.00. Factoring in the Claimant's request for reimbursement of the security deposit (\$1,295.00 discussed below and the \$200.00 repair escrow) this would place the total amount of the Claimant's claim at \$6,675.00 - \$440.00 above the \$6,235.00 set forth in her complaint.

However, the Fund argued an award of the full rent amount would be improper since the Claimant did not claim the full amount in her complaint. The Fund reasoned that, despite failing to appear after receiving proper notice, the Respondent would not be on notice of the Claimant's increase in her total claim. This would deny the Respondent due process.

I shall decline to recommend the Fund reimburse the Claimant for the full amount of the March, April, May, and June 2018 rent payments (i.e. \$1,295.00 per month). I find the Claimant, of her own volition, would need to move to amend her complaint to request the higher amount. This would be analogous to the amendment of a complaint in a civil matter pursuant to Maryland Rule 2-341. The Claimant did not move for an amendment. The issue only arose in the context of the Fund's closing statement. Thus, because there is no amended complaint before me, I decline to recommend an award of the full monthly rental payments.<sup>9</sup> Instead, I shall recommend the Fund reimburse the Claimant \$4,765.60.

*\$1,295.00 Security Deposit*

The lease required that Britton pay the Respondent a \$1,295.00 security deposit for the Respondent to hold in escrow. The Claimant provided a receipt confirming Britton paid the security deposit plus the first month's rent. (CL Ex. 5.) Thus, I find Britton paid the Respondent the security deposit. The Respondent terminated the Property Management Agreement as of April 1, 2018. However, the Claimant testified credibly that the Respondent did not return the security deposit to her. While Britton still resides at Aggies Place, the Claimant, as owner of the property, will be required to return the security deposit to Britton when he moves out. Thus, the Claimant must pay Britton out of her own pocket as opposed to utilizing the security deposit Britton provided the Respondent. It is arguable this is somewhat speculative since it is uncertain whether the Claimant will need to hold back all or some of the security deposit to address repairs required from Britton's tenancy. However, there is no evidence that will be the case. The only evidence before me is that the Claimant is now personally liable to Britton for the entire \$1,295.00 security deposit. Thus I find she suffered an actual loss in that amount.

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<sup>9</sup> The Fund did not opine on whether I had the authority to entertain such an amendment as a general proposition. COMAR as well as the statutes governing this proceeding are silent on this issue. However, because the Claimant made no such amendment, I shall decline to address the issue of whether such an amendment allows the Fund to grant an award higher than what the Claimant set forth in the complaint.



I find the Respondent committed an act or omission by failing to return the security deposit to the Claimant upon closing her business. I further find the Respondent committed that act or omission through misrepresentation as defined above. I find the Respondent's act of failing to return the security deposit to the Claimant constituted a misrepresentation per the terms of the Property Management Agreement.<sup>10</sup> Thus, I find the Claimant is entitled to reimbursement from the fund of \$1,295.00, representing the principal amount of the security deposit.

In light of the above, I find the Claimant is entitled to the following reimbursement from the Fund: \$200.00 (the unreturned and unaccounted for repair escrow) + \$4,765.60 (rental proceeds owed) + \$1,295.00 (security deposit) = \$6,260.60. Because this amount exceeds the \$6,235.00 in the Claimant's claim,<sup>11</sup> I shall recommend the Fund award the Claimant her original amount of \$6,235.00.

#### **PROPOSED CONCLUSIONS OF LAW**

Based on the Findings of Facts and Discussion, I conclude that the Claimant has established by a preponderance of the evidence that she sustained an actual loss compensable by the Guaranty Fund resulting from the Respondent's act or omission in providing real estate brokerage services that constitutes misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2) (2018).

I further conclude as a matter of law that the Claimant is entitled to receive \$6,235.00 from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-404(b) (2018); COMAR 09.11.01.14.

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<sup>10</sup> Again, the Claimant did not provide the entire Property Management Agreement. (CL Ex. 1.) However, I find based on a review of the pages the Claimant did provide, as well as the credible testimony of the Claimant and Thomas, that the Respondent had a fiduciary duty under the Property Management Agreement to return the security deposit to the Claimant upon the closure of her business.

<sup>11</sup> In the claim, the Claimant did not justify her calculation of \$6,235.00.

**RECOMMENDED ORDER**

I **PROPOSE** that the claim filed by the Claimant against the Maryland Real Estate Commission Guaranty Fund be **GRANTED** in the amount of \$6,235.00;

I further **PROPOSE** that the Maryland Real Estate Commission Guaranty Fund pay to the Claimant her actual monetary loss in the amount of \$6,235.00 for the Respondent's wrongful acts and omissions;

I further **PROPOSE** that the Respondent shall be ineligible for any Maryland Real Estate Commission license until the Respondent reimburses the Fund for all monies disbursed under this Order plus annual interest of at least ten percent, as set by the Commissioner pursuant to Section 17-411(a) of the Business Occupations and Professions Article of the Maryland Annotated Code; and

I further **PROPOSE** that the Commission's records and publications reflect this proposed decision.

March 25, 2019  
Date Decision Issued

**SIGNATURE ON FILE**

\_\_\_\_\_  
Nicolas Orechwa  
Administrative Law Judge

NO/sw  
#178579