

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

BEFORE THE REAL ESTATE COMMISSION

**COMMONWEALTH OF PENNSYLVANIA
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

V.

**JOHN J. KATZBECK
CASE NOS. 21-56-018852; 23-56-002685; 23-56-005952**

FINAL ADJUDICATION AND ORDER

**ARION R. CLAGGETT, ACTING COMMISSIONER
OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS**

**GAETANO PICCIRILLI, CHAIRPERSON
STATE REAL ESTATE COMMISSION**

**P.O. BOX 69523
HARRISBURG, PA 17106-9523**

DFP

HISTORY

This case is before the State Real Estate Commission (Commission) to determine whether the real estate licenses of John J. Katzbeck (Respondent) should be suspended, revoked, or otherwise disciplined under the Real Estate Licensing and Registration Act (RELRA)¹. On September 13, 2023, the Commonwealth filed a sixteen count Order to Show Cause (OSC) alleging that Respondent is subject to disciplinary action for violating the RELRA because he: violated 63 P.S. § 455.604(a)(5.1)² by failing to account for escrow in the full amount thereof at

¹ Act of February 19, 1980, P.L. 15, No. 9, *as amended*, 63 P.S. §§ 455.101-455.902.

² § 455.604. Prohibited acts.

The commission may upon its own motion, and shall promptly upon the verified complaint in writing of any person setting forth a complaint under this section, ascertain the facts and, if warranted, hold a hearing for the suspension or revocation of a license or registration certificate or for the imposition of fines not exceeding \$1,000, or both. The commission shall have power to refuse a license or registration certificate for cause or to suspend or revoke a license or registration certificate or to levy fines up to \$1,000, or both, where the said license has been obtained by false representation, or by fraudulent act or conduct, or where a licensee or registrant, in performing or attempting to perform any of the acts mentioned herein, is found guilty of:

* * * * *

(5.1) Failing to comply with any of the requirements of section 608.5.

* * * * *

(6) Failing to preserve for three years following its consummation records relating to any real estate transaction.

* * * * *

(17) Failing, within a reasonable time as defined by the commission, to provide information requested by the commission as the result of a formal or informal complaint to the commission, which would indicate a violation of this act.

* * * * *

(20) Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency.

* * * * *

63 P.S. §§ 455.604(a), (5.1), (6), (17), (20)

the time of consummation, termination or release of a real estate transaction in violation of 63 P.S. § 455.608e(b)³; commingled deposits or other escrows or property with the Respondent's own funds or property, in violation of 63 P.S. § 455.608e(d), and Commission Regulation found at 49 Pa. Code 35.326(a)⁴; violated 63 P.S. § 455.604(a)(5.1) by failing to deposit moneys in a separate

³ § 455.608e - Handling of deposits and other escrows

(a) All deposits or other escrows accepted by a broker must be retained by the broker pending:

* * * * *

(b) Deposits and other escrows must be accounted for in the full amount thereof at the time of consummation, termination or release as provided in subsection (a). If less than the full amount held pursuant to subsection (a) is released, notice must be given in writing or electronic form to all the parties to the transaction of the amounts released, the persons to whom distribution is made and the amounts that continue to be held pursuant to subsection (a).

* * * * *

(d) A broker shall not commingle deposits or other escrows or property of another person with the broker's own funds or property.

* * * * *

(e) A broker must deposit moneys and property of whatever kind or nature, belonging to others, in a separate custodial or trust fund account maintained by the broker with a bank or recognized depository by the end of the business day following their receipt by the broker. The moneys and property must be held by the broker until they are paid or released as provided in subsection (a), at which time the broker shall account for the full amount received. Under no circumstances shall a broker permit any advance payment of funds belonging to others to be deposited in the broker's business or personal account or to be commingled with any funds the broker may have on deposit.

* * * * *

(g) A broker must keep records of all funds deposited in a custodial or trust fund account, which records indicate clearly the date and from whom the broker received the funds, the date deposited, the dates of withdrawals and other pertinent information concerning the transaction, and must show clearly for whose account the money is deposited and to whom the money belongs. All such records and funds shall be subject to inspection by the commission and must be available to the commission or its representatives immediately after proper demand or after notice in writing or electronic form given to the broker or depository. Each separate custodial or trust fund account must designate the broker as trustee and the account must provide for withdrawal of funds without previous notice.

* * * * *

63 P.S. § 455.608e(a), (b), (d), (e)

⁴ § 35.326. Prohibition against commingling or misappropriation.

custodial or trust fund account maintained by the broker with a bank by the end of the business day following their receipt by the broker, in violation of Section 608.5(e) of the Act, 63 P.S. § 455.608e(e); violated 63 P.S. § 455.604(a)(5.1), by failing to keep records of all funds deposited in a custodial or trust fund account which records clearly indicate the date deposited and for whose the account the money is deposited, in violation of 63 P.S. § 455.608e(g); violated 63 P.S. § 455.604(a)(20), by engaging in conduct in the Maple Lots real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency; violated 63 P.S. § 455.604(a)(17), by failing to provide information requested as a result of a formal complaint to the Commission regarding a real estate transaction; violated 63 P.S. § 455.604(a)(6), by failing to produce records related to the Maple Lots for examination by the Commission upon written request or pursuant to an office inspection; violated 63 P.S. § 455.604(a)(6), by failing to preserve for three years following its consummation records relating to a real estate transaction; 63 P.S. § 455.604(a)(8), by advertising a property for sale without the written consent of the owner; and violated 49 Pa. Code 35.281(a)⁵ by failing to put a purported listing agreement in writing. These violations occurred over three separate and distinct real estate transactions.

(a) Except as provided in subsection (b), a broker may not commingle money that is required to be held in escrow—or interest earned on an escrow account—with business, personal or other funds.

* * * *

(b) A broker may deposit business or personal funds into an escrow account to cover service charges assessed to the account by the bank or depository where the account is located or to maintain a minimum balance in the account as required by the regulations of the bank or depository.

49 Pa. Code § 35.326 (a)(b)

⁵ 49 Pa. Code § 35.281. Putting contracts, commitments and agreements in writing.

(a) All contracts, commitments and agreements between a broker, or a licensee employed by the broker, and a principal or a consumer who is required to pay a fee, commission or other valuable consideration shall be in writing and contain the information specified in § 35.331 (relating to written agreements generally).

Although the OSC was served upon Respondent, Respondent has not filed an answer or otherwise responded. On November 1, 2023, the Commonwealth filed a Motion to Deem Facts Admitted and Enter Default (“MDFA”) and mailed a copy to Respondent at his last known address. Respondent did not respond to the MDFA. By order dated January 18, 2024, the Commission granted the MDFA, deeming Respondent to have admitted the factual allegations of the OSC, which was also mailed to Respondent at his last known address. Thereafter, the Commission closed the record. The Commission deliberated this matter at its regularly scheduled meeting and now issues this adjudication as a final disposition of the charges against Respondent.

FINDINGS OF FACT

1. Respondent holds the following licenses to practice as a broker in the Commonwealth of Pennsylvania: Broker Sole Proprietor license, no. RB028631A, which was issued on September 3, 1976 and expires May 31, 2024; Broker Multi-Licensee license, no. RM424826, which was issued on September 27, 2021 and expired on May 31, 2022; and Associate Broker license, no. AB066289, which was issued on October 15, 2007 and expired May 31, 2010. (Commission records; OSC at ¶ 1).

2. Absent further Commission action, Respondent's licenses may be renewed, reactivated or reinstated thereafter upon the filing of the appropriate documentation and payment of the necessary fees. (Commission records; OSC at ¶ 2).

3. At all times pertinent to the Factual Allegations, Respondent held a license to practice as a real estate broker in the Commonwealth of Pennsylvania. (Commission records; OSC at ¶ 3).

4. Respondent's address on file with the Commission is: [REDACTED]
[REDACTED]. (Commission records; OSC at ¶ 4).

5. Respondent currently resides at [REDACTED]
[REDACTED]. (OSC at ¶ 5).

6. The costs of investigation in this matter are three thousand three hundred sixty-six dollars and three cents (\$3,366.03). (OSC at ¶ 6).

7. On March 8, 2021, [REDACTED] entered into an Agreement of Sale to buy two properties located at 1726 and 1728 Maple Avenue, Bethlehem, PA ("Maple Lots") from Katzbeck Real Estate LLC for three hundred thirty-seven thousand and six hundred dollars (\$337,600.00). (OSC at ¶ 8).

8. Respondent is the owner of Katzbeck Real Estate LLC, a real estate investment company. (OSC at ¶ 9).

9. The [REDACTED] desired to purchase the Maple Lots to have a modular home constructed by Respondent for their daughter. (OSC at ¶ 10).

10. Respondent acted as Katzbeck Real Estate LLC's broker in the transaction. (OSC at ¶ 11).

11. Better Home and Garden Real Estate-Cassidon Realty acted as the [REDACTED] broker in the transaction. (OSC at ¶ 12).

12. Under the Agreement of Sale, it was agreed that the [REDACTED] would provide a deposit of eight thousand dollars (\$8,000.00) to Respondent to be held in Respondent's escrow account. (OSC at ¶ 13).

13. The [REDACTED] provided the deposit to Respondent on March 13, 2021. (OSC at ¶ 14).

14. Under the Agreement of Sale, the settlement date would be April 15, 2021, but by agreement of the parties that date was extended to June 13, 2021. (OSC at ¶ 15).

15. Under the Agreement of Sale, it was agreed that if the [REDACTED] were unable to obtain financing, all deposit monies would be returned to the [REDACTED] and the agreement would be void. (OSC at ¶¶16-17; Exhibit A).

16. Despite repeated requests, Respondent failed to provide building specifications to the [REDACTED] financial institution, causing the same to deny the [REDACTED] request for financing. (OSC at ¶ 18).

17. On June 16, 2021, the transaction was terminated because the [REDACTED] were unable to obtain financing. (OSC at ¶ 19).

18. The closing of this transaction never occurred. (OSC at ¶ 20).

19. On June 16, 2021, real estate agent Cindy Courtright of Better Home and Gardens Real Estate-Cassidon Realty sent Respondent an email stating that the [REDACTED] were entitled to the eight-thousand-dollar (\$8,000.00) escrow deposit because Respondent defaulted on the Agreement of Sale and requesting that Respondent agree to the release of the escrow deposit to the [REDACTED] (OSC at ¶ 21).

20. With the June 16, 2021 email, Ms. Courtright attached an Agreement of Sale Release and Distribution of Deposit Money document signed by the [REDACTED] (OSC at ¶¶ 22-23; Exhibit B).

21. On June 24, 2021, William J. Burke, III, Esquire, counsel for the [REDACTED] sent a letter to Respondent demanding the return of the [REDACTED] eight-thousand-dollar (\$8,000.00) deposit and enclosing the release signed by the [REDACTED] (OSC at ¶ 24).

22. Attorney Burke's June 24, 2021 letter did not say there was pending litigation or mediation. (OSC at ¶¶ 25-26; Exhibit C).

23. As of June 13, 2022, Respondent had failed to return the eight-thousand-dollar (\$8,000.00) deposit to the [REDACTED] (OSC at ¶ 27).

24. On June 8, 2021, Department of State Professional Conduct Investigator ("PCI") David Karczewski interviewed Respondent. (OSC at ¶ 28).

25. During the interview, Respondent admitted that he had not returned the eight-thousand-dollar (\$8,000.00) deposit to the [REDACTED] (OSC at ¶ 29).

26. During the interview, Respondent admitted that the eight-thousand-dollar (\$8,000.00) deposit was not in his escrow account. (OSC at ¶ 30).

27. During the interview, Respondent admitted that he had no accounting for the eight-thousand-dollar (\$8,000.00) deposit. (OSC at ¶ 31).

28. During the interview, when asked if he had kept the deposit money for himself or his investment company, Respondent refused to answer. (OSC at ¶ 32).

29. During the interview, Respondent stated that he would return the eight-thousand-dollar (\$8,000.00) deposit when he resells the Maple Lots. (OSC at ¶ 33).

30. PCI Karczewski provided Respondent with a real estate broker's affirmation for the Maple Lots. (OSC at ¶ 34).

31. Respondent failed to provide any documentation related to the Maple Lots transaction. (OSC at ¶ 35).

32. On June 13, 2022, an inspection of John K. Katzbeck Real Estate was conducted by Department of State Inspector Chaundelle Woolley, at which time, PCI Karczewski was also present for inspection. (OSC at ¶¶ 36-37).

33. At the June 13, 2022 inspection, Respondent's escrow account transaction list indicated a balance of one hundred and twelve dollars and ninety-eight cents (\$112.98) as of March 2, 2022. (OSC at ¶¶ 38-39; Exhibit D).

34. At the June 13, 2022 inspection, Respondent's escrow book had pages ripped out but did include one entry for the Maple Lots transaction which merely provided a date of March 22, 2021, the [REDACTED] names, the [REDACTED] address, and a reference to "\$8,000." (OSC at ¶ 40).

35. The escrow book failed to clearly indicate the date the eight thousand dollars (\$8,000.00) from the [REDACTED] was deposited or for whose account the money was deposited. (OSC at ¶¶ 41-42; Exhibit F).

36. As a result of numerous escrow related violations, among other things, Respondent failed the June 13, 2022 inspection. (OSC at ¶ 43).

37. Pursuant to Section 608.5(a)(2) of the Act, 63 P.S. § 455.608e(a)(2), a broker must retain all escrow accepted by the broker pending termination of the real estate transaction where there is either a dispute as to entitlement to the escrow, or; there is a prior agreement in writing or electronic form as to disposition of the escrow in the event of a dispute regarding entitlement to the escrow. (OSC at ¶ 44).

38. In this transaction, there was no dispute as to the entitlement to the escrow. (OSC at ¶ 45).

39. In this transaction, Paragraph 8(B)(3) of the Agreement of Sale provided that if the mortgage loan was not obtained for settlement, all deposit monies would be returned to the [REDACTED] according to the terms of Paragraph 26, and the Agreement would be void. (OSC at ¶ 46).

40. In this transaction, Paragraph 26(A) of the Agreement of Sale provided that where the [REDACTED] terminate the Agreement, the [REDACTED] would be entitled to the return of all deposit monies paid. (OSC at ¶ 47).

41. In this transaction, 26(C) of the Agreement of Sale provided that if there was a dispute as to the entitlement to the escrow which still existed thirty (30) days after the termination of the Agreement of Sale or one hundred and eighty (180) days after the settlement date, whichever is earlier, Respondent would release the escrow to the [REDACTED] upon written request within thirty (30) days unless Respondent was in receipt of verifiable written notice that the dispute was the subject of litigation or mediation. (OSC at ¶ 48).

42. The [REDACTED] provided Respondent with a written request for the return of their escrow deposit on June 16, 2021. (OSC at ¶ 49).

43. If there were a dispute as to the entitlement of the escrow, Respondent had not received notice that the dispute over the entitlement to the escrow was the subject of litigation or mediation. (OSC at ¶ 50).

44. As there was no dispute as to the entitlement of the escrow and a prior written agreement existed as to the issue of the entitlement to the escrow, Respondent was not required under 63 P.S. § 455.608e(a)(2) to retain the escrow and was required to account for this escrow deposit within thirty (30) days of receipt of the [REDACTED] written request for the escrow deposit, however Respondent has not returned the escrow monies. (OSC at ¶¶ 29,51).

45. On January 10, 2023, [REDACTED] entered into an Agreement of Sale with Everitt C Inc. Tranquil Place LLC (“Everitt LLC”) to purchase property on Reed Road, Tax parcel #42-021-034, on which a modular home would be constructed by Respondent’s construction company, for a total sales price of three hundred and ninety-five thousand dollars (\$395,000.00). (OSC at ¶ 68).

46. Respondent acted as Everitt LLC’s broker in the transaction. (OSC at ¶ 69).

47. Iron Valley Real Estate acted as [REDACTED] broker in the transaction. (OSC at ¶ 70).

48. The Agreement of Sale provided that [REDACTED] would provide an initial deposit of five thousand dollars (\$5,000.00) to Respondent. (OSC at ¶ 71).

49. [REDACTED] provided the initial deposit to Respondent on January 12, 2023. (OSC at ¶ 72).

50. [REDACTED] subsequently provided a ten-thousand-dollar (\$10,000.00) deposit to Respondent for the construction of a modular home on the Reed Road property. (OSC at ¶ 73).

51. The Agreement of Sale provided that the settlement date would be February 24, 2023. (OSC at ¶¶ 74-75; Exhibit F).

52. On February 3, 2023, real estate salesperson Bonnie McCarthy learned from [REDACTED] mortgage lender that he could not obtain financing if Coopersburg Construction, Respondent's construction company, built the modular home as it was not an approved builder. (OSC at ¶ 76).

53. Also on February 3, 2023, Ms. McCarthy learned that the mortgage lender's approved builder did not build modular homes. (OSC at ¶ 77).

54. Thereafter, by e-mail dated February 3, 2023, Ms. McCarthy informed Respondent that there was a breach of the Agreement of Sale due to the construction and lender issues and thus, the Agreement was terminated; and also requested the release of the five-thousand-dollar (\$5,000.00) deposit paid by [REDACTED] to Respondent. (OSC at ¶¶ 78-80; Exhibit G).

55. On February 8, 2023, Ms. McCarthy e-mailed Respondent again to request that he sign the release and return the deposit paid by [REDACTED] (OSC at ¶ 81).

56. The closing of this transaction never occurred. (OSC at ¶ 82).

57. The Agreement of Sale, Paragraph 26(C) provided that if the Agreement of Sale was terminated and there was a dispute over the entitlement to deposit monies that was unresolved ten (10) days after the settlement date or following termination of the Agreement of Sale, whichever was earlier, then Respondent would, within thirty (30) days of receipt of [REDACTED] written request, distribute the deposit monies to [REDACTED] unless Respondent was in receipt of verifiable written notice that the dispute was the subject of litigation or mediation. (OSC at ¶ 83).

58. As of May 25, 2023, Respondent was still holding the five-thousand-dollar (\$5,000.00) deposit for this transaction. (OSC at ¶ 84).

59. On May 25, 2023, PCI David Karczewski interviewed Respondent. (OSC at ¶ 85).

60. During the interview, Respondent stated that he had spent six thousand dollars (\$6,000.00) in surveys for the Reed property, and that he did not and would not return the deposit until [REDACTED] agrees to a deduction for the cost of the surveys. (OSC at ¶¶ 86-87).

61. During the interview, PCI Karczewski requested copies of Respondent's transaction file for the Reed Road transaction and any related documentation. (OSC at ¶ 88).

62. To date, Respondent has failed to provide any documentation related to the Reed Road transaction. (OSC at ¶ 89).

63. Pursuant to Section 608.5(a)(2) of the Act, 63 P.S. § 455.608e(a)(2), a broker must retain all escrow accepted by the broker pending termination of the real estate transaction where there is either a dispute as to entitlement to the escrow, or; there is a prior agreement in writing or electronic form as to disposition of the escrow in the event of a dispute regarding entitlement to the escrow. (OSC at ¶ 90).

64. In this transaction, there was a dispute as to the entitlement to the escrow. (OSC at ¶ 91).

65. However, Paragraph 26(c) of the Agreement of Sale provided that if there was a dispute as to the entitlement to the escrow which still existed ten (10) days after the February 24, 2023 settlement date, or upon termination of the Agreement, whichever is earlier, Respondent would release the escrow to [REDACTED] upon written request within thirty (30) days unless Respondent was in receipt of verifiable written notice that the dispute was the subject of litigation or mediation. (OSC at ¶ 92).

66. [REDACTED] provided Respondent with a written request for the return of his escrow deposit on February 3, 2024. (OSC at ¶ 93).

67. Respondent has never received notice that the dispute over the entitlement to the escrow was the subject of litigation or mediation. (OSC at ¶ 94).

68. As there was a prior written agreement as to the issue of the entitlement to the escrow, Respondent was not required under 63 P.S. § 455.608e(a)(2) to retain the escrow and was required to account for this escrow deposit within thirty (30) days of receipt of [REDACTED] written request for the escrow deposit, however the escrow deposit was not returned. (OSC at ¶¶ 84, 86, 87, 95).

69. On March 27, 2023, [REDACTED] interviewed Respondent and two other real estate agents to discuss listing his home located at 930 Morgan Hill Road, Easton, PA 18042 (“Morgan Hill property”) for sale in the future. (OSC at ¶ 106).

70. [REDACTED] informed Respondent that he did not want to list his home for sale immediately as he needed to make repairs on the home prior to listing it for sale. (OSC at ¶ 107).

71. On March 29, 2023, [REDACTED] was contacted by his sister, a real estate salesperson in the state of New Jersey, who informed him that his residence was listed for sale in the Multiple Listing Service (“MLS”). (OSC at ¶ 108).

72. [REDACTED] never signed a listing agreement with Respondent authorizing him to advertise and market the Morgan Hill property. (OSC at ¶ 109).

73. [REDACTED] never verbally authorized Respondent to advertise or market the Morgan Hill property. (OSC at ¶ 110).

74. [REDACTED] never provided Respondent with any type of written consent to advertise and market the Morgan Hill property. (OSC at ¶ 111).

75. After listing the Morgan Hill property for sale, Respondent took an interested buyer to the Morgan Hill property. (OSC at ¶ 112).

76. Respondent entered the residence to show the property without informing [REDACTED] or requesting permission to do so. (OSC at ¶ 113).

77. Respondent left a listing agreement at the Morgan Hill property which was signed by Respondent on March 28, 2023. (OSC at ¶ 114).

78. On May 25, 2023, PCI David Karczewski interviewed Respondent. (OSC at ¶ 115).

79. During the interview, Respondent indicated he asked [REDACTED] to sign a listing agreement. (OSC at ¶ 116).

80. During the interview, Respondent indicated he had [REDACTED] “word and a handshake.” (OSC at ¶ 117).

81. During the interview, Respondent admitted [REDACTED] never signed a listing contract. (OSC at ¶ 118).

82. During the interview, Respondent admitted that when [REDACTED] first contacted him, he indicated his property was not ready to be shown at that time. (OSC at ¶ 119).

83. During the interview, Respondent admitted to entering the Morgan Hill property through an unlocked door to show the property and left a listing agreement for [REDACTED] (OSC at ¶ 120).

84. On September 13, 2023, the Commonwealth filed an OSC setting forth allegations that Respondent violated the RELRA. (MDFA at ¶ 1; Docket entries, Case Nos. 21-56-018852; 23-56-002685; 23-56-005952).

85. The Commonwealth was unsuccessful in serving the OSC upon Respondent via Certified Mail, Return Receipt Requested and via First Class Mail, postage prepaid, at

Respondent's two addresses—[REDACTED] and [REDACTED]
[REDACTED]. (MDFA at ¶ 2).

86. The Commonwealth requested personal service of the OSC on Respondent through the Department of State's Bureau of Enforcement and Investigation ("BEI"). (MDFA at ¶ 3).

87. On September 20, 2023, PCI David Karczewski of BEI personally served Respondent with a true and correct copy of the Order to Show Cause. (MDFA at ¶ 4).

88. Mr. Karczewski executed an Affidavit of Service before a Notary Public on September 21, 2023, indicating that he served the Respondent with the OSC on September 20, 2023 at [REDACTED]. (MDFA at ¶¶ 5-6 and Exhibit A).

89. The OSC directed Respondent to file an Answer within thirty (30) days of the date on the Certificate of Service associated with the Order to Show Cause. (MDFA at ¶ 7; OSC).

90. Thirty (30) days from the date of personal service of the OSC has expired as of October 20, 2023. (MDFA at ¶ 8).

91. As of the date of the filing of the Motion to Enter Default and Deem Facts Admitted, Respondent had filed no Answer to the OSC. (MDFA at ¶ 9).

92. On November 1, 2023 the Commonwealth filed and mailed the MDFA to Respondent by mailing it by first class mail, postage prepaid, to: [REDACTED]
[REDACTED]. (MDFA at certificate of service; Docket entries, Case Nos. 21-56-018852; 23-56-002685; 23-56-005952).

93. By Order dated January 18, 2024 the Commission granted the MDFA and mailed a copy of the order granting the MDFA to Respondent at: [REDACTED]
[REDACTED]. (Order granting MDFA; Docket entries, Case Nos. 21-56-018852; 23-56-002685; 23-56-005952).

94. Respondent did not answer the OSC, did not respond to the MDFA, and did not respond to the Order granting the MDFA. (Docket entries, Case Nos. 21-56-018852; 23-56-002685; 23-56-005952).

95. Respondent has not requested a hearing in this matter. (Docket entries, Case Nos. 21-56-018852; 23-56-002685; 23-56-005952).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over Respondent in this matter. (Findings of fact nos. 1-3).

2. Respondent received notice of this proceeding and of the charges against him and was afforded the opportunity to be heard in accordance with section 4 of the Administrative Agency Law, 2 Pa.C.S. § 504. (Findings of fact nos. 4-5, 84-95).

3. The Commission is authorized to suspend or revoke, or otherwise restrict Respondent's license, or impose a civil penalty under Sections 305 and 604(a) of the Act, 63 P.S. §§ 455.305 and 455.604(a), and/or impose a civil penalty under 63 Pa.C.S. §3108(b)(4) and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5) because Respondent violated Section 604(a)(5.1) of the Act, 63 P.S. § 455.604(a)(5.1), by failing to account for the Maple Lots escrow in the full amount thereof at the time of consummation, termination or release of the transaction in violation of Section 608.5(b) of the Act, 63 P.S. § 455.608e(b). Therefore, Count One of the OSC is sustained. (Findings of fact nos. 7-44).

4. The Commission is authorized to suspend or revoke, or otherwise restrict Respondent's license, or impose a civil penalty under Sections 305 and 604(a) of the Act, 63 P.S. §§ 455.305 and 455.604(a), and/or impose a civil penalty under 63 Pa.C.S. §3108(b)(4) and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5) because Respondent violated Section 604(a)(5.1) of the Act, 63 P.S. § 455.604(a)(5.1), by commingling deposits or other escrows or property of the [REDACTED] with the Respondent's own funds or property, in violation of Section 608.5(d) of the Act, 63 P.S. § 455.608e(d), and Commission Regulation found at Section 35.326(a), 49 Pa.Code 35.326(a). Therefore, Count Two of the OSC is sustained. (Finding of fact nos. 7-44).

5. The Commission is authorized to suspend or revoke, or otherwise restrict Respondent's license, or impose a civil penalty under Sections 305 and 604(a) of the Act, 63 P.S. §§ 455.305 and 455.604(a), and/or impose a civil penalty under 63 Pa.C.S. §3108(b)(4) and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5) because Respondent violated Section 604(a)(5.1) of the Act, 63 P.S. § 455.604(a)(5.1), by failing to deposit moneys belonging to the [REDACTED] in a separate custodial or trust fund account maintained by the broker with a bank by the end of the business day following their receipt by the broker, in violation of Section 608.5(e) of the Act, 63 P.S. § 455.608e(e). Therefore, Count Three of the OSC is sustained. (Finding of fact nos. 7-44).

6. The Commission is authorized to suspend or revoke, or otherwise restrict Respondent's license, or impose a civil penalty under Sections 305 and 604(a) of the Act, 63 P.S. §§ 455.305 and 455.604(a), and/or impose a civil penalty under 63 Pa.C.S. §3108(b)(4) and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5) because Respondent violated Section 604(a)(5.1) of the Act, 63 P.S. § 455.604(a)(5.1), by failing to keep records of all funds deposited in a custodial or trust fund account which records clearly indicate the date deposited and for whose account the money is deposited, in violation of Section 608.5(g) of the Act, 63 P.S. § 455.608e(g). Therefore, Count Four of the OSC is sustained. (Finding of fact nos. 7-44).

7. The Commission is authorized to suspend or revoke, or otherwise restrict Respondent's licenses under Section 604(a) of the Act, 63 P.S. § 455.604(a), or impose a civil penalty under Sections 305 & 604(a) of the Act, 63 P.S. §§ 455.305 & 455.604(a) and/or 63 Pa.C.S. § 3108(b)(4), and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5), because Respondent violated Section 604(a)(20) of the Act, 63 P.S. § 455.604(a)(20) by engaging in conduct in the Maple Lots real estate transaction which demonstrates bad faith, dishonesty,

untrustworthiness, or incompetency. Therefore, Count Five of the OSC is sustained. (Finding of fact nos. 7-44).

8. The Commission is authorized to suspend or revoke, or otherwise restrict Respondent's license, or impose a civil penalty under Sections 305 and 604(a) of the Act, 63 P.S. §§ 455.305 and 455.604(a), and/or impose a civil penalty under 63 Pa.C.S. §3108(b)(4) and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5) because Respondent violated section 604(a)(17) of the RELRA, 63 P.S. § 455.604(a)(17) by failing to provide information requested by the Commission within a reasonable time, as a result of a formal complaint to the Commission regarding the Maple Lots transaction, which would indicate a violation of the Act. Therefore, Count Six of the OSC is sustained. (Finding of fact nos. 7-44).

9. The Commission is authorized to suspend or revoke, or otherwise restrict Respondent's licenses under Section 604(a) of the Act, 63 P.S. § 455.604(a), or impose a civil penalty under Sections 305 & 604(a) of the Act, 63 P.S. §§ 455.305 & 455.604(a) and/or 63 Pa.C.S. § 3108(b)(4), and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5), because Respondent violated Section 604(a)(6) of the Act, 63 P.S. § 455.604(a)(6), by failing to produce records related to the Maple Lots for examination by the Commission upon written request or pursuant to an office inspection. Therefore, Count Seven of the OSC is sustained. (Finding of fact nos. 7-44).

10. The Commission is authorized to suspend or revoke, or otherwise restrict Respondent's licenses under Section 604(a) of the Act, 63 P.S. § 455.604(a), or impose a civil penalty under Sections 305 & 604(a) of the Act, 63 P.S. §§ 455.305 & 455.604(a) and/or 63 Pa.C.S. § 3108(b)(4), and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5), because Respondent violated Section 604(a)(6) of the Act, 63 P.S. § 455.604(a)(6), by failing to preserve

for three years following its consummation records relating to the Maple Lots real estate transaction. Therefore, Count Eight of the OSC is sustained. (Finding of fact nos. 7-44).

11. The Commission is authorized to suspend or revoke, or otherwise restrict Respondent's licenses under Section 604(a) of the Act, 63 P.S. § 455.604(a), or impose a civil penalty under Sections 305 & 604(a) of the Act, 63 P.S. §§ 455.305 & 455.604(a) and/or 63 Pa.C.S. § 3108(b)(4), and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5), because Respondent violated Section 604(a)(5.1) of the Act, 63 P.S. § 455.604(a)(5.1), by failing to account for in the full amount thereof at the time of consummation, termination or release of a real estate transaction all deposits and other escrow related to the Reed Road property, in violation of Section 608.5(b) of the Act, 63 P.S. § 455.608e(b). Therefore, Count Nine of the OSC is sustained. (Finding of fact nos. 45-68).

12. The Commission is authorized to suspend or revoke, or otherwise restrict Respondent's licenses under Section 604(a) of the Act, 63 P.S. § 455.604(a), or impose a civil penalty under Sections 305 & 604(a) of the Act, 63 P.S. §§ 455.305 & 455.604(a) and/or 63 Pa.C.S. § 3108(b)(4), and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5), because Respondent violated Section 604(a)(20) of the Act, 63 P.S. § 455.604(a)(20), by engaging in conduct in the Reed Road real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency. Therefore, Count Ten of the OSC is sustained. (Finding of fact nos. 45-68).

13. Commission is authorized to suspend or revoke, or otherwise restrict Respondent's licenses under Section 604(a) of the Act, 63 P.S. § 455.604(a), or impose a civil penalty under Sections 305 & 604(a) of the Act, 63 P.S. §§ 455.305 & 455.604(a) and/or 63 Pa.C.S. § 3108(b)(4), and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5), because Respondent

violated Section 604(a)(17) of the Act, 63 P.S. § 455.604(a)(17), by failing to provide information requested as a result of a formal complaint to the Commission regarding the Reed Road property. Therefore, Count Eleven of the OSC is sustained. (Findings of fact nos. 45-68).

14. Commission is authorized to suspend or revoke, or otherwise restrict Respondent's licenses under Section 604(a) of the Act, 63 P.S. § 455.604(a), or impose a civil penalty under Sections 305 & 604(a) of the Act, 63 P.S. §§ 455.305 & 455.604(a) and/or 63 Pa.C.S. § 3108(b)(4), and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5), because Respondent violated Section 604(a)(6) of the Act, 63 P.S. § 455.604(a)(6), by failing to produce records regarding the Reed Road transaction for examination by the Commission upon written request or pursuant to an office inspection. Therefore, Count Twelve of the OSC is sustained. (Findings of fact nos. 45-68).

15. The Commission is authorized to suspend or revoke, or otherwise restrict Respondent's licenses under Section 604(a) of the Act, 63 P.S. § 455.604(a), or impose a civil penalty under Sections 305 & 604(a) of the Act, 63 P.S. §§ 455.305 & 455.604(a) and/or 63 Pa.C.S. § 3108(b)(4), and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5), because Respondent violated Section 604(a)(6) of the Act, 63 P.S. § 455.604(a)(6), by failing to preserve for three years following its consummation records relating to the Reed Road real estate transaction. Therefore, Count Thirteen of the OSC is sustained. (Findings of fact nos. 45-68).

16. The Commission is authorized to suspend or revoke, or otherwise restrict Respondent's licenses under Section 604(a) of the Act, 63 P.S. § 455.604(a), or impose a civil penalty under Sections 305 & 604(a) of the Act, 63 P.S. §§ 455.305 & 455.604(a) and/or 63 Pa.C.S. § 3108(b)(4), and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5), because Respondent violated Section 604(a)(8) of the Act, 63 P.S. § 455.604(a)(8), by advertising the

Morgan Hill property without the written consent of the owner. Therefore, Count Fourteen of the OSC is sustained. (Findings of fact nos. 69-83).

17. The Commission is authorized to suspend or revoke, or otherwise restrict Respondent's licenses under Section 604(a) of the Act, 63 P.S. § 455.604(a), or impose a civil penalty under Sections 305 & 604(a) of the Act, 63 P.S. §§ 455.305 & 455.604(a) and/or 63 Pa.C.S. § 3108(b)(4), and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5), because Respondent violated Section 604(a)(20) of the Act, 63 P.S. § 455.604(a)(20), by engaging in conduct in the Morgan Hill real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency. Therefore, Count Fifteen of the OSC is sustained. (Findings of fact nos. 69-83).

18. The Commission is authorized to suspend or revoke, or otherwise restrict Respondent's licenses under Section 604(a) of the Act, 63 P.S. § 455.604(a), or impose a civil penalty under Sections 305 & 604(a) of the Act, 63 P.S. §§ 455.305 & 455.604(a) and/or 63 Pa.C.S. § 3108(b)(4), and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5), because Respondent violated Commission Regulation found at Section 35.281(a), 49 Pa.Code 35.281(a), by failing to put his purported listing agreement with [REDACTED] in writing. Therefore, Count Sixteen of the OSC is sustained. (Findings of fact nos. 69-83).

19. Respondent is subject to the imposition of the costs of investigation in this matter, in the amount of three thousand, three hundred sixty-six dollars and three cents (\$3,366.03) under 63 Pa.C.S. § 3108(b)(5). (Finding of Fact no. 6).

DISCUSSION

Respondent did not file an Answer to the OSC despite having been given a chance to do so. Under the foregoing circumstances, the Commission must ascertain whether Respondent has been afforded the appropriate due process to enable it to render a final decision on the merits of the case.

Due process rights are protected if Respondent is made sufficiently aware of the charges against him and the procedures by which he can defend himself. *Gutman v. Com., State Dental Council & Examining Bd., Bureau of Prof'l Affairs*, 76 Pa. Cmwlth. 193, 463 A.2d 114 (1983); *Clark v. Com., Dep't of Pub. Welfare*, 58 Pa. Cmwlth. 142, 427 A.2d 712 (1981); and *Celane v. Com., Ins. Com'r*, 51 Pa. Cmwlth. 633, 415 A.2d 130, 132 (1980).

Section 33.31 of the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 33.31, authorizes service by mail. "Notice of administrative action which is mailed to the interested party's last known address has been found to be reasonable notice." *Kobylski v. Com., Milk Mktg. Bd.*, 101 Pa. Cmwlth. 155, 516 A.2d 75 (1986). A Respondent is deemed to be in default and relevant facts stated in the OSC may be admitted if the Respondent fails to file an answer within the time provided in the OSC. 1 Pa. Code § 35.37. *See also, Kinniry v. Prof'l Standards & Practices Comm'n*, 678 A.2d 1230 (Pa. Cmwlth. 1996).

In this case, the Commonwealth made an effort that was reasonably calculated under the circumstances to notify Respondent of the charges against him by mailing the OSC by certified mail, electronic return receipt, and by first class mail, postage prepaid, to Respondent's address on file with the Commission as well as other known addresses, which were — [REDACTED] [REDACTED] and [REDACTED]. When neither of these attempts to serve the Respondent with the OSC by mail were successful, the Commonwealth

requested personal service of the OSC on Respondent through BEI. On September 20, 2023, PCI David Karczewski of BEI personally served Respondent with a true and correct copy of the OSC. To this date, Respondent has failed to file an answer to the OSC.

In the OSC and attached Notice, there were specific instructions as to how Respondent could answer the OSC and obtain a hearing. In the “Procedures” section of the OSC, Respondent was also warned what might happen if he did not file an answer as directed: **“If Respondent fails to file an Answer within the time allowed herein, the Factual Allegations may be deemed admitted, and the Commission will issue an Order which may impose penalties as set forth above. If Respondent desires a formal administrative hearing, at which Respondent may defend against the allegations in the Order to Show Cause or to present evidence in mitigation of any penalty which may be imposed upon Respondent or any of Respondent’s licenses, certifications, registrations, permits or other authorizations to practice a profession, a written request for hearing must be filed within thirty (30) days of this Order. IF RESPONDENT FAILS TO FILE A WRITTEN REQUEST FOR HEARING WITHIN THIRTY (30) DAYS OF THIS ORDER, RESPONDENT WILL BE DEEMED TO HAVE WAIVED HIS OR HER RIGHT TO A HEARING AND FINAL JUDGMENT MAY BE ENTERED WITHOUT A HEARING.”**

Despite Respondent’s receipt of notice, Respondent failed to answer the OSC, the MDFA and the Commission’s Order granting the MDFA. As such, Respondent is deemed to have admitted all of the factual allegations contained within the OSC.

The Commission is satisfied from this procedural history that Respondent has been afforded adequate notice of the charges as well as an opportunity to be heard regarding the charges,

such that the Board may now proceed to enter a final order in this disciplinary proceeding without a hearing. *See Celane*, 415 A.2d 130.

Counts One through Eight of the OSC relate to Respondent's handling of the Maple Lots real estate transaction. The first four counts allege that Respondent is subject to disciplinary action for escrow related violations regarding this transaction. Count One of the OSC charges that Respondent failed to account for the Maple Lots escrow in the full amount thereof at the time of consummation, termination or release of the transaction. Count Two of the OSC charges that Respondent commingled deposits or other escrows or property of the [REDACTED] with the Respondent's own funds or property. Count Three of the OSC charges that Respondent failed to deposit moneys belonging to the [REDACTED] in a separate custodial or trust fund account maintained by the broker with a bank by the end of the business day following their receipt by the broker. And Count Four of the OSC charges that Respondent failed to keep records of all funds deposited in a custodial or trust fund account which records clearly indicate the date deposited and for whom the account the money is deposited.

As the facts deemed admitted disclose, on March 8, 2021, the [REDACTED] entered into an Agreement of Sale to buy the Maple Lots from Respondent for three hundred thirty-seven thousand and six hundred dollars (\$337,600). Within the Agreement of Sale, it was agreed that the [REDACTED] would provide a deposit of eight thousand dollars (\$8,000) to Respondent to be held in Respondent's escrow account. This deposit was provided to Respondent on March 13, 2021. Additionally, within the Agreement of Sale, it was agreed that if the [REDACTED] were unable to obtain financing, all deposit monies would be returned to the [REDACTED] and the agreement would be void. Despite repeated requests, Respondent failed to provide building specifications to the [REDACTED] financial institution, and on June 16, 2021, the transaction was terminated

because the [REDACTED] were unable to obtain financing. As such, closing never occurred on this transaction.

On June 16, 2021, real estate agent Cindy Courtright sent Respondent an email stating that the [REDACTED] were entitled to the eight-thousand-dollar (\$8,000) escrow deposit because Respondent defaulted on the Agreement of Sale and requesting that Respondent agree to the release of the escrow deposit to the [REDACTED]. An Agreement of Sale Release and Distribution of Deposit Money document signed by the [REDACTED] was attached to the email. On June 24, 2021, William J. Burke, III, Esquire, counsel for the [REDACTED] sent a letter to Respondent demanding the return of the [REDACTED] deposit and enclosed the release signed by the [REDACTED]. As of June 13, 2022, Respondent had failed to return deposit to the [REDACTED].

On June 8, 2021, PCI David Karczewski interviewed Respondent. During the interview, Respondent admitted that he had not returned the eight-thousand-dollar (\$8,000) deposit to the [REDACTED] that the deposit was not in his escrow account; and that he had no accounting for the deposit. Respondent refused to answer when asked if he had kept the deposit money for himself or his investment company. The fact that Respondent admitted the receipt of the escrow deposit, that he could not account for the deposit, and his refusal to answer what happened to the deposit, is sufficient evidence to reasonably infer he had commingled that deposit with other accounts.

On June 13, 2022, an inspection of John K. Katzbeck Real Estate was conducted by Department of State Inspector Chaundelle Woolley at which time, PCI Karczewski was also present. At the inspection, Respondent's escrow account transaction list indicated a balance of one hundred and twelve dollars and ninety-eight cents (\$112.98) as of March 2, 2022. As such, the Romberger's eight-thousand-dollar (\$8,000) deposit was not in his escrow account. While Respondent's escrow book had pages ripped out, it did include one entry for the Maple Lots

transaction which merely provided a date of March 22, 2021, the [REDACTED] names and address, and a reference to “\$8,000.” The escrow book failed to clearly indicate the date the eight thousand dollars (\$8,000.00) from the [REDACTED] was deposited or for whose account the money was deposited.

There was no dispute as to the entitlement of the escrow, and that a prior written agreement existed as to the issue of the entitlement to the escrow. Under 63 P.S. § 455.608e(a)(2), Respondent was not required to retain the escrow and was required to account for this escrow deposit within thirty (30) days of receipt of the Romberger’s written request for the escrow deposit. Based upon the facts deemed admitted, and all reasonable inference therefrom, the Commonwealth has established sufficient evidence to sustain Counts One through Four of the OSC.

Count Five of the OSC charges that Respondent is subject to disciplinary action because he engaged in conduct in the Maple Lots real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency. Clearly, the factual basis for sustaining Counts One through Four of the OSC, as delineated above, also provide ample evidence of Respondent’s bad faith, dishonesty, untrustworthiness, and incompetency during this transaction. As such, Count Five of the OSC is sustained.

Counts Six Through Eight of the OSC allege that Respondent is subject to disciplinary action as a result of his conduct during the investigation of the Maple Lots transaction and his failure to observe proper record keeping during this transaction. Count Six of the OSC charges that Respondent failed to provide information requested by the Commission as the result of a formal investigation of a complaint. Count Seven of the OSC charges that Respondent failed to produce records related to the Maple Lots for examination by the Commission upon written request or pursuant to an office inspection. Count Eight of the OSC charges that Respondent failed to

preserve for three years following its consummation records relating to the Maple Lots real estate transaction.

As established by the facts deemed admitted in this matter, on or about March 8, 2021, the [REDACTED] entered into an Agreement of Sale to buy the Maple Lots from Katzbeck Real Estate LLC. Based upon Respondent's actions in this transaction, a complaint was filed with the Commission, and on June 8, 2021, PCI David Karczewski interviewed Respondent. During the interview, when asked if he had kept the [REDACTED] deposit money for himself or his investment company, Respondent refused to answer. At that time, PCI Karczewski provided Respondent with a real estate broker's affirmation for the Maple Lots, however Respondent failed to provide any documentation related to the Maple Lots transaction.

On June 13, 2022, an inspection was conducted of John K. Katzbeck Real Estate by Department of State Inspector Chaundelle Woolley at which time, PCI Karczewski was also present. At that inspection, Respondent's escrow book had pages ripped out but did include one entry for the Maple Lots transaction which merely provided a date of March 22, 2021, the [REDACTED] names and address, and a reference to "\$8,000." The escrow book failed to clearly indicate the date the eight thousand dollars (\$8,000) from the [REDACTED] was deposited or for whose account the money was deposited. Based upon these facts, and the reasonable inferences made therefrom, Respondent clearly failed to provide information requested as a result of a complaint made to the Commission, and failed to produce records related to the Maple Lots transaction pursuant to an office inspection and a written request for the records related to that transaction. Because Respondent had either destroyed records for this transaction or did not retain them by the time of the investigation in this matter, which was conducted just over one year after the written agreement of sale had been entered into, Respondent failed to preserve records relating

to the transaction for three years. As such, the Commonwealth has met its burden on these issues and Counts Six through Eight of the OSC are sustained.

Counts Nine through Thirteen of the OSC allege that Respondent is subject to disciplinary action because of a transaction involving property on Reed Road on which a modular home was to be constructed by Respondent's construction company. Count Nine alleges that Respondent failed to account for the full amount of the escrow or other payments at the time of consummation, termination, or release regarding the transaction on Reed Road. Count Ten alleges that Respondent engaged in conduct in the Reed Road real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency.

As established by the findings of fact, on January 10, 2023, [REDACTED] entered into an Agreement of Sale with Everitt LLC to purchase property on Reed Road. It was agreed that a modular home would be constructed by Respondent's construction company, for a total sales price of three hundred and ninety-five thousand dollars (\$395,000). Respondent acted as Everitt LLC's broker in the transaction, and Iron Valley Real Estate acted as [REDACTED] broker.

Within the Agreement of Sale, it was agreed that [REDACTED] would provide an initial deposit of five thousand dollars (\$5,000) to Respondent, with this amount being provided to Respondent on January 12, 2023. [REDACTED] subsequently provided a ten-thousand-dollar (\$10,000.00) deposit to Respondent for the construction of a modular home on the Reed Road property. The Agreement of Sale stipulated that the settlement date would be February 24, 2023.

On February 3, 2023, real estate salesperson Bonnie McCarthy learned from [REDACTED] mortgage lender that he could not obtain financing if Coopersburg Construction, Respondent's construction company, built the modular home as it was not an approved builder. Ms. McCarthy also learned that the mortgage lender's approved builder did not build modular homes. As such,

by e-mail dated February 3, 2023, Ms. McCarthy informed Respondent that there was a breach of the Agreement of Sale due to the construction and lender issues and thus, the Agreement was terminated. Ms. McCarthy also requested the release of the five-thousand-dollar (\$5,000) deposit paid by [REDACTED] to Respondent. On February 8, 2023, Ms. McCarthy e-mailed Respondent again to request that he sign the release and return the deposit paid by [REDACTED]. The closing of this transaction never occurred.

The Agreement of Sale stipulated that if the Agreement was terminated and there was a dispute over the entitlement to deposit monies that was unresolved ten (10) days after the settlement date or following termination of the Agreement of Sale, whichever was earlier, then Respondent would, within thirty (30) days of receipt of [REDACTED] written request, distribute the deposit monies to [REDACTED] unless Respondent was in receipt of verifiable written notice that the dispute was the subject of litigation or mediation. As of May 25, 2023, despite Ms. McCarthy's requests of February 3, 2023, and February 8, 2023, Respondent was still holding the deposit for this transaction.

On May 25, 2023, PCI David Karczewski interviewed Respondent. During the interview, Respondent stated that he had spent six thousand dollars (\$6,000) in surveys for the Reed property, and that he did not and would not return the deposit until [REDACTED] agrees to a deduction for the cost of the surveys. While this may be a dispute as to who was entitled to this money, Respondent had never received notice that the dispute over the entitlement to the escrow was the subject of litigation or mediation. As such, under the written agreement as to the issue of the entitlement to the escrow, Respondent was not required to retain the escrow and was required to account for this escrow deposit within thirty (30) days of receipt of [REDACTED] written request for the escrow deposit. Based upon these facts, the Commonwealth has met its burden of proof on

Count Nine of the OSC, as he was unable to account for the full amount of the escrow and other deposits at the termination of the agreement regarding the Reed Road Property. Further, Respondent's actions, and the reasonable inferences arising therefrom, are ample evidence Respondent's bad faith, dishonesty, untrustworthiness, or incompetency during this transaction. As such, Counts Nine and Ten of the OSC are sustained.

Counts Eleven through Thirteen of the OSC allege that Respondent is subject to disciplinary action because of Respondent's conduct during the investigation of the Reed Road transaction and his failure to observe proper record keeping during this transaction. Count Eleven of the OSC charges that Respondent failed to provide information requested by the Commission as the result of a formal investigation of a complaint. Count Twelve of the OSC charges that Respondent failed to produce records related to the Reed Road transaction for examination by the Commission upon written request or pursuant to an office inspection. And Count Thirteen of the OSC charges that Respondent failed to preserve for three years following its consummation records relating to the Reed Road real estate transaction.

As established by the facts deemed admitted in this matter, on January 10, 2023, [REDACTED] entered into an Agreement of Sale with Everitt LLC to purchase property on Reed Road. Based upon Respondent's actions in this transaction, as delineated above, a complaint was filed with the Commission, and on May 25, 2023, PCI David Karczewski interviewed Respondent. During the interview, PCI Karczewski requested copies of Respondent's transaction file for the Reed Road transaction and any related documentation. To date, despite the request to produce records during an investigation into Respondent's actions, Respondent has failed to provide any documentation related to the Reed Road transaction. Based upon this failure to produce any records being made within 5 months of the Agreement of Sale being entered into in this transaction,

the Commission may reasonably infer that Respondent failed to preserve for three years following its consummation records relating to the Reed Road real estate transaction. Based upon these facts, the Commonwealth has met its burden on Counts Eleven through Thirteen of the OSC, and these Counts are sustained.

Counts Fourteen through Sixteen of the OSC allege that Respondent is subject to disciplinary action as a result of Respondent's actions in dealing with the Morgan Hill Property, that the owner was considering listing for sale at some time in the future. Count Fourteen alleged that Respondent advertised the Morgan Hill property without the written consent of the owner. Count Fifteen alleged that Respondent engaged in conduct in the Morgan Hill property real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency. And finally, Count Sixteen of the OSC alleged that Respondent failed to put his purported listing agreement with the homeowner in writing.

As delineated in the findings of fact, on March 27, 2023, [REDACTED] interviewed Respondent and two other real estate agents to discuss listing of the Morgan Hill property for sale at some time in the future. At the time of the interview, [REDACTED] informed Respondent that he did not want to list his home immediately as he needed to make repairs on the home prior to listing it for sale. On March 29, 2023, [REDACTED] was contacted by his sister, a real estate salesperson in the state of New Jersey, who informed him that his residence was listed for sale in the Multiple Listing Service ("MLS"). [REDACTED] never signed a listing agreement, never verbally authorized, and never provided Respondent with any type of written consent authorizing Respondent to advertise and market the Morgan Hill property. After listing the Morgan Hill property for sale, Respondent took an interested buyer to the Morgan Hill property and entered the residence to show the property without informing [REDACTED] or requesting permission to do so. Respondent also

left a listing agreement at the Morgan Hill property which was signed by Respondent on March 28, 2023.

On May 25, 2023, PCI David Karczewski interviewed Respondent. During the interview, Respondent indicated he asked [REDACTED] to sign a listing agreement, and indicated he had [REDACTED] [REDACTED] “word and a handshake.” Respondent admitted that [REDACTED] never signed a listing contract, and that when [REDACTED] first contacted him, he indicated his property was not ready to be shown at that time. Respondent also admitted to entering the Morgan Hill property through an unlocked door to show the property to a prospective purchaser, at which time he left a listing agreement for [REDACTED]. Based upon these facts, and all reasonable inferences taken therefrom, the Commonwealth has met its burden of showing that Respondent advertised the Morgan Hill property without the written consent of the owner, demonstrated bad faith, dishonesty, untrustworthiness, or incompetency, and failed to put his purported listing agreement with [REDACTED] [REDACTED] in writing. As such, Counts Fourteen through Sixteen of the OSC are sustained.

The facts deemed admitted and the reasonable inferences that can be made therefrom have established the Commonwealth’s case. The Commission must next determine the appropriate sanction. The Commission may suspend or revoke Respondent’s license. In addition, the Commission may impose a civil penalty of up to \$10,000 per violation of the RELRA⁶.

⁶ Section 3108. Civil Penalties.

* * * * *

(b) Additional powers.--In addition to the disciplinary powers and duties of the licensing boards and licensing commissions within the bureau under their respective practice acts, licensing boards and licensing commissions shall have the power, respectively:

In determining a sanction, the Commission considers the seriousness of the offenses and any evidence offered in mitigation. Because Respondent did not file an Answer to the OSC or request a hearing, the Commission has no mitigating evidence to consider. Respondent, in three different transactions, acted in bad faith, and in a dishonest, untrustworthy, and incompetent manner. Respondent failed to cooperate with investigations into his wrongdoing, failed to keep proper transaction records, and advertised a property for sale, and entered and showed that property without the written consent of the property owner. These actions in and of themselves are very concerning to the Commission. In addition to those transgressions, Respondent also failed to properly handle and return escrow and other deposits made to him pursuant to written Agreements of Sale, was unable to account for those monies, and never returned any of those escrow or other payments made to him to their rightful owners. It can be properly inferred that Respondent had either comingled these funds with other accounts, or that he had simply converted them for his own use. Further there is evidence that Respondent tore pages out of his escrow book, the inference being he was trying to cover up his misdeeds. The Commission will not accept this type of behavior from its licensees.

* * * * *

(4) To levy a civil penalty of not more than \$10,000 per violation on a licensee or unlicensed person who violates a provision of the applicable licensing act or licensing board regulation.

* * * * *

63 Pa. C.S. § 3108(b)(4).

The Commission considers Respondent's violations to be extremely serious. The seriousness of Respondent's violations impacts Respondent's general ability to be trustworthy and honest as a real estate professional and reflect poorly upon the entire profession. The Commission is rightfully troubled by Respondent's failure to cooperate with the investigation in this matter. Licensees must cooperate with investigations conducted by the Commission, as often much of the evidence is contained in the licensee's business records. The Commission finds Respondent's improper handling of escrow and other deposits made to him by his clients and his inability to account for or return those escrow and other deposits to their rightful owners to be the most egregious acts that Respondent perpetrated in this matter.

In order to protect the public at large and to deter others from engaging in similar misconduct, the Commission finds that the appropriate sanction is to revoke Respondent's real estate license. Additionally, the Commission finds it appropriate to levy the maximum civil penalty in the amount of ten thousand dollars (\$10,000) each for Counts One, Two, Three, Four, and Nine, relating to Respondent's improper actions regarding escrow related violations, for a total civil penalty of fifty thousand dollars (\$50,000). Finally, the costs of investigation in the amount of three thousand, three hundred sixty-six dollars and three cents (\$3,366.03) shall be imposed for Respondent's failure to cooperate with the investigations in this matter, for a total penalty of fifty-three thousand, three hundred sixty-six dollars and three cents (\$53,366.03).

Accordingly, the Commission enters the following Order.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE REAL ESTATE COMMISSION**

Commonwealth of Pennsylvania	:		
Bureau of Professional and	:		
Occupational Affairs	:		
	:		
v.	:	Case Nos.	21-56-018852
	:		23-56-002685
	:		23-56-005952
John K. Katzbeck,	:		
Respondent	:		

FINAL ORDER

AND NOW, this 23rd day of 2024, the State Real Estate Commission, having duly met and considered the entire record and based upon the foregoing findings of fact, conclusions of law, and discussion, hereby levies a **CIVIL PENALTY** of \$50,000 and imposes the costs of investigation in the amount of \$3,366.03, for a total penalty of **\$53,366.03**, and further **ORDERS** that the real estate licenses of Respondent, **John K. Katzbeck**, License Nos. **RB028631A; RM424826; and AB066289**, be **REVOKED**. Respondent is further ordered to **CEASE AND DESIST** from practicing real estate.

Respondent shall pay the full amount of the civil penalty by certified check, cashier's check, attorney's check or U.S. postal money order made payable to "Commonwealth of Pennsylvania." Respondent shall immediately return his licensure documents, which include the licenses, wall certificates, and wallet cards to the Commission. On or before the effective date of the revocation, the full amount of the civil penalty and the licensure documents shall be forwarded to the following address:

Commission Counsel
Bureau of Professional and Occupational Affairs
P.O. Box 69523
Harrisburg, PA 17106-9523

Respondent may petition for reinstatement of his license(s) after 5 years have passed from the effective date of the revocation. In addition to his petition, Respondent must provide proof that all civil penalties and costs have been paid in full, as well as provide an updated criminal history record.

This Order shall become effective immediately. The discipline imposed shall become effective on June 24, 2024, thirty (30) days after the date of mailing indicated below.

BY ORDER:

**BUREAU OF PROFESSIONAL
AND OCCUPATIONAL AFFAIRS**



**ARION R. CLAGGETT
ACTING COMMISSIONER**

Respondent:
9489 0090 0027 6628 3911 68

9489 0090 0027 6628 3911 75

Prosecuting Attorney:

Commission Counsel:

Date of Mailing:

STATE REAL ESTATE COMMISSION



**GAETANO PICCIRILLI
CHAIRPERSON**

John K. Katzbeck



John K. Katzbeck



Ashley P. Murphy, Esquire
P.O. Box 69521
Harrisburg, PA 17106-9521

Dean F. Picarella, Esquire
P.O. Box 69523
Harrisburg, PA 17106-9523

May 23, 2024

NOTICE

The attached Final Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel
P.O. Box 69523
Harrisburg, PA 17106-9523

The name of the individual Board Counsel is identified on the Final Order.