

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION
V.

WILLIAM A. MCCONKEY
RESPONDENT

AND

CLAIMANT'S
TERESA MILLIGAN

ANGELA POWELL

LAURI DONOVAN

* * * * *

* BEFORE D. HARRISON PRATT,
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-24-10-04919
* REC Case No: 2007-RE-278 (Claimant Milligan)
* OAH No: DLR-REC-24-10-12270
* REC Case No: 2008-RE-641 (Claimant Powell)
* OAH No: DLR-REC-24-10-04921
* REC Case No: 2008-RE-852 (Claimant Donovan)
* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated January 20, 2011, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 4th day of February, 2011.

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;
- D. That the Respondent has expressly waived his right to appeal any Order issued by the Commission awarding to Ms. Donovan money from the Commission's Guaranty Fund. (Consent Order 2008-RE-852)

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

By: Marla S. Johnson
Marla S. Johnson, Commissioner

2/4/2011
Date

SIGNATURE ON FILE

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COMMISSION

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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 June 11, 2008, Laurie Donovan (Donovan), filed a complaint with the Maryland Real Estate Commission (REC) and a claim against the REC Guaranty Fund (Fund) for losses allegedly suffered because of the actions of William A. McConkey (Respondent or McConkey), a licensed real estate salesperson. On April 2, 2008, Angela Powell (Powell) filed complaint with the REC and a claim against the REC Fund, also for losses allegedly suffered because of the actions of the Respondent. On October 26, 2007, Teresa Milligan (Milligan) filed a complaint with the REC and a claim against the REC Fund, also for losses allegedly suffered because of the actions of the Respondent. On

December 29, 2009, the REC filed regulatory charges against the Respondent in the Milligan case. On January 13, 2010, the REC filed regulatory charges against the Respondent in the Donovan and Powell cases.¹

A hearing on the merits in the Milligan case was initially scheduled for September 15, 2010. That hearing, and several subsequently scheduled hearings, was postponed at the Respondent's request, in part because he was involved in reelection activities. A hearing on the merits in the Donovan case was initially scheduled for September 27, 2010 and in the Powell case for September 23, 2010. The Donovan and Powell hearings were postponed, again because of the Respondent's campaign schedule. All three cases were consolidated and scheduled for a hearing on October 25 through October 29, 2010. The Respondent's request to postpone the October hearing was denied.

I called these cases for hearing on October 25, 2010 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010).² Donovan, Milligan, and Powell, the Claimants, were present at the hearing and represented by Michael Morin, Esq. The Respondent was present at the hearing and represented by L. Simmons, Esq. The REC was represented by Jessica Kauffman, Assistant Attorney General. The Fund was represented by Hope Sachs, Assistant Attorney General.

¹ Prior to the beginning of the hearing, the REC and the Respondent entered into a settlement of all of the regulatory charges. Pursuant to the settlement agreement, McConkey agreed to the following as to all three complaints: (1) that he was incompetent and engaged in improper dealing in the performance of his duties, (2) that he would not contest any of the three claims against the Fund, (3) that he knowingly and willingly violated the Maryland Protection of Homeowners in Foreclosure Act, (4) that his real estate license would be suspended for one year and that he would have to go through the application process to get his license back, (5) that he will not file an appeal of the outcome of any of these claims or complaints, (6) and that he will pay a civil penalty in each of the three cases. Once the REC and McConkey entered into a settlement as to the regulatory charges, McConkey and his attorney left the hearing and did not participate in the proceedings. Accordingly, the regulatory charges are not before me.

² Throughout this decision, Maryland Code Annotated, Business Occupations & Professions (2010) is referred to as "Business Occupations" and all references to this Article will be to the version published in the 2010 Replacement Volume.

Procedure in this case is governed by the Administrative Procedure Act, the REC's Hearing Regulations, and the OAH Rules of Procedure. Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009 & Supp. 2010); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

ISSUES

The issues are:

1. Whether the Claimants have sustained an actual loss as the result of the actions or omissions of the Respondent; and if so
2. What if any award should be made to the Claimants from the Fund.

SUMMARY OF THE EVIDENCE

Exhibits:

I admitted the following documents on behalf of the three Claimants:

Documents Pertaining to Claimant Donovan:

1. Notice of Hearing
2. Transmittal, Order for Hearing, Statement of Charges.
- 3.A McConkey's licensing history.
- 3.B McConkey's prior MREC violations.
- 3.C MREC denial of McConkey's application for a brokers license, February 19, 1999.
4. Court of Appeals disbarment order for McConkey.
5. MREC Report of Investigation, with attachments including the following:
 - 5.1 Complaint and Guarantee Fund claim.
 - 5.2 Maryland Judiciary Case Information report.

- 5.3 Listing contract.
- 5.4 Deed of Trust, April 24, 2008.
- 5.5 McConkey letter to Donovan, October 2, 2007.
- 5.6 Copies of 3 checks from Donovan to McConkey, November 6, 2007.
- 5.7 General release, November 7, 2007.
- 5.8 McConkey flyer advertising open houses.
- 5.9 Letter from Broker Chris Riley to the MREC, November 22, 2008.
- 5.10 McConkey letter to the MREC, June 30, 2008.
- 6.A ReMax independent contractor agreement, May 1, 2006.
- 6.B Emails from ReMax to McConkey re paperwork due.
- 6.C Termination of ReMax Independent Contractor Agreement.
7. Deed transferring property to Donovan, February 21, 2005.
8. Letter from attorney MacFayden to Donovan, October 19, 2007.
9. Deed from Donovan to McConkey, November 7, 2007.
10. Letter from attorney Fuchs to Donovan, November 12, 2007.
11. Letter from McConkey to Donovan, November 29, 2007.
12. Possession agreement, November 30, 2007.
13. Listing contract, June 16, 2008.
14. MRIS listing for the Donovan property.
15. Deed from McConkey to Peguese, August 12, 2008.
16. State Department of Assessments and Taxation records for the Donovan property.

Documents Pertaining to Claimant Powell:

1. Notice of Hearing.

2. Statement of Charges and Order for Hearing.
- 3.A McConkey's MREC licensing history.
- 3.B Prior MREC violations.
- 3.C MREC denial of McConkey's application for a brokers license, February 19, 1999.
4. Court of Appeals disbarment order for McConkey.
5. MREC Report of investigation, including the following:
 - 5.1 Complaint.
 - 5.2 McConkey licensing history, February 18, 2009.
 - 5.3 Maryland Judiciary Case Information Report, *Bierman v. Powell*.
 - 5.4 HUD-1 statement for sale of the Powell property to McConkey, January 30, 2007.
 - 5.5 Residential Dwelling Lease, January 30, 2007.
 - 5.6 Deed from Powell to McConkey, January 7, 2007.
 - 5.7 Residential contract of sale from Powell to McConkey, January 17, 2007.
 - 5.8 Promissory note from Powell to McConkey, January 30, 2007.
 - 5.9 McConkey letter to the MREC, April 25, 2008.
 - 5.10 Letter from Broker Riley to the MREC, April 28, 2008.
- 6.A ReMax Independent Contractor Agreement, May 1, 2006.
- 6.B Emails from ReMax to McConkey, September 2007 – July 2008.
- 6.C Termination of ReMax Executive Independent Contractor Agreement.
7. Facsimile from McConkey to Dunn Title.
8. Notices from Option One Mortgage to Powell.
9. State Department of Assessment and Taxation Record for the Powell property.

Documents Pertaining to the Claimant Milligan:

1. Notice of Hearing.
2. Statement of Charges and Order for Hearing.
- 3.A McConkey's MREC licensing history.
- 3.B Prior MREC violations.
- 3.C MREC denial of McConkey's application for a brokers license, February 19, 1999.
4. Court of Appeals disbarment order for McConkey.
5. Deed from Steeves to Milligan, April 11, 1997.
6. Milligan bankruptcy history, November 29, 2004.
7. Notice of Revocation of Power of Attorney & Rescission & Cancellation of Foreclosure Consultation Contract & Foreclosure Reconveyance Deed, October 15, 2006.
8. Citibank Mortgage Payoff Statement, June 5, 2008.
9. MREC Report of Investigation, including the following:
 - 9.1 McConkey advertisements.
 - 9.2 Milligan Complaint, with the following attachments:
 - Morin letter, October 23, 2006.
 - Complainant in Anne Arundel County.
 - Morin letter August 14, 2008.
 - Milligan Amended Complaint for \$25,000.
 - Milligan Supplemental Interrogatory Responses.
 - Milligan Motion for Summary Judgment.
 - Table of Contents for Memorandum.
 - Memorandum in Support of Summary Judgment.
 - 9.3 McConkey House of Delegates Profile in the Maryland Manual.
 - 9.4 Residential Lease Agreement, January 3, 2006.
 - 9.5 Deed from Milligan to McConkey, January 3, 2006, recorded September 26, 2006.

- 9.6 Notice of Transfer of Deed or Title, January 3, 2006, without notary.
- 9.7 Notice of Transfer of Deed or Title, January 3, 2006, with notary.
- 9.8 Notice of Rescission, January 3, 2006, signed by Milligan January 6, 2006.
- 9.9 Promissory note for \$18,200, January 3, 2006.
- 9.10 Residential Contract of Sale, Milligan to McConkey, January 3, 2006.
- 9.11 Understanding Whom Real Estate Agents Represent, Residential Contract of Sale, with notation cancelled 8:35 pm.
- 9.12 Motion to Dismiss Bankruptcy Case, Court Order of Dismissal, January 6, 2006.
- 9.13 Listing Contract ReMax Allegiance January 7, 2006, Understanding Whom Real Estate Agents Represent, Consent for Dual Agency, Front Foot Addendum, Lock Box Addendum, Sign Order.
- 9.14 MRIS Listing ReMax Allegiance, March 7, 2006.
- 9.15 MREC licensing history for McConkey, February 9, 2009.
- 9.16 Listing Contract ReMax Executive, May 19, 2006, check dated September 29, 2006 to Aegis Management final pay for roof replacement (\$2,000.00).
- 9.17 MRIS Listing ReMax Executive, May 21, 2006.
- 9.18 Response of ReMax Broker Blumenkrantz to complaint by Milligan, November 1, 2006, McConkey response to complaint, with attachments.
- 9.19 Residential Contract of Sale, Milligan to McConkey, August 1, 2006.
- 9.20 Response of ReMax Broker Riley to Milligan complaint, November 1, 2006.
- 9.21 McConkey's Independent Contractor Agreement with ReMax, May 1, 2006.

- 9.22 Emails from ReMax to McConkey concerning paperwork due, September 2007 – July 2008.
- 9.23 Termination of ReMax Independent Contractor Agreement, July 10, 2008.
- 9.24 State Department of Assessments and Taxation record for Capital Investors, Inc.
- 9.25 MREC subpoena to Notary Justensen and Justensen's response.
- 9.26 Statement of Notary Justensen, July 25, 2008.
- 9.27 State of Maryland Land Instrument Intake Sheet.
- 9.28 Facsimile cover sheet from McConkey to Dunn Title, MRIS listing October 18, 2006, Gravatt contract of October 17, 2006, letter from attorney Hoffman to Gravatt.
- 9.29 Judgment and Order from Circuit Court for Anne Arundel County, September 18, 2008.
10. *McConkey v. Milligan* District Court Anne Arundel County, Wrongful Detainer/Grantor in Possession, September 18, 2008.
11. Documents concerning civil suit including the following:
 - a. Case information.
 - b. Order granting summary judgment to WM Specialty Mortgage, LLC.
 - c. Judgment and Order of September 18, 2008.
 - d. McConkey bankruptcy documents, December 11, 2008.
 - e. Jury verdict form.
 - f. Jury verdict sheet, April 28, 2009.
 - g. Notice of recorded judgment, May 1, 2009.
 - h. Order vacating judgment in case of *Milligan v. McConkey* and award of attorney's fees to Milligan.
12. Transcript of McConkey's deposition.

13. Trial transcript, *Milligan v McConkey* and *McConkey v. Milligan*, in the Circuit Court for Anne Arundel County, Maryland.

FINDINGS OF FACT

1. At all times relevant to the three claims in this case, McConkey was a licensed real estate salesperson.
2. McConkey was a licensed real estate salesperson from 1984 until 1986. Between 1986 and 1995, he was a licensed real estate broker. During his tenure as a real estate broker, he was disciplined by the MREC on three occasions. On the first occasion, he was reprimanded for failing to properly supervise an agent in his brokerage. On the second occasion, he was fined \$500.00 for failing to respond to a complaint filed with the MREC and failing to follow MREC regulations. On the third occasion, he was fined \$2,000.00 and his brokerage license was revoked for willful misrepresentation, failure to account for money, improper conduct and violation of the MREC Code of Ethics. McConkey appealed his fine and revocation in the third case to the Circuit Court and the Maryland Court of Special Appeals, both of which sustained the fine and revocation.
3. McConkey reapplied for a real estate broker's license on November 24, 1998. A hearing on this application was held before the MREC on January 28, 1999. The MREC denied his application, stating that it was not in the public interest to allow him to hold a broker's license. The MREC, in its order denying McConkey's application, also stated:

Mr. McConkey seems unwilling to accept responsibility for his past actions. His apparent position with regard to the revocation of his license is that he accepts the revocation and would like to move on, but still believes he did nothing to violate the law. He seems to believe that his only mistake with regard to his actions within the partnership were his failures to document partnership business. This is in contradiction with the facts of the case, which leads to the conclusion that Mr. McConkey engaged in serious violations of the law.

4. McConkey graduated from the University of Maryland School of Law in 1990 and he was admitted to the practice of law that same year. On May 9, 1995, McConkey was disbarred from the practice of law in Maryland.
5. McConkey is a member of the Maryland House of Delegates (Republican, District 33A, Anne Arundel County). He has been a Delegate since January 2003, Deputy Minority Whip since 2007, member of the Judiciary Committee, since 2007 (including the Estates and Trusts Subcommittee), member of the Housing and Real Property Subcommittee 2003 – 2006, and other committees.
6. In November 2008, McConkey filed for bankruptcy. At the time of the hearing in this matter, that case was pending.

7. All three of the Claimants were unsophisticated in the selling of real estate, foreclosures, and mortgages.
8. May of the documents in connection with McConkey's dealings with the Claimants were never turned in to his broker.

Facts Pertaining to the Claim of Lauri Donovan

1. Donovan was the owner of real property located at 412 Manor Road in Arnold, Maryland. In September 2007, she lost her job and subsequently fell behind in her mortgage. Soon thereafter, she began to receive foreclosure notices. Foreclosure was scheduled for October 22, 2007.
2. In October 2007, Donovan received a letter from McConkey on ReMax letterhead. In the letter, McConkey states that he wants to "save your home" while paying the mortgage and utilities while working to find a buyer for the property.
3. Donovan called McConkey on October 11, 2007. They met on October 17, 2007 and McConkey told Donovan that he could list her house for sale for a broker fee of 7% of the selling price, that he would pay the mortgage in the interim, and he would allow Donovan to stay in the house. Donovan would reimburse McConkey from the proceeds of the sale of the house. On October 18, 2007, Donovan agreed to McConkey's offer.
4. At McConkey's direction, Donovan obtained a reinstatement letter from her mortgage holder. She attempted frantically to contact McConkey again before the foreclosure but was unsuccessful, as he failed to return her many telephone calls over the next two days.
5. Foreclosure of Donovan's property occurred on October 22, 2007. After the foreclosure sale, McConkey informed Donovan that he had purchased the house at the foreclosure. He informed Donovan that she had thirty days to vacate the premises.
6. Donovan then questioned McConkey about the arrangement he had offered her previously at which point he offered her \$5,000.00 to help her rent an apartment. He paid the rent for six months. Donovan signed a general release upon receipt of the money for the rent.
7. Donovan was unable to leave the premises by November 22, 2007. McConkey denied Donovan's request for an additional week and demanded that she leave the house and turn over the keys.
8. Donovan then learned that she need not vacate the house until the foreclosure sale had been ratified.

9. Soon after moving out of her house, Donovan began seeing flyers advertising her house for sale. She also saw a newspaper article about another homeowner who had filed suit against McConkey. She called the attorney representing that other homeowner, Michael Morin, Esq. Attorney Morin advised Donovan to speak with a representative of the REC, which she did. On June 11, 2008. Donovan filed a complaint with the REC against McConkey.
10. Jennifer Grimes (Grimes), an investigator for the REC, investigated the complaint.
11. On July 2, 2008, McConkey responded to the complaint by letter. He explained that the foreclosure sale of the Donovan property had been ratified by the Circuit Court and that Donovan should have raised her concerns by filing exceptions with the court. He also denied that there was any "agency" relationship between him and Donovan and therefore the REC had no jurisdiction over the matter. He also claimed that the general release signed by Donovan barred any claims she had against him.
12. On November 7, 2008, Grimes interviewed McConkey. McConkey's attorney, Alvin Monshower, was present during this interview. McConkey stated that he routinely contacted people facing foreclosure by sending them direct mailings and by way of television advertisements. He learned of Donovan's foreclosure through public listings. According to McConkey, in the Donovan case, there was no time to stop the foreclosure. He bought the property at the foreclosure sale for \$270,000.00 and offered Donovan \$5,000.00 to move out within thirty days and she accepted. He then offered to sell the property back to Donovan for \$352,500.00, \$82,500.00 more than he paid for the property. In August 2008, he sold the property to another buyer for \$352,500.00.
13. At the time of McConkey's interactions with Donovan, her property had a fair market value of \$352,500.00.

Facts Pertaining to the Claim of Powell

1. Powell was the owner of real property located at 241 Hammonds Lane in Baltimore (Anne Arundel County), Maryland.³ In December 2006, she was three months behind in her mortgage and had received several late notices from her mortgage holder. She was not at this time in foreclosure. She saw several advertisements by McConkey offering to help those behind in the mortgage and/or in foreclosure. She called McConkey's direct telephone number and made an appointment to meet with him.

³ Angela Powell and her husband Donald Powell owned the property as husband and wife. Mrs. Powell filed the complaint on behalf of both.

2. In late December 2006 or early January 2007, Powell met with McConkey at Powell's house. McConkey told her that he would buy her property even though, according to McConkey, she had no equity in her property. Powell had had her property appraised for \$280,500.00 just six months earlier. McConkey blamed high interest rates for the difference in value and offered her \$218,000.00 for the property, which was the amount due on the mortgage at the time. Powell accepted the offer.
3. Powell then entered into an agreement with McConkey to lease the property for a period of 1 year for \$1,400.00 per month.
4. Settlement of the sale to McConkey took place on January 30, 2007 and Powell signed the deed over to McConkey at that time. Settlement costs were \$2,398.00, which Powell paid with a loan from McConkey. Powell signed a promissory note to McConkey for the closing costs.
5. Powell made regular lease payments but never received any receipts. She paid all of the rent for 2007 and for the first three months of 2008. She had not yet paid the rent for April 2008, having filed a complaint with the REC on April 2, 2008. During the lease period, she received late notices from the mortgage holder. At the expiration of Powell's Adjustable Rate Mortgage, the rates increased and monthly mortgage payments went from \$1,720.00 to \$2,335.00.
6. When she continued to get notices from the mortgage holder, and getting no answers from McConkey, Powell contacted an attorney, Margaret Lenard of the Legal Aide Bureau. Ms. Lenard made contact with the REC and on April 2, 2008, Powell filed a complaint against McConkey.
7. McConkey failed to make mortgage payments on the Powell property even though he had agreed to do so after purchasing the property. The Powell property was sold at foreclosure in August 2008.
8. Jenifer Grimes investigated the complaint on behalf of the REC. She interviewed McConkey in the presence of his attorney, Alvin Monshower, on November 7, 2008. McConkey said he did not make the mortgage payments because Powell fell behind in her rent payments. He failed to produce any documentation concerning the rent.

Facts Pertaining to the Claim of Milligan

1. Milligan owned real property located at 1109 Hunter Court in Pasadena, Maryland. In 2004, she was behind in her mortgage payments and her house was sold at foreclosure. The house was purchased by McConkey. Shortly after the foreclosure, McConkey advised Milligan that she had to vacate the property within thirty days. A short time later, the foreclosure sale was nullified when Milligan filed bankruptcy.

2. In December 2005, Milligan was again facing foreclosure. She was required to make payments to the bankruptcy trustee but fell behind because she was unemployed. Foreclosure sale was scheduled for January 6, 2006.
3. Just a few days before the scheduled foreclosure sale in 2006, McConkey came to the property and spoke with Milligan. He informed her that he could save her property from foreclosure and he offered her two options. Under option 1, he would pay the arrearages on the mortgage (\$18,200.00 at the time) and list the property for sale with him being her real estate agent. Under option 2 he would buy the property directly for \$160,000.00 and then rent the property back to her for a period of four years.
4. Milligan agreed to McConkey's second option. On or about January 3, 2006, in compliance with the agreement, she signed the following documents
 - a. Lease agreement
 - b. Deed
 - c. Notice of Transfer of Deed of Title
 - d. Notice of Rescission
 - e. Promissory note to McConkey for \$18,200.00
 - f. Contract of sale to McConkey for \$160,000.00.
 - g. Brochure *Understanding Whom Real Estate Agents Represent*
5. Milligan was not aware that she had signed the deed transferring the property to McConkey. She and McConkey were the only people present on January 3, 2006 when she signed the papers.
6. Milligan agreed to the sale for \$160,000.00 because it would have paid off her mortgage, including all arrearages.
7. Also on January 3, 2006, McConkey advised Milligan to dismiss her bankruptcy case, which she did. Milligan was represented by an attorney in her bankruptcy case.
8. On January 6, 2006, Milligan called McConkey and informed him that she had changed her mind about selling her property. McConkey had previously informed her that she could change her mind within three days. Instead, she instructed McConkey to list her property for sale. She signed a listing agreement on January 7, 2006 and the property was listed in the multiple listing service (MLS) with Milligan as the owner.
9. On May 19, 2006, McConkey had Milligan sign another listing agreement because he had changed brokers. The property was again listed in the MLS with Milligan as the owner.
10. In August 2006, Milligan accepted an offer on her property made by Mr. & Mrs. McCoy. Settlement was scheduled for September 15, 2006. Shortly

before settlement, McConkey informed Milligan that the buyers had backed out of the purchase.

11. McConkey then pressured Milligan to sell the property to him for \$160,000.00. When Milligan refused to sell to McConkey, he advised her that she had already signed documents selling the property to him and he hung up the telephone on her.
12. Milligan has not received the \$160,000.00 and the mortgage on her property was not paid off.
13. The McCoys had made an offer to buy Milligan's property in July 2006. Afterward, a home inspection was conducted and certain items needed to be repaired. The repairs were made. Two days prior to settlement, the McCoys and McConkey made a walk-through of the Milligan house. They discovered a leak in a bedroom. McConkey had a contractor accompany him for the walk through and the contractor offered to repair the leak for \$700.00. The contractor was not licensed by the Maryland Home Improvement Commission. The next day, McCoys' agent had another contractor inspect the area of the leak and that contractor determined that the entire roof needed to be replaced. The McCoys requested an extension of the settlement date in order to have time to replace the roof. McConkey, without consulting Milligan, refused the request. It would have cost approximately \$2,000.00 to replace the roof.
14. On October 26, 2007, Milligan filed a complaint with the REC. Jennifer Grimes investigated the complaint on behalf of the REC. On August 27, 2008, Grimes met with McConkey in the presence of his attorney, Alvin Monshower. McConkey advised Grimes that he bought the Milligan property at foreclosure in 2005. Milligan advised him that she had filed bankruptcy and that the foreclosure sale had been rescinded. In January 2006, when he became aware that the house was again heading for foreclosure, McConkey offered to buy the property for \$160,000.00. As part of the agreement, Milligan was to rent the property back from him for four years, with an option to buy it back. According to McConkey, no other options were discussed. He claimed that he reviewed all of the documents with Milligan before she signed them and that Mr. Justensen was there to notarize the documents. He claims that he advised Milligan that he could not help her until she dismissed her bankruptcy case and he prepared a dismissal form. McConkey also claimed that he made payments on the mortgage including paying off the arrearages.
15. The documents signed by Milligan do not bear a notary signature or stamp. Mr. Justensen was not present when the documents were signed.
16. McConkey claimed that there were two offers on the Milligan property but he did not produce any documents to support this allegation. He denied refusing the request for an extension of the settlement date without consulting Milligan.

17. The house was again scheduled for foreclosure in September 2006, at which time McConkey paid the arrearages and stopped the sale. McConkey alleged that he had another offer for the property, this one for \$205,000.00 from Mr. Gravatt, which he claimed Milligan refused. He then filed the deed that Milligan had signed. When Milligan refused this alleged second offer, McConkey claimed that he then offered to sell the property to Gravatt for \$180,000.00.
18. McConkey did not consult with Milligan when he refused an extension of the settlement with the McCoys.
19. In September 2008, in the Circuit Court for Anne Arundel County, Milligan was awarded a judgment against McConkey for \$75,000.00 for attorney's fees. McConkey has since filed bankruptcy and this obligation will be discharged in that proceeding.
20. Milligan's property was eventually sold at foreclosure and the sale has been ratified. McConkey has not paid Milligan anything for the purchase of the house.
21. At the time of the foreclosure sale, Milligan had equity in the property of \$78,000.00.

DISCUSSION

The Claimants bear the burden of proof in their Claim against the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e). Claims for reimbursement from the Fund are governed by section 17-404 of the Act. COMAR 09.11.03.04 further provides guidance with respect to claims against the Fund. The Claimants have satisfied all of the requirements for recovery against the Fund.

Section 17-410(b)(1)(2004) of the Act provides that "[t]he Commission may order payment by the Guaranty Fund only for the actual monetary loss suffered by the claimant as a result of the claim proven by the claimant." Recovery from the Fund is limited to actual monetary loss and a statutory maximum of \$25,000.00 per claimant. Md. Code Ann., Bus. Occ. & Prof. § 17-410(b)(2), COMAR 09.11.01.18. The term "actual loss" is not defined in the statute, regulation or any reported appellate decision. Interpreting it in

the context of the statute, it means an economic loss suffered by the Claimants because of proven misconduct by the Respondent.

All three claims in this case are based on the same facts that were the basis for the regulatory charges against McConkey, regulations that he has already acknowledged violating. His actions certainly constitute fraud, misrepresentation, and false pretenses, as well as violations of the ethical standards established by the REC. Clearly, then, McConkey was acting as a licensed real estate salesperson in his dealings with the Claimants at the time he violated the regulations and his actions have resulted in actual monetary losses to the Claimants.

Monetary Losses Sustained by Donovan

McConkey bought the Donovan property at the foreclosure sale for \$270,000.00. He later sold the property for \$352,500.00, making a profit of \$82,500.00. He paid for certain repairs on the house that cost no more than \$20,000.00. At the time of McConkey's interactions with Donovan, her property had a fair market value of \$352,500.00, the price for which he sold the property. He paid Donovan \$5,000.00 to assist her with rent. Had Donovan sold the property herself, she would have had certain fees and expenses to pay. I disagree with Attorney Morin that 10% of the selling price is a fair estimate of what those costs and expenses would have been. I find that 8% of the selling price is a fair estimate of what those costs and expenses would have been. I calculate Donovan's actual monetary as follows:

Fair market value of the property	\$352,500.00
Less money advanced for rent	<u>5,000.00</u>
	347,500.00
Less what he paid at foreclosure	<u>270,000.00</u>
	77,500.00
Less costs of repair	<u>20,000.00</u>
	57,500.00
Less 8% for costs and expenses	

of sale	<u>28,200.00</u>
Donovan's actual monetary loss	\$ 29,300.00

Monetary Losses Sustained by Powell

Powell had her property appraised for \$280,500.00 in June 2006 and I find that that was the fair market value of her property at the time of her interactions with McConkey. I have no evidence that McConkey made any repairs to the Powell property. Had Powell sold the property herself, she would have had expenses of no more than 8% of the selling price, *i.e.* \$22,440.00. I calculate Powell's actual monetary loss as follows:

Fair market value of the property	\$280,500.00
Less 8% for costs and expenses of sale	<u>22,440.00</u>
	258,060.00
Less mortgage balance paid in foreclosure	<u>218,000.00</u>
Powell's actual monetary loss	\$ 40,600.00

Monetary Losses Sustained by Milligan

Based on appraisal Milligan obtained, the fair market value of her property at the time of her dealings with McConkey was \$243,000.00. This is also the amount offered by the McCoys to purchase the property. Had the mortgage been paid off, Milligan would have had net profit from the sale of approximately \$78,000.00. I find that Milligan's actual monetary loss was \$78,000.00.

As mentioned previously, there is a statutory limit of \$25,000.00 that any claimant may receive from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-410(b)(2). Therefore, I recommend that each of the Claimants be awarded the maximum amount of \$25,000.00 from the Fund.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, and I recommend that the REC find that the Respondent violated several statutes and regulations by engaging in fraudulent and unethical actions in his dealing with the Claimants and by misrepresenting the true nature of his dealings. I conclude further that he solicited actions of the Claimant under false pretenses.

I conclude further, and I recommend that the REC find, that because of the Respondent's fraud, misrepresentation, and false pretenses, each of the Claimants sustained actual monetary losses. For his violations, the Respondent has agreed to civil penalties in each of these cases. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2010).

I further conclude that the REC may suspend the Respondent's license in accord with the settlement agreement entered into by the Respondent and the REC, and I recommend that the REC take this action. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b) (2010).

Finally, I recommend that the Claimants each be awarded the sum of \$25,000.00 from the Maryland Real Estate Commission Guaranty Fund pursuant to Md. Code Ann., Bus. Occ. & Prof. §§ 17-401 through 17-412 (2010) and COMAR 09.11.01.18, 09.11.03.04.

RECOMMENDED ORDER

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

ORDER that the Respondent violated Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(14)(ii), (15)(ii), (25), (32), (33), 17-532(c)(1)(vi), and COMAR 09.11.01.07, 02.01H, and 09.11.02.02A;

ORDER that the Respondent be fined in the amount as agreed to by the Respondent in the settlement agreement. Md. Code Ann., Bus. & Occ. Prof. § 17-322(c) (2010);

ORDER that the Respondent's license be suspended as agreed by the Respondent in the settlement agreement. Md. Code Ann., Bus. & Occ. Prof. § 17-322(b) (2010);

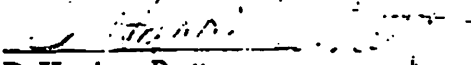
ORDER that the Claimants' Guaranty Fund Claim against the Respondent be allowed in the amount of \$25,000.00 for each of the three Claimants. Md. Code Ann., Bus. Occ. & Prof. §§ 17-401 through 17-412 (2010), COMAR 09.11.01.18, 09.11.03.04;

ORDER that the Respondent is ineligible for a license until the civil penalty has been paid and the Fund reimbursed and until he has complied with the terms of the settlement agreement.

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

January 20, 2011
Date Decision Mailed

SIGNATURE ON FILE


D. Harrison Pratt
Administrative Law Judge

#117751

SIGNATURE ON FILE

MARYLAND REAL ESTATE
COMMISSION

V.

WILLIAM A. MCCONKEY,

Respondent

CLAIMANTS TERESA MILLIGAN,
ANGELA POWELL
LAURI DONOVAN

* BEFORE D. HARRISON PRATT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH Case No.: DLR-REC-24-10-04919
REC Case No.: 07-RE-278 (Claimant Milligan)
*
OAH Case No: DLR-REC-24-10-12270
REC Case No: 08-RE-641 (Claimant Powell)

OAH Case No: DLR-REC-24-10-04921
REC Case No: 08-RE-852 (Claimant Donovan)

* * * * *

FILE EXHIBIT LIST

I admitted the following documents on behalf of the three Claimants:

Documents Pertaining to Claimant Donovan:

1. Notice of Hearing
2. Transmittal, Order for Hearing, Statement of Charges.
- 3.A McConkey's licensing history.
- 3.B McConkey's prior MREC violations.
- 3.C MREC denial of McConkey's application for a brokers license, February 19, 1999.
4. Court of Appeals disbarment order for McConkey.
5. MREC Report of Investigation, with attachments including the following:
 - 5.1 Complaint and Guarantee Fund claim.
 - 5.2 Maryland Judiciary Case Information report.

- 5.3 Listing contract.
- 5.4 Deed of Trust, April 24, 2008.
- 5.5 McConkey letter to Donovan, October 2, 2007.
- 5.6 Copies of 3 checks from Donovan to McConkey, November 6, 2007.
- 5.7 General release, November 7, 2007.
- 5.8 McConkey flyer advertising open houses.
- 5.9 Letter from Broker Chris Riley to the MREC, November 22, 2008.
- 5.10 McConkey letter to the MREC, June 30, 2008.
- 6.A ReMax independent contractor agreement, May 1, 2006.
- 6.B Emails from ReMax to McConkey re paperwork due.
- 6.C Termination of ReMax Independent Contractor Agreement.
- 7. Deed transferring property to Donovan, February 21, 2005.
- 8. Letter from attorney MacFayden to Donovan, October 19, 2007.
- 9. Deed from Donovan to McConkey, November 7, 2007.
- 9. Letter from attorney Fuchs to Donovan, November 12, 2007.
- 10. Letter from McConkey to Donovan, November 29, 2007.
- 11. Possession agreement, November 30, 2007.
- 12. Listing contract, June 16, 2008.
- 13. MRIS listing for the Donovan property.
- 14. Deed from McConkey to Peguese, August 12, 2008.
- 15. State Department of Assessments and Taxation records for the Donovan property.

Documents Pertaining to Claimant Powell:

- 1. Notice of Hearing.

2. Statement of Charges and Order for Hearing.
 - 3.A McConkey's MREC licensing history.
 - 3.B Prior MREC violations.
 - 3.C MREC denial of McConkey's application for a brokers license, February 19, 1999.
4. Court of Appeals disbarment order for McConkey.
5. MREC Report of investigation, including the following:

Complaint.

McConkey licensing history, February 18, 2009.

Maryland Judiciary Case Information Report, *Bierman v. Powell*.

HUD-1 statement for sale of the Powell property to McConkey, January 30, 2007.

Residential Dwelling Lease, January 30, 2007.

Deed from Powell to McConkey, January 7, 2007.

Residential contract of sale from Powell to McConkey, January 17, 2007.

Promissory note from Powell to McConkey, January 30, 2007.

McConkey letter to the MREC, April 25, 2008.

Letter from Broker Riley to the MREC, April 28, 2008.

- 6.A ReMax Independent Contractor Agreement, May 1, 2006.
- 6.B Emails from ReMax to McConkey, September 2007 – July 2008.
- 6.C Termination of ReMax Executive Independent Contractor Agreement.
7. Facsimile from McConkey to to Dunn Title.
8. Notices from Option One Mortgage to Powell.
9. State Department of Assessment and Taxation Record for the Powell property.

Documents Pertaining to the Claimant Milligan:

1. Notice of Hearing.
2. Statement of Charges and Order for Hearing.
- 3.A McConkey's MREC licensing history.
- 3.B Prior MREC violations.
- 3.C MREC denial of McConkey's application for a brokers license, February 19, 1999.
4. Court of Appeals disbarment order for McConkey.
5. Deed from Steeves to Milligan, April 11, 1997.
6. Milligan bankruptcy history, November 29, 2004.
7. Notice of Revocation of Power of Attorney & Rescission & Cancellation of Foreclosure Consultation Contract & Foreclosure Reconveyance Deed, October 15, 2006.
8. Citibank Mortgage Payoff Statement, June 5, 2008.
9. MREC Report of Investigation, including the following:
 - 9.1 McConkey advertisements.
 - 9.2 Milligan Complaint, with the following attachments:
 - Morin letter, October 23, 2006.
 - Complainant in Anne Arundel County.
 - Morin letter August 14, 2008.
 - Milligan Amended Complaint for \$25,000.
 - Milligan Supplemental Interrogatory Responses.
 - Milligan Motion for Summary Judgment.
 - Table of Contents for Memorandum.
 - Memorandum in Support of Summary Judgment.

McConkey House of Delegates Profile in the Maryland Manual.

Residential Lease Agreement, January 3, 2006.

Deed from Milligan to McConkey, January 3, 2006, recorded September 26, 2006.

Notice of Transfer of Deed or Title, January 3, 2006, without notary.

Notice of Transfer of Deed or Title, January 3, 2006, with notary.

Notice of Rescission, January 3, 2006, signed by Milligan January 6, 2006.

Promissory note for \$18,200, January 3, 2006.

Residential Contract of Sale, Milligan to McConkey, January 3,
2006.

Understanding Whom Real Estate Agents Represent, Residential Contract of Sale,
with notation cancelled 8:35 pm.

Motion to Dismiss Bankruptcy Case, Court Order of Dismissal, January 6, 2006.

Listing Contract ReMax Allegiance January 7, 2006, Understanding Whom Real
Estate Agents Represent, Consent for Dual Agency, Front Foot Addendum, Lock Box
Addendum, Sign Order.

MRIS Listing ReMax Allegiance, March 7, 2006.

MREC licensing history for McConkey, February 9, 2009.

Listing Contract ReMax Executive, May 19, 2006, check dated September 29, 2006
to Aegis Management final pay for roof replacement (\$2,00).

MRIS Listing ReMax Executive, May 21, 2006.

Response of ReMax Broker Blumenkrantz to complaint by Milligan, November 1,
2006, McConkey response to complaint, with attachments.

Residential Contract of Sale, Milligan to McConkey, August 1, 2006.

Response of ReMax Broker Riley to Milligan complaint, November 1, 2006.

McConkey's Independent Contractor Agreement with ReMax, May 1, 2006.

Emails from ReMax to McConkey concerning paperwork due, September 2007 – July
2008.

Termination of ReMax Independent Contractor Agreement, July 10, 2008.

State Department of Assessments and Taxation record for Capital Investors, Inc.

MREC subpoena to Notary Justensen and Justensen's response.

Statement of Notary Justensen, July 25, 2008.

State of Maryland Land Instrument Intake Sheet.

Facsimile cover sheet from McConkey to Dunn Title, MRIS listing October 18, 2006, Gravatt contract of October 17, 2006. letter from attorney Hoffman to Gravatt.

Judgment and Order from Circuit Court for Anne Arundel County, September 18, 2008.

10. McConkey v. Milligan District Court Anne Arundel County, Wrongful Detainer/Granter in Possession, September 18, 2008.
11. Documents concerning civil suit including the following:
 - 11.1 Case information.
 - 11.2 Order granting summary judgment to WM Specialty Mortgage, LLC.
 - 11.3 Judgment and Order of September 18, 2008.
 - 11.4 McConkey bankruptcy documents, December 11, 2008.
 - 11.5 Jury verdict form.
 - 11.6 Jury verdict sheet, April 28, 2009.
 - 11.7 Notice of recorded judgment, May 1, 2009.
 - 11.8 Order vacating judgment in case of Milligan v. McConkey and award of attorney's fees to Milligan.
12. Transcript of McConkey's deposition.
13. Trial transcript, *Milligan v McConkey* and *McConkey v Milligan*, in the Circuit Court for Anne Arundel County, Maryland.