

DEPARTMENT OF STATE
OFFICE OF THE SECRETARY OF STATE
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In the Matter of

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

Appellant,

**DECISION AND ORDER
6 DOS APP 01
(590 DOS 00)**

-against-

KNOLLY T. FLETCHER,

Respondent.

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Division of Licensing Services [hereinafter “Appellant”] appeals to the Secretary of State from a decision of the Office of Administrative Hearings that fines Mr. Fletcher [hereinafter “Respondent”] for his failure to comply with a disclosure requirement, but does not order Respondent to reimburse a client commission.

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

Respondent failed to submit a Memorandum in Opposition.

ISSUE

This appeal considers whether the Office of Administrative Hearings erred in its determination that the doctrine of res judicata prevents the reimbursement of the commission received by the Respondent.

FINDINGS OF FACT

Respondent is a licensed real estate broker. In November of 1997, Respondent was hired to locate an apartment for the complainant (“client”). He performed this duty for a commission of \$500, but neglected to do so in accordance with statutory mandate which required providing the client with a real estate disclosure form. As a result of this transaction and the events following the rental of the apartment, an action was brought in Civil Court of the City of New York by the client against the Respondent for the reimbursement of the commission. The outcome was a judgement in favor of Respondent that Respondent was entitled to the commission.

The client also filed a complaint with the Department of State, which subsequently investigated Respondent and his business practices. The Appellant found that Respondent had failed to comply with the disclosure requirement of Real Property Law § 443 during the apartment rental transaction. Respondent was accordingly fined one thousand dollars at the conclusion of an administrative hearing. However, pursuant to the doctrine of res judicata, the Administrative Law Judge (ALJ) refused to order the Respondent to reimburse the client commission, in addition to the fine. The Appellant now appeals on the issue of res judicata.

OPINION

Res judicata bars the re-litigation of a claim that has been argued in any tribunal vested with the power to conduct a hearing and make a final determination on the merits of that claim.¹ Moreover, the doctrine of res judicata does apply in administrative proceedings when the same claim was decided earlier

¹ Bannon v. Bannon, 270 N.Y. 484 (1936).

by a court of law.² The original claim brought forth in the Civil Court of New York City involved whether Respondent deserved the received commission. Whether the issue argued was based in negligence or contract, the ultimate claim in the Civil Court was for a wrongful gain. The Civil Court found that Respondent deserved the litigated commission. In the present matter, the Appellant is arguing the same claim, wrongful gain of a commission, though the issues surrounding the Civil Court and the administrative hearing may differ. At bar, this claim received a final determination on the merits in a court of competent jurisdiction. For these reasons the Department of State is precluded from re-litigating, even in an administrative forum, this issue. Although the Department may come to a different opinion as to whether Respondent deserves the commission, the doctrine of res judicata bars any further discussion of this claim.

DETERMINATION

The order of ALJ is affirmed. The Respondent is directed to pay a fine of one thousand dollars, by certified check or money order to the New York State Department of State. Failure to comply with the above order will result in the immediate suspension of Respondent's broker license.

So ordered on:

Randy A. Daniels
Secretary of State

² Jones v. Young, 257 A.D. 563 (3d Dep't 1939).