

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,)
)
 Complainant,)
 v.)
)
 JOSEPH PIARULLI, unlicensed person,)
 Ref. No. 7861883 FRASAGI PROPERTY)
 MANAGEMENT, an unlicensed entity and)
 RICHARD BILOFSKY, licensed New Jersey)
 real estate broker, Ref. No. 8133575 and broker)
 of record of Bayview Realty, formerly licensed)
 New Jersey real estate broker,)
)
 Respondents.)

DOCKET NO.: HUD-12-022
**FINAL ORDER OF
DETERMINATION**

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 February 26, 2013, at which time the REC presented its case but the Commission tabled the matter in order to obtain legal advice. At that time, the Commission directed RO Gallina to provide more information about the duration of the unlicensed activity that was alleged to have occurred. On March 5, 2013, the Commission issued an oral decision regarding this matter.

BEFORE: Commissioners Linda Stefanik, Jacob S. Elkes, Esq., Robert Melillo, and Harold J. Poltrock, Esq.¹

APPEARANCES: Marianne Gallina, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission ("REC"). Respondents Piarulli and Bilofsky failed to appear despite receiving proper notice and the matter was heard ex parte.

¹ Commissioner Steltzer was present for the hearing on February 26, 2013 but was not present when the Commission issued the oral decision on March 5, 2013. Commissioner Bonilla and Commissioner Timoni were present at the March 5, 2013 hearing but abstained from participation in issuance of the Commission's oral decision because they had not been present at the February 26, 2013 hearing.

STATEMENT OF THE CASE

The REC initiated this matter through service of Order to Show Cause No. 11-27614 (“OTSC”) dated November 20, 2012, 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. This OTSC was served upon Respondent Piarulli by regular and certified mail via letter dated November 21, 2013 to his home address at 44 Cleveland Street, Caldwell, NJ. The regular mail was not returned to this office and the certified mail was returned unclaimed. The OTSC was also served upon Respondent Piarulli by regular and certified mail via letter dated November 21, 2013 at the Frasagi Property Management business address of 5208 Ocean Avenue, Jersey City, NJ. Both the certified and regular mail were returned as not deliverable.

Respondent Bilofsky was also served with the OTSC by regular and certified mail on November 21, 2012 at his new business address for Professionals Real Estate, Inc. located at 821 N. Wood Avenue, Linden, NJ. The regular mail was not returned to this office and the certified mail came back unclaimed.

Respondents Piarulli and Richard Bilofsky were also notified of the February 26, 2013 hearing date via letter dated January 10, 2013, sent by regular and certified mail to the aforementioned addresses. The regular mail was not returned to this office.

The OTSC alleged that Respondents Piarulli and Frasagi Property Management engaged in multiple violations of the Real Estate Brokers and Salespersons Act (“Act”), N.J.S.A. 45:15-17, and the real estate regulations when they engaged in real estate brokerage activity without a real estate license, made substantial misrepresentations to members of the public, and that they demonstrated fraud and dishonest dealing by holding themselves out to the public as real estate licensees and attempting to collect compensation for same. The OTSC also alleged

that Respondents Piarulli and Frasagi Property Management demonstrated unworthiness by failing to comply with a subpoena issued by the REC, and Respondent Bilofsky demonstrated incompetency when he allowed Respondents Piarulli and Frasagi Property Management to operate an unlicensed property management service in shared office space with his real estate office. The REC also alleged that Respondents Piarulli and Frasagi Property Management's overall conduct demonstrated bad faith and dishonesty.

Respondent Bilofsky failed to file an answer or otherwise respond to the OTSC. Respondent Piarulli did not file an answer but responded to the REC's January 10, 2013 letter by facsimile dated February 25, 2013. In this letter, Respondent Piarulli explained that he is a cancer patient and confirmed his phone conversation with RO Gallina wherein he stated that he could not attend the February 26, 2013 hearing. He also explained that he is not a real estate agent or broker and he averred that Mr. Thomas, the complainant in this matter, "gave us an authorization to collect rents for him." He further explained that he shared an office with Respondent Bilofsky. Additionally, he explained that he got sick and "told Mr. Thomas that I had money from rentals, but there may have been more due to us for additional construction work. Mr. Thomas got paid by the insurance company in excess of what we had billed him. We delivered to Thomas my personal checks for the amount of the rents with the understanding of not to deposit until we agreed on the amounts due from both parties." He also stated that he paid all money due to Mr. Thomas and is in fact owed money by Mr. Thomas.

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

- S-1 Property Management Agreement dated 8/9/10 between Wayne Thomas and Frasagi Property Management, LLC.
- S-2 Return check notice from Valley National Bank to Linda and Wayne Thomas dated 10/29/11 re: Frasagi Property Management check #1418.

- S-3 Return check notice from Valley National Bank to Linda and Wayne Thomas dated 11/2/11 re: Frasagi Limited check #1287
- S-4 Return check notice from Valley National Bank to Linda and Wayne Thomas dated 11/8/11 re: Frasagi Property Management check #1419.
- S-5 Check #1420 from Frasagi Property Management, LLC to Wayne Thomas dated 11/15/11 in the amount of \$3,259.00
- S-6 Promissory note dated 11/7/11 from Emanuela Piarulli to Wayne Thomas for \$6,050
- S-7 (a) Subpoena dated 5/7/12 issued by New Jersey Real Estate Commission to Joseph Piarulli and Frasagi Property Management, LLC.
(b) Subpoena dated 5/7/12 issued by New Jersey Real Estate Commission to Richard Bilofsky.
(c) Proof of mailing of subpoenas dated 5/7/12
(d) Proof of delivery of subpoenas dated 5/7/12
- S-8 Letter dated 6/4/12 from Joseph Piarulli to New Jersey Real Estate Commission.

TESTIMONY OF THE WITNESS

Wayne Thomas

Mr. Thomas testified that he had a business relationship with Respondent Piarulli and Frasagi Management, Inc. Mr. Thomas identified Exhibit S-1 as the Property Management Agreement entered into between himself and Frasagi Property Management, LLC. This agreement indicates that Mr. Thomas, as the owner, “employed the services of manager to manage, operate, control, rent and lease” the rental property which consists of 12 residential units. Mr. Thomas testified that, pursuant to the terms of this agreement, Respondent Piarulli was responsible for managing the property, which included collection of rents, making repairs, and providing monthly reports.

Mr. Thomas stated that Respondent Piarulli failed to forward him the rents that he collected from the tenants. When Mr. Thomas terminated his agreement with Respondent Frasagi Property Management, Respondent Piarulli agreed to forward to Mr. Thomas the tenants' security deposits. Mr. Thomas testified that Respondent Piarulli sent him three checks representing tenants' security deposits, all of which were returned unpaid marked "NSF" for insufficient funds. In this regard, Mr. Thomas identified Exhibit S-2 as a copy of a check made out to "Wayne Thomas" dated October 18, 2011 in the amount of \$3,258.00 from Respondent Piarulli that was returned for insufficient funds. Mr. Thomas further identified Exhibit S-3 as a copy of a check, also made out to "Wayne Thomas" and dated October 28, 2011 in the amount of \$3,258.00 from Respondent Piarulli which was also returned unpaid for insufficient funds. Mr. Thomas also identified Exhibit S-4 as another check from Respondent Piarulli to "Wayne Thomas" dated November 1, 2011 for \$3,258.00 which was returned unpaid for insufficient funds.

Mr. Thomas further identified Exhibit S-5 as copies of checks sent by Respondent Piarulli to Mr. Thomas to replace the previously bounced checks.

Mr. Thomas further identified Exhibit S-6 as a copy of a receipt from Respondent Piarruli's wife, Emanuella Piarulli, showing that Respondent agreed to pay him \$1,000.00 per week until the balance due was paid. Mr. Thomas stated that he assumed that Respondent Piarulli was a licensed real estate agent but later found out that he was not licensed.

Mr. Thomas testified that he initiated litigation in Superior Court to collect the balance of money due from Respondents Piarulli and Frasagi Property Management from the security deposits. Mr. Thomas testified that he finally received the full amount of security money as a result of the civil action.

Investigator William McCloskey

Investigator William McCloskey testified on behalf of the REC. Investigator McCloskey testified that, during the course of his investigation, he went to the Jersey City office which housed both Frasagi Property Management and Bayview Realty, the brokerage for which Respondent Bilofsky was broker of record. Neither Respondent Piarulli nor Respondent Bilofsky were present at the time of this initial visit. Investigator McCloskey was eventually able to meet with Respondent Bilofsky who informed him that he did not have any business with Frasagi Property Management and that they only shared office space. Investigator McCloskey further testified that he then informed Respondent Bilofsky that he was prohibited from sharing office space with Frasagi Property Management since Respondent Piarulli's license was revoked. Respondent Bilofsky responded by sarcastically asking if he was supposed to check every person's license status.

Investigator McCloskey stated that he never spoke with Respondent Piarulli during the course of the investigation.

Investigator McCloskey further identified Exhibit S-7(a) as the subpoena issued by the REC to Respondent Piarulli demanding that he produce documents related to the property management agreement which he entered into with Mr. Thomas. He further identified Exhibit S-7(b) as the subpoena issued by the REC to Respondent Bilofsky demanding that he produce documents relating to escrow accounts, contracts and property management agreements. Investigator McCloskey also identified Exhibit S-7(c) as the proofs of mailing of the subpoenas and Exhibit S-7(d) as the proof of delivery of the subpoenas.

Investigator McCloskey further identified Exhibit S-8 as a copy of the letter that Respondent Piarulli sent to the REC dated June 4, 2012. Investigator McCloskey testified that

Respondent Piarulli explains in this letter that he is a cancer patient and cannot appear at the initial return scheduled for June 5, 2012. In this letter, Respondent Piarulli further explained that “operations of Frasagi property Management have ceased and all related documentation has accordingly been removed and disposed.” Investigator McCloskey stated that he never interviewed Respondent Piarulli although he made several attempts to contact him by phone but never received a return call. Investigator McCloskey further stated that he made several trips to Respondent Piarulli’s residence but there was never an answer.

Investigator McCloskey further testified that he met with Respondent Bilofsky in Trenton with respect to the REC’s subpoena. Respondent Bilofsky brought escrow account statements to this meeting but they did not coincide with the records requested.

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 Joseph Piarulli does not presently hold a real estate license in New Jersey. Mr. Piarulli previously held a real estate broker’s license in New Jersey which was revoked in 1984 and has not been reinstated. Therefore, at all times relevant hereto, Respondent Piarulli did not hold a New Jersey real estate license.
2. Respondent Richard Bilofsky is a licensed New Jersey real estate broker and is broker of record of Professionals Real Estate, Inc., licensed New Jersey real estate broker, located at 821 N. Wood Avenue, Linden, NJ 07026. At all times relevant hereto, Respondent Bilofsky was broker of record of Bayview Realty, formerly licensed New Jersey real estate broker, which was located at 5208 Ocean Avenue, Jersey City, NJ 07305. The

license of Bayview Realty became inactive on or about April 26, 2012 and has not been reinstated.

3. At all times relevant hereto, Respondent Frasagi Property Management did not hold a real estate license in New Jersey and does not currently hold a New Jersey real estate license. At all relevant times, Respondents Piarulli and Frasagi Property Management shared office space with Bayview Realty at 5208 Ocean Avenue, Jersey City, NJ 07305.
4. At all relevant times, Wayne Thomas was the owner of properties located at 137 and 139 Wilkinson Street, Jersey City, NJ which comprise a total of twelve residential units. On or about August 9, 2010, Respondents Piarulli and Frasagi Property Management entered into a property management agreement with Mr. Thomas whereby Frasagi was to be compensated to perform various property management services including advertising units for rental, signing leases and collecting rents and holding tenants' security deposits. The property management agreement provided that Frasagi would be paid a fee of the monthly rental for each unit rented and 6% of the gross rental for other management services.
5. Respondents Piarulli and Frasagi provided property management services to Mr. Thomas as described above until Mr. Thomas terminated their services in September 2011. At that time Mr. Thomas requested that Respondent Piarulli forward the tenants' security deposits to him.
6. In response to Mr. Thomas' request, Respondent Piarulli forwarded to Mr. Thomas three post-dated checks as follows:
 - (a) Check #1418 dated October 18, 2011 in the amount of \$3,258 drawn on the account of Frasagi Property Management maintained at Provident Bank ending in 3060; and

- (b) Check #1287 dated October 29, 2011 in the amount of \$3,250 drawn on the account of Frasagi, LTD maintained at Sovereign Bank ending in 0123; and
- (c) Check #1419 dated November 1, 2011 in the amount of \$3,258 drawn on the account of Frasagi Property Management maintained at Provident Bank ending in 3060.
7. The three checks referred to above were returned unpaid marked "NSF". When Mr. Thomas demanded payment in full from Respondent Piarulli, he paid Mr. Thomas \$1,800 and provided him with a promissory note executed by Respondent Piarulli's wife, Emanuela Piarulli, for the balance owed. When payments were not made as promised under the terms of the promissory note, Mr. Thomas instituted a civil suit and filed a complaint with the New Jersey Real Estate Commission. Respondent Piarulli has since paid the balance in full to Mr. Thomas in settlement of the litigation.
8. Investigator McCloskey made numerous attempts to visit and contact Respondents between January 2012 and May 2012. He never made contact with Respondent Piarulli. In January 2012, Investigator McCloskey met with Respondent Bilofsky who stated that he had no knowledge or information regarding the activities of Respondent Piarulli.
9. On or about May 11, 2012, a Real Estate Commission investigator issued subpoenas to Respondents Piarulli and Bilofsky directing them to appear and produce records for inspection on June 5, 2012. Respondent Bilofsky appeared and produced some records. Respondent Piarulli did not appear and has not otherwise complied with the subpoena.

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. Respondents Piarulli and Frasagi Property Management violated N.J.S.A. 45:15-1, 45:15-3 and 45:15-17(t) in that they engaged in real estate brokerage activity without a real estate license.
2. Respondents Piarulli and Frasagi Property Management violated N.J.S.A. 45:15-17(a) in that they made substantial misrepresentations to members of the public by representing themselves as real estate licensees when they, in fact, did not hold any real estate licenses.
3. Respondents Piarulli and Frasagi Property Management violated N.J.S.A. 45:15-17(l) in that, by holding themselves out to the public as real estate licensees and attempting to collect compensation for same by holding the funds of others in real estate transactions, they have demonstrated fraud and dishonest dealing.
4. Respondents Piarulli and Frasagi Property Management violated N.J.S.A. 45:15-17(e) unworthiness, in that they failed to comply with a duly issued subpoena.
5. By their conduct as set forth above, Respondents Piarulli and Frasagi Property Management have demonstrated bad faith and dishonesty, and violated N.J.S.A. 45:15-17(e).
6. Respondent Bilofsky is not guilty of violating N.J.S.A. 45:15-17(e), incompetency, because there is insufficient evidence to prove that he allowed Respondents Piarulli and Frasagi Property Management to operate an unlicensed property management service in shared office space with his real estate office.

DETERMINATION

In arriving at the determination in this matter, the Commission took into consideration the testimony of the witnesses and the documentary evidence admitted during the

course of the hearing. The Commission also considered the serious nature of Respondents' actions.

N.J.S.A. 45:15-1 prohibits a person from engaging either directly or indirectly in the business of a real estate broker, broker-salesperson or salesperson, temporarily or otherwise, or from advertising or representing himself as being authorized to act as a real estate broker, broker-salesperson or salesperson, without being licensed so to do. N.J.S.A. 45:15-3 defines a real estate broker as a "person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of real estate..." Moreover, pursuant to N.J.S.A. 45:15-17 (a), (e), and (l), the Commission may revoke or suspend the right to licensure and impose a fine for any conduct demonstrating incompetency, unworthiness, bad faith or dishonesty, for any conduct demonstrating fraud and dishonest dealing or for the making of a substantial misrepresentation.

Here, the undisputed facts demonstrate that Respondent Joseph Piarulli, an unlicensed individual, and Respondent Frasagi Property Management, an unlicensed entity, engaged in real estate brokerage activity for which they were compensated when they managed the property of Wayne Thomas. This unlicensed activity included the collection of rental monies from the tenants and the advertisement of the rental property for rent and lease. Moreover, according to the property management agreement entered into between Mr. Thomas and Respondent Frasagi Property Management, Respondent Frasagi Property Management was obligated "to sign, renew and cancel rental agreements and leases for the property or any part thereof" and "to rent the apartments as they may become vacant." According to the property management agreement, Respondent Mr. Thomas agreed to compensate Respondent Frasagi

Property Management with six percent of the gross rental receipts. This conduct requires licensure and therefore, Respondents Piarulli and Frasagi Property Management violated N.J.S.A. 45:15-1, 45:15-3 and 45:15-17(t) by engaging in unlicensed activity. Moreover, by engaging in this unlicensed activity, they made substantial misrepresentations to members of the public by representing themselves as real estate licensees when they in fact did not hold any real license in violation of N.J.S.A. 45:15-17(a). Additionally, this conduct demonstrated bad faith and dishonesty in violation of N.J.S.A. 45:15-17(e).

Moreover, the undisputed testamentary and documentary evidence demonstrate that Respondents Piarulli and Frasagi Property Management not only collected compensation from tenants of the property at 137 and 139 Wilkinson Street, Jersey City, NJ, but held these funds and failed to return the security deposits to Mr. Thomas when he terminated the property management agreement. By engaging in this behavior and holding themselves out to the public as real estate licensees, Respondents Piarulli and Frasagi Property Management demonstrated fraud and dishonest dealing in violation of N.J.S.A. 45:15-17(l). Additionally, Respondents Piarulli and Frasagi Property Management Respondents also demonstrated unworthiness in violation of N.J.S.A. 45:15-17(e) by failing to comply with a duly issued subpoena.

The Real Estate Commission has consistently imposed significant sanctions, including license revocations and fines, for similar conduct. See, NJREC v. Lisa Smith and Jasper Realty, Final Order of Determination, ATL-08-045 (3/2/10) (Smith's salesperson's license and both Respondents' broker eligibility revoked for life and a fine of \$45,000.00 imposed when Jasper Realty and Smith engaged in real estate activity and accepted commissions without being licensed as brokers, when Smith failed to deposit and maintain deposit funds, when Smith made false statements, made misappropriations, and a issued a deposit check which

was later returned for insufficient funds among other violations); NJREC v. Jennifer Rickards and Beach Block Management, LLC, Final Order of Determination, MER-08-026 (10/15/10) (Rickards salesperson's eligibility revoked for three years and a fine of \$10,000.00 imposed when he transacted real estate business without being properly licensed, when he accepted commissions from rentals of Beachwatch Condominium units while not properly licensed, and when he accepted commission's through unlicensed Beach Block Management, LLC). In light of this precedent, the facts of this matter, and the severity of the Respondents' misconduct, Respondent Piarulli shall be ineligible for licensure as a salesperson for life. Respondent Piarulli is also ordered to cease and desist from engaging in the real estate brokerage business through Frasagi Property Management or any other unlicensed business entity.

In Kimmelman v. Henkels & McCoy, Inc. 108 N.J. 123 (1987), the Supreme Court established the following seven factors to evaluate the imposition of fines in administrative proceedings 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 imposition of substantial and significant fine.

First, Respondent Piarulli demonstrated bad faith by acting as a real estate licensee when he was not a licensee and by collecting rental fees and turning them over to Mr. Thomas. Second, the Respondent Piarulli's ability to pay is unknown because Respondent failed to appear and no evidence was offered in this regard. Third, the amount of profits obtained by

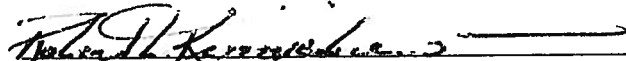
Respondent is also unknown. However, it is clear the Respondent improperly received the rental fees and did not timely turn them over to Mr. Thomas. Fourth, the public is significantly harmed and placed at risk when unlicensed individuals engage in real estate business because such individuals do not have the requisite knowledge or expertise in real estate brokerage activity, and are not actively supervised by licensed brokers that are responsible for their conduct. Fifth, Respondent's actions took place between August 2010 and September 2011, since the property management agreement between Mr. Thomas and Respondent Frasagi Property Management become effective in August 2010 and Mr. Thomas testified that he terminated this agreement in September 2011. Sixth, to the Commission's knowledge, there were no criminal or treble actions. Finally, Respondents license was previously revoked in 1984. In light of this analysis, the Commission has determined that it is appropriate to impose a total fine of \$10,000.00.

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

- I. Respondents Piarulli and Frasagi Management shall pay a fine jointly and severally of \$2,000 for each violation for a total fine of \$10,000.00.
- II. Respondents Piarulli and Frasagi Property Management shall cease and desist from engaging in the real estate brokerage business.
- III. Respondent Piarulli shall be ineligible for real estate licensure for life.

SO ORDERED this 16th day of July, 2014.

By: Linda Stefanik, President
Jacob S. Elkes, Esq., Commissioner
Robert Melillo, Commissioner
Harold J. Poltrock, Esq., Commissioner


Robert L. Kinniebrew
Executive Director
New Jersey Real Estate Commission