

MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

*

*

V.

*

OAH NO. DLR-REC-24-08-11889

GEORGE C. MBAGWU
RESPONDENT

*

AND

*

REC CASE NO. 2005-RE-438

CLAIM OF MELVIN E. AND
PATRICIA A. PULLEY
AGAINST THE REAL ESTATE
COMMISSION GUARANTY FUND

*

*

* * * * *

FINAL ORDER

The Circuit Court for Baltimore City, in Case No. 24-C-09-000610, affirmed the decision of the Maryland Real Estate Commission in the above case but remanded the matter to the Commission to have the amount of the award against the Maryland Real Estate Commission Guaranty Trust Fund modified to the sum of \$8,030.04. That sum accurately reflects the amount of the deposit (\$7,000.00) which they did not receive; the cost of one month's storage of the claimants' possessions (\$249.00); and the amount the claimants expended in attorney's fees in attempting to recover money from the buyer (\$781.04). In accordance with the Order of the Circuit Court of Baltimore City in Case No. 24-C-09-000610, issued June 17, 2009, it is this 13th day of

July, 2009, ORDERED:

1. That the Respondent violated Md. Business Occupations and Professions Article, ("Md. Bus. Occ. & Prof. Art.") *Annotated Code of Maryland*, §§17-322(b)(25),

(31); 17-502(b)(1)(i) and (ii); 17-532(c)(1)(iv) and Code of Maryland Regulations (“COMAR”) 09.11.02.02A;

2. That the Respondent’s real estate license be suspended for two weeks pursuant to Md. Bus. Occ. & Prof. Art. §17-322(c);

3. That in addition to the suspension, the Respondent be fined in the amount of \$5,000.00 pursuant to Md. Bus. Occ. & Prof. Art. 17-322(c);

4. That the Claimant’s Guaranty Fund claim against the Respondent be allowed in the amount of \$8,030.04 pursuant to Md. Bus. Occ. & Prof. Art. §§17-401 through 17-412 and COMAR 09.11.01.18;

5. That all real estate licenses held by the Respondent, George C. Mbagwu, be and are hereby suspended until the Maryland Real Estate Guaranty Fund is reimbursed and that this suspension is in addition to and not in lieu of the two weeks suspension set forth above; and

6. That the records and publications of the Real Estate Commission reflect this final decision.

MARYLAND REAL ESTATE COMMISSION

By: *Suzanne A. Jordan, Commissioner* 

MARYLAND REAL ESTATE * BEFORE MARY R. CRAIG,
 COMMISSION * AN ADMINISTRATIVE LAW JUDGE
 v. * OF THE MARYLAND OFFICE
 GEORGE C. MBAGWU, * OF ADMINISTRATIVE HEARINGS
 RESPONDENT *
 AND CLAIM OF * OAH NO. : DLR-REC-24-08-11889
 MELVIN E. AND PATRICIA A. * MREC NO. : 2005-RE-438
 PULLEY AGAINST THE MARYLAND *
 REAL ESTATE GUARANTY FUND *

* * * * *

EXHIBIT LIST

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

- REC Ex. #1 March 27, 2008 notice of hearing, June 19, 2008 notice of telephone hearing, June 19, 2008 notice of rescheduled hearing
- REC Ex. #2 Transmittal from REC to OAH, March 24, 2008 Statement of Charges and Order for Hearing
- REC Ex. #3 REC record of Respondent’s licensing history
- REC Ex. #4 REC Report of Investigation with the following attachments:
 - Ex. #4A Claimants’ June 10, 2005 Fund Claim
 - Ex. #4B April 21, 2005 residential contract of sale
 - Ex. #4C June 28, 2005 letter from Respondent to REC (same as CL Ex. #1D)
 - Ex. #4D April 21, 2005 check from Mohammed Bagudu to Urban & Village Home stamped “NSF,” and undated facsimile cover sheet (same as CL Ex. #1E)
 - Ex. #4E Harbor Bank of Maryland notice to Respondent of returned item, payor Mohammed Bagudu, dated May 18, 2005 (Same as CL Ex. #1F)

- Ex. #4F Agreement of release signed by Claimants May 21, 2005, unsigned by Mohammed Bagudu
- Ex. #4G May 25, 2005 general addendum, signed by Claimants, unsigned by Mohammed Bagudu
- Ex. #4H May 28, 2005 release of obligation and release of deposit agreement, signed by Respondent

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

- CL Ex. #1 July 16, 2005 letter from Claimants to R. Stoakley and enclosures
- CL Ex. #1A April 21, 2005 check from Mohammed Bagudu to Urban & Village Home
- CL Ex. #1B Bank of America transaction details, payment to Goozman, Bernstein & Markuski; June 2, 2005 letter from Martin Goozman, Esquire, to Mohammed K. Bagudu; June 2, 2005 facsimile from Mr. Goozman to Claimants
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- CL Ex. #1G Claimants' bank statement (pages 3 & 4), rental agreement dated June 2, 2005 between Claimants and John E. and Beverly J. Carey
- CL Ex. #1H April 18, 2005 AccuBanc Mortgage letter to Mohammed Bagudu
- CL Ex. #1I Financial information sheet, completed by Mohammed Bagudu April 21, 2005
- CL Ex. #1J ReMax Seller's appraisal addendum
- CL Ex. #1K May 6, 2005 addendum to contract of sale regarding home inspection
- CL Ex. #1L May 16, 2005 addendum to contract of sale regarding appraisal value
- CL Ex. #1M May 17, 2005 United Van Lines additional services price list

CL Ex. #1N July 28, 2005 settlement statement, 12308 Tavistock Court

CL Ex. #1O Claimants' 2005 W-2 wage and tax statements

The Respondent submitted the following exhibit, which was admitted into evidence:

Resp. Ex. #1 Harbor Bank of Maryland envelope, postmarked May 18, 2005

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE COMMISSION	*	BEFORE MARY R. CRAIG,
V.	*	ADMINISTRATIVE LAW JUDGE,
GEORGE C. MBAGWU	*	OF THE MARYLAND OFFICE OF
RESPONDENT	*	ADMINISTRATIVE HEARINGS
AND	*	OAH No: DLR-REC-24-08-11889
CLAIM OF MELVIN E. AND	*	REC CASE NO: 2005-RE-438
PATRICIA A. PULLEY	*	
AGAINST THE REAL ESTATE	*	
COMMISSION GUARANTY FUND	*	
* * * * *		* * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated November 14, 2008, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 17th day of December, 2008.

ORDERED,

- A. That the Findings of Fact in the Recommended Decision be, and hereby are, AFFIRMED;
- B. That the Conclusions of Law in the Recommended Decision be, and hereby are, APPROVED;
- C. That the Recommended Order in the Recommended Decision be, and hereby is, ADOPTED;

and,

D. That the records, files and documents of the Maryland State Real Estate Commission reflect this decision.

MARYLAND STATE REAL ESTATE COMMISSION

12/17/08
Date

By: 
Surina A. Jordan, Commissioner

MARYLAND REAL ESTATE	* BEFORE MARY R. CRAIG,
COMMISSION	* AN ADMINISTRATIVE LAW JUDGE
v.	* OF THE MARYLAND OFFICE
GEORGE C. MBAGWU,	* OF ADMINISTRATIVE HEARINGS
RESPONDENT	* OAH NO. : DLR-REC-24-08-11889
AND CLAIM OF	* MREC NO. : 2005-RE-438
MELVIN E. AND PATRICIA A.	*
PULLEY AGAINST THE MARYLAND	*
REAL ESTATE GUARANTY FUND	*
* * * * *	* * * * *

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 June 16, 2005, Melvin E. and Patricia A. Pulley (the Claimants) filed a complaint (the Complaint) with the Maryland Real Estate Commission (REC) and a claim (the Claim) against the REC Guaranty Fund (the Fund) for reimbursement of losses allegedly caused by the acts and omissions of a licensed real estate salesperson, George C. Mbagwu (Respondent), in connection with the Claimants' contract to sell residential real estate located at 12308 Tavistock Court, Laurel, Maryland (the Property).

On March 24, 2008, the REC filed a Statement of Charges and Order for Hearing (Charges) against the Respondent, alleging that he violated Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(25), (31) & (33), 17-502(b)(1)(i) & (ii), and 17-532(c)(1)(iv) (2004),¹ and Code of Maryland Regulations (COMAR) 09.11.02.02A, the Code of Ethics for individuals licensed by the REC, by failing to promptly deposit a buyer's escrow deposit check into his escrow account and by failing to inform the Claimants that the check had been returned for insufficient funds. The REC alleges that the Respondent is subject to sanctions pursuant to § 17-322(c).

I held a hearing on September 5, 2008, on the Charges and the Claim at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Assistant Attorney General Jessica A. Kauffman represented the REC. The Claimants participated by telephone and represented themselves. The Respondent was present and was represented by Anthony C. Onwuanibe, Esquire. No one appeared on behalf of the Fund.

I heard this case pursuant to section 17-408 of the Business Occupations and Professions Article. Procedure in this case is governed by the provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2008); COMAR 09.01.03 and 28.02.01.

ISSUES

The issues in this case are as follows:

1. Did the Respondent violate Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(25),

¹ Chapter 274, Acts 2007, effective October 1, 2007, reenacted § 17-322(b)(25) and (b)(33), and Chapter 282, Acts 2008, effective October 1, 2008, reenacted § 17-532 without change from the text in the 2004 volume. All subsequent references are to sections of the Business Occupations and Professions Article of the Maryland Annotated Code (2004), unless otherwise stated.

(31) & (33), 17-502(b)(1)(i) & (ii), 17-532(c)(1)(iv) and COMAR 09.11.02.02A?

2. Should the Respondent be sanctioned by a suspension of his license pursuant to Md. Code Ann., Bus. Occ. & Prof. § 17-322(c)?

3. Should the Respondent be subject to a civil penalty pursuant to Md. Code Ann., Bus. Occ. & Prof. §17-322(c)?

4. Did the Claimants prove that they sustained an actual loss as a result of the Respondent's alleged misconduct?

SUMMARY OF THE EVIDENCE

Exhibits

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The Respondent submitted the following exhibit, which was admitted into evidence:

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Testimony

The REC presented the testimony of the following: the Claimants, Dorian Ritchie, and James Stoakley, REC Investigator.²

The Claimants testified on behalf of their Fund Claim.

The Respondent testified on his own behalf and presented the testimony of Luis A. Perez.

FINDINGS OF FACT

Having considered all of the evidence presented, I find the following facts by a preponderance of the evidence:

1. On September 23, 2006, the REC issued Maryland real estate license No. 311202 to the Respondent; he has held that license continuously to the present.
2. The Respondent has no previous violations on his real estate license record.
3. The Respondent was affiliated with Urban & Village Home, 3231 Belair Road, Suite 102, Baltimore, Maryland 21213 at all relevant times.
4. On April 21, 2005, the Claimants entered into a contract of sale (Contract) to sell the Property to Mohammed Bagudu (Buyer) for \$699,900.00.
5. The Claimants were represented in the sales transaction by Dorian Ritchie, a licensed real estate salesperson.
6. The Respondent was the Buyer's real estate agent in the transaction.
7. The Contract required the parties to settle on May 20, 2005.

² The Claimants, who have moved to Texas, and Mr. Ritchie, who is living in London, England, participated by telephone. Md. Code Ann., State Gov't § 10-211 (2004), COMAR 28.02.01.17B.

8. On April 21, 2005, the Buyer gave the Respondent a check drawn on Harbor Bank for \$7,000.00 for the deposit required by the Contract.

9. On April 21, 2005, the Buyer told the Respondent not to deposit the check, as there were insufficient funds in the bank to cover it. The Respondent did not share this with the Claimants or Mr. Ritchie.

10. The Respondent submitted a copy of the \$7,000.00 check to Mr. Ritchie with the Contract, signed by the Buyer, representing that it was a bona fide deposit check.

11. Without informing the Claimants or Mr. Ritchie, the Respondent held the check until May 16, 2005, when he deposited it into his escrow account at M & T Bank.

12. On May 18, 2005, Harbor Bank notified the Respondent that the check was returned for insufficient funds in the Buyer's account. The Respondent did not tell the Claimants or Mr. Ritchie until after 5:00 p.m. on May 20, 2005.

13. The settlement between the Claimants and the Buyer did not occur.

14. The Claimants were ready, willing and able to settle on May 20, 2005.

15. The Buyer gave the Respondent, and the Respondent transmitted to the Claimants, a letter dated April 18, 2005 signed by Luis Perez, Mortgage Banker, indicating that Accubanc Mortgage pre-approved the Buyer for a \$700,000.00 mortgage, based on a ten percent deposit.

16. Accubanc Mortgage approved the Buyer for a mortgage prior to May 20, 2005, conditioned on him paying twenty percent cash. The Buyer told Mr. Perez that he was transferring funds from a bank in Nigeria, but, as of the close of business on May 20, 2005, he failed to do so.

17. The Respondent first informed Mr. Ritchie after 5:00 p.m. on May 20, 2005 that the settlement would not occur because the Buyer did not obtain financing.

18. On May 20, 2005, Mr. Ritchie telephoned the Respondent repeatedly between 9:00 a.m. and 5:00 p.m., leaving multiple messages for him, asking what time the settlement would take place. The Respondent did not call Mr. Ritchie back until after 5:00 p.m.

19. On the evening of May 20, 2005, the Respondent told Mr. Ritchie that the Buyer could not obtain financing for the purchase price. The Respondent conveyed the Buyer's offer to purchase the Property for \$645,000.00, which the Claimants rejected immediately.

20. On May 21, 2005, Mr. Ritchie prepared, and the Claimants signed, an agreement of release to authorize the Respondent to disburse the \$7,000.00 deposit to them. Mr. Ritchie faxed the document to the Respondent, who did not respond.

21. On May 24, 2005, Mr. Ritchie faxed the Respondent notice that, due to the Buyer's failure to respond to the May 21, 2005 agreement of release, the Claimants withdrew the contract, effective May 25, 2005.

22. The Buyer never paid the \$7,000.00 deposit.

23. Expecting to settle on the sale of their Property to the Buyer on May 20, 2005, the Claimants moved their household furnishings to Florida, placing them in storage at a cost of \$249.00 per month until their new home was completed.

24. The Claimants hired Martin M. Goozman, Esquire, and paid him \$1,000.00 to represent them in an unsuccessful attempt to recover the \$7,000.00 deposit from the Buyer, who disappeared after May 20, 2005.

DISCUSSION

Since the Claim against the Fund and the Charges arose from the same facts and circumstances, I heard them in one proceeding. Accordingly, I considered the evidence presented in this case in determining the merits of both the regulatory Charges and the Fund Claim.

The REC, as the moving party on the Charges, has the burden of proving that the Respondent violated the statutory and regulatory sections at issue; the Claimants, as the moving parties on the Claim, have the burden of proving that they suffered an actual loss as the result of the Respondent's misconduct, all by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2004); *Maryland Comm'r of Labor and Industry v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996)(quoting *Bernstein v. Real Estate Comm.*, 221 Md. 221, 231 (1959)). I find that the REC met its burden of proving the Charges and the Claimants met theirs with respect to the Claim.

The Regulatory Charges

The REC has charged the Respondent with violating the following sections of its regulatory statute and regulations:

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

...

(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:

...

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

...

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

...

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

The first provision of Subtitle 5 cited in the Charges is § 17-502(b)(1), which provides as follows:

§ 17-502. Handling of Trust Money.

...

(b) *Deposits by brokers; restricted use.*- (1) Except as otherwise provided in subsection (c) of this section, a real estate broker promptly, but not more than 7

business days after the acceptance of the contract of sale by both parties, shall deposit trust money in an account that is maintained by the real estate broker:

- (i) separately from the real estate broker's own accounts; and
- (ii) solely for trust money....

The REC also charged the Respondent with violating § 17-532(c)(1)(iv), which requires a licensee to “treat all parties to the transaction honestly and fairly and answer all questions truthfully....” Finally, the REC charged the Respondent with violating the Code of Ethics, COMAR 09.11.02.02A, which provides:

.02 Relations to the Client.

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

The REC contends that the Respondent violated these provisions by failing to promptly deposit the Buyer's check in his escrow account and by failing to notify the Claimants that the check was returned for insufficient funds. It is undisputed that the Respondent did as charged. The Respondent admitted that, when he took the deposit check from the Buyer, he knew it was worthless. He failed to provide any reason why he misled the Claimants into thinking that there was a \$7,000.00 good faith deposit in his escrow account. The Respondent intentionally held the check for more than seven business days in violation of the applicable law and regulation. Md. Code Ann., Bus. Occ. & Prof. § 17-502(b) (2004), COMAR 09.11.02.02A. I conclude that the Respondent knew he was engaging in fraudulent, dishonest behavior, which was a violation of his duty to treat the Buyer and the Claimants equally and fairly, but he hoped that the Buyer would obtain the funds in time to make the check good before the Claimants found out that there was no deposit in escrow. The Respondent's plan unraveled when the Buyer disappeared.

The Respondent attempted to downplay the severity of his conduct by arguing that the Claimants were not entitled to retain the deposit under the terms of the Contract because the Buyer failed to obtain financing. Mr. Perez testified that he was in contact with Mr. Ritchie throughout the loan processing period, informing him that the Buyer was prequalified and that he had applied for the loan. Mr. Perez denied, however, ever telling Mr. Ritchie that Accubanc Mortgage refused to loan the Buyer the funds.

The Respondent testified that he told Mr. Ritchie that the Buyer was having difficulty obtaining financing. I do not find the Respondent's testimony credible. The Claimants and Mr. Ritchie clearly and consistently refuted the Respondent's version of the events. The Claimants both testified that, if they had known that the Buyer was not going to settle, they would not have quit their jobs, packed their household belongings and shipped their possessions to Florida. It is undisputed that Mr. Ritchie repeatedly called the Respondent on May 20, 2005, the date for the settlement, asking when they would settle. The Respondent refused to speak with Mr. Ritchie until after business hours. If the Respondent had previously informed Mr. Ritchie that the Buyer did not have financing, he would have taken one of the calls or returned them during business hours.

I conclude that the Buyer's alleged right to recover a deposit upon contract termination is irrelevant to the issue of whether the Respondent violated the REC statutes and regulations. The law imposes upon an individual licensed by the REC the obligation to treat all parties in a real estate transaction truthfully and fairly. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33), COMAR 09.11.02.02A. The Respondent violated the law when he fraudulently misled the Claimants into thinking that there was a \$7,000.00 deposit in his escrow account to support the Buyer's obligations under the Contract, failed to promptly deposit the check and failed to notify the Claimants that the check was returned for insufficient funds.

The Respondent argued that, at most, he was guilty of poor judgment. I reject that argument because, from the moment the Respondent took the check from the Buyer, he knew it was worthless. The Buyer was perpetrating a fraud on the Claimants by misleading them into believing he had put up a substantial deposit. The Respondent participated in the fraud by sending the Claimants a copy of the bad check, falsely representing that it was a bona fide deposit. By holding the check until shortly before the settlement date, the Respondent intentionally hid highly relevant information from the Claimants, putting his expectation of a commission ahead of his duty to treat the Claimants fairly. That can hardly be characterized as poor judgment. I conclude that the REC proved all of the charged violations of the law and regulations. The Respondent violated § 17-322(b)(25) by engaging in untrustworthy conduct, fraud, dishonesty and improper dealings regarding the deposit check, §§ 17-322(b)(31) and 17-502 by failing to promptly deposit the check into his escrow account, § 17-532(c)(i)(iv) by misleading the Claimants into thinking there was a good faith deposit to support the Contract, and § 17-322(b)(33) and COMAR 09.11.02.02A by dealing unfairly and dishonestly with the Claimants regarding the deposit.³

Regulatory sanction

The purpose of the REC regulatory statute is “to protect the public in its dealings with real estate brokers, to place a duty of good faith and fair dealing on real estate brokers.” *Gross v. Sussex Incorporated*, 332 Md. 247, 274 (1993). In addition to allowing for suspension, revocation or reprimand of a real estate agent, section 17-322 allows the REC to impose a financial penalty, not exceeding \$5,000.00, for each statutory violation. The REC suggested that I consider recommending a \$5,000.00 civil penalty and a two-week suspension of the

³ I reject the Respondent’s explanation that he trusted the Buyer because they previously had a positive business transaction; it is inexcusable not to deposit a check for weeks.

Respondent's real estate license.

Section 17-322(c) directs me to consider the seriousness of the violation; the harm caused by the violation, the Respondent's good faith, and any previous violations in determining the appropriate penalty. The Respondent misled the Claimants about a material fact—the existence of an escrow deposit. Based on that misrepresentation, the Claimants, who quit their jobs, packed and moved their belongings to Florida, suffered serious harm. As explained above, there was no good faith on the Respondent's part. He made the conscious decision to assist the Buyer in deceiving the Claimants. Such conduct warrants severe censure. Despite the absence of previous violations on the Respondent's real estate license and considering all the factors set forth in section 17-322(c), I recommend a \$5,000.00 civil penalty and a two-week suspension of the Respondent's real estate license.

Guaranty Fund Claim

The Claimants seek \$34,774.00 from the Fund, an amount exceeding \$25,000.00, which is the maximum that may be recovered for any one claim. Md. Code Ann., Bus. Occ. & Prof. § 17-404(b). Their Claim is premised on the same facts that, as I have already discussed, proved that the Respondent engaged in fraud with respect to the regulatory action. Md. Code Ann., Bus. Occ. & Prof. § 17-404(a). For the reasons set forth below, I conclude that the Claimants have met their burden on a portion of the Claim.

Section 17-410(b)(1) provides that “[t]he Commission may order payment by the Guaranty Fund only for the actual monetary loss suffered by the claimant as a result of the claim proven by the claimant.” *See also*, COMAR 09.11.01.18. The term “actual loss” is not defined in the statute, regulation or any reported appellate decision. Interpreting it in the context of the statute, an actual loss is an economic loss suffered by the Claimants as a result of proven

misconduct by the Respondent. I conclude that the Claimants are entitled to recover \$8,249.00 from the Fund.

The Claimants are certainly entitled to \$7,000.00, the deposit which they expected the Respondent to hold in his escrow account until settlement or termination of the Contract. The Respondent argued that the Claimants would not have received the deposit because the Contract contained a clause providing that the Buyer could cancel the Contract and receive his deposit if he were unable to obtain financing. I reject this argument. The Claimants' had every right to expect that, if the settlement did not occur on May 20, 2005, they could make a claim for the deposit. The Respondent thwarted their ability to do so. The Claimants had a colorable claim to the deposit, which the Respondent destroyed by not informing them that he held no funds in his escrow account.

The Claimants relisted the Property, ultimately settling on July 28, 2005, for \$665,000.00. They claim that, based on the Contract, they resigned from their jobs and moved their household goods to Florida, where they were constructing a new house. They seek \$12,140.00 for one month lost salaries, \$12,000.00 for moving their furniture and household goods, \$1,985.00 for their first mortgage on the Property for the month of June 2005, \$400.00 for their second mortgage for one month, and \$249.00 for storing their possessions for one month in Florida.

The Claimants seek \$1,000.00 to reimburse them for the legal fees they incurred to attempt to recover the deposit from the Buyer. COMAR 09.11.01.18 states that the amount of compensation recoverable "shall be restricted to the actual monetary loss incurred by the claimant" and may not include "any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund." The attorney's fees paid by the Claimants were

in an attempt to recover money from the Buyer rather than to pursue their Fund Claim. The Claimants would not have been required to incur that expense if the \$7,000.00 had been in the Respondent's escrow account. I conclude that those fees qualify as actual monetary loss within the definition of the regulation. Therefore, the \$1,000.00 for attorney fees is granted.⁴

The Claimants failed to sustain their burden of proof with respect to the mortgage payments. They produced no cancelled checks or other documentary proof that they incurred those expenses. They failed to prove that they paid \$1,985.00 and \$400.00 for the first and second mortgage on the Property.

The Claimants were planning to move to Florida as soon as they sold the Property and their Florida house was finished. They would have incurred \$12,000.00 to move their furniture and household goods to Florida regardless of whether the Contract went to settlement. It is possible that the Claimants incurred additional moving fees to transfer their possessions from storage to their house, but there is no evidence of those costs in this record. I, therefore, conclude that the Claimants' moving expenses were not caused by the Respondent's misconduct. That portion of their Claim is denied.

The Claimants did establish through storage receipts that they paid \$249.00 to store their possessions for one month in Florida. The Claimants both testified that, had they known that the Buyer did not deposit the earnest money, they would have never entered into the Contract. They would have stayed in their house until they were confident that they were going to closing. The Respondent's deceitful conduct misled them into believing that they had to move out of the Property prior to the settlement day. They did so unnecessarily, incurring storage fees. The

⁴ The Claimants did not produce a cancelled check for the attorney's fee, but they provided a contract obligating them to pay the attorney on an hourly basis and a letter that the attorney wrote to the Buyer, sufficiently proving that they paid the attorney's fee.

Claimants proved that they incurred \$249.00 in storage fees to store their possessions in Florida. That portion of the Claim is granted.

That leaves only the \$12,140.00 portion of the Claim, consisting of one month's combined gross salaries for the Claimants, based on their testimony that they would not have resigned their jobs until they had a firm contract of sale. The Claimants presented W-2 forms indicating that Mr. Pulley earned \$45,874.24 and Mrs. Pulley earned \$46,268.76 in 2005. The Claimants did not provide any explanation of their calculation that they earned \$12,120.00 for one month or the exact date when each of them resigned. I conclude that they failed to prove that they incurred \$12,140.00 in lost wages. That portion of the Claim is denied.

In summary, I recommend that the Claimants be awarded a total of \$8,249.00 from the Fund for their Claim. As described above, I recommend that the balance of their Claim be denied.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondent violated Md. Code Ann., Bus Occ. & Prof. §§ 17-322(b)(25), (31) & (33), 17-502(b)(1)(i) & (ii), 17-532(c)(1)(iv) (2004) and COMAR 09.11.02.02A by submitting a check purporting to be for \$7,000.00 to the sellers of real property as a deposit check from a buyer, knowing that it was worthless, failing to deposit the check into his escrow account for twenty-five days and failing to inform the Claimants or their agent that the check was returned for insufficient funds.

I further conclude that the Respondent is subject to a fine and suspension of his license for violations of the Real Estate Law pursuant to Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2004).

Finally, I conclude that the Claimants are entitled to payment of \$8,249.00 from the Real Estate Guaranty Fund pursuant to Md. Code Ann., Bus. Occ. & Prof. §§ 17-401 through 17-412 (2004) and COMAR 09.11.01.18.

RECOMMENDED ORDER

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

ORDER that the Respondent violated Md. Code Ann., Bus. Occ. & Prof. §§ 17-322(b)(25), (31) & (33), 17-502(b)(1)(i) & (ii), 17-532(c)(1)(iv) (2004) and COMAR 09.11.02.02A;

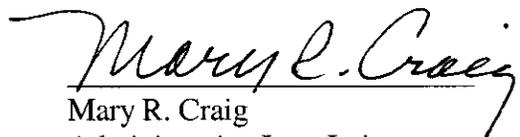
ORDER that the Respondent's real estate license be suspended for two weeks pursuant to Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2004);

ORDER that, in addition to the suspension, the Respondent be fined in the amount of \$5,000.00 pursuant to Md. Code Ann., Bus. & Occ. Prof. § 17-322(c) (2004);

ORDER that the Claimants' Guaranty Fund Claim against this Respondent be allowed in the amount of \$8,249.00 pursuant to Md. Code Ann., Bus. Occ. & Prof. §§ 17-401 through 17-412 (2004), COMAR 09.11.01.18; and

ORDER that the records and publications of the Real Estate Commission reflect the final decision.

November 14, 2008
Date Decision Mailed


Mary R. Craig
Administrative Law Judge

#100651
MRC/rs