

STATE OF NEW YORK  
DEPARTMENT OF STATE

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In the Matter of the Complaint of

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

Complainant,

**DECISION**

-against-

**GLEN A. BIGNESS d/b/a BIGNESS REALTY,**

Respondent.

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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 May 3, 1994 at the New York State Office Building located at 333 East Washington Street, Syracuse, New York.

The respondent, of 113 Hartley Street, Syracuse, New York 13202, did not appear. The following day I received a telephone call from him, in which he advised me that he had entered the wrong date on his calendar and asked for an opportunity to appear. I advised him to send a written request, and when one was received on May 12, 1994 a notice was sent to the respondent advising him that the matter would be re-opened on June 14, 1994 at the Department of State office located at 162 Washington Avenue, Albany. On June 14 the respondent telephoned me at that address and advised me that he had mistakenly gone to the Syracuse office. I told him that the matter would not be calendared again, but that he could submit a written response to the complaint. He said that he would, but as of the date of the writing of this decision, none had been received.

The complainant was represented by Compliance Officer William Schmitz.

**COMPLAINT**

The complaint alleges that the respondent has failed to satisfy a lawful judgement obtained against him and has thereby demonstrated untrustworthiness and incompetency.

### FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by personal delivery on February 11, 1994 after he had failed to claim the notice previously sent to him by certified mail (Comp. Ex. 1).

2) The respondent is duly licensed as a real estate broker d/b/a Bigness Realty at 113 Hartley Street, Syracuse, New York 13203, and as representative of Robar General Funding Co. d/b/a Oakbrook Realty at 26 Copeland Avenue, Homer, New York 13077 (Comp. Ex. 2 and 3).

3) On April 21, 1992, in the Small Claims Part of the City Court of Syracuse, Michael and Brenda Steinberg obtained a default judgement against the respondent in the amount of \$2020.58 including costs (Comp. Ex. 4). The respondent did not appeal from the judgement, and as of the date of the hearing it had not been satisfied.

The judgement arose out of the respondent's operation of a contracting business, his failure to properly complete a job for which the Steinbergs had paid \$2,470.00 and had purchased \$650.17 worth of materials, and his presentment of receipts for supplies unrelated to the job. After the judgement was entered the respondent offered to complete the job, but, because his past conduct the Steinbergs, acting through their attorney, rejected the offer (Comp. Ex. 4).

### OPINION

"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. The fact that the judgement did not arise out of the respondent's activities as a real estate broker is irrelevant. Dovale v Patterson, 85 AD2d 602, 444 NYS2d 694 (1981).

A real estate broker acts in an agency capacity. L.A. Grant Realty, Inc. v Cuomo, 58 AD2d 251, 396 NYS2d 524 (1977). The relationship of agent and principal is fiduciary in nature, "...founded on trust or confidence reposed by one person in the integrity and fidelity of another." Mobil Oil Corp. v Rubinfeld, 72 Misc.2d 392, 339 NYS2d 623, 632 (Civil Ct. Queens County, 1972). Included in the fundamental duties of such a fiduciary are good faith and undivided loyalty, and full and fair disclosure. The object of these rigorous standards of performance is to secure fidelity from the agent to the principal and to insure the transaction of the business of the agency to the best advantage of the principal.

Department of State v Short Term Housing, 31 DOS 90, conf'd. sub nom Short Term Housing v Department of State, 176 AD 2d 619, 575 NYS2d 61 (1991); Department of State v Goldstein, 7 DOS 87, conf'd. Sub nom Goldstein v Department of State, 144 AD2d 463, 533 NYS2d 1002 (1988).

The judgement which the respondent has not satisfied arose out of his failure to complete work for which he had been paid in advance and, a fact which is particularly disturbing, out of his submission of receipts under false pretenses. Those circumstances create grave doubt as to the respondent's ability to faithfully fulfill his fiduciary duties, and require the imposition of a penalty which, it is to be hoped, will impress upon him the seriousness of his obligations to his principals and the importance of avoiding any such misconduct in the future.

#### **CONCLUSIONS OF LAW**

By failing to satisfy the judgment obtained against him by the Steinbergs the respondent has demonstrated untrustworthiness as a real estate broker.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Glen A. Bigness has demonstrated untrustworthiness, and accordingly, pursuant to Real Property Law §441-c, he shall pay a fine of \$1000.00 to the Department of State on or before August 31, 1994, and should he fail to pay the fine then all licenses issued to him as a real estate broker or salesperson shall be suspended for a period of two months, commencing on September 1, 1994 and terminating on October 31, 1994, both dates inclusive, and upon payment of the fine or completion of the license suspensions in lieu thereof, his licenses shall be further suspended until such time as he has produced satisfactory proof that he has fully satisfied the judgment in Steinberg v Bigness, City Court of Syracuse Index No. SC-92-0318.

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