

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

*

CASE NO. 2015-RE-220

*

v.

*

KEVIN MOODY,
Respondent

*

and

*

IN THE MATTER OF THE CLAIM
OF ROY AND CRYSTAL HARRELL
AGAINST THE MARYLAND REAL
ESTATE COMMISSION GUARANTY
FUND

*

OAH NO. DLR-REC-24-18-23963

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PROPOSED ORDER

The Findings of Fact, Proposed Conclusions of Law and Recommended Order of the Administrative Law Judge dated February 21, 2019, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of March, 2019

ORDERED,

A. That the Findings of Fact in the proposed decision be, and hereby are, **ADOPTED** in part and **AMENDED** in part as follows:

Change No. 1, DISCUSSION. Sentence commencing on page 21, continuing to page 22. "To that end, I have included in my calculation of the Claimants' actual loss Items One, Two, Three, Five, Six, Nine and Eleven from the Diligent estimate as outlined above in the findings of fact."

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** in part and **AMENDED** in part as follows:

ORDERED that the Respondent, Kevin Moody, be reprimanded;

ORDERED that the Respondent, Kevin Moody, pay a civil penalty in the amount of **One Thousand Five Hundred Dollars (\$1,500.00)** within thirty days;

ORDERED that the Claimants, Roy Harrell and Crystal Harrell, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of **Fifteen Thousand Eight Hundred Sixty Five Dollars (\$15,865.00)**;

ORDERED that all real estate licenses held by the Respondent, Kevin Moody, shall be suspended until the civil penalty is paid and the Maryland Real Estate Guaranty Fund is reimbursed, including any interest that is payable under the law; and

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

E. Pursuant to Annotated Code of Maryland, State Government Article § 10-220, the Commission finds that the Proposed Decision of the Administrative Law Judge required modification because (1) one item was missing from a list of items included in the calculation of claimant's guaranty fund award in the Administrative Law Judge's Discussion, as evidenced by previous findings of fact and the award total and (2) it omitted from the Recommended Order deadlines for payment of the civil penalty and suspension of all licenses held by the Respondent until the civil penalty is paid and the Maryland Real Estate Guaranty Fund is reimbursed.

F. 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 exceptions and 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.

MARYLAND STATE REAL ESTATE
COMMISSION

26 March 2014
Date

Michael H. Hession
By: For Anne S. Cooke
Anne S. Cooke

MARYLAND REAL ESTATE
COMMISSION

v.

KEVIN MOODY,

RESPONDENT,

and

IN RE: CLAIM OF ROY AND

CRYSTAL HARRELL AGAINST

THE MARYLAND REAL ESTATE

GUARANTY FUND

* BEFORE STEPHEN W. THIBODEAU,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: DLR-REC-24-18-23963
* REC CASE No.: 2015-RE-220

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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 September 4, 2014, Roy and Crystal Harrell (Claimants) filed a Complaint against licensed real estate salesperson Kevin Moody (Respondent). That same day, the Claimants also filed a Claim for compensation from the Real Estate Guaranty Fund (Fund) for losses the Claimants allegedly sustained as a result of the Respondent's misconduct. The Complaint and Claim both arose out of a contract of sale entered into by the Claimants on or about April 5, 2014 for the purchase of 3402 Rickey Avenue in Temple Hills, Maryland (the Property).

On February 6, 2018, after an investigation, the Maryland Real Estate Commission (REC or Commission) determined that charges against the Respondent were warranted and that the Claimants were entitled to a hearing of their Claim and, accordingly, the Commission issued a Statement of Charges and Order for Hearing (Statement of Charges) against the Respondent. The Statement of Charges set forth information about the Claim and further alleged that the Respondent violated subsections 17-322(b)(4), (b)(25), (b)(32), (b)(33) and (c) of the Business Occupations and Professions article (Business Occupations Article) of the Maryland Code and that he also violated section 09.11.02.01C and 09.11.02.02A of the Code of Maryland Regulations (COMAR). The Statement of Charges advised the Respondent that if the charged violations were substantiated, the Commission could sanction him by, among other things, suspending or revoking his real estate license and imposing a monetary fine. On June 26, 2018, the Commission forwarded the Statement of Charges to the Office of Administrative Hearings (OAH) to conduct a hearing.

On November 26, 2018, I conducted the hearing at the Prince George's County Government Center, 9201 Basil Court, Room 102, Largo, Maryland. Md. Code Ann., Bus. Occ. & Profs. §§ 17-324(a) and 17-408(a) (2018). Hope M. Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the REC on the charged violations of law. Shara Hendler, Assistant Attorney General, DLLR, represented the REC on the claim for compensation from the Fund. H. Andrew Reckson, Esquire, represented the Claimants. Gerard G. Magrogan, Esquire, represented the Respondent.

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings before the Office of the Secretary of the DLLR, and the Rules of Procedure of the OAH govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 and Supp. 2018); COMAR 09.01.02; COMAR 09.01.03; COMAR 28.02.01.

ISSUES

1. In connection with the sale of the Property, did the Respondent violate the Business Occupations Article, subsections 17-322(b)(4), (b)(25), (b)(32), (b)(33), or (c), or COMAR 09.11.02.01C or 09.11.02.02A?
2. If the Respondent violated any of these statutory or regulatory provisions, what is the appropriate sanction?
3. Have the Claimants established a compensable claim against the Fund under section 17-404 of the Business Occupations Article; and, if so, what is the appropriate award?

SUMMARY OF THE EVIDENCE

Exhibits

The REC offered the following exhibits, which I admitted into evidence:

- REC Ex. 1 – Notice of Hearing, dated September 4, 2018; Statement of Charges and Order for Hearing, July 20, 2018
- REC Ex. 2 – REC Licensing History for the Respondent, printed November 14, 2018
- REC Ex. 3 – Report of Investigation (pgs. 1-15), completed February 6, 2018, with the following attachments¹:
- Complaint and Guaranty Fund Claim Form, September 4, 2014 (pgs. 16-18)
 - Estimate from Rogue Construction, undated (pg. 19)
 - Various emails between the Claimants and the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE), July 15, 2014 through August 8, 2014 (pgs. 20-23)
 - Affidavit in Support of Petition for Injunctive Relief by DPIE Inspector Sylvester Colbert, January 8, 2016 (pg. 24)
 - Addendum to Contract of Sale, April 4, 2014 (pg. 25)
 - Order of Dismissal in case of *Prince George's County, Md. v. KCE, Inc.*, District Court of Maryland for Prince George's County, Civil Case #0502-SP11250-2016, July 29, 2016 (pg. 26)
 - Property Inspections and Condition Notice for the Property, May 28, 2014 (pgs. 27-29)
 - Email from Marita Joseph to the Claimants, June 11, 2014 (pg. 30)
 - Email from Marita Joseph to the Respondent, June 13, 2014 (pg. 31)
 - Email from Marita Joseph to the Claimants, May 10, 2014 (pg. 32-33)

¹ Several of the attachments were duplicative. As the REC included page numbers for the attachments, I have separately listed each attachment and included the page numbers.

- Email from the Respondent to Marita Joseph, May 29, 2014 (pg. 34)
- Various emails between the Respondent and Marita Joseph, May 29, 2014 through June 16, 2014 (pgs. 35-37)
- Prince George's County Permit for the Property, April 18, 1985 (pg. 38)
- Prince George's County Electrical Permit for the Property, June 10, 2014 (pg. 39)
- Invoice from Kestons Plumbing and Repairs, June 24, 2014 (pg. 40)
- Emails between the Claimants and the DPIE, July 15, 2014 through July 24, 2014 (pgs. 41-46)
- Property Inspections and Condition Notice for the Property, May 28, 2014 (pg. 47)
- Letter from the REC to the Claimants, February 18, 2015 (pg. 48)
- Email from the DPIE to the Claimants, June 19, 2014 (pg. 49)
- Emails between the Claimants and Jonathan Love, attorney for the Respondent, October 15, 2014 (pg. 50)
- Location Drawing of the Property, October 25, 2013 (pg. 51)
- Official Transcript of Proceedings, Excerpt of Judge's Ruling in case of *Prince George's County, Md. v. KCE Inc.*, Circuit Court for Prince George's County, Maryland, Civil Action Law No. 14-36555, March 13, 2015 (pgs. 52-55)
- Notices of Violation issued by the DPIE to the Respondent for the Property, March 25, 2014 (pgs. 56-57)
- Affidavit in Support of Petition for Injunctive Relief by DPIE Inspector Sylvester Colbert, May 23, 2014 (pg. 58)
- Letter from the DPIE to the Claimants, March 25, 2015 (pg. 59)
- Notice of Violation issued by the DPIE to the Claimants and the Respondent for the Property, March 20, 2015 (pgs. 60-61)
- Emails between the DPIE and the Claimants, June 19, 2014 and June 20, 2014 (pgs. 62-63)
- Various photos of the Property, undated (pgs. 64-69)
- Print-out from the DPIE's Permits and Licensing Application Tracking System for the Property, last accessed July 7, 2014 (pgs. 70-71)
- Emails between Marita Joseph and the Respondent, May 29, 2014 (pgs. 72-73)
- Various photos of the Property, undated (pgs. 74-84)
- Location drawing of the Property, October 23, 2013 (pg. 85)
- Estimate of Rogue Construction, undated (pg. 86)
- Residential Contract of Sale, offer date April 5, 2014 (pgs. 87-97)
- Amendment/Addendum to Contract of Sale, undated (pg. 98)
- General Addendum to Contract of Sale, April 8, 2014 (pg. 99)
- FHA Financing Addendum, April 5, 2014 (pgs. 100-101)
- Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards, April 5, 2014 (pg. 102)
- Notice to Buyer and Seller of Buyer's Rights and Seller's Obligations Under Maryland's Single Family Residential Property Condition Disclosure Law, April 5, 2014 (pgs. 103-104)

- Disclosure of License Status Addendum, April 4, 2014 (pg. 105)
- Prince George's County Jurisdictional Addendum to the M.A.R. Residential Contract of Sale, April 4, 2014 (pgs. 106-108)
- Prince George's County Disclosure and Notice Addendum, April 4, 2014 (pg. 109)
- Confirmation of Broker's Commission, April 4, 2014 (pgs. 110-113)
- First Page of Residential Contract of Sale, offer date April 5, 2014 (pg. 114)
- Disclosure of Licensee Status Addendum, April 4, 2014 (pg. 115)
- First Page of Residential Contract of Sale, offer date April 5, 2014 (pg. 116)
- First Page of Residential Contract of Sale, offer date April 5, 2014 (pg. 117)
- Notice of Violation for the Property from the DPIE, March 20, 2015 (pg. 118)
- Page 10 of the Residential Contract of Sale, April 5, 2014 (pg. 119)
- Letter from the REC to the Respondent, November 13, 2014 (pg. 120)
- Letter from the Respondent to the REC, with attachment, November 21, 2014 (pgs. 121-124)
- Letter to the Respondent from the REC, November 13, 2014 (pg. 125)
- Letter from Jonathan Love, Esq., attorney for the Respondent, to the Claimants, October 16, 2014 (pg. 126)
- Letter from Jonathan Love, Esq., attorney for the Respondent, to Richard Faltz, October 16, 2014 (pgs. 127-128)
- Prince George's County Permit for the Property, with handwritten notation of "Final OK" from Sylvester Colbert on June 12, 2014 (pg. 129)
- Correction Order for the Property from the DPIE, June 11, 2014 (pg. 130)
- Prince George's County Electrical Permit for the Property, June 12, 2014 (pg. 131)
- Email from the Respondent to Marita Joseph, June 11, 2014 (pg. 132)
- Various emails between the Claimants; the Respondent; Marita Joseph; Cynthia Ingram, Settlement Officer for Sheridan Title, Inc.; and Susan Kluge, Senior Processor for American Financial Network, Inc., June 11, 2014 (pgs. 133-136)
- Letter from the Respondent to the Metropolitan Police Department of Washington, D.C., October 16, 2014 (pgs. 137-138)
- Text message exchange between Claimant Crystal Harrell and the Respondent, October 15, 2014 (pg. 139)
- Email from Diane Carson, Investigator for the REC, to the Respondent, January 16, 2018 (pg. 140)
- Email from the Respondent to Diane Carson, January 16, 2018 (pgs. 141-142)
- Email from H. Andrew Reckson, Attorney for the Claimants, to Diane Carson, September 14, 2016 (pg. 143)
- Disclosure of Licensee Status Addendum, April 4, 2014 (pg. 144)
- Page Two of the Respondent's Letter to the REC from November 21, 2014 (pg. 145)
- Email from the Respondent to Diane Carson, January 16, 2018 (pgs. 146-147)

- Prince George's County Permit for the Property, November 27, 2013 (pg. 148)
- Notice of Violation for the Property from the DPIE, March 25, 2014 (pgs. 149-150)
- Affidavit in Support of Petition for Injunctive Relief by DPIE Inspector Sylvester Colbert, May 23, 2014 (pg. 151)
- Prince George's County Electrical Permit for the Property, June 12, 2014 (pg. 152)
- Correction Order for the Property from the DPIE, June 11, 2014 (pg. 153)
- Prince George's County Electrical Permit for the Property with "Final OK", June 12, 2014 (pg. 154)
- Email from the DPIE to the Claimants, June 19, 2014 (pg. 155)
- Email from Jonathan Love, attorney for the Respondent, to the Claimants, October 15, 2014 (pg. 156)
- Email from Jonathan Love, attorney for the Respondent, to the Claimants, October 15, 2014 (pg. 157)
- Letter from the REC to the Claimants, February 18, 2015 (pg. 158)
- Notice of Violation for the Property from the DPIE, March 20, 2015 (pg. 159)
- Affidavit in Support of Petition for Injunctive Relief by DPIE Inspector Sylvester Colbert, January 8, 2016 (pg. 160)
- Maryland Casesearch printout for *Prince George's County, Md. v. KCE, Inc.*, District Court of Maryland for Prince George's County, Case #0502-SP8489-2014, case filed July 22, 2014 (pgs. 161-163)
- Notice of Appeal to Circuit Court for Prince George's County for case of *Prince George's County, Md. v. KCE, Inc.*, District Court of Maryland for Prince George's County, Case #0502-SP8489-2014, October 28, 2014 (pg. 164)
- Transmittal of Record, December 22, 2014 (pg. 165)
- Maryland Casesearch printout for *Prince George's County, Md. v. KCE, Inc.*, Circuit Court for Prince George's County, Case #CAL14-36555, case filed December 22, 2014 (pgs. 166-167)
- Official Transcript of Proceedings, Excerpt of Judge's Ruling in case of *Prince George's County, Md. v. KCE Inc.*, Circuit Court for Prince George's County, Maryland, Civil Action Law No. 14-36555, March 13, 2015 (pgs. 168-171)
- Petition for Injunctive Relief, District Court of Maryland for Prince George's County, *Prince George's County, Md. v. Roy L. Harrell, Jr., Crystal Harrell and KCE, Inc.*, undated, (pgs. 172-174)
- Order to Show Cause, District Court of Maryland for Prince George's County, *Prince George's County, Md. v. Roy L. Harrell, Jr., Crystal Harrell and KCE, Inc.*, Case #SP05-02-11250-16, May 9, 2016 (pg. 175)
- Notice of Violation for the Property from the DPIE, March 20, 2015 (pg. 176)
- Affidavit in Support of Petition for Injunctive Relief by DPIE Inspector Sylvester Colbert, January 8, 2016 (pg. 177)

- Order to Show Cause, District Court of Maryland for Prince George's County, *Prince George's County, Md. v. Roy L. Harrell, Jr., Crystal Harrell and KCE, Inc.*, Case #SP05-02-11250-16, May 9, 2016 (pgs. 178-179)
- REC Licensing History for the Respondent, printed January 31, 2018 (pgs. 180-182)

REC Ex. 4 – Photograph of Stop Work Order for the Property, November 19, 2013

The Respondent offered the following exhibits, which I admitted into evidence:

Resp. Ex. 1 – Home Inspection Report for the Property, May 24, 2014

Resp. Ex. 2 – Property Inspections and Condition Notice for the Property, May 28, 2014

Resp. Ex. 3 – Pre-Settlement Walk Through Inspection Acceptance Contract of Sale or Lease for the Property, June 12, 2014

Resp. Ex. 4 – Application for Building Plan Examination and Permit for the Property, November 27, 2013

Resp. Ex. 5 – Blueprint Drawing for the Property, approved by the DPIE November 27, 2013

Resp. Ex. 6 – Email from the Respondent to Marita Joseph, May 10, 2014

Resp. Ex. 7 – Various emails between the Claimants, the Respondent, and Marita Joseph, May 29, 2014 through June 16, 2014

The Claimants offered the following exhibit, which I admitted into evidence:

Clmt. Ex. 1 – Estimate from Diligent Construction & Management, LLC, November 25, 2018

The Fund offered the following exhibit, which I admitted into evidence:

Fund Ex. 1 – Email from Richard Faltz to the Claimants, with attached permit history for the Property, November 24, 2018

Testimony

The REC presented testimony from the Claimant, Roy Harrell; Diane Carson, its real estate investigator; and Richard Faltz, the Claimants' neighbor.

The Claimants presented testimony from the Claimant, Crystal Harrell, and the Respondent.

The Respondent testified in his own behalf when he was called as a witness by the Claimants.

The Fund did not present any witnesses.

FINDINGS OF FACT

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

1. The Respondent has been a licensed real estate broker in Maryland since 2007. In addition to being a licensed real estate broker, the Respondent was a licensed real estate agent from 1996 to 2008. The Respondent's trade name as a realtor is KBM Realtors, Inc. The Respondent has no prior complaints filed against him at the REC.
2. The Respondent is President and CEO of KCE, Inc. (KCE), a 501(c)(3) non-profit corporation that is engaged in the business of purchasing foreclosed homes and renovating those homes for resale.
3. KCE purchased the Property at some point prior to November 18, 2013, and began renovation work on the property.
4. The Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) issued a stop work order to the Respondent for renovations on the property on November 19, 2013 for the Respondent's failure to obtain proper permits from Prince George's County.
5. On November 27, 2013, the Respondent obtained a permit from the DPIE to perform renovations on the Property after submitting an application for permit listing Jose Solis as the contractor and KCE as the homeowner. The scope of the permit provided for general interior renovation, including the kitchen, doors, windows, and drywall replacement at the Property.
6. The Respondent did not know whether Mr. Solis was a licensed home improvement contractor, and there is no indication Mr. Solis was properly licensed as a home improvement contractor by the State of Maryland.

7. At some point prior to April 2014, the Claimants, through their real estate agent Marita Joseph, contacted the Respondent regarding a property for sale on Fisher Road in Temple Hills, Maryland. The Respondent was the listing agent for the Fisher Road property.

8. The Respondent informed Ms. Joseph that the Fisher Road property was under contract, but directed Ms. Joseph's attention to the Property and indicated to the Claimants that the Property was currently being renovated and would be similar to the Fisher Road property.

9. The Claimants viewed the Property and agreed to purchase it from KCE. The Claimant Roy Harrell entered into a Contract of Sale on April 5, 2014 to purchase the property for \$244,500.00 and the date of contract acceptance was April 8, 2014. The Respondent's broker commission for the sale was two and one-half percent, or \$6,112.50.

10. Prior to the contract acceptance, the DPIE issued a notice of violation to KCE and the Respondent on March 25, 2014 for renovations at the Property. Specifically, the March 25, 2014 notice of violation required the following corrective actions by April 25, 2014:

- Obtaining required permits for renovations being performed at the Property, including but not limited to the building;
- Paying special investigation fees totaling \$250.00;
- Obtaining the required electrical permit for all electrical work being performed at the Property;
- Obtaining all required inspections for work performed once the necessary permits were issued; and
- Stopping all work until all of the issues listed in the notice of violation were resolved.

11. The Respondent did not inform the Claimants of the stop work order issued on November 19, 2013, or the March 25, 2014 notice of violation prior to the contract acceptance on April 8, 2014.

12. On May 10, 2014, the Respondent emailed Ms. Joseph with several photo attachments to indicate that the renovation work on the Property was progressing and to schedule a home inspection. Ms. Joseph forwarded that information to the Claimants.

13. On May 23, 2014, Sylvester Colbert, an inspector for the DPIE, executed an affidavit for injunctive relief against KCE for failure to take corrective action related to a January 17, 2014 inspection of the Property that resulted in the March 25, 2014 violation notice.

14. On May 24, 2014, a home inspection of the Property was conducted on behalf of the Claimants by Stephan Baker of Your Home Matters Property Inspection Service, LLC. Mr. Baker recommended the following issues with the Property be remedied:

- Repair and replace the roof coverings because of excess moss and algae growth;
- Install a downspout extension and a buried drain to carry water away from the home at the left corner rear of the home;
- Replace the screen on the storm door, main entry;
- Install window well covers at all window wells;
- Fill the steps where they meet the wall for the rear entry stairs;
- Replace the asphalt drive at the front of the home due to settlement cracks;
- Regrade the property at the rear and right side of the home;
- Repair the concrete steps at the front of the home due to settlement cracks;
- Caulk along the floor of the basement bathroom;
- Repair the leaks to the waste line in the master bath sink;
- Label all breakers on the main electrical panel;
- Repair a three-prong outlet in the master bedroom that was inoperable;
- Repair a loose three-prong outlet in the basement den;
- Secure the electrical wiring in the attic;
- Have a qualified chimney sweep inspect the chimney liner; and
- Repair the exhaust fan and vents for the master bath and hall bath to vent outside the home instead of into the attic.

15. On May 29, 2014, the Respondent agreed to the following corrective actions requested by the Claimants prior to settlement on the Property and pursuant to the home inspection:

- Repair of the plumbing waste line leak under sink in the master bathroom;
- Repair of three-prong electric outlet on rear wall of master bedroom;
- Downspout extension and bury drain line away from home at left corner facing rear of home;
- Screen placement on main entry storm door;
- Replacement of missing window well covers at all window wells;
- Fill-in of rear entry stairs where steps meet wall;
- Drainage correction of negative slope towards rear of home and right side;
- Labeling of main panel breakers identifying location; and
- Venting of exhaust fan of master bath and hall bath out of attic to the outside.

16. The DPIE issued an electrical permit to KCE for the Property on June 10, 2014.

However, the DPIE also issued a correction order related to the electrical work for the Property on June 11, 2014. Mr. Colbert gave the final approval for the overall permit for the Property as well as the electrical permit on June 12, 2014.

17. The Respondent forwarded the June 11, 2014 correction order on that date to Ms. Joseph and assured Ms. Joseph the work to remedy the correction order would be completed prior to settlement.

18. On June 12, 2014, the Claimants settled on the Property.

19. On June 13, 2014, Ms. Joseph emailed the Respondent to indicate that Mr. Solis had not returned to the Property to perform the repairs requested by the Claimants.

20. On June 16, 2014, Ms. Joseph emailed the Respondent again to indicate that the venting of the exhaust fan to the outside of the home had not been completed as agreed to prior to settlement. The Respondent replied to Ms. Joseph and indicated that he had discussed this item with Claimant Roy Harrell but provided no further details.

21. On June 19, 2014, Mike J. Metz and Keith A. Goodhue from the DPIE emailed the Claimants to request to inspect the Property to ensure it met minimum code compliance.

22. On the same date, June 19, 2014, the Claimants hired a plumber, Kestons Plumbing and Repairs, to perform repair work related to a leak in the main floor bathroom of the Property. The total cost for the repair, paid by the Claimants, was \$275.00.

23. A short time after moving into the home, the Claimants spoke with Richard Faltz, a neighbor. Mr. Faltz is a licensed home improvement contractor. Mr. Faltz informed the Claimants that a stop work order had been placed on the Property in November 2013. Mr. Faltz also informed the Claimants that he noticed work had not stopped following the order, and that in his opinion, the quality of the renovation work done on the Property was poor.

24. On July 22, 2014, Prince George's County, Maryland filed a lawsuit seeking an injunction against KCE in the District Court of Maryland for Prince George's County. The lawsuit was related to alleged code violations against KCE. Ultimately, the case was appealed to the Circuit Court for Prince George's County, where on March 13, 2015, Judge Melanie M. Shaw Geter dismissed the case against KCE for the County's failure to establish "a sufficient nexus for the Court to issue an injunction against KCE."

25. On March 20, 2015, the DPIE issued a notice of violation to the Claimants and the Respondent for corrective action related to the Property. Specifically, the March 20, 2015 notice of violation sought the following corrective action to be performed no later than April 20, 2015:

- Obtain all required Prince George's County permits, building for the interior and exterior renovation, and HVAC for ductwork and furnace installation work, or remove same;
- Obtain the required Prince George's County electrical permit for all work performed at the above referenced property, or remove same;
- Remove all drywall installed without the required inspections to expose concealed framing, insulation, and ductwork;
- Call for all the required inspections, framing, plumbing, close in, electrical rough in, HVAC, and final inspection; and
- Pay special investigation fees totaling \$250.00.

26. By January 8, 2016, the corrective action required by the DPIE in its March 20, 2015 notice of violation was not performed by either the Claimants or the Respondent. As such, Prince George's County, Maryland filed a lawsuit in the District Court of Maryland for Prince George's County against both the Claimants and the Respondent and an Order to Show Cause was issued on May 9, 2016. However, on July 20, 2016, the County's lawsuit seeking an injunction against the Claimants and the Respondent was dismissed.

27. As of November 25, 2018, the corrective actions cited in the DPIE's March 20, 2015 notice of violation had yet to be performed at the Property.

28. At no point during the renovation did the Respondent secure a plumbing permit or HVAC permit from the DPIE to perform work at the Property.

29. As of November 25, 2018, the plumbing and HVAC work listed on the May 24, 2014 conditions notice that the Respondent agreed to repair was incomplete. In addition to the leak in the main bathroom, which caused water to leak into a lower level bedroom, there was mold present in the basement of the home due to improper HVAC venting, as well as paint peeling in the main bathroom due to improper HVAC venting.

30. On November 25, 2018, the Claimants received an estimate of work from Diligent Construction and Management, LLC (Diligent), a Maryland licensed home improvement contractor, to remedy the plumbing and HVAC issues.

31. The estimate from Diligent included the following recommended repairs to remedy the plumbing and HVAC issues the Respondent failed to address prior to settlement on the Property:

- Open necessary walls to access and redo the plumbing work of the hall bathroom as per local code, charge including all damaged walls and tile repairs: \$4,700.00;
- Redo the hall bathroom ventilator and duct outside: \$1,200.00;
- Open necessary walls in master bathroom to assess and redo plumbing, charge including all reconstruction: \$4,550.00;
- Duct kitchen vent to outside: \$850.00;
- Move HVAC outdoor unit away from the house: \$780.00;
- Separate sewer and down spout from sub pump: \$2,300.00;
- Redo master bathroom exhaust fan and duct outside: \$1,200.00.

32. The Claimants have no familial or business relationship with the Respondent.

DISCUSSION

The Regulatory Charges

The REC charged the Respondent with violating subsections 17-322(b)(4), (b)(25), (b)(32) (b)(33) and (c) of the Business Occupations Article, and subsections 09.11.02.01C and

09.11.02.02A of COMAR. Section 17-322 of the Business Occupations Article provides, in pertinent part:

- (b) Subject to the hearing provisions of § 17-324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:
- ... (4) intentionally or negligently fails to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee or applicant deals;
 - ... (25) engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;
 - ... (32) violates any other provision of this title; [or]
 - (33) violates any regulation adopted under this title or any provision of the code of ethics[.]
 - ... (c) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the Commission may impose a penalty not exceeding \$5,000 for each violation.

COMAR 09.11.02.01 provides, as pertinent here:

- 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.

Finally, COMAR 09.11.02.02 provides, as pertinent here:

- A. In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction.

The REC bears the burden of establishing, by a preponderance of the evidence, that the Respondent committed the violations alleged in the Statement of Charges. COMAR 09.01.02.16A. 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 Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

1. 17-322(b)(4) charge (Failure to Disclose a Material Fact)

The crux of the REC's charge against the Respondent for violation of subsection 17-322(b)(4) of the Business Occupations Article turns on the question of whether the November 2013 stop work order or the March 25, 2014 notice of violation and stop work order were material facts that should have been disclosed to the Claimants prior to executing the Contract of Sale approximately two weeks later on April 8, 2014. The REC argues that violation notices constituted material facts that should have been disclosed to the Claimants, and the Claimants themselves testified that had they known of the violation notices they would not have entered into the Contract to purchase the home.

The Respondent testified that he did not consider the March 25, 2014 violation notice a material fact that needed to be disclosed because notices of violation were a typical part of the home renovation process. The Respondent did disclose, however, the electrical permit correction order from June 11, 2014, as well as the approval from the DPIE for the correction order, to the Claimants' real estate agent, Marita Joseph, one day prior to settlement on the Property. Disclosure of the June 11, 2014 correction order demonstrates that the Respondent knew or should have known such correction orders and notices of violation are material facts that need to be disclosed to potential buyers. As such, at a minimum, the Respondent negligently failed to disclose a material fact to the Claimants when he did not inform them of the March 25, 2014 violation notice shortly before purchase.

Moreover, the Claimants found out after moving into the home that a stop work order had been issued in November 2013 during renovations of the Property, and that all of the proper permits had not been issued with respect to the Property's renovations. Any one of those facts

would have led to the Claimants not engaging in the contract of sale per their testimony, which makes those facts material for the purposes of the sale of the Property. I therefore find the REC has met its burden with respect to charges under subsection 17-322(b)(4) of the Business Occupations Article.

2. 17-322(b)(25) charge (Conduct Demonstrating Bad Faith, Incompetency, or Untrustworthiness)

Because I have found that the Respondent was negligent in failing to disclose material facts to the Claimants related to the Property's sale, I necessarily find that the Respondent was incompetent in his practices surrounding the Property's sale. There was additional evidence presented demonstrating the Respondent's incompetence in relation to the Property, however.

The Respondent testified that since at least 2005 KCE has been involved with purchasing and renovating properties for resale. The Respondent is the President and CEO of KCE. Yet with respect to the Property, the Respondent did not know whether the contractor he hired to renovate the Property was a licensed contractor. Indeed, he referred to the contractor on site by first name only, "Jose," and said that Jose worked for someone named "Martinez." The Respondent indicated that he dealt with Martinez's company for purposes of the renovation work at the Property, but could not remember the name of the company, or whether Jose, Martinez, or the company were properly licensed home improvement contractors.

Given that the Respondent's business as President and CEO of KCE consisted of purchasing and renovating properties for resale, the Respondent's lack of knowledge with respect to whom he hired to renovate the Property displayed incompetence in his duties as a real estate broker. Moreover, the Respondent's admitted ignorance of the permitting and renovation process overall demonstrated, at least with respect to the Property, his overall incompetence. The REC therefore met its burden to demonstrate a violation by the Respondent under subsection 17-322(b)(25) of the Business Occupations Article.

3. Alleged COMAR violations

The REC charged the Respondent with violating two sections of COMAR: 09.11.02.01C and 09.11.02.02A. These charges are brought through subsection 17-322(b)(33) of the Business Occupations Article, which allows for charges for violations of applicable regulations and the REC licensee's code of ethics. The REC also charged Respondent with a violation of subsection 17-322(b)(32) of the Business Occupations Article, which merely states that the Respondent could also be charged with a violation "of any other provision of this title." Because the REC did not provide any other provision of the title except for subsections 17-322(b)(4) and (25), and did not otherwise argue any other violation of any other provision except those explicitly charged, I consider any potential charges under subsection 17-322(b)(32) to be dismissed.

Pursuant to COMAR 09.11.02.01C, the REC argues that the Respondent's failure to disclose the violation notices to the Claimants prior to the contract of sale constituted a misrepresentation on the part of the Respondent. A claim of negligent misrepresentation requires a showing that a party, owing a duty of care, negligently asserts a false statement, and intends the statement to be acted on by the other party, with knowledge that reliance will cause loss to that other party, who takes action on the misrepresentation and sustains loss. *Balfour Beatty Infrastructure, Inc. v. Rummel Klepper & Kahl, LLP*, 451 Md. 600, 627 n.18 (2017). Negligent misrepresentation can include a negligent failure to disclose. *See Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 135-36 (2007). Because I have already found the Respondent negligently failed to disclose a material fact, he also engaged in negligent misrepresentation in the sale of the Property to the Claimants. As such, the REC has met its burden with respect to demonstrating the Respondent violated COMAR 09.11.02.01C.

Finally, the REC charges the Respondent with violation of COMAR 09.11.02.02A, in particular the provision that states a licensee is not relieved from statutory obligations towards

other parties in a given transaction. Here, the REC argues that while this COMAR provision seems to place emphasis on a licensee promoting the interest of a client first and foremost, a licensee must also ensure it complies with the law in his or her dealings with other parties to a transaction. The REC's argument, therefore, is while the Respondent was clearly representing the interests of his client, REC, in the transaction involving the Property, he ignored his statutory obligations with respect the Claimants.

There can be no doubt that, given my findings in relation to the statutory charges in this case, the Respondent did neglect his statutory obligations to the Claimants. However, because I have found those violations already, it would be superfluous to find another violation merely on the basis that the Respondent violated those statutory obligations. As such, I decline to find a violation of COMAR 09.11.02.02A.

The REC has recommended the Respondent receive a reprimand and a \$500.00 fine for each violation. Given the Respondent's long licensing history and lack of any history of complaints prior to this case, as well as the Respondent's negligent, but not necessarily intentional, actions in this case, I agree with the REC's recommendation. As such, I will recommend the Respondent receive a reprimand for the three violations and a total fine of \$1,500.00.

The Guaranty Fund Claim

Section 17-404 of the Business Occupations Article 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:

- (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) The amount recovered for any claim against the Guaranty Fund may not exceed \$50,000 for each claim.

With respect to claims against the Fund, COMAR 09.11.01.14 states:

The amount of compensation recoverable by a claimant from the Real Estate 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. Actual monetary losses may not include commissions owed to a licensee of this Commission acting in the licensee's 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.

This regulation specifically ties any recovery from the Fund to the "originating transaction" and it is a reasonable interpretation of the term "actual loss," which is employed in section 17-404(a)(1) of the Business Occupations Article. *See Marriott Employees Fed. Credit Union v. Motor Vehicle Admin.*, 346 Md. 437, 445 (1997) ("The consistent and long-standing construction given a statute by the agency charged with administering it is entitled to great deference, as the agency is likely to have expertise and practical experience with the statute's subject.").

Under section 17-407(e) of the Business Occupations Article, the Claimants bear the burden of proof to establish their claim for recovery from the Fund. The burden of proof is by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.01.02.16C. 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*, 369 Md. at 125 n.16. 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.*

There is no dispute that the Property is located in the State. The Respondent’s licensing status was established by the documents in evidence and the Respondent’s testimony. The testimony and documents establish that the Respondent failed to disclose the March 25, 2014 notice of violation in connection with the sale of the Property; thus, there was an omission by the Respondent in the provision of real estate services. The Claimants purchased the Property as their residence and they have no business or familial relationship with the Respondent that would disqualify them from recovery. *See* Md. Code Ann., Bus. Occ. & Prof. § 17-404(c).

The Fund, however, provides a limited mechanism for recovery against a licensed real estate agent; there must be an act or omission by which money or property is obtained by, as potentially relevant here, false pretenses that constitute “fraud or misrepresentation.” A claim of fraud requires a showing that the person made a false representation, with either knowledge of the falsity or reckless indifference as to its truth, for the purposes of defrauding the other party, and the other party reasonably relied upon the false representation and had the right to do so. *See Moscarillo v. Prof’l Risk Mgmt. Servs., Inc.*, 398 Md. 529, 544 (2007). I find the evidence does not support a conclusion, by a preponderance of the evidence, that the omission constituted fraud.

The omission does, however, constitute a negligent misrepresentation as demonstrated above with respect to the Respondent’s statutory violations. By failing to disclose the notice of violation to the Claimants, as well as failing to disclose his use of unlicensed home improvement contractors, the Respondent misrepresented that the renovations were being competently

performed and completed. Moreover, the Respondent agreed to remedy certain issues prior to settlement, including plumbing issues related to the main bathroom in the house, as well as with regards to proper venting and HVAC duct work to the outside of the home, following the home inspection and after agreeing to a request by the Claimants to remedy these issues.

For his part, the Respondent claimed he did not think any plumbing issues or HVAC issues needed to be addressed after he received a “final OK” on his renovation permit on the date of settlement. He also stated that he found out that code did not require venting to lead outside the home; that the venting to the attic was sufficient; and he discussed this with Claimant Roy Harrell. However, he was informed that the Claimants still wanted to have the HVAC repaired and vented outside on June 16, 2014, several days after settlement. And even before settlement, the Respondent contacted the Claimants’ real estate agent, Marita Joseph, to share progress pictures related to the renovation of the Property and state the contractors were taking their time “to produce a quality renovation job.” (REC Ex. 3, pg. 32). Throughout the sale process, the Respondent went out of his way to ensure the Claimants that the renovations being done to the Property were in compliance with code as well as high quality, when in reality many items were left incomplete or otherwise poorly performed after settlement. In sum, this represented several misrepresentations on behalf of the Respondent.

The Claimants seek to recover a total of \$25,230.00 from the Fund, based upon the estimate obtained by Diligent on November 25, 2018. Per COMAR 09.11.01.14, any compensation available to the Claimants from the Fund must be as an actual monetary loss from the “originating transaction.” In this instance, the Respondent agreed to provide for a significant amount of remedial work related to plumbing and HVAC issues following the home inspection but prior to settlement. That work was either not performed, or performed inadequately, resulting in several issues with the Property. To that end, I have included in my calculation of

the Claimants' actual loss Items One, Two, Three, Six, Nine, and Eleven from the Diligent estimate, as outlined above in the Findings of Fact. (Clmt. Ex. 1). This represents a total of \$15,590.00. I have deducted from the Diligent estimate Item Four, calling for installation of insulation in the attic, because there was no evidence presented that the Respondent promised to reinsulate the attic; Item Seven, replacing an underground electrical wire to the Property's shed, because the electrical permit obtained by the Respondent on June 10, 2014 never provided for the replacement of an underground wire; Item Eight, the movement of a window to the left side of a basement room, because based on the testimony at the hearing it was unclear as to whether the parties ever agreed to the placement of a window in the basement; and Item Ten, a regrading of the rear landscape, because this work was performed prior to settlement.

I have also included \$275.00 in the calculation of the actual monetary loss from the work performed by Kestons Plumbing on June 19, 2014 to remedy the main bathroom leak. As such, the total monetary loss the Claimants are entitled to receive from the Fund is \$15,865.00 (\$15,590 + \$275.00 = \$15,865.00).

PROPOSED CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated subsections 17-322(b)(4), (b)(25), and (b)(33) and (c) of the Business Occupations Article, and subsection 09.11.02.01C of COMAR. I further conclude that the REC should reprimand the Respondent and impose a total sanction of \$1,500.00. Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b), (c) (Supp. 2017).

Based on the Findings of Fact and Discussion, I conclude as a matter of law that the Claimants are entitled to an award from the Fund in the amount of \$15,865.00 for the actual loss they sustained as a result of misrepresentations made by the Respondent, in his capacity as a

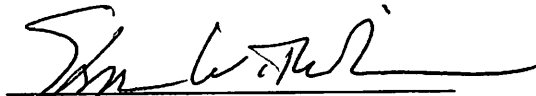
licensed real estate broker, in connection with the sale of the Property. Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2018); COMAR 09.11.01.14.

RECOMMENDED ORDER

I therefore **RECOMMEND** that the Maryland Real Estate Commission **ORDER** as follows:

- (1) That the Respondent be reprimanded;
- (2) That the Respondent pay a civil penalty in the amount of \$1,500.00;
- (3) The Maryland Real Estate Commission Guaranty Fund pay the Claimants \$15,865.00 as the amount of their actual loss from the Respondent's wrongful acts or omissions; and
- (4) That the records and publications of the Maryland Real Estate Commission reflect this decision.

February 21, 2019
Date Decision Issued



Stephen W. Thibodeau
Administrative Law Judge

SWT/dlm
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