

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,)	DOCKET NO.: ESS-13-002
)	
Complainant,)	
v.)	FINAL ORDER OF
)	DETERMINATION
JEFFREY RAY, an unlicensed person, d/b/a)	
NJ RENTALS, NORTH JERSEY RENTALS,)	
NJ EXECUTIVES RENTAL MANAGEMENT,)	
LLC, and NJRENTALS.biz, unlicensed entities)	
)	
Respondent.)	

This matter was heard at a plenary hearing by the New Jersey Real Estate Commission ("Commission") in the Department of Banking and Insurance, State of New Jersey at the Real Estate Commission Hearing Room, 20 West State Street, Trenton, New Jersey on May 7, 2013.

BEFORE: Commissioners Linda Stefanik, Robert Melillo, Eugenia K. Bonilla, Jeffrey A. Lattimer and Michael Timoni.

APPEARANCES: Marianne Gallina, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission ("REC"). Respondent Ray failed to file an answer or otherwise appear despite receiving proper notice, and the matter was heard ex parte.

STATEMENT OF THE CASE

The REC initiated this matter through service of an Order to Show Cause ("OTSC") dated January 24, 2013, pursuant to N.J.S.A. 45:15-17, N.J.S.A. 45:15-18 and N.J.A.C. 11:5-1.1 et seq. The OTSC alleged that Respondent Ray engaged in multiple

violations of the real estate statutes and regulations when he engaged in real estate activity through unlicensed entities, some of which specifically involved consumers Ms. Merant and Ms. Upshaw, and that this conduct demonstrated unworthiness, bad faith and dishonesty.

The REC served the OTSC upon Respondent Ray via letter dated January 24, 2013. At the February 26, 2013 hearing, pursuant to Respondent Ray's oral request to Regulatory Officer Gallina for an extension of time to file an Answer, the Commission deemed this matter contested and granted Respondent Ray two additional weeks to file an Answer. Via letter dated March 8, 2013 served upon Respondent Ray c/o North Jersey Rentals/NJ Rentals by certified and regular mail, the REC informed Respondent Ray that he must file an Answer no later than March 22, 2013, that the matter was a contested case and that a plenary hearing was scheduled for May 7, 2013. The regular mail was not returned. The green card came back to the REC with a signature. Respondent Ray did not file an Answer as directed nor did he appear at the plenary hearing scheduled for May 7, 2013. Therefore, at the hearing on May 7, 2013, the Commission deemed this matter uncontested and granted permission for the REC to proceed ex parte.

At the hearing, the following exhibits were moved into evidence:

- S-1 Internet advertisement for NJRentals.biz
- S-2 Internet advertisements for NJRentals.biz, Gardenstaterentals.net
- S-3 Receipt/Purchase Confirmation NJ Executives Rental Management, LLC
- S-4 North Jersey Rentals internet apartment search results

TESTIMONY OF THE WITNESS

Investigator William E. Mascuch

Investigator William E. Mascuch testified on behalf of the REC. He stated that he was assigned to the investigation of two complaints made against Respondent Jeffrey Ray by Sandra Merant and Latasha Upshaw.

On two occasions during the course of his investigation, Investigator Mascuch went to Respondent Ray's place of business in Montclair. During his first visit, Respondent Ray was not present as he was in Florida but the secretary in the office put Investigator Mascuch in contact with Respondent Ray through the telephone. During this telephone conversation, Respondent Ray told him that he did not need a license to engage in his business activities because he was only selling a database.

Investigator Mascuch testified that he went to Respondent Ray's place of business a second time and the secretary again put Investigator Mascuch in contact with Respondent Ray through the telephone. At that time, Investigator Mascuch informed Respondent Ray of the second complaint and Respondent Ray again asserted that he did not need a license to engage in the underlying activity because he was only selling a database. Respondent Ray told Investigator Mascuch that he was going to speak to an attorney.

Investigator Mascuch identified North Jersey Rental, NJ Rentals, NJ Executives Rental Management, LLC, Gardenstaterentals.net, and NJ Rentals.biz as the businesses that Respondent Ray operated.

Investigator Mascuch further testified that, during the course of his investigation, he obtained documents from the complainants and spoke to both of them. Investigator Mascuch stated that both complainants informed him that they had submitted applications and paid a \$150.00 fee in order gain access to rental property information. Both complainants explained that they contacted some of the landlords but none of the properties were available for several

months. Some had changed price, others did not exist and others had already been rented for several months.

Investigator Mascuch testified regarding the documents he obtained during the course of his investigation. Investigator Mascuch identified Exhibit S-1 as an internet advertisement for NJRentals.biz, one of Respondent Ray's companies. Investigator Mascuch testified that the Exhibit shows the services that are available through this company, such as tenant verification for private landlord. This advertisement also informed customers that once registered, customer service will contact the customer and get the exact criteria sought for a rental property including the number of bedrooms, the price, the location and any other relevant information. The advertisement explains that once this information is obtained, they would match-up potential renters with available properties. Investigator Mascuch testified that this advertisement also states that NJRentals.biz will set up appointments with potential landlords. The website further represents that potential listings expire in 21 days and notes if the landlord requires, they will provide credit checks and run a credit report and provide tenant with copy.

Investigator Mascuch further testified that both complainants said they had contacted customer service, but were not called back and never received a returned fee. Investigator Mascuch stated there was a registration fee of \$100 and a processing fee of \$50 and access to the database which was valid for 180 days.

Investigator Mascuch further identified Exhibit S-2 as a print-out of an internet advertisement for Gardenstaterentals.net/NJRentals.biz dated December 19, 2011. The owner of Central Jersey Rentals is shown as Cody Ray but Investigator Mascuch explained that this is Respondent Jeffrey Ray.

Investigator Mascuch also identified Exhibit S-3 as a receipt/purchase confirmation from NJ Executives Rental Management, LLC for \$150.00 dated October 24, 2011 provided by complainant, Latasha Upshaw.

Lastly, Investigator Mascuch identified Exhibit S-4 as a copy of a printout of a website of NJRentals.biz provided to him by Ms. Upshaw that contains a list of addresses of purported available rentals. Ms. Upshaw made notations about available properties on this exhibit. One such notation on the third page reflects that she contacted a landlord about renting an apartment and the apartment has been rented as of October 24, 2011. However, the listing on the website is dated November 25, 2011. Ms. Upshaw made a notation that no changes were made after she notified them.

Investigator Mascuch testified that the last time he was on the website some listings were still operating but he did not check them all.

FINDINGS OF FACT

Based upon the pleadings, the testimony of the witnesses, and the documentary evidence duly admitted into the record, the Commission makes the following findings of fact:

1. Respondent Jeffrey Ray is not licensed to conduct real estate activity in New Jersey. Respondent Ray operates under the names NJ Rentals, North Jersey Rentals, NJ Executives Rental Management, LLC and NJRentals.biz. None of those entities are licensed to conduct real estate activity in New Jersey. Said entities are located at 605 Bloomfield Avenue, Suite 3, Montclair, NJ 07042. Respondent Ray operates an internet website for rental referrals through the above-named entities. Upon information and belief, Respondent Ray is an owner of all four entities.

2. Prospective tenant Sandra Merant paid \$150.00 to NJ Rentals via its internet website NJRentals.biz. Ms. Merant entered specific information into an online application regarding her real estate needs, such as the municipality she was interested in and the price range she expected to pay for the rental. After paying the \$150.00 fee, Ms. Merant was given access to an online database of rental properties which supposedly met her criteria, with telephone numbers of individual landlords for the properties. When she attempted to contact the individual landlords, she found out that the information she obtained from the website was not current. In some cases, Ms. Merant found that the rentals were not available and had not been available for several months.
3. The services advertised by Respondent Ray through the unlicensed entities go far beyond the providing of a list of purportedly available rentals. The website for NJRentals.biz states the following:

“Our vast knowledge of the New Jersey rental market along with a great relationship with thousands of landlords is by far our strongest point...NJ Rentals specializes in tenant verification for private landlords. Our staff has a combined 40 years expertise in the New Jersey rental market.” (Exhibit S-1).

The website goes on to instruct users to

“Register/sign up. Then contact customer service with your exact criteria, your schedule and customer service will set up appointments to see rentals that are a match to your criteria, price range and according to your schedule.” (Exhibit S-1).

4. On or about October 24, 2011, Latasha Upshaw registered with NJ Executives Rental Management, LLC via their online registration procedure as set forth on the website NJRentals.biz. Ms. Upshaw was not offered any service wherein NJ Executives Rental Management, LLC would schedule an appointment with the landlord. Ms. Upshaw paid the \$150.00 fee to NJ Executives Rental Management, LLC in order to gain access to their website database of purportedly available rentals and landlord contact information. When Ms. Upshaw attempted to contact the individual landlords, she found that the information that she obtained from the website was not up to date. In some cases, Ms. Upshaw found that the rentals were not available and had not been available for several months. Ms. Upshaw was not able to locate a rental through Respondent's service.
5. In the course of REC investigation regarding the Merant and Upshaw complaints, Respondent Jeffrey Ray acknowledged to a Commission investigator that he was in fact the owner of the above named business entities and that he supplied access to a rental database in exchange for a fee. He further stated that it was his opinion that he did not need a real estate license to provide those services.

CONCLUSIONS OF LAW

In light of the above findings of fact, the Commission makes the following conclusions of law with regard to the charges contained in the OTSC and summarized above:

1. Respondent Ray violated N.J.S.A. 45:15-1 and 45:15-3 because he engaged in real estate activity through unlicensed entities.
2. Respondent Ray engaged in real estate activity with Ms. Merant and Ms. Upshaw through an unlicensed entity in violation of N.J.S.A. 45:15-1.2.

3. Respondent Ray violated N.J.S.A. 45:15-17 (e) in that his conduct as described above demonstrates unworthiness, bad faith and dishonesty.

DETERMINATION

In arriving at the determination in this matter, the Commission took into consideration the testimony and credibility of the witness and the undisputed evidence admitted during the course of the hearing. The Commission gave particular consideration to the danger to the public created when an inactive licensee engages in real estate activity that requires licensure or misrepresents the nature of their real estate license. The real estate licensing laws have been repeatedly recognized as necessary regulatory measures that represent the strong public policy of this State designed to protect the public from fraud, incompetence, misinterpretation, and sharp or unconscionable practices. Sammarone v. Bovino, 395 N.J. Super. 132 (App. Div. 2007); Boise Cascade Home & Land Corp. v. NJREC, 121 N.J. Super. 228 (Ch. Div. 1972).

Respondent Ray clearly engaged in unlicensed real estate activity for which he was compensated by operating the businesses known as NJ Rentals, North Jersey Rentals, NJ Executives Rental Management, LLC and NJRentals.biz, through which he assisted in offering or attempting to negotiate the rental of real estate property. N.J.S.A. 45:15-1 prohibits a person from engaging either directly or indirectly in the business of a real estate broker, broker-salesperson, salesperson or referral agent, temporarily or otherwise, or from advertising or representing himself as being authorized to act as a real estate broker, broker-salesperson, salesperson or referral agent “without being licensed to do so.” Additionally, N.J.S.A. 45:15-2 makes clear that a single act, transaction or sale shall violate this prohibition, and N.J.S.A. 45:15-3 defines a real estate salesperson as a “any natural person who, for compensation, valuable consideration or other thing of value, or by reason of a promise or reasonable expectation

thereof, is employed by and operates under the supervision of a licensed real estate broker to sell or offer to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate,...or to solicit for prospective purchasers or lessees of real estate...” Moreover, N.J.S.A. 45:15-3 defines a real estate broker as a “person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of real estate...”

The documentary evidence and the testimony offered by Investigator Mascuch demonstrate that Respondent Ray clearly engaged in unlicensed activity. Respondent Ray, through his several companies including NJ Rentals, North Jersey Rentals, NJ Executives Rental Management, LLC, and NJRentals.biz, operated an internet website for rental referrals and specifically solicited the business of Ms. Upshaw and Ms. Merant. Both of these individuals, after viewing an internet advertisement for one of the companies operated by Respondent Ray, registered and paid \$150 in fees as so instructed with the anticipation that they would be contacted by customer service who would ascertain their exact criteria for a rental property and would even schedule an appointment with potential landlords. The websites not only provided a listing of purportedly available rentals, they advertised themselves as having a vast knowledge of the New Jersey rental market, having a great relationship with thousands of landlords and having a staff with a combined 40 years of experience in the rental market. The website specifically advertised that after registration/sign up, the customer would contact customer service with their specific criteria and customer service will schedule appointments to meet this criteria and price range. One of the websites even stated that they would provide credit checks, credit reports and tenant verification for private landlords. These services are clearly that of a real estate

professional, and require licensure in this State. By engaging in this activity also violated N.J.S.A. 45:15-17(e), which prohibits “Any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty.”

Additionally, N.J.S.A. 45:15:1.2 require a person be licensed when accepting compensation for providing assistance in locating rental housing. In fact, pursuant to N.J.S.A. 45:15:1.2,

“Any person who, before a lease has been fully executed or, where no lease is drawn, before possession is taken by the tenant, charges or accepts any fee, commission or compensation in exchange for providing assistance in locating rental housing, including providing written lists or telephone information on purportedly available rental units, without being licensed pursuant to this act shall be a disorderly person and shall be subject to a fine of not less than \$200 or to imprisonment for not more than 30 days or both.”

Clearly, the businesses that Respondent Ray operated through the aforementioned entities that solicited business from Ms. Merant and Ms. Upshaw, violated the above provision and, therefore, should be referred to the local criminal authorities to address as they see fit. See also N.J.A.C. 11:5-6.5, which requires “Every person engaged in the business of referring, for a fee, prospective residential tenants to possible rental units shall be licensed in accordance with the New Jersey Real Estate License Act, N.J.S.A. 45:15-1 et seq.

The Real Estate Commission has imposed significant sanctions for similar violations. See, NJREC v. Stephanie Locicero Final Order of Determination, Docket No. UNI-09-034 (11/4/10) (eligibility for real estate licensure revoked for 12 years, fined \$6,000.00; conducted unlicensed activity by advertising and marketing out-of-state properties to NJ Consumers through her own website), NJREC v. Jeffrey Lucas and Lucas & Company, Final Order of Determination, Docket No. BUR-10-036 (10/3/11) (Salesperson’s license held on probation for 1 year, disqualification from obtaining broker or broker-salesperson’s license for

10 years, fined \$50,000.00, engaged in unlicensed brokerage activity, engaged in advertisement of real estate brokerage activities through their website and that their website did not comply with the Commission's advertising rules.)

In Kimmelman v. Henkels & McCoy, Inc. 108 N.J. 123 (1987), the Supreme Court established the following seven factors to evaluate the imposition of fines in administrative proceedings and these factors are applicable to this matter which seeks the imposition of penalties under the Real Estate License Act, N.J.S.A. 45:15-1, et seq.: (1) The good or bad faith of the respondent; (2) The respondent's ability to pay; (3) Amount of profits obtained from illegal activity; (4) Injury to the public; (5) Duration of the illegal activity or conspiracy; (6) Existence of criminal or treble actions; and (7) Past violations. Kimmelman, supra 108 N.J. at 137-139. Analysis of these factors in this matter requires imposition of substantial and significant fines.

First, Respondent Ray demonstrated bad faith by engaging in unlicensed activity. Respondent Ray advertised services and assistance to individuals looking to rent properties, which clearly required licensure and placed consumers at risk. Second, there is no evidence in the record regarding Respondent Ray's ability to pay. Third, Respondent Ray profited from his unlicensed real estate activity by collecting service and registration fees for services that required licensure in violation of the law of this State. The Commission is aware of two consumers who each paid \$150.00 for said services. Fourth, the public is significantly harmed when individuals and entities engage in unlicensed activity because the entities have not complied with the Commission's Regulatory requirements. Additionally, the public's confidence in the real estate profession is undermined. Fifth, Respondent Ray's activities took place from July 2011 through

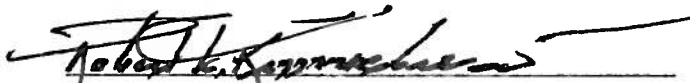
the completion of the investigation of this matter. To the Commission's knowledge, there are no criminal or treble actions. Finally, to the Commission's knowledge there are no past violations.

Accordingly and pursuant to N.J.S.A. 45:15-17, the Commission imposes the following sanctions:

- A. Respondent Ray shall pay fines of \$10,000.00
- B. Respondent Ray is ordered to pay restitution of \$150.00 to Sandra Merant and \$150.00 to Latasha Upshaw.
- C. Respondent Ray is ordered to cease and desist from engaging in all unlicensed real estate activities. This order extends to all business entities of which Respondent Ray is principal officer, and any similar activity.

SO ORDERED this 22nd day of August, 2014.

By: Linda Stefanik, President
Eugenia K. Bonilla, Commissioner
Robert Melillo, Commissioner
Jeffrey Lattimer, Commissioner
Michael Timoni, Commissioner


Robert L. Kinnebrew
Executive Director
New Jersey Real Estate Commission