

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

*

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v.

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Case No. 2015-RE-451

JAMES THOMAS

*

OAH No. DLR-REC-24-17-07825

and

*

**THE CLAIM OF JOYCE WARCHOL
AGAINST THE MARYLAND REAL
ESTATE GUARANTY FUND**

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OPINION AND FINAL ORDER

This matter came before the Maryland Real Estate Commission (“Commission”) for argument on Exceptions filed on or about October 17, 2017, by Respondent James Thomas, to the Proposed Order of August 31, 2017.

On August 14, 2017, Administrative Law Judge Kerwin A. Miller, Sr. (“ALJ”) filed a Proposed Decision and Recommended Order in which he recommended that the Respondent’s real estate broker’s license be suspended for 30 days, and that the Respondent pay a civil penalty of \$3,000, for violating Business Occupations and Professions Article (“BOP”), §§17-322(b)(25), (32) and (33) and §17-532(c)(1)(vi), and Code of Maryland Regulations (“COMAR”) 09.11.02.01C and 01H (Relations to the Public) and COMAR 09.11.02.02A (Relations to the Client). The ALJ also

recommended that the claim of Joyce Warchol against the Maryland Real Estate Commission Guaranty Fund, based on the actions of Respondent, be denied because the Claimant had not suffered an actual monetary loss as a result of Respondent's acts or omissions.

On August 31, 2017, the Commission issued a Proposed Order that adopted the ALJ's Findings of Fact and Conclusions of Law. The Commission amended the ALJ's Recommended Order to provide for the suspension of all of Respondent's real estate licenses for 30 days and to provide, in addition, that all of Respondent's real estate licenses remain suspended until the civil penalty was paid in full, including any interest payable under the law.

Respondent's exceptions alleged: 1) that he failed to appear at the hearing before the ALJ because had not been adequately notified of the hearing; and 2) that the penalty recommended by the ALJ was too severe.

A hearing on the Exceptions filed by Respondent was held by a panel of the Commission, consisting of Commissioners John Nicholas D'Ambrosia, Chairperson, Demetria C. Scott, and Owen M. Taylor, on November 15, 2017. Hope Sachs, Assistant Attorney General, represented the Commission. Appearing at the hearing without counsel, the Respondent acknowledged that he had a right to representation by counsel at the hearing, and that he waived that right. The Claimant Joyce Warchol was not present. The proceedings were electronically recorded.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, three exhibits were entered into the hearing record. No exhibits were offered by the Respondent. A transcript of the hearing before the ALJ was not provided by the Respondent to the Commission.

FINDINGS OF FACT

The Commission adopts the Findings of Fact recommended by the ALJ, specifically including the finding on page 8 of the Proposed Decision regarding Respondent's failure to appear at the hearing before the ALJ.¹

CONCLUSIONS OF LAW

The Commission adopts the Conclusions of Law recommended by the ALJ.

DISCUSSION

For violation of BOP §§17-322(b)(25), (32) and (33) and §17-532(c)(1)(vi), as well as COMAR 09.11.02.01C and 01H and COMAR 09.11.02.02A, the Respondent is subject to sanctions under BOP §17-322(c), which permits the imposition of a penalty not exceeding \$5,000 for each violation, instead of or in addition to reprimanding a licensee or suspending or revoking a license issued under BOP Title 17.

¹ On page 8 of the Proposed Decision, the ALJ found the following: "On March 22, 2017, the OAH sent a Notice of Hearing (Notice) to the Respondent at his last known address of record with the MREC via regular and certified mail. The Notice advised the parties the matter was scheduled for hearing on Monday, May 15, 2017 at 10:00 a.m. at the OAH in Hunt Valley, Maryland. The Respondent's copy of the Notice was not returned to the OAH. Additionally, the certified mail receipt was returned to the OAH as delivered. I found the Respondent failed to appear for the hearing after being duly notified"

In determining the amount of penalty to be imposed, BOP §17-322(c) requires the Commission to consider the following:

- (1) the seriousness of the violation;
- (2) the harm caused by the violation;
- (3) the good faith of the licensee;
- (4) any history of previous violations by the licensee.

The Commission took notice of the Respondent's long history as a licensee, both as a real estate salesperson and as a real estate broker. However, violations committed by the Respondent in this case were very serious, and placed the Complainant at risk of financial loss and personal liability. The Commission also noted that the Respondent had been fined and reprimanded by the Commission for a less serious violation in 2001.

Therefore, after discussion the Commission concludes, based on the ALJ's Findings of Fact and Conclusions of Law, and based on an evaluation of the criteria noted above, that the appropriate disciplinary sanctions in this case are a reprimand of Respondent and the assessment of a civil penalty in the amount of \$5,000.00.

ORDER

The Findings of Fact, Conclusions of Law, and the Recommended Order in the Proposed Decision of the ALJ dated August 14, 2017 having been received and read, and the Exceptions of the Respondent James Thomas having been considered, it is this

3rd day of January, 2018, by the Maryland Real

Estate Commission, ORDERED:

1. That the Respondent James Thomas violated BOP §§17-322(b)(25), (32) and (33) and §17-532(c)(1)(vi), and COMAR 09.11.02.01C and 01H and COMAR 09.11.02.02A;
2. That the Respondent James Thomas be reprimanded by the Maryland Real Estate Commission;
3. That the Respondent James Thomas be assessed a civil penalty in the amount of Five Thousand Dollars (\$5,000.00), which shall be paid to the Maryland Real Estate Commission within thirty (30) days of the date of this Order;
4. That the claim filed by Joyce Warchol against the Maryland Real Estate Guaranty Fund based on the actions of the Respondent James Thomas is denied; and
5. That the records and publications of the Maryland Real Estate Commission reflect this decision.

MARYLAND REAL ESTATE COMMISSION

SIGNATURE ON FILE

By: _____

Note: A judicial review of this Final Order may be sought in the Circuit Court of Maryland in which the Appellant resides or has his/her principal place of business, or in

the Circuit Court for Baltimore City. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

JAMES THOMAS, *
Respondent *

* CASE NO. 2015-RE-451

And

* OAH NO. DLR-REC-24-17-07825

THE CLAIM OF JOYCE WARCHOL
AGAINST THE MARYLAND REAL ESTATE*
GUARANTY FUND

* * * * *
*

PROPOSED ORDER

The Findings of Fact, Conclusions of Law, and Recommended Order of the Administrative Law Judge dated August 14, 2017, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 31st day of August, 2017

ORDERED,

A. That the Findings of Fact in the recommended decision be, and hereby are, **ADOPTED**;

B. That the Conclusions of Law in the recommended decision be, and hereby are, **ADOPTED**;

C. That the Recommended Order be, and hereby is, **AMENDED** as follows:

ORDERED that all real estate licenses held by the Respondent, James Thomas, be and hereby are **SUSPENDED** for thirty (30) days;

ORDERED that the Respondent, James Thomas, shall be assessed a civil penalty in the amount of **Three Thousand Dollars (\$3,000)**, which shall be paid to the Real Estate Commission within thirty (30) days of the date of this Order;

ORDERED that all real estate licenses held by the Respondent, James Thomas, shall be suspended until the civil penalty is paid in full, including any interest that is payable under the law, and that this suspension is in addition to, and not in lieu of, the disciplinary suspension;

ORDERED that the claim filed by Joyce Warchol against the Maryland Real Estate Guaranty Fund based on the actions of Respondent James Thomas is **DENIED**; and

ORDERED that the records and publications of the Maryland Real Estate Commission reflect this decision.

D. Pursuant to § 10-220 of the State Government Article, the Recommended Order of the Administrative Law Judge had to be modified to specify that the thirty day suspension applies to all licenses held by the Respondent.

E. Pursuant to COMAR 09.01.03.08 those parties adversely

affected by this Proposed Order shall have 20 days from the postmark date of the Order to file exceptions and to request to present arguments on the proposed decision before this Commission. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 500 North Calvert Street, Baltimore, MD 21202.

MARYLAND REAL ESTATE COMMISSION

SIGNATURE ON FILE

[Handwritten signature]
COMMISSIONER

SIGNATURE ON FILE

MARYLAND REAL
ESTATE COMMISSION,

v.

JAMES THOMAS,
RESPONDENT

AND

THE CLAIM OF JOYCE WARCHOL

AGAINST THE

MARYLAND REAL ESTATE

GUARANTY FUND

* BEFORE KERWIN A. MILLER, SR.,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

*

* OAH No.: DLR-REC-24-17-07825

* MREC No.: 2015-RE-451

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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 March 24, 2015, Joyce Warchol (Claimant) filed a claim with the Maryland Real Estate Commission's (MREC) Guaranty Fund (Fund) for actual monetary losses suffered as a result of the acts or omissions of James Thomas (Respondent) allegedly committed while the Respondent acted in his capacity as a licensed real estate broker affiliated with RE/MAX 2000. The Claimant also filed a complaint against the Respondent directly with the MREC.

On March 13, 2017, the MREC issued a Statement of Charges (Charges) against the Respondent for alleged violations of the Maryland Real Estate Broker's Act (the Act), Maryland

Code Annotated, Business Occupations and Professions Article, § 17-101 *et. seq.* (2010 and Supp. 2016), and the provisions at Code of Maryland Regulations (COMAR) 09.11.01 and 09.11.02, enacted under the Act. The MREC further determined the Claimant was entitled to a hearing to establish her eligibility for an award from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-409(a) (2010). Accordingly, the MREC ordered a combined hearing on the Charges and the Claimant's claim.

On May 15, 2017, I conducted a hearing at the Maryland Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Profs. §§ 17-324(a) and 17-408(a) (2010). Jessica Kauffman, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the MREC. The Claimant represented herself. Kris King, Assistant Attorney General, DLLR, represented the Fund. The Respondent failed to appear.¹

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings of the Office of the Secretary of the DLLR, and the Rules of Procedure of the OAH govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 and Supp. 2016); Code of Maryland Regulations (COMAR) 09.01.02; COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Respondent violate the provisions of Section 17-322 of the Act;
2. Did the Respondent violate the provisions of Section 17-532 of the Act;
3. Did the Respondent violate COMAR 09.11.02.01C, 09.11.02.01H and 09.11.02.02A;
4. If so, what is the appropriate sanction?

¹ The Respondent's failure to appear and the procedural implications are discussed more fully below.

5. Did the Claimant sustain an actual monetary loss as a result of the Respondent's acts or omissions in his capacity as a licensed real estate broker; and,
6. If so, what is the appropriate award to the Claimant from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the MREC:

- MREC Ex. 1: Notice of Hearing, dated March 22, 2017
- MREC Ex. 2: Hearing Transmittal; Statement of Charges and Order for Hearing, dated March 13, 2017
- MREC Ex. 3: Respondent's Licensing History, dated May 2, 2017
- MREC Ex. 4: Exclusive Right to Sell Residential Brokerage Agreement, dated November 4, 2013
- MREC Ex. 5: Listing for 6400 Riggs Road, Hyattsville, Maryland 20783, dated August 3, 2016
- MREC Ex. 6: Regional Sales Contract, dated April 7, 2014
- MREC Ex. 7: Settlement Statement, print date September 19, 2014
- MREC Ex. 8: Complaint & Guaranty Fund Claim, dated March 24, 2015, with the following attachments:
 - A. Letter from the Claimant to the DLLR, dated March 24, 2015
 - B. 6400 Riggs Road Report and Appraisal, dated September 25, 2014
 - C. Email from Alex Warchol to Mike Ridgway, dated September 12, 2014
 - D. Email from the Respondent to Alex Warchol, dated September 13, 2014
 - E. Email from the Respondent to the Claimant, dated September 15, 2014
 - F. Email from Suzanne Ruddock to the Claimant, dated September 16, 2014
 - G. Email from the Respondent to the Claimant, dated September 18, 2014
 - H. Settlement Statement, undated
- MREC Ex. 9: Respondent's Answer to the Claimant's Complaint, dated May 21, 2015

I admitted the following exhibit on behalf of the Claimant:²

Cl. Ex. 1: Email from the Respondent to the Claimant, dated September 15, 2014

No exhibits were offered on behalf of the Respondent.

Testimony

The MREC presented the following witnesses: The Claimant and Alexander Warchol. The Claimant testified on her own behalf. No one testified on behalf of either the Respondent or the Fund.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent was licensed by the MREC as a real estate broker.
2. On November 4, 2013, the Claimant entered into an exclusive right to sell residential brokerage agreement (listing agreement) with the Respondent as listing broker and seller's agent for the Claimant's property located at 6400 Riggs Road, Hyattsville, Maryland (Claimant's property). At the time of the listing agreement, the Respondent was a real estate broker with RE/MAX 2000.
3. On or about April 7, 2014, the Claimant entered into a residential contract of sale with Shirley Lee (buyer) for \$585,000 with an agreed upon settlement date of May 30, 2014. The April 7, 2014 residential contract of sale was ratified on May 2, 2014.
4. In order to finance the purchase of the Claimant's property, the buyer had to sell property she owned.
5. The settlements for the sale of the Claimant's property and the buyer's property were scheduled back-to-back on the same date with the same settlement attorney.

² The Claimant offered Claimant's exhibit #2 but it was not admitted.

However, due to issues related to the sale of the buyer's property, the settlement date was delayed until June 14, 2014. It was subsequently delayed again until September 19, 2014.

6. There was no oral or written pre-settlement agreement between the Claimant and the buyer.
7. The Respondent asked the Claimant if the buyer could move in or store her belongings at the Claimant's property until the re-scheduled settlement date and the Claimant denied the Respondent's request.
8. Nonetheless, the Respondent allowed the buyer to store personal property and take occupancy of the Claimant's property prior to the re-scheduled settlement date.
9. The Claimant's nephew, Alexander Warchol, did not grant the Respondent permission to allow anyone to move in or store belongings at the Claimant's property pre-settlement. In fact, Mr. Warchol had no authority to authorize anyone to move in or store belongings at the Claimant's property pre-settlement.
10. The Claimant was living in Massachusetts at the time the Respondent granted the buyer unauthorized access to her property and was unable to travel to the property due to her poor health condition at the time.
11. The Claimant was not actively seeking to rent her property during the time that the Respondent had granted the buyer unauthorized access and use of her property.
12. The Claimant did not suffer any monetary loss as a result of the Respondent granting the buyer unauthorized access to her property.
13. The Respondent was reprimanded and fined by the MREC for a violation in 2001.

DISCUSSION

Legal Framework

Disciplinary Charges Under the Act

The MREC charged the Respondent under Section 17-322(b) (Supp. 2016) of the Act, as follows:

Grounds for Discipline

(b) 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:

...

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

...

(32) violates any provision of Subtitle 5 of this title;

...

(33) violates any regulation adopted under this title or any provision of the code of ethics[.]

The MREC further charged the Respondent under Section 17-532(c)(1)(3) (Supp. 2016) of the Act as follows:

Duty To Promote Interests of the Client

(c)(1) A licensee shall:

...

(vi) exercise reasonable care and diligence[.]

In addition to the statutory violations, the MREC also charged the Respondent with violating the following regulatory provisions related to the Act:

Relations to the Public.

...

C. The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State.

...

H. For the protection of all parties with whom he deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed.

COMAR 09.11.02.01.

Relations to the Client.

A. In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction.

COMAR 09.11.02.02.

Guaranty Fund Claim

Under the Act, a person may recover an award from the Fund for an actual loss as follows:

(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. & Profs. § 17-404(a)(2) (Supp. 2016). The amount recovered for a claim made against the Fund may not exceed \$50,000.00. Md. Code Ann., Bus. Occ. & Profs. § 17-404(b).

Burden of Proof

With regard to the Charges, the MREC bears the burden of proof, by a preponderance of the evidence, to demonstrate the Respondent violated the applicable provisions of the Act and the controlling regulations. COMAR 09.01.02.16(a). With regard to the claim against the Fund, the Claimant bears the burden of proof, by a preponderance of the evidence, to demonstrate she suffered an actual loss because of the Respondent's acts or omissions. Md. Code Ann., Bus. Occ. & Profs. § 17-407(e) (Supp. 2016); COMAR 09.01.02.16(c).

The Respondent's Failure to Appear

The Act provides that if, "after due notice, the individual against whom the action is contemplated fails or refuses to appear, nevertheless the [MREC] may hear and determine the matter." Md. Code Ann., Bus. Occ. & Profs. § 17-324(f) (2010). On March 22, 2017, the OAH sent a Notice of Hearing (Notice) to the Respondent at his last known address of record with the MREC via regular and certified mail. The Notice advised the parties the matter was scheduled for hearing on Monday, May 15, 2017 at 10:00 a.m. at the OAH in Hunt Valley, Maryland. The Respondent's copy of the Notice was not returned to the OAH. Additionally, the certified mail receipt was returned to the OAH as delivered. I found the Respondent failed to appear for the hearing after being duly notified and I proceeded in his absence.

The Merits of the Case

Disciplinary Charges

Violations under Sections 17-322 and 17-532 of the Act

The evidence presented by the MREC overwhelmingly demonstrates the Respondent engaged in violations of Section 17-322(b) and Section 17-532 of the Act. At all relevant times, the Respondent was acting in his capacity as a licensed real estate broker. The Respondent and the Claimant entered into the listing agreement for the Respondent to act as the exclusive listing broker and seller's agent. The Claimant entered into the residential contract of sale with the buyer with an agreed upon settlement date of May 30, 2014. Due to no fault of the Claimant, the settlement date was delayed and ultimately scheduled for September 19, 2014. After the initial delay of the May 30, 2014 settlement, the Respondent asked the Claimant if the buyer could move in or store some of her belongings at the Claimant's property. The Claimant adamantly denied the Respondent's request. Nevertheless, the Respondent allowed the buyer to take possession of the Claimant's property in June 2014.

Though the Respondent failed to appear at the hearing, he asserted in his written answer to the Claimant's complaint (Answer) that he received permission from Mr. Warchol to allow the buyer to store her belongings on the Claimant's property pre-settlement. Mr. Warchol testified that he did not grant the Respondent such permission, nor did he have the authority to grant the Respondent such permission.

I find from the Claimant's and Mr. Warchol's testimony that neither one of them granted the Respondent's request to allow the buyer to take possession of the Claimant's property pre-settlement more credible than the Respondent's Answer. Not only did the Claimant articulate a genuine concern with allowing anyone on her property pre-settlement, her testimony was corroborated by Mr. Warchol's. Additionally, though the Respondent's Answer indicates that he

received permission from Mr. Warchol for the buyer to store her belongings on the Claimant's property on an unidentified date, it is clear from the photos included in the September 25, 2014 appraisal of the Claimant's property, the buyer had moved into the property no later than June 14, 2014. The Respondent clearly violated Section 17-322(b)(25) when he ignored the Claimant's denial of his request to allow the buyer to take control of her property and allowed the buyer to take such control four months before settlement. Additionally, the Respondent allowed the buyer to take possession of the Claimant's property for a four-month period without a pre-settlement occupancy agreement. His conduct in this regard also violated the provisions of Section 17-532(c)(vi).

Violations Under COMAR

Based on the evidence presented, I find the Respondent violated COMAR 09.11.02.01C and H which address the duties of a real estate broker in his relations with the public. The Respondent did not protect the Claimant, as a member of the public, from fraud. On the contrary, he allowed the buyer to take control of the Claimant's property for four months prior to settlement, against the Claimant's wishes and without a pre-occupancy settlement agreement. In doing so, the Respondent failed to protect and promote the Claimant's interests as his client; he acted in a manner that directly contravened the Claimant's interests; and he did so without any justification (such as, for example, the need to protect the interests of another party to the transaction or the interests of another client). His conduct of acting in a manner that directly contradicted and damaged the Claimant's interests is also a violation of COMAR 09.11.02.02A. The Respondent's violations under COMAR 09.11.01.07, 09.11.02.01C, 09.11.02.01H and 09.11.02.02A subject him to liability under Section 17-322(b)(33) of the Act, which prohibits licensed real estate brokers from violating any regulations adopted under the Act. The MREC's charges against the Respondent should be upheld. I will discuss the appropriate sanction below.

Guaranty Fund Claim

As discussed above, a claim against the Fund shall be based on an act or omission in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or an act or omission that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(b)(2)(iii) (Supp. 2016); *see* COMAR 09.11.03.04A and B (for the purpose of a guaranty fund claim, misconduct 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). The amount of compensation recoverable by a claimant from the Guaranty Fund “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.” COMAR 09.11.01.18.

The Claimant’s Fund claim was for \$20,925.00. This includes a real estate fee allegedly owed by the Respondent to Art Worley, a referring real estate agent, in the amount of \$2,925.00, and \$4,500.00 per month in rent for the four months of unauthorized use of her property granted to the buyer by the Respondent for a total of \$18,000.00. Based on the evidence before me, the Claimant is not eligible for reimbursement from the Fund. The \$2,925.00 allegedly owed by the Respondent to Mr. Worley is not an actual monetary loss suffered by the Claimant and, therefore, she is not entitled to recover that amount from the Fund. Likewise, the Claimant is not eligible to recover the \$18,000.00 in rent for the period of the buyer’s unauthorized use of her property because she did not suffer an actual monetary loss as a result of that use. The evidence is undisputed that the Claimant had not attempted to rent her property during the four-month period before the September 19, 2014 settlement. Additionally, the buyer’s unauthorized use of the Claimant’s property did not in any way cause the Claimant to suffer an actual monetary loss,

such as destruction of property or loss of property value, which would have otherwise made the Claimant eligible for a reimbursement from the Fund.

It is clear that the Respondent engaged in wrongful conduct by allowing the buyer to take unauthorized possession of the Claimant's property for four months without her approval and absent a pre-settlement occupancy agreement. However, the Claimant's remedy is not through the Fund.

Disciplinary Sanctions

The MREC argued that as a result of the Respondent's numerous violations of the Act and its applicable COMAR provisions, as well as his prior 2001 reprimand and fine, the appropriate sanctions are a thirty-day suspension of his real estate broker's license and the imposition of a \$3,000.00 civil penalty. Section 17-322(c) of the Act provides as follows:

17-322. Denials, reprimands, suspensions, revocations, and penalties-- Grounds

(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.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c). For the following reasons, I find that a thirty-day suspension of the Respondent's real estate broker's license and a \$3,000.00 civil penalty are the appropriate sanctions.

The Respondent's conduct in this case was egregious. He allowed the buyer to take possession of the Claimant's property for four months, against the Claimant's wishes and without a pre-occupancy settlement agreement to protect the Claimant from any potential liability while the buyer was on the Claimant's property. Additionally, the buyer was allowed to take possession of the Claimant's property pre-settlement without allowing the Claimant an opportunity to charge the Respondent for rent until the September 19, 2014 settlement date.

The Respondent has demonstrated by his conduct that he does not respect his fiduciary obligations to his client, as articulated in the Act and in the Code of Ethics which governs the behavior of real estate agents and brokers. The multiple violations committed by the Respondent, coupled with his prior violation in 2001, support the recommended civil penalty and the suspension of his real estate broker's license.

CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I conclude as a matter of law:

1. The Respondent violated Sections 17-322(b)(25), (32), and (33) (Supp. 2016) of the Act;
2. The Respondent violated Sections 17-532(c)(1)(vi) (Supp. 2016) of the Act;
3. The Respondent violated COMAR 09.11.02.01C and 09.11.02.01H (Relations to the Public), and 09.11.02.02A (Relations to the Client);
4. The Claimant is not entitled to an award from the MREC Guaranty Fund because she has not suffered an actual monetary loss as a result of the Respondent's acts or omissions which constituted embezzlement and theft, in violation of Section 17-404 (Supp. 2016) of the Act and COMAR 09.11.03.04; and,

5. The appropriate disciplinary sanctions, under Section 17-322(c) of the Act, are a thirty-day suspension of the Respondent's real estate broker's license and the imposition of a civil penalty in the amount of \$3,000.00.


RECOMMENDED ORDER

I RECOMMEND that the Maryland Real Estate Commission ORDER:

1. The charges against the Respondent, issued on March 13, 2017, be **UPHELD**;
2. The Respondent's real estate broker's license, issued under Registration No. 4876728, be **SUSPENDED FOR THIRTY DAYS**;
3. The Respondent pay a civil penalty in the amount of \$3,000.00;
4. The Maryland Real Estate Commission Guaranty Fund **DENY** the Claimant's claim;
and,
5. The records and publications of the Maryland Real Estate Commission reflect this decision.

August 14, 2017
Date Decision Issued

KAM/cmj
#169413

SIGNATURE ON FILE

Kerwin A. Miller, Sr.
Administrative Law Judge

SIGNATURE ON FILE

MARYLAND REAL
ESTATE COMMISSION,

v.

JAMES THOMAS,
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THE CLAIM OF JOYCE WARCHOL

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* OAH No.: DLR-REC-24-17-07825

* MREC No.: 2015-RE-451

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FILE EXHIBIT LIST

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- B. 6400 Riggs Road Report and Appraisal, dated September 25, 2014
- C. Email from Alex Warchol to Mike Ridgway, dated September 12, 2014
- D. Email from the Respondent to Alex Warchol, dated September 13, 2014
- E. Email from the Respondent to the Claimant, dated September 15, 2014
- F. Email from Suzanne Ruddock to the Claimant, dated September 16, 2014
- G. Email from the Respondent to the Claimant, dated September 18, 2014
- H. Settlement Statement, undated

MREC Ex. 9: Respondent's Answer to the Claimant's Complaint, dated May 21, 2015

I admitted the following exhibit on behalf of the Claimant:³

Cl. Ex. 1: Email from the Respondent to the Claimant, dated September 15, 2014

No exhibits were offered on behalf of the Respondent.

³ The Claimant offered Claimant's exhibit #2 but it was not admitted.