

**NEW JERSEY REAL ESTATE COMMISSION**

NEW JERSEY REAL ESTATE COMMISSION,	)	DOCKET NO.: HUD-15-021
	)	
Complainant,	)	
v.	)	<b>FINAL ORDER OF</b>
	)	<b>DETERMINATION</b>
AUDREY E. PELLEGRINI, formerly licensed	)	
New Jersey real estate salesperson,	)	
(Ref. No. 0124712)	)	
	)	
Respondent.	)	

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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 in the Commission Hearing Room, 20 West State Street, Trenton, New Jersey on May 24, 2016.

**BEFORE:** Commissioners Linda Stefanik, Eugenia K. Bonilla, and Michael Timoni.

**APPEARANCES:** Marianne Gallina, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission ("REC"). Respondent did not appear.

**PROCEDURAL HISTORY**

On June 24, 2015, the Respondent filed an application to reinstate her real estate salesperson's license, and answered in the affirmative when asked if she had been convicted of a crime, misdemeanor or disorderly person's offense. The Respondent had been convicted on March 22, 2013 of one count of forgery in the fourth degree, in violation of N.J.S.A. 2C:21-1a(2). The underlying conduct related to forging documents while employed with the City of Bayonne in order to facilitate a closing on a property located at 17 Elna Court, Bayonne, New Jersey. The Respondent listed that property as a licensed real estate salesperson. She was sentenced to one year of probation, forfeiture of her public employment, and forfeiture of the

commission on the sale of 17 Elna Court in the amount of \$3,937.50. The REC denied Respondent's reinstatement application via letter dated July 2, 2015.

The REC initiated this matter on its own motion through service of an Order to Show Cause ("OTSC") dated September 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 the Respondent was convicted of one count of forgery in the fourth degree, in violation of N.J.S.A. 2C:21-1a(2), for forging documents while employed with the City of Bayonne, New Jersey in order to facilitate a closing on a property that she listed as a real estate salesperson. The OTSC alleged that the conduct underlying the Respondent's conviction demonstrated (1) unworthiness, bad faith and dishonesty, in violation of N.J.S.A. 45:15-17e; (2) fraud and dishonest dealing, in violation of N.J.S.A. 45:15-17i; and (3) that the Respondent does not possess the requisite good moral character, honesty, integrity, and trustworthiness that all candidates for licensure must possess pursuant to N.J.S.A. 45:15-9. Further, the REC argued that, pursuant to N.J.S.A. 45:15-12.1, no license shall be issued by the Commission to any person known by it to have been convicted of forgery within five years from its occurrence.

The Respondent filed an Answer to the OTSC dated October 13, 2015, wherein she admitted that she pleaded guilty to forgery, but denied that she provided any false information within the forged document. Accordingly, the Commission deemed this matter a contested case and directed that a hearing be scheduled.

The REC scheduled the hearing in this matter for February 9, 2016. That hearing date was adjourned due to inclement weather to February 23, 2016. It was adjourned again at the Respondent's request to April 26, 2016, and that hearing date was adjourned due to a lack of quorum. The REC scheduled the matter for May 24, 2016, and served notice of the hearing upon

the Respondent via certified mail. The United States Postal Service verified that the certified mail was delivered to the Respondent on May 13, 2016.

The Respondent failed to appear at the May 24, 2016 hearing. The Commission addressed all other matters on the agenda to allow the Respondent additional time to appear. The REC staff called the Respondent's home telephone number, which was answered by a male who hung up the phone when staff requested to speak to the Respondent. The REC staff redialed the Respondent's telephone number, the call went straight to voice mail, and staff left a message.

In accordance with N.J.A.C. 11:5-11.6 and N.J.A.C. 1:1-14.4, the REC is permitted to present proofs on an *ex parte* basis because the Respondent failed to appear at the May 24, 2016 hearing, after receiving notice of the hearing date. At the hearing on May 24, 2016, the following exhibits were admitted into evidence by the REC:

- S-1 Contract of sale between seller J.N. and purchasers J.G.B., J.V.B. and S.W., signed May 12, 2012 for 17 Elna Court, Bayonne, NJ.
- S-2 Letter dated July 18, 2012, re: 17 Elna Court, "To Whom it May Concern" from the City of Bayonne Tax Assessor, with assessment sheet attached.
- S-3 Letter dated July 2, 2015 to Respondent from Executive Director Robert L. Kinniebrew with salesperson's license reinstatement application attached.
- S-4 City of Bayonne Municipal Court Summons #S-2012-000954, State of New Jersey v. Audrey Pellegrini.
- S-5 Judgment of Conviction, Superior Court of New Jersey, Hudson County, State of New Jersey v. Audrey Pellegrini dated March 22, 2013 with Plea Form and Probation reports attached.
- S-6 Letter dated May 15, 2015 to Respondent from Anthony S. Casale, Vicinage Chief Probation Officer.

### TESTIMONY OF THE WITNESS

Investigator William Ames testified that he is an investigator with the REC and was assigned to handle this matter. Ames stated that Respondent's employing broker contacted the REC regarding the Respondent's arrest for forgery. Ames testified that he met with Respondent's brokers, Mr. and Mrs. Sicato, to discuss Respondent's listing of the property located at 17 Elna Court in Bayonne, which pertained to the Respondent's arrest.

Ames further testified that he requested information from the Respondent regarding the criminal matter, but she had been uncooperative based on her attorney's advice, except for providing the initial criminal summons.

Ames identified Exhibit S-1 as the contract of sale for 17 Elna Court, which the Respondent listed for sale. Ames further testified that the Respondent was also employed in the City of Bayonne tax assessor's office as an administrative assistant. Ames testified that because of her position in the tax assessor's office, the Respondent had access to various documents and created a document that facilitated the sale of the property located at 17 Elna Court. Ames identified Exhibit S-2 as a letter that the Respondent forged to make the document appear to be a letter from the City of Bayonne's tax assessor dated July 18, 2012. The letter states that 17 Elna Court is a one family residential property in a residential neighborhood, and if there were a fire on that property, the owner would be allowed to rebuild since it is in a residential zone. Ames stated that the Respondent created the document to improve the marketability of the property.

Ames identified Exhibit S-4 as the criminal Summons/Complaint against the Respondent dated July 24, 2012. Respondent was charged with forgery in the fourth degree in violation of N.J.S.A. 2C:21-1a(2), and knowingly falsifying or tampering with a record in violation of N.J.S.A. 2C:21-4a.

Ames further identified Exhibit S-5 as the Judgment of Conviction against the Respondent dated March 22, 2013. Ames testified that the Respondent pleaded guilty to and was convicted of forgery in the fourth degree in violation of N.J.S.A. 2C:21-1a(2).

Ames obtained information regarding the Respondent's criminal probation. He explained that Exhibit S-6 is a letter from the Respondent's probation officer to the Respondent dated May 15, 2015, advising that she was sentenced to a term of probation for a period of one year. The probation officer's letter further states that the Respondent had completed her term of probation, her case was closed on March 25, 2014, and that she had satisfied all financial obligations.

Ames stated for the record that Exhibit S-3 is a letter dated July 2, 2015 from the REC to the Respondent denying her application for reinstatement of her real estate salesperson license.

Upon questioning by the Commission, Ames testified that the forged letter (Exhibit S-2) could have facilitated the sale of 17 Elna Court, and that the Respondent would receive a commission. Ames stated that without the letter, the sale may have stalled and that the letter made the property more attractive.

#### **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 Audrey E. Pellegrini is a formerly licensed New Jersey real estate salesperson, most recently licensed with Property Shop, Inc., whose office is located at 943 Broadway, Bayonne, New Jersey. Her license was returned to the Commission on or about September 10, 2012, and has not been renewed or reinstated; and

2. On July 24, 2012, the Respondent was charged in Bayonne City Municipal Court with one count of forgery, in violation of N.J.S.A. 2C:21-1a(2) and one count of falsifying or tampering with records in violation of N.J.S.A. 2C:21-4a; and

3. The underlying conduct related to forging documents while acting in her capacity as an administrative assistant in the City of Bayonne's tax assessor's office in order to facilitate a closing on a property located at 17 Elna Court, Bayonne, New Jersey, that she listed as a real estate salesperson; and

4. On March 22, 2013, the Respondent was convicted of forgery, a crime of the fourth degree, in violation of N.J.S.A. 2C:21-1a(2). The Judgment of Conviction, Exhibit S-5, describes that Respondent was sentenced to probation for a period of one year, ordered to forfeit the commission on the sale of 17 Elna Court, Bayonne, New Jersey and ordered to forfeit her public employment; and

5. On June 24, 2015, the Respondent filed an application to reinstate her real estate salesperson's license. Question 1 on the application asked, "With the exception of motor vehicle violations, since your last New Jersey Real Estate License was last issued or renewed have you been convicted of a crime, misdemeanor, disorderly persons offense in the State of New Jersey, any other state or by the federal government, or are you presently on probation or parole?" The Respondent answered that question in the affirmative; and

6. The REC denied the Respondent's reinstatement application via letter dated July 2, 2015.

**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. The Respondent violated N.J.S.A. 45:15-17(e) because the conduct underlying her conviction demonstrates unworthiness, incompetency, bad faith and dishonesty; and

2. The Respondent violated N.J.S.A. 45:15-17(1) because the conduct underlying her conviction demonstrates fraud and dishonest dealing; and

3. The Respondent is not eligible to hold a real estate license based on N.J.S.A. 45:15-12.1 because she was convicted of forgery pursuant to N.J.S.A. 2C:21-1a(2) on March 22, 2013.

4. The Respondent's conviction demonstrates that she does not possess the requisite good moral character, honesty, integrity and trustworthiness that all candidates for licensure must possess pursuant to N.J.S.A. 45:15-9.

#### **DETERMINATION**

In arriving at the determination in this matter, the Commission took into consideration the testimony and credibility of the witness and the documentary evidence admitted during the course of the hearing. The Commission also considered the serious nature of the allegations.

Pursuant to N.J.S.A. 45:15-12.1, “[n]o license shall be issued by the commission to any person known by it to have been, within five years theretofore, convicted of forgery...” The Respondent was convicted of forgery in violation of N.J.S.A. 2C:21-1a(2), on March 22, 2013. She is ineligible for any real estate license within five years of that conviction.

The Real Estate Brokers and Salesperson Act, N.J.S.A. 45:15-1 to -42 (the “Act”), charges the Commission with the “high responsibility of maintaining ethical standards among real estate brokers and sales[persons]” in order to protect New Jersey real estate consumers. Goodley v. New Jersey Real Estate 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. v. New Jersey Real Estate Comm'n, 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 Ponsi, supra, at 532-533. Thus, the Commission has the power to suspend, revoke, or place on probation the license of any licensee for “any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty.” N.J.S.A. 45:15-17(e).

The facts in this case demonstrate that the Respondent was convicted of forgery on March 22, 2013. The Respondent was sentenced to one year of probation, and ordered to forfeit her public employment and forfeit \$3,937.50, which represented the Commission from the sale of 17 Elna Court, Bayonne, New Jersey. See Exhibit S-5. Her criminal actions took place within the scope of her employment with the City of Bayonne, and during the course of a real estate transaction in which the Respondent was the listing agent. The purpose of her conduct was to facilitate the closing of the 17 Elna Court property.

The conduct underlying the Respondent’s conviction was serious in nature and demonstrated unworthiness, bad faith, and dishonesty in violation of N.J.S.A. 45:15-17(e), and demonstrated fraud and dishonest dealing in violation of N.J.S.A. 45:15-17(l).

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 illegal activity; (4) injury to the public; (5) duration of the illegal activity or conspiracy; (6) existence of criminal actions or treble damages actions; and (7) past violations. Kimmelman, supra 108 N.J. at 137-139. Analysis of these factors in this matter requires imposition of a significant fine.

First, the Respondent demonstrated bad faith by forging a document from the City of Bayonne, where she worked as an administrative assistant, in order to gain an advantage in the sale of one of her listed properties. Second, no evidence was presented regarding Respondent's ability to pay a fine. Third, the Respondent illegally profited from her criminal conduct. By forging the document from the City of Bayonne, the Respondent received commission for the sale of the property in the amount of \$3,937.50. 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, supra, 29 N.J. Super. at 182. The public is harmed when individuals in a fiduciary position violate their responsibilities and fail to comply with the Commission's regulations. Consequently, the public's confidence in that individual as a real estate agent and the real estate industry as a whole is eroded. The Respondent 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, 138 (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 illegal activity appears to have involved a single transaction. Sixth, Respondent was convicted of a crime, sentenced to probation, and ordered to forfeit her public position and commission earned on the transaction.


Lastly, to the Commission's knowledge, there appears to be no prior violations of the real estate statute or regulations by the Respondent.

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

- A. Respondent Pellegrini's real estate salesperson's license shall be revoked for five years (5) years from the date of this Order.
- B. Respondent Pellegrini shall pay a fine to the REC in the amount of \$5,000.00 within 30 days from receipt of this Order.

SO ORDERED this 22<sup>nd</sup> day of March, 2017.

By: Linda Stefanik, President  
Eugenia K. Bonilla, Commissioner  
Michael Timoni, Commissioner

  
Robert L. Kinnibrew  
Executive Director  
New Jersey Real Estate Commission