

STATE OF NEW YORK  
DEPARTMENT OF STATE

-----X

In the Matter of the Complaints of

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

Complainant,

**DECISION**

-against-

**JOHN G. BLEIR, DIANE CHAMBALA, and  
DEBORAH WITHAM,**

Respondents.

-----X

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 April 28, 1993 at the New York State Office Building, 333 E. Washington Street, Syracuse, New York. Because the matters were directly related to each other they were dealt with in a consolidated hearing.

John G. Bleir, of 3325 Vestal Parkway East, Vestal, New York 13850, having been advised of his right to be represented by an attorney, appeared pro se.

Diane Chambala and Deborah Witham, of Farrell Realtors (Farrell), 3646 George F. Highway, Endwell, New York 13760 did not appear.

The complainant was represented by Compliance Officer William Schmitz.

**COMPLAINTS**

The complaints allege that the respondents worked as associate or representative brokers of Farrell while not so licensed.

**FINDINGS OF FACT**

1) Notices of hearing together with copies of the complaints were served on the respondents by certified mail (Comp. Ex. 1).

2) Since April 7, 1987 Bleir has been licensed as a real estate broker in his individual name. From January 30, 1992 until January 20, 1993 he was also licensed as an associate broker associated with Farrell.

From at least September 9, 1988 until September 9, 1992 Chambala was licensed as a real estate broker in her individual name. Since March 3, 1992 she has been licensed as an associate broker associated with Farrell.

From at least October 31, 1987 until May 31, 1992 Witham was licensed as a real estate broker in her individual name. Since March 3, 1992 she has been licensed as an associate broker associated with Farrell.

3) On February 18, 1992 License Investigator William Raiser conducted an inspection of the Farrell office. He ascertained that the respondents were all associated with Farrell and, while using business cards and stationary bearing the Farrell name, were engaged in real estate brokerage transactions.

#### **OPINION**

The evidence is clear and undisputed that the respondents engaged in real estate brokerage activities under the name and aegis of Farrell. By doing so they fell with the definition of "associate real estate broker" (Real Property Law [RPL] §440[2]). Since Chambala and Witham were only licensed in their individual names their conduct was contrary to the provisions of RPL §441(1)(a), which states that an application for a broker's license must set forth "...the name under which he intends to conduct business", and the clear intent of which is that brokers are to conduct business only under the names in which they are licensed. Division of Licensing Services v Polley, 35 DOS 89; Department of State v Boehmer, 17 DOS 87.

The conclusion with regards to Bleir is quite different. The evidence establishes that at the time of the inspection he was properly licensed as an associate broker. While the complainant contends that Bleir's association with Farrell began some six months prior to the inspection, which would have been before his licensure as an associate broker, it has offered no factual evidence to refute his testimony that his association with Farrell began on January 30, 1992, the date on which he obtained his license as an associate broker.<sup>1</sup>

#### **CONCLUSIONS OF LAW**

I- By engaging in the brokerage business under the name and sponsorship of Farrell all of the respondents acted in the capacity of associate brokers associated with Farrell. RPL §440 (2). By so acting while licensed only in their individual names, Chambala and Witham acted contrary to the provisions of RPL §441(1)(a) and, thereby, demonstrated incompetency as real estate brokers.

---

<sup>1</sup> The complainant was not permitted to place in evidence a notice of violation which alleged such employment but for which no foundation was presented.

II- The complainant has failed to establish that Bleir acted in the capacity of an associate broker when not so licensed and, therefore, pursuant to State Administrative Procedure Act §306(1), the charge herein against him should be dismissed.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Diane Chambala and Deborah Witham have demonstrated incompetency as real estate brokers and, accordingly, pursuant to Real Property Law §441-c, they shall each pay fines of \$400.00 to the Department of State on or before July 31, 1993, and should they fail to pay the fines then their licenses as real estate brokers shall be suspended for a period of one month commencing on August 1, 1993 and terminating on August 31, 1993, and

**IT IS FURTHER DETERMINED THAT** the charges herein against John G. Bleir are dismissed.

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