

ADMINISTRATIVE APPEAL  
1 DOS APP. 01

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LICENSING SERVICES  
NY: DEPARTMENT OF STATE

DEPARTMENT OF STATE  
OFFICE OF THE SECRETARY OF STATE

LAN LAN WANG,

Appellant,

DECISION AND ORDER

-against-

DEPARTMENT OF STATE  
DIVISION OF LICENSING SERVICES,

Respondent

The Appellant, Ms. Lan Lan Wang, appeals to the Secretary of State from a Decision of the Office of Administrative Hearings (OAH). The Decision suspended Ms. Wang's license as a real estate broker pending cessation of her operation of an unlicensed apartment information vendor (AIV) business.

The Appellant submitted two Memoranda of Law objecting to the Decision.

The Respondent Division of Licensing Services (DLS) submitted a Memorandum in Opposition to the Appeal.

ISSUES

This Appeal considers: (1) whether OAH has jurisdiction to determine the constitutionality of the apartment information vendor statute (NY Real Property Law, Article 12-C); (2) whether OAH erred when it determined that the Department of State may suspend a real estate broker's

license for activities unrelated to the real estate license itself; and (3) whether OAH erred when it determined that the Appellant's conduct of an unlicensed ATV business constitutes "untrustworthiness or incompetency" such as to justify suspension of her real estate broker's license under NY Real Property Law, §441-c.

### SUMMARY OF THE EVIDENCE

In deciding this Appeal the following documents were considered:

(A) Pleadings, consisting of a Notice of Hearing, the Appellant's Memoranda of Law, and the Respondent's Memorandum in Opposition.

(B) The Hearing Transcript and related exhibits, and the Decision.

(C) Real Property Law (RPL), Article 12-A ("Real Estate Brokers and Real Estate Salesmen") and Article 12-C ("Apartment Information Vendors").

### FINDINGS OF FACT

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

### OPINION AND CONCLUSIONS OF LAW

(1) The authorities cited in the Decision support the conclusion that the Office of Administrative Hearings has no jurisdiction to determine the constitutionality of the apartment information vendor statute. *Cherry v. Brumbaugh*, 355 AD 880, 7 NYS 2d 956 (2<sup>nd</sup> Dept., 1938).

(2) The Department of State may suspend a real estate broker's license for activities unrelated to the real estate license itself. *Fogel v. Dept. of State*, 209 AD 2d 615, 619 NYS 2d 104 (2<sup>nd</sup> Dept., 1994).

(3) The Office of Administrative Hearings determined that Appellant did conduct an unlicensed apartment information vendor business that violated GBL § 446-b and thereby demonstrated untrustworthiness or incompetence as a real estate broker which justified suspension of her real estate broker's license. Violation of a regulatory requirement unrelated to a broker's license has been held to present grounds for a finding of "untrustworthiness or incompetency". Smith v Paterson, 88 AD 2d 917, 450 NYS 2d 577 (2<sup>nd</sup> Dept., 1982).

A careful review of the entire record reveals that since late 1996, when first contacted by Division of Licensing Services investigators concerning her failure to obtain a license as an apartment information vendor, the Appellant has steadfastly refused to comply with the requirements of Real Property Law (RPL) § 446-b. She has been repeatedly requested to do so by the Division of Licensing Services. That she is selling access to listings of apartments which are available for rent is crystal clear despite her attempts to characterize it otherwise. The language of the statute is clear and unambiguous and she has adamantly refused to comply with it. Appellant's argument that the legislature should amend or otherwise modify the statute so as to exempt her on-line business from its requirements is neither relevant nor grounds to excuse compliance with a statute, like it or not, now in effect. Her argument that as an on-line business, it would be impossible to comply with the current requirements of the statute, is similarly unavailing.

Appellant is an intelligent and well educated person. Her knowing and persistent refusal to comply with the law, however, indicates an unreliability that cannot be ignored. The requirements of Article 12-C of the Real Property Law are not to be cavalierly ignored by Appellant or others by simply claiming the law does not apply to them.

Therefore, in exercising my discretion in this matter, I determine that the sanction imposed by the Office of Administrative Hearings is appropriate and that it is not disproportionate to the proven allegations of the complaint.

DETERMINATION

The Decision of the Administrative Law Judge is upheld. The Division of Licensing Services is ordered to suspend the Appellant's real estate license forthwith.



Alexander F. Treadwell  
Secretary of State

January 4, 2001