

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,)	DOCKET NO.: BER-14-018
)	
Complainant,)	FINAL ORDER OF
v.)	DETERMINATION
)	
MARK BROWNLEE, formerly licensed New)	
Jersey real estate broker, (RB7834688) and HOME)	
HUNTERS, INC., (CO8200318), formerly)	
licensed New Jersey real estate broker,)	
)	
Respondents.)	

This matter was heard at a 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 September 1, 2015.

BEFORE: Commissioners Linda Stefanik, Eugenia K. Bonilla, Jeffrey A. Lattimer, Cindy Marsh-Tichy, and Michael Timoni.

APPEARANCES: Marianne Gallina, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission ("REC"). Respondent appeared pro se.

STATEMENT OF THE CASE

The REC initiated this matter on its own motion through service of an Order to Show Cause ("OTSC") dated August 27, 2014, 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 OTSC alleged that Respondents, Mark Brownlee ("Brownlee") and Home Hunters, Inc. ("Home Hunters"), engaged in multiple violations of the

real estate statutes and regulations. Specifically, the REC alleged that Respondents engaged in real estate brokerage activity without a real estate license in violation of N.J.S.A. 45:15-1, 45:15-3 and 45:15-17t. It was also alleged that Respondent Brownlee made substantial misrepresentations to the public by representing himself and Respondent Home Hunters as real estate licensees when in fact neither held a real estate license in violation of N.J.S.A. 45:15-17a. The OTSC further alleged that Respondent Brownlee's actions of holding himself out to the public as a real estate licensee demonstrated fraud and dishonest dealing in violation of N.J.S.A. 45:15-17l. Respondent Brownlee was also charged with failing to cooperate with a Real Estate Commission investigation in violation of N.J.S.A. 45:15-17e and failing to comply with the requirements of N.J.A.C. 11:5-6.5 regarding consent and verification of the listings he advertised. Lastly, Respondents were charged with operating a rental referral agency in violation of N.J.S.A. 45:15-1.2.

Respondents answered and responded to the charges of the OTSC on September 29, 2014. In the response, Respondents stated that they "don't dispute anything listed" when referring to the allegations in the OTSC. The response further stated that Respondents "would like to have the opportunity to correct the infractions, conform to the rules and relicense myself [Brownlee] and Home Hunters." Because Respondents did not dispute the allegations in the OTSC, the Commission determined that no material facts or issues of law were contested. Consequently, a hearing in mitigation pursuant to N.J.A.C. 11:5-11.3(b) took place on September 1, 2015.

TESTIMONY OF THE WITNESS

Respondent Mark Brownlee waived his right to counsel and testified on his own behalf. Respondent Brownlee testified that he submitted his renewal license application, but that the application was not accepted because he did not fulfill his continuing education requirements. Respondent stated that he was in a bad state of mind at the time of applying for reinstatement because he had lost his home and his brother had recently passed away.

Respondent Brownlee further testified that he cannot argue with anything that is in the OTSC and that if he could do things over, he would. Brownlee stated that when the REC investigator came to his office, he was told by the investigator to close the office down and that the investigator did not attempt to work with him or offer any advice.

Upon questioning by the REC's Regulatory Officer, Brownlee testified that he obtained information on available rentals through emails or telephone contact with landlords or listing agents directly. Brownlee stated that he did not obtain the information from the Multiple Listing Service. Respondent testified that he did not notify the landlords he spoke with that he was not licensed with the REC.

Regarding his website, Respondent stated that the website needs to be updated and that he has not had time to make the changes. He further stated that there are no other entities associated with him as a licensed agent besides Home Hunters and that he is listed as an owner on the website.

Respondent Brownlee stated that he engaged in five to ten transactions a week from July 2013 through July 2014. Brownlee explained that he supplied people with listings for available rentals, and if they were interested, they would rent the property from the owner or landlord. Respondent testified that the \$125.00 transaction fee he collected was placed into a

special account; however, the bank account was not an escrow account. Brownlee stated that if he was not able to help someone find a rental, he would return the fee to them.

Lastly, Respondent Brownlee stated that he was sorry for what he did and admitted that he made some mistakes.

FINDINGS OF FACT

Based upon the pleadings and the testimony of the witness, the Commission makes the following findings of fact:

1. Respondent Mark Brownlee does not presently hold a real estate license in New Jersey. According to the licensing records maintained by the REC, Brownlee previously held a real estate broker license in New Jersey which expired on June 30, 2013; and
2. Home Hunters, Inc. is a formerly licensed New Jersey real estate broker whose license expired on June 30, 2013 and was not renewed. Respondent Brownlee was the broker of record and is an owner of Home Hunters, Inc.; and
3. Respondents, Brownlee and House Hunters, placed advertisements on the website known as "Craigslis" during the month of October 2013 in which they advertised properties for rent under the names of Home Hunters, Home Hunters Realty, and HH Realty. Respondents advertised that Home Hunters, Home Hunters Realty and HH Realty would provide rental lists to consumers in exchange for a fee; and
4. Respondents, Brownlee and House Hunters, also maintain a website, www.homehunters.net, which stated that Home Hunters, Inc. is a licensed New Jersey real estate broker and lists Respondent Brownlee as the owner. The web site lists advertisements of properties available for rental by selecting the area, number of

bedrooms and monthly rent amount desired. As of the date of the Order to Show Cause, the website was still active; and

5. On or about November 26, 2013, a REC investigator interviewed Respondent Brownlee in an office located at 6-20 Plaza Road, Fair Lawn, N.J. According to REC records, 6-20 Plaza Road, Fair Lawn, N.J. is listed as the office address of Exclusive Properties Real Estate, LLC, a formerly licensed New Jersey Real Estate broker whose license expired on June 30, 2013 and was not renewed; and
6. When the REC investigator informed Respondent Brownlee that he and Home Hunters were engaging in unlicensed real estate activity, Respondent Brownlee was not cooperative and responded that he knew he was engaging in unlicensed real estate activity and that he had no intention of ceasing operations.

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 Brownlee violated N.J.A.C. 11:5-6.5 because he did not provide to the Commission any information regarding compliance with the regulation, including, but not limited to, (a) whether or not he had written consent of the property owners or the listing agents for the properties that he advertised on Craigslist, (b) verification of the availability of the rental units he advertised or (c) copies of the written contracts that consumers were required to enter into; and
2. Respondents, Brownlee and Home Hunters, violated N.J.S.A. 45:15-1, 45:15-3 and 45:15-17t because they engaged in real estate brokerage activity without a real estate license; and

3. Respondent Brownlee violated N.J.S.A. 45:15-17a because he made substantial misrepresentations to members of the public by representing himself and Home Hunters as real estate licensees, when in fact they did not hold any real estate licenses; and
4. Respondent Brownlee violated N.J.S.A. 45:15-17l because, by holding himself out to the public as a real estate licensee, he has demonstrated fraud and dishonest dealing; and
5. Respondent Brownlee violated N.J.S.A. 45:15-17e because he failed to cooperate with a Real Estate Commission investigation; and
6. Respondents Brownlee and Home Hunters violated N.J.S.A. 45:15-1.2 because they operated a rental referral agency that was not in compliance with that statutory provision.

DETERMINATION

In arriving at the determination in this matter, the Commission took into consideration the admissions, testimony and credibility of the witness. The Commission also considered the serious nature of the circumstances surrounding the actions.

N.J.A.C. 11:5-6.5 sets forth the requirements for persons who engage in the business of referring prospective residential tenants to possible rental units in exchange for a fee. In addition to being licensed by the REC, referral agents must comply with certain contract and advertising requirements. Further, any person who engages in referral agent activity and accepts a fee without being licensed has committed a disorderly persons offense. N.J.S.A. 45:15-1.2. In this case, Respondents were not only unlicensed to conduct this type of business, but they also did not fulfill any of the requirements of N.J.A.C. 11:5-6.5.

Pursuant to New Jersey real estate law, no person shall engage either directly or indirectly in the business of a real estate broker, broker-salesperson, salesperson or referral agent and no person shall advertise or represent themselves as being authorized to act as a licensee

without being licensed to do so. N.J.S.A. 45:15-1. Engaging in real estate business as a referral agent includes “referring prospects for the sale, purchase, exchange, leasing or rental of real estate or an interest therein” and accepting compensation for that activity. N.J.S.A. 45:15-3. Neither Respondent in this matter held a referral agent’s license in 2013 or 2014. This was the time period during which Respondent Brownlee testified that he handled five to ten rental referral transactions per week and collected fees of \$125.00 for each transaction. In fact, Respondent Brownlee held a real estate broker license in New Jersey which expired on June 30, 2013 and was not renewed. Moreover, Respondent Home Hunters held a New Jersey real estate broker which expired on June 30, 2013 and was not renewed.

The Real Estate Brokers and Salesperson 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). Thus, the Commission has the power to suspend or revoke the licenses of brokers and salesperson, and to impose fines, for any acts that violate any of the offenses enumerated in N.J.S.A. 45:15-17 or the real estate regulations. Maple Hill Farms, Inc. v. Div. of 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). Furthermore, real estate brokers and salespersons in New Jersey act as fiduciaries and they are required to exercise: “fidelity, good faith and primary devotion to the interests of [their] principal[s],” Ellsworth Dobbs, Inc., v Johnson and Johnson, 50 N.J. 528, 553 (1967), and “reasonable skill, care and diligence in performing” the business of real estate brokerage with regard to their clients. Sullivan v. Jefferson, 167 N.J. Super. 282, 286-87 (App. Div. 1979).

Here, the undisputed facts demonstrate that Respondents Brownlee and Home Hunters have engaged in serious real estate law violations, all arising out of their activities in placing advertisements on Craigslist in which they advertised properties for rent under the names of Home Hunters, Home Hunters Realty, and HH Realty. Respondents also maintained a website, www.homehunters.net, which stated that Home Hunters was licensed in New Jersey as a real estate broker and listed Respondent Brownlee as the owner. At the time of the hearing the Respondents' website was still active and Respondent Brownlee testified that the website needed to be updated.

N.J.S.A. 45:15-17a, N.J.S.A. 45:15-17e, N.J.S.A. 45:15-17l and N.J.S.A. 45:15-17t provide that the Commission may revoke, suspend and fine any person for “making any false promises or substantial misrepresentations”, for “failure of any person to cooperate with the commission in the performance of its duties”, or for “any other conduct which constitutes fraud or dishonest dealings.” Moreover, the Commission is empowered to “enforce any and all rules and regulations for the conduct of the real estate brokerage business.”

Respondents Brownlee and Home Hunters were not licensed in New Jersey as referral agents in 2013 and 2014. Further, Respondents are not currently licensed. Nevertheless, they represented to consumers that they were authorized to act as residential rental referral agents, did in fact perform referral agent actions and collected fees for those actions. Respondent Brownlee also admitted in his answer, and during the hearing, that his broker's license was not renewed because he did not complete the continuing education requirements for licensure. In sum, Respondents made substantial misrepresentations to consumers by representing that they were licensees when in fact they were not. Respondents engaged in unlicensed real estate activity and dealt dishonestly with the public through their actions. Further, Respondent Brownlee failed

to cooperate with the REC's investigation by continuing to operate his unlicensed and non-compliant residential rental referral business. Therefore, license ineligibility and a fine are the appropriate sanctions in this case.

In Kimmelman v. Henkels & McCoy, Inc. 108 N.J. 123 (1987), the Supreme Court established the following seven factors to evaluate the imposition of fines in administrative proceedings and these factors are applicable to this matter which seeks the imposition of penalties under the Real Estate License Act, N.J.S.A. 45:15-1, et seq.: (1) the good or bad faith of the respondent; (2) the respondent's ability to pay; (3) amount of profits obtained from illegal activity; (4) injury to the public; (5) duration of the illegal activity or conspiracy; (6) existence of criminal or treble actions; and (7) past violations. Kimmelman, supra 108 N.J. at 137-139. Analysis of these factors in this matter requires imposition of a significant fine.

First, Respondent Brownlee demonstrated bad faith by engaging in the continued conduct of misrepresenting himself and Respondent Home Hunters to the public as real estate licensees. Second, although Respondent Brownlee mentioned at the hearing that he had lost his home, no documentary evidence or other proof was presented concerning Respondents' ability to pay. Third, Respondents profited for their illegal activities; however, the total amount of profit is unclear. Nevertheless, Respondent Brownlee testified that he charged a \$125.00 fee for each transaction and averaged five to ten transactions per week during 2013 and 2014. Fourth, the public is significantly harmed when unlicensed individuals and entities engage in real estate activities because the public confidence in real estate agents and the real estate industry as a whole is eroded. Fifth, the Respondents illegal activity was repeated and occurred from the time his license expired on June 13, 2013 through at least the issuance of the Order to Show Cause on August 27, 2014. Furthermore, at the time of the hearing, Respondents' website was still active

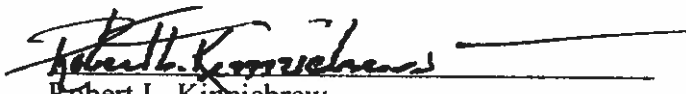
and providing inaccurate information to consumers. Sixth, the Commission is not aware of any prior or pending criminal or treble actions. Finally, to the Commission's knowledge, there appears to be no past violations.

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

- I. Respondents Brownlee and Home Hunters shall pay a fine, jointly and severally, in the amount of \$7,500.00 within 30 days from the date of receipt of this Order.
- II. Respondents Brownlee and Home Hunters shall be ineligible for any type of licensure for a period of two years from the date of this Order, at which time Respondents will have to meet all current requirements for licensure, if they apply to the Commission for any license.
- III. Respondent Brownlee shall divest himself of any ownership interest in any entity that engages in the real estate business and he shall not be employed in any capacity with any real estate agency or business, which includes the business of referral or rental of property, during the period of ineligibility.
- IV. Respondents Brownlee and Home Hunters shall immediately remove their names as licensees or owners of any real estate businesses from all websites that advertises referral or rental properties.

SO ORDERED this 2nd day of March, 2017.

By: Linda Stefanik, President
Eugenia K. Bonilla, Commissioner
Jeffrey A. Lattimer, Commissioner
Cindy Marsh-Tichy, Commissioner
Michael Timoni, Commissioner

A handwritten signature in black ink, appearing to read "Robert L. Kimmiebrew", is written over a horizontal line.

Robert L. Kimmiebrew
Executive Director
New Jersey Real Estate Commission