

STATE OF NEW YORK  
DEPARTMENT OF STATE

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In the Matter of the Complaint of

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

Complainant,

**DECISION**

-against-

**JOSEPH C. MANERI,**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on February 14, 1996 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of Reon Real Estate Owner's Network, Inc., 990 Motor Parkway, Central Islip, New York 11722, was represented by Jerry Garguilo, Esq., 560 North Country Road, St. James, New York 11780.

The complainant was represented by Assistant Litigation Counsel Scott L. NeJame, Esq.

**COMPLAINT**

The complaint alleges that the respondent, a licensed real estate broker and a notary public: participated in a scheme whereby four properties were sold without the owners' consent through the forging of the owners' signatures, transfer of the properties to a fictitious third party, and stamping with a fake notary seal; agreed to accept a power of attorney granted by way of a forged document purportedly signed by a person who was dead, and represented that the purported signatory was alive and well and had not revoked the power of attorney; and notarized acknowledgements of forged signatures on various documents without the purported signatories having appeared before him.

**FINDINGS OF FACT**

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail on November 3, 1995 (State's Ex. 1).

2) The respondent is, and at all times hereinafter mentioned was, duly licensed as a real estate broker and duly commissioned as a notary public (State's Ex. 2).

3) On February 19, 1991, in a criminal complaint issued in the District Court, County of Suffolk, charging that the respondent committed grand larceny in the fourth degree in violation of Penal Law §155.30[1], in that, acting in concert with Robert Lentz, he stole property from Helen Joyce through the knowing use of forged and fraudulent deeds (State's Ex. 9).

On February 20, 1991 a Superior Court Information issued from the office of the District Attorney of Suffolk County, charging that the respondent committed the crime of grand larceny in the third degree in violation of Penal Law §155.35, and on the same date the respondent waived indictment and consented to be prosecuted on that information (State's Ex. 5). The respondent then withdrew his previously entered plea of not guilty, and, in Supreme Court, County of Suffolk, pled guilty to the reduced charge of grand larceny in the fourth degree, a class E felony (Plea Allocation, State's Ex. 8).

In entering his plea, the respondent admitted committing the felony (plea allocation, p. 5). He went on to specifically admit that during the period of November 1988 through April 1989, while acting in concert with Robert Lentz, he stole real property from Helen Joyce by making up, filing, and recording a fraudulent deed from Helen and William Joyce to Edward Donohue (plea allocation, p. 7, line 19 through p. 8, line 9). He further admitted that in connection with the transfer he notarized the signatures of Helen and William Joyce, although during that period of time he did not contact the Joyces and did not have their permission to take any actions with respect to the real property (plea allocation, p. 8, line 20 through p. 9, line 14).

On June 10, 1991 the respondent was sentenced to a term of imprisonment of 60 days, five years probation, and payment of a mandatory surcharge of \$152.00, and, as a condition of probation, to make restitution in the amount of \$67,000.00 plus a five per cent surcharge in monthly payments starting on November 1, 1991 and ending on September 1, 1994 (State's Ex. 6 and 7).

On December 2, 1991 the respondent was granted a Certificate of Relief From Disabilities by the sentencing justice (Resp. Ex. A). The Certificate makes specific reference to the respondent's ability to be a real estate broker and to obtain a pistol permit.

The restitution which the respondent was ordered to make involved the Joyce transaction and three others in which he, acting in concert with Lentz and someone who identified himself as Donohue<sup>1</sup>, engineered the fraudulent transfer of various parcels of real property. The \$67,000.00 represents the respondent's share of the \$102,000 total proceeds of those transactions. As of the date of the hearing the respondent had not completed making restitution, and still owed \$31,000.00.

4) At the time of the transfer of the Joyce property William Joyce was not living, having died on July 25, 1977, some eleven years prior (State's Ex. 4). In spite of that, and in spite of the fact that he had not met Helen Joyce and she had not appeared before him, on March 23, 1989 the respondent notarized the purported acknowledgements of the Joyce's on the deed transferring title of their real property to Edward Donohue (State's Ex. 10).

5) On March 29, 1989, acting on the authority of limited powers of attorney purportedly granted to him by Donohue (State's Ex. 13 and 14), the respondent executed a deed transferring the Joyce property to Liano Organization, Ltd. (State's Ex. 11). The powers of attorney bear the purported notary stamp and signature of Michael A. Russo. Russo, however, was unaware of the execution of the documents, and did not notarize them (State's Ex. 12). While the evidence does not clearly establish whether the respondent or Lentz was responsible for the fraudulent notarizations, the respondent did admit to Suffolk County enforcement authorities that he was aware that the notarizations were not genuine. In spite of that knowledge the respondent accepted, and acted on the basis of, the powers of attorney.

6) On December 8, 1998 the respondent notarized the purported acknowledgement of Daniel J. DeMartini on a deed transferring real property to Patricia Fox (State's Ex. 16). The respondent never met DeMartini, whose signature on the deed was forged and who did not acknowledge to the respondent that he signed the deed (State's Ex. 3).

#### OPINION

I- In weighing whether the respondent's license and commission should be revoked or suspended, it is not necessary to consider the

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<sup>1</sup> The complaint alleges that Donohue was no longer living at the time of the transaction. Although a death certificate shows that an Edward J. Donohue, age thirty-five years, died on December 3, 1988, it also shows that he had a father by the same name who may or may not have survived him (State's Ex. 4). That, together with the testimony regarding Donohue, makes it impossible to conclude whether or not there was an actual Edward Donohue involved in the transactions.

provisions of Correction Law Article 23-A, which "by its terms applies only to the 'application' for a license by a person previously convicted of a crime...; it has no bearing on disciplinary proceedings against persons already licensed." *Mosner v Ambach*, 66 AD2d 912, 410 NYS2d 937, 938 (1978); *Matter of Glucksman*, 57 AD2d 205, 394 NYS2d 191 (1977); *Pisano v McKenna*, 120 Misc.2d 536, 466 NYS2d 231 (Supreme Ct. Oneida County, 1983). Nor does the issuance of the Certificate of Relief From Disabilities deprive the Department of State of its discretion in considering what effect, if any, to give the conviction. *People v Honeckman*, 125 Misc2d 1000, 480 NYS2d 829 (Supreme Ct. NY County, 1984).

II- The scheme in which the respondent participated directly reflects on his ability to fulfill the fiduciary duties which are basic to the business of real estate brokerage. The fiduciary relationship of agent and principal is "...founded on trust or confidence reposed by one person in the integrity and fidelity of another." *Mobil Oil Corp. v Rubinfeld*, 72 Misc.2d 392, 339 NYS2d 623, 632 (Civil Ct. Queens County, 1972). Included in the fundamental duties of such a fiduciary are good faith and undivided loyalty, and full and fair disclosure. Such duties are imposed upon real estate licensees by license law, rules and regulations, contract law, the principals of the law of agency, and tort law. *L.A. Grant Realty, Inc. v Cuomo*, 58 AD2d 251, 396 NYS2d 524 (1977). The object of these rigorous standards of performance is to secure fidelity from the agent to the principal and to insure the transaction of the business of the agency to the best advantage of the principal. *Department of State v Short Term Housing*, 31 DOS 90, conf'd. *sub nom Short Term Housing v Department of State*, 176 AD 2d 619, 575 NYS2d 61 (1991); *Department of State v Goldstein*, 7 DOS 87, conf'd. *Sub nom Goldstein v Department of State*, 144 AD2d 463, 533 NYS2d 1002 (1988).

The respondent's conduct, as clearly established by his guilty plea and as illuminated by the plea allocution, was a demonstration of untrustworthiness as extreme as anything ever brought before this tribunal. He participated in a scheme which, in exchange for the more than \$100,000.00 paid to him and his co-conspirators, they purported to transfer the title to real property in which they had absolutely no transferable interest. To further those frauds, in which his conduct was clearly intended to, and did, deceive persons in a way that would and did cause them to act to the detriment, the respondent lied about facts integral to the purported sales of the subject properties.

The respondent's explanation for his conduct is totally lacking in credibility. He claims that he was approached by Lentz, who told him that Donohue owned certain properties that he wished to sell, and that if the respondent would act as Donohue's attorney in fact he would receive fifty percent of the proceeds of the sales until he had received a total of \$50,000.00, which he said that he needed to start his own brokerage business. At that point,

according to the respondent, he would stop sharing in the proceeds and would act as Donohue's broker, receiving one-half of the normal brokerage commission. It is simply unbelievable that the respondent, a retired New York City police officer, could be so naive that he would believe that in exchange for notarizing some documents and attending the closings he would receive half of the proceeds of the sale of substantial parcels of real estate. His attempt to deny his culpability through the use of such a story, is, particularly in light of the admissions made in the plea allocution, a clear indication that he has not been rehabilitated.

III- The fact that the respondent did not act in the capacity of broker in the transactions is irrelevant. Actions for which a license as a real estate broker are not required may be considered in determining a licensee's untrustworthiness where those actions clearly indicate that the respondent cannot be expected to deal fairly with the public. *Doval v Patterson*, 85 AD2d 602, 444 NYS2d 694 (1981); see, also *Blackmore v Shaffer*, 128 AD2d 494, 512 NYS2d 421 (1987).

IV- The respondent's brokers' licenses and notary commission were renewed after the complainant learned of his misconduct. That, however, does not create a valid claim of laches and collateral estoppel. He remained licensed as a broker and commissioned as a notary, and thus did not suffer prejudice. *Eich v Shaffer*, 136 AD 2d 701, 523 NYS 2d 902 (1988).

V- Regardless of his intent, a notary public acts unlawfully when he notarizes a document without the purported signatory being present. *Division of Licensing Services v Caputo*, 37 DOS 95. The notary's "failure accurately to state the fact is not consistent with the strict obligation imposed upon a notary public." *People v Reiter*, 273 NY 348, 350 (1937).

The respondent notarized two deeds without the purported signatories having appeared before him, and without even having met those persons. Such misconduct violates the very essence of the office of notary public. His explanation that in the case of the Joyce deed he acted to correct an error in the color of the ink used in the signing of what he thought was a legitimate deed and with the assurance that the Joyces would subsequently sign the deed does not, even if believed, excuse his misconduct.

VI- 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).

The complaint alleges that the respondent engaged in misconduct as a notary public through acts which were part of the conduct leading to his conviction of a felony. While it does not allege that such conviction statutorily disqualifies him from being a notary, that charge is closely enough related to those stated in the complaint as to warrant the tribunal's amending the complaint to encompass them. The only relevant evidence, as discussed *supra*, is whether the respondent was convicted of a felony, and whether he has been granted any relief from the statutory bar. Ample evidence was received on those issues, and there is no basis to believe that any additional evidence might have been forthcoming.

Pursuant to Executive Law §130, a commission as a notary public may not be issued to any person who has been convicted of a felony and who has not subsequently received either an executive pardon or a Certificate of Good Conduct from the Parole Board. The applicant has received a Certificate of Relief From Disabilities. That, however, does not entitle him to be commissioned as a notary public. *Matter of the Application of Goldberg*, 77 DOS 94. In fact, in the section of the Certificate provided to enumerate the forfeitures, disabilities or bars from which the grantee is being relieved, the Court referred only to the ability to continue as a real estate broker and to hold a pistol permit, and made no reference to a notary commission.<sup>2</sup>

In referring to Certificates of Relief From Disabilities, Correction Law §701 provides that "no such certificate shall apply, or be construed so as to apply, to the right of such person to retain or to be eligible for public office."

"A Certificate of Relief From Disabilities does not grant the holder the right to retain or be eligible for public office. Correction Law §701; *People v Olensky*, 91 Misc.2d 225, 397 NYS2d 565 (Supreme Court Queens County, 1977). A Certificate of Good Conduct provides relief from all disabilities, without

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<sup>2</sup> While the respondent already holds a commission as a notary, it would be illogical to allow him to continue to do so merely because the statute only refers to appointments, particularly since he holds that commission by reason of an improper post-conviction renewal.

exception made with regards to public office. Correction Law §703-a. The difference is significant inasmuch as a notary public is a public officer. *People v Wadhams*, 176 NY 10 (1903); *People v Rathbone*, 145 NY 436 (1895); *Patterson v Department of State*, 35 AD2d 616, 312 NYS2d 300 (1970). Accordingly, the issuance of a Certificate of Relief From Disabilities does not grant the holder the right to be commissioned as a notary public, *People v Olensky, supra.*" *Division of Licensing Services v Shanahan*, 44 DOS 94, 2-3.

#### CONCLUSIONS OF LAW

1) By his participation in a scheme in which purported title to real property was fraudulently transferred, the respondent engaged in fraud and demonstrated untrustworthiness warranting the revocation of his licenses as a real estate broker. Real Property Law §441-c.

2) By, as a part of a scheme to fraudulently transfer purported title to real property, notarizing acknowledgements on deeds when the purported signatories had not appeared before him, the respondent engaged in acts of misconduct as a notary public warranting revocation of his commission. Executive Law §130.

3) By reason of his conviction of a felony and lack of an Executive Pardon or Certificate of Good Conduct, the respondent is barred from being commissioned as a notary public, and the commission previously issued to him must be revoked. Executive Law §130.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Joseph C. Maneri has engaged in fraud and has demonstrated untrustworthiness, and accordingly, pursuant to Real Property Law §441-c, his licenses as a real estate broker are revoked, effective immediately, and

**IT IS FURTHER DETERMINED THAT** Joseph C. Maneri has engaged in acts of misconduct as a notary public and is statutorily barred from holding a commission as a notary public, and accordingly, pursuant to Executive Law §130, his commission as a notary public is revoked, effective immediately.

Both the real estate broker licenses and the notary commission are to be sent forthwith to: Mr. Thomas F. McGrath, Revenue Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, New York 12208.

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:

ALEXANDER F. TREADWELL  
Secretary of State  
By:

Michael E. Stafford, Esq.  
Chief Counsel