

NEW JERSEY REAL ESTATE COMMISSION

)	Docket No.: MID-19-009
NEW JERSEY REAL ESTATE)	REC Ref No.: 10007073
COMMISSION,)	
)	
Complainant,)	
)	
v.)	FINAL ORDER OF
)	DETERMINATION
MARCUS JONES, licensed New Jersey)	
Real salesperson (Ref. No. 1538586),)	
)	
Respondent.)	

THIS MATTER was heard at a plenary hearing by the New Jersey Real Estate Commission (“Commission”) by video conference in accordance with P.L. 2020, c. 11 on September 14, 2021.

BEFORE: Commissioners Linda K. Stefanik, Eugenia K. Bonilla, Christina Banasiak, Darlene Bandazian, Jacob Elkes, and William Hanley.

APPEARANCES: John Rossakis, Regulatory Officer (“RO Rossakis”), appeared on behalf of the New Jersey Real Estate Commission staff (“REC”). Respondent Marcus Jones (“Respondent”) did not appear at the hearing.¹

STATEMENT OF THE CASE

¹ The Respondent submitted an answer, which indicated that he was represented by an attorney, Adam J. Elias of Elias & Gonzalez, LLC. The hearing in this matter was originally scheduled for May 18, 2021. However, neither the Respondent nor his attorney appeared at the hearing, and the matter was carried to another date. The matter was rescheduled, upon notice to the parties, to September 14, 2021. The Respondent and his attorney again failed to appear at the second hearing date. As a result, a motion was made, and passed, to allow the REC staff to proceed on an ex-parte basis, pursuant to N.J.A.C. 1:1-14.4(b).

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated April 16, 2019, pursuant to N.J.S.A. 45:15-17, N.J.S.A. 45:15-18, and N.J.A.C. 11:5-1.1.

The OTSC sets forth two Counts, each asserting multiple violations of the Real Estate Brokers and Salespersons Act, N.J.S.A. 45:15-1 to 42 (the “Act”). In Count One, the violations alleged against the Respondent were as follows:

- (1) failure to notify the REC that he had been charged with Theft by Deception within 30 days, in violation of N.J.S.A. 45:15-17(s);
- (2) procuring a real estate salesperson’s license by fraud, misrepresentation or deceit by falsely representing in his 2017 license renewal application questionnaire that he had never had a professional license revocation when, in fact, his insurance producer’s license was revoked in July 2015, in violation of N.J.S.A. 45:15-17(n);
- (3) making substantial misrepresentations (a) by falsely representing in his license renewal application that he had never had a professional license revocation, (b) by falsely representing in his license transfer application that he had never had a professional license revocation and (c) not disclosing in his license transfer application his acceptance into the Pre-Trial Intervention (“PTI”) Program; in violation of N.J.S.A. 45:15-17(a);
- (4) demonstrating unworthiness, incompetency, bad faith or dishonesty and engaging in conduct that constitutes fraud or dishonest dealing (a) by falsely representing in his license renewal application that he had never had a professional license revocation, (b) by falsely representing in his license transfer application that he had never had a professional license revocation, (c) not disclosing in his license transfer application his acceptance into the Pre-Trial Intervention (“PTI”) Program and (d) by engaging in the underlying conduct that

resulted in the revocation of his insurance producer's license; in violation of N.J.S.A. 45:15-17(e) and (l); and

(5) failing to demonstrate good moral character, honesty, integrity and trustworthiness (a) by falsely representing in his license renewal application that he had never had a professional license revocation, (b) by falsely representing in his license transfer application that he had never had a professional license revocation, (c) not disclosing in his license transfer application his acceptance into the Pre-Trial Intervention ("PTI") Program and (d) by engaging in the underlying conduct that resulted in the revocation of his insurance producer's license; in violation of N.J.S.A. 45:15-9.

In Count Two, the violations alleged against the Respondent were as follows:

(6) making substantial misrepresentations and pursuing a flagrant and continued course of misrepresentation by representing himself to tenants and others during a three month period as the owner and landlord of certain real property when, in fact, he was never the legal owner of said property, in violation of N.J.S.A. 45-17(a) and (c);

(7) demonstrating unworthiness, incompetency, bad faith or dishonesty and engaging in conduct that constitutes fraud or dishonest dealing by engaging in the underlying conduct that resulted in the criminal charge of Theft by Deception, in violation of N.J.S.A. 45:15-17(e) and (l); and

(8) failing to demonstrate good moral conduct, honesty, integrity and trustworthiness by engaging in the underlying conduct that resulted in the criminal charge of Theft by Deception, in violation of N.J.S.A. 45:15-9.

The Respondent filed an Answer to the OTSC, wherein, in general, he neither admitted nor denied the factual allegations set forth in the OTSC nor objected to the findings insofar as they

called for a legal conclusion. On June 11, 2019, the Commission reviewed the pleadings, deemed the case contested, and directed that a hearing be scheduled. A hearing before the Commission was ultimately conducted on September 14, 2021.

At the hearing, the following documents were submitted and entered into evidence, without objection:

Order to Show Cause, N.J.R.E.C. v. Marcus Jones, Docket No. MID-19-009, dated April 16, 2019

Answer filed in response to Order to Show Cause, N.J.R.E.C. v. Marcus Jones, MID-19-009, dated June 7, 2019

- S - 1 New Jersey Department of Banking and Insurance, Division of Insurance, Certification of Licensed Status for Marcus Jones, dated March 1, 2019
- S - 2 New Jersey Department of Banking and Insurance, Division of Insurance, Consent Order, In the Matter of: Proceedings by the Commissioner of Banking and Insurance of New Jersey to revoke the insurance license of Marcus Jones, Reference No. 1483402, Order No. E15-74, effective date of July 16, 2015
- S - 3 New Jersey Real Estate Commission, 2017 real estate license renewal Qualifying Questionnaire question text and responses by Marcus Jones
- S - 4 New Jersey Real Estate Commission application for transfer of salesperson license submitted by Marcus Jones, signature date of January 11, 2019 (received by staff January 17, 2019)
- S - 5 New Jersey Real Estate Commission application for transfer of salesperson license submitted by Marcus Jones, signature date of January 11, 2019 (received by staff January 22, 2019)
- S - 6 Discrepancy letter submitted by Marcus Jones, via email dated February 7, 2019
- S - 7 New Jersey Real Estate Commission, Denial of Application for Transfer of Real Estate Salesperson License, dated April 16, 2017
- S - 8 Certified Home Investors LLP, Amendment to Operating Agreement, dated December 31, 2016
- S - 9 Winning bidder confirmation and Purchase and Sale Agreement for 966 Bergan Avenue, North Brunswick, New Jersey 08861, dated May 5, 2017

- S - 10 Lease agreement for 966 Bergan Avenue, North Brunswick, New Jersey 08861, between landlord Certified Home Investors LLP and tenant Migor Patria-Jimenez, effective date of May 2, 2017
- S - 11 Middlesex County Sheriff's Office, Arrest Report and Investigative Narrative, Dept. Case No. 516-17, submitted by Lt. Thomas Farrell, dated September 1, 2017
- S - 12 New Jersey Real Estate Commission, Arrest Notification Letter, dated October 3, 2017
- S - 13 Superior Court of New Jersey, Middlesex Vicinage, Pretrial Intervention Order of Postponement, State of New Jersey v. Marcus Jones, dated March 29, 2018
- S - 14 Capital One Bank Cashier's Check No. 9102963850, dated August 30, 2017
- S - 15 Proof of Service of Hearing Scheduling Letter

TESTIMONY OF THE WITNESSES

Gwendolyn Cobb

Gwendolyn Cobb ("Cobb") testified that she is the supervisor of licensing at the REC and has worked with the Department of Banking and Insurance for nineteen years. She confirmed that Exhibit S-3 accurately sets forth the questions contained on the 2017 license renewal application and Respondent's responses thereto. Further, Cobb testified that it was not possible for someone other than the applicant to answer the questions on the application because the applicant must execute a certification as part of the application questionnaire.

William Ames

William Ames ("Ames") testified that he has been an investigator with the REC for over nine years, and that prior to that employment he worked for the New Jersey State Police for 27 years. He also testified that he was not the original investigator of this matter but had reviewed the file in its entirety as well as the evidence contained therein.

Ames reviewed and identified Exhibit S-1 as a certification of the status of the Respondent's insurance producer's license. He testified that the certification indicated that the

initial active date of the Respondent's producer license was October 26, 2012 and the cancellation date was November 30, 2014, which was the date his license expired due to non-renewal. Further, Ames testified that the certification indicated that the insurance license was then revoked on July 16, 2015 as a result of Consent Order No. E15-74 (Exhibit S-2), which barred the Respondent from applying for an insurance producer's license for a period of five years. Ames testified that, while licensed, the Respondent had used false addresses to lower insurance premiums on over 100 automobile insurance policies that he had generated which caused Farmers Insurance Company to suffer an annual premium loss of \$85,969.00 as well as a potential loss of \$120,894.00 through additional discrepancies found in policy garaging and mailing addresses.

Ames also identified Exhibit S-3 as accurately setting forth the text of the 2017 real estate salesperson's licensing renewal questionnaire. Ames testified that Question #3 asked "Since your last New Jersey real estate license was issued or renewed, have you had a real estate or other professional license, certification or similar right to engage in real estate brokerage or any other business or profession, revoked, denied, suspended or restrained by any government authority, surrendered in lieu of formal prosecution, in this state, any other state, or by the federal government?" Ames verified that the Respondent had answered "No" to this question.

Ames then identify Exhibits S-4 and S-5 as being two separate license transfer applications submitted by the Respondent in January 2019, which contained identical questions. He testified that on the first transfer application (Exhibit S-4) received by the REC on or about January 17,

2019, the Respondent had answered “Yes” to Question #1² and “No” to Question #2³. However, on the second transfer application (Exhibit S-5) received by the REC on or about January 22, 2019, the Respondent answered “No” to Question #1 and “Yes” to Question #2, which contradicted his previous responses provided to the REC. Ames also testified that both license transfer applications contained the same Question #3⁴ to which Respondent had answered “No” on both license transfer applications.

Ames testified that the Respondent had submitted a letter to the previous case investigator, Clark Masi, explaining the discrepancies in his answers on the two transfer applications. (Exhibit S-6). Ames further testified that the Respondent stated in his letter that he had made a mistake on the first transfer application by incorrectly answering “Yes” to Question #1 because he had not been convicted of a crime, and then changed his answer on the second transfer application to admit that he had been charged with a crime. Ames also testified that the Respondent stated in his letter that he failed to disclose that he had another professional license revoked because his assistant filled out the application for him and she was unaware of the insurance license revocation. Ames then identified Exhibit S-7 as the REC’s letter sent to the Respondent denying his application for

² Question #1 asked “With the exception of motor vehicle violations, since your last New Jersey Real Estate License was last issued or renewed have you been convicted of a crime, misdemeanor, disorderly persons offense in the State of New Jersey, any other state or by the federal government, or are you presently on probation or parole?”

³ Question #2 asked “Is there a criminal complaint, disorderly persons charge, a criminal accusation or criminal information pending against you or are you presently under indictment in New Jersey, or any other State or by the federal government, or are you presently enrolled in New Jersey’s Pre-Trial Intervention (PTI) program, or any similar State, or Federal, program involving the deferral of the disposition or sentencing in a criminal matter?”

⁴ Question #3 asked “Have you ever had a real estate or other professional license, certification or similar credential revoked, suspended, surrendered in lieu of formal prosecution, or denied in New Jersey or any other state?”

a transfer of his license due to a failure to establish good moral character, honesty, trustworthiness and integrity to qualify for licensure pursuant to N.J.S.A. 45:15-9.

Ames identified Exhibit S-11 as a Middlesex County Sheriff Arrest Report and Investigation Narrative, dated September 1, 2017, which set forth the facts underlying the criminal charge filed against the Respondent of Theft by Deception in violation of N.J.S.A. 2C:20-4(c).⁵ . He testified that, according to the detective's summary, the Respondent and his business partner had agreed to purchase a property at an online auction, and prior to closing, the Respondent represented himself as the owner of the property to the current tenants and to the sheriff office staff, had entered into a lease agreement with the current tenants and collected rent for three months totaling \$6,000. Ames also testified that, according to said investigation report, the Respondent and his partner never closed on purchase of the property and thereafter Respondent made no attempts to forward the collected rent to the real owner of the property.

Ames then identified Exhibit S-12 as a letter from the REC to the Respondent advising that Respondent had failed to notify the REC within 30 days of the criminal charges being filed against him in violation of N.J.S.A. 45:15-17(s). Ames identified Exhibit S-9 as the purchase document from Auction.com indicating a tentative closing date of June 1, 2017. Further, Ames identified Exhibit S-10 as the lease agreement between the Respondent and the tenants dated May 2, 2017, one day after the online auction confirmation. Ames also identified Exhibit S-14 as the cashier's check in the amount of \$6,000.00 made out to the tenants from the Respondent for the returned rent payments which was issued August 30, 2017.

⁵ Under N.J.S.A. 2C:20-4(c), a person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely 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.

Ames testified that in the criminal matter, the Respondent was admitted into the Pre-Trial Intervention (“PTI”) program on or about March 29, 2018 because he was a first-time offender. (Exhibit S-13). Ames explained that the term of supervision imposed for the Respondent was 24 months and that since the Respondent had successfully completed that term, the case will be dismissed and no criminal conviction will be entered, but there will still be a record of the incident.

FINDINGS OF FACT

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

1. The Respondent was licensed as a New Jersey real estate salesperson on May 13, 2015, and was last licensed through JJ Elek Realty, Inc., a licensed New Jersey real estate broker whose office is located at 117 Main Street, Woodbridge, New Jersey 07095. The Respondent’s license has been in “Inactive” status since January 8, 2019.
2. Prior to becoming a licensed real estate salesperson, the Respondent was licensed by the New Jersey Division of Insurance as an insurance producer from October 26, 2012 until November 30, 2014, at which time his license expired due to non-renewal.
3. The Respondent entered into a Consent Order with the New Jersey Commissioner of Banking and Insurance (Order No. E15-74) on July 16, 2015, wherein the Respondent admitted to violating numerous provisions of the New Jersey Insurance Producer Licensing Act of 2001 and agreed to the revocation of his insurance producer’s license. The Respondent is barred from re-applying for such license for a period of five years.
4. The Respondent did not disclose the pending investigation nor the enforcement action taken by the New Jersey Division of Insurance concerning his insurance producer’s license during the process of applying to renew his license as a real estate salesperson in 2017.

5. On or about April 3, 2017, the Respondent completed the qualifying questionnaire required for the renewal of his real estate license for the 2017-2019 licensing term and falsely answered “No” in response to Question #3, which asked “Since your last New Jersey real estate license was issued or renewed, have you had a real estate or other professional license, certification or similar right to engage in real estate brokerage or any other business or profession, revoked, denied, suspended or restrained by any government authority, surrendered in lieu of formal prosecution, in this state, any other state, or by the federal government?”.
6. On or about March 6, 2016, the Respondent and a business partner formed a limited liability partnership known as Certified Home Investors. LLP (“the Company”).
7. In May 2017, the Company participated in an online auction and agreed to purchase property located at 966 Bergen Avenue, North Brunswick, New Jersey 08902 (“the Property”), and the closing of title was preliminarily scheduled for June 4, 2017.
8. Prior to closing on the purchase of the Property, Respondent represented himself as the owner of the Property to the current tenants of the Property and presented them with a leasing agreement which identified him as the landlord on behalf of the Company.
9. On or about May 2, 2017, Respondent and the current tenants executed a “Standard NJ Lease Agreement” wherein Respondent signed as the “Landlord” and set forth a month rental charge of \$2,000. Respondent personally collected rent from the current tenants for the months of May 2017 through July 2017 in the total amount of \$6,000.
10. Prior to closing on the purchase of the Property, Respondent represented himself as the owner of the Property to the staff of the Middlesex County Sheriff’s Department for the

purpose of securing the adjournment of a pending eviction action in connection with the Property.

11. The Company never completed the closing of title on the Property and therefore neither the Company nor Respondent ever acquired legal ownership of the Property.
12. Neither the Company nor the Respondent remitted the \$6,000 collected in rental proceeds to the legal owner of the Property.
13. In August 2017, upon having received notice of the pending eviction action, the tenants filed a criminal complaint with the Middlesex County Sheriff's Office against the Respondent.
14. By cashier's check dated August 20, 2017, the Respondent returned the \$6,000 collected for rental payments to the tenants.
15. On or about September 1, 2017, the Respondent was arrested and charged with one count of Theft by Deception in violation of N.J.S.A. 2C:20-4(c) for collecting rent from the tenants by giving a false impression that he was the owner of the Property and not correcting same.
16. The Respondent failed to notify the REC of the criminal charges filed against him within 30 days.
17. On or about March 29, 2018, the Respondent was accepted into the PTI program for a period of 24 months, which Respondent successfully completed on or about March 28, 2020 whereupon no conviction was entered on the charge of Theft by Deception.
18. In January 2019, Respondent submitted to the REC two separate license transfer applications which contained conflicting and false answers to the identical questions set forth on the application questionnaire.

19. On or about January 17, 2019, the REC received an application for the transfer of licensure on behalf of the Respondent (“First Transfer Application”). As part of the application, the Respondent completed a questionnaire and falsely answered “No” in response to Question #2, which asked “Is there a criminal complaint, disorderly persons charge, a criminal accusation or criminal information pending against you or are you presently under indictment in New Jersey, or any other State or by the federal government, or are you presently enrolled in New Jersey’s Pre-Trial Intervention (PTI) program, or any similar State, or Federal, program involving the deferral of the disposition or sentencing in a criminal matter?”
20. As part of the First Transfer Application, the Respondent also falsely answered “No” in response to Question #3 which asked “Have you ever had a real estate or other professional license, certification or similar credential revoked, suspended, surrendered in lieu of formal prosecution, or denied in New Jersey or any other state?”
21. On or about January 22, 2019, the REC received a second application for the transfer of licensure on behalf of the Respondent (“Second Transfer Application”). As part of the application, the Respondent completed a questionnaire and falsely answered “No” to Question #3 which asked “Have you ever had a real estate or other professional license, certification or similar credential revoked, suspended, surrendered in lieu of formal prosecution, or denied in New Jersey or any other state?”
22. By letter dated April 16, 2019, the REC advised the Respondent that his application for transfer of licensure was denied due to failure to disclose the revocation of his insurance producer’s license.

CONCLUSIONS OF LAW

Considering the above findings of fact, the Commission makes the following conclusions of law regarding the violations alleged in the OTSC and summarized above:

1. The Respondent violated N.J.S.A. 45:15-17(s) in that he failed to notify the Commission that he had been charged with Theft by Deception within 30 days.
2. The Respondent violated N.J.S.A. 45:15-17(n) in that he had procured a real estate salesperson's license by fraud, misrepresentation or deceit by falsely representing in his license renewal application that he never had a professional license revocation when, in fact, his New Jersey insurance producer's license had been revoked on or about July 16, 2015;
3. The Respondent violated N.J.S.A. 45:15-17(a) and N.J.S.A. 45:15-17(c) in that he had made substantial misrepresentations and pursued a flagrant and continued course of misrepresentation (a) by falsely representing in his license renewal application that he had never had a professional license revocation, (b) by falsely representing in his license transfer application that he had never had a professional license revocation, (c) not disclosing in his license transfer application his acceptance into the Pre-Trial Intervention ("PTI"); and (d) falsely representing to the tenants and law enforcement officials that he was the owner of the Property during period of three months;
4. The Respondent violated N.J.S.A. 45:15-17(e) and (l) in that he demonstrated demonstrating unworthiness, incompetency, bad faith or dishonesty and engaged in conduct that constitutes fraud or dishonest dealing (a) by falsely representing in his license renewal application that he had never had a professional license revocation, (b) by falsely representing in his license transfer application that he had never had a

professional license revocation, (c) by not disclosing in his license transfer application his acceptance into the Pre-Trial Intervention (“PTI”); (d) by falsely representing to the tenants and law enforcement officials that he was the owner of the Property during period of three months; (e) by engaging in the conduct underlying the criminal charges filed against him; and (f) by engaging in the conduct underlying the revocation of his insurance producer’s license;

5. The Respondent violated N.J.S.A. 45:15-9 by failing to demonstrate that he possesses the requisite good moral character, honesty, integrity, and trustworthiness that all licensees must possess (a) by falsely representing in his license renewal application that he had never had a professional license revocation, (b) by falsely representing in his license transfer application that he had never had a professional license revocation, (c) by not disclosing in his license transfer application his acceptance into the Pre-Trial Intervention (“PTI”); (d) by falsely representing to the tenants and law enforcement officials that he was the owner of the Property during period of three months; (e) by engaging in the conduct underlying the criminal charges filed against him; and (f) by engaging in the conduct underlying the revocation of his insurance producer’s license.

DETERMINATION

After the hearing and executive session in this matter, the Commission voted in favor of imposing the sanctions described in this Final Order of Determination. In arriving at the determination in this matter, the Commission took into consideration the testimony of the witnesses and the documentary evidence admitted during the hearing.

The REC bears the burden of proving the allegations in the OTSC by a preponderance of the competent, relevant, and credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962);

In re Polk, 90 N.J. 550, 560 (1982). The evidence must be such as would “lead a reasonably cautious mind to a given conclusion.” Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958). Preponderance may be described as “the greater weight of credible evidence in the case. It does not necessarily mean evidence of the greater number of witnesses but means that evidence which carries the greater convincing power.” State v. Lewis, 67 N.J. 47, 49 (1975).

Allegations Against the Respondent

Sufficient competent, relevant, and credible evidence has been presented demonstrating that the Respondent committed the violations set forth in Count One of the OTSC. It is uncontested that on July 16, 2015, Respondent’s New Jersey insurance producer’s license was revoked by Consent Order No. E15-74. (Exhibit S-2). It is also uncontested that in completing both his real estate license renewal application and his real estate license transfer applications, the Respondent denied that said license revocation had occurred and did not disclose same to the REC in violation of N.J.S.A. 45:15-17(n). (Exhibits S-3, S-4 and S-5). Finally, it is also uncontested that on September 1, 2017, Respondent was charged with Theft by Deception under N.J.S.A. 2C:20-4(c) and failed to notify the REC within 30 days thereof in violation of N.J.S.A. 45:15-17(s). (Exhibits S-11 and S-12). This conduct by the Respondent clearly constitutes a substantial misrepresentation as well as acts demonstrating unworthiness, bad faith, dishonesty, fraud, deceit and a lack of good moral character in violation of N.J.S.A. 45:15-17(a), N.J.S.A. 45:15-17(e), N.J.S.A. 45:15-17(l) and N.J.S.A. 45:15-9.

Moreover, sufficient competent, relevant, and credible evidence has been presented demonstrating that the Respondent committed the violations set forth in Count Two of the OTSC. As stated in the testimony of REC investigator Ames and verified by the documentary evidence, Respondent falsely represented himself as the owner and landlord of 966 Bergen Avenue, North

Brunswick, New Jersey to the tenants occupying said property for purpose of collecting \$6,000 in rental payments and to the staff of the Middlesex County Sheriff's Office for the purpose of getting an eviction case adjourned. (Exhibits S-10 and S-11). In addition, it is uncontested that as a consequence of giving this false impression and then failing to correct same over a three month period, the Respondent was charged with Theft by Deception under N.J.S.A. 2C:20-4(c). (Exhibit S-11). Moreover, in completing his real estate license transfer applications, the Respondent denied that he was then participating in the PTI program and did not disclose same to the REC. (Exhibit S-4 and Exhibit S-5). These acts by the Respondent clearly constituted a substantial misrepresentation and a continued course of misrepresentation as well as demonstrated unworthiness, bad faith, dishonesty, fraud, deceit and a lack of good moral character in violation of N.J.S.A. 45:15-17(a), N.J.S.A. 45:15-17(c), N.J.S.A. 45:15-17(e), N.J.S.A. 45:15-17(l) and N.J.S.A. 45:15-9.

Penalty Against the Respondent

The 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 Commission is empowered to suspend and revoke the licenses of, and impose fines against, brokers and salespersons that violate any of the offenses enumerated in N.J.S.A. 45:15-17 or the real estate regulations. 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 Div. of New Jersey Real Estate

Commission v. Ponsi, 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. 45:15-17(e). N.J.S.A. 45:15-17 further states that

if a licensee is deemed to be guilty of a third violation of any of the provisions of this section, whether of the same provision or of separate provisions, the commission may deem that person a repeat offender, in which event the commission may direct that no license as a real estate broker, broker-salesperson, or salesperson shall henceforth be issued to that person.

Here, the Respondent’s conduct indicates a pattern of dishonesty and material misrepresentations so prevalent that it rises to the level of bad faith and unworthiness for licensure. The Respondent’s conduct demonstrated a lack of good judgment as well as a complete disregard for the real estate laws of this State. Given the seriousness of the Respondent’s actions and the sheer volume of violations proven by witness testimony and documentary evidence presented, the Commission determined that the Respondent’s conduct was not isolated and thus considers him a repeat offender who presents a great risk to the public. Indeed, the Respondent used his license in the insurance and real estate industries to lie and defraud consumers and companies alike. Once his insurance producer’s license was revoked due to fraud and dishonest dealing, he then focused his unlawful efforts on the real estate market and not only lied to the REC on multiple occasions, but also lied to the tenants so that he could unlawfully collect their rent money. The Respondent’s unlawful and improper actions were not isolated, but rather were part of patterns practices, and schemes that were premeditated and pervasive. The Commission also takes notice that Respondent was given two separate opportunities to personally appear and present his defense against the allegations set forth in the OTSC and did not.

The Commission has determined that the Respondent's conduct rises to the level of unworthiness for licensure and finds that a lifetime revocation of any and all real estate licenses presently or formerly held by the Respondent is necessary and appropriate to protect the public. Moreover, the lifetime revocation of the Respondent's license is consistent with the Commission's decisions in similar matters. See NJREC v. Stinson, Bontigao, and Ward, Final Order of Determination, Dkt. No. CAM-13-023 (07/28/15) (the Commission imposed a lifetime revocation of any and all real estate licenses presently or formerly held by Respondents Stinson and Bontigao for, among other things, conduct demonstrating unworthiness, bad faith, dishonesty and fraud and also imposed a fine of \$25,000 against Stinson and a \$20,000 fine against Bontigao).

The Commission also finds that the Respondent's egregious conduct warrants the imposition of a monetary fine under the Act. Pursuant to N.J.S.A. 45:15-17, the Commission may impose "a penalty of not more than \$5,000 for the first violation" of the Act, and a "penalty of not more than \$10,000 for any subsequent violation." In Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), the Supreme Court established the following seven factors that must be considered in evaluating the imposition of fines in administrative proceedings: (1) the good or bad faith of the respondent; (2) the respondent's ability to pay; (3) the amount of profits obtained from the illegal activity; (4) the injury to the public; (5) the duration of the illegal activity or conspiracy; (6) the existence of criminal or treble actions; and (7) any past violations. Id. at 137-139.

The first Kimmelman factor is whether the Respondent acted in good or bad faith. The facts presented in this matter are undisputed. The Respondent knowingly lied to insurance companies about material information regarding his insurance clients. The Respondent also knowingly lied to the REC when seeking renewal and transfer of his license. The Respondent further knowingly lied to the tenants and law enforcement personnel. The Respondent's behavior

thus indicates a pattern of dishonesty and material misrepresentations so prevalent that it rises to the level of bad faith and unworthiness for licensure. Therefore, this factor weighs in favor of a monetary penalty.

The second factor of the Kimmelman analysis is the Respondent's ability to pay the fines assessed. Here, no evidence was presented as to the Respondent's ability or inability to pay the fines being assessed, and thus this factor is neutral.

The third factor of the Kimmelman analysis is the amount of profits obtained from the illegal activity. In this case, the Respondent paid back the rent money wrongfully collected from the tenants and there is no evidence that Respondent received any other direct financial benefit related to the lease agreement. While the Respondent had obtained a real estate salesperson's license in 2017 under false pretenses when he lied on his renewal application, no evidence of his income earned from any real estate transactions completed between 2017 and 2019 was presented and thus it cannot be determined what profit, if any, Respondent obtained from his illegal activities.

The fourth factor of the Kimmelman analysis is to determine whether the licensee's conduct caused injury to the public. The public is harmed when licensed professionals fail to maintain the level of honesty and trustworthiness demanded under the laws of this State. It is the responsibility of the Commission to ensure that individuals who hold licenses demonstrate behavior which instills the utmost public trust. The record here is undisputed and shows that the Respondent lied to insurance companies which resulted in them receiving reduced premium payments and incurring other costs. Moreover, Respondent lied to tenants who were deceived into executing a lease agreement and paying \$6,000 to Respondent which he was not lawfully entitled to collect. The injury to the public caused by Respondent's conduct is undeniable and this factor weighs in favor of a monetary penalty.

The fifth factor in a Kimmelman analysis is the duration of the illegal conspiracy or scheme. The evidence presented indicates that the Respondent's conduct was not an isolated occurrence. The Respondent repeatedly lied to and misled members of the public as well as the Commission during the entire four years he was improperly licensed as a real estate salesperson and there was a three month period that Respondent falsely represented that he owned the Property which lead to the charge of Theft by Deception. Prior to that, for three months in 2013, the Respondent engaged in a pattern of fraudulent insurance practices that led to thousands of dollars of lost insurance premiums. Thus, this factor weighs in favor of a monetary penalty.

The sixth factor relates to whether there criminal or treble penalties imposed. The existence of criminal actions and the imposition of a civil penalty may be unduly punitive if other sanctions have been imposed is the sixth factor. The Supreme Court held in Kimmelman that a lack of criminal punishment weighs in favor of a more significant civil penalty because the defendant cannot argue that he or she has already paid a price for his or her unlawful conduct. Kimmelman, supra, 108 N.J. at 139. Here, the Respondent was arrested on the charge of Theft by Deception, but there is no criminal conviction and no imposition of any criminal or civil monetary penalty. As such, this factor does weigh in favor of a monetary penalty being imposed in this proceeding.

The seventh and final factor takes into consideration the Respondents' past violations, of which there are none. No evidence of any past REC violations by the Respondent was presented at the hearing and therefore this factor does not weigh in favor of a monetary penalty.

In light of these Kimmelman factors, which on balance weigh heavily in favor of imposing a monetary fine, the Commission finds that it is appropriate that the Respondent shall pay the fine in the amount set forth below. This monetary penalty is fully warranted by the facts, not excessive

or unduly punitive, and is necessary to demonstrate the appropriate level of opprobrium for the Respondent's egregious conduct.

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

1. Respondent Marcus Jones shall pay a fine of \$7,500.
2. The Commission imposes lifetime revocation of any and all real estate licenses presently or formerly held by Respondent Marcus Jones.

SO ORDERED this 15th day of June, 2022.

By: Linda K. Stefanik, Commissioner
Eugenia K. Bonilla, Commissioner
Christina Banasiak, Commissioner
Darlene Bandazian, Commissioner
Jacob Elkes, Commissioner
William Hanley, Commissioner

DocuSigned by:

5D4CC978B509402...

Eugenia K. Bonilla, President
New Jersey Real Estate Commission

06/15/22 | 8:24 AM EDT

Final Orders-REC/Final Orders/LC Jones REC FO