

**NEW JERSEY REAL ESTATE COMMISSION**

NEW JERSEY REAL ESTATE COMMISSION,	)	DOCKET NO.: BER-15-012
	)	
Complainant,	)	
v.	)	<b>FINAL ORDER OF</b>
	)	<b>DETERMINATION</b>
SHAYVIONNE HARRIS , New Jersey	)	
real estate salesperson, (Ref. No. 0683746)	)	
	)	
Respondent.	)	

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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 July 21, 2015.

**BEFORE:** Commissioners Linda Stefanik, Eugenia K. Bonilla, Denise Illes, Jeffrey A. Lattimer, and Michael Timoni.

**APPEARANCES:** Lauren Glantzberg, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission ("REC"). Respondent Shayvionne Harris ("Harris") appeared pro se.

**STATEMENT OF THE CASE**

The REC initiated this matter on its own motion through service of an Order to Show Cause ("OTSC") dated April 24, 2015, 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 on or about May 10, 2012 Respondent Harris was arrested in New York and charged with one count of grand larceny, in violation of New York Penal Law ("NYPL") § 155.35(1) and one count of offering a false instrument for

filing, in violation of NYPL § 175.35. Harris was actively licensed as a salesperson at this time and did not notify the Commission of the charges. On July 30, 2012, Harris pleaded guilty to grand larceny in the fourth degree in violation of NYPL § 155.30. On December 5, 2012, Harris was convicted and sentenced to five years of probation and ordered to pay restitution in the amount of \$28,200.00. Respondent Harris continued to be licensed and failed to notify the Commission of the criminal conviction. The OTSC alleged that Harris's failure to notify the Commission of both the criminal charges and the conviction within 30 days violated N.J.S.A. 45:15-17(s).

The OTSC further alleges that the conduct underlying Harris's criminal conviction demonstrates unworthiness, incompetency, bad faith or unworthiness in violation of N.J.S.A. 45:15-17(e). Further, it is alleged that Harris's failure to notify the Commission of being charged and convicted also demonstrates incompetency or unworthiness in violation of N.J.S.A. 45:15-17(e). Lastly, the OTSC alleges that the Commission is empowered to revoke Respondent Harris's salesperson license because of her conviction of a theft offense pursuant to in N.J.S.A. 45:15-19.1.

The allegations in the OTSC arise from a criminal complaint from the U.S. Department of Housing and Urban Development ("HUD"). Based on their investigation, HUD found that between July 1, 2004 and August 1, 2009, Harris participated in a Section 8 voucher program where her rent was subsidized dependent on the amount of income she reported. Payments from HUD were made directly to Harris's landlord. In addition to her reported income attributable to babysitting, Harris had a number of temporary jobs during this period. HUD found Harris failed to reported income in the amount of \$28,200.00 attributable to the temporary jobs between the years 2004 and 2009.

Harris responded to the REC's OTSC by letter dated May 12, 2015. In response, Harris admitted to the criminal conduct with explanation. She apologized for her poor judgment and accepted full responsibility for her actions. Harris claimed that she never had a Section 8 voucher, but that the Bronx, New York building she lived in, as a single mother with her three school age children, recorded and reported her income to HUD, and then her rent was adjusted accordingly. She claimed that in the beginning of her tenancy she constantly went to the landlord's office to report the income she was receiving from temporary employment. However, the building manager told her that it was too much paperwork, that she did not have to report the income so frequently, and that everything was fine. She further explained that when she became aware of the income discrepancies being reported to HUD by her landlord, she contacted HUD and attempted to resolve the situation, but her attempts were of no avail. Harris claims she then fully cooperated with the investigation and law enforcement before pleading guilty before the judge.

A hearing in mitigation was held on July 21, 2015 pursuant to N.J.A.C. 11:5-11.3(b). At the hearing, the following exhibits were admitted into evidence:

- S-1 REC Licensing history for Shayvionne Harris;
- S-2 State of New York, Bronx County criminal charges dated May 12, 2012, Waiver of Indictment and Information of charges dated July 30, 2012;
- S-3 State of New York Certificate of Disposition for plea of guilty to Grand Larceny in the 4<sup>th</sup> Degree dated April 7, 2015;
- S-4 Shayvionne Harris REC license application renewal questionnaire for the 2013-2015 license term dated July 31, 2013;
- S-5 Letter dated November 24, 2014 from Shayvionne Harris to REC Investigator Lynne Guenot with letter of explanation;
- R-1 Undated letter of explanation from Shayvionne Harris to REC with character reference letters;

R-2 Letter dated May 12, 2015 from Shayvionne Harris to REC in response to OTSC.

**TESTIMONY OF THE WITNESS**

Shayvionne Harris waived her right to counsel and testified on her own behalf. Respondent Harris testified that she did not know she had to disclose to the Commission that she was convicted of a crime. She explained that she made a mistake when she was younger and is trustworthy in dealing with her real estate clients. Respondent stated that she does not want to lose her real estate license.

Respondent Harris testified that she was living in Noonan Plaza, located in Bronx, New York, from May 2001 until the spring of 2009. Respondent Harris testified that the landlord had income guidelines; however she was not in Section 8 housing. She had a job at a dental office, but lost the job. The landlord told her she had to have an income to live there so she began babysitting and working temporary jobs. Respondent Harris testified that she would report her change of income to the manager at Noonan Plaza, her landlord, and was told that it was too much paperwork every time she received a new temporary work assignment. Thereafter, when she received a new assignment, she did not go back to the office to report her income because she was not sure how long the assignment would last. Respondent Harris stated that she was worried about losing her housing because she had no income and was worried about losing a long term work assignment, so she never disclosed all her jobs to management. Respondent Harris further stated that the manger she first dealt with at Noonan Plaza was fired because of the handling of her situation.

Respondent Harris further testified that after she moved out of Noonan Plaza, the manager contacted her and told her that HUD had taken her file and had noticed income

discrepancies. Respondent Harris stated that she was eventually arrested and charged with grand larceny for not disclosing her income while in living at Noonan Plaza. Respondent Harris testified that she is currently on probation and is paying restitution. She has a balance of \$12,000.00 on the \$28,200.00 she was ordered to pay. She pays \$569.42 per month towards the restitution.

On questioning by the Commissioners, Respondent Harris testified that she is involved in community activities by volunteering with an organization that works with women who are trying to go to college. The organization has an event every year to provide supplies for women who do not have what is needed to go away to college.

Respondent Harris further testified that she admits that she failed to notify the Commission of the criminal charges. She stated that her renewal was coming up and she did not know how to answer the application questions so she contacted the REC to make sure she answered correctly and did not want to give the appearance that she was hiding anything.

Respondent Harris further testified that the building where she lived evaluated her income and that she was told she was supposed to have a permanent job. She mistakenly thought she had to report her income every time it changed, however; she learned that she only had to report her income annually by giving her W-2 forms to the housing manager.

Respondent Harris identified the letters she provided in Exhibit R-1 as a letter of explanation and character reference letters. She stated that she had provided these same letters to the New York Real Estate Commission. Respondent Harris testified that she had a hearing in New York regarding her license and stated that she did not lose her license and did not have to pay any fee or fine.

## 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, Shayvionne Harris, is a licensed New Jersey real estate salesperson and is currently licensed with Elite Real Estate Group of NJ, LLC, whose office is located at 1203 River Road, Suite C, Edgewater, New Jersey. She was licensed as a salesperson with Jiton Greene d/b/a ReMax Prestigious Properties, whose main office is located at 80 North Washington Avenue, Bergenfield, New Jersey, from August 12, 2011 through November 5, 2014 (See Exhibit S-1); and
2. On or about May 10, 2012, Harris was arrested in New York and charged with one count of grand larceny, in violation of NYPL §155.35(I); and one count of offering a false instrument for filing, in violation of NYPL §175.35 (See Exhibit S-2); and
3. In May and June of 2012, Harris was actively licensed as a salesperson and did not notify the Commission of the criminal charges; and
4. On July 30, 2012, Harris pleaded guilty to grand larceny, a crime of the fourth degree, in violation of NYPL §155.30. On December 5, 2012, Harris was convicted of grand larceny in the fourth degree, and sentenced to probation for five years and ordered to pay restitution in the amount of \$28,200.00 with fees. (See Exhibit S-3); and
5. While Harris was actively licensed as a salesperson, she did not notify the Commission of her criminal conviction; and
6. Harris's conduct related to not reporting full income while receiving Section 8 housing benefits from the United States Department of Housing and Urban Development; and

7. On July 31, 2013, Harris renewed her license with ReMax Prestigious Properties. She answered in the affirmative to Question #1 on the 2013-2015 license renewal application which asked, "Since your last New Jersey real estate license was issued or renewed, have you been arrested (other than motor vehicle violations), indicted, charged with a violation of a crime, misdemeanor or disorderly persons offense in this state, any other state or by the federal government?".

### **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 Harris violated N.J.S.A. 45:15-17s (two counts) because she failed to notify the Commission within 30 days of being charged with and convicted of a crime.
2. Respondent Harris's conduct and failure to notify the Commission did not violate N.J.S.A. 45:15-17e.

### **DETERMINATION**

In arriving at the determination in this matter, the Commission took into consideration the pleadings, the testimony, admissions and credibility of the Respondent, and the undisputed documentary evidence admitted during the course of the hearing. The Commission also considered the nature of and the circumstances surrounding the Respondent's actions.

The undisputed facts in the record demonstrate that Respondent Harris was arrested in New York and charged with one count of grand larceny and one count of offering a false instrument for filing. On July 30, 2012, Respondent pleaded guilty to grand larceny in the fourth degree in violation of NYPL § 155.30, and was convicted on December 5, 2012 and sentenced to five years' probation and ordered to pay \$28,200.00 in restitution. Respondent

Harris never notified the REC of her arrest or her conviction. However, on or about July, 31, 2013, Harris contacted the REC for guidance on completing her real estate renewal license application questionnaire and disclosed the criminal action at that time.

Respondent Harris was found to be a credible witness who has shown remorse and taken responsibility for her actions. At the time of the criminal conduct, Harris was a single mother with three school age children. Although this does not excuse her actions, she was primarily concerned with providing housing for her family. (See Exhibit R-2). Furthermore, although it was Harris's responsibility to correctly report her income, she relied on what her landlord told her regarding what documentation to provide and when to provide it. Therefore, placing Harris's license on probation is the appropriate sanction in this matter.

The Real Estate Brokers and Salesperson 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 Comm'n. 29 N.J. Super. 178, 181-182 (App. Div. 1954). Thus, the Commission has the power to suspend or revoke the licenses of brokers and salesperson, and to impose fines, for any acts 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. Div. of New Jersey Real Estate Comm'n. 67 N.J. Super. 223, 232 (App. Div. 1961); Div. of New Jersey Real Estate Comm'n. v. Ponsi, 39 N.J. Super. 526, 527 (App. Div. 1956).

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 warrants the imposition of a fine.

First, the Respondent demonstrated bad faith by failing to notify the Commission of her criminal matter in 2012. However, this factor is mitigated because Respondent Harris truthfully answered the question regarding her criminal activity on her renewal application and informed the REC of both the charges and conviction on July 31, 2013. This was before the OTSC was issued. Second, with respect to ability to pay a fine, Respondent testified that she works at a doctor's office during the week and as a realtor on the weekends. She explained that she had one pending transaction in 2015, pays for her son's college tuition and rents her residence. This factor is mitigated because she was ordered and pays restitution to HUD, has paid more than half of the \$28,000.00 ordered, and continues to make payments.

Third, Respondent profited by paying less rent between 2004 and 2009 because of the unreported income; however, all rent monies were paid by HUD directly to Harris's landlord. Further, it does not appear that any profits were obtained in connection with the use of Respondent Harris's real estate license. Fourth, the public is harmed when licensed individuals are convicted of criminal actions because the public's confidence in that individual real estate agent and the real estate industry as a whole are eroded. Fifth, Respondent's failure to notify the REC of the charges against her occurred for approximately one year, and her failure to notify of the conviction occurred for approximately six months. Sixth, Respondent was convicted of grand larceny in the fourth degree. She was sentenced to probation and has a balance of \$12,000 on the

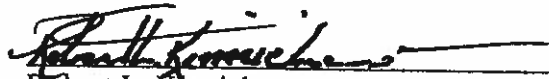
\$28,200.00 restitution she was ordered to reimburse. She pays \$569.42 per month. Finally, to the Commissions knowledge, there are no prior violations of the real estate rules by the Respondent.

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

- I. Respondent Harris' real estate salesperson license shall be placed on probation from the date of this Order. The license probation period shall run concurrently with her criminal probation until the probation period is completed or until the payment of restitution is made in full, whichever is later.
- II. Respondent Harris must notify any employing broker that her license is currently on probation. Any employing broker must notify the REC within 72 hours if he or she receives information indicating Harris may have violated any Commission statutes or regulations. Further, Respondent Harris must notify the REC within 72 hours if she is charged with or convicted of any criminal or disorderly person's offense or if there is an allegation that she has violated the terms of her criminal probation or if she fails to meet her restitution obligations.
- III. Respondent shall pay a fine in the amount of \$1,000.00 within 30 days from receipt of this Order. Specifically, the \$1,000.00 fine is comprised of \$500.00 for each violation of N.J.S.A. 45:15-17s. Respondent shall be permitted to enter into a payment arrangement with the Department of Banking and Insurance Collections Unit.

SO ORDERED this 8<sup>th</sup> day of February, 2017.

By: Linda Stefanik, President  
Eugenia K. Bonilla, Commissioner  
Jeffrey A. Lattimer, Commissioner  
Denise Illes, Commissioner  
Michael Timoni, Commissioner

  
Robert L. Kinnibrew  
Executive Director  
New Jersey Real Estate Commission