

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE)	Docket No.: REC-E-21-001
COMMISSION,)	REC Ref No.: 10010302
)	
Complainant,)	
v.)	
)	
YANIRA GUZMAN, licensed New Jersey)	FINAL DECISION AND ORDER
real estate broker (0121456) and broker of)	
record of GG POWERHOUSE REALTY)	
LLC, licensed New Jersey real estate broker)	
(1972712),)	
)	
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 February 8, 2022.¹

BEFORE: Commissioners Eugenia K. Bonilla, Christina Banasiak, Darlene Bandazian and Denise M. Illes.²

APPEARANCES: John Rossakis, Regulatory Officer (“RO Rossakis”), appeared on behalf of the New Jersey Real Estate Commission staff (“REC”). Yanira Guzman (“Respondent”), broker of record of GG Powerhouse Realty LLC (“GG Powerhouse Realty”), did not appear or otherwise respond despite proper service of the letter scheduling this hearing.

¹ The meeting was conducted via Zoom. All those participating participated via Zoom.

² Commissioner Elkes was in attendance at the start of this matter on February 8, 2022, but left the meeting during the REC’s presentation. Commissioner Elkes did not vote in this matter.

STATEMENT OF THE CASE

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated March 15, 2021, 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 to -12.18.

The OTSC alleged the following:

The Respondent engaged in unlicensed real estate brokerage activity by preparing a contract of sale for 1824 Lincoln Avenue, Pompton Lakes, New Jersey (“Subject Property”) as a representative of iRealty Group LLC (“iRealty Group”), which was not a licensed real estate broker, and while she was licensed with Fathom Realty NJ LLC (“Fathom Realty”) as a broker-salesperson, in violation of N.J.S.A. 45:15-1 and 45:15-3;

The Respondent failed to deposit the funds of others coming into her possession as an escrow agent in a real estate transaction into an escrow account and failed to turn over those funds to her employing broker for deposit into an escrow account, in violation of N.J.S.A. 45:15-17(o);

The Respondent failed to account for or pay over monies belonging to others coming into her possession as a licensee, in violation of N.J.S.A. 45:15-17(d);

The Respondent failed to comply with a duly issued subpoena issued by the REC and failed to provide documents which were requested to be produced, which conduct demonstrated unworthiness, in violation of N.J.S.A. 45:15-17(e);

The Respondent failed to maintain an office open to the public, in violation of N.J.S.A. 45:15-12;

The Respondent attempted to collect a commission or valuable consideration for performing real estate brokerage activity from someone other than her employing broker, in violation of N.J.S.A. 45:15-17(m);

The Respondent engaged in a continued course of misrepresentations to the buyer in sale of the Subject Property when she assured him that the transaction was proceeding even after the property had been sold to another buyer, in violation N.J.S.A. 45:15-17(c); and

The Respondent conduct is in violation of N.J.S.A. 45:15-17(e), in that she demonstrated bad faith and dishonesty by collecting a deposit in a real estate transaction and converting it to her own use; and,

GG Powerhouse Realty is in violation of N.J.S.A. 45:15-12, in that they did not maintain an office open to the public.

The Respondent did not file an Answer to the OTSC. Accordingly, on May 11, 2021, the Commission reviewed the pleadings, deemed this matter uncontested and directed that a proof hearing be scheduled. The matter was scheduled to be heard on November 23, 2021, but that Commission meeting was cancelled. In subsequent communications between the Respondent and the REC, the Respondent requested, and was granted, the opportunity to submit a response to the OTSC. The REC sent a letter scheduling the hearing by certified mail, regular mail and email, dated January 12, 2022, wherein the REC notified the Respondent that this matter would be heard before the Commission on February 8, 2022.³ The return receipt was unclaimed but regular mail was not returned, constituting good service under N.J.A.C. 1:1-7.1(a). Pursuant to N.J.A.C. 1:1-14.4(d)⁴, the hearing proceeded as scheduled on February 8, 2022 at that time the Respondent had not submitted a response and did not appear before the Commission.

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

³ The January 12, 2022 letter was sent to Yanira Guzman by email at brokerguzman@gmail.com; and by certified and regular mail to: Yanira Guzman, Broker, c/o GG Powerhouse Realty at 102 Belmont Avenue, Garfield, New Jersey, 07026, and Yanira Guzman at 7 Luisser Street, Clifton, New Jersey, 07012.

⁴ N.J.A.C. 1:1-14.4(d) provides that if the appearing party requires an initial decision on the merits, the party shall ask the Commission for permission to present ex parte proofs. If no explanation for the failure to appear is received, and the circumstances require a decision on the merits, the Commission may enter an initial decision on the merits based on the ex parte proofs, provided the failure to appear is memorialized in the decision.

- S – 1: Commission License Certifications with History for Yanira Guzman, GG Powerhouse Realty, and iRealty Group, dated September 1, 2021;
- S – 2: Commission, Office Closing Affidavit for iRealty Group, signed by Yanira Guzman, dated November 28, 2018;
- S – 3: Handwritten complaint submitted to the REC by Mixharet Limani, dated December 11, 2019;
- S – 4: New Jersey Realtors® Standard Form of Real Estate Sales Contract, offer to purchase 1824 Lincoln Avenue, Pompton Lakes, New Jersey, signed by DZevdet Limani, dated April 29, 2019;
- S – 5: Cashier’s check issued by Capital One Bank, in the amount of \$20,000, payable to iRealty Group, dated April 29, 2019;
- S – 6: Email correspondence between Mixharet Limani and Yanira Guzman, dated April 22, 2019;
- S – 7: Property Tax records for 1824 Lincoln Avenue, Pompton Lakes, New Jersey, dated August 3, 2020;
- S – 8: Incident Report, Pequannock Township Police Department, Case Number 20-01659, dated January 20, 2020;
- S – 9: Check issued by TD Bank, in the amount of \$20,000, payable to DZevdet Limani, dated February 11, 2020;
- S – 10: Subpoena Duces Tecum, New Jersey Department of Banking and Insurance, Real Estate Commission, Investigation File #10010302; and Certification of Service;
- S – 11: Letter of Explanation submitted by Yanira Guzman, dated March 25, 2020;
- S – 12: Email correspondence between Investigator Robert McCloskey and Yanira Guzman, dated March 25, 2020
- S – 13: Photographs of the premises on file with the REC as the primary business address for GG Powerhouse Realty and Yanira Guzman, taken by Investigator McCloskey on February 6, 2020
- S – 14: Investigation Report, New Jersey Real Estate Commission, Investigation File #10010302, prepared by Investigator McCloskey, undated;

- S – 15: Certification of Service signed by Jennifer Payne, dated February 1, 2022; unclaimed Certified Letter Return Receipt for Scheduling Letter to Yanira Guzman, dated January 12, 2022; and
- S- 16: E-mail correspondence between RO Rossakis and Yanira Guzman, dated February 1, 2022, regarding the scheduling of the hearing on February 8, 2022.

TESTIMONY OF THE WITNESS

Sheila Young Golden

Sheila Young Golden (“Young Golden”) testified on behalf of the REC. Young Golden testified that she has been a REC investigator since January 2012 and had six years of prior experience investigating insurance enforcement matters at the Department of Banking and Insurance. Young Golden stated that this file was originally assigned to REC investigator Robert McCloskey (“McCloskey”), who has since retired. Young Golden stated that she had reviewed the Respondent’s file thoroughly.

Young Golden testified that she is familiar with the Respondent’s licensure history which was as follows: the Respondent is not currently licensed and had been inactive since June 30, 2021; the Respondent was last licensed as broker of record of GG Powerhouse Realty from August 27, 2019 to June 21, 2021; the Respondent was previously licensed as broker salesperson with Fathom Realty from December 12, 2018 to July 18, 2019; and the Respondent had been licensed as broker of record of iRealty Group from November 28, 2011 to October 28, 2018.⁵ Young Golden noted that the Respondent was licensed with Fathom Realty at the time the events in question took place.

Young Golden noted that the Respondent filed an Office Closing Affidavit (“Affidavit”) for iRealty Group, dated November 28, 2018. Young Golden stated that a broker closing their real

⁵ Young Golden noted that the Respondent’s licensure history reflects that she was broker of record at GG Powerhouse Realty from August 27, 2019 to June 30, 2021.

estate office must file an office closing affidavit with the REC. In the instant matter, the Affidavit identified the Respondent as the broker of record for iRealty Group, and stated that she had maintained an escrow account at Bank of America for iRealty Group, which was closed effective October 28, 2018.

Young Golden testified that a formal written complaint was submitted to the Commission by Mixharet Limani (“Complainant”)⁶, dated December 11, 2019. In that complaint, the Complainant recounted that her home, the Subject Property, was going to be sold at a sheriff sale when she had approached the Respondent to purchase the Subject Property with aid from her father. Young Golden stated that the Complainant asserted that the Respondent required a \$20,000 deposit, which was made by her father and delivered to the Respondent in April 2019. Young Golden stated that the Complainant and her father eventually learned that the Subject Property had been sold to another party in November or December 2019. Young Golden testified that the complaint sets forth how the Complainant and her father sought the return of their deposit from the Respondent, who assured them that their monies would be returned, before blocking the Complainant’s phone number.

Young Golden reviewed the Contract of Sale prepared by the Respondent. Young Golden noted that the buyer on the contract was DZevdet Limani, the Complainant’s father; the sale price for the Subject Property was \$200,000; an initial deposit of \$1,000 and a second deposit of \$19,000 was required, and that the Respondent was identified as acting as a dual agent for iRealty Group

⁶ The named buyer for the purchase of 1824 Lincoln Avenue, Pompton Lakes, New Jersey (“Subject Property”) was DZevdet Limani. However, his daughter, Mixharet Limani, appeared to be the primary person in contact with the Respondent throughout this transaction and the one who authored the formal complaint submitted to the Commission and filed the criminal complaint with Pequannock Township Police Department. She is therefore referred to as “Complainant” in this Final Decision and Order.

in this transaction. Young Golden noted that the contract was signed on April 29, 2019 and that as of said date, iRealty Group's office had been closed since October 28, 2018 and the Respondent was then licensed with Fathom Realty.

Young Golden testified that the Complainant provided to the REC a copy of the deposit check, in the amount of \$20,000 and dated April 29, 2019, made out to iRealty Group. Upon further examination, Young Golden reviewed the back of the check and noted that the check was deposited on April 30, 2019 at Brunswick Bank and Trust Company and endorsed by the Respondent. Young Golden noted that iRealty Group's escrow account was held at Bank of America pursuant to the information provided on the Affidavit.

Young Golden reviewed the tax records for the Subject Property, which were accessed on August 3, 2020, and indicated that title to the property was transferred on May 20, 2019 and again on October 7, 2019.

Young Golden testified that the Complainant filed a criminal complaint with the Pequannock Township Police Department on January 20, 2020, wherein the Complainant reported "theft of services" after the Respondent failed to return the \$20,000 deposit given for the purchase the Subject Property. In her criminal complaint, the Complainant stated that she learned the property had been sold to another party as early as October 2019 and contacted the Respondent, who represented that the deposit would be returned. After the Complainant had made several unsuccessful attempts to recoup the deposit, the Respondent, who eventually claimed she had been in a car accident, then blocked the Complainant's phone number. Young Golden noted that after the initial filing of the criminal complaint on January 20, 2020, the police file was updated to reflect that the Respondent had advised the Complainant that she would return the deposit funds on January 24, 2020, which was postponed to January 30, 2020 and then eventually returned in

February 2020. Young Golden noted that the Respondent did not return the deposit until after she learned that the Complainant had filed a criminal complaint. Young Golden further testified that a copy of the criminal complaint had been provided to McCloskey by the Complainant.

Young Golden reviewed S-9 and identified the exhibit as a check that was issued to the Complainant's father, dated February 11, 2020, in the amount of \$20,000 from GG Powerhouse Realty for "Lincoln Avenue." Young Golden confirmed that this check represents a return of the deposit funds. Young Golden noted the Respondent accepted the deposit funds on April 29, 2019, however, the property tax records reflect that the property had changed hands in May 2019, again in October 2019, before the funds were returned on February 11, 2020. S-7. Young Golden testified that upon return of the funds, the Complainant did not want to move forward with the aforementioned criminal complaint and that the Respondent's conduct did not result in a criminal conviction.⁷

Young Golden reviewed S-10 and identified the exhibit as a subpoena to produce documents with a return date of March 26, 2020 that included a Certification of Service signed by McCloskey, which indicates that the subpoena was hand delivered to Kayla Guzman, who identified herself as the Respondent's daughter, at their residence on March 4, 2020. Young Golden further testified regarding McCloskey's service of the subpoena, noting that details are included in his investigative report, which she had thoroughly reviewed and is also entered into evidence as S-14. The report recounts how McCloskey attempted to serve the Respondent at the business address on file with the REC on February 6, 2020 and again on March 4, 2020, at both times the office did not appear to be open to the public. On March 4, 2020, McCloskey also

⁷ Young Golden also noted that no guarantee fund claims made related to this transaction and noted that when the Complainant's funds were returned, she ceased cooperation with the REC.

attempted service at the Respondent's home, where service was made personally to the Respondent's daughter. Young Golden noted that McCloskey photographed the address on the aforementioned dates and that those photographs are submitted into evidence as S-13. Upon further examination of the photographs, Young Golden confirmed that the location photographed appears to be abandoned and there is no indication that the location served as an active office for GG Powerhouse Realty.

Young Golden also recounted McCloskey's investigative report that details a January 27, 2020 conversation with the Complainant, wherein the Respondent informed the Complainant that she needed the Complainant's deposit funds to start her new business.

Young Golden testified regarding the Respondent's March 25, 2020 Letter of Explanation, wherein the Respondent admits that she was using iRealty Group as a "short sale negotiation company" and that the \$20,000 constitutes a "fee" and not a deposit. In addition, the Respondent indicated that she had been experiencing medical issues, including a stroke in December 2019. Young Golden noted that the Respondent did not mention having had a car accident. In addition, Young Golden also noted that the Respondent's Letter of Explanation is not responsive to the subpoena served on March 4, 2020 and did not include any of the requested documents. Young Golden also noted that McCloskey and the Respondent communicated following receipt of her Letter of Explanation, wherein McCloskey reiterated the request for documents initially sought by the March 4, 2020 subpoena. Young Golden stated that the Respondent did not provide any additional documents following McCloskey's second request.

Young Golden characterized the Respondent as engaging in an illegitimate sham transaction from the start because the deposit check was cashed a day after receipt into an account that was not associated with her broker, Fathom Realty; the Subject Property changed hands twice

during the time period the transaction was allegedly pending; and, the Respondent never attempted to return the Complainant's deposit.

FINDINGS OF FACT

Based on 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. The Respondent was licensed as the owner and broker of record for iRealty Group, which was licensed as a real estate broker from October 5, 2017 to October 28, 2018.
2. On or about October 28, 2018, the Respondent filed an Office Closing Affidavit with the Commission attesting to the fact that iRealty Group had ceased operations as a real estate broker.
3. The Respondent was licensed as a broker-salesperson with Fathom Realty, from December 12, 2018 to July 18, 2019.
4. The Respondent was last licensed as broker of record of GG Powerhouse Realty from August 27, 2019 to June 21, 2021
5. On or about April 29, 2019, the Respondent, while licensed as broker of record of Fathom Realty, represented herself as a dual agent on behalf of iRealty Group and prepared a contract of sale for a property located at 1824 Lincoln Avenue, Pompton Lakes, New Jersey.
6. The contract of sale provided for the payment of deposit totaling \$20,000 for the sale and instructed the buyer to pay that deposit by cashier's check made payable to iRealty Group.
7. On or about April 29, 2019, Respondent received a check from the buyer in the amount of \$20,000 representing the deposit monies required under the contract of sale.
8. On or about April 30, 2019, Respondent endorsed the buyer's \$20,000 check and deposited it into an account maintained at Brunswick Bank and Trust Company, which account was not associated with Fathom Realty.
9. According to tax records, title to the 1824 Lincoln Avenue, Pompton Lakes property had been transferred to third-party purchasers on May 20, 2019 and again on October 7, 2019.
10. As of December 2019, Respondent had not advised the buyer that the property had already been sold to other parties and instead represented to the buyer that her transaction was still proceeding forward. Despite representing to the buyer that the transaction was proceeding, in December 2019, the property had been sold to MTGLQ Investors LP on May 20, 2019.

11. The buyer demanded the return of the \$20,000 deposit upon learning that the Subject Property had already been sold, and the Respondent failed to return said deposit to the buyer on the dates promised.
12. On December 11, 2019, the buyer filed a complaint with the Commission and on January 20, 2020 filed a criminal complaint with the Pequannock Township Police Department.
13. In February 2020, the Respondent returned the \$20,000 deposit by way of a bank check drawn from the TD Bank account of GG Powerhouse Realty. Upon receipt of the deposit, the criminal complaint was dismissed.
14. The Respondent failed to produce documents as requested by a REC investigator on several occasions and failed to comply with a subpoena that was duly issued and properly served upon her.

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 as summarized above:

1. The Respondent violated N.J.S.A. 45:15-1 and N.J.S.A. 45:15-3 by preparing a contract of sale for the Subject Property as a representative of iRealty Group, which was not licensed as a real estate broker at the time and while she as licensed with Fathom Realty as a broker salesperson, engaging in unlicensed real estate activity.
2. The Respondent violated N.J.S.A. 45:15-17(o) by failing to deposit the funds of others coming into her possession as an escrow agent in a real estate transaction into the broker's escrow account and failed to turn over those funds to her employing broker for deposit into an escrow account.
3. The Respondent violated N.J.S.A. 45:15-17(d) in that she failed to account for or pay over monies belong into others coming into her possession as a licensee.
4. The Respondent's conduct demonstrates unworthiness, in violation of N.J.S.A. 45:15-17(e), in that she failed to comply with a duly issued subpoena issued by the Commission and failed to provide documents which were requested to be produced.
5. The Respondent's conduct demonstrates bad faith and dishonesty, in violation of N.J.S.A. 45:15-17(e), in that she collected a deposit in a real estate transaction and converted it to her own use.
6. There is insufficient evidence to support a finding that the Respondent failed to maintain an office open to the public in violation of N.J.S.A. 45:15-12.

7. There is insufficient evidence to support a finding that the Respondent attempted to collect a commission or valuable consideration for performing real estate brokerage activity from someone other than her employing broker, in violation of N.J.S.A. 45:15-17(m).
8. There is insufficient evidence to support a finding that the Respondent engaged in a continued course of misrepresentations to the buyer in violation of N.J.S.A. 45:15-17(c).
9. There is insufficient evidence to support a finding that GG Powerhouse Realty failed to maintain an office open to the public in violation of N.J.S.A. 45:15-12.

DETERMINATION

At the conclusion of the hearing in this matter, the Commission voted in favor of finding the aforementioned violations and imposing the sanctions described in this Final Decision and Order. In arriving at the determination in this matter, the Commission took into consideration the documentary evidence submitted, the testimony of the witness, and the nature of and circumstances surrounding the Respondent's conduct.

Allegations Against the Respondent

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. Metro 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).

The OTSC alleges that the Respondent violated N.J.S.A. 45:15-1 and N.J.S.A. 45:15-3, which prohibits engaging in unlicensed activity, when she prepared a contract of sale representing herself as a dual agent of iRealty Group in the sale of the Subject Property. The documentary evidence is clear and uncontroverted. The contract of sale, dated April 29, 2019, was generated

by iRealty Group, discloses the Respondent as a dual agent for iRealty Group, and provides that commission and escrow accounts will be in made payable to iRealty Group. S-4. A review of the licensure histories of the individuals and companies involved in this matter clearly indicate that on April 29, 2019 the Respondent was then licensed with Fathom Realty, and not iRealty Group as the Respondent represented in the contract of sale. S-1. Further, the Office Closing Affidavit clearly demonstrates that iRealty Group had been inoperable since October 28, 2018. S-2, S-4. Therefore, on April 29, 2019, the Respondent was engaging in unlicensed real estate activity when she held herself out as an agent of an unlicensed real estate company, in violation of N.J.S.A. 45:15-1 and N.J.S.A. 45:15-3.

Additionally, the OTSC alleges that the Respondent's conduct is in violation of N.J.S.A. 45:15-17(o) in that she failed to deposit the funds of others coming into her possession as an escrow agent in a real estate transaction into an escrow account and failed to turn over those funds to her employing broker for deposit into an escrow account, and in violation of N.J.S.A. 45:15-17(d) in that she failed to account for or pay over monies belong into others coming into her possession as a licensee. Again, the evidence is incontrovertible. The buyer made a deposit of \$20,000 payable to iRealty Group by cashier's check on April 29, 2019, as instructed by the terms of the contract. S-5. N.J.S.A. 45:15-17(o) requires the Respondent to deposit the funds into an escrow account, which she failed to do. We note that the Respondent was holding herself out as a dual agent of iRealty Group, which was unlicensed at this time, but purported to maintain an escrow account at Bank of America pursuant to the Affidavit provided. S-4, S-2. The evidence provided demonstrates that this deposit was negotiated into an account maintained at Brunswick Bank and Trust Company, which appears to be endorsed by Yanira Guzman. S-5. In addition, there is no evidence or reason to suspect that the account at Brunswick Bank and Trust where the deposit was

negotiated, was associated with Fathom Realty, her then employing broker.⁸ Therefore, in light of this evidence, it is clear the Respondent's conduct is in violation of N.J.S.A. 45:15-17(o) and 17(d).

The OTSC also alleges that the Respondent's conduct regarding the deposit paid is in violation of N.J.S.A. 45:15-17(e). N.J.S.A. 45:15-17(e) prohibits any conduct demonstrating unworthiness, incompetency, bad faith or dishonesty. As discussed above, the deposit at issue was not properly deposited into an escrow account of any kind, and there is no evidence that the monies were paid over to her employing broker, as required by N.J.S.A. 45:15-17(d). In her Letter of Explanation, the Respondent grossly mischaracterized the deposit as a "fee" that was not subject to return. S-11. The evidence provided and this admission from the Respondent demonstrates her bad faith and dishonesty. This conduct demonstrates bad faith and dishonesty and is a clear violation of N.J.S.A. 45:15-17(e).

Further, the OTSC alleges the Respondent's failure to comply with the Commission's duly issued subpoena and failed to provide the requested documents demonstrates unworthiness, in violation of N.J.S.A. 45:15-17(e). The evidence related to this violation is also clear and uncontroverted. On March 4, 2020, McCloskey personally served⁹ the subpoena at the

⁸ In addition, the deposit was repaid from an account maintained by GG Powerhouse Realty at TD Bank. S-9. GG Powerhouse Realty was not named in the contract and was not associated with the Respondent at the time of this transaction. It is unclear why the funds were paid from this account or how the funds from Brunswick Bank and Trust Company were moved or used before being repaid ten months later out of a different account.

⁹ N.J.A.C. 1:1-7.1(a) provides that "[S]ervice shall be made in person; by certified mail, return receipt requested; by ordinary mail; or in any manner which is designed to provide actual notice to the party or person being served. N.J.A.C. 1:1-7.1(d) further provides that "The standards of personal service contained in R. 4:4-4 of the New Jersey Court Rules shall apply to contested cases when personal service is required and this section is inapplicable." For further guidance, R. 4:4-4(a)(1) states, in relevant part, that personal service may be effectuated as follows:

Upon a competent individual of the age of 14 or over, by delivering a copy of the summons and complaint to the individual personally, or by leaving a copy thereof at the individual's dwelling place or usual place of abode with a competent member

Respondent's home address, leaving the paperwork at her residence with her daughter. S-10. The subpoena was returnable March 26, 2020 and requested a letter of explanation as well as supporting documents from several financial institutions where accounts associated with iRealty Group and GG Powerhouse Realty were maintained and documents related to the sale of the Subject Property. Ibid. On March 25, 2020, the Respondent submitted the Letter of Explanation, however, none of the supporting documents requested were furnished to the REC as required by the subpoena.¹⁰ S-11. This conduct demonstrates unworthiness in violation of N.J.S.A. 45:15-17(e).

Insufficient documentary or testimonial evidence was submitted to support several allegations contained in the OTSC. First, the OTSC alleges that the Respondent and GG Powerhouse Realty failed to maintain an office open to the public in violation of N.J.S.A. 45:15-12. Photographs of the address on file with the REC taken by Investigator McCloskey on February 6, 2020 and McCloskey's investigative report were submitted to support this allegation. S-13, S-14. In addition, the OTSC alleges that the Respondent engaged in a continued course of misrepresentations to the buyer, in violation of N.J.S.A. 45:15-17(c). The REC submitted the criminal complaint filed with the Pequannock Township Police Department to support this allegation. S-8. The photographs, investigative report, and complaint provided to support these findings constitute hearsay statements. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter

of the household of the age of 14 or over then residing therein, or by delivering a copy thereof to a person authorized by appointment or by law to receive service of process on the individual's behalf.

¹⁰ The evidence presented indicates that numerous attempts were made to contact the Respondent by email at yguzmanrealtor@gmail.com (the email address from which the Respondent sent an email to McCloskey on March 25, 2020 at 4:15PM), however, no documents were furnished electronically and subsequent emails from McCloskey appear to have gone unanswered. S-12.

asserted. N.J.R.E. 801. Although hearsay is admissible in administrative cases, subject to discretion, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(a) to (b). Hearsay may either be employed to corroborate other evidence, or evidence may be supported or given added probative force by hearsay testimony. The residuum rule does not require that each fact be based on a residuum of legally competent evidence, but rather focuses on the ultimate findings of material fact. Ruroede v. Borough of Hasbrouck Heights, 214 N.J. 338, 359-60 (2013) (internal citations omitted). The decision cannot be supported by hearsay alone. Rather, it must be supported by a residuum of legal and competent evidence. Weston v. State, 60 N.J. 36, 51 (1972). Here, the REC offered to substantiate the aforementioned violations alleged using hearsay evidence alone, without a residuum of legal or competent evidence. As such, there is insufficient evidence to find the Respondent and GG Powerhouse Realty were in violation of N.J.S.A. 45:15-12, as alleged in paragraphs 14 and 19 of the OTSC, or to find the Respondent engaged in a continued course of misrepresentations to the buyer, in violation of N.J.S.A. 45:15-17(c), as alleged in paragraph 16 of the OTSC.

Lastly, paragraph 15 of the OTSC alleges that the Respondent attempted to collect a commission or valuable consideration for performing real estate brokerage activity from someone other than her employing broker, in violation of N.J.S.A. 45:15-17(m). As the funds at issue represent a “deposit” and not a commission, as specified in N.J.S.A. 45:15-17(m), there is insufficient evidence to find such a violation.

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, *supra* at 532-533.

Thus, the Commission has the power to suspend, revoke, or place on probation the license of any licensee for conduct in violation of the Act or the regulations promulgated pursuant thereto, N.J.A.C. 11:5-1.1 to -12.18. Moreover, N.J.S.A. 45:15-17 provides that:

If a licensee is deemed to be guilty of a third violation of any of the provisions of N.J.S.A. 45:15-17, 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 Commission has deemed the Respondent guilty of three separate violations of N.J.S.A. 45:15-17. Based upon this and given the seriousness of the Respondent's actions, the Commission orders the lifetime revocation of the Respondent's license. Moreover, the lifetime revocation of the Respondent's license is consistent with the Commission's decisions in similar matters. See NJREC v. Edward Francis Stinson, et al., Dkt. No. CAM-13-023, Final Order of Determination, (07/28/15) (The Commission ordered lifetime revocation all real estate licenses presently or formerly held by Respondents Stinson and Bontigao after finding the Respondents failed to maintain in special accounts); NJREC v. Gregory Schoultz, et al., Dkt. No. CAP-18-007, Final

Order of Determination, (07/23/20) (The Commission ordered lifetime revocation after finding Respondents had failed to account for or to pay over monies belonging to others that came into their possession as a licensee); NJREC v. Patrick J. Murphy and PATMURPHY.COM, Dkt. No. CAM-13-013, Final Order of Determination, (06/29/16) (The Commission ordered lifetime revocation of license after finding multiple instances of failure to timely deposit and maintain funds of others).

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 and these factors are applicable to this matter which seeks the imposition of penalties under the Act: (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 Respondent's conduct is egregious in that the transaction at issue was a sham as the Respondent attempted to subvert the parties to the sale of the Subject Property at every turn. First, Respondent represented herself as a dual agent of an inoperable and unlicensed company and prepared a contract of sale requiring payment of commission and a sizeable deposit to her defunct business rather than her current broker, attempting to subvert the buyer and her employer. Then, Respondent failed to deposit the buyer's funds into the appropriate escrow account and failed to pay over or account for those funds for over ten months while simultaneously ensuring the buyers

that the transaction was proceeding. The Respondent only returned the deposit monies upon learning about the criminal complaint filed against her which happened after the Subject Property had changed ownership twice. Furthermore, in her Letter of Explanation, Respondent grossly mischaracterized the \$20,000 deposit as a “fee” for non-existent services. In addition, the Respondent subverted the Commission’s attempts to investigate the allegations filed against her in that she was unresponsive and failed to produce documents requested by a subpoena. The Respondent’s attempts to subvert the buyer, her employing broker, the Commission and, as a result, the public, demonstrate bad faith and weigh in favor of a monetary penalty.

The second factor of the Kimmelman analysis is the Respondent’s ability to pay the fines imposed. Here, no evidence was presented as to the Respondent’s ability to pay fines assessed. Even if the Respondent had claimed an inability to pay, she bears the burden of proving her financial limits and incapacity. NJREC v. Cortese, Final Order of Determination, (08/09/17) (citing Goldman v. Shah, OAL Dkt. No. BKI 11903-05, Initial Decision (04/15/08), Final Decision and Order (09/02/08)). The Respondent has not met that burden.

The third factor of the Kimmelman addresses the amount of profits obtained or likely to be obtained from the illegal activity. The greater the profits an individual is likely to obtain from illegal conduct, the greater the penalty must be if penalties are to be an effective deterrent. Kimmelman, 108 N.J. at 138. The profits obtained by the Respondent in this matter are unclear. As the Respondent failed to deposit the buyer’s funds into the escrow account associated with her employing broker, Fathom Realty, and appeared to deposit those funds for over one year into an unidentified account at Brunswick Bank and Trust, it is unclear how the buyers’ funds were used during that time they were not accounted for. It is clear that she reaped some benefit from her failure to abide by the laws and regulations at issue here, however, the exact amount that constitutes

“profit” is difficult to calculate based on the evidence provided. We note that while the monies were eventually returned, over ten months later, this factor still weighs in favor of a monetary penalty.

The fourth factor of the Kimmelman analysis is to determine whether the licensee’s conduct caused injury to the public. In order to protect consumers, the Commission is charged with the “high responsibility of maintaining ethical standards among real estate brokers and sales[persons].” Goodley, 29 N.J. Super. at 182. Therefore, the public is harmed when licensed professionals fail to maintain the level of 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.

In this matter, the Respondent failed to conduct herself in accordance with the high standards expected of every licensee and failed to abide by the real estate statutes and rules governing every licensee. Here the Respondent engaged in unlicensed activity in that she represented herself as a dual agent of an unlicensed real estate company, rather than her then employing broker; failed to deposit funds of others coming into her possession into the appropriate escrow account; and failed to pay over or account for monies coming into her possession as a licensee for over a ten month period. The Respondent also failed to return the deposit monies to the buyer in a timely manner. When investigated for her conduct, the Respondent also failed to comply with a duly issued subpoena and evaded the Commission’s request for documents. This series of conduct erodes the trust in real estate professionals to protect consumers and to engage in ethical conduct. The Respondent’s egregious conduct 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 in this transaction was

an isolated occurrence and not part of an ongoing scheme. However, again we note that the Respondent held the buyer's substantial deposit, in an unauthorized account, for over ten months. Further, the Respondent attempted to sever all contact with the buyer to avoid repayment of the funds due. This factor also weighs in favor of a monetary penalty.

The existence of criminal actions and whether 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, 108 N.J. at 139. Here, the Respondent has not faced any criminal punishment for her actions. We note that the Respondent held the buyer's deposit from April 2019 to February 2020 and did not return the monies until she learned that a criminal complaint had been filed. Further, upon the protracted return of the deposit funds, the buyers dropped the pending criminal complaint and ceased cooperation with the REC. At this time, the Respondent has not faced any repercussions for her conduct. As such, this factor does weigh in favor of a monetary penalty.

The seventh and final factor takes into consideration the Respondent's past violations, of which there are none. No evidence of past violations were presented at the hearing. This factor does not weigh in favor of a monetary penalty.

In light of these factors, the Commission has determined that the Respondent shall pay a fine in the total amount of \$25,000, allocated as follows: \$5,000 for the Respondent's conduct wherein she engaged in unlicensed real estate activity, in violation of N.J.S.A. 45:15-1 and 45:15-3; \$10,000 for the Respondent's conduct wherein she failed to deposit escrow funds, in violation of N.J.S.A. 45:15-17(e) and (o); and \$10,000 for the Respondent's conduct wherein she failed to pay over monies belonging to others coming into her possession as a licensee, in violation of

N.J.S.A. 45:15-17(d). The Commission has consistently imposed serious penalties, including revocation and the imposition of substantial monetary penalties, on licensees who have engaged in conduct similar to the Respondent. See NJREC v. Gregory Schoultz, et al., Dkt. No. CAP-18-007, Final Order of Determination, (07/23/20) (The Commission ordered lifetime revocation after finding Respondents had failed to pay over monies belonging to others that came into their possession as a licensee and failed to maintain special accounts); NJREC v. Patrick J. Murphy and PATMURPHY.COM, Dkt. No. CAM-13-013, Final Order of Determination, (06/29/16) (The Commission revoked the license of a broker and imposed a substantial fine for failure to timely deposit and maintain funds of others); NJREC v. Edward Francis Stinson, et al., Dkt. No. CAM-13-023, Final Order of Determination, (07/28/15) (The Commission ordered lifetime revocation all real estate licenses presently or formerly held by Respondents Stinson and Bontigao and imposed a substantial fine against Respondents for failure to maintain special accounts). Therefore, the sanctions imposed in this matter are appropriate in light of the violations found.

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

- I. Any and all real estate licenses presently or formerly held by Respondent Guzman are revoked for life. No real estate license shall henceforth be issued to the Respondent; and
- II. Respondent Guzman shall pay a fine in the amount of \$25,000 with respect to the violations of the real estate laws and regulations as found in this Final Decision and Order, as follows: \$5,000 for the Respondent's violation of N.J.S.A. 45:15-1 and 45:15-3; \$10,000 for the Respondent's violation of N.J.S.A. 45:15-17(e) and (o); and \$10,000 for the Respondent's violation of N.J.S.A. 45:15-17(d).

SO ORDERED this 17th day of August, 2022.

By: Eugenia K. Bonilla, President
Christina Banasiak, Commissioner
Darlene Bandazian, Commissioner
Denise M. Illes, Commissioner

DocuSigned by:

Eugenia K. Bonilla

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Eugenia K. Bonilla, President
New Jersey Real Estate Commission

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