THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM	*	BEFORE MICHAEL J. WALLACE,
OF YINAN XU,	*	ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE OF
V.	*	ADMINISTRATIVE HEARINGS
THE MARYLAND REAL ESTATE	*	
COMMISSION GUARANTY FUND	*	OAH NO: DLR-REC-22-18-05968
FOR THE ALLEGED MISCONDUCT	*	
OF DACHENG WANG,	*	MREC NO: 2017-RE-302 G.F.
RESPONDENT		

* * * * * * * * * * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated July 12, 2018, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 15th day of August, 2018.

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

8-15-2018
Date

By: _____
Anne S. Cooke, Commissioner

SIGNATURE ON FILE

IN THE MATTER OF THE CLAIM	*	**BEFORE MICHAEL J. WALLACE**
OF YI NAN XU,	*	**ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
V.	*	**OF ADMINISTRATIVE HEARINGS**
THE MARYLAND REAL ESTATE	*	**OAH CASE NO.: DLR-REC-22-18-05968**
COMMISSION GUARANTY FUND,	*	**MREC CASE NO.: 17-RE-302**
FOR THE ALLEGED MISCONDUCT	*	
OF DACHENG WANG,	*	
RESPONDENT	*	

* * * * * * * * * * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On December 30, 2016, Yi Nan Xu (Claimant) filed a Complaint and Guaranty Fund Claim with the Maryland Real Estate Commission (Commission) to recover compensation from the Real Estate Guaranty Fund (Fund) for an alleged actual loss resulting from an act or omission of Dacheng Wang (Respondent), a licensed real estate sales person. On January 29, 2018, the Executive Director of the Commission issued an Order for Hearing, and, on or about February 1, 2018, the Commission forwarded this case to the Office of Administrative Hearings (OAH). [1]

[1] There is no explanation for the more than one year delay in forwarding the case for hearing.

On April 23, 2018, I conducted a hearing at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland 21031. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010). The Claimant appeared and represented himself. Hope Sachs, Assistant Attorney General, represented the Fund. The Respondent failed to appear at the hearing or request a postponement despite the issuance of proper notice. Pursuant to applicable law, I proceeded to conduct the hearing in the Respondent's absence. Md. Code Ann., Bus. Occ. & Prof. § 17-408(c) (2010).

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); 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 Claimant sustain an actual loss, compensable by the Fund, due to an act or omission of the Respondent in which money or property was obtained from the Claimant by theft, embezzlement, false pretenses, or forgery, or an act or omission that constitutes fraud or misrepresentation in the provision of real estate sales services; and, if so,

2. What amount of award is the Claimant entitled to receive from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

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

Cl. # 1. Receipt of payments made to Respondent, undated
Cl. # 2. Check payable to Eagle Premier Title Group, dated October 8, 2016
Cl. # 3. Cashier's Check payable to PM Management, LLC, dated October 3, 2016

The Respondent did not submit any documents for consideration.

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

GF Ex. 1	Notice of Hearing, dated March 14, 2018 with attached Order for Hearing, dated January 29, 2018
GF Ex. 2	Licensing history regarding Respondent, dated April 20, 2018
GF Ex. 3	Maryland Real Estate Commission Complaint and Guaranty Fund Claim, received December 30, 2016

GF Ex. 4	Funds Transfer Request Authorization from Bank of America to Respondent, dated October 8, 2016
GF Ex. 5	Check from PM Management to Claimant, dated October 21, 2016 (Returned for insufficient funds)

Testimony

The Claimant testified on his own behalf. The Fund did not present any testimony. No testimony was presented on behalf of the Respondent.

PROPOSED FINDINGS OF FACT

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

1. At all relevant times, the Respondent was licensed by the Commission as a real estate salesperson under license number 05-622914.

2. Sometime in Early October 2016, the Claimant contacted the Respondent to assist him in purchasing a property located at 2609 South Paca Street in Baltimore, Maryland 21230 (the Property).

3. The Respondent was acting as the Claimant's real estate broker throughout this transaction.

4. The listing price for the Property was $65,000.00.

5. On October 3, 2016, the Claimant gave the Respondent a cashier's check payable to Premier Title Group, the Respondent's employer, in the amount of $3,500.00 as a down payment on the Property.

6. Also on October 3, 2016 the Claimant gave the Respondent $2,000.00 in cash, as a down payment on the Property.

7. On October 8, 2016, the Claimant made a wire transfer of funds from his Bank of America account to the Respondent's PNC Bank account, in the amount of $14,500.00, as earnest money to be applied toward the purchase of the Property.

8. On October 8, 2016, the Claimant gave the Respondent a certified check from Branch Bank and Trust (BB&T) payable to Eagle Title Group, in the amount of $25,000.00, to be applied toward the purchase of the Property.

9. On or about October 10, 2016, the sale of the Property was cancelled.

10. The Claimant requested that the Respondent return the funds that the Claimant had expended to date.

11. On October 21, 2016, the Respondent sent a check from his PM Management LLC account payable to the Claimant in the amount of $20,000.00.

12. This check was returned because there were insufficient funds in the Respondent's PM Management LLC account.

13. The Claimant has since contacted the Respondent on several occasions to recover the money that he had expended toward the purchase of the Property.

14. The Respondent has not responded to the Claimant's calls.

15. To date, the Claimant has received the equivalent in U.S. dollars approximately $3,000.00 in Chinese currency from the Respondent.

DISCUSSION

The Respondent's Failure to Appear

The OAH scheduled the hearing in this case for Monday, April 23, 2018 at the OAH's office in Hunt Valley, Maryland. On March 14, 2018, the OAH mailed a Notice of Hearing (Notice) to the parties. The OAH sent the Respondent's copy of the Notice by first class and certified mail (return receipt requested) to 45438 Oak Trail Square, Sterling, Virginia, 20164, the Respondent's address of record with the REC. The United States Postal Service did not return either the first class or certified mail copies of the Notice that were sent to the Respondent's

address of record to the OAH. The Domestic Return Receipt (Green Card) for the certified mail copy of the Notice that was sent to the Respondent was not returned to the OAH.

As the Notices sent to the Respondent were not returned, and the Respondent did not request a postponement of the hearing, I find that the Respondent was sent proper notice of the hearing, even though the Green Card was not returned to the OAH.

Section 17-324 of the Business Occupations and Professions Article (BOP) provides that before the Commission can take any final action against an individual, the individual must be personally served with a hearing notice or the hearing notice must be sent by certified mail at least ten days prior to the hearing to the individual's last known business address. Md. Code Ann., Bus. Occ. & Prof. § 17-324(d)(1) (2010). If the individual, after receiving proper notice of the hearing, fails or refuses to appear, the Commission may hear and determine the matter despite the individual's absence. Md. Code Ann., Bus. Occ. & Prof. §§ 17-324(f), 17-408(c) (2010). The address used to notify the Respondent of the hearing is the Respondent's address of record with the Commission. Therefore, I conclude that the Respondent was sent proper notice of the hearing, but nevertheless failed to appear. As a result, I determined that it was appropriate to proceed with the hearing despite the Respondent's failure to appear.

Legal Framework

A person may recover compensation from the 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) (Supp. 2017). 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(a)(2)(iii) (Supp. 2017); *see* COMAR 09.11.03.04A and B[2] (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 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 09.11.01.14. The Claimant bears the burden of proving his entitlement to recover from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (Supp. 2017).

As a prerequisite to establishing a claim from the Fund, a claimant must establish that the claim is based on an act or omission occurring in the provision of real estate brokerage services. Under the law, real estate brokerage services are defined as follows:

(l) "Provide real estate brokerage services" means to engage in any of the following activities:

(1) for consideration, providing any of the following services for another person:

(i) selling, buying, exchanging, or leasing any real estate . . . .

Md. Code Ann., Bus. Occ. & Prof. § 17-101 (2010). There is no dispute that the instant claim is based upon an alleged act or omission occurring in the provision of real estate brokerage services.

Background and Analysis

The facts of this case are not in dispute. The Claimant wanted to purchase a $65,000.00 house located in Baltimore, Maryland, and contacted the Respondent to assist him in this

[2] This regulation was repealed effective June 1, 2017; however, it was in effect at the time of the alleged misconduct in this case and therefore it governs this case.

endeavor. The Claimant stated that he had used the services of the Respondent in previous real estate and rental transactions and was familiar with the Respondent. On October 3, 2016, the Claimant gave the Respondent a cashier's check payable to Premier Title Group, the Respondent's employer, in the amount of $3,500.00 along with $2,000.00 in cash, as down payment on the Property. On October 8, 2016, the sellers wanted earnest money to assure them that the Claimant was indeed interested in purchasing the Property so the Claimant made a wire transfer of funds from his Bank of America account to the Respondent's PNC Bank account, in the amount of $14,500.00, to be applied toward the purchase of the Property. In addition, the Claimant gave the Respondent a certified check from BB&T, payable to Eagle Title Group, in the amount of $25,000.00, to also be applied toward the purchase of the Property. In sum, the Appellant gave the Respondent $45,000.00 in funds to be applied to the purchase of the Property. On or about October 10, 2016, however, the sale of the Property was cancelled by the sellers.

The Claimant immediately requested that the Respondent return the funds that the Claimant had expended to date and on October 21, 2016, the Respondent sent the Claimant a check from his PM Management LLC account payable to the Claimant in the amount of $20,000.00. There were insufficient funds in the Respondent's PM Management LLC account to cover the check, however.

The Claimant has since contacted the Respondent on several occasions to recover the money that he had expended toward the purchase of the Property but, to date, the Respondent has only refunded approximately the equivalent of $3,000.00 (US dollars) in Chinese currency.

There was no dispute over these facts. The Respondent failed to appear at the hearing and did not refute the Claimant's evidence. While there was some initial confusion during the hearing over the facts of this case, this confusion was due to a language barrier as the Claimant only speaks Chinese and was assisted by an interpreter at the hearing. The Claimant established

that he contacted the Respondent, who was known to the Claimant to be a licensed real estate salesman, to assist him in the purchase of the Property. The Respondent was in fact licensed by the Commission as a real estate salesman at all times relevant to this matter. The evidence further established that the Claimant paid the Respondent a total of $45,000.00 in funds over approximately five days but, on or about October 10, 2016, the sale was cancelled by the sellers. Despite his many requests over the ensuing year, the Claimant was only able to recover $3,000.00 of his money. There is no dispute that this matter involves an actual loss by the Claimant that is based on an act or omission by the Respondent, a licensed real estate sales person, that occurred during the provision of real estate brokerage services involving a transaction that relates to real estate that is located in Maryland. The Respondent collected a significant amount of money from the Claimant to be applied to the purchase of a property. When the sale fell through, the Respondent failed to return the Claimant's funds. This certainly amounts to 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(a)(2)(iii) (Supp. 2017).

In sum, I find that the preponderance of the evidence is that the Respondent wrongfully kept $42,000.00 of the Claimant's deposit money and failed to return these funds despite numerous requests from the Claimant to do so. I therefore conclude that there was intentional or negligent misrepresentation on the part of the Respondent and conclude that the losses claimed are recoverable from the Fund.

PROPOSED CONCLUSION OF LAW

Based on the above Findings of Fact and Discussion, I conclude as a matter of law that the Claimant sustained an actual loss, compensable by the Fund, due to an act or omission of the Respondent in which money or property was obtained from the Claimant and wrongfully retained

by the Respondent in the course of providing real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(iii) (Supp. 2017). I further conclude as a matter of law that the amount of the award that the Claimant is entitled to receive from the Fund is $42,000.00. COMAR 09.11.01.14.

PROPOSED ORDER

I PROPOSE that the Claim filed by the Claimant against the Maryland Real Estate Guaranty Fund be **GRANTED** in the amount of $42,000.00.

SIGNATURE ON FILE

July 12, 2018
Date Decision Issued

Michael J. Wallace
Administrative Law Judge

MJW/da
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