

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM	*	BEFORE DEBORAH H. BUIE,
OF THELMA B. THOMPSON	*	ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND REAL	*	OF THE MARYLAND OFFICE OF
ESTATE COMMISSION GUARANTY	*	ADMINISTRATIVE HEARINGS
FUND FOR THE ALLEGED	*	OAH No: DLR-REC-22-14-18568
MISCONDUCT OF	*	REC CASE NO: 008-RE-2014 GF
SHAHRAZAD COOPER	*	

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated December 18, 2014, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 20th day of February , 2015,

ORDERED,

- A. That the Findings of Fact in the Recommended Decision be, and hereby are, AFFIRMED;
- B. That the Conclusions of Law in the Recommended Decision be, and hereby are, APPROVED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

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

MARYLAND STATE REAL ESTATE COMMISSION

SIGNATURE ON FILE

2/20/15
Date

By: _____
Anne S. Cooke, Commissioner

IN THE MATTER OF THE CLAIM OF	* BEFORE DEBORAH H. BUIE,
THELMA B. THOMPSON,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND REAL	* OF ADMINISTRATIVE HEARINGS
ESTATE GUARANTY FUND,	* OAH No. DLR-REC-22-14-18568
FOR THE ALLEGED MISCONDUCT	* REC No. 14-RE-008GF
OF SHAHRAZAD COOPER	*

* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On July 3, 2013, Thelma B. Thompson (Claimant) filed a claim with the Maryland Real Estate Guaranty Fund (Fund), established by the Maryland Real Estate Commission (REC), for reimbursement of actual losses in the amount of \$28,400.00, allegedly suffered as a result of the misconduct of Shahrazad Cooper (Respondent), a licensed real estate salesperson at relevant times.¹ On May 27, 2014, the REC transmitted the case to the Office of Administrative Hearings (OAH) for a contested case hearing.

On October 1, 2014, I conducted a hearing at the Department of Agriculture in Annapolis, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-407(c)(2)(ii) (2010). The

¹ The REC revoked the Respondent's license on November 19, 2013.

Claimant was present and represented herself. Kris King, Assistant Attorney General, represented the Fund. The Respondent failed to appear at the hearing.

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings of the Department of Labor, Licensing and Regulation (DLLR), and the Rules of Procedure of the OAH govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); Code of Maryland Regulations (COMAR) 09.01.03; 09.11.03; and 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund?
2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following documents into evidence on behalf of the Claimant:

- Cl. #1. October 2014 Payment Coupon for University Towers Condominium
- Cl. #2. September 18, 2014 Mortgage Bill
- Cl. #3. 2011 1099 tax form for Lisa Thompson
- Cl. #4. Annual Statement January 2011 through January 2012
- Cl. #5. February 8, 2012 Condominium/Cooperative Dwelling Lease
- Cl. #6. Emails from Respondent to Claimant between Dec. 2010 and Dec. 2011
- Cl. #7. Receipts for three new AC units Jan/Feb/March 2011
- Cl. #8. Emails between Respondent and a tenant, January-May 2012
- Cl. #9. Annual Statement for Oct/Nov/Dec 2009

I admitted the following documents into evidence on behalf of the Fund:

GF #1. June 6, 2014 Notice of Hearing, with certified mail receipts attached

GF #2. May 20, 2014 Order for Hearing

GF #3. Respondent's Licensing History printed September 30, 2014

GF #4. Real Property Data Search printed September 30, 2014

GF #5. July 3, 2013 Complaint and Guaranty Fund Claim

GF #6. August 15, 2013 REC letter to Respondent

The Respondent was not present and no exhibits were offered on her behalf.

Testimony

The Claimant testified on her own behalf and presented testimony from her daughter, Lisa Thompson. The Fund did not offer any testimony.

FINDINGS OF FACT

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

1. At all times relevant to this matter, the Respondent was a licensed real estate salesperson.
2. The Respondent's license was terminated on October 5, 2013, and revoked on November 19, 2013.
3. The Claimant is co-owner, with her daughter, Lisa Thompson (Lisa), of a property located at 1121 University Boulevard, Apt. 1305, Silver Spring, Maryland (the Property).

Sometime in 2009, the Claimant and Respondent, in her capacity as a salesperson for I Sell Houses Realtors, LLC and an agent for SMD & Associates LLC, entered into a property management agreement (the Management Agreement). The Management Agreement was entered into verbally and never transferred to writing but it directed the Respondent to rent, lease, operate and manage the Claimant's Property.

4. It was agreed that the apartment would rent for \$1,800.00 and a security deposit of \$1,800.00 would be collected from any prospective tenant. Initially, beginning in 2009, and continuing throughout the next year (2010), the Respondent collected monthly rent and performed all of her duties as property manager to the Claimant's satisfaction. The Respondent, however, was difficult to contact and almost never responded to messages left as voice mail.
5. The Claimant was paying condo fees in the amount of \$1,100.00 directly to the Property and she was making timely mortgage payments to SunTrust.
6. Beginning in April 2011, the Claimant stopped receiving monthly rent and the Respondent was unreachable by telephone or by email. On an unknown date in April 2011, Lisa visited the Property to see who the tenant was. A woman answered the door but would not let Lisa enter.
7. Thereafter, no monthly rent was received from the Respondent. The condominium management office informed the Claimant that its records indicated that the Property was occupied by a tenant named Mr. Franklin. Mr. Franklin was the tenant for ten months, from April 2011 until January 2012; he was paying \$1,600.00 in rent. None of those monies, a total of \$16,000.00 were given to the Claimant.
8. After Mr. Franklin moved, the Claimant got access to the Property, sometime in February 2012, and observed that each of the three bedrooms contained personal property of a different resident. It appeared as if the Respondent was renting each bedroom separately.
9. From February 2012 through March 2012, three boarders shared the Property and paid rent to the Respondent. None of the rent for those two months was given to the Claimant.

10. The condominium management performed routine occupancy checks of all units. The Property was occupied from April 2011 through August 2012.
11. In March 2012, one tenant, E. Twyman, AKA Greenidge, gave the Respondent a security deposit in the amount of \$1,800.00 to be held in escrow for tenancy beginning April 2012. In addition, Ms. Twyman paid rent in the amount of \$1,800.00 from April 2012 through August 2012 (some of which came from government subsidy).
12. The Respondent did not give the security deposit or the five months of rent to the Claimant, a total of \$10,800.00 (\$9,000.00 plus \$1,800.00).

DISCUSSION

A person may recover compensation from the Fund for an actual loss based on an act or omission that occurs in the provision of real estate brokerage services by a licensed real estate broker or licensed real estate salesperson that involves a transaction related to real estate located in the State. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(i), (ii) (2010). For misconduct to be compensable, the act or omission must constitute either theft, embezzlement, false pretenses, forgery, fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(2)(iii), 17-402(c) (2010); COMAR 09.11.03.04. At a hearing concerning a claim against the Fund, the burden of proof shall be on the claimant to establish the validity of the claim. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e) (2010). The REC shall order payment of a claim by the Fund for the actual monetary loss, up to \$50,000.00, suffered by the claimant. Md. Code Ann., Bus. Occ. & Prof. § 17-410(a), (b) (Supp. 2014).

Two categories of acts or omissions may give rise to an actual loss. In the first, money or property is obtained by a licensee by theft, embezzlement, false pretenses or forgery. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(1). The second category involves a licensee's

act or omission that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(iii)(2); COMAR 09.11.03.04B(1).

The statute includes the following relevant definitions at section 17-101 of the Business Occupations and Professions Article:

(a) *In general.*- In this title the following words have the meanings indicated.

...

(j) *Licensed real estate salesperson.*- “Licensed real estate salesperson” means, unless the context requires otherwise, a real estate salesperson who is licensed by the Commission to provide real estate brokerage services on behalf of a licensed real estate broker with whom the real estate salesperson is affiliated.

...

(l) *Provide real estate brokerage services.*- “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;

...

(m) *Real estate.*-

(1) “Real estate” means any interest in real property that is located in this State or elsewhere.

Md. Code Ann., Bus. Occ. & Prof. § 17-101 (2010).

COMAR 09.11.03.04 addresses claims against the guaranty fund as follows:

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

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

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

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

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

The essential facts in this proceeding are not in dispute. The Claimant executed an oral property management and leasing agreement with the Respondent to lease and manage the Claimant's Property. The Respondent secured tenants, sometimes with written lease agreements and sometimes without, as the Claimant's agent. Pursuant to those leases, she collected rent and one known security deposit. These undertakings constituted the performance of real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. § 17-101(l).

There is no dispute that the Respondent was licensed by the REC at relevant times and that the transactions in question involved real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. § 17-101(l). The Respondent's failure to remit rents and place the security deposit in an escrow account amounted to theft of the Claimant's money, and she is therefore entitled to compensation from the Fund for her actual loss in that regard. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(2), 17-402(c); COMAR 09.11.03.04.

The evidence established that from April 2011 through January 2012 (ten months), the Respondent collected \$1,600.00 per month in rent payments from tenant Franklin, but failed to remit any portion to the Claimant for each of those months, as required by the Management Agreement. The evidence also establishes that for two months, three distinct individuals were paying for a bedroom in the three-bedroom Property. No evidence of the amount each was paying was presented but the Fund asked that I infer that the amount collected by the Respondent was \$1,600.00 per month since that was the amount the previous tenant was paying. I find that to be a reasonable measure and conclude that the Respondent collected \$3,200.00 for the months of February and March 2012. Finally, the evidence is undisputed that the Respondent collected a security deposit from tenant Twyman in the amount of \$1,800.00 as well as \$1,800.00 of

monthly rent payments from April 2012 through August 2012 (five months), for a total of \$9,000.00.

The Claimant seeks reimbursement of the full rental amounts, as well as the security deposit. The Respondent did not appear at the hearing and, therefore, there is no evidence to rebut the Claimant's assertions. The Fund asked that I determine that an award is appropriate. Accordingly, I recommend that the Claimant be awarded reimbursement from the Fund in the amount of \$28,200.00 for theft of rents collected by the Respondent, plus \$1,800.00 for theft of the security deposit, for a total of \$30,000.00.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude that the Claimant is entitled to reimbursement from the Real Estate Guaranty Fund in the amount of \$30,000.00 for actual losses resulting from the Respondent's theft. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a)(2)(iii)(1), 17-410(b)(1) (2010); COMAR 09.11.01.18; 09.11.03.04.

RECOMMENDED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I hereby **RECOMMEND** that the Maryland Real Estate Commission: **ORDER** that the Claimant's claim against the Maryland Real Estate Guaranty Fund be **ACCEPTED** in the amount of \$30,000.00; and that it further, **ORDER** that the records and publications of the Maryland Real Estate Commission reflect its final decision.

SIGNATURE ON FILE

December 18, 2014
Date Issued

Deborah H. Buie
Administrative Law Judge

DHB/lh
153486

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
FIRST CLASS MAIL

February 20, 2015

Ms. Thelma Thompson
1568 Star Stella Drive
Odenton, Maryland 20724

Ms. Shahrazad M. Cooper
14934 Hydrus Road
Silver Spring, Maryland 20906

RE: In the Matter of the Claim of Thelma B. Thompson against the Maryland Real Estate Commission Guaranty Fund for the Alleged Misconduct of Shahrazad Cooper
Case No. 008-RE-2014 GF

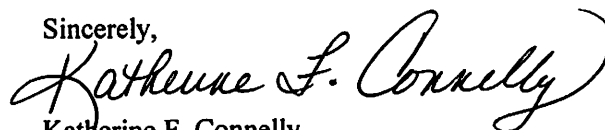
Dear Ms. Thompson and Ms. Cooper:

Enclosed is your copy of the Proposed Order of the Commission issued **In the Matter of the Claim of Thelma B. Thompson against the Maryland Real Estate Commission Guaranty Fund for the Alleged Misconduct of Shahrazad Cooper** heard by an Administrative Law Judge on October 1, 2014.

The Claimant(s) and/or Respondent(s) have the right to file Exceptions to the Proposed Order and to present Arguments to the Commission. Written exceptions to the Proposed Order or a Request to Present Arguments must be filed with the Commission within 20 days of the postmark date of this letter enclosing the Proposed Order.

Should the Claimant(s) and/or Respondent(s) fail to make his and/or their Exceptions and Request to Present Arguments known to the Commission within the time specified, the Proposed Order of the Commission shall be deemed final 20 days after the postmark date on this letter and attached Proposed Order. An appeal of the Proposed Order must be filed within 30 days of the date on which the Proposed Order becomes final and may be sought in the Circuit Court of Maryland in the county in which the applicant for judicial review resides or has his principal place of business, or in the Circuit Court for Baltimore City. For more detailed information on the appeal process, please see Section 10-222, State Government Article, Annotated Code of Maryland and Maryland Rules of Procedure 7-200 through 7-210. You should also be aware that in the event you decide to file an appeal, you will be responsible for obtaining and paying for a copy of the transcript of the hearing before the Office of Administrative Hearings. You should contact the Office of Administrative Hearings to determine which reporting service will be able to provide you with the transcript.

Sincerely,



Katherine F. Connelly
Executive Director

KFC/bai
Enclosure: Copy of Proposed Order