

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-

**GEORGE SIDERAKIS, HELEN SIDERAKIS,
and HIGH VALUE REALTY CORP.,**

Respondents.

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Pursuant to the designation duly made by the Hon. Gail S. Shaffer, Secretary of State, the above noted matter came on for hearing before the undersigned, Roger Schneier, on March 17, 1994 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondents, of 48-15 Skillman Avenue, Sunnyside, New York 11104, having been advised of their right to be represented by an attorney, appeared pro se.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINTS

The complaints in the matter allege that respondent corporation and George Siderakis demanded and received an unearned brokerage fee in connection with a rental transaction between a residential tenant and George Siderakis, in which George Siderakis acted as undisclosed dual agent for the tenant and himself (as landlord), and failed to provide a legitimate brokerage service to the tenant, and that the corporation, acting through Helen Siderakis continues to retain the unearned commission.

FINDINGS OF FACT

1) Notices of hearing together with copies of the complaint were duly served on the respondents (Comp. Ex. 1).

2) At all times hereinafter mentioned George Siderakis was duly licensed as representative broker of High Value Realty Corp. (High Value), 48-15 Skillman Avenue, Sunnyside, New York 11104 (Comp. Ex. 5). He is currently licensed as a broker in his individual name, and his wife, Helen Siderakis is licensed as representative broker of High Value.

3) In or about February, 1988 Gilbert A. Mirett responded to a newspaper advertisement for an apartment for rent placed by High Value. He met with George Siderakis, who told Mirett that he owned the two family house in which the apartment was located, and that if he rented the apartment Mirett would be required to pay a brokerage commission of \$820.00.

On February 2, 1988 Mirett and Helen Siderakis, who was co-owner of the house, entered into a lease for the apartment, and Mirett gave Helen Siderakis two checks: one in the amount of \$1640.00 payable to George Siderakis for rent and security, and one in the amount of \$820.00 payable to High Value for the commission (Comp. Ex. 3).

On October 9, 1992 Mirett, apparently after having a dispute with Helen Siderakis in her capacity of landlady, complained to the Department of State about the commission (Comp. Ex. 2). He alleged in his (unsworn) written complaint that disclosure of George Siderakis' ownership was not made until just before he signed the lease (Comp. Ex. 3).¹

OPINION AND CONCLUSIONS OF LAW

I- As the party which initiated the hearing, the burden is on the complainant to prove, by substantial evidence, the truth of the allegations contained in the complaint. State Administrative Procedure Act (SAPA), §306[1]. Substantial evidence is that which a reasonable mind could accept as supporting a conclusion or ultimate fact. Gray v Adduci, 73 N.Y.2d 741, 536 N.Y.S.2d 40 (1988). "The question...is whether a conclusion or ultimate fact may be extracted reasonably--probatively and logically." City of Utica Board of Water Supply v New York State Health Department, 96 A.D.2d 710, 465 N.Y.S.2d 365, 366 (1983)(citations omitted).

One of the charges in the complaint is that timely disclosure of George Siderakis' ownership of the house and his status as a dual agent and the consequences thereof was not made to Mirett. The only evidence offered to support that charge is the hearsay testimony of the complainant's investigator and the hearsay written complaints of Mirett (Comp. Ex. 2 and 3). The limited credibility of that hearsay, which pursuant to SAPA §306[1] is admissible, is

¹ Mirett did not testify at the hearing as the complainant was unable to locate him.

lessened by the four and a half years that Mirett waited before making the complaint. I have concluded, therefore, as stated in the findings of fact, that disclosure of George Siderakis' ownership was made when Mirett and George Siderakis first met.

Considering the timely disclosure of George Siderakis' ownership interest, it is hard to see how Mirett could have believed that George Siderakis and High Value were acting as his agents. Perhaps if Mirett had been available to testify he could have explained, or could have refuted the respondents' testimony that there was such disclosure. Further, as is discussed below, since George Siderakis and High Value could not have been acting as agents for the landlord, there can be no issue of insufficient disclosure with regards to dual agency.

II- The issue that remains is whether, in spite of the timely disclosure, the commission was unearned and, therefore, has been improperly retained.

In Gold v Lomenzo, 29 NY2d 468, 329 NYS2d 805 (1972), the Court of Appeals said that "(b)rokers' fees must represent charges for actual services...." 329 NYS2d at 813. The question, then, is what, if any, brokerage services did George Siderakis and, through him, High Value perform to merit the receipt and retention of a commission paid by Mirett.

The respondents do not contend that George Siderakis and High Value were Mirett's agents. As it cannot be said that a landlord acts on behalf of a prospective tenant by showing him an apartment and negotiating a lease, certainly the respondents did not provide Mirett with any brokerage services.

Nor can it be said that George Siderakis, and through him High Value, acted as brokers or agents for the landlord. By definition a broker acts on behalf of "another," Real Property Law §440[1], and the essence of the agency relationship is the representation of one person by another; "there is no agency unless one is acting for and in behalf of another." Cadman Memorial Cong. Soc. of Brooklyn v Kenyon, 197 Misc. 124, 95 NYS2d 133, 155 (Supreme Court Kings County, 1950), revd on other grounds 279 AD 1015, 111 NYS2d 808, affd 306 NY 151, reh den 306 NY 851. Accordingly, neither George Siderakis, the landlord, nor High Value, which as a corporation can only act through its officers and employees, 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 AD2d 843, 318 NYS2d 120 (1970), can be said to have been acting as broker or as his own agent. If George Siderakis could not act directly as his own broker and agent, he could not do so indirectly through the instrumentality of his corporation.

This is not a case in which the owner of property which is not rent controlled or regulated chose to require payment of an

additional amount of rent. The \$820.00 check which Mirett issued to High Value at George Siderakis' direction was specifically denominated, by George Siderakis, as a rental fee. It was a commission paid to a broker, not rent paid to the landlord. Since no brokerage services were provided for that fee, it was unearned, and requiring and accepting payment of it was a demonstration of untrustworthiness and incompetency.

Helen Siderakis is currently the representative broker of High Value. As such, she is responsible for its lawful operation, Division of Licensing Services v Roberts Real Estate, 51 DOS 90, mod on other grnds sub nom Roberts Real Estate, Inc. v Department of State, supra., and has demonstrated incompetency by failing to have the corporation refund the unearned commission. Division of Licensing Services v Gafni, 5 DOS 94.

III- Being an artificial entity created by law, High Value can only act through its officers, agents, and employees, and it is, therefore, responsible for the acts committed by its representative brokers, Mr. and Mrs. Siderakis, within the actual or apparent scope of their authority. Roberts Real Estate, Inc. v Department of State, supra.; A-1 Realty Corporation v State Division of Human Rights, supra.

IV- Where a broker has received money to which he, she or it is not entitled, the refund of that money, together with interest, may be required as a condition of retention of the broker's license. 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).

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT George Siderakis and High Value Realty have demonstrated untrustworthiness and incompetency as real estate brokers, and accordingly, pursuant to Real Property Law §441-c, they shall pay a fine of \$1000.00 to the Department of State on or before May 31, 1994, and should they fail to pay the fine then their licenses as a real estate brokers shall be suspended for a period of two months, commencing on June 1, 1994 and terminating on July 31, 1994, both dates inclusive, and

IT IS FURTHER DETERMINED THAT Helen Siderakis has demonstrated incompetency as a real estate broker, and accordingly, pursuant to Real Property Law §441-c, she shall pay a fine of \$500.00 to the Department of State on or before May 31, 1994, and should she fail to pay the fine then her license as a real estate broker shall be suspended for a period of two months, commencing on June 1, 1994 and terminating on July 31, 1994, both dates inclusive, and

IT IS FURTHER DETERMINED THAT upon payment of the above fines or conclusion of the above periods of license suspension, the real estate broker licenses of all of the respondents shall be further suspended until they have delivered to the Department of State a certified check drawn on a bank within the State of New York payable to Gilbert A. Mirett in the amount of \$820.00 plus interest at the legal rate for judgments from June 1, 1994, for delivery by the complainant to Mirett. The complainant shall attempt to locate Mirett and deliver the check to him, and should it be unable to do so it shall retain the check on his behalf until such time as the funds must be paid by the bank to the comptroller in accordance with Abandoned Property Law Article III.

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:

GAIL S. SHAFFER
Secretary of State
By:

James N. Baldwin
Executive Deputy Secretary of State