

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION \*

v. \*

JAVAD AHMED AIZAZ \*  
Respondent

CASE NO. 2008-RE-797

And \*

OAH NO. DLR-REC-24-09-11300

CLAIM OF ALICE MURPHY \*  
AGAINST THE MARYLAND \*  
REAL ESTATE GUARANTY FUND \*

\* \* \* \* \*

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated March 12, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 18<sup>th</sup> day of May, 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, **ADOPTED**;

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

**ORDERED** that the Respondent Javad Ahmed Aizaz violated Md. Bus. Occ. and Prof. Art. § 17-322(b)(25) and (33); and COMAR 09.11.02.01H;

**ORDERED** that all real estate licenses held by the Respondent Javad Ahmed Aizaz be **SUSPENDED** for two weeks;

**ORDERED** that the Respondent Javad Ahmed Aizaz be assessed a civil penalty in the amount of \$2,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

**ORDERED** that the claim of Alice Murphy against the Maryland Real Estate Guaranty Fund be **DENIED**;

**ORDERED** that all real estate licenses held by the Respondent Javad Ahmed Aizaz shall be **SUSPENDED** if the civil penalty is not paid in full within the thirty-day time period, and that this suspension is in addition to, and not in lieu of, the two-week disciplinary suspension.

**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 that the Recommended Decision of the Administrative Law Judge had to be modified because the Judge failed to include all the necessary elements in the Recommended Order.

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.

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(COMMISSIONER'S SIGNATURE APPEARS ON ORIGINAL ORDER)

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MARYLAND REAL ESTATE  
COMMISSION

v.

JAVAD AHMED AIZAZ,

RESPONDENT,

AND THE CLAIM OF

ALICE MURPHY

AGAINST THE

REAL ESTATE COMMISSION

GUARANTY FUND

\* BEFORE MICHAEL D. CARLIS,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS

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\* OAH CASE No: DLR-REC-24-09-11300

\* COMPLAINT No.: 2008-RE-797

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\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On December 9, 2009, the Maryland Real Estate Commission (Commission) ordered a hearing on (i) charges against Javad Ahmed Aizaz (Respondent) for alleged violations of sections 17-322(b)(25) and (33) of the Business Occupations and Professions Article of the Annotated Code of Maryland and Code of Maryland Regulations (COMAR) 09.11.02.01H and (ii) a claim by Alice Murphy (Claimant) against the Commission's Guaranty Fund (Fund) for reimbursement for an alleged actual loss caused by

the Respondent's misconduct.<sup>1</sup>

On December 17, 2009, I held a hearing in Hunt Valley, Maryland. Jessica B. Kaufman, Assistant Attorney General, and the Office of the Attorney General, represented the Commission. The Claimant represented herself. The Respondent represented himself. Kris King, Assistant Attorney General, and the Office of the Attorney General, represented the Fund.

The Administrative Procedure Act, the Office of Administrative Hearings' Rules of Procedure, and the Commission's Hearing Regulations govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009); COMAR 28.02.01; and COMAR 09.01.03, respectively.

### ISSUES

The issues are (i) whether the Respondent violated Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(25) and (33) and COMAR 09.11.02.01H; (ii) if so, whether a two-week suspension of the Respondent's license and a \$2,000.00 penalty are reasonable sanctions; (iii) whether the Claimant suffered an actual loss caused by the Respondent's misconduct; and (iv) if so, whether the amount of the compensable actual loss is the amount claimed by the Claimant.

### SUMMARY OF THE EVIDENCE

#### Exhibits<sup>2</sup>

The following were admitted for the Commission:

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<sup>1</sup> The order was prompted by the Claimant's complaint and claim, which was filed on May 13, 2008. She claimed an actual loss of \$39,000.00. Her complaint states as follows:

I signed a contract to purchase property here at 6706 Purple Lilac Ln. with a deposit for \$39,000.00 from [sic] Sell America Realtor. At the time I didn't know the property was already purchase[d] [u]ntil May 2006, when Mr. Malik knocked on my door. From December 2005 until April 2006 I made payments to Sell America Realtors. From May 2006 until January 2008 I made payments to Mr. Malik state he is the owner [sic]. I invested a lot of money in [ ] this property from December 2005 until January 2008. I invested \$86,000.00 towards payments + the \$39,000.00 [ ] deposit to purchase the house. Come now the house is in foreclosure[.] The bank want give [sic] me an opportunity to buy the house. The Bank want[s] to evict my family and I [sic]. The house would be sold at bank auction. On May of 2008 my family and I would be left homeless and with no money.

<sup>2</sup> The Claimant, Respondent, and Fund did not offer any exhibits.

- MREC Exh. #1: Notices of Hearing and Statement of Charges;
- MREC Exh. #2: Letters, dated December 9, 2009, and Amended Statement of Charges;
- MREC Exh. #3: The Respondent's licensing and disciplinary history;
- MREC Exh. #4: Memorandum, dated December 2, 2008; and
- MREC Exh. #5: Report of Investigation, with attachments.

Testimony:<sup>3</sup>

The Claimant and Robert Oliver, Investigator, testified for the Commission.

The Claimant testified for herself.

The Respondent testified for himself.

**FINDINGS OF FACT**

I find the following by a preponderance of the evidence:

1. At all relevant times, the Respondent was a licensed real estate broker. He owns Sell America Realty, Inc. (Sell America).
2. In or around May 2005, the Claimant signed a residential contract of sale to purchase a house on Gemini Lane in Fort Washington, Maryland (Gemini Property). The Respondent was the seller's agent.
3. The Claimant paid \$10,000.00 to the Respondent as a deposit on the Gemini Property. Due to severe water damage inside the Gemini Property, however, the Claimant never settled on the Gemini Property. The Respondent retained the Claimant's deposit while he looked for another property for her to purchase.
4. On December 15, 2005, the Claimant signed a residential contract for sale (Contract) to purchase a house on Purple Lilac Lane in Clinton, Maryland (Lilac Property). The

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<sup>3</sup>The Fund did not offer any witnesses.

purchase price was \$695,000.00. Haji Z. Malik (seller or Mr. Malik) was the seller. The Respondent represented the seller and drafted the Contract.

5. The Contract required the Claimant to pay a total deposit of \$39,000.00 for the Lilac Property: \$18,000.00 to go to the seller and \$21,000.00 to go to Sell America. The full deposit was to be held in escrow. Settlement was scheduled on January 27, 2006.

6. The Claimant paid the full deposit on the Lilac Property, which included the \$10,000.00 deposit on the Gemini Property that the Respondent had retained. The Respondent placed \$21,000.00 of the total deposit in escrow and gave the remainder of the deposit, \$18,000.00, to the seller.

7. The Claimant and seller signed a residential dwelling lease (Lease) on or about December 15, 2005. The Lease allowed the Claimant to rent the Lilac Property for \$3,500.00 per month. The Lease became null and void if the Claimant did not purchase the Lilac Property within three months. The Claimant moved into the Lilac Property in December 2005.

8. The Claimant was unable to obtain a loan to purchase the Lilac Property by January 27, 2006. As a result, she and the seller extended the date of settlement through March 27, 2006. The Claimant continued to be unable to obtain a loan, and the parties never settled on the Claimant's purchase of the Lilac Property.

9. Although the Lease had become null and void on March 15, 2006, the Claimant continued to live in the Lilac Property through around July 2008. From December 2005 through at least May 2006, she paid rent directly to the Respondent. Beginning in June 2006 or shortly thereafter, the Claimant paid rent to the seller.

10. In June 2007, the Respondent returned \$21,000.00 of the total deposit on the Lilac Property to the Claimant.

11. The seller allowed the Claimant to live in the Lilac Property from at least May

2007 through August 2007 without the payment of any rent.

12. The Claimant did not sustain an actual loss.

### **DISCUSSION**

Section 17-322 of the Business Occupations and Professions Article of the Annotated Code of Maryland provides in pertinent part as follows:

#### **§ 17-322. Denials, reprimands, suspensions, revocations, and penalties – Grounds.**

...  
(b) *Grounds.* — Subject to the hearing provisions of § 17-324 of this subtitle, the Commission may . . . reprimand any licensee, or suspend or revoke a license if the . . . licensee:

...  
(25) engages in conduct that demonstrates bad faith, incompetence, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings:

...  
(33) violates any regulation adopted under this title or any provision of the code of ethics[.]

COMAR 09.11.02.0111 provides:

For the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed.

The charges against the Respondent are based on the real estate transactions related to the Gemini Property and the Lilac Property. In regard to the Gemini Property, the charges allege that the Respondent was the listing and selling agent, and, in late spring or early summer 2005, the Claimant submitted a contract to purchase the property, with a deposit of \$10,000.00. The charges further allege that because the Gemini Property flooded, “the transaction never went to settlement,” and “rather than returning the escrow money to the Claimant as she requested[,] the Respondent held the money in anticipation of the Claimant finding another property to purchase.”



In regard to the Lilac Property, the charges allege that the Respondent was the seller's agent, and, in December 2005, the Claimant signed the Contract and Lease. The Contract required the Claimant to pay a deposit of \$39,000.00: \$21,000.00 to the Respondent to be held in escrow and \$18,000.00 to be given to the seller. The charges further allege that the Contract did not express the exact agreement of the parties in regard to the \$18,000.00. The Lease provided for a monthly rent of \$3,500.00, beginning in December 2005 and continuing month to month, pending settlement on the Claimant's purchase of the Lilac Property. The charges further allege that the Lease became "null and void" if the Claimant did not purchase the property within three months. The charges finally allege that the Claimant never purchased the property, but she continued to rent the property until May 2008, when it went into foreclosure, although the Respondent failed to prepare a second lease agreement.

#### Summary of the Evidence

According to the Claimant, in 2005, when she owned a car auction business, she began house-hunting by driving through neighborhoods. At the time, she was an inexperienced home-buyer. When she saw the Respondent's name and phone number on a "for sale" sign posted at the Gemini Property, she met with him.

The Respondent "told [her] what [she] needed to do," and she signed a contract to purchase the Gemini Property<sup>4</sup> and gave the Respondent a deposit of \$10,000.00. According to the Claimant, he told her "he would see what he could do to help me to find a company that would help me . . . finance that home."

Shortly thereafter, the Claimant took a relative to see the Gemini Property. They did not have a key, so they looked at the interior through a window and saw that it had sustained severe water damage. As a result, the Claimant never settled on the purchase of the Gemini Property.

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<sup>4</sup> The contract was not offered as evidence.

According to the Claimant, she requested her deposit from the Respondent, but he told her to “wait” for him to find another property for her to purchase. The Respondent did not return the deposit.

About seven months later, on December 15, 2005, the Claimant signed the Contract on the Lilac Property. The purchase price was \$695,000.00. Under the terms of the Contract, the Claimant’s deposit was \$39,000.00, distributed as follows: “\$18,000.00 to Seller and \$21,000.00 to Sell America Reality, Inc.” MREC Exh. #5, Attachment 3. Settlement was initially scheduled on January 27, 2006, and later extended to March 27, 2006.

In addition to the Contract, the Claimant signed an “Understanding Whom Real Estate Agents Represent” (Understanding). The Understanding listed the Respondent as the seller’s agent.<sup>5</sup> Despite this, the Claimant thought the Respondent was her agent, because “he said he represented me” and “he said he [was] my realtor in this transaction.”

The record also includes a Lease, signed by the Claimant as the “tenant” and by the seller as the “owner.”<sup>6</sup> Under the terms of the Lease, the rent on the Lilac Property was \$3,500.00 per month, beginning on December 15, 2005, and “month to month” thereafter. The Lease also provides: “Tenant to buy this house within three months of this lease period. If not bought within three month[s], this lease should be declared null & void.” MREC Exh. #5, Attachment 5. According to the Claimant, she moved into the Lilac Property on December 5, 2005, with the Respondent’s permission.

Although the Claimant never settled on the Lilac Property, she thought she owned the property as of December 15, 2005, when she signed the Contract. When asked the basis of her belief, she testified, “because of [the Respondent’s] expertise and professionalism [he] made me

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<sup>5</sup> The Understanding also explains the differences among agents who represent sellers, agents who represent buyers, and dual agents.

<sup>6</sup> The Claimant testified that she did not recall signing the Lease, but she verified her signature.

trust him. [W]hen I first signed the contract, [the Respondent] told me, "This is your house, Alice Murphy." Despite this, the Claimant acknowledged that she had to get a loan to buy the Lilac Property. When asked what she thought would happen if she were unable to obtain the loan, the Claimant testified that she never thought about that because "[the Respondent] assured me that Sell America would get the funding for that property and I asked him why and he said because I putting [sic] substantial amount down and that will go to find a company to finance. If his company would not do it, he'd find another company."

According to the Claimant, from December 2006 through May 2006, she paid \$3,500.00 each month to the Respondent for what she thought were mortgage payments.<sup>7</sup> The Claimant testified that she paid by checks, made payable to Sun Realty.<sup>8</sup> The Claimant testified that the seller appeared at the Lilac Property in May 2006. According to the Claimant, he told her that he did not know why the Respondent had let her sign the Contract because he owned the Lilac Property, and he suggested she talk to a lawyer.<sup>9</sup> After that, the Claimant began paying the rent directly to the seller until July 2008, when a bank foreclosed on the Lilac Property.

The Claimant retained Millstein & Shin. By letter dated April 9, 2007, Mr. Millstein demanded that the Respondent return the Claimant's full deposit of \$39,000.00. The Respondent returned \$21,000.00; the amount he had placed in escrow under the Contract. According to the Claimant, she did not know what happened to the other \$18,000.00.<sup>10</sup>

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<sup>7</sup> Before she moved into the Lilac Property, the Claimant had rented an apartment for \$1,076.00 per month. She testified that she would not have agreed to pay so much for the Lilac Property if she knew the payments were rental, not mortgage, payments.

<sup>8</sup> The checks were not offered as evidence.

<sup>9</sup> The record contains inconsistent evidence in regard to when this occurred. In a January 2008 letter to an attorney and an April 2008 letter to the Commission, the Claimant said the date was April 2006. In the complaint, she said the date was May 2006, and in a July 2008 letter, she said it was "on or about May 2006."

<sup>10</sup> In a letter that Mr. Millstein wrote to the Claimant on May 14, 2007, he wrote that the Respondent had said that the seller had the \$18,000.00, and the Claimant decided not to pursue the matter further because the seller had agreed to give her \$18,000.00 worth of credit toward the rent on the Lilac Property. MREC Exh. #1, Attachment 7.

The record contains Mr. Oliver's report of his investigation of the complaint. He interviewed the Claimant on December 8, 2008. In regard to the Gemini Property, Mr. Oliver reported that the Claimant "asked the [R]espondent to return the deposit but he told her that he was an investor and had a number of homes in the area. He said he would keep the deposit until she found another house, which she did 6 or 7 months later." MREC Exh. #5, pages 2-3.

In regard to the Lilac Property, Mr. Oliver reported that the Claimant thought she could afford to purchase the property, because, at the time, she owned United Auto Auction, and earned over \$80,000.00 annually. She paid an initial deposit of \$39,000.00. She also told Mr. Oliver that the Respondent later requested an "additional \$30,000.00 in order to go to settlement," but she gave him only \$7,000.00 because that was all she could afford.

Mr. Oliver asked the Claimant why she signed a lease on the same date she had signed the Contract. The Claimant said that she had signed the Lease "10 months later with the owner, not the [R]espondent." Mr. Oliver showed her the Lease and reminded her that her complaint mentioned that the Respondent had told her in December 2005 that she could sign a lease. Mr. Oliver reported: "She said if she signed the lease in December she did not know it was a lease. She could not explain why her complaint referenced a lease that she did not know she signed."<sup>11</sup> MREC Exh. #5, page 3.

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<sup>11</sup> The Claimant does not mention a lease in her complaint. Three months later, however, in a letter to the Commission, she wrote:

Mr. Aizaz contacted me and told me I'd need **another \$30,000.00** in way of deposits to transfer ownership of the property. I then informed Mr. Aizaz that I didn't have any additional funds. So Mr. Aizaz requested an additional **\$7000.00** that would equal the amount of 2 (two) months mortgage payments in order to settle. However, yet again Mr. Aizaz informed me that the \$7000.00 that I had given him **still wasn't enough** to settle on the property. He then told me that I could sign a lease from December 2005 through April of 2006. The lease was for \$3500.00 a month of which I paid on time and with receipts to Mr. Aizaz and Sell America realtors. I was told that I could **rent @ this amount** until I came-up with the additional deposits required.

MREC Exh. #5, page 4 (Emphasis in the original).

At the hearing, she referred to the Lease as "a sneak attack."

According to the report, the Claimant said that she met the seller when he came to the Lilac Property “over 1 year after she signed the contract.” The seller reportedly told the Claimant that he had purchased the Lilac Property in December 2005 and that the Respondent did not have authority to sell it. The Claimant told Mr. Oliver that was when she first learned that Mr. Malik owned the Lilac Property. According to his report, Mr. Oliver then showed her the Contract that lists Mr. Malik as the seller. The Claimant told Mr. Oliver that Mr. Malik’s name was not on the Contract when she signed it.<sup>12</sup>

According to Mr. Oliver’s report, the Claimant said that she did not pay rent for the Lilac Property from May 2007 through August 2007. She resumed payments in September 2007. According to the report, the Claimant also told Mr. Oliver that she signed a second lease with Mr. Malik “in ‘about’ March 2007” and a second contract -- or possibly another lease -- in April 2007. Mr. Oliver reported that the Claimant had no documentation to verify a second contract or lease.

Mr. Oliver reported that the Claimant said she thought -- at least until December 2006 -- that she had purchased the Lilac Property from Sell America and that the monthly payments were mortgage payments. She thought the Contract required the Respondent to get a loan approved for her, and if he were unable to get the loan, Sun America would finance the purchase for her. The Report states: “She said that everything was concealed from her. She said that [the] [R]espondent told her to sign documents and did not explain them to her.<sup>13</sup> She did not think she signed a lease and contract at the same time but could not be sure. She said he [the

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<sup>12</sup> The Claimant testified that the Respondent gave her a copy of the Contract with Mr. Malik’s signature on it on December 15, 2005.

<sup>13</sup> The Claimant initialed each page of the Contract. She also testified that the Respondent “went over” the Contract with her, although when she asked questions, he told her “not to worry about it.”

Respondent] was very aggressive and she did not understand the process, as she had never purchased a home before.” MREC Exh. #5, page 4.

On December 10, 2008, Mr. Oliver interviewed the Respondent. He admitted that he kept the Claimant’s \$10,000.00 deposit on the Gemini Property and that she gave him another \$29,000.00 as a deposit on the Lilac Property, for a total deposit on the Lilac Property of \$39,000.00. The Respondent told Mr. Oliver that he put \$21,000.00 from the deposit in an escrow account and gave the remaining \$18,000.00 to the seller. The report states:

At the time the [Claimant] entered into the contract the [S]eller [] was buying the property, as an investment, but had not yet gone to settlement. He needed the \$18,000 from [the Claimant] in order to go to closing and the [R]espondent said he gave the money directly to the settlement company. [The] Respondent said that [the] [S]eller had to close before [the Claimant] could go to settlement. I asked [the] [R]espondent if he had any ownership interest in either of the properties and he said he did not. I asked what his relationship was to the [S]eller and he said that they were involved only in this transaction. He said that he did not have any business or other relationship with him.

MREC Exh. #5, page 5.

According to the Report, the Respondent denied knowledge about the additional \$30,000.00 that the Claimant said the Respondent had requested from her in January 2006. He thought that the Claimant was unable to obtain a loan because she had poor credit. The Respondent gave no thought to whether she would qualify for a loan based on her annual income because “to be honest, at that time no one cared about income” because “if a person could breathe, he or she could get a real estate loan.” MREC Exh. #5, page 6.

According to the Report, the purpose of the Lease was to allow the Claimant to live in the Lilac Property until financing could be obtained. The Respondent collected the rent from the Claimant, but when she “failed to get a loan, after 5 or 6 months, [the Respondent] had no further dealings in the transaction.” MREC Exh. #5, page 6 of the statement. The Respondent said that the Claimant then began to pay the rent directly to Mr. Malik.

On December 15, 2008, Mr. Oliver interviewed David Silberger, Mr. Malik's attorney. Mr. Silberger reported that Mr. Malik purchased the Lilac Property as an investment. He said Mr. Malik allowed the Claimant to live there rent-free in lieu of returning her \$18,000.00. According to Mr. Silberger, Mr. Malik "made up the difference" between his mortgage on the Lilac Property and the rent he received from the Claimant until he could no longer afford the mortgage payments.

The Respondent testified that, after the water damage was discovered at the Gemini Property, "I asked [the Claimant], 'What do you want to do? You can have your money back or you want to get another house.' She said, 'Please, I need a house badly.'"

In regard to the Lilac Property, the Respondent testified that he told the Claimant that Mr. Malik needed \$18,000.00 to buy the property in order to sell it to her. He wanted to "sell right away and make \$30,000.00 to \$40,000.00 or whatever."<sup>14</sup> The Respondent also testified that he told the Claimant that she could move into the Lilac Property if she signed a lease for \$3,500.00 per month.

According to the Respondent, after one month, he knew the Claimant would not be able to obtain a loan to purchase the Lilac Property. During that month, three applications for a loan had been denied. The Respondent testified that he talked to the Claimant about what she intended to do, and, according to the Respondent, the Claimant said that she anticipated "a lot of money" from a settlement of a lawsuit. As a result, the settlement date on the purchase of the Lilac Property was extended to March 27, 2006.

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<sup>14</sup> The precise timing of the seller's purchase of the Lilac Property is unclear. The Respondent testified the settlement was consummated on December 15, 2005, when he gave the settlement company \$18,000.00 on Mr. Malik's behalf. A settlement sheet on the sale of the Lilac Property from Timberlake Clinton LLC to Mr. Malik lists the settlement date as December 14, 2005; however, it is not signed. A print-out from the Maryland Department of Assessment and Taxation shows a transfer from Timberlake Clinton LLC to Mr. Malik on December 21, 2005.

In regard to the \$18,000.00, the Respondent initially testified that he gave it to the seller on December 14, 2005, for his settlement on the property. He later recalled this differently and testified that the seller's settlement was on December 15, 2005, and that he gave the \$18,000.00 directly to the settlement company.

The Respondent admitted that he knew at the time that he drafted the Contract that Mr. Malik planned to use \$18,000.00 from the Claimant's deposit to settle on his purchase of the Lilac Property. He conceded that the Contract inaccurately states that the seller will place the \$18,000.00 in an escrow account.

According to the Respondent, for three months, "and maybe one or more times," he collected the rent from the Claimant. He stopped after that. He acknowledged that he had not prepared any other writing to extend the lease for a term longer than three months "because we did talk to them both [inaudible]. Since it is month to month, that is finished [the three-month term]. It's up to you to continue this. This will stay as long as you want it."

The Respondent testified that he did not financially benefit from either real estate transaction, except for a fee (\$3,500.00) related to the Lease. From the Claimant's total deposit (\$39,000.00), he returned \$21,000.00 to the Claimant, and the remainder of the deposit -- \$18,000.00 -- had been given to the seller.

### Analysis

#### **Disciplinary Violation**

Section 17-322(b)(25) of the Business Occupations and Professions Article of the Annotated Code of Maryland authorizes the Commission to reprimand, suspend, or revoke a real estate agent's license if the agent "engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings."



Section 17-322(b)(33) of the Business Occupations and Professions Article of the Annotated Code of Maryland authorizes the Commission to reprimand, suspend, or revoke a real estate agent's license if the agent "violates any regulation adopted under this title[.]"<sup>15</sup>

COMAR 09.11.02 was adopted under sections 17-207 and 17-208 of the Business Occupations and Professions Article of the Annotated Code of Maryland. COMAR 09.11.02.01H provides:

**.01 Relations to the Public**

...

H. For the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed.

**COMAR 09.11.02.01H**

The Commission argued that the Contract was not an "exact agreement of the parties regarding how the \$18,000.00 would be used." The Commission also argued that the Respondent should have drafted a substitute writing to memorialize the parties' ongoing rental agreement after the Lease had become null and void. According to the Commission, the Respondent's failure to have done those things violated COMAR 09.11.02.01H. For the following reasons, I agree with the Commission.

On December 15, 2005, the Claimant signed the Contract to purchase the Lilac Property. She paid a deposit of \$29,000.00 to the Respondent. The Respondent put \$21,000.00 in an escrow account and gave \$18,000.00 (\$8,000.00 plus the \$10,000.00 deposit from the Gemini Property) to the seller or to the settlement company on Mr. Malik's behalf.

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<sup>15</sup> "Title" is Title 17 of the Business Occupations and Professions Article of the Annotated Code of Maryland.

Paragraphs 16, 18, and 22 of the Contract address deposits. The relevant part of paragraph 18 (“Payment Terms”) states as follows:<sup>16</sup>

**Payment Terms:** The payment of the purchased price shall be made by Buyer as follows: (a) An initial Deposit(s) by way of **Ck** in the amount of **Thirty Nine Thousand\* Dollars (\$39,000)** at the time of this offer. (b) An additional Deposit(s) by way of \_\_\_\_\_ in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) to be paid within \_\_\_\_\_ (\_\_\_\_) days from the Date of Contract Acceptance. (c) The purchase price less any and all Deposit(s) shall be paid in full by Buyer in cash, wired funds, bank check, certified check or other payment acceptable to the settlement officer at settlement. (d) All Deposit(s) will be held in escrow by: **\$18,000 to Seller and \$21,000 —to Sell America Realty, Inc.**

Paragraph 16 addresses what happens to the deposits if either party defaults on the Contract. It provides that the seller may, under certain circumstances, retain the deposits if the buyer “fails to make full settlement[.]”

The relevant part of paragraph 22 states as follows:<sup>17</sup>

22. Deposit(s): Buyer hereby authorizes and directs Broker as specified in Paragraph 18-d of this Contract to hold the initial Deposit(s) instrument without negotiation of Deposit(s) until the parties have executed and accepted this Contract. Upon acceptance, the initial Deposit(s) and additional Deposit(s) (the “Deposit(s)”), if any, shall be placed in escrow as provided below and in accordance with the requirements of Section 17-502(b)(1), Business Occupations and Professions Article, Annotated Code of Maryland. Buyer and Seller instruct Broker to place the Deposit(s) in: (Mark One)

A non-interest bearing account. **\*Transfer from previous contract (Gemini Ln).**

Under COMAR 09.11.02.01H, a licensed real estate broker must ensure that the parties to a real estate transaction execute an agreement that exactly describes their financial obligations and commitments. The Commission argued that the Respondent violated this regulation because the Contract inaccurately described the seller’s obligation related to the use of \$18,000.00 of the Claimant’s deposit.

<sup>16</sup> The parties used a standard form for the Contract. The preprinted portions are reproduced above in standard font, the individualized portions are highlighted

<sup>17</sup> See note 16 regarding fonts.

Paragraph 18 of the Contract obligated the Claimant to pay a deposit of \$39,000.00 at the time of her offer to purchase the property. The entire deposit was to be held in an escrow account, \$18,000.00 by the seller and \$21,000.00 by Sell America. According to the Commission, because the Respondent knew at the time the parties executed the Contract that Mr. Malik planned to use the \$18,000.00 as partial payment on his purchase of the Lilac Property, the Respondent violated COMAR 09.11.02.01H when he drafted the Contract to obligate Mr. Malik to place the \$18,000.00 in escrow.

At the hearing, the Respondent admitted his prior knowledge of Mr. Malik's plans for the \$18,000.00. The Respondent also testified that he told the Claimant about the seller's plans. The relevant language in the Contract, however, obligates Mr. Malik to place the \$18,000.00 from the Claimant in escrow. Accordingly, I find that the Respondent failed "[to] see to it that the financial obligations and commitments regarding [the Lilac Property transaction] are in writing, expressing the exact agreement of the parties." COMAR 09.11.02.01H. I agree, therefore, that the Respondent violated COMAR 09.11.02.01H.

Paragraphs 1 and 45 address the term of the Lease. Paragraph 1 states as follows:<sup>18</sup>

1. INITIAL LEASE TERM: Owner leases to Tenant and Tenant leases from Owner the Property for the term of **Month to Month** year(s) or month(s) commencing on the **15<sup>th</sup>** day of **Dec. 05** (mo./yr.) and ending on the **N/A** day of \_\_\_\_\_ (mo./yr.) (the "Initial Term"), at a total of \_\_\_\_\_ Dollars (\_\_\_\_\_) for said Term, due and payable in equal monthly installments of **Thirty Five Hundred Dollars (\$3500)**, in advance on the first day of each month.

Paragraph 45 states as follows:<sup>19</sup>

45. ADDITIONAL PROVISIONS:

**Tenant to buy this house within three months of this lease period. If not bought within three month[s], this lease should be declared null & void.**

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<sup>18</sup> See note 16 regarding fonts.

<sup>19</sup> See note 16 regarding fonts.

The Commission argued that the Lease was null and void after three months under paragraph 45. The Commission further argued that, if the Respondent had drafted a new lease, the "transaction would have gone more smoothly or at least all the parties would have had knowledge of what the agreements were." This argument, however, does not take into account the Claimant's testimony. According to the Claimant, she thought that she had purchased the Lilac Property from the Respondent, despite the clear language in the Contract and Lease that lists both Mr. Malik as the seller or owner of the Lilac Property and dates of the settlement. There is no reason to think that a third document would have had a different effect on the Claimant's understanding of the transaction. Nonetheless, under COMAR 09.11.02.01, the Respondent was required to "see to it that [the parties'] financial obligations and commitments" related to the Lease were exactly described in a writing.

The evidence of the parties' agreement is the fully-executed Lease. Based on the Lease, the seller and the Claimant agreed that the Claimant would lease the Lilac Property from the seller for \$3,500.00 per month. They further agreed that the initial term of the Lease began on December 15, 2005, and continued from month to month. The parties also agreed, however, that the lease "should be declared null and void" if the Claimant did not buy the Lilac Property within three months. The three-month period ended on March 16, 2006.

Assuming that, as the Commission argued, the Lease became null and void on March 16, 2006, COMAR 09.11.02.01H applied to the Respondent only if the Respondent continued to have real estate dealings related to the Lilac Property with the parties after March 15, 2006. The Respondent's post-March 15, 2006, real estate dealings with the parties are established by the Contract and the Respondent's testimony. The Respondent revised the date of settlement in the Contract from January 27, 2006, to March 27, 2006. The Respondent testified that he collected rent on behalf of the seller from the Claimant for three months, "and maybe one or more times,"

that is, at least through March 2006, and, likely, through April 2006. The Respondent, therefore, remained involved in the parties' real estate transactions after March 2006.

When the Respondent was asked at the hearing whether he had prepared an extension of the Lease, the Respondent testified, "[W]e did talk to them both [inaudible]. Since it is month to month that is finished. It's up to you to continue this. This will stay as long as you want." The Respondent, therefore, seemed to have taken the position that the Lease provided for the parties to continue the rental agreement on a month-to-month basis for as long as they both agreed. I agree with the Commission's argument, however, that the Lease had become null and void on March 16, 2006, under paragraph 45. As a result, I also agree with the Commission that, under COMAR 09.11.02.01H, the Respondent was required to "see to it that [the] financial obligations and commitments [of the parties] regarding" the ongoing rental of the Lilac Property were "in writing, expressing the exact agreement of the parties[.]" The Respondent admitted, however, that he failed to prepare another lease agreement or any other appropriate writing. Because the parties continued a leasehold agreement without a writing, I find that the Respondent violated COMAR 09.11.02.01H by failing "to see to it" that an appropriate replacement lease had been executed.

**Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33) (Supp. 2009)**

Under section 17-322(b)(33) of the Business Occupations and Professions Article of the Annotated Code of Maryland, the Commission may discipline the Respondent for a violation of "any regulation adopted under this title or any provision of the code of ethics[.]" Because I have found that the Respondent violated COMAR 09.11.02.01, I also find that the Commission is authorized under section 17-322(b)(33) to discipline the Respondent.

**Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) (Supp. 2009)**

Section 17-322(b)(25) of the Business Occupations and Professions Article of the Annotated Code of Maryland gives the Commission discretionary authority to discipline the Respondent for conduct that demonstrates bad faith, incompetency, untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings. The Commission argued that the Respondent's violation of COMAR 09.11.02.01H constituted incompetency because "a competent agent would have put those things [accurate language related to deposits in the Contract and a replacement lease] in writing and then the transaction would have gone more smoothly or at least all parties would have had knowledge of what the agreements were."

Incompetency means "incompetence." *Merriam-Webster's Collegiate Dictionary* 630 (11<sup>th</sup> ed. 2006). Incompetence means "the state or fact of being incompetent." *Id.* Incompetent means "not legally qualified" or "inadequate to or unsuitable for a particular purpose" or "lacking the qualities needed for effective action" or "unable to function properly." *Id.*

I disagree with the Commission's argument that the writings would have facilitated smoother transactions or resulted in a better-informed Claimant. The record does not support that argument. In fact, the evidence suggests the opposite, that is, accurate language in the Contract and a substitute lease would have had no effect on the course of the transaction or the Claimant's understanding of the transaction.

The Claimant testified that the Respondent misled her to think that (i) the Respondent owned the Lilac Property; (ii) the Respondent had obtained a mortgage for her; and (iii) her rental payments were mortgage payments. She held those thoughts despite the contrary clear meaning of the plain language in the Contract and Lease.

The Contract unmistakably identifies Mr. Malik as the owner and seller of the Lilac Property, clearly identifies the Respondent as the seller's agent, and plainly informs the Claimant

that she must obtain financing to purchase the Lilac Property. The Lease also clearly identifies Mr. Malik as the owner of the Lilac Property, and it clearly identifies the Claimant as the tenant. There is no reason to think that accurate language in the Contract about how the seller would hold the \$18,000.00 or a replacement lease would have facilitated a smoother transaction or better informed the Claimant. Furthermore, such writings would not have necessarily affected disbursement of the deposit. Paragraph 22 of the Contract sets forth the seller's obligation in regard to disbursement of the deposit in the event that the Contract "shall be terminated or settlement does not occur." They "shall be disbursed by the Broker only in accordance with a release," and, if a party is unable or unwilling to execute a release, the Broker "may distribute the Deposit(s) in accordance with the provisions of Section 17-505(b)(1), Business Occupations and Professions Articles [sic], Annotated Code of Maryland." MREC Exh. #5, Attachment 3.

Nonetheless, the Contract misrepresents the obligation of the seller in regard to the deposit. The Contract provides that the Seller will hold \$18,000.00 of the Claimant's total deposit in escrow. The Contract, however, required all the deposits to be held in escrow.

Under COMAR 09.11.02.01, a writing that "express[es] the exact agreement of the parties" regarding their "financial obligations and commitments" is "[f]or the protection of all parties." The relevant language in the Contract is "inadequate to or unsuitable for" that purpose because it does not describe the exact agreement of the parties related to the seller's use of the deposit. Accordingly, I find that the Respondent's deliberate and knowing use of incorrect language in the Contract demonstrated incompetency.

I decline to find a violation of section 17-322(b)(25) based on the Respondent's failure to create a writing to extend the parties' lease arrangement. The two parts of the Lease related to its term -- (i) beginning in December 2005 and continuing month to month and (ii) becoming null and void after three months -- create an ambiguity and makes the Claimant's position that a

second writing was not required to extend the term of the lease reasonable. I do not find that it demonstrated bad faith, incompetency, or untrustworthiness or that it constituted dishonest, fraudulent, or improper dealings.

### **What is an Appropriate Penalty?**

Under section 17-322 of the Business Occupations and Professions Article, the Commission may suspend a real estate agent's license and penalize him or her up to \$5,000.00 for each violation of the statute. Under section 17-322(c)(2) of the Business Occupations and Professions Article, the amount of a financial penalty is determined by the seriousness of the violation, the harm caused by the violation, the good faith of the licensee, and the history of previous violations by the licensee.

The Commission proposed a two-week suspension and a \$2,000.00 fine. It argued that the factors of "seriousness" and "harm" support the amount of the fine because the "reason" for COMAR 09.11.02.01H is "to make sure" that all the parties understand their agreements, and the Claimant did not "clearly know" to what she had agreed. I agree that the factor of "seriousness" supports a suspension and fine, but I disagree that the factor of "harm" supports the requested penalty.

In regard to "harm," the evidence shows no relationship between the clarity of written documents and the Claimant's understanding of the Lilac Property transaction. To summarize from above, the disconnect between the clarity of documents and the Claimant's understanding of the transaction are illustrated by the following: First, the Lease clearly identifies the Claimant as a "tenant" and the Respondent as the "owner," but the Claimant testified that she thought she was the owner. Second, the Contract clearly identifies Mr. Malik as seller and the Respondent as the seller's agent, but the Claimant testified that she thought the Respondent represented her. Third, the Understanding clearly explains the differences among types of real estate agents and



identifies the Respondent as “working as [] seller/landlord’s agent,” but the Claimant thought the Respondent represented her in the purchase of the Lilac Property. The Claimant’s “harm” was, in large part, self-inflicted.<sup>20</sup>

I agree with the Commission’s argument that the Respondent’s violation of COMAR 09.11.02.01H and section 17-322(b)(33), as it relates to the Claimant’s deposits, was a serious violation. The Respondent knowingly and deliberately used false language in the Contract to describe the parties’ agreement related to the \$18,000.00 deposit. Such conduct was a gross violation of his statutory, regulatory, and ethical obligations. The fact that the Respondent had not financially benefitted from the transaction is not relevant to the seriousness of the violation. COMAR 09.11.02.01H sets forth an ethical standard with which the Respondent must comply. The seriousness of the violation derives from the knowing and deliberate nature of the violation; it is not mitigated by the Respondent’s failure to benefit financially.

The Commission also argued that the penalty is supported by the “good faith” of the Respondent. According to the Commission, the Respondent’s inconsistent testimony related to the source of the \$18,000.00 that Mr. Malik used to purchase the Lilac Property illustrates the importance of clear written agreements and suggests that the Respondent had exploited the Claimant’s inexperience “in conducting this transaction.”<sup>21</sup>

I disagree that the factor of “good faith” supports the Commission’s proposed penalty. The statute does not say anything about a lack of good faith. It says that “the Commission shall consider . . . the good faith of the licensee” to determine the amount of the penalty. “Good faith”

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<sup>20</sup> The Claimant was well-spoken, intelligent, and literate. Although she may have been a novice home buyer, she testified that she had owned a business that sold used cars and, therefore, should have had plenty of experience with contracts related to sales.

<sup>21</sup> The Respondent’s testimony about the source of the \$18,000.00 changed from testifying that he gave \$18,000.00 of his own money to Mr. Malik so that he could settle on the Lilac Property on December 14, 2005, to not knowing where the \$18,000.00 came from because Mr. Malik’s settlement on the Lilac Property and the Claimant’s payment of the deposit occurred “around the same time,” to remembering that Mr. Malik’s settlement was on December 15, 2005, and he gave \$18,000.00 from the Claimant’s deposit directly to the settlement company.

means “a state of mind consisting in (1) honesty in belief and purpose, (2) faithfulness to one’s duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage.”

*Black’s Law Dictionary* 780 (11<sup>th</sup> ed. 2004). Under the plain language of section 17-322(c)(2)(iii) of the Business Occupations and Professions Article, “good faith” may mitigate the amount of a penalty, but an absence of good faith does not support the amount of the penalty.

The Commission finally argued that the Respondent’s history of previous violations supports the penalty. The record shows that, in case number 02-RE-222, the Respondent consented to a reprimand, \$1,000.00 fine, and completion of a three-hour ethics course. This previous discipline was for the disbursement of money from an escrow account. This factor, therefore, supports the amount of the Commission’s proposed penalty.

I find that the Commission’s sanction is reasonable. The seriousness of the Respondent’s violations and the Respondent’s history of previous violations fully justify the penalty. In fact, the Respondent’s knowing and intentional use of false language in the Contract to describe what Mr. Malik must do with the \$18,000.00 warrants, by itself, a sanction at least as much as that for which the Commission had argued.

#### The Guaranty Fund Claim

Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2004) states, as follows:

##### **§ 17-404. Claims against the 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 sales person; 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 states, as follows:

**.04 Claims Against the Guaranty Fund.**

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.

On May 13, 2008, the Claimant claimed an actual loss of \$39,000.00. This amount equals her deposit on the Lilac Property. On July 1, 2008, and at the hearing, she amended her claim to \$25,000.00. This amount is the sum of \$18,000.00 (part of the total deposit)<sup>22</sup> and \$7,000.00 the Claimant alleged she had given the Respondent in January 2006 to settle on the Lilac Property.

The Claimant has the burden of proof. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2004); COMAR 09.01.02.16C. She must prove (i) an actual monetary loss, (ii) caused by an act or omission of the Respondent in the provision of real estate brokerage services, (iii) during a transaction that relates to real estate in Maryland, (iv) in which money or property is obtained by

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<sup>22</sup> The Claimant admitted that the Respondent returned \$21,000.00 of the total deposit.

theft, embezzlement, false pretense, or forgery or that constitutes fraud or misrepresentation. Md. Code Ann. Bus. Occ. & Prof. § 17-404(a)(2) (2004).

The Fund argued that the Claimant was not entitled to reimbursement because she failed to prove an actual monetary loss caused by an act or omission of the Respondent. According to the Claimant, she should be reimbursed because, when she signed the Contract, the Respondent gave her “false hope” by telling her, “This is your house, Alice Murphy.” At a different point in her testimony, the Claimant testified that she should be reimbursed from the Fund because of “me being told I could purchase a home [and] allow me to give my hard earned deposit on a house that he knew I had no intention in the world to purchase.”<sup>23</sup> She referred to this as “misrepresentation.” For the following reasons, I agree with the Fund.

The Claimant has not proven an actual loss or that, assuming an actual loss, it was caused by the Respondent’s misconduct. The amount of the alleged actual loss is based, in part, on \$7,000.00 that the Claimant said she gave to the Respondent in January 2006 to settle on the Lilac Property. The Claimant, however, offered no evidence to corroborate her testimony. She testified that she had given such documentation to her attorney, but she did not offer Mr. Millstein as a witness or a copy of the documents she claimed to have given him. Based on the Claimant’s testimony alone, which at times was inconsistent, I do not find that the Claimant paid \$7,000.00 to the Respondent in January 2006 to settle on the Lilac Property. Furthermore, the Claimant was a tenant in the Lilac Property beginning in December 2005. The rent was \$3,500.00 per month. Her attorney, in an April 2007 letter to the Respondent, described the \$7,000.00 as “two months rent (the months of January and February 2006)[.]” MREC Exh. #5, Attachment 6. At the hearing, the Claimant admitted she paid \$3,500.00 each month while she resided at the Lilac Property. The

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<sup>23</sup> In the context of the hearing, it was clear that the Claimant misspoke. She meant to say that the Respondent knew from the beginning of the transaction that she would not be able to obtain a loan to purchase the Lilac Property.

\$7,000.00, assuming it had been paid by the Claimant, was more likely than not rent for December and January.

The remainder of the alleged actual loss is the \$18,000.00 deposit that was given to the seller pursuant to the terms of the Contract. The record, however, does not support finding an \$18,000.00 actual loss. In fact, the following evidence supports finding, if anything, that the Claimant received at least an \$18,000.00 credit for rental payments that she otherwise was obligated to pay while she lived at the Lilac Property as a tenant. First, the Claimant admitted she lived rent-free from May 2007 through August 2007 ( $\$3,500.00 \times 4 \text{ months} = \$14,000.00$ ). Second, on May 14, 2007, the Claimant's attorney wrote: "I advised you that, according to Mr. Aizaz, the remaining \$18,000.00 is held by Mr. Haji Malik, however, you told me that you do not wish to bring any legal action against Mr. Malik notwithstanding he may be unlawfully holding the said \$18,000.00. You stated that based upon your own communications with Mr. Malik, that Mr. Malik intended to offer you a rent credit of \$18,000.00, and therefore, you wished to resolve this matter through collection of \$21,000.00 against Mr. Aizaz, as referenced above." MREC Exh. 5, Attachment 7. Third, on May 21, 2007, the Claimant "specifically release[d] [the Respondent] from any and all responsibility and liability in connection with the Contract of Sale." MREC Exh. 5, Attachment 8. Finally, the Claimant offered no corroboration of her testimony that she resumed the payment of rent after August 2007. Based on this evidence, I do not find that the Claimant proved that she has a claim to any of the \$18,000.00.

Assuming, however, based on her testimony alone, that Mr. Malik gave her credit for only \$14,000.00 worth of rental payments, the evidence does not support a finding that the Respondent's misconduct caused the loss of any part of the \$18,000.00. Misconduct includes theft, embezzlement, false pretenses, artifice, trickery, forgery, fraud, misrepresentation, or deceit.

There is no evidence from which reasonably to find theft, embezzlement, false pretenses, artifice, trickery, forgery, fraud, or deceit.

“Misrepresentation” is “[t]he act of making a false or misleading assertion about something, usually with the intent to deceive.” *Black's Law Dictionary* 1022 (8<sup>th</sup> ed. 2004); *see also Merriam-Webster's Collegiate Dictionary* 794 (11<sup>th</sup> ed. 2006). “Misrepresentation” can also mean “to serve badly or improperly as a representative.” *Merriam-Webster's Collegiate Dictionary* 794 (11<sup>th</sup> ed. 2006). The Contract and Understanding clearly identify the Respondent as the seller's agent. Furthermore, the Contract clearly lists Mr. Malik as the seller and provides that \$18,000.00 of the total deposit goes to him. While it is true that the Contract incorrectly represented that Mr. Malik was to hold the \$18,000.00 in escrow, no evidence links this false assertion to an intent to deceive. Furthermore, Mr. Malik, not the Respondent, controlled the \$18,000.00. Assuming the Claimant was entitled to all or part of the \$18,000.00, there was no act or omission on the part of the Respondent that caused the actual loss.

#### **CONCLUSIONS OF LAW**

I conclude the following:

- A. The Respondent violated Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(25) and (33) (Supp. 2009).
- B. The Respondent violated COMAR 09.11.02.01H.
- C. The Claimant did not suffer an actual loss due to the Respondent's misconduct.

#### **RECOMMENDED ORDER**

**I RECOMMEND** that the Maryland Real Estate Commission:

- A. Suspend the Respondent for two weeks;
- B. Penalize the Respondent \$2,000.00; and

C. Have the records and publications of the Maryland Real Estate Commission reflect this decision.

ADMINISTRATIVE LAW JUDGE'S SIGNATURE  
APPEARS ON ORIGINAL ORDER

March 12, 2010  
Date Decision Mailed

\_\_\_\_\_  
Michael D. Carlis  
Administrative Law Judge

MDC/eah  
#112153

MARYLAND REAL ESTATE  
COMMISSION

v.

JAVED A. AIZAZ,

RESPONDENT

AND THE CLAIM OF

ALICE MURPHY

AGAINST THE

REAL ESTATE COMMISSION

GUARANTY FUND

\* BEFORE MICHAEL D. CARLIS,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS

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OAH CASE No: DLR-REC-24-09-11300

COMPLAINT No.: 2008-RE-797

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**EXHIBITS**

The following were admitted for the Commission:

- MREC Exh. #1: Notices of Hearing and Statement of Charges;
- MREC Exh. #2: Letters, dated December 9, 2009, and Amended Statement of Charges;
- MREC Exh. #3: The Respondent's licensing and disciplinary history;
- MREC Exh. #4: Memorandum, dated December 2, 2008; and
- MREC Exh. #5: Report of Investigation, with Attachments.