

THE MARYLAND REAL ESTATE COMMISSION **FINAL ORDER**

IN THE MATTER OF * BEFORE MARINA L. SABETT, **OCT 31 2012**
 THE CLAIM OF * ADMINISTRATIVE LAW JUDGE **MARYLAND REAL**
 JANIEL UNISA, CLAIMANT * OF THE MARYLAND OFFICE OF **ESTATE COMMISSION**
 V. * ADMINISTRATIVE HEARINGS
 THE MARYLAND REAL ESTATE *
 COMMISSION GUARANTY FUND * OAH NOS: DLR-REC-22-12-12275
 FOR THE ALLEGED MISCONDUCT *
 OF SUE ANNE WILLISON, * MREC NO: 2012-RE-278 G.F.
 REAL ESTATE BROKER *
 * * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated September 17, 2012, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 26th day of September, 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, 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

September 26, 2012
Date

By: **SIGNATURE ON FILE**
Marla S. Johnson, Commissioner

<p>IN THE MATTER OF THE CLAIM OF</p> <p>JANIEL UNISA,</p> <p>CLAIMANT,</p> <p>V.</p> <p>THE MARYLAND REAL ESTATE</p> <p>COMMISSION GUARANTY FUND FOR</p> <p>THE ALLEGED MISCONDUCT OF</p> <p>SUE A. WILLISON, LICENSED</p> <p>SALESPERSON,</p> <p>RESPONDENT</p>	<p>* BEFORE MARINA L. SABETT,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH CASE No.: DLR-REC-22-12-12275</p> <p>* MREC COMPLAINT No. : 2012-RE-278</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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RECOMMENDED DECISION

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STATEMENT OF THE CASE

On December 28, 2011, Jamiel Unison (Claimant) filed a complaint with the Maryland Real Estate Commission (MREC) and a claim against the Maryland Real Estate Commission Guaranty Fund (Fund). The claim was for monetary losses allegedly incurred by the Claimant as a result of the misconduct of Sue A. Willison, Licensed Real Estate Salesperson (Respondent). On March 9, 2012, MREC transmitted the matter to the Office of Administrative Hearings (OAH) for a hearing regarding the Claimant’s claim against the Fund.

I held a hearing on June 26, 2012 at the Office of Administrative Hearings (OAH) in Wheaton, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010). The Claimant represented himself. The Respondent did not appear and by Consent Order dated November 22, 2011, may not contest the claims filed by the Claimant.¹ Jessica Kaufman, Assistant Attorney General, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2011); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

ISSUES

(1) Did the Claimant sustain an actual loss as a result of an act or omission of the Respondent that constitutes theft, embezzlement, false pretenses, forgery, misrepresentation, or fraud?

(2) If the Claimant sustained an actual loss, what is the amount of actual loss compensable by the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

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

Fund Ex. 1 A Notice of Hearing, dated April 11, 2011, with attached Certified Mail Receipt confirming delivery of the Notice to the Respondent

Fund Ex. 2 Order for Hearing, dated March 7, 2012, and the transmittal to the OAH regarding same

Fund Ex. 3 DLLR license registration information for the Respondent, dated June 1, 2012

¹ A more detailed discussion of the contents of the Consent Order and the circumstances leading to its entry are discussed *infra* in the Findings of Fact and Discussion.

Fund Ex. 4 Affidavit of Steven Long, Assistant Executive Director of the MREC, dated March 13, 2012

Fund Ex. 5 Claimant's MREC Complaint and Guaranty Fund Claim, dated December 21, 2011 and received by the MREC on December 28, 2011

Fund Ex. 6 Consent Order between the MREC and the Respondent, Case Nos.: 2012- RE-002, *et al*, dated November 22, 2011

Fund Ex. 7 MREC Report of Investigation, dated January 16, 2012

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

Claimant Ex. 1 Letter from Joseph and Kathy Stuart to "Whom it May Concern" dated June 19, 2012

Claimant Ex. 2 E-mail correspondence between the Claimant and Respondent, dated between July 11 and August 8, 2011

No exhibits were offered on behalf of the Respondent.

Testimony

The Claimant testified on her own behalf. No testimony was offered on behalf of the Respondent. The Fund presented the testimony of Jack L. Mull, Jr., an investigator of behalf of the MREC.

FINDINGS OF FACT

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

1. At all times relevant to this matter, the Respondent was a Licensed Real Estate Salesperson, registration number 05 527749, on behalf of West Patrick Property Solutions, LLC (West Patrick), a property management company located in Frederick, MD.
2. On or around November 11, 2009, the Claimant, the tenant of a property located at 9765 Duffer Way, Montgomery Village, MD 20886 (Duffer Way property), entered into a

Residential Dwelling Lease (Lease) with the Respondent in her role as the agent of West Patrick representing the property owner of the Duffer Way property (property owner).

3. The Lease required the Claimant to provide West Patrick a monthly rent in the amount of \$1900.00 and a security deposit in the amount of \$2200.00. The Claimant also was required to pay a pet deposit in the amount of \$1500.00.
4. On or around November 14, 2009, the Claimant provided the Respondent with a check in the amount of \$3400.00, which represented the first month rent (\$1900.00) and the \$1500.00 pet deposit.
5. On or around November 14, 2009, the Claimant also provided the Respondent a cashier's check in the amount of \$2200.00, which represented the security deposit.
6. The Respondent was the only signatory on the bank accounts opened and maintained by West Patrick and held 100% ownership of West Patrick.
7. In March 2011, the Claimant was informed by the property owner that West Patrick had been delinquent in forwarding the net rent proceeds and directed the Claimant to send the rent payments directly to the property owner.
8. In April 2011, the property owner notified the Claimant that the management agreement with West Patrick was dissolving.
9. On or around June 23, 2011, the Claimant received an e-mail from the Respondent informing him that West Patrick was closing out all of its accounts and attaching release documents. The Claimant completed the release documents and after having them returned by the post office as "undeliverable" to the Respondent, the Claimant forwarded the release documents to the Respondent's attorney at the Respondent's request.

10. On November 22, 2011, the Respondent entered into a Consent Order in which she admitted that she violated Section 17-322(b)(22) of the Business Occupations and Professions Article of the Maryland Annotated Code as to the Claimant (and many others like him) when she failed “to promptly account for or remit money that came into her possession, but belonged to another person.” Consent Order at paragraph 5 and Appendix “A”, Fund Ex. 6.
11. Under the Consent Order, she further waived any right to participate in the hearing of this matter and waived her right to contest or appeal any decision by the Commission that involves a claim arising out of her “actions while a property manager at West Patrick Solutions.” Id. at page 3.
12. Further, under the Consent Order the Respondent may not “apply to the Commission in the future for a license to engage in the provision of or assist in the provision of real estate brokerage services in the State.” Id. at page 3.
13. As of the date of the hearing, the Claimant’s security and pet deposits had not been released to the property owner and neither the Claimant nor anyone on his behalf has received the release of such deposits.

DISCUSSION

The burden of proof at a hearing on a claim against the Fund is on the “claimant to establish the validity of the claim.” Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2010). Section 17-404(a) of the same statute governs all claims brought against the Fund and sets forth, in pertinent part, the following criteria that must be established by a claimant to obtain an award:

§ 17-404. Claims against Guaranty Fund.

(a) *In general.*-(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;
 - 2. a licensed associate real estate broker;
 - 3. a licensed real estate salesperson; or
 - 4. an unlicensed employee of a licensed real estate broker;
- (ii) involve a transaction that relates to real estate that is located in the State; and
- (iii) be based on an act or omission:
 - 1. in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or
 - 2. that constitutes fraud or misrepresentation.

(b) *Limitation on recovery.*- The amount recovered for any claim against the Guaranty Fund may not exceed \$25,000 for each claim.²

Md. Code Ann., Bus. Occ. & Prof. § 17-404(a), (b) (Supp. 2010). See COMAR 09.11.03.04.

The MREC shall order payment of a valid claim from the Guaranty Fund for actual monetary losses suffered by a claimant not to exceed \$25,000.³ Md. Code Ann., Bus. Occ. & Prof. § 17-410(a), (b) (2010); COMAR 09.11.01.18. For the reasons that follow, the Claimant is entitled to an award of \$3, 700.00 for the actual monetary losses he suffered as the result of the acts or omissions of the Respondent in the instant case.

By Consent Order dated November 22, 2011, the Respondent admitted that she violated Section 17-322(b)(22) of the Business Occupations and Professions Article of the Maryland Annotated Code as to the Claimant (and many others like him) when she failed “to promptly account for or remit money that came into her possession, but belonged to another person.” Consent Order at paragraph 5 and Appendix “A”, Fund Ex. 6. Under that Order, she further waived any right to participate in the hearing of this matter and waived her right to contest or

² The recovery limit under Section 17-404 has changed to \$50,000.00 effective July 1, 2012. 2012 Md. Laws ch. 184.

³ See *supra* footnote 2.

appeal any decision by the Commission that involves a claim arising out of her “actions while a property manager at West Patrick Solutions.” Id. at page 3.

At the hearing, the Claimant presented copies of e-mail correspondence with the Respondent dated between July 22 and August 8, 2011 requesting the release of his \$2200.00 security deposit and \$1500.00 pet deposit remitted on or around November 14, 2009 pursuant to a Residential Dwelling Lease entered into with the Respondent in her role as an agent of West Patrick, representing the owners of the Duffer Way property. Claimant Ex. 1. As part of his investigation of this matter, Jack L. Mull, an investigator for the MREC, presented testimony and copies of the Claimant’s personal and cashier’s check provided to the Respondent, which documented payment in the amount of \$3700.00 to West Patrick on or around November 14, 2009. Fund Ex. 7, at page 2. The Respondent admitted in a signed and sworn affidavit dated July 17, 2011 that she was the sole owner of West Patrick and the only signatory on the bank accounts opened and maintained by West Patrick. Fund Ex. 7, at attachment 2a. As of the date of the hearing, however, the uncontroverted testimony of the Claimant is that neither he (or anyone acting on his behalf) nor the property owner of the Duffer Way property has received the deposits.

Accordingly, I find that the Respondent failed to release the \$3700.00 in security and pet deposits to the Claimant or anyone acting on his behalf and that such monies were not released to the Duffer Way property owner. At the hearing, the Fund also recommended that the Claimant be reimbursed by the Fund in the amount of \$3700.00.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Facts and Discussion, I conclude as a matter of law that the Claimant is entitled to reimbursement from the Real Estate Guaranty Fund in the amount

of \$3700.00, for actual losses resulting from the Respondent's actions. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(1), (2) and 17-410(b)(1) (2010); COMAR 09.11.01.18 and 09.11.03.04.

RECOMMENDED ORDER

I **RECOMMEND** that the MREC **ORDER**:

That the Claimant's claim against the Maryland Real Estate Guaranty Fund be **ACCEPTED** in the amount of \$3700.00; and

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

September 17, 2012
Date Decision Mailed

SIGNATURE ON FILE

Marina L. Sabett
Administrative Law Judge

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