

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION

DOCKET NO.: SOM-11-047

Complainant,

v.

**FINAL ORDER OF
DETERMINATION AS TO
PATRICIA PLANTE ONLY**

CARL A DAY,¹ licensed New Jersey real estate salesperson, and PATRICIA PLANTE, licensed New Jersey real estate broker salesperson

Respondents.

This matter was heard at a plenary hearing by the New Jersey Real Estate Commission ("Commission") in the Department of Banking and Insurance, State of New Jersey at the Real Estate Commission Hearing Room, 20 West State Street, Trenton, New Jersey on March 19, 2013.

BEFORE: Commissioners Linda Stefanik, Robert Melillo, Eugenia K. Bonilla, Jacob S. Elkes, and Jeffrey A. Lattimer.

APPEARANCES: Marianne Gallina, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission ("REC"). Respondent Plante appeared with counsel, Michael R. Scully, Esq.

STATEMENT OF THE CASE

The REC initiated this matter through service of an Order to Show Cause ("OTSC") dated December 22, 2011, pursuant to N.J.S.A. 45:15-17, N.J.S.A. 45:15-18 and

¹ Carl Day, a licensed New Jersey real estate salesperson, was originally named as a respondent in the matter herein but entered into a Consent Order with the REC on June 5, 2011.

N.J.A.C. 11:5-1.1 et seq. In the OTSC, the REC alleged that Respondent Day, licensed salesperson, engaged in multiple violations of the Real Estate Brokers and Salespersons Act and the real estate regulations when he made several substantial misrepresentations related to the showing of a client's home during which he allowed a film crew to be present, failed to deal fairly with all parties when he allowed several people to enter the client's home, proceeded to stay in that home for over five hours unescorted and use the home for filming without permission from the client and demonstrated unworthiness. The REC also alleged in the OTSC that Respondent Plante, branch office manager of Coldwell Banker Real Estate Services, failed to properly supervise the actions of Respondent Day.²

Respondent Plante answered the charges of the OTSC via her counsel, Michael R. Scully, Esq., on May 25, 2012. In this Answer, she denied any legal violation.³ Therefore, this matter was deemed a contested case, and scheduled for a full hearing on March 19, 2013. Respondent Plante appeared at the hearing with counsel as noted above.

The matter against Respondent Day was settled by Consent Order dated June 5, 2012. In this Consent Order, Respondent Day admitted to the following:

1. David Desiderio is the owner of property located at 11 Twins Court, Pittstown (Franklin Township), N.J. consisting of a house and acreage. Although the property had been on the market at one time, in November 2010 the property was not listed for sale. On or about November 8, 2010, Respondent Day repeatedly contacted Mr. Desiderio for permission to show the property and represented that he had a "serious buyer" interested in it. No listing agreement was signed between Coldwell Banker and [Mr.] Desiderio. However, on or about November 10, 2010, a document entitled

² At the end of the presentation of all witnesses, the REC administratively dismissed paragraph 16 of the OTSC relating to Respondents' failure to deliver a Consumer Information Statement to the seller in accordance with N.J.A.C. 11:5-6.9(e)(2).

³ Respondent Day, who was also represented by Michael R. Scully, submitted a similar answer to the charges in the OTSC. In this answer, he also denied any legal violations.

“Commission Agreement For Sale by Owner (FSBO)” was signed by [Mr.] Desiderio, Respondent Day and Respondent Plante. Said document gave permission for Coldwell Banker to show the property and offer it for sale to prospective buyers Aimee LaNieve Spiers and/or Morihiko Goto. It also provided that Coldwell Banker would be paid a commission of 5% of the sale price if a sale or lease came to fruition; and

2. Although he was out of town on or about November 10, 2010, Mr. Desiderio gave permission to Respondent Day to show the house. Mr. Desiderio’s sister, Diana Desiderio was present at the house when Respondent Day and his buyers arrived with several more people, cameras and at least four vehicles. Ms. Desiderio was subsequently asked to leave; and
3. Respondent Day, Ms. Spiers, Mr. Goto and the persons who accompanied them remained on the premises in question for an extended period of time during which they video recorded their visit to the property. The homeowner was not made aware of this activity prior to the arrival of the buyers nor had he given permission for his home to be used in such a manner;

Moreover it was further

ORDERED AND AGREED that [Respondent] admits and accepts responsibility for the following violation: Respondent Day is in violation of N.J.A.C. 11:5-6.4(a) and N.J.S.A. 45:15-17(t) by failing to deal fairly with all parties when he allowed several people to enter the Desiderio home, to stay in the home for an extended period of time and to video record the premises without advance permission from Mr. Desdierio.⁴

⁴ Pursuant to the terms of the Consent Order, paragraphs 13, 15 and 16 of the OTSC were administratively dismissed. In these paragraphs, the REC had alleged that Respondent Day made several substantial misrepresentations, that he engaged in conduct demonstrating unworthiness, bad faith and dishonesty and that both Respondents failed to deliver a Consumer Information Statement to the seller.

At the hearing against Respondent Plante only, the following exhibits were admitted into evidence:

S-1 - Coldwell Banker fax cover sheet, undated, time stamped 11/8/2010 18:16 from Carl Day to David Desiderio

S-2 - Coldwell Banker fax cover sheet dated 11/8/2010, time stamped 18:54 from Carl Day to David Desiderio

S-3 - Coldwell Banker Commission Agreement For Sale By Owner (FSBO) dated 11/10/2010

S-4 - Email from Patricia Plante to John Bradley, dated November 16, 2010

S-5 - June 20, 2011 Timeline, unsigned, supplied by Carl Day

D-1 - Plante's handwritten notes documenting the circumstances surrounding the Desiderio transaction

TESTIMONY OF THE WITNESSES

Investigator William McCloskey

Investigator William McCloskey testified on behalf of the REC. He stated that Mr. Desiderio, the property owner of the home at Twins Court in Franklin Township who filed the complaint, informed him that he was not intending to sell his property, but after a discussion with Respondent Day, Mr. Desiderio gave Respondent Day permission to show the property to two people. Investigator McCloskey stated that Mr. Desiderio was in Florida when the showing occurred but his sister, Ms. Desiderio, was present at the home. Investigator McCloskey testified that, during the showing of the property, an entourage of people accompanied Respondent Day to the property and Mr. Desiderio's sister was asked to leave. Both Respondents Plante and Day admitted in their Answer to the OTSC that Ms. Desiderio was subsequently asked to leave. Investigator McCloskey testified that Ms. Desiderio left as requested but returned to the premises

later. 8 to 10 people were present at the house with Respondent Day during the showing, including a camera crew. Investigator McCloskey testified that, during the showing, wardrobe changes were made, which included wedding dresses, and there was a relatively large camera.

Investigator McCloskey further testified that Mr. Desiderio spoke to Respondent Day about the activities that his sister reported to him, but Respondent Day denied the presence of either a camera crew at the property or an entourage of people. Mr. Desiderio's sister also informed Investigator McCloskey that Respondent Day was in the garage on the phone while the purported buyers were in the house unsupervised. Additionally, Investigator McCloskey met with Mr. Desiderio at his house and viewed film footage of the day of the showing which showed people going in and out of the house for hours.

Investigator McCloskey also testified that he requested from Respondents a copy of the Desiderio file and all related documents including the Consumer Information Statement but was told by Respondent Day that there was no copy of the file because it was over six months old and Respondent Day had destroyed it. In his Answer to the OTSC, although Respondent Day denied stating that there was no file insofar as he produced for Investigator McCloskey a Commission Agreement For Sale By Owner "FSBO", Respondent Day admitted that he "did not retain all materials related to this matter insofar as no transaction resulted." Respondent Plante specifically informed Investigator McCloskey that she did not have a file and never had a file. However, she did provide him with a copy of her email that was admitted into evidence as Exhibit S-8.

Investigator McCloskey further testified that Mr. Desiderio provided him with documents, Exhibits S-1 through S-3. Investigator McCloskey identified Exhibit S-1 as a fax

sent to Mr. Desiderio from Carl Day on November 8, 2010, wherein Respondent Day indicated that he had a “serious buyer” for his property.

Investigator McCloskey further identified Exhibit S-2 as another fax from Respondent Day to Mr. Desiderio, also sent on November 8, 2010, wherein Respondent Day again informed Mr. Desiderio that he had a “serious buyer” who had seen the house before and requested that Mr. Desiderio call him. Investigator McCloskey stated that, on this fax, “serious” was underlined and emphasized. Investigator McCloskey stated that Mr. Desiderio expressed reluctance to show the house because he had rifles and firearms in the house. Mr. Desiderio told Investigator McCloskey that he was persuaded to show the house because it had been listed previously and Respondent Day told him that the proposed buyers were willing to pay cash.

Investigator McCloskey further identified Exhibit S-3 as the Commission Agreement For Sale By Owner that was signed by Mr. Desiderio and both Respondents. During the course of the investigation, Respondent Plante confirmed that it was her signature on this document. Investigator McCloskey stated the fax is dated November 8, 2010 and the document lists two buyers, namely “Aimee LaNieve Spiers and/or Morihiko Goto.”

Investigator McCloskey further identified Exhibit S-4 as a copy of an email sent to John Bradley of the corporate office for Coldwell Banker from Respondent Plante on November 16, 2010 and entitled “Carl Day Sales Agent Warrant.” This was provided to him by Respondent Plante during the course of the investigation. In this e-mail, Respondent Plante explained what happened regarding the showing of the property by Carl Day. The e-mail states that the buyer was not qualified to purchase the property at 11 Twins Court and had other motives for being shown the property. In this email, Respondent Plante stated that,

An agent here in Warren, Carl Day, had a walk-in buyer (Aimee LaNieve Spiers...) on Tues. Nov. 9 who wanted to see a property

that had expired. Carl got in touch with the owner who was in Florida and the owner signed a permission to show. Carl went to the property on Nov. 10 and met the sister of the owner who opened the door, let Carl and the buyer in and Carl suggested that she should leave during the showing. The buyer showed up with her "fiancee" (Morihiro Goto) and nine other people and two movie cameras and began to film this woman in different clothing outfits in the foyer. She told Carl that she was filming because her "fiancée" was going to propose to her and they wanted it on film, then said something about putting the video on bravo or Housewives of New Jersey. She continued to say that she and her "fiancée" wanted to buy the house. The sister returned and wanted to know why all of these people were filming in her brothers house and the (sic) told the sister the same thing she had told Carl. It seems like the buyer is really not qualified to purchase this home and had other motives to make the film which are not clear.

Investigator McCloskey further identified Exhibit S-5 as a timeline he received from Carl Day who had prepared same at his own behest. This document is dated June 20, 2011 and entitled Timeline regarding 11 Twins Court and Aimee LaNieve Spiers. In entry #2 on the timeline, dated November 8, 2010, Respondent Day indicates that he was told that the buyer, Mr. Goto, would be paying cash and that he owned a brokerage company. In entry #3, dated November 9, 2010, Respondent Day indicated that he confirmed that Mr. Goto owns a brokerage company and was given Mr. Goto's FINRA # by Mr. Goto himself. In this same entry, he confirmed that Mr. Goto knew Aimee Spiers. In entry #7, Respondent Day indicates that Ms. Spiers and Mr. Goto did not respond to Respondent Day's request that they contact Phyllis Byrne Nelson, the Coldwell Banker mortgage broker.

Investigator McCloskey further testified that Respondents did not obtain any documents regarding the buyers' qualifications prior to showing them the property at Twins Court on November 10, 2010.

On cross examination, Investigator McCloskey testified that he began his investigation more than 6 months after the events occurred. Investigator McCloskey also

testified that Mr. Desiderio did not withdraw his consent to a later showing for these same individuals which occurred around sunset on that same day.

Respondent Plante

Respondent Plante testified on her own behalf. Respondent Plante testified that she is a broker with Coldwell Banker Real Estate and the Branch Manager for the Warren office where Respondent Day is an associate. Respondent Plante testified that she was employed by Bergdoff until 2009 when they blended with Coldwell Banker.

Respondent Plante further testified that Respondent Day made her aware of the Desiderio showing the day before the actual showing. Respondent Day informed her that a woman walked into the office and indicated that she was trying to contact Mr. Desiderio. Respondent Plante testified that she told Respondent Day to get everything he needed, including the listing. Respondent Plante indicated that Respondent Day informed her that he sent the listing packet to Mr. Desiderio.

Respondent Plante stated that she then received a call from Mr. Desiderio stating that he did not want the property listed. Mr. Desiderio also insisted that he was not selling. Respondents ultimately obtained permission to show the property from Mr. Desiderio but did not enter into a listing agreement.

Respondent Plante also testified that Mr. Desiderio called her on the day of showing complaining about the people at his house. He stated that his sister had made him aware of what was happening at the property. During this phone conversation with Mr. Desiderio, Respondent Plante then assured him that she would get the group of people out of his house. Respondent Plante stated that Mr. Desiderio said not to do so and to let them see the property at sunset.

Respondent Plante further testified that she spoke to Investigator McCloskey and told him there was no file concerning the Desiderio showing because there was no contract of sale. Respondent Plante stated that she gave Investigator McCloskey the related e-mail and offered to show him other related paperwork, including her own notes, but he was not interested in these documents. He ultimately wanted the transaction file. Respondent Plante explained that the office normally keeps listing agreements for one and a half years and then ships them out to a different location where the files are maintained for 7 years. The procedure is the same for contracts of sale. Respondent Plante stated that, because there was no contract or listing, the file was shredded after 6 months. She also testified that sometimes these files are given back to agents.

Respondent Plante further testified regarding her notes. Respondent Plante stated that she sometimes scribbles on paper and, later in the day, converts this to more formal notes at the end of the day. She stated that, if there seems to be a problem, she writes notes. Her notes with respect to this matter, Exhibit D-1, consist of multiple, handwritten pages. Respondent Plante testified that these notes indicate that, on November 9, 2010, Respondent Day was working at his desk when a woman walked into the office and expressed an interest in viewing a house in Franklin in Hunterdon County. Respondent Day then did a tax search and confirmed that the owner of the subject property was Mr. Desiderio. This same entry also indicates that Mr. Desiderio said he didn't want to sell Twin Court as his sons did not want him to do so but he "would show as he has other property near and could build." Respondent Plante testified that this confirms that her earliest involvement with this matter was on November 9, 2010.

Respondent Plante then identified a second entry dated November 9, 2010⁵ which indicates that Mr. Desiderio told her there were other lots available. Respondent Plante testified that she then advised Respondent Day to obtain the appropriate financial information and to contact the appropriate bank and mortgage representative. Respondent Plante stated that Respondent Day informed her that he had obtained a FINRA number but she told him that this did not mean anything and that he should get the CPA number. Respondent Plante stated that she thought he was following up in this regard.

Respondent Plante testified that she spoke with Respondent Day on November 10, 2010, while he was at the property with the buyer. She also had a conversation with Mr. Desiderio and she understood that his instructions were to let the entourage of people stay for the showing. Respondent Plante referenced her notes from November 10, 2010, taken at 8:38,⁶ where she indicates that Mr. Desiderio complained that Respondent Day had allowed so many people in his house in addition to “blacked out SUV’s, movie camera-11 people.” Every time she spoke to Mr. Desiderio on the day of the showing, the situation became more dramatic but he always maintained that he did not want the buyer removed from the property. Respondent Plante stated that the only person who had access to the property was the sister and she did not ask them to leave.

Respondent Plante testified that her notes from the same day, taken at 8:56 p.m., indicate that she spoke with Mr. Desiderio’s sister who informed her that Respondent Day was carrying dresses into the house “for Aimee.” On this same date but at 9:39, Respondent Plante’s notes indicate she had another conversation with Mr. Desiderio who had called her once again.

⁵ This entry has a time of 2:34 noted.

⁶ The time indicator of 8:38 was added at a later time.

At this time, he wanted “to make sure [she] spoke to his [sister].” Respondent Plante advised Mr. Desiderio that they would obtain the buyer’s financial information to make sure they qualify.

Respondent Plante testified that the last page of her notes references a conversation she had with Ms. Spiers on November 12, 2010, wherein Ms. Spiers informed her that she was being considered for a television program when asked about the video filmed at the Desiderio property. Respondent Plante stated that this was the first time she heard about the TV program. Ms. Spiers also informed her that she was running for political office.

Respondent Plante stated that on November 13, 2010, Mr. Desiderio called and said his sister received a call from Ms. Spiers who asked to see the Desiderio house again. According to Respondent Plante’s notes from that same day, Respondent Day called Ms. Spiers and advised her not to go because Mr. Desiderio stated that he was going to call the police after reviewing his security video. Respondent Plante stated she told Respondent Day to stay away from Ms. Spiers because she was not a serious buyer.

Respondent Plante testified that on November 15, 2010, Ms. Spiers went to the property contrary to Respondent Day’s advice. However, Respondent Day did not attend this showing because he was instructed not to attend without first obtaining pre-approval.

Respondent Plante described Respondent Day as honorable. Respondent Plante further testified that Amy Spiers wanted to pay Respondent Day cash for his time but he refused to accept this cash and he explained he could only accept commission through his broker. Respondent Plante stated that she had only managed Respondent Day for six months but he was nice and well-liked by clients. Respondent Plante acknowledged that Respondent Day should have ascertained whether or not the individuals were pre-qualified before going to the house but she has not had any prior problems with Respondent Day.

Upon cross-examination, Respondent Plante stated she first found out about the potential buyers seeing Mr. Desiderio's house on November 9, 2010. Respondent Plante stated that she determined that the property was not listed and she had a discussion with Respondent Day on November 9, 2010 informing him to get the potential buyers pre-qualified. Respondent Plante stated she signed the commission agreement on November 9, 2010 and obtained permission to show the property the next day. The commission agreement provided that the broker would receive a fee of five percent of the purchase price. (Exhibit S-3).

Respondent Plante further testified she was not aware of the faxes sent by Respondent Day to Mr. Desiderio dated November 8, 2010 where Respondent Day indicated he had a serious buyer for the property. (Exhibits S-1 or S-2). Respondent Plante stated Respondent Day informed her of these faxes at a later date.

Respondent Plante further testified Mr. Desiderio called her the night before the showing and may have indicated his reluctance to show his property. When asked whether she was aware of the urgency Respondent Day expressed in showing the property, Respondent Plante indicated that she was not aware he expressed such urgency but she acknowledged that Respondent Day wanted to show the property.

Respondent Plante described that standard office procedure for showing a property involved obtaining the financial information including getting pre-approval and verifying identification. Respondent Plante stated she advised Respondent Day to follow this procedure and she did not become aware that he didn't follow the policy until the next day.

When Respondent Plante was asked how she knew the buyers were serious buyers, Respondent stated Respondent Day had informed her that he had serious buyers, but acknowledged they could have lied to Respondent Day.

Respondent Plante further testified that she is not aware of every appointment. She emphasized to Respondent Day the importance of getting the appropriate financial information. Respondent testified Respondent Day never consulted with her before she received a call from Desiderio on November 9, 2010.

Recall of Investigator McCloskey

Investigator McCloskey was recalled by the complainant to testify. Investigator McCloskey was asked if Respondent Plante's notes were ever offered to him. Investigator McCloskey testified that she never mentioned her notes. He indicated she only made reference to her e-mail and they also discussed whether or not there was a file. On cross-examination Investigator McCloskey testified that he does not remember every piece of his conversation.

FINDINGS OF FACT

Based upon the pleadings, the testimony of the witness, and the documentary evidence duly admitted into the record, the Commission makes the following findings of fact:

1. During the relevant time period, Respondent Day was a licensed New Jersey real estate salesperson employed with Coldwell Banker Real Estate Services, licensed New Jersey real estate broker whose principal place of business is located at 1 Campus Drive, Suite 3-23, Parsippany, N.J. 07054. During the relevant time period, Respondent Day was employed at the branch office of Coldwell Banker located at 7 Mt. Bethel Road, Warren, N.J. 07060. Respondent Day is no longer actively licensed. Pursuant to the terms of the Consent Order entered into on June 5, 2012, Respondent Day's license as a real estate salesperson was suspended for a period of six months, to commence on June 11, 2012.
2. Respondent Patricia Plante is a licensed New Jersey real estate broker-salesperson. At all relevant times, she was employed with Coldwell Banker Real Estate Services as the

branch office supervisor for the Coldwell Banker office located at 7 Mt. Bethel Road, Warren, N.J. 07060. At all relevant times, as branch office supervisor of Coldwell Banker Real Estate Services, Respondent Plante was responsible for the oversight of Respondent Day's actions and activities in the Mt. Bethel Road branch office of Coldwell Banker in general.

3. David Desiderio is the owner of property located at 11 Twins Court, Pittstown (Franklin Township), N.J. consisting of a house and acreage. Although the property had been on the market at one time, the property was not listed for sale in November 2010. On or about November 8, 2010, Respondent Day repeatedly contacted Mr. Desiderio for permission to show the property and represented that he had a "serious buyer" interested in it. No listing agreement was signed between Coldwell Banker and Desiderio. However, on or about November 10, 2010, a document entitled "Commission Agreement For Sale by Owner (FSBO)" was signed by Mr. Desiderio, Respondent Day and Respondent Plante. Said document gave permission for Coldwell Banker to show the property and offer it for sale to prospective buyers, Aimee LaNiever Spiers and/or Morihiko Goto. It also provided that Coldwell Banker would be paid a commission of 5% of the sale price if a sale or lease came to fruition on or before February 10, 2011.
4. Mr. Desiderio was out of town on or about November 9, 2010 and November 10, 2010, and in response to Respondent Day's contacts, informed Respondent Day that he was reluctant to show his property because it was not for sale at that time and it was not in show condition. In fact, Mr. Desiderio informed Respondent Day that there were exposed firearms throughout the house. However, Mr. Desiderio ultimately gave Respondent Day permission to show the house. As of November 10, 2010, the date of

the showing, Respondent Day had failed to obtain the appropriate financial documentation with respect to the potential buyers, including getting pre-approval and verifying identification, to ascertain whether or not the proposed buyers were in fact qualified to purchase the Desiderio property.

5. Mr. Desiderio's sister was present at the house when Respondent Day and his buyers arrived with several more people and at least four vehicles. Ms. Desiderio was subsequently asked to leave. She did so but returned to the house.
6. When she observed numerous persons, vehicles and cameras at the house, Ms. Desiderio contacted Mr. Desiderio by telephone to report same. Mr. Desiderio contacted Respondent Day to complain about the unauthorized people present on his property. Mr. Desiderio also complained about same to Respondent Plante.
7. Respondent Day, Ms. Spiers, Mr. Goto and the persons who accompanied them remained on the premises in question for an extended period of time during which time they video recorded their visit to the property. The homeowner was not made aware of this activity prior to the arrival of the buyers nor had he given permission for his home to be used in such a manner.
8. The premises in question are monitored by a security system which includes surveillance cameras that have date and time stamps on the images that are recorded. The activities of the buyers and their film crew on November 10, 2010 were recorded. Investigator McCloskey had the opportunity to observe this surveillance footage which showed an entourage of people coming in and out of the house for hours.
9. Respondent Plante became aware of the Desiderio showing on November 9, 2010, the day before the actual showing occurred. She was aware that Mr. Desiderio had not in

fact listed his property for sale and was reluctant to show the property. Moreover, at that time she was aware that Respondent Day had not obtained the appropriate financial documentation related to the prospective buyers. Although Respondent Plante advised Respondent Day to attain the appropriate financial documentation, Respondent Plante did not follow up to ensure that this task had been completed. Nevertheless, Respondent Plante sanctioned the November 10, 2010 showing of the Desiderio property by Respondent Day.

10. When she was questioned by a Real Estate Commission investigator regarding the Desiderio matter, Respondent Plante responded that she did not have a file on same.

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 charge against Respondent Plante for failing to deliver a Consumer Information Statement to the seller in accordance with N.J.A.C. 11:5-6.9(e)(2), is administratively dismissed at the request of the Real Estate Commission.
2. Respondent Plante violated N.J.A.C. 11:5-4.5 in that, as branch office manager of Coldwell Banker Real Estate Services, she failed to properly supervise the actions of Carl Day as set forth previously.

DETERMINATION

In arriving at the determination in this matter, the Commission took into consideration the testimony and credibility of the witnesses and the documentary evidence admitted during the course of the hearing.

Respondent Plante, failed to properly supervise Respondent Day in the showing of David Desiderio's property by allowing Respondent Day to show the property without first determining if Ms. Spiers and Mr. Goto were qualified buyers and getting them pre-qualified. Pursuant to N.J.A.C. 11:5-4.5(c), "Any branch office shall be under the direct supervision of a licensed broker employed as a broker salesperson by the broker maintaining the branch office." As the branch office manager of the Coldwell Realtor office in Warren and as a broker – salesperson at the time of the Desiderio showing, Respondent Plante was charged with the responsibility of overseeing the activities of Respondent Day, a real estate salesperson under her stead at the time. By her own admission, Respondent Plante became aware that Respondent Day planned to show the Desiderio property at Twin Court on November 9, 2010. This was the day before the actual showing. Respondent Plante also knew that Mr. Desiderio had not listed the Twin Court property for sale and he had expressed a reluctance to go forward with the showing. However, under her stead, Respondent Day convinced Mr. Desiderio to show his property because he had serious buyers, even though he had not obtained the appropriate financial documentation to verify their ability to purchase the property. Respondent Plante testified that she advised Respondent Day to obtain the appropriate financial documentation to verify that the potential buyers were actually qualified to make such a purchase. In fact, when Respondent Day informed Respondent Plante that he had obtained a FINRA number for Mr. Goto who claimed to work as a CEO and owner of a brokerage company, Respondent Plante advised him that this was not sufficient and that he should obtain more appropriate documentation. However, this financial verification was never obtained by Respondent Day nor was any effort made on Respondent Plante's part to confirm that said verification had been made. By Respondent Plante's own admission, Respondent Plante should have completed this task and erred by not

doing so. The onus was on Respondent Plante to ensure that the Respondent Day had ascertained whether or not they were in fact qualified to make this purchase. In this vein, Respondent Plante failed to supervise Respondent Day.

The Commission has consistently imposed fines for these types of violations. See, NJREC v. Petrides and Steadman, Dkt. No. ATL-09-031, Final Order of Determination, (2/1/11), aff'd in unpublished App. Div. opinion A-5019-09T3 (App. Div., 1/1/11), (Steadman, as branch office manager of Prudential Fox & Roach and broker-salesperson, fined \$5,000.00 and broker-salesperson's license suspended for four months for failure to properly supervise salesperson Petridis who made substantial misrepresentations in a contract of sale by failing to designate the appropriate equitable owner of the property and failed to deal fairly with all parties by placing his own interest above his principals); NJREC v. Pavic and Cordova, Dkt. No. PAS-09-024, Final Order of Determination, (11/16/10) (Cordova fined \$4,000.00 for allowing Pavic to list property without consent of owners and failing to supervise the activities of Pavic in her handling the transaction).

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 Real Estate License Act, N.J.S.A. 45:15-1, et seq.: (1) The good or bad faith of the respondent; (2) The respondent's ability to pay; (3) Amount of profits obtained from 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. Kimmelman, supra 108 N.J. at 137-139. Analysis of these factors in this matter requires imposition of a limited fine.


First, Respondent Plante did not demonstrate bad faith when she failed to supervise the activities of Carl Day in the handling of the Desiderio property. Second, no evidence was submitted regarding Respondent's ability to pay. Third, to the best of the Commission's knowledge the Respondent did not obtain any profits from the violations in this matter. Fourth, the public is significantly harmed when individuals in a fiduciary position violate or fail to perform their responsibilities. Fifth, the Respondent's activities occurred during the course of the one transaction. Finally, to the Commission's knowledge there are no past violations of the Commission's rules by the Respondent.

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

- I. Respondent Plante shall pay a fine of \$1,000.00 to be paid within 30 days of entry of written order.

SO ORDERED this 31ST day of July, 2014.

By: Linda Stefanik, President
Jacob S. Elkes, Esq., Commissioner
Robert Melillo, Commissioner
Eugenia K. Bonilla, Commissioner
Jeffrey A. Lattimer, Commissioner


Robert L. Kinnebrew
Executive Director
New Jersey Real Estate Commission