

THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE  
COMMISSION

V.

MICHAEL TISDALE  
RESPONDENT

AND

CLAIM OF SUNITA PIERCE

AGAINST THE REAL ESTATE  
COMMISSION GUARANTY FUND

\* BEFORE SUSAN A. SINROD,  
\* ADMINISTRATIVE LAW JUDGE,  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH No: DLR-REC-24-10-08816  
\* REC CASE NO: 2009-RE-458  
\*

\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated October 28, 2010, having been received, read and considered, it is, by the Maryland Real Estate Commission, this 17<sup>th</sup> day of November, 2010,

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

11/17/2010  
Date

By:

[COMMISSIONER'S SIGNATURE  
APPEARS ON ORIGINAL ORDER]

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<b>MARYLAND REAL ESTATE</b>	<b>* BEFORE SUSAN A. SINROD,</b>
<b>COMMISSION</b>	<b>* AN ADMINISTRATIVE LAW JUDGE</b>
<b>v.</b>	<b>* OF THE MARYLAND OFFICE</b>
<b>MICHAEL TISDALE</b>	<b>* OF ADMINISTRATIVE HEARINGS</b>
<b>RESPONDENT</b>	<b>* OAH Case No.: DLR-REC-24-10-08816</b>
<b>and</b>	<b>* MREC Case No.: 2009-RE-458</b>
<b>CLAIM OF SUNITA PIERCE,</b>	<b>*</b>
<b>CLAIMANT</b>	<b>*</b>
<b>AGAINST THE MARYLAND REAL</b>	<b>*</b>
<b>ESTATE COMMISSION GUARANTY</b>	<b>*</b>
<b>FUND</b>	<b>*</b>

\* \* \* \* \*

**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 20, 2009, Sunita Pierce (“Claimant”), filed a complaint with the Maryland Real Estate Commission (“REC”) and a claim against the REC Guaranty Fund (“Fund”) for losses allegedly suffered as a result of the actions of Michael T. Tisdale (“Respondent”), a licensed real estate broker. On March 8, 2010, the REC filed regulatory charges against the

Respondent for his dealings with the Claimant and authorized the Claimant to proceed with her claim against the Fund.

On August 13, 2010, I conducted a hearing at the Office of Administrative Hearings (“OAH”), 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. & Prof. § 17-408 (2010).<sup>1</sup> Peter Martin, Assistant Attorney General, represented the REC. Eric London, Assistant Attorney General, represented the Fund. The Claimant represented herself and the Respondent represented himself.

The Administrative Procedure Act, the REC’s Hearing Regulations and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov’t. §§ 10-201 through 10-226 (2009 & Supp. 2010); Code of Maryland Regulations (“COMAR”) 09.01.03 and 28.02.01.

### **ISSUES**

1. Did the Respondent violate section 17-322(b)(14) of the Business Occupations Article by failing to provide a copy of the lease agreement that he procured for the Claimant’s property to the Claimant?
2. Did the Respondent violate section 17-322(b)(22) of the Business Occupations Article by failing to remit the security deposit and rental payments that he collected to the Claimant?
3. Did the Respondent violate section 17-322(b)(25) of the Business Occupations Article by engaging in conduct that demonstrated bad faith, incompetency or untrustworthiness that constitutes dishonest, fraudulent or improper dealings?
4. Did the Respondent violate section 17-322(b)(33) of the Business Occupations Article by violating any regulation adopted under the Business Occupations Article or any provision of the code of ethics?
5. 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?
6. Did the Respondent violate COMAR 09.11.02.02A by failing to protect and promote the interests of the Claimant, and by failing to exhibit absolute fidelity to the Claimant’s interests?

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<sup>1</sup> Throughout this decision, Maryland Code Annotated, Business Occupations & Professions (2010) is referred to as “Business Occupations” and all references to this Article will be to the version published in the 2010 Replacement Volume.

7. Did the Claimant suffer an actual monetary loss as a result of the conduct of the Respondent and, if so, what is the amount of the loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

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

- REC Ex. #1- Notice of Hearing, dated May 25, 2010, with Statement of Charges dated March 8, 2010 attached
- REC Ex. #2- Letter from Peter Martin, Assistant Attorney General to the Respondent, dated July 27, 2010, with Amended Claim, dated September 23, 2010 attached
- REC Ex. #3- Certification of Katherine F. Connelly, Executive Director, REC, dated August 10, 2010, with Respondent's Licensing History attached
- REC Ex. #4- Invoice of LG General Contractors, dated February 23, 2005
- REC Ex. #5- Re/Max Greater Metro, listing of 2718 Norland Road, Baltimore, Maryland, printed August 8, 2008
- REC Ex. #6- Report of Investigation, dated December 9, 2009
- REC Ex. #7- Receipts, dated monthly from January 2009 through August 2009
- REC Ex. #8- Licensing History of Artee Williams, dated August 2, 2010
- REC Ex. #9- Letter from the Respondent to Peter Martin, Assistant Attorney General, dated August 3, 2010

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

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

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

#### Testimony

The REC presented the testimony of:

1. The Claimant

2. William Reynolds, Investigator

The Claimant testified on behalf of her claim against the Fund.

The Respondent testified on his own behalf.

The Fund did not present the testimony of any witnesses.

### **FINDINGS OF FACT**

After considering the evidence presented, I find the following facts by a preponderance of the evidence:

1. At all times relevant to this matter, the Respondent was a duly licensed real estate broker. The Respondent's most recent license was issued to him on May 7, 2010, and will expire on March 4, 2012.
2. At all times relevant to this matter, the Respondent was affiliated with Michael Tisdale Realty.
3. The Claimant and her godmother are the owners of a property, the address of which is 2718 Norland Avenue, Baltimore, Maryland ("Property"). The Claimant lives in Brooklyn, New York. The Respondent was the Claimant's agent when she purchased this and two other properties in Baltimore in 2005. The Claimant's godmother has had no involvement with the Property or the Respondent since they purchased the Property in 2005.
4. After purchasing the Property in 2005, the Claimant had extensive repairs and rehabilitation performed on the Property. A new stove and refrigerator were installed, along with numerous other repairs.
5. In the summer of 2008, the Claimant decided to sell the property. There were tenants living in the Property at the time. The Claimant terminated the lease with her tenants,

who moved out so that she could prepare the Property for sale. The Respondent listed the Property for the Claimant.

6. By December 2008, the property had not sold. Therefore, the Claimant decided to try to re-list the Property for rent or sale, since the real estate market was unfavorable.
7. At some point in late 2008, the Respondent informed the Claimant that a new hot water heater was needed on the Property. The Claimant did not authorize the replacement of the hot water heater.
8. The Claimant asked the Respondent to forward any potential lease agreement for her to sign in the event that he found a tenant.
9. In March 2009, the Claimant had not heard from the Respondent since the Property had been re-listed for rent or sale. She asked her sister, who lived in Baltimore, to check on the property. The Claimant believed that the Property was still vacant. When the Claimant's sister went to the Property and walked around the back, she discovered that someone was living there.
10. The Claimant subsequently discovered that on December 24, 2009, the Respondent leased the Property to Monica Holloway. The lease term was one year, for a monthly rental amount of \$900.00 per month. The Claimant's name did not appear anywhere on the lease. The Respondent signed his name as the "Owner/Authorized Representative."
11. Ms. Holloway paid \$900.00 to the Respondent for a security deposit on the lease. Additionally, from January 5, 2009 through August 9, 2009, Ms. Holloway paid rent in the amount of \$900.00 per month to the Respondent. The rent payments and security deposit that the Respondent collected totaled \$8,100.00.

12. After the Claimant had several heated discussions with the Respondent following her discovery that the Property had been rented, the Respondent eventually sent her the lease in March 2009.
13. Despite several demands by the Claimant, the Respondent never remitted the rental payments or the security deposit to the Claimant.
14. In September 2009, the Claimant went to Baltimore to meet Ms. Holloway. From that point forward, Ms. Holloway paid the rent to the Claimant.
15. When the Claimant inspected the Property in September 2009, a different, but not new, stove and refrigerator had been installed, replacing the ones that had been installed in 2005. Additionally, a new hot water heater had been installed as well. The replacement of the stove, refrigerator and hot water heater had been performed, on the Respondent's request, by Artee Williams, an unlicensed contractor.

### **DISCUSSION**

In its Statement of Charges, the REC determined that the hearing on the regulatory charges and the monetary claim that the Claimant filed against the Fund arose from the same facts and circumstances and should be consolidated.

#### **Regulatory charges**

The REC charged the Respondent with violating the following sections of the Maryland Real Estate Law:

#### **§ 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:

...

(14) for any transaction in which the licensee has served as or on behalf of a real estate broker, fails to furnish promptly to each party to the transaction a copy of:

(i) the listing contract to sell or rent real property;

(ii) the contract of sale; or

(iii) the lease agreement;

...

(22) fails to account for or to remit promptly any money that comes into the possession of the licensee but belongs to another person;

...

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

...

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

Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(14), (22), (25) and (33).

The applicable sections of the code of ethics that the REC charged the Respondent of violating are:

01. Relations to the Public

C. The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State.

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.

COMAR 09.11.02.01C; COMAR 09.11.02.02A.

With regard to the regulatory charges brought by the REC, the burden of proof is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2004). It rests with the REC as the moving party. *Commissioner of Labor and Industry v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996).

The Claimant testified that she never gave the Respondent the authority to sign contracts on her behalf. Nor was he hired to manage the Property while it was being rented. She had asked him to forward any lease agreement that he procured, for her authorization and signature. She never received any notification that he had rented the Property. On March 9, 2009 when the Claimant's sister discovered that someone was living in the Property, the Claimant called the Respondent and he became irate. He did finally fax a copy of the lease. According to the Claimant, she sent him two letters requesting that he forward the rent payments and security deposit that he collected, but he never responded.

William Reynolds investigated this matter on behalf of the REC. At the hearing, he testified that he spoke to the Claimant, Ms. Holloway, the Claimant's godmother and Artee Williams, the contractor who completed repairs on the property at the Respondent's request. Mr. Reynolds attempted to contact the Respondent at his office telephone number, only to discover that it had been disconnected. He left a message on the Respondent's cell phone voicemail, but never received a response. He even went to the Respondent's real estate office, which was empty and had mail and newspapers overflowing outside of the front door. Mr. Reynolds never heard from the Respondent. However, the Respondent filed a response to the Claimant's complaint with the REC. REC Ex. #6, p. 26.

Mr. Reynolds spoke to the Claimant's godmother, who told him that she never had any dealings with the Respondent, other than at the time that the Property was purchased; she never authorized him to make repairs upon the Property, rent the Property, or collect rental payments.

The Respondent testified at the hearing that he had a long term real estate relationship with the Claimant. He insisted that she knew that the property needed rehabilitation. According to the Appellant, the Claimant told him in 2008 that she could not put any more money into the property, despite being told that a new water heater was needed, as well as other work. He insisted that he always told Ms. Holloway that the owner of the property was in New York. The Respondent said that he made attempts to fax the lease to the Claimant on several occasions, but her fax machine had not been turned on.

The Respondent maintained that he always signed documents on the Claimant's behalf in the past. He proceeded with the lease to Ms. Holloway on that premise, that it was just "business as usual." He agreed that he did not get the Claimant's approval to contract for repairs; he took it upon himself to do the work necessary to rehabilitate the property. The Respondent explained that the security deposit went toward the rehabilitation of the property. He also conceded that he never remitted any of the rent that he collected to the Claimant. However, he testified at the hearing and stated in a letter to the REC dated August 3, 2010, that he never received any rent from Ms. Holloway after March 2009. REC Ex. #9. That letter also stated that the Claimant's godmother authorized the Respondent to sign documents on her behalf and to have work done on the property.

I found the Respondent's testimony to be completely lacking in credibility. The credible evidence in the record directly contradicted the Respondent's testimony. To the contrary, the Claimant's testimony was credible, and I am convinced from that testimony that the Respondent

did not have any authority to sign contracts or collect funds on her behalf, or on her godmother's behalf. The Respondent conceded that he did not inform the Claimant about the lease with Ms. Holloway, and he never remitted rental payments or the security deposit to the Claimant. He testified that the security deposit went toward replacement of the hot water heater. The Respondent blatantly fabricated his story, both during his testimony and in the August 3, 2010 letter, that he only received rent from Ms. Holloway through March 2009. REC Ex. #9. The REC presented receipts for cash that the Respondent received from Ms. Holloway, signed by the Respondent for \$900.00 per month from January 2009 through August 2009. REC Ex. #7. Each receipt referenced "2718 Norland Ave," and the Respondent's signature on each appears to be identical. Further, in the Respondent's August 3, 2010 letter to the REC, he stated that it was the Claimant's godmother that he represented, and he did have authorization to sign contracts, collect and reimburse funds on her behalf. REC Ex. #9. Nevertheless, the Respondent did not make that argument at the hearing, and it was very clear from both Mr. Reynolds' conversation with the Claimant's godmother, and from the Claimant's credible testimony, that the Claimant's godmother had virtually no contact with the Respondent after they purchased the Property.

Interestingly, the REC presented an invoice from LG General Contractors, that established that the Claimant installed a new stove and refrigerator in 2005, after she purchased the property and prior to renting it. REC Ex. #4. However, the Respondent arranged for Artee Williams, and unlicensed contractor, to replace that stove and refrigerator without the Claimant's authorization at some point between late 2008 and 2009. REC Ex. #6, p. 28. It is difficult to believe that a stove and refrigerator that was only three or four years old required replacement so quickly. The evidence clearly established that the Claimant did not authorize that work.

The credible evidence in this case established that the Respondent violated section 17-322(b)(14)(iii) by failing to provide the lease to the Claimant. The Claimant had no knowledge of the lease until her sister drove to the Property at the Claimant's request and discovered there were occupants. After that discovery, the Claimant had several heated conversations with the Respondent before he finally sent the lease. Considering the Respondent's deceit and untruthfulness throughout his dealings with the Claimant, the investigation of this incident, and at the hearing, I do not believe that the Respondent tried several times to fax the lease to the Claimant. Had he truly been making an effort to do so, he could have mailed it to her, or called her to ask that the fax machine be turned on. The Respondent acknowledged that he had an ongoing business relationship with the Claimant; clearly he knew how to reach her.

The Respondent also blatantly violated section 17-322(b)(22), by his failure to account for and remit the rental payments and security deposit that he received from Ms. Holloway, which rightfully belonged to the Claimant. As analyzed above, on this point he was blatantly untruthful to the REC in his August 3, 2010 letter and in his testimony by insisting that he only collected rents until March 2009. The receipts that the REC presented established that he collected rents through August. REC Ex. #7. The Respondent's claim that the security deposit went toward the rehabilitation of the property lacks merit, since neither the Claimant nor her godmother ever authorized any such repairs or rehabilitation.

The Respondent's dishonest and fraudulent conduct demonstrated egregious bad faith and untrustworthiness in violation of section 17-322(b)(25). Further, the Respondent's conduct violated the code of ethics in violation of section 17-322(33). He failed to protect against fraud, misrepresentation and unethical practices, and he failed to protect and promote the interests of

the Claimant and maintain absolute fidelity to the Claimant's interest. COMAR 09.11.02.01 and 02.

As a result of his actions and omissions, the Respondent is subject to sanction under section 17-322(c) of the Business Occupations Article. Section 17-322(c) of the Business Occupations Article provides for the imposition of monetary penalties and states, in pertinent part, as follows:

(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.

Md. Code Ann., Bus. Occ. & Prof. § 17-322(c).

The REC recommended the imposition of a civil penalty of \$5,000.00 and a six month suspension of the Respondent's real estate license. Although I find this recommendation to be significantly less than that which should be imposed given the severity of the Respondent's misconduct, the REC is the agency that licenses and oversees the real estate industry and is in the best position to determine the appropriate sanction. As stated, the violations that the Respondent committed were of a most serious nature. He fraudulently executed a lease of the Claimant's property without her authorization, failed to inform her of the lease, and collected rental payments and a security deposit without ever remitting them to the Claimant. The Respondent

was untruthful to the REC in his letter of August 3, 2010. The Respondent converted the Claimant's money to his own, and fraudulently deceived her despite their business relationship. Additionally, his actions harmed her financially in the amount of \$8,100.00. Based on my analysis herein, the Respondent exhibited a complete lack of good faith in his transactions involving the Property. Finally, the REC presented evidence that the Respondent has four prior complaints against him. Therefore, I recommend that the REC impose a civil penalty of \$5,000.00, and suspend the Respondent's license to sell real estate for a period of six months.

Guaranty Fund Claim

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

**§ 17-404. Claims against the Guaranty Fund.**

- (a)(1) Subject to the provisions of this subtitle, a person may recover compensation from the Guaranty Fund for an actual loss.
- (2) A claim shall:
  - (i) be based on an act or omission that occurs in the provision of real estate brokerage services by:
    - 1. 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.

With respect to claims against the Fund, COMAR 09.11.03.04 further provides as follows:

**.04 Claims Against the Guaranty Fund.**

A. A guaranty fund claim shall be based on the alleged misconduct of a licensee.

B. For the purpose of a guaranty fund claim, misconduct:

(1) Is an action arising out of a real estate transaction involving real estate located in this State which causes actual loss by reason of theft or embezzlement of money or property, or money or property unlawfully obtained from a person by false pretense, artifice, trickery, or forgery, or by reason of fraud, misrepresentation, or deceit;

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

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

COMAR 09.11.01.18 provides further:

The amount of compensation recoverable by a claimant from the Real Estate Guaranty Fund, pursuant to Business Occupations and Professions Article, Title 17, Subtitle 4, Real Estate Guaranty Fund, Annotated Code of Maryland, 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. Actual monetary losses may not include commissions owed to a licensee of this Commission acting in his capacity as either a principal or agent in a real estate transaction, or any attorney's fees the claimant may incur in pursuing or perfecting the claim against the guaranty fund.

The Claimant bears the burden of proof in this proceeding against the Fund. Md. Code Ann., Bus. Occ. & Prof. § 17-407(e). In this case, the Claimant seeks \$8,100.00, which represents the amount of rental payments and the security deposited that the Respondent collected pursuant to Ms. Holloway's lease.

The Claimant established that she suffered an actual monetary loss of \$8,100.00 as a result of the acts of the Respondent. The only question remains whether the installation of a new hot water heater and a different stove and refrigerator should be factored into the calculation of the Claimant's award from the Fund. When she bought the Property in 2005, it needed over

\$12,000.00 worth of repairs. In February 2005, those repairs were completed. A new stove and refrigerator were installed as part of the repairs. However, the Claimant stated that when she inspected the property after discovering the lease to Ms. Holloway, a different stove and refrigerator were in the kitchen, and neither appeared to be new. Additionally, a new water heater had been installed. She conceded that the Respondent had told her in 2008 that a new water heater was needed, but she never gave him the authority to replace it. The Respondent hired Artee Williams to perform the repair work upon the property, which included the removal and installation of sheetrock, installation of a new hot water heater, purchase and installation of a refrigerator and stove, repair a banister railing, repair a front door lock, repair bathroom tile and caulking, preparation and painting the entire house and basement. REC Ex. #6, p. 28. The Claimant was credible, and the Respondent did not dispute that this work was unauthorized.

The Claimant testified that she was not informed that any of this work needed to be done, other than the replacement of the hot water heater. She conceded that a new hot water heater has been installed. Since the Claimant was aware that the hot water heater needed replacement, the Fund suggested that the hot water heater constituted a windfall to the Claimant, since she did not pay for and benefits her property. However, there is no evidence in the record that the Respondent actually paid Artee Williams for the hot water heater. Mr. Reynolds testified that when he spoke to Artee Williams as part of his investigation, Ms. Williams told him that she could not remember the date that the work was performed, nor did she have any receipts for the payment of the work. The invoice does not have a date. REC Ex. #6, p. 28. The Respondent did not provide evidence that he paid for Artee Williams' work. Therefore, I cannot conclude that the amount of the hot water heater should be credited against the amount that the Claimant recovers from the Fund, which is also the amount that the Respondent will be required to

reimburse the Fund with interest. COMAR 09.11.01.23A. Recovery from the Fund is for the purpose of compensating a claimant that incurs an actual loss resulting from the act of a licensed real estate agent. The Claimant truly incurred a loss of \$8,100.00 due to the acts of the Respondent, and absent any evidence that the Respondent actually paid for and provided the windfall of the new hot water heater out of his personal funds, I cannot conclude that the cost of the hot water heater should be deducted from the Claimant's recovery.

Additionally, there was an issue regarding the whereabouts of the stove and refrigerator that the Claimant purchased in 2005. The Claimant testified credibly that she had no knowledge that there was anything wrong with either. The Respondent barely addressed this issue at the hearing, other than to ask the Claimant questions regarding whether she remembered being told that the refrigerator had burned out, to which she replied she did not. The invoice from Artee Williams revealed that the Respondent was billed for \$1,250.00 for the installation of a stove and refrigerator. However, the evidence in the record is scant as to the reason for the purchase, since the stove and refrigerator that Ms. Williams replaced were only a few years old. Not having any knowledge about the quality, value or problems with the stove and refrigerator I cannot render a decision as whether either the Claimant or the Respondent benefitted or suffered a loss with regard to either. Therefore, I will not consider the stove or the refrigerator in my calculation of the Claimant's award from the Fund. I conclude, therefore, that the Claimant should recover her entire loss of \$8,100 from the Fund, which constitutes the rental payments and security deposit that the Respondent failed to remit to the Claimant.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Real Estate Commission demonstrated by a preponderance of the evidence that:

A. The Respondent failed to provide a copy of the lease of to the Claimant. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(14) (2010).

B. The Respondent failed to remit rental payments and a security deposit that he received but that belonged to the Claimant. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(22) (2010).

C. The Respondent engaged in conduct that demonstrates bad faith, incompetency, or untrustworthiness, or that constitutes dishonest, fraudulent, or improper dealings. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25) (2010).

C. The Respondent violated regulations adopted under the Business Occupations Article and a provision of the code of ethics. Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(33) (2010). COMAR 09.11.02.01C; COMAR 09.11.02.02A.

D. The Respondent is subject to sanctions for his conduct, and that a six month suspension and a \$5,000.00 civil penalty are appropriate sanctions. Md. Code Ann., Bus. Occ. & Prof. § 17-322(c) (2010).

E. The Claimant has established an “actual loss” recoverable from the Fund, in the amount of \$8,100.00. Md. Code Ann., Bus. Occ. & Prof. § 17-404 (2010).

### **RECOMMENDED ORDER**

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

**ORDER**, that the Respondent’s real estate license be suspended for six months; and further

**ORDER**, that the Respondent pay a civil penalty of \$5,000.00; and further

**ORDER** that the Claimant’s claim against the Guaranty Fund be allowed in the amount of \$8,100.00. and

**ORDER** that the records and publications of the Maryland Real Estate Commission reflect this decision.

ADMINISTRATIVE LAW JUDGE'S SIGNATURE  
APPEARS ON ORIGINAL ORDER

October 28, 2010  
Date Decision Mailed

  
Susan A. Sinrod  
Administrative Law Judge

SAS/rs  
Doc # 117442

<b>MARYLAND REAL ESTATE</b>	<b>* BEFORE SUSAN A. SINROD,</b>
<b>COMMISSION</b>	<b>* AN ADMINISTRATIVE LAW JUDGE</b>
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	<b>*</b>
<b>* * * * *</b>	<b>* * * * *</b>

**FILE EXHIBIT LIST**

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