

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE \* BEFORE DOUGLAS E. KOTEEN,  
COMMISSION \* ADMINISTRATIVE LAW JUDGE  
V. \* OF THE MARYLAND OFFICE OF  
PATRICE MU YA, \* ADMINISTRATIVE HEARINGS  
RESPONDENT \* OAH No: DLR-REC-22-23-16558  
\* REC CASE NO: 758-RE-2022

\* \* \* \* \*

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated September 27, 2023 having been received, read and considered, it is, by the Maryland Real Estate Commission, this 23<sup>rd</sup> day of October 23, 2023,  
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, APPROVED;
  - C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;
- and,
- D. That the records, files and documents of the Maryland State Real Estate Commission reflect this decision.

MARYLAND STATE REAL ESTATE COMMISSION

11/6/23  
Date

By: Sandy Olson, Commissioner

**SIGNATURE ON FILE**

ON

**IN THE MATTER OF THE CLAIM** \* **BEFORE TRACEE N. HACKETT,**  
**OF KARIM DOWOU,** \* **AN ADMINISTRATIVE LAW JUDGE**  
**CLAIMANT** \* **OF THE MARYLAND OFFICE**  
**v.** \* **OF ADMINISTRATIVE HEARINGS**  
**THE MARYLAND REAL ESTATE** \*  
**COMMISSION GUARANTY FUND,** \*  
**FOR THE ALLEGED MISCONDUCT** \*  
**OF PATRICE MUYA,** \* **OAH No.: LABOR-REC-22-23-16558**  
**RESPONDENT** \* **REC No.: 758-RE-2022<sup>1</sup>**

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On July 12, 2022,<sup>2</sup> Karim Dowou (Claimant) filed a Complaint and Guaranty Fund Claim (Claim) with the Maryland Real Estate Commission (REC)<sup>3</sup> to recover reimbursement from the Real Estate Guaranty Fund (Fund) for an alleged actual loss resulting from an act or omission of Patrice Muya<sup>4</sup> trading as J.K.B. Homes, LLC (Respondent), a licensed real estate broker. On

<sup>1</sup> On the hearing order, the REC No. listed as “758-RE-2022 GF” and on the Claim form, the Complaint No. is listed as “758-2022.”

<sup>2</sup> On the hearing order, the date of receipt is listed as June 10, 2022; however, on the Claim form, the receipt date is listed as July 12, 2022, the same day it was signed.

<sup>3</sup> The REC is under the jurisdiction of the Department of Labor (Department).

<sup>4</sup> The Claimant listed the Respondent’s name as “Patrick Muya” on the Claim, the Fund listed the Respondent’s name as “Patric Muya” on the transmittal and as “Patrice Muya” on the Registration inquiry. I have used the spelling from the Registration inquiry as it coincides with the Respondent’s Maryland license.

May 4, 2023, the Executive Director of the REC issued a Hearing Order on the Claim and, on June 15, 2023, forwarded the case to the Office of Administrative Hearings (OAH) for a hearing.

On September 14, 2023, I held a hearing at the OAH in Rockville, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408(a) (2018). Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. A French interpreter was present for the Appellant and participated by phone. Neither the Respondent nor anyone authorized to represent the Respondent appeared.

On July 18, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States first-class mail and certified mail, return receipt requested to the Respondent's address on record with the OAH. Code of Maryland Regulations (COMAR) 28.02.01.05C(1). The Notice stated that a hearing was scheduled for September 14, 2023, at 10:00 a.m. at the OAH located at 40 West Gude Drive, Suite 235, Rockville, Maryland 20850. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return the Notice to the OAH which was sent via first-class mail. The Notice sent to the Respondent via certified mail was returned to the OAH on July 25, 2023, as undeliverable with the notation "return to send, attempted – not known, unable to forward." The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16.

I determined that the Respondent received proper notice, and, after waiting twenty minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. COMAR 28.02.01.23A; COMAR 28.02.01.05A, C.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, the REC's procedural regulations, and the Rules of Procedure of the OAH

govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 09.11.03; COMAR 28.02.01.

### ISSUES

1. Did the Claimant sustain an actual loss, compensable by the Fund, due to an act or omission of the Respondent in the provision of real estate brokerage services that constitutes fraud/misrepresentation or in which money or property was obtained from the Claimant by theft/embezzlement/false pretenses/forgery?
2. If so, what amount should be awarded to the Claimant from the Fund?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Bank of America Funds Transfer Request Authorization, wire date January 19, 2022 and copy of the Appellant's sister's Maryland driver's license, issued April 6, 2023<sup>5</sup>
- Clmt. Ex. 2 - Email communications between Nawal Tahri-Joutey, seller's representative and the Respondent, dated January 19-20, 2023
- Clmt. Ex. 3 - Email communications between the Claimant and Erin M. Rorke, police officer, Montgomery County Police Department, dated March 27-30, 2022
- Clmt. Ex. 4 - Screenshot of text message communication between the Claimant and the Respondent, dated January 19, 2022<sup>6</sup>
- Clmt. Ex. 5 - Screenshot of text message between the Claimant and the Respondent, dated January 16, 2022
- Clmt. Ex. 6 - Residential Contract of Sale Offer Package, various dates
- Clmt. Ex. 7 - Letter from the Commonwealth of Virginia, Department of Professional and Occupational Regulation, dated February 21, 2022

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<sup>5</sup> For confidentiality purposes, I have redacted the identifying information on the driver's license with the exception of the photograph and the name.

<sup>6</sup> The Claimant showed the text messages directly on his cell phone to me and the Fund during the hearing. I scrolled up on the phone and read the date of the first text message in the exchange which was January 19, 2022 on the record. At the conclusion of the hearing, I permitted the Claimant to send me an electronic version on this exhibit (the Fund indicated that it did not want copies as it would receive all documents in the file when it is returned with the Proposed Decision). The electronic version does not reflect the January 19, 2022 date at the top.

Clmt. Ex. 8 - "JKB Homes" Wire Instructions with handwritten notes made by the Claimant, undated

The Respondent did not appear and did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, dated July 18, 2023 and Hearing Order, signed May 4, 2023

Fund Ex. 2 - Maryland Department of Labor, Real Estate Commission Registration Inquiry, printed August 29, 2023

### Testimony

The Claimant testified and did not present other witnesses.

The Respondent was not present and did not present any witness testimony.

The Fund did not present any testimony.

### **PROPOSED FINDINGS OF FACT**

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

1. At all times relevant to the subject of this hearing, the REC licensed the Respondent as a real estate broker.
2. At some unidentified date, the Claimant contacted the Respondent to assist him with purchasing a home in Maryland by providing real estate brokerage services.
3. The Claimant and the Respondent never entered into a formal agreement for real estate brokerage services, however, the Respondent provided open house information for real estate listings to the Claimant, provided the entry code information for viewing real estate properties, prepared a formal real estate contract offer on behalf of the Claimant, and communicated with the seller's agent directly on the Claimant's behalf regarding the offer.
4. On January 15, 2022, at approximately 6:45 p.m., the Claimant and his spouse attended an open house/showing of the residential real estate property located at 19928 Apple Ridge Place, Gaithersburg, Maryland 20886 (Property).

5. After viewing the Property, the Claimant informed the Respondent that he and his spouse were interested in making an offer.

6. On January 16, 2022, the Respondent sent a text message to the Claimant requesting that the Claimant write a check in the amount of \$7,000.00 payable to "JKB Homes" as the earnest money deposit (EMD) and that this money would be used as part of his down payment. Clmt. Ex. 5. The Respondent verbally explained to the Claimant that the money would be placed in the Respondent's account and then in an escrow account, and in the event that the Claimant did not purchase a home, that his money would be returned.

7. On January 17, 2022, the Respondent prepared an offer for the Claimant and his spouse to purchase the Property.

8. The Claimant was unable to write a check and provide it to the Respondent due to his work schedule and requested that his sister, Ntacheobi Ndukwe, assist with sending a wire transfer of the Claimant's money (\$7,000.00) to the Respondent's Bank of America account for "JKB Homes, LLC."

9. On January 19, 2022, Ms. Ndukwe sent a wire transfer in the amount of \$7,000.00 on behalf of the Claimant to the Respondent's Bank of America account for "JKB Homes, LLC."

10. Also on January 19, 2022, the Claimant sent a text message with a screenshot of the wire transfer confirmation to the Respondent.

11. On January 20, 2022, Nawal Tahri-Joutey, the seller's agent, informed the Claimant and the Respondent that the seller had accepted a different offer for the Property.

12. At some unidentified date, the Claimant expressed interest in other residential real estate property in Maryland and even though the Respondent did not meet the Claimant in person, he provided entry codes so that the Claimant could view the properties that he was interested in.

13. At some unidentified date, the Claimant was advised by one of his friends that he should not enter any of those properties and shortly thereafter, the Claimant informed the Respondent that he no longer wanted to purchase a home and requested the return of the \$7,000.00 EMD.

14. The Respondent refused to return the EMD to the Claimant.

15. At some unidentified time, the Claimant filed a complaint with the Commonwealth of Virginia, Department of Professional and Occupational Regulation against the Respondent, who is also licensed in Virginia.<sup>7</sup>

16. On February 21, 2022, Cameron Parris, Intake Analyst, Commonwealth of Virginia, Department of Professional and Occupational Regulation, Complaint Analysis and Resolution Unit, informed the Claimant via letter that it did not have jurisdiction to investigate his complaint because the work was performed in Maryland.

17. On or around March 27, 2022, the Claimant filed a police report with Officer Erin Rorke of the Montgomery County Police Department under case number 2200013034.

18. Officer Rorke informed the Claimant that she spoke with the Respondent, and he was refusing to return the EMD, and that the Respondent stated that he could retain this money for one year until the Claimant purchased a home. Officer Rorke advised the Claimant that he could file a claim with the Fund.

19. On July 12, 2022, the Claimant filed his Claim with the REC.

### **DISCUSSION**

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2018);<sup>8</sup> Md. Code Ann., State

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<sup>7</sup> The specific license held by the Respondent in the Commonwealth of Virginia is unknown based on the record.

<sup>8</sup> Unless otherwise noted, all references to the Business Occupations and Professions Article are to the 2018 Replacement Volume of the Maryland Annotated Code.

Gov't § 10-217 (2021). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

A person may recover compensation from the Fund for an actual loss based on certain types of acts or omissions in the provision of real estate brokerage services by a licensee. A licensee "means a licensed real estate broker, a licensed associate real estate broker, or a licensed real estate salesperson." Bus. Occ. & Prof. § 17-101(k).

The provision of real estate brokerage services is defined as follows:

(l) "Provide real estate brokerage services" means to engage in any of the following activities:

(1) for consideration, providing any of the following services for another person:

(i) selling, buying, exchanging, or leasing any real estate; or

(ii) collecting rent for the use of any real estate;

(2) for consideration, assisting another person to locate or obtain for purchase or lease any residential real estate;

(3) engaging regularly in a business of dealing in real estate or leases or options on real estate;

(4) engaging in a business the primary purpose of which is promoting the sale of real estate through a listing in a publication issued primarily for the promotion of real estate sales;

(5) engaging in a business that subdivides land that is located in any state and sells the divided lots; or

(6) for consideration, serving as a consultant regarding any activity set forth in items (1) through (5) of this subsection.

*Id.* § 17-101(l).

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.

*Id.* § 17-404(a)(2). The amount recovered for any claim against the Fund may not exceed \$50,000.00 for each claim. *Id.* § 17-404(b).

The Claimant argued that he is entitled to the return of his EMD because he provided it to the Respondent in good faith despite no real estate brokerage contract being signed. According to the Claimant, when his offer on the Property was not approved, he subsequently communicated to the Respondent that he no longer wanted to purchase a home and requested the return of his \$7,000.00 EMD. The Claimant testified that the Respondent told him that the \$7,000.00 would go towards the deposit of the home, but when the sale did not go through on the Property, the Respondent refused to return the EMD. The Claimant testified that he contacted the police, and the Respondent indicated that he could keep the money for one year in an attempt to find another home for the Claimant to purchase. The Claimant argued that the Respondent “stole” this money from him and is wrongfully keeping it.

The Fund argued that the Claimant proved his Claim because he had a reasonable expectation that the EMD would be returned if the offer on the Property was not accepted. The Fund further argued that the Claimant made several attempts to request the return of the EMD from the Respondent and also filed a police report and REC claims in Maryland and Virginia. Therefore, the Fund agreed that the Claimant should be awarded \$7,000.00.

For the reasons stated below, I find that the Claimant has met his burden and is entitled to recovery from the Fund. There was no evidence of any statutory bar to recovery. *See* Bus. Occ. & Prof. § 17-404(c)-(d); COMAR 09.11.01.19. The Claimant has provided sufficient evidence to show that he has made a valid claim as required by section 17-404(a)(2). There is no dispute that at all times relevant, the Respondent was a license real estate broker. Bus. Occ. & Prof. §

17-404(a)(2)(i). The Claimant provided credible testimony that Respondent provided real estate brokerage services including assisting with locating property listings for residential homes for sale in Maryland, providing access codes to view properties, processing the Claimant's EMD, preparing the offer package for sale of the Property, and communicating with the seller's agent on behalf of the Claimant. These actions are all services that fall under the scope of Bus. Occ. & Prof. § 17-101(l). Additionally, such services were provided for consideration, i.e., payment, because the Claimant testified credibly that it was his understanding that had the sale for the Property gone through, the Respondent would have received his commission as part of the seller's required fees. *Id.* Additionally, the Respondent failed to create a real estate brokerage agreement and to return the EMD related to a purchase offer on the Property, which was located in the state of Maryland. Bus. Occ. & Prof. § 17-404(a)(2)(i)-(ii).

Lastly, the Respondent's actions to obtain the EMD from the Claimant were based on false pretenses and misrepresentations. Bus. Occ. & Prof. § 17-404(a)(2)(iii). As a licensed real estate broker in Maryland, the Respondent was required to maintain any EMD in a trust account until "the real estate transaction for which the trust money was entrusted is consummated or terminated." Md. Code Ann., Bus. Occ. & Prof. § 17-505(a)(1) (2018). Further, Md. Code Ann., Bus. Occ. & Prof. § 17-505(f) provides that "[a]n agreement under which a real estate broker is entrusted with the trust money shall contain a statement that the real estate broker may distribute the trust money in accordance with subsection (b) of this section if the owner or beneficial owner of the trust money fails to complete the real estate transaction for which the trust money was entrusted." In this matter, the Respondent failed to offer any agreement to the Claimant and instead sent him a text message requesting that he write a check to the "JKB Homes, LLC" account in the amount of \$7,000.00 for the EMD which would be used towards his deposit. The Respondent provided credible testimony that the Respondent told him that if the

offer for the Property did not go through that the money would be returned. Since the transaction was terminated by the seller when he or she accepted an alternative offer, the Respondent had an obligation to return the money. Md. Code Ann., Bus. Occ. & Prof. § 17-505(a)(1) (2018).

Based upon the record before me, I find that the Respondent obtained the EMD under false pretenses,<sup>9</sup> because he told the Claimant that it would be returned, but then choose to keep it and said that he would hold it for one year or until the Claimant purchased a home. This information was materially different than the information provided to the Claimant when he gave the Respondent the money and the Claimant relied upon the purpose explained to him for the EMD to his detriment. The Respondent indicated that he would retain the EMD despite the fact that the Claimant testified credibly that he told the Respondent that he no longer wanted to purchase a home and that he no longer required his services.

I agree with the Claimant and the Fund that the Claimant is entitled to the full recovery of the \$7,000.00 paid for the EMD to the Respondent. There is no applicable statutory or regulatory calculation for recovery from the Fund. Because the \$7,000.00 is less than the maximum amount of recovery of \$50,000.00, I find that this amount is appropriate and not statutorily barred. Md. Code Ann., Bus. Occ. & Prof. § 17-404(b).

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss due to an act or omission of the Respondent in the provision of real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. §§17-101(d), 17-404(a)(2), 17-505(a)(1), (f) (2018).

I further conclude that the Claimant is entitled to recover \$7,000.00 from the Fund. Md. Code Ann., Bus. Occ. & Prof. §17-404(b) (2018); COMAR 09.11.01.19.

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<sup>9</sup> The Claimant argued that the Respondent stole the EMD from him; however, as no criminal charges were filed, I find that false pretenses more accurately reflects the facts of this case.

**RECOMMENDED ORDER**

I **RECOMMEND** that the claim filed by the Claimant against the Maryland Real Estate Commission Guaranty Fund be **GRANTED**.

I further **ORDER**:

1. The Guaranty Fund award the Claimant \$7,000.00.
2. The Respondent shall reimburse the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Real Estate Commission.<sup>10</sup>
3. The Respondent's license is suspended. The Maryland Real Estate Commission may not reinstate the Respondent's license until the Respondent repays in full the amount paid by the Guaranty Fund, plus interest, and the Respondent applies to the Real Estate Commission for reinstatement of the license.<sup>11</sup>
4. The records and publications of the Maryland Real Estate Commission reflect this decision.

September 27, 2023  
Date Decision Issued

**SIGNATURE ON FILE**

Tracee N. Hackett  
Administrative Law Judge

TNH/ja  
#207363

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<sup>10</sup> Md. Code Ann., Bus. Occ. & Prof. § 17-411(a) (2018).

<sup>11</sup> Md. Code Ann., Bus. Occ. & Prof. § 17-412(a), (b) (2018).

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