

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Complaint of

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

Complainant,

DECISION

-against-

FRED S.DORFMAN,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on March 30 and May 11, 1999 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent did not appear.

The complainant was represented by Litigation Counsel Laurence Soronen, Esq.

When the proceedings were opened on March 30th Mr. Soronen presented five copies of a letter dated March 23, 1999 from the respondent to the tribunal which were mailed to Mr. Soronen in Albany (State's Ex. 1). No copy of the letter was ever received directly by the tribunal. In that letter the respondent requested an adjournment because, he said, his primary business is out of state and he would not be back in New York until April 21, 1999¹, and in order to seek counsel. Because that request was not in compliance with the applicable rule of the tribunal (19 NYCRR 400.11), the matter went forward at that time. However, when it developed that it could not be established that the respondent had received the notice of hearing at least ten days prior to the hearing, Real Property Law (RPL) §441-e[2], the matter was adjourned.

On May 7, 1999 the tribunal received a letter from the respondent, this time mailed from the post office in Smithtown, New

¹ Interestingly, the letter was mailed from the post office in Patchogue, New York.

York and notarized in New York State, in which he stated that he would not be back in New York until June 1st, and, still, that he needed to seek counsel. As the letter contained neither telephone nor telefax numbers, the respondent was advised in a letter mailed the same day that his untimely and incomplete request was denied.

COMPLAINT

The complaint, as amended on the record on March 30, 1999 to withdraw one of the charges without prejudice, alleges that the respondent conducted real estate brokerage activity under a unlicensed name and entity, and failed and refused to cooperate with the Department of State's investigation of his alleged wrongdoing.

FINDINGS OF FACT

1) Notices of hearing together with copies of the complaint were served on the respondent by certified and regular first class mail addressed and mailed to him at his last known business address. The certified mail was posted on March 3, 1999, and was returned by the Postal Service marked "unclaimed" after several attempts at delivery. The uncertified mail was posted on March 10, 1999 and, based on the respondent's letter of March 23, 1999, was apparently received by him on or about that date (State's Ex. 1, 2, 3 and 4).

2) The respondent is duly licensed as a real estate broker in his individual name pursuant to a license expiring on October 10, 1999 (State's Ex. 2).

3) During at least the year 1995 the respondent, acting through Lodo Management Corp. (hereinafter "Lodo"), engaged in the management of real property for compensation. His management activities included the leasing to tenants of residential real property on behalf of Dominic Palma, a landlord (State's Ex. 5 and 6). The respondent was the President, Secretary, and sole shareholder of Lodo (State's Ex. 6A), which was not licensed to engage in the business of real estate brokerage in the State of New York (State's Ex. 7).

4) On September 24, 1998 Senior License Investigator Steven J. Wakely wrote to the respondent at his last known business address (State's Ex. 8). Mr. Wakely had been attempting to contact the respondent by telephone with regards to an investigation which he was conducting based on a complaint received from Mr. Palma, who claims that the respondent has failed to give him an accounting or copies of the records of his management of Mr. Palma's property. The respondent had not replied to several telephone messages which Mr. Wakely had left for him.

In his letter, which was not returned by the Postal Service, Mr. Wakely directed the respondent to appear at the complainant's office in Hauppauge, New York on October 2, 1998, and to bring certain records with him. The respondent neither appeared as directed nor replied to the letter.

On October 2, 1998 Mr. Wakely sent another letter to the respondent, by certified mail, this time directing him to appear with the required records on October 13, 1998. Although the letter was delivered on October 5, 1998 (State's Ex. 8), once again there was no response from, or appearance by, the respondent.

Mr. Wakely also made several visits to the respondent's office. On each occasion the office was closed.

OPINION AND CONCLUSIONS OF LAW

I- The holding of an ex parte quasi-judicial administrative hearing was permissible, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served. RPL §442-e[2]; *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

II- Pursuant to RPL §440-a no corporation may engage in the business of real estate brokerage without being licensed to do so. Included in the business of real estate brokerage is the renting of real property. RPL §440[1]. Lodo was not a licensed real estate broker. Therefore, by engaging in the leasing of real property through that corporation the respondent violated RPL §440-a and demonstrated untrustworthiness and incompetency as a real estate broker.

The fact that the respondent was licensed as a real estate broker in his own name is of no import. A real estate broker who or which wishes to conduct brokerage business under a name other than that on his/her/its license must apply for a license under that new name. RPL §441[1][a]. *Division of Licensing Services v Cucci*, 65 DOS 95; *Division of Licensing Services v Perry*, 57 DOS 95; *Division of Licensing Services v Morse*, 12 DOS 95; *Division of Licensing Services v Scala*, 38 DOS 94; *Division of Licensing Services v Feld*, 147 DOS 93; *Division of Licensing Services v Cruz*, 8 DOS 93; *Division of Licensing Services v Fishman*, 153 DOS 92; *Division of Licensing Services v Selkin*, 47 DOS 92; *Division of Licensing Services v Tripoli*, 96 DOS 91; *Department of State v Prater*, 29 DOS 88; *Department of State v Lombardo*, 30 DOS 86.

III- RPL §442-e[5] states:

"The secretary of state shall have the power to enforce the provisions of this article and

upon complaint of any person, or on his own initiative, to investigate any violation thereof or to investigate the business, business practices and business methods of any person, firm or corporation applying for or holding a license as a real estate broker or salesman, if in the opinion of the secretary of state such investigation is warranted. Each such applicant or licensee shall be obliged, on request of the secretary of state, to supply such information as may be required concerning his or its business, business practices or business methods, or proposed business practices or methods."

Pursuant to RPL §442-j the Secretary of State has the authority to delegate to employees of the Department of State the above powers to compel a licensee to supply information.

The respondent failed to comply with the complainant's requests that he cooperate with its investigation of Mr. Palma's complaint when he did not respond to Investigator Wakely's letters and telephone calls. That non-cooperation was a violation of RPL 442-e[5]. *Division of Licensing Services v Lawson*, 42 DOS 93.

IV- Where a broker or salesperson has received money to which he is not entitled, he may be required to return it, together with interest, as a condition of retention of his license. *Donati v Shaffer*, 83 NY2d 828, 611 NYS2d 495 (1994); *Kostika v Cuomo*, 41 N.Y.2d 673, 394 N.Y.S.2d 862 (1977); *Zelik v Secretary of State*, 168 AD2d 215, 562 NYS2d 101 (1990); *Edelstein v Department of State*, 16 A.D.2d 764, 227 N.Y.S.2d 987 (1962). Accordingly, the respondent should be required to refund all commissions and fees received by Lodo from Mr. Palma.

DETERMINATION

WHEREFORE IT IS HEREBY DETERMINED THAT Fred S. Dorfman has violated Real Property Law §§440-a and 442-e[5] and has demonstrated untrustworthiness and incompetency. Accordingly, pursuant to Real Property Law §441-c, he shall pay a fine of \$1,000.00 to the Department of State on or before May 28, 1999, and upon failure to pay such fine his license as a real estate broker shall be suspended until the fine is paid, and

IT IS FURTHER DETERMINED THAT pursuant to Real Property Law §441-c the real estate broker's license issued to Fred S. Dorfman is suspended effective immediately and until such time as he shall have fully complied with the complainant's investigation and made a full and satisfactory accounting to Dominic Palma regarding his management of Mr. Palma's real property, shall have paid to Mr.

Palma all money due and owing to him as established by the accounting, together with interest at the legal rate for judgements (currently 9% per year) from the date(s) on which payment of that money to Mr. Palma was originally due, and shall have refunded to Mr. Palma all commission's and other fees paid by or on behalf of Mr. Palma to Lodo Management Corp., together with interest at the legal rate from judgements from the date(s) of such payment(s).

The respondent is directed to send payment of the fine in the form of a certified check or money order and his license certificate and pocket card to Usha Barat, Customer Service Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, NY 12208.

Roger Schneier
Administrative Law Judge

Dated: May 12, 1999