

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,)	Docket No.: PAS-19-005
)	REC Ref No.: 10006179
Complainant,)	
)	
v.)	FINAL ORDER OF
)	DETERMINATION
LEON CABARCAS, Licensed New Jersey Real Estate Broker (Ref. No. 8436093),)	
)	
Respondent.)	

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 30, 2019.

BEFORE: Commissioners Linda K. Stefanik, Eugenia K. Bonilla, Christina Banasiak, Darlene Bandazian, Jacob Elkes, and Denise M. Illes.

APPEARANCES: John Rossakis, Regulatory Officer (“RO Rossakis”), appeared on behalf of the New Jersey Real Estate Commission staff (“REC”). Respondent Leon Cabarcas (“Cabarcas”) did not appear or otherwise respond despite proper service of the Order to Show Cause filed against him in this matter and proper service of the letter scheduling the hearing.

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, and N.J.A.C. 11:5-1.1 to -12.18. The OTSC was served via regular and certified mail at the

Respondent's home address at 440 Conklintown Road, Ringwood, New Jersey 07456 ("home address"). The certified mail was signed for and the regular mail was not returned. S-1.

The OTSC alleges that Cabarcas represented Habib Georges ("Georges") as a buyer's agent. Between April 2013 and February 2016, Georges provided Cabarcas with several deposits totaling \$40,500 to purchase three investment properties.¹ Although the transactions were never completed, Cabarcas failed to return Georges's deposit money. On or about September 29, 2017, Georges filed an amended civil complaint against Cabarcas in the Superior Court of New Jersey, Passaic County, Law Division (Georges v. Cabarcas et al., Docket No. PAS-L-2175-17), wherein he demanded the return of the deposit money and additional penalties. The complaint also named the Commission as a defendant and included a claim for payment from the New Jersey Real Estate Guaranty Fund ("Guaranty Fund") pursuant to N.J.S.A. 45:15-34.

The OTSC also alleges that on or about October 3, 2017, criminal charges were filed against Cabarcas for three counts of Theft by Deception in violation of N.J.S.A. 2C:20-4(a) in the third degree.²

The OTSC further alleges that on or about February 2, 2018, a civil judgment was entered in Georges's favor against Cabarcas in the civil action filed in Superior Court of New Jersey, Passaic County, for damages and attorneys' fees in the amount of \$161,264.

¹ The OTSC and the Amended Complaint filed in the civil action both allege that \$40,500 in deposit monies was not returned to Georges. Exhibits S-1, S-7. However, in his certification in support of Default Judgment filed in the civil action, Georges certified that \$49,500 in deposit monies was not returned to him. Exhibit S-8 at ¶ 13. Georges further certified that he did not have two checks totaling \$9,000 at the time the Amended Complaint was filed, but he had since located them from his bank. Exhibit S-8 at ¶ 5.

² Theft can be a disorderly persons offense, or a crime of the fourth, third, or second degree, depending on the monetary amount involved. N.J.S.A. 2C:20-2(b).

The OTSC further alleges that on or about August 16, 2018, Georges entered into a Consent Order (“CO”) with the Commission and received \$55,500 from the Guaranty Fund, representing the funds that Cabarcas misappropriated plus attorneys’ fees and costs under the statute.

The OTSC further asserts that N.J.S.A. 45:15-41 mandates that the Commission revoke Cabarcas’s real estate license and deem him ineligible for reinstatement of licensure until he satisfies the judgment against him in full, including reimbursement of the Guaranty Fund together with interest.

The Respondent did not file an Answer to the OTSC. Accordingly, on March 12, 2019, the Commission reviewed the OTSC and decided there were no material issues of fact or law in dispute, and directed that a hearing be scheduled. On March 28, 2019, a letter was sent to the Respondent via regular and certified mail to his home address, scheduling this hearing for April 30, 2019. The certified mail was unclaimed but the regular mail was not returned, therefore constituting good service under N.J.A.C. 1:1-7.1(a). Pursuant to N.J.A.C. 1:1-14.4(d), the hearing proceeded as scheduled on April 30, 2019, at which time the following exhibits were admitted into evidence by the REC, without objection:

- S - 1 Order to Show Cause in New Jersey Real Estate Commission v. Leon Cabarcas, Docket No. PAS-19-005, dated February 6, 2019 and Proof of Service;
- S - 2 Proof of Service of Notice of Proof Hearing in New Jersey Real Estate Commission v. Leon Cabarcas, Docket No. PAS-19-005, dated March 28, 2019;
- S - 3 Contract of Sale for Property located at 17-19 Lake Avenue, Paterson, New Jersey 07503, dated April 17, 2013 and Copy of Cancelled Deposit Check;
- S - 4 Contract of Sale for Property located at 168 Knapp Avenue, Clifton, New Jersey 07011, dated January 15, 2014 and Copy of Deposit Check and Corresponding Bank Statement;
- S - 5 Copy of Cancelled Deposit Checks for Purchase of Property located at 357 Highland Avenue, Passaic, New Jersey 07055 and Corresponding Bank Statements;

- S - 6 Clifton Municipal Court Complaint-Summonses, State of New Jersey v. Leon Cabarcas, Complaint Numbers: 1602-S-2017-001197, 1602-S-2017-001198, 1602-S-2017-001199;
- S - 7 Superior Court of New Jersey, Passaic County, Law Division, Civil Action, Habib Georges v. Leon Cabarcas et al., Docket No. PAS-L-2175-17, Amended Complaint, filed October 2, 2017;
- S - 8 Superior Court of New Jersey, Passaic County, Law Division, Civil Action, Habib Georges v. Leon Cabarcas et al., Docket No. PAS-L-2175-17, Certification of Plaintiff in Support of Default Judgment Against Defendant Leon Cabarcas, dated November 20, 2017;
- S - 9 Superior Court of New Jersey, Passaic County, Law Division, Civil Action, Habib Georges v. Leon Cabarcas et al., Docket No. PAS-L-2175-17, Judgment, filed February 2, 2018;
- S - 10 Partial Assignment of Judgment to New Jersey Real Estate Commission of Damages Awarded to Plaintiff in Habib Georges v. Leon Cabarcas et al., Docket No. PAS-L-2175-17, dated August 8, 2018;
- S - 11 Superior Court of New Jersey, Passaic County, Law Division, Civil Action, Habib Georges v. Leon Cabarcas et al., Docket No. PAS-L-2175-17, Consent Order for Payment of the Real Estate Guaranty Fund, filed August 16, 2018; and
- S - 12 New Jersey Real Estate Commission Memorandum, Authorizing Payment from Guaranty Fund, dated September 4, 2018 and Payout Check Information.

TESTIMONY OF THE WITNESS

Keith Hackett (“Hackett”) testified on behalf of the REC. Hackett stated that he has been employed as an Investigator by the REC for approximately five years. Hackett testified that the matter came to the REC’s attention in October 2017 when Richard Vrhovc, Esq. (“Vrhovc”), on behalf of his client, Georges, named the REC as a co-defendant in a civil complaint. The complaint alleged that Cabarcas failed to return Georges’s deposit monies totaling \$40,500,³ which was to

³ The cancelled checks issued by Georges to Cabarcas and admitted into evidence before the Commission totaled \$48,500. Exhibit S-3 (cancelled check in the amount of \$8,000); Exhibit S-4 (cancelled check in the amount of \$24,000); Exhibit S-5 (cancelled checks in the amount of \$9,000 and \$7,500). In his certification, Georges states that there were two checks issued in connection

be used to purchase three properties, when the transactions were not completed. Although Georges repeatedly requested the money back, Cabarcas failed to return it.

Hackett testified that Georges signed a contract to purchase 17-19 Lake Avenue in Paterson, New Jersey on April 17, 2013. Exhibit S-3. On April 25, 2013, Georges wrote a check to Bridges and Towers Real Estate (“Bridges and Towers”), Cabarcas’s brokerage office, for \$8,000 to be used as a deposit. Ibid. The memo on the check reads, “17 Lake” which corresponds to the address on the contract of sale. Ibid. Hackett testified that Cabarcas deposited this check.

Hackett further testified that Georges then signed a contract to purchase 168 Knapp Avenue in Clifton, New Jersey. Exhibit S-4.⁴ Georges issued a check for \$24,000 made out to Bridges and Towers as a deposit on that property. Ibid. Hackett testified that that check was also deposited.

Hackett testified that there was no contract of sale for the third property, located at 357 Highland Ave in Passaic, New Jersey. Nevertheless, Georges issued two checks in the amounts of \$9,000 and \$7,500 to Bridges and Towers, which were deposited. Exhibit S-5.

Hackett testified that he spoke to Vrhovc, but not Georges, when investigating this matter. He testified that he attempted to speak to Cabarcas and contacted Cabarcas by phone and e-mail, but that Cabarcas never responded. Hackett also testified that he visited Cabarcas’s office, Bridges and Towers, located at 118 Lakeview Avenue in Clifton, which was partially boarded up and

with the first property he attempted to purchase - one for \$1,000 and one for \$8,000. Exhibit S-8 at ¶ 5. However, it does not appear that the check for \$1,000 was included in Exhibit S-3 when it was entered into evidence at the hearing.

⁴ Georges’s information appears on the Sale Contract Questionnaire dated January 6, 2014. Exhibit S-4. The contract for sale lists German Duque as the buyer, and is signed and dated January 14, 2014. Ibid. The sellers, Carlos Cabarcas and Robert Cabarcas, signed it the next day. Ibid. In his certification, Georges states that Cabarcas “put my name on the front page to make it appear I had a contract, when in reality the contract already belonged to a different buyer.” Exhibit S-8 at ¶ 7.

appeared to be empty. He testified that Cabarcas's office is a single building, and he does not know who the owner is. Hackett also testified that he checked the Multiple Listing Service ("MLS") to ascertain if Cabarcas had any active listings, and found that Cabarcas did not. Hackett testified that he did not check local Realtor associations to find Cabarcas. Hackett further testified that he was unaware if Cabarcas is attending continuing education classes. Hackett further testified that Cabarcas has not attempted to renew his license, which expires June 30, 2019, and no one is licensed under him.

Hackett also testified that he issued a subpoena for Cabarcas to appear, but Cabarcas failed to do so. Hackett testified that the subpoena was sent to Cabarcas's home and business addresses via certified and regular mail. The certified mail sent to Cabarcas's home was unclaimed, but the regular mail was not returned. The certified mail sent to Cabarcas's business address was returned as undeliverable because there was an issue with the address.

Hackett testified that to successfully collect a claim from the Guaranty Fund, the claimant must file a civil suit naming the Commission as a party to the complaint, obtain a judgment, attempt to collect on the judgment, assign his judgment creditor's rights under the judgment to the Commission, and file criminal charges against the broker or salesperson. N.J.S.A. 45:15-37.

Hackett testified that Georges successfully completed all the steps in the statute and brought a claim against the Guaranty Fund. Hackett testified that Georges filed a civil law suit against Cabarcas and amended the complaint in that suit to name the Commission as a defendant. Exhibit S-7. Georges also filed criminal complaints against Cabarcas in Clifton Municipal Court. Exhibit S-6. Cabarcas was charged with three counts of Theft by Deception in violation of N.J.S.A. 2C:20-4(a) in the third degree, and the amounts in the three complaints correspond with the amounts of deposit funds that Cabarcas failed to return to Georges. Exhibit S-6.

Hackett testified that Georges obtained a default judgment against Cabarcas in amount of \$161,264.10 on or about February 2, 2018. Exhibit S-9. This judgment amount includes \$49,500 which Cabarcas misappropriated, along with treble damages, costs, and attorneys' fees pursuant to the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -20. Ibid. On August 8, 2018, a Partial Assignment of Judgment in the amount of \$55,500 was executed in favor of the Commission. Exhibit S-10.

Hackett testified that on August 16, 2018, the New Jersey Office of the Attorney General, on behalf of the REC, and Georges entered into a Consent Order for payment from the Guaranty Fund in the amount of \$55,500. Exhibit S-11. He further testified that the Guaranty Fund issued a check in that amount on October 1, 2018. Exhibit S-12. The Guaranty Fund has a limit of \$20,000 per transaction. N.J.S.A. 45:15-34. Accordingly, Georges's claim for \$24,000 in connection with the purchase of 168 Knapp Avenue in Clifton was capped at \$20,000.

FINDINGS OF FACT

Based on the pleadings, the testimony of the witness, and the documentary evidence duly admitted into the record, the Commission makes the following findings of fact:

1. The Respondent is a licensed New Jersey real estate broker and is currently licensed with Bridges and Towers Real Estate, for which he is the broker of record, located at 118 Lakeview Avenue, Clifton, New Jersey.
2. On or about April 17, 2013, Georges signed a contract to purchase 17-19 Lake Avenue in Paterson, New Jersey. As part of that transaction, Georges wrote a check for \$8,000 to Bridges and Towers, which Cabarcas deposited.

3. On or about January 6, 2014, Georges filled out a Sale Contract Questionnaire to purchase a property located at 168 Knapp Avenue in Clifton, New Jersey. As part of that transaction, Georges wrote a check for \$24,000 to Bridges and Towers, which Cabarcas deposited.
4. As part of a transaction to purchase a property located at 357 Highland Ave in Passaic, New Jersey, Georges issued two checks in the amounts of \$9,000 and \$7,500 to Bridges and Towers, which were deposited.
5. Georges filed a civil lawsuit against Cabarcas alleging, among other counts, fraud and breach of contract. Georges filed an Amended Complaint on October 2, 2017, to name the Commission as a defendant.
6. Georges filed criminal complaints against Cabarcas in Clifton Municipal Court. Cabarcas was charged with three counts of Theft by Deception in violation of N.J.S.A. 2C:20-4(a) in the third degree, and the amounts in the three complaints correspond with the amounts of deposit funds that Cabarcas failed to return to Georges.
7. On or about February 2, 2018, Georges obtained a default judgment against Cabarcas in amount of \$161,264.10. This amount includes \$49,500 which Cabarcas misappropriated, along with treble damages, costs, and attorneys' fees pursuant to the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -20.
8. On August 8, 2018, a Partial Assignment of Judgment in the amount of \$55,500 was executed in favor of the Commission.
9. On August 16, 2018, the New Jersey Office of the Attorney General, on behalf of the REC, and Georges entered into a Consent Order for payment to Georges from the Guaranty Fund in the amount of \$55,500.
10. On October 1, 2018, the Guaranty Fund paid Georges's claim.

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. Pursuant to N.J.S.A. 45:15-41, Cabarcas's broker's license shall be revoked and he shall be ineligible for reinstatement of his license until he satisfies the judgment in full, including reimbursement of the Guaranty Fund with interest.

DETERMINATION

After the hearing and executive session in this matter, the Commission voted in favor of 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 witness, the documentary evidence admitted during the hearing, and the nature of and circumstances surrounding Cabarcas'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. Metropolitan 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 Cabarcas misappropriated \$40,500 in deposit funds from Georges in relation to three transactions that were never completed.

The facts in evidence indicate that Georges gave Cabarcas at least \$48,500 in deposit checks over the course of nearly three years to purchase three properties. Cabarcas deposited these funds, but failed to refund to Georges the deposit money when the transactions were not completed. Georges took the necessary steps to successfully collect on a claim from the Guaranty Fund under N.J.S.A. 45:15-37. Specifically, Georges filed a civil suit naming the Commission as a party to the complaint, received a judgment, showed an attempt to collect on the judgment, assigned a portion of the judgment to the Commission and filed criminal charges against Cabarcas. Georges received \$55,500 from the Guaranty Fund.

Penalty Against the Respondent

The Real Estate Brokers and Salespersons Act, N.J.S.A. 45:15-1 to -42, 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. See Mango v. Pierce-Coombs, 370 N.J. Super. 239, 256 (App. Div. 2004) ; See also N.J.A.C. 11:5-6.4(a). 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 (App. Div. 1956); Maple Hill Farms, Inc. v. New Jersey Estate Comm’n, 67 N.J. Super. 223, 233 (App. Div. 1961).

The Guaranty Fund is a special trust fund maintained by the State Treasurer and administered by the Commission. It was established to provide a fund from which any person harmed by the “embezzlement, conversion or unlawful obtaining of money or property in a real

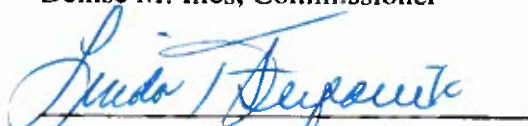
estate brokerage transaction” by a licensee or an unlicensed employee of a real estate broker may recover compensation. N.J.S.A. 45:15-34. The legislation was designed to assist a person who receives a valid judgment in any court of competent jurisdiction against a real estate broker or real estate salesperson for the return of moneys or property when the judgment is unsatisfied in whole or in part. Wharton v. Howard S. Straub, Inc., 235 N.J. Super. 179, 185 (App. Div. 1989) (citing Senate Labor, Industry and Professions Committee, Sponsor's Statement, No. 1068, L. 1976, c. 112). Pursuant to N.J.S.A. 45:15-41, when a court orders payment from the Guaranty Fund, the licensee whose acts gave rise to the claim shall have his or her license revoked and not be eligible for reinstatement of his or her license until he or she has satisfied the judgment in full, including reimbursement of the Guaranty Fund with interest.

Accordingly, and pursuant to N.J.S.A. 45:15-41, the Commission imposes the following sanction:

1. Cabarcas's broker's license shall be revoked and he shall be ineligible for the reinstatement of his license until he satisfies the judgment against him in full, including reimbursement to the Guaranty Fund with interest.

SO ORDERED this 14th day of January, 2020.

By: Linda K. Stefanik, President
Eugenia K. Bonilla, Vice President
Christina Banasiak, Commissioner
Darlene Bandazian, Commissioner
Jacob Elkes, Commissioner
Denise M. Illes, Commissioner


Linda K. Stefanik, President
New Jersey Real Estate Commission