

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,) DOCKET NO.: BER-13-017
)
Complainant,)
v.) **FINAL ORDER OF**
) **DETERMINATION**
)
MARY M. BEETY, licensed New Jersey real)
estate broker (RB7832390),)
)
Respondent.)

This matter was heard at a plenary hearing by the New Jersey Real Estate Commission ("Commission") in the Department of Banking and Insurance, State of New Jersey at the Real Estate Commission Hearing Room, 20 West State Street, Trenton, New Jersey on October 8, 2013.

BEFORE: Commissioners Linda Stefanik, Benjamin Steltzer, Eugenia Bonilla, Jacob S. Elkes, Esq., Jeffrey Lattimer, Robert Melillo, and Harold J. Poltrock, Esq.

APPEARANCES: Marianne Gallina, Regulatory Officer, appeared on behalf of the New Jersey Real Estate Commission ("REC"). Respondent Beety appeared without counsel and waived her right to counsel.

STATEMENT OF THE CASE

The REC initiated this matter through service of an Order to Show Cause ("OTSC") dated June 7, 2013 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 et seq.

The Order to Show Cause (“OTSC”) alleged that Respondent Beety failed to cooperate with a Real Estate Commission (“REC”) investigation and a subpoena issued by the REC. The OTSC also alleged that Respondent Beety produced incomplete and inadequate records to the investigator and, to date, has failed to produce all of the requested records. Moreover, the REC Investigator’s review of Respondent Beety’s operating and escrow accounts indicated an irregularity.

Respondent Beety submitted an “Answer to Order to Show Cause to clarify Allegations¹.” Therefore this matter was deemed a contested case, and scheduled for a full hearing on October 8, 2013.

In her answer, Respondent Beety stated that, during the investigation, she was in the midst of moving her office location and, as a result, her office space and paperwork were in disarray. Respondent Beety further stated that she tried to comply with the investigator’s record requests but was unaware that originals would be deemed unacceptable and did not have immediate access to the supplemental records requested by the investigator. She further explained that she compiled some documentation which included leases and copies of checks. Respondent Beety also explained that, in reference to the irregularity referred to in the OTSC, \$6,600 was inadvertently deposited into an operating account rather than the trust account due to a mix-up with the deposit slip. She explained that the subsequent immediate return of only \$6,000 into the escrow account was a bank error. Moreover, Respondent Beety stressed that she was working towards the record compliance while simultaneously trying to keep her business afloat and while dealing with family deaths and illness. Respondent Beety further acknowledged

¹ Respondent Beety included some of the requested documents by the Commission attached to her answer.

that she was served with the subpoena and admitted that her ledger was unacceptable to the investigator but indicated she had other responsibilities and continued to update the investigator regarding her situation as she sought time extensions.

At the hearing, the following exhibits were considered by the Commission:

S-1 Handwritten list of documents prepared by REC investigator to be provided by Mary Beety

S-2 Letter dated August 17, 2012 from Mary Beety to REC investigator Robert McCloskey with fax cover page attached

S-3 Subpoena dated October 16, 2012 to Mary Beety returnable November 20, 2012 with proof of service attached

S-4 Handwritten list of documents prepared by REC investigator to be provided by Mary Beety by January 18, 2013

S-5 E-mail correspondence dated January 16, 2013 between Mary Beety and REC investigator Robert McCloskey

R-1 Letter from Investigator Robert McGrath to Commissioner Considine as a referral to the Department of Banking and Insurance for investigation

TESTIMONY OF THE WITNESSES

Investigator McCloskey

Investigator McCloskey testified on behalf of the REC. He testified that he has been employed with the REC for 10 years as an investigator. He explained that the initial complaint came to the REC from a person who claimed to have power of attorney over her business partner and complained that Respondent Beety owed her money. The complaint also stated that Respondent Beety's son was collecting disability while working in the real estate office.

When the investigator met with Respondent Beety on April 26, 2012 at the office located in Bergenfield, the office was disheveled but he noted that Respondent Beety had only

recently moved into this location. Investigator McCloskey further testified that this office was not on file with the REC. Respondent Beety claimed to have recently sent a letter to the REC about the move but could not locate the letter because of her recent move. Therefore, Investigator McCloskey instructed Respondent Beety how to update her office address online. Moreover, at this time, he provided Respondent Beety with a written list of documents that she needed to provide to him, Exhibit S-1, and scheduled a meeting with her for early May 2012.

Investigator McCloskey stated that, when he met with Respondent Beety again, she provided him with a number documents, including three months of bank statements and some contracts. Investigator McCloskey reviewed Respondent Beety's bank statements from February 2012 through April of 2012, which included both escrow and operating account statements. Investigator McCloskey further testified that he noticed a transfer from an escrow account to an operating account in the amount of \$6,600.00. In that regard, Respondent Beety informed him that she inadvertently deposited this money into the operating account using an ATM card and, when she had noticed the error, she transferred the money back to the escrow account. However, Investigator McCloskey observed that only \$6,000.00 was returned to the escrow account. Respondent Beety responded that this was a bank error and added that she had been having trouble with the bank and had switched banks twice. Investigator McCloskey stated that only \$400.00 was left in the operating account by the end of the month. Investigator McCloskey also stated that the escrow account he reviewed at that time was not the account on record with the REC.

Investigator McCloskey stated he was not able to meet with Respondent Beety until in or about July 2012 because he broke his shoulder but Respondent Beety was not able to provide additional documentation at that time. Investigator McCloskey then noted that

Respondent Beety requested additional time to comply with the REC's request via letter dated August 17, 2012. (Exhibit S-2). Moreover, he stated that he tried to meet with Respondent Beety again but Respondent Beety continued to request additional time until he served a subpoena upon her on October 18, 2012 which set a return date of November 20, 2012. (Exhibit S-3). Investigator McCloskey emphasized that Respondent Beety was given over a month to comply with the terms of the subpoena. He also explained that the subpoena requested the same documents he requested from Respondent Beety in May 2012.

Investigator McCloskey stated that, on the November 20, 2012 return date, Respondent Beety arrived with disorganized documents which were piled in no particular order and most of which were originals. He refused to accept these documents and requested that she produce copies instead. He specifically informed her to go back to the office and make copies of all bank statements and deposit slips with contracts. He explained that he needed to be able to ascertain where all monies went. Investigator McCloskey also provided her with a list of the documents he was requesting, Exhibit S-4, and told her he needed this by January 2013.

Investigator McCloskey further stated that he received a number of requests for extensions by Respondent Beety. He stated that he received a desperate call from Respondent Beety on a Friday stating that she needed additional time to respond to his request even though he was supposed to meet with her on February 4, 2013. He declined this request and advised her to work on her compilation of the documents over the weekend. Investigator McCloskey stated that, when he went to her office on February 4, 2013, Respondent Beety did not have the documentation available. Investigator McCloskey stated that he also explained to her what a ledger should look like. He added that she did not recognize the ledger he showed to her.

Mary Beety

Respondent Beety stated that nothing was done intentionally and that no clients were hurt. Respondent Beety stated that she has a ledger onto which she staples deposit slips. She added that she has a separate ledger card for each transaction. She stated that she recently changed this to comply with the REC mandates. Respondent Beety stated that the ledger sheet that she provided was prepared by an accountant and that Investigator McCloskey wanted different documentation every time they spoke.

Respondent Beety explained that the issue with the deposit was an accident because she was in the process of changing banks. Moreover, Respondent Beety stated that no money is missing. Respondent Beety further explained that she has a large family and, therefore, has a lot of commitments. Additionally, she testified that she is making adjustments and is going to hire an assistant for the office. Respondent Beety also stated that she had cancer and she thought that she was going to die at one point. She stated that she was overworked and that she asked Investigator McCloskey for the extensions because she was sick. She stated that she did not intentionally fail to comply with a subpoena.

Respondent Beety stated that she did not dispute that Investigator McCloskey gave her a list of documents that he requested her to provide. Referring to said list, Exhibit S-3, she claimed that she did respond. Respondent Beety stated that she did provide Investigator McCloskey with some originals because she didn't have time to make copies. Moreover, she explained that she gave Investigator McCloskey documents that were assembled by her accountant. She added that the ledger shows the deposit for each transaction but they were different and Investigator McCloskey didn't like the order they were in and he asked her to re-

organize them. Respondent Beety stated that, when she filed her answer, she attached copies of her trust account which were in a monthly order. Respondent Beety stated that she had a child in the hospital and that had to come first.

FINDINGS OF FACT

Based upon 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. Mary M. Beety, at all times relevant, was a licensed New Jersey real estate broker and broker of record of Northern Star Realty, LLC, d/b/a Exit Northern Star Realtors, licensed New Jersey real estate broker, located at 150 S. Washington Avenue, Bergenfield, N.J. 07621.
2. On or about March 26, 1997, Respondent Beety entered into a Memorandum of Settlement with the New Jersey Real Estate Commission to resolve allegations that, as broker of record of Mary Beety Associates, she had commingled escrow funds and failed to account for or pay over the funds of others in real estate transactions. Respondent's broker license was voluntarily surrendered for two years, she was ineligible to apply for a salesperson's license for five months, and she agreed to pay a \$5,000 fine.
3. On or about September 11, 1997, Respondent Beety became licensed as a real estate salesperson after having paid the fine. She reinstated her broker's license on or about October 1, 1999.
4. On or about April 26, 2012, in response to a complaint filed against Respondent Beety, Investigator McCloskey visited Respondent Beety at her new office location in Bergenfield and requested that Respondent Beety produce business records for inspection. Said records were not available. At that time, the investigator provided

Respondent Beety with a written list of the documents that she produce and explained to her that he would return to the office in early May 2012 to review same. (Exhibit S-1). On this list, Investigator McCloskey requested the following items: 1) partnership agreement; 2) copy of escrow account statements (TD Bank) for December 2011, January 2012, February 2012 and March 2012 and a Final Statement; 3) copy of operating account statements (TD Bank) for December 2011, January 2012, February 2012 and March 2012; and 4) a bank statement from Provident showing initial deposit. Respondent Beety admitted that she was not able to produce the documentation at that time.

5. Investigator McCloskey visited Respondent Beety's office on two other occasions, once in May 2012 and again in or about July or August of 2012, and attempted to conduct an office inspection and audit of the business records. Respondent Beety was not able to produce complete business records during either visit. However, the investigator did review escrow and operating account bank statements for January, February and March of 2012 and discovered irregularities in same. Respondent Beety continued to request more time to respond over the next two months.
6. When Investigator McCloskey reviewed the bank statements from February 2012 through April 2012, he discovered a transfer of \$6,600.00 from an escrow account to an operating account. However, only \$6,000.00 of that money had been placed back into the escrow account and the operating account had a balance of only \$400.00 by the end of the monthly statement.
7. On or about October 18, 2012, Investigator McClsokey served a subpoena upon Respondent Beety which was returnable on November 20, 2012. In this subpoena, the

following materials were requested: 1) All escrow account monthly statements for all accounts for Exit North Star Realtors from June 2010 through September 2012; 2) The ledger page associated with all deposits to all escrow accounts; 3) Copies of all deposit slips for all deposits to all escrow accounts; 4) reconciliation reports for all escrow accounts from June 2012 to present; 5) copies of any correspondence to the REC changing Escrow account banks and account numbers. (Exhibit S-3). Respondent Beety appeared on November 20, 2012 with original files that were disorganized and in disarray. Therefore, Investigator McCloskey would not accept these documents. Respondent Beety was instructed how to organize the documents and given until January 18, 2013 to comply. In fact, Investigator McCloskey again gave Respondent Beety a specific list of the documents that she was to provide and gave her a sample ledger page, in the event that she did not have a ledger and would need to reconstruct her records. (Exhibit S-4). In this list, Investigator McCloskey requested the following items: 1) 2011-2012 All; For each Deposit 2) Copy of contract page #1; 3) Copy of Deposit Check; 4) Copy of all disbursement to whom; 5) Copy of ledger page for each contract; 6) Every transfer must be accounted for; 6) authorization for all transfers; 7) copies of all escrow account statements. On this list, Investigator McCloskey made clear that this was to be done by January 18, 2013.

8. On January 16, 2013, Respondent Beety requested more time to comply with the subpoena. In her email to Investigator McCloskey, Respondent Beety explained that her employees were sick and she also had the flu. She explained that, "It is not healthy space to be and as such reports are not completed. Thank you for your considerations." In response to this email, Investigator McCloskey wrote : "I will extend to you this **final**

courtesy. Please be advised that there will be absolutely no further extensions. You should have had this information and documentation available to me in an organized fashion when you appeared in Trenton in response to the subpoena. You have had a full two months beyond the subpoena to assemble the documents which should have been available to me when I was at your office back April 2012. I will be in your office on Monday February 4, 2013 at 11:00 **THERE WILL BE NO FURTHER EXTENSIONS!** On February 4, 2013, Respondent Beety's documents were not prepared when the investigator arrived.

CONCLUSIONS OF LAW

In light of the above findings of fact, the Commission makes the following conclusions of law with regard to the charges contained in the OTSC and summarized above:

1. Respondent violated N.J.S.A. 45:15-17e in that she demonstrated incompetency by failing to cooperate with the Commission investigation.
2. Respondent violated N.J.S.A. 45:15-17e in that she by demonstrated incompetency by failing to comply with a subpoena issued by the Commission.

DETERMINATION

In arriving at the determination in this matter, the Commission took into consideration the testimony of both Investigator McCloskey and Respondent Beety, in addition to Respondent Beety's limited admissions in her Answer to the OTSC.

Pursuant to N.J.S.A. 45:15-17e, the Commission may place on probation, suspend, revoke the license of any licensee or issue a penalty for, "Any conduct which demonstrates unworthiness, incompetency, bad faith, or dishonesty." Moreover, the failure of any person to cooperate with the commission in performance of its duties or to comply with a

subpoena issued by the commission compelling the production of materials in the course of an investigation may be construed as conduct demonstrating unworthiness. N.J.S.A. 45:15-17e. Here, Investigator McCloskey made numerous attempts to obtain documentation from Respondent Beety and, these attempts were met by numerous excuses from Respondent Beety. While the Commission is sensitive to personal circumstances especially those that are serious in nature, Respondent Beety was ultimately given over nine months to compile the information sought by the REC. Respondent Beety claims that Investigator McCloskey continued to ask for new and additional items every time they met. However, inherent to the investigation process is the need to uncover more information if a concern is raised. Investigator McCloskey testified that he observed a significant bank error in the escrow account early on in his investigation and Respondent Beety admitted to this fact. Investigator McCloskey needed to ensure that Respondent Beety's accounts and real estate dealings were in order and that they were being properly managed and therefore he requested additional documentation.

Moreover, when Respondent Beety showed up in response to the subpoena she brought documents in no particular order and most of which were originals. While Investigator McCloskey informed her that the documents were unacceptable and that they needed to be copied and placed in proper order, he also gave her specific instructions as to how to arrange these documents and gave her another list identifying which documents he needed. However, Respondent Beety repeatedly asked for extensions until Investigator McCloskey gave her the peremptory date of February 4, 2013, at which point she needed to have all documents in proper order. Despite the fact that Respondent Beety was given a lengthy period of time to adequately respond to the REC and was given numerous extensions to do so, she failed to comply. Therefore, Respondent Beety committed two violations of N.J.S.A. 45:15-17e in that she failed


to comply with a subpoena and demonstrated incompetence by failing to cooperate with an investigation.

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

1. Respondent Beety's broker license shall be on probation for a period of two years.
2. Respondent Beety shall pay a \$2500.00 fine within 90 days of written order. During her probation, Respondent must submit a letter from an accountant on a semi-annual basis indicating her records have been reviewed and are in order.

SO ORDERED this 16th day of July, 2014

By: Linda Stefanik, President
Jacob S. Elkes, Esq., Commissioner
Robert Melillo, Commissioner
Harold J. Poltrock, Esq., Commissioner
Benjamin Steltzer, Commissioner
Eugenia Bonilla, Commissioner
Jeffrey Lattimer, Commissioner



Robert L. Kinniebrew
Executive Director
New Jersey Real Estate Commission