BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION	*	
	*	**CASE NO. 2018-RE-222**
v.	*	**OAH NO. LABOR-REC-24-19-37841**
BARRY MILLER, Respondent	*	
and	*	
IN THE MATTER OF THE CLAIM OF BRETT WILMER AGAINST THE MARYLAND REAL ESTATE COMMISSION GUARANTY FUND	*	

* * * * * * * * * * * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated November 30, 2020, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20 day of January, 2021, hereby **ORDERED**:

A. That the Findings of Fact in the proposed decision be, and hereby are, **AFFIRMED.**

B. That the Conclusions of Law in the proposed decision be, and hereby are, **APPROVED.**

C. That the Recommended Order in the proposed decision be, and hereby is, **ADOPTED** and **AMENDED** in part as follows:

All real estate licenses held by the Respondent shall be suspended from the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted and shall not be reinstated until the civil penalty is paid in full and the Maryland Real Estate Guaranty Fund (the "Fund") is reimbursed, including any interest that is payable under

the law and application for reinstatement is made.

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

E. Pursuant to Annotated Code of Maryland, State Government Article § 10-220, the Commission finds that the Proposed Decision of the Administrative Law Judge required modification because it omitted from the Recommended Order suspension of the Respondent's license(s) until the civil penalty and Fund award are paid in full and application for reinstatement is made.

F. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties adversely affected by this Proposed Order shall have twenty (20) days from the postmark date of the Order to file 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.

G. Once the 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

SIGNATURE ON FILE

1/20/2021
Date

By: [illegible]

MARYLAND REAL ESTATE	*	**BEFORE JENNIFER M. CARTER JONES,**
COMMISSION	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE**
BARRY MILLER,	*	**OF ADMINISTRATIVE HEARINGS**
RESPONDENT	*	
And	*	**OAH No.: DLR-REC-24-19-37841**
THE CLAIM OF BRETT WILMER,	*	**MREC No.: 18-RE-222**
CLAIMANT,	*	
AGAINST THE MARYLAND	*	
REAL ESTATE COMMISSION	*	
GUARANTY 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 or about November 27, 2017, Brett Wilmer (Claimant), filed a claim with the Maryland Real Estate Commission's (MREC or Commission) Guaranty Fund (Fund) for actual monetary losses suffered as a result of the acts or omissions of Barry Miller (Respondent), allegedly committed while the Respondent acted in his capacity as a licensed real estate broker. The Claimant also filed a complaint against the Respondent with the MREC, the agency responsible for regulating and disciplining real estate brokers.

On November 8, 2019, the MREC issued a Statement of Charges (Charges) against the Respondent for alleged violations of the Maryland Real Estate Broker's Act (Act), Maryland Code Annotated, Business Occupations and Professions Article, section 17-101 *et. seq.* (2018 & Supp. 2019) and the provisions at Code of Maryland Regulations (COMAR) 09.11.01 and 09.11.02, enacted under the Act. The MREC further determined the Claimant was entitled to a hearing to establish his eligibility for an award from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-409(a) (2018). Accordingly, the MREC ordered a combined hearing on the Charges and the Claimant's claim against the Fund.

On September 1, 2020, I conducted a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Profs. §§ 17-324(a) and 17-408(a) (2018). Hope Sachs, Assistant Attorney General, Department of Labor, (DOL), represented the MREC. Lynn Krause, Esquire, represented the Claimant. Shara Hendler, Assistant Attorney General, DOL, represented the Fund. The Respondent failed to appear for the hearing.

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings before the Office of the Secretary of the DOL, and the Rules of Procedure of the Office of Administrative Hearings govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.02, 09.01.03 and 28.02.01.

ISSUES

1. Did the Respondent engage in conduct that demonstrated bad faith, incompetency, or untrustworthiness or that constituted dishonest, fraudulent or improper dealings, in violation of section 17-322(b)(25) of the Act;

2. Did the Respondent violate any other provision of the Act, thereby violating section 17-322(b)(32) of the Act;

3. Did the Respondent violate any regulation adopted under the Act or any provision of the code of ethics, in violation of section 17-322(b)(33) of the Act;

4. Did the Respondent fail to exercise reasonable care and diligence when dealing with the Claimant, in violation of section 17-532 of the Act;

5. Did the Respondent violate the Code of Ethics in COMAR 09.11.02.02 by failing to protect and promote the interests of the Claimant while maintaining statutory obligations towards other parties to a transaction?

6. If so, what is the appropriate sanction?

7. Did the Claimant sustain an actual monetary loss as a result of the Respondent's acts or omissions in his capacity as a licensed real estate broker; and,

8. If so, what is the appropriate award to the Claimant from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for the MREC:

MREC Ex. 1: Notice of Hearing, dated June 18, 2020

MREC Ex. 2: Statement of Charges and Order for Hearing, dated November 8, 2019

MREC Ex. 3: Licensing Information for the Respondent, printed on August 25, 2020

MREC Ex. 4: MREC Report of Investigation, closed on May 7, 2019

I admitted the following exhibits for the Claimant:

CLMT Ex. 1: Letter from the Claimant to the Respondent, dated November 3, 2017

CLMT Ex. 2: List of Damages; Receipt from Spartan Junk Removal, dated October 28, 2017; Estimate from B-More Installed, dated November 3, 2017; Bill from Anne Arundel County, Maryland Water and Wastewater Service, dated August 28, 2017; Bill from Anne Arundel County, Maryland Water and

Wastewater Service, dated November 28, 2017; and list of expenses, undated.

The Respondent failed to appear for the hearing and did not offer any exhibits for admission into evidence.

The Fund did not submit any exhibits.

Testimony

The MREC presented the testimony of the Claimant and Tovie Campbell, MREC Investigator.

The Claimant also testified on his own behalf[1]

No one testified on behalf of the Respondent or the Fund.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent was an associate real estate broker licensed by the MREC under license number 03-579609. He has held his Maryland real estate license since 2003 and it expires in November 2021.

2. The Claimant owns 407 Blossom Lane in Glen Burnie, Maryland (the Property).

3. The Claimant, who was a loan officer, and the Respondent worked together and were professional friends.

4. In or about 2013, the Claimant relocated to Nashville, Tennessee. He was going to sell the Property, but instead decided to rent it out, and hired the Respondent to manage the Property. The Claimant and the Respondent entered into a property management agreement (the Agreement).

[1] The Claimant's regulatory testimony also served as his testimony in support of his Guaranty Fund claim.

5. As part of the Agreement, the Respondent was required to negotiate and implement rental agreements, to collect security deposits and rent, to conduct background checks on all prospective tenants, and to check on the condition of the Property every two-to-three months to ensure the Property was in good repair.

6. The Respondent was also responsible for walking through the Property with tenants at the beginning of their tenancy and conduct a walk-through inspection of the Property at the end of a tenancy to assess whether damages existed that would require deductions from the security deposit.

7. Under the Agreement, the Respondent was to retain fifteen percent of the rent each month as a fee for his property management services to the Claimant.

8. Between 2013 and 2016, the Respondent carried out the responsibility of the Agreement with no problems. The Respondent remitted rent payments to the Respondent and otherwise carried out his responsibilities under the Agreement.

9. On or about June 6, 2016, the Respondent rented the Property to T1.[2] T1 signed a two-year lease (original lease). The original lease stated that T1 was required to pay $1,800.00 per month in rent, an $1,800.00 security deposit and a $350.00 pet deposit.

10. The Respondent collected the $1,800.00 security deposit and the $350.00 pet deposit from T1.

11. The original lease provided that T1 was responsible for paying all of the utilities, including water.

12. Approximately six months after moving into the Property, T1 began having trouble paying the rent and the Respondent added two additional people to the lease, T2 and T3. The Respondent did not send a copy of the amended lease to the Claimant.

[2] I have identified the tenants in this fashion to protect confidentiality and because two tenants during the relevant time period share the same first and last initials.

13. Approximately one year into the original lease, T3 moved out of the Property and the Respondent notified the Claimant that a new person, T4, was moving into the Property to replace T3 and to help T1 pay rent. Actually, T1 had moved out of the Property but the Respondent did not notify the Claimant that T1 was no longer living in the Property.

14. When T1 moved out of the Property, she owed $1,000.00 in unpaid rent.

15. On June 17, 2017, the Respondent entered into a one-year lease agreement (new lease) with T4 and another person, T5. The Respondent did not send a copy of the new lease to the Claimant.

16. Before renting the Property to T4 and T5, the Respondent did not conduct background checks as required in the Agreement.

17. The new lease provided that T4 and T5 were responsible for paying all of the utilities, including water.

18. The Respondent did not collect a security deposit from T4 and T5 and did not note in the new lease that he collected a security deposit.

19. The Respondent sent the Claimant the rent payment from T4 and T5 for August, but did not receive rent for September. The Respondent did not send the Claimant any other rent from T4 and T5 except for August 2017.

20. Between September 13, 2017 and September 19, 2017, the Respondent and the Claimant engaged in a series of emails in which the Respondent updated the Claimant on the status of the tenancy at the Property, the steps the Respondent had taken to obtain rent from and to evict T4 and T5, and the status of the water bill.

21. On September 19, 2017, the Respondent sent an email to the Claimant advising him that he visited the Property and other than a broken screen door, the outside and the inside of the Property appeared to be intact. The Respondent also advised the Claimant he was

forfeiting his fifteen percent of any rent due to the Claimant to mitigate the lack of rent from T4 and T5.

22. Also, on September 19, 2017, the Respondent filed a petition in the District Court for Anne Arundel County (District Court) for the eviction of T4 and T5. T4 was in a rehabilitation facility at that time and the Respondent attempted to send notice to T4 of a September 27, 2017 hearing date in the District Court related to the eviction.

23. On September 27, 2017, the Respondent appeared in District Court regarding the eviction. T4 and T5 did not appear. The District Court Judge awarded the Claimant $2,310.00 in unpaid rent and possession of the Property to the Respondent.

24. On October 17, 2017, the Respondent appeared in District Court to evict T4 and T5. The District Court Judge awarded the Claimant $4,800.00 in unpaid rent and eviction of T4 and T5.

25. The Claimant has not received the $4,800.00 he was awarded by the District Court and he has not pursued enforcement of the judgment.

26. T4 and T5 were evicted and moved out of the Property in October 2017.

27. When T4 and T5 moved out of the Property, they left damages on every floor, including the following:

- five porch screens ripped;
- broken gazebo window;
- four broken interior doors;
- broken basement windows;
- ripped, torn and stained carpets;
- unprofessional and unworkmanlike paint on walls in odd colors (black, dark purple, red);

- bedroom window screen missing
- broken porch screen and storm doors;
- broken and bent door frames;
- broken cabinets and drawers in the kitchen;
- broken glass in kitchen door;
- broken bolt on garage window; and
- broken vanity in the basement bathroom

28. When T4 and T5 were evicted, they owed $3,600 in rent (July and September).

29. After T4 and T5 moved out of the house, because the Respondent had not switched the water bill to be payable by T4 and T5, the Claimant was required to pay a $1,795.00 water bill for over a year of water consumption by the tenants.[3]

30. After T4 and T5 left the Property, the Respondent sent T1's $1,800.00 security deposit and T1's $350.00 pet deposit to the Claimant.

31. The Claimant had to make repairs to the Property due to damages caused by T4 and T5 and paid $4,550.00 to make those repairs.

32. The Claimant paid $475.00 to rent a dumpster and $335.00 to Spartan Junk Removal to clean out the Property after T4 and T5 left.

33. The Claimant suffered an actual loss of $3,595.00, calculated as follows:

Item(s)	Amount
Water Bill	$1,795.00
Security Deposit due from T4 and T5	$1,800.00
TOTAL	**$3,595.00**

[3] The bill was originally $3,421.13, but Anne Arundel County Water and Wastewater Service reduced the bill to $1,795.46 to account for leaking toilets at the Property.

DISCUSSION

Legal Framework

Disciplinary Charges Under the Act

The MREC charged the Respondent under section 17-322 (2018) of the Act, as follows:

> **Denials, reprimands, suspensions, revocations, and penalties--**
>
> (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:
>
> ...
>
> (25) engages in conduct that demonstrates bad faith, incompetency, untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;
>
> ...
>
> (32) violates any other provision of this title; [or]
>
> (33) violates any regulation adopted under this title or any provision of the code of ethics[.]

The MREC further charged the Respondent under section 17-532 of the Act, which requires that he promote the interest of the Claimant, as his client, by "exercis[ing] reasonable care and diligence" when dealing with the Claimant. Finally, the MREC charged the Respondent with violating the Code of Ethics, COMAR 09.11.02.02, which requires the Respondent, as the Claimant's agent, to "protect and promote the interests of the [Claimant]."

Guaranty Fund Claim

Under the Act, a person may recover an award from the Fund for an actual loss as follows:

> (2) A claim shall:
>
> (i) be based on an act or omission that occurs in the provision of real estate brokerage services by:
>
> 1. a licensed real estate broker;
> 2. a licensed associate real estate broker;
> 3. a licensed real estate salesperson; or

4. an unlicensed employee of a licensed real estate broker;

(ii) involve a transaction that relates to real estate that is located in the State; and

(iii) be based on an act or omission:

1. in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or
2. that constitutes fraud or misrepresentation.

Md. Code Ann., Bus. Occ. & Profs. § 17-404(a)(2) (2018). The amount recovered for a claim made against the Fund may not exceed $50,000.00. Md. Code Ann., Bus. Occ. & Profs. § 17-404(b) (2018).

Burden of Proof

With regard to the Charges, the MREC bears the burden of proof, by a preponderance of the evidence, to demonstrate the Respondent violated the applicable provisions of the Act and the controlling regulations. COMAR 09.01.02.16A. With regard to the claim against the Fund, the Claimant bears the burden of proof, by a preponderance of the evidence, to demonstrate he suffered an actual loss because of the Respondent's acts or omissions. Md. Code Ann., Bus. Occ. & Profs. § 17-407(e) (2018); COMAR 09.01.02.16C. To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so" when all of the evidence is considered. *Coleman v. Anne Arundel Co. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

The Merits of the Case

Disciplinary Charges

The Claimant argued that under the Agreement he entered into with the Claimant to manage the Property, among other things, the Respondent was required to conduct background checks of prospective tenants, obtain a security deposit of $1,800.00 for each term of tenancy, assign the utilities to the current tenant, and check on the Property every two-to-three months to

ensure it was in good repair. The Claimant did not present a copy of the Agreement; therefore, I am unable to review its actual terms. However, I found the Claimant's testimony regarding the terms of the Agreement to be credible. He was able to recall and recount with detail what was agreed upon and repeated that recollection on more than one occasion during his testimony, bolstering his credibility.

The MREC asserts that had the Respondent fulfilled his responsibilities under the Agreement and checked on the Property every two-to-three months, he would have become aware that T4 and T5 or individuals associated with them had extensively damaged the Property. The Respondent could have then mitigated any further damage. Furthermore, the MREC argues that if the Respondent had collected a security deposit from T4 and T5, any damages to the Property would be mitigated. Thus, the MREC asserts the Respondent acted in an incompetent and untrustworthy manner in his capacity as property manager for the Property in violation of section 17-322(b)(25).

Furthermore, in addition to his failure to check on the state of the Property and obtain a security deposit, the MREC argues that the Respondent failed to exercise reasonable care and diligence when dealing with the Claimant in violation of section 17-532 of the Act when he failed to transfer the utility bills, including the water bill, to be payable by T4 and T5. As a result of the Respondent's failures, the Claimant had to pay a water bill in the amount of $1,795.00 covering the time of T4's and T5's tenancy.

Finally, the MREC argues that due to his lack of diligence and failure to abide by the terms of the Agreement, the Respondent failed to protect and promote the interests of the Claimant in violation of COMAR 09.11.02.02 and section 17-322 (b)(33) of the Act.

The evidence is unambiguously clear that the Respondent did not meet some of his obligations under the agreement. Specifically, he did not collect a security deposit from T4 and

T5, which the Claimant could have used to mitigate the damage T4 and T5 caused to the Property. Furthermore, it is clear that the Respondent did not transfer the water bill, to make it payable by T4 and T5, and as a result, they did not pay the water bill for the duration of their tenancy, ultimately resulting in a $1,795.00 water bill. These actions and omissions support the conclusion that the Respondent dealt with the Claimant in a manner that was untrustworthy, incompetent, and unethical, in violation of sections 17-322(b)(25), (32) and (33) of the Act and COMAR 09.11.02.02.

Guaranty Fund Claim

As discussed above, a claim against the Fund shall 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 an act or omission that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(iii) (2018). The amount of compensation recoverable by a claimant from 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 09.11.01.15. I will evaluate whether the evidence supports any actual monetary loss.

The Claimant asserted that he is entitled to recover $17,105.00 from the fund as a result of the Respondent's acts or omissions. The Claimant presented evidence that he was required to pay a water bill in the amount of $1,795.00 for the amounts accrued during T4's and T5's tenancy. The Claimant argued that he would not have had to pay that amount if the Respondent had transferred the water bill to be payable by T4 and T5 as required under the Agreement. Furthermore, the Claimant offered evidence that he did not receive $3,600.00 in rent from T4 and T5 for two months of their tenancy and that during that tenancy, T4 and T5 caused $4,500.00 in damage to the Property, which he had to pay in addition to renting a dumpster for $475.00 and

paying to have junk removed for $335.00. The Claimant also asserts that he had to forego three months of rent in the amount of $5,400.00 during the time he was required to make repairs to the Property after T4 and T5 were evicted. Additionally, he had to pay $300.00 for utilities during that time.

The Claimant argues that if the Respondent had fulfilled his responsibilities under the Agreement, he would have visited the Property every couple of months, observed the damages to the Property, and had an opportunity to mitigate any further damage. Additionally, if the Respondent had collected a security deposit, the Claimant could have used that money to repair some of the damage T4 and T5 caused. Furthermore, the Claimant argues that had the Respondent conducted a background check for T4 and T5, he would have learned that T4 was addicted to drugs and would have avoided renting the Property to them.

I conclude that the Claimant has proven he sustained an actual loss of $3,595.00 as a result of the Respondent's acts or omissions.

The Claimant provided a copy of the $1,795.00 water bill he was required to pay for water consumption during the period when the Property was occupied by tenants. Accordingly, I conclude he has proven he suffered an actual loss for that amount.

It is also clear that, although he executed the new lease to T4 and T5 on June 17, 2017, the Respondent did not collect a security deposit from them as required by the Agreement. Indeed, the Claimant credibly testified that he only received the security deposit the Respondent collected under the original lease with T1. Although the original lease notes that the Respondent collected an $1,800.00 security deposit from T1, on the new lease between the Respondent, T4 and T5, the security deposit provision is blank. Moreover, according to Ms. Campbell, who interviewed the Respondent as part of the MREC investigation, the Respondent admitted he did

not collect a security deposit from T4 and T5 because they did not have the money for it at the time of the new lease.

The security deposit is required for the purpose of ensuring the property owner has sufficient funds to repair any damages caused by tenants or to cover the cost of unpaid rent. In this case, the Claimant submitted evidence that T4 and T5 or individuals associated with them caused $5,400.00 in damages to the Property. Although the Respondent sent T1's security deposit and pet deposit to the Claimant, some of that money was allotted towards T1's delinquent rent. Had the Claimant collected a security deposit at the beginning of T4's and T5's tenancy as required by the Agreement, he would have had an additional $1,800.00 to make repairs to the Property. Accordingly, I conclude that the Claimant suffered a loss of $1,800.00 as the funds to which he was entitled to apply toward the $4,500.00 in damages caused by T4 and T5.

Although I find the Claimant suffered a loss in the amount he had to spend to make repairs to the Property for to the damage caused by T4 and T5, I conclude he has not proven that the loss is attributable to the Respondent's acts or omissions. There is no dispute that the Claimant had to pay $4,500.00 to a contractor to make repairs to the Property as the Claimant submitted an estimate from contractor B-More Installed and credibly testified he paid that amount. The Claimant also submitted a receipt from Spartan Junk Removal for $335.00 and credibly testified that he paid $475.00 to rent a dumpster to clean out the Property.

There is also no dispute that the Respondent was required under the Agreement to check on the Property every two-to-three months to ensure that the tenants were not damaging the Property, beyond normal wear and tear. However, when renting property, one takes the risk that the tenants may damage the property to some extent. As I have stated, the potential for damage is the purpose for obtaining a security deposit at the beginning of the tenancy. Outside of collecting

that deposit, and stopping by the Property periodically, there is little a landlord can do to ensure a tenant does not damage a rented property. I have already determined that the Respondent improperly neglected to collect a security deposit from T4 and T5, which contributed to the ultimate loss suffered by the Claimant.

There is insufficient evidence, however, that the Respondent failed to check on the Property during the tenancy of T4 and T5. The Claimant testified that he did not have a copy of the Agreement, and testified alternately that the Respondent was required to check on the state of the Property every two months or every two-to-three months. T4 and T5 moved into the Property in mid-June. That means that under the Agreement, the Respondent should have checked on the Property by mid-August - or by mid-September at the latest. The Claimant provided no evidence to show when T4 and T5 damaged the Property and I find it reasonable to conclude the damage could have occurred in the first couple months of tenancy. Alternatively, assuming the Respondent visited the Property in mid-August, the damage could have occurred between mid-August and mid-September. According to a September 19, 2017 email from the Respondent to the Claimant, the Respondent advised that he visited the Property and the only damage he noticed was to the front screen door and that the inside of the Property appeared to be intact. Accordingly, it is reasonable to conclude that much of the damage occurred after that date.

Ultimately, a property owner or property manager assumes a risk that a tenant may damage the property and the security deposit is calculated based upon that risk. When a tenant's damages exceed the security deposit, the property owner or manager can seek damages directly from the tenant, but that excessive damage is not necessarily attributable to any lack of diligence by the property manager. In this case, I find that the Claimant did not prove the Respondent failed to check on the Property as required under the Agreement and he failed to prove that the damages caused by the tenants resulted from any act or omission by the Respondent.

Accordingly, I do not find the Claimant has met his burden to prove that he is entitled to the cost of the repairs, the rental of the dumpster, or the cost of the junk removal from the Fund.

I further conclude the Claimant has not proven that he is entitled to compensation from the Fund for the amount of rent due from T4 and T5 at the time of their eviction in October 2017. Under the lease, T4 and T5 were obligated to pay $1,800.00 per month in rent. It is not uncommon for a tenant to fail to timely remit rent or to stop paying rent altogether. The remedy for this situation is to proceed with the eviction process utilizing the district court – a procedure the Respondent instituted and completed on the Claimant's behalf – securing an order of eviction and a judgment for $4,800.00 to cover T4's and T5's unpaid rent. While the evidence supports the conclusion that the Respondent did not conduct a background check as required under the Agreement, the Claimant presented no evidence to prove that a background check would have revealed T4's drug addiction or any other information that would lead to the Respondent to believe that she would damage the Property or fail to pay rent. Accordingly, I do not find that the loss of rent can be attributable to any act or omission of the Respondent's.

I conclude that the loss suffered by the Claimant is limited to the $1,800.00 security deposit the Respondent was required collect from T4 and T5 under the Agreement and the $1,795.00 the Claimant was required to pay for the water bill the Respondent failed to transfer to the tenants' names. Having found the Claimant has failed to prove the loss of the rent and the damages to the Property resulted from any act or omission of the Respondent, he is not entitled to recover from the Fund the $3,600.00 in lost rent, the $4,500.00in repairs he had to make to the Property, the $475.00 dumpster rental, or the $335.00 he spent for junk removal.

As I find the Claimant's loss due to the property damage caused by T4 and T5 cannot be attributed to the Respondent, I further conclude that the Claimant is not entitled to recover from the fund the $5,400.00 in the rent he lost or the $300.00 he spent on utilities during the time he

was making repairs. Again, the Claimant submitted insufficient evidence that the damage and the loss of rent resulted from any act or omission on the part of the Respondent. As the time spent to make the repairs and the utilities necessary to carry out those repairs are directly linked to the property damage, the Claimant cannot recover for the lost rent and utility payments during that time.

Therefore, I find the Claimant has proven he is entitled to an award from the Fund for $3,595.00 for the payment he made for the water bill and the loss of the security deposit from T4 and T5 he could have used to mitigate the property damage they caused.

Disciplinary Sanctions

Section 17-322(c) of the Act provides as follows:

> **17-322. Denials, reprimands, suspensions, revocations, and penalties--Grounds**
>
> (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.
>
> (3) The Commission shall pay any penalty collected under this subsection into the General Fund of the State.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2018).

The MREC argued that as a result of the Respondent's violations of the Act and its applicable COMAR provisions, the appropriate sanction is a 30-day suspension, and the imposition of a $2,500.00 civil penalty for each of the three substantive violations, for a total of

$7,500.00. In support of its recommendation, the MREC points to the fact that the Respondent did not abide by the terms of the Agreement he entered into with the Respondent. The MREC maintains that if the Respondent had acted in good faith and in accord with the interests of the Claimant, the Claimant would not have suffered the loss he did. Specifically, the MREC contends that in addition to failing to obtain the security deposit and transferring the water bill to the tenants' names, the Respondent failed to protect the Claimant's interests when he failed to visit the Property to ensure no damage had been caused by the tenants.

As I have stated, I find that the Respondent is subject to sanction for his failure to collect the security deposit and his failure to transfer the water bill. I have also concluded that there is insufficient evidence that the Respondent failed to inspect the Property every two-to-three months as required under the Agreement or that the failure of the Respondent to conduct a background check would have yielded any indication that T4 and T5 would cease to pay rent. Accordingly, although I find that the Respondent violated the cited provisions of the Act, I do not find his actions so egregious or the harm to the Claimant attributable to the Respondent's actions so great as to warrant suspension. Rather, I conclude that a reprimand is the appropriate sanction. This is particularly so in light of the fact that the Respondent has no history of previous violations.

Furthermore, although the MREC argued that the Respondent did not appear for the hearing and could not offer a showing of any good faith intentions or dealings with the Claimant, the record is rife with emails between the Claimant and the Respondent in which the Respondent communicates the efforts he made on the Claimant's behalf to pursue eviction of T4 and T5, to obtain missing rent payments from T1, T4, and T5, and foregoing his commission to ensure the Claimant received as much money as possible to compensate for the missing rent and potential damages. Although the statements in those emails were not made under oath, the Claimant did

not object to their admissibility or dispute their existence or content. They do indicate that the Respondent acted with some measure of good faith toward the Claimant. Accordingly, coupled with the other mitigating factors, I conclude a civil penalty of $1,000.00 per violation is appropriate, for a total of $3,000.00.

CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I conclude as a matter of law that by failing to collect the security deposit from T4 and T5 under the new lease and by failing to transfer the water bill from the Claimant to the tenants' names for payment, the Respondent engaged in conduct that demonstrated incompetency, untrustworthiness, and improper dealings, in violation of section 17-322(b)(25) of the Act; failed to exercise reasonable care and diligence when dealing with the Claimant, in violation of section 17-532 of the Act; and violated COMAR 09.11.02.02 by failing to protect and promote the interests of the Claimant. By virtue of these aforementioned violations, the Respondent also violated sections 17-322(b)(32) and (33) which generally prohibits any violation of a provision of the act or any regulation adopted under the Act.

I further conclude that the Claimant is entitled to an award from the Fund in the amount of $3,595.00. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(iii) (2018);

I further conclude that the appropriate disciplinary sanctions are a reprimand and a civil penalty in the amount of $3,000.00. Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b) and (c) (2018).

RECOMMENDED ORDER

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

1. The Charges against the Respondent, issued on November 8, 2019, be **UPHELD;**
2. The Respondent be **REPRIMANDED;**

3. The Respondent pay a civil penalty in the amount of $3,000.00;

4. The Maryland Real Estate Commission Guaranty Fund pay to the Claimant the amount of his actual monetary loss, $3,595.00, for the Respondent's wrongful acts or omissions; and

5. The records and publications of the Maryland Real Estate Commission reflect this decision.

SIGNATURE ON FILE

November 30, 2020
Date Decision Issued

Jennifer M. Carter Jones
Administrative Law Judge

JCJ/cj
#189226