

MARYLAND REAL ESTATE COMMISSION

**MARYLAND REAL ESTATE
COMMISSION**

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***OAH NO. DLR-REC-24-14-02314**

v.

***REC NO. 2012-RE-425 G.F.**

**THOMAS A. E. BENNETTS,
Respondent**

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And

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**CLAIM OF ELIZABETH AND
CHRISTOPHER TAYLOR AGAINST THE
MARYLAND REAL ESTATE GUARANTY
FUND**

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OPINION AND FINAL ORDER

This matter came before the Maryland Real Estate Commission (“Commission”) on argument on Exceptions filed by the Respondent, Thomas A. E. Bennetts, to the Proposed Order of August 27, 2014. On July 1, 2014, Administrative Law Judge Marleen B. Miller (“ALJ”) filed a Recommended Decision and Recommended Order in which she recommended that the Respondent’s real estate license be revoked; that the Respondent pay a monetary penalty of \$5,000.00 to the Commission; and that the Maryland Real Estate Guaranty Fund (“Fund”) pay Christopher Taylor, as attorney in fact for Edith Taylor, in the amount of \$19,522.00 for the Respondent’s misconduct.

On August 27, 2014, the Commission issued a Proposed Order that affirmed the Findings of Fact; approved the Conclusions of Law; and adopted the Recommended Order in the Recommended Decision of the ALJ.

A hearing on the Exceptions filed by the Respondent, was held by a panel of Commissioners, consisting of Commissioners J. Nicholas D’Amrosia, Karen Baker, and Marla S.

Johnson on December 17, 2014. Assistant Attorney General Jessica Berman Kaufman represented the Commission. The Respondent was present at the hearing and acknowledged that he had waived representation by counsel. Neither Elizabeth Taylor nor Christopher Taylor, attorney in fact for Edith Taylor, was present at the hearing. The proceedings were electronically recorded.

PRELIMINARY MATTERS

At the Exceptions' hearing, the Respondent attempted, on a number of occasions, to dispute the ALJ's Findings of Fact and to make arguments based on information not set forth in the Findings of Fact. The Respondent did not provide the Commission with a copy of the transcript of the hearing before the ALJ. The Respondent was notified by letter, dated September 25, 2014 that:

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If the party filing exceptions is contesting the factual findings in the Proposed Order, that party must file with the Commission three (3) copies of the transcript of the hearing in OAH Case No DLR-REC-24-14-02314, which was heard before Administrative Law Judge Marleen B. Miller on April 17, 2014. All transcripts must be submitted to the Commission no less than ten (10) days before the scheduled argument hearing.

If the transcript is not received by the Commission at least ten (10) days prior to the hearing, the party will be bound by the factual findings in the Proposed Order, and may only argue that those factual findings do not support the legal conclusion reached....”

The Commission did not permit the Respondent to make arguments against the accuracy of the information contained in the Findings of Fact nor did the Commission permit the Respondent to make arguments based on information which was not contained in the Findings of Fact because the Respondent had failed to provide the Commission with a copy of the transcript of the hearing before the ALJ

SUMMARY OF THE EVIDENCE

On behalf of the Commission, four exhibits, as well as the Office of Administrative Hearings' case folder containing the exhibits entered into the record at the hearing before the ALJ, were entered into the record. A transcript of the hearing before the ALJ was not provided by the Respondent.

FINDINGS OF FACT

The Commission adopts the Findings of Fact recommended by the ALJ.

DISCUSSION

At the Exceptions' hearing, the Respondent alleged that he was improperly denied a postponement of the hearing before the ALJ. He contended that he sought a postponement in order to obtain representation by an attorney at the hearing before the ALJ.

The Commission finds that on March 11, 2014 the Office of Administrative Hearings sent a Notice of Hearing to the parties, scheduling a hearing for 10:00 a.m. on Thursday, April 17, 2014 at the Office of Administrative Hearings' Administrative Law Building in Hunt Valley, Maryland. On March 25, 2014, the Commission filed a motion requesting that the Claimants be permitted to participate in the hearing by telephone because Beth Taylor was then residing in Austin, Texas and Christopher Taylor was then residing in California. On April 1, 2014, the Respondent indicated that he was opposed to that motion and advised that he would be submitting the reasons for his opposition in writing. Nevertheless, the Respondent failed to file any written opposition within the time required by the Code of Maryland Regulations ("COMAR") 28.02.01.12B(3)(a). Instead, on April 9, 2014, the Respondent filed a Request for Postponement of the hearing scheduled for April 17, 2014. As the bases for the postponement request the Respondent asserted that he wished to obtain counsel to represent him; that he needed

more time to review the relevant paperwork, to obtain documents and to issue any necessary subpoenas; and that a “caretaker” required to assist him at the hearing would be out of town “during the Easter Holidays”. The ALJ ruled on the two motions prior to the scheduled hearing. The ALJ granted the Commission’s motion to permit telephone testimony by the Claimants noting that although the Respondent had expressed his oral opposition to a telephone hearing, he had failed to timely file a written opposition setting forth the basis for his objection. The ALJ found, accordingly, that the Respondent had failed to provide good cause to object to the Claimants testifying by telephone as required by COMAR 28.02.01.10B(2). The ALJ denied the Respondent’s motion for postponement noting that COMAR 28.02.01.16C requires that the party requesting a postponement must establish good cause for the postponement, and COMAR 28.02.01.16B requires that documentation be provided to support the request. The ALJ found that the Respondent failed to provide such documentation. The ALJ further concluded that the Respondent had been provided more than adequate time to obtain a lawyer and to review the relevant paperwork. Accordingly, the ALJ found that the Respondent had failed to show good cause for a postponement. (See Commission Exhibit 4.)

The Commission concludes that, for the reasons cited by the ALJ, the ALJ’s decisions to permit testimony by telephone and to deny the Respondent’s request for a postponement of the hearing were proper.

At all relevant times, the Respondent was a licensed real estate broker. FF 1¹. On January 29, 2008, the Respondent entered into an agreement with Cynthia Moses d/b/a/ Keller Williams Metro Realty (“Keller Williams”) to work for Keller Williams as an associate broker. Keller Williams does not perform property management services and the Respondent was not authorized to engage in property management under the Keller Williams name. Instead, Keller

¹ “FF” refers to the ALJ’s Findings of Fact.

Williams only permitted him to offer those services under his own name or the name of his company, BRE Management. FF 2.

On February 26, 2008, Christopher Taylor (who at all relevant times has lived outside Maryland) obtained power of attorney to, among other things, act for and collect sums owed to his mother, Edith Taylor, who, in March, 2009, began residing in assisted living. FF 3.

Having been referred to Keller Williams by his niece, on April 21, 2009, Christopher Taylor entered into a Property Management Agreement (the "Management Agreement") with the Respondent, under the name Keller Williams/BRE Management. Pursuant to the Management Agreement, Mr. Taylor authorized the Respondent to lease and manage his mother's property located at 10108 Parkwood Terrace in Bethesda, Maryland (the "Property"). FF 4. The Respondent failed to advise the Claimants that he had no authority to offer property management services under the Keller Williams name, and Mr. Taylor would not have employed the Respondent had he known his property management services were not being provided by Keller Williams. FF 5.

Under the Management Agreement, the Respondent agreed to rent the Property for a minimum monthly rent of \$2,650.00 and to obtain from any tenant a \$2,750.00 security deposit. The Claimants agreed to pay to the Respondent the following:

A leasing fee of 1% on a one-year lease, 1 ¼% on a two-year lease and 1 ½% on a three-year lease;

A management fee of 10% on all rent received;

A \$300.00 deposit for repairs, with any repairs costing over \$300.00 to be approved by the Claimants; and

An administrative fee of 10% over any amounts billed for repairs, replacement or improvement of the Property. FF 6.

In July 2009, the Respondent leased the Property to Russ and Pati Pendergrass, for a monthly rental fee of \$2,750.00.² FF 7. The Respondent failed to keep the Pendergrasses' security deposit and rental payments in an escrow or trust account, instead depositing those funds into his personal account and commingling that money with other personal or business deposits. FF 8. The Respondent failed to keep the Claimants timely and adequately informed regarding problems with the Property and how he was addressing them. FF 9. Although the Pendergrasses timely paid their rent each month, the Respondent was consistently late in making repairs³ and in forwarding money owed to the Claimants.⁴

The Pendergrasses and a neighbor made repeated complaints to Montgomery County officials regarding the condition of the Property and the Respondent's failure to perform necessary repair work. FF 11. Montgomery County issued numerous citations to the Respondent, personally, because of the following problems with the Property that he failed to adequately address with the Claimants until after the County became involved:⁵

Cracked and missing tiles in the laundry room;

The inability to open the window in the hall bath on the first floor;

Required repairs in the master bathroom;

² Although the Pendergrass lease was not introduced into evidence at the hearing before the ALJ and the documentation which was introduced was contradictory as to whether the monthly rent was \$2,650.00 or \$2,750.00, the Respondent's accounting sheets indicated that he received \$2,750.00 each month from the tenants.

³ Problems with the Property necessitating repairs included, for example, a number of trees that had come down in a storm, a leaking downstairs shower, a leaky skylight, a non-operational dishwasher and disposal and gutters requiring reattachment and cleaning.

⁴ For example, it was not until November 2011 that the Respondent forwarded to the Claimants their portion of rent paid between July and November 2011. Furthermore, despite numerous demands for payment, the Respondent failed to forward to the Claimants any rental proceeds from rental payments he received between November 2011 and April 2012 before Beth Taylor met with him and demanded payment in April 2012.

⁵ The Respondent told the Commission's investigator that he was issued twenty-seven citations and fined \$13,000.00.

Required repair to the sliding glass door in the dining room;

The need to repaint the dining room ceiling;

Required repair or replacement of the roof;⁶

Inadequate air-flow to the dining room and kitchen;

Missing screens;

Missing caulk around the kitchen counter;

Required repair/replacement of the hot water heater;

Required repair/replacement of rotted deck boards;

Required repair/replacement or painting of fencing;

Required repair of the Jacuzzi in the master bathroom;

Required repair of the soffit on the rear roof line;

The need for stationary fans to improve the basement apartment's air flow;

The need to cut branches of trees and bushes near the roof line;

Required repair of the front gate and fenced area around the garbage cans;

Exterminator treatment for termites, pests and ants; and

Repair/replacement of a rotted, lower level kitchen window. FF 12.

When contractors came to perform work on the Property, they complained that they were not being paid by the Respondent. Also, Liberty Home Builders contacted Ms. Taylor directly in an effort to obtain payment for its work. FF 13.

⁶ According to Mr. Taylor, he provided general authorization for repairs to the roof, but did not obtain information from the Respondent so that he could provide specific authorization for any particular amount to be spent for those repairs. Moreover, he testified that the roof work was never completed. The Respondent advised him that the company he had hired to perform the work went out of business. Despite this, the Respondent's accounting indicated that he paid that company, in full, for completion of the roof work.

Without either of the Claimants' permission, the Respondent hired an attorney and paid him a \$1,500.00 retainer, on November 12, 2010, to defend himself against the citations, then held back an additional \$1,600.00 for attorneys' fees he never expended, along with a \$150.00 administrative fee for hiring the attorney.⁷ The citations were resolved on or about December 27, 2010. FF 15.

The Respondent had a stroke in or around December 2009, was hospitalized several times and lost his mother in February 2011 and his sister in July 2011, all of which he used as excuses for his failure to make necessary repairs, to provide a timely/complete accounting and to remit sums owed to the Claimants. FF 16. After approximately January 30, 2010, the Respondent left Keller Williams and, in or around April 2011, he became an associate broker with ERA Pro Realty. In or around January 2013, he became associated with Prudential PenFed Realty. FF 17.

In November 2011, Ms. Taylor and her husband drove to Maryland to meet with the Respondent, who provided an accounting, which revealed that the Respondent, without permission, had withheld \$6,500.00 from amounts to be disbursed to the Claimants for removal of a tree that he claimed was unsafe. FF 18. Because Ms. Taylor's husband works for a landscaping company and is an arborist, he advised the Respondent that he would take care of any tree problems. Nevertheless, the Respondent continued to hold back \$4,000.00 to purportedly deal with issues regarding trees on the Property.⁸ FF 19. The Respondent refused to remit all of the amounts he owed to the Claimants under the Management Agreement without their signing a complete release of any and all claims they might have against him. The

⁷ When Mr. Taylor contacted the attorney, he acknowledged that it was his signature on the \$1,500.00 check made payable to him but that he had no recollection of doing any legal work regarding the Property. When the Respondent was asked why his attorney would have no memory of the case he allegedly worked on, the Respondent replied that he is an elderly man, who might therefore have difficulty remembering details.

⁸ According to Ms. Taylor, her husband performed extensive tree work on the Property.

Claimants acted reasonably in refusing to do so. FF 20. In March 2012, the Respondent stopped operating BRE Management. FF 21.

The Respondent wrote the following checks, presumably for work performed on the Property:⁹

- \$ 700.00 9/2/10 from the Respondent's personal First Union account (#1284) to Mario Sandoval for landscaping work.
- \$3,570.00 10/30/10 to Liberty from the Respondent's personal First Union account (#1288)
- \$1,200.00 10/30/10 to Liberty Home Builder's, Inc. ("Liberty")¹⁰ from the Respondent's personal First Union account (#1289)
- \$3,600.00 10/30/10 to Liberty from the Respondent's personal First Union account (#1294)
- \$3,570.00 10/31/10 to Liberty from the Respondent's personal First Union Account (#1292)
- \$2,610.00 11/12/10 to Liberty from the Respondent's personal First Union Account (#1297)

FF 22.

The Respondent obtained a \$2,610.00 cashier's check from Wachovia, payable to Liberty Homes and/or Reynaldo Campos. FF 23.

The Respondent paid \$7,130.00 to Mr. Taylor, as follows:

- \$2,365.00 9/3/10 by Wachovia cashier's check
- \$2,265.00 11/2/11 from the Respondent's Wachovia personal checking account
- \$2,500.00 11/12/11 from the Respondent's Wachovia personal checking account

FF 24.

⁹ Only the fronts of the checks were admitted into evidence and the Respondent failed to provide the Commission's investigator or the ALJ at the hearing any evidence that the checks were ever issued or negotiated (e.g., the backs of the checks, copies of bank account statements, invoices marked "paid", or testimony from the contractors to whom they were presumably issued for work performed on the Property.

¹⁰ The checks to this company are written to Liberty Home Builders, Liberty Homes, and/or Reynaldo Campos.

In mid-April 2012, the Pendergrasses vacated the Property and were either credited with or obtained the return of their security deposit. FF 25.

On April 12, 2012, the Claimants filed their Complaint against the Respondent and their claim against the Fund. FF 26. The Commission assigned the Complaint to its investigator, Jennifer Grimes, who communicated with the Claimants, Ms. Moses and the Respondent. FF 27. Despite Ms. Grimes' repeated requests for evidence of where the Pendergrasses' security deposit and rent money was deposited and of the Respondent's alleged payment for work performed on the Property, the Respondent failed to provide any more than a one-page Activity Summary for November 2011.¹¹ The Respondent only provided adequate documentation of a total of \$4,193.02 in expenditures he made regarding the Property, detailed as follows:

A total of \$2,200.00 in two separate payments to Liberty prior to November 17, 2010;

\$10.00 to Montgomery County Permitting Service on August 2, 2010;

\$26.24 to Hardware City for an August 26, 2010 purchase of a smoke alarm;

\$31.78 for laundry room light bulbs;

\$125.00 for August 26, 2010 carpet cleaning by Liberty Carpet Service;

\$1,800.00 for August 27, 2010 chimney work by High's Chimney Service, Inc. FF 29.

Based on the results of Ms. Grimes investigation, on January 2, 2014, the Commission issued charges against the Respondent. FF 30.

The Respondent was charged with violation of Sections 17-322 (b) (22), (25), (32) and (33), Business Occupations and Professions Article, *Annotated Code of Maryland* ("Md. Bus. Occ. and Prof. Art.") which provide as follows:

§17-322

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¹¹ The Activity Summary listed no individual withdrawals or deposits, only total amounts.

(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:

(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;

(32) violates any other provision of this title;

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

The Respondent was also charged with failure to comply with the duties that a real estate broker owes to his clients under §§17-532 (c) (1) (v) and (vi) Md. Bus. Occ. and Prof. Art. to account for all trust money received in a timely manner and, in general, to exercise reasonable care and diligence. In addition, the Respondent was charged with violations of Code of Maryland Regulations (“COMAR”) 09.11.01.07 and 09.11.02.01C which provide as follows:

COMAR 09.11.01.07 – Records of Transactions.

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.

COMAR 09.11.02.01 – Relations to the Public

C. 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.

It was undisputed at the hearing before the ALJ that the Pendergrasses (“tenants”) paid timely rent to the Respondent during each month of their occupancy of the subject property between July 2009 and April 2012. At a monthly rental of \$2,750.00 for 33 months, the tenants paid a total of \$90,750.00 to the Respondent, all of which he admittedly commingled in his personal or business account, rather than in an escrow or trust account. The Respondent was entitled under the Management Agreement to deduct 10% of those monthly rentals for his rental management fee, a total of \$9,075.00. He was also entitled to, at most, a 1 ½% leasing fee totaling \$1,361.25. The only additional sum which the Respondent was authorized to retain was a 10% fee for administrative work and supervision related to maintenance. The Respondent received a \$300.00 deposit on maintenance expenses in accordance with the Management Agreement which also provided, in pertinent part, that: “Except in the event of emergencies, expenditures exceeding \$300.00 will be made by Agent only after being authorized to do so by Owner.” It is undisputed that the Respondent obtained estimates and arranged for substantial work to be done on the Property; however it is far less clear to what extent the Respondent obtained authorization from either Claimant for work that cost more than \$300.00; what work had to be performed on an emergency basis without prior authorization; what work was actually performed; and whether and to what extent he paid contractors for their work. As noted by the ALJ, the Respondent only produced to the Claimants, to the Commission’s investigator and/or to the ALJ real proof of payment of \$4,193.02 in maintenance expenses.

Based on the documentation presented at the hearing, the ALJ found that the Respondent was only justified in retaining a maximum of \$15,048.00 which she calculated as follows:

Amounts placed in trust with the Respondent	\$90,750.00	rental payments
Maintenance Deposit	<u>300.00</u>	
Total Money Placed in Trust	\$91,050.00	

Amounts advanced for maintenance/repairs	\$ 4,193.02
10% administrative/supervision fee	419.30
Management Fee	9,075.00
Leasing Fee	<u>1,361.25</u>
Amounts properly retained by Respondent	\$15,048.57

Since the Respondent can only justify retaining \$15,048.57 of the \$91,050.00 placed in trust, the question becomes what happened to the remaining \$76,001.43. The Claimants acknowledged and checks introduced into evidence at the hearing before the ALJ support the Respondent's payment of at least \$7,130.00 to Mr. Taylor. Further, at the time of the hearing before the ALJ, the Respondent admitted that he still retained five months rental totaling \$12,272.00 which he had been unwilling to deliver without a full release. Although the Respondent contended that the unaccounted for funds were properly used for maintenance, repairs and other fees owed to him, he failed to properly document the performance of and payment for such work. The ALJ found that either the Respondent was a very poor record keeper or he intentionally used invoices, estimates and checks which were not negotiated to mislead the Claimants and the Commission's investigator into believing that he had expended large sums of money, which should have been placed in an escrow account, on repairs and maintenance to the Property.

As reflected in the ALJ's Findings of Fact, the Respondent failed to exercise reasonable care and diligence; improperly commingled funds held in trust with his personal funds; and failed to maintain and to have adequate records available for inspection by the Commission. He also demonstrated incompetence and untrustworthiness and failed to properly account for and remit that portion of the Pendergrasses' rental payments placed in his care to which he was not entitled. Thus, the Commission concludes that the Respondent violated Section 17-322(b)(22), Md. Bus. Occ. and Prof. Art. by failing to account for and to properly remit monies which came

into his possession which belonged to the Claimants. The Respondent also violated Section 17-322(b)(25), Md. Bus. Occ. and Prof. Art. by engaging in conduct that demonstrated incompetency and untrustworthiness. The Respondent failed to make a timely accounting of all trust monies received and failed to exercise reasonable care and diligence in violation of Sections 17-532(c)(1)(v) and 17-532(c)(1)(vi), Md. Bus. Occ. and Prof. Art. The Respondent's violations of Sections 17-532(c)(1)(v) and 17-532(c)(1)(vi) also constitute a violation of Section 17-322(b)(32), Md. Bus. Occ. and Prof. Art. Further, the Respondent violated COMAR 09.11.01.07 by failing to maintain adequate records; by co-mingling money belonging to the Claimants with his own funds; and by failing to make his records available for inspection by the Commission. The Respondent also violated COMAR 09.11.02.01C by engaging in practices which could be damaging to the dignity and integrity of the real estate profession. By violating the provisions of COMAR 09.11.01.07 and 09.11.02.01C, the Respondent has also violated Section 17-322(b)(33), Md. Bus. Occ. and Prof. Art.

Instead of or in addition to reprimanding a licensee or suspending or revoking a license, the Commission may impose a penalty not exceeding \$5,000 for each violation. 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.

Section 17-322(c)(1) and (2), Md. Bus. Occ. and Prof. Art.

The Commission finds that the Respondent does not have a history of prior violations; however, his violations of the law and of regulations cannot be justified and are very serious. The

Respondent caused harm to the Claimants by failing to keep adequate records of the funds which were expended to perform repairs and maintenance on the rental property and by failing to properly account for and remit that portion of the Pendergrasses' rental payments which were due to the Claimants. The Respondent's actions in this matter have also harmed the reputation and dignity of the real estate profession with the public. The Respondent has also shown a lack of good faith in his dealings with the Claimants and by his failure to provide adequate evidence of where the Pendergrasses' security deposit and rent money was deposited and of his alleged payments for work on the property when that evidence was repeatedly requested by the investigator for the Commission.

Based upon its evaluation of the relevant factors set forth in Section 17-322(c)(2), Md. Bus. Occ. and Prof. Art., the Commission concludes that the revocation of all real estate licenses held by the Respondent, Thomas A. E. Bennetts, and the imposition of a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) are appropriate sanctions in this case.

Claims for reimbursement from the Fund are governed by Section 17-404, Md. Bus. Occ. and Prof. Art., which states, in pertinent part:

§17-404

(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;

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

(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.

With respect to claims against the Fund, COMAR 09.11.03.04 and 09.11.01.18 further provide:

COMAR 09.11.03.04

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 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.

COMAR 09.11.01.18

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.

The first issue to be resolved in regard to the claim against the Fund relates to whether both Claimants are parties in interest. The Commission concurs with the ALJ's finding that the Management Agreement and February 26, 2008 General Power of Attorney and Designation of

Guardian of Edith S Taylor indicate that the only party in interest is Christopher Taylor, as attorney in fact for Edith Taylor. Although Elizabeth Taylor is listed as an alternative on the Power of Attorney, she lacks standing to pursue a claim against the Fund so long as her brother, Christopher Taylor, is available to serve.

In regard to the requirements which must be met in order to successfully pursue a claim against the Fund, it is undisputed that the Respondent was a licensed real estate broker involved in a transaction relating to real estate (the Property) located in Maryland. The claim of the Claimant, Christopher Taylor, therefore meets the first two of the three requirements of the law necessary to recover a claim against the Fund. To prove entitlement to recovery from the Fund, the Claimant must prove that he incurred an actual loss based on the Respondent's acts or omissions, in which the Respondent obtained money or property by theft, embezzlement, false pretenses, or forgery, or by conduct that constituted fraud or misrepresentation.

Maryland recognizes two types of misrepresentation: fraudulent and negligent. Fraudulent misrepresentation requires proof of scienter, an intent to deceive the other party. *Martens Chevrolet, Inc. v. Seney*, 292 Md. 328, 333 (1982), quoting *Cahill v. Applegarth*, 98 Md. 493 (1904). Maryland also recognizes negligent misrepresentation. Negligent misrepresentation exists when all five of the following are present:

- (1) the defendant, owing a duty of care to the plaintiff, negligently asserts a false statement;
- (2) the defendant intends that his statement will be acted upon by the plaintiff;
- (3) the defendant has knowledge that the plaintiff will probably rely on the statement, which, if erroneous, will cause loss or injury;
- (4) the plaintiff, justifiably, takes action in reliance on the statement; and
- (5) the plaintiff suffers damage proximately caused by the defendant's negligence.

Martens Chevrolet, 292 Md. At 337. See also *Lloyd v. General Motors Corporation*, 397 Md. 108, 135 (2007).

The Claimants testified that they were referred to Keller Williams, not to the Respondent. They further testified that they felt confident that they could trust the Respondent to properly manage the Property since he had Keller Williams, a large company, standing behind him. Ms. Moses, Keller Williams's president, testified that the company's January 29, 2008 agreement with the Respondent showed that the Respondent was not authorized to provide property management services in the Keller Williams' name. Despite his lack of authorization to provide management services under the Keller Williams' name, the Respondent failed to advise the Claimants that he, not Keller Williams, would be managing the Property. Further, the Respondent even included the Keller Williams name in the Management Agreement, without explaining that only advertising for and obtaining a tenant for the Property would be performed by Keller Williams. As a result, the Claimants were misled into believing that the security deposit provided by the Pendergrasses as well as their rental payments would be placed into a Keller Williams escrow account. They were also misled into believing that when the Respondent was unavailable, other Keller Williams staff would be available to manage the Property. Thus, the Commission finds that the Respondent, who owed a duty of care to the Claimants, misled them with the intention that they would utilize property management services he would provide. The Commission also finds that the Respondent knew that the Claimants would probably rely upon his misrepresentations which could cause them loss. Mr. Taylor reasonably relied upon the Respondent's misrepresentations to his financial detriment. Thus, the Commission concludes that the Respondent, at most, committed fraud, and, at least, negligently misrepresented the nature of his relationship with Keller Williams to the Claimants which resulted in the loss of funds paid by the Pendergrasses as rent.

Mr. Taylor, as attorney in fact for his mother, is entitled to recovery from the Fund of the “actual monetary loss” he incurred. Although the Respondent failed to prove that he had expended all of the sums he contended he spent for work on the Property, Mr. Taylor who bears the burden of proof on his claim, only provided proof of the following actual monetary losses:

Amount the Respondent admitted is owed for five months’ rent	\$12,272.00
Money wrongfully withheld for tree work	4,000.00
Money wrongfully paid and withheld for unauthorized legal fees	<u>3,250.00</u>
Actual Monetary Loss	\$19,522.00

CONCLUSIONS OF LAW

Based upon the ALJ’s Findings of Fact and the foregoing Discussion, the Commission concludes, as a matter of law:

1. The Respondent, Thomas A. E. Bennetts, violated Section 17-322 (b) (22), Md. Bus. Occ. and Prof. Art. by failing to account for and to properly remit monies which came into his possession which belonged to another person.
2. The Respondent, Thomas A. E. Bennetts, violated Section 17-322 (b) (25), Md. Bus. Occ. and Prof. Art. by engaging in conduct that demonstrated incompetency and untrustworthiness.
3. The Respondent, Thomas A. E. Bennetts, violated Sections 17-532 (c) (1) (v) and 17-532 (c) (1) (vi), Md. Bus. Occ. and Prof. Art. by failing to make a timely accounting of all trust monies and by failing to exercise reasonable care and diligence.
4. The Respondent, Thomas A. E. Bennetts’ violations of Sections 17-532 (c) (1) (v) and 17-532 (c) (1) (vi), Md. Bus. Occ. and Prof. Art. also constitute a violation of Section 17-322 (b) (32), Md. Bus. Occ. and Prof. Art.
5. The Respondent, Thomas A. E. Bennetts, violated COMAR 09.11.01.07 by failing to

maintain adequate records; by co-mingling money belonging to another person with his own funds; and by failing to make his records available for inspection by the Commission.

6. The Respondent, Thomas A. E. Bennetts, violated COMAR 09.11.02.01C by engaging in practices which could be damaging to the dignity and integrity of the real estate profession.

7. The Respondent, Thomas A. E. Bennetts' violations of COMAR 09.11.01.07 and COMAR 09.11.02.01C constitute violations of Section 17-322 (b) (33), Md. Bus. Occ. and Prof. Art.

8. The Respondent, Thomas A. E. Bennetts, is subject to sanctions for his conduct and revocation of all real estate licenses which he holds and the imposition of a civil penalty in the amount of \$5,000.00 are appropriate sanctions. Section 17-322 (c), Md. Bus. Occ. and Prof. Art.

9. The Claimant, Christopher Taylor, as attorney in fact for Edith Taylor, has established an "actual loss", due to the Respondent's misconduct, recoverable from the Maryland Real Estate Guaranty Fund in the amount of \$19,522.00. Section 17-404, Md. Bus. Occ. and Prof. Art.

ORDER

The Exceptions of the Respondent, Thomas A. E. Bennetts, having been considered, it is this one day of February, 2015, by the Maryland Real Estate Commission, **ORDERED:**

1. That the Respondent, Thomas A. E. Bennetts, violated Sections 17-322 (b) (22), (25), (32), and (33) and Sections 17-532(c) (1) (v) and 17-532 (c) (1) (vi), Md. Bus. Occ. and Prof. Art. and COMAR 09.11.01.07 and 09.11.02.01C;

2. That all real estate licenses held by the Respondent, Thomas A. E. Bennetts, be **REVOKED**;

3. That the Respondent, Thomas A. E. Bennetts, be assessed a civil penalty in the amount of **Five Thousand Dollars (\$5,000.00)** which shall be paid within thirty (30) days of the date of this Order;

4. That the Claimant, Christopher Taylor, as attorney in fact for Edith Taylor, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of **Nineteen Thousand Five Hundred Twenty-two Dollars (\$19,522.00)**;

5. That the Respondent, Thomas A. E. Bennetts, shall be ineligible to hold a real estate license until the civil penalty is paid in full and the Maryland Real Estate Guaranty Fund is reimbursed, including any interest that is payable under the law; and

6. That the records and publications of the Maryland Real Estate Commission reflect this decision.

MARYLAND REAL ESTATE COMMISSION

By: SIGNATURE ON FILE

Note: A judicial review of this Final Order may be sought in the Circuit Court of Maryland in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.