

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,	)	DOCKET NO.: CAM-13-023
	)	
Complainant,	)	
v.	)	<b>FINAL ORDER OF</b>
EDWARD FRANCIS STINSON, licensed New	)	<b>DETERMINATION AS TO</b>
Jersey real estate broker-salesperson,	)	<b>EDWARD FRANCIS</b>
(Lic.#1005383), MARIE BONTIGAO	)	<b>STINSON AND MARIE</b>
(Lic.#0342551) formerly licensed New Jersey real	)	<b>BONTIGAO</b>
estate salesperson, and APRIL WARD <sup>1</sup> , licensed	)	
New Jersey real estate salesperson,	)	
(Lic.#1006119).	)	

Respondents.

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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 July 22, 2014.

**BEFORE:** Commissioners Linda Stefanik, Eugenia Bonilla, and Michael Timoni.

**APPEARANCES:** Deputy Attorney General Carl Bornmann, appeared on behalf of the complainant, the New Jersey Real Estate Commission ("REC"). Respondents failed to appear.

**STATEMENT OF THE CASE**

The REC initiated this matter on its own motion through service of an Order to Show Cause ("OTSC") dated November 8, 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 OTSC charged that Respondent Stinson violated N.J.S.A.

<sup>1</sup> April Ward, a licensed New Jersey real estate salesperson, was originally named as a respondent in the matter herein but entered into a Consent Order with the Real Estate Commission on May 20, 2014.

45:15-17o and N.J.A.C. 11:5-5.1(a) and (c) by commingling the money of his principal with his own, and failed to maintain in a special account, separate and apart from personal or other business accounts, all monies received while 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. The OTSC alleges that Stinson's actions, as stated, demonstrate unworthiness, incompetency, bad faith or dishonesty in violation of N.J.S.A. 45:15-17e; and that he violated N.J.A.C. 11:5-6.4(a) by failing to protect and promote the interests of his principal. The OTSC also alleges that Respondent Stinson violated N.J.A.C. 11:5-4.2, and 11:5-4.4(a) by failing to properly supervise the activities of Respondents Bontigao and Ward; violated N.J.A.C. 11:5-5.4(b)1 by failing to record the information required by that rule on the trust account checkbook stub and ledger for all deposits and disbursements of monies of others; violated N.J.A.C. 11:5-5.4(b)2 by failing to maintain a trust account ledger; violated N.J.A.C. 11:5-5.4(b)3 by failing to reconcile and maintain records confirming that at least a quarterly reconciliation had been made between the checkbook balance, bank statement balance and trust account ledger; and violated N.J.A.C. 11:5-5.4(b)4 by failing to maintain business records as required by regulation.

The OTSC further alleged that Respondent Bontigao violated N.J.S.A. 45:15-17o and N.J.A.C. 11:5-5.1(a) and (c) by commingling the money of her principal with her own, and failed to maintain in a special account, separate and apart from personal or other business accounts, all monies received while 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. The OTSC alleges that Respondent Bontigao's actions, as stated, demonstrate unworthiness, incompetency, bad faith or dishonesty in violation of N.J.S.A. 45:15-17e; and that she violated N.J.A.C. 11:5-6.4(a) by failing to protect and promote the interests of her principal. The OTSC also alleges

that Respondent Bontigao violated N.J.S.A. 45:15-171 because the above described conduct constitutes fraud or dishonest dealing.

At the hearing, the following exhibits were admitted into evidence:

- S-1 Order to Show Cause (OTSC) dated November 8, 2013 (REC 001-009);
- S-2 Stinson Response to OTSC dated November 18, 2013 (REC 010-021);
- S-3 Ward Response to OTSC dated November 20, 2013 (REC 022-026);
- S-4 Stinson Broker Salesperson License Data dated April 15, 2014 (REC 027-030);
- S-5 Bontigao Real Estate Salesperson License Data dated April 15, 2014 (REC 031-035);
- S-6 Ward Real Estate Salesperson License Data dated April 15, 2014 (REC 036-039);
- S-7 Tenant's Section 8 Housing Record for 428 Linden Ave., Woodbury Heights, NJ (REC 040);
- S-8 Tenant Money Order Receipts for 428 Linden Ave., Woodbury Heights, NJ (REC 041);
- S-9 Tenant Lease (p.1) dated April 17, 2012 for 428 Linden Ave., Woodbury Heights, NJ (REC 042);
- S-10 Copies of two (2) TD Bank checks dated April 15, 2012 and April 30, 2012 from Tenants for 428 Linden Ave., Woodbury Heights, NJ (REC 043-044);
- S-11 Owner letter dated May 10, 2012 terminating management services of Exit Realty for 201 Benson Court, Camden, NJ (REC 045);
- S-12 Lease Agreement dated August 1, 2011 for 201 Benson Court, Camden, NJ (REC 046-050);
- S-13 Listing Agreement (p.1) dated June 17, 2011 for 201 Benson Court, Camden, NJ (REC 051);
- S-14 Contract of Sale dated March 6, 2012 for 6224 Highland Ave., Pennsauken, NJ (REC 052-064);

- S-15 Email from Infinity Title to Investigator Petro dated July 26, 2012 (REC 065);
- S-16 HUD-1 Settlement Statement dated July 16, 2012 for 6224 Highland Ave., Pennsauken, NJ (REC 066-068);
- S-17 Exit Realty Deposit Slip and Check for \$1,000.00 dated March 4, 2012 for 6224 Highland Ave., Pennsauken, NJ (REC 069);
- S-18 Exit Realty Bank Statement dated March 3, 2012 (REC 070);
- S-19 Exit Realty Check #1016 dated March 16, 2012 made payable to Exit Realty in the amount of \$1,000.00 (REC 071);
- S-20 Exit Realty Check #1010 dated November 11, 2011 made payable to "Cash" in the amount of \$2,100.00 and endorsed by April Ward (REC 072);
- S-21 Stinson letter to Vargas dated July 16, 2012 regarding office closing (REC 073);
- S-22 Stinson Office Closing Affidavit (incomplete) (REC 074);
- S-23 Stinson Office Closing Affidavit (complete) dated June 3, 2012 (REC 078);
- S-24 Susquehanna Bank Checks made payable to Stinson dated July 18, 2012 (REC 078);
- S-25 Exit Realty's Susquehanna Bank Statement dated July 31, 2012 with paid checks (REC 079-083).

### **PROCEDURAL HISTORY**

At the hearing on April 29, 2014, Deputy Attorney General ("DAG") Carl Bornmann stated that Respondent Stinson was served with the OTSC on or about November 8, 2013, and answered on or about November 18, 2013. The original hearing date was set for February 19, 2014 but was continued to the April 29, 2014 date after the Commission staff received a letter from Stinson's chiropractor explaining that Stinson was being treated for cancer and was limited in his ability to travel, and he was also suffering from long term memory loss.

Stinson was also served with discovery that included a reminder of the April 29, 2014 hearing date; however, Stinson failed to appear and DAG Bornmann had not received any response from him.

DAG Bornmann stated that, with respect to Respondent Bontigao, the OTSC was initially not served when it went out on November 8, 2013, because the address on file was not accurate. Another copy was served on Bontigao on January 9, 2014 via certified and regular mail. The certified mailing was returned "unclaimed," and the regular mail was not returned. DAG Bornmann stated that Bontigao has not responded. DAG Bornmann further stated that he received a letter from Tracy Frederick, Assistant Public Defender, dated February 18, 2014, who indicated that Bontigao was under investigation in a criminal matter related to her real estate activities in Philadelphia and would not testify, asserting her Fifth Amendment protection against self-incrimination. DAG Bornmann stated that he spoke with Ms. Frederick and was advised that she is not representing Bontigao in this matter before the Commission. DAG Bornmann asserted that Bontigao's assertion of Fifth Amendment protection does not apply to this type of proceeding; there is no constitutional requirement that a civil proceeding be stayed pending a criminal investigation without a showing of substantial prejudice or bad faith; and that the REC wanted to proceed with this matter.

The Commission adjourned the matter until May 20, 2014, with that date being preemptory for hearing the matter against Stinson and Bontigao. The Commission also requested clarification on the REC's legal position as to Bontigao's assertion of the Fifth Amendment protection against self-incrimination, with any submissions due one week before the May 20, 2014 hearing date.

At the May 20, 2014 hearing date, upon oral argument by DAG Bornmann and consideration of his submitted brief, the Commission determined that the Fifth Amendment protection against self-incrimination had not been properly asserted by Bontigao, and even if it had been, that would not prevent the Commission from moving forward with this matter for the reasons expressed in DAG Bornmann's brief.

At the hearing on July 22, 2014, DAG Bornmann stated that he had been in settlement discussions with Stinson but was unable to settle this matter.

### **TESTIMONY OF THE WITNESS**

William Petro was called to testify and was sworn by the court reporter. Petro testified that he has been employed as an investigator with the Real Estate Commission for fifteen years. He further testified that he was assigned to the investigation of this matter and he is familiar with the facts in this matter.

Petro identified and reviewed Exhibits S-1 – S-6:

S-1 - Order to Show Cause (OTSC) dated November 8, 2013 (REC 001- 009);

S-2 - Stinson Response to OTSC dated November 18, 2013 (REC 010 — 021);

S-3 - Ward Response to OTSC dated November 20, 2013 (REC 022 - 026);

S-4 - Stinson Broker Salesperson License Data dated April 15, 2014 (REC 027 - 030);

S-5 - Bontigao Real Estate Salesperson License Data dated April 15, 2014 (REC 031 - 035);

S-6 - Ward Real Estate Salesperson License Data dated April 15, 2014 (REC 036 - 039).

Petro testified that Bontigao was the owner of the Tri-State Investment Holdings of NJ Corporation d/b/a Exit Realty The Tri-State Group ("Tri-State NJ"), a formerly licensed

New Jersey real estate broker. Bontigao was a formerly licensed salesperson at Tri-State NJ. Bontigao was also the owner of Tri-State Investment Holdings, Inc., d/b/a Exit Realty The Tri-State Group ("Tri-State PA"), a licensed Pennsylvania real estate broker. Bontigao was a licensed salesperson at Tri-State PA. Petro testified that Ward was a licensed agent with Tri-State operating out of its Camden office.

Petro identified and reviewed Exhibits S-7 – S-10:

S-7 - Tenant's Section 8 Housing Record for 428 Linden Avenue, Woodbury Heights, NJ (REC 040);

S-8 - Tenant Money Order Receipts for 428 Linden Avenue, Woodbury Heights, NJ (REC 041);

S-9 - Tenant Lease (p. 1) dated April 17, 2012 for 428 Linden Avenue, Woodbury Heights, NJ (REC 042);

S-10 - Copies of two (2) TD Bank checks dated April 15, 2012 and April 30, 2012 from Tenants at 428 Linden Avenue, Woodbury Heights, NJ (REC 043 - 044).

Petro testified that Tri-State NJ was the property manager in the rental transaction for the property located at 428 Linden Avenue, Woodbury Heights, New Jersey. The property was owned by Anthony Micsko and the tenant was Lisa McMillan. Rental assistance was to be paid by the Gloucester County Housing Authority.

Petro testified that three money orders were paid to Tri-State by Lisa McMillan as partial rent and security deposit for the property at Woodbury Heights.

Petro testified that the tenant was the victim in this transaction. Any records that would have been available from Tri-State were never produced although records were subpoenaed.

Micsko was the first of several individuals to complain to the REC. Petro testified that he went to Tri-State's Camden office but it was vacant. He tried to contact the

broker and was able to get in touch with Stinson. Stinson had just become aware that the office was closed in May 2012.

According to Petro's testimony, Stinson complained that he went to the Philadelphia office and nobody was there. He went to the Camden office and no one was there either. Stinson was upset that he hadn't been paid. Stinson was instructed by Petro that he would have to do an office closing affidavit and close accounts that he was associated with. Stinson stated that he couldn't get in touch with Bontigao. Bontigao had all the records and he couldn't find Bontigao. Subpoenas were sent to all known addresses for Bontigao.

Petro stated that Bontigao located tenants for a three family building owned by Micsko. Micsko hired Bontigao to manage the property and collect the rents. Micsko believed that the Exit Realty offices in New Jersey and Pennsylvania were part of the same company but, in fact, they were two separate corporations. Bontigao informed Micsko that they handled the property management through the Pennsylvania office. Bontigao was the owner of both corporations and both corporations had the same broker.

Petro testified that Micsko was unable to recover the security deposit from Stinson.

Petro testified that Sharon Boyd, another complainant, was the owner of 201 Benson Court, Camden, New Jersey. Boyd had a property listed for rental with Tri-State NJ and Bontigao. Boyd was unable to recover security deposit money collected by the respondents from the tenant. Petro testified that Boyd contacted Bontigao, who was unable to account for Boyd's tenant's monies.

Petro identified and reviewed Exhibits S- 11 – S-25:

S-11 - Owner letter dated May 10, 2012 terminating management services of Exit Realty for 201 Benson Court, Camden, NJ (REC 045);



- S-12 - Lease Agreement dated August 1, 2011 for 201 Benson Court, Camden, NJ (REC 04 - 050);
- S-13 - Listing Agreement (p. 1) dated June 17, 2011 for 201 Benson Court, Camden, NJ (REC 051);
- S-14 - Contract of Sale dated March 6, 2012 for 6224 Highland Avenue, Pennsauken, NJ (REC 052 - 064);
- S-15 - Email from Infinity Title to Investigator Petro dated July 26, 2012 (REC 065);
- S-16 - HUD-1 Settlement Statement dated July 16, 2012 for 6224 Highland Avenue, Pennsauken, NJ (REC 066 - 068)
- S-17 - Exit Realty Deposit Slip and Check for \$1,000.00 dated March 4, 2012 for 6224 Highland Avenue, Pennsauken, NJ (REC 069);
- S-18 - Exit Realty Bank Statement dated March 3, 2012 (REC 070);
- S-19 - Exit Realty Check # 1016 dated March 16, 2012 payable to Exit Realty in the amount of \$1,000.00 (REC 071);
- S-20 -Exit Realty Check # 1010 dated November 11, 2011 made payable to "Cash" in the amount of \$2,100 and endorsed by April Ward (REC 072);
- S-21 - Stinson letter to Vargas dated July 16, 2012 regarding office closing (REC 073);
- S-22 - Stinson Office Closing Affidavit (Incomplete) (REC 074);
- S-23 - Stinson Office Closing Affidavit (Complete) dated June 23, 2012 (REC 075 - 077);
- S-24 - Susquehanna Bank Checks made payable to Stinson dated July 18, 2012 (REC 078);
- S-25 - Exit Realty's Susquehanna Bank Statement dated July 31, 2012 with paid checks (REC 079 - 083).

Petro testified that there was a property located at 6224 Highland Avenue, Pennsauken, New Jersey, in which the deposit money of \$1,000.00 was to be held by the listing broker. The deposit money was payable to Exit Tri-State and drawn on the escrow account. The

deposit money had been transferred to the Pennsylvania company; as a result, at closing, Tri-State (New Jersey entity) had insufficient funds to pay over the deposit.

Petro testified that he spoke with Anna Kelhower from the title company and she informed him that the closing came up \$1,000.00 short of the necessary funds. Petro stated that Bontigao controlled the operating account, not Stinson. That account was closed out by Bontigao.

Petro described Exhibit S-20, which was made payable to cash in the amount of \$2,100.00. Petro testified that he subpoenaed bank records and was able to get copies of checks that were endorsed by Ward and signed by Stinson. Petro testified that, based on his investigation, this was a common business practice for them.

Petro testified that he interviewed Stinson and Ward. Stinson explained that he had no knowledge of this particular item. Stinson stated that he signed many blank checks so that if anyone needed escrow to be released for a closing, they would have access to the checks.

Petro testified that both Ward and Bontigao confirmed that there were blank checks left in the office that were signed by Stinson, to which they both had access. Ward told Petro that she had an escrow check made out to cash endorsed by her. Ward told Petro that on November 15, 2011, she was directed by Bontigao to do her a favor and take the check to the bank to cash because Bontigao needed cash. Ward said that she did as directed. The check was made out for \$2,100.00. Ward cashed the check and gave the money to Bontigao.

Petro testified that Stinson informed him that he was in charge of the escrow accounts and he would sign the escrow checks. Stinson wasn't the signatory on the companies' operating accounts and Bontigao handled the financial operations within Exit Tri-State.

Petro testified that Stinson said that Bontigao was the owner and Stinson followed her instructions. Ward oversaw the administration of the office and was not licensed as a broker-salesperson. Stinson was licensed as a broker in New Jersey and Pennsylvania. Stinson did not oversee contracts that were coming in and out of the office.

Petro testified that he told Stinson that he had to submit an office closing affidavit as required by law. Stinson told Petro that he couldn't verify the status of the company's bank accounts. Petro advised Stinson to consult with an attorney.

Petro read a letter dated July 16, 2012 that Stinson sent to the REC regarding the closing of the office. Petro testified that Stinson sent an office closing affidavit to the REC stating that the office was closed on May 31, 2012 to the REC. That affidavit was returned to Stinson as "incomplete" because the escrow/trust account number was missing. Petro testified that another office closing affidavit was filed by Stinson on July 27, 2012.

Petro testified that, on July 18, 2012, Stinson made out two checks payable to himself in the amounts of \$1,454.00 and \$100.00, closing out the accounts. Petro testified that Stinson informed him that he would hold onto those checks, but that Petro cannot account for those checks.

Petro testified that Exhibit S-25 relates to Bontigao and shows various charges to the escrow/trust account during July 2012 for a car wash, parking and Netflix charges.

Petro testified that Stinson was unable to give a specific time when the office closed and that the date he put on the office closing affidavit was arbitrarily chosen. Petro testified that he went to the Philadelphia office and then to the Camden office and found both offices were closed.

## **FINDINGS OF FACT**

Based upon the pleadings, the testimony of the witness, and the documentary evidence duly admitted into the record, the Commission makes the following findings of fact:

1. Edward Francis Stinson is a licensed New Jersey real estate broker-salesperson presently employed with JP Rothermel & Associates, LLC, d/b/a Exit JP Rothermel, licensed New Jersey real estate broker located at 5 Wilkins Station Rd., Suite 5-103, Medford, NJ 08055. At all times relevant hereto, Stinson was broker of record of Tri-State Investments Holdings of NJ Corporation, d/b/a Exit Realty The Tri-State Group (hereinafter "Tri-State") formerly licensed New Jersey real estate broker located at 1 Market St., Unit 2C, Camden, NJ 08102. On or about July 12, 2012, Respondent Stinson filed an office closing affidavit for Tri-State; and
2. Respondent Stinson also holds a Pennsylvania real estate broker's license and was broker of record of Tri-State Investment Holdings, Inc., d/b/a Exit Realty The Tri-State Group, which is licensed as a Pennsylvania real estate broker located in Philadelphia, PA; and
3. Respondent Marie Bontigao is a formerly licensed New Jersey real estate salesperson and is an owner of Tri-State Investment Holdings of NJ Corporation, d/b/a/ Exit Realty The Tri-State Group. Respondent Bontigao's license became inactive on May 23, 2012 and has not been renewed or reinstated; and
4. Upon information and belief, Respondent Bontigao is also the owner of Tri-State Investment Holdings, Inc., d/b/a Exit Realty The Tri-State Group, which is licensed as a Pennsylvania real estate broker located in Philadelphia, PA and was licensed as a salesperson there; and

5. Respondent April Ward is a licensed New Jersey real estate salesperson currently employed with Garden Realty of Haddonfield, licensed New Jersey real estate broker. Respondent Ward was employed with Tri-State from on or about May 18, 2010 to May 31, 2012 when Tri-State was closed. While she was a salesperson employed with Tri-State, Respondent Ward acted as an office manager and ran the day-to-day operations of the office; and
6. In response to complaints filed with the Commission alleging that rent monies and escrow deposit monies were unaccounted for by Tri-State, on or about July 16, 2012, a New Jersey Real Estate Commission investigator attempted to conduct an office inspection and an audit of the escrow account and records of Tri-State, however, the office was closed. When the investigator contacted Respondent Stinson at his home, Stinson was unable to produce any business or trust account records for inspection by the Real Estate Commission investigators. Respondent Stinson admitted to the investigator that he:
  - a. Did not regularly maintain a ledger or other permanent method of recordkeeping for the funds of others received by Tri-State as an escrow agent or as the temporary custodian of the funds of others in a real estate transaction; and
  - b. Did not make any reconciliation of the escrow account checkbook balance and client trust ledger balances; and
  - c. Failed to record references in the escrow account checkbook or ledger pages identifying the date, source and amount of each item deposited, and the dates, payees and amounts of all disbursements; and

- d. Failed to record references on the escrow account checkbook stubs or checkbook ledger pages identifying the date, source and amount of each item deposited, and the dates, payees and amounts of all disbursements; and
  - e. Failed to maintain bank statements, cancelled checks and deposit slips for the escrow account; and
  - f. Failed to maintain transaction files including copies of all offers, contracts and listing agreements; and
7. Due to extremely poor recordkeeping, the total amount of deposit monies which Respondents should have been maintaining as an escrow agent or as the temporary custodian of the funds of others in real estate transactions for the entire period for which the audit was attempted cannot be determined. The Commission investigator issued a subpoena to Susquehanna Bank for records of accounts held by Tri-State; and
8. The bank accounts for Tri-State at Susquehanna Bank were as follows:
- a) Escrow account ending in 5050;
  - b) Operating account ending in 5118;
  - c) Commission account ending in 5332; and
9. As broker of record, Respondent Stinson was responsible for supervising the activities of Respondents Bontigao and Ward and was responsible for oversight of all of the operations of Tri-State. However, Respondent Stinson did not have signatory authority on the operating account; and
10. In response to the Commission investigator's request for business records, Respondent Stinson stated that he did not maintain any records or have any access to them because the office had been emptied, presumably by Respondent Bontigao; and

11. Respondent Bontigao's whereabouts are unknown and despite numerous attempts, the REC investigator was unable to contact her; and
12. Anthony Micsko is a formerly licensed New Jersey real estate salesperson formerly employed with Tri-State and also is the owner of the property located at 428 Linden Avenue, Woodbury Heights, NJ, which he listed for rental with the Pennsylvania brokerage office of Tri-State in 2011 and 2012. The property consisted of three units. Two of the units had been rented. One unit was rented by tenants Kille and Crossan for the term of May 1, 2012 to April 30, 2013 and the second unit was rented by tenant McMillan for the term of September 6, 2011 to September 30, 2012. Micsko had a property management agreement with Tri-State wherein they would collect the rents and hold security deposits. All paperwork regarding the listing, lease, deposits and rent receipts were held by the Pennsylvania office of Tri-State. Micsko moved to Florida and relied on Tri-State to manage the property; and
13. McMillan fell behind on her rent and was subsequently evicted. Micsko attempted to collect the security deposit that Tri-State was to be holding but was unable to contact anyone from Tri-State. He was never able to recover the full security deposits or rents due for the two rented units. To date, Micsko is owed \$2,025.00 in security deposits and \$1,350.00 in rent paid by tenants; and
14. Sharon Boyd was the owner of property located at 201 Benson Court, Camden, NJ which she listed for rental with Tri-State and Respondent Bontigao. Said property was rented to Beverly Benjamin as tenant on or about August 1, 2011. Tri-State performed property management services for Boyd, including holding the security deposit and collecting rent; and

15. The lease ended July 31, 2012 and despite Ms. Boyd's repeated demands, Respondents Bontigao and/or Stinson have failed to account for or pay over the security deposit collected by Respondents from the tenant; and
16. To date, Boyd is owed a total of \$1,900.00 representing the tenant's security deposit; and
17. As stated above, Respondents Stinson and Bontigao were licensed in Pennsylvania and operated a real estate brokerage company there. That entity is separate from the New Jersey licensed entity. Upon information and belief, property management for Micsko and Boyd were performed by the Pennsylvania brokerage and not under the New Jersey licensed entity; and
18. On or about March 4, 2012 Ernesto and Mildred Soto executed a contract of sale for the purchase of 6224 Highland Avenue, Pennsauken, NJ for \$85,000.00. The contract of sale provided that all deposit monies were to be held in the escrow account of Tri-State. The Soto's paid a \$1,000.00 initial deposit to "Exit Realty The Tri-State Group" on or about March 4, 2012, and which was deposited in the Tri-State escrow account on or about March 5, 2012. On or about March 19, 2012, check #1016 in the amount of \$1,000.00 payable to Exit Tri-State was drawn on the escrow account and apparently the money was transferred to the Pennsylvania brokerage company, Exit Tri-State. As a result of the transfer, the balance in the escrow account of Tri-State (the New Jersey licensed entity) fell to \$100.00. The balance in the operating account of Tri-State was \$87.91. Therefore, there were insufficient funds held by Tri-State to account for the Soto deposit; and
19. The Soto transaction closed on or about July 16, 2012. No representative of Tri-State appeared with the deposit monies. The closing agent deducted the deposit amount from



the commission amount that was to have been paid to Tri-State which enabled the transaction to close; and

20. The misappropriation of the Soto deposit, as well as other transactions including checks payable to "cash", was accomplished by Respondent Ward, who wrote checks that were pre-signed by Respondent Stinson out of the escrow account. Respondent Ward was acting at the direction of Respondent Bontigao. Ward would cash the checks and turn the cash over to Bontigao, who converted those funds to her own use. Respondent Stinson denied any knowledge of those transactions.

### **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. The conduct of Respondents Stinson and Bontigao is in violation of N.J.S.A. 45:15-17o and N.J.A.C. 11:5-5.1(a) and (c) in that they commingled the money of their principals with their own, and failed to maintain in a special account, separate and apart from personal or other business accounts, all monies received by the Respondents acting in the capacity of a real estate broker or an escrow agent or the temporary custodian of the funds of others in a real estate transaction; and
2. The conduct of Respondents Stinson and Bontigao is in violation of N.J.S.A. 45:15-17e in that the above described events demonstrate unworthiness, incompetency, bad faith or dishonesty; and
3. The conduct of Respondent Bontigao is in violation of N.J.S.A. 45:15-17l in that the above described conduct constitutes fraud or dishonest dealing; and

4. The conduct of Respondents Stinson and Bontigao is in violation of N.J.A.C. 11:5-6.4(a) in that, by virtue of the above described actions, they failed to protect and promote the interests of their principals; and
5. Respondent Stinson is in violation of N.J.A.C. 11:5-4.2, and 11:5-4.4(a) in that he failed to properly supervise the activities of Respondents Bontigao and Ward; and
6. Respondent Stinson's conduct is in violation of N.J.A.C. 11:5-5.4(b)1 in that he failed to record the information required by that rule on the trust account checkbook stub and ledger for all deposits and disbursements of monies of others received by them; and
7. Respondent Stinson's conduct is in violation of N.J.A.C. 11:5-5.4(b)2 in that he failed to maintain a trust account ledger as specified in that regulation and;
8. Respondent Stinson's conduct is in violation of N.J.A.C. 11:5-5.4(b)3 in that he failed to reconcile and maintain records confirming that at least a quarterly reconciliation has been made between the checkbook balance, bank statement balance and trust account ledger; and
9. Respondent Stinson's conduct is in violation of N.J.A.C. 11:5-5.4(b)4 in that he failed to maintain business records as required by that regulation.

#### **DETERMINATION**

In arriving at the determination in this matter, the Commission took into consideration the testimony of the witness and the documentary evidence admitted at the hearing. The Commission also considered the serious nature of and the circumstances surrounding Respondents' actions.

The actions of Respondents Stinson and Bontigao here clearly constitute commingling of funds with respect to security deposits and rents for two tenants at 428 Linden

Heights, and deposit funds regarding the purchase of 6224 Highland Avenue, in violation of N.J.S.A. 45:15-17c and N.J.A.C. 11:5-5.1(a) and (c). The Respondents' conduct is evidence of unworthiness, incompetency, bad faith and dishonesty. Furthermore, the evidence presented shows that Respondent Stinson failed to maintain business and financial records as required by N.J.A.C. 11:5-5.4(b)1, 2, 3, and 4, and failed to properly supervise Bontigao and Ward, in violation of N.J.A.C. 11:5-4.2 and 11:5-4.4(a).

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, 39 N.J. Super., 526, 532-533 (App. Div. 1956). The Commission has consistently held that the responsibilities that a real estate licensee owes to parties where he is acting as an escrow agent or temporary custodian of funds due are among the most sensitive and significant obligations that a licensee can assume. The highest duty of loyalty and fidelity are owed by licensees to such parties. Consequently, violations by licensees of their fiduciary responsibilities are considered extremely serious by this Commission, and warrant license revocation for a significant period.

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 the imposition of substantial and significant fines.

First, Respondents Stinson and Bontigao demonstrated bad faith in their actions in the transactions of two properties. Second, no evidence was submitted regarding the Respondents' ability to pay. Third, Respondents Stinson and Bontigao profited by the fees they earned for collecting rents on the Linden Avenue property and commission on the Highland Avenue property. Fourth, the public is harmed when individuals in a fiduciary position violate their responsibilities. Fifth, Respondents' actions took place over approximately a two year period. Sixth, there is no evidence of any criminal or treble actions against Respondent Stinson and the pending criminal action against Respondent Bontigao is unresolved as of the date of the hearing. Seventh, there is no evidence of any prior violations of the real estate laws by Respondents.

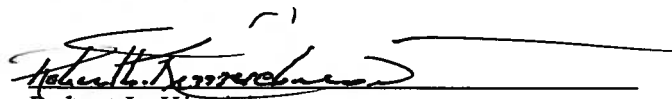
Accordingly and pursuant to N.J.S.A. 45:15-17, the Commission imposes the following sanctions:

- I. The Commission imposes lifetime revocation of any and all real estate licenses presently or formerly held by Respondent Stinson.
- II. The Commission imposes a fine in the amount of \$25,000.00 against Respondent Stinson with respect to the violations of the real estate laws as found in this Final Decision and Order.
- III. The Commission imposes lifetime revocation of any and all real estate licenses presently or formerly held by Respondent Bontigao.

IV. The Commission imposes a fine in the amount of \$20,000.00 against Respondent Bontigao with respect to the violations of the real estate laws as found in this Final Decision and Order.

SO ORDERED this 28<sup>th</sup> day of July, 2015.

By: Linda Stefanik, President  
Michael Timoni, Commissioner  
Eugenia K. Bonilla, Commissioner

  
Robert L. Kinniebrew  
Executive Director  
New Jersey Real Estate Commission