

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

*

v.

*

CASE NO. 2018-RE-304

**HUSNI A. KURAISH,
Respondent**

*

OAH NO. DOL-REC-24-20-27717

*

and

*

**IN THE MATTER OF THE CLAIM
OF GUY MASSOUMI AGAINST
THE MARYLAND REAL ESTATE
COMMISSION GUARANTY FUND**

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PROPOSED ORDER

The Findings of Fact, Proposed Conclusions of Law and Proposed Order of the Administrative Law Judge dated July 29, 2021, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 15th day of September, 2021, hereby **ORDERED**:

A. That the Findings of Fact in the proposed decision be, and hereby are, **AFFIRMED**.

B. That the Proposed Conclusions of Law in the proposed decision be, and hereby are, **APPROVED**.

C. That the Proposed Order in the proposed decision be, and hereby is, **ADOPTED**.

D. That the records, files, and documents of the Maryland 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, 3rd Floor, 500 North Calvert Street, Baltimore, MD 21202. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

F. Once this 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

MARYLAND REAL ESTATE COMMISSION

9/15/2021
Date

By:  **SIGNATURE ON FILE**

MARYLAND REAL ESTATE
COMMISSION

v.

HUSNI A. KURAISHI,
RESPONDENT

And

THE CLAIM OF GUILTY MASSOUMI,
CLAIMANT,
AGAINST THE MARYLAND
REAL ESTATE COMMISSION
GUARANTY FUND

* BEFORE JENNIFER A. NAPPIER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: LABOR-REC-24-20-27717

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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 January 3, 2018, Guity Massoumi (Claimant) filed a complaint against Husni A. Kuraishi (Respondent) with the Maryland Real Estate Commission (REC 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. 2020) and the provisions at Code of Maryland Regulations (COMAR) 09.11.02, enacted under the Maryland Real Estate Broker's Act. The charges arise out of the Respondent's conduct while

employed as the property manager for the Claimant's condominium located at 407 Christopher Avenue, #21, Gaithersburg, Maryland. The Claimant also filed a claim for reimbursement from the REC Guaranty Fund (Fund) for losses incurred as a result of the alleged conduct of the Respondent (Claim). On November 12, 2020, the REC issued a Statement of Charges and Order for Hearing, setting forth regulatory charges (Charges) against the Respondent 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).

On May 4, 2021, I conducted a remote hearing via the Webex videoconferencing platform. Md. Code Ann., Bus. Occ. & Profs. §§ 17-324(a), 17-408(a) (2018); COMAR 28.02.21.20B. John D. Hart, Assistant Attorney General, Department of Labor, represented the REC. The Claimant represented herself.¹ David Watt, Esquire, represented the Respondent. Nicholas Sokolow, Assistant Attorney General, Department of Labor, represented the Fund.

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 10-226 (2014 & Supp. 2020); Md. Code Ann., Bus. Occ. & Prof. §§ 17-101 through 17-702 (2018 & Supp. 2020); COMAR 09.01.02, 09.01.03 and 28.02.01.

ISSUES

1. Did the Respondent 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 Maryland Real Estate Broker's Act (Act);

¹ The Claimant was assisted by a Farsi interpreter.

2. Did the Respondent fail to account for all trust money received in a timely manner, in violation of section 17-532(b)(1)(v) of the Act;

3. Did the Respondent fail to exercise reasonable care and diligence when providing real estate brokerage services, in violation of section 17-532(b)(1)(vi) of the Act;

4. Did the Respondent fail to comply with any other requirements of the Act; applicable federal, State, and local fair housing laws and regulations; and other applicable laws and regulations, thereby violating section 17-532(b)(1)(vii) of the Act;

5. Did the Respondent violate any other provision of the Act, thereby violating section 17-322(b)(32) of the Act;

6. Did the Respondent violate any regulation adopted under the Act or any provision of the Code of Ethics (COMAR 09.11.02), thereby violating of section 17-322(b)(33) of the Act; and,

7. If so, what is the appropriate sanction?

8. Did the Claimant sustain an actual monetary loss as a result of the Respondent's acts or omissions in his capacity as a licensed real estate broker; and,

9. If so, what is the appropriate award to the Claimant from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

The REC submitted the following exhibits, which were admitted into evidence:

REC Ex. 1A	Notice of Remote Hearing, dated March 10, 2021
REC Ex. 1B	Notice of Remote Hearing, dated April 8, 2021
REC Ex. 2	Statement of Charges and Order for Hearing, November 12, 2020
REC Ex. 3	Report of Investigation, August 27, 2019
REC Ex. 4	Supplemental Report of Investigation, August 6, 2020

- REC Ex. 5 Maryland Department of Labor licensing records, March 24, 2021
- REC Ex. 6 Certifications of David Finneran, Executive Director, MHIC, dated April 1, 2021

The Claimant submitted the following exhibits, which were admitted into evidence unless otherwise noted:

- Cl. Ex. 1 Statement of Account, January 1, 2011 to October 11, 2017²
- Cl. Ex. 2 NOT ADMITTED
- Cl. Ex. 3 NOT ADMITTED
- Cl. Ex. 4 NOT ADMITTED
- Cl. Ex. 5 NOT ADMITTED
- Cl. Ex. 6 NOT ADMITTED
- Cl. Ex. 7 NOT ADMITTED
- Cl. Ex. 8 NOT ADMITTED
- Cl. Ex. 9 NOT ADMITTED
- Cl. Ex. 10 NOT ADMITTED
- Cl. Ex. 11 NOT ADMITTED
- Cl. Ex. 12 Release of Statement of Lien, December 20, 2017
- Cl. Ex. 13 Letter from Nagle & Zaller, P.C. to the Claimant, with attachment, December 20, 2017
- Cl. Ex. 14 Cashier's check from the Claimant to Hyde Condomium [sic], phase 1, December 20, 2017
- Cl. Ex. 15 Receipt from the Clerk of the Circuit Court for Montgomery County, December 22, 2017
- Cl. Ex. 16 Comsource Statements, October 20, 2017, December 22, 2017, and January 23, 2018; Petition – For Warrant of Restitution, July 27, 2017

² The last page of the exhibit is illegible. The last legible date is October 11, 2017

- Cl. Ex. 17 Letter addressed "To Whom It May Concern," from the Claimant, December 23, 2017; UPS Store receipt, December 26, 2017; U.S. Postal Service Certified Mail Receipt, undated
- Cl. Ex. 18 Checks from the Respondent to the Claimant, February 8, June 10, September 10, October 10, November 12, and December 8, 2016; Duplicate check to A-K Real Estate, November 27, 2017
- Cl. Ex. 19 Emails between the Respondent and Comsource, January 13 and April 6, 2017; Letters from Comsource to the Claimant (mailed to the Respondent), March 31, August 1, and August 28, 2017

The Respondent submitted the following exhibits, which were admitted into evidence:

- Resp. Ex. 1 Statement of Account, November 30, 2015 to November 9, 2016; Resident Transaction Report, January 1, 2017 to October 18, 2017
- Resp. Ex. 2 Email from the Respondent to Tovie Balis,³ September 17, 2019; Copies of checks from A-K Real Estate, Inc. (A-K Real Estate) to Hyde Park Ph. I Condo, November 29, 2016 (#2168 & #2167) and December 5, 2016 (#2148 & #2149)
- Resp. Ex. 3 Check from A-K Real Estate to the Claimant, November 12, 2016
- Resp. Ex. 4 Checks from A-K Real Estate to Hyde Park Ph. I Condo, January 10, 2017, February 3, 2017, March 1, 2017, April 4, 2017, May 5, 2017, June 2, 2017, July 5, 2017, August 5, 2017, September 1, 2017, October 3, 2017, November 8, 2017, December 10, 2017
- Resp. Ex. 5 Letter from Craig B. Zaller, Esquire to the Claimant c/o the Respondent, November 9, 2016; Emails from the Respondent to Craig B. Zaller, Esquire, November 28 and 29, 2016
- Resp. Ex. 6 Comsource statement, November 22, 2017
- Resp. Ex. 7 Letter from Comsource to the Claimant c/o the Respondent, January 11, 2017; Note to A-K Real Estate from Barbra Akuffo, January 21, 2017
- Resp. Ex. 8 Emails between the Respondent and Shirley Umali, January 13, 2017 and April 6, 2017
- Resp. Ex. 9 Letter from Comsource to the Claimant c/o the Respondent, August 1, 2017
- Resp. Ex. 10 Letter from Comsource to the Claimant c/o the Respondent, August 29, 2017, with attachments

³ Balis is REC investigator Tovie Campbell's maiden name.

- Resp. Ex. 11 Letter from Comsource to the Claimant, November 6, 2017
- Resp. Ex. 12 City of Gaithersburg Rental housing Inspection Report and Correction Notices, October 4, 2016 and November 16, 2016
- Resp. Ex. 13 Emails from the Respondent to Massoud Massoumi, March 13, 2013, August 6, 2013, September 19, 2014, October 21, 2014, and September 22, 2014
- Resp. Ex. 14 Emails between the Claimant and the Respondent, January 1 and January 2, 2018

The Fund did not submit any exhibits for admission into evidence.

Testimony

The REC presented the testimony of Tovie Campbell, REC Investigator II; and the Claimant.

The Claimant testified on her own behalf.

The Respondent testified on his own behalf.

The Fund did not present any witnesses.

FINDINGS OF FACT

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

Background

1. At all relevant times, the Respondent owned A-K Real Estate and was a real estate broker licensed by the REC under license number 01-80666. He has been a licensed real estate broker since July 22, 1985.
2. At all relevant times, the Claimant owned the condominium located at 407 Christopher Avenue #21 in Gaithersburg, Maryland (the Property). The condominium is part of Phase I of Hyde Park (the Community).
3. Comsource has been the management company for the Community's homeowner's association (HOA) since 1998.

4. On June 5, 2010, the Claimant signed a Property Management and Exclusive Rental Agreement (property management agreement) with A-K Real Estate. The agreement exclusively employed the Respondent to rent, lease, operate, and manage the Property from June 5, 2010 until May 31, 2011.

5. The Claimant and the Respondent renewed the property management agreement, and the Respondent acted as the property manager continuously from June 2010 through December 2017.⁴

6. As the property manager, the Respondent and A-K Real Estate were solely responsible for management of the Property, including but not limited to procuring suitable tenants, paying condo fees, and ensuring that the Property received necessary maintenance, repairs, and cleaning.

7. The Respondent was also responsible for collecting rent from tenants and allocating money from the rent to pay the condo fees, tax payments, the cost of repairs, and other expenses for the Property. The Respondent then forwarded the balance of the monthly rental income to Claimant, minus his management fee.

8. The Respondent has no history of prior REC complaints.

Repairs and Property Maintenance

9. On multiple occasions between October 2014 and December 2017, the Respondent employed an unlicensed contractor, Ahmed Sayyad, to make repairs to the Property.

10. The Respondent did not disclose to the Claimant that Mr. Sayyad was unlicensed.

11. The Claimant was dissatisfied with some of the work performed by Mr. Sayyad.

⁴ There is no evidence of the renewal dates in the record.

Payment of Condo Fees

12. Comsource has been responsible for collection of all condo fees since 1998.⁵

13. The Claimant was charged condo fees for the Property on the first day of each month. Condo fee payments were due by the fifteenth day of each month.

14. From February 2011 through September 2016, the Respondent was always \$367.00 behind on the condo fee payments, after having missed the January 2011 payment of \$367.00.

January 1, 2016 through December 31, 2016

15. From January 1, 2016 through December 31, 2016, the monthly condo fee was \$376.00.

16. The Respondent failed to pay the condo fees in September, October, and November of 2016. As a result, as of November 8, 2016, the Claimant's outstanding balance was \$1,475.00.

17. On November 9, 2016, Comsource charged the Claimant \$33.44 in interest and \$275.00 in legal fees, bringing the outstanding balance to \$1,803.44.

18. On November 9, 2016, the Community's attorney mailed the Respondent a letter, informing him that he represented the Community and had been retained to collect the past due condo fees.⁶ The letter stated that the Claimant was in default of her condo fees and owed the Community \$1,803.44. The letter further advised that pursuant to the Community's governing documents, the Claimant's condo fees would be accelerated through December 16, 2016 if either payment in full or a payment plan was not made within thirty days of the Respondent's receipt of

⁵ Although Comsource collected the condo fees, payments were made out to the Community.

⁶ The letter was addressed to the Claimant in care of the Respondent and mailed only to the Respondent's business address.

the letter and the Community could file a lawsuit against the Claimant, resulting in a lien against the Property.

19. The Respondent did not notify the Claimant of the November 9, 2016 letter from the Community's attorney.

20. On November 28, 2016, the Respondent emailed the Community's attorney to dispute the amount of condo fees owed, alleging that the Claimant owed one payment less than stated in the November 9, 2016 letter. The Respondent also complained that there were many problems with the Property and that Comsource never responded to any of his complaints about fixing the leak coming from the unit above the Property, which was expensive to fix. He suggested the following payment plan: Two payments of \$376.00 to be mailed by November 30, 2016 and in December 2016, the regular payment of \$376.00 plus the outstanding balance and half of the attorney's fees, split between two additional payments. He also asked that the Community waive the interest.

21. The Community's attorney did not accept the Respondent's proposed payment plan.

22. On December 5, 2016, Comsource received two payments of \$376.00 from the Respondent, bringing the outstanding balance to \$1,427.44.

23. On December 14, 2016, Comsource received two more payments of \$376.00 from the Respondent, bringing the outstanding balance to \$675.44

January 1, 2017 through December 31, 2017

24. On January 1, 2017, the monthly condo fee was increased to \$383.00.

25. On January 17, 2017, Comsource adjusted the interest owed from \$33.44 to \$30.50, bringing the outstanding balance to \$1,055.50.

26. On January 19, 2017, Comsource received a payment of \$383.00 from the Respondent, bringing the outstanding balance to \$672.50.

27. On February 1, 2017, Comsource charged the Claimant \$21.62 in interest and \$175.00 in attorney's fees, bringing the outstanding balance to \$1,252.12.⁷

28. On February 1, 2017, the Community's attorney mailed the Respondent a warning letter,⁸ stating that the Claimant was in default of her condo fees and owed the Community \$1,252.12. The attorney repeated the warning contained in the November 9, 2016 letter regarding the possibility of legal action and a lien against the Property.

29. The Respondent received the February 1, 2017 letter, but did not notify the Claimant of the letter, outstanding condo fees, or the possibility the Community would take legal action against the Claimant.

30. On February 8, 2017, Comsource received a payment of \$383.00 from the Respondent, bringing the outstanding balance to \$869.12.

31. On February 16, 2017, Comsource received a payment of \$367.00 from the Respondent, bringing the outstanding balance to \$502.12.

32. On March 3 and April 10, 2017, Comsource received a payment of \$383.00 from the Respondent. The balance remained unchanged.⁹

33. Due to the Respondent's failure to bring the Claimant's account current, on April 27, 2017, the Community filed a lien against the property in the amount of \$3,810.44. This amount consisted of the outstanding balance of \$502.12; an acceleration of the condo fees from May 2017 through December 2017, totaling \$3,064.00; and additional charges of \$9.32 in

⁷ This amount includes the regular monthly condo fee of \$383.00.

⁸ The letter was addressed to the Claimant in care of the Respondent and mailed only to the Respondent's business address.

⁹ The balance remained unchanged because the Claimant was charged the regular monthly condo fee of \$383.00 on the first of each month.

interest, \$175.00 in attorney's fees, and \$60.00 for a lien filing fee. The lien was recorded on May 12, 2017.

34. On May 12, 2017, Comsource received a payment of \$383.00 from the Respondent, bringing the outstanding balance to \$3,427.44.

35. On June 8, July 10, and August 11, 2017, Comsource received payments of \$383.00 from the Respondent, bringing the outstanding balance to \$2,278.44.

36. On August 29, 2017, Comsource sent the Respondent a letter,¹⁰ stating that they had charged the Claimant a \$100.00 management fee because her tenant allegedly committed vandalism by emptying a Community fire extinguisher in the stairwell. This brought the outstanding balance to \$2,378.44.

37. The Respondent disputed the \$100.00 management fee, but his efforts were unsuccessful and the fee was not removed from the Claimant's account.

38. The Respondent failed to notify the Claimant of the August 29, 2017 letter and the \$100.00 management fee.

39. On September 6, October 11, and November 16, 2017, Comsource received payments of \$383.00 from the Respondent, bringing the outstanding balance to \$1,229.44.

40. Comsource did not receive a condo fee payment from the Respondent in December 2017.

41. The Respondent never informed the Claimant of the past due condo fees or the lien placed against the Property.

42. In early December of 2017, the Claimant decided that she would no longer rent the Property and, instead, place it on the market. On or about December 6, 2017, she notified the Respondent of her decision and her intention to terminate their contract.

¹⁰ The letter was addressed to the Claimant in care of the Respondent and mailed only to the Respondent's business address.

43. In the process of preparing to sell the Property in early December 2017, the Claimant discovered that the Community had placed a lien on the Property.

44. On December 14, 2017, Comsource charged the Claimant \$39.30 in interest and \$50.00 in attorney's fees, bringing the outstanding balance to \$1,318.74.

45. On December 14, 2017, the Community's attorney sent the Claimant a letter, stating that the November 16, 2017 payment of \$383.00 was the last condo payment received by Comsource and there was an outstanding balance of \$1,318.74 on her account. Prior to receiving this letter, the Claimant was unaware that her condo fees were not paid in full.

46. After receiving the letter from the Community's attorney, the Claimant questioned the Respondent about the unpaid condo fees. The Respondent told the Claimant that Comsource was lying and just trying to scare her.

47. On December 20, 2017, the Claimant paid the Community \$1,318.74 to satisfy the lien and obtain a Release of Statement of Lien.

48. On December 22, 2017, the Claimant paid the Circuit Court for Montgomery County \$10.00 for the release recording fee and \$40.00 for the release surcharge.

49. On December 23, 2017, the Claimant sent Comsource a letter, notifying them that the Respondent was no longer the property manager for the Property and stating that no further correspondence regarding the Property should be sent to the Respondent.

50. On January 1, 2018, the Claimant emailed the Respondent and notified him that she had received the December 14, 2017 letter from the Community's attorney and a copy of an October 26, 2017 bill from Comsource. The Claimant asked the Respondent for an explanation and a copy of his receipts for the condo fee payments.

51. On January 2, 2018, the Respondent replied to the Claimant's January 1, 2018 email. He stated that all of the condo fees were paid in full as of December 2017.

2016 and 2017 Rental Income

52. The Respondent forwarded rental income to the Claimant each month in 2016, with the exception of September and October.

53. The Respondent forwarded rental income to the Claimant each month from January 2017 to August 2017.

54. The Respondent did not receive rent for the Property from approximately July 2017 through October 2017 because the tenant claimed financial hardship.

55. On July 27, 2017, the Respondent filed a petition to evict the tenant from the Property for non-payment of rent.¹¹

56. The Respondent did not forward any rental income to the Claimant after August 2017.¹²

DISCUSSION

BURDEN OF PROOF

With regard to the Charges, the REC bears the burden of proof, by a preponderance of the evidence, to demonstrate that the Respondent 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 the Respondent's acts or omissions. Md. Code Ann., Bus. Occ. & Profs. § 17-407(e) (2018); 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 of the evidence is considered. *Coleman v. Anne Arundel Co. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

¹¹ The outcome of this action is unclear.

¹² The record is unclear as to whether there was a short-term tenant occupying the property in November and December of 2017.

For the reasons that follow, I find that the REC has met its burden. I further find that the Claimant has failed to meet her burden.

THE DISCIPLINARY CHARGES UNDER THE ACT

The REC charged the Respondent 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) (2018)

The REC further charged the Respondent under section 17-532 of the Act, which requires that he account for all trust money¹³ received in a timely manner; exercise reasonable care and diligence; and comply with all requirements of the Act, applicable federal, State, and local fair housing laws and regulations, and other applicable laws and regulations. Md. Code Ann., Bus. Occ. & Profs. § 17-532(b)(v)-(vii) (Supp. 2020). The REC further charged the Respondent with violating the COMAR 09.11.02.02A by failing to maintain his obligation of absolute fidelity to his client by not protecting and promoting her interests.

¹³ ““Trust money”” means a deposit, payment, or other money that a person entrusts to a real estate broker ... to hold for: (1) the benefit of the owner or beneficial owner of the trust money; and (2) a purpose that relates to a real estate transaction involving real estate in the State.” Md. Code Ann., Bus. Occ. & Profs. § 17-501(c) (2018).

The Merits of the Case Regarding the Charges

As property manager for the Property from June 2010 through December 2017, the Respondent was solely responsible for management of the Property, including but not limited to procuring suitable tenants, collecting rent, paying condo fees, and ensuring that appropriate repairs were made to the Property.

The Respondent admitted that he was responsible for and failed to make timely condo fee payments while managing the Property. Although the condo fees were consistently one payment behind beginning in February of 2011, the Charges in this case arise from the Respondent's mismanagement of the condo fee payments in 2016 and 2017, resulting in a lien being filed against the Property and the accumulation of attorney's fees and interest on the Claimant's account. The root of this issue is the Respondent's failure to pay the September 2016, October 2016, and November 2016 condo fees.

During a June 18, 2019 interview with REC Investigator Tovie Campbell, the Respondent reported that he became aware of the delinquent condo fees when he received the November 9, 2016 letter from the Community's attorney. He claimed that he was unaware the HOA management company had *changed* from Vanguard to Comsource and that he believed this was the reason the condo fees for September and October 2016 were not paid. REC Ex. 3, p. 8. However, after being confronted with Ms. Campbell's testimony that Comsource had managed the HOA since 1998, long before the Respondent began to manage the Property, the Respondent's explanation changed. At the hearing, the Respondent alleged that the condo fees went unpaid in September and October of 2016 because he was managing another condominium on the same street as the Property and mistakenly sent the condo fee payment to Vanguard before

he realized that the payment should have gone to Comsource.¹⁴ According to the Respondent, when the checks were returned “it was kind of late” and he then used the money to pay Comsource.

On cross examination by the REC, the Respondent alleged that there was a tenant who abandoned the property in September of 2016, and as a result, there was no rental income coming for payments of the condo fees. He said that during that time, he made condo fee payments using funds from A-K Real Estate’s financial account. At one point, the Respondent stated that the condo fees were not paid because of the lack of rental income. When asked if he informed the Claimant that there was no rental income for the payment of the September and October 2016 condo fees, the Respondent stated, “I’m sure I was in communication with [the Claimant],” but did not specifically testify that he discussed the matter with the Claimant or otherwise notified her of any issues with paying the condo fees. By the end of the cross examination, the Respondent again stated that the September and October 2016 condo fee payments had been sent to Vanguard in error. Notably, the Respondent testified that he voided the checks that were allegedly sent to Vanguard and kept them in his file for the Property, but he made no effort to locate those checks in preparation for the hearing. Additionally, the Respondent’s handwritten records of the condo fee payments do not include payments for September and October 2016. REC Ex. 4, pp. 34-35. Had the Respondent mailed payments to Vanguard during those months under the belief that he was paying the condo fees for the Property, logic dictates that he would have recorded those payments.

The Respondent also testified that he believed that he had brought the account current prior to the lien being filed against the Property. However, this is illogical, as he admitted that

¹⁴ The Respondent did not offer a specific explanation for his failure to pay the November condo fees in a timely fashion. Presumably, after receiving the November 9, 2016 letter from the Community’s attorney, the Respondent delayed making the November 2016 payment while he attempted to negotiate a payment plan.

he was in receipt of the November 9, 2016 letter which stated that there was an outstanding balance of \$1,803.44, and he only made payments of \$1,504.00 by the end of December 2016, with no extra payments thereafter. Additionally, the Community's attorney sent the Respondent another letter of February 1, 2017, notifying him that the Claimant's account was delinquent and stating that failure to make payment in full could result in a legal action and a lien against the Property. Still, the Respondent failed to take action to bring the account current and avoid legal action against the Claimant.

I found the Respondent's testimony to be confusing, incredulous and, at times, evasive. The Respondent's inconsistent explanations for his failure to pay the Property's condo fees in a timely manner render his testimony unreliable and call into question his credibility. While I am unable to determine the true reason for the Respondent's failure to pay the condo fees in a timely manner, the evidence clearly establishes that the Respondent's failure to pay the condo fees and his subsequent management of the account and inadequate response to the attorney's demand letters, at a minimum demonstrated incompetency and/or improper dealings, and a failure to exercise reasonable care and diligence, in violation of sections 17-322(b)(25) and 17-532(b)(vi) of the Business Occupations and Professions Article. *See also* Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(32), 17-532(b)(1)(vii) (2018). The task of paying monthly condo fees is simple and straightforward, especially when a real estate broker with over thirty years of experience has been paying the condo fees for a particular Property for several years and nothing significant has changed with the account.

Additionally, I find credible the Claimant's clear and consistent testimony that the Respondent never informed her there were any issues with paying the condo fees in a timely manner. Indeed, given that the Respondent continued to send the Claimant rental income during the majority of 2016 and 2017, the Claimant would have no reason to believe there was a lack of

funds. The fact that the Claimant paid the remaining balance on the account within about a week of learning of the lien on the Property suggests that the Claimant would have taken care of the matter immediately had she been made aware of the delinquent account earlier. The Claimant's confusion with regard to the delinquent account is also made evident by her January 1, 2018 email to the Claimant, questioning why Comsource stated that the fees had not been paid and that it was the Community's attorney who informed her of the lien. Resp. Ex. 14.

The Respondent's failure to keep the condo fees current and notify the Claimant in the event he was unable to do so also amounts to a failure to protect and promote the Claimant's interest, in violation of COMAR 09.11.02.02A. His failure to protect and promote the Claimant's interest resulted in a lien being placed against the Property and the accumulation of legal fees and interest.

The Respondent also admitted that he hired an unlicensed contractor, Ahmed Sayyad, to perform repairs on the Property.¹⁵ He testified that has known Mr. Sayyad for over twenty years and hired him because he always performed excellent work for the Respondent and responded quickly. The Respondent also asserted that he was trying to save the Claimant money by hiring Mr. Sayyad who was willing to accept installment payments and charged half of what other contractors would have charged for the work performed on the Property. Although the Respondent's intentions may have been good, his failure to hire a licensed contractor deprived the Claimant of the protections afforded by the proper licensure, including potential coverage under the Maryland Home Improvement Guaranty Fund. I find that the Respondent's use of an unlicensed contractor to perform work on the Property amounts to another failure to protect and promote the Claimant's interest, in violation of COMAR 09.11.02.02A.

¹⁵ The Claimant alleged the Respondent hired a second unlicensed contractor to perform work on the Property, Esmeralda Portillo. However, the Respondent testified that Ms. Portillo only provided cleaning services.

With regard to whether the Respondent accounted for all trust money received in a timely manner, none of the parties to this case made any specific arguments on this point. There is no evidence in the record to establish in what manner the Respondent was responsible for accounting for the rental payments received from the tenants. As previously discussed, the Respondent did maintain some records—during the investigation, the Respondent submitted to Ms. Campbell the handwritten record of the condo fee payments and his disbursements to the Claimant. REC Ex. 4, pp. 34-35. Based upon the record before me, I find there is insufficient evidence to establish that the Licensee failed to account for all trust money received in a timely manner.

Disciplinary Sanctions

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) (2018).

The REC recommended that as a result of the Respondent's violations of the Act and its applicable COMAR provisions, the appropriate sanctions are a reprimand and the imposition of a total civil penalty of \$5,000.00 for all of the violations found.

The Respondent does not have a history of previous violations. The Respondent's violations with regard to this case are not insignificant, but they also are not in the most severe category of violations that could be committed by a real estate broker. While the Respondent clearly mismanaged the situation, there is no evidence that he committed fraud, theft, or

embezzlement. However, upon realizing that he had missed the condo fee payments, the Respondent did not entirely act in good faith—although he did attempt to rectify the issue to some extent, he concealed the delinquent account from the Claimant and lied to her when she questioned him about the account status in December 2017 and January 2018. On the other hand, it does appear the Respondent hired the unlicensed contractor in good faith, believing that it was in the Claimant’s best interest to save as much money possible.

As previously discussed, the Claimant was harmed by the Respondent’s conduct because she accumulated and was obligated to pay additional attorney’s fees and interest as a result of the Respondent’s failure to make timely condo fee payments and to swiftly rectify the situation once the payments were missed and he received the threat of legal action from the Community’s attorneys. This conduct also resulted in a lien against the Property and may have negatively affected the Claimant’s credit. The Claimant was also required to pay a release recording fee and release surcharge. Further, the failure to hire a licensed contractor deprived the Claimant of the protections afforded by proper licensure.

Based on the forgoing, I find that the REC’s requested reprimand and \$5,000.00 civil penalty are the appropriate sanctions. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2018).

THE GUARANTY FUND CLAIM

The Claimant filed a claim for reimbursement from the Fund for losses incurred as a result of the Respondent’s conduct. On the January 3, 2018 Complaint Form, the Claimant complained that the Respondent failed to pay the condo fees for the Property, resulting in a lien against the Property which the Claimant learned of from a third party. She further complained that the Respondent “has caused a lot of financial damages.” However, the Claimant did not elaborate upon the nature of the damages or specify the amount of the damages. REC. Ex. 3, p. 14. When questioned by the Fund as to the amount of her claim, the Claimant was unable to

determine the amount of her alleged loss. She said that she is seeking reimbursement for money she spent to repair damages to the Property caused by her tenants and the amount that she paid for the lien to be released.

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) (2018).

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) (2018).

There is no evidence or allegation that the Respondent obtained money or property through false pretenses or forgery. Further, the Claimant testified that she did not believe that the Respondent misappropriated funds or otherwise took money that belonged to the Claimant. The Claimant did not offer any evidence that she incurred a loss as the result of fraud or

misrepresentation by the Respondent. Also, after completion of her investigation, Ms. Campbell did not have sufficient evidence to conclude that the Respondent engaged in theft, embezzlement, false pretense, forgery, or conduct that constitutes fraud or misrepresentation. Thus, I find the Claimant has failed to meet the requirements of section 17-404(a)(2)(iii) of the Business Occupations and Professions Article. The Fund agrees. Accordingly, the Claimant may not recover any monies from the Fund.¹⁶

PROPOSED CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I conclude as a matter of law the Respondent engaged in conduct that demonstrated incompetency, dishonesty, untrustworthiness, and/or improper dealings, in violation of section 17-322(b)(25) of the Act. *See also* Md. Code Ann., Bus. Occ. & Prof. § 17-532(b)(1)(vii) (2018). I further conclude that the Respondent also failed to exercise reasonable care and diligence, in violation of section 17-532(b)(1)(vi) of the Act. *See also* Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(32) (2018). The Respondent 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 while maintaining statutory obligations towards other parties to a transaction.

I further conclude that there is insufficient evidence to establish that the Respondent failed to account for all trust money received in a timely manner. Md. Code Ann., Bus. Occ. & Prof. § 17-532(b)(1)(v) (2018); COMAR 09.01.02.16A.

I further conclude that the Claimant did not demonstrate by a preponderance of the evidence that she sustained an actual loss compensable by the Fund due to an act or omission of the Respondent in the provision of real estate brokerage services in which

¹⁶ I also note that losses resulting from property damage caused by the Claimant's tenant are not recoverable from the Fund, as they are not due to the act or omission of the Respondent. *See* Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2) (2018).

money or property was obtained from the Claimant by theft, embezzlement, forgery, fraud, false pretenses, or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404, and 17-407(e) (2018); COMAR 09.11.01.15.

I further conclude that the appropriate disciplinary sanctions are a reprimand and the imposition of a \$5,000.00 civil penalty. Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(c) (2018).

PROPOSED ORDER

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

1. The Charge under section 17-532(b)(1)(v) be **DISMISSED**;
2. The remainder of the Charges against the Respondent, issued on November 8, 2019, be **UPHELD**;
3. The Respondent be **REPRIMANDED**;
4. The Respondent pay a civil penalty of \$5,000.00.
5. The Maryland Real Estate Commission Guaranty Fund deny the Claimant's claim; and
6. The records and publications of the Maryland Real Estate Commission reflect this decision.

July 29, 2021
Date Decision Issued

JAN/emh
#193471

SIGNATURE ON FILE

Jennifer A. Nappier
Administrative Law Judge

SIGNATURE ON FILE

Name of the person whose signature is on file

Date