

THE MARYLAND REAL ESTATE COMMISSION

FINAL ORDER

IN THE MATTER OF THE CLAIM *
OF CELESTIAL CHURCH *
OF CHRIST LULI PARISH *
AGAINST THE MARYLAND REAL *
ESTATE COMMISSION GUARANTY *
FUND FOR THE ALLEGED *
MISCONDUCT OF OMOLOLU *
OYEKAN *

BEFORE ANN C. KEHINDE.,
ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE OF
ADMINISTRATIVE HEARINGS
OAH No: DLR-REC-22-11-30566
REC CASE NO: 2010-RE-360GF

AUG 14 2012

**MARYLAND REAL
ESTATE COMMISSION**

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated March 30, 2012, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 19th day of April, 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

SIGNATURE ON FILE

4/19/12
Date

By: _____
Anne S. Cooke, Commissioner

providing real estate brokerage services to the Claimant for the real property located at 7300 Kent Town Drive, Hyattsville, Maryland.

On July 25, 2011, the Commission transmitted the matter to the Office of Administrative Hearings (OAH) for a hearing on Claimant's claim against the Fund. On October 12, 2011, the OAH scheduled a hearing for January 12, 2012 and sent Hearing Notices to the Claimant, the Respondent, and MREC.

On January 12, 2012, I conducted a hearing at the OAH – Wheaton, Westfield North Suite 205, 2730 University Boulevard, West, Wheaton, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010). The Claimant was present and was represented by Joseph McBride, Esquire. Eric B. London, Assistant Attorney General for the Department of Labor, Licensing and Regulation (DLLR), represented the Fund. Neither the Respondent nor anyone authorized to represent him appeared, and after waiting at least fifteen minutes, we proceeded in the Respondent's absence.

The Administrative Procedure Act, the procedural regulations of the DLLR, and the OAH Rules of Procedure govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2011); Code of Maryland Regulations (COMAR) 09.01.02, 09.01.03, 09.11.03.02; 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** Notices of Hearing, dated October 12, 2011
- Fund Ex. 2** Notice of Hearing (certified mail) returned by the U.S. Post Office: "Return to Sender, Not Deliverable as Addressed, Unable to Forward."
- Fund Ex. 3** Affidavit of Steven Long, dated December 7, 2011
- Fund Ex. 4** Letter to Respondent (sent by first class and registered mail) from Fund, dated December 7, 2011, with attached Notice of Hearing and Order for Hearing
- Fund Ex. 5** Order for Hearing
- Fund Ex. 6** Licensing History

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

- Claimant Ex. 1** Residential Contract of Sale, September 12, 2007
- Claimant Ex. 2** Understanding Whom Real Estate Agents Represent
- Claimant Ex. 3** Copy of Cashier's Check No.: 2753767 from Claimant to Upper Shore Title, dated July 9, 2007, with deposit slip dated July 10, 2007
- Claimant Ex. 4** Suntrust Bank Check No.: 003008 from Upper Shore Title to Horizon Homes Realty LLC, dated October 11, 2007
- Claimant Ex. 5** Clestial Church of Christ Luli Parish, Inc. v. Omololu Ioyekan a/k/a James Oyekan, filed in the Circuit Court for Prince George's County, Case No.: CAL-09-39890
- Claimant Ex. 6** Answer filed by Omololu I. Oyekan in Case No.: CAL-09-39890, dated March 22, 2010
- Claimant Ex. 7** Judgment against Respondent, in the Circuit Court for Prince George's County, Case No.: CAL-09-39890, February 24, 2011

No exhibits were offered on behalf of the Respondent.

Testimony

Charles Ajbaza, Seniorship, testified on behalf of the Claimant.¹ No testimony was offered on behalf of the Respondent or the Fund.

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 broker, registration number 508320, working for Horizon Homes Realty, LLC. The Respondent was the sole proprietor of Horizon Homes Realty, LLC.
2. In 2007, the Claimant in this matter, a church, was renting a hall at 5801 Arbor Street, in Hyattsville, Maryland, to conduct its religious services. The Claimant wanted to find a property it could purchase. The Claimant provided a cashier's check made payable to Upper Shore Title in the amount of \$100,000.00, to be deposited and held by Upper Shore Title as a deposit on a suitable property.
3. With the Respondent's assistance, the Claimant found a property suitable for its use, located at 7300 Kent Town Drive, Hayattsville, Maryland (the property).
4. The Claimant signed a Residential Contract of Sale (Contract) on September 12, 2007, offering \$1,805,000.00 for the property. The Contract provided for a \$100,000.00 deposit to be held in escrow by Horizon Homes Realty, LLC.
5. On October 11, 2007, Upper Shore Title, Inc., presented Horizon House Realty, LLC, with a check in the amount of \$100,000.00. The check was posted to Horizon House Realty, LLC, on October 16, 2007.

¹ Reverend Ajbaza testified that a Seniorship in his church is the title given to a senior pastor.

6. Sometime after the deposit was transferred to Horizon House Realty, LLC, there was a fire at the property. The Claimant was unable to re-negotiate the price of the property and the parties did not go forward with the settlement.
7. Members of the Claimant church met with the Respondent to request that the \$100,000.00 deposit being held by the Respondent's company be returned to the church. The Respondent told the church members that neither he nor his company had the money. The Respondent used the Claimant's monies in purchasing a house for his personal benefit. The Respondent promised to repay the Claimant but never made any payments.
8. On December 14, 2009, the Claimant sued the Respondent in the Circuit Court for Prince's George's County, in case number CAL 09-39890.
9. On March 22, 2010, the Respondent filed a response to the Claimant's Complaint and stated that he has been the sole owner and only member of Horizon Homes Realty, LLC, that he "[pled] no context [sic] to the charges levied and I will like to make payment arrangements suitable to the church."
10. On February 24, 2011, judgment was granted by the Circuit Court for Prince George's County, in favor of the Claimant in the amount of \$125,056.68, and against the Respondent, in case number CAL 09-39890.
11. On October 12, 2011, the OAH sent a Hearing Notice to the Respondent at 5015 Mineola Road, College Park, Maryland 20740. This address the same address provided by the Respondent and listed in the Commission's licensing records.
12. The Hearing Notice contained the following statement: "FAILURE TO APPEAR MAY RESULT IN DISMISSLA OF YOUR CASE OR A DECISION AGAINST YOU."

13. On December 7, 2011, the Executive Director of the Commission searched the Maryland Motor Vehicle Administration's computer system for the Respondent's driver's license records in order to obtain the Respondent's most recent address.
14. On December 7, 2011, counsel for the Fund sent a letter and copy of the Hearing Order and Hearing Notice to the Respondent at the address listed in the MVA records (1576 Ivystone Court, Silver Spring, Maryland 20904). The correspondence was sent to the Respondent by both first class mail and by registered mail, return receipt requested; the return receipt was not returned signed by the Respondent and the first class mail was not returned by the United States Postal Service.

DISCUSSION

Respondent's failure to appear

The REC must give the Claimant and a licensed real estate broker "alleged to be responsible for the act or omission giving rise to the claim an opportunity to participate in the hearing" by giving notice of the hearing to the parties. Md. Code Ann., Bus. Occ. & Prof. § 17-408(a) and (b) (2010). In this case, the REC presented proof that a Hearing Notice, dated October 12, 2011, was sent to the Respondent at 5015 Mineola Road, College Park, Maryland 20740 (Fund Ex. 1). This address was the same address listed on the Commission's licensing records (Fund Ex. 6).

When this Hearing Notice was returned by the United States Postal Service as undeliverable (Fund Ex. 2), the Executive Director of the Commission searched the Maryland Motor Vehicle Administration's computer system for the Respondent's driver's license records in order to obtain the Respondent's most recent address. (Fund Ex. 3). On December 7, 2011, counsel for the Fund sent a letter and copy of the Hearing Order and Hearing Notice to the

Respondent at the address listed in the MVA records (1576 Ivystone Court, Silver Spring, Maryland 20904). Counsel for the Commission further noted that the correspondence was sent to the Respondent by both first class mail and by registered mail, return receipt requested; the return receipt was not returned signed by the Respondent, but the first class mail was not returned by the United States Postal Service.

I permitted the hearing to proceed as the Commission presented satisfactory proof that the “records of the Commission show that all notices required under this subtitle were sent to each licensee and each unlicensed employee alleged to be responsible for the act or omission giving rise to the claim.” Md. Code Ann., Bus. Occ. & Prof. § 17-408(c) (2010).

Claimant’s Guaranty Fund claim

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.

Md. Code Ann., Bus. Occ. & Prof. § 17-404(a), (b) (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. Md. Code Ann., Bus. Occ. & Prof. § 17-410(a), (b) (2010); COMAR 09.11.01.18.

The Claimant argued that it is entitled to the maximum award from the Fund, \$25,000.00. The Claimant provided unrefuted evidence that it gave \$100,000.00 to the Respondent to hold in escrow and that the Respondent used the money for his own personal use. Reverend Ajbaza testified without contradiction that church officials met with the Respondent who admitted using the monies to purchase a home for himself and that he later lost the house to foreclosure. Further, the Respondent apologized to the church officials for using the monies for his own use and promised to pay the church back. However, the Respondent never paid the Claimant any monies prior to, or subsequent to, the \$125,056.68 judgment the Claimant obtained against the Respondent in the Circuit Court for Prince George's County.

The evidence presented by the Claimant is uncontested and overwhelmingly shows that the Respondent received from the Claimant \$100,000.00 to be held in escrow pending closing on the contract of sale for the Kent Town Drive property. Settlement did not take place after there was a fire on the property and the parties were not able to re-negotiate a new price. The Claimant requested that the Respondent return the \$100,000.00 and the Respondent failed to do so. The Respondent's refusal to return the \$100,000.00 constitutes embezzlement or the fraudulent and willful misappropriation of money. The Fund agreed and recommended that the statutory maximum of \$25,000.00 be awarded to the Claimant. Thus, I find that the Respondent obtained money from the Claimant in the course of providing real estate services

for property located in Maryland and then embezzled the money. Therefore, the Claimant has suffered an actual loss as a result of the Respondent's act and is entitled to an award from the Fund. The Claimant's actual loss of \$100,000.00 far exceeds the maximum award allowed from the Fund. As a result, the Claimant is entitled to \$25,000.00 from the Fund.

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 \$25,000.00, 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 Commission ORDER:

That the Maryland Real Estate Guaranty Fund pay the Claimant \$25,000.00; and further,

That the Respondent shall be ineligible for any Commission license until he reimburses the Fund for the full amount of the award paid to the Claimant by the Fund, plus annual interest of at least ten percent; and

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

March 30, 2012
Date Decision Mailed

ACK/rbs
136651

SIGNATURE ON FILE

Ann C. Kehinde
Administrative Law Judge

- Claimant Ex. 2** **Understanding Whom Real Estate Agents Represent**
- Claimant Ex. 3** **Copy of Cashier's Check No.: 2753767 from Claimant to Upper Shore Title, dated July 9, 2007, with deposit slip dated July 10, 2007**
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