

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**

Complaint No.: 2016-1709, 1711, 2072

-against-

**JEANINE RUTHERFORD-ORTIZ,  
RIVERVIEWS REAL ESTATE LLC, and  
RICK ORTIZ aka ARSENIO R. ORTIZ,**

Respondents.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on March 6, 2019 at the office of the Department of State located at 123 William Street, New York, New York.

The respondents did not appear.

The complainant was represented by Matthew Wolf, Esq.

**COMPLAINT**

The complaint alleges that the respondent real estate brokers and salesperson engaged in deceptive acts or practices and retained unearned commissions, that respondent Rutherford-Ortiz failed to cooperate with the complainant's investigation, and that the respondent salesperson has been convicted of a felony.

**FINDINGS OF FACT**

1) Notices of Hearing together with copies of the Complainant were served on Jeanine Rutherford-Ortiz and Riverviews Real Estate LLC (hereinafter "Riverviews") by certified and regular mail addressed to Ms. Rutherford Ortiz at their last registered business address appearing in the records of her New York State license as a real estate broker and at the last registered

business address appearing in the records of her Florida license as a real estate broker, and posted on December 17, 2018. The certified mail sent to the address for the New York license was returned by the Postal Service marked "not deliverable as addressed" and "unable to forward," but the regular mail sent to that address was not returned. The certified mail to the address for the Florida license was delivered on December 20, 2018, and the regular mail sent to that address was not returned (State's Ex. 1).

2) Notice of Hearing together with copies of the Complaint were served on Arsenio Ortiz by certified and regular mail posted on December 17, 2018 and addressed to him at his last known home address appearing in the records of the Department of State, his last known business address appearing in the records of the Department of State, and at a New York State correctional facility in which he was incarcerated. Neither the mailings to the residence address nor the return receipt for the certified mailing to that address were returned by the Postal Service. The certified mailing to the business address was returned by the Postal Service marked "not deliverable as addressed" and "unable to forward," but the regular mail sent to that address was not returned. The certified mail to the correction facility address was delivered on December 19, 2018, and the regular mail sent to that address was not returned (State's Ex. 1).

3) At all times hereinafter mentioned Jeanine Rutherford-Ortiz was licensed as a real estate broker representing Riverviews. She was originally licensed in Mohegan Lake and Putnam Valley, New York, but her most recent license was at 1024 Harbor Hill Street, Winter Garden, Florida 34787. She surrendered that license on November 16, 2017, and it expired on December 11, 2017 (State's Ex. 2).

4) At all times hereinafter mentioned Arsenio R. Ortiz, also known as "Rick Ortiz," was licensed as a real estate salesperson associated with Riverviews, and, therefore, working under the direction and supervision of Ms. Rutherford-Ortiz, his wife. He was originally licensed in Mohegan Lake and Putnam Valley, New York, but her most recent license was at 1024 Harbor Hill Street, Winter Garden, Florida 34787. His license expired on February 12, 2018 (State's Ex. 2).

5) On or about January 6, 2016 Luis Guajardo, acting on the instructions of Mr. Ortiz, of which instructions Ms. Rutherford-Ortiz was aware, wired \$4,000.00 to Ms. Rutherford-Ortiz's Florida business account as a deposit on the rental of an apartment located at 748 10<sup>th</sup> Street, New York, New York 10019. Mr. Guajardo's application to rent the property was subsequently denied, but although both Mr. Guajardo and his attorney made several requests for a refund his \$4,000.00 has not been returned to him (State's Ex. 3).

6) Also on or about January 6, 2016 Erin Scott, acting on the instructions of Mr. Ortiz, of which instructions Ms. Rutherford-Ortiz was aware, wired \$3,500.00 to Ms. Rutherford-Ortiz's Florida business account as a deposit on the rental of a apartment also located at 748 10<sup>th</sup> Street, New York, New York 10019. Ms. Scott's application to rent the property was subsequently denied, but although both Ms. Scott and her attorney made several requests for a refund, and such a refund was promised, her \$3,500.00 has not been returned to her (State's Ex. 3).

7) On or about August 17, 2015 Jiayi Chen, a Chinese exchange student then enrolled at New York University but who has since returned to China, saw an advertisement for a rental apartment placed on Craig's List by Mr. Ortiz. According to the advertisement it was a no-fee rental. Ms. Chen agreed to rent the apartment, and at the direction of Mr. Ortiz wired \$5,895.00 to Riverviews. According to Mr. Ortiz the payment was to serve as a security deposit. Ms. Chen also gave the landlord a \$5,895.00 security deposit. When she learned from the landlord that it had not received the security deposit paid to Mr. Ortiz, as only a one month deposit was required, Ms. Chen asked Mr. Ortiz for the return of her money. However Mr. Ortiz then told Ms. Chen that the \$5,895.00 was a commission and declined to return the money (State's Ex. 5 and 6).

8) On February 15, 2018 Mr. Ortiz was sentenced to concurrent sentences of 28 months to seven years and 42 months on his guilty pleas to Criminal Possession of a Forged Instrument in the 2<sup>nd</sup> Degree, Penal Law §170.25, a class D felony, and Burglary in the 2<sup>nd</sup> Degree, Penal Law §140.25, a class C felony (State's Ex. 7). There is no evidence before the tribunal to indicate that he has been granted either an executive pardon or a Certificate of Relief from Disabilities or of Good Conduct.

9) In two conversations Ms. Rutherford-Ortiz was directed by the complainant's investigator to supply her with a written response to the allegations in the Guajardo and Scott matters, but she failed to supply such a response. Ms. Rutherford-Ortiz subsequently failed to comply with or respond to the investigator's directive that she appear for an in-person interview on December 27, 2017 (State's Ex. 3).

### **OPINION AND CONCLUSIONS OF LAW**

I- To obtain personal jurisdiction and bind the respondents to the agency decision the complainant must properly serve the respondents with notice of the hearing and a copy of the Complaint and afford them the opportunity to be heard. *See*, Siegel, New York Practice § 58 (4<sup>th</sup> ed. 2005). Service of the Notice of Hearing and Complaint on Ms. Rutherford-Ortiz, and through her to Riverviews, was made by regular and certified mail addressed to her at her last known business addresses appearing in the records of the Department of State and of the State of Florida, and the certified mail sent to the Florida license address was delivered on December 20, 2019. Service of the Notice of Hearing and Complaint to Mr. Ortiz was made by regular and certified mail addressed to him at his last known residence and business addresses appearing in the records of the Department of State, and at the New York State correctional facility in which he was incarcerated. The mailing to the correctional facility was delivered on December 19, 2018.

Service properly made in a manner reasonably calculated to provide notice of the time, date, place, manner and nature of the proceedings is sufficient whether or not the opposing party actually receives the notice, *see Persad v Division of Licensing Services*, 63 DOS APP 09 (2009); *Pinger v Division of Licensing Services*, 23 DOS APP 07 (2007). As notice was properly served in this instance, and in fact actually received, the hearing was permissibly conducted in the absence of the respondents. *Patterson v Department of State*, 35 AD2d 616 (3d Dept. 1970); *Staley v Division of Licensing Services*, 14 DOS APP 01 (2001); *Department of State v Battista*, 05 DOS APP 11 (2011); *Roy Staley v Division of Licensing Services*, 14 DOS APP 01 (2001); *Matter of the Application of Rose Ann Weis*, 118 DOS 93 (1993).

II- The surrender by Ms. Rutherford-Ortiz of her license does not divest this tribunal of jurisdiction. *Brooklyn Audit Co., Inc. v Department of Taxation and Finance*, 275 NY 284 (1937); *Senise v Corcoran*, 146 Misc.2d 598, 552 NYS2d 483 (Supreme Ct., NY County 1989). Jurisdiction would, in fact, continue even had the license expired of its own terms. *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). Nor does the expiration of the respondents' licenses deprive the Department of State of jurisdiction, as it retains jurisdiction over a disciplinary matter and may impose disciplinary sanctions where (1) the alleged unlawful conduct occurred while the respondent was licensed and (2) the respondent was eligible to automatically renew the prior license at the time of the commencement of the action. See, *Division of Licensing Services v Akbar Yasrebi*, 12 DOS 99 (1999); *Division of Licensing Services v Thabit Uadah*, 287 DOS 98 (1998). Since it is less than two years since the respondents' licenses expired and, therefore, pursuant to Real Property Law (RPL) §441(2) they may still renew those licenses, this tribunal retains jurisdiction over the matter before it.

III- Being an artificial entity created by law, Riverviews 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 broker, Ms. Rutherford-Ortiz, and its salesperson, Mr. Ortiz, within the actual or apparent scope of their 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 A.D.2d 843, 318 N.Y.S.2d 120 (1970); *Division of Licensing Services v First Atlantic Realty Inc.*, 64 DOS 88; RPL ' 442-c.

IV- The respondents received deposits from Luis Guajardo and Erin Scott toward the rental of an apartment. In both cases, after the deposits were received by the respondents the applicants for the apartment were denied occupancy and refused refunds. The failure to return the deposits was in violation of 19 NYCRR 175.2, and a clear demonstration of untrustworthiness.

V- In the case of Jiayi Chen, the respondents received \$5,595.00 under the false pretense that it was to be part of her security deposit. When Ms. Chen learned that that was not true she requested a refund, at which point Mr. Ortiz stated that the respondents would retain the money as a commission. In doing that he further demonstrated untrustworthiness, and by reason of their not refunding the money the other respondents are equally liable for that untrustworthiness.

VI- Where a broker or salesperson has received money to which he or she is not entitled, he or she may be required to return it, together with interest, as a condition of retention of his or her license. *Donati v Shaffer*, 83 NY2d 828, 611 NYS2d 495 (1994); *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).

VII- Pursuant to RPL §442-e (5) a real estate broker is obligated to cooperate with the Department of State's investigations of possible license violations. Ms. Rutherford-Ortiz did not supply the written statement which she was directed to submit, and she failed to appear for an interview by the complainant's investigator as she was directed to do. Those failures constitute violations of the statute and further demonstrations of untrustworthiness.

VIII- Pursuant to RPL §440-a a person who has been convicted of a felony and who has not received a Certificate of Relief from Disabilities or of Good Conduct, or an executive pardon, shall not be entitled to be licensed as a real estate salesperson. Mr. Ortiz has been convicted of two felonies and there is no evidence of either a pardon or the required certificate. Accordingly, his license must be revoked.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Jeanine Rutherford-Ortiz has violated 19 NYCRR 175.2 and Real Property Law §442-e (5) and has demonstrated untrustworthiness, and accordingly, pursuant to Real Property Law §441-c, her license as a real estate broker, UID #49OR0945325, is deemed revoked effective immediately. Should she ever apply for a license pursuant to Real Property Law Article 12-A no action shall be taken on such application until she has produced proof satisfactory to the Department of State that she has refunded the sums of \$4,000.00 plus interest at the legal rate for judgements (currently 9% per year) from January 6, 2016 to Luis Guajardo, \$3,500.00 plus interest at the legal rate for judgements from January 6, 2016 to Erin Scott, and \$5,595.00 plus interest at the legal rate for judgements from August 17, 2015 to Jiayi Chen, and

**IT IS FURTHER DETERMINED THAT** Arsenio R. Ortiz aka Rick Ortiz has violated 19 NYCRR 175.2 and Real Property Law §442-e (5), has demonstrated untrustworthiness, and has been convicted of two felonies, and accordingly, pursuant to Real Property Law §§ 440-a and 441-c, his license as a real estate salesperson, UID #40OR1084563, is deemed revoked effective immediately, and

**IT IS FURTHER DETERMINED THAT** by reason of its liability arising out of the acts of Jeannine Rutherford-Ortiz and Arsenio R. Ortiz aka Rick Ortiz, Riverviews Real Estate LLC has violated 19 NYCRR 175.2 and Real Property Law §442-e (5) and has demonstrated untrustworthiness, and accordingly, pursuant to Real Property Law §441-c, its license as a real estate broker, UID #49OR0945325, is deemed revoked effective immediately. Should it ever apply for a license pursuant to Real Property Law Article 12-A no action shall be taken on such application until it has produced proof satisfactory to the Department of State that it has refunded the sums of \$4,000.00 plus interest at the legal rate for judgements (currently 9% per year) from January 6, 2016 to Luis Guajardo, \$3,500.00 plus interest at the legal rate for judgements from January 6, 2016 to Erin Scott, and \$5,595.00 plus interest at the legal rate for judgements from August 17, 2015 to Jiayi Chen.

/S/  
Roger Schneier  
Administrative Law Judge

Dated: March 7, 2019