159 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-

ROBERT J. REGEVIK,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on June 8, 1999 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, having been advised of his right to be represented by an attorney, chose to represent himself. At the close of the proceedings he was granted leave to submit additional written evidence, but no such submission has been received.

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

COMPLAINT

The complaint, as amended on the record, alleges that an order and judgement has been entered against the respondent in New York Supreme Court finding that he had engaged in false and fraudulent activities in the sale of shares of cooperative and/or condominium corporations (sic).

FINDINGS OF FACT

1) Notices of hearing together with copies of the complaint were served on the respondent by certified mail at both of his last known business addresses (State's Ex. 1).

2) Pursuant to a license expiring October 24, 1999 the respondent is duly licensed as a real estate broker representing Park Slope Real Estate Inc. Until June 30, 1999, when the license expired, he was also licensed as a real estate broker in his individual name (State's Ex. 1).

3) On January 28, 1998 an order and judgement was filed on default against the respondent and John B. Swift, Jr. in Supreme Court, County of New York, permanently enjoining the respondent and Mr. Swift from engaging or attempting to engage in any public promotion, offer, sale, distribution, exchange or transfer of real estate securities as governed by Article 23-A of the General Business Law, requiring that the respondent pay $8,000.00 to the Attorney General, and finding that the respondent and Mr. Swift were liable for violations of the Martin Act for, *inter alia*: making various false and fraudulent statements in the offering plan of a cooperative apartment corporation; falsely and fraudulently stating in an amendment to the offering plan that they would deposit $38,115.00 in the reserve fund and that they would fund the reserve fund in accordance with the Reserve Fund Law; failing to disclose in the offering plan and amendments thereto the terms of the underlying mortgage, that they were behind in the payment of maintenance due on unsold shares, that the cooperative corporation was behind in the payments due on the mortgage, that they had placed a mortgage on the building that was not satisfied at the closing with the cooperative corporation, that the managing agent had been changed and the new managing agent was not licensed to collect rents, and that a principal of the sponsor had died; and engaging in the sale of unsold shares without a current offering plan. It was further found that they were liable for violations of Executive Law §63[12] for, *inter alia*, repeatedly: Failing to pay the full maintenance on unsold share; failing to fund the reserve fund and to follow the proper procedure for taking a credit against their contribution to the reserve fund; failing to call a shareholder meeting within thirty days of the closing; and failing to have the apartment corporation governed by a board of directors (State's Ex. 1).[1]

4) The order and judgement arose out of a business venture in which the respondent and three other persons, John B. Swift, Jr, Donald Klugland, and David Whitmore, were general partners and principals in a limited partnership organized to sponsor the conversion of a Brooklyn building to cooperative ownership. All of the partners were at the time affiliated with the real estate brokerage office of John B. Swift Inc. The building was managed by Mr. Swift and Mr. Whitmore.

Shortly after the acquisition of the property by the partnership relations between the partners became strained, and eventually the respondent left the Swift office to form his own brokerage firm. Several months later Mr. Klugland also left the office.

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[1] A separate hearing in which John B. Swift, Jr. was the respondent was conducted before the Hon. Felix Neals on May 13, 1999, and his decision revoking Mr. Swift's license as a real estate broker was issued on June 15, 1999 (141 DOS 99).

Shortly after the conversion of the building to cooperative ownership Mr. Klugland died. Limited partners whom he had solicited consulted with the respondent, and they agreed amongst themselves that the partnership should be dissolved, the unsold shares should be equally divided among the partners, and the cooperative board should be strengthened. The respondent then called a special meeting of all the partners.

In order to change the partnership agreement it was necessary to obtain the consent of a majority of the general partners and two thirds of the limited partners. Mr. Swift and Mr. Whitmore and 70% of the limited partners voted against the change, so the motion failed.

Several years later the respondent met with some of the limited partners again, and he called another special meeting. However, the vote on the question of dissolving the partnership was the same.

Throughout his dealings on behalf of himself and the dissident limited partners the respondent repeatedly, but to no avail, asked Mr. Swift and Mr. Whitmore to provide management reports and tax returns.

Eventually, the respondent received telephone calls from some of the cooperative's shareholders who wished to sever their relationship with Mr. Swift and Mr. Whitmore. At a meeting of the cooperative, at which Mr. Swift was present but not voting and Mr. Whitmore was not present, a new board of seven members was elected, with the respondent and two shareholders whom he appointed as the representatives of the sponsor. The new board discharged Mr. Swift and Mr. Whitmore as managers, and retained outside professional management. Several members of the board contacted the bank to do a "workout" on the mortgage.

Within two weeks Mr. Swift and Mr. Whitmore called a special meeting of the partnership. They voted to remove the respondent as general partner and sponsor's representative on the cooperative board, and then elected a new cooperative board consisting of Mr. Whitmore and his two appointees plus four other shareholders. The new board then fired the management company and re-hired Mr. Whitmore as manager.

Eventually the bank commenced foreclosure proceedings. The respondent arranged a meeting the with Attorney General's office, and Mr. Whitmore was given a deadline by which time he was to provide financial and other information. That information was not supplied.

The assistant Attorney General who prosecuted the matter has acknowledged to the complainant's investigator that the respondent made efforts to correct the problems and possible wrongdoing of Mr.

Swift and Mr. Whitmore, but took the position that since the respondent was a partner he was guilty of the charges.

OPINION AND CONCLUSIONS OF LAW

The order and judgement of Supreme Court is conclusive on the question of the respondent's responsibility for the wrongdoing in the operation of the limited partnership, and he is collaterally estopped from disputing its findings in this forum. *Division of Licensing Services v Loffredo*, 83 DOS 95, conf'd. 235 AD2d 541, 653 NYS2d 33 (1997). That, however, does not preclude this tribunal from considering whether the respondent's conduct in the operation of the partnership and cooperative warrant the imposition of disciplinary sanctions.

The evidence, undisputed, and in part provided, by the complainant indicates that the respondent, although a general partner, was not directly involved in Mr. Swift's and Mr. Whitmore's conduct in the operation of the partnership and that he eventually acted to constrain them. Unfortunately, it is evident that he acted too late. While he eventually went to the Attorney General, he did so only after a long delay. Also, it appears from the nature of the violations set forth in the Supreme Court's order and judgement that the respondent neglected his duty to see to it that the proper steps were taken in the operation the partnership and cooperative, apparently relying, instead, on Mr. Swift and Mr. Whitmore.

The respondent's conduct cannot be excused, amounting, as it does, to a serious demonstration of incompetency. He has, however, been punished for his neglect, having been ordered by Supreme Court to pay $8,000.00 to the Attorney General and to make restitution in an amount to be determined to cooperative unit purchasers as well as having been permanently enjoined from engaging in the real estate cooperative business. Thus, there is no call for the imposition by this tribunal of further punishment.

The injunction is of particular significance. The respondent's negligence did not involve general real estate brokerage business. It was restricted to the specialized area of the sponsorship and sale of a cooperative conversion. Because of the injunction the public is already protected from the possibility of such future negligent conduct by the respondent, and no further protection would flow from the suspension or revocation of the respondent's license. He is admonished, however, that he is entirely responsible for assuring that his real estate brokerage business is operated in full compliance with the applicable statutes and regulations, and that any neglect of that responsibility may very well result in the loss of his license.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Robert J. Regevik has demonstrated incompetency and, accordingly, pursuant to Real Property Law §411-c, he is reprimanded therefore.

Roger Schneier
Administrative Law Judge

Dated: July 9, 1999