

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,

-against-

**RICHARD FLETCHER,
SAMI D. KATRI, and
METROPOLITAN PROPERTY GROUP INC.**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on July 19, 2016 at the office of the Department of State located at 123 William Street, New York, New York.

The respondents were represented by Douglas J. Pick, Esq., Pick & Zambicki LLP, 369 Lexington Avenue, 12th Floor, New York, NY 10017.

The complainant was represented by Matthew Wolf, Esq.

COMPLAINT

The complaint alleges that the respondents failed to assure that a client received a Disclosure of Bedbug Infestation History when renting an apartment and retained an unearned commission which arose out of the rental transaction.

FINDINGS OF FACT

1) Notices of Hearing together with copies of the Complaint were served by certified and regular mail addressed to the respondents at their last known business address and posted on June 30, 2015. Subsequent notices of adjournment were sent to the respondents and their counsel by regular mail (State's Ex. 1).

2) Sami D. Katri is, and at all times hereinafter mentioned was, duly licensed as a real estate broker representing Metropolitan Property Group Inc. (hereinafter "Metropolitan"). His license is due to expire on September 20, 2017 (State's Ex. 2).

3) At all times hereinafter mentioned Richard Fletcher was duly licensed as a real estate salesperson associated with Metropolitan. He is currently licensed as an associate real estate broker associated with Metropolitan. His license is due to expire on September 20, 2017 (State's Ex. 2).

4) In June 2012 Abigail Reich was shown a rental apartment, #4C at 257 East 61st Street, New York, NY by Mr. Fletcher, and on June 19, 2012 she entered into a one year lease of the apartment, effective July 1, 2012 (State's Ex. 3).

5) According to Ms. Reich's testimony on cross examination, the respondents were acting as the landlord's agent in the transaction (transcript, p. 31).

6) In addition to paying rent and security to the landlord, Ms. Reich paid a broker's commission of \$2,535.00 to the respondents (State's Ex. 4).

7) Ms. Reich moved into the apartment. Some weeks thereafter she discovered that it was infested with bedbugs. After making inquiries, she learned that live bed bugs had been found in the apartment on July 25, 2011, and that on July 28, 2011 it had been treated for bed bugs. She also learned that several other apartments in the building had been treated for bed bugs (State's Ex. 5 and 6).

8) Ms. Reich was never given a Disclosure of Bedbug Infestation History.

9) On October 29, 2012 Ms. Reich signed a Surrender Agreement pursuant in which she surrendered possession of the apartment to the landlord, forfeited the security deposit, and granted a general release to the landlord, its employees, and its agents (Resp. Ex. A).

10) Ms. Reich attempted to obtain a refund of the broker's commission paid to the respondents but they did not return her money.

11) In or about January 2013 Ms. Reich commenced lawsuits against Metropolitan and the landlord in Small Claims Court. Both of those lawsuits were dismissed (Resp. Ex. B). According to Ms. Reich the dismissal of the suit against the landlord occurred after they had entered into a settlement and she had been paid an unspecified amount of money (transcript, pp. 37-38).

OPINION AND CONCLUSIONS OF LAW

I- Being an artificial entity created by law, Metropolitan can only act through its officers, agents, and employees, and it is, therefore, bound by the knowledge acquired by, and is responsible for the acts committed by its representative broker, Mr. Katri, and its then salesperson, Mr. Fletcher, within the actual or apparent scope of their authority. *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 A.D.2d 843, 318 N.Y.S.2d 120 (1970); *Division of Licensing Services v First Atlantic Realty Inc.*, 64 DOS 88 (1998); Real Property Law ' 442-c.

II- New York City Administrative Code §27-2018.1 (a) states

For housing accommodations subject to this code, an owner shall furnish to each tenant signing a vacancy lease, a notice in a form promulgated or approved by the state division of housing and community renewal that sets forth the property's bedbug infestation history for the previous year regarding the premises rented by the tenant and the building in which the premises are located.

The respondents, whom the respondents' counsel established were the agents of the owner of the apartment rented by Ms. Reich, failed to assure that their client provided Ms. Reich with the bed bug infestation history. The result that she rented an apartment which she did not know had a recent history of bedbug infestation, in a building that had such a history. That act of omission was a violation of the respondents' obligation to deal fairly and openly with a prospective renter, *DLS v Woodland*, 84 DOS 99 (1999); *DLS v Goode*, 299 DOS 98 (1998); *DLS v Devaney*, 242 DOS 96 (1996), and, therefore, was an act of both incompetency and untrustworthiness.

III- The respondents argue that the matter should be dismissed because of both the general release executed by Ms. Reich and the dismissal of her small claims lawsuits. That argument is incorrect.

The Department of State was not a party to either the release or the law suits. It is hornbook law that, therefore, it is not bound by those third party actions. It is a fundamental obligation of the Department of State to assure that its licensees act lawfully, competently, honestly, and ethically, and it may act on any information which it receives that indicates that a licensee is guilty of misconduct. It is not bound by Ms. Reich's waiver of her contract or other rights.

III- Where a broker or salesperson has received money to which he or she is not entitled, he or she 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 respondents received a commission of \$2,535.00 as the result of a brokerage transaction in which they acted in an incompetent and untrustworthy manner. It is proper, therefore, to direct that they refund that commission with interest. Ms. Reich's waiver of her personal rights in no way affects the Department of State's authority and obligation to assure that its licensees do not benefit from their misconduct and, hopefully, to deter such misconduct by these and other licensees in the future.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Sami Katri, Metropolitan Property Group Inc., and Richard Fletcher have demonstrated untrustworthiness and incompetency, and accordingly, pursuant to Real Property Law §441-c, they shall each pay a fine of \$500.00 to the Department of State on or before September 15, 2016, and should they fail to pay the fine their licenses as real estate brokers, UID #31KA0923481 and UID #10301212189, shall each be suspended for a period commencing and September 16, 2016 and terminating one month after the receipt by the Department of State of their license certificates, pocket cards, and broker identification. Upon payment of the fines or termination of the suspensions in lieu thereof their licenses shall be further suspended until such time as they have produced proof satisfactory to the Department of State that they have refunded the sum of \$2,535.00, plus interest at the legal rate for judgments (currently 9% per year) from June 19, 2012, to Abigail Reich. They are directed to send a certified check or money order for the fines payable to "Secretary of State," along with proof of having made the ordered refund, or their license certificates, pocket cards, and broker's identification, to Norma Rosario, Department of State, Division of Licensing Services, One Commerce Plaza, 99 Washington Avenue, 5th Floor, Albany, New York 12231-0001.

/s/
Roger Schneier
Administrative Law Judge

Dated: July 27, 2016