

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,)	DOCKET NO.: BUR-13-001
)	
Complainant,)	
v.)	FINAL ORDER OF
)	DETERMINATION
OLIVIA ALFORD, licensed New Jersey)	
Real estate broker, License Ref. No. 8330410)	
and ALFORD REAL ESTATE INC., licensed)	
real estate broker, License Ref. No. 5800236)	
)	
Respondents.)	

This matter was heard at a plenary 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 March 19, 2013.

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

APPEARANCES: Lauren Glantzberg, Regulatory Officer, appeared on behalf of the complainant, the New Jersey Real Estate Commission ("REC"). Respondents Olivia Alford and Alford Real Estate, Inc. failed to appear.

STATEMENT OF THE CASE

The REC initiated this matter on its own motion through service of an Order to Show Cause ("OTSC") dated January 17, 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 OTSC alleged that Respondents Alford and Alford Real Estate Inc. ("Respondent Alford Real Estate") 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, when Respondents failed to comply with a Commission subpoena, failed to properly maintain their home office by ensuring that the brokerage office was independent of living quarters with a separate entrance plainly visible from the street, upon which the licensed premises shall have frontage, and when they failed to prominently display on the exterior of Alford Real Estate the name in which the broker is authorized to operate and the name of the individual licensed as its authorized broker. The OTSC also alleges that Respondent Alford made a substantial misrepresentation, procured a license by fraud and that these actions constituted fraud and dishonest dealing and conduct.

By letter dated January 18, 2013, the REC served the OTSC upon both Respondent Alford and Respondent Alford Real Estate, via both regular and certified mail, at Alford's home address, which also served as the business address. On or about January 25, 2013, Respondent Alford signed for the certified mail directed to herself and on behalf of Respondent Alford Real Estate. The regular mailing was not returned to the REC. Respondent Alford spoke with Regulatory Officer Lauren Glantzberg ("RO Glantzberg") prior to the initial return date of February 12, 2013 and indicated that she was ill and had suffered from a stroke. Alford acknowledged that she did not file an answer. The REC did not receive an answer from Respondent Alford nor from Respondent Alford Real Estate. On or about February 14, 2103, the REC served notice of the March 19, 2013 hearing date upon Respondents at the home and office address via both regular and certified mail. Both certified mailings were signed for by Alford and the regular mailing was not returned to the REC. Therefore, service of the OTSC to Respondents at the address on file with the REC constitutes proper service.

Despite receiving proper service, Respondent failed to answer the OTSC. Consequently, the matter was deemed uncontested and a proof hearing was scheduled on March 19, 2013. The Respondent failed to appear at the hearing despite receiving service of the OTSC and notice of the hearing date. The REC staff also received a call from Alford prior to the hearing date where she indicated that she did not intend to appear at the hearing.

At the hearing, the following exhibits were admitted into evidence:

- S-1 Change of Address Application and letter from Olivia Alford to the Real Estate Licensing Service Bureau dated January 31, 2012.
- S-2 Letter from Carmen Collazo, Supervisor of Licensing, to Olivia Alford c/o Alford Real Estate Inc. regarding office inspection dated February 7, 2012
- S-3 REC Subpoena to Olivia Alford to Appear and Produce Records dated May 1, 2013 and returnable on May 16, 2012.

TESTIMONY OF THE WITNESS

Investigator Lynne Guenot testified on behalf of the REC. Investigator Guenot testified that she is an investigator with the Real Estate Commission and was assigned the Alford case to investigate a change of address application from Respondent Olivia Alford.

Investigator Guenot identified Exhibit S-1 as the application for a change of address signed by Respondent Olivia Alford, dated January 31, 2012. Investigator Guenot testified that Respondent Alford answered “yes” to the location being a private residence and attached a letter stating she is familiar with regulation N.J.A.C. 11:5-4.4(b). Pursuant to application instructions, Respondent Alford was directed to confirm in said letter that she was familiar with N.J.A.C. 11:5-4.4(b) and that her office was in compliance with this rule.

Respondent Alford only stated that she was familiar with this regulation in her January 31, 2012 letter.

Investigator Guenot further identified Exhibit S-2 as the letter sent by REC licensing staff, dated February 7, 2012, stating that her license was being processed pending final inspection of her home office to ensure compliance.

Investigator Guenot further testified that she inspected the home office on April 12, 2012 at which time she observed that there was no separate entrance from the main living quarters and there was no signage identifying the broker of record. Investigator Guenot testified that she entered through the residence and spoke with Respondent's husband. Respondent's husband stated that Respondent was ill.

During her visit, Investigator Guenot also spoke to Alford at the kitchen table. Investigator Guenot observed that Respondent Alford had significant problems with her mobility. Investigator Guenot then informed Respondent Alford that she was not in compliance with the home office requirements. Respondent Alford stated that she had not been doing any real estate business. Respondent Alford then identified a real estate licensee who had worked under her tutelage, but then stated that this licensee was no longer active.

Investigator Guenot further identified Exhibit S-3 as a subpoena made returnable for May 16, 2012 which was issued by the REC to Respondent Alford. The subpoena requested copies of escrow and business account statements, and copies of all real estate transactions between January 31, 2012 and May 15, 2012. Investigator Guenot testified that no response or records were produced by Respondent Alford.

FINDINGS OF FACT

Based upon 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. Respondent Olivia Alford is a formerly licensed New Jersey real estate broker whose license expired on July 1, 2013, formerly licensed as broker of record of Alford Real Estate, Inc., licensed real estate broker, whose office is located at 20 Buttercup Lane, Willingboro, New Jersey.
2. Respondent Alford Real Estate, Inc., is a formerly licensed real estate broker, whose license expired on July 1, 2013 and whose office is located at 20 Buttercup Lane, Willingboro, New Jersey.
3. On or about January 31, 2012, Respondent Alford submitted an application for a change of address to the Real Estate Commission. On this application, Respondent Alford listed the new address for Respondent Alford Real Estate as 20 Buttercup Lane, Willingboro, New Jersey.
4. The application contained the following question: "Is this location a private residence?" If answered yes, please submit a letter that you are familiar with N.J.A.C. 11:5-4.4(b) and your office is in compliance with this rule. Respondent answered this question in the affirmative.
5. Respondent submitted a letter to the Commission dated January 31, 2012, indicating only that she is familiar with N.J.A.C. 11:5-4.4(b). Respondent did not claim to be in compliance with the rule.

6. On or about February 7, 2012, the Department of Banking and Insurance, Licensing Services Bureau – Real Estate sent a letter to Respondent Alford indicating that her application for licensure was being processed pending final inspection of the office.
7. On or about April 12, 2012, a Real Estate Commission investigator visited Respondent's home office to determine if the office was in compliance with the Real Estate Commission rules and regulations; and
8. At the time of the investigator's visit, the Respondent's home office had no exterior sign identifying the name of the business or the broker and had no separate entrance from the main living quarters. When the investigator interviewed Respondent Alford during the visit, she explained that she was ill. The investigator observed that Respondent's mobility was compromised.
9. On or about May 1, 2012, a Commission investigator issued a subpoena directing an appearance by Olivia Alford at the offices of the Real Estate Commission returnable on May 16, 2012 and requested the production of records of Alford Real Estate Inc.
10. Respondents failed to comply with the subpoena.

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. Respondents demonstrated unworthiness because they failed to respond to a subpoena issued by the Commission compelling an appearance and the production of documents during the course of an investigation and demonstrated incompetency because Respondents failed to comply with the home office requirements of N.J.A.C. 11:5-4.4(b), each in violation of N.J.S.A. 45:15-17e (two counts).

2. Respondents violated N.J.A.C. 11:5-4.4(b) and N.J.S.A. 45:15-17t because they did not properly maintain their home office by ensuring that the office is independent of living quarters with a separate entrance plainly visible from the street upon which the licensed premises shall have frontage.
3. Respondents violated N.J.S.A. 45:15-12 by failing to have prominently displayed, on the exterior of Alford Real Estate Inc., the name in which the broker is authorized to operate and the name of the individual licensed as its authorized broker.
4. Respondent Alford did not violate N.J.S.A. 45:15-17a because she did not make a substantial misrepresentation on the application.
5. Respondent Alford did not violate N.J.S.A. 45:15-17n because she did not procure a license by fraud, misrepresentation and deceit.
6. Respondent Alford did not violate N.J.S.A. 45:15-17l because her actions did not constitute fraud and dishonest dealing.

DETERMINATION

In arriving at the determination in this matter, the Commission took into consideration the testimony and credibility of the witness and the undisputed documentary evidence admitted during the course of the hearing.

The Commission finds that Respondent Alford's home office did not comply with the Real Estate Brokers and Salespersons Act, N.J.S.A. 45:15-1 et seq, and the Regulations for the New Jersey Real Estate Commission, N.J.A.C. 11:5-1.1. N.J.A.C. Specifically, 11:5-4.4(b) provides that if a real estate brokerage office is located in a residence then "it shall be independent of the living quarters and shall have a separate exterior entrance plainly visible from the street upon which the licensed premises shall have frontage." Additionally, N.J.S.A. 45:15-

12 requires that every place of business maintained by a real estate broker have prominently displayed on the exterior thereof the name in which the broker is authorized to operate and, “in the case of a corporation or partnership, the name of the individual licensed as its authorized broker and the words Licensed Real Estate Broker”.

On January 31, 2012, Respondent Alford submitted a change of address application to the REC indicating that she was moving the location of her brokerage, Respondent Alford Real Estate, to a private residence. She also submitted a letter, as instructed in the application, indicating that she was familiar with N.J.A.C. 11:5-4.4(b) which sets forth the requirements for brokerage offices. However, in the letter she submitted (Exhibit 1), she did not state she was in compliance with the statutory requirements.

Investigator Guenot testified that during her April 12, 2012 site visit to Respondent Alford’s home, and the proposed new location for Respondent Alford Real Estate, that she observed that the requirements of N.J.S.A. 11:5-4.4(b) were not met. Namely, she testified that there was no separate entrance from the living quarters and there was no sign displayed on the exterior identifying the residence as Alford Real Estate. Consequently, Respondents are in violation of N.J.A.C. 11:5-4.4(b), N.J.S.A. 45:15-17t and N.J.S.A. 45:15-12.

Investigator Guenot also identified Exhibit 3 as a subpoena that was issued to Respondent Alford on May 1, 2012 directing her to appear on May 16, 2012 and produce documents and records for Respondent Alford Real Estate. Receipt of this subpoena was acknowledged by Alford. (Exhibit 3). Respondents’ failed to respond or comply in any way to the subpoena in violation of N.J.S.A 45:15-8.

The evidence presented does not support a finding that Respondent Alford made a substantial misrepresentation on her application, nor that she procured a license by fraud,

misrepresentation and deceit. Moreover, Respondent Alford did not engage in fraud and dishonest dealing because even though she sought to change her address on the application to a private residence, she did not falsely indicate that she was in compliance with the requirements of N.J.A.C. 11:5-4.4(b) in her letter. Therefore, Respondent Alford did not violate N.J.S.A. 45:15-17a, N.J.S.A. 45:15-17n and N.J.S.A. 45:15-17l.

The Real Estate Brokers and Salesperson 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 v. New Jersey Real Estate Comm’n, 29 N.J. Super. 178, 181-182 (App. Div. 1954). Thus, the Commission has the power to suspend or revoke the licenses of brokers and salespersons, and to impose fines, for any acts that violate any of the offenses enumerated in N.J.S.A. 45:15-17 or the real estate regulations. 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 sum, the undisputed facts show that Respondent Alford did not have a home office that complied with the Commission’s rules in violation of N.J.A.C. 11:5-4.4(b). In this case, Alford responded “Yes” to the application question that asked, “Is this location a private residence?” The application further stated this “if answered yes, please submit a letter that you are familiar with N.J.A.C. 11:5-4.4(b) and your office is in compliance with this rule.” Respondent Alford did provided a letter dated January 31, 2012 stating that she was familiar with N.J.A.C. 11:5-4.4(b), but provided no response with respect to compliance.

The Real Estate Commission has previously imposed significant sanctions for violations similar to those found above, including license revocation and fines. See NJREC v. Ronald Klim, Final Order of Determination, Dkt. No. OCE-10-001 (11/19/10) (did not properly

maintain his home office by ensuring that the office is independent of living quarters with a separate entrance plainly visible from the street upon which the licensed premises shall have frontage in violation of N.J.A.C. 11:5-4.4(b), negligent misrepresentations on application constitutes a substantial misrepresentation, demonstrates incompetency, fines \$2,500); and NJREC v. Katy C. Shiau, Docket No. MID-05-001 (1/11/07) (failure to comply with home office requirements, broker's license revoked for two years, fined \$1,000). However, in this matter, the Commission took into consideration Respondent Alford's illness as a mitigating factor and the fact that she did not represent that she was in compliance with the home office requirements.

The following analysis of the Kimmelman factors demonstrates that a limited penalty is appropriate. 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 License 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.

First, Respondent Alford's actions did demonstrate a limited degree of bad faith. Second, no evidence was presented regarding her ability to pay a fine. Third, no evidence was presented as to whether or not Respondents profited from her actions. Fourth, the harm to the public is minimal because of Respondent's illness and her claim that she was not actively engaged in the real estate business. Fifth, the duration of the Respondents' actions appears to be minimal. Sixth, there are no criminal or treble actions associated with these facts. Finally, to the


Commission's knowledge, there appears to be no prior violations of the Commission's rules by Respondents.

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

- I. Respondent Olivia Alford's real estate broker's license shall be revoked for six months from the date of this Order.
- II. Respondent Alford Real Estate Inc.'s brokerage license shall be revoked for six months from the date of this Order.

SO ORDERED this 10TH day of August, 2015.

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



Robert L. Kinniebrew
Executive Director
New Jersey Real Estate Commission