

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-

**MARTIN L. SANDBERG,**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on March 16, 1998 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 44 Mile Road, Suffern, New York 10901 chose not to be present, but was represented by Alicia K. Sandberg, Esq., 508 Mt. Holly Road, Katonah, New York 10536.

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

**COMPLAINT**

The complaint alleges that the respondent, a licensed real estate broker and commissioned notary public, was disbarred as an attorney based upon his sworn written acknowledgement that he could not successfully defend himself on the merits against disciplinary charges, and that by reason thereof his license and commission should be revoked.<sup>1</sup>

**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 a duly licensed real estate broker pursuant to a license issued on August 30, 1996 and expiring on

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<sup>1</sup> Other charges contained in the complaint were withdrawn at the hearing by the complainant.

August 30, 1998, and a duly commissioned notary public pursuant to a commission renewed on May 31, 1997 and expiring on May 31, 1999. Both the license and the commission were issued by reason of his being an attorney at law in the State of New York (State's Ex. 1).

3) On or about December 9, 1996 the respondent was disbarred and his name was stricken from the roll of attorneys and counselors-at-law. *Matter of Sandberg*, 226 AD2d 97, 651 NYS2d 113. In its decision the Supreme Court, Appellate Division, Second Judicial Department, found that the respondent had tendered his resignation, averring that he was fully aware of a pending investigation, acknowledging that the charges would include allegations of failure to account to the law firm of which he was a partner for certain legal fees totalling \$85,937 paid by clients for legal services rendered and which he deposited in his personal bank accounts, and depositing in excess of \$600,000 in personal bank accounts while maintaining no records as to the amounts, identity or sources of legal fees paid by clients of his law firm. The Court stated that the respondent had acknowledged that he could not successfully defend himself on the merits against any disciplinary charges which would be initiated against him, and that his resignation was freely and voluntarily tendered without coercion or duress.

#### MOTION FOR ADJOURNMENT

Counsel for the respondent sought an adjournment on the grounds that the respondent was facing a possible criminal prosecution arising out of the same transactions as underlie his disbarment, and that although he wished to testify in his defense, to do so might jeopardize his defense in the criminal matter. The motion was denied. *Oleshenko v NYS Liq. Auth.*, 21 NY2d 778, 288 NYS2d 474 (1968); *Langemyr v Campbell*, 21 NY2d 796, 288 NYS2d 629 (1968); *Matter of Manigaulte*, 63 Misc2d 765, 313 NYS2d 322 (Supreme Court, Suffolk County, 1970).

#### OPINION

I- The relationship of a real estate broker and his or her clients 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).

Likewise, a member of a partnership is a fiduciary of the other partners. *Birnbaum v Birnbaum*, 73 NY2d 461, 541 NYS2d 746 (1989). In misapplying funds belonging to the law firm of which he was a partner the respondent breached his fiduciary duties to that partnership. His conduct was a clear demonstration of untrustworthiness which, although not arising out of his activities as a real estate broker, may serve as the basis for the revocation of his license. *Matter of Dovale*, 85 AD2d 602, 444 NYS2d 694 (1981).

As a real estate broker the respondent has fiduciary duties with regards to the handling of money belonging to his principals similar to those which he abused as an attorney. 19 NYCRR 175.1, 175.2, and 175.3, and the tribunal has been presented with no evidence or argument which would reasonably lead to the conclusion that he can be trusted to fulfill those fiduciary duties any more than he fulfilled his fiduciary duties as a partner in a law firm.

II- The fundamental function of a notary public is the authentication of documents. The acts of misconduct of which to which the respondent has admitted, and for which he was disbarred, warrant, pursuant to Executive Law §130, the revocation of his commission as a notary public, as it is clear from the respondent's conduct that he cannot be trusted to perform his duties as a notary honestly. *Division of Licensing Services v Erdheim*, 80 DOS 94.

III- The respondent was granted his license as a real estate broker and his commission as a notary public by virtue of his being an attorney. Accordingly, he was not required to meet any of the educational, experiential, or character standards imposed by the governing statutes. Real Property Law (RPL) §442-f; Executive Law §130. See *Huber v Shaffer*, 160 Misc2d 923, 611 NYS2d 998 (1993). He is no longer an attorney and, therefore, the basis on which his license and commission were issued no longer exists. Thus, even if the acts underlying his disbarment did not provide more than sufficient grounds for the revocation of his license and commission he would still not be entitled to that license and commission.

#### CONCLUSIONS OF LAW

1) The respondent has demonstrated untrustworthiness warranting the revocation of his license as a real estate broker.

2) The respondent has engaged in acts of misconduct which warrant the revocation of his commission as a notary public.

3) The respondent's license as a real estate broker and commission as a notary public should be revoked inasmuch as he is no longer an attorney and, therefore, the basis upon which he was granted the license and commission is no longer valid and he no longer qualifies to hold the license and commission.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** the license as a real estate broker and the commission as a notary public of Martin L. Sandberg are revoked, effective immediately. He is directed to send his license certificate and pocket cards to Diane Ramundo, Customer Service Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, NY 12208.

Roger Schneier  
Administrative Law Judge

Dated: March 20, 1998