

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE)	Docket No.: REC-20-003
COMMISSION,)	REC Ref No.: 10008467
)	
Complainant,)	
)	
v.)	
)	FINAL ORDER OF
RICARDO BELGRAVE, Licensed New)	DETERMINATION
Jersey Real Estate Salesperson (Ref. No.)	
1867203),)	
)	
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 April 13, 2021.

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

APPEARANCES: John Rossakis, Regulatory Officer (“RO Rossakis”), appeared on behalf of the New Jersey Real Estate Commission staff (“REC”). Respondent Ricardo Belgrave (“Respondent”) appeared on his own behalf. The Respondent acknowledged his right to counsel and voluntarily waived that right.

STATEMENT OF THE CASE

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated December 10, 2020, pursuant to N.J.S.A. 45:15-17, N.J.S.A. 45:15-17.1, N.J.S.A. 45:15-18, and N.J.A.C. 11:5-1.1 to -12.18.

The OTSC alleges that on or about March 25, 2019, the Respondent showed a home that was listed for sale with DJA Enterprises, LLC, d/b/a Weichert Realtors Coastal located at 800 Simsbury Court, Galloway, New Jersey (“the Property”) to his clients. The OTSC further alleges that during the showing, the Respondent left the premises and allowed his clients to view the Property unaccompanied by a licensee.

The OTSC alleged that the Respondent’s conduct demonstrated incompetency and unworthiness for licensure in violation of N.J.S.A. 45:15-17(c) when he allowed his clients to access and view the Property unaccompanied by a licensee and without permission.

The Respondent filed an Answer to the OTSC, wherein he admitted to the factual allegations set forth in the OTSC but disputed that the conduct constituted a violation of N.J.S.A. 45:15-17(e).

Accordingly, on February 23, 2021, the Commission reviewed the pleadings, and deemed this matter contested and directed that a hearing be scheduled. A hearing before the Commission was conducted on April 13, 2021.

At the hearing, the following documents were submitted jointly by Belgrave and the REC, and entered into evidence as Exhibits, without objection:

- S-1 Written complaint submitted to the New Jersey Real Estate Commission by Daniel Higman, dated March 25, 2019;
- S-2 Letter of in response to complaint, from Ricardo Belgrave, to New Jersey Real Estate Commission Investigator, Erica Berg, dated September 2, 2020; and
- R-1 Respondent Character Reference Letters.

TESTIMONY OF THE WITNESSES

Edward Augsberger

Edward Augsberger (“Augsberger”) testified on behalf of the REC. Augsberger testified that he has been licensed since 2003 as a real estate salesperson and was the individual who brought the Respondent’s behavior to the attention of the Commission. Augsberger testified that he is employed by Weichert Realtors Coastal and has been licensed since 2003, with the bulk of his business coming from the bank side of REO properties, or foreclosures. Augsberger testified that the banks take possession of the properties, cleaning and rehabilitating some properties, while selling others in as-in condition. He further testified that a large percentage, about 99%, of the properties he handles are vacant.

Augsberger testified that on March 25, 2019, he received a phone call from another agent in his office about people being at the Property. Augsberger testified that he went to check on the Property, and upon arriving, saw two males who were unaccompanied by a licensed real estate salesperson. Augsberger testified that he asked the two males to leave but also asked them the name of the real estate salesperson who let them into the Property. He testified that the Respondent’s name was given in response.

Augsberger testified that there are many vacant properties in Atlantic County and finding people unaccompanied at a vacant property is a common occurrence because there are so many investors trying to strong arm agents so they can see the properties. Augsberger testified that there had been other times that he had found people at a property unaccompanied by agents. He testified that if he was able to get an agent’s name, he would call the agent and their broker, but had never filed charges with the REC. Augsberger testified that in other situations he was not always able to find the responsible persons. Augsberger further testified that agents giving the lockbox codes

out to interested buyers was “becoming the norm”, and that was part of the reason he felt that it was necessary to report the Respondent’s conduct to the REC.

Augsberger testified that the Respondent was apologetic when he spoke to him about the incident and seemed like a good guy, but the situation did not seem reasonable. He testified that he felt like the Respondent was trying to appeal to his nature as a man when he told him he had to leave to get his wife flowers. Augsberger further testified that he did not take the incident personally or hold a grudge against the Respondent, but rather was just trying to protect the property he was responsible for.

Ricardo Belgrave

The Respondent testified that he has been a real estate agent for almost three years with Atlantic Shore Realty Group, LLC, d/b/a Keller Williams Realty Atlantic Shore (“Keller Williams”). The Respondent testified that he has had no prior complaints, no previous criminal charges, and no prior trouble with the REC. He testified that he made an appointment on March 25, 2019 to show the Property to his clients, a married couple, for the second time so they could have one of their fathers, who is a contractor, look at the Property. The Respondent testified that while at the showing, he received a phone call from his wife, who wasn’t feeling well. He testified that his wife was pregnant with their fourth child at the time. The Respondent testified that he put the key back in the lockbox, scrambled the numbers on it, locked the door, and advised his clients to close the door when they were finished. The Respondent further testified that he did not feel comfortable disclosing the medical situation to his clients, but that he took precautions to keep the property safe. The Respondent testified that he never gave out the key to the property or the code to the lockbox to the clients.

The Respondent testified that he spoke to Augsberger when Augsberger called about the situation. He further testified that he did not feel comfortable disclosing the medical situation to Augsberger because he did not know him, which is why he told him he was getting his wife flowers. The Respondent testified that his wife's birthday is March 22 and he did not actually leave the Property to buy her flowers.

The Respondent testified that he had been a teacher until he retired in 2018. He further testified he is a family man and has five children. The Respondent also testified that he loves selling real estate and is still working to get on his feet financially after starting this new career.

Daniel Rallo

Daniel Rallo ("Rallo") offered a statement on behalf of the Respondent and his character. Rallo is a team leader and one of the owners of Keller Williams and has been a broker-salesperson for seventeen years. He testified that he has worked with the Respondent since the Respondent started with Keller Williams. Rallo testified that the Respondent is very driven, has integrity, and is honest. He further testified that the Respondent works with underprivileged children and heads the diversity council at Keller Williams. Rallo testified that he is proud to work with the Respondent.

Ruben Stewart III

Ruben Stewart III ("Stewart") offered a statement on behalf of the Respondent and his character. He testified that he is a community activist and has been the Respondent's best friend for over twenty years. Stewart testified that he and the Respondent are the president and vice president on the board of a non-profit organization in Atlantic County. When asked if he had known the Respondent to exhibit "any conduct which demonstrates unworthiness, incompetency,

bad faith or dishonesty,” Stewart testified that he had not seen the Respondent exhibit such conduct.

Daniel Torres

Daniel Torres (“Torres”) offered a statement on behalf of the Respondent and his character. He testified that he is a team leader at Keller Williams and a former police officer. Torres testified that he has worked in real estate since 1994. Torres testified that he first met the Respondent through his wife and has known the Respondent to be a family man, a loving father, and a great husband. He testified that he has been impressed with the Respondent’s desire to mentor others and help the community. Torres testified that the Respondent is highly motivated to achieve his goals and strives to reach high level goals and be impactful. Torres testified that the Respondent is “one of the good guys” and that he hoped that justice would be done in this case, and that the punishment would fit the crime.

Raymond Brophy

Raymond Brophy (“Brophy”) offered a statement on behalf of the Respondent and his character. He testified that he is a friend and colleague and has worked with the Respondent since they both started at Keller Williams. Brophy testified that the Respondent has great moral fiber and provides advice and guidance to other agents. Brophy further testified that the Respondent’s thoughts and actions make the world a better place and reminds the people around him to be nice and help others.

Shawn O’Brien

Shawn O’Brien (“O’Brien”) offered a statement on behalf of the Respondent and his character. He testified that he has worked with the Respondent as his broker. O’Brien testified that the Respondent is an enthusiastic member of a voluntary subcommittee, a social equity task

force, which helps change the lives of community members by sponsoring them for real estate licensure. He testified that the Respondent was instrumental in organizing a screening process for the applicants, speaking to residents at city council meetings to raise awareness of the program, and advocating for allowing as many applicants as possible to be sponsored. O'Brien testified that the Respondent has never had a problem or complaint against him, and that he is a good associate who shows honesty, integrity, and commitment to God, family, and business.

Rosalie Hadulias

Rosalie Hadulias ("Hadulias") offered a statement on behalf of the Respondent and his character. She testified that she has been a salesperson for twenty-two years, a broker for nineteen years, and is the Respondent's broker of record. Hadulias testified that the Respondent has never exhibited any other questionable conduct or had any other complaints. She further testified that usually when an incident like this arises, it is worked out broker to broker, but the other broker never called her. Hadulias testified that the first time she heard about the incident was when she received the letter regarding the REC hearing.

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. The Respondent is a licensed New Jersey real estate salesperson and is currently licensed with Atlantic Shore Realty Group, LLC, d/b/a Keller Williams Realty Atlantic Shore located at 802 Tilton Road, Northfield, New Jersey.
2. The Respondent obtained his New Jersey real estate salesperson license on December 20, 2018.

3. The property, located at 800 Simsbury Court, Galloway, New Jersey, and was listed for sale with DJA Enterprises, LLC, d/b/a Weichert Realtors Coastal.
4. On or about March 25, 2019, the Respondent showed the Property to his clients, when he received a phone call from his wife, asking him to come home.
5. The Respondent then locked the door, and left his clients unaccompanied in the Property, asking them to shut the door behind them.

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 as summarized above:

1. The Respondent's conduct is in violation of N.J.S.A. 45:15-17(e) in that his conduct demonstrated incompetency because he purposefully left his clients unaccompanied by a licensee, allowing them unauthorized and unsupervised access to the Property.

DETERMINATION

At the conclusion of the hearing in this matter, the Commission voted in favor of finding the violation and imposing the sanctions described 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 nature of and circumstances surrounding the Respondent's conduct.

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. Metro 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 Respondent

The OTSC alleges that the Respondent violated N.J.S.A. 45:15-17(e) when he left his clients unaccompanied at the Property without proper authorization or supervision. In a letter dated January 8, 2021 addressed to the Commission, the Respondent admitted to the allegation made against him in the OTSC.

In this case, the Respondent disputes that his conduct is in violation of N.J.S.A. 45:15-17(e). However, he admitted, both in his letter and his testimony given at the hearing, that he purposefully allowed his clients unsupervised access to the Property. In light of this admission, the Respondent has violated N.J.S.A. 45:15-17(e) and his license is subject to an appropriate penalty.

Penalty Against the Respondent

The Real Estate License Act, N.J.S.A. 45:15-1 to -42 (“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, *supra* at 532-533.

Thus, the Commission has the power to suspend, revoke, or place on probation the license of any licensee for “any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty.” N.J.S.A. 45:15-17(e). Given the serious nature of the Respondent’s actions and the severe lack of judgment, the Commission determined that the suspension of the Respondent’s real estate salesperson license for thirty days and then a six-month probationary basis for any license thereafter issued is necessary and appropriate. Moreover, the suspension of the Respondent’s license and then probationary period is consistent with the Commission’s decisions in similar matters. See NJREC v. Piacentine, Final Order of Determination, Dkt. No. CAP-16-028 (02/28/17) (for violations of N.J.S.A. 45:15-17(e) and N.J.A.C. 11:5-6.4(a), the Commission suspended the licensee’s real estate salesperson license for forty-five days, imposed a \$2,500 fine, and required six additional hours of continuing education courses after the Respondent had provided the electronic lockbox code to potential buyers thereby allowing the potential buyers to enter a home unattended by a real estate licensee or other authorized person); NJREC v. Santiago, Final Order of Determination, Dkt. No. CAM-19-008 (07/23/20) (for violations of N.J.S.A. 45:15-17(e) and N.J.A.C. 11:5-6.4(a), the Commission suspended the licensee’s real estate salesperson license for thirty days, imposed a \$1,500 fine, and required six additional hours of continuing education courses after the Respondent allowed his clients to enter the property of another unaccompanied and without a real estate licensee or other authorized person and caused the property to no longer be available to the buyers).

Pursuant to N.J.S.A. 45:15-17, the Commission may 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. The Respondent admitted that he allowed his clients to remain in the Property without proper authorization or supervision, although he testified that he never gave out the keys or the lockbox code to his clients. The facts do not indicate that the Respondent’s conduct was meant to be deliberately nefarious, but he knew he was providing his clients access to the Property without supervision or permission. This factor weighs in favor of a monetary penalty.

The second factor of the Kimmelman analysis is the Respondent’s ability to pay the fines assessed. Here, although the Respondent testified that he was working to get on his feet after changing occupations, no evidence was presented as to the Respondent’s ability to pay fines assessed, and thus 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 Respondent received the benefit of providing clients access to a home without his presence or other authorized supervision, which could have led to a contract of sale. This factor weighs 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 when licensed professionals fail to maintain the level of trustworthiness demanded under the laws of this State. It is the responsibility of the Commission to ensure that individuals who hold licenses demonstrate behavior which instills the utmost public trust. Licensees are responsible for the homes of the seller, which includes supervising the conduct of potential buyers who enter the premises and survey their property. In this matter, for prospective buyers to have access to the Property without the supervision of a licensed agent erodes the trust sellers have in real estate professionals to protect their investment. 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 Respondent's conduct was an isolated, one-time occurrence and not part of an ongoing scheme. This factor does not weigh in favor of a significant monetary penalty.

The existence of criminal actions and whether a civil penalty may be unduly punitive if other sanctions have been imposed is the sixth factor. 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, supra, 108 N.J. at 139. Here, the Respondent has not faced any criminal punishment for his actions. As such, this factor does weigh in favor of a monetary penalty.

The seventh and final factor takes into consideration the Respondent's past violations, of which there are none. No evidence of past violations was presented at the hearing. This factor does not weigh in favor of a significant monetary penalty.

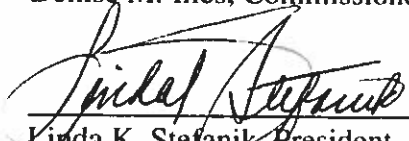
In light of these factors, the Respondent shall pay a fine in the total amount of \$2,000. The fine is fully warranted, not excessive or unduly punitive, and is necessary to demonstrate the appropriate level of opprobrium for the Respondent's conduct.

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

1. Respondent Belgrave's real estate salesperson license is hereby suspended for a period of thirty days from the issuance of this Order.
2. Respondent Belgrave shall pay a fine of \$2,000.
3. After the term of suspension is complete, any real estate license thereafter issued to Respondent Belgrave shall be held on probation for a period of six months. During the period of probation, the following conditions shall apply: 1) the Respondent shall inform his employing broker that his license is currently on probation; 2) the Respondent's broker shall notify the Commission within 72 hours if he or she receives any information indicating that the Respondent may have violated the Act or corresponding regulations; and 3) the Respondent must notify the Commission within 72 hours if he is charged with or convicted of any criminal or disorderly persons offense.

SO ORDERED this 17th day of June, 2021.

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



Linda K. Stefanik, President
New Jersey Real Estate Commission