

**NEW JERSEY REAL ESTATE COMMISSION**

	)	Docket No.: UNI-18-002
	)	REC Ref No.: 10004650
NEW JERSEY REAL ESTATE	)	
COMMISSION,	)	
	)	
Complainant,	)	
	)	
v.	)	<b>FINAL ORDER OF</b>
	)	<b>DETERMINATION</b>
	)	
ANTHONY GALLEGO, Licensed New	)	
Jersey Real Estate Salesperson (SP1433688),	)	
	)	
Respondent.	)	

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**THIS MATTER** was heard by the New Jersey Real Estate Commission (“Commission”) in the Department of Banking and Insurance, State of New Jersey at the Commission Hearing Room, 20 West State Street, Trenton, New Jersey on April 24, 2018.

**BEFORE:** Commissioners Linda K. Stefanik, Eugenia K. Bonilla, Sanjeev Aneja, Christina Banasiak, Jacob S. Elkes,<sup>1</sup> Denise M. Illes, and Kathryn Godby Oram.

**APPEARANCES:** Marianne Galina, Regulatory Officer (“RO Gallina”), appeared on behalf of the New Jersey Real Estate Commission staff (“REC”). Respondent Anthony Gallego (“Respondent”) was represented by Joel Leon, Esq. (“Leon”).

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<sup>1</sup> Commissioner Elkes arrived at the hearing after the exhibits were entered into evidence and before any testimony was heard.

## STATEMENT OF THE CASE

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated February 12, 2018, pursuant to N.J.S.A. 45:15-17, N.J.S.A. 45:15-18, N.J.S.A. 45:15-19.2,<sup>2</sup> and N.J.A.C. 11:5-1.1 to -12.18.

The OTSC alleges that the Respondent entered into a Consent Order (“CO”) with the Department of Banking and Insurance Bureau of Fraud Deterrence (“BFD”) in which the Respondent agreed to pay \$2,500 in fines arising out of a violation of N.J.S.A. 27:33A-1.<sup>3</sup> The OTSC alleges the violation arose when Respondent obtained coverage from Progressive Garden State Insurance Company (“Progressive”) for a 1999 BMW 328 vehicle on November 27, 2013 at 4:12 p.m. The Respondent then reported to Progressive that the vehicle was involved in an accident on November 28, 2013. However, the New Jersey Police Crash Investigation Report indicated that the accident occurred on November 27, 2013 at 2:53 p.m., before the Respondent had purchased the policy with Progressive. The OTSC alleges that the Respondent violated N.J.S.A. 45:15-17(e) in that the above conduct demonstrated unworthiness, bad faith, and dishonesty, and N.J.S.A. 45:15-17(l) in that the above conduct constituted fraud or dishonest dealings.

The Respondent filed a timely Answer to the OTSC on March 5, 2018, wherein the Respondent admitted to the factual allegations set forth in the OTSC but denied that the conduct

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<sup>2</sup> On page one of the OTSC, it states that the OTSC is being issued pursuant to N.J.S.A. 45:15-19.2, which provides that the Commission may suspend the license of a licensee pending trial for certain enumerated offenses, including crimes involving, relating to, or arising out of the licensee’s activities as a real estate licensee. However, this appears to be a typographical error as the OTSC does not seek the suspension of the Respondent’s license based upon this statutory citation nor did the REC seek such relief at the hearing.

<sup>3</sup> This is a typographical error. The CO indicates that the Respondent violated the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -34.

constituted a violation of N.J.S.A. 45:15-17(e) and (l). Accordingly, on March 26, 2018, the Commission deemed this matter a contested case and directed that a hearing be scheduled.

A hearing before the Commission was conducted on April 24, 2018, at which time the following exhibits were admitted into evidence by the REC, without objection:

- S-1 New Jersey Real Estate Salesperson License Certification with History and Licensing Panels;
- S-2 Consent Order No. 14-50352-35, State of New Jersey Department of Banking and Insurance, Bureau of Fraud Deterrence, In the Matter of Anthony Gallego dated July 27, 2016;
- S-3 Progressive Automobile Insurance Declaration Page, Anthony Gallego, changes effective March 1, 2013;
- S-4 Progressive Automobile Insurance Declaration Page, Anthony Gallego, changes effective November 27, 2013; and
- S-5 New Jersey Police Crash Investigation Report, Case No. 13-21583.

In addition, the following exhibits were admitted into evidence by the Respondent, without objection:

- R-1 Letter by Marvin Daniels, Realtor Associate, Century 21 – Pogo Realtors; and
- R-2 Letter by S. Bertram Logistics Manager Abraham<sup>4</sup> dated April 18, 2018.

### **TESTIMONY OF THE WITNESSES**

#### **Anthony Gallego**

The Respondent testified on his own behalf. He admitted that he filed a false insurance claim to Progressive after a motor vehicle accident. He testified that Progressive rejected the claim, but they did not tell him it was fraudulent, and that he was unaware of any issues related to his claim at the time he completed his application for a real estate license. He further testified that

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<sup>4</sup> Only the name “Abraham” was provided and it is unclear whether it is a first or last name.

he became aware of the investigation when BFD contacted him in 2016, after he was licensed by the Commission.<sup>5</sup> He testified that he and an investigator from BFD discussed the terms of the CO wherein the Respondent would admit that he committed fraud and pay a \$2,500 fine. He testified that he was not represented by an attorney at the time he entered into the CO. He further testified that he reported the incident to his real estate broker. In addition, the Respondent testified that he was paying the fine in monthly installments of \$66 and that approximately half of the fine is still outstanding. The Respondent further testified that in addition to real estate, he works part time as a driver with a transportation company.

#### **Janusz Pogorzelsai**

Janusz Pogorzelsai (“Pogorzelsai”) testified that he is the broker of Century 21 Pogo Realtors. Pogorzelsai testified that he has known the Respondent for almost four years. He also testified that there have never been any complaints about the Respondent’s conduct as a real estate salesperson. Pogorzelsai further testified that the Respondent is a good salesperson, and that he is dependable and ethical. Pogorzelsai also testified that the Respondent told him about CO and the underlying conduct.

#### **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 is a licensed New Jersey real estate salesperson and is currently licensed with Century 21 Pogo Realty, Inc., located at 923 Stuyvesant Avenue, Union, New Jersey.
2. The Respondent obtained his New Jersey real estate salesperson license on July 23, 2014.

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<sup>5</sup> During the hearing, RO Gallina represented that the Respondent did not have to disclose the CO on his renewal application because it was not a criminal conviction and it did not involve the revocation of another professional license.

3. Prior to receiving his New Jersey real estate salesperson license, on November 27, 2013 at approximately 2:53 p.m., the Respondent's 1999 BMW 328 vehicle was involved in an accident.
4. The Respondent purchased insurance for this vehicle from Progressive on November 27, 2013 at 4:12 p.m., after the motor vehicle accident referenced above.
5. On December 1, 2103, the Respondent reported to Progressive that this vehicle was involved in an accident that occurred on November 28, 2013 at 5:00 p.m.
6. On July 27, 2016, the Respondent entered into a CO with the BFD wherein he admitted to violating the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -34 and the Respondent agreed to pay a \$2,500 fine.

#### **CONCLUSIONS OF LAW**

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

1. The Respondent violated N.J.S.A. 45:15-17(e) by demonstrating unworthiness, bad faith, and dishonesty by committing insurance fraud when he filed a fraudulent insurance claim regarding the date his vehicle was involved in an accident.
2. The Respondent violated N.J.S.A. 45:15-17(l) in that his conduct in committing insurance fraud when he filed a fraudulent insurance claim regarding the date his vehicle was involved in an accident constitutes fraud and dishonest dealing.

#### **DETERMINATION**

After the hearing and executive session in this matter, the Commission voted in favor of finding the violations and 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, the documentary evidence admitted during the hearing, and the nature of and circumstances surrounding the Respondent's conduct.

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).

#### Allegations Against the Respondent

The OTSC alleges that the Respondent filed a fraudulent claim with his automobile insurance company before he was licensed as a New Jersey real estate salesperson. The Respondent admitted to this allegation. For the reasons set forth below, the Respondent's conduct demonstrates unworthiness, bad faith, and dishonesty, and constitutes fraud and dishonest dealing, in violation of N.J.S.A. 45:15-17(e) and (l).

The facts in evidence indicate that the Respondent did not have automobile insurance at the time of a motor vehicle accident, which occurred on November 27, 2013 at approximately 2:53 p.m. However, he obtained a policy with Progressive less than two hours after the accident. On December 1, 2013, he told Progressive that the accident occurred on November 28, 2013 at 5:00 p.m. so as to benefit from the policy. On July 23, 2014, the Respondent was issued a real estate salesperson license. At that time, the Respondent was not aware of any pending BFD investigation, and thus, did not disclose same to the Commission. On July 27, 2016, the Respondent entered into a CO with the BFD wherein it provides that the Respondent "knowingly provided false and

misleading information to [Progressive] on December 1, 2013.” Ex. S-2. The Respondent’s wrongful and dishonest actions of providing false and misleading information to Progressive when he was aware that his vehicle was not, in fact, in an accident when he purported it was in order to benefit from the insurance policy, demonstrates unworthiness, bad faith, and dishonesty, and constitutes fraud and dishonest dealing, in violation of N.J.S.A. 45:15-17(e) and (l).

The Respondent admitted to filing the false claim, but argues that because his conduct occurred before he obtained a real estate license there is no violation of N.J.S.A. 45:15-17(e) and (l). While the Respondent’s conduct underlying the CO occurred less than one year before the Respondent obtained his real estate license, the Commission was unaware of the conduct at the time that the Respondent was granted a license.

The Commission is empowered to, and has an obligation to, scrutinize the conduct of licensees and license applicants even if the conduct does not directly relate to or occur in the course of the real estate brokerage business, or the conduct does not occur while licensed. To conclude that the Commission cannot consider fraudulent conduct that occurred prior to licensure could lead to the result that dishonest and untrustworthy persons could be licensed simply because of the timing of their fraudulent conduct. Such a result would be contrary to the New Jersey Real Estate Broker and Salesperson Act, N.J.S.A. 45:15-1 to -42 (“Act”) as well as the public interest.

Pursuant to N.J.S.A. 45:15-9, an applicant for licensure as a real estate salesperson in this State must demonstrate good moral character, and the Commission is similarly empowered to investigate and require proof of an applicant’s honesty, trustworthiness, character, and integrity. These requirements and qualities serve to protect the public interest. The Commission routinely scrutinizes conduct that occurred prior to licensure in reviewing license applications. If the Commission had been aware of the Respondent’s fraudulent conduct, his application would have

been reviewed more thoroughly and he may not have been granted a license or may have been granted a license on a probationary basis. See In Re the Denial of an Application for Licensure as a Salesperson submitted by Edward Olimpio, Order denying license dated 10/21/13 (denying real estate sales person license where Commission was especially concerned with fraud related to mortgages); In Re the Denial of an Application for Licensure as a Real Estate Salesperson submitted by Richard Williams, Order granting license 05/11/11 (applicant was convicted of securities fraud eleven years before applying for licensure and license was granted on probationary terms).

The Commission has the responsibility to consider the Respondent's conduct that occurred prior to licensure. It is inimical to the public interest to ignore fraudulent conduct that occurred less than a year prior to a license application. That the Respondent was not licensed at the time he committed insurance fraud is irrelevant.

#### 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 Comm'n, 29 N.J. Super. 178, 181-182 (App. Div. 1954). The nature and duties of a real estate business are grounded in interpersonal fiduciary, and business relationships and demand the upmost honesty, trust, and good conduct. Maple Hill Farms, Inc. v. New Jersey Real Estate Comm'n, 67 N.J. Super. 223, 231-32 (App. Div. 1961); See also Mango v. Pierce-Coombs, 370 N.J. Super. 239, 256 (App. Div. 2004), N.J.A.C. 11:5-6.4. Courts have long recognized that the real estate sales industry should exclude individuals who are incompetent, unworthy, and unscrupulous, to protect the public interest. See Div. of New Jersey Real Estate Comm'n v. Ponsi, 39 N.J. Super. 526, 532-533 (1956).



Thus, the Commission has the power to suspend, or revoke, or place on probation the license of any licensee for “any conduct which demonstrates unworthiness, incompetency, bad faith, or dishonesty” or conduct that “constitutes fraud or dishonest dealing.” N.J.S.A. 45:15-17(e) and (l). The facts in this matter demonstrate that the Respondent admittedly committed insurance fraud. The Respondent’s conduct was serious in nature and demonstrated unworthiness, bad faith, and dishonesty. Thus, the Respondent does not possess the necessary honesty and trustworthiness required of real estate licensees.


The Commission has consistently imposed serious penalties, including revocation, upon licensees who have committed insurance fraud. The Commission has previously revoked a license for five years when a respondent submitted an insurance claim for a vehicle that was uninsured at the time it sustained damage in violation of N.J.S.A. 45:15-17(e) and (l). Real Estate Commission v. Yehuda S. Dachs, Dkt. No. MON-11-013, Final Order of Determination, 02/08/12. See also Real Estate Commission v. Lopez, 96 N.J.A.R. 2<sup>nd</sup> (REC) 31 (1996) (Commission revoked real estate license for five years based upon licensee’s conduct in fraudulently endorsing an insurance check and failing to turn over that money in violation of N.J.S.A. 45:15-17(e) and (l)); Real Estate Commission v. Muhammad Nasir, Dkt No. MID-05-011, Final Order of Determination 09/28/06, aff’d N.J. Real Estate Comm’n v. Nasir, 2008 N.J. Super. Unpub. LEXIS 1425, (App. Div. 2008) (Commission revoked real estate license for five years based upon licensee’s conduct in obtaining disability insurance without disclosing a prior injury in violation of N.J.S.A. 45:15-17(e) and (l)); Real Estate Commission v. Jiton T. Greene, Dkt. No. BER-16-008, Final Order of Determination, 05/23/17 (Commission revoked real estate license for five years based upon licensee’s conviction in New York for insurance fraud when she filed a fraudulent insurance claim claiming that her vehicle was stolen in violation of N.J.S.A. 45:15-17(e)).

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

1. The Respondent Anthony Gallego's New Jersey real estate salesperson license shall be revoked for a period of two years commencing from the date of this Order. During the revocation period, the Respondent shall not be eligible for any real estate license.

SO ORDERED this 24<sup>th</sup> day of January, 2019.

By: Linda K. Stefanik, President  
Eugenia K. Bonilla, Vice-President  
Sanjeev Aneja, Commissioner  
Christina Banasiak, Commissioner  
Jacob S. Elkes, Commissioner  
Denise M. Illes, Commissioner  
Kathryn Godby Oram, Commissioner

  
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Richard Mumford  
Acting Director of Banking

Final Orders-REC/Final Orders/JD Gallego REC FO