

**BEFORE THE MARYLAND REAL ESTATE COMMISSION**

**MARYLAND REAL ESTATE  
COMMISSION**

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v.

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**CASE NO. 418-RE-2018**

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**OAH NO. DLR-REC-24-20-16470**

**JEFFERSON KNAPP,  
Respondent**

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and

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**IN THE MATTER OF THE CLAIM  
OF LAURIE POWERS AGAINST  
THE MARYLAND REAL ESTATE  
COMMISSION GUARANTY FUND**

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**OPINION AND FINAL ORDER**

This matter came before a hearing panel of the Maryland Real Estate Commission (“Commission”) on February 16, 2022 as a result of the written exceptions filed by Respondent, Jefferson Knapp, and the response thereto filed by Claimant, Laurie Powers, to the Commission’s Proposed Order of October 20, 2021. On January 4-7, February 22-24 and May 6, 7, and 10, 2021, Administrative Law Judge Susan A. Sinrod (“ALJ”) held a hearing (“ALJ Hearing”) on Claimant’s Complaint and Guaranty Fund Claim. The ALJ filed a Proposed Decision on June 7, 2021 in which she recommended Claimant’s claim against the Maryland Real Estate Guaranty Fund (“Fund”) be granted and Claimant be awarded \$50,000. The ALJ further recommended Respondent’s license be revoked. On October 20, 2021, the Commission issued the Proposed Order affirming the ALJ’s Findings of Fact, approving the Conclusions of Law, and adopting the Recommended Order.

On November 12, 2021, Respondent filed written exceptions to the Proposed Order. On November 30, 2021, Claimant filed a response to Respondent’s written exceptions to the Proposed Order. A hearing on the exceptions was held February 16, 2022 (“February 16th Hearing”) by a

panel consisting of Commissioners Anne Cooke, Michael Lord, and Donna Horgan. Hope Sachs, Assistant Attorney General, appeared as the presenter of evidence on behalf of the Commission and the Fund (hereinafter referred to together as the "Fund"). Claimant appeared represented by Michael Jacobs, Esq. Respondent appeared represented by Timothy Casey, Esq. The proceedings were electronically recorded.

### **PRELIMINARY MATTERS**

Respondent filed in advance and moved at the February 16th Hearing to introduce additional evidence not presented at the ALJ Hearing, specifically a Motion for Leave to Allow Respondent to Speak at Exceptions Hearing. Claimant (in a written response and at the February 16th Hearing) and the Commission opposed the motion. Pursuant to the Code of Maryland Regulations ("COMAR") 09.01.03.09 K:

Additional evidence may not be introduced unless the party seeking to introduce it demonstrates to the satisfaction of the administrative unit that the new evidence:

- (1) Is relevant and material;
- (2) Was not discovered before the ALJ hearing; and
- (3) Could not have been discovered before the ALJ hearing with the exercise of due diligence.

Respondent argued his additional testimony met the standard. The Panel recessed to review and in accordance with the provisions of COMAR 09.01.03.09 K and after careful consideration, determined Respondent failed to establish that he could not have discovered the new evidence he intended to provide through additional testimony before the ALJ Hearing. Respondent's motion was denied.

## SUMMARY OF THE EVIDENCE

On behalf of the Commission, ten exhibits, as well as the Office of Administrative Hearings' file containing the exhibits which were introduced at the ALJ Hearing, were entered into evidence:

- REC Ex. 1: Proposed Order by Commission, dated October 20, 2021 and Proposed Decision by ALJ Susan A. Sinrod, dated June 7, 2021.
- REC Ex. 2: Respondent's written exceptions dated November 12, 2021
- REC Ex. 3: Claimant's Response to Respondent's written exceptions dated November 30, 2021
- REC Ex. 4: Respondent's Reply to Claimant's Response to Respondent's written exceptions dated December 17, 2021
- REC Ex. 5: Motion for Leave to Allow Respondent to Speak at Exceptions Hearing dated February 1, 2022
- REC Ex. 6: Claimant's Opposition to Respondent's Motion for Leave to Allow Respondent to Speak at Exceptions Hearing dated February 4, 2022
- REC Ex. 7: Exceptions hearing notice from Commission, dated November 30, 2021
- REC Ex. 8: Claimant's Motion to Strike Respondent's Reply dated January 5, 2022
- REC Ex. 9: Respondent's Opposition to Motion to Strike Respondent's Reply dated January 18, 2022
- REC Ex. 10: Supplement to Exceptions to Proposed Order dated November 15, 2021.

## FINDINGS OF FACT

The Commission adopts the Findings of Fact recommended by the ALJ.

## DISCUSSION

At all times relevant to this matter, Respondent Jefferson Knapp was an associate real estate broker. FF 1.<sup>1</sup> In August of 2015 Respondent and Claimant were connected through Claimant's friend (who was a client of Respondent), Suzanne Letine, when Claimant expressed interest in moving back to the US from Italy and looking at 415 Water Street, St. Michaels, MD (the "Property"). FF. 2, 4. At the time Claimant owned a home in Bethesda, MD. FF 3. Claimant and

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<sup>1</sup> "FF" refers to the ALJ's Findings of Fact in the proposed decision.

Respondent entered into a Non-Binding Buyer Representation Agreement. FF 5.

During their first visit to the Property, Claimant and Respondent discussed remodeling ideas, Respondent told Claimant he was a licensed contractor and could help. FF 6. Claimant had significant concerns about the Property from the outset, most important to her was the issue of mold, to which she has serious sensitivity. FF 7-8. Respondent assured Claimant he would arrange and oversee an inspection to alleviate her fears. FF 9.

On August 10, 2015, Claimant submitted an offer for the Property contingent upon satisfactory home inspections which was accepted after some negotiation. FF 10. Respondent selected (Claimant was not provided with a list) and hired Glenn Albrecht of Albrecht Building and Inspections to perform the home inspection. FF 11. At Respondent's suggestion, Claimant did not attend the inspection. FF 12-13. Mr. Albrecht conducted the home inspection and performed an air-sample mold test on August 20, 2015. The Respondent was at the Property at the time of the inspection but "did not accompany, oversee, or shadow Mr. Albrecht." FF 14.

The inspection report listed a number of problems, some more significant than others, but Respondent assured Claimant there were "no deal breakers" and there was no mention of a mold issue. FF 15-22. Mr. Albrecht did not remove the upstairs air handler access panel to look inside of the air handler nor did he probe any wood on the interior or exterior of the Property to check for rot. FF 23-24. Claimant did not discuss the inspection report with Mr. Albrecht, instead she relied on her discussion with Respondent. FF 26. Claimant came up with a list of request repairs (paired down at Respondent's suggestion). FF 27-28. Respondent also arranged a Chimney inspection during which he told the inspector not to take photographs, to skip standard locations, and to leave certain recommendations out of his report. FF 29-32.

Settlement on the Property was scheduled for September 25, 2015. Claimant was scheduled

to be out of the country but Respondent assured her he would confirm the requested repairs had been made. He also performed an inspection at her home in Bethesda and made recommendations for repairs there. Claimant gave power of attorney to Ms. Lentine to handle the closing. FF 33-39.

Respondent began renovations to the Property in February 2016. Claimant gave Respondent \$30,000.00 over three payments. After Respondent obtained a HVAC cost estimate Claimant felt was too high, she hired Bay Hundred Enterprises, LLC (Bay Hundred) to do the work. As part of their work Bay Hundred removed an air handler and discovered black mold and rust. They also found visible mold in at least one upstairs air register. FF 40-44. Another contractor, Chet Fluharty Construction, went to the Property to adjust some cabinets and discovered soft and clearly rotted walls all around the house. FF 47-49. Claimant subsequently discovered that some of the seller's repairs were faulty, despite Respondent's assurances to the contrary. FF 50-51. Claimant also discovered Respondent's Maryland Home Improvement Commission<sup>2</sup> license had lapsed by the time he did work both at the Property and her Bethesda home. Claimant ultimately terminated Respondent from the renovation project. FF 52-53.

Claimant hired a number of professionals to handle the mold, rot, and other issues. Mold mitigation and related replacement cost Claimant \$15,327.24. FF 55. Rot mitigation cost Claimant \$30,890.32. FF 56. Claimant paid \$28,718.64 for remediation of exterior rot in siding, trim, fascia, eaves, and windows. FF 57. Claimant paid \$9,046.92 to remediate rot and structural defects in the French doors. FF 58. Claimant paid \$11,734.91 for painting after remediation. FF 59. She paid \$743.00 for mold mitigation in the crawlspace. FF 60. She paid \$1,740.00 complete the work suggested on the masonry chimneys which Respondent instructed the chimney inspector not to report. FF 61. She paid \$3,835.74 to repair the rotten and leaking upstairs bathroom window, one

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<sup>2</sup> On June 27, 2018, the Maryland Home Improvement Commission issued a citation against Respondent for \$1,500.00 for performing home improvement work without a license.

of the sellers' repair items Respondent falsely stated was satisfactory. FF 62. And finally Claimant paid \$406.34 for removal, replacement, and attachment of crushed ducting in the crawlspace, another seller repair Respondent falsely told Claimant was complete. FF 63. Claimant's actual loss totalled \$102,443.11. FF 65.

Respondent took exception to the revocation of his license as well as the Fund award. He argued both in writing and at the February 16th Hearing that the ALJ failed to substantiate that the condition of the Property was obvious, that the home inspector had more responsibility than he, and that his lack of disciplinary history should be a mitigating factor. Respondent also argued that revocation was extreme, given the number of licenses revoked by the Commission in recent years.

Claimant, in writing and at the hearing, and the Fund argued the ALJ's proposed decision was supported by the facts and there were no errors of law. Claimant urged the panel to consider the ALJ's credibility findings and argued that because Respondent went so far out of his lane and his assurances to Claimant were false that he was indeed guilty of the various violations and negligent misrepresentation. The Fund concurred.

The Commission is not persuaded by Respondent's exceptions. While it is true that Respondent has no disciplinary record, the alleged violations at issue in this case are numerous and extreme. As the ALJ explained, Respondent made promises to Claimant that he did not fulfill or have any intention of fulfilling and she relied upon those promises by going forward to purchase the Property. Proposed Decision 41. Respondent denied making any false or misleading statements upon which he intended Claimant to rely. *Id.* at 49-50. However, the ALJ found the testimony by Claimant and her witnesses to be credible and Respondent's not credible. *Id.* at 39, 50, 56. In making these statements to Claimant, Respondent failed to disclose material facts that he knew or should have known. Those statements also demonstrated bad faith, untrustworthiness, and

dishonesty in his dealings with Claimant. Respondent did not treat the Claimant fairly, failed to protect her and therefore the public, and failed in his obligation of fidelity to her. He did not answer her questions honestly and purposely excluded her from inspections and excluded important items from inspection reports. Save for his disciplinary history, the ALJ found no facts tending toward mitigation. The Commission certainly views revocation as a high price to pay, however Respondent's behavior merits it. His actions were egregious violations of his duties as a licensed associate real estate broker. The Commission disagrees that the punishment is too severe and agrees with the ALJ's legal analysis of the statutory factors and her resulting conclusion. See MD. CODE ANN. BUS. OCC. & PROF. ("BOP") §§17-322(b)(3), (4), and (25), 17-532(b)(1)(iii) and (c)(1)(iv), COMAR 09.11.02.01C and D, and COMAR 09.11.02.02.

Regarding the Fund award, BOP § 17-404(a)(1) provides that a person may recover compensation from the Fund for an actual loss. BOP § 17-404(a)(2) provides the specific criteria that must be met to award a claim against a Respondent. The ALJ included a thorough analysis of the amounts in Claimant's claim. She also

deducted any expenses incurred for additions to the Property for future mold and rot resistance [AND] removed costs for items that the Claimant did not prove to be discoverable, or that neither Mr. Albrecht nor the Respondent could readily have been able to discover.

Proposed Decision 61. Nothing in Respondent's exceptions contradicts the ALJ's analysis. Accordingly, the evidence is sufficient to establish an actual monetary loss entitling Claimant to an award from the Fund for \$50,000.00.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, the Commission concludes as a matter of law that Respondent violated BOP §§17-322(b)(3), (4), and (25), 17-532(b)(1)(iii) and (c)(1)(iv), COMAR 09.11.02.01C and D, and COMAR 09.11.02.02.

In addition, the Commission concludes as a matter of law that Claimant is entitled to an award from the Fund in the amount of \$50,000 for the actual loss sustained as a result of misrepresentations made by Respondent, in his capacity as a licensed associate real estate broker, in connection with the sale of the Property. BOP §14-404.

**ORDER**

The exceptions of Respondent Jefferson Knapp, the response thereto by Claimant, Laurie Powers, and argument at the February 16, 2022 hearing having been considered, it is this 13<sup>th</sup> day of May, 2022 by the Maryland Real Estate Commission, hereby **ORDERED**:

1. That all real estate licenses held by Respondent, Jefferson Knapp, be and hereby are REVOKED from the date all rights to appeal this order are exhausted;
2. That Claimant, Laurie Powers, be reimbursed from the Maryland Real Estate Guaranty Fund in the amount of Fifty Thousand Dollars (\$50,000); and
3. That the records and publications of the Maryland Real Estate Commission reflect this decision.

**MARYLAND REAL ESTATE COMMISSION  
SIGNATURE ON FILE**

By: \_\_\_\_\_

**Note:** A judicial review of this Final Order may be sought in 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. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.



In addition, the Commission concludes as a matter of law that Plaintiff is to be held liable for the Fund in the amount of \$500,000. The actual loss caused to Plaintiff is not to be determined by the Commission as a matter of fact and association. Plaintiff's loss is to be determined with the sale of the property. BOP 6/14/04

**ORDER**

The Commission of Investments of the State of Maryland, by its Commission on Real Estate, hereby orders that Plaintiff is to be held liable for the Fund in the amount of \$500,000. The actual loss caused to Plaintiff is not to be determined by the Commission as a matter of fact and association. Plaintiff's loss is to be determined with the sale of the property. BOP 6/14/04

**SIGNATURE ON FILE**

By: \_\_\_\_\_  
The Commission on Real Estate of the State of Maryland, by its Commission on Real Estate, hereby orders that Plaintiff is to be held liable for the Fund in the amount of \$500,000. The actual loss caused to Plaintiff is not to be determined by the Commission as a matter of fact and association. Plaintiff's loss is to be determined with the sale of the property. BOP 6/14/04

**BEFORE THE MARYLAND REAL ESTATE COMMISSION**

**MARYLAND REAL ESTATE  
COMMISSION**

v.

**JEFFERSON KNAPP,  
Respondent**

**and**

**IN THE MATTER OF THE CLAIM  
OF LAURIE POWERS AGAINST  
THE MARYLAND REAL ESTATE  
COMMISSION GUARANTY FUND**

\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated June 7, 2021, having been received, read and considered, it is, by the Maryland Real Estate Commission, this \_\_ day of September, 2021, hereby **ORDERED**:

A. That the Findings of Fact in the proposed decision be, and hereby are, **AFFIRMED.**

B. That the Conclusions of Law in the proposed decision be, and hereby are, **APPROVED.**

C. That the Recommended Order in the proposed decision be, and hereby is, **ADOPTED.**

D. That the records, files, and documents of the Maryland 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, 500 North Calvert Street, Baltimore, MD 21202. If no written exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final.

F. Once this 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 REAL ESTATE COMMISSION

10/20/2021  
Date

By:

SIGNATURE ON FILE

**MARYLAND REAL ESTATE**

**\* BEFORE SUSAN A. SINROD,**

**COMMISSION**

**\* AN ADMINISTRATIVE LAW JUDGE**

**v.**

**\* OF THE MARYLAND OFFICE**

**JEFFERSON KNAPP,**

**\* OF ADMINISTRATIVE HEARINGS**

**RESPONDENT**

**\***

**And**

**\* OAH No.: DLR-REC-24-20-16470**

**THE CLAIM OF LAURIE POWERS,**

**\***

**CLAIMANT,**

**\***

**AGAINST THE MARYLAND**

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**REAL ESTATE COMMISSION**

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**GUARANTY FUND**

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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 March 11, 2018, Laurie Powers (Claimant) filed a complaint against Jefferson Knapp (Respondent) with the Maryland Real Estate Commission (REC) for alleged violations of the Maryland Real Estate Broker's Act (Act), Maryland Code Annotated, Business Occupations and Professions Article, section 17-101 *et. seq.* (2018 & Supp. 2020) and the provisions at Code of Maryland Regulations (COMAR) 09.11.01 and 09.11.02, enacted under the Act. This matter involves the Claimant's purchase of a property located at 415 Water Street, St. Michaels,

Maryland (Property). The Claimant also filed a claim for reimbursement from the REC Guaranty Fund (Fund) for losses incurred as a result of the alleged conduct of the Respondent (Claim). On July 17, 2020, the REC issued a Statement of Charges and Order for Hearing, setting forth regulatory charges against the Respondent and ordering a hearing on the Claimant's claim against the Fund. The REC further determined that the Claimant was entitled to a hearing to establish her eligibility for an award from the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-409(a) (2018). Accordingly, the REC ordered a combined hearing on the Charges and the Claimant's claim against the Fund.

On January 4 through 7, February 22 through 24 and May 6, 7, and 10, 2021, I conducted a hearing remotely via the Webex videoconferencing platform. Md. Code Ann., Bus. Occ. & Prof. §§ 17-324(a) and 17-408(a) (2018); COMAR 28.02.21.20B. Shara Hendler, Assistant Attorney General, Department of Labor, represented the REC. Michael Jacobs, Esquire, and Melanie Barney, Esquire, represented the Claimant. Timothy Casey, Esquire, represented the Respondent. John Hart, Assistant Attorney General, Department of Labor, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedures for Administrative Hearings before the Office of the Secretary of the Department of Labor, and the Rules of Procedure of the Office of Administrative Hearings govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.02, 09.01.03 and 28.02.01.

#### ISSUES

1. Did the Respondent, directly or through another person, willfully make a misrepresentation or knowingly make a false promise in violation of section 17-322(b)(3) of the Act?

2. Did the Respondent intentionally or negligently fail to disclose to any person with whom he dealt a material fact that he knew or should have known that relates to the Property, in violation of section 17-322(b)(4) of the Act?

3. Did the Respondent engage in conduct that demonstrated bad faith, incompetency, or untrustworthiness or that constituted dishonest, fraudulent, or improper dealings, in violation of section 17-322(b)(25) of the Act?

4. Did the Respondent violate any other provision of the Act, in violation of section 17-322(b)(32) of the Act?

5. Did the Respondent fail to disclose all material facts as required under section 17-322 of the Act, in violation of section 17-532(b)(1)(iii)<sup>1</sup> of the Act?

6. Did the Respondent fail to treat all parties to a transaction honestly and fairly and answer all questions fully, in violation of section 17-532(c)(1)(iv) of the Act?

7. Did the Respondent violate COMAR 09.11.02.01C by failing to protect the public against fraud, misrepresentation, or unethical practices in the real estate field?

8. Did the Respondent violate COMAR 09.11.02.01D by failing to make reasonable efforts to ascertain all material facts concerning the Property in order to fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of material facts?

9. Did the Respondent violate COMAR 09.11.02.02A by failing to protect and promote the interests of the Claimant while maintaining statutory obligations towards other parties to a transaction?

10. If so, what is the appropriate sanction?

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<sup>1</sup> The REC cited this charge as section 17-352(c)(1)(iii) in the Statement of Charges. REC Ex. #1. In 2017, this statute was renumbered and this provision is now contained in (b)(1)(iii) not (c)(1)(iii). I acknowledge that the REC's citation was to that which was in existence at the time of the matters that are relevant to this case.

11. Did the Claimant sustain an actual monetary loss as a result of the Respondent's acts or omissions in his capacity as a licensed real estate broker; and,

12. If so, what is the appropriate award to the Claimant from the Fund?

**SUMMARY OF THE EVIDENCE**

Exhibits

The REC submitted the following exhibits, which were admitted into evidence:

- REC Ex. #1- Statement of Charges and Order for Hearing, dated July 17, 2020
- REC Ex. #2- Notice of Remote Hearing, dated November 5, 2020
- REC Ex. #3(a)- Licensing History of the Respondent, dated December 7, 2020
- REC Ex. #3(b)- Certification of David R. Finneran, Executive Director, MHIC, dated December 7, 2020
- REC Ex. #3(c)- Maryland Commission of Real Estate Appraisers, Appraisal Management Companies and Home Inspectors Licensing History of the Respondent, undated
- REC Ex. #4- Report of Investigation by Roderick Dotson, investigation closed on September 16, 2019
- REC Ex. #5- Certification of Todd Blackistone, Custodian of Records of the Maryland Commission of Real Estate Appraisers, Appraisal Management Companies, and Home Inspectors, dated April 5, 2021; Complaint Checklist (typed and handwritten), dated June 11, 2019
- REC Ex #6- Affidavit of David Finneran, dated May 7, 2021; printout of archived website (July 24, 2014-May 2, 2016, and May 2, 2016- September 15, 2017) of the Maryland Home Improvement Commission
- REC Ex. #7- Affidavit of Todd Blackistone, undated

The Claimant submitted the following Bates-stamped<sup>2</sup> exhibits, which were admitted into evidence unless otherwise noted:

- Cl. Ex. #1- Spreadsheet of total cost of heating, ventilation, and air conditioning (HVAC) system, ducting and registers, undated (no Bates stamp); proposal of Douglas W. Fluharty dba Bay Hundred Enterprises, LLC, dated April 6,

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<sup>2</sup> The "K" numbers set forth in the exhibit list are the Bates stamped page numbers.

2016 (K001-K002); email from Doug Fluharty to the Claimant, dated May 1, 2016 (K003); invoice from Douglas W. Fluharty dba Bay Hundred Enterprises LLC, dated January 23, 2017 (K004); invoice from Warrington Builders, Inc., dated June 1, 2016 (K005-K007); invoice from Warrington Builders, Inc., dated June 16, 2016 (K008); invoice from Warrington Builders, Inc., dated July 7, 2016 (K009-K012); invoice from Total Home Performance, dated June 13, 2016 (K013); invoice from Servpro of The Mid-Upper Shore, dated September 8, 2016 (K014-K016); invoice from Servpro, dated September 12, 2016 (K017); invoice from Servpro, dated September 16, 2016 (K018)

Cl. Ex. #2-

Spreadsheet of total sunporch rot, mold and ceiling leak/deck costs (no Bates stamp); invoice from Warrington Builders, Inc., dated July 7, 2016 (K019-K022); invoice from Warrington Builders, Inc., dated July 19, 2016 (K023-K025); invoice from Warrington Builders, Inc., dated August 2, 2016 (K026-027); invoice from Warrington Builders, Inc., dated August 11, 2016 (K028); invoice from Delmarva Roofing & Coating, Inc., dated August 5, 2016 (K029); Proposal from Delmarva Roofing & Coating, Inc. dated June 24, 2016 (K030); invoice from Total Home Performance, LLC, dated July 13, 2016 (K031); invoice from The Lumberyard, Inc. dated July 1, 2016 (K032); Quotation from The Lumberyard, Inc. dated July 28, 2016 (K033); invoice from Warren's Wood Works, dated February 8, 2017 (K034); Tile Order Form from Solid Tops, LLC, dated July 8, 2016 (K035); email receipt from Solid Tops, LLC, dated August 4, 2016 (K036); Tile Order Form from Solid Tops, LLC, dated July 14, 2016 (K037-K038); invoice from Solid Tops, LLC, dated February 2, 2017 (K039); email receipt from Floor & Décor, dated March 17, 2017 (K040-K041); Proposal from Jason S. Bell, dated July 27, 2016 (K042); invoice from Bill Lemaire, dated December 8, 2016 (K043); invoice from Bill Lemaire, dated December 16, 2016 (K044); invoice from Bill Lemaire, dated December 24, 2016 (K045); invoice from Bill Lemaire, dated December 30, 2016 (K046); invoice from Bill Lemaire, dated January 12, 2017 (K047); invoice from Bill Lemaire, dated January 20, 2017 (K048); invoice from Bill Lemaire, dated February 3, 2017 (K049); invoice from Bill Lemaire, dated February 17, 2017 (K050); invoice from Bill Lemaire, dated March 11, 2017 (K051); invoice from James E. Harvey Millwork, Inc., dated January 19, 2017 (K052); invoice from Douglas W. Fluharty, dba Bay Hundred Enterprises, dated October 10, 2016 (K053); invoice from Douglas W. Fluharty, dba Bay Hundred Enterprises, LLC, dated January 23, 2017 (K054); invoice from Chet Fluharty Construction, dated March 26, 2017 (K055); invoice from Chet Fluharty Construction, dated August 8, 2017 (K056-K060)

Cl. Ex. #3-

Spreadsheet of total rotted exterior siding, trim, fascia, eaves & windows (no Bates-stamp); Quote from Shenandoah Sash & Door, dated August 25, 2016 (K061-K064); Contract-Detailed from Pella Window and Door Showroom of Beltsville, dated September 6, 2016 (K065-K069); invoice from James E. Harvey Millwork, dated April 20, 2017 (K070); invoice



from James E. Harvey Millwork, Inc., dated June 2, 2017 (K071); invoice from The Lumberyard, Inc., dated April 7, 2017 (K072); invoice from The Lumberyard, Inc., dated May 18, 2017 (K073); invoice from James E. Harvey Millwork, Inc., dated July 13, 2017 (K074); invoice from Chet Fluharty Construction, dated August 8, 2017 (K075-K079)

- Cl. Ex. #4- Spreadsheet of total French door rot & structural defects costs (no Bates-stamp); Quote from Weather Shield to The Lumberyard, dated June 10, 2016 (K080-K081); invoice from The Lumberyard, dated August 26, 2016 (K082); invoice from Chet Fluharty Construction, dated August 8, 2017 (K083-K087)
- Cl. Ex. #5- Spreadsheet of total rotted sun porch, exterior siding, trim, fascia, eaves, window & door painting costs (no Bates-stamp); sales receipts from Avon Decorating Center, dated January 28, 2017; February 20, 2017; March 24, 2017; May 17, 2017; June 5, 2017; June 14, 2017; June 29, 2017; July 1, 2017 (K088-K091); receipts from Sherwin-Williams, dated January 25, 2017; January 30, 2017; December 9, 2016; January 10, 2017 (K092-K093); invoice from Custom Painting By JP Gonzalez LLC, dated August 16, 2017 (K094); invoice from Custom Painting by JP Gonzalez, LLC, dated July 10, 2017 (K095); invoice from Custom Painting by JP Gonzalez, LLC, dated June 14, 2017 (K096); invoice from Custom Painting by JP Gonzalez, LLC, dated February 3, 2017 (K097)
- Cl. Ex. #6- Itemization of miscellaneous costs (no Bates-stamp); invoice from Total Home Performance LLC, dated October 26, 2016 (K098); invoice from Total Home Performance LLC, dated January 17, 2017 (K099); invoice from Douglas W. Fluharty dba Bay Hundred Enterprises, LLC, dated June 20, 2016 (K100); Work Agreement from Gede Insulation, dated October 12, 2016 (K101); invoice from Katya's Landscapes, LLC, dated April 7, 2017 (K102-K103); invoice from Laurence Haley Jr. Masonry Inc., dated July 21, 2017 (K104); invoice from NCF Home Improvements LLC, dated November 6, 2016 (K105); invoice from Chet Fluharty Construction, dated January 23, 2017 (K106-107); email from Joey Patrick to the Claimant, dated June 16, 2016 (K108); Condition Report from Atlantic Chimney Service, dated June 6, 2019 (K109); Estimate from Atlantic Chimney Service, dated April 14, 2019 (K110); invoice from Atlantic Chimney Service, dated December 7, 2018 (K111); invoice from Alliance Floors, LLC, dated November 17, 2016 (K112); invoice from Hutchison Glass & Mirror, Inc., dated September 27, 2016 (K113); Quote from Weather Shield, dated March 22, 2016 (K114); invoice from Warrington Builders, Inc. dated June 1, 2016 (K115-K117); invoice from Warrington Builders, Inc., dated July 7, 2016 (K118-K121); invoice from Douglas W. Fluharty dba Bay Hundred Enterprises, LLC, dated January 23, 2017 (K122-K123); invoice from Douglas W. Fluharty dba Bay Hundred Enterprises, LLC, dated September 19, 2016 (K124)

Cl. Ex. #7-

Email chain between the Claimant and the Respondent, dated August 16, 2015 (K125-127); drawing of the back of the Property; email from the Respondent to the Claimant, dated August 20, 2015, with Building Inspection Agreement attached, dated August 20, 2015 (K128-129); email from Glenn Albrecht to the Claimant dated August 20, 2015, with Inspection Report and invoice from Albrecht Building and Inspections, dated August 20, 2015 attached (K130-K164); email from Glenn Albrecht to the Respondent, dated August 21, 2015, with Certificate of Mold Analysis, dated August 21, 2015 attached (K165-171); emails between the Claimant and the Respondent, dated August 21, 2015 (K172); Claimant's notes regarding home inspection, dated August 22, 2015 (K173); email from the Respondent to the Claimant, dated August 25, 2015, forwarding email from Brandon Weems to the Respondent, dated August 25, 2015 containing findings and pictures from dock inspection (K174-K176); Atlantic Chimney Service Condition Report, dated August 19, 2015 (K177); invoice from Randy Arnesen Termite & Pest Control, Inc. (K178); Wood Destroying Insect Inspection Report, dated August 19, 2015 (K179); email from the Respondent to the Claimant, dated August 28, 2015, with Property Inspections Addendum to Contract of Sale, signed by the sellers on August 28, 2015 attached (K180-K182); emails between Joyce Crowe and the Claimant, dated August 24, 2015 through August 31, 2017 (K183-K185); emails between the Claimant and the Respondent, dated September 1, 2015, with Bethesda home inspection results attached (K186-K189); emails between the Claimant and the Respondent, dated September 11, 2015 (K190-K193); emails between the Claimant and the Respondent, dated September 10 and September 19, 2015, (K194-K195); emails between the Claimant and the Respondent, dated September 20, 2015, with Knappworks estimate attached (K196-K198); emails between the Claimant and the Respondent, dated September 22, to September 25, 2015 (K199-K206); emails between the Claimant and the Respondent, dated September 28, 2015 through February 1, 2016; Knappworks estimate, dated January 8, 2016 (K207-K227); letter from The Commissioners of St. Michaels to the Claimant, dated March 18, 2016 (K228); Historic District Commission Certificate of Appropriateness, dated March 16, 2016 (K229); Town of St. Michaels Application for Historic District Review, dated February 22, 2016 (K230-K233); email from the Respondent to the Claimant, dated April 6, 2016 (K234); proposal from Douglas W. Fluharty dba Bay Hundred Enterprises, LLC, dated April 6, 2016 (K235-K236); email from the Respondent to the Claimant, dated April 6, 2016 (K237); email from the Respondent to the Claimant, dated April 8, 2016 (K238); Quote from Weather Shield dated March 22, 2016 (K239); emails between the Claimant and the Respondent, dated April 8 through April 11, 2016 (K240-K242); email from the Respondent to the Claimant, dated April 23, 2016, with pictures attached (K243-K261); emails between the Claimant and the Respondent, dated April 29 to April 30, 2016 (K262-K267); Estimate from Knappworks, LLC, dated April 30, 2016 (K268); email from Douglas Fluharty to the Claimant, dated May 1, 2016 (K269); email from the Respondent to the

Claimant, dated May 3, 2016 (K270); Payment Schedule from Knappworks, LLC, dated May 1, 2016 (K271-K272); email from the Respondent to the Claimant, dated April 30, 2016 (K273); Quote from Crystal Cabinet Works, Inc., dated February 18, 2016 (K274); Invoice from Barclay Designs, LLC, dated April 29, 2016 (K275); emails between the Claimant and the Respondent, dated May 4 through May 6, 2016 (K276-278); email from Douglas Fluharty to the Claimant, dated May 6, 2016, with statement attached (K279-280); email from the Claimant to the Respondent, dated May 6, 2016 (K281); email receipt from Key One Inc., dated May 6, 2016 (K282); emails between Derek Dombrowski, Total Home Performance and the Claimant, dated May 5 and May 9, 2016 (K283); statement of Derek Dombrowski, Total Home Performance, undated (K284); estimate of Total Home Performance, dated April 4, 2016 (K285-K286); email from Douglas Fluharty to the Claimant, dated May 31, 2016 (K287); letter from the Commissioners of St. Michaels to the Claimant, dated June 6, 2016 (K288); Building Permit/Zoning Certificate Application 2015, dated April 23, 2016 (K289-K290); Town of St. Michaels Building Permit No. 4761, voided on May 19, 2016 (K291); email from Joey Patrick to the Claimant, dated June 16 2016, with pictures attached (K292-K292D); email from Joey Patrick to the Claimant, dated July 1, 2016 (K293); email from Warrington Builders to the Claimant, dated July 12, 2016 (K294); estimate from Warrington Builders, undated (K295-K297)

- Cl. Ex. #8- The Claimant's calendars for August 2015, September 2015, April 2016, and May 2016 (K298-K301)
- Cl. Ex. #9- Town of St. Michaels Building Permit No. 4761, voided on May 19, 2016 (K302); Town of St. Michaels Building Permit/Zoning Certificate Application 2015, dated April 23, 2016 (K303-K304)
- Cl. Ex. #10- Email from Todd Blackistone, Executive Director, Commission of Real Estate Appraisers, Appraisal Management Companies and Home Inspectors to Michael Jacobs, dated December 21, 2020; Respondent's home inspector's, home improvement and real estate licensing history; Knappworks LLC business status and Annual Report/Personal Property, printed December 23, 2020(K305-K311)
- Cl. Ex. #11- Complaint filed with the Maryland Home Improvement Commission by the Claimant against the Respondent, dated August 29, 2018 (K312); Citation by the Maryland Home Improvement Commission against the Respondent, dated June 27, 2019 (K312-K315)
- Cl. Ex. #12- COMAR 09.36.07.01 through .13 (K316-K333)
- Cl. Ex. #13- Letter from Michael J. Jacobs, Esq. to Michael L. Kasnic, Executive Director, REC, dated June 3, 2020 (K334-K359); sworn statement of the Claimant (K359-371); Claimant's witnesses and proffer of testimony

(K372-383); Home Improvement Commission citation (K384-K386); Maryland Judiciary Judgment and Liens search list of judgments against the Respondent (K387); list of entered and satisfied judgments (K388); letter from Martha Suss to the REC, undated (K389); letter from J. Nicholas D'Ambrosia to the REC, undated (K390-K391)

- Cl. Ex. #14- Real Property Data Search for the Respondent's property at 24280 Oakwood Park Rd., St. Michaels, MD 21663 (K392)
- Cl. Ex. #15- Circuit Court Case Information case search, Case Number C-20-CV-16-000062, *Laura O'Sullivan, et. al. v. [the Respondent]* (K393-K397)
- Cl. Ex. #16- Fifty-seven photographs, undated (K398-K456); emails between Christelle Gorman and the Claimant, dated September 22 and 23, 2015 (K457-459); six photographs, undated (K460-K465)
- Cl. Ex. #17- Estimates from Knappworks, LLC, dated September 20, 2015; November 14, 2015; December 27, 2015; January 11, 2016; February 25, 2016; April 30, 2016; Accounting, dated May 1, 2016; Invoice, dated May 1, 2016; Payment Schedule, dated May 1, 2016 (K466-K493)
- Cl. Ex. #18- Notes of Roderick Dotson, Investigator, REC, undated
- Cl. Ex. #19- Seven photographs, dated April 25, 2016 (K494-K500)
- Cl. Ex. #20- Benson & Mangold Real Estate online listing of the Property (K501-K505)
- Cl. Ex. #21- Listing Brochure Walkthrough of House (K506-K511)
- Cl. Ex. #22- Warrington Builders Invoices & Payments, undated (K512)
- Cl. Ex. #23- Warrington Builders, Inc., business card (K513); emails between Warrington Builders and the Claimant, dated May 11 and 12, 2016 (K514-L515)
- Cl. Ex. #24- Date stamped pictures of listing photographs, varying dates (no Bates-stamp)
- Cl. Ex. #25- Knappworks, LLC website (001-002);<sup>3</sup> LinkedIn profile of the Respondent (003-004); Zillow profile of the Respondent (005-006); Active Rain profile of the Respondent (007-009); Lead-Safe Certified Contractors website profile of the Respondent (010)
- Cl. Ex. #26- Zillow profile of the Respondent (001-005)

<sup>3</sup> Some of the exhibits that the Claimant submitted during the hearing were Bates-stamped separately from the originally filed exhibits.

- Cl. Ex. #27- Active Rain profile of the Respondent (001-009)
- Cl. Ex. #28- LinkedIn profile of the Respondent (001-005)
- Cl. Ex. #29- Excerpt from Home Improvement Commission website (001-004)
- Cl. Ex. #30- Notes of Claimant from home inspection; drawing of the Property (001-002)
- Cl. Ex. #31- Article in The Star Democrat, dated July 12, 2020 (001-007)
- Cl. Ex. #32- Five photographs of problems throughout the Property, varying dates (001-005)
- Cl. Ex. #33- Seven photographs of problems throughout the Property, varying dates (001-007)
- Cl. Ex. #34- Six photographs of problems throughout the Property, varying dates (001-006)
- Cl. Ex. #35- Email from the Respondent to the Claimant, dated February 4, 2016, with drawing of laundry room attached (001-002)
- Cl. Ex. #36- Not offered
- Cl. Ex. #37- Eight photographs of work in progress throughout the Property, varying dates (001-008)

The Respondent submitted the following exhibits, which were admitted into evidence unless otherwise noted:

- Resp. Ex. #1- Inspection Report, Albrecht Building and Inspections dated August 20, 2015
- Resp. Ex. #2- Residential Contract of Sale, dated August 10, 2015
- Resp. Ex. #3- MRIS listing of the Property, dated August 5, 2015
- Resp. Ex. #4- Maryland Non-Binding Buyer Representation Agreement, dated August 9, 2015
- Resp. Ex. #5- HUD-1 Settlement Statement, dated September 25, 2015
- Resp. Ex. #6- Notice Pursuant to "Property Inspections" Addendum to Contract of Sale, dated August 26, 2015
- Resp. Ex. #7- Emails between the Claimant and the Respondent, varying dates

Resp. Ex. #8-	Not offered
Resp. Ex. #9-	Not offered
Resp. Ex. #10-	Not offered
Resp. Ex. #11-	Not offered
Resp. Ex. #12-	Emails between Suzanne S. Lentine and the Respondent, dated August 7 and 8, 2015 and September 23, 2015
Resp. Ex. #13-	Not offered
Resp. Ex. #14-	Not offered
Resp. Ex. #15-	Not offered
Resp. Ex. #16-	Not offered
Resp. Ex. #17-	Not offered
Resp. Ex. #18-	MRIS Full Tax Record for the Property, dated August 8, 2016
Resp. Ex. #19(a)-	Notice to Buyer and Seller of Buyer's Rights and Seller's Obligations Under Maryland's Single Family Residential Property Condition Disclosure Law, dated February 18, 2015
Resp. Ex. #19(b)-	Maryland Residential Property Disclosure and Disclaiming Statement, signed by the sellers on February 20, 2015
Resp. Ex. #20-	Certificate of Mold Analysis, by Pro-Lab, dated August 21, 2015
Resp. Ex. #21-	Timeline, prepared by the Respondent, undated
Resp. Ex. #22-	Five photographs of the Property, undated
Resp. Ex. #23-	Twenty-nine listing photographs of the Property, undated
Resp. Ex #24-	Not offered
Resp. Ex. #25-	Not offered
Resp. Ex. #26-	Not admitted <sup>4</sup>
Resp. Ex. #27-	Not admitted

<sup>4</sup> The exhibits that were not admitted during the hearing remain with the file and are preserved for the record.

Resp. Ex. #28- Letter from the Commission of Real Estate Appraisers, Appraisal Management Companies and Home Inspectors to Glenn Albrecht, dated October 11, 2019

Resp. Ex. #29- Respondent's website profile on Long & Foster Website, undated

The Fund did not submit any exhibits for admission into evidence.

### Testimony

The REC presented the testimony of the following witnesses:

1. Roderick Dotson, REC Investigator
2. The Claimant
3. Joseph Patrick, Atlantic Chimney Service, accepted as an expert witness in venting and chimney use and maintenance
4. Derek Dombrowski, Total Home Performance, accepted as an expert witness in healthy home evaluations, including remediation of mold and moisture issues.
5. Suzanne Lentine, the Claimant's friend
6. Douglas Fluharty, Bay Hundred Enterprises, LLC, accepted as an expert witness in residential HVAC and electrical work.

The Claimant testified on her own behalf, and presented the testimony of the following witnesses:

1. Troy Foster, accepted as an expert witness in carpentry, with expertise in removal and replacement of rotted wood.
2. Charles Everett (Chet) Fluharty, Chet Fluharty Construction, accepted as an expert witness in carpentry, with expertise in detection, removal, and replacement of rotted wood.
3. Anastacia Monto, Interior Designer
4. Richard Powers, the Claimant's father

The Respondent testified on his own behalf, and presented the testimony of the following witnesses:

1. Debra Crouch, Listing Agent
2. Glenn Albrecht, Home Inspector
3. Martha Suss, Sales Manager, Long & Foster, accepted as an expert witness in real estate brokerage services on the subject of agency.
4. Todd Gregory Still, Licensed Master HVAC mechanic
3. Thomas Lynch, Licensed Real Estate Salesperson, accepted as an expert witness in brokerage services in the State of Maryland, and matters pertaining to real estate agency.

#### **FINDINGS OF FACT**

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

1. At all relevant times, the Respondent was an associate real estate broker licensed by the REC under license number 05-645635.
2. On August 8, 2015, the Claimant accompanied her friend, Suzanne Lentine, to look at the Property. The Claimant had been living in Italy and wanted to return to live in the United States. The Respondent was Ms. Lentine's listing agent for the sale of her St. Michaels home. Ms. Lentine contacted the Respondent to see if he could show the Property to the Claimant.
3. At all relevant times, the Claimant also owned a home in Bethesda, Maryland.
4. The Claimant and Ms. Lentine spent approximately forty-five minutes at the Property that day. Ms. Lentine suggested to the Claimant that she utilize the Respondent as her buyer's agent for the purpose of making an offer to purchase the Property.
5. On August 9, 2015, the Claimant and Ms. Lentine returned to the Property. The Claimant and the Respondent entered into a Non-Binding Buyer Representation Agreement,



agreeing that the Respondent would act as the Claimant's buyer's agent for the purchase of the Property.

6. While there on August 9, 2015, the Claimant began discussing remodeling ideas, which included rearranging the kitchen and installation of a flagstone patio in the rear of the Property. The Respondent informed the Claimant that he was also a builder/home improvement contractor and a licensed home inspector and could do the remodeling work she desired.

7. The Claimant had concerns about the Property regarding rot and moisture because it was on the water and the original structure was built in 1810.

8. The Claimant informed the Respondent from the beginning that she would only purchase the Property if appropriate inspections revealed that there was no problem with mold, or any structural defects such as wood rot. The Claimant has a serious sensitivity to mold and cannot live in a home that has elevated levels. She informed the Respondent that she wanted the Property "turned upside-down" to reveal any mold issues.

9. The Respondent assured the Claimant that he would obtain a home inspection and a mold inspection that would reveal if any issues of mold or rot existed at the Property. The Respondent also offered and promised that because of his qualifications and expertise as a contractor and home inspector, he would oversee or "shadow" the home inspection to ensure that a thorough inspection was done so that any issues of mold and rot would be discovered.

10. On August 10, 2015, the Claimant submitted an offer for the Property contingent upon satisfactory home inspections. After some negotiation, the sellers accepted the Contract on August 14, 2015. The agreed upon purchase price was \$1,300,000.00.

11. The Respondent selected and hired Glenn Albrecht of Albrecht Building and Inspections to perform the home inspection on the Claimant's behalf. The Respondent did not give the Claimant a list of home inspectors to choose from. Mr. Albrecht also conducted mold

testing, which not all home inspectors did. This alleviated the need to obtain a separate mold analysis.

12. The Respondent represented to the Claimant that it was not necessary for her to attend the home inspection. He convinced her that it would be better for him to be present to ensure that Mr. Albrecht conducted a thorough home inspection, sufficient to discover if any of her potential deal breakers, mold or rot, existed on the Property.

13. As a result of the Respondent's suggestion, the Claimant stayed at her Bethesda home on the day of the home inspection.

14. Mr. Albrecht conducted the home inspection and performed an air-sample mold test on August 20, 2015. The Respondent was at the Property at the time of the inspection. Mr. Albrecht and the Respondent crossed paths while Mr. Albrecht was conducting the inspection, but the Respondent did not accompany, oversee, or shadow Mr. Albrecht during the inspection.

15. Upon receipt of the home inspection and mold analysis reports, the Claimant asked the Respondent to go over them with her, especially the mold analysis because she did not understand what the numbers meant. The Respondent and the Claimant had an email exchange and set up a time to talk about the inspections. In that email, the Respondent told the Claimant that he did not see any deal breakers in the home inspection report or the mold analysis.

16. The home inspection report noted that there were some signs of roof leakage that Mr. Albrecht observed in the attic. The report also noted that there were "some sections of misc[ellaneous] rot at diverse locations." REC Ex. #4. Mr. Albrecht denoted these items with "RR" which the inspection report key defined as "Repair or Replace," meaning that the item was not "functioning as intended, or needs further inspection by a qualified contractor...." REC Ex. #4.

17. The inspection report also noted some problems with the dock, including some rotted boards, and neither the electric nor the water at the dock was functioning.
18. The inspection report noted a leak stain at the ceiling near the kitchen from an upstairs bathroom. There were also signs of water incursion and a damaged wall at an upstairs bathroom window, with some minor rot at the window sash. There was some water incursion at an exterior door toward the rear of the house.
19. Mr. Albrecht found that most of the windows were difficult to operate and many were painted shut. He suggested that this be fixed so that the windows could open.
20. Mr. Albrecht also found signs of poor ventilation, delaminated insulation, surface fungus on the undersides of the floor joists and some condensed moisture in the crawlspace. He suggested further evaluation of these issues.
21. Regarding the HVAC systems, Mr. Albrecht noted that both heat pumps were operating satisfactorily on the day of the home inspection, but they were old and well past their life expectancy. He also noted that the upstairs air handler had rust damage "typical to an old piece of equipment." REC. Ex. #4.
22. The inspection report included some other minor problems for which Mr. Albrecht suggested further evaluation.
23. Mr. Albrecht did not remove the upstairs air handler access panel to look inside of the air handler.
24. Mr. Albrecht did not probe any wood on the interior or exterior of the Property to check for rot.
25. For the mold inspection, Mr. Albrecht collected three air samples. The first was a control sample from outside, one from the great room on the main floor, and one from the upstairs master bedroom. The analysis revealed that there were more mold spores detected in

the upstairs bedroom sample; however, the great room sample and the upstairs bedroom sample did not indicate that the mold levels were elevated.

26. The Claimant did not call Mr. Albrecht to discuss the inspection reports directly because the Respondent assured her that everything in the report was minor, and none of her deal breakers were present.

27. After discussing the inspection results, the Claimant came up with a list of items that she wanted the sellers to repair. The Respondent urged her not to make too many requests for repairs because her offer was not for the full asking price for the Property and it might discourage the sellers from moving forward with the sale. The Respondent assured the Claimant that he could do many of the repairs after the closing on the Property. The Respondent also advised the Claimant not to ask the sellers to repair anything that the Claimant was going to replace during the remodel of the Property.

28. The Claimant submitted a list of repairs that she requested the sellers to complete before closing, and on August 28, 2015, the sellers agreed in writing to perform the repairs. Those repairs included: 1) fixing rotted loose boards on the dock as well as the inoperative water and electrical on the dock; 2) repairing the window leak in the upstairs bathroom as well as the damaged interior wall below the window; 3) providing access to the crawlspace and bringing the crawlspace in a similar condition as the rear crawlspace, including a vapor barrier, insulation, remediating mold, if any, and fixing any structural issues therein; and 4) venting the bath fans to the exterior, and replacing the dryer vent with metal.

29. The Respondent also selected Atlantic Chimney Service (Atlantic) to conduct a chimney inspection. The inspection occurred on August 19, 2015. During the inspection, the workers conducting the inspection called the owner of Atlantic, Joey Patrick, and requested him

to come to the Property. They wanted some assistance because they were confused about what the Respondent was asking of them.

30. Ordinarily, when a chimney inspection is performed for a real estate transfer, the inspector will take photographs of the appliances and the venting systems and will inspect to make sure that current standards are maintained.

31. When Mr. Patrick arrived at the Property, the Respondent told Mr. Patrick that he was going to be the general contractor on the renovations to the Property. Mr. Patrick inspected the two masonry chimneys and suggested that they needed chase covers and water barriers, even if they were not in use.

32. The Respondent asked Mr. Patrick not to take pictures. He also told Mr. Patrick to disregard the masonry chimneys, and not to include any suggestions related thereto in his inspection report. Mr. Patrick also made some other verbal recommendations of items that needed repair, which the Respondent told him to leave out of his report.

33. The settlement on the Property was scheduled for September 25, 2015. The Claimant was to return to Italy prior to that date. The Claimant gave power-of-attorney to Ms. Lentine to attend the settlement in her stead. The Respondent represented to the Claimant that he would inspect the seller repairs prior to closing to ensure they were completed satisfactorily.

34. The Claimant needed to sell her house in Bethesda in order to purchase the Property. The Respondent offered to do what he called a "friendly," no cost inspection of the Bethesda house to determine what work needed to be done to get that house ready for sale.

35. The Respondent completed the friendly inspection with a list of repairs that should be completed in order for the Claimant to sell the Bethesda house. He offered to do the work on the Bethesda house and the Claimant employed him to do so. The Respondent did not charge the Claimant for the inspection on the Bethesda house.

36. The Claimant returned to Italy on September 12, 2015.

37. Ms. Lentine accompanied the Respondent on a final walk-through of the Property prior to the closing. The Respondent inspected the sellers' dock repair and found it to be satisfactory. He sent one of his workers into the crawlspace to check that repair; the worker reported that the repair was satisfactory. The Respondent also found the repairs in and around the leaking window in the upstairs bathroom to be satisfactory.

38. Ms. Lentine attended the closing for the Claimant on September 25, 2015.

39. The Claimant returned from Italy in early 2016.

40. The Respondent began the renovations to the Property in February 2016. The Claimant paid the Respondent \$10,000.00 on February 11, 2016, \$20,000.00 on February 25, 2016, and \$10,000.00 on March 12, 2016 for the Respondent's renovations to the Property.

41. The Respondent suggested, based on the inspection report, that the Claimant replace the HVAC systems, both upstairs and downstairs due to their age. After the Respondent obtained a cost estimate that the Claimant felt was too high, she agreed to employ Doug Fluharty from Bay Hundred Enterprises, LLC (Bay Hundred) to replace the HVAC systems.

42. Mr. Fluharty from Bay Hundred and his daughter Michelle who worked with him began replacing the HVAC systems at the Property in April 2016. When Michelle went to the attic to remove the upstairs air handler, she noticed that the air handler was turned off, and mold was visible on the exterior of the air handler cabinet.

43. Upon removal of the air handler access panel, Michelle discovered that the entire interior of the air handler was covered with black mold, which extended into the cabinet insulation, the wiring blower wheel, the circuit board, and into the duct work. The secondary condensate drain pan was rusted, indicating that water had been leaking from the air handler over a long period of time. There was also mold, visible in at least one upstairs air register.

44. On April 23, 2016, the Claimant received an email from the Respondent informing her that in the process of the replacement of the HVAC systems, it was discovered that there was mold in the main trunk line, that seemed isolated to just one trunk line. He said that it was likely due to the use of duct board, on which mold grows very easily, and lack of maintenance, and it would cost \$1,565.00 to replace the duct board with metal ductwork wrapped in insulation.

45. The extensive mold in the air handler and ductwork developed over a long period of time.

46. The Claimant was extremely distraught over the discovery of such extensive mold.

47. Chet Fluharty (Chet) of Chet Fluharty Construction went to the Property to adjust some cabinet doors in the Spring of 2016.<sup>5</sup> While there, the Claimant asked Chet about some peeling paint. When Chet probed the area, it was soft and clearly rotted.

48. Chet walked the Property with the Claimant and identified problematic areas, which were extensive. The screwdriver he used to probe the wood went right in, indicating rotting that developed over several years. There was bubbled and blistered paint all around the house. The rot went so far into the exterior walls that it extended to the sheathing, studs, and insulation.

49. The rot that Chet discovered developed over a long period of time.

50. The Claimant subsequently discovered that some of the seller's repairs were faulty, despite the fact that the Respondent assured her that he inspected them prior to closing and the repairs were completed to his satisfaction. The repair of the window leak in the upstairs

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<sup>5</sup> The date Chet went to the Property was unclear from the record.

bathroom was poorly done; beadboard had pulled away and water had come in. The window would not close. The associated drywall repair behind the shower was poorly done as well.

51. The sellers did not complete the work they agreed to perform in the crawl space. One portion of the crawlspace was left untouched, and crushed ductwork was never repaired.

52. The Claimant also subsequently discovered that the Respondent's construction company Knappworks, LLC was defunct, and that his MHIC license had lapsed. The Claimant performed home improvement work on her Bethesda home and at the Property without a proper license. He acted as the general contractor on the renovation work on the Property without a proper license.

53. On May 6, 2016, the Claimant told the Respondent by email that she did not want him on the job site at the Property until he provided her with his MHIC license and a certificate of insurance. The Claimant ultimately terminated the Respondent from the renovation project.

54. On June 27, 2018, the Maryland Home Improvement Commission issued a citation against the Respondent for \$1,500.00 because he performed home improvement work at the Property without being licensed.

55. As a result of the mold found throughout the HVAC systems; the trunk line; air registers, ductwork and insulation needed to be mold mitigated and replaced. The Claimant paid \$4,046.00 to Bay Hundred and \$9,546.54 to Warrington Builders (Warrington) for this work. She also paid \$735.00 to Total Home Performance and \$999.70 to Servpro for mold mitigation. The total the Claimant paid to remediate the mold from the HVAC system was \$15,327.24.

56. As a result of the rot found on the interior of the sunporch, rotted siding, French doors, windowsills, window sashes, and a passage door from the garage to the house, the Claimant paid \$5,566.88. to Warrington; \$559.00 to Total Home Performance; \$804.81 to The



Lumberyard; \$3,971.32 to Solid Tops; \$109.83 to Floor & Décor; \$3,586.00 to Jason Bell Tile Setter; \$8,185.77 to Colony House/Bill Lemaire; \$1,242.00 to James Harvey Millwork; \$1,355.00 to Bay Hundred; and \$5,509.71 to Chet Fluharty Construction, for a total of \$30,890.32 to remediate the interior rot.

57. The Claimant paid \$28,718.64 for remediation of exterior rot in siding, trim, fascia, eaves, and windows.

58. The Claimant paid \$9,046.92 to remediate rot and structural defects in the French doors; they sagged and had no structural support.

59. The Claimant paid \$11,734.91 for painting after remediation.

60. The Claimant paid Total Home Performance \$743.00 for mold mitigation in the crawlspace.

61. The Claimant paid \$1,740.00 to Atlantic to complete the work Mr. Patrick suggested on the masonry chimneys but which the Respondent instructed Mr. Patrick not to put in the inspection report.

62. The Claimant paid \$3,835.74 to Warrington and The Lumberyard to repair the rotten and leaking upstairs bathroom window, one of the sellers' repair items that the Respondent falsely stated was satisfactory. The repair was visibly faulty, water still leaked in, and it had to be completely repaired again.

63. The Claimant paid \$406.34 to Bay Hundred for removal, replacement, and attachment of crushed ducting in the crawlspace. This was a seller repair that the Respondent sent a worker to the crawlspace to inspect prior to closing and the Respondent falsely told the Claimant the work was satisfactory. However, this part of the work was never actually completed.

64. The Claimant incurred additional expenses for improvements to the Property to prevent future moisture, mold, and rot.

65. The Claimant's actual loss was \$102,443.11.

### DISCUSSION

#### **Legal Framework**

##### Disciplinary Charges Under the Act

The REC charged the Respondent under section 17-322 (2018) of the Act, as follows:

##### **Denials, reprimands, suspensions, revocations, and penalties--**

(b) Grounds--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:

...

(3) directly or through another person willfully makes a misrepresentation or knowingly makes a false promise;

(4) intentionally or negligently fails to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee or applicant deals;

...

(25) engages in conduct that demonstrates bad faith, incompetency, untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;

...

(32) violates any other provision of this title;...

The REC further charged the Respondent under section 17-532 of the Act, which requires that he disclose to the client all material facts as required under section 17-322 of the Act, and which requires that a licensee treat all parties to the transaction honestly and fairly and answer all questions truthfully. Md. Code Ann., Bus. Occ. & Profs. § 17-532(b)(iii) and (iv) (Supp. 2020). The REC further charged the Respondent with failing to protect the public against fraud, misrepresentation, or unethical practices in the real estate field, in violation of COMAR 09.11.02.01C, and failing to make a reasonable effort to ascertain all material facts concerning

the Property, to fulfill the obligation to avoid error, exaggeration, misrepresentation or concealment of facts in violation of COMAR 09.11.02.01D. Finally, the REC charged the Respondent with violating COMAR 09.11.02.02A, by failing to maintain his obligation of absolute fidelity to his client by not protecting and promoting her interests.

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) (2018).

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) (2018).

Burden of Proof

With regard to the Charges, the REC bears the burden of proof, by a preponderance of the evidence, to demonstrate that the Respondent violated the applicable provisions of the Act and the controlling regulations. COMAR 09.01.02.16A. 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) (2018); COMAR 09.01.02.16C. 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 Co. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

### **The Merits of the Case**

The Claimant liked the Property the first time she saw it on August 8, 2015, but had some reservations and a lot of questions. Given that the house was quite old, built in 1810, she was concerned about latent defects. On August 10, 2015, the day the Claimant made her initial offer on the Property, the Claimant and Ms. Lentine made some notes about ideas the Claimant had for remodeling and discussed those ideas with the Respondent. Cl. Ex. #30-01. The Respondent told the Claimant that he could do all of the remodel work she was contemplating, including installation of a lifting garage door, a large flagstone patio, changes to the kitchen and laundry room and adding closets to the bedrooms. The Claimant felt comfortable that the Respondent had this additional expertise and would be able to give her advice. He gave her a preliminary price of \$60,000.00 for that work.

Knowing that the Claimant was nervous and uneasy with the purchase of the Property, the Respondent assured her that he would obtain the appropriate inspections in an effort to discover if any of her deal breakers existed on the Property. The Claimant was pleased that the Respondent had additional competencies in construction, over and above that of a real estate salesperson, and she immediately trusted him. At the hearing, she testified that she felt he "had her back" and she trusted and relied upon him during the inspection process.

The Respondent told the Claimant that by employing him as her real estate agent, she was getting "one-stop shopping" due to his contracting expertise, and the Claimant felt comfortable

with the Respondent as a result. The Respondent told her he could write the contract with a clause that she could terminate the contract for any reason, even if the home inspection came back with no problems. The Claimant was concerned about the fact that the sellers chose to disclaim, not to disclose any defects. The Respondent assured her that disclaimers were common, and the thorough inspections that he would obtain for her would disclose any defects. The Claimant told the Respondent that she wanted the house "turned upside down" in search of mold, as she would walk away from the purchase if any elevated levels existed. The Respondent was aware of her potential deal breakers, which included any significant mold or structural issues such as rot.

The Respondent did not give the Claimant a list of home inspectors to choose from; he employed Mr. Albrecht to do the home inspection. He advised the Claimant not to attend the home inspection. He convinced her that he should be there to oversee the inspection, because he knew what she was looking for and he could make certain that the inspections were thorough and extensive enough to discover mold, rot, or other significant problems. The Claimant believed that the Respondent actually oversaw the inspection as he promised, and she believed he saw each item listed on the inspection report with his own eyes.

The Claimant and the Respondent reviewed the inspection report together on the telephone. REC Ex. #4, p. 92; Resp. Ex. #1. The Respondent told the Claimant that there were no deal breakers in the report. This surprised the Claimant; however, knowing that the Respondent oversaw the inspection and had reviewed the inspection report, she relied on his interpretation. He said the rot was a minor issue that she should not request the sellers to repair; he could take care of it as part of the renovation work he was going to perform after closing. It did not occur to the Claimant to contact Mr. Albrecht about the home inspection; she trusted the Respondent's assessment that everything in the home inspection report was minor. On the

Respondent's advice, the Claimant requested the four items for the sellers to repair, and the sellers agreed to all four. REC Ex. #4, p. 135.

In February 2016, after the Claimant paid the Respondent \$30,000.00 in to begin the renovations to the Property, the Respondent asked her for an additional \$10,000.00 even though very little work had been done. He said that he needed the money for payroll, to enable him and his workers to continue working. She gave him an additional \$10,000.00 on March 12, 2016. After that, the Respondent performed very little work.

On April 23, 2016, the Claimant received the email from the Respondent about the discovery of mold in the upstairs HVAC systems. His email said only that there was mold isolated in the main trunk line. Cl. Ex. #7, K243. He said that it was likely due to the use of duct board, on which mold grows very easily, and also lack of maintenance, and it would cost \$1,565.00 to replace the duct board with metal ductwork wrapped in insulation. It was only after the Claimant spoke to Mr. Fluharty that she learned that mold covered the entire upstairs air handler and ductwork. The Claimant met Mr. Fluharty at the Property and was horrified to discover the amount of black mold outside and inside of the air handler, the ductwork, the interior of the air handler access panel and duct board, the air handler circuit board, the blower, and an upstairs air register. The secondary drain pan was rusted. She took photographs of the moldy surfaces. Cl. Ex. #16, K399-K409. Mr. Fluharty told the Claimant that it was the worst mold he had ever seen in an HVAC system. Mr. Fluharty also told the Claimant that the mold should have been discovered during the home inspection in August 2015.

When the Claimant questioned why Mr. Albrecht did not discover and report the mold, the Respondent told her that home inspectors are not required to remove access panels. He explained that if the air sample mold test came back with elevated levels of mold, a surface test would have been done. Since the mold levels did not come back elevated, no further mold

analysis was performed. The Claimant was extremely angry after hearing this. Clearly, the Respondent and Mr. Albrecht did not "turn the house upside-down" looking for mold as the Respondent promised. Had this mold been discovered during the home inspection, she would not have purchased the Property.

After the Claimant terminated the Respondent from completing her renovation, she subsequently discovered that the Respondent did not have a current MHIC license and his contracting company Knappworks, LLC was defunct.

Ms. Lentine and the Claimant have been friends for thirty years. The Respondent was Ms. Lentine's listing agent for her house in St. Michaels. Ms. Lentine was with the Claimant on August 8 and 9, 2015 when the Claimant decided to make an offer on the Property. Ms. Lentine knew from the Claimant and from conversations with the Claimant and the Respondent that the Respondent told the Claimant that it was not necessary for her to be present at the home inspection, that he knew a lot of inspectors and he would take care of everything. Ms. Lentine testified that the Respondent was well aware that the Claimant wanted a thorough home inspection and mold inspection, and if mold or rot were discovered during the home inspection, she would not purchase the Property. After the Respondent submitted the offer on behalf of the Claimant, the Claimant told Ms. Lentine that she trusted the Respondent and was comfortable that he was going to take care of everything as he promised.

The Claimant called Ms. Lentine the day Mr. Fluharty found the mold throughout the HVAC system. She was extremely upset; Ms. Lentine said the Claimant sounded like she could not breathe. Ms. Lentine actually saw the mold, which she described as being all over every piece of duct work; it was more mold than she had ever seen. Ms. Lentine testified that when they originally walked through the Property, it had been freshly painted, and they did not notice the signs of rot. Ms. Lentine does not have any expertise in building or home inspections.

Ms. Lentine was aware of the Respondent's financial difficulties during the time this transaction was occurring. The Respondent told Ms. Lentine during this process that he wished he had the Claimant's money to get him out of his financial situation at the time.

Anastacia Monto was the Claimant's interior designer. The Respondent had been her realtor in the past. Ms. Monto spent significant time at the Property and worked closely with the Claimant. She knew the Respondent was the contractor doing the renovation work on the Property. However, when she was first at the Property in March 2016, she noticed that not much work had been done, especially given the enormity of the job.

Ms. Monto was there when Mr. Fluharty found the mold in the HVAC system. Ms. Monto had worked with the Respondent many times and thought of him as honest and straightforward. However, according to Ms. Monto, on the day of the mold discovery, he did not take responsibility, did not seem to take it seriously and offered no solution. At the hearing, she said "[t]he Jeff I knew was not this Jeff," referring to the Respondent. Ms. Monto observed the mold in the air handler and the ductwork, and said if anyone had inspected it, they would have seen the mold. She was "astonished" by the mold she observed. Every time Ms. Monto went to the Property, her perception of the Respondent changed because only one worker was ever there, and it did not look like a working jobsite. Ms. Monto never again communicated with the Respondent after she worked with the Claimant; she did not feel she could trust him.

Debra Crouch was the listing agent on the Property. She was there rather frequently and never smelled or saw evidence of mold. A principal of her firm showed the house and noticed what he thought was rot on the siding. When Ms. Crouch approached the sellers about it, they were very responsive and had the rot fixed within one week. Ms. Crouch sat in the sunporch quite a bit, especially during open houses because it was spacious, sunny, and scenic. She testified that she never saw any evidence of moisture or rot inside or outside of the house. Upon



review of the photographs of the rotted wood in the sunporch and the exterior of the Property. Ms. Crouch said she never saw evidence of it while she was there. She and her husband even walked around the entire house and looked at the siding carefully; they did not see any blistering paint or other evidence of rot; if she had, she would have told the sellers.

The Respondent has been doing construction since he was a teenager. He has been a licensed real estate salesperson since 2014. He is a licensed home improvement contractor; however, his MHIC license lapsed between 2015 and 2017. The Respondent believed that he needed the MHIC license for structural work only such as window replacements and the like, but not for painting touch-ups or similar minor work. He also had a home inspector's license but never actually conducted a paid home inspection. He taught about home inspections for one semester at Chesapeake College.

The Respondent testified that he has a mold allergy himself. For this reason, he does not go into houses where there is mold and he does not go into crawlspaces because of the possibility of mold. He testified that he never smelled or sensed mold at the property.

The Respondent explained that a realtor is not an expert in anything. A realtor's job is to help guide a buyer or seller through a real estate transaction. He noted that as a real estate agent, he never made any assessment regarding the condition of the Property; however, it appeared to the Respondent that it was well taken care of for its age.

The Respondent unequivocally denied that the Claimant ever told him that she wanted that house turned "upside down" looking for mold. Contrary to the Claimant's testimony, the Respondent testified that he gave the Claimant a list of several home inspectors, and she chose Mr. Albrecht because he was the only one in the area that did mold tests as part of his home inspection. The Respondent also denied that the Claimant requested a separate mold inspection. Regarding the home inspection, the Respondent insisted that he told the Claimant she should be

at the home inspection so that she could ask questions of the home inspector. He denied that he ever said he would oversee or follow the home inspector; it would have been inappropriate and it would have distracted the home inspector to the point where he might miss something. The Respondent said he did not remember why the Claimant did not attend the home inspection. He denied the allegation in the Statement of Charges that he turned off the air handler to minimize the mold in the air for the mold inspection.

After reviewing the inspection report, the Respondent determined that nothing therein depicted structural problems, and the mold analysis came back with no elevated levels of mold. REC Ex. #4; Resp. Ex. #1 and 20. According to the Respondent, the Claimant determined which items to include in the repair addendum. Resp. Ex. #1 and 6. For example, when discussing item 4.6 in the inspection report which noted that windows were painted shut, the Respondent testified that the Claimant wanted to leave that item off the list because she always kept the windows closed. According to the Respondent, he told the Claimant that he could not advise her regarding the home inspection repairs or the mold analysis, but she should contact Mr. Albrecht if she wanted to talk further about it. He denied her allegation that he told her not to request too many repairs of the sellers. Contrarily, he said that he told her she could ask for any repairs that she wanted. He claimed the only advice he gave was not to ask for a repair of something she intended to replace anyway. The Respondent denied that he had any responsibility for the failure to discover the mold and rot; he maintained that was the purpose of the home inspection.

The Respondent denied agreeing, prior to settlement of the Claimant's purchase of the Property, to perform renovation work on the Property. He said that on the second day the Claimant and Ms. Lentine went to look at the Property, Ms. Lentine mentioned to the Claimant that the Respondent was a contractor and maybe he could help her out. The Respondent insisted that he was extremely busy at the time and told both Ms. Lentine and the Claimant that he would

need to know the scope of work and the timing because he was too busy to commit. He denied the allegation in the Statement of Charges that he told the Claimant that allowing him to do the work would "simplify the process." REC Ex. #1. He maintained that he did not do any work on the Property until February 2016; prior to that there had been no agreement for him to do the renovations.

The Respondent and Ms. Lentine attended the pre-settlement walk-through; the Claimant was in Italy. The Respondent testified that he went through the Property checking to see that all of the seller repairs were completed satisfactorily. The Respondent said the dock looked good; the sellers replaced more boards than requested and the water and electric were operating. The windowsill that had the rot was solid, so he assumed they repaired it with a filler to replace the rot. He did not go into the crawlspace due to his mold sensitivity, but he sent one of his workers in and the worker said it looked fine; there was a vapor barrier and insulation. The worker compared it to the other crawlspace in the house that had already been encapsulated and said it looked the same.

The Respondent testified that it was "a bunch of crap" regarding the allegation in the Statement of Charges that the Claimant informed him that the repairs the seller completed were done poorly and placed the house in worse condition than it was previously. REC Ex. #1. He said she never mentioned the sellers' repairs to him; nor did he ever refuse to go to the sellers and request them to fix their poor work. Subsequently, he contradicted that testimony and said that he could not go back to the sellers to request additional repairs because he was no longer the Claimant's agent at that point and had no recourse with the sellers. According to the Respondent, the first time he heard from the Claimant that she was not happy with the seller repairs was in May or June 2016 when the window they fixed started leaking.

The Respondent discussed the situation with his MHIC license. He said that his company, Knappworks, LLC, was hurt financially during the recession and he changed his company name because there were judgments against Knappworks. He let his MHIC license lapse in April 2015 and renewed it again in July 2017. He conceded that he never changed the name or MHIC number on his company vehicle. He also denied that he was in financial distress at the time; he said he made \$150,000.00 that year and was very busy. He conceded that his home at the time was in foreclosure; he had a \$7,300.00 per month mortgage payment that he could not make during the recession.

When presented with online profiles of the Respondent from Zillow and a site called Active Rain, the Respondent denied that he authored them. Cl. Ex. #26 and 27. He said he never heard of Active Rain. He explained that these websites pull information from online sources and create a profile without authority to do so. He said he has never used Zillow; it is technically a competitor. However, when redirected to the content of the Active Rain profile, which lists his background and his expertise as a home improvement contractor, he saw comments from people and conceded it appeared to be he who responded to those comments. He also conceded that he wrote the biographical portion of the web page, but he did not know how Active Rain obtained it. He authored his profile on the Long & Foster website and noted that he did not discuss his home improvement or home inspection expertise on that website. Resp. Ex. #29.

The Respondent testified that the friendly home inspection that the Respondent performed on the Claimant's Bethesda home was not technically a home inspection because he did not charge her for it. He said it was more akin to what they call in the industry a "walk and talk" just to identify things that needed to be repaired before putting the house on the market.

The Respondent denied the allegation that he was dishonest or deceptive to the Claimant while providing brokerage services. REC Ex. #1. He argued that anything that happened after settlement on September 25, 2015, occurred after the buyer/broker relationship terminated when he was no longer providing real estate brokerage services. He denied that there was ever a conflict of interest; he never acted as a contractor prior to settlement of the Claimant's purchase of the Property. It was only after she returned from Italy in early 2016 that he gave her an estimate of work to be done and then proceeded to start the work.

Mr. Albrecht testified that he conducts approximately 300-400 inspections per year. He explained that the mold testing he conducts is a "three cassette mold test" which requires three air samples: one outside as the control group, one in the upstairs master bedroom and one in the downstairs great room. He has been conducting this type of mold testing for approximately twenty years. There is no requirement for continuing education or certification for this type of mold testing.

At the hearing, Mr. Albrecht's testimony was consistent with his home inspection report. Resp. Ex. #1. He found some miscellaneous rot and lead paint. He also found some signs of water incursion and wall damage in the upstairs bathroom. Resp. Ex. #1, Section 4. Regarding the floors, Mr. Albrecht noticed some signs of poor ventilation and surface fungus, and because he could not access below the original block of the house, he recommended further evaluation of the crawlspace. Resp. Ex. #1, Section 5.

Regarding the HVAC systems, Mr. Albrecht said that both systems were operating during his mold inspection. However, they were old units and past their life expectancy. He explained that an air sample mold test is always done with air circulating through the system. He acknowledged there was rust in the attic air handler, typical of an old system. Resp. Ex #1, Section 8. He walked around the attic and looked at the air handler but did not remove the air

handler panels, which he said was the standard of care for home inspectors. He deemed it not to be a "readily accessible" panel, which he would have been required to open. He did remove the electrical panel cover. Resp. Ex. #1, Section 7.

According to Mr. Albrecht, the Respondent was on the Property during his home inspection but was doing other things while Mr. Albrecht was inspecting. He did not "shadow" or follow Mr. Albrecht during the home inspection. Mr. Albrecht prefers not to have the client or prospective buyer follow him during the home inspection because it distracts him from the task. If requested, he will walk around the house with the client and discuss his findings after he completes his inspection.

Regarding the mold analysis, Mr. Albrecht testified that there was nothing in the report that caused him concern. With regard to the mold subsequently discovered in the air handler and ducts, Mr. Albrecht countered that as far as he knew, the substance was never tested; it could have been soot, which is often found in an air handler. He characterized himself as a mold tester, not a mold inspector. He is not required to have a license to conduct air cassette testing. He learned to do the mold testing approximately twenty years ago through a class given by Pro Lab in Florida. Mr. Albrecht did not recall the Respondent emphasizing the mold inspection or telling him that the Claimant had a mold sensitivity.

Martha Suss is the Sales Manager at the St. Michaels office of Long & Foster where the Respondent works. She was accepted as an expert witness in real estate brokerage services, specifically on the subject of agency. She explained that it is very common for a prospective purchaser of a St. Michaels property to request a mold inspection, given the humidity and the location on the water. She explained that the air sample test is always step one, and a surface sample would be the second step if the air sampler revealed evidence of mold.

Ms. Suss discussed an agent's role in a real estate transaction when the agent is asked to perform tasks outside of typical agent's duties. Ms. Suss advises agents to "stay in their lane" and get the job done; it is not advisable to take on other tasks. She indicated that it would not be appropriate to request a real estate agent to follow a home inspector to ensure that the inspection is done properly; agents are not home inspectors.

Ms. Suss was unaware of the Respondent's financial difficulties in 2015, including the fact that his house was in foreclosure. She had never seen his Zillow profile which discussed his building expertise and advertised himself to be not only a realtor, but a home inspector and home improvement contractor. When questioned about this at the hearing, Ms. Suss conceded it is not advisable for a realtor to hold himself out in that manner; that this does not comport with her "stay in our lane" advice. She tells her agents to be wary of conflicts of interest. She seemed surprised and commented that "we learn something new every day." She was not aware that the MHIC number on the Respondent's truck was still invalid, and she was not aware that Knappworks LLC's charter had been forfeited.

Todd Gregory Still is a licensed master HVAC mechanic in Maryland. He is self-employed. The Respondent asked him to give an estimate on replacement of the HVAC systems on the Property. When observing one of the compressors, he noticed that the fan was turning but the compressor was not working; no air conditioning or refrigeration was happening. He pulled the disconnect to unplug the system to ensure that it did not create an electrical hazard. He said it was not working anyway, so it did not make sense to let the fan run and use electricity.<sup>6</sup> Mr. Still ultimately presented an estimate for replacement of the systems, but the Claimant rejected it because it was too high. Mr. Still was only at the Property for about fifteen minutes, and he did

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<sup>6</sup> There was some debate at the hearing about whether it was the Respondent who turned off the air handler and/or unplugged the compressor. I believed Mr. Albrecht that both the upstairs and downstairs HVAC systems were working during his home inspection; therefore, I did not find this to be a material issue.

not think he saw the inside air handler or anything else regarding the HVAC systems at the Property.

Although Mr. Still had twenty-one years of significant HVAC experience, the Respondent did not offer him as an expert witness; however, the parties treated him like one and asked him many questions regarding HVAC systems. His testimony was credible and informative. He said it is common to see mold in HVAC systems, especially ones that have fiberboard ductwork. The fiberboard harbors water, its cold, dark and damp. Mold naturally occurs on that surface and it cannot be cleaned or remediated. Sheet metal ductwork is much preferred.

Thomas Lynch has fifty-years of experience in the real estate industry. He has a broker's license in Maryland, Virginia, and Washington, D.C. He also teaches real estate. At the hearing, he was accepted as an expert witness in brokerage services in Maryland, specifically pertaining to agency. Mr. Lynch sat through the entire hearing and heard the testimony of all of the witnesses. Mr. Lynch explained that COMAR sets forth that an agent must promote and protect the interests of the client, and this is an obligation of absolute fidelity. COMAR 09.11.02.02A. He explained the difference between "fidelity" and "fiduciary," and the fact that the duty of an agent to his client was previously characterized as "fiduciary" but it was changed to "fidelity" in 1999. In Mr. Lynch's words, fidelity is defined as the requirement to keep promises that are in the listing agreement and the buyer/broker agreement and abide by all statutory requirements. Contrarily, a fiduciary is in a position of trust and confidence, similar to a doctor, lawyer, or trustee.

Mr. Lynch explained that under Maryland law, a realtor must act in accordance with the contract, act in the best interest of the client, protect money and keep client confidences. However, the agent does not have the obligation to stay loyal, since the term fiduciary was



replaced with fidelity. If an agent voluntarily takes on additional responsibilities as part of the agent/client relationship, it must be in writing.

In Mr. Lynch's opinion, the Respondent did not violate any ethical responsibilities with regard to his services as a real estate broker when he performed home improvement work with a lapsed MHIC license, because it had nothing to do with his real estate services. He opined that any advice he gave the Claimant regarding her Bethesda home had nothing to do with the purchase of the Property.

The Claimant's father, Richard Powers, came to look at the Property after the sellers accepted the Claimant's offer in August 2015.<sup>7</sup> He and his wife flew in from Bend, Oregon. Mr. and Mrs. Powers looked around the Property while the Claimant and the Respondent were in the kitchen talking about work to be done. Although Mr. Powers did not hear everything the Claimant and Respondent were talking about, he testified that he heard them discussing rearranging and remodeling the kitchen and building an outside patio. It was clear to Mr. Powers that the Respondent was going to do the work if the sale went through. Mr. Powers was pleased and felt the Claimant could rely on the Respondent given that he was the Claimant's buyer's agent, as well as a builder and a home inspector. Mr. Powers was in Bethesda when the Respondent conducted his "friendly" inspection there, and as he was leaving to return to Oregon that day, he asked the Respondent to look out for the Claimant's interests. The Respondent assured Mr. Powers that he would. Mr. Powers noted that the Claimant placed a high level of trust in the Respondent; he had vast expertise and offered to take care of everything. I will discuss each of the disciplinary charges separately.

**1. Did the Respondent, directly or through another person, willfully make a misrepresentation or knowingly make a false promise in violation of section 17-322(b)(3) of the Act?**

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<sup>7</sup> Mr. Powers testified that he was at the Property for the first time with the Claimant on August 20, 2015; however, I believe this testimony is in error. Mr. Albrecht performed the home inspection on August 20, 2015, and the evidence is undisputed that the Claimant was not there that day. That date is not material to this decision.

I found the evidence to be overwhelmingly convincing that the Respondent offered and promised the Claimant that he would oversee, follow, or "shadow" Mr. Albrecht during the course of his home inspection. The Respondent represented to the Claimant that because he had the building and home inspection knowledge and expertise, he would ensure that if any of the Claimant's deal breakers, primarily mold and rot, existed on the Property, it would be discovered. I believed the Claimant when she testified that the Respondent never gave her a list of home inspectors; the Respondent picked Mr. Albrecht. I believed the Claimant that the Respondent suggested that she not be present for the home inspection, as he would be there to oversee and ensure that the inspection was proper and that any issues of rot or mold were discovered. I found the Claimant's testimony to be extremely credible, along with that of Ms. Lentine and Mr. Powers, both of whom were part of and/or observed conversations between the Claimant and the Respondent. The theme of the discussions throughout entire process, was that the Respondent held himself out to have the expertise to take care of the Claimant's concerns.

Given the weight I placed upon the testimony of the Claimant, Ms. Lentine and Mr. Powers, I did not believe the Respondent's testimony that he told the Claimant that she should come to the home inspection. This was a large transaction for the Respondent during a tough financial time for him; I was convinced, despite his testimony to the contrary, that it was financially important to him that the sale to proceeded to closing. Not only was he to earn a sizeable commission, he also was going to perform the home improvement renovations to the Property for the Claimant. Given the age of the home and the Claimant's concerns, it is plain to see, therefore, why the Respondent would not want her at the home inspection, looking at the Property with a critical eye.

The undisputed testimony from both the Respondent and Mr. Albrecht was that Respondent did not, in fact, follow Mr. Albrecht during the home inspection. He was present at

the Property and they crossed paths a few times, but Mr. Albrecht conducted his inspection independently, without the Respondent.

Mr. Lynch discussed the document that is part of every residential real estate contract, entitled "*Understanding Whom Real Estate Agents Represent.*" REC Ex. #4, p. 13-14. The REC created this document. This document sets forth that all agreements with real estate brokers and agents shall be in writing. Mr. Lynch explained that the language in this document puts a real estate client on notice that "if it is not in writing it does not exist." (T. Lynch). Therefore, it was Mr. Lynch's opinion that if a buyer's agent verbally promises he will shadow a home inspector, this promise is not binding because it is not in writing. However, he stated further that if a real estate agent makes a promise that is not upheld, he has violated his obligation of fidelity. If an agent accepts a duty, he must perform that duty diligently.

Mr. Lynch agreed that during the period of the existing agency agreement, a buyer's agent has a duty to tell the client of any defects he discovers; however, he is not required to go looking for defects. If a buyer's agent agrees to personally look for defects, he has then stepped out of his "cocoon," and that agreement should be in writing.

I conclude that the evidence established convincingly that the Respondent made and broke a promise that was vitally important to the culmination of this real estate transaction. He falsely promised he would shadow Mr. Albrecht due to his expertise in construction and home inspections to ensure that any mold or rot would be discovered. By doing so, he promised the Claimant that he would look for, and find, any defects related thereto. In the Contract, the parties agreed that brokers and agents do not assume any responsibility for the condition of the property. The parties to a Maryland real estate contract agree that brokers or agents are not making any representations or advising the parties regarding the condition of the property, including mold. REC Ex. #4; Resp. Ex. #2. However, the Respondent, through the promises he

made to the Claimant, went outside of the confines of the Contract and of the buyer/broker agreement by making a promise to the Claimant that he did not fulfill or have any intention to fulfill, and upon which she relied by going forward to purchase the Property. By doing so, the Respondent violated section 17-322(b)(3) of the Act.

**2. Did the Respondent intentionally or negligently fail to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee or applicant deals, in violation of section 17-322(b)(4) of the Act?**

Mr. Albrecht's inspection report pointed out that there was miscellaneous rot that should be replaced or repaired, and several areas where moisture was a problem. REC Ex. #4; Resp. Ex. #1. At the very least, in order to protect the Claimant's interests, the Respondent should have explored these areas further.

Mr. Albrecht testified that he did not probe the walls for rot because he did not want to damage anything. Wherever there was a visual anomaly in the siding, he touched the area and if it did not buckle or show bubbling, he did not check it any further. He looked for those anomalies around windowsills in the sun porch and found nothing concerning. Mr. Albrecht said rot can happen in a matter of days, months, or years, depending on the grade of wood. Mr. Albrecht was not offered as an expert witness.

COMAR 09.36.07 sets forth the minimum standards for home inspectors. COMAR 09.36.07.04 discusses what is required of a home inspector regarding a structural inspection. It states:

**B. Probing.**

(1) A home inspector shall probe a representative number of structural components where deterioration is suspected or where clear indications of possible deterioration exist.

(2) Probing is not required:

(a) If it will damage any finished surface; or

(b) Where no deterioration is visible.

The pre-printed narrative on the home inspection report form says that the home inspector shall “[p]robe exterior wood components when deterioration is suspected.” Mr. Albrecht clearly suspected some rot but did not probe.

When questioned about the wood rot in the sun porch, the Claimant conceded that the pictures she presented into evidence were taken in 2016, and she was not sure if it was in that same condition at the time of the inspection in 2015. Cl. Ex. #16. However, she was told by contractors who discovered the rot that it was a longstanding problem and should have been discovered through the home inspection.

Chet Fluharty (Chet)<sup>8</sup> of Chet Fluharty Construction, was accepted as an expert witness in carpentry with expertise in rotten wood detection, removal, and replacement. He was asked to go to the Property and adjust some cabinet doors in the Spring of 2016. While there, the Claimant asked Chet about some peeling paint. When Chet probed the area, it was soft and clearly rotten. Upon closer examination, Chet found bubbled and blistered paint all around the Property. Chet walked the Property with the Claimant and identified problematic areas, which were extensive. The screwdriver he used to probe the wood went right in, indicating rotting that happened over several years. The rot went so far into the exterior walls that it invaded the sheathing, studs, and insulation. *See* Cl. Ex. #16, K415-K426; K428-K432; K434-K444. Chet opined confidently that in August 2015, when Mr. Albrecht conducted his home inspection, the rot would have been noticeable. I found Chet’s testimony to be credible and informative.

Troy Foster is a carpenter that works for Chet Fluharty Construction. He was accepted as an expert witness in the removal and replacement of rotted wood. He performed substantial work at the Property replacing rotted wood. He reviewed the Claimant’s pictures and described

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<sup>8</sup> I have referred to Chet Fluharty by his first name throughout this decision to distinguish him from Doug Fluharty, whom I refer to as Mr. Fluharty.

what they depicted. There was uneven, buckled paint on the exterior siding of the house. Cl. Ex. #16, K434. Underneath a bay window, where the siding panel had been removed, there was rotten wood and wet insulation. Cl. Ex. #16, K442-443. There was a window leak from a bathroom window which caused rot, which the seller's attempted to repair but the repair was faulty. Cl. Ex. #16, K414. In the sunporch, both the baseboard and windowsills were rotted, the paint was buckled and which was visible in the photographs. Cl. Ex. #16, K416-K418. According to Mr. Foster, paint does not stick to rotted, wet wood. It buckles. Every inside corner of the windowsill in the sunporch was rotted, which, Mr. Foster opined, did not happen overnight; it had to be leaking for years. Cl. Ex. #16, K423. The walls in the sunporch were rotted, and the insulation was wet. Cl. Ex. #16, K420. Mr. Foster replaced all of the rotted wood in the sunporch. Additionally, there was rot on the front exterior siding near the front door. Cl. Ex. #16, K428-K431. The front porch sagged in the middle and held water, which caused the sides to rot. Cl. Ex. #16, K432. Blistering paint can be seen on the siding that, according to Mr. Foster, was a clear sign of rot. Cl. Ex. #16, K434. When the siding was removed, the Tyvek house wrap was stained and wet. Cl. Ex. #16, K435. There were signs of uneven and missing paint on the eaves, soffit, and fascia, which was a clear indication of rot. Cl. Ex. #16, K436-K439.

Mr. Foster explained that in order to discover whether there is rot, the area needs to be probed with either a screwdriver or a knife. If it is soft, then it is rotten. Trim is cosmetic, so if trim shows signs of rot, it is necessary to examine below the trim to discover if the rot extends further into the wood. Mr. Foster opined that there would have been signs of rotting eight months earlier when Mr. Albrecht conducted his home inspection. Mr. Foster rendered an educated guess that the rot had to be forming for years. Although probing does cause some damage, especially if there is rot, Mr. Foster noted that there were visible signs of rot throughout

the Property; it was not necessary to probe to discover the rotted wood. I found Mr. Foster's testimony to be very credible and informative.

Regarding rot, the Respondent denied ever having seen the condition of rot in the sunporch or the exterior of the house before or after settlement. He testified that if he had seen it, he would have pointed it out and he would have taken a closer look. Again, he denied ever withholding information from the Claimant.

Doug Fluharty from Bay Hundred was accepted as an expert witness in residential HVAC and electrical work. His daughter Michelle worked with him and helped him remove and replace the air handlers at the Property in April 2016. They removed the attic air handler first. They immediately spotted significant visible black mold on the outside of the air handler. When they went to dismantle the system, they discovered that everything throughout the air handler and the ductwork was covered with mold. The downstairs air handler was not mold infested and was working fine.

Mr. Fluharty reviewed the Claimant's pictures of the moldy air handler and ductwork. Cl. Ex. #16, K399-K499. He noted that the secondary drain pan was galvanized, designed to resist rust. The fact that the galvanized drain pan was rusted was clearly a sign that the system had been neglected for a long time. Cl. Ex. #16, K400. Mr. Fluharty said that the mold was very visible, even on the outside of the air handler; nothing needed to be removed to discover the pervasive mold. The pictures depict mold on the inside and outside of the air handler, on the inside of the air handler cabinet panel, in the blower, on the circuit board and even in a bedroom air register. Cl. Ex. #16, K399-K409.

On May 6, 2016, Mr. Fluharty emailed the Claimant, presumably on her request, with a statement regarding his discovery of mold in the upstairs HVAC system. Cl. Ex. #7, K279-K280. He discovered the mold on April 25, 2016; he wrote this statement only eleven days later.

Similar to his testimony, he described Michelle's initial discovery of the mold on the exterior of the air handler cabinet. He described the areas of mold, and also noted that the system had been turned off. Mr. Fluharty's statement concluded by stating:

In my opinion, the obvious mold on the exterior of the cabinet, and the deteriorated condition of the secondary drain pan, and visible mold in the ceiling registers should have caused concern from any home inspector. Mold can be a serious health threat and (sic) never be treated lightly.

The only way to completely correct his mold condition is to completely replace all contaminated components of the system....

Cl. Ex. #7, K280.

Mr. Fluharty testified that it is not uncommon to find mold in an HVAC system, but he said this was the worst he had ever encountered. He opined that humidity alone did not cause this condition, contrary to the testimony of Mr. Sill. Mr. Fluharty did not observe the condition of the upstairs HVAC system and registers in August 2015 but opined that mold this extensive did not just appear since the home inspection. This mold was caused by neglect over a long period of time.

When asked why the Claimant replaced the downstairs unit considering that it was operational with no signs of mold, Mr. Fluharty said that that unit was past its useful life so she decided to replace both. Mr. Fluharty was a credible, informative expert witness.

In April 2016, the Claimant contacted Derek Dombrowski from Total Home Performance to discuss moisture in the attic air handler and to do a crawlspace evaluation. Mr. Dombrowski was accepted as an expert witness in healthy home evaluations and mold and moisture remediation. When Mr. Dombrowski saw the severe rusting in the secondary air handler pan, he knew that the HVAC system was clogged or not working well. According to Mr. Dombrowski, mold in the air handler unit can indicate condensation, sweating or leakage. Typically, condensation issues happen in the summer. When Mr. Dombrowski returned to the Property a



few days later, Mr. Fluharty had already removed the air handler. Once he was able to see inside the ductwork, he found the inside of the ductwork to be black, when it supposed to be yellow. It was the worst mold he had ever seen. It was one-half inch thick. Mr. Dombrowski opined that this amount of mold happened over a long period of time, especially because the HVAC system was designed to keep moisture away.

Mr. Dombrowski explained that there are multiple ways of collecting mold samples. In addition to an air sample test, a swab test or petri dish test can be done; any homeowner can obtain one of those over the counter. A professional he referred to as a "hygienist" will also conduct air sampling tests, but will proceed with more thorough tests if there are any indications of mold. Mr. Dombrowski also opined that if the air handler had not been working at the time of the mold analysis, the spore testing would have been more localized and stagnant and may not have picked up on mold in the air handler system. The test readings would have been less reliable if the HVAC system were not running. He also noted that if there are different levels of mold in different parts of the house, that is an area of concern. *See also* Cl. Ex. #7, K283-K286. Mr. Dombrowski reviewed the mold report and agreed that the numbers were in the normal/average range. Cl. Ex. #7, K167-171. However, given that there were higher levels upstairs, Mr. Dombrowski would have suggested having a hygienist investigate the matter further, especially given the Claimant's mold sensitivity. Mr. Dombrowski would not use a home inspector to do a thorough mold inspection. Mr. Dombrowski was an extremely credible witness.

Regarding the mold, the Respondent said he saw "black something" when Mr. Fluharty took the HVAC system apart but argued that the black substance was never sent for analysis. The Respondent suggested that it could have been soot. He said that prior to settlement, he never

saw any black substance on the air registers or the air handler; he denied he withheld that information from the Claimant.

COMAR 09.36.07.01 sets forth the definitions applicable to home inspectors. "Inspect" means to examine readily accessible systems and components of a building in accordance with the standards of practice set forth in this chapter, using normal operating controls and opening readily openable access panels. COMAR 09.36.07.01B(17). "Readily openable access panel" is a panel that is within normal reach, unsealed and easily removable by one person." COMAR 09.36.07.01B(22). Mr. Albrecht testified that he deemed the air handler panel not to be readily accessible, but he did not say why. The inspection report includes a photograph of the rusted secondary drain pan for the attic air handler, but there is no accompanying description and no indication that the rusted pan could indicate a much larger problem than simply age. Resp. Ex. #1, Section 8.3.

Joseph (Joey) Patrick from Atlantic was accepted as an expert in venting and chimney use and maintenance. His employees performed the chimney inspection on the Property in August 2015, but they called him to the job because they did not understand what the Respondent wanted them to do; he was asking them not to take pictures. According to Mr. Patrick, ordinarily when a chimney inspection is performed for a real estate transfer, he takes photographs of the appliances and the venting systems, and he inspects to make sure that current standards are maintained. Upon arrival at the Property, the Respondent told Mr. Patrick that he was the general contractor on the renovations to the Property. Mr. Patrick inspected the two masonry chimneys and told the Respondent that they should have chase covers and a water barrier even if the chimneys were not in use. The Respondent said he would take care of it. CL. Ex. #7, K293. Mr. Patrick made some additional recommendations; however, the Respondent

told him to disregard the masonry chimneys and to leave his recommendations out of his inspection report. Cl. Ex. #7, K293. That left Mr. Patrick with only one gas fireplace to inspect.

Mr. Patrick ultimately went back to repair the masonry chimneys after the Claimant terminated the Respondent from the renovation work on the Property. At that time, he took pictures. Upon review of pictures of the masonry chimneys, Mr. Patrick testified credibly that they had some problems he would have included in his inspection report had the Respondent not instructed him to omit his suggestions. One had been cracked, but the picture depicted that it had been recently repaired. Cl. Ex. #7, K292A. The repair failed, and Mr. Patrick fixed it in June 2016. The other masonry chimney needed to be made watertight and needed a crown and a liner. It had the potential for pooling water. Cl. Ex. #7, K292(a), (b), (c) and (d). I found Mr. Patrick to be a very credible witness.

The Respondent denied telling Mr. Patrick not to put his recommendations in his inspection report and said that he did not know why Mr. Patrick would say such a thing.

The REC argued that the Respondent offered services and agreed to take on tasks over and above those of a buyer's agent. He needed the money and this was a significant residential sale. The REC took the position that the Respondent should have known of the existence of the rot and mold because he promised he would oversee the home inspection due to his contracting and home inspection expertise, to ensure that any mold or rot would be discovered. He picked Mr. Albrecht, who did the most basic mold analysis even though the Claimant wanted the house thoroughly inspected for mold. The REC argued that all of this could have been avoided had the Respondent followed up with Mr. Albrecht and asked questions regarding the Claimant's deal breaker issues, especially considering that Mr. Albrecht noted the existence of some rot and moisture in his inspection report. The REC relied on the expert testimony of Mr. Dombroski, Mr. Foster, and Mr. Fluharty in support of its argument that the mold and rot were pervasive;

their testimony was undisputed that both situations existed at the time of Mr. Albrecht's inspection. The REC maintained that the Respondent had an obligation to share what he knew, and in this particular situation, he voluntarily agreed to use his expertise to discover if these conditions existed.

The Respondent argued that paragraphs 25 and 51 of the Contract, and the document *Understanding Whom Real Estate Agents Represent*, limit the culpability of a real estate agent. Paragraph 51 even mentions mold spores as a condition of which an agent makes no representations. Resp. Ex. #2. The Respondent maintained that by signing the Contract, the parties agreed to these paragraphs, and therefore, the Respondent cannot be held responsible. Additionally, as set forth in the Contract, all agreements between a buyer and agent must be in writing, and there is nothing in writing wherein the Respondent promised to oversee the home inspection or take on additional tasks, over and above the provision of real estate brokerage services. The Respondent questioned why the Claimant never called Mr. Albrecht to question the home inspection report if she was confused by its contents. The Respondent questioned the credibility of Mr. Fluharty versus that of Mr. Albrecht, emphasizing that more weight should be placed upon Mr. Albrecht's findings because he had been a licensed home inspector for a long time. He also emphasized the testimony of Mr. Sill, who said that the rust in the drain pan could have occurred by virtue of many factors; it is not necessarily indicative of mold.

The Respondent argued further that there would be no reason for him to tell the Claimant not to come to the home inspection. It would make sense for her to be there so that she could ask questions. Additionally, since the mold analysis indicated mold levels were not elevated, there was no reason for the Respondent to suspect mold. Finally, he emphasized that his duty to the Claimant was fidelity, not fiduciary.

This is not a contract or a tort case, and my determination does not require an analysis of contractual or tort culpability or liability. This is an administrative proceeding in which I am charged with the duty to determine whether the Respondent violated the Act. Therefore, it is not necessary that I determine whether the provisions of the Contract limit the Respondent's responsibility for his actions. Section 17-322 of the Act imposes duties upon a real estate agent. An agent cannot make false or misleading oral statements to a client in connection with a real estate transaction and absolve himself of his regulatory obligations through contractual language purporting to exclude oral statements from the agent's duty to his client.

I did not find the Respondent to be credible. While this is not a case against Mr. Albrecht, Mr. Albrecht's inspection missed some obvious signs of mold and rot, the Claimant's dealbreakers. As stated above, I have already determined that the Respondent stepped out of the bounds of the agent/client relationship and made promises to the Claimant that he would utilize his construction knowledge and home inspector expertise to go above and beyond the normal services of a real estate broker, in an effort to ensure that the home inspector properly inspected and discovered any elevated mold levels or structural issues such as rot. In effect, the Respondent verbally guaranteed that the home inspection would discover mold and rot if it existed in the house.

Despite the results of the air sample mold analysis, had the Respondent fulfilled his promise and followed Mr. Albrecht during his home inspection, he likely would have discovered what Mr. Albrecht did not, visible mold on the outside of the air handler.

There was some debate at the hearing regarding whether Mr. Albrecht was required to open the access panel to the air handler to inspect. This case is not against Mr. Albrecht and it is not for me to decide whether or not he acted properly. Regardless, observation of the air handler in April 2016 revealed visible mold on the outside of the air handler. Cl. Ex. #16, K401. I found

Mr. Fluharty's unrebutted expert testimony as well as that of Mr. Dombrowski to be extremely credible that this condition developed over time; a home inspector in August 2015 should have seen this. Had Mr. Albrecht noted it, or had the Respondent followed through with his promised task, the Respondent would have seen this condition and would have been on notice that a mold condition existed in some form. At that point, removal of the air handler panel and observation of the pervasive mold therein would have been warranted.

Similarly, I found the unrebutted expert testimony of Troy Foster and Chet to be credible and informative. The extensive rot that was discovered on the exterior of the Property as well as the sunporch, could not have developed overnight, and existed at the time of the home inspection in August 2015. Mr. Albrecht's inspection report pointed out there were some areas of miscellaneous rot, and he suggested that it be looked into further; however, the Respondent told the Claimant that it was nothing to worry about, and that he could fix any such rot during his renovation of the Property. Then, when Mr. Foster and Chet were at the Property in the Spring of 2016, the sunporch had to be completely dismantled as well as much of the exterior walls on the Property due to rot and the structural concerns the rot posed. The Respondent, seeing it mentioned in the home inspection report, knowing this was a deal breaker for the Claimant, should have, at the very least, contacted Mr. Albrecht to discuss the issue further and determine whether it was a structural concern. Had the Respondent followed Mr. Albrecht as he promised the Claimant he would do, he would have discovered, and investigated further, the matter of rot.<sup>9</sup>

Last, Mr. Patrick's testimony was credible and quite concerning. The Respondent actually told Mr. Patrick not to include his suggestions regarding the masonry chimneys into his chimney inspection report. Although the Respondent denied that he did this, I found Mr.

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<sup>9</sup>Both the Respondent and Mr. Albrecht testified that it would have been improper for the Respondent to follow or oversee Mr. Albrecht during his inspection. It would have distracted Mr. Albrecht's attention to the Property. I have concluded that the Respondent offered and promised to do so; whether or not it was proper has no bearing on this decision.

Patrick's testimony to be particularly credible, because he remembered it as the strangest inspection he ever conducted. His workers were doing the inspection, but they called him to the Property because of the way the Respondent was directing the inspection. Whether or not the issues Mr. Patrick would have included in his inspection report were minor or major, this was an affirmative attempt on the part of the Respondent to hide a defect from the Claimant.

Based on this analysis, I conclude that the Respondent failed to disclose material facts that he knew regarding the chimney, and facts he should have known regarding rot and mold on the Property, in violation of section 17-322(b)(4) of the Act.

**3. Did the Respondent engage in conduct that demonstrated bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent or improper dealings, in violation of section 17-322(b)(25) of the Act?**

Based on my previous analysis in the case, I conclude that the Respondent demonstrated bad faith, untrustworthiness, and dishonesty in his dealings with the Claimant as her buyer's agent. He made promises he did not keep. He was very aware of the Claimant's uncertainties regarding the Property and the defects that would cause her to terminate the Contract. He did not keep his promise to oversee Mr. Albrecht's inspection, and she relied upon that promise. Had he done so, it is more likely than not that he would have discovered the potential of the existence of the Claimant's deal breakers. He talked her into staying away from the home inspection under the guise that he would be the better one to attend given his expertise. When he reviewed the inspection report, he told the Claimant that that he did not see deal breakers, even though Mr. Albrecht suggested further evaluation of the rot he discovered. Regardless of the mold analysis report, the Respondent would have seen the mold on the outside of the air handler, which should have prompted further inspection and the discovery of the serious mold problem in the HVAC system. Further, the Respondent affirmatively dissuaded Mr. Patrick from putting recommendations regarding the masonry chimneys in his inspection report. Through these

actions, the Respondent demonstrated bad faith, untrustworthiness, and dishonesty in representing the Claimant in the purchase of the Property, in violation of Section 17-322(b)(25) of the Act.

**4. Did the Respondent fail to disclose all material facts as required under section 17-322 of the Act, in violation of section 17-532(b)(1)(iii) of the Act?**

For the reasons discussed regarding under heading number two above, I conclude that the Respondent violated section 17-352(b)(1)(iii) of the Act.

**5. Did the Respondent fail to treat all parties to a transaction honestly and fairly and answer all questions fully, in violation of section 17-532(b)(1)(iv) of the Act?**

The Respondent did not treat the Claimant fairly. He did not answer her questions fully or fairly. Whether for personal financial reasons or otherwise, he failed to keep the promises that he made to the Claimant, attempted (and succeeded) in keeping her away from the home inspection, instructed the chimney inspector to omit recommendations in his inspection report, and failed, despite his promises, to use his skills as a home improvement contractor and home inspector to discover defects that were clearly material to whether the purchase of the Property went forward. He also downplayed and basically ignored the suggestion regarding rot in the home inspection report. This constituted unfair and dishonest treatment, in violation of section 17-532(b)(1)(iv) of the Act.

**6. Did the Respondent violate COMAR 09.11.02.01C by failing to protect the public against fraud, misrepresentation, or unethical practices in the real estate field?**

COMAR 09.11.02.01C is part of the Code of Ethics of realtors. It requires agents to "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 Respondent's actions, as set forth herein, injected unethical practices into the community which reflected poorly on the real estate profession. In addition to the matters already discussed herein,



the Respondent used his position as a realtor to acquire home improvement construction business, prior to the closing of the purchase of the Property, for which he was not licensed at the time. He acted upon this conflict of interest, by telling the Claimant that he could fix many of the problems listed in the home inspection report and dissuaded her from asking for the sellers to repair additional problematic areas revealed in the home inspection report. By doing so, he raised the cost of the work that he agreed to perform on the Property. This worked to the Respondent's advantage as he secured a lucrative commission, and to the Claimant's disadvantage, as she purchased a home with defects which she would not have accepted, if disclosed prior to settlement. The Respondent controlled the situation in his own financial interest when he was obligated instead to be protecting the Claimant's interest. He failed to protect the Claimant, and therefore, the public from unethical practices.

**7. Did the Respondent violate COMAR 09.11.02.01D by failing to make reasonable efforts to ascertain all material facts concerning the Property for which he accepted agency in order to fulfill the obligation to avoid error, exaggeration, misrepresentation or concealment of material facts?**

This regulation is also part of the Code of Ethics. For the reasons already set forth herein, the Respondent violated this regulation.

**8. Did the Respondent violate COMAR 09.11.02.02 by failing to protect and promote the interests of the Claimant while maintaining statutory obligations towards other parties to a transaction?**

This regulation imposes an obligation of "absolute fidelity to the client's interest...." Although undefined in COMAR, fidelity is commonly defined as the strict observance of promises and duties or loyalty,<sup>10</sup> or the "quality or state of being faithful."<sup>11</sup> I agree with Mr. Lynch's testimony and the argument of the Respondent that a relationship predicated on "fidelity" is different from "fiduciary," which was the previous term used in this regulation.

<sup>10</sup> <https://www.dictionary.com/browse/fidelity>.

<sup>11</sup> <https://www.merriam-webster.com/dictionary/fidelity>.

However, the Respondent, by failing to keep his promises to the Claimant and failing to protect her interests, failed in his obligation of absolute fidelity. The other component of this section states that the 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. There is no evidence in the record that indicates the Respondent failed in his statutory obligations to the sellers, but it is patently clear that he failed in obligation of fidelity to the Claimant. For these reasons, I conclude that the Respondent violated this regulation.

**Disciplinary Sanctions**

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) (2018).

I placed significantly more weight upon the Claimant's testimony than that of the Respondent. He was untruthful at the hearing about a multitude of facts, some were material, some were minor. Despite his testimony and assertions to the contrary, I believe he made

promises to the Claimant to use his expertise to ensure that the home inspection revealed any of her deal breakers. I believe that the Claimant made it patently clear that she wanted a thorough mold inspection; the air sample test that Mr. Albrecht conducted did was not thorough enough to discover a major mold problem. The Respondent did not suggest that the Claimant contact Mr. Albrecht to discuss the home inspection; he led her to believe that almost everything therein was minor, and within his expertise to fix. I believed the Claimant that she and the Respondent began discussing renovations that she wanted him to perform on the Property on that first weekend, August 8 and 9, 2015. He represented that he had an HIC license when he did not; he received a citation from the HIC for \$1,500.00 as a result. Cl. Ex. #11, K313-K315. He did not give her a list of home inspectors; he picked Mr. Albrecht. He did not tell her she should be at the home inspection; he persuaded her to stay away. My assessment of the Respondent's credibility spiraled even further downward on a minor point, when he represented that when he discussed the home inspection report with the Claimant, she told him she did not need the sellers to repair the windows that were painted shut because she never has the windows open. The Claimant testified convincingly that she keeps the windows open all of the time; she never would have said that. At the hearing, the Respondent misrepresented his financial situation in 2015. The evidence convinced me that the Respondent needed this transaction to close; his business had been hurt in the recession, and he even told Ms. Lentine at the time that he wished he had the Claimant's money so he could get out of his financial situation. The Respondent stood to gain commission on the sale, home improvement work for the renovations on the Property, as well as home improvement work on the Claimant's Bethesda home.

The REC requested that the Respondent's license be revoked; it did not discuss a lesser sanction, and there was no indication whether it considered and rejected a lesser sanction other than revocation. In the absence of other guidance, I have considered the factors identified in the

monetary penalty provision, section 17-322(c) of the Business Occupations Article, in evaluating the appropriateness of a reprimand, suspension, or revocation, even though the REC did not request that a penalty be imposed. I find those considerations to be relevant to the issue.

The violations were serious. The Respondent's failed promises and misrepresentations literally resulted in the Claimant's purchase of the Property, the cost of which was approximately \$1,300,000.00. Absent the Respondent's failed promises, she likely would have walked away from the purchase. She incurred significant expenses to remediate mold and repair rot. The violations implicate the Respondent's competency, ethics, and trustworthiness and caused monetary damage to the Claimant. The Respondent's actions were the result of bad faith to the Claimant, and a desire to advance his own financial interest. The Respondent does not have a history of previous violations of the Act. However, the egregiousness of his violations and the harm they caused outweigh the absence of that mitigating factor. I do not take the concept of revoking a professional license lightly. However, I could not find anything in the record that would further mitigate the Respondent's conduct. I also considered the fact that the Respondent continued his dishonesty by failing to be truthful at the hearing. The nature of the Respondent's violations supports the REC's request to revoke the Respondent's real-estate salesperson license.

#### 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(a)(2)(iii) (2018). 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 09.11.01.15. The maximum recovery from the Fund is \$50,000.00. Md. Code Ann., Bus. Occ. & Prof. § 17-404(b) (2018).

The Claimant’s adjusted Claim amount was \$169,225.67.<sup>12</sup> She testified that everything in the Claim was for remediation of the problems that the Respondent failed to discover despite his promises that, due to his building and home inspection expertise, he would oversee the home inspector to make sure that none of her deal breakers existed in the Property. No part of her claim was for renovation work. The Claimant would not have purchased the Property had she known that she would incur close to \$170,000.00 in expenses to remediate mold and rot.

The evidence did not convince me that the Respondent necessarily intended to defraud the Claimant. Despite the argument of the REC, the evidence did not establish that he knew about the mold in the HVAC system prior to Mr. Fluharty’s discovery. There was no evidence that he knew of the extent of the rot either, although with his claimed expertise there is no question that he should have seen the buckling and peeling paint all around the exterior of the Property and in the sunporch. The Respondent turned a blind eye; he did not even try to discover these defects, because he knew that the Claimant would walk away from the sale that would not only be a sizeable commission for him, but the promise of substantial remodeling work. There was no claim that the Respondent obtained money or property by theft, embezzlement, false pretenses, or forgery. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(iii)(1) (2018).

The question that remains, therefore, is whether the Respondent’s actions constituted a misrepresentation that caused the Claimant an actual loss compensable by the Fund. All of the facts relevant to this case arose out of real estate brokerage services. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(i) (2018). I agree with the Fund that the testimony of Mr. Fluharty and Mr. Dombrowski established convincingly that the substance inside the HVAC system was

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<sup>12</sup> The Claimant’s original claim was for \$170,769.67 but she made some adjustments that she discussed at the hearing.

mold, and that the mold predated the home inspection. Prior to settlement, several people, including Ms. Crouch, Mr. Powers and Mr. Albrecht, noticed rot around the exterior of the Property. There was no evidence that either Ms. Crouch or Mr. Powers have the construction background of the Respondent. Given the Respondent's promises to the Claimant, to go above and beyond the duties and obligations of a real estate broker and ensure that any mold or rot was discovered, especially with his construction background, he should have known that this was a sign of a more extensive problem.

The Fund cited *Goldstein v. Miles*, 159 Md. App. 403 (2004), a tort fraud and negligent misrepresentation case that discusses what constitutes negligent misrepresentation as set forth in long-standing case law in Maryland:

- (1) the defendant, owing a duty of care to the plaintiff, negligently assert [ed] a false statement;
- (2) the defendant intend[ed] that his statement [would] be acted upon by the plaintiff;
- (3) the defendant ha[d] knowledge that the plaintiff [would] probably rely on the statement, which, if erroneous, [would] cause loss or injury;
- (4) the plaintiff, justifiably, [took] action in reliance on the statement; and
- (5) the plaintiff suffer[ed] damage proximately caused by the defendant's negligence. (Internal citation omitted).

*Goldstein v. Miles*, 159 Md. App. 403, 435 (2004).

Although this is not a tort case, this case is helpful and instructive in an analysis of what constitutes misrepresentation in any scenario. *Goldstein* went on to discuss the type of statement that would satisfy the first element:

A statement that is "vague and indefinite in its nature and terms, or is merely a loose conjectural or exaggerated statement, is not sufficient to support" either a fraud or negligent misrepresentation action, because "such indefinite representations ought to put the person to whom they are made, upon the inquiry, and if he chooses to put faith in such statements, and abstained from inquiry, he has no reason to complain." *Id.* As the Court of Appeals more recently observed: "Ordinarily ... the representation must be definite, and mere vague, general, or indefinite statements are insufficient, because they should, as a general rule, put the hearer upon inquiry, and there is no right to rely upon such statements." *Fowler v. Benton*, 229 Md. 571, 579, 185 A.2d 344 (1962).

*Goldstein v. Miles*, 159 Md. App. 403, 436 (2004).

The Respondent cited *Lustine Chevrolet v. Cadeux*, 19 Md. App. 30 (1973), and *Savings Bank Retirement Systems v. Clarke*, 258 Md. 501 (1970), both which discuss the elements necessary to establish fraudulent misrepresentation. However, as set forth above, I have not determined that the Respondent committed fraud upon the Claimant.

The Respondent, knowing that the Claimant was concerned about rot and mold on the Property, held himself out to have extensive contracting expertise and to be a licensed home inspector. He promised her, in no uncertain terms, that he would oversee the home inspection, and make sure that the inspection was thorough enough to discover the existence of either. She asked him to "turn the house upside-down for mold," and he put the Claimant's concerns to rest when he assured her that would happen. Instead, he did not oversee Mr. Albrecht's inspection, and Mr. Albrecht failed to discover visible mold outside of the air handler and failed to access the air handler by opening the cabinet panel. Had he done so he would have discovered a serious mold problem. There was no evidence that the air handler panel was not readily accessible, other than Mr. Albrecht's testimony that he did not deem it to be so. Had the Respondent acted as he promised the Claimant he would, he would have seen the visible mold outside of the air handler and a reason to explore further. Additionally, although Mr. Albrecht noted some miscellaneous rot in his inspection report, he did not use a probe to explore other areas of possible rot, and he did not note the buckling paint and rotted areas all around the Property. The Respondent, had he overseen the inspection as promised, or had he looked around at all, should have known about the rot, which was pervasive throughout the Property. He promised the Claimant he would make sure that if either of these problems existed, he would find them. Instead, he did not even try.

The Respondent owed a duty of fidelity to the Claimant. He made false promises. He made statements to engage her trust and move her purchase of the Property to conclusion. The

Respondent had every reason to believe the Claimant would rely upon these statements, and she did. He also knew that she could suffer a serious financial loss if she closed on the Property and he did not act as he promised he would. She justifiably relied upon the Respondent's promise, and did, as a result, suffer financial loss. I conclude that the Respondent's actions constituted negligent misrepresentation, and therefore, any actual loss that the Claimant suffered as a result is compensable from the Fund.

I agree with the Fund that the focus in determining the award should be aimed at the issues of mold and rot that were the Claimant's deal breakers. Not everything that Mr. Albrecht may have missed is the result of an act or omission of the Respondent. The Respondent promised he would use his expertise to discover any mold or rot by overseeing Mr. Albrecht's inspection. Therefore, in reviewing the Claim, I deducted any expenses incurred for additions to the Property for future mold and rot resistance. I also removed costs for items that the Claimant did not prove to be discoverable, or that neither Mr. Albrecht nor the Respondent could readily have been able to discover. While I agreed with the Fund's assessment of what items should not be included, some of my ultimate monetary conclusions were different from that of the Fund.

Claimant's Ex. #1 sets forth the cost to remediate the mold in the upstairs HVAC system, ducting and registers. The total claim was \$30,319.04. However, it included \$7,200.00 for the cost of the new HVAC new unit upstairs. I deducted that cost because the Claimant knew the unit was past its life expectancy, and she was in the process of replacing it when Mr. Fluharty found the mold. This is not an item that was overlooked and it should not be part of the claim. Similarly, the ultra-violet lights (\$1,565.00), sump pump (\$775.00), additional caulking (\$194.00) and insulation (\$5,257.80) designed to prevent future moisture and mold are improvements to the Property and not remediation of mold and rot so I deducted those costs.



After removal of those items from this part of the claim, the compensable loss is \$15,327.24.

This cost matched the Fund's recommendation.

Claimant's Ex. #2 sets forth the claim for remediation of the sunporch interior rot, which is overall compensable. The Claimant's claim for this remediation is \$55,014.72. However, it included costs for repair of the upstairs sun deck, which was missing a particular membrane that would stop water from leaking. There is no evidence in the record that this was a discoverable defect; Mr. Albrecht did not have access underneath the sun deck to be able to discover that this membrane was missing. I removed every cost related to the sun deck.

The invoice from Warrington included \$ 2,700.00 for Delmarva Roofing, to purchase the membrane for the sun deck, which I deducted. Cl. Ex. #2, K028-K029. I deducted \$1,002.82 from the Total Home Performance invoice for wrap pillars, tape, and seal for all seams and to fasten up the foundation wall, as well as \$275.00 for insulation around the perimeter of the foundation in the crawlspace, as these were additional improvements to the Property to prevent moisture, but did not constitute remediation. Cl. Ex. #2, K031. From the Warrington invoice, I took out anything to do with the sun deck, including five percent for materials and ten percent for labor as designated on the invoice. Cl. Ex. #2, K019-K028. The total deducted was \$4,426.14. I also deducted \$4,708.18 from The Lumberyard invoice for the sun deck. Cl. Ex. #2, K033. Similarly, I removed the charges from Warrens Wood Works \$3,079.44 for sun deck railings. Cl. Ex. #2, K034. The invoice from Chet Fluharty Construction included \$7,528.12 for repair of the sun deck, which I also deducted. Cl. Ex. #2, K055-K060. The total, after deductions for items that did not constitute remediation of mold or rot, is \$30,890.32. This was slightly less than the Fund's recommendation of \$34,410.92.

Claimant's Ex. #3 sets forth the cost the Claimant incurred to remediate rotted exterior siding, trim, fascia, eaves, and windows. The total claim for these charges is \$28,718.64. All of the invoices are for the remediation of exterior rot; I did not deduct any costs.

Claimant's Ex. #4 sets forth the cost the Claimant incurred to repair French door structural defect. The total claim for these items is \$9,046.92. The Fund questioned whether the French doors leading from the kitchen to the great room should be included, because there was no rot on those doors; they sagged because they had no structural support. The Fund argued that this was visible and the Claimant should have known about it. The photograph of those doors does not reveal to my untrained eye that the doors are sagging. Cl. Ex. #16, K433. Moreover, it was a structural issue, which, more likely than not, should have been identified through the home inspection. I did not deduct any cost for the repair of the French doors.

Claimant's Ex. #5 sets forth the cost the Claimant incurred for painting the wood that replaced the rotted wood. The total claim for this item is \$11,734.91. I did not deduct anything from those costs.

Claimant's Ex. #6 sets forth the cost the Claimant incurred for miscellaneous additional work. Her total claim for these items is \$35,935.44. From the Total Home Performance invoice, I allowed \$743.00 for mold mitigation in crawlspace. Cl. Ex. #6, K098-K099. The remainder of that invoice is for installation of a new access door to the crawlspace, installation of a dehumidifier, replacement of the sump pump, installation of a vapor barrier and insulation, all of which were additional improvements to the Property but not remediation. The charges from Bay Hundred for the new sump pump, TruTeam for gutters and downspouts, landscaping and grading from Katya's Landscapes, LLC, the masonry charges for repair of the sidewalk, driveway, and entry way from Laurence Haley Jr. Masonry Inc., were for improvements, and not for remediation. The Claimant argued that the gutters sloped in the wrong direction pushing water

close to the house causing rot. However, this cost was not to remediate rot, it was to prevent further rot and I consider that to be a home improvement rather than remediation; therefore, it is not compensable. I also deducted the cost for Chet Fluharty Construction to replace the front porch since there was a dip in it causing water to pool. This problem may have caused some of the rot around the front porch; however, the Claimant did not present any evidence that would indicate this problem to be discoverable, and I also consider this to be a home improvement, not remediation. I allowed the \$1,740.00 cost of Atlantic to carry forth the suggestions that the Respondent instructed Mr. Patrick not to put in the chimney inspection report. Cl. Ex. #6, K110-K111. However, I did not allow the charge of Alliance Floors, LLC to replace broken tiles in a guest shower and an improperly sized door. It is more likely than not that this condition was visible to the Claimant, and not an item that the Respondent should be responsible for. I allowed for the total charge of \$3,835.74 of the rotten/leaking master bathroom window, because that was a seller repair that the Respondent said he inspected and was satisfactory; however, the repair was not done well, it was visible, and it had to be removed and disposed of. I also allowed \$406.34 charge from Bay Hundred for removal, replacement, and attachment of crushed ducting in the crawlspace because this was a seller repair the Respondent offered to inspect. The Respondent sent a worker down to the crawlspace to check to make sure the repair was complete, and the worker confirmed it was done but it was not. The total cost that I find to be compensable from the Fund as set forth in Claimant's Ex. #6 is \$6,725.08. Everything else was above and beyond remediation.

When added together, I conclude that the total compensable amount of the claim is \$102,443.11.

#### CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I conclude as a matter of law the Respondent knowingly made a false promise in violation of section 17-322(b)(3) of the Act. He also negligently failed to disclose material facts which he knew and should have known related to the Property in violation of section 17-322(b)(4) of the Act. I further conclude that the Respondent engaged in conduct that demonstrated bad faith, incompetency, dishonesty, and untrustworthiness in violation of section 17-322(b)(25) of the Act. I conclude that the Respondent also failed to disclose all material facts of which he should have known as required under section 17-322 of the Act, in violation of section 17-532(b)(1)(iii) of the Act, and failed to treat all parties to a transaction honestly and fairly and answer all questions fully, in violation of section 17-532(c)(1)(iv) of the Act. The Respondent violated COMAR 09.11.02.01C by failing to protect the public against fraud, misrepresentation, or unethical practices in the real estate field. He also violated COMAR 09.11.02.01D by failing to make reasonable efforts to ascertain all material facts concerning the Property in order to fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of material facts. The Respondent also violated the Code of Ethics, set forth in COMAR 09.11.02.02 by failing to protect and promote the interests of the Claimant while maintaining statutory obligations towards other parties to a transaction.

I further conclude that the Claimant is entitled to an award from the Fund in the maximum amount of \$50,000. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a)(2)(iii) (2018); *Goldstein v. Miles*, 159 Md. App. 403, 436 (2004).

I further conclude that the appropriate disciplinary sanction is revocation. Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b) (2018).

**RECOMMENDED ORDER**

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

1. The Charges against the Respondent, issued on November 8, 2019, be **UPHELD**;
2. The Respondent's license be **REVOKED**;
3. The Maryland Real Estate Commission Guaranty Fund pay to the Claimant the maximum amount of \$50,000.00, for the Respondent's wrongful acts or omissions; and
4. The records and publications of the Maryland Real Estate Commission reflect this decision.

June 7, 2021  
Date Decision Issued

SAS/cj  
#191881

**SIGNATURE ON FILE**  
SIGNATURE

\_\_\_\_\_  
Susan A. Sinrod  
Administrative Law Judge

RECOMMENDED ORDER

RECOMMENDED for the Maryland Real Estate Commission's ORDER

The Commission has received the Respondent's letter of November 8, 2011, to the Commission.

The Respondent's letter is REVERSED.

The Maryland Real Estate Commission's Order of 11/11/11 and pay to the Respondent.

The Respondent's letter of 11/11/11 for the Respondent's letter of 11/11/11.

The Respondent's letter of 11/11/11 for the Respondent's letter of 11/11/11.

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