

BEFORE THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM \*  
OF RODERICK ROBINSON \*  
AGAINST THE MARYLAND REAL \* CASE NO. 2014-RE-68  
ESTATE GUARANTY FUND, \* OAH NO. DLR-REC-22-14-27081  
FOR THE ALLEGED MISCONDUCT \*  
OF JANICE ELLISON \*  
\*  
\* \* \* \* \*

PROPOSED ORDER

The Findings of Fact, Conclusions of Law, and Recommended Order of the Administrative Law Judge dated October 30, 2014, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 17th day of December, 2014

**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, **AMENDED** to state that the Claimant suffered an actual loss compensable by the fund in the amount of \$39,275.00;

C. That the Recommended Order be, and hereby is, **AMENDED** as follows:

**ORDERED** that the Claim of Roderick Robinson against the Maryland Real Estate Guaranty Fund based on the actions of Janice Ellison is granted in the amount of \$39,295.00;

**ORDERED** that Janice Ellison is ineligible to hold a real estate license until the Fund is repaid in full together with interest as provided by law;

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

D. Pursuant to §10-220 of the State Government Article, the Commission finds that the recommended order must be amended to include the provision that Janice Ellison is ineligible to hold a real estate license until the Guaranty Fund is repaid in full together with the interest prescribed by law, in accordance with Section 17-412 of the Business Occupations and Professions Article.

Additionally, the Commission finds that the actual loss amount referenced in the Conclusions of Law, \$39,275.00, must be amended to comport with the actual loss amount in the Proposed Order, \$39,295.00. This change is consistent with the ALJ's findings of fact and the Discussion section of the ALJ's Proposed Decision, wherein the ALJ states that "[t]he Claimant proved that his actual total loss is \$39,295.00."

E. Pursuant to Code of Maryland Regulations (COMAR)

09.01.03.08 those parties adversely affected by this Proposed Order shall have 20 days from the postmark date of the Order to file exceptions and to request to present arguments on the proposed decision before this Commission. The exceptions should be sent to the Executive Director, Maryland Real Estate Commission, 3rd Floor, 500 North Calvert Street, Baltimore, MD 21202.

SIGNATURE ON FILE

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Maryland Real Estate Commission

IN THE MATTER OF THE CLAIM OF  
RODERICK ROBINSON,  
CLAIMANT

v.

THE MARYLAND REAL ESTATE  
COMMISSION GUARANTY FUND,  
FOR THE ALLEGED MISCONDUCT  
OF JANICE ELLISON,  
RESPONDENT

\* BEFORE MARY SHOCK,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\*  
\* OAH CASE No: DLR-REC-22-14-27081  
\* REC No: 2014-RE-68  
\*  
\*

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On August 14, 2013, Roderick Robinson (Claimant) filed a Complaint and Guaranty Fund Claim (Claim) with the Maryland Real Estate Commission (Commission) regarding alleged improper acts and omissions of licensed real estate broker, Janice Ellison (Respondent). On July 17, 2014, the REC issued an Order for Hearing and transmitted the case to the Office of Administrative Hearings (OAH) to conduct a hearing and to issue a proposed decision.

On August 15, 2014, OAH sent a Notice of Hearing by certified and first-class mail to the Respondent at her last known address of record: 707 Ruxford Drive, P.O. Box 82, Kingsville,

Maryland 21087. The United States Postal Service (USPS) returned the certified mail as unclaimed; it did not return the notice sent by regular mail.

On September 24, 2014, I conducted the hearing at the OAH, Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408.<sup>1</sup> The Claimant appeared and represented himself. The Respondent failed to appear. Jessica Kaufman, Assistant Attorney General, represented the Fund.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009 & Supp. 2014); the Commission's procedural regulations, COMAR 09.11.03; and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

### **ISSUES**

1. Did the Claimant sustain an actual loss compensable by the Fund due to the Respondent having committed acts or omissions involving theft, embezzlement, false pretenses, forgery, fraud, or misrepresentation?
2. If so, what amount should be awarded to the Claimant from the Fund?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

Neither the Claimant nor the Respondent offered any exhibits.

I admitted the following documents for the Fund:

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|-------|--|
| GF #1 | Notice of Hearing, August 15, 2014, Order for Hearing, July 17, 2014, returned certified mail, September 12 and 15, 2014 |
| GF #2 | Transmittal to OAH, undated, Order for Hearing, July 17, 2014, Complaint and Guarantee Fund Claim, August 14, 2013       |
| GF #3 | Commission licensing records for Respondent, August 26, 2014   |
| GF #4 | Commission Report of Investigation, May 7, 2014  |

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<sup>1</sup>All references to the Annotated Code of Maryland, Business Occupations and Professions Article are to the 2010 Volume and 2014 Supplement.

## Testimony

The Claimant testified and called Delsa Procks, Treasurer, To God Be the Glory Deliverance Outreach Church (To God Be the Glory Church or Church).

The Respondent was not present to call any witnesses.

The Fund called Jennifer Grimes, Commission Investigator.

## **PROPOSED FINDINGS OF FACT**

I propose that the Commission find the following facts by a preponderance of the evidence:

1. The Claimant is the Pastor of To God Be the Glory Church.
2. On January 14, 2010, the Respondent formed a limited liability company, Prime Realty Services, LLC, (Prime Realty); she was owner and member.
3. In 2011, Church members decided to purchase a larger building because the congregation was growing. The Claimant had learned from other pastors in the community that the Respondent had helped them find and purchase church buildings.
4. The Claimant contacted the Respondent to assist in purchasing a property. The Claimant and Delsa Procks, Church Treasurer, met with the Respondent.
5. On March 14, 2011, the Respondent was affiliated with Century 21 Horizon Realty (Century 21).
6. On March 14, 2011, the Claimant signed a contract to purchase a church in Maryland and gave the Respondent a cashier's check for a deposit in the amount of \$10,000.00, made payable to Prime Realty.
7. On June 2, 2011, the Respondent and the Claimant signed an Exclusive Right to Represent Buyer Agreement and the Claimant paid the Respondent a \$295.00 fee.

8. Periodically, after June 2, 2011, the Respondent told the Claimant that he would have to make continued down payments for the property. Including the deposit and down payments, the Claimant paid the Respondent a total of \$39,000.00 payable to Prime Realty as follows:

March 14, 2011	\$10,000.00
June 28, 2011	5,000.00
September 20, 2011	9,000.00
January 11, 2012	10,000.00
September 9, 2012	<u>5,000.00</u>
Total	\$39,000.00

9. The Respondent did not give the deposit or down payments to the seller of the property. The sale was not completed and the Claimant lost the opportunity to purchase the property.

10. The Respondent did not deposit the money the Claimant paid into any escrow or trust account with either Century 21 or Prime Realty.

11. The Respondent showed the Claimant and Church members four properties, but no sale was ever finalized.

12. The Claimant contacted the Respondent and demanded repayment. The Respondent agreed to repay the money, but failed to do so.

13. The OAH sent notice of the hearing to the Respondent at her address of record with the Commission by both certified and regular mail. The USPS returned the certified mail as unclaimed, but did not return the regular mail.

14. An individual identifying himself as an attorney representing the Respondent contacted the Assistant Commissioner about the Fund hearing.

## DISCUSSION

Before a hearing on a claim against the Fund can proceed, the Commission must give notice to the licensee alleged to be responsible for the act or omission giving rise to the claim. Md. Code Ann., Bus. Occ. & Prof. § 17-408. In the present case, the OAH sent notice of the hearing to the Respondent at her address of record with the Commission by both certified and regular mail. The USPS returned the certified mail as unclaimed, but did not return the regular mail. Additionally, Jennifer Grimes, Commission Investigator, testified that a person claiming that he was an attorney representing the Respondent, contacted the Assistant Commissioner about the hearing. Neither the attorney nor the Respondent appeared for the hearing and no one requested a postponement. I find that the Respondent had notice of the hearing. The Commission gave her the opportunity to participate, but she failed to do so. I held the hearing in her absence.

Maryland law provides that a person may recover compensation from the Fund for an actual loss based on an act or omission of a licensed real estate broker that occurs in the provision of real estate brokerage services and involves a transaction that relates to real estate in Maryland. The loss must be based on an act or omission in which money or property is obtained by theft, embezzlement, false pretenses, or forgery, or constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a).<sup>2</sup>

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<sup>2</sup>Similarly, Maryland regulations provide at COMAR 09.11.03.04:  
.04 Claims Against the Guaranty Fund.

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.



The Claimant bears the burden of proving entitlement to recover from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e). It is undisputed in this case that, at all relevant times, the Respondent was a licensed real estate broker and her transactions with the Claimant related to Maryland real estate. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(i) and (ii). To prove entitlement to recovery from the Fund, the Claimant was therefore only required to 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.

Embezzlement occurs whenever money or other property is entrusted to someone who stands in a fiduciary relationship with the owner and the fiduciary fraudulently and willfully appropriates the property to a use other than that which was intended. *State v. Burroughs*, 333 Md. 614 (1994).

Based on the foregoing authority, for the Claimant to establish embezzlement by the Respondent, the Claimant was required to prove, and did prove, that, while serving in a fiduciary capacity, the Respondent obtained funds from the Claimant, and, that while serving in a fiduciary capacity, she misappropriated all or part of those funds with fraudulent intent.

The Claimant first proved that the Respondent served him in a fiduciary capacity. The Respondent testified that he approached the Respondent and asked that she represent him in buying a building for the Church. As a result, the Respondent assisted the Claimant in finding a building and entering into a contract with the seller on March 13, 2011. Further, on June 2, 2011, the Claimant and Respondent signed an Exclusive Right to Represent Buyer Agreement providing that the Respondent would act as an agent for the Claimant in the purchase of real

property. Thus, the Respondent had a fiduciary relationship to the Claimant.<sup>3</sup> *See Lewis v. Long & Foster Real Estate, Inc.*, 85 Md. App. 754, 761-763 (1991).

Both the Claimant and Delesa Procks, Treasurer, testified that they learned that the seller did not receive the \$10,000.00 deposit, and that the seller ultimately sold the property to another buyer. Both witnesses further testified that the Claimant continued to make down payments on the property at the Respondent's request. The deposit and down payments totaled \$39,000.00. Although the Respondent showed the Claimant and Church members other buildings, including one they were interesting in buying, the Church never completed a purchase and the Respondent never returned any of the money. The Claimant testified that he demanded repayment. He stated that the Respondent promised several times to repay the money, but she failed to do so.

Jennifer Grimes, Commission Investigator, testified that as part of her investigation she contacted the broker of record for Prime Realty and he stated that he never received any escrow money from the Respondent for the Claimant.

The Claimant signed a contract to purchase a church building on March 13, 2011. He paid a deposit of \$10,000.00 at that time. The Respondent misrepresented to the Claimant that she would pay the money to the seller, thus binding the seller to the agreement and securing the property for the Claimant. Instead of paying that money to the seller, the Respondent kept the deposit. She was affiliated with Century 21 at the time, but had the Claimant make the check payable to Prime Realty, a limit liability company of which she was owner and member. Then over the course of the next fifteen months, the Respondent continued to misrepresent to the Claimant that she required further down payments on the property. She took money from the Claimant and used it for her own purposes. The Respondent's acts constitute embezzlement.

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<sup>3</sup> "In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This *obligation of absolute fidelity to the client's interest is primary*, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction." COMAR 09.11.02.02A (emphasis added).

The remaining question concerns the amount that the Claimant has proven that he is entitled to recover from the Fund as a result of the Respondent's embezzlement. COMAR 09.11.01.18 limits such recovery to the "actual monetary loss" incurred by a claimant.

The Claimant proved that he incurred a loss of \$39,000.00 including the deposit and down payments. Further, as stated above, on June 2, 2011, the Claimant and Respondent signed an Exclusive Right to Represent Buyer Agreement and the Claimant paid the Respondent a \$295.00 fee. The Fund argued that the \$295.00 the Claimant paid to the Respondent was not compensable. However, from the time the Respondent accepted the check for the deposit on March 13, 2011, and continuing through September 9, 2012, when she took the last down payment, the Respondent repeatedly told the Claimant that the sale would move forward. No sale was ever finalized. Although the \$295.00 fee could be construed as an administrative fee toward any commission the Respondent might earn, under the circumstances of this case, it appears that the Respondent did not intend to complete any sale and earn any commissions. On March 11, 2014, she had the Claimant make the deposit check payable to Prime Realty when she was affiliated with Century 21, and by June 2, 2011, she had not paid the deposit to the seller. Those facts demonstrate that that from the very beginning of their fiduciary relationship, the Respondent intended to keep all the money she could get from Claimant, including any alleged fee, and use the money for her own purposes. Thus, I find that the Respondent willfully appropriated the deposit, down payments and the fee to her own use. The Claimant proved that his total actual loss is \$39,295.00.

**CONCLUSIONS OF LAW**

I conclude as a matter of law that the Claimant proved that he sustained an actual loss compensable by the Fund in the amount of \$39,275.00. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a) and 17-407(e); COMAR 09.11.03.04.

**PROPOSED ORDER**

**I PROPOSE** that the Maryland Real Estate Commission **ORDER** as follows:

1. The Maryland Real Estate Commission Guaranty Fund shall pay to the Claimant \$39,295.00.
2. The Commission's records and publications shall reflect this decision.

SIGNATURE ON FILE

October 30, 2014  
Date Decision Issued

\_\_\_\_\_  
Mary Shock  
Administrative Law Judge

MKS/kkc  
#151833

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**FILE EXHIBIT LIST**

Exhibits

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