

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,) DOCKET NO.: BER-15-018
) REC REF. NO.: 10001196
 Complainant,)
)
 CHARLES CHICHIZOLA, a licensed New Jersey) FINAL DECISION AND ORDER
 real estate salesperson, License Ref. No. 8436974)
)
)
 Respondent.)

This matter was heard at a 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 February 23, 2016.

BEFORE: Commissioners Linda Stefanik, Eugenia Bonilla, Denise Illes, Michael Timoni, Harold Poltrock, and Cindy Marsh-Tichy.

APPEARANCES: Marianne Gallina, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission staff (“REC”). Jacqueline Ramirez, Esq. appeared on behalf of Respondent Charles Chichizola.

PROCEDURAL HISTORY

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated August 7, 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 Respondent Charles Chichizola (“Respondent” or “Chichizola”) demonstrated untrustworthiness, incompetency, bad faith, and dishonesty by

filing a false police report regarding a carjacking that never occurred, in violation of N.J.S.A. 45:15-17e, violated N.J.S.A. 45:15-17i¹ because the conduct underlying the Respondent's conviction for knowingly filing a fraudulent² police report demonstrated fraud, and violated N.J.S.A. 45:15-17s by failing to notify the Commission within 30 days of being charged with a crime.

Nancy Lucianna, Esq., filed an Answer to the OTSC on behalf of the Respondent dated August 28, 2015, wherein the Respondent admitted to and denied certain allegations set forth in the OTSC. Accordingly, the Commission deemed this matter a contested case and directed that a hearing be scheduled. A hearing was conducted on February 23, 2016, at which the following exhibits were admitted into evidence by the REC, without objection:

- S-1 One page from the Respondent's 2013-2015 New Jersey real estate salesperson's renewal application, dated June 26, 2013.
- S-2 State of New Jersey v. Charles Chichizola, Superior Court of New Jersey, Hudson County, Judgment of Conviction, dated October 23, 2013.
- S-3 Letter dated May 20, 2015, from the Superior Court of New Jersey, Passaic Vicinage, detailing the terms of the Respondent's probation, which was terminated on July 17, 2014.

The following exhibits were admitted into evidence by the Respondent, without objection:

¹ The OTSC states that the Respondent's underlying conviction demonstrates fraud, in violation of N.J.S.A. 45:17(i); however, this appears to be a typographical error as the correct statutory reference is N.J.S.A. 45:15-17i.

² While the OTSC alleges that the Respondent was charged and convicted of filing a "fraudulent police report," the Judgment of Conviction states that the Respondent was convicted of providing a "false report to incriminate another," in violation of N.J.S.A. 2C:28-4A.

- R-1 Consent Order No. 13-52840-03 dated October 30, 2014, entered into between the Respondent and the State of New Jersey, Department of Banking and Insurance, Bureau of Fraud Deterrence.
- R-2 Claims Withdrawal Form dated June 4, 2013, signed by the Respondent and Ric Bernabe of Plymouth Rock Management Company of New Jersey.

TESTIMONY OF THE WITNESS

The Respondent testified on his own behalf. He testified that due to trauma involving his daughter, he was, and is still, unable to recall exactly what happened regarding the incident of June 21, 2013³, which led to his conviction for filing a false police report. The Respondent testified that after the incident, he visited his psychiatrist who opined that a traumatic event can sometimes lead to a “block” in one’s memory. The Respondent further stated that his real estate license means everything to him, and that he “goes the extra mile” for his clients because he believes the real estate business is about caring for the people you serve.

Regarding the circumstances which led to the criminal conviction at issue, the Respondent stated that his vehicle was “basically stolen” in West New York. He had parked his car, walked around the corner to get dinner for his family, went back to his car, and had a cigarette. A man then asked the Respondent for a lighter and “the next thing I knew, the car was gone,” which prompted Respondent to call the police. Upon the police arriving, the Respondent stated that the police drove him around for approximately 20 minutes in an effort to gain

³ At numerous times throughout the hearing, the Respondent and Ms. Ramirez stated that the underlying conduct which led to the Respondent’s conviction for filing a false police report occurred on June 21, 2013. However, the Judgment of Conviction in that matter states that the “Date(s) of Offense” was May 18, 2013, and that the “Date of Arrest” was June 24, 2013. See Exhibit S-2.

information as to what happened. The Respondent testified that he was unable to remember anything and vomited in the police car due to the trauma of the incident. The Respondent stated that he was then taken to the police station in order to try and identify the suspect by means of mugshots, but the only identification he could provide was that the suspect was wearing a hood.

Chichizola stated that while at the police station, the police told him to call his insurance company, which he did. He ultimately filed a claim with the insurance company. The Respondent testified that approximately one week later his car was found “a couple towns over” with “everything inside ripped out.” His car had no license plates, no navigation system, and no radio.

Upon finding his car, the Respondent stated that he later reimbursed his insurance company for the money paid out to him for his claim. Respondent testified that approximately one month after the incident, he received a call from the police who told him that he was going to be criminally charged and that he should surrender at the local municipal court. He testified that he went to the municipal court with his attorney and paid the \$250 bail. The Respondent further stated that upon advice from his attorney, he entered a plea of guilty to filing a false police report, a 4th degree crime in violation of N.J.S.A. 2C:28-4A, and was sentenced to probation for one year and ordered to pay a fine. The Respondent stated that, upon recommendation from his probation officer, his probation was terminated after nine months.

The Respondent stated that he has never and does not currently have any substance abuse problems, but at the time of the incident, he was suffering from the aforementioned emotional trauma due to his daughter’s illness and because of that, his memory was, and still is, not clear. The Respondent testified that he has taken continuing education classes and has been

to several courses to see certain people speak in order to get a better understanding of the real estate industry and to become a better real estate salesperson.

Regarding his failure to disclose his criminal charges to the Commission, the Respondent stated that after he was charged, he discussed disclosing the charges to the Commission with his attorney who said she would research the issue and get back to him. The Respondent further stated that his attorney did call the Commission regarding disclosure of the criminal charges but was told to put the disclosure in writing⁴. The Respondent acknowledged that he was at fault “to a certain extent” by not knowing the timeframes within which he was required to notify the Commission of the criminal charges and by relying on his attorney’s assurance that she would take care of reporting the charges.

Regarding Respondent’s failure to disclose that he had been charged with a criminal violation on his license renewal application dated June 26, 2013 (see Exhibit S-1), the Respondent stated that he “cannot recall” why he did not disclose that information.

In conclusion, the Respondent testified that he knows what he did was wrong and understands that the REC is doing its job by having him appear and explain the underlying conduct relating to his criminal charges and conviction. The Respondent stated that he is open to having his license placed on probation, and that he just wants to continue practicing real estate because he wants to do what he loves.

FINDINGS OF FACT

⁴ In a letter dated August 19, 2013, Nancy Lucianna, Esq., notified the Commission of the Respondent’s criminal charges and his intent to plead guilty to the offense of filing a false police report. However, pursuant to N.J.S.A. 45:15-17s, the deadline for notifying the Commission of his criminal charges was on or about July 23, 2013, 30 days after being charged.

Based on 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. The Respondent is a licensed real estate salesperson, actively licensed as a salesperson with Remax. He was previously licensed with Jesgroup, LLC d/b/a Hometown Realty, whose office is located at 372 Franklin Avenue, Wyckoff, New Jersey. From January 24, 2012 through March 3, 2015, the Respondent was licensed with Welcome Realty, LLC d/b/a ERA Welcome Realty, whose office is located at 302 Main Street, Fort Lee, New Jersey.
2. On or about June 21, 2013, the Respondent was charged in the West New York Municipal Court with one count of insurance fraud, in violation of N.J.S.A. 2C:21-4.6A and one count of knowingly filing a false police report, in violation N.J.S.A. 2C:28-4B-(1)⁵.
3. The Respondent failed to notify the Commission within 30 days of the above-referenced charges.
4. The Respondent failed to report the above-referenced charges on his 2013-2015 license renewal application.

⁵ The OTSC, and the Respondent's attorney's February 16, 2016 letter to RO Gallina, allege that the Respondent was originally charged with one count of insurance fraud, in violation of N.J.S.A. 2C:21-4.6A and one count of filing a fraudulent/false police report, in violation of N.J.S.A. 2C:21-4B(1). Both the OTSC and the February 16, 2016 letter provide that both of the aforementioned counts were dismissed and that the Respondent pleaded guilty to and was convicted of one count of filing a false police report, in violation of N.J.S.A. 2C:28-4A. However, the Judgment of Conviction provides that the original charges issued against the Respondent were for one count of providing a false report to incriminate another, in violation of N.J.S.A. 2C:2B-4A, and one count of insurance fraud, in violation of N.J.S.A. 2C:21-4.6A. The Judgment of Conviction also provides that the final charges issued against the Respondent was for one count of providing a false report to incriminate another, in violation of N.J.S.A. 2C:2B-4A and that one count of insurance fraud, in violation of N.J.S.A. 2C:21-4.6A, was dismissed. See Exhibit S-2.

5. The Respondent was convicted on or about October 18, 2013, in the Superior Court of New Jersey, Hudson County, of knowingly filing a false police report, in violation of N.J.S.A. 2C:28-4A.
6. The Respondent was sentenced to one year of probation and was ordered to continue treatment and to obtain gainful employment.
7. The Respondent failed to notify the Commission within 30 days of the October 18, 2013 conviction.

CONCLUSIONS OF LAW

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

1. The conduct underlying the Respondent's conviction for filing a false police report demonstrates dishonesty, in violation of N.J.S.A. 45:15-17e.
2. There is insufficient evidence to conclude that the conduct underlying the Respondent's conviction for filing a false police report demonstrates fraud, in violation of N.J.S.A. 45:15-17l.
3. The Respondent violated N.J.S.A. 45:15-17s by failing to notify the Commission within 30 days of being charged of a crime.
4. The Respondent violated N.J.S.A. 45:15-17s by failing to notify the Commission within 30 days of being convicted of a crime.
 - a. The pleadings are hereby amended to conform to the evidence supporting this conclusion. See infra pg. 11-13.

5. By failing to disclose on his license renewal application that he had been charged or convicted of a crime, the Respondent procured his real estate license through misrepresentation, in violation N.J.S.A. 45:15-17n.

a. The pleadings are hereby amended to conform to the evidence supporting this conclusion. See infra pg. 11-13.

DETERMINATION

At the conclusion of the hearing and executive session in this matter, the Commission voted in favor of finding the violations and imposing the sanctions described in this Final Decision and Order. In arriving at the determination in this matter, the Commission took into consideration the testimony of the witness, and the documentary evidence admitted at the hearing. The Commission also considered the serious nature of and the circumstances surrounding the Respondent's actions.

The Real Estate License Act, N.J.S.A. 45:15-1 et seq. ("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). The nature and duties of a real estate business are grounded in interpersonal, fiduciary, and business relationships and demand the utmost honesty, trust, and good conduct. Maple Hill Farms, Inc., 67 N.J. Super. 223, 232 (App. Div. 1961); Division of New Jersey Real Estate Comm'n 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 Comm'n v. Ponsi, supra.

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. 45:15-17e. The facts in this matter demonstrate that the Respondent was convicted of filing a false police report, in violation of N.J.S.A. 2C:28-4A. It is undisputed that the Respondent pleaded guilty to the filing of a false police report and such a crime, by definition, involves dishonesty and accordingly constitutes a violation of N.J.S.A. 45:15-17e. However, the Commission finds there was insufficient evidence to conclude that such conduct demonstrates fraud, in violation of N.J.S.A. 45:15-17l.

Pursuant to N.J.S.A. 45:15-17s, a real estate licensee violates the Act if the licensee fails “to notify the commission within 30 days of having been convicted of any crime...or of the filing of any formal criminal charges.” Here, Respondent testified that after he was charged with the above-mentioned crimes, he discussed disclosing the charges to the Commission with his attorney. The Respondent further testified that his attorney called the Commission regarding the disclosure but was told to put the disclosure in writing. The Respondent ultimately notified the Commission of being charged with the above-mentioned crimes on August 19, 2013, via a letter from his attorney, Nancy Lucianna, Esq.; however, said letter was after the 30 day time frame as set forth in N.J.S.A. 45:15-17s. See supra note 4. The letter informed the Commission that the Respondent was charged with filing a false police report and insurance fraud and the Respondent’s intention to plead guilty to the offense of filing a false police report. The letter further stated that the prosecutor will be dismissing the charge of insurance fraud.

The Respondent did plead guilty to and was convicted of the offense of filing a false police report, and the prosecutor dismissed the complaint of insurance fraud. Nevertheless, the

Respondent failed to notify the Commission within 30 days of the conviction. Therefore, by failing to timely notify the Commission of having been charged with a crime, and by failing to notify the Commission of having been convicted of a crime, the Respondent committed two violations of N.J.S.A. 45:15-17s.

A licensee also violates the Act if he procures a real estate license by fraud, misrepresentation, or deceit. N.J.S.A. 45:15-17n. When completing his 2013-2015 license renewal application, the Respondent failed to disclose that he had been charged or convicted of a crime. The evidence shows that the Respondent completed said application on June 26, 2013, after being charged with the filing of a false police report and insurance fraud. See Exhibit S-1. During his testimony, the Respondent stated that he “could not recall” why he did not state on the application that he had been charged or convicted of a crime. Accordingly, by failing to disclose such information, the Respondent procured the renewal of his real estate salesperson license by misrepresentation, in violation of N.J.S.A. 45:15-17n.

The Commission notes that the OTSC did not charge the Respondent with violation of N.J.S.A. 45:15-17s, for failing to notify the Commission within 30 days of being convicted of a crime, or with violation of N.J.S.A. 45:15-17n, procuring the renewal of his real estate salesperson license by misrepresentation. N.J.A.C. 1:1-6.2(a) provides that “[u]nless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge’s discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice.”

Here, the OTSC alleged that by failing to notify the Commission within 30 days of being charged of a crime, the Respondent violated N.J.S.A. 45:15-17s. The Commission however, did

not allege that by failing to notify the Commission within 30 days of being convicted of a crime, the Respondent violated N.J.S.A. 45:15-17s. Furthermore, although the OTSC did allege that the Respondent failed to disclose being charged with a crime on his 2013-2015 license renewal application, the OTSC did not allege such conduct violated any statutory or regulatory provision. The Respondent was on notice as to the factual basis underlying the issuance of the OTSC, and, at the hearing, he admitted to both failing to notify the Commission within 30 days of being convicted of a crime and failing to disclose being charged with a crime on his 2013-2015 license renewal application. Thus, the OTSC in this matter should be conformed to reflect the proofs and the correct statutory violations as follows: the Respondent violated N.J.S.A. 45:15-17s (two counts) by his failure to notify the Commission within 30 days of being charged and convicted of a crime; and by his failure to disclose that he was charged with a crime on his 2013-2015 license renewal application, the Respondent procured renewal of his real estate salesperson license by misrepresentation, in violation of N.J.S.A. 45:15-17n.

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 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 Act: (1) The good or bad faith of the respondent; (2) The respondent’s ability to pay; (3) Amount of profits obtained from the 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. Id. at 137-139. The analysis of these factors as follows shows

that the imposition of a fine is required to discourage the type of conduct that the Respondent engaged in.

First, the Respondent demonstrated bad faith by failing to notify the Commission within 30 days of being charged and convicted of a crime, as well as failing to disclose that he had been charged with a crime on his 2013-2015 license renewal application.

Second, no evidence was presented during the hearing regarding the Respondent's ability to pay a fine, but he did testify that he is currently employed as a licensed salesperson with Remax.

Third, the Respondent testified that he did not profit in any way from his actions. Rather, the Respondent paid \$3,150 pursuant to the Consent Order entered into with the State of New Jersey, Department of Banking and Insurance, Bureau of Fraud Deterrence. See Exhibit R-1.

Fourth, in order to protect consumers, the Commission is charged with the "high responsibility of maintaining ethical standards among real estate brokers and sales[persons]." Goodley v. New Jersey Real Estate Comm'n, supra at 182. Therefore, the public is harmed when individuals in a fiduciary position violate their responsibilities and fail to comply with the Act and corresponding regulations. In this case, the Respondent violated his responsibilities by filing a false report with law enforcement, failing to timely notify the Commission of being charged with and then convicted of a crime, and misrepresenting pending criminal charges on his license renewal application. Also, the public's confidence in the real estate industry is eroded when a licensee is unable to conduct himself in accordance with the high standards expected of him and his profession. Respondent therefore displayed character that is contrary to the principal intent behind the Act: to "protect consumers by excluding 'undesirable, unscrupulous and

dishonest persons...from the real estate business.” Sammarone v. Bovino 395 N.J.Super. 132 (App. Div.), 193 N.J. 275 (2007); see also Tobias v. Comco/America, Inc. 96 N.J. 173, 180 (1984); Kazmer-Standish Consultants, Inc. v. Schoeffel Instruments Corp. 89 N.J. 286, 290 (1982); and Markheim-Chalmers, Inc. v. Masco Corp. 332 N.J. Super. 452, 457 (App. Div. 1999).

Fifth, Respondent’s actions occurred over an approximately five month period.

Sixth, the underlying conduct which forms the basis for this proceeding is criminal in nature. The Respondent’s actions caused him to be criminally charged with filing a false police report and insurance fraud. He pleaded guilty to the filing of a false police report and a Judgment of Conviction was entered against him on or about October 23, 2013. The Respondent was sentenced to one year of probation and ordered to continue his treatment with his doctor and obtain gainful employment. Lastly, there is no evidence of prior violations of the Act or real estate regulations by Respondent.

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

1. Respondent Chichizola shall pay a total fine in the amount of \$1,000 as follows:
 - a. \$250 for violating N.J.S.A. 45:15-17s by failing to notify the Commission within 30 days of the filing of any formal criminal charges against him;
 - b. \$250 for violating N.J.S.A. 45:15-17s by failing to notify the Commission within 30 days of having been convicted of a crime; and
 - c. \$500 for violating N.J.S.A. 45:15-17n by procuring his real estate license by misrepresentation due to his failure to disclose being charged with a crime on his 2013-2015 license renewal application.

2. Respondent Chichizola's real estate salesperson's license shall be held on probation for one year. During the probationary period, the following conditions shall be imposed:

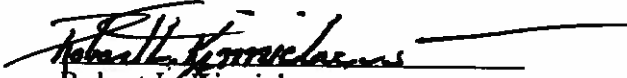
It is Chichizola's obligation to inform any employing broker that his license is currently on probation;

Any employing broker must notify the Commission within 72 hours if he or she receives any information indicating that Chichizola may have violated the Act or corresponding regulations; and

Chichizola must notify the Commission within 72 hours if he is charged with or convicted of any criminal or disorderly persons offense.

SO ORDERED this 14th day of February, 2017.

By: Linda Stefanik, President
Eugenia K. Bonilla, Vice President
Denise Illes, Commissioner
Harold Poltrock, Commissioner
Michael Timoni, Commissioner
Cindy Marsh-Tichy, Commissioner


Robert L. Kinniebrew
Executive Director
New Jersey Real Estate Commission

Chichizola rec order wm AV Edits/INOORD