

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-

MICHAEL C. DELISA,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on April 25, 2018 at the office of the Department of State located at 123 William Street, New York, New York.

The respondent, an attorney at law, chose to represent himself.

The complainant was represented by Matthew Wolf, Esq.

COMPLAINT

The complaint alleges that the respondent real estate broker failed to render an account and remit money owed to a client within a reasonable time, and failed to cooperate with the complainant's investigation.

FINDINGS OF FACT

1) Notice of Hearing together with a copy of the Complaint was served by certified mail (State's Ex. 1).

2) The respondent is duly licensed as a real estate broker in his individual name. His license is due to expire on September 14, 2019 (State's Ex. 2).

3) On October 2, 2013 Robert and Edith May Algerie signed a sales agreement offering to purchase real property located in Huntington Station, New York, and they gave Neal W. Mandel

of First American Real Estate Group LLC, the selling real estate broker, a deposit of \$1,000 (State's Ex. 5).

4) In or about January 2014 the Algeries signed a contract to purchase the property, and they issued a check for \$1,250.00 as an additional deposit to Delisa Law Group PLLC, the respondent's law firm, to be held in escrow (State's Ex. 4 and 5).

5) The transaction was to be a short sale, but after waiting about a year for the bank holding the mortgage on the property to approve the sale the Algeries decided to cancel the transaction. They requested, and received from the respondent, the refund of the \$1,250.00 contract deposit (State's Ex. 5).

6) Acting through their attorney the Algeries also requested the return from Mr. Mandel of the original \$1,000.00 deposit. Mr. Mandel advised them that the money had been given to the respondent, but the respondent denied, to both the Algerie's attorney and the complainant's investigator, having received the money (State's Ex. 7 and 9).

7) A statement of account for the Delisa Law Group PLLC operating account shows a deposit of \$1,000.00 on December 2, 2013. A payment receipt and account reconciliation print-out received by the complainant's investigator indicate that the \$1,000.00 was the Algerie deposit (State's Ex. 6 and 8). However, the respondent, who had previously advised the complainant's investigator and documented that the deposit was of a cash payment received from a client in a different matter (State's Ex. 10), testified that the receipt and reconciliation were fabricated by a disgruntled former employee who had worked as bookkeeper for both him and Mr. Mandel, and whom he had fired for falsifying the books and records of his law firm.

OPINION AND CONCLUSIONS OF LAW

As the party which initiated the hearing the burden is on the complainant to prove, by substantial evidence, the truth of the allegations 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).

The complaint alleges that the respondent improperly retained money received in the course of a real estate transaction. In his testimony the respondent denied the charge. He testified credibly that the documents upon which the complainant relied to show that the \$1,000.00 deposit was received by him were fabricated by a former bookkeeper whom he had fired, and presented his own documents to show that the \$1,000.00 bank deposit which the complainant claims was the deposit was, in fact, a deposit of money received from a client in a different matter. The

complainant relied entirely on the hearsay testimony of its investigator and the contested documents, and called neither Neal Mandel, the real estate broker who claimed to have transferred the deposit to the respondent, nor the former bookkeeper as witnesses.

In view of the forgoing, I find that the complainant has failed to establish by substantial evidence that the respondent ever received the \$1,000.00 deposit. Therefore, the charge that he improperly retained the money must be dismissed. Further, as the complaint of non-cooperation with the complainant's investigation is based on the allegation that he lied to the complainant's investigator when he denied receiving the deposit, the non-cooperation charge must also be dismissed.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the complaint is dismissed.

/s/

Roger Schneier
Administrative Law Judge

Dated: June 6, 2018