

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,) DOCKET NO.: HUD-10-032
)
Complainant,)
v.) **FINAL ORDER OF**
) **DETERMINATION**
PAUL W. HAGDORN, licensed New Jersey real)
estate broker-salesperson,)
)
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 March 6, 2012 and May 21, 2013.

BEFORE: Commissioners Linda Stefanik, Jacob S. Elkes, Esq., Robert Melillo, Benjamin Steltzer, and Michael Timoni at the March 6, 2012 Hearing; and Commissioners Linda Stefanik, Jeffrey A. Lattimer, Eugenia K. Bonilla, Harold J. Poltrock, Benjamin Steltzer, and Jacob S. Elkes, Esq. at the May 21, 2013 Hearing.¹

APPEARANCES: Marianne Gallina, Regulatory Officer, appeared on behalf of the New Jersey Real Estate Commission ("REC"). Respondent Hagdorn appeared with counsel, Dominick Zero, Esq.

STATEMENT OF THE CASE

The REC initiated this matter through service of an Order to Show Cause ("OTSC") dated August 9, 2010, pursuant to N.J.S.A. 45:15-17, N.J.S.A. 45:15-18 and N.J.A.C.

¹ Although the composition of the Commission differed at the two hearings, a copy of the transcript for the March 6, 2012 was provided to all Commissioners prior to the hearing held on May 21, 2013.

11:5-1.1 et seq. The OTSC alleged that Respondent Hagdorn improperly withdrew monies from the escrow and commission accounts of the Hagdorn Holding Company even though he no longer held any ownership interest in this company and utilized this money for his own personal use and benefit. The OTSC further alleged that Respondent Hagdorn engaged in multiple violations of the real estate statutes and regulations when he commingled the money of his principals with his own and failed to maintain in a special account, separate and apart from personal or other business accounts, all monies received by Respondent Hagdorn acting in the capacity of a real estate broker or as an escrow agent or the temporary custodian of the funds of others. The Order to Show Cause further alleged that Respondent Hagdorn's conduct demonstrated fraud and dishonest dealing and, by these actions, Respondent Hagdorn failed to protect and promote the interests of his principals.

Respondent Hagdorn responded to the charges of the OTSC with an Answer dated August 22, 2010. In this answer, he explained that he sold his former company, Exit Hagdorn Realty, on September 1, 2005, and that certain accounts were left open including a commission account, a trust account and an operating account "because of commissions that did not close and outstanding bills that were not paid. Annette [Rubin] was supposed to dissolve those accounts in a reasonable amount of time." He further asserted that the accounts were still open in December 2008 and he ultimately closed the accounts himself in early December. He further explained that, "I had a deal that ended in a lawsuit and the proceeds were forwarded from our attorney, Dominic Zero, to Annette Rubin. I believed that the money was put in the Exit Hagdorn Realty operating account. I believed that the \$5,500 was the money won in the lawsuit. Annette must have put that money into one of her accounts." He further asserted that he had no way of knowing that the \$5,500 was trust money because the accounts were not named. He ultimately

denied all legal violations, stating that he had no control over the accounts nor did he know that it was trust money or that it belonged to third parties. He thought that the money that he withdrew was a portion of the commission that he won in a lawsuit.²

This matter was deemed a contested case and scheduled for a full hearing on March 6, 2012 and May 21, 2013. Respondent Hadgorn appeared at the hearing with counsel as noted above. At the hearing, the following exhibits were admitted into evidence:

- S-1 Change of broker of record affidavit 9/26/05
- S-2 Application for corporate real estate broker license, Hagdorn Holding Company, 9/26/05
- S-3 Letter of temporary authorization, 10/6/05 from NJREC to Hagdorn Holding Company
- S-4 November 2008 Bank Statement at BCB Community Bank for Hagdorn Holding Company trust account
- S-5 December 2008 Bank Statement at BCB Community Bank for Hagdorn Holding Company trust account
- S-6 Check #2237 dated November 25, 2008 in the amount of \$5,537.45 payable to Paul Hagdorn drawn on the Hagdorn Holding Co's trust account with BCB Community Bank
- S-7 November 2008 Bank Statement at BCB Community Bank for Hagdorn Holding Company commission account
- S-8 December 2008 Bank Statement at BCB Community Bank for Hagdorn Holding Company commission account drawn on Hagdorn Holding Co's commission account with BCB Community Bank
- S-9 Check #2238 dated November 25, 2008 in the amount of \$243.20 payable to Paul Hagdorn
- S-10 NJREC computerized licensing print-out for account information of Hagdorn Holding Company dated 1/08/09

² Mr. Hagdorn did not specifically respond to the allegations that he violated N.J.A.C. 11:5-5.1(c) and N.J.S.A. 45:15-17e.

- S-11 Letters dated July 18, 2007 and September 17, 2007 from Dominick Zero, Esq. to Annette Rubin re: settlement of commission dispute, Exit Hagdorn Realty v. Elgendi with copies of checks and commission statements attached
- S-12 Fax cover sheet dated January 28, 2009 from Annette Rubin to Charlene Overcash with attached chart.

TESTIMONY OF THE WITNESSES

Annette T. Rubin³

Annette T. Rubin testified on behalf of the REC. Ms. Rubin stated that she filed a complaint with the REC regarding Respondent Paul Hagdorn. Ms. Rubin testified that she is broker/owner of Exit On the Hudson Realty in Bayonne, New Jersey. In the summer of 2005, she entered into a contract with Mr. and Mrs. Hagdorn to purchase their real estate brokerage, Exit Hagdorn Realty. The corporate entity name was Hagdorn Holdings.

Ms. Rubin further testified regarding the Change of Broker of Record Affidavit Form, Exhibit S-1. She identified this as one of the forms that she completed once she passed the exams for brokerage and that it was prepared and processed through the attorney that handled the sale of the business. She added that, attached to the form, was a letter she prepared for Respondent Hagdorn to sign which stated that he resigned as broker-of-record and no longer held any position or owned any interest in Hagdorn Holding Company. The minutes from the

³ Ms. Rubin was also originally named as a Respondent in this matter. However, prior to the full hearing, she entered into a Consent Order with the REC. In this Consent Order, dated June 19, 2012, Ms. Rubin admitted to the factual allegations set forth in Paragraphs 2 through 7, paragraphs 9 through 11, and paragraph 13 of the OTSC. Moreover, pursuant to this Consent Order, it was ordered and agreed that the conduct of Ms. Rubin as set forth in the OTSC constitute violations of a) N.J.A.C. 11:5-3.9(c) for failing to file an office closing affidavit for Hagdorn Holding Company when it ceased doing business in 2007; and (b) N.J.A.C. 45:15-17e for failing to reconcile the accounts of Hagdorn Holding Company prior to filing a Change of Broker of Record affidavit. Furthermore, Ms. Rubin was ordered to pay a \$1,000.00 fine, to complete the thirty (30) hour course on office management which is a part of the broker pre-licensure education course and provide proof of same to the Commission staff on or before December 31, 2012.

September 26, 2005 meeting were also attached to this exhibit, which confirmed that Ms. Rubin became broker of record of the company.

Ms. Rubin further identified Exhibit S-2 as the form she completed and submitted to the REC to change the corporate status. The form reflects the new bank accounts, both escrow and business, that were opened by Ms. Rubin and her business partner upon establishing the new business. These accounts were designated to replace the accounts previously held by Mr. Hagdorn and his wife in the name of Hagdorn Holding. Ms. Rubin testified that Exhibit S-3 is a form from the REC acknowledging the change of broker.

Ms. Rubin further testified that, at the time this was taking place, she was operating two companies simultaneously because there were still outstanding transactions that began with the first company prior to September 2005, and funds that needed to be disbursed for bills, taxes and a litigation concerning a sizeable commission payment that was being contested. This all related to the prior entity.

Ms. Rubin then identified Exhibit S-10 as a computerized print-out from the REC's licensing system which reflected the operating and escrow bank accounts that were still being maintained by Hagdorn Holding. With respect to these accounts, Ms. Rubin testified that she had possession of the checkbooks and had previously gone to the bank to have Mr. and Mrs. Hagdorn removed as signatories so that she would be the only signatory on those accounts. Ms. Rubin stated that this activity took place the end of September 2005.

Ms. Rubin further testified regarding the outstanding lawsuit over disputed commissions. Ms. Rubin testified that an agent, Emad Ghaly, was owed commission money related to a transaction that began under Respondent Hagdorn's tenure as broker of record. This

commission of approximately \$10,000.00 had to be split between the Hagdorn entity and another real estate brokerage. The matter was finally resolved after about two years.

Ms. Rubin further testified regarding Exhibit S-11. Ms. Rubin described Exhibit S-11, in part, as a letter that she received from Respondent Hagdorn's attorney, Dominick Zero. She explained that Mr. Zero had contacted her by phone to ask her about the disbursement of money from the lawsuit and he also informed her that Respondent Hagdorn requested that payment of the commission money be made directly to him. However, Ms. Rubin advised Mr. Zero that the money had to be payable to the real estate agency, at which point the funds could be properly disbursed between the agent and the office. Moreover, some of the funds would have to cover a number of related transaction fees. She testified that Mr. Zero then sent the cover letter which enclosed \$4,800.00⁴ which represented three quarters of "our half of the commission."

She further explained that, attached to this exhibit, are copies of the checks sent to disburse the commission monies to the appropriate parties and entities with documentation as to how the funds were distributed and why. Ms. Rubin then outlined the fees and went through a breakdown of which parties and entities were owed money and how much they were owed. She explained that, after making the appropriate distributions, about \$1900 remained in the Exit Hagdorn Holding operating account with Bayonne Community Bank. However, this was not the final disposition of all of the Hagdorn moneys because she was still waiting to get an accounting from either Mr. Zero or an accountant that was hired to ascertain whether all prior debts had been paid by Hagdorn.

⁴ Although Ms. Rubin testified that the letter indicated that \$4,800.00 was enclosed, the letter itself actually indicates that \$4,830.00 was enclosed. Exhibit S-11.

Ms. Rubin testified that she received correspondence from Mr. Turteltaub, the attorney who represented her and her partner in the sale of the business, who informed her that Mr. and Mrs. Hagdorn had gone to him and expressed that they thought it was taking too long to have all of the matters resolved. Mr. and Mrs. Hagdorn were seeking the money that was left over. She further clarified that she received two letters from Mr. Turteltaub and also spoke directly to him. She informed him that she was wanted to make sure that all debts had been paid and that it was necessary for her to proceed prudently. She added that, with the exception of one phone conversation that she had with Respondent Hagdorn, the negotiations regarding any disbursement of funds was handled through professionals.

Ms. Rubin further testified regarding the balance in the Hagdorn Holding trust account as reflected in the November 2008 bank statement, Exhibit S-4. She stated that, in November 2008, the escrow account had a balance of \$5,537.45. However, the next statement dated December 1, 2008, Exhibit S-5, reflecting activity for November 30 through December, shows a balance of zero. Ms. Rubin stated that, when she reviewed this statement, she contacted the bank for an explanation as to why the accounts were zeroed out. Representatives from the bank then informed her that a check was drawn to close the account on November 28, 2008. The bank then sent a copy of a countercheck dated November 25, 2008, Exhibit S-6. She explained that this countercheck, written in Respondent Hagdorn's writing, was made payable to Respondent Hagdorn for \$5,537.45. On this check, Respondent Hagdorn made a notation that it was for 'close out.' The check is also signed by Paul Hagdorn and endorsed on the back by Paul Hagdorn. The bank stamp indicates that it zeroed out the account. Ms. Rubin stated that the check number is 2237 and it is not from the checkbook that she has locked in her office.

Ms. Rubin further testified about the last page of the November 2008 bank statement, Exhibit S-7, explaining that this was reflective of the Hagdorn Holding commission account used for depositing gross commission funds from transactions and paying out commission owed to agents as well as for additional expenses. The statement indicated a balance of \$243.20, but shows that a debit for \$243.20 was made on November 28, 2008, which zeroed out the account. The December 1, 2008 statement for this same account, Exhibit S-8, shows a zero balance. Ms. Rubin testified that she found out from the bank that Respondent Hagdorn wrote a check payable to himself for \$243.20, endorsed the check and received the money from the teller.

Ms. Rubin further identified Exhibit S-12 as the fax she sent to Charlene Overcash at the REC when she realized that Respondent Hagdorn did not intend to return the money. Ms. Overcash told her to prepare an accounting. Exhibit S-12 is the chart she prepared from her ledger book in response to this request. This chart, prepared from her ledger book, gave an accounting of the names, the amounts and the dates of outstanding monies due. Ms. Rubin testified regarding her attempts to track down certain individuals who were owed money and the current status of those attempts.

Ms. Rubin further testified that, since she purchased Hagdorn Holdings, she has made some disbursements of the outstanding trust monies. She explained that, because the outstanding funds involve trust money, she did not feel entitled to spend money looking for these individuals so she instead tried to locate the individuals herself. Additionally, she hired a teenage intern to help her by searching the internet. She was successful in locating a number of individuals and was able to provide them with the money they were owed. However, she acknowledged that this money could have been sent to unclaimed funds for the State. She

further stated that the funds that were taken by Respondent Hagdorn have not been provided to her and explained that she reimbursed the individuals that she located from the small balance that remained in the Hagdorn Holding operating account.

Moreover, Ms. Rubin acknowledged that she was mistaken when she thought that her application to the REC established new bank accounts for her the new company because, in fact, the application references Hagdorn Holding. She acknowledged it was the application to place her as the broker of record on Hagdorn Holding Company which she had newly purchased and the accounts listed were not the new accounts that she had established for her new entity but the existing accounts already established for Hagdorn Holding. She had crossed off the account numbers for her new company.

Paul Hagdorn

Respondent Paul Hagdorn testified on his own behalf. Respondent Hagdorn testified that he has been a salesperson since 1999 and a broker since 2002, and he has owned three real estate businesses. He stated that he is currently a broker-salesperson and works under a licensed broker. Respondent Hagdorn testified that he has had no prior problems with the REC.

Respondent Hagdorn further testified regarding his understanding of accounts and stated that he had an operating and an escrow account. He stated that, when he operated a brokerage, he also maintained a separate account for commissions. He testified that he understood that commingling is a violation of the real estate laws and that there are potential penalties. Respondent Hagdorn stated that he considered commingling to be a death sentence and would never do it.

Respondent Hagdorn testified that he sold his business in 2005 to Ms. Rubin and understood that he would no longer be able to transact any business related to that entity.

Respondent Hagdorn further testified that he maintained a personal account at BCB Community Bank and frequented a local branch near to where he lived. He stated that he never touched the escrow accounts.

Respondent Hagdorn stated that, from 2005 to mid-2008, he received one check from Ms. Rubin regarding disbursements from the previous entity. He stated that he was supposed to get a percentage of a \$6,400 commission paid out as the result of a lawsuit but never received this money. Respondent Hagdorn further testified that he had an attorney assist him in obtaining his share of the outstanding commission money. Respondent Hagdorn further stated that he made a request to Ms. Rubin through Mr. Stanley Turtleaub, Esq., regarding the money that was owed to him and never received any response.

Respondent Hagdorn stated he went to BCB Community Bank in June 2008 to close his personal account and the teller asked him if he was going to close the other accounts. Respondent Hagdorn stated that he had not been aware of those accounts nor did he close those accounts in June of 2008. Respondent Hagdorn stated he made every attempt to get the money that was owed to him and never had any response from Ms. Rubin. He stated that Mr. Turtleaub sent a letter to Ms. Rubin inquiring as to the \$5,500 that he thought was in the operating account. Respondent Hagdorn testified that in November of 2008 he was upset and decided to close the accounts thinking the money that was in those accounts belonged to him. Respondent Hagdorn stated that had he known the money did not belong to him, he would have never taken the money.

Respondent Hagdorn testified that he was the broker of record for 3 years at Hagdorn Holding and he and his wife were in charge of day to day operations which included managing the escrow account. Respondent Hagdorn testified that he did not make a reconciliation of the money held in escrow when he sold the Hagdorn Holding business to Ms. Rubin because some deals were still pending.

Respondent Hagdorn further testified that the money he withdrew was owed to him. Moreover, he stated he did not receive commission for 13 transactions. Respondent Hagdorn stated that there was no way to figure out what was owed to him because there was no accounting. Respondent Hagdorn further testified that he did have direct discussions with Ms. Rubin over the years regarding what was owed.

Respondent Hagdorn stated when he learned that the money did not belong to him, he was unable to return it, because it was already gone.

FINDINGS OF FACT

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

1. Respondent Paul W. Hagdorn is a licensed New Jersey real estate broker. Respondent Hagdorn was the owner and was licensed as broker of record of Hagdorn Holding Company d/b/a Exit Hagdorn Realty from November 26, 2002 through September 26, 2005.
2. Annette Rubin is a licensed New Jersey real estate broker and is broker of record of Beanne Holding Limited, d/b/a Exit on the Hudson Realty, licensed New Jersey real estate broker, whose office is currently located at 808 Broadway, Bayonne, NJ 07002.

3. In August 2005, Ms. Rubin purchased Hagdorn Holding Company d/b/a/ Exit Hagdorn Realty from Respondent Hagdorn. On or about September 26, 2005, Ms. Rubin was substituted as broker of record of same.
4. On or about September 29, 2005, a second entity, Beanne Holding Limited d/b/a Exit on the Hudson Realty, was formed by Ms. Rubin and licensed as New Jersey real estate broker. That entity opened new escrow and operating accounts.
5. The Change of Broker of Record Affidavit Form, Exhibit S-1, as well as the attached letter signed by Respondent Hagdorn which stated that he resigned as broker-of-record and no longer held any position or owned any interest in Hagdorn Holding Company and the minutes from the September 26, 2005 meeting, reflect that Respondent Hagdorn had no ownership interest in Hagdorn Holding Company, d/b/a Exit Hagdorn Realty nor was he employed as a real estate broker-salesperson there as of September 26, 2005.
5. Hagdorn Holding Company continued in business as a licensed New Jersey real estate broker, with Ms. Rubin as its broker of record, until June 30, 2007 when the corporate real estate license expired and was not renewed. No office closing affidavit was filed with the New Jersey Real Estate Commission by anyone on behalf of Hagdorn Holding Company.
6. The bank accounts of Hagdorn Holding Company, d/b/a Exit Hagdorn Realty, were maintained at Bayonne Community Bank, including operating account (#xxxxxx5465), commission account (#xxxxxx5630) and escrow account (#xxxxxx5457).
7. The bank accounts were kept open in 2005 after the sale of Hagdorn Holding Company due to expenses to be paid, commissions still due and escrow funds on deposit. Respondent Hagdorn was not removed as a signatory on those accounts, despite Ms.

Rubin's attestations that she thought that she had removed him as signatory. These accounts were not closed when the corporate real estate broker license of Hagdorn Holding Company expired and was not renewed in 2007.

8. One of the outstanding commissions due was the subject of civil litigation that was pending at the time of the sale of Hagdorn Holding Company. That suit was subsequently settled and commissions were disbursed by Ms. Rubin in August and September of 2007 to the salesperson involved in the transaction, Emad Ghaly, and to the Hagdorn Holding Company operating account for the share of the commission due to the corporate broker.
9. On or about November 25, 2008, without the knowledge or authorization of Ms. Rubin, Respondent Hagdorn withdrew \$243.20 from the Exit Hagdorn Realty commission account to bring the balance to \$0 and close out the account.
10. On or about November 25, 2008, without the knowledge or authorization of Ms. Rubin, Respondent Hagdorn withdrew \$5,537.45 from the Exit Hagdorn Realty escrow account to bring the balance to \$0 and close out the account.
11. The escrow account contained deposit funds from 11 consumers who left deposits from January 15, 2003 through February 5, 2005. The funds represented deposits paid on transactions that did not proceed to closing and remained in the account due to the inability of the broker to locate the rightful owners of the funds.

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 Hagdorn violated N.J.S.A. 45:15-17(o) and N.J.A.C. 11:5-5.1(a) and (c) in that he commingled the money of his principals with his own, and failed to maintain in a special account, separate and apart from personal or other business accounts, all monies received by Respondent Hagdorn acting in the capacity of a real estate broker or as an escrow agent or the temporary custodian of the funds of others in a real estate transaction.
2. Respondent Hagdorn violated N.J.S.A. 45:15-17(d) in that he failed to account for or to pay over escrow deposit monies coming into his possession.
3. Respondent Hagdorn violated N.J.S.A. 45:15-17(e) in that the above stated events demonstrate unworthiness, bad faith and dishonesty.
4. Respondent Hagdorn violated N.J.S.A. 45:15-17(l) in that the above conduct demonstrates fraud and dishonest dealing.
5. Respondent Hagdorn violated N.J.A.C. 11:5-6.4(a) in that by his above described actions, he failed to protect and promote the interests of his principals.

DETERMINATION

In arriving at the determination in this matter, the Commission took into consideration the testimony of the witnesses and the documentary evidence admitted at the hearing. The Commission also considered the serious nature of and the circumstances surrounding Respondent Hagdorn's actions.

Respondent Hagdorn's actions here clearly constitute a failure to account for or to pay over monies belonging to others coming into his possession as a real estate licensee, and commingling the money of principals with his own, in violation of N.J.S.A. 45:15-17(d), 45:15-17(o) and N.J.A.C. 11:5-5.1(c). N.J.S.A. 45:15-17 provides that the Commission may revoke,

suspend and fine licensees for “failing to account for or pay over moneys belonging to others, coming into the possession of the licensee” and

[c]ommingling the money or other property of his principals with his own or failure to maintain and deposit in a special account, separate and apart from personal or other business accounts, all moneys received by a real estate broker, acting in said capacity, or as escrow agent, or the temporary custodian of the funds of others, in a real estate transaction.

[N.J.S.A. 45:15-17(d) and (o)].

N.J.A.C. 11:5-5.1(a) accordingly requires brokers to establish and maintain such a separate bank account for the holding of real estate funds. N.J.A.C. 11:5-5.1(c) specifically states that commingling is considered to be: (1) mingling of money of principals with his own; (2) failing to maintain and deposit promptly the real estate funds into the special bank account separate and apart from personal or other business accounts; or (3) failing to promptly segregate any moneys received. The undisputed facts in the record demonstrate that Respondent Hagdorn commingled the money of his principals when he withdrew all of the funds in both the operating and escrow accounts belonging to his former company, Hagdorn Holdings, closed the accounts out and used this money for his own purpose without Ms. Rubin’s permission or knowledge. Respondent Hagdorn’s assertions that he did not know that he was utilizing escrow monies and thought that this money was owed to him as a result of the resolution of a lawsuit are not believable. As a real estate licensee, Respondent Hagdorn was fully aware of the statutes and regulations governing escrow monies. Moreover, he knew that he had no ownership interest in Hagdorn Holdings and had no right to withdraw any money from said accounts. Any dispute as to commissions that he may have been owed was properly reserved for civil litigation. Ms. Rubin was maintaining those accounts so that the deposit monies could be returned to the individuals

represented by Respondent Hagdorn while he was still broker of record. By withdrawing these funds, Respondent Hagdorn placed at risk funds that did not rightfully belong to him. Moreover, he has made no effort whatsoever to return these funds to Ms. Rubin. This behavior is egregious and unacceptable and constitutes commingling and a failure to account for or pay over monies by taking the money in those accounts that belonged to individuals that his company had previously represented in transactions in violation of N.J.S.A. 45:15-17(d), 45:15-17(o) and N.J.A.C. 11:5-5.1(c). Moreover, Respondent Hagdorn, by not making any effort to return said funds to Ms. Rubin, has also failed to account for or to pay over escrow deposit monies coming into his possession in violation of N.J.S.A. 45:15-17(d).

Respondent Hagdorn's failure to safeguard these real estate monies further constitutes a failure to protect and promote the interests of his real estate client as well as fraud and dishonest dealing, in violation of N.J.A.C. 11:5-6.4 and N.J.S.A. 45:15-17(l) respectively. It also demonstrates unworthiness, bad faith and dishonesty in violation of N.J.S.A. 45:15-17(e).

N.J.A.C. 11:5-6.4(a) provides that licensees:

Shall strictly comply with the laws of the agency and the principles governing fiduciary relationships. In accepting employment as an agent, the licensee pledges himself to protect and promote, as he would his own, the interests of the client or principal he has undertaken to represent; this obligation of absolute fidelity to the client's or principals' interest is primary but does not relieve the licensee from the obligation of dealing fairly with all parties to the transaction.

[N.J.A.C. 11:5-6.4(a)].

Moreover, pursuant to N.J.S.A. 45:15-17(e), the Commission may place on probation, suspend or revoke the license of any licensee for, "Any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty." Additionally, the Commission is empowered to take enforcement action regarding "Any other conduct...which constitutes fraud or

dishonest dealing.” N.J.S.A. 45:15-17(l). The nature and duties of the real estate business are grounded in interpersonal, fiduciary and business relationships and demand the utmost honesty, trust and good conduct when dealing with the consuming public and with property of others. In many instances, significant sums of personal moneys are placed within the trust of the licensee. The public relies upon the honesty and good moral character of the licensee when it entrusts money to him or enters into a fiduciary relationship with him.

The Commission has consistently held that the responsibilities that a real estate licensee owes to parties where he is acting as an escrow agent or temporary custodian of funds due are among the most sensitive and significant obligations that a licensee can assume. The highest duty of loyalty and fidelity are owed by licensees to such parties. Consequently, violations by licensees of their fiduciary responsibilities are considered extremely serious by this Commission. Respondent Hagdorn’s withdrawal of escrow funds that did not belong to him, but rather to clients, represented by him in his former capacity as broker of record is clearly violative of N.J.S.A. 45:15-17l and e and N.J.A.C. 11:5-6.4.

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 require imposition of substantial and significant fines.

First, Respondent Hagdorn demonstrated bad faith when he withdrew money from and closed out bank accounts that contained deposit monies and that he no longer had a right to access as he sold Hagdorn Holdings in 2005. Second, there is no evidence in the record regarding Respondent Hagdorn's ability to pay. Third, Respondent Hagdorn profited by almost a total of \$5,780.65 by withdrawing this amount of money from the escrow and operations bank accounts. Fourth, the public is significantly harmed when real estate licensees in fiduciary positions violate their responsibilities and utilize protected real estate funds for their own purposes. Fifth, Respondent Hagdorn's actions took place during November 2008. Sixth, to the Commission's knowledge, there are no criminal or treble actions associated with the facts. Finally, there appears to be no past violations of the Commission's rules by Respondent Hagdorn.

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

- I. Respondent Hagdorn's broker license is revoked for five years.
- II. Respondent Hagdorn is ineligible for a salesperson license for two years.
- III. Respondent Hagdorn is ordered to pay restitution to Annette Rubin in the amount of \$5,537.45 which represents the sum misappropriated.
- IV. Respondent Hagdorn shall pay a fine in the amount of \$10,000.00.
- V. The total fine, which includes restitution, must be paid in full before Respondent Hagdorn is eligible for licensure as a salesperson.

SO ORDERED this 23rd day of July, 2014.

By: Linda Stefanik, President
Jacob S. Elkes, Esq., Commissioner
Robert Melillo, Commissioner
Harold J. Poltrock, Esq., Commissioner
Benjamin Steltzer, Commissioner
Michael Timoni, Commissioner
Eugenia K. Bonilla, Commissioner
Jeffrey A. Lattimer, Commissioner



Robert L. Kinnibrew
Executive Director
New Jersey Real Estate Commission