

IN THE MATTER OF THE CLAIM *
OF RICHARD R. LEWIS *
AGAINST THE MARYLAND REAL *
ESTATE COMMISSION GUARANTY *
FUND FOR THE ALLEGED *
MISCONDUCT OF CHRISTINE *
C. KNOTT, RESPONDENT *

MARYLAND REAL
ESTATE COMMISSION

* REC CASE NO. 2008-RE-209
* OAH NO. DLR-REC-22-09-35257

* * * * *

OPINION AND FINAL ORDER

This matter came before the Commission on argument on Exceptions filed by the Claimant, Richard R. Lewis, to the Proposed Order of December 20, 2010. On November 15, 2010, Administrative Law Judge T. Austin Murphy (“ALJ”) filed a Recommended Decision and Order in which he recommended that the Claimant be reimbursed \$1,700.00 from the Maryland Real Estate Guaranty Fund (“Fund”) to compensate for actual losses that he sustained because of the conduct of Christine C. Knott.

On December 20, 2010, the Maryland Real Estate Commission (“Commission”) issued a Proposed Order that affirmed the ALJ’s Recommended Findings of Fact; approved the ALJ’s Conclusions of Law; and adopted the ALJ’s Recommended Decision that the Claimant be reimbursed \$1,700.00 from the Maryland Real Estate Guaranty Fund.

A hearing was held by a panel of Commissioners, consisting of Commissioners Anne S. Cooke, Georgiana Tyler and Robin L. Pirtle on March 16, 2011. Peter Martin, Assistant Attorney General, represented the Commission. The Claimant waived representation. A transcript of the hearing before the ALJ was not provided to the Commission. The proceedings were electronically recorded.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, four exhibits, including the exhibits which were introduced at the hearing before the ALJ, were entered into evidence.

PRELIMINARY MATTERS

On December 20, 2010, the Commission mailed a copy of the Proposed Order of the Commission to the Claimant and the Respondent and advised them of their rights to file Exceptions. On January 19, 2011, the Commission sent a letter to the Claimant and Respondent advising that the Commission had received Exceptions from the Claimant and that a hearing on the Exceptions had been scheduled for March 16, 2011 at 12:30 p.m. The copy of the Proposed Order and notice of the hearing on Exceptions was mailed to the Respondent at 1901 Wooded Trace, Owings, Maryland 20736. Steven Long, Assistant Executive Director of the Commission, in an Affidavit dated January 31, 2011 (Commission Exhibit 4), stated that the Motor Vehicle Administration's computer system showed 1901 Wooded Trace, Owings, Maryland 20736 to be the most recent address for the Respondent. Based on this information, the Commission concluded that the Respondent, who did not appear for the scheduled hearing on the Claimant's Exceptions, had been properly notified of the Proposed Order and scheduled hearing on

the Claimant's Exceptions. The Commission therefore elected to proceed with the hearing on the Claimant's Exceptions.

FINDINGS OF FACT

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

DISCUSSION

At all times relevant to this matter, the Respondent was a licensed real estate broker. She was first licensed on December 11, 2001 and her license expired in March, 2009. FF 1.¹ Before July 19, 2007, the Claimant and his family were renting a property located at 206 Rosewood Avenue, Catonsville, Maryland, and he was interested in purchasing a home. FF 2. The Claimant and his wife met the Respondent after inquiring about a home, located at 2400 Westchester Avenue ("Property"), which was on the market and for which the Respondent was the listing agent. FF 3. The Claimant advised the Respondent that he wished to purchase the Property but wanted to wait until he received a large annuity check in June 2007. FF 4. The Respondent asked the Claimant to settle on April 30, 2007. FF 5. When the Claimant informed the Respondent that he was reluctant to settle before receiving the annuity check, the Respondent promised him that she would pay his last month's rent of \$1,700.00. FF 6. As a result of the Respondent's representation that she would pay his last month's rent, the Claimant agreed to settle at an earlier date than June, 2007. FF 7. When the Claimant asked the Respondent for a check in the amount of \$1,700.00 at settlement, she initially denied that

¹ "FF" refers to the ALJ's Findings of Fact.

she had promised to pay him the \$1,700.00 but later stated that she would mail him a check for \$1,700.00 when she returned to her office. FF 8. The Respondent never paid the Claimant the promised \$1,700.00. FF 9.

The ALJ recommended that the Claimant be reimbursed \$1,700.00 from the Fund based on his conclusion that the Respondent had made false representations to the Claimant in regard to reimbursement for his last month's rent and, as a result, the Claimant had suffered a loss of \$1,700.00.

At the Exceptions' hearing, the Claimant argued that the proposed award of \$1,700.00 from the Fund did not adequately reimburse him for his losses due to the Respondent's conduct. Specifically, he stated that the Respondent failed to properly arrange for winterization of the home or arrange for fuel oil for the property and, as a result of these failures, he incurred expenses. The Claimant reiterated the testimony he had given at the hearing before the ALJ: Because there was no fuel for the furnace, the furnace would not start when the inspector attempted to inspect it. The Claimant stated that he paid for fuel for the furnace, and although the Respondent promised to reimburse him for that expense, she has failed to do so. The Claimant alleged that when the inspector turned on the water in the Property, the plumbing sprang several leaks and drywall suffered water damage. He contended that he should be granted an award from the Fund for the expense of repairing plumbing leaks and drywall damaged by water because those damages were the result of the Respondent's failure to arrange for the proper winterization of the home.

In order to recover compensation from the Fund, the Claimant must prove an actual loss based on an action or omission in the provision of real estate brokerage services, by the Respondent (a licensed real estate broker), that involves a real estate transaction within the State. The claim must be based on an act or omission in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. ("BOP") § 17-404(a) (2010); Code of Maryland Regulations ("COMAR") 09.11.03.04. Further, COMAR 09.11.01.18 provides that the amount of compensation recoverable by a claimant from the Fund is 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.

In the instant case, the Claimant did not wish to settle on his purchase of a house until June, 2007. However, he was induced to settle early when the Respondent falsely promised to reimburse the Claimant for the one month's rent he would incur if he settled early. The Respondent did not provide the Claimant with a check for \$1,700.00 as she had promised and the Claimant was required to incur the expense for one month's rent.² The Commission concludes that the Claimant has met his burden of proof by presenting evidence that based on the false pretenses of the Respondent, a licensed real estate broker, during the course of the provision of real estate brokerage services relating to Maryland real estate, the Claimant has suffered an actual loss of \$1,700.00 for the one month's rent which the Respondent promised, but failed to pay, to the Claimant.

² The Commission notes that the ALJ discusses the Respondent's pattern of behavior in regard to reimbursing the Respondent for the \$1,700.00 rent payment at page 5 of the Recommended Decision and concluded that it was clear that the Respondent had no intention of fulfilling her promise to the Claimant in regard to the \$1,700.00 rent payment.

The Claimant has sought, both at the hearing before the ALJ and at his Exceptions hearing, to be granted an award from the Fund for the cost of fuel for the furnace of the Property and for the expenses incurred in repairing plumbing leaks and water damage to drywall in the Property which was caused by the failure to properly winterize the property. The Commission concludes that the Claimant is not entitled to compensation from the Fund for either the cost of fuel or repairs because neither expense was due to theft, embezzlement, false pretenses, forgery, fraud or misrepresentation by the Respondent. (See Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(iii)(1) and (2) (2010) and COMAR 09.11.03.04B(1).) As noted by the ALJ in his Recommended Decision, since the Claimant purchased the Property, he would have had to purchase fuel for the furnace. Further, while Respondent's failure to assure that the Property had been properly winterized may have involved negligence on her part, it does not constitute the type of activity which would permit an award from the Fund.

CONCLUSIONS OF LAW

Based upon the ALJ's Findings of Fact, which have been adopted by the Commission, and the foregoing Discussion, the Commission concludes, as a matter of law:

1. Respondent, Christine C. Knott, was a licensed real estate broker at all times relevant to this matter;
2. Claimant, Richard R. Lewis suffered a loss, in the amount of \$1,700.00, due to his reliance on the false pretenses of the Respondent made during the course of the provision of real estate services related to Maryland real estate;

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

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM * BEFORE T. AUSTIN MURPHY
OF RICHARD R. LEWIS * ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND REAL * OF THE MARYLAND OFFICE OF
ESTATE COMMISSION GUARANTY * ADMINISTRATIVE HEARINGS
FUND FOR THE ALLEGED * OAH No: DLR-REC-22-09-35257
MISCONDUCT OF CHRISTINE * REC CASE NO: 2008-RE-209
C. KNOTT *

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated November 15, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of December, 2010,

ORDERED,

- A. That the Findings of Fact in the Recommended Decision be, and hereby are, AFFIRMED;
- B. That the Conclusions of Law in the Recommended Decision be, and hereby are, APPROVED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

- D. That the records, files and documents of the Maryland State Real Estate Commission reflect this decision.

MARYLAND STATE REAL ESTATE COMMISSION

SIGNATURE ON FILE

12/20/2010
Date

By: [Signature]
Anne S. Cooke, Commissioner

IN THE MATTER OF THE CLAIM * BEFORE T. AUSTIN MURPHY,
OF RICHARD R. LEWIS * AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND REAL * OF THE MARYLAND OFFICE
ESTATE GUARANTY FUND, * OF ADMINISTRATIVE HEARINGS
FOR THE ALLEGED MISCONDUCT * OAH No.: DLR-REC-22-09-35257
OF CHRISTINE C. KNOTT * REC No. 08-RE-209

* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On September 14, 2007, Richard R. Lewis (Claimant) filed a claim with the Maryland Real Estate Commission (REC) Guaranty Fund (Fund) for reimbursement for actual losses in the amount of \$3,129.75, suffered as a result of alleged misconduct by Christine C. Knott (Respondent), a formerly-licensed real estate broker. On or about September 3, 2009, the REC transmitted the case to the Office of Administrative Hearings (OAH) for a contested case hearing.

On August 23, 2010, I conducted a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-407(c)(2)(ii) (2010). The Claimant represented himself. Hope Sachs, Assistant Attorney General, represented the Fund. The Respondent failed to appear.

On May 25, 2010, the OAH mailed a notice of the hearing, by first class mail and by certified mail, to the Respondent's address of record with the REC. The notice advised the Respondent that a hearing was scheduled regarding the claim against her on August 23, 2010. The United States Postal Service (USPS) returned the signed certified notice receipt to the OAH.

The Respondent was given due notice of her hearing pursuant to Md. Code Ann., Bus. Occ. & Prof. § 17-324(d)(ii) (2010). After waiting more than fifteen minutes for the Respondent or anyone representing her to appear, I ruled that the hearing would proceed in the Respondent's absence. Md. Code Ann., Bus. Occ. & Prof. § 17-324(f) (2010).

Procedure is governed by the contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); COMAR 09.01.03; COMAR 09.11.03; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund?
2. What is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following documents into evidence on behalf of the Claimant:

- Cl. Ex. # 1 - August 27, 2007 letter to Whom It May Concern from Claimant
- Cl. Ex. # 2 - February 25, 2008 letter to DLLR from Claimant
- Cl. Ex. # 3 - July 19, 2007 letter from Heather S. Swan, Esquire to Claimant
- Cl. Ex. # 4 - March 30, 2007 Home Inspection Report from AAA Quality Home Inspections, Inc.

Cl. Ex. # 5 - Invoices and receipts from Spann Mechanical, dated April 9 and May 14, 2007 and P D Ferrin & Co., dated August 12, 2007

Cl. Ex. # 6 - March 21, 2007 Buyer Agency Contract

Cl. Ex. # 7 - June 24, 2006 Rental Agreement

Cl. Ex. # 8 - Copy of a prayer card with a note from the Respondent to the Claimants

I admitted the following documents into evidence on behalf of the Fund:

Fund Ex. # 1 - Notice of Hearing, dated May 25, 2010, with Certified Mail Receipt

Fund Ex. # 2 - September 1, 2009 Order for Hearing

Fund Ex. # 3 - Licensing History of Respondent

Fund Ex. # 4 - September 14, 2007 Complaint and Guaranty Fund Claim

No documents were submitted on behalf of the Respondent.

Testimony

The Claimant testified on his own behalf.

The Fund did not present any testimony.

No testimony was presented on the Respondent's behalf.

FINDINGS OF FACT

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

1. At all times relevant to this matter, the Respondent was a licensed real estate broker. She was first licensed as such on December 11, 2001. Her license expired in March 2009.
2. Before July 19, 2007, the Claimant was living in a property, which he was renting, located at 206 Rosewood Avenue with his family in Catonsville, Maryland, and he was interested in purchasing a home.
3. The Claimant and his wife were searching for a home to buy and met the Respondent after inquiring about a house on the market at 2400 Westchester Avenue (Property), for which the Respondent was the listing agent.

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4. The Claimant indicated that he wished to purchase the property but that he wanted to wait until June 2007 to settle because he was expecting a large annuity check then.
5. The Respondent asked the Claimant to settle on April 30, 2007.
6. When the Claimant indicated that he was reluctant to settle before the annuity check arrived, the Respondent promised that she would pay the rent of \$1,700.00 for his last month under his lease.
7. As a result of this representation, the Claimant agreed to settle at an earlier date than June 2007.
8. At the settlement, the Claimant asked the Respondent for the check. The Respondent denied that she promised him that she would pay him the \$1,700.00 rent, but later the Respondent said she would mail the check when she returned to her office.
9. The Respondent never paid the Claimant the promised \$1,700.00.

DISCUSSION

A person may recover compensation from the Fund for an actual loss based on an act or omission that occurs in the provision of real estate brokerage services by a licensed real estate broker that involves a transaction that relates to real estate that is located in the State. The act or omission must be one that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a) (2010); COMAR 09.11.03.04.¹ At a hearing concerning a claim against the Fund, the burden of proof shall be on the claimant to establish the validity of the claim. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2010). The REC shall order payment of a claim by the Fund for the actual monetary loss (up to \$25,000) suffered by the claimant. Md. Code Ann., Bus. Occ. & Prof. § 17-410(a) & (b) (2010). Further COMAR 09.11.01.18 sets forth the parameters of an actual loss as follows.

¹ The REC adopted COMAR 09.11.03.04 pursuant to a statutory delegation of authority. Md. Code Ann., Bus. Occ. & Prof. § 17-402(c) (2010).

The amount of compensation recoverable by a claimant from the Real Estate Guaranty Fund, pursuant to Business Occupations and Professions Article, Title 17, Subtitle 4, Real Estate Guaranty Fund, Annotated Code of Maryland, 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 his 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.

Two categories of acts or omissions may give rise to an actual loss. In the first, money or property is obtained by a licensee by theft, embezzlement, false pretenses or forgery. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(1) (2010). In the second, a licensee's act or omission constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(2) (2010); COMAR 09.11.03.04B(1).

The Claimant argues that the Respondent influenced the Claimant to settle early and incur a penalty of one month rent payment by promising to pay the Claimant's rent in the settlement. It is clear from the evidence that the Respondent had no intention of making good on the promise. She failed to come to the settlement with a check, she made a lame excuse that she got new checks and then failed to put a check in the mail when she said she would. The Claimant has met his burden of proving that the Respondent made false pretenses to him to induce him to settle earlier than he wanted and, due to the false pretense, suffered a loss of \$1,700.00.

The Claimant further argues that the Respondent caused him to lose money because the Claimant had to purchase fuel to start the furnace during the inspection of the property. He asserts that the inspection was scheduled but neither the Respondent nor another sales person

from her office showed for the inspection. He testified that when the inspector tried the furnace, he could not start it because the fuel tank was empty. The Claimant presented the bill for the oil as evidence of the loss. Because there was no heat in the home, when the inspector turned on the water, the plumbing sprang several leaks. The Claimant argues that he should be reimbursed for the expenses to repair the leaks and the drywall damaged by the water. The Respondent's failure to assure that the home was winterized does not rise to the level of an act or omission in which money or property is obtained from a person by theft, embezzlement, false pretenses or forgery; or that constitutes fraud or misrepresentation. The Respondent certainly dropped the ball in assuring that the home was properly winterized, but that does not amount to an illegal act found in Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(1) or (2). As it turns out, the Claimant purchased the home and he would have had to fill up the fuel tank. The repair of the wall and the plumbing issue would have to be addressed in a contract action. I cannot find under the limited parameters of the Code that it is recoverable under these circumstances.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Facts and Discussion, I conclude that the Claimant is entitled to reimbursement from the Real Estate Guaranty Fund in the amount of \$1,700.00 for actual losses resulting from the fraud and misrepresentation of the Respondent. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(2) (2010); COMAR 09.11.03.04B(1).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Real Estate Commission:

ORDER that the Claimant be reimbursed \$1,700.00 from the Maryland Real Estate Guaranty Fund to compensate for actual losses that he sustained because of the conduct of the Respondent, and further,

ORDER that the Respondent 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; Md. Code Ann., Bus Occ. & Prof. § 17-411(a)(2) (2010), and further,

ORDER that the records and publications of the Maryland Real Estate Commission reflect its final decision.

SIGNATURE ON FILE

November 15, 2010
Date Decision Issued

T. Austin Murphy
Administrative Law Judge

TAM/fe
#116273

**IN THE MATTER OF THE CLAIM * BEFORE T. AUSTIN MURPHY,
 OF RICHARD R. LEWIS * AN ADMINISTRATIVE LAW JUDGE
 AGAINST THE MARYLAND REAL * OF THE MARYLAND OFFICE
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No documents were submitted on behalf of the Respondent.

