

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,) DOCKET NO.:UNI-13-007
)
Complainant,)
v.) **FINAL ORDER OF**
) **DETERMINATION**
)
MARY C. TAFUR, licensed New Jersey real estate)
salesperson, (Ref. No. 0235556) and MARY)
SANCHEZ, licensed New Jersey real estate)
salesperson, (Ref. No. 0900779),)

Respondent.

This matter was heard at a 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 July 9, 2013.

BEFORE: Commissioners Linda Stefanik, Jacob S. Elkes, Esq., Robert Melillo, Jeffrey A. Lattimer, Eugenia K. Bonilla, and Michael Timoni.

APPEARANCES: Marianne Gallina, Regulatory Officer, appeared on behalf of the New Jersey Real Estate Commission ("REC"). Respondents Tafur and Sanchez appeared with and were represented by Luke Kealy, Esq.

STATEMENT OF THE CASE

The REC initiated this matter through service of an Order to Show Cause ("OTSC") dated March 14, 2013, 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 charged that Respondent Tafur and Respondent Sanchez engaged in multiple violations of the real estate statutes and regulations. Specifically, the REC alleged that Respondent Tafur made substantial misrepresentations to parties in two real estate transactions by representing herself as an authorized agent of Countrywide Realty, Inc., d/b/a/ Century 21

Atlantic Realty (“Century 21”) and signing the name of her daughter, Respondent Sanchez, to the related transaction documents. The OTSC further alleged that, by engaging in this activity, Respondent Tafur did not work on behalf of or under the supervision of her broker and used her license for the benefit of another person and that these actions constituted fraud and dishonest dealing, and also demonstrated unworthiness, bad faith and/or dishonesty. The OTSC also alleged that Respondent Sanchez made substantial misrepresentations to parties in these two transactions and that these actions constituted fraud and dishonest dealing, and also demonstrated unworthiness, bad faith and/or dishonesty.

Respondents answered the charges of the OTSC on May 2, 2013. Therefore, this matter was deemed a contested case, and scheduled for a full hearing on July 9, 2013.

In the Answer, Respondent Tafur admitted to being the mother of Respondent Mary Sanchez. Respondent Tafur also admitted to meeting with prospective seller, Dora Quintero, the property owner of 153-155 Manning Avenue, North Plainfield, and to signing her daughter’s name on the property’s listing agreement. The Answer stated that, thereafter, the property was processed by her daughter, Respondent Sanchez, as a listing of Century 21. Century 21 was where Sanchez was employed as a licensed salesperson.

Additionally, Respondent Tafur admitted that on or about December 30, 2011, that she presented an offer from Guillermo Nicho to purchase the property located at 112 Avon Street, Roselle Park and that the offer was presented on a Century 21 form contract, and Respondent Tafur signed the name of her daughter on the contract. Respondent Tafur, however, denied all other factual and legal allegations, including the allegation that she admitted to an REC investigator that she did in fact pose as her daughter, Respondent Mary Sanchez, on the subject transactions described above.

In this same Answer, Respondent Sanchez admitted that she did not negotiate or sign the documents in the subject transactions, and that Respondent Tafur who showed the properties, took the listing on the 153-155 Manning Avenue property, completed paperwork, and signed the documents on behalf of her daughter. She also admitted that she did not negotiate or sign the real estate documents on the subject transactions.

The Respondents appeared at the hearing with counsel as noted above. At the hearing, the following exhibits were admitted into evidence:

- S-1 Licensing record for Mary Tafur.
- S-2 Licensing record for Mary Sanchez.
- S-3 Consumer Information Statement for Guillermo Nicho, buyer and Century 21 Atlantic Realtors with Mary Sanchez signature.
- S-4 Contract of sale with Opinion 26 notice attached, dated 12/19/11 for 112 Avon Street, Roselle Park, NJ with Mary Sanchez signatures.
- S-5 Listing agreement dated 12/23/11 for 153-155 Manning Avenue, North Plainfield, NJ between Dora Quintero, seller and Century 21 Atlantic Realtors naming Mary Sanchez as authorized representative.
- S-6 Written statement of Mary Sanchez dated July 25, 2012
- S-7 Written statement of Mary Tafur dated July 25, 2012

TESTIMONY OF THE WITNESSES

Investigator Shelia Young-Golden

Investigator Young-Golden testified that she has been an investigator with the REC for 18 months and worked in the Enforcement Division of the Department of Banking and Insurance for 5½ years. Investigator Young-Golden testified that she was assigned to investigate this matter.

Investigator Young-Golden identified Exhibit S-3 as the Consumer Information Statement between purchaser Guillermo Nicho (“Nicho”) and Respondent Sanchez. Exhibit 3 contained the signatures of both Nicho and Mary Sanchez. Investigator Young-Golden further explained that Exhibit S-4, the contract of sale for the 112 Avon Street property, for which Nicho was purchaser, was a Century 21 form contract of sale that also had the signature of Mary Sanchez and lists Century 21 as the participating broker. Moreover, Investigator Young-Golden identified Exhibit S-5 as a copy of a Listing Agreement for prospective seller Dora Quintero’s (“Quintero”) North Plainfield property which was also purportedly signed by Respondent Sanchez.

Investigator Young-Golden further testified that she was present at the Century 21 office when Mr. Castro, Respondent Sanchez’s broker at Century 21, spoke with Nicho regarding his request to have his deposit money returned. At that time, Nicho informed Castro that Respondent Tafur was representing him. Castro was surprised to learn of this information.

Investigator Young-Golden also testified that she interviewed Quintero as part of her investigation but there was a bit of a communication problem because Quintero’s native language was not English. However, Young-Golden was able to ascertain from Quintero that she did not know Respondent Sanchez, and, when asked to identify her agent, Quintero told her it was Respondent Tafur with Century 21.

Investigator Young-Golden further testified that she interviewed Respondent Sanchez. Investigator Young-Golden stated that Respondent Sanchez was very apologetic, and explained that she was a single mom and thought that she could handle the job, but it was overwhelming with school, childcare and her other job. Respondent Sanchez stated that her mom (Respondent Tafur) was trying to help her through some difficulties. Respondent Sanchez

admitted to her that her mom signed the documents on her behalf. Respondent Sanchez stated that she was working for Century 21 at this time. Investigator Young-Golden identified Exhibit S-6 as Respondent Sanchez's written statement documenting the subject events.

Investigator Young-Golden further testified that she also interviewed Respondent Tafur. Investigator Young-Golden stated that, initially, Respondent Tafur denied that she did anything wrong. She later admitted that she signed the documents related to the two real estate transactions. Investigator Young-Golden explained that Respondent Tafur stated that she introduced herself to the parties in the transactions as Mary Tafur, but when signing documents she wrote Mary Sanchez. Moreover, Investigator Young-Golden identified Exhibit S-7 as Respondent Tafur's written statement documenting the subject events.

Respondent Mary Tafur

Respondent Mary Tafur testified on her own behalf. Respondent Tafur testified that she has been a salesperson for 11 years and had been employed by ERA Reed Realty for 10 years. She stated that she has not had any other complaints filed against her nor has she been the subject of any disciplinary actions.

Respondent Tafur testified that, in December of 2011, she obtained a listing for a property which was owned by Dora Quintero, in North Plainfield, N.J., on behalf of Century 21 and Respondent Sanchez. She further testified that her daughter was living in Boundbrook and was not able to make it to the appointment with Quintero. Respondent Tafur stated that she prepared the listing agreement and put Mary Sanchez's name and license number on the document. (Exhibit S-5). Respondent Tafur testified that she completed the form because it was her daughter's listing and she was trying to help her daughter because she was having personal

difficulties. Respondent Tafur stated that this transaction never closed so there was no commission collected.

Respondent Tafur further testified regarding the 112 Avon Street purchase transaction. She stated that Nicho, the purchaser, had contacted her daughter, and her daughter then contacted her because she did not have the appropriate key. Respondent Tafur then met the owner at the property and told him her daughter was not there, even though she was intending to attend this meeting. Respondent Tafur then proceeded to prepare the contract (Exhibit S-4) and signed the document as Mary Sanchez. Respondent Tafur stated that she was only trying to help daughter because she was in school and taking care of her granddaughter. Respondent Tafur testified that this transaction never closed and that she only helped her daughter with these two deals which occurred during the time period of December, 2011 and January, 2012.

Respondent Tafur stated that she never claimed to be a Century 21 agent. She stated that she would always properly identify herself to the buyer or seller. Moreover, Respondent Tafur stated that her broker knew she was helping her daughter.

Respondent Tafur further testified that she did not deny her involvement. She stated that she informed the investigator that she was helping her daughter, but that she did not work for Century 21.

Respondent Mary Sanchez

Respondent Mary Sanchez testified on her own behalf. Respondent Sanchez testified that she has been a licensed salesperson for 4 years and worked at ERA Reed Realty with her mom for 2 years before she began her employment at Century 21. She stated that she has not had any other complaints filed against her, nor has she been the subject of any disciplinary actions.

Respondent Sanchez testified regarding the 153-155 Manning Avenue, North Plainfield, N.J property. Respondent Sanchez stated that she scheduled an appointment to meet with Dora Quintero, the property owner. Respondent Sanchez further stated she planned to bring her mother with her to the appointment, but she was unable to make the appointment and her mother met with Quintero by herself and took the listing.

Respondent Sanchez testified that the 112 Avon Street listing was an offer to purchase and she took the call and an appointment was then scheduled through the office. However, since she did not have a supra key, she asked for her mother's assistance since she had a supra key. A "supra key" is a lock-box key. Sanchez was not able to attend the appointment and, therefore, her mother prepared the documents and signed her name. Respondent Sanchez stated that this transaction never closed.

Upon questioning by the Commissioners, she stated that she understands what she did was wrong.

FINDINGS OF FACT

Based upon the pleadings, the testimony of the witnesses, and the documentary evidence duly admitted into the record, the Commission makes the following findings of fact:

1. Respondent Mary C. Tafur was, at all relevant times, a licensed New Jersey real estate salesperson employed with C. Reed Realty, Inc., d/b/a/ ERA Reed Realty, licensed New Jersey real estate broker. Respondent was first licensed as a salesperson on December 20, 2002. (Exhibit S-1).
2. Respondent Mary Sanchez was, at all relevant times, a licensed New Jersey real estate salesperson employed with Countrywide Realty, Inc., d/b/a/ Century 21 Atlantic Realty,

licensed New Jersey real estate broker. Respondent was first licensed as a real estate salesperson on March 27, 2009. (Exhibit S-2).

3. Respondent Mary Tafur is the mother of Respondent Mary Sanchez.
4. On or about December 23, 2011, while she was licensed with ERA Reed Realty, Respondent Tafur obtained a listing for the property located at 153-155 Manning Avenue, North Plainfield, NJ on behalf of Century 21 Atlantic Realty and Respondent Sanchez. The owner of the property was Dora Quintero. Respondent Tafur met with Quintero and signed Respondent Sanchez's name to the listing agreement.
5. On or about December 30, 2011, while she was employed with ERA Reed Realty, Respondent Tafur presented an offer from buyer Guillermo Nicho to purchase the property located at 112 Avon Street, Roselle Park, NJ which was listed for sale. The offer was presented to the seller's agent on a Century 21 Atlantic Realty form contract and Respondent Tafur signed the name of Respondent Sanchez to the document.
6. Respondent Tafur admitted that she did in fact sign her daughter's name on several documents related to the two real estate transactions described above. Some of these documents contained the Century 21 Atlantic Realty logo or otherwise stated that Century 21 Atlantic Realty was a participating broker.
7. Respondent Sanchez admitted she did not negotiate or sign the real estate documents on the two real estate transactions described above, and that it was her mother, Respondent Tafur who in fact showed the 112 Avon Street, Roselle Park, NJ property, obtained the listing on the 153-155 Manning Avenue, North Plainfield, NJ property and completed paperwork for her, including signing Sanchez's name to documents.

8. The consumers with whom Respondent Tafur interacted during these two transactions were both under the impression that Respondent Tafur was acting as their real estate agent.

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 Tafur violated N.J.S.A. 45:15-17a in that she made substantial misrepresentations to the parties involved in the Manning Avenue and Avon Street transactions. However, Respondent Tafur did not violate N.J.S.A. 45:15-17c in that she did not pursue a flagrant and continued course of misrepresentation or making false promises through agents, broker-salesperson, salespersons or referral agents, advertisements or otherwise.
2. Respondent Tafur did not violate N.J.S.A. 45:15-17l and 45:15-17t because her conduct did not constitute fraud or dishonest dealing.
3. Respondent Tafur violated N.J.S.A. 45:15-17e because her conduct in the Manning Avenue and Avon Street transactions demonstrate incompetency.
4. Respondent Tafur violated N.J.S.A. 45:15-3 in that she did not work on behalf of or under the supervision of the broker with whom she was employed at the time of these transactions.
5. Respondent Tafur violated N.J.A.C. 11:5-4.3 in that she used her license for the benefit of another person and firm so as to circumvent the regulations of the New Jersey REC.
6. Respondent Sanchez violated N.J.S.A. 45:15-17a in that she made substantial misrepresentations when she handled the Manning Avenue and Avon Street transactions

as her own work through Century 21 Atlantic Realty. However, Respondent Sanchez did not violate N.J.S.A. 45:15-17c in that she did not pursue a flagrant and continued course of misrepresentation or making false promises through agents, broker-salesperson, salespersons or referral agents, advertisements or otherwise.

7. Respondent Sanchez violated N.J.S.A. 45:15-17e in that her conduct in the Manning Avenue and Avon Street transactions demonstrate incompetency.
8. Respondent Sanchez did not violate N.J.S.A. 45:15-17l and 45:15-17t because her conduct did not constitute fraud or dishonest dealing.

DETERMINATION

In arriving at the determination in this matter, the Commission took into consideration the pleadings, the testimony, and credibility of the witness testimony, and the undisputed documentary evidence admitted during the course of the hearing.

Pursuant to N.J.S.A. 45:15-17a and N.J.S.A. 45:15-17e, the Commission may place on probation, suspend or revoke the license of any licensee for, “Making any false promises or any substantial misrepresentation” or “Any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty.” Additionally, a licensed real estate salesperson must work on behalf of or under the supervision of the broker with whom she is employed and may not use her license for the benefit of another person and firm so as to circumvent the regulations of the New Jersey REC. N.J.S.A. 45:15-3 and N.J.A.C. 11:5-4.3.

In this case, the undisputed facts demonstrate that Respondent Tafur made substantial misrepresentations to consumers involved in the Manning Avenue and Avon Street transactions when she prepared and signed her daughter’s name to transactional documents during the course of two real estate transactions. Both Respondents admitted that, although

Respondent Tafur was licensed and employed under the ERA Reed Realty brokerage and Respondent Sanchez under the Century 21 brokerage, Respondent Tafur appeared in her stead during the two aforementioned transactions in an effort to assist her daughter. In both of these instances, Respondent Tafur signed her daughter's names to Century 21 documents. While Respondent Tafur stated that she properly identified herself to the two consumers involved, namely Nicho and Quintero, her intentional misrepresentation on real estate documentation during the course of two real estate transactions, not only constituted violations of the real estate statutes and regulations, but also confused both individuals who asserted during the course of the investigation that Respondent Tafur was acting as their real estate agent. Furthermore, in Sanchez's written statement (Exhibit S-6), she states that she "did not recognize the 2 signatures to be mine." Likewise, in Tafur's written statement (Exhibit S-7), she states that "I have filled out forms and sign her [Sanchez] name."

Therefore, not only did Tafur's conduct constitute a substantial misrepresentation and demonstrate incompetency in violation of N.J.S.A. 45:15-17a and N.J.S.A. 45:15-17e, but Respondent Tafur also violated N.J.S.A. 45:15-3 and N.J.A.C. 11:5-4.3 because she used her real estate license to benefit another, namely Respondent Sanchez, and she was not working on the behalf of or under the supervision of her employing broker, ERA Reed Realty.

Moreover, Respondent Sanchez's behavior was complicit by allowing her mother to appear in her stead and sign her name on her behalf. Therefore, her conduct also constituted a substantial misrepresentation and demonstrates incompetency in violation of N.J.S.A. 45:15-17a and N.J.S.A. 45:15-17e. Respondent Sanchez made substantial misrepresentations when she represented the Manning Avenue and Avon Street transactions as her own and that of her brokerage, Century 21. However, neither Respondent Sanchez nor Respondent Tafur violated

N.J.S.A. 45:15-17c in that they did not pursue a flagrant and continued course of misrepresentation or making false promises through agents, broker-salesperson, salespersons or referral agents, advertisements or otherwise. Moreover, Respondents did not violate N.J.S.A. 45:15-17l and 45:15-17t because their conduct did not constitute fraud or dishonest dealing.

The nature and duties of the real estate business are grounded in interpersonal, fiduciary and business relationships and demand the utmost honesty, competence, trust and good conduct when dealing with the consuming public and with property of others. In many instances, significant sums of money 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.

The Real Estate Commission has consistently imposed sanctions, including license revocations, suspensions and fines for similar conduct. See, NJREC v. Steadman and Petridis, Final Order of Determination, ATL-09-031 (2/1/11) (The Commission imposed a \$5,000.00 fine upon Petridis, revoked his salesperson license for 2 months and ordered him to successfully complete 30 hours of courses on broker's ethics, agency law and relationships. The Commission also imposed a \$5,000.00 fine upon Steadman and ordered that his broker-salesperson's license be suspended for 4 months and that he successfully complete 30 hours of courses on broker's ethics, agency law and relationships. Petridis made substantial misrepresentations in a contract of sale. Petridis and Steadman failed to obtain separate written informed consents to disclose dual agency. Steadman failed to properly supervise Petridis.); NJREC v. Smith et al., Final Order of Determination, ESS-01-010 (1/7/02) (Salesperson Smith was fined \$6,000.00 and had her license revoked for 5 years for, among other violations, violating N.J.S.A. 45:15-17a because she made a substantial misrepresentation on her business

card that indicated she was broker, when in fact she was a licensed salesperson); NJREC v. DeCou, Final Order of Determination, BUR-07-034 (7/21/08) (DeCou misrepresented that a deposit was collected when in fact it was not. She also failed to apprise her broker of a transaction she was engaged in and misrepresented herself as an agent of a broker with whom she was not licensed. DeCou was fined \$5,000.00 and her license was suspended for 1 year).

In Kimmelman v. Henkel's & McCoy, Inc. 108 N.J. 123 (1987), the Supreme Court established the following seven factors 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 Real Estate License Act, N.J.S.A. 45:15-1, et seq.: (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. Analysis of these factors in this matter requires the imposition of fines.

First, Respondent Tafur and Sanchez did not demonstrate bad faith in the transactions, but rather both demonstrated incompetence. Second, no evidence was submitted regarding the Respondents' respective abilities to pay fines. Third, no profits were shown to be made by the Respondents for the two subject real estate transactions. Fourth, the public is significantly harmed when licensees in fiduciary positions violate their responsibilities and fail to comply with REC regulations, whether through intentional actions or incompetence. Specifically, the public is harmed when licensed individuals make substantial misrepresentations because the public confidence in that individual real estate agent and the real estate industry as a whole is eroded. Further, real estate salespersons are required to operate under the supervision of an employing broker to ensure the licensee's compliance with all real estate laws. Fifth, the

Respondents' actions were isolated, taking place during December 2011 and during the course of transactions related to two properties. Sixth, to the Commission's knowledge, there were no criminal or treble actions against either Respondent. Finally, there appears to be no prior violations of the Commission's rules by the Respondents. Pursuant to this analysis, the Commission believes that imposition of a limited fine of \$2,500.00 for Respondent Tafur and \$500.00 for Respondent Sanchez is appropriate.

Based upon the facts in this matter and the precedent cited, the Commission has determined it necessary and appropriate to suspend Respondent Tafur's real estate salesperson license for three months. Upon any reinstatement, Tafur's license will be held on probation for two years. The Commission also imposes a \$2,500.00 fine upon Respondent Tafur. Moreover, the Commission suspends Respondent Sanchez's real estate salesperson license for two months and, upon reinstatement, her license will be held on probation for two years. Sanchez is also fined \$500.00. Moreover, the Commission finds that due to the nature of the violations it is also appropriate to require Respondent Tafur to complete the 75 hour salesperson pre-licensure coursework and the 30 hour broker pre-licensure course on ethics. Respondent Sanchez is to complete the 75 hour salesperson pre-licensure course.

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


- I. Respondent Tafur's real estate salesperson's license shall be suspended for three (3) months from the date of this order. Upon reinstatement, her license will be held on probation for two (2) years. Respondent Tafur shall inform any employing broker that her license is on probation and she shall notify the Commission in writing within 72 hours in

the event she may have violated the New Jersey Real Estate License Act, N.J.S.A. 45:15-1, et seq. and N.J.A.C. 11:5-1.1 et seq.

- II. Respondent Tafur shall pay a fine in the amount of \$2,500.00 within 30 days of the issuance of this order.
- III. Respondent Tafur shall successfully complete 75 hours in salesperson pre-licensure coursework and the broker pre-licensure 30 hours of coursework on ethics before her license may be reinstated.
- IV. Respondent Sanchez's real estate salesperson's license shall be suspended for two (2) months from the date this order. Upon reinstatement, her license will be held on probation for two (2) years. Respondent Sanchez shall inform any employing broker that her license is on probation and she shall notify the Commission in writing within 72 hours in the event she may have violated the New Jersey Real Estate License Act, N.J.S.A. 45:15-1, et seq. and N.J.A.C. 11:5-1.1 et seq.
- V. Respondent Sanchez shall pay a fine of \$500.00 within 30 days of the issuance of this order.
- VI. Respondent Sanchez shall successfully complete 75 hours of the salesperson pre-licensure course before her license may be reinstated.

SO ORDERED this 11 day of December, 2015.

By: Linda Stefanik, President
Jacob S. Elkes, Esq., Commissioner
Robert Melillo, Commissioner
Eugenia K. Bonilla, Commissioner
Jeffrey A. Lattimer, Commissioner
Michael Timoni, Commissioner


Robert L. Kinniebrew
Executive Director
New Jersey Real Estate Commission