

STATE OF NEW YORK  
DEPARTMENT OF STATE

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In the Matters of the Complaints of

**DEPARTMENT OF STATE  
DIVISION OF LICENSING SERVICES,**

Complainant,

**DECISION**

-against-

**JOHN BIJUR, SUJUR REALTY CORP. and  
ROBERT JOHNSON,**

Respondents.

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Pursuant to the designation duly made by the Hon. Gail S. Shaffer, Secretary of State, the above noted matters came on for hearing before the undersigned, Roger Schneier, on June 29, 1993 at the office of the Department of State located at 270 Broadway, New York, New York.

John Bijur, of 183 Sterling Place, Brooklyn, New York 11238, an attorney at law, appeared on behalf of himself and Sujur Realty Corp. (Sujur), of the same address.

Robert Johnson, of the same address, did not appear.

The complainant was represented by Compliance Officer William Schmitz.

**COMPLAINTS**

The complaints in the matters (as amended at the hearing to eliminate several charges), which being directly related were consolidated and heard together, allege that Johnson represented Sujur without being licensed to that corporation, and that Bijur, acting on behalf of Sujur, permitted Johnson to do so.

**FINDINGS OF FACT**

1) Notices of hearing together with copies of the complaints were served on the respondents by certified mail. Subsequent notices of adjournment were served on the respondents by ordinary first class mail (Comp. Ex. 1 and 2).

2) Bijur is duly licensed as a real estate broker representing Sujur, with an office located at 183 Sterling Place, Brooklyn, New York. He is both an officer and owner of Sujur (Comp. Ex. 3).

Johnson has been duly licensed as a real estate broker in his individual name at 183 Sterling Place, Brooklyn, New York since March 31, 1992. He was became licensed as an associate real estate broker associated with Sujur at the same address on September 9, 1992 (Comp. Ex. 4). I take official notice of the records of the Department of State that the associate broker license was cancelled on May 15, 1993.

3) On August 6, 1992 License Investigator John Goldman visited the respondents' office at 183 Sterling Place. He observed Johnson sitting behind a desk and, in response to his questioning, Johnson told him that he worked as a real estate broker in association with and supervised by the other respondents. Goldman obtained from Johnson a business card containing the following wording:

"SUJUR REALTY  
REAL ESTATE 183 STERLING PL. (CORNER OF FLATBUSH AVE.)  
BROOKLYN, NEW YORK 11238  
TELEPHONE (718)622-1600  
FAX (718) 622-1783

BOB JOHNSON  
ASSOCIATE BROKER" (Comp. Ex. 5).

4) 183 Sterling Place is a storefront office. The building is owned by Bijur's wife, and contains only one real estate broker's office.

#### OPINION

1) The evidence establishes that as of August 6, 1992 Johnson was working for Sujur in the capacity of associate broker, as he admitted to Investigator Goldman. That admission is confirmed by Johnson's use of a desk in the Sujur office, his business card indicating that he was an associate broker, and the fact that he had transferred his individual license to Sujur's address the previous March. In light of that, I do not find credible Bijur's assertion that Johnson did not begin working for him and Sujur until he obtained his associate broker's license (September 9, 1992).

For the purposes of Real Property Law (RPL) Article 12-A, the statute which governs the licensure and conduct of real estate brokers and salespersons, an associate broker is to be treated in the same manner as a real estate salesperson. The employment by a licensed real estate broker of a salesperson, or, therefore, of an associate broker, who is not licensed in association with that broker is a violation of RPL §440-a, Division of Licensing Services v Marks, 37 DOS 92; c.f. Department of State v Valentin, 30 DOS 87, con'fd. sub nom Valentin v

Shaffer, 545 NYS2d 629 (AD 1st Dept. 1989); Doherty v Cuomo, 64 AD2d 847, 407 NYS2d 337 (1978), app. dism. 45 NY2d 960, 411 NYS 566; and of RPL §442-c.

II- So long as the issue has been fully litigated by the parties, and is closely enough related to the stated charges that there is no surprise or prejudice to the respondent, the pleadings may be amended to conform to the proof and encompass a charge which was not stated in the complaint. This may be done even without a formal motion being made by the complainant. Helman v Dixon, 71 Misc.2d 1057, 338 NYS2d 139 (Civil Ct. NY County, 1972). In ruling on the motion, the tribunal must determine that had the charge in question been stated in the complaint no additional evidence would have been forthcoming. Tollin v Elleby, 77 Misc.2d 708, 354 NYS2d 856 (Civil Ct. NY County, 1974). What is essential is that the "matters were raised in the proof, were actually litigated by the parties and were within the broad framework of the original pleadings." Cooper v Morin, 91 Misc.2d 302, 398 NYS2d 36, 46 (Supreme Ct. Monroe County, 1977), mod. on other grnds. 64 AD2d 130, 409 NYS2d 30 (1978), aff'd. 49 NY2d 69, 424 NYS2d 168 (1979).

In this case, the complaint alleges that Bijur and Sujur violated RPL §440-a, but makes no reference to RPL §442-c. Since, however, the issues litigated with regards to the alleged violation of §440-a are the same as those which must be litigated with regards to an alleged violation of §442-c, and since those issues were fully litigated, it is appropriate to amend the pleadings to include an allegation of a violation of §442-c by Bijur and Sujur, and they are, therefore, so amended.

III- As the representative broker of Sujur, Bijur is responsible for its lawful operation, Division of Licensing Services v Shulkin, 4 DOS 90, and he may be held liable for violations of law which occur in the operation of the corporation's business so long as he is aware of those violations. RPL §442-c. Considering Bijur's testimony that he was present in the Sujur office on a regular basis, and Johnson's statement that he was being supervised by Bijur, it is logical to conclude that Bijur was aware that Johnson was working as an associate broker on behalf of Sujur, and thereby representing Sujur, at a time that he was not so licensed.

IV- RPL §440-a requires that a real estate broker be licensed in the capacity under which he conducts business. Division of Licensing Services v Lawson, 42 DOS 93. Therefore, a person who is licensed as a real estate broker in his own name must obtain a license as an associate broker before working in that capacity.

V- In determining what penalty, if any, to impose on Johnson I have taken into consideration the fact that he has previously been found to have demonstrated untrustworthiness and incompetence by failing to maintain an escrow account and by failing to immediately deliver a duplicate original of an application for a lease and a lease

agreement to a prospective tenant, and was given the option of paying a \$500.00 fine or having his license suspended for three months. Division of Licensing Services v Johnson, 122 DOS 92.

**CONCLUSIONS OF LAW**

1) By permitting Johnson to work as an associate broker of Sujur, and thereby represent it, when not so licensed, Bijur and Sujur violated RPL §§440-a and 442-c.

2) By working in the capacity of associate broker of Sujur when not so licensed, Johnson violated RPL §440-a.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** John Bijur and Sujur Realty Corp. have violated Real Property Law §§440-a and 442-c, and accordingly, pursuant to Real Property Law §441-c, they shall pay a fine of \$250.00 to the Department of State on or before August 31, 1993, and upon failure to pay the fine their licenses as real estate brokers shall be suspended for a period of one month, commencing on September 1, 1993 and terminating on September 30, 1993; and

**IT IS FURTHER DETERMINED THAT** Robert L. Johnson has violated Real Property Law §440-a, and accordingly, pursuant to Real Property Law §441-c, his license as a real estate broker is suspended for a period of one month, commencing on September 1, 1993 and terminating on September 30, 1993.

These are my findings of fact together with my opinion and conclusions of law. I recommend the approval of this determination.

Roger Schneier  
Administrative Law Judge

Concur and So Ordered on:

GAIL S. SHAFFER  
Secretary of State  
By:

James N. Baldwin  
Executive Deputy Secretary of State