

**NEW JERSEY REAL ESTATE COMMISSION**

	)	FINAL DECISION AND ORDER
IN RE LICENSURE AS A REAL ESTATE	)	ADOPTING INITIAL DECISION IN
SALESPERSON OF RONALD M.	)	MARLENE CARIDE v. PATETTA, OAL
PATETTA,	)	DKT NO. BKI 05997-18, AGENCY DKT
RESPONDENT.	)	NO. OTSC E17-115
	)	
	)	

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

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

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

This matter comes before the Commission pursuant to the authority of N.J.S.A. 52:14B-1 to -31, and the Real Estate Brokers and Salesperson Act, N.J.S.A. 45:15-1 to -42 (“Real Estate Act”), N.J.A.C. 11:5-1.1 to -12.18, and all powers expressed or implied therein, for the purpose of reviewing the Initial Decision of Administrative Law Judge Hon. Jacob S. Gertsman (“ALJ”) rendered on June 2, 2021 in Marlene Caride<sup>1</sup> v. Ronald M. Patetta, OAL DKT No. BKI 05997-18, AGENCY DKT No. OTSC E17-115 (“Initial Decision”). In the Initial Decision, the ALJ granted a Motion for Summary Decision brought by the Department of Banking and Insurance

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<sup>1</sup> At the time this case was filed on April 26, 2018, Marlene Caride had not been sworn in as the Commissioner of the Department of Banking and Insurance. Commissioner Caride was sworn in on June 27, 2018.

(“Department”) on all seven Counts of the Department’s Order to Show Cause No. E17-115 (“OTSC”)<sup>2</sup>. Regarding Counts Five through Seven, the ALJ ordered the revocation of the real estate salesperson license of Ronald M. Patetta (“Patetta” or “Respondent”) and imposed \$10,000 in fines for violations of the Real Estate Act. The Commission considered the matter on the papers, without testimony, and the following documents constituted the record:

- a. Initial Decision;
- b. Respondent’s Exceptions to the Initial Decision (June 15, 2021);
- c. Department’s Exceptions to the Initial Decision (June 16, 2021);
- d. Department’s Reply to Patetta’s Exceptions to the Initial Decision (June 29, 2021);
- e. Respondent’s Sur-reply to Department’s Response (July 21, 2021);
- f. Judgment in Criminal Case against Patetta (December 16, 2013);
- g. Crozier Letter on behalf of Patetta (July 12, 2021);
- h. Tanya Statement on behalf of Patetta (undated);
- i. Donna Statement on behalf of Patetta (undated);
- j. LaMalfa Letter on behalf of Patetta (January 17, 2012);
- k. Lime Letter on behalf of Patetta (January 17, 2012);
- l. Schleimer Letter on behalf Patetta (January 27, 2012);
- m. Sullivan Letter on behalf of Patetta (November 21, 2013);
- n. Wilczynski Email on behalf of Patetta (January 20, 2012);

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<sup>2</sup> Counts One through Four of Order to Show Cause No. E17-115 relate exclusively to the Respondent’s New Jersey insurance producer license and will be addressed in a Final Decision and Order issued by the Commissioner of Banking and Insurance. Given Counts Five through Seven relate exclusively to Respondent’s New Jersey real estate license, which is active, the Commission retains primary interest in this matter pursuant to N.J.A.C. 1:1-17.8 and shall address those counts in this Final Decision and Order.

On or about December 7, 2017 the Department issued the OTSC against the Respondent seeking to revoke his real estate salespersons license and impose civil monetary penalties for violations of the Real Estate Act. Initial Decision at 2. In the OTSC, the Department alleged that the Respondent engaged in the following activities in violation of the real estate laws of this State:

Count Five: Patetta's conviction for felony tax evasion constitutes violations of N.J.S.A. 45:15-17(e), (h), and (l), and subjects Patetta's real estate salesperson license to revocation pursuant to N.J.S.A. 45:15-19.1; and

Count Six: Patetta failed to notify the Commission within 30 days of his guilty plea to or conviction of felony tax evasion, in violation of N.J.S.A. 45:15-17(s) and the conditions of his probationary real estate salesperson license; and

Count Seven: Patetta failed to disclose that he was convicted of felony tax evasion or that he voluntarily surrendered his insurance producer license on REC Qualifying Questionnaires that he filed with the REC on May 8, 2015, and April 11, 2017 in violation of N.J.S.A. 45:15-17(e) and (n).

Id. at 17-19.

On February 16, 2018, the Respondent filed an Answer to the OTSC, wherein the Respondent denied all of the allegations set forth in the OTSC and requested a hearing. Id. at 2. The Department transmitted the matter as a contested case to the Office of Administrative Law ("OAL") pursuant to N.J.S.A. 52:14B-1 to -31 and N.J.S.A. 52:14F-1 to -23, where it was filed on April 26, 2018. Ibid.

After multiple status conferences and the completion of discovery, the Department filed a Motion for Summary Decision on May 17, 2019. Initial Decision at 3. The Respondent filed opposition to the Department's motion on July 19, 2019, and the Department's reply was filed on August 16, 2019. Ibid.

By order dated January 27, 2020, the ALJ granted a motion by Respondent's counsel to be relieved as counsel for The Respondent. Ibid. On July 20, 2020, the Respondent notified the ALJ that he would be adopting the brief in opposition to the Department's motion and proceeding pro

se in this matter. Initial Decision at 3. After additional status conferences, oral argument was held on October 8, 2020. Ibid. On November 4, 2020, the Respondent filed supplemental information regarding his ability to pay fines. Ibid. The Department filed its response on December 1, 2020. Ibid.

On June 2, 2021, the ALJ issued an Initial Decision that granted summary decision to the Department on all seven counts of the OTSC. In relation to Counts Five through Seven, the ALJ ordered the revocation of the Respondent's real estate salesperson license. Id. at 26. The ALJ additionally ordered that the Respondent be fined \$10,000 for violations of the Real Estate Act. Ibid.

On June 15, 2021, the Respondent submitted Exceptions to the Initial Decision pursuant to N.J.A.C. 1:1-18.4(a) ("Respondent's Exceptions"). The Department, through its counsel Deputy Attorney General Telge N. Peiris ("DAG Peiris"), submitted a letter advising that it was not filing exceptions ("Department's Exceptions").

#### **ALJ'S FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS**

The ALJ noted that, pursuant to N.J.A.C. 1:1-12.5(b), a motion for summary decision requires analysis of whether "the papers and discovery which have been filed, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Initial Decision at 12. Further, the ALJ stated that the New Jersey Supreme Court has explained that when deciding a motion for summary judgment under R. 4:46-2,

a determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials present, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged dispute issue in favor of the non-moving party.

Ibid. (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). Further, the ALJ stated that R. 4:46-2(c) provides further guidance regarding whether the Brill standard has been met in a case. Ibid. R. 4:46-2(c) provides that:

[a]n issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

In light of this standard, the ALJ granted the Department's Motion for Summary Decision on all Counts.

The ALJ determined that the following material facts were not in dispute in regards to Counts Five through Seven of the OTSC. Initial Decision at 5-7. Respondent's real estate salesperson license is currently active. Id. at 5, ¶17. On November 30, 2011, the Respondent was indicted on five counts of personal income tax evasion and five counts of willful subscription to a false tax return, for the years 2001, 2002, 2003, 2004, and 2005, in connection with income received from insurance employers that the Respondent did not report. Id. at 3-4, ¶3.

The ALJ further found that the Respondent applied for a real estate salesperson license on December 2, 2011 and represented on the application that he did not have a criminal charge pending against him. Id. at 5, ¶¶ 18-19. On December 9, 2011, the Respondent sent a letter to the Commission to inform them that he had mistakenly represented that he had no criminal charges pending. Id. at 6, ¶20. On January 6, 2012, the Real Estate Commission staff ("REC") denied Respondent's application for a real estate license due to the pending criminal charges against him. Ibid. ¶21. The Respondent appealed the denial on February 2, 2012. Ibid. ¶ 22. The Commission overturned the denial at its April 4, 2012 meeting, and determined that the Respondent should receive a real estate salesperson license to be held on a probationary basis, which would terminate

upon resolution of the criminal charges pending against the Respondent. Initial Decision at 6, ¶23. The Respondent was issued a real estate salesperson license effective April 4, 2012. Ibid. ¶25. By letter dated April 4, 2012, the REC staff informed the Respondent that he “must notify the Commission in writing within 30 days of any verdict or guilty plea or other disposition of the criminal charges that are pending, as required by N.J.S.A. 45:15-17(s).” Ibid. ¶24. The REC letter further directed the Respondent that all written notifications to the Commission should be addressed to the “Chief of Investigations, Real Estate Commission, P.O. Box 328, Trenton, New Jersey.” Ibid. ¶26

On April 29, 2013, the Respondent pled guilty to one count of the Indictment and entered into a plea agreement with the U.S. Attorney’s Office for the District of New Jersey. Id. at 4, ¶7. On June 26, 2013, the Respondent submitted a renewal application together with responses to a Qualifying Questionnaire and was approved for a real estate salespersons license July 1, 2013. Id. at 6-7, ¶¶27-28. On December 16, 2013, the Court entered a Judgment of Conviction on Count Three of the Indictment for Attempt to Evade or Defeat Tax for 2003, in violation of 26 U.S.C. 7201. Id. at 4, ¶8. Also, on December 16, 2013, the Respondent submitted an insurance producer request for license surrender/status change form seeking to surrender his New Jersey resident producer license. Ibid. ¶9.

On May 8, 2015, the Respondent submitted a renewal application together with responses to a Qualifying Questionnaire wherein he represented that he had not been convicted of a crime, since his last New Jersey real estate license was issued or renewed. Id. at 7, ¶¶29 and 30. The Respondent’s real estate salespersons license was renewed effective May 8, 2015, based on the information he provided to the REC. Initial Decision at 7, ¶31. On April 11, 2017, the Respondent submitted a renewal application together with responses to a Qualifying Questionnaire. Ibid. ¶32.

The Respondent's license was renewed effective April 11, 2017 based on the information he provided to the REC. Ibid. ¶33.

Based on the foregoing uncontested facts and additional evidence presented by the Department, the ALJ found that Respondent:

1. Failed to surrender his real estate license.
2. Represented on the May 8, 2015 renewal application, that he had not surrendered a professional license since the last time his real estate license was issued or renewed and failed to disclose to the REC he had been convicted of felony tax evasion or that he had voluntarily surrendered his producer license.
3. Represented on the April 17, 2017 renewal application, that he had not been convicted of a crime, since his last New Jersey real estate license was issued or renewed and represented that he had not surrendered a professional license since the last time his real estate license was issued or renewed.

Initial Decision at 11.

The ALJ further concluded that Respondent's conduct, as detailed above, had violated the Real Estate Act. Initial Decision at 17-19. Specifically, as to Count Five, the ALJ held that Respondent's conviction of "felony tax evasion unquestionably demonstrates unworthiness, incompetency, bad faith or dishonesty." Id. at 17. Accordingly, the ALJ held that the Respondent violated N.J.S.A. 45:15-17(e), (h), and (l). Id. at 22.

As to Count Six, the ALJ found that the letter from Respondent's probation officer did not constitute notice to the REC informing them of Respondent's guilty plea. Id. at 17. The ALJ therefore found that by not affirmatively notifying the REC of his guilty plea within thirty days, the Respondent violated N.J.S.A. 45:15-17(s), and the conditions of his probationary real estate salesperson license. Id. at 18.

As to Count Seven, the ALJ found that on both the May 8, 2015 and April 17, 2017 when Respondent renewed his real estate salesperson license, he falsely represented that he had not been

convicted of a crime and that he had not surrendered another professional license. Id. at 18-19. The ALJ held that the Respondent's failure to disclose his conviction for felony tax evasion or that he had voluntarily surrendered his insurance producer license constitute violations of N.J.S.A. 45:15-17(e) and (n). Initial Decision at 19.

#### Penalties Ordered by the ALJ

As to the appropriate penalty, the ALJ correctly stated that pursuant to N.J.S.A. 45:15-17, the Respondent's real estate license may be revoked, and additionally, a penalty of not more than \$5,000 for the first violation, and a penalty of not more than \$10,000 for any subsequent violation may be imposed. Id. at 21-22.

The ALJ recommended that the Respondent's real estate salesperson license be revoked for the violations proven in Counts Five through Seven of the OTSC. Id. at 23.

As to monetary penalties, the ALJ noted that the Department requested a total of \$10,000 for the violations of the Real Estate Act. Id. at 24. Specifically, the Department sought \$0 for the single violation in Count Five; \$5,000 for the single violation in Count Six; and \$5,000 (\$2,500 each for two violations) in Count Seven. Id. at 23-24.

The ALJ applied the seven factors for determining monetary penalties set forth in Kimmelman v. Henkles & McCoy, Inc., 108 N.J. 123, 137-39 (1987). Id. at 24-26. These factors include: (1) the good faith or bad faith of the Respondent; (2) the Respondent's ability to pay; (3) the amount of profits obtained from the illegal activity; (4) injury to the public; (5) duration of the illegal activity or conspiracy; (6) existence of criminal actions; and (7) past violations. Id. at 24.

As to the first factor in Kimmelman, the good or bad faith of the Respondent, the ALJ stated that the Respondent demonstrated bad faith in failing to report his conviction to the REC. Ibid.



As to the second factor in Kimmelman, the ability to pay, the ALJ stated that after the oral argument, the ALJ directed the Respondent to submit proof of his income in support of his argument that he is unable to pay a civil monetary penalty. Initial Decision at 24. On November 4, 2020, the Respondent submitted an e-mail which stated, “2020 YTD from Real Estate sales. \$25,360. Gross before allowable expenses and federal state and self employment taxes.” Ibid. In response, the Department argued that the Respondent failed to provide income information in discovery. Id. at 24-25. Further, the Department argued, the Respondent’s e-mail submission did not account for whether Respondent had any savings, assets, or income from prior years, did not establish an inability to pay, and was not a reflection of the Respondent’s current financial status. Initial Decision at 25. The ALJ agreed with the Department’s arguments and stated that the Respondent did not establish an inability to pay. Ibid.

As to the third factor, the profits obtained, the ALJ stated that although the Respondent did not obtain a direct profit for the violations of Real Estate Act, his actions delayed any disciplinary action, which may have resulted in the revocation of his real estate salesperson license. Ibid.

As to the fourth factor, injury to the public, the ALJ stated that the Department demonstrated injury to the public through the Respondent’s disregard of important safeguards and protections for consumers. Ibid. The ALJ also stated that the Respondent’s misrepresentations on his license renewal applications submitted on May 8, 2015, and April 11, 2017, demonstrate that he has acted dishonestly and with a lack of integrity. Ibid.

Regarding the fifth factor in Kimmelman, the duration of illegal activity, the ALJ found that the Respondent made misrepresentations in the renewal applications submitted to the REC on May 8, 2015, and on April 11, 2017. Ibid. Taken with the misrepresentations on his applications

to renew his insurance producer license, in 2014 and 2015, the illegal activity persisted for three years. Ibid.

Regarding the sixth factor, the existence of criminal charges related to the matter, the ALJ noted while the Respondent was sentenced to a term of imprisonment for his conviction for felony tax fraud, “that does not alleviate his obligation to comply with the reporting requirements with the . . . REC as set forth in . . . the New Jersey Real Estate Licensing Act.” Ibid.

For the final factor in Kimmelman, previous relevant regulatory and statutory violations, the ALJ found that the Respondent entered into a Consent Order with the Department in 1996 for failing to disclose a conviction on an application to renew his insurance producer license and was subject to a \$500 fine. Initial Decision at 26. The ALJ stated that “it is clear that the prior violation did not deter him from failing to follow the reporting requirements that are plainly set forth in the statute.” Ibid.

Based upon the above analysis, the ALJ recommended that a civil monetary penalty in the amount of \$10,000 for the violations of the Real Estate Act was appropriate. Ibid. The ALJ did not state how the penalty was to be allocated among Counts Five through Seven of the OTSC. The Department, however, had recommended the following allocation: \$0 for Count Five; \$5,000 for Count Six; and \$2,500 each for the two violations in Count Seven for a total of \$5,000 for Count Seven. Id. at 23-24.

## EXCEPTIONS

Under N.J.A.C. 1:1-18.4(a), Parties' Exceptions were due on or before June 16, 2021. The Respondent filed timely exceptions ("Respondent Exceptions"). The Department, through counsel DAG Peiris, submitted a letter indicating that it was not filing exceptions.<sup>3</sup>

### Respondent Exceptions

The Respondent argues that his probation officer is not an "uninterested third party" because she is an officer of the Court and she notified the REC of his conviction by letter dated June 13, 2013. Respondent Exceptions at 1. The Respondent contends that in October 2014 he contacted "the commissions and asked what I needed to reinstate my licenses." Id. at 2. He indicates that he was told to "answer the questionnaires and complete [his] credits." Ibid. He states that he answered "no" to the question regarding if he had been convicted of felony because he interpreted the wording on the question "since my last renewal or issue" to mean that there was not any new criminal activity. Ibid.

The Respondent also asks that the Commission consider his record as a real estate salesperson. Ibid. He states that he always upheld his fiduciary duty and he always treated his clients with "utmost respect, honesty, and integrity." Ibid. He states that he has not been accused of harming the general public. Ibid.

Lastly, the Respondent asks that the Commission consider that he is 66 years old, on social security, and has spent his life in the insurance and real estate industry. Ibid. He states that he is trying to resolve his debt and provide for his family and that the revocation of his salesperson

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<sup>3</sup> The Department filed their Reply to Patetta's Exceptions on June 29, 2021, past the five-day deadline in N.J.A.C. 1:1-18.4(d). Accordingly, the Department's Reply will not be considered in this Final Order. The Respondent then filed a sur-reply to the Department's Response on July 21, 2021. Since applicable administrative rules do not permit a sur-reply in this context, Patetta's sur-reply filing was not considered.

license would be devastating “financially and emotionally.” Ibid. He asks for the ability to keep his license, “at least on a probationary period.” Ibid.

### **LEGAL DISCUSSION**

In light of the above findings of fact and other evidence set forth by the ALJ, the Commission voted in favor of adopting the Initial Decision rendered in Marlene Caride v. Ronald M. Patetta, OAL DKT No. BKI 05997-18, AGENCY DKT No. IOTSC E17-115. Specifically, the Commission concurred with the ALJ’s conclusions of law regarding Counts Five through Seven of the OTSC summarized as follows:

1. Patetta violated N.J.S.A. 45:15-17(e), (h), and (l) based on his conviction on charges of felony tax evasion which constitutes conduct demonstrating unworthiness, incompetency, bad faith or dishonesty.
2. Patetta violated N.J.S.A. 45:15-17(s) and the conditions of his probationary real estate license by failing to notify the REC within thirty days of his guilty plea or conviction for felony tax evasion.
3. Patetta violated N.J.S.A. 45:15-17 (e) and (n) by failing to disclose that he was convicted of felony tax evasion and failing to disclose that he had voluntarily surrendered his insurance producer license on the REC qualifying questionnaires filed on May 8, 2015, and April 11, 2017.

Further, the Commission concurred with the sanctions ordered by the ALJ for Patetta’s four violations of the Real Estate Act, which sanctions were as follows:

1. Real Estate license be revoked; and
2. Pay a penalty of \$10,000.

In arriving at the determination in this matter, the Commission took into consideration the uncontested facts and additional evidence set forth in the Initial Decision, as well as the other documents constituting the record in this matter.

### Allegations Against the Respondent

Counts Five through Seven of the OTSC charge the Respondent with violations of the Real Estate Act, which governs the licensure and conduct of New Jersey real estate licensees and empowers the Commission to suspend or revoke the license of, and to fine, a real estate salesperson for violations of its provisions. N.J.S.A. 45:15-17. The relevant counts are discussed below.

#### Count Five

Count Five of the OTSC alleges that the Respondent's conviction for felony tax evasion constitutes violations of N.J.S.A. 45:15-17(e), (h), and (l), and subjects his real estate salesperson license to revocation pursuant to N.J.S.A. 45:15-19.1. Initial Decision at 17.

The ALJ found that a conviction for felony tax evasion "unquestionably demonstrates unworthiness, incompetency, and bad faith or dishonesty." Ibid. The ALJ also found that the Commission did not have knowledge of the Respondent's conviction because he failed to submit a written notification to the "Chief of Investigations, Real Estate Commission" after his guilty plea and conviction. Ibid. Lastly, the ALJ found that the conviction for tax evasion demonstrates fraud or dishonest dealing. Ibid.

The evidence also showed that the Respondent falsely represented that he had not been convicted of a crime since his last New Jersey real estate license was issued or renewed on both his May 8, 2015, and April 11, 2017 Qualifying Questionnaires submitted with his applications to renew his license. Id. at ¶¶29-33.

In his Exceptions, the Respondent argues that his probation officer is not an “uninterested third party” because she is an officer of the Court and she notified the REC of his conviction by letter dated June 13, 2013. Respondent Exceptions at 1. The Respondent states that in October 2014 he contacted “the commissions and asked what I needed to reinstate my licenses.” Id. at 2. He indicates that he was told to “answer the questionnaires and complete [his] credits.” Ibid. He states that he answered “no” to the questions on the Qualifying Questionnaires because he interpreted the wording on the question “since my last renewal or issue” to mean that there was not any new criminal activity. Ibid.

The Commission agrees with the ALJ that the Respondent had the responsibility to notify “the Commission in writing within 30 days of any verdict or guilty plea or other disposition of the criminal charges that are pending” in accordance with the letter dated April 4, 2012 from the REC staff. The letter from his probation officer, merely informing the REC of his plea, but not his conviction, does not satisfy this duty.

The Commission also agrees with the ALJ that Respondent’s conduct in evading income tax demonstrates unworthiness, bad faith, and dishonesty as well as fraud or dishonest dealing. Further, the Respondent was convicted of a crime that the Commission did not have knowledge of when the Respondent renewed his real estate salesperson license in 2015 and 2017.

Accordingly, the Commission concurs with the ALJ that the Department proved, by a preponderance of the competent, relevant, and credible evidence, the allegations in Count Five of the OTSC. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Therefore, the Commission FINDS that the Respondent’s actions, as alleged in Count Five of the OTSC, constitute violations of N.J.S.A. 45:15-17(e) (conduct which demonstrates unworthiness, incompetency, bad faith, or dishonesty), N.J.S.A. 45:15-17(h) (being convicted of a crime which the Commission did not have

knowledge of at the time of last issuing a real estate license to the licensee), and N.J.S.A. 45:15-17(l) (conduct which constitutes fraud or dishonest dealing).

Count Six

Count Six of the OTSC alleged that the Respondent failed to notify the Commission within thirty days of his guilty plea to or conviction for felony tax evasion, in violation of N.J.S.A. 45:15-17(s), and the conditions of his probationary real estate salesperson license. Initial Decision at 17-18.

Respondent denied this allegation and contended that his compliance was established by the letter dated June 13, 2017, from Respondent's probation officer, Denise May, to the REC indicating that the Respondent had pled guilty "to a criminal offense" and requested information regarding the Respondent's real estate license in order to assist in the preparation of the presentence report. Initial Decision at 9-10. The ALJ found that the letter from Respondent's probation officer, and not the Respondent personally, to the Department did not satisfy the statutory requirement that the Respondent notify the REC of a conviction. Id. at 17-18. Further, the letter was not addressed to the "Chief of Investigations Real Estate Commission" as required under the conditions of his probationary license and the letter was also dated June 13, 2013, which was more than thirty days after the Respondent's guilty plea. Id. at 18. The ALJ correctly stated that "the statutory language is unambiguous" and therefore Respondent had an affirmative obligation to personally notify the REC of his conviction. Ibid. The ALJ found that by not affirmatively notifying the REC of his guilty plea within thirty days, the Respondent violated N.J.S.A. 45:15-17(s), and the conditions of his probationary real estate salesperson license. Ibid.

In his Exceptions, the Respondent argues that his probation officer was not an "uninterested third party" because she is an officer of the Court and she notified the REC of his conviction by

her letter dated June 13, 2013. Respondent Exceptions at 1. However, this letter was sent after the 30 days required by N.J.S.A. 45:15-17(s). Further, in the letter from the REC dated April 4, 2012 setting forth the conditions of his probationary license, the REC informed the Respondent that he “must notify the Commission in writing within 30 days of any verdict or guilty plea or other disposition of the criminal charges that are pending, as required by N.J.S.A. 45:15-17(s).” Initial Decision at 5. The REC letter further explicitly directed the Respondent that all written notifications to the Commission should be addressed to the “Chief of Investigations, Real Estate Commission, P.O. Box 328, Trenton, New Jersey.”

Accordingly, the Commission concurs with the ALJ that the Department proved, by a preponderance of the competent, relevant, and credible evidence, the allegations in Count Six of the OTSC. Therefore, the Commission FINDS that the Respondent’s actions, as alleged in Count Six of the OTSC, constitute a violation of N.J.S.A. 45:15-17(s) (failing to notify the Commission within thirty days of having been convicted of any crime) and the terms of his probationary real estate salespersons license.

#### Count Seven

Count Seven of the OTSC alleges that the Respondent failed to disclose that he was convicted of felony tax evasion or that he voluntarily surrendered his insurance producer license on renewal Qualifying Questionnaires that he filed with the REC on May 8, 2015, and April 11, 2017 in violation of N.J.S.A. 45:15-17(e) and (n). Initial Decision at 18-19.

The ALJ found that on both May 8, 2015 and April 17, 2017, when Respondent renewed his real estate salesperson license, he falsely represented that he had not been convicted of a crime and that he had not surrendered another professional license on the Qualifying Questionnaires. Ibid. Indeed, the evidence showed that on December 16, 2013, the Court entered a Judgment of



Conviction on Count Three of the Indictment for Attempt to Evade or Defeat Tax for 2003, in violation of 26 U.S.C. 7201. Id. at 4, ¶8. Also, on December 16, 2013, the Respondent submitted an insurance producer request for license surrender/status change form seeking to surrender his New Jersey resident producer license. Ibid. ¶9.

The ALJ held that the Respondent's failure to disclose his conviction for felony tax evasion or that he had voluntarily surrendered his insurance producer license constitute violations of N.J.S.A. 45:15-17(e) and (n). Id. at 23.

In his Exceptions, the Respondent argues that argues that in October 2014 he contacted "the commissions and asked what I needed to reinstate my licenses." Respondent Exceptions at 2. He indicates that he was told to "answer the questionnaires and complete [his] credits." Ibid. He states that he answered "no" to the questions on the Qualifying Questionnaires because he interpreted the wording on the question "since my last renewal or issue" to mean that there was not any new criminal activity. Ibid.

The Commission agrees with the ALJ that the Respondent demonstrated dishonesty when he falsely represented that he had not been convicted of a crime since his last New Jersey real estate license was issued or renewed, and that he had not surrendered another professional license on both his May 8, 2015, and April 11, 2017 Qualifying Questionnaires submitted with his applications to renew his license. Indeed, it was an uncontested fact that in December 2013, a judgment of conviction was entered against Patetta and thereupon he surrendered his New Jersey resident insurance producer license. Id. at 4, ¶¶8-9. By presenting false information on his 2015 and 2017 Qualifying Questionnaires, Patetta procured his real estate salesperson license through misrepresentation or deceit—on two separate occasions. Accordingly, the Commission concurs with the ALJ that the Department proved the allegations in Count Seven of the OTSC by a

preponderance of the competent, relevant, and credible evidence. Therefore, the Commission FINDS that the Respondent's actions, as alleged in Count Seven of the OTSC, constitute violations of N.J.S.A. 45:15-17(e) (conduct which demonstrates unworthiness, incompetency, bad faith, or dishonesty) and N.J.S.A. 45:15-17(n) (procuring a real estate license by fraud, misrepresentation or deceit).

### **PENALTY AGAINST THE RESPONDENT**

#### **Revocation of Respondent's Real Estate License**

With respect to the appropriate disciplinary action to take against the Respondent's real estate salesperson license, the Commission finds that the record is more than sufficient to support license revocation and, in fact, compels the revocation of Respondent's real estate salesperson license in this State. Accordingly, the Commission ADOPTS the ALJ's recommendation that the Respondent's real estate salesperson license be revoked.

The Real Estate 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 utmost honesty, trust, and good conduct. Maple Hill Farms, Inc. v. New Jersey Real Estate Commission, 67 N.J. Super. 223, 232 (App. Div. 1961); Div. of New Jersey Real Estate Comm'n 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 Ponsi, 39 N.J. Super. at 532-533.

The Commission has the power to suspend, revoke, or place on probation the license of any licensee for “any conduct which demonstrates unworthiness, incompetency, bad faith, or dishonesty” or conduct that “constitutes fraud or dishonest dealing.” N.J.S.A. 45:15-17(e) and (l). Further, N.J.S.A. 45:15-19.1 compels the Commission to revoke the license of a licensee if said licensee is “convicted in a court of competent jurisdiction in the State of New Jersey or any state...of forgery, burglary, robbery, any theft or related offense with the exception of shoplifting, criminal conspiracy to defraud, or other like offenses...”

The uncontested facts in this matter demonstrate that the Respondent pled guilty to tax evasion. The Respondent then failed to notify the Commission of the conviction. Further, when applying to renew his license in 2015 and 2017, the Respondent denied that he had been convicted of a crime and failed to advise that he had surrendered another professional license. The Respondent’s conduct was serious in nature and demonstrated unworthiness, bad faith, and dishonesty. Accordingly, and for the reasons set forth in the Initial Decision, the Commission adopts the ALJ’s Order revoking Respondent’s real estate license and FINDS that the Respondent does not possess the necessary honesty and trustworthiness required of real estate licensees.

#### Monetary Penalties Against the Respondent

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.

As noted by the ALJ, pursuant to Kimmelman, certain factors are to be examined when assessing administrative monetary penalties such as those that may be imposed under N.J.S.A. 45:15-17. No one Kimmelman factor is dispositive for or against fines and penalties. See

Kimmelman, 108 N.J. at 139 (“[t]he weight to be given to each of these factors by a trial court in determining . . . the amount of any penalty, will depend on the facts of each case”).

The first Kimmelman factor addresses the good faith or bad faith of the Respondent. The ALJ found that the Respondent demonstrated bad faith in failing to report his conviction to the REC. Initial Decision at 24. The Respondent also demonstrated bad faith by failing to indicate that he had surrendered a professional license on both his May 8, 2015, and April 11, 2017 Qualifying Questionnaires submitted with his applications to renew his real estate salesperson license. Accordingly, this factor weighs in favor of the imposition of a monetary penalty.

The second factor in Kimmelman is the Respondent’s ability to pay. Respondents who claim an inability to pay civil penalties bear the burden of proving their 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 ALJ stated that after the oral argument, the ALJ directed the Respondent to submit proof of his income in support of his argument that he is unable to pay a civil monetary penalty. Initial Decision at 24. On November 4, 2020, the Respondent submitted an e-mail which stated, “2020 YTD from Real Estate sales. \$25360. Gross before allowable expenses and federal state and self employment taxes.” Ibid. In response, the Department argued that this submission did not account for whether Respondent has any savings, assets, or income from prior years, did not establish an inability to pay, and was not a reflection of the Respondent’s current financial status. Id. at 24-25. The ALJ agreed with the Department’s arguments and stated that the Respondent did not establish an inability to pay. Id. at 25. The Commission concurs with the ALJ that the Respondent has not met that burden and therefore this factor weighs in favor of the imposition of a monetary penalty.

The third Kimmelman factor relates to the profits obtained. 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 ALJ found that although the Respondent did not obtain a direct profit for the violations of Real Estate Act, his actions delayed any disciplinary action, which may have resulted in the revocation of his licenses. Initial Decision at 25. The Commission concurs and finds that Respondent's failure to timely notify the Commission of his guilty plea and denying the conviction on his license renewals in 2015 and 2017 allowed him to continue to be a real estate licensee and prevented the Commission from a timely investigation into this matter. See NJREC v. Fardin, Final Order of Determination, (01/14/20). This factor weighs in favor of the imposition of a monetary penalty.

The fourth Kimmelman factor is 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 licensees fail to comply with Commission regulations. When a licensee is unable to conduct himself in accordance with the high standards expected of him and his profession, the public's confidence in the real estate industry is eroded. As to this factor, the ALJ stated that the Department demonstrated injury to the public through the Respondent's willful disregard of important safeguards and protections for consumers. Initial Decision at 25. The ALJ also stated that the Respondent's misrepresentations on his license renewal applications submitted on May 8, 2015, and April 11, 2017, demonstrate that he has acted dishonestly and with a lack of integrity. Ibid. The Commission concurs and finds that this factor weighs in favor of a monetary penalty.

Regarding the fifth factor in Kimmelman, the duration of illegal activity, the Commission concurs with the ALJ and finds that the Respondent made misrepresentations in the renewal

applications submitted to the REC on May 8, 2015, and on April 11, 2017. Accordingly, the illegal activity persisted for two years and the Commission finds that this factor weighs in favor of a monetary penalty.

The existence of criminal punishment and whether a civil penalty may be unduly punitive if other sanctions have been imposed is the sixth factor under the Kimmelman analysis. 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. Regarding this factor, the ALJ noted while the Respondent was sentenced to a term of imprisonment for his conviction for felony tax fraud, “that does not alleviate his obligation to comply with the reporting requirements with the...REC as set forth in...the New Jersey Real Estate Licensing Act.” Initial Decision at 25. The Commission concurs with the ALJ, and finds that Respondent has not suffered any criminal punishment or treble damages relating to his willful misrepresentations to the REC and failure to give proper notice of his guilty plea, and this factor weighs in favor of a monetary penalty.

The final factor examined in Kimmelman is previous relevant regulatory and statutory violations of the Respondent. There is no evidence that the Respondent has previously violated the Real Estate Act or its associated regulations. Accordingly, this factor weighs against the imposition of a monetary penalty.

In light of the above Kimmelman analysis and based on the violations of the Real Estate Act, the Commission ADOPTS the Order of the ALJ that a civil monetary penalty in the amount of \$10,000 for the violations of the Real Estate Act is appropriate. However, the ALJ did not specifically allocate the fines amongst Counts Five through Seven. Thus, the Commission

MODIFIES the ALJ's decision in that limited regard and allocates the fine as follows, as recommended by the Department:

Count Five: \$0 for the violations of N.J.S.A. 45:15-17(e), (h), and (l).

Count Six: \$5,000 for the violation of N.J.S.A. 45:15-17(s).

Count Seven: \$2,500 each for two violations of N.J.S.A. 45:15-17(e) and (n), for a total of \$5,000 for this Count.

These fines are fully warranted, not excessive or unduly punitive, and necessary to demonstrate the appropriate level of opprobrium for the Respondent's conduct. The Commission also notes that the ALJ's total fine of \$10,000 is far less than the maximum permitted under N.J.S.A. 45:15-17, which allows for the imposition of up to a \$5,000 fine for the first violation and up to a \$10,000 fine for each subsequent violation of the Real Estate Act.

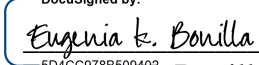
**CONCLUSION**

Having carefully reviewed the Initial Decision, the Respondent’s Exceptions, and the entire record herein, the Commission hereby ADOPTS the findings of fact and conclusions of law as set forth in the Initial Decision, except as modified herein, and holds that the Respondent violated the Real Estate Act as alleged in Counts Five through Seven of the OTSC.

The Commission further ADOPTS the ALJ’s recommendation as to the imposition of penalties against the Respondent and hereby ORDERS the revocation of the Respondent’s real estate salesperson license. The Commission also ADOPTS the further recommendation of the ALJ and hereby ORDERS that fines totaling \$10,000 be imposed against the Respondent. The Commission MODIFIES the Initial Decision as it relates to the allocation of these monetary penalties. The civil monetary penalty shall be allocated as follows: Count Five: \$0, Count Six: \$5,000, and Count Seven: \$5,000.

SO ORDERED this 11th day of January, 2022.

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

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Eugenia K. Bonilla, Vice President  
New Jersey Real Estate Commission

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