

MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

V.

OLAYELE AJIBOYE

RESPONDENT

and

**CLAIM OF ALANA HILL
AGAINST THE MARYLAND REAL
ESTATE COMMISSION GUARANTY
FUND**

CLAIMANT

* * * * *

OPINION AND FINAL ORDER

This case comes before the Real Estate Commission (“Commission”) on argument on Exceptions filed by Respondent, Olayele Ajiboye, to the Proposed Order of November 20, 2017. Administrative Law Judge Joy L. Phillips (“ALJ”) filed a Proposed Decision and Recommended Order in which she recommended that pursuant to Section 17-322(b) and (c), Maryland Annotated Code, Business Occupations and Professions Article, (“BOP”), Respondent pay a civil penalty of \$5,500 and that Respondent be reprimanded. The Order also recommended that the Maryland Real Estate Commission Guaranty Fund (“Fund”) pay to the Alana Hill (Claimant) the amount of her actual monetary loss, \$38,745.48, “for the Respondent’s wrongful acts or omissions”

On March 26, 2018, the Commission issued a Proposed Order affirming the ALJ’s Findings of Fact, approving the Conclusions of Law and adopting the Recommended Decision. The Proposed Order also ordered that the records and

publications of the Maryland Real Estate Commission reflect its decision. Claimant did not file Exceptions to the ALJ's Proposed Decision.

A hearing was held by a panel of Commissioners consisting of Commissioners J. Nicholas D'Ambrosia, Demetria Scott and Owen Taylor. Hope Sachs, Assistant Attorney General, appeared as the Presenter of evidence on behalf of the Commission. Respondent appeared, acknowledged that he waived his right to representation at the hearing and presented oral argument. A transcript of the hearing before the ALJ was not provided to the Commission. Claimant and her counsel were present. The proceedings were electronically recorded.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, four exhibits as well as the Office of Administrative Hearings' folder containing the exhibits which were introduced at the hearing before the ALJ, were entered into evidence. Respondent presented no additional admissible evidence.

FINDINGS OF FACT

The Commission adopts the Findings of Fact recommended by the ALJ.

DISCUSSION

At all times relevant to this matter, the Respondent, Olayele Ajiboye, was a licensed real estate broker for Legends Realty Group, LLC.¹ He was also the president and sole member of Equity Holdings International, LLC (Equity), which owned the house located at 3909 Wallace Road, New Brentwood, Maryland (Property). FF 2. Equity purchased the property following foreclosure with the intent to renovate and sell it. FF 3 The single family home had an unfinished basement which was uninhabitable because of

¹ "FF" refers to the ALJ's Findings of Fact

flooding. FF 4. Lauren Secco, a neighbor, toured the property and noticed two feet of standing water covering the basement floor. FF 5. Approximately one month later she noticed water being pumped out of the basement and renovations began. *Id.* Respondent had the house renovated, including finishing the basement, constructing bedrooms, a great room, laundry room and a bathroom. FF7.

After the renovations, but prior to occupancy, a neighbor, Valerie Alston, was invited to walk through the property by one of the workers and when she stepped down into the basement, her socks became wet from the carpet. FF 9. She mentioned this to the worker and he responded “we’re going to take care of that.” *Id.* She also noticed a mildew smell. *Id.* Likewise, another neighbor Michelle Newaldass, toured the Property before it was sold and noticed soaking wet carpet in the basement. FF10.

In November 2014, Respondent, who acted as the listing and selling agent for the Property, signed a disclaimer asserting that he had no actual knowledge of any latent defects in the Property. FF 11. On or about January 25, 2015, Respondent and Claimant entered into a contract for sale of the Property. FF 12. Respondent provided a copy of the disclaimer as part of the sale. FF 11. The inspection resulted in twenty-six (26) items needing repair. FF 12. The parties entered into an Addendum to address the negative slope on the exterior left side and to provide a report from a licensed structural engineer that the foundation was satisfactory as a result of cracks in the foundation found by the home inspector in the sump pump area. *Id.* The Respondent made most of the repairs including adding layers of dirt around the house in an attempt to change the water flow away from the Property. FF 13, 14. Claimant was required to place \$5,000 in escrow for

the costs of the structural engineer, the grading around the house and for filling in of a pipe with cement. FF 13.

During the walk through, Respondent assured Claimant that there had never been a water problem and that the cracks in the foundation were because the home was older. He indicated that repair of the cracks was “a simple, cheap repair” and that “he would help her out.” FF 15. The parties settled on February 25, 2015 and the property was inspected by a structural engineer on February 27, 2015. FF 16. The engineer issued a report which stated:

- The house foundation appeared to be in good condition. There were a few minor cracks noted in the exterior foundation parging. The cracks appeared to be parging expansion cracks which do effect (sic) the integrity of the house foundation walls

- There was no sign of foundation water leaks noted in the basement or anywhere in the house finished rooms.

- There was no cracks noted in any of the drywall finish of all the whole house interior walls

- The overall house building condition appeared to be structurally sound.

FF 17. Claimant and her agent contacted the engineer regarding the bowing wall in the basement. FF 18. The engineer issued a revised report:

- The house foundation appears to be in good condition. There were a few minor cracks noted in the exterior foundation parging. The cracks appeared to be parging expansion cracks. These cracks **do not** effect (sic) the integrity or strength of the house foundation walls.

FF 19. Respondent provided Claimant with the revised report and Claimant moved into the Property in mid-March 2015. FF 20, 21.

In mid-April, during a rainstorm, water and mud seeped into the basement via an outside door which is at the bottom of the outdoor steps. FF 22. The muddy water intruded about five to six feet into the basement. *Id.* The sump pump did not turn on. *Id.*

Claimant hired Jiffy Plumbing, Heating & A/C to snake the outside drain and rented fans from the Home Depot. FF 23. She shampooed the carpet, bought sand and blocks to build a barrier at the top of the outside steps to prevent more water from entering. *Id.*

In mid-May, during another rainstorm, water seeped into the basement from the bottom of a wall that is bowed, near the sump pump resulting in all the carpeting in the great room and hallway being ruined. FF 24. The water entered the basement from the front of the Property. *Id.* Claimant hired Mac's Heating, A/C Plumbing to snake the outside drain and unclog the mud and rented fans and powerful dehumidifiers. FF 25. She also raised the outside barriers to keep water from coming down the steps. *Id.*

At the latter part of June, the basement flooded once again as a result of water coming in from the back of the basement. FF 26. The water rose four or five inches throughout the basement. *Id.* Claimant used a wet vacuum, fans and dehumidifiers to remove the water and pulled up the remaining carpet. FF 27. Claimant hired Jiffy Plumbing, Heating & A/C to fix the sump pump. *Id.*

Claimant hired ET & A Consulting, Inc. to inspect the Property. The inspector found an unused sump pit at the rear right corner of the basement which became visible when the carpet was removed. FF28. The inspector also noticed "lateral foundation wall displacement at the base of the front foundation wall" as well as evidence of water intrusion and moisture throughout the basement. *Id.* The inspection also revealed cracks in the rear wall and around the front porch and sump pump outlet. *Id.* He also noted that the exterior grading slopes toward the house. *Id.* Finally, mold and water damage on tack strips under the basement carpeting showed old water damage. FF 29

In December 2015, Claimant hired Koppers Quality Waterproofing, Inc. to replace the old sump pit with a deeper pit and a new sump pump which gave Claimant two operating sump pumps in the basement. FF 30. Claimant also hired Curry's Concrete Services to install various concrete walkways and patios outside the Property. FF 31. The Claimant spent \$3,606.48 to repair the water damage after she purchased the Property \$806.48 (Jiffy Plumbing, Heating & A/C, Mac's Heating, A/C & Plumbing and Home Depot; \$600.00 (ET&T); \$2,200.00 Koppers Quality Waterproofing, Inc. FF 32.

Despite Claimant's efforts, the basement continues to flood during every rainstorm, smells of mold and mildew, has no carpeting on the floor and is uninhabitable. FF 33. A reasonable estimate to waterproof the basement is \$11,779.00, FF. 34, and a reasonable amount to remodel the basement after the waterproofing is \$23,360.00. FF 35.

On February 12, 2016, Claimant filed a complaint against Respondent with the Commission as well as filed a claim for reimbursement with the Fund. FF 36. On February 23, 2016, the Commission sent a copy of the complaint and a demand for a response to the Respondent. Respondent failed to respond to the demand. FF38. On March 25, 2016, the Commission again sent a copy of the complaint to Respondent and notified him that he had an additional ten days in which to respond. FF 39. Respondent failed to respond. *Id.* On April 26, 2016, the Commission notified Respondent via email of the complaint. FF 40. The email notified Respondent that he had failed to respond to previously mailed correspondence. *Id.*

On April 26, 2016, Respondent updated his address with the Commission. FF 41. On April 27, 2016, the Commission attached a copy of the complaint packet to another

email and sent it to the Respondent. FF 42. Respondent has not filed a written response.

Id.

Code of Maryland Regulation (COMAR) 09.11.01.12 provides that a “licensee shall reply in writing to the Commission within 20 days of receipt of written inquires directed to the licensee by the Commission.” Failure to do so is considered a violation of BOP § 17-322 (b) (25).

On four separate occasions, the Commission sent written communications to Respondent. Specifically, the Commission mailed correspondence to Respondent on February 23, 2016 and March 25, 2016. On April 26, 2016 and April 27, 2016, the Commission sent correspondence via electronic communication (email). As of the date of this order, the Respondent has not responded to the Commission’s inquires. Accordingly the Commission finds that the Commission violated COMAR 09.11.01.12 and in turn his conduct violates §17-322 (b)(25).

BOP §17-322 (b)(4) permits discipline for intentionally or negligently failing to disclose to any person with whom the applicant or licensee deals, a material fact that the licensee knew or should know and that relates to the property which the licensee or applicant deals. It cannot be disputed that the flooding issue in the basement and the cracks in the foundation of the Property are material facts because a reasonable person would attach importance to them in determining his or her course of action in the transaction in question. *See Ward Development Co. v. Ingrao*, 63 Md. App. 645, 655 (1985). Discussing materiality of a fact, the Court in *Maryland Real Estate Commission v. Garceau*, 234 Md. App. 324 (2017), said:

“In a business transaction, reliance upon a misrepresentation of a fact, intentionally misrepresented or otherwise, is justifiable only if the fact

misrepresented is material. **A fact is material if its existence or non-existence is a matter to which a reasonable man would attach importance in determining his choice of action in the transaction, or the maker of the misrepresentation knows that its recipient is likely to regard the fact as important although a reasonable man would not so regard it.**”

Id. at 357, quoting *Gross v. Sussex*, 332 Md. 247, 258 (1993) (emphasis in original)

Therefore, Respondent had an obligation to disclose this to Claimant because he knew of the condition of the basement and the foundation of the Property.

Respondent denied in the Disclaimer he had knowledge of defects in the property, but testified that he put his hand to the wall of the basement during the pre-settlement walk-through to show Claimant that it was not damp. (Proposed Decision, at 16) Additionally, Respondent assured Claimant that there was never a water problem. FF 15. However, a neighbor testified that she saw water pumped out of the house prior to renovations. FF 15. Furthermore, one of the individuals working on the Property for Respondent stated that Respondent was aware of the flooding and “planned” to take care of it, FF 9, which is contrary to Respondent’s testimony of “hundreds” of workers who would corroborate that there was never any water invasion into the basement. (Proposed Decision, at 16)

Furthermore, there were a number of cracks in the wall of the Property. FF 12, 15, 17. Failure to disclose that the cracks were a foundational issue also constituted a violation of BOP §17-322 (b) (4). This conclusion is buttressed by the fact that the Respondent got a revised report from the structural engineer that stated that the “cracks do not effect (sic) the integrity of the house foundation walls,” FF 19, which was a material change and a *direct* contradiction of the initial report which stated that “crack do effect (sic) the integrity of the house foundation walls.” FF 17.

As a real estate licensee since 1992, Respondent should have been well aware of his duty to disclose material facts that he knew or should have known relating to the Property. The Commission concludes that the Respondent's failure to disclose to Claimant the material facts relating to the flooding of the basement and the cracks in the foundation of the Property was in blatant disregard of his duties as a real estate licensee and demonstrates, at best, incompetence on his part in violation of § 17-322 (b)(25). His actions encompassed all of the elements prohibited by § 17-322 (b)(25) – bad faith, incompetence and untrustworthiness and dishonest, fraudulent and improper dealings. Additionally, the misrepresentations form the basis of the Commission's conclusion that Respondent also violated BOP § 17-532 (b) (1) (iv) by failing to treat Claimant honestly and fairly and answer all the Claimant's questions about the Property, especially the basement, truthfully.

The misrepresentations and untrustworthy practices of Respondent are also damaging to the integrity of the real estate profession and violate COMAR 09.11.02.01C as well as BOP § 17-322(b) (32) and (33). In short, Respondent misrepresented to Claimant the condition of the basement and the foundation of the Property.

For violations of BOP §§ 17-322 (b)(4), (25), (32), (33), and 17-532 (b)(1)(iv), as well as COMAR 09.11.01.12 and 09.11.02.01C, the Respondent is subject to sanctions under BOP § 17-322 (c), which permits the imposition of a penalty, not exceeding \$5,000 for each violation, instead of or in addition to reprimanding a licensee or suspending or revoking a license.

To determine the amount of the penalty to be imposed, BOP, § 17-322 (c) requires the Commission to consider the following factors:

1. the seriousness of the violation;
2. the harm caused by the violation;
3. the good faith of the licensee; and
4. any history of previous violations by the licensee.

While there is no history of previous violations by Respondent, the violations in this case are serious. Respondent deceived Claimant by mischaracterizing the state of the basement in the home as well as the integrity and stability of the home by having a revised engineering report submitted in order to induce Claimant into purchasing the Property. FF 19. As well as presenting Claimant with a Disclaimer that he had no actual knowledge of any latent defects in the Property. FF 11. This is in direct contradiction of his own worker who indicated that he was aware of the flooding and “planned to take care of it.” FF 9.

The Respondent’s actions also caused substantial financial harm to Claimant who was forced to spend thousands of dollars to repudiate the water damage in the basement, to no end, as the basement remains uninhabitable. FF 33. Respondent’s conduct in regard to Claimant very clearly lacked good faith. Respondent told Claimant that he had no issues with water damage in the basement despite the fact that a neighbor saw water being removed from the house, FF 5, as well as his own worker admitted to Respondent’s actual knowledge. FF 9. Additionally, Respondent attempted to minimize the cracks in the foundation. FF 15. Despite this actual knowledge, Respondent chose to misrepresent the condition of the Property. The Commission concludes, based on the above-cited factors, that the appropriate sanction is a civil penalty of \$5,500.00 and a reprimand.

BOP § 17-404(a)(1) provides that a person may recover compensation from the Guaranty Fund for an actual loss. BOP § 17-404(a)(2) provides that 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.

The amount which may be recovered for any claim against the Guaranty Fund may not exceed \$50,000.00 for each claim. BOP § 17-404(b).

COMAR 09.11.01.18 provides that recovery from the Guaranty Fund is 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.

Applying the elements of proof found in BOP § 17-404(b), the Commission concludes that Respondent was a licensed real estate broker and the subject

real estate transaction related to real estate located in Maryland. The acts or omissions attributable to Respondent were his misrepresentations and failure to disclose information to Claimant. Those acts or omissions constituted the misrepresentation which is a required element or proof for recovery from the Guaranty Fund. The Claimant reasonably relied on Respondent's misrepresentations and omissions when he stated that the basement had no water issues and that the Property had no foundation instability. Accordingly, Claimant is entitled to reimbursement from the Fund. After reviewing the ALJ's Findings of Facts and the Claimant's Exhibits submitted at the hearing before the ALJ, the Commission concludes that the Claimant's actual losses should be calculated as follows:

The amount due to Claimant for water damage after she purchased the Property:

\$ 806.48	Jiffy Plumb. Heating & A/C & Plumb. Mac's Heating, A/C & Plumb. and Home Depot
\$ 600.00	ET&T
<u>\$2,200.00</u>	Koppers Quality Waterproofing, Inc.
\$3,606.48	

The Commission further concludes that the following amounts were due to Claimant to waterproof the basement:

\$ 1,600.00	Demolishing the drywall and taking up the existing floors
\$ 9,384.00	Installing a trench
<u>\$ 795.00</u>	Installing area drain and sealing wall cracks
\$11,779.00	

The Commission further concludes that the following amounts were due to Claimant to remodel the basement after waterproofing:

\$ 920.00	Demolishing perimeter walls
\$ 3,000.00	Reframing the walls and applying insulation
\$ 1,700.00	Installing drywall and finishing the walls
\$ 560.00	Finishing baseboards
\$ 800.00	Removing and replacing bathroom toilet, sink and tile
\$ 1,000.00	Replacing damaged floors (7)
\$ 1,450.00	Rebuilding a closet
\$ 1,050.00	Painting basement
\$ 7,000.00	Removing carpet from steps and installing new wooden steps
<u>\$ 2,900.00</u>	“Re-doing” Shower Walls and Tub
\$23,360.00	

Therefore, the Commission calculates the amount of Claimant’s claim which constitutes an actual loss due to the misrepresentations, omissions of the Respondent as follows:

\$ 3,606.48	Water Damage
\$11,779.00	Water Proofing
<u>\$23,360.00</u>	Remodeling
<u>\$38,745.48</u>	Claimant’s Actual Loss

Accordingly, the Commission concludes that Claimant is entitled to reimbursement from the Fund in the amount of \$38,745.48.

CONCLUSIONS OF LAW

Based upon the ALJ’s Findings of Fact, which have been affirmed by the Commission, and the foregoing Discussion, the Commission concludes, as a matter of law, that:

1. The Respondent, Olayele Ajiboye, violated BOP §§ 17-522 (b)(4), (25), (32), (33); § 17-532 (b)(1)(iv) and COMAR 09.11.01.12 and 09.11.02.02C;

2. The Respondent, Olayele Ajiboye, is subject to the penalties prescribed in BOP § 17-322 (c) for these violations, reprimand and a \$5,500 civil penalty are appropriate sanctions.

ORDER

The Exceptions of the Respondent, Olayele Ajiboye, having been considered, it is this 20th day of August, 2018 by the Maryland Real Estate Commission, **ORDERED:**

1. That the Respondent, Olayele Ajiboye, violated BOP §§ 17-322(b) (4), (25), (32) and (33); BOP §§ 17-532(c)(1)(iv); and COMAR 09.11.01.12 and 09.11.02.02C;
2. The Respondent shall be **REPRIMANDED**;
3. That the Respondent, Olayele Ajiboye, shall be assessed a civil penalty in the amount of **Five Thousand Five Hundred Dollars (\$5,500.00)** which shall be paid to the Real Estate Commission within thirty (30) days of the date of this Order;
4. That the Claimant, Alana Hill, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of **Thirty Eight Thousand Seven Hundred Forty Five Dollars and Forty-Eight Cents (\$38,745.48)** (BOP §17-404 and COMAR 09.11.01.14);
5. That Respondent, Olayele Ajiboye, shall be ineligible to hold any real estate license issued by the Maryland Real Estate Commission until the civil penalty is paid in full and the Maryland Real Estate Guaranty Fund is reimbursed for

all monies disbursed under this Order, including any interest that is payable under the law (BOP § 17-411(a)(2)); and

6. That the records and publications of the Maryland Real Estate Commission reflect this decision.

MARYLAND REAL ESTATE COMMISSION

SIGNATURE ON FILE

By: _____

Note: A judicial review of this Final Order may be sought in the Circuit Court of Maryland in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.

SIGNATURE ON FILE

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION
V.

OLAYELE AJIBOYE
RESPONDENT

AND

CLAIM OF ANA HILL
AGAINST THE MARYLAND
REAL ESTATE COMMISSION
GUARANTY FUND

* BEFORE JOY L. PHILLIPS
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-24-17-18323
* REC CASE NO: 2016-RE-353
*

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated November 20, 2017, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of December, 2017,

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

12-20-2017
Date

By: _____
J. Nicholas D'Ambrosia, Commissioner

SIGNATURE ON FILE

MARYLAND REAL ESTATE

* BEFORE JOY L. PHILLIPS,

COMMISSION

* AN ADMINISTRATIVE LAW JUDGE

v.

* OF THE MARYLAND OFFICE

OLAYELE AJIBOYE,

* OF ADMINISTRATIVE HEARINGS

RESPONDENT

*

And

* OAH No.: DLR-REC-24-17-18323

THE CLAIM OF ALANA HILL,

* MREC No.: 2016-RE-353

CLAIMANT,

*

AGAINST THE MARYLAND

*

REAL ESTATE COMMISSION

*

GUARANTY FUND

*

* * * * *

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 February 12, 2016, Alana Hill (Claimant), filed a claim with the Maryland Real Estate Commission's (MREC) Guaranty Fund (Fund) for actual monetary losses suffered as a result of the acts or omissions of Olayele Ajiboye (Respondent), allegedly committed while the Respondent acted in his capacity as a licensed real estate broker for Legends Realty Group LLC. The Claimant also filed a complaint against the Respondent directly with the MREC.

On June 3, 2017, the MREC issued a Statement of Charges (Charges) against the Respondent for alleged violations of the Maryland Real Estate Broker's Act (Act), Maryland Code Annotated, Business Occupations and Professions Article, section 17-101 *et. seq.* (2010 & Supp. 2017), and the provisions at Code of Maryland Regulations (COMAR) 09.11.01 and 09.11.02, enacted under the Act. The MREC further determined the Claimant was entitled to a hearing to establish her eligibility for an award from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-409(a) (2010). Accordingly, the MREC ordered a combined hearing on the Charges and the Claimant's claim against the Fund.

On September 6, 2017, I conducted a hearing at the Largo Government Center. Md. Code Ann., Bus. Occ. & Profs. §§ 17-324(a) and 17-408(a) (2010). Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the MREC. The Claimant was represented by Heather Kafetz, Esquire. Kris King, Assistant Attorney General, DLLR, represented the Fund. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings before the Office of the Secretary of the DLLR, and the Rules of Procedure of the Office of Administrative Hearings govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); COMAR 09.01.02, 09.01.03 and 28.02.01.

ISSUES

1. Did the Respondent intentionally or negligently fail to disclose to the Claimant a material fact that he knew or should have known that related to property he sold to the Claimant, in violation of section 17-322(b)(4) of the Act;

2. Did the Respondent engage in conduct that demonstrated bad faith, incompetency, or untrustworthiness or that constituted dishonest, fraudulent or improper dealings, in violation of section 17-322(b)(25) of the Act;

3. Did the Respondent violate any other provision of the Act, thereby violating section 17-322(b)(32) of the Act;

4. Did the Respondent violate any regulation adopted under the Act or any provision of the code of ethics, in violation of section 17-322(b)(33) of the Act;

5. Did the Respondent fail to treat the Claimant honestly and fairly and answer all of her questions truthfully, in violation of section 17-532(b)(1)(iv) of the Act;

6. Did the Respondent violate COMAR 09.11.01.12¹ by failing to reply in writing to the MREC within twenty days of receipt of its written inquiry;

7. Did the Respondent violate COMAR 09.11.02.02C by failing to protect the public against fraud, misrepresentation, or unethical practices in the real estate field; and,

8. If so, what is the appropriate sanction?

9. Did the Claimant sustain an actual monetary loss as a result of the Respondent's acts or omissions in his capacity as a licensed real estate broker; and,

10. If so, what is the appropriate award to the Claimant from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for the MREC:

MREC Ex. 1: Notice of Hearing, issued on July 3, 2017

MREC Ex. 2: Respondent's MREC Licensing History, printed September 5, 2017

MREC Ex. 3: Statement of Charges and Order for Hearing, dated June 3, 2017

¹ The Charges contained a typographical error, referring to this section as COMAR 09.11.01.16.

MREC Ex. 4: Claimant's Complaint and supporting documentation (97 pages)

MREC Ex. 5: Escrow Agreement for Repairs, dated February 25, 2015

MREC Ex. 6: Lucinda Rezek's Report of Investigation, with the following attached documents:

- First notice of complaint sent February 23, 2016
- Second notice of complaint sent March 25, 2016 (certified mail)
- Email sent to the Respondent on April 26, 2016
- Emailed copy of Complaint to the Respondent, April 27, 2016

I admitted the following exhibits for the Claimant:

CLMT Exs. 1 - 3, 8 - 15, 18 - 19, 25 - 28: Photographs

CLMT Ex. 4: Receipt from Jiffy Plumbing, Heating & Cooling, April 22, 2015

CLMT Ex. 5: Receipts from The Home Depot, April 22 - 23, 2015

CLMT Ex. 6: Invoice from Mac's Heating, A/C & Plumbing, May 19, 2015

CLMT Ex. 7: Receipts from The Home Depot, May 19, 2015

CLMT Ex. 16: Receipts from The Home Depot, June 29 and July 1, 2015

CLMT Ex. 17: Invoice from Jiffy Plumbing, Heating & Cooling, June 28, 2015

CLMT Ex. 20 - 21: Reports and Receipts from ET&A Consulting, Inc., August 4, 2015 and July 1, 2015

CLMT Ex. 22 - 23: Invoices from Curry's Concrete Services, December 28, 2015 and March 21, 2016

CLMT Ex. 24: Invoice from Koppers Quality Waterproofing, December 30, 2015

CLMT Ex. 29: Estimate from Maryland Mold and Waterproofing, August 25, 2017

CLMT Ex. 30: Estimate from Marck Remodeling, LLC, September 4, 2017

CLMT Ex. 31: Spreadsheet re: damages, September 6, 2017

I admitted the following exhibits for the Respondent, unless otherwise noted:

RESP Ex. 1: Not admitted

RESP Ex. 2: Print-out of house showings, September 5, 2014 to March 31, 2015

RESP Ex. 3: Not admitted

RESP Ex. 4: Listings for Claimant's house on May 15, 2014 and January 25, 2015

RESP Ex. 5: Not admitted

RESP Ex. 6: Inspection report by Antonio Ancona, Engineering Consultant, March 5, 2015

The Fund did not submit any exhibits.

Testimony

The MREC presented the following witnesses: Alana Hill; Lucinda Rezek, Paralegal, MREC; and Valarie Alston. The Claimant also testified on her own behalf.² The Respondent testified on his behalf. No one testified on behalf of the Fund.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent was a real estate broker licensed by the MREC under license number 01-319861. He was a broker for Legends Realty Group LLC.

The Claimant's Claim against the Fund

2. The Respondent was also the president and sole member of Equity Holdings International, LLC (Equity), the company that owned the property at 3909 Wallace Road, North Brentwood, Maryland (Property).

3. Equity bought the Property in July 2014 following a foreclosure. The Respondent intended to renovate the Property and resell it.

4. The Property is a single story home with a full basement. At the time Equity purchased the Property, the basement was not finished and was uninhabitable, due at least in part to flooding.

² The Claimant's regulatory testimony also served as her testimony in support of her Guaranty Fund claim.

5. Before the Respondent bought the Property, a neighbor, Lauren Secco, toured the home and saw about two feet of water covering the basement floor. A bank representative showing her the home told her the water would have to be pumped out of the property manually. About one month later she saw water being extracted from the Property through a large tube running from the side of the Property down to the sidewalk. Shortly thereafter, renovations on the Property began.

6. The Respondent hired a team of workers and sub-contractors to renovate the Property. He never lived in the home, but was frequently at the Property during renovations.

7. As part of the renovations, the Respondent finished the basement, constructing bedrooms, a great room, a laundry room, and a bathroom.

8. One of the workers worked at the Property on a regular basis. He and the Respondent were recognizable to the neighbors.

9. After the renovations were complete but before the Property was sold to the Claimant, one of the neighbors, Valarie Alston, was invited by the worker she recognized to walk into the Property to see the changes. Ms. Alston knew from tenants who previously lived in the Property that the basement flooded to the point the basement could not be used. Ms. Alston took off her shoes for the home tour. When she stepped off the basement steps onto the carpeted basement floor, her socks became wet from the carpet. She mentioned to the worker that it was wet and the worker said they knew about the water and that "We're going to take care of that." Ms. Alston also noticed a mildew smell.

10. Another neighbor, Michelle Newaldass, also toured the Property before it was sold to the Claimant and found soaking wet carpet in the basement.

11. On November 14, 2014, the Respondent, who was the listing and selling agent for the Property on behalf of Equity, signed a disclaimer (Disclaimer) asserting he had no actual

knowledge of any latent defects in the Property. The Respondent later provided the Disclaimer to the Claimant as part of the contract for sale.

12. On or about January 25, 2015, the Respondent and the Claimant entered into a contract for sale of the Property. As part of the home inspection, a list of twenty-six items needing repair was provided to the Respondent. The parties entered into an Addendum to the contract which required those items to be repaired. Among other things, the Addendum required that the Respondent address the negative slope on the exterior left side, and provide a report from a licensed structural engineer that the foundation was satisfactory. The latter requirement was due to some cracks in the foundation found by the home inspector in the sump pump area. The Respondent made most of the listed repairs.

13. The Claimant was required to place \$4,300.00 in escrow for the costs of the structural engineer. She was also required to place \$700.00 in escrow for grading around the house and filling in a pipe with cement.³

14. One of the repairs the Respondent made was to add layers of dirt around the house in an attempt to change the water flow away from the Property.

15. The Respondent and the Claimant did a walk-through of the Property prior to settlement. The Respondent assured her there had never been a water problem. He told her there were bound to be cracks in the foundation because it is an older home, but that required a simple, cheap repair. He said if she had any problems, he would help her out.

16. The parties settled on the Property on February 25, 2015.

17. A structural engineer hired by the Respondent inspected the property on February 27, 2015 and issued a report on March 5, 2015 that included the following statements:

- The house foundation appeared to be in good condition. There were a few minor cracks noted in the exterior foundation parging. The cracks appeared to

³ The parties did not explain what pipe needed to be filled in or why.

be parging expansion cracks which do effect (sic) the integrity of the house foundation walls.

- There was no sign of foundation water leaks noted in the basement or anywhere in the house finished rooms.
- There were no cracks noted in any of the drywall finish of all the whole house interior walls.
- The overall house building condition appeared to be structurally sound.

18. Because of the internal inconsistencies in the engineer's report, the Claimant and her agent contacted the engineer, who did not talk to the Claimant until he had been paid. The Claimant told him that he had not addressed the bowing wall in the basement and the engineer said he did only a limited inspection and did not notice it. He asked if she wanted him to return to the Property and she declined the offer.

19. The engineer ultimately produced a revised report that changed the language to the following:

- The house foundation appeared to be in good condition. There were a few minor cracks noted in the exterior foundation parging. The cracks appeared to be parging expansion cracks. These cracks **do not** effect (sic) the integrity or strength of the house foundation walls.

20. The Respondent produced that revised report at the hearing. It bears the same date as the original report, March 5, 2015.

21. The Claimant moved into the Property in mid-March 2015.

22. In mid-April 2015, during a rainstorm, water and mud seeped into the basement via an outside door which is at the bottom of outdoor steps. There is a drain at the bottom of the outside steps and mud flowing down the steps clogged the drain. The muddy water intruded about five to six feet into the basement. The sump pump did not turn on.

23. The Claimant hired Jiffy Plumbing, Heating & A/C to snake the outside drain. The Claimant rented fans from The Home Depot. She shampooed the carpet. She bought sand and blocks to build a barrier at the top of the outside steps to prevent more water from entering.

24. In mid-May 2015, during a rainstorm, water seeped into the basement from the bottom of a wall that is bowed, near the sump pump. This time all the carpeting in the great room and hallway was ruined. The water entered the basement from the front of the Property.

25. The Claimant hired Mac's Heating, A/C & Plumbing to snake the outside drain and unclog the mud in it. She rented fans and powerful dehumidifiers from The Home Depot. She raised the outside barriers to keep water from coming down the steps.

26. At the end of June 2015, the basement was again flooded, this time from rain water that came in from the back of the basement. The water rose four or five inches throughout the basement.

27. The Claimant used a wet vac, fans, and dehumidifiers to get rid of the water. All of the remaining carpet was pulled up. The Claimant hired Jiffy Plumbing, Heating & A/C to get the sump pump working.

28. The Claimant hired ET&A Consulting, Inc., to inspect the Property. On August 5, 2015, the inspector found an unused sump pit at the rear right corner of the basement. It had become visible when the carpeting was removed. The inspector noticed "lateral foundation wall displacement at the base of the front foundation wall." He found evidence of water intrusion and moisture throughout the basement. He noticed cracks in the rear wall and around the front porch and sump pump outlet and wrote that exterior grading slopes toward the house.⁴

29. Mold and water damage on tack strips under the basement carpeting showed old water damage.

30. In December 2015, the Claimant hired Koppers Quality Waterproofing, Inc., to replace the old sump pit with a deeper pit and a new sump pump. This gave the Claimant two operating sump pumps in the basement.

⁴ The inspector also wrote: "area way floor slab elevation is very close to basement elevation." This observation was not explained by the witnesses.

31. In December 2015 and March 2016, the Claimant hired Curry's Concrete Services to install various concrete walkways and patios outside of the Property.

32. The Claimant expended the following amounts to remediate the water damage after she purchased the Property:

- \$806.48 Jiffy Plumbing, Heating & A/C, Mac's Heating, A/C & Plumbing, and Home Depot (clean up after first three floods)
- \$600.00 ET&A (engineering inspection)
- \$2,200.00 Koppers Quality Waterproofing, Inc. (replaced old, nonworking sump pump)

33. The Property basement continues to be uninhabitable. It continues to flood during every rainstorm. The Claimant uses it only for laundry. It smells of mildew and mold. It has no carpeting on the floor. The Claimant's daughter has moved her bedroom upstairs to a former closet.

34. A reasonable amount to waterproof the Property's basement is \$11,779.00, which includes demolishing the drywall and taking up existing floors (\$1,600.00); installing a trench drain (\$9,384.00) and area way drain (\$795.00); and sealing wall cracks.

35. A reasonable amount to remodel the Property's basement after the waterproofing is completed is \$23,360.00, which includes demolishing the perimeter walls (\$920.00); reframing the walls and applying insulation (\$3,000.00); and installing drywall and finishing the walls (\$1,700.00) and baseboards (\$560.00); removing and replacing bathroom toilet, sink and tile after swamp pump is done (\$800.00); replacing seven damaged doors (\$1,000.00); rebuilding a closet to cover the new swamp pump (\$1,450.00); painting the entire basement (\$2,880.00);

removing carpet from steps and installing new wooden steps (\$1,050.00); tiling entire basement floor (\$7,000); and “re-doing” shower walls and tub that are affected by the swamp pump (\$2,900.00).

MREC’s Charges against the Respondent

36. On February 12, 2016, the Claimant filed a complaint against the Respondent with the MREC and filed a claim for reimbursement with the Fund.

37. The Respondent updated his address of record with the MREC on the following dates: March 23, 2015; September 10, 2015; and April 26, 2016.

38. On February 23, 2016, the MREC sent the Respondent a copy of the complaint and a demand for a response. These were sent to his address of record and not returned as undeliverable. The Respondent failed to respond to this demand.

39. On March 25, 2016, the MREC again sent the Respondent a copy of the complaint and notified him that he had an additional ten days in which to respond. This notice was sent by regular U.S. mail, which was not returned, and by certified mail, which was not claimed by the Respondent.

40. On April 26, 2016, the MREC notified the Respondent by email of the complaint. In that email, MREC notified the Respondent that he had failed to respond to previously mailed correspondence.

41. On April 26, 2016, the Respondent updated his address with the MREC.

42. On April 27, 2016, the MREC attached a copy of the complaint packet to another email and sent it to the Respondent. To date, the Respondent has not filed a written response.

DISCUSSION

Legal Framework

Disciplinary Charges Under the Act

The MREC charged the Respondent under section 17-322 (Supp. 2017) of the Act, as follows:

Denials, reprimands, suspensions, revocations, and penalties--

(b) Grounds--Subject to the hearing provisions of § 17-324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

...

(4) intentionally or negligently fails to disclose to any person with whom the Applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee or Applicant deals;

(25) engages in conduct that demonstrates bad faith, incompetency, untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;

...

(32) violates any other provision of this title;

(33) violates any regulation adopted under this title or any provision of the code of ethics[.]

The MREC further charged the Respondent under section 17-532(c)(1) (Supp. 2017) of the Act as follows:

Duties to client.

(c)(1) A licensee shall:

...

(iv) treat all parties to the transaction honestly and fairly and answer all questions truthfully[.]

In addition to the statutory violations, the MREC also charged the Respondent with violating the following regulatory provisions related to the Act:

Form of Licensee's Reply to Commission's Written Inquiries.

A licensee shall reply in writing to the Commission within 20 days of receipt of written inquiries directed to the licensee by the Commission. Failure to reply in

this way may be considered by the Commission to be a violation of Business Occupations and Professions Article, § 17-322(a)(25), Annotated Code of Maryland, for which revocation or suspension of the license can be imposed.

COMAR 09.11.01.12.

Relation to the Public.

C. The licensee shall protect the public against fraud, misrepresentation or unethical practices in the real estate field. The licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the Commission charged with regulating the practices of brokers, associate brokers and salespersons in this state.

COMAR 09.11.02.02.

Guaranty Fund Claim

Under the Act, a person may recover an award from the Fund for an actual loss as follows:

(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.

Md. Code Ann., Bus. Occ. & Profs. § 17-404(a)(2) (Supp. 2017). The amount recovered for a claim made against the Fund may not exceed \$50,000.00. Md. Code Ann., Bus. Occ. & Profs. § 17-404(b) (Supp. 2017).

Burden of Proof

With regard to the Charges, the MREC bears the burden of proof, by a preponderance of the evidence, to demonstrate the Respondent violated the applicable provisions of the Act and the controlling regulations. COMAR 09.01.02.16A. With regard to the claim against the Fund, the Claimant bears the burden of proof, by a preponderance of the evidence, to demonstrate she suffered an actual loss because of the Respondent's acts or omissions. Md. Code Ann., Bus. Occ. & Profs. § 17-407(e) (Supp. 2017); COMAR 09.01.02.16C. To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so" when all of the evidence is considered. *Coleman v. Anne Arundel Co. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

The Merits of the Case

Disciplinary Charges

The heart of the MREC's case is that the Respondent knew or should have known that the basement of the Property flooded in rain storms prior to selling the house to the Claimant and he not only failed to disclose the defect to her, but actually told her there was no flooding problem. Valarie Alston submitted an affidavit and came to the hearing to testify personally. Ms. Alston lives adjacent to the Property and knew the tenant who occupied the Property before it was foreclosed on and purchased by the Respondent. The previous tenant told Ms. Alston the basement flooding rendered the home uninhabitable and finally led to her moving out. After the Property was renovated, Ms. Alston was given a tour of the Property before it was put on the market by a worker who was frequently at the Property. Ms. Alston was in her stocking feet. Upon stepping from the basement steps onto the carpeted floor, Ms. Alston immediately realized the carpet was soaking wet. She told the worker who remarked that they knew about it and were going to take care of it. She also testified the basement smelled of mildew.

The Respondent denied that anyone who did not sign in with a real estate agent was given a tour of the Property. He did not appear to remember meeting Ms. Alston, but her recollection was quite clear. She remembered his commenting on her garden, telling her it inspired his work on the Property's yard.

A second neighbor, Michelle Newaldass, submitted an affidavit in which she explained that she, too, had been invited to tour the Property after the renovations were complete. She wrote that the carpet was "sopping wet and drenched with water." The Respondent told her "the maid had left the faucet on, and that the issue was being addressed." (MREC Ex. 4, p. 87).

A third neighbor, Lauren Secco, submitted an affidavit in which she wrote she toured the Property while it was still owned by the bank and there was about two feet of water in the basement at the time. About a month later, she saw the water being pumped out of the basement and renovations beginning.

Finally, the Claimant's testimony buttressed the MREC's case against the Respondent. Her testimony regarding the extensive flooding that occurred in the months following her purchase of the Property is unimpeached and was corroborated by documentary proof. The Claimant also testified the Respondent told her during the pre-settlement walk-through that there is "never going to be water" in the basement. She said the Respondent offered to fix any problem that might arise in the house.

The Respondent testified that his record as a real estate agent is excellent and he has been licensed since 1992 and has never been disciplined. He said he is the sole member of his company and that he alone oversees the renovations of the properties his company handles. He does not do any of the work himself, but hires sub-contractors. He said that when he buys properties from banks, they are not required to disclose any defects in the properties; thus, he

would have no way of knowing whether a particular property is prone to flooding. His company completes three to four renovations per year.

The Respondent described the substantial renovations he made to the Property, including finishing the basement, adding three bedrooms and two bathrooms, and transforming the outside of the home. He bought the Property for \$139,000.00, put \$92,000.00 into the renovations, and sold it for \$294,900.00. He pointed to the permit he received from Prince George's County as proof that there were no problems with the Property after his renovations. He said he never lived there and only used the Property as an investment. He said he has proof of everyone who toured the property, referring to the sign-in sheets used by real estate agents. He testified that he went out of the country after completing the renovations, something he would not have done had he known the basement was prone to flooding.

The Respondent denied that the Claimant asked about water damage, yet he also testified he put his hand to the wall in the basement during the pre-settlement walk-through to show her it was not damp. As further proof that he had no problems with flooding during the time he owned the Property, he highlighted that he had no insurance claims during that time. He denied knowing "anything" about the house, but also testified he was at the Property four to five times per week during renovations. He said he did not know anything about the nonworking sump pump, but confirmed that he knew the other sump pump was working well. He pointed to the engineer's report from March 5, 2015 as proof that the foundation was sound and required no repair. He submitted into evidence a revised copy of that report, but testified he does not know why the engineer revised it. (Resp. Ex. 6). He said he has "hundreds" of workers who could corroborate that there was never any water intrusion into the basement while he owned the Property, but he failed to produce even one affidavit by one of those persons in support of that

assertion. In fact, the only evidence we have regarding his workers is that one of them took Ms. Alston into the Property and said they knew about the flooding and planned to take care of it.

The Respondent testified that he spent no money on the foundation of the house or grading the outside yard, although he did spend money on aesthetic improvements to the yard. When the Claimant was addressing the basement flooding, she discovered large, old cracks in the foundation of the Property and submitted photographs of those cracks. (MREC Ex. 1, pp. 91 – 95). Considering the significant work the Respondent did to the basement of the Property, it is difficult to believe he did not see the numerous cracks in the foundation so plainly visible in the photographs. His long history as a property renovator and real estate broker cast doubt on his testimony that he never noticed something so obvious, particularly given how extensively he renovated the basement and how often he was at the Property during renovations.

Regarding his failure to respond to the MREC's Charges, the Respondent adamantly denied ever receiving anything in writing from the MREC until he received an email on April 26, 2016. He said he replied to the email, writing that he had never received anything from MREC, which prompted the MREC's email the following day with the attached Charges. The Respondent did not bring his reply email to the hearing. He testified that he did respond to the Charges in writing and does not know why the MREC did not receive a copy of his response, but he also did not bring a copy of his response to the hearing.

I did not find the Respondent to be a credible witness. His testimony was often vague and he was difficult to pin down on specifics. He denied ever allowing neighbors to tour the house after renovations were complete, either personally or through a worker, despite two neighbors attesting to having done just that. He testified that there was never a flooding issue in the basement of the Property, yet his worker told Ms. Alston they were aware of the problem and planned to take care of it. He was adamant there was never any flooding during the months he

owned the property, yet the Claimant experienced three water incursions or floods in the three months after she bought the house. It strains credulity that the Respondent was completely unaware that the basement flooded every time there was heavy rain.

Further impacting his credibility was his testimony that he never received anything in writing from the MREC and that he responded after receiving the Charges via email. He testified that he trains other real estate agents, yet he failed to produce proof that he replied to the MREC email on April 26, 2016 and then sent in a written response to the Charges that were emailed to him the following day. It is simply not believable that someone who is so sophisticated in the practice of selling real estate would not be able to produce written verification of his testimony if it actually existed. This is particularly true given that he was able to produce documentation to support other assertions, such as which real estate agents showed his property, the listings for the Property when he bought and sold it, and the revised report from his engineer, reporting that the cracks in the foundation do not affect the integrity or strength of the house foundation walls.

For all of these reasons, I give little weight to the Respondent's testimony and significant weight to the evidence produced by the MREC. Accordingly, I find the MREC has met its burden of proving that the Respondent is subject to penalties pursuant to sections 17-322(b)(4) and (25) of the Act by either intentionally or negligently failing to disclose to the Claimant that the Property basement had a history of and was prone to flooding, a fact he either knew or should have known. By doing so, he engaged in conduct that demonstrated bad faith, incompetency, untrustworthiness, or that constituted dishonest, fraudulent, or improper dealings. Furthermore, I find the MREC has met its burden of proving that the Respondent failed to treat the Claimant honestly and fairly and answer all of her questions truthfully, in violation of section 17-532(c)(1)(iv) of the Act.

Regarding the Respondent's interactions with the Claimant, I find the MREC has met its burden of

proving the Respondent violated COMAR 09.11.02.02C by failing to protect the public against fraud, misrepresentation or unethical practices in the real estate field. Regarding the Respondent's failure to reply in writing to the MREC within twenty days of receipt of written inquiries sent by the MREC, I find the Respondent violated COMAR 09.11.01.12. His actions also violate sections 17-322(b)(32) and (33) of the Act.

Guaranty Fund Claim

As discussed above, a claim against the Fund 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 an act or omission that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(b)(2)(iii) (Supp. 2017). 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 09.11.01.14. I will evaluate whether the evidence supports any actual monetary loss.

The Claimant's initial claim was for \$38,000.00, and she indicated in her complaint that the total would increase. At the hearing, the Claimant testified she was seeking \$48,711.03, representing the work that she has already done to clean up and prevent further flooding, and the costs to waterproof the basement and remodel the interior to restore it to its original, pre-flood condition. For flood clean up, the evidence supports each amount sought as set forth in Finding of Fact 32. I have made one exception to an additional request, however.

The Claimant hired Curry's Concrete Services to install concrete alongside the house and she submitted the invoices from the company. The invoice dated December 28, 2015 lists the following as work to be done:

concrete walkway; concrete footings; lay plastic under concrete walkway; install wire into concrete walkway; framing; concrete finishing; 3500 psi concrete;

install drain pipes; remove mulch; remove plants; clean gutters; clean step area; haul and dispose of material; all materials included; labor. Total cost: \$1,800.00.

(Clmt. Ex. 22).

The invoice dated March 21, 2016 lists the following as work to be done:

Concrete patio; concrete wall; concrete step; framing; 3500 psi concrete; concrete footings; tree root removal; lay plastic under concrete patio; install plastic into concrete patio; install rebars into concrete wall and step; concrete finishing; remove concrete from two pole holes; haul and dispose of materials; all materials included; labor. Total cost: \$4,000.00.

(Clmt. Ex. 23).

Neither invoice explains how the concrete work was related to the flooding problem. The Claimant testified that it addressed “positive drainage,” but there was no expert called to explain what that meant or how it related to the basement flooding. I could hazard a guess, but that does not constitute proof. Accordingly, I do not find the Claimant has proven a basis to be reimbursed for those expenditures. The other costs were sufficiently supported by the evidence and should be reimbursed in the amount of \$3,606.48.

Maryland Mold and Waterproofing submitted an estimate for waterproofing work that will need to be done. (Clmt. Ex. 29).⁵ The estimate included \$3,475.00 for the cost of a carbon fiber strap system to repair the bowing basement wall. The Claimant did not present any expert testimony linking the carbon fiber strap system to the basement flooding. She talked about the wall in the basement that was bowed, but no evidence explains whether it was linked to flooding. A battery back-up system for \$1,600.00 was noted to be an optional upgrade and no testimony explained why that is necessary. I do find sufficient evidence to support the other items in the estimate as directly linked to the flooding problem. Those items are itemized in Finding of Fact 34. Thus, I find the Claimant has shown she is entitled to be reimbursed in the amount of \$11,779.00 as the reasonable costs of waterproofing the basement.

⁵ This estimate is significantly less than the estimate of \$23,297.00 provided by JES Foundation Repair, which the Claimant included in her original claim. (MREC Ex. 1, pp. 72-83).

There is no question the basement will have to be remodeled after the waterproofing work is completed. Marck Remodeling LLC provided an estimate for the remodeling work which totals \$23,360.00. (Clmt. Ex. 30). The estimate's costs are itemized in Finding of Fact 35. All of the work appears to be reasonable and predictable. The Fund did not disagree.

Therefore, I find the Claimant has proven she is entitled to an award from the Fund as follows:

Flood clean-up costs	\$ 3,606.48
Waterproofing	\$11,779.00
Remodeling	<u>\$23,360.00</u>
Total:	\$38,745.48

Disciplinary Sanctions

The MREC argued that as a result of the Respondent's violations of the Act and its applicable COMAR provisions, the appropriate sanctions are a reprimand, the imposition of a \$500.00 civil penalty for failing to respond to the MREC's Charges, and a \$5,000.00 civil penalty for all of the other violations.

Section 17-322(c) of the Act provides as follows:

17-322. Denials, reprimands, suspensions, revocations, and penalties-- Grounds

(c) Penalty. –

- (1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the Commission may impose a penalty not exceeding \$5,000 for each violation.
- (2) To determine the amount of the penalty imposed, the Commission shall consider:
 - (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.

- (3) The Commission shall pay any penalty collected under this subsection into the General Fund of the State.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (Supp. 2017).

For the following reasons, I find that the requested reprimand and civil penalties are the appropriate sanctions. The Respondent has no history of any previous violations and that certainly weighs in his favor. However, his actions toward the Claimant in failing to disclose a history of flooding in the Property, something he either knew or should have known, are serious. The Claimant testified that the basement is essentially unusable now. She uses it only to do laundry. She said her daughter has moved her bedroom upstairs to a former closet. The Claimant counted on the Respondent's assurances that he would take care of any problems that arose and that there was no history of flooding in the Property. She paid \$294,900.00 for a home and can only use the upstairs. She will have to have significant work done to the basement before it will be habitable.

The sanctions reflect the Respondent's lack of a disciplinary history, but also acknowledge the serious harm done. The \$500.00 sanction for failing to respond to the MREC is appropriate in light of the Respondent's complete failure to respond to the Charges.

CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I conclude as a matter of law:

1. The Respondent intentionally or negligently failed to disclose to the Claimant a material fact that he knew or should have known that related to property he sold to the Claimant.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(4) (Supp. 2017).

2. The Respondent engaged in conduct that demonstrated bad faith, incompetency, or untrustworthiness or that constituted dishonest, fraudulent or improper dealings. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) (Supp. 2017).

3. These actions violated a provision of the Act. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(32) (Supp. 2017).
4. The Respondent violated regulations adopted under the Act. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33) (Supp. 2017).
5. The Respondent failed to treat the Claimant honestly and fairly and answer all of her questions truthfully. Md. Code Ann., Bus. Occ. & Prof. § 17-532(b)(1)(iv) (Supp. 2017).
6. The Respondent failed to reply in writing to the MREC within twenty days of receipt of its written inquiry. COMAR 09.11.01.12.
7. The Respondent failed to protect the public against fraud, misrepresentation, or unethical practices in the real estate field. COMAR 09.11.02.02C.
8. The Claimant is entitled to an award from the Fund in the amount of \$38,745.48 because she sustained an actual monetary loss as a result of the Respondent's acts or omissions in his capacity as a licensed real estate broker when the Respondent failed to disclose a condition in property he sold to the Claimant, namely, that the Property had a history of flooding and was prone to flooding. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(iii) (Supp. 2017).
9. The appropriate disciplinary sanctions are a reprimand and a civil penalty in the amount of \$5,500.00. Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b) and (c) (Supp. 2017)

RECOMMENDED ORDER

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

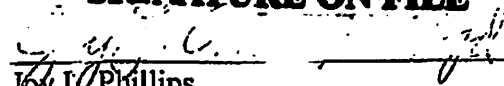
1. The Charges against the Respondent, issued on June 3, 2017, be **UPHELD**;
2. The Respondent be **REPRIMANDED**;
3. The Respondent pay a civil penalty in the amount of \$5,500.00;

4. The Maryland Real Estate Commission Guaranty Fund pay to the Claimant the amount of her actual monetary loss, \$38,745.48, for the Respondent's wrongful acts or omissions; and

5. The records and publications of the Maryland Real Estate Commission reflect this decision.

November 20, 2017
Date Decision Issued

SIGNATURE ON FILE



Joy L. Phillips
Administrative Law Judge

JLP/dlm
#170846

SIGNATURE ON FILE