

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-

**JOHN A. ROBINSON
ROBINSON REAL ESTATE 1908, LLC, brokerage**

Respondents.

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The above noted matter came on for hearing before the undersigned, Ziedah F. Diata, on October 4, 2017, at the office of the Department of State (“Department”) located at 123 William Street, New York, New York. The matter was originally calendared for June 28, 2017 and was adjourned at the respondent’s request.

The Division of Licensing Services (“DLS”) was represented by John Kenny, Esq. The respondent was represented by Linda Johnson, Esq., Himan, Howard & Katell, LLP, 80 Exchange Street, Binghamton, New York.

COMPLAINT

The complaint alleges the respondent committed multiple violations of the Real Property Law (“RPL”), and charges the respondent with demonstrating untrustworthiness and/or incompetence by conducting real estate activities through another broker’s license while his license was suspended and failing to satisfy a money judgment.

FINDINGS OF FACT

1) The respondent is currently licensed as limited liability company broker for Robinson Real Estate 1908, LLC. His license expires on February 3, 2019 (State’s Ex. 2). He testified that he has practiced as a real estate professional for approximately 40 years (Transcript at 54).

2) On December 13, 2011, the respondent admitted he violated Real Property Law 441-c by failing to deposit construction funds in an escrow account or posting a bond for those funds and

by commingling funds of a contract vendee. He and the DLS consented to imposition of a nine-month suspension of his Real Estate Broker license commencing on January 15, 2012. *Division of Licensing Services v John A. Robinson*, 495 DOS 11 (2011).

3) On or about June 1 2015, Eugene Matarese filed a Preliminary Statement of Complaint (“preliminary statement”) with the Department claiming the respondent had conducted business a real estate broker while his license was suspended (State’s Ex. 3).

4) At the hearing, the respondent testified that he asked one of his salespersons, Elena Ferrante, to become the licensed trade name broker for Robinson Real Estate 1908 LLC during his suspension period. She served as the principle broker from March 2012 through December 2012 (Respondent’s Ex. B). During this time, she listed and sold properties and supervised real estate salespersons. She was not an officer of the corporation, nor did she write checks or deal with any financial aspects of the business. The respondent continued to sign checks and handle the finances for the company. He testified that he was “distracted” about his license and had believed signing checks was a “secretarial job” that he was permitted to perform (Transcript at 75). He also testified that he would have made Ms. Ferrante an officer had he known it was required.

5) According to the respondent, during his suspension, nine real estate deals were completed, and then income from those deals was primarily applied toward rental payments. Ms. Ferrante was also given a raise and received a percentage of the income from sales. The respondent testified that during his suspension he did not list any properties under his name, show any properties or market himself as a broker (Transcript at 71-72).

6) On November 26, 2013, in the Supreme Court, Delaware County, New York, Mr. Matarese obtained a judgment against the respondent in the amount of \$531,477.73 (State’s Ex. 3). The judgment is related to a house Mr. Matarese commissioned the respondent to build (“subject property”). The respondent has not paid the judgment and testified that he cannot afford to pay it. He testified that he has attempted to sell the subject property, which is still in the respondent’s name, in order to give the proceeds to Mr. Matarese, but the purchase offers were below the judgment amount and were not acceptable to Mr. Matarese (Transcript at 84). He testified that the income he earns through several rental properties and a small excavation company has not been enough to pay the judgment. The respondent further testified that he owns gravel bank that has not been operational for years and that his real estate business has been slow and has even lost money (Transcript at 55). The respondent filed for bankruptcy in 2012, but the judgment was not discharged in the bankruptcy (Transcript at 77). Additionally, he asserted his business had been impacted by a slow real estate market and by letters Mr. Matarese had written and sent to community members and building inspectors (Transcript at 77; Respondent’s Ex. A).

OPINION & CONCLUSIONS OF LAW

I - As the party that initiated the hearing, the burden is on the complainant to prove, by substantial evidence, the truth of the charges set forth in the complaint. State Administrative Procedure Act §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 (citations 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 (1983), quoting *300 Gramatan Avenue Associates, supra*, 408 NYS2d at 57.

II - The complainant has charged the respondent with using Ms. Ferrante's broker's license to engage in real estate activities without being properly licensed to do so. While the respondent testified credibly that he did not personally participate in any real estate transactions during his suspension, he also admitted that he never gave Ms. Ferrante the power to operate the business. He further admitted during his suspension, the brokerage consummated nine real estate deals through which it earned income and paid expenses. The complainant has proven by substantial evidence that the respondent continued to operate and generate income from his brokerage, Robinson Real Estate 1908, LLC, during his suspension. By doing so, he demonstrated incompetence and untrustworthiness pursuant to Real Property Law §441-c. In assessing his penalty, I have considered that the respondent testified credibly that his failure to properly abide by his suspension was unintentional.

III -The respondent is charged with demonstrating untrustworthiness and/or incompetence by failing to satisfy a money judgment against him. "The failure to pay a judgment which has been lawfully obtained, without a showing that he is unable to do so, is a demonstration of untrustworthiness by a real estate broker. *Department of State v Feldman*, 113 DOS 80 (1980), *conf'd. sub nom Feldman v Department of State*, 81 AD2d 553, 440 NYS2d 541 (1981); *Division of Licensing Services v Shulkin*, 40 DOS 90 (1990); *Division of Licensing Services v Janus*, 33 DOS 89 (1989)." *Division of Licensing Services v Harrington*, 123 DOS 93 (1993) at 4. While it is unrefuted that the respondent has failed to satisfy the money judgment, he has also testified credibly that he lacks the means to satisfy the judgment. The complainant has not proven by substantial evidence that the respondent's failure to satisfy the judgement is a demonstration of incompetence or untrustworthiness. Accordingly, this charge is dismissed.

DETERMINATION

WHEREFORE, IT IS DETERMINED THAT John A. Robinson, UID# 35R0023996, has demonstrated incompetence and untrustworthiness by operating a real estate brokerage while his real estate broker license was suspended. Accordingly, his license as a real estate broker, is suspended for one year. The suspension begins on June 4, 2018 and ends one year after the receipt of his license. The respondent is ordered to send her license certificate to Norma Rosario, Department of State, Division of Licensing Services, One Commerce Plaza, 99 Washington Avenue, 6th Floor, Albany, New York 12231-0001.

/s/

Ziedah F. Diata
Administrative Law Judge

Dated: May 7, 2018