

FINAL ORDER

MAR 01 2011

~~BEFORE THE MARYLAND REAL ESTATE COMMISSION~~
~~MARYLAND REAL~~

ESTATE COMMISSION

IN THE MATTER OF THE CLAIM *
OF TIMOTHY L. ZIMBRO, SR. *
AGAINST THE MARYLAND REAL * CASE NO. 2008-RE-867
ESTATE GUARANTY FUND, * OAH NO. DLR-REC-22-09-35185
FOR THE ALLEGED MISCONDUCT *
OF CHRISTINE C. KNOTT *

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated November 22, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 29th day of December 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, ADOPTED;

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

ORDERED that the claim of Timothy L. Zimbrow, Sr. against the Maryland Real Estate Guaranty Fund for losses that resulted from the misrepresentations of Christine C. Knott be GRANTED in the amount of \$2,260;

ORDERED that Christine C. Knott, the former real estate licensee responsible for the losses suffered by the Claimant, shall be ineligible for a real estate license until the Guaranty Fund is repaid in full, together with any interest that is due.

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 Commission finds that the Recommended Decision of the Administrative Law Judge had to be modified because the judge failed to include the provision that the licensee responsible for the losses suffered by the Claimant is ineligible to hold a real estate license until the Guaranty Fund has been repaid in full together with any interest that is due.

E. Pursuant to Code of Maryland Regulations (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.


M&I

(COMMISSIONER'S SIGNATURE
APPEARS ON ORIGINAL ORDER)

IN THE MATTER OF THE CLAIM * BEFORE T. AUSTIN MURPHY,
OF TIMOTHY L. ZIMBRO, SR., * 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-22-09-35185
OF CHRISTINE C. KNOTT * REC No. 08-RE-867

* * * * *

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 June 16, 2008, Timothy L. Zimbrow, Sr. (Claimant) filed a claim with the Maryland Real Estate Commission (REC) Guaranty Fund (Fund) for reimbursement for actual losses in the amount of \$100,000.00,¹ suffered as a result of alleged misconduct by Christine C. Knott (Respondent), a formerly-licensed real estate broker. On or about September 3, 2009, the REC transmitted the case to the Office of Administrative Hearings (OAH) for a contested case hearing.

On August 23, 2010, I conducted a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-407(c)(2)(ii) (2010). The Claimant represented himself. Hope Sachs, Assistant Attorney General, represented the Fund. The Respondent failed to appear.

¹ At the hearing the Respondent amended his claim to \$19,641.00.

On May 25, 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 for August 23, 2010 regarding the claim against her. The United States Postal Service (USPS) returned the signed certified notice receipt to the OAH.

The Respondent was given due notice of her hearing pursuant to Md. Code Ann., Bus. Occ. & Prof. § 17-324(d)(ii) (2010). 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) (2010).

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 & Supp. 2010); 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 - July 14 and November 21, 2007 Structural Engineer's report of Foundation and inspection and certificate

Cl. Ex. # 2 - October 10 and November 13, 2007 report of Water Analysis

Cl. Ex. # 3 - June 14, 2007 Home Inspection Report

Cl. Ex. # 4 - June 14, 2007 Wood Destroying Insect Report Occupancy Agreement, dated September 7, 2007

Cl. Ex. # 5 - Fifty photographs of the exterior and interior of the home

Cl. Ex. # 6 - List of items and costs to repair the home

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

Fund Ex. # 1 - Notice of Hearing, dated May 25, 2010, with Certified Mail Receipt

Fund Ex. # 2 - August 26, 2009 Order for Hearing

Fund Ex. # 3 - Licensing History of Respondent

Fund Ex. # 4 - June 16, 2008 Complaint and Guaranty Fund Claim

No documents were submitted on behalf of the Respondent.

Testimony

The Claimant testified on his own behalf and presented the testimony of his girlfriend, Loretta Burn. 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 was first licensed as such on December 11, 2001. Her license expired in March 2009.
2. In the summer 2007, the Claimant met the Respondent, who was the selling agent of a property (property) in which he was interested.
3. The property had an addition on it and a pool in the back.
4. The Claimant asked if the addition was built to code and was assured by the Respondent that permits had been obtained for the addition and pool and that it was all done to code.
5. The Respondent contracted with an engineer to provide a report certifying the soundness of the addition. On July 14, 2007, an engineer reported to the property to perform the

inspection. Neither the Respondent nor her associate was present for the inspection. The engineer filed a report certifying the addition as being structurally sound.

6. The addition was not structurally sound.
7. The Respondent assured the Claimant that permits had been obtained and that they were in the mail. The Claimant did not receive any permits and later came to learn that no permits had been obtained.
8. The Respondent had a water test performed on the well. The report showed that the water was contaminated. The Respondent did not disclose this to the Claimant.
9. The Claimant went to settlement believing that the well was certified, that there was a permit issued for the pool, and that the addition was structurally sound.
10. The Respondent paid for the Claimant's well to be flushed out twice, leading to the well functioning properly.
11. The engineer who issued the faulty report rebuilt the addition to code without charging the Claimant. The Claimant did spend his own money replacing the roof of the addition and temporarily shoring up the house to make it habitable.
12. The pool collapsed shortly after the Claimant moved into the home. The Claimant could not afford to repair the pool and was required by the county to fill in the pool. He incurred \$2,260.00 in expenses to fill in the pool. The Claimant performed most of the labor himself.

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) (2010); COMAR 09.11.03.04.² 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). 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) (2010). In the second, a licensee's act or omission constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(2) (2010); COMAR 09.11.03.04B(1).

The Claimant argued that the Respondent was responsible for expenses he incurred relating to the addition and the pool. He also asserted that the Respondent made misrepresentations regarding the well. However, because the Respondent paid to fix the well, that misrepresentation does not form the basis for this claim.

Clearly, the Claimant has proven that the Respondent misrepresented the fact that permits had been secured for the addition and the pool. It is apparent that the Respondent was aware that

² The REC adopted COMAR 09.11.03.04 pursuant to a statutory delegation of authority. Md. Code Ann., Bus. Occ. & Prof. § 17-402(c) (2010).

no permits had been obtained and that she made that affirmative misrepresentation to the Claimant in an effort to have him buy the property.

The events that came after that statement, however, require a different result for the addition than they do for the pool. The Respondent hired a structural engineer to certify the addition. Although either she or her associate was supposed to be present for the engineer's inspection, neither was present. Apparently the homeowner misdirected the engineer and the engineer issued a report certifying the addition without performing a full inspection. There was no proof that the Respondent was aware of this. The engineer issued a report and both the Claimant and the Respondent relied upon the report. In fact, when confronted with the faulty report, the engineer admitted his mistake and fixed the addition without charging the Claimant. The Claimant did incur considerable expenses prior to the engineer taking on this responsibility, but the Claimant failed to present any evidence of a misrepresentation by the Respondent that led to these damages. While it is true that the Respondent claimed that the permits had been obtained when they had not, the engineer's report, had it been done correctly, would have exposed the structural problems with the addition. The Claimant cannot recover these expenses from the Fund.

The pool, however, was never inspected by an independent expert. The Respondent assured the Claimant that there had been a permit issued for the pool and that it had been built according to code. The inference can be fairly drawn based on the Respondent's representations to the Claimant as settlement approached that the permits were "in the mail," that the Respondent was aware that no permits had ever been issued. This was an intentional misrepresentation designed to induce the Claimant to buy a home. The Respondent had a personal incentive to make this inducement because she was both the listing agent and the buyer's agent in this transaction. Therefore, the Claimant has proven that the Respondent committed a

misrepresentation in the course of a real estate transaction that led to him having to pay \$2,260.00 to fill in the hole left by the pool after it collapsed. The Claimant produced receipts that showed that he paid \$700.00 to rent a bob cat, \$560.00 for seven truckloads of dirt and \$1,000.00 for grading of the dirt. As the Fund conceded, the Claimant should be permitted to recover these expenses 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 \$2,260.00 for actual losses resulting from the fraud and misrepresentation of the Respondent. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(2) (2010); 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 \$2,260.00; and

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

ADMINISTRATIVE LAW JUDGE'S SIGNATURE
APPEARS ON ORIGINAL ORDER

November 22, 2010
Date Decision Issued

T. Austin Murphy 
Administrative Law Judge

#116256

IN THE MATTER OF THE CLAIM	* BEFORE T. AUSTIN MURPHY,
OF TIMOTHY L. ZIMBRO, SR.,	* 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-22-09-35185
OF CHRISTINE C. KNOTT	* REC No. 08-RE-867

* * * * *

FILE EXHIBIT LIST

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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/occprof/recomm.html
MREC E-mail: mrec@dllr.state.md.us

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
FIRST CLASS MAIL

January 3, 2011

Mr. Timothy Zimbro
1607 Havre De Grace Drive
Edgewater, Maryland 21037

Ms. Christine Knott
1901 Wooded Trace
Owings, Maryland 20736

**RE: Claim of Timothy L. Zimbro, Sr. against the Maryland Real Estate Commission
Guaranty Fund for the Alleged Misconduct of Christine C. Knott
Case No. 2008-RE-867 GF**

Dear Mr. Zimbro and Ms. Knott:

Enclosed is your copy of the Proposed Order of the Commission issued on behalf of the Claim of Timothy L. Zimbro, Sr. Against the Maryland Real Estate Commission Guaranty Fund for the Alleged Misconduct of Christine C. Knott heard by an Administrative Law Judge on August 23, 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)

EXECUTIVE DIRECTOR

KFC/bai

Enclosure: Copy of Proposed Order

