

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,) DOCKET NO.: MON-12-025
)
Complainant,)
v.) **FINAL ORDER OF**
) **DETERMINATION**
)
BARBARA A. REINECKE, licensed New Jersey)
real estate broker, License Ref. No. 9587802, and)
broker of record of Pasch Realty, Inc., licensed)
New Jersey real estate broker, License Ref. No.
0345579

Respondent.

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 May 7, 2013.

BEFORE: Commissioners Linda Stefanik, Jacob S. Elkes, Esq., Robert Melillo, Eugenia K. Bonilla, Jeffrey A. Lattimer and Michael Timoni.

APPEARANCES: Marianne Gallina, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission ("REC"). Respondent appeared with counsel, Michael D. Landis, Esq.,

STATEMENT OF THE CASE

The REC initiated this matter on its own motion through service of an Order to Show Cause ("OTSC") dated December 26, 2012 and initially returnable on January 29, 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 alleged that Respondent Reinecke ("Reinecke"), as broker of record of Pasch Realty, Inc. ("Pasch"), engaged in multiple violations of the Real Estate Brokers and

Salespersons Act, N.J.S.A. 45:15-1 et seq. and Regulations for the New Jersey Real Estate Commission, N.J.A.C. 11:5-1.1 et seq. Specifically, it was alleged that Reinecke commingled the money of her principals with her own and failed to maintain monies in a special account separate and apart from personal or business accounts [N.J.S.A. 45:15-17o and N.J.A.C. 11:5-5.1(a) and (c)]. The OTSC also alleged that Respondent failed to record transaction information on the trust account checkbook stub and ledger, failed to maintain a trust account ledger and failed to reconcile and maintain records confirming that quarterly reconciliation had been made between the checkbook balance, bank statement balance and trust account ledger [N.J.A.C. 11:5-5.4(b)l, 2 and 3]. The OTSC further alleged that Respondent Reinecke failed to promptly deposit funds of others in a special account within five days as required by rule, and that her actions demonstrate incompetency and failure to protect and promote the interests of her principals [N.J.A.C. 11:5-5.1(e), N.J.S.A. 45:15-17e and N.J.A.C. 11:5-6.4(a)].

An answer to the OTSC was filed by Michael D. Landis, Esq. on January 22, 2013 on behalf of Respondent Reinecke wherein substantially all the allegations in the OTSC were not disputed. Respondent Reinecke specifically admitted to the allegations contained in paragraphs 1 through 8 of the OTSC with the exception of paragraph 4 where she denied that she used her operating account for all real estate transactions handled by her office, but admitted to requesting that buyers issue her a new check combining the initial and second deposits payable to the attorney because she did not hold escrow monies. Respondent Reinecke also admitted to the allegations contained in paragraphs 9 and 12 through 15 of the OTSC which related to the commingling of funds, various record keeping violations and Respondent Reinecke's failure to promptly deposit funds within 5 days as required by N.J.A.C. 11:5-5.1(e). Respondent Reinecke denied that her behavior demonstrated incompetency as alleged in paragraph 10 of the OTSC,

but stated that her behavior demonstrated negligence. Moreover, Respondent Reinecke denied that she failed to protect and promote the interests of her principals in violation of N.J.A.C. 11:5-6.4(a) because her principals did not sustain any financial loss nor were they otherwise prejudiced by Reinecke's conduct.¹

At the May 7, 2013 hearing, the underlying allegations of the OTSC were reviewed and considered by the Commission. After review, and because Respondent Reinecke did not dispute the allegations in the OTSC, the Commission determined that no material facts or issues of law were contested. Consequently, the hearing was converted to a hearing in mitigation pursuant to N.J.A.C. 11:5-11.3(b). Respondent Reinecke requested that the Commission consider the sanction of probation as opposed to revocation of Respondent Reineck's license or the issuance of a fine.

TESTIMONY OF THE WITNESSES

Investigator William Petro

Investigator William Petro testified that he is employed by the Real Estate Commission and was assigned to investigate the matter. He stated that Respondent Reinecke was cooperative and that she provided him with the information he had requested. Investigator Petro testified that, with respect to Reinecke, he investigated real estate transactions involving both the purchase and rental of property. He stated that Reinecke never used her escrow account. Regarding purchase transactions, he explained that she would hold checks that were provided to her by clients as deposits until acceptance of the contract was made, then destroy the checks. At this point of the transaction, another check would be written by the purchaser of the property.

¹ Respondent Renecke's attorney, Michael D. Landis, Esq., stated in his opening that there was no dispute as to the facts and clarified for the record that Respondent did not dispute the allegations in paragraphs 10 and 11 following the testimony of the witnesses.

Respondent Reinecke never negotiated or deposited the checks despite the fact that the real estate contract would often indicate that she was holding the \$1,000.00 deposit.

With respect to rental transactions, Investigator Petro testified that Reinecke provided property management services for rentals for several clients and that she didn't deposit the monies she received into the escrow account. She deposited those monies into the business's operating account.

Investigator Petro further testified that during the course of his investigation he reviewed Reinecke's accounts for the prior six (6) years and observed that Respondent always had sufficient funds. However, deposits were made into the wrong accounts. As a result of this method of accounting, she was out of trust because there were no monies in her escrow account. Investigator Petro stated that for purchase transactions the Seller's attorney would handle the money and for rentals the money was going into her operating account.

Investigator Petro further testified that Respondent did not initially understand the requirements for proper accounting, but did eventually come to understand them. He stated that her books now appear to be in order.

Upon questioning by the Commissioners, Investigator Petro further testified that he could not say exactly how many rentals were involved, but going back over six (6) years it appeared to have been over 300 checks that went into the operating account.

Respondent Reinecke

Respondent Reinecke testified that she has been a real estate salesperson since approximately 1995 and became a broker between 1999 and 2001.

Reinecke described her practice for handling checks that she received during the course of a real estate transaction and testified that she would deposit the rental money into the

operating account and maintain a paper record of what monies went in and out of the account for the purchase transactions. She further explained that she has not used the escrow account for at least six (6) years and made sure that the attorney was paid directly by the buyers when they came out of attorney review. Respondent Reinecke testified that, although the formal contract indicated that Pasch Realty held the initial deposit, she never actually deposited the checks she received.

Upon questioning by the Commissioners, Respondent denied using her operating account for all real estate transactions; however, stated that the money retained in her operating account related to the rental properties that she managed. Respondent further testified that for purchase transactions she sometimes only retained a copy of the deposit check in her file which she would receive by fax or email. She admitted that she was unable to ascertain if the check was negotiable, but maintained that she never experienced a problem.

Upon cross-examination, Respondent Reinecke testified that although the contract form stated that Pasch Realty would hold the initial deposit, she never deposited the checks. Respondent Reinecke further testified that Pasch Realty has been in business since 2001.

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. Respondent Barbara A. Reinecke is a licensed New Jersey real estate broker, currently licensed as a broker of record of Pasch Realty, Inc., licensed New Jersey real estate broker, whose office is located at 1991 Campbell Road, Manasquan, New Jersey, 08736; and

2. On or about June 26, 2012 and on subsequent visits thereafter, Real Estate Commission investigators conducted an office inspection and audit at Pasch Realty, Inc. Their investigation revealed the Respondent:
 - a. Did not regularly maintain a ledger or other permanent method of recordkeeping for the funds of others received by Pasch Realty as an escrow agent or as the temporary custodian of the funds of others in real estate transactions; and
 - b. Did not make any reconciliation of the escrow account or operating account checkbook balances or client trust ledger balances; and
 - c. Failed to record references in the escrow account checkbook identifying the date, source and amount of each item deposited, and the dates, payees and amounts of disbursements; and
 - d. Did not retain copies of cancelled checks, duplicate deposit slips, confirmation slips or other written materials reflecting broker's accepting such payments; and
3. Respondent and Pasch Realty, Inc. maintained an escrow account ending in 0154 at Central Jersey Bank. The Commission investigators reviewed bank statements for that account from January 31, 2006 through June 1, 2012. There was no activity in the escrow account except for service charges which were paid with personal or other business funds deposited by Respondent into that account. There were no escrow deposits that were made into or out of that account during this time period. Respondent did not maintain any other escrow account; and
4. Respondent and Pasch Realty, Inc. maintained an operating account ending in 5466 with Wells Fargo Bank. According to investigators, she used the operating account for all real estate transactions handled by her office. Respondent admitted to using her operating account for rental transactions. In reviewing individual purchase transaction files in the Pasch Realty office,

the investigators found that initial deposit checks were collected from prospective buyers and were retained in their respective file. The checks were not deposited into any type of account at Pasch Realty. Respondent either returned the check to the buyer at closing or destroyed them if the contract was cancelled. If the contract proceeded through attorney review, Respondent would request that the buyers issue a new check combining the initial and second deposits payable to the attorney retained in the transaction. Respondent admitted that it was her policy not to hold escrow monies; and

5. Numerous individual transaction files were reviewed by Commission investigators including:

- a. February 2, 2008, 2417 Robin Way, Wall, NJ; and
- b. May 1, 2008, 2 Puerto Vallarta St., Toms River, NJ; and
- c. July 30, 2010, 114 Daniele Dr., Ocean, NJ; and
- d. April 26, 2011, 23 Crasass St., Old Bridge, NJ; and
- e. February 5, 2012, 17 Deerfield Rd., Holmdel, NJ

In each of those transactions, the deposit checks were handled as described above; and

6. Respondent and Pasch Realty performed property management services for rental properties. These activities included showing properties, negotiating leases, collecting rents, and disbursing funds for repairs. The Commission investigation revealed that no account ledger was maintained and no account reconciliations were made. Rental payments were paid to Pasch Realty and were deposited into the operating account. Respondent paid expenses such as maintenance and homeowner association fees on behalf of the landlords out of the operating account. Respondent paid the net rental receipts due to the landlords on those properties out of the operating account; and

7. Commission investigators reviewed numerous rental transactions including 43 Creed Road, Brick, NJ; 142 Primrose Lane, Brick, NJ; 156 Primrose Lane, Brick, NJ and 227 Club Drive, Brick NJ and verified that the above described procedures were followed; and

8. At no time were there insufficient funds in the operating account. There was no evidence of misappropriation of the funds of others. On a follow-up visit on or about August 16, 2012, a Commission investigator verified that proper escrow and recordkeeping practices were being followed, in accordance with the New Jersey Real Estate Commission's rules and regulations.

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 Reinecke is guilty of violating N.J.S.A. 45:15-17o and N.J.A.C. 11:5-5.1(a) and (c) because she commingled the money of her principals with her own (Respondent and/or Pasch), and failed to maintain in a special account, separate and apart from personal or other business accounts, all monies received by Respondent and/or Pasch acting in the capacity of a real estate broker or as an escrow agent or the temporary custodian of the funds of others in real estate transactions; and
2. Respondent Renecke is guilty of violating N.J.S.A. 45:15-17e because the above stated behavior demonstrates incompetency; and
3. Respondent Reinecke is guilty of violating N.J.A.C. 11:5-6.4(a) because her above described actions failed to protect and promote the interests of her principals; and
4. Respondent Reinecke is guilty of violating N.J.A.C. 11:5-5.4(b)l because she failed to record the transaction information required on the trust account checkbook stub and

ledger for all deposits and disbursements of monies of others received by her or Pasch Realty, Inc.; and

5. Respondent Reinecke is guilty of violating N.J.A.C. 11:5-5.4(b)2 because she failed to maintain a trust account ledger; and
6. Respondent Reinecke is guilty of violating N.J.A.C. 11:5-5.4(b)3 because she 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
7. Respondent Reinecke violated N.J.A.C. 11:5-5.1(e) because she failed to promptly deposit others' funds into special accounts within 5 days.

DETERMINATION

In arriving at the determination in this matter, the Commission took into consideration the testimony of the witnesses and the admissions made by Respondent Reinecke. The Commission also considered the serious nature of the circumstances surrounding Respondent Reinecke's actions, but acknowledges that the REC investigation revealed that Reinecke always maintained sufficient funds to cover her transactions.

Pursuant to N.J.S.A. 45:15-17o, a real estate licensee violates the Act if the licensee "commingles the money or other property of his principals with his or her own or fails to maintain and deposit in a special account, separate and apart from personal or other business accounts, all moneys received by real estate brokers, acting in said capacity, or as escrow agent or the temporary custodian of the funds of others, in a real estate transaction." Moreover, if a licensee fails to maintain and promptly deposit these moneys in an authorized financial

institution, or fails to promptly segregate moneys received which are received for the benefit of others, a licensee also violates his or her duties. N.J.A.C. 11:5-5.1 (a) and (c).

By her own description, Respondent Reinecke would deposit the money she collected from rentals into her operating account instead of an escrow account. Respondent Reinecke also failed to deposit into an escrow account monies she received during the course of real estate transactions for the purchase of property. Respondent Reinecke admitted that she would hold onto the checks in her file then later destroy them, or in some cases she only had a copy of the check, despite the provision in the real estate contract stating that she was holding said monies. Clearly, this conduct violates N.J.S.A. 45:15-17o and N.J.A.C. 11:5-5.1(a) and (c). By mishandling the funds in this manner, Respondent Reinecke also violated 11:5-5.1(e) which requires a licensee to promptly deposit funds received within 5 days.

Respondent further failed to record and maintain ledgers and reconcile accounts at least quarterly between the checkbook balance, bank statement balance and trust account ledger in violations of N.J.A.C. 11:5-5.4(b)1, N.J.A.C. 11:5-5.4(b)2 and N.J.A.C. 11:5-5.4(b)3 which requires these actions.

In sum, the undisputed and admitted facts in the record demonstrate that Respondent Reinecke commingled the money of her principals by depositing monies received in rental transactions into the operating account and thus failed to maintain in a special account, separate and apart from a personal or other business account, monies received by her and/or Pasch in violation of N.J.S.A. 45:15-17o, N.J.A.C. 11:5-5.1(a) and (c). Respondent also failed to record financial information, maintain a trust account ledger, reconcile and maintain records, and deposit funds within 5 days in violation of N.J.A.C 11:5-5.4(b)1-3 and 11:5-5.1(e).

The Respondent's failure to safeguard these real estate monies constitutes failures to protect and promote the interests of her real estate clients in violation of N.J.A.C. 11:5-6.4 which provides that licensees:

"strictly comply with the laws of agency and the principles governing fiduciary relationships. In accepting employment as an agent, the licensee pledges himself to protect and promote, as (s)he would his own, the interests of the client or principal (s)he has undertaken to represent; this obligation of absolute fidelity to the client's or principals' interest is primary but does not relieve the licensee from the obligation of dealing fairly with all parties to the transaction." N.J.A.C. 11:5-6.4(a).

Moreover, pursuant to N.J.S.A. 45:15-17e, the Commission may place on probation, suspend or revoke the license of any licensee for, "Any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty." The nature and duties of a real estate business are grounded in interpersonal, fiduciary and business relationships and demand the utmost honesty, trust and good conduct when dealing with the consuming public and with the property of others. Maple Hill Farms, Inc., supra. 67 N.J. Super. 223, 232 (App.Div. 1961); Division of New Jersey Real Estate Comm'n v. Ponsi, 39 N.J. Super. 526, 527 (App. Div. 1956). In many instances, significant sums of personal moneys are placed within the trust of the licensee. The public relies upon the honesty and good moral character of the licensee when it entrusts him or her or enters into a fiduciary relationship with him or her. Ellsworth Dobbs, Inc., v. Johnson and Johnson, 50 N.J. 528, 553 (1967).

In this case, Respondent Reinecke admitted that her conduct was negligent. By retaining checks and not depositing them into an escrow account in purchase transactions and depositing rental monies into the operating account, Respondent Reinecke did not deal fairly

with all parties involved in these transactions. Consequently, the Commission finds that these repeated negligent acts demonstrate incompetence.

The Commission has consistently held that the responsibilities a real estate licensee owes to parties where he or she is acting as an escrow agent or temporary custodian of funds 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. Overall, a Respondent's commingling of real estate monies and failing to protect their client's interests requires the revocation of their real estate license. See NJREC v. Ciocca, Final Order of Determination, Dkt. No. BUR-08-12 (9/5/08) (real estate salesperson's license revoked for seven years and \$10,000.00 fine for commingling and failures to protect and promote interests of principals). The public must be protected from such conduct.

Moreover, the Commission has consistently revoked the real estate licenses and imposed significant fines for commingling and misappropriations. See NJREC v. Lorrie DeZerga, Final Order of Determination, Dkt. No. BER-12-001 (4/10/13) (Broker's license revoked for life and ineligible for salesperson's license for one year and fined \$10,000.00 for commingling escrow monies, misappropriation, and multiple failures to account for or pay over monies); see also NJREC v. Philip Chenekan, Final Order of Determination, Dkt. No. ESS-10-034 (12/26/11) (Broker's license revoked for life and fined \$20,000.00 for commingling escrow monies, illegally utilizing those funds for personal use, only returning deposit monies after REC intervention, and repetitive record keeping violations including no quarterly reconciliation of escrow accounts).

The Commission has also consistently imposed significant sanctions for egregious record keeping infractions, especially when coupled with commingling. See NJREC v. Charles E. Zimmer, Final Order of Determination, Dkt. No. MOR-0814 (12/24/08) (Broker's license revoked for seven years and ineligible to qualify for salesperson's license for three years and fined \$20,000.00 for commingling monies of principals, failed to adequately maintain trust account ledger and other records required to be maintained by licensees and failed to adequately maintain monies in trust); see also NJREC v. Saul Sanchez, Final Order of Determination, Dkt. No. UNI-10-048 (3/12/12) (Broker's license revoked for two years and ineligible for salesperson's license for six months, required to complete education and examination requirements and fined \$5,000.00 for commingling money of principal, failure to maintain separate account and failure to promote and protect interest of principal).

In this case, Respondent Reinecke's repetitively failed to use her escrow account and chose to deposit monies into the operating account. She also failed to implement required accounting practices and record transaction information. As a result, she failed to promote and protect the interests of her principals on multiple occasions. However, the record reflects that although Respondent commingled funds, she did not misappropriate funds. This distinction has been considered by the Commission in the imposition of its penalties.

In NJREC v. Richard Speedie, Final Order of Determination, Dkt. No. SOM-12-003 (4/18/13), salesperson Speedie received two checks totaling \$10,000.00 from a buyer as deposit money and failed to turn over the money to his broker for deposit into an escrow account. The Commission found that Speedie failed to protect the interests of his clients, failed to deal fairly with all parties to the transaction and found that his conduct demonstrated incompetency. Consequently, the Commission revoked his salesperson license for three years and fined him

\$3,000.00. Here, Respondent Reinecke is a licensed real estate broker and, as such, has greater responsibility and acts in a supervisory capacity. See N.J.A.C. 11:5-4.2 and N.J.A.C. 11:4.4(a).

In light of all the above cited precedent and the fact that Respondent Reinecke did not misappropriate funds, but displayed multiple instances of incompetence in her failure to use her escrow account coupled with a failure to maintain and reconcile her accounts, the Commission determined that it is necessary and appropriate to revoke Respondent's broker's license for two years.

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 Brokers and Salespersons 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 fine.

First, although Respondent did not use the commingled monies for her own personal use, Respondent repeatedly demonstrated incompetence failing to deposit rental monies into an escrow account, failing to maintain a ledger, failing to protect the interests of her principals and commingled money. Second, there is no evidence in the record regarding Respondent's ability to pay a fine which is imposed to deter such conduct. Third, there was no evidence presented that Respondent benefited financially from her actions. Fourth, the public is significantly harmed when real estate licensees in fiduciary positions violate their responsibilities and utilize protected real estate funds for their own accounting purposes. Fifth, Respondent's

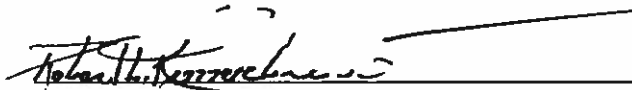
actions took place between January 31, 2006 through June 1, 2012. Hence, Respondent continued to violate the Act with her improper accounting practices for over six years. The improper accounting practices were not an isolated incident. Sixth, to the Commissions knowledge, there are no criminal or treble actions associated with these facts. Finally, there appears to be no past violations of the Commission's rules by the Respondent. In sum, Respondents actions were incompetent, pose significant harm to the public and lasted over a six year period.

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

- I. Respondent Reinecke's broker license is revoked for two (2) years from the issuance of this Order.
- II. Respondent Reinecke is eligible to hold a real estate salesperson license on a probationary basis subject to the following condition: Respondent must complete salesperson pre-licensing education course within three (3) months of issuance of this Order.
- III. Respondent Reinecke shall pay a fine in the amount of \$5,000.00 within 30 days from the issuance of the Order.
- IV. To qualify for re-licensure as a real estate broker, Respondent Reinecke shall complete all real estate broker pre-licensure education courses and pass the examination.

SO ORDERED this 26 day of August, 2015.

By: Linda Stefanik, President
Jacob S. Elkes, Esq., Commissioner
Robert Melillo, Commissioner
Eugenia K. Bonilla, Commissioner
Jeffrey A. Lattimer, Commissioner
Michael Timoni, Commissioner


Robert L. Kinniebrew
Executive Director
New Jersey Real Estate Commission