

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION, ) DOCKET NO.: ESS-13-014  
)  
Complainant, )  
v. ) **FINAL ORDER OF**  
) **DETERMINATION**  
)  
MARIXSA C. ROLON, formerly licensed New )  
Jersey Real Estate Salesperson, License Ref. No. )  
0121775 and TIFFANY GROUP, LLC., an )  
unlicensed entity, )  
Respondents.

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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 June 17, 2014 and September 10, 2014. Prior to these hearing dates, a preliminary hearing was held on June 18, 2013.

**BEFORE:** Commissioners Linda Stefanik, Robert Melillo<sup>1</sup>, Eugenia K. Bonilla, Harold J. Poltrock, Esq.<sup>2</sup>, Jeffrey Lattimer, and Michael Timoni.

**APPEARANCES:** Regulatory Office Lauren Glantzberg, appeared on behalf of the complainant, the New Jersey Real Estate Commission ("REC"). Marixsa C. Rolon appeared pro se on June 18, 2013 and June 17, 2014.

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<sup>1</sup> Commissioner Melillo was present at the June 17, 2014 hearing date, however he was not present at the September 10, 2014 hearing because he retired from his position on the REC on or about July 31, 2014. Therefore, he did not participate in the decision making process.

<sup>2</sup> Commissioner Poltrock was not present at the June 17, 2014 hearing date wherein an extension to file an answer was granted, however he was present at the September 10, 2014 hearing, wherein witness testimony was taken.

## STATEMENT OF THE CASE

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated May 20, 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 alleged that Respondent Rolon engaged in multiple violations of the real estate statutes and regulations when she failed to account for or pay over monies belonging to others, commingled the money of her principal with her own and failed to protect and promote the interests of her principal. It was further alleged that this conduct demonstrates unworthiness, incompetency, bad faith, and dishonesty, and also constitutes fraud and dishonest dealing. The OTSC further alleged that Respondent Rolon failed to comply with a subpoena issued by the Commission. In addition, the OTSC alleges that Respondent Tiffany Group, LLC engaged in conduct which constitutes unlicensed activity.

At the September 10, 2014 hearing, the following exhibits were admitted into evidence:

- S-1 License panels for Marixsa Rolon.
- S-2 Check in the amount of \$5,250 payable to Tiffany Group, LLC dated October 27, 2011.
- S-3 Business cards for “Tiffany Group” and Marixsa Rolon advertisement.
- S-4 Letter of Investigator McCloskey to Marixsa Rolon, dated January 13, 2012.
- S-5 Letter of Marixsa Rolon to REC, dated January 24, 2011.
- S-6 Email of Dino Ciccotti, broker/owner of NJProperty.Net Realty Services, LLC to Investigator McCloskey, dated February 7, 2012.
- S-7 Subpoena to Marixsa Rolon dated January 26, 2012 with Certification of Service.
- S-8 Superior Court of New Jersey, Essex County, Indictment of Marixsa Rolon dated September 5, 2012.

## **PROCEDURAL HISTORY**

Respondent Rolon did not file an answer after receiving service of the OTSC, but appeared at the initial return date on June 18, 2013 and requested thirty days to file an Answer and retain an attorney. The Commission deemed the matter a contested case and granted Respondent a thirty day extension to file an answer and retain an attorney.

A full hearing was scheduled for June 17, 2014. On that date, Respondent Rolon appeared and stated that she had only recently been able to retain an attorney for this matter because she was paying three different attorneys for her criminal and civil cases. Respondent further stated that she needed more time to gather the files from her criminal case and for her attorney to prepare and to file an answer. She stated that the criminal matter was completed on May 5, 2014, and she was accepted into a Pre-Trial Intervention (“PTI”) program.

The Commission granted the adjournment request and advised that the next hearing date was to be peremptory with no further adjournments. In addition, all discovery was to be exchanged promptly and Respondent was instructed to file an Answer to the charges in the OTSC by June 26, 2014.

On or about June 10, 2014, the REC received a Response to Order to Show Cause from Nathaniel M. Davis, Esq. on behalf of Respondent Rolon. Despite general denials to the allegations in the OTSC, Respondent Rolon admitted that the subject check was cashed by Respondent Tiffany Group, LLC and that she was indicted for Theft by Deception for her failure to return deposit monies.

By letter dated June 19, 2014, the REC informed Mr. Davis that a plenary hearing was scheduled for September 10, 2014. The letter indicated that the date was a peremptory and that there will be no further adjournments. On the date of the hearing, September 10, 2014,

neither Respondent Rolon nor her attorney, Nathaniel Davis, Esq., appeared despite receiving proper notice. At the commencement of the hearing Regulatory Officer (“RO”) Lauren Glantzberg stated the June 19<sup>th</sup> letter was sent to Nathaniel M. Davis, Esq. and to Respondent Rolon both certified and regular mail. RO Glantzberg also stated that she had discussed the possibility of settlement with Mr. Davis over the telephone and that the date of the hearing was also discussed.

### **TESTIMONY OF THE WITNESS**

On September 10, 2014, Investigator Robert McCloskey testified on behalf of the REC. Investigator McCloskey testified that he was assigned this matter after the REC received a complaint from the broker of record, Dino Ciccotti of NJProperty.Net Realty Services, LLC (“NJProperty”). Investigator McCloskey explained that the broker informed him that Respondent Rolon had received a deposit in the amount of \$5,250.00 that was not returned to Pastor Thorn of Tell The Truth House of Prayer Holiness Church, Inc. Investigator McCloskey stated that Pastor Thorn tendered a check in the amount of \$5,250.00 which was given to Respondent Rolon as a deposit for a lease. However, the lease was never entered into between the parties and Pastor Thorn made repeated requests for the return of his deposit.

Investigator McCloskey further testified that he met with Respondent Rolon after Ciccotti called her and she came to the office of NJProperty in West Orange. This meeting occurred on January 13, 2012. Respondent Rolon told Investigator McCloskey that she would not answer any questions because these issues were in litigation and she wanted counsel present. Investigator McCloskey stated that he made arrangements with Respondent Rolon to meet in Trenton on January 26, 2012 and followed up with a letter dated January 13, 2012 confirming this meeting. (See Exhibit S-4). Investigator McCloskey testified that Respondent Rolon did not

appear on January 26, 2012, but he did receive a letter from her dated January 24th (See Exhibit S-5) requesting to reschedule the meeting so that she could gather documents and retain an attorney.

Investigator McCloskey further testified that he did not hear from Respondent Rolon or an attorney after the January 24th letter. He then followed up with a subpoena (See Exhibit S-7) directing Respondent Rolon to appear before the REC on February 28, 2012 and to provide documents concerning the transaction with Pastor Thorn. Investigator McCloskey stated that he served the subpoena on Rolon's attorney, Anthony Mack, Esq., and the broker of record, Dino Ciccotti. In response, Investigator McCloskey received an email dated February 7, 2012 from Dino Ciccotti (See Exhibit S-6) advising that Mr. Ciccotti had contacted Respondent Rolon regarding the subpoena and she stated that she had received it through her attorney.

Investigator McCloskey identified Exhibit S-1 as being a true copy of Respondent Rolon's licensing panel. He indicated that her license was returned to the REC on February 17, 2012. (Exhibit S-1). He further stated that according to the licensing panel that the Tiffany Group was not a licensee.

Investigator McCloskey then identified Exhibit S-8 as being a copy of the grand jury indictment of Respondent Rolon, dated September 5, 2012, which he obtained from the Essex County Superior Court. Investigator McCloskey testified that Respondent Rolon was indicted for Theft of over \$500 by taking the subject check in the amount of \$5,250.00. (See Exhibit S-8).

Investigator McCloskey further identified Exhibit S-2 as being a copy of the check dated October 27, 2011 provided to him by Pastor Thorn that was made payable to "Tiffany Group, LLC" for \$5,250.00. Investigator McCloskey testified that Respondent Rolon

had cashed the check. The memo section of the check indicates that it is for church and daycare deposit and that it was posted on October 31, 2011. (See Exhibit S-2). Investigator McCloskey testified that no contract or lease agreement was ever entered into, and that Pastor Thorn repeatedly asked Respondent Rolon to return the deposit money.

Investigator McCloskey identified Exhibit S-3 as being a copy of a business card and post card he received from Respondent Rolon. The business card had Respondent Rolon's picture and the name "Tiffany Group, LLC" showing an address of "PO Box 491, Roselle, NJ 07203". (See Exhibit S-3).

### **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 Marixsa C. Rolon is a formerly licensed New Jersey real estate salesperson, most recently licensed with NJProperty.Net Realty Services, LLC, a licensed New Jersey real estate broker, whose office is located at 7 Oak Place, Montclair, New Jersey. She had been previously licensed with Stuyvesant Yale LLC, a licensed New Jersey real estate broker, whose office is located at 709 Clinton Avenue, G-2, Newark, NJ from May 25, 2011 through November 3, 2011. Her license was returned to the Commission on or about February 17, 2012 and has not been renewed or reinstated; and
2. Respondent Tiffany Group, LLC is an unlicensed entity and Respondent Rolon is a principal of said entity with its primary address at P.O. Box 491, Roselle, NJ 07203; and
3. On or about October 27, 2011, Pastor Thorn of "Tell The Truth House of Prayer Holiness Church, Inc." met with Respondent Rolon at 92 Bell Street, Orange, NJ for the purpose of leasing the 92 Bell Street property for his church; and

4. On or about October 27, 2011, Pastor Thorn tendered a check in the amount of \$5,250 payable to "Tiffany Group, LLC" and gave the check to Respondent Rolon as a deposit towards the lease of the 92 Bell Street property; and
5. The check tendered by Pastor Thorn was cashed by Respondent Rolon on October 31, 2011; and
6. No lease was ever entered into between Pastor Thorn of "Tell The Truth House of Prayer Holiness Church, Inc. and the leasing party; and
7. Pastor Thorn thereafter repeatedly requested the return of his deposit of \$5,250.00; and
8. On or about September 5, 2012, Respondent was indicted for the failure to return the deposit to Pastor Thorn in the Superior Court of New Jersey, Essex County on one count of Theft by Deception, a crime of the third degree, in violation of N.J.S.A. 2C:20-4; and
9. On or about January 30, 2012, the REC served a subpoena requesting documents and requiring an appearance by Rolon, which was returnable on February 28, 2012; and
10. Respondent Rolon failed to appear and provide documents in response to the subpoena.

#### **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. Respondent Rolon's failure to comply with the subpoena issued by the Commission compelling an appearance and the production of materials, demonstrates unworthiness in violation of N.J.S.A. 45:15-17(e); and
2. Respondent Rolon failure to account for or to pay over monies belonging to Pastor Thorn and/or Tell The Truth House of Prayer Holiness Church, Inc. which came into her possession is in violation of N.J.S.A. 45:25-27(d); and

3. Respondent Rolon commingled the money of Pastor Thorn and/or Tell The Truth House of Prayer Holiness Church, Inc. with her own in violation of N.J.S.A. 45:15-17(o) and N.J.A.C. 11:5-5.1(c); and
4. Respondent Rolon violated N.J.S.A. 45:15-17(e), by failing to paying over monies and commingling as set forth in paragraphs 2 and 3 above, demonstrates bad faith and dishonesty in violation of N.J.S.A. 45:15-17(e); and
5. Respondent Rolon failed to protect and promote the interests of her principal, Pastor Thorn, in violation of N.J.A.C. 11:5-6.4(a); and
6. Respondent Rolon's conduct set forth above constitutes fraud and dishonest dealing in violation of N.J.S.A. 45:15-17(l); and
7. Respondent Tiffany Group, LLC involvement and conduct in the lease deposit transaction constituted unlicensed activity in violation of N.J.S.A. 45:15-1 and 3.

### **DETERMINATION**

In arriving at the determination in this matter, the Commission took into consideration the testimony and credibility of the witness and the undisputed documentary evidence admitted during the course of the hearing. The Commission also considered the serious nature of and the circumstances surrounding the actions of Respondent Rolon and Respondent Tiffany Group, LLC.

In this case, Respondent Rolon's actions, as a real estate licensee, clearly constitute a failure to account for or to pay over monies belonging to another which came into her possession in violation of N.J.S.A. 45:15-17(d). Moreover, she commingled the money of her principal with her own in violation of N.J.S.A. 45:15-17(o) and N.J.A.C. 11:5-5.1(c). The undisputed facts on the record demonstrate that Respondent Rolon cashed the check for



\$5,250.00 given to her by Pastor Thorn. (See Exhibit 2). The check was to be used as a deposit for a lease. When the subject property was not secured and a lease was not signed, Pastor Thorn repeatedly asked Respondent Rolon for the return of the deposit money. However, Respondent Rolon never returned the deposit money.

Respondent Rolon's failure to safeguard Pastor Thorn's deposit money further constitutes a failure to protect and promote the interests of her real estate client as well as fraud and dishonest dealing, in violation of N.J.A.C. 11:5-6.4 and N.J.S.A. 45:15-17(l), respectively. It also demonstrates bad faith and dishonesty in violation of N.J.S.A. 45:15-17(e).

At Respondent Rolon's request, Pastor Thorn made out the deposit check to "Tiffany Group, LLC". As admitted in Respondent's answer, Respondent Rolon is the owner and principal of Respondent Tiffany Group, LLC. (See also Exhibit 3). There was no evidence presented by Respondents, or found by the REC, that Respondent Tiffany Group, LLC was licensed to engage in real estate activity. Therefore, Respondent Tiffany Group, LLC's involvement and conduct in the lease deposit transaction constitute unlicensed activity in violation of N.J.S.A. 45:15-1 and 3.

As to the failure to comply with the subpoena, Investigator McCloskey identified Exhibit 7 as the subpoena that was issued to Respondent Rolon, dated January 26, 2012, and directing her to appear on February 28, 2012 and produce documents and records. Receipt of this subpoena was confirmed by Investigator McCloskey. (See Exhibit 6). Respondent Rolon failed to comply in any way to the subpoena. Therefore, the Commission finds that this conduct constitutes unworthiness in violation of N.J.S.A. 45:15-17(e).

Moreover, pursuant to N.J.S.A. 45:15-17(e), 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.” The Commission may also impose a penalty of not more than \$5,000.00 for the first violation and a penalty of not more than \$10,000.00 for any subsequent violation. N.J.S.A. 45:15-17. Additionally, the Commission is empowered to take enforcement action regarding “any other conduct...which constitutes fraud or dishonest dealing.” N.J.S.A. 45:15-17(1).

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 when dealing with the consuming public and with the 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 monies are placed within the trust of the licensee. The public relies upon the honesty and good moral character of the licensee when it entrusts him or her or enters into a fiduciary relationship with him or her. Ellsworth Dobbs, Inc., v. Johnson and Johnson, 50 N.J. 528, 553 (1967).

The Commission has consistently held that the responsibilities that a real estate licensee owes to parties where he or she is acting as an escrow agent or temporary custodian of funds due are among the most sensitive and significant obligations that a licensee can assume. The highest duty of loyalty and fidelity are owned by licensees to such parties. Consequently, violations by licensees of their fiduciary responsibilities are considered extremely serious by the Commission. Overall, a Respondent’s commingling of real estate monies and failing to protect their client’s interests requires revocation of their real estate license. See, NJREC v. Ciocca, Final Order of Determination, Dkt. No. BUR-08-12 (9/5/08) (real estate salesperson’s license revoked for seven years and \$10,000.00 fine for commingling and failures to protect and promote interests of principals); See also, NJREC v. Baker, Final Order of Determination, Dkt.

No. ESS-11-046 (10/5/12) (real estate salesperson's license revoked for seven years and \$15,000.00 fine for failure to deposit \$4,500.00 into trust account and commingling money with his own, ordered to make restitution.) The public must be protected from such conduct.

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 requires the imposition of a fine.

First, Respondent Rolon demonstrated bad faith when she failed to return deposit monies to Pastor Thorn after no lease agreement was entered into by the parties. Second, there is no evidence in the record regarding Respondent Rolon's ability to pay. Third, Respondent Rolon profited by keeping the deposit monies given to her by Pastor Thorn in the amount of \$5,250.00. Fourth, the public is significantly harmed when real estate licensees in fiduciary positions violate their responsibilities and utilize protected real estate funds for their own purposes. Fifth, Respondent Rolon's actions took place during October, 2011 and she was indicted almost a year later on September 5, 2012 after repeated requests to return the deposit money. Sixth, Respondent Rolon was indicted for failing to return the deposit to Pastor Thorn in the Superior Court of New Jersey, Essex County on one count of theft by deception, a crime of the third degree, in violation of N.J.S.A. 2C:20-4. When Respondent Rolon appeared before the REC on

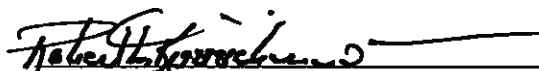
June 17, 2014 she stated that she was accepted into PTI for these charges. Lastly, to the Commission's knowledge, there appears to be no other past violations.

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

1. Respondent Rolon's real estate salesperson license is hereby revoked for four (4) years from the issuance of this Order.
2. Respondent Rolon shall make full restitution prior to any re-licensure.
3. Respondents Rolon and Tiffany Group, LLC shall pay a fine in the amount of \$5,000.00, jointly and severally, within 30 days from the issuance of this Order. Said fine shall be paid in full prior to any re-licensure.

SO ORDERED this 5<sup>th</sup> day of May, 2016.

By: Linda Stefanik, President  
Harold J. Poltrock, Esq., Commissioner  
Michael Timoni, Commissioner  
Eugenia K. Bonilla, Commissioner  
Jeffrey A. Lattimer, Commissioner

  
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