

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION,)	DOCKET NO.: PAS-19-023
)	REC REF. NO.: 10009177
Complainant,)	
)	
v.)	
)	FINAL ORDER OF
ALBERT DIODONET, licensed)	DETERMINATION
New Jersey real estate salesperson)	
(SP 1865613),)	
)	
Respondent.)	

This matter was heard at a hearing by the New Jersey Real Estate Commission (“Commission”) via Zoom, a video teleconferencing service, on December 15, 2020.¹

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

APPEARANCES: Patricia Coppel, Regulatory Officer (“RO Coppel”), appeared on behalf of the complainant, the New Jersey Real Estate Commission staff (“REC”). Peter Pena, Esq. appeared on behalf of Albert Diodonet (“Diodonet” or “Respondent”).

STATEMENT OF THE CASE

The REC initiated this matter through service of an Order to Show Cause (“OTSC”) dated November 13, 2019, pursuant to N.J.S.A. 45:15-17, N.J.S.A. 45:15-18, N.J.S.A. 45:15-19.2 and N.J.A.C. 11:5-1.1 to -12.18.

The Respondent is a licensed New Jersey real estate salesperson currently licensed with Luis Sanchez Realty, LLC, a licensed real estate broker, whose main office is located at 245 Lexington Avenue, Passaic, New Jersey. The Respondent was first licensed in New Jersey in 2018.

¹ Due to the COVID-19 public health emergency, in accordance with P.L. 2020, c. 11, this hearing took place via Zoom, a video teleconferencing service.

The OTSC alleges that on or about June 19, 2019, the Respondent entered into a Consent Order with the New Jersey Department of Banking and Insurance Bureau of Fraud Deterrence in which he agreed to pay a \$2,500 fine plus surcharges arising out of a violation of N.J.S.A. 27:33A-1 et seq. The OTSC alleges that said violation arose out of the false and misleading information provided by the Respondent to Progressive Insurance Company (“Progressive”). The OTSC alleges that the Respondent maintained coverage with Progressive for a 2006 Honda CBR motorcycle and on May 15, 2017 reported to Progressive that his motorcycle had been stolen. The OTSC further alleges that the Respondent failed to advise Progressive that he had been involved in a one-vehicle accident with the motorcycle on May 9, 2017, at which time the motorcycle sustained damage. The OTSC further alleges that the Respondent denied the previous accident several times when speaking with Progressive, although the accident had been reported to the Hawthorne Police Department, and that the Respondent was not truthful and provided false and misleading information to Progressive when pursuing an alleged theft claim.

The OTSC further alleges that the Respondent, by engaging in the conduct set forth in the Consent Order with the Department of Banking and Insurance referenced above, demonstrated unworthiness, bad faith, and dishonesty, in violation of N.J.S.A. 45:15-17(e). In addition, the OTSC alleges that the Respondent’s conduct as described above constitutes fraud or dishonest dealings, in violation of N.J.S.A. 45:15-17(l).

On November 26, 2019, Diodonet submitted an Answer to the OTSC (“Answer”), wherein he admitted in part and denied in part the allegations contained in the OTSC. On January 14, 2020, the Commission deemed this matter a contested case and directed that a hearing be scheduled.

On December 15, 2020, a hearing was conducted. At the hearing, the following exhibits for the Complainant were admitted into evidence by the Commission, without objection:

- S-1 NJREC v Albert Diodonet – Order to Show Cause
- S-2 Answer of Albert Diodonet
- S-3 REC License Panel of Albert Diodonet – Ref#1865613
- S-4 Hawthorne Police Crash Report – May 9, 2017
- S-5 Hawthorne Police Report – May 16, 2017
- S-6 Transcript of Examination Under Oath – Albert Diodonet July 25, 2017
- S-7 Suffolk County NY Police Report – March 20, 2018
- S-8 In the Matter of Albert Diodonet – Consent Order 17-53227-04 Bureau of Fraud Deterrence – Department of Banking and Insurance – June 19, 2019.

At the hearing, the following exhibits for the Respondent were admitted into evidence by the Commission, without objection:

- A. Email of verification of insurance from Progressive Insurance dated May 9, 2017 at 10:38 a.m.
- B. Copy of Police report from Suffolk County Police, illustrating subjects arrested for theft of the Respondent's motorcycle
- C. Suffolk County Police Dept. Affidavit
- D. Character reference from Luis Sanchez, (the Respondent's broker)
- E. Character Reference from Dominic Santiago
- F. Character reference from Franklin Montero, Esq.
- G. Character reference from Jason M. Kaplan, Esq.

TESTIMONY OF ALBERT DIODONET

Diodonet testified at the hearing. He stated that he purchased the motorcycle in 2016 and that it was in good condition, despite the motorcycle being 10 years old at the time. Diodonet explained the circumstances surrounding the one-vehicle accident with the motorcycle on May 9,

2017. He stated that he braked too hard and fell off the motorcycle a few blocks from his home. He stated that he did not call the police, but believes a jogger called the police, who was the only witness to the incident to his knowledge. He stated that the police arrived on the scene and asked to see his insurance. He stated that he called Progressive from the scene and asked Progressive to email him his insurance card but did not notify Progressive that he had been in an accident, as he felt the incident did not arise to the seriousness of an accident. He stated that he then showed the officer his insurance information. He stated that he did not file a claim with Progressive for this incident and did not have any repairs made to the motorcycle after the incident. Diodonet stated that he was not aware that the police officer had later filed a police report regarding the incident on May 9, 2017.

Not too long after the May 9, 2017 incident, Diodonet stated that the motorcycle was stolen, and he reported this to the police and filed a claim with Progressive. Diodonet stated that as part of his stolen motorcycle claim with Progressive, he met with a Progressive investigator and was examined under oath on July 25, 2017. Diodonet stated that he was made aware of the May 9, 2017 police report for the first time during the examination. During the examination, he stated that the motorcycle was in good condition, despite the May 9, 2017 police report stating that the motorcycle had “moderate damage.”

Diodonet stated that he never received compensation for the theft or for any damage to the motorcycle cause by the May 9, 2017 incident. The motorcycle was later recovered in Suffolk County. In the Suffolk County Police Department Affidavit, Diodonet attested that the motorcycle, “was in good condition and was in substantially the same condition as when it was purchased,” when it was recovered. Further, in the hearing, Diodonet again stated that the motorcycle was in good condition upon its recovery after the theft, besides additional mileage.

Regarding the June 19, 2019 Consent Order, Diodonet stated that he subsequently learned that the incident on May 9, 2017 was considered an “accident” by the insurance company. He further stated that had no incentive to be dishonest, and he did not receive any compensation from Progressive for the May 9, 2017 incident or from the motorcycle theft. Diodonet stated that he understands now that his testimony under oath was misleading because he wrongly thought that an “accident” was a more serious event than what occurred on May 9, 2017.

FINDINGS OF FACT

Based on the pleadings, the testimony of Diodonet, and the documentary evidence admitted into the record, the Commission makes the following findings of fact:

1. The Respondent is a licensed New Jersey real estate salesperson currently licensed with Luis Sanchez Realty, LLC, a licensed real estate broker, whose main office is located at 245 Lexington Avenue, Passaic, New Jersey. The Respondent was first licensed in New Jersey in 2018. Exhibit S-3
2. The Respondent maintained coverage with Progressive for a 2006 Honda CBR motorcycle. Exhibit A and Exhibit S-6 at 5.
3. On or about May 15, 2017, the Respondent reported to Progressive that the motorcycle had been stolen. Exhibit S-5.
4. The Respondent failed to advise Progressive that he had been involved in a one-vehicle accident with the motorcycle on May 9, 2017. Exhibit S-6 at 54.
5. Even though the accident had been reported to the Hawthorne Police Department, the Respondent denied the previous accident several times when speaking with Progressive, including during the July 25, 2017 examination under oath. Exhibit S-6 50-54.

6. On March 20, 2018, the Respondent's motorcycle was recovered by Suffolk County Police. Exhibit B. On March 20, 2018, in an affidavit signed by the Respondent, the Respondent attested that the recovered motorcycle "was in good condition and was in substantially the same condition as when it was purchased." Exhibit C.
7. Diodonet learned that the incident on May 9, 2017 was considered an "accident" for insurance claim purposes. He had no incentive to be dishonest, and he did not receive any compensation from Progressive for the May 9, 2017 incident or from the motorcycle theft. Diodonet thought that an "accident" was a more serious event than what occurred on May 9, 2017. Diodonet now understands that his testimony under oath was misleading
8. On or about June 19, 2019, the Respondent entered into a Consent Order with the New Jersey Department of Banking and Insurance Bureau of Fraud Deterrence in which he agreed to pay a \$2,500 fine plus surcharges arising out of a violation of N.J.S.A. 27:33A-1 et seq. Said violation arose out of the false and misleading information provided by the Respondent to Progressive. Exhibit S-8.

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. This matter shall be dismissed because there is insufficient evidence that Diodonet demonstrated unworthiness, bad faith, and dishonesty, in violation of N.J.S.A. 45:15-17(e), and that the conduct as described above constitutes fraud or dishonest dealings, in violation of N.J.S.A. 45:15-17(1).

DETERMINATION

The REC bears the burden of proving the allegations in the OTSC by a preponderance of the competent, relevant, and credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); In re Polk, 90 N.J. 550, 560 (1982). The evidence must be such as would “lead a reasonably cautious mind to a given conclusion.” Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958). Preponderance may be described as “the greater weight of credible evidence in the case. It does not necessarily mean evidence of the greater number of witnesses but means that evidence which carries the greater convincing power.” State v. Lewis, 67 N.J. 47, 49 (1975).


Diodonet repeatedly maintained that his motorcycle was in good condition, even after the May 9, 2017 one-vehicle crash and the March 20, 2018 recovery of his stolen motorcycle. Additionally, Diodonet testified that he did not believe that the incident on May 9, 2017 rose to the seriousness of an “accident” for insurance claim purposes, only later realizing that it was an “accident” that need to be reported. Diodonet believed, in good faith, that his testimony during the July 25, 2017 examination under oath was accurate, despite later learning that his testimony was misleading. Based upon foregoing findings of fact, there is insufficient evidence to show that Diodonet’s actions constituted unworthiness, bad faith, and dishonesty, in violation of N.J.S.A. 45:15-17(e), or fraud or dishonest dealings, in violation of N.J.S.A. 45:15-17(1).

At the conclusion of the hearing and executive session in this matter, the Commission voted in favor of dismissing this matter due to finding insufficient evidence to sustain the allegations in the OTSC.

Accordingly, the Commission finds for the Respondent and dismisses the OTSC.

SO ORDERED this 9th day of March, 2021.

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



Linda K. Stefanik, President
New Jersey Real Estate Commission

MM Diodonet FO/Final Orders-REC