

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION)	DOCKET NUMBER MER-17-024
)	REC Ref. No. 10004437
Complainant)	
)	
v.)	ORDER TO SHOW CAUSE
)	
MICHAEL H. KENYON, licensed New Jersey real)	
estate referral agent (RA0339740),)	
)	
Respondent)	

THIS MATTER being commenced by the New Jersey Real Estate 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 Michael H. Kenyon is a licensed New Jersey real estate referral agent currently employed with New Jersey Referral Agents, LLC, licensed New Jersey real estate broker, located at 20 Plymouth Avenue, Middletown, N.J. 07758. Respondent was first licensed in New Jersey on May 20, 2003; and

2. At all times relevant hereto, Respondent was licensed as a broker-salesperson with Pinnacle Group MG, LLC, licensed New Jersey real estate broker d/b/a Pinnacle Realtors and Associates, located at 245 Nassau Street, Princeton, N.J. Respondent's employment with Pinnacle was terminated on or about August 5, 2016; and

3. On or about January 24, 2015, the property located at 14 Pennington Lawrenceville Road, Pennington, N.J. which was owned by Deanna Herrington and Robert Gendusi, divorced persons was listed for sale with Pinnacle Realtors and Associates. Respondent was the listing agent. The listing price was \$342,000. The property was a short sale and the sellers were facing foreclosure, owing over \$349,000 in mortgages and tax liens. Respondent did not perform a comparative market analysis, but rather used one that had been performed by ReMax of

Princeton in October, 2014. Respondent did not take any actions to confirm or corroborate the ReMax comparative market analysis; and

4. Respondent did prepare and have the seller sign a Consumer Information Statement as well as a Consent to Disclosed Dual Agency; and

5. On or about March 17, 2015, Respondent presented to seller Herrington a Purchase and Sale Agreement with a purchase price in the amount of \$162,000 on behalf of KVM Investments, his own company. The agreement was drawn by Respondent as the seller, KVM Investments, and therefore, the contract did not contain an attorney review clause or Opinion 26 addendum. The contract stated that the purchase price was subject to existing liens on the property. At some point in his discussions with seller Herrington, the purchase price was changed to \$122,000, subject to all liens on the property. The contract disclosed that the buyer is an investor and that he intended to re-sell the property at a profit. The contract also disclosed that the price offered may be less than market value; and

6. Even though the listing agreement with Pinnacle Realtors naming Respondent as selling agent was in full force and effect, Respondent also included in the proposed contract a clause whereby seller would acknowledge that she had not been represented by buyer or any of the buyer's agents. In fact, the proposed contract did not make any provision for a commission to be paid; and

7. Along with the proposed contract of sale, Respondent presented to seller Herrington an "Action Plan" and a "Direct Sales Representative Compensation Agreement" wherein he offered to pay a 3% commission back to Herrington and designated her as a "sales representative." Deanna Herrington is not a real estate licensee. According to the terms of the agreement, the compensation was to be paid outside of the closing statement and was not to be disclosed to the banks who held the existing mortgages on the property. Ms. Herrington refused to sign the document, terminated her discussions with Respondent, and filed a complaint with the New Jersey Real Estate Commission; and

8. During the course of the investigation, a Real Estate Commission investigator reviewed the file for the Herrington/Gendusi property which was maintained in the office of the broker, Pinnacle Realtors. The file did not contain any of the documents provided to the investigator by seller Herrington including the proposed contracts of sale with Respondent's company, KVM Investments, nor did it contain copies of the "Action Plan" or "Direct Sales Representative Compensation Agreement." The broker of record stated to the investigator that he was unaware of Respondent's offer to purchase the property; and

9. Respondent is in violation of N.J.A.C. 11:5-6.4(a) (two counts) in that 1) he failed in his fiduciary responsibility to his client or principal by placing his financial interest above that of his client in the attempted purchase of his client's property and 2) put his client, the seller, at risk of being obligated to pay a commission to Pinnacle Realtors which was not set forth in the proposed contract of sale; and

10. Respondent is in violation of N.J.S.A. 45:15-17(e) (four counts) in that he demonstrated unworthiness, incompetency, bad faith or dishonesty by: (1) not substantiating the property market value; (2) by listing and offering to purchase a short sale property on his own behalf and offering a kickback to the seller in an effort to defraud or otherwise withhold important financial information from the lenders who held existing mortgages on a short sale property; (3) by offering a commission to an unlicensed person and (4) by attempting to engage in a real estate transaction outside the authority and supervision of his employing broker when the property was in fact listed with that broker;

And for good cause shown,

IT IS ON THIS 4th DAY OF DECEMBER, 2017

ORDERED that Respondent Michael H. Kenyon shall show cause why Respondent's 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 the Order to Show Cause, state the factual basis of each and every factual allegation denied and assert any defenses that Respondent intends to present if this matter is deemed a contested case and a plenary hearing is held; and

IT IS FURTHER ORDERED that failure to comply with all 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 New Jersey Real Estate Commission will review this Order to Show Cause and Answer filed, if any, at a meeting scheduled on or after the 9th day of January, 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 hereof to his last known business address via certified mail.



Patrick J. Mullen
Director of Banking