189 DOS 99

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-

ALAN J. NAFTAL and CLAYTON GREYSTOKE REALTY, INC.,

Respondents.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on May 3 and July 14 and 15, 1999 at the office of the Department of State located at 41 State Street, Albany, New York.

The respondents were represented by John K. Sharkey, Esq., 2310 Nott Street East, Niskayuna Center Professional Building, Niskayuna, New York 12309.

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

At his request, at the end of the testimony Mr. Sharkey was granted two weeks to submit a written closing argument. He has failed to do so, and has not responded to the tribunal's August 25, 1999 e-mail inquiry as to whether he still intends to make a submission. Accordingly, this decision has been drafted without the receipt of such argument.

COMPLAINTS

The two complaints in the matter allege that: The Alan J. Naftal, acting individually and in his capacity as representative of Clayton Greystoke Realty, Inc. (hereinafter "Clayton Greystoke"), improperly altered a listing agreement and submitted it to the Columbia County Board of Realtors' Multiple Listing Service (hereinafter "the MLS"), forged the signature of his principal's owner on change notifications extending the listing of the subject property and submitted them to the MLS, relied on the altered listing agreements and forged change notifications to

advertise the property and demand commissions for their potential sale or lease, failed to give copies of the altered listing agreement and forged change notifications to his principal, failed to place escrow funds in his escrow account and converted those funds to his own use, failed to make clear for whom he was working, demanded payment of an unearned commission and commenced a lawsuit therefore, and engaged in the unauthorized practice of law; the respondent forged the signature of a partner of another principal on change notification forms and submitted them to the MLS, relied on the forged change notification form to continue to advertise the subject property and demand a commission on the potential sale of the property, failed to provide copies of the change notification forms to his principal even after a formal request by its attorney, and submitted altered copies of the change notification forms to the complainant in the course of its investigation.

FINDINGS OF FACT

1) Notice of hearing together with copies of the complaints were served on the respondents by certified mail (State's Ex. 1 and 27).

2) Alan J. Naftal is, and at all times hereinafter mentioned was, duly licensed as a real estate broker both in his individual name and as representative of Clayton Greystoke (State's Ex. 1 and 2).

3) In or about February, 1994 David Fulton, who at the time was the sole officer and shareholder of Versa Chem Corporation (hereinafter "Versa Chem"), spoke with Mr. Naftal about selling Versa Chem's building located at 350 Power Avenue, Hudson, New York. On February 3, 1994 Mr. Fulton executed a commercial property listing agreement prepared by Mr. Naftal granting Clayton Greystoke a six month exclusive right to sell listing with a price of $495,000.00 and a commission rate of 8% of the sale price or 6% of a lease (State's Ex. 2). Pursuant to his conversations with Mr. Naftal and to the terms of the written agreement the listing was to be submitted to the MLS.

4) Mr. Naftal failed to indicate on the listing agreement what, if any, commission would be payable to a buyer's broker, which information was required for filing with the MLS. Accordingly, without the knowledge of Mr. Fulton, he had the agreement altered to add the terms "BUYER BROKER TBD" (State's Ex. 3). He did not obtain Mr. Fulton's permission to make the alteration, and did not provide him with a copy of the altered agreement, of which Mr. Fulton did not learn until sometime later, in the course of a law suit.

5) The language "BUYER BROKER TBD" was not acceptable to the MLS. Accordingly, so as to be able to file the listing agreement with the MLS, Mr. Naftal had the agreement altered to add "3.5%"

after "BUYER BROKER TBD" (State's Ex. 4). In addition, the agreed commission rates were blacked out. Mr. Fulton did not give permission for, and did not learn of, those changes until the law suit.

6) When it came time for the listing agreement to expire Mr. Naftal contacted Mr. Fulton and asked to extend it. Not being happy with the service provided by Clayton Greystoke Mr. Fulton refused the request, subsequently making efforts to market the property himself (State's Ex. 5).[1] However, in spite of Mr. Fulton's refusal, Mr. Naftal prepared, or caused to have prepared, a "change notification" form purporting to extend the listing for an additional six months at Mr. Fulton's request, affixed, or caused to have affixed, to it what purported to be Mr. Fulton's signature, and filed, or caused to have filed, the form with the MLS (State's Ex. 6 and 19). The affixing of the purported signature was, as Mr. Naftal was aware, necessary for the form to be accepted by the MLS. Mr. Fulton was not given a copy of the form, and did not learn of its existence until after the commencement of the law suit. An additional such change, again containing the unauthorized purported signature of Mr. Fulton, this time followed by Mr. Naftal's initials, was filed with the MLS on or about February 1, 1995 and purported to extend the listing another additional two months (State's Ex. 7, 8, and 19). Although exhibit 8, which apparently was retained in the respondents' files and not submitted to the MLS, contains a notation that it was "approved verbally by Barbara Fulton" (Barbara Fulton is Mr. Fulton's wife) no such approval was ever given. Mr. Fulton was not aware of the existence of exhibits 7 and 8 until after the commencement of the law suit.

7) Sometime in the fall or early winter of 1994 Mr. Fulton had discussions with Peter and Susan Crowdy of Crowdy Design Corporation (hereinafter "Crowdy"). The Crowdys had learned of the availability of the Versa Chem building from an article which Mr. Fulton had caused to appear in the newsletter of the Columbia Economic Development Corporation (State's Ex. 5). They had gone to the Versa Chem building and had seen the Clayton Greystoke sign which had been placed outside while the listing was in effect, and had contacted Mr. Naftal, who arranged for them to see the building.

The Crowdys, who where shown the building by Mr. Fulton when Clayton Greystoke's salesperson failed to appear at the appointed time, were interested in subleasing some space from Have Incorporated (hereinafter "HAVE"), which had offered to lease the

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[1] Mr. Fulton did indicate to Mr. Naftal that he had no objection to the respondent trying to find a buyer for the building on a non-exclusive basis.

entire Versa Chem building with an option to purchase to it.[2] Pending the lease to HAVE, Mr. Fulton and the Crowdys agreed to the rental of approximately 5,500 square feet to Crowdy. Mr. Naftal drew up a document memorializing that agreement. The document, on Clayton Greystoke letterhead and executed by Mr. Crowdy and Mr. Fulton on March 10, 1995, detailed the amount of space to be leased, the financial terms of the lease, and the month to month nature of the lease, and stated that a check payable to Clayton Greystoke should be made out in the amount of $2,055.40 for security, and that the check would be held in escrow (State's Ex. 9). (In a letter dated August 1, 1995 Mr. Naftal advised Mr. Fulton that $2,055.00 was being held in escrow [State's Ex. 11]). The check was issued by Mrs. Crowdy (State's Ex. 10), and Mr. Fulton never authorized the respondent to spend the money. Mr. Naftal, however, deposited the check in Clayton Greystoke's operating account (State's Ex. 24 and 26), although he later told the complainant's investigator that it had been deposited in the escrow account. The agreement was subsequently superseded by an attorney drawn lease.[3]

Sometime in the Spring of 1995 Versa Chem also entered into a lease (with option to purchase) with HAVE. That lease, which resulted from several meetings (Resp. Ex. J), provided for the rental of the space not rented to Crowdy (Resp. Ex. G). As a part of that transaction, on March 8, 1995 Mr. Naftal received a deposit of $5,000.00 to be held in escrow (State's Ex. 21). He was never given authorization to cash the deposit check or spend the money, and did not advise the principals of HAVE that he had deposited the check in Clayton Greystoke's operating account. However, on the date of its issuance Mr. Naftal deposited the check in Clayton Greystoke's operating account (State's Ex. 22 and 26). HAVE never received a credit for that deposit, and the money has not been returned to it.

The lease to HAVE occurred after Mr. Naftal had shown its principals a number of other properties, and then, to the surprise of those principals, showed them the Versa Chem building, in which HAVE had already been renting space.

8) Commencing on May 1, 1995 Mr. Naftal began to demand that Versa Chem pay Clayton Greystoke commissions on the two transactions (State's Ex. 11). Mr. Fulton did not believe that

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[2] HAVE began leasing a part of the building on a month to month basis in 1992, well in advance of its listing with Clayton Greystoke. Sometime later HAVE became interested in purchasing or leasing some new space and contacted Mr. Naftal, who, in the course of their dealings, showed the Versa Chem building to HAVE's owners.

[3] No evidence was presented as to whether Crowdy received a credit for the $2,055.40.

Clayton Greystoke was owed any commissions, inasmuch as HAVE was already a tenant at the time the respondents received the listing and had entered into its lease after the expiration of the listings, and because the Crowdys learned of the property from the Columbia Development Corp. newsletter, also after the listing's expiration. However, in order to settle the matter, in a letter dated June 4, 1996 he offered to allow the respondents to retain, as full payment, the money which was supposed to be in escrow (State's Ex. 12).

9) By summons and complaint dated December 5, 1996 Clayton Greystoke sued Versa Chem on a claim for commission on the HAVE and Crowdy transactions. The complaint alleged, among other things, that on February 1, 1995 Versa Chem agreed to an extension of the listing agreement, and attached to it were copies of the first altered listing agreement and of the second change notification (State's Ex. 13).

10) Sometime in 1998 Versa Chem filed for bankruptcy. On November 25, 1998 Clayton Greystoke filed a claim in the bankruptcy proceedings for the commission which it alleged it was owed (State's Ex. 15). The trustee in bankruptcy objected to the claim (State's Ex. 16), and upon Clayton Greystoke having defaulted the claim was denied (State's Ex. 17).[4]

11) Sometime in 1994 the members of ATM II Partners (hereinafter "ATM"), brothers Anthony, Thomas, and Michael or Harry Pizza decided to sell or lease real property which they owned located at 377 Fairview Avenue, Hudson, New York. Thomas Pizza and one of his brothers spoke with Mr. Naftal and respondents' salesperson John Prata, and on December 7, 1994 they granted Clayton Greystoke a six month exclusive right to sell listing with an asking price of $950,000.00 (State's Ex. 27).

12) In June, 1995, when the ATM listing agreement was about to expire, Mr. Naftal asked Thomas Pizza if he wanted to extend it, and Mr. Pizza told him and John Prata that he did not. In spite of that, Mr. Naftal prepared or caused to have prepared and submitted to the MLS change notifications on which it was indicated that the price had been reduced to $850,000.00 and the listing had been extended to December 7, 1995, and on which the purported, but unauthorized and not genuine, signature of Thomas Pizza was affixed. In the course of the complainant's investigation of the transaction Mr. Naftal submitted to the complainant's investigator copies of the change notices which had been altered to indicate that the changes had been verbally authorized by Thomas Pizza and that Mr. Naftal had affixed the signature (State's Ex. 27). In a

[4] The effect of the default in the bankruptcy proceedings, and the reasons therefore, were dealt with in an order by this tribunal dated June 18, 1999.

subsequent conversation with another investigator, Mr. Naftal indicated that the alterations had been made on one of the forms after it had been faxed to the MLS, and that the other notification was a copy of a form that had been created to replace one that had been misplaced, an assertion which was not made in his letter which accompanied the copies when they were sent to the complainant.

13) Subsequent to the June 7, 1995 expiration of the ATM listing Thomas Pizza entered into negotiations with Doug Geller of an entity known as "Peterson/Geller" which eventually purchased the property for $510,000.00. Mr. Naftal, who had shown the property to Mr. Geller shortly after the inception of the listing, but who had not negotiated the purchase and sale, made a demand for a commission (State's Ex. 27).

14) Sometime prior to the expiration of the ATM listing negotiations began with "Furniture Weekend" for the leasing to it of the property. A lease was eventually executed, and Clayton Greystoke was paid the first installment of the commission for which it billed ATM (Resp. Ex. L and V).

OPINION

I- When Mr. Naftal, acting as representative of Clayton Greystoke, entered into the listing agreements with Versa Chem and ATM, the respondents became the agents of Versa Chem and ATM, and they became his principals. The relationship of agent and principal is fiduciary in nature, "...founded on trust or confidence reposed by one person in the integrity and fidelity of another." *Mobil Oil Corp. v Rubenfeld*, 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).

II- The listing agreement which the respondents obtained from Versa Chem could not be filed with the MLS because Mr. Naftal had neglected to indicate on it how any commission would be shared with a buyer's broker. In order to enable the filing Mr. Naftal altered, or had altered, the agreement to include the necessary information without obtaining Mr. Fulton's consent or approval, and without advising him of the alteration. While there is no evidence

that any harm arose from those alterations, Mr. Naftal's actions evidenced an excessively cavalier attitude towards the proper conduct of his brokerage business, and was a demonstration of incompetency.

III- When the Versa Chem and ATM listings expired Mr. Naftal prepared, or caused to have prepared, fraudulent and unauthorized change notifications advising the MLS that the listings had been extended. The respondents argue that the charge that the notifications extended the listing agreement is not supported by the evidence, since the they were only change notifications, not agreements to make changes. However, above purported authorization signatures of Mr. Fulton and Mr. Pizza and the language which explains the nature of the changes the notification forms contain the wording "Please change the above listing as follows." That language clearly causes the forms to act both as agreement to the changes by Mr. Fulton and Mr. Pizza and notification of those changes to the MLS, a fact upon which the respondents relied in attaching copies of the Versa Chem change notifications to the complaint in their lawsuit. The preparing, or causing to be prepared, of the fraudulent forms bearing the forged signatures of Mr. Fulton and of Mr. Pizza, and then the continuing to offer the properties for sale or lease in reliance on those forms, was in violation of 19 NYCRR 175.10, demonstrated untrustworthiness, and were fraudulent practices, which "...as used in relation to the regulation of commercial activity, is often broadly construed, but has generally been interpreted to include those acts which may be characterized as dishonest and misleading. Since the purpose of such restrictions on commercial activity is to afford the consuming public expanded protection from deceptive and misleading fraud, the application is ordinarily not limited to instances of intentional fraud in the traditional sense. Therefore, proof of an intent to defraud is not essential." *Allstate Ins. Co. v Foschio*, 93 A.D.2d 328, 464 N.Y.S.2d 44, 46-47 (1983) (citations omitted).

IV- The respondents failed to deliver to Mr. Fulton and Mr. Pizza copies of the change notifications which had been purportedly executed by them. Had they in fact executed those documents the failure to deliver copies would have been in violation of 19 NYCRR 175.12. However, inasmuch as they did not execute them the failure to deliver copies was not in violation of the regulation, which requires the delivery of copies "of any instrument to any party or parties executing the same...."

V- In the Versa Chem transactions Mr. Naftal accepted money to be held in escrow and then, without authorization, deposited that money in Clayton Greystoke's operating account. In so doing he wrongfully converted the funds to his own use in breach of his fiduciary duties as an escrow agent. In the case of the HAVE lease, that conversion was clearly to the detriment of HAVE, which never received any credit for its $5,000.00, as the respondents retained it as a commission while it was not offset by Versa Chem

reducing the sum payable to it by HAVE. That money belonged to HAVE, and the respondent had no right to claim it to satisfy what he perceived to be Versa Chem's obligations to him and Clayton Greystoke. In the case of the Crowdy transaction, while no evidence was presented as to whether Crowdy suffered any loss because of Mr. Naftal's conduct that still does not excuse his mishandling, and thereby placing in jeopardy, of the funds. Mr. Naftal's conduct in not depositing and maintaining the escrow monies in Clayton Greystoke's escrow account, and in converting the funds by depositing them in Clayton Greystoke's operating account, was a clear demonstration of untrustworthiness.

VI- Real Estate brokers are permitted to prepare purchase offer contracts and rental agreements subject to very definite limitations.

> "The line between such permitted acts by real estate brokers and the unauthorized practice of the law has been recognized as thin and difficult to define and, at time, to discern. Whether or not the services rendered are simple or complex may have had a bearing on the outcome, but it has not been controlling....
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> The justification for granting to real estate brokers and agents the privilege to complete simple purchase and sale documents has been said to be the practical aspect of the matter, that is, the business need for expedition and the fact that the broker has a personal interest in the transaction. It should be noted in this regard, however, that the so-called 'simple' contract is in reality not simple....The personal interest of the broker in the transaction and the fact that he is employed by one of the opposing parties are further reasons to require that, insofar as the contract entails legal advice and draftsmanship, only a lawyer or lawyers be permitted to prepare the document, to ensure the deliberate consideration and protection of the interests and rights of the parties.
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> The law forbids anyone to practice law who has not been found duly qualified and licensed to do so....Thus, the privilege accorded to real estate brokers and agents must be circumscribed for the benefit of the public to ensure that such professionals do not exceed the bounds of their competence and, to the detriment of the innocent public, prepare

> documents the execution of which requires a lawyer's scrutiny and expertise." *Duncan & Hill Realty v Dept. of State*, 62 AD2d 690, 405 NYS2d 339, 343-344 (1978) (citations omitted), appeal dismissed 45 NY2d 821, 409 NYS2d 210.

In preparing a purchase offer contract and leases, real estate brokers and salespersons may not insert any provision which requires the exercise of legal expertise. They may not devise

> "legal terms beyond the general description of the subject property, the price and the mortgage to be assumed or given....(and) may readily protect (themselves) from a charge of unlawful practice of law by inserting in the document that it is subject to the approval of the respective attorneys for the parties. Moreover, a real estate broker or agent who uses (a purchase offer form) recommended by a joint committee of the bar association and realtors association of his local county, who refrains from inserting provisions requiring legal expertise and who adheres to the guidelines agreed upon by the American Bar Association and the National Association of Real Estate Brokers...has no need to worry about the propriety of his conduct in such transactions." *Duncan & Hill Realty v Dept. of State, supra*, 405 NYS2d at 345.

Mr. Naftal prepared what is, in the body of the document, referred to as a "re-cap regarding the rental" by Crowdy of space in the Versa Chem Building (State's Ex. 9), but which, upon reading, is clearly a lease of that property.[5] The document sets

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[5] While the complaint charges the respondents with wrongfully preparing a sublease, the document is a lease. However, the issue of the document being a lease was fully litigated by the parties. So long as an 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

(continued...)

forth the space to be leased, the month to month term of the lease, the amount of rent to be paid, the amount of the rent security to be held in escrow, and the date of commencement of the lease, and is signed by the parties to be charged. The fact that subsequently a different lease was executed does not change the nature of the document at its inception.

VII- 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.

Implicit in the requirement that a licensee cooperate with an investigation is the requirement that the licensee be honest in his or her supposed cooperation. Mr. Naftal, however, sent the complainant's investigator altered and misleading documents regarding the ATM transaction in response to the request for such documents made in the course of the investigation.

VIII- Being an artificial entity created by law, Clayton Greystoke can only act through it officers, agents, and employees, and it is, therefore, bound by the knowledge acquired by and is responsible for the acts committed by its representative broker, Mr. Naftal, within the actual or apparent scope of his authority.

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[5](...continued)
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). Accordingly, the pleadings are amended to allege that the respondents engaged in the unauthorized practice of law in drafting and obtain the signature of Peter Crowdy to a lease agreement.

Roberts Real Estate, Inc. v Department of State, 80 NY2d 116, 589 NYS2d 392 (1992); *A-1 Realty Corporation v State Division of Human Rights*, 35 A.D.2d 843, 318 N.Y.S.2d 120 (1970); *Division of Licensing Services v First Atlantic Realty Inc.*, 64 DOS 88; RPL § 442-c.

IX- Where a broker or salesperson has received money to which he, she, or it is not entitled, the licensee may be required to return it, together with interest, as a condition of retention of the 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). The respondents received $5,000.00 from HAVE to be held in escrow, but Mr. Naftal deposited it in Clayton Greystoke's operating account. They not returned that money, and HAVE has not received any credit for it. Accordingly, they should be required to return it with interest. They also received, and misapplied, $2,055.40 from Crowdy Design Corp. There is, however, no evidence before the tribunal as to whether that corporation received a proper credit for the money that should have been in escrow. Thus, the respondents should be required to either provide proof that such a credit was given or to return the money with interest.

CONCLUSIONS OF LAW

1) By improperly altering the Versa Chem listing agreement with regards to sharing of commissions with buyers' brokers, Alan J. Naftal, and through him Clayton Greystoke Realty, Inc., demonstrated incompetency as real estate brokers.

2) By preparing and submitting fraudulent MLS change notifications purporting to extend and alter the Versa Chem and ATM listings, Alan J. Naftal, and through him Clayton Greystoke Realty, Inc., demonstrated untrustworthiness as real estate brokers and engaged in fraudulent practices.

3) In failing to deliver copies of the change notifications which were not executed by them to Mr. Fulton and Mr. Pizza, the respondents did not violate 19 NYCRR 175.12, and the charge that they did should be, and is, dismissed.

4) By misapplying the escrow funds received in the Versa Chem transaction Alan J. Naftal, and through him Clayton Greystoke Realty, Inc., demonstrated untrustworthiness as real estate brokers.

5) By preparing a lease to be executed by Crowdy Design Corp. and Versa Chem Alan J. Naftal, and through him Clayton Greystoke Realty, Inc., engaged in the unauthorized practice of law and demonstrate untrustworthiness and incompetency as real estate brokers.

6) By submitting fraudulently altered documents to the Department of State in the course of its investigation Alan J. Naftal, and through him Clayton Greystoke Realty, Inc., violated RPL §442-e[5] and demonstrated untrustworthiness as real estate brokers.

7) The evidence does not establish that the respondents failed to make clear in the Versa Chem transactions for whom they were working. Accordingly, the charge that they violated 19 NYCRR 175.7 should be, and is, dismissed.

8) The evidence establishes that the respondents may have reasonably believed that they were entitled to a commission from Versa Chem. Accordingly, the charge that they demanded payment of an unearned commission and filed a lawsuit in an attempt to collect same should be, and is, dismissed.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Alan J. Naftal and Clayton Greystoke Realty, Inc. have violated Real Property Law §442-e[5], have engaged in fraudulent practices, and have demonstrated untrustworthiness and incompetency, and accordingly, pursuant to Real Property Law §441-c, all licenses as real estate brokers issued to them are suspended for a period commencing on October 1, 1999 and terminating one year after the receipt by the Department of State of their license certificates and pocket cards. Upon the conclusion of the suspensions, the licenses shall be further suspended until such time as the respondents shall produce proof satisfactory to the Department of State that they have refunded the sum of $5,000.00 plus interest at the legal rate for judgements (currently 9%) from March 8, 1995 to HAVE, Inc., and either that Crowdy Design Corporation received a full credit of $2,055.40 on their rental of space from Versa Chem Corp. or that the respondents have refunded that sum together with interest at the legal rate for judgements from March 10, 1995 to that corporation. The respondents are directed to send their license certificates and pocket cards and the aforementioned proof 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: September 13, 1999