

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION	)	DOCKET NUMBER HUD-19-003
	)	(REC Ref No. 10007007)
Complainant,	)	
	)	
v.	)	ORDER TO SHOW CAUSE
	)	
HENRY SONG, licensed New Jersey real estate	)	
salesperson, (Ref No. 0896751)	)	
	)	
Respondents.	)	

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THIS MATTER being commenced by the New Jersey Real Estate Commission (the "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 and N.J.A.C. 11:5-1.1 et seq., and it appearing that:

1. Respondent Henry Song ("Song") is a licensed New Jersey real estate salesperson, who was first licensed in 2008, and is currently licensed with Landarama Inc., whose primary office is located at 110 Fieldcrest Avenue, 5<sup>th</sup> floor, Edison, New Jersey. Prior to being licensed with Landarama Inc., Song was licensed with Douglas Elliman of NJ, LLC from the date of his initial licensure as a real estate salesperson in New Jersey until June 9, 2017; and

2. At all relevant times herein, Song was the owner and principal of the Mobius Group, LLC, (the "Mobius Group"), an entity which is not licensed by the Commission to conduct real estate activity in New Jersey; and

3. In or around 2014, while licensed through Douglas Elliman of NJ, LLC, Song entered into a written agreement with Yunhong "Alice" Shen (the "Owner"), to manage the rental properties located at 26 Avenue at Port Imperial, Unit # 325, West New York, New Jersey and 24 Avenue at Port Imperial, Unit # 232, West New York, New Jersey (collectively, the "Properties"); and

4. Pursuant to the terms of the property management agreement, the Owner agreed to pay a monthly fee to the Mobius Group for the Mobius Group to rent, maintain and manage the Properties. The agreement authorized Song, through the Mobius Group to, among other things, to collect rents due from any tenants renting the Properties and provided that Song was to deposit rents collected in an authorized

trust account in a national or state institution qualified to engage in the banking business and to remit the net rental proceeds from the Properties (minus management fees and expenses) to the Owner; and

5. Song's then broker, Douglas Elliman of NJ, LLC was not a party to the management agreement, nor was the agreement disclosed to, or authorized by, Song's broker; and

6. In June of 2017, Song terminated his relationship with Douglas Elliman of NJ, LLC and transferred his salesperson's license to Landarama, Inc. Song did not disclose that he was engaged in property management for compensation to Landarama, Inc.; and

7. On or about March 25, 2018, the Owner submitted a written complaint to the Commission stating that Song had failed to transfer rental income from the Properties to the Owner since January of 2017 and that the total amount of money outstanding at that time was approximately \$36,000. The Owner provided copies of the lease agreements for the tenancies in place at the Properties, reflecting that Song executed both agreements as "landlord" on behalf of the Owner; and

8. On July 20, 2018, Song appeared at the offices of the Commission and was interviewed by the Commission investigator assigned to the investigation of this matter. During the interview, Song stated that he was managing the Properties as a favor to the Owner and that his management fee was an amount calculated to be only enough to cover his expenses. Song stated that rent payments for the Properties were deposited into a general checking account for the Mobius Group, and that after withholding his management fee, the net rental payments were sent to a separate account that was considered the Owner's, from which the Owner could request withdrawals. Further, Song admitted that he received payment of his management fee directly from the Owner and not through his broker and that the Mobius Group did not issue IRS form 1099's for the income generated through the management of the Properties. Song further stated that he has terminated his arrangement with the Owner and no longer manages the Properties; and

9. At the time of the above interview, Song also produced bank records, which corroborated his statement and revealed the following information:

- a. Song withheld a total of \$370 every month from the rental payments from the two Properties, and therefore annually, Song, through the Mobius Group, was paid approximately \$4440 for managing the Properties; and
- b. The tenants' security deposits were maintained in a separate interest-bearing account; and
- c. All outstanding rent monies and security deposits have been released to the Owner and no funds remain outstanding; and

10. Respondent Song's conduct is in violation of N.J.S.A. 45:15-1 and 3, in that by engaging in property management for compensation through his unlicensed entity, the Mobius Group, and not through the real estate broker through which he was licensed, Song engaged in unlicensed activity; and

11. Respondent Song's conduct is in violation of N.J.S.A. 45:15-17(m), in that Song accepted compensation for real estate activity from a person other than his broker. Specifically, Song accepted payment for property management activity directly from the Owner of the Properties, as described above; and

12. Respondent Song is in violation of N.J.S.A. 45:15-17(d), in that Song failed to pay over rental income owed to the Owner from January 2017 through June 2018, as more fully described above.

And for good cause shown,

IT IS on this 5<sup>th</sup> day of March, 2019

ORDERED that Respondent Henry Song 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 will review this Order to Show Cause and Answer(s) filed, if any, at a meeting scheduled on or after the 9<sup>th</sup> day of April, 2019 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.

  
Richard Mumford  
Acting Director of Banking  
New Jersey Department of Banking and Insurance  
New Jersey Real Estate Commission