

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE)	Docket No.: SOM-16-027
COMMISSION,)	REC Ref No.: 10004657
)	
Complainant,)	
)	
v.)	
)	FINAL ORDER OF
TERRY SHAPIRO, a licensed New)	DETERMINATION
Jersey real estate salesperson)	
(Ref. No. 1645890),)	
)	
)	
Respondent.)	

THIS MATTER was heard 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 April 4, 2017 and April 25, 2017.

BEFORE: Commissioners Linda Stefanik, Sanjeev Aneja, Denise Illes, Kathryn Godby Oram, and Harold J. Poltrock.

APPEARANCES: John Rossakis, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission staff (“REC”). Robert Ramsey, Esq. (“Ramsey”) appeared on behalf of Respondent Terry Shapiro (“Respondent”). The Respondent was present.

STATEMENT OF THE CASE

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated December 2, 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 OTSC alleges that the Respondent violated N.J.S.A. 45:15-17n in that he procured a real estate license by fraud, misrepresentation or deceit when he falsely represented on his 2016 real estate salesperson license application questionnaire that he had not held a professional license that had been revoked or suspended. It further alleges that the Respondent also violated N.J.S.A. 45:15-9 in that he has failed to demonstrate that he possesses the good moral character required for licensure.

The Respondent, who was initially representing himself pro se, filed a timely Answer dated January 3, 2017, wherein he admitted to many of the factual allegations set forth in the OTSC but disputed that the conduct at issue constituted violations as alleged in the OTSC. On February 14, 2017, after reviewing the pleadings, the Commission deemed this matter a contested case and directed that a hearing be scheduled.

The hearing was conducted on April 4, 2017 and April 25, 2017, during which the following exhibits were admitted into evidence by the REC:

- S-1 May 27, 1994 New Jersey Supreme Court Disciplinary Review Board Decision and Recommendation IMO Terry Shapiro;
- S-2 November 1, 1994 New Jersey Supreme Court Order of Suspension IMO Terry L. Shapiro;
- S-3 January 31, 2001 New Jersey Supreme Court Disciplinary Review Board Decision IMO Terry L. Shapiro;
- S-4 July 5, 2001 New Jersey Supreme Court Order of Suspension IMO Terry L. Shapiro;
- S-5 December 16, 2011 New Jersey Supreme Court Disciplinary Review Board Decision IMO Terry L. Shapiro;
- S-6 March 20, 2012 New Jersey Supreme Court Order of Suspension IMO Terry L. Shapiro;
- S-7 April 19, 2016 New Jersey Supreme Court Order of Disbarment by Consent IMO Terry L. Shapiro; and

S-8 April 19, 2016 Real Estate Salesperson License Application, including the Questionnaire and Respondent's Responses to the Questionnaire.

The following exhibits were entered into evidence by the Respondent:

- R-1a March 26, 2017 letter from James DiOrio of Berkshire Hathaway HomeServices;
- R-1b Letter dated March 28, 2017 from Ellen Brown of REMAX;
- R-1c Letter dated March 20, 2017 from Joan Rothbard of Recreation Picnic Services, Inc.;
- R-1d Letter dated April 1, 2017 from Stacey B. Singer of Visual Marketing Industries;
- R-1e Undated letter from Kenneth S. Packman of Kenneth S. Packman, DDS;
- R-1f Letter dated March 28, 2017 from Jeffrey Simms, Esq. of Jeffery Simms, PC;
- R-1g Letter dated March 24, 2017 from Richard H. Stein of Randall & Stein, PA; and
- R-1h Letter dated April 17, 2017 from Scott Margolis of JMP Securities LLC.

TESTIMONY OF THE WITNESS

Terry Shapiro

The Respondent testified on his own behalf. He chronicled his career as an attorney, enumerating the multitude of awards he won and the recognition he received while he was practicing personal injury, medical malpractice, and products liability from 1974 to 2012.

The Respondent testified concerning the events that led to the first suspension of his New Jersey license to practice law in 1994.¹ (Exhibit S-1). At the time, the Respondent was

¹ Exhibits S-1 and S-2 provide that the Respondent was suspended for a period of six months, effective December 1, 1994, for the following violations: negligent misappropriation of client funds (in violation of RPC 1.15); conduct

representing a family that won a structured settlement in a catastrophic injury case. There was a Medicare lien against this settlement that he was in the process of negotiating. The Respondent testified that during these negotiations, he had asked his office manager to set aside approximately \$46,000 that were appropriated from the settlement for resolving the lien, in “our account” while he worked out the details of the settlement. The Respondent stated that the office manager mistook his instruction to mean that she should deposit the funds into the firm’s business account. Later that same day, the office manager presented the Respondent with a number of checks that needed his signature, including a check for \$46,000 of his client’s structured settlement. The Respondent testified that he signed the check by accident. That check was deposited into the firm’s business account. A junior associate at the firm noticed the error and alerted the Respondent immediately. The Respondent testified that the error was reversed within 24 hours. At the junior associate’s request, the Respondent self-reported the ethics violation and an investigation ensued that resulted in the first suspension of his license.² (Exhibit S-2).

The Respondent detailed the consequences of this first disciplinary action as follows: that his suspension took a toll on his reputation and business; that he was suffering psychologically and sought treatment; and that he was diagnosed with an “aversion to bookkeeping,” so he was unable to reconcile his firm’s trust accounts himself for the rest of his career as an attorney. Because of his inability to maintain his financial records, the Respondent testified that he faced several disciplinary actions, including suspensions in 2002 and 2014 and

involving deceit and misrepresentation (in violation of RPC 8.4(c)); and conduct prejudicial to the administration of justice (in violation of RPC 8.4(d)).

² Many of the details to which the Respondent testified regarding his initial suspension contradict the facts as presented in Exhibit S-1, May 27, 1994 New Jersey Supreme Court Disciplinary Review Board Decision, which provides a thorough account of the conduct underlying the Respondent’s 1994 suspension.

eventually, disbarment in 2016. The Respondent emphasized that these disciplinary actions were due solely to his aversion to bookkeeping that resulted in his failure to reconcile trust accounts as required by law, characterizing them simply as an accounting problem.

The Respondent also testified regarding the events that led to his 2001 suspension. (Exhibit S-3). The Respondent confirmed that in 1996, his law clerk submitted a Certification of Services for her work on a legal matter, reflecting that she had worked 36.9 billable hours at a rate of \$90 per hour. The Respondent changed the Certification to reflect that he had completed the 36.9 billable hours at his increased rate of \$225 per hour. This second version of the Certification was submitted to his adversary who, the Respondent testified, felt the rate was fair and reasonable and did not constitute overbilling, and was actually on the low side. This conduct served as the basis of a three-month suspension from the practice of law.³ (Exhibit S-4).

The Respondent testified briefly about the events that occurred just before his final suspension in March 2012. The Respondent testified that in the days before the 2012 Order was issued that: he suffered a major heart attack; he was rushed to the hospital to undergo quadruple bypass surgery, where he suffered a stroke; he came out of surgery partially blind, with speech and memory impairments; he worked hard at the Kessler Institute to recover and was able to return to work in 2016; but his practice had been closed by his staff in his absence following his sudden heart attack and suspension.⁴ The Respondent testified he never returned to his offices.

³ Exhibits S-3 and S-4 provide that the Respondent was suspended for a period of three months, effective August 1, 2001 and until the further order of the Supreme Court, for the following violations: conduct involving dishonesty, fraud, deceit or misrepresentation (in violation of RPC 8.4(c)).

⁴ The Respondent did not specifically address the events that led to his 2012 suspension from the practice of law, however, Exhibits S-5 and S-6 were entered into evidence by the REC without objection. Exhibits 5 and 6 provide that the Respondent was suspended for a period of three years effective on June 4, 2012 for the following violations: charging an unreasonable fee (in violation of RPC 1.5(a)); charging an excessive contingency fee in a personal injury matter (in violation of RPC 1.5(c)); dividing a fee between lawyers not in the same firm when the division exceeded the fees allowable under Rule 1:21-7 (in violation of RPC 1.5(e)); failure to safeguard client trust funds and negligent appropriation of client funds (in violation of RPC 1.15(a)); failure to promptly deliver to a client or

By 2016, the Respondent's three-year suspension from the practice of law had ended and the Respondent applied to have his law license reinstated. The Office of Attorney Ethics requested a copy of the Respondent's firm's 2012 financial records, which are required to be maintained for a period of five years, before the Respondent could be reinstated. The Respondent indicated that since his staff had closed his office without his supervision in 2012, he was unaware of what had happened to his firm's records. The Respondent testified that while he made a diligent effort to locate these documents in 2016 for the purpose of producing them to the Office of Attorney Ethics, he felt he was not responsible for them since he was not there to ensure that they were maintained properly. When the Respondent was unable to satisfy the Office of Attorney Ethics' request, the Respondent consented to be disbarred as an attorney by the Supreme Court of New Jersey. (Exhibit S-7).

The Respondent testified that he was 67 years old when he was disbarred, and that he had spent his adult years as a practicing attorney and had no other skill set. After speaking to his attorney, Ramsey, the Respondent was inspired to attend classes at the Professional School of Business in Milburn, New Jersey, in order to become a real estate agent. The Respondent testified that he had completed the required pre-licensure courses and the real estate exam by April 2016. As part of the real estate license application, the Respondent was asked to complete a questionnaire that included the following question:

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 New Jersey or another state?

The Respondent answered "No," which he indicated was truthful as he understood the question.

third person funds or other property they are entitled to receive (in violation of RPC 1.15(d)); and recordkeeping violations (in violation of Rule 1:21-6).

Several days later, the Respondent contacted Ramsey via email to ensure he had answered the questionnaire accurately. The Respondent stated that he believed that since his law license had not been suspended or revoked “in lieu of prosecution,” the answer he provided on the questionnaire was correct. The Respondent testified that Ramsey agreed, but that Ramsey suggested the Respondent contact REC Investigator Clark Masi (“Masi”).

The Respondent testified that he contacted Masi for the first time by telephone on April 28, 2016. The Respondent stated that he informed Masi that he had been a licensed attorney until 2016 and that he had a disciplinary history associated with his law license. The Respondent also stated that he emphasized that the conduct that served as the basis for his disciplinary history had not been dishonest or criminal in nature and was related to recordkeeping errors. The Respondent testified that Masi requested additional information, specifically, information regarding the events that led to his being disbarred. By letter dated May 2, 2016, the Respondent sent Masi an unsigned copy of the questionnaire, his resume, a copy of an email exchange between himself and Ramsey that emphasized the Respondent’s desire to make truthful disclosure of his disciplinary history to the REC, and a copy of the 2016 Order of disbarment. (Answer, Attachment: May 2, 2017 Letter).

The Respondent stated that when he had not heard back from Masi regarding his inquiry, he signed the questionnaire and submitted it to the REC sometime between May 2 and May 20, 2016. He stated that he did not follow up with Masi before submitting his application because he felt he had been thorough. On May 26, 2016, the Respondent received his real estate salesperson license.⁵

⁵ In his opening statement, Regulatory Officer Rossakis stated that Masi had contacted the license processor to request that Respondent’s license not be processed because Masi was investigating Respondent’s disciplinary history. However, the license processor became suddenly ill and passed away. The license processor’s replacement,

On June 16, 2016, Masi contacted the Respondent again, requesting more information about his disciplinary history. The Respondent reiterated to Masi that these were merely recordkeeping violations and that no criminal conduct, theft or deception had occurred. The Respondent testified that Masi again asked the Respondent to provide more information. The Respondent replied by letter dated July 17, 2016, wherein he submitted only the same documents he had already provided to Masi in his May 2, 2016 letter. (Answer, Attachment: June 17, 2016 Letter).

The Respondent asserted that he did not procure his real estate license by fraud or deceit. He stated that he wanted make a truthful, accurate and complete disclosure to Masi. However, the Respondent admitted that he did not disclose that his 1994 law license suspension involved conduct prejudicial to the administration of justice or that his 2001 law license suspension involved a finding of dishonesty, fraud, deceit or misrepresentation because Masi did not specifically ask for that information. In fact, the Respondent testified that he did not disclose any information about the suspensions that led to his disbarment because that information was not specifically requested.⁶ In addition, the Respondent acknowledged that the Order of Disbarment he had given to Masi was the only document related to his disciplinary history that failed to provide any context as to the Respondent's conduct. Respondent acknowledged that his disbarment was "probably" related to his prior suspensions. Lastly, he acknowledged that the Disciplinary Review Board's 1994, 2001, and 2012 Decisions would have provided Masi with

not knowing why the license had been set aside, went ahead and processed it, which is how Respondent obtained his license.

⁶ By letter dated June 17, 2016, the Respondent stated the following: "You requested a more specific explanation of the reason the Supreme Court entered its Order on April 20, 2016. I stated to you during our June 16th telephone conversation that I failed to complete quarterly reconciliations of my trust account... There were no client complaints, no criminal conduct, theft or dishonesty."

the information he sought, but because Masi had not asked for them specifically, he did not provide them.

The Respondent insisted that because his license to practice law had not been “revoked or suspended in lieu of prosecution,” his answer of “no” to question #3 on the questionnaire was truthful.⁷ The Respondent further insisted that he interpreted the use of the word “prosecution” in Question #3 to mean criminal prosecution only, which he believes is a reasonable interpretation. The Respondent stated that the way the question was worded was confusing, and that there is a “more fair” to word the inquiry.⁸ Furthermore, the Respondent stated that he relied on the advice of his attorney in ensuring the answer to Question #3 was truthful, and that he had “gone one step further” by contacting Masi because he knew that this was his “last chance” and he wanted to make sure he had “done this right.” He testified that had he gotten further clarification from Masi, he may have answered the question differently. Lastly, the Respondent stated that because the Commission knew he was a disbarred attorney, he was unsure if he would have gotten his real estate license, had he answered the question affirmatively.

The Respondent testified at length about his new career as a real estate salesperson. Since he received his license on May 26, 2016, he has been employed full time at Berkshire Hathaway in Livingston, NJ. He has already completed all the continuing education courses required by the Commission. He further stated that he loves his new job and enjoys commercial work because it allows him to utilize his legal background. The Respondent also stated that he

⁷ At this point in the testimony, the Commission spoke directly to Ramsey to ascertain if he interpreted the question the same way as the Respondent had. Ramsey noted that the Respondent could still face criminal prosecution for his ethical violations as an attorney so he agreed with the Respondent’s interpretation.

⁸ The Respondent testified that Question #3 should be modified as follows: “In between each of those questions you could but the word “or.” Have you ever been suspended or revoked or whatever the other thing is. So that the person reading it understands that you are asking separately each of those questions. And the word ‘in lieu of prosecution,’ to me as a lawyer, and to my attorney upon whom I rely, to me it meant a criminal prosecution. It is criminal.”

has worked hard to get where he is now professionally, and emphasized how much he loves his new job. The Respondent disclosed that his current broker of record and fellow employees at Berkshire Hathaway were not aware of his disciplinary history as an attorney, or any proceedings before the Commission, but that the broker who hired him had known about his disciplinary history. He stated that he had been selected by the most successful employee in his office to handle their accounts while they were on vacation.

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. The Respondent is a licensed New Jersey real estate salesperson, who was first licensed on May 26, 2016, and is currently licensed with PNJP LLC, d/b/a Berkshire Hathaway HomeServices, New Jersey Properties, whose office is located at 220 Davidson Avenue, Somerset, New Jersey, 08873.
2. The Respondent was licensed as an attorney in the State of New Jersey. He was admitted to the New Jersey Bar in 1974 and was permanently disbarred on April 19, 2016.
3. As a licensed attorney in the State of New Jersey, the Respondent was required to abide by the New Jersey Rules of Professional Conduct (“RPC”), as set forth by the New Jersey Supreme Court.
4. During his tenure as an attorney, prior to his permanent disbarment, the Respondent’s license to practice law was suspended on three separate occasions for various violations of the RPC.
5. In 1994, the Respondent’s law license was suspended for six months for negligent misappropriation of more than \$60,000 of client trust funds, in violation of RPC 1.15;

conduct involving deceit and misrepresentation for lying to an associate about the receipt of a fee to which the associate was entitled, in violation of RPC 8.4(c); and conduct prejudicial to the administration of justice by failing to comply with a court order, in violation of RPC 8.4(d).

6. In 2001, the Respondent's law license was suspended for three months for knowingly and intentionally submitting a false certification of services to his adversary, with the knowledge that this certification would be considered in determining his fee, in violation of RPC 8.4(c).
7. In 2012, the Respondent's law license was suspended for three years because of multiple ethics violations including, but not limited to, failing to safeguard client trust funds and negligent misappropriation of client trust funds, in violation of RPC 1.15(a); failing to promptly deliver to a client or third person funds or other property that they are entitled to receive, in violation of RPC 1.15(b); charging excessive fees in contingency cases, in violation of RPC 1.5(c); and recordkeeping improprieties in violation of RPC 1.15(d) and N.J. Ct. R. 1:21-6.
8. In a written decision by the Disciplinary Review Board of the Supreme Court of New Jersey dated December 16, 2011 related to the Respondent's 2012 license suspension, the Board highlighted the Respondent's failure to learn from past mistakes, his lack of civility and disrespectful conduct towards the Office of Attorney Ethics and special ethics masters involved, and the severity and multitude of violations as aggravating factors that warranted enhanced discipline.

9. On April 19, 2016, the New Jersey Supreme Court ordered the Respondent's permanent disbarment as an attorney-at-law in the State of New Jersey, pursuant to the tender of his consent thereto.
10. According to the Respondent, the 2016 disbarment was the result of his failure to abide by quarterly submissions of his attorney trust accounts to the Office of Attorney Ethics, as ordered by the New Jersey Supreme Court, as a condition of reinstatement from his law license suspension in 2012.
11. In connection with his 2016 application for real estate salesperson licensure questionnaire, the Respondent provided a negative response to Question #3, which asked, "Have you ever had a real estate or other professional license, certification or similar credential revoked, suspended, surrendered in lieu of prosecution, or denied in New Jersey or any other state?"
12. During a telephone call with REC Investigator Clark Masi on April 28, 2016, Masi specifically requested information regarding the events that led to Respondent being disbarred. The Respondent misrepresented to Masi that the conduct that served as the basis for his disciplinary history had not been dishonest or criminal in nature and was related to recordkeeping errors.
13. By letter dated May 2, 2016, the Respondent sent Masi an unsigned copy of the questionnaire, his resume, a copy of an email exchange between himself and his attorney, and a copy of the 2016 Order of disbarment.
14. When Respondent had not heard back from Masi following Respondent's May 2nd letter, Respondent signed the questionnaire and submitted it to the REC sometime between May 2 and May 20, 2016.

15. On June 16, 2016, Masi contacted the Respondent again, requesting more information about his disciplinary history. The Respondent again misrepresented to Masi that his disciplinary history involved mere recordkeeping violations.
16. The Respondent replied to Masi's request for more information about his disciplinary history by letter dated July 17, 2016, wherein Respondent submitted only the same documents he had already provided to Masi in his May 2, 2016 letter.
17. Respondent did not disclose to the REC that his 1994 law license suspension involved conduct prejudicial to the administration of justice or that his 2001 law license suspension involved a finding of dishonesty, fraud, deceit or misrepresentation.
18. Respondent did not disclose any information to the REC about the suspensions that led to his disbarment.

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's conduct is in violation of N.J.S.A. 45:15-17n, in that he procured a real estate license by misrepresentation when he falsely represented on his 2016 license application that he had not ever had a professional license revoked or suspended.
2. The Respondent's conduct is in violation of N.J.S.A. 45:15-9, in that he failed to demonstrate that he possesses the good moral character required for licensure.

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 Order of Determination. In arriving at the determination in this matter, the Commission took into

consideration the testimony of the witness and the documentary evidence admitted during the course of the hearing.

The Real Estate Broker and Salesperson 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 Commission is empowered to suspend and revoke the licenses of, and impose fines against, real estate licensees that commit any of the offenses enumerated in N.J.S.A. 45:15-17 or the real estate regulations. Maple Hill Farms, Inc. v. New Jersey Real Estate Comm’n, 67 N.J. Super. 223, 232 (App. Div. 1961); 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 New Jersey Real Estate Comm’n v. Ponsi, supra. at 532-533.

Thus, the Commission has the power to suspend, revoke, or place on probation the license of any licensee for procuring a real estate license by misrepresentation. N.J.S.A. 45:15-17n.

The OTSC alleges that the Respondent’s conduct is in violation of N.J.S.A. 45:15-17n, which prohibits “[p]rocurring a real estate license, for himself or anyone else, by fraud, misrepresentation or deceit.” Furthermore, the OTSC alleges that the Respondent failed to demonstrate that he possesses the good moral character required for licensure, pursuant to N.J.S.A. 45:15-9 (“The [license] applicant shall furnish evidence of good moral character ... The [C]ommission may make such investigation and require such proof as it deems proper and in the public interest as to the honesty, trustworthiness, character and integrity of an applicant.”)

Question 3 on the real estate license application asks as follows:

Have you ever had a real estate license or other professional license, certification or similar credential revoked, suspended, surrendered in lieu of prosecution, or denied in New Jersey or any other state?

The Respondent answered “no” to this question. However, the Respondent’s New Jersey license to practice law was suspended on three separate occasions and was subsequently permanently revoked.

The Respondent argues that the question was unclear and worded unfairly and that he answered truthfully as he understood the question. In addition, the Respondent insists that because his license had not been revoked or suspended “in lieu of prosecution,” his answer was truthful. The Respondent further insists that he interpreted “prosecution” only as it pertains to criminal actions. Respondent’s arguments are specious and ignore the plain language of the question. By answering “no” to Question 3, Respondent procured a real estate license by misrepresentation, in violation of N.J.S.A. 45:15-17n.

As the documentary evidence indicates, the Respondent was suspended on three separate occasions. In 1994, he was suspended for a period of six months for the negligent misappropriation of client funds; conduct involving deceit and misrepresentation; and conduct prejudicial to the administration of justice. In 2001, the Respondent was suspended for a period of three months for conduct involving dishonesty, fraud, deceit or misrepresentation. Lastly, in 2012, the Respondent was suspended for a period of three years for charging an unreasonable fee; charging an excessive contingency fee in a personal injury matter; dividing a fee between lawyers not in the same firm when the division exceeded the fees allowable under Rule 1:21-7; failure to safeguard client trust funds and negligent appropriation of client funds; failure to promptly deliver to a client or third person funds or other property they are entitled to receive;

and recordkeeping violations. The Respondent, following his disclosure to Masi, characterized these violations as mere “recordkeeping errors.” Given the severity of these numerous violations over many years, the Respondent’s characterization of his conduct in this way clearly constitutes misrepresentation and a failure to demonstrate good moral character as required by N.J.S.A. 45:15-9. In addition, the significant and numerous attorney ethics violations, in and of themselves, demonstrate that the Respondent lacks good moral character as required for real estate licensure pursuant to N.J.S.A. 45:15-9.

The Respondent made an attempt to demonstrate that he was being transparent about his disciplinary history when he contacted Masi, prior to submitting his application, to disclose that he had been disbarred as an attorney. At first blush, this appears to be true, however, a closer examination of the Respondent’s conduct reveals that the Respondent made every attempt to thwart Masi’s investigation and hide his past sanctions.

On May 2, 2016 and June 17, 2016, the Respondent submitted documents to assist in providing “additional information” as requested by Masi. However, only one document relevant to his disciplinary history was sent, namely, the 2016 Order wherein the New Jersey Supreme Court permanently revoked the Respondent’s license as an attorney-at-law. Upon closer inspection, it becomes evident that the 2016 Order does not provide any details as to why the Respondent was disbarred or any information pertaining to the three prior suspensions that underlie his disbarment. The Respondent repeatedly asserted that he did not provide this information because Masi did not specifically ask for it. However, the Respondent understood Masi’s request in his June 17, 2017 letter when he wrote: “You requested a more specific explanation of the reason the Supreme Court entered its Order on April 20, 2016. I stated to you during our June 16th telephone conversation that I failed to complete quarterly reconciliations of

my trust account... There were no client complaints, no criminal conduct, theft or dishonesty.” With this letter, the only relevant attachment submitted was the 2016 Order. The Respondent acknowledged that the 2016 Order did not provide Masi with any useful information for his investigation into the Respondent’s disciplinary history. The Respondent also admitted that he was concerned that if he answered application Question #3 in the affirmative, whether he would be granted a real estate license. This demonstrates, at best, an attempt to obfuscate the REC’s license application review, and at worst, intent to deceive the REC.

Taken together, these facts clearly demonstrate that the Respondent’s conduct constitutes a violation of N.J.S.A. 45:15-17n in that the Respondent procured his real estate license by misrepresenting his disciplinary history related to his license to practice law in New Jersey. Furthermore, the Respondent’s less than forthcoming responses to requests for information from Masi regarding his disciplinary history do not display the good moral character necessary for licensure under N.J.S.A. 45:15-9. In light of these findings, the Respondent’s real estate salesperson license shall be revoked for a period of three years. This penalty is appropriate, as his conduct demonstrates the type of unscrupulous behavior the Commission is charged to protect the public from. See New Jersey Real Estate Comm’n v. Ponsi, supra at 532-533. 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) the amount of profits obtained from the illegal activity; (4) any injury to the public;

(5) the duration of the illegal activity or conspiracy; (6) the existence of criminal or treble actions; and (7) any past violations. Id. at 137-139. Each of these factors is discussed below.

As previously discussed, the Respondent's conduct in his mischaracterization of his disciplinary history and his subsequent attempts to thwart Masi's investigation into that history demonstrate bad faith.

As to the second factor, the Respondent did not testify to or produce evidence of any circumstances that would render him unable to pay monetary penalties assessed.

The third factor examines the amount of profits obtained from the Respondent's conduct. In this case, Respondent obtained the ability to engage in real estate brokerage activity as a New Jersey real estate licensee. No evidence was presented as to the extent of the monies earned by the Respondent from when he was initially licensed on May 26, 2016 through the present.

Regarding the fourth factor, 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 fail to comply with Commission regulations. When a licensee is unable to conduct himself in accordance with the high standards expected of him and his profession, the public's confidence in the real estate industry is eroded. In this matter, the Respondent was unable to conduct himself in accordance with the high standards expected of him and those in his profession when he provided a false answer on his licensing questionnaire and went on to prevent Masi from learning the truth about his disciplinary history related to his previously held professional license as an attorney.

The Respondent attempted to characterize his missteps as an attorney to a REC investigator as accounting errors. However, the record reflects that his conduct as an attorney for

which he was disciplined was deceitful, dishonest, and fraudulent, and that such actions occurred numerous times over many years. As an attorney, the Respondent charged unreasonable fees, was negligent in the management of client trust funds and misappropriated client funds. In 2011, the Supreme Court Disciplinary Review Board noted that the Respondent failed to learn from past mistakes, lacked civility and was disrespectful towards the Office of Attorney Ethics. With this in mind, many of the rules that dictate the conduct of licensed real estate salespersons in New Jersey are similar to those the Respondent violated as an attorney under the Rules of Professional Conduct. As a real estate salesperson, the Respondent is obliged to conduct himself in an honest and trustworthy manner and demonstrate good moral character. In addition, he is required to properly maintain books and records relating to real estate transactions, place the interests of his clients before his own and would have fiduciary responsibilities to his clients that are essential to the public's confidence in the real estate industry. The Respondent's attempts to disguise his disciplinary history related to his law license, in addition to the conduct underlying that history, clearly displays 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). To allow the Respondent to hold a New Jersey real estate salesperson license in light of this information would be at odds with the Act and have an injurious effect on the public.

The fifth factor of the Kimmelman analysis is the duration of the illegal activity or conspiracy. As the documentary evidence clearly demonstrates, the Respondent maintained a

pattern of unethical behavior for the duration of his legal career, beginning in 1988 when was privately reprimanded, until he was disbarred in 2016. In the interim he was suspended on three occasions. This factor does not apply as to the misrepresentations he made on his questionnaire or to Masi.

Regarding the sixth factor, the Respondent has not been party to criminal or civil proceedings that the REC is aware of stemming from his conduct as a licensed attorney or because of the misrepresentations he made on the questionnaire or to Masi.

Lastly, there is no evidence of prior violations of real estate regulations by the Respondent since his license was granted in May 2016.


In light of the above Kimmelman analysis and based upon the violations the Commission has concluded that the Respondent committed, the Respondent shall pay a fine in the amount of \$1,000 for procuring his real estate license by misrepresenting the disciplinary history related to his license to practice law in New Jersey, in violation of N.J.S.A. 45:15-17n. This fine is fully warranted, not excessive, or unduly punitive, and is necessary to demonstrate the appropriate level of opprobrium for the Respondent's conduct. Moreover, this fine is consistent with prior Commission decisions. See, NJREC v. Charles Chichizola, Dkt. No. BER-15-018, Final Order (02/14/17) (Respondent fined \$500 per violation of N.J.S.A. 45:15-17n for procuring real estate salespersons license by misrepresentation); NJREC v. Kymberly Oakes, Dkt. No. OCE-10-014, Final Order (01/14/14) (Respondent fined \$1,000 for violations including N.J.S.A. 45:15-17n, procurement of a real estate license by fraud, misrepresentation or deceit).

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

- I. Respondent Shapiro's real estate license is revoked for a period of three years. Respondent shall not be eligible for any real estate license during the revocation period.
- II. Respondent Shapiro shall pay a fine in the amount of \$1,000 for his violation of N.J.S.A. 45:15-17n.

SO ORDERED this 28th day of June, 2017.

By: Linda Stefanik, President
Sanjeev Aneja, Commissioner
Kathryn Godby Oram, Commissioner
Denise Illes, Commissioner
Harold J. Poltrock, Commissioner


Patrick J. Mullen
Director of Banking

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