

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM	*	BEFORE GWENLYNN D'SOUZA,
OF ERICH SMITH	*	ADMINISTRATIVE LAW JUDGE,
CLAIMANT	*	OF THE MARYLAND OFFICE OF
V.	*	ADMINISTRATIVE HEARINGS
THE MARYLAND REAL ESTATE	*	
COMMISSION GUARANTY FUND,	*	
FOR THE ALLEGED MISCONDUCT	*	OAH No: LABOR-REC-22-24-15257
OF MELISSA K. WATTS,	*	MREC NO: 231-RE-2022 G.F.
RESPONDENT	*	

* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated January 24, 2025, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 18th day of January, 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.

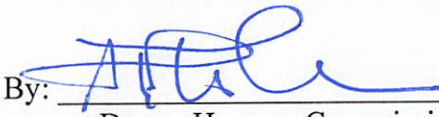

E. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.09 those parties adversely affected by this Proposed Order shall have twenty (20) days from the postmark date of the Order to file written exceptions to this Proposed Order. The exceptions should be sent to the Executive Director, Maryland 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
 Donna Horgan, Commissioner

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM * BEFORE GWENLYNN D'SOUZA,
OF ERICH SMITH * ADMINISTRATIVE LAW JUDGE,
CLAIMANT * OF THE MARYLAND OFFICE OF
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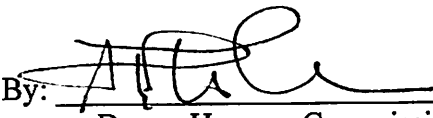
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MARYLAND STATE REAL ESTATE COMMISSION

3/3/25
Date

By:  EXECUTIVE DIRECTOR
For Donna Horgan, Commissioner

IN THE MATTER OF THE CLAIM
OF ERICH SMITH,
CLAIMANT

v.

THE MARYLAND REAL ESTATE
COMMISSION GUARANTY FUND,
FOR THE ALLEGED MISCONDUCT
OF MELISSA K. WATTS,
RESPONDENT

* BEFORE GWENLYNN D'SOUZA,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
*
* OAH No.: LABOR-REC-22-24-15257
* REC No.: 2022-RE-231
*

* * * * *

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 September 29, 2021, Erich Smith (Claimant) filed a claim with the Maryland Real Estate Commission (REC)¹ to recover compensation from the Real Estate Guaranty Fund (Fund) for an alleged actual loss resulting from an act or omission by Melissa K. Watts (Respondent). The REC determined that the Claimant was entitled to a hearing to establish eligibility for compensation and issued a Hearing Order on the claim. On June 3, 2024, the REC forwarded the case to the Office of Administrative Hearings (OAH) for a hearing.

¹ The REC is under the jurisdiction of the Department of Labor (Department).

On October 31, 2024,² I held a hybrid hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408(a) (2018).³ Hope Sachs, Assistant Attorney General, Department, represented the Fund and appeared in person. Erich Smith appeared without representation and participated by video. Both Respondent and her counsel, David G. Mulquin, Esquire, appeared in person.

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 Claimant sustain an actual loss, compensable by the Fund, due to an act or omission of the Respondent that constitutes fraud or misrepresentation in the provision of real estate brokerage services?
2. If so, what amount should be awarded to the Claimant from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Screenshot of receipt for drywall repair, first page, dated September 21, 2021
- Clmt. Ex. 2 - Screenshot of receipt for drywall repair, second page, undated
- Clmt. Ex. 3 - Withdrawn
- Clmt. Ex. 4 - Receipt from RoofPro, dated August 27, 2024, with payment date September 21, 2021

² The hearing was initially scheduled for October 8, 2024, but that hearing date was postponed to consolidate the matter with another case.

³ Unless otherwise specified, all citations to the Business, Occupations, and Profession Article are to the 2018 Replacement Volume.

- Clmt. Ex. 5 - Proposal from RoofPro to the Claimant, dated July 22, 2021
- Clmt. Ex. 6 - Photograph of ceiling showing water damage, taken June 4, 2021
- Clmt. Ex. 7 - Photograph of ceiling showing water damage, taken June 4, 2021

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 - Order appointing Trustee, dated September 28, 2019
- Resp. Ex. 2 - Residential Brokerage Agreement, dated June 2, 2020
- Resp. Ex. 3 - AmeriSpec Inspection Service Report, dated August 1, 2020
- Resp. Ex. 4 - Residential Contract of Sale, dated July 23, 2020
- Resp. Ex. 5 - S & J Roofing LLC Invoice, undated
- Resp. Ex. 6 - Chronology of contract history, undated
- Resp. Ex. 7 - Expenses on comparable property with Stahl as Trustee and Watts as agent, undated
- Resp. Ex. 8 - Email from Claimant to Respondent Watts, dated July 15, 2021, with portion of prior email, undated

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, dated September 19, 2024; Notice of Hearing, dated June 25, 2024; Memorandum, dated July 31, 2024 re: undeliverable mail
- Fund Ex. 2 - Order for Hearing, dated May 20, 2024
- Fund Ex. 3 - REC Complaint Form, dated September 29, 2021
- Fund Ex. 4 - Licensing information for the Respondent, printed September 10, 2024

Testimony

The Claimant testified and presented the testimony of William Maldonado.

The Respondent testified and presented no other witnesses.

The Fund did not present any witness testimony.

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 Respondent was licensed by the REC as a real estate salesperson.⁴
2. On June 2, 2020, Coakley Realty entered into a Listing Agreement with Thomas Stahl, Trustee for the sellers, for a property located in Columbia, Maryland (Property).⁵
3. In the Listing Agreement, the Respondent is identified as the Listing Agent for the Property.⁶
4. The Property had two existing skylights.
5. On July 23, 2020, the Claimant signed a Residential Contract of Sale (Contract) for the purchase of the Property with a home inspection contingency.⁷
6. On August 1, 2020, AmeriSpec Inspection Service inspected the Property and noted the weather conditions were clear and explained that viewing the Property during a rainstorm would increase the chances of determining whether leaks exist or the current status of staining.⁸
7. AmeriSpec Inspection Service prepared a Home Inspection Report. At item 1402 of the Home Inspection Report, AmeriSpec Inspection Service recommended to “repair/replace” the asphalt composition shingle on the roof.⁹

⁴ Fund Ex. 4

⁵ The full address is in the record.

⁶ Resp. Ex. 2.

⁷ Resp. Ex. 3.

⁸ Resp. Ex. 4.

⁹ *Id.*

8. At item 1403 of the Home Inspection Report, AmeriSpec Inspection Service recommended to “repair/replace” the skylight, plumbing vents, and to tar the patching of the skylights.¹⁰

9. On August 3, 2020, the Claimant requested that certain unsatisfactory conditions identified in the Home Inspection Report be corrected by the Sellers. That same day, on behalf of the Sellers, the Trustee agreed to the repairs, including items 1402 and 1403, which were summarized collectively as “repair roof.”¹¹

10. In early August 2020, the Trustee retained S & J Roofing to replace the roof at the Property. A document entitled “Invoice”¹² listed the removal of two existing skylights, the replacement of damaged plywood sheets surrounding them, and the resetting and sealing of the existing skylights.¹³

11. While the roof repair was performed at the Property on August 9, 2020, Mr. Maldonado, a general contractor, informed the Respondent that an employee of S & J Roofing told him the skylights needed to be replaced soon. Mr. Maldonado informed the Respondent that the skylights could leak soon.

12. On August 9, 2020, the Respondent instructed Mr. Maldonado to only replace the roof because the Sellers did not have funds to replace the skylights.

13. On August 24, 2020, settlement occurred, and the Claimant assumed ownership of the Property.

14. At no time prior to closing, did the Respondent inform the Claimant of Mr. Maldonado’s forewarning that the skylights could leak soon.

¹⁰ *Id.*

¹¹ Resp. Ex. 3.

¹² The Invoice is undated.

¹³ Resp. Ex. 5.

15. In June 2021, the Claimant observed water leaking from the skylights into the house and soaking the walls.¹⁴

16. In July 2021, the Claimant contacted Mr. Maldonado, who informed the Claimant that, at the time of the repair work in August 2020, Mr. Maldonado had notified the Respondent that the skylights at the Property could leak.

17. On July 15, 2021, the Claimant contacted the Respondent by email and stated:

Several weeks ago, my wife and I noticed water damage on the drywall on the ceiling near one of our skylights. After opening up the ceiling to investigate, it was apparent where the leak was coming from – a damp hole in the rotting OSB “decking” (a term for the boards that make up the top of a roof) near the skylight. Additionally, a couple weeks after the initial leak, another skylight began leaking as well. I called the roofing company, and they came out to re-caulk the skylights. Although the roofing company stated they would not incur the cost to fix the damaged OSB decking where the water had saturated the decking and allowed water to leak into the house. The reason behind them not fixing the OSB decking is as follows – the roofing company stated that when they replaced the roof back in AUG 2020, the “sellers’ were notified that the skylights were bad and needed to be replaced otherwise they would leak but were told (through William Maldonado) to not worry about replacing the skylights. I have this claim via text messages with the owner of the roofing company. I talked to William to get confirmation on the statement the roofing company provided and William confirmed this statement was accurate . . .

The information regarding the skylights needing to be replaced was never disclosed to Jimmy [Okunola, Claimant’s real estate agent] or me. The thing that really irks me is that I would have gladly paid a few grand to have the skylights replaced in order to not deal with the current situation . . .

I still hold reservations as to if the roofing company and contractor are being truthful or not, but I leave that up to you to confirm or deny.¹⁵

[Parentheses in original; Brackets added.]

18. In response to the July 15, 2021 email, the Respondent maintained that any issues after closing are not the responsibility of the Seller.¹⁶

¹⁴ Clmt. Exs. 6, 7.

¹⁵ Resp. Ex. 8.

¹⁶ *Id.* The date portion of the response email was not offered.

19. Between July 2021 and September 2021, the Claimant paid RoofPro a total of \$4,709.00 to replace the skylights.¹⁷

20. On September 21, 2021, Fiacre L. charged the Claimant \$475.58¹⁸ to repair the drywall and plaster. The Claimant paid Fiacre L. for the repair work that day.¹⁹

DISCUSSION

Applicable Law

The Maryland Real Estate Commission maintains a Fund to protect persons²⁰ who suffer financial loss due to the misconduct of a licensee. *See Lewis v. Long & Foster Real Estate, Inc.*, 85 Md. App. 754, 761 (1991); Bus. Occ. & Prof. § 17-404(a)(2) (2018). 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).

As a regulated profession, licensees have a responsibility to the public to conduct themselves in a reputable manner when providing real estate brokerage services. *Md. Real Estate Comm’n v. Garceau*, 234 Md. App. 324, 355 (2017) (*citing Lewis*, 85 Md. App. at 760); *see also* COMAR 09.11.02.02A. 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;

¹⁷ Clmt. Exs. 4.

¹⁸ The repair cost was \$555.97, and a fee of 3.00 and a discount of \$83.39 were applied. The total cost for Fiacre L.’s services was \$475.58 (\$555.97 + \$3.00 - \$83.39 = \$475.58).

¹⁹ Clmt. Exs. 1, 2.

²⁰ By statute, certain claimants are excluded from recovering from the Fund altogether. It is undisputed there are no such statutory impediments to the Claimant’s recovery in this case. The claim was timely filed. Bus. Occ. & Prof. § 17-404(d). The Claimant is not a spouse of the licensee or unlicensed employee or the personal representative of the spouse of the licensee or the unlicensed employee alleged to be responsible for the act of omission giving rise to the claim. Bus. Occ. & Prof. § 17-404(c)(2).

(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.

Bus. Occ. & Prof. § 17-101(l) (Supp. 2024).

A person may recover compensation from the Fund for an actual loss originating from specific types of acts or omissions in the provision of real estate brokerage services by a licensee.

See Bus. Occ. & Prof. § 17-404(a)(1); COMAR 09.11.01.15. A claim against the Fund 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.

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

The code of ethics for licensees is contained in the Code of Maryland Administrative Regulations, Title 9, Subtitle 11. Licensees shall protect their clients and the public against misrepresentations and must make a “reasonable effort” to ascertain all material facts about the property for which the licensee is an agent. COMAR 09.11.02.01C-D. The regulation specifically states:

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.

D. The licensee shall make a reasonable effort to ascertain all material facts concerning every property for which the licensee accepts the agency, in order to fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of material facts.

COMAR 09.11.02.01C-D.

A fact is material if its existence or non-existence is a matter to which a reasonable consumer would attach importance to the information in determining his choice of action in the transaction, or the maker of the misrepresentation knows that its recipient is likely to regard the fact as important although a reasonable person would not so regard it. *Gross v. Sussex, Inc.*, 332 Md. 247, 258 (1993); *see also Garceau*, 234 Md. App. 360-361.

Recovery is permitted from the Fund if the act or omission complained of constitutes fraud. The essential elements for a claim of concealment fraud are a party owed a duty to another party to disclose a material fact; the party fails to disclose that fact; the party intends to defraud or deceive the other party; and the other party takes action in justifiable reliance on the concealment and sustains a loss. *Lloyd v. General Motors Corp.*, 916 A.2d 257 (2007).

Maryland law on justifiable reliance does not require an investigation in every case. *See Gross v. Sussex*, 332 Md. 247, 264–69, 630 A.2d 1156 (1993); *Schmidt v. Millhauser*, 212 Md. 585, 592–93, 130 A.2d 572 (1957). An investigation is required when, “under the circumstances, the facts should be apparent to [a person of the plaintiff’s] knowledge and intelligence from a cursory glance or he has discovered something which should serve as a warning that he is being deceived” *Rozen v. Greenberg*, 165 Md. App. 665 (2005) (citations omitted).

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. *See* Bus. Occ. & Prof. § 17-407(e); State Gov't § 10-217. “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). A trier of fact can properly accept all, some, or none of the evidence offered. *See Sifrit v. State*, 383 Md. 116, 135 (2004).

The Parties’ Positions

The Claimant contended that the Respondent was the real estate agent for the Property on which the Claimant had placed a contract with a contingency clause for inspection and the owner had agreed to perform roof repairs. The Claimant maintained that at the time of the roof repair work, Mr. Maldonado notified the Respondent that the skylights needed to be replaced soon and could leak soon, and the Respondent instructed Mr. Maldonado not to replace the skylights because the owners did not have enough funds. The Claimant argued that the Respondent did not disclose the potential leak to him and that the information was material because had he known about the potential leaks, he would have renegotiated his contract. The Claimant stated that he purchased the Property and sustained a financial loss when the skylight leaked. The Claimant seeks reimbursement from the Fund for the actual loss caused by the Respondent’s omissions about the need for skylight replacement and the potential leak.

The Respondent denied the alleged conversation between Mr. Maldonado and herself occurred but argued, in the alternative, that if it had occurred, the Respondent would have contacted the broker for approval. The Respondent asserted that Mr. Maldonado was deflecting responsibility for his actions, and a fallout between Mr. Maldonado and the Respondent occurred. The Respondent maintained that even the Claimant had documented reservations about

whether that conversation occurred. The Respondent contended that the Property passed a home inspection, and the leak occurred ten months after the home inspection. The Respondent seeks the denial of the claim for an award from the Fund.

The Fund agreed with the Claimant that the Respondent failed to disclose the condition of the skylights to the Claimant, which caused the Claimant to purchase the Property with defective skylights that were expected to leak. The Fund made no representation as to the amount of the award recommended.

Analysis

Preliminarily I find that the Respondent was a licensed real estate salesperson, who engaged in real estate services related to the Property, which is located within the State of Maryland. The underlying facts of this finding were undisputed by the parties and supported by documentary evidence.

As a licensed real estate salesperson, the Respondent owed a duty to avoid misrepresentation or concealment of material facts. The Claimant must show the Respondent omitted a material fact, the Respondent's omission was fraudulent, the Claimant justifiably relied on the omission, the Respondent's omission resulted in an actual loss to the Claimant, and the actual loss is the claimed amount. For the reasons explained below, I find that the Claimant is entitled to compensation from the Fund.

Omission of Material Facts

The Respondent disputed that she omitted a material fact. Although the Respondent denied that anyone told her about the condition of the skylights, she could not recall much about the roof repair, other than the payment for repairs.

S & J Roofing performed the repair work on the Property in August 2020, which corresponds to the period Mr. Maldonado advised the Respondent that the skylights were likely

to leak if not repaired. An invoice reflects the repair work completed by S & J Roofing, including replacement of damaged plywood sheets surrounding the skylights. This document supports a finding that the Respondent was informed by Mr. Maldonado about the skylight condition during the roof repair and subsequently the roofer provided an invoice reflecting repairs to the existing damage around the skylights.

I find Mr. Maldonado credible in his testimony about his conversation with the Respondent concerning the need to replace the skylights and the Respondent's immediate instruction to replace only the roof, based on Mr. Maldonado's course of dealings with the Respondent, the timing of the conversation with the Respondent after the roofer's assessment, the contemporaneous invoice about the roof repairs, and Mr. Maldonado's certainty about the instructions provided by the Respondent.

The Respondent raised three arguments that are not persuasive. First, the Respondent asserted a fallout between the Respondent and Mr. Maldonado occurred. The Respondent, however, did not establish that the alleged fallout occurred prior to July 2021, when the conversation about the roof repair between Mr. Maldonado and the Claimant occurred. Therefore, I do not find that Mr. Maldonado was biased at the time of the July 2021 conversation with the Claimant because of the alleged fallout.

Second, the Respondent asserted that the Claimant had documented reservations in July 2021 about Mr. Maldonado and the roofing company's truthfulness. The Claimant wrote an email stating he had reservations about "whether the roofing company and contractor were being truthful, but [he left] that up to [the Respondent] to confirm or deny." At the time the Claimant wrote the email, he did not have all the information presented at hearing, including the contemporaneous S & J Roofing invoice (showing what work was completed), or the Respondent's position. The Claimant's inconclusive opinion is not dispositive of this matter.

Lastly, the Respondent argued that she would have disclosed the skylight situation to her broker. The Respondent's duty to her broker is separate from her duty to the Claimant. The fact that she discloses the defective aspects of a property to her broker routinely does not signify that she discloses defective aspects of a property to a buyer routinely. The Respondent's course of dealing with her Broker does not lead me to conclude the Respondent would have disclosed the defective skylight condition or the potential leak to the Claimant.

The evidence demonstrates that Mr. Maldonado informed the Respondent about the defective skylight condition and the potential leak, and did so prior to the Claimant attending the closing on the purchase of the Property. The information about the defective skylight²¹ and the potential leak was material because a reasonable buyer would attach importance to the information in determining his choice of action regarding the purchase of the Property. A reasonable consumer could have taken steps to mitigate his loss such as renegotiating the contract price of the Property. As the July 2021 email indicates, the Claimant would have been willing to bear the expense of the skylight repair to avoid further damage to the Property.

It is uncontroverted that the Respondent did not speak with the Claimant about the skylight at all. The Respondent failed to disclose the material facts about the defective skylight and potential leak to the Claimant.

Omissions Constituting Fraud

Next, I must determine if the Respondent's omissions were fraudulent. I must determine if the Respondent's omissions about the defective skylight and the potential leak were made with

²¹ It is undisputed that after repairs were performed a second home inspection was performed. The home inspector did not note a defective skylight. The report of the home inspector is given little weight to determine the condition of the skylight, as the skylight was not inspected after rainfall occurred.

the intent to deceive the Claimant. Given the timing of the events, specifically Mr. Maldonado's notice to the Respondent about the defective skylight and the Respondent's immediate instruction to Mr. Maldonado to perform only a roof repair, the Respondent's omissions were made with the intent to deceive the Claimant, specifically about the condition of the skylights. The specific instructions to Mr. Maldonado reflect an intent to conceal a defective skylight from the Claimant. The Respondent's nondisclosure to the Claimant, thereafter, was fraudulent.

Justifiable Reliance

The Claimant justifiably relied on the Respondent's omission. The defects in the skylight were not be observable based on a careful, visual inspection of the Property. As the home inspection report reflects, property damage, and particularly water damage, from the defective skylight would likely be known after a period of precipitation. The Claimant's reliance was reasonable because the defective condition of the skylight was physically concealed by the Respondent.

Omissions Resulting in Loss to the Claimant

Having found that the Respondent's omissions were material and fraudulent, and that the Claimant justifiably relied on those omissions, I must address if the Claimant's actual loss was the result of the Respondent's omissions. Mr. Maldonado provided his lay opinion²² about the potential of a leak at the time of the roof repair. Mr. Maldonado's testimony was not beyond the

²² In *Freeman v. State*, 487 Md. 420 (2024), the Supreme Court stated:

Expert testimony is required only when the subject of the inference is so particularly related to some science or profession that is beyond the ken of the average lay[person]; it is not required on matters of which the jurors would be aware by virtue of common knowledge." *Johnson v. State*, 457 Md. 513, 530, 179 A.3d 984, 994 (2018) (cleaned up). "When a court considers whether testimony is beyond the 'ken' of the average lay[person], the question is not whether the average person is already knowledgeable about a given subject, but whether it is within the range of perception and understanding." *Galicia [v. Maryland]*, 479 Md. 341, 394, 278 A.3d 131, 161 (2022)].

range of perception and understanding of the average person. To leak is defined as “to let a substance or light in or out through an opening.” Leak, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 707 (11th ed. 2020). Leaks are a matter of common knowledge. The average person understands that water may enter through an opening at a skylight.

It stands to reason that when there is evidence of a defective skylight, which is concealed rather than resolved, and the surrounding area is repaired, that damage due to a leak from the defective skylight will likely continue to occur. To the extent the Respondent suggested that the length of time between the roof repair and the leak negates causation, the length of time is irrelevant to determining if the omission resulted in damage to the Property. The pictures of the damaged walls by the skylight demonstrate that damage occurred in June 2021, and the Claimant’s email reflects that the damage to the sheathing reoccurred earlier than that.

The Fund argued, and I agree, that the Claimant suffered an actual loss because of the Respondent’s omission. Therefore, the Claimant is entitled to compensation from the Fund.

Amount of Actual Loss²³

The Respondent did not dispute the Claimant’s testimony about the repairs performed after the leak or the cost of repairs. The total cost of replacement of the skylight and repairs for water damage in the surrounding area was \$5,184.58 (\$4,709.00 + \$475.58 = \$5,184.58). I conclude that the Claimant should be awarded \$5,184.58 from the Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has established by a preponderance of the evidence that he sustained an actual and compensable loss due to omissions of the Respondent that constitute a fraud in the provision of real estate brokerage services. *See* Md. Code Ann., Bus. Occ. & Prof.

²³ There is no applicable statutory or regulatory calculation for establishing actual loss.

§§ 17-101(k) and (l) (Supp. 2024); Md. Code Ann., Bus. Occ. & Prof. §§ 404(a) and (b) (2018).

I further conclude that the Claimant is entitled to recover \$5,184.58 from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-404(b) (2018).


RECOMMENDED ORDER

I **RECOMMEND** that the claim filed by the Claimant against the Maryland Real Estate Commission Guaranty Fund be **GRANTED**.

I further **RECOMMEND**:

1. The Guaranty Fund award the Claimant \$5,184.58.
2. The Respondent shall reimburse the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Real Estate Commission. Md. Code Ann., Bus. Occ. & Prof. § 17-411(a) (2018).
3. The Respondent's license is suspended. The Maryland Real Estate Commission may not reinstate the Respondent's license until the Respondent repays in full the amount paid by the Guaranty Fund, plus interest, and the Respondent applies to the Real Estate Commission for reinstatement of the license. Md. Code Ann., Bus. Occ. & Prof. § 17-412(a), (b) (2018).
4. The records and publications of the Maryland Real Estate Commission reflect this decision.

January 24, 2025
Date Decision Issued


Gwenlynn D'Souza
Administrative Law Judge

GD/kh
#215657