

STATE OF NEW YORK  
DEPARTMENT OF STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matters of the Complaint of

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

Complainant,

-against-

**DONALD J. BROOKS and  
BROOKS REAL ESTATE GROUP, LLC,**

**DECISION**

Respondents,

and

The Application of

**DONALD BROOKS**  
Applicant,

For a License as a Real Estate Broker.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on July 22, 2014 at the office of the Department of State located at 123 William Street, New York, New York.

Respondent/applicant Brooks having been advised of his right to be represented by an attorney chose to appear *pro se*.

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

**COMPLAINT/ISSUE**

The complaint alleges that Mr. Brooks acted as a real estate broker without a license as such, failed to maintain an escrow account and comingled and converted client funds, failed to return unearned commissions, failed to satisfy judgments, failed to effectuate agency disclosure, and failed to cooperate

with the complainant's investigations, and DLS contends that because of the foregoing the applicant's application for renewal of his license as a real estate broker should be denied.

### **FINDINGS OF FACT**

1) Notice of hearing together with a copy of the complaint was served by certified and regular mail addressed to the respondents/applicant at their last known business address and posted on June 20, 2014. Neither the mailing nor the return receipt was returned by the Postal Service (State's Ex.1). At the hearing Mr. Brooks acknowledged receipt of the mailing.

2) Donald Brooks has been licensed by the Department of State as follows (State's Ex. 2):

4/6/2007 – 4/5/2009, and 10/20/2009 – 8/25/2011, real estate salesperson;

8/25/2011 – 8/24/2013, real estate broker representing Brooks Real Estate Group LLC.

3) By application dated September 24, 2013 Mr. Brooks applied to renew his license as a real estate broker, and by letter dated April 24, 2014 he was advised by the complainant that it proposed to deny the application because of the facts and circumstances underlying the complaint herein and that he could request a hearing, which he did by letter received on May 19, 2014 (State's Ex. 16). Accordingly, a notice of hearing, receipt of which was acknowledged by Mr. Brooks at the hearing, was served by certified and regular mail posted on June 20, 2014 (State's Ex. 15).

4) Mr. Brooks' original license as a real estate salesperson was issued after a hearing before me precipitated by the proposed denial of his application by DLS because of his March 13, 2001 conviction of Conspiracy to Commit Mail, Wire, and Securities Fraud in violation of 18 USC 371, for which he was sentenced to 3 years supervised release and ordered to make restitution in the amount of \$67,000.00. "The conviction arose out of the applicant's participation in the organization and operation of a series of 'boiler rooms' which were used for the solicitation of investments in a corporation which he had organized through the making of false and fraudulent representations to persons to whom 'cold' calls had been made. The proceeds of the sale of those securities were applied in a manner contrary to the representations in the offering documents, with a large percentage used as excess compensation for the applicant and his co-conspirators." *Matter of the Application of Donald Brooks*, 609 DOS 06, p.2.

5) In early 2012 Catherine Hung entered into an exclusive right to sell agreement with the respondents/applicant for the sale of her co-op apartment located at 531 E. 88<sup>th</sup> Street, New York, NY 10128 (State's Ex. 3 and 4). Mr. Brooks did not provide her with an agency relationship disclosure form. She gave Mr. Brooks the keys to her apartment and to the building so that he could show the apartment to potential purchasers.

On the evening of March 5, 2012 Ms. Hung, who was by then residing elsewhere, returned to the apartment and found the personal belongings of Courtney Furlong, who was not present, in the apartment, which had been vacant. She called the police to report that there was an intruder in the apartment, and the police officers who responded were able to trace Ms. Furlong from a telephone number found on the laptop computer found in the apartment.

Mr. Brooks had, without ever having obtained Ms. Hung's permission to do so, given Ms. Furlong the keys to the building and apartment so that she could reside there for a day or two after an apartment rental which he had negotiated for her had fallen through. Ms. Hung caused Ms. Furlong to vacate the apartment and then changed the locks to the apartment at a cost of \$162.23, and on December 4, 2012 she obtained a small claims court judgment against the respondents/applicant, whose agency she

had terminated, for that amount plus interest and disbursements (total \$188.72) (State's Ex. 5 and 6). The judgment has not been satisfied because Mr. Brooks insisted on meeting Ms. Hung in person to effectuate payment and she insists that he mail her a check.

6) Investigator Stephen Cavota was assigned to investigate the complaint which Ms. Hung filed against the respondents/applicant. On May 6, 2013 he wrote to Mr. Brooks by regular and certified mail and provided him with a copy of Ms. Hung's complaint. Mr. Brooks was requested to provide a written response and to appear at Mr. Cavota's office on May 21, 2013, but he failed to do so. A subsequent letter gave Mr. Brooks until June 10, 2013 to comply, and he did appear on that date, albeit two hours late. However he still did not provide the requested written statement. Other requested documentation was provided by fax the next day. By fax dated June 12, 2013 Mr. Brooks advised Mr. Cavota that he would satisfy Ms. Hung's judgment by June 21, 2013 (State's Ex. 7). As noted above, he has failed to do so.

7) Ms. Furlong's involvement with the respondents/applicant began when she was seeking to rent an apartment. On February 18, 2012 Ms. Furlong had given Mr. Brooks a deposit of \$1,300.00 towards the rental of an apartment located at 124 East 117<sup>th</sup> Street, New York, New York but the landlord then rented the apartment to someone else. In his June 12, 2013 fax to Mr. Cavota Mr. Brooks promised to refund that money, but he has failed to do so (State's Ex. 12). As in the case of Ms. Hung's complaint Mr. Brooks failed to comply in a timely manner with the complaints made by Investigator Cavota in the course of his investigation (State's Ex. 13).

8) On September 23, 2011 Laura Sapinsky-Blake and her husband saw an apartment for rent advertised on Craig's List by the respondents/applicant. They spoke with Mr. Blake and arranged to view the apartment that day. Mr. Blake told them that if they wanted the apartment they would have to leave a \$1,000.00 deposit, and they obtained and gave to Mr. Brooks a cashier's check in that amount (State's Ex. 9 and 10). Mr. Brooks subsequently negotiated the check and did not place the funds in a special account. He never provided the Sapinsky-Blakes with an agency relationship disclosure form.

Mr. Blake failed to deliver to the landlord's agent all of the paper work which the Sapinsky-Blakes had completed. Claiming that the landlord's agent was being difficult he gave Ms. Sapinsky-Blake the agent's telephone number and told her to "bitch it out" with her (trans. p. 27, lines 17-18). The agent told Ms. Sapinsky-Blake that Mr. Brooks had not submitted the details of her guarantors, and by the time that was taken care of the apartment had been rented to someone else. Pursuant to their agreement with the respondents/applicant the Sapinsky-Blakes requested a refund of their deposit less a \$75.00 charge for a credit check. When no refund was forthcoming the Sapinsky-Blakes sued the respondents/applicant in small claims court, and on April 12, 2012 they were granted a judgment in the total amount of \$986.38. The respondents/applicant made a partial payment towards satisfaction of the judgment on May 22, 2012, but as of the date of the hearing \$400.00 remained due (State's Ex. 9 and 10).

9) On May 6, 2013 Investigator Cavota wrote to Mr. Brooks by regular and certified mail and provided him with a copy of Ms. Sapinsky-Blake's complaint. Mr. Brooks was requested to provide a written response and to appear at Mr. Cavota's office on May 17, 2013, but he failed to do so. A subsequent letter gave Mr. Brooks until June 10, 2013 to comply, and he did appear on that date. He however still did not provide all of the requested documents. By fax dated June 12, 2013 Mr. Brooks advised Mr. Cavota that he would satisfy the Sapinsky-Blakes' judgment by July 17, 2013 (State's Ex. 10).

10) On March 30, 2012 Robert Manzo, Cassie Manzo, and Robert Mallet (hereinafter "the tenants") signed a lease to rent an apartment at 1469 Lexington Avenue, New York, New York in a transaction which the respondents/applicant acted as broker. In the course of that transaction they gave Mr. Brooks various sums of money. On March 30, 2012 the landlord, having rented the apartment to

someone else, rejected the tenants, who then asked Mr. Brooks for a refund of their money. The money which had been paid to the landlord was returned by the landlord. Of the money retained by the respondents/applicant, \$675.00 was refunded in the form of bank money orders, but a \$255.00 check issued on the respondent/applicant's business bank account was dishonored due to insufficient funds, causing the tenants to incur a bank charge of \$12.00. By email dated June 5, 2012 Mr. Brooks promised Robert Manzo that he would be sending him a certified check for \$237.00, but he failed to do so. In his June 12, 2013 fax to Investigator Cavota Mr. Brooks promised to pay the \$237.00 to Robert Manzo, but he has failed to do so (State's Ex. 11).

11) Mr. Brooks failed to respond in a timely to requests from Mr. Cavota to meet with him with regard to the Manzo complaint and to provide him with documents (State's Ex. 11).

12) On August 13, 2011 Adeline Lopes gave Mr. Brooks, who was still only licensed as a real estate salesperson, \$1,000.00 as a deposit on the rental of an apartment. He gave her a receipt on the letterhead of Brooks Real Estate Group LLC, which was not yet licensed as a real estate broker, in which he stated that the money was fully refundable if a lease was not executed. He neither gave the money to the landlord nor deposited it in a special/escrow account, and, in fact, he did not have such an account, as he has admitted both to the complainant and in his testimony. A lease was not executed and Ms. Lopes asked Mr. Brooks for a refund. On or about September 3, 2011 Mr. Brooks gave Ms. Lopes a check for \$1,000.00, but that check was dishonored due to insufficient funds. By check dated October 10, 2011, for which there were by then sufficient funds in their account, the respondents/applicant refunded \$500.00, and Mr. Books promised to refund the balance if Ms. Lopes would give him some time. When the balance was not forthcoming Ms. Lopes sued Mr. Brooks in Kings County Small Claims court, and in a letter to Investigator Jack Bilello Mr. Brooks promised to pay the \$500.00 balance in court, but he failed to do so and on July 26, 2012 she was awarded a judgment of \$560.00, including interest and disbursements, which Mr. Brooks has not satisfied (State's Ex. 14).

13) According to Mr. Brooks' testimony, although he now has an escrow account he does not deposit monies obtained in rental transactions in it.

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

I- Although this is a matter which involves both a complaint which seeks the imposition of disciplinary sanctions on the respondents/applicant and addresses the question of whether Mr. Brooks' application for renewal of his license should be denied, the burden of proof is not very different from what it would be in other cases. The complainant has the burden of proving by substantial evidence the truth of the allegations in the complaint and the applicant has the burden of proving by substantial evidence that he is sufficiently trustworthy and competent to be licensed as a real estate broker. 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 (2<sup>nd</sup> 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- Being an artificial entity created by law, Brooks Real Estate Group, LLC 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, Mr. Brooks, 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 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.

III- Pursuant to Real Property Law (RPL) §440-a it is unlawful to engage in the business of real estate brokerage or to hold oneself out as a real estate broker unless duly licensed as such. In spite of that Mr. Brooks engaged in a transaction in which he sought to broker the rental of an apartment and accepted money prior to the issuance of his and his company's real estate broker license. In so doing he violated the statute and demonstrated untrustworthiness and incompetence.

IV- Pursuant to 19 NYCRR 175.1 a real estate broker must maintain as separate special (escrow) account for the deposit of money belonging to his or her principals. Mr. Brooks testified that he has such an account but that he does not deposit money in rental transactions in it, which would explain his inability to make refunds when they are due. His failure to make such deposits in the transactions involved in this proceeding was in violation of the regulation and a further demonstration of untrustworthiness and incompetency.

V- As real estate brokers the respondents/applicant acted as agent for Ms. Hung and for the prospective tenants of various apartments, who were 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 (Civil Ct. Queens County, 1972). Included in the fundamental duties of such a fiduciary are good faith and undivided loyalty, and full and fair disclosure. Such duties are imposed upon real estate licensees by license law, rules and regulations, contract law, the principals of the law of agency, and tort law. *L.A. Grant Realty, Inc. v Cuomo*, 58 AD2d 251, 396 NYS2d 524 (1977). 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. *Dubbs v Stribling & Assoc.*, 96 NY2d 337, 728 NYS2d 413 (2001); *Department of State v Short Term Housing*, 31 DOS 90, conf'd. *sub nom Short Term Housing v Department of State*, 176 AD 2d 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 (1988).

VI- The respondents retained money in the various transactions involved herein even after it both became evident that they were not entitled to that money and Mr. Brooks had agreed to refund it. In several instances they purported to make refunds but issued checks for which there were insufficient funds in their account. Their conduct was a breach of their fiduciary duty to safeguard and account for their principals' money and, therefore, a further demonstration of untrustworthiness and incompetency.

VII- Where a broker has received money to which he or she is not entitled, he 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).

VIII- The respondents/applicant have failed to satisfy several judgments obtained against them. "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, 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; *Division of Licensing Services v Janus*, 33 DOS 89." *Division of Licensing Services v Harrington*, 123 DOS 93 at 4. I find, therefore, that they have further demonstrated untrustworthiness.

IX- Mr. Brooks permitted Ms. Furlong to reside in Ms. Hung's apartment without Ms. Hung's knowledge or permission, thereby endangering integrity and security of that apartment. His explanation that he did as he did because he felt sorry for Ms. Furlong in no way excuses his conduct, and, in fact, emphasizes his lack of appreciation for his fiduciary duties to Ms. Hung. His conduct was yet another demonstration of untrustworthiness and incompetency.

X- Pursuant to RPL §442-e[5] a real estate broker is obligated to cooperate with investigations of his or her conduct conducted by the Department of State. By failing to appear for interviews and to submit requested documents in a timely manner Mr. Brooks violated that regulation and further demonstrated untrustworthiness and incompetency.

XI- The complaint alleges that by failing to provide various persons with agency relationship disclosure statements the respondents violated RPL §443. However the complainant has failed to present evidence that the properties involved herein were "residential real property" as defined by the statute and that, therefore, disclosure statements were required. That charge is, therefore, dismissed.

XII- In determining what discipline to impose for the foregoing violations and whether to grant the application herein I have considered the 2007 decision in the matter of Mr. Brooks' application for a license as a real estate salesperson. In that decision I found that in the conduct which led to his felony conviction he had demonstrated a high degree of untrustworthiness. However I also found his subsequent employment "indicates a fitness to serve in a fiduciary capacity." 609 DOS 06 at p.6. Apparently, I was wrong. It is clear now from Mr. Brooks' conduct as related herein that he either is unable or does not wish to act in a lawful and trustworthy manner. I find, therefore, that his license as a real estate broker should be revoked<sup>1</sup>, and that he has failed to meet his burden of proving that he is sufficiently trustworthy and competent to be licensed as a real estate broker, and, therefore, that his application should be denied.

### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Brooks Real Estate Group, LLC and Donald J. Brooks have violated Real Property Law §440-a and have demonstrated untrustworthiness and incompetency; and accordingly, pursuant to Real Property Law §§441-c and 441-e their license as a real estate broker, UID #10491202307, is deemed revoked effective immediately, and the application of Donald J. Brooks for renewal of that license is denied. Should either or both of them ever apply for a new license as a real estate broker or salesperson no action shall be taken on that application until they present proof satisfactory to the Department of State that they have made the following payments, together with interest from the dates indicated at 9%, the current rate for interest on judgments: Catherine Hung, \$188.72 (12/4/20012); Courtney Furlong, \$1,300.00 (2/18/2012); Luran Sapinsky-Blake, \$400.00 (4/12/2012); Robert Manzo, \$237.00 (3/30/2012); and Adeline Lopes, \$560.00 (7/26/12).

/s/  
Roger Schneier  
Administrative Law Judge

Dated: September 3, 2014

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<sup>1</sup> The expiration of the respondents' license does not deprive the tribunal of jurisdiction to impose disciplinary sanctions. *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).