

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,) DOCKET NO.:UNI-14-014
)
Complainant,)
v.) **FINAL ORDER OF**
) **DETERMINATION**
)
SAUL SANCHEZ, formerly licensed New Jersey)
real estate broker (Ref. No. 9909420) and)
RICHARD J. BILOFSKY, formerly licensed New)
Jersey real estate broker (Ref. No. 8133575))
Respondents.

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 October 21, 2014 and December 16, 2014.

BEFORE: Commissioners Linda Stefanik, Eugenia K. Bonilla, Michael Timoni and Harold J. Poltrock.¹

APPEARANCES: Lauren Glantzberg, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission ("REC"). Respondent Bilofsky appeared *pro se*. Respondent Sanchez failed to appear.

STATEMENT OF THE CASE

The REC initiated this matter on its own motion through service of an Order to Show Cause ("OTSC") dated July 15, 2014, 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 Sanchez, a formerly licensed

¹ Commissioner Poltrock was not present at the October 21, 2014 hearing but signed a certification stating that he received and listened to an audio recording from the October 21, 2014 hearing date, wherein he heard the hearing and the witness testimony taken.

real estate broker, engaged in unlicensed brokerage activity, during his period of ineligibility for a salesperson's license pursuant to N.J.S.A. 45:15-1&3. Specifically, by Final Order of Determination of the Commission dated March 12, 2012, Respondent Sanchez's broker's license was revoked for two years and he was ineligible for a real estate salesperson's license for a period of six months commencing on that date. He also was fined \$5,000.00. The OTSC further alleged that Respondent Sanchez's conduct demonstrated unworthiness in violation of N.J.S.A. 45:15-17e.

The OTSC also alleged that Respondent Bilofsky engaged in license lending by allowing his license to be used for the benefit of others in violation of N.J.A.C. 11:5-4.3. Further, the OTSC alleges that his conduct demonstrated incompetency by allowing revoked Respondent Sanchez to run the day to day operations of his corporate business, Professionals Real Estate, Inc. in violation of N.J.S.A. 45:15-17e.

On July 15, 2014, the OTSC was served on both Respondents via regular and certified mail. On or about August 1, 2014, an answer was filed by Respondent Bilofsky. On or about September 10, 2014, a letter and Notice of Appearance was received from Jorge A. Batista, Esq. on behalf of Respondent Sanchez. Mr. Batista stated that his appearance would be limited to "the issue of the severity of any sanction or penalty imposed". Consequently, the case was deemed to be contested. On September 11, 2014, notice of the October 21, 2014 hearing date was provided to Respondent Bilofsky, Respondent Sanchez and his attorney, Jorge A. Batista, Esq. Respondent Bilofsky appeared on the initial hearing date of October 21, 2014 and on December 16, 2014 when the hearing was continued and concluded. Respondent Sanchez and his attorney failed to appear at either hearing date despite receiving notice of the first hearing

date and Sanchez being subpoenaed to appear at the second hearing date with a copy sent to his attorney.

At the hearing dates, the following exhibits were admitted into evidence:

- S-1 Independent Contractor agreements for Lidia Lee and Zoila Mejia with Professionals Real Estate, Inc. dated April 16, 2012.
- S-2 Licensing application for Professionals Real Estate, Inc. dated April 12, 2012.
- S-3 Lease agreement between Saul Sanchez and Professionals Real Estate, Inc. dated April 15, 2012.
- S-4 Subpoena to Richard Bilofsky dated December 31, 2013.
- S-5 Licensing Panel for Richard Bilofsky.
- S-6 March 12, 2012 Final Order in N.J.R.E.C. v. Saul Sanchez - UNI-10-048.
- S-7 Saul Sanchez REC Salesperson license application.
- S-8 May 2012 account statement for Professionals Real Estate, Inc. operating account with TD Bank.
- S-9 July 2012 account statement for Professionals Real Estate, Inc. operating account with TD Bank.
- S-10 Checks from July and August 2012 from Professionals Real Estate, Inc. operating account.
- S-11 TD Bank new business account application dated April 12, 2012.
- R-1 IRS Response Form, copy of Police Report, Draft Letter to TD bank and a Letter to Robert Carter, REC Chief of Investigations.

TESTIMONY OF THE WITNESS

INVESTIGATOR ROBERT SPILLANE

On October 21, 2014, Investigator Robert Spillane testified on behalf of the REC. Investigator Spillane testified that he was assigned this matter after the REC received a

complaint from two salespersons, Lidia Lee and Zoila Mejila. Investigator Spillane explained that Ms. Lee and Ms. Mejia told him that they were employed with Professionals Real Estate, Inc. ("Professionals") and that Respondent Sanchez was running the new agency that had previously been a ReMax agency. They also stated that they were not being paid commissions because the agency was suddenly closed by Respondent Bilofsky, whom they understood to be the broker of record.

Investigator Spillane identified Exhibit S-1 as two separate independent contractor agreements. The first agreement was signed by Lidia Lee and the second was signed by Zoila Mejia. Both Lee and Mejia were real estate salespersons. Investigator Spillane testified that both agreements were signed by a broker purported to be Respondent Richard Bilofsky.

Investigator Spillane further testified that on or about April 12, 2012, Ms. Lee and Ms. Mejia were introduced by Respondent Sanchez to Respondent Bilofsky and were told that ReMax Professionals was closing and that Respondent Bilofsky would be the new broker of record for Professionals. Investigator Spillane stated that Lee and Mejia were also told by Respondent Sanchez that he would continue to run the office.

Investigator Spillane identified Exhibit S-2 as the application for corporation and real estate broker license dated April 12, 2012 that was submitted to the REC for Professionals, which was signed by Respondent Bilofsky as broker of record. Investigator Spillane testified that this date coincides with the date of introductions between salespersons Lee and Mejia and Respondent Bilofsky.

Investigator Spillane further testified that as part of his investigation he conducted interviews with TD Bank employees who processed the paperwork for the bank accounts opened by Respondents Sanchez and Bilofsky for Professionals. Spillane interviewed bank manager

Anne Beeman who told him that Respondents Sanchez and Bilofsky opened the accounts together. Respondent Sanchez indicated to Ms. Beeman that franchise fees for ReMax were too much so he was closing the agency and opening a new agency with Respondent Bilofsky who would be the broker of record, but that he would still be running the agency at the same location in Linden. Spillane also interviewed TD Bank employee, Jean Savaille, who explained that Respondent Bilofsky signed all the paperwork but Respondent Sanchez was providing all the answers to any questions. Mr. Savaille also told him that he provided the debit card to Respondent Bilofsky who then handed it to Respondent Sanchez. In addition, Sanchez's birthdate was used as the PIN number for the debit card.

Investigator Spillane further identified Exhibit S-3 as the lease agreement between Respondent Sanchez and Professionals dated April 15, 2012. Spillane stated that this was three days after the Respondents went to TD Bank to open business bank accounts for Professionals. Spillane testified that the lease is signed by Respondent Sanchez as landlord and the other signature is Respondent Bilofsky on behalf of Real Estate Professionals as tenant.

Investigator Spillane testified that he interviewed Respondent Sanchez at the REC. Respondent Sanchez told him that approximately one year before opening Professionals, Sanchez had discussions with Bilofsky regarding Bilofsky being broker of record because Respondent Sanchez knew his license was going to be revoked. Investigator Spillane stated that Respondent Sanchez described the financial arrangement was that Sanchez would continue to run the agency and Respondent Bilofsky would pay the rent for the building to Sanchez from proceeds of the agency. Sanchez would deduct rent proceeds from income and Bilofsky would retain the balance for profit.

Investigator Spillane identified Exhibit S-4 as the subpoena requiring Respondent Bilofsky to appear and produce documents at the REC. Investigator Spillane testified that when Respondent Bilofsky was interviewed on January 15, 2014 the only document he brought was the subpoena. Bilofsky failed to provide any other documents or records regarding Professionals or Sanchez as requested in the subpoena.

Investigator Spillane identified Exhibit S-5 as the licensing panel and profile for Respondent Bilofsky which showed that his license status was currently inactive. Spillane further identified Exhibit S-6 as the Final Order of Determination dated March 12, 2012 which was entered against Respondent Sanchez. Investigator Spillane described Exhibit S-7 as the REC salespersons application submitted by Respondent Sanchez.

Investigator Spillane identified Exhibits S-8 and S-9 as documents he obtained by subpoena from TD Bank regarding the bank accounts for Professionals. Investigator Spillane testified that the debit transactions to the Professionals' bank account at TD Bank were made by Respondent Sanchez from the debit card given to him by Bilofsky. During Spillane's interview, Sanchez admitted that he made the transfers described on the bank statements and that he used the funds from the debit cards transactions for personal use and for operating expenses for Professionals.

Investigator Spillane identified Exhibit S-10 as checks drawn against the TD bank account for Professionals. Check 0099 was made payable to ReMax Professionals in the amount of \$2000 for a referral fee. Check 2000 was made payable to Mejia in the amount in the amount of \$3000 for commission. Check 2003 was also made payable to Mejia in the amount in the amount of \$4000 for commission. All three checks appeared to be signed by Bilofsky, but Respondent Sanchez told Spillane that he signed the name of Richard Bilofsky on all three

checks. Spillane testified that Sanchez did this so that he would get his referral fee and Ms. Mejia would be paid her commission.

Upon questioning by the Commissioners, Spillane testified that he saw similarities between the signatures on the documents to open the TD Bank accounts and the signature on the independent contractor agreement for Lidia Lee. Spillane stated that the signature on the independent contractor agreement for Mejia appears to be different, and when he questioned Respondent Sanchez about it, he admitted he signed the agreement for Mejia, but not the Lee agreement. Sanchez also stated to Spillane that Bilofsky had authorized him to sign any documents he needed to run the agency.

Investigator Spillane testified that the initial complaint made by Ms. Mejia and Ms. Lee occurred on or about August 21, 2012. According to Spillane, this was around the time that the agency was suddenly closed by Respondent Bilofsky, who refused to pay Mejia and Lee commissions. At that time, Respondent Bilofsky also made a complaint to the REC claiming that his identity had been stolen by Sanchez. Investigator Spillane explained that he investigated all complaints at the same time because they were related.

RESPONDENT RICHARD BILOFSKY

At both hearing dates, Respondent Richard Bilofsky waived his right to be represented by counsel and testified on his own behalf. On October 21, 2014, Respondent Bilofsky testified that he met Respondent Sanchez approximately 10 to 12 years ago. Bilofsky stated that he became his broker and sponsored Sanchez to become a licensed broker. Respondent Bilofsky testified that after Sanchez went out on his own he kept in touch with him.

Respondent Bilofsky further testified that he did not know that Respondent Sanchez was not licensed at the time he formed Professionals. Respondent Sanchez told him that

he was selling his two ReMax offices and asked him if he wanted to go into business together. Respondent Bilofsky advised him that he was going to Florida, but to let him know when the businesses were sold.

Respondent Bilofsky further testified that he and Sanchez went to his accountant to form the Professionals corporation, which was owned 100 percent by Bilofsky, and that he and Sanchez then went to TD Bank to open business accounts. Respondent Sanchez put \$100.00 in each account for the future when they would open their business. When shown the licensing application for Professionals (See Exhibit S-2) by Regulatory Officer Lauren Glantzberg and asked whether this was his signature on the application, Bilofsky responded that it looked like his signature.

On the second day of the hearing, December 16, 2014, Respondent Bilofsky testified that when he returned from Florida, he discovered that \$28,000.00 had passed through the Professionals business accounts. He then blocked both accounts and went to the Linden Police Department to file a report regarding three checks that he claimed had been forged. He stated that he didn't sign any checks. He also met with Chief of Investigations, Robert Carter, of the REC to make a complaint that someone stole his identity. Respondent Bilofsky also stated that he went to the bank and post office to file fraud reports. When questioned by the Commissioners, Bilofsky stated that the postal authorities were unable to help and that he never brought an action against TD Bank.

Respondent Bilofsky also testified that he was the only signatory on the accounts. However, in his opening statement on October 21st, he stated that he was the only signatory on the escrow account and that both he and Bilofsky were the signatories on the general account.

On cross-examination, Respondent Bilofsky testified that he was not aware Respondent Sanchez's license was revoked. He thought Sanchez was a broker. Respondent Bilofsky also stated that he did not have any licenses transferred to his corporation.

Respondent Bilofsky further testified that he went to the bank and opened accounts so that they would be ready to go since one needs all that to start a corporation in New Jersey. Respondent Bilofsky stated that the investigator was wrong and that he never received a debit card.

Upon questioning by the Commissioners, Respondent Bilofsky testified that Respondent Sanchez's girlfriend worked at the TD Bank. He stated that his intention was to go into business with Sanchez after Sanchez sold the two ReMax businesses.

JEAN SAVAILLE

Jean Savaille was called as a witness by the REC. Mr. Savaille testified that he is employed at TD Bank as a Customer Service Representative. Mr. Savaille also stated that he also holds a real estate license. In his position at TD Bank he opens accounts and assists in credit card and home loan applications.

Mr. Savaille testified that on April 12, 2012, he opened an account for Respondents Bilofsky and Sanchez, and that both were present when the accounts were opened. Mr. Savaille stated that Respondent Bilofsky presented a certificate of corporate formation and a tax document for Professionals. Savaille further stated that he completed the account application and Bilofsky signed the application in his presence.

Mr. Savaille identified Exhibit S-11 as the new business account application that was signed by Bilofsky and Sanchez. Mr. Savaille stated that Respondent Bilofsky was introduced to him as Sanchez's new partner and over heard them talking about the new venture.

Mr. Savaille testified that two debit cards were issued, one card for Respondent Bilofsky and one card for Respondent Sanchez. A PIN number was also created for the cards. Mr. Savaille further stated that he was not aware that Mr. Bilofsky made a complaint to the bank because that would have been made to the manager, Anne Beeman.

On cross-examination Mr. Savaille testified that he gave Respondent Bilofsky a debit card because Bilofsky said he wanted one when asked. Mr. Savaille stated that two debit cards were issued, and that customers are not required to sign for debit cards.

LIDIA LEE

Lidia Lee was called as a witness by the REC. Ms. Lee testified that she worked at ReMax from 2004 until 2012. Respondent Sanchez told her he lost his broker's license and that Respondent Bilofsky would be the new broker of record at Professionals.

Ms. Lee identified her signature on her Independent Contractor's Agreement (See Exhibit S-1), but is not aware whether Bilofsky or Sanchez, on behalf of Bilofsky, signed the agreement as the broker. Ms. Lee testified that Respondent Bilofsky came into the office, but did not attend the sales meeting, even though she saw him speak with other agents.

Ms. Lee testified that Respondent Bilofsky told her that he was not going to pay her commissions because she didn't work for him. She further testified that since she was not being paid her commissions, she filed a complaint with the REC. She also filed a civil law suit against Bilofsky which was settled out of court.

On cross-examination, Ms. Lee testified that her license was with Professionals in 2012. Ms. Lee stated that she had met Respondent Bilofsky a few years before working at Professionals. Ms. Lee also stated that it was not unusual for the independent contractor agreement not to be signed in front of you.

ZOLIA MEJIA

Ms. Mejia was called as a witness by the REC. Ms. Mejia testified that she is currently employed by Striker Realty in Rahway. Ms. Mejia stated that she was previously employed with ReMax and then Professionals in 2012. Respondent Bilofsky became broker of record for Professionals in April, 2012. She stated that Respondent Bilofsky told her that he was the new broker and would help her make lots of money.

Ms. Mejia identified her independent contractor agreement in Exhibit S-1, but stated that she does not know who signed it because it was left in her mailbox. Ms. Mejia further testified that she saw Respondent Bilofsky in the office three or four times during the month of April, 2012, and saw Respondent Sanchez in the office three or four times a week.

Ms. Mejia identified a copy of a check made out to her which represented part of her commissions as Exhibit S-10. Ms. Mejia stated that Professionals did not have enough money to pay her at one time.

On cross-examination, Ms. Mejia testified that she and Ms. Lee met Respondent Bilofsky at a Burger King and Respondent Bilofsky asked her for money to run the office. Ms. Mejia stated that Respondent Bilofsky told her he was going to have Respondent Sanchez arrested, and she told him not to because she wanted Respondent Sanchez to continue to run the office.

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 Saul Sanchez is a formerly licensed New Jersey broker most recently licensed as broker of record of Ocean Developers, LLC d/b/a ReMax

Professionals, a formerly licensed New Jersey real estate broker whose office was located at 821 North Wood Avenue, Linden, New Jersey. Sanchez's broker's license was revoked for a period of two years by Order of the Commission dated March 12, 2012 ("the March 12, 2012 Final Order"). The March 12, 2012 Final Order also imposed a six month period of ineligibility for a salesperson's license from the date of the order and imposed a \$5,000 fine. Sanchez has paid \$1,250 of the \$5,000 fine (See Exhibit S-6); and

2. Respondent Richard J. Bilofsky is a formerly licensed New Jersey broker most recently licensed as broker of record of Professionals Real Estate, Inc., a formerly licensed New Jersey real estate broker. His license expired on June 30, 2013 and has not been renewed or reinstated (See Exhibit S-5); and
3. Professional Real Estate, Inc. is a formerly licensed real estate broker, whose office was located at 821 Wood Avenue, Linden, New Jersey. Professionals Real Estate, Inc. did not renew its license and it expired on June 30, 2013 (See Exhibit S-5); and
4. Sanchez completed the salesperson pre-licensure education course on February 15, 2013 and passed the examination on February 20, 2013 (See Exhibit S-7); and
5. Respondent Sanchez answered "yes" to question #3 which asks, "Have you ever had a real estate license or other professional license, certification or similar credential revoked, suspended, surrendered in lieu of formal prosecution, or denied in New Jersey or any other state?" (See Exhibit S-7); and

6. By letter dated April 5, 2013 (See Exhibit S-7), the Commission staff denied Respondent Sanchez's application for a license because of the suspension or revocation of a real estate or other professional license previously held, the conduct on which that action was based, and the failure to pay the fine imposed as part of the March 12, 1012 Final Order. The staff concluded that Sanchez failed to meet the standard for licensure as set forth in N.J.S.A. 45:15-9; and
7. On September 1, 2013, Respondent Sanchez filed an appeal to the Commission of the initial denial of licensure as a salesperson based upon his contention that he is under significant financial hardship and Sanchez submitted evidence of rehabilitation. He also submitted three positive character references and had an active offer of employment as a salesperson with Coldwell Banker Robert Michael Realty, 21 Brant Avenue, Clark, New Jersey; and
8. Respondent Sanchez admitted to Investigator Robert Spillane that he engaged in real estate brokerage activity during the period that his broker's license was revoked and during his salesperson's license ineligibility, specifically starting in April, 2012:
 - a. On April 12, 2012, Respondent Sanchez went to the TD Bank branch in Roselle, NJ with Respondent Bilofsky and completed an application (See Exhibit S-11) to open business accounts ("simple checking") for Professionals Real Estate in which Respondent Bilofsky signed as President and Owner of Professionals Real Estate; and

- b. Sanchez admitted to using the debit card attached to the simple checking account of Professionals Real Estate to make the following payments (See Exhibit S-8 & S-9);
- i. 5/18/12 Real Estate Commission - \$100
 - ii. 5/18/12 Garden State MLS - \$72.50
 - iii. 5/21/12 501 North Wood Avenue, signs - \$482.50
 - iv. 5/21/12 United Association of Realtors - \$446.25
 - v. 5/21/12 United Association of Realtors - \$250
 - vi. 7/12/12 Color Screen Pros, banner - \$227.50
- c. Commencing at least as early as April, 2012 through August, 2012, Sanchez ran the day to day operations of Professionals Real Estate located at 821 North Wood Avenue, Linden, NJ; and
- d. Sanchez admitted that on or about July 5, 2012, he wrote check #99 (See Exhibit S-10) from the Professionals Real Estate operating account in the amount of \$2,000 to "ReMax Professionals I" as a referral fee, and signed the name of Respondent Richard Bilofsky, as the authorized signer.
- e. Sanchez admitted that on August 1, 2012, he wrote check #2000 (See Exhibit S-10) from the Professionals Real Estate Operating Account, in the amount of \$3,000, payable to Zoila Mejia, salesperson with Professionals Real Estate, as commission for the Magnolia Street, Elizabeth, NJ transaction and check #2003 (See Exhibit S-10) from the Professionals Real Estate Operating Account in the amount of \$4,000, as commission for the 140 Franklin Street, Elizabeth, NJ, transaction and in both instances signed the name of Respondent Richard Bilofsky, as the authorized signer ; and

- f. Sanchez admitted that he signed the name Respondent Richard Bilofsky as the broker of record of Professionals Real Estate, on the independent contractor's agreement of Zoila Mejia with Professionals Real Estate, dated April 16, 2012 (See Exhibit S-1); and
9. On or about April 12, 2012, Respondent Bilofsky signed as broker of record on an application for his corporation, Professionals Real Estate, Inc. and real estate broker license which was submitted to REC (See Exhibit S-2); and
10. On or about April 6, 2012, Respondent Bilofsky formed Professionals Real Estate, Inc. and was issued a Certificate of Incorporation (See Exhibit S-2); and
11. On or about April 15, 2012, Respondent Bilofsky signed a lease agreement on behalf of Professionals Real Estate, Inc. as tenant with Respondent Sanchez, as landlord, to occupy the premises at 821 North Wood Avenue, Linden, NJ. (See Exhibit S-3); and
12. In August, 2012, Respondent Bilofsky made a written complaint to Chief of Investigations Robert Carter of the REC regarding the forgery of his signature and the fraudulent use of his real estate corporation. (See Exhibit R-1); and
13. On or about August 3, 2012, Respondent Bilofsky made a report to the Linden Police Department which stated that Respondent Sanchez stole three checks from his office. (See Exhibit R-1); and
14. On or about December 31, 2013, the REC issued a subpoena to Respondent Bilofsky to appear and produce records which was returnable on January 15, 2015. Respondent Bilofsky appeared and was interviewed by Investigator

Spillane; however, he failed to bring or produce any of the records or documents requested; and

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:

1. Respondent Sanchez made admissions to Investigator Spillane that were also supported by the evidence that he engaged in real estate brokerage activity during the period of his broker license revocation and salesperson's license ineligibility, in violation of N.J.S.A. 45:15-12.3. This statute provides that a person whose license has been revoked pursuant to N.J.S.A. 45:15-17 or N.J.S.A. 45:15-19.1 shall not be a general partner, officer, director or owner, either directly or indirectly, of a controlling interest in a licensed partnership, limited partnership or corporation, nor shall the person be retained or employed in any capacity, or compensated in any manner by a licensee, nor shall the person occupy or share office space in a licensed office location for any purpose during the period of revocation; and
2. Respondent Sanchez violated N.J.S.A. 45:15-1 and N.J.S.A. 45:15-3 in that he engaged in unlicensed activity while his broker's license was revoked and while he was ineligible as a salesperson pursuant to the REC's March 12, 2012 Final Order; and
3. Respondent Sanchez violated N.J.S.A. 45:15-17e in that the above conduct demonstrates unworthiness; and
4. Respondent Bilofsky violated N.J.A.C. 11:5-4.3 in that he engaged in license lending. Specifically, a licensee cannot enter into an arrangement, direct or indirect, whereby an individual licensee, in this case Respondent Bilofsky, lends his name or license for the

- benefit of another person, firm or corporation. This includes any arrangement whereby the broker fails to personally oversee and direct the operations of the business; and
5. Respondent Bilofsky violated N.J.S.A. 45:15-17c because his conduct demonstrates incompetency in that he allowed Respondent Sanchez to run the day to day operations of Professionals Real Estate, Inc.

DETERMINATION

In arriving at the determination in this matter, the Commission took into consideration the testimony and credibility of the witnesses and the undisputed documentary evidence admitted during the hearing. The Commission also considered the serious nature of and the circumstances surrounding the actions of Respondent Sanchez and Respondent Bilofsky.

In this case, Respondent Sanchez engaged in real estate brokerage activity during the period of his revocation and salesperson ineligibility. Sanchez introduced Bilofsky as his new business partner to TD bank representatives and shared office space with Bilofsky pursuant to their lease agreement. Clearly, this constitutes a violation of N.J.S.A. 45:15-12.3. Moreover, Respondent Sanchez engaged in unlicensed activity in violation of N.J.S.A. 45:15-1 and N.J.S.A. 45:15-3. He admits to withdrawing funds from the Professionals business account, signing checks and agreements with Bilofsky's name, which he claims he had to the authority to do. He also admits that he and Bilofsky agreed that Sanchez would run the day to day operations of Professionals. This fact was also corroborated by independent witness testimony. In sum, the undisputed facts on the record demonstrate that Respondent Sanchez held himself out to be broker of record at Professionals and was also running the day to day operations of the agency. Respondent Sanchez's actions further demonstrate unworthiness in violation of N.J.S.A. 45:15-17e.

Furthermore, Respondent Bilofsky's actions, as a formerly licensed real estate broker, clearly support a finding that he engaged in license lending in violation of N.J.A.C. 11:5-4.3. Bilofsky stated that he did not sign the three checks and the brokers' agreements. Sanchez admitted to signing the checks and one of the agreements. Bilofsky further stated that he had no intention of going into business with Sanchez until he sold his two ReMax businesses. However, his actions show a different intention. On April 6, 2012, Bilofsky formed the corporation known as "Professionals Real Estate Inc." On April 12, 2012 he admitted to signing an application for a real estate broker license that was submitted to the REC. On this same date, he and Sanchez went to TD Bank to open business accounts. He signed the account application as the President of the corporation and represented himself as being the broker of record. Also, on this same day, Sanchez introduced Bilofsky to salespersons at the Linden office as being the broker of record. The salespersons are also instructed that Sanchez will continue to run the day to day operations of the business. Sanchez is given a debit card and access to the Professionals accounts. In addition, Bilofsky signed a lease agreement with Sanchez for the Linden office effective April 15, 2012. Accordingly, Bilofsky did not wait until Sanchez sold his businesses before starting the new business. A business arrangement was created by the Respondents for the benefit of Sanchez in April, 2012. This arrangement was supported by the actions of Bilofsky. Lastly, Respondent Bilofsky allowed Sanchez to run the day to day operations of Professionals. Bilofsky's actions demonstrate incompetency in violation of N.J.S.A. 45:15-17e.

Pursuant to N.J.S.A. 45:15-17e, 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." Additionally, the Commission is empowered to take enforcement action regarding "any other conduct...which constitutes fraud or dishonest dealing."

N.J.S.A. 45:15-17l. The nature and duties of the 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 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 moneys are placed within the trust of the licensee. The public relies upon the honesty and good moral character of the licensee when it entrusts money to a licensee or enters into a fiduciary relationship with a licensee. Ellsworth Dobbs, Inc., v. Johnson and Johnson, 50 N.J. 528, 553 (1967). Therefore, license revocation is the appropriate sanction in this case.

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. These factors are applicable in this matter which seeks the imposition of penalties under the Real Estate License Act, N.J.S.A. 45:15-1, et seq.: These factors are: (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. An analysis of these factors indicates that imposition of a significant fine is appropriate.

First, Respondent Sanchez demonstrated bad faith when he engaged in unlicensed activity; Respondent Bilofsky demonstrated bad faith by engaging in license lending. Second, there is no evidence in the record regarding Respondents' ability to pay. Third, the amount of profits obtained by both Respondents is also unknown. However, according to Respondent Sanchez, the financial arrangement between the Respondents was established to be profitable for

both parties. Fourth, the public is significantly harmed when individuals engage in unlicensed activity because the unlicensed persons have not complied with REC's statutory and regulatory requirements and safe guards. The public is also harmed when brokers are not held accountable for the operations of a real estate business because they have lent their license to another. Fifth, Respondents' activities took place between April 2012 and August 2012, over five months, where commissions on real estate transactions were due. Sixth, the Commission has no knowledge of criminal or treble damages. However, the Commission is aware, through testimony at the hearing, that there was a civil suit against Respondent Bilofsky for unpaid commissions that was settled between the parties. Finally, Sanchez had previous violations. Respondent Sanchez's broker's license was revoked for two years, and he received a six month period of ineligibility for a salesperson's license, along with a \$5,000.00 fine by Order of this Commission dated March 12, 2012.

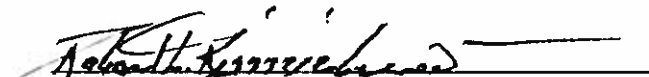
Accordingly and pursuant to N.J.S.A. 45:15-17, the Commission imposes the following sanctions:

- I. Respondent Sanchez's real estate salesperson's license shall be revoked for a period of five (5) years commencing on the date of this Order.
- II. Respondent Sanchez shall pay a fine in the amount of \$5,000.00. Said fine shall be paid within 30 days from the issuance of this Order. No re-licensure shall be considered until the fine is paid in full.
- III. Respondent Bilofsky's real estate broker's license shall be revoked for a period five (5) years commencing on the date of this Order. Further, Respondent Bilofsky shall also be ineligible to apply for a salesperson or referral agents' license for a period five (5) years commencing on the date of this Order.

IV. Respondent Bilofsky shall pay a fine in the amount of \$5,000.00. Said fine shall be paid within 30 days from the issuance of this Order. No re-licensure shall be considered until the fine is paid in full.

SO ORDERED this 26th day of May, 2016.

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


Robert L. Kinniebrew
Executive Director
New Jersey Real Estate Commission