

**NEW JERSEY REAL ESTATE COMMISSION**

NEW JERSEY REAL ESTATE	)	Docket No.: REC-E-22-007
COMMISSION,	)	(REC Ref No.: 10013794)
	)	
Complainant,	)	
v.	)	FINAL DECISION AND ORDER
	)	
PETER WEISS, licensed New Jersey	)	
real estate salesperson (Ref. No. 2077770),	)	
	)	
Respondent.	)	

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**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 November 29, 2022.<sup>1</sup>

**BEFORE:** Commissioners Eugenia K. Bonilla, Erin Brown, William Hanley, Denise M. Illes and Robert Oppenheimer.

**APPEARANCES:** Jacqueline Dilks-Brotman, Regulatory Officer (“RO Dilks-Brotman”), appeared on behalf of the New Jersey Real Estate Commission staff (“REC”). Peter Weiss (“Respondent”) waived the 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 June 7, 2022 pursuant to N.J.A.C. 11:5-1.1 to -12.18, N.J.S.A. 45:15-17, and 45:15-18. The OTSC alleges that on or about August 2, 2021, the Respondent was charged with Unlawful Entry of a Structure, in violation of N.J.S.A. 2C:18-3(a), for entering the home located at 197 Carol Drive without the owner’s permission through an unsecured window. The OTSC

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<sup>1</sup> The meeting was conducted via Zoom. All those participating participated via Zoom.

alleges that the conduct underlying the Respondent's criminal charge of Unlawful Entry of a Structure demonstrates unworthiness, bad faith or dishonesty in violation of N.J.S.A. 45:15-17(e).

On August 17, 2022, the Respondent submitted an Answer to the OTSC, wherein he denied certain allegations set forth in the OTSC and requested a hearing. On October 25, 2022, the Commission reviewed the pleadings, deemed this matter a contested case and directed that a hearing be scheduled. The matter was heard by the Commission on November 29, 2022. The following documents were submitted by the REC and entered into evidence, without objection:

- S-1: New Jersey Department of Banking and Insurance, Real Estate Commission, License Certification with History for the Respondent;
- S-2: Complaint Information Sheet #332206. dated August 2, 2021;
- S-3: Correspondence between Jennifer Britske and Investigator William Ames, May 2022;
- S-4: Photographs of 197 Carol Drive, Toms River, NJ, 08753 taken by Jennifer Britske; Exterior photograph featured in the MLS Listing for 197 Carol Drive;
- S-5: Toms River Police Department, Officer Report for Case 21-35608;
- S-6: Correspondence between Sarah Hicks and Investigator Ames dated May 2, 2022;
- S-7: Correspondence between Peter Weiss and REC, dated September 13, 2021;
- S-8: Correspondence between Peter Weiss and Investigator William Ames, dated May 2, 2022;
- S-9: Letter of Explanation, submitted Peter Weiss, undated; Incoming and Outgoing Call Log, undated;
- S-10: Text messages between Sarah Hicks and Peter Weiss, dated July 31, 2021 and August 1, 2021;
- S-11: Letter from Michael D'Amico to REC, dated August 25, 2021; Letter from Darrin Parodi to REC, dated August 24, 2021;
- S-12: Card from Peter Weiss to Jennifer Britske, undated;

S-13: Correspondence between Peter Weiss and Investigator Tyrone Hodges, dated March 1, 2022; and

S-14: Documents regarding Pretrial Intervention, dated February 24, 2022.

### **TESTIMONY OF THE WITNESSES**

#### **Jennifer Britske**

Jennifer Britske (“Britske”) testified as a witness for the REC. Britske stated that she has been employed for six years with the New Jersey State Police and works in Internal Affairs. Britske testified that on July 31, 2021, she was away from her home, located at 197 Carol Drive. Britske stated that her home was under contract, there were no showings scheduled, and that she had left personal items in plain view, including her State police uniform. Britske testified that she returned to her home on August 1, 2021 and had let her dog out in the back yard and noticed that her back yard gate had been unlocked. Britske testified that she also noticed that her patio furniture had been rearranged and one lounge chair had been moved under an open bathroom window.

Britske testified that because of her formal training as a police officer, she “cleared” each room of her home and spoke with her neighbor, who said they had seen three men entering the property the day before. Britske testified that she then contacted the police department. Britske identified Exhibit S-4 as photographs taken of the scene, including the lounge chair that had been moved to access the bathroom window and exterior images of the bathroom window covered in fingerprints and fingerprinting residue.<sup>2</sup>

Britske noted that the only similarity between her home at 197 Carol Drive and the property located at 229 Carol Drive—the home Respondent had intended to view— was that both are ranch style homes, as is every home on street. Britske stated there are no other similarities, as the

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<sup>2</sup> Britske stated that her partner has been an evidence technician for the municipal police department for approximately 4.5 years and had checked the crime scene for fingerprints.

properties are different colors and have different exteriors, and noting that 229 Carol Drive appears “run-down” and is “one of the worst looking houses on the block, with a garage.”

Britske identified Exhibit S-2 as the complaint she submitted to the REC and Exhibit S-3 as email correspondence between herself and Investigator Ames. Britske reflected on the incident, stating that she feels “disgusted” by the invasion of her home by the Respondent. She testified that as a police officer, she never imagined this happening to her. Further, she stated that any time she receives an email or communication regarding the invasion, she feels a “Band-aid was being ripped off.” She testified that she has increased the security on her new home and is unable to sleep at night, waking up at the slightest sound, and has begun triple checking the locks on her windows and doors.

#### **Peter Weiss**

The Respondent testified at the hearing. The Respondent explained how he came to mistakenly enter Britske’s home at 197 Carol Drive on July 31, 2021, stating that he was a newer agent and was working with a new client. On that day, the client had picked out several properties to see that day including 229 Carol Drive, which they were scheduled to see at 11:00AM. The Respondent stated that the MLS listing for 229 Carol Drive did not include an exterior photograph, so he was not sure what the property looked like.<sup>3</sup>

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<sup>3</sup> In his written submission to the REC, Respondent stated that the MLS listing for 229 Carol Drive did not include a photograph of the exterior; however, in Exhibit S-9, which is a timeline of events prepared by the Respondent and submitted to Investigator Ames, he states that he “recognized the home from the pictures he had seen online”. Respondent testified that what he meant by his statement in Exhibit S-9 is that he had previously seen the MLS listing for 197 Carol Drive, while it was on the market, and confused that memory with 229 Carol Drive.

Respondent testified that as he approached Carol Drive, he saw a home with a “For Sale” sign on the lawn and a lockbox, and assumed that it was the property his clients had selected.<sup>4</sup> The Respondent stated that he tried to get the key to the property using the lock-box, but the combination he had did not work. The Respondent then reached out to the two listing agents, Merritt and Hicks, on the “For Sale” sign. The Respondent called, left voicemails and sent follow up text messages to both agents. The Respondent testified that Merritt was unresponsive and Hicks advised that he had the wrong contact and that she was not going to help him get inside.<sup>5</sup> The Respondent stated that he thought that Hicks was confused, because he had made an appointment to show his client’s 229 Carol Drive and he believed it was the home he was attempting to enter.

The Respondent testified that he looked through the windows of the property and saw that the home appeared set up for a showing, noting that he saw an MLS sheet and realtor business cards on the counter. The Respondent testified that he checked the doors and windows for an alternate way to enter the property, and then went into the backyard and found the bathroom window unlocked. The Respondent stated that he moved a lawn chair under the window to ensure he did not cause any damage to the siding, and entered the home by climbing through the window and letting his clients into the home through the front door.

The Respondent opined that his conduct did not demonstrate unworthiness because he was acting as an agent who believed he had permission to be inside the home, he believed he had gone above and beyond to show the home to his clients, and he secured the home upon exiting the

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<sup>4</sup> The Respondent testified that every house on the street was approximately 1,100 to 1,300 sq. ft., had either one or two bedrooms, and appeared similar outside of the exterior façade.

<sup>5</sup> The Respondent testified that he continued to text with Hicks, who informed him that her contact information appears on the “For Sale” sign at 197 Carol Drive, not 229 Carol Drive. The Respondent stated that he did not read this message until he and his clients had left the property. See Exhibit S-10.

premises. Further, the Respondent stated that because he apologized to Britske, his conduct did not demonstrate bad faith and because he was forthcoming with the police, his clients, and Britske when he realized his error, his conduct does not demonstrate dishonesty. The Respondent admitted that he could have contacted his broker for assistance, but did not do so because he did not think what he was doing was wrong. Further, the Respondent testified that he consulted his salesperson manual, looked on the Commission's website and spoke to his broker, and could not find a rule that said it was illegal to enter a property through a window.

Regarding the criminal complaint filed against him, the Respondent testified that his attorney advised him to accept Pre Trial Intervention ("PTI") in lieu of going to trial. The Respondent stated that he did not hire an attorney for the hearing before the Commission because he felt he made one mistake and had already paid a tremendous price for it, indicating that this incident has impacted his health, well-being and his college age children. The Respondent expressed embarrassment that he had entered the wrong home. Further, he noted that Britske was a police officer with access to a gun who moved from the property three weeks after the incident.

### **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 an actively licensed New Jersey real estate salesperson, first licensed as a real estate salesperson on July 27, 2020.
2. The Respondent is currently licensed with Riviera Realty d/b/a Coldwell-Banker Riviera Realty ("Riviera"), a licensed New Jersey real estate broker, whose main New Jersey office is located at 550 Brick Boulevard, Bricktown, New Jersey.
3. On or about August 2, 2021, the Respondent was charged with Unlawful Entry of a Structure, in violation of N.J.S.A. 2C:18-3(a) by the Toms River Police Department.

4. The conduct underlying the criminal charges related to the Respondent's unauthorized entry of 197 Carol Drive in Toms River through an unsecured window.
5. On July 31, 2022, the Respondent and his clients had an appointment to view 229 Carol Drive in Toms River.
6. On July 31, 2022, the Respondent and his clients instead appeared at 197 Carol Drive and attempted to access the key in the lock-box, but the code Respondent had did not work.
7. The Respondent contacted the two listing agents on the "For Sale" sign posted on 197 Carol Drive for assistance to gain access into the property and one agent advised that Respondent had contacted the wrong agent for 197 Carol Drive and would not provide the lockbox code for 229 Carol Drive.
8. The Respondent entered 197 Carol Drive by going into the backyard and climbing through an unsecured window by using a lounge chair taken from the patio and placed up against the house.
9. Upon entering 197 Carol Drive, the Respondent let his clients in through the front door and proceeded to tour the home. After several minutes, the Respondent realized that he was in the wrong property and the Respondent's and his clients exited the property.
10. On or about February 24, 2022, the Respondent plead guilty to a violation of N.J.S.A. 2C:18-3(a) and was accepted into the Ocean County PTI Program for a period of 12 months. Pursuant to the terms of the Respondent's PTI, the the prosecution of the criminal charges described above were postponed for the period of PTI. Upon successful completion of PTI, the criminal charges filed against the Respondent will be dismissed.

### **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. The Respondent's conduct underlying the criminal charge of Unlawful Entry of a Structure in violation of N.J.S.A. 2C:18-3(a), whereby the Respondent entered 197 Carol Drive without the owner's authorization through an unsecured window, demonstrates unworthiness for licensure, in violation of N.J.S.A. 45:15-17(e).

## **DETERMINATION**

At the conclusion of the hearing in this matter, the Commission voted in favor of finding the aforementioned violation 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 documentary evidence submitted, the testimony of the witnesses, 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 facts alleged in the OTSC are uncontested. The Respondent's written submissions to the REC, exhibits and witness testimony substantiate that the Respondent was an actively licensed real estate salesperson when on July 31, 2021 he took new clients to view 229 Carol Drive, Toms River, New Jersey. Upon arriving at Carol Drive, the Respondent saw a "For Sale" sign at 197 Carol Drive and mistakenly assumed this was 229 Carol Drive, the property his clients had selected. When the lockbox code at 197 Carol Drive did not work, the Respondent entered the property through an unsecured window and brought the clients inside for a showing. When the Respondent realized that he was in the wrong home, the Respondent and his clients exited the home. As a result of the above described conduct, the Respondent was charged with Unlawful



Entry of a Structure, in violation of N.J.S.A. 2C:18-3(a). The Respondent elected to participate in the PTI program for a period of 12 months in lieu of a trial.

The Respondent characterizes his unauthorized entry into 197 Carol Drive as a justifiable mistake. However, the Commission is charged with the “high responsibility of maintaining ethical standards among real estate brokers and sales[persons]” Goodley v. New Jersey Real Estate Comm’n, 29 N.J. Super. 178, 181-182 (App. Div. 1954). In furtherance of this objective, the Commission is empowered to suspend, revoke or place on probation the license of a licensee who engages in conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty. N.J.S.A. 45:15-17(e). The word “unworthiness,” signifies a lack of those ethical qualities that befit the vocation. Id. at 182. In this matter, the Respondent entered a person’s home by climbing through an unsecure window. He engaged in this conduct despite being told by the listing agent for 197 Carol Drive that he was mistaken and knowing that the listing agent also refused to assist him to gain entrance into the property. In fact, the listing agent expressly advised the Respondent that he was not at 229 Carol Drive, but he failed to read the text message which had been timely sent. The Respondent’s conduct, which occurred while engaged in his role as a salesperson, raises serious questions about the Respondent’s judgment and ability to meet the high ethical standards the Commission is charged with maintaining. The Commission is concerned that despite being subject to criminal charges, Respondent still appears to grapple with whether his conduct was in fact unethical or problematic and even consulted with his broker, his employee manual, and the Commission’s website trying to find rationalization for his conduct. The Respondent’s failure to appreciate the impropriety of his conduct and lack of good judgment is alarming. Therefore, the Commission finds that the Respondent’s conduct demonstrates unworthiness for licensure, in violation of N.J.S.A. 45:15-17(e).

## **Penalties Against the Respondent**

As discussed above, 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, 29 N.J. Super.181-182 . The nature and duties of a real estate business are grounded in interpersonal, fiduciary, and business relationships and demand the utmost honesty, trust, and good conduct. Maple Hill Farms, Inc. v. New Jersey Real Estate Commission, 67 N.J. Super. 223, 232 (App. Div. 1961); Div. of the New Jersey Real Estate Comm’n v. Ponsi, 39 N.J. Super. 526, 527 (App. Div. 1956). Courts have long recognized that the real estate sales industry should exclude individuals who are incompetent, unworthy, and unscrupulous, in order to protect the public interest. See Div. of the New Jersey Real Estate Comm’n v. Ponsi, 39 N.J. Super. at 532-533. Thus, the Commission has the power to suspend, revoke, or place on probation the license of any licensee for “any conduct which demonstrates unworthiness, incompetency, bad faith, or dishonesty.” N.J.S.A. 45:15-17(e). As set forth above, the Commission found that the Respondent’s unauthorized entry into 197 Carol Drive through an unsecured window demonstrates unworthiness, in violation of N.J.S.A. 45:15-17(e). Based upon these findings, the Commission is empowered, under the Act, to take action against the Respondent’s license.

The Commission appreciates the Respondent’s candor and notes that the desire to “go above and beyond” for the client is a desirable quality in a licensee; however in this instance, entering a property through an unsecure window without the owner’s express permission—even if the Respondent had been at 229 Carol Drive—is well beyond acceptable advocacy for a client and demonstrates an astonishing lack of judgment. Such conduct constitutes unworthiness pursuant to N.J.S.A. 14:15-17(e), which cannot be overlooked. Thus, after considering the

testimony and evidence presented, and in light of the violations committed by the Respondent, as set forth herein, the Respondent's real estate salesperson license is revoked for a period of one year. The Commission notes that the Respondent was accepted into the Ocean County PTI Program and upon successful completion of the program, the criminal charges filed against the Respondent will be dismissed, but nevertheless the underlying conduct by the Respondent warrants discipline.

Moreover, pursuant to N.J.S.A. 45:15-17, the Commission may impose a penalty of not more than \$5,000 for the first violation of the Act, and a penalty of not more than \$10,000 for any subsequent violation. In Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), the Supreme Court established the following seven factors in order to evaluate the imposition of fines in administrative proceedings and these factors are applicable to this matter, which seeks the imposition of penalties under the Act: (1) the good or bad faith of the respondent; (2) the respondent's ability to pay; (3) the amount of profits obtained from the illegal activity; (4) any injury to the public; (5) the duration of the illegal activity or conspiracy; (6) the existence of criminal or treble actions; and (7) any past violations. Id. at 137-139. Each of these factors is discussed below. No one Kimmelman factor is dispositive for or against fines and penalties. See Id. at 139 (“[t]he weight to be given to each of these factors by a trial court in determining... the amount of any penalty, will depend on the facts of each case.”).

The first factor is whether the respondent was acting in good or bad faith, which requires an assessment of how egregious the respondent's conduct was and whether the respondent could have reasonably believed his conduct was legal. Kimmelman, 108 N.J. at 137. As discussed above, the Respondent's conduct is egregious, demonstrating a lack integrity and judgment which rises to unworthiness. Further, it is unreasonable for the Respondent to have believed the entry of

197 Carol Drive through an unsecured window was legal or appropriate conduct for a licensee. The Respondent argues that following his arrest, he was forthcoming with Britske, his clients, the Toms River Police Department, and his broker, therefore he has demonstrated good faith. The Commission, however, notes that the Respondent knew he had entered the wrong property prior to being arrested and did not come forward to his employer, the listing agents or Britske. While such cooperation is commendable, it does not excuse the Respondent's reckless behavior nor does his candor overcome the egregiousness of his conduct. Similarly, the Commission also notes the Respondent's timely disclosure to the REC regarding the filing of the charges against him and his cooperation with Investigator Ames, but again, this does not obviate the Respondent's demonstrable lack of judgment. Thus, we find that the Respondent conduct demonstrates bad faith.

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

The third Kimmelman factor addresses the amount of profits obtained or likely to be obtained from the illegal activity. The greater the profits an individual is likely to obtain from illegal conduct, the greater the penalty must be if penalties are to be an effective deterrent. Kimmelman, 108 N.J. at 138. In this instance, the Respondent does not appear to have obtained any profits due to his underlying conduct.

The fourth Kimmelman factor addresses the injury to the public. As discussed above, in order to protect consumers, the Commission is charged with “maintaining ethical standards among real estate brokers and sales[persons].” Goodley, 29 N.J. Super. at 182. Therefore, the public is harmed when an individual fails to comply with Commission regulations. Here, the Respondent unlawfully entered 197 Carol Drive through an unsecured window. 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 case, the injury to the public is undisputable. Moreover, this matter also presents an identifiable victim, Jennifer Britske, who recounted the palpable adverse impact of the Respondent’s intrusion into her home, including the fear she experienced on the day she discovered the Respondent’s unlawful entry, the impact of his conduct on her mental well-being, the increased security interventions at her current home and the visible distress displayed during her testimony. 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 injury to the public caused by the Respondent’s conduct weighs in favor of a monetary penalty.

The fifth Kimmelman factor to be examined is the duration of the illegal activity. The Respondent’s unauthorized entry of the Property appears to be a singular occurrence and not part of a larger pattern.

Sixth, the Respondent has been party to criminal proceedings stemming from the conduct at issue. The Respondent was charged with one count of Unlawful Entry of a Structure and is currently enrolled in a PTI program.

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

In light of these Kimmelman factors which weigh in favor of imposing a monetary penalty, the Commission determined that the Respondent shall pay a civil penalty fine in the total amount of \$5,000.

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

- I. Respondent Peter Weiss's real estate salesperson license shall be revoked for one year.
- II. Respondent Peter Weiss shall pay a fine of \$5,000 with respect to the violation of N.J.S.A. 45:15-17(e).

SO ORDERED this 13<sup>th</sup> day of March, 2023.

By: Eugenia K. Bonilla, President  
William Hanley, Vice President  
Erin Brown, Commissioner  
Denise M. Illes, Commissioner  
Robert Oppenheimer, Commissioner



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Eugenia K. Bonilla, President  
New Jersey Real Estate Commission

AR Weiss FO/Final Orders-REC