

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

V.

DALTON EILEEN BLAIR

RESPONDENT

AND

THE CLAIM OF NICOLE HINES

CLAIMANT

AGAINST THE MARYLAND

REAL ESTATE COMMISSION

GUARANTY FUND

* BEFORE SUN E. CHOI,
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
*
* OAH No: LABOR-REC-24-24-17900
*
* MREC No: 571-RE-2022
*
*

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated January 29, 2025, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 19th day of February 2025, ORDERED,

A. That the Findings of Fact in the Recommended Decision be, and hereby are, ADOPTED;

B. That the Conclusions of Law in the Recommended Decision be, and hereby are, ADOPTED;

C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

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

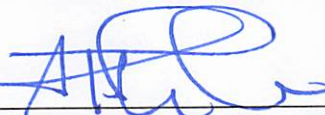
E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties adversely affected by this Proposed Order shall have twenty (20) days from the postmark date of the Order to file written exceptions to this Proposed Order. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 100

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

F. 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 STATE REAL ESTATE COMMISSION

3/3/25
Date

By:  EXECUTIVE DIRECTOR
for Donna Horgan, Commissioner

MARYLAND REAL ESTATE	*	BEFORE SUN E. CHOI,
COMMISSION	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE
DALTON EILEEN BLAIR, ¹	*	OF ADMINISTRATIVE HEARINGS
RESPONDENT	*	
AND	*	
THE CLAIM OF NICOLE HINES,	*	
CLAIMANT,	*	
AGAINST THE MARYLAND	*	
REAL ESTATE COMMISSION	*	OAH No.: LABOR-REC-24-24-17900
GUARANTY FUND	*	MREC No.: 2022-RE-571

* * * * *

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 July 8, 2022, Dr. Nicole Hines (Claimant) filed a Complaint against Dalton Eileen Blair, a licensed real estate salesperson (Respondent), for alleged violations of the Maryland Real Estate Brokers Act (Act)² and the provisions at Code of Maryland Regulations (COMAR) 09.11.03, enacted under the Act. The Claimant also filed a claim (Claim) with the Maryland Real

¹ The Respondent's full name is Dalton Eileen Blair and not Eileen Blair as originally indicated in the transmittal form to the Office of Administrative Hearings (OAH).

² Md. Code Ann., Business Occupations & Professions (Bus. Occ. & Prof.) §§ 17-101 to -702 (2018 & Supp. 2024). All references to the Bus. Occ. & Prof. article are to the 2018 volume, unless otherwise specified.

Estate Commission's (REC) Guaranty Fund (Fund) to recover compensation of \$6,500.00 for an alleged actual loss resulting from an act or omission of the Respondent.

On June 18, 2024, after an investigation, the REC determined that charges against the Respondent were warranted and issued a Statement of Charges (Charges) against the Respondent. The Charges set forth that the Respondent failed to exercise reasonable care and diligence when she communicated to the Claimant that she had ordered and paid for a home warranty policy (or AHW policy) for one year and failed to actually pay for the AHW policy for the home on Applegraph Way in Germantown, Maryland (home or Applegraph Way property). The Charges advised the Respondent that if the charged violations were substantiated, the REC could impose a reprimand, suspension, revocation and/or a monetary penalty.

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. On July 3, 2024, the REC forwarded the case to the OAH to conduct a hearing.³

On November 4, 2024, I held a hearing by video.⁴ Jonathan Phillips, Assistant Attorney General (AAG), Maryland Department of Labor (Department), represented the REC on the charged violations of law against the Respondent. Jessica Kaufman, AAG, Department, represented the Fund. The Claimant was self-represented. The Respondent was self-represented.

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.⁵

³ Bus. Occ. & Prof. § 17-409.

⁴ *Id.* at §§ 17-324(a), 17-408(a); COMAR 28.02.01.20B(1)(b).

⁵ 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 exercise reasonable care and diligence in violation of section 17-532 of the Business Occupations & Professions Article when she communicated to the Claimant that she had ordered and paid for the Claimant's home warranty policy but failed to do so?
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?
4. If so, what amount should be awarded to the Claimant from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the REC:

- REC Ex. 1 - Notice of Remote Hearing, October 24, 2024;
Notice of Remote Hearing, August 19, 2024; and
Subpoenas Issued, September 11, 2024
- REC Ex. 2 - Department, REC, Licensing History of the Respondent, October 28, 2024
- REC Ex. 3 - REC Report of Investigation, (Bates 000001-000237), September 19, 2023
- REC Ex. 4 - Transmittal, July 3, 2024; and
Statement of Charges and Order of Hearing, June 18, 2024

The Fund did not offer any exhibits.

The Claimant did not offer any exhibits.

I did not admit the following exhibits referred to by the Respondent:

- Resp. Ex. 1 - Not offered⁶
- Resp. Ex. 2 - Not offered

⁶ Copies of the Respondent's exhibits were kept in the file for judicial review purposes.

Testimony

The REC presented the testimony of the following witnesses: Lindsey Anderson, Investigator and the Claimant.

The Claimant testified and presented the testimony of the Respondent.

The Respondent testified and presented the testimony of the Claimant.

The Fund did not present the testimony of any witness.

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 real estate salesperson, since October 25, 2018.
2. Prior to this matter, the Respondent has not been charged by the REC.
3. The Charges arise out of the Claimant's residential contract of sale to purchase the Applegraph Way property. The Claimant was the buyer of the home, and the Respondent served as the buyer's agent.
4. The home was listed for sale "as is" because it had been remodeled, and the contract of sale was not contingent upon a home inspection.
5. The Claimant, through the Respondent, made an offer on the home, which was accepted by the homeowner, the seller (contract of sale).
6. The Claimant had an inspection completed for the home, which was not a requirement in the contract of sale of the home.
7. On October 23, 2021, the Respondent wrote to the Claimant via email, "Hi Nicole, I have ordered the home warranty and paid for it. Please look at your contract of sales page 2, and number 10. Thanks."⁷

⁷ REC Ex. 3, at 000178.

8. The contract of sale page two, number ten states, “10. HOME WARRANTY: Yes. Home warranty policy paid for and provided at Settlement by Buyer...Cost not to exceed \$545.00.”⁸

9. On July 8, 2022, the Claimant filed a Complaint against the Respondent.

10. On July 8, 2022, the Claimant filed a Claim for reimbursement from the Fund, in the amount of \$6,500.00.

11. An investigation was conducted concerning the allegations contained in the Complaint.

12. On June 18, 2024, the REC determined that Charges against the Respondent were warranted.

13. On June 18, 2024, the REC determined that the Claimant was entitled to a hearing on her Claim against the Fund.

DISCUSSION

Regulatory Charges

The REC contended in its Charges that the Respondent violated, and is subject to, section 17-532 of the Business Occupations and Professions Article, which provide,

(b) In general. – (1) A licensee shall:
(vi) exercise reasonable care and diligence.⁹

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.¹⁰ 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

⁸ *Id.* at 000123.

⁹ Bus. Occ. & Prof. § 17-532(b)(1)(vi) (Supp. 2024).

¹⁰ State Gov’t § 10-217 (2021); COMAR 28.02.01.21K.

evidence is considered.¹¹ 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.¹²

The Parties' Position Regarding the Regulatory Charges

The REC asserted that the regulatory case arose from a real estate transaction that occurred on November 22, 2021. The Respondent informed the Claimant via email that a home warranty policy had been ordered and paid for on the Claimant's behalf. However, it later came to light that the Respondent had not, in fact, made the payment for the home warranty policy as communicated. While the Respondent contended that she made an honest mistake, REC contended that her mistake nonetheless constituted the Respondent's failure to exercise reasonable care and diligence in fulfilling the Respondent's responsibilities to the Claimant.

The Respondent contended that the email that she sent to the Claimant stating that she paid for the home warranty policy was an error, an honest mistake on her part, because she failed to review what she wrote before sending it.

The Claimant, on the other hand, contends that the Respondent made repeated statements that she provided her clients with a home warranty policy as a gift, but failed to do so in her case, which resulted in losses consisting of expenses for repairs out of pocket and to purchase a home warranty policy.

The Fund did not have a position regarding the REC Charges.

Merits of the Regulatory Charges

Lindsey Anderson is a Licensing and Regulatory Investigator II employed by the Department, a position she has held for over two years. Her duties include coordinating and conducting interviews of the complaints, respondents, and witnesses, as well as preparing reports for the REC. In the course of her duties, Ms. Anderson investigated this case involving the

¹¹ *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

¹² COMAR 28.02.01.21K(1), (2)(a).

Respondent. Ms. Anderson testified that her investigation began on July 7, 2022, when the Claimant alleged that the Respondent failed to gift her a year-long home warranty policy.¹³ Ms. Anderson contacted the Respondent and conducted an interview, probing into the actions alleged in the Claimant's complaint. Ms. Anderson also obtained and gathered numerous exhibits connected to her investigation. After reviewing the written responses from the Respondent, the Respondent's broker, and the original Complaint, Ms. Anderson drafted an investigation report detailing her findings.¹⁴ The investigation report is a 238-page document that includes all of the materials she used in her investigation. In reviewing the investigation report, Ms. Anderson conducted a comprehensive investigation into the matter, demonstrating thoroughness and attention to detail. There is no reason to question the credibility of her testimony. Her notes and interviews with all parties involved were meticulously detailed and remain uncontested. Ms. Anderson determined based on her investigation, "this is referred for review and appropriate disposition to the Commission."¹⁵

The REC called the Respondent to testify next. This is the Respondent's first complaint against her from the REC since she obtained her license on October 25, 2018.¹⁶ The Respondent testified that she was the buyer's agent for the Claimant in a real estate transaction that closed on November 22, 2021.¹⁷ She acknowledged that she sent an email to the Claimant on October 23, 2021.¹⁸ The Respondent explained that she made a mistake by sending that email to the Claimant without reading it. She emphasized that while she ordered the home warranty policy, it was going to be paid for at the closing of the home by the buyer, the Claimant.¹⁹

¹³ REC Ex. 3, at 000001.

¹⁴ See REC Ex. 3.

¹⁵ REC Ex. 3, at 000023.

¹⁶ Findings of Fact (FOF) Nos. 1 and 2.

¹⁷ FOF No. 3.

¹⁸ FOF No. 7.

¹⁹ Respondent's testimony.

The Respondent reiterated that the email she sent stating that she had paid for the home warranty was a mistake. She acknowledged that, had she exercised reasonable care, she would not have sent the email and that the email was an inaccurate representation of the situation. In her view, the error stemmed from a lack of attention to detail, and she characterized it as a mistake on her part, acknowledging that she should have been more careful in communicating that the payment had not been made. At a minimum, she recognized that it was a failure to properly exercise reasonable care and duty in the matter.

Written communications hold significant weight, and the Respondent's written communication via email clearly conveyed to the Claimant that she had paid for the home warranty policy even though there is a reference to the contract of sale.²⁰ Based on the evidence and the Respondent's admission to such, it appears that the Respondent did genuinely make a mistake. Based on the record before me, I conclude that the Respondent violated the statute charged.

Disciplinary Sanction

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

(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:

(32) violates any other provision of this title.²¹

In addition, 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;

²⁰ FOF No. 7.

²¹ Bus. Occ. & Prof. § 17-322(b)(32) (Supp. 2024).

- (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.²²

The REC recommended a reprimand be issued against the Respondent in light of the circumstances. The Claimant stated that she did not want to ruin the Respondent's career and did not want to see the Respondent's license suspended or revoked.

I concur with both the Real Estate Commission (REC) and the Claimant that a reprimand is the most appropriate sanction in this matter. This case represents the Respondent's first complaint filed against her by the REC. Regarding the issue of a monetary penalty, the nature and impact of the Respondent's violation were not severe. The Claimant was able to utilize the AHW policy and initially was unaware of who had paid for it. Later, upon discovering that the policy had been canceled, the Claimant purchased another one. Additionally, the Respondent appeared to use the terms "offer" and "paid" interchangeably during her testimony. While testifying, she initially stated that she had paid for the policy but then corrected herself, clarifying that she had ordered it instead. The evidence established that the Respondent's confusion of the use of "offer" and "paid" interchangeably demonstrates her good faith belief that her written communication to the Claimant was an honest mistake. Given the record before me and the shared position of the REC and the Claimant, I find that imposing a monetary penalty would not be appropriate in this matter, and I therefore recommend a reprimand as the sole sanction.

Fund Claim

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

²² *Id.* at § 17-322(c) (Supp. 2024).

licensee “means a licensed real estate broker, a licensed associate real estate broker, or a licensed real estate salesperson.”²³

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.²⁴

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.²⁵

The amount recovered for any claim against the Fund may not exceed \$50,000.00 for each claim.²⁶

²³ *Id.* at § 17-101(k) (Supp. 2024).

²⁴ *Id.* at § 17-101(l) (Supp. 2024).

²⁵ *Id.* at § 17-404(a)(2).

²⁶ *Id.* at § 17-404(b).

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.²⁷ 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.²⁸

The Parties’ Position Regarding the Fund Claim:

The Claimant contended that if Respondent followed through on her offer to purchase the home warranty policy, as initially promised, the Claimant would not have incurred any actual losses in the amount of \$1,665.00.

The Respondent asserted that she never offered to provide the Claimant with a home warranty policy, that the payment of the AHW policy was the responsibility of the Claimant as the buyer in the contract of sale. As such, she is not responsible for the Claimant’s alleged losses.

The Fund argued that the Claimant failed to establish that she sustained an actual loss resulting from the Respondent’s acts or omissions that would constitute fraud or misrepresentation. Additionally, the Fund asserted that the Claimant did not provide documentary evidence to substantiate her Claim of actual losses amounting to \$6,500.00, which was later reduced to \$1,665.00 during the hearing. Of this amount, the Claimant would have been responsible for a \$75.00 deductible, as well as \$220.00 for expenses that would not have been covered under any home warranty policy.

The REC did not have a position regarding the Fund Claim.

Analysis

The Claimant testified about her interactions with the Respondent during the home purchase process. She recalled that the Respondent consistently assured her that she provided her clients with a home warranty policy, emphasizing that the warranty would cover all issues for one year. These assurances reassured the Claimant, particularly because the property was sold

²⁷ *Id.* at § 17-407(e); State Gov’t § 10-217 (2021).

²⁸ *Coleman*, 369 Md. at 125 n.16 (2002).

“as is,” and she trusted that the home warranty would address any potential concerns. The Claimant emphasized that she relied entirely on the Respondent’s representations. She further testified that, despite her initial hesitancy regarding the home warranty, the Respondent downplayed her concerns by suggesting that the recent remodeling of the home rendered a warranty unnecessary. The Claimant also stated that she did not feel the need to inquire further about the warranty, such as its recordation or other specifics, as these details had been managed by the Respondent. According to the Claimant, the AHW policy was a critical factor in her decision to move forward with the purchase. She had no reason to believe that the Respondent had changed her mind regarding her offer of the home warranty policy, even as their relationship later deteriorated.

During cross examination, the Claimant clarified the breakdown of her actual losses. The Claimant acknowledged that the \$75.00 paid is the initial deductible under the home warranty for an estimate, and the \$220.00 out-of-pocket repair would have been her responsibility regardless of whether the AHW policy had remained active. As such, she does not consider these amounts to be actual losses attributable to the Respondent. However, she identified the following expenses as losses directly tied to the Respondent’s failure to fulfill the promise to pay for the home warranty policy: \$545.00 for the first-year home warranty, \$675.00 for ceiling repairs, light installation, and painting (though she lacks documentation), and \$150.00 for a light purchased from Amazon (also undocumented). Based on this calculation, the Claimant asserts that her total actual loss amounted to \$1,370.00 instead of \$1,665.00.

The Claimant provided additional details regarding her expenses and the home warranty policy. She stated that she initially utilized the AHW policy that was in place for certain items before later discovering that the AHW policy had been canceled. Although she was unaware of who had paid for the AHW policy, she did use it a few weeks after purchasing her home to

address some issues identified in the inspection report. When she attempted to use the AHW policy again to resolve a problem with her freezer and ice buildup, she was informed by telephone that the AHW policy had been canceled. Upon learning of the cancellation, the Claimant purchased a new home warranty policy with Choice Home Warranty (CHW policy) for \$545.00. Despite this, the Claimant did not present any invoices or documentation related to either the cancellation of the AHW policy or and/or the purchase of the CHW policy.

The Claimant also addressed additional expenses. She stated that the \$675.00 ceiling repair, painting, and light installation occurred following ceiling repair work. While she acknowledged that a receipt for this work was not submitted at the hearing, she indicated she could provide it. The repairs required cutting out, replacing, and painting the ceiling, which she paid for out of pocket because she did not believe either warranty would cover the work. She clarified that her decision to repaint in a different color was a personal choice but maintains the expense is connected to the repair. Lastly, the Claimant referenced a \$150.00 light purchased from Amazon but admitted she did not have a receipt or invoice for it and could not confirm the date of the purchase. She acknowledged that documentation for several expenses included in her Claim was not available during the hearing but expressed her intention to provide receipts where possible.²⁹

Without more, there is no evidence presented that rises to the level of fraud or misrepresentation by the Respondent. In addition, despite the Claimant's testimony, there are gaps in the evidence. The Claimant did not provide sufficient documentation, such as invoices or receipts for all her out-of-pocket expenses. Moreover, she was unable to prove that the original AHW policy was canceled, nor could she substantiate certain expenses, such as the purchase of the CHW policy, the ceiling repair or the kitchen light purchase. Given these deficiencies, I find

²⁹ The Claimant did not request that I keep the record open for her to submit the receipts.

that the Claimant has not sufficiently proven her actual losses. Therefore, I conclude that the Claimant has failed to establish a valid Claim for reimbursement from the Fund.

PROPOSED CONCLUSIONS OF LAW

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

1. The Respondent failed to exercise reasonable care and diligence, in violation of section 17-532(b)(1)(vi) of the Business Occupations & Professions Article.³⁰
2. The Respondent is subject to the disciplinary sanctions of a reprimand.³¹
3. The Respondent is not subject to a monetary penalty.³²
4. The Claimant failed to demonstrate by a preponderance of the evidence that the Respondent's act or omission rose to the level of fraud or misrepresentation.³³
5. The Claimant failed to demonstrate by a preponderance of the evidence that she 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.³⁴

RECOMMENDED ORDER

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

1. The charged violation of section 17-532(b)(1)(vi) of the Business Occupations and Professions Article be **UPHELD**;
2. The Respondent be **REPRIMANDED**;
3. The Maryland Real Estate Commission Guaranty Fund **DENY** the Claimant's Claim; and

³⁰ Bus. Occ. & Prof. § 17-532(b)(1)(vi) (Supp. 2024).

³¹ *Id.* § 17-322(b)(32) (Supp. 2024).

³² *Id.* § 17-322(c) (Supp. 2024).

³³ *Id.* § 17-404(a)(2) (Supp. 2024).

³⁴ *Id.* § 17-404(a)(1) (Supp. 2024); COMAR 09.11.01.15.

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

January 29, 2025
Date Decision Issued

SEC/kh
#214905

Sun E. Choi
Sun E. Choi
Administrative Law Judge