

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE * BEFORE JUDITH JACOBSON,
CLAIM OF JOSEPH K. * ADMINISTRATIVE LAW JUDGE
HARRIS, CLAIMANT, * OF THE MARYLAND OFFICE OF
V. . * ADMINISTRATIVE HEARINGS
THE MARYLAND REAL ESTATE *
COMMISSION GUARANTY FUND * OAH NOS: DLR-REC-22-12-11897

FOR THE ALLEGED MISCONDUCT *
OF SUE ANN WILLISON, * MREC NO: 2012-RE-021 G.F.
RESPONDENT *

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated January 4, 2013, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 21st day of February, 2013,

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

2/20/2013
Date

By: SIGNATURE ON FILE
Marla S. Johnson, Commissioner

<p>IN THE MATTER OF THE CLAIM OF</p> <p>JOSEPH K. HARRIS,</p> <p>CLAIMANT,</p> <p>V.</p> <p>THE MARYLAND REAL ESTATE</p> <p>COMMISSION GUARANTY FUND FOR</p> <p>THE ALLEGED MISCONDUCT OF</p> <p>SUE ANN WILLISON, LICENSED</p> <p>SALESPERSON,</p> <p>RESPONDENT</p>	<p>* BEFORE JUDITH JACOBSON,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH CASE No.: DLR-REC-22-12-11897</p> <p>* MREC COMPLAINT No. : 12-RE-021</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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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 July 27, 2011, Joseph K. Harris (Claimant) filed a claim against the Maryland Real Estate Commission Guaranty Fund (MREC, Fund), for monetary losses he allegedly incurred as a result of the misconduct of Sue Ann Willison, Licensed Real Estate Salesperson (Respondent). On March 9, 2012, the MREC transmitted the matter to the Office of Administrative Hearings (OAH) for a hearing regarding the claim against the Fund.¹

¹ The hearing was initially scheduled for July 2, 2012, but was postponed due to inclement weather.

I held a hearing on October 15, 2012 at the OAH office in Wheaton, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408(a) (2010). The Claimant appeared and represented himself. The Fund was represented by Jessica Kaufman, Assistant Attorney General. The Respondent did not appear. The notice that was sent to the Respondent at her address of record was returned by the postal service as not deliverable, unable to forward. In a Consent Order dated November 22, 2011, the Respondent agreed not to contest this claim. I decided that it was appropriate to proceed in the Respondent's absence under these circumstances.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

ISSUES

- 1) Did the Claimant sustain an actual loss as a result of an act or omission of the Respondent that constitutes theft, embezzlement, false pretenses, forgery, misrepresentation, or fraud?
- 2) If the Claimant sustained an actual loss, what is the amount compensable by the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

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

- Cl. Ex. # 1 - Chart, Fund Claim Losses; Invoice, West Patrick Property Solutions, May 31, 2011; Letter from the Claimant to the Respondent, February 22, 2011; Email from the Respondent to the Claimant, March 2 (year not indicated); Email from the Claimant to the Respondent, April 12 (year not indicated); Estimate, Catoctin Mountain Flooring, June 4, 2011; Photographs; Receipt, Tractor Supply Co., June 5, 2011; Internet pages with prices for Toro Engine and Cub Cadet Belt, undated; List of work from Randy, undated; Receipt, Ace Hardware, June 4, 2011; Memorandum from the Claimant to the MHIC, July 25, 2011; Estimate, Chris Ladino Plumbing, undated; Certificate of Analysis, Fredericktowne Labs, January 24, 2011

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

Fund Ex. # 1 - Notice of Hearing, August 7, 2012; Memorandum from OAH to Legal Services, August 21, 2011; Undeliverable Mail; Notice of Hearing, April 11, 2012

Fund Ex. # 2 - Transmittal; Order for Hearing, March 7, 2012; Complaint and Guaranty Fund Claim Form, received July 27, 2011

Fund Ex. # 3 - License registration information for the Respondent, June 19, 2012

Fund Ex. # 4 - Affidavit of Steven Long, March 12, 2012

Fund Ex. # 5 - Report of Investigation, December 13, 2011; Consent Order, November 22, 2011 (two copies); Complaint and Guaranty Fund Claim with attachments; Email from the Claimant to the Respondent, June 7, 2011; Letter from Avery Barton Strachan to the MREC, September 12, 2011; Letter from Bonnie Teague to the MREC, September 6, 2011; Affidavit by the Respondent, July 17, 2011; Contract between the Claimant and West Patrick Property Solutions, June 15, 2010, with attachments; Management Portfolio Fees, undated; Boyer Lease, June 24, 2010, with attachments; Copy of check, June 28, 2010; Email from the Claimant to the Respondent, February 8, 2011; Email from the Respondent to the Claimant, January 28, 2011; Letter from the Respondent to Jason and Amanda Boyer, March 24, 2011; Emails, Respondent and Claimant, June and July 2011

No exhibits were offered on behalf of the Respondent.

Testimony

The Claimant testified on his own behalf. The Fund did not present any testimony. No testimony was offered on behalf of the Respondent.

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 Salesperson, registration number 05 527749, on behalf of West Patrick Property Solutions, LLC (West Patrick), a property management company located in Frederick, Maryland.
2. In June 2010, the Respondent and the Claimant entered into an agreement for the Respondent to act as the property manager for a house and grounds owned by the Claimant in Emmitsburg, Maryland. The Claimant agreed to pay the Respondent \$100.00 per month.

3. Subsequently, tenants Jason and Amanda Boyer entered into a lease with the Respondent for the Claimant's property. The Boyers paid the Respondent a security deposit of \$2,450.00 and agreed to a monthly rent of \$2,450.00.
4. When the Boyers' tenancy ended on May 20, 2011, the Respondent failed to give the Claimant the security deposit, in the amount of \$2,450.00, or the interest on the security deposit, \$64.24.
5. The Respondent did not give the Claimant part of the April 2011 rent paid to her by the Boyers, in the amount of \$381.51.
6. The Respondent did not give the Claimant the \$2,350.00 that was owed from the May 2011 rent paid to her by the Boyers, consisting of \$2,450.00 minus the \$100.00 management fee.
7. The Respondent did not pay the Claimant \$300.00 in maintenance fees that she owed.
8. On November 22, 2011, the Respondent entered into a Consent Order in which she admitted that she failed to promptly account for or remit money that came into her possession, but belonged to another person.
9. Under the Consent Order, the Respondent waived any right to participate in the hearing of this matter and waived her right to contest or appeal any decision by the MHIC that involves a claim arising out of her actions while a property manager at West Patrick.

DISCUSSION

The burden of proof is on the Claimant to establish the validity of the claim. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (Supp. 2012). The Claimant may obtain an award from the Fund for a claim based on an act or omission occurring in the provision of real estate brokerage services by a licensed real estate salesperson if the claim involves a transaction that relates to real estate located in Maryland and if the claim is based on an act or omission in which money or property was obtained from him by theft. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a) (Supp.

2012). The MREC shall pay a valid claim from the Fund for actual monetary losses suffered by a claimant, not to exceed the statutory limit of \$50,000.00 for each claim.² Md. Code Ann., Bus. Occ. & Prof. § 17-404(b), 17-410 (2010 & Supp. 2012).

By Consent Order dated November 22, 2011, the Respondent admitted violating Section 17-322(b)(22) of the Business Occupations and Professions Article of the Maryland Annotated Code as to this Claimant, when she failed “to promptly account for or remit money that came into her possession, but belonged to another person.” Fund Ex. # 6. The Respondent further waived any right to participate in the hearing of this matter and waived her right to contest or appeal any decision by the MREC involving a claim arising out of her actions. Fund Ex. # 6.

The Claimant seeks payment from the Fund for money improperly kept by the Respondent, and for certain expenses related to damage to his property he asserts were the result of the Respondent’s failure to carry out her duty to inspect and manage the property.

The evidence shows that for a fee of \$100.00 per month, the Respondent acted as the property manager for a house and grounds owned by the Claimant in Emmitsburg, Maryland. The tenants, Jason and Amanda Boyer, paid the Respondent a security deposit of \$2,450.00, and agreed to pay a monthly rent of \$2,450.00.

The Boyers’ tenancy ended on May 20, 2011. The evidence also shows that the Respondent did not give the Claimant the security deposit, nor did she give the Claimant the interest earned on the security deposit, \$64.24.³ The Respondent did not give the Claimant part of the April 2011 rent paid to her by the Boyers, in the amount of \$381.51 and she did not give the Claimant \$2,350.00 owed from the May 2011 rent, consisting of \$2,450.00 minus \$100.00

² The recovery limit under Section 17-404 changed to \$50,000.00 effective July 1, 2012. 2012 Md. Laws ch. 184.

³ The Claimant originally claimed \$150.00 interest; he acknowledged at the hearing that the interest was \$64.24.

management fee. The Respondent did not pay the Claimant \$300.00 in maintenance fees that were owed to the Claimant.

The Fund's position was that the Claimant was entitled to payment from the Fund for the full amount kept by the Respondent, \$5,545.75, because her actions were acts committed in the provision of real estate brokerage services, in which money was obtained from the Claimant by theft. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a) (Supp. 2012). I find that the evidence supports the Claimant's claim for \$5,545.75.

Additional Damages

The Claimant asserted that because the Respondent failed to carry out her responsibility to inspect the house and grounds, the tenants caused extensive damage to the property, which included the following: the tenants damaged the floor and other parts of the interior of the house; the tenants failed to mow the lawn; the tenants damaged the Claimant's tractors; and the tenants failed to properly fence in their horses, which resulted in the need for a filtration system. The Claimant argued that he was entitled to recovery from the Fund for these damages, because the Respondent misrepresented that she was inspecting the property when she was not doing so.

The Fund's position was that the damage claims are not recoverable, citing COMAR 09.11.01.18, which provides that the amount of compensation recoverable by a claimant from the Fund are limited to monetary loss from the "originating transaction." Here, the originating transaction established the Respondent's duties and the fees payable to her by the Claimant.

I agree with the Fund on this point: damages caused by the tenants are not recoverable from the Fund because they do not arise from the property management agreement between the Claimant and the Respondent. The damage from the tenants is a matter between the Claimant and the tenants; the Claimant may keep the security deposit and not refund it to the tenants, and

he may have additional legal recourse against the tenants for damage not covered by the amount of the security deposit. The Fund is not responsible for those damages.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Facts and Discussion, I conclude as a matter of law that the Claimant is entitled to reimbursement from the Real Estate Guaranty Fund in the amount of \$5,545.75 for actual losses resulting from the Respondent's actions and/or omissions. Md.

Code Ann., Bus. Occ. & Prof. §§ 17-404, 17-410 (2010 and Supp. 2012).

RECOMMENDED ORDER

I RECOMMEND that the MREC ORDER:

That the Claimant's claim against the Maryland Real Estate Guaranty Fund be **ACCEPTED** in the amount of \$5,545.75; and

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

January 4, 2013
Date Decision Mailed

SIGNATURE ON FILE

Judith Jacobson
Administrative Law Judge

JJ/emh
#139271