

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,)	DOCKET NO.: ESS-19-004
)	REC REF. NO.: 10007701
Complainant,)	
)	
v.)	
)	FINAL ORDER OF
CAROL MARY FARDIN, licensed)	DETERMINATION
New Jersey real estate salesperson)	
(Ref. No. 1539845),)	
)	
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 April 30, 2019.

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

APPEARANCES: John Rossakis, Regulatory Officer (“RO Rossakis”), appeared on behalf of the complainant, the New Jersey Real Estate Commission staff (“REC”). Carol Mary Fardin¹ (“Fardin” or “Respondent”), appeared at the hearing pro se.

STATEMENT OF THE CASE

The REC initiated this matter through service of an Order to Show Cause (“OTSC”) dated January 24, 2019, 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 on or about July 25, 2018 Fardin was arrested and charged with one count of Insurance Fraud, in violation of N.J.S.A. 2C:21-4.6(a). The OTSC alleges that Fardin

¹ Fardin is licensed by the REC as “Carol Fardin,” however, the Complaint-Summons and other documentation provided by Fardin refer her as “Mary C. Fardin”.

failed to notify the Commission within 30 days of the filing of criminal charges against her, as required by N.J.S.A. 45:15-17(s). In addition, the OTSC alleges that the conduct underlying the criminal charges, which involved the filing of a false insurance claim for the reimbursement of several electronic devices owned by Fardin which were not in fact stolen, demonstrates unworthiness, bad faith and dishonesty, in violation of N.J.S.A. 45:15-17(e).

On February 10, 2019, Fardin submitted an Answer to the OTSC (“Answer”), wherein she admitted to the violations contained therein. On March 12, 2019, the REC considered the pleadings and found that pursuant to N.J.A.C. 11:5-11.3(b), no material facts or issues of law were contested and directed that a hearing be scheduled. A hearing was scheduled for April 30, 2019.

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

- S-1 Complaint-Summons issued by the Maplewood Township Municipal Court, State of New Jersey v. Mary C. Fardin, dated July 25, 2018;
- S-2 Order of Postponement in State of New Jersey v. Mary C. Fardin, Pretrial Intervention, dated October 22, 2018;
- S-3 Letter from Jennifer Miller, Special Investigations Unit at USAA Casualty Insurance Company, to James R. Fardin, dated January 2018; and,
- S-4 Letter from Mary Carol Fardin to Clark K. Masi, Investigator at the Real Estate Commission, dated December 6, 2018.

TESTIMONY OF THE WITNESSES

Mary Carol Fardin

Fardin testified on her own behalf at the hearing. Fardin explained the circumstances surrounding the conduct underlying her July 25, 2018 arrest for Insurance Fraud. She stated that in January 2018, she had traveled to London, England for a weekend, when her carry-on luggage and cell phone were stolen on a subway platform. Fardin testified that she contacted her insurance

provider, USAA, to file a claim for her stolen phone approximately one week after her return. Fardin noted that she was able to procure insurance through USAA as her father-in-law served in the United States Air Force. USAA informed her that because the theft occurred overseas, no police report was necessary, but requested photographs to substantiate her ownership of the stolen items, which Fardin provided. Fardin stated that she proceeded with her claim but “embellished it” by adding that her laptop, e-reader, iPad 2, and an Apple watch had been stolen in addition to her cell phone. Fardin testified that she knowingly misrepresented to USAA that the laptop, e-reader, iPad 2, and Apple watch were stolen, when they remained in her possession. Fardin stated that her cell phone was valued at approximately \$800 and that her total claim was for approximately \$2,000. She also noted that her insurance deductible was \$500.

Fardin stated that shortly after filing her claim, she was contacted by an employee from USAA’s Special Investigative Unit who informed her that USAA was aware that the photographs she submitted to USAA, as proof of ownership of the items reportedly stolen, were taken after the date of the reported theft. Fardin also noted that the investigator appeared suspicious that Fardin had brought so many electronics with her on a short weekend trip. Fardin stated that she did not receive any compensation for the theft claim she filed the items reported stolen under her USAA insurance policy.

Fardin testified that on July 25, 2018, she was charged with one count of Insurance Fraud. Exhibit S-1. Fardin explained that she was accepted into Essex County’s Pretrial Intervention Program (“PTI”) on October 22, 2018. Exhibit S-2. Fardin also testified that participation in the program required her to plead guilty to Insurance Fraud and that the plea would be held “inactive” pending her successful completion of the program. The terms of her participation in PTI included an 18-month sentence wherein Fardin is required to attend monthly meetings with her probation

officer, is subject to drug tests and the completion of 50 hours of community service within the first three months of entry into the program. Id. Fardin noted that court fees were assessed, but that they were paid in full immediately and were nominal in amount. Fardin also noted that she was not asked to pay for the costs associated with USAA's investigation as part of her sentence.

Fardin stated that pursuant to the terms of her PTI, after nine months, on June 22, 2019, she could be considered for early termination of PTI if certain requirements were met, including the completion of community service. Fardin stated that she has completed this requirement and is meeting with her probation officer on June 4, 2019 to see if her sentence would be considered for early termination. Fardin noted that if successful, the charges against her will be expunged.

Fardin stated she is 48 years old and a resident of Maplewood, New Jersey. She is the mother of four children, two approaching college age, one in middle school, and another attending grammar school. She stated that her and her husband had purchased a home in Maplewood 18 years ago and had invested a significant sum in renovating the property to accommodate their growing family. Fardin stated that both her and her husband are independent contractors, so their income is often unstable. Fardin further testified that just prior to her trip to London, her and her husband reassessed their goals and current financial situation. Fardin noted that while they were not behind on their mortgage payments, they realized that they needed to reprioritize their financial goals if they wanted to send their two eldest children to college. As a result, the family sold their home and downsized to a rental property.

Fardin stated that when her cell phone was stolen, the \$800 replacement cost would prove to be financially stressful. She acknowledged that the trip to London, which had already been planned to celebrate her daughter's 16th birthday, also served as a financial stressor. Fardin stated that embellishing the insurance claim would have helped alleviate financial stresses they faced at

the time. Fardin stated that drug abuse, alcoholism and medical conditions did not motivate her conduct.

Fardin repeatedly asserted that she wholeheartedly regrets her conduct and is ready to accept any disciplinary actions brought against her by the Commission. She further stated that she takes complete responsibility for her conduct, characterized her conduct as a “moment of poor judgment,” and that she is otherwise truthful and honest. She stated that she has never committed any type of insurance fraud in the past and has never been convicted of a crime or misdemeanor, including theft. Fardin indicated that the December 6, 2018 letter she submitted to the REC was her first time notifying the REC of the charges filed against her because she was unaware of the notification requirement set forth in N.J.S.A. 45:15-17(s). Exhibit S-4.

Fardin also testified regarding her involvement in her Maplewood community. In addition to the community service required for completion of PTI, Fardin stated that she also volunteers her time with a number of organizations, including The Isaiah House, MEND (a local food bank), and an annual melanoma research fundraiser held in Maplewood. She further stated that when her youngest child started school, she chose to become a local real estate agent because she had a background in marketing and because this gave her the opportunity to become further involved in Maplewood. She stated that she is a top producer in her office of 200 agents and that she is proud that she serves her community and her business at the highest level, including the real estate attorneys and inspectors with whom she works.

She stressed that she puts her community, clients and family’s needs first, and that this conduct is so out of character, that the idea that this would interrupt her career and that she would be unable to provide for her family or participate in her community because of it, is difficult for

her to discuss. She concluded her testimony by stating that this conduct is “a strange contained incident” and that she cannot adequately express how much she regrets it.

Octavio Jose Mendes

Octavio Jose Mendes (“Mendes”) testified on the Respondent’s behalf. Mendes stated that he is the Respondent’s broker of record. He stated that he has known the Respondent for five years, and that during that time the Respondent has acted as an exemplary member of the real estate community, often going out of her way for her colleagues. Mendes provided a recent example where Fardin assisted a fellow agent whose family member was diagnosed with Multiple Sclerosis, organizing the family’s move to a new home. Mendes also testified that Fardin is very involved in the Maplewood community at large, collecting funds for EMS and cancer research.

Mendes noted that Fardin’s conduct was out of character. He pointed out that as a broker of record, part of his job is to review licenses from new and transferring licensees. He stated that some of these licensees have committed significant crimes, including drug trafficking, and noted that the REC elected to grant licenses to those individuals. In light of these more egregious violations, he urged the Commission not to use Fardin as an example, as this was an isolated instance that was out of character. Mendes also noted that he learned of the incident when he was contacted by REC staff. Mendes stated that when he approached Fardin to discuss the incident, it was clear to him that she felt very badly about her conduct and expressed regret.

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. Fardin is an actively licensed New Jersey real estate salesperson, who was first licensed on July 29, 2015, and is currently licensed through Mid Town Direct Realty, LLC, d/b/a Keller

Williams Mid Town Direct Realty, located at 181 Maplewood Avenue, Maplewood, New Jersey, 07040.

2. On or about July 25, 2018, Fardin was charged with one count of Insurance Fraud, in violation of N.J.S.A. 2C:21-4.6(a), a crime of the third degree.
3. The conduct underlying the criminal charges involved the filing of an insurance claim for the reimbursement of several electronic devices owned by Fardin which she claimed were stolen, but were still in Fardin's possession.
4. On or about October 22, 2018, Fardin was accepted into the Essex County PTI program for a period of 18 months. Pursuant to the terms of Fardin's PTI, all proceedings in prosecution of the above criminal charges are postponed for the duration of the period of PTI.
5. On or about December 6, 2018, Fardin submitted a written statement to the Commission regarding her conduct wherein Fardin admits to intentionally submitting a false claim for reimbursement to her insurance company and expresses remorse for her actions.

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. Fardin failed to notify the Commission within 30 days of the criminal charges filed against her, in violation of N.J.S.A. 45:15-17(s).
2. Fardin's conduct underlying her criminal charges demonstrates unworthiness for licensure, 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 in this Final Order of Determination. In arriving at the determination in this matter, the Commission took into consideration the testimony presented 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. Metropolitan 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 entirely from Fardin’s admitted conduct underlying her criminal charge of Insurance Fraud, in violation of N.J.S.A. 2C:21-4.6(a), wherein Fardin filed an insurance claim for the reimbursement of several electronic devices owned by Fardin, which she claimed were stolen, but which were still in Fardin’s possession. Criminal charges were filed against Fardin for this conduct on July 25, 2018 and Fardin failed to notify the Commission of her arrest within 30 days, in violation of N.J.S.A. 45:15-17(s). In addition, the OTSC alleges that the conduct underlying the criminal charges brought against her demonstrates unworthiness for licensure, bad faith, and dishonesty, in violation of N.J.S.A. 45:15-17(e).

Fardin's conduct in this matter is uncontested. Fardin testified that she was charged with Insurance Fraud on July 25, 2018. Exhibit S-1. Fardin testified that she failed to notify the REC of the criminal charges filed against her within 30 days, in violation of N.J.S.A. 45:15-17(s) because she was unaware that this reporting was required by statute. During her testimony, Fardin indicated that the December 6, 2018 letter she submitted to the REC was her first time notifying the REC of the charges filed against her. Exhibit S-4.

Furthermore, Fardin testified about the conduct underlying her criminal charge, describing with clarity how she had traveled to London for a weekend in January 2018 where her cell phone and carry-on luggage were stolen on a subway platform. She admitted that when reporting the cell phone as stolen to her insurance provider, USAA, she also included additional electronic devices as having been stolen although they remained in her possession, including a laptop, e-reader, iPad 2, and an Apple watch. Fardin recounted how she provided photographs of the stolen items to USAA one week after filing the claim, and how USAA was able to detect that the photographs provided by her were taken after the date of the alleged theft at the Fardin's home. Fardin recounted being contacted by USAA's Special Investigative Unit to relay that they were aware of her fraudulent conduct, would not honor the claim filed, and had decided to void the Fardin's policy. Exhibit S-3. The conduct described above is a violation of N.J.S.A. N.J.S.A. 45:15-17(e), as it clearly demonstrates Fardin's unworthiness for licensure, bad faith, and dishonesty.

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

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 the 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 Div. of the New Jersey Real Estate Comm'n v. 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).

As set forth above, the Commission found that the conduct underlying Fardin’s criminal charge of Insurance Fraud, in violation of N.J.S.A. 2C:21-4.6(a), demonstrates unworthiness, bad faith and dishonesty, in violation of N.J.S.A. 45:15-17(e). Based upon these findings, the Commission is empowered, under the Act, to suspend or revoke Fardin’s real estate salesperson license.

Fardin does not dispute the actions alleged in the OTSC, which demonstrate a disregard of the high ethical standards imposed that are imparted upon real estate licensees in this State. Fardin testified that she knowingly and willingly provided an inaccurate insurance claim to USAA for electronics that remained in her possession. Pursuant to her testimony, she filed a claim for \$2,000 in stolen electronics when, in reality, all that was stolen was an \$800 cell phone. The Commission notes Fardin’s earnest regret for her actions and appreciates her candor, however, her actions constitute a breach of trust by a licensee that demonstrates unworthiness, bad faith and dishonesty on the part of Fardin that cannot be overlooked, pursuant to N.J.S.A. 14:15-17(e).

Thus, after considering the testimony and evidence presented, and in light of the violations committed by Fardin, as set forth herein, the Commission imposes a suspension of Respondent Fardin's real estate salespersons license for a period of time to run concurrent with her criminal PTI or until December 31, 2019, whichever is later, effective from the date of this Order. The Commission notes that because the Respondent was accepted into the Essex County PTI Program, upon successful completion of the program, the criminal charges filed against the Respondent for Insurance Fraud will be dismissed.

Moreover, 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 good or bad faith, the Respondent testified that she failed to notify the Commission within 30 days of the filing of criminal charges against her, as required by N.J.S.A. 45:15-17(s), because she was unaware of that she was required to do so. The Respondent's letter to REC Investigator Masi, dated December 6,

2018, was the first time the Respondent notified the Commission of the charges filed against her. Exhibit S-4. The Commission notes that the Respondent's letter is very forthcoming regarding the circumstances of her arrest and does not seek to obfuscate any facts. Thus, we do not find that the Respondent acted in bad faith when she failed to notify the Commission within 30 days.

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)). Thus, the Respondent 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. In this instance, the Respondent's failure to timely notify the Commission of the pending criminal charges permitted her to continue to be a real estate licensee and prevented the Commission from a timely investigating into this matter.

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 v. New Jersey Real Estate Comm'n, 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 herself or himself in accordance with the high standards expected of him or her and his or her profession, the public's confidence in the real estate industry is eroded.

In this matter, Fardin was unable to conduct herself in accordance with the high standards expected of her and those in her profession when she failed to notify the Commission of the criminal charges filed against her, in violation of the real estate statutes and rules. The Commission must encourage licensees to abide by the rules that are in place in order 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. The Respondent's failure to notify the Commission as it relates to the criminal charges against her within 30 days was a singular occurrence. The Respondent was criminally charged on July 25, 2018 and notified the Commission on December 6, 2018, approximately three months late.

Sixth, the Respondent has not been party to criminal proceedings or other civil proceedings stemming from the conduct at issue. No such criminal or civil proceedings have stemmed from the Respondent's failure to notify the Commission about the charges filed against her within 30 days.

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


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

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

- I. Respondent Fardin's real estate salesperson license shall be suspended for a period to run concurrent with her criminal PT1, or until December 31, 2019, whichever is later.
- II. Upon reinstatement of her license, Respondent Fardin's real estate salesperson license shall be held on probationary status for a period of two years. During the probationary period, the following conditions shall apply:
 - a) The Respondent shall notify her employing broker that she is on probation;
 - b) The Respondent's employing broker shall notify the REC within 72 hours if he or she receives any information indicating that the Respondent may have violated the REC statutes or regulations; and,
 - c) The Respondent shall notify the REC within 72 hours if she is charged with or convicted of any criminal or disorderly persons offenses.
- III. Respondent Fardin shall pay a fine of \$500 with respect to her violation of N.J.S.A. 45:15-17(s), failure to timely notify the REC of the pending criminal charges.

SO ORDERED this 14th day of January, 2020.

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



Linda K. Stefanik, President
New Jersey Real Estate Commission

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