

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,)	DOCKET NO.: OCE-15-019
)	REC REF. NO.: 10001208
Complainant,)	
)	
PATRICIA GABRIEL, a licensed New Jersey)	FINAL DECISION AND ORDER
real estate salesperson, License Ref. No. SP0572173)	
)	
Respondent.)	

This matter was heard at a hearing by the New Jersey Real Estate Commission (“Commission”) at the Department of Banking and Insurance, State of New Jersey in the Commission Hearing Room, 20 West State Street, Trenton, New Jersey on March 22, 2016.

BEFORE: Commissioners Linda Stefanik, Denise Illes, Harold Poltrock, and Michael Timoni.

APPEARANCES: Marianne Gallina, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission staff (“REC”). Respondent Patricia Gabriel (“Respondent” or “Gabriel”) appeared pro se.¹

PROCEDURAL HISTORY

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated August 11, 2015, pursuant to N.J.S.A. 45:15-17, N.J.S.A. 45:15-18, N.J.S.A. 45:15-19.2,² and N.J.A.C. 11:5-1.1 et seq. The OTSC alleged that the Respondent (1)

¹ The Respondent stated that she is represented by Mark D. Abramson, Esq., but he was not present for the hearing.
² N.J.S.A. 45:15-19.2 provides that the Commission may suspend the license of a licensee pending trial on an indictment for certain enumerated offenses, including crimes involving, related to, or arising out of the licensee’s activities as a real estate licensee. The OTSC does not seek the suspension of Respondent’s license based on this statutory cite, nor did the REC seek such relief at hearing.

failed to notify the Commission within 30 days of being charged with a crime, in violation of N.J.S.A. 45:15-17s; (2) failed to notify the Commission with 30 days of having a criminal indictment filed against her, in violation of N.J.S.A. 45:15-17s; (3) demonstrated unworthiness, bad faith, and dishonesty by downloading information from Comprehensive Home Rental Internet System (“CHRIS”) and the Sea Breeze Realty (“Sea Breeze”) database onto her personal home computer without the knowledge or consent of her broker while she was employed with Sea Breeze and by accessing and downloading CHRIS and the Sea Breeze database onto her personal home computer using the broker’s login information and password after her termination from Sea Breeze, thus, obtaining client information belonging to Sea Breeze without the authorization or consent of the broker, in violation of N.J.S.A. 45:15-17e (two counts); (4) violated N.J.S.A. 45:15-17i because the aforementioned conduct regarding downloading information from CHRIS constitutes fraud or dishonest dealings; and (5) demonstrated unworthiness in that she failed to cooperate in a REC investigation and failed to comply with a duly served subpoena, in violation of N.J.S.A. 45:15-17e.

The Respondent filed an Answer³ to the OTSC dated August 31, 2015, wherein she admitted to and denied certain allegations set forth in the OTSC. Accordingly, the REC deemed this matter a contested case and directed that a hearing be scheduled.

A hearing was conducted on March 22, 2016, at which time the following exhibits were admitted into evidence by the REC, without objection:

S-1 Independent Contractor Agreement between the Respondent and Catherine Moeller (“Moeller”), as broker of record of Sea Breeze, dated March 19, 2011.

³ The Respondent’s Answer to the OTSC contained five attachments. However, only the first attachment was submitted prior to the hearing. Accordingly, attachments two through five were provided to the REC at the time of the hearing.

- S-2 REC Licensing Services confirmation of online termination of licensees Dorian Fiore (“Fiore”) and the Respondent from Sea Breeze, effective date August 2, 2013.
- S-3 Report of Gary Thorne, Jr. (“Thorne”), prepared for Moeller regarding access to CHRIS by the Respondent and Fiore, dated November 3, 2015.
- S-4 E-mail correspondence from Gary Thorne, Jr. to Moeller, dated February 26, 2014.
- S-5 Undated note from Moeller to the Commission with attachments consisting of: a letter from the Respondent and Fiore to Moeller’s client, Mike Walraven (“Walraven”), indicating that Sea Breeze was no longer renting his properties, copies of payment sheets showing that Walraven was Moeller’s client for 2012 and 2013, and copies of Rental Authorizations issued to Sea Breeze for listing #585 and #589, owned by Vincent Laracca (“Laracca”).
- S-6 REC licensing information panel of the Respondent.
- S-7a The State of New Jersey v. Patricia Gabriel, Superior Court of New Jersey, Law Division, Ocean County, Indictment No. 14-03-593, Computer Criminal Activity-Third Degree, dated March 18, 2014.
- S-7b The State of New Jersey v. Patricia Gabriel, Pretrial Intervention Order of Postponement for Indictment No. 14-03-593, dated September 22, 2014.
- S-7c The State of New Jersey v. Patricia Gabriel, Pretrial Intervention Program Order of Dismissal and Order to Discharge Bail for Indictment No. 14-03-593, dated July 21, 2015.

The following exhibits were admitted into evidence by the Respondent, without objection:⁴

- R-1 Letter from the Office of the Ocean County Prosecutor, Office of Victim-Witness Advocacy, to Moeller, informing her that the grand jury returned an indictment (No. 14-03-593) for the charge of N.J.S.A. 2C:20-25a, Computer Criminal Activity, dated March 19, 2014.
- R-2 Letter from the Office of the Ocean County Prosecutor, Office of Victim-Witness Advocacy, to unnamed recipient, stating that the grand jury returned an indictment (No. 14-03-593) for the charge of N.J.S.A. 2C:20-25a, Computer Criminal Activity, dated March 19, 2014.
- R-3 E-mail correspondence from Moeller to the Respondent and Fiore, dated April 19, 2014.

TESTIMONY OF THE WITNESSES

Patricia Gabriel

The Respondent testified on her own behalf at the hearing. She stated that she was not terminated from Sea Breeze, but rather, she quit on August 2, 2013. The Respondent admitted that she did download information from CHRIS but did so around July 28, 2014 and July 29, 2014, which was part of her job. The Respondent further stated that after she quit, she was on her computer and went to Moeller's "site" on CHRIS because her own "site" was taken off. The Respondent testified that she did not hack anything, did not enter any passwords, but rather used Moeller's password which was stored in her computer. The Respondent testified that she went

⁴ These exhibits were not provided to the REC prior to the hearing. They were distributed to the REC at the request of the Respondent at the time of the hearing and then admitted into evidence.

on CHRIS to see if Moeller had released some of her rentals since some tenants had informed her that they wanted to rent with her but could not because they were blocked from doing so. The Respondent stated that she did not need to steal any tenants or homeowners since she has done well during her time in the business and actually brought Moeller a lot of business. The Respondent stated that the original charge brought by the prosecutor was theft, but since they could not prove it, they changed the charge. The Respondent again admitted that she went on Moeller's CHRIS site but was only looking for her own tenants and did nothing malicious. The Respondent stated again that she was not terminated by Moeller, but rather quit because there "was no more unity" within the brokerage. The Respondent further testified that she was not negligent in failing to notify the Commission about being charged with a crime. Rather, her attorney told her not to notify the Commission and not to answer any questions until the criminal case was over.

Regarding the use of Moeller's password to log into CHRIS when she was no longer employed at Sea Breeze, the Respondent stated that she was not conducting business when she went into CHRIS at that time. She stated that she was "just looking at tenants." The Respondent could not explain why she would look at tenants' information when she earlier testified that she did not need said information because she had done well in the real estate business. Respondent testified that she knew that she no longer had access to CHRIS after she stopped working at Sea Breeze on August 2, 2013. The Respondent testified that she did not submit a letter of resignation to Sea Breeze Realty.

Catherine Moeller

Moeller testified that she owns Sea Breeze and has been its broker of record since 2005. Moeller testified that she was not sure of the Respondent's start-date at Sea Breeze but her end-

date was August 2, 2013, and she had an independent contractor agreement with the Respondent. Moeller was then shown exhibit S-1, her independent contractor agreement with the Respondent, to refresh her recollection of the Respondent's start-date of March 19, 2011. Moeller stated that there is a clause in the agreement that states "all listings shall be with broker unless otherwise agreed." See Exhibit S-1, ¶ 14. Moeller further stated that the agreement provides for a duty of non-disclosure, in which the salesperson agrees to not furnish to anyone any information obtained while employed at Sea Breeze such as clients, prices, etc. Id. at ¶ 22.

Moeller explained that Sea Breeze has always, and will continue, to use CHRIS, which the Respondent's current employer, BayShore Realty, Inc., d/b/a BayShore Agency ("BayShore"), does not use. Moeller testified that her employees are given a username and password to CHRIS, which enables them to "do rentals, check owners, and check available properties." Additionally, there is owner-specific information on CHRIS such as home addresses, social-security numbers, e-mail addresses, and cell phone numbers. Moeller stated that she had received a call from the "master" of CHRIS indicating there was "suspicious activity" on the system with Moeller's username and password. Moeller requested that the master research the type of activity being done and what IP address was being used to access the system. Moeller also testified that the Respondent had been warned about improperly downloading information from CHRIS. Moeller stated that she did so because the Respondent's former broker of record told her that previously, the Respondent improperly downloaded information, but the Respondent's former broker of record did not pursue any legal action against the Respondent. Moeller testified that she again informed the Respondent that she was not allowed to use CHRIS for such activity. Moeller then noted that she asked Thorne to prepare a report that summarized the unauthorized activity on CHRIS. See Exhibit S-3. Moeller further

testified that she has never entered her username or password to CHRIS into the Respondent's computer. She stated that the Respondent used Moeller's CHRIS information to take listings and information from Sea Breeze in order to use such information at her new agency, BayShore.

Moeller further testified that the Respondent, using BayShore letterhead, sent out a letter to Moeller's clients falsely stating that Sea Breeze was not renting their listings anymore. See Exhibit S-5. Moeller then testified that after reading Thorne's report and seeing the letter from BayShore, she filed a police report with the local municipality and changed her CHRIS password.

Moeller stated that it was a mutual agreement with the Respondent to end their professional relationship, and it was cordial in nature. Moeller also stated that she wrote a letter to the Respondent, wherein she informed her that she was fired, but it is not in the evidence packet and Moeller forgot to bring it with her.

Robert Spillane

Investigator Robert Spillane ("Spillane") testified that he has been an investigator with the REC for four years, and was assigned to handle this matter. Spillane testified that exhibit S-6 indicated that after the Respondent left Sea Breeze, she was immediately employed with BayShore, with a start-date of September 26, 2013. Spillane further testified that the Respondent did not provide documents he requested regarding criminal charges brought against her and rather he obtained such documents from the Ocean County Prosecutors Office under subpoena, which are admitted into evidence as exhibits S-7a, S-7b, and S-7c.

Spillane further stated that in an effort to interview the Respondent regarding this matter, he issued a subpoena to have her appear at the REC offices. Spillane stated that after the date was set for the interview, the Respondent's attorney contacted him saying the interview

conflicted with the Respondent's court appearance regarding her criminal charges and asked to re-schedule. Spillane testified that the interview was rescheduled but the Respondent arrived at the REC offices without an attorney and she refused to answer any questions regarding the investigation and would only provide answers to identifying questions. The Respondent advised him that she was invoking her Fifth Amendment right against self-incrimination. Spillane testified that exhibit S-7c shows that the Respondent's criminal case was dismissed, through the Pre-trial Intervention Program ("PTI"), on July 21, 2015. Spillane stated that he did not receive any notification from the Respondent regarding said dismissal. Spillane further noted that the Respondent's criminal case was disposed of at the time she appeared for questioning at the Commission on May 12, 2014.

On cross-examination, Spillane admitted that both Respondent and her attorney left a message for him saying they would answer questions after the Respondent's criminal case was over. Spillane testified that Respondent and her attorney left messages advising him that Respondent's criminal case was concluded but only after his investigation had been concluded.

Dorian Fiore

Fiore was then sworn-in and testified in support of the Respondent. Fiore stated that she and the Respondent quit Sea Breeze on August 2, 2013, took six weeks off, and were then employed at BayShore. Fiore testified that Moeller would regularly hold meetings in each of their respective offices at Sea Breeze, during which they would receive phone calls and Moeller would use their computers to login to CHRIS under her own name. Fiore opined that this might be how Moeller's CHRIS information was stored on the Respondent's computer.

Mary Lou Gaylor

Mary Lou Gaylor (“Gaylor”) was then sworn in and testified in support of the Respondent. Gaylor testified that she worked at Sea Breeze and stated that Moeller would sign into CHRIS on both the Respondent’s and Fiore’s computers during meetings that were held in their respective offices.

David Deleo

David Deleo (“Deleo”) was then sworn in and testified in support of the Respondent. Deleo stated that he is the Respondent’s current manager at BayShore, has been a real estate agent for 35 years, and has been a real estate broker for about seven years. Deleo testified that after the Respondent and Fiore started working with him, Moeller came to his office and accused them of stealing her listings. Deleo stated that homeowners tend to list property with multiple people, not just with one exclusive salesperson. Deleo opined that based on his experience, when salespersons leave an agency they take listings with them because the homeowners feel that they are working with that agent, not the company.

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. The Respondent is a licensed New Jersey real estate salesperson currently licensed with BayShore, a licensed New Jersey real estate broker, whose main office is located at 600 Route 539, Tuckerton, NJ 08087. The Respondent works in BayShore’s branch office located at 1120 Long Beach Boulevard, Ship Bottom, NJ 08008. The Respondent was first licensed in New Jersey as a real estate salesperson on November 16, 2005.

2. The Respondent became licensed with BayShore on September 26, 2013. Prior to her employment with BayShore, the Respondent was licensed with Sea Breeze Realty, licensed New Jersey Real Estate broker located at 2017 Long Beach Boulevard, Surf City, NJ 08088, from March 19, 2011, until her employment with Sea Breeze was terminated on August 2, 2013.
3. Summer rentals comprise a substantial part of the business conducted by Sea Breeze. Sea Breeze uses CHRIS for its database of summer rentals. The Respondent was actively engaged in the summer rental business while she was employed with Sea Breeze and was familiar with CHRIS. CHRIS is accessed through the use of a login and password.
4. The broker of record of Sea Breeze, Moeller, maintained the login and password information for all users on CHRIS. While the Respondent was employed with Sea Breeze, she had her own login information and password for access to CHRIS. The Respondent's employment with Sea Breeze was terminated on August 2, 2013.
5. In October 2013, Moeller became aware that there had been unauthorized login activity into CHRIS by the Respondent using Moeller's login information and password and that the Respondent had accessed the Sea Breeze database after her employment with Sea Breeze was terminated. In addition, Moeller was made aware that from August 6, 2013 through October 29, 2013, the database maintained by Sea Breeze in CHRIS had been downloaded onto the Respondent's home computer without permission or authorization.
6. The Respondent used the information from CHRIS to send solicitations to clients of Sea Breeze and advertised that she was now associated with BayShore.

7. When confronted, the Respondent admitted her activity to Moeller, who then, on October 18, 2013, filed a police report with the Surf City Police Department.
8. On or about March 18, 2014, the Respondent was indicted in the Superior Court of New Jersey, Ocean County, Indictment Number 14-03-593 on one count of Computer Criminal Activity, a crime of the third degree, in violation of N.J.S.A. 2C:20-25a and did not notify the Commission of same within 30 days.
9. On or about April 23, 2014, a subpoena was issued to the Respondent by Investigator Spillane on behalf of the REC, which required that the Respondent appear at the REC offices to give information to Spillane regarding the above-referenced charges. The Respondent appeared on May 12, 2014, but she refused to give a statement or to provide any documentation to Spillane. Instead, she invoked the Fifth Amendment right against self-incrimination.
10. On or about September 22, 2014, the Respondent was admitted into PTI and was placed on probation for a period of 18 months.
11. On or about July 21, 2015, the indictment against the Respondent was dismissed.

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. The Respondent violated N.J.S.A. 45:15-17s by failing to notify the Commission within 30 days of having a criminal indictment filed against her.
2. The Respondent violated N.J.S.A. 45:15-17e by demonstrating unworthiness in accessing and downloading CHRIS and the Sea Breeze database onto her personal home computer while using the broker of record's (Moeller) login information and

password after the Respondent's termination from Sea Breeze, thus, obtaining client information belonging to Sea Breeze without the authorization or consent of the broker of record.

3. There is insufficient evidence to conclude that the conduct described above demonstrates fraud or dishonest dealings, in violation of N.J.S.A. 45:15-17l, as alleged in the OTSC.
4. The Respondent violated N.J.A.C. 11:5-6.1(r) as the advertisement she disseminated following her termination from Sea Breeze was false, misleading, and deceptive.
 - a. The pleadings are hereby amended to conform to the evidence supporting this conclusion.
5. By failing to cooperate in a REC investigation and by failing to comply with a duly served subpoena, the Respondent demonstrated unworthiness, in violation N.J.S.A. 45:15-17e.

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 Decision and Order. In arriving at the determination in this matter, the Commission took into consideration the testimony and credibility of the Respondent, the other witnesses, and the undisputed documentary evidence admitted at the hearing.

The Real Estate License Act, N.J.S.A. 45:15-1 et seq. ("Act") charges the Commission with the "high responsibility of maintaining ethical standards among real estate brokers and sales[persons]" in order to protect New Jersey real estate consumers. Goodley v. New Jersey Real Estate Comm'n. 29 N.J. Super. 178, 181-182 (App. Div. 1954). The nature and duties of a

real estate business are grounded in interpersonal, fiduciary, and business relationships and demand the utmost honesty, trust, and good conduct. Maple Hill Farms, Inc. v. New Jersey Real Estate Comm'n, 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 facts in this matter demonstrate that the Respondent was indicted on one count of Computer Criminal Activity, a crime of the third degree, in violation of N.J.S.A. 2C:20-25a. The conduct underlying said indictment was serious in nature and demonstrated unworthiness. As part of her terms of employment with Sea Breeze, the Respondent knew that she could only use the information contained on CHRIS for certain purposes. Additionally, the independent contractor agreement explicitly stated that any information acquired during her period of employment could not be used elsewhere. See Exhibit S-1 ¶ 14 and 22. Accordingly, the Respondent’s disregard for those terms demonstrated unworthiness, bad faith, and dishonesty, in violation of N.J.S.A. 45:15-17e. However, there is insufficient evidence to conclude that such conduct demonstrates fraud, in violation of N.J.S.A. 45:15-17l, as alleged in the OTSC.

Moreover, the evidence shows that when REC Investigator Spillane asked the Respondent to provide certain documents regarding her criminal charge, she did not do so. Such documents were obtained from the Ocean County Prosecutors Office under subpoena. Also, in

an effort to interview the Respondent regarding this matter, Spillane issued a subpoena to have her appear at the REC offices. Spillane testified that the Respondent arrived at the REC offices without an attorney and that besides identifying questions, she refused to answer any questions regarding the investigation and advised him that she was invoking her Fifth Amendment right against self-incrimination.

Invoking the Fifth Amendment can be done at any trial, investigation, inquiry, or other proceeding that could conceivably result in the filing of criminal charges. See McCarthy v. Arndstein, 266 U.S. 34 (1924). However, “in administrative and civil proceedings, it is permissible for the trier of fact to draw adverse inferences from a party’s plea of the Fifth Amendment.” State v. Leonetti, 216 N.J. Super. 579, 587 (App. Div. 1987); see also Baxter v. Palmigiano, 425 U.S. 308, 316-320 (1976); Mahne v. Mahne, 66 N.J. 53, 60 (1974); Bastas v. Bd. of Review Dep’t of Labor and Ind., 155 N.J. Super. 312, 315 (App. Div. 1978); Duratron Corp. v. Republic Stuyvesant Corp. et al., 95 N.J. Super. 527, 531 (App. Div. 1967).

Here, Spillane stated that after the date was set for the interview, the Respondent’s attorney contacted him saying the interview conflicted with the Respondent’s court appearance in regards to her criminal charges and asked to re-schedule. The interview was re-scheduled and Spillane testified that the Respondent arrived at the REC offices without an attorney. Other than answering identifying questions, Respondent refused to answer any questions regarding the investigation and advised him that she was taking advantage of her Fifth Amendment right against self-incrimination. By failing to cooperate with the aforementioned REC investigation and by failing to comply with a duly served subpoena, the Respondent demonstrated unworthiness, in violation of N.J.S.A. 45:15-17e. In addition, the Commission is permitted to

draw an adverse inference from the Respondent's plea of the Fifth Amendment. Such an adverse inference further supports a finding of unworthiness.

Pursuant to N.J.S.A. 45:15-17s, a real estate licensee violates the Act if the licensee fails "to notify the commission within 30 days of having been convicted of any crime...or of the filing of any formal criminal charges." In this case, the Respondent testified that she was not negligent in failing to notify the Commission about being charged with a crime. Rather, the Respondent asserted that her attorney told her not to notify the Commission and not to answer any questions until the criminal case was over. This argument is not credible. A respondent's failure to comply with relevant notification requirements is not excused by the individual's reliance on the advice of counsel. See Comm'r v. Pino, OAL Dkt. No. BKI 8070-02, 2003 N.J. Agen. Lexis 555, Initial Decision (09/11/03), Final Decision and Order (10/30/03) (rejected the respondent's argument that his failure to notify the Department of the filing of formal criminal charges against him should be excused because of his attorney's advice not to do so) (citing Comm'r v. Fiegoli, OAL Dkt. No. BKI 8589-00, Initial Decision (04/08/02), Final Decision and Order (03/28/97); see also Comm'r v. McAllister, OAL Dkt. No. INS. 11676-93, 1995 N.J. Agen. Lexis 416, Initial Decision (07/13/95), Final Decision and Order (09/22/95) (the respondent's failure to cooperate with an administrative order is not excused by reliance on attorney's advice). Therefore, by failing to timely notify the Commission of having a criminal indictment filed against her, the Respondent violated N.J.S.A. 45:15-17s.

The Commission notes that the OTSC in this matter did not charge the Respondent with violating N.J.A.C. 11:5-6.1(r) for disseminating a false, misleading, or deceptive advertisement. Moeller testified that the Respondent, using BayShore letterhead, sent a letter to Moeller's clients falsely stating that Sea Breeze was not renting their listings anymore. See Exhibit S-5.

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.”

Here, the REC did not allege that the advertisement disseminated by the Respondent and Fiore violated N.J.A.C. 11:6-6.1(r). However, the events that led to the dissemination of said advertisement stem directly from the conduct underlying the basis for REC’s investigation. Therefore, the Respondent was on notice as to the factual basis underlying the issuance of the OTSC, and, at the hearing, the Respondent admitted to issuing the aforementioned advertisement. Thus, the OTSC in this matter should be conformed to reflect the proofs and provide that the Respondent’s advertisement, which stated that Sea Breeze “will no longer be renting those properties,” constitutes a violation of N.J.A.C. 11:5-6.1(r) in that it contains false, misleading, and deceptive claims or misrepresentations.

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) Amount of profits obtained from the 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. Id. at 137-139. The analysis of these factors shows that the imposition of a fine is required to discourage the type of conduct that the Respondent engaged in.

First, the Respondent demonstrated bad faith by failing to notify the Commission within 30 days of having a criminal indictment filed against her; failing to comply with a REC investigation; failing to comply with a duly served subpoena; accessing and downloading CHRIS and the Sea Breeze database onto her personal home computer using the broker or record's login information and password after her termination from Sea Breeze, thus, obtaining client information belonging to Sea Breeze without the authorization or consent of the broker of record; and by disseminating an advertisement that contained false, misleading, and deceptive claims or misrepresentations. Second, no evidence was presented during the hearing regarding the Respondent's ability to pay a fine, but she did testify that she is currently employed as a licensed salesperson with BayShore. Third, no evidence was presented as to whether the Respondent directly profited from her actions. 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). The public is harmed when individuals in a fiduciary position violate their responsibilities and fail to comply with the Commission's regulations. In this case, Respondent violated her responsibilities by failing to timely notify the Commission of having a criminal indictment filed against her; accessing and downloading CHRIS and the Sea Breeze database onto her personal home computer using the broker of record's logon information and password after her termination from Sea Breeze, thus, obtaining client information belonging to Sea Breeze without the authorization or consent of the broker or record; and by disseminating an advertisement that contained false, misleading, and deceptive claims or misrepresentations. Also, the public's confidence in the real estate industry is eroded when a licensee is unable to conduct him or herself in accordance with the high standards expected of him and his profession.

The 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). Fifth, the duration of the Respondent’s actions appears to be minimal. Sixth, the underlying conduct that forms the basis for this proceeding is criminal in nature in that the Respondent was charged with a criminal offense and was placed in PTI. Lastly, there are no prior violations of the real estate statute or regulations by the Respondent.

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

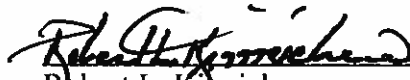
- I. Respondent Patricia Gabriel shall pay a fine in the total amount of \$3,500 as follows:
 - a. \$500 for violating N.J.S.A. 45:15-17s by failing to notify the Commission within 30 days of having a criminal indictment filed against her;
 - b. \$1,000 for violating N.J.S.A. 45:15-17e in that she demonstrated unworthiness, bad faith, and dishonesty by accessing and downloading CHRIS and the Sea Breeze database onto her personal home computer using the broker of record’s logon information and password after her termination from Sea Breeze, thus, obtaining client information belonging to Sea Breeze without the authorization of the broker of record;
 - c. \$1,000 for violating N.J.A.C. 11:5-6.1(r) by disseminating a false, misleading, and deceptive advertisement following her termination from Sea Breeze; and

d. \$1,000 for violating N.J.S.A. 45:15-17e in that she demonstrated unworthiness by failing to cooperate with a REC investigation and failing to comply with a duly served subpoena.

II. Respondent Patricia Gabriel's real estate salesperson's license shall be suspended for six (6) months.

SO ORDERED this 14th day of February, 2017.

By: Linda Stefanik, President
Denise Illes, Commissioner
Harold Poltrock, Commissioner
Michael Timoni, Commissioner



Robert L. Kinniebrew
Executive Director
New Jersey Real Estate Commission

Gabriel rec order WM (AV)/INOORD