

THE MARYLAND REAL ESTATE COMMISSION

THE CLAIM OF BRIAN AND \* BEFORE HARRIET C. HELFAND,  
SUSAN DAVIDSON \* ADMINISTRATIVE LAW JUDGE  
AGAINST THE MARYLAND REAL \* OF THE MARYLAND OFFICE OF  
ESTATE COMMISSION GUARANTY \* ADMINISTRATIVE HEARINGS  
FUND FOR THE ALLEGED \* OAH No: DLR-REC-22-09-34616  
MISCONDUCT OF \* MREC No. 2007-RE-701 G.F.  
BETH A. CORBIN \*  
\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated October 22, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 17th day of November, 2010,

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

11/17/2010  
Date

(COMMISSIONER'S SIGNATURE  
APPEARS ON ORIGINAL ORDER)

THE CLAIM OF BRIAN DAVIDSON	*	BEFORE HARRIET C. HELFAND,
AND SUSAN DAVIDSON, <sup>1</sup>	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANTS	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND	*	OF ADMINISTRATIVE HEARINGS
REAL ESTATE COMMISSION	*	OAH NO.: DLR-REC-22-09-34616
GUARANTY FUND FOR	*	MREC NO.: 07-RE-701
THE ALLEGED MISCONDUCT OF	*	
BETH A. CORBIN,	*	
RESPONDENT	*	

\* \* \* \* \*

**RECOMMENDED DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On or about May 12, 2007, Susan and Brian Davidson (Claimants) filed a complaint with the Maryland Real Estate Commission (MREC) and, on that same date, filed a claim against the MREC Guaranty Fund (Fund) for reimbursement of \$5,768.42 for actual losses suffered as a result of alleged misconduct by the Respondent related to a real estate sales transaction in which the Claimants were the prospective buyers of a property located in Myersville, Maryland.

I held a hearing on the Claimants' Fund claim on September 27, 2010, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland.<sup>2</sup> Md. Code Ann., Bus. Occ. § 17-408

<sup>1</sup> Susan Davidson is now known as Susan Newcomb.

<sup>2</sup> Although the MREC initiated regulatory charges against the Respondent, it declined to pursue the charges. The case went forward solely on the Claimants' Fund claim.

(2004). The Claimants represented themselves. Arnold Politzer, Esquire, represented the Respondent. Hope Sachs, Assistant Attorney General, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); COMAR 09.01.03 and 28.02.01.

**ISSUE**

Did the Claimants sustain an actual loss that is compensable by the Fund because the Respondent failed to inform them that the property they contracted to purchase was subject to foreclosure?

**SUMMARY OF THE EVIDENCE**

**Exhibits**

The Claimants offered the following exhibits which were admitted into evidence:

- Cl. #1            Residential Contract of Sale
- Cl. #2            Printout from Multiple List Service (MLS)
- Cl. #3            Complaint and Guaranty Fund Claim, received May 29, 2007
- Cl. #4            MREC Report of Investigation, with attachments

The Respondent offered the following exhibits which were admitted into evidence:

- Resp. #1        Addendum to Contract of Sale
- Resp. #2        Memo from Respondent to Cathy Leaycraft / Janet Romm
- Resp. #3        Residential Contract of Sale

The Fund offered the following exhibits which were admitted into evidence:

- GF #1            Notice of Hearing / Undeliverable Mail
- GF #2            Complaint and Guaranty Fund Claim, received May 29, 2007
- GF #3            Licensing Information

Testimony

The Claimants testified in their own behalf and presented the testimony of Cathy Leaycraft, Real Estate Agent for Home Selling Assistance, and Jack Mull, MREC Investigator.

The Respondent testified in her own behalf and presented the testimony of Ellen Toridis, Real Estate Broker for Realty 2000 Plus, Inc.

The Fund did not call any witnesses.

**FINDINGS OF FACT**

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

1. At all times relevant, the Respondent held a valid real estate broker's license. The Respondent's most recent license was issued on February 26, 2007 and expired on January 3, 2009.
2. The Respondent owned a home located on Fisher Hollow Road in Myersville, Maryland (Property) that she used as a rental property. The Respondent had a mortgage loan on the Property. In or about December 2006, the tenants of the Property moved and, without receipt of the rental income, the Respondent had difficulty meeting her mortgage payments. As a result, the Respondent decided to put the Property on the market. The Respondent was in contact with her lender regarding her attempt to sell the Property.
3. On or about March 11, 2007, the Claimants went with their real estate agent, Cathy Leaycraft, to see the Property. The listing price of the Property was \$244,900.00. The listed owner of the Property was the Respondent. The Respondent was also the listing real estate agent for the Property and had placed a signed "addendum" revealing her status at the Property, included with other information regarding the Property.
4. The Claimants decided that they wanted to purchase the Property. On March 13, 2007, Ms. Leaycraft called the Respondent to inform her of the Claimants' intention to submit an

offer to purchase the Property. During their conversation, the Respondent told Ms. Leaycraft that “the bank” required the offer before 10:00 p.m. that evening. Shortly thereafter, Ms. Leaycraft submitted a contract of sale to the Respondent. In the contract, the Claimants offered to purchase the property for \$234,900.00. The Claimants also wrote a check in the amount of \$2,000.00 as an initial deposit on the purchase.

5. On March 14, 2007, the Respondent called Ms. Leaycraft to say that the offer was acceptable to her, but she needed approval from “the bank.” The Respondent later informed Ms. Leaycraft that “the bank” would only accept the full asking price of \$244,900.00, without contingencies.

6. The Claimants agreed to pay the full purchase price of \$244,900.00 and drop all contingencies in the contract. They redrafted the first page of the contract, reflecting a purchase price of \$244,900.00, attached it to the other pages of the original contract, and resubmitted it to the Respondent.

7. On or about March 22, 2007, Ms. Leaycraft received the contract from the Respondent and the Claimants proceeded to go forward with the purchase, engaging a title company, arranging for financing and an appraisal, and scheduling a home inspection. The parties agreed to a settlement date of April 19, 2007.

8. The Claimants paid the mortgage lender, Prosperity Mortgage, \$450.00 for an application fee and the appraisal. The Claimants also engaged and paid Superior Home Inspections, LLC, \$300.00 to perform an inspection of the Property.

9. On April 5, 2007, the Claimants and Ms. Leaycraft met at the Property for the scheduled home inspection. Toward the end of the inspection, Ms. Leaycraft received a phone call from the title company informing her that the Respondent did not own the Property.

10. On or about March 14, 2007, the Property was sold at auction pursuant to a foreclosure proceeding. The Respondent had been unaware of the sale.

11. The Respondent returned the \$2,000.00 deposit to the Claimants.

### DISCUSSION

Claims for reimbursement from the Fund are governed by section 17-404 of the Maryland Business Occupations Article and COMAR 09.11.03.04F, which state as follows:

#### **§ 17-404. Claims against the Guaranty Fund.**

(a) *In General.* -- (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:

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. & Prof. § 17-404 (2004).

COMAR 09.11.03.04 Claims Against the Guaranty Fund.

...

F. Misconduct.

(1) A Guaranty Fund claim shall be based on alleged misconduct of a licensee.

(2) Misconduct for the purpose of a Guaranty Fund claim shall be 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 performed by an unlicensed employee of a real estate broker or by a duly licensed real estate broker or salesperson for which that license is required by Business Occupations Article, Title 17, Annotated Code of Maryland.

G. Parties to the proceeding shall include the claimant or claimants, and the licensees alleged to be responsible for the harm stated in the claim. . .

The burden of proof rests with the Claimants to establish the validity of the claim. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2004).

In this matter, I find that the Claimants have sustained an actual loss as the result of a misrepresentation by the Respondent that she had clear legal title to the Property and her failure to inform the Claimants that the Property was subject to foreclosure. Although I believed the Respondent's assertion that she was unaware of the auction sale of the property, she nonetheless had an obligation to inform the Claimants of the existence of the foreclosure proceedings. Had the Claimants known of the pending foreclosure, they may have declined to purchase the property and not incurred the expenses of the loan application, appraisal, and home inspection.

Irregularities occurred during the process, not all of which were precipitated by the Respondent. The first clue that suggested that the sale might be problematic was the Respondent's comment regarding the approval of "the bank" for the contract price of the Property. While it was incumbent on the Respondent to reveal the actual status of her ownership of the Property, Ms. Leaycraft, the Claimants' agent, failed to question why "the bank's" imprimatur was required for the sale. Also, the resubmission of the contract with the revised purchase price was, in itself, questionable. Instead of producing an entirely revised contract, the Claimants, on the advice of Ms. Leaycraft, simply rewrote the first page of the contract to reflect the asking purchase price, and submitted it attached to the original document. This document was never properly ratified by properly dated signatures of the Claimants, nor did it eliminate the contingencies, as requested by "the bank."

Clearly, the Respondent felt a time imperative for the sale of the Property; additionally, it appears that Ms. Leycraft may have been unfamiliar with the proper procedures for the ratification of a revised contract of sale. These factors merged to create a situation in which the Respondent and her broker, Ellen Toridis, who had requested, but never received, a fully ratified new contract and executed addendum from Ms. Leycraft, were, in effect, along with the Claimants, left in limbo in regard to the actual sale. This, combined with the foreclosure sale that was unknown to the Respondent, laid the foundation for the Claimants' loss.

The Claimants legitimately believed that they had contracted to purchase the Property. Pursuant to this belief, they applied for a loan and paid for an appraisal and arranged and paid for a home inspection. These costs were incurred due to the misrepresentation by the Respondent that she was able to sell the property to them unencumbered by the specter of a pending foreclosure. The \$450.00 and \$300.00 fees the Claimants respectively paid to their lender and home inspector, for a total of \$750.00, constitute actual loss.<sup>3</sup> Accordingly, I find that the Claimants have sustained an actual loss compensable by the Fund due to an omission of fact by the Respondent that constituted a misrepresentation.

### **CONCLUSIONS OF LAW**

Upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimants sustained an actual loss compensable by the Fund for their expenditures for a loan application, appraisal, and home inspection because the Respondent failed to inform them that the

---

<sup>3</sup> The Claimants also requested reimbursement for storage rental fee (\$284.00), the cost of renting back the home they sold (\$3,369.67), mileage to the Property (\$129.98), lost wages (\$234.77), and compensation for lost market time (\$1,000.00). I find that none of these expenses are appropriate for consideration as actual loss. The Claimants stated that they contracted for the sale of their home in February 2007, before the March 13, 2007 contract on the Property. They also rented storage space for their belongings beginning in February 2007. Clearly, the Claimants contemplated and planned for moving prior to their interest in the Property and would have incurred these costs, as well as rent for any dwelling they occupied at the time, even had they not attempted to purchase the Property. Additionally, their mileage costs to visit the Property, alleged lost wages for visiting the Property and unsubstantiated compensation for lost market time, do not constitute actual loss.



property they contracted to purchase was subject to foreclosure. Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2004) and COMAR 09.11.03.04.

**RECOMMENDED ORDER**

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

**ORDER**, that the Claimants be reimbursed \$750.00 from the Maryland Real Estate Guaranty Fund to compensate for actual losses that she sustained because of the conduct of the Respondent, and further,

**ORDER**, that the Respondent be ineligible for any Maryland Real Estate Commission license until the Respondent reimburses the Fund for all monies disbursed under this Order plus annual interest of at least ten percent, as set by the Commission; Md. Code Ann., Bus Occ. & Prof. § 17-411(a)(2) (2004), and further,

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

ADMINISTRATIVE LAW JUDGE'S SIGNATURE APPEARS ON ORIGINAL ORDER
---

October 22, 2010  
Date Decision Mailed

Harriet C. Helfand  
Administrative Law Judge

# 117006