

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,)
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 Complainant)
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 vs.)
)
 DONALD POJEDNIC, licensed New Jersey real)
 estate broker, (RB8938053), and broker of)
 record of POJEDNIC, INC., d/b/a AGER)
 REAL ESTATE, licensed New Jersey real estate)
 broker (CO9100153),)
)
 Respondent)

DOCKET NUMBER: OCE-19-017
(REC Ref. Nos. 10007715, 10007729)
10008036)

ORDER TO SHOW CAUSE

THIS MATTER being commenced by the New Jersey Real Estate Commission in the Department of Banking and Insurance, State of New Jersey on its own motion pursuant to the provisions of N.J.S.A. 45:15-17, 45:15-17.1, 45:15-18 and N.J.A.C. 11:5-1.1, and it appearing that:

1. Donald Pojednic (“Respondent”) is a licensed New Jersey real estate broker and is broker of record of Pojednic, Inc., d/b/a Ager Real Estate, a licensed New Jersey real estate broker currently located at 3310 Long Beach Boulevard, Brant Beach, N.J. 08008. A substantial portion of the activities of Ager Real Estate involve summer rentals; and

COUNT ONE

2. On or about November 30, 2018, criminal charges were filed against Respondent in the Long Beach Township Municipal Court on one count of Misapplication of Entrusted Property, in violation of N.J.S.A. 2C:21-5 and one count of Theft, in violation of and 2C:20-3(a). The criminal charges are pending in municipal court at this time; and

3. Respondent failed to report to the Real Estate Commission the filing of criminal charges against him within 30 days; and

4. Respondent is in violation of N.J.S.A. 45:15-17(s) in that he failed to report the filing of criminal charges against him within 30 days as required by that regulation; and

COUNT TWO

5. In January 2019 a Real Estate Commission investigation into the activities of Respondent and of Ager Real Estate was undertaken. Respondent produced business records and gave a statement to a Commission investigator pursuant to a subpoena issued to him by the Commission. At that time, Respondent admitted that he spent the winter months in Florida and that he was not physically present in the office of Ager Real Estate. He stated that during the months that he is away, the office is supervised by salesperson Donald O'Brien. Mr. O'Brien is not a broker or broker-salesperson; and

6. The investigation revealed Respondent was absent from the office for approximately six months of the year; and

7. Respondent is in violation of N.J.A.C. 11:5-4.4 in that he failed to personally supervise the office of Ager Real Estate as well as the activities conducted by salespersons employed with Ager Real Estate, nor was the office supervised by a broker-salesperson during the extended periods of time that Respondent was absent; and

COUNT THREE

8. A review of the bank statements for the Ager Real Estate escrow account and operating account maintained at Bank of America for January 2018 through September 2018 as well as rental agreements for that time period revealed that monies were transferred on a regular basis from the escrow account into the operating account with no explanations or ledger entries to document the transfers; and

9. On each rental transaction, the Respondent deducted a commission which ranged from 10% to 12% of the rental amount and an additional \$30 processing fee from the rental monies that were paid. The remaining balance was then paid to the owner of the property. However, Respondent did not promptly transfer the commission and fees that he deducted into an operating account when they were collected. Respondent admitted to a

Commission investigator that he left those funds in the escrow account and transferred money as needed into the operating account to pay business and personal expenses; and

10. In addition to the rental fees, security deposits that were paid by tenants were also deposited into the escrow account. Security deposits were returned to tenants via check, but if the check was not cashed, no follow-up was undertaken and the security deposit monies remained in the escrow account with no ledger notation or other documentation regarding same; and

11. The investigator's audit of the bank records and rental agreements for the time period of January 2018 to September 2018 revealed that \$2,738,114 was deposited into the escrow account. Of that amount, \$212,730 represented broker funds including commissions and processing fees. Withdrawals from the account were \$235,533. Therefore, withdrawals exceeded available funds in escrow by \$22,803. In addition, there were transfers between the escrow account and the operating account during that period, thus avoiding overdrafts; and

12. The conduct of Respondent is in violation of N.J.S.A. 45:15-17(o) and N.J.A.C. 11:5-5.1(a) and (c) in that he commingled the money of his principals with his own, and failed to maintain in a special account, separate and apart from personal or other business accounts, all monies received by the Respondent or Ager Real Estate acting in the capacity of a real estate broker or as escrow agent or the temporary custodian of the funds of others in a real estate transaction; and

13. Respondent is in violation of N.J.A.C. 11:5-5.1(d) in that he failed to promptly pay commissions due to Ager Real Estate from the escrow account into the operating account or make appropriate notations to the business records to indicate the amount and source of each commission; and

14. The conduct of Respondent is in violation of N.J.A.C. 11:5-6.4(a) in that by the actions set forth above, he failed to protect and promote the interests of his principals; and

COUNT FOUR

15. In the course of the investigation, Respondent was unable to produce ledgers for the escrow account of Ager Real Estate. Respondent admitted to a Commission investigator that he did not maintain either a general ledger or individual transaction ledgers. He further stated that he did not perform regular reconciliations of the escrow account; and

16. Respondent's conduct is in violation of N.J.A.C. 11:5-5.4 in that he failed to maintain business records required by that regulation including trust account ledgers, and in that he failed to produce records evidencing at least a quarterly reconciliation of the escrow account; and

COUNT FIVE

17. Respondent's conduct is in violation of N.J.S.A. 45:15-17(e) in that he has demonstrated unworthiness, incompetency, bad faith or dishonesty by:

- a. Commingling broker funds with the funds of others in real estate transactions;
- b. Failing to maintain business records and to reconcile the escrow account of Ager Real Estate;
- c. Failing to supervise the office of Ager Real Estate;
- d. Failing to notify the Real Estate Commission of the filing of formal criminal charges.

And for good cause shown,

IT IS ON THIS 4th DAY OF SEPTEMBER, 2019

ORDERED that Respondent Donald Pojednic shall show cause why Respondent's real estate license should not be suspended or revoked and/or why fines or other sanctions should not be imposed pursuant to N.J.S.A. 45:15-17 and N.J.A.C. 11:5-1.1. Respondent shall file a written Answer to the charges in this Order to Show Cause

as required by N.J.A.C. 11:5-11.2 within twenty (20) days of the service of this Order. As required by N.J.A.C. 11:5-11.2, Respondent's written Answer must include specific admissions or denials of all allegations in the Order to Show Cause, state the factual basis of each and every factual allegation denied and assert any defenses that Respondent intends to present if this matter is deemed a contested case and a plenary hearing is held; and

IT IS FURTHER ORDERED that failure to comply with all the requirements of N.J.A.C. 11:5-11.2 may result in a determination that there are no material facts or issues of law in dispute and any presentation made to the Commission will be limited to the issue of the severity of any sanction or penalty to be imposed; and

IT IS FURTHER ORDERED that the New Jersey Real Estate Commission will review this Order to Show Cause and Answer filed, if any, at a meeting scheduled on or after the 22nd day of OCTOBER, 2019 at 9:30 a.m. to determine whether there is a material fact or issue of law contested. No appearance is required at that time; and

IT IS FURTHER ORDERED that if the Commission determines that there is a material fact or issue of law contested, a hearing will be scheduled for a future date; and

IT IS FURTHER ORDERED that if the Commission determines that there is no material fact or issue of law contested, a hearing shall be scheduled at which the Respondent will be limited to presenting witnesses and documentary evidence regarding the issue of the severity of any sanction or penalty to be imposed; and

IT IS FURTHER ORDERED that a copy of this Order be served upon the Respondent as provided in N.J.S.A. 45:15-18, which service may be accomplished by

serving a copy of this Order on the Respondents personally, or by delivering a copy hereof to his last known business addresses via certified mail.



Marlene Caride
Commissioner
New Jersey Department of Banking and Insurance

mag Pojednic OTSC/rec enforcement