

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Complaints of

**DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES,**

Complainant,

DECISION

-against-

**FRANK TENTEROMANO, COURTLIN REAL
ESTATE INC., and DONNA MINKOFF,**

Respondents.

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These matters came on for a consolidated hearing before the undersigned, Roger Schneider, on January 11, 1995 at the office of the Department of State located at 270 Broadway, New York, New York.

Frank Tenteromano, of 2110 E. 14th Street, Brooklyn, New York 11229, and Donna Minkoff, of 2113 East 14th Street, Brooklyn, New York 11229, having been advised of their right to be represented by an attorney, appeared pro se, and Mr. Tenteromano appeared on behalf of the corporation.

The complainant was represented by Supervising License Investigator William Schmitz.

COMPLAINTS

The complaints allege that, in violation of Real Property Law (RPL) §443, Mr. Tenteromano and Ms. Minkoff, at a time when Ms. Minkoff was associated with Courtlin Real Estate Inc. (Courtlin), failed to obtain a disclosure form from a potential tenant at the time of their first substantial contact with that person, and Mr. Tenteromano failed to obtain a disclosure form from a landlord at the time of his first substantial contact with that person.

FINDINGS OF FACT

1) Notices of hearing together with copies of the complaint were served on the respondents by certified mail, and subsequent notices of adjournment were sent to them by regular first class mail (State's Ex. 1).

2) Frank Tenteromano is, and at all times hereinafter mentioned was, duly licensed as a real estate broker representing Courtlin (State's Ex. 2 and 3).

Donna Minkoff is duly licensed as a real estate salesperson in association with Wilk Real Estate Ltd. (State's Ex. 2). At all times hereinafter mentioned she was duly licensed as a real estate salesperson in association with Courtlin (State's Ex. 3).

3) On March 1, 1992 Courtlin received a listing for rental an apartment located in a 3 family house. The owner refused to sign the agency disclosure form required by RPL §443, and Mr. Tenteromano, who was aware that RPL §443 applied to rental transactions, noted that on one of the forms (State's Ex. 6). He did not, however, place on file an affidavit setting forth the facts of the refusal.

On the same day, Cynthia Pena went to the respondents' office in an attempt to locate an apartment to rent. She dealt with Ms. Minkoff, who referred her to the above noted apartment. After Ms. Pena told Ms. Minkoff that she was interested in renting the apartment, Ms. Minkoff had Ms. Pena complete a rental agreement and accepted a \$550.00 commission from her (State's Ex. 4 and 6). Ms. Minkoff subsequently gave the commission money to Mr. Tenteromano, and has never received a part of it back from him.

Ms. Pena refused to sign an agency disclosure form, and the respondents did not place on file an affidavit setting forth the facts of the refusal.

OPINION AND CONCLUSIONS OF LAW

RPL §443 sets forth a procedure pursuant to which an agency relationship disclosure form must be provided to sellers, buyers, lessors, and lessees. When the disclosure form must be provided depends on the nature of the agency relationship. However, what is relevant to this matter is that in all cases forms must be provided to the parties before the consummation of any rental transaction.¹ In addition to providing the disclosure form, the exact language of which is set forth in RPL §443[4], the licensee must obtain a signed acknowledgement of receipt from the seller/lessor and the buyer/lessee, or, if there is a refusal to sign the receipt, the licensee must "set forth under oath or affirmation a written declaration of the facts of the refusal and shall maintain a copy of the declaration for not less than three years." RPL §443[f].

¹ In certain instances the forms must be provided upon entering into a listing (RPL §443[3][a]) or at the time of the "first substantive contact" (RPL § 443[3][b] and [c]).

The evidence clearly establishes that the respondents violated RPL §443 by failing both to obtain signed acknowledgments from the lessor and lessee and to make written affirmations under oath or affirmation of the lessor's and lessee's refusals to sign the acknowledgements. That, however, is not what they were charged with.

The complaints allege that the respondents failed to obtain disclosure forms from the lessor and the lessee, not that the respondents failed to obtain acknowledgments or file declarations of refusal. Thus, since it is the licensee's obligation to provide, not obtain, the disclosure forms, the complaints allege facts which are not violations of the statute.

This is not a case in which the complaints can be amended to conform to the proof. Although Mr. Tenteromano was asked whether he had an affidavit on file regarding the lessor's refusal to sign the disclosure statement, and although he responded in the negative, that single exchange does not amount to a sufficiently full litigation of the issues so as to warrant such an amendment. Cf. Tollin v Elleby, 77 Misc.2d 708, 354 NYS2d 856 (Civil Ct. NY County, 1974); Hellman v Dixon, 71 Misc.2d 1057, 338 NYS2d 139 (Civil Ct. NY County, 1972). Therefore, since the complaints did not give the respondents notice of the specific charges against them and place them on notice of what it was that they were to defend themselves against, the complaints must be dismissed. John Urban Realty v Cuomo, 72 AD2d 947, 422 NYS2d 233 (1979).

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the charges herein against Frank Tenteromano, Courtlin Real Estate Inc., and Donna Minkoff are dismissed.

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