

failure to notify the Commission of two separate arrests and subsequent convictions within 30 days of their occurrence is a violation of N.J.S.A. 45:15-17s. In addition, the Respondent's license is subject to revocation because he was convicted of a theft related offense, pursuant to N.J.S.A. 45:15-19.1.

Robert F. Rue, Esq. filed a timely Answer to the OTSC on behalf of the Respondent, dated December 29, 2016, wherein the Respondent admitted to and denied certain allegations set forth in the OTSC. Accordingly, on January 24, 2017, the Commission deemed this matter a contested case and directed that a hearing be scheduled.

A hearing was conducted on February 28, 2017, at which the following exhibits were admitted into evidence by the REC²:

- S-1 Criminal Complaint – Summons in the matter of the State of New Jersey v. Thomas Grady, regarding a July 6, 2015 theft incident involving a stolen bicycle, dated August 2, 2015;
- S-2 Ship Bottom Police Department Investigation Report regarding a July 26, 2015 theft incident involving a stolen iPhone, dated July 26, 2015;
- S-3 Ship Bottom Police Department Investigation Report regarding a July 6, 2015 theft incident involving a stolen bicycle, dated August 2, 2015;
- S-4 Municipal Certification of Disposition regarding both the July 26, 2015 and August 2, 2015 arrests, dated “received” on February 9;
- S-5 Letter from Respondent regarding July 26, 2015 arrest, dated and timestamped August 31, 2015;

based on this statutory cite, nor did the REC seek such relief at the hearing. On page two of the OTSC, however, it is alleged that Respondent's license is subject to revocation pursuant to N.J.S.A. 45:15-19.1 because Respondent was convicted of a theft related offense.

² S-2 was not entered into evidence at the start of the hearing but was entered into evidence by REC Regulatory Officer John Rossakis during the Respondent's testimony with no objection from Respondent's counsel.

- S-6 Letter from Respondent regarding August 2, 2015 arrest, dated September 1, 2015 and timestamped September 3, 2015; and,
- S-7 Letter from Respondent regarding court appearance for August 2, 2015 arrest; dated and timestamped September 15, 2015.

TESTIMONY OF THE WITNESSES

Clark K. Masi

Clark K. Masi (“Masi”) testified on behalf of the REC. Masi stated that he is employed as an Investigator by the REC. Masi was assigned to investigate to the Respondent’s conduct after the REC received two separate arrest notifications from the New Jersey State Police.

Masi testified at length regarding whether the Respondent satisfied the requirement to notify the Commission of the filing of formal charges against him within 30 days pursuant to N.J.S.A. 45:15-17s. Upon receipt of the arrest notifications from the New Jersey State Police, Masi initially testified that he waited 30 days before contacting the Respondent to request documentation from him.³ On cross-examination, Masi testified that he actually spoke to the Respondent on August 20, 2015 regarding both arrests via telephone. After speaking to the Respondent on multiple occasions, the Respondent still had not provided Masi with the requested documentation. The Respondent did provide a Criminal Complaint for one of his two arrests in September 2015, but Masi had to request the other Criminal Complaint directly from the Ship Bottom Police Department. (Exhibit S-1).

When the Respondent was convicted on November 20, 2015 of Receiving Stolen Property and a municipal ordinance violation, Masi did not receive notification of the

³ The documentation requested includes police reports, investigation reports, the Court’s final disposition of charges, a letter explaining the arrests and a letter to explain why the Respondent failed to notify the REC within 30 days of his arrest.

Respondent's convictions within 30 days. Masi followed up by sending a letter to the Respondent on January 25, 2016 requesting further information regarding the Respondent's recent convictions. On February 10, 2016, the REC received a letter from the Respondent's attorney notifying the Commission of Respondent's conviction and included the Court's final disposition. (Exhibit S-4). On cross examination, Masi admitted that he did not know how long it takes for the Court to issue a final disposition.

Masi testified regarding the Respondent's arrest involving a stolen bicycle. (Exhibit S-3). Referencing the Ship Bottom Police report, Masi described how Officer Tretola ("Tretola"), on August 2, 2015, came across Tretola's personal bicycle, which had been stolen from behind the Ship Bottom Police Department a month earlier on July 6, 2015. The bicycle's markings and identification number had been covered up with electrical tape and spray paint. Later that night, Tretola intercepted the Respondent and a friend riding bicycles in Ship Bottom. The Respondent's friend was riding the stolen bicycle. Tretola's report indicates that when asked, the Respondent admitted he was involved in covering up the markings and identification number. Masi testified that the report also indicates that the Respondent thought the bicycle belonged to a friend and he was unaware that it was stolen and that he was intoxicated when the acts occurred.

On cross-examination, Masi testified that the Respondent was issued a summons for a motor vehicle offense for not having a bell and a light on the stolen bicycle in addition to a violation of N.J.S.A. 2C:20-7a (theft of moveable property). Furthermore, Masi testified that the Respondent's friend was riding the stolen bicycle when the Respondent was issued the summons. Masi went on to confirm that the Respondent's explanation for how he came to be in possession of a stolen bicycle was that "it just showed up" on his father's property.

Thomas S. Grady

The Respondent testified on his own behalf at the hearing. He testified regarding the circumstances surrounding his August 2, 2015 arrest. The Respondent and a friend were riding bicycles in Ship Bottom when they were stopped by Tretola because his friend's bicycle did not have the required bell or light on the handle bars. The Respondent stated he had found the bicycle on his father's property and assumed it belonged to a friend. The Respondent told the officer that his friend had nothing to do with the stolen bicycle and was issued a summons for not having a light or bell. The Respondent pointed out that the summons did not name his friend, who was riding the bicycle, or the Respondent's father, on whose property the bicycle had been found. In addition, the Respondent testified that the bicycle's identifying marks had been concealed with spray paint and tape, but that he was not responsible for covering up these markings.

Respondent testified that he pled guilty to the offense of Receiving Stolen Property under the direction of his attorney and to expedite these matters. In addition, he stated that the younger police officers in Ship Bottom, where he currently resides with his father, do not like him. He spoke of a pattern of harassment by the officers of the Ship Bottom Police Department, including numerous unnecessary traffic stops.

Regarding his July 26, 2015 arrest, the Respondent testified that he was very intoxicated at the time and does not remember the details of the incident. He stated that he was "looking for a girl" when he entered a stranger's second floor unit by accident. While inside, he removed an iPhone from the unit because he thought it belonged to him. He then entered the first floor unit and that tenant called the police. (Exhibit S-2). His first clear memories of the event are of being in the police station.

The Respondent acknowledged his mistakes. He stated that he is looking to move past his bad judgment. He has learned from the incidents at issue and is embarrassed by his conduct. In addition, he has been attending Alcoholics Anonymous approximately two times a week for the last two years. He sought counseling following his arrests and has not been arrested since these incidents occurred in 2015. The Respondent indicated that these events occurred in quick succession during a short period of time because he may have just ended a romantic relationship and “was having a difficult time.” Furthermore, he indicated that he was 23 years old when these events occurred. The Respondent stated that during his arrest, the police did not inform him it was necessary to notify the Commission within 30 days of his arrest.

Lastly, the Respondent testified that he currently lives and works with his father. In the past year, he has been working under the tutelage of his father as an intern and participated in closing 39 real estate transactions with him. He works full-time as a real estate salesperson intern and has no additional employment. In addition, he testified that his broker knew about his arrests and subsequent convictions.

FINDINGS OF FACT

Based on 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. The Respondent is an actively licensed New Jersey real estate salesperson, currently licensed with Zachariae Realty d/b/a Berkshire Hathaway Homeservices Zack Shore Realty, licensed New Jersey broker, whose main office is located at Village Harbour Suite 1006S, 675 Route 72, Manahawkin, New Jersey 08050.
2. On July 26, 2015, the Respondent was arrested and charged in the Ship Bottom Municipal Court with one count of Burglary, in violation of N.J.S.A. 2C:18-2a(1), two

counts of Criminal Trespassing in violation of N.J.S.A. 2C:18-3a, and one count of Theft of Movable Property, in violation of N.J.S.A. 2C:20-3a.

3. On August 2, 2015, the Respondent was arrested and charged in the Ship Bottom Municipal Court with one count of Theft of Movable Property, in violation of N.J.S.A. 2C:20-3a and one count of Receiving Stolen Property, in violation of N.J.S.A. 2C:20-7a.
4. The underlying conduct for the July 26, 2015 incident involved entering a private residence and taking the owner's iPhone.
5. The underlying conduct for the August 2, 2015 incident involved a stolen bicycle valued at \$250.
6. On August 20, 2015, Masi and the Respondent spoke regarding both arrests via telephone.
7. On November 20, 2015, the Respondent pleaded guilty to and was convicted of one count of Receiving Stolen Property, in violation of N.J.S.A. 2C:20-7a, and was assessed a fine in the amount of \$506 as well as costs. The Respondent was also required to make restitution to the victim, Officer Brian Tretola.
8. The one count of Criminal Trespass, N.J.S.A. 2C:18-3a, was downgraded to a municipal ordinance violation, Creating a Disturbance (9.16.030(3)), and the Respondent was assessed a fine in the amount of \$856 as well as associated costs.
9. The remaining criminal charges were dismissed.
10. The Respondent was actively licensed at the time of his conviction but did not notify the Commission within 30 days.

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 as summarized above:

1. Pursuant to N.J.S.A. 45:15-19.1, the Respondent's real estate license is subject to revocation due to his conviction of a theft-related offense.
2. The Respondent is in violation of N.J.S.A. 45:15-17s (one count) in that he failed to timely notify the Commission of the judgment of conviction filed against him.

DETERMINATION

At the conclusion of the hearing and executive session in this matter, the Commission voted in favor of finding certain violations alleged in the OTSC and imposing the sanctions described in this Final Order and Determination. In arriving at the determination in this matter, the Commission took into consideration the pleadings, the testimony of the witnesses, the undisputed documentary evidence admitted during the course of the hearing, and the nature of and circumstances surrounding the Respondent's recent conviction for receiving stolen property and the conduct underlying that conviction. N.J.S.A. 45:15-19.1 provides that the Respondent's real estate license is subject to revocation because he has been convicted of a theft-related offense. In addition, the Respondent is charged with failing to provide notification to the Commission of the filing of formal criminal charges against him and of his subsequent conviction within 30 days, in violation of N.J.S.A. 45:15-17s.

The Real Estate Brokers and Salespersons Act, N.J.S.A. 45:15-1 et seq. ("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). The

Commission is empowered to suspend and revoke the licenses of, and impose fines against, real estate licensees that commit any of the offenses enumerated in N.J.S.A. 45:15-17 or the real estate regulations. Maple Hill Farms, Inc. v. New Jersey Real Estate Comm'n, 67 N.J. Super. 223, 232 (App. Div. 1961); New Jersey Real Estate Comm'n v. Ponsi, 39 N.J. Super. 526, 527 (App. Div. 1956). Courts have long recognized that the real estate sales industry should exclude individuals who are incompetent, unworthy, and unscrupulous, in order to protect the public interest. See Div. of New Jersey Real Estate Comm'n v. Ponsi, supra at 532-533.

Thus, the Commission has the power to suspend, revoke, or place on probation the license of any licensee for “any conduct which demonstrates unworthiness, incompetency, bad faith, or dishonesty.” N.J.S.A. 45:15-17e.

N.J.S.A. 45:15-19.1 provides that the Commission shall revoke the license of any licensee who is convicted of theft or theft-related offences during the term of the license issued by the Commission. The undisputed facts and evidence in this matter demonstrate that on November 2, 2015, the Respondent pleaded guilty to one count of Receiving Stolen Property (N.J.S.A. 2C:20-7A) and one count of Creating a Disturbance (Ship Bottom, Municipal Code, 9.16.030(3)). The Respondent’s underlying conduct and the attendant theft-related conviction demonstrate the type of undesirable behavior from which the Commission is charged to protect the public. Thus, the Respondent’s license is subject to revocation pursuant to N.J.S.A. 45:15-19.1. However, a closer examination of the circumstances surrounding the Respondent’s conviction and underlying conduct reveals that a lesser penalty is appropriate in this matter. As the testimony reflects, on August 2, 2015, the Respondent was riding his bicycle around Ship Bottom with a friend when they were stopped by Officer Tretola for not having a bell and light on one of the bicycles, which is required by the municipality. Tretola noticed that the

Respondent's friend was riding the Officer's personal bicycle, which had recently been stolen. When Tretola began to question the pair about how they came to possess the bicycle, the Respondent stepped forward and took responsibility for the bicycle because it had been found on his father's property. The Respondent testified that there were many bicycles left on his father's property, as is the practice in his neighborhood, so he assumed the bicycle in question belonged to a friend. These uncontested circumstances mitigate the conduct underlying the Respondent's conviction.

In an unrelated incident, on July 26, 2015, the Respondent testified to removing an iPhone from the apartment of a stranger that he entered without permission while extremely intoxicated. The Respondent explained that the phone he took looked just like his own and that he removed it in error. The Respondent has sought alcohol abuse counseling to prevent this type of conduct going forward, testified that he had been going through a difficult time personally when the incident occurred, has taken responsibility for his error in judgment and has not been involved in any further incidents of this nature.

Given these mitigating circumstances, the Commission determined that a suspension for a period of six months followed by probation for a period of two years with conditions was an appropriate penalty. Lastly, the OTSC alleges that the Respondent is in violation of N.J.S.A. 45:15-17s (three counts) in that he failed to notify the Commission of the filing of formal criminal charges against him and of his subsequent convictions within 30 days. N.J.S.A. 45:15-17s requires licensees to notify the Commission within 30 days of having been convicted of any crime, misdemeanor, or disorderly persons offense, or of having been indicted, or of the filing of any formal criminal charges. The Respondent had formal criminal charges filed against him in the Ship Bottom Municipal Court on July 26, 2015 and August 2, 2015. Masi testified that he

and the Respondent had spoken via telephone on August 20, 2015 regarding the Respondent's recent criminal charges and the documentation he was required to submit to the Commission. This communication is within the 30 day period following the filing of charges and it was reasonable for Respondent to believe that the Commission was notified within the 30 days of the filing of formal charges against him. However, the Respondent did not notify Masi of his November 20, 2015 criminal conviction until February 10, 2016, which is outside the 30 day notification period. The Respondent argues his delay in notifying the Commission of his conviction was due to the fact the court's final disposition was not issued within the 30 day notification period. However, a letter informing the Commission of recent events would have been sufficient to satisfy the notification requirement; Respondent was not required to wait for the paper final disposition to be available. Thus, the Respondent is in violation of N.J.S.A. 45:15-17s (one count) for failing to timely notify the Commission of his judgment of conviction.

Pursuant to N.J.S.A. 45:15-17, the Commission may impose a penalty of not more than \$5,000 for the first violation of the Act, and a penalty of not more than \$10,000 for any subsequent violation. 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 Act: (1) the good or bad faith of the respondent; (2) the respondent's ability to pay; (3) the amount of profits obtained from the illegal activity; (4) any injury to the public; (5) the duration of the illegal activity or conspiracy; (6) the existence of criminal or treble actions; and (7) any past violations. Id. at 137-139. Each of these factors is discussed below.

First, the Respondent's failure to notify the Commission of his criminal conviction does not demonstrate bad faith. The Respondent was formally convicted on November 2, 2015 and notified the REC on February 10, 2016. This falls outside the 30 day notification period, however, the Respondent appeared to be under the impression that the court's final disposition must be provided to the Commission for notification to be complete. As discussed, this is not the case and a letter would have been sufficient. Although the Respondent should have been familiar with the notification requirements as a licensee, his failure to provide the Commission with timely notification was not motivated by dishonesty or bad faith.

Second, the Respondent testified that he works full-time with his father. He fills an "internship" role where he has assisted his father in closing 39 real estate transactions over the last year. It is presumed that he maintains this role and has the ability to pay fines assessed in this matter.

The third and fifth factors in the Kimmelman analysis examine the profits obtained by the Respondent and the duration of the illegal activity. In this matter, the Respondent obtained the benefit of continued licensure, although the delay in notification was only a little over one month. Furthermore, based on the testimony provided, these incidents appear to be isolated in nature.

In order to protect consumers, the Commission is charged with the "high responsibility of maintaining ethical standards among real estate brokers and sales[persons]." Goodley v. New Jersey Real Estate Comm'n, supra, 29 N.J. Super. at 182. The Respondent's failure to comply with the Commission's notification requirements are contrary to the principle intent behind the Act: to "protect consumers by excluding 'undesirable, unscrupulous and dishonest persons...from the real estate business.'" Sammarone v. Bovino 395 N.J. Super. 132 (App.

Div.), 193 N.J. 275 (2007); see also Tobias v. Comco/America, Inc. 96 N.J. 173, 180 (1984); Kazmer-Standish Consultants, Inc. v. Schoeffel Instruments Corp. 89 N.J. 286, 290 (1982); and Markheim-Chalmers, Inc. v. Masco Corp. 332 N.J. Super. 452, 457 (App. Div. 1999). As previously noted, the Respondent did not notify the Commission within 30 days of his criminal conviction. And as previously noted, this conduct was not motivated by bad faith and was ultimately rectified. However, it should be noted that the onus falls on the licensee to be aware of the applicable statutory and regulatory requirements of those in their profession. The Commission must encourage licensees to abide by the rules that are in place to protect consumers and ensure ethical conduct by those in the real estate profession. The Respondent's failure to abide by these rules weighs in factor of a monetary penalty.

Sixth, the Respondent has not been party to criminal proceedings related to his failure to notify the Commission of his criminal charges or conviction in a timely manner. As to the final factor, there is no evidence of prior violations by the Respondent.

In light of these factors and penalties previously assessed by the Commission, the Respondent shall pay a fine in the amount of \$500 for one count of failure to timely notify the Commission of his judgment of conviction in violation of N.J.S.A. 45:15-17s. This penalty is consistent with prior Commission decisions. See, NJREC v. Shayvionne Harris, Dkt. No. BER-15-12, Final Order (02/08/17) (Respondent fined \$500 per violation of N.J.S.A. 45:15-17s for failure to timely notify the Commission of criminal charges and conviction); NJREC v. Patricia Gabriel, Dkt. No. OCE-15-019, Final Order (02/14/17) (Respondent was fined \$500 for failure to timely notify the Commission of criminal charges); NJREC v. Charles Chichizola, Dkt. No. BER-15-018, Final Order (02/14/17) (Respondent fined \$500 per violation of N.J.S.A. 45:15-17s for failure to timely notify the Commission of criminal charges and conviction).

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

- I. The Respondent's real estate license is suspended for a period of six months from the date of this order;
- II. Upon relicensure, the Respondent's real estate license will be held on probation for a period of two years. During the period of probation, the following conditions apply:
 - 1) the Respondent shall inform any employing broker that his license is on probation;
 - 2) the Respondent's broker shall notify the Commission within 72 hours if he or she receives any information indicating that the Respondent may have violated the Act or corresponding regulations; and, 3) the Respondent must notify the Commission within 72 hours if he is charged with or convicted of any criminal or disorderly persons offense; and
- III. The Respondent shall pay a fine in the amount of \$500 for one count of failure to timely notify the Commission of his judgment of conviction, which shall be paid prior to any relicensure.

SO ORDERED this 28th day of June, 2017.

By: Linda Stefanik, President
Sanjeev Aneja, Commissioner
Jacob Elkes, Commissioner
Kathryn Godby Oram, Commissioner
William Hanley, Commissioner
Denise Illes, Commissioner


Patrick J. Mullen
Director of Banking

IT FURTHER APPEARING THAT the Commission is in possession of the meeting minutes taken at the February 28, 2017 meeting; and

IT FURTHER APPEARING THAT the meeting minutes reflect that Commission: (a) ordered the suspension of the Respondent's real estate license for a period of three months; (b) ordered that upon relicensure, the Respondent's real estate license will be held on probation for a period of two years during which time the following conditions apply: the Respondent must inform any employing broker that his license is on probation; the broker shall notify the Commission within 72 hours if he or she receives any information indicating that the Respondent may have violated the Real Estate Brokers and Salespersons Act, N.J.S.A. 45:15-1 et seq. ("Act") or corresponding regulations, and the Respondent must notify the Commission within 72 hours if he is charged with or convicted of any criminal or disorderly persons offense; and (c) levied a \$500 fine against the Respondent; and

NOW THEREFORE, it is on this 8th day of August, 2017,

ORDERED that the lines marked "I." to "III." on page 14 of the Final Order are hereby corrected to more precisely conform to the oral decision issued at the hearing; and

IT IS FURTHER ORDERED that the text contained on the lines marked "I." to "III." is hereby replaced with the following text:

- "I. The Respondent's real estate license is suspended for a period of three months;
- II. Upon relicensure, the Respondent's real estate license will be held on probation for a period of two years. During the period of probation, the following conditions apply: 1) the Respondent shall inform any employing broker that his license is on probation; 2) the Respondent's broker shall notify the Commission within 72 hours if he or she receives any information indicating that the

Respondent may have violated the Act or corresponding regulations; and, 3) the Respondent must notify the Commission within 72 hours if he is charged with or convicted of any criminal or disorderly persons offense; and

III. The Respondent shall pay a fine in the amount of \$500 for one count of failure to timely notify the Commission of his judgment of conviction, which shall be paid prior to any relicensure.”

SO ORDERED this 10 day of August, 2017.

By: Linda K. Stefanik, President
Sanjeev Aneja, Commissioner
Jacob Elkes, Commissioner
Kathryn Godby Oram, Commissioner
William Hanley, Commissioner
Denise M. Illes, Commissioner



Patrick J. Mullen
Director of Banking