

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE)	Docket No.: REC-E-22-002
COMMISSION,)	(REC Ref No.: 10013832)
)	
Complainant,)	
v.)	FINAL DECISION AND ORDER
)	
MARIANN BALMANN, licensed New)	
Jersey real estate salesperson (Ref. No.)	
1861271),)	
)	
Respondent.)	

THIS MATTER was heard at a plenary hearing by the New Jersey Real Estate Commission (“Commission”) by video conference in accordance with P.L. 2020, c. 11 on January 10, 2023.¹

BEFORE: Commissioners Eugenia K. Bonilla, William J. Hanley, Christina Banasiak, Erin Brown, Denise M. Illes, Carlos Lejnieks, and Gabrielle Liguori.

APPEARANCES: Jacqueline Dilks-Brotman, Regulatory Officer (“RO Dilks-Brotman”), appeared on behalf of the New Jersey Real Estate Commission staff (“REC”). Mariann Balmann (“Respondent”) waived her right to counsel and appeared pro se.

STATEMENT OF THE CASE

The REC initiated this matter on its own motion through service of an Order to Show Cause (“OTSC”) dated May 2, 2022, 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 seeks to revoke the Respondent’s real estate salesperson license and impose a civil monetary penalty for violations of the Real Estate Brokers and Salespersons

¹ The meeting was conducted via Zoom. All those participating participated via Zoom.

Act, N.J.S.A. 45:15-1 to -42 (“Act”). The OTSC alleges that the Respondent engaged in the following activities in violation of the laws of this State:

Count One: The Respondent plead guilty to one count of Theft by Deception, in violation of N.J.S.A. 2C:20-4, after the Respondent received a grant from the Federal Emergency Management Agency (“FEMA”) by creating the false impression that her property in Little Egg Harbor was her primary residence at the time of Superstorm Sandy (“Sandy”). The conduct underlying the Respondent’s conviction demonstrates unworthiness, bad faith, or dishonesty, in violation of N.J.S.A. 45:15-17(e); and

Count Two: The Respondent failed to notify the Commission within 30 days that she had been convicted of a crime, in violation of N.J.S.A. 45:15-17(s).

On or about May 6, 2022, the Respondent filed an Answer to the OTSC wherein she requested a hearing. On June 28, 2022, the matter was deemed contested. On January 10, 2023, a hearing was conducted before the Commission. At the hearing, the following documents were submitted jointly, without objection, and entered into evidence:

- S-1: New Jersey Department of Banking and Insurance, Real Estate Commission, License Certification with History for Mariann Balmann, dated October 13, 2022;
- S-2: New Jersey State Police Conviction Notification, dated November 15, 2020;
- S-3: Letter from Investigator Clark Masi to Mariann Balmann, re: Conviction Notification, dated December 7, 2020;
- S-4: Accusation, New Jersey v. Balmann, undated;
- S-5: Judgment of Conviction, New Jersey v. Balmann, dated December 11, 2020;
- S-6: Criminal Information Form, Ocean County Superior Court – Law Division, dated December 8, 2020;
- S-7: Letter of Explanation submitted by Mariann Balmann, dated April 18, 2021;
- S-8: Letter to REC submitted by Mariann Balmann, dated May 2021;
- S-9: Mariann Balmann’s Facebook Posts and Status Updates, dated August 27, 2012 to December 24, 2015; and,

S-10: FEMA Records Request submitted by Mariann Balmann, postmarked August 11, 2022.

TESTIMONY OF THE WITNESSES

Mariann Balmann

The Respondent testified on her behalf at the hearing. The Respondent stated that in June 2012, she and her wife purchased a property in Little Egg Harbor, NJ (“LEH Property”) with the intention of maintaining it as a summer home, while their existing property, located in Bridgewater, NJ (“Bridgewater Property”), would remain their primary residence. The Respondent testified that by August 2012, her family decided they should leave the Bridgewater Property and relocate their primary residence to the LEH Property. Following their decision, the Respondent stated that she began making much needed renovations at the LEH Property including, mold remediation, repair termite damage to the studs and foundation, and new walls and floors. The Respondent testified the renovations began in September 2012 and were completed by late October 2012.²

The Respondent testified that by late October 2012 she had initiated her daughters’ transfer to the Pinelands School District and timed the transition so that they would start on November 1, 2012, the first day of the second term. In addition, the Respondent stated that by late October 2012 she was receiving her bills at the LEH Property, had updated the address on her voter registration so she was able to cast a ballot from Little Egg Harbor on Election Day, had updated the address on her driver’s license, and had purchased new furniture and appliances in preparation for their permanent change of address.

² The Respondent testified that while the initial renovations were ongoing, she moved into the LEH Property, and her family remained in Bridgewater. Her family would come to Little Egg Harbor on Thursday or Friday, stay the weekend and leave on Monday morning so her daughters could attend school.

The Respondent testified that starting on or about the third week of October 2012, her family began moving their possessions into the LEH Property. On October 27, 2012, the Respondent stated that she and her family were evacuated from Little Egg Harbor as Sandy approached, eventually making landfall on October 29, 2012.

The Respondent testified that she was able to return to the LEH Property on October 30, 2012 and remained there for two weeks while she demolished her home and began to rebuild a second time, using payouts from her homeowner and flood insurance policies. The Respondent testified that after the second round of renovations were completed, a municipal inspector informed her that due to the extensive storm damage, the house had to be lifted from its foundation or she could face monetary penalties. The Respondent recalled later learning that there was so much damage to the foundation, it would cost more to lift the existing structure and repair the foundation than it would to raze the house and rebuild it.

The Respondent stated that she then consulted her insurance agent who told her she should apply for aid from FEMA because she was living in Little Egg Harbor when Sandy hit. The Respondent testified that she was as upfront with FEMA and had submitted a handwritten letter which stated that she owned two properties and was living at the LEH Property at the time of the storm while her family remained in Bridgewater.³ The Respondent stated her ownership of two properties was not an issue for the FEMA agent.

The Respondent testified that she received approximately \$150,000 in aid from FEMA. She also stated that she took out a second mortgage, and the FEMA aid together with the mortgage

³ The Respondent testified that she tried to get a copy of her records from FEMA, including the handwritten letter. She spent several hours on the phone waiting to speak with an agent, who informed her the letter may be recorded on microfilm, but they would be unable to provide her with a copy because the location of those microfilms is unknown. See Exhibit S-10.

enabled her to raze the LEH Property in February 2015 and rebuild. The Respondent stated that once renovations were completed in October 2015, her family moved into the LEH Property permanently as they had planned to do in October 2012.⁴

The Respondent identified Exhibit S-9 as her Facebook updates from August 27, 2012 through December 24, 2015, documenting her family's presence at the LEH Property before Sandy, the subsequent damage from the storm, the renovations she made immediately following Sandy, the demolition and rebuilding of the LEH Property in 2015 and the LEH Property upon the completion of all renovations.

The Respondent stated that she became a licensed real estate salesperson in 2018, following her retirement from teaching. In 2019, she learned that she was being investigated for a felony related to the FEMA funding she had received. The Respondent elected to enter a guilty plea after speaking with an attorney, who informed her that if she chose to go to trial, both her and her wife could be sentenced to up to 10 years in jail. The Respondent testified that she pleaded guilty and was sentenced to two years of probation, which ended on December 7, 2021. She was also ordered to pay restitution of approximately \$177,000.⁵ The Respondent stated that she completed probation without issue. In addition, to date, she has paid \$119,000 in restitution.

She notified her broker about her felony conviction in April 2021, when her broker approached the Respondent about the licensure renewal questionnaire. Upon informing her

⁴ The Respondent testified that she tried to rent out the Bridgewater Property in October 2015, when her family relocated full time, but she was not able to find a tenant until December 2015. Since then, the Bridgewater Property has had two long-term tenants, with the current tenant residing there for the last five years.

⁵ In addition to probation and restitution, following her conviction, her teaching license was revoked, and pension forfeited.

employer, she followed the instructions provided about reporting her conviction to the Commission.

Deborah Balmann

Deborah Balmann (“Deborah”) testified on behalf of the Respondent. Deborah stated she is the Respondent’s wife and recalled buying the LEH Property in June 2012 with the Respondent and “falling in love” with the home after spending one summer there. Deborah stated that her daughter was the family member who voiced wanting to make the LEH Property their permanent residence, so the family started making plans to relocate right away, with the hope the girls would start school in Little Egg Harbor on the first day of the next term.

Deborah recalled that she, her daughters, and pets remained in Bridgewater while the Respondent repaired the home the first time, how they were ready to move in when Sandy hit, described the extent of the destruction to the LEH Property, and their devastation and disappointment upon learning there was too much damage to the foundation for the house to be lifted so it had to be torn down. Deborah confirmed that the Respondent applied for a FEMA grant after her insurance agent recommended they apply and disclosed that they were married and owned two properties.⁶

Deborah testified that in December 2019, they learned they were being investigated for committing a felony related to the FEMA aid. Deborah recalled receiving a letter informing her that charges were being considered against her. Deborah stated that they both obtained attorneys, who suggested that in light of the torrent of press coverage about FEMA fraud, they consider negotiating a plea deal where one spouse would plead guilty and as a part of the deal, no charges

⁶ Deborah testified that both properties are in the Respondent’s name.

would be brought against the other, to minimize the chances that both spouses would be sentenced to jail time, leaving their children without any parents to care for them.

In closing, Deborah testified that the Respondent is a law abiding citizen who has never so much as gotten a traffic ticket.

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. In October 2012, the Respondent had changed her primary residence from Bridgewater, NJ to Little Egg Harbor, NJ, where she began receiving her bills. The address change was reflected on her voter registration and driver's license, and in paperwork identifying where her children were slated to begin school on November 1, 2012.
2. On October 29, 2012, Superstorm Sandy made landfall in Little Egg Harbor, NJ and the Respondent's property sustained substantial damage.
3. Following Superstorm Sandy, the Respondent obtained approximately \$150,000 in FEMA funding to repair the damage to her primary residence.
4. On or about October 13, 2020, the Respondent entered a plea of guilty in the Superior Court of New Jersey - Ocean County, to one count of Theft by Deception, in violation of N.J.S.A. 2C:20-4.
5. On or about December 8, 2020, the Respondent was convicted of one count of Theft by Deception, in violation of N.J.S.A. 2C:20-4 and was sentenced to serve a two year term of probation and ordered to pay \$177,417.25 in restitution.
6. The Respondent successfully completed her probationary term on December 7, 2021.
7. The Respondent has paid approximately \$119,000 towards the restitution owed.
8. The Respondent credibly testified that she lived in Little Egg Harbor during Superstorm Sandy. This is further substantiated by her receiving bills at the LEH Property, updating the address on her voter registration and driver's license, and the plan to send her daughters to the Pinelands School District on November 1, 2012.

9. The Respondent credibly testified that she had been truthful about her living situation to FEMA, disclosing that she owned two properties by way of handwritten letter submitted to the agency.

CONCLUSIONS OF LAW

In light of the above findings of fact, the Commission makes the following conclusions of law with regard to the charges contained in the OTSC as summarized above:

1. There is insufficient evidence to support a finding that the Respondent demonstrated unworthiness, bad faith, or dishonesty, in violation of N.J.S.A. 45:15-17(e).
2. The Respondent violated N.J.S.A. 45:15-17(s), in that she did not notify the Commission within 30 days that she had been convicted of a crime.

DETERMINATION

At the conclusion of the hearing in this matter, the Commission voted in favor of finding the aforementioned violations and imposing the sanctions described in this Final Decision and Order. In arriving at the determination in this matter, the Commission took into consideration the testimony of the witnesses, the documentary evidence submitted, and the nature of and circumstances surrounding the Respondent's conduct.

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

Allegations Against the Respondent

The OTSC alleges that the conduct underlying the Respondent's conviction for Theft by Deception, in violation of N.J.S.A. 2C:20-4, demonstrates unworthiness, bad faith, or dishonesty, in violation of N.J.S.A. 45:15-17(e). The Commission finds that there is insufficient evidence to support a finding of this allegation based upon the preponderance of the competent, relevant, and credible evidence in the record.

The following facts are undisputed. In October 2012, the Respondent was in the process of relocating her family's primary residence from Bridgewater, New Jersey to Little Egg Harbor, New Jersey. After moving their belongings into the LEH Property on or about October 27, 2012, their plans were postponed by Superstorm Sandy, which made landfall on October 29, 2012, causing substantial damage to the LEH Property. See Exhibit S-9 at 33-37. In 2015, the Respondent learned that the home had to be razed and rebuilt in order to be habitable. Shortly afterwards, the Respondent applied for FEMA aid and was awarded approximately \$150,000. Using the funds awarded by FEMA and by taking out a second mortgage, the Respondent was able to rebuild the LEH Property, where she and her family have resided since October 2015.

In 2019, the Respondent was investigated by FEMA and the New Jersey Division of Consumer Affairs for "creating the false impression that her property in Little Egg Harbor was her primary residence at the time of Superstorm Sandy." Exhibit S-4 at 17. An accusation was filed against the Respondent, wherein she was charged with one count of Theft By Deception, in violation of N.J.S.A. 2C:20-4. Exhibit S-4 at 17-18. The Respondent pleaded guilty and was ordered to serve two year term of probation and pay restitution in the amount of \$177,417.25.⁷

⁷ The Respondent testified that she was awarded approximately \$150,000 in FEMA aid. However, it appears she was ordered to pay \$177,417.25 in restitution, which is broken down as \$160,000

Exhibit S-5 at 20-23; Exhibit S-6 at 25-26. The Respondent successfully completed her probationary term on December 7, 2021, and has, to date, repaid approximately \$119,000 of the monies owed.

The Commission finds the Respondent's testimony, that she did not purposefully obtain FEMA grant funding by creating a false impression that she lived in Little Egg Harbor during Superstorm Sandy, to be credible. The Respondent's credible testimony that the LEH Property was her primary residence when Sandy made landfall is substantiated by her uncontroverted statements that she was already receiving her bills at the LEH Property, had updated the address on her voter registration and driver's license, and was planning to send her daughters to a school within the Pinelands School District for the first day of the new term which began on November 1, 2012. The chronology of events described by her testimony appears substantiated also by her contemporaneous posts on social media. Exhibit S-9 at 31-48.

Further, the Commission finds the Respondent's testimony credible that she had been truthful about her living situation to FEMA, disclosing that she owned two properties by way of handwritten letter submitted to the agency.⁸ The Commission notes that FEMA, armed with this knowledge, subsequently granted the Respondent approximately \$150,000 in aid in 2015, without raising any issues until 2019. The Respondent's testimony was further corroborated by the testimony of Deborah Balmann. Taken together, these facts do not, by a preponderance of the

due to the Sandy Recovery Division of the NJ Department of Community Affairs and \$17,417.25 to FEMA. Exhibit S-6 at 26.

⁸ The Commission finds the Respondent's testimony regarding her numerous attempts to contact FEMA to obtain copies of the aforementioned handwritten letter, also to be credible. See Exhibit S-10 at 50-51.

evidence, demonstrate bad faith, dishonesty or unworthiness. Therefore, there is insufficient evidence to support a finding that the Respondent is in violation of N.J.S.A. 45:15-17(e).

Second, the OTSC alleges the Respondent is in violation of N.J.S.A. 45:15-17(s), which requires licensees notify the Commission within 30 days of being convicted of a crime. The documentary evidence indicates the Respondent was convicted on December 8, 2020. Pursuant to the Respondent's testimony, it is uncontested that she did not notify anyone about her conviction, including her broker or the Commission, until April 2021, well outside the 30 day timeframe proscribed by statute. Therefore, we find the Respondent failed to notify the Commission within the mandated timeframe, in violation of N.J.S.A. 45:15-17(s).

Penalty Against the Respondent

The 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 Commission, 29 N.J. Super. 178, 181-182 (App. Div. 1954). The Commission is empowered to suspend and revoke the licenses of, and impose fines against, brokers and salespersons that violate any of the offenses enumerated in N.J.S.A. 45:15-17 or the real estate regulations. Maple Hill Farms, Inc. v. New Jersey Real Estate Commission, 67 N.J. Super. 223, 232 (App. Div. 1961); Division of New Jersey Real Estate Commission v. Ponsi, 39 N.J. Super. 526, 527 (App. Div. 1956).

Pursuant to N.J.S.A. 45:15-17, the Commission has the power to suspend, revoke, or place on probation the license of the Respondent for a violation of N.J.S.A. 45:15-17(s). After considering the evidence presented, the Commission does not believe licensure action is warranted by the Respondent's failure to notify the Department within 30 days of her conviction.

In addition, 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 that must be considered in evaluating the imposition of fines in administrative proceedings and these factors are applicable to this matter which seeks the imposition of penalties under the Act: (1) the good or bad faith of the respondent; (2) the respondent’s ability to pay; (3) the amount of profits obtained from the illegal activity; (4) the 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.

The first Kimmelman factor is whether the Respondent acted in good or bad faith. In the instant matter, the Respondent testified that she failed to notify her broker and the Commission of the conviction against her because her conduct was unrelated to her real estate license. In light of this credible testimony and the circumstances surrounding the Respondent’s conduct, the Respondent’s failure to notify the Commission was not done for the purpose of escaping scrutiny by the Commission and does not rise to an act made in bad faith. This factor does not weigh in favor of a monetary penalty.

The second factor of the Kimmelman analysis is the Respondent’s ability to pay the fines imposed. Here, no evidence was presented as to the Respondent’s ability to pay fines assessed. A respondent who claims an inability to pay a monetary penalty bears the burden of proving his financial limits and 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)). This factor is of neutral consideration in the imposition of a monetary penalty.

The third factor of the Kimmelman analysis 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. Here, the Respondent's failure to notify the Commission of her criminal conviction did not result in any profits obtained. This factor does not weigh in favor of a monetary penalty.

The fourth factor of the Kimmelman analysis is to determine whether the licensee's conduct caused 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 a licensee fails to abide by the statutes and regulations that govern their profession. The public's trust was eroded when the Respondent failed to notify the Commission of her criminal conviction in a timely manner. The factor weighs in favor of a monetary penalty.

The fifth factor in a Kimmelman analysis is the duration of the illegal conspiracy or scheme. The evidence presented indicates the Respondent's failure to notify the Commission is an isolated occurrence and was not part of an ongoing scheme. The Respondent was convicted on December 8, 2020 and had 30 days to notify the Commission. The Commission was not notified until April 2021, approximately four months late. Due to the short duration of activity and because the conduct at issue was an isolated occurrence, this factor does not weigh in favor of a monetary penalty.

The existence of criminal actions and whether a civil penalty may be unduly punitive if other sanctions have been imposed is the sixth factor. The Supreme Court held in Kimmelman that a lack of criminal punishment weighs in favor of a more significant civil penalty because the

defendant cannot argue that he or she has already paid a price for his or her unlawful conduct. Kimmelman, 108 N.J. at 139. Here, the Respondent has not faced any criminal punishment for her failure to notify the Commission. As such, this factor weighs in favor of a monetary penalty.

The seventh and final factor takes into consideration the Respondent's past violations, of which there are none. No evidence of past violations was presented at the hearing. This factor does not weigh in favor of a monetary penalty.


In light of these Kimmelman factors, several of which weigh in favor of no penalty, the Commission determined that the Respondent shall pay a fine in the total amount of \$1,000 for the violation of N.J.S.A. 45:15-17(s).

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

- I. The Respondent shall pay a fine in the amount of \$1,000 with respect to the violation of N.J.S.A. 45:15-17(s).

SO ORDERED this 20th day of May, 2023.

By: Eugenia K. Bonilla, President
William J. Hanley, Vice President
Christina Banasiak, Commissioner
Erin Brown, Commissioner
Denise M. Illes, Commissioner
Carlos Lejnleks, Commissioner
Gabrielle Liguori, Commissioner



Eugenia K. Bonilla, President
New Jersey Real Estate Commission

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