

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-

**GEORGE QIAO,**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on March 26, April 21, and July 29, 1998 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent was represented by Bruce A Hubbard, Esq., 685 Third Avenue, Sixteenth Floor, New York, New York 10017.

The complainant was represented by Assistant Litigation Counsel Scott L. NeJame, Esq. and Legal Assistant Thomas Napierski.

**COMPLAINT**

The complaint alleges that the respondent made material misstatements on his applications for licenses as a real estate broker, and that the actions underlying the revocation of his mortgage broker's and mortgage solicitor's licenses in Hawaii constituted fraud and/or a fraudulent practice and were demonstrations of 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 (State's Ex. 1).

2) From May 17, 1995 through July 10, 1995 the respondent was licensed as a real estate salesperson in association with Citi Habitats, Inc. On July 10, 1995, pursuant to an application dated July 5, 1995 on which he answered "no" to question number 4: "Have you ever been convicted of any criminal offense in this State or elsewhere or are any criminal, administrative or civil charges

presently pending against you; or has any license, permit, commission, registration or application for a license, permit, commission, registration held by or submitted by you or a company in which you are or were a principal ever been revoked, suspended or denied by any state, territory or governmental jurisdiction or foreign country for any reason?", the respondent was granted a license as a real estate broker associated with Citi Habitats, Inc. for the license period ending October 8, 1996 (State's Ex. 2 and 4).

3) Since December 3, 1996, pursuant to an application of the same date on which he again answered "no" to question number 4, the respondent has been licensed as a real estate broker representing Apartment Rent Mart Inc. d/b/a/ Relocations (State's Ex. 3 and 5).

4) On January 10, 1995 the Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs of the State of Hawaii (hereinafter "Hawaii") issued a Petition for Disciplinary Action Against Mortgage Broker's and Mortgage Solicitor's Licenses in the *Matter of the Mortgage Broker's License of City Mortgage Corp. and the Mortgage Solicitors' Licenses of Zhi George Qiao and Diane Susan Petty* (State's Ex. 7).

Notices of hearing on the complaint were sent to City, a company owned and operated by the respondent, and the respondent at their last known business addresses, but were not delivered. Accordingly, notice of hearing was published in the "Honolulu Advertiser," a newspaper of general circulation, on June 23 and 30, 1995 (State's Ex. 8). The respondent, who had already relocated to New York (Resp. Ex. A), was not aware of those notices.

The hearing was conducted on July 19, 1995, and the respondent did not appear. Subsequent to the hearing the Hearing Officer issued the following findings of fact (State's Ex. 8):

a) On November 9, 1993 Yung Hong Lau submitted a loan application to City, and was assisted by the respondent with his loan application; the respondent assured Mr. Lau that a low rate of interest would be obtained; Mr. Lau was required to pay a \$750.00 processing fee to City and the respondent and was assured by the respondent that his application would be processed within 3 months; when he did not hear from them at the end of 3 months Mr. Lau attempted to contact City and the respondent by telephone, but discovered that City's telephone line had been disconnected; Mr. Lau's loan application was never processed and he did not hear from City and the respondent after its submission; Mr. Lau's processing fee has never been refunded to him.

b) In November, 1993, in response to advertisement that represented that loan applications would be approved within 45 days, Hexuan Ren submitted a loan application to City; the

respondent assisted Mr. Ren with his application; Mr. Ren was required to pay a processing fee of \$750.00 to City and the respondent; by the end of June, 1994 the application had not been processed; on July 5, 1994 Mr. Ren wrote to City and the respondent to cancel the application and request a refund; on July 7, 1994 Mr. Ren received a letter from a William R. Brown representing City; Mr. Brown acknowledged receipt of Mr. Ren's request and claimed that Mr. Ren owed City \$43.70 in processing fees; on July 23, 1994 Mr. Ren sent Mr. Brown a written summary of his attempts to close the loan and of City and the respondent's failure to process the application, and again demanded a full refund; Mr. Ren received no response, his application was never processed, and his fee has not been refunded.

c) In September, 1993 Daniel and Janice Low, assisted by the respondent; submitted a loan application to City; the Lows were required to pay a \$750.00 processing fee to City and the respondent; the respondent informed the Lows that it would take a couple of months to process their application; by May, 1994, when their application still not been processed, the Lows attempted several times to contact the respondent by telephone, but most of their calls were not returned; on May 25, 1994 Mrs. Low sent City a letter requesting cancellation of the application and a refund of the fee; the Lows received no response, their application was never processed, and their fee was not refunded.

d) In September, 1993 Jan K.T. Loi and his wife submitted a loan application to City; the Lois were required to pay a fee of \$750.00 to City and an additional \$125.00 to Title Guaranty Escrow Services; on February 11, 1994 the Lois were informed by City's representative that the application had been sent to the lender and would be approved in a couple of days, and that they would be able to close on the loan the next week; when they did not hear from City or its representative the Lois attempted to contact her on numerous occasions without success; on May, 1994 the Lois were informed by City's representative that because of an increase in interest rates they would no longer qualify for the loan sought; on June 20, 1994 Mr. Loi wrote to City and requested a refund of the \$750.00 fee, but no refund has been forthcoming.

e) In October, 1993 Anil M. Sabnis, assisted by the respondent, submitted a loan application to City, and was required to pay a \$750.00 fee to City and the respondent; in January, 1994 Mr. Sabnis decided to lock in the interest rate at 7.75% with no points, and the respondent informed him that the lock would be effective for 21 days; on February 18, 1994 the respondent informed Mr. Sabnis that the closing documents had been express mailed to him in Korea, but such documents were never received; on March 14, 1994 the respondent informed

Mr. Sabnis that the 7.75% interest rate was still in effect and that another set of closing documents would be express mailed to him by March 18, 1994; Mr. Sabnis never received the promised documents; on March 21, 1994 the respondent informed Mr. Sabnis that in order to close he would have to agree to an 8.75% interest rate, to which Mr. Sabnis agreed to avoid further delay and risk and further increases; as a result of the higher rate Mr. Sabnis will be required to pay an additional \$205.00 per month, or \$73,800.00 for the life of the loan, plus an additional \$1,427.00 in points; Mr. Sabnis incurred expenses of \$1,500.00 to telephone calls to City and the respondent.

f) Between November, 1993 and July, 1994 H.R. Hartz, Inc. provided professional appraisal service to City but, despite repeated requests, City has failed to pay for services in the total amount of \$1,432.16.

As a result of the foregoing findings of fact, the Hearing Officer recommended that the respondent's license be revoked, that he be fined \$6,000.00, and that he be directed to make restitution totalling \$7,807.29 (State's Ex. 8).

5) All of the events recited by the Hearing Officer, except possibly some of the appraisal services, occurred while the respondent was the owner of City and before he relocated to New York (Resp. Ex. A, Asset Purchase Agreement and lease of 12/7/94; Transcript p. 15, lines 17-18).

6) On September 25, 1995 Hawaii issued a Director's Final Order, signed on September 22, 1995, imposing the recommended sanctions (State's Ex. 9).

7) Having learned of the Hawaii proceedings when he received the notice of hearing in these proceedings, on April 8, 1998 the respondent, acting through his attorney in the State of Hawaii, moved to set aside the Director's Final Order and re-open the hearing (Resp. Ex. B). That motion was denied by a new Director's Final Order dated August 4, 1998, stating "...the Director hereby adopts the Hearings (sic) Officer's Findings of Fact, Conclusions of Law, and Recommended Order as the Director's Final Order in this matter. The Respondent's Motion To Set Aside Director's Final Order Filed September 25, 1995 And Reopen Hearing is denied" (Respondent's post hearing submission of September 3, 1998).

8) The respondent sold the assets of City on July 6, 1994. The asset purchase agreement specifically provided that the buyer was not assuming City's liabilities other than for rent and payroll after July 6, 1994 (State's Ex. A).

OPINION

I- The Director of the Department of Commerce and Consumer Affairs of the State of Hawaii has held, after a default hearing conducted with notice substantially the same as that required by Real Property Law §441-3[e], and after considering the respondent's motion to aside the original order and re-open the hearing, that the respondent failed to return to clients four unearned fees, misled five clients to their detriment, and failed to pay for services rendered to his company. Such conduct by a real estate broker has consistently been found to be a demonstration of untrustworthiness. *Gold v Lomenzo*, 29 NY2d 468, 329 NYS2d 805 (1972); *Division of Licensing Services v Robin*, 80 DOS 97; *Division of Licensing Services v Werner*, 160 DOS 96; cf. *Feldman v Department of State*, 81 AD2d 550, 440 NYS2d 541 (1981).

The respondent seems to believe that he is not responsible for the misconduct found by Hawaii because he sold the business and moved away. If anything, however, that sale merely compounds the seriousness of his actions, as he made no provision for the purchasers of City's assets to assume its obligations to existing clients. Further, the sale of the business can in no way free the respondent of blame for the misrepresentations made by him and his company to his clients while he was operating that business. In an attempt to go behind the Hawaii decision, the respondent argued that all or part of the fees not refunded were, by the terms of the agreements signed by his clients, non-refundable. While the respondent may not properly seek to impeach that decision in this forum, it is noted that even where an agreement says that a processing fee is non-refundable the payor is entitled to a refund where, as here, it is found that no processing occurred.

II- Fraudulent practices "...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). A single fraudulent practice may be the basis for the imposition of disciplinary sanctions. *Division of Licensing Services v Linfoot*, 60 DOS 88, conf'd. *sub nom Harvey v Shaffer*, 156 A.D.2d 1013, 549 N.Y.S.2d 296 (1989). Besides constituting untrustworthiness, the respondent's conduct in accepting processing fees and then failing to process the applications for which they were paid, in misleading clients, and in failing to pay bills for expenses incurred by his business, constituted fraudulent practices.

II- The respondent's answers to question number 4 on his applications were false, and, as they reflected on his trustworthiness, constituted material misstatements. However, inasmuch as the respondent was unaware that he was answering the questions incorrectly, he may not be penalized for those misstatements.

#### CONCLUSIONS OF LAW

1) By reason of the findings and order of the Department of Commerce and Consumer Affairs of the State of Hawaii the respondent has demonstrated untrustworthiness as a real estate broker and has engaged in fraudulent practices.

2) Although the respondent's applications for licensure as a real estate broker contained material misstatements, since the respondent was unaware at the time of their making that his statements were incorrect he should not be penalized for them.

#### DETERMINATION

**WHEREFORE, IT IS HEREBY DETERMINED THAT,** pursuant to Real Property Law §441-c, George Qiao has demonstrated untrustworthiness and has engaged in fraudulent practices, and, accordingly, his license as a real estate broker is revoked, effective immediately. Should he ever re-apply for a license as a real estate broker or salesperson, no action shall be taken on such application until he shall have produced proof satisfactory to the Department of State that he has fully complied with the Director's Final Order in *Matter of the Mortgage Broker's License of City Mortgage Corp. and the Mortgage Solicitor's Licenses of Zhi George Qiao and Diane Susan Petty*, MBS 94-15-L, MBS 94-19-L, MBS 94-20-L, MBS 94-27-L, MBS 94-28-L, MBS 94-35-L. The respondent is directed to send his license certificate and pocket card to Diane Ramundo, Customer Service Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, NY 12208.

Roger Schneier  
Administrative Law Judge

Dated: September 15, 1998