

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION)	DOCKET NUMBER BER-18-004
)	(REC Ref. No. 10006134)
Complainant,)	
)	ORDER TO SHOW CAUSE
v.)	
)	
Victor Polce, licensed New Jersey real estate)	
broker-salesperson (Ref. No. 8835313))	
)	
Respondent.)	

THIS MATTER being commenced by the New Jersey Real Estate Commission (“Commission”) in the Department of Banking and Insurance, State of New Jersey, on its own motion, pursuant to the provisions of N.J.S.A. 45:15-17, 45:15-18, 45:15-19.2 and N.J.A.C. 11:5-1.1 et seq., and it appearing that:

1. Respondent Victor Polce (“Polce”) is an actively licensed New Jersey real estate broker-salesperson, who was first licensed in 2010, and is currently licensed with RWSP Realty LLC, d/b/a Better Homes and Gardens Real Estate Rand Realty (“Rand Realty”). Polce is employed at the branch office located at 227 Closter Dock Road, Closter, New Jersey 07624; and
2. On or about May 26, 2017, Polce, on behalf of Rand Realty, entered into a written agreement (the “Listing Agreement”) with Brian Shannahan (the “Seller”) to list the property located at 59 Ogle Road, Old Tappan, New Jersey 07675 (the “Property”) for sale. The price stated in the Listing Agreement was \$824,999; and
3. The Listing Agreement did not include any signature dates nor an effective date, and also failed to specify a definite terminal date; and

4. The Listing Agreement included that Rand Realty was owed 4.5% of the sale price on the Property as commission and that Rand Realty was offering 1.5% of the sale price as commission to potential cooperating brokers; and

5. On or about June 2, 2017, Polce entered the listing into the New Jersey Multiple Listing Service, with a list price of \$849,999; and

6. On or about June 6, 2017, Polce presented a verbal offer to purchase the Property for \$720,000 to the Seller. The offer was made by Polce's client. This offer was rejected by the Seller; and

7. Between the dates of June 6, 2017 and June 15, 2017, Polce presented two additional verbal offers to purchase the Property to the Seller, on behalf of Polce's buyer clients. The offer prices were \$770,000 and \$825,000 respectively. These offers were rejected by the Seller; and

8. On or about June 16, 2017, New Jersey real estate salesperson Jennifer Romero ("Romero") with Keller Williams – Village Square Realty contacted Polce to make an offer on the Property. Romero stated to Polce that she had a full-price, all-cash offer that she would like to present to the Seller. In response, Polce stated that offers to purchase the Property were no longer being accepted; and

9. On information and belief, on or about June 19, 2017, Romero submitted a written offer to purchase the Property for \$850,000 to Polce, on behalf of her client Gialluisi Custom Homes LLC; and

10. Polce never presented Romero's verbal or written offers to the Seller; and

11. On information and belief, on or about June 24, 2017, the Romero offer was withdrawn, purportedly because of Polce's conduct as described above; and

12. On or about September 22, 2017, Polce was interviewed by a Commission investigator regarding the above described listing. During that interview, Polce failed to produce an original copy of the Listing Agreement. Instead, Polce produced an altered copy of the Listing Agreement, which contained an effective date of June 2, 2017, signature dates of June 2, 2017 and a list price of \$849,999. Polce stated to the investigator that he altered the Listing Agreement without the authorization of the Seller. Polce never provided a copy of the altered Listing Agreement to the Seller; and

13. Respondent Victor Polce's conduct is in violation of N.J.S.A. 45:15-17(f) in that Polce failed to specify a definite terminal date in the Listing Agreement; and

14. Respondent Victor Polce's conduct is in violation of N.J.S.A. 45:15-17(e) in that by altering the Listing Agreement as described above, without authorization from his client, the Seller, Polce engaged in conduct demonstrating unworthiness, incompetency, bad faith or dishonesty; and

15. Respondent Victor Polce's conduct is in violation of N.J.A.C. 11:5-6.4(a) in that Polce failed in his fiduciary duty to his client by failing to protect and promote, as he would his own, the interests of his client. Specifically, Respondent Polce discouraged and hindered the presentation of a higher offer on the Property, while negotiating lower offers as a dual agent; and

16. Respondent Victor Polce's conduct is in violation of N.J.A.C. 11:5-6.4(f) and (g) in that his failure to present offers to his client, and his conduct as described above, demonstrates that Polce did not cooperate fully with all New Jersey licensees and did not meet his obligation of absolute fidelity to his client's interests and of dealing fairly with all parties to the subject transaction; and

17. Respondent Victor Polce's conduct is in violation of N.J.S.A. 45:15-17(a) (two counts) in that he made substantial misrepresentations in connection with the above transaction. Specifically,

- a. Polce falsely represented to New Jersey real estate salesperson Jennifer Romero that the Seller was no longer accepting offers on the Property; and
- b. Polce falsely represented to New Jersey real estate salesperson Jennifer Romero that he had a full asking cash offer on the Property; and

18. Respondent Victor Polce's conduct is in violation of N.J.S.A. 45:15-17(l) in that his conduct, as described above, constitutes dishonest dealing.

And for good cause shown,

IT IS on this 21st day of February, 2018

ORDERED that Respondent Victor Polce shall show cause why his real estate license should not be suspended or revoked and/or why fines or other sanctions should not be imposed pursuant to N.J.S.A. 45:15-17 and N.J.A.C. 11:5-1.1. Respondent shall file a written Answer to the charges in this Order to Show Cause as required by N.J.A.C. 11:5-11.2 within twenty (20) days of the service of this Order. As required by N.J.A.C. 11:5-11.2, Respondent's written Answer must include specific admissions or denials of all allegations in this Order to Show Cause, state the factual basis of each and every factual allegation denied, and assert any defenses that Respondent intends to present in the event that this matter is deemed a contested case and a plenary hearing is held; and

IT IS FURTHER ORDERED that failure to comply with all of the requirements of N.J.A.C. 11:5-11.2 may result in a determination that there are no material facts or issues of law

in dispute and any presentation made to the Commission will be limited to the issue of the severity of any sanction or penalty to be imposed; and

IT IS FURTHER ORDERED that the Commission with review this Order to Show Cause and Answer(s) filed, if any, at a meeting scheduled on or after the 10th day of April, 2018 at 9:30 a.m. to determine whether there is a material fact or issue of law contested. No appearance is required at that time; and

IT IS FURTHER ORDERED that if the Commission determines that there is a material fact or issue of law contested, a hearing will be scheduled for a future date; and

IT IS FURTHER ORDERED that if the Commission determines that there is no material fact or issue of law contested, a hearing shall be scheduled at which the Respondent will be limited to presenting witnesses and documentary evidence regarding the issue of the severity of any sanction or penalty to be imposed; and

IT IS FURTHER ORDERED that a copy of this Order be served upon the Respondent as provided in N.J.S.A. 45:15-18, which service may be accomplished by serving a copy of this Order on the Respondent personally, or by delivering a copy thereof to his last known business address via certified mail.



Patrick J. Mullen
Director of Banking
New Jersey Department of Banking and Insurance
New Jersey Real Estate Commission