

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**IN THE MATTER OF THE CLAIM
OF ANN MARIE DILORENZO,
CLAIMANT**

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CASE NO. 2018-RE-351

v.

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OAH NO. DLR-REC-22-18-36406

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

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PROPOSED ORDER

The Findings of Fact, Proposed Conclusions of Law and Recommended Order of the Administrative Law Judge dated April 23, 2019, having been received, read and considered, it is, by the Maryland Real Estate Commission (the "Commission"), this 19 day of June, 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.
- E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties

¹ The Commission notes that in footnote 4 on page 7 the Administrative Law Judge cites to Guaranty Fund Exhibit 6. There is however no Guaranty Fund Exhibit 6 in this matter and the information is actually contained in Guaranty Fund Exhibit 2, a harmless typographical error requiring correction for clarity only.

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

6-19-2019
Date

By: SIGNATURE ON FILE

IN THE MATTER OF THE
CLAIM OF ANN MARIE
DILorenZO,
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-22-18-36406
* REC No.: 18-RE-351GF

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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 March 1, 2018, Ann Marie DiLorenzo (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 she alleged she 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 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 Office of Administrative Hearings (OAH) for a hearing.

On February 14, 2019, at 9:30 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 without counsel. Shara Hendler, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting fifteen minutes, neither the Respondent nor anyone acting on her behalf appeared at the hearing or requested a postponement.

On January 16, 2019, the OAH mailed notice of the hearing to the Respondent by certified and regular mail to The Estate of Duane Farley,¹ 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. Bus. Reg. § 17-408(c) (2015).² 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 25, 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

¹ 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.

² "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." Bus. Occ. § 17-408(c).

Respondent's absence. 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 Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); Code of Maryland Regulations (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 exhibits³ for the Claimant:

- CL Ex. 1a: Property Management Agreement, August 17, 2010
- CL Ex. 1b: Renewal of Residential Dwelling Lease, December 4, 2015
- CL Ex. 1c: Repair Escrow Balance Statement, February 1, 2011
- CL Ex. 1d: Unit Statement, September 1, 2017 to April 1, 2018
- CL Ex. 1e: Receipts and e-mail, various dates in February 2018
- CL Ex. 1f: E-mails, various dates
- CL Ex. 1g: Verizon phone records
- CL Ex. 1h: Letter from the Respondent, February 27, 2018

³ The Claimant offered these collectively in a binder as Claimant's Exhibit one. The Claimant separated the various documents contained within the binder by tabs labeled a, b, c, etc. For the sake of clarity of the record I have identified the documents contained within those tabs.

- CL Ex. 1i: The Claimant's complaint with supporting documentation, March 1, 2018
- CL Ex. 1j: Letter from the Respondent, March 9, 2018
- CL Ex. 1k: Letter from John Tselepis, March 12, 2018
- CL Ex. 1l: Affidavit signed by the Claimant, February 11, 2019
- CL Ex. 1m: Tenant Statement, January 1, 2017 to February 27, 2018
- CL Ex. 1n: Affidavit of Mark Wigfield, February 7, 2019
- CL Ex. 1o: E-mail from the Claimant to the Respondent, December 13, 2017
- CL Ex. 1p: Attendance and Labor Report, February 5, 2019
- CL Ex. 1q: E-mails between the Claimant and the Harford County Association of Realtors, various dates
- CL Ex. 1r: Invoice from MarylandRentCourt.com, February 8, 2018
- CL Ex. 1s: Various photographs
- CL Ex. 1t: E-mail from Bryant Smith to the Claimant with attachments, May 15, 2018
- CL Ex. 1u: Request for Approved Absence and Invoice

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: Respondent's Licensing History

The Respondent did not offer any exhibits.

Testimony

The Claimant testified and did not present other 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 a residence located at 732 Farnham Place, Bel Air, Maryland 21014 (Farnham Place).

3. On August 17, 2010, the Claimant and the Respondent entered into a Property Management Agreement with regard to Farnham Place. The Respondent managed Farnham Place per the terms of the Property Management Agreement, which remained in full force and effect until February 19, 2018.

4. On October 30, 2010, three tenants, Bridgett N. Williams, Kavery L. Pace, and Joseph Pounds Sr. (tenants) signed a lease (lease) to rent Farnham Place. The tenants remained in Farnham Place under the terms of the lease until April of 2018.

5. The lease initially obligated the tenants to pay \$1,495.00 on the first day of each month. On January 1, 2015, the monthly rent amount increased to \$1,545.00 per month.

6. The Respondent managed Farnham Place from the commencement of the lease until the termination of the Property Management Agreement. Pursuant to the terms of the Property Management Agreement, the Respondent collected a fee of nine percent of the base monthly rent under the lease to manage Farnham Place. From January 1, 2017 through January 1, 2018, the Respondent collected \$1,807.65 in management fees from the base rent received on Farnham Place.

7. The lease obligated the tenants to pay a penalty of five percent of any rent unpaid five days or more beyond the first day of the month. Beginning in January 2017, the tenants consistently paid their rent more than five days beyond the first of the month. The tenants paid the Respondent \$832.25 in late fees from January 1, 2017, through the termination of the Property Management Agreement.

8. The Property Management Agreement obligated the Respondent, as part of her property management responsibilities to enforce the provisions of the lease and pursue eviction proceedings against tenants who consistently paid their rent late. The Claimant requested that the Respondent enforce the terms of the lease and commence eviction proceedings. The Respondent did not pursue eviction proceedings against the tenants and kept all the late fees to herself.

9. The lease obligated the tenants to make a security deposit of \$2,990.00. The Property Management Agreement obligated the Respondent to hold the Security Deposit in an escrow account to be returned to the tenants upon expiration or termination of the lease. The tenants paid the Respondent \$2,990.00 as a security deposit, which the Respondent deposited in her escrow account. After the tenants left Farnham Place, the Respondent did not return the security deposit to the tenants or to the Claimant.

10. The tenants left Farnham Place in shambles. Because the Respondent did not return the security deposit to the Claimant, the Claimant needed to pay for all repairs and cleaning of Farnham Place out of her own pocket.

11. The Claimant terminated the Property Management Agreement on February 19, 2018. The Respondent closed her business on April 1, 2018, and died on June 24, 2018.

12. The Claimant incurred \$5,151.81 in costs to repair the property after the tenants moved out. The Claimant incurred these costs after she terminated the Property Management Agreement.

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 Thursday, February 14, 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, 20850.⁴ 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

⁴ All information concerning Mr. Brouwer's search of the Estate and the results of that search is contained in GF Ex. 6.

Notice to that address.⁵ 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 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 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 determine the matter despite the individual’s absence. Bus. Occ. & Prof. §§ 17-324(f), 17-408(c). 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.

⁵ 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 that address which the USPS returned as “unclaimed, unable to forward.”

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 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 her burden with regard to unearned late fees, unearned management fees, and the unreturned security deposit plus interest.

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 Farnham Place as a rental property. The tenants signed a lease, paid a security deposit of \$2,990.00, and commenced living in Farnham Place in October 2010. The tenants initially paid rent in the amount of \$1,495.00 per month. That amount increased to \$1,545.00 per month per the terms of a renewal of residential dwelling lease executed on December 21, 2015. Per the terms of the Property Management Agreement, the Respondent deducted a nine percent management fee from the monthly rent received and remitted the balance to the Claimant.

The Claimant testified that beginning in January of 2017, she noticed the tenants consistently paid their rent late each month. In response the Claimant requested the Respondent commence the process of evicting the tenants. Pursuant to the terms of the lease, the Respondent collected a five percent penalty each time the tenants made a late rent payment. Despite the fact the tenants paid their rent late and the Respondent collected the late fee, the Respondent made no efforts to evict the tenants and thus did not utilize the late fees collected. Instead, the Respondent kept the late fees to herself. The Claimant further contended that evicting late-paying tenants is part and parcel of the Respondent's property management duties. The Respondent failed to

perform those duties by not evicting the tenants and but continued to collect the monthly nine percent management fee.

Although the Respondent collected a security deposit in the amount of \$2,990.00, she did not return it to the Claimant upon termination of the Property Management Agreement.

Additionally, she did not return it to either the Claimant or the tenants when they moved out of Farnham Place in April of 2018. Consequently, per the terms of the lease, the Claimant, as owner of Farnham Place, was personally liable to the tenants to return the security deposit with interest. Likewise, if the Claimant wished to apply the funds from the security deposit toward repairs, she could not do so and would need to pay those repairs out of pocket.

The Claimant contended she incurred a variety of personal expenses to bring her claim before the Fund and have it heard. She requested reimbursement for those expenses. The Claimant also contended she incurred \$5,151.81 in costs to repair Farnham Place after the tenants moved out and \$7,030.00 in lost rent opportunity due to the Respondent's mismanagement. The Claimant requested reimbursement from the Fund for those amounts.

Analysis

There is no dispute the Respondent is a licensed real estate broker, Farnham Place is located in the State of Maryland, and the agreements into which the Claimant and the Respondent entered concern Farnham Place. 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) (2018). I shall address each of the Claimant's allegations separately below.

(a) Fees for late payment of rent

Paragraph 1 of the lease, entitled “Initial Lease Term,” obligates the tenants to pay their rent “in advance on the first day of each month.” (CL Ex. 1b). Paragraph 4 of the lease, entitled “Payment of Rent,” reads in pertinent part as follows: “[The tenants agree] to pay the rent when due without any deduction or setoff. If a monthly installment of rent is paid more than five days after the date when due, [the tenants] shall pay, as additional rent, a sum equal to 5% of the amount of delinquent rent due.” (CL Ex. 1b). Article 7 of the Property Management Agreement, entitled “Compensation,” reads in whole as follows:

[The Respondent] shall receive as consideration and remuneration for its services under this Management Agreement a fee equal to Nine percent (9%) per month of the base monthly rental. All monies due to [the Respondent] under this agreement shall be paid out of the Operating Account prior to remitting disbursements from said account to [the Claimant].

Late fees, uncollectable checks charges, and applications fees paid by Tenant under any lease are the property of [the Respondent] to be used to offset [the Respondent’s] expense in enforcing the respective lease provisions.

(CL Ex. 1a).

Article 8.3 of the Property Management Agreement, entitled “Final Accounting,” reads “Upon termination of this agreement for any reason, [the Respondent] shall deliver to [the Claimant] all records, contracts, leases, unpaid bills, outstanding sums of monies (i.e., repair escrow, security deposit etc.), and any other papers or documents which are in [the Respondent’s] possession and which relate to [Farnham Place].”

The Claimant testified the tenants began to pay their rent consistently late beginning around January of 2017. Because the lease obligated the tenants to pay \$1,545.00 per month in rent at that time, the late fee assessed per the terms of the lease was \$77.25.⁶

⁶ Five percent of \$1,545.00 is \$77.25.

The Claimant presented evidence through a tenant statement for the period of January 1, 2017 to February 27, 2018 that the Respondent collected the following late fees from the tenants:

Date	Late Fee Paid by Tenants
January 10, 2017	\$150.00
February 23, 2017	\$105.00
March 20, 2017	\$75.00
May 19, 2017	\$55.00
May 26, 2017	\$70.00
September 5, 2017	\$100.00
September 25, 2017	\$100.00
November 1, 2017	\$100.00
November 28, 2017	\$77.25
Total	\$832.25

(CL Ex. 1m.)⁷

I find the Respondent committed an act or omission by failing to return the \$832.25 in late fees to the Claimant when the Property Management Agreement terminated. 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

⁷ At the hearing, the Claimant testified that she added up the amounts the Respondent collected in late fees as set forth in the “Tenant Statement.” (CL Ex. 1m.) The Claimant contended that the sum of those amounts was \$917.70. She referenced the first two line items as examples, but did not provide the remaining line items she used in arriving at that sum. Thus, it is unknown how the Claimant arrived at a sum which is \$85.45 more than the sum calculated above. Even more confusing is a December 30, 2017, line item entitled “Late Fees Paid to date by Tenant 2017.” The statement lists that amount as \$287.70 – far less than what the statement reflects the Respondent actually collected from the tenants over the course of 2017. Notwithstanding, given the statement sets forth specific sums collected from the tenants for late fees on specific dates, I find the Respondent collected late fees from the tenants as set forth in the table above.

any other conduct that amounts to a false assertion.” *Black's Law Dictionary* 1152 (10th ed. 2014). While the Property Management Agreement allowed the Respondent to keep the late fees, it allowed her to do so for the express purpose of enforcing the lease provisions. The Claimant produced numerous email exchanges in which she notified the Respondent of her displeasure at the fact the tenants consistently paid their rent late. Those emails, which span the entire course of 2017 and spill into 2018, illustrate that the Claimant began to forcefully register her displeasure with the Respondent’s performance over a year prior to terminating the Property Management Agreement. For example, on January 4, 2017, the Claimant sent the following email to the Respondent:

Duane

I have not heard back from you on the email below. I also called Farley last week and no one called me back with the status of the DECEMBER rent. I am extremely disappointed and frustrated in the service Farley has provided over the past several months and lack of responsiveness when I contact the office or send an email. I have to basically email and call multiple times and beg every month to see where my rent is.

WHERE IS THE DECEMBER RENT? I am not a bank and I am not renting my place for free. Please respond ASAP and let me know what is going on – did the tenant not pay or is there a delay at Farley in depositing the money in my bank? Also, as I said once before, if the tenant cannot afford the rent, they need to move. When is their lease up?

(CL Ex. 1i.)

The email demonstrates the Claimant placed the Respondent on clear notice that she deemed late rent payments unacceptable and that she wished to have the lease provisions enforced. However, subsequent emails reveal that the Respondent took no action. This required the Claimant to constantly follow up over the course of 2017. Further, the tenant statement shows the tenants consistently paid late rent over the course of 2017. Based on these facts, I find the Respondent committed an error or omission through misrepresentation – she agreed, per the

terms of the Property Management Agreement, to utilize late fees to enforce the lease. When the Claimant requested the Respondent do that, the Respondent ignored the Claimant and kept the late fees she collected. In reviewing Article 7 (Compensation) of the Property Management Agreement as a whole, I find that Article clearly delineates what monies the Respondent is entitled to keep as a fee and what she is not. Paragraph one of Article 7 clearly delineates the nine percent of the base rent as a fee the Respondent is entitled to keep.⁸ Paragraph two allows the Respondent to keep the late fee, but earmarks that fee for the specific purpose of enforcing the lease. It does not designate the late fees as a fee earned by the Respondent (i.e. income to her). Moreover, as quoted above, the lease defines the late fee as “additional rent.” The Property Management agreement only allows the Respondent to draw a management fee from the base rent. Accordingly, I recommend the Fund award the Claimant \$832.25 for the late fees.

(b) Unearned Management Fees

As noted above, Article 7 of the Property Management Agreement permits the Respondent to keep nine percent of the base rent as a management fee. The Article provides that the Respondent may keep that fee “as consideration and remuneration for its services under this Management Agreement.” I find the terms of the Property Management Agreement obligate the Respondent to perform all management duties in order to earn the nine percent fee. At the hearing, the Claimant contended that the Respondent did not perform all her management duties and therefore did not earn her fee (despite keeping the fee to herself after receiving the rent). After considering the evidence presented, I agree with the Claimant.

⁸ As shall be discussed below, the question of whether the Respondent is entitled to keep the fee hinges on whether she fulfills her end of the bargain and correctly manages the property.

As noted above, over the course of 2017 and early 2018, the tenants routinely paid their rent late. The Claimant advised the Respondent early in 2017 she did not deem late payment of the rent acceptable and requested the Respondent take action to remedy that problem. In the following email dated October 31, 2017, the Respondent acknowledged the tenants consistently failed to pay rent on time:

Hi Ms. DiLorenzo, I am responding to the email you sent Lindsey yesterday. She no longer works for [the Respondent]. I am the bookkeeper. We received a payment from the tenant at your property today. That will cover the balance of September rent and part of October. I will be contacting her today to find out when we can expect the balance due. She is getting further and further behind each month. I will prepare a check for you today and give it to [the Respondent] to review and sign.
Thank you,
Donna

(CL Ex. 1i.)

The Claimant commenced her protests concerning the tenants' late payment of rent as early as January 2017. But as the email indicates, the Respondent had taken no action to remedy that situation as late as October 2017. The email only indicates the Respondent will "contact" the tenants to discuss the payments. As noted, the tenants remained in Farnham Place until after the Claimant terminated the Property Management Agreement in February 2018.

In at least one email, the Claimant advised the Respondent that timely payments are required so she may pay her own bills in a timely manner. I find the Claimant is entitled to receive rent payments timely per the terms of the lease. I further find the Respondent failed to perform management duties under the Property Management Agreement by not taking action against the tenants for failing to pay their rent timely. I specifically find this true in light of the numerous requests and complaints the Claimant made to the Respondent.

The Respondent retained the following management fees on the following dates:

Date Management Fee Retained	Amount of Fee
January 1, 2017	\$139.05
February 2017 ⁹	\$139.05
March 20, 2017	\$139.05
April 1, 2017	\$139.05
May 1, 2017	\$139.05
June 1, 2017	\$139.05
July 1, 2017	\$139.05
August 1, 2017	\$139.05
September 1, 2017	\$139.05
October 1, 2017	\$139.05
November 1, 2017	\$139.05
December 2017	\$139.05
January 2018	\$139.05
Total	\$1,807.65

(CL Ex. 1i).

I find the Respondent committed an act or omission by collecting the management fee without, per the Claimant's request, enforcing the terms of the lease when the tenants consistently paid late. I further find the Respondent committed that act or omission through misrepresentation

⁹ The exhibit does not contain statements showing the deduction of a management fee for February 2017, December 2017 and January 2018. However, in light of the fact the Respondent deducted a management fee for all other months noted in the chart above, coupled with the fact I did not hear any evidence of the tenants owing outstanding rent when they moved out in April 2018, I find it more likely than not that the Respondent collected a management fee for those months.

as defined above. I further find the Claimant suffered an actual loss in the amount of \$1,807.65. Because the Respondent failed to properly manage Farnham Place she did not earn the management fee. That fee, being part of the base rent, rightfully belonged to the Claimant.

(c) \$2,990.00, Security Deposit

Paragraph 3 of the lease obligates the tenants to provide a \$2,990.00 security deposit upon the signing of the lease. (CL Ex. 1b.) Paragraph 3.5 of the Property Management Agreement, entitled "Security Deposits," reads: "Monies collected from the Tenant for the required Security Deposit will be held by [the Respondent] in a Security Deposit escrow account so as to comply with the Landlord/Tenant Security Deposit Law of the State of Maryland." As noted above, paragraph 8.3 of the Property Management Agreement obligates the Respondent to return the security deposit upon termination of the Property Management Agreement. The Claimant terminated the Property Management Agreement on February 19, 2019. (CL. Ex. 1e.) The Respondent did not return the security deposit to either the Claimant or the tenants after the Property Management Agreement's termination. The Claimant testified that none of her bank statements reflect the security deposit being deposited into her account.¹⁰ For the reasons stated above I find the Claimant's testimony credible that the Respondent did not return the security deposit to her.

The Claimant testified that the tenants left Farnham Place in deplorable condition. The Claimant presented a series of photographs to illustrate that fact. (CL Ex. 1s.) Because the Respondent did not return the security deposit, the Claimant could not use those funds to address

¹⁰ At the hearing, the Claimant testified she had her bank statements available as evidence the Respondent did not return the security deposit. However, she was reluctant to introduce them into evidence due to privacy concerns. I find the fact the Claimant was willing to enter her bank statements into evidence is indicative of her truthfulness on the issue the Respondent did not return the security deposit to her.

the repairs and cleaning required after the tenants left.¹¹ I thus find the Claimant incurred an actual loss in the amount of \$2,990.00 as the principal amount of the security deposit.

The Claimant additionally requested reimbursement for interest due on the security deposit. In support of her claim, the Claimant offered a chart from the Maryland Association of Realtors website which presents a calculation of \$513.48 in interest. (CL Ex. 1d.) 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.

The interest rate in the Claimant's chart is calculated per the statute and the Fund did not contest the amount. The Respondent held the security deposit for over six months and the security deposit is more than fifty dollars. While the statute does not state a time when interest stops accruing, the Claimant only requested interest from the date the Respondent received the security deposit through the date the tenancy ended. I find that request reasonable and therefore, I find the Claimant is entitled to \$513.48 in interest on the security deposit principal.

¹¹ As shall be discussed below the Claimant testified she incurred \$5,151.81 in costs to repair and clean Farnham Place.

I find the Respondent committed an act or omission by failing to return the security deposit to the Claimant 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 act of failing to return the security deposit despite agreeing to do so pursuant to paragraphs 3.5 and 8.3 of the Property Management Agreement constitutes a misrepresentation. Thus, I find the Claimant is entitled to reimbursement from the fund of \$3,503.48 representing the principal amount of the security deposit plus interest.

(d) The Claimant's remaining claims

The Claimant also contended she incurred \$5,151.81 in costs to repair Farnham Place after the tenants moved out and \$7,030.00 in lost rent opportunity due to the Respondent's mismanagement. Additionally the Claimant made a claim for various costs associated with prosecuting her claim before the Fund. With regard to the \$5,151.81 in repair costs, I find \$3,503.48 of that is already covered by virtue of the award for the security deposit plus interest. With regard to the balance, the Claimant presented no evidence about whether the damages incurred happened before or after the Property Management Agreement ended in February 2018. Thus, I find that she failed to prove, by a preponderance of the evidence, that those damages were incurred as a result of any act or omission on the part of the Respondent. Additionally, had the Claimant proved that, she did not provide any evidence of an actual loss under the statute. She presented no evidence she gave the Respondent money to make the repairs but the Respondent did not do so and pocketed the money. Accordingly, on this issue, I decline to recommend an award.

With regard to the \$7,030.00 in lost rent, I do not find any act or omission on the part of the Respondent. First, Article 3.8 of the Property Management Agreement gives the Claimant the choice of hiring the Respondent to procure new tenants. The Claimant specifically declined that service from the Respondent. (CL Ex. 1a.) Additionally, the Claimant's claim is just speculation. She presented no evidence that she herself had procured any new tenants who would have paid that amount. Finally, the Claimant filed her claim on March 1, 2018. However, she testified the lost rental opportunity spanned the period from April 15, 2018 until December 31, 2018 – thus I find this claim outside the four corners of her complaint. Accordingly, on this issue, I decline to recommend an award.

The Claimant requested \$2,408.00 for “preparation time” and \$1,506.72 for travel to the OAH to present her case. Both of these costs occurred in 2019 and are thus outside the scope of her March 1, 2018 complaint. Additionally, while I do not fault the Claimant's frustration at having to pay these costs, I find them to be costs of doing business and not compensable by the Fund. Accordingly, on this issue, I decline to recommend an award.

In light of the above, I find the Claimant is entitled to the following reimbursement from the Fund: \$832.25 (late fees) + \$1,807.65 (unearned management fee) + \$3,503.48 (security deposit plus interest) = \$6,143.38.

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 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 \$6,143.38. Md. Code Ann., Bus. Occ. & Prof. § 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 \$6,143.38;

I further **PROPOSE** that the Maryland Real Estate Commission Guaranty Fund pay to the Claimant her actual monetary loss in the amount of \$6,143.38 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 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.

April 23, 2019
Date Decision Issued

SIGNATURE ON FILE

Nicolas Orechwa
Nicolas Orechwa *EO*
Administrative Law Judge

NO/sw
#179290