

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM * BEFORE MARINA L. SABETT,
 OF JAMES MCDONALD, JR., * ADMINISTRATIVE LAW JUDGE
 CLAIMANT, * OF THE MARYLAND OFFICE OF
 AGAINST THE MARYLAND * ADMINISTRATIVE HEARINGS
 REAL ESTATE COMMISSION *
 GUARANTY FUND FOR THE * OAH NO: DLR-REC-22-13-29180
 ALLEGED MISCONDUCT OF *
 SUE A. WILLISON * MREC NO: 2013-RE-202 G.F.
 * * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated April 9, 2014, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 21st day of May, 2014,

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

5/21/2014
Date

By: **SIGNATURE ON FILE**
Marla S. Johnson, Commissioner

<p>IN THE MATTER OF THE CLAIM OF</p> <p>JAMES McDONALD, Jr.,</p> <p>CLAIMANT,</p> <p>V.</p> <p>THE MARYLAND REAL ESTATE</p> <p>COMMISSION GUARANTY FUND FOR</p> <p>THE ALLEGED MISCONDUCT OF</p> <p>SUE A. WILLISON, LICENSED REAL</p> <p>ESTATE SALESPERSON,</p> <p>RESPONDENT</p>	<p>* BEFORE MARINA L. SABETT,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH CASE No.: DLR-REC-22-13-29180</p> <p>* MREC COMPLAINT No. : 13-RE-202GF</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On January 23, 2013, James T. McDonald (Claimant) filed a complaint with the Maryland Real Estate Commission (MREC) and a claim against the Maryland Real Estate Commission Guaranty Fund (Fund). The claim was for monetary losses allegedly incurred by the Claimant as a result of the misconduct of Sue A. Willison, Licensed Real Estate Salesperson (Respondent). On July 25, 2013, the MREC transmitted the matter to the Office of Administrative Hearings (OAH) for a hearing regarding the Claimant’s claim against the Fund.

I held a hearing on January 14, 2014, at the Comptroller's Office in Wheaton, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010). The Claimant represented himself. Although the OAH issued an October 29, 2013 notice of this hearing to the Respondent by regular mail and by certified mail to the Respondent's address of record, both the regular mail and certified mail copies were returned by the U.S. Postal Service marked "Return to Sender Not Deliverable as Addressed Unable to Forward." The Respondent did not appear at the January 14, 2014 hearing. Nonetheless, by Consent Order dated November 22, 2011, the Respondent agreed not to contest the claim filed by the Claimant.¹ Hope Sachs, Assistant Attorney General, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

ISSUES

(1) Did the Claimant sustain an actual loss as a result of an act or omission of the Respondent that constitutes theft, embezzlement, false pretenses, forgery, misrepresentation, or fraud?

(2) If the Claimant sustained an actual loss, what is the amount of actual loss compensable by the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits into evidence on behalf of the Fund:

¹ A more detailed discussion of the contents of the Consent Order and the circumstances leading to its entry are discussed *infra* in the Findings of Fact and Discussion.

- Fund Ex. 1 Consent Order, *Maryland Real Estate Comm'n v. Sue Willison*, Case Nos. 2012-RE-002, *et al.*, dated November 22, 2011
- Fund Ex. 2 A Notice of Hearing, dated October 29, 2013, sent by certified mail and returned to OAH as the letter was undeliverable as addressed
- Fund Ex. 3 A Notice of Hearing, dated October 29, 2013, sent by regular mail and returned to OAH as the letter was undeliverable as addressed
- Fund Ex. 4 DLLR license registration information for the Respondent, dated January 9, 2014
- Fund Ex. 5 MREC Complaint and Guaranty Fund Claim, dated January 23, 2013

I admitted the following exhibits into evidence on behalf of the Claimant:

- CL Ex. 1 Residential Dwelling Lease for Maryland between the Claimant as the Tenant and the Respondent as the Landlord, executed July 19, 2010
- CL Ex. 2 Residential Dwelling Lease for Maryland between the Claimant as the Tenant and Kristine Inchausti as the Landlord, executed July 24, 2012
- CL Ex. 3 Residential Dwelling Lease for Maryland between the Claimant as the Tenant and Kristine Inchausti as the Landlord, executed August 8, 2013

No exhibits were admitted on behalf of the Respondent.

Testimony

The Claimant testified on his own behalf. No testimony was offered on behalf of the Respondent or the Fund.

FINDINGS OF FACT

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

1. At all times relevant to this matter, the Respondent was a Licensed Real Estate Salesperson, registration numbers 05 527749 and 05 34796, and worked on behalf of West Patrick Property Solutions, LLC (West Patrick), a property management company located in Frederick, Maryland.

2. On or around July 19, 2010, the Claimant entered into a Residential Dwelling Lease for Maryland with the Respondent in her role as both the agent of West Patrick and the landlord of 20439 Ambassador Terrace, Germantown, Maryland 20874 (Germantown property).
3. The Lease required the Claimant to provide a security deposit in the amount of \$1,650.00 and monthly rent in the amount of \$1,650.00.
4. The tenant paid the security deposit and his monthly rent required under the Lease to the Respondent.
5. The term of the lease was from July 24, 2010 through July 31, 2012.
6. Sometime prior to the expiration of the lease with the Respondent, responsibility for the management of the Germantown property transferred from the Respondent to L. A. Williams Real Estate & Managements, LLC (Williams Managements).
7. On or around July 24, 2012, the Claimant entered into a new lease agreement with Williams Managements for the Germantown property from August 1, 2012 through July 31, 2013. The July 24, 2012 lease agreement stated that the security deposit was given to the Respondent at the time of the lease was signed in 2010, and was still being held by the Respondent at the time the July 2012 lease agreement entered into between the Claimant and Willams Managements. Cl. Ex. 2.
8. On August 8, 2013, the Claimant and Williams Managements entered into another lease agreement for the Germantown property for the period of August 1, 2013 through July 31, 2014. The August 2013 lease agreement stated that no security deposit was being held by Williams Managements, and that the Claimant had filed a complaint with the MREC for the return of his security deposit. Cl. Ex. 3.

9. Despite the Claimant's requests to the Respondent that she return the \$1,650.00 security deposit to him, the Respondent never transferred the Claimant's security deposit back to him, to Williams Managements, nor to any other person or entity acting on behalf of the Claimant or Williams Managements.
10. The Respondent improperly withheld the \$1,650.00 security deposit from the Claimant.
11. The Respondent was the only signatory on the bank accounts opened and maintained by West Patrick and she held 100% ownership of West Patrick.
12. On November 22, 2011, the Respondent entered into a Consent Order with the MREC in which she admitted that she violated Section 17-322(b)(22) of the Business Occupations and Professions Article of the Maryland Annotated Code as to many persons like the Claimant when the Respondent failed "to promptly account for or remit money that came into her possession, but belonged to another person." Fund Ex. 1, at p. 2, paragraph 5.
13. Under the Consent Order, the Respondent further waived any right to participate in the hearing of this matter and waived her right to contest or appeal any decision by the MREC that involves a claim arising out of her "actions while a property manager at West Patrick Solutions." *Id.* at p. 3.
14. Further, under the Consent Order the Respondent may not "apply to the [MREC] in the future for a license to engage in the provision of or assist in the provision of real estate brokerage services in the State." *Id.*

DISCUSSION

The burden of proof at a hearing on a claim against the Fund is on the "claimant to establish the validity of the claim." Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2010).

Section 17-404(a) of the same statute governs all claims brought against the Fund and sets forth, in pertinent part, the following criteria that must be established by a claimant to obtain an award:

§ 17-404. Claims against Guaranty Fund.

(a) *In general.*-(1) Subject to the provisions of this subtitle, a person may recover compensation from the Guaranty Fund for an actual loss.

(2) A claim shall:

(i) be based on an act or omission that occurs in the provision of real estate brokerage services by:

1. a licensed real estate broker;
2. a licensed associate real estate broker;
3. a licensed real estate salesperson; or
4. an unlicensed employee of a licensed real estate broker;

(ii) involve a transaction that relates to real estate that is located in the State; and

(iii) be based on an act or omission:

1. in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or
2. that constitutes fraud or misrepresentation.

(b) *Limitation on recovery.*- The amount recovered for any claim against the Guaranty Fund may not exceed \$50,000 for each claim.

Md. Code Ann., Bus. Occ. & Prof. § 17-404(a),(b) (Supp. 2013). See COMAR 09.11.03.04.

Moreover, the amount of compensation recoverable by a claimant from the Fund pursuant to Business Occupations and Professions Article, Title 17, Subtitle 4, Real Estate Guaranty Fund, Annotated Code of Maryland, is “restricted to the actual monetary loss incurred by the claimant... from the originating transaction.” COMAR 09.11.01.18.

For the reasons that follow, the Claimant is entitled to an award of \$1,650.00 for the actual monetary losses he suffered as the result of the acts or omissions of the Respondent in the instant case. Md. Code Ann., Bus. Occ. & Prof. § 17-410(a), (b) (2010); COMAR 09.11.01.18.

By Consent Order dated November 22, 2011, the Respondent admitted that she violated Section 17-322(b)(22) of the Business Occupations and Professions Article of the Maryland

Annotated Code as to persons like the Claimant when she failed “to promptly account for or remit money that came into her possession, but belonged to another person.” Fund Ex. 1, at p. 2, paragraph 5. Under that Order, the Respondent further waived any right to participate in the hearing of this matter and waived her right to contest or appeal any decision by the Commission that involves a claim arising out of her “actions while a property manager at West Patrick Solutions.” *Id.* at p. 3.

The Respondent, as an agent of West Patrick, entered into a lease agreement with the Claimant in this case on or around July 19, 2010, pursuant to which the Claimant paid \$1,650.00 as a security deposit. The Claimant argues that because the Respondent failed to return the \$1,650.00 to him (or to Williams Managements) within forty-five days after July 31, 2012 (when the lease term ended), he is entitled to the \$1,650 security deposit, interest on the security deposit in the amount of three percent per annum, and damages that are “threefold” of the withheld amount, the later two measures of damages being applicable to landlords under section 8-203(e) of the Real Property Article, Maryland Annotated Code.

Any recovery to which the Claimant may be entitled from the Fund, however, is limited to the actual monetary loss suffered by the Claimant as a result of the claim proven by the Claimant. Md. Code Ann., Bus. Occ. & Prof. § 17-410(b)(1). Such actual damages may not include “monetary losses other than the monetary loss from the originating transaction.” COMAR.09.11.01.18. Accordingly, the Claimant would not be entitled to recover the three percent interest and the threefold damages from the Fund as such amounts would be monetary losses beyond the originating transaction. As the Fund correctly pointed out at the hearing, while the Claimant may have been entitled to the damages provided for in section 8-203(e) of the Real

Property Article in an action directly against the Respondent (brought in a State district court, for example), such damages are not appropriately recovered from the Fund.

Given the testimony of the Claimant and the exhibits admitted, I find that the evidence sufficiently establishes that the Claimant directly paid to the Respondent the \$1,650.00 security deposit for the Germantown property, and the Respondent improperly failed to return to the security deposit to the Claimant. Accordingly, the Claimant is entitled to be compensated by the Fund for the actual monetary loss suffered by the Claimant, \$1,650.00. Md. Code Ann., Bus. Occ. & Prof. § 17-410(b)(1); COMAR.09.11.01.18.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Facts and Discussion, I conclude as a matter of law that the Claimant is entitled to reimbursement from the Real Estate Guaranty Fund in the amount of \$1,650.00 for actual losses resulting from the Respondent's actions. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(1), (2) and 17-410(b)(1) ; COMAR 09.11.01.18 and 09.11.03.04.

RECOMMENDED ORDER

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

That the Claimant's claim against the Maryland Real Estate Guaranty Fund be **ACCEPTED** in the amount of \$1,650.00; and

That the records and publications of the Maryland Real Estate Commission reflect its final decision.

April 9, 2014
Date Decision Issued

MLS/lh
#148644

SIGNATURE ON FILE

Marina L. Sabett
Administrative Law Judge