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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-

RAINELLE M. LOGAN

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on October 18 and 31, 1996 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of Century 21 David Price Realty Corp., 9506 Avenue L, Brooklyn, New York 11236, was represented by Alfred Fazio, Esq., Jaffe, Fazio & McKenna, 40 Wall Street, New York, New York 10005.

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

COMPLAINT

The complaint alleges that the respondent, at the time a licensed real estate salesperson and now a licensed associate real estate broker, with the intent to induce, by fear or panic, the owners of a house to list or sell their house by hiring the respondent, made representations to the owners of the house regarding the entry, or prospective entry, into their neighborhood of a person or persons of a particular race, color, or national origin, stating that she could not guarantee the owners that they would get the same price in a few months because black persons were moving into the neighborhood, thereby violating Human Rights Law §296[3-b] and 19 NYCRR 175.17[a] and demonstrating untrustworthiness and/or incompetence.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail on June 29, 1996 (State's Ex. 1).

2) The respondent is duly licensed as an Associate Real Estate Broker in association with Century 21 David Price Realty Corp. (hereinafter "Century 21"). At all times hereinafter mentioned she was duly licensed as a real estate salesperson in association with Century 21 (State's Ex. 2).

3) On May 4, 1994 the respondent visited the home of Mr. and Mrs. Stan Goldner, 36 Paerdegat 7th Street, Brooklyn, New York and spoke with the Goldners and Alan Weisberg, a local community activist. The Goldner's, who had no intention of selling their house, had arranged the meeting because they wanted to see if the respondent would engage in unlawful conduct. The holding of such meetings in order to obtain evidence of misconduct had previously been suggested to Mr. Weisberg by a representative of the Department of State. In an effort to obtain a listing for sale of the Goldners' home by Century 21, the respondent told them that she could not guarantee that they would get as good a price in a few months as black persons were moving into the neighborhood.[1]

OPINION

I- " It shall be an unlawful discriminatory practice for any real estate broker, real estate salesman or employee or agent thereof or any other individual, corporation, partnership or organization for the purpose of inducing a real estate transaction from which any such person or any of its stockholders or members may benefit financially, to represent that a change has occurred or will or may

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[1] While there was some inconsistency in the testimony of Mrs. Goldner and Mr. Weisberg regarding how the visit by the respondent came to be arranged, that inconsistency with regards to a relatively minor detail is not relevant to the issue of the truth of their testimony regarding what the respondent said during that visit, which testimony was essentially consistent. The respondent's contention that the testimony of Mrs. Goldner and of Mr. Weisberg should not be believed because their original complaint to the Department of State involved an alleged violation of the then extant non-solicitation order and because they did not allege a blockbusting violation in writing until nearly a year later is not convincing. Mr. Weisberg did allege a blockbusting violation in his original telephone contact with the Division of Licensing Services.

> occur in the composition with respect to race, creed, color, national origin or marital status of the owners or occupants in the block, neighborhood or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood or area in which the real property is located, including but not limited to the lowering of property values, an increase in criminal or anti-social behavior, or a decline in the quality of schools or other facilities." Executive Law §296[3-b].
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> "To further this State policy of preserving stable and integrated communities and of avoiding churning and panic selling, the Secretary of State, acting expressly under both Real Property Law article 12-A and Executive Law §91, promulgated a regulation which prohibited licensed real estate brokers from representing to homeowners that the value of their homes was decreasing due to an influx into the community of people of a different race, color or creed (19 NYCRR 175.17[a])." [2] *Matter of Campagna v Shaffer*, 73 NY2d 237, 240-241, 538 NYS2d 933 (1989). See, also, *New York State Association of Realtors, Inc. v Shaffer*, 27 F.3d 834 (1994).

The respondent attempted to induce the Goldners to list their home for sale. To do so, she told them that she could not guarantee that in a few months they could get as much for their house as they presently could. Her stated reason for that conclusion was that black persons were moving into the neighborhood. Her conduct, known as "blockbusting," *Matter of Campagna v Shaffer, supra*, was a clear and direct violation of both Executive Law §296[3-b] and 19 NYCRR 175.17[a].

As discussed above, both the State and Federal Courts have held that the State, and in particular the Secretary of State, has a strong interest in the prevention of blockbusting. As noted by the United States Court of Appeals,

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[2] "No licensed real estate broker or salesperson shall induce or attempt to induce an owner to sell or lease any residential property or to list same for sale or lease by making any representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion or national origin." 19 NYCRR 175.17[a].

> "(w)hile realtors gain the benefit of the commissions generated by the increase in sales, homeowners and communities suffer the detriment of declining property values and neighborhood instability brought on by panic selling, the fanning of racial tensions and promoting of ethnic stereotypes." *New York State Association of Realtors, Inc. v Shaffer, supra,* at 836.

In *Drago v Lomenzo*, 36 AD2d 742, 320 NYS2d 475 (1971), the Court sustained a six month suspension of the license of a respondent who had been found to have engaged in blockbusting.[3] The Federal courts have also recognized the wrongfulness of, and the harm arising from, blockbusting. *United State v Bob Lawrence Realty, Inc.*, 474 F.2d 115 (1973); *Sanborn v Wagner*, 354 F.Supp. 291 (1973); *United States v Mitchell*, 327 F.Supp. 476 (1971). In similar matters, the courts have supported the proposition that a real estate broker or salesperson may be disciplined for such conduct as the making of racially discriminatory remarks, *Schwartz v Cuomo*, 59 AD2d 946, 399 NYS2d 471 (1977), *Forman Enterprises v Department of State*, 58 AD2d 801, 396 NYS2d 250 (1977), and racial steering (directing persons of particular races to certain areas in accordance with the racial makeup of those areas), *Schimkus v Shaffer*, 143 AD2d 418, 532 NYS2d 564 (1988), *Kranzler Realty Inc. v Department of State*, 76 AD2d 901, 429 NYS2d 244 (1980).

Blockbusting, with its direct, open attack on racial sensitivities and community stability, is an extremely serious act of untrustworthiness. Its future deterrence requires the imposition of a substantial penalty.

II- In her answer the respondent interposed, as a third affirmative defense, the claim that the Goldners and Mr. Weisberg conspired to entrap her by arranging a meeting under false pretenses. The courts, however, have consistently refused to dismiss discrimination cases where the individual complainants had originally acted under what amounted to false pretenses.

In *Havens Realty Corporation v Coleman*, 455 US 363, 102 S.Ct. 1114 (1982), the United States Supreme Court ruled that "testers," (individuals who, without intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful steering practices) have standing

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[3] The blockbusting aspect of *Drago* is not discussed in the Court's decision, which dealt only with the issue of whether an additional violation not related to blockbusting had been properly found. However, the dissenting opinion in *Butterly & Green v Lomenzo*, 43 AD2d 707, 350 NYS2d 188, makes it clear that blockbusting was the basic charge in *Drago.*

to sue under the Fair Housing Act of 1968. The Court held that testers who have been the object of an unlawful misrepresentation have suffered injury even where they fully expected to receive false information. That holding was subsequently followed by the United States Court of Appeals for the Second Circuit in *Ragin v Harry Macklowe Real Estate Co.*, 6 F.3d 898 (1993). See, also, *Schimkus v Shaffer, supra.*

The Goldners and Mr. Weisberg were, in essence, acting as private testers. In fact, Mr. Weisberg had previously been asked by an employee of the Department of State to arrange just such meetings in an attempt to obtain evidence of unlawful conduct by real estate brokers and salespersons. Accordingly, the third affirmative defense is dismissed.

III- The respondent also poses, as a fifth affirmative defense, the doctrine of laches. Traditionally, the common law rule has been that laches may not be interposed as a defense against the State when acting in a governmental capacity and the public interest. That principal has, however, been abrogated by State Administrative Procedure Act (SAPA) §301[1], which provides that "(i)n an adjudicatory proceeding, all parties shall be afforded an opportunity for a hearing within reasonable time." *Cortland Nursing Home v Axelrod*, 66 NY2d 169, 495 NYS2d 927 (1985). That requirement is mandatory, not discretionary. *Maxwell v Commissioner of Motor Vehicles,* 109 Misc.2d 62, 437 NYS2d 554 (Sup. Ct. Erie County, 1981).

In order to show that a hearing has not been held within a reasonable time, the respondent must show substantial prejudice arising out of the delay. *Correale v Passidomo*, 120 AD2d 525, 501 NYS2d 724 (1986); *Geary v Com'r of Motor Vehicles*, 92 AD2d 38, 459 NYS2d 494 (1983), aff'd 59 NY2d 950, 466 NYS2d 304 (1983); Cf. *Eich v Shaffer*, 136 AD2d 701, 523 NYS2d 902 (1988). Such a showing can be made with a demonstration by the respondent that her ability to present defense witnesses with a clear and detailed recollection of the events has been hampered by the delay. *Walia v Axelrod*, 120 Misc.2d 104, 465 NYS2d 443 (Sup. Ct. Erie County, 1983). However, the respondent must show that the delay significantly and irreparably handicapped her in preparing a defense. *Reid v Axelrod*, 164 AD2d 973, 559 NYS2d 417 (1990); *Gillette v NYS Liquor Authority*, 149 AD2d 927, 540 NYS2d 61.

Although counsel for the respondent chose not to elucidate his claim of laches in his closing argument, it appears to be based on the fact that the respondent was originally investigated on a charge of violating the non-solicitation order, and was later disciplined for unlicensed activity, and that the charge of blockbusting did not arise until after the matter was publicized in the *Daily News*. He has not offered any evidence, however, to show any actual prejudice to the respondent. Accordingly, the fifth affirmative defense is dismissed.

IV- I have also considered the respondent's first, second and fourth affirmative defenses.

The first affirmative defense is merely a denial of unlawful conduct. Based on the finding that the respondent did engage in blockbusting, that defense is dismissed.

The second affirmative defense simply sets forth the facts that: The respondent contacted the Goldners to see if they wished to sell their home; the Goldners were not interested in discussing the matter on the telephone and terminated the conversation; and the Goldners subsequently contacted the respondent to arrange a meeting. Those facts in no way refute the charges in the complaint. The defense is, therefore, dismissed.

The fourth affirmative defense alleges that any reliance on the respondent's purported statements and representations was not reasonable or justified. Since a showing of such reliance is not required for it to be established that the respondent engaged in blockbusting, the defense is dismissed.

V- In deciding what penalty to impose, I have considered the fact that the evidence establishes but a single act of blockbusting. I have also considered, however, that this is not the first violation by the respondent, who previously paid a $500.00 fine in settlement of charges that she worked as a real estate salesperson during a period of time following the expiration, and prior to the renewal, of her license as a real estate salesperson.

CONCLUSIONS OF LAW

By encouraging the Goldners to list their home for sale because the fact that black persons were moving into the area might result in a reduction of value of their property, the respondent engaged in blockbusting in violation of Executive Law §396[3-b] and 19 NYCRR 175.17[a], and thereby demonstrated untrustworthiness.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Rainelle M. Logan has demonstrated untrustworthiness and, accordingly, her license as real estate broker is suspended for a period of six months, commencing on December 1, 1996 and terminating on May 31, 1997, both dates inclusive, and she is directed to immediately send her license certificate and pocket card to Thomas F. McGrath, Revenue Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, NY 12208.

Roger Schneier
Administrative Law Judge

Dated: November 15, 1996