

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION	*	
v.	*	
BEECHER H.W. BROWN. Respondent	*	CASE NO. 2008-RE-218
And	*	
	*	OAH NO. DLR-REC-24-11-08529
CLAIM OF GLORIA VALENTINE AGAINST THE MARYLAND REAL ESTATE GUARANTY FUND	*	
	*	*
*	*	*

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated November 14, 2011, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 30th day of January, 2012

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, AFFIRMED;

C. That the Recommended Order be, and hereby is, AMENDED as follows:

ORDERED that the Respondent Beecher H.W. Brown, violated Md. Bus. Occ. and Prof. Art. § 17-322(b)(3), (22), (25), (31), (32), and (33); § 17-502; § 17-530; and COMAR 09.11.01.12, 09.11.02.01C,

and 09.11.02.02D;

ORDERED that all real estate licenses held by the Respondent Beecher H.W. Brown are REVOKED;

ORDERED that the Respondent Beecher H.W. Brown be assessed a civil penalty in the amount of \$30,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that the claim of Gloria Valentine against the Maryland Real Estate Guaranty Fund be GRANTED in the amount of \$25,000.00;

ORDERED that the Respondent Beecher H.W. Brown shall be ineligible for a real estate license until the civil penalty is paid in full and the Guaranty Fund is repaid, together with all interest due;

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

D. Pursuant to §10-220 of the State Government Article, the Commission finds that the Recommended Order of the Administrative Law Judge had to be modified to provide a time period within which the civil penalty must be paid, and to provide that the Respondent would be ineligible to hold a real estate license until the civil penalty is paid in full, and the Guaranty Fund is reimbursed. It was also necessary to include in the Order all the sections of the law that the ALJ found that the Respondent had violated.

E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.08 those parties adversely affected by this Proposed Order shall have 20 days from the postmark date of the Order to file

exceptions and to 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.

SIGNATURE ON FILE

Maryland Real Estate Commission

MARYLAND REAL ESTATE	* BEFORE TAMEIKA LUNN-EXINOR,
COMMISSION	* AN ADMINISTRATIVE LAW JUDGE
v.	* OF THE MARYLAND OFFICE
BEECHER H.W. BROWN,	* OF ADMINISTRATIVE HEARINGS
RESPONDENT	*
and	*
THE CLAIM OF GLORIA	*
VALENTINE, CLAIMANT,	*
AGAINST THE MARYLAND REAL	* OAH Case No.: DLR-REC-24-11-08529
ESTATE COMMISSION GUARANTY	* MREC Case No.: 08-RE-218
FUND	*

* * * * *

PROPOSED 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 20, 2007, Gloria Valentine (Claimant) filed a complaint with the Maryland Real Estate Commission (REC or Agency) and a claim against the REC Guaranty Fund (Fund) for losses she alleges she suffered as a result of the actions of Beecher H.W. Brown (Respondent), a licensed real estate salesperson. On February 14, 2011, the REC issued regulatory charges against the Respondent and authorized the Claimant to proceed with her claim against the Fund.

On August 16, 2011, I conducted a hearing at the Largo Government Center located at 9201 Basil Court, Largo, Maryland 20774. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2011).¹ Peter Martin, Assistant Attorney General, represented the REC and Jessica Berman Kaufman, Assistant Attorney General, represented the Fund. The Claimant represented herself. The Respondent failed to appear after notice was sent to his address of record with the Commission.²

The Administrative Procedure Act, the REC's Hearing Regulations and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't. §§ 10-201 through 10-227 (2009 & Supp. 2011); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

ISSUES

1. Did the Respondent violate sections 17-322(b)(3) (misrepresentation or false promise); (6) (failed to obtain consent for dual agency); (22) (failed to account for or remit monies that belong to another person); (25) (bad faith, incompetency, untrustworthiness); (30) (failed to disclose relationship with seller); (31) (mishandling trust money under section 17-502 of the Business Occupations Article); (32) (violation of any other statute in title 17); or (33) (violation of the code of ethics found in agency regulations) of the Business Occupations Article?
2. Did the Respondent violate Code of Maryland Regulations (COMAR) 09.11.01.12 (Residential Listing Contracts to be in writing and signed); 09.11.02.01C (protect the public against fraud, misrepresentation or unethical practices); and 09.11.02.02D (licensee shall reveal any interest in the property in writing)?
3. Did the Claimant suffer an actual monetary loss as a result of the conduct of the Respondent and, if so, what is the amount of the loss?

¹ Throughout this decision, Maryland Code Annotated, Business Occupations & Professions (2010) is referred to as "Business Occupations."

² Notice was sent both by certified and regular mail to the Respondent at his address of record on April 21, 2011. The certified mail was returned by the Postal Service as unclaimed. The regular mail was not returned by the Postal Service.

SUMMARY OF THE EVIDENCE

Exhibits

The REC offered the following exhibits, which were admitted into evidence as REC

Exhibits:

1. Notice of Hearing for June 3, 2011 and Statement of Charges and Order for Hearing, certified mail to the Respondent returned
2. Notice of Hearing for August 16, 2011, certified mail to the Respondent returned
3. Licensing History of the Respondent
4. Report of Investigation by Robert A. Hall, with attachments
5. Consent for Dual Agency Form (blank)
6. Letter to the Respondent from the Claimant, dated August 20, 2007
7. Associates & Johnson, LLC Commission form for the Respondent
8. Consent Order in the matter of MD REC v. Beecher Brown, Complaint No. 2006-RE-355, dated August 23, 2010
9. Proposed Order in the matter of MD REC v. Beecher Brown, Case No. 2003-RE-285, dated July 28, 2005
10. Final Order in the matter of Consumer Protection Division v. Creative Financial & Housing Services, Inc., Beecher Brown and Danny Blue, File No. 00-003, dated December 3, 2001

The Claimant offered the following documents which were admitted into evidence as

Claimant's Exhibits:

1. Spreadsheet of Losses Incurred by the Claimant
2. Complaint to Determine Dischargeability of Debts, In re:
Gloria Valentine, filed in the US Bankruptcy Court in 2009
3. Charles County, Maryland Tax Bill for 2009

4. Legal Services Agreement between Claimant and Alston Parker, Esq., dated October 30, 2007
5. Itemized Legal Services bill from Goren, Wolff & Orenstein, LLC, dated January 17, 2011
6. Account Statement from The Law Offices of Richard B. Rosenblatt, PC

The Respondent failed to appear for this hearing therefore there was no evidence presented on his behalf.

Testimony

The REC presented the testimony of the Claimant; George H. Johnson, Associates & Johnson, LLC Real Estate Brokerage; and Robert Hall, an REC Investigator. The Claimant testified in her case. The Respondent failed to appear. The Fund did not present the testimony of any witnesses.

FINDINGS OF FACT

After considering the evidence presented, 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 associated with a real estate brokerage entity known as Associates & Johnson, LLC.
2. On April 28, 2007, the Claimant entered into an Unimproved Land Contract of Sale with seller, Shirley A. Brown, for one acre of land located at Route 257 Rock Point Road. The Claimant's agent in this Sale Contract was the Respondent and the broker was Associates & Johnson.

3. The Contract of Sale was in the amount of \$70,000.00. The Claimant made an initial deposit of \$10,000.00 by check and the contract stated that the initial deposit would be held in escrow.
4. The Respondent deposited the Claimant's check into his personal account; he did not submit the money to his broker, Associates & Johnson to be held in escrow. He also did not submit the contract document to his broker, Associates & Johnson.
5. The Respondent did not inform the Claimant that the seller was his wife and that he was his wife's real estate agent.
6. There was no written listing agreement for the property.
7. The Claimant did not sign a dual agency authorization.
8. On May 7, 2007, the Claimant entered into an agreement with the Respondent indicating the following:
 - a. The purchase price for the acre of land is \$70,000.00.
 - b. The Respondent will pay all closing costs associated with the transaction.
 - c. The Claimant will pay \$10,000.00 earnest money.
 - d. The \$10,000.00 deposit will be returned to the Claimant at closing and the Claimant will receive an additional \$10,000.00 as a credit partner.
 - e. The Respondent will pay a down payment if necessary and make monthly payments for four months.
 - f. After four months, the property shall be recorded in the Respondent's name by way of quitclaim deed relinquishing ownership from the Claimant.
 - g. At no time was the Claimant to pay any more money than the initial deposit.
9. The lender for the \$70,000.00 loan was a private lender, Dr. Robert Self. The Claimant signed the note for \$70,000.00.

10. On June 7, 2007, the Claimant settled with the seller. The Claimant received \$3,290.83 at settlement. The seller received \$51,105.23 at settlement.
11. The Respondent failed to inform the broker, Associates & Johnson, LLC, about his transaction with the Claimant until it was done.
12. The Respondent failed to pay the Claimant \$20,000.00 at closing and he failed to make the first four monthly payments.
13. On August 20, 2007, the Claimant sent a letter to the Respondent requesting that he honor their agreement entered into on May 7, 2007.
14. On November 18, 2010, a Chapter 7 Adversary Judgment was entered against the Claimant in the amount of \$100,868.30. This claim was brought by the lender, Dr. Robert Self.
15. The Claimant paid the law firm of Goren, Wolf and Orenstein a total of \$24,741.00 for services rendered in the case against her brought by the lender.
16. The Claimant paid attorney Ara Parker a total of \$2,000.00 for services rendered in the civil suit against the Respondent.
17. The Claimant paid attorneys \$915.00 for settlement negotiations with the lender.
18. In 2008, 2009 and 2010, the Claimant paid property taxes totaling \$4,013.29.
19. The Claimant suffered an actual loss of \$149,246.76.
20. The Respondent has a long history of complaints filed with the REC dating back to 2003, including a case with the Consumer Protection Agency.
21. On or about September 20, 2007, the Claimant complained to the REC.

DISCUSSION

Burdens

No statute or regulation directly addresses which party has the burdens of production and persuasion³ in a case in which the Agency seeks to sanction a licensee. *See* Md. Code Ann., Bus. Occ. & Prof. §§ 17-323 and 17-324 (explaining some notice requirements but not setting forth any burdens of proof). Generally, the party asserting the affirmative of a proposition has the burdens to prove that proposition. In *Comm'r of Labor & Industry v. Bethlehem Steel*, 344 Md. 17, 34 (1996), the Court held “that the burden of proof is generally on the party asserting the affirmative of an issue before an administrative body.” With regard to the Agency’s regulatory case against the Respondent, the Agency is asserting that the Respondent violated portions of several statutes; I conclude that the Agency has the burdens of proof in the regulatory case.

With regard to the Claimant’s case against the Fund, it is clear that the Claimant shoulders the burdens of production and persuasion. The burdens are on the “claimant to establish the validity of the claim.” Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2010). With regard to elements of proof in a case against the Fund, the statute, Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2010), governs all claims brought against the Fund, and sets forth criteria that must be established by the Claimant in order to obtain reimbursement.

With regard to the standard of proof, the statutes make it clear that the standard is by a preponderance of the evidence. Md. Code Ann., Bus. Occ. & Prof. §17-324(b) (referring to Maryland's Administrative Procedures Act).

³ Maryland law has long recognized that the “burden of proof” is more precisely discussed in terms of a burden of production and a burden of persuasion. Since before 1999, a third such burden has been addressed in Maryland, that being the “burden to plead.” *Owens-Corning v. Walatka*, 125 Md. App. 313, 325 (1999), citing Lynn McLain, *Maryland Evidence* § 300.1, at 132 (1987)).

Regulatory Charges

The REC charged the Respondent with violating the following sections of the Business Occupations Article.:

§ 17-322. Denials, reprimands, suspensions, revocations, and penalties – Grounds.

...

(b) *Grounds.*--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:

...

(3) directly or through another person willfully makes a representation or knowingly makes a false promise;

...

(6) violates §17-530(c) or (d) of this title;

...

(22) fails to account for or to remit promptly any money that comes into the possession of the licensee but belongs to another person;

...

(25) engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;

...

(30) fails to make the disclosure or provide the consent form required by §17-530 of this title;

(31) violates any provision of Subtitle 5 of this title that relates to trust money;

(32) violates any other provision of this title;

(33) violates any regulation adopted under this title or any provision of the code of ethics [.]

Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(3), (6), (22),(25),(30), (31), (32) and (33).

§ 17-502. Handling Trust Money.

(a) Submission to brokers by associate brokers and salespersons. -- An associate real estate broker or a real estate salesperson who obtains trust money while providing real estate brokerage services promptly shall submit the trust money to the real estate broker on whose behalf the associate real estate broker or the real estate salesperson provided the real estate brokerage services.

§ 17-530. Disclosure of Relationship with lessor or seller.

(b) *Required* – (1) A licensee who participates in a residential real estate transaction as a seller’s agent, buyer’s agent, or as a cooperating agent shall disclose in writing that the licensee represents the seller or lessor or the buyer or lessee.

(c) *Dual agents - Generally prohibited.* - Except as otherwise provided in subsection (d) of this section, a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson may not act as a dual agent in this State.

(d) *Same - Exception.* - (1)(i) If a licensed real estate broker or a designee of the real estate broker obtains the written informed consent of all parties to a real estate transaction, the real estate broker may act as a dual agent in the transaction.

(ii) When acting as a dual agent in a real estate transaction, a real estate broker or a designee of the real estate broker shall assign a licensed associate real estate broker or licensed real estate salesperson affiliated with the real estate broker to act as the intracompany agent on behalf of the seller or lessor and another licensed associate real estate broker or licensed real estate salesperson affiliated with the real estate broker to act as the intracompany agent on behalf of the buyer or lessee.

The REC charged the Respondent with violating COMAR 09.11.01.12 and 09.11.02.02D which provide:

All residential listing contracts, listing real property for sale, rental, lease, or exchange, either exclusive or open, shall be in writing and signed, and a copy of the contract shall be given to the seller or owner before the licensee advertises, shows, or offers the property.

COMAR 09.11.01.12

D. Disclosure Requirement.

(1) The licensee may not acquire an interest in, or purchase, personally, for any member of the licensee's immediate family, for the licensee's firm, for any member of the firm, or for any entity in which the licensee has any ownership interest, property listed with the licensee or the licensee's firm without making the licensee's true position known to the listing owner. In selling or leasing property in which the licensee, the licensee's firm, or any member of the licensee's immediate family or the licensee's firm has an ownership interest, the licensee shall reveal that interest in writing to all parties to the transaction.

COMAR 09.11.02.02D

The REC also charged the Respondent with violating a portion of the Agency's code of ethics:

01. Relations to the Public

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.

COMAR 09.11.02.01C

Based on the evidence presented, I conclude that the Respondent is responsible for each of the violations charged. The REC presented three witnesses. I found each witness' testimony to be credible because it was well-supported by contracts, investigative material, business records and correspondence. The witnesses were all consistent in their recollection of the facts, which were further supported by REC exhibits. In contrast, the Respondent failed to appear for the hearing and the REC investigator report indicates that the Respondent admitted to most of the alleged violations. I have explained the reasons for my decision below as it relates to each charge.

Disclosure of Relationship to Lessor

Section 17-530 of the Business Occupations Article clearly states that if a licensee in a residential real estate transaction acts as seller's agent and buyer's agent, the agent shall disclose in writing the dual nature of the relationship. The seller of the unimproved land was the Respondent's wife and he was her real estate agent. The Respondent was also the Claimant's real estate agent. Pursuant to COMAR 09.11.08.01, the REC developed a form "Consent for Dual Agency". In this case, this form was not completed and signed by the Respondent and the Claimant as required by law. The Claimant testified that she never signed a dual agency agreement. There was never written consent for dual agency as required by law. The

Respondent also did not disclose his relationship to the seller in writing pursuant to COMAR 09.11.02.02D.

During the REC investigation, the Respondent stated that he discussed his relationship to the seller with the Claimant several times. Also, he stated that he listed himself as an Intracompany Agent with Broker as Dual Agent for both the seller and buyer in the Contract of Sale and that was notice to the Claimant that he was acting as a dual agent in the transaction. However, listing himself as an Intracompany Agent on the Contract of Sale does not satisfy the dual agency written consent requirement. According to section 17-530(d)(1)(i), a licensee must *expressly* obtain written informed consent from all parties to a real estate sales transaction; mere disclosure of a dual agency relationship is not enough. Therefore, the Respondent has violated section 17-530, COMAR 09.11.08.01 and COMAR 09.11.02.02D.

Handling of Trust Money Deposit and Contract Agreement

It is clear in this case that the Respondent was obligated to be, and was acting as a real estate salesperson for the owner of the unimproved land and the Claimant. As a real estate salesperson, and as an employee of the real estate broker, the Respondent was obligated by section 17-502 of the Business Occupations Article, to submit the deposit money check in the amount of \$10,000.00 to the broker. The Respondent did not submit the money to his broker and he did not submit the listing contract or the Claimant's contract to his broker. George H. Johnson, owner of the brokerage for this transaction testified that he never saw the listing contract or the sale contract although he asked for them numerous times. COMAR 09.11.01.12 requires that all listing contracts be in writing. Clearly, the Respondent violated section 17-502 and COMAR 09.11.01.12. This conduct also demonstrates untrustworthiness if the Respondent intentionally kept the money knowing that it was to be submitted, or incompetence if he did not understand that the money was to be submitted to his broker. Md. Code Ann., Bus. Occ. & Prof.

§ 17-322(b)(25). This conduct also satisfies the “catch-all” provisions of sections 17-322(b)(31) (violates any provision of Subtitle 5) and (32) (violates any other provision) are satisfied.

During the REC’s investigation, Robert Hall, Investigator, spoke with the Respondent about these allegations and the Respondent admitted that he took the \$10,000.00 deposit from the Claimant and that he and his wife were holding it. The Respondent admitted that neither he nor his wife had an escrow account. The Respondent also admitted during the investigation that he never had a listing for the property. The evidence is clear that the Respondent failed to handle trust money appropriately and that he failed to put the listing contract for his wife’s property in writing,

Fraud, Misrepresentation and Unethical Practice

The Act provides, at section 17-322(b)(25), that the REC may take action against a licensee who “engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings.” Section 17-322(b)(32) and (33) provides that the REC may take action against a licensee who violates any other provision of the title or any provision of the code of ethics.

The Respondent’s dealings with the Claimant were fraught with bad faith, dishonesty and impropriety. The Respondent failed to properly disclose in writing that the seller was his wife. The Respondent also failed to get written consent of dual agency. The Respondent demonstrated dishonesty and a lack of integrity when he entered into the May 7, 2007 agreement with the Claimant. The May 7, 2007 agreement was prepared in bad faith; it was dishonest and was proof of the Respondent’s incompetency. In the May 7, 2007 agreement, the Respondent led the Claimant to believe that once he quitclaim deeded the property to himself, she would no longer be held financially responsible for the note. This was untrue and caused the Claimant to have to file bankruptcy and receive a judgment against her? in the amount of \$100,868.30.

The Respondent did not treat the Claimant fairly and honestly when he negotiated the May 7, 2007 agreement with the Claimant in which he agreed to pay all closing costs, to give the Claimant \$20,000.00, and to pay the first four mortgage payments after which he would quitclaim deed the property to himself and the Claimant would no longer be held financially responsible. The Respondent breached the May 7, 2007 agreement with the Claimant and did not uphold any of the promises enumerated in that contract.

Lastly, I conclude that had the Respondent violated his ethical obligations to the public as a licensed real estate agent when he led the Claimant believe that she was his credit partner, and that she would only have to pay the initial \$10,000.00 which she would receive back at settlement along with an additional \$10,000.00. Instead of receiving \$20,000.00, the Claimant lost a large amount of money. It is clear that this was fraud and that the Respondent willfully made a false promise in violation of section 17-322(b)(3). During the REC investigation into this claim, the Respondent stated that the Claimant backed out of the May 7, 2007 agreement therefore he did not abide by any of the promises in that contract. However, REC Ex. #6 (August 20, 2007, letter from the Claimant to the Respondent) clearly shows that that the Claimant relied on the promise made in the May 7, 2007 agreement.

Based on the evidence presented, I find that the Respondent failed to disclose that the seller was his wife, failed to disclose dual agency, breached the May 7, 2007 agreement with the Claimant and misled the Claimant throughout the entire transaction. I conclude that the Respondent violated Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(25),(32) and (33).

Regulatory Sanctions

The Respondent is subject to sanction under section 17-322(c) of the Business Occupations Article. Section 17-322(c) of the Business Occupations Article provides for the imposition of monetary penalties and states, in pertinent part, as follows:

(c) *Penalty.* –

(1) 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.

(2) To determine the amount of the penalty imposed, the Commission shall consider:

- (i) the seriousness of the violation;
- (ii) the harm caused by the violation;
- (iii) the good faith of the licensee; and
- (iv) any history of previous violations by the licensee.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c).

The REC recommended the imposition of a civil penalty of \$20,000.00 and revocation of the Respondent's real estate license. The evidence in this case supports the recommended sanctions. However, I find that the civil penalty should be increased to \$30,000.00 as the Respondent violated more than six sections of the Article in question. The violations that the Respondent committed were serious. He converted the earnest money deposit to his own use. He failed to submit the deposit to his broker as well as copies of the listing and sale contracts. He failed to disclose his marital relationship with the seller and failed to get written consent for dual agency. He caused \$149,246.76 worth of monetary harm to the Claimant. He caused the Claimant to lose trust in a licensed real estate salesperson. He breached the May 7, 2007 agreement with the Claimant. He caused his broker not to trust him. He has not shown good faith in the transactions and has a long history of violations including a sanction by Consumer Protection Agency. Based upon the facts and circumstances of this case, I find that the recommended sanctions are not arbitrary and capricious or an abuse of the REC's discretion.

Md. Aviation Admin. v. Noland, 386 Md. 556, 581-82 (2005).

Guaranty Fund Claim

Claims for reimbursement from the Fund are governed by section 17-404 of the Business Occupations Article, which states, in pertinent part:

§ 17-404. Claims against 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:

...

3. a licensed real estate salesperson;

...

(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.

With respect to claims against the Fund, COMAR 09.11.03.04 further provides as follows:

.04 Claims Against the Guaranty Fund.

A. A guaranty fund claim shall be based on the alleged misconduct of a licensee.

B. For the purpose of a guaranty fund claim, misconduct:

(1) Is an action arising out of a real estate transaction involving real estate located in this State which causes actual loss by reason of theft or embezzlement of money or property, or money or property unlawfully obtained from a person by false pretense, artifice, trickery, or forgery, or by reason of fraud, misrepresentation, or deceit;

(2) Is performed by an unlicensed employee of a real estate broker or by a duly licensed real estate broker, associate broker, or salesperson; and

(3) Involves conduct for which a license is required by Business Occupations and Professions Article, Title 17, Annotated Code of Maryland.

COMAR 09.11.01.18 provides further:

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.

As noted above, the Claimant bears the burdens of production and persuasion in this proceeding against the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e). In this case, the Claimant seeks reimbursement for the following:

- \$10,000.00 Earnest deposit which was to be returned at settlement
- \$10,000.00 Payment for being a credit partner pursuant to May 7, 2007 agreement
- \$100,868.30 Chapter 7 Adversary Judgment for the note owned by Dr. Self
- \$6,709.17 Closing costs
- \$10,000.00 Loan for property pursuant to private loan agreement
- \$24,741.00 Attorneys fees for trial with Dr. Self
- \$2,000.00 Attorneys fees for civil suit against Respondent
- \$915.00 Attorneys fees for settlement negotiations with Dr. Self
- \$4,013.29 2008, 2009 and 2010 property taxes

Total: \$169,246.76

The Fund did not dispute that the Claimant suffered an actual loss; however the Fund did dispute the amount of the actual loss. The following is the Funds calculation of the Claimant's actual loss:

- \$3,381.18 Closing Costs
- \$10,000.00 Earnest deposit which was to be returned at settlement
- \$10,000.00 Payment for being a credit partner
- \$70,000.00 Actual loan amount for the property at issue
- \$27,656.00 Attorneys fees

Total: \$121,037.18

After a thorough review of the record, my calculation of the Claimant's actual loss is as

follows:

- \$10,000.00 Earnest deposit which was to be returned at settlement
- \$100,868.30 Chapter 7 Adversary Judgment for the note owned by Dr. Self
- \$6,709.17 Closing costs
- \$24,741.00 Attorneys fees for trial with Dr. Self
- \$2,000.00 Attorneys fees for civil suit against Respondent
- \$915.00 Attorneys fees for settlement negotiations with Dr. Self
- \$4,013.29 2008, 2009 and 2010 property taxes

Total: \$149,246.76

The Fund compensation limit is \$25,000.00. In this case, the Claimant clearly proved that she had an actual loss of at least \$149,246.76 due to the misrepresentation, dishonest behavior, incompetence and fraudulent acts of the Respondent in Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-404. As previously mentioned, the Respondent converted the earnest money deposit to his own use. He failed to submit the deposit to his broker as well as the listing and sale contracts. He failed to disclose his marital relationship with the seller and failed to get written consent for dual agency. He breached the May 7, 2007 agreement with the Claimant and misled her into thinking that she was his credit partner. He has not shown good faith in the transactions in which he misrepresented his intentions and acted fraudulently. The Claimant has successfully established that she suffered an actual monetary loss of \$149,246.76. Therefore she is entitled to the maximum compensation from the fund of \$25,000.00.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the REC demonstrated by a preponderance of the evidence that:

A. The Respondent, as a licensed sales person, directly made misrepresentations or false promises. Md. Code. Ann., Bus. Occ. & Prof. § 17-322(b)(3).

B. The Respondent failed to account for or to remit promptly any money that came into his possession but belonged to another person. Md. Code. Ann., Bus. Occ. & Prof. § 17-322(b)(22).

C. The Respondent engaged in conduct that demonstrates bad faith, incompetency, or untrustworthiness, or that constitutes dishonest, fraudulent, or improper dealings. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25).

D. The Respondent failed to make the disclosure or provide consent form required by Md. Code. Ann., Bus. Occ. & Prof. § 17-530.

E. The Respondent violated a provision of Subtitle 5 relating to trust money. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(31); Md. Code Ann., Bus. Occ. & Prof. § 17-502.

F. The Respondent violated section 17-322(b)(32) of the Business Occupations Article by engaging in conduct that violated any other provision of the title.

G. The Respondent violated the regulations adopted under the Business Occupations Article which are the code of ethics. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33); COMAR 09.11.02.01H.

H. The Respondent is subject to sanctions for the conduct and revocation of his license and a \$30,000.00 civil penalty are appropriate sanctions. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c).

I also conclude that the Claimant has established by a preponderance of the evidence an actual monetary loss recoverable from the Fund, in the amount of \$25,000.00. Md. Code Ann., Bus. Occ. & Prof. § 17-404; COMAR 09.11.03.04.

RECOMMENDED ORDER

I THEREFORE RECOMMEND that the Maryland Real Estate Commission:

ORDER that the Respondent's real estate license be revoked; and further

ORDER that the Respondent pay a civil penalty of \$30,000.00; and further

ORDER that the Claimant be reimbursed from the Guaranty Fund in the amount of \$25,000.00; and further

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

November 14, 2011
Date Decision Issued

Tameika Lunn-Exinor
Administrative Law Judge

TLE/rbs
Doc #125814

MARYLAND REAL ESTATE

*** BEFORE TAMEIKA LUNN-EXINOR,**

COMMISSION

*** AN ADMINISTRATIVE LAW JUDGE**

v.

*** OF THE MARYLAND OFFICE**

BEECHER H.W. BROWN,

*** OF ADMINISTRATIVE HEARINGS**

RESPONDENT

and

THE CLAIM OF GLORIA

VALENTINE, CLAIMANT,

AGAINST THE MARYLAND REAL

*** OAH Case No.: DLR-REC-24-11-08529**

ESTATE COMMISSION GUARANTY

*** MREC Case No.: 08-RE-218**

FUND

*** * * * ***

FILE EXHIBIT LIST

Exhibits

The REC offered the following exhibits, which were admitted into evidence as REC

Exhibits:

1. Notice of Hearing for June 3, 2011 and Statement of Charges and Order for Hearing, certified mail to the Respondent returned
2. Notice of Hearing for August 16, 2011, certified mail to the Respondent returned
3. Licensing History of the Respondent
4. Report of Investigation by Robert A. Hall, with attachments
5. Consent for Dual Agency Form (blank)
6. Letter to the Respondent from the Claimant, dated August 20, 2007
7. Associates & Johnson, LLC Commission form for the Respondent

8. Consent Order in the matter of MD REC v. Beecher Brown, Complaint No. 2006-RE-355, dated August 23, 2010

9. Proposed Order in the matter of MD REC v. Beecher Brown, Case No. 2003-RE-285, dated July 28, 2005

10. Final Order in the matter of Consumer Protection Division v. Creative Financial & Housing Services, Inc., Beecher Brown and Danny Blue, File No. 00-003, dated December 3, 2001

The Claimant offered the following documents which were admitted into evidence as

Claimant's Exhibits:

1. Spreadsheet of Losses Incurred by the Claimant
2. Complaint to Determine Dischargeability of Debts, In re: Gloria Valentine, filed in the US Bankruptcy Court in 2009
3. Charles County, Maryland Tax Bill for 2009
4. Legal Services Agreement between Claimant and Alston Parker, Esq., dated October 30, 2007
5. Itemized Legal Services bill from Goren, Wolff & Orenstein, LLC, dated January 17, 2011
6. Account Statement from The Law Offices of Richard B. Rosenblatt, PC

The Respondent failed to appear for this hearing therefore there was no evidence presented on his behalf.