

**NEW JERSEY REAL ESTATE COMMISSION**

NEW JERSEY REAL ESTATE	)	Docket No.: MER-17-002
COMMISSION	)	REC Ref. No.: 10001731
	)	
Complainant,	)	
	)	
v.	)	<b>FINAL ORDER OF</b>
	)	<b>DETERMINATION</b>
MICHAEL DIPLACIDO, a licensed	)	
New Jersey real estate salesperson	)	
(Ref. No. 1430792)	)	
	)	
Respondent.	)	

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**THIS MATTER** was heard by the New Jersey Real Estate Commission (“Commission”) at the Department of Banking and Insurance, State of New Jersey in the Real Estate Commission Hearing Room, 20 West State Street, Trenton, New Jersey on June 27, 2017.

**BEFORE:** Commissioners Linda K. Stefanik, Eugenia Bonilla, Sanjeev Aneja, Jacob Elkes, William Hanley, Denise M. Illes, and Kathryn Godby Oram.

**APPEARANCES:** John Rossakis, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission staff (“REC”). James P. Manahan appeared on behalf of Respondent Michael DiPlacido (“Respondent”).

**STATEMENT OF THE CASE**

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated December 9, 2016, 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 charges contained in the OTSC stem from the Respondent's conduct underlying a Consent Judgment addressing alleged violations of the New Jersey Debt Adjustment and Credit Counseling Act ("DACCA") and New Jersey Consumer Fraud Act ("CFA").

Prior to obtaining his real estate salespersons license, the Respondent was licensed as a mortgage lender by the New Jersey Department of Banking and Insurance ("Department"). In 2003, the Respondent became the majority partner and President of Best Interest Rate Mortgage Company, LLC ("BIRMCO"). As President of BIRMCO, the Respondent allegedly solicited loan modification services to distressed homeowners using a mailing made to appear as if it was sent from a government agency. Once homeowners contacted BIRMCO, the company demanded an up-front fee for its services, promising homeowners lower interest rates and monthly payments. Upon receipt of their fee, the employees of BIRMCO made little or no attempt to engage in mortgage modification services. In addition, the Respondent and his company were allegedly selling a service that it was not licensed to provide.

On July 10, 2009, a Verified Complaint was filed against the Respondent and BIRMCO by the Attorney General of the State of New Jersey, New Jersey Division of Consumer Affairs ("DCA") and the Commissioner of the Department. On October 25, 2011, the Respondent and BIRMCO entered into a Consent Judgment settling violations alleged in an Amended Complaint<sup>1</sup> ("Consent Judgment"). The terms of the agreement provide that entering into the Consent Judgment did not constitute an admission of any liability or wrongdoing of any kind by BIRMCO. Further, it provides that the Respondent and his co-defendants are forbidden from engaging in any business which is any way related to debt adjustment, mortgage loan modifications, or foreclosure relief services. The Respondent was also barred for a period of 10 years from applying for any

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<sup>1</sup> The Consent Judgment references an "Amended Complaint." However, an "Amended Complaint" was not entered into evidence, only the July 10, 2009 Verified Complaint was entered into evidence at the hearing.

license from the Division of Banking within the Department. In addition, the Consent Judgment required the Respondent to make a payment in the amount of \$250,000, which comprised consumer restitution, penalties and costs pursuant to the New Jersey CFA.

The OTSC in this matter alleges that this conduct underlying the Respondent's Consent Judgment is in violation of N.J.S.A. 45:15-17e and N.J.S.A. 45:15-17l because the Respondent's conduct demonstrates unworthiness, bad faith, dishonesty and dishonest dealing. Furthermore, the OTSC alleges that this underlying conduct demonstrates that the Respondent does not possess the good moral character, honesty, trustworthiness and integrity required for licensure, in violation of N.J.S.A. 45:15-9.

Following the filing of the Verified Complaint, the Respondent and his company stopped taking new clients and wound up all existing BIRMCO business. After BIRMCO ceased operations, the Respondent took and passed the New Jersey Real Estate Licensure Examination. In doing so, he completed Question #3 on the accompanying questionnaire ("Qualifying Questionnaire") that asked: "Have you ever had a real estate or other professional license, certification or similar credential revoked, suspended, surrendered in lieu of formal prosecution, or denied in the state of New Jersey or any other state?" The Respondent provided a negative response.

The OTSC alleges that by providing a negative response to Question #3 of the Qualifying Questionnaire, the Respondent failed to disclose any information regarding his previous status as a licensed mortgage lender in New Jersey, and his role in the conduct described in the Consent Judgment and his surrender of his mortgage lending license as a result thereof. Thus, the Respondent has demonstrated dishonesty and unworthiness for licensure, in violation of N.J.S.A. 45:15-17e. Furthermore, the OTSC alleges that the Respondent falsely represented that he has

never had a professional license surrendered in lieu of prosecution in the State of New Jersey, in violation of N.J.S.A. 45:15-17n.

The Respondent, through his attorney, James P. Manahan, Esq., filed a timely Answer on February 23, 2017, wherein he admitted to certain allegations and denied others that were set forth in the OTSC. Specifically, the Respondent denied that any findings, conclusions, or adjudications of unconscionable and deceptive business practices were ever made. Further, the Respondent noted that paragraph 24 of the Consent Judgment specifically stated that the matters were being settled upon the terms stated and that the "... Consent Judgment does not constitute any admission of liability or wrongdoing, either express or implied" by the Respondent or any other party. Further, the Respondent noted that the Consent Judgment did not prohibit, restrain, or restrict Respondent from applying for a New Jersey real estate license. Finally, Respondent noted that his response to Question #3 on Qualifying Questionnaire was at that time, and continues to be, truthful and accurate. Respondent's professional mortgage broker license was voluntarily surrendered by Respondent on February 17, 2010, more than 20 months prior to the Consent Judgment because Respondent's mortgage company ceased conducting business.

On February 28, 2017, after reviewing the pleadings, the Commission deemed this matter a contested case and directed that a hearing be scheduled. The hearing was scheduled for May 9, 2017. On May 8, 2017, the Respondent filed a Motion to Dismiss and appeared before the Commission to argue his motion on May 9, 2017. The motion was denied and the hearing was adjourned to June 27, 2017.

The hearing was conducted on June 27, 2017, at which time the following exhibits were admitted into evidence by the REC:

- S-1 New Jersey Real Estate Salesperson License Application submitted by the Respondent, dated December 23, 2013;
- S-2 Verified Complaint in Anne Milgram, et. al. v. BIRMCO, Dkt. No. MER-C-84-09, dated July 10, 2009;
- S-3 Certification of Licensed/Registered Status of BIRMCO, Michael DiPlacido, Albert/Alfred Branca and Duane Jones, dated September 17, 2010;
- S-4 Consent Judgment in Paula T. Dow, et. al. v. BIRMCO signed by Michael DiPlacido, Albert/Alfred Blanca, Duane Jones and BIRMCO, Dkt. No. MER-C-84-09, dated September 12, 2011;
- S-5 Consent Agreement and Order in Commonwealth of Pennsylvania Department of Banking, et. al. v. BIRMCO, Dkt. No. 090111, dated June 11, 2009;
- S-6 Consent Order In the Matter of BIRMCO, Commonwealth of Massachusetts, No. 2006-002, undated;
- S-7 Notice of Complaint, Order to Show Cause and Cease and Desist in State of New Hampshire Banking Department v. BIRMCO and Michael DiPlacido, Docket No. 10-117, dated April 12, 2011;
- S-8 State of Colorado, Assurance of Voluntary Compliance and Discontinuance, In re: Best Interest Rate Mortgage Company and Michael DiPlacido individually, dated October 26, 2009;
- S-9 Best Interest Rate Mortgage Company, LLC, Notice of Administrative Actions, Docket No. 10-1879-MR, Federal Register, Volume 75 Issue 247, dated December 27, 2010; and
- S-10 "Attorney General Announces Mortgage Fraud Lawsuits," News Release by the New Jersey Department of Law and Public Safety, Office of the Attorney General, dated July 15, 2009.

The following exhibit was entered into evidence by the Respondent:

- R-1 State of NJ, Schedule NJK-1 (Form NJ-1065), Partner's Share of Income for 2010.

## **TESTIMONY OF THE WITNESS**

### **Michael DiPlacido**

The Respondent testified on his own behalf at the hearing. The Respondent chronicled his career at BIRMCO, where he was an owner and President. He stated that he started the business in 2003 with three partners, Alan Branca, Steven Inforzato and later, Duane Jones. The Respondent stated that he originally owned 60 percent of the company, owning 66 percent by the time the business wound down in 2010. (Exhibit R-1). The Respondent further stated that, in its early stages, BIRMCO handled regular mortgages including refinancing and purchase mortgages, out of its New Jersey offices. He further stated that business quickly expanded and that BIRMCO was able to offer services in 10 states including, Pennsylvania, Idaho, Colorado and New Hampshire. Further, the Respondent stated that, at the peak of its success, in 2006, BIRMCO had over 100 employees processing 100 loans a month, at an amount of approximately \$25 million. As President of the company, the Respondent stated that he oversaw loan processing and finances.

The Respondent further stated that BIRMCO's business suffered when the mortgage industry collapsed in 2008, and that one of the partners, Duane Jones, suggested that BIRMCO start providing loan modifications services to bring in new business, while also helping struggling homeowners. After consulting with the law firm Flaster Greenberg, BIRMCO began to offer loan modification services, and it completed 3,000 loan modifications during its time in operation.

The Respondent stated that in June 2009 he received a Verified Complaint from the New Jersey Attorney General regarding BIRMCO's loan modification services alleging various violations, including engaging in deceptive business practices and the unlicensed practice of loan modification. (Exhibit S-2). Shortly afterwards, BIRMCO received similar complaints from Pennsylvania and Colorado. (Exhibits S-5 and S-8). The Respondent acknowledged that BIRMCO was operating in 10 different states during this time, but he could not remember which

of those states had also filed complaints against the company in addition to New Jersey, Pennsylvania and Colorado.

Regarding the allegations of deceptive business practices, the Complaints specifically alleged that the marketing materials BIRMCO was using to solicit distressed homeowners were made to look like they came from a government agency (Exhibit S-2, ¶21; Exhibit S-8, ¶5-7). The Respondent testified that, at that time, Alan Branca was the partner who oversaw marketing internally; however, BIRMCO also hired Red Clay Media (“Red Clay”), a direct marketing firm, to assist with their marketing needs. He further stated that BIRMCO had worked with Red Clay before, but when BIRMCO started providing loan modification services, its business relationship with Red Clay grew. Red Clay provided BIRMCO with a list of potential clients, including homeowners that were at least four months behind on their mortgage payments, and others chosen based on their credit history. Red Clay also provided the letters used to solicit business, written to look like it was being sent by a government agency, and Red Clay also did the mailings. The Respondent indicated that these letters were approved internally and paid for before being mailed out but that he did not work with Red Clay directly.

The Respondent stated that he examined the two advertisements sent by BIRMCO that were central to allegations of deceptive business practices in New Jersey, Pennsylvania and Colorado. (Exhibits S-2 and S-8 Exhibit A). In reviewing the advertisement titled “Form 008-S,” the form used to solicit homeowners in Pennsylvania, the Respondent admitted that he did not know what the title on the advertisement meant. He noted that the disclaimer appearing on the bottom of the document is much smaller in font than the font used elsewhere. He also noted that the names of government programs appear on the advertisement, but that BIRMCO’s name does not appear anywhere. Further, a phone number is provided on the document that the Respondent

admitted was most likely BIRMCO's. He stated that when consumers called the number, the company was clear that BIRMCO was not a government agency. In reviewing the advertisement used to solicit consumers in Colorado, a variation of Form 008-S, the Respondent noted that while the name "BIRMCO" does appear, the full name of the company does not. In addition, the Respondent acknowledged that the form is titled PAYMENT REDUCTION NOTIFICATION and is formatted to look like a government form. The Respondent acknowledged that a "Reference Number" appears on document. He also stated that he was not sure to what this number referred, but suggested that it may have been used by Red Clay to integrate incoming calls from customers to BIRMCO's system. Lastly, the Respondent stated that he was sorry he used these forms and realizes he made an error and a poor business judgment by using them.

The Respondent testified that the Complaints accused BIRMCO of unlicensed debt adjustment. (Exhibit S-2, ¶15-17 and Exhibit S-8, ¶8-9). The Respondent further testified that in 2009 there was a crackdown on loan modifications and a new law was passed that only allowed attorneys to provide such services. The Respondent testified that his attorney at Flaster Greenberg had reached out to the Department. Upon receipt of the Complaint, the Respondent stated that BIRMCO, and its attorneys at Flaster Greenberg, cooperated with the State's investigation. The Respondent testified that Flaster Greenberg communicated with the State via phone and email and that, eventually, State officials came to the firm to better understand BIRMCO's operations.

The Respondent spoke briefly about the loan modification process at BIRMCO. He stated that when a customer that was three to four months behind on their mortgage payments called, the customer would have to explain to a BIRMCO employee the type of hardship they were facing. The employee would then instruct the customer to collect W2s, paystubs and provide a hardship letter that BIRMCO would submit to the customer's lender. The Respondent testified that



BIRMCO would then argue the customer's case that their mortgage should be modified, and that BIRMCO's role was to act as an intermediary between the borrower and the lender to make mortgage payments more affordable for the borrower.

The Respondent testified that he volunteered to settle a number of cases filed against himself and BIRMCO. He testified that he had read and understood the terms of all agreements prior to signing and that he would not have agreed to consent without these terms being included. The Consent Judgment in New Jersey was signed in October 2011 and the Respondent read Paragraph 24 of the agreement into the record:

The Parties consent to the entry of this Consent Judgment for the purposes of settlement only and this Consent Judgment does not constitute any admission of liability or wrongdoing, either express or implied, by Settling Defendants or any other party.

The Respondent summarized the conditions in the Consent Agreement, including that he and the other named parties would pay restitution to customers, and that he was not to seek a license from the Division of Banking in the Department for a period of 10 years. The Respondent reiterated that he was familiar with similar terms in the agreements he signed in Colorado and Pennsylvania and that without these terms, he would not have agreed to consent.

The Respondent testified that while BIRMCO was providing traditional mortgages, they did not receive a single complaint. When they began providing loan modifications, they received a total of 112 complaints across all of the geographic areas in which it served. The Respondent stated that the complaints were being made by individuals who were unhappy with their loan modifications. Furthermore, BIRMCO and the Respondent paid restitution to these individuals pursuant to the terms of the Consent Judgment.

The Respondent also stated that while BIRMCO was never directed to cease operations, after conversing with inside counsel, it ceased taking new business and worked to speedily close

all of its existing loan modification files. Respondent testified that BIRMCO and the Respondent's licenses did not expire until 2011, but once their files closed, the Respondent and BIRMCO opted to voluntarily surrender their licenses to the Division of Banking in 2010.

The Respondent also testified regarding BIRMCO losing its Federal Housing Authority ("FHA") approval. The Respondent stated that BIRMCO lost FHA approval because it failed to notify the United States Department of Housing and Urban Development ("HUD") that it had ceased doing business in Idaho and Colorado.<sup>2</sup> (Exhibit S-9). The Respondent also stated that by this time, BIRMCO had wound up its files.

When asked to provide additional information as to why the Respondent voluntarily surrendered his license, the Respondent stated that business operations ceased due to increased scrutiny by the Department following the receipt of the Verified Complaint in 2009. Shortly after receipt of the complaint, BIRMCO examined their options and concluded they had no other choice than to stop taking on new business. The Respondent emphasized that this decision was made well in advance of the Consent Judgment, and was not a condition to the agreement. The Respondent testified that BIRMCO worked diligently to close all open files, and once all existing loan modifications were complete, BIRMCO shut its doors in February 2010 and surrendered its license. The Respondent stated that he has anguished mentally, physically and financially due to his involvement with the loan modification practice, and that he started experiencing physical pain in his arm. He also testified that he had to have a stent put in due to stress at the age of 48.

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<sup>2</sup> The Notice of Administrative Action in the Federal Register (Exhibit S-9) states that the Board of HUD approved this administrative action to permanently withdraw BIRMCO's FHA approval based on BIRMCO's failure to notify HUD that it had been excluded from doing business in Idaho and Colorado; BIRMCO improperly used a simulated government form implying endorsement by the FHA; and because BIRMCO failed to obtain required state licenses to operate in the states of Idaho and Colorado.

The Respondent further testified that when completing the Qualifying Questionnaire for the real estate exam, he did not consider the terms of his Consent Judgment in answering Question #3. He answered the question truthfully and he helped good people get good loan modifications during that time. He stated that if he was asked Question #3 now, he would provide the same answer.

The Respondent further testified about his career since leaving BIRMCO and leaving the loan modification business. From 2010 to 2012, the Respondent was the owner of a Muscle Maker Grill in Cherry Hill. He sold the business for a loss in 2012. Thereafter, he opened two self-serve frozen yogurt stores in Northeast Philadelphia, PA and Glassboro, NJ. In 2013, he decided to become a licensed real estate agent and work full-time. In the first nine months, he managed a Keller Williams office in Northeast Philadelphia as a team leader. He was not actively selling real estate in this capacity but was responsible for the day to day operations at the office, including maintaining the calendar. In April 2015, he transferred to a Keller Williams office in Washington Township where he worked as a productivity coach for four months. He testified that he then left coaching to start actively selling properties full-time, and that 2016 was his first full year as an agent. The Respondent testified he sold \$7.4 million in property in 2016 from 50 real estate transactions, working seven days a week. He testified that he expects to exceed these numbers this year. Lastly, the Respondent testified that he has not had any complaints while working in this capacity and prides himself on his customer service.

## **FINDINGS OF FACT**

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. Respondent Michael DiPlacido is a licensed New Jersey real estate salesperson, who was first licensed on January 2, 2014, and is currently licensed with Washington Realty Partners LLC, d/b/a Keller Williams Realty, Millville, whose office is located at 905 West Main Street, Millville, New Jersey, 08332.
2. Prior to being licensed as a real estate salesperson, the Respondent was an owner and president of BIRMCO.
3. BIRMCO was licensed as a mortgage lender by the Department from May 1, 2003 until its license was surrendered on February 17, 2010.
4. The Respondent was licensed as a mortgage lender by the Department from May 1, 2003 until his license was surrendered on February 17, 2010.
5. On October 25, 2011, the Respondent, along with BIRMCO and two other BIRMCO employees as co-defendants, entered into a Consent Judgment in settlement of various alleged violations of the New Jersey DACCA and the New Jersey CFA filed against the same by the Office of the Attorney General of the State of New Jersey, the New Jersey DCA and the Department.
6. The conduct underlying the Consent Judgment concerned allegations of unconscionable and deceptive business practices related to BIRMCO's activity as an unlicensed debt adjuster.

7. The Consent Judgment was signed in October 2011, and Respondent made no admissions concerning any allegations in the Amended Complaint.<sup>3</sup> Specifically, the Consent Judgment provides that:

The Parties consent to the entry of this Consent Judgment for the purposes of settlement only and this Consent Judgment does not constitute any admission of liability or wrongdoing, either express or implied, by Settling Defendants or any other party.

8. No factual allegations are set forth in the Consent Judgment. The terms of the Consent Judgment provide that the Respondent is forbidden from engaging in any business which is any way related to debt adjustment, mortgage loan modifications, or foreclosure relief services. The Respondent was also barred for a period of 10 years from applying for any license from the Division of Banking within the Department. In addition, the Consent Judgment provided for monetary relief whereby the Respondent agreed to a settlement of the action in the amount of \$250,000, with \$125,000 payable within 60 days of the effective date (i.e., October 25, 2011), but the balance of Respondent's settlement amount was to be suspended and automatically vacated on October 25, 2014 (i.e., three years from the date of the entry of the Consent Judgment) if Respondent complied with specified conditions.
9. On or about December 17, 2013, the Respondent passed the New Jersey Real Estate Licensure Exam, and provided a negative response to Question #3 on the Qualifying Questionnaire, which reads: "Have you ever had a real estate or other professional license, certification or similar credential revoked, suspended, surrendered in lieu of formal prosecution, or denied in the state of New Jersey or any other state?"

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<sup>3</sup> As noted above, a copy of the Amended Complaint was not offered into evidence; thus, the Commission is not aware of the exact nature of the allegations set forth in the Amended Complaint.

## 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 as summarized above:

1. There is insufficient evidence to support a finding that the Respondent's conduct underlying the Consent Judgment demonstrates unworthiness, bad faith and dishonesty, in violation of N.J.S.A. 45:15-17e.
2. There is insufficient evidence to support a finding that the Respondent failed to disclose any information regarding his previous status as a licensed mortgage lender in New Jersey, his role in the conduct described in the Consent Order,<sup>4</sup> and his surrender of his mortgage lending license, in violation of N.J.S.A. 45:15-17e (conduct demonstrating dishonesty and unworthiness).
3. There is insufficient evidence to support a finding that the Respondent's conduct underlying the Consent Judgment is in violation of N.J.S.A. 45:15-17l (conduct constituting dishonest dealing).
4. There is insufficient evidence to support a finding that the Respondent falsely represented that he has never had a professional license surrendered in lieu of prosecution in the State of New Jersey, in violation of N.J.S.A. 45:15-17n.
5. There is insufficient evidence to support a finding that the Respondent's conduct underlying the Consent Judgment demonstrates that the Respondent does not possess the good moral character, honesty, trustworthiness and integrity required for licensure, in violation of N.J.S.A. 45:15-9.

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<sup>4</sup> Assuming that "Consent Order" is a typographical error and is referring to the Consent Judgment discussed herein, there is no conduct described in the Consent Judgment. The Consent Judgment sets forth only the terms of resolution and specifically provides that it does not constitute any admission of liability or wrongdoing, either express or implied, by Respondent or any named Defendants or any other party.

## DETERMINATION

At the conclusion of the hearing and executive session in this matter, the Commission voted to find that there is insufficient evidence to support findings of the violations alleged in the OTSC. In arriving at the determination in this matter, the Commission took into consideration the pleadings, the testimony of the witness, and the undisputed documentary evidence admitted during the course of the hearing.

The OTSC in this matter alleges that the conduct underlying the Respondent's Consent Judgment demonstrates unworthiness, bad faith, dishonesty and dishonest dealing, in violation of N.J.S.A. 45:15-17e and N.J.S.A. 45:15-17l. Furthermore, the OTSC alleges this underlying conduct demonstrates that the Respondent does not possess the good moral character, honesty, trustworthiness and integrity required for licensure, in violation of N.J.S.A. 45:15-9.

The REC relies primarily on a Verified Complaint and Consent Judgment as evidence of the Respondent's nefarious conduct. A closer review of the documents, however, reveals that the Consent Judgment expressly states that there is no admission of guilt on the part of the Respondent in agreeing to the terms set forth therein.<sup>5</sup> Moreover, the Verified Complaint, admitted into evidence as S-4, appears to have been superseded by an Amended Complaint, which was not admitted into evidence. Specifically, the Consent Judgment, page 2, indicates that "the Caption in this Amended Complaint erroneously listed Alfred Banca as Albert Branca..." The Verified Complaint (S-2) lists only BIRMCO as a defendant and contains specific allegations as to BIRMCO only. The Respondent is not a named defendant in this document; thus, the Commission is unaware as to the alleged specific wrongful conduct of the Respondent alleged in any Amended

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<sup>5</sup> S-2 states: "The Parties consent to the entry of this Consent Judgment for the purposes of settlement only and this Consent Judgment does not constitute any admission of liability or wrongdoing, either express or implied, by Settling Defendants or any other party."

Complaint.<sup>6</sup> The Consent Judgment (S-4) lists BIRMCO, Respondent, and others as defendants; however, the Consent Judgment does not contain any recitation of alleged wrongful conduct and the Amended Complaint was not entered into evidence; thus, the Commission is unaware of the specific allegations against those defendants, including the Respondent.

Similar documents were presented to further substantiate the Respondent's conduct, including an Assurance of Voluntary Compliance and Discontinuance executed in Colorado, and a Consent Agreement and Order executed in Commonwealth of Pennsylvania v. BIRMCO. However, a closer inspection of these documents reveals that the Consent Agreement and Order executed in Pennsylvania names only BRIMCO. The Respondent is mentioned by name once, noting that he held the position of President of BRIMCO. (Exhibit S-5, ¶8). Furthermore, both Pennsylvania's Consent Agreement and Order and Colorado's Assurance of Voluntary Compliance contain clauses wherein by signing the agreement the Respondent admitted no wrongdoing.<sup>7</sup> While the Commission has serious concerns about the conduct alleged; the violations contained in the OTSC are based solely on allegations that have not been substantiated. Without independent evidence of the Respondent's conduct, there is insufficient evidence to find violations of N.J.S.A. 45:15-17e, N.J.S.A. 45:15-17l, and N.J.S.A. 45:15-9.

Next, the OTSC alleges that by providing a negative response to Question #3 of the Qualifying Questionnaire, the Respondent failed to disclose any information regarding his previous status as a licensed mortgage lender in New Jersey, his role in the conduct described in the Consent Order, and his surrender of his mortgage lending license as a result thereof, the

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<sup>6</sup> The Respondent does admit in his Answer to the OTSC that some time prior to being employed as a real estate salesperson, the Respondent was an owner and president of BIRMCO.

<sup>7</sup> S-8 includes a clause that states: "The Respondent denies any wrongdoing, including specifically any violation of the CCPA, and this Assurance shall not be deemed an admission by Respondent of any violation for any purpose." Similarly, S-5 includes a clause that states: "BIRMCO, without admitting wrongdoing, consents to the entry of this Order to resolve issues contained herein."



Respondent has demonstrated dishonesty and unworthiness for licensure, in violation of N.J.S.A. 45:15-17e. Furthermore, the OTSC alleges that the Respondent falsely represented that he has never had a professional license surrendered in lieu of prosecution in the state of New Jersey, in violation of N.J.S.A. 45:15-17n.

Question #3 asks applicants whether they have ever had a real estate or other professional license, certification or similar credential revoked, suspended, surrendered in lieu of formal prosecution, or denied in the state of New Jersey or any other state. In response to this question, the Respondent answered, "No." No evidence has been presented that indicates that the Respondent's mortgage lending license was surrendered in lieu of prosecution. In fact, Exhibit S-3, admitted into evidence by the REC, indicates that the Respondent's license was surrendered on February 17, 2010, six months prior to its expiration on July 31, 2010. Furthermore, the Respondent surrendered his license a full 18 months prior to the execution of the Consent Judgment in this matter, which was signed on October 25, 2011. The Respondent's testimony reflects that he surrendered his mortgage lending license prior to his renewal date because BIRMCO was no longer doing business, not in lieu of prosecution. No evidence to the contrary was presented at the hearing. Thus, there is insufficient evidence to find violations of N.J.S.A. 45:15-17e and N.J.S.A. 45:15-17n.

As there is insufficient evidence to support finding any violations alleged in this matter, no action will be taken against the Respondent's real estate salespersons license nor is any monetary penalty assessed.

SO ORDERED this 28<sup>th</sup> day of November, 2017.

By: Linda K. Stefanik, President  
Eugenia Bonilla, Vice President  
Sanjeev Ancja, Commissioner  
Jacob Elkes, Commissioner  
William Hanley, Commissioner  
Denise M. Illes, Commissioner  
Kathryn Godby Oram, Commissioner



Patrick J. Mullen  
Patrick J. Mullen  
Director of Banking

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