

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION
V.

RHONDA L. HAMILTON
RESPONDENT
AND

CLAIM OF FEMI ADEWALE
AGAINST THE REAL ESTATE
COMMISSION GUARANTY FUND

* BEFORE DANIEL ANDREWS,
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-24-09-43593
* REC CASE NO: 2009-RE-415

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated September 27, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of October, 2010.

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

10-20-2010
Date

By: _____

(COMMISSIONER'S SIGNATURE
APPEARS ON ORIGINAL ORDER)



MARYLAND REAL ESTATE	* BEFORE DANIEL ANDREWS,
COMMISSION	* AN ADMINISTRATIVE LAW JUDGE
v.	* OF THE MARYLAND OFFICE
RHONDA L. HAMILTON,	* OF ADMINISTRATIVE HEARINGS
RESPONDENT	*
and	*
CLAIM OF FEMI ADEWALE,	*
CLAIMANT	*
AGAINST THE MARYLAND REAL	*
ESTATE COMMISSION GUARANTY	* OAH Case No.: DLR-REC-24-09-43593
FUND	MREC Case No.: 2009-RE-415

* * * * *

AMENDED PROPOSED DECISION¹

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

STATEMENT OF THE CASE

On February 24, 2009, Femi Adewale, (Claimant) filed a complaint with the Maryland Real Estate Commission (REC) and a claim against the REC Guaranty Fund (Fund) for losses allegedly suffered as a result of the actions of Rhonda Hamilton (Respondent), a licensed real estate broker. On September 30, 2009, the REC filed a Statement of Charges and Order for Hearing, alleging regulatory violations by the Respondent related to a real estate transaction

¹ This decision was amended only to correct the REC's Case Number. Otherwise, there are no other corrections.

involving the Claimant and authorized the Claimant to proceed with his claim against the Fund.

On June 7, 2010, the REC filed an Amended Statement of Charges and Order for hearing.

On June 29, 2010, I conducted a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. §§ 17-324 and 17-408 (2010).² Assistant Attorney General Peter Martin represented the REC. The Claimant was represented by Lisa Sanders, Esquire. Assistant Attorney General Hope Sachs represented the Fund. The Respondent failed to appear for the hearing.

The Administrative Procedure Act, the REC's Hearing Regulations and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 and Supp. 2010); Code of Maryland Regulations (COMAR) 09.01.03 and 28.02.01.

ISSUES

1. Did the Respondent violate BO § 17-322(b)(22) by failing to account for or to remit promptly any money that comes into the possession of the licensee but belongs to another person?
2. Did the Respondent violate BO § 17-322(b)(25) by engaging in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent or improper dealings?
3. Did the Respondent violate BO §§ 17-322(b)(31) and 17-502, by failing to deposit trust money into an account separate from the Respondent's own accounts and solely used for trust money?³
4. Did the Respondent violate BO §§ 17-322(b)(31) and 17-505(a)(1), by failing to maintain trust money in an account authorized under Part I of subtitle 5 of the BO Article until the reason the trust money was entrusted is consummated or terminated?
5. Did the Respondent violate BO §§ 17-322(b)(31) and 17-507, by failing to maintain all records of trust money in a secured area within the office of the broker?
6. Did the Respondent violate BO § 17-322(b)(33) and COMAR 09.11.01.07 by failing to maintain adequate records of the real estate transaction at issue?

² All references in the remainder of this Proposed Decision are to the Business Occupations and Professions Article (BO) as contained in the 2010 replacement volume.

³ Pursuant to BO § 17-501(c) Trust Money means a deposit, payment, or other money that a person entrusts to a real estate broker... to hold for: (1) the benefit of the owner ...; and (2) a purpose that relates to a real estate transaction involving real estate in the State.

7. Did the Respondent violate BO §§ 17-322(b)(33) and COMAR 09.11.02.01C by failing to protect the public against fraud, misrepresentation, or unethical practices in the real estate field; by failing 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?
8. Did the Respondent violate BO §§ 17-322(b)(33) and COMAR 09.11.02.02.02 by failing to protect and promote the interest of the client?
9. Did the Claimant suffer an actual monetary loss as a result of the conduct of the Respondent and, if so, what is the amount of the loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the REC:

- REC # 1 Notice of Hearing, dated June 4, 2010, for a hearing scheduled on June 29, 2010, with attached Statement of Charges and Order for Hearing dated September 30, 2009
- REC # 2 Letter from Peter Martin, Assistant Attorney General, to Respondent dated June 7, 2010, with an attached Amended Statement of Charges and Order for Hearing dated June 7, 2010. Also attached to this exhibit is a certified mail return receipt, date stamped June 8, 2010, and reflecting service upon the Respondent
- REC # 3 REC Licensing History for Respondent
- REC # 4 Residential Contract of Sale, dated April 7, 2007, with several attachments
- REC # 5 Photocopy of Claimant's personal check number 701, dated April 7, 2007
- REC # 6 Letter from Town and Country Mortgage, dated July 18, 2010
- REC # 7 REC Report of Investigation, with attachments, dated June 11, 2009⁴
- REC # 8 Certification by Katherine F. Connelly, June 8, 2010, with an attached Report of Investigation by Hal Orbits containing several exhibits
- REC # 9 Affidavit of Katherine F. Connelly, June 28, 2010

The Claimant and Fund did not submit any exhibits into evidence.

⁴ The attachments to this exhibit were pre-marked as "exhibits" but were referred to in the hearing as attachments.

Testimony

The REC presented testimony from the Claimant, Patrick Richardson, a financial auditor for the REC, and Alisa Lopez, a bank manager for Wachovia Bank. In addition to testifying for the REC, the Claimant testified in his own behalf and did not present any other testimony in support of his claim against the Fund. The Fund did not call any witnesses.

FINDINGS OF FACT

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

1. On July 22, 1996, the Respondent became a licensed real estate salesperson under License number 512944. On February 22, 2001, the Respondent became a licensed real estate broker under the same license number. On February 7, 2007, the Respondent notified the REC of a business name change, through which she acted as a licensed real estate broker, to be Coldwell Banker Household Realty. The Respondent's license has been valid since February 22, 2001 and is due to expire on February 22, 2011.
2. Since August 17, 2009, the Respondent's address of record with the REC has been: Coldwell Banker Household Realty, 5922 Allentown Way, Temple Hills, MD 20748.
3. On April 7, 2007, through a Residential Contact of Sale (Contract), the Claimant, identified as the Buyer, made an offer to purchase real estate located at 11406 Hickory Drive, Fort Washington, MD from Prudential Relocation Inc. (Seller).
4. The Contract provided that the purchase price was in the amount of \$580,000.00 and required the Claimant to make a down payment in the amount of \$25,000.00.
5. The Contract required Coldwell Banker Household Realty Corporation (Broker) to hold any deposits in escrow in a non-interest bearing account.
6. The Contract identifies the Respondent as the sales associate for the Broker and indicates that the Respondent is acting as the Claimant's agent.

7. The Contract required the Claimant to make a written application for financing and if financing is not obtained within thirty days from the date of the Contract, then the Seller may declare the Contract null and void. Further, after providing the Seller with evidence that the Claimant was unable to obtain financing, then the Claimant could declare the Contract null and void. Under either circumstance, the Contract provides that if the Claimant complies with his obligations under the contract, including those with respect to applying for and obtaining financing, then the deposit shall be returned to the Claimant.

8. On April 7, 2007, the Claimant issued a personal check in the amount of \$25,000.00 made payable to Coldwell Banker Household Realty Corporation.

9. On July 18, 2007, Town and Country Mortgage notified the Claimant that he was not qualified or approved for a loan in the amount of \$580,000.00.

10. On March 6, 2008, the Claimant and Seller entered into a Release of Obligation Under Contract of Sale and Release of Deposit Agreement (Agreement).⁵ Through the Agreement, the Claimant and Seller made the Contract null and void. Additionally, the Claimant and Seller agreed to distribute the deposit money held in escrow by the Respondent. The distribution of the escrowed deposit money was as follows: The Claimant was to receive \$22,000.00 and the Seller was to receive \$3,000.00.

11. The Agreement was signed by all parties, including the Respondent.

12. On September 18, 2008, the Respondent notified the Claimant by letter that his deposit money would be returned less any money owed to the Seller. Through the letter, the Respondent requested the Claimant to allow thirty days for the funds to be returned.

13. The Claimant never received any refund of the deposit money.

⁵ The Claimant signed the Agreement on February 28, 2008 and the Seller signed the Agreement on March 6, 2008.

14. On February 24, 2009, the Claimant filed a Complaint and Guaranty Fund claim with the REC.

15. The Respondent was notified of the complaint and on April 14, 2009 filed a response. In her response, the Respondent admitted that she has not refunded the Claimant his deposit money.

16. On May 4, 2009, Pat Richardson, Fiscal Auditor for the REC, performed an audit of the Respondent's escrow account. The audit revealed that the Respondent's escrow account had a balance of \$48.23. The Respondent's escrow account should have a balance of at least \$25,000.00.

17. The Respondent admitted that her escrow account was linked to her business operating account and when the operating account had insufficient funds to cover expenses posting to her operating account, the money in the escrow account was automatically transferred as a form of overdraft protection.

18. On May 19, 2010, the OAH mailed a Notice of Hearing (Notice) to the Respondent by certified mail and regular mail to her address of record with the REC. The Notice informed the Respondent that a hearing in this matter was scheduled for June 29, 2010 at the OAH at 10:00 a.m. The Notice mailed by certified mail was returned as unclaimed. The Notice mailed by regular mail was not returned.

19. On June 7, 2010, Assistant Attorney General Peter Martin filed an Amended Statement of Charges and Order for Hearing. On June 8, 2010, the Amended Charges were personally served on the Respondent by certified mail at her address of record with REC.

DISCUSSION

The Respondent's Failure to Appear

The Respondent has been licensed by the REC since 1996 as a sales person or broker. Since August 17, 2009, the Respondent's address of record with the REC has been 5922

Allentown Way, Temple Hills, Maryland 20748. The Respondent's current license is not due to expire until February 22, 2011.

On May 19, 2010, the OAH mailed a Notice to the Respondent by certified mail and regular mail using her address of record with the REC. The Notice informed the Respondent that a hearing involving the proposed disciplinary action against her and a claim against the Fund was scheduled for June 29, 2010 at the OAH at 10:00 a.m. The Notice sent by certified mail was returned to the OAH as unclaimed. The Notice sent by regular mail was not returned to the OAH. On June 7, 2010, Assistant Attorney General Peter Martin filed an Amended Statement of Charges and Order for Hearing. On June 8, 2010, the Amended Charges were personally served on the Respondent by certified mail at her address of record with REC.

Pursuant to COMAR 09.01.03.05, for hearings involving the REC, an administrative law judge shall conduct an evidentiary hearing under the Administrative Procedure Act and COMAR 28.02.01. Under COMAR 28.02.01.05, the OAH is required to give the Respondent reasonable notice of the hearing, including the date, time, location, and nature of the hearing. The method by which the OAH may give notice of a hearing is as follows:

C. Method of Giving Notice.

(1) The [OAH] shall give any notice required by this regulation by U.S. mail, or other method of personal or courier delivery, to the person at the address on record with the [OAH].

(2) If notice is given by U.S. mail, the notice is effective at the end of the 5th day after its deposit in the mail.

(3) Proof that notice has been given may be made by the dated file copy in the case file.

COMAR 28.02.01.05C.

For hearings involving a claim against the Fund, the Respondent is entitled to an opportunity to participate in a hearing. BO § 17-408(a). Accordingly, the Respondent must be

given notice of the hearing. BO § 17-408(b). A hearing involving the Fund may not proceed unless the records of the REC show that all notices required were sent to each licensee or unlicensed employee alleged to be responsible for the act or omission giving rise the claim. BO § 17-408(c).

On June 29, 2010, the hearing in the matter began as scheduled. However, the Respondent failed to appear. After waiting for at least fifteen minutes, the hearing proceeded in her absence. After considering the evidence presented by the REC and the records in the OAH hearing file, I determined that the Respondent was provided reasonable notice of the hearing and an opportunity to participate in the hearing. On May 19, 2010, the OAH mailed the Respondent a Notice which informed her of the date, time, location, and nature of the hearing. The Notice was mailed to the Respondent's address of record with the REC, which is the address on record with the OAH. The OAH mailed two separate Notices to the Respondent. One Notice was sent by certified mail but was returned as unclaimed. Another Notice sent by regular mail was not returned by the postal authorities. Pursuant to the above regulation, this Notice became effective, five days later, on May 24, 2010. The Respondent was personally served by certified mail with an Amended Statement of Charges and Order for Hearing, on June 8, 2010, at her address of record with REC. The service of this document at the Respondent's address of record with the REC demonstrates that her address of record was still current and valid. Finally, other than the Respondent, there are no other licensees or unlicensed employees alleged to be responsible for this claim against the Fund. For all these reasons, I concluded it was appropriate to proceed with the hearing in the Respondent's absence.

The Regulatory Charges

The uncontested evidence established by a preponderance of the evidence the following facts. In April of 2007, the Respondent was licensed with the REC as a real estate broker under

license number 512944. On April 7, 2007, the Claimant offered to buy a residential property located in Prince George's County, Maryland, from the Seller, through a residential contract of sale. The Contract identified the Respondent as the Claimant's agent. The Contract also required the Claimant to make a \$25,000.00 deposit on the purchase price of the property which would be deposited into a non-interest bearing escrow account held by Coldwell Banker Household Realty Corporation. The Respondent is a real estate broker for Coldwell Banker Household Realty Corporation. On April 7, 2007, the Claimant issued a personal check made payable to Coldwell Banker Corporation, in the amount of \$25,000.00, and gave the check to the Respondent. The Contract also provided that the Claimant's deposit money was refundable if he pursued financing approval in the manner required by the Contract but was unable to obtain financing of the purchase price.

The Claimant sought approval for financing of the purchase price but was notified on July 18, 2007 that he was not qualified for financing of the purchase price. Subsequently, the Claimant sought a refund of his deposit money from the Respondent. On March 6, 2008, the Claimant, Seller, and Respondent executed an Agreement for the refund of the Claimant's deposit money because the Contract was cancelled. The Agreement called for a refund to the Claimant in the amount of \$22,000.00 and a payment to the Seller in the amount of \$3,000.00. On September 18, 2008, the Respondent confirmed that the Claimant had requested a refund of his deposit money because the Contract was cancelled. The Respondent informed the Claimant that a refund would be processed less any money owed to the Seller, but that it would take thirty days before the money was refunded to the Claimant.

The Claimant never received a refund of any of his deposit money. Consequently, the Claimant filed a complaint with the REC against the Respondent and a claim against the REC Guaranty Fund. Upon receiving the complaint and claim filed by the Claimant, the REC

initiated an investigation. Through the investigation, on April 14, 2009, the Respondent admitted to the REC that she never returned the Claimant's deposit money. Further, on May 4, 2009, an escrow audit was performed by REC Fiscal Auditor Patrick Richardson. The auditor reviewed the Respondent's escrow account records for the month of April 2009. The audit revealed that, on April 30, 2009, the escrow account held by Coldwell Banker Household Realty Corporation had an ending balance of \$48.23, but should have had a balance of at least \$25,000.00. After its investigation, the REC issued a Statement of Charges against the Respondent alleging several regulatory violations, which I shall address below. Any other relevant facts established by the REC shall be discussed therein.

The REC is authorized to reprimand a licensee, or suspend or revoke a licensee's license for any violation of any of the subsections found under BO §17-322. In addition to or in lieu of a reprimand, suspension, or revocation, the REC may impose a \$5,000.00 penalty for each violation of section 17-322. The specific subsections at issue are these:

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

....

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

...

(22) fails to account for or to remit promptly any money that comes into the possession of the licensee but belongs to another person;

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

...

(31) violates any provision of Subtitle 5 of this title that relates to trust money;

(32) violates any other provision of this title;

The Respondent is charged with a violation of BO § 17-322(b)(22). This statute requires the Respondent to account for and promptly remit any money that comes into the possession of the Respondent, a licensed real estate broker, but belongs to another. The evidence clearly established that the Respondent failed account for or to promptly remit the Claimant's deposit money which came into the Respondent's possession on April 7, 2007 and was required to be deposited into a non-interest bearing escrow account maintained by the Respondent. The evidence established that, as early as February 28, 2008, the Claimant sought a refund of his deposit money by executing an Agreement. On March 6, 2008, the Agreement was executed by the Seller. On September 18, 2008, the Respondent acknowledged the Claimant's refund request and her responsibility to process the request but asked for thirty days to allow for the refund to be received by the Claimant. By April 14, 2009, the Respondent admitted to the REC that she never refunded any money to the Claimant. As of April 30, 2009, the Respondent's escrow account had a balance of \$48.23. The Claimant never received any refund of his deposit money. Further, through her statements to the REC, the Respondent indicated that her escrow account was linked to her operating account and was used as automatic overdraft protection when her operating account became insufficient to cover expenses posting to the operating account. Consequently, the Respondent could not account for Claimant's deposit money because it was removed from the escrow account. Based on these facts, the Respondent failed to account for the Claimant's deposit money which was entrusted to her. The term 'promptly' is not defined by the statute, but it has been more than a few months, if not a few years, since the Claimant sought a refund of his money. However, the Respondent has never refunded any money and, as of April 2009, her escrow account had insufficient funds from which she could refund the money. Thus, the Respondent has failed to promptly remit the Claimant's deposit money. For these reasons, I find that the Respondent committed a violation of § BO 17-322(b)(22).

The Respondent is charged with a violation of § BO 17-322(b)(25) by engaging in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings. The evidence established that the Respondent demonstrated bad faith, incompetency, untrustworthiness, and fraudulent and improper dealings. The Respondent was required to deposit the Claimant's money into her escrow account and protect this money for purposes of applying it toward the purchase price or refunding it back to him. By failing to do so, the Respondent demonstrated the qualities indicated above. By failing to return any of the deposit money, even after promising to do so, demonstrates these same qualities. As indicated by the Respondent in her statements to REC, the Respondent's escrow account was not separate and independent of her business operating account. Thus, when the Respondent's operating account contained insufficient funds, the escrow account money was transferred automatically as an overdraft protection measure. Consequently, the money in the Respondent's escrow account was depleted and became unavailable for the intended purpose. The failure to ensure her escrow account was independent and separate from her business operating account also demonstrates incompetence and untrustworthiness. For all these reasons, I find the Respondent committed a violation of BO § 17-322(b)(25).

Next, the Respondent is charged with violations of BO §§ 17-322(b)(31) and 17-502(b)(1) and (2). Under these statutes the Respondent must deposit trust money in an account that is maintained by the real estate broker separately from the broker's own accounts and is used solely for trust money. Additionally, the broker may not use the trust money for any purpose other than that for which it was entrusted to the broker. For the same reasons previously stated, it is clear that the Respondent failed to keep her escrow account separate from her operating account. It is also clear, that as to the Claimant's deposit money, it was withdrawn from the escrow account and used for a purpose other than acting as the Claimant's deposit. Therefore, I

find that the Respondent committed violations of BO §§ 17-322(b)(31) and 17-502(b)(1) and (2).

The Respondent is charged with violations of BO §§ 17-322(b)(31), 17-505, and 17-507. Under these statutes, as a licensed real estate broker, the Respondent must maintain trust money in an authorized trust account until the reason the trust money was entrusted is consummated or terminated. Additionally, the Respondent is required to maintain all records of trust money in a secured area within the office of the broker. As stated above, the Respondent was required to place the Claimant's deposit money into her escrow account until either the real estate transaction was completed or terminated. The Respondent has never refunded the Claimant's money and it is no longer in her escrow account. Thus, the Respondent has committed violations of BO §§ 17-322(b)(31) and 17-505.

On May 5, 2009, when Patrick Richardson, the REC's financial auditor, was at the Respondent's real estate brokerage office, he requested the Respondent to produce past escrow account records for a period of twenty-four months by May 12, 2009. On June 11, 2009, the Respondent was interviewed by REC Investigator Hal Orbits. During the interview, the Respondent stated that she did not have the past two years of escrow account statements but would forward them to the REC once she received the records. Based on the failure of the Respondent to produce the escrow account records when requested to do so by the REC or as promised by the Respondent, I shall draw a reasonable inference that she did not have the records secured in an area of her brokerage office. For this reason, I find that the Respondent committed violations of BO §§ 17-322(b)(31) and 17-507.

The Respondent is charged with a violation of § BO 17-322(b)(33), which incorporates violations of any regulation adopted under Title 17 of the BO Article or any provision of the

code of ethics. Through this statute and the incorporated regulations or ethic codes, the REC has alleged that the Respondent has committed several violations.

Under COMAR 09.11.01.07, the REC alleges that the Respondent failed to maintain adequate records of the real estate transaction involving the Respondent. COMAR 09.11.01.07 provides:

Licensees shall maintain adequate records of all real estate transactions engaged in by them as licensed real estate brokers or salesmen. If a licensee has custody or possession of money belonging to others, in the absence of proper written instructions from the parties involved in the transaction to the contrary, these funds may not be intermingled with funds belonging to the licensee, but rather they shall be deposited and retained as required in a non-interest-bearing escrow account clearly designated as containing funds held for others. The records of transactions, including bank accounts or deposits referred to in these regulations, shall be available during usual business hours for inspection by the Commission, its field representatives, or other employees.

Based on the evidence already explained above, it is clear that the Respondent did not maintain adequate records of the real estate transaction involving the Claimant. The evidence established that the Claimant's deposit money was commingled with the Respondent's operating account and that she did not have her bank records available for inspection by the REC's financial auditor. For these reasons, the Respondent committed violations of § BO 17-322(b)(33) and COMAR 09.11.01.07.

The Respondent is charged with a violation of COMAR 09.11.02.01C, which provides:

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.

Under this regulation, the Respondent has a responsibility to the public, which includes the Claimant and, in this case, the Seller. The Respondent was entrusted with deposit money which was supposed to be maintained in her escrow account and disbursed as required by the

Claimant and Seller. By making false representations in the Agreement executed by all the parties and in her letter to the Claimant that the escrowed deposit money would be disbursed, the Respondent made misrepresentations and engaged in unethical real estate practices. This same conduct is damaging to public and to the integrity of the real estate field because it erodes public confidence in real estate brokers. For these reasons, I find that the Respondent committed a violation of COMAR 09.11.02.01C.

The REC alleges that the Respondent committed a violation of COMAR 09.11.02.02A, a provision in the Maryland real estate code of ethics which provides:

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

The evidence established that the Respondent was an agent for the Claimant. She accepted the Claimant's deposit money with the requirement that it be placed in her escrow account. The Respondent was responsible to preserve this money for its intended purpose and to return the money when directed to do so. The Respondent failed to meet her ethical responsibilities when this money disappeared from her escrow account for some reason other than for its intended purpose. The Respondent failed to meet her ethical responsibilities when her escrow account balance became insufficient to return the deposit money to the Claimant. For these reasons, I find that the Respondent committed a violation of COMAR 09.11.02.02A.

Having found the REC established by a preponderance of the evidence the violations discussed above, the next issue is the appropriate sanctions for these violations. For each violation of BO §17-322 the Respondent is subject to a reprimand, suspension, or revocation. BO §17-322(b). Further, BO §17-322(c) provides for the imposition of monetary penalties as follows:

(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.

The REC recommended a revocation of the Respondent's license because of the seriousness of her violations. This case does involve multiple statutory, regulatory, and ethical violations. The underlying factual basis for each violation involves the misappropriation of \$25,000.00, a large amount of money. The failure to return any money, especially after stating to the Claimant the money would be refunded in thirty days, and then having not returned the money since 2008, is serious. These facts cause great harm not only to the Claimant, but also to the trust the public must have in real estate brokers who are entrusted with the money of others. Although the record shows no prior history of violations, the seriousness of all violations committed by the Respondent merits a revocation of her license. Thus, I recommend that the Respondent's REC license be revoked. The REC did not argue for a monetary fine. Thus, I shall not consider a monetary fine for the violations committed by the Respondent.

Fund Claim

Claims for reimbursement from the Fund are governed by BO §17-404, which states, in pertinent part:

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

(2) A claim shall:

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

1. a licensed real estate broker;

...

(ii) involve a transaction that relates to real estate that is located in the State; and

(iii) be based on an act or omission:

1. in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or

2. that constitutes fraud or misrepresentation.

(b) The amount recovered for any claim against the Guaranty Fund may not exceed \$25,000 for each claim.

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

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

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

(1) Is an action arising out of a real estate transaction involving real estate located in this State which causes actual loss by reason of theft or embezzlement of money or property, or money or property unlawfully obtained from a person by false pretense, artifice, trickery, or forgery, or by reason of fraud, misrepresentation, or deceit;

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

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

Additionally, COMAR 09.11.01.18 addresses the issues surrounding recovery from the

Fund:

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

Finally, the Claimant bears the burden of proof in his case against the Fund. BO § 17-407(e).

The Claimant filed a claim against the Fund seeking reimbursement of the \$25,000.00 he entrusted to the Respondent, his real estate agent, a licensed broker. As discussed above, the Claimant's money was a deposit toward the full purchase price of a residential property located in Prince George's County, Maryland. The Contract required the Respondent to place this money in her escrow account and, when requested to do so, disperse the money either toward the purchase price or refund the money to the Claimant. The evidence also established that the Claimant, Seller, and the Respondent agreed that that the amount of money to be refunded to the Claimant was \$22,000.00. Finally, it is clear that the Respondent never refunded the money and had insufficient funds in her escrow account to cover the amount of money she was required to refund to the Claimant. The facts as discussed throughout this decision established several violations involving fraud, misrepresentation, deceit, and false pretenses. Based upon the totality of all the circumstances, I conclude that the Claimant established that he suffered an actual loss by the acts of omissions of the Respondent, a licensed real estate broker, acting as his agent, in a real estate transaction occurring in this State. I recommend an award from the Fund in the amount of \$22,000.00.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Real Estate Commission demonstrated by a preponderance of the evidence that the Respondent, a licensed real estate broker:

1. Violated BO §17-322(b)(22) by failing to account for and promptly remit any money that comes into the possession of the Respondent, a licensed real estate broker, but belongs to another.

2. Violated BO §17-322(b)(25) by engaging in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings.
3. Violated BO §§ 17-322(b)(31) and 17-502(b)(1) and (2) by failing to deposit trust money in an account that is maintained by the real estate broker separately from the broker's own accounts and is used solely for trust money; and by using the trust money for any purpose other than that for which it was entrusted to the broker.
4. Violated BO §§17-322(b)(31) and 17-505 by failing to maintain trust money in an account authorized trust account until the reason the trust money was entrusted is consummated or terminated.
5. Violated BO §§17-322(b)(31) and 17-507 by failing to maintain all records of trust money in a secured area within the office of the broker.
6. Violated BO §17-322(b)(33) and COMAR 09.11.01.07 by failing to maintain adequate records of all real estate transactions engaged in by them as licensed real estate brokers or salesmen; by allowing trust money to be intermingled with funds belonging to the licensee; and by not having the records of transactions, including bank accounts or deposits referred to in these regulations available during usual business hours for inspection by the REC, its field representatives, or other employees.
7. Violated BO §17-322(b)(33) and COMAR 09.11.02.01C by failing to protect the public against fraud, misrepresentation, or unethical practices in the real estate field; and by failing 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.

8. Violated BO §17-322(b)(33) and COMAR 09.11.02.02A when, acting as an agent, the Respondent failed to protect, promote, and observe absolute fidelity to the interests of the Claimant.

9. For all these violations, the Respondent's real estate broker license is subject to revocation. BO §17-322.

10. The Claimant suffered an actual monetary loss compensable by the Fund as a result of the conduct of the Respondent in the amount of \$22,000.00. BO §17-404(a); COMAR 09.11.03.04; COMAR 09.11.01.18.

RECOMMENDED ORDER

I THEREFORE RECOMMEND that the Maryland REC:

ORDER, that the Respondent's license be revoked; and further

ORDER, that the Claimant be awarded \$22,000.00 from the Fund; and that it further

ORDER that the records and publications of the Maryland Real Estate Commission

reflect this decision.

ADMINISTRATIVE LAW JUDGE'S SIGNATURE
APPEARS ON ORIGINAL ORDER

September 27, 2010
Date Decision Mailed

Daniel Andrews
Administrative Law Judge

D. Andrews

DA/eh
Doc #114991

MARYLAND REAL ESTATE	* BEFORE DANIEL ANDREWS,
COMMISSION	* AN ADMINISTRATIVE LAW JUDGE
v.	* OF THE MARYLAND OFFICE
RHONDA L. HAMILTON,	* OF ADMINISTRATIVE HEARINGS
RESPONDENT	*
and	*
CLAIM OF FEMI ADEWALE,	*
CLAIMANT	*
AGAINST THE MARYLAND REAL	*
ESTATE COMMISSION GUARANTY	* OAH Case No.: DLR-REC-24-09-43593
FUND	MREC Case No.: 2009-RE-415

* * * * *

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the REC:

- REC # 10 Notice of Hearing, dated June 4, 2010, for a hearing scheduled on June 29, 2010, with attached Statement of Charges and Order for Hearing dated September 30, 2009
- REC # 11 Letter from Peter Martin, Assistant Attorney General, to Respondent dated June 7, 2010, with an attached Amended Statement of Charges and Order for Hearing dated June 7, 2010. Also attached to this exhibit is a certified mail return receipt, date stamped June 8, 2010, and reflecting service upon the Respondent.
- REC # 12 REC Licensing History for Respondent
- REC # 13 Residential Contract of Sale, dated April 7, 2007, with several attachments
- REC # 14 Photocopy of Claimant's personal check number 701, dated April 7, 2007
- REC # 15 Letter from Town and Country Mortgage, dated July 18, 2010

REC # 16 REC Report of Investigation, with attachments, dated June 11, 2009⁷

REC # 17 Certification by Katherine F. Connelly, June 8, 2010, with an attached Report of Investigation by Hal Orbits containing several exhibits

REC # 18 Affidavit of Katherine F. Connelly, June 28, 2010

The Claimant and Fund did not submit any exhibits into evidence.

⁷ The attachments to this exhibit were pre-marked as “exhibits” but were referred to in the hearing as attachments.