

ADMINISTRATIVE APPEAL  
**7 DOS APP. 00**  
(189 DOS 99)

DEPARTMENT OF STATE  
OFFICE OF THE SECRETARY OF STATE  
----- X

**ALAN J. NAFTAL AND CLAYTON  
GREYSTOKE REALTY, INC.**

Appellants,

DECISION AND ORDER

-against-

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

Respondent

----- X

Alan J. Naftal and Clayton Greystoke Realty, Inc. (“Appellants”) appeal to the Secretary of State from a determination of the Office of Administrative Hearings that suspended Appellants’ licenses as real estate brokers for a period of one year.

Appellants submitted a Memorandum of Appeal objecting to that determination.

The Department of State Division of Licensing Services (“Respondent”) submitted a Response to the Memorandum of Appeal and a Cross-Appeal.

Appellants did not file a response to the Cross-Appeal.

## ISSUES

This appeal considers: (1) whether the Office of Administrative Hearings erred when it determined that Appellants demonstrated incompetency as real estate brokers by altering co-brokerage information on a listing agreement; (2) whether the Office of Administrative Hearings erred when it determined that Appellants demonstrated untrustworthiness as real estate brokers and engaged in fraudulent practices by signing their client's name to change notifications reflecting extension agreements; (3) whether the Office of Administrative Hearings erred when it determined that Appellants demonstrated untrustworthiness as real estate brokers by submitting altered documents to the Department of State in the course of its investigation of Appellants; (4) whether the Office of Administrative Hearings erred when it determined that Appellants engaged in the unauthorized practice of law and demonstrated untrustworthiness and incompetency as real estate brokers by preparing a lease between their client and a prospective tenant; and (5) whether the Office of Administrative Hearings erred when it determined that Appellants demonstrated untrustworthiness as real estate brokers by misapplying escrow funds, as Appellants' failure to deposit certain funds into an escrow account did not cause financial harm to any party.

## SUMMARY OF THE EVIDENCE

In deciding this appeal, the following documents were considered:

- (A) Pleadings, consisting of a notice of hearing, Appellant's Memorandum of Appeal, Respondent's Response to the Memorandum of Appeal, and Cross-Appeal.
- (B) Copy of the hearing transcripts, with the exhibits appended.

## FINDINGS OF FACT

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

## OPINION

The record does not establish that the Office of Administrative Hearings committed error in any of its determinations.

Even if Appellants are correct in their contention that no party suffered financial harm as a result of Appellants' failure to place certain funds in an escrow account, that does not excuse Appellants' breach of fiduciary duty by commingling and converting the funds of clients, which placed the funds in jeopardy, and which was a clear demonstration of untrustworthiness. Courts in this State have consistently held that the return of converted funds and the lack of intent to permanently deprive any party of funds does not negate the intent or otherwise excuse the wrongful conduct. In re Munzer, 261 A.D.2d 87, 697 N.Y.S.2d 49 (1<sup>st</sup> Dept. 1999).

The record supports the determination of the Office of Administrative Hearings that Appellants' license be suspended for one year, and further suspended until such time as Appellants produce proof that they have refunded the sum of \$5,000 plus interest at the legal rate for judgments (currently 9%) from March 8, 1995 to Have, Inc.

## DETERMINATION

The determination of the Office of Administrative Hearings is affirmed.

So Ordered on:

ALEXANDER F. TREADWELL  
Secretary of State