

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE	)	Docket No.: REC-E-21-005
COMMISSION,	)	REC Ref No.: 10010154
	)	
Complainant,	)	
v.	)	FINAL DECISION AND ORDER
	)	
MARY E. DOUGHERTY, licensed New	)	
Jersey real estate salesperson (Ref. No.	)	
9131911),	)	
	)	
Respondent.	)	

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**THIS MATTER** was heard by the New Jersey Real Estate Commission (“Commission”) by video conference in accordance with P.L. 2020, c. 11 on October 12, 2022.

**BEFORE:** Commissioners Eugenia K. Bonilla, Erin Brown, William Hanley, Denise M. Illes, Gabrielle Liguori, and Robert Oppenheimer.

**APPEARANCES:** John Rossakis, Regulatory Officer (“RO Rossakis”), appeared on behalf of the New Jersey Real Estate Commission staff (“REC”). Robert J. Melillo, Esq. (“Melillo”) and Matthew Beck, Esq. (“Beck”) appeared on behalf of Mary E. Dougherty (“Dougherty”). Dougherty was present.

**STATEMENT OF THE CASE**

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated May 2, 2022, pursuant to N.J.S.A. 45:15-17, N.J.S.A. 45:15-17.1, N.J.S.A. 45:15-18, and N.J.A.C. 11:5-1.1 to -12.18. The OTSC alleges that Dougherty violated the Real Estate Brokers and Salespersons Act, N.J.S.A. 45:15-1 to -42 (“Act”) as follows:

Dougherty’s conviction and conduct underlying Accusation No. 21-02-00155-A for False Swearing and the conduct underlying Complaint-Summons #1424-S-2019-00039 for Bribery demonstrate that Dougherty lacks the moral character required for licensure set forth in N.J.S.A. 45:15-9; and

Dougherty's conduct underlying the conviction, the Accusation No. 21-02-00155-A for False Swearing, and the Complaint-Summons #1424-S-2019-00039 for Bribery in Official and Political Matters demonstrate dishonesty and unworthiness for licensure, in violation of N.J.S.A. 45:15-17(e).

On May 23, 2022, Dougherty submitted an Answer to the OTSC through counsel, wherein she denied certain allegations set forth in the OTSC and requested a hearing. On June 28, 2022, the Commission reviewed the pleadings, deemed this matter a contested case and directed that a hearing be scheduled.

The matter was heard by the Commission on October 12, 2022. The following exhibits were submitted by the REC and entered into evidence without objection:

- S – 1: New Jersey Department of Banking and Insurance, Real Estate Commission, License Certification with History for Mary E. Dougherty, dated October 4, 2022;
- S – 2: Complaint-Summons #1424-S-2019-000396, State of New Jersey v. Mary Dougherty, dated December 19, 2019;
- S – 3: Accusation No. 21.02-00155-A, State of New Jersey v. Mary Dougherty, dated February 19, 2021; and,
- S – 4: Judgment of Conviction, State of New Jersey v. Mary Dougherty, dated April 5, 2021.

In addition, the following exhibits were admitted by Dougherty and entered into evidence without objection:

- R-1: Letter from Matthew Beck, Esq. to Hon. Stephen J. Taylor, JSC, with character references (dates vary), dated March 12, 2021;
- R-2: Order for Early Discharge of Probation, dated October 20, 2021;
- R-3: Letter from Michele Zyska, Broker of Record, Compass NJ LLC, dated May 20, 2022;
- R-4: Letter from Pearl Minato, D.A.G. to Thomas R. Calcagni, Esq., dated June 29, 2018;

- R-5: Letter to Thomas R. Calcagni, Esq. from John A. Nicodemo, D.A.G., dated September 12, 2021;
- R-6 Criminal Accusation No. 21-10-00774-A, State of New Jersey v. Matthew J. O'Donnell, dated October 27, 2021;
- R-7: Superior Court Record Sheet, State of New Jersey v. Matthew O'Donnell, undated;
- R-8: Order of Forfeiture of Employment, State of New Jersey v. Matthew O'Donnell, dated October 27, 2021; and,
- R-9: "Matt O'Donnell Pleads Guilty, Faces Three Years in State Prison" from [www.newjerseyglobe.com](http://www.newjerseyglobe.com), dated October 27, 2021.

### **TESTIMONY OF THE WITNESSES**

#### **Robert Lyszczarz**

Robert Lyszczarz ("Lyszczarz") testified on behalf of Dougherty. Lyszczarz stated that he is currently employed as broker of record at RES Realty LLC, d/b/a ReMAX Select ("ReMax Select") and has held this title since March 2022. Lyszczarz stated he previously served as Chief Executive Officer ("CEO") since the company's inception in 1997. Lyszczarz testified that he has works primarily out of the main office in Westfield, New Jersey.

Lyszczarz stated that he has known Dougherty since she was first licensed with ReMax Select in March 2014. He testified that he was involved in hiring Dougherty, however, he has never directly supervised her. Lyszczarz stated that he learned about Dougherty's criminal case directly from her within two or three days of the charges being filed. Lyszczarz stated that Dougherty continued to keep him apprised of the status of her criminal case throughout 2020 and early 2021. In March 2021 Dougherty informed him that she intended to transfer her license away from ReMax Select. Lyszczarz recalled being disappointed at this news and tried to convince Dougherty to stay with ReMax Select because he felt she was an asset to the company. Lyszczarz noted that if Dougherty were to return to ReMax Select, he would be thrilled.

Lyszczarz stated that while serving as CEO, the broker of record and office managers would report client complaints to him directly and that he did not receive any complaints about Dougherty during her tenure, and noted that he had received positive feedback from Dougherty's supervising broker and clients. However, Lyszczarz stated he is aware of a complaint that was filed against Dougherty with the "board"<sup>1</sup> related to an estate that Dougherty was servicing for ReMax Select. Lyszczarz stated it was his belief that the complaint was filed by a buyer's agent who had submitted an offer on the estate that Dougherty did not present to the estate's executrix after consulting with her supervising broker, resulting in sanctions against both Dougherty and the broker.

In closing, Lyszczarz described Dougherty as an extremely competent and compassionate member of the real estate community who is an honorable and community-oriented individual.

#### **Michelle Zyska**

Michelle Zyska ("Zyska") testified on behalf of Dougherty. Zyska stated that she has been licensed as broker of record at Compass New Jersey ("Compass") for the last two and a half years. She has been licensed in New Jersey for 17 years, first as a salesperson in 2005 and then as a broker in 2015. Zyska testified that she works out of Compass's main office in Montclair, New Jersey ("Montclair office").<sup>2</sup>

Zyska testified that she has known Dougherty for a year and a half and met her when Dougherty's transferred her license to Compass on or about March 5, 2021. At that time, Zyska

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<sup>1</sup> Lyszczarz's testimony did not indicate which specific board received a complaint about Dougherty, other than describing the board as a "local realtor board."

<sup>2</sup> Zyska testified that prior to joining Compass, she was licensed with Prominent Properties Sotheby's as a broker-salesperson, prior to that, with Weichert for three years as a broker manager and two years as a salesperson. Prior to Weichert, Zyska was licensed with Keller Williams as a sales agent.

stated that she received an email from Compass's onboarding team that Dougherty's license was blocked or flagged by the State. Compass's national recruiter informed Zyska that the "flag" or "block" was not related to Dougherty's real estate license, so Compass elected to move forward with the transfer of Dougherty's license. Zyska stated that while she did not know that Dougherty had been convicted of a crime at that time, she is aware of other licensees who have been convicted of crimes that did not have a similar issue when transferring their license.

Zyska stated that she was not responsible for the direct supervision of Dougherty as broker of record, noting that it was because Dougherty worked out a branch office located in Morristown and she worked out of the Montclair office. Zyska testified that her interactions with Dougherty were limited and she does not monitor how Dougherty conducts herself day-to-day.

Zyska stated that she is not aware of any complaints made against Dougherty, outside the incident detailed in Lyszczarz's testimony involving the estate. Zyska stated that she has never received any information from a client or customer that caused Zyska to question Dougherty's honesty or integrity. Zyska described Dougherty's as professional who reliably demonstrates a strong worth ethic, an exemplary agent who shows up at all Compass events and a "culture carrier" for the company. Zyska identified Exhibit R-3 as a letter she submitted to the Commission on May 20, 2022 on behalf of Dougherty which accurately reflects her opinion of Dougherty's character and professionalism.

**Edward O'Brien**

Edward O'Brien ("O'Brien") testified on behalf of Dougherty. O'Brien stated that he has been the Branch Office Manager at Compass's Morristown branch office for a year and a half.<sup>3</sup> He was first licensed in New Jersey as a salesperson in 2013 and as a broker in February 2017.

O'Brien testified that Dougherty has been an agent in his office since March 2021.<sup>4</sup> O'Brien stated that within a few days of joining Compass, Dougherty requested a meeting where she informed him that she had criminal charges pending against her. O'Brien opined that he was not concerned because he did not feel she was a threat to the general public and because the criminal charges were unrelated to real estate.

O'Brien confirmed that he is responsible for supervising Dougherty's day-to-day conduct and described Dougherty as knowledgeable, professional, and contentious in representing her clients, remarking that she is a pleasure to work with and has become an ambassador for the company due to her charitable, compassionate, and positive nature. O'Brien stated that he has not received any complaints from the public regarding her performance as a licensee and noted that he has received positive feedback from other agents in their office who have worked with Dougherty. O'Brien stated that he has never questioned Dougherty's honesty and integrity.

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<sup>3</sup> O'Brien testified that prior to joining Compass, he was licensed as broker for Group 26, where he supervised agents in the Cranford office from 2019 to 2021 and broker for Weichert, where he supervised agents in the Montclair and Hoboken offices from 2017 to 2018.

<sup>4</sup> O'Brien stated that initially he and Dougherty worked out of the Short Hills office before transferring to Morristown in June 2021 and that he was responsible for her supervision at both offices.

**Mary E. Dougherty**

Dougherty testified on her behalf. Dougherty testified that she is currently 61 years old and resides in Morristown, New Jersey. Dougherty stated that she has held a real estate license for approximately 30 years and was first licensed as a salesperson in 1991.<sup>5</sup> Dougherty recalled that her license reinstated in 2014 and she began working full time with ReMax Select, where she remained until March of 2021, when she transferred her license to Compass.

Dougherty confirmed that she ran for the public office for the first time in 2018 as candidate for Morris County Commissioner, stating she had observed the lack of services available at her mother-in-law's nursing home and as Commissioner, she would be able to improve nursing home facilities. Dougherty noted that she was already familiar with politics because her husband is currently serving his fourth term as Mayor of Morristown. As it relates to her husband's political career, Dougherty stated that she was never involved in fundraising for any of his mayoral campaigns in any capacity, nor did she personally solicit any contributions for his campaign or any other candidates for political office.<sup>6</sup> As it relates to her campaign for County Commissioner, Dougherty stated that she found fundraising "uncomfortable" because it is hard to ask people for that type of money and support.

Dougherty identified Exhibit S-2 as the Complaint-Summons #1424-S-2019-000396 ("Complaint") issued by the Morristown Municipal Court, wherein she was charged with bribery and it was alleged that on or about September 14, 2018, Dougherty accepted a coffee cup

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<sup>5</sup> Dougherty stated that her license had been in referral status while she focused on relocation services and on inactive status when she shifted to global relocation services, which did not require licensure.

<sup>6</sup> Dougherty noted that she was involved with her husband's first mayoral campaign as an organizer, but has not been involved in any of his subsequent campaigns.

containing a \$10,000 cash campaign contribution from Matthew O'Donnell ("O'Donnell") during a meeting.

Regarding her history with O'Donnell, Dougherty stated she met him in mid-2018, when she sat on the Morristown Planning Board ("Board") and O'Donnell was employed as a municipal attorney.<sup>7</sup> Dougherty testified that at that time O'Donnell had the reputation of a well-respected attorney, who was involved with several municipalities, and represented Morristown on tax appeals, describing him as "an overall good guy" who was confident in the legal services he provided.<sup>8</sup> She also stated that she was aware of O'Donnell's involvement in the local political scene, as he often attended fundraising events.

Dougherty described the September 14<sup>th</sup> meeting as social in nature, but stated that the meeting ended abruptly when O'Donnell informed her that he had to go to court, handed her an opaque coffee cup, and left the bakery. Dougherty further testified that minutes later, she went to her car, opened the cup, discovered there was cash inside, and contacted her campaign finance director. Within 20 minutes of the end of the meeting, Dougherty had also contacted O'Donnell, leaving a voicemail thanking him for his support and informing him that she could not accept the donation in cash but that she could accept checks.

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<sup>7</sup> Dougherty later testified that she stepped down from the Planning Board on December 31, 2009, as her husband's first term as Mayor began on January 1, 2010, and she felt that both her and her husband, holding such high-profile positions, may raise the appearance of impropriety. These dates appear inconsistent with Dougherty's testimony that she met O'Donnell in 2018, while on the Board.

<sup>8</sup> Dougherty clarified that she was aware he was a tax appeal attorney but was requesting her support for reappointment as county counsel and since she had not had the opportunity to work with him in this capacity she did not know whether he was good or bad at his job, so she asked him directly whether he was good at his job as county counsel.



Dougherty recounted the many attempts she made to return the cash to O'Donnell. A second meeting took place on September 21<sup>st</sup>, which lasted approximately 30 minutes at the same bakery, where Dougherty returned O'Donnell's cash contribution and stated with or without his contribution to her campaign, they were still friends and that she would "support" him.<sup>9</sup> Dougherty opined that O'Donnell made the campaign contribution because he was supporting her run for County Commissioner and not as part of a bribe. Dougherty testified that her statement of support meant she would consider his reappointment for municipal attorney based on his reputation of competency, asserting that no specific role was discussed, or explicit promise made.<sup>10</sup>

Dougherty recalled their next meeting, which took place on October 12<sup>th</sup>, at which time O'Donnell provided Dougherty with four checks totaling \$10,000 and suggested Dougherty work with him as a real estate agent on Morristown based development projects. Dougherty testified that her response was that his proposal would be unethical, as she could not work with him on development projects that her husband voted for in his capacity as Mayor.<sup>11</sup> Regarding the checks provided by O'Donnell, Dougherty stated that she did not know the individuals named as "payor"

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<sup>9</sup> Dougherty reviewed the Affidavit of Probable Cause ("Affidavit"), included as part of Complaint-Summons #1424-S-2019-000396, and noted that the Affidavit's discussion of the September 21st meeting was one sentence long and did not include her statement regarding her friendship with O'Donnell. See Exhibit S-2.

<sup>10</sup> Dougherty reviewed the Affidavit and stated the facts alleged were comprised of "snippets" of several conversations she had with O'Donnell and suggested that the recitation of facts is not entirely accurate. See Exhibit S-2 at 23.

<sup>11</sup> Dougherty noted that her response to O'Donnell's proposal is not included in the Affidavit. Ibid.

on the checks but that she was aware, at that time, that O'Donnell was the true source of the contribution.<sup>12</sup>

Dougherty testified that she reported the checks she received from O'Donnell, as written, in a Report of Campaign Contributions and Expenditures ("Report") submitted to the New Jersey Election Law Enforcement Commission ("ELEC") at the end of October 2018. Dougherty opined that she erred doing so and in trusting O'Donnell. She stated that although she submitted a Report to ELEC knowing that the funds came from O'Donnell, and not from the individuals named on the checks, she never intended to be dishonest or malicious and that she has taken responsibility for her error. Dougherty stated that she could not recall her frame of mind when completing the Report, as the event occurred over four years ago. Dougherty testified that as a result of her filing, she plead guilty to one count of False Swearing in Superior Court in February of 2021 and was sentenced on March 18, 2021 wherein she was ordered to serve a one year term of probationary supervision, pay fines totaling \$155, and forfeiture of the \$10,000 campaign contribution central to her conviction.<sup>13</sup> Dougherty admitted that she likely would not have voluntarily disclosed the true source of the funds if her conduct had not been discovered.

Dougherty stated that she did not win the election in November 2018 and described returning to her life as "wife, mother and licensee." In 2019, she learned that charges had been filed against her related to her interaction with O'Donnell and noted that this was the first time she

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<sup>12</sup> Dougherty further asserted that she was not paying attention to the individuals named on the checks provided by O'Donnell because she was consumed with returning the cash donation.

<sup>13</sup> Dougherty noted that in exchange for her guilty plea, the bribery charge in the Complaint was dismissed.

had ever been charged with a criminal offense.<sup>14</sup> Dougherty stated that in the course of preparing her criminal defense, she learned that O'Donnell had been working with the police and was the "Cooperating Witness" referenced throughout the Affidavit of Probable Cause ("Affidavit").

Regarding O'Donnell's criminal activities, Dougherty reviewed Exhibits R-4 to R-9. First, Dougherty identified Exhibit R-4 as a letter memorializing O'Donnell's plea agreement dated June 29, 2018.<sup>15</sup> Next, Dougherty identified Exhibit R-7 as a New Jersey Superior Court record regarding O'Donnell's criminal conviction, which states that the O'Donnell plead guilty to the accusation. Dougherty identified the "Accusation" as Exhibit R-6, noting that Count 1 of the Accusation alleges misconduct which took place between October 2010 and December 2017. In addition, Dougherty noted that Count 2 of the Accusation alleges O'Donnell engaged in fraudulent billing practices. Dougherty asserted that she was not involved in any of the conduct alleged in the Accusation and the conduct by O'Donnell is not in any way related to her criminal case. Dougherty identified Exhibit R-5 as a letter memorializing O'Donnell's plea agreement dated September 12, 2021. Dougherty noted that the document identifies O'Donnell as the "defendant" and sets forth the terms of his plea agreement.<sup>16</sup> Lastly, Dougherty identified Exhibit R-9 as an article published on the New Jersey Globe's website on October 27, 2021 featuring a photograph

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<sup>14</sup> Dougherty testified that when she was served with the Complaint, she was not arrested or taken into custody, however, she was processed at the police department. She described feeling stunned, embarrassed, and shocked by the experience.

<sup>15</sup> Dougherty noted that as of August 2018, she was unaware that O'Donnell had entered into the June 2018 plea agreement. However, she later provided testimony that she had become aware of this plea agreement following their October 12<sup>th</sup> meeting or in early 2020.

<sup>16</sup> Dougherty confirmed the terms of O'Donnell's September 12, 2012 plea agreement, which supersedes R-4, on the record. Exhibit R-5 at 82 – 84. Dougherty noted that the agreement requires that O'Donnell forfeit any public employment and be forever disqualified from holding public office. *Id.* at ¶2 at 82. Further, Dougherty noted that R-8 is an Order of Forfeiture of Employment entered in State v. Matthew O'Donnell, dated October 27, 2021. Exhibit R-8 at 96.

O'Donnell and identifying him as "the state's cooperating witness in a political corruption sting operation" who admitted to crimes related to his work as the Mount Arlington borough attorney and as a tax appeal attorney for Morristown, Bloomfield and Morris County. Dougherty noted that the article also refers to illegal conduct which took place in Holmdel, New Jersey, for which the city is seeking punitive damages. In sum, Dougherty testified that she did not have knowledge of O'Donnell's extensive illegal activities described in these documents when she dealt with him in 2018.

Dougherty vehemently denied that she did not commit to support O'Donnell's reappointment as counsel to Morristown to induce him to give her the campaign contribution at issue. Rather, Dougherty asserted that her support of O'Donnell was based on his competence as an attorney and their friendship. Dougherty also noted that had a better qualified applicant applied for the position, she would have voted for their appointment rather than O'Donnell's, as that would be in the best interest in the residents of Morris County. Dougherty further stated that her level of support for O'Donnell's reappointment would have been the same if O'Donnell had only donated \$5,000 or had chosen to not make any campaign contribution at all.

Dougherty testified that she successfully completed her probationary term without incident, in fact she was released after seven months, citing Exhibit R-2, the Order for Early Discharge of Probation signed on October 20, 2021 by Judge Tyler. In addition, Dougherty stated that she has paid the fines assessed and returned the campaign contribution, as ordered in the Judgment of Conviction. Dougherty noted that she was not ordered to complete community service as part of her sentence, as Judge Taylor had commentated during her formal sentencing that Dougherty had spent approximately 30 years providing community service, so he did not

impose additional service as part of her sentence. In addition, Dougherty noted that her sentence did not include a ban on running for or holding public office or maintaining a real estate license.

Dougherty noted that her criminal case was covered exhaustively in the local news. In addition, her real estate competitors contacted her listings regarding her criminal case, and succeeded in getting one client to withdraw from an existing listing and another to elect not to renew their listing with her. In addition, the financial cost of her criminal defense and subsequent legal representation at this hearing has totaled over \$100,000. Regarding the impact of her criminal case on her personal life, Dougherty opined that it has compromised everything she has worked for and has “cast a dark cloud” over her family and reputation. She described herself as a joyful, blessed person and stated it was difficult to carry this ordeal for several years. She credits her faith, family, friends and her confidence in who she is, as the reasons she was able to persevere. Dougherty testified that these events impacted her physical health, including hospitalizations in 2020 and 2022 for arterial fibrillation and her ability to stay asleep at night. Dougherty stated that she never intends to run for public office again and expressed remorse, describing her conduct as “one of the biggest mistakes of her life.”

Regarding her career as a real estate salesperson, Dougherty testified that she has closed 87 transactions between 2014 and 2019. Since her conviction in March of 2021, she has represented approximately 60 clients and has not received any consumer complaints. Dougherty testified that she belongs to the Realtor Organization, where she was won Circle of Excellence Award approximately six or seven times. Regarding the complaint made against her to the local realtor board, Dougherty stated that approximately eight years ago, she was working on a real estate transaction involving an estate. Throughout the transaction, she worked exclusively with the estate attorney. After the property was under contract, she received an offer on the property,

and consulted her supervisor on how to proceed due to the unusual nature of receiving an offer at this late stage in a pending transaction. Her supervisor advised Dougherty to send the offer to the estate attorney. The agent filed a complaint with her local realtor board that the family executrix was not copied on the email and did not receive notification of the offer. The matter was resolved, and Dougherty and her supervisor had to pay a fine. Dougherty testified that she is not aware of any other client complaints or investigations into her conduct by the REC.

Dougherty reviewed the character letters submitted to Judge Taylor before her formal sentencing in her criminal case and entered into evidence as R-1. Letters were submitted by her stepson and her brother, in addition, letters were submitted by former clients she represented as a real estate salesperson and an individual she sponsors in Alcoholics Anonymous (“AA”).<sup>17</sup> The other letters provided in R-1 detail Dougherty’s involvement in various community-oriented and charitable programs, including establishing the Morristown Community Emergency Response Team and Morristown Women in Business, her work providing meals for health care workers during the coronavirus pandemic, her work on the Corporate Leadership Counsel and Neighborhood House Advisory Committee, her support of the Morristown Hispanic community, her efforts at Mrs. Wilson’s Halfway House for Women and the Family Promise Shelter program, and the various ways she is involved in her church. In addition, several of the letters submitted feature testimonials by individuals Dougherty has helped with “random acts of kindness” on her part. Dougherty testified that where she sees a need, she feels compelled to jump in to help.

Dougherty stated that she has not received any additional counseling since her conviction outside of her ongoing involvement with AA. She is still active with Morristown Women in

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<sup>17</sup> Dougherty testified that she has been in recovery since she was approximately 28 years old. Dougherty stated that she attends AA meetings on a weekly basis and that she has sponsored approximately fifteen people during her tenure at AA.

Business and at her church. She recently joined the Kiwanis Club and been elected as Secretary.<sup>18</sup> She has also joined Cornerstone Family Programs, which is associated with the Family Promise Shelter program referenced above.

Reflecting on what it means to hold a real estate salesperson license, Dougherty opined that her work is rooted in her faith and her desire to help people, and as a realtor she is able to really help people reach their goals. She is also a senior real estate specialist, where she assists families who wish to downsize their homes. She is grateful to be a part of all of these pieces of people's lives. She stated that she is a really good agent that has provided excellent service for the last 30 years. She asserts she has no blemishes on her real estate career.

#### **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. Dougherty is an actively licensed real estate salesperson, first licensed in New Jersey on July 1, 1991.
2. From March 17, 2014 to March 3, 2021, Dougherty's license was affiliated with RES Realty LLC, a licensed real estate broker, whose main office is located at 137-143 Elmer Street, Westfield, New Jersey 07090. Dougherty worked out of the Morristown branch office, d/b/a ReMAX Select, located at 1 Madison Avenue, Morristown, New Jersey 07960.
3. In 2018, Dougherty campaigned as a candidate for County Commissioner in the Morris County general election.
4. On or about December 17, 2019, Complaint-Summons #1424-S-2019-000396 was filed against Dougherty, charging her with one count of Bribery in Official and Political Matters, in violation of N.J.S.A. 2C:27-2(d). The Complaint included an Affidavit of Probable Cause, which stated, among other things, that Dougherty accepted a \$10,000 campaign contribution in exchange for Dougherty's promise to aid an unnamed cooperating witness to secure a public position with the Morris County local government.

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<sup>18</sup> Dougherty testified that the Kiwanis Club is an international organization with a focus on assisting children.

5. On or about February 7, 2020, Dougherty was arrested by New Jersey State Police in connection with the above criminal charges.
6. On or about February 19, 2021, Accusation No. 21-02-00155-A was filed against Dougherty, charging her with one count of False Swearing, in violation of N.J.S.A. 2C:28-2(a). This Accusation alleged that Dougherty filed and certified to the truth of a Report of Campaign Contributions and Expenditures with the New Jersey Election Law Enforcement Commission, knowing that the report contained false information regarding the amounts and sources of one or more campaign contributions.
7. On or about February 19, 2021, Dougherty entered a plea of guilty to one count of False Swearing, in violation of N.J.S.A. 2C:28-2(a). The charges alleged in the Complaint were dismissed as part of the plea agreement.
8. On or about March 18, 2021, Dougherty was convicted of False Swearing – False Statement Under Oath, in violation of N.J.S.A. 2C:28-2(a). Dougherty was sentenced to a one-year term of probation; assessed fines and fees totaling \$155; and ordered to forfeit the \$10,000 campaign contribution described above.

#### **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. Dougherty's conduct and conviction for False Swearing demonstrate that Dougherty lacks the moral character required for licensure set forth in N.J.S.A. 45:15-9.
2. Dougherty's conduct and conviction for False Swearing demonstrate dishonesty and unworthiness for licensure, in violation of N.J.S.A. 45:15-17(e).

#### **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 witnesses, and the nature of and circumstances surrounding the Dougherty'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). Here, sufficient competent, relevant, and credible evidence has been presented demonstrating that the Respondent committed the violations set forth in the OTSC.

The OTSC alleges and the evidence in the record substantiates that Dougherty was an actively licensed New Jersey real estate salesperson when she ran for the Morris County Commissioner in the 2018 general election. While fundraising, Dougherty received a campaign contribution in the amount of \$10,000 in cash from O’Donnell. She later exchanged the cash contribution for four separate checks in the amount of \$2,500 each, naming four different “payors”, totaling \$10,000, from O’Donnell. Following receipt of the checks, Dougherty certified to the truth of the Report made to ELEC containing information she knew to be false regarding the amounts and sources of one or more campaign contributions. On February 19, 2021, Dougherty plead guilty to count of False Swearing, in violation of N.J.S.A. 2C:28-2(a). She was later sentenced to serve a one-year term of probation; assessed fines and fees totaling \$155; and ordered to forfeit the \$10,000 campaign contribution described above.

The OTSC also alleges and the evidence in the record substantiates that Dougherty’s conviction for False Swearing and the conduct underlying her conviction demonstrates that she

lacks the good moral character required for licensure in violation of N.J.S.A. 45:15-9 and N.J.S.A. 45:15-17(e), in that Dougherty's conviction for False Swearing and the conduct underlying her conviction demonstrates dishonesty and unworthiness for licensure. First, the evidence to support a finding of these violations is clear and uncontroverted. Dougherty plead guilty to one count of False Swearing, which is defined as: "A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a crime of the fourth degree." By admitting to knowingly making a false statement under oath to the Election Law Enforcement Commission, Dougherty acknowledged that she purposefully engaged in an act of deceit and lacked candor when dealing with a government body, which evidences a lack of good moral character. , Moreover, Dougherty both testified and stipulated to the facts regarding the conduct underlying her conviction. Specifically, Dougherty admitted that when she received the \$10,000 campaign contribution in the form of four checks on or about October 12, 2018, she knew that the true source of the contribution was not the payors named on the checks and nevertheless filed the Report with ELEC on or about October 26, 2018 that falsely identified the source of that contribution.<sup>19</sup> The fact that Dougherty's deceitful conduct was done intentionally while seeking public office where integrity and honesty are demanded of public officials, makes Dougherty's actions more egregious, and demonstrates both a lack of good moral character and unworthiness for licensure.<sup>20</sup> Second,

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<sup>19</sup> In addition to Dougherty's stipulation, the Commission notes the following stipulations entered by the REC at the hearing: Dougherty's conduct underlying the Complaint referenced in the OTSC and the conduct underlying her conviction for False Swearing did not involve, and was unrelated to, her activity as a real estate licensee; Dougherty has fully complied with the reporting obligations imposed upon real estate licensees by N.J.S.A. 45:15-17(s); and, Dougherty has no history of any disciplinary action by this Commission during her tenure as a licensee.

<sup>20</sup> While the Affidavit of Probable Cause and Complaint-Summons #1424-S-2019-000396 both contain allegations of bribery, the Commission notes that all bribery charges were dismissed and

Dougherty asserts that an allegation that she lacks good moral character and the honesty and trustworthiness required for licensure based on the Complaint and conduct underlying the Complaint is not appropriate, as a Complaint is not evidence of guilt and because she adamantly maintains that she did not have the intent necessary for a bribery conviction obfuscates the relevant facts. Dougherty is correct, the Complaint and conduct underlying the complaint are insufficient to find she is unworthy for licensure. However, as discussed above, the allegations in the OTSC are also based on the undisputed conviction for and conduct underlying False Swearing, in violation of N.J.S.A. 2C:28-2(a). As such, Dougherty has not established good moral character necessary for licensure pursuant to N.J.S.A. 45:15-9 or trustworthiness and honesty as set forth in N.J.S.A. 45:17-17(e).

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). It must be recognized that salespersons and brokers engaged in the business of real estate in New Jersey act as fiduciaries, and they are “required to exercise fidelity, good faith and primary devotion to the interests of [their] principal[s],” Ellsworth Dobbs, Inc. v. Johnson, 50 N.J. 528, 553 (1967), and “reasonable skill, care and diligence in performing” the business of real estate with regard to their clients. See Sullivan v. Jefferson, 167 N.J. Super. 282, 286-287 (App. Div. 1979). The Legislature explicitly recognized the need to protect real estate consumers by ensuring that licensees possess good moral character, honesty, integrity, and trustworthiness. See N.J.S.A. 45:15-9(a). A conviction for False Swearing under N.J.S.A.2C:28-2(a) is a serious crime. The

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therefore the Commission’s findings and conclusions are only based upon Dougherty’s conviction for False Swearing in violation of N.J.S.A. 2C:28-2(a) and the underlying conduct involved therein.

fact that the underlying conduct did not involve Dougherty's real estate license or a real estate transaction is of no import since it is the responsibility of the Commission to ensure that individuals who hold licenses demonstrate behavior which instills the utmost public trust. Being convicted of engaging in deceitful conduct in the pursuit of public office, does not instill public trust and bespeaks of actions demonstrating a lack of integrity and honesty.

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. As stated above, the Commission finds that Dougherty's conduct demonstrates dishonesty and unworthiness for licensure, in violation of N.J.S.A. 45:15-17(e), in that it is uncontested that Dougherty was convicted of one count of False Swearing based on Dougherty's certifying to the truth of a Report to ELEC regarding a \$10,000 campaign contribution that she knew to be false, in pursuit of public office. Based on the seriousness of Dougherty's conduct, the Commission orders a one-year revocation of Dougherty's salesperson license. The Commission considered the testimony of the witnesses who appeared on Dougherty's behalf at the hearing, noting that two of the three witnesses did not supervise Dougherty on a daily basis and did not testify to having any social interaction with Dougherty, and therefore had limited personal knowledge of her character. The Commission acknowledges the letters attesting to Dougherty's good character, Dougherty's long history of charitable work in her community and commends her

commitment to helping others, but this does not mitigate the violations nor eliminate the necessity for discipline to address this serious act of dishonesty.


After considering the testimony and evidence presented, and in light of the violations committed by the Respondent, as set forth herein, the Commission imposes a revocation of the Dougherty's real estate salesperson license for a one year.

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 held by Dougherty are revoked for a period of one year.
- II. Any subsequent license issued to Dougherty will be held on probationary status for a period of two years. During the probationary period, the following conditions shall apply:
  - a) Dougherty shall notify her employing broker that she is on probation;
  - b) Dougherty's employing broker shall notify the REC within 72 hours if he or she receives any information indicating that Dougherty may have violated the Act and corresponding regulations at N.J.A.C. 11:5-1.1 to -12.18; and,
  - c) Dougherty shall notify the REC within 72 hours if she is charged with or convicted of any criminal or disorderly persons offenses.

SO ORDERED this 31<sup>st</sup> day of January, 2023.

By: Eugenia K. Bonilla, President  
William Hanley, Vice President  
Erin Brown, Commissioner  
Denise M. Illes, Commissioner  
Gabrielle Liguori, Commissioner  
Robert Oppenheimer, Commissioner

  
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Eugenia K. Bonilla, President  
New Jersey Real Estate Commission

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