

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

V.

HELEN D. KOIS,
RESPONDENT

and.

CLAIM OF JAMES R. RUPP

AGAINST THE REAL ESTATE
COMMISSION GUARANTY FUND

* * * * *

* BEFORE LATONYA B. DARGAN,
* ADMINISTRATIVE LAW JUDGE,
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: DLR-REC-24-16-10184
* MREC NO: 2015-RE-015 G.F.

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated November 16, 2016, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 21st day of December, 2016.

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

12/21/2016

Date

By: _____
Marla S. Johnson, Commissioner

MARYLAND REAL
ESTATE COMMISSION,

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* * * * *

PROPOSED 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 14, 2014, James R. Rupp (Claimant) filed a claim with the Maryland Real Estate Commission's (MREC) Guaranty Fund (Fund) for actual monetary losses suffered as a result of the acts or omissions of Helen D. Kois (Respondent), allegedly committed while the Respondent acted in her capacity as a licensed real estate broker, affiliated with Snowden Chase Realty Services, LLC. The Claimant also filed a complaint against the Respondent directly with the MREC.

On March 16, 2016, the MREC issued a Statement of Charges (Charges) against the Respondent for alleged violations of the Maryland Real Estate Broker's Act (the Act), Maryland Code Annotated, Business Occupations and Professions Article, § 17-101 *et. seq.* (2010 and Supp. 2016), and the provisions at Code of Maryland Regulations (COMAR) 09.11.01 and 09.11.02, enacted under the Act. The MREC further determined the Claimant was entitled to a hearing to establish his eligibility for an award from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-409(a) (2010). Accordingly, the MREC ordered a combined hearing on the Charges and the Claimant's claim before the Fund.

On August 22, 2016, I conducted a hearing at the Maryland Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Profs. §§ 17-324(a) and 17-408(a) (2010). Jessica Kauffman, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the MREC. The Claimant represented himself. Hope Sachs, Assistant Attorney General DLLR, represented the Fund. The Respondent failed to appear.¹

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings of the Office of the Secretary of the DLLR, and the Rules of Procedure of the OAH govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 and Supp. 2016); Code of Maryland Regulations (COMAR) 09.01.02; COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Respondent violate the provisions of Section 17-322 of the Act;
2. Did the Respondent violate the provisions of Section 17-532 of the Act;
3. Did the Respondent violate COMAR 09.11.01.07, 09.11.02.01C and 09.11.02.02A;

¹ The Respondent's failure to appear and the procedural implications are discussed more fully below.

4. If so, what is the appropriate sanction;
5. Did the Claimant sustain an actual monetary loss as a result of the Respondent's acts or omissions in her capacity as a licensed real estate broker; and,
6. If so, what is the appropriate award to the Claimant from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for the MREC:

MREC Ex. 1: March 16, 2016 Statement of Charges

MREC Ex. 2: Notice of Hearing

MREC Ex. 3: The Respondent's licensing history

MREC Ex. 4: Jack Mull, Jr.'s September 14, 2015 Report of Investigation, with the following attachments

- The Claimant's July 14, 2014 Complaint and Claim Form
- Real Property Search, 9218 Briarchip Street, Laurel, MD
- February 1, 2010 Single Family Dwelling Lease
- Maryland Department of Assessments and Taxation Charter Search, Snowden Chase Realty Services, LLC
- August 1, 2012 Real Estate Management Agreement between the Claimant and the Respondent
- Statement of Account, June 1, 2010 through May 31, 2013
- Statement of Security Deposits held by Snowden Chase Realty Services, LLC, through May 31, 2013
- January 13, 2015 *Subpoena Duces Tecum* to Bank of America
- Bank account statements for Snowden Chase Realty Services, LLC

MREC Ex. 5: June 18, 2010 Accounts Purchase Agreement between the Respondent and Judith L. Nigh

MREC Ex. 6: Statement of Account, January 23, 2013 through May 31, 2013

I admitted the following exhibits for the Claimant:

Cl. Ex. 1: SunTrust Bank account statements, January 19, 2013 through July 18, 2013

Cl. Ex. 2: Timeline of Events

Cl. Ex. 3: Statement of Amounts due the Claimant from the Respondent

No exhibits were offered on behalf of the Respondent.

Testimony

The MREC presented the following witnesses: the Claimant, Judith Nigh, and Jack Mull, Jr., Investigator, DLLR. The Claimant testified on his own behalf. No one testified on behalf of either the Respondent or the Fund.

FINDINGS OF FACT

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

1. In December 2009, the Claimant entered into a property management agreement with Judith Nigh's real estate brokerage firm, Snowden Chase Realty, LLC (Snowden Chase), for Ms. Nigh to provide property management services, including the collection of rent payments from tenants, related to a property the Claimant owned on Briarchip Way in Laurel, Maryland (the Property). At this time, the Respondent worked for Snowden Chase as a real estate agent.
2. On or around February 1, 2010, Ronald Williams and Christine Coates (Tenants) entered into a lease agreement with the Respondent, acting in her capacity as an agent for Snowden Chase. Under the lease agreement, the Tenants were to pay \$1,800.00 a month in rent payable to Snowden Chase, which the Respondent was to deposit into an account owned by the Claimant. The Tenants were also required to pay an \$1,800.00 security deposit, which the Respondent was to place in an escrow account for the duration of the tenancy.
3. On or around May 6, 2010, the Respondent filed Articles of Organization with the Maryland Department of Assessments and Taxation for a limited liability company called Snowden Chase Realty Services, LLC (Snowden Realty). In the Articles of

Organization, the Respondent identified the company's purpose as providing property management services for residential houses.

4. On or around June 1, 2010, Mrs. Nigh retired and sold her interest in and client list for Snowden Chase to the Respondent.
5. On or around July 1, 2010, the Respondent obtained her Maryland real estate broker's license, under Registration No. 303167 and she began to use it as representative of Snowden Realty.
6. On or around August 1, 2012, the Claimant entered into a real estate management agreement (Agreement) with the Respondent, in her capacity as a real estate broker and as representative of Snowden Realty, for the Respondent to act as the exclusive rental and management agent for the Property.
7. Under the Agreement, the Respondent was responsible for collecting rent payments from the Tenants and placing the payments in a SunTrust Bank account accessible by the Claimant. Additionally, the Respondent was responsible for maintaining a reserve account with a minimum balance of \$200.00 at all times to facilitate payment for any minor repairs that needed to be performed at the Property.
8. Under the Agreement, the Respondent was authorized to collect a management fee equal to 8% of the gross monthly rental payment.²
9. In late summer/early fall 2012, the Respondent advised the Claimant she was having difficulty obtaining the monthly rent payments from the Tenants.
10. On or around October 1, 2012, the Respondent advised the Claimant that she received the rent payment for October 2012, but that she filed a failure to pay rent action

² The Respondent's management fee was \$144.00 per month ($1,800 \times .08 = 144$).

against the Tenants for their alleged failure to pay rent for approximately three months.

11. On or around October 10, 2012, the Respondent advised the Claimant that the Tenants' October 2012 rent check was returned by the bank due to insufficient funds and she collected the rent from the Tenants in cash.
12. The Tenants paid their rent to the Respondent at all times relevant to this matter.
13. On January 22, 2013, a deposit was made to the SunTrust account in the amount of \$1,472.00.
14. Between January 23, 2013 and May 31, 2013, the Respondent did not make any deposits to the SunTrust account.
15. The Respondent never set up the \$200.00 reserve account called for under the Agreement.
16. The Claimant contacted the Respondent on three occasions in February 2013, seeking a status update from her on the failure to pay rent action against the Tenants. On February 8, 2013, the Respondent emailed the Claimant to say she received a payment from the Tenants in the amount of \$300.00 that same day and she recommended the Claimant authorize her to proceed with an eviction action for failure to pay rent. On February 9, 2013, the Claimant advised the Respondent to proceed with an eviction action.
17. Between February 9, 2013 and April 17, 2013, the Respondent had no contact with the Claimant.
18. On April 17, 2013, the Claimant sent an email to the Respondent, requesting an update on the eviction proceedings. The Respondent did not respond to the Claimant until April 29, 2013, at which time she advised the Claimant the eviction was

scheduled for May 16, 2016. She further advised the Claimant the Tenants promised to pay any outstanding rents by the end of the week and she would notify the Claimant of when, and how much, money was received from the Tenants. On April 30, 2013, the Claimant sent a follow-up email to the Respondent requesting that she keep him apprised of events.

19. The Respondent had no further communication with the Claimant after her April 29, 2013 email to him.
20. Prior to June 3, 2013, Ms. Nigh received numerous complaints from former clients who advised her the Respondent had mismanaged their accounts and rent proceeds.
21. On June 3, 2013, Ms. Nigh resumed control of the accounts she sold to the Respondent in June 2010 and began managing the accounts again as Snowden Chase.
22. Ms. Nigh's review of the Respondent's records for Snowden Realty revealed the following amounts were collected by the Respondent in connection with the Property:

Collected From Tenants for the Property	Collection Amount	Collection Date³
	\$300.00	1/29/2013
	\$1,890.00	2/27/2013
	\$1,800.00	4/3/2013
	\$1,890.00	5/15/2013
Total	\$5,880.00	

23. Of the \$5,880.00 the Respondent's records reflect she collected as rent for the Property, the Respondent was entitled to retain \$470.40 as her management fee. The

³ It does not appear, based on the documentary evidence, that the Respondent collected a rent payment that could be applied to the rent due for March 2013.

net total rental proceeds the Respondent should have remitted to the Claimant was \$5,409.60.

24. Ms. Nigh's review of the records for Snowden Realty also revealed expenditures made in connection with the Property for repairs in the amount of \$87.00, and for gas and electric costs in the amount of \$129.19, for a total of miscellaneous costs equaling \$216.19.
25. The Respondent never set up an escrow account, or any other type of account, to hold the \$1,800.00 security deposit paid by the Tenants.
26. The total amount of money owed to the Claimant by the Respondent in connection with the management of the Property is \$7,193.41 (\$5,409.60 (rental proceeds) + \$1,800.00 (security deposit) + \$200.00 (reserve account) = \$7,409.60 - \$216.19 (miscellaneous expenses not paid by the Claimant) = \$7,193.41).
27. On October 3, 2014, the corporate charter for Snowden Realty was deemed forfeited by the Maryland Department of Assessments and Taxation because a corporate tax return was not filed for 2013.

DISCUSSION

Legal Framework

Disciplinary Charges Under the Act

The MREC charged the Respondent under Section 17-322(b) (Supp. 2016) of the Act, as follows:

Grounds for Discipline

(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;

...

(31) violates any provision of Subtitle 5 of this title that relates to trust money;

...

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

The MREC further charged the Respondent under Section 17-532(c)(1)(3) (Supp. 2016)

of the Act as follows:

Duty To Promote Interests of the Client

(c)(1) A licensee shall:

...

(v) in a timely manner account for all trust money received;

(vi) exercise reasonable care and diligence[.]

In addition to the statutory violations, the MREC also charged the Respondent with violating the following regulatory provisions related to the Act:

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 09.11.01.07.

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.

COMAR 09.11.02.01.

Relations to the Client.

A. 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 09.11.02.02.

Guaranty Fund Claim

Under the Act, a person may recover an award from the Fund for an actual loss as follows:

(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;
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.

Md. Code Ann., Bus. Occ. & Profs. § 17-404(a)(2) (Supp. 2016). The amount recovered for a claim made against the Fund may not exceed \$50,000.00. Md. Code Ann., Bus. Occ. & Profs. § 17-404(b).

Burden of Proof

With regard to the Charges, the MREC bears the burden of proof, by a preponderance of the evidence, to demonstrate the Respondent violated the applicable provisions of the Act and the controlling regulations. COMAR 09.01.02.16(a). With regard to the claim against the Fund, the Claimant bears the burden of proof, by a preponderance of the evidence, to demonstrate he suffered an actual loss because of the Respondent's acts or omissions. Md. Code Ann., Bus. Occ. & Profs. § 17-407(e) (Supp. 2016); COMAR 09.01.02.16(c).

The Respondent's Failure to Appear

The Act provides that if, "after due notice, the individual against whom the action is contemplated fails or refuses to appear, nevertheless the [MREC] may hear and determine the matter." Md. Code Ann., Bus. Occ. & Profs. § 17-324(f) (2010). On July 5, 2016, the OAH sent a Notice of Hearing (Notice) to the Respondent at her address of record with the MREC. The Notice advised the parties the matter was scheduled for hearing on Monday, August 22, 2016 at 10:00 a.m. at the OAH in Hunt Valley, Maryland. The Respondent's copy of the Notice was returned to the OAH as "Undeliverable – Unable to forward." At the hearing, the MREC presented Judith Nigh to testify about the Respondent's residence and address. Ms. Nigh has personally known the Respondent for several years. She testified that the address on record with the MREC is the Respondent's home address. Ms. Nigh has visited the Respondent at the address. Additionally, Jack Mull, Jr., the MREC investigator, testified that he made numerous attempts to contact the Respondent during the investigation, and the Respondent did not respond to his efforts.

The Respondent is responsible for maintaining a valid address with the MREC. The MREC attempted to contact the Respondent at the address it had on record for her and the OAH sent the Notice to the Respondent's address of record. I found the Respondent failed to appear for the hearing and I proceeded in her absence.

The Merits of the Case

Disciplinary Charges

Violations under Sections 17-322 and 17-532 of the Act

The evidence presented by the MREC overwhelmingly demonstrates the Respondent engaged in violations of Section 17-322(b) and Section 17-532 of the Act. At all relevant times, the Respondent was acting in her capacity as a licensed real estate broker. She and the Claimant entered into the Agreement for the Respondent to act as the exclusive management agent for the Property. It was understood by both parties that under the Agreement, the Respondent was to promptly remit to the Claimant all rental payments collected by depositing the amounts into an account at SunTrust Bank that was accessible to the Claimant.

The Respondent clearly failed to promptly remit to the Claimant the rent money collected from the Tenants for the period of January 2013 through May 2013, in violation of Section 17-322(b)(22). Ms. Nigh testified that her review of the Respondent's accounting records reflected the Respondent did, in fact, collect rent payments from the Tenants. (*See also* MREC Ex. 4, Attachment 6.) Despite collecting payments from the Tenants, the Respondent did not dispose of the payments in the manner directed under the Agreement, namely, by placing the amounts in the Claimant's SunTrust Account. (Cl. Ex. 1.) The Respondent compounded this failure by repeatedly misleading the Claimant about the status of the payments. She repeatedly led the Claimant to believe (1) the Tenants had simply stopped making timely rent payments, and (2) she was pursuing an eviction action against the Tenants for their alleged failure to pay rent.

Neither of those things was true. The Tenants made their rental payments to the Respondent; she failed to turn those payments over to the Claimant as she was required to do under the Agreement.

Through her actions, the Respondent violated Section 17-322(b)(22) of the Act, by failing to promptly remit to the Claimant the money that came into her possession in connection with the Property. The Respondent did not remit the money to the Claimant at all. The Respondent's actions in keeping the money for her own purposes and repeatedly misleading the Claimant about the Tenants' conduct, as well as her efforts to obtain the money the Tenants had allegedly failed to pay, demonstrated bad faith and untrustworthiness on the Respondent's part, and constituted dishonest and fraudulent dealings with the Claimant. The Respondent's conduct clearly violates Section 17-322(b)(25) of the Act. Additionally, the Respondent wholly failed to account for all trust money she received from the Tenants; on the contrary, she lied to the Claimant about receiving the money at all. Her conduct in this regard violated the provisions of Section 17-532(c)(v) and (vi) of the Act. By violating provisions of the Act related to trust money, the Respondent also violated Section 17-322(b)(31) of the Act.

Violations Under COMAR

Based on the evidence presented, I find the Respondent violated COMAR 09.11.01.07, which relates to records of transactions. Although the Respondent kept business records that Ms. Nigh was able to review and which reflected the money collected by the Respondent in connection with the Property, those records did not reflect *where* the Respondent placed the money she collected. It is clear that after January 22, 2013, she did not deposit any of it into the account set up for that purpose – the account at SunTrust Bank. Jack Mull, Jr., the MREC investigator, testified that he attempted to contact the Respondent multiple times during his investigation to give her an opportunity to explain her side of things and to produce any

documentation reflecting the location of the funds; the Respondent was unresponsive to Mr. Mull's attempts.

I further find the evidence demonstrates the Respondent violated COMAR 09.11.02.01C, which deals with the duties of a real estate broker in her relations with the public. The Respondent did not protect the Claimant, as a member of the public, from fraud. On the contrary, she perpetrated fraud against him when she collected rent money for his Property, did not remit that money to him, and misled him about the money's whereabouts. In doing so, the Respondent failed to protect and promote the Claimant's interests as her client; she acted in a manner that directly contravened the Claimant's interests, and she did so without any justification (such as, for example, the need to protect the interests of another party to the transaction or the interests of another client). Her conduct of acting in a manner that directly contradicted and damaged the Claimant's interests is also a violation of COMAR 09.11.02.02A. The Respondent's violations under COMAR 09.11.01.07, 09.11.02.01C, and 09.11.02.02A subject her to liability under Section 17-322(b)(33) of the Act, which prohibits licensed real estate brokers from violating any regulations adopted under the Act. The MREC's charges against the Respondent should be upheld. I will discuss the appropriate sanction below.

Guaranty Fund Claim

As discussed above, a claim against the Fund shall be based on an act or omission in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or an act or omission that constitutes fraud or misrepresentation. Md. Code Ann., Bus. Occ. & Prof. § 17-404(b)(2)(iii) (Supp. 2016); *see* COMAR 09.11.03.04A and B (for the purpose of a guaranty fund claim, misconduct 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).

The amount of compensation recoverable by a claimant from the Guaranty Fund “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.” COMAR 09.11.01.18.

The Claimant’s Fund claim was for \$7,193.41.00. This includes the rent payments for January 22, 2013 through May 31,2013, minus the Respondent’s 8% management fee (which was to be deducted from each rent payment), plus the tenant’s \$1,800.00 security deposit and the \$200.00 reserve account balance, minus the \$216.19 miscellaneous expenses for the Property the Claimant did not pay. The Claimant presented ample evidence demonstrating the following: (1) he and the Respondent had a contractual agreement for the Respondent to act as the property manager for the Property; (2) the Respondent’s responsibilities as the property manager included the collection of rent and placing the rent in the appropriate trust or escrow account; (3) the Respondent collected all monies that were due from the Tenants, including a security deposit totaling one month’s rent; (4) despite repeated requests from the Claimant for information about the whereabouts of the money, the Respondent lied to the Claimant by asserting the Tenants were not paying their rent and she was undertaking efforts to have them evicted for non-payment of rent; and, most significantly, (5) despite collecting money from the Tenants, the Respondent did not remit any money to the Claimant that was owed him from January 22, 2013 through May 31, 2013.

I find the Claimant is entitled to an award from the Fund. The evidence demonstrates it is more likely than not the Respondent stole money from the Claimant; she violated her obligations to the Claimant, as specified in the Agreement, when she failed to maintain the collected rent money in the appropriate account to which the Claimant had access. The Respondent’s actions constitute embezzlement, as she took money that was not hers to take and likely used it in ways

she was not authorized to do; had the Respondent treated the money in the manner she was authorized to do, it would have been available to the Claimant in the SunTrust account. The Respondent blatantly lied to the Claimant about the whereabouts of the money; she asserted the Tenants stopped paying their rent when this was not true. The Respondent's misrepresentations to the Claimant support the reasonable inference I draw that she used the money for her own purposes even though it was not her money to use. As a result of the Respondent's embezzlement, misrepresentations and theft, the Claimant sustained an actual monetary loss totaling \$7,193.41, and he is entitled to an award from the Fund in that amount.

Disciplinary Sanctions

The MREC argued that as a result of the Respondent's numerous violations of the Act and its applicable COMAR provisions, the appropriate sanctions are the revocation of her real estate broker's license and the imposition of an \$18,000.00 civil penalty. Section 17-322(c) of the Act provides as follows:

17-322. Denials, reprimands, suspensions, revocations, and penalties-- Grounds

(c) Penalty. –

- (1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the Commission may impose a penalty not exceeding \$5,000 for each violation.
- (2) To determine the amount of the penalty imposed, the Commission shall consider:
 - (i) the seriousness of the violation;
 - (ii) the harm caused by the violation;
 - (iii) the good faith of the licensee; and
 - (iv) any history of previous violations by the licensee.
- (3) The Commission shall pay any penalty collected under this subsection into the General Fund of the State.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c). For the following reasons, I find that revocation of the real estate broker's license and an \$18,000.00 civil penalty are the appropriate sanctions.

The Respondent's conduct in this case is egregious. She embezzled money from the Claimant. She then made repeated and deliberate misrepresentations to the Claimant in order to hide the fact that she embezzled money from him. . The Respondent did not deal with the Claimant honestly or in good faith after January 2013, and she impugned the character of the Tenants in order to mislead the Claimant about her own conduct. She was wholly uncooperative with the MREC once it began its investigation, which demonstrates a further lack of good faith on her part.

Although the Respondent does not have a prior disciplinary history, the ongoing egregiousness of her conduct in her dealings with the Claimant cancels out that particular mitigating factor. The Claimant was harmed by the Respondent's misconduct; he was cheated out of \$7,193.41 to which he was fully entitled. The Respondent has demonstrated by her conduct that she does not respect her fiduciary obligations to her client, as articulated in the Act and in the Code of Ethics which governs the behavior of real estate agents and brokers. The multiple violations committed by the Respondent support the recommended civil money penalty and the recommended revocation of her real estate broker's license.

CONCLUSIONS OF LAW

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

1. The Respondent violated Sections 17-322(b)(22), (25), (31) and (33) (Supp. 2016) of the Act;
2. The Respondent violated Sections 17-532(c)(1)(v) and (vi) (Supp. 2016) of the Act;
3. The Respondent violated COMAR 09.11.01.07 (Records of Transactions), 09.11.02.01C (Relations to the Public), and 09.11.02.02A (Relations to the Client);

4. The Claimant is entitled to an award from the MREC Guaranty Fund in the amount of \$7,193.41, because he sustained an actual loss in that amount as a result of the Respondent's acts or omissions by which the Respondent obtained money from the Claimant through embezzlement and theft, in violation of Section 17-404 (Supp. 2016) of the Act and COMAR 09.11.03.04; and,
5. The appropriate disciplinary sanctions, under Section 17-322(c) of the Act, are revocation of the Respondent's real estate broker's license and the imposition of a civil penalty in the amount of \$18,000.00.


RECOMMENDED ORDER

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

1. The charges against the Respondent, issued on March 16, 2016, be **UPHELD**;
2. The Respondent's real estate broker's license, issued under Registration No. 303167, be **REVOKED**;
3. The Respondent pay a civil penalty in the amount of \$18,000.00;
4. The Maryland Real Estate Commission Guaranty Fund pay to the Claimant his actual monetary loss, in the amount of \$7,193.41, for the Respondent's wrongful acts or omissions; and,
5. The records and publications of the Maryland Real Estate Commission reflect this decision.

November 16, 2016
Date Decision Mailed

LBD/kkc
#165342

SIGNATURE ON FILE


Latonya B. Dargan
Administrative Law Judge