

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM \* BEFORE MICHAEL R. OSBORN,  
OF FLUERDLIS SIMMONS \* ADMINISTRATIVE LAW JUDGE  
AGAINST THE MARYLAND REAL \* OF THE MARYLAND OFFICE OF  
ESTATE COMMISSION GUARANTY \* ADMINISTRATIVE HEARINGS  
FUND FOR THE ALLEGED \* OAH No: DLR-REC-22-09-25481  
MISCONDUCT OF JOHN O. TAYLOR, \* REC CASE NO: 2007-RE-339  
REAL ESTATE SALESPERSON \*

\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated July 28, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 29<sup>th</sup> 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;

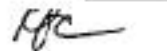
and,

D. That the records, files and documents of the Maryland State Real Estate Commission reflect this decision.

MARYLAND STATE REAL ESTATE COMMISSION

[COMMISSIONER'S SIGNATURE  
APPEARS ON ORIGINAL ORDER]

By: Anne S. Cooke, Commissioner



Date 9/30/10

THE CLAIM OF FLUERDLIS	*	BEFORE MICHAEL R. OSBORN,
SIMMONS,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND	*	OF ADMINISTRATIVE HEARINGS
REAL ESTATE COMMISSION	*	OAH NO.: DLR-REC-22-09-25481
GUARANTY FUND FOR	*	MREC NO.: 07(RE)339
THE ALLEGED MISCONDUCT OF	*	
JOHN O. TAYLOR, REAL ESTATE	*	
SALESPERSON,	*	
CHATEL REAL ESTATE COMPANY,	*	
RESPONDENT	*	
* * * * *		

**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 November 20, 2006, Fluerdlis Simmons (Claimant) filed a complaint with the Maryland Real Estate Commission (MREC) and, on that same date, filed a claim against the MREC Guaranty Fund (Fund) for reimbursement of \$19,925.00 for actual losses suffered as a result of alleged misconduct by the Respondent related to the Respondent’s representation of the Claimant as her broker in a real estate sales transaction.

I held a hearing on the Claimant's Fund claim on April 30, 2010, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. § 17-408 (2004). The Claimant represented herself. Assistant Attorney General Chris King represented the Fund. The Respondent failed to appear for the hearing after proper notice.

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 Office of Administrative Hearings 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, through acts or omissions, wrongfully obtain money or property from the Claimant through theft, embezzlement, false pretenses, forgery, misrepresentation, deceit, or trickery while conducting real estate services for which a license was required?
- 2) If so, what was the extent of the Claimant's losses?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

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

- Cl. Ex. A - Residential Contract of Sale, dated June 28, 2004, with attached check # 866 to the Respondent in the amount of \$1,000.00
- Cl. Ex. B - Addendum Form between Claimant and Aida Hernandez (seller), offer dated June 27, 2004, with signature by the seller dated June 28, 2004
- Cl. Ex. C - Two photocopies of BB&T check to the Claimant for \$5,000.00
- Cl. Ex. D - Settlement Statement, dated August 20, 2004
- Cl. Ex. E - Loan Document Worksheet, dated August 20, 2004
- Cl. Ex. F - Letter To Whom It May Concern from seller, dated August 19, 2004

Cl. Ex. G - Not admitted

Cl. Ex. H - Invoice for roof repairs to Claimant's home, dated December 15, 2009

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

Fund Ex. 1 - Packet containing the following documents: Affidavit of Hubert Lowery, dated April 29, 2010; REC licensing information for the Respondent; and Order for Hearing, dated June 29, 2009

Fund Ex. 2 - Complaint and Guaranty Fund Claim, filed November 20, 2006

No exhibits were offered on behalf of the Respondent.

### Testimony

Mr. King presented the Fund's case, which included the Commission's efforts to notify the Respondent of the hearing. The Fund called no witnesses.

The Claimant testified on her own behalf and presented the testimony of Weldin Goodwin, Real Estate Broker, who testified as an expert in the field of residential real estate transactions.

### **FINDINGS OF FACT**

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

1. The Respondent held a valid real estate broker's license number 3551579 at all relevant times.
2. The Claimant decided to buy a home in 2004.
3. The Claimant was a first-time home buyer, without prior experience or education in residential real estate transactions.
4. The Claimant was not related to the Respondent.

5. When the Claimant began her search for a home to purchase in 2004, she was introduced to the Respondent by mutual friends. The Claimant understood the Respondent to be a real estate agent affiliated with Chatel Real Estate Company.

6. The Claimant believed the Respondent to be her “buyer’s agent.”

7. No buyer’s agency agreement was executed between the Claimant and the Respondent.

8. No written or oral agreement was reached between the Claimant and the Respondent relating to how the Respondent was to be compensated in the event the Respondent assisted the Claimant in locating and purchasing a home.

9. No agreement, oral or written, was reached between the Claimant and the Respondent as to the nature and scope of the Respondent’s responsibilities to the Claimant.

10. The Respondent showed homes to the Claimant prior to June 2004.

11. The Respondent became aware that a single-family home located at 8807 E. Fort Foote Terrace, Fort Washington, Maryland (the property) was for sale as a “Sale by Owner.”

12. The Respondent did not have any listing agreement or agency agreement with the seller of the property.

13. The Respondent arranged with the seller to show the property to the Claimant in June 2004.

14. The Claimant, in the company of the Respondent, viewed the property in June 2004.

15. On June 27, 2004, the Claimant submitted a purchase offer for the property in the amount of \$227,500.00. The purchase offer also proposed that the seller agree to a \$10,000.00 “seller’s credit” to the Claimant.

16. On June 27, 2004, the Claimant submitted an addendum to the purchase offer (addendum) in which she proposed that several uninstalled items located in the family room of the property that were to be used to renovate the property would be conveyed to the Claimant.

17. The addendum included a proposal that the seller would “credit purchaser repair credit of \$8,500.00 to be assigned to Able Estate.”

18. The Respondent provided all standard forms used in the purchase transaction. All lines on the form on which to indicate the identity of the broker and the relationship of the broker to either the buyer or the seller were left blank.

19. On June 28, 2004, the seller accepted the terms of the Claimant’s offer, including the addendum.

20. The property proceeded to closing on August 20, 2004. At closing, the parties to the contract were provided various documents to read and sign, among them a Settlement Statement (settlement statement). The settlement statement provided that the contract sale price was \$237,500.00, which was \$10,000.00 more than the offer for the property accepted by the seller. The settlement statement provided that the “seller’s credit,” or contribution by the seller towards the Claimant’s closing costs, was \$7,125.00, not the \$10,000.00 to which the seller had agreed.

21. The settlement statement, at line items 700 through 702, provided spaces for “Total Sales/Broker’s Commission based on price \$237,500” and spaces for a division of the percentage of the sales commission and what person or entity would be responsible for paying a commission. The spaces in line items 700 through 702 of the settlement statement were left blank.

22. The Claimant proceeded through closing without requesting a change to any line item entry on the settlement statement.

23. Following closing, the Respondent instructed the seller to provide the \$8,500.00 she had agreed to provide the Claimant for repairs to him so that he could place the \$8,500.00 in an escrow account.

24. Two days following closing the Claimant met with the Respondent. The Respondent provided to the Claimant a check in the amount of \$5,000.00 drawn on the account of Able Estate & Company, LLC. The Respondent advised the Claimant the \$5,000.00 was from the \$8,500.00 repair credit to which the seller had agreed.

25. The Respondent told the Claimant the remaining \$3,500.00 of the repair credit was his compensation, and showed the Claimant a check for \$3,500.00 made payable to the Respondent drawn on the account of Able Estate & Company, LLC.

26. The Claimant filed a claim against the Fund that was received by the Fund on November 20, 2006. The Commission provided the Respondent with the Claimant's complaint, and the Respondent failed to respond.

27. The Respondent was required by the Commission to maintain with the Commission a current address and to advise the Commission of any changes of address.

28. The Respondent's real estate license expired June 2, 2008.

29. The Respondent's address of record with the Commission is 12309 Surrey Circle Drive, Ft. Washington, MD 20744.

30. On December 23, 2009, the OAH sent a Notice of Hearing to the Respondent, John O. Taylor, 12309 Surrey Circle Drive, Fort Washington, MD 20744, the address of record for the Respondent on file with the Commission, by both certified mail and first-class mail. The Notice advised the Respondent that a hearing would be conducted March 2, 2010. The

Respondent did not claim the certified mail and the first-class mail was returned to the OAH as undeliverable.

31. The Commission determined through Maryland Motor Vehicle Administration records that the Respondent's address on April 29, 2010 was 500 Pine Road, Fort Washington, MD 20744. The OAH sent a revised Notice of Hearing, with a hearing date of April 30, 2010, to the Respondent at the 500 Pine Road address by both certified mail and first-class mail. The Respondent did not claim the certified mail and the first-class mail was returned to the OAH as undeliverable.

## **DISCUSSION**

### **Summary of Recommended Decision**

I find that the Claimant has shown that she is entitled to recover actual losses from the Fund in the amount of \$3,500.00, and recommend the Fund pay her that amount. I have set out the reasons for my conclusions and recommendation in detail below.

### **Notice to the Respondent**

The Respondent failed to appear for the hearing. I conducted the hearing in his absence. Preliminarily, the Fund presented documents showing that the Notice was sent by certified mail and first-class mail to the Respondent's address of record with the Commission. The first-class mail Notice was returned to the OAH as undeliverable. The U.S. Postal Service returned the certified mail Notice as unclaimed. The Fund provided a revised address to the OAH based on current Maryland Motor Vehicle Administration address information. The Fund presented documents that demonstrated Notice was sent to the Respondent at this address by certified mail and first-class mail. The first-class mail Notice was returned to the OAH as undeliverable. The U.S. Postal Service returned the certified mail notice as unclaimed. The Fund presented no other



evidence that the hearing notice was received by the Respondent. The Respondent's license had expired by the time of the OAH Notice.

Section 8-312 of the Business Regulation Article, Annotated Code of Maryland (2010) requires that a hearing notice be given to a person at least ten days before the hearing by certified mail to the business address of the licensee on record with the REC. That provision also applies to proceedings to recover from the Fund. Md. Code Ann., Bus. Reg. § 8-407(a) (2010). The requirements under the contested case provisions of Maryland's Administrative Procedure Act are similar. *See* Md. Code Ann., State Gov't § 10-209 (2009). I find that the notice requirements were met in this case.

When notice has been provided in the manner required by statute or regulation, the party to whom the notice has been directed has no legitimate claim that the notice given was inadequate or defective. *State v. Barnes*, 273 Md. 195 (1974). In Maryland, a finding that an individual properly mailed a letter raises a presumption that the letter "reached its destination at the regular time and was received by the person to whom it was addressed." (citations omitted). *Bock v. Insurance Comm'r*, 84 Md. App. 724, 733 (1990). Even testimony that the addressee did not receive the letter does not conclusively rebut the presumption of receipt. Instead, the trier of fact must consider that evidence along with all of the other evidence in the case to determine whether the letter was mailed and whether the addressee subsequently received it. *Id.* Accordingly, a receipt indicating notice was delivered to the proper address is all that is necessary to satisfy notice provisions for certified mail. Proof that the addressee actually received the notice is not required. Here, there is no evidence the Respondent received either the first or second Notice, and there was no evidence of delivery.

The facts and circumstances in this case show that notice of this hearing was mailed to the Respondent as required by statute. The Respondent was required by the Commission to maintain a current address on file with the Commission and to notify the Commission of any changes of address. The Commission took the extra step of searching for the Respondent through motor vehicle records to find him. I conclude the Respondent received constructive notice of the hearing. He was the person primarily responsible for maintaining current address information with the Commission, which he failed to do. Thus, I conclude the Respondent was also properly notified of the instant proceeding and that the hearing could properly proceed in his absence as well. COMAR 09.01.02.09.

### **Background**

Much of the evidence presented by the Claimant demonstrates that she misunderstood the role of the Respondent in her purchase of the property. A brief discussion of the Claimant's case against the Fund is warranted.

The Respondent knew the Claimant had no prior experience in residential real estate transactions, and that she was looking for a principal residence for her and her daughters. The Respondent had shown several pieces of property to the Claimant, though no purchase offers had been made. The Claimant believed she had a good relationship with the Respondent and that the Respondent was a friend. The Claimant believed it was the responsibility of the Respondent to apply his knowledge and expertise in residential real estate and to look out for her best interests in all matters relating to the purchase of the property. She attributed every defect in the property, every irregularity at closing, every action of the seller between her offer to purchase the property and closing, and every repair she had to make during the initial months and years of ownership to the failure of the Respondent to look out for her best interests. She believed the Respondent's

advice to her to forego a home inspection, and the Respondent's failure to give the property a more thorough going-over than she had given it herself in the one-and-only thirty-minute walk-through she conducted, resulted in the Claimant taking possession of a home that had significant defects that required thousands of dollars in repairs.

The Claimant had no agreement with the Respondent as to the nature and scope of his responsibilities. The Claimant and the Respondent did not discuss his role or responsibilities relating to the purchase of the property. The Claimant expected the Respondent's years of experience and wealth of knowledge about residential real estate to be to her benefit. She viewed the Respondent as her agent, advisor, and advocate. The evidence demonstrates this was not how the Respondent viewed his role and responsibilities.

The Respondent handled all negotiations for the sale of the property. The Respondent advised the Claimant not to hire an inspector to inspect the property to avoid any delay in closing. The Respondent also informed the Claimant that if she obtained a home inspection she may be unable to obtain a home loan. The Claimant followed this advice and did not obtain a home inspection.

When the Claimant took possession of the property, all of the cabinets, doors, sinks, and fixtures she had seen in the family room when she viewed the property, and which were described in the addendum to the contract, were gone. The Claimant sought help from the Respondent to recover the property missing from the family room. The Respondent told her there was nothing he could do. The Claimant found a large number of problems in the property after taking possession, including extensive rot, deterioration, mold and mildew, insects in the kitchen, falling ceilings, a leaky roof and basement, electrical outlets that did not work, missing gutters and downspouts, a faulty refrigerator, and a faulty hot water heater. There was no oven or range. The

Claimant had to replace the furnace during the first six months of ownership. In the months and years following closing, the Claimant paid what she alleges was almost \$20,000.00 in repairs to the property to make it habitable.

The Claimant's expert sat in the hearing throughout the presentation of all evidence. He had a very dim view of the conduct of the Respondent. He opined that the Respondent failed to exercise the best real estate brokerage practices, especially by failing to conduct a walk-through of the property within twenty-four hours of closing to ensure the Claimant was receiving what she had bargained for. The expert opined, based on his review of the documents admitted into evidence and his expertise, that the property must have passed a termite inspection prior to closing, and that an appraiser would have conducted a physical evaluation of the property to ensure its value provided sufficient security for the mortgage loan to the Claimant. The expert opined the lender would never release funds to the Claimant to purchase the property without these necessary inspections and appraisals.

The Claimant's expert was unable to draw a conclusion that the Respondent had committed acts of theft, embezzlement, false pretenses, or forgery, or acts that constituted fraud or misrepresentation with the exception of his retention of part of the repair credits the Claimant was due from the seller as his compensation.

### **The Real Estate Commission Guaranty Fund**

Claims for reimbursement from the Fund are governed by section 17-404 of the Annotated Code of Maryland Business Occupations Article and COMAR 09.11.03.04, which state as follows:

#### **§ 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:

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. & Prof. § 17-404 (2004).

COMAR 09.11.03.04 Claims Against the Guaranty Fund.

...

A. A Guaranty Fund claim shall be based on 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 or salesperson; and

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

**Burden of Proof**

The Claimant must prove she has a valid claim against the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2004).

### **Respondent's Status as a Real Estate Licensee**

In order for a licensee's loss-causing conduct to be the basis of a claim against the Fund, that conduct must arise out of a transaction in which the licensee is acting in a capacity for which a license is required. *Sheppard v. Bay Country Realty, Inc.*, 297 Md. 88 (1983); COMAR 09.11.03.04B(3). Providing real estate brokerage services, associate real estate brokerage services, or real estate sales services requires a license. Md. Code Ann., Bus. Occ. & Prof. § 17-301(a) (2004). A licensee may be a real estate broker, an associate real estate broker, or a real estate salesperson. Md. Code Ann., Bus. Occ. & Prof. § 17-101(g) (Supp. 2009). The Fund presented evidence that the Respondent was a real estate licensee at all relevant times. Providing real estate brokerage services means, for consideration, assisting another person to locate residential real estate for purchase. Md. Code Ann., Bus. Occ. & Prof. § 17-101(1)(2) (2004). Thus, I conclude the conduct about which the Claimant complains arose from a transaction in which a real estate license was required to be held by the Respondent, that the Respondent was compensated, and that his conduct was loss-causing.

### **Ethical Standards**

To protect the interests of the public, the Maryland legislature has directed the MREC to adopt a code of ethics to set standards of conduct for all persons licensed to conduct real estate transactions. Md. Code Ann., Bus. Occ. & Prof. § 17-207(a) (2004). The MREC has done so through publication of a Code of Ethics. Under the Code of Ethics, a licensee shall make a reasonable effort to ascertain all material facts concerning every property for which the licensee accepts an agency, and to fulfill this obligation by avoiding error, exaggeration, misrepresentation, or concealment of material facts.

COMAR 09.11.02.01D. A licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field, and eliminate practices which could be damaging to the public or damaging to the integrity of the real estate profession. COMAR 09.11.02.02.01C. In accepting employment as an agent, the licensee shall protect and promote the interests of the client. COMAR 09.11.02.02A.

The Claimant had no agency agreement with the Respondent. The Claimant believed the Respondent should be looking out for her best interests, but there was no agreement or understanding, written or otherwise, that existed between her and the Respondent that described or articulated his responsibilities with respect to the property, or how he was to be compensated.

### **Terms Defined**

The statutory and regulatory provisions governing the Fund do not define theft, embezzlement, false pretenses, forgery, fraud, misrepresentation, trickery, or deceit. The Maryland legislature has codified the common law definitions of some of these terms, provided statutory definitions for others, or included the common law definitions of some terms within statutory definitions in the Criminal Law Article. These terms have also been defined by Maryland courts.

Theft means unlawfully obtaining or exerting unauthorized control of the property of another with the intention that the owner be deprived of it. Md. Code Ann., Crim. Law, § 7-104 (Supp. 2009.) Embezzlement means fraudulently and willfully appropriating money or a thing of value that a fiduciary holds in a fiduciary capacity contrary to the requirements of the fiduciary's trust responsibility. Md. Code Ann., Crim. Law, § 7-113 (2002). Embezzlement is the fraudulent appropriation of personal property by a person to whom it was entrusted by or for the owner.

*Couture v. State*, 7 Md. App. 269 (1969). False pretenses means: a false representation of past or

existing fact; made with intent to defraud; through which money or something of value is lost when the victim relies on the falsity. *Lockard v. State*, 3 Md. App. 580 (1968). Forgery is recognized as within the definition of counterfeit, and means to materially alter or falsely make an original document or create a new false document. Md. Code Ann., Crim. Law, § 1-101(c) (2002). Deception means to knowingly create or confirm in another a false impression that the offender does not believe to be true, or failing to correct a false impression that the offender has previously created or confirmed. Md. Code Ann., Crim. Law, § 7-101(b) (Supp.2009). Misrepresentation and trickery require no additional explanation or definition, as the terms are well understood.

### **Essential Element of Proof Absent**

The key element to any and all of the Claimant's claims for recovery from the Fund is proof that the Respondent obtained money or property from the Claimant. Her claims must be based on an act or omission by the Respondent in which money or property was obtained from her by theft, embezzlement, false pretenses, forgery, fraud, misrepresentation, artifice, trickery, forgery, or deceit. Except as noted below, the Claimant failed to carry this burden.

The Claimant was displeased with the performance and conduct of the Respondent. The Claimant's expert took a dim view of his conduct as well and opined there were steps the Respondent should have taken to ensure the Claimant's best interests were more carefully guarded. However, the Claimant presented no proof that the Respondent obtained money or property from her through his acts or omissions, with one exception. Thus, most of the Claimant's claims against the Fund must fail.

### **Claimant's Proof is Sufficient as to One Aspect of Her Claim**

The real estate licensing history of the Respondent presented by the Fund makes no



mention of any affiliation by the Respondent with Chatel Real Estate or Able Estate & Company, LLC. The Claimant believed the Respondent to be affiliated with Chatel Real Estate. The Respondent included in the addendum to the Claimant's offer that the seller agree to provide to the Claimant a \$8,500.00 repair credit to be paid to Able Estate. At settlement, the Claimant directed the seller to provide \$8,500.00 to him for deposit in an Able Estates escrow account. The Respondent then paid to the Claimant only \$5,000.00 of that repair credit, claiming \$3,500.00 for himself as compensation for his efforts in handling the transaction for the Claimant. The Respondent was present at settlement and exercised control of money that belonged to the Claimant. He deliberately misrepresented his entitlement to it, to the Claimant's detriment. The Respondent paid \$3,500.00 to himself even though he had no compensation agreement with the Claimant whatsoever for handling the "sale by owner" transaction between the Claimant and the seller. The Claimant was aware the Respondent appropriated these funds to himself, and it was only through his misrepresentations of entitlement that she allowed him to keep the money. This entitles her to some measure of the relief she seeks.

The Claimant carried her burden of proof as to \$3,500.00.

### **CONCLUSIONS OF LAW**

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

The Respondent was a licensed real estate broker, associate real estate broker, or real estate salesperson. Md. Code Ann., Bus. Occ. & Prof. § 17-101(g) (Supp. 2009).

The Respondent was a real estate licensee at all relevant times. Providing real estate brokerage services means, for consideration, assisting another person to locate residential real estate for purchase. Md. Code Ann., Bus. Occ. & Prof. § 17-101(l)(2) (Supp. 2009).

Thus, I conclude the conduct about which the Claimant complains arose from a

transaction in which a real estate license was required to be held by the Respondent, and that the conduct was loss-causing;

The Claimant's claims are based on acts or omissions that occurred in the provision of real estate brokerage services by the Respondent relating to real estate in the State;

Money in the amount of \$3,500.00 was obtained from the Claimant by the Respondent by misrepresentation in the course of a real estate transaction. The misrepresentation caused the Claimant to lose \$3,500.00. Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2004); COMAR 09.11.03.04; and,

The Claimant has met her proof burden as to an actual loss of \$3,500.00. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2004).

### **RECOMMENDED ORDER**

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

**ORDER**, that the Claimant be reimbursed \$3,500.00 from the Maryland Real Estate Commission Guaranty Fund to compensate her for losses that she sustained because of the conduct of the Respondent, and further,

**ORDER**, that the Respondent be ineligible for any Maryland Real Estate Commission license until the Respondent reimburses the Fund for all monies disbursed under this Order plus annual interest of at least ten percent, as set by the Commission; Md. Code Ann., Bus Occ. & Prof. § 17-411(a)(2) (2004), and further,

**ORDER**, that the records and publications of the Maryland Real Estate Commission reflect this decision.

July 28, 2010  
Date Decision Mailed

ADMINISTRATIVE LAW JUDGE'S SIGNATURE  
APPEARS ON ORIGINAL ORDER

MICHAEL K. USDOMI  
Administrative Law Judge

MRO  
#113624

THE CLAIM OF FLUERDLIS	*	BEFORE MICHAEL R. OSBORN,
SIMMONS,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND	*	OF ADMINISTRATIVE HEARINGS
REAL ESTATE COMMISSION	*	OAH NO.: DLR-REC-22-09-25481
GUARANTY FUND FOR	*	MREC NO.: 07-RE-339
THE ALLEGED MISCONDUCT OF	*	
JOHN O. TAYLOR, BROKER,	*	
CHATEL REAL ESTATE COMPANY,	*	
RESPONDENT	*	

\* \* \* \* \*

**FILE EXHIBIT LIST**

Claimant's Exhibits:

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Fund Ex. 2 - Complaint and Guaranty Fund Claim, filed November 20, 2006

Respondent's Exhibits:

None.

# DLLR

STATE OF MARYLAND  
DEPARTMENT OF LABOR, LICENSING AND REGULATION

MARTIN O'MALLEY, Governor  
ANTHONY G. BROWN, Lt. Governor  
ALEXANDER M. SANCHEZ, Secretary

Division Occupational & Professional Licensing  
Stanley J. Botts, Commissioner

DLLR Home Page: [www.dllr.state.md.us/license/ocyprof/recomm.html](http://www.dllr.state.md.us/license/ocyprof/recomm.html)  
MREC E-mail: [mrec@dllr.state.md.us](mailto:mrec@dllr.state.md.us)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
FIRST CLASS MAIL

September 30, 2010

Mr. John O. Taylor  
500 Pine Road  
Fort Washington, Maryland 20744

Ms. Fluerdlis Simmons  
8807 E. Fort Foote Terr.  
Fort Washington, Maryland 20744

RE: **Claim of Fluerdlis Simmons against the Maryland Real Estate Commission  
Guaranty Fund for the Alleged Misconduct of John O. Taylor**  
Case No. 2007-RE-500 GF BI  
334

Dear Mr. Taylor and Ms. Simmons:

Enclosed is your copy of the Proposed Order of the Commission issued on behalf of the Claim of Fluerdlis Simmons Against the Maryland Real Estate Commission Guaranty Fund for the Alleged Misconduct of John O. Taylor heard by an Administrative Law Judge on April 30, 2010.

The Claimant(s) and/or Respondent(s) have the right to file Exceptions to the Proposed Order and to present Arguments to the Commission. Written exceptions to the Proposed Order or a request to present Arguments must be filed with the Commission within 25 days of the Claimant(s) and/or Respondent(s) receipt of this Proposed Order.

Should the Claimant(s) and/or Respondent(s) fail to make his and/or their Exceptions and request to present Arguments known to the Commission within the time specified, the Proposed Order of the Commission shall be deemed final and shall become effective 30 days thereafter. This additional period is to allow time should the Claimant(s) and/or Respondent(s) desire to file in a Court of Law.

Sincerely,

  
(COMMISSIONER'S SIGNATURE  
APPEARS ON ORIGINAL ORDER)

KFC/bai

Enclosure: Copy of Proposed Order

