

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION	)	DOCKET NUMBER MON-19-001
	)	(REC Ref No. 10007354)
Complainant,	)	
	)	
v.	)	ORDER TO SHOW CAUSE
	)	
MICHAEL DANZIGER, licensed New Jersey	)	
real estate broker, (Ref No. 7838934)	)	
	)	
Respondent.	)	

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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 Michael Danziger (“Danziger”) is a licensed New Jersey real estate broker, who was first licensed in 1988, and is currently licensed as broker of record of Option 1 Shore Realty LLC (“Option 1”) whose office is located at 2005 Route 35, Oakhurst, New Jersey; and

2. On or about September 19, 2017, Andrew and Sharon Calstrom (the “Sellers”) entered into a listing agreement with Danziger to list their home, located at 66 Maple Avenue, West Long Branch, New Jersey (the “Property”) for sale. The agreement granted Option 1 the exclusive right to sell the Property at a price of \$575,000 until January 20, 2018. The agreement provided that a commission of 5% of the sale price would be due and payable to Option 1 in the event that a sale of the Property was consummated during the effective period of the listing agreement; and

3. On or about September 19, 2017, the Sellers executed an “Informed Consent to Dual Agency” form, authorizing Option 1 and Danziger to act as disclosed dual agent in the sale of the Property if the opportunity arises; and

4. On or about November 21, 2017, the Sellers entered into a contract with Danny, Esther and Leon Cohen (the “Buyers”) for the sale of the Property. The contract sales price was \$565,000, with a commission of 5% of the sale price due to Option 1 upon closing. Danziger represented both the Buyers and the Sellers as disclosed dual agent in the subject transaction; and

5. Danziger did advise the Sellers that the Buyers were related to Danziger prior to the execution of the above contract of sale; and

6. Upon information and belief, after the execution of the above contract, it was discovered by the Sellers that the Property was in a short sale situation and therefore any agreement for the sale thereof required third party approval by the Sellers' mortgage lender. As a result, after execution of the above contract, the Sellers, through their attorney, began negotiations with their lender for short sale approval for the Property; and

7. At all relevant times herein, Danziger advertised and held himself out to the public as specializing in short sale transactions; and

8. On or about April 19, 2018, Danziger sent a second listing agreement for the Property to the Sellers. The agreement granted Option 1 the exclusive right to sell the Property at a price of \$575,000 until October 19, 2018 and provided that a commission of 6% of the sale price would be due and payable to Option 1 in the event that a sale of the Property was consummated during the effective period of the listing agreement; and

9. Danziger never discussed increasing the commission rate of 5%, which was agreed upon in the previous listing agreement, to 6% with the Sellers prior to submitting the agreement to them for execution; and

10. When questioned by the Sellers regarding the increased commission rate, Danziger advised the Sellers not to worry since the Sellers' short sale lender would be paying the sale commission; and

11. Thereafter, upon advice from their attorney, the Sellers signed the listing agreement; and

12. On or about April 24, 2018, the Buyers and Sellers entered into a second contract of sale for the Property. The contract sales price was \$555,000, with a commission of 6% of the sale price due to Option 1 upon closing; and

13. On or about May 14, 2018, the Sellers received approval from their lender for the consummation of the short sale of the Property on the terms set forth in the second contract of sale.

However, the acceptance letter advised that the contract would result in a deficiency due the lender; but they approve the transaction, release its lien on the Property and charge off the remaining debt as an uncollectable balance. Further, the Sellers were advised that any additional proceeds would be applied towards the deficiency amount at closing and that the IRS would be so informed of the forgiven debt in the amount of the loan deficiency and that the debt forgiveness may result in tax liability to the Sellers; and

14. On or about May 18, 2018, closing of title occurred, at which time a commission check in the amount of \$33,000, representing 6% of the sale price of the Property, was issued to Danziger by the closing agent in accordance with the terms of the second contract of sale; and

15. On or about May 22, 2018, Danziger deposited the \$33,000 commission check into the Option 1 operating account; and

16. On or about June 6, 2018, Danziger issued a check from the Option 1 operating account in the amount of \$8991, made payable to himself and deposited same into his personal bank account; and

17. On or about June 7, 2018, Danziger issued a personal check in the amount of \$8,991 to one of the Buyers, Leon Cohen; and

18. The above payment from Danziger to Leon Cohen was not included in the closing statement and was not otherwise disclosed to the Sellers or their lender; and

19. Danziger was subsequently interviewed by a Commission investigator and stated that the above payment was not a rebate, but rather was a gift to the Buyers to offset the cost of loan discount points, which were charged to Buyers at closing. Danziger also admitted that he was not familiar with the current requirements for short sale transactions in New Jersey; and

20. Respondent Danziger's conduct is in violation of N.J.A.C. 11:5-6.2(b), in that the second listing agreement presented to the Sellers contained a predetermined commission rate, which rate was increased from the prior listing agreement executed by the Sellers and was not discussed by Danziger with the Sellers prior to being presented to them for their execution; and

21. Respondent Danziger's conduct is in violation of N.J.A.C. 11:5-6.4(a), in that by increasing the amount of the sale commission for the purchase and sale of the Property from 5% to 6%, as more fully described above, Danziger failed in his fiduciary duty to protect and promote, as he would his own, the interests of his clients; and

22. Respondent Danziger's conduct is in violation of N.J.A.C. 11:5-6.4(a), in that by paying the buyer, Leon Cohen, a portion of his commission for the sale of Property, without disclosing same to the Sellers or to the Sellers' short sale lender, Danziger failed in his obligation to deal fairly with all parties to the subject transaction; and

23. Respondent Danziger's conduct is in violation of N.J.S.A. 45:15-17(k), in that by paying \$8,991 to the Buyers out of his sale commission for the subject transaction, as more fully described above, Danziger paid a rebate, profit, compensation or commission to individuals not possessed of a real estate license; and

24. Respondent Danziger's conduct is in violation of N.J.A.C. 11:5-6.1(r), in that by advertising himself as specializing in short sale transactions without possessing specialized knowledge or expertise in such transactions, Danziger released advertisements containing misleading or deceptive claims; and

25. Respondent Danziger's conduct is in violation of N.J.S.A. 45:15-17(e), incompetency, in that by advising the Sellers that they would not be responsible for paying any increase in the sale commission in the subject transaction, without advising the Sellers of the possibility for additional tax liability associated with the sale of the Property, after holding himself out as having specialized knowledge and/or expertise in short sale transactions, Danziger engaged in conduct demonstrating incompetency.

And for good cause shown,

IT IS on this \_\_\_\_ day of \_\_\_\_\_, 2019

ORDERED that Respondent Michael Danziger 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 12<sup>th</sup> day of March, 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

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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 her last known business address via certified mail.



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