

STATE OF NEW YORK  
DEPARTMENT OF STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

-----X

In the Matter of the Complaint of

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

Complainant,

**DECISION**

-against-

**EVAN LINCHON,**

Respondent.

-----X

The above noted matter came on for hearing before the undersigned, Roger Schneier, on March 17, 1999 at the office of the Department of State located at 270 Broadway, New York, New York.

The matter had previously been calendared for hearing on January 6, 1999. On December 30, 1998 the respondent telefaxed to the tribunal a request for an adjournment because, he said, his attorneys had advised him that they would no longer represent him and, therefore, he needed to retain new counsel. In spite of having been granted that adjournment, when the hearing commenced on March 17, 1999 the respondent stated that he was present without counsel because his attorney was asking for too much money. With questioning of the respondent by the tribunal it developed that the respondent was still, or once again, represented by the attorneys which he stated in his December 30th fax no longer represented him. He did not explain why, contrary to the clearly stated requirements of 19 NYCRR 400.11, he had not requested an adjournment in advance, or how and when he would be able to pay an attorney. Accordingly, the matter proceeded without further adjournment, but the respondent was granted until April 15, 1999 to retain an attorney and have that attorney submit written legal argument. The matter was further delayed, however, when the respondent failed to retain such counsel promptly. On April 5, 1999 the tribunal received a letter dated March 31, 1999 from Howard W. Goldson, Esq., Goldson & Radin, P.C., 861 Larkfield Road, Commack, New York 11725, in which Mr. Goldson stated that he had been retained by the respondent and requested an extension of the time granted for the written submission. In response, Mr. Goldson was granted until April 22, 1999 to make that submission. His memorandum was in fact received on April 26, 1999 although no further extension was

requested. The complainant's reply memorandum was received on May 19, 1999, and Mr. Goldson's surreply was received on June 4, 1999.

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

### COMPLAINT

The charges remaining in the complaint after certain charges were adjourned without date so as not to interfere with an ongoing criminal investigation being conducted by the New York State Attorney General allege that the respondent's license as a real estate broker in the State of New Jersey was revoked, and that the facts underlying the order of revocation demonstrate fraud, fraudulent business practices, untrustworthiness, incompetence, and material misstatements in New Jersey real estate broker and salesperson applications.

### FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent in person on March 2, 1999 (State's Ex. 1 and 2).<sup>1</sup> The respondent initially denied being served but, when confronted with the affidavit of service, conceded that service had in fact been made.

2) The respondent is licensed as a real estate broker in two capacities: Representing Mikado Enterprises Corporation, and doing business as La Chalet Realty, both at 136-15 Roosevelt Avenue, 3rd Floor, Flushing, New York 11354 (State's Ex. 1).

3) On January 12, 1999 the New Jersey Real Estate Commission conducted a hearing in the matter of *New Jersey Real Estate Commission v Evan Linchon et al* (State's Ex. 3). The respondent was present at, and participated in, that hearing. Based on the evidence received at that hearing, including the respondent's testimony, the Commission found that: On his application for a New Jersey real estate broker's license the respondent misrepresented his broker's license history when he answered "no" to the question that asks whether he ever had a professional license revoked or suspended, inasmuch as his New York State license was suspended for

---

<sup>1</sup> The complaint served on March 2, 1999 contained the allegations dealt with in this decision, which arose out of action taken in the State of New Jersey on February 18, 1999 (State's Ex. 3). An earlier complaint, not placed in evidence but which was the basis for the calendaring of the matter by the tribunal, containing the charges which were adjourned, had previously been served on the respondent. It was that complaint which precipitated the respondent's first request for an adjournment. The two matters were calendared to be heard at the same time.

one month in 1986; while taking the New Jersey real estate instructor's licensing examination, and while that examination was in progress, the respondent took into the rest room a scrap of paper containing several test questions in violation of rules which preclude removing examination materials or notes from the examination room; the respondent took the paper with the questions into the rest room "to organize his thoughts;" the respondent took a book entitled "How to Teach Real Estate to Adults" into the test center room in violation of rules precluding such conduct; the respondent registered for the real estate salesperson's examination posing as one Ichiro Makino so as to take the examination in Mr. Makino's place, fraudulently using Mr. Makino's driver's license and social security card as identification; the respondent took and passed the real estate salesperson's examination for Mr. Makino, who was subsequently, and as a result thereof, issued a license as a real estate salesperson; the respondent operated Mikado Enterprises as a real estate broker in New Jersey without a separate entrance visible from the street or a sign displayed identifying the respondent as a real estate broker; the respondent did not supervise the office of Mikado Enterprises on a full-time basis; the respondent improperly operated Mikado Enterprises in Mr. Makino's residence; the respondent closed Mikado Enterprises' office without properly notifying the Commission. In its conclusions of law the Commission also found that the respondent had falsely indicated that he was not licensed in another state, when he was in fact licensed in New York.

Based on its findings of fact the Commission found that the respondent: Made substantial misrepresentations on his application for a real estate broker's license; attempted to procure a real estate instructor's license through fraud, misrepresentation and deceit by cheating on the licensing examination; acted fraudulently in using Mr. Makino's social security card and driver's license to register for the real estate salesperson's license examination; demonstrated unworthiness, bad faith and dishonesty; and violated regulations with regards to the maintenance of his broker's office, the lack of a sign thereon, and its closing.

The Commission discounted the respondent's claim that his motive was to help Asian students learn about the New Jersey real estate market, finding, instead, that he acted to expand his own business enterprise for his own gain. It found that he engaged in a continuous course of fraud, misrepresentation and deceit, and that he took the real estate salesperson's examination to assure that Mr. Makino obtained a salesperson's license to assist him in his business, and then employed Mr. Makino to transact real estate business without the supervision of a broker. Accordingly, the Commission barred the respondent from obtaining a real estate instructor's license, revoked his real estate broker's license, and imposed a \$10,000.00 fine payable by the respondent prior to reapplying for licensure.



**OPINION AND CONCLUSIONS OF LAW**

I- In his post hearing memorandum counsel for the respondent argues that the tribunal acted improperly in denying the respondent's request for an adjournment to obtain counsel. The record is clear, however, that the respondent had more than adequate time to obtain counsel and failed to explain when and how he expected to be able to afford to retain counsel in the future. In addition, although his previous request for an adjournment shows that he was fully aware of the proper procedure for requesting an adjournment, the respondent failed to comply with 19 NYCRR 400.11, which requires that requests for adjournments be made in writing three working days prior to the scheduled date of the hearing. Under those circumstances the denial of the adjournment was proper.

In any case, the complainant's case was entirely documentary and, as counsel for the respondent points out in his brief, hinges totally on questions of law. Thus, any prejudice which the respondent might have suffered was obviated by the fact that the tribunal, acting on its own motion, granted the respondent time after the close of the hearing to obtain counsel who could submit written argument on the law, granted that counsel additional time after the respondent inexplicably delayed in retaining him, accepted that counsel's brief even when it was submitted late, and accepted counsel's surreply to the complainant's reply even though leave to submit such a surreply was not properly requested.

II- Counsel for the respondent argues that the determination of the New Jersey Real Estate Commission was, for several reasons, improperly accepted in evidence.

He first contends that counsel for the complainant asked the tribunal to take official notice of the determination although there is no authority for the tribunal to do so. In so contending counsel ignores the sequence of events which led to the admission of the determination into evidence. The document was offered in evidence and, no objection having been made by the respondent after his perusal of it, and, therefore, no basis for the offer having been called for or presented, the document was accepted in evidence. It was not until after the document was in evidence that counsel for the complainant asked the tribunal to take official notice of it. That request was superfluous, as once a document is in evidence and, therefore, part of the record, there is no need for the tribunal to take official notice of it.

Counsel next, although he acknowledges that the rules of evidence do not apply in administrative hearings (State Administrative Procedure Act §306[1]; *Sowa v Looney*, 23 NY2d 329, 296 NYS2d 760 (1968)), relies on various technical rules of evidence to argue that the document was not properly authenticated.

The determination had been supplied by the New Jersey Real Estate Commission, apparently *sua sponte*, to the complainant. It was accompanied by a letter on the Commission's letterhead which was signed by a Regulatory Officer. It was shown to the respondent, who was given ample time to examine and read the determination, and the respondent acknowledged that it was an authentic copy. There is absolutely nothing in the record to support counsel for the respondent's outrageous claims that the respondent was not "afforded the time within which to read the proffered document or to compare the document with an authenticated copy so as to accurately testify," that the respondent was shown only the first page of the document, and that the respondent acknowledged the authenticity of the document under obvious pressure from the tribunal.

All relevant, material, and reliable evidence which will contribute to an informed result is admissible in an administrative hearing, *Sowa v Looney, supra*, even where that evidence consists of hearsay, *Gray v Adduci*, 73 NY2d 741, 536 NYS2d 40 (1988), which, if sufficiently probative, may constitute substantial evidence. *In the Matter of Ribya "BB"*, 243 Ad2d 1013, 663 NYS2d 417 (3rd Dept., 1997); *A.J. & Taylor Restaurant, Inc. v New York State Liquor Authority*, 214 AD2d 727, 625 NYS2d 623 (2nd Dept., 1995). The New Jersey determination, addressing as it does the issues before the tribunal, is relevant and material. Its having been provided by the issuing agency of a sister state and its authentication by the respondent establishes its reliability.

III- A reading of the New Jersey determination, from which the respondent had not appealed as of the date of the hearing, leads to the conclusion that he was afforded a full and fair opportunity to litigate the New Jersey charges, and did so. That being the case, he is collaterally estopped from disputing the findings in that determination. *Ikramuddin v De Buono*, 683 NYS2d 319 (AD 3rd Dept., 1998); see also, on the general issue of collateral estoppel, *Division of Licensing Services v Loffredo*, 83 DOS 95, conf'd. *sub nom Loffredo v Treadwell*, 235 AD2d 541, 653 NYS2d 33 (1997).

IV- In its determination the New Jersey Real Estate Commission found that the respondent lied on his application when he stated that he had never had a professional license suspended or revoked and indicated that he was not licensed in another state. That conduct was a clear indication of untrustworthiness. *Division of Licensing Services v Vandewater*, 200 DOS 98.

The Commission also found that the respondent cheated on two licensing examinations, first by taking unauthorized materials into the examination room and by taking notes out of the examination room during the course of the examination "to organize his thoughts," and second by registering for and taking a salesperson's license examination in the name, and using the identification of, another person whom he then employed as a salesperson. It

discounted his assertion that he was merely acting to help Asian students, and found, instead, that he acted for his own gain. That conduct was a further demonstration of untrustworthiness.

The respondent was also found to have failed to have supervised his New Jersey brokerage office. In New York, as in New Jersey, a real estate broker is obliged to supervise the real estate brokerage activities of the salespersons associated with him or the firm which he represents. Real Property Law (RPL) §441[1][d]. That supervision must consist of "regular, frequent and consistent personal guidance, instruction, oversight and superintendence by the real estate broker with respect to the general real estate brokerage business conducted by the broker, and all matters relating thereto." 19 NYCRR 175.21[a]; *Friedman v Paterson*, 453 NYS2d 819 (1982), aff'd. 58 NY2D 727, 458 NYS2d 546. The failure to exercise such supervision is a demonstration of incompetence. *Division of Licensing Services v Misk*, 64 DOS 92.

V- In determining what, if any, penalty to assess, I have considered not only the misconduct of the respondent upon which the New Jersey revocation was based and the fact that his New York license was previously suspended after a finding that he was guilty of misconduct, but also the fact in his testimony before both this and the New Jersey tribunal the respondent lied and offered explanations for his conduct that had no apparent basis in truth. *Matter of Daniel R. Fruitbine*, 233 AD2d 61, 663 NYS2d 156 (1st Dept., 1997).

At the very outset of the hearing, until he was confronted with an affidavit of service which clearly identified him, the respondent denied having been served with the notice of hearing and complaint. Then, in attempting to explain away his having taken the New Jersey real estate salesperson's test on behalf of, and using the identification of, another person, he incredibly testified that he did so only because he planned to be an instructor and wanted to know what was on the test, although he admitted both in New Jersey and in his testimony before this tribunal that he could have accomplished the same result by taking the salesperson's pre-licensure course. Incredibly, the respondent even contended that the violation was the fault of the New Jersey authorities, since they didn't do a good enough job in checking his identity. He seems to totally discount the fact that the result of his unlawful conduct was that a person was licensed as a real estate salesperson without taking and passing the required examination, and that that person then worked for him as a salesperson without supervision.

With regards to the respondent's cheating on the instructor's examination, he testified that he did nothing wrong, although the evidence to the contrary is overwhelming, and that the charges were the result of business competitors not wanting Chinese or Japanese instructors in New Jersey. Finally, when asked in the New Jersey

proceeding about an investigation of him being conducted in New York State, of which investigation he was aware, the respondent insisted that he was not the person being investigated.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Evan Linchon has demonstrated untrustworthiness and incompetence, and accordingly, pursuant to Real Property Law §441-c, his licenses as a real estate broker is revoked, effective July 1, 1999. He is directed to send his license certificates and pocket cards 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: June 8, 1999