

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,)	DOCKET NO.: MOR-18-013
)	REC REF. NO.: 10002095
Complainant,)	
)	
v.)	FINAL ORDER OF
)	DETERMINATION
RAYMOND J. RICE, licensed New Jersey)	
real estate broker-salesperson (SB7936222))	
)	
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, with further deliberations and the amended final determination decided on April 13, 2021.

BEFORE: Commissioners Linda K. Stefanik, Eugenia K. Bonilla, Christina Banasiak, Darlene Bandazian, William Hanley, and Denise M. Illes.¹

APPEARANCES: Marianne Gallina, Regulatory Officer (“RO Gallina”), appeared on behalf of the complainant, the New Jersey Real Estate Commission staff (“REC”). Lawrence P. Cohen, Esq. (“Cohen”) of Lavery, Selvaggi, Abromitis & Cohen, appeared on behalf of Respondent Raymond J. Rice (“Respondent”).

¹ Commissioners Hanley, Illes, and Bandazian, were not present at the September 25, 2018 hearing, however, they reviewed the transcript of the public hearing as well as the exhibits entered into evidence.

STATEMENT OF THE CASE

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated May 14, 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 alleged that the Respondent: (1) transacted real estate activity on his own behalf and without the knowledge and authorization of his employing broker, in violation of N.J.S.A. 45:15-1 and N.J.S.A. 45:15-3 (two counts); (2) collected and/or attempted to collect a commission from someone other than his employing broker, in violation of N.J.S.A. 45:15-17(m) (two counts); (3) demonstrated unworthiness, incompetency, bad faith, or dishonesty by transacting real estate activity on his own behalf and without the knowledge and authorization of his employing broker and by collecting and/or attempting to collect a commission from someone other than his employing broker, in violation of N.J.S.A. 45:15-17(e); (4) made a substantial misrepresentation to a Real Estate Commission Investigator during the course of the investigation regarding the commission clause in the contract for the purchase of the property located at 1497 Springfield Avenue, Maplewood, New Jersey (“Maplewood property”), in violation of N.J.S.A. 45:15-17(a); and (5) failed to indicate his license status on the contract of sale for the property located at 33. W. Washington Avenue, Washington, New Jersey (“Washington Property”).

By letter dated June 22, 2018, the Respondent filed an Answer to the OTSC, wherein he denied the allegations set forth in the OTSC. Accordingly, on June 26, 2018, the Commission reviewed the pleadings, deemed this matter contested, and directed that a hearing be scheduled. A hearing was conducted on September 25, 2018, at which time, the following exhibits were admitted into evidence by the REC, without objection:²

² Exhibits S-1 through S-9 were marked for identification at the beginning of the hearing and Exhibit S-10 was marked for identification during the testimony of REC Investigator William

- S-1 Garden State Multiple Listing Service Report for 33 W. Washington Avenue, Washington, New Jersey (Block 95, Lot 3);
- S-2 Letter of intent regarding the purchase of “Block 95 Lot 3-Borough of Washington-Warren County, N.J” from Ray Rice to 2170 Route 57 LLC c/o George Van Veldhuisen, dated February 13, 2012;
- S-3 Undated and unsigned Contract of Sale for Block 95, Lot 3, Washington, New Jersey between 2170 Route 47, LLC and Jade Land Co., LLC, prepared by Lawrence Cohen, Esq.;
- S-4 Signed Contract of Sale for 33 W. Washington Avenue, Washington, New Jersey 07882, Block 95, Lot 3, between 2170 Route 57, LLC and Jade Partners Washington, LLC, dated September 4, 2013;
- S-5 Letter from Ray Rice, Jade Land Co., LLC, to 2170 Route 57, LLC regarding professional services in the amount of \$3,655 that was due and payable to Jade Land, Co., LLC for 33 W. Washington Ave., Washington, New Jersey;
- S-6 U.S. Department of Housing & Urban Development Settlement Statement (HUD-1) for the sale of 33 Washington Avenue, Washington, New Jersey 07882, from 2170 Route 57, LLC to Jade Washington dated April 15, 2014;
- S-7 Signed Contract of Sale for 1497 Springfield Avenue, Maplewood, New Jersey, between Bayleys LLC and 1487 Springfield LLC, sellers, to Southeast Investments, Inc., buyer, dated August 4, 2014;
- S-8 Letter from Gary J. Drechsel, Sr. Member—Broker of Record, Eagle American Realty to Bayleys LLC and 1497 Springfield LLC, with attached invoice for commissions, dated March 17, 2016;
- S-9 Letter from Roy E. Kurnos, Esq., Belsole and Kurnos, L.L.C., to Gary J. Drechsel, Eagle American Realty and Raymond Rice, Jade Land Co., LLC, regarding the commission held in escrow for the 1497 Springfield Avenue, Maplewood, New Jersey transaction, dated April 8, 2016; and
- S-10 Letter from Raymond Rice to REC Investigator William Ames, dated October 14, 2014.

Ames. Exhibits S-1 through S-10 were admitted into the record at the conclusion of the hearing, prior to the Executive Session in this matter. RO Gallina marked for identification REC Investigator William Ames’s Investigation Report as Exhibit S-11 and asked to move it into evidence at the conclusion of the hearing in this matter. Cohen objected to moving Exhibit S-11 into evidence, and RO Gallina then withdrew same.

TESTIMONY OF THE WITNESSES

William Ames

REC investigator, William Ames (“Ames”), testified on behalf of the REC and stated that he has been employed as an investigator for the REC for the last six and one-half years. Prior to being employed by the REC, he was employed for 27 years by the New Jersey State Police. He stated that he retired in 2010 as a Detective Sergeant First Class.

Ames stated that he was assigned to investigate the Respondent as part of his duties with the REC. The Respondent first came to the attention of the REC through a May 30, 2014 complaint filed by Eagle American Realty’s (“Eagle Realty”) broker of record, Gary Drechsel (“Drechsel”). In the complaint, Drechsel reported that he believed that the Respondent had completed transactions that were outside scope of his broker-salesperson’s license while he was employed by Drechsel. Drechsel additionally included documentation to support his complaint.³ Ames testified that he spoke with Drechsel after the complaint was filed and a formal investigation into the Respondent’s conduct was initiated. Ames stated that the information that he obtained through his investigation regarding the transactions at issue in this matter was obtained primarily from interviews with Drechsel and Rice, and through documentation supplied by Drechsel and Rice. Ames stated that the Respondent acted outside the scope of his license by attempting to receive or by receiving commissions without identifying his broker.

Ames testified that Exhibit S-1 is a Multiple Listing Service (“MLS”) report for the Washington property, for which Fiedler Realty was the listing agency. He stated that he discussed the Washington property with Drechsel. Ames also testified that Drechsel supplied Exhibit S-2,

³ Although not marked and entered into evidence at the hearing, Ames stated that Drechsel submitted the Respondent’s independent contractor agreements for the years of 2013 and 2014. Ames stated that he was unaware of the specific agreement terms and what percentage that the Respondent would receive as commissions under same.

which is the letter of intent regarding the purchase of the Washington property between the Respondent and George Van Veldhuisen (“Van Veldhuisen”) and that sets forth the terms of the purchase of the Washington property. Ames stated that Exhibit S-2 indicates that the Respondent made an offer to buy the property from Van Veldhuisen and that the Respondent is a licensed real estate broker in New Jersey.

Ames further testified that Exhibit S-3 is an undated and unsigned contract of sale for the Washington property prepared by Cohen. Ames stated that the seller is listed as 2170 Route 57, LLC and the buyer is listed as Jade Land Co., LLC (“Jade Land”). Ames stated that the Respondent was identified in the contract as having a real estate license, which is required in contracts when someone with a real estate license is involved in a transaction. Ames further stated that the Respondent was the sole member of Jade Land. Moreover, Ames testified that Exhibit S-3 indicates that Fiedler Realty and Eagle Realty were to receive commissions on the sale of the Washington property. Ames additionally noted that the Respondent was licensed with Eagle Realty in September 2013.

Ames stated that Exhibit S-4 is an executed contract of sale dated September 4, 2013. The seller that is set forth in the contract is 2170 Route 57, LLC, which is the same seller that is set forth in Exhibit S-3. However, the buyer is listed in Exhibit S-4 as Jade Partners Washington, LLC (“Jade Partners”).⁴ This contract did not disclose that the Respondent was a real estate licensee. This contract did not address a commission that was to be paid to either the buyer’s or seller’s agents. However, Ames testified that Exhibit S-5 was a document from Jade Land to 2170 Route 57, LLC, which indicated that the amount due and payable to Jade Land, as a result of the

⁴ The Respondent stipulated that neither Jade Land nor Jade Partners are licensed real estate brokers in New Jersey.

purchase of the Washington property, was \$3,655 for “professional services rendered.” The document was signed by the Respondent on behalf of Jade Land. Eagle Realty was not mentioned in Exhibit S-5. Ames stated that Drechsel believed that the \$3,655 amount set forth in Exhibit S-5 was the buyer’s agent’s commission and should have gone to Eagle Realty, rather than Jade Land.

Ames further testified that Exhibit S-6 was the U.S. Department of Housing & Urban Development Settlement Statement (“HUD-1 Statement”) for the sale of the Washington property between Jade Partners⁵ and 2170 Route 57. According to Exhibit S-6, Fiedler Realty was to receive \$3,845 in commission and Jade Land was to receive \$3,655 in commission from the sale of the Washington property. Ames stated, however, that Jade Land should not have received a commission because it is not licensed as a broker. Ames stated that Exhibit S-6 appears to have been executed with a signature of a representative of Jade Partners and a signature of the settlement agent, Cohen, attesting to the truth and accuracy of the HUD-1 Statement.⁶ Ames testified that the amount listed on the HUD-1 as a commission, \$3,655, is the same amount as was requested as payment for “professional services rendered” on Exhibit S-5. Ames stated that if an amount is listed as a commission on HUD-1 Statement, it is deemed a commission and not a reimbursement for professional services. Ames was not aware if the Respondent or any other entity ultimately received commissions, and he was unaware if the issue had been resolved

⁵ The HUD-1 Statement sets forth that the borrower for the Washington property transaction was Jade Partners but indicated that a commission was due to Jade Land. The executed contract in this matter, Exhibit S-4, lists the buyer as Jade Partners, while the unsigned contract, Exhibit S-3, lists the buyer as Jade Land.

⁶ Cohen stipulated that he was the settlement agent for the Washington property transaction.

between Drechsel and the Respondent. Ames additionally testified that he did not interview anyone from Fiedler Realty, Van Veldhuisen,⁷ or any of the attorneys involved in the matter.

Ames testified that in January 2016 Drechsel reached out to the REC regarding another transaction in which Drechsel believed that the Respondent wrongly received a commission that should have gone to Eagle Realty. Ames testified that he believed that the Respondent was not employed by Eagle Realty at the time that Drechsel filed the second complaint against the Respondent. Ames testified that Drechsel provided Exhibit S-7 to him, which is the purchase and sale agreement between sellers, Bayleys, LLC and 1497 Springfield, LLC, and buyer, Southeast Investments, Inc. (“Southeast Investments”), for the sale and purchase of the Maplewood property, dated August 4, 2014. Ames testified that he discussed this transaction with the Respondent. Ames testified that the Respondent informed him that he brought his friend into the transaction as the buyer and that he was not expecting a commission as a result of the sale of the Maplewood property. Ames testified that on page 9 of Exhibit S-7, there is a paragraph that sets forth that Ray Rice of Jade Land is the procuring broker in connection with the Maplewood property transaction and that a commission of four percent is to be provided to him. Ames stated that Drechsel handwrote on the side of this paragraph that Eagle Realty should be the entity receiving the commission listed in the contract.

Ames testified that he spoke to David Klipstein (“Klipstein”), Vice President of Southeast Investments. Ames stated that he was informed by Klipstein that the Respondent told Klipstein to list the Respondent as the broker in the contract for the Maplewood property. Ames stated that he also spoke to Roy Kurnos (“Kurnos”), attorney for the sellers, regarding the Maplewood

⁷ Ames testified that he was aware that Van Veldhuisen held a real estate license because it was listed on the contract.

transaction. He stated that Kurnos advised him that because there remained a dispute as to the rightful receiver of the commission on the Maplewood property, he would not distribute the commission payment until a decision had been made as to who should receive commission. However, Ames stated that Kurnos eventually released the commission held on the Maplewood property back to the sellers. Ames read from his investigation report that was not admitted into evidence. Ames read the following: "On November 14th, spoke with attorney Kurnos who advised me that all monies being held in escrow for the [Maplewood property] sale had been dispersed to seller, William Harrington ("Harrington"), and that no monies or commission was paid to [the Respondent]." In addition, Ames stated that it was his understanding from his interviews with Kurnos that the Maplewood property did proceed to closing in August 2014.

Ames testified that he met with the Respondent on October 14, 2014, at which time, the Respondent reviewed the complaint. Ames testified that the Respondent believed that the transactions were outside the scope of his employment with Eagle Realty, but that the Respondent did not feel that it was fair to take a commission. Ames testified that he received Exhibit S-10, a letter, dated October 14, 2014, from the Respondent after the aforementioned interview, which constituted the Respondent's official, written statement regarding the complaint filed against him with the REC. Ames testified that he requested that the Respondent submit this statement to him after the interview was conducted. Ames stated that Exhibit S-10 provides that the Respondent is the sole member of Jade Land, which is a "standalone LLC" and which was established in 2004 "in order to facilitate the initial phase of ascertaining the viability of property development." Ames additionally stated that Exhibit S-10 provides that Jade Land "holds title to no property and at present is the contract purchaser of a redevelopment site in Newtown, Sussex County, New Jersey[, and w]hat has been referenced as a commission in the closing statement in fact was a return of

capitol [sic] previously invested in [the Washington property] over the time frame that lead [sic] up to the execution of the contract.”

Ames stated that he was informed by the Respondent that the Respondent was not the sole owner of Jade Partners and was only at 20% member of same. Moreover, Ames indicated that the Respondent relayed to him that the Respondent did not want a commission because as a member of Jade Partners, he did not feel it was fair to take a commission. Ames was unaware of who were the remaining partners of Jade Partners and acknowledged that the Respondent was the only person against whom a complaint was lodged. Ames additionally testified that the Respondent was cooperative with the investigation regarding these transactions, and that he timely provided documentation and responses to Ames, as requested.

Ames stated that after receiving Exhibit S-10, there were implications that there may be a lawsuit instituted by Drechsel against the Respondent if the issue regarding the commissions could not be resolved. However, Ames stated that he was unsure if Drechsel and the Respondent resolved their dispute or if a lawsuit was ever actually filed.

Ames acknowledged that his investigative report is dated November 3, 2017. He testified that the investigation was active during the time from the initial complaint until his investigation ended, and it is not unusual for reports to take an extended period of time to write, some taking four or five years. Between October 2014, when he met with the Respondent, and November 2017, when the report is dated, he was involved in approximately 300-400 investigations, which he keeps track of on a computer program. However, Ames insisted that the investigation regarding the Washington property was not completed in October 2014 and was ongoing matter that remained in active status. Ames stated that his report would not be filed until the investigation is complete.

Gary Drechsel

Drechsel testified that he is employed as broker partner for Eagle Realty and Drechsel Realty, LLC (“Drechsel Realty” or the “agency”). Drechsel testified that the Respondent was licensed under Drechsel Realty d/b/a Eagle Realty as a broker-salesperson from December 26, 2013 to February 6, 2016. During that time, he had a written employment agreement wherein the Respondent and the agency would split commissions on a 50/50 basis. It was Drechsel’s understanding that under this employment agreement, the Respondent was to conduct all real estate activity through the agency; however, the Respondent did not have access to the MLS through the agency. Drechsel stated that the Respondent, like other agents, was an independent contractor and able to set his own hours and work schedule. Drechsel stated that the Respondent did not bring listings to the agency and he was not aware if the Respondent brought in any commissions, other than the commissions that should have been received based on the Washington property and Maplewood property.⁸ The Respondent, however, introduced the agency to individuals interested in property. Drechsel was aware that the Respondent was involved in developing land and the Respondent would partner with different individuals and entities to develop properties. However, the Respondent did not conduct this business through Drechsel’s agency.

Drechsel testified that he learned of the Respondent’s involvement with Jade Land from a licensed broker at Fiedler Realty. Specifically, the broker called Drechsel to bring to his attention that there was a closing and that the Respondent was paid a commission directly. Drechsel did not recall if he learned of the transaction before the closing or afterwards. Drechsel testified that he contacted the Respondent to discuss the transaction. He testified on direct examination that the

⁸ On cross-examination, Drechsel stated that he was aware that the Respondent was involved as an owner in a property in downtown Hackettstown, New Jersey for which Eagle Realty may have received a commission. Drechsel stated that his agency secured a buyer for this property, but Drechsel was unaware that the Respondent was a principal in that property at that time.

Respondent informed him that the seller was claiming a commission because he was a licensed agent with Fiedler Realty. Drechsel stated that the Respondent informed him that because the seller was claiming a commission, the Respondent was claiming his commission as well. Drechsel stated that he received an email with the HUD-1 Statement, Exhibit S-6, and a copy of the Respondent's invoice, Exhibit S-5, from Cohen after the Respondent claimed that the HUD-1 Statement Drechsel received from Fiedler Realty was incorrect and that he did not receive a commission on the Washington property. Drechsel stated that the HUD-1 Statement received from Cohen was the same HUD-1 Statement received from Fiedler Realty.⁹ On cross-examination, Drechsel denied that the Respondent told him that he did not want to receive a commission for this transaction; however, he did state that the Respondent told him that he would not receive a commission from the transaction.

Drechsel additionally testified that the Respondent did not inform him as to why he did not go through the agency to claim the commission nor was Drechsel aware of how the transaction was resolved. Drechsel stated that he requested that his agency receive its portion of the commission and was told by the Respondent that he would "work it out" with Fiedler Realty. At that point, the discussions between Drechsel and the Respondent ceased, and Drechsel reported the incident to the REC. Drechsel stated that his agency never received payment for its portion of the commission.

⁹ The Commission questioned Cohen regarding whether the HUD-1 Statement that he signed and certified for the Washington property was correct. Cohen advised that he was not a fact witness; however, his signature, as settlement agent, is on the document. He stated that he would have the Respondent testify to these questions. Cohen stated that he did not check his records; however, he assumes that checks were disbursed. He further stated that the HUD-1 Statement was accurate based upon the information that was received and was most likely prepared by a paralegal at his office.

Drechsel testified that he learned of the second transaction during a meeting, regarding the sale of a separate property, with Klipstein. Drechsel stated that Klipstein informed him that the Respondent was the broker for the Maplewood property transaction. Drechsel testified that he emailed Klipstein after the meeting to confirm that the Respondent was the broker and was going to receive the commission. Drechsel stated that he attempted to meet with the Respondent to discuss this matter, and the Respondent stated that he would discuss the matter with his attorney. Drechsel additionally stated that the Respondent's attorney and Drechsel's attorney exchanged emails in an attempt to arrange a conference call; however, neither Drechsel nor his attorney were able to discuss this matter with Cohen. On cross-examination, Drechsel denied that the Respondent had claimed to be unaware that there was a clause in the Maplewood property contract that would give a commission to the Respondent or Jade Land.

Drechsel testified that the contract regarding the Maplewood property was executed in August 2015 and the transaction closed in April or May 2016. He stated that he was not involved in the transaction, and he tried to get a copy of the contract to see if Eagle Realty or the Respondent were mentioned. He further testified that he never saw a listing agreement for the Maplewood Property and was not aware if there was a listing agreement under the Respondent's name; however, he stated that it is not unusual in commercial transactions that the entities would be listed in the contract setting forth the commissions owed to the agents.

Drechsel testified that Exhibit S-8 was a letter from himself to both attorneys informing them that Drechsel held Respondent's real estate license and that the commission in the Maplewood property transaction should go to Eagle Realty, rather than to "Jade." The buyer and sellers were also copied on this letter.

Drechsel testified that he contacted Kurnos, who told him, through Exhibit S-9, that he was putting the money in escrow due to the dispute over the commission. He also spoke to Stephen Urban (“Urban”), who was the attorney for the buyer. Drechsel stated that Urban agreed with Kurnos that the money should go in escrow until the dispute over the commission was resolved. Drechsel testified that he believed that the money was still being held in escrow; however, the day of the hearing was the first that he had heard that the monies held in escrow were released back to the sellers. He stated that he has no information to contradict that the monies had been released to the sellers. He also stated that he has been unable to recover any portion of any commissions that was to be paid to Jade Land or the Respondent. Drechsel stated that he has not filed any lawsuits to recover commissions.

Raymond J. Rice

The Respondent testified on his own behalf. The Respondent stated that prior to becoming a salesperson¹⁰ with Eagle Realty, he had his license at Weichert in 1989 and became the Vice President of their land and auction division from 1989 through 2012. The Respondent became a salesperson with Eagle Realty in 2013, and that during his tenure at Eagle Realty, he did not actively search for listings. Instead, the Respondent dealt with the development of retail and apartment sites. The Respondent testified that he had discussions with Drechsel regarding what the Respondent’s role would be at Eagle Realty. Specifically, those discussion entailed that the Respondent would bring individuals to Eagle Realty that would be suitable for retail developments, such as pharmacies, banks, and convenience stores. In addition, the Respondent stated that Drechsel approached the Respondent to identify individuals that would invest in a joint company

¹⁰ While the Respondent testified that he was licensed as a salesperson with Eagle Realty, the Respondent is a New Jersey licensed broker-salesperson.

consisting of Drechsel, the Respondent, and a group of other investors as the principals in that company. The Respondent stated that his contract with Drechsel provided for a 50/50 split regarding commissions. The Respondent stated that aside from the allegations against him, as set forth in the OTSC in this matter, he has never had any charges brought against him regarding his real estate license.

In relation to the Washington property, the Respondent stated that he was interested in the purchase of the property, which was part of a “semblance that [he] did on this side of the downtown.” The Respondent stated that he owned the property that was immediately adjacent to the Washington property, which the Respondent purchased from PNC Bank. Additionally, the Respondent was under contract to purchase the property that was immediately to the northwest of the Washington property, which was a former convenience store. The Respondent stated that Exhibit S-2 is a letter of intent that he prepared for the purchase of the Washington property. The Respondent testified that Exhibit S-2 was delivered to Van Veldhuisen, who is a principal in 2170 Route 57, LLC, which owned the Washington property. The Respondent stated that he saw a Fiedler Realty sign on the Washington property regarding the sale of same. He stated that he does not use the MLS. The Respondent testified that he called Van Veldhuisen and left a message then subsequently submitted Exhibit S-2 for the purchase of the property. At the time that the Respondent submitted Exhibit S-2 for the purchase of the property, he states that he did not know that Van Veldhuisen held a real estate license; however, he was subsequently informed of this. The Respondent, however, stated that in Exhibit S-2, he identified himself as a licensed broker associate in the State of New Jersey. The Respondent provided that at the end of Exhibit S-2, there is a clause that sets forth that a commission would be issued to Weichert.

The Respondent stated that he submitted Exhibit S-2 to Van Veldhuisen, who was not happy with the offered purchase price. The Respondent did not continue to pursue the property; however, six to eight months thereafter, the Respondent heard from Van Veldhuisen and the contract set forth in Exhibit S-3, which was drafted by Cohen at the Respondent's direction, was submitted, but was not executed. The Respondent acknowledged that the clause in Exhibit S-3, which sets forth that the Respondent, under Eagle Realty, is due commission on the Washington Property, was placed in the contract at his direction. The Respondent testified that Van Veldhuisen called the Respondent a substantial period of time later and asked to meet him at a Dunkin Donuts in Washington, New Jersey. The Respondent and Van Veldhuisen discussed the terms of the deal and an outline regarding the transaction was drafted, to which the parties shook hands as a form of agreement. Thereafter, the Respondent was contacted by Van Veldhuisen's attorney advising that he would be drafting a contract for the sale of the Washington property that the Respondent could pick up from his office. The Respondent stated that he did obtain and sign this contract, which is Exhibit S-4. The contract was on behalf of Jade Partners, which is a standalone limited liability company that was set up for a project that consisted of 50 apartments, 7,100 square feet of retail space, and a path site. The Respondent stated that at the time that the contract was signed, he was a 20% member of Jade Land.¹¹ The Respondent stated that the other members of Jade Land were aware and agreed to the purchase of the Washington property at the price of \$125,000. The property was originally listed for sale at a price of \$222,000 or \$225,000. The Respondent

¹¹ During his testimony, the Respondent stated that he was a 20% member of Jade Land at the time of contracting for the Washington property. The contract for the Washington property, Exhibit S-4, was dated September 4, 2013. However, in his letter to Ames, Exhibit S-10, dated October 14, 2014, the Respondent stated that he was the sole member of Jade Land.

stated that he did not have Cohen or any other attorney review the executed contract of sale, and the contract of sale was signed at Van Veldhuisen's attorney's office.

The Respondent indicated that the Washington property closed on or about April 15, 2014. The Respondent stated that during the time-period between the execution of the contract and the closing, environmental testing was done. He stated that the Washington property had been the site of a former hotel that had burned down. There were some issues including "urban fill conditions," two tanks, and some soil that had staining in it that ultimately had to be remediated. The Respondent testified that the seller had agreed to deliver a usable survey and that the seller had represented that the company that had done the cleanup had done so properly. However, the issues remained, and the Respondent and Jade Partners/Jade Land paid for the remediation to the property without contribution from the seller.

The Respondent stated that at the time of closing there were no discussions with Van Veldhuisen regarding brokerage fees or commissions. However, the Respondent later testified that Van Veldhuisen indicated that he would not be taking a commission on the sale of the Washington property. While there is a commission listed for Fiedler Realty on the HUD-1 Statement, the Respondent stated that he was not sure regarding whether a commission check was issued to Fiedler Realty for the sale of the property. The Respondent further noted that he was never asked by Van Veldhuisen if the Respondent was going to take a commission on the sale of the property. The Respondent, however, testified that prior to closing there was a discussion regarding the remediation performed by Jade Partners/Jade Land in relation to the Washington property. Specifically, the Respondent stated that Jade Partners/Jade Land spent almost \$15,000 on the remediation, and Van Veldhuisen agreed to reimburse Jade Partners/Jade Land for a portion of that amount "that would be attributable to the fact that [the Respondent] wasn't receiving any

commission on [the sale of the Washington property].” Van Veldhuisen requested that the Respondent submit a letter to him to that effect, which is Exhibit S-5. The Respondent stated that the “professional services” referenced in Exhibit S-5 were the seller’s portion of the cost of the remediation to the Washington property. The Respondent additionally stated that if this letter had been a commission bill, he would have set forth the commission rate, the purchase price, and ultimately, the commission price. The Respondent stated that Jade Land then received a check in the amount of \$3,655, and the money was reinvested into Jade Partners, after being endorsed by the Respondent. However, the Respondent testified that he was unaware of how that amount was determined. The Respondent testified that this payment was a credit to the buyer and not a commission. Additionally, the Respondent testified that the purchase price was not adjusted to account for this credit because there were issues with the closing being pushed back by almost two months, the funds were already wired into Cohen’s escrow account, and the documents were already executed by the parties. The Respondent testified that he did not review the HUD-1 Statement and that Cohen had signed same on behalf of Jade Partners. In fact, the Respondent stated that he did not attend the closing for the Washington Property, as the closing was held electronically.

The Respondent stated that Drechsel called him and informed him that Dan Fiedler of Fiedler Realty informed Drechsel that the Respondent had taken a commission at the closing of the Washington Property. The Respondent stated that he informed Drechsel that he did not take a commission, and upon meeting with Drechsel at his office, the Respondent explained to him that Van Veldhuisen had offered to provide a reimbursement to Jade Partners. The Respondent additionally noted that Drechsel asked him if he was aware of the reason that Mr. Fiedler had called Drechsel to inform him that the Respondent had accepted a commission, to which the

Respondent stated that he did not know. The Respondent stated that he did not have any interaction with Mr. Fiedler and had only had discussions with the seller, Van Veldhuisen. The Respondent testified that Drechsel never advised the Respondent that he expected to receive the commission from the Washington property nor did he ask to receive his portion of the alleged commission or threaten to file a lawsuit to recoup any monies he believed were owed to him. However, after his conversation with Drechsel, the Respondent was contacted by Ames, who advised him that Drechsel filed a complaint against him with the REC in relation to the commission on the Washington property. The Respondent testified that he provided documentation related to the transaction to Ames and that he, ultimately, met with Ames to discuss the issue.

In relation to the Maplewood property transaction, the Respondent testified that he has known the seller of the Maplewood property, Harrington, who is a demolition contractor and also, invests in real estate, for over 25 years. The Respondent stated that he had a conversation with Harrington wherein Harrington informed the Respondent that he assembled three pieces of property on Springfield Avenue in Maplewood, New Jersey, which the town would allow to be used for the construction of apartments. The Respondent stated that he visited the location with Harrington but ultimately, made the decision that he was not interested in purchasing the properties. The Respondent stated that he did not have any subsequent conversations with Harrington regarding the Maplewood property.

Respondent testified that one of the Respondent's partners had advised the Respondent that he was working with a group to search for properties that could be used to develop convenience stores, specifically WAWA convenience stores. The Respondent informed his partner that he had recently viewed Harrington's property and mentioned that this could potentially be a site for a WAWA. The Respondent stated that the extent of his knowledge regarding the business dealings

of the buyer of the Maplewood property, Southeast Investments, was through his partner, who had a business relationship with Southeast Investments, which is now terminated, and through the Respondent developing properties in Hackettstown, New Jersey, where Southeast Investments is attempting to develop another WAWA location.

The Respondent stated that aside from one conversation with Harrington wherein the Respondent was informed that Harrington was still trying to reach a deal on the Maplewood property, he had no involvement in the negotiations or contracting for the Maplewood property, and he ultimately found out, through Drechsel, who the entities involved in the transaction were. Specifically, the Respondent testified that Drechsel asked him if he was aware that a property in Maplewood was getting ready to close and that the Respondent was listed as the procuring broker. Drechsel also asked the Respondent if he was making a claim for commission on the transaction. The Respondent testified that he informed Drechsel that he was completely unaware of the transaction, did not have a copy of the contract, did not have a listing agreement for the Maplewood property, and did not ask for any compensation. The Respondent additionally advised Drechsel that he made an introduction and was unaware of any clause in a contract related to the sale of the Maplewood property that would provide compensation to the Respondent. The Respondent affirmed that he did not have a written agreement with Harrington or with the purchaser nor did he verbally, in writing, or through email, request a commission related to the Maplewood property from anyone. The Respondent stated that Drechsel then sent a series of emails with deadlines for the Respondent's answer. The Respondent testified that after receiving these emails, he advised Drechsel that he would be contacting his attorney, Cohen.

The Respondent stated that he was not aware of Drechsel sending a letter and invoice, Exhibit S-8, to Harrington regarding the commission for the Maplewood property until after it was

sent by Drechsel. The Respondent further testified that he cannot remember the exact date that he remembers first seeing the contract for the transaction; however, he stated that it was after Drechsel made him aware that the Respondent was listed as the procuring broker for the sale. The Respondent further testified that he was unaware of who drafted the contract for the purchase of the Maplewood property. The Respondent stated that after Drechsel approached him regarding the Maplewood property transaction, the Respondent attempted to get in contact with Harrington but was unable to do so.¹² The Respondent was able to get in contact with Klipstein, however, who informed the Respondent that he was contacted by Drechsel regarding the commission. Klipstein advised the Respondent that he did not want to discuss the matter. The Respondent stated that he was ultimately contacted by Kurnos who asked the Respondent if he was making a claim for a commission. The Respondent stated that he informed Kurnos that he was not making a claim; however, the Respondent was informed by Kurnos that since Drechsel was making a claim for a commission, there had been a decision to place the monies into escrow at the time of closing. The Respondent testified that he offered to sign a release to any claim the Respondent may have to the monies held in escrow; however, he did not receive a document from Kurnos to sign. The Respondent did not know that the monies held in escrow were released to the sellers until Ames's testimony before the Commission at this hearing.

The Respondent reiterated that he never received any money from any person or entity regarding the sale of the Maplewood property nor did he make a claim for any commission related to the sale of the Maplewood property. The Respondent stated that he does not feel that he was

¹² While the Respondent initially testified that he was unable to get ahold of Harrington after Drechsel brought the Maplewood property transaction to his attention, on redirect, the Respondent testified that he was informed by Harrington that the Respondent was put in the contract because Harrington felt that he deserved some form compensation for locating a buyer. The Respondent testified again that he informed Harrington that he did not want a commission.

entitled to compensation related to the sale of the Maplewood property. The Respondent testified that Harrington had done a lot of contractor work for the Respondent, and Harrington and the Respondent are currently engaged in a project together. The Respondent stated that all he did regarding the Maplewood transaction was officiate an introduction that was not the Respondent's "line of business and he got fortunate enough to find a buyer." The Respondent stated that to the best of his knowledge, a lawsuit to recover any alleged commissions was never filed by Drechsel against the Respondent.

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 broker-salesperson, who at the time of the hearing, is employed with Builder Marketing Services, Inc., licensed New Jersey real estate broker, located at 6 Schooleys Mountain Road, New Jersey 07853.
2. At all times relevant, the Respondent was licensed with Eagle Realty, licensed New Jersey real estate broker, located at 410 Route 10 West, Ledgewood, New Jersey 07852. His employment with Eagle Realty terminated on or about February 6, 2016.
3. At all times relevant, the Respondent was a partner/member of entities known as Jade Land and Jade Partners, neither of which hold a real estate license in New Jersey.
4. The Washington property was listed for sale by Fiedler Realty, licensed New Jersey real estate broker, located at 227 Main St, Hackettstown, NJ 07840.
5. The MLS report for the Washington property provides that the commission due to the buyer's broker is three percent of the purchase price of the property minus \$95.

6. In or about February 2012, the Respondent, as a principal for Jade Land, commenced negotiations with the owner of the Washington property, Van Veldhuisen.
7. Respondent's attorney, Cohen, prepared a contract to purchase the Washington property, which included a provision acknowledging that Eagle Realty was entitled to receive a commission on the transaction and disclosed the Respondent's status as a real estate licensee in New Jersey. This contract was not executed.
8. On or about September 4, 2013, a new contract of sale for the purchase of the Washington property was prepared by the seller Van Veldhuisen's attorney, in which the Respondent was listed as a principal for Jade Partner. The contract did not identify the Respondent as a licensed New Jersey real estate broker-salesperson, did not identify any real estate broker involved in the sale, and did not contain a provision for a commission to be paid to anyone. The purchase price of the Washington property was listed in the contract as \$125,000.
9. The closing for the Washington property took place on or about April 15, 2014, while the Respondent was licensed with Eagle Realty.
10. Pursuant to the HUD-1 Statement for the sale of the Washington property, which was prepared and acknowledged by the Respondent's Attorney, Cohen, on behalf of Jade Partners and as the settlement agent, "Jade Land Co, LLC" claimed a real estate commission due in the amount of \$3,655. This amount was received by the Respondent, who endorsed the check, on behalf of Jade Land.
11. On or about August 4, 2014, a contract of sale was executed for the purchase of the Maplewood property between sellers, Bayleys LLC and 1497 Springfield LLC, and

buyer, Southeast Investments, for the purchase price of \$1.8 million. The contract was drafted by the attorney for the sellers, Kurnos.

12. Paragraph 13.2 of the contract specified that “Ray Rice of Jade Land Co., LLC is the procuring broker in connection with the transaction contemplated by this Agreement and said broker shall be paid by the seller, if and when this transaction closes, the aggregate commission of four percent (4%) of the purchase price.”
13. When the broker of record for Eagle Realty, Drechsel, became aware of the transaction in February 2016, he submitted a claim for commission to be paid to Eagle Realty, the broker with whom the Respondent was licensed at the time of contracting for the sale of the Maplewood property.
14. The Maplewood property proceeded to close and the commission was held in escrow pending a final resolution related to whom the commission should be issued.
15. After the parties and their attorneys were made aware of Eagle Realty’s claim for commission related to the Maplewood property, neither the Respondent nor Jade Land made a claim for a commission and in fact, neither the Respondent nor Jade Land received any compensation related to the sale of the Maplewood property.
16. The monies held in escrow by the seller’s attorney, Kurnos, related to the commission for the Maplewood property transaction were eventually released back to the Seller.

CONCLUSIONS OF LAW¹³

In light of the above findings of fact, the Commission makes the following conclusions of law with regard to the allegations contained in the OTSC and summarized above.

1. In relation to the Washington property, the Respondent transacted real estate activity that was outside the scope of his employment and without the knowledge and authorization of his employing broker, in violation of N.J.S.A. 45:15-1 and N.J.S.A. 45:15-3.
2. The Respondent collected a commission from someone other than his employing broker when he accepted a commission on the Washington property transaction, in violation of N.J.S.A. 45:15-17(m).
3. The Respondent failed to indicate his license status on the executed contract of sale for the Washington property, in violation of N.J.S.A. 45:15-17(q).
4. The Respondent's actions in transacting real estate activity that was outside the scope of his employment and in accepting a commission for the Washington property

¹³ After the September 25, 2018 hearing in this matter, the Commission initially determined that the Respondent was in violation of the following: (1) two counts of N.J.S.A. 45:15-1 and N.J.S.A. 45:15-3 for transacting real estate activity on his own behalf and without the knowledge and authorization of his employing broker for both the Washington property and Maplewood property transactions; (2) two counts of N.J.S.A. 45:15-17(m) for collecting and/or attempting to collect a commission from someone other than his employing broker for both the Washington property and Maplewood property transactions; (3) N.J.S.A. 45:15-17(e) in demonstrating bad faith and dishonesty in accepting or attempting to accept commissions for both the Washington property and Maplewood property transactions; and (4) N.J.S.A. 45:15-17(q) for failing to indicate his license status on the contract of sale for the Washington property. However, after an additional review of the witnesses' testimony and documentary evidence entered into the record by those current commissioners not present at the hearing on September 25, 2018, the Commission further deliberated and determined that there is insufficient evidence to support a finding that the Respondent accepted or attempted to accept a commission in relation to the sale of the Maplewood property transaction. As such, this final order reflects an amended decision by the Commission and correctly reflects the violations that the Commission finds that the Respondent committed and which are supported by the evidence admitted during the hearing in this matter.

transaction without going through his employing broker demonstrates bad faith and dishonesty, in violation of N.J.S.A. 45:15-17(e).

5. In relation to the Maplewood property, there is insufficient evidence to support a finding that the Respondent transacted real estate activity that was outside the scope of his employment and without the knowledge and authorization of his employing broker, in violation of N.J.S.A. 45:15-1 and N.J.S.A. 45:15-3.
6. There is insufficient evidence to support a finding that the Respondent collected a commission from someone other than his employing broker in relation to a commission on the Maplewood property transaction, in violation of N.J.S.A. 45:15-17(m).
7. There is insufficient evidence to support finding that the Respondent demonstrated unworthiness, incompetency, bad faith, or dishonesty, in violation of N.J.S.A. 45:15-17(e) as a result of his activities with the Maplewood property transaction.
8. There is insufficient evidence to support a finding that the Respondent made a substantial misrepresentation to a REC investigator during the course of the investigation regarding the commission clause in the contract for the purchase of the Maplewood property, in violation of N.J.S.A. 45:15-17(a).

DETERMINATION

At the conclusion of the hearing and executive session in this matter, and after further deliberations on April 13, 2021, the Commission voted in favor of finding the 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 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

Washington Property:

As it relates to the Washington property, the OTSC alleges the following: (1) the Respondent misrepresented his true license status and attempted to collect compensation by transacting real estate activity on his own behalf and without the knowledge and authorization of his employing broker, in violation of N.J.S.A. 45:15-1 and N.J.S.A. 45:15-3; (2) the Respondent collected and/or attempted to collect a commission from someone other than his employing broker, in violation of N.J.S.A. 45:15-17(m); (3) the Respondent failed to indicate his license status in the contract of sale for the Washington property, in violation of N.J.S.A. 45:15-17(q); and (4) the Respondent demonstrated unworthiness, incompetency, bad faith, or dishonesty by accepting a commission without the knowledge and authorization of his employing broker, in violation of N.J.S.A. 45:15-17(e).

The evidence in this matter shows that the Respondent, on behalf of entities in which he maintained a partnership interest, Jade Land and Jade Partners, negotiated and ultimately contracted for the purchase of the Washington property. Through his letter of intent, Exhibit S-2, dated February 13, 2012, the Respondent informed the seller, Van Veldhuisen, a principal of 2170

Route 57, LLC, that Respondent was a licensed broker associate in the State of New Jersey. Additionally, the letter of intent contains a clause that states that “Weichert Commercial will be paid a commission of 3% of the sale price by Seller at closing.” The Respondent, during his testimony, acknowledged that, in the letter of intent, he asked for a commission as a result of the purchase of the Washington property while he worked for Weichert. Moreover, the unexecuted contract of sale, Exhibit S-3, which was drafted by the Respondent’s attorney, Cohen, contains a clause that states that: “Eagle American Realty . . . shall be paid a commission of 3% of the sale price by the Seller at Closing. The parties acknowledge that [the Respondent], who is a principal of Jade Land Co., LLC, is a licensed broker associate of the State of New Jersey.” However, the Respondent acknowledged during his testimony that the executed contract of sale for the Washington property transaction, Exhibit S-4, which he signed on behalf of Jade Partners, fails to contain a clause disclosing the Respondent’s license status nor does it discuss a commission being paid to the parties’ brokers of record. The purchase price of the Washington property is listed on Exhibit S-4 as \$125,000.

Moreover, the evidence in this matter also demonstrates that on April 14, 2014, the Respondent sent a letter, Exhibit S-5, to 2170 Route 57, LLC, the seller of the Washington property, in which the Respondent requested that \$3,655 be paid to Jade Land “[f]or professional services rendered.” The Respondent’s letter fails to set forth what “professional services” were performed in exchange for the \$3,655 requested. On April 15, 2014, the parties to the Washington property transaction completed a HUD-1 Statement, Exhibit S-6, wherein the buyer of the Washington property was listed as Jade Partners; however, line 702 of the HUD-1 Statement sets forth that Jade Land is entitled to \$3,655 in commission as a result of the transaction. The Respondent’s attorney, Cohen, certified to the accuracy of the HUD-1 Statement by signing the

document as the settlement agent and additionally acknowledged the receipt and accuracy of the HUD-1 Statement by signing the document on behalf of Jade Partners, the listed buyer of the Washington property. Moreover, in his testimony, the Respondent acknowledged that he, on behalf of Jade Land, received a check in the amount of \$3,655 as a result of the closing of the Washington property, and that this money was reinvested into the business. The Respondent, however, contended that this check was a reimbursement to Jade Land as a result of expenditures made during remediation of the property. The MLS report for the Washington property, Exhibit S-1, provides that the buyer's broker will receive a commission of three percent of the purchase price minus \$95.

N.J.S.A. 45:15-1 provides:

No person shall engage either directly or indirectly in the business of a real estate broker, broker-salesperson, or salesperson, temporarily or otherwise, and no person shall advertise or represent himself as being authorized to act as a real estate broker, broker-salesperson, or salesperson, or to engage in any of the activities described in [N.J.S.A.] 45:15-3, without being licensed so to do as hereinafter provided.

As referenced in N.J.S.A. 45:15-1, N.J.S.A. 45:15-3, in pertinent part, defines a real estate broker-salesperson to be:

any natural person who is qualified to be licensed as a real estate broker but who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed or contracted by and operates under the supervision of a licensed real estate broker to perform the functions of a real estate salesperson as defined herein.¹⁴

¹⁴ N.J.S.A. 45:15-3, in pertinent part, defines a real estate salesperson to be:

any natural person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed or contracted by and operates under the supervision of a licensed real estate broker to sell

Additionally, N.J.S.A. 45:15-17 provides the Commission with the power to suspend, revoke, or place on probation the license of any licensee and in addition or as an alternative, assess a penalty of not more than \$5,000 for the first violation, and a penalty of not more than \$10,000 for any subsequent violation for, among other things:

(m) [a]ccepting a commission or valuable consideration as a real estate broker-salesperson or salesperson for the performance of any of the acts specified in this act, from any person, except his employing or contracting broker, who must be a licensed broker; or

(q) Purchasing any property unless he first discloses to the seller in the contract of sale his status as a real estate broker, broker-salesperson, or salesperson.

Pursuant to the above statutes, as a New Jersey-licensed real estate broker-salesperson who maintained an employment contract with Eagle Realty a New Jersey-licensed real estate broker, the Respondent was required to operate under the supervision of a licensed real estate broker to buy or offer to buy or negotiate the purchase, sale, or exchange of real estate. In the present case, the Respondent's real estate license was held through Eagle Realty. As such, the Respondent was required to transact real estate activity for which he would receive a commission under the knowledge and authorization of his employing broker. Here, however, the Respondent operated outside the scope of his employment with Eagle Realty by negotiating the purchase of the Washington property on behalf of Jade Partners/Jade Land and accepted a commission for doing so. The Respondent failed to disclose his status as a real estate licensee in the executed contract, Exhibit S-4, and failed to advise the other parties that the commission should go through the broker which held his license, Eagle Realty. Moreover, not only did the Respondent accept a commission

or offer to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate [...].

outside of his employment with Eagle Realty, he accepted the commission that was paid to an entity that did not maintain a real estate license in New Jersey.

The Respondent's contention that the \$3,655 payment was reimbursement for money expended by Jade Partners/Jade Land is unpersuasive and not supported by the documentary evidence admitted into the record. The Respondent testified that Jade Partners/Jade Land had expended \$15,000 for remediation on the property but could not explain how the \$3,655 amount that was received by Jade Land, and endorsed by the Respondent after the closing, was calculated, even though he sent a letter to the seller specifying this specific amount and claiming they were "[f]or professional services rendered." See Exhibit S-5. Additionally, the MLS report for the Washington property, Exhibit S-1, specifically provides that the buyer's broker will receive a commission at a rate of three percent of the purchase price minus \$95. Moreover, both the Respondent's letter of intent, Exhibit S-2, and unexecuted contract prepared by his attorney, Cohen, Exhibit S-3, contain clauses that specify that the broker is entitled to three percent of the purchase price. The purchase price for the Washington property was \$125,000. See Exhibit S-4. The commission on this sale is three percent of this purchase price minus \$95 which calculates to \$3,655, the exact amount that the Respondent requested from the seller "[f]or professional services rendered" and the amount listed on the HUD-1 Statement, Exhibit S-6, as the commission due and paid to Jade Land. The Respondent testified that he received the check in this amount after the closing and it was reinvested back into the business. Based on the foregoing evidence in the record, the Commission finds that the Respondent violated N.J.S.A. 45:15-1 and N.J.S.A. 45:15-3 by acting outside the scope of his employment with Eagle Realty by transacting real estate activity on his own behalf and without the knowledge and authorization of his employing broker. Additionally, the Commission finds that the Respondent violated N.J.S.A. 45:15-17(m) by

accepting a commission from someone other than his employing broker. The Commission also finds that the Respondent violated N.J.S.A. 45:15-17(q) by failing to indicate in the contract of sale for the Washington property transaction.

Additionally, N.J.S.A. 45:15-17(c) provides the Commission with 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.” Here, the Respondent was aware that Eagle Realty held his broker-salesperson license and therefore regarding any transactions where he engaged in real estate activities as a broker-salesperson, he was required to go through Eagle Realty to collect commissions. In fact, the Respondent listed his former broker of record, Weichert, in his letter of intent, Exhibit S-2, as to whom the commission should be paid at the completion of the transaction, and then similarly in the unexecuted contract of sale, the Respondent listed Eagle Realty as the entity entitled to receive commission as a result of the transaction. Notwithstanding, the Respondent signed a contract of sale without any reference to his broker of record and then accepted a commission paid to Jade Land, an entity in which he maintains a partnership interest and is not licensed in New Jersey as a real estate entity. The Respondent then attempted to argue that the commission paid to his company was not a commission but was rather a credit towards remediation costs expended by Jade Partners/Jade Land. However, he was unable to provide a reasonable explanation as to why the \$3,655 received was designated as a commission on the HUD-1 Statement, Exhibit S-6, how this amount was calculated, or how this amount is the same specified on the MLS report, Exhibit S-1, that the buyer’s broker would receive at the conclusion of the transaction. It is clear from the testimony and documentary evidence admitted into the record that the Respondent, in relation to the Washington property transaction, acted in bad faith and with dishonesty in transacting real estate activity outside the scope of his employment

and without the knowledge and authorization of his employing broker and also in seeking and accepting a commission from someone other than his employing broker of record. As such, the Commission finds that the Respondent's actions in relation to the Washington property transaction constitute bad faith and dishonesty, in violation of N.J.S.A. 45:15-17(e).

Maplewood Property:

As it relates to the Maplewood property, the OTSC alleges the following:

- (1) the Respondent misrepresented his true license status and attempted to collect compensation by transacting real estate activity on his own behalf and without the knowledge and authorization of his employing broker, in violation of N.J.S.A. 45:15-1 and N.J.S.A. 45:15-3;
- (2) the Respondent collected and/or attempted to collect a commission from someone other than his employing broker, in violation of N.J.S.A. 45:15-17(m);
- (3) the Respondent demonstrated unworthiness, incompetency, bad faith, or dishonest by transacting real estate activity outside the scope of his employment and without the knowledge and authorization of his employing broker and by accepting a commission from someone other than his employing broker, in violation of N.J.S.A. 45:15-17(e); and
- (4) Respondent made a substantial misrepresentation to REC Investigator Ames during the course of the investigation regarding the commission clause in the contract for the purchase of the Maplewood property, in violation of N.J.S.A. 45:15-17(a).

The Respondent testified that his involvement in the Maplewood property transaction was limited to making an introduction of a potential buyer to the seller, whom the Respondent stated was a business acquaintance. Specifically, the Respondent testified that he had worked with the representative for the seller, Harrington, on many occasions and was aware that Harrington had property that could be used for an apartment development. Although he did not ultimately purchase the property, the Respondent stated that one of his business partners was working with

an entity seeking land to build WAWA locations. The Respondent testified that he did not know that a contract of sale was drafted or that the property was proceeding to closing until he was asked about his involvement in the transaction by Drechsel. The contract of sale, Exhibit S-7, contains a clause that provides that the “Seller and Buyer represent and warrant to each other that Ray Rice of Jade Land Co., LLC is the procuring broker in connection with the transaction . . . and shall be paid by the Seller, if and when this transaction closes, the aggregate commission of four percent (4%) of the purchase price.” The Respondent testified that he did not ask for this clause to be placed in the contract, and he was not seeking a commission based upon the introduction of the parties that he had made.

However, Ames testified that he spoke with Klipstein, the Vice President of the buyer, Southeast Investments, LLC, who informed him that the Respondent told Klipstein to list the Respondent as the broker in the contract for the Maplewood property.¹⁵ Moreover, Drechsel testified that he spoke to Klipstein, who advised him that the Respondent was the broker for the Maplewood transaction. Drechsel additionally sent a letter and invoice, Exhibit S-8, claiming that Eagle Realty, rather than the Respondent, is entitled to the commission from the transaction. As a result, the sellers’ attorney, Kurnos, provided a letter, Exhibit S-9, to both Drechsel and the Respondent advising both that the commission would be placed into escrow pending an agreement between Eagle Realty and Jade Land regarding the entity entitled to receive the commission.

¹⁵ While RO Gallina, in her closing statement, stated that Ames testified that he has an email from Klipstein to this effect, no email was admitted into evidence during the hearing. It is also unclear whether Ames does, in fact, possess the subject email from Klipstein as there was no testimony by Ames that professed that an email existed. However, Drechsel stated that he emailed Klipstein to confirm that the Respondent was the broker for the Maplewood transaction and was going to receive the commission. No email to this effect was admitted into evidence at the hearing, and there was no testimony that indicated that Klipstein replied to Drechsel’s email.

However, it was learned from Ames's testimony that the monies held in escrow were released to the sellers and neither Eagle Realty nor the Respondent ultimately received any commission from the Maplewood property.

As set forth above, the OTSC alleges that Respondent misrepresented his true license status and attempted to collect compensation by transacting real estate activity on his own behalf and without the knowledge and authorization of his employing broker, in violation of N.J.S.A. 45:15-1 and N.J.S.A. 45:15-3. The evidence submitted at the hearing, however, is insufficient to support a finding that the Respondent transacted real estate activity outside the scope of his employment and without the knowledge and authorization of his employing broker. Specifically, the Respondent denies that he was involved in the transaction as a broker and that he only made an introduction between the parties that led to the sale of the Maplewood property. Ames testified that he spoke with Klipstein, who advised him that the Respondent requested that he be listed as the procuring broker in the contract of sale. In addition, Drechsel testified that he was informed by Klipstein that the Respondent was the broker for the transaction. However, no documentary evidence was submitted that would support the testimony of either Ames or Drechsel in this regard. While hearsay evidence is admissible in an administrative hearing, 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). While the Respondent was listed in the contract of sale, Exhibit S-7, for the Maplewood transaction, there was no evidence submitted that the Respondent was even aware that this clause was placed in the contract of sale or actively sought a commission on the Maplewood property transaction, as he was not a party to the underlying transaction, and no closing statement

was presented that would indicate that the Respondent was being paid a commission as a result of this transaction.

Next, the OTSC alleges that the Respondent collected and/or attempted to collect a commission from someone other than his employing broker. Pursuant to N.J.S.A. 45:15-17(m), real estate licensees are prohibited from “[a]ccepting a commission or valuable consideration as a real estate broker-salesperson or salesperson for the performance of any of the acts specified in this act, from any person, except his employing or contracting broker, who must be a licensed broker.” (emphasis added). The letter from Kurnos, Exhibit S-9, sets forth that the commission monies would be held in escrow until an agreement as to the rightful recipient of same is reached and Ames’s testimony provided that the monies were ultimately released to the sellers. As such, the Respondent did not, in fact, accept a commission as a result of the Maplewood property transaction. As such, there is insufficient evidence to support a finding that the Respondent accepted a commission from someone other than his employing broker, in violation of N.J.S.A. 45:15-17(m).

Next, the OTSC alleges that the Respondent violated N.J.S.A. 45:15-17(e), which prohibits “any conduct which demonstrates unworthiness, incompetency, bad faith, or dishonesty.” As noted above, the Commission has determined that, as to the Maplewood property transaction, there is insufficient evidence to support a finding that the Respondent engaged in any prohibited activity. The Commission thus additionally finds that there is insufficient evidence to support a finding that the Respondent demonstrated unworthiness, incompetency, bad faith, or dishonesty, in violation of N.J.S.A. 45:15-17(e), as a result of the Maplewood property transaction.

Lastly, the OTSC alleges that the Respondent violated N.J.S.A. 45:15-17(a), which prohibits “[m]aking any false promises or any substantial misrepresentation.” As noted above, the

parties disagree as to the Respondent's involvement in the Maplewood transaction and also as to the reason why the Respondent is listed as the procuring broker in the contract of sale, Exhibit S-7. However, no documentary evidence was submitted at the hearing to contradict the statements made by the Respondent to Ames regarding this clause of the contract of sale. As such, the Commission finds that there is insufficient evidence to support a finding that the Respondent made a substantial misrepresentation to Ames during the course of his investigation in violation of N.J.S.A. 45:15-17(a).

Penalty 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 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 violations of the Act as set forth in N.J.S.A. 45:15-17.

As set forth above, based upon the testimony and documents in the record, the Commission found that the Respondent committed the following violations of the Act: (1) transacted real estate activity in relation to the Washington property transaction that was outside the scope of his

employment and without the knowledge and authorization of his employing broker, in violation of N.J.S.A. 45:15-1 and N.J.S.A. 45:15-3; (2) accepted a commission from someone other than his employing broker as a result of the Washington Avenue property, in violation of N.J.S.A. 45:15-17(m); (3) demonstrated bad faith and dishonesty, in violation of N.J.S.A. 45:15-17(e), in acting outside the scope of his employment and accepting a commission from someone other than his employing broker as a result of the Washington property transaction; and (4) failed to disclose his license status on the contract of sale for the Washington property, in violation of N.J.S.A. 45:15-17(q). Based upon these findings, the Commission is empowered, under the Act, to suspend or revoke the Respondent's real estate broker-salesperson license.

The Respondent's actions during the Washington property transaction demonstrate a disregard of the high standards that are imparted upon real estate licensees in this State. As such, the Commission finds that the suspension of the Respondent's real estate salesperson license to be an appropriate sanction for the violations found herein. However, the Commission notes that neither the Respondent nor his counsel drafted the executed contract of sale for the Washington property. Additionally, the Respondent testified that he did not personally review the HUD-1 Statement that set forth that a commission was to be issued to Jade Land at closing. Although, as a real estate licensee, the Respondent is expected and required to be knowledgeable as to the real estate statutes and regulations that govern his license, and in addition is expected to thoroughly review any real estate-related documents to assure that those documents are in compliance with all applicable New Jersey requirements, the Commission considered these factors in determining the appropriate length of suspension for the violations that were found. Thus, after considering the testimony and evidence presented, and in light of the violations committed by the Respondent, as

set forth herein, the Commission finds that an appropriate penalty in this matter includes the suspension of the Respondent's real estate broker-salesperson license for a period of three months.

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 the Commission deems these factors 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. 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.”). Each of these factors is discussed below.

Regarding the first Kimmelman factor, the Respondent acted in bad faith by transacting real estate activity on his own behalf and without the knowledge and authorization of his employing broker. Specifically, the Respondent sought to receive a commission on the purchase of the Washington property, which was being purchased by an entity in which he was a principal, without going through his employing broker. Although the Respondent set forth that he was a licensed broker-salesperson and that any commission should be processed through his broker of record in both the letter of intent, Exhibit S-2, and in the unexecuted contract of sale, Exhibit S-3, the Respondent failed to make sure that his license status or broker of record were disclosed in the executed contract of sale for the Washington property, Exhibit S-4. The Respondent then received

the commission on the sale of the Washington property, although claiming it was reimbursement for expenditures made by the purchasing entity, Jade Land, in remediating the subject property. However, the amount that he admitted to receiving, \$3,655, was listed on the HUD-1 Statement, Exhibit S-6, as a commission payable to Jade Land rather than as a credit to the buyer, Jade Partners. The Respondent's excuse that this amount was listed as a commission rather than a credit because the documents were already signed and the money was already held for closing is unpersuasive and is not supported by the evidence presented during the hearing. Moreover, the amount received by the Respondent is the exact amount of the buying broker's commission, as set forth on the MLS report for the Washington property, Exhibit S-1, and listed on the HUD-1 Statement as commission for the property. The Respondent's actions in accepting a commission from someone other than his employing broker and being dishonest in his testimony before the commission in relation to the source of the money he received from the Washington property transaction weigh in favor of a monetary penalty.

The Respondent did not provide any specific testimony or proofs in relation to the second Kimmelman factor, which addresses the Respondent's ability to pay the fines imposed. Respondents who claim an inability to pay civil penalties bear the burden of proving their incapacity. NJREC v. Cortese, Final Order of Determination, (08/09/17) (citing Goldman v. Shah, OAL Dkt. No. BKI 11903-05, Initial Decision (04/15/08), Final Decision and Order (09/02/08)). The Respondent has not met that burden and therefore this factor weighs in favor of a monetary penalty.

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 case, the Respondent received payment of \$3,655, which was paid directly to an entity in which he maintains a partnership interest, Jade Land, and was reinvested into the business. Of this amount, the Respondent, under his employment contract with Eagle Realty, was entitled to only half of the commission received, had the Respondent processed the commission through his employing broker as he was required to do. By receiving the full amount of the commission payment, the Respondent profited by a windfall of \$1,827.50 as a result of his actions. This factor also weighs in favor of a penalty.

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 licensees 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 governing his activities as a broker-salesperson with his employing broker. The responsibility falls on the licensee to be aware of the applicable statutory and regulatory requirements of those in their profession. 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 Washington property transaction began on or about February 2012 and closed on or about April

15, 2014. During the early stages of the transaction, the Respondent appeared to have been abiding by the appropriate real estate statutes. However, once the contract of sale was executed on February 4, 2013, the Respondent then began to act on his own behalf and outside the scope of his employment and at the closing on April 15, 2014, ultimately accepted a commission from someone other than his employing broker. At a minimum, therefore, the Respondent's illegal activity last for a period of over 14 months. The Commission also finds it to be a significant factor that as of the date of the hearing in this matter, the Respondent still had not accepted responsibility for his wrongful actions and still had failed to reimburse Eagle Realty for its part of the commission for the Washington property transaction as required under their employment agreement. As such, the Respondent's wrongful activity could be deemed to have continued for the period of time of over 5.5 years, from February 4, 2013 through at least September 25, 2018. In any event, the duration of the Respondent's illegal activity was extensive and weighs in favor of a monetary penalty.

Regarding the sixth Kimmelman factor, the Respondent has not been a party to criminal proceedings or other civil proceedings stemming from the conduct at issue. The fact that the Respondent has not been subjected to any criminal punishment nor any other civil penalty weighs in favor of imposing a monetary penalty in this administrative forum.

As to the seventh factor, there is no evidence of prior real estate violations committed by the Respondent. This factor mitigates in favor of the Respondent and against imposing a monetary penalty.

In light of the fact that six of the seven Kimmelman factors favor imposing a monetary penalty, the Respondent shall pay a fine in the total amount of \$3,000 representing the following: \$1,000 for transacting real estate activity on his own behalf and without the knowledge of and authorization of his employing broker, in violation of N.J.S.A. 45:15-1 and N.J.S.A. 45:15-3; \$1,000 for accepting a commission from someone other than his employing broker, in violation of N.J.S.A. 45:15-17(m); and \$1,000 for failing to indicate his license status on the contract of sale for the Washington property, in violation of N.J.S.A. 45:15-17(q). These specific fines are fully warranted, not excessive or unduly punitive, and are necessary to demonstrate the appropriate level of opprobrium for the Respondent's conduct.

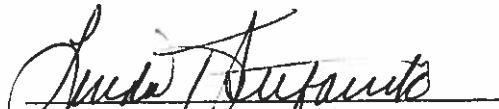
Accordingly, and pursuant to N.J.S.A. 45:15-17, the Commission imposes the following sanctions:

- I. Respondent Raymond J. Rice's real estate broker-salesperson license is hereby suspended for a period of three months from the issuance of this Order.
- II. Respondent Raymond J. Rice shall complete a total of six hours of continuing education, of which three hours shall be in the area of ethics and three hours shall be in the area of agency. These six hours of continuing education are in addition to, and shall not be applied to, the biennial licensing requirement to complete 12 hours of continuing education.
- III. Respondent Raymond J. Rice shall pay a total fine in the amount of \$3,000, which is comprised of a fine of \$1,000 for transacting real estate activity on his own behalf and without the knowledge of and authorization of his employing broker, in violation of N.J.S.A. 45:15-1 and N.J.S.A. 45:15-3; a fine in the amount of \$1,000 for accepting a commission from someone other than his employing broker, in violation of N.J.S.A.

45:15-17(m); and a fine in the amount of \$1,000 for failing to indicate his license status on the contract of sale for the Washington property, in violation of N.J.S.A. 45:15-17(q).

SO ORDERED this 27th day of May, 2021.

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



Linda K. Stefanik, President
New Jersey Real Estate Commission

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