

STATE OF NEW YORK  
DEPARTMENT OF STATE

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In the Matter of the Application of

**MANUEL CARPIO**

DECISION

For a License as a Real Estate Broker

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on December 14, 1995 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 361 5th Avenue, P.O. Box 154061, Brooklyn, New York 11215-0461, was represented by Reginald Casimir, Esq., 361 Firth Avenue, Brooklyn, New York 11215.

The Division of Licensing Services (hereinafter "DLS") was represented by Supervising License Investigator William Schmitz.

**ISSUE**

The issue before the tribunal is whether the applicant should be denied a license as a real estate broker because he has failed to comply with the terms of a determination revoking his previously held license.

**FINDINGS OF FACT**

1) The applicant was previously licensed as a real estate broker. That license was revoked on June 1, 1993 after a hearing which resulted in findings that, in a transaction which occurred in early 1991, he had: acted as an undisclosed double agent by representing simultaneously the diverse interests of sellers and buyers in a real estate transaction; engaged in the unauthorized practice of law by giving legal advise pertaining to, and preparing documents significantly affecting the legal rights of, the sellers and buyers, and by discouraging the buyers from seeking the advice of an attorney; and engaged in fraud and a fraudulent practice in that subsequent to witnessing and certifying the signatures of the sellers on a deed of transfer he altered the name of the grantee on the instrument and offered it to a public servant for filing, which was done because the actual grantee was an applicant for public assistance. As a condition of the consideration of any future application for a license pursuant to Real Property Law (RPL) Article 12A, the applicant was directed to refund to Phunamattee

Balram and Jairam Balram the sum of \$3,500.00, the commission paid by them, plus interest at the rate of 9% from March 29, 1991. Division of Licensing Services v Manuel E. Carpio d/b/a Dentone Realty Co., 63 DOS 93. The applicant has not made the refund.

2) By application dated April 26, 1995 the applicant applied for a license as a real estate broker d/b/a Dentone Realty Co., and disclosed the prior revocation (State's Ex. 3).

3) By letter date May 25, 1995 the applicant was advised that DLS proposed to deny his application because he had failed to make the refund and had not demonstrated the trustworthiness and/or competency required of a real estate broker, and that he could request an administrative review. By letter dated June 28, 1995 Mr. Casimir requested such a review on behalf of the applicant, and by letter dated August 12, 1995 the applicant was advised that, after conducting an administrative review, DLS continued to propose to deny the application. Again acting on behalf of the applicant, by letter dated August 14, 1995, Mr. Casimir requested an administrative hearing. Accordingly, a notice of hearing was served on the applicant by certified mail on November 1, 1995 (State's Ex. 1).

3) Sometime after the revocation of his broker's license the applicant visited the premises which had been sold and attempted, unsuccessfully, to locate Mr. and Mrs. Balram. In June, 1994, a year after receipt of the hearing decision, the applicant went to 390 Essex Street, Brooklyn, New York, the address to which the Balrams had told him, at the time of the sale of their property, they were moving, but was unable to speak with anyone.

The applicant's next attempt to locate the Balrams was in October 1994, when he again visited 390 Essex Street. At that time he was told by the current residents of the two family house that the Balrams, whom they subsequently described as friends (App. Ex. A), had lived at 390 Essex Street only temporarily and that their current whereabouts were unknown.

The applicant never attempted to contact the Balrams by mail, certified or otherwise, and never otherwise contacted the Postal Service to determine if the Balrams had left a forwarding address. At the hearing he suggested that he could do so if so directed.

4) The applicant has offered to deliver to the Department of State a bank check for the refund, to be held by it for the benefit of the Balrams for a period during which it may locate the Balrams (State's Ex. 2). He has also acknowledges that he requires additional training as a real estate broker, and has offered to take the real estate broker's course should his application be granted.

**OPINION AND CONCLUSIONS OF LAW**

As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that he is entitled to be licensed as a real estate broker. State Administrative Procedure Act (SAPA), §306(1). Substantial evidence is that which a reasonable mind could accept as supporting a conclusion or ultimate fact. Gray v Adduci, 73 N.Y.2d 741, 536 N.Y.S.2d 40 (1988). "The question...is whether a conclusion or ultimate fact may be extracted reasonably--probatively and logically." City of Utica Board of Water Supply v New York State Health Department, 96 A.D.2d 710, 465 N.Y.S.2d 365, 366 (1983)(citations omitted). That burden includes proving that he is sufficiently trustworthy and competent. RPL §441[1][d].

The 1993 decision revoking the applicant's prior license as a real estate broker provides that as a condition of consideration of any application by the applicant for a license pursuant to RPL Article 12A he must make the stated refund to the Balrams. That decision was not appealed, and, consistent with the doctrine of res judicata, is binding on both the applicant and the tribunal. Evans v Monaghan, 396 NY2d 312; 2 Frank E. Cooper, State Administrative Law Chapter XV §5 (1965). However, the tribunal must consider whether, under the current circumstances, the continued imposition of the conditions is unreasonable. Beirne v Paterson, 86 AD2d 947, 448 NYS2d 594 (1982).

There is no doubt that the applicant's efforts to comply with the refund order have been insufficient. His first attempt, made several months after he received the order, was to visit the property which the Balrams had sold more than two years earlier and from which he knew they had moved. Such an attempt was predestined to fail. The second and third attempts, a full year and more after his receipt of the order, were to visit the address to which the Balrams had moved after the sale. He never attempted to find out if they had left a forwarding address with the Postal Service, and only now suggests that he might do so.

In spite of the applicant's woefully inadequate attempts to make the refund, the tribunal must consider whether there is any reasonable possibility that, at this late date, he will be successful in locating the Balrams. I think not. Rather, it appears highly likely that by requiring un-modified compliance with the refund requirement the revocation will be made permanent, contrary to RPL §441-c[4], which allows for the possibility relicensing after a period of one year from revocation.

Using the facilities available to it as a government agency, it is possible that DLS can locate the Balrams and assure that they receive the money which is due them, which, as of the date of the hearing, amounted to \$4,985.25, and which is accruing additional interest at the rate of \$.86 a day. But the applicant's suggestion

that DLS should hold the money only for some period of time while it attempts to locate the Balrams is not acceptable, as it encompasses the strong possibility of the money being returned to him. Rather, should DLS be unable to locate the Balrams it would be more equitable for the money to be paid to the abandoned property fund pursuant to Abandoned Property Law Article III, in which eventuality the Balrams might at some time make application for it pursuant to Abandoned Property Law Article XIV.

From his testimony it is obvious that even today the applicant does not fully appreciate the reasons for the revocation of his license. Therefore, the granting of the application must also be conditioned upon the applicant establishing his competency. He has suggested that once granted the license he would be willing to take a real estate broker's course. It would be more appropriate for him to take such a course prior to licensure. Further, he should be required to establish his competency by passing the licensing examination before the issuance of the license.

#### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** the application of Manuel Carpio for a license as a real estate broker is granted subject to the satisfaction of the following conditions prior to the issuance of the license:

1) The applicant shall deliver to the Department of State, Division of Licensing Services, a cashier's check drawn on a New York State bank, payable to Phunamattee Balram and Jairam Balram, in the amount of \$4,985.25 plus \$.86 additional interest for each day from December 14, 1995 until delivery of the check. The Division of Licensing Services shall attempt to locate the payees and deliver the check to them, but should they be unable to do so the check shall not be returned to the applicant, but shall be retained until such time as the funds are paid to the abandoned property fund;

2) The applicant shall submit to the Division of Licensing Services proof that subsequent to the date of this decision he successfully completed an approved ninety hour real estate broker course as provided for in Real Property Law §441[1][d]; and

3) The applicant shall take and pass the real estate broker licensing examination provided for in Real Property law §441[1][d].

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:

ALEXANDER F. TREADWELL  
Secretary of State  
By:

Michael E. Stafford, Esq.  
Chief Counsel