

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION
V.

MICHAEL L. STRANGE
RESPONDENT

AND

CLAIM OF INDHIRA A. HILL

AGAINST THE REAL ESTATE
COMMISSION GUARANTY FUND

* BEFORE A. ELIZABETH ROJUGBOKAN
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-24-09-46312
* REC CASE NO: 2008-RE-284

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated August 31, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 29th day of September, 2010.

ORDERED,

- A. That the Findings of Fact in the Recommended Decision be, and hereby are, AFFIRMED;
- B. That the Conclusions of Law in the Recommended Decision be, and hereby are, 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

SIGNATURE ON FILE

9-29-2010
Date

By: J. Nicholas D'Ambrósia, Commissioner

RE ON

MARYLAND REAL ESTATE
COMMISSION

v.

MICHAEL L. STRANGE,
RESPONDENT

AND THE CLAIM OF
INDHIRA L. HILL AGAINST THE
REAL ESTATE GUARANTY FUND

* BEFORE A. ELIZABETH ROJUGBOKAN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO. : DLR-REC-24-09-46312
* MREC NO. : 2008-RE-284

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On November 1, 2007, Indhira L. Hill (Claimant) filed a complaint with the Maryland Real Estate Commission (MREC) and a claim against the MREC Guaranty Fund (Fund) for losses allegedly suffered as a result of the actions of Michael L. Strange (Respondent), a licensed real estate salesperson. On December 3, 2009, the REC filed regulatory charges against the Respondent related to a real estate transaction involving the Claimant and authorized the Claimant to proceed with her claim against the Fund.

I conducted a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley,

Maryland. Md. Code Ann., Bus. Occ. & Prof. §§ 17-324 and 17-407(c)(2)(ii) (2004).¹ Jessica B. Kauffman, Assistant Attorney General, represented the MREC. Hope Sachs, Assistant Attorney General, represented the Fund. The Claimant represented herself. The Respondent did not appear after notices were sent to his address of record with the Commission.²

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

ISSUES

1. Did the Respondent violate § 17-322(b)(4) of the Business Occupations and Professions Article, by intentionally or negligently failing to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee or applicant deals?
2. Did the Respondent violate § 17-322(b)(25) of the Business Occupations and Professions Article, by engaging in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent or improper dealings?
3. Did the Respondent violate COMAR 09.11.02.01D by failing to fulfill the obligation to avoid misrepresentation, or concealment of material facts of interest of the Claimant concerning the property the licensee owned and sold?
4. Did the Claimant suffer an actual monetary loss compensable by the Fund as a result of the conduct of the Respondent and, if so, what is the amount of the loss?

¹ All references in the remainder of this Proposed Decision are to the Business Occupations and Professions Article (2004 & Supp. 2009) unless otherwise stated.

² Notice was sent both by certified and regular mail to the Respondent at his address of record on March 31, 2010. The certified mail was returned by the Postal Service as unclaimed. The regular mail was not returned by the Postal Service.

SUMMARY OF THE EVIDENCE

Exhibits

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

- MREC #1 Notice of Hearing, March 31, 2010
- MREC #2 Transmittal from MREC to OAH
- MREC #3 Licensing history of the Respondent
- MREC #4 Request for Investigation
- MREC #5 Report of Investigation prepared by Hal Orbits, with the following attachments:
- Complaint and Guaranty Fund Claim Form, received November 1, 2007
 - Notice of Complaint to the Respondent, November 7, 2007 and response
 - Recommendations Addendum by Sanford Kramer Plumbing, June 18, 2007
 - Notice of Complaint to Oris Fields, November 7, 2007 with response
 - Notice of Complaint to Andre Nicholas, November 7, 2007 with response
 - Residential Contract of Sale, date of offer February 19, 2007, and related documents
 - Residential Property Disclosure and Disclaimer Statement
 - General Addendum, February 21, 2007
 - Letter from Deanna L. Lofton, Office Administrator, to the Claimant and Betty Johnson, July 13, 2007
 - Letter from Derek T. Williams to Ms. Lofton and the Board of Directors, July 18, 2007
 - Letter from Eve Parris, Realty Executives/2000, to Hal Orbits, June 2, 2009
 - Exclusive Right to Sell Residential Brokerage Agreement, February 1, 2007; Residential Property Disclosure and Disclaimer Statement; related documents
 - *For Your Protection: Get a Home Inspection*

Neither the Claimant, nor the Respondent submitted any exhibits.

Witnesses

The MREC presented testimony of the following witnesses:

- The Claimant
- Derek Williams
- Steve Long, MREC Assistant Executive Director

The Claimant testified regarding her Fund claim.

Neither the Respondent, nor the Fund presented any witnesses.

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 in the State of Maryland, License #05-582414.
2. At all times relevant to this matter, the Respondent and his wife, Lydia Strange, were the owners of condominium unit 103 at Cherry Glenn Condominium, Inc. (Cherry Glenn), 11226 Cherry Hill Road, in Beltsville, Maryland (property).
3. At all times relevant to this matter, Mira Campbell, was the owner of unit 203, the unit above the Respondent's property and Derek Williams was the owner of unit T3, the unit below the Respondent's property.
4. In the summer of 2006, Joseph Blackwell, Cherry Glen Maintenance Supervisor, repeatedly inspected condominium units 203, 103 and T3 to discover the source of water leaks into unit 103 and T3. Mr. Blackwell repeatedly told the Respondent that his air conditioning was rusted out and needed to be replaced. Mr. Blackwell also noted that the Respondent's hallway bathtub and drain line were leaking, damaging the ceiling in unit T-3.
5. Deana Lofton, Cherry Glenn's office administrator, directed the Respondent to make the repairs recommended by Mr. Blackwell and he agreed. The Respondent also told Mr. Blackwell that he would make the repairs.
6. The Respondent did not perform any of the repairs. Instead, the Respondent and his wife put the property on the market. The extent of the hallway bathroom water leaks was not noticeable without removing the access panels and inspecting the plumbing and air conditioner.

7. On February 1, 2007, the Respondent and his wife signed the Maryland Residential Property Disclaimer Statement. The Respondent did not disclose any latent defects or acknowledge that there was a plumbing problem in the hallway bathroom.

8. On February 14, 2007, the Respondent, as the owner/settler, entered into a purchase contract with the Claimant, for the property in the amount of \$240,000.00. The property has three bedrooms and two bathrooms. The Claimant secured two roommates ready to move in once she went to settlement. She expected each roommate to share a third of the mortgage payments.

9. The Claimant did not have a professional home inspection performed. After the Respondent and his wife moved out of the property, the Claimant conducted a cursory inspection on her own. She noticed that the ceiling in the hallway bathroom was wet and notified her buyer's agent, Oris Fields, Keller Williams Preferred Properties, regarding her concerns.

10. After several telephone calls to Mr. Fields, the Claimant stated that she no longer wished to purchase the property. Mr. Field told her that if she did not go to settlement "everyone would sue her."

11. On or about February 19, 2007, the Claimant decided to go to settlement.

12. On February 21, 2007, the Respondent and his wife acknowledged in a General Addendum that the property was the source of the water leak directly into T3 and resulting ceiling damage. The Respondent and his wife also accepted full responsibility and liability (including claims, damages, loses and expenses) arising out of or resulting from the source of damage into the property as well as repair of the damaged ceiling in T3.

13. On March 30, 2007, pursuant to an agreement with the Claimant, the Respondent and his wife agreed to deposit \$3,000.00 in an escrow account at First Rate Title to pay for the costs of the repairs.

14. The Claimant went to settlement on March 31, 2007 and moved in sometime in April 2007.

15. Days after the Claimant moved in, she met Mr. Williams' mother, who told her for the first time that the continuous leaking from the property to their unit had begun in the summer of 2006. The Claimant contacted Mr. Fields to assist her in getting the repairs done in accordance with the General Addendum. Mr. Fields provided her with the Respondent's number to speak with him directly.

16. When the Claimant accused the Respondent of having prior knowledge of the extent of the leak months before settlement, he denied it. He agreed, however, to send a plumber over to the property to assess the damage. The plumber never came.

17. Over the next two months, the Claimant repeatedly contacted Mr. Fields as well as the Respondent in an effort to have repairs completed with the money placed in escrow, but neither of them returned her calls.

18. Eve Parris, the Claimant's aunt and a realtor, called the Respondent, who answered and agreed to have a plumber look at the property. A few days later, the plumber appeared and assessed units 103 and T3, but would not make a determination as to the source of the leak until he could inspect unit 203. The Claimant relayed this information to the Respondent.

19. On June 18, 2007, Sanford Kramer, a plumber, inspected the property and determined that the water leaks into T3 were coming from unit 203.

20. On July 13, 2007, Ms. Lofton sent a letter to the Claimant to report complaints from the tenants in unit #T3 and advise her that she was responsible for the damages in the unit below. Cherry Glen ordered the Claimant to make the repairs within ten days, pursuant to the Annotated Code of Maryland, Maryland Condominium Act, section 11-113. The Claimant was further advised that any additional complaints within twelve months would result in a fine not to exceed \$1,000.00.

21. On July 18, 2007, Mr. Williams, owner of T3, wrote a letter to Ms. Lofton, as well as to the Cherry Glen Board of Directors, complaining about the Claimant's failure, over the past two months, to put an end to the continuous water leak into their unit.

22. A few weeks later, the Respondent and the owner of unit 203 showed up with another plumber to inspect the property. Afterwards, the Respondent acknowledged that the water leak was not attributable to unit 203 and agreed to cover the costs of the repairs. Another plumber was scheduled to make repairs on September 1, 2007 at 10:30 a.m.

23. On September 1, 2007 at 10:00 a.m., thirty minutes before the scheduled appointment, the Claimant received a call from her aunt relaying that the Respondent had cancelled the appointment.

24. On October 30, 2007, Ms. Campbell, owner of unit 203 sold her unit.

25. On November 1, 2007, the Claimant filed a claim for reimbursement with the MREC Guaranty Fund in the amount of \$25,000.00 to cover the cost of her mortgage, condominium fees, water leak repairs on her property and to reimburse her for the money she had borrowed from her uncle.

26. Sometime in June 2008, the Claimant disposed of her property through a quick sale. In real estate law a quick sale (or short sale) is a type of transaction in which property is sold for a price that falls below what is due and owing on a mortgage loan.

27. By May 22, 2009, \$691.04 was deducted from the \$3,000.00 escrow account with First Rate Title to cover the Respondent's unpaid property taxes, leaving an escrow balance of \$2,308.96.³ The Claimant has never made a claim against the escrow proceeds.

28. On June 10, 2009, an MREC Investigator interviewed the Respondent who admitted that he knew of the water leak approximately six months before he moved out of the unit.

³ This information was revealed in the MREC's investigation. I can only infer that the Respondent's real estate broker authorized the release of a portion of the escrow funds.

29. The Respondent intentionally failed to disclose a material fact relating to the plumbing problems in his unit (which he discovered in the summer of 2006). The Respondent's conduct demonstrates untrustworthiness and improper dealings in the field of real estate.

30. The Respondent failed to ascertain the extent of the damage to his property or the property below or disclose the information to the Claimant prior to settlement.

31. The Respondent failed to authorize the payment of funds to cover the costs of repair of the plumbing problem in unit 103 or ceiling damage in unit T3.

DISCUSSION

I. The Regulatory Charges

The MREC charged the Respondent with violating section 17-322(b)(4) and (25) of the Business Occupations and Professions Article, which provides, in part:

(b) *Grounds.* – 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:

...

(4) intentionally or negligently fails to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee or applicant deals;

...

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

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

D. 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 alleged that the Respondent, as a seller/owner, failed to disclose a material fact at settlement relating to the extent of the plumbing problems in his hallway bathroom and drain line, that resulted in water leaking into the unit below (unit T3).

The MREC presented the testimony of the Claimant who discussed the emotional turmoil she faced in her efforts to get the Respondent to repair the water leaks as promised, the financial strain the situation created due to her inability to secure a second roommate and her eventual decision to dispose of the property through short sale.

As a first-time homebuyer, she relied solely on the representations made to her by the Respondent⁴ and her real estate agent, Mr. Fields. The Claimant never obtained a professional home inspection, instead relying on her own personal observations as well as those of her uncle, potential roommate and her real estate agent. During her inspection, she noticed the hallway bathroom wet stains and spots on the ceiling and wall. When she mentioned her concerns to Mr. Fields, he assured her that he would handle it. As the settlement date approached, the Claimant became frustrated about the condition of her unit. She got into a heated argument with Mr. Fields, questioning whether either he or the Respondent were “on the up and up.” When the Claimant later expressed her desire to cancel the contract, Mr. Fields told her that “everyone would sue her,” if she did not go to settlement. The Claimant felt she had no other options at her disposal; she had to proceed to settlement.

The Claimant described the state of affairs in the days leading up to settlement. She was informed, one week before settlement, that there was a second leak into unit T3. Mr. Fields assured her that her concerns would be addressed in a general addendum, which was signed on March 30, 2007, placing \$3,000.00 in an escrow account. The General Addendum states in relevant part, as follows:

When the source of the damage and the ceiling has been repaired to Owner/Seller’s satisfaction, and upon receipt of the appropriate documentation to include a satisfactory invoice, from the tradesman, the Seller/Owner shall pay such invoice from the monies that have been placed in Escrow at First Rate Title.

⁴ In the Property Disclosure Form, the Respondent listed no defects and no leaks or moisture. MREC Exhibit #9, page 4.

MREC Exhibit #5, General Addendum. Moreover, the Respondent promised to send out a plumber to address the issue after settlement. The assurances provided by the Respondent gave the Claimant the confidence to proceed to settlement as scheduled on March 31, 2007.

The Claimant then described how conditions continued to deteriorate once she moved into the property. The leaking in her hallway bathroom continued. Her neighbors in unit T3 began complaining about what they considered to be an ongoing problem previously discussed with the Respondent. On July 13, 2007, Cherry Glenn sent the Claimant a letter advising her that she was being held responsible for the damage to T3. MREC Exhibit #11. Shortly thereafter, she received a letter from the occupants of unit T3 demanding to know when the problem would be addressed. MREC Exhibit #12. The Claimant became anxious. She repeatedly called the Respondent, each time leaving messages, but got no response. The Respondent's lack of response made the Claimant feel even more anxious, so she decided to get her aunt to intervene.

The Claimant became more hopeful when her aunt, a realtor, got involved. After reviewing the paperwork relating to the property transaction, her aunt became suspicious, noting that "something didn't seem right" about the paperwork. Her aunt spoke with the Respondent who assured her that he would take care of the situation.

The Claimant then described what she considered to be the Respondent's stalling tactics. In the months that followed, two plumbers assessed the leak problem in her property. The first plumber looked at her unit (103) and the unit below (T3), but he could not determine the cause of the leak unless he had access to the unit above the property (203). The second plumber came with the Respondent and Ms. Campbell (the owner of the 203), and that plumber determined that source of the leak was from the Claimant's property and the Respondent again promised to address the issue. The Claimant made repeated efforts to get the plumber to return with no

success. Finally, a scheduled date to make the repairs on September 1, 2007 was cancelled when, the Respondent cancelled thirty minutes before the scheduled the appointment.

The Claimant discussed the impact of not having the leak repaired as promised. She had purchased the three bedroom, two bathroom condominium with the expectation of securing two roommates who would share the cost of the mortgage payment. The Claimant's ability to secure a second roommate was destroyed by the continuous leaking in the hallway bathroom, rendering that bathroom unusable. Consequently, the Claimant struggled to pay her mortgage without a second roommate. She worked long hours at work and even borrowed money from relatives; but with each month, paying her mortgage became more and more difficult.

The Claimant's health also began to deteriorate due to all the stress relating to this matter. During this period, the occupants of T3 would repeatedly knock on her door wanting to know when the leak in her unit would be fixed. She became distraught because she just couldn't afford the bathroom repairs on her own, so she elected to dispose of her property via a short sale.

The Claimant maintained that the impact on her life has been devastating. She now lives with her mother and shares the couch with her eleven-year-old child. She no longer has the resources to purchase another property. Moreover with her credit seriously damaged, she has no expectation of being able to rent a decent apartment.

The MREC also presented the testimony of Mr. Williams, the occupant of T3, who corroborated the Claimant's statements regarding the ongoing water leak problem.

The MREC then presented the testimony of Mr. Long, who oversees the day-to-day operations of the MREC's investigative staff, which included Hall Orbits, the person who conducted the investigation in this matter. Mr. Long summarized the interviews which supported the basis for the regulatory charges against the Respondent. Mr. Orbits concluded, after his interviews with Cherry Glen employees (Ms. Lofton and Ms. Blackwell), one of the

occupants of unit T3 (Sara Williams) as well as statements made the Respondent, that he failed to disclose a material fact. According to Mr. Orbits, the Respondent had been made aware, in the summer of 2006, that his property was the source of the water leaks and ceiling damage in unit T3. The Respondent had even promised Cherry Glenn employees that he would make the repairs; instead, he put his property on the market without disclosing any of the known problems and issues described above. The MREC determined that regulatory charges were appropriate.

I also find that, even though the Respondent was acting as the owner/seller and not simply providing real estate brokerage services, as licensed real estate agent, he is subject to sanctions under section 17-322 for acts or omissions which occur in the course of any real estate transaction in which he is involved in this State. See, *Nelson v. Real Estate Comm'n*, 35 MD. App. 334, 338, *cert denied*, 280 Md. 733 (1977) (rejecting Nelson's argument that since he was selling his own real estate, he was not subject to sanctions under the MD Real Estate Broker's Act). The court held in *Gross v. Sussex*, 332 Md. 247, 274 (1993) as follows as it relates to the Business Occupations and Professions Article:

... That section subjects the licensee of a real estate broker to suspension or revocation whenever the broker "intentionally or negligently fails to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know that relates to the property with which the licensee or applicant deals." The plain language of the statute makes apparent its purpose: to protect the public in its dealings with real estate brokers, to place a duty of good faith and fair dealing on real estate brokers.

As the purpose of the statute is to protect the public, I find that these recommended charges are appropriate and well supported by the evidence.

II. The Appropriate Regulatory Sanction

The authority to impose sanctions on licensed real estate agents can be found at section 17-322(c) of the Business Occupations and Professions Article, which states in relevant part:

(c) *Penalty.*-

(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

(3) The Commission shall pay any penalty collected under this subsection into the General Fund of the State.

(4) The Commission may not impose a fine based solely on a violation of subsection (b)(35) of this section.

Based on the evidence presented, I find that the MREC's recommendation of a reprimand and a combined civil penalty of \$5,000.00 is reasonable and appropriate.

The Respondent's actions were serious in nature. The Respondent intentionally failed to disclose a material fact - the source of the water leaks in the property as well as the ceiling damage in unit T3. The Respondent's behavior also demonstrated bad faith, untrustworthiness and dishonesty in that he was made aware of the extent of the problem in the summer of 2006, even promised to make the repairs, yet failed to rectify the problems. I further find that the Claimant was harmed by the Respondent's actions in light of the impact of this non-disclosure on the Claimant's ability to make a fully informed decision to purchase the unit. The Respondent does not have a history of any previous violations.

III. The Fund

Claims for reimbursement from the Fund are governed by § 17-404, which states, in pertinent part:

§ 17-404. Claims against the Guaranty Fund.

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

(2) A claim shall:

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

...

3. a licensed real estate salesperson;

...

(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.

With respect to claims against the Fund, COMAR 09.11.03.04 further provides as follows:

.04 Claims Against the Guaranty Fund

A. A guaranty fund claim shall be based on the alleged misconduct of a licensee.

B. For the purpose of a guaranty fund claim, misconduct:

(1) Is an action arising out of a real estate transaction involving real estate located in this State which causes actual loss by reason of theft or embezzlement of money or property, or money or property unlawfully obtained from a person by false pretense, artifice, trickery, or forgery, or by reason of fraud, misrepresentation, or deceit;

(2) Is performed by an unlicensed employee of a real estate broker or by a duly licensed real estate broker, associate broker, or salesperson; and

(3) Involves conduct for which a license is required by Business Occupations and Professions Article, Title 17, Annotated Code of Maryland.

COMAR 09.11.01.18 additionally addresses the issues surrounding recovery from the Fund:

The amount of compensation recoverable by a claimant from the Real Estate Guaranty Fund, pursuant to Business Occupations and Professions Article, Title 17, Subtitle 4, Real Estate Guaranty Fund, Annotated Code of Maryland, 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.** Actual monetary losses may not include commissions owed to a licensee of this Commission acting in his capacity as either a principal or agent in a real estate transaction, or any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.

Emphasis Added.

The Claimant bears the burden of proof in her case against the Fund. § 17-407(e). Based on the evidence presented, the Claimant has not met her burden of proving that she is entitled to reimbursement from the Fund. She presented conflicting information regarding her expenses.

The Claimant filed a claim for \$25,000.00, which included a letter dated September 27, 2007 detailing her expenses:

Expenses	Costs
Mortgage payments of approximately two-thirds \$2,250.00 (\$750.00 per person) for 13 months (1 st payment made May 2007 and last payment made June 2008). <i>See</i> MREC Exhibit #1, Complaint	\$9,750.00
AC System leak	\$136.90
Money borrowed from Uncle to move in	\$1,500.00
Condo fees of \$385 per month for thirteen months ⁵	\$5,005.00
TOTAL	\$16,391.90

The Claimant then stated, in a letter dated June 15, 2009 that her mortgage was \$3,000.00 not \$2,250.00 a month. MREC #Exhibit #5. She also requested reimbursement for condo fees

⁵ The Claimant testified that she paid \$385.00 per month for her condominium fees and owed a total of \$11,862.50. The Claimant went to settlement on March 31, 2007 and later disposed of her property through quick sale sometime in June 2008. This was a 13-month period. The amount provided by the Claimant covers a 30-month period.

for a thirty month period, when in fact she only in the property from a total of thirteen months, from May 2007 through June 2008:

Expenses	Costs
Roommate's share of mortgage payments was \$1,000.00 per month for 13 months	\$13,000.00
AC System leak	\$125.00
Money borrowed from uncle to move in	\$1,500.00
Condo fees of \$385 per month for thirty months	\$11,862.50
TOTAL	\$26,487.50

At the hearing, the Claimant testified that her mortgage was in fact \$2,250.00.

The Claimant also failed to connect her inability to pay her mortgage or condo fees to the obligations inherent in the originating transaction. COMAR 09.11.01.18. The system the Claimant created to pay her mortgage (obtaining two roommates) was outside of the mutual obligations of the real estate transaction. Ultimately, the Respondent only agreed to be responsible for the repairs totaling \$3,000.00, which was placed in an escrow account and, as of the date of the hearing, \$2,308.96 is still available. I understand that the Claimant is asking for more, but she has failed to demonstrate that her loss claim based on mortgage payments, condo fees and the money she borrowed from her uncle were directly attributable to the Respondent's acts or omissions.

While I sympathize with the Claimant, given all that she has been through, she has provided very little documentation to show the extent of her actual damages. The Claimant sold the property without making any repairs or obtaining an estimate to determine the extent of the damage. Moreover, the Claimant failed to provide any documentation to show that her property was sold at a loss due to the damage caused by the water leaks. Thus, I have no way of determining the actual costs attributable to the water leak. I find that the Claimant's Fund claim is without merit. Therefore, I cannot recommend an award.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that:

1. The Respondent violated § 17-322(b)(4) of Business Occupations and Professions, by intentionally or negligently failing to disclose to the Claimant, a prospective buyer of the property, material facts regarding the property involving a rusted out air conditioner that needed to be replaced, leaking in the hallway bathtub and drain line and damage to the ceiling on unit T3.

2. The Respondent violated § 17-322(b)(25) of Business Occupations and Professions, by engaging in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent or improper dealings, including, but not limited to, failing to disclose the Claimant water leaks into the property and damage to the ceiling of unit T3 in the Maryland Residential Property Disclaimer Statement, failing to make the repairs as agreed to in the General Addendum, and failing to authorize the release of the escrow balance to pay for the costs of the repairs.

3. The Respondent also violated COMAR 09.11.02.01D, by concealing material facts relating to the water leaks in the property and into unit T3.

4. The Respondent is subject to sanctions for his conduct pursuant to section 17-322(c) of Business Occupations and Professions, and a reprimand and a \$5,000.00 civil penalty are appropriate sanctions.

5. The Claimant did not suffer an actual monetary loss, compensable by the Fund as a result of the conduct of the Respondent pursuant to section 17-404(a) of Business Occupations and Professions, COMAR 09.11.03.04 and COMAR 09.11.01.18.

RECOMMENDED ORDER

I RECOMMEND that the Maryland Real Estate Commission:

ORDER, that the Respondent violated sections 17-322(b)(4) and 17-322(b)(25) of the Business Occupations and Professions Article, and COMAR 09.11.02.01D; and further

ORDER that the Respondent be reprimanded; and further

ORDER, that the Respondent pay a civil penalty of \$5,000.00; and further

ORDER, that the Claimant not be awarded any money from the Fund; and that it further

ORDER that the records and publications of the Maryland Real Estate Commission

reflect this decision.

August 31, 2010
Date Decision Mailed

AER/ba
#114402

SIGNATURE ON FILE

A. Elizabeth Rojuginokan
Administrative Law Judge

MARYLAND REAL ESTATE
COMMISSION

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EXHIBIT LIST

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 - Notice of Complaint to Oris Fields, November 7, 2007 with response
 - Notice of Complaint to Andre Nicholas, November 7, 2007 with response
 - Residential Contract of Sale, date of offer February 19, 2007, and related documents
 - Residential Property Disclosure and Disclaimer Statement
 - General Addendum, February 21, 2007
 - Letter from Deanna L. Lofton, Office Administrator, to the Claimant and Betty Johnson, July 13, 2007

- Letter from Derek T. Williams to Ms. Lofton and the Board of Directors, July 18, 2007
- Letter from Eve Parris, Realty Executives/2000, to Hal Orbits, June 2, 2009
- Exclusive Right to Sell Residential Brokerage Agreement, February 1, 2007; Residential Property Disclosure and Disclaimer Statement; related documents
- *For Your Protection: Get a Home Inspection*

Neither the Claimant, nor the Respondent submitted any exhibits.