

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Complaint and Application
of

**DEPARTMENT OF STATE, DIVISION OF
LICENSING SERVICES,**

Complainant,

DECISION

-against-

**JOSEPH DALLOS, also known as JOSEPH
DALLOS, JR., doing business as WESTEND
PROPERTIES OF BUFFALO, LLC,**

Respondent/Applicant

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The above matter was heard by the undersigned, Scott NeJame, on January 16, 2014 at the office of the Department of State located at One Commerce Plaza, Albany, New York via teleconference with the Department of State at 65 Court Street, Buffalo, New York.

The respondent was represented by Brian J. Ruffino, Esq., Ruffino Law Firm, PC, 528 Elmwood Avenue, Suite 3, Buffalo, New York 14222.

The complainant/DLS (complainant) was represented by Senior Attorney Linda D. Cleary, Esq.

COMPLAINT

The complaint alleges that the respondent/applicant (respondent) engaged in unlicensed activity as a property manager and then applied for a license after realizing that he needed one to operate his business.

FINDINGS OF FACTS

1) The notice of hearing together with a copy of the complaint originally scheduling the matter for October 30, 2013 was served on the respondent by certified mail at his last known business address and delivered by the Postal Service on October 15, 2013. The complainant also

served Mr. Ruffino by regular mail at approximately the same time (State's Ex. 1). This is a disciplinary and an application case (State's Ex. 1).

2) On October 25, 2014, Mr. Ruffino faxed a letter to the tribunal indicating that he had a conflict on October 30, 2013 and that he needed an adjournment. That request was granted and the hearing, on consent of the complainant, was adjourned to January 16, 2014. At the hearing, Mr. Ruffino did not object to service of the notice of hearing and complaint (R¹- 6).

3) The respondent has never been licensed as a real estate broker. By application dated April 30, 2013, he applied for said license (R- 41; State's Ex. 3; Resp.'s Ex. A).

4) In 1995, after he graduated from high school, the respondent "bought a five-unit house and after that I bought more -- you know, quite a few more, I believe thirty properties after that. And in the course of that work, I -- you know, I rented property, I made all the repairs, I took care of these properties, I made the leases." (R- 16) He was a sole proprietor and manager for all his buildings (R- 18). He did most if not all the maintenance on his properties, including light electrical, plumbing, painting, woodworking, installing doors, windows (R- 20). He used an attorney for evictions and an accountant for the taxes on the properties (R- 19).

5) When his daughter was born in 2006, the respondent decided to sell his restaurant and twelve of his units (R- 21). When he sold at least one of the units, the purchaser of the unit asked and the respondent agreed to manage the property for him (R- 22). The purchaser provided the respondent with a management agreement and the respondent signed it and began managing that and other properties he sold (R- 21).

6) The respondent's real estate attorney, George Barbary, Esq., told the respondent that he should form a corporation so that he could keep his transactions--owning and managing--separate (R- 22).² Mr. Barbary formed a limited liability company for the respondent which was named Westend Properties of Buffalo, LLC, (West End) and the respondent was named as the representative of the company (R- 22; State's Ex. 3).

7) From that point onward until 2013, the respondent built up his clientele and managed between 52 and 68 properties (R- 23-24).

8) No one ever told the respondent, including his own attorney, that he needed a real estate broker's license for managing the properties (R- 23). He continued to manage the properties, like he did with his own, which involved collecting rent, doing accounting statements for the owners, showing and renting apartments, doing repairs (R- 25). Any time he needed help with evictions, he would contact his attorney to handle them (R- 25).

9) The respondent was asked why he conducted business as a property manager without a real estate broker's license and the respondent answered that "it was an honest mistake. I was not aware that I needed one. My attorney didn't tell me I needed one. Real estate -- and real estate agents also gave me properties to manage and they -- they knew I wasn't a real estate agent. They knew I wasn't a real estate broker. They just knew I was a property manager. No one told

¹ "R" refers to specific pages in the hearing transcript.

² The respondent testified already that he keeps his personal and business expenses separate.

me that I needed it. I didn't know I needed it until she [New York State Department of State License Investigator Carol Brimmer (Inv. Brimmer)] walked into my office and told me.” (R- 26)

10) When Inv. Brimmer conducted her investigation in December 2012 as the result of a complaint filed by Jenna and Marc Jacques dated in May 2012, she met with and advised the respondent he could not operate a property management business without a broker’s license. The respondent immediately ceased conducting business as a property manager for others, as in stopped collecting rent from the tenants and had them pay their rents directly to the owners. He then took the real estate broker’s exam, passed it and submitted his paperwork to the complainant (R- 26-27). He learned about using the proper forms, about commingling accounts, and about opening an escrow account for tenant deposits and rents (R- 34-36).

11) The only complaint the respondent ever received was from the Jacques who, according to the respondent, he worked with for only a few months and that “Jenna Jacques” was difficult to deal with (R- 37-38).

12) Provided by Mr. Ruffino, the respondent submitted his real estate broker completion of the 45 hour broker qualifying course; successful completion of the 75 hour salesperson pre-licensing course; certificate of satisfactory completion of the 45 hour broker qualifying course; Department of Health Housing notice of violation concerning the property located at 124 Kettering Drive, Buffalo, New York and owned by Jenna Jacques; the health inspector’s report that all violations at that address have been corrected; respondent’s statements from Frank LaDuca regarding his repairs to the property and repair invoices; the financial records from the respondent’s management of 124 Kettering Drive; and five letters of recommendation, one of which was from the Mayor of Buffalo (Resp.’s Ex. A).

13) Contrary to the letter dated May 10, 2013 provided by the complainant to the respondent proposing to deny the respondents’ license (State’s Ex. 3), Senior License Investigator Janine Barnhart testified at the hearing that the respondent possessed the transactional experience necessary for a license as a real estate broker (R- 13-14).

OPINION AND CONCLUSIONS OF LAW

I- As the party which initiated the hearing, the burden is on the complainant to prove, by substantial evidence, the truth of the charges in the complaint. State Administrative Procedure Act (SAPA) §306(1). Substantial evidence “means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact... More than seeming or imaginary, it is less than a preponderance of the evidence, overwhelming evidence or evidence beyond a reasonable doubt (citation omitted).” *300 Gramatan Avenue Associates v. State Div. Of Human Rights*, 45 NY2d 176, 408 NYS2d 54, 56-57 (1978); *Tutuianu v. New York State*, 22 AD3d 503, 802 NYS2d 465 (2nd Dept. 2005). “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 AD2d 719, 465 NYS2d 365, 366 (4th Dept. 1983), *quoting 300 Gramatan Avenue Associates v. State Div. Of Human Rights, supra*, 408 NYS2d at 57.

II- The Department of State retains jurisdiction to conduct this proceeding even though the respondent never held a real estate broker license. *Albert Mendel & Sons, Inc. v. NYS Department of Agriculture and Markets*, 90 AD2d 567, 455 NYS2d 867 (3rd Dept. 1982); *Main Sugar of Montezuma, Inc. v. Wickham*, 37 AD2d 381, 325 NYS2d 858 (3rd Dept. 1971).

III- Being an artificial entity created by law, Westend can only act through its officers, agents, and employees, and it is, therefore, bound by the knowledge acquired by and is responsible for the acts committed by its representative, the respondent, within the actual or apparent scope of his authority. *Roberts Real Estate, Inc. v. Department of State*, 80 NY2d 116, 589 NYS2d 392 (1992); *A-1 Realty Corporation v. State Division of Human Rights*, 35 AD2d 843, 318 NYS2d 120 (2nd Dept. 1970); Real Property Law §442-c.

First, the complainant alleges that the respondent conducted licensed activity as a property manager without the required real estate broker's license. This charge is sustained.

Real Property Law §440-a provides that no person or entity shall act or hold himself out as a real estate broker without applying for a real estate broker's license. In his duties as manager of the properties, the respondent and as designee of his limited liability company served in the capacity of agent for every customer they served, their principals. 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 (NY Civil Ct. 1972), *aff'd* 77 Misc.2d 962, 357 NYS2d 589, *rev'd on other grounds* 48 AD2d 428, 370 NYS2d 943; *Wende C. v. United Methodist Church*, 6 AD3d 1047, 776 NYS2d 390 (4th Dept. 2004). Included in the fundamental duties of such a fiduciary are good faith, undivided loyalty, obedience, and full and fair disclosure. *L.A. Grant Realty, Inc. v. Cuomo*, 58 AD2d 251, 396 NYS2d 524 (4th Dept. 1977); *Precision Glass Tinting, Inc. v. Long*, 293 AD2d 594, 740 NYS2d 138 (2nd Dept. 2002); *Re/Max All-Pro Realty, Inc. v. New York State Dept. of State*, 292 AD2d 831, 739 NYS2d 321 (4th Dept. 2002) (*quoting Stevens, Inc. v. Kings Vil. Corp.*, 234 AD2d 287, 288, 650 NYS2d 307 (2nd Dept. 1996)). Such duties are imposed upon real estate licensees by license law, rules and regulations, contract law, the principles of the law of agency, and tort law. 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 AD2d 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 (2nd Dept. 1988); *see also, Coldwell Banker Residential Real Estate v. Berner*, 202 AD2d 949, 609 NYS2d 948 (3rd Dept. 1994).

Included in those duties as a real estate broker are, pursuant to Real Property Law §440(1), any person or limited liability company who, for another and for a fee, rents, or offers to rent real estate, collects or attempts to collect rent for the use of real estate...

At the time that he entered into the management contracts with said property owners from 2006 through the time that he applied for a real estate broker's license on April 30, 2013, the respondent was not licensed as a real estate broker. He admittedly managed the properties of others for a fee, including but not limited to showing and renting out apartments, collecting rent, conducting evictions through an attorney, and making repairs to the properties. He therefore

violated Real Property Law §440-a and demonstrated incompetency in violation of Real Property Law §441-c.

While the respondent testified that he “made an honest mistake,” that “mistake” is not an excuse and is a violation of the law and should be sanctioned nonetheless. However, in mitigation of the respondents’ actions, he has proved to be an effective property manager having had only one complaint in his entire career spanning from 1995 through 2013. He also possesses the required transactional experience required of a real estate broker.

The tribunal will grant the respondents’ application, but as a sanction, will fine him and his limited liability company a total of \$2,000, \$1,000 for each entity. Upon payment of the fine, his license shall be granted.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT respondents Joseph Dallos, also known as Joseph Dallos, Jr., doing business as Westend Properties of Buffalo, LLC, engaged in unlicensed activities requiring a real estate broker’s license in violation of Real Property Law §440-a and thereby demonstrated incompetency in violation of Real Property Law §441-c. His application for a license will be granted after the respondents pay a fine of \$2,000 to the Department of State on or before May 15, 2014. Should they fail to pay the fine by that date, their license as a real estate broker and limited liability broker will not be granted until payment of the \$2,000 fine, plus interest from the May 15, 2014. The respondents are directed to send a certified check or money order for the fine payable to “Secretary of State,” by certified mail, to Norma Rosario, Department of State, Division of Licensing Services, One Commerce Plaza, 99 Washington Avenue, 6th Floor, Albany, New York 12231-0001.

/s/

Scott NeJame
Administrative Law Judge

Dated: April 21, 2014