

**NEW JERSEY REAL ESTATE COMMISSION**

NEW JERSEY REAL ESTATE COMMISSION,	)	DOCKET NO.:HUD-14-015
	)	
Complainant,	)	
v.	)	<b>FINAL ORDER OF</b>
	)	<b>DETERMINATION</b>
CHARLES OMAR HERNANDEZ, an unlicensed	)	
person,	)	
Respondent.	)	

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THIS MATTER was heard at a plenary hearing by the New Jersey Real Estate Commission ("Commission") in the Department of Banking and Insurance, State of New Jersey at the Real Estate Commission Hearing Room, 20 West State Street, Trenton, New Jersey on October 7, 2014.

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

**APPEARANCES:** Marianne Gallina, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission ("REC"). Respondent Hernandez 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 August 4, 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 Hernandez engaged in violations of the real estate statutes and regulations when he referred to a textbook during a real estate salesperson license examination. The OTSC further alleged that Respondent Hernandez's

actions demonstrated that he does not possess the requisite good character, honesty, integrity and trustworthiness that all candidates for licensure must possess.

Respondent Hernandez was served with the OTSC, but did not file an answer to the charges in the OTSC. Thus, the matter was deemed uncontested and a proof hearing was scheduled for October 7, 2014. Although the Respondent received notice of the scheduled hearing date, and was in communication with the REC Staff, he did not appear at the hearing, nor did he request an adjournment.

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

- S-1 Copies of emails and Incident Report to Gwendolyn Cobb from Secaucus Security at PSI testing site.
- S-2 Copy of the “Check in Speech”, which are the rules candidates must follow while taking the exam.
- S-3 Photocopy of the cover of the book entitled “Essentials of New Jersey Real Estate” Respondent Hernandez had on his lap during the examination.
- S-4 PSI Security Agreement for examinations.

### **TESTIMONY OF THE WITNESS**

Investigator Robert McCloskey testified on behalf of the REC. Investigator McCloskey testified that he was assigned to investigate the Hernandez security incident after Gwendolyn Cobb, REC Supervisor of Licensing and Education, received an email from PSI staff regarding a security breach at a testing center which occurred on February 11, 2014.

Investigator Robert McCloskey identified Exhibit S-1 as copies of emails that Ms. Cobb received regarding a security incident involving Respondent Hernandez. Investigator McCloskey stated that he went out to the testing site and met with the proctors. His investigation

revealed that a proctor had observed Respondent Hernandez with a copy of a book, “Essentials of New Jersey Real Estate”, on his lap during the taking of a salesperson licensing examination. The proctors asked for the book and Respondent complied, however he then became unruly. Investigator McCloskey identified Exhibit S-3 as a copy of the cover of the book Respondent Hernandez had on his lap during the examination. A copy of the cover was taken by one of the proctors on the date of the examination.

Investigator McCloskey further identified Exhibit S-2 as a copy of the “Check in Speech,” which sets forth the rules that candidates must follow while taking the exam. Investigator McCloskey explained that on one occasion he went to the testing center anonymously to observe the procedures. He stated that all candidates, even late arrivals, were read the rules and then taken into the exam room.

Investigator McCloskey then identified Exhibit S-4 as a copy of the security agreement that appears on a computer screen at the testing site before the exam. McCloskey explained that candidates must indicate that they will comply with the agreement in order to proceed with taking the test. Respondent agreed to the terms of the Security Agreement at the commencement of the examination. However, Respondent Hernandez did not comply with the agreement after the exam started.

Investigator McCloskey further testified that he met with Respondent Hernandez who stated that he was late to take the examination because he was involved in a car accident. Apparently, there was no police report because the person had fled the scene. Respondent Hernandez stated that he wanted to take the exam that day because he had already paid for it. Investigator McCloskey testified that he asked Respondent Hernandez about the book being in the examination room; however, Hernandez would not discuss the matter.

Investigator McCloskey further testified that Respondent Hernandez had a special accommodation that allowed him to have a private room and provided him with extra time to take the test. This accommodation was provided by the testing center.

Investigator McCloskey further testified that after the book was taken from Respondent Hernandez, he threatened the proctors. Hernandez started throwing stuff around and the proctors became fearful for their safety. The proctors returned the book to Hernandez, but were able to take a photocopy of the cover of the book. Investigator McCloskey stated that Hernandez told the proctors that they were ruining his life and they know what the consequences are going to be.

### **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 Charles Omar Hernandez does not currently hold nor has he ever held a real estate salesperson license in New Jersey; and
2. On February 11, 2014, Respondent sat for the New Jersey real estate salesperson's licensing examination at the Secaucus, New Jersey site for PSI, the New Jersey state-approved testing vendor; and
3. Respondent was given special accommodations in taking the test, based on his representation that he had disabilities which entitled him to same under the Americans with Disabilities Act. The accommodations included a private testing room and twice the amount of time allotted by regulation for candidates to take the examination. The accommodations did not allow the use of textbooks or other resource materials; and

4. Prior to the commencement of the examination, PSI staff read the “Check in Speech” (Exhibit S-2) to Respondent which outlines the examination rules, as is standard procedure. The Check in Speech includes the prohibition against accessing unauthorized study materials or notes while in the examination room; and
5. The real estate examination is taken via computer. Before the examination can begin, the Security Agreement (Exhibit S-4) appears on the computer screen and the candidate is required to agree to the terms of the Security Agreement. If the candidate disagrees with the Security Agreement, he or she cannot take the examination; and
6. Respondent agreed to the terms of the Security Agreement at the commencement of the examination on February 11, 2014; and
7. At approximately 3:30 p.m. when a PSI examination proctor checked-in on the Respondent, the proctor observed that Respondent had an open book in his lap entitled “Essentials of New Jersey Real Estate.” The proctor told the Respondent that having the book in the examination room was a violation of the Security Agreement and that the examination would be terminated. Respondent did not answer the proctor’s questions as to why he had the book in the room; and
8. The proctor confiscated the book, at which time the Respondent became agitated. A supervisor was called to the room and Respondent yelled at both of the men, grabbed a chair and repeatedly slammed it into the floor while demanding that they return his book. PSI personnel made a copy of the cover of the book and returned the book to Respondent. They then requested that Respondent leave the premises.

## **CONCLUSIONS OF LAW**

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

1. Respondent has demonstrated that he does not possess the requisite good character, honesty, integrity and trustworthiness that all candidates for licensure must possess pursuant to the provisions of N.J.S.A. 45:15-9 ; and
2. Respondent's conduct in referring to a textbook on his lap during a real estate salesperson license examination is in violation of N.J.A.C. 11:5-3.4(a).

## **DETERMINATION**

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

This matter concerns Respondent's actions in the application process for a real estate salesperson license and therefore deals with the basic requirements that all real estate licensees must demonstrate. N.J.S.A. 45:15-9 provides that every applicant for a real estate license must furnish evidence of good moral character and proof of their honesty, trustworthiness, character and integrity. These are qualities and qualifications of licensure which protect the public interest. In addition, N.J.A.C. 11:5-3.4(a)<sup>1</sup> clearly states that examinees shall not be permitted to refer to any notes, books, or memoranda in the administration of examination for licensure.

The facts in the record demonstrate that Respondent Hernandez brought a book entitled "Essentials of New Jersey Real Estate" (Exhibit S-3) into the testing room and had the open book on his lap while taking the real estate examination. When confronted by the exam proctors, Respondent Hernandez became unruly and threatening causing the proctors to be concerned for their safety. This conduct demonstrates dishonesty, untrustworthiness, lack of character and lack of integrity.

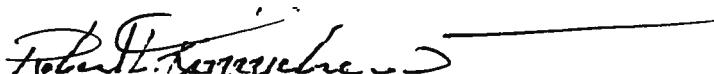
Furthermore, both the Check in Speech (Exhibit S-2) and the Security Agreement (Exhibit S-4), which was provided to Respondent, clearly state that study materials are not permitted once the exam begins. Referring to a textbook during the examination seriously compromises the ability of the Commission to properly qualify future licensees.

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

- I. Respondent Charles Omar Hernandez shall be barred from taking the real estate salesperson's class and license examination for a period of one (1) year from October 7, 2014. Respondent shall re-quality in accordance with the Commission's regulation then in effect.

SO ORDERED this 4<sup>th</sup> day of September, 2015.

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