

THE MARYLAND REAL ESTATE COMMISSION

IN THE MATTER OF THE CLAIM	*	BEFORE EMILY DANEKER,
OF RUTH VILLANGCA,	*	ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE OF
AGAINST THE MARYLAND	*	ADMINISTRATIVE HEARINGS
REAL ESTATE COMMISSION	*	
GUARANTY FUND FOR THE	*	OAH NO: DLR-REC-22-14-44863
ALLEGED MISCONDUCT OF	*	
ANISHA WHITE, RESPONDENT	*	MREC NO: 2015-RE-241 G.F.
* * * * *	*	* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated July 22, 2015, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 19th day of August, 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

8/19/2015
Date

By: _____
Marla S. Johnson, Commissioner

IN THE MATTER OF THE CLAIM OF
RUTH VILLANGCA,
CLAIMANT
v.
THE MARYLAND REAL ESTATE
COMMISSION GUARANTY FUND,
FOR THE ALLEGED MISCONDUCT
OF ANIISHA WHITE, RESPONDENT

* BEFORE EMILY DANEKER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
* OAH CASE No.: DLR-REC-22-14-44863
* MREC CASE No.: 15-RE-241 GF
*

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On November 20, 2014, Ruth Villangca (Claimant) filed a Complaint and Guaranty Fund Claim (Claim) with the Maryland Real Estate Commission (the Commission). The Claim alleged improper acts and omissions by Aniisha White (the Respondent), a licensed real estate salesperson. The Claimant is seeking payment or reimbursement from the Commission's Guaranty Fund (Fund).¹

¹ The Commission's Order for Hearing recites that the Claimant filed her claim against the Respondent on November 20, 2012. The documents in evidence reflect that the Claimant filed a related claim against Sonatta Camara, a real estate broker, on November 20, 2012, but her claim against the Respondent was filed two years later, on November 20, 2014. Regardless of which date is used, the instant Claim was timely filed. See Md. Code Ann., Bus. Occ. & Prof. § 17-404 (d) (2010 & 2014 Supp.).

On December 15, 2014, after an investigation, the Commission issued an Order for Hearing on the Claim. On December 19, 2014, the Commission forwarded its Order for Hearing to the Office of Administrative Hearings (OAH) with instructions to conduct a hearing and to issue a proposed decision and order in this case.

On May 1, 2015, pursuant to section 17-408 of the Business Occupations and Professions Article (Business Occupations Article) of the Annotated Code of Maryland,² I conducted a hearing at the Largo Government Center, 9201 Basil Court, Largo, Maryland, 20774. The Claimant was present at the hearing and was represented by Jeffrey D. Goldstein, Esquire. Assistant Attorney General Peter Martin represented the Fund. Neither the Respondent, nor anyone authorized to represent her, appeared at the hearing.

The contested case provisions of the Administrative Procedure Act, the Commission's procedural regulations, 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) 09.11.03; COMAR 09.01.03; COMAR 28.02.01.

ISSUES

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

² All citations to the Business Occupations Article are to the version in the 2010 volume, unless otherwise indicated.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - General Addendum, undated
- Clmt. Ex. 2 - REO Escrow/Closing Disclosure for Buyer's Choice, undated
- Clmt. Ex. 3 - Villangca Check Listing
- Clmt. Ex. 4 - Prince George's County Police Incident Report, date reported September 5, 2012
- Clmt. Ex. 5 - Transcript of Plea Hearing in *State v. Aniisha White*, Circuit Court for Prince George's County, Criminal Trial Nos. CT 13-1028X & 13-1452X, dated November 27, 2013
- Clmt. Ex. 6 - Transcript of Sentencing Hearing in *State v. Aniisha White*, Circuit Court for Prince George's County, Criminal Trial Nos. CT 13-1028X & 13-1452X, dated February 7, 2014
- Clmt. Ex. 7 - Indictment and the Sentencing Disposition entered in *State v. Aniisha White*, Circuit Court for Prince George's County, Criminal Trial Nos. CT 13-1028X, dated February 7, 2014

I admitted the following exhibits offered for the Fund:

- Fund Ex. 1 - Documentation of Undeliverable Mail, consisting of:
 - Memorandum from OAH, dated April 14, 2015
 - Notice of Hearing addressed to Anisha [sic] White, with enclosures, mailed March 18, 2015
 - Envelope, marked "Return to Sender" by U.S. Postal Service on April 9, 2015
- Fund Ex. 2 - Respondent's Licensing Record
- Fund Ex. 3 - Affidavit of Steven Long, dated April 9, 2015
- Fund Ex. 4 - Letter from Peter Martin to Aniisha White, dated April 10, 2015
- Fund Ex. 5 - Affidavit of Jennifer Grimes, dated April 20, 2015
- Fund Ex. 6 - Maryland Judiciary Case Search Information Report for Circuit Court for Prince George's County, Criminal Case CT 13-1452X

Fund Ex. 7 - Letter from Jeffrey Goldstein to the Commission, dated November 20, 2014, attaching:

- Claimant's Complaint & Guaranty Fund Claim against Sonatta Camara, with attachments, received November 20, 2012
- Indictment and the Sentencing Disposition in *State v. Aniisha White*, Circuit Court for Prince George's County, Criminal Trial Nos. CT 13-1028X, dated February 7, 2014
- Transcript of Plea Hearing in *State v. Aniisha White*, Circuit Court for Prince George's County, Criminal Trial Nos. CT 13-1028X & 13-1452X, dated November 27, 2013
- Transcript of Sentencing Hearing in *State v. Aniisha White*, Circuit Court for Prince George's County, Criminal Trial Nos. CT 13-1028X & 13-1452X, dated February 7, 2014

Fund Ex. 8 - Claimant's Complaint & Guaranty Fund Claim against Aniisha White, submitted November 20, 2014

Testimony

The Claimant testified on her own behalf. The Fund did not present any witnesses.

PROPOSED FINDINGS OF FACT

I propose that the Commission 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 under license #639241. Her license expired on May 8, 2013 and has not been renewed.
2. The Respondent was affiliated with Camara & Company The Real Estate Group (Camara & Co.), a brokerage specializing in the sale of bank-owned properties.
3. The Claimant sought to purchase 6831 Annapolis Road, Hyattsville, Maryland (Property), a foreclosed property.
4. Sonatta Camara, the owner of Camara & Co., referred the Claimant to Respondent for the purchase of the Property.

5. On March 1, 2012, the Claimant met with the Respondent and the Claimant signed what the Respondent represented to be a contract to purchase the Property. The document the Claimant signed was, in fact, not a contract to purchase the Property.

6. On March 2, 2012, at the Respondent's request, the Claimant provided a deposit on the purchase of the Property, in the amount of \$3,500.00.

7. Thereafter, the Respondent requested additional funds from the Claimant for use toward the purchase of the Property. From March 2, 2012 through August 2, 2012, the Claimant provided funds totaling \$33,650.00 to the Respondent to be put toward the purchase of the Property and toward title work for the purchase of the Property.

8. After a prior postponement, the Respondent told the Claimant that the settlement for her purchase of the Property would be held on September 6, 2012.

9. On September 5, 2012, the Respondent sought to postpone the settlement again and the Claimant and her husband then contacted Sonatta Camara and learned that the Property had already been sold to a third party.

10. The Respondent did not return the Claimant's money and the Claimant has not since been reimbursed from any source.

11. The Respondent pled guilty in the Circuit Court for Prince George's County, Maryland, to a charge of theft which was based on this incident, among others.

DISCUSSION

I. The Statutory Notice Provisions Were Met.

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 (b)(2). In the present case, the OAH sent a notice of the hearing (Notice) to the Respondent at her address of record with the Commission by both certified and regular mail. The Respondent's address of record with the Commission matched her address on file with the Motor Vehicle Administration. (Fund Ex. 3.) Nevertheless, the United States Postal Service (USPS) returned the Notice sent by certified mail as unclaimed. The USPS did not return the Notice sent by regular mail.

Jennifer Grimes, an investigator with the Commission, averred that she investigated the Respondent's whereabouts and her investigation indicated that the Respondent was in custody at the Prince George's County Detention Center as of April 9, 2015. (Fund Ex. 5.) Thereafter, Assistant Attorney General Martin sent a copy of the Notice to the Respondent at the Prince George's County Detention Center. The Respondent did not appear for the hearing, no one appeared on her behalf, and no one requested a postponement on her behalf.

Based on the foregoing, I find that the Respondent was given proper notice of the hearing and an opportunity to participate. The Respondent failed to participate and I held the hearing in her absence. COMAR 28.02.01.23A.

II. The Merits of the Claim.

Applicable Law

Claims for reimbursement from the Fund are governed by section 17-404 of the Business Occupations Article, which provides, in pertinent part:

- (1) Subject to the provisions of this subtitle, a person may recover compensation from the Guaranty Fund for an actual loss.

- (2) A claim shall:
- (i) be based on an act or omission that occurs in the provision of real estate brokerage services^[3] by:
 - 3. a licensed real estate salesperson;
 - (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. & Prof. § 17-404 (a).

The governing regulations further provide, as relevant here:

- 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

³ To “[p]rovide 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;
- (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.

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

embezzlement of money or property, or money or property unlawfully obtained from a person by false pretense, artifice, trickery, or forgery, or by reason of fraud, misrepresentation, or deceit;

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

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

COMAR 09.11.03.04.

The Claimant bears the burden of proving entitlement to recover from the Fund. Business Occupations Article § 17-407(e). The Claimant's burden is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217; *Schaffer v. Weast*, 546 U.S. 49, 56 (2005). To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so[,]" when all of the evidence is considered. *Coleman v. Anne Arundel County Police Dep't*, 369 Md. 108, 125 n.16 (2002). For the reasons explained below, I find that the Claimant has proven eligibility for compensation from the Fund.

The Claimant is Entitled to Recover from the Fund

The undisputed evidence establishes that the Respondent was a licensed real estate salesperson at all relevant times. (Fund Ex. 2.) The transaction plainly arises out of the Respondent's provision of real estate brokerage services and involves a transaction for real estate located in Maryland. (Test. of Claimant; Clmt. Ex. 1; Clmt. Ex. 2; Clmt. Ex. 5 at 11, 16.) Thus, the remaining issues are whether the Claimant sustained an actual loss by virtue of the Respondent's misconduct.

As noted above, the type of "misconduct" that will support an award from the Fund is an act or omission in which money (as is the case here) is obtained from the claimant by theft, embezzlement, false pretenses, forgery, fraud, or misrepresentation, artifice, trickery, or deceit.

Md. Code Ann., Bus. Occ. & Prof. § 17-404 (a)(2)(iii); COMAR 09.11.03.04. "Theft," as defined under Maryland criminal law, includes, "obtain[ing] control over property by willfully or knowingly using deception" with the intention "to deprive the owner of the property." Md. Code Ann., Crim. Law § 7-104 (2012). The evidence establishes that the Respondent engaged in misconduct constituting theft in the transaction at hand.

The Respondent was licensed as a real estate salesperson as of May 6, 2011. (Fund Ex. 2.) The Claimant had never purchased a home and was unfamiliar with the process and documents that would normally be anticipated in connection with the purchase of a home. (Test. of Claimant.) The Claimant credibly testified that the Respondent presented the Claimant with a document, which the Respondent represented to be a contract to purchase the Property. The Claimant signed the document, believing she then had a contract to purchase the Property. The Claimant's testimony and the documents presented at the hearing made clear that the Respondent misrepresented the documents and never had the Claimant execute a contract to purchase the Property. That is, the evidence establishes that the Respondent, an experienced, licensed real estate salesperson, deceived the Claimant into believing that she (the Claimant) had executed a contract to purchase the Property. The Respondent then requested a deposit on the purchase of the Property and, thereafter, requested additional funds from the Claimant. (Test. of Claimant; Clmt. Ex. 3; Clmt. Ex. 4. Each time, the Respondent falsely represented to the Claimant that the payments were necessary for her purchase of the Property and for title work in advance of the settlement on her purchase of the Property. (Test. of Claimant; Clmt. Ex. 3.) In response to these requests, the Claimant provided the Respondent with a total of nine checks, each of which was made payable to either Camara & Co. or a title company. The Respondent did not use the funds for the stated purposes, however.

The Claimant's testimony and evidence further established that on September 5, 2012 the Respondent informed the Claimant that the settlement on the Property would need to be postponed, after a prior postponement, due to issues with the title. The Claimant and her husband then contacted Ms. Camara and learned, for the first time, that the Property had already been purchased by a third party. The Claimant and Ms. Camara contacted the police. Ultimately, the Respondent was arrested and charged with theft under Maryland's criminal law as a result of this incident and other acts. (Clmt. Ex. 7.)

Subsequently, the Respondent, who was represented by counsel in the criminal proceeding, entered a guilty plea to the charge of theft over \$10,000 and under \$100,000. (Clmt. Ex. 5, at 16; Fund Ex. 6 at 2.) Of central importance to the matter at hand, in pleading guilty to theft, the Respondent admitted that:

Between March 2, 2012 and September 6, 2012 . . . [s]he received and stole also \$33,650 in checks from Ruth Dillangca [sic], promising to find her a home. She cashed these checks [sic] and deposited them in her account without the knowledge or permission of Camera [sic] & Company or Ms. Ruth Dillangca [sic].

(Clmt. Ex. 5, at 11.) The Circuit Court for Prince George's County, Maryland, found that there was a sufficient factual basis for the plea and that it was "freely, voluntarily, and understandably made." (Clmt. Ex. 5 at 16.) Accordingly, it accepted the Respondent's guilty plea. (*Id.*) On February 7, 2014, the Respondent was sentenced to ten years in jail, with all but one year suspended, in connection with the theft charge. (Clmt. Ex. 6 at H-2, 21, 22; Clmt. Ex. 7.)

The Claimant's testimony and the guilty disposition on the theft charge, arising from the same conduct at issue here, established that the Respondent obtained money from the Claimant by means of theft. *See Culver v. Maryland Insurance Commissioner*, 175 Md. App. 645 (2007);

cf. Powell v. Maryland Aviation Administration, 336 Md. 210 (1994). Accordingly, the Claimant established the requisite misconduct by the Respondent.⁴

Finally, it is clear that the Claimant sustained an actual loss. The Claimant testified that the Respondent obtained funds totaling \$33,650.00 from her in connection with the purchase of the Property. She explained that \$3,500.00 was an initial deposit and that the additional funds were paid at the Respondent's request to further the purchase of the Property. The Claimant supported her testimony with copies of the checks at issue, (Clmt. Ex. 3), and with a transcript from the Respondent's plea hearing, in which the Respondent acknowledged that she stole a total of \$33,650.00 from the Claimant. (Clmt. Ex. 5 at 11, 16.) The Respondent cashed the checks or deposited them into her own account and did not use the funds toward the purchase of the Property. The Claimant received no value for the funds. Thus, the Claimant established that she sustained an actual loss in the amount of \$33,650.00.

Accordingly, the Claimant established the essential elements that are required to recover from the Fund and she should receive an award from the Fund in the amount of \$33,650.00.

CONCLUSIONS OF LAW

I conclude as a matter of law that the Claimant proved that she sustained an actual loss compensable by the Fund in the amount of \$33,650.00. Md. Code Ann., Bus. Occ. & Prof. §§ 17-404(a) and 17-407(e); COMAR 09.11.03.04.

⁴ The Claimant presented evidence that the Respondent forged three checks provided by the Claimant; however, that evidence was not sufficiently detailed. Upon my review, many of the checks appear to have varying combinations of handwriting and lacked consistency in the way they were filled out. In light of this record, I cannot conclude that the three specific checks were forged by the Respondent. In any event, this is not outcome determinative, as my conclusion that the Respondent obtained money from the Claimant by acts constituting theft covers all of the checks and funds at issue.

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 her actual monetary loss of \$33,650.00 for the Respondent's wrongful acts.
2. The Commission's records and publications shall reflect this decision.

July 22, 2015
Date Decision Issued

SIGNATURE ON FILE

Emily Daneker
Administrative Law Judge

DA

ED/da
#157144