

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-

**LESLIE BHAGWANDIN,**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on October 23, 1997 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of Nardin Real Estate Inc. (hereinafter "Nardin"), 4351 White Plains Road, Bronx, New York 10466, did not appear.

The complainant was represented by Supervising License Investigator Bernard Friend.

**COMPLAINT**

The complaint alleges that the respondent permitted a person to engage in unlicensed real estate activity.

**FINDINGS OF FACT**

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail addressed to him, and delivered on September 6, 1997, at his last known business address (State's Ex. 1).

2) The respondent is, and at all times hereinafter mentioned was, duly licensed as a real estate broker representing Nardin (State's Ex. 2 and 7).

3) From September, 1991 through June, 1993 the respondent permitted Ewan Peart, who at the time was not licensed as either a real estate salesperson or broker (State's Ex. 3), to act as a real estate salesperson in the rental or placing for rent of real property

on behalf of Nardin, and caused him to be compensated by Nardin for that unlicensed activity (State's Ex. 4, 5 and 6).

**OPINION**

I- Pursuant to Real Property Law (RPL) §441-e[2], before imposing disciplinary sanctions on a licensed real estate broker the complainant must, at least ten days prior to the hearing, serve notice of the charges on the respondent. Such service may be made by, among other methods, mailing the notice of hearing and complaint to the respondent by certified mail addressed to the respondent at his or her last known business address. Such a mailing was made in this case, and the return receipt provided by the United States Postal Service evidences that the notice of hearing and complaint was received. Therefore, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served, the holding of an ex parte quasi-judicial administrative hearing was permissible. *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weiss* 118 DOS 93.

II- A real estate broker who or which has an unlicensed salesperson associated with him or it is guilty of a misdemeanor, RPL §442-c, and of demonstrating incompetency. *Doherty v Cuomo*, 64 AD2d 847, 407 NYS2d 337 (1978), app. disp. 45 NY2d 960, 411 NYS2d 566; *Division of Licensing Services v Fishman*, 153 DOS 92. Such an association is also a violation of RPL §440-a. A real estate salesperson is a person associated with a real estate broker with the purpose of, among other things, renting or placing for rent any real property, RPL §440[3], the activities in which Ewan Peart engaged on behalf of Nardin.

III- Inasmuch as a real estate broker is obligated to supervise the activities of the corporation which he or she is licensed to represent, RPL §§441 and 441-b[2], *Division of Licensing Services v Shulkin*, 4 DOS 90, the respondent can and should be held responsible for the unlicensed activities of Ewan Peart.

**CONCLUSIONS OF LAW**

By allowing an unlicensed person to act as a real estate salesperson on behalf of Nardin, and by causing him to be compensated for his unlicensed brokerage activity, the respondent violated RPL §442-c and demonstrated incompetency.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Leslie Bhagwandin has violated Real Property Law §442-c and has demonstrated incompetency as a real estate broker, and accordingly, pursuant to Real Property Law §441-c, he shall pay a fine of \$750 to the Department of State on or before November 28, 1997. Should he fail to pay to pay the fine all licenses as a real estate broker issued to him shall be suspended for a period commencing on December 1, 1997 and terminating

two months after the receipt by the Division of Licensing Services of his license certificate(s) and pocket card(s). He is directed to send the fine or his license certificate(s) and pocket card(s) to Diane Ramundo, Customer Service Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, NY 12208.

Roger Schneier  
Administrative Law Judge

Dated: October 30, 1997