

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,)	DOCKET NO.: CAP-18-007
)	REC REF. NO.: 10004702
Complainant,)	
)	
v.)	
)	FINAL ORDER OF
GREGORY SCHOULTZ, formerly licensed)	DETERMINATION
New Jersey real estate broker (RB8533729), and)	
broker of record of Townsends Inlet Realty,)	
formerly licensed real estate broker (CO8800316),)	
)	
Respondent.)	

This matter was heard at a hearing by the New Jersey Real Estate Commission (“Commission”) at the Department of Banking and Insurance, State of New Jersey in the Commission Hearing Room, 20 West State Street, Trenton, New Jersey on September 25, 2018.

BEFORE: Commissioners Linda K. Stefanik, Eugenia K. Bonilla, Sanjeev Aneja, Christina Banasiak, Jacob Elkes, and Denise M. Illes.

APPEARANCES: Marianne A. Gallina, Regulatory Officer (“RO Gallina”), appeared on behalf of the complainant, the New Jersey Real Estate Commission staff (“REC”). Gregory Schoultz (“Respondent”) did not appear at the hearing.

STATEMENT OF THE CASE

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated May 21, 2018, 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 was served via regular and certified mail at the Respondent’s home address at 11 Wilkie Boulevard, Marmora, New Jersey, 08223 and business address at Townsends Inlet Realty, Inc., 8505 Landis Avenue, Sea Isle City, New Jersey, 08243.

The OTSC alleged that the Respondent, acting as broker of record for Townsends Inlet Realty, Inc. ("Townsends"), commingled monies from the rental escrow account with monies held in Townsends' operating account for an extended period of time. The OTSC alleged that when the Respondent self-reported his conduct to the REC, neither the rental escrow account nor the operating account was funded. The OTSC alleged that the Respondent:

Commingled the money of his principals with his own, and failed to maintain in a special account, separate and apart from personal or other business accounts, all monies received by the Respondent acting in the capacity of real estate broker or as an escrow agent or the temporary custodian of funds of others in real estate transactions, in violation of N.J.S.A. 45:15-17(o), N.J.A.C. 11:5-5.1(a) and N.J.A.C. 11:5-5.1(c);

Engaged in conduct which constitutes fraud and dishonest dealing, in violation of N.J.S.A. 45:15-17(l);

Failed to protect and promote the interests of his principals, in violation of N.J.A.C. 11:5-6.4(a);

Failed to account for or pay over monies belonging to others which came into his possession as a licensee, in violation of N.J.S.A. 45:15-17(d);

Made substantial misrepresentations as to the status of the escrow account when the account ledger he maintained and produced to a REC investigator showed that Townsends was holding \$65,857.50 as of September 20, 2016, when in reality, the account had a negative balance, in violation of N.J.S.A. 45:15-17(a); and,

Demonstrated unworthiness, incompetency, bad faith and dishonesty, in violation of N.J.S.A. 45:15-17(e).

The Respondent did not file an Answer to the OTSC. Accordingly, on June 26, 2018, the Commission reviewed the pleadings and deemed this matter uncontested. On July 13, 2018, a letter was sent to the Respondent via regular and certified mail to his home address at 11 Wilkie Boulevard, Marmora, New Jersey, 08223, scheduling this hearing for September 25, 2018. The Respondent signed the return receipt and accepted the letter on July 20, 2018. Despite proper

service, the Respondent did not appear at the hearing. RO Gallina requested to proceed ex-parte with the hearing to substantiate the allegations against the Respondent set forth in the OTSC. The hearing proceeded as scheduled on September 25, 2018.

At the September 25, 2018 hearing, the following exhibits were admitted into evidence by the REC, without objection:

- S-1 Letter to Gregory Schoultz from Marianne A. Gallina, dated July 13, 2018; Certified mail return receipt signed by Gregory Schoultz, dated July 20, 2018; Letter to Gregory Schoultz from Patrick Mullen, Director of Banking and Insurance, dated May 24, 2018¹; Certified Mail Envelope with “Return to Sender, Unclaimed, Unable to Forward” from business address at Townsends Inlet Realty; USPS Tracking Results for 70140510000091002543, showing delivery date of May 29, 2018 at 4:08pm “Left with Individual, Marmora, New Jersey, 08223”;
- S-2 Letter from Gregory Schoultz to the New Jersey Real Estate Commission, dated September 21, 2016;
- S-3 Townsends Inlet Realty, NJREC Case #10004702, Tenant Ledger Analysis of 9/20/2016, created by REC Investigator Robert Spillane;
- S-4 Townsends Inlet Realty, Inc. Lease Agreement for Beth Green, dated October 28, 2015 for occupancy from July 2, 2016 to July 9, 2016; Tenant Ledger Report for 9300 Pleasure Avenue, 1st and 2nd Floor, dated September 20, 2016 for tenants Beth Green, Geri Wolf, and Eileen Vorlander;
- S-5 Townsends Inlet Realty, Inc. Lease Agreement for Joseph Ryan, dated August 12, 2016 for occupancy from July 29, 2017 to August 12, 2017; Deposit Check #5127 for \$1,000 from Joseph Ryan, dated November 3, 2015, and deposited into Townsends Inlet Realty, Inc., Rental Escrow Account; Letter from Joseph Ryan, dated September 15, 2016; Tenant Ledger Report for 54 79th St. West, dated September 20, 2016;
- S-6 Townsends Inlet Realty, Inc. Lease Agreement for Dottie Sheridan, dated March 6, 2016 for occupancy from August 7, 2016 to August 13, 2016²; Tenant Ledger Report for 117 93rd St. West, dated September 20, 2016;

¹ The May 24, 2018 letter was sent by certified mail to the Respondent at both his home address and his business address at Townsends Inlet Realty, Inc., at 8505 Landis Avenue, Sea Isle City, New Jersey, 08243.

² The lease itself is dated March 6, 2016; however, one of the signatures on the lease is dated March 29, 2016.

- S-7 Townsends Inlet Realty, Inc. Lease Agreement for Lucia Burke, dated July 25, 2016 for occupancy from August 6, 2016 to August 13, 2016; Tenant Ledger Report for 229 76th St. West, dated September 20, 2016;
- S-8 Townsends Inlet Realty, Inc. Lease Agreement for Ed Gasiewski, dated March 25, 2016 for occupancy from August 6, 2016 to August 13, 2016³; Tenant Ledger Report for 9400 Roberts Ave. #109, dated September 20, 2016;
- S-9 Ocean City Home Bank Statements for Townsends Inlet Realty, Inc., Rental Escrow Account, dated January 31, 2016, April 30, 2016, May 31, 2016, July 31, 2016, August 31, 2016, and September 20, 2016; and
- S-10 Townsends Inlet Realty, NJREC Case #10004702, Account Analysis: Escrow v. Operating, 1/1/2016 thru 9/20/2016, created by REC Investigator Robert Spillane.

TESTIMONY OF THE WITNESS

Robert Spillane

Robert Spillane (“Spillane”) testified on behalf of the REC. Spillane stated that he has been employed as an investigator at the REC for the last six and one-half years. Spillane stated that he is a nationally certified real estate investigator and is an inactively licensed New Jersey real estate broker.

Spillane stated that the Respondent first came to the attention of the REC on September 9, 2016, when the Respondent contacted Spillane by phone to advise that he had no monies left in either his rental escrow account or operating account. Spillane stated that within days of receiving the Respondent’s initial call, several consumer complaints were filed against the Respondent with the REC, confirming the Respondent’s self-reporting.

Spillane identified Exhibit S-2 as a written statement provided by the Respondent, dated September 21, 2016, following an interview on September 20, 2016. Spillane stated that Exhibit

³ The lease itself is dated March 25, 2016; however, both signatures on the lease are electronically dated March 26, 2016.

S-2 is an incomplete summary of the interview. For example, Spillane notes that in this written statement the Respondent stated that he bounced a check for \$2,800, which is incorrect as the check the Respondent is referring to was for \$2,880. In addition, during the interview, the Respondent stated he had bounced several additional checks which were returned for insufficient funds, however, these checks are not mentioned in his written statement.

Spillane noted that during the interview, the Respondent stated that he had opened both his rental escrow account and operating account in 1989 in such a manner that if the operating account was overdrawn, those funds would be automatically withdrawn from his rental escrow account. Spillane noted that during the interview the Respondent stated that he had never reconciled his bank accounts. In his written statement, the Respondent acknowledges that he should have reconciled his accounts earlier.

Spillane stated that during his investigation he was able to obtain rental escrow account statements, operating account statements, and Townsends' rental transaction records.⁴ Spillane testified that using the rental transaction records provided, he was able to create Exhibit S-3, titled "Tenant Ledger Analysis." In summary, Spillane stated that 24 property owners represented by Townsends were due a total of \$48,870 from the Respondent's rental escrow account. In addition, 70 tenants were due a total of \$27,800. In total, Spillane stated that there were 94 victims who were owed a total of \$76,670. Spillane noted that funds of "long term tenants"⁵ were not included

⁴ Spillane noted that the rental transaction records he obtained for Townsends only included lease agreements. Spillane noted that these records did not include the associated property listings.

⁵ Spillane described "long term tenants" as those who remained in a property for several years. The security deposit of these tenants was paid and rolled over year after year and was documented in their corresponding lease agreements. Spillane did not note how many "long term tenants" were impacted by the Respondent's conduct.

in the rental transaction records, however, pursuant to a review of the documentation provided, Spillane found that these tenants were due an additional \$5,250.⁶

Spillane explained that Exhibits S-4 through Exhibit S-8 are rental agreements randomly selected from the 94 transactions listed on Exhibit S-3.

Spillane identified Exhibit S-4 as a lease agreement for tenant Beth Green (“Green”). Spillane noted that Exhibit S-3 indicates that the property owner, Robert Ziemer (“Ziemer”), received a check in the amount of \$2,880 from this rental transaction, which was written against the rental escrow account and returned for insufficient funds. Spillane identified a notation on the lease agreement that Green had paid a \$200 security deposit, which had been rolled over from a previous lease agreement. Furthermore, Spillane identified Green as one of the aforementioned “long term tenants.” Spillane noted that this \$200 security deposit had not been returned to Green.

Spillane identified Exhibit S-5 as a lease agreement for tenant Joseph Ryan (“Ryan”). Spillane stated that Ryan was still due a \$500 security deposit which had been rolled over from a previous lease and indicated on the lease agreement by a notation made by the Respondent. These monies should have been held in the rental escrow account at issue, and at the time of Spillane’s investigation, these monies were still due to Ryan but were not available.

Spillane identified Exhibit S-6 as a lease agreement for tenant Dottie Sheridan (“Sheridan”). The property owner involved in this transaction is Albert Lory (“Lory”). Spillane stated that he met with Lory, who had filed a complaint alleging that he was still due \$900 for “profits received” from the Respondent. Spillane stated that his analysis of the records provided

⁶ During Spillane’s testimony, he indicated that transactions for “long term tenants” were not recorded on the tenant ledgers provided by the Respondent, forming the basis of Exhibit S-3. However, later in his testimony, Spillane identifies several individuals as “long term tenants” whose transactions appear on Exhibit S-3.

indicated that Lory was actually still due \$990. Furthermore, Sheridan had paid a \$400 security deposit which had not been returned to her.

Spillane identified Exhibit S-7 as a lease agreement for tenant Lucia Burke (“Burke”). Spillane noted that Burke paid a security deposit of \$500 to secure the rental property at 229 West 76th Street.⁷ A notation on S-7 indicates that the \$500 deposit was rolled over from a previous rental.

Spillane identified Exhibit S-8 as a lease agreement for tenant Ed Gasiewski (“Gasiewski”). The owner of the property was Robert Cohen. Spillane noted that Gasiewski had provided a \$500 security deposit for this rental, which was to be held in the rental escrow account and was not available for return from said account.

Spillane identified Exhibit S-9 as statements of Townsends’ rental escrow account from January 1, 2016 through September 16, 2016.⁸ Specifically, Spillane testified that Townsends’ bank accounts were set up to automatically draw monies from the rental escrow account to cover overages in the operating account. Spillane stated that pursuant to his review of these statements, between January 2016 and September 2016, there were 81 instances of automatic withdrawals from the rental escrow account into the operating account. Spillane noted that he was unable to review statements from the previous 27 years while Townsends was in operation.

Spillane identified Exhibit S-10 as his analysis of the records provided in Exhibit S-9. Spillane reiterated that there were 81 instances of automatic withdrawals from the rental escrow

⁷ During Spillane’s testimony, it became evident that the \$500 security deposit paid by Burke was rolled over from a previous security deposit she had paid to secure a rental at 128 89th Street. The 89th Street property was rented to Burke by Karen Kirchner and the Respondent indicated to Spillane that the tenant was due \$500, which was no longer held in the rental escrow account.

⁸ Exhibit S-9 does not include rental escrow account statements from February 2016, March 2016, and June 2016.

account into the operating account, totaling \$63,497.54. Spillane noted that with every automatic withdrawal, a \$10 fee was assessed against the rental escrow account, totaling \$810.⁹ In addition, Spillane noted that \$15,450 was manually withdrawn from the rental escrow account and deposited into the operating account during this time period.

Further, as it relates to the operating account, Spillane noted that the Respondent wrote 19 checks made payable to himself from the operating account during this time period. Spillane noted that these checks were included for review in Exhibit S-10. Furthermore, Spillane stated that a review of the operating accounts transactions revealed that the Respondent used the operating account to pay for both business and personal expenses. Spillane further noted that the funds in the operating account were only available because the monies had been automatically transferred from the rental escrow account.

Spillane noted that during his interview with the Respondent, the Respondent stated that if Townsends was to facilitate a sale, the escrow funds from those sales were never held by the company, but by a title company or an attorney. Spillane concluded that there only appeared to be one escrow account, the rental escrow account he examined.

Spillane stated that in early September 2016, he was advised by the detective bureau of the Sea Isle City Police Department that an investigation had been opened into the Respondent for the "theft of trust funds." One year later, he was advised by the Sea Isle City Police Department that the Cape May County Assistant Prosecutor declined to charge the Respondent because the Respondent had represented that he would provide restitution to his victims. In his second

⁹ Spillane testified that based on his review of Exhibit S-9, there were 81 instances of automatic transfers of monies the Respondent's rental escrow and operating accounts between January 2016 and September 2016. However, a review of rental escrow statements provided for this time period indicates that there were 51 verifiable automatic transfers and each automatic transfer incurred a \$10 fee assessed against the rental escrow account, totaling \$510. Exhibit S-9.

conversation with the Sea Isle City Police Department, Spillane was advised that the department was researching whether they could bring criminal charges at the municipal level, but Spillane was unaware of whether such charges were ever brought. Lastly, Spillane noted that, to date, there is no indication or evidence that any restitution has been paid to the victimized consumers.

FINDINGS OF FACT

Based on the pleadings, the testimony of the witnesses, and the documentary evidence duly admitted into the record, the Commission makes the following findings of fact.

1. The Respondent is a formerly licensed New Jersey real estate broker. At all relevant times, Respondent was also the broker of record at Townsends Inlet Realty, Inc., located at 8505 Landis Avenue, Sea Isle City, New Jersey, 08243.
2. The Respondent's license, as well as the corporate licenses of Townsends Inlet Realty, expired on July 30, 2017 and have not been renewed or reinstated.
3. On September 9, 2016, the Respondent contacted the REC to report that there were no funds remaining in his rental escrow or operating account.
4. By letter dated September 21, 2016, the Respondent stated that he had opened both his rental escrow account and operating account in 1989 in such a manner that if the operating account was overdrawn, those funds would be automatically withdrawn from the rental escrow account and vice versa. Exhibit S-2.
5. In the same September 21, 2016 letter, the Respondent stated he "was unaware of the dire circumstance at the time of the overdraft but would have known better if [he] had paid attention to bookkeeping". Exhibit S-2.
6. Following the Respondent's self-reporting, the REC received several consumer complaints relating to the Respondent's conduct. The Respondent's conduct involved summer rentals

handled by Townsends. Complaints alleged that rents collected by the Respondent, on behalf of Townsends, were not turned over to the property owners of the individual properties. Complaints also alleged that the Respondent did not return security deposits owed to rental property tenants.

7. Between January 2016 and September 2016, there were 51 instances of the automatic transfer of funds from the rental escrow account to the operating account to cover overdrafts in the operating account, totaling \$42,489.26. Exhibit S-9.
8. Between January 2016 and September 2016, \$510 in fees were assessed against the rental escrow account, as a \$10 fee was assessed every time an automatic withdrawal took place. Exhibit S-9.

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. The Respondent commingled the money of his principals with his own, and failed to maintain in a special account, separate and apart from personal or other business accounts, all monies received by the Respondent acting in the capacity of real estate broker or as an escrow agent or the temporary custodian of funds of others in real estate transactions, in violation of N.J.S.A. 45:15-17(o), N.J.A.C. 11:5-5.1(a) and N.J.A.C. 11:5-5.1(c).
2. The Respondent's conduct in commingling the monies in the rental escrow accounts and operating accounts and his failure to maintain all monies received while acting in the capacity of a real estate broker or escrow agent in a real estate transaction constitutes fraud and dishonest dealing, in violation of N.J.S.A. 45:15-17(l).

3. By commingling the money of his principals, his failure to maintain separate accounts, and his failure to account for or pay over monies belonging to others that came into his possession as a licensee, the Respondent failed to protect and promote the interests of his principals, in violation of N.J.A.C. 11:5-6.4(a).
4. The Respondent failed to account for or pay over monies belonging to others which came into his possession as a licensee, in violation of N.J.S.A. 45:15-17(d).
5. There is insufficient evidence to support a finding that the Respondent made substantial misrepresentations as to the status of the rental escrow account to REC Investigator Spillane, in violation of N.J.S.A. 45:15-17(a).
6. The Respondent demonstrated unworthiness, incompetency, bad faith, and dishonesty, in violation of N.J.S.A. 45:15-17(e).

DETERMINATION

At the conclusion of the hearing and executive session in this matter, the Commission voted in favor of finding certain violations and imposing the sanctions described herein. In arriving at the determination in this matter, the Commission took into consideration the testimony presented at the hearing and the undisputed documentary evidence admitted at the hearing.

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 allegations set forth in the OTSC stem from the Respondent's undisputed conduct while serving as broker of record for Townsends. The Respondent self-reported to the REC that both his rental escrow and operating accounts had been emptied of funds.

In a written submission to the REC, the Respondent admitted that his rental escrow account was linked to his operating account to provide funds when the operating account was overdrawn. Exhibit S-2. N.J.S.A. 45:15-17(o) and N.J.A.C. 11:5-5.1(a) require brokers to maintain and deposit the monies of his principals "in a special account, separate and apart from personal or other business accounts, all moneys received by a real estate broker, acting in said capacity, or as escrow agent, or the temporary custodian of the funds of others, in a real estate transaction." In addition, N.J.A.C. 11:5-5.1(c) provides that the failure to promptly segregate any moneys received, which are to be held for the benefit of others, constitutes commingling. In the instant matter, as the Respondent admits, and the documentary evidence provided confirms, there were 51 instances where monies were automatically drawn from his rental escrow account when his other business account was overdrawn, totaling \$42,489.26 in transferred funds, and the imposition of \$510 in fees. Exhibit S-2 and S-9. The funds were never kept in a "special account, separate and apart from other business accounts." Funds from the rental escrow account were always available to be automatically transferred to the operating account on an as needed basis. This arrangement is in direct violation of N.J.S.A. 45:15-17(o), N.J.A.C. 11:5-5.1(a), and N.J.A.C. 11:5-5.1(c).

This documentary evidence indicates seven instances¹⁰ that the Respondent failed to account for or pay over monies belonging to others that came into his possession as a licensee, in

¹⁰ Spillane testified that his Tenant Ledger Analysis (Exhibit S-3) is based on his review of Townsends' Tenant Ledger Reports and relates to 85 transactions. However, the documents entered into evidence at the hearing relates only to seven of these 85 transactions. The documents reviewed by Spillane for the remaining transactions were not admitted into evidence and form the

violation of N.J.S.A. 45:15-17(d). Specifically, the Respondent failed to pay over \$200 due to Green and \$2,880 due to Ziemer (Exhibit S-3, S-4 and S-9); \$500 due to Ryan (Exhibit S-3, S-5 and S-9); \$400 to Sheridan and \$630 to Lory (Exhibit S-5, S-6 and S-9); \$500 due to Burke (Exhibit S-3, S-7 and S-9); and, \$500 due to Gasiewski (Exhibit S-3, S-8 and S-9). Each instance reflects the Respondent's failure to pay over monies belonging to the tenant or the property owner, which came into his possession as a licensee, in violation of N.J.S.A. 45:15-17(d). Furthermore, the Respondent's failure to pay over monies that came into his possession as a licensee demonstrate his failure to protect and promote the interests of his principal, in violation of N.J.A.C. 11:5-6.4(a); constitutes fraud and dishonest dealing, in violation of N.J.S.A. 45:15-17(l); and unworthiness, incompetency, bad faith, and dishonesty, in violation of N.J.S.A. 45:15-17(e).

Lastly, no documentary or testimonial evidence was submitted to support a finding that the Respondent made substantial misrepresentations as to the status of the escrow account to REC Investigator Spillane as alleged in paragraph 11 of the OTSC. Therefore, no violation of N.J.S.A. 45:15-17(a) is found.

Penalties Against the Respondent

The Real Estate Brokers and Salespersons Act, N.J.S.A. 45:15-1 to -42 ("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). The nature and duties

basis for statements made by Spillane in both his Tenant Ledger Analysis and testimony, which were offered for the truth asserted. These statements constitute hearsay, which is admissible in an administrative hearing. However, notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. See N.J.A.C. 1:1-15.5(a) to (b). As no such evidence was provided relating to the remaining entries on Spillane's Tenant Ledger Analysis, the Commission considered the seven transactions that were substantiated by documentary evidence.

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. Thus, 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).

In addition, "if a licensee is deemed to be guilty of a third violation of any of the provisions of [N.J.S.A. 45:15-17], whether of the same provision or of separate provisions, the commission may deem that person a repeat offender, in which event the commission may direct that no license as a real estate broker, broker-salesperson, or salesperson shall henceforth be issued to that person." Id.

As set forth above, the Commission found that the Respondent's conduct constitutes 51 violations of N.J.S.A. 45:15-17 (o), N.J.A.C. 11:5-5.1(a), and N.J.A.C. 11:5-5.1(c), wherein the Respondent commingled the money of his principals with his own and failed to maintain in a special account, separate and apart from personal or other business accounts, all monies received by the Respondent acting in the capacity of real estate broker or as an escrow agent or the temporary custodian of funds of others in real estate transactions. In addition, the Commission found that the Respondent's conduct is in violation of the following: N.J.S.A. 45:15-17(l) (prohibits engaging in conduct which constitutes fraud and dishonest dealing); N.J.A.C. 11:5-6.4(a) (failed to protect and promote the interests of his principals); N.J.S.A. 45:15-17(d) (failed

to account for or pay over monies belonging to others which came into his possession as a licensee); and, N.J.S.A. 45:15-17(c) (demonstrated unworthiness, incompetency, bad faith and dishonesty). Based upon these findings, the Commission is empowered, under the Act, to consider the Respondent a “repeat offender.”

The Respondent’s actions while acting as broker of record at Townsends demonstrate a disregard of the high standards that are required of real estate licensees in this State and constitute over 51 violations of the Act. As such, the Commission finds that the lifetime revocation of the Respondent’s real estate broker license to be an appropriate sanction for the violations found herein. The Commission notes the Respondent’s admission that he “was unaware of the dire circumstance at the time of the overdraft but would have known better if [he] had paid attention to bookkeeping” because he had not reconciled his accounts in a very long time is demonstrative of the Respondent’s incompetency and unworthiness for licensure. The Respondent’s failure to “pay attention to bookkeeping” lead to at least 51 instances of the automatic transfer of funds from the rental escrow account to the operating account to cover overdrafts in the operating account, totaling \$42,489.26, and the imposition of \$510 in fees assessed against the rental escrow account. Exhibit S-9. Furthermore, due to the Respondent’s incompetence, no funds remained in the rental escrow account when monies were due to numerous property owners and tenants represented by Townsends. The Respondent’s written statement demonstrates his failure to recognize the serious nature of his conduct and his responsibilities to uphold his fiduciary responsibilities as a broker. In addition, while acting as a broker in these transactions, the Respondent had a fiduciary obligation to protect and promote, as he would his own, the interests of the client or principal he has undertaken to represent, and to safeguard escrow monies. By commingling funds between the rental escrow account and operating account and failing to account for monies due, the Respondent

has breached these fiduciary duty responsibilities. This breach of the Respondent's fiduciary obligations also translates to injury to the public at large, who need to remain confident that real estate licensees will handle other parties' monies in the appropriate manner.

Thus, after considering the testimony and evidence presented, and in light of the multiple violations committed by the Respondent, as described herein, the Commission imposes a lifetime revocation of any and all real estate licenses held by the Respondent. The lifetime license revocation of licensees who have engaged in conduct similar to the Respondent has been imposed in similar cases. See New Jersey Real Estate Commission v. Patrick J. Murphy and PATMURPHY.COM, Dkt. No. CAM-13-013, Final Order of Determination, (06/29/16) (Lifetime revocation of a broker's license after breaches of fiduciary duty including commingling and failure to deposit and maintain funds); New Jersey Real Estate Commission v. Edward Francis Stinson, et al., Dkt. No. CAM-13-023, Final Order of Determination, (07/28/15) (Lifetime revocation all real estate licenses after finding the Respondents commingled the money of their principals with their own and failed to maintain in special accounts). Therefore, the sanctions imposed in this matter are appropriate in light of the violations found. Pursuant to N.J.S.A. 45:15-17, 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 in order 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 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) any 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. Each of these factors is discussed below. 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.”).

With regard to the first factor, whether the Respondent acted in bad faith, the Respondent, as a licensed broker and while acting as Townsends’ broker of record, commingled monies between his rental escrow account and operating account, and as a result, drained the rental escrow account of funds due to several of property owners and tenants. Exhibits S-3, S-9. The Respondent admits that when he initially set up the rental escrow and operating accounts in 1989, the accounts were connected so that any overdrafts would be paid by the other account. Additionally, pursuant to the testimony of Spillane, the Respondent had represented to the Cape May County Assistant Prosecutor that he would provide restitution to his victims. However, as of the date of the hearing, there is no evidence that any restitution has been made to the effected property owners or tenants. These actions are indicative of bad faith; thus, this factor weighs in favor of a monetary penalty.

There is no evidence 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, thus, has not met that burden.

The third Kimmelman factor addresses 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. The profits obtained by the Respondent in this matter are unclear. As the Respondent did use escrow funds to keep his operating account afloat in order to continue

doing business, it is clear that he reaped a benefit from the of commingling of funds, however, the exact amount that constitutes “profit” is difficult to calculate based on the documentary evidence provided.

The fourth Kimmelman factor addresses the 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, 29 N.J. Super. at 182. Therefore, the public is harmed when individuals 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.

In this matter, the Respondent was unable to conduct himself in accordance with the high standards expected of him and those in his profession when he failed to abide by the real estate statutes and rules governing his activities as a broker. The Respondent commingled funds by failing to maintain an escrow account separate and apart from his operating account and failed to maintain prudent bookkeeping practices. Both accounts were drained of funds, leaving at least seven individuals without funds that should have been maintained in the rental escrow account, and thus, without the monies they were owed. In addition, the Respondent’s conduct led to at least 51 instances of the automatic transfer of funds between the two accounts to cover overdrafts, totaling \$42,489.26, and the imposition of \$510 in fees against the rental escrow account. Exhibit S-9. Licensees must abide by the rules to protect consumers and ensure ethical conduct by those in the real estate profession. The Respondent’s failure to abide by these rules weighs in favor of a monetary penalty.

The fifth Kimmelman factor to be examined is the duration of the illegal activity. Pursuant to the Respondent’s written statement, he has been commingling funds since he set up his bank

accounts in 1989, as his rental escrow account was never separate and apart from his other business accounts. Exhibit S-2. Furthermore, the accounts have not been reconciled in a “very long time” pursuant to the Respondent’s own admission. Ibid. Therefore, the Respondent’s wrongful activity has continued from 1989 until at least September 9, 2016, approximately 27 years, before he self-reported to Spillane. The duration of illegal activity in this matter supports the imposition of a monetary penalty.

Sixth, the Respondent has not been party to criminal proceedings or other civil proceedings stemming from the conduct at issue. Spillane testified that the Cape May County Assistant Prosecutor declined to charge the Respondent because the Respondent had represented that he would provide restitution to his victims. However, to date, there is no evidence that any restitution has been made to the effected property owners or tenants. This factor supports the imposition of a monetary penalty.

As to the final factor, there is no evidence of prior real estate violations committed by the Respondent.

In light of these factors, the Commission has determined that the Respondent shall pay a fine in the total amount of \$25,000. The Commission has consistently imposed serious penalties, including revocation and the imposition of substantial monetary penalties, on licensees who have engaged in conduct similar to the Respondent. See New Jersey Real Estate Commission v. Patrick J. Murphy and PATMURPHY.COM, Dkt. No. CAM-13-013, Final Order of Determination, (06/29/16) (The Commission revoked the license of a broker and imposed a fine of \$10,000 after finding multiple instances of failure to timely deposit and maintain funds of others in a fiduciary capacity and commingling of funds in trust and operating accounts); New Jersey Real Estate Commission v. Edward Francis Stinson, et al., Dkt. No. CAM-13-023, Final Order of

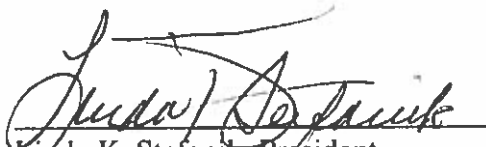
Determination, (07/28/15) (The Commission ordered lifetime revocation all real estate licenses presently or formerly held by Respondents Stinson and Bontigao and imposed a fine \$25,000 against Stinson and a fine of \$20,000 against Bontigao after finding the Respondents commingled the money of their principals with their own and failed to maintain in special accounts). Therefore, the sanctions imposed in this matter are appropriate in light of the violations found.

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

- I. Any and all real estate licenses presently or formerly held by Respondent Gregory Schoultz are revoked for life. No real estate license shall henceforth be issued to the Respondent; and
- II. Respondent Gregory Schoultz shall pay a fine in the amount of \$25,000 with respect to the violations of the real estate laws and regulations as found in this Final Decision and Order.

SO ORDERED this 23rd day of July, 2020.

By: Linda K. Stefanik, President
Eugenia K. Bonilla, Vice President
Sanjeev Aneja, Commissioner
Christina Banasiak, Commissioner
Jacob Elkes, Commissioner
Denise M. Illes, Commissioner


Linda K. Stefanik, President
New Jersey Real Estate Commission

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