

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-

FRANCES A. BONET,

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 November 14, 1994 at the office the Department of State located at 270 Broadway, New York, New York.

The respondent, of Alfred K. Heinemann Real Estate Corp., 140 Merrick Road, Lynbrook, New York 11563, was represented by Albert A. D'Agostino, Esq., Minerva & D'Agostino, 107 South Central Avenue, Valley Stream, New York 11580.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint alleges that the respondent violated Real Property Law (RPL) §443.3 by failing to provide a disclosure form to a tenant, and by failing to obtain a signed acknowledgement from him.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail (State's Ex. 1).

2) The respondent is, and at all times hereinafter mentioned was, a duly licensed real estate salesperson associated with Alfred K. Heinemann Real Estate Corp. (State's Ex. 3).

3) On or about March 1, 1993 the respondent began to assist Lawrence Lombardo in his attempt to locate an apartment to rent. She did not provide him with a copy of the disclosure form set forth in

RPL §443[4] and, accordingly, did not obtain his signed acknowledgment of receipt.

The respondent did have Mr. Lombardo execute a "rental acceptance agreement" in which he acknowledged his liability to pay a commission to "Heinemann Realtors" should he accept an apartment found by them (State's Ex. 2, Resp. Ex. A)¹.

OPINION

RPL §443[3] provides that a real estate broker must provide an agency relationship disclosure form to a buyer of residential real property, and must obtain a signed acknowledgement from the buyer, at the time of the first substantive contact with the buyer. A "buyer" is defined as a transferee or lessee (RPL §443[1][b]), and "residential real property" is property improved by a one to four family dwelling to be used or occupied as a home or residence (RPL §443[1][f]).

The evidence establishes that Mr. Lombardo was a buyer as defined by the statute. However, the record is entirely devoid of evidence as to the nature of the buildings involved in the respondent's search for an apartment for him.² While the tribunal is aware that many rentals in the area involved occur in one to four family dwellings, it cannot, without some supporting evidence, conclude that Mr. Lombardo, and the respondent acting on his behalf were looking for an apartment in those types of dwellings, rather than in a larger apartment house. It follows that it is not possible to conclude that the respondent was required to provide Mr. Lombardo with a disclosure form.

CONCLUSIONS OF LAW

The complainant has failed to meet its burden of proving by substantial evidence an essential element of the violation charged. State Administrative Procedure Act §306. Accordingly, the charge that the respondent violated RPL §443 must be dismissed.

¹ Mr. Lombardo did not in fact ever rent an apartment located by the respondent.

² Part of State's Exhibit 2 is a copy of apartment listings. That list includes the addresses but not the size or type of the buildings containing the apartments.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the charges herein against Frances A. Bonet are dismissed.

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:

Phillip M. Sparkes
Special Deputy Secretary of State