

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM \* BEFORE DEBORAH H. BUIE,  
OF SAM AXELROD AND \* ADMINISTRATIVE LAW JUDGE  
WENDY FORBES, CLAIMANTS \* OF THE MARYLAND OFFICE OF  
AGAINST THE. \* ADMINISTRATIVE HEARINGS  
MARYLAND REAL ESTATE \*  
COMMISSION GUARANTY FUND \* OAH NOS: DLR-REC-22-12-14224  
FOR THE ALLEGED MISCONDUCT \*  
OF TAMARA SADOWSKI \* MREC NO: 2010-RE-367 G.F.

\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated October 16, 2012, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 27th day of November, 2012,

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

11/28/2012  
Date

By: SIGNATURE ON FILE  
Marla S. Johnson, Commissioner

IN THE MATTER OF THE CLAIM OF:	*	BEFORE DEBORAH H. BUIE,
SAM AXELROD AND	*	AN ADMINISTRATIVE LAW JUDGE
WENDY FORBES,	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND REAL	*	OF ADMINISTRATIVE HEARINGS
ESTATE GUARANTY FUND,	*	OAH No. DLR-REC-22-12-14224
FOR THE ALLEGED MISCONDUCT	*	REC No. 2010-RE-367
OF TAMARA SADOWSKI	*	
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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 March 3, 2010, Sam Axelrod and Wendy Forbes (Claimants) filed a claim with the Maryland Real Estate Guaranty Fund (Fund), established by the Maryland Real Estate Commission (REC), for reimbursement of actual losses in the amount of \$10,094.00, suffered as a result of the alleged misconduct by Tamara Sadowski (Respondent), a licensed real estate salesperson at relevant times. On March 15, 2012, the REC transmitted the case to the Office of Administrative Hearings (OAH) for a contested case hearing.

On July 26, 2012, I conducted a hearing at the OAH Wheaton office in Wheaton, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-407(c)(2)(ii) (2010). Wendy Forbes was present and presented the case on behalf of both Claimants. Eric B. London, Assistant Attorney

General, represented the Fund. Despite proper notice, the Respondent failed to appear at the hearing or to request a postponement.<sup>1</sup> Pursuant to applicable law, I proceeded to hear the case in the Respondent's absence.<sup>2</sup>

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings of the Department of Labor, Licensing and Regulation (DLLR), and the Rules of Procedure of the OAH govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012); Code of Maryland Regulations (COMAR) 09.01.03; 09.11.03; and 28.02.01.

### ISSUES

1. Did the Claimants sustain an actual loss compensable by the Fund?
2. If so, what is the amount of that loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following documents into evidence on behalf of the Claimants:

- Cl. #1. December 7, 2006 Property Management and Exclusive Rental Agreement
- Cl. #2. February 11, 2008 Residential Lease Agreement
- Cl. #3. Copies of Cashier's Checks (July, August, October 2009)
- Cl. #4. E-mails between Claimants and Respondent
- Cl. #5. Summary of complaint

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<sup>1</sup> On May 22, 2012, OAH sent notice of the July 26, 2012 hearing, by both certified and first class mail to the Claimant's address of record with the Commission and the Maryland Motor Vehicle Administration, 4909 Quebec Street, College Park, Maryland 20740 (*See* Fund Ex. ## 2 & 3.) Although the United States Postal Service returned the certified mailing, the first class mailing was never returned to OAH as undeliverable.

<sup>2</sup> Section 17-324 of the Business Occupations Article provides that before the Commission can take any final action against an individual if that individual has been personally served with a hearing notice or the hearing notice or has been sent certified mail notice at least ten days prior to the hearing to the individual's last known business address. Md. Code Ann., Bus. Occ. & Prof. § 17-324(d) (2010). If the individual, after receiving proper notice of the hearing, fails or refuses to appear, the Commission may hear and determine the matter despite the individual's absence. Md. Code Ann., Bus. Occ. & Prof. § 17-324(f) (2010).

Cl. #6. Detailed timeline of contacts

Cl. #7. July 16, 2009 letter from Claimants to Respondent

Cl. #8. Undated letter from Claimants to Respondent

Cl. #9. November 10, 2009 letter from Broker Byrk to Respondent

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

GF #1. May 22, 2012 Notice of Hearing

GF #2. May 22, 2012 Notice of Hearing, with attached certified mail receipts

GF #3. Certified receipt for address correction

GF #4. E-mail from Eric London to Steven Long

GF #5. July 24, 2012 REC Professional License History

GF #6. March 6, 2012 Order for Hearing

GF #7. March 3, 2012 Complaint and Guaranty Fund Claim

GF #8. March 11, 2011 REC Report of Investigation, with eight attached exhibits.

As the Respondent was not present, she offered no exhibits.

### Testimony

Wendy Forbes testified on behalf of both Claimants. The Fund did not present testimony, only argument. As the Respondent was not present, she offered no testimony.

### **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.
2. The Respondent's was originally licensed in 2001 and the license expired on April 18, 2011. Renewal of the Respondent's license was not permitted due to her failure to respond to the instant complaint.

3. On or about December 7, 2006, the Claimants and Respondent, in her capacity as agent of Red Door Realtors, LLC, entered into a Property Management and Exclusive Rental Agreement (the Management Agreement). The Management Agreement directed the Respondent to rent, lease, operate and manage the Claimants' property located at 3102 Cheverly Avenue, in Cheverly, MD (the Property).
4. The Respondent performed well per the Management Agreement from January 2007 through February 2008. When a new tenant moved into the Property in February 2008, the Claimants began experiencing problems with the Respondent's performance.
5. On February 11, 2008, the Respondent entered into a Residential Lease Agreement (the Lease) with a tenant (the Tenant) for the Property. Pursuant to the Lease, the Tenant was to pay rent at \$1,750.00 per month, through February 2009. The Tenant also paid a security deposit of \$3,500.00 and \$1,344.00, which represented the last month's rent. The Tenant paid a total of \$4,844.00.
6. The Respondent never provided the Claimants with a copy of the Lease despite repeated requests. The Claimants names do not appear on the Lease as landlords. The Respondent placed her initials throughout the Lease, representing herself as the landlord.
7. The Respondent failed to remit to the Claimants rent on a timely basis for the majority of months beginning in May 2008. On repeated occasions, the Claimants asked the Respondent to find a more reliable tenant; the Respondent was unresponsive to the Claimants' concerns and requests, frequently not responding to e-mails for weeks.
8. Because of the regular late rent payments, on July 16, 2009, the Claimants notified the Respondent in writing that they wished to terminate the Management Agreement, effective September 2009. The Respondent asked for a grace period and the Claimants

acquiesced. The Claimants renewed their request, however, for termination of the Management Agreement, effective September 30, 2009.

9. Effective October 1, 2009, the Claimants engaged the services of Property Management Specialists, Inc (PMS). On November 10, 2009, A. Bryk, the PMS broker, sent a letter to the Respondent requesting copies of the Lease, contact information for the Tenant, and the whereabouts of the security deposit.
10. The Respondent did not respond to the letter. The Claimants continually e-mailed the Respondent throughout September and early October, requesting information about September and October 2009 rent. The Respondent never responded to those e-mails.
11. PMS obtained copies of cashier's checks for rent paid for the months of August, September, and October 2009. The same Tenant who entered into a one-year lease in February 2008 paid \$1,750.00, payable to the Respondent, for the month of August 2009; \$1,750.00, payable to the Respondent, for the month of September 2009; and \$1,825.00, payable to the Respondent, for the month of October 2009.
12. None of these funds were remitted to the Claimants. Similarly, the \$4,844.00 (security deposit and last month's rent) that was paid by the Tenant in February 2008 was never remitted to the Claimants.
13. On March 3, 2010, the REC received a complaint filed by the Claimants. An investigator, J. Grimes was assigned to the complaint. Ms. Grimes interviewed the Claimants and made numerous attempts to contact the Respondent for a response to the complaint. The attempts including certified mail, telephone calls to the phone number on file with REC and phone numbers provided by the Claimants, as well as a visit to the Respondent's address of record.

14. The Respondent never responded to Ms. Grimes.

### DISCUSSION

A person may recover compensation from the Fund for an actual loss based on an act or omission that occurs in the provision of real estate brokerage services by a licensed real estate broker or licensed real estate salesperson that involves a transaction related to real estate located in the State. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(i), (ii) (2010). For misconduct to be compensable, the act or omission must constitute either theft, embezzlement, false pretenses, forgery, fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(2)(iii), 17-402(c) (2010); COMAR 09.11.03.04. At a hearing concerning a claim against the Fund, the burden of proof shall be on the claimant to establish the validity of the claim. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2010). The REC shall order payment of a claim by the Fund for the actual monetary loss, up to \$25,000, suffered by the claimant. Md. Code Ann., Bus. Occ. & Prof. § 17-410(a), (b) (2010).

Furthermore, COMAR 09.11.01.18 sets forth the parameters of an actual loss as follows:

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.

Two categories of acts or omissions may give rise to an actual loss. In the first, money or property is obtained by a licensee by theft, embezzlement, false pretenses or forgery. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(1). The second category involves a licensee's act or

omission that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(2); COMAR 09.11.03.04B(1).

The statute includes the following relevant definitions at section 17-101 of the Business Occupations and Professions Article:

(a) *In general.*- In this title the following words have the meanings indicated.

...

(j) *Licensed real estate salesperson.*- “Licensed real estate salesperson” means, unless the context requires otherwise, a real estate salesperson who is licensed by the Commission to provide real estate brokerage services on behalf of a licensed real estate broker with whom the real estate salesperson is affiliated.

...

(l) *Provide real estate brokerage services.*- “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;

...

(m) *Real estate.*-

(1) “Real estate” means any interest in real property that is located in this State or elsewhere.

...

Md. Code Ann., Bus. Occ. & Prof. § 17-101 (2010).

The essential facts in this proceeding are not in dispute. The Claimants executed a property management and leasing agreement with the Respondent to lease and manage the Claimants’ Property. The Respondent secured a tenant for the Claimants’ Property and also entered a lease agreement with the Tenant to collect rent.

The evidence established that the Respondent collected rent for the months of August through October 2012, totaling \$5,250.00 but failed to remit any portion to the Claimants in each of those months, as required by the Management Agreement.<sup>3</sup> The evidence also establishes that

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<sup>3</sup> There is no explanation as to why \$1,825.00 was collected from the Tenant for October 2009; however, the Claimants are seeking recovery of only the lease agreement amount of \$1,750.00, no more.



in February 2008, the Respondent collected a security deposit from the Tenant of \$3,500.00 as well as \$1,344.00, which represents the last month's rent. No portion of those funds were ever remitted to the Claimants.

The Respondent has never responded to the allegations. The REC investigator, J. Grimes, made several attempts to contact the Respondent and received no response. The Respondent did not appear at the hearing to dispute the allegations. The evidence establishes that she failed to pay amounts due to the Claimants in violation of § 17-322(b)(22) of the Business Occupations and Professions Article. Further, there is no dispute that the Respondent was a licensed real estate salesperson at relevant times and that the transactions in question involved real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. § 17-101(a) (2010). The Respondent's actions amounted to theft of the Claimants' money, and they are therefore entitled to compensation from the Fund for their actual loss. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(2), 17-402(c) (2010); COMAR 09.11.03.04.

#### Amount of Actual Loss

The statute permits a claimant to recover compensation from the Fund for actual losses suffered not to exceed \$25,000.<sup>4</sup> Md. Code Ann., Bus. Occ. & Prof. § 17-410(a), (b) (2010); COMAR 09.11.01.18. The statute further provides that the REC may order payment by the Fund "only for the actual monetary loss suffered by the claimant. . . ." Md. Code Ann., Bus. Occ. & Prof. § 17-410(b)(1). The regulations also provide that the compensation recoverable from the Fund is "restricted to the actual monetary loss incurred by the claimant," is limited to "the monetary loss from the originating transaction," and "may not include commissions owed to a licensee . . . acting in his capacity as a principal or agent in a real estate transaction. . . ."

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<sup>4</sup> The recovery limit under Section 17-404 has changed to \$50,000.00 effective July 1, 2012. 2012 Md. Laws ch. 184 .

COMAR 09.11.01.18. In their Complaint, the Claimants sought to recover \$10,094.00 for three months rent (August through October 2009), the security deposit, and the last month's rent.

I conclude that the Claimants are entitled to recover \$5,250.00, the total of three months for which the Respondent failed to remit the rent payments, \$3,500 for the money paid for the security deposit, and \$1,344 for the money paid for last month's rent (pursuant to the lease agreement), for a total of \$10,094.00. There was no evidence presented indicating that the Respondent was entitled to be compensated for any commissions. Accordingly, I conclude that the Claimants are entitled to reimbursement from the Fund in the amount of \$10,094.00.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Facts and Discussion, I conclude that the Claimants are entitled to reimbursement from the Real Estate Guaranty Fund in the amount of \$10,094.00 for actual losses resulting from the Respondent's theft. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(2)(iii)(1), 17-410(b)(1) (2010); COMAR 09.11.01.18; 09.11.03.04.

### **RECOMMENDED ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, I hereby **RECOMMEND** that the Maryland Real Estate Commission:

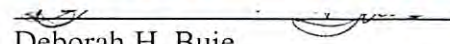
**ORDER** that the Claimants' claim against the Maryland Real Estate Guaranty Fund be **ACCEPTED** in the amount of \$10,094.00; and that it further,

**ORDER** that the records and publications of the Maryland Real Estate Commission reflect its final decision.

October 16, 2012  
Date Decision Mailed

DHB: #137937

**SIGNATURE ON FILE**

  
Deborah H. Buie  
Administrative Law Judge