

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.: 2016-0510

-against-

**GERALD LEIBMAN<sup>1</sup>**

Respondent.

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The above-noted matter came on for hearing before the undersigned, Aiesha L. Hudson, on June 13, 2018, at the office of the Department of State (“Department”) located at 123 William Street, New York, New York.

The respondent did not appear at the hearing.

The Division of Licensing Services (“DLS”) was represented by Matthew Wolf, Esq.

**COMPLAINT**

The complaint alleges that the respondent committed violations of Real Property Law, Article 12-A, and the implementing regulations thereunder, by allowing an unlicensed person to collect rents and commissions on the respondent’s behalf, in violation of Sections 442-a and 440-a of the Real Property Law, and demonstrating untrustworthiness and/or incompetency by providing inconsistent statements during the DLS’ investigation, in violation of Section 441-c of the Real Property Law.

**FINDINGS OF FACT**

1) Notice of Hearing together with a copy of the Complaint was served by certified and regular mail addressed to the respondent at his last known address appearing in the records of the

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<sup>1</sup> Because Vista Brokerage, Inc. (“Vista Brokerage”), for whom Respondent Gerald Leibman is the representative broker, is not named as a party, Vista Brokerage is not included in the caption.

Department of State on May 16, 2018 (date of Affidavit of Service).<sup>2</sup> As of the date of the hearing, neither the certified or regular mail was returned from the Post Office. The certified mail return receipt was also not returned (State's Ex. 1).

2) At all relevant times, the respondent, Gerald Leibman, was licensed as a corporate real estate broker, UID #31LE0421291, representing Vista Brokerage Inc. ("Vista Brokerage"). His current license expires on March 18, 2019 (State's Ex. 2).

3) On March 4, 2016, the DLS received a Preliminary Statement of Complaint ("preliminary statement") against the respondent and Leonard Leibman from Remberth S. Medranda, Jr. ("complainant") (State's Ex. 3).<sup>3</sup>

4) The preliminary statement alleges that in December 2014,<sup>4</sup> the complainant's mother, Leonor Medranda, found an advertisement for a vacant apartment in a building located at 632 Van Cortlandt Avenue, in Yonkers, NY ("subject premises") which indicated the contact phone numbers for Miguel Polanco and the respondent's company, Vista Brokerage. Thereafter, Ms. Medranda contacted Mr. Polanco to view the vacant apartment. After showing Ms. Medranda the subject premises, Mr. Polanco showed her a "blank" lease that appeared to be signed by the respondent.<sup>5</sup> When Ms. Medranda indicated to Mr. Polanco that she was interested in the subject premises, Mr. Polanco told her that to take possession of the apartment she needed to pay one month's rent, one month's security deposit, and a broker's fee (hereinafter, "commission") equal to 15% of the annual rent. After negotiating with Ms. Medranda, Mr. Polanco agreed to accept a commission equal to one month's rent (\$1400) if Ms. Medranda paid it in cash (State's Ex. 3). On November 30, 2014, the day she signed the lease for the subject premises, Ms. Medranda gave Mr. Polanco separate checks for one month's rent and the security deposit made payable to Ribevy Realty Corp. ("Ribevy Realty") and paid Mr. Polanco the negotiated commission in cash (State's Ex. 3-5).

5) In the preliminary complaint, the complainant also stated that he was recently researching the respondent and his connection to Vista Brokerage, Inc. and Ribevy Realty, the company to which Ms. Medranda pays rent, for an unrelated matter. During his research, he discovered that the respondent "[did] not have "any paperwork filed for Mr. Polanco to legally

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<sup>2</sup> The address in the Department of State's records is also the same address the respondent indicated on his most recent correspondence with the DLS.

<sup>3</sup> It is unclear from the preliminary statement whether the naming of Leonard Leibman was due to an unspecified connection to Vista Brokerage or to Ribevy Realty Corp., the latter of which the complainant alleges is the owner of the building in which the subject premises is located (State's Ex. 3).

<sup>4</sup> Given that the lease signed by the complainant's mother was signed on November 30, 2014, the allegation that the time frame during which the relevant events at issue in this case took place was December 2014 must be an error (State's Ex. 3).

<sup>5</sup> The preliminary statement does not indicate why Mr. Polanco showed his mother a blank lease (allegedly signed by Gerald Leibman) and the record does not contain a copy of the "blank" lease. The preliminary statement also refers to a lease on which Ms. Medranda "was asked to fill in the terms oddly" and that "most of the lease appears to be in [Ms. Medranda's] handwriting." Whether either lease referred to in the preliminary statement is the same lease that the complainant provided to the DLS Investigator during the investigation of his complaint is not clear (State's Ex. 5).

collect a broker's fee on [the respondent's] behalf" (State's Ex. 3).<sup>6</sup> When the complainant confronted the respondent about the fact that Mr. Polanco had illegally collected a commission, the respondent allegedly told the complainant that Mr. Polanco was paid a "tip" for his services (State's Ex. 3). There is no record in the Department of State's records of Miguel Polanco being licensed as a real estate broker or real estate salesperson from at least January 1, 2012 through the present (State's Ex. 6).

6) Neither the complainant nor Ms. Medranda testified at the hearing, nor did DLS submit a sworn statement from either. Mr. Polanco also did not testify at the hearing or provide a sworn statement.

7) During DLS' investigation of the complainant's preliminary statement, DLS Investigator Fred Weakley ("Inv. Weakley") interviewed the complainant. During his interview, the complainant reiterated the allegations in his preliminary statement, including that Ms. Medranda paid Mr. Polanco a commission in cash (Transcript at 11-12). As a result of their conversations, the complainant sent Inv. Weakley a copy of the lease for the subject premises signed by the complainant's mother, Leonor Medranda, and Ribevy Realty, who signed the lease on behalf of the owner of the property (Transcript at 14; State's Ex. 5). The signature for the person who signed on behalf of Ribevy Realty is illegible (State's Ex. 5). As proof of payment, the complainant also provided Inv. Weakley with copies of the cancelled checks dated November 30, 2014, which indicated they were for "December's Rent" and the "Security Deposit" for 632 #4E, the subject premises (Transcript at 12-14; State's Ex 4).

8) The investigation of the complainant's preliminary statement was transferred to Inv. Berschwinger ("Inv. Berschwinger") in 2017 (Transcript 14-15). Thereafter, Inv. Berschwinger contacted the respondent (Transcript 18-19). Inv. Berschwinger's testified that, during her interview, the respondent stated that Vista Brokerage was hired by Ribevy Realty to manage the property at 632 Van Cortlandt Park Avenue, where the subject premises is located (Transcript at 19-20). Inv. Berschwinger also testified that the respondent admitted to her that Miguel Polanco was an employee of Vista Brokerage and that "[Mr. Polanco's] main duties were to assist with errands and to show apartments" (Transcript at 20). During the conversation, the respondent denied the complainant's allegations that Mr. Polanco collected the rent, security deposit and commission from Ms. Medranda in connection with her rental of the subject premises. He stated that Mr. Polanco showed apartments but did not draft leases or collect money. According the respondent, leasing activity was done through Vista Brokerage's licensed agents, although he did not indicate which licensed agent, if any, handled the execution of the Medranda's rental of the subject premises (Transcript at 24-25).

9) During her investigation, Inv. Berschwinger requested that the respondent to provide a written statement to confirm his statements during the interview and provide more information regarding his relationship with Ribevy Realty, his responsibilities as property manager, and Mr. Polanco's duties as an employee of Vista Brokerage (Transcript at 20-21). She also asked the respondent to specifically address the complainant's allegations that Mr. Polanco had not only

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<sup>6</sup> It is not clear from the preliminary statement whether the complainant was referring to the fact that Mr. Polanco was not licensed as a real estate salesperson or broker or that the respondent had not filed the appropriate paperwork indicating that Mr. Polanco was associated with Vista Brokerage.

shown Ms. Medranda the subject premises, but also collected the rent, security deposit, and a commission from her in facilitating her rental of the subject premises (Transcript at 21). Inv. Berschwinger testified that she also asked the respondent to send her copies of the respondent's "escrow statements" from "October through December 2014 and November and December of 2018 (sic)" (Transcript at 21).<sup>7</sup> She testified that the request for information and documents was sent to the respondent by e-mail, first-class and certified mail (Transcript at 21). A copy of the request was not provided to the tribunal.

10) In response to Inv. Berschwinger's request, the respondent submitted a written statement dated January 17, 2018, which explained that the respondent was the property manager for Ribevy Realty and that his responsibilities related to that position included running the day-to-day operations of the property, collecting rent, and leasing the property (State's Ex. 7). The respondent's statement also asserted that Miguel Polanco was not employed by Vista Brokerage, in contradiction to the respondent's earlier statement to Inv. Berschwinger, during her interview, regarding Mr. Polanco's association with Vista Brokerage (Transcript at 23-24).<sup>8</sup> His statement also reiterated that "Mr. Polanco does not assist with drafting leases or collecting rent and security" (State's Ex. 7; Transcription at 23-24). Contrary to Inv. Berschwinger's request, the respondent's written statement did not specifically address Mr. Polanco's involvement, if any, in the leasing of the subject premises to Ms. Medranda, nor did it admit or deny whether Mr. Polanco collected the rent, security deposit and a commission from Ms. Medranda in connection with her rental of the subject premises.<sup>9</sup>

11) In response to the Investigator's request for copies of "escrow statements," the respondent provided copies of the bank statements for Vista Brokerage's checking account for the statement periods October, November and December 2014, as well as copies of the cancelled checks corresponding to the deposits made during each statement periods. Most of the checks deposited indicate that they were for a "broker's fee" paid to Vista Brokerage.<sup>10</sup> The respondent

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<sup>7</sup> Given that this hearing took place in June 2018, the testimony that the Investigator requested documents from the respondent for November and December 2018 must be a typographical error or misstatement by the witness. Presumably, the request was for the respondent's November and December 2017 statements, which the respondent did provide to Inv. Berschwinger.

<sup>8</sup> Investigator Berschwinger contacted the respondent to obtain clarification on his inconsistent statement, but she was unsuccessful (Transcript at 24).

<sup>9</sup> The respondent's written statement does not deny that Ms. Medranda leased the Subject Apartment, nor that the first month's rent, security deposit and commission were collected to secure the apartment. That the initial month's rent and security deposit were provided to someone is evidenced by the lease signed by Ms. Medranda and Ribevy Realty. Thus, to the extent that the respondent claims that Mr. Polanco is not an employee of Vista Brokerage, it begs the question who collected the items necessary for Ms. Medranda to rent the apartment; and if it was Mr. Polanco, under what authority did he do so. The respondent's written statement does not address either question. While Mr. Polanco could be an employee of Ribevy Realty instead of Vista Brokerage, if true, the respondent had an opportunity to clarify that fact, but did not do so (State's Ex. 7).

<sup>10</sup> It is not evident in the record why the respondent provided copies of statements for Vista Brokerage's checking account rather than for a separate escrow account designated to hold funds on behalf of its clients (as required by 19 NYCRR § 175.1). However, there was no indication from Investigator Berschwinger at the hearing that the bank statements the respondent's provided were inadequate or unresponsive to her request.

also provided the bank statements for November and December 2017, which indicate there were no deposits made during those months (State's Ex. 7). There is no indication in the respondent's bank statements that the cash commission Ms. Medranda paid to Mr. Polanco was deposited into the respondent's bank account since all of the deposits during December 2014 statement period are accounted for by the corresponding cancelled checks the respondent also provided.<sup>11</sup>

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

I- To obtain personal jurisdiction and bind the applicant to the agency decision, DLS must properly serve the applicant with notice of the hearing and afford him an opportunity to be heard. 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 notice. *See Persad v. Division of Licensing Services*, 63 DOS APP 09 (2009); *Pinger v. Division of Licensing Services*, 23 DOS APP 07 (2007).

In this case, service of the Notice of Hearing and Complaint was made by certified and regular mail to the respondent's last known business address, which was the same address the respondent used in his last correspondence with the DLS. Neither mailing was returned by the U.S. Postal Service, nor was the certified mail return receipt. Accordingly, inasmuch as there is evidence that notice of the place, time, and purpose of the hearing was properly served, the holding of an *ex parte* quasi-judicial administrative hearing was permissible. *Patterson v. Department of State*, 35 A.D.2d 616, 312 N.Y.S.2d 300 (3d Dep't 1970); *Verdell v. DeBuono*, 262 A.D.2d 812, 691 N.Y.S.2d 679, 680 (3d Dep't 1999) (quoting *Silverstein v. Minkin*, 49 N.Y.2d 260, 263, 425 N.Y.S.2d 88 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865)); *Matter of the Application of Rose Ann Weis*, 118 DOS 93 (1993).

II- As the party who initiated this action, the complainant has the burden to prove, by substantial evidence, the truth of the charges. SAPA § 306(1). Substantial evidence is that which a reasonable mind could accept as supporting a conclusion or ultimate fact. *Division of Licensing Services v. Guitierrez*, 1101 DOS 08 (2008) (citing *Gray v. Adduci*, 73 N.Y.2d 741, 536 N.Y.S.2d 40 (1988)). In determining whether substantial evidence has been presented by the complainant, "the question...is whether a conclusion or ultimate fact may be extracted reasonably probatively and logically." *Division of Licensing Services v. Cirrincione*, 246 DOS 98 (1998) (citing *City of Utica Water Supply v. NYS Health Department*, 96 A.D.2d 710, 465 N.Y.S.2d 365, 66 (4<sup>th</sup> Dep't 1983)).

III- RPL § 440-a provides that no person may act as, or hold himself or herself out as, a real estate salesperson or broker without first procuring a license therefor from the Department of State in accordance with Real Property Law 12-A. Any person associated with a licensed real estate broker who lists for sale, buys, rents, or collects rent for the use of real estate for or in behalf of a real estate broker is acting as a real estate salesperson. RPL § 440(3). Here, DLS alleges that Mr. Polanco violated § 440-a by collecting rent and a commission from Ms. Medranda in connection with her rental of the subject premises without a real estate salesperson or broker

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<sup>11</sup> The checks for the first months rent and the security deposit were paid directly to Ribevy Realty and thus would not be reflected in Vista Brokerage's bank account (State's Ex. 4).

license. Although the evidence in the record clearly indicates that Mr. Polanco does not have a real estate salesperson or broker's license, there is insufficient evidence in the record to establish that he engaged in the real estate activities charged in the complaint.

The respondent does not dispute that Mr. Polanco showed Ms. Medranda the subject premises. However, he denies the complainant's allegations that Mr. Polanco did more to facilitate the leasing of the subject premises than show the apartment to Ms. Medranda and insists that Mr. Polanco's job duties did not include collecting money or drafting leases.<sup>12</sup> Since neither the complainant nor Ms. Medranda testified at the hearing, the only evidence in the record that Mr. Polanco collected money and a commission from Ms. Medranda in connection with the execution of her rental of the subject premises is the complainant's unsworn statements in the preliminary statement of complaint and Inv. Weakley's testimony at the hearing regarding the statements the complainant made during his interview, all of which is hearsay.

It is well established that hearsay evidence is permitted in an administrative proceeding and, under certain circumstances, may constitute an agency's entire case. *Posner v. Division of Licensing Services*, 37 DOS APP 09 (2009); *Today's Lounge of Oneonta, Inc. v. New York State Liq. Auth.*, 103 A.D.3d 1082, 1083 (3d Dep't 2013). Both unsworn written and oral statements may be sufficient. *Diehsner v. Schenectady City School Distr.*, 152 A.D.2d 796, 797 (3d Dep't 1989). However, an administrative determination may be based entirely on hearsay evidence only if it is "sufficiently relevant and probative" or "sufficiently reliable" and is not otherwise "seriously controverted." *Doctor v. NYS Office of Alcoholism and Substance Abuse Services*, 112 A.D.3d 1020, 1022 (3d Dep't 2013); *Watson v. NYS Justice Ctr. for Protection of People with Special Needs*, 152 A.D.3d 1025, 1027 (3d Dep't 2017); see also *Division of Licensing Services v. Sottile*, 19 DOS 91 (1991) (to be admissible in administrative hearing, the hearsay evidence must be "reliable, relevant, and probative"); *Sowa v. Looney*, 23 N.Y.2d 329, 333 (1968) ("All relevant, material, and reliable evidence which will contribute to an informed result should be admissible in a disciplinary proceeding"). In determining whether the evidence presented constitutes substantial evidence, [t]he question is whether the hearsay introduced is the kind of evidence on which responsible persons are accustomed to rely on." *Diehsner*, 152 A.D.2d at 797 (internal quotations omitted).

In this case, most of the complainant's statements in the preliminary statement and testified to by Inv. Weakley are disputed by the respondent and/or unsubstantiated by other evidence. First, the respondent not only denied that the complainant collected the rent, security deposit and a commission in connection with the leasing of the subject premises, but also alleged that Mr. Polanco's job duties never included collecting money. Second, while the respondent did not directly refute the complainant's allegation that the respondent admitted to the complainant that Mr. Polanco was compensated for his work securing the lease of the subject premises as a "tip," the statement was generally disputed by the respondent's insistence the Mr. Polanco did not collect a commission in this case. Moreover, the overall probative value and reliability of the respondent's alleged admission is lessened by the fact that it was introduced into evidence through multiple

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<sup>12</sup> The allegation in the preliminary statement that, after showing Ms. Medranda the subject premises, Mr. Polanco showed her a blank lease and directed her to fill-in some of the terms of the lease, is not included in the DLS' complaint. Thus, it will not be considered as a basis for determining the respondent's liability for Mr. Polanco's alleged conduct with respect to the Medranda's lease.

levels of hearsay: Inv. Weakley testified to the what the complainant told him regarding what the respondent told the complainant. The respondent's admission, itself, is likely hearsay since there is no evidence that the respondent was directly involved in the lease transaction to the extent that he would have personal knowledge. Third, while it is not refuted by respondent that Ms. Medranda contacted Mr. Polanco about the subject premises after she saw a vacancy sign for the subject premises that included both Mr. Polanco's and Vista Brokerage's name and contact information, even if true, it is insufficient to prove that Mr. Polanco collected the rent and commission in this case. The sign suggests that Mr. Polanco was engaged in real estate activities in association with, if not on behalf of the respondent, but it is not substantial proof that that Mr. Polanco's actions went beyond showing the subject premises to persons who contacted him.

Furthermore, the complainant's hearsay statements are not substantiated by other evidence in the record. The few pieces of documentary evidence in the record do not establish that Mr. Polanco had a more extensive role in the leasing of the subject premises to Ms. Medranda. The copies of the checks written for the rent and security deposit, as well as the signed lease, are only evidence that the lease was executed. Since the checks for the security deposit and first month's rent were paid to Ribevy Realty Corp. and the commission was paid in cash, there is no evidence connecting Mr. Polanco to those payments. The respondent also cannot be connected to the commission that Mr. Polanco allegedly received since there is no evidence in the respondent's bank statements that the respondent received the commission paid by Ms. Medranda.

The respondent's unsworn written statement does not refute or support the complainant's claims. The probative value and credibility of the respondent's written statement is lessened by the fact that it not only contains the inconsistent statement denying employment of Mr. Polanco, but it also asserts, *in the present tense*, that "Miguel Polanco *does* not assist with drafting leases or collecting rent and security" (emphasis added). As a result, it is unclear from the statement whether Mr. Polanco may have been employed by the respondent in that past, if not presently, or whether Mr. Polanco currently performs tasks for the respondent, despite not being an "employee" of the brokerage. Inv. Berschwinger was unable to contact the respondent to obtain an explanation for the inconsistencies. Additionally, although the respondent denies employing Mr. Polanco the written statement, he also fails to give any other explanation of Mr. Polanco's connection to the respondent or Vista Brokerage, if he is not an employee, and/or under what circumstances or authority Mr. Polanco was permitted to show the subject premises. Given that the subject premises is located in an apartment building managed by the respondent, his failure to explain who collected the money and commission in connection with the Medranda's lease, if not Mr. Polanco, is suspect. Given the unexplained inconsistency with the respondent's earlier statements to Inv. Berschwinger and the internal inconsistency and vagueness of the document itself, the tribunal finds it the respondent's written statement offers little value to the determination of the issue at bar.

The tribunal, therefore, concludes that there is insufficient evidence that Mr. Polanco was engaged in unlicensed real estate activity in violation RPL § 440-a.

Furthermore, because the tribunal finds that the DLS has failed to establish Mr. Polanco violated § 440-a, the tribunal need not decide whether there was sufficient evidence in the record

to justify imputing liability for any unlicensed real estate activity by Mr. Polanco to the respondent.<sup>13</sup>

IV- DLS's complaint also alleges that the respondent violated RPL § 442-a which prohibits a *licensed* real estate salesperson from receiving compensation from any person other the real estate broker with whom the real estate salesperson is associated in connection with "any service rendered, or work done by the salesperson in . . . leasing [or] renting . . . any real estate." However, since Mr. Polanco is not a licensed real estate salesperson, the prohibition in § 442-a is not applicable to the DLS' allegations that Mr. Polanco, acting as a salesperson for the respondent, collected a commission from Ms. Medranda. Accordingly, this charge is dismissed.<sup>14</sup>

V- Pursuant to RPL § 441-c, the respondent's license may be revoked or suspended for demonstrating untrustworthiness or incompetency to act as a real estate broker. "With regard to untrustworthiness, the courts have been careful not to define the term 'untrustworthiness' or fix absolute limits on its application, rather, the Department of State has been vested with wide discretion in determining what should be deemed untrustworthy conduct" *Division of Licensing Services v Bizzari*, 1517 DOS 07 (2007) (citing *Gold v Lomenzo*, 29 N.Y.2d 468 (1972)). "In exercising this discretion, however, the Secretary of State is subject to the requirement that 'there should be such factual presentation concerning acts or conduct by the licensee or his agent as would warrant a conclusion of unreliability, and which establishes that any confidence or reasonable expectation of fair dealing to the general public would be misplaced.'" *Pasquariello v. Division of Licensing Services*, 33 DOS APP 10 (quoting *Chiaino v Lomenzo*, 26 A.D.2d 469, 472 (1st Dept 1966)).

In this case, the DLS contends that the respondent demonstrated untrustworthiness by providing inconsistent statements to the Investigator during the DLS' investigation of the complainant's preliminary statement. As noted above, the written statement the respondent submitted to the DLS denying his employment of Mr. Polanco, directly contradicted his earlier admission to the Investigator that Mr. Polanco was an employee, and the respondent failed to acknowledge or explain why his response had changed. Given that this issue of whether the respondent employed by or was associated with Mr. Polanco was a crucial fact in DLS'

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<sup>13</sup> Liability for any unlicensed real estate activities Mr. Polanco conducted on the respondent's behalf may be imputed to the respondent only under certain circumstances. *See Markland v. Division of Licensing Services*, 54 DOS APP 09 (2009). Section 442-c provides that: "No violation of a provision of [Article 12-A of the RPL] by a real estate salesperson or employee of a real estate broker shall be deemed to be cause for the revocation or suspension of the license of the broker, unless it shall appear that the broker had actual knowledge of such violation or retains the benefits, profits or proceeds of a transaction wrongfully negotiated by his salesperson or employee after notice of the salesperson's or employee's misconduct." RPL § 442-c; *see Roberts Real Estate, Inc. v Department of State*, 80 N.Y.2d 116, 123 (1992); *Cornell Associates Realty Ltd. v. Shaffer*, 210 A.D.2d 537, 540 (3d Dep't 1994); *see also Cruiseland Real Estate Inc. v. Division of Licensing Services*, 15 DOS APP 04 (2004). Because the tribunal finds that there is insufficient evidence in the record to conclude that Mr. Polanco conducted unlicensed real estate activities, the issue of the respondent's liability need not be reached.

<sup>14</sup> Even if the tribunal were to apply § 442-a more broadly to include Mr. Polanco's unlicensed conduct, the charge would still be dismissed because the record lacks evidence, outside of the complainant's unsworn and uncorroborated hearsay statements, that Mr. Polanco collected a commission from Ms. Polanco.

investigation of whether the respondent should be held responsible for Mr. Polanco's actions, the respondent's contradiction of his previous statement on the issue, without explanation, was significant. As a licensee of the Department of State, the respondent was obligated to fully comply with the Investigator's investigation. RPL § 442-e(5). Here, by providing inconsistent representations regarding the crucial fact of whether the respondent employed Mr. Polanco, in addition to failing to explain Mr. Polanco's specific involvement in the Medranda's rental of the subject premises as Inv. Berschwinger requested, the respondent failed to comply with that obligation and demonstrated untrustworthiness to act as a real estate broker under § 441-c.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** George Leibman has demonstrated untrustworthiness in violation of RPL §441-c. Accordingly, pursuant to RPL § 441-c, he shall pay a fine of \$500.00 to the Department of State on or before April 15, 2019, and should he fail to pay the fine his license as a real estate broker, UID #31LE0421291, shall be suspended for a period commencing on April 16, 2019 and terminating two (2) months after the receipt by the Department of State of his license certificate. He is directed to send a certified check or money order for the fine payable to "Secretary of State," or his license certificate, by certified mail addressed to Norma Rosario, Customer Service Unit, Department of State, Division of Licensing Services, One Commerce Plaza, 99 Washington Avenue, 5th Floor, Albany, New York 12231-0001.

/S/

Aiesha L. Hudson  
Administrative Law Judge

Dated: February 13, 2019