

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION)	DOCKET NUMBER BER-17-023
)	REC Ref. No. 10004437
Complainant)	
)	
v.)	ORDER TO SHOW CAUSE
)	
JOHN VIAUD, licensed New Jersey real estate salesperson (SP0683271),)	
)	
Respondent)	

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, 45:15-18, and N.J.A.C. 11:5-1.1, et seq., and it appearing that:

1. Respondent John Viaud is a licensed New Jersey real estate salesperson currently employed with Reggo and Kelemen Real Estate, licensed New Jersey real estate broker, located at 129 Queen Anne Road, Bogota, N.J. 07603. Respondent was first licensed on October 30, 2006; and

2. At all times relevant hereto, Respondent was the owner of the property located at 513 Tilden Avenue, Bogota, N.J. Respondent listed the property for sale with Reggo and Kelemen Real Estate on or about January 19, 2016 for \$299,000. The listing period was January 19, 2016 to May 31, 2016. That listing represented that the taxes on the property were \$8,500. The actual taxes for 2015 were \$9,985 and for 2016 were \$10,146; and

3. In May, 2016, prospective buyers Eury Camacho and Tania Cruz became interested in the Tilden Avenue property. On or about May 3, 2016, buyer's agent John Baek brought the discrepancy in the tax amount to the Respondent's attention via e-mail and on that same day, Respondent entered a new listing on the Multiple Listing Service with the listing period of May 3, 2016 – July 31, 2016. However, the taxes were still listed as \$8,500; and

4. On or about May 5, 2016, prospective buyers Eury Camacho and Tania Cruz made an offer on the property for \$285,000. Respondent accepted the offer, and a contract of sale was signed on or about May 9, 2016; and

5. The contract for the property entered attorney review on May 11, 2016. During attorney review, the buyers learned that there was an underground oil tank on the property. Negotiations regarding the removal of the oil tank were not successful and on or about May 14, 2016 buyer's attorney canceled the contract. Negotiations continued thereafter, and the cancelation was rescinded. The contract was reinstated on May 19, 2016 when Respondent agreed to remove the oil tank. Respondent did not mark the property as "under attorney review" in the Multiple Listing Service until May 22, 2016. Attorney review was concluded on May 25, 2016. However, Respondent did not change the status of the property to "under contract" until June 1, 2016. Respondent held an open house on May 22, 2016 and continued to market the property by entering the property into the Multiple Listing Service as a new listing on June 3, 2016 during which time the property was actually under contract with buyers Camacho and Cruz; and

6. The June 3, 2016 listing represented that the taxes were \$9,800 which amount was lower than the actual taxes of \$10,146; and

7. Buyers Camacho and Cruz canceled the contract on June 6, 2016 due to unresolved inspection issues as well as their having learned that the property was still on the market as an active listing; and

8. During the course of the investigation of the complaint filed by buyers Camacho and Cruz against Respondent, a Real Estate Commission investigator contacted Respondent and requested that he provide a statement as well as documents related to the transaction in question. The investigator made requests verbally and/or via e-mail on February 10, 2017, March 17, 2017 and March 31, 2017, all of which the Respondent did not comply with. The investigator notified Respondent's broker on April 4, 2017 of the Respondent's failure to cooperate. It was only after the broker was contacted that Respondent provided a statement dated April 24, 2017; and

9. Respondent is in violation of N.J.A.C. 11:5-6.1(o) in that he advertised the Tilden Avenue property for sale on or after May 25, 2016 without noting in the listing that the property was under contract; and

10. Respondent is in violation of N.J.A.C. 11:5-6.4(a) in that he failed to deal fairly with the buyers when he did not mark the property as “under attorney review” and then did not mark the property as “under contract” in the Multiple Listing Service as set forth in paragraph 5 above; and

11. Respondent is in violation of N.J.S.A. 45:15-17(e) in that the above described conduct with regard to the listing of the property in the Multiple Listing Service as set forth in paragraph 5 above constitutes unworthiness, incompetency, bad faith or dishonesty; and

12. Respondent is in violation of N.J.S.A. 45:15-17(e), conduct demonstrating unworthiness by failing to cooperate with a Real Estate Commission investigator during the course of the investigation and failing to provide a written statement when requested to do so; and

13. Respondent’s conduct in misrepresenting the actual amount of the taxes assessed on the Tilden Avenue property in the May 3, 2016 listing agreement after the incorrect amount was specifically brought to his attention as set forth in paragraph 3 above constitutes a violation of N.J.S.A. 45:15-17(a);

And for good cause shown,

IT IS ON THIS 6th DAY OF NOVEMBER, 2017

ORDERED that Respondent John Viaud shall show cause why Respondent’s 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. Respondent shall file a written Answer 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, Respondent’s

written Answer 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 Respondent intends 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 filed, if any, at a meeting scheduled on or after the 12th day of DECEMBER, 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 Respondent 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 Respondent as provided in N.J.S.A. 45:15-18, which service may be accomplished by serving a copy of this Order on the Respondent personally, or by delivering a copy hereof to his last known business address via certified mail.



Patrick J. Mullen
Director of Banking