

**NEW JERSEY REAL ESTATE COMMISSION**

NEW JERSEY REAL ESTATE	)	Docket No.: MOR-16-021
COMMISSION,	)	REC Ref No.: 10003726
	)	
Complainant,	)	
	)	
v.	)	
	)	<b>FINAL ORDER AND</b>
DOMINICK PREVETE,	)	<b>DETERMINATION</b>
a formerly licensed New Jersey	)	
real estate salesperson	)	
(Ref. No. 9131812),	)	
	)	
Respondent.	)	

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**THIS MATTER** was heard 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 28, 2017.

**BEFORE:** Commissioners Linda Stefanik, Sanjeev Aneja, Jacob Elkes, William Hanley and Denise Illes.

**APPEARANCES:** John Rossakis, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission staff (“REC”). Respondent Dominick Prevete (“Respondent”) did not appear or otherwise respond despite proper service of the Order to Show Cause (“OTSC”) filed against him in this matter and proper service of the letter scheduling the hearing.

**PROCEDURAL HISTORY**

The REC initiated this matter on its own motion through service of an OTSC dated December 2, 2016, pursuant to N.J.S.A. 45:15-17, N.J.S.A. 45:15-18, N.J.S.A. 45:15-19.1, and N.J.A.C. 11:5-1.1 et seq. The OTSC alleges, pursuant to N.J.S.A. 45:15-19.1, the Respondent’s

real estate license is subject to revocation due to a theft offense conviction demonstrating unworthiness, bad faith and dishonesty in violation of N.J.S.A. 45:15-17e.

The OTSC was served on the Respondent by way of cover letter dated December 2, 2016, sent certified and regular mail.<sup>1</sup> The certified mail sent to the Respondent was returned unclaimed to the REC while the regular mail was not returned.

The Respondent did not file an Answer within 20 days of receipt of the OTSC pursuant to N.J.A.C. 11:5-11.2 or otherwise respond to the OTSC. On January 10, 2017, the Commission deemed this matter uncontested and directed that it be scheduled for a hearing. Notice of the hearing date was sent to the Respondent on January 26, 2017 by certified and regular mail.<sup>2</sup> Neither has been returned to the REC.

A hearing was conducted on February 28, 2017, at which time the following exhibits were admitted into evidence by the REC:

- S-1 Criminal Complaint – Summons in the matter of the State of New Jersey v. Dominick A. Prevete Jr., dated December 15, 2015;
- S-2 Morris Plains Boro Police Department Investigation Report, dated December 15, 2015;
- S-3 Judgment of Conviction, dated June 8, 2016; and
- S-4 Proof of Service, including January 26, 2017 letter from the REC to Dominick Prevete, c/o Realty Executives Regional Office New Jersey, 277 Fairfield Road, Suite 126, Fairfield, New Jersey 07004, advising of the January 24, 2017 hearing, sent by certified mail (7013 0600 0001 4653 9904) and regular mail; a copy of the certified mail receipts (one for certified mail 7013 0600 0001 4653 9904) and one

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<sup>1</sup> The OTSC and cover letter were sent to the Respondent at his last known home address of 69 Morris Avenue, Morristown, New Jersey 07960.

<sup>2</sup> Notice of the hearing was sent to the Respondent at his last known home address of 69 Morris Avenue, Morristown, New Jersey 07960 and to his last known business address, care of Realty Executives Regional Office New Jersey, at 277 Fairfield Road, Suite 126, Fairfield, New Jersey 07004.

for the mail sent to Respondent's home address (certified mail 7013 0600 0001 4653 9850); and the green card for certified mail 7013 0600 0001 4653 9904, signed on 01/30/17 by "R Robbert."

### **TESTIMONY OF THE WITNESS**

Keith Hackett ("Hackett") testified on behalf of the REC. Hackett stated that he is employed as an Investigator by the REC. Hackett was assigned to investigate the Respondent's conduct after the REC received a copy of a civil lawsuit filed against the Respondent by attorney Paul Anderson ("Anderson") on behalf of Weichert Company ("Weichert"). Hackett stated that the documents provided by Anderson charged the Respondent with the theft of \$9,700. At the time of the theft the Respondent was serving as the Regional Vice President of Weichert. In this capacity, one of his responsibilities was to approve the distribution of marketing funds allocated to the sales agents that he supervised.

In the course of investigating the Respondent's conduct, Hackett spoke to the current Vice President of Weichert, Jackie Botti ("Botti"). Botti explained that funds are allocated to individual agents to reimburse them for expenses accrued in marketing their services on an annual basis. To access these funds, an agent must submit a signed Associate Benefit Request ("ABR") form to their immediate manager who forwards the request to the Vice President for approval. If approved, Weichert disburses a check made payable to that agent in the amount requested. Hackett and Botti also discussed the incident that precipitated the discovery of the Respondent's conduct. In 2015, a sales agent in the Respondent's employ, Sylvia Benmenachem ("Benmenachem"), applied for her marketing funds disbursement via an ABR. Benmenachem's supervisor informed her that her allocation was already depleted for that year. An internal investigation ensued to determine how this had come to occur.

During the course of the internal investigation it became evident that the Respondent, in his capacity as Regional Vice President, had created and forged signatures on ABR forms using Benmenachem's name and the names of three other sales agents.<sup>3</sup> The Respondent then approved the "requests" and checks were issued, made payable to those sales agents. The Respondent forged each agent's signature, signed the checks over to himself and deposited them into his personal bank account. (Exhibit S-1). The Respondent was reported to the Morris Plains Boro Police Department on October 19, 2015 by Anderson on behalf of Weichert and an official police investigation took place. The Morris Plains Boro Police Department investigation revealed that the Respondent had forged signatures on checks in the amount of approximately \$9,700 between January 30, 2015 and July 29, 2015. (Exhibit S-2). On June 8, 2016, the Respondent pleaded guilty to one count of Theft by Deception in violation of N.J.S.A. 2C:20-4. On July 15, 2016, he was sentenced to probation for a period of two years and ordered to make restitution to Weichert in the amount of \$9,700, to be paid in monthly installments of \$25. (Exhibit S-3).

Lastly, the Commission inquired as to whether Hackett was able to speak to the Respondent in the course of the investigation. Hackett stated that he did question the Respondent but was unable to discuss the ABR forms at issue in this matter as the Respondent's attorney had advised him not to discuss them. The Respondent informed Hackett that he is currently licensed as a real estate broker-salesperson, but is involuntarily inactive. Respondent's real estate license was returned to the REC on October 22, 2015, the same day he was terminated

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<sup>3</sup> Hackett testified that he had the opportunity to speak to all four individuals targeted by the Respondent's thefts. Each individual stated they did not create or sign the ABR form at issue or deposit the resulting check. During his testimony, only three of these agents were mentioned by name, Ms. Benmenachem, Mr. Miller, and Ms. Payne. The fourth agent remained unidentified.

from Weichert. He is currently employed as the Head of Business Development at Realty Executive Regional Office New Jersey.

### **FINDINGS OF FACT**

Based on 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 Dominick Prevete is a formerly licensed New Jersey real estate broker-salesperson, most recently licensed with Weichert. His license was returned to the New Jersey Real Estate Commission on October 22, 2015, the same day he was terminated by Weichert, and has not been renewed or reinstated.
2. While employed at Weichert, the Respondent served as Regional Vice President, and his responsibilities included approving ABR forms for sales agents requesting reimbursement of marketing expenses.
3. An internal investigation conducted by Weichert and a subsequent formal investigation conducted by the Morris Plains Boro Police Department revealed that from January 30, 2015 to July 29, 2015, the Respondent created, signed, and approved ABR forms in the names of four different sales agents in his employ. The Respondent went on to forge these agents' signatures on each of the resulting checks and sign them over to his personal bank account, collecting a total of \$9,700.
4. On June 8, 2016, Respondent pleaded guilty to one count of Theft by Deception, a third degree theft offense, in violation of N.J.S.A. 2C:20-4. On July 15, 2016, he was convicted of said offense and sentenced to serve a two-year period of probation, and was ordered to pay restitution in the amount of \$9,700 to the victim, Weichert.

5. The theft was related to the Respondent's employment as a broker-salesperson with Weichert.

### **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 in that he has been convicted of a theft offense.
2. The Respondent is in violation of N.J.S.A. 45:15-17e in that his conviction for Theft by Deception and the conduct underlying that conviction demonstrate unworthiness, bad faith, and dishonesty.

### **DISCUSSION**

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 and Determination. In arriving at the determination in this matter, the Commission took into consideration the undisputed testimony of the witness, the undisputed documentary evidence admitted during the course of the hearing, and the serious nature of and circumstances surrounding the Respondent's recent conviction for Theft by Deception and the conduct underlying the conviction. N.J.S.A. 45:15-19.1 provides that the Respondent's real estate license is subject to revocation because he has been convicted of a theft offense which was related to his activities as a real estate licensee. In addition, the Respondent's conviction of Theft by Deception and underlying conduct demonstrate unworthiness, bad faith, and dishonesty, in violation of N.J.S.A. 45:15-17e.

The Real Estate Brokers and Salespersons' 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 Comm'n, 29 N.J. Super. 178, 181-182 (App. Div. 1954). The Commission is empowered to suspend and revoke the licenses of, and impose fines against, real estate licensees that commit any 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). 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 Div. of New Jersey Real Estate Comm'n v. Ponsi, 39 N.J. Super. 526, 532-533 (App. Div. 1956).

Thus, the Commission has the power to suspend, revoke, or place on probation the license of any licensee for "any conduct which demonstrates unworthiness, incompetency, bad faith, or dishonesty." N.J.S.A. 45:15-17e.

The undisputed facts and evidence in this matter demonstrate that the Respondent, while acting as Regional Vice President of Weichert, from January 30, 2015 to July 29, 2015, created and signed ABR forms in the names of four different sales agents in his employ. He went on to forge these agents' signatures on the resulting checks, sign them over to himself, and to deposit them into his personal bank account, collecting a total of \$9,700. As Regional Vice President, it was his responsibility to approve these requests made by sales agents for reimbursement of expenses they had incurred marketing their services. The Respondent demonstrated how untrustworthy and dishonest he was when he abused this responsibility by usurping monies from Weichert and from the sales agents in his employ. Furthermore, the Respondent pleaded guilty

one count of Theft by Deception due to his conduct. A theft offense conviction demonstrates dishonesty, unworthiness, and bad faith. Taken together, it is clear that the Respondent does not possess the integrity that is demanded and expected from real estate licensees and, therefore, the Respondent's eligibility for a real estate license must be revoked.

The OTSC alleges: "Respondent's conduct is in violation of N.J.S.A. 45:15-17(e) in that his conviction establishes that he has engaged in conduct which demonstrates unworthiness, bad faith and dishonesty." It is unclear whether this charge addresses the conduct underlying the Respondent's conviction or only the conviction for Theft by Deception. N.J.A.C. 1:1-6.2(a) provides that "[u]nless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice."

Pursuant to N.J.A.C. 1:1-6.2, the Commission amends the pleadings to conform to the proofs for purposes of clarification. The Commission finds that the Respondent's conviction for a theft offense is in violation of N.J.S.A. 45:15-17e because a conviction for a theft offense demonstrates unworthiness, bad faith and dishonesty. Pursuant to N.J.A.C. 1:1-6.2, due to the conviction and criminal proceedings that followed, the Respondent was on notice as to the factual basis underlying the issuance of the OTSC in this matter. Thus, the OTSC in this matter should be conformed to reflect the proofs and the correct regulatory violations as follows: "Respondent's conviction for a Theft Offense and the conduct underlying the conviction are in violation of N.J.S.A. 45:15-17e in that both the conviction and the underlying conduct demonstrate unworthiness, bad faith, and dishonesty."



Lastly, N.J.S.A. 45:15-19.1 provides that the Commission shall revoke the license of any licensee who is convicted of theft offenses involving the real estate activities of the licensee during the term of the license issued by the Commission. The undisputed documentary evidence and facts in this matter demonstrate that the Respondent was convicted of one count of Theft by Deception in the third degree pursuant to a guilty plea. The Respondent's conviction also demonstrates a breach of the public trust. The nature and duties of the real estate business are grounded in interpersonal, fiduciary and business relationships that demand the utmost honesty, trust and good character. Maple Hill Farms, Inc., supra, 67 N.J. Super. 223, 232 (App. Div. 1961). In many instances significant sums of personal monies are placed within the control of the licensee. This fact emphasizes that the very nature of the real estate profession requires unequivocal honesty and the good moral character of its practitioners. A conviction for theft most assuredly relates adversely to the central core of the nature of the real estate business. For these reasons, it is necessary to revoke Respondent Dominick Prevete's license for a period of ten (10) years and to impose appropriate fines. See, NJREC v. Lori Mase, Dkt. No. MOR-08-042, Final Order (12/15/09) (Respondent's license revoked for five years after conviction for Theft by Deception, in violation of N.J.S.A. 45:15-19.1); NJREC v. Michael Ricciardi, Dkt. No. MOR-09-045, Final Order (01/10/11) (Respondent's salesperson license revoked for five years, fined \$2,500 after theft conviction).

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 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.

First, the Respondent's conduct demonstrates bad faith. The Respondent, as Regional Vice President of Weichert Company, was responsible for approving requests made by sales agents for reimbursement of expenses they incurred marketing their services. The Respondent abused his position to approve fraudulent requests he created and signed in the names of his agents and then forged their signatures again on the resulting checks before depositing them into his personal bank account. These actions were clearly undertaken in bad faith. This factor weighs in favor of assessing a large monetary penalty.

Second, the Respondent revealed to Investigator Hackett that he was terminated from Weichert on October 22, 2015. He has since begun working at Realty Executive Regional Office New Jersey as Head of Business Development. As no evidence was presented indicating that the Respondent's employment situation changed since his conversation with Hackett, it is presumed that he maintains this role and has the ability to pay fines assessed in this matter.

Factors three and five require determinations of how much money was obtained from the illegal activity at issue and the duration of time the activity took place. Both the internal investigation at Weichert and the formal investigation conducted by the Morris Plains Boro police determined that the Respondent obtained \$9,700 from his illegal activities which took place over a period of seven months until his actions were detected by Weichert.

Fourth, 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, 29 N.J. Super. 178, 182 (App. Div. 1954). Therefore, the public is harmed when individuals in a fiduciary position violate their responsibilities and fail to comply with Commission regulations. In this case, the Respondent abused his role to forge documentation and steal \$9,700 from his employer, Weichert, and deprive those funds from the sales agents that he oversaw. When a licensee is unable to conduct himself in accordance with the high standards expected of him and his profession, the public’s confidence in the real estate industry is eroded. Respondent therefore displayed character that is contrary to the principal 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). This factor weighs in favor of assessing a large monetary penalty.

Sixth, the Respondent has been party to criminal and civil proceedings stemming from the conduct at issue. He pleaded guilty to one count of Theft by Deception, a third degree theft offense, in 2016. In exchange for his plea, the Respondent was sentenced to serve a two-year period of probation and was required to pay restitution in the amount of \$9,700 to the victim, Weichert, made in monthly payments of \$25.


Lastly, there is no evidence of prior violations of real estate regulations by the Respondent.

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

- I. Respondent Prevete's eligibility to obtain a real estate license is revoked for a period of ten (10) years from the date of this order.
- II. Respondent Prevete shall pay a fine in the amount of \$10,000, calculated as \$2,500 per theft committed.
- III. Respondent Prevete must provide proof that he has complied with the terms of his criminal probation, any restitution ordered and any fines imposed in this Final Order and Determination, prior to relicensure.

SO ORDERED this 1<sup>st</sup> day of May, 2017.

By: Linda Stefanik, President  
Sanjeev Aneja, Commissioner  
Jacob Elkes, Commissioner  
William Hanley, Commissioner  
Denise Illes, Commissioner

  
Robert L. Kinniebrew  
Executive Director  
New Jersey Real Estate Commission

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