96 DOS 93

STATE OF NEW YORK
DEPARTMENT OF STATE

----------X

In the Matter of the Complaint of

DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES,

Complainant, **DECISION**

-against-

IOSA ARDELEAN,

Respondent.

----------X

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 July 8, 1993 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 70-19 Fresh Pond Road, Ridgewood, New York 11385, having been advised of his right to be represented by counsel, appeared pro se.

The complainant was represented by Scott NeJame, Esq.

COMPLAINT

The complaint in the matter alleges that the respondent: failed to show apartments to a prospective tenant because of race, color or Puerto Rican ancestry; authorized, permitted and suffered an unlicensed person to perform and hold herself out as a real estate salesperson associated with him; and failed to pay a $10,000.00 judgement obtained against him in United States District Court.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail (Comp. Ex. 1). An amended complaint was subsequently served on the respondent by regular first-class mail posted on June 30, 1993, and was placed in evidence without objection by the respondent (Comp. Ex. 2).

2) The respondent is duly licensed as a real estate broker under his own name at 70-19 Fresh Pond Road, Ridgewood, New York. At all

times hereinafter mentioned he was licensed as a real estate broker d/b/a Banat Realty at the same address (Comp. Ex. 3), and with offices at two other addresses.

3) On January 26, 1990 a judgement in the amount of $10,000 was entered against the respondent in United States District Court, Eastern District of New York. That judgement arose from a jury verdict, and from a memorandum and order on a motion to set aside the verdict (Comp. Ex. 4). In the law suit which resulted in the verdict, memorandum and order the respondent was represented by an attorney. In his memorandum the Hon. Eugene H. Nickerson, United States District Judge, found, in relevant part: that on August 16, 1986 Raymond and Carmen Mariani, persons of Puerto Rican ancestry, went to respondent's Fresh Pond Road office and met with trainee Vera Bugyi[1], who accompanied them to and showed them an apartment for which the respondent was a rental agent of the owners; that after seeing the apartment the Marianis told Bugyi that they liked it and Bugyi said that she would arrange an appointment for them with the owners on August 18, 1986; that on August 18 the respondent asked Bugyi what had happened over the weekend, she told him that she had shown the apartment to prospective tenants and had made an appointment for them to see the owners that afternoon, and he asked her whether she had checked with the owners to confirm the availability of the apartment[2]; that Bugyi told the respondent that she had not confirmed the availability and then proceeded to call the owner's, as a result of which she was told that the apartment was to be rented to someone else; that Bugyi then called Raymond Mariani and told him that the apartment was rented; that Mariani went to respondent's office and was shown a book of listings by Bugyi, who discussed the listings with him; that Ardelean then came from the back part of the office and went through the listings with Mariani and, the jury apparently believed, told Mariani that each of the listed apartments in his price range was too small or unavailable; that The Open Housing Center, Inc. subsequently sent a tester to another of respondent's offices, and was shown the apartment which the Marianis were told had been rented; and that the jury could have reasonably found that the respondent failed to show Raymond Mariani apartments because of his race, color or Puerto Rican ancestry.

4) The respondent failed to pay the judgement, and Mariani, represented by the Puerto Rican Legal Defense & Education Fund, Inc., (the Fund) began proceedings to collect it. An investigation by the fund disclosed that on October 11, 1989, after the commencement of the law suit the respondent transferred, without consideration, his interest in his home and three other properties to his wife. Those

---

[1] At the time Bugyi was not licensed as a real estate broker or salesperson. A license as a real estate salesperson was first issued to her on May 26, 1987 (Comp. Ex. 3).

[2] The respondent considered the Marianis to be Bugyi's "customers" (Comp. Ex. 10).

properties had been owned jointly by the respondent and his wife. The investigation also disclosed that after the entry of judgement the respondent had transferred to a Banat Realty Inc., a corporation owned and operated by his wife and established after the entry of judgement, again without consideration, his interest in Banat Realty. A motion was brought to set aside the transfers as fraudulent (Comp. Ex. 5).

By order dated November 30, 1992 Judge Nickerson granted the motion to set aside the transfers and ordered the return of the improperly transferred property and an accounting of the property and income returned to the respondent by Banat Realty Inc. When the transfers had not been accomplished, on April 28, 1993 Kenneth Kimerling, Esq., General Counsel of the Fund wrote to the respondent's attorney and demanded compliance by May 14, 1993. When the transfers still had not occurred, Kimerling moved, by notice of motion dated June 1, 1993, for an order holding the respondents in contempt (Comp. Ex. 6). The reconveyances of the real property finally occurred on June 24, 1993 (Comp. Ex. 7). There is no evidence in the record as to whether the accounting has been delivered.

5) The respondent, who is 49 years old, claims to be without funds to satisfy the judgement. However, he has testified that his attorney is holding $10,000.00 for him. In addition, his joint tax returns with his wife show, without indicating the source of the income, that they received taxable interest of $15,724.00 in 1991 and of $12,781.00 in 1992. He also testified that he no longer works as a real estate broker because he has chosen not to. He states that he would have paid the judgement if it were not for the demand that he pay what he considers to be excessive attorney's fees demanded by the Fund.

OPINION

I- The judgement against the respondent in United States District Court is binding on him, and is not subject to collateral attack in this proceeding, 73 NY Jur2d Judgements, §10, and the material facts underlying that judgment are conclusively settled and may not be litigated again. 73 NY Jur2d Judgements, §339. Therefore, this tribunal is bound by the holdings and findings of fact in the United State District Court proceeding.

II- The failure of a real estate broker to show real property to a person because of that person's race, color or ancestry is an act of unlawful discrimination and of untrustworthiness. Department of State v Schimkus, 29 DOS 87, conf'd sub nom Schimkus v Shaffer, 143 AD2d 418, 532 NYS2d 564 (1988).[3]

III- A real estate broker who has an unlicensed salesperson associated with him is guilty of a misdemeanor, Real Property Law (RPL) §442-c, and of demonstrating incompetency. Doherty v Cuomo, 64 AD2d 847, 407 NYS2d 337 (1978), app. dism. 45 NY2d 960, 411 NYS2d 566;

[3] In Schimkus, as in this case, the respondent was found to have falsely represented to a member of the public that there was no property meeting that person's requirements in his listings.

Division of Licensing Services v Fishman, 153 DOS 92. A real estate salesperson is a person who is associated with a real estate broker with the purpose of, among other things, renting or placing for rent any real property. RPL §440(3).

Even if the respondent's contention that he directed Bugyi not to engage in the activities of a real estate salesperson in his absence is believed, the record clearly establishes that when he learned of her activities with the Marianis, whom he considered her customers, he permitted her to contact the owners of the house to ascertain the availability of the apartment, to contact the Marianis to tell them that the apartment was not available, and to show Mariani additional listings. Those activities clearly are referable to an attempt to rent real property, and, therefore, constitute working as an unlicensed salesperson.

IV- 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.

Not only did the respondent fail to satisfy the judgement obtained against him by Raymond Mariani, he took concerted steps to frustrate the collection of that judgment, with the result that contempt proceedings had to be brought against him. He has not explained the source of his interest income or the status of $20,000.00 that was offered in settlement, and has failed to direct his attorney to satisfy the judgement with the $10,000 that he is holding for the respondent. Far from showing that he is unable to satisfy the judgement, the respondent has shown that he simply has no intention of paying it regardless of his ability, and has gone so far as to voluntarily cease working in an apparent attempt to stymie collection attempts. He has demonstrated a total disregard for the mandate of the court and a contempt for his obligations under the law.

CONCLUSIONS OF LAW

1) By failing to show available apartments to Raymond Mariani because of Marini's Puerto Rican ancestry the respondent engaged in an unlawful act of discrimination and demonstrated untrustworthiness as a real estate broker.

2) By allowing Bugyi, who was not licensed as a real estate salesperson or broker, to ascertain from the owners of real property whether an apartment was available for rental, to discuss such availability with Mariani, and to show additional listings to Mariani, the respondent authorized, permitted and suffered Bugyi to act as an unlicensed real estate salesperson, thereby violating RPL § 442-c and demonstrating incompetency.

3) By failing to satisfy a lawfully obtained judgment against him, which failure has not been justified by a showing of financial inability, the respondent demonstrating untrustworthiness as a real estate broker.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Iosa Ardelean has violated Real Property Law §442-c and has demonstrated untrustworthiness and incompetency, and accordingly, pursuant to Real Property Law §441-c, his license as a real estate broker is suspended for a period of six months, commencing on September 1, 1993 and terminating on February 28, 1994, and upon expiration of the suspension said license shall be further suspended until such time as he shall produce proof satisfactory to the Department of State that he has fully satisfied the judgement entered against him in Carmen Mariani, Raymond Mariani and Open Housing Center, Inc. v Banat Realty, Vera Bugyi, John Doe, Saban Bajrktarevic, Iosa Ardelean and Kaja Bajrktarevic, United States District Court, Eastern District of New York, CV 86-2895.

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