

BEFORE THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM           \*  
OF RICHARD M. WHITE                   \*  
AGAINST THE MARYLAND REAL           \* CASE NO. 2012-RE-255  
ESTATE GUARANTY FUND,               \* OAH NO. DLR-REC-22-12-11604  
FOR THE ALLEGED MISCONDUCT         \*  
OF SUE ANN WILLISON                 \*  
   \*           \*           \*           \*           \*

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 13<sup>th</sup> day of November, 2012

ORDERED,

A. That the Findings of Fact in the recommended decision be, and hereby are, ADOPTED;

B. That the Conclusions of Law in the recommended decision be, and hereby are, AMENDED to reflect that the Claimant is entitled to reimbursement from the Real Estate Guaranty Fund in the amount of \$11,789.27;

C. That the Recommended Order be, and hereby is, AMENDED as follows:

ORDERED that the Claim of Richard M. White against the Maryland Real Estate Guaranty Fund based on the actions of Sue Ann

Willison is granted in the amount of \$11,789.27;

ORDERED that Sue Ann Willison shall be ineligible to hold a real estate license until the Fund is repaid in full together with interest as provided by law;

ORDERED that the records and publications of the Maryland Real Estate Commission reflect this decision.

D. Pursuant to §10-220 of the State Government Article, the Commission finds the recommended order had to be amended to increase the amount of the award from the Guaranty Fund. The Administrative Law Judge ('ALJ') denied the Claimant attorney's fees that were incurred in an effort to recover the losses caused by the misconduct of the licensee. COMAR 09.11.01.18 provides that a claimant may not recover attorney's fees incurred in pursuing or perfecting the claim against the guaranty fund. It is clear from the record that these fees were related to a civil action filed in the District Court of Maryland. In that case the Claimant was awarded damages, including attorney's fees, against the Respondent based on her failure to comply with their management agreement. The Respondent has not responded to the judgment. These fees were directly related to the original transaction, as reflected by their inclusion in the amount of the court's judgment, and were not incurred in connection with the Guaranty Fund claim. Therefore, the Claimant is entitled to that additional amount from the Guaranty Fund.

E. 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**

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Maryland Real Estate Commission

IN THE MATTER OF THE CLAIM OF: \* BEFORE JENNIFER M. CARTER JONES,  
RICHARD M. WHITE, \* 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-22-12-11604  
OF SUE ANN WILLISON \* REC No. 12-RE-255

\* \* \* \* \*

**RECOMMENDED 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 December 2, 2011, Richard M. White (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 \$9,535.00, 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 himself. 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**

The Claimant did not offer any exhibits for admission into evidence.

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

GF #1. OAH April 11, 2012 Notice of Hearing with attached certified mail receipts

GF #2. March 9, 2012 Transmittal by 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. Claimant's Complaint and Guaranty Fund Claim with the REC Fund, received on December 2, 2011

GF #6. Consent Order, dated November 22, 2011

GF #7. REC Report of Investigation, closed on December 16, 2011

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

## Testimony

The Claimant testified on his 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. On or about August 19, 2009, the Claimant and Respondent, in her capacity as agent of West Patrick Property Solutions, a Frederick, Maryland-based company she had created, entered into a Property Management and Exclusive Rental Agreement (the Stapleton Management Agreement). The Stapleton Agreement directed the Respondent to rent, lease, operate and manage the Claimant's investment property located at 5086 Stapleton Terrace in Frederick (the Stapleton Property).
4. On or about August 28, 2009, the Claimant and Respondent entered into another Property Management and Exclusive Rental Agreement (the Sumner Agreement). The Sumner Agreement directed the Respondent to rent, lease, operate and manage the Claimant's investment property located at 2062 Sumner Drive in Frederick (the Sumner Property).
5. On or about February 24, 2011, the Respondent entered into a Residential Lease Agreement (the Stapleton Lease) with a tenant (the Stapleton Tenant) for the Stapleton Property. Pursuant to the Stapleton Lease, the Tenant paid a security deposit of \$1,350.00 and rent at \$1,350.00 per month.

6. On or about February 28, 2011, the Respondent entered into a Residential Lease Agreement (the Sumner Lease) with two tenants (the Sumner Tenants) for the rental of the Sumner Property. Pursuant to the Sumner Lease, the tenants paid a security deposit of \$1,695.00 and rent at \$1,695.00 per month. The Sumner Tenants also paid a pet deposit of \$400.00.
7. The Respondent failed to remit to the Claimant the Stapleton and Sumner Tenants' rent for the months of April and May 2011.
8. The Respondent also failed to return the Stapleton and Sumner Tenants' security deposit and the Sumner Tenants' pet deposit. The Stapleton and Sumner Tenants have not claimed the return of the deposit from the Respondent.
9. The Claimant made multiple attempts to contact the Respondent to inquire about the status of the rental payments, but the Respondent did not return his calls.
10. After the Respondent failed to return his phone calls or remit the rent payments, the Claimant contacted his attorney and filed a civil action against the Respondent in the District Court of Maryland for Frederick County for breach of contract.
11. The District Court issued judgment in favor of the Claimant and against the Respondent in the amount of \$11,887.29 (\$9,535.00 – judgment principal + \$98.00 – costs + \$2,254.29 – attorney's fees).
12. As of the date of the hearing, the Respondent has not responded to the District Court judgment and her whereabouts are unknown.
13. 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, and agreed, *inter alia*, to the revocation of her license and not to contest the claims of various complainants 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 \$25,000.00, 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 property management and leasing agreements with the Respondent to lease and manage the Claimant's properties. The Respondent secured tenants for each of the Claimant's properties and also entered a lease agreement with the tenants to collect rent.

The evidence established that in the months of April and May 2011, the Respondent collected \$1,350.00 in rent payments from the Stapleton Tenant and \$1,695.00 from the Sumner Tenants, but failed to remit any portion to the Claimant in each of those months, as required by the Stapleton and Sumner Management Agreements.

Furthermore, the evidence establishes that the Respondent never returned the tenants' security deposits for either of the properties or the Sumner Tenants' pet deposit to the Claimant.

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 he 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 \$9,535.00. That amount includes two months' rent for the Sumner and Stapleton properties (\$6,090.00), the security deposits not returned to the Tenants (\$3,045.00) and the pet deposit not returned to the Sumner Tenant (\$400.00).

The Fund did not challenge the Claimant's entitlement to reimbursement in the amount of \$9,535.00 and asserted that the Claimant should be entitled to include the amount he paid in attorney's fees associated with his district court action

COMAR 09.11.01.18 provides that the amount of compensation recoverable by a claimant from the Real Estate 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. The attorney's fees the Claimant paid pursuing his action in the District Court do not constitute a loss from the originating transaction. Therefore, I find that he is not entitled to compensation for the amount he paid in attorney's fees.

Accordingly, I conclude that the Claimant is entitled to reimbursement from the Fund in the amount of \$9,535.00, the amount of rent the Respondent failed to remit to the Claimant for April and May 2011 plus the \$3,045.00 in security deposits and the \$400.00 pet deposit the Respondent failed to return to the Claimant.

### **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 \$9,535.00 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.

**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 \$9,535.00; 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 Mailed

JCJ/  
# 136898

**SIGNATURE ON FILE**

Jennifer M. Carter Jones  
Administrative Law Judge