

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM	*	BEFORE JENNIFER CARTER-JONES,
OF CARROLL WALLACE	*	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-22-09-25453
MISCONDUCT OF	*	REC CASE NO: 2008-RE-387 G.F.
AISHA K. MOORE	*	
* * * * *		* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated August 23, 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'Ambrosia, Commissioner

SIGNATURE ON FILE

IN THE MATTER OF THE CLAIM * BEFORE JENNIFER CARTER-JONES,
OF CARROLL WALLACE, * AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND REAL * OF THE MARYLAND OFFICE
ESTATE GUARANTY FUND, * OF ADMINISTRATIVE HEARINGS
FOR THE ALLEGED MISCONDUCT * OAH No.: DLR-REC-22-09-25453
OF AISHA K. MOORE * REC No. 08-RE-387

*

* * * * *

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 December 13, 2007, Carroll Wallace (Claimant) filed a claim with the Maryland Real Estate Commission (REC) Guaranty Fund (Fund) for reimbursement for actual losses in the amount of \$19,066.96, suffered as a result of alleged misconduct by Aisha K. Moore (Respondent), a formerly-licensed real estate broker. On or about June 19, 2009, the REC transmitted the case to the Office of Administrative Hearings (OAH) for a contested case hearing.

On May 25, 2010, I conducted a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-407(c)(2)(ii) (2004). Brian R. Bregman, Esquire,

represented the Claimant. Peter Martin, Assistant Attorney General, represented the Fund. The Respondent failed to appear.

On February 26, 2010, the OAH mailed a notice of the hearing, by first class mail and by certified mail, to the Respondent's address of record with the REC. The notice advised the Respondent that a hearing was scheduled regarding the claim against her on April 28, 2010. The United States Postal Service (USPS) returned the certified notice to the OAH with the notation "Return to Sender: No Such Street." The first-class notice was returned to the OAH with the notation "Return to Sender: Vacant." The hearing was rescheduled for May 25, 2010 and, on March 29, 2010, the OAH mailed a notice of the rescheduled hearing, by certified mail, to the same address of record for the Respondent. The USPS returned that letter with the notation: "Return To Sender: Attempted – Not Known." The REC obtained a second address for the Respondent and, on April 5, 2010, the OAH again mailed the notice of the May 25, 2010 hearing through certified mail, which was also returned by the USPS. On April 2, 2010, the REC contacted the MVA and verified that the address to which the OAH sent the April 5, 2010 hearing was the Respondent's address of record with the MVA.

The Respondent was given due notice of her hearing pursuant to Md. Code Ann., Bus. Occ. & Prof. § 17-324(d)(ii) (2004). After waiting more than fifteen minutes for the Respondent or anyone representing her to appear, I ruled that the hearing would proceed in the Respondent's absence. Md. Code Ann., Bus. Occ. & Prof. § 17-324(f) (2004).

Procedure is governed by the contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH. Md. Code Ann.,

State Gov't §§ 10-201 through 10-226 (2009); COMAR 09.01.03; COMAR 09.11.03;
COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund?
2. What is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- Cl. Ex. #1 - Not Admitted
- Cl. Ex. # 2 - Agreement for the Assignment of Beneficiary Interest, dated September 7, 2006
- Cl. Ex. # 3 - Trust Agreement, dated September 7, 2006
- Cl. Ex. # 4 - Occupancy Agreement, dated September 7, 2006
- Cl. Ex. # 5 - Limited Power of Attorney, dated September 7, 2006
- Cl. Ex. # 6 - Cost Sheet, dated September 7, 2006
- Cl. Ex. # 7 - Checks from Claimant to Troese Title Inc. and to Envestus Corporation: August 29, 2006, check number 887597757
August 29, 2006, check number 887597756
- Cl. Ex. # 8 - Check from Claimant to Troese Title Inc, dated September 7, 2006, check number not visible
- Cl. Ex. # 9 - Checks for Rent from Claimant to RZ Management LLC:
 - November 8, 2006, check number 887595713,
 - December 7, 2006, check number 887595895
 - January 17, 2007, check number 100281329
 - January 19, 2007, check number 100281348
 - February 12, 2007, check number 100281474¹

¹ A copy of the back of this check is also included in Cl. Ex. #9

- March 28, 2007, check number 100281752
- March 28, 2007, check number 100281753
- April 18, 2007, check number 10029489

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

Fund Ex. # 1 - Notice of Hearing, dated February 26, 2010, with Certified Mail Slip

Fund Ex. # 2 - Notice of Hearing, dated March 8, 2010, with Certified Mail Slip

Fund Ex. # 3 - Notice of Hearing- Rescheduled, dated March 29, 2010, with Certified Mail Slip

Fund Ex. # 4 - Notice of Hearing- Rescheduled, dated April 5, 2010, with Certified Mail Slip

Fund Ex. # 5 - Affidavit of Steven Long, dated April 5, 2010

Fund Ex. # 6 - Letter from Katherine F, Connelly, dated May 11, 2010, with attached Licensing History of Respondent

Fund Ex. # 7- Complaint and Guaranty Fund Claim, dated December 13, 2007

No documents were submitted on behalf of the Respondent.

I admitted the following exhibit into evidence as a joint exhibit on behalf of the

Fund and the Claimant:

Joint Ex. #1- Report of Investigation by Robert Oliver, Received: December 4, 2008, Closed: March 31, 2009

Testimony

The Claimant testified on his own behalf.

The Fund did not present any testimony.

No testimony was presented on the Respondent's behalf.

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 broker. She owned a brokerage company named Envestus Group LLC (Envestus). The Respondent also owned a company named RZ Management (RZ).
2. Before September 2006, the Claimant was living in a townhouse with his family in Waldorf, Maryland, and he was interested in purchasing another home. The Claimant did not have good credit at the time.
3. The Claimant met the Respondent through a friend.
4. In September 2006, the property located at 2761 Randall Court in Waldorf, Maryland (the Property) was owned by Mohammed Uddin (Uddin).
5. The Respondent represented to the Claimant that she could arrange for him to purchase the Property through a rent-to-own contract. Under the rent-to-own contract, the Respondent represented that the Claimant would pay rent to Uddin on the Property for two years, at which time he would become eligible to purchase the home. The Respondent also represented to the Claimant that a credit check would be unnecessary if he contracted with Uddin through her rent-to-own contract.
6. The Respondent represented to the Claimant that she had been in the real estate brokerage business for years.
7. On September 7, 2006, the Claimant signed a Trust Beneficiary Agreement, an Assignment of Beneficiary Interest, and a Cost Sheet. The documents assigned the Claimant and Envestus beneficiary interest in the Property.
8. On that same date, the Claimant signed an Occupancy Agreement, which named RZ as the Trustee of the Property and the Claimant as the Tenant. The Claimant agreed to pay \$2,500.00 per month in rent to RZ on the first day of each month.

9. The Claimant did not thoroughly read the documents he signed on September 7, 2006. He relied on the Respondent's representation that the documents contained the provisions that would allow him to rent the Property and then purchase it in two years.
10. On August 29, 2007, the Claimant gave the Respondent the following cashier's checks:
 - Check number 887597756 for \$5,000.00 payable to Envestus
 - Check number 0105843 for \$3,916.66, payable to Troese Title Inc.
11. On September 7, 2007, the Claimant gave the Respondent cashier's check number 887597757 for \$5,000.00, payable to Troese Title, Inc.
12. Based upon the Respondent's representation that the funds were directed at closing costs and the establishment of a trust for his purchase of the Property, the Claimant paid the Respondent a total of \$13,916.66 before moving into the Property.
13. The Respondent told the Claimant that he was to pay rent directly to her through her company, RZ, and she would forward the rent to Uddin.
14. Settlement on the contract between Uddin, the Respondent and the Claimant was scheduled for November 8, 2006. On that date, the Claimant gave the Respondent cashier's check number 887595713 for \$2,500.00.
15. The Respondent told the Claimant that a portion of his payments would be placed in trust for the purchase of the home and a portion would be applied toward moving into the Property.
16. The Claimant paid the first month's rent at the November 8, 2006 settlement.

17. The Claimant paid the Respondent \$2,500.00 on November 8, 2006 and December 7, 2006. He paid the Respondent \$500.00 on January 19, 2007, \$2,500.00 on February 12, 2007, two payments of \$2,650.00 on March 28, 2007, and \$5,150.00 on April 18, 2007.
18. The April 18, 2007 payment of \$5,150.00 was to cover the Claimant's rent for April and May 2007. A portion of that amount, \$150.00, constituted a late fee.
19. In or about June 2007, Uddin contacted the Claimant and reported that he had not received the rent payment from RZ for April and May 2007. Uddin demanded that the Claimant pay him for the April and May 2007 rent.
20. Neither Uddin nor the Claimant could reach the Respondent; therefore, the Claimant began make rent payments directly Uddin.
21. Uddin informed the Claimant that the Mortgage on the property was \$400.00 more than the monthly \$2,500.00 the Claimant paid in rent. After the Respondent disappeared, Uddin told the Claimant that he would have to pay the additional \$400.00 per month in addition to his monthly rent to remain in the property.²
22. The Claimant paid Uddin \$400.00 per month for six months in addition to his rent totaling \$2,400.00.
23. The Claimant never received a refund from the Respondent for any of the money he gave her. He also never received a refund of the rent he paid to her for April and May 2007.

² It is unclear whether Uddin originally paid the additional \$400.00, or whether the Respondent paid this amount. Regardless, the Claimant testified that Uddin required him to pay that additional monthly amount to remain in the Property.

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 that involves a transaction that relates to real estate that is located in the State. The act or omission must be one that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a) (2004); COMAR 09.11.03.04.³ 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) (2004). 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) (2004). Further 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) (2004). In the second, a licensee's act or omission constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(2) (2004); COMAR 09.11.03.04B(1).

³ The REC adopted COMAR 09.11.03.04 pursuant to a statutory delegation of authority. Md. Code Ann., Bus. Occ. & Prof. § 17-402(c) (2004 & Supp. 2009).

The Claimant argues that the Respondent abused her expertise as a real estate broker to compel the Claimant to pay her funds in the amount of \$13,916.66 for closing costs and the establishment of a trust for the Claimant's use to purchase the Property in two years. The Claimant also asserts that he paid the Respondent \$5,150.00 for April and May 2007 rent, which she did not remit to Uddin. Because he did not receive rent payments for April and May 2007 from the Respondent, Uddin demanded that the Claimant pay him the April and May rent again, including late fees. Finally, the Claimant asserts that Uddin required him to pay an additional \$400.00 per month for six months to meet the total monthly mortgage payment for an additional \$2,400.00. Accordingly, the Claimant asserts that he is entitled to compensation from the Fund in the amount of \$21,466.66 for actual losses suffered from the fraudulent actions by Respondent,⁴ but amended the claim at the hearing to \$21,465.96.

The Fund agrees that the Claimant is entitled to compensation for the \$13,916.66 he paid the Respondent and for rent for the months of April and May 2007 for which the Claimant had to pay Uddin an additional \$5,150.00. The Fund asserts, however, that the Claimant is not entitled to compensation for the alleged \$2,400.00 the Claimant paid Uddin in addition to the monthly rent because the Claimant amended his claim amount on the day of the hearing, leaving the Respondent without notice of the full amount of the claim she would expect to defend in violation of the Fund's notice requirements.

It is clear from the evidence that the Respondent used her real estate expertise to defraud the Claimant of at least \$19,066.66. According to the cost sheet (CL Ex. 6), the Respondent charged the Claimant for the following:

⁴ The Claimant originally requested \$19,065.96. At settlement, Claimant paid two \$5,000 checks, and one check for \$3,916.66 (Cl. Ex. #7 and #8); when adding in the rent payments for \$5,150, the total is \$19,066.66, not the \$19,065.96 that both parties continuously used throughout the hearing.

Escrow Fee	\$850.00
Charles County Recordation	\$40.00
Resident Beneficiary Prorated Payment for Sep. 8-31	\$1,916.66
Investor Beneficiary Prorated Payment for Sep. 8-31	\$230.00
Contingency Fund	\$3,654.30
Trust Acceptance Fee	\$250.00
Resident Beneficiary Trust Buy-in Fee	\$6,975.70
Total	\$13,916.66

Other than the escrow fee and the Charles County Recordation fee, the amounts the Respondent charged the Claimant and the purpose of the fees the Respondent charged the Claimant for the real estate transaction are insufficiently and often contradictorily explained in the real estate documents.⁵ Coupled with the Respondent's evasive behavior and the fact that she has essentially disappeared from involvement in the transaction she brokered between the Claimant and Uddin, I conclude that the Respondent intended to and did fraudulently obtain funds from the Claimant. Therefore, I find that the Claimant is entitled to reimbursement from the Fund for \$13,026.66. Furthermore, in light of the Respondent's apparent propensity for fraudulent behavior, I find that it is more likely than not that the Respondent did not record the transaction regarding the Property or open an escrow account for funds related to the Property. Accordingly, I find that the Claimant is entitled to reimbursement from the Fund for the \$890.00 he paid for the purported deposit into an escrow account and for recordation fees.

⁵ For instance, the Respondent charged the Claimant a Resident Beneficiary Trust Buy-in Fee of \$6,975.70, but neither this fee, nor an explanation of the purpose of this fee is found in any of the transactional documents.

The Claimant also credibly testified, without rebuttal, that because the Respondent failed to remit to Uddin the \$5,150.00 payment he made to her for April and May 2007 rent, he paid those months rent again to Uddin upon his demand. Accordingly, the Claimant is entitled to reimbursement from the fund for that amount. Coupled with the \$13,026.66 the Claimant paid to the Respondent, as enumerated on the Cost Sheet, the Claimant is entitled to reimbursement in the amount of \$19,066.96. for losses he actually sustained. It is therefore reasonable to conclude that this Cost Sheet is an attempt by the Respondent to fraudulently obtain money from the Claimant. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(2) (2004); COMAR 09.11.03.04B(1)

I find, however, that the Claimant is not entitled to reimbursement of the \$2,400.00 in additional rent payments he purportedly paid Uddin over a period of six months. The Claimant's testimony vacillated between whether Respondent paid Uddin \$400.00 per month to cover mortgage costs in addition to the rent the Claimant paid or whether Uddin paid the additional \$400.00 per month to cover the mortgage. Regardless of who was paying, the \$400.00 was a separate agreement between Uddin and the Respondent to which the Claimant was not privy until the Respondent disappeared. The Claimant was not contractually obligated to pay Uddin the additional \$400.00, and his decision to agree to Uddin's demand for that amount was not part of the original transaction with the Respondent. Therefore, it does not constitute an actual loss attributable to the Respondent and it is not subject to reimbursement from the Fund. COMAR 09.11.01.18.

The loss must be caused by an act or omission, that occurs in the provision of real estate brokerage services by a licensed real estate broker, and that involves a transaction

relating to real estate located in Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(i)(2004). This \$2,400.00 payment is not mentioned in any agreement presented in evidence, and became a separate transaction between Claimant and landlord. While this transaction does relate to real estate in Maryland, there is no evidence that the landlord is a licensed real estate broker in Maryland, and thus the Claimant cannot be eligible to recover for this loss. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(i)(2004). In addition it must be noted that during his testimony, Claimant was very equivocal in regards to this payment. He was not positive what it was actually for; he testified that he believes it was for a portion of the mortgage that the Respondent was supposed to pay the landlord, but was very equivocal in his explanation. Therefore, I cannot find that this \$2,400.00 is subject to payment from the Fund.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Facts and Discussion, I conclude that the Claimant is entitled to reimbursement from the Real Estate Guaranty Fund in the amount of \$19,066.66 for actual losses resulting from the fraud and misrepresentation of the Respondent. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(2) (2004); COMAR 09.11.03.04B(1).

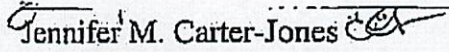
RECOMMENDED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I hereby **RECOMMEND** that the Maryland Real Estate Commission: **ORDER** that the Claimant's claim against the Maryland Real Estate Commission be **ACCEPTED** in the amount of \$19,066.66; and that it further,

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

SIGNATURE ON FILE

August 23, 2010
Date Decision Mailed


Jennifer M. Carter-Jones
Administrative Law Judge

JCJ/ab
#114397

**IN THE MATTER OF THE CLAIM * BEFORE JENNIFER CARTER-JONES,
OF CARROLL WALLACE, * AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND REAL * OF THE MARYLAND OFFICE
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OF AISHA K. MOORE * REC No. 08-RE-387**

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- January 17, 2007, check number 100281329
- January 19, 2007, check number 100281348

- February 12, 2007, check number 100281474⁶
- March 28, 2007, check number 100281752
- March 28, 2007, check number 100281753
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Fund Ex. # 7- Complaint and Guaranty Fund Claim, dated December 13, 2007

No documents were submitted on behalf of the Respondent.

I admitted the following exhibit into evidence as a joint exhibit on behalf of the Fund and the Claimant:

Joint Ex. #1- Report of Investigation by Robert Oliver, Received: December 4, 2008, Closed: March 31, 2009

⁶ A copy of the back of this check is also included in Cl. Ex. #9