

MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION *

v.

*** CASE NO. 2013-RE-184**

**DONNA SPARE
Respondent**

And

***OAH NO. DLR-REC-24-13-45748**

**CLAIM OF MARIA SANZ AGAINST
THE MARYLAND REAL ESTATE
GUARANTY FUND**

*** * * * ***

OPINION AND FINAL ORDER

This matter came before the Maryland Real Estate Commission (“Commission”) on argument on Exceptions filed by the Claimant, Maria Sanz, to the Proposed Order of September 11, 2014. On June 24, 2014, Administrative Law Judge Daniel Andrews (“ALJ”) filed a Recommended Decision and Recommended Order in which he recommended that the Respondent be reprimanded for recommending an unlicensed home improvement contractor in violation of Sections 17-532(c)(vi) and (vii)3. of the Business Occupations and Professions Article, Annotated Code of Maryland (“Md. Bus. Occ. and Prof. Art.”) and that the Claimant’s claim against the Maryland Real Estate Guaranty Fund (“Fund”) be denied.

On September 11, 2014, the Commission issued a Proposed Order that affirmed the Findings of Fact in the Recommended Decision and Recommended Order of the ALJ. The Commission, in its Proposed Order, amended the Conclusions of Law in the Recommended Decision and Recommended Order as follows:

“Based on the Findings of Fact and the Discussion of the Administrative Law Judge, the Respondent violated Section 17-322(b)(32) and (33) of the Business Occupations and

Professions Article, Annotated Code of Maryland. The Respondent also violated Section 17-532 (c) (1) (vi) and (vii) 3. of the Business Occupations and Professions Article. Additionally, the Respondent violated the Code of Ethics as set forth in COMAR 09.11.02.02A. Therefore, she is subject to sanctions under Section 17-322(b), and a civil penalty under Section 17-322(c) of the Business Occupations and Professions Article. The appropriate sanction is a civil penalty in the amount of \$1,000.

The Claimant, Maria Sanz, is not entitled to reimbursement from the Real Estate Guaranty Fund because she failed to establish that she suffered an actual loss as a result of the Respondent's conduct.”

The Commission also amended the Recommended Order of the ALJ as follows:

“ORDERED that the Respondent Donna Spare violated Md. Bus. Occ. and Prof. Art. §17-322 (b) (32) and (33); §17-532(c) (1) (vi) and (vii) 3; and COMAR 09.11.02.02A;

ORDERED that a civil penalty in the amount of \$1,000 be imposed on the Respondent Donna Spare;

ORDERED that the Respondent Donna Spare pay the civil penalty in full to the Commission within 30 days of the date of this Proposed Order;

ORDERED that all real estate licenses held by the Respondent Donna Spare shall be SUSPENDED if the civil penalty is not paid within the 30-day period;

ORDERED that the Claim of Maria Sanz against the Maryland Real Estate Guaranty Fund be DENIED:

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

A hearing on the Exceptions filed by the Claimant, Maria Sanz, was held by a panel of Commissioners, consisting of Commissioners Anne S. Cooke, Georgiana S. Tyler and M. Liliana Robeson on November 19, 2014. Assistant Attorney General Susan Cherry represented the Commission. The Respondent was present at the hearing and was represented by Timothy Knepp, Esquire. The Claimant was present at the hearing and acknowledged that she had waived representation by counsel. The proceedings were electronically recorded.

SUMMARY OF THE EVIDENCE

On behalf of the Commission, three exhibits as well as the Office of Administrative Hearings' case folder containing the exhibits entered into the record at the hearing before the ALJ, were entered into the record. A transcript of the hearing before the ALJ was not provided by the Claimant.

FINDINGS OF FACT

The Commission adopts the Findings of Fact recommended by the ALJ with the following corrections based on the evidence presented at the hearing before the ALJ:

Finding of Fact 28. is amended to state: "On March 4, 2013, in relation to the home improvement contract between the Claimant and Vanterpool, a criminal complaint was filed in the District Court of Maryland for Baltimore City (District Court), Case Number 2B02187761 which charged Vanterpool with failing to perform a contract under Maryland Annotated Code, Business Regulation Article, Section 8-605 and with acting as a contractor without a license under Maryland Annotated Code, Business Regulation Article, Section 8-601."

Finding of Fact 29. is amended to state: "On June 18, 2013, the District Court found Vanterpool guilty of acting as a contractor without a license and imposed a suspended sentence of two years,

with two years probation, and court costs. The District Court did not impose any restitution to be paid to the Claimant.”

Finding of Fact 32. is amended to state: “ On December 29, 2012, the Claimant paid Global Home Co. to measure and install kitchen cabinets and a countertop at a cost of \$6,650.00.”

Finding of Fact 33. is amended to state: “On June 29, 2013, the Claimant paid Razuri \$1,800.00 for work performed at her residence. The Claimant did not explain nor was the ALJ able to determine from the Claimant’s exhibits what work she paid Razuri to perform for this payment.”

Finding of Fact 34. is amended to state: “ On July 1, 2013, the Claimant paid Wood Floors Plus \$2,783.99 for floor work performed at her residence.”

Finding of Fact 28. was required to be amended to accurately state the charges against Vanderpool. (See Commission exhibit 12 entered into evidence at the hearing before the ALJ.)

Finding of Fact 29. was required to be amended to accurately state the charge on which Vanterpool was convicted.

Findings of Fact 32., 33., and 34. were required to be amended because, in the Recommended Decision, they incorrectly stated that the Respondent had made the referenced payments.

DISCUSSION

Since 2005 and at all relevant times, the Respondent has been a licensed real estate agent with the Commission, under registration number 601027. Between March 24, 2011 and April 5, 2013, the Respondent was issued real estate license number 4104004. Her current license number is 4424334 and expires on April 5, 2015. FF 1.¹

QTFS Investments (“QTFS), also referred to as Accurate Custom Building, LLC (“ACB”), are owned and operated by Derek Vanterpool and any future reference to QTFS, ACB

¹ “FF” refers to the ALJ’s Finding of Fact.

or Mr. Vanterpool shall be identified as Vanterpool.² On June 11, 2012, the Circuit Court for Baltimore County issued a business license to Vanterpool's business, Accurate Custom Building Services, LLC, which was effective to April 30, 2013. FF 2.

On September 29, 2012, the Claimant made arrangements with the Respondent to view 1227 Park Avenue, Baltimore, MD 21217 (the "Property"), which was listed for sale. FF 3.

On October 1, 2012, the Respondent showed the Property to the Claimant, after which the Claimant agreed to present an offer to purchase the Property, with the Respondent as the Claimant's agent. FF 4. On October 3, 2012, the Claimant's offer was accepted by the Property's seller through the seller's agent. FF 5.

The contract to purchase the Property was scheduled to settle on October 30, 2012, but before settlement, the Claimant requested an opportunity to perform a home inspection of the Property. FF 6. On or about October 8, 2012, the Claimant, Respondent and a home inspector, identified as Rich Sammons, inspected the Property. FF 7. During the home inspection, the Claimant inquired about possible home improvements, including removing a dividing wall between the kitchen and living room of the Property. FF 8. Mr. Sammons indicated that he could make several recommendations. The Respondent recommended Vanterpool and indicated that he would do a good job and that she had recommended him before to other clients. FF 9. Prior to her recommendation, the Respondent did not know if Vanterpool held a license issued by the Maryland Home Improvement Commission ("MHIC") and she assumed that the business license issued by the Circuit Court for Baltimore County was sufficient to perform home improvement work. FF 10. On October 25, 2012, the Respondent sent an email to the Claimant indicating that Vanterpool could paint, remodel the kitchen, and remove the wall with a quote of

² See footnote 2 of the ALJ's Recommended Decision and Recommended Order.

\$7,800.00. In a reply email, the Claimant expressed her thought that the price was too high. FF 11.

On October 31, 2012, the contract settlement date was extended to November 9, 2012, and then again to November 30, 2012, and finally, it was extended to December 7, 2012. FF 12. By November 23, 2012, the Claimant had made contact with Vanterpool and made arrangements to meet with him to discuss her home improvement needs. FF 13. Due to issues with the Claimant's former residence and a need to move into the Property as soon as possible, the Claimant executed a pre-settlement agreement which permitted her to move into the Property on December 3, 2012. FF 14. The Claimant settled on the Property on December 7, 2012. FF 15.

On December 9, 2012, the Claimant and Vanterpool signed a contract to perform home improvement work at the Property including: remodeling the kitchen by doing some demolition of the existing kitchen; installing cabinets; doing plumbing; tiling two areas with gray tiles and black grout; in the laundry room, doing some demolition and installing a new door on the opposite wall to flow with the kitchen; installing a granite gray countertop; in the furnace area, installing drywall with shelves, paint black; painting the entire house; installing floor boards; painting the kitchen wall a gray tone; and painting the balance of the house in a neutral color. FF 16. The total cost of the contract between the Claimant and Vanterpool was \$9,000.00. The payment terms included: one-third (\$3,000.00) upon signing the contract; one-third (\$3,000.00) upon start of the contract; and one-third (\$3,000.00) upon completion of the contract. FF 17.

On December 9, 2012, the Claimant paid Vanterpool \$3,000.00. FF 18. On December 12, 2012, the Claimant paid Vanterpool \$3,000.00. FF 19. On December 12, 2012, Vanterpool began to perform the home improvement work required by the contract. FF 20.

The Claimant and Vanterpool agreed upon the performance of additional work with an added cost to the original contract including installing a thermostat (\$50.00) and staining and finishing the floor (\$1,200.00), which increased the total contract price to \$10,250.00. FF 21. On December 19, 2012, the Claimant paid Vanterpool \$650.00 which included \$50.00 for the thermostat and fifty-percent, \$600.00, toward staining and finishing the floor. By this date, the Claimant had paid Vanterpool a total of \$6,650.00 on the total contract price of \$10,250.00. FF 22.

On December 21, 2012, Vanterpool requested that the Claimant pay him some more money so he could pay his subcontractors, but the Claimant refused because she had already paid all of the money required by their contract. After an argument about payment and work performed, Vanterpool left the Property, returned the keys to the Property and allegedly took the granite countertop³, tools, sink, some cabinets, and left the kitchen unfinished, the Property unpainted with exposed electrical cables, and left the ceiling and floors unfinished. FF 23. After December 21, 2012, Vanterpool never returned to the Property to complete the home improvement work as required under the contract. FF 24.

Beginning with an email on December 22, 2012 and through a series of subsequent emails, the Claimant complained to the Respondent about Vanterpool, describing her issues, including that the Respondent recommended an unlicensed contractor to perform home improvement work on the Property. FF 25. By December 22, 2012, the Claimant had obtained the services of an attorney, Michael Blum, Esquire, to address Vanterpool's failure to complete the contract. FF 26. On December 25, 2012, the Claimant sent another email complaining to the Respondent about Vanterpool and requested that the Respondent have Vanterpool return all

³ On December 21, 2012, prior to Vanterpool leaving the Property, the Claimant signed an agreement permitting Vanterpool to remove the granite countertop from the property because it was not acceptable to the "customer".

money not earned under the home improvement contract. FF 27. On March 4, 2012, in relation to the home improvement contract between the Claimant and Vanterpool, a criminal complaint was filed in the District Court of Maryland for Baltimore City (“District Court”), Case Number 2B02187761, which charged Vanterpool with failing to perform a contract under Maryland Annotated Code, Business Regulation Article, Section 8-605 and with acting as a contractor without a license under Maryland Annotated Code, Business Regulation Article, Section 8-601. FF 28. On June 18, 2013, the District Court found Vanterpool guilty of acting as a contractor without a license and imposed a suspended sentence of two years, with two years of probation, and court costs. The District Court did not impose any restitution to be paid to the Claimant. FF 29. The Maryland Home Improvement Commission (“MHIC”) has no record of Vanterpool holding a license to perform home improvement work. FF 30.

After Vanterpool failed to complete the contract, the Claimant sought the services of Joe Razuri of Razuri Services (“Razuri”), a MHIC licensed contractor, to complete the original contract. Razuri proposed a contract including work for plumbing and gas fittings, electricity, carpentry, and painting at a cost of \$3,500.00. FF 31. On December 29, 2012, the Claimant paid Global Home Co. to measure and install kitchen cabinets and a countertop at a cost of \$6,650.00. FF 32. On June 29, 2013, the Claimant paid Razuri \$1,800.00 for work performed at her residence but did not explain to the ALJ nor could the ALJ determine from her exhibits what work she paid Razuri to perform for this payment. FF 33. On July 1, 2013, the Claimant paid Wood Floors Plus \$2,783.99 for floor work performed at her residence. FF 34. From December 30, 2012 through October 24, 2013, the Claimant paid Razuri \$1,790.81 for additional work performed at her residence. FF 35. The Claimant paid Global Home Co., Wood Floors Plus, and Razuri a total of \$13,024.80 for the work performed at her residence. FF 36.

The Commission may reprimand a licensee or suspend or revoke a license if a licensee violates any provision of Title 17, Business Occupations and Professions Article, *Annotated Code of Maryland* ("Md. Bus. Occ. & Prof. Art."). Statutory provisions and regulations which are relevant in this case provide, in pertinent part:

Sections 17-322(b)(32) and 17-322(c)(1) and (2):

(b) Subject to the hearing provisions of §17-324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

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

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

.....
(c) (1) Instead of or in addition to suspending or revoking a license, the Commission may impose a penalty not exceeding \$5,000.00 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.
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Section 17-532(c)(1)(vi) and (vii)3:

(c) (1) A licensee shall:

.....
(vi) exercise reasonable care and diligence; and

(vii) comply with all:

-
3. other applicable laws and regulations.

COMAR 09.11.02.02 A.:

A. In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction.

The evidence disclosed that the Respondent, who was licensed by the Commission at all relevant times, acted as the Claimant's real estate agent for the purchase of the Property. The Respondent recommended Vanterpool, a home improvement contractor who was not licensed by the Maryland Home Improvement Commission, to the Claimant to perform work on the Property. Based on the Respondent's recommendation, the Claimant entered into a home improvement contract with Vanterpool with a total cost of \$9,000.00. The Claimant and Vanterpool later agreed that Vanterpool would perform additional floor work and install a thermostat at a cost of \$1,250.00. The Claimant paid Vanterpool a total of \$6,650.00 before the Claimant and Vanterpool had a dispute over additional payment on December 21, 2012.. Vanterpool then left the Property without completing the home improvement contract. As a result, the Property was left without a working kitchen and other significant portions of the home improvement contract, including plumbing and electrical work, painting and floor work remained to be completed. The Claimant's exhibits indicate that she paid Global Home Co., Wood Floors Plus, and Razuri a total of \$13,024.80 in part, at least, to perform work left unfinished by Vanterpool.

The Commission has established a policy regarding a licensee's recommendation of unlicensed home improvement contractors. That clear policy was published by the Commission in a newsletter, entitled "The Commission Check" in the Spring of 2012 and stated:

"We would like to further clarify the importance of actively searching for the status of a contractor's license *before* making any type of referral to a consumer or your client. If the person or business you recommend turns out to be unlicensed, it can cause serious problems for both your client *and for you*. As we explained, if the job were to go wrong, your client would not have access to monetary relief from the Home Improvement Commission's Guaranty Fund. That fund is maintained only for licensed home improvement contractors. Additionally, the Commission has always held the position that if you recommend a person who does not have a valid, current license, then you have not met your duty of care to your client. Failing to adhere to the standards set forth in §17-532 of the Maryland Real Estate Brokers Act is a civil offense, and

the Commission is authorized to suspend or revoke your license, and can assess a civil penalty up to \$5,000 for each violation.”

The Commission Check, Spring 2012 (bolded emphasis provided in the original,)

The Commission’s policy about recommending unlicensed contractors is also readily available on the Commission’s website to which the public and all licensees have access. The Commission concludes that the evidence established that the Respondent violated the Commission’s policy, stated above, by recommending an unlicensed contractor to the Claimant. When Vanterpool failed to complete the contract, the Claimant was required to locate other contractors to complete the work at an expense well beyond that of the original contract price. If Vanterpool had been a licensed contractor, the Claimant could have sought relief through the Maryland Home Improvement Commission’s Guaranty Fund from which a claimant may recover compensation for an actual loss that results from an act or omission of a licensed home improvement contractor. (See Section 8-405(a), Business Regulation Article, *Annotated Code of Maryland*.) However, since Vanterpool was an unlicensed home improvement contractor, the Claimant could not seek reimbursement from the Maryland Home Improvement Commission’s Guaranty Fund for any losses she sustained due to Vanterpool’s failure to complete the contract. The Commission concludes that the Respondent failed to comply with COMAR 09.11.02.02A. by failing to promote or protect her client’s interest when she recommended an unlicensed home improvement contractor to perform work on the Property. In addition, the Respondent failed to exercise reasonable care and diligence, by recommending an unlicensed home improvement contractor to the Claimant, in violation of Md. Bus. Occ. and Prof. Art., §17-532(c)(1)(vi). The Respondent’s violation of Md. Bus. Occ. and Prof. Art., §17-532(c)(1)(vi) also constitutes a violation of Md. Bus. Occ. and Prof. Art., §17-322(b)(32). Further, by failing to comply with

COMAR 09.11.02.02A., the Respondent violated Md. Bus. Occ. and Prof. Art., §17-322(b)(33) and §17-532(c)(1)(vii)3.

In recommending a penalty, the Commission has considered the factors set forth in Md. Bus. Occ. and Prof. Art., §17-322(c). The Commission finds that the violations committed by the Respondent were serious. The Commission has made it clear in an article on its website, in its newsletter and in prior disciplinary cases that a licensee has a duty to verify the licensing status of a contractor before recommending that person to a consumer. The article on the website particularly focuses on home improvement contractors who carry the protection of the Maryland Home Improvement Commission Guaranty Fund only if they are licensed by that agency. Despite these warnings, the Respondent admitted a lack of knowledge about the Maryland Home Improvement Commission law and its licensing requirements and the Respondent did not verify whether the home improvement contractor she recommended to the Claimant was licensed by the Maryland Home Improvement Commission. The Respondent's failure to do so is a clear violation of the licensing law and cannot be minimized by the assertion made by the ALJ that the Claimant should have made her own inquiry regarding Vanterpool's licensing status. The Commission also finds that the Respondent's action in recommending an unlicensed home improvement contractor to the Claimant caused harm to the Claimant in that she was precluded from seeking reimbursement for any losses she sustained, as a result of her contract with the unlicensed home improvement contractor, from the Maryland Home Improvement Commission's Guaranty Fund. The Respondent's lack of good faith is evidenced by the fact that she made a recommendation that the Claimant hire Vanterpool without verifying that Vanterpool was licensed by the Maryland Home Improvement Commission and in disregard of the Commission's stated policy concerning the recommendation of contractors to clients. The

Commission further finds that the Respondent, who has been licensed since 2005, has no other history of complaints or charges filed against her.

After considering the factors set forth in Md. Bus. Occ. and Prof. Art., §17-322(c), the Commission concludes that the appropriate penalty in this case is the imposition of a civil penalty in the amount of \$1,000.00.

In order for a person to recover compensation from the Maryland Real Estate Guaranty Fund for an actual loss, a claim against the Fund shall:

- (i) be based on an act or omission that occurs in the provision of real estate brokerage services by:
 - 1. a licensed real estate broker;
 - 2. a licensed associate real estate broker;
 - 3. a licensed real estate salesperson; or
 - 4. an unlicensed employee of a licensed real estate broker;
- (ii) involve a transaction that relates to real estate that is located in the State; and
- (iii) be based on an act or omission:
 - 1. in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or
 - 2. that constitutes fraud or misrepresentation.

Md. Bus. Occ. and Prof. Art., §17-404(a)(2).

The amount of compensation which a claimant may recover from the Real Estate Guaranty Fund “shall be restricted to the actual monetary loss incurred by the claimant, but may not include monetary losses other than the monetary loss from the originating transaction.”

COMAR 09.11.01.18.

The Respondent is a licensed real estate salesperson who acted as the agent for the Claimant in the purchase of property which is located in Maryland. Thus, two elements of Section 17-404 have been met.

The Claimant in this case bases her claim on misrepresentation. Maryland recognizes two distinct types of misrepresentation: fraudulent and negligent. Fraudulent misrepresentation, also known as an action for deceit, requires proof of scienter, an intent to deceive the other party. *Martens Chevrolet, Inc. v. Seney*, 292 Md. 328, 333 (1982), quoting *Cahill v. Applegarth*, 98 Md. 493 (1904). There was no evidence produced in this case that the Respondent had an intent to deceive the Claimant in recommending an unlicensed home improvement contractor to the Claimant and thus, there is no basis for a finding of fraudulent misrepresentation. The ALJ found that the Claimant did not have a viable claim because she was unable to prove fraudulent misrepresentation. However, Maryland also recognizes negligent misrepresentation. Negligent misrepresentation exists when all five of the following are present:

- (1) the defendant, owing a duty of care to the plaintiff, negligently asserts a false statement;
- (2) the defendant intends that his statement will be acted upon by the plaintiff;
- (3) the defendant has knowledge that the plaintiff will probably rely on the statement, which, if erroneous, will cause loss or injury;
- (4) the plaintiff, justifiably, takes action in reliance on the statement; and
- (5) the plaintiff suffers damage proximately caused by the defendant's negligence.

Martens Chevrolet, 292 Md. at 337. See also *Lloyd v. General Motors Corporation*, 397 Md. 108, 135 (2007). The Respondent negligently recommended Vanterpool to the Claimant as a home improvement contractor who had the licenses sufficient to perform home improvement work and indicated that Vanderpool would do a good job without first determining that he was licensed by the Maryland Home Improvement Commission. The Respondent provided the recommendation to the Claimant with the intention that her recommendation would be acted

upon by the Claimant and with the knowledge that if the Claimant relied upon her statement that Vanterpool had done great work for her and for other clients and would do good work for the Claimant, and that statement was erroneous, the Claimant would sustain loss or injury. The Claimant, in reliance upon the Respondent's recommendation, contracted with Vanterpool to perform home improvement work. The Claimant suffered damages as a result of the Respondent's negligence in recommending an unlicensed home improvement contractor in that she paid the unlicensed contractor for work which was not finished and was unable to file a claim with the Maryland Home Improvement Guaranty Fund because the home improvement contractor was not licensed by that agency. Thus, the Claimant has met the requirement that an act of the Respondent constituted misrepresentation.

Finally, the Claimant is required to prove that she sustained an actual monetary loss. It is this element which the Claimant has been unable to prove with specificity. The Claimant proved that she paid Vanterpool \$6,650.00 on a total contract price of \$10,650.00. It is also clear that the Respondent paid other contractors \$13,024.80 to perform work on the Property. However, the Claimant did not prove what portion of the sum she paid other contractors was due to poor work by Vanderpool or uncompleted work by Vanterpool. The Commission notes that, for example, there was no proof provided that the kitchen cabinets or countertops which were eventually installed in the Property were identical to those which Vanterpool had proposed to install. Further, no evidence was provided that the floor work which Vanterpool contracted to perform was identical to the floor work which was eventually performed on the Property. Although it is undisputed that Vanterpool left the contract unfinished, there was no testimony or other evidence from any licensed home improvement contractor or person with expertise in home improvement which demonstrated that work performed by Vanterpool was unworkmanlike

and needed repair. Further, there was no evidence presented which showed exactly what work performed by Vanterpool was required to be performed again because it was unworkmanlike and which showed the cost of performing the work again or of completing additional work set forth in the contract which was not performed by Vanterpool. The Commission would be required to find that the other contractors performed work which had been previously performed in an unworkmanlike manner by Vanterpool; performed only that additional work which had been left uncompleted by Vanterpool; installed identical cabinets and countertops to those installed and removed by Vanterpool; and did not perform any work not set forth in the Vanterpool contract as well as the actual cost of completing the Vanterpool contract in order to grant an award from the Fund to the Claimant. The Commission concludes that it cannot make a finding of the actual loss sustained by the Claimant based upon the evidence and testimony presented. The burden is on the Claimant to prove the amount of her actual monetary loss with specificity and the Commission concludes that the Claimant did not meet that burden.

CONCLUSIONS OF LAW

Based upon the ALJ's Findings of Fact, as amended in this Final Order, which have been adopted by the Commission, and the foregoing Discussion, the Commission concludes, as a matter of law, that:

1. The Respondent, Donna Spare, failed to comply with COMAR 09.11.02.02A. by failing to promote or protect her client's interest when she recommended an unlicensed home improvement contractor to perform work on her client's property.
2. The Respondent, Donna Spare, failed to exercise reasonable care and diligence when she recommended an unlicensed home improvement contractor to perform work on her client's property in violation of Md. Bus. Occ. and Prof. Art., §17-532(c)(1)(vi).

3. The Respondent's violation of COMAR 09.11.02.02A. also constitutes a violation of Md. Bus. Occ. and Prof. Art., §§17-322(b)(33) and Md. Bus. Occ. and 17-532(c)(1)(vii)3.

4. The Respondent's violation of Md. Bus. Occ. and Prof. Art., §17-532(c)(i)(vi) also constitutes a violation of Md. Bus. Occ. and Prof. Art., §§17-322(b)(32).

5. The Respondent, Donna Spare, is subject to sanctions for her conduct and a \$1,000.00 civil penalty is an appropriate sanction. Md. Bus. Occ. and Prof. Art., §17-322(c).

6. The Claimant, Maria Sanz, is not entitled to reimbursement from the Real Estate Guaranty Fund because she failed to establish that she suffered an actual loss as a result of Respondent's conduct.

ORDER

The Exceptions of the Claimant, Maria Sanz, having been considered, it is this 16th day of January, 2015, by the Maryland Real Estate Commission,
ORDERED:

1. That the Respondent, Donna Spare, violated Sections 17-322 (b) (32) and (33) and 17-532 (c) (1) (vi) and (vii) 3., of the Business Occupations and Professions Article, *Annotated Code of Maryland* and COMAR 09.11.02.02A.;

2. That a civil penalty in the amount of \$1,000.00 be imposed on the Respondent, Donna Spare;

3. That the Respondent, Donna Spare, pay the civil penalty in full to the Commission within 30 days of the date of this Order;

4. That all real estate licenses held by the Respondent, Donna Spare, shall be **SUSPENDED** if the civil penalty is not paid within the 30-day period;

5. That the claim of Maria Sanz against the Maryland Real Estate Guaranty Fund be

DENIED; and

6. 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 of Maryland 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.

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
FIRST CLASS MAIL

January 16, 2015

Ms. Maria Sanz
1227 Park Avenue, Unit #9
Baltimore, Maryland 21217

Timothy P. Knepp, Esquire
Law Offices of Timothy P. Knepp
PO Box 34019
Baltimore, Maryland 21221

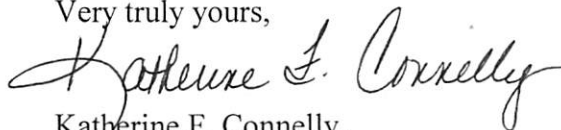
**RE: Maryland Real Estate Commission v. Donna Spare and Claim of Maria Sanz
against the Maryland Real Estate Commission Guaranty Fund
Case No. 184-Re-2013 GF**

Dear Ms. Sanz and Mr. Knepp:

Enclosed is the copy of the Final Order of the Commission, issued in **Maryland Real Estate Commission v. Donna Spare and Claim of Maria Sanz against the Maryland Real Estate Commission Guaranty Fund** against the Maryland Real Estate Guaranty Fund, which was heard by a panel of Commissioners on November 19, 2014.

Any person aggrieved by a final decision of the Commission in a contested case may take an appeal as allowed in §10-222 of the State Government Article. Procedures for appeal are those set forth in Maryland Rule 7-201 et seq. You have 30 days from the date of this letter to file a petition for judicial review in a Circuit Court. Please note that Maryland Rule 7-206 provides for the cost of preparing a transcript to be paid by the appellant.

Very truly yours,



Katherine F. Connelly,
Executive Director

KFC/bai

Enclosures: Final Order
cc: file