

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE)	Docket No.: BUR-19-022
COMMISSION,)	REC Ref No.: 10009180
)	
Complainant,)	
)	
v.)	
)	
GEORGE DENNEY, licensed New Jersey)	FINAL ORDER OF
Real estate broker (9696534), broker of)	DETERMINATION
Record of Keller Williams Realty;)	
and TERRY GRAYSON, licensed New)	
Jersey real estate salesperson (1430524))	
)	
Respondent.)	

THIS MATTER was heard at a plenary hearing by the New Jersey Real Estate Commission (“Commission”) by video conference in accordance with P.L. 2020, c. 11 on March 23, 2021 and May 11, 2021. ¹

BEFORE: Commissioners Linda K. Stefanik, Eugenia K. Bonilla, Darlene Bandazian, Jacob Elkes, William Hanley, and Denise M. Illes.

APPEARANCES: Patricia Coppel, Regulatory Officer (“RO Coppel”), appeared on behalf of the New Jersey Real Estate Commission staff (“REC”). Respondents George Denney (“Denney”) and Terry Grayson (“Grayson”) (collectively “Respondents”) appeared without counsel. The Respondents acknowledged their rights to counsel and voluntarily waived those rights.

¹ This matter was heard on March 23, 2021 and then carried to May 11, 2021 for further deliberation by the Commission.

STATEMENT OF THE CASE

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated November 13, 2019, 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.

The OTSC alleges that Grayson failed to promptly (within 5 business days) place the deposit money of Roxanne Richetti (“Buyer”) into the trust account of RM Realty Associates of DE LLC, d/b/a Keller Williams Realty (“Keller Williams”), in violation of N.J.A.C. 11:5-5.1(e), which requires that money belonging to another must be segregated.

The OTSC further alleges that Grayson’s failure to ensure that the deposit money of the Buyer was properly deposited pursuant to N.J.A.C. 11:5-5.1(e) also constitutes a violation of N.J.A.C. 11:5-4.2(a)(1)² by Denney as the broker of record of Keller Williams. N.J.A.C. 11:5-4.2(a)(1) provides that individual brokers are responsible for the actions of persons licensed through their real estate business taken in pursuit of real estate brokerage business that are in violation of the provisions of the Real Estate License Law, N.J.S.A. 45:15-1 to -42 (“Act”) or the regulations promulgated thereunder.

The Respondents each filed a separate Answer to the OTSC, wherein they both admitted to the factual allegations set forth in the OTSC. Accordingly, on February 11, 2020, the Commission reviewed the pleadings, and directed that a hearing be scheduled. A hearing before the Commission was conducted on March 23, 2021 and continued May 11, 2021.

² The OTSC also alleges a violation of N.J.A.C. 11:5-4.22(a)(1). However, this appears to be a typographical error as no such provision exists and N.J.A.C. 11:5-4.2(a)(1) governs the responsibility of brokers.

At the hearing, the following documents were submitted and entered into evidence as Joint Exhibits, without objection:

- S - 1 Order to Show Cause in New Jersey Real Estate Commission v. George Denney and Terry Grayson, Docket No. BUR-19-022, dated November 13, 2019;
- S - 2 Answer of Terry Grayson;
- S - 3 Answer of George Denney;
- S - 4 REC License Panel of Terry Grayson- Ref #1430524;
- S - 5 REC License Panel of George Denney- Ref #9696534;
- S - 6 Original Deposit check from Richetti;
- S - 7 Second Replacement Deposit check from Richetti;
- S - 8 Keller Williams Deposit Ledger and Escrow Deposit form; and
- S - 9 Amanda Marquez email statement.

TESTIMONY OF THE WITNESSES

Terry Grayson

Grayson testified that he was the listing agent for the property located at 100 Ryan Run, Sicklerville, New Jersey (“Property”) and represented the sellers. He testified that the original deposit provided by the Buyer was in the form of a personal check, which was not accepted because Keller Williams did not accept personal checks for deposit into its trust account. Grayson testified that his assistant was working with the Buyer’s agent and his assistant to get the certified check required for the deposit. He stated that the certified check was eventually received, but not before the Buyer elected to void the contract. Grayson testified that at that time, he was not looking for the certified check because the deal was dead. Grayson further admitted that it was not until the legal dispute arose between the parties to the Contract of Sale and the Buyer that he realized the TD Bank certified check tendered for the deposit had not been properly placed into the Keller

Williams trust account. Grayson testified that he learned a valuable lesson and will never let something like this happen again. Grayson also testified that the factual allegations set forth in the OTSC were accurate.

Amanda Marquez

Amanda Marquez (“Marquez”) testified that she worked with the Buyer’s agent and his assistant to get the certified check required for the deposit after seeing that the Buyer had submitted a personal check. She testified that she and other members of the team each had a mail box in the office. Marquez testified that she had recently gotten married, which led to her getting a new mail box in the office. She testified that the confusion with the handling of the certified check arose because she now had two mail boxes in the office --one with her maiden name and one with her new married name. Marquez further testified that staff does not go into the office all the time, but instead does some of their work remotely. She stated that usually front desk workers let staff know about checks that have come into the office for processing. Marquez testified that she went into the office to look through all the mail boxes when it was discovered that the certified check had not been deposited. She testified that the check was found sitting in one of her two mail boxes.

George Denney

Denney testified that there is a process in the office for dealing with checks received. He testified that the checks received are entered into the computer system and sent to processing. Denney testified that this Buyer’s certified check, however, was not entered into the computer system or sent to processing, but instead put into Marquez’s mail box because the deal was already dead before it was received. He further testified that he has taken actions to change the process for receiving checks in the office as a result of this situation. Denney testified that the new process requires that all checks that are delivered to the office must get processed. He testified that now if

a check is to be returned, it must be picked up in twenty-four hours or it will be deposited into the trust account. Denney also admitted that the factual allegations set forth in the OTSC were accurate.

FINDINGS OF FACT

Based on 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. On or about November 28, 2000, Denney first obtained his New Jersey broker-salesperson license. (Exh. S-5).
2. On or about April 22, 2006, Denney was licensed as broker of record for Keller Williams with offices located at 409 Marlton Pike East, Cherry Hill, New Jersey. (Exh. S-5).
3. On or about October 9, 2014, Grayson was first licensed as a real estate salesperson in the State of New Jersey and was employed as a salesperson with Keller Williams. (Exh. S-4).
4. On or about March 24, 2019, the Buyer entered into a contract of sale to purchase property located at 100 Ryan Run, Sicklerville, New Jersey. (Exh. S-2).
5. The Buyer was represented in this transaction by real estate salesperson Thomas Englett of Berkshire Hathaway and Grayson was the listing agent for this property and represented the sellers. (Exh. S-2).
6. On or about March 26, 2019, the Buyer tendered a TD Bank certified check to Grayson in the amount of \$3,000 made payable to Keller Williams, as the initial deposit required under the Contract of Sale. The first deposit remitted by the Buyer was in the form of a personal check which was not acceptable to Keller Williams because it did not accept personal checks for deposit into its company trust account. (Exh. S-6).

7. On or about April 2, 2019, by letter of the same date, the Buyer elected to void the contract of sale because of home inspection issues. The Buyer was not represented by an attorney. (Exh. S-2).
8. A legal dispute arose between the parties to the Contract of Sale when the Buyer demanded the return of her deposit money and the sellers would not agree to the release of the deposit money.
9. It was not until the dispute arose that Grayson realized the TD Bank certified check tendered for the deposit had not been properly placed into the Keller Williams trust account but had been placed into an internal mail box to be deposited.
10. When the certified check was discovered, on or about May 7, 2019, the check was placed into the Keller Williams trust account where the money remains until the legal dispute among the parties has been resolved. (Exh. S-8).

CONCLUSIONS OF LAW

Considering the above findings of fact, the Commission makes the following conclusions of law regarding the charges contained in the OTSC and summarized above:

1. Grayson's conduct is in violation of N.J.A.C. 11:5-5.1(e) in that that he failed to promptly (within 5 business days) place the deposit money of a buyer into the trust account of Keller Williams, which requires that money belonging to another must be segregated.
2. Denney's conduct is in violation of N.J.A.C. 11:5-4.2(a)(1) in that as the broker of record of Keller Williams, Denney is responsible for the actions of persons licensed through his real estate business.

DETERMINATION

After the hearing and executive session in this matter, the Commission voted in favor of imposing the sanctions set forth in this Final Order of Determination. In arriving at the determination in this matter, the Commission took into consideration the testimony of the witnesses and the documentary evidence admitted during the hearing.

The REC bears the burden of proving the allegations in the OTSC by a preponderance of the competent, relevant, and credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); In re Polk, 90 N.J. 550, 560 (1982). The evidence must be such as would “lead a reasonably cautious mind to a given conclusion.” Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958). Preponderance may be described as “the greater weight of credible evidence in the case. It does not necessarily mean evidence of the greater number of witnesses but means that evidence which carries the greater convincing power.” State v. Lewis, 67 N.J. 47, 49 (1975).

Allegations Against the Respondents

The OTSC alleges that Grayson failed to promptly (within 5 business days) place the deposit money of a buyer into the trust account of Keller Williams in violation of N.J.A.C. 11:5-5.1(e), which requires that money belonging to another must be segregated. The OTSC further alleges that as broker of record, Denney is responsible for Grayson’s failure to ensure that the deposit money of the buyer was properly deposited; thus, Denney’s conduct constitutes a violation of N.J.A.C. 11:5-4.2(a)(1). Both Grayson and Denney filed Answers to the OTSC, wherein they admitted to the factual allegations set forth in the OTSC.

Penalty Against the Respondents

The Act charges the Commission with the “high responsibility of maintaining ethical standards among real estate brokers and sales[persons]” in order to protect New Jersey real estate

consumers. Goodley v. New Jersey Real Estate Commission, 29 N.J. Super. 178, 181-182 (App. Div. 1954). The Commission is empowered to suspend and revoke the licenses of, and impose fines against, brokers and salespersons that violate any of the offenses enumerated in N.J.S.A. 45:15-17 or the real estate regulations. Maple Hill Farms, Inc. v. New Jersey Real Estate Commission, 67 N.J. Super. 223, 232 (App. Div. 1961); Division of New Jersey Real Estate Commission v. Ponsi, 39 N.J. Super. 526, 527 (App. Div. 1956). Courts have long recognized that the real estate sales industry should exclude individuals who are incompetent, unworthy, and unscrupulous, in order to protect the public interest. See Div. of New Jersey Real Estate Commission v. Ponsi, 39 N.J. Super. at 532-533.

The facts in evidence do not support a finding that the Respondents acted in intentional disregard of the real estate regulations in this matter. Grayson testified that once the transaction had been terminated, he was no longer focused on the whereabouts of the certified check and, in fact, was unaware that the certified check had not been properly processed until legal issues arose between the buyers and sellers. He further testified that he understands the seriousness of his actions, and that he learned a valuable lesson from this situation. Denney testified that although his firm already had established procedures to process checks received in the office, he has already changed the process in the office so that when checks are not picked up within twenty-four hours, they will be deposited immediately into the company's trust account. However, the conduct of both Grayson and Denney nevertheless are violations of the real estate regulations and demonstrate a lack of good judgment, and therefore warrant sanctions. To correct this behavior and prevent further such misconduct going forward, the Commission directs that within six months of the issuance of this Final Order of Determination, Grayson and Denney each shall complete an

additional three hours of continuing education in the area of agency which shall not count towards the continuing education requirement for the next license renewal term.

Pursuant to N.J.S.A. 45:15-17, the Commission may also impose “a penalty of not more than \$5,000 for the first violation” of the Act, and a “penalty of not more than \$10,000 for any subsequent violation.” In Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), the Supreme Court established the following seven factors that must be considered in evaluating the imposition of fines in administrative proceedings and these factors are applicable to this matter which seeks the imposition of penalties under the Act: (1) the good or bad faith of the respondent; (2) the respondent’s ability to pay; (3) the amount of profits obtained from the illegal activity; (4) the injury to the public; (5) the duration of the illegal activity or conspiracy; (6) the existence of criminal or treble actions; and (7) any past violations. Id. at 137-139.

The first Kimmelman factor is whether the Respondent acted in good or bad faith. The facts presented in this matter are undisputed. Grayson testified that he failed to promptly deposit the money of a buyer into the Keller Williams trust account due to the confusion surrounding his assistant’s multiple internal mail boxes. The facts do not indicate that Grayson’s conduct was meant to be deliberately nefarious, but it is clear that he knew there was a deposit of certified funds forthcoming and failed to perform the follow up required to ensure that the check was properly handled by the office staff. And while the facts do not indicate that this situation arose out of any direct actions by Denney, his position as the broker of record makes him responsible for the actions and subsequent lapse in judgment of his salesperson-licensee. Therefore, these factors weigh in favor of a monetary penalty.

The second factor of the Kimmelman analysis is the respondents’ ability to pay the fines assessed. Here, no evidence was presented as to either Grayson’s or Denney’s ability to pay

possible fines assessed, and thus this factor is deemed neutral as it cannot be determined if this factor weighs in favor or against a monetary penalty.

The third factor of the Kimmelman analysis is the amount of profits obtained from the illegal activity. In this case, the Respondents did not receive any financial benefit related to this transaction given that it had been terminated, and thus this factor does not weigh in favor of a monetary penalty.

The fourth factor of the Kimmelman analysis is to determine whether the licensee's conduct caused injury to the public. The public is harmed whenever licensed professionals fail to maintain the level of honesty and trustworthiness demanded under the laws of this State. See Div. of New Jersey Real Estate Commission v. Ponsi, 39 N.J. Super. at 532-533. It is the responsibility of the Commission to ensure that individuals who hold licenses demonstrate behavior which instills the utmost public trust. *Ibid.* Real estate salespersons and brokers have access to clients' financial information and are involved in monetary transactions. Here, not only did the Respondents fail to deposit the Buyer's funds into the Keller Williams trust account in a timely fashion, but they were completely unaware of the location of the funds, which were later found in an office mail box. The Respondents' conduct in this transaction did not exhibit the competency required to act in a fiduciary capacity necessary to protect the public interest. This factor weighs in favor of a monetary penalty.

The fifth factor in a Kimmelman analysis is the duration of the illegal conspiracy or scheme. The evidence presented indicates that the Respondents' conduct was an isolated, one-time occurrence and not part of an ongoing scheme. This factor does not weigh in favor of a monetary penalty.

The existence of criminal punishment and whether a civil penalty may be unduly punitive if other sanctions have been imposed is the sixth factor under the Kimmelman analysis. The Supreme Court held in Kimmelman that a lack of criminal punishment weighs in favor of a more significant civil penalty because the defendant cannot argue that he or she has already paid a price for his or her unlawful conduct. Kimmelman, 108 N.J. at 139. Here, the Respondents have not faced any criminal punishment for their actions. As such, this factor does weigh in favor of a monetary penalty.

The seventh and final factor under Kimmelman takes into consideration the Respondents' past violations. No evidence of any past violations was presented at the hearing. This factor therefore does not weigh in favor of a monetary penalty.

In light of the above analysis of the Kimmelman factors, which in the aggregate weigh in favor of a monetary penalty being assessed, the Respondents shall pay fines in the amounts set forth below. The fines are fully warranted, not excessive or unduly punitive, and are necessary to demonstrate the appropriate level of opprobrium for the Respondents' conduct.

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

1. Respondent Grayson shall pay a fine of \$500.
2. Within six months of the date of this Order, Respondent Grayson shall complete three hours of continuing education in the area of agency which shall not count towards the continuing education requirement for any license renewal term. Respondent Grayson is required to provide proof of completion to the Commission.
3. Respondent Denney shall pay a fine of \$2,500.

4. Within six months of the date of this Order, Respondent Denney shall complete three hours of continuing education in the area of agency which shall not count towards the continuing education requirement for any license renewal term. Respondent Denney is required to provide proof of completion to the Commission.

SO ORDERED this 27th day of August, 2021.

By: Linda K. Stefanik, President
Eugenia K. Bonilla, Vice President
Darlene Bandazian, Commissioner
Jacob Elkes, Commissioner
William Hanley, Commissioner
Denise M. Illes, Commissioner



Linda K. Stefanik, President
New Jersey Real Estate Commission

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