

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM * BEFORE LORRAINE E. FRASER
OF EMILY AND RANDOLPH PYATT * ADMINISTRATIVE LAW JUDGE
CLAIMANTS * OF THE MARYLAND OFFICE OF
AGAINST THE MARYLAND * ADMINISTRATIVE HEARINGS
REAL ESTATE COMMISSION *
GUARANTY FUND FOR THE * OAH NO: DLR-REC-22-15-37181
ALLEGED MISCONDUCT OF *
SEAN ROBINSON, RESP. * MREC NO: 2015-RE-008 G.F.
* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated June 7, 2016, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of July, 2016.

ORDERED,

- A. That the Findings of Fact in the Recommended Decision be, and hereby are, AFFIRMED;
- B. That the Conclusions of Law in the Recommended Decision be, and hereby are, APPROVED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

D. That the records, files and documents of the Maryland State Real Estate Commission reflect this decision.

MARYLAND STATE REAL ESTATE COMMISSION

SIGNATURE ON FILE

7/20/16
Date

By: _____
Marla S. Johnson, Commissioner

**IN THE MATTER OF THE CLAIM
OF EMILY & RANDOLPH PYATT,
CLAIMANTS
v.
THE MARYLAND REAL ESTATE
COMMISSION GUARANTY FUND,
FOR THE ALLEGED MISCONDUCT OF
SEAN ROBINSON,
RESPONDENT**

*** BEFORE LORRAINE E. FRASER,
* ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH CASE No.: DLR-REC-22-15-37181
* MREC CASE No.: 15-RE-008GF
*
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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
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CONCLUSION OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On July 10, 2014, Emily and Randolph Pyatt (Claimants) filed a Complaint and Guaranty Fund Claim with the Maryland Real Estate Commission (Commission or REC) to recover compensation from the Real Estate Guaranty Fund (Guaranty Fund) for an alleged actual loss resulting from an act or omission of Sean Robinson (Respondent), a licensed real estate salesperson.

On October 29, 2015, the Executive Director of the Commission issued an Order for Hearing, and, on November 2, 2015, the Commission forwarded this case to the Office of Administrative Hearings (OAH), to schedule a hearing. On December 1, 2015, OAH sent notice

to the parties scheduling the hearing for January 19, 2016 at 10:00 am at the LaPlata Public Library in LaPlata, Maryland. The notices sent to the Claimants via regular mail were returned by the U.S. Post Office as “attempted – not known” and the notices sent certified mail were returned as unclaimed. The notices sent to the Respondent via regular and certified mail were not returned by the post office.

On January 19, 2016, I convened the hearing as scheduled. At that time, Jessica Kaufman, Assistant Attorney General, realized that the Commission had given OAH the wrong mailing address for the Claimants. I postponed the hearing so that notice could be sent to the Claimants’ correct address. On January 21, 2016, OAH sent notice to the parties of the rescheduled hearing date, March 16, 2016. The notice sent to the Respondent via certified mail was returned by the post office as unclaimed; however, the notice sent via regular mail was not returned.

On March 16, 2016, I conducted a hearing at the LaPlata Public Library in LaPlata, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010). The Claimants were present and represented themselves. The Respondent did not appear. Kris King, Assistant Attorney General, Department of Labor, Licensing, and Regulation, represented the Guaranty Fund.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov’t §§ 10-201 through 10-226 (2014); the Commission’s procedural regulations, Code of Maryland Regulations (COMAR) 09.11.03; and OAH’s Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

ISSUES

1. Did the Claimants sustain an actual loss, compensable by the Guaranty Fund, due to an act or omission of the Respondent in which money or property was obtained from the Claimants by theft, embezzlement, false pretenses, or forgery; or that constitutes fraud or misrepresentation in the provision of real estate sales services?
2. If so, what amount should be awarded to the Claimants from the Guaranty Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits into evidence on behalf of the Claimants:

- Cl. Ex. 1 Teller Check Receipt for \$2,200.00, 7/10/14
- Cl. Ex. 2 E-mail between the Claimants and the Respondent, 6/30/14-7/8/14
- Cl. Ex. 3 Claimants' check paid to Ernie's Lock \$104.97, 7/8/14

No exhibits were offered for the Respondent.

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

- Fund Ex. 1 Notice of Hearing, 1/21/16, with certified mail receipt; Order for Hearing, 10/29/15
- Fund Ex. 2 Order for Hearing, 10/29/15
- Fund Ex. 3 Licensing history for the Respondent, 3/15/16
- Fund Ex. 4 Report of Investigation, 6/10/15

Testimony

The Claimants testified on their own behalf. The Respondent did not present any testimony. The Fund did not present any testimony.

FINDINGS OF FACT

I propose that the Commission find the following facts by a preponderance of the evidence:

1. From July 4, 2013 through July 3, 2015, the Respondent was licensed by the Commission as a real estate agent.
2. On November 8, 2013, the Claimants entered into a lease to rent their townhome to three tenants: Dorothy Muse, Richard Muse, and Edward Muse. The rental rate was \$1,850.00 per month for December 2013 through November 2014, due in advance of the first of each month. For the period November 8, 2013 through November 30, 2013, the pro rated rental rate was \$1,418.00. The security deposit was \$1,850.00. The tenants were to pay the rent and security deposit to the Respondent, as the property manager for the Claimants. In addition, the tenants were to pay an additional \$50.00 per month pet deposit. The pet deposit was to be paid to the Claimants, held by them, and refunded to the tenants if there was no damage at the time the tenants moved out of the property.
3. On November 12, 2013, the Claimants and the Respondent entered into a property management agreement. The Respondent was to manage the rental property owned by the Claimants and leased to the tenants in the November 8, 2013 agreement. The Claimants agreed to pay the Respondent a leasing fee of \$1,000.00 to obtain a tenant and a management fee of \$100.00 per month. The Respondent was to perform any necessary maintenance, repairs, and cleaning, and expenditures exceeding \$500.00 were to be authorized in advance by the Claimants.
4. In December 2013, Richard Muse passed away. The Respondent was aware the tenant had passed away but did not notify the Claimants.

5. The tenants paid their rent and security deposit to the Respondent on time each month for the months November 2013 through May 2014.
6. The Respondent paid the Claimants the following amounts: \$1,800.00 on December 9, 2013; \$1,350.00 on January 13, 2014; \$1,200.00 on February 21, 2014 (\$600.00 was withheld to make repairs); \$1,840.00 on March 31, 2014;¹ \$1,800.00 on April 21, 2014; and \$1,800.00 on May 28, 2104. The Respondent paid the Claimants the rent monies for November 2013 in full; however, it is unclear what that exact amount was.²
7. On April 10, 2014, Dorothy Muse notified the Respondent that she would be vacating the property as of May 30, 2014, because her husband had passed away. The tenants cleaned the property when they moved out. The Respondent did not notify the Claimants that the tenants were vacating the property.
8. On July 4, 2014, Claimant E.P. entered the property and discovered it was vacant.
9. On July 7, 2014, the Respondent agreed to return the keys to the property to the Claimants; however, he did not do so.
10. On July 8, 2014, the Claimants paid a locksmith \$104.97 to change the locks at the property.³
11. On July 10, 2014, the Claimants refunded \$2,200.00 to Dorothy Muse, which included her security deposit of \$1,850.00 and pet deposit of \$350.00.
12. The Respondent owes the Claimants \$2,365.00, which is calculated as follows:
$$\$1,850.00 \text{ rent} + \$50.00 \text{ pet deposit} - \$100.00 \text{ management fee} = \$1,800.00 \text{ per month} \times 6 \text{ months} = \$10,800.00 - \$600.00 \text{ for repairs} = \$10,200.00 - \$9,790.00 \text{ (the amount the}$$

¹ The Respondent's March 21, 2014 check to the Claimants for \$1,800.00 was returned by the bank for insufficient funds.

² Claimant E.P. testified they were paid in full for November 2013; however, she did not state the amount and the cancelled check is not in evidence. The November rent was pro rated and the Respondent was entitled to deduct his fees.

³ The Fund rounded this amount up to \$105.00 at the hearing.

Respondent paid to the Claimants) = \$410.00 + \$1,850.00 security deposit + \$105.00
locksmith = \$2,365.00.

DISCUSSION

A person may recover compensation from the Guaranty Fund for an actual loss that is based on an act or omission by a licensed real estate sales person that occurs in the provision of real estate brokerage services involving a transaction that relates to real estate that is located in this State. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a) and (b)(2)(i) and (ii) (Supp. 2015). A claim shall be based on an act or omission in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(b)(2)(iii) (Supp. 2015); *see* COMAR 09.11.03.04A and B (for the purpose of a guaranty fund claim, misconduct is an action arising out of a real estate transaction involving real estate located in this State which causes actual loss by reason of theft or embezzlement of money or property, or money or property unlawfully obtained from a person by false pretense, artifice, trickery, or forgery, or by reason of fraud, misrepresentation, or deceit). The amount of compensation recoverable by a claimant from the Guaranty Fund “shall be restricted to the actual monetary loss incurred by the claimant, but may not include monetary losses other than the monetary loss from the originating transaction.” COMAR 09.11.01.18. The Claimants bear the burden of proving their entitlement to recover from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (Supp. 2015).

The Claimants original Fund claim was for \$7,747.50. The Claimants based this amount on the rent they did not receive in June and July 2014, late payment fees for January through July, the security deposit they returned to the tenants, the pet deposit they returned to the tenants, attorney’s fees, a cleaning fee, and the cost of changing the locks. During the hearing, Claimant E.P. testified that the Claimants received the November and December 2013 rent in full and on

time but that starting in January 2014 the Respondent began paying them late. Claimant E.P. stated that the Respondent told her that the tenants had a financial hardship. She stated that she discussed changing the date the rent was due if the tenant were waiting on a check each month. She complained that the Respondent did not collect late fees from the tenants and said the Respondent told her he felt sorry for them and would pay the late fees himself. She said that in February 2014, a pipe burst and the Respondent had it repaired but did not notify her until she called him asking why the rent was late, and he did not give her any receipts. She stated that in March 2014, the check the Respondent gave to them bounced and then the Respondent paid them with a money order. She said that she did not receive May's rent until May 27, 2014 and she assumed June's rent would be late. She said that they did not receive any rent payments for June and July 2014. She stated that she drove to the property on July 1st or 2nd and put a notice on the door for the tenant. She said she returned to the property on July 4th, entered, and discovered it was vacant. She was able to locate Edward Muse at his place of employment. Mr. Muse told Claimant E.P. that they moved out in April and that they paid rent through the end of May 2014. She stated that the Respondent never told them that the tenants had moved out. She said she learned that Richard Muse passed away in December 2013; however, the Respondent never notified them. She testified that Dorothy Muse tried to collect her security deposit and pet deposit from the Respondent, but he did not give them to her. She stated that she paid \$2,200.00, the deposit amounts, to Ms. Muse directly. She said that the Respondent agreed to return the keys to her but did not do so. As a result, she hired a locksmith to change the locks. She stated that the Respondent could have advertised the property for rent as soon as the tenants moved out in April and then they would have received rent payments in June and July. She said they promptly hired someone to clean the property and that they were able to rent it in a couple of weeks.

On cross examination, Claimant E.P. stated that she did not believe that the tenants paid rent in June or July 2014. She agreed the Respondent deducted his management fee and money for the cost of repairs from the rent he paid them. She said she told the Respondent to collect late fees from the tenants but that he said that he would pay the fees, which she said was a red flag to her. She said she assumed that the Respondent did not collect late fees from the tenants. She acknowledged that she believed that the tenants paid their rent on time and the Respondent was paying them late. She admitted there were no attorney's fees, explaining that they consulted with an attorney but did not hire him. She acknowledged that the tenants cleaned the property when they moved out but said that they paid to have it cleaned again because it had been sitting vacant for two to three months. She said they obtained a judgment against the Respondent in District Court; however, they have not been able to collect any money from the Respondent. She agreed that the lease stated that the pet deposit would be paid to them and that they would hold it, not the Respondent. Thus, she agreed that amount should be removed from their claim.

Claimant R.P. testified that Ms. Muse told him that she paid her rent on time, around the 25th to 27th of each month, in advance. He said that at the time they did not know who was telling the truth but that they have since discovered that the Respondent was withholding funds from them. He said that the Respondent should be responsible for the cleaning fee because he was negligent in not telling them that the house was vacant, they were under a time crunch to rent the property quickly, and they did not have time to clean it themselves. He testified that the Respondent admitted that he did something wrong and owed them money but never said what he thought he owed. He said that they have not attempted to collect the judgment against the Respondent because the attorney told them that there were other liens and judgments ahead of theirs.

The Fund argued that the Claimants were only entitled to reimbursement for the \$1,850.00 security deposit and the \$105.00 to change the locks, for a total of \$1,955.00. The Fund agreed that the Respondent collected the security deposit and was holding it in trust for the Claimants. The Fund also agreed that the Respondent should have returned the keys to the Claimants, and was therefore responsible for the cost of changing the locks. The Fund maintained that the Claimants were not entitled to attorney's fees because they did not pay any. The Fund asserted that the Claimants were not entitled to the pet deposit because they received it from the Respondent. The Fund argued that the Claimants were not entitled to cleaning fees because the Respondent was not responsible for cleaning fees under their agreement. The Fund maintained that the Claimants were not entitled to late fees because the tenants paid the rent on time; it was the Respondent who paid the Claimants late but there was no provision in the agreement for late fees if he paid late. The Fund asserted that the Claimants were not entitled to rent for June and July because the Respondent did not collect rent monies for those months and then fail to pay the money to the Claimants. The Fund argued that whether the property could have been rented in June and July was too speculative to constitute an actual loss.

I find that the Claimants are entitled to reimbursement of the \$1,850.00 security deposit and the \$105.00 expense of changing the locks. The Respondent collected the security deposit from the tenants and was to hold it in trust for the Claimants to be refunded to the tenants if they left the property in good condition. The Respondent refused to refund the security deposit to the tenants and the Claimants refunded the amount to the tenants themselves. The Claimants incurred the cost of changing the locks when the Respondent refused to return the keys to them. I also find that the Respondent did not pay the Claimants in full in January; his payment was \$450.00 short and there is no evidence that he paid for any repairs in January. In addition, I find that the Respondent overpaid the Claimants \$40.00 in March. Further, I find that the Claimants

are not entitled to reimbursement of attorney's fees, the pet deposit, cleaning fees, late fees, or rent for June and July. The Claimants did not pay any attorney's fees. The Respondent paid the pet deposit to the Claimants each month; therefore, they were obligated to refund that money to the tenants. The Respondent was not responsible for cleaning the property a second time after the tenants cleaned it. Finally, the Respondent did not collect any late fees from the tenants because they did not pay late and he did not collect rent from the tenants in June and July because they had given notice of their intent to leave by the end of May. Thus, there was no theft of funds by the Respondent of money he never collected in the first place. Therefore, I conclude that the Claimants are entitled to reimbursement of \$2,365.00 from the Fund.

CONCLUSION OF LAW

Based on the Findings of Facts and Discussion, I conclude that the Claimants established that they sustained an actual loss of \$2,365.00 compensable by the Guaranty Fund resulting from an act or omission in which the Respondent obtained money or property from the Claimants by theft, embezzlement, false pretenses, or forgery; or that constitutes fraud or misrepresentation.

Md. Code Ann., Bus. Occ. & Prof. § 17-404 (Supp. 2015); COMAR 09.11.03.04.

PROPOSED ORDER

I **PROPOSE** that the Claim filed by the Claimants against the Maryland Real Estate Guaranty Fund be **GRANTED** in the amount of \$2,365.00.

June 7, 2016
Date Decision Issued

SIGNATURE ON FILE

Lorraine E. Fraser
Administrative Law Judge

LEF/sm
#162695