

FINAL ORDER

NOV 02 2012

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL
ESTATE COMMISSION

IN THE MATTER OF THE CLAIM *
OF VENETIA BELL *
AGAINST THE MARYLAND REAL *
ESTATE COMMISSION GUARANTY *
FUND ARISING FROM THE ALLEGED *
MISCONDUCT OF MARLESIA A. JOHNSON *
AND *
LATRICIA A. LEE *

CASE NO. 2009-RE-390 G.F.
OAH NO. DLR-REC-22-11-08428
DLR-REC-22-11-21751

* * * * *

PROPOSED ORDER

The Findings of Fact of the Administrative Law Judge dated July 10, 2012, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 6th day of September 2012,

ORDERED.

A. That the Findings of Fact of the Administrative Law Judge in the recommended orders dated November 28, 2011 and July 10, 2012 be ADOPTED:

B. That the claim of Venetia Bell against the Maryland Real Estate Guaranty Fund be GRANTED in the amount of \$1,948.29;

C. That all real estate licenses held by the Respondents Marlesia A. Johnson and Latricia A. Lee shall be suspended until the Guaranty Fund is repaid in full, together with all interest

that is due:

D. That the records and publications of the Maryland Real Estate Commission reflect this decision.

DISCUSSION

After reviewing the recommended decision of the Administrative Law Judge ("ALJ") dated November 28, 2011, the Real Estate Commission determined that, based on the Findings of Fact, the Claimant was entitled to reimbursement in some amount from the Guaranty Fund as a result of the actions of the respondent licensees. However, it was not possible for the Commissioners to determine from that recommended decision what the appropriate amount was, since the ALJ had dismissed the claim without discussion of the various elements of damages set forth by the Claimant. Accordingly, the Commission remanded the case to the ALJ for findings of fact with regard to the specific damages suffered by the Claimant. As guidance to the ALJ, the Commission fully described in its Remand Order of February 2, 2012 the basis for its conclusion that the Claimant was entitled to recover from the Guaranty Fund as a result of the failure of both agents to verify the listing information. The Commission adopts by reference the analysis set forth in the Remand Order in this Proposed Order.

The Commission has reviewed the ALJ's Findings of Fact dated July 10, 2012, and adopts them, as well as the Findings of Fact in the Recommended Decision of November 28, 2011. Based on those facts, the Commission holds that the actual loss suffered by the Claimant, and recoverable from the Fund, totals \$1,948.29. The

items included in this calculation are as follows:

\$1,150.00	Updating second floor kitchen
464.75	Appliances for second floor kitchen
195.00	Leadprobe (1/2 the total bill)
6.12	Postage
45.00	Zoning plats
37.00	Filing for Notice of Appeal
50.42	Required sign to post

\$1,948.29

The Commission bases this determination on the loss suffered as a result of the respondents' misrepresentation of the property as multi-unit, when it was not zoned for separate apartments. Relying on what they had told her, she bought the property and completed the kitchen area on the second floor so that it could be used as a separate apartment. She also incurred costs in an attempt to obtain the zoning status that she had been led to believe the property already had.

The Commission is limited by its governing statutes and regulations to awarding monies from the Guaranty Fund only to cover "actual loss". Thus, the Commission finds that other damages sought by the Claimant are not recoverable from the Fund, because they did not directly result from the misrepresentation, because they are speculative in nature, or because they are specifically precluded. Other improvements to the building and its systems, for example, painting, new windows, and a new boiler, which improved

the property regardless of whether it was one unit or two, are not directly related to the misrepresentation. The Claimant also included lost rental income in her claim; however, she did not provide any outside opinion of what a reasonable expectation of rent would have been. The Commission therefore finds that the amounts claimed are speculative, and cannot be reimbursed from the Guaranty Fund.

The Claimant also sought to recover the real estate commission paid in the purchase of the property; the Commission regulations specifically bar the recovery of commissions paid in a real estate transaction. COMAR 09.11.01.18.

In sum, while the Commission recognizes that the Claimant invested a substantial amount of money in improving the property, it finds that only a portion of those monies constitute actual monetary loss incurred as a result of misrepresentations by the respondents.

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

IN THE MATTER OF THE CLAIM OF:	* BEFORE KIMBERLY A. FARRELL,
VENETIA BELL,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
v.	* OF ADMINISTRATIVE HEARINGS
THE MARYLAND REAL ESTATE	* OAH CASE Nos.: DLR-REC-22-12-07875 ¹
COMMISSION GUARANTY FUND,	* & DLR-REC-22-12-07869
FOR THE ALLEGED MISCONDUCT OF	* MREC COMPLAINT No.: 09-RE-390 GF
MARLESIA A. JOHNSON,	*
REAL ESTATE SALESPERSON,	*
&	*
LATRICIA A. LEE,	*
REAL ESTATE SALESPERSON,	*
RESPONDENTS	*

* * * * *

FINDINGS OF FACT

STATEMENT OF THE CASE
SUMMARY OF THE EVIDENCE
ADDITIONAL FINDINGS OF FACT

STATEMENT OF THE CASE

On February 5, 2009, Venetia Bell (Claimant) filed a claim against the Maryland Real Estate Commission (REC) Guaranty Fund (Fund) for \$22,437.59.² The claim was for monetary losses allegedly incurred by the Claimant as a result of the misconduct of Latricia Lee and

¹ The files originally had different OAH numbers. Respondent Johnson's case number was originally DLR-REC-22-11-08428. Respondent Lee's case number was originally DLR-REC-22-11-21751.

² At the September 7, 2011 hearing the Claimant sought to amend the amount of her claim, revising it upward substantially. The motion to amend the claim was denied for reasons stated on the record after hearing from all parties present at the time.

Marlesia Johnson, Licensed Real Estate Salespersons (Respondents), in providing real estate services to the Claimant for the real property located at 1625 Ralworth Road, Baltimore, Maryland.

On February 11, 2011, the REC transmitted the matters to the Office of Administrative Hearings (OAH) for a hearing. The hearings were originally set for May 6, 2011. There was a problem with service of notice for one of the Respondents and the cases were postponed and rescheduled for September 7, 2011.

I conducted a hearing on September 7, 2011, at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010). The Claimant represented herself at the hearing. Kris King, Assistant Attorney General, represented the Fund. Respondent Johnson represented herself. Respondent Lee failed to appear after actual notice of the hearing.

On November 28, 2011, I issued a Recommended Decision proposing that the Claimant's Fund claim be denied and dismissed. On February 2, 2012, the Executive Director of the REC, Katherine F. Connelly, issued a Remand Order. The REC determined that the Claimant was eligible to recover from the Fund based on failures of both the agents involved in the transaction and remanded the case "for findings of fact on the amount claimed." Remand Order, pg. 2. The Order further clarified that the Commission would determine the amount of actual loss sustained by the Claimant and reiterated that the remand was strictly for findings of fact. Remand Order, pg. 7.

Accordingly another hearing was scheduled to afford the Claimant an opportunity to present evidence and argument related to her claimed losses. That hearing was held April 24, 2012, at OAH offices in Hunt Valley. The Claimant represented herself. Neither Respondent attended the hearing. Each had actual notice of the hearing date, time, and location. Peter Martin, Assistant Attorney General, represented the Fund.

The Administrative Procedure Act, the procedural regulations of the DLLR, and the OAH Rules of Procedure govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2011); Code of Maryland Regulations (COMAR) 09.01.02, 09.01.03, 09.11.03.02; and 28.02.01.

SUMMARY OF THE EVIDENCE

Exhibits

At the September 7, 2011 hearing the following exhibits were admitted into evidence:

I admitted the following exhibits offered by the Fund:

- Fund #1 Notice of Hearing and receipt from the United States Postal Service (USPS) evidencing service on Respondent Johnson
- Fund #2 Notice of Hearing and receipt from the USPS evidencing service on Respondent Lee³
- Fund #3 Order for Hearing, February 8, 2011
- Fund #4 Department of Labor, Licensing and Regulation (DLLR) REC records for Respondent Johnson
- Fund #5 DLLR REC records for Respondent Lee
- Fund #6 Complaint and Guaranty Fund Claim Form, with attachment

The Claimant offered the following exhibits which I admitted as indicated:

- CLMT #1 Not admitted
- CLMT #2 Not admitted and withdrawn
- CLMT #3 Lead inspection report for 3567 Elmora Ave., Baltimore, Maryland
- CLMT #4 Residential contract for sale for 3567 Elmora Avenue, release, and attachments
- CLMT #5 Metropolitan Regional Information Systems, Inc. (MRIS) listing for 1625 Ralworth Road
- CLMT #6 Prints of pictures of 1625 Ralworth exterior
- CLMT #7 Print of picture of 1625 Ralworth interior
- CLMT #8 Floor plan of 1625 Ralworth
- CLMT #9 Documentation of payment of commission to McTear Realtors for sale of 1625 Ralworth
- CLMT #10 Print of picture of 1625 Ralworth interior
- CLMT #11 Email with attached receipts⁴
- CLMT #12 LeadProbe Invoice and inspection certificates for 1625 Ralworth

³ Fund exhibits #1 and #2 are each in their respective OAH files, as opposed to being stored with the rest of the exhibits in a separate section of the file. There is only one set of exhibits for the consolidated hearings. Those exhibits are stored in Respondent Johnson's file.

⁴ CLMT #11 was admitted into evidence for the information it contained as to the kitchen renovation only.

- CLMT #13 Letter from the Claimant to Respondent Johnson, March 14, 2008
- CLMT #14 Letter from the Claimant to Thomas McTear, March 28, 2008
- CLMT #15 Letter to the Claimant from Respondent Johnson, March 24, 2008, with attachments
- CLMT #16 Letter from the Claimant to Respondent Lee and Jack Queen, May 9, 2008
- CLMT #17 Letter to the Claimant from Mary Jo Button of Long & Foster, May 16, 2008
- CLMT #18 Letter from Respondent Lee to the Claimant, undated
- CLMT #19 Documents related to attempt to obtain zoning variance
- CLMT #20 Print of picture of required posting, with attached receipts
- CLMT #21 Department of Planning Memo, August 21, 2008
- CLMT #22 Board of Municipal and Zoning Appeals decision, December 4, 2008
- CLMT #23 Request for Tenancy Approval, Housing Choice Voucher Program
- CLMT #24 Masterwork Design & Construction, Inc. estimate, January 25, 2009, with attachment
- CLMT #25 Letters from the Housing Authority of Baltimore City (HABC) to the Claimant, May 5, 2008, March 19, 2009, March 31, 2010, and January 24, 2011

Respondent Johnson offered the following exhibits, admitted as indicated below:

- RESP #1 Not admitted
- RESP #2 Not admitted
- RESP #3 Residential Contract of Sale for 1625 Ralworth

Respondent Lee was not present to offer any exhibits.

At the April 24, 2012 hearing, the following exhibits were newly admitted or, with respect to RESP #11 from the original hearing, the specifics of the exhibit's admission were revised.

The Fund did not offer any additional exhibits nor did either of the absent Respondents.

The following exhibits submitted by the Claimant were admitted as indicated:

- CLMT #11 Email with attached receipts⁵
- CLMT #26⁶ Typed and handwritten statements regarding plumbing costs
- CLMT #27 Petro Heating & Air Conditioning Services retail installment sales contract, October 15, 2007, with attachments

⁵ Limited portions of this exhibit were admitted at the first hearing. At the second hearing, that ruling was reconsidered and the exhibit was admitted in its entirety.

⁶ Newly admitted exhibits at this second hearing were numbered starting where the original hearing exhibit numbers left off.

- CLMT #28 Casper G. Sippel, Inc. invoices, November 8, 2007 and October 10, 2007, with attachments
- CLMT #29 Roofing Unlimited, Inc. statement, October 24, 2007, estimate, and attachments
- CLMT #30 Baltimore Window Factory invoice, October 31, 2007
- CLMT #31 BGE bill/statements (eight)

Testimony

At the original hearing, the Claimant testified as did Respondent Johnson. No other witnesses testified.

At the April 24, 2012 hearing, only the Claimant testified.

ADDITIONAL FINDINGS OF FACT

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

1. The Claimant claims all the following items as actual losses to her due to the failure of the real estate agents involved to verify the listing information with respect to 1625 Ralworth Road, Baltimore, Maryland, 21218. The Claimant's position is that every expenditure she made related to the property is a loss because, but for the incorrect impression that the property could be rented as two units, she would not have purchased the property at all.
2. The Claimant seeks reimbursement for \$3,197.00 paid as a commission to McTear Realtors & Company by check issued October 1, 2007 and cashed October 5, 2007. CLMT #9.⁷
3. The Claimant seeks reimbursement of \$2,295.00 paid to Ron Goldys. This includes \$1,150.00 for work done to update and improve the second floor kitchen, including purchasing

⁷ The Fund did not object to most of the individual items for which the Claimant seeks reimbursement; however, the Fund did object to this commission being claimed as an actual loss based on COMAR 09.11.01.18 which reads:

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.

and installing cabinets, countertop, sink, faucet and plumbing labor; \$350.00 for work in the basement bathroom removing tile and adding wainscoting; \$120.00 for flooring repair to the living room; \$600.00 for additional wainscoting for the downstairs bathroom, and replacement of a new cabinet and sink; and \$75.00 related to a basement washtub. CLMT #11, pg 1.

4. The Claimant seeks reimbursement of \$3,270.00 for services provided by Donnell Thomas. These services include painting the upstairs bedroom, hallway, and bathroom (\$300.00); installing some upstairs kitchen cabinets and a radiator cover (\$460.00, which includes purchasing the cabinet and materials to hang it from Lowe's for \$309.92); sanding and varnishing the floors in the living room and dining room on the main level (\$860.00); walling off an area to create a basement level bedroom, installing a light switch and a baseboard heater (\$1,000.00); and building a basement utility wall to improve the appearance of the basement area by hiding the oil tank, furnace, and sump pump (\$650.00). CLMT #11, pgs. 2 and 3.

5. The Claimant seeks reimbursement of \$464.75 paid to Best Used Appliance's (sic) for a used refrigerator (\$190.00), a used gas stove (\$190.00) and flexline for the hook-up (\$15.00). These appliances were for the second kitchen which turned out not to be useful due to the zoning.⁸ CLMT #11, pg. 3.

6. The Claimant seeks reimbursement of \$195.00 for money paid to Leadprobe. The total Leadprobe bill is \$390.00. The Claimant was billed for two inspections because Leadprobe issued separate certificates for each of the originally intended apartments. CLMT #12.

7. The Claimant seeks reimbursement of \$6.12 spent to send certified mail to Thomas McTear, of McTear Realtors & Company, Jack Queen and Respondent Lee. CLMT #14, attachment, and CLMT #16, attachment.

⁸ The Claimant did not offer any information about how much money she will recover when she disposes of these items. Her theory of the case is that she is entitled to recover these expenses in full because, had she been provided with proper information about the property's zoning, she would not have purchased the property and incurred these expenses.

8. The Claimant seeks reimbursement for costs associated with the zoning appeal related to this property. The Claimant spent \$45.00 for zoning plats, and \$37.00 to file a Notice of Appeal to the Board of Municipal and Zoning Appeals. CLMT #19.
9. The Claimant seeks reimbursement for \$50.42 she spent for the sign she was required to post in conjunction with her zoning appeal. CLMT #20.
10. The Claimant seeks reimbursement of \$1,345.00 paid for plumbing repairs and upgrades. This expenditure replaced both lateral pipes and horizontal pipes. The work, among other things, increased water pressure. CLMT #26.
11. The Claimant seeks reimbursement of \$5,357.00 for expenses associated with removing the old boiler and replacing it with a new one. CLMT #27.
12. The Claimant seeks reimbursement of \$231.00 for a one-year service contract purchased on the new boiler. Testimony of Claimant.⁹
13. The Claimant is seeking reimbursement of \$278.66 and \$277.26 (total of \$555.92) for electrical work and supplies provided by Casper G. Sippel, Inc. under separate invoices. The work included, but was not limited to, installing a new ground wire on the cold water pipe, installing GFCI receptacles, installing switches, and correcting double-tapped breakers. CLMT #28.
14. The Claimant is seeking reimbursement of \$2,265.00 for monies expended in repairing the roof, repointing the chimney, and replacing gutters and downspouts. CLMT #29.
15. The Claimant is seeking reimbursement of \$2,638.40 for replacement windows. She had double-hung double-paned windows installed on the main floor and the upstairs. The price of \$2,638.00 is not reflected on the documents provided by the Claimant, however, I find her

⁹ The receipts produced by the Claimant show a line item for \$231.00. The line item is not identified on the receipt as being for a service contract; however I accept the Claimant's representation regarding this expense.

testimony credible on the amount of payment. She reached the total payment by adding together the amount of her downpayment (\$1,374.20) and the amount of her final payment (\$1,264.20), which included a discount for early payment. CLMT #30.

16. The Claimant is seeking reimbursement for BGE bills covering time periods when she was renovating the property (October through mid-November 2007) as well as the time period before she was able to secure her first tenant (mid-November 2007 through May 2008).

October bill	\$ 70.19
November bill	\$ 69.71
December bill	\$138.96
January bill	\$ 66.89
February bill	\$ 42.92
March bill	\$ 28.53
April bill	\$ 37.79
May bill	<u>\$ 67.35</u>

\$522.34 total

CLMT #31.

17. The Claimant is seeking reimbursement from the Fund for amounts of money she is claiming as lost rent. For the months of January 2008 through April 2008, the Claimant is seeking \$6,400.00 in lost rent. The Claimant wanted to get \$1,600.00 per month total rent from the two rental units she anticipated having. Four months without any tenant at \$1,600.00 per month totals \$6,400.00.

18. The Claimant secured a tenant in May of 2008. That tenant paid \$1,290.00 per month in rent. The Claimant is seeking reimbursement for the difference between the rent she desired to obtain from a two-unit rental and the amount she actually obtained from her one tenant. The Claimant believes that this reduced rent loss totals \$3,720.00 for the period from May 2008 through April 2009, calculated as \$310.00 (the difference between \$1,600.00 and \$1,290.00) multiplied by twelve months.

19. Effective May 1, 2009, the tenant began paying \$1,342.00 per month in rent. The Claimant is seeking reimbursement for the difference between the rent she desired, \$1,600.00, and the amount she was paid, \$1,342.00. The Claimant believes that this reduced rent loss totals \$3,096.00, calculated as \$258.00 (the difference between \$1,600.00 and \$1,324.00) multiplied by twelve months.

20. Effective May 1, 2010, the tenant began paying \$1,407.00 per month in rent. The Claimant is seeking reimbursement for the difference between the rent she desired, \$1,600.00, and the amount she was paid, \$1,407.00. The Claimant believes that this reduced rent loss totals \$2,316.00, calculated as \$193.00 (the difference between \$1,600.00 and \$1,407.00) multiplied by twelve months.

21. The rent did not increase after May 2010. The Claimant seeks reimbursement for additional reduced rent losses through the date of the original hearing, which was September 7, 2011. She did not offer a dollar figure for the time period covering May 2010 through September 7, 2011. Applying her method of calculating loss, there would be four full months at \$193.00 per month for a total of \$772.00, plus a prorated portion of September found by taking 7/30ths of \$193, which, rounded to the nearest dollar, is \$45.00.¹⁰

22. The Claimant did not offer any appraisal or the opinion of any real estate or other industry professional regarding what a reasonable expectation for rent would have been.

23. The Claimant also seeks reimbursement of \$10,710.00 for work she would like to have done to the property to make it more suitable and more attractive as a single-unit rental. The

¹⁰ The Fund objects to reimbursing the Claimant for her claims for lost rent. The Fund believes the claimed losses are too speculative. The Claimant knew that a property a couple of doors down from her was bringing in \$1,700.00 per month in rent. She had not been inside the house and knew nothing about the amenities it offered or its condition. She also knew nothing about the income or other information about the tenants in that other property. The Claimant provided no opinion by an appraiser or other individual supporting her contention that she should have been able to get \$1,600.00 each month in rent. The Claimant asserts that CLMT #23 proves that the property was worth that much in rent because the paperwork indicates that \$1,600.00 was the "proposed rent."

work includes, but is not limited to, eliminating interior doors that are not really appropriate in a single-unit rental space, removing cabinets from the second kitchen area, restoring a closet that was converted into a pantry, cutting and capping gas, water and drain lines, patching and painting walls, installing carpet, rebuilding a closet foyer, etc. The \$10,710.00 figure comes from an estimate the Claimant obtained by Masterwork Design & Construction, Inc. The company was licensed to do home improvement work at the time the estimate was obtained, which was January 25, 2009. CLMT #24.

24. The Claimant submitted no appraisals of the property value for 1625 Ralworth.

July 10, 2012
Date Findings of Fact Mailed

SIGNATURE ON FILE

Kimberly A. Farrell
Administrative Law Judge

KAF/kkc
Document #136012

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