

DEPARTMENT OF STATE  
OFFICE OF THE SECRETARY OF STATE  
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In the Matter of  
**OLLIE R. GORR,**  
Appellant,

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

-against-

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

Respondent

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Ollie Gorr, Appellant, is appealing the Office of Administrative Appeals [hereinafter “OAH”] decision revoking her real estate license. The Department of State, Division of Licensing Services [hereinafter “DLS”] , Respondent, cross-appeals seeking additional sanctions against the Appellant.

**ISSUE**

This appeal considers whether the Office of Administrative Hearings committed reversible error by revoking the real estate license of the Appellant due to multiple violations of the Real Property Law. At issue are whether the Appellant: violated any fiduciary and other duties owed to the non-party complainant seller, acted in a fraudulent manner, failed to make required disclosures, and demonstrated untrustworthiness, all in violation of RPL §§ 441-c and 443 and associated regulations.

**FINDINGS OF FACT**

For the purpose of this opinion, the findings of fact in the decision of the Office of Administrative Hearings are adopted in full.

## OPINION AND CONCLUSIONS OF LAW

### A) Appeal

Initially, it is important to note that the Appellant did not attend the administrative hearing; however, Ms. Gorr had ample opportunity to either attend the hearing or request another adjournment. The record clearly establishes that the Appellant had notice of the May 11, 2000 hearing date and was informed of the proper means to request an adjournment.

The Appellant has submitted an appeal that is without merit. The Appellant makes representations that are unsupported by the record. In an attempt to augment the record, Ms. Gorr has submitted new “evidence” in her appeal and her response to Respondent’s cross-appeal. This evidence will not be considered. An appellate tribunal is limited to the facts and record that were in evidence at the time of the original decision.

The record clearly establishes that Ms. Gorr’s actions violated the Real Property Law. As an agent of the seller, Mackay Trucking Corp., Ms. Gorr was involved in a fiduciary relationship. Fundamentally, Ms. Gorr owed the sellers undivided loyalty and full and fair disclosure. The record establishes that those duties were neglected. Ms. Gorr did not disclose that she was a major shareholder in the corporation and that the other primary shareholder was someone the seller wished to avoid. Not only did she neglect to disclose these facts, she denied them when confronted with them.

Ms. Gorr never provided the sellers, her principals, with a real estate disclosure form. Ms. Gorr contended that the requirement to furnish the disclosure form did not apply to this transaction because the property involved was not residential. Although a disclosure form is not required for all real estate transactions, it is required for all transactions involving residential real property. Property is considered

residential if a portion of the real property is being utilized as a residence for one to four families. RPL §443. There is no question that Ms. Gorr knew that a portion of the property was being utilized as a residence; therefore, Ms. Gorr should have provided the seller with the required disclosure form.

Moreover, a real estate broker has the obligation to inform all parties in a real estate transaction which party the broker is representing. Not only did Ms. Gorr not make it clear for whom she was working, she intentionally withheld vital information, and that she was, in effect, the buyer. Ms. Gorr had the affirmative obligation to inform the sellers that she was acting as both agent and principal. This information was a material fact which the sellers had the right to know and Ms. Gorr had the duty to reveal.

Having reviewed the record and the briefs submitted by both parties, I find no reversible error was committed by the Administrative Law Judge. There is ample evidence that the Appellant violated her fiduciary duties to the seller, and acted in an untrustworthy manner. The order revoking Mr. Gorr's real estate license was reasonable and appropriate and within the Administrative Law Judge's discretion.

#### B) Cross-Appeal

The Respondent has asked that the Administrative Law Judge decision be modified and that restitution be granted. The record establishes that \$23,000 of the \$150,000 commission was received by the Appellant. Upon closing the Appellant was to receive \$25,000 from the seller. (The remaining \$125,000 would be paid by 20 installment payments from monies due under the mortgage note.) Pursuant to an agreement between the parties, it was agreed that the buyer would pay the portion of the commission due at closing in order to simplify the process. The buyer tendered a check which subsequently was returned for insufficient funds. However, the Respondent established that thereafter, Ms. Gorr received most of the money owed to her at closing, despite Ms. Gorr's claims to the contrary.

The record establishes conduct by Ms. Gorr that includes violations of her fiduciary duties and a pattern of untrustworthiness. This pattern of conduct negates any claim Ms. Gorr has entitling her to any commission for this transaction.<sup>1</sup>

### **DETERMINATION**

The determination of the Administrative Law Judge is affirmed in part and modified in part. The Appellant's real estate license was properly revoked and should be returned to the Department of State. Moreover, Ms. Gorr is ordered to return the \$23,000 she received as commission to Mackay. The Division of Licensing Services will not consider any new license application by Ms. Gorr until the terms of this Decision and Order are met.

So ordered on:

Alexander F. Treadwell  
Secretary of State

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<sup>1</sup>Ms. Gorr's claim that she has not received any money as commission is disputed by letters in evidence that she drafted. Her misrepresentations to this Department are further evidence that Ms. Gorr should not be licensed as a professional who has responsibility to act within the public trust.