

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

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v.

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CASE NO. 2020-RE-584

**GERARD SMITH,
Respondent**

*

OAH NO. DOL-REC-24-23-14424

and

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**IN THE MATTER OF THE CLAIM
OF GABRIELLE MESSER AND
CHRISTIAN BRUNECZ AGAINST
THE MARYLAND REAL ESTATE
COMMISSION GUARANTY FUND**

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PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated October 23, 2023, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 31 day of January 2024, hereby

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, **AMENDED** as follows:

ORDERED that the charges against Respondent, Gerard Smith, be upheld;

ORDERED that the Respondent, Gerard Smith, be reprimanded by the Maryland Real Estate Commission and, to the extent that the Respondent is no longer licensed, the reprimand be imposed against his former license;

ORDERED that the Respondent, Gerard Smith, pay a civil penalty in the amount of **One Thousand Dollars (\$1,000.00)** within thirty (30 days) of the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted;

ORDERED that once this Proposed Order becomes a Final Order and all rights to appeal are exhausted, the Claimants, Gabrielle Messer and Christian Brunecz, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of **\$21,267.50**;

ORDERED that the Respondent, Gerard Smith, reimburse the Maryland Real Estate Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%);

ORDERED that all real estate licenses held by the Respondent, Gerard Smith, shall be suspended from the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted and shall not be reinstated until the Maryland Real Estate Guaranty Fund is reimbursed, including any interest that is payable under the law, and application for reinstatement is made; and

ORDERED that all real estate licenses held by the Respondent, Gerard Smith, shall be suspended from the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted and shall not be reinstated until the civil (monetary) penalty is paid.

D. That the records, files, and documents of the Maryland Real Estate Commission

reflect this decision.

E. Pursuant to Annotated Code of Maryland, State Government Article § 10-220, the Commission finds that the Recommended Decision of the Administrative Law Judge required modification because it omitted from the Recommended Order deadlines for payment of the civil penalty and suspension of all licenses held by the Respondent until the civil penalty is paid.

F. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties adversely affected by this Proposed Order shall have twenty (20) days from the postmark date of the Order to file written exceptions to this Proposed Order. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 1100 N. Eutaw Street, Baltimore, MD 21201. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

G. Once this Proposed Order becomes final, the parties have an additional thirty (30) days in which to file an appeal to the Circuit Court for the Maryland County in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City

**MARYLAND REAL ESTATE COMMISSION
SIGNATURE ON FILE**

Date

1/31/24

By: _____

MARYLAND REAL ESTATE
COMMISSION

v.

GERARD SMITH,¹

RESPONDENT

AND

THE CLAIM OF GABRIELLE

MESSER AND CHRISTIAN

BRUNECZ,

CLAIMANTS,

AGAINST THE MARYLAND

REAL ESTATE COMMISSION

GUARANTY FUND

* BEFORE SUSAN A. SINROD,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS

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* OAH No.: LABOR-REC-24-23-14424

* MREC No.: 2020-RE-584

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES

SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT

DISCUSSION

PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On May 18, 2020, Gabrielle Messer and Christian Brunecz (Claimants) filed a Complaint against Gerard Smith, a real estate salesperson (Respondent), for alleged violations of the Maryland Real Estate Brokers Act (Act), Md. Code Ann., Bus. Occ. & Prof. §§ 17-101 to -702

¹The Respondent goes by the nickname Chopper.

(2018 & Supp. 2023), and the provisions at Code of Maryland Regulations (COMAR) 09.11.02.01 and .02, enacted under the Act. The Claimants also filed a claim (Claim) with the Maryland Real Estate Commission's (REC) Guaranty Fund (Fund) to recover compensation in the amount of \$15,545.94 for an alleged actual loss resulting from an act or omission of the Respondent.²

On May 16, 2023, after an investigation, the REC determined that the charges against the Respondent were warranted and issued a Statement of Charges and Order for Hearing (Charges) against the Respondent. The Charges set forth that the Respondent engaged in conduct that demonstrated bad faith, incompetency, or untrustworthiness that constitutes dishonest, fraudulent or improper dealings. Further the Charges allege that the Respondent failed to ensure that financial obligations and commitments regarding real estate transactions were in writing and given to the parties, failed to protect and promote the interests of the Claimants and failed in his obligation of absolute fidelity to the Claimants' interests. The Charges advised the Respondent that if the charged violations were substantiated it could result in reprimand, suspension or revocation of his real estate license and a monetary fine of up to \$5,000.00 per violation. The REC further determined that the Claimants were entitled to a hearing to establish eligibility for an award from the Fund. Accordingly, the REC ordered a combined hearing on the Charges and the Claim and, on May 30, 2023, forwarded the case to the Office of Administrative Hearings (OAH) to conduct a hearing. Bus. Occ. & Prof. § 17-409 (2018).

On August 1, 2023, I conducted a remote hearing via Webex. Bus. Occ. & Prof. §§ 17-324(a), 17-408(a) (2018); COMAR 28.02.01.20B(1)(b). Jessica B. Kaufman, Assistant Attorney General, Maryland Department of Labor (Department), represented the REC on the

² At the hearing, the Claimants amended their Claim to \$21,267.50, because their claim is comprised of attorney's fees and the attorney's fees increased since the time that they filed the Claim.

charged violations of law. Ernie Dominguez, Assistant Attorney General, Department, represented the Fund. The Claimants represented themselves. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, the REC's procedural regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 09.01.03; COMAR 09.11.03; COMAR 28.02.01.

ISSUES

1. Did the Respondent violate Sections 17-322 (b)(25) and (33) of the Business Occupations article?
2. Did the Respondent violate COMAR 09.11.02.01H?
3. Did the Respondent violate COMAR 09.11.02.02A?
4. If the Respondent violated any of the above provisions, what is the appropriate sanction?
5. Did the Claimants sustain an actual loss, compensable by the Fund, due to an act or omission of the Respondent in the provision of real estate brokerage services that constitutes fraud or misrepresentation?
6. If so, what amount should be awarded to the Claimants from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the REC:³

- REC Ex. #4- Notice of Hearing and Statement of Charges and Order for Hearing, dated May 16, 2023; envelope returned by the United Postal Service, postmarked June 15, 2023
- REC Ex #5- Transmittal to the OAH, undated, with Statement of Charges and Order for Hearing, dated May 16, 2023 attached
- REC Ex. #6- Respondent's licensing history, dated July 5, 2023
- REC Ex. #7- Report of Investigation, closed May 26, 2022

I admitted the following exhibits offered by the Claimants:

- Cl. Ex. #1- Letter from Alex Faller, Armistead, Lee, Rust & Wright, P.A. to the Claimant Ms. Messer, dated July 26, 2023, with attorney's fees itemization attached
- Cl. Ex. #2- Letter from Safiyah Basir, Rocket Homes Real Estate, LLC to the Respondent, dated May 9, 2019
- Cl. Ex. #3- Photograph of oil tank outside of Claimants' home, undated
- Cl. Ex. #4- Text messages between the Respondent and Ms. Messer, varying dates
- Cl. Ex. #5- Text message between Jacob Bryan and Ms. Messer, dated May 3, 2019
- Cl. Ex. #6- Email from the Respondent to the Claimants, dated May 30, 2019
- Cl. Ex. #7- Property Inspections Notice, undated

The Respondent did not submit any exhibits for admission into evidence.

The Fund did not submit any exhibits for admission into evidence.

³ This matter was originally consolidated with the case involving charges and a Fund claim against Hugh Smith, the Respondent's father and the broker with whom the Respondent was associated. The parties agreed to withdraw the case against Hugh Smith for settlement purposes. The first three exhibits the REC was prepared to offer pertained only to Hugh Smith. Therefore, the REC withdrew those exhibits.

Testimony

The REC presented the following witnesses:

1. Jillian Lord, Assistant Executive Director, REC.
2. Gabrielle Messer, Claimant

The Fund did not present any witnesses.

Ms. Messer testified on behalf of the Claimants' claim against the Fund.

The Respondent testified on his own behalf.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the Respondent was licensed by the REC as a real estate salesperson. He is no longer licensed.
2. On April 16, 2019, the Claimants and the Respondent entered into an Exclusive Buyer Agreement wherein the Respondent, through Coldwell Banker Chesapeake Real Estate Company, agreed to assist the Claimants in the purchase of a property.
3. On April 16, 2019, the Claimants submitted a contract offering to purchase the property located at 306 Bayly Avenue, Cambridge, Maryland 21613 (Contract). The seller of the property was Four Gems Real Estate LLC (Seller).
4. On April 20 and 21, 2019, the Seller signed the Contract. The sale was contingent upon a home inspection.
5. The Property Inspections Addendum to the Contract required the Claimants to obtain the home inspection and provide a completed copy of the home inspection report to the Seller within fourteen days. Then, within five days of receipt of an unsatisfactory report, the Seller was required to notify the Claimants if they will make any or all requested repairs.

6. May 5, 2019 was the fourteenth day after acceptance of the Contract, and the date by which the Claimants were required to provide the Seller with the home inspection report and request repairs.

7. John Follum of Compass Property Inspections, LLC, conducted the home inspection on April 29, 2019.

8. During the inspection, Mr. Follum found that an above-ground heating oil tank was corroded, had a hole, and had leaked some oil into the soil. Mr. Follum suggested replacement of the oil tank and removal and replacement of the contaminated soil underneath the tank.

9. This problem was a big concern for the Claimants. The Respondent assured the Claimants that he would take care of it, and he created a Property Inspections Notice requesting that the Seller replace the oil tank. The Respondent's request regarding the oil tank stated, "oil Tank in rear of property (270 Gallon heating oil tank) Shall be replaced on or before contractual settlement date. Please refer to attached inspection report for specifics." REC Ex. #7, p. 156.

10. The Property Inspections Notice did not include a request to replace and remediate the contaminated soil underneath the tank. However, the Respondent assured the Claimants that, by his referral to the "attached inspection report for specifics," the Seller was required to comply with the suggestion in the home inspection report that the soil be remediated.

11. The Respondent did not submit the Property Inspections Notice and home inspection report to the Seller until May 7, 2019.

12. Even though the Respondent did not request it in a timely manner, the Seller replaced the oil tank. They refused to do any additional repairs, due to the untimeliness of the submission of the request for repairs.

13. Prior to the closing, the Respondent assured the Claimants on multiple occasions that the Seller was going to complete the requested soil remediation to the Claimants' satisfaction.

14. The closing of the sale of the Property convened on May 30, 2019. At the closing, it came to the Claimants' attention that the Seller did not remediate the contaminated soil under the oil tank. The closing did not go forward.

15. On June 6, 2019, the Seller's attorney sent a letter to the Claimants indicating an intent to move forward with legal action for breach of contract due to the Claimants' failure to go forward with closing.

16. The Claimants obtained legal counsel to assist with their defense. The Claimants ultimately closed on the Property; however, they incurred legal fees in the amount of \$21,267.50 to resolve the dispute.

17. The Claimants spent \$2,163.44 to replace the soil and remediate the contamination. They have been reimbursed for that amount.⁴

DISCUSSION

REGULATORY CHARGES

Legal Framework

The REC charged the Respondent with the following:

(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;

....

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

⁴ It is unclear who reimbursed the Claimants for the soil remediation.

Bus. Occ. & Prof. § 17-322(b)(25) & (33) (Supp. 2023).

The REC has also charged the Respondent with two counts of violating the Code of Ethics. COMAR 09.11.02.01H states:

H. For the protection of all parties with whom the licensee 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 09.22.02.02A states:

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.

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. State Gov't § 10-217 (2021); COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). In the regulatory portion of this case, the REC bears the burden to prove by a preponderance of the evidence that the Respondent committed the violations alleged in the Charges. COMAR 28.02.01.21K(1), (2)(a).

Analysis

The Claimants made it known to the Respondent that the replacement of the oil tank and remediation of the soil was mandatory, or they would walk away from the Contract. From April 30, 2019 through the next week, Ms. Messer, knowing there was a deadline to request repairs, inquired of the Respondent regarding the status of the repairs. REC Ex. #7, p. 70;

Cl. Ex. #4. The Respondent assured the Claimants that the repairs would be made. He even told the Claimants by text message on May 2, 2019 that he was calling the Seller hourly to inquire about the repairs. At that point, he had not even submitted the Property Inspections Notice or home inspection report to the to the Seller. Cl. Ex. #4; REC Ex. #7, pp. 156-159.

The Respondent submitted the Property Inspections Notice and home inspection report to the Seller on May 7, 2019, two days late. The Respondent drafted the Property Inspections Notice to request only that the oil tank be replaced but not for soil remediation. Instead, in the Property Inspections Notice, he referred to the attached home inspection report for details. He informed the Claimants that such a reference required the Seller to complete the recommendations in the home inspection report, including the soil remediation. Despite the lateness of the Property Inspections Notice, the Seller agreed to replace the oil tank, but refused to do any additional repairs, including soil remediation. The Seller did not agree to the soil remediation. At the closing, the Claimants found out that the soil remediation was never accomplished.

Right after the failed closing, the Respondent emailed the Claimants, again stating that because he referred in the Property Inspections Report to the details in the home inspection report, the Claimants were “100% covered and clear of any liability.” REC Ex #7, p. 82. He also said that by signing a copy of the Property Inspections Report, the seller was “contractually obligated to replace or repair any item from said list if needed.” REC. Ex. #7, p. 82. He also said he called the Maryland Department of the Environment and reported the “HAZMAT” spill, and the State will hold the seller liable for making the repairs, and if the seller refuses, “the [S]tate will condemn the house making it impossible to sell to anyone else.” REC Ex. #7, p. 82.

At the hearing, the Respondent apologized several times about the fact that everyone had to appear for this hearing. He relied upon the Contract and said, "the Contract says everything." He said he did the best he could and everything he did was in the best interest of the Claimants and was legal. He disagreed that he submitted the request for repairs too late but said he had no evidence to establish this contention. He referred to his military background and good character and said that he did not believe he misrepresented anything to the Claimants.

The REC argued that the Respondent failed to timely notify the Seller of requested repairs and he misrepresented to the Claimants that the Seller agreed to remediate the soil. The REC maintained that the Respondent acted in bad faith, with incompetency and untrustworthiness and was dishonest. The Contract required that the Claimants provide a copy of the home inspection report and notify the Seller by May 5, 2023 of any requested repairs. The Respondent did not do so until May 7, 2023. Additionally, the Property Inspections Notice did not specifically ask for soil remediation.

The REC noted that the Respondent is no longer licensed. It requested that I impose a reprimand upon his prior license and impose a civil penalty of \$1,000.00. I will address each charge.

§ 17-322(b)(25)-Engaging in conduct that demonstrates bad faith, incompetency or untrustworthiness that constitutes dishonest, fraudulent, or improper dealings

The Respondent's failure to submit the request for repairs in a timely manner and his failure to specify the request for soil remediation in the Property Inspections Report constituted bad faith, incompetency, untrustworthiness and dishonesty. He misrepresented to the Claimants that the Seller agreed to remediate the soil. The Seller, despite the untimeliness of the request, agreed to replace the oil tank. The Seller refused to do any additional repairs given the untimeliness of the request. Moreover, the Property Inspections Notice did not even request soil

remediation. The Respondent's argument that referral to the home inspection report required the Seller to complete any repairs contained therein lacks merit. The Respondent acted in bad faith and was dishonest and untrustworthy throughout this transaction. I conclude that the Respondent's actions fit squarely within Section 17-322(b)(25).

§ 17-322(b)(33)- Violates any regulation adopted under this title or any provision of the code of ethics

The REC has also charged the Respondent with violations of the Code of Ethics. As set forth above, COMAR 09.11.02.01H requires a licensed real estate salesperson to ensure that financial obligations and commitments regarding real estate transactions are in writing, express the exact agreement of the parties, and ensure that all parties have copies within a reasonable time of execution. The timely submission of the home inspection report and request for repairs was an essential component of this transaction and was determinative of whether the sale of the Property would even proceed. The Respondent did not place the Claimants' complete repair request in writing. The Respondent violated this section of the Code of Ethics.

The REC also charged the Respondent with a violation of another section of the Code of Ethics. COMAR 09.11.02.02A requires an agent to protect and promote the interests of the client and imposes an obligation of absolute fidelity to the client, while not relieving the agent of his statutory obligations toward the other parties. The Respondent, by failing to include remediation of the soil in the Property Inspections Notice, and by failing to present the Property Inspections Notice and the home inspection report to the Seller in a timely manner, failed to protect the interests of the Claimants. He knew very clearly that the Claimants would walk away from the Contract if the matter was not addressed. Yet, in the Property Inspections Notice, he very inarticulately requested replacement of the oil tank without reference to soil remediation.

As stated above, I strongly disagree with the Respondent that the reference to the home inspection report constituted a request for soil remediation. The Respondent is in violation of this section of the Code of Ethics, and the charge that he violated the Code of Ethics under Section 17-322(33) should be upheld.

Disciplinary Sanctions

Section 17-322(c) of the Act provides as follows:

(c)(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.

(4) The Commission may not impose a fine based solely on a violation of subsection (b)(35) of this section.

Bus. Occ. & Prof. § 17-322(c) (Supp. 2023).

The violations were serious. The Respondent's inaction and misrepresentations directly caused the Claimants to incur significant, unnecessary, legal expenses because of the failure of the May 30, 2019 closing. The Respondent lacked good faith in his representation to the Claimants that the Seller was going to remediate the soil, and by his failure to submit the Property Inspections Notice and home inspection report in a timely manner. The REC represented that the Respondent has no prior history of violations. With consideration of those factors, and based on my analysis herein, I agree with the REC that the Respondent should pay a civil penalty in the amount of \$1,000.00, and that a reprimand be imposed upon his prior license with the REC.

FUND CLAIM

A person may recover compensation from the Fund for an actual loss based on certain types of acts or omissions in the provision of real estate brokerage services by a licensee. A licensee “means a licensed real estate broker, a licensed associate real estate broker, or a licensed real estate salesperson.” Bus. Occ. & Prof. § 17-101(k) (Supp. 2023).

The provision of real estate brokerage services is defined as follows:

(l) “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;

(2) for consideration, assisting another person to locate or obtain for purchase or lease any residential real estate;

(3) engaging regularly in a business of dealing in real estate or leases or options on real estate;

(4) engaging in a business the primary purpose of which is promoting the sale of real estate through a listing in a publication issued primarily for the promotion of real estate sales;

(5) engaging in a business that subdivides land that is located in any state and sells the divided lots; or

(6) for consideration, serving as a consultant regarding any activity set forth in items (1) through (5) of this subsection.

Id. § 17-101(l) (Supp. 2023).

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.

Id. § 17-404(a)(2). The amount recovered for any claim against the Fund may not exceed \$50,000.00 for each claim. *Id.* § 17-404(b).

The Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Occ. & Prof. § 17-407(e) (2018); State Gov't § 10-217. To prove a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman*, 369 Md. at 125 n.16.

First, the analysis under Section 17-404 requires that a claim be based on an act or omission. The Respondent’s failure to articulate in the Property Inspections Notice the Claimants’ request that the contaminated soil be remediated, and his failure to submit the Property Inspections Notice and home inspection report in a timely manner, constituted acts and omissions in the provision of a real estate service.

Second, the analysis requires that as a result of the act or omission, money or property was obtained from a person by theft, embezzlement, false pretenses or forgery; *or* constitute fraud or misrepresentation. There was no evidence of theft, embezzlement, false pretenses or forgery.

Maryland recognizes two forms of misrepresentation: fraudulent misrepresentation and negligent misrepresentation. As the evidence establishes negligent misrepresentation, I will rely on that definition. Negligent misrepresentation occurs when the defendant: (1) owes a duty of care to the plaintiff; (2) intends that his statement will be acted upon by the plaintiff; (3) has knowledge that the plaintiff will probably rely on the statement, which if erroneous will cause loss or injury; (4) plaintiff justifiably takes action in reliance on the statement, and

(5) suffers damage proximately caused by the defendant's negligence. *White v. Kennedy Krieger Institute, Inc.*, 221 Md. App. 601, 641 (2015) (quoting *Lloyd v. General Motors Corp.*, 397 Md. 108, 135-36 (2007) (emphasis omitted).

Here, the Respondent, by virtue of the agent/client relationship established by the Exclusive Buyer Representation Agreement dated April 16, 2019, owed a duty of care to the Claimants. REC Ex. #7, p. 110. He intended for the Claimants to rely upon his assurance that the Seller was going to remediate the contaminated soil. He expected that the Claimants would rely on that statement because they made it clear to him that failure to have the soil remediation accomplished would have been a deal-breaker; they would have walked away from the Contract. He also knew that the statement, being erroneous, would cause harm to the Claimants with the possibility of a failed property sales transaction. The Claimants justifiably relied upon the Respondent's representations and went to closing thinking that the soil remediation had occurred. When, during the closing, the Claimants discovered that soil remediation was never part of the discussion between the Respondent and the Seller, the closing fell through. The Seller pursued legal action against the Claimants, who incurred legal expenses in the form of attorney's fees in the amount of \$21,267.50 for their defense. These legal fees were damages proximately caused by the Respondent's negligent misrepresentations.

The Claimants have established that they suffered an actual loss due to the acts and omission of the Respondent, by virtue of his misrepresentation of the salient facts regarding the Claimants' purchase of the Property. Therefore, the Claimants are entitled to compensation in the amount of \$21,267.50 from the Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Respondent violated Sections 17-322(b)(25) and (33) of the Business Occupations Article of the Maryland Code, as well as the Code of Ethics, COMAR 09.11.02.01H and COMAR 09.11.02.02A. Consequently, I conclude that the Charges are upheld, and the Respondent is subject to the disciplinary sanction of a reprimand against his previous Maryland real estate license.

I further conclude that the Respondent is subject to a monetary penalty of \$1,000.00. Md. Code Ann., Bus. Occ. § 17-322(c) (Supp. 2023).

I further conclude that the Claimants demonstrated by a preponderance of the evidence that they sustained an actual loss compensable by the Fund due to acts and omissions of the Respondent in the provision of real estate brokerage services. Md. Code Ann., Bus. Occ. § 17-404 (2018).

I further conclude that the Claimants are entitled to recover \$21,267.50 from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-404(b) (2018); COMAR 09.11.01.19.

RECOMMENDED ORDER

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

The Charges against the Respondent be **UPHELD**; and

A reprimand be imposed against the Respondent's previous Maryland real estate license;

and

The Respondent pay a monetary penalty of \$1,000.00; and

ORDER that the Maryland Real Estate Commission Guaranty Fund award the Claimants \$21,267.50; and further **ORDER:**

1. The Respondent shall reimburse the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Real Estate Commission.⁵

2. The Maryland Real Estate Commission may not reinstate the Respondent's license until the Respondent repays in full the amount paid by the Guaranty Fund, plus interest, and the Respondent applies to the Real Estate Commission for reinstatement of the license.⁶

3. The records and publications of the Maryland Real Estate Commission reflect this decision.

SIGNATURE ON FILE

October 23, 2023
Date Decision Issued

Susan A. Sinrod
Administrative Law Judge

SAS/cko
#207975

⁵ Md. Code Ann., Bus. Occ. & Prof. § 17-411(a) (2018).

⁶ Md. Code Ann., Bus. Occ. & Prof. § 17-412(a), (b) (2018).