

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-

**MARIE M. PARENTI d/b/a PARENTI 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 June 14, 1993 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of Monarch Center, Suite 104, Box 26, Moriches, New York 11955 was represented by David K. Lieb, Esq., 376A Main Street, Center Moriches, New York 11934.

The complainant was represented by Compliance Officer William Schmitz.

**COMPLAINT**

The complaint in the matter alleges that the respondent rented an illegal apartment, thereby demonstrating untrustworthiness and incompetency.

**FINDINGS OF FACT**

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

2) Marie M. Parenti is licensed as a real estate broker representing Marie Parenti Realty Inc. located at Monarch Center, Suite 104, Box 26, Moriches, New York 11955, and in her individual name at 1186 Montauk Highway, P.O. Box 89, Mastic, New York 11950. She does not hold any license in the name "Parenti Realty" (Comp. Ex. 2).

3) On March 6, 1990 the respondent negotiated the rental to Eileen Maroccio of a three bedroom apartment located in a two family house at 404 Birchollow Road, Shirley, New York. She was compensated with a

\$775.00 commission paid to her by the Suffolk County Department of Social Services. The respondent was aware that two family houses were generally not legal in the area, and so she asked the landlord, Robert Bloomfield, about the legal status of the house. He told her that there had been a legal conversion of a formerly single family house. When the respondent asked for documentation, Bloomfield told her that he had just purchased the house and had not yet received the certificate of occupancy from his attorney, and he gave her a letter stating that the conversion was legal. The respondent accepted that letter, and made no independent inquiries to determine if what Bloomfield had said was true. In fact, the house had a certificate of occupancy for one family use only.

The evidence is conflicting as to whether at the time that the respondent effectuated the rental both apartments in the house were occupied. In a conversation with License Investigator Sam Napolitano she said that Bloomfield was living in the house, and she repeated that admission in a letter dated June 22, 1992 (Comp. Ex. 4). In her testimony at the hearing, however, she stated that the entire house was vacant at the time she effectuated the rental. She also testified, however, that Bloomfield had told her that he intended to reside in the second apartment. Therefore, I find that the respondent knew that as a result of the rental which she negotiated both apartments would be occupied.

#### OPINION

I- Conduct by a licensed real estate broker which has the effect of violating or encourages violation of local zoning and occupancy regulations has, on several occasions, been held to be a demonstration of untrustworthiness and incompetency. Department of State v Delza B. Smith, 150 DOS 80, conf'd. sub nom Smith v Paterson, 88 A.D.2d 917, 450 N.Y.S.2d 577 (1982); Division of Licensing Services v Rabizadeh, 27 DOS 92; Division of Licensing Services v J.R. Valino Your Realty Co., Inc., 19 DOS 90; Division of Licensing Services v Frank Dell'Accio, Jr., 15 DOS 88.

The complainant has established that the respondent effectuated the rental of an apartment in an illegal two family house knowing that such houses were generally illegal in the area, and knowing either that at the time of the rental the second apartment in the house was already occupied, or that the owner of the house intended to occupy that second apartment. The complainant further established that in spite of her suspicions about the legality of the occupancy the respondent accepted, without seeing a certificate of occupancy, the owner's unsupported statement that the occupancy was legal.

Where a real estate broker is aware that two family dwellings are generally not permitted in a particular area, she has an obligation to make reasonable inquiry into the legality of the situation when she is asked to effectuate a rental in such a dwelling. She cannot naively rely on the unsupported statement of the owner of the house, who has a

strong motive to misrepresent the legal status of the house. She either must insist on being shown the certificate of occupancy, which in this case might have meant visiting the owner's attorney's office, or must confirm the legal status of the property by contacting the local building department.

II- Where a broker has received money to which she is not entitled, she may be required to return it, together with interest, as a condition of retention of his license. Kostika v Cuomo, 41 N.Y.2d 673, 394 N.Y.S.2d 862 (1977); Zelik v Secretary of State, 168 AD2d 215, 562 NYS2d 101 (1990); Edelstein v Department of State, 16 A.D.2d 764, 227 N.Y.S.2d 987 (1962).

#### **CONCLUSIONS OF LAW**

1) By effectuating the rental of an apartment in a dwelling in which she knew that two apartments would be occupied, in a situation in which she had reason to believe that the dwelling was an illegal two family house, which was in fact the case, without first making reasonable efforts to ascertain what the legal status of the property was, the respondent demonstrated incompetency as a real estate broker.

2) The respondent may not be allowed to profit from her incompetent conduct in effectuating an illegal rental, and should be ordered to refund the commission paid to her as a result of that rental.

#### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Marie M. Parenti has demonstrated incompetency as a real estate broker, and accordingly, pursuant to Real Property Law §441-c she shall pay a fine of \$500.00 to the Department of State on or before September 30, 1993, and should she fail to pay the fine then her license as a real estate broker shall be suspended for a period of one month, commencing on October 1, 1993 and terminating on October 31, 1993, and

**IT IS FURTHER DETERMINED THAT** upon payment of the fine or expiration of the suspension the respondent's license as a real estate broker shall be further suspended until she shall produce proof satisfactory to the Department of State that she has refunded the sum of \$775.00, plus interest at the legal rate for judgements from October 1, 1993, to the Suffolk County Department of Social Services.

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