

BEFORE THE MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

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CASE NO. 2020-RE-460

v.

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OAH NO. DOL-REC-24-24-13119

**GLENN BONNER, JR.,
Respondent**

*

AND

*

**THE CLAIM OF ALYCE HILL,
Claimant,**

*

*

**AGAINST THE MARYLAND
REAL ESTATE COMMISSION
GUARANTY FUND**

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PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated December 16, 2024, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 4th day of April, 2025, hereby **ORDERED**:

A. That the Findings of Fact in the recommended decision be, and hereby are, **AFFIRMED IN PART AND AMENDED as follows:**

In Finding of Fact number 13, the phrase "Respondent signed the Property Inspections Notice" is changed to "Seller signed the Property Inspections Notice." All other Findings of Fact remain unchanged.

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,

AMENDED as follows:

ORDERED, that the Charges against the Respondent be **UPHELD**; and

ORDERED, that a **REPRIMAND** be placed on the Respondent's license; and

ORDERED, that the Respondent pay a monetary penalty of Three Thousand Five Hundred Dollars (\$3,500.00) within thirty (30 days) of the date this Proposed Order becomes a Final Order and all rights to appeal are exhausted; and

ORDERED, that all real estate licenses held by the Respondent 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 monetary penalty is paid; and

ORDERED, that the Claimant's claim against the Maryland Real Estate Commission Guaranty Fund be denied; and

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 Recommended Decision of the Administrative Law Judge required modification because the Administrative Law Judge's Recommended Findings of Fact contained a typographical error in Finding of Fact 13, which should have read "Seller" rather than "Respondent." The Recommended Order was amended because it omitted from the Recommended Order deadlines for payment of the monetary penalty and suspension of all licenses held by the Respondent until the monetary penalty is paid.

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, 100 S. Charles Street, Tower One, Baltimore, MD 21201. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

G. Once this 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

4/3/25
Date

By: Donna Hargan

MARYLAND REAL ESTATE

COMMISSION

v.

GLENN BONNER, JR.,

RESPONDENT

AND

THE CLAIM OF ALYCE HILL,

CLAIMANT,

AGAINST THE MARYLAND

REAL ESTATE COMMISSION

GUARANTY FUND

* BEFORE JOHN D. HART,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

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* OAH No.: LABOR-REC-24-24-13119

* MREC No.: 2020-RE-460

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES

SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION

PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On February 24, 2020, Alyce Hill (Claimant) filed a Complaint against Glenn Bonner, Jr., a licensed real estate salesperson (Respondent), for alleged violations of the Maryland Real Estate Brokers Act (Act), Md. Code Ann., Bus. Occ. & Prof. §§ 17-101 to -702 (2018 & Supp. 2024), and the provisions at Code of Maryland Regulations (COMAR) 09.11.02, 09.11.07, enacted under the Act. The Claimant also filed a claim (Claim) with the Maryland Real Estate

Commission's (REC or Commission) Guaranty Fund (Fund) to recover compensation of \$30,964.00 for an alleged actual loss resulting from an act or omission of the Respondent.

On April 30, 2024, after an investigation, the REC determined that the charges against the Respondent were warranted and issued a Statement of Charges (Charges) against the Respondent. The Charges set forth that the Respondent, as the buyer's agent, failed to ensure that his client received a copy of the Residential Real Property Disclosure/Disclaimer Statement (disclosure/disclaimer statement) from the seller prior to submitting an offer for the purchase of the property. The Charges further provided that such conduct was in violation of § 17-322 of the Business Occupations and Professions Article, as well as COMAR 09.11.02.02A and 09.11.07.02C. The Charges advised the Respondent that if the charged violations were substantiated, the Respondent's real estate license may be suspended or revoked, and he may be subject to a fine of up to \$5,000.00 per violation. The REC further determined that the Claimant was entitled to a hearing to establish eligibility for an award from the Fund. Accordingly, the REC ordered a combined hearing on the Charges and the Claim and, on May 13, 2024, forwarded the case to the Office of Administrative Hearings (OAH) to conduct a hearing. Bus. Occ. & Prof. § 17-409 (2018).

On September 18, 2024, I held a hearing by telephone and video. Bus. Occ. & Prof. §§ 17-324(a), 17-408(a) (2018); COMAR 28.02.01.20B(1)(a)-(b). Catherine Villareale, Assistant Attorney General, Maryland Department of Labor (Department), represented the REC on the charged violations of law. Jonathan Phillips, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. Sonya Hamlin, Esquire, represented the Respondent, who was present.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, the REC's procedural regulations, and the Rules of Procedure of the OAH

govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2024); COMAR 09.01.03; COMAR 09.11.03; COMAR 28.02.01.

ISSUES

1. Did the Respondent fail to ensure that his client received a copy of the disclosure/disclaimer statement from the seller prior to submitting an offer for the purchase of the property, in violation § 17-322 of the Business Occupations and Professions Article, COMAR 09.11.02.02A and 09.11.07.02C?
2. If so, what is the appropriate sanction?
3. Did the Claimant sustain an actual loss, compensable by the Fund, due to an act or omission of the Respondent in the provision of real estate brokerage services that constitutes fraud or misrepresentation, or in which money or property was obtained from the Claimant by theft, embezzlement, false pretenses or forgery?
4. If so, what amount should be awarded to the Claimant from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

Unless otherwise noted, I admitted the following exhibits offered by the REC:

- REC Ex. 1 - Statement of Charges and Order for Hearing, dated April 30, 2024
- REC Ex. 2 - Notice of Remote Hearing, issued June 11, 2024
- REC Ex. 3 - Respondent's Licensing Information from AS400 Database, printed September 10, 2024
- REC Ex. 4 - REC Report of Investigation with attachments:
- Report of Investigation, closed date February 17, 2022, pp. 1-13
 - Complaint/Claim Form, filed February 24, 2020, pp. 14-15
 - Claimant's Narrative submitted with Complaint/Claim Form, undated, pp. 16-19
 - Residential Contract of Sale, signed October 18, 2018, pp. 20-31
 - Property Inspections Notice, signed October 26, 2018, pp. 32-33
 - Property Inspections Addendum, signed October 18, 2018, pp. 34-37
 - Conventional Financing Addendum, signed October 18, 2018, pp. 38-39

- Addendum to Contract, signed November 26, 2018, pp. 40-41
- Addendum to Exclusive Listing Agreement, signed October 1, 2018, pp. 42-43
- Metropolitan Regional Information Systems, Inc. Property Listing, undated, pp. 44-45
- Rescom, LLC Roofing Contract, signed February 9, 2019, p. 46
- Rescom, LLC Payment Receipt, dated February 14, 2019, p. 47
- Tolson General Contractors, Inc., Invoice for Roof Repair, dated October 29, 2018, p. 48
- JEN Contracting, Estimate for Floor Repair, undated, p. 49
- Tolson General Contractors, Inc., Roof Replacement-Asphalt Shingle Contract, dated November 13, 2018, p. 50
- Emails between Respondent and Claimant, November 26, 2018 through December 4, 2018, p. 51
- Lowe's Order Receipt, dated September 13, 2018, pp. 52-53
- Maryland Business Express Search, Simo Homes, LLC, printed February 8, 2019, pp. 54-55
- Inspection Report, dated October 21, 2018, pp. 56-73¹
- Email from Sarah D. Cline, Esq. to Commission with attached October 12, 2021 letter, RE: 460 RE 2020, pp. 74-75
- Respondent's Licensing Information from AS400 Database, printed February 24, 2020, p. 76
- Letter from Respondent and Broker of Record to the Commission, dated April 21, 2020, pp. 77-78
- Emails between Commission and Respondent, dated April 15-16, 2020, p. 79
- Letter from Respondent and Broker of Record to the Commission, dated March 19, 2020, pp. 80-84
- Residential Contract of Sale, signed October 18, 2018, pp. 85-96
- Inspection Report, dated October 21, 2018, pp. 97-130
- Property Inspections Notice, signed October 26, 2018, pp. 131-133
- Addendum to Contract, Post Settlement Inspection Repairs, signed November 26, 2018, pp. 134-136
- Addendum to Contract, Solar Panels Removal, signed November 26, 2018, pp. 137-138
- American Land Title Association Settlement Statement, dated November 26, 2018, pp. 139-142²
- Emails between Respondent and Claimant with attached listing, RE: Listings, dated October 13, 2018, pp. 143-146
- Email between Seller and Vernon Tolson, dated December 9, 2018, p. 147
- Letter from Vernon Tolson, undated, p. 148

¹ The page numbering referenced here is how the Commission numbered the attachments to its Report of Investigation. For most of these attachments, the Commission assigned a number for each page. However, for the Inspection Report, the Commission failed to assign page numbers for the reverse pages in the two-sided report. Therefore, although the exhibit list references pp. 56-73, a total of 35 pages of the 36-page Inspection Report is contained within that section. A second copy of the Inspection Report that was submitted with the Respondent's response to the complaint is also included as an attachment to the Report of Investigation at pp. 97-130. Each page of this copy of the Inspection Report is numbered and as such is where I will cite to when referencing the Inspection Report.

² Following page 142 is the signature page for the seller that was not assigned a page number.

- Invoice from Skyline Homes, Repairs Due to Removal of Solar Panels, undated p. 149
 - Certificate of Liability Insurance for Skyline Homes, LLC, dated March 17, 2017 p. 150
 - Rescom, LLC Roof Inspection, dated December 5, 2018, pp. 151-156
 - Tolson General Contractors, Inc., Invoice-1032, dated October 29, 2018, p. 157
 - Tolson General Contractors, Inc., Purchase Order, dated October 29, 2018, p. 158-159
 - Letter from Tolson General Contractors, Inc to Seller, dated November 13, 2018, pp. 160-161
 - Tolson General Contractors, Inc Estimate, dated November 13, 2018, p. 162
 - Email from Claimant to Commission, dated February 7, 2022, p. 163
 - Alejandro Martinez's Licensing Information from AS400 Database, printed February 24, 2020, p. 164
 - Letter from Counsel for Alejandro Martinez to Commission, dated March 3, 2020, pp. 165-166
 - Letter from Commission to Alejandro Martinez, dated February 24, 2020, p. 167
 - Complaint/Claim Form, filed February 24, 2020, pp. 168-169
 - Claimant's Narrative submitted with Complaint/Claim Form, undated, pp. 170-173
 - Letter from Counsel for Alejandro Martinez to Commission, dated July 10, 2019, pp. 174-176
 - Letter from Commission to Alejandro Martinez, dated June 28, 2019, p. 177
 - REC Online Complaint Form, Complaint Tracking #: 2019-611, dated April 8, 2019, pp. 178-179
 - Addendum to Exclusive Listing Agreement, signed October 1, 2018, pp. 180-182
 - Letter from the Commission to Claimant, dated September 26, 2019, pp. 183-192
 - Copies of the response from Counsel for Alejandro Martinez to Commission, dated March 3, 2020 with attachments, pp. 193-233
- REC Ex. 5 - REC Second Report of Investigation with attachment, pp. 1-12
- Report of Investigation, closed May 27, 2022, pp. 1-7
 - Emails between Commission and Respondent, various dates, pp. 9-12
- REC Ex. 6 - (Not Offered)³ REC Supplemental Report of Investigation with attachments, closed May 27, 2022
- REC Ex. 7 - (Not Offered) REC Second Supplemental Report of Investigation, closed May 27, 2022
- REC Ex. 8 - Maryland Residential Property Disclosure and Disclaimer Statement, pp. 1-4

³ The Commission marked and transmitted to the OAH prior to the hearing a packet of exhibits including REC Ex. 6 and 7. At the hearing, the Commission did not offer REC Ex. 6 and 7. As a result, these documents are not part of the record on which I based my decision, but have been retained in the file.

Unless otherwise noted, I admitted the following exhibits offered by the Respondent:

- Lic. Ex. 1 - Time Limit for Seller's Acceptance, signed October 17, 2018
- Lic. Ex. 2 - Photograph of Claimant and her husband, undated
- Lic. Ex. 3 - Listing for 9624 Stuart Lane, Clinton, MD 20735, closing November 23, 2018
- Lic. Ex. 4 - (Not Admitted)⁴ Listing for 9624 Stuart Lane, Clinton, MD 20735, closing July 22, 2022
- Lic. Ex. 5 - Text Messages between Respondent and Seller, dated October 2018⁵

Neither the Fund nor the Claimant offered any exhibits into evidence.

Testimony

The REC presented the following witness: Diane Carson, Investigator.

The Fund did not call any witnesses.

The Claimant testified and called her husband, Thomas Hill, as a witness.

The Respondent testified and did not present other witnesses.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the REC licensed the Respondent as a real estate salesperson.
2. The Respondent represented the Claimant in the purchase of the residential property located at 9624 Stuart Lane, Clinton, MD 20735 (Property).
3. On October 13, 2018, the Respondent sent the Claimant the listing for the Property. (REC Ex. 4, pp. 144-146).

⁴ The Commission objected to the admission of Respondent's Exhibit 4 as it was the listing for the Claimant's sale of the property in 2022 and not relevant to the proceeding before me which dealt with the Claimant's purchase of the property in 2018. The exhibit was not admitted, but a copy has been retained in the file.

⁵ The screenshot is blurry to the extent that the specific day on which the text was sent is unable to be read.

4. The Property was listed by a licensed real estate broker, but the listing stated that the seller, Simo Home, LLC (Seller), was to be contacted directly with all questions and offers. (REC Ex. 4, p. 145). On October 1, 2018, the listing broker and the Seller had entered into an Addendum to Exclusive Listing Agreement, limiting the broker's involvement in the sale. (REC Ex. 4, pp. 41-43).

5. On October 17, 2018, at the request of the Claimant, the Respondent submitted to the Seller an offer for the Property, as well as a Time Limit for Seller's Acceptance form that placed an expiration on the offer of 12:00 PM on October 18, 2018. (Lic. Ex. 1).

6. At a time not specified in the record, but prior to the submission of the offer, the Claimant asked the Respondent for the disclosure/disclaimer statement. The Respondent told the Claimant that he asked for the statement, but the Seller stated he did not have to provide one. The Respondent did not obtain a disclosure/disclaimer statement from the Seller prior to submitting the Claimant's offer.

7. On October 18, 2018, the Seller signed the Residential Contract of Sale presented by the Respondent thus accepting the Claimant's offer. (REC Ex. 4, pp. 20-30).

8. The Respondent did not inform the Claimant of the right to rescind a contract where a disclosure/disclaimer statement has not been provided.

9. Included in the Residential Contract of Sale was a Property Inspections Addendum that provided the Claimant with the opportunity to have a general home inspection performed prior to settlement. (REC Ex. 4, pp. 34-37).

10. On October 21, 2018, a home inspection was performed and a report generated. (REC Ex. 4, pp. 97-130).

11. The home inspector noted in his report that the roof was at the end of its useful life expectancy and noted three active leaks above the garage, the rear left bedroom and the left

wall of the master bedroom. The home inspector recommended replacement of the roof. (REC Ex. 4, p. 100, 101, 107, 110, 111, 126).

12. On October 26, 2018, the Respondent provided the Seller with a Property Inspections Notice signed by the Claimant as well as a copy of the inspection report. The Claimant requested through this notice that the Seller repair nine items that were noted in the report, including “[h]ave a licensed roofing [c]ontractor [r]epair the 3 active leaks (see Report)...” (REC Ex. 4, pp. 32-33).

13. On October 26, 2018, the Respondent signed the Property Inspections Notice and agreed to repair eight of the nine items, including the repair of the three active roof leaks. (REC Ex. 4, p. 33).

14. On November 25, 2018, the Seller had not completed all the repairs agreed to, and an Addendum to Contract was drafted, giving the Seller until November 27, 2018 to complete the list of remaining repairs noted in the addendum. The addendum was signed by the Seller on November 26, 2018. (REC Ex. 4, p. 135).

15. On November 26, 2018, the Claimant and the Seller signed a second Addendum of Contract noting that the Seller would credit the Claimant \$250.00 for the “home inspection items which are now all complete.” (REC Ex. 4, p. 136).

16. On November 26, 2018, the Claimant and the Seller signed a third Addendum of Contract providing the Seller with additional time after settlement to have solar panels removed from the roof and to repair the damage caused by the removal. The addendum provided for the holding of \$3,000.00 of the Seller’s money in escrow to be forfeited to the Claimant should the Seller fail to comply with the terms of addendum. (REC Ex. 4, p. 40).

17. On November 26, 2018, the Claimant and the Seller proceeded to settlement. (REC Ex. 4, pp. 139-142).

DISCUSSION

THE REGULATORY CHARGE

The Legal Standard

The REC contended in its Charges that the Respondent:

(b) 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:

....

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

....

Bus. Occ. & Prof. § 17-322(b)(33) (Supp. 2024). The REC further contends that the specific regulations violated are as follows:

COMAR 09.11.02.02A

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.

and

COMAR 09.11.07.02C

The buyer's agent should make every effort to ensure that the prospective purchaser has the disclosure statement or the disclaimer statement in hand before submission of the offer to purchase the property.

The Burden of Proof

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. State Gov't § 10-217 (2021); COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman*

v. Anne Arundel Cnty. Police Dep't, 369 Md. 108, 125 n.16 (2002). In this case, the REC bears the burden to prove by a preponderance of the evidence that the Respondent committed the violations alleged in the Charges. COMAR 28.02.01.21K(1), (2)(a). For the reasons that follow, I find that the REC has met its burden.

The Positions of the Parties

The Respondent admitted that he did not obtain a disclosure/disclaimer statement from the Seller prior to conveying the Claimant's offer to purchase the Property. The Respondent, however, argued that the disclosure/disclaimer statement is typically provided by the listing agent, but that this was a unique sale where the property was listed by a broker who otherwise did not participate in the transaction and directed that all communications and offers be sent to the Seller directly. The Respondent further contended that the Claimant was adamant about getting their offer to the Seller quickly and getting under contract, regardless of the receipt of the disclosure/disclaimer statement, pointing to the time limit of noon the following day that the Claimant placed on the offer. (Lic. Ex. 1). The Respondent averred that he did inquire with the Seller about the disclosure/disclaimer statement and the Seller simply responded they did not have to provide one. Lastly, the Respondent contended that as a foreclosure, the Property fell within the enumerated list of transfers exempt from the disclosure/disclaimer requirement. However, the Respondent was not aware of this at the time of the offer. (REC Ex. 8).

The REC argued that it is clear from the testimony of the Claimant and her husband that they were not provided with a copy of a property disclosure/disclaimer statement either before or after the submission of the offer. Moreover, the REC argued that the Respondent in prior interviews with Commission investigators admitted to not making an effort to obtain the disclaimer/disclosure statement. (REC Ex. 4, pp. 8-9). The REC contended that the Respondent's failure to obtain this statement for his clients was serious, in that the purchase of a

home is one of the largest transactions of a person's life. The REC then argued that pursuant to section 10-702 of the Real Property Article, buyers can rescind a contract if the disclosure/disclaimer statement is received after entering into the contract, and the Respondent failed to convey to his clients that the sales contract was voidable because a disclosure/disclaimer statement had not been provided.

Analysis

The Respondent readily admitted that he did not obtain the disclosure/disclaimer statement prior to conveying the Claimant's offer to the Seller. This is a clear violation of COMAR 09.11.07.02C that requires a buyer's agent to "make every effort to ensure" that their client has the disclosure/disclaimer statement before they make an offer. This statement is a valuable piece of information to the buyer-in that at a minimum it sets forth any latent defects known to the seller, and the failure to provide it prior to entering the sales contract allows the buyer to rescind the contract and receive a return of any deposits made. Real Prop. § 10-702(h)(1)(i)-(ii). Therefore, in failing to secure this statement for the Claimant prior to conveying the offer, the Respondent was not protecting and promoting the interests of the client as required under COMAR 09.11.07.02C.

As for the Respondent's argument that his failure was the result of the Claimant's impatience to get under contract, a client's desire to place an offer quickly does not negate this duty, but may only hasten the buyer agent's efforts to obtain the statement. Moreover, the list of exemptions the Respondent references in the standard Maryland Residential Property Disclosure and Disclaimer Statement do not apply to the transaction at issue in this case. The Respondent claimed that because the Property was a "foreclosure" the Seller was exempt from providing the statement. The list does contain two types of exempt sales that contain the word "foreclosure," however, the first applies to "a sale by a lender or an affiliate or subsidiary of a lender that

acquired the real property by foreclosure or deed in lieu of foreclosure” and the other to “[a] sheriff’s sale, tax sale, or sale by foreclosure, partition, or by court appointed trustee.” Real Prop. § 10-702(b)(2)(iii)-(iv); (REC Ex. 8).

The Respondent did not establish that the Seller was a lender or affiliate or subsidiary of a lender that acquired the Property through foreclosure, or that the transaction itself was a sale by foreclosure. Instead, the record before me shows that the Seller was the owner and rehabber of the Property, and it was being sold to the Claimant through a conventional sale. Therefore, neither exemption applies. For the sake of argument, even if we assume that the transaction was exempt, the Respondent still admitted that at the time he extended the offer he was not aware that the Property was a foreclosure, and therefore was not aware of any exemption from the duty to obtain the statement at that time. I conclude that the Respondent violated the statute and regulations charged, and I will address sanctions as follows.

Disciplinary Sanction(s)

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

(c)(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.

(4) The Commission may not impose a fine based solely on a violation of subsection (b)(35) of this section.

Bus. Occ. & Prof. § 17-322(c) (Supp. 2024).

After walking through the factors for assessing a penalty, the REC recommended a Reprimand and a total fine in the amount of \$3,500.00. I agree with the REC that the failure to

obtain the disclosure/disclaimer statement is a serious violation that harmed the Claimant, in that she proceeded with the transaction without the benefit of the disclosure of any material defects by the Seller, and ultimately was not informed by the Respondent that the transaction could be rescinded due to the failure to provide the statement. Therefore, disciplinary action along with the assessment of a penalty is appropriate. However, I find that the Respondent's error was not done with malicious intent, but rather was an oversight of the duties expected of him as the buyer's agent. Also, the REC reported that this is the only offense on the Respondent's record in the eleven years he has been a licensee. Therefore, I agree with the REC that a Reprimand and penalty in the amount \$3,500.00 is an appropriate sanction.

THE FUND CLAIM

The Legal Standard

A person may recover compensation from the Fund for an actual loss based on certain types of acts or omissions in the provision of real estate brokerage services by a licensee. A licensee "means a licensed real estate broker, a licensed associate real estate broker, or a licensed real estate salesperson." Bus. Occ. & Prof. § 17-101(k) (Supp. 2024).

The provision of real estate brokerage services is defined as follows:

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

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

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

(ii) collecting rent for the use of any real estate;

(2) for consideration, assisting another person to locate or obtain for purchase or lease any residential real estate;

(3) engaging regularly in a business of dealing in real estate or leases or options on real estate;

(4) engaging in a business the primary purpose of which is promoting the sale of real estate through a listing in a publication issued primarily for the promotion of real estate sales;

(5) engaging in a business that subdivides land that is located in any state and sells the divided lots; or

(6) for consideration, serving as a consultant regarding any activity set forth in items (1) through (5) of this subsection.

Id. § 17-101(l) (Supp. 2024).

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.

Id. § 17-404(a)(2). The amount recovered for any claim against the Fund may not exceed \$50,000.00 for each claim. *Id.* § 17-404(b).

The Burden of Proof

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Occ. & Prof. § 17-407(e) (2018); State Gov't § 10-217. To prove a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman*, 369 Md. at 125 n.16. For the reasons that follow, I find the Claimant has failed to meet her burden.

The Positions of the Parties

The Claimant argued that although the Respondent's actions may not have been intentional, they resulted in an actual loss to her family. The Claimant sought \$30,964.00 from the Guaranty Fund based on the cost to repair eleven different items that the Claimant alleged they had to fix after obtaining the Property. The replacement of the roof was one of these eleven items, and the Claimant argued that the Respondent misrepresented its condition by telling her

and her husband, at some point prior to settlement, that the roof was repaired and looked good to him. The Claimant further argued that the Respondent misrepresented to her that the Property did not have a front foot fee, and that she only learned of the presence of the fee at closing. Moreover, the Claimant contended that but for the Claimant's failure to inform them that they could rescind the contract because no disclosure/disclaimer statement was provided, she would have terminated the contract to avoid the costs she would later incur to fix up the Property.

Counsel for the Fund recommended no award. Counsel argued that the Claimant admitted that of the eleven repair costs sought, the roof was the only one where the Respondent made a misrepresentation, and that the Claimant agreed that the Respondent otherwise did not obtain any money by theft, embezzlement, false pretenses, or forgery. Therefore, the Fund focused its recommendation on the Respondent's alleged misrepresentation of the condition of the roof. Counsel for the Fund contended that the Claimant did not suffer an actual loss due to the Respondent's statements about the condition of the roof, as the Claimant had a home inspection completed prior to settlement that clearly outlined that the roof needed to be replaced, and yet the Claimant proceeded with the sale. As for the argument that the Claimant would not have otherwise incurred these repair costs if the Respondent would have informed her that the contract could be rescinded due to the failure to provide the disclosure/disclaimer statement, counsel for the Fund argued that this argument also held no merit as the Claimant had the opportunity to terminate the contract per the Property Inspection Addendum and yet proceeded with the sale.

Analysis

The Claimant agrees that no money was obtained by the Respondent through theft, embezzlement, false pretenses, or forgery. Therefore, her recovery from the Fund hinges on whether her actual loss was due to the acts or omissions of the Respondent that constitute fraud

or misrepresentation. The actual loss identified by the Claimant are the costs to repair eleven items on the home after she took possession of the Property. The specific acts or omissions the Claimant contends this actual loss results from are the Respondent's alleged statement that the roof was repaired and looked good to him, and his omission in not informing her that the contract can be rescinded for the failure to provide a disclosure/disclaimer statement.

The Claimant and her husband testified that the Respondent stated that the roof looked good to him, however, when this statement was made during the transaction was not clear. Regardless of when it occurred, it is clear that the Respondent did not hold himself out as a roofer or a home inspector, and did not have his clients rely on his assessment alone. Instead, a home inspection was conducted by a licensed home inspector. The home inspector unequivocally stated in his report the following:

The current roof covering is at the end of its useful life expectancy of 20-25 years. There is [sic] 3 active leaks. Inspector recommends you consult with a licensed roofing contractor for the replacement of the roof covering. Leaks above garage, above rear left bedroom, and left wall of master bedroom.

(REC Ex. 4, p. 100). The report goes on to detail and provide pictures of the active leaks. The poor condition of the roof and/or active leaks makes an appearance on no less than six pages of the report. After receiving this report, the Claimant knew or reasonably should have known that the roof needed to be replaced, and cannot have reasonably relied on the lay opinion of her realtor that it looked good to him. By moving forward with the transaction, the Claimant reasonably knew or should have known that the cost to replace the roof was something that either she would have to negotiate for with the Seller or otherwise bear herself after closing. As such, I find that the Claimant has not met her burden in proving that she suffered an actual loss due to the act or omission of the Respondent that constitutes fraud or misrepresentation.

As for the alleged misrepresentation regarding the front foot fee, the Respondent testified credibly that he did inquire with the Seller about this fee, and relayed to the Claimant that such a

fee was in place until 2022. Although he was unable to produce documentation of his communication to the Claimant, the Respondent was able to corroborate his testimony with the text exchange with the Seller where he inquired about and received a response regarding the existence of the fee. (Lic. Ex. 5).

I further find the Claimant's argument that an award from the Fund can be based on the Respondent's failure to inform her of the right to rescind a contract when a disclosure/disclaimer statement was not provided, to also be without merit. Although the Claimant contends that she would have terminated the contract had she known she could, this assertion does not correspond with her actions during the transaction. Even though she received a home inspection that clearly stated that the roof needed to be replaced, she only asked that the Seller repair the active leaks as well as a number of other items noted in the home inspection. When the Seller responded that they would repair all but one of the requested items, the Claimant could have invoked the Property Inspections Addendum to terminate the contract, but instead moved forward with the transaction. (REC Ex. 4, p. 36). Even when the settlement date approached and the Seller failed to complete all repairs, thus allowing the Claimant another opportunity to terminate, the Claimant moved forward with the transaction signing addendums to the contract to provide the Seller with more time to complete repairs even after settlement. (REC Ex. 4, pp. 40, 135). Ultimately, the Claimant's actual loss stems from the Seller's alleged inadequate repairs and not the acts or omissions of the Respondent.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Respondent violated § 17-322(b)(33) of the Business Occupations and Profession Article, as well as COMAR 09.11.02.02A and 09.11.07.02C. Consequently, I conclude that the Respondent is subject to the disciplinary sanctions of a Reprimand and a \$3,500.00 fine. Bus. Occ. & Prof. § 17-322(c) (Supp. 2024).

I further conclude that the Claimant did not demonstrate by a preponderance of the evidence that they sustained an actual loss compensable by the Fund due to an act or omission of the Respondent in the provision of real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2) (2018).

RECOMMENDED ORDER

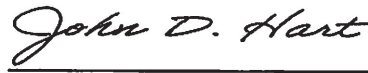
I **RECOMMEND** that the Maryland Real Estate Commission:

ORDER that the Charges against the Respondent be **UPHELD** and that a **REPRIMAND** be placed on the Respondent's license; and that the Respondent pay a monetary penalty of \$3,500.00; and

ORDER that the Maryland Real Estate Commission Guaranty Fund deny the Claimant's claim; and

ORDER that the records and publications of the Maryland Real Estate Commission reflect this decision.

December 16, 2024
Date Decision Issued



John D. Hart
Administrative Law Judge

JDH/ckc
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