

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,	)	DOCKET NO.: SOM-16-019
	)	REC REF. NO.: 10004442
Complainant,	)	
	)	
LAURA M. CORTESE, a licensed New Jersey	)	FINAL ORDER OF
real estate salesperson (Ref. No. 9909617)	)	DETERMINATION
	)	
	)	
Respondent.	)	

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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 March 28, 2017.

**BEFORE:** Commissioners Linda K. Stefanik, Eugenia K. Bonilla, Sanjeev Aneja, William Hanley, and Denise Illes.

**APPEARANCES:** Marianne Gallina, Regulatory Officer (“RO Gallina”), appeared on behalf of the complainant, the New Jersey Real Estate Commission staff (“REC”). Respondent Laura M. Cortese (“Respondent”) appeared pro se.

**STATEMENT OF THE CASE**

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated November 16, 2016, pursuant to N.J.S.A. 45:15-17, N.J.S.A. 45:15-18, N.J.S.A. 45:15-19.2,<sup>1</sup> and N.J.A.C. 11:5-1.1 et seq. The OTSC alleged that although the

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<sup>1</sup> On page one of the OTSC, it states that the OTSC is being issued pursuant to N.J.S.A. 45:15-19.2, which provides that the Commission may suspend the license of a licensee pending trial for certain enumerated offenses, including crimes involving, relating to, or arising out of the licensee’s activities as a real estate licensee. However, this appears to be a typographical error as the OTSC does not seek the suspension of the Respondent’s license based upon this statutory citation nor did the REC seek such relief at the hearing. On page two of the OTSC, however, it is

Respondent was actively licensed in December 2015 and January 2016, the Respondent did not notify the Commission, pursuant to N.J.S.A. 45:15-17s, that she was charged on December 7, 2015, with one count of Theft by Deception, a crime in the second degree, and Unsworn Falsification, a crime in the fourth degree. The OTSC further alleged that on May 16, 2016, the Respondent pleaded guilty to one count of Theft by Deception, a third degree crime and based upon the Respondent's conviction, the Commission is required to revoke the Respondent's real estate license, pursuant to N.J.S.A. 45:15-19.1.

In a letter dated November 29, 2017, the Respondent filed an Answer to the OTSC, wherein she admitted to the allegations as set forth in the OTSC and explained the situation from which the above-referenced charges and conviction originated. Accordingly, on January 24, 2017, the Commission reviewed the pleadings, and deemed this matter uncontested and directed that a hearing in mitigation be scheduled. A hearing was conducted on March 28, 2017, at which the following exhibits were admitted into evidence by the REC, without objection:

- S-1 Seaside Heights Municipal Court Summons, State of New Jersey v. Laura M. Cortese, dated December 7, 2015; and
- S-2 Judgment of Conviction, Superior Court of New Jersey, Ocean County, State of New Jersey v. Laura M. Cortese, dated July 29, 2016.

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

- R-1 Letter from Russell Williams, Broker/Manager of Berkshire Hathaway HomeServices, dated March 8, 2017;

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alleged that the Respondent's license is subject to revocation pursuant to N.J.S.A. 45:15-19.1 because the Respondent was convicted of a theft offense.

- R-2 Letter from Jim Longo, Broker-salesperson, Weichert Realtors, dated March 27, 2017;
- R-3 U.S. Individual Income Tax Returns of Anthony and Laura Cortese for the following tax years: 2006, 2008, 2009, 2010, 2011, and 2012; and Homestead Benefit Worksheets for the tax years 2011 and 2012;
- R-4 Application to refinance home, including “Disclosure Notices,” “Broker Certifications,” “Servicing Disclosure Statement,” “Uniform Residential Loan Application,” and “Affiliated Business Disclosure Statement,” dated October 25, 2012;
- R-5 Initial Decision by Administrative Law Judge Edward J. Delanoy, Jr. in the matter of Department of Community Affairs, Sandy Recovery Division v. Laura Cortese, OAL Dkt. No. CAF 1129-15, Agency Dkt. No. RSP0012218 and Laura Cortese v. Department of Community Affairs, Sandy Recovery Division, OAL Dkt. No. CAF 1130-15, Agency Dkt. No. RRE0002867, dated February 25, 2015 (“Initial Decision”);
- R-6 Letter from Kenneth Roberts, Zoning/Housing Official, the Borough of Seaside Heights, New Jersey, dated November 24, 2014;
- R-7 Letter from Arlette Cascella, Agent, State Farm Insurance, dated March 24, 2014;
- R-8 MLS Listing showing sale and attorney review status of Warren, New Jersey rental property;
- R-9 Photographs of Warren, New Jersey property showing credit card decals in window; and

R-10 Printout from the New Jersey Judiciary website related to Pretrial Intervention Program (“PTI”).

**TESTIMONY OF THE WITNESS**

**Laura M. Cortese**

The Respondent testified on her own behalf at the hearing. The Respondent stated that she has been a New Jersey licensed real estate salesperson for 18 years and the criminal charges and subsequent conviction issued against her do not relate to her real estate career. She stated that that the charges and conviction relate to the destruction of her personal home, which is still unable to be occupied, during Hurricane Sandy, when she was approximately 45-years-old. The Respondent testified that she has been forced to continue to pay for a rental home and also flood insurance, homeowner’s insurance, and a mortgage on her home in Seaside Heights, New Jersey (“Seaside property”), which is unoccupied. As a result of this financial stress, the Respondent stated that she is in foreclosure on her second mortgage on the Seaside property.

The Respondent stated that before Hurricane Sandy, she was in a dual residency in both Warren, New Jersey and Seaside Heights, New Jersey. She stated that she and her husband rented a cottage in Warren, New Jersey (“Warren property”) prior to purchasing the Seaside property. The Respondent noted that the Warren property was a rental property without a lease and that she was on a month to month tenancy. The Respondent stated the Seaside property was her primary residence. She stated that the Seaside property was the place that she loved and where she kept her “best furnishings.” However, even after her purchase of the Seaside property, the Respondent and her husband kept the Warren property, which was used by the Respondent’s husband for business purposes and to park his trucks.

The Respondent stated that three months before Hurricane Sandy, the Respondent and her husband were being evicted from the Warren property because it was being sold.<sup>2</sup> Thus, Respondent stated that before Hurricane Sandy, she was residing at the Seaside property full-time and she moved her remaining personal property from the Warren property to the Seaside property. Moreover, the Respondent stated that prior to Hurricane Sandy, she was in the process of attempting to refinance the Seaside property, and stated that her 2012 application to refinance the Seaside property, contained in Exhibit R-4, provides that the Seaside property was her primary residence.<sup>3</sup> The Respondent stated that on October 27, 2012, there was a mandatory evacuation of Seaside Heights, New Jersey, and she was forced “to go back to the rental.” The Respondent further testified that during Hurricane Sandy, a tree fell on the Warren property, and she learned that the Seaside property was in what was referred to as “ground zero.” The Respondent stated that there was no access to the island to access damages and she had no power or water. She stated that both the Warren property and the Seaside property were uninhabitable, and she was effectively homeless. The Respondent further stated that she was approached by people who informed her that she could apply for disaster assistance for the Warren property. However, the Respondent informed them that her primary home was the Seaside property and she was unsure of the extent of the damage to the Seaside property. The Respondent then contacted her insurance company and she stated that she was told that they would visit the

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<sup>2</sup> The Respondent originally testified that she and her husband were being evicted from the Warren property three months before Hurricane Sandy. She later testified that she “received the eviction notice on the 24<sup>th</sup>, October 24<sup>th</sup>, which was four days before the storm.” The Respondent further testified that after receiving notice of the mandatory evacuation of Seaside, New Jersey due to Hurricane Sandy, she was forced to return “to the rental,” which was the Warren property. Thus, it is unclear from the Respondent’s testimony when she was actually evicted from the Warren property.

<sup>3</sup> Exhibit R-4 contains various documents related to the refinancing application completed by the Respondent and her husband in relation to the Seaside Property. The documents entitled “Disclosure Notices” and “Uniform Residential Loan Application” contain certifications from the Respondent and her husband that the Seaside property was their primary residence from at least October 25, 2012, the date the documents were signed by both the Respondent and her husband.

property, assess the damage caused by the storm, and help with any assistance needed. The Respondent additionally noted that when she spoke with a Federal Emergency Management Agency (“FEMA”) representative, she was asked which property was considered her primary residence and which property was listed on her tax return, to which the Respondent answered that the Seaside property was her primary residence. The Respondent stated that she “just followed the bouncing ball” and did whatever she thought she needed to do as she had never been in this type of situation before.

The Respondent stated that she began receiving rental assistance. She further stated that she stayed in the area where her husband’s business was and began renting a new property that was three times the amount of the rent on the Warren property. The Respondent stated that she was not receiving enough money from the insurance company to cover the damage to the Seaside property and “couldn’t go home because it was destroyed.”

The Respondent stated that in December 2015, after attempting to be approved for the Reconstruction, Rehabilitation, Elevation, and Mitigation (“RREM”) program, she had to obtain an attorney through the Volunteer Lawyers for Justice, and she filed an appeal because she was informed that there were allegations that the Seaside property was not her primary residence. The Respondent stated that she was confused as she provided them<sup>4</sup> with everything she needed to provide in order to get approved for the RREM program. The Respondent further stated that she won on appeal with a motion for summary decision and the Initial Decision contained in

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<sup>4</sup> The Respondent does not address to whom she means by her reference to “them;” however, based upon her discussion of the RREM program and her subsequent discussion of the Initial Decision, in evidence as Exhibit R-5, it is assumed that the Respondent was referring to the New Jersey Department of Community Affairs, which administers the RREM program with federal funding provided through Community Disaster Block Grant Disaster Recovery funds allocated to New Jersey by the U.S. Department of Housing and Urban Development.

Exhibit R-5,<sup>5</sup> was issued. After she won her appeal, which provided that the Seaside property was her primary residence, the Respondent stated that she was approached by officers with a complaint, which again alleged that the Seaside property was not the Respondent's primary residence. The Respondent stated that the day after receiving the complaint, she and her husband were in the newspaper, plastered on social media, and discussed on television and on the radio. The Respondent further testified that she was grouped in with other people who did fraudulently claim that a property was their primary residence when the property was not.

The Respondent testified that after receiving the complaint, she and her husband each needed to obtain a separate attorney to appear in court on their behalf and speak with the "District Attorney General." The Respondent further stated that the "District Attorney General" did not want to hear anything and did not allow the Respondent to tell her side of the story. The Respondent testified that she was informed that she could tell her side of the story and provide the documentation, which she provided to the Commission at this hearing, at trial. The Respondent claimed that the prosecuting attorney had the Initial Decision, the same document marked in evidence in this matter as Exhibit R-5. The Respondent further noted that her attorney attempted to have the Respondent placed into the PTI program because she and her husband could not afford to pay the \$60,000 needed to hire two attorneys to handle the trial. Because the Respondent was unable to afford the cost of a trial, she stated that she accepted a plea deal even though she is innocent. The Respondent testified that the first time she lied throughout this

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<sup>5</sup> The Respondent explained that a Final Decision was entered on the matter; however, she did not provide a copy of the Final Decision at the time of the hearing and only provided the Commission with a copy of the Initial Decision, which is marked in evidence as Exhibit R-5. The Final Decision was entered on May 28, 2015 and adopted the Initial Decision as the Commissioner of the Department of Community Affairs' Final Decision. See <http://www.state.nj.us/dca/lrf/rulemaking/decisions/pdf/PDF%20Final%20Decision%20Sandy%2020150528b.pdf>. The Commission takes official notice of the Final Decision, pursuant to N.J.A.C. 1:1-15.2, and admits the Final Decision into the record herein.

ordeal was when she said she was guilty in front of the judge. The Respondent further noted that if she did not accept the plea deal, she was facing the consequences of the full charges originally issued against her and her husband, who holds an environmental license to collect garbage, and may have lost his license because of the charges issued against him. Because of this, the Respondent felt it necessary to plead guilty to something she stated that she did not do.

The Respondent additionally testified that she did not want any assistance money and that the \$250,000 flood insurance policy she maintained should have been enough to cover the damage to the Seaside property as a result of Hurricane Sandy. The Respondent stated that if she was given the flood insurance money instead of the rental assistance money, she would have been back in the Seaside property already and would not have needed the assistance money in the first place. The Respondent additionally stated that the flood insurance policy and rental assistance were provided by the same group, FEMA. The Respondent noted that the flood insurance policy gave the Respondent \$120,000 that is being held by her mortgage company and has not provided them with the remainder of the policy limit in the amount of \$130,000. The Respondent testified that instead of providing this remaining amount, they came after her and her husband for the assistance money they received. The Respondent further testified that the U.S. Small Business Administration ("SBA") loan for \$40,000 that was received in her husband's name was for the content of their property and is being paid back by the Respondent and her husband.

The Respondent further noted that it was not alleged that the Seaside property was not the Respondent's home or that it was not substantially damaged by Hurricane Sandy. The Respondent stated that she believes the issue underlying her charges and conviction was that she did not reside at the Seaside property for a long enough period of time to be considered her



primary residence. However, the Respondent alleges that she was told that she could have moved into her home one day before Hurricane Sandy and have it considered her primary residence. The Respondent alleges that since 2002, when she purchased the Seaside property, she resided at said property more than 51% of the time and certainly resided there in the month before Hurricane Sandy over 51% of the time.

The Respondent stated that she considers her real estate license to be the only thing that she has left and the only thing that offers a chance of providing an income that would contribute to her family's financial obligations. The Respondent stated that before and after Hurricane Sandy, she worked full-time as a real estate salesperson out of her company's Watchung, New Jersey office, but she never considered herself a "heavy-hitter realtor." She said most of her business comes from repeat customers, and that she can do a lot of her work from her husband's office. The Respondent noted that she worked in a law office after Hurricane Sandy in order to bring in extra money. The Respondent additionally stated that she believes that if she were to lose her real estate license now, she would be unemployed and without hope of finding another job because of her criminal record. The Respondent stated that she considers herself to be a good person and that she is not a criminal. She further expressed that she had to plead guilty even though she is innocent. The Respondent noted that she did fail to notify the Commission of the criminal charges filed against her; however, she stated that she was not aware that she needed to notify the Commission at that time and further noted she was advised by her attorney not to discuss the charges filed against her with anyone. The Respondent stated that she believed that the charges against her would be dismissed. The Respondent further noted that she informed the Commission of her criminal matter once she realized the matter was going to trial.<sup>6</sup>

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<sup>6</sup> The OTSC provides that the Respondent notified the Commission of her plea in a letter dated June 2, 2016. The Respondent further notified the Commission of her conviction on August 9, 2017. See OTSC at ¶ 6.

The Respondent additionally spoke as to her state of mind. Specifically, the Respondent noted that she started feeling well again and more positive. She stated that she thought that she would be able to get her life back after this experience she went through. The Respondent additionally stated that she began receiving activity with her real estate license, which allowed her to feel like she had a purpose, as she was able to help her husband with financial obligations again. The Respondent noted that neither she nor her husband have any savings or a retirement fund after expending so much money on the criminal matter and the costs of maintaining a mortgage on the Seaside property she cannot inhabit and on her current rental property. She noted that husband has dealt with depression since the situation occurred, and her husband ended up in a hospital on two separate occasions because of the stress of the situation. Additionally, the Respondent noted that she is a cancer survivor of stage four head and neck cancer. The Respondent further testified that she had aggressive chemotherapy and radiation. She believes that this experience with Hurricane Sandy, the damage to the Seaside property, and criminal charges and convictions were worse than dealing with her cancer diagnosis and treatment.

The Respondent stated that she was sentenced to a probationary term of one year, which will be coming to an end in June or July 2017. The Respondent noted that the prosecuting attorney recommended a probationary term of five years; however, the Respondent stated that the judge sentenced the Respondent to a minimum probationary term. The Respondent testified that she has to meet with her probation officer once per month and is consistent in the terms of her probation. Additionally, the Respondent testified that she is required to make restitution payments in the amount of \$25 per month. The Respondent stated that she gives an extra \$3 per month for probation fees. After the end of the probationary term, the remaining amount of restitution ordered is converted into a civil consent judgment. The Respondent stated that she

believes that the restitution requirement is then handled as a judgment and the restitution payments she has been making will cease. The Respondent stated that to date, she has been consistent in and up-to-date on her restitution payments.

### **FINDINGS OF FACT**

Based on the pleadings, the testimony of the Respondent, 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 salesperson currently licensed with PNJP, LLC d/b/a Berkshire Hathaway HomeServices, licensed New Jersey broker, whose office is located at 220 Davidson Avenue, Somerset, New Jersey. Respondent works out of the Watchung, NJ branch office;
2. On or about December 7, 2015, the Respondent was charged in the Seaside Heights Municipal Court with one count of Theft by Deception, a crime in the second degree, in violation of N.J.S.A. 2C:20-4, and Unsworn Falsification, a crime in the fourth degree, in violation of N.J.S.A. 2C:28-3A. The matter was referred to the Superior Court of New Jersey, Ocean County for prosecution;
3. In December 2015 and January 2016, the Respondent was actively licensed as a New Jersey real estate salesperson and did not notify the Commission of the charges filed against her, as required by N.J.S.A. 45:15-17s;
4. On or about May 16, 2016, the Respondent entered a plea of guilty in the Superior Court of New Jersey, Ocean County, to one count of Theft by Deception, a crime in the third degree, in violation of N.J.S.A. 2C:20-4;
5. On or about July 29, 2016, the Respondent was convicted of one count of Theft by Deception, a crime in the third degree, in violation of N.J.S.A. 2C:20-4, and

- sentenced to one year of probation and ordered to pay restitution in the amount of \$88,608.57;
6. By letter dated June 2, 2016, the Respondent informed the Commission of her guilty plea; and
  7. By letter dated August 9, 2016, the Respondent informed the Commission of her conviction.

### **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. Pursuant to N.J.S.A. 45:15-19.1, the Respondent's real estate license is subject to revocation due to her conviction of a theft offense.
2. 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.

### **DETERMINATION**

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 Order of Determination. In arriving at the determination in this matter, the Commission took into consideration the testimony of the Respondent and the undisputed documentary evidence admitted at the hearing. The Commission also considered the circumstances surrounding the Respondent's conviction.

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.

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. . . .” The facts in this matter demonstrate that on or about May 16, 2016, the Respondent pleaded guilty in the Superior Court of New Jersey, Ocean County, to one count of Theft by Deception, a third degree crime, in violation of N.J.S.A. 2C:20-4, which provides that “[a] person is guilty of theft if he purposely obtains property of another by deception.” Pursuant to the terms of N.J.S.A. 2C:20-4, the Respondent pleaded guilty to and was convicted of a theft offense, which is not considered a shoplifting offense, in a court of competent jurisdiction in this State. Moreover, the Commission has consistently held that convictions for Theft by Deception, in violation of N.J.S.A. 2C:20-4, fall within the provisions of N.J.S.A. 45:15-19.1 and thus, compel the revocation of a licensee’s real estate license. See NJREC v. Christopher Koller, Final Order of Determination, Dkt. No. UNI-16-004 (05/01/17) (pursuant to N.J.S.A. 45:15-17e and N.J.S.A. 45:15-19.1, the

Commission revoked the licensee's real estate broker-salesperson's license for a period of five years based upon his convictions for Theft by Unlawful Taking and Theft by Deception); and NJREC v. Dominick Prevete, Final Order of Determination, Dkt. No. MOR-16-021 (05/01/17) (pursuant to N.J.S.A. 45:15-17e and N.J.S.A. 45:15-19.1, the Commission revoked the licensee's real estate salesperson's license for a period of ten years based upon his convictions for Theft by Deception). Thus, the Respondent's license is subject to revocation pursuant to N.J.S.A. 45:15-19.1.

However, a closer examination of the circumstances surrounding the Respondent's conviction and underlying conduct reveals that a lesser penalty than revocation is appropriate in this matter. The Respondent's conviction for Theft by Deception, in violation of N.J.S.A. 2C:20-4, centered on the allegation that the Respondent's Seaside property was not her primary residence and as such, she obtained assistance money from several different sources through deceit. However, the Respondent's testimony and the documentary evidence admitted into the record reflect the following: The Respondent purchased the Seaside property in 2002 and the Respondent testified that she always considered the Seaside property to be her primary residence; however, the Respondent noted that she did not reside at the Seaside property full-time as she and her husband additionally rented the Warren property that was, according the Respondent, mostly used for her husband's business purposes, such as storing work vehicles. The Respondent further testified that three months prior to Hurricane Sandy, the Warren property was purchased, which caused her and her husband to be evicted from the Warren property. The Respondent further testified that prior to Hurricane Sandy, there was a mandatory evacuation of Seaside, New Jersey, which forced the Respondent to return to the Warren property. The Respondent admitted during her testimony that she pleaded guilty to Theft by Deception;

however, the Respondent maintained throughout her testimony that she only pleaded guilty because she could not afford the cost of going to trial on the matter and she feared that her husband would lose his license that allows him to operate his business.

Moreover, the Respondent provided tax returns for the tax years of 2006, 2008, 2009, 2010, 2011, and 2012 including Homestead Benefit Worksheets for the tax years of 2011 and 2012, contained in Exhibit R-3, that show that the Respondent and her husband listed the Seaside property as their primary residence. Additionally, the Respondent provided her application for the refinancing of the Seaside property, contained in Exhibit R-4, in which the Respondent and her husband certified, prior to Hurricane Sandy, that their primary residence was the Seaside property. Further, the Respondent provided a letter from the Borough of Seaside Heights, contained in Exhibit R-6, that states that “[a]ccording to our records in the Housing Department of Seaside Heights, [the Seaside] property has only been occupied by the owners as their primary residence.” The Respondent additionally provided a letter from State Farm Insurance, Contained in Exhibit R-7, that the Seaside property “[i]s the sole property and primary residence of [the Respondent].”

Of particular note, the Initial Decision, marked in evidence as Exhibit R-5, was entered after the Respondent appealed the denial of the Homeowner Resettlement Program and the RREM program based upon the determination by the New Jersey Department of Community Affairs, Sandy Recovery Division (“DCA”) that the Seaside property was not her primary residence. The Initial Decision reversed the DCA’s determination and specifically provided that the Respondent “intended to and did occupy the Seaside . . . property as her primary residence and she did make it her domicile.” Exhibit R-5 at 12. Moreover, the Initial Decision found that the Respondent

and her husband considered the Seaside . . . property to be their primary residence as evidenced by their tax returns during the years prior to the storm, their Homestead Benefit worksheet submissions, their FEMA application, and the Disclosure Notices form in connection with their loan approval. [The Respondent] has also submitted independent verification that the Seaside . . . property was their primary residence through FEMA, State Farm ([the Respondent]'s insurance company), the Housing Department of Seaside Heights, the New Jersey Division of Taxation, and the Internal Revenue Service.

[The Respondent] regarded the residence to be her true and permanent home, and that is sufficient to declare [the Seaside] property to be her primary residence and domicile as of October 29, 2012. All of the indicia of domicile were present by [the Respondent]. The loss has been properly proven under the requirements of the [Homeowner] Resettlement and RREM programs

Id. at 17. The Commissioner of the Department of Community Affairs adopted the Initial Decision as a Final Decision on May 28, 2015,

Based upon a review of the above, the Commission noted that the record was more than sufficient to substantiate the Respondent's claim that the Seaside property was the Respondent's primary residence prior to Hurricane Sandy. Given the mitigating circumstances, as discussed above, the Commission determined that the appropriate penalty in this matter is for the Respondent's real estate salesperson's license to be held on probation, with the conditions set forth below, for a period of three months from the issuance of this Final Order of Determination in this matter.

The OTSC additionally alleges that the Respondent is in violation of N.J.S.A. 45:15-17s in that she failed to notify the Commission of the filing of formal criminal charges against her within 30 days. N.J.S.A. 45:15-17s requires licensees to notify the Commission within 30 days of having been indicted or of the filing of any formal criminal charges. Here, on December 7, 2015, the Respondent was formally charged with one count of Theft by Deception, a crime in the



second degree, and Unsworn Falsification, a crime in the fourth degree. The Respondent admitted in her Answer to the OTSC and in her testimony that she did not notify the Commission within 30 days of December 7, 2015, as required by N.J.S.A. 45:15-17s. The Respondent testified that she did not know she needed to inform the Commission of the filing of formal charges against her. In addition, the Respondent stated that she was informed by her attorney not to discuss the matter with anyone. However, the Respondent, as a real estate licensee, has a responsibility to be aware of and abide by the statutes and regulations that apply to her real estate license. The Respondent was tasked to be knowledgeable as to the specific notice requirements that related to the filing of formal criminal charges against her. While her attorney may have advised her to not discuss the criminal matter with anyone, this does not absolve her of her responsibilities, as set forth in N.J.S.A. 45:15-17s. As such, the Commission finds that the Respondent is in violation of N.J.S.A. 45:15-17s for failing to timely notify the Commission of the filing of formal criminal charges against her.

Pursuant to N.J.S.A. 45:15-17, the Commission may impose a penalty of not more than \$5,000 for the first violation of the Act, and a penalty of not more than \$10,000 for any subsequent violation. In Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), the Supreme Court established the following seven factors in order to evaluate the imposition of fines in administrative proceedings and these factors are applicable to this matter, which seeks the imposition of penalties under the 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 activity; (4) any 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. Each of these factors is discussed below. No one Kimmelman factor is dispositive for or against fines and penalties. See

Kimmelman, *supra*, 108 N.J. at 139 (“[t]he weight to be given to each of these factors by a trial court in determining . . . the amount of any penalty, will depend on the facts of each case”).

First, the Respondent’s failure to notify the Commission of the formal criminal charges issued against her does not demonstrate bad faith. The Respondent was formally charged with one count of Theft by Deception, a crime in the second degree, and Unsworn Falsification, a crime in the fourth degree, on December 7, 2015. The Respondent testified that she did not know that she needed to notify the Commission of the filing of formal charges against her and that her attorney advised her not to speak to anyone regarding the criminal matter. While, as noted above, the Respondent should have been familiar with the notification requirements as a licensee, her failure to provide the Commission with timely notification of the charges issued against her was not motivated by dishonesty or bad faith.

As to the second Kimmelman factor, no proofs have been provided regarding the Respondent’s ability to pay the fines imposed. Respondents who claim an inability to pay civil penalties bear the burden of proving their incapacity. Goldman v. Shah, OAL Dkt. No. BKI 11903-05, Initial Decision (04/15/08), Final Decision and Order (09/02/08). However, it is noted that the Respondent testified that her payment arrangement related to her requirement to pay restitution as a result of her criminal conviction for Theft by Deception, provides that the Respondent make monthly payments of only \$25 and after the term of her probation, the remaining restitution amount will be converted to a civil consent judgment. In addition, the Respondent testified that she has no savings or retirement fund, and she has only recently been able to start contributing to her family’s financial responsibilities.

The third Kimmelman factor addresses the amount of profits obtained or likely to be obtained from the illegal activity. The greater the profits an individual is likely to obtain from

illegal conduct, the greater the penalty must be if penalties are to be an effective deterrent. Kimmelman, supra, 108 N.J. at 138. In the present matter, it does not appear that the Respondent financially benefited from her failure to notify the Commission of the criminal charges filed against her.

The fourth Kimmelman factor addresses the injury to the public. In order to protect consumers, the Commission is charged with the “high responsibility of maintaining ethical standards among real estate brokers and sales[persons].” Goodley v. New Jersey Real Estate Comm’n, supra, 29 N.J. Super. at 182. The Respondent’s failure to comply with the Commission’s notification requirements are contrary to the principle intent behind the Act: to “protect consumers by excluding ‘undesirable, unscrupulous and dishonest persons . . . from the real estate business.’” Sammarone v. Bovino 395 N.J. Super. 132 (App. Div.), 193 N.J. 275 (2007); see also Tobias v. Comco/America, Inc. 96 N.J. 173, 180 (1984); Kazmer-Standish Consultants, Inc. v. Schoeffel Instruments Corp. 89 N.J. 286, 290 (1982); and Markheim-Chalmers, Inc. v. Masco Corp. 332 N.J. Super. 452, 457 (App. Div. 1999). Here, the Respondent did not notify the Commission within 30 days of the filing of criminal charges against her. As set forth above, this conduct was not motivated by bad faith. However, as previously provided, the responsibility falls on the licensee to be aware of the applicable statutory and regulatory requirements of those in their profession. The Commission must encourage licensees to abide by the rules that are in place to protect consumers and ensure ethical conduct by those in the real estate profession. The Respondent’s failure to abide by these rules weighs in factor of a monetary penalty.

The fifth Kimmelman factor to be examined is the duration of the illegal activity. Based on the testimony provided, this incident appears to be isolated in nature.

Sixth, the Respondent has not been party to criminal proceedings related to her failure to notify the Commission of his criminal charges filed against her.

As to the final factor, there is no evidence of prior violations committed by the Respondent.

In light of these factors and penalties previously assessed by the Commission, the Respondent shall pay a fine in the amount of \$250 for one count of failure to timely notify the Commission of the criminal charges filed against her, in violation of N.J.S.A. 45:15-17s. This penalty is consistent with prior Commission decisions. See NJREC v. Charles Chichizola, Dkt. No. BER-15-018, Final Order (02/14/17) (licensee fined \$250 for failure to notify the Commission within 30 days of the filing of criminal charges against him, in violation of N.J.S.A. 45:15-17s).

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

- I. The Respondent's real estate salesperson's license shall be held on probation for a period of three months from the date of this Final Order of Determination. During the period of probation, the following conditions apply: 1) the Respondent shall inform her employing broker that her license is currently on probation; 2) the Respondent's broker shall notify the Commission within 72 hours if he or she receives any information indicating that the Respondent may have violated the Act or corresponding regulations; and 3) the Respondent must notify the Commission within 72 hours if she is charged with or convicted of any criminal or disorderly persons offense; and

- II. The Respondent shall pay a fine in the amount of \$250, which may be payable on a payment plan, for failing to timely notify the Commission of the filing of criminal charges filed against her, in violation of N.J.S.A. 45:15-17s.

SO ORDERED this 11<sup>th</sup> day of August, 2017.

By: Linda K. Stefanik, President  
Eugenia K. Bonilla, Vice President  
Sanjeev Aneja, Commissioner  
William Hanley, Commissioner  
Denise Illes, Commissioner



Patrick J. Mullen  
Director of Banking

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