

83 A.D.2d 845
Supreme Court, Appellate Division,
Second Department, New York.

Nigel J. BLATCHLY, d/b/a Devon Realty, Petitioner,
v.
DEPARTMENT OF STATE of the
State of New York, Respondent.

Aug. 10, 1981.

Real estate broker brought Article 78 proceeding to review a determination of the Secretary of State revoking his license. The Supreme Court, Appellate Division, held that revocation was disproportionate to misconduct, and three-month suspension was maximum penalty record would sustain.

Petition granted; determination modified by vacating penalty imposed.

Attorneys and Law Firms

****755** Goldson & Goldson, North Babylon (Howard W. Goldson, North Babylon, of counsel), for petitioner.

Robert Abrams, Atty. Gen., New York City (Arnold D. Fleischer, Asst. Atty. Gen., Shirley Adelson Siegel, Sol. Gen., and Peter Bienstock, Asst. Atty. Gen., New York City, of counsel), for respondent.

Before HOPKINS, J. P., and TITONE, RABIN and WEINSTEIN, JJ.

Opinion

MEMORANDUM BY THE COURT.

***845** Proceeding pursuant to CPLR article 78 to review a determination of the Secretary of State, dated September 24, 1979 and made after a hearing, which found that petitioner had demonstrated untrustworthiness and revoked his real estate broker's license.

Petition granted to the extent that the determination is modified, on the law, by vacating the penalty imposed. As so modified, determination confirmed, without costs or disbursements, petition otherwise dismissed on the merits and the matter is remitted to the Secretary of State for the imposition of a new penalty in accordance herewith.

We find there was substantial evidence to sustain the charge against the petitioner. However, the penalty imposed, revocation of his license, is so disproportionate to his misconduct in light of all the circumstances to be shocking to one's sense of fairness (see *Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 356 N.Y.S.2d 833, 313 N.E.2d 321). Petitioner has been a real estate broker for 27 years. There is no indication of prior violations committed by him. Accordingly we find that a three-month suspension is "the maximum penalty the record will sustain" (*Robb Tess Rest. Corp. v. New York State Liq. Auth.*, 49 N.Y.2d 874, 876, 427 N.Y.S.2d 936, 405 N.E.2d 181).

Parallel Citations

83 A.D.2d 845, 441 N.Y.S.2d 755