

FINAL ORDER

BEFORE THE MARYLAND REAL ESTATE COMMISSION

SEP 26 2012

MARYLAND REAL
ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v. *

CHARLES J. DIXON *

and *

CASE NO. 2010-RE-255

KEITH L. CROSS *

Respondents *

OAH NO. DLR-REC-21-11-14647
DLR-REC-24-11-14648

and *

CLAIM OF EURMON AND JOY HERVEY
AGAINST THE MARYLAND
REAL ESTATE GUARANTY FUND *

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated January 12, 2012, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 9th day of March, 2012

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, AFFIRMED;

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

Keith L. Cross

ORDERED that the Respondent Keith L. Cross violated Md. Bus. Occ. and Prof. Art. § 17-322(b)(32) and (33), and § 17-532(c)(1)(iv), (vi), and (vii), and COMAR 09.11.02.02A;

ORDERED that the Respondent Keith L. Cross be and hereby is REPRIMANDED;

ORDERED that the Respondent Keith L. Cross be assessed a civil penalty in the amount of \$3,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that the Claim filed by Eurmon and Joy Hervey against the Maryland Real Estate Guaranty Fund based on the actions of Keith L. Cross is granted in the amount of \$1,349.47;

ORDERED that all real estate licenses held by the Respondent Keith L. Cross shall be suspended if the civil penalty is not paid in full within the thirty-day time period, and the Guaranty Fund is not reimbursed in full including any interest that is payable under the law;

Charles J. Dixon

ORDERED that the Respondent Charles J. Dixon violated Md. Bus. Occ. and Prof. Art. § 17-322(b)(32) and (33), and § 17-532(c)(1)(vi), and (vii), and COMAR 09.11.02.01A and 09.11.02.02A;

ORDERED that the Respondent Charles J. Dixon be and hereby is REPRIMANDED;

ORDERED that the Respondent Charles J. Dixon be assessed a civil penalty in the amount of \$3,000.00, which shall be paid within thirty (30) days of the date of this Proposed Order;

ORDERED that the Claim filed by Eurmon and Joy Hervey against the Maryland Real Estate Guaranty Fund based on the actions of Charles J. Dixon is denied;

ORDERED that all real estate licenses held by the Respondent Charles J. Dixon shall be suspended if the civil penalty is not paid in full within the thirty-day time period;

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

D. Pursuant to §10-220 of the State Government Article, the Commission finds that the Recommended Decision of the Administrative Law Judge had to be modified to provide a time period within which the civil penalties must be paid, and to provide that all real estate licenses held by the Respondents would be suspended if their civil penalties are not paid in full within the thirty-day time period. Additionally, all real estate licenses held by Respondent Keith L. Cross will be suspended until the Guaranty Fund is reimbursed.

E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.08 those parties adversely affected by this Proposed Order shall have 20 days from the postmark date of the Order to file exceptions and to request to present arguments on the proposed decision before this Commission. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor.

500 North Calvert Street, Baltimore, MD 21202.

SIGNATURE ON FILE

Maryland Real Estate Commission

MARYLAND REAL ESTATE
 COMMISSION
 and
 EURMON AND JOY HERVEY,
 THE CLAIMANTS
 v.
 CHARLES J. DIXON,
 and
 KEITH L. CROSS,
 THE RESPONDENTS

* BEFORE MARTIN E. MILLER
FINAL ORDER
 * AN ADMINISTRATIVE LAW JUDGE
 SEP 26 2012
 * OF THE MARYLAND OFFICE OF
 MARYLAND REAL
 ESTATE COMMISSION
 ADMINISTRATIVE HEARINGS
 *
 * OAH Nos.: DLR-REC-21-11-14647 &
 DLR-REC-24-11-14648
 *
 * REC CASE Nos.: 10-RE-255
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RECOMMENDED DECISION

STATEMENT OF THE CASE
 ISSUES
 SUMMARY OF THE EVIDENCE
 FINDINGS OF FACT
 DISCUSSION
 CONCLUSIONS OF LAW
 RECOMMENDED ORDER

STATEMENT OF THE CASE

On December 4, 2009, Eurmon and Joy Hervey (the Claimants) filed a Complaint against two licensed real estate salespersons, Keith L. Cross and Charles J. Dixon (the Respondents), as well as a claim for reimbursement (the Claim) from the Maryland Real Estate Guaranty Fund (the Fund) for losses the Claimants allegedly incurred as a result of the Respondents' misconduct. On July 26, 2010, the Claimants amended their Claim against the Fund, decreasing

the amount claimed from \$6,740.00 to \$3,614.40.¹ After investigation, the Maryland Real Estate Commission (the MREC or the Commission) issued a February 28, 2011 Statement of Charges and Order for Hearing against Keith L. Cross (the Cross Charges) for his alleged violations of sections 17-322(b)(32) and (33); 17-322(c)² and 17-532(c)(1)(iv), (vi) and (vii) of the Maryland Annotated Code's Business Occupations and Professions Article (the Business Occupations Article), as well as Code of Maryland Regulations (COMAR) 09.11.02.02A. The Hearing Order further referenced the Claimant's Claim against the Fund. On that same date, the Commission issued a Statement of Charges and Order for Hearing against Charles J. Dixon (the Dixon Charges) for his alleged violations of sections 17-322(b)(32) and (33); 17-322(c) and 17-532(c)(1)(vi) and (vii) of the Business Occupations Article, as well as COMAR 09.11.02.01A and 02A. The Commission makes no reference to the Fund Claim in its Hearing Order regarding Mr. Dixon. On March 8, 2011, the Commission forwarded the Claim and the Cross and Dixon Charges to the Office of Administrative Hearings (OAH) for a hearing and issuance of a recommended order.

On October 17, 2011, I conducted the consolidated hearing at OAH's Administrative Law Building in Hunt Valley, Maryland, pursuant to Section 17-408 of the Business Occupations Article. Patricia Stephenson, Esquire, represented the Claimants, Assistant Attorney General Jessica Kaufman represented the Commission, and Assistant Attorney General Hope Sachs represented the Fund. The Respondents failed to appear, to provide representation for themselves at the hearing, or to request a postponement. As the Commission provided

¹ At the time of the initial Claim, the Claimants had yet to receive the \$2,350.00 security deposit for the Premises, but it was delivered to them in January 2010.

² In the Commission's Hearing Order, it alleges that each of the Respondents "violated, and is subject to" Business Occupations Article §17-322(c), which is the portion of the statute that refers to the monetary penalties for violations of subsection (b) of that statute.

persuasive evidence³ that timely notice of the hearing had been sent to the Respondents' then current addresses of record, I proceeded to hear the case without them. *See Business Occupations Article §§ 17-324(f); COMAR 09.01.02.09.*

The Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009 and Supp. 2011), COMAR 09.11.03, and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

ISSUES

The issues in this case are as follows:

1. Did the Respondents violate Business Occupations Article § 17-532(c)(1)(vi), by failing to exercise reasonable care and diligence?
2. Did the Respondents violate Business Occupations Article § 17-532(c)(1)(vii), by failing to comply with all applicable laws and regulations?
3. Did Mr. Cross violate 17-532(c)(1)(iv), by failing to treat all parties honestly and fairly or by failing to answer all questions truthfully?
4. Did the Respondents violate Business Occupations Article § 17-322(b)(32), by violating the above sections of the Business Occupations Article?
5. Did the Respondents violate Business Occupations Article § 17-322(b)(33), by violating the provisions of the Code of Ethics set forth in COMAR 09.11.02.02A?
6. Did Mr. Dixon violate Business Occupations Article § 17-322(b)(33), by violating the provisions of the Code of Ethics set forth in COMAR 09.11.02.01A?
7. What, if any, sanctions and or penalties should be imposed against the Respondents?
8. What, if any, amount should be awarded to the Claimants from the Fund?

³ See MREC Ex. # 1 & 4.

SUMMARY OF THE EVIDENCE

Exhibits:

The Claimants submitted the following documents, which I admitted into evidence as the following numbered exhibits:

1. Receipts for expenses
2. Itemized Reimbursement Request

The Commission submitted the following documents, which I admitted into evidence as the following numbered exhibits:

1. Mr. Cross' Notice of Hearing, with attached Statement of Charges and documentation regarding receipt
2. The Commission's referral of the case involving Mr. Cross to OAH, with attached Statement of Charges
3. Mr. Cross' Licensing History
4. Mr. Dixon's Notice of Hearing
5. The Commission's referral of the Dixon case to OAH, with attached Statement of Charges
6. Mr. Dixon's Licensing History
7. Report of Investigation by Jack L. Mull, Jr., MREC Investigator, received December 4, 2009 and closed July 20, 2010

The Respondents submitted no documents for admission into evidence.

Testimony

One of the Claimants, Joy Hervey, testified for the Commission and on the Claimants' behalf. The Commission also presented the testimony of Jack L. Mull, Jr., an MREC investigator. The Respondents presented no witnesses.

FINDINGS OF FACT

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

1. At all relevant times, Keith L. Cross and Charles J. Dixon have been licensed real estate salespersons.
2. No prior complaints have been filed with the Commission against Mr. Dixon.
3. Two prior complaints have been filed with the Commission against Mr. Cross, both of which are now closed.
4. In 2005, the Claimants purchased property located at 1 Barstad Court in Lutherville, Maryland (the Property) as their principal residence.
5. The previous owner of the Property had created an apartment in the basement with a kitchen, bathroom, living room area, two bedrooms and a private entrance and rented the basement apartment to a tenant.
6. The Claimants removed the kitchen cabinets and utilized the basement apartment as a home office.
7. In 2009, Mr. Hervey accepted a new job in Florida, and the Claimants decided to rent the Property rather than list it for sale.
8. Because the Claimants were unable to rent the Property before moving out of Maryland, on July 10, 2009, they employed Continental Realty Property Management (Continental), through its agent Keith Cross, to manage and lease the Property, having seen an advertisement for Mr. Cross's services as a property manager. The agreement provided that Continental would receive 10% of all rentals received, as well as the first month's rent for the acquisition of each new and subsequent tenant for the Property.

9. During a conversation with Mr. Cross, the Claimants asked him his opinion on renting the entire property to a family or as two separate units: the upstairs living area and the basement apartment. He agreed that either arrangement would be acceptable. Consequently, the Claimants spent \$83.80 at Home Depot turning the basement back into a separate apartment.

10. On or about August 20, 2009, Mr. Cross sent a residential dwelling lease (the Lease) to the Claimants on behalf of four unrelated prospective tenants, who were Towson University students (the Students). The Lease had been prepared by Mr. Dixon (on behalf of the Students) and approved by Mr. Cross (on behalf of the Claimants). When the Claimants asked Mr. Cross if this multiple occupancy was permissible, he assured them that it would not be a problem.

11. The Claimants knew nothing about zoning restrictions or housing code requirements and therefore relied on the experience and expertise of Mr. Cross in accepting and executing the proposed lease agreement.

12. The commission on the Lease paid by the Claimants was divided between the Respondents.

13. The Students moved into the Property on or about August 25, 2009.

14. In late August or early September 2009, the Baltimore County Code Enforcement Office (Baltimore County) conducted an inspection of the Property after numerous neighbors complained about the excessive debris left and number of cars parked at and around the Property, which they felt created a safety hazard.

15. In September 2009, the Claimants received from Baltimore County Interrogatories and a Code Inspections and Enforcement Correction Notice, dated September 10, 2009, ordering them to cease using the property as a rooming/boarding house on a residential

street zoned RC5, by receiving compensation for allowing three or more unrelated individuals to lease the Property.

16. Mrs. Hervey contacted Mr. Cross and informed him of the Notice they had received from Baltimore County and he assured her that it should not become a problem because the dwelling was structured as two separate units. He suggested that they request that one of their former neighbors write a letter confirming that the property was a two-unit dwelling and maintain the letter to be used if a citation were to be issued by Baltimore County.

17. On October 5, 2009, Baltimore County issued to the Claimants a Code Enforcement & Inspections Citation for their having used the property as a boarding house, indicating that they would be assessed a civil penalty in the amount of \$2,000.00 and informing them that a hearing on the matter was scheduled for October 28, 2009 (the Hearing).

18. Mr. Cross offered to pay half of the Claimants' legal fees and recommended an attorney for them to use. When the Claimants chose a different attorney, who charged a higher fee than the recommended attorney, Mr. Cross tendered his resignation as their property manager effective October 22, 2009.

19. On October 28, 2009, the Claimants traveled from Florida to attend the Hearing with their attorney, expending \$314.14 on an airline ticket and airport parking and \$751.27 in legal fees. Mrs. Hervey testified that although she had obtained a Rental Housing License she was unaware of the zoning restrictions and had believed they were able to lease the two separate portions of the dwelling. She further testified that she had relied on the advice of Mr. Cross, a real estate professional and owner of a rental property management company. She further informed the hearing officer that they had applied for conversion of the residence into a two apartment residence. The hearing officer considered this testimony and other mitigating factors, reducing the civil penalty to \$200.00 if the zoning violation was corrected by January 10, 2010.

20. Although aware of the Hearing date, neither Respondent appeared at the Hearing or paid anything toward the legal fees the Claimants paid in connection with those proceedings.

21. As licensed real estate salespersons working in Baltimore County, the Respondents had a duty to be informed of Baltimore County Code and zoning restrictions applicable to properties they offered for lease or, at the very least, the duty to research the issue of multiple occupancy before presenting the Lease to the Claimants for approval.

22. On December 4, 2009, the Claimants filed their Complaint and Claim against the Respondents.

23. On February 4, 2010, the Commission engaged one of its investigators, Jack L. Mull, Jr. to investigate the allegations of the Complaint, concerning which he issued a report on or about July 20, 2010.

24. The Property remained vacant between mid January and mid-June 2010.

25. After speaking with the Claimants and obtaining the information contained in the above factual findings, Mr. Mull interviewed Mr. Cross, who confirmed the sequence of events as described to him by the Claimants. Mr. Cross nevertheless told Mr. Mull that he did not believe that it was the responsibility of a real estate salesperson to verify zoning laws and local ordinances.

26. On July 19, 2010, Mr. Mull interviewed one of the Students, who told Mr. Mull that she and her roommates had asked Mr. Dixon about four unrelated persons living in the Property because they had heard that it had become an issue in rental properties in the Towson area. The Student advised Mr. Mull that Mr. Dixon had told them that he was not aware of any restrictions but that he would inquire. According to the Student, Mr. Dixon later contacted them and stated that he had been told that it would be permissible for them to sign the Lease.

27. When Mr. Mull interviewed Mr. Dixon on July 19, 2010, Mr. Dixon confirmed what the Student said had occurred. Mr. Dixon further advised Mr. Mull that he had telephoned Mr. Cross to discuss the Students' inquiry regarding the permissibility of multiple occupancy and that Mr. Cross had told him that it would not be a problem for the Students to reside together in the Property. Mr. Dixon admitted that he did not research the code restrictions for the Property but, instead, relied on the advice of the listing agent, Mr. Cross.

DISCUSSION

The Respondents' Violation of Statutes and Regulations

Pursuant to sections 17-322(b)(32) and (33) of the Business Occupations Article, the Commission may reprimand any licensee or suspend or revoke a license if that licensee violates any other provision of that title of the Business Occupations Article, any regulation adopted under that title, or any provision of the Code of Ethics.

The Commission has charged the Respondents with failing to comply with the following duties a real estate salesperson owes to his clients under Business Occupations Article § 17-532:

§ 17-532. Duties to client.

....
(c) *In general.* –

(1) A licensee shall:

....

(vi) exercise reasonable care and diligence; [and]

(vii) comply with all:

1. requirements of this title;
2. applicable federal, State, and local fair housing laws and regulations; and
3. other applicable laws and regulations.

The Commission charged only Mr. Cross with violating Business Occupations Article § 17-532(c)(1)(iv), for failing to “treat all parties to the transaction honestly and fairly and answer all questions truthfully.”

The Commission further charged both Respondents with violating Code of Ethics provision COMAR 09.11.02.02A and only Mr. Dixon with violating COMAR 09.11.02.01A, which regulations provide as follows:

.01 Relations to the Public.

A. The licensee shall remain informed of matters affecting real estate in the community, the State, and the nation.

.02 Relations to the Client.

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

COMAR 09.11.02.02A.

I find that the Respondents violated all of the above statutes and regulations under which they were charged and, consequently, agree with the Commission's recommendation that they both should be reprimanded. The Respondents failed to exercise reasonable care and diligence and neglected their obligations to the parties to the Lease in question when they drafted, approved and encouraged their clients to sign a lease which violated applicable law. *See* Business Occupations Article § 17-322(b)(32) & (33), 17-532(c)(1)(vi) & (vi); COMAR 09.11.02.02A. Reasonable care would have required them to research whether multiple occupancy was permissible in the Property, particularly after their clients raised issues as to the legality of the Lease. Moreover, Mr. Dixon violated COMAR 09.11.02.01A when he relied upon Mr. Cross' representation, rather than checking himself to determine whether the lease he was drafting for the Students violated applicable law. Finally, Mr. Cross violated § 17-532(c)(1)(iv) when he responded to inquiries by the Claimant and Mr. Dixon that the Lease did not violate applicable law (without checking whether his response was correct) and when he

misrepresented his intention to assist in the Claimants' defense of the Baltimore County citation, failing to deal with the Claimants and the Students' agent in a fair and professional manner.

Regulatory Sanctions/Penalties

Instead of or in addition to reprimanding, suspending or revoking a real estate licensee for his or her violation of the above statutes and regulations, Section 17-322(c) of the Business Occupations Article permits assessment of up to a \$2,000.00 monetary penalty,⁴ per violation, applying the following criteria:

- (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.

The Commission's representative recommended that each of the Respondents pay a \$2,000.00 total penalty for their statutory violations and a \$1,000.00 penalty for their violations of the Code of Ethics. I agree. The Respondents were paid a commission they failed to earn by doing the research necessary to determine whether the Lease would be enforceable. That research could have been as simple as making a phone call to Baltimore County to inquire whether the Claimants' neighborhood had restrictions against multiple occupancy. The Respondents showed a lack of good faith in their dealings with the parties to the Lease, who incurred damages and were seriously inconvenienced by the consequences of entering into an illegal agreement. To make matters worse, neither Respondent chose to appear at the Hearing before Baltimore County or to respond to the charges against them by appearing at the hearing in this case. Nevertheless, because I believe that the Respondents' harmful acts and omissions were more negligent than intentional, I conclude that total penalty of \$3,000.00, each, is sufficient.

⁴ Business Occupations Article 17-322(c)(3) provides that the Commission "shall pay any penalty collected under this subsection into the General Fund of the State."

Guaranty Fund Claim

Claims for reimbursement from the Fund are governed by section 17-404 of the Business Occupations Article, which states, in pertinent part, as follows:

§ 17-404. Claims against the Guaranty Fund.

(a)(1) Subject to the provisions of this subtitle, a person may recover compensation from the Guaranty Fund for an actual loss.

(2) A claim shall:

(i) be based on an act or omission that occurs in the provision of real estate brokerage services by:

1. a licensed real estate broker;

...

(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.

With respect to claims against the Fund, COMAR 09.11.03.04 further provides as follows:

.04 Claims Against the Guaranty Fund.

A. A guaranty fund claim shall be based on the alleged misconduct of a licensee.

B. For the purpose of a guaranty fund claim, misconduct:

(1) 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;

(2) Is performed by an unlicensed employee of a real estate broker or by a duly licensed real estate broker, associate broker, or salesperson; and

(3) Involves conduct for which a license is required by Business Occupations and Professions Article, Title 17, Annotated Code of Maryland.

The Claimants bear the burden of proof their pursuing its claim against the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e). I conclude that the Claimants have proven that they incurred damages as a consequence of Mr. Cross' negligent representation that the Lease would not be a problem because it was being made with four unrelated individuals. Because Mr. Dixon only made representations to the Students and not to either of the Claimants, they cannot successfully pursue a guaranty fund claim against him.

Maryland recognizes two distinct kinds of misrepresentation: fraudulent and negligent. Fraudulent misrepresentation requires the element of intent or *scienter*. *Martens Chevrolet, Inc. v. Seney*, 292 Md. 328, 333 (1982), quoting *Cahill v. Applegarth*, 98 Md. 493 (1904). The Maryland Court of Appeals has held that five elements must be present to establish negligent misrepresentation. Those elements are as follows:

- (1) the defendant, owing a duty of care to the plaintiff, negligently asserts a false statement;
 - (2) the defendant intends that his statement will be acted upon by the plaintiff;
 - (3) the defendant has knowledge that the plaintiff will probably rely on the statement, which, if erroneous, will cause loss or injury;
 - (4) the plaintiff, justifiably, takes action in reliance on the statement;
- and
- (5) the plaintiff suffers damage proximately caused by the defendant's negligence.

Martens Chevrolet, 292 Md. at 337.

As the Claimant's real estate agent, Mr. Cross owed them a duty of care in connection with his efforts to lease their Property. He negligently made a false statement to them concerning the legality and enforceability of the Lease, intended that the Claimants rely on that representation and knew they would probably rely on his representation that renting the Property to multiple unrelated tenants would not be a problem. In signing the Lease, the Claimants did

justifiably rely on Mr. Cross's experience and expertise as a licensed real estate salesperson. Finally, the Claimants suffered damages as a consequence of Mr. Cross' negligent failure to do any research into the issue of whether multiple occupancy was permitted on the Property before making his negligent misrepresentation to the Claimants.

I regret to note that not all of the damages suffered by the Claimants as a result of Mr. Cross' negligent misrepresentations are recoverable from the Fund. COMAR 09.11.01.18 provides the following limitations on any such recovery:

The amount of compensation recoverable by a claimant from the Real Estate Guaranty Fund, pursuant to Business Occupations and Professions Article, Title 17, Subtitle 4, Real Estate Guaranty Fund, Annotated Code of Maryland, shall be restricted to the actual monetary loss incurred by the claimant, but may not include monetary losses other than the monetary loss from the originating transaction. Actual monetary losses may not include commissions owed to a licensee of this Commission acting in his capacity as either a principal or agent in a real estate transaction, or any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.

It is therefore clear that the Claimants may not recover any of the commissions they paid in connection with the Lease or any legal fees they have paid to Ms. Stephenson for pursuing their Claim against the Fund. I further conclude that they are not entitled to recover their airfare to come to Maryland for the hearing in this case. Moreover, because I find that the Claimants presented insufficient evidence regarding their efforts to expeditiously re-rent the Property after the Students vacated, I do not believe they have met their burden of proving their entitlement to any allegedly lost rental income. The Claimants also seek to recover the cost of living room carpet replacement, house cleaning and changing the locks on the Property. Because these costs would be incurred in readying the Property for any new tenant, I do not find them to be recoverable in this case.

I conclude that the following documented losses incurred by the Claimants flow directly from the originating transaction, i.e., the illegal/unenforceable Lease, and are recoverable from the Fund:

Improvements to basement to rent as a separate apartment	\$ 83.80
Legal fees incurred in the zoning hearing	751.27
Airline ticket and airport parking for zoning hearing	314.40
Penalty paid on the Baltimore County citation	<u>200.00</u>
THE CLAIMANTS' ACTUAL MONETARY LOSS	\$ 1,349.47

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law as follows:

- Mr. Cross violated Business Occupations Article §§17-322(b)(32) and (33) and 17-532(c)(1)(iv), (vi) and (vii), as well as COMAR 09.11.02.02A.
- Mr. Dixon violated Business Occupations Article §§ 17-322(b)(32) and (33) and 17-532(c)(1)(vi) and (vii), as well as COMAR 09.11.02.01A and 02A.
- Each Respondent should receive a reprimand from the Commission.
- Each Respondent should pay a monetary penalty of \$3,000.00 to the Commission.
- The Fund should pay the Claimants their actual monetary loss, in the amount of \$1,349.47, for the misconduct of Mr. Cross.

RECOMMENDED ORDER

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


1. The Commission's charges against the Respondent, Keith L. Cross under Business Occupations Article §§17-322(b)(32) and (33) and 17-532(c)(1)(iv), (vi) and (vii), as well as COMAR 09.11.02.02A, are **AFFIRMED**.
2. The Commission's charges against the Respondent, Charles J. Dixon, under Business Occupations Article §§ 17-322(b)(32) and (33) and 17-532(c)(1)(vi) and (vii), as well as COMAR 09.11.02.01A and 02A, are **AFFIRMED**.

3. The Respondents, Charles J. Dixon and Keith L. Cross, are hereby **REPRIMANDED** by the Commission.
4. The Respondents, Charles J. Dixon and Keith L. Cross, shall each pay to the Commission a monetary penalty of \$3,000.00.
5. Any claim against the Real Estate Guaranty Fund by the Claimants for any acts or omissions of Charles J. Dixon is **DISMISSED**.
6. The Fund should pay the Claimants their actual monetary loss, in the amount of \$ 1,349.47, for the negligent misrepresentations of Keith L. Cross
7. The Licensee, Charles J. Dixon, shall be ineligible for an REC license until he pays his monetary penalty to the Commission.
8. The Licensee, Keith L. Cross, shall be ineligible for an REC license until he pays his monetary penalty to the Commission and reimburses the Fund for the full amount of the award paid to the Claimants by the Fund, plus annual interest of at least ten percent; and
9. The Commission's records and publications shall reflect this final decision.

January 10, 2012
Date decision mailed

MBMrbs
129207

SIGNATURE ON FILE


Marleen B. Miller
Administrative Law Judge