

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-

**LAWRENCE A. WOODLAND and FERN QUILITZCH,
a/k/a FERN E. DECKER,**

Respondents.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on March 16, 1999 at the New York State Office Building located at 65 Court Street, Buffalo, New York.

The respondents did not appear.

The complainant was represented by Assistant Litigation Counsel Scott L. NeJame, Esq.

COMPLAINT

The complaint alleges that: Mr. Woodland, a licensed real estate broker, failed to present to a prospective home purchaser, and to obtain his signature on, a real estate agency relationship disclosure form at the time of his first substantive contact with him and failed to make clear to him for whom he was acting; either or both of the respondents failed to pre-qualify the prospective purchaser or to determine his financial ability to purchase the property shown and/or to explain the procedure, duties and obligations involved in applying for HUD property; Mr. Woodland represented to the prospective purchaser that he or Ms. Quilitzch would handle all aspects of the purchase for him, but they failed to assist him in his application for and/or procurement of mortgage financing; even though they knew or should have known of the prospective buyer's financial ability or lack thereof, the respondents forwarded a purchase contract signed by the prospective buyer to HUD; Mr. Woodland wrongfully forwarded the prospective buyer's deposit to HUD, and failed to maintain an escrow account in which he could have deposited that deposit; Mr. Woodland has failed

to satisfy a judgement for the deposit which was not returned by HUD after the sale was not consummated.

FINDINGS OF FACT

1) Copies of the notice of hearing and the complaint were sent to the respondents as follows (State's Ex. 1 and 2): To Mr. Woodland by both certified and regular first class mail addressed to him at his last known business address, and by certified mail to an unexplained address (1171 Titus Avenue, Rochester, New York); to Ms. Quilitzch by both certified and regular first class mail addressed to her at both her last known business address and, in an apparent attempt to serve at her residence in Farmington, New York, at an address in Farmingdale, New York. The certified mail to both respondents at the business address and to Mr. Woodland at the Titus Avenue address was returned marked "unclaimed." The first class mail to both respondents at the business address was returned marked "return to sender: unable to forward." The mail to Ms. Quilitzch in Farmingdale was returned marked "no such street."

2) At all times hereinafter mentioned Lawrence A. Woodland was duly licensed as a real estate broker in his individual name. That license expired on October 17, 1996 and has not been renewed (State's Ex. 3).

3) At all times hereinafter mentioned Fern Quilitzch was licensed as a real estate salesperson in association with Mr. Woodland, under the name Fern E. Decker. That license was cancelled upon the non-renewal of Mr. Woodland's license on October 17, 1996, and expired and was not renewed on October 1, 1997 (State's Ex. 3).

4) Sometime in 1994 David W. Burroughs and his son Javin began looking with Mr. Woodland for a home for Javin Burroughs to purchase. Eventually they located a home which they liked at 150-152 Glenwood Avenue, Rochester, New York, and Mr. Woodland told David Burroughs that he would need \$1,000.00, which Mr. Burroughs said he did not have. Mr. Woodland asked Mr. Burroughs how much money he could come up with, and Mr. Burroughs replied that he could let his son have \$500.00, to which Mr. Woodland agreed.

Mr. Woodland prepared and presented to the Burroughs a contract for Javin Burroughs to purchase the house from the United States Department of Housing and Urban Development (hereinafter "HUD") for \$45,151.00 (State's Ex. 4). The contract stated that the purchaser had paid \$500.00 as earnest money to be held by Mr. Woodland. Javin Burroughs signed the contract on May 26, 1994, and with his or his father's permission it and the \$500.00 deposit provided by David Burroughs were submitted to HUD, which accepted it on June 1, 1994.

5) At some point in the transaction Mr. Woodland gave Javin Burroughs, and Javin Burroughs acknowledged receipt of, a real estate agency relationships disclosure form.

6) At no time did the respondents have any detailed discussions with the Burroughs about their finances. According to Mr. Woodland, he assumed that his daughter had taken care of pre-qualifying them. However, he merely indicated to David Burroughs that the financing of the purchase was being taken care of, and never obtained any credit information from either of the Burroughs.

7) Mr. Woodland was unable to obtain financing for Javin Burroughs (State's Ex. 11), and, therefore, the purchase could not be consummated (State's Ex. 10). There having been no closing, and Mr. Woodland having unable to obtain a refund of the \$500.00 from HUD, David Burroughs sued him in the City Court of Rochester, Small Claims Division, and on January 23, 1996 was granted a default judgement for \$505.84, including costs (State's Ex. 7). The judgement has not been satisfied.

8) Although advised that he could obtain the refund of his money directly from HUD by submitting a mortgage denial letter from a lender, and although he was advised how to go about obtaining such a letter, Mr. Burroughs never followed up on that advice.

9) By determination dated October 9, 1969, after hearings held on March 5 and September 24, 1969, Mr. Woodland's license as a real estate broker was suspended for failure to promptly refund a deposit received in an aborted real estate brokerage transaction (State's Ex. 13).

OPINION AND CONCLUSIONS OF LAW

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. Real Property Law (RPL) §441-e[2]; *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

II- Jurisdiction over the respondents for acts of misconduct which occurred during their licensure continues even though the licenses expired of their own terms. *Albert Mendel & Sons, Inc. v N.Y. State Department of Agriculture and Markets*, 90 AD2d 567, 455 NYS2d 867 (1982); *Main Sugar of Montezuma, Inc. v Wickham*, 37 AD2d 381, 325 NYS2d 858 (1971).

III- As the party which initiated the hearing, the burden is on the complainant to prove, by substantial evidence, the truth of the charges 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).

IV- The complaint alleges that Mr. Woodland failed to present the Burroughs with, and obtain their signatures on, a real estate agency relationship disclosure form. David Burroughs, however, testified that Javin Burroughs (who did not testify) did receive such a form. Therefore, that charge, and the charge that Mr. Woodland failed to make clear for whom he was acting, must be, and are, dismissed.

V- The complaint alleges that the respondents failed to "pre-qualify" Javin Burroughs or to determine his financial ability to purchase the property, and that they failed to explain the procedure, duties and obligations involved in applying for a HUD property. The complainant has failed, however, to offer any explanation for, or in any other way to support, its position that a real estate broker has any obligation to "pre-qualify" a potential purchaser, and presented no evidence to support the other charges. Those charges must be, therefore, and are, dismissed.

VI- Real estate brokers have a fundamental duty to deal honestly with the public. *Division of Licensing Services v John Linfoot*, 60 DOS 88, conf'd. *sub nom Harvey v Shaffer*, 156 AD2d 103, 549 NYS2d 296 (1989). The evidence establishes that Mr. Woodland told the Burroughs that he would take care of all aspects of the transaction, particularly the obtaining of financing. He failed to do that, with the result that the transaction did not close and the Burroughs were unable to obtain the return of the \$500.00 deposit paid to HUD. His conduct was a demonstration of untrustworthiness and incompetency.

VII- The complaint alleges that Mr. Woodland wrongfully failed to hold the \$500.00 deposit in escrow. However, the evidence establishes that the \$500.00 was remitted to HUD with the permission of either Javin or David Burroughs. Accordingly, there was nothing improper in Mr. Woodland not holding the deposit in escrow.

VIII- "The failure to pay a judgement which has been lawfully obtained, without a showing that he is unable to do so, is a demonstration of untrustworthiness by a real estate broker. *Department of State v Feldman*, 113 DOS 80, conf'd. *sub nom Feldman v Department of State*, 81 AD2d 553, 440 NYS2d 541 (1981); *Division of Licensing Services v Shulkin*, 40 DOS 90; *Division of Licensing Services v Janus*, 33 DOS 89." *Division of Licensing Services v Harrington*, 123 DOS 93 at 4. Mr. Woodland has failed to satisfy the judgement obtained against him by David Woodland, and has thereby demonstrated untrustworthiness.

IX- The evidence fails to establish that Ms. Quilitzch was involved in or responsible for any misconduct. Accordingly, the charges against her should be dismissed.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Lawrence Woodland has demonstrated untrustworthiness and incompetency, and, accordingly, pursuant to Real Property Law §441-c, should he ever re-apply for a license as a real estate broker or salesperson no action shall be taken on the application until he has paid a fine of \$1000.00 to the Department of State and has presented proof satisfactory to the Department of State that he has fully satisfied the judgement in the matter of *Burroughs v Woodland*, City Court of Rochester, Small Claims Division, Index No. SC-95 3262, and

IT IS FURTHER DETERMINED that the charges herein against Fern Quilitzch a/k/a Fern Decker are dismissed.

Roger Schneier
Administrative Law Judge

Dated: April 12, 1999