

FINAL ORDER

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MAY 07 2012

MARYLAND REAL
ESTATE COMMISSION

IN THE MATTER OF THE CLAIM *
OF JAMES I. MARTIN *
AGAINST THE MARYLAND REAL * CASE NO. 2010-RE-493 GF
ESTATE GUARANTY FUND. * OAH NO. DLR-REC-22-11-20589
FOR THE ALLEGED MISCONDUCT *
OF CHARLES M. MARTIN *

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law, and Recommended Order of the Administrative Law Judge dated January 10, 2012, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 9th day of March, 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, ADOPTED;

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

ORDERED that the Claim of James I. Martin against the Maryland Real Estate Guaranty Fund based on the actions of Charles M. Martin is granted in the amount of \$23,823.00;

ORDERED that Charles M. Martin 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 include the provision that Charles M. Martin shall be ineligible to hold a real estate license until the Guaranty Fund is repaid in full together with the interest prescribed by law.

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

[Signature]
Maryland Real Estate Commission

for Anne S. Cooke, Chair

IN THE MATTER OF THE CLAIM OF:	*	BEFORE JENNIFER M. CARTER JONES,
JAMES I. MARTIN,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	*	OF THE MARYLAND OFFICE
v.	*	OF ADMINISTRATIVE HEARINGS
THE MARYLAND REAL ESTATE	*	OAH CASE No. DLR-REC-22-11-20589
COMMISSION GUARANTY FUND	*	MREC COMPLAINT No. 10-RE-493GF
FOR THE ALLEGED MISCONDUCT OF	*	
CHARLES M. MARTIN, REAL ESTATE	*	
SALESPERSON,	*	
RESPONDENT	*	

* * * * *

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 June 4, 2010, James I. Martin (Claimant) filed a claim with the Maryland Real Estate Guaranty Fund (Fund), established by the Maryland Real Estate Commission (REC), for reimbursement for actual losses in the amount of \$23,824.90, suffered as a result of the alleged misconduct by Charles M. Martin (Respondent), a licensed real estate salesperson. On May 25, 2011, the REC transmitted the case to the Office of Administrative Hearings (OAH) for a contested case hearing. On July 7, 2011, the OAH scheduled a hearing for October 13, 2011.

On October 13, 2011, I conducted a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010). Henry Klemkowski, Esquire, represented the Claimant. Kris King, Assistant Attorney General for the Department of Labor, Licensing and Regulation (DLLR), represented the Fund. The Respondent failed to appear.

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. 2011); Code of Maryland Regulations (COMAR) 09.01.02, 09.01.03, 09.11.03.02; and COMAR 28.02.01.

ISSUES

(1) Did the Claimant sustain an actual loss as a result of an act or omission of the Respondent that constitutes theft, embezzlement, false pretenses, forgery, misrepresentation, or fraud?

(2) If the Claimant sustained an actual loss, what is the amount of actual loss compensable by the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits into evidence on behalf of the Guaranty Fund:

Fund Ex. 1 Notice of hearing, sent by the OAH on July 7, 2011 via first class mail; returned to the OAH on July 18, 2011 as undeliverable

Fund Ex. 2 Notice of hearing, sent by the OAH on July 7, 2011 via certified mail; returned to the OAH on July 18, 2011 as vacant

Fund Ex. 3 DLLR Hearing Order, dated May 5, 2011

Fund Ex. 4 The Respondent's licensing history with the DLLR

Fund Ex. 5 Printout from the Maryland State Department of Assessments and Taxation for 5803 Lowery Lane, Upper Marlboro, Maryland 20772

Fund Ex. 6 Claimant's Complaint and Guaranty Fund Claim, received on June 4, 2010

Fund Ex. 7 Notice of Summary Suspension of Real Estate Broker's License, December 16, 2010

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

Claimant Ex. 1 Residential Contract of Sale, dated January 23, 2008

Claimant Ex. 2 Addendum #1 to the Contract, dated January 23, 2008

Claimant Ex. 3 Brook Martin Investments, LLC, Investment Disclosure Addendum, signed by the Respondent on January 23, 2008 and signed by the Claimant and the listing agent on January 24, 2008

Claimant Ex. 4 Amendment to the Agreement of Sale, dated April 25, 2008

Claimant Ex. 5 Amendment to the Agreement of Sale, signed by the Respondent on March 19, 2008 and signed by the Claimant on March 25, 2008

Claimant Ex. 6 Owner Financing Addendum, dated June 26, 2008

Claimant Ex. 7 Amendment to the Agreement of Sale, dated August 29, 2008

Claimant Ex. 8 Owner Financing Addendum, dated August 29, 2008

Claimant Ex. 9 Settlement Statement, dated September 10, 2008

Claimant Ex. 10 Promissory Note, signed by the Respondent on September 10, 2008

Claimant Ex. 11 Sworn statement of Andrew Lincoln, Dominion Financial Services, LLC, dated October 11, 2012,¹ with the following attachments:

- Letter from Mr. Lincoln to the Respondent, dated March 23, 2009
- Email correspondence from Mr. Lincoln to Claimant's attorney, Mr. Klemkowski, dated October 19, 2009
- Email from Mr. Lincoln to Mr. Klemkowski, dated October 15, 2009

Claimant Ex. 12 Guaranty, dated September 10, 2008

Claimant Ex. 13 Purchase Money First Lien Mortgage, dated September 10, 2008

¹ October 12, 2012 is the date that appears on the document. Clearly, however, this was an error.

- Claimant Ex. 14 Metropolitan Regional Information Systems Short Listing for 3706 Edmondson Avenue, Baltimore, Maryland 21229-2017, dated January 21, 2008
- Claimant Ex. 15 Line-of-credit letter from Ronald B. Edlavitch, Sole Proprietor, Evergreen Financial Co., addressed to "To Whom It May Concern," dated January 18, 2008
- Claimant Ex. 16 Printout from the Maryland State Department of Assessments and Taxation (SDAT) for 8347 Pioneer Drive, Severn, Maryland 21144
- Claimant Ex. 17 Metropolitan Regional Information Systems Short Listing for 3706 Edmondson Avenue, Baltimore, Maryland 21229-2017, dated May 5, 2009
- Claimant Ex. 18 Letter from the Respondent to Mr. Klemkowski, dated February 21, 2009; letter from the Respondent to Mr. Klemkowski, dated March 8, 2009; letter from Mr. Klemkowski to the Respondent, dated March 12, 2009; and, letter from the Respondent to Mr. Klemkowski, dated April 6, 2009
- Claimant Ex. 19 Affidavit of Debt Due Under Mortgage and Note, dated March 18, 2009
- Claimant Ex. 20 Deed for property in Prince George's County, Maryland, dated January 13, 2005

Testimony

The Claimant testified and presented the testimony of Joseph S. Barnes, Real Estate Agent with Long and Foster. No other witnesses testified.

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 under license number 3637196. The Respondent's license expired on December 6, 2009.
2. On or about July 18, 2007, the Claimant listed his residential property, 3706 Edmonson Avenue (the property), for sale for \$89,500.

3. The Claimant listed the property for sale through Long and Foster, a real estate company. Joseph S. Barnes was the Claimant's listing agent with Long and Foster.
4. On or about January 18, 2008, the Respondent obtained a standing line of credit for \$105,000.00 to purchase a property located at 8347 Pioneer Drive in Severn, Maryland. The Respondent did not purchase this property.
5. By January 21, 2008, the Claimant had not received any offers to purchase the property and he lowered the price.
6. The Claimant's property remained on the market until he received an offer from the Respondent for \$65,000.00.
7. On or about January 23, 2008, the Respondent contracted to purchase the property from the Claimant via a Residential Contract of Sale (the Contract). The contract price for the property was \$65,000.00.
8. The Contract listed the settlement date as March 23, 2008.
9. Also on or about January 23, 2008, the Respondent and the Claimant agreed to an addendum to the Contract, which stated that the Claimant would not contribute to the Respondent's closing costs and that the Claimant would pay a 3% brokerage fee to the Respondent in his capacity as a salesperson for ReMax.
10. On or about January 23, 2008, the Respondent submitted to the Claimant an Investment Disclosure Addendum under his company name, Brooks Martin Investments, LLC. That addendum acknowledged that the Respondent, a principal for Brooks Martin Investments, was a licensed realtor who did not represent the Claimant in any way. The addendum also notified the Claimant that the Respondent's company regularly engaged in the

business of buying properties at grade prices, improving them, and selling them at retail prices (flipping).

11. The Claimant signed the Investment Disclosure Addendum on January 24, 2008.
12. On or about March 25, 2008, the Claimant and the Respondent signed an Amendment to the Agreement of Sale, which increased the purchase price for the property to \$75,550.00. The Amendment also provided that the Claimant would pay ReMax Specialists a brokerage fee of \$7,500.00, inclusive of the original 3% brokerage fee. The Amendment also extended the contract and settlement date to April 25, 2008.
13. On or about April 25, 2008, the Claimant and the Respondent signed an Amendment to the Agreement of Sale, in which both parties agreed to extend the Contract and the settlement date through May 30, 2008. The Amendment also provided that because the Respondent's company, Brooks Martin Investments was not in good standing with the SDAT, it had assigned all of its interests in the property to Martin Superior Properties, LLC.
14. On or about June 26, 2008, the Claimant and the Respondent entered into an Owner Financing agreement via an Owner Financing Addendum to the Contract. The Owner Financing Addendum provided that the Claimant would grant a Purchase Money Mortgage to the Respondent in the amount of \$17,500.00. Under this Addendum, the Claimant and the Respondent agreed that the Claimant would receive the total cost of the purchase price of the property minus \$17,500.00, which would constitute a mortgage held by the Claimant.

15. Under the terms of the Purchase Money Mortgage Addendum, the Respondent agreed to satisfy the mortgage at an interest rate of 10%, not later than six months from the final settlement date.
16. On or about August 29, 2008, the Claimant and the Respondent entered into an Amendment to the Agreement of Sale, which extended the Contract and settlement date to September 8, 2008; granted the Respondent permission to remarket the property prior to the settlement date; disclosed again that the Respondent was a principal with Martin Superior Properties, LLC, and had a financial interest in the property and sale transaction; and granted permission to the Respondent to assign the Contract to another purchaser.
17. On or about August 29, 2008, the Claimant and the Respondent entered into another Owner Financing agreement via a second Owner Financing Addendum to the Contract. The second Owner Financing Addendum provided that the Claimant would grant a Purchase Money Mortgage to the Respondent in the amount of \$20,000.00. Under this Addendum, the Claimant and the Respondent agreed that the Claimant would receive the total cost of the purchase price of the property minus the \$7,500.00 brokerage fee and the \$20,000.00 Purchase Money Mortgage.
18. Under the terms of the Purchase Money Mortgage Addendum, the Respondent agreed to satisfy the \$20,000.00 mortgage at an interest rate of 10%, not later than six months from the final settlement date.
19. On or about September 10, 2008, the Claimant and the Respondent settled on the sale of the property. The Claimant received \$39,096.95 after loaning the Respondent \$20,000.00 on the Purchase Money Mortgage.

20. On or about September 10, 2008, the Respondent obtained a home mortgage loan from Dominion Financial Services in the amount of \$96,500.00 for the purchase of the property. The Claimant and his real estate sales agent, Mr. Barnes, learned of the Respondent's \$96,500.00 loan at the settlement on the Property.
21. On September 10, 2008, the Respondent signed a promissory note to the Claimant providing that he promised to pay \$20,000.00 to the Claimant at a rate of 10% interest. The promissory note also provided that the Respondent would make payments of \$166.00 on the tenth day of each month, beginning on October 26, 2008 and every month thereafter until the balance is satisfied. If the Respondent failed to make a monthly payment within five days after the payment was due, the Respondent agreed that he would pay an additional late charge of 5% of the overdue payment, but "not less than U.S. \$500.00 and not more than U.S. \$1,000.00." (Claimant Ex. 10). Under the terms of the promissory note, the Respondent agreed to make this payment only one time on any late payment.
22. The promissory note also provided that the Respondent would pay the full amount of any balance that remained on the \$20,000.00 mortgage loan by February 10, 2009.
23. As of February 21, 2009, the Respondent had not made a payment on the \$20,000.00 mortgage to the Claimant.
24. By letter dated February 21, 2009, the Respondent contacted Mr. Klemkowski and notified him that he intended to pay the arrearages on the mortgage to the Claimant within fourteen days.
25. By letter dated March 8, 2009, the Respondent again contacted Mr. Klemkowski and requested the exact amount that was currently due to the Claimant.

26. By letter dated March 12, 2009, Mr. Klemkowski notified the Respondent that the total balance due on the mortgage loan was \$20,990.00.
27. As of March 18, 2009, Dominion Financial Services had forgiven \$60,000.00 of the Respondent's home mortgage loan for the purchase of the property. The Respondent still owed \$36,500.00 on the loan to Dominion Financial Services.
28. By letter dated April 6, 2009, the Respondent notified Mr. Klemkowski that he was in the process of refinancing another property to cure the outstanding debt due the Claimant. The Respondent further advised that he would provide an update to Mr. Klemkowski by April 10, 2009.
29. By fax letter dated April 10, 2009, Mr. Klemkowski notified that he was expecting the letter the Respondent promised, explaining his intended schedule of settlement of the mortgage loan.
30. The Claimant never received a payment on the \$20,000.00 Purchase Money Mortgage he gave the Respondent.
31. As of the date of the hearing, the Respondent owed the Claimant \$23,833.00, inclusive of interest.

DISCUSSION

Notice

On July 7, 2011, the OAH mailed notice of the hearing to the Respondent by certified and regular mail to his last address on file with the MREC, 5803 Lowery Lane, Upper Marlboro, Maryland 20772. The notice advised the Respondent of the date, time, and place of the hearing. The notice sent via certified mail was returned to the OAH marked "VACANT." The notice sent via first class mail was returned to the OAH marked "Not Deliverable as Addressed." The

Respondent's license had expired on December 6, 2009. According to the SDAT, the Respondent owns the property at 5803 Lowery Lane. Thus, I find that the Respondent was properly notified of the hearing but he failed to appear.

Legal Framework

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) (2010). 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.

(b) *Limitation on recovery.*- The amount recovered for any claim against the Guaranty Fund may not exceed \$25,000 for each claim.

Md. Code Ann., Bus. Occ. & Prof. § 17-404(a), (b) (2010). See COMAR 09.11.03.04.

The MREC shall order payment of a valid claim from the Fund for actual monetary losses suffered by a claimant not to exceed \$25,000. Md. Code Ann., Bus. Occ. & Prof. § 17-410(a), (b) (2010); COMAR 09.11.01.18.

The Claimant argues that the Respondent fraudulently obtained a mortgage from the Claimant for \$20,000.00, purportedly to make renovations on the property after the purchase was complete, but neither made any payment to satisfy that mortgage, nor made the renovations that served as the basis for the \$20,000.00 loan. In support of that position, the Claimant testified that in July 2007, he put the property on the market in the hopes that it would sell quickly. When the property had not sold by January 2008, he lowered the price and, because he was desperate to sell the property, accepted an offer for \$65,000.00 from the Respondent on January 18, 2008.

The Claimant explained that the Respondent presented as a very knowledgeable and professional salesperson and furnished him with proof that a lender, Evergreen Financial, had approved him for a standing line of credit of \$105,000 for the purchase of another property in Severn, Maryland. Based on the Respondent's apparent real estate knowledge and his line of credit, the Claimant testified that he did not question the Respondent when he amended the Contract to receive a 3% commission, or when he increased the purchase price for the property to \$75,550.00 to increase his commission to \$7,500.00.

The Claimant also testified that the Respondent made it clear that he purchased the property with the intent of flipping it in a short period of time as noted in the January 23, 2008 Investment Disclosure Addendum (Claimant Ex. 3). In fact, explained the Claimant, the Respondent had the Claimant sign an amendment to the Contract on August 29, 2008, authorizing the Respondent to "immediately remarket" the property as long as it did not disturb the pending sale from the Claimant to the Respondent. According to the Claimant, all of the

Respondent's actions were consistent with his intent to renovate the property quickly and remarket it at a higher price.

Based on all of the Respondent's representations, and coupled with the Respondent's apparent financial stability, the Claimant testified that he did not have any reason to question the Respondent's motives or ability to repay the \$20,000.00 seller's mortgage loan.

As corroboration of his position, the Claimant points to the fact that, according to a real estate listing for the property, dated May 5, 2009, the Respondent listed the property on September 10, 2008 for \$174,900, indicating that the property would be substantially improved. September 10, 2008 was the Contract settlement date, and, as of that date, no renovations had been made. Mr. Barnes, the Claimant's real estate agent, testified that to his knowledge, none of the renovations the Respondent claimed he would make in the real estate listing had been made as of the date of the hearing.

The Claimant has furnished ample evidence that the Respondent, in his professional capacity as a licensed real estate agent, fraudulently obtained a \$20,000.00 mortgage from the Claimant and failed to repay any portion of that loan. The Respondent made numerous representations that his company needed funds to renovate the Claimant's property after he purchased it to the extent that he convinced the Claimant to take give the Respondent a \$20,000.00 mortgage from the \$75,500.00 purchase price. At that time, the Respondent had already amended the Contract to increase the original Contract price to allow enough funds to receive a \$7,500.00 brokerage fee, purportedly for the same purpose, to renovate the property. Notwithstanding the \$20,000.00 the Respondent received as a mortgage from the Claimant and the additional \$7,500.00 he received in brokerage fees, according to the evidence produced by

the Claimant, the Respondent had made absolutely no renovations to the property as of the date of the hearing.

In the absence of any evidence to the contrary, therefore, I agree with the Claimant that the Respondent fraudulently misrepresented to the Claimant that he would (a) make renovations to the property; and (b) repay the Claimant the full amount of the \$20,000.00 seller's mortgage loan within six months.

The Claimant seeks compensation from the Fund in the amount of \$23,824.90 plus attorney's fees. COMAR 09.11.01.18 provides the following, with regard to the compensation recoverable by a claimant from the Fund:

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. 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.

According to the terms of the Claimant's seller's mortgage loan to the Respondent, the Respondent was responsible for repaying the loan within six months of October 26, 2009. The terms of the loan also dictated that the Respondent would pay a one-time late charge of no less than \$500.00 if he failed to make timely payments on the loan and that he would pay interest on the loan at a rate of 10% per annum. Therefore, pursuant to the terms of the loan, the Claimant is entitled to compensation from the Fund for the following: Claimant's mortgage to the Respondent (\$20,000.00); interest at the rate of 10% per annum, prorated to May 26, 2010, the date the Claimant filed his claim with the Fund (\$3,333.00); and a one-time \$500.00 late charge, for a total of \$23,823.00.

Pursuant to COMAR 09.11.01.18, the Claimant is not entitled to recover attorney's fees.

CONCLUSIONS OF LAW

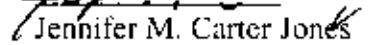
Based upon the foregoing Findings of Facts and Discussion, I conclude as a matter of law that the Claimant is entitled to reimbursement from the Fund in the amount of \$23,823.00, for actual losses resulting from the Respondent's actions. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(1), (2) and 17-410(b)(1) (2010); COMAR 09.11.01.18 and 09.11.03.04.

RECOMMENDED ORDER

I **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 \$23,823.00; and further, that the records and publications of the Maryland Real Estate Commission reflect its final decision.

January 10, 2012
Date Decision mailed

SIGNATURE ON FILE


Jennifer M. Carter Jones
Administrative Law Judge

JCI/ch
129218

IN THE MATTER OF THE CLAIM OF:	* BEFORE JENNIFER M. CARTER JONES,
JAMES I. MARTIN,	* AN ADMINISTRATIVE LAW JUDGE
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FOR THE ALLEGED MISCONDUCT OF	*
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SALESPERSON,	*
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* * * * *

EXHIBIT LIST

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