

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

WALTER GREENBERG,

DECISION

For a License as a Real Estate Salesperson

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The above matter was heard by the undersigned, Ziedah F. Giovanni, on April 30, 2014 at the office of the Department of State located at 123 William Street, New York, New York.

The applicant was represented by Barry J. Yellen, Esq., 261 Madison Avenue, New York, NY 10016.

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

COMPLAINT

The complaint alleges that the applicant was conducting business as a real estate salesperson and/or real estate broker without benefit of a license, indicating a lack of the requisite good character and trustworthiness for licensure as a real estate salesperson.

FINDINGS OF FACT

1) By application dated October 25, 2012, the applicant applied for a license as a real estate salesperson (State’s Ex. 2). The sponsoring broker on the application is Jack Glass, the broker of record for New York City Apartments, Inc. (“New York City Apartments”).

2) By letter dated June 7, 2013, the applicant was advised by the DLS that it proposed to deny his application because an investigation found that the applicant was conducting business as a real estate salesperson and/or real estate broker without benefit of a license. On this basis, the DLS concluded that the applicant lacked the requisite good character and trustworthiness for licensure as a real estate salesperson (State’s Ex. 1). He was further advised that he could request an administrative hearing, which he did by letter dated July 10, 2013. Notice of hearing, together with a copy of the complaint, was served by certified and regular mail on or about April 11, 2014 (State’s Ex. 1).

3) By preliminary statement of complaint dated October 5, 2011, Mr. Ronald Malden accused the applicant of placing a misleading advertisement for an apartment in Manhattan (“subject apartment”) to which Mr. Malden had responded. Mr. Malden was in California, planning to relocate to New York. The advertisement for the apartment indicated, among other

amenities, that the apartment had a new stove, new refrigerator and a washer and dryer. After arriving in New York, Mr. Malden discovered the apartment was not as it was depicted in the advertisement, including that fact that there was no washer and dryer.

4) DLS investigator Jack Billelo testified that he interviewed Mr. Malden about his complaint. During the interview, Mr. Malden stated he paid a commission for the rental of the subject property to JG Advertising Corp. (Transcript at 42-43). After discovering the problems with the apartment, Mr. Malden sued New York City Apartments and JG Advertising, Inc., and the matter was resolved in a settlement in which Mr. Malden received \$1500 (State's Ex. 10). Jack Glass is the CEO of JG Advertising (Transcript at 23). The applicant was not named in the suit.

5) Regarding Mr. Malden, the applicant testified that after an initial conversation in which Mr. Malden conveyed his interest in the subject property, he informed Mr. Glass about Mr. Malden. He testified that afterward he was no longer involved in processing the transaction, except for sending documents to Mr. Malden at Mr. Glass's instruction and communicating about the transmission of those documents (Transcript at 106). The applicant testified that because years have passed, he no longer remembered all of the details of his interaction with Mr. Malden.

6) The applicant testified that he created online Craigslist advertisements for New York City Apartments. He stated that Jack Glass provided him with all apartment information, and he only conveyed to the public the content of the advertising, nothing more (Transcript at 90). The applicant testified that he knew he was prohibited from engaging in brokerage activities. With regard each inquiry he received, the he testified, "I would hand it off to Mr. Glass or one of the licensed agents in the office."

7) Applicant Greenberg testified that he had indicated to Mr. Glass that he wanted to become a licensed salesperson and that Mr. Glass told him he could assist with advertising until he completed all of his qualifications.

8) Inv. Billelo interviewed the applicant. He testified that the applicant told him he was compensated by JG Advertising when a property he advertised was rented through New York City Apartments (Transcript at 55). Inv. Billelo testified that the applicant told him he was paid between \$200 and \$400 for Mr. Malden's rental of the subject property (Transcript at 56).

9) No evidence was presented indicating Mr. Glass split his commission from the rental of the subject property with the applicant.

10) Two Craigslist advertisements discovered by Inv. Billelo included detailed descriptions of available apartments and contained the applicant's desk phone number (State's Ex. 13). The advertisements also contained the statement, "for further information contact Louis..." The applicant testified that he shared his desk number with multiple people and did not know the person named in the advertisement. Inv. Billelo testified he had not ascertained who "Louis" was.

11) In addition to placing advertisements on the Craigslist website, the applicant advertised on the website nakedapartments.com. The applicant's profile page on the website included his desk phone number and his email at New York City Apartments (State's Ex. 14). Under the applicant's name were the words, "Overall Rating: Brokerage: New York City Apartments Contact Now." The "Meet Walter" section stated, "I'm a highly motivated and outgoing individual who works for one of the top brokerage firms in New York City. I will work my hardest for you and land you on the apartment of your dreams" [sic]. The applicant's profile page also includes a list of five apartments with their neighborhood locations and rental amounts under the heading "Walter's Apartments." Additionally, there is a section entitled "Walter's Specialties" under which over twenty Manhattan neighborhoods are listed.

12) The applicant testified that whenever he received a phone call through any of his website advertisements, he would explicitly inform people he was not a licensed salesperson and tell them that he would have a licensed person get back to them (Transcript at 19).

13) The New York City Apartments website includes the applicant's name, image, desk phone number, and description of him as an "agent-in-training." There is a "property list" section, but the data in that section is left blank (State's Ex. 12).

14) Mr. Glass testified at the hearing that he approved the applicant's advertisements, including the nakedapartment.com advertisement, and that he did not believe they went beyond allowable advertising. He further testified that he had indicated to the applicant that all of his advertisements were acceptable.

OPINION AND CONCLUSIONS OF LAW

I- A hearing on an application for licensure or registration is held at the request of an applicant who has been notified of the proposed denial of the application. 19 NYCRR 400.4[b]. It is the applicant's burden to establish that he is sufficiently trustworthy to be licensed as a real estate salesperson. Real Property Law §441; State Administrative Procedure Act §306.

II- Pursuant to Real Property Law §440-a, it is unlawful for a person to hold himself or herself out as a real estate broker or real estate salesperson without being so licensed. By advertising property on nakedapartments.com, particularly in the context of the sections labeled "Meet Walter", "Walter's Apartments" and "Walter's Specialties," the applicant improperly held himself out to be real estate broker or salesperson when he was not. By advertising in this manner, the applicant demonstrated untrustworthiness.

The complainant has not established, however, that the applicant's advertisement on other websites, or the applicant's interaction with Mr. Malden, constituted conducting business as a real estate salesperson or broker. In these instances, the applicant did not use misleading language, and furthermore, it appears he turned over all inquiries to a licensed broker or salesperson. Although the applicant received compensation for his advertisements, the complaint did not allege, nor has it been proven, that the applicant was paid through the impermissible splitting of a broker's commission.

III- In mitigation of the above-named violations, I have considered that the applicant showed no apartments. Furthermore, his misconduct certainly appears to have been unintentional, in that that all of his advertisements were approved by the broker of record. Although the DLS brings no charges against Mr. Glass in the present complaint, it appears any misconduct on the part of the applicant was explicitly permitted and/or facilitated by Mr. Glass. Under these circumstances, and in the context of the full record, the applicant's misconduct should not be a complete bar to his licensure. However, his violation of real property law absolutely warrants disciplinary action. Accordingly, the applicant will be required to pay a fine.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Walter Greenberg, for a license as a real estate salesperson is granted.

IT IS FURTHER DETERMINED THAT the applicant shall pay a fine of \$1000 to the Department of State on or before October 20, 2014. Should he fail to pay the fine, his license as a real estate salesperson shall be suspended for a period commencing on October 21, 2014 and terminating two months after the receipt by the Department of State of his license certificate and pocket card. He is directed to send a certified check or money order for the fine payable to "Secretary of State" or his license certificate and pocket card, to Norma Rosario, Department of State, Division of Licensing Services, One Commerce Plaza, 99 Washington Avenue, 5th Floor, Albany, New York 12231-0001.

/s/
Ziedah F. Giovanni
Administrative Law Judge

Dated: September 10, 2014