

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

V.

WILLIAM RODGERS,
RESPONDENT

and.

CLAIM OF MECHELLE HASTY.

AGAINST THE REAL ESTATE
COMMISSION GUARANTY FUND

* BEFORE DENISE O. SHAFFER,
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-24-23-07086
* MREC NO: 2021-RE-134 G.F.

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated August 4, 2023, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 27th day of September, 2023, 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 in the Recommended Decision be, and hereby is, ADOPTED;
- D. That the records, files and documents of the Maryland State Real Estate Commission reflect this decision.
- E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties adversely affected by this Proposed Order shall have twenty (20) days from the postmark date of the Order to file written exceptions to this Proposed Order. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 1100 North Eutaw Street, Baltimore, MD 21201. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

F. Once the Proposed Order becomes final, the parties have an additional thirty (30) days in which to file an appeal to the Circuit Court for the Maryland County in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City.

10/4/2023
Date

MARYLAND STATE REAL ESTATE COMMISSION

SIGNATURE ON FILE

By: Sandra Olson
Sandra Olson, Commissioner

MARYLAND REAL ESTATE
COMMISSION

v.

WILLIAM RODGERS,
RESPONDENT

And

THE CLAIM OF MECHELLE HASTY,

CLAIMANT,

AGAINST THE MARYLAND

REAL ESTATE COMMISSION

GUARANTY FUND

* BEFORE DENISE O. SHAFFER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: LABOR-REC-24-23-07086

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On or about September 16, 2020, Mechelle Hasty¹ (Claimant) filed a complaint against William Rodgers (Respondent Rodgers) with the Maryland Real Estate Commission (MREC or Commission) for alleged violations of the Maryland Real Estate Broker's Act, Maryland Code Annotated, Business Occupations and Professions Article, section 17-101 *et. seq.* (2018 & Supp. 2022) and the provisions at Code of Maryland Regulations (COMAR) 09.11.02, enacted under

¹At the time of the complaint, the Claimant was named Mechelle Dickens. She has since married and used the name Mechelle Hasty at the hearing.

the Maryland Real Estate Broker's Act. The charges against Respondent Rodgers arise out of a Residential Contract of Sale for 4301 Liberty Heights Avenue (Property), owned by the Claimant as of August 6, 2020, and located in Baltimore, Maryland. The Claimant also filed a claim for reimbursement from the MREC Guaranty Fund (Fund) for losses incurred as a result of the alleged conduct of Respondent Rodgers. On March 2, 2023, the MREC issued a Statement of Charges and Order for Hearing, setting forth regulatory charges (Charges) against Respondent Rodgers and ordering a consolidated hearing on the Charges and the Claimant's claim against the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-409(a) (2018).² On March 7, 2023, the Commission transmitted this matter to the Office of Administrative Hearings (OAH) for a hearing on the merits.³

On May 23, 2023, I convened an evidentiary hearing at the OAH in Hunt Valley, Maryland.⁴ Hope Sachs, Assistant Attorney General, of the Office of the Attorney General of Maryland, represented the Commission. Timothy Moorehead, Esquire, represented Respondent Rodgers. The Claimant, Mechelle Hasty, represented herself. Assistant Attorney General McKenzie Read represented the Fund.⁵

The contested case provisions of the Administrative Procedure Act, the Maryland Real Estate Broker's Act, the procedures for Administrative Hearings before the Office of the Secretary of the Department of Labor, and the Rules of Procedure of the Office of Administrative Hearings govern this case. Md. Code Ann., State Gov't §§ 10-201 through

² Unless otherwise noted, all references to the Business and Occupations Article are to the 2018 Replacement Volume.

³ Md. Code Ann., Bus. Occ. & Prof. § 17-323(d)(2) (If the Commission determines there is a reasonable basis to believe any grounds exist for disciplinary action under § 17-322 of this subtitle, the investigation shall be referred for a hearing).

⁴ This case was consolidated for purposes of the hearing with OAH Case Number LABOR-REC-21-23-07085, a regulatory action against David Politzer, a licensed real estate broker. A separate decision will issue in that case.

⁵ Kimberly Caspari, Esquire, represented Respondent Politzer.

10-226 (2021); Md. Code Ann., Bus. Occ. & Prof. §§ 17-101 through 17-702 (2018 & Supp. 2022); COMAR 09.01.02, 09.01.03 and 28.02.01.

ISSUES

1. Did Respondent Rodgers engage in conduct that demonstrated bad faith, incompetency, or untrustworthiness or that constituted dishonest, fraudulent, or improper dealings, in violation of section 17-322(b)(25) of the Business Occupations and Professions Article;⁶
2. Did Respondent Rodgers fail to make a reasonable effort to ascertain all material facts concerning the Property in order to fulfill his obligation to avoid error, exaggeration, misrepresentation, or concealment of material facts in violation of COMAR 09.11.02.01D;
3. Did Respondent Rodgers fail in his statutory obligations to the Claimant, who was a party to the transaction in violation of COMAR 09.11.02.02A; and
4. If so, what is the appropriate sanction?
5. Did the Claimant sustain an actual monetary loss as a result of Respondent Rodger's acts or omissions in his capacity as a licensed real estate salesperson; and,
6. If so, what is the appropriate award to the Claimant from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Commission:

- | | |
|--------------|--|
| MREC Ex. # 1 | Notice of Hearing, March 28, 2023 |
| MREC Ex. # 2 | Statement of Charges and Order for Hearing, Respondent Rodgers, March 2, 2023 |
| MREC Ex. # 3 | Statement of Charges and Order for Hearing, Respondent Politzer, March 2, 2023 |

⁶ Title 17 of the Business Occupations and Professions Article constitutes the Maryland Real Estate Brokers Act, hereinafter "the Act."

- MREC Ex. # 4 MREC licensing registration printout, Respondent Rodgers, April 25, 2023
- MREC Ex. # 5 MREC licensing registration printout, Respondent Politzer, April 25, 2023
- MREC Ex. # 6 MREC Report of Investigation, Investigator: Frazier West, Received: December 8, 2020, Assigned: February 9, 2022, Closed: June 1, 2022
- MREC Ex. # 7 Letter from MREC Executive Director Michael L Kasnic to Respondent Politzer, December 8, 2020
- MREC Ex. # 8 Letter (Notice of Complaint – Final Notice) from MREC Executive Director Michael L Kasnic to Respondent Politzer, January 19, 2021

I admitted the following exhibits on behalf of Respondent Politzer:

- R. Politzer Ex. # 1 Google calendar summary of trainings and meetings in 2020

I admitted the following exhibits on behalf of Respondent Rodgers:

- R. Rodgers Ex. # 1 Addendum 5 to Contract, June 16, 2020
- R. Rodgers Ex. # 2 Portion of Contract, undated
- R. Rodgers Ex. # 3 Park Heights Roofing Proposal, September 22, 2020
- R. Rodgers Ex. # 4 Email from Janis Stevens confirming enrollment in Home Warranty Service Agreement, July 22, 2020
- R. Rodgers Ex. # 5 Mr. Appliance Invoice, September 3, 2020
- R. Rodgers Ex. # 6 Certificate of Occupancy, April 14, 2020
- R. Rodgers Ex. # 7 Charis Contractors, LLC, Roof Certification, April 7, 2020
- R. Rodgers Ex. # 8 Amazon Shipping Invoice, September 20, 2020
- R. Rodgers Ex. # 9 Property Inspections Notice, June 25, 2020
- R. Rodgers Ex. # 10 Mike's Plumbing and Heating Invoice, September 4, 2020

I admitted the following exhibits on behalf of the Claimant:

- Cl. Ex. # 1 Park Heights Roofing Proposal, September 22, 2020
- Cl. Ex. # 2 Four Twelve Roofing Proposal, May 3, 2023
- Cl. Ex. # 3 Seven photographs of roof and ceiling, undated

- Cl. Ex. # 3A Four photographs of siding, undated
- Cl. Ex. # 4 Exterior Experts, Inc., Contract, May 10, 2023
- Cl. Ex. # 5 Window Nations Contract and Proof of Payment, February 6, 2021
- Cl. Ex. # 6 Eight photographs of windows, undated
- Cl. Ex. # 7 Navy Federal Credit Union Statement showing payment to Noble's Landscape Service, October 19, 2020
- Cl. Ex. # 8 Navy Federal Credit Union Statement showing payment of \$350.00 via Cash App, September 8, 2020
- Cl. Ex. # 9 Two photographs of wall behind refrigerator and one screenshot of text message from Terminex, undated
- Cl. Ex. # 10 RCJ Electrical Co., Proposal, May 2, 2023
- Cl. Ex. # 11 HWC Constructions Invoice, March 9, 2023, and screenshot invoice
- Cl. Ex. # 12 Not Offered⁷
- Cl. Ex. # 13 Three photographs of master bathroom, undated
- Cl. Ex. # 14 May 2023 and August 2020 email exchanges between Claimant, Theresa Haywood and Janis Stevens regarding the Home Warranty, various dates
- Cl. Ex. # 15 Claimant's Complaint to the Maryland Home Improvement Commission and the MREC, undated
- Cl. Ex. # 16 Email exchange between Claimant, Respondent Rodgers and Theresa Haywood, various dates
- Cl. Ex. # 17 Three photographs open spaces in walls, undated
- Cl. Ex. # 18 Navy Federal Credit Union Statement showing payment to American Home Shield, September 16, 2020
- Cl. Ex. # 19 Photograph of main water valve, undated

⁷ Although the Claimant referred to Claimant's Exhibit # 12 during her testimony as an estimate in the amount of \$3500.00 for completion of the fence, she did not include that estimate in the packet she submitted at the hearing. I also did not find an estimate to complete the fence in the attachments to MREC Ex. # 6.

Testimony

The Commission presented the testimony of Frazier West, Commission Investigator. Respondents Politzer and Rodgers testified. The Claimant testified. The Fund did not call any witnesses.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. Respondent Rodgers is a real estate salesperson licensed by the MREC under license number 05-520479.
2. At all times relevant, Respondent Rodgers was working for One Stop Real Estate Solutions, LLC, and Keller Williams Legacy (KWL). He was supervised by Respondent Politzer, a real estate broker.
3. Respondent Rodgers owned the Property and was the licensed home improvement contractor renovating the Property under the trade name Wands Construction LLC. He primarily hired subcontractors to perform the renovation. He listed it for sale as both the owner and the seller's agent.
4. On June 16, 2020, the Claimant and Respondent Rodgers entered into a contract of sale for the purchase of the Property for \$364,900.00.
5. At the time of the contract, Respondent Rodgers agreed to "close off fence at front right-side facing home with accessibility to enter and exit yard." (MREC Ex. # 6 at p. 1-142)
6. The contract was subject to a home inspection, which was performed by MRP Home Solutions on June 19, 2020. The inspection revealed multiple major, minor, and general defects. In addition, the plumbing inspection could not be completed because there was a severe leak.

7. On June 25, 2023, Respondent Rodgers and the Claimant entered into an agreement about the repairs. The following chart sets out the requested repair, whether Respondent Rodgers agreed to undertake the repair, and whether Respondent Rodgers completed the repair.⁸ See MREC Ex. # 6

Requested Repair	Resp. Rodgers Response	Status of Repair
Exterior: Wall covering Flashing & Trim – Vinyl Siding Repair - vinyl siding at side of home not properly overlapping. Moisture infiltration potential. Siding not properly secured.	Will Repair	Not Repaired
Exterior: Wall covering, Flashing and Trim -damaged siding - Repair and seal damaged siding; Seal all crack that leave for rodent intrusion	Will Repair	Not Repaired
Exterior: GFCIs & Electrical – Repair GFCI; would not reset	Will Repair	
Exterior: remove all debris at exterior of home such as glass and broken slate	Will Repair	Not Repaired
Exterior: install drainage holes at master bedroom balcony to allow water to discharge from surface	Will Repair	
Exterior: install missing balcony sliding screens at doors for all that are missing	Will Not Repair	
Exterior: Windows - install window screens that are missing throughout home	Will Not Repair	
Exterior: Crawl Space replaced damaged wood members in crawl space at side of home; Secure/Replace /Repair falling insulation. Identify unidentified drainpipe and make sure properly installed. Install laundry exhaust to discharge outside of home. Properly seal and secure all openings that lead to inside of home. Add vapor barrier and ventilation.	Will Repair all list items except add vapor barrier and ventilation	Not Repaired
Cooling: Repair cooling system	Will Repair	Repaired
Add vent to gas meter closet	Will Repair	Repaired
Plumbing: Repair & cure sewer pump check valve deficiency	Will Repair	Not Repaired
Plumbing: Leak at dining room ceiling	Will Repair	Not Repaired

⁸ The evidence offered at the hearing did not address each repair but focused on the incomplete items. If there was evidence that a repair was complete or incomplete, I have noted it. A blank space indicates that the evidence did not establish whether the item was complete or not.

Plumbing: Drain, waste and vent systems - repair unsealed ejector pump for bathroom in basement	Will Repair	Not Repaired
Plumbing: Evaluate and repair main drain stack in basement	Will have evaluated by contractor and make all recommended repairs	Not Repaired
Electrical: Panelboards & Breakers- Install proper screws/fasteners at the electrical panel cover	Will Repair	Repaired
Electrical: Service Grounding and Bonding – grounding electrode conductor to ground rod inadequate and should be checked by licensed electrician	Will Repair	Not Repaired
Electrical: Electrical defects evaluate and repair sunroom light fixture and electrical work; when turned off breaker tripped.	Will Repair	Repaired
Basement, Foundation, Crawlspace, & Structure: Evaluate, repair and/or correct waterproofing system. Moisture present where some pump is located; does not appear to be a French drain in that area.	Will have evaluated by contractor and make all recommended repairs	Not Repaired
Basement, Foundation, Crawlspace, & Structure: Evaluate, plug in and make sure the sump pump is working properly.	Will Repair	
Bathrooms (Master): Cabinetry, Ceiling, Walls & Floor – Evaluate, remove, replace and repair damaged wall in master bedroom to correct water damage that is present	Will Repair	
Bathrooms (Master): Repair/modify vanity drawer that bumps into plumbing under sink	Will Repair	
Kitchen: Repair leak under kitchen sink	Will Repair	
Doors, Windows & Interior: Repair master bedroom windows; would not stay open	Will Repair	

8. The contract did not include an alarm system.

9. On the day of settlement, some repairs had been made and many were not complete.

10. When the Claimant did a walk-through inspection before settlement, there were crews at the home working on the repairs. The Claimant agreed to proceed to settlement and

Respondent Rodgers assured her that the workers on site would complete the listed repairs.

Within an hour after settlement, the repair crews left the Property without completing the repairs.

11. After she moved in, the Claimant discovered several unfinished repairs and new issues with the home, including:

- Building and other debris present in backyard
- Master bathroom faucet not replaced
- Plumbing work
 - Sewer pipe not attached to pipeline
 - Hot/cold water lines were crossed, causing, among other things, for the toilets to flush with hot water
 - Dishwasher did not work
- Siding and framing
 - The siding was used and not uniform
 - The siding was not properly secured or mounted allowing moisture to penetrate the home
 - The siding was not sealed
- Rotten wood in the crawl space and floor joists
- Openings in the home were not sealed off, including a large hole behind the refrigerator that allowed mice and other rodents to enter the home.
- Electrical: the grounding electrode conductor to ground rod was inadequate

12. The Contract required that a wood-paneled fence be completed within three days of settlement. The Contract did not require that the fence enclose the entire Property and did not require that Respondent Rodgers install a gate across the driveway. The fence was completed on September 9, 2020.

13. Respondent Rodgers did not agree to provide the Claimant receipts and invoices for the repairs he performed or hired a subcontractor to perform.

14. Respondent Rodgers purchased the replacement faucet for the master bathtub and was willing to install it after settlement but did not do so.

15. The Claimant purchased a home warranty as part of the settlement process. Among other things, the home warranty included up to \$500.00 for leaks or breaks in the

plumbing system. The Claimant did not use the home warranty when she repaired the plumbing defects.

16. On September 4, 2020, the Claimant paid Mike's Plumbing and Heating Services, Inc. \$1,442.00 to inspect the plumbing, repair the sewer line, address an issue with the dryer vent and rework the water heater wire.

17. On September 9, 2020, the Claimant paid Mike's Plumbing and Heating Services, Inc. \$582.00 to address the issue with the hot and cold water lines being reversed.

18. On September 3, 2020, the Claimant paid Mr. Appliance a service fee not covered by the home warranty to fix the dishwasher. The technician determined that the water to the dishwasher was turned off and no repair was needed.

19. On September 9, 2020, the Claimant paid \$350.00 for a replacement faucet for the master bathroom tub.

20. In August of 2020, the Claimant paid WD Lockhart, LLC, \$350.00 to repair the hole behind the refrigerator and close other holes in the crawlspace.

21. On October 20, 2020, the Claimant paid Noble's Landscaping Services \$654.00 to remove the debris left by Respondent Rodgers.

22. In March of 2023, the Claimant paid HWC Construction \$3,500.00 to properly wire and ground the electrode conductor and to repair the electrical panel.

23. In May of 2023, the Claimant contracted with Exterior Experts, Inc. to replace the siding at a cost of \$19,944.00.

DISCUSSION

BURDEN OF PROOF

With regard to the Charges, the MREC bears the burden of proof, by a preponderance of the evidence, to demonstrate that Respondent Rodgers violated the applicable provisions of the

Act and the controlling regulations. COMAR 09.01.02.16A. With regard to the Claim against the Fund, the Claimant bears the burden of proof, by a preponderance of the evidence, to demonstrate she suffered an actual loss because of Respondent Rodgers' acts or omissions. Md. Code Ann., Bus. Occ. & Profs. § 17-407(e); COMAR 09.01.02.16C. To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Co. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

For the reasons that follow, I find that the MREC has met its burden. I further find that the Claimant has met her burden on part of her claim.

THE DISCIPLINARY CHARGES UNDER THE ACT

The MREC charged Respondent Rodgers under section 17-322 of the Act, as follows:

Grounds for discipline

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

...

(25) engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;

...

(32) violates any other provision of this title;

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

Md. Code Ann., Bus. Occ. & Profs. § 17-322(b)(25), (32) & (33).

The MREC charged Respondent Rodgers with violating COMAR 09.11.02.01D, which provides:

The licensee shall make a reasonable effort to ascertain all material facts concerning every property for which the licensee accepts the agency in order to

fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of material facts.

The MREC also charged Respondent Rodgers with violating COMAR 09.11.02.02A by failing to maintain his obligations to the Claimant as the buyer in the transaction.

As the selling realtor and home improvement contractor for the Property, Respondent Rodgers was responsible for renovating the Property and making repairs consistent with the promises he made during the contracting and settlement process. The Act defines “provide real estate brokerage services” to mean engaging in any of a list of activities, including “selling, buying, exchanging, or leasing any real estate.” Md. Code Ann., Bus. Occ. & Profs. § 17-101(l)(1)(i). Because Respondent Rodgers owned the Property and listed it as the seller’s agent, he was working as a real estate agent and thereby is governed by the regulations under the Act.

The MREC alleged that Respondent Rodgers violated the Act by acting dishonestly and in bad faith when he made representations to the Claimant about the status of the repairs and failed to follow through and perform them as promised, namely those listed in the Property Inspection Notice including, fixing the siding, the plumbing, the electrical work, and the gaping holes in the Property. Md. Code Ann., Bus. Occ. & Profs. § 17-322(b)(25), (32) & (33). For these reasons, the MREC argued it has grounds to discipline Respondent Rodgers. Furthermore, the MREC argued that Respondent Rodgers failed to protect the Claimant’s interests by making sure the house was in habitable repair, pursuant to COMAR 09.11.02.02, and failed to make any effort to ascertain all material facts concerning the significant deficiencies in the Property in violation of COMAR 09.11.02.01D.

Respondent Rodgers denied all responsibility. He argued that (1) he repaired what he promised to repair, (2) he was not responsible for his subcontractors, (3) he was generous in allowing for a property inspection when homes were in high demand, and most were being sold

without one, and therefore should not be held to the high standard MREC suggests applies and (4) he has been in business for decades without a complaint.

These arguments are not persuasive. The Claimant asked for, and Respondent Rodgers agreed, to the home inspection contingency. The inspection revealed significant issues, and rather than decline and relist the Property, Respondent Rodgers agreed to complete all the repairs set out in finding of fact number seven. He failed to complete the repairs before settlement, represented on the day of settlement that he would do so, and failed to follow through. In fact, the credible evidence established that the workers left within an hour of settlement without completing the work. He did not repair what he promised to repair.

Respondent Rodgers' argument that he cannot be held responsible for the shoddy work of his subcontractors supports rather than undermines MREC's charges. While it is true that this is not a Home Improvement Commission complaint, the MREC is not seeking to hold him accountable for unworkmanlike home improvement. Rather, the MREC seeks to hold him accountable for willfully failing to learn about the status of the repairs so that he could avoid error, misrepresentation, or concealment of material facts. Respondent Rodgers' testimony that he did not have that obligation convinces me that his actions were both deliberate and untrustworthy.

The argument that he was overly generous in allowing a home inspection likewise has no merit. As noted above, he voluntarily agreed to the home inspection. Regretting that decision after the fact is irrelevant to a determination of his culpability on these charges. Similarly, the fact that Respondent Rodgers has no prior complaints, while relevant to the type of discipline imposed, is not relevant to whether these charges have been proven by the MREC. If the MREC were precluded from disciplining real estate salespersons for a first offense, it would be utterly ineffective in executing its mission to protect the public.

Therefore, as set out in the above findings of facts, I find that Respondent Rodgers made numerous misrepresentations by promising and failing to repair items listed in the Property Inspection Notice. I further find that he actively avoided learning material facts, specifically, the incompetent work performed by his subcontractors, in an intentional effort to avoid disclosing significant defects in the Property to the Claimant. This conduct demonstrated bad faith, untrustworthiness, and improper dealings with the Claimant, in violation of section 17-322(b)(25)(32) & (33) of the Business Occupations and Professions Article as well as COMAR 09.11.02.01D and 09.11.02.01A. As will be set out in detail in the Fund portion of this decision, his actions resulted in significant financial hardship to the Claimant.

Section 17-322(c) of the Act provides as follows:

Determination of penalty

(c)(1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the Commission may impose a penalty not exceeding \$5,000 for each violation.

(2) To determine the amount of the penalty imposed, the Commission shall consider:

- (i) the seriousness of the violation;
- (ii) the harm caused by the violation;
- (iii) the good faith of the licensee; and
- (iv) any history of previous violations by the licensee.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c).

The MREC recommended that as a result of Respondent Rodgers' violations of the Act and applicable COMAR provisions, the appropriate sanctions are a reprimand and the imposition of a total civil penalty of \$2,500.00.

Respondent Rodgers does not have a history of previous violations. Yet, Respondent Rodgers' violations are serious because he was the owner, selling agent and home improvement contractor. He failed in his obligation to deliver a home that was sound. He made promises that he failed to keep. He deliberately avoided responsibility for his subcontractors' poor workmanship. As will be set out in detail below, the Claimant was harmed by Respondent

Rodgers' conduct because her home had significant defects, and as a result, she spent significant sums to complete the repairs left undone by Respondent Rodgers.

Based on the foregoing, I find that the MREC's requested reprimand and a \$2,500.00 civil penalty are the appropriate sanctions. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c).

THE GUARANTY FUND CLAIM

The Claimant filed a claim for reimbursement from the Fund for losses incurred as a result of Respondent Rodgers' conduct.⁹ Under the Act, an individual may recover an award from the Fund for an actual loss as follows:

(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. & Profs. § 17-404(a)(2).

The amount of compensation recoverable by a claimant from the 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." COMAR 09.11.01.15. The maximum recovery from the Fund is \$50,000.00. Md. Code Ann., Bus. Occ. & Prof. § 17-404(b).

⁹ The Claimant is also pursuing a claim with the Home Improvement Commission.

First, the analysis under section 17-404 requires that a claim shall be based on an act or omission. Respondent Rodgers' actions, failing to make promised repairs and failing to disclose material defects in the Property are acts and omissions in the provision of a real estate service.

Second, the analysis requires that as a result of the act or omission, money or property must be obtained from a person by theft, embezzlement, false pretenses or forgery; or constitute fraud or misrepresentation. Maryland recognizes two forms of misrepresentation: fraudulent misrepresentation and negligent misrepresentation. As the evidence establishes negligent misrepresentation, I will rely on that definition. Negligent misrepresentation occurs when the defendant: (1) owes a duty of care to the plaintiff; (2) intends that his statement will be acted upon by the plaintiff; (3) has knowledge that the plaintiff will probably rely on the statement, which if erroneous will cause loss or injury; (4) plaintiff justifiably takes action in reliance on the statement, and (5) suffers damage proximately caused by the defendant's negligence. *White v. Kennedy Krieger Institute, Inc.*, 221 Md. App. 601, 641 (2015)(quoting *Lloyd v. General Motors Corp.*, 397 Md. 108, 135-36 (2007) (emphasis omitted)).

First, under the Contract and as the realtor listing the Property, Respondent Rodgers owed duties of care to the Claimant. Second, Respondent Rodgers intended the Claimant to rely upon his promises to repair the defects noted in the Property Inspection Notice. Third, Respondent Rodgers knew that the Claimant was relying upon him to make the repairs, especially because he represented on the day of settlement that the work would be done, and had workers present on the Property during the walk-through.¹⁰ Fourth, the Claimant justifiably relied upon Respondent Rodgers' promises to repair the defects because they had a written

¹⁰ Respondent Rodgers argued that the home passed various inspections and a certificate of occupancy was issued. This argument may be relevant to a Home Improvement Commission claim, but it is not persuasive here. The fact that the promises were made and not kept, is the issue. Even if the home was technically habitable, Respondent Rodgers promised more than that in the course of his dealings with the Claimant. I note that is so stating I do not make any determinations as to whether the work was inadequate, incomplete, or unworkmanlike or whether the Claimant suffered an actual loss under Maryland's Home Improvement Law,

agreement and Respondent Rodgers made these promises to her as a realtor AND a home improvement contractor. Fifth, the evidence indicates the Claimant was required to undertake essential repairs herself in order to live in the home. Thus, the Claimant argued she is entitled to reimbursement for various expenditures.

Fence

The Claimant sought reimbursement of \$3,500.00 to complete a fence. The Contract called for a fence to be completed within three days of settlement. The Contract did not require that the fence enclose the entire Property and did not require that Respondent Rodgers install a gate across the driveway. The fence was completed on September 9, 2020. The Claimant argued that she intended the fence to completely enclose her property, including having a gate installed across the driveway that she could open and close. Respondent Rodgers argued that he never agreed to construct a fence that included a working gate across the driveway and that it would not be feasible to do so. Respondent Rodgers' testimony on this point was corroborated by email exchanges with the Claimant about the fence shortly after it was constructed. Clearly, the Claimant meant one thing when she noted the need for a fence in the contract, and Respondent Rodgers meant something different. As the contract was not specific, I find that Respondent Rodgers' work completing a fence around the front of the Property that did not enclose the driveway was a reasonable interpretation of the contract language. With respect to the fence, there was no misrepresentation, and I recommend that the Fund does not reimburse the Claimant for this expense.

Alarm System

The Contract showed that the alarm system was excluded and did not convey with the home. The Claimant has not established that any misrepresentations were made concerning the alarm system and she is not entitled to reimbursement for this expense.

Roof

The Claimant submitted estimates and invoices to replace the roof. Defects to the roof were not noted in the Property Inspection Notice and Respondent Rodgers did not make a promise to repair the roof. The Claimant is not entitled to reimbursement for this expense.

Windows

The Claimant submitted receipts in the amount of \$6,995.00 from Window Nation for the replacement of windows in her home. The Claimant also submitted photographs of closed windows with cracks in the wall surrounding them. The replacement windows were installed in February of 2021 and included windows in three second-floor bedrooms. The receipt did not break down the cost for each bedroom, and it did not identify which room was the master bedroom. Respondent Rodgers agreed to repair the master bedroom windows, which the inspection report noted would not stay open. The Claimant did not elaborate on whether Respondent Rodgers repaired the windows to the extent that they could stay open. That is the only thing he promised to do. In addition, the Claimant has not established that, if Respondent Rodgers had failed to make this repair, this failure required new windows to be installed. She has also not established the cost associated with the master bedroom windows. The Claimant has not met her burden to prove that she is entitled to reimbursement for this expense,

Siding

Respondent Rodgers agreed to make the following repairs to the siding: "Wall covering Flashing & Trim – Vinyl Siding Repair - vinyl siding at side of home not properly overlapping. Moisture infiltration potential. Siding not properly secured. Wall covering, Flashing and Trim - damaged siding - Repair and seal damaged siding; Seal all crack that leave for rodent intrusion." (MREC Ex. #6 at p. 1-151). The Claimant's credible testimony, corroborated by extensive photographs and reports from home inspections, established that these repairs were never made.

The failure to make the repairs as promised allowed moisture to seep into the home. The Claimant paid Exterior Expert, Inc. \$19,944.00 to replace the siding. This expense caused harm to the Claimant as a direct result of Respondent Rodgers' negligent misrepresentation that he would repair the siding. The Claimant has established that she is entitled to reimbursement for this expense.

Trash Removal

Respondent Rodgers agreed to "remove all debris at exterior of home such as glass, broken slate." (MREC Ex. #6 at p. 1-151). The Claimant's credible testimony, corroborated by photographs, established that the trash was never removed. Although Respondent Rodgers testified that he paid a subcontractor to remove the debris, he also acknowledged that he did not personally inspect the Property to ensure that the job was complete. This failure to supervise the work of his subcontractors led to the Claimant paying \$654.00 to Noble's Landscaping to remove the debris. This expense caused harm to the Claimant as a direct result of Respondent Rodgers' negligent misrepresentation that he would remove the debris. The Claimant has established that she is entitled to reimbursement for this expense.

Closing openings in the home

Respondent Rodgers agreed to "properly seal and secure all openings that lead to inside of home." (MREC Ex. #6 at p. 1-151). The Claimant's credible testimony, corroborated by photographs, established that there were gaping holes in her home that allowed mice and other rodents to enter the home. One hole behind the refrigerator was massive and led directly to the exposed underside of the home. Although Respondent Rodgers testified that he was not aware of the hole behind the refrigerator, he also acknowledged that he did not personally inspect the Property to ensure that the job was complete. This failure to supervise the work of his subcontractors is an example of Respondent Rodgers' deliberate avoidance of his obligation to

ascertain material facts. It led to the Claimant paying \$350.00 to WD Lockhart, LLC to repair the holes in the home. This expense caused harm to the Claimant as a direct result of Respondent Rodgers' negligent misrepresentation that he would repair the holes. The Claimant has established that she is entitled to reimbursement for this expense.

Electrical work

Respondent Rodgers agreed to make the following repairs to the electrical systems: "Service Grounding and Bonding – grounding electrode conductor to ground rod inadequate and should be checked by licensed electrician." (MREC Ex. #6 at p. 1-151). The Claimant's credible testimony, corroborated by extensive photographs and reports from home inspections, established that these repairs were never made. The failure to make the repairs as promised rendered the home not up to code and required repair. The Claimant paid HWC Construction \$3,500.00 to repair the electrical work. This expense caused harm to the Claimant as a direct result of Respondent Rodgers' negligent misrepresentation that he would repair the electrical work. The Claimant has established that she is entitled to reimbursement for this expense.

Plumbing

Respondent Rodgers agreed to make the following plumbing repairs: "Drain, waste and vent systems - repair unsealed ejector pump for bathroom in basement. Evaluate and repair main drain stack in basement." (MREC Ex. #6 at p. 1-151). The Claimant's credible testimony, corroborated by extensive photographs and reports from home inspections, established that these repairs were never made. The failure to make the repairs as promised rendered the home not up to code and required repair. The Claimant paid Mike's Plumbing and Heating Services, Inc. \$1,442.00 to inspect the plumbing, repair the sewer line, address an issue with the dryer vent and rework the water heater wire and \$582.00 to address the issue with the hot and cold water lines being reversed. This expense caused harm to the Claimant as a direct result of Respondent

Rodgers' negligent misrepresentation that he would repair the plumbing work. The Claimant has established that she is entitled to reimbursement for this expense.

The Claimant also sought reimbursement for \$350.00 replacement faucet for the master bath. The Property Inspection Report did not detail this repair, although Respondent Rodgers acknowledged that he intended to replace the faucet and testified that he ordered and purchased the faucet. He testified that it was back ordered and did not arrive in time to install before settlement. He also stated that he was willing to install the faucet. As the Respondent did not make any misrepresentations about the faucet, the Claimant has not established that she is entitled to reimbursement for this expense.

The Claimant also sought reimbursement for a \$189.00 service fee paid to Mr. Appliance to fix the dishwasher. The technician determined that the water to the dishwasher was turned off and no repair was needed. For that reason, this expense was not incurred by Respondent Rodgers' failure to make repairs. The dishwasher was not broken. The Claimant has not established that she is entitled to reimbursement for this expense.

The Home Warranty

Respondent Rodgers argued that the Claimant purchased a home warranty at the time of settlement and that her failure to use that warranty undermines her request for reimbursement from the Fund. I disagree. The warranty language is limited and precise. There was no evidence that any of the items that Respondent Rodgers promised and failed to repair would be covered under the warranty. Nor did Respondent Rodgers point to any provision of the Act or the COMAR implementing the Act that requires a Claimant to prove that the damages inflicted by the Respondent's negligence could have been mitigated.

Recommended Fund Award

Thus, I find the Claimant met the requirements of section 17-404(a)(2)(iii) of the Business Occupations and Professions Article and has established by a preponderance of the evidence that she is entitled to a total reimbursement amount of \$26,472.00 for the following expenses: \$19,944.00 to replace the siding, \$654.00 to remove trash, \$350.00 to repair holes, \$3,500.00 to repair the electrical work, \$1,442.00 to inspect and repair plumbing, \$582.00 to address the hot and cold water lines being reversed.

PROPOSED CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I conclude as a matter of law that Respondent Rodgers engaged in conduct that demonstrated bad faith and dishonesty, in violation of section 17-322(b)(25) & (32) of the Act. Respondent Rodgers also violated the Code of Ethics, set forth in COMAR 09.11.02.02 by failing to protect and promote the interests of the Claimant and COMAR 09.11.01.01 by failing to make a reasonable effort to ascertain material facts. Based on these violations, I also find Respondent Rodgers violated section 17-322(b)(33) of the Act.

I further conclude that the appropriate disciplinary sanctions are a reprimand and the imposition of a \$2,500.00 civil penalty. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2018).

I further conclude that the Claimant demonstrated by a preponderance of the evidence that she sustained an actual loss in the amount of \$26,472.00 compensable by the Fund due to an act or omission of Respondent Rodgers in the provision of real estate brokerage services which constitutes misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2) (2018); COMAR 09.11.01.15.

PROPOSED ORDER

I **PROPOSE** that the Maryland Real Estate Commission **ORDER** that:

1. The Charges under section 17-322(b)(25), (32), & (33) be **UPHELD**;
2. The Charges under COMAR 09.11.02 be **UPHELD**;
3. Respondent Rodgers be **REPRIMANDED**;
4. Respondent Rodgers pay a civil penalty of \$2,500.00;
5. The Maryland Real Estate Commission Guaranty Fund grant the Claimant's claim in the amount of \$26,472.00; and
6. The records and publications of the Maryland Real Estate Commission reflect this decision.

August 4, 2023
Date Decision Issued

SIGNATURE ON FILE

Denise O. Shaffer
Administrative Law Judge

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