

STATE OF NEW YORK  
DEPARTMENT OF STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Complaint of

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

Complainant,

**DECISION**

-against-

**FIASESE H. AKLAH,**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on June 13, 2000 at the office of the Department of State located at 123 William Street, New York, New York.

The respondent did not appear.

The complainant was represented by Litigation Counsel Laurence Soronen, Esq.

**COMPLAINT**

The complaint alleges that the respondent has been convicted of a felony and that by reason thereof his license as a real estate salesperson should be revoked.

**FINDINGS OF FACT**

1) Notice of hearing together with a copy of the complaint was mailed to the respondent by both certified and regular first class mail addressed to him at both his last known business and residence addresses (State's Ex. 1, 2, 3, and 4). All of the mailings were returned by the Postal Service. The certified mailing to his business address was marked "Forwarding Order Expired" and the uncertified mailing to that address was marked "Attempted-Not Known" (State's Ex. 3). The certified mailing to his residence address was returned marked "Attempted-Not Known" and the uncertified mailing to that address was marked "Refused" (State's Ex. 4).

2) The respondent is duly licensed as a real estate salesperson for the period of July 16, 1998 through July 16, 2000 (State's Ex. 1).

3) On September 25, 1998 the respondent was convicted in United States District Court for the Southern District of New York of Depositing a Counterfeit Check in violation of 18 USC 513[a], a Federal felony (State's Ex. 1).

**OPINION AND CONCLUSIONS OF LAW**

I- The holding of an ex parte quasi-judicial administrative hearing was permissible, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served. Real Property Law (RPL) §441-e; *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

II- RPL §440-a provides that a license as a real estate salesperson may not be held by a person who has been convicted of a felony and who has not subsequently received an Executive Pardon, a Certificate of Relief From Disabilities, or a Certificate of Good Conduct. *Matter of the Application of Story*, 140 DOS 93. The statute grants no discretion on the issue, *Matter of the Application of Matematico*, 10 DOS 94, and, pursuant to Correction Law §751, the bar to licensure is not subject to the provisions of Correction Law Article 23-A regarding the licensure of persons previously convicted of criminal offenses.

In *People ex rel Marks v Brophy*, 293 NY 469 (1944), the Court of Appeals said that federal crimes which are unknown to our State Penal Law are not cognizable at all in our State courts. "It is fundamental in the public policy of this State that we do not, if we can avoid it, decree forfeitures in our courts because of violations of criminal laws of another jurisdiction." 293 NY 469 at 474. See also *Barsky v Board of Regents*, 305 NY 89 (1953); *Matter of Donegan*, 282 NY 285 (194). However, in *Chu v Ass'n of Bar of City of New York*, 42 NY2d 491, 398 NYS2d 1001 (1997), the Court modified its holding, stating "(w)hatever may have been the proper evaluation of a felony conviction in courts other than those of our own State in 1940 when *Donegan* was decided, we now perceive little or no reason for distinguishing between conviction of a Federal felony and conviction of a New York State felony as a predicate for professional discipline." 42 NY2d 491 at 494, 398 NYS2d at 1003.<sup>1</sup>

The Legislature addressed the holding in *Chu* by amending the Judiciary Law to provide that, for the purpose of automatic disbarment, a felony is any criminal offense classified as such under the laws of New York, or any criminal offense committed in any other state, district, or territory of the United States and classified as a felony therein which, if committed within this State, would constitute a felony in this State. However, whether through oversight or otherwise, no change was made to the Real Property Law. Accordingly, it is not necessary to determine whether the crime of which the respondent was convicted is equivalent to a felony under New York law.

The respondent was convicted of a Federal felony. He has not presented any evidence that he has been granted an Executive Pardon, a Certificate of Relief From Disabilities, or a Certificate of Good Conduct. Accordingly, his a barred from holding a license as a real estate salesperson.

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<sup>1</sup> In a footnote the Court noted that it was not addressing the effect to be accorded felony convictions in the courts of a Sister state or of a foreign country.

III- In view of the statutory bar, the question of whether the acts underlying the conviction were a demonstration of untrustworthiness and/or incompetency, were acts of fraud, or were fraudulent practices is moot.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Fiasese H. Aklah is disqualified from holding a license as a real estate salesperson, and, accordingly, pursuant to Real Property Law §441-c his license as a real estate salesperson, UID #40AK0877709, is revoked, effective immediately.

Roger Schneier  
Administrative Law Judge

Dated: June 15, 2000