

NEW JERSEY REAL ESTATE COMMISSION

)	Docket No.: REC-E-23-10
NEW JERSEY REAL ESTATE)	REC Ref No.: 10015496
COMMISSION,)	
)	
Complainant,)	
v.)	FINAL ORDER OF
)	DETERMINATION
SASHI GUPTA, licensed New Jersey real)	
estate salesperson (Ref. No. 8540637))	
)	
Respondent.)	
)	

THIS MATTER was heard by the New Jersey Real Estate Commission (“Commission”) by video conference on April 8, 2025.

BEFORE: Commissioners Eugenia K. Bonilla, Christina Banasiak, Erin Brown, Denise M. Illes, and Gabrielle Liguori.

APPEARANCES: John Rossakis, Regulatory Officer (“RO Rossakis”), appeared on behalf of the New Jersey Real Estate Commission staff (“REC”). Sashi Gupta (“Respondent”) was represented by Frederick Rubenstein, Esq., of Shah & Rubenstein, LLC.

STATEMENT OF THE CASE

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated May 31, 2024, 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 to -12.18.

The OTSC alleges that the Respondent violated the Real Estate Brokers and Salespersons Act, N.J.S.A. 45:15-1 to -29.5 (“Act”) and corresponding regulations as follows:

The Respondent does not possess the honesty, trustworthiness, character, and integrity required for licensure by N.J.S.A. 45:15-9(a); and

The Respondent's conduct demonstrates dishonesty, bad faith, and unworthiness for licensure in violation of N.J.S.A. 45:15-17(e)

The Respondent filed an Answer to the OTSC on or about June 17, 2024. On August 13, 2024, the Commission reviewed the pleadings, deemed this matter contested, and directed that a hearing be scheduled.

At the hearing, the following documents were submitted by the REC, and entered into evidence, without objection:

- S-1: New Jersey Department of Banking and Insurance, Real Estate Commission, License Certification with History for Shashi Gupta, dated September 11, 2024;
- S-2: New Jersey Department of Banking and Insurance complaint filed by seller of 117 North Road, Nutley, New Jersey, dated March 12, 2022;
- S-3: SupraWEB Management Website, Showings Dashboard for Mary Ryder, dated May 18, 2022;
- S-4: Nutley Police Department, Investigation Report and Supplemental Investigation Reports, dated April 23, 24 and 25, 2022;
- S-5: Written statement submitted to staff investigator by Shashi Gupta, dated July 20, 2022; and
- S-6: Nest camera footage of property showing at 117 North Road, Nutley, New Jersey on April 21, 2022, submitted by seller.

TESTIMONY OF THE WITNESS

Sashi Gupta

The Respondent was the only witness and testified on her own behalf. She testified that on April 21, 2022 she showed a property located at 117 North Road, Nutley, New Jersey 07110 ("Property"). The Property was listed by Keller Williams Realty NJ Metro Group. She confirmed

that the Supra record was accurate and that she showed the property for approximately 51 minutes. (Exh. S-6).

The Respondent testified that during the showing she left her clients downstairs and went upstairs to turn off the bedroom lights. She was impressed with the decoration and organization of the space, so she began to open dresser drawers to see how everything was organized. She opened a box that caught her attention because it was turquoise and pretty. Inside the box was a set of cufflinks. She put everything back and did not take anything.

The Respondent further testified that, after the showing, she became aware that the homeowner had a Nest camera when the homeowner called that night and confronted her about her conduct at the showing. She testified that she apologized and was very embarrassed. She testified that she made further attempts to apologize, but the homeowner was unreceptive. She further testified that she texted the homeowner, and went to the property after an open house when she believed the homeowner would be home. The Respondent testified that she saw the homeowner at the door, but he refused to speak to her. The homeowner then called the police who asked the Respondent to leave.

RO Rossakis played the Nest camera video of the Respondent entering the bedroom and opening drawers. Exh. S-6. The Respondent acknowledged that she did not turn off the light in the bedroom, and testified that her clients had a question about the basement so she went back downstairs. When viewing the video, she agreed that it showed her opening approximately six drawers, but also stated she does not remember exactly how many drawers she opened. Respondent also acknowledged that the video depicts her opening up two jewelry boxes. She testified that she did not remember opening a second jewelry box, but did admit to opening the turquoise box that contained cufflinks. She acknowledged that in her statement to the REC

investigator she wrote that she opened two drawers. (Exh. S-5). She testified that she believed this was accurate when she wrote the statement.

The Respondent testified that she was terminated from Weichert, her brokerage at the time, after her broker became aware of her conduct recorded on the NEST camera. She also stated that she was unsure how her broker became aware of her conduct. Respondent then joined Keller Williams, but was fired again after that broker became aware of her conduct. Respondent stated that she did not disclose her conduct to Keller Williams, and was unaware how they learned about her conduct. She testified that she is currently licensed with NRK, and she has told her broker about her conduct.

The Respondent further testified that during the showing, she had left her clients unaccompanied when she went upstairs.

On cross-examination, the Respondent testified that this is her first disciplinary proceeding in her career of almost thirty years. She also testified that she did not intend to mislead the REC investigator when she wrote in her statement that she had opened two drawers in the bedroom, but now recalls that she had actually opened more.

The Respondent testified that she reached out to the homeowner to apologize and did not try to coerce him or convince him to not report her. She testified that she is embarrassed by her behavior, and she had never done anything like that before. She testified that at the time of the incident, she was not thinking and was unaware of what she was doing.

FINDINGS OF FACT

Based on 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. The Respondent was first licensed in New Jersey as a real estate salesperson on February 24, 1986. She is currently licensed with NRK of New Jersey, Inc., d/b/a Prominent Properties Sotheby's International Realty, licensed New Jersey real estate broker, whose main office is located at 457 Sylvan Avenue, 2nd Floor, Englewood Cliffs, New Jersey 07632.
2. On April 21, 2022, the Respondent showed the Property for approximately 51 minutes.
3. During the showing of the Property, the Respondent left her clients downstairs unaccompanied and entered a bedroom located upstairs alone. In the bedroom, she opened several dresser drawers, removed two boxes, and looked inside. She did not remove any items from the Property.
4. The Respondent's conduct was recorded on the homeowner's Nest camera. The homeowner called the Respondent and confronted her about her behavior during the showing.
5. The Respondent tried to apologize to the homeowner several times by text message and attempted to apologize in-person.
6. On April 23, 2022, Respondent showed up at the Property to speak with the homeowner and the homeowner called the Nutley Police, who asked the Respondent to leave the homeowner alone. No charges were filed against the Respondent.
7. The homeowner filed a complaint with the REC on May 12, 2022.
8. The Respondent submitted a written statement to the REC investigator wherein she admitted that she opened dresser drawers and removed a jewelry box.

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 as summarized above:

1. The Respondent lacks the honesty, trustworthiness, character, and integrity for licensure required under N.J.S.A. 45:15-9(a) and violated N.J.S.A. 45:15-17(e) by demonstrating unworthiness, incompetency and dishonesty by leaving her clients unaccompanied and entering a bedroom alone wherein she began opening drawers and going through the homeowner's private belongings.

DETERMINATION

At the conclusion of the hearing in this matter, the Commission voted in favor of finding the violations and imposing the sanctions described in this Final Decision and Order. In arriving at the determination in this matter, the Commission took into consideration the documentary evidence submitted, the testimony of the witness, and the nature of and circumstances surrounding the Respondent's conduct.

The REC bears the burden of proving the allegations in the OTSC by a preponderance of the competent, relevant, and credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); In re Polk, 90 N.J. 550, 560 (1982). The evidence must be such as would "lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro Bottling Co., 26 N.J. 263, 275 (1958). Preponderance may be described as "the greater weight of credible evidence in the case. It does not necessarily mean evidence of the greater number of witnesses but means that evidence which carries the greater convincing power." State v. Lewis, 67 N.J. 47, 49 (1975).

Allegations Against the Respondent

The OTSC alleged that during a showing, the Respondent left her clients unaccompanied on the first floor and went into a bedroom on the second floor of the Property, and then opened several dresser drawers, and searched through them. It was further alleged that the Respondent removed a jewelry box and examined the contents inside, but did not remove any items from the Property. In her testimony, Respondent admitted to the alleged conduct and her behavior was captured by the homeowner on a Nest camera.

The allegations in the OTSC were proven by the preponderance of competent, relevant and credible evidence, which was not contested by the Respondent. This conduct demonstrates that the Respondent lacks the honesty, trustworthiness, character, and integrity for licensure required under N.J.S.A. 45:15-9(a) and demonstrates unworthiness, incompetency and dishonesty in violation of N.J.S.A. 45:15-17(e).

The Respondent's conduct constitutes a serious violation of the ethical and professional standards governing all licensees. The Respondent left her clients alone downstairs and unsupervised, while she went upstairs to a bedroom. Thereupon, she proceeded to open dresser drawers and go through the homeowner's belongings. She testified that she found the Property very well organized and opened drawers impulsively to see how the homeowner organized everything, but did not take anything. However, being curious and impulsive does not excuse Respondent's egregious behavior. And the fact that nothing was taken does not mitigate the violation. The act of searching through and inspecting the contents of a homeowner's closed dresser drawers in the bedroom unquestionably violated the homeowner's privacy and sense of security. The Respondent's conduct demonstrates a serious lack of judgment, and lack of appreciation for the high level of trust and confidence that homeowners must place in our licensees

when they list their homes for sale and essentially invite members of the public into their homes and personal spaces when they are not there. Homeowners must be able to depend on licensees to have the competency to know to how to conduct themselves at showing and have the trustworthiness, character, and integrity not to violated the homeowner's privacy. Rummaging through a homeowner's dresser drawers that contain personal items and property, and opening closed boxes to inspect its contents, is an egregious breach of the homeowner's privacy, and demonstrates dishonesty, unworthiness and incompetency.

The Respondent testified that she was not thinking, and going through the homeowner's belongings was very out of character for her. The Commission appreciates that the Respondent seemed genuinely remorseful. Notwithstanding, as observed in the Nest video and gleaned from Respondent's own testimony, Respondent's egregious conduct was done without any hesitancy and she did not consider the impropriety of her actions until she was confronted by the homeowner after the fact. 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 Comm'n, 29 N.J. Super. 178, 181-182 (App. Div. 1954). The word "unworthiness" signifies a lack of those ethical qualities that befit the vocation. Goodley, 29 N.J. Super. at 182. Good moral character, trustworthiness and integrity are certainly ethical qualities required by all real estate licensees. See N.J.S.A. 45:15-9(a). In this matter, the Respondent left her clients unaccompanied downstairs, went into a bedroom upstairs alone, and rifled through the homeowner's personal belongings. The Commission finds that the Respondent's conduct demonstrates a lack trustworthiness, character, and integrity required for licensure under N.J.S.A. 45:15-9(a), and further demonstrates incompetence, dishonesty, and unworthiness in violation of N.J.S.A. 45:15-17(e).

Penalty Against the Respondent

The Act charges the Commission with the “high responsibility of maintaining ethical standards among real estate brokers and sales[persons]” in order to protect New Jersey real estate consumers. Goodley, 29 N.J. Super. at 181-182. The Commission is empowered to suspend and revoke the licenses of, and impose fines against, brokers and salespersons that violate any of the offenses enumerated in N.J.S.A. 45:15-17 or the real estate regulations. Maple Hill Farms, Inc. v. New Jersey Real Estate Commission, 67 N.J. Super. 223, 232 (App. Div. 1961); Division of New Jersey Real Estate Commission 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 Commission has the power to suspend, revoke, or place on probation the license of any licensee for “any conduct which demonstrates unworthiness, incompetency, bad faith, or dishonesty.” N.J.S.A. 45:15-17(e). As set forth above, the Commission found that the Respondent’s conduct of intentionally leaving her clients unsupervised so that she could rummage through the homeowner’s personal belongings demonstrates bad faith, incompetency and unworthiness, in violation of N.J.S.A. 45:15-17(e). Indeed, respecting the personal property and privacy of the homeowner is a fundamental tenet that a licensee must follow when showing a property, and this was not done by the Respondent. Based upon these findings, the Commission is empowered, under the Act, to take action against the Respondent’s license. After considering the testimony and evidence presented, and in light of the violation committed by the Respondent, as set forth herein, the Respondent’s real estate salesperson license is revoked for a period of two years. The Respondent will need to be requalified for licensure.

Moreover, pursuant to N.J.S.A. 45:15-17, in addition to revocation of a license, the Commission may impose “a penalty of not more than \$5,000 for the first violation” of the Act, and a “penalty of not more than \$10,000 for any subsequent violation.” In Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), the Supreme Court established the following seven factors that must be considered in evaluating the imposition of fines in administrative proceedings and these factors are applicable to this matter which seeks the imposition of penalties under the Act: (1) the good or bad faith of the respondent; (2) the respondent’s ability to pay; (3) the amount of profits obtained from the illegal activity; (4) the injury to the public; (5) the duration of the illegal activity or conspiracy; (6) the existence of criminal or treble actions; and (7) any past violations. Id. at 137-139. No one Kimmelman factor is dispositive for or against fines and penalties. See Id. at 139 (“[t]he weight to be given to each of these factors by a trial court in determining... the amount of any penalty, will depend on the facts of each case.”).

The first factor is whether the respondent was acting in good or bad faith, which requires an assessment of how egregious the respondent’s conduct was and whether the respondent could have reasonably believed his conduct was legal. Kimmelman, 108 N.J. at 137. As discussed above, the Respondent’s conduct is egregious, and demonstrates a lack of judgment which rises to unworthiness. Further, it is unreasonable for the Respondent to believe that going through the homeowner’s private belongings was appropriate conduct for a licensee. Accordingly, this factor weighs in favor of imposing a penalty.

The Respondent did not provide any specific testimony or proofs in relation to the second Kimmelman factor, which addresses the Respondent’s ability to pay the fines imposed. Respondents who claim an inability to pay civil penalties bear the burden of proving their incapacity. NJREC v. Cortese, Final Order of Determination (08/09/17) (citing Goldman v. Shah,

OAL Dkt. No. BKI 11903-05, Initial Decision (04/15/08), Final Decision and Order (09/02/08)). The Respondent testified that she is 76 years old and widowed. However, no testimony or evidence was presented by Respondent attesting to her inability to pay a monetary penalty other sources of income. This factor is neutral.

The third factor Kimmelman addresses is the amount of profits obtained or likely to be obtained from the illegal activity. 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. In this instance, the Respondent does not appear to have obtained any profits due to her conduct. Accordingly, this factor does not weigh in favor of a penalty.

The fourth Kimmelman factor addresses the injury to the public. As discussed above, in order to protect consumers, the Commission is charged with “maintaining ethical standards among real estate brokers and sales[persons].” Goodley, 29 N.J. Super. at 182. Therefore, the public is harmed when an individual fails to comply with Commission regulations. Here, the Respondent entered into a bedroom without her clients and began to go through the homeowner’s belongings. When a licensee is unable to conduct herself in accordance with the high standards expected of her and her profession, the public’s confidence in the real estate industry is eroded. In this case, the injury to the public is indisputable. Moreover, this matter also presents an identifiable victim, the homeowner whose privacy was violated. The Commission must protect consumers and compel ethical conduct by its licensees. The injury to the public caused by the Respondent’s conduct weighs in favor of imposing a monetary penalty.

The fifth Kimmelman factor to be examined is the duration of the illegal activity. The Respondent’s conduct appears to be a singular occurrence and not part of a larger pattern. Accordingly, this factor does not weigh in favor of a monetary penalty.

The existence of criminal actions and whether a civil penalty may be unduly punitive if other sanctions have been imposed is the sixth factor. The Supreme Court held in Kimmelman that a lack of criminal punishment weighs in favor of a more significant civil penalty because the defendant cannot argue that he or she has already paid a price for his or her unlawful conduct. Kimmelman, 108 N.J. at 139. No criminal or civil proceedings have stemmed from the Respondent's actions. Accordingly, this factor weighs in favor of a monetary penalty given that the Commission's actions are the only consequence the Respondent will receive for her conduct.

The final factor examined in Kimmelman is previous relevant regulatory and statutory violations of the respondent, and if past penalties have been insufficient to deter future violations. Kimmelman, 108 N.J. at 139. The Respondent has been licensed for several decades without any prior disciplinary history. This factor does not weigh in favor of a monetary penalty.

In light of these factors, the Commission has determined that the Respondent shall pay a fine in the total amount of \$3,500.

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


1. The Respondent's real estate salesperson license is revoked for a period of two years.

The Respondent will have to requalify for licensure.

2. The Respondent shall pay a fine in the amount of \$3,500 with respect to the violations of the real estate laws and regulations as found in this Final Decision and Order.

SO ORDERED this 8th day of July, 2025.

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

Signed by:

CF31268CCQCF4CA
Denise Illes, Presiding Commissioner
New Jersey Real Estate Commission

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