

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,	)	Docket No.: HUD-18-015
	)	REC Ref No.: 10004654
Complainant,	)	
	)	
v.	)	<b>FINAL ORDER OF</b>
	)	<b>DETERMINATION</b>
JERRY GUSTOSO, Licensed New Jersey Real Estate Salesperson (Ref No. 0676792),	)	
	)	
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 March 26, 2019.

**BEFORE:** Commissioners Linda K. Stefanik, Darlene Bandazian, Jacob S. Elkes, Denise M. Illes, Carlos Lejnieks, and Kathryn Godby Oram.

**APPEARANCES:** John Rossakis, Regulatory Officer (“RO Rossakis”), appeared on behalf of the New Jersey Real Estate Commission staff (“REC”). Respondent Jerry Gustoso (“Respondent”) was represented by Emily A. Kaller, Esq. (“Kaller”) of Greenbaum, Rowe, Smith & Davis, LLP.

## STATEMENT OF THE CASE

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated September 10, 2018, pursuant to N.J.S.A. 45:15-17, 18 and 19.1, and N.J.A.C. 11:5-1.1 to -12.18.

The OTSC alleges that on May 25, 2018, the Respondent pleaded guilty in the Superior Court of New Jersey, Ocean County, to one count of Theft by Deception, in violation of N.J.S.A. 2C:20-4, a crime of the third degree. As part of the plea agreement, the Respondent agreed to make restitution in the amount of \$26,434.99 to the New Jersey State Treasurer and to the Federal Emergency Management Agency (“FEMA”). The OTSC alleges that the conduct underlying the criminal charge relates to the Respondent filing falsified claims and applications for disaster relief funds from numerous federal and state government programs to remediate damages caused by Hurricane Sandy to a property owned by the Respondent. The OTSC alleges that the Respondent’s conduct demonstrates dishonesty and unworthiness in violation of N.J.S.A. 45:15-17(e) and that the Respondent’s license is subject to revocation pursuant to N.J.S.A. 45:15-19.1 because he has been convicted of a theft offense.

The Respondent filed an Answer to the OTSC, wherein the Respondent admitted to the factual allegations set forth in the OTSC but denied that the conduct constituted a violation of N.J.S.A. 45:15-17(e). The Respondent neither admitted nor denied the assertion that his real estate license was subject to revocation pursuant to N.J.S.A. 45:15-19.1, but did assert that revocation would have a devastating and disproportionate impact on the Respondent and his ability to earn a living. Accordingly, on November 27, 2018, the Commission reviewed the pleadings and deemed this matter uncontested and directed that a hearing be scheduled.

A hearing before the Commission was conducted on March 26, 2019, at which time the following exhibits were admitted into evidence by the REC, without objection:

- S-1 Berkeley Township Municipal Court Summons, State of New Jersey v. Jerry Gustoso, dated August 17, 2017;
- S-2 Judgment of Conviction, Superior Court of New Jersey, Ocean County, State of New Jersey v. Jerry Gustoso, dated August 21, 2018; and
- S-3 NJREC Licensing System Reported Home Address History for Respondent Jerry Gustoso.

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

- R-1 Cancelled renter's insurance policy for 2 Marine View Plaza, Apartment 22 F, Hoboken, NJ 07030 ("Hoboken apartment");
- R-2 Car insurance identification card reflecting Respondent's address as 142 Cedar Run Road, Bayville, N.J. 08721 ("Bayville house"), effective September 8, 2012;
- R-3 NJM Insurance Homeowners Declaration Page for Bayville house, effective July 31, 2012;
- R-4 NJM Insurance correspondence reflecting NJM's treatment of Bayville house as primary residence;
- R-5 NJM Flood Insurance for Bayville house, effective date of policy changed June 12, 2013 (Policy period July 31, 2012 to July 31, 2013);
- R-6 NJM correspondence letter, dated August 6, 2012, requesting homeowner to complete certain repairs to Bayville house;
- R-7 NJM correspondence letter, dated November 30, 2012, reflecting the completion of requested repairs to Bayville house;
- R-8 Direct TV bill for Bayville house addressed to Bayville house, dated August 18, 2012;
- R-9 Direct TV equipment lease documents, dated August 18, 2012;
- R-10 NJM correspondence regarding home replacement cost analysis, dated September 7, 2012;
- R-11 Multiband DVR installation invoice, dated August 18, 2012;

- R-12 Trans Union printout reflecting reported address as Bayville house, dated January 1, 2017;
- R-13 Credit Karma printout reflecting reported address as Bayville house, dated December 14, 2016;
- R-14 IRS E-Filing 2012 (prerequisite for receiving Sandy Grant);
- R-15 NJ 2012 Homestead filing (prerequisite for receiving Sandy Grant);
- R-16 U-Haul Web Receipt reflecting drop off location of Bayville, NJ, dated August 3, 2012;
- R-17 Mortgage Documents for Bayville house;
- R-18 Wholesale Commitment Letter from Flagstar Bank reflecting owner occupancy for Bayville house;
- R-19 Correspondence from attorney Martone indicating temporary Hoboken apartment leased on a month-to-month basis due to displacement from primary residence following hurricane Sandy;
- R-20 Correspondence from Prime Source Mortgage indicating mortgage for Bayville house initiated as a primary residence loan;
- R-21 Hoboken apartment lease reflecting March 1, 2008 to February 26, 2011 tenancy;
- R-22 Hoboken apartment lease renewal signed December 30, 2013;
- R-23 Gas bill for Bayville house, dated November 7, 2012;
- R-24 Cedar Run block party invitation;
- R-25 Letters and statements of neighbors and friends who visited Bayville house;
- R-26 Checks reimbursing funds; and
- R-27 Packet of financial documents and correspondence related to Sandy relief funds.

## **TESTIMONY OF THE WITNESSES**

### **Jerry Gustoso**

The Respondent testified he currently lives at 142 Cedar Run Road, Bayville, New Jersey ("Bayville house"). He stated that this is a single-family home and he resides there alone and does not reside elsewhere.

The Respondent testified that he lived in Hoboken until he purchased his house in Bayville in August 2012. He stated his lease expired on his Hoboken apartment in 2011, but he resided there on a month-to-month basis until he purchased the Bayville house. The Respondent testified that his girlfriend, who had shared custody of her two children in the Hudson county area, moved into the Hoboken apartment at that time. He also stated that his adult son had mentioned wanting to move to Hoboken, so he wanted to keep the Hoboken apartment in addition the Bayville house. The Respondent testified he cancelled his renter's insurance policy with New Jersey Manufacturers Insurance Company ("NJM") and got a homeowner's insurance policy with NJM for the Bayville house.

The Respondent further testified that he rented a U-Haul truck the day after closing and moved his belongings to the Bayville house the next day. The Respondent stated that he performed work on the house as soon as he moved in, which included painting, purchasing new appliances, and landscaping. He stated he turned on utilities and set up his cable, phone, and internet shortly thereafter. The Respondent further testified that he completed repairs on the Bayville house at the request of NJM, and that he was at the Bayville house when the NJM inspector came to check if the repairs were completed. The Respondent testified that he worked from home or from the Hoboken office because he works all over the state. He stated he attended neighborhood events to get to know his neighbors.

The Respondent testified he lived in the Bayville house from August 2012 until he was ordered to evacuate the area by police during Hurricane Sandy. He stated that he was not allowed back to the area until October 30th, and when he returned, there was debris everywhere. The Respondent testified that he fell to his knees, cried, and felt that he had lost everything he had worked hard for. The Respondent further testified that he filed a claim with his insurance company, NJM, and received about \$36,000 which was not enough to complete the repairs to the Bayville house.

The Respondent further testified that he began talking to neighbors and turned to the internet for research on disaster relief funds and applying for grants. The Respondent testified that he was truthful when he filled out his grant applications. He stated the Bayville house was his primary residence at this time, but he had to move back to the Hoboken apartment temporarily until the Bayville house was repaired. The Respondent testified he had not changed the address on his driver's license before hurricane Sandy and did not change it after because he was forced to move back to Hoboken at that time. The Respondent testified that he supplied his driver's license with his applications and was questioned about the Hoboken apartment address. He stated he was honest about why his driver's license had a different address than the Bayville house. The Respondent testified that his applications were denied at first but were later approved once he had a meeting with the grant analyst and provided him supporting documents, such as the U-Haul receipt and utility bills. The Bayville house rebuild was complete at the end of 2014.

The Respondent further testified that he was "completely shocked" when he was served the criminal summons in 2016 for filing fraudulent relief claims. He stated he did not understand the charges at first, but once he realized that the claim was based on the allegation that the Bayville

house was not his primary residence, he thought this claim had to be a mistake. The Respondent further testified that he believed he would be able to prove his innocence.

The Respondent testified that he hired an attorney, who contacted the State and tried to submit the supporting documents to the prosecutor. The Respondent testified that he was offered a plea agreement for pretrial intervention (“PTI”) but rejected it because he was not guilty and did not lie on his applications. The Respondent testified he spent about two and a half years and \$60,000 on his defense. He further testified that his attorney told him a trial would cost between \$75,000 and \$100,000. The Respondent stated the charges against him created both emotional and financial hardships for him. He testified that in addition to financial obligations of the mortgage, car payment, and his son’s college tuition, he had also been losing business due to his credibility being challenged. The Respondent further testified that upon the advice of his attorney, he agreed to a plea agreement to save the money and to be able to move on. The Respondent testified that on or about May 25, 2018, he entered a plea of guilty in the Superior Court of New Jersey, Ocean County, to one count of Theft by Deception, a crime in the third degree, in violation of N.J.S.A. 2C:20-4. He testified that although the plea was a lie, he couldn’t pay the large amount of money needed to go to trial and did not want to take a chance on going to jail.

The Respondent testified that he had been a real estate agent since 2006. He stated this was a second career after retiring from a job in law enforcement. The Respondent further testified that he understands the importance of honesty and integrity and that he loves his real estate job and needs his license to continue making a living and taking care of his family. He also stated that he reported the charges to the Commission and kept REC Investigator Clark apprised of the case status throughout.

The Respondent testified he paid back about \$213,000 in Sandy relief funds, including a Small Business Administration (“SBA”) loan of \$186,000 plus interest, \$14,000 from the Sandy Homeowner/Renter Assistance Program (“SHRAP”), \$10,000 from Renew Jersey Stronger program, and \$2,200 from FEMA. These funds were part of the conditions of his plea agreement and all funds were paid before the date of the plea. The Respondent testified that he was sentenced to one year of probation, from which he was released early because he did not violate any terms of his probation.

**Joseph Covello**

Joseph Covello (“Covello”) testified that he has been a real estate agent for over forty years, and has headed Liberty Realty for twenty-five years, where he has employed the Respondent’s mother. He is on the Board of Directors for the MLS, and several other boards. Covello testified that he has known the Respondent, his mother, and their family for almost forty years. He testified that the Respondent has always been an honest and good man, leading him to pursue his first career in law enforcement. He also testified that the last few years have been hard on the entire family, as the Respondent’s business has slowed, and he has had a difficult time paying his bills and keeping his home. Covello testified that the Respondent has had a hard time getting clients, in part because of what comes up when they look up his name. Covello testified that the Respondent is a good agent who loves what he does and needs his license to continue working and earning a living.

**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 Urban Dwelling, LLC, d/b/a Keller Williams City Life Realty, located at 100 Washington Street, Hoboken, New Jersey.
2. The Respondent obtained his New Jersey real estate salesperson license in 2006.
3. On or about August 17, 2016, the Respondent was charged with one count of Theft by Deception, in violation of N.J.S.A. 2C:20-4, a crime of the second degree, and one count of Unsworn Falsification to Authorities, in violation of N.J.S.A. 2C: 28-3(a), a crime of the fourth degree.
4. On or about September 8, 2016, the Respondent notified the Commission of the filing of criminal charges against him.
5. On or about May 25, 2018, the Respondent entered a plea of guilty in the Superior Court of New Jersey, Ocean County, to one count of Theft by Deception, a crime in the third degree, in violation of N.J.S.A. 2C:20-4.
6. On or about May 29, 2018, the Respondent made full restitution to the New Jersey State Treasurer and to FEMA, in the total amount of \$26,434.99, in accordance with his plea agreement.
7. On or about August 21, 2018, a Judgment of Conviction was entered in the Superior Court of New Jersey, Ocean County, sentencing the Respondent to criminal probation for a period of one year.
8. On or about August 18, 2018, the Respondent notified the Commission of his conviction and the sentenced imposed.

## 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. There is insufficient evidence to support a finding that the Respondent's conduct underlying the criminal conviction demonstrates unworthiness and dishonesty, in violation of N.J.S.A. 45:15-17(e).
2. Pursuant to N.J.S.A. 45:15-19.1, the Respondent's real estate license is subject to revocation due to his conviction of a theft offense.

## DETERMINATION

At the conclusion of the hearing 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 in this matter alleges that the conduct underlying the Respondent's guilty plea to Theft by Deception demonstrates unworthiness and dishonesty in violation of N.J.S.A. 45:15-17(e).

The REC relies on the Respondent's guilty plea to the charge of Theft by Deception to prove its case. The Respondent credibly testified, however, that he did not commit theft, but pleaded guilty upon the advice of his attorney because he did not have enough money to pay for his attorney to take the case to trial. No admissions concerning the underlying the conduct made in connection with the guilty plea were entered into evidence. No transcript of the Respondent's guilty plea was admitted into evidence. The Respondent paid back as restitution all relief funds received as part of his plea agreement, evidenced by Exhibit R-26, and was released early from his sentence of one year of probation for not violating any conditions of the probation. The Commission found the Respondent to be credible and no evidence was presented to contradict the Respondent's credible testimony that he did not act with dishonest or fraudulent intent. Accordingly, the Commission finds there to be insufficient evidence to support findings that the Respondent violated N.J.S.A. 45:15-17(e).

The OTSC further alleged that on May 25, 2018, the Respondent pleaded guilty to one count of Theft by Deception, a third-degree crime, and based upon the Respondent's conviction, the Commission is required to revoke the Respondent's real estate license, pursuant to N.J.S.A. 45:15-19.1.

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 (including federal courts) of forgery, burglary, robbery, any theft or related offense with the

exception of shoplifting, criminal conspiracy to defraud, or other like offenses...” The facts in this matter demonstrate that on or about May 25, 2018, the Respondent pleaded guilty in the Superior Court of New Jersey, Ocean County, to one count of Theft by Deception, a third-degree crime, in violation of N.J.S.A. 2C:20-4, which provides that “[a] person is guilty of theft if he purposely obtains property of another by deception.” Pursuant to the terms of N.J.S.A. 2C:20-4, the Respondent pleaded guilty to and was convicted of a theft offense, demonstrated by the Judgment of Conviction dated August 21, 2018 contained in Exhibit S-2, which is not considered a shoplifting offense. Moreover, the Commission has consistently held that convictions for Theft by Deception, in violation of N.J.S.A. 2C:20-4, fall within the provisions of N.J.S.A. 45:15-19.1 and thus compel the revocation of a licensee’s real estate license. See NJREC v. Christopher Koller, Final Order of Determination, Dkt. No. UNI-16-004 (05/01/17) (pursuant to N.J.S.A. 45:15-17(e) and N.J.S.A. 45:15-19.1, the Commission revoked the licensee’s real estate broker-salesperson’s license for a period of five years based upon his convictions for Theft by Unlawful Taking and Theft by Deception); See also NJREC v. Dominick Prevete, Final Order of Determination, Dkt. No. MOR-16-021 (05/01/17) (pursuant to N.J.S.A. 45:15-17(e) and N.J.S.A. 45:15-19.1, the Commission revoked the licensee’s real estate salesperson’s license for a period of ten years based upon his convictions for Theft by Deception). Thus, the Respondent’s license is subject to revocation pursuant to N.J.S.A. 45:15-19.1.

However, a closer examination of the circumstances surrounding the Respondent’s conviction and underlying conduct reveals that a lesser penalty than revocation is appropriate in this matter. The Respondent’s conviction for Theft by Deception, in violation of N.J.S.A. 2C:20-4, centered on the allegation that the Respondent’s Bayville house was not his primary residence and as such, he obtained disaster relief funds from several different sources through deceit.

However, the Respondent's testimony and the documentary evidence admitted into the record reflect the following: the Respondent purchased the Bayville house in 2012 and the Respondent testified that he considered the Bayville house to be his primary residence; the Respondent provided numerous documents that supported his testimony, including proof of cancellation of his renter's insurance on his Hoboken apartment, utility and cable bills on the Bayville house and a U-Haul receipt evidencing the truck rental on moving day to Bayville. The Respondent testified that he immediately began making improvements to the Bayville house, including painting, landscaping, and replacing appliances. The Respondent further testified that prior to Hurricane Sandy, there was a mandatory evacuation of Bayville, New Jersey, which forced the Respondent to return to the Hoboken apartment, which was now being inhabited by his girlfriend and her children. The Respondent stated during his testimony that he pleaded guilty to Theft by Deception; however, the Respondent maintained throughout his testimony that he only pleaded guilty on the advice of counsel because he could not afford the cost of going to trial on the matter and he feared that he could end up in jail.

The Respondent also provided his tax return for the tax year of 2012 including Homestead Benefit Worksheet, contained in Exhibits R-14 and R-15, that show that the Respondent listed the Bayville house as his primary residence. Additionally, the Respondent provided his mortgage documents for the Bayville property, contained in Exhibit R-17 and the commitment letter from Flagstar Bank, Exhibit R-18, which support the Respondent's assertion that prior to Hurricane Sandy, the Bayville house was the Respondent's primary residence. Further, the Respondent provided a letter from NJM, contained in Exhibit R-4, that states that NJM "[h]as been providing coverage for 142 Cedar Run Rd, Bayville NJ 08721 as the insured's primary residence. At the time of the October 30, 2012 claim due to losses from Super Storm Sandy, we were providing coverage

as a primary residence.” Thus, the Commission found that the documentary evidence supports the Respondent’s testimony that the Bayville house was his primary residence.

#### Penalty Against the Respondent

The Real Estate License Act, N.J.S.A. 45:15-1 to -42 (“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 Comm’n, 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, to protect the public interest. See Div. of New Jersey Real Estate Comm’n v. Ponsi, 39 N.J. Super. at 532-533. Thus, the Commission has the power to revoke the license of any licensee if that licensee is convicted of any theft or related offense. N.J.S.A. 45:15-19.1.

Given the mitigating circumstances, as discussed above, the Commission has determined that the appropriate penalty in this matter is for the Respondent’s real estate salesperson’s license to be held on probation, with the conditions set forth below, for a period of three months from the issuance of this Final Order of Determination in this matter. This penalty is consistent with prior Commission decisions. See NJREC v. Cortese, Final Order of Determination, Dkt. No. SOM-16-019 (08/11/17) (pursuant to N.J.S.A. 45:15-19.1, the Commission held the licensee’s real estate salesperson’s license on probation for a period of three months based upon the presentation of

credible testimony and evidence showing mitigating factors surrounding her guilty plea and conviction for Theft by Deception).

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

1. The Respondent Jerry Gustoso's New Jersey real estate salesperson's license shall be held on probation for a period of three months from the date of this Final Order of Determination. During the period of probation, the following conditions shall apply: 1) the Respondent shall inform his employing broker that his license is currently on probation; 2) the Respondent's broker shall notify the Commission within 72 hours if he or she receives any information indicating that the Respondent may have violated the Act or corresponding regulations; and 3) the Respondent must notify the Commission within 72 hours if he is charged with or convicted of any criminal or disorderly persons offense.

SO ORDERED this 14<sup>th</sup> day of January, 2020.

By: Linda K. Stefanik, President  
Darlene Bandazian, Commissioner  
Jacob S. Elkes, Commissioner  
Denise M. Illes, Commissioner  
Carlos Lejnieks, Commissioner  
Kathryn Godby Oram, Commissioner



Linda K. Stefanik, President  
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