

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-

**DIVINE KIRKMAN,**

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 December 20, 1993 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of El Mundo Realty Inc., 109-02 Jamaica Avenue, Richmond Hill, New York 11418, having been advised of his right to be represented by an attorney, appeared pro se.

The complainant was represented by Compliance Officer William Schmitz.

**COMPLAINT**

The complaint in the matter alleges that the respondent rented an apartment to a tenant without the authorization of the landlord, in violation of 19 NYCRR 175.10.

**FINDINGS OF FACT**

1) Notice of hearing together with a copy of the complaint was personally served on the respondent on November 24, 1993 (Comp. Ex. 1).

2) The respondent is duly licensed as a real estate salesperson in association with El Mundo Realty Inc., 109-02 Jamaica Avenue, Richmond Hill, New York (Comp. Ex. 2). At all times hereinafter mentioned he was licensed as a real estate salesperson in association with real estate broker Joseph Felix at 1272 Broadway, Brooklyn, New York.

3) Sometime in the Fall of 1991 a man named Franklin, who claimed to be the manager and superintendent of a six family apartment building located at 953 Lafayette Avenue, Brooklyn, New York, went to the respondent's office, asked him to find a tenant for an apartment in that building, and gave him the keys to the apartment. The respondent had previously found tenants for other apartments in the building on Franklin's request without incident.

The respondent showed the apartment to Velma Wilkins. Wilkins gave the respondent money for rent, security, and a brokerage commission, which the respondent turned over to Felix, and the respondent contacted Franklin, who eventually told the respondent to draw up a lease for the apartment and to sign it as agent for the landlord, which the respondent did (Comp. Ex. 3). Subsequently, however, the respondent and Felix were confronted by Ralph Lewis, the actual owner of the building. Lewis was unhappy with the tenancy of Wilkins and claimed that he had never authorized Franklin to rent the apartment. Wilkins was evicted from the apartment, and Felix returned to her all of the money which she had given to the respondent.

#### OPINION AND CONCLUSIONS OF LAW

19 NYCRR 175.10 provides that "(a) real estate broker shall never offer a property for sale or lease without the authorization of the owner." Since a real estate salesperson may only work in association with, and under the supervision of a licensed real estate broker (Real Property Law [RPL] §§440[3], 441[1][d], 441-a, 441-d, 442, and 442-b; 19 NYCRR 175.13, 175.14, and 175.21), the regulation applies equally to real estate salespersons.

Inasmuch as the respondent did not have the authorization of the owner of the building, he violated the regulation when he showed the apartment to Wilkins. In view of the circumstances, however, that violation did not rise to the level of untrustworthiness or incompetency so as to justify the imposition of sanctions pursuant to RPL §441-c.

Franklin represented himself to the respondent as being the manager of the building with authorization to rent apartments in it. Acting on that representation the respondent had previously, and without incident, obtained tenants for apartments in that building. Therefore, when Franklin again presented himself to the respondent, asked him to obtain another tenant, and gave him the keys to the apartment, it was not unreasonable for the respondent to believe that he had valid authorization to offer the apartment for rent.<sup>1</sup>

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<sup>1</sup> Since the issue has not been raised in this proceeding, no opinion is expressed on what the propriety of the respondent's  
(continued...)

DETERMINATION

**WHEREFORE, IT IS HEREBY DETERMINED THAT** the charges herein against Divine Kirkman 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:

James N. Baldwin  
Executive Deputy Secretary of State

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<sup>1</sup>(...continued)  
conduct would have been had this been the first apartment which he had shown on Franklin's direction and without receiving proof of Franklin's authority to authorize such showings. He is admonished that failure to obtain such proof in future transactions may result in the imposition of disciplinary sanctions against him.