

**NEW JERSEY REAL ESTATE COMMISSION**

NEW JERSEY REAL ESTATE COMMISSION,	)	Docket No.: MID-19-007
	)	REC Ref No.: 10006713
Complainant,	)	
	)	
v.	)	
LAWRENCE LaBIRT, Licensed New Jersey Real Estate Salesperson (SP0340483),	)	<b>FINAL ORDER OF DETERMINATION</b>
	)	
Respondent.	)	

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**THIS MATTER** was heard by the New Jersey Real Estate Commission (“Commission”) in the Department of Banking and Insurance, State of New Jersey at the Commission Hearing Room, 20 West State Street, Trenton, New Jersey on May 14, 2019.

**BEFORE:** Commissioners Linda K. Stefanik, Darlene Bandazian, Jacob Elkes, Denise M. Illes, Carlos Lejnieks, and Kathryn Godby Oram.

**APPEARANCES:** Marianne Gallina, Regulatory Officer (“RO Gallina”), appeared on behalf of the New Jersey Real Estate Commission staff (“REC”). Respondent Lawrence LaBirt (“Respondent”) appeared on his own behalf. The Respondent acknowledged his right to counsel and voluntarily waived that right.

**STATEMENT OF THE CASE**

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated February 4, 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 the Respondent is currently licensed with Home Access Realty, LLC located 1254 Highway 27, North Brunswick, New Jersey. He was previously licensed with ReMax Diamond Realtors (“Diamond”) whose office address is 3430 Highway 27, Kendall Park, New Jersey, from May 23, 2003 through November 21, 2017. While employed at Diamond, he was the listing agent for 42 Prospect Street, East Orange, New Jersey (“Prospect Street Property”) from December 3, 2015 through December 30, 2016. The Prospect Street Property was a short sale, and the listing agreement did not contain a price. The Prospect Street Property was owned by Keirstin Austin (“Austin”). During the listing, there was an offer, but the transaction was not completed, and the listing expired on December 30, 2016. The OTSC alleges that in March 2017, the Respondent gained access to the Prospect Street Property using the key which was in the lockbox and began residing there without Austin’s permission. While he resided in the Prospect Street Property, he paid the homeowner association (“HOA”) fees of \$236 a month. He continued to reside in the Prospect Street Property until November 2017.

Austin complained to the Respondent’s broker, Joseph Buono (“Buono”), that she discovered on or about November 4, 2017 that her property was being occupied. Buono then advised the REC of this matter. When he was questioned by an investigator with the REC, the Respondent indicated that he was getting a divorce and did not have a place to live. He claimed that Austin verbally agreed to let him live at the Prospect Street Property, but he could not provide any corroboration.

The OTSC alleges that Austin demanded that the Respondent pay rent for the period he occupied the property. On or about November 17, 2017, the Respondent paid Austin \$2,000. The property was foreclosed upon and sold in February 2018. Buono filed a complaint with the REC, but the REC’s investigator was unable to contact Austin.

The OTSC alleges that the Respondent violated N.J.S.A. 45:15-17(e) in that allowing Austin to sign a listing agreement without a listing price and moving into the Prospect Street Property using a lockbox key without Austin's permission demonstrated unworthiness, bad faith, and dishonesty. The OTSC also alleges that Respondent violated N.J.A.C. 11:5-6.4(a) in that he put his interests above his client, violating his fiduciary duty, when he prepared a listing agreement without a price and had Austin sign it and when he moved into the Prospect Street Property without a lease or other authorization.

The Respondent filed an Answer to the OTSC,<sup>1</sup> wherein the Respondent denied that the listing agreement did not contain a price, admitted to moving into the property and paying the homeowner association fees, but denied that it was without Austin's consent. Accordingly, on March 26, 2019, the Commission deemed this matter a contested case and directed that a hearing be scheduled.

A hearing before the Commission was conducted on May 14, 2019, at which time the following exhibits were admitted into evidence by the REC, without objection:

- S-1 Letter from Buono to REC dated November 28, 2017;
- S-2 Listing Agreement dated 12/2/15 for the Prospect Street Property between Austin and Remax Diamond Realtors with electronic signatures, Multiple Listing Service ("MLS") sheet attached;
- S-3 Consumer Information Statement on New Jersey Real Estate Relationships dated 12/2/15 between Austin and ReMax Diamond Realtors;
- S-4 E-mail chain between Judy Suarez and Respondent between April 16, 2018 to April 18, 2018;
- S-5 Checks from Respondent to Millennium Homes dated March 20, 2017; April 19, 2017; May 31, 2017; June 16, 2017; and July 28, 2017;

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<sup>1</sup> The Respondent's Answer is dated July 21, 2019, three months after the hearing date, but was received by the REC on February 22, 2019.

- S-6 Receipt for House of Glass from \$535; and
- S-7 Letter from TD Bank dated September 13, 2018 regarding a \$2,000 check payable to Austin on November 17, 2017.

The Respondent admitted the following exhibits into evidence:

- R-1 Letter from TD Bank dated September 13, 2018 regarding \$2,000 check payable to Austin on November 17, 2017,<sup>2</sup> checks from Respondent to Millennium Homes dated March 20, 2017; April 19, 2017; May 31, 2017; June 16, 2017; July 28, 2017;<sup>3</sup>
- R-2 Listing Agreement dated 12/2/15 for the Prospect Street Property between Austin and Diamond with ink signatures;
- R-3 Receipt for House of Glass from \$535;<sup>4</sup> Receipt for Mendoza's Appliances Service, Inc. for \$250;
- R-4 Millennium Homes Invoice to Austin dated March 25, 2016 for \$11,348.00 in past due homeowners association fees, late fees, legal fees, and the current charge;
- R-5 Witness statement from Justin Cupid ("Cupid");<sup>5</sup> and
- R-6 E-mail to Buono from Respondent resigning from Diamond Realtors.

### **TESTIMONY OF THE WITNESSES**

#### **Joseph Buono**

Buono testified that he is the broker of record at Diamond and he was the Respondent's supervising broker when the Respondent was employed there. Buono testified that he was unsure of where the key to the Prospect Street Property was located after it was removed from the lockbox.

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<sup>2</sup> This exhibit was the same as Exhibit S-7.

<sup>3</sup> This exhibit was the same as Exhibit S-5.

<sup>4</sup> This receipt is the same as the receipt in Exhibit S-6.

<sup>5</sup> This was entered into evidence over the objection of RO Gallina in that it was hearsay and the REC had no prior knowledge of Cupid.

Buono testified that he received a call from Austin that the Respondent had moved into the Prospect Street Property without her permission. He discussed the phone call with the Respondent, who admitted that he had moved into the property. Buono testified that the Respondent told him that the Respondent and Austin had a verbal agreement and that the Respondent said he was doing repairs and paying the HOA fees, which was the agreement with the owner.

Buono further testified that he drafted the letter to the REC dated November 28, 2017, entered into evidence as S-1, which indicates that he had released Respondent's license and that the Respondent admitted that he had been "squatting" in a vacant home that had previously been listed for sale. He testified that the Respondent was aware that he was sending a letter to the REC to alert them to the issue, but that the Respondent did not contribute to the contents of the letter.

Finally, Buono testified that he had known the Respondent a long time, and that he never had any cause to distrust the Respondent. Buono testified that he was aware that he had the obligation to supervise the Respondent and asked him to resign.

#### **Judy Suarez**

Judy Suarez ("Suarez") testified that she has been employed as an investigator with the REC for eight years and that prior to that she was employed by the Division of Insurance as investigator for 18 years. She was the investigator assigned to this matter.

Suarez testified that the matter came to the REC's attention when it received Buono's letter, Exhibit S-1. She began her investigation by looking at the Respondent's licensing information. She then contacted the Respondent's current employer, who gave her the Respondent's cell phone number. She then spoke to the Respondent regarding his residency of the Prospect Street Property. She testified that the Respondent told her that Austin did not want to renew the listing after it had expired, though he had asked her to do so. She testified that he told her that the lockbox was still

on the property, and that he had the key because he was the listing agent. She testified that the Respondent told her that he had a verbal agreement with Austin where he would live in the Prospect Street Property, pay the HOA fees, and maintain the property. She also testified that the Respondent told her that banks prefer that properties are occupied, so that by residing there, Austin benefitted.

Suarez testified that Exhibit S-2 is the listing agreement with electronic signatures and MLS report. She testified that there is no price on the listing agreement and the Respondent is the listing agent. She testified that S-3 is the Consumer Information Statement on New Jersey Real Estate Relationships. The Respondent is the seller's agent and disclosed dual agent, if the opportunity arose.

Suarez further testified that Exhibit S-4 is an e-mail chain with the Respondent regarding the check for \$2,000, which was made out to Austin. In an e-mail, Suarez requested another copy of the check because it was unreadable. S-4 at 1. An e-mail dated April 16, 2018 from the Respondent indicates that the listing expired in December 2016 and that the Respondent asked Austin if he could stay in the Prospect Street Property as a caretaker. Id. at 3. The e-mail indicates that, at first, Austin declined because he did not want another tenant when she had to evict last one. Ibid. However, Austin then agreed that the Respondent could stay at the property if he would be a "caretaker", pay the HOA fees, and maintain the property. Ibid. The e-mail states that at some point, Austin asked for more money, and when the Respondent refused, Austin said she was "walking away." Ibid. Suarez testified that her understanding was that Austin was abandoning the Prospect Street Property and wanted her to leave.

Suarez testified that Exhibit S-5 is five checks from the Respondent to Millennium Homes for the HOA fees. She further testified that Exhibit S-6 is a receipt from House of Glass to repair

a door. However, she testified that it is not clear from the receipt if the repair was completed on the Prospect Street Property. She testified that she called House of Glass, but they could not tell her where they did the work. Suarez further testified that she could not provide House of Glass very much information, because the date on the receipt is illegible. She also testified that the Respondent claimed that he paid for other expenditures, such as plumbing, but that he did not provide receipts.

Suarez further testified that Exhibit S-7 is a check made out to Austin for \$2,000. She testified that she did not know how the Respondent delivered the check to Austin and whether Austin received the check. However, Suarez testified that the check was cashed.

Suarez also testified that the Respondent admitted that he “squatted” in another property located at 4301 Birchwood Ct., North Brunswick, New Jersey in 2011 or 2012. She testified that the Respondent stated that he also had a verbal agreement with that property owner where he would pay \$800 a month in rent. Suarez also testified that the Respondent called himself the “short sale king.”

Suarez testified that she attempted to reach Austin, but was unsuccessful. She testified that the Respondent said that he did not have Austin’s phone number because he had a new phone. She testified that she performed an Accurint search, which is a LexisNexis service to search public records. She stated that she called two listed numbers and could not leave a voicemail, either because the mailboxes were full or not set up. She testified that she then performed a Bing search and discovered that one of the numbers belonged to one of Austin’s relatives.

Suarez testified that the Respondent did not provide any statements from any other witnesses and never discussed Cupid. Suarez testified that it was her understanding that Buono terminated the Respondent’s employment. She testified that the Respondent’s current broker

indicated that the Respondent told him that he had been in a motor vehicle accident and left Diamond to recover. She testified that the Respondent did not give her the e-mail in R-7 indicating that he resigned from Diamond.

**Lawrence LaBirt**

The Respondent testified on his own behalf. He testified that he first met Austin through a referral and had no prior relationship with her. He testified that the agreement without the listing price dated December 2, 2015, Exhibit S-2, was likely printed from Diamond's paperless system, as it contains electronic signatures. He testified that it was a mistake if there was a listing agreement in the paperless system without a listing price, and there was no malicious intent. He testified that the bank requires agreements with ink signatures on listing agreements. He testified that Exhibit R-2, also dated December 2, 2015, contained both ink signatures of himself and Austin and a typed listing price. He could not recall how he got Austin to sign the agreement in ink, or when the ink signatures and the typed listing price were added. He also testified that there was a hard copy, with the listing price and ink signatures, in the file he kept as an agent. He further testified that there was a listing price on the agreement sent to the MLS. He testified he could not recall when he sent the agreement to the MLS, though the listing date on the MLS sheet is December 3, 2015. S-2.

The Respondent also testified that there was an accepted offer and contract on the property during the listing, but that the transaction was not completed. He further testified that he was not the buyer's agent, and that he acted solely as a seller's agent during the time the Prospect Street Property was listed.

He further testified that that when the listing for the Prospect Street Property expired he was staying with friends. He testified that he asked Austin if he could rent the property, but she



initially refused. He testified that she then agreed he could live at the property if he paid the HOA fees, as she was behind on her payments. Ex. R-4. He testified that he still hoped to sell the property and negotiate the amount that she owed. He then testified that Austin offered to do some repairs, such as fix the garage door and sliding glass door, but he did not believe she would do so. He testified that he moved into the property in March 2017, after the patio door was fixed. He testified that he did not obtain a Certificate of Occupancy from East Orange before moving in. He denied that he took the key from the lockbox, as the lockbox was no longer on the property. He indicated he had a key because he was the listing agent.

He further testified that after a few months, Austin asked him for more money. He testified that he did not want to pay more money, because that is not what they had agreed, and the property was in poor condition. He testified that he did not pay fair market value for rent during the time of occupancy because it did not occur to him. He described the property as “distressed” and stated that he had read that leases are not valid for distressed properties. He testified that Austin said she was going to walk away and let the bank foreclose. He testified that she did not ask him to leave, so he stayed and continued to pay the HOA fees and repair the property. He testified that he would not have stayed if she had asked him to leave. He testified that he did not have a plan regarding how long he would stay. Further, he testified that the bank did not take title to the Prospect Street Property while he was living there.

The Respondent also testified that the utilities were in his name and he paid the bills. He did not recall when he put the utilities in his name, and he did not produce a utility bill. He testified that he had called House of Glass before the hearing and that they remembered him and the repair they made at the Prospect Street Property. He testified that they completed the repair in March 2017.

The Respondent testified that much of his correspondence with Austin was done through phone calls and that he does not have any text messages because he had a different phone at the time. He further testified that they did not e-mail each other, and he was unaware where she currently resides.

He further testified that he continued to ask Austin to relist the Prospect Street Property or complete the paperwork for short sale. He testified that although she indicated that she would bring the short sale paperwork to the property, she never did so. He testified that she later she said she did not want to, and he felt she wasted his time.

The Respondent testified regarding Exhibit R-5, a witness statement of Cupid. The Respondent testified that Cupid was the proposed buyer's husband, but the transaction was not completed. He testified that he gave Cupid's name to Suarez and she wrote it down. In his statement, Cupid indicated that Suarez told him that she would tell the Respondent's broker if the Respondent did not start paying Austin money to live at the Prospect Street Property. The Respondent testified that Cupid was unavailable to testify because he was too busy.

The Respondent testified that Austin called Buono and told him that the Respondent owed Austin money for living at her property. He testified that Buono then called him and told him to pay the money he owed to Austin. He testified that while he did not want to pay her because that was not their agreement, he listened to Buono and paid Austin \$2,000. He testified that he e-mailed Buono, resigning from Diamond on November 21, 2017. R-7.

The Respondent testified that Buono advised the Respondent that he would send a letter to the REC regarding the matter. The Respondent testified that he believed it was a good idea in case Austin came to the REC, it would already be aware of the situation.

The Respondent testified that in November 2017, Austin called him, and they met at the Prospect Street Property where he gave her the check for \$2,000 and they did a final walkthrough. He testified that she was impressed with the repairs that were completed. He testified that after he left the property he blocked her number because he wanted nothing more to do with her and that she was “extorting” money from him.

He testified that he did not “squat” in any other listing. He testified that he rented a home from a friend while the home was for sale and that it sold shortly after he had moved in.

The Respondent testified that he should have had a written agreement with Austin. He stated that he is not “crooked” or “unethical.” He testified that has been a real estate agent for 16 years and this is the first time he has had a complaint against him. He testified that he had an “impeccable record” and that he was “insulted” to be before the Commission. Finally, he testified that he no longer lists short sales.

### **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 licensed New Jersey real estate salesperson who was first licensed on May 23, 2003 and is currently licensed with Home Access Realty, LLC whose office is located at 1254 Highway 27, North Brunswick, New Jersey. He was previously licensed with ReMax Diamond Realtors whose office address is 3430 Highway 27, Kendall Park, New Jersey from May 23, 2003 through November 21, 2017.
2. The Respondent was the listing agent for a home located at 42 Prospect Street, East Orange, New Jersey, which was listed from December 3, 2015 through December 30, 2016.

3. A listing agreement for the Prospect Street Property dated December 2, 2015 contained electronic signatures and did not indicate a listing price. A listing agreement for the property containing ink signatures and also dated December 2, 2015, did indicate a listing price. The listing date on the MLS information sheet is December 3, 2015 and the MLS information sheet states a listing price.
4. In March 2017, after the listing had expired, the Respondent moved into the Prospect Street Property using a key he obtained from his time as the listing agent.
5. The Respondent did not pay rent to the homeowner, Austin, but paid the HOA fees.
6. Austin made a complaint to the Respondent's broker, Buono, that Respondent was living in her home and not paying rent.
7. On or about November 28, 2017, Buono wrote a letter to the REC informing it that the Respondent had moved into a home for which he had been the listing agent.
8. The Respondent paid Austin \$2,000 and moved out of the home in November 2017.

### **CONCLUSIONS OF LAW**

Considering the above findings of fact, the Commission makes the following conclusions of law regarding the charges contained in the OTSC and summarized above:

1. There is insufficient evidence to support a finding that the Respondent's conduct, in moving into a property for which he had been the listing agent after the listing expired and paying the HOA fees, is in violation of N.J.S.A. 45:15-17(e) (conduct demonstrating unworthiness, bad faith, and dishonesty).
2. There is insufficient evidence to support a finding that the Respondent's conduct, in moving into a property for which he had been the listing agent after the listing expired

and paying the HOA fees, is in violation of N.J.A.C. 11:5-6.4(a) in that he put his interests above his client and violated his fiduciary duty.

3. There is insufficient evidence to support a finding that the Respondent prepared a listing agreement without a listing price, is in violation of N.J.A.C. 11:5-6.4(a) in that he put his interests above his client and violated his fiduciary duty.
4. There is insufficient evidence to support a finding that the Respondent prepared a listing agreement without a listing price, in violation of N.J.S.A. 45:15-17(e) (conduct demonstrating unworthiness, bad faith, and dishonesty).

### **DETERMINATION**

After the hearing and executive session in this matter, the Commission found that there is insufficient evidence to support finding of the violations alleged in the OTSC. In arriving at the determination in this matter, the Commission took into consideration the testimony of the witnesses, and the 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).

The OTSC alleges that the Respondent prepared a listing agreement without a listing price, which his client, Austin, signed and such conduct demonstrates unworthiness, bad faith, and dishonesty and violated his fiduciary duty in violation of N.J.S.A. 45:15-17(e) and N.J.A.C. 11:5-

6.4(a). It also alleges that the Respondent moved into a home for which he had been the listing agent after the listing expired using a key from the lockbox and resided there without the homeowner's authorization which demonstrates unworthiness, bad faith, and dishonesty and violated his fiduciary duty in violation of N.J.S.A. 45:15-17(e) and N.J.A.C. 11:5-6.4(a).

The REC relied upon the testimony of the investigator, the Respondent's former broker, and the Respondent to prove these allegations. Of these witnesses, only the Respondent has firsthand knowledge of the events at issue. Although the Respondent was not always a credible witness, the REC is unable to prove the allegations contained in the OTSC by relying solely upon uncorroborated hearsay.

Hearsay is a statement, other than one made by the declarant while testifying at the hearing, offered in evidence to prove the truth of the matter asserted. N.J.R.E. 801. Although hearsay is admissible in administrative cases, subject to discretion, some legally competent evidence must exist to support each ultimate finding of fact to a sufficient extent to provide assurances of reliability and to avoid the appearance of arbitrariness. N.J.A.C. 1:1-15.5(a) to (b). Hearsay may either be employed to corroborate other evidence, or evidence may be supported or given added probative force by hearsay testimony. The residuum rule does not require that each fact be based on a residuum of legally competent evidence, but rather focuses on the ultimate findings of material fact. Ruroede v. Borough of Hasbrouck Heights, 214 N.J. 338, 359-60 (2013) (internal citations omitted). The decision cannot be supported by hearsay alone. Rather, it must be supported by a residuum of legal and competent evidence. Weston v. State, 60 N.J. 36, 51 (1972).

Here, the REC attempted to prove its case using hearsay evidence alone, which is not sufficient to satisfy its evidentiary burden. The REC was unable to provide any testimony or other evidence that Austin did not allow the Respondent to move into the Prospect Street Property, nor

was the REC able to provide corroboration of the hearsay testimony. Due to the lack of nonhearsay evidence, the REC was unable to meet its burden of proof.

As there is insufficient evidence to support the findings of any violations alleged in the OTSC in this matter, no action will be taken against the Respondent's real estate salesperson license nor will any monetary penalty be assessed.

SO ORDERED this 14<sup>th</sup> day of January, 2020.

By: Linda K. Stefanik, President  
Darlene Bandazian, Commissioner  
Jacob Elkes, Commissioner  
Denise M. Illes, Commissioner  
Carlos Lejnieks, Commissioner  
Kathryn Godby Oram, Commissioner



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Linda K. Stefanik, President  
New Jersey Real Estate Commission

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