

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-

**JOHN ROMANO,**

Respondent.

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This matter came on for hearing before the undersigned, Roger Schneier, on March 14, 1995 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of Roman Rental Agency, 110 East Main Street, Suite 140, East Islip, New York 11730, did not appear.

The complainant was represented by compliance officer William Schmitz.

**COMPLAINT**

The complaint alleges that the respondent changed his principal business address without giving notice in writing to the Department of State in the required manner and form, and that while his license as a real estate broker was under automatic suspension therefore he negotiated a rental.

**FINDINGS OF FACT**

1) Notice of hearing together with a copy of the complaint was mailed to the respondent by certified mail at both 6 Ackerson Street, Bayshore, New York 11706, his last known business address, and 110 East Main Street, Suite 140, East Islip, New York 11730, the address at which he was last licensed as a real estate broker, and was delivered at the East Islip address on February 3, 1995 (State's Ex. 1 and 2).

2) From January 12, 1993 until January 12, 1995 the respondent was duly licensed as a real estate broker d/b/a Roman Rental Agency at the East Islip address (State's Ex. 4).

3) On or about February 10, 1993 the respondent negotiated the rental to Patricia Tuohy and Thomas Epp of a house located at 85 Cullen Avenue, Islip, New York, and received from them a commission of \$900.00. The respondent conducted that transaction from an office at 6 Ackerson Street, Bayshore, New York, although he had not filed a change of address notice with the Department of State (State's Ex. 3, 5, and 6).

### OPINION

I- The respondent is not currently licensed, and was not licensed at the time of the commencement of the proceeding. He was, however, licensed at the time of his alleged misconduct (although, as discussed below, his license was suspended), and can, until January 12, 1997, renew that license by merely submitting an application and paying the required fees. Real Property Law (RPL) §441[2].

"The expiration of a license does not divest the Secretary of State of the jurisdiction to impose disciplinary sanctions for misconduct which occurred while the license was in effect. Albert Mendel & Sons, inc. v N.Y. State Department of Agriculture and Markets, 90 AD2d 567, 455 NYS2d 867 (1982); Senise v Corcoran, 146 Misc.2d 598, 552 NYS2d 483 (Supreme Ct., NY County 1989). Even an expired license may be revoked. Maine Sugar of Montezuma, Inc. v Wickham, 37 AD2d 381, 325 NYS2d 858 (1971). To allow the lapse of the respondent's license to divest the Secretary of State of jurisdiction would be to improperly deprive him of his right to disqualify the respondent from holding such a license in the future. Brooklyn Audit Co., Inc. v Department of Taxation and Finance, 275 NY 284 (1937)." Division of Licensing Services v Brimhall, 40 DOS 95.

II- A license as a real estate broker is issued in response to an application on which the applicant is required to state the address at which the business is to be conducted. RPL §441[1][b]. Absent the filing of a change of address notification pursuant to RPL §441-a[5], the operation of a real estate brokerage business at an address other than that which was stated on the application is a violation of RPL §441[1][b]. Division of Licensing Services v Pilato, 94 DOS 94.

The respondent was licensed at 110 East Main Street, East Islip, New York, but conducted business from an unlicensed office at 6 Ackerson Street, Bayshore, New York. In doing that he violated RPL §441[1][b].

III- When the respondent moved his office without filing a change of address form with the Department of State his license was automatically suspended. RPL §441-a[5]. Accordingly, it became unlawful for him to engage in the real estate brokerage business, RPL §440-a, and he was not entitled to demand or receive commissions. RPL §442-d; Galbreath-Ruffin Corp. v 40th & 3rd Corp, 19 NY2d 354, 280 NYS2d 126 (1967).

IV- Where a broker or salesperson has received money to which he is not entitled, he may be required to return it, together with interest, as a condition of retention of his 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).

V- In setting the penalty to be imposed for the respondent's violation, I have considered the fact that prior to the scheduling of the hearing he was offered the opportunity to resolve the matter through the payment of a fine of \$250.00 (State's Ex. 1). Where such an offer of settlement has not been accepted and the respondent has subsequently been found guilty, it is proper to impose a fine higher than that which was asked for in the settlement offer. Vito v Jorling, 197 AD2d 822, 603 NYS2d 64 (1993) (finding that it was proper to impose a fine of \$22,825.00 after an offer to settle for a \$500.00 penalty was rejected).

#### CONCLUSIONS OF LAW

1) This tribunal has jurisdiction to consider and adjudicate the charges herein, and to impose the appropriate discipline on the respondent.

2) By engaging in the business of real estate brokerage at an address at which he was not licensed, the respondent violated RPL §441[b].

3) By engaging in the business of real estate brokerage after he had moved his office without filing a change of address card with the Department of State the respondent violated RPL §440-a.

4) By demanding and receiving a commission for real estate brokerage services while his license was suspended pursuant to RPL §441-a[5] the respondent demonstrated untrustworthiness and incompetency as a real estate broker.

5) The respondent should be required to refund, together with interest, the unlawful brokerage commission demanded and received by him.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** John Romano had violated Real Property Law §§440-a and 441[b], and has demonstrated untrustworthiness and incompetency, and accordingly, pursuant to Real Property Law §441-c, he shall pay a fine of \$500.00 to the Department of State on or before May 31, 1995. Should he fail to pay the fine, and should his license as a real estate broker have been renewed, that license shall be suspended for a period of one month, commencing on June 1, 1995 and terminating on June 30, 1995. Upon payment of the fine or termination of the suspension in lieu thereof his license shall be further suspended until such time as he shall produce proof satisfactory to the Department of State that he has refunded the sum of \$900.00, together with interest at the legal rate for judgements (currently 9% per year) from February 10, 1993 to Patricia Tuohy and Thomas Epp. Should the respondent not have renewed his license as a real estate broker, then if he ever applies for renewal of that license or for issuance of a new license as a real estate broker or salesperson such application shall not be granted until he has paid the fine and made the restitution ordered above.

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