

**NEW JERSEY REAL ESTATE COMMISSION**

NEW JERSEY REAL ESTATE COMMISSION, ) DOCKET NO.: MON-12-025  
)  
Complainant, )  
v. ) **FINAL ORDER OF**  
) **DETERMINATION**  
)  
JANUSZ GAJDA, licensed New Jersey real estate )  
broker (Ref. No. RB0125436) and broker of record )  
of MAXLAND ADVANCED, LLC d/b/a/ ReMax )  
Home Experts, licensed New Jersey real estate )  
broker, )  
  
Respondents.

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

**BEFORE:** Commissioners Linda Stefanik, Robert Melillo, Eugenia K. Bonilla, and Jeffrey A. Lattimer.

**APPEARANCES:** Marianne Gallina, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission ("REC"). Respondent Gajda appeared with counsel, Louis Managano, Esq.

**STATEMENT OF THE CASE**

The REC initiated this matter through service of an Order to Show Cause ("OTSC") dated January 27, 2014 on Janusz Gajda ("Gajda"), 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 was initially returnable on February 19, 2014 where it was deemed to be a contested case and scheduled for a hearing. Although the

caption of the OTSC lists both Gajda and Maxland Advanced, LLC (“Maxland”) as Respondents, charges were only brought against Gajda, who was the licensed broker of record for Maxland, doing business as ReMax Home Experts. The OTSC charged that Respondent Gajda engaged in multiple violations of the real estate laws of New Jersey. Specifically, the REC alleged that Respondent failed to protect and promote the interest of his principals, failed to record information on the trust account checkbook stub and ledger, failed to maintain a trust account ledger, failed to maintain records confirming at least quarterly reconciliation on accounts, and failed to deposit funds within 5 days. The OTSC further alleged that Respondent did not file a change of address with the REC when he moved his office location, and failed to maintain business records. The OTSC also alleges that Respondent failed to maintain an office open to the public and failed to supervise salespersons in his employ.

Respondent, through counsel, filed an Answer on February 12, 2014. Accordingly, after the return date, the case was scheduled for a full hearing on May 20, 2014.

In his Answer, Respondent Gajda admitted to paragraphs 4 through 6, and 8 through 11 of the OTSC regarding the factual allegations. Respondent denied in part the allegations of paragraph 7 of the OTSC regarding not having a broker-salesperson in his employ that would have been qualified to act in the capacity of office supervisor; however, admitted that licensees in his employ regularly left the office unattended and forwarded calls from the office telephone number to their personal cell phones. Respondent also admitted to violations of law in paragraphs 15, 17, 18 and 20 regarding recording keeping and accounting practices. At the hearing, the REC moved to administratively dismiss the allegations of paragraph 12 in connection with producing an employment agreement upon information provided by Respondent Gajda before the hearing.

The Respondent appeared at the hearing with counsel. At the hearing the following exhibits were offered by Respondent and admitted into evidence:

- R-1 Circle of Excellence Sales Award.
- R-2 Character reference letters
- R-3 Photos of flood damage to office.

**TESTIMONY OF THE WITNESS**

**Respondent Janusz Gajda**

Respondent Janusz Gajda testified on his own behalf. Upon questioning by the Regulatory Officer, Respondent Gajda affirmed that in September, 2011 he spoke with Carmen Collazo of the REC and that he advised her of the destruction to his office due to hurricane Irene. However, Gajda acknowledged that he had not filed a written change of address with the REC as of October, 2012.

Respondent Gajda further testified that he has an office number with voicemail, but there were times his salespersons forwarded the calls to their own personal cell phones. Respondent stated that he was not a tough enough boss, but he has corrected this problem.

Respondent Gajda further testified that during the time period of January, 2012 through October, 2012 he was not in the office all the time because he was also working as a salesperson. Respondent testified that his agents have to notify him of their transactions and although the agents have the files, they are duplicate files.

Respondent Gajda further testified that he now has a person at the office to answer the phone and that calls are no longer being forwarded to the salesperson's cell phones. Respondent also stated that he has addressed the five day deposit issue. He explained that he now has a form that the agent has to sign off on and that he then countersigns it. Respondent

testified that there has not been a single deposit that has been more than five days late since the investigator has been to his office.

**Investigator Robert Spillane**

Investigator Robert Spillane testified on behalf of the REC. Investigator Spillane testified that prior to becoming an investigator he was a managing broker.

Investigator Spillane testified that he was initially unsuccessful on several occasions in his attempts to contact the Respondent, but that he did meet with him on October 22, 2012. Investigator Spillane testified that he requested records for multiple real estate transactions; however, Respondent was not able to provide all records. Investigator Spillane explained that some of the files requested were not at the office. Investigator Spillane further testified that the Respondent told him that some of the files were with the agents. Investigator Spillane stated that there was not a tracking system for current and closed transactions. Consequently, the only way to get information about a given transaction was to log onto the Multiple Listing Service (“MLS”). Investigator Spillane further testified that there was a general escrow record, but there were no transaction records for each individual escrow account.

On cross-examination Investigator Spillane testified that when he first went to Respondent Gajda’s office, located at 750 Patterson Avenue, East Rutherford, there was no one at the office. However, he was able to meet with Respondent at this location on October 22, 2012.

Investigator Spillane further testified that Respondent informed him that his records were at a former location and were damaged by a flood. Gajda indicated to him that many of his records were destroyed. Investigator Spillane further testified that Respondent provided the records to the REC for current transactions by contacting his agents to get copies.

**Respondent Gary Stefano, CPA**

Gary Stefano (“Stefano”) testified on behalf of Respondent Gajda. Stefano testified that he is a Certified Public Accountant (“CPA”) working out of Paterson, NJ and has been a CPA for over 25 years. He has experience working with real estate record systems and has worked with five to ten other real estate clients. He further stated that he was retained by Respondent in January 2014.

Stefano further testified that he reviewed all Respondent’s transactions in both the trust and operations accounts from August 2012 through the current date. Stefano stated that when he found that there was non-compliance, he corrected those errors. He further stated that there was no commingling of funds. Stefano also found that Respondent Gajda did retain ledger sheets for clients when money was received, deposited and returned. Respondent Gajda also maintained reconciliations to establish an account balance; however, Stefano admitted that it was not a formal reconciliation that would comply with real estate regulations.

Stefano further testified that he and Gajda have created monthly reconciliation reports for both the trust and operating accounts and that there are now individual accounts for all escrow funds. Stefano further testified that the records are now in compliance with real estate regulations going back to 2012 through the present. Stefano stated that he will continue to reconcile and monitor Respondent Gajda’s accounts and record keeping system.

Stefano further testified that no clients were damaged due to the past record keeping system, and that Respondent is now in compliance with the REC rules and regulations, including the 5-day deposit rule. Stefano described the accounting system that was now in place, and further explained his work with Respondent Gajda in reviewing and summarizing transactions.

Upon questioning by the Commissioners, Stefano stated that he does not have copies of the checks, but maintains a computerized accounting program of all transactions. In further response to the Commissioners' questions, Respondent Gajda stated that he now keeps copies of the checks and began doing so after Investigator Spillane visited his office.

### **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 Janusz Gajda is a licensed New Jersey real estate broker, currently licensed as broker of record of Maxland Advanced, LLC, d/b/a/ ReMax Home Experts, licensed New Jersey real estate broker, whose office is located at 750 Paterson Avenue, East Rutherford, New Jersey 07073; and
2. As of October, 2012, the address on file with the New Jersey Real Estate Commission for ReMax Home Experts, Inc. was 150 Locust Avenue, Wallington, N.J. The telephone number for ReMax Home Experts which was on file with the New Jersey Real Estate Commission as of October, 2012 was 973-777-4663. When a Real Estate Commission investigator visited that location, he found it to be a vacant lot. The investigator contacted the Garden State Multiple Listing Service to inquire as to what address for ReMax Home Experts was on their records. He was told the address was 48 Locust Avenue, Wallington, N.J. When the investigator visited that location, he found a vacant residential building; and
3. The 150 Locust Avenue address and the above telephone number were advertised to the public as the offices of ReMax Home Experts as of October, 2012; and

4. On or about October 19, 2012 a Real Estate Commission investigator was able to find an East Rutherford, N.J. address on the internet for the office of ReMax Home Experts. However, when the investigator arrived at that location at 11:20 a.m., the office was closed; and
5. On or about October 19, 2012, when the Real Estate Commission investigator called the telephone number of ReMax Home Experts (973-777-4663) which was on record with the NJREC as of October, 2012, he reached the personal cell phone of Agana Kowalczyk, licensed New Jersey salesperson employed with ReMax Home Experts; and
6. On or about October 22, 2012, a Real Estate Commission investigator met with Respondent Gajda at 750 Paterson Avenue, East Rutherford, N.J. That location displayed a ReMax Home Experts sign on the exterior of the building. At that time, Respondent Gajda stated that he did not have business records available at the office and that he had moved his office in 2011 because of a flood at the Locust Avenue location. He provided the investigator with his business card which still had the Locust Avenue address on it; and
7. At the October 22, 2012 meeting, Respondent Gajda admitted to the Real Estate Commission investigator that he and the licensees employed at his office regularly left the office unattended and forwarded calls to the office telephone number to their personal cell phones; and
8. On November 16, 2012, the Real Estate Commission investigator returned to the office of ReMax Home Experts and met with Respondent Gajda who produced two cardboard boxes of files which he said he had brought from his residence. The records produced

were incomplete. At that time, the investigator attempted to conduct an office inspection and audit at ReMax Home Experts. His investigation revealed that Respondent Gajda:

- a. Did not regularly maintain a ledger or other permanent method of recordkeeping for the funds of others received by ReMax Home Experts as an escrow agent or as the temporary custodian of the funds of others in a real estate transaction; and
  - b. Did not make any reconciliation of the escrow account or operating account checkbook balances and client trust ledger balances; and
  - c. Failed to record references in the escrow account checkbook identifying the date, source and amount of each item deposited, and the dates, payees and amounts of all disbursements; and
  - d. Did not retain copies of all cancelled checks, duplicate deposit slips, all confirmation slips or other written materials reflecting broker's accepting such payments; and
9. Respondent and ReMax Home Experts maintained an escrow account ending in 8431 at Spencer Savings Bank. The Commission investigator reviewed bank statements for that account from January, 2012 through October, 2012. However, since most of the transaction files were missing and no ledgers were maintained, the investigator could not conduct a full audit; and
10. The investigator directed Respondent Gajda to reconstruct as much of the transactions as possible using alternate sources such as the Multiple Listing Service and cooperating brokers. On November 19, 2012 Respondent Gajda appeared at the Real Estate Commission offices and produced additional documentation; and



11. The investigator's review of the additional documentation provided by Respondent on November 19, 2012 revealed the following:
- a. 47 Park Row, Wallington, N.J. The contract of sale was signed by the buyer on or about January 19, 2010 and at that time an initial \$1,000 deposit was collected from the buyer. Said funds were deposited into the escrow account on January 30, 2010; and
  - b. 235 Lanza Avenue, Garfield, N.J. – The contract of sale was signed on or about March 14, 2010 and an initial deposit of \$1,000 was collected from the buyer at that time. Said funds were deposited into the escrow account on April 5, 2010; and
  - c. 73 Morrisee Avenue, Wallington, N.J. – On or about January 12, 2010 an initial deposit check for \$1,000 was collected from buyer (Kasperak) for another property. That transaction never came to fruition. The same buyer entered into a contract of sale for 73 Morrisee Avenue on or about February 8, 2011 and the buyer's check dated January 12, 2010 was used as the initial deposit on the Morrisee Avenue property. That check was deposited into the escrow account on or about February 18, 2011; and
  - d. 2437 5<sup>th</sup> Street, Fort Lee, N.J. – The initial deposit check for \$1,000 was collected from the buyer on October 5, 2010. However, the contract of sale was dated September 18, 2010 and stated that the initial deposit was being held by ReMax Home Experts. The deposit was actually deposited into the escrow account on October 19, 2010; and

- e. 95 Miller Street, Wallington, N.J. was the subject of a court action whereby the Superior Court issued an Order Permitting Sale of Real Estate dated November 10, 2011. The initial deposit check for \$5,000 was collected by Respondent from the buyer Anna Konefal on October 4, 2011 and deposited into escrow on November 30, 2011. There were three additional prospective buyers, all represented by Respondent as a disclosed dual agent. Respondent prepared offers and collected deposits from the three other buyers and stated to a Commission investigator that the original deposit checks were returned to the prospective buyers when the Court issued its Order approving the sale to buyer Konefal; and
- f. 32 Smith Street, #2A, Fair Lawn, N.J. – The contract of sale and initial \$1,000 deposit check from buyer were dated July 25, 2012. The deposit was to be held by ReMax Home Experts. The check was deposited into the escrow account on or about August 13, 2012; and

### **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 violated N.J.S.A. 45:15-17e because by failing to maintain business records and perform required accounting practices Respondent demonstrated incompetency; and
2. Respondent violated N.J.A.C. 11:5-6.4(a) because he failed to protect and promote the interests of his principals; and
3. Respondent violated N.J.A.C. 11:5-5.4(b)(1) because he failed to record transaction information required by that rule on the trust account checkbook stub and ledger for

- deposits and disbursements of monies of others received by him or ReMax Home Experts; and
4. Respondent violated N.J.A.C. 11:5-5.4(b)(2) because he failed to maintain a trust account ledger; and
  5. Respondent violated N.J.A.C. 11:5-5.4(b)(3) because he failed to reconcile and maintain records confirming that at least a quarterly reconciliation has been completed between the checkbook balance, bank statement balance and trust account ledger; and
  6. Respondent violated N.J.A.C. 11:5-5.1(e) (six counts) because he failed to promptly deposit funds within 5 days of receipt as required by the rule; and
  7. Respondent violated N.J.A.C. 11:5-3.9 by failing to file a written change of address with the New Jersey Real Estate Commission in 2011 when he moved his office location to 750 Paterson Avenue, East Rutherford, N.J.; and
  8. Respondent violated N.J.A.C. 11:5-4.1 because he failed to maintain business records as required by the regulation; and
  9. Respondent violated N.J.A.C. 11:5-4.4(a) (two counts) because he failed to maintain an office open to the public and failed to supervise the salespersons in his employ as required by the regulation.

#### **DETERMINATION**

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

The Real Estate Brokers and Salesperson Act, N.J.S.A. 45:15-1 et seq., charges the Commission with the “high responsibility of maintaining ethical standards among real estate brokers and sales[persons]” in order to protect New Jersey real estate consumers. Goodley v. New Jersey Real Estate Comm’n, 29 N.J. Super. 178, 181-182 (App. Div. 1954). Thus, the Commission has the power to suspend and revoke the licenses of brokers and salespersons, and to fine, for violations of the offenses enumerated in N.J.S.A. 45:15-17 or the real estate regulations. Maple Hill Farms, Inc. supra, 67 N.J. Super. 223, 232 (App. Div. 1961); Division of New Jersey Real Estate Comm’n v. Ponsi, 39 N.J. Super. 526,527 (App. Div. 1956). Furthermore, real estate brokers and salespersons in New Jersey act as fiduciaries, and they are required to exercise: “fidelity, good faith and primary devotion to the interests of [their] principal[s],” Ellsworth Dobbs, Inc. v. Johnson and Johnson, 50 N.J. 528, 553 (1967), and “reasonable skill, care and diligence in performing” the business of real estate brokerage with regard to their clients. Sullivan v. Jefferson, 167 N.J. Super. 282, 286-287 (App. Div. 1979).

Pursuant to N.J.S.A. 45:15-17e, the Commission may place on probation, suspend or revoke the license of any licensee for “any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty.” In addition, the Commission is empowered to prescribe and enforce any and all rules and regulations for the conduct of the real estate brokerage business”. N.J.S.A. 45:15-17t. Further, N.J.A.C. 11:5-5.4(b)(1) and (2) provides that, among the records to be maintained by a broker, “written references on the checkbook stubs or checkbook ledger pages to all deposits into and withdrawals from the account maintained by the broker ... shall specifically identify the date, amount and payor of each item deposited, the property to which the monies pertain and the reason for their being held by the broker”, and that an

individual trust account ledger must be kept for each client. N.J.A.C. 11:5-5.4(b)(3) requires that records are maintained by the broker showing at least a quarterly reconciliation of all accounts.

In addition, pursuant to N.J.A.C. 11:5-5.1(e), deposit monies shall be deposited in a special account, separate and apart from other accounts, “not more than 5 business days next following the receipt of the money”. Furthermore, every licensed broker “shall maintain an office which shall be open to the public during usual business hours” and “the activities of the licensees working from it shall be under the direct supervision of the broker himself or herself or of a person licensed as a broker-salesperson”. N.J.A.C. 11:5-4.4(a).

In this case, the undisputed facts demonstrate that Respondent Gajda failed to deposit funds he received within 5 days as required by rule on at least six occasions, and by his own admission, and the testimony of his accountant, he failed to maintain proper record keeping for all transactions as required by law until the Respondent retained accounting services in January 2014. Additionally, Respondent Gajda failed to maintain an office open to the public and failed to supervise his salespersons. Respondent admitted in his testimony that he was not in the office at all times during the period of January, 2012 through October, 2012 because he was working as a salesperson. Moreover, both the investigator and the Respondent testified there were several occasions when the office was left with no one in it and phone calls were forwarded to salespersons’ cell phones. However, according to the testimony, this issue was corrected after the investigator met with Respondent.

N.J.A.C. 11:5-6.4(a) requires that a licensee “pledge himself to promote and protect, as he would his own, the interests of the client”. The Respondent’s inability to abide by required accounting practices constitutes a failure to protect and promote the interests of their clients in violation of N.J.A.C. 11:5-6.4(a).

The Commission heard testimony and took into consideration the fact that Respondent's original business location sustained substantial flooding due to a hurricane and Respondent incurred difficulty in securing a new location for his office as well as properly staffing that office. The Commission also considered that Respondent incurred damages to files and records as a result of the flood. (See Exhibit R-3). In addition, Respondent Gajda has shown that he has retained an accountant who has reviewed his records and brought his business operation into compliance with real estate regulations as of the date of the hearing. Further, Respondent represents that he will be working with an accountant in the future to keep him in compliance. Nevertheless, because multiple violations were committed both prior to and after the flood, Respondent's license is being placed on probation. The Commission finds that this is the appropriate sanction.

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 a significant fine.

First, Respondent demonstrated bad faith by failing to deposit funds within 5 days of receipt and failing to maintain proper recordkeeping and accounting practices. Second, there has been no evidence submitted regarding Respondent's inability to pay a fine. Third, Respondent profited from his activity by transacting real estate business while he continued to


violate multiple real estate rules and regulations. Fourth, the public is harmed when individuals in a fiduciary position violate their responsibilities by failing to maintain business records and follow required accounting practices. Consequently, the public's confidence in the real estate industry is eroded. Fifth, Respondent's illegal actions took place over the course of at least two years – a significant period of time. For example, Respondent violated the 5-day rule on at least one occasion in 2010, 2011 and 2012, respectively. Also, the damage from the hurricane occurred in September 2011, but Respondent's accounting practices were not in compliance until 2014. Sixth, the Commission is not aware of any related criminal proceedings. Finally, there are no prior violations of the real estate rules and regulations by Respondent Gajda.

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

- I. Respondent Gajda's real estate broker's license shall be held on a probationary basis for a period of two years from the date of this order.
- II. During this probationary period, a licensed CPA shall provide a report to the REC on a semi-annual basis (every six months) which either confirms or denies that Respondent Gajda, and any brokerage business that he is associated with, maintains business records and accounting practices that are in compliance with all REC statutes and regulations.
- III. Within six (6) months from the date of this order, Respondent Gajda shall take 30 hours of continuing education courses as a broker in office management. These 30 hours of courses shall not count towards required continuing education credits for that licensing period.
- IV. Respondent Gajda shall pay a fine to the REC based on the findings in the amount of \$6,000.00 within 30 days from receipt of this order.

SO ORDERED this 1<sup>ST</sup> day of August, 2016.

By: Linda Stefanik, President  
Robert Melillo, Commissioner  
Eugenia K. Bonilla, Commissioner  
Jeffrey A. Lattimer, Commissioner

  
Robert L. Kimbiebrew  
Executive Director  
New Jersey Real Estate Commission