

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-

LUTHER G. GOODE,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on December 2, 1998 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent did not appear.

The complainant was represented by Litigation Counsel Laurence Soronen, Esq.

COMPLAINT

The complaint alleges that the respondent, a real estate salesperson, acted as a real estate broker although not so licensed, attempted to collect a commission directly from a client, failed to disclose to his client the essential terms of an agreement into which he and she had entered, and failed to disclose his status as a real estate agent to a party to a regulated transaction.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail delivered at his last known business address on September 16, 1998. A subsequent notice of adjournment was mailed to the respondent by regular first class mail addressed to him at the same address (State's Ex. 1).

2) From October 8, 1996 through October 20, 1997 the respondent was licensed as a real estate salesperson in association with Hasse Realty, 4505 Avenue D, Brooklyn, New York 11203. From October 20, 1997 through October 8, 1998 he was licensed as a real

estate salesperson in association with Metro King Realty, 4515 Avenue N, Brooklyn, New York (State's Ex. 1).

3) On or about September 10, 1997 the respondent entered into a "Consulting Services Agreement" with Edna Clarke, pursuant to which he agreed "to consult Miss Edna Clarke and assist her in the purchase of real estate for a flat fee" of \$5,000.00. The agreement did not state who would be responsible for that payment (Ms. Clarke or the seller), the respondent did not explain to Ms. Clarke who would have to pay, and Ms. Clarke was unaware of who would have that responsibility (State's Ex. 1). The respondent eventually located a home for Ms. Clarke to purchase (State's Ex. 3). That purchase came to fruition, but, because of objections by Ms. Clarke's attorney, the respondent was never paid the \$5,000.00.

4) In his dealings with the seller of the home purchased by Ms. Clarke the respondent never disclosed the capacity in which he was acting.

5) The respondent entered into the agreement with Ms. Clarke entirely without the knowledge of his employing broker in spite of the fact that he had first come into contact with Ms. Clarke in his capacity of a salesperson associated with that broker (State's Ex. 2 and 3).

OPINION AND CONCLUSIONS OF LAW

I- The holding of an ex parte quasi-judicial administrative hearing was permissible, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served. Real Property Law (RPL) §441-e[2]; *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

II- The fact that the respondent's license has expired does not divest this tribunal of jurisdiction to impose disciplinary sanctions for acts which occurred prior to that expiration. *Albert Mendel & Sons, Inc. v N.Y. State Department of Agriculture and Markets*, 90 AD2d 567, 455 NYS2d 867 (1982); *Main Sugar of Montezuma, Inc. v Wickham* 37 AD2d 381, 325 NYS2d 858 (1971).

III- Real Property Law (RPL) §440-a provides that no person shall engage in the business of, or act temporarily or otherwise as, as real estate broker without being so licensed. A real estate broker is, among other things, a person who attempts to negotiate the sale of an interest in real estate. RPL §440(1). The respondent entered into an agreement with Ms. Clarke to assist her in the purchase of real property, and, in fact, assisted her in such a purchase. Assisting the purchaser of real property is, of course, assisting in the sale of real property. Thus, the respondent's conduct fell within the defined activities of a real estate broker. Since those activities occurred without the

knowledge and supervision of his employing broker, they did not fall under the protection of the respondent's license as a real estate salesperson. RPL §§440(3), 441(1)(d) and 442-c, and 19 NYCRR 175.21; *Division of Licensing Services v Miles*, 158 DOS 92. Thus the respondent violated RPL §440-a, and, in the process, demonstrated untrustworthiness.

IV- RPL §442-a states:

"No real estate salesman in anyplace in which this article is applicable shall receive or demand compensation of any kind from any person, other than a duly licensed real estate broker with whom he associated, for any services rendered or work done by such salesman in the appraising, buying, exchanging, leasing, renting or negotiating of a loan upon real estate."

The respondent contracted with Ms. Clarke to receive just such a payment. He has, therefore, violated RPL §442-a.

V- With the execution of the "Consulting Services Agreement" with Ms. Clarke the respondent became her agent. 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. Such duties are imposed upon real estate licensees by license law, rules and regulations, contract law, the principals of the law of agency, and tort law. *L.A. Grant Realty, Inc. v Cuomo* 58 AD2d 251, 396 NYS2d 524 (1977). 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 respondent fell short of the full performance of his fiduciary duties when he failed to explain to Ms. Clarke who would be responsible for payment of the \$5,000.00 fee. He thereby demonstrated untrustworthiness and incompetence.

VI- Real estate brokers have a fundamental duty to deal honestly with the public. *Division of Licensing Services v John Linfoot*, 60 DOS 88, conf'd. *sub nom Harvey v Shaffer*, 156 AD2d 103, 549 NYS2d 296 (1989). In failing to disclose to the sellers of the

home the capacity in which he was acting the respondent breached that duty and demonstrated untrustworthiness.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Luther G. Goode has violated Real Property Law §§440-a and 442-a and has demonstrated untrustworthiness and incompetency as a real estate salesperson. Accordingly, pursuant to Real Property Law §442-c, his license as a real estate salesperson shall be deemed to have been revoked effective this date.

Roger Schneier
Administrative Law Judge

Dated: December 9, 1998