

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION	)	DOCKET NUMBER CAM-18-012
	)	(REC Ref. No. 10005957)
Complainant,	)	
	)	ORDER TO SHOW CAUSE
v.	)	
	)	
MARY A. TYLER, licensed New Jersey real estate	)	
broker (Ref. No. 7934980) and	)	
WILLIAM A. PRICOLI, licensed New Jersey	)	
real estate salesperson (Ref. No. 8134930) and	)	
FAZZIO PREFERRED PROPERTIES, LLC,	)	
licensed New Jersey real estate broker	)	
(Ref. No. 1538187)	)	
Respondents.	)	

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THIS MATTER being commenced by the New Jersey Real Estate Commission (“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, 45:15-18 and N.J.A.C. 11:5-1.1 et seq., and it appearing that:

1. Respondent Mary A. Tyler (“Tyler”) is an actively licensed New Jersey real estate broker, who was first licensed in New Jersey in 1990, and is currently licensed as broker of record of Fazzio Preferred Properties, LLC (“Fazzio Properties”), licensed New Jersey real estate broker, whose primary office is located at 401 South Kings Highway, Cherry Hill, New Jersey; and
2. Respondent William A. Pricoli (“Pricoli”) is an actively licensed New Jersey real estate salesperson, who was first licensed in 2015, and is currently licensed with Fazzio Properties; and
3. On or about April 16, 2015, Tyler submitted an “Application for Corporation Partnership, LLC and Real Estate Broker License” on behalf of Fazzio Properties. The application indicated that Tyler would act as broker of record of the firm. The application documentation indicated that Tyler and Pricoli were president and vice president of Fazzio Properties respectively and that each owned 50% of the business. The application documentation further provided that Tyler was the responsible officer/manager of the business for all brokerage activities conducted by the business as well as being authorized as the signatory for the firm’s escrow account; and

4. The above application was approved by the Commission and Fazio Properties became licensed as a New Jersey real estate broker on April 22, 2015; and

5. On or about December 31, 2016, a certification was executed by Pricoli, wherein it was stated that Tyler was leaving Fazio Properties and that she will relinquish all interest in the company; and

6. The Commission was not notified of the change in ownership of Fazio Properties; and

7. On information and belief, currently, no partner, officer or owner of Fazio Properties holds a license as a real estate broker to transact business in the name and on behalf of Fazio Properties as its authorized broker; and

8. On or about June 19, 2017, an unannounced office inspection was conducted by Commission investigators. It was discovered that Fazio Properties is located within the offices of the law firm Catalano Law, where Pricoli is employed as the business manager. Specifically, the brokerage office is located in the same office used by Pricoli to perform his duties as business manager of the law firm. There is no exterior signage displaying the name of the brokerage or the name of the broker of record, as required by the Commission's regulations. During the inspection, the assigned Commission investigators requested to review Fazio Properties' books and records, however the only records that were available for on-site inspection were the escrow and operating account bank statements for the prior three months; and

9. During the above-mentioned office inspection, interviews were conducted with both Tyler and Pricoli. During the interview, the following information was ascertained:

a. Tyler was approached by Pricoli in April of 2015 and asked to be the broker of record for Fazio Properties. She is compensated by Pricoli for her occasional sales activity and has no other functions within the agency. Tyler stated to the Commission investigators that she does not know what to do as a broker of record and does not know what records are required to be retained. Pricoli controls all financial and other records for the agency, and Tyler does not review agency escrow or operating accounts nor does she review any transactions conducted by Pricoli. After the agency's license was approved, Tyler agreed to allow Pricoli to become the 100% owner of the business; and

b. Pricoli is the full-time business manager of Catalano Law and the owner Fazio Properties. He controls the agency financial accounts and records, but does not maintain general ledgers or separate transaction ledgers for the agency's escrow account. Pricoli does not review escrow account statements, nor does he perform reconciliations of the escrow account. Pricoli stated to the Commission investigators that he asked Tyler to be the broker of record on the license application so that he could operate the agency, as he is not a licensed broker. Pricoli further stated that he had an employment agreement with Tyler to conduct real estate sales activity for Fazio Properties; and

10. On or about July 11, 2017, subpoenas to appear at Commission Headquarters and produce documents were issued by the Commission against both Tyler and Pricoli; and

11. On or about July 19, 2017, the Commission investigator assigned to this matter received a phone call from a representative of the accounting firm of CPA Andrew Roesler. Said representative stated that she was contacted by Pricoli in order to prepare a general ledger and reconciliations for Fazio Properties. She further stated that her reason for contacting the Commission investigator was that Pricoli could not provide guidance in the development of a general ledger or reconciliation that meet the requirements of the Commission. Said representative further stated that the accounting firm was contacted by Pricoli and had no contact with, or guidance from Tyler; and

12. On July 27, 2017, Tyler and Pricoli appeared at the New Jersey Real Estate Commission Headquarters and were interviewed by a Commission investigator. During the interview, the following information was ascertained:

a. Prior to the interview at Commission Headquarters, Pricoli provided Tyler with copies of the escrow account general ledger, bank ledger and reconciliations for the period of April, 2015 through June, 2017, which were prepared by an independent CPA on or around July 25, 2017. General ledgers, bank statements and reconciliations were not maintained by Fazio Properties, nor were separate records maintained by either Tyler or Pricoli prior to July 25, 2017; and

b. Tyler stated that it was the responsibility of Pricoli, as sole owner of the company, to maintain the books and records of Fazzio Properties. Tyler admitted that neither employment contracts nor independent contractor agreements were utilized since the inception of Fazzio Properties. A draft of an independent contractor agreement was provided, which Tyler stated would be used in the future, but was not used in the past; and

c. Pricoli confirmed that Tyler was not involved in the management or review of the agency escrow or operating accounts. Pricoli further stated that records of the escrow account had not been previously maintained because of low account activity; and

d. The services of a legal assistant for Catalano Law are used to take messages, type contracts, send correspondence and complete other clerical tasks on behalf of Fazzio Properties. Said legal assistant is compensated in cash payments, which are not paid through Fazzio Properties. A review of Commission records indicates that the aforementioned legal assistant is not a New Jersey real estate licensee; and

13. Respondent Mary A. Tyler's conduct constitutes prohibited license lending, as set forth in N.J.A.C. 11:5-4.3; and

14. Respondent Mary A. Tyler's conduct is in violation of N.J.S.A. 45:15-17(e) incompetency, in that by allowing Pricoli to run the day to day operations of Fazzio Properties and assume other responsibilities of the broker of record, as described above, Tyler engaged in conduct which demonstrates incompetency; and

15. Respondent Mary A. Tyler's conduct is in violation of N.J.A.C. 11:5-5.4(e) and 5.5(a) in that Tyler failed to maintain the financial books and other records described in N.J.A.C. 11:5-5.4(a) for Fazzio Properties, located at the primary office location, and in that Tyler failed to have such books and records available for on-site inspection by Commission investigators as required by N.J.A.C. 11:5-5.5(a); and

16. Respondent Mary A. Tyler's conduct is in violation of N.J.A.C. 11:5-6.1(a), in that Tyler failed to conspicuously display, on the exterior of Fazzio Properties, the regular business name of the

brokerage and the name of the broker of record of the firm with the words “Licensed Real Estate Broker,” and

17. Respondent Mary A. Tyler’s conduct is in violation of N.J.A.C. 11:5-4.1 in that Tyler allowed Pricoli to commence real estate sales activity on behalf of Fazio Properties without executing a written agreement which recites the terms under which the services of Pricoli had been obtained; and

18. Respondent William A. Pricoli’s conduct is in violation of N.J.S.A. 45:15-17(a) in that Pricoli misrepresented to the assigned Commission investigator that an independent contractor agreement was in place for his sales activity through Fazio Properties; and

19. Respondent William A. Pricoli’s conduct is in violation of N.J.S.A. 45:15-1 and 3 in that he engaged in unlicensed activity, as more fully set forth above; and

20. Respondent William A. Pricoli’s conduct is in violation of N.J.S.A. 45:15-17(e) in that his conduct, as described above, demonstrates unworthiness; and

21. Pursuant to N.J.S.A. 45:15-9, the broker license of Fazio Properties is subject to cessation, in that no partner, officer or owner of Fazio Properties is licensed as a New Jersey real estate broker to transact business in the name and on behalf of Fazio Properties as its authorized broker.

And for good cause shown,

IT IS on this 15<sup>th</sup> day of May, 2018

ORDERED that Respondents Mary A. Tyler, William A. Pricoli and Fazio Preferred Properties, LLC shall show cause why their real estate licenses 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. Respondents shall file written Answers 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, Respondents’ written Answers must include specific admissions or denials of all allegations in this Order to Show Cause, state the factual basis of each and every factual allegation denied, and assert any defenses that Respondents intend to present in the event that this matter is deemed a contested case and a plenary hearing is held; and

IT IS FURTHER ORDERED that failure to comply with all of 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 Commission will review this Order to Show Cause and Answer(s) filed, if any, at a meeting scheduled on or after the 26<sup>th</sup> day of June, 2018 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 Respondents 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 Respondents 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 thereof to their last known business addresses via certified mail.



Patrick J. Mullen  
Director of Banking  
New Jersey Department of Banking and Insurance  
New Jersey Real Estate Commission