

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF	*	BEFORE JENNIFER M. CARTER JONES,
THE CLAIM OF LISA	*	ADMINISTRATIVE LAW JUDGE
ALGAZI-MARCUS, CLAIMANT	*	OF THE MARYLAND OFFICE OF
V.	*	ADMINISTRATIVE HEARINGS
THE MARYLAND REAL ESTATE	*	
COMMISSION GUARANTY FUND	*	OAH NOS: DLR-REC-22-12-11603
FOR THE ALLEGED MISCONDUCT	*	
OF SUE ANNE WILLISON,	*	MREC NO: 2012-RE-054 G.F.
REAL ESTATE BROKER	*	
* * * * *	*	* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated August 21, 2012, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 26th day of September, 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, APPROVED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

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

MARYLAND STATE REAL ESTATE COMMISSION

SIGNATURE ON FILE

September 26, 2012
Date

By: Marla S. Johnson
Marla S. Johnson, Commissioner

IN THE MATTER OF THE CLAIM OF: * BEFORE JENNIFER M. CARTER JONES,
LISA ALGAZI-MARCUS, * AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND REAL * OF THE MARYLAND OFFICE
ESTATE GUARANTY FUND, * OF ADMINISTRATIVE HEARINGS
FOR THE ALLEGED MISCONDUCT * OAH No. DLR-REC-22-12-11603
OF SUE ANN WILLISON * REC No. 12-RE-054

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
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RECOMMENDED ORDER

STATEMENT OF THE CASE

On or about August 22, 2011, Lisa Algazi-Marcus (Claimant) filed a claim with the Maryland Real Estate Guaranty Fund (Fund), established by the Maryland Real Estate Commission (REC), for reimbursement of actual losses in the amount of \$8,551.51, suffered as a result of the alleged misconduct by Sue Ann Willison (Respondent), a licensed real estate salesperson at all relevant times. On March 9, 2012, the REC transmitted the case to the Office of Administrative Hearings (OAH) for a contested case hearing.

On May 30, 2012, I conducted a hearing at the Frederick County Department of Social Services, 100 All Saints Street, Frederick, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-407(c)(2)(ii) (2010). The Claimant was present and represented herself. Jessica Kaufman, Assistant Attorney General, represented the Fund. The Respondent failed to appear at the hearing.

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings of the Department of Labor, Licensing and Regulation (DLLR), and the Rules of Procedure of the OAH govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2011); COMAR 09.01.03; 09.11.03; and 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund?
2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- Cl. #1. Detailed Owner's Statement, and Property and Loss by Job table
- Cl. #2. Claimant's check register for dates including January 2011 through December 2011 and attached Claimant's Bank Statements from M&T Bank for January 2011 through August 2011
- Cl. #3. Email correspondence between the Claimant and the Respondent between July 22, 2010 and July 20, 2011

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

- GF #1. OAH April 11, 2012 Notices of Hearing with attached certified mail receipts
- GF #2. Transmittal from the DLLR REC to OAH with attached DLLR Order for Hearing, dated March 7, 2012
- GF #3. REC Professional License History for the Respondent, printed on May 1, 2012
- GF #4. Affidavit of Steven Long, dated March 12, 2012
- GF #5. Complainant's Complaint and Guaranty Fund Claim with the REC Fund, dated received on August 22, 2011
- GF #6. Consent Order, dated November 22, 2011
- GF #7. REC Report of Investigation, dated closed on December 15, 2011

As the Respondent was not present, she offered no exhibits.

Testimony

The Claimant testified on her own behalf. The Fund offered the testimony of Jack L. Mull, Jr., DLLR investigator for the REC. As the Respondent was not present, she offered no testimony.

FINDINGS OF FACT

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

1. At all times relevant to this matter, the Respondent was a licensed real estate salesperson.
2. The Respondent's license was revoked pursuant to a consent order on November 22, 2011.
3. At all times relevant, the Respondent was an agent of West Patrick Property Solutions (WPPS), a Maryland company based in Frederick, Maryland that she had created.
4. On or about July 22, 2010, the Claimant and Respondent entered into a Property Management and Exclusive Rental Agreement (the Agreement) to rent, lease, operate and manage the Claimant's investment property located at 2473 Lakeside Drive in Frederick, Maryland (the Property). At the time of the Agreement was executed, the Respondent acted as an agent of WPPS.
5. The Agreement required the Respondent to collect a security deposit from any tenant, to deposit the amount of any security deposit into a trust account, and to account for any return of any security deposit with the tenant. The Agreement also required the Respondent to remit to the Claimant monthly payments made by tenants and other funds collected on behalf of the Claimant less any deductions due to the Respondent and to provide the Claimant with a monthly statement of receipts, disbursements and charges.
6. The Agreement required the Claimant to pay the Respondent a property management fee of 8% of the monthly gross rent.

7. The Agreement required the Claimant to provide a \$300.00 deposit to the Respondent to cover the cost of routine repairs and maintenance. The Claimant provided that deposit to the Respondent.
8. On or about August 30, 2010, the Respondent, as an agent for the Claimant, entered into Residential Dwelling Lease for Maryland (the Lease), with tenants DH and NH to rent the property. The lease required the tenants to pay a security deposit of \$1,650.00, a pet deposit of \$200.00, and to pay monthly rent in the amount of \$1,650.00.
9. The Respondent obtained a \$1,650.00 security deposit and the \$200.00 pet deposit from the tenants.
10. After deduction of the Respondent's 8% property management fee, the Respondent was required to remit \$1,518.00 of the monthly rent for the property to the Claimant.
11. Pursuant to the Lease, the monthly rent was due on the first day of each month and the tenants were responsible for paying the cost for the water utility as extra rent.
12. When the Respondent received a water bill for the property, the Respondent agreed to deduct the amount of any water bill she received from the amount of the tenant's monthly rent she remitted to the Claimant. The Respondent would then collect the water bill amount from the tenants as additional rent pursuant to the Lease.
13. Each month, the Claimant had to contact the Respondent to remind her to remit the tenants' rent payments and to provide the monthly statement of receipts, disbursements and charges.
14. The Respondent submitted rent payments and statements of receipts, disbursements and charges for the months of September 2010 through March 2011.
15. In February 2011, the Respondent deducted \$300.51 from the amount of rent she remitted to the Claimant as the cost to pay the water bill.

16. The Respondent collected the \$300.51 for the water bill in cash from the tenants, but did not reimburse the Claimant for the \$300.51 she deducted from the February 2011 rent.
17. On or about April 28, 2011, Frederick Air Conditioning performed maintenance on the property air conditioning system. The Respondent failed to pay Frederick Air Conditioning from the \$300 maintenance fund the Claimant had given the Respondent so the Claimant paid \$299.00 for the air conditioning maintenance out of pocket.
18. The tenants paid their monthly rent in April, May, June and July, 2011, but the Respondent did not submit rent payments to the Claimant or statements of receipts, disbursements and charges for those months.
19. During the months of April, May, June and July, 2011, the Claimant contacted the Respondent repeatedly via email and made attempts to contact her by telephone. Despite multiple promises that she would remit the payments and the statements, the Respondent never did so.
20. By email, dated July 20, 2011, the Claimant terminated the Agreement with the Respondent.
21. On or about August 30, 2011, the Claimant entered into a new Property Management and Exclusive Rental Agreement with Property Management People (PMP). She paid PMP \$1,850.00, the amount of the tenants' security and pet deposits, as a condition of that agreement.
22. The Respondent entered into a Consent Decree on November 22, 2011, in which she admitted, *inter alia*, that she had violated § 17-322(b)(22) of the Business Occupations and Professions Article, by failing to account for or submit funds to various complainants, including the Claimant. She also agreed to the revocation of her license

and not to contest the claims of various complainants, including the Claimant, against the Fund.

DISCUSSION

A person may recover compensation from the Fund for an actual loss based on an act or omission that occurs in the provision of real estate brokerage services by a licensed real estate broker or licensed real estate salesperson that involves a transaction related to real estate located in the State. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(i), (ii) (2010). For misconduct to be compensable, the act or omission must constitute either theft, embezzlement, false pretenses, forgery, fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(2)(iii), 17-402(c) (2010); COMAR 09.11.03.04. At a hearing concerning a claim against the Fund, the burden of proof shall be on the claimant to establish the validity of the claim. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2010). The REC shall order payment of a claim by the Fund for the actual monetary loss, up to \$25,000, suffered by the claimant. Md. Code Ann., Bus. Occ. & Prof. § 17-410(a), (b) (2010).

Furthermore, COMAR 09.11.01.18 sets forth the parameters of an actual loss as follows:

The amount of compensation recoverable by a claimant from the Real Estate Guaranty Fund, pursuant to Business Occupations and Professions Article, Title 17, Subtitle 4, Real Estate Guaranty Fund, Annotated Code of Maryland, shall be restricted to the actual monetary loss incurred by the claimant, but may not include monetary losses other than the monetary loss from the originating transaction. Actual monetary losses may not include commissions owed to a licensee of this Commission acting in his capacity as either a principal or agent in a real estate transaction, or any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.

Two categories of acts or omissions may give rise to an actual loss. In the first, money or property is obtained by a licensee by theft, embezzlement, false pretenses or forgery. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(1). The second category involves a licensee's act or

omission that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(2); COMAR 09.11.03.04B(1).

The statute includes the following relevant definitions at section 17-101 of the Business Occupations and Professions Article:

(a) *In general.*-- In this title the following words have the meanings indicated.

...

(j) *Licensed real estate salesperson.*-- "Licensed real estate salesperson" means, unless the context requires otherwise, a real estate salesperson who is licensed by the Commission to provide real estate brokerage services on behalf of a licensed real estate broker with whom the real estate salesperson is affiliated.

...

(l) *Provide real estate brokerage services.*-- "Provide real estate brokerage services" means to engage in any of the following activities:

(1) for consideration, providing any of the following services for another person:

- (i) selling, buying, exchanging, or leasing any real estate; or
- (ii) collecting rent for the use of any real estate;

...

(m) *Real estate.*--

(1) "Real estate" means any interest in real property that is located in this State or elsewhere.

Md. Code Ann., Bus. Occ. & Prof. § 17-101 (2010).

The essential facts in this proceeding are not in dispute. The Claimant executed a property management and leasing agreement with the Respondent to lease and manage the Claimant's Property. The Respondent secured a tenant for the Claimants' Property and also entered a lease agreement with the Tenant to collect rent, including water charges.

The evidence established that in the months of April, May, June, and July 2011, the Respondent collected \$1,650.00 in rent payments from the Tenant, but failed to remit any portion to the Claimant in each of those months, as required by the Management Agreement. The evidence also establishes that the Claimant paid \$300.51 in outstanding water and sewer charges and that the tenants paid the Respondent that amount as extra rent to cover the cost of the water

and sewer charges, but the Respondent never remitted the amount she collected to the Claimant as required in the Management Agreement. Furthermore, the evidence establishes that the Respondent failed to pay Frederick Air Conditioning \$299.00 in charges from the \$300.00 maintenance fee the Claimant left with the Respondent, which resulted in the Claimant making that payment out of pocket. The Claimant's un rebutted testimony was that the Respondent never refunded the \$300.00 maintenance fee. Finally the evidence establishes that the Respondent never returned the tenants' \$1,650.00 security deposit, or their \$200.00 pet deposit to the Claimant, which, in turn, resulted in the Claimant having to pay those amounts out-of-pocket to PMP to secure the representation of that property management company.

Via the terms of the November 22, 2011 Consent Decree, the Respondent admitted that her failure to account for or pay amounts due to the Claimant violated § 17-322(b)(22) of the Business Occupations and Professions Article, and the evidence is consistent with that admission. There is no dispute that the Respondent was a licensed real estate salesperson at relevant times and that the transactions in question involved real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. § 17-101(a) (2010). The Respondent's actions amount to theft of the Claimant's money, and she is therefore entitled to compensation from the Fund for his actual loss. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(2), 17-402(c) (2010); COMAR 09.11.03.04.

Amount of Actual Loss

The statute permits a claimant to recover compensation from the Fund for an actual loss up to a maximum of \$25,000.00. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a), (b). The statute further provides that the REC may order payment by the Fund "only for the actual monetary loss suffered by the claimant...." Md. Code Ann., Bus. Occ. & Prof. § 17-410(b)(1). The regulations also provide that the compensation recoverable from the Fund is "restricted to

the actual monetary loss incurred by the claimant,” is limited to “the monetary loss from the originating transaction,” and “may not include commissions owed to a licensee ... acting in his capacity as a principal or agent in a real estate transaction....” COMAR 09.11.01.18.

In this case, the Claimant seeks to recover \$8,552.51. That amount includes four months rent, less the monthly management fee ($\$1,650 - 8\% = \$1,518.00 \times 4 = \$6,072.00$); the amount of the unreturned maintenance fee ($\$300.00$)¹; the unreimbursed amount the Claimant paid for the water charges ($\$330.51$); and the unreimbursed amount she paid to PMP for the tenants’ security and pet deposits ($\$1,650.00 + \$200.00 = 1850$) for a total of \$8,552.51.

The Claimant provided evidence in the form of her check register, bank statements showing rent deposits to the Claimant’s bank accounts until March 2011, emails in which the Respondent acknowledged the rent payments due, and the Claimant’s un rebutted testimony, that the amount of her actual loss was \$8,552.51. The Fund agreed that the Claimant was entitled to reimbursement in this amount.

Accordingly, I conclude that the Claimant is entitled to reimbursement from the Fund in the amount of \$8,552.51.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Facts and Discussion, I conclude that the Claimant is entitled to reimbursement from the Real Estate Guaranty Fund in the amount of \$8,552.51 for actual losses resulting from the Respondent’s theft. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(2)(iii)(1), 17-410(b)(1) (2010); COMAR 09.11.01.18; 09.11.03.04.

¹ In her original claim the Claimant sought reimbursement for \$299.00, reflecting the actual amount she paid to Frederick Air Conditioning for the April 2011 air conditioning maintenance. At the hearing, she amended that amount, without objection by the Fund, to \$300, reflecting the amount the Respondent owed her for the \$300 the Claimant paid the Respondent as a maintenance fee. I granted the requested amendment, adding the additional dollar to the amount of total reimbursement sought.

RECOMMENDED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I hereby

RECOMMEND that the Maryland Real Estate Commission:

ORDER that the Claimant's claim against the Maryland Real Estate Guaranty Fund be **ACCEPTED** in the amount of \$8,552.51; and that it further,

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

August 21, 2012
Date Decision Issued

JCJ/bp
136862

SIGNATURE ON FILE

Jennifer M. Carter Jones
Administrative Law Judge