

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,)
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 Complainant)
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 vs.)
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)
 JOSE MARTE, licensed New Jersey real)
 estate broker-salesperson, (SB0125400),)
)
 PETER LIVE, formerly licensed New Jersey)
 broker-salesperson, (SB0452692) and YUDITH)
 GUERRA, a/k/a Judith Guerra, formerly licensed)
 real estate salesperson, (SP1222016))
)
)
 Respondents)

DOCKET NUMBER: BER-17-012
(REC Ref. Nos. 10004013, 10004781
10005102, 10003616, 10005284)

ORDER TO SHOW CAUSE

THIS MATTER being commenced by the New Jersey Real Estate Commission in the Department of Banking and Insurance, State of New Jersey on its own motion pursuant to the provisions of N.J.S.A. 45:15-17, 45:15-17.1, 45:15-18 and N.J.A.C. 11:5-1.1, and it appearing that:

1. Jose Marte is a licensed New Jersey real estate broker-salesperson currently licensed with Zabdi Realty, LLC, licensed New Jersey real estate broker located at 298 Palisade Ave., Cliffside Park, N.J. 07010. Marte has been licensed there since May 19, 2017. Marte was broker of record of Live Realty, formerly licensed New Jersey real estate broker located at 1605 John Street, Fort Lee, New Jersey 07024 from October 13, 2009 until April 12, 2017 when the license of Live Realty became inactive. The license of Live Realty has not been renewed or reinstated; and
2. Respondent Peter live is a formerly licensed New Jersey broker-salesperson who was first licensed in New Jersey on June 24, 2004. Respondent Peter Live was employed as a salesperson on or about November 6, 2009 and then as a broker-salesperson on or about July 29, 2010 licensed with Live Realty. His license became inactive on March

22, 2017 and has not been renewed or reinstated. Respondent Peter Live was 100% owner of Live Realty; and

3. Although Respondent Live became a broker in 2010, he continued to work as a broker-salesperson employed with Live Realty. Respondent Live acted as an office manager and ran the day-to-day operations of the office. Respondent Marte, who was broker of record at the time, was rarely in the real estate office, and in fact was employed elsewhere. Upon information and belief, Respondent Marte was President of Commercial Energy Solutions, LLC; and

4. Respondent Yudith Guerra is a formerly licensed New Jersey real estate salesperson, most recently employed with Live Realty. Her license became inactive on January 3, 2017, and has not been renewed or reinstated. Upon information and belief, Respondent Guerra is the wife of Respondent Live; and

5. By his own admission to Real Estate Commission investigators, Marte was broker of record in name only. He did not have access to the bank accounts or any other bank records, did not have access to any transaction files, did not have knowledge of Live Realty transactions other than his own, did not supervise any of the activities of Respondent Peter Live or any of the other agents in the Live Realty office, did not reconcile the escrow account, did not sign employment agreements, did not sign checks, and did not issue payments of any kind, including payment of commissions to agents. Respondent Marte told investigators that Respondent Live ran the office; and

6. On April 20, 2016 when a Real Estate Commission investigator visited the office of Live Realty at 8614 Kennedy Boulevard, North Bergen, N.J. which was the address on file with the Commission, the office was unoccupied and locked. There was an accumulation of mail at the front door, behind a locked steel gate. The agency telephone number was not in service. Further investigation revealed that Live Realty had been evicted from the premises for non-payment of rent; and

7. A subpoena to appear and produce records was personally served upon Respondent Marte at his residence on April 25, 2016. That subpoena directed Respondent Marte to appear at the Real Estate Commission on May 5, 2016. Respondent Marte appeared as required by the subpoena but failed to produce any of the documents required in the subpoena; and

8. On or about May 3, 2016, a change of address for Live Realty was made with the Real Estate Commission noting the new address as 1605 John Street, Fort Lee, N.J.; and

9. When investigators visited the office of Live Realty in Fort Lee, they obtained partial business records. Additional (incomplete) records were provided by Respondent Marte at a later date; and

10. Based on the records provided, investigators determined that there were checking accounts, including an escrow account, maintained by Live Realty which were not reported to the Real Estate Commission. Those accounts were overdrawn at various times. The records also documented transfers that were made by Respondent Live from one of the escrow accounts into the business checking account, and then the funds were withdrawn by him. Those manual withdrawals totaled \$50,000 for the period October, 2015 through April, 2016; and

11. Upon information and belief, several of the deposit checks paid by buyers were cashed by Respondent Live and were never deposited into any of the Live Realty accounts; and

12. On or about November 23, 2015, buyer Natalia Dominguez paid \$60,000 to Live Realty as a deposit to be held in escrow for the purchase of property located at 6808 Broadway, West New York, N.J. The transaction did not proceed to closing and Ms. Dominguez requested that the deposit be returned to her. In September, 2016 and October, 2016, Respondent Peter Live gave Mrs. Dominguez three checks totaling \$60,000 which

were all returned for insufficient funds. To date, the deposit monies have not been returned to Ms. Dominguez; and

13. On or about October 20, 2016, Ms. Dominguez filed criminal charges against Respondent Live in West New York Municipal Court alleging theft in the amount of \$60,000, a violation of N.J.S.A. 2C:20-4; and

14. On or about December 16, 2016, Respondent Live was indicted in the Superior Court of New Jersey, Hudson County on one count of Theft by Deception, in violation of N.J.S.A. 2C:20-4, a crime of the 3rd degree; and

15. Respondent Live did not report the filing of formal criminal charges to the Commission; and

16. In June, 2017, Respondent Live was accepted into the Pre-trial Intervention Program in Hudson County. The PTI term is 3 years, during which time Live is ordered to make restitution in the amount of \$60,000 to Ms. Dominguez; and

17. In January, 2016, buyer Edwin Diaz signed an offer to purchase property located at 395 Lakeview Avenue, Clifton, N.J. The purchase price was \$250,000. Respondent Yudith Guerra was the agent for the buyer. The property was a short sale. Ms. Guerra instructed Mr. Diaz to pay \$40,000 as a deposit so that he could show that he was a serious buyer. Mr. Diaz paid \$40,000 to Live Realty as a deposit on the transaction. The transaction was cancelled and Mr. Diaz made several requests to salesperson Yudith Guerra of Live Realty and to Respondent Peter Live for the return of his money. Respondent Live admitted to using the funds and promised to repay Mr. Diaz. To date, the funds have not been repaid; and

18. Mr. Diaz has filed a complaint with the Fort Lee, N.J. Police Department and that matter is under investigation as of the date of the filing of this Order to Show Cause; and

19. During the course of the Real Estate Commission's investigation, several additional complaints were filed against Respondent Peter Live by prospective buyers who

had tendered deposit monies to Live Realty on real estate transactions, none of which proceeded to closing nor were the deposits refunded. They are listed below:

<u>Date of Contract</u>	<u>Property</u>	<u>Buyer</u>	<u>Deposit amount paid</u>
July 28, 2015	75 East 51 st St. Bayonne, N.J.	Lin Jie and Lia Ping	\$ 1,000
February 29, 2016	319 26 th St. Union City, N.J.	Alina Briceno	\$ 1,000
October 31, 2016	395 Lakeview Ave., Clifton, NJ	Salcedo and Rosely Rodriguez	\$50,000
March 11, 2017	20 Leo Ave. Hopatcong, N.J.	Mayra Amami	\$85,000

20. In regard to the property listed above at 395 Lakeview Ave., Clifton, N.J., Respondent Yudith Guerra acted as agent for the buyer. The purchase price was \$250,000. The property was a short sale. The buyer was encouraged by Respondent Live to put down \$50,000 as a deposit in order to demonstrate that she was qualified to purchase the property. This was the same property that had a previous offer made by Edwin Diaz as set forth in paragraph 17 above; and

21. In all of the cases recited above, buyers made numerous requests to have their deposit monies returned. No monies have been returned as of the date of the filing of the within Order to Show Cause; and

22. Due to the extremely poor recordkeeping, the total number of transaction files and 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 any given period cannot be determined. However, Respondent Live admitted

to a Real Estate Commission investigator that he used escrow account monies to cover personal debts; and

23. As broker of record, Respondent Marte was responsible for supervising the activities of Respondent Live and Respondent Guerra and was responsible for oversight of all of the operations of Live Realty; and

24. The conduct of Respondents Live and Marte is in violation of N.J.S.A. 45:15-17(o) 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 as escrow agent or the temporary custodian of the funds of others in a real estate transaction; and

25. The conduct of Respondent Live is in violation of N.J.S.A. 45:15-17(e) in that the above stated events demonstrate unworthiness, bad faith or dishonesty; and

26. The conduct of Respondent Live is in violation of N.J.S.A. 45:15-17(l) in that the above described conduct constitutes fraud or dishonest dealing; and

27. The conduct of Respondents Live, Marte and Guerra is in violation of N.J.A.C. 11:5-6.4(a) in that by the above described actions, they failed to protect and promote the interests of their principals; and

28. Respondent Live is in violation of N.J.S.A. 45:15-17(s) in that he failed to report the filing of formal criminal charges against him as required by that rule; and

29. The conduct of Respondent Marte is in violation of N.J.S.A. 45:15-17(e) in that the above stated events demonstrate incompetency; and

30. Respondent Marte 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 Respondent Live; and

31. Respondent Marte'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

32. Respondent Marte'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

33. Respondent Marte'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

34. Respondent Marte'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; and

35. Respondent Guerra's conduct is in violation of N.J.A.C. 11:5-5.2(a) in that as set forth above she directed her clients to pay large deposits and accepted the funds of prospective purchasers where she knew or should have known that same would not be safeguarded; and

36. Respondent Guerra is in violation of N.J.S.A. 45:15-17(e) in that her conduct as set forth above constitutes unworthiness, incompetency, bad faith or dishonesty;

And for good cause shown,

IT IS ON THIS 2nd DAY OF AUGUST, 2017

ORDERED that Respondents Jose Marte, Peter Live and Yudith Guerra shall show cause why Respondents' real estate licenses and/or eligibility to hold a real estate license should not be suspended or revoked and/or why fines or other sanctions should not be imposed pursuant to N.J.S.A. 45:15-17 and N.J.A.C. 11:5-1.1. Respondents shall file written Answers to the charges in this Order to Show Cause as required by N.J.A.C. 11:5-11.2 within twenty (20) days of the service of this Order. As required by N.J.A.C. 11:5-11.2, Respondents' written Answers must include specific admissions or denials of all allegations in the Order to Show Cause, state the factual basis of each and every

factual allegation denied and assert any defenses that Respondents intend to present if this matter is deemed a contested case and a plenary hearing is held; and


IT IS FURTHER ORDERED that failure to comply with all the requirements of N.J.A.C. 11:5-11.2 may result in a determination that there are no material facts or issues of law in dispute and any presentation made to the Commission will be limited to the issue of the severity of any sanction or penalty to be imposed; and

IT IS FURTHER ORDERED that the New Jersey Real Estate Commission will review this Order to Show Cause and Answer(s) filed, if any, at a meeting scheduled on or after the 26th day of SEPTEMBER, 2017 at 9:30 a.m. to determine whether there is a material fact or issue of law contested. No appearance is required at that time; and

IT IS FURTHER ORDERED that if the Commission determines that there is a material fact or issue of law contested, a hearing will be scheduled for a future date; and

IT IS FURTHER ORDERED that if the Commission determines that there is no material fact or issue of law contested, a hearing shall be scheduled at which the Respondents will be limited to presenting witnesses and documentary evidence regarding the issue of the severity of any sanction or penalty to be imposed; and

IT IS FURTHER ORDERED that a copy of this Order be served upon the Respondents as provided in N.J.S.A. 45:15-18, which service may be accomplished by serving a copy of this Order on the Respondents personally, or by delivering a copy hereof to their last known business addresses via certified mail.


Patrick J. Mullen
Director of Banking