

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,) DOCKET NO.: CAM-13-013
)
Complainant,)
v.) **FINAL ORDER OF**
) **DETERMINATION**
)
PATRICK J. MURPHY, licensed New Jersey)
real estate broker (Ref. No. 7817863) and)
PATMURPHY.COM, INC., licensed New Jersey)
real estate broker (Ref. No. 0018698).)

Respondents.

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 9, 2013.

BEFORE: Commissioners Linda Stefanik, Jacob S. Elkes, Esq., Robert Melillo, Jeffrey A. Lattimer, Eugenia K. Bonilla, and Michael Timoni.

APPEARANCES: Lauren Glantzberg, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission ("REC"). Respondents appeared without counsel, pro se and waived their right to counsel.

STATEMENT OF THE CASE

The REC initiated this matter on its own motion through service of an Order to Show Cause ("OTSC") dated May 16, 2013 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 charged that Respondent Murphy and Respondent Patmurphy.com, Inc. (herein collectively referred to as "Respondents") engaged in multiple violations of the real estate statutes and regulations when they failed to timely deposit and

maintain the funds of others in a fiduciary capacity, and committed multiple acts of commingling funds in trust and operating accounts. The OTSC also alleged that Respondents committed numerous record keeping violations and that their actions demonstrate unworthiness, incompetency, and bad faith. The OTSC further alleged that Respondents failed to comply with a subpoena issued by the Commission compelling the production of documents and information during the course of the investigation.

PROCEDURAL HISTORY

On May 16, 2013, the REC served Respondents with both a Motion for Temporary Suspension and the OTSC. On June 18, 2013, Respondents appeared pro se before the Commission for the motion hearing. Respondents did not provide a written response or answer to the OTSC. Instead, Respondents submitted a “Reply to the Notice of Motion” which Respondent Murphy served at the June 18th hearing. Consequently, the matter was deemed a contested case and a full hearing was scheduled for the allegations in the OTSC on July 9, 2013.

In his Reply to the Notice of Motion (“Reply”), Respondents stated: “I have reviewed all of the complaint and the notes of the Investigator Mr. William Petro. I admit to all the findings. I was present during Mr. Petro’s investigation findings and so I am aware of all the wrongdoing he found. Much of his investigation findings were as informative to me as to him.”

Respondent Murphy further explained in his reply that his wife was also a real estate broker until her death three years prior and that she acted as his business partner. He added that he did all of the marketing and sales and she handled the “back-office” work in that she administered the bank accounts, records and contracts for a span of forty years. He added that they had been the HUD local listing broker for all of Southern New Jersey and that HUD

changed the procedures during this time in that all earnest money was to be held, not by the broker, but by the HUD appointed title company.

Respondent Murphy further described that his administrative staff consisted of Mary Bocella, a licensed New Jersey real estate broker who supervised MLS listing inventory as well as the HUD listings. He added that he employed Ann McIntyre as a HUD approved housing counselor and stated that she was a signer on the accounts. However, Respondent Murphy admitted that this was improper because she was not licensed as a broker or salesperson.

Respondent Murphy also stated that: "The deposit money was deposited in the escrow account and moved out to various accounts electronically. From there Ann then paid her bills. I had no knowledge of most of the incoming and nothing to do with the electronic transfers or withdrawals."

On June 20, 2013, the Commission issued an Order of Temporary Suspension. Pursuant to the terms of the Order, Respondents brokers' licenses were suspended effective immediately. Respondent Patmurphy.com, Inc. was ordered not to engage in any activities as a real estate broker. Further, the Commission ordered that Murphy would be eligible to hold a salesperson license subject to the conditions that Murphy provide the employing broker with a copy of the Order of Temporary Suspension and that, with any application for licensure as a salesperson, Respondent Murphy shall provide a letter from the employing broker confirming his or her knowledge of the Order of Temporary Suspension. The Order also stated that it would be in effect until further order of the commission.

The plenary hearing was held on July 9, 2013. The Respondents appeared at the hearing pro se and waived their right to counsel. At the hearing, the following exhibits were admitted into evidence:

- S-1 Licensing history panels for Patrick J. Murphy and PATMURPHY.COM, INC., as of 5/14/13;
- S-2 TD Bank official check #019-28149 made payable to PATMURPHY.COM realtors dated 11/20/08 for an earnest money deposit for Frank Villari in the amount of \$5,000.00;
- S-3 Bank Statement dated November, 2008 for PATMURPHY.COM, INC., escrow account at TD Bank ending in #4797;
- S-4 PATMURPHY.COM, INC. receipt dated August 28, 2012 for \$1,000 received by Frank Villari;
- S-5 Consent Agreement dated August 28, 2012 between Patrick J. Murphy and Frank Villari regarding Murphy indebtedness to Villari;
- S-6 Bank statements – July-December, 2008 for PATMURPHY.COM, INC. Escrow account at TD Bank, account ending in #4797;
- S-7 PATMURPHY.COM, INC. ledger of escrow transactions July-November, 2008;
- S-8 Bank statement – July, 2010 for PATMURPHY.COM, INC. escrow account at TD Bank, account ending in #4797;
- S-9 Bank statement – December, 2010 for PATMURPHY.COM, INC. escrow account at TD Bank, account ending in #4797;
- S-10 Bank statements – January, 2011 through November, 2011 for PATMURPHY.COM, INC. escrow account at TD Bank, account ending in #4797;
- S-11 Bank statement – July, 2011 for PATMURPHY.COM, INC. escrow account at Beneficial Bank, account ending in #7061;
- S-12 Letter dated August 14, 2012 from PATMURPHY.COM, INC. to Beneficial Bank removing McIntyre as a signatory on the PATMURPHY.COM, INC. escrow account at Beneficial Bank, account ending in #7061;
- S-13 Proposal to Purchase dated April 26, 2012 & Contract of Sale dated May 1, 2012 for 30 Homestead Rd., Stratford, NJ from Rodriquez to Cullinan;
- S-14 TD Bank Official check #51350783-5 in the amount of \$1,000 from Cullinan to PATMURPHY.COM, INC. REALTORS;

- S-15 Sale Release and Distribution of Deposit Money Agreement dated May 1, 2012;
- S-16 Check #1063 from PATMURPHY.COM. INC. escrow account at Beneficial Bank ending in #7061 in the amount of \$1,000 to Cullinan;
- S-17 PATMURPHY.COM, INC. receipt to Cullinan dated September 5, 2012 for \$1,000;
- S-18 Bank Statement – September, 2011 for PATMURPHY.COM, INC. escrow account at Beneficial Bank, account ending in #7061;
- S-19 Bank Statements – October, 2011 – August, 2012 for PATMURPHY.COM, INC., escrow account at Beneficial Bank, account ending in #7061;
- S-20 Contract of Sale dated July 15, 2011 for 30 Homestead Rd., Stratford, NJ from Rodriquez to 11 Homes, LLC;
- S-21 Beneficial Bank Deposit slip for \$18,261.00 dated July 27, 2011 for deposit into PATMURPHY.COM, INC. escrow account at Beneficial Bank, account ending in #7061 and check #2695 dated July 20, 2011 from 11 Homes LLC to PATMURPHY.COM, INC. in the amount of \$18,261.00;
- S-22 Bank Statements July 31, 2011 – September, 2011 for PATMURPHY.COM, INC. escrow account at Beneficial Bank, account ending in #7061;
- S-23 REC Subpoena to Patrick J. Murphy to Provide Documents dated 9/25/2012;
- R-1 Letter from Garden State Properties Group to REC dated July 8, 2013.

TESTIMONY OF THE WITNESSES

PATRICK MURPHY

Respondent Patrick Murphy testified on his own behalf and waived his right to counsel.

Respondent Murphy testified that several brokers want to work with him, and that he seeks to obtain a salesperson's license. Respondent stated that this is the only job he has had for 58 years. Respondent Murphy further testified that he was not aware of the money coming in because everything was done electronically; however, he acknowledged that he is responsible for what happened.

Respondent Murphy added that he has no income and that he has been foreclosed upon, forcing him out of his home and office. Respondent stated that his wife of 40 years handled all finances before she suddenly died. Respondent Murphy stated that he is guilty as charged, and is just asking for a salesperson license.

Respondent Murphy further testified that he was the HUD listing broker and deposit money was held by the title company and his escrow account had no real activity. He stated that because the title company held the deposits, he did not concern himself with the escrow accounts.

Respondent Murphy identified Exhibit S-6 as bank statements for Patmurphy.com's TD Bank escrow account from July 2008 through December 2008. He explained that the funds were related to proposed short sales. Specifically, he stated that the funds were being withdrawn electronically by Ann McIntyre ("McIntyre"), who was employed by Respondent Murphy, and who was not telling him about these transactions. He further stated that McIntyre was a signer on the account, but was not licensed. Murphy testified that the

deposits were given to McIntyre and that McIntyre represented to him that she was an approved HUD closing officer, but he later found out she was not.

Respondent Murphy further testified that he requested the Camden County Prosecutor's office to criminally pursue McIntyre. Respondent Murphy stated that he did not know funds were coming in because deposits were given to McIntyre and she was paying all the bills. Respondent Murphy testified that McIntyre took over all the bank accounts when his wife passed away three years ago in February. Another broker had initially taken over management of the accounts, but that broker left when the business contracted.

Respondent Murphy further testified regarding the Villari transaction that occurred in 2008 involving the deposit payment from Villari to Murphy of \$5,000.00. Respondent Murphy testified that he did not personally receive those funds, but he acknowledged that the funds were received. He added that when Villari asked for the return of the money, he spoke with McIntyre who informed him they did not have money to pay him back so they entered into an agreement to repay the funds. (See Exhibit S-5).

Respondent Murphy then identified Exhibit S-7 as a ledger that he created for transactions between July and November, 2008. Respondent stated that he recognized a few of the addresses referenced in the ledger, but that there were many HUD properties and that he did not get involved with these transactions on the paper level.

Respondent Murphy identified Exhibit S-9 as a TD bank escrow account statement for Patmurphy.com for the month of December 2010. He stated that he did not know what the entries were because McIntyre handled bill payments and he never reviewed the accounts.

Respondent Murphy further testified regarding the allegations that he failed to comply with the REC's investigation. Respondent claimed that he did not fail to cooperate. He stated that he looked for the items that were requested, but could not locate them. He stated that his wife passed away and she handled that aspect of the business.

INVESTIGATOR WILLIAM PETRO

Investigator William Petro testified on behalf of the REC. Investigator Petro testified that he has been employed as an investigator with the REC for 14 years and was assigned to investigate the complaint initiated by Frank Villari. Investigator Petro testified that he spoke to Respondent Murphy about the complaint but the Respondent was not initially aware of the Villari transaction.

Investigator Petro stated that as part of his investigation he went to Respondent Murphy's office. Investigator Petro testified that Respondent's office was located in an "L" shaped building on the corner with an entrance on the side. Investigator Petro stated that it did not really appear to be an office. Investigator Petro stated that there were no records in the office section and that some records were kept in the basement of the house section.

Investigator Petro further testified that he requested records on several occasions and served Respondent with a subpoena. (See Exhibit S-23). The documents requested were bank statements, deposit slips, ledgers, records and other information relating to the real estate business. Investigator Petro stated that Respondent Murphy provided him with bank statements, some deposit slips and some contracts. Moreover, Petro was provided with a ledger that did not comply with any accounting procedure and which contained some notations referencing unknown property. (See Exhibit S-7). Investigator Petro further testified that he was able to establish that Villari gave \$5,000 to Respondent Murphy in 2008. Investigator Petro explained

that from the records he reviewed he was able to see other transactions that went in and out of accounts, and found that accounts were closed by the bank because of repeated overdrafts.

Investigator Petro stated that the investigation lasted between seven and eight months. He explained that he had difficulty conducting the investigation because the office did not have any lights or heat. Investigator Petro further stated that Respondent Murphy denied having knowledge of backroom operations of the real estate business.

Investigator Petro further testified that after the completion of the investigation, he became aware of five other individuals who had not been able to contact Respondents or get their money back.

Investigator Petro further testified that McIntyre was a signatory on the escrow account and that she did not have a real estate license. Petro informed McIntyre that she was violating the REC licensing laws and that McIntyre then immediately contacted the bank and had her name removed from the escrow account. Respondent Murphy informed Investigator Petro that he was not aware that you had to be licensed to be a signatory.

FINDINGS OF FACT

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

1. Respondent Patrick J. Murphy is a New Jersey real estate broker, whose license is currently under suspension and who acted as broker of record of PATMURPHY.COM, INC., a New Jersey real estate broker, with an office located at 1201 Route 70 West, Cherry Hill, New Jersey; and

2. Respondent PATMURPHY.COM, INC. (“Patmurphy.com”) is a New Jersey real estate broker, whose license is currently under suspension, with a principal place of business located at 1201 Route 70 West, Cherry Hill, New Jersey; and
3. On or about November 20, 2008 Frank Villari tendered a \$5,000 deposit to Patmurphy.com for the purchase of an investment property. (See Exhibit S-2); and
4. On or about November 26, 2008, the deposit was made into the escrow account for Patmurphy.com, ending in #4797, maintained at Commerce Bank (acquired by TD Bank), which raised the balance to \$66,113.08. (See Exhibit S-3);
5. In late 2011, Villari requested the return of his deposit funds; and
6. In February, 2012, Villari received a check from Respondent Murphy which was returned for insufficient funds; and
7. On August 23, 2012, Respondent Murphy paid Villari \$1,000 (See Exhibit S-4) and on August 28, 2012, Murphy and Villari entered into an agreement to repay the balance of Villari’s deposit with a payment schedule from August 31, 2012 through December 31, 2012. (See Exhibit S-5); and
8. As of May 15, 2013, Respondent Murphy has failed to pay the remaining balance of the payments as agreed to Villari; and
9. The bank statements for the escrow account for Patmurphy.com, ending in #4797, maintained at Commerce Bank (acquired by TD Bank), from July, 2008 through December, 2008, reflect that numerous deposits and withdrawals were made. (See Exhibit S-6); and
10. Respondent Murphy admitted to an REC investigator that he did not regularly maintain an adequate ledger or other permanent method of recordkeeping for the funds of others

- received by Respondent Patmurphy.com as an escrow agent or as the temporary custodian of the funds of others in a real estate transaction. (See Exhibit S-7); and
11. On July 2, 2010, the escrow account for Patmurphy.com, ending in #4797, maintained at Commerce Bank (acquired by TD Bank) had a balance of \$4,548.08 and Villari's \$5,000 was outstanding (See Exhibit S-8); and
 12. On July 2, 2010, the escrow account for Patmurphy.com, ending in #4797, maintained at Commerce Bank (acquired by TD Bank) was out of trust. (See Exhibit S-8); and
 13. In December, 2010, there were numerous transfers to the escrow account for Patmurphy.com, ending in #4797, maintained at Commerce Bank (acquired by TD Bank) from an operating account ending in #4789 and a commission account ending in #6072 (See Exhibit S-9); and
 14. On December 8, 2010, an electronic payment was made to USAA.com from the escrow account for Patmurphy.com, ending in #4797, maintained at Commerce Bank (acquired by TD Bank) in the amount of \$210.23 (See Exhibit S-9); and
 15. On December 27, 2010 an eBillpay in the amount of \$1,000.00 was made from the escrow account for Patmurphy.com, ending in #4797, maintained at Commerce Bank (acquired by TD Bank) to April Mulhern (See Exhibit S-9); and
 16. On December 31, 2010, the balance in the escrow account ending in #4797 was \$785.90 and Villari's \$5,000 deposit was outstanding resulting in the account being out of trust (See Exhibit S-9); and
 17. From January 1, 2011 through November 1, 2011, withdrawals were made from the escrow account for Patmurphy.com, ending in #4797, maintained at Commerce Bank (acquired by TD Bank) to make bill payments and for transfers to other Patmurphy.com

- accounts. (See Exhibit S-10). On November 1, 2011, TD Bank closed the account with an overdrawn balance of \$-76.10. (See Exhibit S-10) ; and
18. On November 1, 2011, the time of the closing of the TD escrow account ending in #4797, Villari's \$5,000.00 deposit was outstanding; and
 19. Respondent Patmurphy.com maintained a second escrow account at Beneficial Bank ending in #7061 which was not reported and on file with the Real Estate Commission. (See Exhibit S-11); and
 20. Ann McIntyre was a signatory on the escrow account at Beneficial Bank ending in #7061 and was not a New Jersey real estate licensee (See Exhibit S-12); and
 21. On or about May 1, 2012, Michael Cullinan entered into a contract of sale for the purchase of the property located at 30 Homestead Road, Stratford, NJ. (See Exhibit S-13); and
 22. The contract required that a \$1,000 deposit was to be paid upon signing of the contract, to be held in the escrow account of Patmurphy.com, Inc. Realtors. (See Exhibit S-13); and
 23. On May 1, 2012, Michael Cullinan tendered a \$1,000 deposit check to Respondent Patmurphy.com, Inc. Realtors, (TD Bank Official Check #51350783-5). (See Exhibit S-14) ; and
 24. On August 6, 2012, the seller, the Rodriguezs', signed a notice to release the deposit funds to the buyer, Michael Cullinan. (See Exhibit S-15); and
 25. On September 5, 2012, the deposit funds were returned by Respondent Murphy to Cullinan by check #1063 from the escrow account at Beneficial Bank ending in #7061. (See Exhibits S-16&S-17); and

26. On September 2, 2012, there was \$661.74 in the escrow account at Beneficial Bank ending in #7061. The first escrow account, the escrow account for Patmurphy.com, ending in #4797, maintained at Commerce Bank (acquired by TD Bank) was closed. Both Villari and Cullinan's deposits were outstanding and the second escrow account, the escrow account at Beneficial Bank ending in #7061, was out of trust. (See Exhibit S-18); and
27. On September 12, 2012, a transfer into the escrow account at Beneficial Bank ending in #7061 of \$2,000 from PATMURPHY.COM, INC. account ending in #7046 made the check to Cullinan negotiable. (See Exhibit S-18); and
28. Between October 1, 2011 and August 31, 2012, there were regular transfers between Respondents' escrow, operating and commission accounts and as of July 31, 2012, there was a balance of \$1,001.17 in the escrow account at Beneficial Bank ending in #7061. (See Exhibit S-19); and
29. Respondent Murphy could not identify which transactions in the October 1, 2011 through August 31, 2012 statements that the funds were associated with, nor could he provide any ledgers or contracts associated with the funds. (See Exhibit S-19); and
30. On or about July 15, 2011, 11 Homes, LLC entered into a contract with Luis A. and Jessy I. Rodriguez for the purchase of the property located at 30 Homestead Road, Stratford, NJ. (See Exhibit S-20); and
31. The contract indicated that an \$18,261.00 deposit was to be paid by 11 Homes, Inc. upon the signing of the contract to be held by Patmurphy.com, Inc. Realtors. (See Exhibit S-20); and

32. On July 27, 2011, a deposit of \$18,261.00 was made into the escrow account at Beneficial Bank ending in #7061. (See Exhibit S-21); and
33. Between July, 2011 and September, 2011, there were various transfers from the escrow account at Beneficial Bank ending in #7061 to the operating account ending in #7046 and a commission account ending in #7053. (See Exhibit S-22); and
34. On September 30, 2011, the balance in the escrow account at Beneficial Bank ending in #7061 was \$-18.23, with both the I1 Homes, Inc. and Villari deposits outstanding. (See Exhibit S-22); and
35. On September 30, 2011, the escrow account at Beneficial Bank ending in #7061 was out of trust. (See Exhibit S-22); and
36. On September 26, 2012, an REC investigator personally delivered a subpoena to Respondent Murphy requesting the production of records for Patmurphy.com, Inc. (See Exhibit S-23); and
37. Respondent Murphy failed to provide records and documents requested by the subpoena; and
38. There was no quarterly reconciliation performed on the escrow account ending in #4797, maintained at Commerce Bank (acquired by TD Bank), the escrow account at Beneficial Bank ending in #7061, the TD Bank operating account or the Beneficial Bank operating account; and
39. Respondent Murphy admitted to the REC investigator that he did not make any reconciliation of the escrow accounts' checkbook balance and client trust ledger balances.

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. Respondents violated N.J.S.A. 45:15-12.5 because they failed to deposit and maintain in an account separate and apart from all personal and business accounts the funds of others received while acting in the capacity of a real estate broker; and
2. Respondents violating N.J.S.A. 45:15-17o and N.J.A.C. 11:5-5.1(a) and (c) because they commingled the money of their principals with their own, and failed to maintain in a special account, separate and apart from all other personal and business accounts, all monies received by the Respondents, 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; and
3. Respondents violated N.J.S.A. 45:15-17d because they failed to account for or pay over the funds of others in various real estate transactions; and
4. Respondents violated N.J.S.A. 45:15-17e because the conduct that they engaged in demonstrates incompetency; and
5. Respondents violated N.J.S.A. 45:15-17l because the conduct that they engaged in demonstrates fraud and dishonest dealing; and
6. Respondents violated N.J.A.C. 11:5-6.4(a) because their actions failed to protect and promote the interests of their principals; and
7. Respondents violated N.J.A.C. 11:5-5.4(b)(1) because they failed to record transaction information on the trust account checkbook stub and ledger for all deposits and disbursements of monies of others received by them; and

8. Respondents violated N.J.A.C. 11:5-5.4(b)(3) because they failed to reconcile and maintain records confirming that at least a quarterly reconciliation had been made between the checkbook balance, bank statement balance and trust account ledger; and
9. Respondents violated N.J.A.C. 11:5-5.1(b) because they failed to report via affidavit or certification any change in an existing account or the establishment of the second escrow account, namely, the escrow account at Beneficial Bank ending in #7061; and
10. Respondents violated N.J.A.C. 11:5-5.1(h) because an individual who was not actively licensed by the REC as a real estate broker-salesperson or salesperson was a signatory on the Beneficial Bank escrow account; and
11. Respondents violated N.J.A.C. 11:5-5.4(a) because they failed to maintain a record of funds received from real estate transactions; and
12. Respondents violated N.J.A.C. 11:5-5.4(c) because they failed to maintain records of real estate transactions, including fully executed contracts of sale; and
13. Respondents violated N.J.S.A. 45:15-17(e) and N.J.A.C. 11:5-5.5 because they failed to comply with a subpoena issued by the REC compelling the production of materials in the course of an investigation.

DETERMINATION

In arriving at the determination in this matter, the Commission took into consideration the pleadings, the documentary evidence admitted into the record, the testimony of the witnesses and the admissions of Respondent Murphy. The Commission also considered the serious nature and the circumstances surrounding the Respondents' actions.

The Respondents' actions clearly constitute multiple failures to account for or pay over monies belonging to others coming into their possession as real estate licensees, and

multiple instances of commingling the money of principals with their own, in violation of N.J.S.A. 45:15-17d, N.J.S.A. 45:15-17o, N.J.S.A. 45:15-12.5 and N.J.A.C. 11:5-5.1(c). Pursuant to N.J.S.A. 45:15-17d and N.J.S.A. 45:15-17o , a real estate licensee violates the New Jersey Real Estate Licensing Act (“Act”) if the licensee fails “to account for or pay over any moneys belonging to others, coming into the possession of the licensee” or for “commingling the money or other property of his principals with his own” and “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.” Moreover, if a licensee comingles the moneys of his principals with his own, or fails to maintain and promptly deposit these moneys in an authorized financial institution, or fails to promptly segregate moneys received for the benefit of others, then a licensee is in violation of the Act. N.J.A.C. 11:5-5.1(c) and N.J.S.A. 45:15-12.5.

The undisputed and admitted facts in the record demonstrate that Respondents failed to maintain the deposit monies of others. Specifically, the deposit monies received from Frank Villari totaling \$5,000.00 were not held in escrow. When the Villari transactions did not move forward, Respondents did not return Mr. Villari’s deposit money. The REC’s investigation of Respondents began after a complaint was filed by Villari and later revealed various violations wherein Respondent Murphy failed to properly maintain escrow monies of his principals in accordance with the Act. Moreover, Respondent Murphy did not have knowledge of many of the real estate transactions identified during the investigation. Murphy explained that his late wife and, then, an unlicensed employee, maintained these records. Despite his attempts to make sense of the records he did maintain, Respondent Murphy was never able to present a clear picture of

his accounting methods to Investigator Petro. Consequently, Respondents are in violation of N.J.S.A. 45:15-17d, N.J.S.A. 45:15-17o, N.J.S.A. 45:15-12.5 and N.J.A.C. 11:5-5.1(c).

In this case, Respondents' mishandling of fiduciary funds is coupled with the Respondents' lack of record keeping in violation of N.J.A.C. 11:5-5.4(b)(1) and (3), N.J.A.C. 11:5-5.1(b) and (h) and N.J.A.C. 11:5-5.4(a) and (c). N.J.A.C. 11:5-5.4(b)(1) provides that, among the records to be maintained by a broker, "written references on the checkbook stubs or checkbook ledger pages to all deposits into and withdrawals from the account maintained by the broker ... shall specifically identify the date, amount and payer of each item deposited, the property to which the monies pertain and the reason for their being held by the broker", and the same information for each disbursement is also required. N.J.A.C. 11:5-5.4(b)(3) requires that records are maintained by the broker showing at least a quarterly reconciliation of same and N.J.A.C. 11:5-5.4(a) requires that Respondents maintain a record of funds received.

Here, the record is clear that Respondent Murphy failed to properly record deposits and disbursements and failed to maintain records confirming that at least quarterly reconciliation had been made between the checkbook balance, bank statement and trust account ledger. Murphy also failed to maintain a record of funds received. Furthermore, Respondent Murphy allowed an unlicensed individual to be signatory on the business's escrow account and collect deposit monies. This is clearly not permitted pursuant to N.J.A.C. 11:5-5.1(h) which requires that an individual who is an additional signatory on an escrow account be actively licensed as a broker-salesperson or salesperson. Further, it was uncontroverted that Respondent Murphy failed to report, via affidavit, the establishment of the second escrow account at Beneficial Bank in violation of N.J.A.C. 11:5-5.1(b). Lastly, although Respondent Murphy made efforts to cooperate with Investigator Petro, he did not fully comply with the subpoena issued by

the REC because he did not provide all documentation requested in the subpoena. Consequently, he demonstrated incompetency by failing to produce all business records in violation of N.J.S.A. 45:15-17(e) and N.J.A.C. 11:5-5.5. In sum, the undisputed and admitted facts demonstrate that the Respondents engaged in repetitive and inexcusable record keeping violations.

N.J.A.C. 11:5-6.4(a) requires that licensees “pledge himself to promote and protect, as he would his own, the interests of the client” and that they are obligated to “dealing fairly with all parties to the transaction.” The Respondents’ failure to safeguard real estate monies constitutes a failure to protect and promote the interests of their clients and to deal fairly with them in violation of N.J.A.C. 11:5-6.4(a). Further, the failure of Respondents’ to monitor their financial accounts and ensure the safety of the funds of their fiduciaries also constitutes fraud and dishonest dealing in violation of N.J.S.A. 45:15-17(l). Moreover, this type of conduct also demonstrates incompetency in violation of N.J.S.A. 45:15-17(e).

Pursuant to N.J.S.A. 45:15-17e, 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.” In addition, the Commission empowered to take enforcement actions regarding “any other conduct...which constitutes fraud or dishonest dealing.” N.J.S.A. 45:15-17l. 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. Maple Hill Farms, Inc., supra, 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). 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 a licensee or enters

into a fiduciary relationship with a licensee. Ellsworth Dobbs, Inc., v. Johnson and Johnson, 50 N.J. 528, 553 (1967). Although Respondent Murphy explained that several hardships contributed to his violations, including economic factors and the death of his wife, he was still responsible as broker of record for the commingling of funds, failure to account or pay over funds and for an overall lack of record keeping and accounting practices. Furthermore, Respondent Murphy admitted to the findings of Investigator Petro. Therefore, given the serious nature and multiple violations of Respondents', license revocation for life is the appropriate sanction in this case.

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, with mitigation considered, requires imposition of a significant fine.

First, the Commission finds that Respondent Murphy, acting on behalf of Respondent Patmurphy.com, did not demonstrate bad faith, but rather displayed multiple instances of incompetency by his actions. Second, Respondent Murphy testified that he has no income and that his home was foreclosed upon. Third, the Respondent profited by failing to return the \$5,000 deposit in the Villari transaction. Fourth, in addition to Villari, the public is also significantly harmed when individuals in fiduciary positions violate their responsibilities to account for monies and maintain records because the public's confidence in the real estate


industry is eroded. Fifth, Respondents actions took place during at least a two year period beginning in late 2011, when Villari requested the return of his deposit monies, until the date of the hearing when the monies still had not been returned. Also, Respondents record keeping practices were still not in accord with REC regulations on the date of the hearing. Sixth, to the Commission's knowledge, there are no criminal actions pending against Respondents. Lastly, there are no prior violations of the Act by the Respondents.

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

- I. Respondent Murphy and Respondent Patmurphy.com, Inc. broker's licenses are revoked for life from the date of this order.
- II. Respondent Murphy shall be ineligible to apply for a salesperson's license for ten years from the date of this order.
- III. Respondents Murphy and Respondent Patmurphy.com shall pay a fine of \$10,000.00, jointly and severally, within 30 days from the date of receipt of this order.
- IV. Respondent Murphy shall not be eligible for salesperson licensure until full restitution is paid on all pending guaranty fund claims filed against him and until the fine is paid in full.
- V. This Order shall super cede the Commission's Order of Temporary Suspension entered on June 20, 2013 which provided that Respondent Murphy would be eligible to hold a salesperson license subject to conditions. Hence, this provision of the Order of Temporary Suspension is null and void.

SO ORDERED this 29th day of June, 2016.

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



Robert L. Kinniebrew
Executive Director
New Jersey Real Estate Commission