

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,) DOCKET NO.: UNI-16-004
)
Complainant,)
)
CHRISTOPHER KOLLER, a licensed New) FINAL DECISION AND ORDER
Jersey real estate salesperson,)
)
Respondent.)

This matter was heard at a hearing by the New Jersey Real Estate Commission (“Commission”) at the Department of Banking and Insurance, State of New Jersey in the Commission Hearing Room, 20 West State Street, Trenton, New Jersey on October 5, 2016.

BEFORE: Commissioners Linda Stefanik, Denise Illes, and Michael Timoni.

APPEARANCES: Marianne Gallina, Regulatory Officer (“RO Gallina”), appeared on behalf of the complainant, the New Jersey Real Estate Commission staff (“REC”). Jacob P. Davidson, Esq. appeared on behalf of Respondent Christopher Koller (“Respondent”).¹

PROCEDURAL HISTORY

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated June 1, 2016, pursuant to N.J.S.A. 45:15-17, N.J.S.A. 45:15-18, N.J.S.A. 45:15-19.1, and N.J.A.C. 11:5-1.1 et seq. The OTSC alleged that the conduct underlying the Respondent’s convictions for Theft by Unlawful Taking in the third degree, in violation of N.J.S.A. 2C:20-3, and Theft by Deception in the third degree, in violation of N.J.S.A. 2C:20-4,

¹ The Order to Show Cause that was issued against the Respondent provides that he is a “licensed New Jersey real estate salesperson. . . .” While the Respondent was originally licensed as a real estate salesperson in 2003, the Respondent obtained a license to become a New Jersey real estate broker in February 2010. However, his license is currently inactive.

demonstrate unworthiness, incompetency, bad faith, and dishonesty, in violation of N.J.S.A. 45:15-17e.

The Respondent, through his attorney, Jacob P. Davidson, Esq., filed an Answer to the OTSC dated July 13, 2016, wherein he admitted to some of allegations as set forth in the OTSC, did not address other allegations, and requested that a hearing be scheduled. On July 26, 2016, the Commission considered the pleadings and determined that this matter was a contested case and directed that a hearing be scheduled.

A hearing was conducted on October 5, 2016, at which the following exhibit was admitted into evidence by the REC, without objection:

S-1 Judgment of Conviction, Superior Court of New Jersey, Somerset County, in the matter of State of New Jersey v. Christopher M. Koller, dated February 20, 2015.

The following exhibits were admitted into evidence by the Respondent and marked as R-1, without objection:

1. Computerized print out from Middlesex County Probation Department entitled “Comprehensive Automated Probation System, Collections Inquiry by Client,” dated July 12, 2016;
2. Letter from Vincent Baricaua, broker of record for RE/MAX Our Town, dated July 13, 2016; and
3. Letter from Ari Opitz, former client of the Respondent, dated July 13, 2016.

TESTIMONY OF THE WITNESS

Christopher Koller

The Respondent testified on his own behalf at the hearing. The Respondent testified that he was first licensed as a real estate salesperson in 2003. He applied for and obtained a real

estate broker's license in 2010. The Respondent stated that his real estate broker's license is currently inactive, as he submitted an application to transfer his license on August 14, 2016, which has not yet been approved by the REC.

The Respondent testified that during the time surrounding his conviction, he had created a maintenance service company as a side job to his real estate business. He further stated that he worked with an onsite property manager, who allowed him to complete a job, even though he did not win the bid for said job. The Respondent stated that the property manager allowed him to complete the job as long as the Respondent shared his profits with the property manager. The Respondent stated that he completed the job satisfactorily pursuant to this agreement and the work passed all required inspections. The Respondent additionally testified that there was no detriment to the property by him completing the work instead of the winning bidder. The Respondent stated that he believes that the agreement between himself and the property manager came to light through the properties' bookkeeping, as the "paperwork was changed."

The Respondent indicated that he was convicted of fraud² on a technicality by performing work on a bid that he did not win rather than for not performing the work that he agreed to perform. He further stated that he made restitution in the amount of approximately \$23,000, and he is currently working with probation to complete the terms of his plea agreement. He stated that he feels remorse for his actions, and that since his arrest and conviction related to this matter, he has not had any other trouble regarding his character, fraud, or white collar crime. The Respondent stated that for thirteen years and up until a month prior to the hearing when he switched offices, he was working as a real estate agent, and he was not aware of any complaints against him from clients or business associates.

² The Respondent was convicted of Theft by Unlawful Taking in the third degree, in violation of N.J.S.A. 2C:20-3 and Theft by Deception in the third degree, in violation of N.J.S.A. 2C:20-4.

On cross examination, RO Gallina inquired into the circumstances of how the Respondent's scheme became known. Specifically, RO Gallina stated that Exhibit S-1, the Respondent's Judgment of Conviction in the Superior Court of New Jersey, Somerset County, provided that the consumer became aware that the Respondent completed unauthorized work on the properties because the work repaired or installed by the Respondent was leaking. RO Gallina stated that the consumer then determined that the company that was paid to do the work was not the company that did the work.³ Mr. Davidson then stated that RO Gallina's description of the events was also his understanding of the events. Mr. Davidson also stated that since the Respondent's maintenance company did not actually win the bid to perform the work, the Respondent was not given the opportunity to repair the issues that arose. It was then pointed out by RO Gallina that Exhibit S-1's recount of the circumstances underlying the Respondent's convictions contradicts the Respondent's previous testimony where he stated that the work he performed was satisfactorily completed and that there was no detriment incurred by the properties by him completing the work instead of the winning bidder. The Respondent stated that the problems with the work occurred after job was completed. Mr. Davidson advised the Commission that the Respondent does not know the extent of the problems with the leaks that occurred as the Respondent was not given the opportunity to inspect the work and determine the

³ Exhibit S-1 provides that "On March 26, 2014, Somerset County Prosecutor's Office Investigators met with Mr. Scheffer, President of Access Property Management. It was reported that one of the properties (Far Hills Polo Club) had work done on their chimneys previously; invoices were submitted by McPuff Chimney Services, LLC in 2012 and 2013 for completing the work. Mr. Scheffer recently contacted McPuff Chimney Services in regards to any type of warranty on the work that they had completed as some of the buildings had chimneys that were leaking. It was confirmed with McPuff Chimney Services that they had never performed work at the Polo Club. Mr. Scheffer informed investigators that the co-defendant, G.B., was the property manager at the Polo Club at the time the chimneys were reportedly worked on and was responsible for ensuring that proper repair work was done to the facility. It was determined through further investigation that the co-defendant had permitted an unauthorized contractor to do chimney work at the Polo Club and had fraudulently reported that McPuff Chimney services had completed the work. It was also confirmed that numerous checks, for repair work, were deposited into accounts belonging to the [Respondent]."

exact cause of the alleged problems.⁴ He stated that the Respondent does not know whether the alleged problems related to workmanship or a defect in the products installed. Moreover, Mr. Davidson stated that the Respondent was only aware that the leaks were minor and were fixable.

On further cross-examination, the Respondent testified that the incident at issue took place during the last quarter of the 2014 calendar year when he was 37 years old. He further stated that during that time while employed in the real estate industry he started a maintenance services company, All Purpose Property and Estate, in order to earn extra income. The Respondent testified that his business was registered with the New Jersey Division of Community Affairs and was insured. He has since completely disbanded his maintenance company.

At the time of the incident, All Purpose Property and Estate entered into cleaning contracts, minor repairs, and storm clean-up jobs, which the Respondent saw as a viable business opportunity. The Respondent testified that the incident at issue arose from his maintenance service company performing work for the Far Hills Polo Club ("Polo Club"). He further stated that he knew the onsite property manager for the Polo Club because the Respondent had contracted to perform work for the Polo Club in the past. The Respondent stated that he submitted a bid to the Polo Club for his maintenance company to complete the chimney repairs, but it was not the winning bid. He testified that the onsite property manager was looking for extra money and advised the Respondent that for a fee, the onsite property manager would make sure that the Respondent's maintenance company would be contracted to do the work at the Polo Club, in spite of the fact that the Respondent lost the bid.

⁴ Mr. Davidson stated that "the properties" alleged problems with the work completed by the Respondent. It is unclear from Mr. Davidson's statements to whom he is referring.

The Respondent was asked if he submitted invoices to the Polo Club under another name in order to lead the Polo Club to believe that the bid winner was providing the services, rather than the Respondent. The Respondent advised that the onsite property manager “had a hand in a lot of that,” and at the direction of the property manager, he registered his company under a “d/b/a” name, which he believes was “McPuff Chimney.” The Respondent testified that he never submitted invoices for the work he performed for the Polo Club. He stated that he was paid by check for the work he completed, but the payments received were based upon the original estimate and bid. The Respondent was unsure of how the onsite property manager was able to justify the disbursements to the Respondent or whether there was a “paper trail” related to same.

The Respondent testified that he learned of the problem with the work he completed for the Polo Club when the owner of the property management company⁵ contacted him. He stated that the owner of the property management company questioned him on how he won the bid and he was subsequently contacted by Prosecutor’s Office. The Respondent stated that the criminal case resulted in the Respondent making restitution and being placed on probation. He currently has one and a half years remaining and reports to his probation officer once per month. The Respondent testified that he has not been assessed any fines as a result of the conviction.⁶

Respondent stated that he has not had any other criminal convictions or arrests and did not have any social conditions, such as substance abuse, depression, etc. that contributed to his conviction. Through further questioning, however, the Respondent admitted that he had

⁵ The Respondent testified that the agreement to circumvent the bidding process was entered into between the onsite property manager and himself. The owner of the management company, Access Property Management, is a separate individual apart from the onsite property manager.

⁶ The Judgment of Conviction sets forth that the Respondent’s Restitution was in the amount of \$23,361.22 and his “Total Financial Obligation” is \$23,641.22, which accounts for \$280 in fees and penalties.

previous arrests in 1997, which occurred prior to him being licensed as a New Jersey real estate salesperson and a New Jersey real estate broker. The Respondent stated that on his initial application to become a real estate salesperson in 2003 he failed to disclose his previous convictions for municipal ordinance violations in New Jersey and convictions for criminal offenses in Pennsylvania.⁷ The Respondent testified that he did not disclose this information on his initial licensure application because the offenses occurred when he was a minor. He later admitted that he was actually 18 years old at the time of these prior convictions. RO Gallina then advised the Commission that the Respondent entered into a Voluntary Consent Order with the REC in 2010, which related to his failure to disclose these prior convictions on his real estate broker's licensure application.⁸ The Respondent testified that he does not remember having to pay a fine relating to the Voluntary Consent Order. RO Gallina advised the Commission that a payment of \$1,000 was received relating to same.

Mr. Davidson advised the Commission that the hearing in this matter was prompted by the Respondent disclosing his arrest and subsequent conviction by answering truthfully on his most recent New Jersey real estate license renewal questionnaire. Although the Respondent admitted that he did not affirmatively inform the REC of his arrest and conviction when they occurred, he later testified that after he was arrested, he communicated with REC investigator

⁷ Exhibit S-1 provides that “[a] review of the [Respondent’s] criminal history reveals: He has no known prior identifiable juvenile offense history. As an adult, the defendant has on the Municipal Court level, in New Jersey, the [Respondent] has been convicted of six local ordinance violations, the majority of which were soliciting-related. The [Respondent] was subsequently fined. The [Respondent] has been convicted on four occasions in Pennsylvania; the charges include Simple Assault, Theft, Receiving Stolen Property, Conspiracy, and Possession of Marijuana. The [Respondent] experiences jail time, probation and fines. He received two Violations of Probation. The present offense constitutes the [Respondent’s] first indictable conviction. The [Respondent] applied for PTI on August 28, 2014; his application was denied due to his criminal history which showed a pattern of arrests for financially motivated crimes.”

⁸ RO Gallina stated that she did not have a signed copy of the Voluntary Consent Order in the Respondent’s REC file; however she stated that the Voluntary Consent Order was mailed to the Respondent on July 21, 2010, and a \$1,000 fine was paid to the REC relating to the same Voluntary Consent Order. It is unclear from the testimony if the Respondent did, in fact, enter into a Voluntary Consent Order based upon his failure to disclose his previous criminal convictions on his real estate broker’s licensure application.

Clark Masi (“Masi”), via telephone, email, and faxed letters. The Respondent further stated that he “periodically followed-up with [Masi] and as soon as the court case was over, [the Respondent] forwarded him all the information that was pertinent.” RO Gallina informed the Commission that the Respondent’s REC file contained a notation that the REC received a notification on July 1, 2014 that the Respondent was arrested in June 2014. Additionally, there was a notation that the REC received a notification that in January 2015 that the Respondent was convicted and sentencing would be imminent.

FINDINGS OF FACT

Based on the pleadings, the testimony of the Respondent, and the documentary evidence duly admitted into the record, the Commission makes the following findings of fact.

1. The Respondent was first licensed as a New Jersey real estate salesperson in 2003 and was subsequently licensed as a New Jersey real estate broker in 2010. As of the date of the OTSC, the Respondent was employed with RES Realty, LLC, d/b/a ReMax Properties Unlimited, whose main office is located at 143 Elmer Street, Westfield, New Jersey 07090. The Respondent submitted an application to the REC on August 14, 2016 in order to transfer his real estate broker-salesperson’s license. As of the date of the hearing, the Respondent’s real estate broker-salesperson’s license was not yet transferred, and the Respondent’s New Jersey real estate broker-salesperson’s license is currently inactive.
2. On or about June 25, 2014, the Respondent was arrested in relation to maintenance work he completed in 2012 and 2013 for the Far Hills Polo Club.
3. Specifically, the Respondent’s arrest and subsequent conviction stems from the Respondent and his co-defendant, an onsite property manager for the Far Hills Polo

- Club, entering into an agreement whereby the Respondent's maintenance company, an unauthorized contractor, performed chimney work at the Far Hills Polo Club by fraudulently reporting that McPuff Chimney Services, LLC had completed the work.
4. On or about August 12, 2014, the Respondent was indicted for one count of False Representation in the third degree, in violation of N.J.S.A. 2C:21-17A(2), one count of Assumes False Identity in the third degree, in violation of N.J.S.A. 2C:21-17(1), one count of Theft by Unlawful Taking in the third degree, in violation of N.J.S.A. 2C:20-3, one count of Tampering with Public Records or Information-Entry False in the third degree, in violation of N.J.S.A. 2C:28-7A(1), two counts of Forgery-False Issue in the third degree, in violation of N.J.S.A. 2C:21-1A(2), and one count of Theft by Deception in the third degree, in violation of N.J.S.A. 2C:20-4.
 5. On or about September 12, 2014, the Respondent pleaded guilty to one count of Theft by Unlawful Taking in the third degree, in violation of N.J.S.A. 2C:20-3, and one count of Theft by Deception in the third degree, in violation of N.J.S.A. 2C:20-4.
 6. On or about February 20, 2015, the Superior Court of New Jersey, Somerset County, issued a Judgment of Conviction against the Respondent on one count of Theft by Unlawful Taking in the third degree, in violation of N.J.S.A. 2C:20-3, and one count of Theft by Deception in the third degree, in violation of N.J.S.A. 2C:20-4. The Judgment of Conviction sentenced the Respondent to serve three years of probation and pay restitution of \$23,361.22, joint and several with his co-defendant. Restitution was to be made to the Far Hills Polo Club's property management company, Access Property Management. The Respondent was also responsible for paying additional fees in the amount of \$280.

7. On the Respondent's 2015-2017 New Jersey real estate real estate license renewal questionnaire, the Respondent indicated that he had been convicted a crime.

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 Respondent violated N.J.S.A. 45:15-17e by demonstrating unworthiness, bad faith, and dishonesty by entering into a scheme with the Far Hills Polo Club's onsite property manager, whereby the Respondent's maintenance company, an unauthorized contractor, performed chimney work for the Far Hills Polo Club by leading its property management company, Access Property Management, to believe that the work was actually completed by McPuff Chimney, LLC, which is the subject of his February 20, 2015 conviction for Theft by Unlawful Taking in the third degree and Theft by Deception in the third degree.

DETERMINATION AND ORDER

At the conclusion of the hearing and executive session in this matter, the Commission voted in favor of finding the violation and imposing the sanction described in this Final Decision and Order. In arriving at the determination in this matter, the Commission took into consideration the testimony presented, the credibility of the Respondent, and the undisputed documentary evidence admitted at the hearing.

The Real Estate License Act, N.J.S.A. 45:15-1 et seq. (“Act”), charges the Commission with the “high responsibility of maintaining ethical standards among real estate brokers and sales[persons]” in order to protect New Jersey real estate consumers. Goodley v. New Jersey Real Estate Commission, 29 N.J. Super. 178, 181-182 (App. Div. 1954). The nature and duties of a real estate business are grounded in interpersonal, fiduciary, and business relationships and demand the utmost honesty, trust, and good conduct. Maple Hill Farms, Inc. v. New Jersey Real Estate Commission, 67 N.J. Super. 223, 232 (App. Div. 1961); Division of New Jersey Real Estate Commission v. Ponsi, 39 N.J. Super. 526, 527 (App. Div. 1956). Courts have long recognized that the real estate sales industry should exclude individuals who are incompetent, unworthy, and unscrupulous, in order to protect the public interest. See Division of New Jersey Real Estate Commission v. Ponsi, Supra, 39 N.J. Super. at 532-533. Thus, the Commission has the power to suspend, revoke, or place on probation the license of any licensee for “any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty.” N.J.S.A. 45:15-17e.

The facts in this matter demonstrate that on or about August 13, 2014, the Respondent was indicted in the Superior Court of New Jersey, Somerset County, on one count of False Representation in the third degree, one count of Assumes False Identity in the third degree, one count of Theft by Unlawful Taking in the third degree, one count of Tampering with Public Records or Information-Entry False in the third degree, two counts of Forgery-False Issue in the third degree, and one count of Theft by Deception in the third degree. Moreover, on or about September 12, 2014, the Respondent pleaded guilty to one count of Theft by Unlawful Taking in the third degree and one count of Theft by Deception in the third degree; on or about February 20, 2015, a Judgment of Conviction was entered against the Respondent in the Superior Court of New Jersey, Somerset County, on one count of Theft by Unlawful Taking in the third degree, in

violation of N.J.S.A. 2C:20-3, and one count of Theft by Deception in the third degree, in violation of N.J.S.A. 2C:20-4.

The Respondent's deceitful and wrongful conduct which underlies his criminal convictions was serious in nature and demonstrated unworthiness, bad faith, and dishonesty, in violation of N.J.S.A. 45:15-17e. Specifically, the Respondent's conviction was based upon him entering into a scheme to defraud Access Property Management, the property management company responsible for the Polo Club. The Respondent testified that his bid to perform chimney work at the Polo Club was rejected and another company's bid was chosen. However, the Respondent stated that he entered into an agreement with the onsite property manager at the Polo Club, whereby the Respondent's company would be paid to perform the work instead of the winning bidder if the Respondent paid a fee to the onsite property manager.

The Judgment of Conviction provides that this onsite property manager permitted the Respondent's maintenance company "to do chimney work at the Polo Club and had fraudulently reported that McPuff Chimney Services had completed the work." While the Respondent testified that he did not submit invoices under McPuff Chimney Services' name, the Judgment of Conviction provides that "invoices were submitted by McPuff Chimney Services, LLC in 2012 and 2013 for completing the work [and i]t was confirmed with McPuff Chimney Services that they had never performed any work at the Polo Club."

Additionally, the Judgment of Conviction states that "[i]t was also confirmed that numerous checks, for repair work, were deposited into accounts belonging to the [Respondent]." In addition, the Respondent testified that in order to do the work at the Polo Club, he registered his maintenance company as "d/b/a/ McPuff Chimney," which he said was suggested by the onsite property manager. Accordingly, the Respondent engaged in a fully thought-out scheme to

defraud that lasted between the years of 2012-2013, and purposely deceived the Polo Club's property management company in order to receive funds for completing a job that the Respondent was unauthorized to perform.

N.J.S.A. 45:15-19.1 compels the Commission to revoke the license of a licensee if said licensee is "convicted in a court of competent jurisdiction in the State of New Jersey or any state (including federal courts) of forgery, burglary, robbery, any theft or related offense with the exception of shoplifting, criminal conspiracy to defraud, or other like offenses. . . ." Here, as noted above, on or about September 12, 2014, the Respondent pleaded guilty and on or about February 20, 2015, a Judgment of Conviction was entered against the Respondent in the Superior Court of New Jersey, Somerset County, on one count of Theft by Unlawful Taking in the third degree, in violation of N.J.S.A. 2C:20-3, and one count of Theft by Deception in the third degree, in violation of N.J.S.A. 2C:20-4. N.J.S.A. 2C:20-3 provides that "A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof." Moreover, N.J.S.A. 2C:20-4 provides that:

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

- a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind, and including, but not limited to, a false impression that the person is soliciting or collecting funds for a charitable purpose; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
- b. Prevents another from acquiring information which would affect his judgment of a transaction; or
- c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be

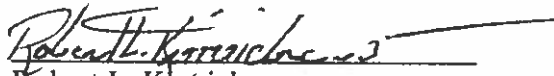
influencing another to whom he stands in a fiduciary or confidential relationship.

Pursuant to the terms of N.J.S.A. 2C:20-3 and N.J.S.A. 2C:20-4, both are theft offenses, which are not considered shoplifting offenses. As the Respondent pleaded guilty to and was convicted of two theft offenses in this State, N.J.S.A. 45:15-19.1 compels the revocation of the Respondent's real estate license.

Accordingly and pursuant to N.J.S.A. 45:15-17e and N.J.S.A. 45:15-19.1, the Commission imposes the following sanction: Respondent Christopher Koller's New Jersey real estate broker-salesperson's license shall be revoked for a period of five years commencing from the date of his convictions for Theft by Unlawful Taking and Theft by Deception on February 20, 2015. Respondent Koller shall not be eligible for any real estate license during the period of revocation.

SO ORDERED this 1st day of May, 2017.

By: Linda Stefanik, President
Denise Illes, Commissioner
Michael Timoni, Commissioner


Robert L. Kinziebrew
Executive Director
New Jersey Real Estate Commission

AV Koller REC Final Order/Orders