

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,)	DOCKET NO.: BER-16-008
)	REC REF. NO.: 13-28632
Complainant,)	
)	
JITON T. GREENE, a licensed New Jersey)	FINAL DECISION AND ORDER
real estate broker, License Ref. No. 0229326)	
)	
Respondent.)	

This matter was heard at a hearing by the New Jersey Real Estate Commission (“Commission”) at the Department of Banking and Insurance, State of New Jersey in the Commission Hearing Room, 20 West State Street, Trenton, New Jersey on November 29, 2016.

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

APPEARANCES: Marianne Gallina, Regulatory Officer (“RO Gallina”), appeared on behalf of the complainant, the New Jersey Real Estate Commission staff (“REC”). Edward G. Johnson, Esq. appeared on behalf of Respondent Jiton T. Greene (“Respondent”).

PROCEDURAL HISTORY

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated June 20, 2016, pursuant to N.J.S.A. 45:15-17, N.J.S.A. 45:15-18, N.J.S.A. 45:15-19.1, and N.J.A.C. 11:5-1.1 et seq. The OTSC alleged that the conduct underlying the Respondent’s conviction for insurance fraud in the third degree, pursuant to NYPL § 176.20, demonstrates unworthiness, incompetency, bad faith, and dishonesty, in violation of N.J.S.A. 45:15-17e. The OTSC further alleged that the Respondent committed three

violations of N.J.S.A. 45:15-17e by failing to notify the Commission that she was charged with insurance fraud, failing to notify the Commission that she was indicted for insurance fraud, and by failing to notify the Commission of the charges being filed against her on her 2013-2015 real estate broker's license renewal application. Lastly, the OTSC alleged that the Respondent committed two violations of N.J.S.A. 45:26-17s by failing to notify the Commission within 30 days of being charged with a crime and by failing to notify the Commission within 30 days of being indicted for a crime.

The Respondent, through her attorney, Edward G. Johnson, Esq., filed an Answer to the OTSC dated August 7, 2016, wherein she admitted to and denied certain allegations as set forth in the OTSC and requested that a hearing be scheduled. Accordingly, on August 9, 2016, the Commission reviewed the pleadings, and deemed this matter a contested case and directed that a hearing be scheduled.

The hearing was scheduled for October 5, 2016 but was adjourned at the request of the Respondent's attorney. The matter was rescheduled for November 29, 2016, which hearing date was to be peremptory.

A hearing was conducted on November 29, 2016, at which the following exhibits were admitted into evidence by the REC, without objection:

- S-1 License renewal qualifying questionnaire and answers from 2013, which were completed by the Respondent, dated June 25, 2013 ("qualifying questionnaire");
- S-2 Certificate of Disposition Indictment in the matter of State of New York v. Jiton Greene, dated May 14, 2015;
- S-3 Statement of Detective William Fisher in the matter of State of New York v. Jiton Greene, dated December 11, 2012; and

S-4 Indictment in the matter of State of New York v. Jiton Greene, dated August 12, 2013.

The following exhibits were admitted into evidence by the Respondent, without objection:

R-1 Letter from Jennifer Murphy, Senior Probation Officer, advising that the Respondent was placed on probation for five years on March 12, 2015, and is currently in compliance with the rules and conditions of her probation, dated November 23, 2016; and

R-2 Letter from Devon M. Wilt, Esq., advising that Devon M. Wilt, Esq. was retained to represent the Respondent on her appeal to the Supreme Court, State of New York, Appellate Division, First Department, and that the Respondent's Appellate Brief is being prepared, dated November 8, 2016.

TESTIMONY OF THE WITNESSES

William Ames

REC investigator, William Ames ("Ames"), testified on behalf of the REC and stated that he was assigned to investigate the present matter involving the Respondent. He stated that in 2013,¹ a faxed complaint was received by the REC relating to the Respondent, which alleged that the Respondent was arrested in New York City. Ames stated that he contacted the Respondent regarding the allegations contained in the faxed complaint, and that the Respondent admitted to the allegations at that time. Ames additionally provided that he required the Respondent to submit a statement and provide additional documentation to him, including court documents

¹ Ames reviewed a copy of the faxed complaint received by the REC and indicated that there was no exact date on the correspondence.

relating to the arrest made. Ames stated that he did, in fact, obtain the documentation requested from the Respondent.

Ames additionally provided that based upon the documentation he received from the Respondent, he was “able to go backwards in time” and contact the insurance company that was “the victim, so to speak, of the insurance fraud.” Ames stated that he was able to subpoena the insurance company and obtain the insurance company’s background report into what had occurred in their investigation up until the point of the Respondent’s arrest.

At the start of the investigation, Ames indicated that he reviewed the Respondent’s qualifying questionnaire for her New Jersey real estate broker’s license renewal application, which was recorded on June 25, 2013 and marked into evidence as Exhibit S-1. Ames stated that the Respondent’s response to question one on her qualifying questionnaire, which asked if the Respondent had any criminal convictions during the previous two years, was “No.” Ames further provided that he received the information relating to the Respondent’s arrest after the June 25, 2013 recording of the Respondent’s answers to her salesperson license renewal questionnaire. After a review of the file jacket for this investigation, Ames stated that the initial case file in this matter was opened by the REC on August 20, 2013. Ames further stated that Exhibit S-2 is the Certificate of Disposition Indictment, which he stated is the formal document from the court and court clerk in Bronx County, New York, and it is an examination of the records on file based upon the arrest of the Respondent. Ames stated that the crime, based upon the arrest date and the indictments, occurred prior to the date that the investigation was opened by the REC on August 20, 2013 and before the REC received the faxed complaint.

Ames additionally stated that the information related to the crime committed by the Respondent is contained in Exhibit S-3, which is the charging document, or “in New Jersey, we

would call it the criminal summons or criminal warrant.” In relation to the circumstances of the crime committed by the Respondent, Ames summarized Exhibit S-3 and stated that S-3 provides that New York City Police Department Detective Fischer was the formal complainant based upon information from an investigation, wherein it was determined that up to and including December 5, 2011,² a vehicle owned by the Respondent had been reported stolen when the vehicle was left in a secure location. Ames stated that, “in the auto theft world, the vehicle had been dumped prior to the actual, formal reporting of the theft.”

In relation to how the insurance company handled the reporting of the alleged theft, Ames testified that he believes that the insurance company recorded an interview with the Respondent, wherein the Respondent reinforced the claim that the vehicle was stolen. However, the vehicle was located in Mount Vernon, New York.

As to the Respondent’s real estate license status between 2013 and 2015, Ames testified that the Respondent was consistently and actively licensed during that time period. He further stated that the Respondent was cooperative during the investigation into her insurance fraud charge and conviction. Specifically, Ames testified that the Respondent retained an attorney at the beginning of his investigation and “whenever [Ames] asked for anything, [he] did receive it at some point in [his] investigation . . . written or emailed.”

Ames further testified that from his review of the REC licensing files and his investigation files, the Respondent did not report that she was charged with a crime or that she was indicted within 30 days as required by the statute. Ames stated that up until his communication with the Respondent upon the start of his investigation, the Respondent did not self-report that she had been arrested or indicted. Ames further stated that the REC did not

² Exhibit S-3 provides “that on or about and between August 1, 2011 at approximately 12:00PM and December 5, 2011 at approximately 11:59 AM at Various locations in Bronx Count, County of the Bronx, State of New York. . . .”

receive any formal, voluntary notification of any type from the Respondent that related to Respondent's arrest, indictment, or conviction, and it was only upon receiving the faxed complaint that the REC obtained knowledge of the Respondent's indictment and subsequently, reached out to the Respondent to confirm the allegations contained in the complaint.

On cross-examination, Ames testified that the REC received the anonymous, faxed complaint, which was signed by a "Sean" in 2013, subsequent to the Respondent's indictment for insurance fraud. Ames additionally testified that the REC was on notice of the allegation regarding the Respondent's indictment based upon the faxed complaint; however, the faxed complaint containing the allegation was vague.

Ames stated that the REC's process is that once a complaint comes in, administrative staff and the Chief of Investigations would review the complaint and determine if it is a real estate, insurance, or banking complaint. Further, Ames testified that once a determination is made, the complaint is "farmed out" to the investigators. Ames stated that his investigation into the Respondent's indictment began post-August 2013. He stated that although he was assigned to investigate the allegations in the complaint in August 2013, the REC investigators carry "about 30, 40, 50 cases" at a time, and he usually "gets [his] stuff out" between six-eight weeks after they are assigned. As such, Ames testified that he probably reached out to the Respondent sometime in October or November of 2013 regarding the allegations in the complaint, rather than in August 2013, when the case was first assigned to him.

Ames further testified that Exhibit S-2 provides that the indictment against the Respondent was filed on August 23, 2013,³ which was two months after Exhibit S-1, the Respondent's qualifying questionnaire, was filed with the REC. Ames additionally stated that

³ While the Certificate of Disposition of Indictment contains a filed date of August 23, 2013, Exhibit S-4 provides that the indictment was executed on August 12, 2013.

Exhibit S-2 also provides that the Respondent's arrest date was December 11, 2012. While Ames originally did not answer, on cross-examination, whether formal charges were filed against the Respondent until August 23, 2013, by stating that he was unfamiliar with the system in New York, he later indicated that Exhibit S-2 shows that the Certificate of Disposition Indictment was filed on August 23, 2013, and based upon a reading of S-2, no formal charges were filed against the Respondent until two months after she filed her qualifying questionnaire with the REC.

Moreover, Ames stated that, based upon the information contained in Exhibit S-2, he was unable to determine whether the Respondent was released from police custody after the December 11, 2012 arrest date indicated on Exhibit S-2 and Exhibit S-3. Ames further testified that he was unaware if the Respondent was formally taken into custody on December 11, 2012. He also stated that he was unaware of when the Respondent was served with a copy of the indictment.

When asked if Ames could determine when actual charges were filed against the Respondent, Ames stated that "if my 27 years in the State police has anything to do with reading documents, I'm going to say that [Exhibit] S-3 is the form that was used as the charging document. . . ." He further stated that Exhibit "S-3 would appear to be the New York charging document or complaint." Additionally after being asked if Exhibit S-3 would not belong to the Respondent but would belong to the Prosecutor's Office and Grand Jury, Ames stated that he was unable to testify as to the process for New York as "New York does things a little different than us." However, Ames testified that by reviewing Exhibit S-2, it appears to be a certificate, which states that an indictment occurred, whereas Exhibit S-3 would be the actual charging document or complaint that is signed by a detective. Ames further testified that he is unable to state whether the detective, who prepared Exhibit S-3, kept notes and how an investigation was

conducted. However, Ames was asked from his own experience as a former New Jersey State Police Trooper and New Jersey State Police Detective, how he would investigate and write a report relating to a crime. Ames indicated that New Jersey State Troopers would do their own investigation and write their own report. He further indicated that the usual process would be that the reports are then submitted to the Prosecutor's Office. Ames additionally stated that the defendant would then get a criminal summons or criminal warrant depending on what charges are issued. In relation to a Driving While Intoxicated offense, Ames indicated that the defendant would get a ticket that sets forth the charges against the defendant and the ticket is considered service.

In relation to the actual investigation that occurred by the detectives in New York, which resulted in the Respondent's indictment and subsequent conviction, Ames testified that he has some background knowledge as to what the investigation encompassed based upon his conversations with the insurance company investigator. However, he does not have any investigation reports or any background leading up to the arrest. He further stated that he could not testify as to what is correct or incorrect in New York's investigation. Ames stated that he can only testify as to the documents in front of him, and the documents state that the Respondent made an insurance claim for a stolen vehicle.

Ames further testified that the Respondent answered question one on her qualifying questionnaire in the negative. Moreover, Ames stated that part of question one addresses an applicant's conviction, and the Respondent's conviction occurred after the date that the Respondent's qualifying questionnaire was filed with the REC. However, Ames stated that he believes that question one also addresses an applicant's arrest as well as conviction, but the question "is blacked out" on Exhibit S-1. The qualifying questionnaire contained on Exhibit S-1

did not set forth the entire text of the question. As such, RO Gallina indicated that she had a sample questionnaire that contained the full text of both questions one and two as set forth on Exhibit S-1. The sample questionnaire was then provided to Mr. Johnson, to use during his cross-examination of Ames. Mr. Johnson stated that question one provides that “[w]ith the exception of motor vehicle violations, since your last New Jersey Real Estate License was last issued or renewed have you been convicted of a crime, misdemeanor, or disorderly persons offense in the State of New Jersey. . . .”⁴ Ames then indicated that the Respondent’s negative answer to this question was accurate and correctly answered because the Respondent’s conviction was entered two months after she completed her renewal application.⁵

Mr. Johnson then indicated that question two on Exhibit S-1 addresses an indictment, which Mr. Johnson stated did not “come down” until August 23, 2013, which was two months after the Respondent’s renewal application was completed. Ames stated that he was unable to address this statement as he did not have the full text of the questions in front of him. In light of this, RO Gallina read the entire text of both questions one and two on the sample questionnaire into the record. Specifically, she stated that question one asks

⁴ The sample questionnaire, which RO Gallina purports to contain the full text of the questions as set forth in Exhibit S-1, differs from the actual questions set forth in the qualifying questionnaire contained in Exhibit S-1. Although the full text of question one is not provided in Exhibit S-1, the text that is provided states: “Since your last New Jersey real estate license was issued or renewed have you been . . . misdemeanor or disorderly persons offense or convicted of a crime, misdemeanor or diso” Further, the OTSC provides that question one on the qualifying questionnaire states: “Since your last New Jersey real estate license was issued or renewed have you been arrested (other than for motor vehicle violations), indicted, charged with a violation of a crime, misdemeanor or disorderly persons offense or convicted of a crime, misdemeanor or disorderly persons offense in this state, any other state or by the federal government.” As such, the text that is provided for question one in Exhibit S-1 clearly differs from the sample questionnaire language read into the record by Mr. Johnson and later, RO Gallina, during the cross-examination of Ames.

⁵ Mr. Johnson asked Ames whether it was correct that the Respondent’s answer to question one, as he read into the record, was accurate because the Respondent’s “conviction came down two months after this application was completed.” Ames’s response was “yes.” However, according to Exhibit S-2 the Respondent was convicted on October 31, 2014 and then sentenced on March 12, 2015. See Exhibit S-2. The Respondent’s indictment was entered in August 2013. See Exhibit S-4.

With the exception of motor vehicle violations, since your last New Jersey Real Estate License was last issued or renewed have you been convicted of a crime, misdemeanor, disorderly persons offense in the State of New Jersey, any other state or by the federal government, or are you presently on probation or parole?

RO Gallina then stated that question two provides

Is there a criminal complaint, disorderly persons charge, a criminal accusation or criminal information presently pending against you or are you presently under indictment in New Jersey, or any other State or by the federal government, or are you presently enrolled in New Jersey's Pre-Trial Intervention (PTI) program or any similar State or Federal program involving the deferral of the disposition or sentencing in a criminal matter?⁶

Ames testified that based upon the documents entered into evidence, the indictment was entered on August 23, 2013, which was after the Respondent's qualifying questionnaire was filed with the REC, on June 25, 2013. As such, Ames indicated that the Respondent's answer to question two was accurate at the time she filed her qualifying questionnaire.

Jiton T. Greene

The Respondent testified on her own behalf at the hearing. The Respondent stated that she has been a New Jersey licensed real estate agent since 2000 and a New Jersey real estate broker since 2005. She stated that she recalls being involved in an incident in New York in August 2011, where her car was stolen.⁷ She further stated that she called 911 and the officer that responded took the Respondent's statement regarding the incident involving her stolen

⁶ The sample questionnaire, which RO Gallina purports to contain the full text of the questions as set forth in Exhibit S-1, differs from actual questions set forth in the qualifying questionnaire contained in Exhibit S-1. Although the full text of question two is not provided in Exhibit S-1, the text that is provided for question 2.a. states: "Since your last New Jersey real estate license was issued or renewed, have you en . . . disposition or sentencing in a criminal matter in another state or the federal government?" As such, the text that is provided for question two in Exhibit S-1 clearly differs from the sample questionnaire language read into the record by RO Gallina.

⁷ The Respondent stated that the incident occurred in August 2011; however, Exhibit S-3 provides that "on or about September 29, 2011, [the Respondent] filed a police report at the 49 precinct indicating that her 2006 Land Rover . . . had been stolen that day." Exhibit S-3 additionally provides that the Respondent "completed an affidavit of vehicle theft on or about December 1, 2011, in which [the Respondent] maintained she had been driving said vehicle in the Bronx on September 29, 2011."

vehicle. Thereafter, the Respondent stated that she filed a report with her insurance company, State Farm. She testified that a couple months later, she heard from State Farm that they were deeming that the report she made was fraudulent as the car was not stolen. However, the Respondent maintained that the car was, in fact, stolen. The Respondent stated that she only owed \$700 on the vehicle at the time of the incident and would not have submitted a fraudulent report as the car was almost fully paid off. The Respondent further stated that she believes that she “took a loss” because of “this whole ordeal.” However, the Respondent did note that her boyfriend, who was from the Bronx, New York, also had keys to the vehicle at the time it was reported stolen.

The Respondent additionally testified that in December 2012, officers came to her place of business and asked her to come to the police station to answer some questions regarding her stolen vehicle. She stated that on December 11, 2012, she answered questions regarding her stolen vehicle at the police station and was then allowed to leave.

The Respondent stated she remembers filling out and submitting a license renewal qualifying questionnaire in 2011 and again in 2013. She stated that she did not advise the REC on her 2011 qualifying questionnaire that she was arrested or indicted because she was not arrested or indicted prior to the submission of qualifying questionnaire. In relation to her 2013 qualifying questionnaire, she stated that she answered “No” to question one, which allegedly asked “have you been convicted of a crime misdemeanor, disorderly persons offense in the State of New Jersey, any other state or by the federal government, or are you presently on probation. . . ?” She further testified that she answered “No” to question two, which allegedly asked “[i]s there a criminal complaint, disorderly persons charge, a criminal accusation or criminal information presently pending against you or are you presenting under indictment in New Jersey,

or any other State or by the federal government. . . ?” The Respondent provided that she answered both of these questions in the negative because she was not indicted or convicted of a crime.

The Respondent additionally testified that in August 2013, after she was indicted, she did not advise the Commission of her indictment because “being that [she] was innocent, [she] didn’t think these charges were going to go . . . I really didn’t think the charges were going to stick.” She further stated that some of the charges originally filed against her were dismissed. Moreover, the Respondent stated that after the indictment, she received a telephone call from Ames and she cooperated with his investigation by drafting and sending him a letter that explained everything and that she was appealing the conviction. The Respondent additionally stated that she put Ames in touch with her attorney, who sent him the necessary documents.

On cross-examination, the Respondent testified that she was unsure of the exact date that she found out that there were criminal charges against her; however, she stated that her attorney did call her to advise her that charges were issued. The Respondent stated that she never received any formal notification regarding the indictment. She further testified that the first time she went to court on the charges issued against her was in August 2013.⁸ The Respondent additionally stated that she had no knowledge of any charges pending against her prior to August 2013. She testified that after her being questioned in December 2012, she assumed that everything was fine because she never heard back from the officers until nine months later in August 2013. The Respondent additionally stated that she was never provided with any documentation or notice that criminal charges were filed against her until she received a call from her attorney in August 2013. She further testified that State Farm did not inform her that

⁸ The Respondent initially stated that the first time she went to court on the charges issued against her was in 2014 or 2015; however, upon further questioning from RO Gallina, she advised that it was actually August 2013.

her claim was considered fraudulent. The Respondent stated that she was only advised by State Farm that they were investigating the insurance claim regarding the stolen vehicle. She stated that she was contacted by investigators for State Farm and she cooperated with them by providing the documentation that they requested.

In relation to her appeal of her criminal conviction, the Respondent indicated that her conviction was entered on March 12, 2015, and that her attorney informed her in 2015 that she would be filing the appeal; however, the Respondent stated that she believes her attorney actually filed the appeal sometime in 2016.

The Respondent additionally indicated that she is currently on probation, which started on March 12, 2015, and will continue for a five year period. The Respondent's attorney indicated that the terms of her probation are that she needs to report, "which is no less than once a month, there is urine testing, and there is home visits." Additionally, the Respondent stated that she was fined and ordered to pay restitution, in that amount of \$5,000. However, she later stated that she was not required to pay restitution and the \$5,000 was actually the amount she was fined, which has been paid. The Respondent additionally provided that State Farm never paid her for the claim she filed and she is currently suing State Farm in relation to this matter.

Moreover, the Respondent stated that when she went to the police station for questioning on December 11, 2012, she may have been fingerprinted but was unsure. She additionally stated that she was unsure if she was actually arrested on December 11, 2012.⁹ After reviewing Exhibit

⁹ Exhibit S-2 provides that the date of the Respondent's arrest was December 11, 2012. Additionally, Exhibit S-3, which was signed and dated by Detective William Fisher on December 11, 2012, contains "Arrest# B12689173" in the caption of the document. However, the Respondent's testimony was unclear regarding when she was arrested. At varying points in the Respondent's testimony, she stated that she was arrested in both December 2012 and August 2013, and would change her testimony accordingly. She was unable to confirm if the date of arrest listed on Exhibit S-2 was correct and was unable to advise of the exact date she was arrested. The Respondent was additionally unable to remember the time of day when she was arrested. At the conclusion of her testimony, there was no clear determination regarding when the Respondent was arrested.

S-2, the Respondent stated that she was not arrested on December 11, 2012, and was not fingerprinted. She further stated that the December 11, 2012, questioning was the first time she appeared at the police station for questioning and that the detective came to her place of business at a shoe store in Brooklyn, New York to ask her to come to the police station for questioning.¹⁰ Once she answered the detective's questions, she stated she was free to leave. She further stated that she did not hear anything else about the incident until August 2013, which is when she was arrested and fingerprinted. She stated that she retained an attorney after August 2013 and the attorney advised her that charges were pending against her. The Respondent stated that she was not arrested for insurance fraud prior to her filling out her license renewal qualifying questionnaire in 2013, and that she had no explanation as to why there is an Arrest# B12689173 under her name in the caption on Exhibit S-3, which was dated December 11, 2012. The Respondent further testified that she was convicted of insurance fraud by a jury trial.

In response to questioning regarding the condition of the vehicle at the time it was stolen, the Respondent stated that the vehicle was in excellent condition and was drivable at the time it was stolen. She stated that any severe engine damage that the insurance company stated the vehicle had must have happened after it was stolen.¹¹ She stated that her vehicle was not in an accident and the statement made in Exhibit S-3 regarding the condition of the vehicle must have come from a government informant that was going to get 25 years in prison and then would be deported.¹² The Respondent further stated that there was a government informant at the trial who testified that he did not know the Respondent and had never seen her before. She claimed that

¹⁰ The Respondent stated that she remembered that it was summertime when the detective came to her place of business in Brooklyn, New York, while she was discussing the December 11, 2012, request for questioning.

¹¹ Exhibit S-3 provides "that said vehicle had significant damage to its engine and could not be driven under its own power as of August 2011 or any point thereafter."

¹² The statements contained in Exhibit S-3 are made by Detective William Fisher.

the informant “was saying what they wanted him to say to save himself.” She further stated that the vehicle was recovered in Mount Vernon, New York.

FINDINGS OF FACT

Based on the pleadings, the testimony of the witnesses, 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 broker currently licensed as broker of record of Jiton Greene, LLC d/b/a Re/Max Prestigious Properties, whose office is located at 80 North Washington Avenue, Bergenfield, New Jersey 07621.
2. On or about December 11, 2012, Detective William Fisher issued a statement in the matter of The State of New York v. Jiton Greene in Criminal Court of the City of New York, Bronx County, wherein he stated that the Respondent committed the following offenses: one count of insurance fraud, in violation of NYPL § 176.20; one count of falsifying business records, in violation of NYPL § 175.10; and one count of offering a false instrument for filing, in violation of NYPL § 175.35.
3. On June 25, 2013, Greene completed the license renewal qualifying questionnaire for the 2013-2015 licensing term.
4. The Respondent answered “No” to question one on her license renewal questionnaire submitted on June 25, 2013, which the REC stated at the November 29, 2016 hearing, asked: “With the exception of motor vehicle violations, since your last New Jersey Real Estate License was last issued or renewed have you been convicted of a crime, misdemeanor, disorderly persons offense in the State of New Jersey, any other state or by the federal government, or are you presently on probation or parole?”¹³

¹³ The OTSC alleges that the Respondent answered “No” to question one, which asked “Since your last New Jersey real estate license was issued or renewed have you been arrested (other than for motor vehicle violations), indicted,

5. The Respondent also answered “No” to question two on her license renewal questionnaire submitted on June 25, 2013, which the REC stated at the November 29, 2016 hearing asked: “Is there a criminal complaint, disorderly persons charge, a criminal accusation or criminal information presently pending against you or are you presently under indictment in New Jersey, or any other State or by the federal government, or are you presently enrolled in New Jersey’s Pre-Trial Intervention (PTI) program or any similar State or Federal program involving the deferral of the disposition or sentencing in a criminal matter?”
6. On or about August 12, 2013, the Respondent was indicted in the Supreme Court of New York, Bronx County, on one count of insurance fraud in the third degree and one count of attempted grand larceny in the third degree.
7. After the indictment was filed in August 2013, the REC received a faxed, semi-anonymous complaint, which advised the REC that the Respondent was arrested for insurance fraud in New York.
8. Sometime after receiving the faxed complaint in August 2013, REC Investigator Ames, contacted the Respondent regarding the allegations contained in the faxed complaint received by the REC. The Respondent cooperated with Ames’s investigation.
9. On or about March 12, 2015,¹⁴ the Respondent was convicted of insurance fraud in the third degree, in violation of NYPL § 176.20.

charged with a violation of a crime, misdemeanor or disorderly persons offense or convicted of a crime, misdemeanor or disorderly persons offense in this state, any other state or by the federal government?”

¹⁴ Exhibit S-2 states that the date of conviction was on October 31, 2014, and that the date of sentence was March 12, 2015. However, the OTSC states that Respondent was convicted on or about March 12, 2015 and Respondent admits that fact in her Answer. The date of conviction will be referred to as March 12, 2015.

10. On or about March 12, 2015, the Respondent was sentenced to probation for a period of five years to begin on March 12, 2015, and was ordered to pay a fine of \$5,000, which she has since paid.

CONCLUSIONS OF LAW

In light of the above findings of fact, the Commission makes the following conclusions of law with regard to the charges contained in the OTSC and summarized above.

1. The Respondent violated N.J.S.A. 45:15-17e by demonstrating unworthiness, bad faith, and dishonesty by committing insurance fraud when she filed a fraudulent insurance claim based upon an alleged theft of her vehicle, which is the subject of her March 12, 2015 conviction for insurance fraud in the third degree.
2. There is insufficient evidence to conclude that Respondent failed to notify the Commission of being charged with insurance fraud on her 2013 qualifying questionnaire, in violation of N.J.S.A. 45:15-17e, as alleged in the OTSC.
3. There is insufficient evidence to conclude that the Respondent failed to notify the Commission of being indicted for insurance fraud on her 2013 qualifying questionnaire, in violation of N.J.S.A. 45:15-17e, as alleged in the OTSC.
4. There is insufficient evidence to conclude that the Respondent failed to notify the Commission of the charges filed against her on her 2013 qualifying questionnaire, in violation of N.J.S.A. 45:15-17e, as alleged in the OTSC.
5. There is insufficient evidence to conclude that the Respondent failed to notify the Commission within 30 days of being charged with a crime, in violation of N.J.S.A. 45:15-17s, as alleged in the OTSC.

6. There is insufficient evidence to conclude that the Respondent failed to notify the Commission within 30 days of being indicted for a crime, in violation of N.J.S.A.45:15-17s, as alleged in the OTSC.
7. Under N.J.S.A. 45:15-19.1, insurance fraud is considered a “like offense” to conspiracy to defraud.

DETERMINATION AND ORDER

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 Decision and Order. In arriving at the determination in this matter, the Commission took into consideration the testimony of the witnesses and the undisputed documentary evidence admitted at the hearing. The Commission also considered the serious nature of and the circumstances surrounding the Respondents’ actions.

The Real Estate License 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 Commission, 29 N.J. Super. 178, 181-182 (App. Div. 1954). The nature and duties of a real estate business are grounded in interpersonal, fiduciary, and business relationships and demand the utmost honesty, trust, and good conduct. Maple Hill Farms, Inc. v. New Jersey Real Estate Commission, 67 N.J. Super. 223, 232 (App. Div. 1961); Division of New Jersey Real Estate Commission 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 Division of New Jersey Real Estate Commission v. Ponsi, supra, 39 N.J. Super. at 532-533.

Thus, the Commission has the power to suspend, revoke, or place on probation the license of any licensee for “any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty.” N.J.S.A. 45:15-17e. The facts in this matter demonstrate that on or about August 12, 2013, the Respondent was indicted in the Supreme Court of the State of New York, Bronx County, for one count of insurance fraud in the third degree and one count of attempted grand larceny in the third degree. Moreover, on or about March 12, 2015, the Respondent, after the conclusion of a jury trial, was found guilty of one count of insurance fraud in the third degree, in violation of NYPL 176.20. The conduct underlying the Respondent’s criminal conviction was serious in nature and demonstrated unworthiness, bad faith, and dishonesty. Specifically, the Respondent’s conviction was based on her knowingly filing of a fraudulent police report and fraudulent insurance claim with her insurance company, State Farm, in which she alleged that her vehicle was stolen. However, through State Farm’s internal investigation and the investigation of a police department and Detective William Fisher, it was determined that the Respondent’s motor vehicle was not stolen, but was located in Mount Vernon, New York “from approximately mid-August through November of 2011 where it was being stored in a garage until it was dumped at a random location in Mount Vernon.” See Exhibit S-3. Additionally, while the Respondent testified that her vehicle was in good running condition at the time she filed her police report on or about September 29, 2011, it was additionally determined during the investigations that the “vehicle had significant damage to its engine and could not be driven under its own power as of August of 2011 or any point thereafter.” Ibid. Accordingly, the Respondent’s wrongful and dishonest actions of filing a fraudulent police report and fraudulent insurance claim when she was aware that her vehicle was not, in fact, stolen in order to recover insurance proceeds on an inoperable vehicle, which is the basis for her

criminal conviction for insurance fraud in the third degree, demonstrated unworthiness, bad faith, and dishonestly, in violation of N.J.S.A. 45:15-17e.

Moreover, N.J.S.A. 45:15-19.1 compels the Commission to revoke the license of a licensee if said licensee is “convicted in a court of competent jurisdiction in the State of New Jersey or any state (including federal courts) of forgery, burglary, robbery, any theft or related offense with the exception of shoplifting, criminal conspiracy to defraud, or other like offenses. . . .” Moreover, it should be noted that as it relates to new applicants, N.J.S.A. 45:15-12.1, provides that no license shall be issued to someone who has been convicted of criminal conspiracy to defraud or other like offenses within the previous five years. Here, as noted above, on or about March 12, 2015, the Respondent, after the conclusion of a jury trial, was convicted of insurance fraud in the third degree in violation of NYPL 176.20. NYPL 176.20 provides that “A person is guilty of insurance fraud in the third degree when he commits a fraudulent insurance act and thereby wrongfully takes, obtains or withholds, or attempts to wrongfully take, obtain or withhold property with a value in excess of three thousand dollars.” As previously noted by the Commission, insurance fraud is a “like offense” to conspiracy to defraud. See New Jersey Real Estate Commission v. Ana Carmona, Final Determination and Order, Dkt. No. PAS-07-029 (11/30/07) (finding that the Commission is empowered to revoke respondent’s real estate license pursuant to N.J.S.A. 45:15-19.1 because she has been convicted of insurance fraud, which is a like offense under the terms of that statute). Thus, as the Respondent was convicted by a court of competent jurisdiction in the State of New York for insurance fraud in the third degree, which is a like offense to conspiracy to defraud, N.J.S.A. 45:15-19.1 compels the revocation of the Respondent’s real estate broker’s license.

It should additionally be noted that although the Respondent alleges that she is currently appealing her criminal conviction, no evidence was admitted at the hearing that suggested that an appeal had actually been filed as of the date of the hearing on November 20, 2016. Further, even if an appeal had been filed by the Respondent, this does not indicate the likelihood that the Respondent would win on said appeal. As the Respondent's conviction for insurance fraud in the third degree has not yet been vacated, N.J.S.A. 45:15-19.1 continues to apply and compels the revocation of the Respondent's real estate broker's license.

However, the facts in evidence and the testimony of the witnesses do not support a finding that the Respondent violated N.J.S.A. 45:15-17e by failing to notify the Commission of being charged with insurance fraud, failing to notify the Commission of being indicted for insurance fraud, and failing to notify the Commission of the charges issued against her on her 2013 qualifying questionnaire. As noted above, N.J.S.A. 45:15-17e provides that a licensee violates the Act by displaying "any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty." In the present matter, the Respondent's qualifying questionnaire was filed with the Commission on June 25, 2013. Exhibit S-4 provides that the Respondent was not indicted until August 12, 2013, approximately one and one-half months after she submitted her license renewal questionnaire. Moreover, the Respondent testified that she did not receive formal notice of her indictment and the charges issued against her, and she was only informed of both when her attorney contacted her in August 2013. Additionally, while Exhibit S-3 provides that the Respondent was arrested on December 11, 2012, the Respondent's testimony indicated that she believes that she was first arrested in relation to her fraudulent insurance claim in August 2013, rather than on December 11, 2012. The Respondent testified that the December 11, 2012 date was when she was called in for questioning in relation to her allegedly stolen vehicle and

was permitted to leave once she answered the questions. Moreover, the sample questionnaire questions that were read into evidence by both RO Gallina and Mr. Johnson at the November 29, 2016, hearing did not ask whether the Respondent was arrested or charged with a crime. Rather the questions asked whether the Respondent was convicted of a crime and whether there was a criminal complaint, disorderly persons charge, a criminal accusation, or criminal information pending against the Respondent at that time. The Respondent testified that at the time she answered and filed her license renewal questionnaire, she was not charged or convicted of insurance fraud in New York. As such, and based upon the questions read into evidence at the November 29, 2016, hearing, the Respondent's negative answers to both of these questions were correct, and the record does not support a finding that the Respondent failed to notify the Commission of being charged with insurance fraud, failed to notify the Commission of being indicted for insurance fraud, and failed to notify the Commission of the charges issued against her on her 2013 qualifying questionnaire, in violation of N.J.S.A. 45:15-17e, as alleged in the OTSC.

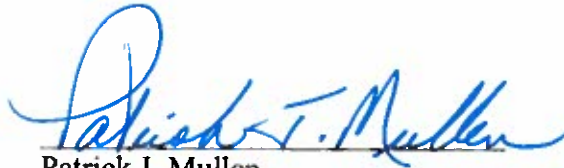
Additionally, the facts in evidence and the testimony of the witnesses do not support a finding that the Respondent violated N.J.S.A. 45:15-17s by failing to notify the Commission within 30 days of being charged with a crime and by failing to notify the Commission within 30 days of being indicted. Pursuant to N.J.S.A. 45:15-17s, a real estate licensee violates the Act if the licensee fails "to notify the commission within 30 days of . . . having been indicted, or of the filing of any formal criminal charges." In this matter, the Respondent testified that she was indicted and was made aware of the charges issued against her in August 2013. Ames testified that the REC received a faxed complaint advising the REC that the Respondent was arrested for insurance fraud. Ames additionally testified that although the complaint was undated, he

believed that the complaint was received by the REC in August 2013, as the REC investigation file was opened on August 20, 2013. Sometime after the complaint was received, Ames stated that he reached out to the Respondent to confirm the allegations in the complaint and the Respondent cooperated with his investigation. However, Ames did not provide an exact date upon which he first contacted the Respondent. The testimony of the witnesses conflicted over the exact dates upon which the Respondent was actually charged with a crime and when she was indicted. Additionally, the REC failed to establish the exact timeframe during which the Respondent was required to notify the Commission of her charges and her indictment. Therefore, the record does not support a finding that the Respondent failed to notify the Commission within 30 days of being indicted and charged with insurance fraud, in violation of N.J.S.A. 45:15-17s, as alleged in the OTSC.

Accordingly and pursuant to N.J.S.A. 45:15-17e and N.J.S.A. 45:15-19.1, the Commission imposes the following sanction: Respondent Jiton T. Greene's New Jersey real estate broker's license shall be revoked for a period of five years commencing from the date of this Order. During the revocation period, Respondent shall not be eligible for any real estate license. Additionally, pursuant to N.J.S.A. 45:15-12.3, the Respondent shall fully divest herself from her real estate business and shall not be permitted to be a general partner, officer, director, or owner of any real estate business nor retained or employed in any capacity of same.

SO ORDERED this 23rd day of May, 2017.

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



Patrick J. Mullen
Director of Banking

AV Greene REC Final Order/Orders