

## NEW JERSEY REAL ESTATE COMMISSION

OAL DOCKET NO. BK1 01591-20  
AGENCY DKT. NO. CAM-16-018  
APPELLATE DOCKET NO.: A-3654-21

**NEW JERSEY  
REAL ESTATE COMMISSION,**

**Petitioner,**

V.

RICHARD A. KARPFF

### FINAL ORDER (ON REMAND)

This matter comes before the Real Estate Commission (“Commission”) pursuant to the April 1, 2024 opinion of the Superior Court of New Jersey, Appellate Division, Docket No. A-3654-21 remanding the matter to reconsider the length of the suspension<sup>1</sup> of Richard Karpf’s (“Karpf”) real estate broker’s license that was ordered by the Commission in its June 14, 2022 Final Order (“Final Order”).

### Statement of the Case and Procedural History

The Commission initiated this matter on its own motion through service of an Order to Show Cause No. CAM-16-018 dated October 12, 2016 ("OTSC"), pursuant to N.J.S.A. 45:15-17, 45:15-18, and N.J.A.C. 11:5-1.1 to -12.18. In the OTSC, the Commission sought to revoke and/or suspend the Karpf's real estate broker's license and to impose civil penalties and costs for alleged violations of N.J.A.C. 11:5-4.4(a) for failing to maintain and supervise his licensed real estate

<sup>1</sup> Although the Appellate Division stated that Karpf's real estate broker's license was suspended, the Commission revoked his license in the Final Order. Pursuant to N.J.S.A. 45:15-17, the Commission may "suspend for a period less than the unexpired portion of the license period, or may revoke any license..." The three-year revocation period set forth in the Final Order was longer than the unexpired portion of Karpf's broker license, as real estate licensees renew their licenses every two years. N.J.A.C. 11:5-3.1.

office on a full time basis and failing to have his real estate office open to the public during regular business hours and of N.J.S.A. 45:15-17(e), in that this conduct demonstrates unworthiness, incompetency, bad faith or dishonesty.<sup>2</sup>

On November 4, 2016, the Karpf filed an Answer to the OTSC, wherein he denied certain allegations set forth in the OTSC and requested a hearing. On September 26, 2017, a hearing commenced before the Commission at which time Count One and Count Two were dismissed. The matter was scheduled for a hearing on March 26, 2019 before the Commission to address the remaining violations by Karpf alleged in the OTSC.<sup>3</sup> On January 14, 2020, the matter was transferred to the Office of Administrative Law ("OAL"), pursuant to N.J.S.A. 52:14B-1 to -15, and N.J.S.A. 52:14F-1 to -13.

The Administrative Law Judge Hon. Tama B. Hughes ("ALJ") conducted hearings on September 14 and September 30, 2021. On March 30, 2022, the ALJ issued the Initial Decision, wherein the ALJ found that Karpf was liable for the violations as set forth in Count III of the OTSC. In addition, the ALJ addressed the imposition of the appropriate penalty and recommended a two-year suspension of Karpf's broker license and a civil penalty in the amount of \$2,500.

In the Final Order, the Commission adopted the ALJ's finding that Karpf violated N.J.A.C. 11:5-4.4(a) in that he failed to maintain and supervise his licensed real estate office on a full time basis and failed to have it open to the public during regular business hours and that said conduct

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<sup>2</sup> The OTSC alleged certain statutory and regulatory violations by Karpf and his employee, Joseph Thomas ("Thomas"), a licensed real estate salesperson. Count I alleged violations by both Karpf and Thomas, Counts II and III alleged violations by Karpf only and Count IV alleged violations by Thomas only. On February 1, 2018, Thomas entered into a Consent Order, resolving all violations pending against him that were asserted in the OTSC.

<sup>3</sup> Count III of the OTSC alleged that Karpf's conduct was in violation of N.J.A.C. 11:5-4.4(a) and N.J.S.A. 45:15-17(e) and remained the sole count to be adjudicated by the ALJ.

also demonstrates unworthiness, incompetence, and bad faith in violation of N.J.S.A. 45:15-17(e). The Commission modified the ALJ's recommendation of a two-year revocation of Karpf's broker license and ordered the revocation of Karpf's broker license for a period of three years. The Commission also modified the ALJ's recommendation of a \$2,500 penalty and ordered that a \$5,000 fine be imposed.

Karpf appealed to the Appellate Division arguing that the case should be dismissed as res judicata because the Commission had previously dismissed the OTSC when it directed the parties to engage in settlement discussions after it dismissed Counts One and Two. He further argued that he maintained an office which was open to the public and compliant with N.J.S.A. 45:15-12. Specifically, he claimed that his office was open during usual business hours, was always supervised, and he worked full time as a broker who was always accessible to clients and sales agents. He further argued that the regulations which require a broker to maintain a physical office are antiquated, serve no legitimate purpose, and N.J.A.C. 11:5-4.4 is vague and confusing. He also argued that the Commission erred in relying on Investigator Dana Tatarek's testimony because she misrepresented how many times she had visited Karpf's office during her investigation. Finally, he argued that he should not have been penalized because he did not act in bad faith, did not profit from illegal activity, and there was no injury to the public.

The Appellate Division found that the Commission's findings were not arbitrary, capricious, or unreasonable, and there was ample evidence to support its conclusions that Karpf violated N.J.S.A. 45:15-17(e) and N.J.A.C. 11:5-4.4(a). New Jersey Real Est. Comm'n v. Karpf Docket No. A-3654-21 (App. Div. April 1, 2024) (slip op. at 26).

The Appellate Division further found that N.J.A.C. 11:5-4.4 is not plainly unreasonable, or void for vagueness, and the Commission's interpretation and implementation was "within the

reasonable bounds of agency interpretation.” Id. at 28, 31-32. Nevertheless, the Appellate Division noted that it may be appropriate for the Commission to revisit N.J.A.C. 11:5-4.4 given the changes in technology and “the way society conducts business,” and consider whether N.J.A.C. 11:5-4.4(a) should be amended to address these changes. Id. at 30.

The Appellate Division upheld the \$5,000 monetary penalty, and stated that the Commission appropriately considered the factors at Kimmelman v. Henkles & McCoy, Inc., 108 N.J. 123, 137-39 (1987), prior to imposing the monetary penalty. Id. at 36. Although the Commission’s penalty was higher than the ALJ’s recommendation, the Appellate Division found that the penalty did not shock its sense of fairness. Id. at 36-37 (citing In re Herrmann, 192 N.J. 19, 28-29 (2007)).

When addressing the length of Karpf’s license suspension, the Appellate Division concluded that the Commission failed to properly address issues that would potentially mitigate the imposition of the three-year suspension. Id. at 37. The Appellate Division noted the following: that this matter was prompted by an anonymous complaint, rather than a client; Karpf had no past regulatory violations; there were no allegations of any misappropriation of funds; there was no specific injury to the public; and his conduct did not involve any criminal activity. Id. at 37-38. Although the Appellate Division recognized that the factors set forth in Kimmelman, 108 N.J. at 137-39, are traditionally used to evaluate monetary fines, it noted that the Commission may consider these factors when determining whether to impose a suspension. Id. at 38-39. The Commission could also consider any other factors it deemed relevant “in its sound discretion to impose an appropriate and fair sanction.” Id. at 39.

By letter dated April 18, 2024, the parties were directed to file briefs by May 24, 2024 and responsive briefs by June 10, 2024. Both parties filed their initial briefs on May 24, 2024, and

neither party filed a responsive brief.

Parties' Arguments as to Appropriate Length of Revocation/Suspension

In his brief, Karpf argued that the penalty imposed was too harsh for a “very technical violation” of a regulation that is outdated, serves no legitimate governmental purpose, and is unique to the real estate profession. Karpf Brief at 1. Karpf also referenced his Appellate Division brief wherein he had previously addressed the factors in Kimmelman and “invited” the Commission “to review that information.” Ibid. He characterized the penalty imposed as a “gross miscarriage of justice.” Ibid.

In its brief, the Real Estate Commission Staff (“REC”) noted that the revocation period of an insurance producer license is five years pursuant to N.J.A.C. 11:17D-2.7(a). REC Brief at 3. The Commission is within the Department of Insurance. Ibid. (citing N.J.S.A. 45:15-5). Accordingly, it is appropriate for the Commission to consider a revocation period for a real estate license under the same parameters set by the Department for the revocation of an insurance producer license “as they both fall within the current Department of Banking and Insurance.” Id. at 3-4. The REC therefore argues that the three-year revocation of Karpf’s license is reasonable given it “is considerably less than the five years that a Producer Act revocation would be.” Id. at 4.

The REC argues that the Appellate Division found that the Commission “appropriately considered the Kimmelman factors prior to imposing the monetary sanction.” Ibid. (quoting Karpf, at 36). Accordingly, the REC relies upon the same analysis to support the appropriateness of the license revocation period which had already been affirmed by the Appellate Division. Ibid.

The first Kimmelman factor addresses the good faith or bad faith of the violator. Karpf argues that he did not act egregiously or evilly, and reasonably believed that he did not violate any

regulations or statutes. Karpf Appellate Brief at 51. He argues that he worked as a teacher part-time, and as a broker full-time. Ibid. Further, his office was open every day. Ibid. He argues that prohibiting brokers from teaching “is a perversion of New Jersey law.” Id. at 52. The REC, however, argued that the Appellate Division affirmed the Commission’s finding that Karpf acted in bad faith because he was aware of his responsibilities, including the requirement to have his office open to the public during usual business hours. REC Brief at 4 (citing Karpf, at 34-35). The REC argues that this finding also applies to Karpf’s license. Ibid.

The third Kimmelman factor relates to the profits obtained. Karpf argues that he did not make any profit. Karpf Appellate Brief at 53. The REC argues that the Appellate Division affirmed the Commission’s finding that although the exact amount of profits Karpf made is unclear, he did, in fact, earn income working as a teacher during normal business hours while operating a real estate brokerage, which favored a penalty. REC Brief at 5 (citing Karpf, at 35). The REC argued that this reasoning also applies to revoking Karpf’s license. Ibid.

The fourth factor of the Kimmelman analysis is to determine whether the licensee’s conduct caused injury to the public. Karpf argues that no injury to the public occurred. Karpf Appellate Brief at 53. He argues that no one was harmed, no member of the public complained, no misappropriation of funds or assets occurred, no crimes were committed, and no property transactions were “botched.” Ibid. He further argues that the entire cause of action “is dealing with allegations of de minimus technical claims which harmed no one are which are not contained in any State statute.” Ibid. The REC argues that the Commission previously determined that “the public is harmed when licensees fail to comply with Commission regulations. When a licensee is unable to conduct himself in accordance with the high standards expected of him and his profession, the public’s confidence in the real estate industry is eroded.” REC Brief at 5 (citing

Karpf, at 35). The REC argued that this reasoning, which was affirmed by the Appellate Division, also applies to revoking Karpf's license. Ibid.

The fifth Kimmelman factor to be examined is the duration of the illegal activity. Karpf argues that there was no illegal activity. Karpf Appellate Brief at 53. He reasserts that he was a part-time teacher and a full time broker. Ibid. The REC argues that the Commission previously determined that Karpf's conduct lasted over a decade, which weighed in favor of a higher penalty. REC Brief at 5-6 (citing Karpf, at 36). The REC argued that this reasoning also applies to revoking Karpf's license. Id. at 6. The REC further argues that although the Appellate Division stated that the Commission did not consider that Karpf had no past regulatory violations, this conduct lasted more than a decade, or a quarter of Karpf's career. Ibid. (citing Karpf, at 36, 38). Consequently, the REC argues that it is inaccurate to state that Karpf had a long, unblemished career when his on-going violations were simply undetected prior to now. Ibid.

The sixth factor contemplated in Kimmelman is the existence of criminal actions and whether a civil penalty may be unduly punitive if other sanctions have been imposed. Karpf argues that there was no criminal conduct, but rather teaching, which should he "lauded, praised, extolled and encouraged due to the shortage of teachers." Karpf Appellate Brief at 53. The REC acknowledges that although this factor would normally weigh in favor of a higher penalty, the Appellate Division stated that the lack of criminal prosecution should be viewed as a mitigating factor in regard to Karpf's license revocation. REC Brief at 6 (citing Karpf, at 38).

The final factor examined in Kimmelman is the previous relevant regulatory and statutory violations of the respondent, and if past penalties have been insufficient to deter future violations. Karpf argues that there are no past violations. Karpf Appellate Brief at 54. The REC agreed that Karpf held a broker's license since 1979 and had no history of regulatory or statutory violations.

REC Brief at 7 (citing Karpf, at 36). However, the REC argues that that this factor is offset by the fact that Karpf's illegal conduct lasted over a decade, so it is incorrect to conclude that there were no previous regulatory violations in his career. Ibid.

The REC also addressed the other factors suggested by the Appellate Division to be given further consideration. Ibid. (citing Karpf, at 37-38). The REC argues that it is irrelevant that the investigation was prompted by an anonymous complainant, rather than a customer, because Karpf's conduct violated the Commission's regulations "regardless how it came to light." Ibid. The REC noted that the Appellate Division next stated that "the Commission did not reference any history of customer or agent complaints regarding the operation of Karpf's real estate office during the forty years he operated his business." Id. at 8 (citing Karpf, at 38). The REC reiterates that Karpf still violated a regulation, for more than a decade, or a quarter of his career, and the Appellate Division affirmed this finding. Ibid. The REC argues that the lack of additional complaints is not determinative and has already been considered by the imposition of a three-year, rather than a five-year, revocation for insurance producers. Ibid. This argument, according to the REC, also applies to counter the Appellate Division's suggestion that mitigation should be considered given that Karpf had no past regulatory violation, and there was no allegation of misappropriation of funds. Ibid. (citing Karpf, at 38).

The REC states that the Appellate Division also noted that "there was also no specific injury to the public." Ibid. (quoting Karpf, at 38). The REC argues that the Appellate Division's assumption was incorrect. Ibid. Real estate licensees are held to a high standard. Ibid. Regulatory violations erode public confidence in the industry as a whole, which constitutes specific injury to the public. Ibid.

In sum, the REC argues that the three-year revocation “was already tempered by” mitigating factors. Id. at 9. The REC states that a three-year revocation is appropriate and asks that the Commission issue a decision on remand that clarifies that the mitigating factors were already considered and reimposes the three-year suspension from the date of the Order. Ibid.

#### Revocation of Karpf’s License

The Real Estate Act charges the Commission with the “high responsibility of maintaining ethical standards among real estate brokers and sales[persons]” 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 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. Maple Hill Farms, Inc. v. New Jersey Real Estate Commission, 67 N.J. Super. 223, 232 (App. Div. 1961); Div. of 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 Ponsi, 39 N.J. Super. at 532-533.

The REC argues that it is appropriate to consider the five-year length of time for revocation of an insurance producer license under N.J.A.C. 11:17D-2.7(a) to a real estate license. REC Brief at 3-4, 7, 8, 9. However, N.J.S.A. 45:15-17 provides that suspension of a license may be ordered for a time less than the unexpired portion of the license period and revocation of a license is permitted without limitation. Therefore, the Commission could have revoked Karpf’s license for longer than five years. However, in its original imposition of the three-year revocation, the Commission considered mitigating factors. Accordingly, for the reasons set forth below, the Commission reimposes its three-year revocation from the date of the Final Order.

The Commission reiterates and incorporates by reference its findings regarding Karpf's conduct and the Kimmelman factors in its Final Order. Final Order at 13-23.

As to the first Kimmelman factor, the good or bad faith of the respondent, we find that Karpf acted in bad faith because he should have been aware of his responsibilities under the Real Estate Brokers and Salesperson Act, N.J.S.A. 45:15-1 to -42 ("Act") and associated regulations. Karpf argues that he did not act egregiously or evilly, and reasonably believed that he did not violate any regulations or statutes. Karpf Appellate Brief at 51. He argues that he worked as a teacher part-time, and as a broker full-time while his office was open every day. Ibid. We again find that Karpf's insistence that he only taught part time is based on dubious reasoning and is unpersuasive, and this factor weighs in favor of revocation. Final Order at 21.

The third Kimmelman factor relates to the profits obtained. The greater the profits an individual is likely to obtain from illegal conduct, the greater the penalty must be if penalties are to be an effective deterrent. Kimmelman, 108 N.J. at 138. Karpf argues that he did not make any profit. Karpf Appellate Brief at 53. We acknowledge that determining the exact amount of profits Karpf might have obtained is unclear. Nevertheless, we find that for over a decade, Karpf was able to earn an income from being employed full-time as a teacher during normal business hours while operating a real estate brokerage, which weighs in favor of revocation. Final Order at 21-22.

The fourth factor of the Kimmelman analysis is to determine whether the licensee's conduct caused injury to the public. 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 Commission, 29 N.J. Super. 178, 181 (App. Div. 1954). Karpf argues that no injury to the public occurred. Karpf Appellate Brief at 53. While

the Appellate Division indicated that there was no specific injury to the public, we find that the public is harmed when licensees fail to comply with the law. Indeed, when a licensee has not conducted himself in accordance with the high standards expected of him and his profession, the public's confidence in the real estate industry is eroded. This factor weighs in favor of revocation. Final Order at 22.

The fifth factor in Kimmelman is the duration of illegal activity. The Court in Kimmelman found that greater penalties are necessary to incentivize wrongdoers to cease their illegal conduct. Kimmelman, 108 N.J. at 139. The longer the illegal conduct, the more significant civil penalties should be assessed. Ibid. Karpf argues that there was no illegal activity. Karpf Appellate Brief at 53. We find however that Karpf's conduct, which did in fact violate N.J.S.A. 45:15-17(e) and N.J.A.C. 11:5-4.4(a), took place over ten years. Final Order at 22. This factor weighs heavily in favor of revocation.

The existence of criminal punishment and whether a civil penalty may be unduly punitive if other sanctions have been imposed is the sixth factor under the Kimmelman analysis. A large civil penalty may be unduly punitive if other sanctions have been imposed for the same violation Kimmelman, 108 N.J. at 139. While we originally determined that the lack of criminal punishment or treble damages weighed in favor of a higher monetary penalty, when determining the appropriateness of the length of revocation, this factor weighs in favor of not revoking Karpf's license. See Karpf, at 38.

The final factor examined in Kimmelman is previous relevant regulatory and statutory violations of the respondent. Karpf argues that there are no past violations. Karpf Appellate Brief at 54. We found that Karpf has held a real estate broker's license since 1979 and has no history of any regulatory or statutory violations. Final Order at 23. However, we agree with the REC's

argument and find that Karpf blatantly and unrepentantly flouted real estate regulations for over a decade, and therefore it is inaccurate to characterize his career as “unblemished.” REC Brief at 7. To find that he has an unblemished record obfuscates Karpf’s long history of violating real estate regulations. Nevertheless, we will consider this to be a mitigating factor in favor of a shorter length of revocation.

We also agree with the REC’s argument that it is immaterial that the investigation began because of an anonymous, rather than a customer, complaint. REC Brief at 7. Karpf’s conduct violated N.J.A.C. 11:5-4.4(a) and N.J.S.A. 45:15-17(e). It is irrelevant how the Commission was alerted that Karpf was violating the Commission’s regulations. Similarly, it is also immaterial that there is no history of customer or agent complaints. Karpf still violated the Commission’s regulations for more than a decade, a factor which weighs in favor of revocation.

The Appellate Division noted that there “was no specific injury to the public...” Karpf, at 38. However, as found above, the public is harmed when licensees fail to comply with the law. When a licensee fails to conduct himself in accordance with the high standards expected of him and his profession, the public’s confidence in the real estate industry is eroded.

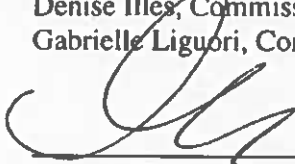
We agree with the Appellate Division that there was no misappropriation of any funds, and Karpf’s conduct did not involve any criminal activity. Ibid. These are mitigating factors that have been considered when determining the appropriate length of Karpf’s revocation, as Karpf’s license could have been revoked for much longer under N.J.S.A. 45:15-17, which does not set a limit on the amount of time that a license may be revoked.

#### Conclusion

Having carefully reviewed the Appellate Division decision and the parties’ briefs, we find that a three-year license revocation is appropriate.

SO ORDERED this 16th day of April, 2025.

By: Eugenia K. Bonilla, President  
Christine Banasiak, Commissioner  
Erin Brown, Commissioner  
William Hanley, Commissioner  
Denise Illes, Commissioner  
Gabrielle Liguori, Commissioner

  
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Eugenia K. Bonilla, President  
New Jersey Real Estate Commission

Jd Karpf FO on remand/Final Orders-REC

