

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-

**SAM SAMAREL**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on April 9, 1997 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 27 Foxboro Avenue, Farmingdale, New York 11738, did not appear.

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

**COMPLAINT**

The complaint in the matter alleges that the respondent, a licensed real estate salesperson, engaged in regulated real estate transactions and collected compensation therefore at a time that he was not licensed to do so and, while acting in said unlicensed capacity, unlawfully entered a premises and removed certain personal property therefrom.

**FINDINGS OF FACT**

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail delivered on March 5, 1997 (State's Ex. 1).

2) From June 15, 1987 until June 15, 1991, when his license expired without being renewed, the respondent was duly licensed as a real estate salesperson. The license was renewed on January 22, 1992 and was in effect until its expiration on June 15, 1995, with the exception of the period of June 9, 1992 to July 21, 1992, when the respondent was not associated with any broker. The license was

again renewed on May 1, 1996 in association with Century 21 Bay Way Realty, Inc., with which he had been licensed since November 6, 1992, and was effective until his association with that broker was terminated on December 31, 1996 (State's Ex. 1). Accordingly, the respondent was not licensed as a real estate salesperson or broker from June 15, 1995 until May 1, 1996. I take official notice that the actual expiration date of the license is May 1, 1998, and that until that date the respondent may resume employment as a real estate salesperson merely upon the filing of a change of association report.

3) On March 29, 1996 a felony complaint was filed in District Court, County of Suffolk, charging the respondent with Burglary in the second degree (State's Ex. 4). On December 23, 1996, in settlement of that charge, the respondent pled guilty to Disorderly Conduct, Penal Law §240.20 (State's Ex. 5).

4) The felony complaint and the ensuing guilty plea arose out the following events:

On March 13, 1996 a vacant home located at 235 29th Street, Lindenhurst, New York was listed for sale with Century 21 Herrick Real Estate. The listing was placed on the multiple listing service, and thereby become available to the respondent who, although not then licensed, was working for Century 21 Bay Way Realty, Inc.

In order to facilitate entry to the house by cooperating brokers and salespersons, a lockbox was attached to the door. On March 14, 1996 the respondent and Laurence Barasch, another salesperson licensed in association with the same broker, apparently used a lockbox key to open that box and obtain the key to the house which was contained therein. They then entered the house, from which, without the authorization of the owner, they removed a new suitcase. Also missing after the event were tools, a stamp collection, a coin collection, a trading card collection, and a knife (State's Ex. 2).

5) During the period of June 15, 1995 until May 1, 1996, when he was not licensed as a salesperson or broker, the respondent engaged in numerous real estate brokerage transactions on behalf of Century 21 Bay Way Realty, Inc., and was compensated therefore (State's Ex. 6).

#### OPINION

I- The holding of an ex parte quasi-judicial administrative hearing was permissible, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served. *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

II- Real estate brokers and salespersons act in a fiduciary capacity. *L.A. Grant Realty, Inc. v Cuomo*, 58 AD2d 251, 396 NYS2d 524 (1977). Their relationship with home owners and other clients 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). One of the results of that trust and confidence is that real estate salespersons are, as is demonstrated by the facts of this case, often given unsupervised access to homes. In giving such access, the public has a right to expect that they will not be victimized by the very persons who are supposed to be acting on their behalf.

Using his association with Century 21 Bay Way Realty, Inc. the respondent gained access to a vacant home and absconded with property he found in it. Such outrageous conduct is a blatant demonstration of extreme untrustworthiness, and establishes without any doubt that the respondent cannot be trusted to be licensed as a real estate salesperson.

III- Pursuant to Real Property Law (RPL) §440-a, no person may hold him or herself out, or act temporarily or otherwise as, a real estate salesperson without first procuring a license therefore.

The respondent has clearly violated that statute. While according to a statement which he made License Investigator James Cahill his failure to renew his license was the result of an oversight (State's Ex. 6), his failure to appear at the hearing and offer a sworn explanation subject to cross examination, in particular an explanation of how he could have worked as a salesperson for close to a year without seeing from the dates on his license certificate and pocket card that his license had expired, results in that statement being of little, if any, evidentiary value. In any case, his conduct was a clear demonstration of incompetency.

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). The same rule should applied in this case with regards to the personal property which the respondent misappropriated, as well as to the commissions which he received for his unlicensed activities.

#### CONCLUSIONS OF LAW

1) By using his association with a real estate broker, albeit while unlicensed, to gain entry to a home and then remove property from that home without the permission of the owner, the respondent demonstrated untrustworthiness as a real estate salesperson.

2) By acting as a real estate salesperson for compensation during an extended period while he was not so licensed, the respondent demonstrated incompetency as a real estate salesperson.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Sam Samarel has demonstrated untrustworthiness and incompetency and, accordingly, pursuant to Real Property Law §441-c, his license as a real estate salesperson is revoked effective immediately. Should he ever reapply for a license as a real estate salesperson, or apply for a license as a real estate broker, no action shall be taken on the application until he shall have produced proof satisfactory to the Department of State that he has made full restitution, together with interest at the legal rate for judgements from March 14, 1996, to the rightful owner or owners of the property which he misappropriated from the house at 235 29th Street, Lindenhurst, New York, and has returned to the payers thereof his share of any commissions received by him for activities as a real estate salesperson while not licensed, together with interest at the legal rate for judgements from the date of his receipt of the commission. He is directed to immediately send his license certificate and pocket card to Thomas F. McGrath, Revenue Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, NY 12208.

Roger Schneier  
Administrative Law Judge

Dated: April 24, 1997