

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**IN THE MATTER OF THE CLAIM** \*  
**OF KATHRYN HENRY &** \*  
**KEVIN BRAITSCH,** \*  
**Claimants** \*

v.

**THE MARYLAND REAL ESTATE** \*  
**COMMISSION GUARANTY FUND,** \*  
**FOR THE ALLEGED MISCONDUCT** \*  
**OF GILBERT CHAMPION,** \*  
**Respondent** \*

**CASE NO. 2020-RE-301**

**OAH NO. DOL-REC-22-23-14379**

\* \* \* \* \*

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated October 23, 2023, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 10<sup>th</sup> day of December 2023, hereby **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.**

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

E. 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, 1100 N. Eutaw Street, Baltimore, MD 21201. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

F. Once this 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**

12/20/23  
Date

By: \_\_\_\_\_

SIGNATURE ON FILE

**IN THE MATTER OF THE CLAIM  
OF KATHRYN HENRY &  
KEVIN BRAITSCH,  
CLAIMANTS**

**v.**

**THE MARYLAND REAL ESTATE  
COMMISSION GUARANTY FUND,  
FOR THE ALLEGED MISCONDUCT  
OF GILBERT CHAMPION,  
RESPONDENT**

**\* BEFORE PATRICIA M. DEMAIO,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS**

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**\* OAH No.: LABOR-REC-22-23-14379**

**\* REC No.: 2020-RE-301**

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**\* \* \* \* \***

**PROPOSED DECISION**

**STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER**

**STATEMENT OF THE CASE**

On or about November 24, 2019, Kathryn Henry<sup>1</sup> and Kevin Braitsch<sup>2</sup> (Claimants) filed a Complaint and Guaranty Fund Claim (Claim) with the Maryland Real Estate Commission (REC), under the jurisdiction of the Department of Labor (Department), to recover compensation from the Real Estate Guaranty Fund (Fund) for an alleged actual loss resulting from an act or omission of Gilbert Champion (Respondent), a licensed real estate salesperson.

<sup>1</sup> Referred to herein as Claimant Kathryn Henry or Ms. Henry.

<sup>2</sup> Referred to herein as Claimant Kevin Braitsch or Mr. Braitsch.

On May 4, 2023, the Executive Director of the REC issued a Hearing Order on the Claim, which was received by the Office of Administrative Hearings (OAH) on May 8, 2023.

On July 26, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408(a) (2018). Johnathan Phillips, Assistant Attorney General, Department, represented the Fund. The Claimants were self-represented.<sup>3</sup> Neither the Respondent nor anyone authorized to represent the Respondent appeared.

Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. Code of Maryland Regulations (COMAR) 28.02.01.23A. On June 14, 2023, the OAH sent a Notice of Hearing (Notice) to the Respondent by regular United States mail and certified mail to the Respondent's address on record with the OAH.<sup>4</sup> COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for July 26, 2023 at 9:30 a.m. at the OAH, 11101 Gilroy Road, Hunt Valley, MD 21031. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you." The Notice sent by regular mail was returned to the OAH with the notation: "return to sender not deliverable as addressed unable to forward." The Notice sent by certified mail was returned to the OAH with the notation "return to sender no mail receptacle unable to forward."

The Fund argued that the hearing could proceed in the Respondent's absence. The Fund averred that proper notice was issued to the Respondent's address of record. The Fund emphasized that the Respondent used the same address that is on record with the REC for his Motor Vehicle Administration driver's license. (Fund Ex. 5). The Respondent did not notify the REC of any change of mailing address.<sup>5</sup> See COMAR 28.02.01.03E.

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<sup>3</sup> Ms. Henry presented the case on behalf of the Claimants.

<sup>4</sup> The Respondent's address was provided to the OAH on the transmittal submitted by the REC.

<sup>5</sup> Unless otherwise specifically provided, the "ALJ shall conduct an evidentiary hearing under the Administrative Procedure Act and COMAR 28.02.01." COMAR 09.01.03.05.

I determined that proper notice was issued to the Respondent's address of record with the REC and the OAH, and, after waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. COMAR 28.02.01.23A; COMAR 28.02.01.05A, C.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, the REC's procedural regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 09.01.03; COMAR 09.11.03; COMAR 28.02.01.

### **ISSUES**

1. Did the Claimants sustain an actual loss, compensable by the Fund, due to an act or omission of the Respondent that constitutes fraud or misrepresentation in the provision of real estate brokerage services or in which money or property was obtained from the Claimants by theft, embezzlement, false pretenses, or forgery?
2. If so, what amount should be awarded to the Claimants from the Fund?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Emails and text messages between Costal Lending Group, the Claimants, and the Respondent, April 10, 2018 – December 12, 2018
- Clmt. Ex. 2 - Emails between Costal Lending Group and the Claimants, July 16, 2018 – July 20, 2018; Emails between Costal Lending Group and the Respondent, August 22, 2018 – August 29, 2018
- Clmt. Ex. 3 - Emails and text messages between the Claimants and the Respondent, February 15, 2019 – April 17, 2019; Text messages between the Claimants and an unidentified contractor, March 10, 2019
- Clmt. Ex. 4 - Emails between the Claimants and the Respondent, November 15, 2018 – November 21, 2018

- Clmt. Ex. 5 - Emails between the Claimants and Costal Lending Group, February 28, 2019
- Clmt. Ex. 6 - Text messages between the Claimants and the Respondent, April 2, 2017; June 30 – July 1, 2017
- Clmt. Ex. 7 - Text messages between Mr. Braitsch and the Respondent, May 31, 2017, November 17, 2018; Email between the Claimants and the Respondent, January 10, 2018
- Clmt. Ex. 8 - Emails between the Claimants and the Respondent, April 8, 2019 – April 22, 2019; Emails between the Claimants and Endeavor Title Company, April 22, 2019 – May 10, 2019; text messages between the Claimants and the Respondent, April 8, 2019 – April 29, 2019
- Clmt. Ex. 9 - Letter from Michael I. Gordon, Esquire, to the Respondent, December 28, 2018; Invoice from Mr. Gordon, April 8, 2019
- Clmt. Ex. 10 - Emails between the Respondent and the Claimants, June 12, 2019 – August 17, 2019
- Clmt. Ex. 11 - Claimants' Summary of events, undated

As the Respondent failed to appear, I admitted no exhibits offered by the Respondent.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Remote Hearing, June 14, 2023
- Fund Ex. 2 - Transmittal, May 8, 2023; Order for Hearing, May 4, 2023
- Fund Ex. 3 - REC Report of Investigation and attachments<sup>6</sup>
- Fund Ex. 4 - REC licensing information, accessed June 26, 2023
- Fund Ex. 5 - Maryland Motor Vehicle Administration Record for the Respondent, July 14, 2023

### Testimony

The Claimant, Kathryn Henry, testified and did not present other witnesses.

The Respondent was not present and presented no testimony.

The Fund presented no testimony.

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<sup>6</sup> The attachment is numbered page 1 – 228. However, there is a page that is not numbered. Accordingly, there are 229 pages to the attachment.

## PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the Respondent was licensed by the REC as a real estate salesperson with PEAKE Realty, LLC, under license number 05-650685.
2. The Respondent was also part owner of JME Development.
3. On or about December 1, 2016, with the Respondent serving as their buyers' agent, the Complainants submitted a \$5,000.00 earnest money deposit toward the purchase of a property located at 622 S. Bethel Street, Baltimore, Maryland. After the purchase contract was nullified, the Respondent advised the Complainants that he would retain the \$5,000.00 to be used toward the purchase of another property.
4. On or about April 6, 2017, the Claimants and the Respondent entered into a contract whereby the Claimants would purchase the property owned by JME Development located at 1828 Bank Street, Baltimore, Maryland (Property) for \$333,000.00 (Contract). The Respondent agreed to contribute \$5,000.00 toward the Claimants' closing costs. Settlement was scheduled for June 5, 2017.
5. Under the Contract, the Respondent and his investors would completely renovate the Property, with a structural addition and application for a City Historic Tax Credit (CHAP).<sup>7</sup> Upon completion of the renovations, the Respondent would sell the Property to the Claimants.
6. Based on the proposed settlement date, the Claimants converted their yearly lease agreement to a monthly lease agreement.

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<sup>7</sup> The CHAP tax credit would allow the Claimants' property taxes to be calculated based on the Property's value before the renovations.



7. On May 31, 2017, the Respondent asked Claimant Kevin Braitsch to open an account with BGE<sup>8</sup> for utility services for the Property. On a date not specified in the record, Mr. Braitsch complied.

8. By June 5, 2017, the renovations were not complete, and the settlement did not take place.

9. On August 25, 2017, an addendum to the Contract was signed, and a new settlement date of October 31, 2017, was promised. All other terms and conditions of the Contract remained the same. The renovations were not completed by October 31, 2017, and the settlement did not occur.

10. On November 21, 2017, the Contract was amended increasing the purchase price of the Property to \$344,980.00 to account for deviations from the original scope of work.

11. On November 28, 2017, the Respondent told the Claimants to provide sixty days' notice to vacate their current residence.

12. In December 2017, the Claimants purchased appliances for the property in the amount of \$4,908.89.<sup>9</sup>

13. In March 2018, the Claimants purchased hardwood flooring for the Property with a promise that the Respondent would reimburse them the next business day. The Respondent failed to reimburse the Claimants the next business day.

14. On June 6, 2018, a second contract of sale (Contract II) was ratified with a \$344,980.00 purchase price. The Respondent agreed to contribute \$5,000.00 toward the Claimants' closing costs. Settlement was scheduled for July 6, 2018.

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<sup>8</sup> Baltimore Gas and Electric.

<sup>9</sup> The Claimants paid \$3,562.79 for kitchen appliances and \$1346.10 for a washer and dryer.

15. On June 26, 2018, Contract II was amended to increase the Respondent's contribution toward closing costs to \$7,000.00 due to the Respondent's delay with being able to move to settlement.

16. The renovations were not completed by July 6, 2018, and the settlement date was cancelled.

17. On November 15, 2018, the Respondent offered to reduce the asking price for the sale of the Property to \$339,980.00 and pay all of the Claimants' closing costs. The Respondent proposed that the settlement be scheduled for December 15, 2018. The Claimants rejected the offer.

18. On or about November 16, 2018, the Respondent offered to reduce the asking price for the sale of the Property to \$314,999.00, pay all of the Claimants "hard" closing costs, and provide a one-year home warranty. The Respondent promised a new settlement date of December 15, 2018, contingent upon all necessary repairs being completed. The Claimants did not sign the agreement.

19. In December 2018, on a date not specified in the record, the Claimants retained Michael I. Gordon, Esquire, to represent them regarding their ongoing communications with the Respondent and his failure to finish the renovations and move to settlement of the Property. The Claimants paid Mr. Gordon \$1,862.44<sup>10</sup> for his representation.

20. On December 28, 2018, on behalf of the Claimants, Mr. Gordon issued a letter to the Respondent requesting a commitment to complete the renovations to the Property and a definite closing date.

21. On January 28, 2019, a meeting was held with Mr. Gordon, the Claimants, and the Respondent.

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<sup>10</sup> The original total due for work rendered was \$2012.44. The Claimants received a \$150.00 courtesy discount.

22. On February 7, 2019, a new contract of sale was entered with a sale price of \$314,980.00, the Respondent to pay all “hard” closing costs, and provide a two-year home warranty (Contract III). The Respondent promised a new settlement date of March 7, 2019, contingent upon the Respondent delivering the Property completed, inspected, and approved by the Claimants prior to settlement. The renovations were not completed, and the settlement did not take place.

23. For twenty-two months, beginning in June 2017, the Claimants paid an additional \$200.00 per month in rent because they converted to a month-to-month lease agreement.

24. In May 2019, the Claimants’ earnest money deposit was returned.

25. The Respondent reimbursed the Claimants for the expenses they incurred for purchasing appliances, flooring and other building materials, and utilities for the Property.

26. On or about November 24, 2019, the Claimants filed a claim with the Fund for \$6,262.00.<sup>11</sup> (Fund Ex. 3).

### **DISCUSSION**

The Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Occ. & Prof. § 17-407(e); State Gov’t § 10-217. To prove a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

A person may recover compensation from the Fund for an actual loss based on certain types of acts or omissions in the provision of real estate brokerage services by a licensee. A licensee, “means a licensed real estate broker, a licensed associate real estate broker, or a licensed real estate salesperson.” Bus. Occ. & Prof. § 17-101(k) (Supp. 2023).

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<sup>11</sup> \$4,400.00 (increased rent) + \$1862.44 (attorney’s fees) = \$6,262.44

The provision of real estate brokerage services is defined as follows:

(l) "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;

(2) for consideration, assisting another person to locate or obtain for purchase or lease any residential real estate;

(3) engaging regularly in a business of dealing in real estate or leases or options on real estate;

(4) engaging in a business the primary purpose of which is promoting the sale of real estate through a listing in a publication issued primarily for the promotion of real estate sales;

(5) engaging in a business that subdivides land that is located in any state and sells the divided lots; or

(6) for consideration, serving as a consultant regarding any activity set forth in items (1) through (5) of this subsection.

*Id.* § 17-101(l) (Supp. 2023).

A claim against the Fund 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.

*Id.* § 17-404(a)(2). The amount recovered for any claim against the Fund may not exceed

\$50,000.00 for each claim. *Id.* § 17-404(b).

The testimony established that there is no absolute bar to the Claimants being reimbursed by the Fund. I find that the Claim is based on an alleged act or omission that occurred in the provision of real estate brokerage services by a licensed real estate salesperson.

There is no dispute that the Respondent is a real estate salesperson, licensed by the Commission. *Id.* § 17-404(a)(2)(i)(3). It is also undisputed that the Claim involves a transaction that relates to real estate that is in the State. Bus. Occ. & Prof. § 17-404(a)(2)(ii). Further, the Claim involves the sale of a home where the Claimants intended to reside. Bus. Occ. & Prof. § 17-404(c)(1). The Claimants were not related to or the personal representative of the Respondent. Bus. Occ. & Prof. § 17-404(c)(2). The Claimants filed the Claim less than three years after they entered the original Contract for sale of the Property. Bus. Occ. & Prof. § 17-404(d).

Actual monetary losses may not include commissions owed or any attorney's fees incurred in pursuing the claim. COMAR 09.11.01.15. These amounts were not sought by the Claimants. The Fund argued and I agree that in this matter, although the Claimants are seeking to recover the amount paid to an attorney, the attorney's representation was sought to assist the Claimants with pursuing the Respondent to finish the renovations and execute the sale of the Property, not to pursue the Claim with the Fund. Therefore, I find that the Claimants are not barred from recovering their attorney's fees.

There was no evidence presented that the Respondent's conduct constituted theft, embezzlement, false pretenses, or forgery. Therefore, section 17-404(a)(2)(iii)(1) is inapplicable as a basis for the Claim. The remaining dispositive issue is whether the Respondent committed an act or omission that constitutes fraud or misrepresentation under section 17-404(a)(2)(iii)(2) for which the Claimants should be compensated by the Fund. For the reasons set forth below, I conclude that the Claimants have sustained their burden of showing that the Respondent committed an act or omission that constituted fraud or misrepresentation and as a result they suffered a compensable loss.

A finding of fraud requires the intent to deceive through a representation that is knowingly false or made in reckless indifference to the truth. *First Union Nat. Bank v. Steele Software Sys.*, 154 Md. App. 97, 147 (2003). A negligent misrepresentation, on the other hand, requires:

- (1) the Respondent's negligent assertion of a false statement;
- (2) the Respondent's intent that his statement will be acted upon by the Claimant;
- (3) the Respondent's knowledge that the Claimant will probably rely on the statement, which, if erroneous, will cause loss or injury;
- (4) the Claimant, justifiably, takes action in reliance on the statement; and
- (5) the Claimant suffers damage proximately caused by the Respondent's negligence.

*See UBS Fin. Services, Inc. v. Thompson*, 217 Md. App. 500, 525 (2014).

Claimant Kathryn Henry testified in detail and provided credible evidence that established that the Respondent's acts or omissions that occurred in the provision of real estate brokerage services constituted fraud or misrepresentation. The record is replete with instances where the Respondent misrepresented his ability to purchase materials, pay contractors and otherwise finance the Property's renovation. The Respondent repeatedly made false promises regarding the progress of the work being performed at the Property and his ability to complete the renovations. On multiple occasions, the Respondent instructed the Claimants' lender to request an appraisal of the Property's value knowing that the renovations were not complete. On at least one occasion, the Respondent provided a date for the appraisal and then failed to respond when the appraiser attempted to contact him on the scheduled date.

Based on the Respondent's representations, the Claimants converted their yearly lease to a month-to-month lease agreement while they waited for the Respondent to finish the renovations and convey the Property to the Claimants. The Claimants testified credibly that as a result of their month-to-month status, their rent was increased by \$200.00 monthly.

The Fund argued and I agree that the Claimants suffered an actual loss because of the Respondent's acts or omissions and that the Claimants are entitled to reimbursement from the Fund. The Fund recommended an award in the amount of \$6,262.00. I also conclude that the Claimants should be reimbursed in that amount.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimants have established by a preponderance of the evidence that they sustained an actual and compensable loss due to an act or omission of the Respondent that constitutes theft, embezzlement, fraud or misrepresentation in the provision of real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. §§ 17-101(k) and (l) and 404(a) and (b) (2018).

I further conclude that the Claimants are entitled to recover \$6,262.00 from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-404(b) (2018).

### **RECOMMENDED ORDER**

I **RECOMMEND** that the claim filed by the Claimants against the Maryland Real Estate Commission Guaranty Fund be **GRANTED**.

I further **RECOMMEND**:

1. The Guaranty Fund award the Claimants \$6,262.00.
2. The Respondent shall reimburse the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Real Estate Commission. Md. Code Ann., Bus. Occ. & Prof. § 17-411(a) (2018).
3. The Respondent's license is suspended. The Maryland Real Estate Commission may not reinstate the Respondent's license until the Respondent repays in full the amount paid by the Guaranty Fund, plus interest, and the Respondent applies to the Real Estate Commission for reinstatement of the license. Md. Code Ann., Bus. Occ. & Prof. § 17-412(a), (b) (2018).

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

October 23, 2023  
Date Decision Issued

PMD/ckc  
#207931

SIGNATURE ON FILE

Patricia M. DeMaio  
Administrative Law Judge