

**NEW JERSEY REAL ESTATE COMMISSION**

NEW JERSEY REAL ESTATE	)	Docket No.: CAP-16-028
COMMISSION,	)	REC Ref. No: 10004197
	)	
Complainant,	)	
	)	
v.	)	<b>FINAL ORDER AND</b>
	)	<b>DETERMINATION</b>
	)	
PATRICIA PIACENTINE, a licensed	)	
New Jersey real estate salesperson	)	
(License Ref. No. 0345455),	)	
	)	
Respondent.	)	

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**THIS MATTER** was heard by the New Jersey Real Estate Commission (“Commission”) at the Department of Banking and Insurance, State of New Jersey at the Real Estate Commission Hearing Room, 20 West State Street, Trenton, New Jersey on February 28, 2017.

**BEFORE:** Commissioners Linda Stefanik, Sanjeev Aneja<sup>1</sup>, Jacob Elkes, William Hanley, Denise Illes, and Kathryn Godby-Oram.

**APPEARANCES:** John Rossakis, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission staff (“REC”). Respondent Patricia Piacentine did not appear at the hearing.<sup>2</sup>

**PROCEDURAL HISTORY**

On or about December 9, 2016, the REC served Patricia Piacentine (“Respondent”) with an Order to Show Cause (“OTSC”) that was issued 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 the Respondent obtained an

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<sup>1</sup> Although Commissioner Aneja was present at the hearing, he voted no to the motion to find the Respondent in violation of N.J.S.A. 45:15-17e and N.J.A.C. 11:5-6.4a and to impose associated penalties.

<sup>2</sup> The Respondent did not file an Answer, but notified the REC by letter dated February 23, 2017 that she would be unable to appear at the February 28, 2017 hearing due to extenuating circumstances.

electronic lockbox code from the listing office and provided the same to her client, a potential buyer, for the purpose of allowing them unauthorized and unsupervised access to 301 Arizona Avenue, Villas, New Jersey 08251 (“Property”) on March 9, 2016. The OTSC alleged that this conduct demonstrated unworthiness and dishonesty in violation of N.J.S.A. 45:15-17e. Furthermore, the OTSC alleged that the Respondent violated N.J.A.C. 11:5-6.4(a) by failing to strictly comply with the laws of agency and the principles governing fiduciary relationships, and placing her interests above the interests of her clients.

The Respondent did not file a timely Answer to the allegations made in the OTSC. The matter was reviewed by the Commission on January 24, 2017, where it was determined there were no material facts or issues of law in dispute. A hearing was scheduled for February 28, 2017 to determine the severity of sanctions and penalties to be imposed. A letter dated January 24, 2017 was sent to the Respondent confirming the date of the hearing. By letter dated February 23, 2017, the Respondent apologetically admitted to all allegations made against her in the OTSC and informed the REC that she would not be present at the upcoming hearing due to extenuating circumstances.

At the February 28, 2017 hearing, the following exhibits were admitted into evidence by the REC:

- S-1 Complaint or Consumer Inquiry filed by Gail Villari with New Jersey Real Estate Commission dated March 24, 2016, and Ethics Complaint filed by Gail Villari and Melissa DeMusz with Cape May County Association of REALTORS<sup>®</sup> dated March 30, 2016.
- S-2 Respondent’s Reply to the Ethics Complaint dated April 21, 2016.
- S-3 Report of Contact Transcription of Voicemail Message dated May 16, 2016.

**TESTIMONY OF THE WITNESS**

**Robert Spillane**

Robert Spillane (“Spillane”) testified on behalf of the REC. Spillane began his career as a police officer, then as a real estate licensee and broker, and is currently an Investigator at the REC. Spillane was assigned to investigate the Respondent’s conduct after the REC received a complaint from the owner of the Property, Gail Villari (“Villari”).

Spillane testified to his conversations with Villari, via telephone. In his conversation with Villari, she reiterated the allegations she had made in the complaint filed with the REC as follows: after listing her property with Homestead Realty Company on March 9, 2016, she came home to find two people standing in her living room, without a real estate licensee present. When Villari asked who had let them into her home, the buyers said that their real estate agent had given them the access code to the lockbox and let them onto the property. (Exhibit S-1).

Next, Spillane testified to his conversation with the listing agent, Melissa DeMusz (“DeMusz”). DeMusz stated that when she had listed Villari’s home in 2015 she had placed an electronic lockbox on the premises. She explained that in order for a real estate licensee to access the Property, they would have to call the listing office and request a code. An individualized code would be issued that would open the lockbox that would be valid for 24 hours. DeMusz stated that on March 9, 2016, the Respondent contacted her office and received an individualized code, which was used at 2:25 PM that same day to access the key on the Property. In addition, DeMusz let Spillane hear an audio recording of a voicemail the Respondent had left for her on March 16, 2015. Spillane stated that on the recording the

Respondent admitted to allowing people onto the Property without authorization.<sup>3</sup> (Exhibit S-3). Finally, DeMusz provided Spillane with an activity log of the Property's electronic lockbox. The log shows the times and dates when the Respondent was issued the code and when the code was used to access the key at the Property. (Exhibit S-4). The log corroborates that the Respondent received a code to access the electronic lockbox located on the Property on March 9, 2016, which was then used to open the lockbox at 2:25PM that day.

Lastly, Spillane testified to his conversation with the Respondent at her ReMax office. During their conversation the Respondent again admitted to letting her clients into the Property by giving them the code to the electronic lockbox, providing access to the Property without her supervision, while she was on vacation. During Spillane's visit to ReMax, he also spoke to the Respondent's broker, Brian Roche ("Roche"). Roche informed Spillane that he was on the Professional Standards Committee of the Cape May Association of REALTORS® and was aware that an ethics complaint was filed against the Respondent. (Exhibit S-1). In addition, he knew the Respondent had submitted a letter admitting to the allegations against her (Exhibit S-2). Lastly, he informed Spillane that he had required the Respondent to re-take a required ethics course due to her conduct.

### **FINDINGS OF FACT**

Based on the Order to Show Cause, the Respondent's February 23, 2017 letter, the testimony of the witness, and the documentary evidence duly admitted into the record, the Commission makes the following findings of fact:

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<sup>3</sup> The audio recording that DeMusz shared with Spillane was transcribed for a "Report of Contact," which was submitted as Exhibit S-3. The recording states: "Hello Melissa. It's Patty Piacentine. First of all I wanted to apologize for allowing my clients to go through your property. I had scheduled to go away for my family. They are cash buyers. It is the home they really wanted to see and I am getting a contract together for you today to, um, hopefully get to you today if not it will be first thing tomorrow. Please give me a call."

1. Respondent Patricia Piacentine is an actively licensed New Jersey real estate salesperson, who was first licensed in November 2003, and is currently licensed with David Kelly Thompson Inc., d/b/a RE/MAX At The Shore, Ocean City, licensed New Jersey Real Estate Broker, whose office is located at 315 Ocean Street, Cape May, New Jersey, 08204.
2. On or about August 8, 2015, Villari entered into a listing agreement with DeMusz of Homestead Real Estate Company, to sell her home, located at 301 Arizona Avenue, Villas, New Jersey, 08251.
3. On March 9, 2016, the Respondent contacted DeMusz to schedule an appointment to view the Property. The Respondent was provided with an electric lockbox code to show the Property to prospective buyers at 2:00 p.m. on March 9, 2016.
4. On March 9, 2016, at approximately 2:25 PM, the Respondent provided the electronic lockbox code to the potential buyers without the permission of Villari or DeMusz, thereby allowing the potential buyers to enter the home unattended by a real estate licensee or other authorized person. When Villari returned to her property, she found two individuals inside her home unsupervised.
5. On March 16, 2016, the Respondent left a voicemail for DeMusz, wherein she apologized for allowing her clients to view the Property unattended, stated she did so because they were going to make a cash offer on the home, refers to an offer that she would submit later that week, and stated she was on vacation.
6. On March 24, 2016, Villari submitted a complaint to the Commission, reporting the Respondent for providing unauthorized access to her home to prospective buyers and seeking an investigation for possible regulatory violations.

7. On March 30, 2016, Villari and DeMusz filed a complaint against the Respondent with the Cape May County Association of REALTORS<sup>®</sup>, accusing the Respondent of violating Articles 1 and 3 of the REALTORS<sup>®</sup> Code of Ethics.
8. On April 12, 2016, the Grievance Committee decided to forward the complaint to the Professional Standards Committee for a hearing to determine if violations of Articles 1 and 3 of the REALTORS<sup>®</sup> Code of Ethics had taken place.
9. On April 12, 2016, the Respondent submitted a letter to the Professional Standards Committee, admitting to the allegations made against her in the ethics complaint.

### **CONCLUSIONS OF LAW**

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

1. The Respondent's conduct is in violation of N.J.S.A. 45:15-17e in that her conduct demonstrated unworthiness and dishonesty because she purposefully obtained an electronic lockbox code and provided the same to her clients for the purpose of allowing them unauthorized and unsupervised access to the Property.
2. The Respondent's conduct is in violation of N.J.A.C. 11:5-6.4(a) in that by allowing her clients to enter into and view the property of another, unaccompanied and without a real estate licensee or other authorized person, she failed to deal fairly with all parties to the transaction.

### **DISCUSSION**

At the conclusion of the hearing and executive session in this matter, the Commission<sup>4</sup> voted in favor of finding the violations and imposing the sanctions described in this Final

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<sup>4</sup> Commissioner Aneja voted no to the motion to find the Respondent in violation of N.J.S.A. 45:15-17e and N.J.A.C. 11:5-6.4a and to impose associated penalties.

Decision and Order. In arriving at the determination in this matter, the Commission took into consideration the Respondent's February 23, 2017 letter, the testimony presented, and the undisputed documentary evidence admitted at the hearing.

The OTSC alleges that the Respondent violated N.J.S.A. 45:15-17e and N.J.A.C. 11:5-6.4(a) when she obtained the electronic lockbox code to the Property with the intent to provide that code to her client, a potential buyer, in order for them to enter the home without proper authorization or supervision. In a letter dated February 23, 2017 addressed to the Real Estate Commission, the Respondent admitted to the allegations made against her in the OTSC.

The Real Estate License Act, N.J.S.A. 45:15-1 et seq. ("the Act") charges the Commission with the "high responsibility of maintaining ethical standards among real estate brokers and sales[persons]" in order to protect New Jersey real estate consumers. Goodley v. New Jersey Real Estate Comm'n. 29 N.J. Super. 178, 181-182 (App. Div. 1954). The Commission is empowered to suspend and revoke the licenses of, and impose fines against, brokers and salespersons that violate any of the offenses enumerated in N.J.S.A. 45:15-17 or the real estate regulations. Maple Hill Farms, Inc. v. New Jersey Real Estate Comm'n. 67 N.J. Super. 223, 232 (App. Div. 1961); Division of New Jersey Real Estate Comm'n v. Ponsi, 39 N.J. Super. 526, 527 (App. Div. 1956). Courts have long recognized that the real estate sales industry should exclude individuals who are incompetent, unworthy, and unscrupulous, in order to protect the public interest. See Div. of New Jersey Real Estate Comm'n v. Ponsi, *supra* at 532-533.

Thus, the Commission has the power to suspend, revoke, or place on probation the license of any licensee for "any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty." N.J.S.A. 45:15-17e. In this case, the Respondent does not dispute that her conduct is in violation of N.J.S.A. 45:15-17e. She has repeatedly admitted that she purposefully

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obtained an electronic lockbox code and provided the same to her clients to allow them unauthorized and unsupervised access to the Property. In addition, she has repeatedly admitted that this conduct reflects an error in judgment and lacks the integrity that is demanded and expected from real estate licensees. In light of these admissions, the Respondent has violated N.J.S.A. 45:15-17e and her license is subject to suspension, revocation, or probation.

In addition, the Respondent's conduct is in a violation of N.J.A.C. 11:5-6.4(a). Under N.J.A.C. 11:5-6.4(a), by accepting employment as an agent, a licensee pledges to protect and promote, as she would her own, the interests of the client she has undertaken to represent; this obligation of absolute fidelity to the client's interests is primary but does not relieve the licensee from the obligation of dealing fairly with all parties to the transaction. Here, the Respondent failed to deal fairly with all parties to the transaction, namely the homeowner.<sup>5</sup>

Pursuant to N.J.S.A. 45:15-17, the Commission may impose "a penalty of not more than \$5,000.00 for the first violation" of the Act, and a "penalty of not more than \$10,000.00 for any subsequent violation." In Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), the Supreme Court established the following seven factors must be considered in evaluating the imposition of fines in administrative proceedings and these factors are applicable to this matter which seeks the imposition of penalties under the Act: (1) the good or bad faith of the respondent; (2) the respondent's ability to pay; (3) the amount of profits obtained from the illegal

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<sup>5</sup> The OTSC alleged that the Respondent violated N.J.A.C. 11:5-6.4(a) and cited the language that Respondent "failed to strictly comply with the laws of agency and the principles governing fiduciary relationships" and "placed her interests above the interests of her clients." The Commission found that Respondent failed in her "obligation of dealing fairly with all parties," which is also a violation of N.J.A.C. 11:5-6.4(a). "Unless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice." N.J.A.C. 1:1-6.2(a). Respondent was on notice as to the factual basis underlying the charge of a violation of N.J.A.C. 11:5-6.4(a). Thus, the OTSC in this matter should be conformed to reflect the Commission's conclusion that Respondent failed to deal fairly with all parties to a transaction.



activity; (4) the injury to the public; (5) the duration of the illegal activity or conspiracy; (6) the existence of criminal or treble actions; and (7) any past violations. Id. at 137-139.

The first factor of the Kimmelman analysis is whether the Respondent acted in good or bad faith. The facts presented in this matter are clear, the Respondent allowed her client to enter the Property without proper authorization or supervision. As previously stated, the Respondent has apologized for her conduct and poor judgment repeatedly and taken responsibility for her actions. However, it is imperative to acknowledge that the Respondent's lapse in judgment is so severe it rises to the level of bad faith. The facts do not indicate that the Respondent's conduct was meant to be deliberately nefarious, but it is clear that she knew she was procuring the electronic lockbox code under false and dishonest pretenses in order to provide access for her clients so they could enter the Property without supervision or permission. This factor weighs in favor of a significant monetary penalty.

Secondly, no evidence was presented as to Respondent's ability to pay fines assessed. Thirdly, the Respondent received the benefit of providing clients access to a home without her presence or other authorized supervision, which could have led to a contract of sale.

The fourth factor of the Kimmelman analysis is to determine whether the licensee's conduct caused injury to the public. The public is harmed when licensed professionals fail to maintain the level of honesty and trustworthiness demanded under the laws of this State. It is the responsibility of the Commission to ensure that individuals who hold licenses demonstrate behavior which instills the utmost public trust. Licensees are responsible for the homes of the seller, which includes supervising the conduct of potential buyers who enter the premises and survey their property. In this matter, for Villari to return to her home and find two strangers she does not know wandering around inside, with access to all of her belongings, without the

supervision of a licensed agent has caused her irreversible harm and destroys her trust in real estate professionals. This factor weighs in favor of a monetary penalty.

The fifth factor in a Kimmelman analysis is the duration of the illegal conspiracy or scheme. The documentary and testimonial evidence presented indicates that the Respondent's conduct was an isolated, one time occurrence and not part of an ongoing scheme. This factor does not weigh in favor of a significant monetary penalty.

The existence of criminal actions and whether a civil penalty may be unduly punitive if other sanctions have been imposed is the sixth factor. The Supreme Court held in Kimmelman that a lack of criminal punishment weighs in favor of a more significant civil penalty because the defendant cannot argue that he or she has already paid a price for his or her unlawful conduct. Kimmelman, supra, 108 N.J. at 139. Here, the Respondent has not faced any criminal punishment for her actions. However, it is clearly documented that she has been part of an ethics proceeding before the Cape May Association of REALTORS<sup>®</sup> stemming from this conduct at issue. She has, in part, paid a price for her behavior. As such, this factor does not weigh in favor of a significant monetary penalty.

The seventh and final factor takes into consideration the Respondent's past violations, of which there are none. No evidence of past violations was presented at the hearing either through documentary or testimonial evidence. This factor does not weigh in favor of a significant monetary penalty.

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

1. Respondent Piacentine's real estate salesperson license is hereby suspended for a period of forty-five (45) days from the issuance of this Order.

2. Respondent Piacentine shall pay a fine of \$2,500.
3. Respondent Piacentine shall take an additional six hours of continuing education courses in the area of agency (three hours) and ethics (three hours) which shall not count towards the continuing education requirement for the next renewal term within 90 days of the issuance of this Order. Respondent Piacentine is required to provide proof of completion to the Commission before the time for her license renewal.

SO ORDERED this 12<sup>th</sup> day of July, 2017.

By: Linda Stefanik, President  
Jacob Elkes, Commissioner  
Kathryn Godby Oram, Commissioner  
William Hanley, Commissioner  
Denise Illes, Commissioner

  
Patrick J. Mullen  
Director of Banking

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