

IN THE MATTER OF THE
CLAIM OF CHRIS JOHN TESTA,
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-22-18-36396
* REC No.: 19-RE-079

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
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STATEMENT OF THE CASE

On August 7, 2018, Chris John Testa (Claimant) filed a complaint against Duane Farley, Real Estate Broker (Respondent). The Claimant also filed a claim with the Maryland Real Estate Commission Guaranty Fund (MREC or Fund), in which he alleged he sustained monetary losses as a result of the Respondent's acts or omissions. Specifically, the Claimant 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 a hearing be set for Claimant to establish his

eligibility for an award from the Fund. On November 21, 2018, the MREC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On April 8, 2019, at 10:30 a.m., I conducted a hearing at the OAH headquarters in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2018). The Claimant appeared by telephone¹ and was represented by Douglas C.T. Maloon, Esquire who was present. Jessica Berman Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation, represented the Fund. After waiting fifteen minutes, neither the Respondent nor anyone on her behalf appeared at the hearing or requested a postponement.

On February 12, 2019, the OAH mailed notice of the hearing to the Respondent by certified and regular mail to The Estate of Duane Farley,² c/o Thomas Kokolis and Jacob Deaven, Parker, Simon & Kokolis, LLC, 110 North Washington Street, Suite 500, Rockville, Maryland, 20850, the Respondent's last known address of record on file with the MREC. Md. Code Ann., Bus. Occ. & Prof. § 17-408(c) (2018).³ 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 February 19, 2019, the OAH received the signed 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 the Respondent's absence. Md. Code Ann., Bus. Occ. & Prof. § 17-408(c) (2018); Code of Maryland Regulations (COMAR) 28.02.01.23A.

¹ The Claimant is a resident of Georgia. The OAH previously set a hearing in this matter for February 12, 2019. Although the Claimant traveled to Maryland and was ready to proceed, that hearing did not go forward due to a declaration of state wide liberal leave. The Claimant requested to be present by telephone to avoid a second trip to Maryland. Without objection from the Fund or the Respondent, and finding good cause, I granted that request.

² 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.

³ "The Commission may not proceed with the hearing unless the records of the Commission show that all notices required under this subtitle were sent to each licensee and each unlicensed employee alleged to be responsible for the act or omission giving rise to the claim." Md. Code Ann., Bus. Occ. & Prof. § 17-408(c) (2018).

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**IN THE MATTER OF THE CLAIM
OF CHRIS JOHN TESTA,
CLAIMANT**

CASE NO. 2019-RE-079

v.

OAH NO. DLR-REC-22-18-36396

**THE MARYLAND REAL
ESTATE COMMISSION
GUARANTY FUND FOR THE
ALLEGED MISCONDUCT OF
DUANE FARLEY, RESPONDENT**

* * * * *

PROPOSED ORDER

The Findings of Fact, Proposed Conclusions of Law and Recommended Order of the Administrative Law Judge (“ALJ”) dated June 19, 2019, having been received, read and considered, it is, by the Maryland Real Estate Commission (the “Commission”), this 17th day of July, 2019, hereby **ORDERED**:

- A. That the Findings of Fact¹ in the proposed decision be, and hereby are, **ADOPTED**.
- B. That the Proposed Conclusions of Law in the proposed decision be, and hereby are, **ADOPTED**.
- C. That the Recommended Order in the proposed decision be, and hereby is, **ADOPTED**.
- D. That the records, files, and documents of the Maryland Real Estate Commission reflect this decision.

¹ The Commission notes the following harmless typographical errors requiring correction for clarity only:

- The property on Parkhill Place in Nottingham, Maryland is either identified with an incorrect house number or without the house number in the proposed decision. All references to that property are to 37 Parkhill Place, Nottingham, Maryland 21236.
- On page 4 of the proposed decision the ALJ identifies exhibits. GF Ex. 6 is listed as undated but the print out is dated “January 15, 2019”.

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 this 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 REAL ESTATE COMMISSION

July 17, 2019
Date

By: SIGNATURE ON FILE

The contested case provisions of the Administrative Procedure Act, the Department's and the MREC's procedural regulations, and the OAH 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:

- Farley Property Management Agreement, August 10, 2007
- Lease for 17 Parkhill Place, Nottingham, Maryland 21236
- Statements from the Respondent re: Security Deposit

CL Ex. 2:

- Farley Property Management Agreement, August 10, 2007
- Lease for 19 Silver Hill Court, Perry Hall, Maryland 21128 (Silver Hill)

CL Ex. 3:

- E-mail from John Tselepis, March 12, 2018
- E-mails from John Tselepis, April 4 through April 7, 2018
- Letter from Advanced Property Management, July 20, 2018

CL Ex. 4: Receipts from Earl Smith, May 18, 2016 and May 20, 2016

I admitted the following exhibits for the Fund:

GF Ex. 1: OAH Hearing Notice, February 12, 2019 and MREC Hearing Order, November 9, 2018

GF Ex. 2: OAH Hearing Notice, January 16, 2019

GF Ex. 3: OAH Hearing Notice, November 29, 2018, returned unclaimed

- GF Ex. 4: Respondent's Licensing History, undated
- GF Ex. 5: Affidavit of Jillian Lord, January 15, 2019
- GF Ex. 6: Printout from Maryland Register of Wills, undated
- GF Ex. 7: Claimant's Complaint, August 6, 2018

The Respondent did not offer any exhibits.

Testimony

The Claimant testified and presented Michelle Lynn Miller and Earl Edward Smith Sr. as witnesses. 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 owners who rented their properties to third parties.
2. At all times relevant, the Claimant owned residences located at Parkhill Place, Nottingham, Maryland 21236 (Parkhill Place) and 19 Silver Hill Court, Perry Hall, Maryland 21128 (Silver Hill).⁴
3. On August 10, 2007, the Claimant and the Respondent entered into two separate property management agreements: one for Parkhill Place and one for Silver Hill. The Respondent managed the properties per the terms of their respective Property Management Agreements. The Property Management Agreements remained in full force and effect until on or around February of 2018.
4. On February 15, 2012, Michelle Lynn Miller (Miller) entered into a lease to rent Parkhill Place. The lease obligated Miller to provide a security deposit in the amount of

⁴ For the sake of simplicity, I shall refer to Parkhill Place and Silver Hill collectively as "the properties."

\$3,190.00. Miller provided the security deposit to the Respondent in full. The Respondent placed the security deposit in her escrow account.

5. On May 18, 2016, Earl Edward Smith Sr. (Smith) entered into a lease to rent Silver Hill. The lease obligated Smith to provide a security deposit in the amount of \$3,390.00. Smith provided the security deposit to the Respondent in full. The Respondent placed the security deposit in her escrow account.

6. Miller and Smith still reside in the properties under the terms of their respective leases. The Claimant is obligated to return their security deposits to Miller and Smith in full unless the terms of their respective leases allow him to retain all or part the security deposits under certain conditions.⁵

7. The Respondent terminated the Property Management Agreement and closed her business on April 1, 2018. The Respondent died on June 24, 2018.

8. The Claimant attempted to get the Respondent to return the security deposits on numerous occasions. Neither the Respondent nor anyone on her behalf responded to the Claimant.

9. The Respondent never returned the security deposits for the properties to the Claimant.

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 Monday, April 8, 2019 at 10:30 a.m., 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

⁵ For example, the Claimant can apply some or all of the security deposit to repairs to the properties from damage caused by the tenants.

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, 20850.⁶ 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 notice to that address.⁷ On February 12, 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 Deaven, Parker, Simon & Kokkolis (sic), LLC, 110 N. Washington Street, Suite 500, Rockville, MD 20850." On February 19, 2019, the OAH received the green return receipt from the USPS which the recipient signed on February 14, 2019.⁸ The USPS did not return the notice the OAH sent to the Rockville address by first class mail.

⁶ All information concerning Mr. Brouwer's search of the Estate and the results of that search is contained in the OAH file.

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

⁸ Likewise, on January 16, 2019, the OAH sent notice to the Respondent's personal representative at the same address. That notice concerned the original hearing date of February 12, 2019, which was cancelled due to liberal leave. The Respondent's personal representative signed for that notice on January 22, 2019.

Because someone signed for the notice sent by certified mail 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 decide 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 his entitlement to recover compensation from the Guaranty 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 his burden.

The Merits of the Case

Arguments of the Parties

Neither the Respondent nor the Fund presented a case. The Claimant testified he entered into property management agreements with the Respondent regarding both properties. The Respondent as the Claimant’s agent, entered into a lease with Miller for Parkhill Place and with Smith for Silver Hill. Both Miller and Smith paid deposits which the Respondent deposited in her

escrow account. In late 2017, the Claimant noticed the Respondent began to fall behind on sending him net rental proceeds from the two properties. The Claimant tried to contact the Respondent, but received little response. Ultimately the Respondent did provide the Claimant with the net rental proceeds she owed. However, she then announced the closure of her business. After that announcement, the Claimant only sporadically interacted with the Respondent or someone on her behalf. Despite the Claimant's repeated requests, the Respondent never returned the security deposits. Both Miller and Smith testified they paid the security deposits and are still residing in the properties. They both expect the security deposits back when they move out of their respective properties and implied they would sue the Claimant, if need be, for the return of their security deposits.

Analysis

Paragraph 3 of the leases for both properties entitled "Security Deposit: Payment and Receipt" contains the same boilerplate language with blanks for the parties to fill in the amount of the security deposit. (CL Exs. 1 and 2). The lease signed by Smith for Silver Hill contains a security deposit amount of \$3,390.00. The security deposit amount on the lease Miller signed for Parkhill Place is inexplicably blank. However, both Miller and Smith testified at the hearing. Both brought documentary evidence that they paid their respective security deposits. Smith's testimony and documentation was consistent with the security deposit amount on the Silver Hill lease.⁹ (CL. Ex. 2 and Ex.4) Miller testified and provided documentation¹⁰ that she provided the Respondent a \$3,190.00 deposit. Miller paid the Respondent the deposit as follows: \$1,750.00 initial deposit payment plus \$250.00 pet deposit. She then paid the balance of the deposit in monthly

⁹ Claimant's exhibit 4, which Smith produced at trial, contains two receipts signed by the Respondent. One receipt is in the amount of \$4,000.00 and the other receipt is in the amount of \$1,695.00. Smith testified the amounts represent the following: \$3,390.00 for the security deposit, \$1,695.00 for one month's rent and \$610.00 as prorated rent for moving in earlier than the commencement of the lease.

¹⁰ The documentation Miller provided concerned an agreement to pay the deposit as set forth above. She only had one copy of the agreement and without objection from counsel I simply read the document into the record.

installments of \$297.50 per month from March 1, 2012 to June 1, 2012. I listened to Smith's testimony and Miller's testimony. They both testified credibly and assuredly. They both supported their testimony with documentation. Thus, I find they both Smith paid the Respondent a security deposit in the amount of \$3,390.00 and Miller paid the Respondent a security deposit in the amount of \$3,190.00.

Paragraph 2B of both Property Management Agreements entitled LEASE

NEGOTIATIONS reads:

[The Respondent] shall handle all negotiations with tenants with respect to leases. All such agreements are subject to the approval of [the Claimant]. However, [the Claimant] may provide [the Respondent] with authorization to lease under certain specified terms and conditions. IMPORTANT NOTICE: Monies collected from the tenants for the required SECURITY DEPOSIT will be held by [the Respondent] so as to comply with Maryland Landlord/Tenant Security Deposit Laws.

The Claimant testified the Respondent never returned the security deposits to him, nor provided an accounting of their use. There is no evidence in the record the Respondent returned the security deposits to the tenants. The Claimant supported his testimony by providing e-mails between himself and John Tselepis, an accountant hired by the Respondent. The e-mails support the Claimant's contention that when he requested the security deposits be returned, the Respondent did not honor that request. Most revealing is an e-mail from Tselepis to the Claimant dated April 4, 2018, which states in part:

[The Respondent] reviews the statements before signing and sending material. Due to health reasons, she can only work 2 hours per day, 3 times per week. She will not delegate to her husband who has authority to sign checks. The [sic] is a backlog of about 70 statements and checks. I do not have authority to sign checks.

(CL. Ex. 3)

Maryland Real Property Article Section 8-203(e) entitled "Return of Security Deposit with Interest" reads in pertinent part as follows:

(e)(1) Within 45 days after the end of the tenancy, the landlord **shall** return the security deposit to the tenant together **with simple interest** which has accrued at the daily U.S. Treasury yield curve rate for 1 year, as of the first business day of each year, or 1.5% a year, whichever is greater, less any damages rightfully withheld.

(2)(i) Except as provided in subparagraph (ii) of this paragraph, interest shall accrue at monthly intervals from the day the tenant gives the landlord the security deposit. Interest is not compounded.

(ii) No interest is due or payable:

1. Unless the landlord has held the security deposit for at least 6 months; or
2. For any period less than a full month.
3. Interest shall be payable only on security deposits of \$50 or more.

(Emphasis added)

I find by virtue of the statute, the Claimant is obligated to return the security deposits to Miller and Smith. I find the Respondent committed an act or omission by failing to return the security deposit 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* 1152 (10th ed. 2014). Under the terms of the Property Management Agreement, the Respondent agreed to hold the security deposits as a fiduciary. However, when the Respondent failed to return them to the Claimant when requested (despite having the ability to do so). Thus, I find the Claimant is entitled to reimbursement from the fund of \$6,580.00 representing the principal amount of the security deposit.

At the hearing, the issue arose as to whether the Claimant is entitled to reimbursement of the security deposits with interest. The Claimant seemed uncertain as to whether he could obtain an award of interest from the Fund. The Fund argued the Claimant was not entitled to interest. In advance of that argument, the Fund noted that neither lease contained a provision concerning the accrual of interest on the security deposits. Thus, the Fund reasoned, the Claimant did not incur an actual loss since the loss (the lack of interest accrual) did not emanate from the originating transaction (the lease).

On this issue I disagree with the Fund and shall recommend an award of interest as to both security deposits. As noted above, section 8-203(e) of the Real Estate Article required the Claimant to return the security deposits “**with simple interest** which has accrued at the daily U.S. Treasury yield curve rate for 1 year, as of the first business day of each year, or 1.5% a year, whichever is greater, less any damages rightfully withheld.” (Emphasis added) While the Claimant did not provide copies of the security deposit receipts, the property settlement agreements obligate the Respondent to hold the security deposits “so as to comply with Maryland Landlord/Tenant Security Deposit Laws.” With this language, I find the Claimant had reason to believe the Respondent would keep the security deposits in interest bearing accounts, to be returned with interest (as required by law). Thus, I find the Respondent’s failure to return not only the principal amount of the security deposits but also the accrued interest to be a misrepresentation as defined above. The Claimant, obligated under the law to pay Miller and Smith interest on their security deposits, will need to pay that interest himself. Thus, I find the Claimant suffered an actual loss with regard to the interest accrued on the security deposits.

Interest on the Miller Security Deposit

Miller did not provide her entire security deposit of \$3,190.00 until June 1, 2012. Thus, I find interest begins to accrue as of that date. The Treasury yield curve rate for one year, starting of the first business day of each year from 2012 through 2019 is as follows:¹¹

| First Business Day of the Year | Yield Curve Rate for one year |
|---------------------------------------|--------------------------------------|
| January 3, 2012 | 0.12% |
| January 2, 2013 | 0.15% |
| January 2, 2014 | 0.13% |
| January 2, 2015 | 0.25% |
| January 4, 2016 | 0.61% |
| January 3, 2017 | 0.89% |
| January 2, 2018 | 1.83% |
| January 2, 2019 | 2.60% |

Because the one year yield rate for 2012 through 2017 was less than 1.5%, I find, per section 8-203(e) of the Real Estate Article, that the Miller security deposit accrued 1.5% interest for those years. 1.5% of \$3,190.00 is \$47.85. For 2018, the one year yield rate exceeded 1.5% and the Miller security deposit earned 1.83% and 1.83% of \$3,190.00¹² is \$58.37.

¹¹ <https://www.treasury.gov/resource-center/data-chart-center/interest-rates> (last visited June 13, 2019)

¹² The statute does not require the interest be compounded.

For 2019, the one year yield rate again exceeded 1.5% and the Miller security deposit earned 2.60%, and 2.60% of \$3,190.00 is \$82.94. At that rate, interest accrues at \$6.91 per month. At the hearing, neither party suggested to which date I should recommend the Fund award interest. Given it is uncertain when the Fund will issue its final award, any recommendation by me would be speculative. Since Miller was still residing in Parkhill Place as of April 8, 2019, I will recommend the Fund award interest through at least March 2019. Accordingly I recommend the Fund award interest on the Miller security deposit as follows:

| Year or Month | Interest Amount |
|----------------------|------------------------|
| 2012 | \$27.86 ¹³ |
| 2013 | \$47.85 |
| 2014 | \$47.85 |
| 2015 | \$47.85 |
| 2016 | \$47.85 |
| 2017 | \$47.85 |
| 2018 | 58.37 |
| January, 2019 | \$6.90 |
| February, 2019 | \$6.90 |
| March, 2019 | \$6.90 |
| Total | \$346.18 |

¹³ For 2012, interest accrued at \$3.98 per month ($\$47.85/12=\3.98). Because interest did not commence until June, the Miller security deposit only earned seven months of interest that year, or \$27.86 ($\$3.98 \times 7 = \27.86).

Interest on the Smith Security Deposit

Smith provided his security deposit in the amount of \$3,390.00 on or around May 20, 2016. (CL. Ex. 4) Given Smith provided the security deposit toward the end of the month I find any interest accrued for May 2016 would be *de minimus*. Thus, for the sake of simplicity, I shall calculate the interest accrued on the Smith security deposit beginning June 1, 2016. The rates used shall be the same rates used to calculate the Miller security deposit. Thus, for 2016 and 2017, 1.5% of \$3,390.00 is \$50.85. For 2018, 1.83% of \$3,390.00 is \$62.03. For 2019, 2.60% of \$3,390.00 is \$88.14. For the same reason as Miller, I shall recommend the Fund reimburse interest through March 2019. Thus, I find the Smith security deposit earned interest as follows:

| Year or Month | Interest Amount |
|---------------|-----------------------|
| 2016 | \$29.61 ¹⁴ |
| 2017 | \$50.85 |
| 2018 | \$62.03 |
| January 2019 | \$7.34 ¹⁵ |
| February 2019 | \$7.34 |
| March 2019 | \$7.34 |
| April 2019 | \$7.34 |
| May 2019 | \$7.34 |
| June 2019 | \$7.34 |
| Total | \$164.51 |

¹⁴ For 2016, interest accrued at \$4.23 per month ($\$50.85/12=\4.23). Because interest did not commence until June, the Smith security deposit only earned seven months of interest that year, or \$29.61 ($\$4.23 \times 7 = \29.61).

¹⁵ $\$88.14/12 = \7.34

In light of the above, I find the following with regard to total principal and interest on the security deposits: \$3,190.00 (Miller Security Deposit Principal) + \$346.18 (Miller Security Deposit Interest) + \$3,390.00 (Smith Security Deposit Principal) + \$164.51 (Smith Security Deposit Interest) = \$7,090.69. I shall thus recommend the Fund award the Claimant \$7,090.69.¹⁶

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 he 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 amount of the award the Claimant is entitled to receive from the Fund is \$7,090.69. Md. Code Ann., Bus. Occ. § 17-404(b) (2018); COMAR 09.11.01.14.

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 \$7,090.69;

I further **PROPOSE** that the Maryland Real Estate Commission Guaranty Fund pay to the Claimant her actual monetary loss in the amount of \$7,090.69 for the Respondent's wrongful acts and omissions;

¹⁶ In his complaint, the Claimant requested reimbursement of \$7,031.48 from the Fund. On his claim form, the Claimant stated this figure came from the principal on the security deposits, plus "earned interest and 6% pre-judgment interest." He did not explain his math. The Claimant's amount is \$59.21 less than what I find the principal and interest to be on the security deposits. Since the Claimant requested an award of principal and interest from the Fund, I find the Respondent to be on proper notice.

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 Commission 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.

June 19, 2019
Date Decision Issued

SIGNATURE ON FILE

Nicolas Orechwa
Administrative Law Judge

NO/sw
#180469