

DEPARTMENT OF STATE
OFFICE OF THE SECRETARY OF STATE

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In the Matter of

JOSEPH PEATTIE, Real Estate Salesperson,

Appellant/Cross-Respondent,

**DECISION AND ORDER
3 DOS APP. 00**

-against-

**DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES**

Respondent/Cross-Appellant

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Joseph Peattie (“Appellant”) appeals to the Secretary of State from a decision of the Office of Administrative Hearings that ordered restitution by Mr. Peattie, a real estate salesperson, to non-party complainants. Respondent, Division of Licensing Services, filed a cross appeal seeking review of the Administrative Law Judge’s decision denying Respondent’s request for suspension/revocation of Mr. Peattie’s real estate license.

Appellant submitted a Memorandum of Appeal objecting to the determination below.¹

Respondent submitted a Memorandum in Opposition and Cross Appeal.

¹Mr. Peattie did not submit proof of service of process on Respondent. Although this could be treated as fatal error, a de novo review of the record was conducted, mitigating the service requirement. The case is reviewed on the merits without regard to potentially fatal procedural error.

ISSUE

This appeal considers whether the Office of Administrative Hearings committed error in determining that Appellant must pay restitution to non-party complainants, but is entitled to maintain his real estate license.

SUMMARY OF THE EVIDENCE

In deciding this appeal, the following documents were considered:

- A) Pleadings, consisting of a notice of hearing, a notice of appearance, Appellant's Memorandum of Appeal, and the Respondents's Memorandum in Opposition and Cross Appeal.
- B) Division of Licensing Services documents that relate to the licensure history of the Appellant.
- C) Brochure and flyer of the Buyer's Building System.
- D) Contracts of the Buyer's Building System.
- E) Exclusive listing agreements.
- F) Contract for purchase and sale of real estate.
- G) Agency disclosure form.
- H) Copies of checks.
- I) Copy of the hearing transcripts, with the exhibits appended.

FINDINGS OF FACT

The findings of fact in the decision of the Office of Administrative Hearings are adopted in full for purposes of this appeal.

OPINION

Supervising Administrative Law Judge Neals correctly noted:

While licensed as a real estate salesperson, Mr. Peattie engaged in regulated, real estate brokerage business for his own benefit in an unlicensed name at an unlicensed business address. Mr. Peattie's behavior fits the conduct outlawed by Real Property Law § 440-a. He acted as a real estate broker without being licensed.

The illegality of the services rendered by Mr. Peattie forecloses any legitimate claim for a fee. A commission unlawfully retained by a real estate salesperson may be ordered to be refunded with interest.

Division of Licensing Services v. Peattie, 95 DOS 00.

Judge Neals found that the actions of the Appellant violated the Real Property Law (RPL); however, he believed the Appellant had no criminal or fraudulent intent to circumvent the licensing law. I disagree. The record clearly supports a finding that the Appellant owned and operated a business which used operating procedures designed to circumvent the licensing law and used business forms designed to give the appearance that certain regulated activities were not being performed when, in fact, they were.

Moreover, the record sustains a finding that Mr. Peattie intended to mislead potential customers including the non-party complainants, through the use of his homebuilders guide/advertisement. The guide implies that Mr. Peattie owned lots or at the very least had lots at his disposal and that in coordination with a "consortium" of building/real estate professionals, Mr. Peattie would perform certain services. Admittedly, Mr. Peattie performed some of the required services under his contract, but he was not involved in any "consortium" of other experts and admitted under oath that he owned no lots and had no special access to lots (except through his years of research and personal knowledge). Such misleading statements and activities permeate Mr. Peattie's business practices.

Lastly, Mr. Peattie cannot hide behind a written contract and claim that services not mentioned in the contract were not rendered because a contract says such services were not required. Although Mr. Peattie argued that his contract with the non-party complainants did not include a lot search (which it did), the absence of a contract provision does not mitigate the fact that a lot search was, in fact, conducted in violation of law. The record clearly establishes that Mr. Peattie intended to do a lot search from the outset regardless of what language the contract contained.

CONCLUSIONS OF LAW

Mr. Peattie violated the Real Property Law when he conducted real estate broker activities without a license in the course of his business activities. Moreover, Mr. Peattie conducted himself in an untrustworthy manner in furtherance of his business activities and fraudulently attempted to circumvent the Real Property Law by opening a “consulting business” which had services that included regulated real estate activity. Mr. Peattie also issued publications/advertisements which were untruthful and misleading.

The Secretary of State has the affirmative duty to protect the public from unreliable and untrustworthy real estate professionals and may upon review revoke or suspend a real estate license when the Secretary finds that the holder of a license is in violation of the law or is untrustworthy.

DETERMINATION

The determination of the Administrative Law Judge is sustained in part, reversed in part, and is modified as follows.

The Judge below ordered payment of full restitution. Inasmuch as the Appellant performed some of the unregulated activity pursuant to his contract with the non-party complainants, he is entitled to payment for services rendered. Therefore each non-party complainant is entitled to 50 percent restitution with interest. Mr. Peattie will retain 50 percent of his fee as compensation for non-regulated

activities. He is not entitled to any fees paid to him for services that were provided in violation of the Real Property Law, i.e. the lot search. The illegality of the services rendered by Mr. Peattie in violation of RPL § 440-a foreclose any legitimate claim for a fee while acting as a real estate broker.

Having found that Mr. Peattie deliberately circumvented the law, acted in an untrustworthy manner, and practiced fraudulent business activities any real estate licenses he currently holds are hereby revoked and no license shall be issued until restitution is paid.

So ordered on:

Alexander F. Treadwell
Secretary of State