

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**IN THE MATTER OF THE CLAIM *
OF SARA JOHNSON, ***

Claimant

CASE NO. 2018-RE-064

v.

OAH NO. LABOR-REC-22-19-33463

**THE MARYLAND REAL ESTATE *
COMMISSION GUARANTY FUND *
FOR THE ALLEGED MISCONDUCT *
OF STEVEN DOWNEY, ***

Respondent

* * * * *

PROPOSED ORDER

The Proposed Findings of Fact, Conclusions of Law and Order of the Administrative Law Judge dated February 25, 2020, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 14th day of April, 2020 hereby **ORDERED**:

A. That the Proposed Findings of Fact in the proposed decision be, and hereby are, **AFFIRMED**.

B. That the Proposed Conclusions of Law in the proposed decision be, and hereby are, **APPROVED**.

C. That the Proposed Order in the proposed decision be, and hereby is, **ADOPTED** in part **AMENDED** in part as follows:

ORDERED that the Claimant's claim against the Maryland Real Estate Guaranty Fund is **GRANTED** and once this Proposed Order becomes a Final Order and all rights to appeal are exhausted, the Claimant, Sara Johnson, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of **Two Thousand Dollars (\$2,000.00)**;

ORDERED that all real estate licenses held by the Respondent, **Steven Downey**, shall be suspended from the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted and shall not be reinstated until the Maryland Real Estate Guaranty Fund is reimbursed, including any interest that is payable under the law, and application for reinstatement is made;

D. That the records, files, and documents of the Maryland Real Estate Commission reflect this decision.

E. Pursuant to Annotated Code of Maryland, State Government Article § 10-220, the Commission finds that the proposed decision of the Administrative Law Judge required modification because the Order contained a typographical error on the reward amount and neglected to include the impacts of the Fund award on Respondent's (currently expired) license.

F. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties adversely affected by this Proposed Order shall have twenty (20) days from the postmark date of the Order to file written exceptions to this Proposed Order. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 500 North Calvert Street, Baltimore, MD 21202. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

G. Once the Proposed Order becomes final, the parties have an additional thirty (30) days in which to file an appeal to the Circuit Court for the Maryland County in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City

MARYLAND REAL ESTATE COMMISSION

SIGNATURE ON FILE

4/14/2020
Date

By: _____

<p>IN THE MATTER OF THE CLAIM</p> <p>OF SARA JOHNSON,</p> <p>CLAIMANT</p> <p>v.</p> <p>THE MARYLAND REAL ESTATE</p> <p>COMMISSION GUARANTY FUND,</p> <p>FOR THE ALLEGED MISCONDUCT</p> <p>OF STEVEN DOWNEY,</p> <p>RESPONDENT</p>	<p>* BEFORE MARY SHOCK,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH NO.: DLR-REC-22-19-33463</p> <p>* REC NO.: 2018-RE-064 GF</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On August 9, 2017, Sara Johnson (Claimant) filed a Complaint and Guaranty Fund Claim with the Maryland Real Estate Commission (Commission) to recover compensation from the Real Estate Guaranty Fund (Fund) for an alleged actual loss resulting from an act or omission of Steven Downey (Respondent), a licensed real estate salesperson. On October 3, 2019, the Executive Director of the Commission issued an Order for Hearing and forwarded the case to the Office of Administrative Hearings (OAH) for a hearing.

On January 22, 2020, I conducted a hearing at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland 21031. Md. Code Ann., Bus. Occ. & Prof. § 17-408(a) (2018). The Claimant

was present and represented herself. The Respondent failed to appear. Kris King, Assistant Attorney General, Department of Labor, represented the Fund.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2019), the Commission's procedural regulations, Code of Maryland Regulations (COMAR) 09.11.03 and 09.01.03; and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

ISSUES

1. Did the Claimant sustain an actual loss, compensable by the Fund, due to an act or omission of the Respondent in which money or property was obtained from the Claimant by theft, embezzlement, false pretenses, or forgery; or that constitutes fraud or misrepresentation in the provision of real estate sales services?
2. If so, what amount should be awarded to the Claimant from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for the Claimant:

- CL 1 District Court of Maryland for Baltimore City, Case Information, filing date, November 18, 2016
- CL 2 Housing Authority of Baltimore City, Code Violation Notice and Order, July 28, 2016
- CL 3 Ten photographs of property (a-j)
- CL 4 Majestic Inspection Co., Pro-Lab Certificate of Mold Analysis, June 27, 2016
- CL 5 Michael Mardiney, III, M.D., Report, June 30, 2016
- CL 6 District Court of Maryland for Baltimore City, Case Information, filing date, July 8, 2016
- CL 7 Eight checks from Claimant to Respondent, November 11, 2015 to July 1, 2016
- CL 8 Text messages between Respondent and Claimant, August 5, 2016
- CL 9 Email from Claimant to Respondent, November 11, 2015

I admitted the following exhibits for the Fund:

- FUND 1 Notice of Hearing, October 28, 2019
- FUND 2 Order for Guaranty Fund, October 3, 2019
- FUND 3 License information for the Respondent, last updated October 24, 2017

- FUND 4 Maryland Motor Vehicle Administration, Driving Record Information, October 3, 2019
- FUND 5 State Department of Assessments and Taxation, Real Property Data Search, January 21, 2020
- FUND 6 Complaint, August 9, 2017

Testimony

The Claimant testified on her own behalf. The Respondent, who did not appear, did not present any testimony. The Fund did not present any testimony.

PROPOSED FINDINGS OF FACT

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

1. At all relevant times, the Respondent was licensed by the Commission as a real estate salesperson. His license expired on April 7, 2019.
2. On April 7, 2019, the Respondent's address of record with the Commission was on Northampton Road, Timonium, Maryland.
3. On October 3, 2019, the Respondent's address of record with the Maryland Department of Transportation, Motor Vehicle Administration (MVA), was on Northampton Road, Timonium/Lutherville, Maryland.
4. On October 28, 2019, the OAH mailed a notice of the hearing to the Respondent at his address of record with the Commission and with the MVA. The notice was sent by regular first-class mail and certified mail. The United States Postal Service (USPS) did not return the first-class mail as undeliverable. On January 24, 2020, the USPS returned the certified mail as "Unclaimed."
5. In November 2015, the Claimant entered into a two-year lease with the Respondent for an apartment in a townhouse in Baltimore City, Maryland.
6. The Claimant rented the main level and basement for \$1,450.00 a month. She had two roommates with whom she equally shared costs.

7. The Claimant paid the Respondent a \$2,000.00 security deposit.
8. The Claimant believed the Respondent owned the property. She paid the monthly rent to the Respondent. He did not own the property. Patrice Arca owned the property. The Claimant never had any contact with Ms. Arca.
9. Immediately after the Claimant and her roommates moved into the apartment, they experienced problems with the plumbing. When someone flushed the toilet on the main level, the downstairs bathtub filled with water. The heater also broke during the winter.
10. The Respondent sent someone to look at the problems, but no one repaired the plumbing.
11. The basement flooded and damaged the floor. By June 2016, the Claimant was seeing mold in the basement; mold spores were elevated in the apartment. The air conditioner broke because of the dampness.
12. On July 28, 2016, the Baltimore City Department of Housing found code violations in the basement of the property including a defective floor, wall, and drain pipe.
13. Furniture and bedding in the basement were ruined due to the dampness and mold.
14. In the summer of 2016, the Claimant's roommates moved out.
15. On or about November 18, 2016, the District Court for Baltimore City found the Respondent breached the lease, ordered that the Claimant be awarded \$6,000.00, treble the security deposit, and released the Claimant from the lease effective August 2016. The Claimant has not been able to collect the \$6,000.00 award from the Respondent.
16. The Claimant paid \$150.00 for someone to clean the home before she moved.
17. The Claimant's allergies were exacerbated by the mold. She spent \$75.00 to see her physician.

18. The Claimant was employed during all relevant times. She used her leave to attend Court hearings related to the lease.

19. The Claimant did not pay for any repairs.

DISCUSSION

Under Maryland law, the Commission may not proceed with the hearing unless the records of the Commission show that a notice of hearing was sent to the individual alleged to be responsible for the act or omission giving rise to the claim. Md. Code Ann., Bus. Occ. & Prof. § 17-408(c). The Fund, for the Commission, demonstrated that the Respondent had notice of the hearing. The Fund provided the Respondent's licensing record with the Commission documenting his address of record as of April 9, 2019. (FUND 3.) The Fund also provided driving record information for the Respondent from the MVA showing that the Respondent's address of record on October 3, 2019, the date the Commission referred the case to OAH, was the Northampton Road address. (FUND 4.) The OAH mailed the notice of hearing only several weeks later on October 28, 2019. Finally, the USPS did not return the notice of hearing sent by regular first-class mail to the Respondent at his address of record. Although the USPS returned the notice sent by certified mail, the letter was unclaimed, not undeliverable. Based on the record, the Commission demonstrated that the Respondent received notice of the hearing and failed to appear. I held the hearing in the Respondent's absence. COMAR 28.02.01.23A; COMAR 09.01.03.05A.

Maryland law provides that a licensed real estate salesperson is a person who is licensed by the Commission to provide real estate brokerage services on behalf of a licensed real estate broker with whom the real estate salesperson is affiliated. Md. Code Ann., Bus. Occ. & Prof. § 17-101(j) (2018). Providing real estate brokerage services includes leasing any real estate or collecting rent for the use of any real estate. *Id.* § 17-101(l)(1). A person may recover compensation from the Fund for an actual loss based on an act or omission in the provision of real estate brokerage

services by a licensed real estate salesperson in a transaction related to real estate located in the State. *Id.* § 17-404(a)(1) and (2)(i)3. and (ii) (2018). The claim must be based on an act or omission in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or that constitutes fraud or misrepresentation. *Id.* § 17-404(a)(2)(iii).

The burden of proof at a hearing on a claim against the Fund is on the Claimant to establish the validity of the claim. *Id.* § 17-407(e) (2018). The Claimant's claim is based on an alleged act or omission that occurred in the provision of real estate brokerage services by a licensed real estate salesperson. The evidence shows that the Respondent was a licensed real estate salesperson in November 2015, when he entered into a residential rental lease with the Claimant. The Claimant's claim involves a transaction that relates to real estate that is located in the State. The first two requirements of the statute have been met. *Id.* § 17-404(a)(2)(i)-(ii).

The dispositive issue is whether the Respondent committed an act or omission in which he obtained money or property from the Claimant by theft, embezzlement, false pretenses, or forgery; or that constitutes fraud or misrepresentation. *Id.* § 17-404(a)(2)(iii). For the reasons set forth below, I conclude that the Claimant has met her burden with regard to her security deposit and is eligible to recover that money from the Fund.

The Claimant presented evidence to establish that she experienced numerous problems with the apartment including plumbing defects, flooding, and inoperable heating and air conditioning units. On June 27, 2016, Majestic Inspections Company completed a mold analysis of the property and found elevated mold spores in the basement. (CL 4.) On July 28, 2016, the Baltimore City Department of Housing detected code violations related to a defective wall, floor, and drain pipe in the basement. (CL 2.) The Respondent did not properly repair any of the defects.

The Respondent collected a security deposit from the Claimant and failed to return that money when the District Court for Baltimore City released the Claimant from the lease and

awarded her treble the security deposit amount, \$6,000.00. The Respondent's act in failing to return the security deposit amounts to theft or embezzlement.

Theft means to exert unauthorized control over the property of another. Md. Code Ann., Crim. Law § 7-104(a) (Supp. 2019). Embezzlement includes the willful appropriation of money that a fiduciary holds contrary to the requirements of the fiduciary's trust responsibilities. *Id.* § 7-113(a) (2012). A security deposit is the payment of money to a landlord by the tenant to protect the landlord in the event the tenant breaches the lease or damages the premises. Md. Code Ann., Real Prop. § 8-203(a)(3) (Supp. 2019). A landlord is required to place a security deposit in a federally insured institution. *Id.* § 8-203(d). If the landlord intends to withhold any of the security deposit, he or she is required to notify the tenant. If the landlord fails to do so, he or she forfeits the right to keep the security deposit. *Id.* § 8-203(g).

There is no evidence that the Respondent notified the Claimant that he intended to withhold the security deposit. There is evidence that the District Court for Baltimore City awarded the Claimant the return of the security deposit in treble. (CL 1.) The Respondent's failure to return the security deposit after forfeiture and a Court order, amounts to exerting unauthorized control over the Claimant's property and is contrary to his fiduciary responsibilities, which permit him to keep the security deposit only in the event of breach or damages and with proper notice.

The Claimant seeks return of all the rent she paid the Respondent, money she spent to move into a new house, reimbursement for clothing, bedding, and furniture that was destroyed due to the dampness and mold, the cost of a doctor's visit because the mold exacerbated her allergies, lost time from work when she used leave to attend Court proceedings, money for gas and wear-and-tear on her car because she had to travel to stay with her parents for weekends to escape the apartment, and for mental anguish. These damages are not recoverable from the Fund. As stated above, recovery from the Fund is limited to money or property that was obtained from

a person by theft, embezzlement, false pretenses, or forgery; or that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(iii). Besides the security deposit, the Respondent did not obtain any money or property from the Claimant. Although the Court ordered the Respondent to pay treble the security deposit, that award is different from the award recoverable from the Fund. In accordance with the statute, the Fund is only authorized to award actual losses of money or property the Claimant gave to the Respondent, which he then failed to return.

Finally, the fact that the Respondent did not own the property does not bar the Claimant's claim. All the checks the Claimant wrote to pay the security deposit and rent were written to the Respondent personally. (CL 7.) Also, although the Claimant shared costs with roommates, there is no evidence either of her roommates have filed a claim against the Fund for the same loss and the check for the security deposit is drawn from the Claimant's account. *Id.*

PROPOSED CONCLUSION OF LAW

Based on the Findings of Facts and Discussion, I conclude that the Claimant demonstrated by a preponderance of the evidence that she sustained \$2,000.00 in an actual loss compensable by the Fund resulting from an act or omission in the provision of real estate brokerage services that constitutes theft or embezzlement. Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2018).

PROPOSED ORDER

I **PROPOSE** that the claim filed by the Claimant against the Maryland Real Estate Guaranty Fund be **GRANTED** in the amount of \$2,00.00.

SIGNATURE ON FILE

February 25, 2020
Date Decision Issued

Mary Shock
Administrative Law Judge

MKS/cmj
#184180