

**MARYLAND REAL ESTATE COMMISSION**

**IN THE MATTER OF THE CLAIM OF: \***

**AJIBOLA M. KAZEEM,**

**\* OAH CASE NO. DLR-REC-22-09-30684**

**CLAIMANT**

**\***

**V.**

**\***

**THE MARYLAND REAL ESTATE  
COMMISSION GUARANTY FUND**

**\* CASE NO. 06-RE-294GF**

**\***

**FOR THE ALLEGED MISCONDUCT  
OF MICHAEL CAMPHOR, LICENSED  
REAL ESTATE SALESPERSON**

**\***

**RESPONDENT**

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

**OPINION AND FINAL ORDER**

This matter came before the Commission on argument on Exceptions filed by the Respondent, Michael Camphor, to the Proposed Order of December 15, 2010. On November 5, 2010, Administrative Law Judge Thomas E. Dewberry (“ALJ”) filed a Recommended Decision and Order in which he recommended that the Claimant be awarded the sum of \$3,865.00 from the Maryland Real Estate Commission Guaranty Fund (“the Fund”) for actual losses sustained as a result of the misconduct of the Respondent. The ALJ further recommended that the Respondent be ineligible for any real estate broker’s or salesperson’s license until such time as the Respondent reimbursed the Fund for all monies disbursed to the Claimant plus annual interest of ten percent.

On December 15, 2010, the Commission issued a Proposed Order that affirmed the ALJ’s Findings of Fact, approved the ALJ’s Conclusions of Law, and adopted the ALJ’s Recommended Order.

A hearing, on the Exceptions filed by the Respondent, was held by a panel of Commissioners, consisting of Commissioners J. Nicholas D'Ambrosia, Marla S. Johnson, and Colette P. Youngblood on April 20, 2011. Peter Martin, Assistant Attorney General, represented the Commission. Christopher Staiti, Esquire, represented the Claimant. A transcript of the hearing before the ALJ was not provided to the Commission. The proceedings were electronically recorded. The Respondent appeared on his own behalf.

### **SUMMARY OF THE EVIDENCE**

On behalf of the Commission, four exhibits, including the Office of Administrative Hearings' ("OAH") file and the exhibits which were introduced at the hearing before the ALJ, were entered into evidence.

### **PRELIMINARY MATTERS**

A review of the record in this case discloses that this matter was originally scheduled for hearing at the Office of Administrative Hearings on March 9, 2009, but the hearing was withdrawn by the Commission so that the parties could enter into a Consent Order. Fund 4.<sup>1</sup> The Consent Order, entered into by the Respondent, the Claimant, and the Commission, provided that the Respondent would pay a total of \$3,000.00 to the Claimant within 90 days from the date the Order was signed by the Commission. It also provided that if the Respondent failed to make the payment to the Claimant, the Commission could choose to refer the Guaranty Fund claim to the Office of Administrative Hearings for the scheduling of a hearing on the claim. The Respondent failed to make the \$3,000.00 payment to the Claimant within 90 days of the date of the Consent Order. Paragraph 13 of the Consent Order also provided that:

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<sup>1</sup> "Fund" refers to the Exhibits submitted into evidence by the Maryland Real Estate Commission Guaranty Fund at the hearing before the ALJ.

“13. By entering into this Consent Order, the Respondent expressly waives the right to any hearing or further proceedings to which he may be entitled in this matter and any rights to appeal from the Consent Order.”

The Commission finds that the Respondent did not appear for the hearing before the ALJ on Mr. Kazeem’s guaranty fund claim. The ALJ found, after reviewing the evidence presented, that the notice of the hearing was properly sent to the Respondent’s last business address on file with the Commission and that, although the copy of the hearing notice which was sent by certified mail was unclaimed, the hearing notice sent by regular mail was not returned to OAH. The ALJ concluded that the Respondent had been properly notified in accordance with Md. Code Ann., Business Occupations & Professions Article (“Bus. Occ. & Prof.”) § 17-408 (2010 Replacement Vol.), Code of Maryland Regulations (“COMAR”) 09.01.02.05 and COMAR 09.01.02.07, and proceeded to conduct the hearing *in absentia*. The Commission concludes that the ALJ acted properly in conducting the guaranty fund claim hearing in the absence of Mr. Camphor. Further, the Commission concludes that, in the Consent Order of March 30, 2009, Mr. Camphor had already agreed to facts which the ALJ incorporated in the Findings of Fact of his Recommended Decision; had agreed that he had violated Md. Code Ann. §§ 17-322(b)(25) and (33) as well as COMAR 09.11.02.01C and H and 09.11.02.02 D; and had waived “...the right to any hearing or further proceedings to which he may be entitled...and any rights to appeal ...” . Therefore, the Commission concludes that even if Mr. Camphor had not received proper notice as he alleged, such lack of notice would have been harmless error since he had already waived his right to a hearing.

On December 27, 2010, the Commission forwarded a letter, with a copy of the Recommended Decision of the ALJ and the Proposed Order of the Commission, to the Respondent. (Commission's Exhibit 1). On or about January 19, 2011, the Commission received a letter from the Respondent filing Exceptions to the Proposed Order. (Commission's Exhibit 2). On February 2, 2011, the Commission sent a letter to Mr. Camphor acknowledging receipt of his Exceptions and informing him that a hearing on his Exceptions would be held on April 20, 2011. (Commission's Exhibit 3). In the February 2, 2011 letter, Mr. Camphor was informed of the following:

“ A postponement request must be made in writing, and will be considered only if it is received by the agency not less than ten (10) days before the scheduled date of the hearing. The request shall set forth the reasons for the request, and will be granted only for good cause. A postponement request received less than ten days before the hearing will not be considered unless there are extenuating circumstances.

....

Generally, any evidence that was not presented at the hearing before the Administrative Law Judge, including testimony, may not be introduced or referred to at this hearing. A party seeking to introduce additional evidence must apply in writing to the Commission at least fifteen (15) days before the hearing for leave to introduce the evidence, and must demonstrate both that the additional evidence is material, and that there were good reasons for failing to introduce it before the Administrative Law Judge.

A party may be represented by an attorney licensed to practice law in Maryland. If you wish to hire an attorney to represent you, you should arrange legal representation prior to the hearing, and as soon as possible. If you appear for the hearing without an attorney, no continuance will be granted in order to allow you additional time to hire legal counsel.....”

On or about April 8, 2011, Mr. Camphor submitted a request to the Commission for a postponement in order to hire an attorney as well as a request that subpoenas be issued to two potential witnesses.

The Commission found that Mr. Camphor received sufficient notice to engage the services of an attorney for the April 20, 2011 hearing but failed to do so. Further, the

Commission found that Mr. Camphor was advised, in the Commission's letter of February 2, 2011, that if he appeared for his hearing without an attorney, no continuance would be granted in order to allow him additional time to hire legal counsel. Mr. Camphor acknowledged receipt of the Commission's letter of February 2, 2011. Therefore, the Commission concluded that his request for postponement of the hearing on his Exceptions in order to obtain representation by an attorney should be denied.

Mr. Camphor's request to subpoena two witnesses was denied by the Commission prior to the Exceptions hearing. The Commission determined that the exceptions process is an appeal on the record and regulations governing the exceptions process do not provide for the use of subpoenas for witnesses at the exceptions level.

Mr. Camphor also sought to introduce evidence not presented at the hearing before the ALJ and advised the Commission that he wished to refute the claim made against the Fund by the Claimant. He sought to introduce additional evidence because he contended that he had not been properly notified of the hearing before the ALJ and therefore was unable to present argument and evidence against the Fund claim. As previously stated, the Commission concluded that, in the March 30, 2009 Consent Order, Mr. Camphor waived his right to introduce evidence in any further hearing or proceedings, or to any appeal from the Consent Order. The Commission further notes that even if he had not waived his right to further proceedings in this matter, he did not comply with the requirements of Code of Maryland Regulations ("COMAR") 09.01.03.09 K. in regard to the introduction of additional evidence at the Exceptions hearing. Therefore, the Commission concluded that his request to introduce additional evidence should be denied.

## FINDINGS OF FACT

The Commission adopts the Findings of Fact recommended by the ALJ.

## DISCUSSION

The Respondent was licensed as a real estate salesperson, affiliated with Re/Max One, at all times relevant to this case. His license expired on December 22, 2008 and has not been renewed. FF 1, 2<sup>2</sup>. On or about September 30, 2004, Jessica Bryant, Curtis Johnson and Rhonda Bell (tenants) and the Claimant entered into a residential dwelling lease for the Claimant's property located at 1943 W. Baltimore Street, Baltimore, Maryland 21223 (the "Property"). FF 3. The Respondent was the tenants' agent in this transaction. FF 4. Although the residential dwelling lease prohibited assigning the lease or subletting the Property, the Respondent sublet the Property on or about October 1, 2004. FF 5, 6. In the sublease transaction, the Respondent, acting as president and owner of B. McDad Associates, (referred to as lessor), sublet the Property to Baltimore Behavioral Health, a rehabilitation facility, (referred to as lessee). FF 7. The Respondent sublet the Property without the knowledge or authorization of the Claimant. FF 8. The Claimant did not learn of the subletting of the Property until the Spring of 2005. FF 9. The Claimant was unaware of the Respondent's ownership interest in B. McDad Associates until the Spring of 2005, when a General Addendum to the lease was signed. FF 10. The Respondent profited from his unauthorized subletting of the Property owned by the Claimant. FF 11. The Respondent failed to pay bills which ultimately became the responsibility of the Claimant. FF 12. The residential dwelling lease provided that the

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<sup>2</sup> "FF" refers to the ALJ's Findings of Fact in the Recommended Decision.

tenants were to pay for cold water/sewer costs but the Claimant's City of Baltimore Metered Water Bill for the reading date of June 17, 2005, in the amount of \$901.41, was not paid by the tenants. FF 13, 14. The Claimant did not receive the May, 2005 monthly rent payment of \$1,050.00 for the Property. FF 12. The Claimant hired Christopher Staiti, Esquire and paid him \$1,914.00 to represent him in a landlord/tenant breach of contract dispute in the District Court of Maryland and to represent him in amicable resolution efforts with Baltimore Behavioral Health. FF 15. On March 30, 2009, a Consent Order was entered into by the Claimant, the Respondent, and the Commission. In that Consent Order, the parties stipulated to Findings of Fact 1. through 10 of the ALJ's Recommended Decision. The Respondent agreed, in the Consent Order, to pay a total of \$3,000.00 to the Claimant not later than 90 days from the date of the Consent Order. FF 17. The Consent Order also provided that, in the event the Respondent failed to pay the Claimant within 90 days, the Fund claim could be scheduled for a hearing at the OAH. FF 18. The Respondent failed to pay the Claimant the agreed upon amount within the specified time period. FF 19.

Md. Code Ann., Bus. Occ. & Prof. § 17-404 governs claims brought against the Maryland Real Estate Guaranty Fund and sets forth the following criteria that must be established by a claimant in order to obtain an award from the Fund:

**§ 17-404.**

(a) (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.

**COMAR 09.11.03.04** provides the following:

A. A guaranty fund claim shall be based on the alleged misconduct of a licensee.

B. For the purpose of a guaranty fund claim, misconduct:

(1) Is an 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;

(2) Is performed by an unlicensed employee of a licensed real estate broker or by a duly licensed real estate broker, associate broker, or salesperson; and

(3) Involves conduct for which a license is required by Business Occupations and Professions Article, Title 17, Annotated Code of Maryland.

The Respondent was a licensed real estate salesperson at all times relevant to this matter. The Respondent's activities, as the tenants' agent in a transaction involving the rental of the Claimant's property, fall within the definition of providing real estate brokerage services set forth in Md. Code Ann., Bus. Occ. & Prof. § 17-101(1)(1), (2), and (3), to wit:



“(1) “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;...”

The acts and omissions of the Respondent, which are complained of by the Claimant, relate to real estate located in Maryland. Thus, the requirements of Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(i) and (ii) have been met.

The Respondent stipulated in the Consent Order of March 30, 2009 that he “sublet the Claimant’s property without the knowledge or authorization of the owner.” Respondent’s actions, as president and owner of B. McDad Associates, in subletting the Claimant’s Property to Baltimore Behavioral Health without the Claimant’s prior written consent constituted fraud, false pretenses, and misrepresentation. Therefore, the Claimant has met the requirements to recover compensation from the Maryland Real Estate Commission Guaranty Fund for actual losses sustained as a result of the transaction.

The Commission accepts the ALJ’s determination that the Claimant modified his Fund claim to approximately \$3,800.00 prior to the March 9, 2009 hearing at the Office of Administrative Hearings which was withdrawn so that the parties could enter into the March 30, 2009 Consent Order. The Claimant’s claim consisted of the following:

Baltimore City Water Bill	\$ 901.41
Legal Fees:	
Landlord/Tenant Breach of Contract case	1,309.00
Amicable Resolution Efforts-Baltimore	

Behavioral Health	605.00
MREC Complaint-Representation	769.50
May, 2005 Rent	1,050.00

Under the provisions of the lease agreement, the tenants were responsible for paying all utility costs, including “Cold water/sewer”. The Claimant paid the Baltimore City Water bill in the amount of \$901.41 but was not reimbursed by the tenants.

At the November 5, 2010 hearing before the ALJ, the Claimant testified that, when he learned that the Respondent had leased his Property to Baltimore Behavioral Health and that the Property was being used as a rehabilitation center, he informed the Respondent that he wanted the tenants to vacate the Property by a certain date but the Respondent refused to comply with his demand. As a result, the Claimant was required to employ counsel, at a cost of \$1,309.00, to file a Complaint and Summons Against Tenant in Breach of Lease in order to terminate the lease. The Claimant and his attorney also worked to amicably resolve the lease issue with Baltimore Behavioral Health, which offered some resistance to his efforts to evict the sixteen people who were living in the Property. The legal fee for representation in these amicable resolution efforts was \$605.00. The Claimant also sought a Fund award to cover the legal fee of \$769.50 incurred for representation regarding the “REEC Complaint”. The Commission finds that COMAR 09.11.01.18 provides that the amount of compensation recoverable from the Fund “shall be restricted to the actual monetary loss incurred by the claimant” and may not include “any attorney’s fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund”. The Commission concludes that the attorney’s fee paid regarding the Complaint and Summons Against Tenant in Breach of Lease and the legal fee paid for amicable resolution efforts with Baltimore Behavioral Health were not

paid to pursue the claim against the Fund. However, the legal fee of \$769.50 incurred in pursuing the Claimant's claim against the Guaranty Fund is not recoverable from the Fund.

The ALJ determined that the Claimant did not receive the May, 2005 monthly installment rent payment of \$1,050.00 for the Property. The Claimant testified that, although there was a security deposit equal to one month's rent, (which, arguably could have compensated him for the May, 2005 rent payment), he spent more than the security deposit for repairs occasioned by having sixteen people living in the Property. Although the Claimant was unable to produce receipts for the clean up and maintenance which was required to be done to the Property after the tenants were evicted (over five years before the August 10, 2010 hearing), the ALJ found the Claimant's testimony in that regard to be credible and reasonable.

Based on the foregoing, the Commission concludes that the Claimant has met his burden of proof and is entitled to receive an award from the Guaranty Fund for the following actual losses:

Baltimore City Water Bill	\$ 901.41
Legal Fees:	
Landlord/Tenant Breach of Contract case	1,309.00
Amicable Resolution Efforts-Baltimore	
Behavioral Health	605.00
May, 2005 rent	1,050.00

#### **CONCLUSIONS OF LAW**

Based upon the ALJ's Findings of Fact, which have been adopted by the Commission and the foregoing Discussion, the Commission concludes, as a matter of law, that:

1. Respondent, Michael Camphor, was a licensed real estate salesperson at all times relevant to this matter.

2. Claimant, Ajibola M. Kazeem, suffered an "actual loss", in the amount of \$3,865.00 due to fraud, false pretenses, and misrepresentation of the Respondent, Michael Camphor, a licensed real estate salesperson, during the course of the provision of real estate brokerage services related to Maryland real estate;

3. Claimant, Ajibola M. Kazeem, is entitled to compensation, in the amount of \$3,865.00, from the Maryland Real Estate Commission Guaranty Fund for actual losses sustained as a result of the actions of the Respondent, Michael Camphor; and

4. Claimant, Ajibola M. Kazeem, is not entitled to compensation from the Maryland Real Estate Commission Guaranty Fund for legal fees incurred, in the amount of \$769.50, in pursuing a claim against the Maryland Real Estate Commission Guaranty Fund.

### ORDER

The Exceptions of the Claimant, Michael Camphor, having been considered, it is this 13<sup>th</sup> day of July, 2011, by the Maryland Real Estate Commission, **ORDERED:**

1. That the Claimant, Ajibola M. Kazeem, be reimbursed in the amount of Three Thousand Eight Hundred Sixty-Five Dollars (\$3,865.00) from the Maryland Real Estate Commission Guaranty Fund to compensate for the actual losses sustained by the Claimant due to the conduct of the Respondent, Michael Camphor;

2. That Respondent, Michael Camphor, shall be ineligible to hold any real estate license issued by the Maryland Real Estate Commission until the Maryland Real Estate

Commission Guaranty Fund is reimbursed Three Thousand Eight Hundred Sixty-Five Dollars (\$3,865.00) plus annual interest of ten percent (10%), pursuant to Md. Ann. Code, Bus. Occ. & Prof., §§ 17-411(a) and 17-412; and

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

**MARYLAND REAL ESTATE COMMISSION**

**SIGNATURE ON FILE**

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

**Note:** A judicial review of this Final Order may be sought in the Circuit Court of Maryland in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.

THE MARYLAND REAL ESTATE COMMISSION

THE CLAIM OF \* BEFORE THOMAS E. DEWBERRY,  
AJIBOLA M. KAZEEM \* 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-22-09-30684  
MISCONDUCT OF \* MREC No. 2006-RE-294 G.F.  
MICHAEL CAMPHOR

\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated November 5, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 15th day of December, 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

12/15/2010  
Date

By: SIGNATURE ON FILE  
Marla S. Johnson, Commissioner

IN THE MATTER OF THE CLAIM OF:  
AJIBOLA M. KAZEEM,  
CLAIMANT,

v.

THE MARYLAND REAL ESTATE  
COMMISSION GUARANTY FUND  
  
FOR THE ALLEGED MISCONDUCT OF  
MICHAEL CAMPHOR, LICENSED  
REAL ESTATE SALESPERSON  
  
RESPONDENT

\* BEFORE THOMAS E. DEWBERRY,  
\* CHIEF ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH CASE Nos. DLR-REC-22-09-30684  
\*  
\* MREC COMPLAINT No. 60-RE-294GF  
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**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 March 3, 2006, Ajibola M. Kazeem, (Claimant) filed a complaint with the Maryland Real Estate Commission (MREC) and a claim against the Real Estate Commission Guaranty Fund (Fund) in the amount of \$2822.42. The claim was for monetary losses incurred as a result of the alleged misconduct of Michael Camphor (Respondent), a Licensed Real Estate Salesperson.

On July 14, 2009, based upon the content of the complaint, the MREC issued an Order for Hearing. On May 25, 2010 the Office of Administrative Hearings (OAH) scheduled a hearing for August 10, 2010 at 10 a.m.

The above-captioned case was heard before Thomas E. Dewberry, Chief Administrative Law Judge (CALJ), on behalf of the MREC. The Claimant was present and represented by Christopher Staiti, Esquire. Matthew Lawrence, Assistant Attorney General, Office of the Attorney General, Department of Labor, Licensing and Regulation, represented the Fund. The Respondent failed to appear for the 10 a.m. hearing. After waiting approximately fifteen minutes, the hearing was convened.

On May 25, 2010, the OAH had mailed notice of the hearing to the Respondent by certified and regular mail to his last business address on file with the MREC, 8603 Trumps Hill Road, Upper Marlboro, Maryland 20772. The notice advised the Respondent of the time, place and date of the hearing. The notice sent by certified mail was returned to the OAH marked “RETURN TO SENDER UNCLAIMED UNABLE TO FORWARD.” The notice sent to the Respondent by regular mail was not returned to the OAH. At the time the notice was mailed, the Respondent was not licensed by the MREC.

Insofar as written notice of the hearing was sent to the Respondent at his last business address on file with the MREC, the ALJ directed that the hearing proceed *in absentia*. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2004); Code of Maryland Regulations (COMAR) 09.01.02.05; COMAR 09.01.02.07.

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. 2010); Code of Maryland Regulations (COMAR) 09.01.02, 09.01.03, 09.11.03.02; and 28.02.01.

### **ISSUES**

The issues presented are whether the Claimant sustained an “actual loss” compensable by the Fund as the result of an act or omission of the Respondent within the meaning of section 17-



404(a) of the Business Occupations and Professions Article of the Annotated Code of Maryland, and if so, the amount of the award.

**SUMMARY OF THE EVIDENCE**

**Exhibits**

The Claimant submitted the following exhibits into evidence:

- Claimant Ex. #1 - Residential Dwelling Lease (6 pages)
- Claimant Ex. #2 - City of Baltimore Metered Water Bill for June 17, 2005 meter reading
- Claimant Ex. #3 - Stevens & Staiti, LLP "Client Accounting Ledger," dated August 9, 2010

The Fund submitted the following exhibits into evidence:

- Fund Ex. #1 - DLLR Transmittal to OAH, dated July 24, 2009
- Fund Ex. #2 - MREC licensing information on the Respondent
- Fund Ex. #3 - MREC Complaint and Guaranty Fund Claim, dated January 24, 2006
- Fund Ex. #4 - MREC Consent Order, dated March 30, 2009
- Fund Ex. #5 - OAH memo to DLLR's Legal Services re "Undeliverable Mail," dated June 23, 2010

**Testimony**

The Claimant testified on his own behalf. 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 to this case, the Respondent was licensed as a real estate salesperson. His license expired on December 22, 2008 and has not been renewed.
2. At all times relevant to this case, the Respondent was affiliated with Re/Max One.

3. On or about September 30, 2004, Jessica Bryant, Curtis Johnson and Rhonda Bell (tenants) and the Claimant entered into a residential dwelling lease for the Claimant's property located at 1943 W. Baltimore Street, Baltimore, Maryland, 21223.

4. The Respondent was the tenants' agent in this transaction.

5. The residential dwelling lease prohibited assigning the lease or subletting the property without the Claimant's prior written consent.

6. On or about October 1, 2004, the Respondent sublet the property.

7. In the sublease transaction, the Respondent, acting as president and owner of B. McDad Associates, referred to as lessor, sublet the property to an organization, Baltimore Behavior Health, referred to as lessee, a rehabilitation facility.

8. The Respondent sublet the property without the knowledge or authorization of the Claimant.

9. The Claimant did not learn of the subletting until the spring of 2005.

10. The Claimant was unaware of the Respondent's ownership interest in B. McDad until the spring of 2005, when a General Addendum to the lease was signed.

11. The Respondent profited from the unauthorized act of subletting the property owned by the Claimant and failed to pay bills which ultimately became the responsibility of the Claimant.

12. The Claimant did not receive the May 2005 monthly installment rent payment of \$1,050.00 for the property.

13. The residential dwelling lease provided that the tenants were to pay for Cold Water/Sewer costs.

14. The Claimant's City of Baltimore Metered Water Bill for the reading date of June 17, 2005 in the amount of \$901.41 was not paid by the tenants.

15. The Claimant hired Christopher Staiti, Esquire and paid him \$1,914.00 to represent him in the Landlord/Tenant Breach of Contract dispute in the District Court of Maryland and the amicable resolution efforts with the Baltimore Behavior Health organization.

16. On March 30, 2009, the MREC and the Respondent entered into a Consent Order to resolve the Claimant's complaint. The Parties stipulated to the aforementioned Findings of Fact #1 - #10.

17. In the March 30, 2009 Consent Order, the Respondent agreed that he would pay a total of \$3,000 to the Claimant no later than 90 days from the date of the Consent Order.

18. The Consent Order provided that if the Respondent failed to pay the Claimant the claim may be scheduled for a hearing at the OAH.

19. The Respondent failed to pay the Claimant the agreed upon amount.

### **DISCUSSION**

The burden of proof at a hearing on a claim against the Fund is on the "claimant to establish the validity of the claim." Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2004). Section 17-404(a) of the same statute governs all claims brought against the Fund and sets forth, in pertinent part, the following criteria that must be established by a claimant to obtain an award:

#### **§ 17-404. Claims against 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(a) (2004). COMAR 09.11.03.04, *Claims Against the Guaranty Fund*, provides the following:

A. A guaranty fund claim shall be based on the alleged misconduct of a licensee.

B. For the purpose of a guaranty fund claim, misconduct:

(1) Is an 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;

(2) Is performed by an unlicensed employee of a licensed real estate broker or by a duly licensed real estate broker, associate broker, or salesperson; and

(3) Involves conduct for which a license is required by Business Occupations and Professions Article, Title 17, Annotated Code of Maryland.

At all times relevant, the Respondent was a licensed real estate salesperson. The Respondent served as the tenants' agent in a transaction involving the rental of Claimant's property. The Respondent's activities fall within the definition of providing real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. § 17-101(1)(1), (2), (3) (Supp. 2008).<sup>1</sup> The act(s)

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<sup>1</sup> (I) "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;

.....

and omission(s) of the Respondent, complained of by the Claimant, relate to real estate located in Maryland. The Claimant has met the requirements of sections 17-404(a)(2) (i) & (ii) of the Business Occupations and Professions Article.

For the instant claim to be successful against the Fund, the act(s) and omission(s) of the Respondent must also constitute one or more of six prohibited actions specified in section 17-404(a)(2)(iii) of the Business Occupations and Professions Article. Indeed, the act of the Respondent, acting as president and owner of B. McDad Associates, in subletting the Claimant's property to an organization, Baltimore Behavior Health, without the Claimant's prior written consent constituted false pretenses and misrepresentation. The Respondent did not appear at the hearing to contest these facts. However, the Fund presented a Consent Order (Fund Exhibit #4) signed by the Respondent on March 19, 2009 in which he stipulated that he "sublet the Claimant's property without the knowledge or authorization of the owner."

The Claimant's January 24, 2006 Guaranty Fund Claim was in the amount of \$2,822.42, as follows:

Rent for May 2005 in the amount of \$1,050.00 plus  
Legal fees to evict "strawman" tenants - \$1,471.00  
Legal fees to amicably resolve rent issue - \$301.42  
Additional Legal Fees as herein accrued

In addition, at the hearing, the Claimant submitted a City of Baltimore Metered Water Bill for the reading date of June 17, 2005 in the amount of \$901.41. The MREC argued that the Claimant did not amend his Guaranty Fund Claim "at least 15 days prior to any hearing date" as required on the MREC Complaint and Guaranty Fund Claim form. The Claimant's representative stated that the Claim form was amended prior to the hearing of OAH case number

DLR-REC-24-08-23689. I note that this hearing was scheduled for March 9, 2009 and that the case was settled at the hearing. Although the Claimant's representative could not produce a copy of the amended Claim form he indicated that the Claim was increased to approximately \$3,800.00 which would accurately reflect the testimony and documentation that is being presented at the hearing. I accept the Claimant's assertion that the form was amended and will allow the \$901.41 water bill that the Claimant believed was paid under the provisions of the lease agreement in which the tenants were responsible for paying all utility costs.

With regard to the legal fees included in the Claimant's claim, the Claimant submitted a Client Account Ledger (Claimant's Exhibit #3) in the amount of \$2,683.50. The account ledger was broken down into three categories with the following fees:

1943 West Baltimore Street – LT Breach of Con<sup>2</sup> - \$1,309.00  
Amicable Resolution Efforts - \$605.00  
REEC Complaint – Representation - \$769.50<sup>3</sup>

The MREC argued that the legal fees should not be allowed and cited COMAR 09.11.01.18 which states that the amount of compensation recoverable “shall be restricted to the actual monetary loss incurred by the claimant” and may not include “any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.” I find that the attorney's fees paid by the Claimant for “1943 West Baltimore Street – Lt Breach of Con” and “Amicable Resolution Efforts” were not paid to pursue the claim against the guaranty fund. The Claimant testified that when he found out that the Respondent had leased his property to Baltimore Behavior Health and that his property was operating as a rehabilitation center he told the Respondent that he wanted the tenants out by a certain date and the Respondent refused. Consequently, the Claimant was forced to employ counsel to terminate the lease. The Claimant also had to argue at the District Court that he was the owner of the property because of the

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<sup>2</sup> Landlord/Tenant Breach of Contract

<sup>3</sup> The MREC objected to the portion of the bill for the “REEC Complaint – Representation.”

sublease documentation which resulting in a dispute involving standing. With regard to the “Amicable Resolution Efforts” portion of the ledger, the Claimant and his attorney worked to amicably resolve the matter because there were sixteen people living at his property and there was some resistance from Baltimore Behavior Health because he was seeking to evict all of those individuals. The Claimant’s representative argued that the Claimant should also be reimbursed for the \$769.50 in legal fees that the Claimant paid for representation for the “REEC Complaint” because the statute was enacted for a simple process, not one that has taken six years. He noted that the fees arose and accrued prior to the March 2009 Consent Order and that no fees have been added for today’s hearing preparation. The Claimant’s representative argued that the Claimant has been a valuable part of this licensing process and he believes that it is in the public’s best interest to not have people like the Respondent acting as real estate agents. Although I am sympathetic to the Claimant’s six year process, COMAR 09.11.01.18 is clear that the amount of compensation recoverable may not include any attorney’s fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund. Clearly, the \$769.50 portion of the Client Accounting Ledger that the Claimant is seeking is for attorney fees which arose from pursuing or perfecting of the Claimant’s claim against the guaranty fund and are therefore not allowed.

With regard to the Claimant’ request for reimbursement for the May 2005 rent in the amount of \$1,050.00, the MREC noted that there was a security deposit in the amount of one month’s rent. The Claimant testified that he spent more than the security deposit for repairs after having sixteen people reside at the property. He indicated however that since the dispute was over five years ago he does not have receipts for the clean up and maintenance that had to be done to the property after the tenants were evicted. I find the Claimant’s testimony credible and

reasonable that he would have spent more than the amount of the security deposit to improve the property after evicting sixteen individuals.

The Claimant has provided documentary and testimonial evidence to support his claim against the Fund and has met the required burden of proof. I find that the Claimant has sustained the following actual loss:

Rent for May 2005	-	\$1,050.00
City of Baltimore Water Bill		\$ 901.41
Landlord/Tenant Breach of Contract		
Legal Fees		\$1,309.00
Amicable Resolution Efforts		
Legal Fees		<u>\$ 605.00</u>
<b>Total</b>		<b>\$3,865.41</b>

The Claimant, therefore, is entitled to reimbursement from the Fund for an actual loss in the amount of \$3,865.41.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, the ALJ concludes, as a matter of law, that the Claimant has established an “actual loss” valued at \$3,865.41 based on false pretense or misrepresentation by the Respondent, a licensed real estate salesperson. Accordingly, the Claimant is entitled to prevail in his claim against the Fund in the amount of \$3,865.41. Md. Code. Ann., Bus. Occ. & Prof. § 17-404(a) (2004); COMAR 09.11.03.04; COMAR 09.11.01.18.

#### **RECOMMENDED ORDER**

On the basis of the foregoing Findings of Fact, Discussion and Conclusions of Law, it is **RECOMMENDED** that the Maryland Real Estate Commission:

**ORDER**, that the Claimant be awarded the sum of \$3,865.00 from the Fund based on the claim filed on January 24, 2006 for actual losses sustained as a result of the misconduct of the Respondent; and that it further



**ORDER** that the Respondent be ineligible for any real estate broker's or salesperson's license until such time as the Respondent reimburses the Fund for all monies disbursed under this Order plus annual interest of ten percent (10%), pursuant to sections 17-411(a) and 17-412 of the Business Occupations and Professions Article of the Annotated Code of Maryland; and that it further

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

November 5, 2010  
Date Decision Mailed

SIGNATURE ON FILE  
Thomas E. Dewberry  
Chief Administrative Law Judge

TED/bv  
Document #117321