

FINAL ORDER

BEFORE THE MARYLAND REAL ESTATE COMMISSION MAY 3 - 2011

IN THE MATTER OF THE CLAIM  
OF SANG LEE  
AGAINST THE MARYLAND REAL  
ESTATE GUARANTY FUND,  
FOR THE ALLEGED MISCONDUCT  
OF KUN J. KIM

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MARYLAND REAL  
ESTATE COMMISSION

CASE NO. 2008-RE-777  
OAH NO. DLR-REC-22-10-04918

\* \* \* \* \*

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated January 3, 2011, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 8th day of March, 2011

ORDERED,

A. That the Findings of Fact in the recommended decision be, and hereby are, AMENDED as follows:

1. At all times relevant to this case, the Respondent was licensed as a real estate broker. His license expired on January 24, 2009, and has not been renewed.

B. That the Conclusions of Law in the recommended decision be, and hereby are, ADOPTED;

C. That the Recommended Order be, and hereby is, ADOPTED;

D. Pursuant to §10-220 of the State Government Article, the Commission finds that Finding 1 of the Findings of Fact of the

Administrative Law Judge had to be changed because it was inconsistent with the licensing records of the Commission, Exhibit MREC GF3.

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

**FINAL ORDER**

IN THE MATTER OF THE CLAIM OF:

\* BEFORE JEROME WOODS, II,

SANG LEE,

\* ADMINISTRATIVE LAW JUDGE MAY 3 - 2011

CLAIMANT,

\* OF THE MARYLAND OFFICE OF MARYLAND REAL  
\* ESTATE COMMISSION  
\* OF ADMINISTRATIVE HEARINGS

v.

THE MARYLAND REAL ESTATE  
COMMISSION GUARANTY FUND

\* OAH CASE No. DLR-REC-22-10-04918

FOR THE ALLEGED MISCONDUCT OF  
KUN J. KIM, LICENSED REAL ESTATE  
SALESPERSON

\* MREC COMPLAINT No. 08-RE-777GF

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 or about May 6, 2008, Sang Lee (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 \$35,000.00. The claim was for monetary losses incurred as a result of the alleged misconduct of Kun J. Kim (Respondent), a Licensed Real Estate Salesperson.

On December 30, 2009, based upon the content of the complaint, the MREC issued an Order for Hearing. On September 8, 2010 the Office of Administrative Hearings (OAH) scheduled a hearing for October 7, 2010 at 10:00 a.m.

I heard the above captioned case on behalf of the MREC. The Claimant was present and represented by Robinson S. Rowe, Esquire. Jessica Kaufman, Assistant Attorney General, Office of the Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund. The Respondent failed to appear for the 10:00 a.m. hearing. After waiting approximately fifteen minutes, the hearing was convened.

On September 8, 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, 4505 Wilkens Avenue, Baltimore, Maryland 21229. 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 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 (2010); 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, what is the amount of the award.

## SUMMARY OF THE EVIDENCE

### Exhibits

The Claimant submitted the following exhibits into evidence:

- Claimant Ex. #1 - Respondent business card
- Claimant Ex. #2 - Business Purchase Contract, dated July 1, 2007
- Claimant Ex. #3 - Returned \$35,000.00 check from Respondent to Claimant, dated November 8, 2007
- Claimant Ex. #4 - Claimant check stub, dated July 1, 2007 for payment to Respondent, \$50,000.00
- Claimant Ex. #5 - Report of Investigation, dated August 10, 2009

The Fund submitted the following exhibits into evidence:

- Fund Ex. #1 - Notice of Hearing, dated September 24, 2010
- Fund Ex. #2 - Notice of Hearing, dated June 24, 2010
- Fund Ex. #3 - MREC Certification for Licensing History, dated August 23, 2010
- Fund Ex. #4 - Affidavit of Steven Long, dated August 20, 2010
- Fund Ex. #5 - Complaint, dated April 23, 2008

### 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 expires on January 24, 2011.
2. At all times relevant to this case, the Respondent was affiliated with Lego Realty Group, Inc.
3. On or about July 1, 2007, the Respondent and the Claimant entered into a contract whereby the Claimant would purchase the Respondent's business known as Kellers Market. The contract required that the Claimant pay the Respondent \$50,000.00 as an earnest money deposit.
4. The Claimant paid \$50,000.00 as required by the contract.
5. The contract had a contingency clause that if the Claimant could not secure a loan, the contract would be cancelled and all funds would be returned to the Claimant.
6. On or about the first week of October 2007, the Claimant informed the Respondent that he could not secure a loan and that the \$50,000.00 needed to be returned to him as required by the contract. The Respondent agreed.
7. On November 8, 2007, the Respondent sent the Claimant two checks. The check for \$15,000.00 cleared without any problems. The Respondent's check to the Claimant for \$35,000.00 did not clear because of insufficient funds in the Respondent's account.
8. The Claimant made numerous attempts to get the Respondent to return the \$35,000.00 as required by the contract, but the Respondent ignored him.
9. The Respondent failed to pay the Claimant the agreed-upon remaining balance of \$35,000.00.

## 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) (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.

Md. Code Ann., Bus. Occ. & Prof. § 17-404(a) (2010). 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 agent in a transaction involving the sale of his property. The Respondent's activities fall within the definition of providing real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. § 17-101(l)(1), (2), (3) (2010).<sup>1</sup> The acts and omissions 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 acts and omissions 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 failing to return the complete amount the Claimant paid in accordance with the contract when the Claimant

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<sup>1</sup> (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;
- . . . .

Md. Code Ann., Bus. Occ. & Prof. § 17-101(l) (2010).



could not secure a loan, constituted false pretenses and misrepresentation. The Respondent did not appear at the hearing to contest these facts. Quite simply, the Respondent was supposed to return \$50,000.00 to the Claimant but has only returned \$15,000.00.

The Claimant has provided documentary and testimonial evidence to support his claim against the Fund and has met the required burden of proof. I compute the Claimant's actual loss as \$35,000.00, which is the remaining balance the Respondent owes the Claimant after paying him \$15,000.00. The \$35,000.00 amount exceeds the \$25,000.00 limit for payment from the Fund for any one claim. Md. Code Ann., Bus. Occ. & Prof. § 17-410(b)(2) (2010). Therefore, I conclude that the Claimant's compensable loss from the Fund is \$25,000.00. The Fund agrees with this amount.

The Claimant, therefore, is entitled to reimbursement from the Fund for an actual loss in the amount of \$25,000.00.

### **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 \$25,000.00 based on false pretenses 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 \$25,000.00. Md. Code. Ann., Bus. Occ. & Prof. § 17-404(a) (2010); 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 \$25,000.00 from the Fund based on the claim filed on May 6, 2008 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.

January 3, 2011  
Date Decision Mailed

  
Jerome Woods, II  
Administrative Law Judge

IN THE MATTER OF THE CLAIM OF:	*	BEFORE JEROME WOODS, II,
SANG LEE,	*	ADMINISTRATIVE LAW JUDGE
CLAIMANT,	*	OF THE MARYLAND OFFICE
v.	*	OF ADMINISTRATIVE HEARINGS
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COMMISSION GUARANTY FUND	*	
FOR THE ALLEGED MISCONDUCT OF	*	MREC COMPLAINT No. 08-RE-777GF
KUN J. KIM, LICENSED REAL ESTATE	*	
SALESPERSON	*	
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	*	

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**FILE EXHIBIT LIST**

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