

I N D E X

| | PAGE |
|----------------------------------|-------|
| Notice of Appeal..... | 1 |
| Affidavit. | 2 |
| Order to Show Cause..... | 9 |
| RELATOR'S TESTIMONY: | |
| Richard Endicott—Direct | 13 |
| Cross. | 24 |
| Re-direct. | 24 |
| Charles E. Fell—Direct..... | 25 |
| Cross. | 27 |
| Re-direct. | 29-31 |
| Re-cross. | 30 |
| Charles H. Harrison—Direct..... | 32 |
| Cross. | 41 |
| Warner Lindsay—Direct | 46 |
| Cross. | 52 |
| Re-direct. | 53 |
| George Van H. Potter—Direct..... | 53 |
| Cross. | 57 |
| Re-direct. | 58 |
| Walter Clark—Direct | 58 |
| John J. Stevenson—Direct..... | 60 |
| Cross. | 69 |
| Re-direct | 81 |
| Re-cross. | 82 |

| | PAGE |
|---------------------------------|-------------|
| Herman Schabinger—Direct | 83 |
| Cross. | 84 |
| Re-direct | 86 |
| Re-cross. | 87 |
| John R. Siracusa—Direct | 89 |
| Michael Liebster—Direct | 90 |
| Cross. | 94 |
| Re-direct. | 98 |
| Frank J. Bloom—Direct..... | 100 |
| Cross. | 103 |
| Re-direct. | 104-110-115 |
| Re-cross. | 104-112 |
| RESPONDENT'S TESTIMONY: | |
| Richard Endicott—Direct | 116-160 |
| John R. Siracusa—Direct..... | 120 |
| Cross. | 125 |
| Irene Endicott—Direct | 128 |
| Cross. | 129 |
| Re-direct. | 130 |
| Re-cross. | 130 |
| Jacob Shenkman—Direct | 131 |
| Cross. | 135 |
| Re-direct. | 140 |
| Re-cross. | 141 |
| Charles H. Harrison—Direct..... | 142 |
| Cross. | 149 |
| Re-direct. | 152 |

| | PAGE |
|--|------|
| Charles E. Fell—Direct..... | 153 |
| Russell C. Roney—Direct..... | 157 |
| Cross. | 159 |
| Certification. | 160 |
| Relator's Exhibit 1, Section 2 of By-Laws.... | 161 |
| Relator's Exhibit 2, Section 2 of By-Laws.... | 161 |
| Relator's Exhibit 3, Letter, John J. Stevenson to Atlantic City Real Estate Board, 1-4-24 | 162 |
| Relator's Exhibit 4, Letter, Charles H. Harri- son, President, to John J. Stevenson, 9-16-24 | 165 |
| Relator's Exhibit 5, Letter, Charles H. Harri- son, President, to John J. Stevenson, 7-1-24 | 166 |
| Relator's Exhibit 6, Letter, John J. Stevenson to Charles Harrison, President, 7-2-24... | 167 |
| Respondent's Exhibit 3, Contract..... | 168 |
| Respondent's Exhibit 4, Bill..... | 170 |
| Respondent's Exhibit 5, Regulation No. 5, Fees Payable. | 170 |
| Respondent's Exhibit 6, Letter, J. Shenkman to Atlantic City Real Estate Board, 6-20-24 | 171 |
| Respondent's Exhibit 7, Bill..... | 172 |

| | PAGE |
|---|------|
| Respondent's Exhibit 8, Letter, John J. Stevenson to Charles Harrison, President, 2-9-24. | 173 |
| Alternative Writ of Mandamus. | 174 |
| Return to Alternative Writ. | 182 |
| Answer to Return of Respondent to Alternative Writ | 186 |
| Notice. | 189 |
| Opinion. | 191 |
| Respondent's Exhibit 5. | 195 |
| Opinion. | 196 |
| Rule for Peremptory Writ. | 199 |
| Judgment. | 200 |

NOTICE OF APPEAL.

(Filed September 28, 1926.)

NEW JERSEY SUPREME COURT.

JOHN J. STEVENSON,
Relator-Respondent.
v.
ATLANTIC CITY REAL ES-
TATE BOARD,
Respondent-Appellant.

10

On Appeal.
Notice of Appeal.

*To Bolte, Sooy & Tripician, Esquires, Attorneys for
relator-respondent:*

20

Take notice, that the respondent-appellant, Atlantic City Real Estate Board, appeals to the Court of Errors and Appeals from the whole of the judgment of the Supreme Court entered in this cause on the following grounds:

1. Because the Supreme Court erred in entering judgment in favor of the relator-respondent, and directing the issuance of a peremptory writ of mandamus. 30

2. Because the Supreme Court erred in giving final judgment in favor of the relator-respondent instead of a judgment in favor of the respondent-appellant.

3. Because the Supreme Court erred in considering relator-respondent's motion as a demurrer and giving judgment in favor of relator-respondent thereon.

Respectfully,

THOMPSON & HANSTEIN,
*Attorneys for Respondent-
Appellant.*

10

AFFIDAVIT

(Filed Oct. 8, 1924)

STATE OF NEW JERSEY, }
COUNTY OF ATLANTIC, } ss.

20 JOHN J. STEVENSON, being duly sworn according to law, on his oath deposes and says that:

I am a resident of the City of Atlantic City, County of Atlantic and State of New Jersey.

I am engaged in the real estate business in Atlantic City and have been for upwards of twelve years, and that the realtors of Atlantic City associated themselves together and incorporated under the name of Atlantic City Real Estate Board. I became one of the members of the said board and enjoyed membership in said board up until the 16th day of September, 1924.

30 The Atlantic City Real Estate Board, incorporated, is composed of a membership of practically all legitimate real estate agents in Atlantic City and membership in said board is a valuable asset to a realtor doing business in Atlantic City, one of the benefits to be derived from being a member be-

ing that a member may advertise himself as being a realtor, and a non-member cannot so advertise himself, so that the name "Realtor" is of great value and is generally recognized by the public as a stamp of approval of the business methods of the person who uses the designation.

That the Atlantic City Real Estate Board, incorporated, at or about the time of its incorporation, adopted a constitution and a set of by-laws, and that Section 2, Article 4, of the by-laws, as adopted, read as follows: 10

"The President shall appoint, when necessary, a committee on arbitration consisting of five (5) active members, whose duties shall be to hear any differences arising between members of the board, referred to them for arbitration. And the said committee's findings, after a due and just opportunity is given both parties, shall be binding upon such members. Any member who shall refuse or neglect to comply with such findings shall be liable to suspension from all benefits of membership, or to expulsion, as the board of trustees, by a majority vote may direct." 20

That thereafter, the by-laws aforesaid were amended, and Section 2, Article 4, as above quoted, was amended under a new article and section known as Article 10, Section 2, a true copy of which section is hereunto annexed and made a part hereof. 30

That on or about the 1st day of December, 1923, one Jacob Shenkman listed with me, in my office, for sale, apartment house properties located on a lot situate at the northeast corner of Vermont and Madison Avenues, in Atlantic City, and in accordance with the rules of the Atlantic City Real Estate

Board, incorporated, I made a multiple listing thereof and put the same in the office of the secretary of said board. That under the rules of said board, when a multiple listing is made and a sale of the property so listed is effected through any realtor, the realtor so effecting said sale receives sixty per cent of the commissions arising therefrom, the Atlantic City Real Estate Board receives five per cent. and the realtor listing said properties receives the
10 balance of the commission; that the properties so as aforesaid listed by me, belonging to Mr. Shenkman, were sold through another realtor who claimed to be entitled to the entire commission; thereupon, I, as a member of the Atlantic City Real Estate Board, incorporated, as aforesaid, invoked the provisions of Section 2, Article 10, of the amended by-laws aforesaid, with the result that the president of said board appointed a committee of arbitration, which
20 board met and heard the testimony adduced by me as well as that adduced by the aforesaid realtor, who had made actual sale of the properties aforesaid, and said board, after considering the testimony, decided against my claim of being entitled to receive any portion of the commissions arising out of the sale aforesaid from the realtor who had made said sale; that in accordance with the provisions of said Section 2, Article 10, I considered that the finding of said board was binding upon me in-
30 so far as any claim I might have against the selling realtor was concerned, and I, accordingly, abided by said finding, and have abided by said finding from the time of the finding thereof, up to and including the present time.

That before the happenings related in the preceding paragraph, Mr. Shenkman, who is not and was not a member of the Atlantic City Real Estate

Board, had agreed with me personally that no matter what happened with reference to the findings of the Real Estate Board and the committee of arbitration aforesaid, that he would pay to me for my services one-half of a commission of three per cent on \$12,000.

That after the decision of the committee of arbitration aforesaid, and after I had become bounden thereby, insofar as my dealings were concerned with the Atlantic City Real Estate Board, and the members thereof, I undertook to effect a settlement of the accounts between Mr. Shenkman and myself, which included other items in addition to the item of \$180 for the one-half commissions hereinbefore referred to, with the result that Mr. Shenkman and myself disagreed, legal proceedings were threatened but not instituted, and with the further result that Mr. Shenkman and myself were dealing through attorneys representing both sides of the controversy.

That thereafter, individual members of the Atlantic City Real Estate Board talked with me with reference to my accounts with Mr. Shenkman and I am advised, although I do not know for a certainty what happened, that the board of directors of the Atlantic City Real Estate Board met and determined without giving me notice of a hearing or notice of their intention of having a hearing that I should be expelled from membership to the Atlantic City Real Estate Board as they termed it "under Article 4, of Section 2, of the old constitution and by-laws, and under Article 10, Section 2, of the new constitution and by-laws"; that my only knowledge of a meeting of the board of directors was of the action taken by them as contained in the notice

received from the president of said Board a true and correct copy of which is as follows:

ATLANTIC CITY REAL ESTATE BOARD
Guarantee Trust Building
Phone Marine 5613

September 16, 1924.

Mr. John J. Stevenson,
Rhode Island & Oriental Aves.,
Atlantic City, N. J.

10 Dear Sir:—

The Board of Directors under Article 4, Section 2 of the old constitution and by-laws and under Article 10, Section 2, of the new constitution and by-laws, has expelled you from membership in the Atlantic City Real Estate Board.

Yours very truly,

Charles H. Harrison,
President.

H:E

20 I am advised and charge that no active member of the Atlantic City Real Estate Board had asked for a committee of arbitration to determine any differences that might have existed between me and any such member and that no committee of arbitration was appointed, and that there was no complaint from any member of the Atlantic City Real Estate Board upon which the board of directors of said board acted in attempting to expel me from membership in said Board.

30 I am advised that the action of the Atlantic City Real Estate Board in attempting to expel me is illegal because

1. There were no charges preferred against me by any member of the Atlantic City Real Estate Board.

2. There was no hearing given me on any charges presented by any member of the Atlantic City Real Estate Board.

3. The board of directors of the Atlantic City Real Estate Board did not legally expel me from membership therein.

4. The board of directors of the Atlantic City Real Estate Board did not legally proceed under either Article 4, Section 2, of the old constitution and by-laws, or under Article 10, Section 2, of the new constitution and by-laws. 10

5. That the board of directors of the Atlantic City Real Estate Board could not legally proceed under both Article 4, Section 2, of the old constitution and by-laws and Article 10, Section 2, of the new constitution and by-laws.

That after receipt of the notice of my expulsion from membership aforesaid, I made an effort through my attorneys, Bolte, Sooy & Gill, to have the order of expulsion removed and to have the Board reinstate me to membership, and that my attorneys negotiated with said Board, through their attorneys, Thompson & Hanstein, and that I was definitely advised that the Board would refuse to reinstate me until Thursday, the 2nd day of October, 1924. 20

I, therefore, pray that a writ of mandamus be issued out of this Honorable Court directed to the Atlantic City Real Estate Board ordering them and compelling them to reinstate me to active membership in the Atlantic City Real Estate Board. 30

JOHN J. STEVENSON.

Sworn and subscribed to before me this 4th day
of October, A. D. 1924.

MAZIE L. PREIST,
Notary Public of New Jersey.

A true copy.

EDWARD J. KELLEHER,
Clerk.

ARTICLE X.

10 Section 2.

The president, at the request of any active members shall appoint a committee of arbitration. Such committee shall consist of five disinterested active members of the board, two of whom shall be selected by each side of the controversy and the fifth by the president. If there shall be more than two active members involved, then each disputant shall select one such member and the president shall select the remainder of such five active members. Their duties shall be to hear any differences arising among members of the Board referred to them for arbitration. And the committee's findings, after a due and just opportunity is given all parties, to be heard in the presence of each other, shall be binding upon such members. Any member who shall refuse or neglect to comply with such findings shall be liable to suspension from all benefits of membership or to expulsion as the board of directors, by a majority vote, may direct.

30 A true copy.

EDWARD J. KELLEHER,
Clerk.

[ENDORSED]

Service of a certified copy hereof
duly acknowledged this 9th day of
October, 1924.

Thompson & Hanstein,
Attorneys for Atlantic City
Real Estate Board.

10

ORDER TO SHOW CAUSE.

NEW JERSEY SUPREME COURT.

JOHN J. STEVENSON,
Relator,
v.
ATLANTIC CITY REAL ES-
TATE BOARD,
Respondent.

Mandamus.
Order to Show
Cause.

20

Upon reading and filing the affidavit of the rela-
tor, and on motion of Bolte, Sooy & Gill, attorneys
of relator.

It is on this 8th day of October, 1924, Ordered 30
that the defendant show cause before this Court,
at the State House, Trenton, N. J., on Tuesday, the
sixth day of January, 1925, at 10.30 o'clock in the
forenoon of said day why a writ of mandamus
should not issue in accordance with the prayer of
the relator commanding the defendant to reinstate

to active membership in the Atlantic City Real Estate Board, said relator.

It is further ordered that both parties have leave to take testimony to be used on the return of this rule, on three days' notice.

It is further ordered that copies of the rule and the affidavits be served on defendant within five days from the date hereof.

Entered October 8, 1924.

10 On motion of

BOLTE, SOOY & GILL,
Attorneys of Relator.

By the Court,

SAMUEL KALISCH,
J. S. C.

[ENDORSED]

20

Service of a certified copy hereof
duly acknowledged this 9th day of
October, 1924.

Thompson & Hanstein,
Attorneys for Atlantic City
Real Estate Board.

30

DEPOSITIONS.

NEW JERSEY SUPREME COURT.
ATLANTIC COUNTY.

JOHN J. STEVENSON,

Relator,

v.

ATLANTIC CITY REAL ES-
TATE BOARD,

Respondent.

Mandamus.
Depositions.

Atlantic City, N. J., November 7th, 1924.

TESTIMONY.

Before CLAUDE W. MYROSE, Supreme Court
Examiner.

Depositions taken before Claude W. Myrose, Supreme Court Examiner, on Friday, the seventh day of November, 1924, at eleven o'clock in the forenoon, in the offices of Bolte, Sooy & Gill, Real Estate and Law Building, Atlantic City, N. J., in the presence

of G. Arthur Bolte, Esq., and William Frank Sooy, Esq., of Messrs. Bolte, Sooy & Gill, attorneys for relator, and Walter Hanstein, Esq., of Messrs. Thompson & Hanstein, attorneys for respondent.

It Is Agreed by and between counsel for the respective parties that the depositions shall be taken stenographically, afterwards reduced to typewriting and signatures of the witnesses waived.

10

Mr. Sooy: I offer in evidence the constitution and by-laws of the Atlantic City Real Estate Board with reference to Article 10, Section 2, thereof, page 15, under heading, "Committees" and preceding Article 10 under the heading, "Meetings," which by-laws appear to be undated as to time of passage.

(By-laws and constitution received in evidence
20 and marked Exhibit Relator 1.)

Mr. Sooy: Also the constitution and by-laws of 1921, Article 4, Section 2, found on page 11 of said by-laws as printed in pamphlet form.

(Received in evidence and marked Exhibit Relator 2.)

It Is Stipulated And Agreed between counsel that
30 the constitution and by-laws of 1921 may be called the old constitution and by-laws and the constitution and by-laws marked Exhibit Relator 1 may be designated as the new by-laws and that the new by-laws were passed at a regular meeting of the board on May twenty-seventh, 1924.

RICHARD ENDICOTT, sworn for the relator.

Direct examination.

By Mr. Sooy:

Q. Mr. Endicott, what official position have you with the Atlantic City Real Estate Board?

A. Executive secretary.

10

Q. As such do you have in your possession the control and custody of the minutes of the various meetings of the Atlantic City Real Estate Board, both as to its stockholders and directors?

A. Why, no. Mr. Kite is the secretary. I have charge of them in his absence.

Q. Have you them with you here today?

A. I have.

Q. Will you turn to the minutes that you have in your possession and say when the constitution and by-laws of 1921, marked Exhibit Relator number 2, were adopted by the Atlantic City Real Estate Board?

20

A. I can't say. That is right, 1921? I can't tell that.

Q. You have the minutes here, haven't you?

A. Not of 1921. I have the 1924 minutes here.

Q. Have you with you the minutes of a meeting of the Atlantic City Real Estate Board when the constitution and by-laws which we have designated as the new were adopted?

30

A. Yes, sir.

Q. Will you produce that minute?

(Witness complies.)

Q. I call your attention to the fact that the min-

utes of May twenty-seventh, 1924, contain the following clause: "The new constitution and by-laws prepared by the by-laws committee was presented and was adopted, as per printed copy attached." I ask you whether or not the constitution and by-laws marked Exhibit Relator 1 are the constitution and by-laws referred to in that minute.

A. They are.

Q. Are you able to testify whether or not the
10 constitution and by-laws as adopted at the meeting of May twenty-seventh, 1924, superseded the old by-laws and constitution of 1921?

A. They did.

Mr. Hanstein: I want to note an objection to that question because it calls for a conclusion from the witness. There is no evidence that he is qualified to give a conclusion.

20 Mr. Sooy: He has answered it.

Mr. Hanstein: Then I move the answer be stricken out.

Mr. Sooy: What was your answer to my question?

A. I thought so.

Q. That isn't the question. The question is, what was your answer to my question.

A. I believe they did.

30 Q. That isn't the question. The question is, what was your answer to my question as originally put?

Mr. Hanstein: I object to the form of that question, because what his answer may have been in the face of an objection, is immaterial. I think you

are entitled, perhaps, to the answer over the objection. That is all.

(Last question repeated.)

A. My answer was they did.

Q. Are you able to testify from personal knowledge whether or not since the adoption of the constitution and by-laws marked Exhibit 1 on May twenty-seventh, 1924, the Atlantic City Real Estate Board has proceeded under the provisions and terms of the constitution and by-laws of 1924? 10

A. I should say not completely.

Q. And by that you mean that they have proceeded not only under the constitution and by-laws of 1924, but also the constitution and by-laws of 1921?

A. No, I wouldn't say that. There are certain provisions in this new set of by-laws that are not in the old set of by-laws, and we have not yet put all of those in practice, the new things. 20

Q. In so far as the constitution and by-laws of 1924 changed the provisions of the constitution and by-laws of 1921, are you able to testify whether or not the Atlantic City Real Estate Board has proceeded under the terms and provisions of the by-laws and constitution of 1924?

A. They have since May twenty-seventh.

Q. And that would apply, would it not, to proceedings under Section 2 of Article 10 of the by-laws of 1924 as they change Section 2, Article 4, of the by-laws of 1921? 30

A. Yes, sir.

Q. Have you with you the record of any application made by any active member of the Atlantic City Real Estate Board that a committee of arbi-

tration be appointed under Section 2 of Article 10 for the purpose of considering a dispute between Mr. John J. Stevenson and any member of the Board in the year 1924?

A. Which by-laws are you applying to now? Not under that by-laws, no, sir.

10 Q. Have you any minute of the appointment of an arbitration committee by the president on the application of an active member to consider differences arising between John J. Stevenson and any member of the Atlantic City Real Estate Board?

A. I have—Mr. Hanstein, you have that folder. An arbitration committee was appointed there.

(Question repeated.)

A. No, no minute.

(Question repeated.)

20 Q.—under Article 4, Section 2, of the constitution and by-laws of 1921?

A. No minute.

Q. Have you any record of the appointment of such a committee by the president under the provisions of Article 4, Section 2, of the constitution and by-laws of 1921?

A. We have a letter on file.

Q. Will you produce that letter?

30 (Paper produced.)

A. This is a carbon copy of the letter.

Q. Outside of the copy of the letter you produced, have you any other record of the appointment of an arbitration committee to consider such a dispute during the year 1924?

A. We have several letters, correspondence between the board and Mr. Stevenson and others relative to the arbitration, to show that there was such a committee appointed and acted.

Q. But no minute?

A. No minute. Well, we have minutes to show that Mr. Stevenson appeared later before the board of directors relative to an arbitration.

Q. But the question was whether or not you had any minute showing the appointment of such a committee? 10

A. No.

Q. Have you any minute showing the report of the committee that was so appointed?

A. No direct minute.

Q. Have you any minute showing the ratification or other action taken on the report of any committee that might have been so appointed?

A. We have.

Q. Will you produce that? 20

A. There are three separate minutes applying to this case.

Q. Will you read into the record the action of the board in ratifying the report of any committee with reference to the arbitration that we have been discussing?

A. June thirtieth. "The president was requested by the board"—which means the board of directors—"to write Mr. John J. Stevenson from board headquarters and tell him he must write a letter to Mr. Shenkman, withdrawing his claim, or otherwise he must resign from the board." On August 30 first, a meeting of the board of directors reads, "In regard to the matter of Mr. Stevenson and the letter written him by the president with reference to his resigning from the board, it was regularly

moved, seconded and carried that the action of the president in writing such letter be sustained, and that the matter be referred to Mr. Walter Hanstein for advice in the matter." September twelfth, "Mr. Potter, seconded by Mr. Lindsay, moved that Mr. John J. Stevenson be expelled from the board for non-compliance with the decision of the board of arbitration and action of the board of trustees in connection with the Shenkman matter. Motion carried."

10 Q. That is the only record by minutes that you have with reference to the report of an arbitration committee or with reference to any action taken on any report that may have been made by the arbitration committee?

A. It is.

Q. Did the arbitration committee that was appointed ever file any written report?

A. It did not.

20 Q. Have you any record or is there any record at your command of the proceedings of the arbitration committee with reference to any disputes between an active member and John J. Stevenson?

A. Only correspondence.

Q. Who is the Mr. Shenkman referred to in the minutes you have just read?

A. Mr. J. Shenkman, who owns property at 201 North Vermont Avenue, on December twenty-first, I should say, of last year.

30 Q. Was he an active member of the Atlantic City Real Estate Board in 1923 or in 1924?

A. No.

Q. Is he now an active member of the Atlantic City Real Estate Board?

A. He is not.

Q. Has he ever been?

A. Not to my knowledge.

Q. Have you any record of the application by an active member of the board for an appointment of an arbitration committee with reference to differences that existed between Mr. Shenkman and Mr. Stevenson?

A. We have a letter from Mr. Stevenson requesting such an arbitration committee.

Q. Will you produce that?

10

(Letter produced, offered in evidence and marked Exhibit Relator 3.)

Q. Who is the Mr. Roney mentioned in Exhibit Relator 3?

A. Russell C., an active member of the Atlantic City Real Estate Board.

Q. An active member of the Real Estate Board?

A. Yes, sir.

Q. Had Mr. Roney, as an active member of the Real Estate Board, listed Mr. Shenkman's property for sale or as being in his hands for sale prior to the letter of Mr. Stevenson of January twenty-fourth, 1924?

20

A. Not listed with the board on the multiple listing system, no.

Q. He has not?

A. No.

Q. Was there a dispute between Mr. Roney and Mr. Stevenson with reference to commissions arising out of the sale of property belonging to Mr. Shenkman?

30

A. From that letter, I should think so.

Q. Was the board of arbitration appointed under this letter, Exhibit Relator 3?

A. It was.

Q. And did that board make any report as to whether or not Mr. Stevenson was entitled to participate in the commissions Mr. Roney was to have under the sale of the Shenkman property?

A. Verbal report.

Q. And that verbal report was not entered on the minutes of the Atlantic City Real Estate Board of Directors or stockholders, was it?

A. It was not.

10 Q. Do you know whether or not the finding of the arbitration committee as between Mr. Stevenson and Mr. Roney was that Mr. Stevenson was not entitled to participate in the commissions that were paid to Mr. Roney on account of the sale of the Shenkman property?

A. It was.

Q. And Mr. Roney was a realtor at that time and an active member of the board?

A. He was.

20 Q. Mr. Stevenson was, also?

A. He was.

Q. And Mr. Shenkman was not?

A. He was not.

Q. Who constituted the arbitration committee?

A. Mr. Charles E. Fell, chairman, Frank J. Bloom and John R. Siracusa.

30 Q. Outside of the appointment of the arbitration committee just referred to, was there any other arbitration committee appointed to adjust the differences between Mr. Stevenson and any active member of the Atlantic City Real Estate Board?

A. In what year?

Q. Any year.

A. I can't answer that.

Q. Well, we will say in the year 1923 or 1924?

A. No.

Q. Did Mr. Shenkman ever ask that an arbitration committee be appointed to determine differences that had arisen between him and Mr. Stevenson?

A. He did not ask for an arbitration committee.

Q. And none was appointed?

A. No.

Q. Is there any record in the possession of the Atlantic City Real Estate Board that contains a report or information to the board that Mr. Stevenson had not abided by the decision of the arbitration board appointed as you have heretofore testified, insofar as that report referred to his dealings with Mr. Roney?

10

A. No report from Roney.

Q. Well, is there a report from anyone with reference solely to the dealings as between Roney and Stevenson?

A. I can't see where they can be separated. That is where I can't understand. They are so tied up together that when you get a letter from Shenkman that he is not abiding by the arbitration committee's findings, I should say yes, there was such a report.

20

Q. Is there any record or report that contains the finding that Mr. Stevenson, after the report of the arbitration committee, endeavor to obtain from Roney any portion of the commissions that he had been paid by virtue of the sale in the Shenkman matter?

A. No.

30

Q. Then, insofar as the record of the Atlantic City Real Estate Board appears, Mr. Stevenson did not endeavor, after the finding of the arbitration committee, to collect from Mr. Roney any portion of the commissions arising in the transaction concerning the Shenkman property?

A. Not to our knowledge.

Q. Is the Atlantic City Real Estate Board, the respondent in this case, an incorporated organization?

A. It is.

Q. Under what laws? I mean what state?

A. State of New Jersey.

Q. And was incorporated when?

10 (This date was to have been given to the Examiner, but has not been furnished.)

Q. Since the incorporation of the Atlantic City Real Estate Board under what designation have its members been known?

A. Realtors.

Q. Is the name, "Realtor" permitted to be used by other people engaged in the real estate business in Atlantic unless they are members of the Real
20 Estate Board?

A. It is not.

Q. So that the name "Realtor" among real estate dealers in Atlantic City is of considerable value, is it not?

A. I should think it would be.

Q. A member expelled from membership in the Atlantic City Real Estate Board would not be entitled to use the name "Realtor," would he?

A. He would not.

30 Q. The Atlantic City Real Estate Board has adopted what is known as the multiple listing system, has it not?

A. It has.

Q. Briefly explain what the multiple listing system is.

A. The multiple listing system is a system where-

by one realtor endeavors to secure the sole agency for the sale of a particular piece of property on blanks furnished by the Atlantic City Real Estate Board. A copy of the listing must be sent to the Board headquarters within twenty-four hours after the listing contract has been signed, from which place copies of the listing are sent out to every member of the board, to be used for the sale of this particular property. The multiple listings are taken for a period of not less than three months. The division of commission as arranged between brokers is thirty-five per cent for the listing broker, sixty per cent to the selling broker and five per cent to the Board in case of a co-operative sale. 10

Q. And if a man is not a member of the Atlantic City Real Estate Board, can he participate in multiple listings?

A. He may sell the property so listed, but he can't list property under the multiple system.

Q. And if he does sell the property, he must divide commissions irrespective of whether he is a member of the board or not? 20

A. He must.

Q. If he isn't a member of the board and there is a multiple listing, does he get a copy of that multiple listing?

A. If he isn't a member of the board?

Q. Yes.

A. He does not.

Q. You have produced all of the minutes of the Atlantic City Real Estate Board pertaining to the matter of the appointment of arbitrators and the action of the board with reference to John J. Stevenson, have you not? 30

A. Yes.

Cross-examination.

By Mr. Hanstein:

Q. Is this a copy of the letter that you referred to in which the president appointed the arbitration committee?

A. It is.

10 (Letter marked Respondent 1 for identification.)

Q. Were you present at that arbitration hearing?

A. I was not.

Q. Then when you made your statement as to the—as to the decision that the arbitration committee made, you were relying merely on what you have been told; is that correct?

A. What I have been told—that is right—by the chairman of the committee.

20

Re-direct examination.

By Mr. Sooy:

Q. Is there any minute of any report of the arbitration committee, either verbal or written, in the matter of Stevenson and Roney, other than the minutes you have read?

A. No.

30 Q. When I say that, I mean any minutes of the board of directors or of the Real Estate Board itself?

A. That is right.

CHARLES E. FELL, sworn for the relator.

Direct examination.

By Mr. Sooy:

Q. Mr. Fell, you were appointed as a member of an arbitration committee by the president of the Atlantic City Real Estate Board in January of 1924, 10
were you not?

A. Yes.

Q. I show you a copy of letter marked Respondent 1 for identification and ask you whether or not that constitutes your appointment?

A. I don't remember having received this letter, but I probably did. I don't remember having received it. The reason I don't is because it isn't always customary to send out letters. Sometimes they will call up and tell you. 20

Q. Did you ever see the written application under which your appointment as chairman of that committee was made?

A. Application that I be chairman of the committee?

Q. No; the application for the appointment of the board of arbitrators?

A. Only that letter which Stevenson sent in; this letter here.

Q. Did your committee meet in pursuance with 30
your appointment?

A. Yes.

Q. And you file any written report?

A. No, we didn't.

Q. Did you make any verbal report?

A. Yes, we made a verbal report.

Q. To whom?

A. To both the secretary and Mr. Harrison, the president.

Q. To the secretary of the board—

A. Or to Mr. Faunce, who was then the president.

Q. Did you ever make any verbal or written report to the board of directors assembled in a meeting?

A. Yes.

Q. Was any minute made of that report?

10 A. I don't know about that. I know I brought it up in the meeting. I don't know whether any record was made of it or not.

Q. Was it a directors' meeting?

A. Yes; board of directors' meeting.

Q. At what meeting, do you know?

A. What do you mean, the date?

Q. Yes.

A. Sometime after the hearing. It may have been the next one or the second one following. Very
20 likely the one following.

Q. Was Mr. Stevenson present at the meeting at which the report was made?

A. No.

Q. Was Mr. Stevenson a member of the board of directors at that time?

A. No.

Q. No written report was ever made?

A. No. I don't think therefore it had been customary to file a written report.

30 Q. Was the meeting at which you made your verbal report a regularly called meeting of the board of directors or was it a casual meeting?

A. I don't recall that. It was very likely at the following meeting. I say that because I haven't missed any meetings and I would very likely make a report at the next meeting. The minutes would

show whether the next meeting following that arbitration had been a special or regular meeting.

Q. Did you ever receive an appointment as a member of the board of arbitration with reference to any dispute between Shenkman and Stevenson at the instigation of any active member of the board?

A. No.

Cross-examination.

10

By Mr. Hanstein:

Q. Mr. Fell, the term "Director" as you used it is what you are referring to, is what is referred to as trustee in the by-laws?

A. Yes.

Q. The term is used interchangeably by you folks?

A. Yes.

Q. Was it the custom of the arbitration committees to file reports in writing?

20

A. I am pretty certain it never has been.

Q. And you didn't file this one in writing?

A. No.

Q. You told Mr. Sooy that you had never been appointed to arbitrate any difference between Mr. Stevenson and Mr. Shenkman. Do you know what brought this controversy out of which this case arises to an arbitration? Was there a letter?

A. There was a letter sent by Stevenson, asking for an arbitration committee.

30

Q. Is this the letter, marked Relator 3?

A. I believe it was. Without reading it all through, I would say it was. On or about the fourth of January, and that is about when it started.

Q. You had better skim through that letter.

A. Yes, that is it, because I see the reference to Mr. Roney and the multiple listing.

Q. This arbitration dealt with the matter of commission, did it not?

A. It did, yes.

Q. And from what transaction did this commission arise?

A. Mr. Stevenson told us that Mr. Shenkman had—he had made two contracts with Mr. Shenkman
10 for two properties that he owned, and that Mr. Shenkman had asked him not to file one of them—the other he was ready to let go through—and that he, having that contract, was entitled to commission from Mr. Roney, commission which Shenkman would pay under the multiple listing co-operative division of that commission, and Mr. Shenkman stated then that he had not signed that contract. We found—rather, Mr. Shenkman stated that he had told Mr. Stevenson that this contract for the one property
20 he wouldn't sign because the property was then in course of negotiation with Mr. Roney. If it wasn't sold by a certain date, which might have been Monday or Tuesday of the following week, he might then consider giving him a contract. On one property he didn't have any negotiation; he would give him the contract for that. Our committee found since Mr. Stevenson had represented to the board that that contract was signed, and that as a matter of fact, it hadn't been signed, and that as a matter
30 of fact, Mr. Stevenson admitted—Mr. Shenkman charged that Mr. Stevenson had come after the sale had been made to him, Shenkman, and asked him to sign a contract. Our committee found that Mr. Shenkman owed the commission to Mr. Roney, that Mr. Stevenson had no part in the commission from Mr. Roney or from Mr. Shenkman.

Q. And that was the decision of your arbitration committee?

A. Yes.

Q. And that decision was rendered orally?

A. Yes that was rendered orally. They were all there and they heard our decision before they left.

Q. At the conclusion of the arbitration?

A. Yes, at the conclusion of the arbitration we told Mr. Stevenson what we had decided. He went out in the hall and the committee discussed it for a few minutes and we told him what we had decided. 10

Q. And he knew then that your decision was that he was not entitled to any commission from Mr. Shenkman or any from Mr. Roney?

A. Yes. The committee further censured him very severely, and it did in its report to the board of directors for having tried to deceive the board in the matter of this multiple listing and trying to abuse the confidence of a property owner by trying to get a contract signed after the property had been sold by another broker. 20

Re-direct examination.

By Mr. Sooy:

Q. Then, insofar as the dispute between Roney and Stevenson was concerned, you found that Stevenson was not entitled to recover from Roney any portion of the commissions that Roney had received? 30

A. That was part of our decision.

Q. And that was the only part of your decision that dealt with any dispute between two active members of the board, was it not?

A. Well, to answer that, I have got to amplify

my answer. We have considered, I think, in our committees—

Q. I don't care what you have considered, Mr. Fell.

A. Well, I can't give you the answer the way I have it in my mind.

Q. Let me change that, then. The only parties to the dispute, the subject of your arbitration, who were active members of the board, were John J. Stevenson and Mr. Roney, were they not?

10 A. That is true.

Q. Mr. Shenkman wasn't a member of the board?

A. That is true?

Q. Either active or otherwise.

A. That is right.

Q. Was there any report made by your committee, either verbal or written, to the entire Real Estate Board?

20 A. No, not to the entire board. It was made on three occasions to the board of directors. Twice when Mr. Stevenson was present. It was made twice while he was present.

Q. Was such a report ever made by the board of directors to the entire Real Estate Board?

A. No. That wasn't customary. Never had been done.

30 Mr. Sooy: I ask that the last part be stricken out and the answer stand as "No," the rest being merely a voluntary statement.

Re-cross examination.

By Mr. Hanstein:

Q. Mr. Stevenson was present at the time of this arbitration, wasn't he?

- A. Yes, he was, all the way through.
- Q. He knew that the only ones present as an arbitration committee were yourself, Mr. Siracusa and Mr. Bloom, did he not?
- A. Yes.
- Q. Did he make any objection to the fact that there were only three members on that committee?
- A. No, he didn't.
- Q. Did he proceed to bring on his case before the committee? 10
- A. He did.
- Q. Did he make any objection after the decision was rendered that there were only three members?
- A. No.

Re-direct examination.

By Mr. Sooy:

- Q. Do I understand you to testify that Mr. Stevenson produced witnesses before the arbitration committee? 20
- A. Mr. Stevenson, I think, brought Shenkman.
- Q. That is your recollection?
- A. That is my recollection. Or had him come. I don't know whether he actually walked in with him.
- Q. Was there ever any report made by your committee or in your presence that insofar as your findings were concerned as between Stevenson and Roney that Mr. Stevenson had failed to live up to your decision insofar as his claim was concerned that dealt with the division of commissions between himself and Roney? 30
- A. Mr. Stevenson to our knowledge lived up to the decision with regard to Mr. Roney, but not with regard to Mr. Shenkman.

(It is stipulated and agreed between counsel that John J. Stevenson was expelled from the board for his failure to abide by the findings of this particular arbitration committee appointed by the president in January of 1924, at the request of Stevenson under his letter marked Exhibit 3, for the relator.)

10 (It is stipulated and agreed between counsel that there was no report to the board of directors of the Atlantic City Real Estate Board of any violation on the part of Mr. Stevenson of the findings of the arbitration committee insofar as the findings concerned Stevenson and his commission demands upon Roney.)

CHARLES H. HARRISON, sworn for relator.

20 Direct examination.

By Mr. Sooy:

Q. Mr. Harrison, you were president of the Atlantic City Real Estate Board from what time until what time?

A. I don't know just the date. The latter part of January until now.

Q. The latter part of January, 1924, until now?

A. Yes.

30 Q. And were you president at the time you wrote Mr. Stevenson your letter of September sixteenth, 1924?

A. Yes.

Q. And the letter shown you is the letter written by you to Mr. Stevenson notifying him of his ex-

pulsion from membership in the Atlantic City Real Estate Board?

A. Yes.

(Letter offered in evidence and marked Exhibit Relator 4.)

Q. I show you a letter dated July first, 1924, and ask you whether or not you also wrote that letter?

A. Yes, I did.

10

(Letter offered in evidence and marked Relator Exhibit 5.)

Q. I show you copy of letter dated July second, 1924, addressed to Mr. Charles Harrison, president of the Atlantic City Real Estate Board, and ask you whether or not you received the original of that letter from Mr. Stevenson?

A. Yes.

20

Q. Will you produce the original?

(Letter produced, offered in evidence and marked Relator Exhibit 6.)

Q. Was there any reason urged for the expulsion of Mr. Stevenson from the Atlantic City Real Estate Board other than that he had made claim against Shenkman for commissions which he contended were due from Shenkman to him by virtue of the sale of property by Roney, which property belonged to Shenkman?

30

A. Yes.

Q. There was?

A. Yes.

Q. And was the reason of his expulsion from mem-

bership in the board not only by reason of his failing to abide by the arbitration committee's finding with reference to Shenkman, but also for other reasons?

A. Other reasons in connection with the case.

Q. The other reasons that you speak of were not communicated to Mr. Stevenson, were they?

A. Apparently not; not in the letter. They were verbally.

10 Q. So that the action of the board in expelling Mr. Stevenson from membership was based on other matters that had been urged before the board that did not relate to his claim against Mr. Shenkman for commissions?

A. As far as written communication, but conversation with him.

Q. And the other matters that were urged in Mr. Stevenson as a reason for his expulsion were urged where and how?

20 A. They were urged before the board of directors and in the presence of Stevenson.

Q. Were they urged by virtue of a request of any active member of the board that there be an arbitration between Mr. Stevenson and the urging member as to the matters which were considered by the board?

A. No, but the board of directors consider they have jurisdiction over the action of their members.

30 Q. Irrespective of whether or not an arbitration committee is asked for?

A. Yes.

Q. Was Mr. Stevenson ever given any written notice of the other matters that were urged against him and which constituted a portion of the reason for which he was expelled?

A. Probably no written notice that I know of, but

he appeared in person on two occasions before the board of directors.

Q. And there was no arbitration committee appointed or requested with reference to these other matters upon which the board based its decision to expel him?

A. No, but they all bore on the original arbitration.

Q. Was Mr. Stevenson ever present at a meeting after he had been advised in advance that these other matters would be brought up for discussion? 10

A. I don't know how he was advised of the various meetings, but he was there on two occasions.

Q. Is there any record that shows that he was ever notified that a meeting was to be held for the purpose of considering these other matters which you speak of?

A. I don't know that he ever had any written notice, but it was his request that he was there. It was really his request in both cases. 20

Q. To whom did he make any request that he be present at meetings of the board of directors when other matters were discussed?

A. I think he made the request of myself.

Q. Whereabouts did he ever make such a request?

A. One time in the board room.

Q. When was that?

A. As I recall, it was prior to the first time the board of directors—that he appeared before the board of directors. 30

Q. That doesn't mean much, Mr. Harrison, when you say prior to the first time he appeared before the board. Do you mean prior to the first time he appeared before the board with reference to the arbitration?

A. Yes; in reference to the whole case. After the arbitration committee.

Q. You say that he requested that he be present in the board. In other words, was the board in meeting when these matters were discussed and he made that request, or how did it come about?

A. The first time—before he met with us the first time, he made the request in the board room that he could explain the matter to the board of directors.

Q. Was that with reference to the arbitration then?

10 A. The whole proposition.

Q. But that was before the board had made its report, was it not?

A. No; it was after he had had the verbal report of the arbitration committee when they decided at the arbitration that he must do thus and so, he had been unethical.

Q. Then he asked you that he be present at a meeting of the board of directors so that he could discuss with the board of directors the findings of the arbitration committee?

20

A. That is correct.

Q. Was he ever present at any other meeting of the board than the one that he requested to be present at, where the board took up other matters than the report of the board of arbitration?

A. Yes. He wasn't present when other business was discussed.

Q. Was he ever present when any matters were discussed with reference to his conduct other than his conduct with reference to the transaction in question, that is, the Shenkman-Roney transaction?

30

A. And the whole transaction of irregularity on his part. You can't separate them.

(Question repeated.)

A. Well, I can't answer the question because the whole thing is tied up together, his irregularities.

Q. Then, as I understand it, Mr. Stevenson was expelled from membership not only because he refused to abide by the arbitration committee's findings with reference to his dealings with Shenkman, who was not a member, but he was also expelled by reason of other irregularities which the board of directors found he had been guilty of and which had not been the subject of arbitration?

10

A. All the result of the arbitration.

Q. When you say all as the result of the arbitration, the finding of the arbitration committee was that he had no claim for commissions from Roney and that he had no claim for commissions from Shenkman; is that it?

A. That, and his manipulation of the multiple listing system; irregularity in it.

Q. Then, in addition to his being expelled by reason of not obeying the findings of the arbitration committee with reference to Shenkman, it was also that he had indulged in some irregularities in reference to the multiple listing system?

20

A. Yes.

Q. Was he ever presented with charges with reference to his irregularities under the multiple listing system?

A. Well, they were all brought out at the arbitration, so the arbitration committee reported to us.

30

Mr. Sooy: I ask that he be stricken out as not responsive.

(Question repeated.)

A. Why, sure, he was at the board of directors' meeting.

Q. Was he notified before he came to the board of directors' meeting that in addition to charges preferred against him for violating the terms of the arbitration award with reference to commissions from Shenkman, that he was also charged or to be charged with violation of the multiple listing?

A. Well, I went over it with him pretty fully before he came to the meeting. That is the only way I can answer it.

10 Q. He was never served with any written charges or notice, was he?

A. Not to my knowledge.

Q. Why didn't you in your letter of July first, asking him to resign, tell him that he was asked to resign also because of these other irregularities he had indulged in?

A. Well, probably I was negligent, but he knew all about it.

20 Mr. Sooy: I ask that the latter part be stricken out.

Mr. Hanstein: I ask that the entire answer remain as being entirely responsive.

30 Q. In your letter of July first, 1924, you advised Mr. Stevenson that if he will withdraw his claim for commissions from Mr. Shenkman, that he didn't have to resign. Did you then have before you the irregularities with reference to multiple listing?

A. Yes.

Q. Why didn't you advise him as to that, also?

A. Because we wanted to give him another chance. He was let into membership on probation.

Mr. Sooy: I ask that the last be stricken out.

Mr. Hanstein: I ask that it remain as being responsive.

Q. He was an active member?

A. Yes.

Q. A regular, active member?

A. Yes.

Q. As much an active member as the president or the secretary or the treasurer, was he not?

A. Well, I would have to go back a little further to answer that question. 10

Q. No, you don't have to.

A. He is listed as an active member, but when he was elected —

Q. Never mind that. You didn't advise him in your letter of July first, with reference to the violation of the multiple listing system, did you?

A. No, sir.

Q. And in your letter of September sixteenth, in which you notified him of his expulsion, you didn't advise him that he had been expelled by reason of his alleged violation of the multiple listing system? 20

A. No.

Q. At the time of your letter of September sixteenth, 1924, were the constitution and by-laws as the new constitution and by-laws, marked Exhibit Relator 1, in force and effect?

A. I think they were. It was just about the period between the two, but I think the new one —

Q. Calling your attention to the fact that the new form of by-laws was adopted in May of 1924, I ask you now whether the new by-laws were in force at that time you wrote your letter of September sixteenth? 30

A. Yes, they were.

Q. From what source did you gain your informa-

tion that Mr. Stevenson had been expelled under Article 4, Section 2 of the old constitution and by-laws and under Article 10, Section 2 of the new by-laws?

A. Well, they are almost identically the same.

Q. I say, from whom did you get your information?

A. I just used my own judgment.

Q. The board of directors didn't tell you under
10 which section he had been expelled?

A. I think not. I don't remember it.

Q. There was no action of the board of directors expelling Mr. Stevenson under either section of the constitution and by-laws, was there?

A. Well, the constitution and by-laws are the matter that govern us.

(Question repeated.)

20 A. I don't know how to answer that. We work under the constitution and by-laws, and there was a motion made that he be ——

Q. Then if you were working under the constitution and by-laws when you sent your letter of September sixteenth, 1924, Mr. Stevenson was not expelled under Article 4, Section 2 of the by-laws of 1921?

30 A. No, he wasn't. We were working under the new by-laws, but they were the same and it was done to clarify the thing to him, if he didn't have the new by-laws.

Q. I show you the new constitution and by-laws and call your attention to Section 2 under Article 10, under the heading "Committees," and marked Relator Exhibit No. 1, and ask you whether or not that is the section under which you were proceed-

ing when you notified Mr. Stevenson of his expulsion.

Mr. Hanstein: I object to that question on the ground that the course of conduct of the president has been embodied in the letter written by him and which is in evidence, marked Relator Exhibit 4, which speaks for itself.

A. Yes.

10

Cross-examination.

By Mr. Hanstein:

Q. Mr. Harrison, you wrote this letter Exhibit 4, didn't you?

A. Yes.

Q. In which you recite that the board of directors under Article 4, Section 2 of the old constitution 20 and by-laws, and under Article 10, Section 2 of the new constitution and by-laws. "has expelled you from membership in the Atlantic City Real Estate Board." You wrote that letter, did you not?

A. Yes.

Q. Did that letter express what the board of directors had done? I mean did that letter express under which set of by-laws the board of directors had proceeded?

30

Mr. Sooy: I object to that on the ground the letter speaks for itself and this witness cannot testify.

Mr. Hanstein: I will withdraw the question.

Q. Now, Mr. Harrison, did you undertake to differentiate in advising Mr. Stevenson that he had

been expelled from the board between which set of by-laws you proceeded under?

A. The two sets of by-laws are very similar as to these two particular articles. To make the matter clear to Mr. Stevenson, thinking that he probably did not —

Mr. Sooy. I object to this as not responsive, and what he thought could have no bearing at all.

10

(Question repeated.)

Q. You have got your letter there. You can answer it from that.

A. I felt that we were notifying him that he was expelled under the new by-laws, without any doubt.

Q. You made a reference there to the old by-laws?

A. And that they were the same as the old. He probably had never seen the new. He hadn't been active in the board.

20

Mr. Sooy: I ask that the last part be stricken.

Q. Did you undertake to determine whether the new by-laws superseded the old ones?

Mr. Sooy: That is objected to as irrelevant and immaterial.

30

Mr. Hanstein: I will withdraw that question.

Q. This controversy arose, did it not, prior to the adoption of the new by-laws? Is that correct?

A. That is correct.

Q. Was this arbitration held under the old by-laws?

A. Under the old by-laws.

Q. And in continuing through to the conclusion of this matter, did you undertake to follow the old ones or did you presume that the two being alike, it was immaterial?

Mr. Sooy: I object to what he presumed.

A. I thought the by-laws were alike and the thing started under the old, and the new were the same, I had notified him that under either set he was discharged. 10

Q. Mr. Harrison, without having determined which of the two applied, you notified him that he was expelled, regardless of whether technically one applied and the other is not; is that correct?

Mr. Sooy: I object to that as leading.

A. Yes.

Q. Then when you make the statement to Mr. Sooy that you proceeded under the new by-laws, do you have any modification to make of that answer? 20

Mr. Sooy: I object to that ?

A. Yes.

Q. Were you present at the board of directors' meeting referred to in the minutes of the board dated September twelfth? 30

A. Yes.

Q. At that time the board passed the motion of Mr. Potter that Mr. Stevenson be expelled for non-compliance with the decision of the board of arbitration and action of the board of trustees in connection with the Shenkman matter, did the board issue

at that time under which by-laws they should proceed?

A. I think not.

Q. Did you have any authority from the board of directors to determine under which set of by-laws you had expelled Mr. Stevenson from membership?

A. No.

Q. That was a pure gratuity on your part?

A. Yes.

10 Q. Do you know the whole history of this transaction?

A. All of it except the actual arbitration. I wasn't present at that.

Q. But do you know the history of the advising by Mr. Stevenson of the Real Estate Board that he had a multiple listing contract on Mr. Shenkman's property? Are you familiar with that?

A. Only on hearsay.

20 Q. Was Mr. Stevenson present at all meetings of the board of directors when matters in connection with this controversy were discussed?

A. He was present at the two meetings.

Q. Was he present at the meeting when this resolution expelling him was passed?

A. No.

Q. Had he been at two meetings prior to the passing of that resolution?

A. Yes.

30 Q. Had the matters and differences here been discussed at those meetings at Mr. Stevenson's request?

A. Yes.

Q. Both times he was present?

A. Yes.

Q. He was present at each time?

A. Yes, each meeting.

Q. And he himself requested that the matter be brought up; is that correct?

A. Yes.

Q. What matters were discussed at those meetings when Mr. Stevenson was present?

A. Do you mean other matters pertaining to the board, or just Stevenson's case?

Q. In relation to Mr. Stevenson's case?

A. Well, the first time he tried to explain that we didn't understand, and his explanation was very vague. 10

Q. Didn't understand what? Tell the whole story as it was told there, as nearly as you can.

A. Well, really he didn't say much of anything. "You don't understand, you men don't understand the case, you don't understand." That seemed to be the tone of his whole argument before the board of directors.

Q. Did the board of directors have the facts in connection with this matter, explained to them? 20

A. They did.

Q. Was anything said about the filing of a multiple listing contract by Mr. Stevenson upon the property in question?

A. Yes.

Q. Just what was said?

A. He didn't have very much at all to say. He got very red —

Q. Whether it was Stevenson or somebody else, what was the whole story that was told in relation to this matter while Stevenson was present? 30

A. Mr. Fell, who was one of the directors and had been a member of the arbitration committee, related the case to the board of directors while Stevenson was present.

Q. All right. What did he relate? Do you recall that?

A. He recalled the irregular way in which he tried to file the multiple listing contract that never had been signed by Mr. Shenkman.

Q. Just state what the situation was. Tell the story as Mr. Fell told it at that time in the presence of Mr. Stevenson with relation to that multiple listing contract.

A. I am trying to think how I can shorten it up, because it is a long story.

10 Q. Suppose I withdraw the question and let Fall tell it.

A. It seems to me that would be better. It will just be repetition of a long drawn out story.

Q. Was anything ever raised against Stevenson at any of the directors' meetings other than the matters that he himself raised in his letter of January fourth, which is in evidence and marked Exhibit 3?

A. I think not.

20

WARNER LINDSAY, sworn for the relator.

Direct examination.

By Mr. Sooy:

Q. You were a member of the board of directors of the Atlantic City Real Estate Board from January, 1924, up until the present date?

30 A. I was.

Q. Under a minute of that board dated September twelfth, 1924, it is recorded that you seconded the motion of Mr. Potter that Mr. Stevenson be expelled from the board for non-compliance with the decision of the board of arbitration and action of

the board of trustees in connection with the Shenkman matter. Do you remember that?

A. I do.

Q. Was there anything else urged against Mr. Stevenson as a reason for his expulsion other than his failure to observe the findings of the arbitration committee?

A. He was expelled for not —

Q. No.

(Question repeated.)

10

A. No.

Q. And his failure to observe the findings of the arbitration committee consisted in his making a claim against Shenkman, who was not a member of the board or of the association, for commissions, did it not? There was no charge that he had failed to comply with the findings of the board of arbitration in so far, as any claim against Roney's commissions was concerned, was there?

20

A. He refused to carry out the directions of the board of directors.

Q. No.

Mr. Sooy: I ask that question be stricken out.

(Question repeated.)

A. There was not.

Q. So that he was expelled, according to your idea of the situation, by reason of the fact that he had demanded from Shenkman commissions in defiance of the findings of the board of arbitration?

30

A. That wasn't the only reason.

Q. There were other reasons urged besides that?

A. He was expelled for ——

Q. No. Were there other reasons urged, is the question now.

A. Yes.

Q. You say there were other reasons urged. What were they?

A. Refusing to abide by the decision of the arbitration committee and the board of directors.

Q. And that refusal referred to his demand on Shenkman for commissions, did it not?

10 A. It did.

Q. It didn't refer to any demand having been made by him on Roney for commissions, did it?

A. No.

Q. Then was there any other reason upon which he was expelled other than his refusal to abide by the findings of the arbitration committee, which was that he should not ask from Shenkman any portion of the commissions that he claims to have earned on the sale which Roney had effected?

20 A. Well, he was expelled for that, together with the fact that he had misrepresented his multiple listing contract.

Q. Then, in addition to the fact that he had demanded from Shenkman commissions which the board had found he wasn't entitled to, he was expelled because of irregularities with reference to multiple listing, was he?

A. Yes.

30 Q. Were the reasons, including his violation of the multiple listing rule, urged and stated at the meeting of September twelfth, when the motion was made that he should be expelled?

A. Yes.

Q. Was Mr. Stevens present?

A. Yes.

Q. At the meeting of the board of directors of September twelfth, when this motion was made?

A. Oh, no, I beg your pardon. That was a previous meeting.

Q. At this meeting of September twelfth, who urged that he be expelled for the additional reason that he had violated the multiple listing rules?

A. I don't remember.

Q. But it was urged?

A. Yes.

10

Q. The man that made the motion was Mr. Potter. Did he urge that as a reason?

A. I don't recall.

Q. You seconded the motion?

A. Yes.

Q. Back in January of 1924, the board knew of any irregularities of Mr. Stevenson with reference to multiple listing, didn't they?

A. Is that the date when the contract was filed?

Q. That is the date, yes.

20

A. Yes.

Q. And they knew of the violation with reference to multiple listing, or the alleged violations with reference to multiple listing, from the time the contract was filed up until September twelfth, 1924, when this resolution expelling Mr. Stevenson was passed, did they not?

A. Yes.

Q. Were you present at a meeting of the board held August first —

30

A. Yes.

Q. —when the following minute was discussed: "In regard to the matter of Mr. Stevenson and letter written him by the president with reference to his resigning from the board, it was regularly moved, seconded and carried that the action of the president in writing such a letter be sustained and the

matter be referred to Mr. Walter Hanstein for advice in the matter," handing you letter of July first, 1924, for the purpose of refreshing your recollection, so that you can answer.

A. I am familiar with the fact that that letter was sent out.

Q. You were actually present at that meeting of the board, were you not?

A. Yes.

10 Q. Your name is down?

A. Yes.

Q. I call your attention to the fact that the letter of July first, 1924, to which your attention has just been called, and which is marked Exhibit Relator 5, advised Mr. Stevenson that if he would withdraw his claim for commission as made on Mr. Shenkman, that he would not have to resign from the board. Did you notice that?

A. Yes.

20 Q. Then at that time if Mr. Stevenson had withdrawn his claim for commission, you wouldn't have considered at all his violation of the multiple listing, would you?

A. Yes.

Q. I mean his alleged violation?

A. Yes.

Q. Then why didn't you advise Mr. Stevenson that he had to do something else in order to retain his membership in the board other than withdraw
30 his claim for commission?

A. Because we wanted to see this case settled.

Q. You wanted to see this case settled?

A. Yes.

Q. And then you were going to bring another case against him; is that the idea?

A. Not necessarily.

Q. Is that what you had in your mind when you ratified the action of the president in sending the letter of July first?

A. Yes.

Q. Then it was your intention in so voting at that meeting that after Stevenson had withdrawn his claim for commission against Shenkman to still continue to press charges against him for alleged violation of the multiple listing system?

10

Mr. Hanstein: I object to any question with reference to Mr. Lindsay's intentions.

(Question repeated.)

A. It was.

Q. Were the multiple listing system violations discussed at the meeting of August first?

A. Yes.

Q. No record made of them?

20

A. No.

Q. And was it suggested by any member of the board that notwithstanding the letter of July first, which the board authorized the president to send, that still they were going to hold against Mr. Stevenson alleged violations of the multiple listing system?

A. Yes.

Q. And at the meeting of September twelfth, when he was finally expelled, his alleged violations of the multiple listing system constituted one of the reasons upon which he was expelled?

30

A. We wanted to let Mr. Stevenson —

Q. I don't care about that.

(Question repeated.)

A. Yes.

Q. And Mr. Stevenson was not present at the meeting of September twelfth?

A. No.

Q. Mr. Stevenson, of course, was not a member of the board of directors?

A. No.

Q. And was not present at the meeting of August 1st, 1924?

10 A. He wasn't present.

Cross-examination.

By Mr. Hanstein:

Q. Mr. Lindsay, on these matters that the board had against Mr. Stevenson, other than his failure to abide by the verdict of the arbitration committee, had Mr. Stevenson been present at all hearings on
20 those matters before the board of directors?

A. Yes.

Q. Had these matters been raised at his own request?

Mr. Sooy: That is objected to as leading.

Mr. Hanstein: I will withdraw the question.

Q. How did these matters come before the board?

30 A. The executive secretary, Mr. Endicott, reported the misrepresentation of the multiple listing contract.

Q. Do you know whether or not Mr. Stevenson requested to be heard in regard to those matters?

A. I do not.

Re-direct examination.

By Mr. Sooy:

Q. I want to call your attention to your testimony on direct examination, wherein you said that Mr. Stevenson was not present at the meetings of the board of directors on August 1st, or September 12th, and ask you whether or not you want to correct your testimony in answer to Mr. Hanstein's question in which question he asked you whether Mr. Stevenson was present at all meetings when these things were discussed, and in which you answered yes. 10

A. I do want to correct that.

By Mr. Hanstein:

Q. At what meeting was Mr. Stevenson not present? 20

A. August 1st meeting and September 12th meeting.

Q. Mr. Stevenson had been present at the other meetings when this matter was discussed; is that your testimony?

A. Yes.

GEORGE VAN H. POTTER, sworn for the relator. 30

Direct examination.

By Mr. Sooy:

Q. Mr. Potter, you are a member of the board of directors of the Atlantic City Real Estate Board and have been since January, 1924?

A. Yes, sir.

Q. And you are the gentleman who made the motion of August 1st, 1924, in which you moved that the letter of July 1st, marked Exhibit Relator 5, sent by the president to John J. Stevenson be ratified, are you not?

A. Yes, sir.

10 Q. And did you at that time also have in mind that Mr. Stevenson had indulged in alleged irregularities with reference to multiple listing?

A. If you are leading up to the expulsion, I had nothing to—I voted to expel Mr. Stevenson—

Q. No, we haven't got that far.

A. I had nothing to do with that. I wasn't a member of the multiple listing committee.

Q. Did you know anything about his alleged violations of the multiple listing system?

A. I did.

20 Q. Were they discussed at the meeting of August 1st?

A. They were.

Q. And at the time they were discussed, the letter marked Exhibit 5 was also under discussion, was it not?

A. It was.

30 Q. And the members of the board knew that the president of the board had asked Mr. Stevenson to either resign or withdraw his claim against Mr. Shenkman for commissions, did they not?

A. I judge they did. I did.

Q. And if he had withdrawn his claim for commissions against Mr. Shenkman, the matter of alleged violations of multiple listing would have been not considered, would they?

A. They couldn't have been considered, because

they never had been brought up under this proposition.

Q. Never had been brought up under this proposition?

A. No.

Q. In other words, when you say they had never been brought up under this proposition, you mean

A. The request for his resignation didn't include those. That is my understanding, speaking for myself. 10

Q. And when you made your motion of August 1st, that the letter, Exhibit 5, written by the president to Mr. Stevenson, be confirmed, you did not consider multiple listing at all?

A. I did not.

Q. And the question of the alleged violations of multiple listing by Mr. Stevenson was not considered in connection with that letter? 20

A. Not by me.

Q. And had they been considered by you in connection with the report of the arbitration committee as to Stevenson's claim for commissions?

A. You mean my consideration of the report? I wasn't one of the members of the arbitration committee.

Q. No, but, as I understood it, the committee had reported?

A. Yes, they had.

Q. And their report did not include any report as to violations of the multiple listing, did it? 30

A. Not that I know of.

Q. You were present when the report was made?

A. Yes, sir.

Q. Did you understand that the only violation upon which Mr. Stevenson's resignation was to be

asked was his request for a commission against Mr. Shenkman in violation of the findings of the arbitration committee?

A. Yes, sir.

Q. When you made your motion of September 12th, 1924, that Mr. Stevenson be expelled from membership in the board, did you consider also the alleged violation of the multiple listing system?

A. I did not.

10 Q. Was that discussed at that meeting?

A. It was touched on, but had nothing to do with it, because my motion speaks for itself in there, what I asked him to be expelled for, not abiding by the decision of the arbitration committee, and the directions of the board of directors.

Q. And your motion dealt with his violation of that finding of the arbitration committee solely that he was demanding commission from Mr. Shenkman?

A. Yes.

20 Q. And did you know at that time that the matter of difference between Roney and Stevenson, insofar as commissions were concerned, as between those two people had been settled and adjusted and was at an end?

A. I did.

Q. And you knew that Stevenson at that time was not claiming or had not claimed from Roney any participation in the commission that he had received by virtue of the Shenkman sale?

30 A. Yes.

Cross-examination.

By Mr. Hanstein:

Q. Had Mr. Stevenson's conduct in regard to the multiple listing system been discussed before the board?

A. It had been brought up in a casual manner, but it had never been discussed by anybody making a motion and so forth and so on like that. Casually, I would say, yes. 10

Q. It had been discussed?

A. Yes.

Q. Mr. Stevenson had been there when the discussions took place, had he not?

A. On two occasions, yes, sir.

Q. And at that time there was some charge made against him, was there not, or, rather, perhaps, a statement made that he had made misrepresentations as to the multiple listing system? 20

A. There had.

Q. And you had heard that matter threshed out, had you not?

A. I had, yes, sir.

Q. Mr. Stevenson was there at that time, wasn't he?

A. Yes, sir.

Q. Did this conduct of Mr. Stevenson have any influence on you in the decision that you reached? 30

A. None whatever. I shall abide by my motion.

Q. What action of the board of trustees had Stevenson failed to comply with that you refer to in your motion?

A. To withdraw his request for commission from Shenkman, and he had not complied with the directions of the board of directors to resign.

Re-direct examination.

By Mr. Sooy:

Q. Had there ever been any charges preferred against Mr. Stevenson with reference to his violation of the multiple listing system which had been referred to a committee of arbitration and that committee had reported that he had violated the multiple listing system?

A. Not to my knowledge, sir.

Q. And was there any discussion that looked towards the preferment of charges against Stevenson upon which he was to be brought to trial for those violations?

A. The discussion, Mr. Sooy, was entirely along the line of his unethical conduct, and there was nothing broached on whether there would be any charges brought or not, to my knowledge.

WALTER CLARK, SWORN for the relators.

Direct examination.

By Mr. Sooy:

30 Q. Mr. Clark, you were a director of the Atlantic City Real Estate Board during the period beginning with January, 1924, and continuing up to the present date?

A. Yes, sir.

Q. Were you present at the meeting of the board of directors of that board on September 12th, 1924?

A. As I remember it, I was there in the early part of the meeting and then I had to leave.

Q. Were you there when Mr. Potter made his motion that Mr. Stevenson be expelled from membership?

A. No, I don't think I was.

No cross-examination.

(Hearing adjourned until Thursday, November 10 11th, 1924, at 9 A. M.)

20

30

Tuesday, November 11th, 1924.

(Hearing resumed at 9 A. M.)

10 JOHN J. STEVENSON, sworn for the relators.

Direct examination.

By Mr. Sooy:

Q. Mr. Stevenson, you are the relator in this case?

A. I am.

Q. You live where?

A. 47 North Jackson Avenue.

20 Q. What business are you engaged in?

A. Real estate and insurance.

Q. How long have you been engaged in that business?

A. Around about twelve years.

Q. In Atlantic City?

A. Atlantic City about eight years; eight or nine years.

Q. Were you a member of the Atlantic City Real Estate Board?

30 A. I was.

Q. When did you become a member?

A. From the time of its organization.

Q. What kind of a member were you? That is, by that I mean active or inactive?

A. Well, at first I went in as junior member, due to the fact of giving my partner, who was an older man than myself, the active membership, and then

after that it was not necessary to act that way, and we just took our membership with either one to act as active, whichever one was present, and I always give the floor to him.

Q. How long had you been an active member prior to September 16th, 1924?

A. After the first year of organization.

Q. That doesn't mean anything. How long had you been an active member?

A. About four years. The board is about five 10 years old, I think.

Q. Did you, during the time you were a member prior to September 16th, 1924, make a request that a board of arbitration be appointed to consider the differences between you and any other member of the board?

A. Mr. Roney and myself, yes.

Q. Did you make any application for an arbitration between yourself and Mr. Shenkman?

A. No. 20

Q. As a matter of fact, was Mr. Shenkman an active member of the board at any time?

A. No.

Q. As a result of the application you made for an arbitration between Mr. Roney and yourself, did the board appoint such a committee?

A. Yes; committee of three.

Q. Did that committee sit?

A. It did.

Q. Did it hear the evidence adduced on both sides 30 as to your claim against Mr. Roney?

A. They did.

Q. Was the finding of the board against your claim?

A. It was.

Q. What was your claim that was the subject of arbitration?

A. The subject of arbitration between Mr. Roney and myself was the fact that Mr. Roney—I had a multiple listing on the property there at Madison and Vermont. Mr. Shenkman, the owner, listed that in my office, and after listing it he went to work and changed the listing to have it read in two street facings, being a property facing on two streets, and
10 having the confidence at that time that I did in Mr. Shenkman, after the young lady had made the two separate copies, we destroyed the original one. After that Mr. Shenkman, promised to come in and he did come in and sign one of those copies, and promised to come back the following Monday and sign the other one. I told him at the time he did that that it was out of the ruling of the board to hold a multiple listing over night, and to verify that I called the board room and asked them was I
20 permitted to hold this listing until Monday, as the other would be signed. Well, Monday came and he did not come in, stating that the case had not been settled, and I forwarded the signed copy down to the board room, and also the unsigned copy. Mr. Shenkman at that time stated that he would pay the half of the commission of the board on the listing price then, due to the fact he had a larger and better proposition under way and could afford to do that.

30 Q. Who did he say he would pay any commission to?

A. To myself.

Q. For what?

A. For the reason the listing—

Q. Commission for what?

A. For the sale of his property, 201, I think the number is.

Q. What was your claim that was the subject of arbitration as between Mr. Roney and yourself?

A. That was the claim, that I was not entitled to any commission of Mr. Roney.

Q. Had Mr. Shenkman's property been sold by Mr. Roney?

A. It had later.

Q. When you say later you don't mean after the arbitration, do you?

A. No.

10

Q. It had been sold before you asked for the arbitration?

A. Yes.

Q. And you were claiming, were you, commissions by virtue of your listing of this property with the Atlantic City Real Estate Board?

A. Yes.

Q. And from whom were you claiming those commissions?

A. From Roney.

20

Q. And as a result of your application for an arbitration between you and Mr. Roney as to those commissions, what did the board decide?

Mr. Hanstein: That is objected to as leading.

A. The board decided that I was not entitled to anything from Mr. Roney.

Q. In addition to your claim for a share of the commissions, coming due by reason of the sale of the Shenkman property, did you have a claim against Mr. Shenkman for commissions?

30

A. I did.

Q. What proportion of the commissions did you claim from Mr. Shenkman?

A. I claimed the portion of the commission as he

promised to give, which was half of the commission on twelve thousand dollars, the listing that he made on December 1st.

Q. With reference to your claim for commissions against Mr. Shenkman, when did he make the promise to pay you one-half commissions?

A. He made the promise to do that the afternoon that he signed one of the said multiple listings.

Q. When was that?

10 A. That was somewhere around the middle of December, if I am not mistaken.

Q. Middle of December of what year?

A. Last year; '23.

Q. Did his promise of one-half of the commissions have any relation to your claim for commissions from Roney?

A. No.

20 Q. Did he promise to pay you one-half of the commissions, irrespective of what he paid Roney as commissions?

A. He did.

Q. Were you ever notified by the Atlantic City Real Estate Board that you were to be given a hearing on the question as to your practice in filing your multiple listing with reference to the Shenkman property?

A. No.

30 Q. Were you ever present at a meeting of the board or the board of directors of the board, with counsel, in pursuance to notice, when the board discussed your practice with reference to multiple listing in the Shenkman case?

A. I had two calls—

Q. Listen to the question.

(Question repeated.)

A. I was before the board twice, two meetings.

Q. With counsel?

A. No.

Q. Did you have notice that they were going to take up this question at these meetings of the board that you attended?

A. No.

Q. With reference to the two meetings of the board which you did attend, when they discussed your practice with reference to the multiple listing, had the board filed its determination with reference to the arbitration as between you and Roney on the question of commissions? 10

A. The Roney question and mine was practically settled the day we left there, the Saturday afternoon of that arbitration.

Q. When you say that the question between you and Roney had been settled the day you left, can you fix the time by referring to the month? 20

A. I think that was somewhere around about the month of May or June, if I am not mistaken.

Q. Had the board filed any written conclusions then?

A. No, I never received any.

Q. Did they file any verbal conclusions that you heard of?

A. No.

Q. What notice did you have that the board of arbitration had ever filed any decision with reference to your claim for commissions as between you and Roney? 30

A. I never had any notification outside of verbal remarks from Mr. Fell on the afternoon of the meeting.

Q. Well, what were those verbal remarks?

A. That he couldn't personally see—I might be morally entitled to it, but legally he couldn't see any returns for me in the matter.

Q. What did he mean by returns to you?

A. That is, to claim any commission.

Q. Did he tell you that that was the decision of the board of arbitration?

A. No. He said they would report back to the body and I would receive a communication from them, which I never did.

Q. Did any other member of the board of arbitration tell you that that was the finding of the board?

A. No; that is the only notice I ever had.

Q. Then after Mr. Fell had told you that he personally felt that you had no moral claim for commission against Roney, were you ever served with any notice that the question of multiple listing was to be taken up by the board for action?

A. I was by letter—oh, no, no.

Q. Were you ever made aware by notice, verbal or otherwise, that any active member of the board had requested an arbitration as between you and some other active member of the board with reference to the question of your practice in the multiple listing of the Shenkman property?

A. No.

Q. Did you ever receive a hearing from the board on notice with reference to your practice in multiple listing of the Shenkman property or any other property?

A. No, only—you say verbal?

Q. Yes. Did you ever receive a verbal notice?

A. Only a telephone call to call at the office on two occasions.

Q. A telephone call to call at whose office?

A. At the board headquarters.

Q. From whom?

A. From the secretary.

Q. For what purpose did he say that you were to call at the office of the board?

A. No mentioned purpose. Just "Call this afternoon." On two occasions I called there.

Q. When you got there on those two occasions, what subject was under discussion?

A. On both occasions the same subject was under discussion as pertaining to the Roney arbitration matter, claiming that I didn't abide by that decision, and I said I had no further claim on that, that this matter was entirely different, out of the board's matter, and I couldn't understand why those men would demand of me my rights and privilege, which was in the hands of my attorney. 10

Q. You say that at the two meetings you were requested to attend by communication over the phone, the question under discussion was your claim for commissions from whom? 20

A. My claim for the commission was from Shenkman.

Q. Was that claim that you were making for commissions from Shenkman independent of your claim for commissions from Roney which had already been decided by the board?

A. Yes.

Q. At these two meetings which you attended and at which they took up your claim for commissions from Shenkman, was the question of multiple listing discussed? 30

A. It was discussed pertaining to the same arbitration on both times, as to the Roney arbitration and myself. They brought that in on both occasions, and I stated there on both occasions that this had nothing whatever to do with the present claim, it

was Mr. Shenkman's own promise and he must live up to his promise and that the board had nothing to do with this matter, that it was in the hands of my attorney, this man had started legal action, and then they demanded of me something that I had to fortify myself, and they demanded that and stated that if I didn't—in the letter form, that if I didn't send a letter I would be expelled, and that prolonged and prolonged until one afternoon Mr. Harrison, the president, stopped me and said, "Stevenson, what are you going to do about that?" I said, "I will stop over tomorrow morning; I am busy with a settlement." The following morning I got a letter that I was expelled.

10 Q. Did you receive any letter from the board saying that you would be expelled from the board by reason of alleged illegal practices with reference to multiple listings?

20 A. I did receive a letter asking—if I didn't send a letter in, I would be told to resign.

(Question repeated.)

A. Yes.

(Counsel hands Exhibit Relator 5 to the witness.)

30 Q. Having read this letter marked Exhibit Relator 5, I again ask you did you ever receive a letter from the board saying that you would be expelled for violation of the multiple listing rule?

A. Oh, no, no.

Q. Then you want to change your answer to the previous question in which you said that you did receive such a letter?

A. Well, that is the letter that I stated I had.

Q. And is the letter marked Exhibit Relator 5 the only letter you ever received from the board requesting your resignation?

A. Yes.

Q. Did you withdraw your claim for commission from Shenkman?

A. No.

Q. Were you present at the meeting of the board of directors of the Realtors' board on August 1st, 1924, when the question of the letter written by the president to you was discussed? 10

A. If that was one of the afternoons that I was called. I don't know the date. I couldn't tell you that. On two occasions I was called there.

Q. Then you don't know?

A. No.

Q. Were you present at a meeting of the board on September 12th, when the motion was made that you be expelled? 20

A. No.

Cross-examination.

By Mr. Hanstein:

Q. Mr. Stevenson, how many properties did Mr. Shenkman own in the neighborhood of Vermont and Madison?

A. Why, there were two properties there. It was one at first and changed to two. 30

Q. What do you mean, it was one and then changed to two?

A. It was one tract of ground and he put two separate buildings and give them separate numbers.

Q. So that Mr. Shenkman had two properties in the neighborhood of Vermont and Madison; is that correct?

A. That is correct.

Q. And it was out of those two properties that this controversy arises, wasn't it?

A. Yes.

Q. Was it out of those two or out of one of these properties that it arose?

A. Well, it was one at first and then they separated it.

10 Q. Well, as a matter of fact, he gave you a listing at first for two properties. That is your contention, isn't it?

A. No. He gave me a listing first of the whole tract, which consisted of two buildings. Then after that—

Q. Was that a multiple listing agreement?

A. That was a multiple listing agreement.

Q. For two properties?

A. Yes.

20 Q. Did you ever file that listing?

A. Not that listing, no.

Q. When did you get that listing?

A. Around the 1st of December.

Q. You got that around the 1st of December, and you didn't file it? What did you do with it?

A. That listing was destroyed upon making two separate agreements, so that the property would be two street numbers, one on Vermont Avenue and one on—

30 Q. That one listing embodying two properties is out of the question entirely, isn't it?

A. Yes.

Q. What happened with the two listings?

A. The two listings, one listing he signed on Friday afternoon, and the other one he promised to sign Monday, if this other deal wasn't through, but he asked me to stay off that because he had told the

man a story that he didn't give them to me and he knew he did.

Q. Will you give me the number of the two properties?

A. One is at the northeast corner of Madison and Vermont and the other one is adjoining that corner, which I think is 201. There were no numbers on it at that time.

Q. 203, isn't it?

A. 201 or 203. The next property.

10

Q. As to the property at the northeast corner of Vermont and Madison a multiple listing agreement was signed for that property, was it not?

A. Correct.

Q. And you filed a copy of the listing with the Real Estate Board; is that correct?

A. Correct.

(Paper marked Respondent 2 for identification.)

20

Q. Now, the listing for North Vermont you never got signed, did you?

A. No, he didn't sign that.

Q. This is the listing that you advised the Real Estate Board you actually had, is it not?

A. Yes.

Q. You told the board that you had it?

Mr. Sooy: What listing is that?

30

Mr. Hanstein: The one on 203 North Vermont.

A. Yes, I told them I had the whole listing.

Q. This is the listing as near as you had it, isn't it?

A. This was made at the same time as the other

and I was to hold this until Monday and the board give me privilege to hold it until Monday, and when he didn't sign it on the following Monday, the board received this.

Q. This is not signed by Mr. Shenkman?

A. No.

(Paper marked Respondent 3 for identification.)

10 Q. Now, who on the board told you you could hold that until Monday without having it signed?

A. Mr. Endicott.

Q. Mr. Endicott said you could hold it until Monday, without having it signed?

A. And he would make note of it in the office there.

Q. Did Mr. Endicott know at the time he discussed this with you that you hadn't had it signed by Mr. Shenkman?

20 A. Yes.

Q. He knew that?

A. Yes.

Q. You told him that?

A. That was the purpose of calling him.

Q. Was this property which is described in the unsigned multiple listing the property that was sold?

A. Yes.

30 Q. And this is the only agreement you had with Mr. Shenkman relating to the payment to you of a commission on the property, isn't it?

A. No. The original agreement I had, but we have destroyed that.

Q. You didn't have any agreement, then, providing for a commission on that property, did you?

A. Only his verbal.

Q. This property had not been listed under the

multiple listing system of the Real Estate Board by Mr. Roney, had it?

A. No.

Q. Did you have any agreement from Mr. Roney to pay you any part of this commission?

A. No.

Q. On what theory could you have based a claim against Mr. Roney for any part of this commission?

A. By the fact of notifying the board of the case and Mr. Shenkman knowing that he had given it to me, but in telling a lie to the present man who he brought out, as my letter will state, asking me—the man came to him and said, “Is there a realtor on this job?”—my signs were on the building; no need of that question—and he says, “No,” but then when he came over to my office he says to me, “Steve, I told this fellow there was no one on it.”

(Question repeatd.)

20

Q. Just explain how Mr. Roney was obligated to pay you any part of a commission on this?

A. Mr. Shenkman had given me the multiple listing, and after I had taken that multiple listing we made two separate copies. Having the confidence I did at that time, not thinking, we destroyed it, which you do at times, and had the other two copies ready for him to sign. He came in and signed one copy, Mr. Shenkman did. Mr. Shenkman promised to come in the following Monday and do that. He stated that if he didn't make the deal with the broker he was working on—he made no mention of any name who that broker was. After making that, Mr. Shenkman said, “Stevenson, I want to correct the thing for you; I have told Mr. Roney,” the broker, if you want names—he didn't mention the names at

30

that time, but he said, "I told Mr. Roney that I had no listing of this property with anyone and if he wanted to go ahead with it he could." He said, "I know I have told that man a lie, but I will take care of it, it is his deal and I will promise to take care of you on one-half commission on the listing I give you." After that he brought in the fact, he said, "I don't understand how it is; you told me all you fellows are working together." I said, 10 "That is correct." He said, "This man asked me if there was a realtor on it." I said, "Did he do that?" and he said, "Yes." I brought the matter up before the board—

Q. Just a minute. You are telling me a story and aren't answering.

Mr. Sooy: I insist he is answering.

Q. Are you through with that answer?

20 A. As far as I have given to you the point. If you want to know any more, all right.

Q. Up to the time that property was sold by Mr. Roney you hadn't discussed the property with Mr. Roney at all, had you?

A. No; I didn't know it was he on it.

Q. That he was working on it, you mean?

A. No, I didn't know who the broker was.

30 Q. So you hadn't had any discussion with Mr. Roney about paying you any part of this commission?

A. No.

Q. You hadn't actually listed this property with the Real Estate Board so that the listing had circulated, had you?

A. I couldn't do it.

Q. Then your answer is no?

A. Not this one number, no.

Q. What I want you to explain to me is how you claim Mr. Roney was owing you a part of this commission when Mr. Roney had never discussed this property with you and hadn't promised to pay you any commission and you hadn't listed this property under the multiple listing? Will you explain that?

A. By reasons of calling the board headquarters and stating that I had one copy signed now and the other copy would be signed Monday and the board headquarters knowing those facts, and when this transaction came up I brought the matter to their attention. I had already notified the secretary of that board to make notations of the transaction as I have stated before. When the record came through in cancellation form—which we have to send out after we sell a property the listing broker must say, "Cancel that multiple listing"—upon receiving that I immediately called headquarters. 10

Q. Upon receiving what? 20

A. This cancellation notice which we send out on all multiple listing. At that time it showed who was the man that sold the property.

Q. Did you get a cancellation notice on this property?

A. Yes. It is a little pamphlet they print and says the property has been sold, so and so property has been sold.

Q. Do you mean to say you got a cancellation notice through the multiple listing, advising that this particular property had been sold? 30

A. A number of them. Not this one, no, but a number of them.

Q. What did the cancellation notice have to do with this if you didn't get one on this property?

A. I learned who the broker was who was dealing on it.

Q. Was a cancellation notice sent out about this property?

A. On all properties, yes.

Q. Don't answer me that way. Answer me as regards this particular property.

A. Well, this particular property was amongst others. The regular form that comes out.

10 Q. Then you say you got notice from the Real Estate Board advising that the multiple listing on this property was cancelled through the sale of the property. You say that?

A. Yes. That is, we got notice of the sale, of that sale being made by Roney. It came to me through the regular form.

20 Q. Now, Mr. Stevenson, let me be very certain I am getting your answer to this correctly. As I understand your testimony, you say that it is the practice of the Real Estate Board when a property that is listed with the board is sold through the board, that a cancellation notice is sent out by the multiple listing bureau, advising the brokers that that property has been sold. You say that is the practice, don't you?

30 A. No. If we list a property, the man who makes the sale sends in a notice to the listing man that that property has been sold. Then he, in turn, sends a notification to the board room. Being no multiple listing record of this property, outside of what I called the secretary to make notice on the board headquarters, I learned that Roney was the man that made this deal and immediately upon learning that I went to the board headquarters. The secretary called Mr. Roney down from his office, the first time I ever met the man, and there we talked together on the matter, and from that I brought the arbitration on.

Q. What I want you to do is to tell me now whether or not you got a notice of the cancellation of this multiple listing?

A. No, I didn't get any notice only I say the way they go through it, our regular method of going through it.

Q. I am asking you now if you got one in the regular form?

A. I said no, because I couldn't. It wasn't listed.

Q. You never knew Roney until after his property was sold, did you? 10

A. No.

Q. You were not entitled to any share of Roney's commission by reason of having filed a multiple listing yourself on this property, were you?

A. No. They arbitrated against that.

Q. I mean until this listing that you had procured would have circulated among all brokers, no broker would have known that you were interested in the property, and therefore you couldn't base any claim for a commission on that listing, could you? 20

A. Not through another broker, no. Only when they are listed.

Q. How do you say Roney's obligation arose to you if you never saw the man until after the sale?

A. By reason of the fact that Mr. Shenkman stated, "Stevenson, the reason that I won't sign that is due to the fact that the agent"—I won't use his name, because I didn't know him at that time—"asked me if there was a realtor on it." I brought that matter before the arbitration on that one point, which Mr. Roney was satisfied to do that, because I stated that all the men worked together and Shenkman says, "That seems funny, they are not, because this man asked me that one point," and my letter 30

states that distinctly, and that was the cause of arbitration.

Q. And these facts that you have stated constitute the sole basis of your claim against Roney?

A. Yes.

Q. Mr. Shenkman told you he was going to take care of your commission on this, didn't he?

A. He did.

Q. Just what was it he said?

10 A. He says, "Stevenson, I have had an inquiry from a broker and he asked me if there was a realtor on the job and I said no; I knew I lied to that man, but I didn't want to upset the proposition, because it is an exceedingly good one and I can well afford to take care of you, and I will take care of you for half of the commission on the listing I have given you, and you lay off the job."

Q. When did he make that statement to you?

20 A. That was Friday around the middle of December, somewhere around there, between the first and the middle of December.

Q. Was it the Friday that the multiple listing contract was drawn up?

A. About that time, yes.

Q. Did you see Mr. Shenkman on the Monday when he was to sign this multiple listing?

A. No, he didn't come in.

Q. Did you see him, I say?

30 A. Yes, I did see him on Atlantic Avenue in the Title Company.

Q. Did you discuss the matter of commissions with him at that time?

A. No, not then, because he had promised that.

Q. He had promised to take care of your commission?

A. Yes. I asked him then—

Q. When did you find out that he wasn't going to pay you this commission?

A. About around—I judge around July or August of this year.

Q. You didn't know until then that Mr. Shenkman wasn't going to pay you any commission?

A. That is it.

Q. Is that your story?

A. I think Mr. Bolte can verify that by the letter we got from the attorney.

Q. Had this property been settled for prior to the arbitration, do you know?

A. I couldn't tell you that.

Q. Well, if Mr. Shenkman was going to pay you your commission, did you expect to get commission from Mr. Shenkman and from Mr. Roney, too?

A. If I was—morally I was entitled to it from Roney, but they arbitrated against it and I abided by that decision.

Q. You had a promise from Mr. Shenkman made in December, you say, that he was going to pay you half of that commission?

A. Yes.

Q. Did you expect to collect that half of the commission from Mr. Shenkman and get part of Mr. Roney's commission, too?

A. No.

Q. Which was it that you were counting on, the Shenkman commission or the Roney commission?

A. On the Shenkman commission. I told you I brought up the matter before the arbitration on the word "Realtor" which my letter states there, not so much as the commission basis.

Q. You relied on getting one-half of your commission from Shenkman?

A. That was my lookout, yes.

Q. If you had gotten that, that was all you were entitled to on the deal?

A. That was all, yes.

Q. What was it you wanted Mr. Roney to pay? Did you want Mr. Roney to pay you a part of his commission?

A. No.

Q. Besides the half that Mr. Shenkman was to pay you?

10 A. No.

Q. What was it you wanted to arbitrate from Mr. Roney?

A. My letter states that and I told you that three times, the word "Realtor," bringing that word "Realtor" up that time we brought it up, that morally I was entitled to it, but they arbitrated no because of not having gone through its regular course. My letter states that.

20 Q. As a matter of fact, hasn't it been your contention all through this hearing that this arbitration related to your claim for commission as against Roney?

A. No.

Q. That had nothing to do with it?

A. No.

Q. Well, what was it in that arbitration?

A. What do you mean?

Q. What was arbitrated?

30 A. The point of "Realtor." My letter will state that. I brought that before the board.

Q. You might read out this letter the thing you think was arbitrated. Here is your letter.

A. On the letter the question of the—whether I was entitled to any commission through a multiple listing on account of Shenkman making the original with me. Shenkman, when he stated those facts

with me, stated that if the board seen fit and I was morally entitled to a division, then he and Mr. Roney should make it and then Mr. Shenkman be reimbursed.

Q. It was Mr. Shenkman's proposition——

A. It was Mr. Shenkman's proposition.

Q. ——that if the board determined he had to pay this commission he would do it; is that it?

A. Yes.

10

Re-direct examination.

By Mr. Sooy

Q. Mr. Stevenson, Mr. Hanstein just asked you whether or not Shenkman had told you that your getting commissions from him depended on whether the board of arbitration decided that you should get commissions from him, Shenkman?

20

A. Not his proposition, no.

Q. Did the question of your commissions from Shenkman constitute any part of the arbitration or finding of the arbitration on your request that they arbitrate your claim for commissions against Roney?

A. Not Mr. Shenkman's personal promise, no.

Q. Did you ask for or were they arbitrating the question as to whether or not you were entitled to commissions from Shenkman?

A They were not.

30

Re-cross examination.

By Mr. Hanstein:

Q. You never got any word from Mr. Shenkman that he wouldn't pay you your commission, you say, until around June; isn't that correct?

A. Somewhere around there, I got a letter from Lawyer Godfrey which I handed over to Mr. Bolte.

10 Q. That arose by reason of your sending Mr. Shenkman a bill; isn't that correct? Didn't you send Mr. Shenkman a bill for the commission?

A. I sent that to his attorney, I think. I think Mr. Bolte did that.

Q. Let me show you this bill. I guess that is your bill, isn't it?

A. Yes.

Q. And you sent that on the date stated there to Mr. Shenkman, did you?

20 A. I believe so. I sent it. I don't know whether it was just on that date. I know it was around that time.

Q. That was a bill for the commission on the very property in question, wasn't it?

A. Yes.

(Paper marked Respondent 4 for identification.)

30 Q. At the close of this arbitration by the board didn't you hear the board deliver orally its findings on this matter?

A. One man did.

Q. Well, wasn't he chairman of the board of arbitration?

A. He seemed to have all the say and the other men nothing.

Q. Well, he was chairman of the board, wasn't he, Mr. Stevenson?

A. I believe so. I don't know. I couldn't tell you that.

Q. Didn't you know that Mr. Fell was chairman of the board?

A. No, I did not.

Q. Well, it was Mr. Fell who announced the decision, wasn't it?

A. He didn't announce it.

10

Q. Just what did he say?

A. He said, "Steve, I can't see where you have any stand at all." If my memory serves me right, Mr. Siracusa said, "Morally I think you are entitled to it, but legally no." Frank Bloom, I think he said the same thing.

Q. They all agreed on your moral rights?

A. Moral standing, yes. I think that is it, if my memory serves me right. That day it was a Saturday, I think, and there was very little attention. It seemed as though everybody wanted to get out to some affair going on.

20

Q. This arbitration took place before the settlement on the property, didn't it?

A. That I couldn't tell you now.

HERMAN SCHABINGER, sworn for the relator.

30

Direct examination.

By Mr. Sooy:

Q. Mr. Schabinger, were you ever present when a conversation occurred between Mr. Stevenson and Mr. Shenkman with reference to Shenkman paying

commissions to Stevenson on account of the sale of the Shenkman properties that are the subject under discussion here?

A. Yes, sir.

Q. What did Mr. Shenkman say to Mr. Stevenson?

A. Mr. Shenkman told Mr. Stevenson that he had another party who he could make a better deal with, and if Mr. Stevenson would lay off the deal that
10 he would give him half commissions.

Q. Were the properties referred to the Shenkman properties on Vermont and Madison Avenues?

A. Yes, sir.

Q. And were the same properties that Roney eventually sold for Shenkman?

A. As far as I know.

Q. Can you give the date or approximate date when that conversation took place?

A. About the middle of December.

20 Q. Of 1923?

A. 1923.

Cross-examination.

By Mr. Hanstein:

Q. Where did this conversation take place?

A. In Mr. Stevenson's office.

Q. Are you employed by Mr. Stevenson?

30 A. Yes, sir, as a real estate salesman.

Q. Did you hear the full conversation?

A. I only heard that part of it.

Q. You mean you only heard one line of it?

A. Well, I heard them arguing about the listing of the property and finally Mr. Shenkman told Mr. Stevenson that he would take care of him on the commissions.

Q. Tell me this: Did Mr. Stevenson offer Mr. Shenkman a proposition?

A. I don't know that he did.

Q. Well, what did you understand Mr. Shenkman to mean when you say he said he had a better proposition than Mr. Stevenson's and if Mr. Stevenson would lay off he would pay him one-half of the commissions?

A. Well, I understood that he had somebody else on the deal with him and the other fellow could make a better deal than what Mr. Stevenson could. 10

Q. That is what I am asking you, did Mr. Stevenson tell Mr. Shenkman that he had a customer for the property?

A. Yes.

Q. Mr. Stevenson told Mr. Shenkman that he had a customer for the property?

A. Mr. Stevenson had a customer for the property?

Q. Did he say that? 20

A. No, he didn't say that.

Q. Was he making any proposition at all to Mr. Shenkman about the price that he could get Mr. Shenkman for the property?

A. Not that I know of.

Q. Well, I return, then, to my other question to you, and ask you what you thought Mr. Shenkman had in mind when he said that he had a better proposition than Mr. Stevenson's. What proposition did Mr. Stevenson make to him? 30

A. I don't know.

Q. How much of this conversation did you hear?

A. Just what I have repeated to you.

Q. Just this one line of it? That is all you heard?

A. That is all I paid particular attention to. I heard lots of conversation but I didn't pay atten-

tion to it because they were in one office and I was in the other.

Q. And this is the only statement of that whole conversation that you are in a position to repeat?

A. Yes.

Q. Is that it?

A. That is it.

Q. Did you hear Mr. Stevenson tell Mr. Shenkman that he had any sale proposition for him?

10 A. No.

Re-direct examination.

By Mr. Sooy:

Q. Did you know that Stevenson had the property for sale for forty-five thousand dollars, the entire property?

A. I did.

20 Q. And did you know that he had it for sale for twelve thousand dollars as to twenty-seven by thirty-five feet of it?

A. Yes.

Q. In other words, one property for forty-five thousand and the other for twelve thousand dollars?

A. Yes.

30 Q. Did you know whether or not when Mr. Shenkman referred to having a better proposition than Stevenson had, he referred to the price of forty-five thousand and twelve thousand that he had given to Mr. Stevenson?

A. I understood it was for the property—

Mr. Hanstein: I object to what he understands about it. What he heard will control. Also, it is leading.

(Question repeated.)

A. Well, I understood it was for the property 203.

Mr. Hanstein: I ask that be stricken out.

Q. Go ahead. You understood it was for the property 203?

A. That is what I understood that the argument was about.

10

Re-cross-examination.

By Mr. Hanstein:

Q. You didn't know whether or not Mr. Stevenson had a customer for this property, did you?

A. No.

20

Q. As a matter of fact, he didn't have, did he?

A. I don't know.

Q. Well, you would be likely to know if he did have, wouldn't you?

A. Not always, no.

Q. Did you hear him say that he had a customer for it?

A. No.

30

JOHN R. SIRACUSA, sworn for the relator.

Direct examination.

By Mr. Sooy:

Q. Mr. Siracusa, you are a member of the Atlantic City Real Estate Board, aren't you?

10 A. Yes.

Q. And also a member of the board of directors?

A. Yes.

Q. Were you one of the arbitration committee appointed to adjust the differences between Mr. Stevenson and Mr. Roney?

A. I was.

Q. How many sittings were there of that arbitration board?

A. Just one.

20 Q. That was about when?

A. That was in March sometime.

Q. Of 1924?

A. Yes.

Q. At that sitting was the conclusion of the board reached and announced?

A. Yes, it was.

Q. How was it announced? Verbally or in writing?

A. Verbally, by the chairman of the committee.

30 Q. What was the announcement?

A. That Mr. Stevenson was not entitled to any commission.

Q. Was there any other announcement than that? I mean did that include the full report of the board?

A. As far as the commission was concerned, yes, sir.

Q. Was the result of the announcement ever communicated at a meeting of the board of directors of the Real Estate Board?

A. It was verbally, yes.

Q. When?

A. I imagine, if I remember correctly, it was the meeting following the sitting of that committee.

Q. That would have been the April meeting?

A. Possibly.

Q. March or April meeting?

10

A. Yes, I think so.

Q. Was Mr. Stevenson present when that was announced?

A. No, sir.

Q. That was the only meeting, you say, of that arbitration committee?

A. Yes, sir.

Q. Were you present at a meeting of the board of directors held on August 1st, when the question of a letter written by the president to Mr. Stevenson requesting his resignation was discussed?

20

A. I was at one meeting when that was discussed. Whether that was the particular one or not I don't remember. I think it was mentioned in a couple of meetings.

Q. And the request for resignation or the letter that you heard discussed was the letter marked Exhibit Relator 5?

A. It was.

Q. And were you present at the meeting of September 12th when Mr. Potter moved that Mr. Stevenson be expelled from the board for non-compliance with the decision of the board of arbitration in connection with the Shenkman matter?

30

A. I am almost positive I was.

Q. Just so you can see that, may I call your at-

tention to the minutes? You see that you were, don't you?

No cross-examination.

MICHAEL LIEBSTER, sworn for the relator.

10 Direct examination.

By Mr. Sooy:

Q. Mr. Liebster, what is your business?

A. I am retired.

Q. Do you know Mr. Stevenson?

A. I do.

Q. Do you know Mr. Shenkman?

A. Yes, sir.

20 Q. Did you ever hear any conversation between Mr. Shenkman and Mr. Stevenson with reference to the properties at Madison and Vermont Avenues?

A. I did.

Q. When was that?

A. Well, I heard several conversations between them. In fact, I can say a good many of them.

Q. With reference to the sale of these properties?

A. Well, that was after. I heard conversations previous to that. I know Mr. Shenkman has listed
30 those two properties with Mr. —

Mr. Hanstein: I would like to ask that his answers be confined to the questions.

Q. Did you ever have any knowledge of the listing of the properties in question by Mr. Shenkman with Mr. Stevenson?

A. I did.

Q. How did you get that knowledge?

A. Well, I happened to be in the office and they had a listing drawn up of those two properties and signed by Mr. Shenkman. In fact, Mr. Stevenson asked me as a favor to go and put signs on the property.

Q. You were present when Mr. Shenkman listed these two properties with Mr. Stevenson, were you?

A. I was.

10

Q. I show the witness paper purporting to be signed by Jacob Shenkman and ask him if that is the listing he refers to?

A. That is it.

Q. That paper bears date 12th month, 1st, 1923. Was that the time that this listing was signed?

A. Around that time. It was in December.

(Paper offered in evidence and marked Exhibit Relator 7.)

20

Q. After that listing you say you put the signs on the properties?

A. I did.

Q. And they were John J. Stevenson, Realtor's signs?

A. Yes, sir.

Q. After the property had been listed by Mr. Shenkman with Mr. Stevenson, did you hear any further conversation between them with reference to these properties?

30

A. I did.

Q. What was it?

A. The conversation was—it happened several days after. Mr. Shenkman came in and he asked Mr. Stevenson whether he wouldn't divide this list-

ing into two separate listings and Mr. Stevenson answered that he would, and he drew up two listings and he had a double listing, and he destroyed that. Mr. Shenkman signed one and he said that he would sign the other one in a few days, which was agreeable between the two.

Q. Did he tell Mr. Stevenson why he didn't want to sign the other one just then?

A. No, not at the time.

10 Q. And Mr. Stevenson, in pursuance to that request, did draw up double listings?

A. Yes, sir.

Q. What did he do with them, do you know?

A. Mr. Stevenson?

Q. Yes.

A. I couldn't say what he done with them at the time.

Q. Then did you hear any other conversation after that between Mr. Shenkman and Mr. Stevenson?

20 A. Yes. First, I want to tell you what I heard previous to this. I heard that Mr. Stevenson always asked the girl when Mr. Shenkman comes to sign the listing until one time Mr. Shenkman came in and they had a conversation between themselves on that second listing, and Mr. Shenkman asked Mr. Stevenson to leave it go a while because he has got somebody that is trying to sell the property and he thinks he can do better than what the listing called for, and that he would take care of him if he leaves
30 it alone.

Q. Take care of whom?

A. Of Mr. Stevenson.

Q. Did he say how he would take care of him?

A. By giving him a part of his earnings, commission, whatever it was.

Q. Did he tell Stevenson who the other party was

who had the property and would probably be able to sell it at a better price than Stevenson's listing?

A. I didn't hear him mention any names.

Q. Did he tell Stevenson what proportion of the commission he would give Mr. Stevenson in the event that the other party sold it?

A. No. He said he would take care of his share, he said. I didn't hear any amount.

Q. Did you hear any other conversations between 10 them?

A. Then they had other conversations between them, some kind of a bill that was between themselves. Mr. Stevenson, I understood, owed Mr. Shenkman something and Mr. Shenkman demanded payment on it and he said to him "Well, let us straighten it out; you owe me some money, and I owe you some money; let's straighten the matter out."

Q. Who said that?

20

A. Mr. Shenkman said that.

Q. Said that to Stevenson?

A. Yes.

Q. What moneys did Shenkman say he owed to Stevenson, if any?

A. That he owed him?

Q. Yes.

A. I think I made a mistake by answering you before who said it. Mr. Shenkman asked Mr. Stevenson for some money that was due him, and Mr. Stevenson answered him and said "Well, you owe me some money on that commission you promised 30 me; let's straighten it out; let's figure out what the difference is and we will straighten it out," and that is the way it began, you know.

Q. What did Shenkman say to that?

A. He didn't say anything. Just dropped the matter and left it go no further. That is the reason I say there were so many conversations in the matter, I don't know what the end of it was.

Cross-examination.

By Mr. Hanstein:

- 10 Q. Are you in the real estate business?
A. I am not exactly in the real estate business. I have a real estate license.
Q. As a broker or salesman?
A. Salesman.
Q. Salesman for whom?
A. Under Mr. Stevenson.
Q. At the present time?
A. Yes; at the present time, too, yes.
Q. At the time this controversy arose, likewise,
20 I presume?
A. Yes, sir.
Q. Are you working at it?
A. Am I working at the real estate business?
Q. Yes.
A. No, sir.
Q. You are not working under your salesman's license?
A. No, sir.
Q. Why do you have a salesman's license, if you
30 are not working at it?
A. Mr. Stevenson has taken out a license for me, being that he knows I am not doing anything and I come in once in a while in his office and I have got good acquaintance, and he thought if something comes up in case I get sometimes some kind of business, I would be better in power to be able to do it according to law.

Q. Didn't you file the application yourself for a salesman's license?

A. I signed the application. I didn't fill it out.

Q. Showing you Exhibit Relator 7, which I believe you testified to, I now ask you if you previously testified that that was Mr. Shenkman's signature?

A. I didn't testify that it was his signature. I testified that this was the listing made. I didn't testify to his signature.

Q. When you say that that was the listing made, where do you get the basis for that statement? 10

A. What do you mean?

Q. Whose handwriting is this?

A. I couldn't tell you whose handwriting it is.

Q. How do you know this is the listing that was made?

A. Because I saw that this was the paper that they wrote and this is mentioning his price as it was argued between them.

Q. You saw this was the paper they wrote; is that it? 20

A. Yes, sir.

Q. If you saw that his was the paper they wrote, why aren't you able to tell me whose handwriting it is?

A. Well, I couldn't very well tell you that.

Q. Who wrote it?

A. Well, I think Mr. Stevenson wrote it.

Q. Where were you when this was written?

A. In the office.

Q. In the same room with Mr. Stevenson? 30

A. No; that was done in—yes, it was in the same room, because it was done in the front office.

Q. You were in the room when this was written?

A. Yes, sir.

Q. Was Mr. Shenkman there?

A. Yes, sir.

Q. Were you watching what was written?

A. No.

Q. When did you see this paper next after it was written?

A. I haven't seen it at all.

Q. This is the first time you saw it?

A. This is the first time I saw it, but I remember mentioning the figures.

10 Q. You remember what this listing was exactly, don't you?

A. Yes; about.

Q. You must remember it exactly to know that this paper represents it.

A. I know that the two properties were listed for forty-five thousand dollars.

Q. Tell us the other details of the listing?

A. What do you mean, the details?

20 Q. Well, what else was agreed to between the parties at the time they made up this listing that was written?

A. This listing was written up and then I believe the listing that was really signed was a different listing, it was a listing that had copies and carbons on.

Q. I understand that. You say that this paper, Exhibit 7, represents the agreement made at that time?

30 A. That represents the listing that they have agreed to list it for.

Q. At that time?

A. Yes.

Q. Now, I am asking you to state the agreement of listing that was made at that time and the details of the property. Can you do it or can't you?

A. This was the listing that they have agreed

upon to put in the regular listing. That was a memorandum, I might as well call it.

Q. This is a memorandum? You tell us what was written on this memorandum.

A. Well, they mentioned the price and I believe they talked about the size of the lot.

Q. What is the size of the lot?

A. I couldn't remember that in my mind.

Q. You don't remember the size of the lot?

A. No.

10

Q. Do you remember how they described the property on this listing?

A. How what?

Q. How they described the property on this listing?

A. Well, I remember they was just talking that it was two buildings, one facing one street and the other facing another street, one facing Rhode Island Avenue, I believe, and another one was facing Madison Avenue.

20

Q. Was that written down on this paper?

A. Well, I don't know exactly if it was written down. I heard the conversation going on while this writing was done. I wasn't standing there at the counter and watching exactly what goes on the paper.

Q. How many conversations did you hear about this property?

A. Many of them. I think I heard so much that I was sick of hearing it, because there was some disagreement between themselves after that first listing was destroyed.

30

Q. Do you remember when this property was sold?

A. It was sold sometime, I believe, in December or in January. Around that time.

Q. And it was your understanding that Mr. Shenkman was to pay Mr. Stevenson a commission?

A. He said he would. I had personally nothing to do with it. It didn't make any difference to me whether Mr. Shenkman does pay him anything or not.

Q. You also know that there was some conversation about multiple listing of this property, too, don't you?

A. Yes. There was a multiple listing drawn on the two. I know that. This I know.

10

Re-direct examination.

By Mr. Sooy:

Q. Do you know whether both of the multiple listings were signed or whether only one of them was signed?

A. The first one that was listed on the two properties together, that was signed, and then there was
20 two separate ones made, and one was signed and the argument always, the conversation that was going on between themselves was practically on the one that wasn't signed. Mr. Shenkman always promised to come in to sign it. Of course, I didn't hear that from Mr. Shenkman saying he is coming in to sign it, but I always heard Mr. Stevenson asking the girl, "Was Mr. Shenkman in to sign that?" That is what I heard. I didn't come here to testify because I favor Mr. Stevenson or have anything
30 against Mr. Shenkman. I am as much friends to Mr. Shenkman as I am to Mr. Stevenson. I was summoned and I came here. That is all I can tell you. I have no interest whatever. Even if I have a license I have never made a dollar in Mr. Stevenson's office yet in the real estate business. This I can make a statement and swear to it, so I am

absolutely an outside party in the matter. In fact, I can say I would give fifty dollars if I wouldn't have been in this mess at all. I didn't want to interfere between the two men, because I am just as much friend to this man as I am to that man.

(Hearing adjourned until Friday, November 28th,
1924, at 1 P. M.)

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Atlantic City, N. J., Friday, November 28th, 1924.

(Hearing resumed at 1 P. M.)

FRANK J. BLOOM, sworn for the relator.

10

Direct examination.

By Mr. Bolte:

Q. You are a member of the Atlantic City Real Estate Board?

A. Yes.

20 Q. Were you chairman of the committee that was appointed by the president sometime in the early part of 1924 to take up a matter of difference between Mr. Roney and Mr. Stevenson?

A. I wasn't chairman, but I was a member of the committee.

Q. Who was chairman?

A. Charlie Fell was chairman, I believe.

Q. And the other member of the committee?

A. John Siracusa.

Q. The committee, then, was composed of Charles Fell, chairman—

30 A. And John Siracusa and myself.

Q. Did you have a hearing?

A. We did.

Q. Where?

A. Had a hearing in the old quarters of the Real Estate Board, in the Guarantee Trust Building on the first floor next to Fisher's office.

Q. How many hearings did you have?

A. One hearing.

Q. Do you know when it was held?

A. I couldn't tell you exactly. It was held last winter in the afternoon at two o'clock. I couldn't say the exact time. You have the right time, haven't you?

Q. Who acted as secretary?

A. Mr. Fell.

Q. Both as chairman and secretary?

10

A. He was the chairman and secretary of the meeting, yes.

Q. Do you know whether you made any report of the findings of that committee?

A. We listened to the testimony as given then by the different men, or to the remarks as given by the different brokers, and then the committee consulted together. We excused the men in the room and then we gave a verbal report to the men that were—that is, to Mr. Stevenson and Mr. Roney, who were outside, the brokers in the transaction.

20

Q. Who appeared before you at that hearing?

A. Who appeared before us?

Q. Yes.

A. There were Mr. Roney and Mr. Stevenson and Mr. Shenkman.

Q. As a result of this investigation, had you anything before you at all, before the committee?

A. No, we had nothing before us excepting that we had been notified that we were to arbitrate a matter between Mr. Stevenson and Mr. Roney.

30

Q. And that is the matter that you considered, between Stevenson and Roney?

A. Yes, Mr. Roney and Mr. Shenkman at the time; it was a matter of commission.

Q. Mr. Shenkman neither at that time or since

has been a member of the Real Estate Board of Atlantic City?

A. No.

Q. Mr. Roney was?

A. Mr. Roney was.

Q. And you were proceeding under your constitution to adjust a matter of difference between two of your members, were you?

10 A. Well, that is sort of indirect. I can't say yes or no, because Mr. Shenkman was a party to the transaction, too. He was the man from whom the commission was to be paid that the argument was over.

Q. It was over Mr. Shenkman's commission?

A. Yes.

Q. Did you make any report in writing?

A. No, we made just a verbal report.

Q. To whom did you make it?

20 A. I didn't make the report. Mr. Fell made the report, I think, to the chairman of the board.

Q. What board do you mean?

A. Rather, the secretary of the board. The Real Estate Board.

Q. Did you sign that?

A. No.

Q. Do you know what sort of a report he made?

A. Why, just that there was a——

Q. Were you present when he made it?

30 A. No, excepting what the committee agreed to report.

Q. You know what the committee agreed to report?

A. Yes.

Q. But as to what his report was to the secretary of the board, you don't know that?

A. No, personally I don't know what message he reported to the board.

Q. Your determination was what, of the committee?

A. Well, that Mr. Stevenson was entitled to commission from nobody.

Q. Do you know whether Mr. Stevenson abided by your determination so far as your board was concerned?

A. As far as I was concerned about the matter, I didn't know anything excepting what I heard, rumors. I don't know anything definitely because, 10
you see, after our arbitration, then it seems that all the negotiations with Mr. Stevenson and the board and things like that were with the board of directors.

Q. There were only how many members at the meeting?

A. As I recall, there were Charles Fell and John Siracusa and myself. That is the committee.

Q. That constituted the entire committee?

A. Yes.

Q. So the committee was of three members only? 20

A. Three members.

Cross-examination.

By Mr. Hanstein:

Q. Mr. Bloom, was there any objection to the fact that there were three members?

A. None whatever.

Q. Mr. Stevenson didn't raise any question about 30
it?

A. No.

Re-direct examination.

By Mr. Bolte:

Q. That is the only meeting you ever had?

A. On this affair, yes, that is, where I was a member of the committee.

Re-cross examination.

10

By Mr. Hanstein:

Q. I believe that you told Mr. Bolte that there was nothing before the board on which you folks were to act. I show you a letter from Stevenson——

A. I beg your pardon. Yes, I had seen a copy of that letter, but that is just what I said, about an arbitration between Mr. Roney and Mr. Shenkman, to arbitrate on the matter of the commission due in the Shenkman matter.

20

Q. I show you the letter of January fourth from Stevenson to the Real Estate Board through its president, marked Relator's Exhibit 3, and ask you if that letter was present at the time of the arbitration?

A. I am quite sure it was.

Q. Do you recall whether it was read or not?

A. I don't think it was read. I think it was just passed around for the inspection of the men, as I remember it.

30

Q. You have read that letter?

A. I have read the letter, yes. I read it before the meeting.

Q. What was arbitrated at this meeting?

A. Well, the story as I remember it is that Mr. Stevenson wrote this letter wishing to participate

in a commission which was due Mr. Roney from Mr. Shenkman, and that the committee decided that Mr. Stevenson had no claim in that commission.

Q. Tell us this: From whom did Mr. Stevenson claim a commission?

A. I have got to answer that in two ways, Mr. Hanstein. He claimed the commission from Mr. Shenkman through Mr. Roney.

Q. How did he claim a commission from Mr. Shenkman through Mr. Roney? 10

A. Because he brought the affair up for arbitration by request on application to the board, and naturally, inasmuch as Mr. Shenkman owned the property in question and he was the man who paid the commission and Mr. Roney had already closed the negotiations, Mr. Stevenson wanted to participate in that commission.

Q. Was anything said at that arbitration about a multiple listing contract?

A. Yes. Mr. Stevenson at first represented that 20 he had either a multiple listing or the equivalent of it. He claimed that he called up the Real Estate Board and notified them that he had it, and then later on, when we pressed him in the meeting or, rather, asked him further about it, he said he didn't have any but he had already made one multiple listing of the whole thing, which didn't suit Mr. Shenkman, which Mr. Shenkman had in turn cancelled and made other listings of the parcels.

Q. Was the testimony then that Shenkman— 30

Mr. Bolte: I object to the leading question.

(Question withdrawn.)

Q. What happened to this cancelled multiple listing? Was that operative?

A. No. On the arbitration board's decision it was thrown out.

Q. I don't think you understood that question. I asked you what happened to the cancelled multiple listing that Shenkman had given to Stevenson?

A. The cancelled multiple listing that Shenkman had given to Stevenson?

Q. Yes.

A. Well, I don't know what became of that. It
10 was cancelled.

Q. Did Mr. Stevenson make any claim under the cancelled multiple listing?

A. No.

Q. That wasn't in the controversy?

A. No.

Q. Then do I understand you to say that Mr. Stevenson claimed that there was more than one multiple listing contract on the entire property; is that
it?

20 A. On the entire property, yes.

Q. Did he claim that he actually had a multiple listing contract on the property in question?

A. At first he did.

Q. What did the testimony develop as to the actual facts?

A. Well, he didn't.

Q. It developed that he did not have one?

A. That he did not have one.

Q. Was Mr. Stevenson claiming a commission
30 under this multiple listing contract that he claimed to have?

A. Yes.

Q. When there is a multiple listing contract on property, Mr. Bloom, and one agent, a member of the board, procures the listing and another member of the board sells the property, what is the arrangement in regard to commission?

A. Why the commission is split in this way: The selling broker gets sixty-five per cent; the Real Estate Board five per cent; and the listing broker gets the other thirty per cent. I think that is right; sixty-five and thirty-five instead of sixty-five, five and thirty.

Q. Was Mr. Stevenson claiming under that arrangement?

A. He was.

Q. From whom did he claim that there was a commission due to him under that multiple listing? 10

A. Well, he claimed that it was due from Mr. Shenkman through Mr. Roney as the other broker in the transaction.

Q. Under these multiple listing contracts who collects the commission, the listing broker or the selling broker?

A. Ordinarily the listing broker collects the commission.

Q. Did Mr. Stevenson at that time make any claim that Mr. Shenkman owed him any commission? 20

A. At this affair?

Q. Yes.

A. Yes. Yes, he claimed that the commission which Mr. Roney was collecting, that is, part of that commission which Mr. Roney was collecting from Mr. Shenkman, was due him.

Q. And it was due by virtue of the multiple listing? Is that correct?

A. On the original request for the arbitration, yes. 30

Q. Did Mr. Stevenson produce any evidence of any agreement with Mr. Roney in regard to a promise on Roney's part to pay him a commission or part of the commission?

A. No, none that I know of.

Q. Was there any evidence at all before the board that Mr. Stevenson had any arrangement with Mr. Roney at all in regard to Roney paying him part of the commission?

A. None at all.

Q. Then you say Stevenson's claim was based entirely on the multiple listing arrangement?

A. His original application for an arbitration hearing was on the grounds of participating in a
10 commission under a multiple listing contract on that property.

Q. And due from whom?

A. Due from Mr. Shenkman through Mr. Roney.

Q. When you say due through Mr. Roney, just what do you mean? Who is to collect the commission from Mr. Shenkman?

A. Well, inasmuch as the—well, the man who owns the property pays the commission. The broker making the deal collects the commission.

20 Q. Is that the same testimony you gave a minute ago?

Mr. Bolte: I object to that.

(Question withdrawn.)

A. Well, here is the reason—

Mr. Bolte: There is no question.

30 Q. In what way does this multiple listing division of commissions operate in regard to the collection and division of commissions?

A. Ordinarily when a property is sold, the listing broker collects the whole commission, and then he—

Mr. Bolte: He has already testified to that. I object to it.

Q. Go ahead.

A. And then he distributes it on the basis as set by the board.

Q. It developed before the board, then, that Mr. Stevenson didn't have any multiple listing contract with Mr. Shenkman?

A. No.

Q. Did he produce evidence of any other contract with Mr. Shenkman under which he was entitled to a commission?

A. No.

Q. What was the arbitration committee's finding in regard to Mr. Stevenson's right to a commission?

A. Mr. Stevenson was due no commission from anybody.

Q. From anybody?

A. Well, from Mr. Roney, who in turn, got all the money due on that commission from Mr. Shenkman.

Q. Then you mean he wasn't entitled to it from Roney or Shenkman; is that it?

A. No; neither.

Q. What do you mean when you say that he wasn't entitled to a commission from anybody?

A. Well, the reason I say that, I——

Mr. Bolte: I object to that. Not what he means. Let him testify about it.

30

(Question repeated.)

A. Well, ordinarily——

Q. No. Just name the people from whom you decided he was not entitled to a commission?

A. From Roney and Shenkman.

Re-direct examination.

By Mr. Bolte:

Q. Do you mean to say, Mr. Bloom, that you people determined at your committee meeting that Mr. Stevenson was not entitled to any commission from Mr. Shenkman, or that you determined that he was not entitled to participate in the commission that
10 Shenkman paid to Mr. Roney?

A. Well, Mr. Bolte, I have to answer that by making a statement, if you will let me.

Q. I think you can answer that. I want that answered just that way.

(Question repeated.)

A. He was not entitled to participate in the commission due from Shenkman to Roney, that is, the
20 full commission.

Q. You people determined that the commission was due from Shenkman to Roney?

A. We determined that the commission was due as a result of the arbitration.

Q. On the transaction between Shenkman and Roney. And that Mr. Stevenson's request to share in the commission that had been paid from Shenkman to Roney, you determined that he was not entitled to share in that?

30 A. Absolutely not entitled to share in it.

Q. In other words, you determined the matter of difference between Stevenson and Roney, didn't you?

A. In settling the question with Stevenson and Roney it must affect Mr. Shenkman. You can't get away from it.

Q. Answer my question.

(Question repeated.)

A. Yes.

Q. And the other part of it, so far as Shenkman was concerned, of the difference between Shenkman and Stevenson, you simply assume that because you determined——

A. It always is assumed.

10

Q. You simply assumed because you determined that Stevenson was not entitled to share in the commission with Mr. Roney that he was not entitled to any commissions from Shenkman outside of that? That is simply an assumption on your part, isn't it?

A. The board always rules that way.

Q. I am asking you whether that isn't an assumption on your part?

A. It is an obligation we assume. As realtors we have to abide by the ruling of the board. That is the other end of it, Mr. Bolte. It isn't necessarily assumed. It is a broad statement. It is really law in the board.

20

Q. Have you anything on your by-laws to that effect?

A. Well, it has been an unwritten law all through our procedure.

Q. That is your conclusion of it?

A. Yes, sir.

30

Q. That is simply your conclusion of it?

A. Well, it is the way we have been operating.

Q. In how many cases has that occurred?

A. We have never yet had any deviation that I know of.

Q. In how many cases did it occur? Did you de-

termine anything of that type by which you created that unwritten law?

A. By past decisions.

Q. Which one? How many?

A. I will just mention one. I was in one affair with Mr. Potter and Mr. Emley about four months ago where we had a decision.

Q. Previous to this decision of Stevenson and Roney?

10 A. Mr. Bolte, I couldn't answer that. I will have to go over the cases. I have been on about four or five different arbitrations and I can't think of all of them just now because, you know, they come and go and that is all there is to it. I would have to refresh my memory.

Q. In other words, at the present time you can't think of a single case where a similar situation arose?

A. No, I can't.

20 Q. And the committee was called upon by Mr. Stevenson to determine whether he was entitled to share in the commissions which were to be paid or had been paid by Shenkman to Roney, wasn't it?

A. Yes.

Q. And that is what he asked you to determine, wasn't it?

A. Yes.

Re-cross examination.

By Mr. Hanstein:

30 Q. As a matter of fact, had that commission been paid at that time?

A. I don't think so. I am not sure. I don't think it had been paid yet, because this affair was brought up shortly after the agreement of sale was made,

and I don't think that the actual settlement had taken place yet.

Q. Well then, you couldn't have considered anything in regard to a commission that had been paid, could you?

A. Oh, no.

Q. Do you know on what theory Stevenson based his claim against Roney?

A. It must have been on the representation——

Q. I am asking you if you know? 10

A. On the theory of having a multiple listing of that property.

Q. Are you familiar with the form of multiple listing contracts?

A. Rather well.

Q. That was the sole basis of Stevenson's claim against Roney, was it?

A. Yes. He claimed he had a multiple listing contract on that property.

Q. I show you a form or listing contract in evidence marked Respondent 3 for identification and ask you to look at that and refresh your memory as to the contents of multiple listing agreements. 20

A. Yes, that is one of our forms.

Q. Can you tell me under these multiple listing contracts to whom the owner of property listed with the Real Estate Board promises to pay the commission?

Mr. Bolte: I object to that. The contract speaks for itself. 30

Mr. Hanstein: It is not in evidence. It is just for identification.

Mr. Bolte: Then I object to it again because the multiple listing contracts would be the best evidence.

A. The listing broker ordinarily gets the commission.

Q. Well, was Roney the listing broker in this case?

A. Mr. Stevenson claimed to be the listing broker.

Q. Who was the owner?

A. As I remember it, Jacob Shenkman.

Q. And Stevenson was claiming under a multiple listing contract; is that it?

10 Q. Well then, from whom was Stevenson claiming commission?

A. Well, it is the same story. He was claiming it through Mr. Roney from Mr. Shenkman.

Q. Why through Mr. Roney?

Mr. Bolte: I object to that.

A. Mr. Hanstein, they are one and the same thing. You can't get away from it.

20 Q. You have testified that the multiple listing contract under which Stevenson claimed provided for the payment of a commission from the owner to the listing broker. Why did Stevenson claim his commission to be due to him through Roney?

A. The only answer to that is that he had arranged the agreement of sale.

Q. Well, under the multiple listing contract who is to pay to whom?

30 A. Under the multiple listing contract the party listing the property is to pay the listing broker the commission.

Q. And did Stevenson make any claim under the multiple listing contract against Shenkman?

A. Yes.

Re-direct examination.

By Mr. Bolte:

Q. Your multiple listing is a matter between two brokers, isn't it, or the brokers who work on it?

A. Yes, the brokers. It is really the whole board, all of the members.

Q. And the man who put in the multiple listing is supposed to get the money, isn't he? 10

A. Yes.

Q. Is there anything to stop the other broker who actually sells the property from getting the money from the man whose property it is, from the man who lists it? It physically can be done, can't it?

A. Oh, yes, it is possible.

Q. And conditions may arise in which the owner pays the man who actually makes the sale, may they not? 20

A. In which the owner pays the—

Q. The man who actually makes the sale.

A. Apart from the multiple listing system?

Q. Either with or without it. He can do it, can't he?

A. Yes.

Q. In that event, if the owner pays the man who actually makes the sale, the money is paid just the same to the man who puts in the multiple listing, isn't it? 30

Mr. Hanstein: I object to this line of examination on the ground it is entirely irrelevant, incompetent and immaterial.

(Question repeated.)

Q. His share of it?

A. Oh, yes. Yes, it goes right through.

Q. And the question as to whether or not the commission had been paid in this sale or had not been paid, wasn't considered that day at all, was it?

A. At that time?

10 Q. Yes. The only thing you considered was whether Mr. Stevenson was entitled to share in the commission that either had come to Mr. Roney or was coming to him, wasn't it?

A. Yes.

RELATOR RESTS.

RESPONDENTS' TESTIMONY.

20 RICHARD ENDICOTT, recalled for the respondents.

Direct examination.

By Mr. Hanstein:

Q. What is your office in this Atlantic City Real Estate Board?

A. Executive secretary.

30 Q. Do you have charge of the office of the company?

A. Of the Real Estate Board, yes.

Q. Do you have charge of the operation of the multiple listing system?

A. Under the advice of the multiple listing committee. I actually see that it is operated.

Q. You are the one who is in actual charge?

A. That is right.

Q. You are familiar with the operation of the system?

A. I am.

Q. I show you the code of ethics of the National Association of Real Estate Boards and ask you if that has been adopted by the Atlantic City Real Estate Board?

A. It has.

Q. Had it been adopted by the Real Estate Board at the time of this hearing before the arbitration committee? 10

A. No. This is a revised code, revised in June of this year.

Q. It was not in operation at that time?

A. Not completely. We had a code, but this is the revision of that code.

Q. Do you have a copy of the code that was in operation at that time?

A. Not with me. We have one in the office however. 20

Q. Will you produce that?

A. I will.

Q. I show you a pamphlet entitled, "The Multiple Listing System," bearing the name and address of the Atlantic City Real Estate Board, and ask you if that contains the rules and regulations of the multiple listing system of the Atlantic City Real Estate Board?

A. It does.

Q. Was that in operation at the time this controversy arose? 30

A. It was.

Mr. Hanstein: I offer it in evidence.

Mr. Bolte: I object to it as irrelevant and immaterial.

(Paper marked Respondents' Exhibit 5.)

Mr. Hanstein: For the purpose of the record, I call particular attention to regulation number 5, entitled, "Fees Payable."

Q. Did you ever hear of premises 203 North Vermont Avenue?

A. I have.

10 Q. When did you first hear of this property in connection with the Atlantic City Real Estate Board?

A. Sometime the latter part of December I heard that there was a property——

Q. What year?

A. 1923.

Q. You heard of it in the latter part of December, 1923. From whom did you hear it?

A. I first heard of it from Mrs. Endicott, the assistant secretary.

20 Q. Mrs. Endicott is your wife?

A. She is.

Q. When did you first hear of it from Mr. Stevenson?

A. A few days after Mrs. Endicott had notified me about this property.

Q. What transpired between you and Stevenson?

A. Well, Mr. Stevenson had called the board office and stated that he had a multiple listing on——

30 Mr. Bolte: I object. To you?

A. Well, I have got to bring it in how I got the information.

Q. If he didn't state it to you, you can't testify to it. You testify, even if it isn't connected up properly at this time, to the first conversation or trans-

action you had with Mr. Stevenson in regard to this property.

A. A few days after I had first heard of the property, I called Mr. Stevenson on the telephone and asked him when he was going to send the multiple listing contract for this property in to the board. He stated that he would send it right in. After several visits of Mr. Stevenson to the board following this conversation, on each occasion I asked Mr. Stevenson where this contract was and he says, "Oh, I forgot it, but I will send it right down." We never saw that contract in the office until after this arbitration committee was appointed and acted. 10

Q. Did Stevenson tell you that he had a multiple listing contract for the premises 203 North Vermont Avenue?

A. He did so state.

Q. Did he tell you who was the owner of that property?

A. He told me Mr. Shenkman was the owner of the property. 20

Q. Did Mr. Stevenson list that property with the board?

A. Only verbally through Mrs. Endicott.

Q. He never presented to the board a multiple listing contract for that property?

A. Not to the board office.

Q. You were not present at this arbitration, were you?

A. I was not. 30

Q. Did you receive information that Mr. Stevenson subsequently demanded payment of a commission from Mr. Shenkman?

A. Through correspondence coming through the board, I did.

Q. Was it a letter that came to the board?

A. Yes, sir.

Q. Is this the letter that you received?

A. That is the letter.

Mr. Hanstein: I offer it in evidence.

Mr. Bolte: I object to it as irrelevant and immaterial. It plays no part in this controversy.

10 (Letter marked Respondents' Exhibit 6.)

Q. Did you subsequently write a letter to Mr. Stevenson?

A. Not personally, no.

No cross-examination.

20

JOHN R. SIRACUSA, recalled for the respondents.

Direct examination.

By Mr. Hanstein:

Q. Are you a member of the Atlantic City Real Estate Board, Mr. Siracusa?

A. I am.

30 Q. And you are in the real estate business in Atlantic City?

A. Yes, sir.

Q. And have been for how many years?

A. Six years.

Q. Are you acquainted with Mr. Stevenson?

A. I am.

Q. Were you appointed a member of the arbitration committee that sat at the request of Mr. Stevenson?

A. I was.

Q. Do you recall what took place at that arbitration hearing?

A. I do.

Q. Was this letter marked Relator Exhibit 3 under date of January fourth, 1924, and signed by John Stevenson, present at the hearing? 10

A. Yes.

Q. Do you remember who were present at that hearing?

A. Besides the committee, do you mean?

Q. Yes.

A. Mr. Shenkman, Mr. Stevenson and the committee, is all I can remember.

Q. Mr. Roney?

A. Yes, Mr. Roney.

Q. Was any objection made by Mr. Stevenson to the fact that there were only three members on the arbitration committee? 20

A. There was no objection to that.

Q. Did Mr. Stevenson take the stand at that time?

A. He did.

Q. Will you tell us what it was that was arbitrated at this hearing?

A. It was the question of a property being sold which was owned by— 30

Mr. Bolte: I object to his conclusions. He can testify what actually occurred.

Q. You testify to what occurred there in this arbitration, telling what was arbitrated and the testimony and what the findings of the board were.

A. The arbitration was to consider the payment of a commission by Mr. Shenkman—

Mr. Bolte: I object to the answer as not responsive.

Q. Go ahead.

A. That is, as to who was to collect the commission.

10. Q. Tell what was said. Tell what Mr. Stevenson said at that hearing.

A. He claimed that he—he stated that Mr. Shenkman promised to take care of him in some way about the payment of the commission on this property.

Q. Did Stevenson claim to have a multiple listing contract on this property?

A. He had claimed to have a multiple listing contract, yes.

Q. Did he say so at that hearing?

20. A. I wouldn't say whether he said so at that hearing or not.

Q. Did he produce a multiple listing contract?

A. He did.

Q. Was it signed?

A. It was not.

Q. I show you what purports to be a multiple listing contract and ask you if that was the multiple listing contract he produced?

A. Yes, that was the one.

30. Q. What did Stevenson say—I am talking about on the witness stand—what did he say as to his right to a commission under this multiple listing contract?

A. He said he was morally entitled to a commission.

Q. A commission from whom?

- A. Mr. Shenkman.
- Q. Did he state to you why this multiple listing contract was not signed by Mr. Shenkman?
- A. I could only say what I think he said.
- Q. You testify to the best of your recollection.
- A. I think he said, at that time, that Mr. Shenkman had held off the signing of it.
- Q. Did Stevenson testify that the property had been subsequently sold?
- A. Yes. 10
- Q. By whom had it been sold?
- A. By Mr. Roney.
- Q. Did Stevenson claim a commission under this multiple listing contract?
- A. He did.
- Q. From whom did he claim it?
- A. It would have to come from Mr. Shenkman.

Mr. Bolte: I object to that answer.

- Q. From whom did he claim it? 20
- A. From Mr. Shenkman.
- Q. Where did Roney come in on this? What way did Stevenson have of claiming against Roney?
- A. Mr. Stevenson was supposed to be the listing broker and Mr. Roney the selling broker on the property owned by Mr. Shenkman, and under the multiple listing system the listing broker is to receive so much and the selling broker so much and the board so much. 30
- Q. Is the matter of this commission arising under this multiple listing contract the thing that you folks arbitrated?
- A. That is what I was arbitrating.
- Q. They all arbitrated the same thing, didn't they?
- A. I suppose so.

Q. From whom was Stevenson claiming a commission at the time of this arbitration?

A. From Mr. Shenkman.

Q. Was he claiming a commission from Mr. Shenkman?

A. I don't see how he could claim a commission from Mr. Roney.

Mr. Bolte: I object to that.

10

Q. Did he?

A. He may have been claiming it from Roney and Shenkman.

Q. What is your present recollection as to the person from whom he was claiming a commission?

A. Mr. Shenkman would be paying the commission. It was a question of him collecting some part of this commission and Mr. Roney getting some part. Whether he claimed it from Mr. Shenkman or Roney, didn't matter as far as I could see. He wanted some part of the commission which Mr. Shenkman was paying.

20

Q. That was the issue, was it?

A. That could only be the issue as far as I was concerned.

Q. What was the conclusion of the arbitration committee as the result of this arbitration?

A. That in view of the fact, that there was no multiple listing, that Mr. Stevenson had no claim for commission.

30

Q. Had no claim for commission from Shenkman, is that it?

Mr. Bolte: I object to that.

A. Yes.

Q. Did Mr. Stevenson testify to any arrangement

that he had with Mr. Roney in regard to a commission?

A. No.

Q. Did he testify that Roney had promised him any commission?

A. No.

Q. Did he testify whether or not he had seen Roney before this agreement of sale was made?

A. He didn't say that he had seen Roney?

Q. He didn't testify to any promise on Roney's part to pay him any part of this? 10

A. No.

Q. Is that correct? What was the conclusion of the arbitration committee as to Stevenson's claim for commission?

Mr. Bolte: I object to that.

A. That Mr. Stevenson had no claim for commissions. 20

Q. From whom?

A. From Mr. Shenkman or Roney.

Cross-examination.

By Mr. Bolte:

Q. So Roney did figure in this somehow, didn't he?

A. Oh, yes, he was in it. 30

Q. He figured in this determination of your committee, somehow?

A. He had sold the property.

Q. And he figured in your determination somehow, didn't he?

A. Yes.

Q. Your committee knew that this commission either was paid to Mr. Roney—did you know at the time that it had been paid?

A. I don't think the settlement had been made.

Q. You knew it was to be paid to Mr. Roney?

A. We concluded that.

Q. And you concluded that Stevenson felt that he was entitled to participate in this commission that was coming to Mr. Roney, didn't you?

10 A. No. We concluded that he wasn't entitled to participate.

Q. But that is what he was claiming?

A. Yes.

Q. That he was entitled to participate in this commission that was coming to Mr. Roney?

A. Coming to someone for the sale of the property.

Q. You knew the only party that could possibly be interested was the man who had sold it, Mr.

20 Roney, didn't you?

A. Yes.

Q. Part of the commission that was coming to Mr. Roney for the sale of that property, you determined that Mr. Stevenson had no share in that?

A. Yes.

Q. That is what you determined that day, didn't you?

A. Yes.

30 Q. And that Mr. Roney alone was entitled to have that commission?

A. Yes.

Q. There was quite some discussion in regard to the multiple listing?

A. Yes.

Q. He produced some blank agreements, so you must have gone into the discussion of that?

A. There was no agreement.

Q. Didn't he produce the blank agreement?

A. There was the blank filled out, but no agreement signed there.

Q. He produced that that day?

A. Yes.

Q. And the matter of him sharing with Mr. Roney was claimed on the fact of this multiple listing arrangement, wasn't it?

A. On the fact that he claimed he had that blank signed. 10

Q. And on that he claimed to be entitled to share with Mr. Roney in this commission?

A. Yes.

Q. And your understanding of his contention that day was that he was to share under the arrangement of this multiple listing and Mr. Roney share in it and the board share in it?

A. That he was not to share in it.

Q. That was his claim, wasn't it? 20

A. He claimed that he was entitled to it under a multiple listing contract, and at the hearing he showed the blank without any signature and there was no contract for him to share.

Q. And because the contract wasn't signed you determined that he wasn't entitled to share in it?

A. That is right.

By Mr. Hanstein:

Q. If he had had a signed agreement, he would have then had a part of this commission; is that correct? 30

IRENE ENDICOTT, sworn for the respondents.

Direct examination.

By Mr. Hanstein:

Q. Mrs. Endicott, you are the wife of Richard Endicott, the secretary of the board?

A. Yes.

10 Q. Are you associated with Mr. Endicott in the office of the Atlantic City Real Estate Board?

A. Yes.

Q. Are you acquainted with Mr. Stevenson?

A. Yes.

Q. Did you receive a phone call from Mr. Stevenson relative to the property 203 North Vermont Avenue?

A. Yes.

20 Q. Do you recall when that was that he called you up?

A. Yes. I made a note of it and I have the note here.

Q. When was it?

A. December 24th, 1923.

Q. What did Mr. Stevenson say to you?

A. He told me that he had a multiple listing of Vermont and Madison and he would bring it in in a few days, probably Monday, I think he said.

Q. Did he give you the number?

30 A. No, he didn't. He just said Vermont and Madison to me. At least, that is what my notes show.

Q. He told you he had a multiple listing on it?

A. He explained it, yes, how he had the multiple listing on the properties and then that he had the

multiple listing on the front property and this was the rear property.

Q. Had he already filed with the board the multiple listing on the front property?

A. Yes, I think he had.

Q. That had already been filed?

A. Yes.

Q. And it was the rear property he was talking about at that time?

A. Yes.

10

Q. Did you have any further conversation with him about this multiple listing?

A. No, I didn't.

Q. Did he ever bring in to you a multiple listing on 203 North Vermont Avenue?

A. No, he did not.

Q. Never brought that in to you?

A. No.

Cross-examination.

20

By Mr. Bolte:

Q. Did he say why he wanted until Monday to bring it in?

A. I don't recall that he did.

Q. You wouldn't say that he didn't, would you, Mrs. Endicott?

A. Mr. Stevenson talked to me quite some time about it, but I couldn't get head nor tail of what he meant about waiting, but I told him it wasn't necessary for me to make a note of the multiple listing, as long as he had it signed, to bring it in to the board.

30

Q. His explanation you paid no attention to because you couldn't understand it?

A. Not particularly.

Q. So at that time he may have told you that this man had promised to sign it on Monday, may be not, and you paid no attention to what he said to you?

A. I asked him if he had a multiple listing why he didn't bring it in, why he wanted me to make a note of it, because it wasn't customary. If a man has a multiple listing, he brings it in to the board.

10 Q. What did he say?

A. Well, he said that he would bring it Monday.

Q. Didn't he tell you at the time that the man promised to sign it on Monday?

A. I don't remember.

Q. You wouldn't say he didn't tell you that?

A. No, I wouldn't say he didn't tell me, but I don't remember it.

20 Re-direct examination.

By Mr. Hanstein:

Q. Did he tell you flatly whether or not he had a multiple listing?

A. Yes.

Q. What did he say? That he definitely had one? Is that it?

30 A. Yes; he said, "I have a multiple listing, but," he said, "I want until Monday to bring it in."

Re-cross examination.

By Mr. Bolte:

Q. He told you that he had a multiple listing?

A. Yes.

Q. Didn't he tell you, too, that it wasn't signed, that one wasn't signed and he was going to get it Monday?

A. No, I couldn't recall that he did.

Q. But you wouldn't say that he didn't tell you that, would you?

A. Will you ask me that again?

(Question repeated.)

10

A. Well, Mr. Stevenson talked over the telephone like he testifies. You can't always just get his meaning.

Q. So that you may not have understood him?

A. No, I may not have.

Q. Other people are afflicted in the same way, that you can't understand them when they testify, aren't they?

A. Yes, sir.

20

JACOB SHENKMAN, affirmed for the respondents.

Direct examination.

By Mr. Hanstein:

Q. Where do you live, Mr. Shenkman?

A. I live at 3916 Winchester Avenue.

30

Q. Do you know Mr. Stevenson?

A. Yes, sir.

Q. Do you know Mr. Roney?

A. Yes, sir.

Q. Did you around December of 1923, own some property at 203 North Vermont Avenue?

A. Yes, sir.

Q. Did Mr. Stevenson approach you in regard to selling this property for you?

A. Yes, sir; several others. I had three in the operation.

Q. You had an operation with three distinct buildings; is that correct?

A. Three being built. That is right.

10 Q. Did you give Mr. Stevenson a multiple listing contract on these three buildings?

A. No, sir.

Q. How many of them did you give him a multiple listing contract on?

A. He made out the listing on the three, but I only signed on two. The one in question was—

Q. Stop right there just a minute. Did he make out a multiple listing that included all three properties at one time?

20 A. At one time, yes, sir.

Q. And you refused to sign it?

A. Exactly.

Q. Subsequently, did he make out a listing for two of the properties in one listing?

A. Yes, sir.

Q. Did you sign that?

A. I signed on one of the two properties.

Q. Did he also make out a listing on the third property?

30 A. Yes, sir.

Q. What is the number of that property?

A. 203 North Vermont Avenue.

Q. Did you ever sign a multiple listing contract on that property?

A. No, sir.

Q. What conversation took place between you and

Mr. Stevenson in regard to the listing of this property?

A. It was on a Friday morning when Mr. Stevenson and Mr. Liebster came up on the operation and asked me to go to his office and have these signed. It was by the request of Mr. Liebster that I went there, because Mr. Liebster is the one I promised to give the multilpe listing in the first place. When we got to the office I read the applications over and I signed the one on 223 and 225 Madison Avenue, which numbers they are, and I told Stevenson that 203 North Vermont Avenue I won't sign because I expected it to be sold today or tomrrow, and then he says, "If it isn't sold, will you sign it for me?" I said, "If it isn't sold I will sign it for you, yes, sir." Monday morning—that day the property was sold and I never signed that contract, but in the afternoon Mr. Stevenson called me up and asked me to go to his office at once, he must see me, very important. I came up there and he showed me a paper and he says, "Jake, you forgot to sign this paper."

Q. Is this the paper?

A. I think it is.

Q. You think that is the paper?

A. Yes, sir, on 203 Vermont Avenue.

Mr. Hanstein: The witness has just been shown Respondent 3 for identification, which I now offer in evidence.

(Paper marked Respondent Exhibit 3.)

A. I looked at that paper, read it over, and I said, "John, I didn't forget to sign it." I says, "This is the one in question I told you I wouldn't sign,

and it is practically sold." Well, he says, "Gol darn it, I told the Real Estate Board I have one already signed in the office and all I have to do is just produce it." I said, "I can't help you if you made yourself a liar with the board, I can't help you out any." Well, he says, "What am I to do?" I says, "I don't know; you can't get me in it," and that was the end of it. He says, "I will have to take it up otherwise." Then he says, he started in to
10 talk to me about part of the commission and he says, "Will you help me in getting commission off of Roney?" I said, "If you don't pull me in in any way," I says, "I don't care if you got commission off of Roney, if I am not implicated in it." He says, "All right I will get commission, anyhow" About a few days later he called me in the office and showed me a letter which he wrote, which has been exhibited here and says, "Are you satisfied
20 with it?" I says, "I can't help you any whether I am satisfied or not." He says, "All I ask you to do is to go up before the board and testify to the truth of the matter," which I did, and that was the last of it.

Q. You didn't sign this multiple listing on the property in question; is that it?

A. No, sir.

Q. Did you call at Stevenson's office and tell him that you would see that the commission was properly adjusted according to the multiple listing contract?
30

A. No, sir.

Q. You were present at the arbitration hearing?

A. Yes, sir.

Q. Did Mr. Stevenson owe you some money?

A. Yes, sir; still owes it. He owes more than what that bill calls for.

Q. Subsequent to the arbitration hearing, did you receive a bill from Mr. Stevenson for the commission on the property in question?

Mr. Bolte: I object to it as irrelevant and immaterial to this issue.

A. No, sir.

Q. Did you receive that bill after the arbitration? 10

A. Oh, yes; quite a long while afterwards.

Mr. Bolte: I object to that.

Mr. Hanstein: I offer it in evidence.

Mr. Bolte: I object to it as irrelevant and immaterial.

(Paper marked Respondent Exhibit 7.) 20

A. I received that bill when I threatened suit which I entered against him for collecting a bill.

Cross-examination.

By Mr. Bolte:

Q. So Stevenson asked you to go up to the committee and to testify to the truth, didn't he? 30

A. Yes, sir.

Q. And as long as you were not brought into it you wouldn't care how the commission was split?

A. He told me that—

Q. I am asking you that question. Answer the question?

A. He explained to me that it didn't make——

Q. You can answer that yes or no.

(Question repeated.)

A. As long as I didn't have to pay twice, yes.

Q. You had talked to Stevenson about this property?

A. Yes, sir.

10 Q. You had signed a multiple listing contract, hadn't you?

A. Not on this property.

Q. Had you signed a multiple listing contract that included all three of these properties you claim and which was destroyed?

A. No, sir; never did.

Q. Did you sign twice?

A. No, sir.

Q. How many times did you sign a contract?

20 A. Once.

Q. Didn't you testify that you signed one contract which was destroyed and subsequently signed another?

A. No, sir. I testified that he has made out several forms, but I never signed any until I was satisfied that I signed for what I asked for.

Q. Never signed any contract at all?

A. No, sir. I did sign the one on 223 and 25 Madison Avenue.

30 Q. How was that property listed?

A. 223 and 25 Madison Avenue.

Q. That is how you signed it, is it?

A. I think so.

Q. Well, you would know, wouldn't you?

A. I would know it if I would see it, yes, sir.

Q. Wouldn't you know it without seeing it? You know what you signed for, don't you?

A. I don't recollect the listing wording as it was put in.

Q. What?

A. I wouldn't recollect the way it was listed, whether it was listed corner or by numbers.

Q. Where did you sign it?

A. In Stevenson's office.

Q. How often were you in Mr. Stevenson's office?

A. Oh, I used to be there quite often, twice a week, three times a week. 10

Q. Two or three times a week? You were anxious to sell this property, weren't you?

A. Yes, sir.

Q. And that he sell it for you?

A. No, sir.

Q. You were in Stevenson's office a great deal. Weren't you very friendly with him at the time?

A. Yes, sir.

Q. He had done a great deal of work for you, hadn't he? 20

A. He has never sold anything for me.

Q. I didn't ask you that.

A. That is the work he could do for me.

Q. What has he done?

A. Nothing.

Q. Why were you in his office?

A. Came in to see him. I built around the corner and I hung around there. It was in the winter time and it was cold.

Q. That is what you mean to tell us as the reason you went in that office? 30

A. Yes, sir. I built the apartments around the corner at Massachusetts and Atlantic.

Q. And you hung around his office because it was cold?

A. I didn't hang around his office at all. I just came in there now and then.

Q. Didn't you testify a minute ago you hung around it right along?

A. I didn't say I hung around it. I just came in two or three times a week.

Q. And because it was cold, that is the reason you went there?

A. More or less.

10 Q. What is the less?

A. At one time Mr. Liebster gave me a mortgage and I came around to see him.

Q. Did he work for Stevenson?

A. He worked for Stevenson, yes. I didn't know it then.

Q. You never discussed your properties with Stevenson at all?

A. About the selling of it, yes.

20 Q. On these occasions when you would come in there?

A. Some times.

Q. How frequently did you discuss the selling of these particular properties with him?

A. I can't recollect.

Q. You were very anxious to sell them, were you not?

A. I have about twenty-five more properties now I am anxious to sell.

30 Q. You are a very wealthy man. I congratulate you on it. How many times did you discuss the selling of these properties prior to the listing of them?

A. I don't know. I can't recollect.

Q. Quite frequently, didn't you?

A. It must have been.

A. And you were perfectly willing that he sell 203 North Vermont, weren't you?

A. Yes; sell any of them. He had many more he can sell for me.

Q. When you made out this listing, when you discussed it with him, didn't you discuss 203 North Vermont with him?

A. I didn't discuss any when I refused to sign it.

Q. Prior to that?

A. We discussed the operation.

Q. Didn't you discuss the selling by him of all these properties?

10

A. Yes, sir.

Q. And you say that you didn't sign one copy which was destroyed?

A. He has destroyed several copies.

Q. And one of those you had signed, hadn't you?

A. No, sir.

Q. Never signed it?

A. I never signed any that were destroyed, for I wouldn't sign any and that is why they were destroyed because I wouldn't sign them. He would always have something sneaky in there that I didn't care to sign.

20

Q. What was in there sneaky that you didn't care to sign?

A. I can't recollect.

Q. There is your listing copy. Tell me what was sneaky in those copies that you didn't care to sign?

A. Well, there is the listing for days, to begin with.

Q. Isn't that in every multiple listing contract?

30

A. No. He wanted it for more or less time and I didn't care to give to him.

Q. Aren't those listings all alike?

A. No. I can give him a listing for a month or more months.

Q. And that was your only objection, was it?

A. That was one objection.

Q. What others?

A. The other objection was that he had them listed, three as a unit, which I refused.

Q. That is the reason you refused to sign it?

A. That is it.

Q. You wanted them separated?

A. Exactly.

Q. And he was to change that, was he?

10 A. Exactly.

Q. On all three of the properties; was that it?

A. Exactly.

Re-direct examination.

By Mr. Hanstein:

Q. Do I understand that Stevenson wanted you to sign the listing on 203 North Vermont Avenue
20 after you had sold the property?

A. Yes, sir.

Q. Did Stevenson know that you had sold it?

A. Yes, sir.

Q. And he still wanted you to sign the listing?

A. Exactly.

Q. Did he say why he wanted you to sign the listing?

A. Because he promised to produce a signed copy to the Real Estate Board in order to collect the com-
30 mission.

Q. He wanted you to sign so he could participate in the commission?

A. Exactly.

Re-cross examination.

By Mr. Bolte:

Q. That was one of the properties you had discussed with him?

A. That is right.

Q. How do you know that Stevenson knew that it had been sold?

A. I told him.

Q. I thought you said he sent for you to come in, wanted you in a hurry?

A. That was after he knew it was sold.

Q. Where did you tell him it had been sold?

A. Either in person or on the telephone, I suppose. I don't recollect.

Q. He called you up afterwards, did he?

A. That is right.

Q. And told you to hurry up in?

A. Exactly.

Q. Wanted you in a hurry, something important?

A. That is it.

Q. Said nothing to you at the time you told him it had been sold?

A. No, sir.

Q. Not a word?

A. No, sir.

CHARLES H. HARRISON, recalled for the respondents.

Direct examination.

By Mr. Hanstein:

10 Q. What is your position with the Real Estate Board, Mr. Harrison?

A. President.

Q. Were you president in January, 1924?

A. The latter part of it.

Q. I show you a letter dated February 9th, 1924, addressed to you as president of the Atlantic City Real Estate Board, purporting to be signed by John J. Stevenson, and ask you if you received that letter from Mr. Stevenson?

A. Yes.

20 (Letter offered in evidence and marked Respondent Exhibit 8.)

Q. You know Mr. Stevenson, do you not?

A. Yes.

Q. You were not the president who appointed the arbitration committee, were you?

A. I don't think so. I think the former president appointed it.

30 Q. On what date did you take office? Do you know?

A. I think the minutes will show that. I don't recall it. January 22nd I was elected and took office.

Q. You were not present at this arbitration hearing, were you?

A. No.

Q. Are you a member of the board of directors?

A. Yes; as president, I am.

Q. Was a report of the arbitration committee rendered to the board of directors?

A. Yes.

Q. Was Mr. Stevenson present at that time?

A. No.

Q. Did Mr. Stevenson appear before the board of directors subsequent to the arbitration committee hearing? 10

A. Subsequent?

Q. Yes.

A. No, sir.

Q. Did he appear before the board of directors after the arbitration committee had reported?

A. He did.

Q. What was the occasion of Mr. Stevenson appearing before the board of directors the first time after the arbitration? 20

A. At his own request.

Q. To whom did he make the request?

A. To me.

Q. In writing or verbally?

A. As I recall, both in writing and verbally.

Q. What did he say to you when he made his verbal request?

Mr. Bolte: I object to this and object to the whole line of questioning because it is immaterial and foreign to the issue and irrelevant. 30

Q. What did he say to you when he made the request to appear before the board?

A. He really didn't say much of anything clearly.

It was just that we didn't understand, that he could explain.

Q. Explain what?

A. His attitude, I suppose. I don't know what he wanted to explain.

Q. What did he want to appear before the board about?

10 Mr. Bolte: I object to that. Let him testify to conversations he had and not his conclusions.

(Question repeated.)

A. The report of the arbitration committee, which was given to him—I gave it to him verbally—was that he was not entitled to any commission in this transaction and that was the reason he wanted to come before us, to explain his side of the situation.

20 Q. He was not entitled to any commission from whom?

A. He was not entitled to any commission either from Roney or Shenkman, and the board was there to protect the public just as much as to adjudicate matters between their members.

Q. What took place when he appeared before the board of directors this time?

A. Well, he attempted to explain the situation.

Mr. Bolte: I object to that.

30 Q. Did he say anything at all about the report of the arbitration committee?

A. Well, yes, he said that he was entitled to a commission there, that he had a multiple listing contract, tried to make an explanation of this kind and he was entitled to a commission.

Q. Did he tell his story in connection with this before the board of directors?

A. Not any clear statement that anybody could make anything definite out of—that I could make anything definite out of.

Q. Do you recall what he said before the board of directors? Do you recall what he talked about before the board of directors?

A. I had a couple of conversations with him besides the times he was up before the board. His argument was that he was entitled to a commission. 10

Mr. Bolte: I object to the answer.

Q. Was he there talking about commission?

A. Sure he was.

Q. Did he make any objection to the report of the arbitration committee?

A. He complained that he didn't have a fair show before the arbitration committee, that they talked sports and everything else but what they were there to arbitrate. He said the whole line of conversation seemed to be sports that afternoon? 20

Q. Did he tell his story to the board of directors?

A. He attempted to.

Q. Well, what stopped him?

A. Why, he didn't have any story to tell.

Q. Well, did he talk about this matter to the board of directors?

A. Yes, he tried to explain that he had a multiple listing contract on it and that we didn't understand the situation. That seemed to be his line of talk, that we didn't understand the condition, the situation there. 30

Q. Did the board of directors consider this matter?

A. You are talking about the first time?

Q. The first time he was before the board of directors. Did the board of directors consider this matter which Stevenson brought up before them?

Mr. Bolte: I object to it.

A. They certainly did.

Q. What conclusion did the board of directors
10 render?

Mr. Bolte: I object to that as irrelevant and immaterial.

A. They decided that the arbitration committee was correct and that Stevenson was not entitled to

any commissions at all, either from Roney or Shenkman.

Q. That is what the board of directors decided?
20

A. Yes, sir.

Q. And Stevenson was there and presented his side of the story?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Did you have any subsequent conversations with Stevenson?

A. I did.

Q. Was that in a board meeting or outside of it?
30

A. That was outside of a board meeting.

Q. What was said then?

Mr. Bolte: I object to that.

A. That was after I had received a letter from Mr. Shenkman with a bill attached to the letter.

Q. For the commission?

A. For the commission, yes. Credit on some money that Mr. Stevenson owed Mr. Shenkman.

Q. After you had received that, then what happened?

A. I asked Mr. Stevenson to come in to the board room.

Q. Did you show him this bill, Respondent 7?

Mr. Bolte: I object.

10

A. Yes.

Q. You showed it to him?

A. Yes.

Q. What did you say to him and what did he say to you about it?

A. Well, I told him that he hadn't any claim on this matter after an arbitration committee had decided the matter and that I thought he was very unwise to take any such action and treat a client and treat the public as he was trying to do with Mr. Shenkman; words to that effect. 20

Q. What did Stevenson say?

A. The same story, "You don't understand; I want to come before the board of directors again."

Q. Did he go before the board of directors again?

A. He did.

Q. What was said and done there?

A. Well, he still claimed that he had a separate agreement—at the second hearing he claimed he had an outside agreement with Mr. Shenkman for half commission on this transaction. 30

Q. Did he produce any written agreement?

A. Neither any written agreement nor any evidence or testimony to that effect. Merely his own statement.

Q. What conclusions did the board render at that time?

Mr. Bolte: I object to that as immaterial and he cannot testify to the conclusion of the board. The minutes speak for themselves.

A. The minutes show it.

10 (Question repeated.)

A. That Mr. Stevenson was not entitled to this money from Mr. Shenkman and that he must come to the board room and write to Mr. Shenkman, withdrawing this claim against Shenkman. The reason for that was that we wanted to be sure that he would do it.

Mr. Bolte: I object to that.

20

Q. Was that conclusion delivered to Mr. Stevenson?

A. It was.

Q. Did Mr. Stevenson ever write such a letter from the board?

A. He did not, to my knowledge.

Q. Did Stevenson appear before the board again?

A. No, sir.

30 Q. The subsequent action of the board in regard to the matter, I presume, is embodied in the minutes?

A. The minutes and the letter that has already been produced.

Q. The letter that you wrote to Mr. Stevenson?

A. Yes.

Cross-examination.

By Mr. Bolte:

Q. So that yours and the board's entire complaint is the fact that he didn't release his claim against Shenkman?

A. That and his unethical action in connection with multiple listing contracts, handling of them in this case. 10

Q. And of that there was never any minute made or anything else said, was there? Did Mr. Siracusa testify that that is what the committee determined?

A. Did he testify to it?

Q. Yes.

A. To the board of directors?

Q. No; here. That the committee passed on that?

A. I don't know what Mr. Siracusa testified.

Q. You heard him testify, didn't you? 20

A. Yes, but I don't recall.

Q. Did Mr. Bloom so report?

A. I am only testifying to what the board of directors—the report to the board of directors.

Q. So that the committee's testimony here doesn't correspond to what you say the board determined?

Mr. Hanstein: I object to that as not being proper cross-examination.

A. I am testifying as to what took place in the board of directors, not what the witnesses testified to. 30

Q. You heard the committee's report, did you?

A. At the board of directors, yes.

Q. Was the committee present?

A. The chairman of the committee was.

Q. Any of the others there?

A. No.

Q. Did the committee at that time state anything with regard to Mr. Stevenson being barred on account of any wrong in multiple listing?

A. They certainly did. He certainly did.

Q. He did?

A. Yes. It was all part of the same case.

10 Q. Did he at that time state that Mr. Stevenson should be dismissed from the board on account of multiple listing?

A. That entered into the whole case.

Q. I am asking you did he or didn't he?

A. Yes, he did.

Q. And despite that, you wrote the request, and all that you requested Mr. Stevenson to do was to write to Mr. Shenkman and waive his claim against him?

A. That is all I wrote to Mr. Stevenson about.

20 Q. And that is all you talked to Mr. Stevenson about, isn't it?

A. No, absolutely not.

Q. Had you been told by the board to state anything else?

A. The board discussed all about him.

Q. Did you so put it in your letter to him?

A. No.

30 Q. When you told him that he was dismissed from the board, you didn't put it in your letter?

A. No.

Q. Despite the fact that his work in multiple listing was so serious, you didn't mention it in your letter at all, did you?

A. He knew all about it.

Q. I am asking you the question.

A. He was notified he was dropped from the board.

(Question repeated.)

A. No. I notified him he was dropped from the board.

Q. Answer the question.

A. I don't recall what I put in the letter. I haven't seen the letter for some time. I don't think I did, but I haven't seen the letter for some time. 10

Q. Here is the letter. Read it and after reading it, answer the question.

A. This is not the letter notifying him of his discharge from the board.

Q. What the board determined was that if Stevenson waived his commission against Shenkman and so wrote a letter to Shenkman, that everything would be satisfactory, wouldn't it?

A. We have a duty to perform to the public, and that is to protect the public. You don't want to pay two commissions if you sell a piece of property. 20

Q. I ask you to answer the question.

(Question repeated.)

A. Yes.

Q. And had he done so, everything would have been all right?

A. I wouldn't say yes. 30

Q. You would not say yes?

A. No. I don't know what the board would have determined.

Q. You were simply carrying out their instructions under your communication of July 1st, weren't you?

A. That is right.

Q. And that said nothing about multiple listing, did it?

A. No.

Q. And your other communication said nothing about multiple listing, did it, your second communication, dated September 16th, 1924?

A. No.

10 Q. And the controversy with Roney was over and settled, wasn't it, the other member of the board?

A. Yes, so far as I know.

Re-direct examination.

By Mr. Hanstein:

Q. These irregularities by Mr. Stevenson in regard to multiple listing had been discussed by the board?

20 A. On three or four occasions.

Q. Mr. Stevenson was present at that time?

A. On two occasions.

Q. Was Stevenson present at that time?

A. Yes. The second time he was present he requested that Mr. Fell shouldn't be there, because they had talked about—one of the reasons for it was that they had talked about multiple listing the first time.

30 Mr. Bolte: I object. There is no question at all.

Q. You state, Mr. Harrison, that the board did discuss the matter of Mr. Stevenson's irregularities in connection with multiple listing?

A. Yes.

Q. And Mr. Stevenson was present on those occasions?

A. Yes.

Q. You also testified, I believe, that his irregularities were part of the report of the arbitration committee?

A. They were.

Q. Do you know what is referred to in the minute of September 12th, 1924, where it states, "Mr. Potter, seconded by Mr. Lindsay, moved that Mr. John J. Stevenson be expelled from the board for non-compliance with the decision of the board of arbitration and action of the board of trustees in connection with the Shenkman matter?" What action of the board of trustees does that refer to?

10

A. That refers to the fact that he wouldn't—

Mr. Bolte: I object to that.

A. —withdraw the claim for the commission that he said Shenkman owed him.

20

CHARLES E. FELL, recalled for the respondents.

Direct examination.

By Mr. Hanstein:

Q. You were chairman of the board of arbitration in the Stevenson matter?

30

A. Yes.

Q. Do you recall whether or not this letter of January 4th, 1924, written by Mr. Stevenson to the board, was read at that hearing?

A. If that was the letter which called for the hearing, it was.

Q. It was read at the hearing?

A. Yes.

Q. What was arbitrated at this hearing?

A. Why, the matter of—

Mr. Bolte: I object to the question. The question here is what took place, the conversation and so forth, and not the conclusions.

10 (Question repeated.)

A. Why, the claim of Mr. Stevenson for commission from Mr. Roney and Mr. Shenkman.

Q. Arising out of what property?

A. Vermont Avenue and Madison.

Q. Do you recall the number?

A. No, I don't. 200, I think it was.

Q. Did Mr. Stevenson testify at that time?

A. He did.

20 Q. Did he claim to have a multiple listing contract on this property?—

A. Yes.

Q. Did he produce any?

A. No.

Q. Did he produce, at that time, Respondent Exhibit No. 3?

A. I don't recall this contract. I don't recall having seen that unsigned contract.

30 Q. But you do recall that he testified that he had a multiple listing contract on the property?

A. Yes.

Q. Did he subsequently change that statement?

A. Yes.

Q. At that hearing?

A. Yes.

Q. In what respect did he change it?

A. Well, he admitted after Mr. Shenkman had testified, that he did not have a signed contract.

Q. Did he claim that he had any agreement that he had made with Mr. Roney?

A. No. He hadn't seen Mr. Roney, he said.

Q. He said he had not seen Mr. Roney?

A. Didn't know Mr. Roney in connection with it at all.

Q. On what did he base his claim to a commission from Mr. Shenkman?

10

A. Well, on the usual multiple listing—

Mr. Bolte: I object to that. What he stated would be proper evidence.

Q. What did he say about the obligation of Mr. Shenkman to pay him a commission?

A. He said nothing about any side contract with Mr. Shenkman. He merely was claiming a commission through a multiple listing contract which he claimed to have made with Mr. Shenkman, and we found that that contract had never been signed—

20

Mr. Bolte: I object to that. That is not responsive.

Q. Then you say he based his claim against Shenkman on a multiple listing contract?

A. Yes.

Q. What was the decision of the committee in regard to Stevenson's claim for a commission?

30

Mr. Bolte: That is objected to.

A. Well, we found that he had no claim for commission at all; Mr. Shenkman had refused to sign

the contract and that, in fact, there never had been any contract.

Mr. Bolte: I object to that as not being responsive.

Q. What did you determine as to the obligation of Mr. Roney to pay a commission?

10 Mr. Bolte: I object to that.

A. We found that neither Mr. Shenkman nor Mr. Roney was obligated to pay Stevenson in this particular sale.

Q. Did you report that finding to the board of directors?

A. Yes, we reported it, with the additional information that we gathered at that hearing that he had pretended to have this contract and did not have
20 it.

Q. Are you a member of the board of directors?

A. Yes.

Q. What action was taken at the board of directors' meeting?

A. When it was reported to the board of directors they confirmed the findings of the committee.

Q. Did Mr. Stevenson subsequently appear before the board of directors?

A. Yes, he did.

30 Q. What took place at that time?

A. Why, he told the president, I think, that he wanted to be heard before the board of directors

Mr. Bolte: I object to that.

A. We had him before the board of directors and

went over the case again, gave him an opportunity to present any new information that he had, and found that he didn't have any, and he repeated again what he had said before, about the contract, and we found again before the board of directors just what the committee had found, that there was no contract at all.

Q. And he never produced any contract?

A. No. I have never heard of any.

Q. Did the board of directors make any determination as to a commission due Stevenson? 10

A. Yes.

Q. What was the determination?

Mr. Bolte: I object to that. The minutes of the board speak for that.

A. That he wasn't entitled to any.

Q. Did Mr. Stevenson appear before the board of directors again? 20

A. Yes, he did.

Q. What took place on that occasion?

A. The same thing.

No cross-examination.

RUSSELL C. RONEY, sworn for the respondents.

Direct examination. 30

By Mr. Hanstein:

Q. Are you in the real estate business in Atlantic City, Mr. Roney?

A. Yes, sir.

Q. Member of the Atlantic City Real Estate Board?

A. Yes, sir.

Q. Do you know Mr. Stevenson?

A. I do now.

Q. Do you know Mr. Shenkman?

A. Yes, sir.

Q. Did you procure a customer for Mr. Shenkman for premises 203 North Vermont Avenue?

10 A. I did.

Q. About what date was it when you procured that customer?

A. It was in the latter part of December, 1923.

Q. Had Mr. Shenkman requested you to sell that property for him?

A. He did.

Q. Had you placed this property with the multiple listing committee with the Atlantic City Real Estate Board?

20 A. No.

Mr. Bolte: I object to this as being irrelevant.

Q. Did you know Mr. Stevenson prior to your sale of that property?

A. No.

Q. Did you ever agree to pay Mr. Stevenson any part of this commission?

30 Mr. Bolte: I object to the question as irrelevant and immaterial.

A. No.

Q. Did you ever undertake to have Mr. Shenkman cancel a multiple listing contract on this property?

A. No.

Q. Were you present at the hearing before the arbitration board?

A. I was.

Q. Did Mr. Stevenson at that time state whether or not he had a multiple listing contract on this property?

A. Whether he stated that at the arbitration meeting I don't know, but he stated before the meeting that he had one.

Q. Did he state that to you?

10

A. Yes.

Q. He told you he had a multiple listing contract on that property?

A. Yes.

Q. Did he produce one at the hearing?

A. He produced a contract that wasn't signed.

Q. For the same property?

A. The same property.

Q. At the time of this arbitration hearing, had there been any commissions paid on this transaction?

20

A. No.

Cross-examination.

By Mr. Bolte:

Q. You were paid the commission since then?

A. Since the sale.

Q. And Mr. Stevenson since that time has made no claim on you for any share of the commissions, has he?

30

A. No.

Q. And the finding of the board, so far as you were concerned, was final with Mr. Stevenson?

A. So far as I know.

Q. As far as the committee was concerned? You would know, wouldn't you, if he had made any claim on you?

A. Yes, sir.

Q. He has never come to you and claimed anything from you in regard to any commissions at all, has he, since that time?

A. No, he has not.

10

RICHARD ENDICOTT, recalled for the respondents.

Direct examination.

By Mr. Hanstein:

Q. Is this exhibit, Respondent 3, the form of multiple listing contract that was in use by the Atlantic City Real Estate Board at the time this controversy arose?

A. Yes, at that time.

No cross-examination.

RESPONDENTS REST.

TESTIMONY CLOSED.

30

I hereby certify that the foregoing is a true and accurate transcript of the testimony taken before me in the before entitled cause.

CLAUDE W. MYROSE,
Supreme Court Examiner.

RELATOR'S EXHIBIT 1.

Section 2. The President, at the request of any Active Member, shall appoint a Committee of Arbitration. Such Committee shall consist of five disinterested Active Members of the Board, two of whom shall be selected by each side of the controversy and the fifth by the President. If there shall be more than two Active Members involved, then each disputant shall select one such member and the President shall select the remainder of such five Active Members. Their duties shall be to hear any differences, arising among members of the Board referred to them for arbitration. And the Committee's findings, after a due and just opportunity is given all parties, to be heard in the presence of each other, shall be binding upon such members. Any member who shall refuse or neglect to comply with such findings shall be liable to suspension from all benefits of membership or to expulsion as the Board of Directors, by a majority vote, may direct.

RELATOR'S EXHIBIT 2.

Section 2. The President shall appoint, when necessary, a Committee on Arbitration consisting of five (5) Active Members, whose duties shall be to hear any differences arising between members of the Board, referred to them for arbitration. And the said committee's findings, after a due and just opportunity is given both parties, shall be binding upon such members. Any member who shall refuse or

neglect to comply with such findings shall be liable to suspension from all benefits of membership, or to expulsion, as the Board of Trustees, by a majority vote may direct.

RELATOR'S EXHIBIT 3.

10

January 4, 1924.

Mr. Wm. Faunce, Pres.
Atlantic City Real Estate Board
Guarantee Trust Bldg.
Local

Dear Sir:

I wish to place before the Board the following case for arbitration.

The facts are: Mr. Jacob Shenkman, owner of the northeast corner of Vermont and Madison Avenues, placed in my hands for the Multiple Listing System the said property and after making out the contract I found that the property could not be described as well in one contract so I made two separate contracts of which Mr. Shenkman approved on or before December 18th at which time he stated it would be more proper form of listing in the different offices as the properties had two street facings. He signed one of these contracts and asked me to hold the other one over till the following

20
30 Monday.

I then notified the Secretary of our Board that I had the Multiple Listing on this property, and that the owner requested me to hold same until Monday. Mr. Shenkman stated that the only reason he requested me to wait was that Mr. Roney had called upon him with a proposition and while nego-

tiating he asked if there was any other realtor on this property and Mr. Shenkman said no but afterwards realized he had made a mistake. This remark of Mr. Roney's was uncalled for as my signs were on the buildings.

I immediately notified the Secretary of this condition so as to place myself right before the Board due to my previous notice to the Secretary. Mr. Shenkman said to me that it was a surprise to him to find Mr. Roney asking him the question if there was any other realtor on this property as he was under the impression that all realtors worked jointly. He felt that if he said yes the deal would not go through so he answered no but afterwards realized that he had made a mistake and he stated that he would correct the same for me. He called at my office within the next day or so and stated that he felt the deal would be closed and that he would see that the commission was properly adjusted according to the Multiple Listing contract.

Upon learning that the deal was closed through the cancellation notice I immediately got in touch with the Secretary of the Board by phone and also by a visit so as to have my previous notice attached to the cancellation notice so that same could be brought before the proper committee if necessary. At that time Mr. Endicott suggested that I meet Mr. Roney and he called him to the Board room.

I explained the situation to Mr. Roney and told him the record of the listing was in the Board room and Mr. Endicott brought forth the notification of the listing I first received from Mr. Shenkman. I asked Mr. Roney in the presence of Mr. Endicott, if there had been any talk as to whether there was any other realtor on this matter and he said there had been no talk of any kind as to commissions.

Having notified the Board and having carried out the proper terms that we Board members should do by giving them notification I felt that the Board was entitled to their portion of the commission as well as mine.

10 My intentions were to have Mr. Shenkman, Mr. Roney and myself appear before the Board but upon the request of the Secretary to write you the facts of the case I have written this letter to the best of my knowledge as the facts present themselves.

I felt that if the members of our Board would carry before them at all times the words, "Multiple Listing" their returns would multiply, many more times.

20 I feel that after you study these facts over you will arrange for a meeting where Mr. Shenkman, Mr. Roney and myself can be heard personally and at which time the facts can be explained more clearly than by letter.

I can further state that I have one or two persons that can verify the listing as I stated above.

I am enclosing, by request of your Secretary, contract which was made out the same time as the contract which has been broadcast. This matter could have been avoided if Mr. Roney had not asked the question he did and if Mr. Shenkman had been truthful in answering him.

30 Trusting you will give this matter your careful consideration and awaiting your reply, I am

Yours very truly

John J. Stevenson.

RELATOR'S EXHIBIT 4.

September 16, 1924

Mr. John J. Stevenson
Rhode Island & Oriental Aves.
Atlantic City, N. J.

Dear Sir:—

The Board of Directors under Article 4, Section 10
2 of the old Constitution and By-Laws and under
Article 10, Section 2 of the new Constitution and
By-Laws, has expelled you from membership in the
Atlantic City Real Estate Board.

Yours very truly

Charles H. Harrison

President

20

30

RELATOR'S EXHIBIT 5 11/7/24.

SEAL OF ATLANTIC CITY REAL ESTATE
BOARD

| | | |
|----|--|---|
| 10 | National Association Member of Real Estate Boards | Real Estate League Member of New Jersey |
| | | Directors |
| | Charles H. Harrison President | Walter W. Clerk |
| | Charles E. Fell 1st Vice President | I. Norwood Griscom James Byrnes |
| | Byron Jenkins 2nd Vice President | Warner Lindsay, Jr. Geo. VanH. Potter |
| | Percy E. Howard Treasurer | Carlton E. Adams John R. Siracusa |
| 20 | George W. Kite Secretary | John Leek |
| | Richard Endicott, Jr. Executive Secretary | Advisory Board M. A. Devine |
| | I. M. Endicott Asst. Secretary | William S. Emley Wm. A. Faunce |

ATLANTIC CITY REAL ESTATE BOARD
Incorporated

GUARANTEE TRUST BUILDING

Phone Marine 5613

30

July 1, 1924

Mr. John J. Stevenson,
Oriental & Rhode Island,
Atlantic City, N. J.

My dear Stevenson,

The Board of Directors at a meeting yesterday considered the matter of your claim and bill against Jacob Shenkman.

In view of the fact that the sending of this bill was directly against the verdict of the Arbitration Committee, the Board of Directors instructed me to insist that you come to the Board Room and write a letter to Mr. Shenkman withdrawing your claim for this commission, or else your resignation from the Board would be in order.

Yours very truly,

Charles H. Harrison
President.

10

ATLANTIC CITY REAL ESTATE BOARD.

RELATOR'S EXHIBIT 6.

July 2, 1924

Mr. Chas. Harrison, President
Atlantic City Real Estate Board
Guarantee Trust Bldg.
Local

20

My dear Mr. Harrison:

In reply to your letter of the 1st will say that as a member of the Board I feel that their action is entirely out of order and furthermore, that they are going beyond their position as a Board.

The arbitration question which was settled by a Committee appointed by you has nothing whatever to do with this claim. The claim that I make of Mr. Jacob Shenkman now is a private arrangement which he made and agreed to in the presence of two or more witnesses.

30

This is the first time I have criticised the Board's action but the committee who heard the arbitration had no thoughts of arbitrating the matter that afternoon as their minds were more for social and sport

events. I will also say that the mannerism of Mr. Fells on my last visit to the Board was uncalled for and not in accordance with the ethics of the Board.

I feel that this is an unjust answer to me as a Board member, as this is a technical point of this man Shenkman to try and release himself of obligations which he rightfully and truthfully made before witnesses that I have. The verify the above remarks this same man stated facts before three of our mem-
 10 bers and when the Board started to investigate the remarks, the guilty persons had this man sign an affidavit that he did not state the facts to the said members. A person of this type is apt to do most any unscrupulous act.

I would ask you, as President of this Board, to verify these statements and to see that I, as a Board member, is not entitled to such treatment.

I have placed this matter in the hands of my attorney, Mr. Arthur Bolte, who will handle the same
 20 as I stated to you before.

Trusting you will bring this before the Board as per our conversation of this morning, I am

Very truly yours
 John J. Stevenson

RESPONDENT'S EXHIBIT 3.

30

MULTIPLE LISTING SYSTEM UNIFORM
 AGENCY CONTRACT ATLANTIC CITY REAL
 ESTATE BOARD

Description and Terms

Street and Number 203 N. Vermont Ave. Lot 27 x 35
 Type of Building 2 family apt. Construction brick

Rooms: 1st Floor 4 rooms & bath Apartments 2
2nd " 5 " " "
3rd "

Baths 2 Furnished or unfurnished

Garage No. Rentals \$1750

Basement Heat Hot Water Light Gas & Electric

Leased No Expiration

Terms: Sale price \$12,000 Mortgages \$7,000 Cash requires

Remarks, New building, modern 10

May exchange for Can property be seen? Yes

Owner's address 9 N. New Hampshire Ave., Atlantic City, N. J.

The Multiple Listing Bureau of the Atlantic City Real Estate Board reserves the right to refuse this listing, if, in its opinion, the price is excessive.

John J. Stevenson

Member of Atlantic City Real Estate Board

In consideration of your endeavor to procure a purchaser for the property described hereon and registration of the same with the ATLANTIC CITY REAL ESTATE BOARD, the undersigned grants you the sole and exclusive right for a period of 120 days without revocation, to sell said property at the price and upon the terms stated hereon, or at any other price or terms to which the undersigned may consent. The undersigned further agrees to assist and cooperate in such sale. The undersigned hereby agrees to pay you commission in accordance with the ATLANTIC CITY REAL ESTATE BOARD rates printed below in case said property or any portion thereof is sold by the undersigned, by you, by me or by any person during the term of this contract; or, within three months after its expiration through your instrumentality or that of any board member. Exclusive privilege is granted 20 30

RESPONDENT'S EXHIBIT 6.

June 20, 1924.

Atlantic City R. E. Board
Guarantee Trust Bldg.
Atlantic City, N. J.

Gentlemen:

I am enclosing herewith a bill received from Mr. John J. Stevenson asking for payment of commission for the sale of #203 N. Vermont Avenue. 10

When this sale was made M. Stevenson brought this question up before a committee of your members and in my presence they ruled that Mr. Stevenson was not entitled to any part of the commission.

I am referring this bill to you so that you may explain to me why he is asking for part of the commission.

Please reply at your earliest convenience.

Yours truly,

J. Shenkman.

20

30

RESPONDENT'S EXHIBIT 7.

| | | |
|----|---------------------------------|-------------|
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| | 1500.00 | |
| | 1200.00 | |
| | 900. | |
| 10 | 900. | |
| | <hr/> | |
| | 4500.00 | |
| | 2 stores—3x1—each | |
| | 5-2-1-second floor, | |
| | 5-2-1-3rd “ | |
| | Hot water Gas & Electric | |
| | 27x35—\$12000 | |
| | Hot water Gas & Electric \$7000 | |
| | 1-4-2-1-780 | |
| 20 | 1-5-2-1-900 | |
| | <hr/> | |
| | 1780 | |
| | said price agreed | |
| | to by | |
| | Jacob Shenkman | |
| | 12/1/23 | |
| | | Present mo. |
| | | Schabinger |
| | | Leibster |
| 30 | | Weber |

RESPONDENT'S EXHIBIT 8.

February 9, 1924.

Mr. Charles Harrison, Pres.
Atlantic City Real Estate Board
Guarantee Trust Bldg.
Atlantic City, N. J.

My dear Mr. Harrison:

On Saturday, January 23rd, a committee arbitrated a question that arose between Mr. Roney and myself on the multiple listing system.

10

That committee received the name of a Board member who requested and tried to have Mr. Shenkman cancel a multiple listing contract which he had given to me. This information Mr. Shenkman willingly gave to all of us and we were surprised to hear him say a Realtor had requested him to have a multiple listing contract canceled.

20

He would not divulge the name of the Realtor until I suggested that he take the committee to the other end of the room and then give the name of such member. Up to the present time I know of two cases this member has acted in the same manner.

I will say that there is no member of the Board today who is more sold on multiple listing than the writer and I feel that this system will, inside of two years, eliminate all other real estate men who do not carry the word Realtor, as it is the nearest step that will put the real estate market on a solid foundation.

30

To have a member interested in the multiple listing as I have been, and then to have another member come out so boldly and request the cancellation of such contracts is very unbusinesslike and strictly against the ethics of our Board.

A member doing this same act twice makes me feel that he is not eligible to be associated with the Real Estate Board and to be allowed to use the word Realtor.

I would ask you to give this matter your personal attention and I request an answer as to what the committee did in this case.

Thanking you in advance, I am

Yours very truly,

John J. Stevenson.

10

ALTERNATIVE WRIT OF MANDAMUS.

(Filed December 2, 1925.)

NEW JERSEY, ss.

The State of New Jersey to Atlantic City
Real Estate Board, Greeting:

20

Whereas, John J. Stevenson, a resident
(L. S.) of the City of Atlantic City, County of
Atlantic and State of New Jersey, a real
estate broker, having been a member of
the Atlantic City Real Estate Board, a

corporation existing under and by virtue of the laws
of the State of New Jersey, composed of real estate
brokers engaged in the real estate business in the
City of Atlantic City, and vicinity, was on or about
30 the 16th day of September, 1924, expelled from mem-
bership in said Atlantic City Real Estate Board;
and

Whereas, membership in the Atlantic City Real
Estate Board is a valuable privilege by reason of
the fact that practically all legitimate real estate
agents in Atlantic City, and vicinity, enjoy member-

ship therein, and, by reason of the further fact, that the members thereof are permitted to use the name "Realtor" and advertise under said name, and non-members are not permitted so to do, and by reason of the further fact that the name "Realtor" is generally recognized by the public as a stamp of approval of the business methods of the person who uses the designation; and

Whereas, the Atlantic City Real Estate Board, at or about the time of its incorporation, adopted a constitution and set of by-laws, Section 2, Article 4, of the by-laws reading as follows: 10

"The President shall appoint, when necessary, a committee on arbitration consisting of five (5) active members, whose duties shall be to hear any differences arising between members of the board, referred to them for arbitration. And the said committee's findings, after a due and just opportunity is given both parties, shall be binding upon such members. Any member who shall refuse or neglect to comply with such findings shall be liable to suspension from all benefits of membership, or to expulsion, as the board of trustees, by a majority vote may direct." 20

; and

Whereas, thereafter said by-laws were amended under a new article and section, known as Article 10, Section 2, which reads as follows: 30

"The president, at the request of any active member, shall appoint a committee of arbitration. Such committee shall consist of five disinterested active members of the board, two of whom shall be selected by each side of the controversy and the fifth by the president. If

there shall be more than two active members involved, then each disputant shall select one such member and the president shall select the remainder of such five active members. Their duties shall be to hear any differences arising among members of the Board referred to them for arbitration. And the Committee's findings, after a due and just opportunity is given all parties, to be heard in the presence of each other, shall be binding upon such members. Any member who shall refuse or neglect to comply with such findings shall be liable to suspension from all benefits of membership or expulsion as the board of directors, by a majority vote, may direct."

; and

Whereas, in addition to the by-laws so as aforesaid adopted and amended, the Atlantic City Real Estate Board had adopted a system of division of commissions and listing of properties for sale known as "The Multiple Listing System," which is a system of co-operative sales force employed by members of the Atlantic City Real Estate Board to sell real estate more rapidly, to the benefit of the realtor and to the satisfaction of the client, under which system, it is provided that where a contract is signed by an owner of real estate, which fixes the price and terms at which the owner is willing to sell his property, the contract may be filed with the secretary of the Board, and, if the sale is made, by any other realtor than the one obtained in the contract, such realtor to receive sixty per cent of the commission fixed by agreement, and the member listing the property thirty-five per cent, and five per cent thereof to be paid to the Board itself; and

Whereas, John J. Stevenson, while a member of the Atlantic City Real Estate Board, claimed to have listed with the secretary of the Atlantic City Real Estate Board certain property belonging to one J. J. Shenkman, which property was afterwards sold through the efforts of Russell C. Roney, a member of the Atlantic City Real Estate Board, who received and retained the entire commission; and

Whereas, John J. Stevenson, still being a member of said Atlantic City Real Estate Board, believing himself to be aggrieved by the action of Roney in retaining all of the commissions arising out of the sale aforesaid, addressed a letter to the president of the Atlantic City Real Estate Board asking that the transaction aforesaid be investigated by said Board; and 10

Whereas, the president of the Board aforesaid appointed three persons, members of said Board, to hear the parties and determine the dispute; and 20

Whereas, the decision of the Board, through its investigating committee, so as aforesaid appointed, was adverse to Stevenson, and to the effect that Stevenson had no claim against Roney for any part of the commissions; and 20

Whereas, thereafter, Stevenson, claiming to have a separate agreement with said Shenkman for the payment of commissions on the sale of the property aforesaid, even though the sale of the property was actually accomplished by another, proceeded to press his claim against the said Shenkman; and 30

Whereas, the trustees of the Atlantic City Real Estate Board, learning of the claim of Stevenson against Shenkman aforesaid, demanded that said Stevenson withdraw his claim for commission from the said Shenkman or else resign from the Board;

and

Whereas, the said Shenkman was not a member of the said Atlantic City Real Estate Board at the times hereinbefore mentioned; and

Whereas, thereafter the said Stevenson, having refused to withdraw his claim against the said Shenkman, which claim was then the subject of litigation in the courts of New Jersey, the Atlantic City Real Estate Board, without hearing, and with-
 10 out charges having been preferred by any member of said Atlantic City Real Estate Board, through its president, Charles H. Harrison, did on the 16th day of September, 1924, expel the said John J. Stevenson from membership in the said Atlantic City Real Estate Board as is evidenced by the following letter:

“September 16, 1924.

20 Mr. John J. Stevenson,
 Rhode Island & Oriental Aves.,
 Atlantic City, N. J.

Dear Sir:—

The Board of Directors under Article 4, Section 2 of the old Constitution and By-Laws and under Article 10, Section 2 of the new Constitution and By-Laws, has expelled you from membership in the Atlantic City Real Estate Board.

Yours very truly,

Charles H. Harrison,
 President.”

30

; and

Whereas, the said John J. Stevenson, thereafter, endeavored to have the order of expulsion revoked and to retain his membership in said Atlantic City Real Estate Board, which was refused by said Board; and

Whereas, the said John J. Stevenson was expelled from membership from said Board for "other reasons" which "other reasons" were not the subject of charges by any member of said Board against said John J. Stevenson; and

Whereas, the expulsion of said John J. Stevenson is resisted because

1. There were no charges preferred against the said John J. Stevenson by any member of the Atlantic City Real Estate Board. 10

2. There was no hearing given the said John J. Stevenson on any charges preferred by any member of the Atlantic City Real Estate Board.

3. Because the Atlantic City Real Estate Board, through its investigating committee, had no power to determine any controversy between Shenkman, a non-member of the Board, and John J. Stevenson. 20

4. Because the only authority of the Board was to investigate the controversy between Stevenson and Roney.

5. Because Stevenson abided by the findings of the Real Estate Board through its committee insofar as any claim the said Stevenson had against Roney, a member of said Board, with respect to the commissions earned and appropriated by Roney in the sale of the Shenkman property. 30

6. Because the expulsion of the said John J. Stevenson was in part based on "other reasons" upon which "other reasons" the said John J. Stevenson had never been given a hearing, nor had charges on said "other reasons" ever been pre-

ferred by any member of said Board.

7. Because the said John J. Stevenson was not legally expelled by the Board of Directors of the Atlantic City Real Estate Board.

8. Because the Board of Directors of the Atlantic City Real Estate Board did not legally proceed under either Article 4, Section 2, of the old constitution and by-laws, or under Article 10, Section 2, of the new constitution and by-laws, or under any other provision of the constitution, by-laws, or rules and regulations of said Board.

9. Because under the rules and regulations adopted by the Atlantic City Real Estate Board, the penalty for violation of the multiple listing system does not extend to expulsion but under said rules and regulations, as adopted by said Board, and published by it, the only penalty is a financial penalty to the realtor himself as is more fully and at large set forth in the booklet of the Atlantic City Real Estate Board entitled "Out of the Darkness into the Light," "The Multiple Listing System," "A New Era in Real Estate," and "Atlantic City Real Estate Board."

We, therefore, being willing that due and speedy justice should be done in this behalf, command and strictly enjoin you that, immediately after receipt of this writ, you do reinstate John J. Stevenson into membership in the Atlantic City Real Estate Board in the same standing that he, the said John J. Stevenson, was at and before the date of his expulsion therefrom, or cause to us to the contrary to signify, lest in your default complaint should come to us repeated, and how you shall execute this, our com-

mand, certify to our Justices of our Supreme Court of Judicature at Trenton, on December 11th, 1925, together with this our writ, and this in nowise omit at your peril.

Witness, WILLIAM S. GUMMERE, ESQUIRE, Chief Justice of our Supreme Court, at Trenton, this 13th day of November, 1925.

EDWARD J. KELLEHER,
Clerk.

BOLTE, SOOY & GILL, 10
Attorneys.

A true copy,
EDWARD J. KELLEHER,
Clerk.

[ENDORSED]

Service acknowledged November 14th,
1925.

Thompson & Hanstein, 20
Attorneys for Respondent.

30

RETURN TO ALTERNATIVE WRIT.

(Filed December 2, 1925.)

NEW JERSEY SUPREME COURT.

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| | | |
|---|---|--|
| JOHN J. STEVENSON, <i>Relator,</i> | } | On Mandamus. Return to Alternative Writ. |
| v. | | |
| ATLANTIC CITY REAL ES- TATE BOARD, <i>Respondent.</i> | } | |

20 *To the Honorable Justices of the Supreme Court of
 New Jersey:*

We, the Atlantic City Real Estate Board, a corporation of the State of New Jersey, to whom this writ is directed, do hereby make return thereto to your Honors, and certify that all the statements set forth in said writ are not true;

30 That it is true that this respondent is a corporation existing under the laws of the State of New Jersey, composed of real estate brokers engaged in the real estate business in the City of Atlantic City and vicinity;

That the said relator, John J. Stevenson, was expelled from membership from the said Atlantic City Real Estate Board;

That it is true that membership in the Atlantic City Real Estate Board is a valuable privilege;

That it is true that the said Atlantic City Real Estate Board adopted a constitution and by-laws, reading as set forth in the alternative writ herein allowed, and that the same were amended as set forth in said alternative writ;

That it is true that the Atlantic City Real Estate Board has adopted the system of division of commissions and listing of property known as the "Multiple Listing System," which operates as set forth in said alternative writ;

10

That it is true that the said John J. Stevenson claimed to have listed with the secretary of the Atlantic City Real Estate Board certain property belonging to one Jacob J. Shenkman, which was afterwards sold through the efforts of Russell C. Roney, a member of the Atlantic City Real Estate Board;

It is also true that the said John J. Stevenson addressed a letter to the president of the Atlantic City Real Estate Board asking for an arbitration between the said John J. Stevenson and Russell C. Roney and Jacob J. Shenkman, and that thereafter the president of the Atlantic City Real Estate Board appointed three members to hear the arbitration; and that the said John J. Stevenson attended said arbitration and presented his side of the controversy without objecting to the fact that there were only three members to said committee;

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The result of said arbitration was that the said John J. Stevenson had no claim against either the said Jacob J. Shenkman, or the said Russell C. Roney;

30

Thereafter, the said John J. Stevenson instituted a suit, or made a demand upon the said Jacob J. Shenkman for the payment of the commission alleged to be due by the said Jacob J. Shenkman to John J. Stevenson, which had been determined

against the said John J. Stevenson in the said arbitration;

That thereafter, the said Atlantic City Real Estate Board, being advised that the said John J. Stevenson was refusing to comply with the findings of said arbitration board, in that he was, despite said arbitration, prosecuting said demand against the said Jacob J. Shenkman, demanded that the said John J. Stevenson withdraw his claim against the
10 said Jacob J. Shenkman, which the said John J. Stevenson refused to do;

That after a hearing before the Board of Directors of said Real Estate Board, at which hearing the said John J. Stevenson was present in response to a notice and charges preferred against him, the said John J. Stevenson was expelled from membership in said Real Estate Board for failure to comply with the findings of the arbitration committee.

20 That it is not true that the said John J. Stevenson was expelled from membership for any other reason than the foregoing reason;

It is not true that there were no charges preferred against the said John J. Stevenson by any member of the Atlantic City Real Estate Board;

It is not true that there was no hearing against the said John J. Stevenson, or any charges preferred by any member of the Atlantic City Real Estate Board;

30 It is not true that the Atlantic City Real Estate Board, through its investigating committee, had no power to determine any controversy between Jacob J. Shenkman and John J. Stevenson;

It is not true that the only authority of the Board was to investigate the controversy between John J. Stevenson and Russell C. Roney;

It is not true that the expulsion of the said John

J. Stevenson was based on other reasons than those upon which he had been given a hearing;

It is not true that the said John J. Stevenson was not legally expelled by the Board of Directors of the said Atlantic City Real Estate Board;

It is not true that the Board of Directors of the Atlantic City Real Estate Board did not legally proceed in expelling the said John J. Stevenson;

And the said Atlantic City Real Estate Board does humbly pray that the said writ may be dismissed, and that it may be relieved from obeying the command therein given. 10

Atlantic City Real Estate Board,

By: CHAS. H. HARRISON,

President.

Dated December 1st, 1925.

THOMPSON & HANSTEIN,

Attorneys for Respondent.

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30

the said John J. Stevenson was refusing to comply with the findings of the said arbitration board in that he was, despite said arbitration, prosecuting the said demand against the said Jacob J. Shenkman, demanded that the said John J. Stevenson withdraw his claim against the said Jacob J. Shenkman, which the said John J. Stevenson refused to do" and that for that reason the said John J. Stevenson was expelled.

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3. That under the constitution and by-laws of the Atlantic City Real Estate Board, the respondent had no power to determine disputes between a member of said Board and a non-member, and had no power to expel from membership a member of said Board refusing to comply with an order of said Board which dealt with dealings between members and non-members.

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4. Because the respondent admits that under the rules and regulations adopted by the Atlantic City Real Estate Board, the penalty for violation of the multiple listing system does not extend to expulsion but under said rules and regulations, as adopted by said Board and published by it, the only penalty is a financial penalty to the relator himself as is more fully and at large set forth in the booklet of the Atlantic City Real Estate Board entitled "Out of the Darkness into the Light," "The Multiple Listing System," "A New Era in Real Estate," and "Atlantic City Real Estate Board."

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5. Because the Atlantic City Real Estate Board expelled John J. Stevenson for "other reasons" than the alleged violations of the findings of the

committee of the Atlantic City Real Estate Board, upon which said "other reasons," the said John J. Stevenson was not given a hearing before said Board as more fully and at large by the testimony of the respondent taken in support of the rule to show cause heretofore granted in this case.

6. Because the matters and things set forth in the
10 return made by the respondent in this cause are not sufficient, in law, to require the relator to plead thereto; therefore, and because of the insufficiency of the matters and things set forth in the return, the relator prays judgment that said answer and return is stricken, set aside, and for nothing holden, and that a peremptory writ of mandamus do issue in accordance with the prayer of the alternative writ in this cause.

BOLTE, SOOY & GILL,
Attorneys of Relator.

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NOTICE.

(Filed December 13, 1925.)

NEW JERSEY SUPREME COURT.

| | | |
|---------------------------------------|---|--------------|
| JOHN J. STEVENSON, <i>Relator,</i> | } | 10 |
| v. | | Notice. |
| ATLANTIC CITY REAL ES- TATE BOARD, | | On Mandamus. |
| <i>Respondent.</i> | | |

To Thompson & Hanstein, Esqs., Attorneys of Atlantic City Real Estate Board:

Sirs: 20

Take notice that the testimony heretofore taken in support of the rule to show cause heretofore issued in the above case, and which testimony was used on the argument of the said rule, will be used by the relator on the argument of the alternative writ and in support thereof, said argument to be before the Supreme Court, at Trenton, N. J., on the 19th day of January, 1926, at 10.30 o'clock, in the forenoon, or as soon thereafter as counsel may be heard.

Take further notice that if you desire, additional testimony may be taken on the part of the respondent. 30

Yours respectfully,
BOLTE, SOOY & GILL,
Attorneys of Relator.

Dated Dec. 11, 1925.

[ENDORSED]

Due and legal service of the within
notice duly acknowledged this 11th day
of December, 1925.

Thompson & Hanstein,
Attorneys of Respondent.

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OPINION.

(Filed Oct. 20, 1925.)

NEW JERSEY SUPREME COURT.

No. 207, May Term, 1925.

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JOHN J. STEVENSON,
Relator,
v.
ATLANTIC CITY REAL ES-
TATE BOARD,
Respondent.

20

Submitted June 9th, 1925.

Decided October 10th, 1925.

On application for a writ of mandamus.

Before JUSTICES TRENCHARD, KATZENBACH AND
LLOYD.

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For the relator: BOLTE, SOOY & GILL, Esqs.

For the respondent: THOMPSON & HANSTEIN,
Esqs.

Per Curiam:

John J. Stevenson, a member of the Atlantic City Real Estate Board, applies for a writ of mandamus to reinstate him as a member of said Board. The Atlantic City Real Estate Board is incorporated under the laws of New Jersey. It has adopted by-laws. Section 2, Article 4, of what is known as the old by-laws, provides that the president shall appoint, when necessary, a committee on arbitration which shall consist of five members whose duties shall be to hear any differences arising between members of the Board referred to them for arbitration. The by-law further provides that the committee's findings shall be binding upon such members, and that any member who shall refuse to comply with such finding shall be liable to suspension or expulsion as the board of trustees, by a majority vote, shall direct. The new by-laws of the Real Estate Board contain substantially the same provision in Article 10, Section 2. The multiple system of listing properties for sale was adopted by the Real Estate Board. This system provides that where a contract is signed by an owner of real estate which fixes the price and terms at which the owner is willing to sell his property, the contract may be filed with the secretary of the Board, and if the sale is made by any other realtor than the one obtaining the contract, such realtor is to receive 60% of the commission fixed by the agreement, and the member listing the property 35%. Five per cent goes to the Board.

Stevenson claimed that he had obtained a contract with one J. J. Shenkman, for the sale of a property owned by him on Vermont Avenue in the City of Atlantic City. Stevenson further claimed that he listed this property with the Board. The

sale of this property was effected by Russell C. Roney, a member of the Real Estate Board, who received and retained the entire commission. Stevenson then addressed a letter to Mr. Faunce, the president of the Board, and asked that the matter be investigated. No committee or arbitration was appointed in accordance with the by-laws, but Mr. Faunce appointed three members to hear the parties and determine the dispute. The decision was that Mr. Stevenson had no claim against Roney for any part of the commission. Stevenson claimed to have a written agreement with the owner, Shenkman, by which he was to receive a certain percentage of the commission even though the sale of the property was actually accomplished by another. Stevenson thereupon proceeded to press his claim against Shenkman. When the trustees of the Real Estate Board learned of this they expelled Stevenson without any charges being preferred against him or without a hearing. Stevenson then endeavored to have the order of expulsion revoked. This was refused. Stevenson now seeks by mandamus to be reinstated as a member of the Real Estate Board.

The first contention made on behalf of Stevenson is that the hearing was not conducted in accordance with the by-law referred to. It is true that the hearing was not conducted according to the by-law, in that the board of arbitration was not composed of five members as the by-law provided. Stevenson, however, had knowledge of this when he submitted to the hearing. Having submitted to the hearing before the three members appointed without complaint, we feel that he is not now entitled to question the action of the committee conducting the hearing. He waived, it seems to us, the provision of the by-law requiring a committee of five.

The next contention advanced in behalf of Stevenson seem to us to have more merit. His expulsion was based upon the theory that he failed to abide by the findings of the committee. The powers of the committee could not be extended further than to determine a controversy between Stevenson and Roney. Shenkman was not a member of the Real Estate Board and Stevenson's relations to Shenkman were not within the scope of the hearing. The
10 expulsion was based upon the theory that Stevenson had not abided by the findings. The action which he took or proposed to take against Shenkman was upon a separate agreement, as he claimed, with Shenkman. It had nothing to do with the listing of the property. This matter was not inquired into by the committee before which the hearing was held.

It also appears that the Real Estate Board expelled Stevenson for other reasons than the alleged violation of the findings of the committee. Steven-
20 son was accorded no hearing upon these other reasons. These reasons might have been the ones which moved the trustees to expel Stevenson. As we think it is questionable as to whether Stevenson violated the findings of the committee, and as his expulsion appears to have been based upon other unmentioned grounds, and as the right to be a member of a Real Estate Board seems to be a valuable right as it entitles a member to use the word "real-
30 tor," we have reached the conclusion that Stevenson is entitled to the issue of an alternative writ of mandamus to settle the question as to the propriety of his expulsion.

An alternative writ of mandamus is allowed.

11/28/24 RESPONDENT'S EXHIBIT 5.

Title Page of Exhibit is as follows:

“OUT OF THE DARKNESS INTO THE LIGHT”
THE
MULTIPLE LISTING
SYSTEM

10

A NEW ERA IN REAL ESTATE
ATLANTIC CITY REAL ESTATE BOARD
106 Guarantee Trust Building.

RULES AND REGULATIONS.

IS THERE ANY FINE FOR NOT COMPLYING
WITH THE RULES AND REGULATIONS OF
THE MULTIPLE LISTING SYSTEM?

There is no *fine* attached to the system.

IS THERE ANY OTHER PENALTY, OTHER
THAN A FINE, FOR NOT COMPLYING WITH
THE RULES OF THE SYSTEM?

20

You merely punish yourself *financially*. Never forget that the benefits of the Multiple Listing System are mutual and EVERY REALTOR will profit by it. Certainly you will take advantage of the sales power in moving the property of your client that can be found in the proper use of this system.

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OPINION.

(Filed July 26, 1926.)

NEW JERSEY SUPREME COURT.

No. 40, Jany. T., 1926.

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JOHN J. STEVENSON,

Relator,

v.

ATLANTIC CITY REAL ES-
TATE BOARD,*Respondent.*On Mandamus.
Demurrer to alterna-
tive writ.

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Argued before GUMMERE, Chief Justice, and
Justices KALISCH AND CAMPBELL.

For the relator, THOMPSON & HANSTEIN.

For the respondent, BOLTE, SOOY & GILL.

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Per Curiam.

The purpose of the present proceeding is to compel the Atlantic City Real Estate Board to reinstate the relator Stevenson to membership in that body;

he having originally been a member thereof, but having been, as he claims, wrongfully expelled therefrom.

The material facts disclosed by the record before us are as follows: A by-law of the Board provides that, when any differences arise between members thereof, there shall be a hearing thereon before a committee of arbitration selected from the membership of the body; and that the findings of this committee with relation to such differences shall be binding upon the members involved therein. In the present case there was a controversy between Stevenson, and one Roney, another member of the Board, with relation to the commissions received by Roney from a man named Shenkman on a sale of the latter's property; Roney's claim being that he was the procurer of the sale, and as such entitled to all commissions resulting therefrom, while Stevenson's claim was that, by virtue of a pre-existing agreement with Shenkman he was entitled to share in the commission, even if Roney had been the procuring cause of such sale. This matter was heard before an arbitration committee and was decided in favor of Roney; that is, the committee held that Roney was entitled to the whole of the commission. It further decided that Stevenson had no claim against Shenkman arising out of the transaction. Notwithstanding this latter finding of the committee, Stevenson brought suit against Shenkman to compel him to pay him the amount of his claim under the agreement between them; and thereupon the defendant Board expelled him from membership because of his action in instituting such suit.

We are unable to perceive from a reading of the by-law anything showing that the defendant Board or its arbitration committee had any jurisdiction

over the matter of the validity of the relator's claim against Shenkman. The latter was not a party to the arbitration; was not a member of the Board; and was not affected by the decision of the arbitration committee. The by-law, as we construe it, limits the power of the arbitration committee to the determination of differences between members of the Board; and, consequently, when the committee undertook to go outside of the power thus conferred, and assumed to settle matters in differences between a member and an outsider, its action to that extent was *ultra vires* and void.

10 We conclude, therefore, that the expulsion of the relator from membership in the Board for violating a finding of the arbitration committee, in a matter over which it had no jurisdiction, was without legal justification; and that the relator is entitled to a peremptory writ, commanding the respondent to restore him to membership therein.

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RULE FOR PEREMPTORY WRIT.

(Filed Aug. 6, 1926.)

NEW JERSEY SUPREME COURT.

JOHN J. STEVENSON,
Relator,
 v.
 ATLANTIC CITY REAL ES-
 TATE BOARD,
Respondent.

On Mandamus.
 Rule for Peremptory
 Writ.

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This cause coming on to be heard on demurrer to the return to an alternative writ of mandamus; and the court having considered the proofs and the arguments of counsel for the respective parties, and being of the opinion that the relator is entitled to a peremptory writ of mandamus requiring the respondent to reinstate the relator into membership in the Atlantic City Real Estate Board.

It is, on this 6th day of August, A. D. 1926, on motion of Bolte, Sooy & Gill, attorneys of the relator, ordered that a peremptory writ of mandamus issue in the above matter in accordance with the opinion of this court requiring the respondent, Atlantic City Real Estate Board, to reinstate the relator, John J. Stevenson, into membership in said

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Atlantic City Real Estate Board in the same standing that he, the said John Stevenson, was at and before the date of his expulsion therefrom, and permit him to exercise all the rights and privileges of a member of the Atlantic City Real Estate Board, and that the respondent, Atlantic City Real Estate Board, pay to the relator his costs, including printing.

Entered August 6, 1926, on motion of
BOLTE, SOOY & TRIPICIAN.

10

A true copy

.....
Clerk

EDWARD J. KELLEHER,
Clerk.

JUDGMENT.

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(Filed December 12, 1926.)

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And now at this day, to-wit, the twenty-ninth day of September, in the year nineteen hundred and twenty-six, before the Justices of the Supreme Court of New Jersey, at Trenton, aforesaid, comes as well the said John J. Stevenson, relator, as the said Atlantic City Real Estate Board, respondent, by their attorneys aforesaid, whereupon all and singular the premises aforesaid being seen and by the said court now here fully understood, and mature deliberation thereupon had, it appears to the court that the return to the alternative writ of mandamus by the said defendants presented, and by the said relator demurred to, is not good and sufficient in law, and that the demurrer thereto is well taken.

Whereupon it is adjudged that said demurrer be sustained, and that a peremptory writ of mandamus do issue out of this court commanding Atlantic City Real Estate Board to reinstate John J. Stevenson into membership in the Atlantic City Real Estate Board in the same standing that he, the said John J. Stevenson was at and before the day of his expulsion therefrom.

It is further adjudged that the relator, John J. Stevenson, do recover of the said respondent, Atlantic City Real Estate Board, his costs which have been taxed at the sum of
Costs \$

Judgment entered September 29, 1926.

WM. S. GUMMERE, C. J.

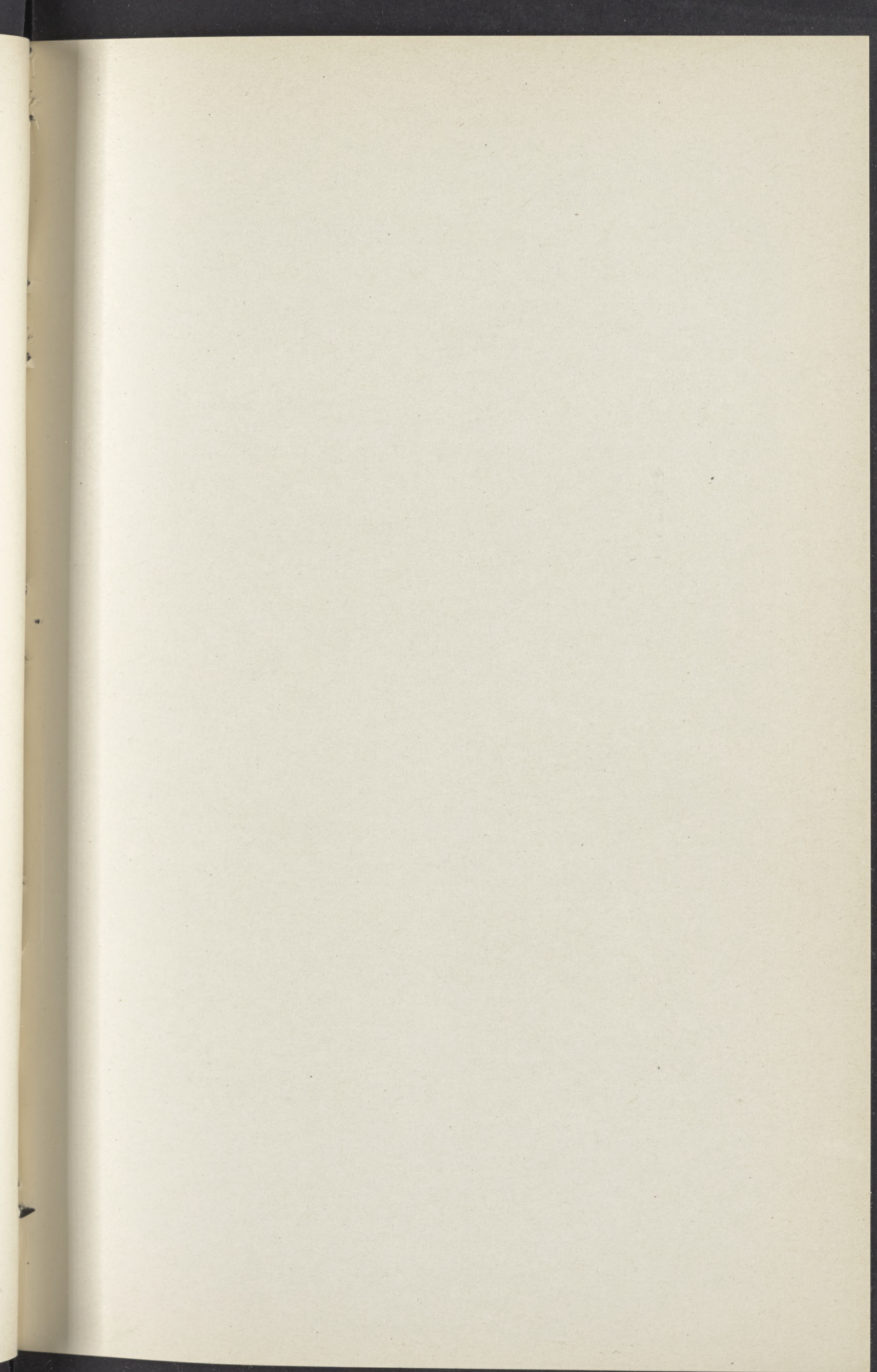
Witnesses in the case of the said defendant be
 arrested and that a temporary writ of mandamus
 be issued to the said defendant commanding Atlantic City
 to pay to the said plaintiff the sum of \$1000
 and to the said plaintiff the sum of \$1000
 and to the said plaintiff the sum of \$1000
 and to the said plaintiff the sum of \$1000

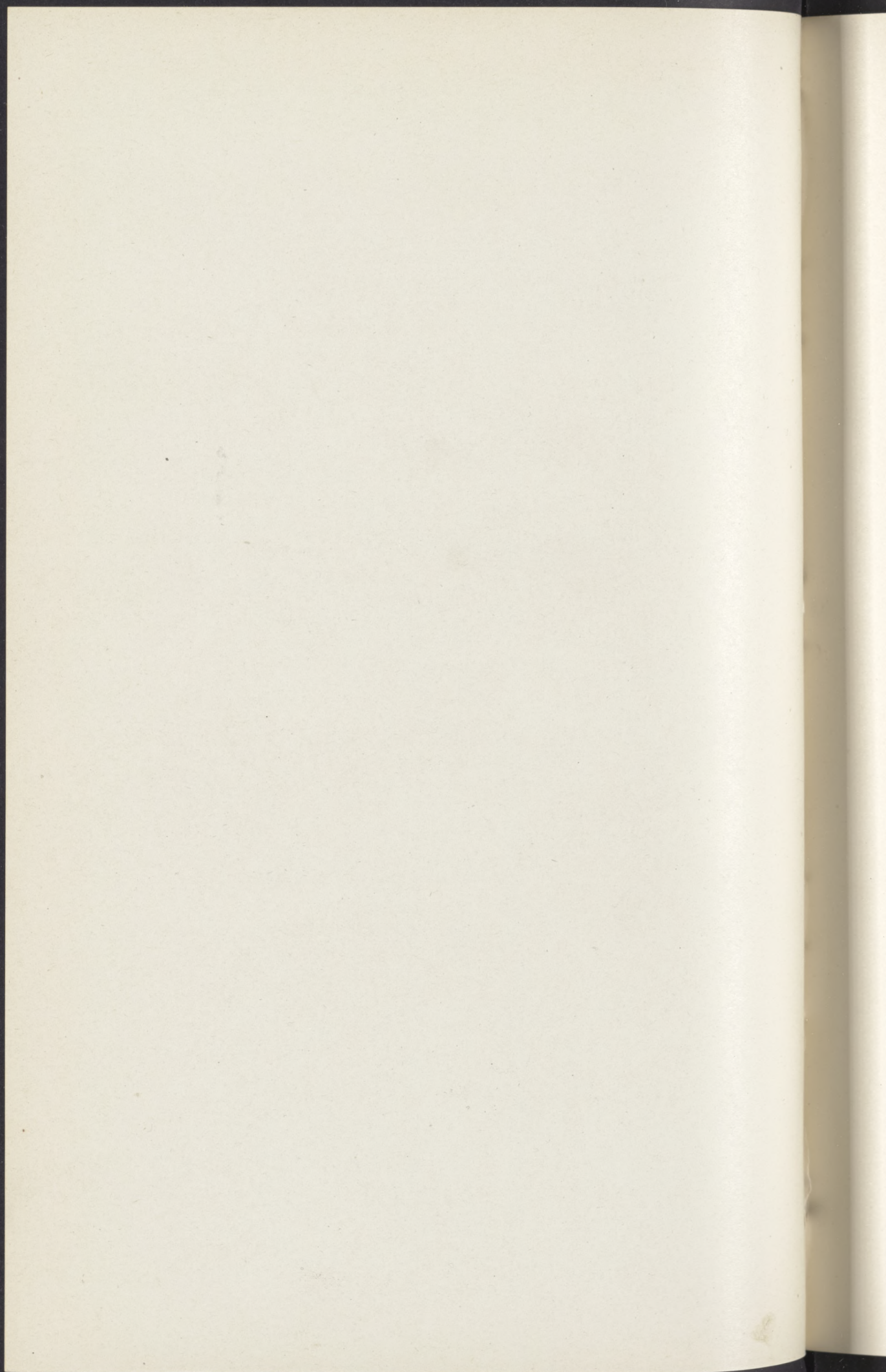
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 It is further ordered that the relation of John J.
 to the said defendant be dissolved and that the
 said defendant be restored to the office of
 the City of Atlantic City and that the costs which have
 been incurred by the said plaintiff be paid to him

WITNESSED my hand and the seal of the said Court
 at Atlantic City this 10th day of March 1888

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

JOHN J. STEVENSON,
Relator-Respondent,

v.

ATLANTIC REAL ESTATE BOARD,
Respondent-Appellant,

ON APPEAL.

BRIEF OF RESPONDENT-APPELLANT.

FACTS

The respondent is a corporation incorporated under "An Act to incorporate associations not for pecuniary profit." The relator, prior to the time of his expulsion, was a member of the defendant association.

The defendant association maintains what is known as a "Multiple Listing System." Under this system a person owning real estate can list that property for sale with any member of the Atlantic City Real Estate Board. The listing is made on a form such as is set forth on page 168 of the State of

the Case. When the listing is signed by the owner, it is forwarded to the central office of the Real Estate Board and a copy is then distributed to every member of the Real Estate Board. Upon a sale of the property by the broker listing the same, he receives all of the commission agreed to be paid, with the exception of 5%, which is paid to the Real Estate Board for its services in the matter. If the property is sold by any other member of the Real Estate Board than the listing broker, the selling broker receives 65% of the commission, the listing broker 30% and the Real Estate Board 5% (p. 22, lines 36 to page 23, line 29). It is one of the rules of the Real Estate Board in the operation of its multiple listing system that all multiple listings must be sent to the Board headquarters within 24 hours after the contract is signed. This division and distribution of commission is a matter entirely between the members of the Real Estate Board and does not affect the owner of the property, as it will be observed his agreement is merely *to pay to the listing member* of the Real Estate Board a specified commission in the event of a sale of the property, within a designated period regardless of who may sell the same.

A controversy arose between relator, Stevenson, and one Roney, a member of the Real Estate Board, and one Shenkman, who was the owner of the property sold, but who was not a member of the Real Estate Board, over certain commissions claimed by the relator to be due to him. The relator, not being able to secure what he considered a satisfactory adjustment of his claim with the two other parties, invoked by his letter to the president (p. 162) an arbitration of his claim by an arbitration committee of the Real Estate Board as against Roney and Shenkman.

The provisions of the constitution and by-laws of the defendant association at that time in force relating to arbitration are found on page 162 and marked "Relator Exhibit 2."

The arbitration was had, the finding was against the relator, and to the effect that he was not entitled to any commission from either Shenkman or Roney, but he refused to abide by the decision of the arbitration committee, and insisted upon the collection of his commission from Shenkman, which, being a refusal on his part to comply with the findings of the arbitration committee; was adopted by the board of directors of the defendant as grounds for the expulsion of the relator. He was duly expelled and it was to review that expulsion that the writ of mandamus was allowed in this cause. Testimony was taken and used both on the argument of the rule to show cause and on the argument on the motion to strike the return in the Supreme Court.

The testimony taken is in some respects conflicting, but the points at issue are well defined.

Shenkman was the owner of two properties, which he was desirous of selling. Stevenson, around December 1st, 1923, undertook to get a multiple listing contract from Shenkman upon both properties, but that listing was destroyed and never filed with the Real Estate Board, and is entirely out of this question (Stevenson, p. 70, l. 25). However, Shenkman did sign a listing on one of the properties and refused to sign a listing on the other, which is the property in question (Stevenson, p. 70, l. 34). The listing that was not signed is marked "Respondent's Exhibit 3," page 168, and shows that it is not signed. Stevenson contended that Shenkman promised to sign it the Monday following the Friday on which the other listing was made (Stevenson, p. 70, l. 34).

Shenkman contends that he agreed to sign the listing on the following Monday if the property was not sold, but that the property was sold and, therefore, the listing was never signed (Shenkman, p. 133, l. 5-25). Stevenson contended that he told the Real Estate Board that he actually had a listing for the property in question (Stevenson, p. 71, l. 25). The same fact is set out in Stevenson's affidavit filed in this cause (p. 3, l. 26). He also contended that he advised the Real Estate Board that he had the listing and the Board advised him that he would have the privilege of holding it until the Monday (Stevenson, p. 71, l. 34). He contended that he was advised in that respect by Mr. Endicott, executive secretary of the Board (Stevenson, p. 72, l. 10-28).

On the other hand, Mrs. Endicott, the wife of the executive secretary, who is associated with him in his duties with the Real Estate Board, stated that she received a phone call from Mr. Stevenson on December 24, 1923, relative to this very property, and that at that time Stevenson told her that he had a multiple listing on the property in question, and that he would bring it in on the following Monday (Irene Endicott, p. 128, l. 27). At that time he definitely stated that he had a multiple listing (Irene Endicott, p. 128, l. 35).

Richard Endicott, the executive secretary, testified that the first he heard of the property in question was from his wife, and that he next heard of the property from Stevenson a few days after his (Endicott's) wife was called by Stevenson (Richard Endicott, p. 118, l. 13). Endicott further testified that Stevenson represented to him that he actually had a signed multiple listing contract on the property in question (Richard Endicott, p. 119, l. 15), and that he had forgotten to send it in, but would

send it right in, and no multiple listing was ever filed on the property (Endicott, p. 119, l. 10). As a matter of fact, Stevenson's statements were false, for no listing had ever been signed.

By reason of the fact that no multiple listing contract was ever signed by Shenkman and filed with the Real Estate Board, the multiple listing was not distributed among the members, and none of the members were, therefore, advised of the fact that there was to be any division of the commissions on the sale of the property.

Roney, a member of the defendant, Real Estate Board, sold the property in question. By reason of the fact that the property had not been listed, he was not liable to Stevenson for any commission that could arise from that source, and he never agreed to pay Stevenson any part of the commission that was otherwise coming to him (Roney, p. 158, l. 26), and, in fact, Stevenson himself testified that he did not have any agreement with Roney to pay him any part of the commission (Stevenson, p. 73, l. 5).

Stevenson felt that by virtue of the above situation he was entitled to be paid a commission, and he invoked an arbitration of his rights by the Atlantic City Real Estate Board. His letter to the president of the Real Estate Board (p. 162) reads, in part—"I wish to place before the Board the following case for arbitration—I feel that after you study these facts over you will arrange for a meeting where Mr. Shenkman, Mr. Roney and myself can be heard personally, and at which time the facts can be explained more clearly than by letter."

It is obvious from that that Stevenson called into the arbitration not only Mr. Roney, his fellow realtor, but also Mr. Shenkman, the owner of the prop-

erty, who was not a member of the Real Estate Board. Mr. Stevenson testified that Shenkman agreed to be bound by the arbitration.

“A. On the letter the question of the— whether I was entitled to any commission through a multiple listing on account of Shenkman making the original with me. Shenkman, when he stated those facts with me, stated that if the Board seen fit, and I was morally entitled to a division, then he and Mr. Roney should make it and then Mr. Shenkman be reimbursed.

Q. It was Mr. Shenkman’s proposition —

A. It was Mr. Shenkman’s proposition.

Q. —that if the Board determined he had to pay this commission he would do it; is that it?

A. Yes” (S. C. p. 80, l. 34-p. 81, l. 10).

The next fact to consider is what was arbitrated. Stevenson admitted that he had no agreement with Roney under the terms of which he was entitled to any commission from Roney (p. 81, l. 13). This is borne out by the testimony of Roney (p. 158, l. 25). Stevenson further stated that he was counting on getting the commission from Shenkman. In reply to the question, “What was it you were counting on, the Shenkman commission or the Roney commission?” Stevenson answered, “On the Shenkman commission. I told you I brought up the matter before the arbitration on the word ‘Realtor,’ which my letter states here, not so much as the commission basis” (p. 79, l. 30-35).

“Q. You relied on getting one-half of your commission from Shenkman?

A. That was my lookout, yes.

Q. If you had gotten that, that was all you were entitled to on the deal?

A. That was all, yes" (Stevenson, p. 79, l. 34-p. 80, l. 3).

It will be observed that the multiple listing contracts are made by the owner of the real estate with a certain listing broker, and the only contractual relationship that exists in regard to the payment of commissions is that existing between the listing broker and the owner. The form of the contract does not permit a suit by the selling broker against the owner. Therefore, in this case, Stevenson's claim was necessarily against Shenkman, and it was only from Shenkman that Stevenson claimed to have any right of commission, or had any contractual relationship. That Stevenson was claiming a commission from Shenkman is borne out by the testimony of the members of the arbitration committee.

"Q. From whom did he claim it?

A. From Mr. Shenkman" (p. 123, l. 20).

If a multiple listing contract had been in fact signed, the only way in which Roney, the selling broker, could have collected a commission would have been in a suit by Stevenson. It is, therefore, apparent that Stevenson appeared before the arbitration committee to secure an adjudication that Shenkman was liable under a multiple listing contract, and by reason of that liability Stevenson would have participated in the commission.

If, as counsel for the relator now attempts to argue, Stevenson was claiming from Shenkman under an independent contract for commission not related to the multiple listing, it is difficult to see why

he needed to have Roney present at the arbitration or why he would have invoked an arbitration at all before the Real Estate Board in a matter in which it had no interest.

After the decision of the arbitration committee determining that Stevenson was not entitled to share in the commission either from Roney or Shenkman, Stevenson made a claim upon Shenkman for his commission, by the institution of a suit. When this was brought to the attention of the Real Estate Board, Stevenson was brought before the Board of Directors for a violation of that section of the by-laws that related to arbitration, and which provided that "Any member who shall refuse or neglect to comply with such findings shall be liable to suspension from all benefits of membership, or to expulsion, as the Board of Directors by a majority vote, may direct." After a hearing Stevenson was expelled from membership, and then applied for the writ that was allowed in this cause.

I.

THE COURT BELOW HAD NO RIGHT TO CONSIDER THAT STEVENSON HAD DEMURRED TO THE ALTERNATIVE WRIT.

The sequence of the pleadings in this matter were as follows: First, there was a petition for a writ of mandamus, upon which an order to show cause was allowed. Upon the return of the order to show cause an alternative writ of mandamus was allowed, to which the Real Estate Board filed a return. Stevenson then filed an answer to the return which appears on page 186 of the State of the Case, and

is entitled, "On Mandamus Answer to Return of Respondent to Alternative Writ." In the concluding paragraph of his answer he sets forth the following prayer:

"Because the matters and things set forth in the return made by the respondent in this cause are not sufficient, in law, to require the relator to plead thereto; therefore, and because of the insufficiency of the matters and things set forth in the return, *the relator prays judgment that said answer and return is stricken, set aside, and for nothing holden, and that a peremptory writ of mandamus do issue in accordance with the prayer of the alternative writ in this cause*" (S. C.).

Stevenson then gave notice that the testimony taken in support of the rule to show cause would be used on the argument of the alternative writ, which notice also provided that if the Real Estate Board desired, it might take additional testimony.

At the argument the Real Estate Board contended that the practice of both answering and moving to strike out the return of an alternative writ was unusual, and that it was not sanctioned by the decision in such cases, and that, under the circumstances of this case, the return should not be stricken, citing *Silverthorn v. Warren Railroad Company*, 4 Vroom, 173, and such cases.

Stevenson's counsel then undertook to argue as though he had demurred to the return. He had not, in fact, demurred and further than that, the cases seem very clear to the effect that one may not both answer and demur.

"A party cannot demur and plead at the same time to the same count." Putterbaugh's Pleading and Practice, page 266.

“It is not allowable to demur and plead to the same matter at the same time, at any stage of the pleadings, except where authorized so to do by the statute, or by leave of court. In such a case, it has been held that a motion lies to strike out either the answer or demurrer, but that plaintiff may disregard both plea and demurrer and take a judgment, although generally the answer or plea is deemed to overrule the demurrer.” 31 Cyc. 310.

Besides the fact that, having answered he could not demur, it is quite apparent that Stevenson's pleadings could in no sense be considered a demurrer. It is an answer and a motion to strike the return and nothing more. It starts out “In reply to the return, etc.” It sets up new matter. It is not in the form of a demurrer, and there is no joinder in the demurrer. It is apparent that even the relator below did not consider it a demurrer because, if he had there would have been no occasion to give notice that the testimony previously taken on the rule to show cause would be used on the argument of the demurrer.

The Court below based its decision upon a consideration of Stevenson's pleading as a demurrer, and it is contended that in that respect it was erroneous.

II.

EVEN CONSIDERING STEVENSON'S MOTION AS A DEMURRER, IT SHOULD HAVE BEEN DETERMINED IN FAVOR OF THE REAL ESTATE BOARD.

The alternative writ sets up that Stevenson was a member of the Atlantic City Real Estate Board, and was, on or about the 16th day of September, 1924, expelled from membership, and that the membership is a valuable privilege, and that the Real Estate Board adopted a constitution and by-laws, Section 2, Article 4, of which is set out in said writ, as well as the amendment of the same.

The writ also sets up that there is what is known as a "Multiple Listing System," and that Stevenson, while a member of the Board, claimed to have listed with that system of the Board, property belonging to one Shenkman, which property was afterward sold through the efforts of one Roney, a member of the Board, and that Stevenson, believing himself aggrieved by the action of Roney in retaining all the commission arising out of the sale, addressed a letter to the president of the Real Estate Board asking that the transaction aforesaid be investigated by the Board, and that the president appointed 3 persons to hear the parties and determine the dispute; and that the decision of the Board, through its investigating committee, was adverse to Stevenson, and to the effect that Stevenson had no claim against Roney for any part of the commission, and that Stevenson claimed to have a separate agreement with Shenkman for the payment of com-

missions on the sale of the property, proceeded to press his claim against Shenkman, and that the trustees of the Real Estate Board learning of the claim of Stevenson against Shenkman, demanded that said Stevenson withdraw his claim for commission or resign from the Board, and that Stevenson, having refused to withdraw his claim against Shenkman, the Real Estate Board, without a hearing and without charges being preferred, through its president, expelled Stevenson from membership by a letter, which is set out in said writ, and said writ sets out that Stevenson was expelled from membership for other reasons, which were not the subject of charges by any member of the Board against Stevenson, and that the expulsion of said Stevenson is resisted because:

(1) There were no charges preferred against Stevenson.

(2) There was no hearing given Stevenson on any charge preferred by any member of the Real Estate Board.

(3) The Real Estate Board had no power to determine a controversy between Shenkman, a non-member and Stevenson.

(4) The only authority of the Board was to investigate the controversy between Stevenson and Roney.

(5) Stevenson abided by the findings of the Real Estate Board, through its committee, insofar as they related to Roney.

(6) The expulsion of the said Stevenson was in part based on "other reasons" upon which the said Stevenson has never been given a hearing, nor had any charges been preferred.

(7) Because the said Stevenson was not legally expelled by the Board of Directors of the Real Estate Board.

(8) Because the Board of Directors did not legally proceed under the sections of the constitutions referred to in the writ.

The return to the alternative writ admits the incorporation of the Real Estate Board, the previous membership of Stevenson, the adoption of the constitution and by-laws and the operation of the so-called "Multiple Listing System." It also admits that Stevenson claimed to have listed certain property with the Real Estate Board which belonged to Shenkman. The return then sets up that Stevenson addressed a letter to the Real Estate Board asking for an arbitration between the said Stevenson, Shenkman and Roney, and that three members were appointed to hear the arbitration and that Stevenson attended the arbitration and presented his side of the controversy without objecting to the fact that there were only three members to the committee, which allegation in the return, amounted to a denial that Stevenson had asked for an investigation of the matter pending between himself and Roney.

The return also sets up that the result of that arbitration was that Stevenson had no claim either against Shenkman or Roney, which sets up a different situation than that set up in the alternative writ, which is to the effect that the investigating committee determined that Stevenson had no claim against Roney alone.

The return also sets up that Stevenson instituted a suit against Shenkman for the payment of the commission alleged to be due from Shenkman to Stevenson, which had been determined against Stevenson in the arbitration, which is a substantial dispute of the charge in the writ that Stevenson claimed to have a separate agreement with Shenkman for the payment of commission.

The return sets up that the Real Estate Board, being advised that Stevenson had refused to comply with the findings of said arbitration board, in that he was, despite said arbitration, prosecuting said demand against Shenkman, demanded that Stevenson withdraw his claim against Shenkman, which the said Stevenson refused to do, which also is a dispute of the allegation that Stevenson's suit against Shenkman was based on an independent claim.

The return also sets up that there was a hearing before the Board of Directors at which hearing Stevenson was present in response to a notice and charges preferred against him, and that he was expelled from membership for failure to comply with the finding of the arbitration committee, which substantially disputes the allegation that Stevenson was expelled without a hearing and without charges. The return denies each one of the numbered counts set up in the writ.

If Stevenson's motion below is to be considered a demurrer, then the allegation of the return must be taken to be true, and from its allegations it appears that Stevenson invoked an arbitration before an arbitration committee of the Real Estate Board between one Roney, a member of the Real Estate Board, and one Shenkman, and that Stevenson attended the arbitration and presented his side of the controversy. The finding of the arbitration committee was that Stevenson had no claim against either Shenkman or Roney, the persons against whom he had invoked the arbitration; that, despite that finding, Stevenson prosecuted a demand against Shenkman on the very matter which had been arbitrated, thereby violating the finding of the arbitration committee, which is a ground for expulsion under the by-laws.

The return also denies that the Real Estate Board had no power to determine the controversy between Shenkman and Stevenson.

The Supreme Court, on the argument on the rule to show cause, took the view that the fact that there were only three members on the arbitration committee, instead of five, was immaterial, inasmuch as Stevenson had knowledge of this when he submitted to the hearing and having submitted to the hearing before the three members, without complaint, he is not now entitled to question the action of the committee conducting the hearing. The Court took the view that he thus waived the provision of the by-laws requiring a committee of five.

The Supreme Court, on the argument of the motion (or alleged demurrer) took the view, and practically decided the case on the theory that the arbitration committee had no jurisdiction over Stevenson's claim against Shenkman, because Shenkman was a non-member.

It should be noted that the return sets up that Stevenson asked for an arbitration between Roney and Shenkman, a non-member, and attended the arbitration and preseted his side of the controversy.

It is submitted that the same theory that would consider that Stevenson had waived the committee of five, would also consider that Stevenson had waived any question of the jurisdiction of the committee to consider an arbitration with a non-member.

Since Stevenson, himself, invoked the arbitration against a non-member, who came in and submitted himself to the arbitration and agreed to be bound by it and Stevenson does likewise, without any objection, then Stevenson is bound.

“He voluntarily submitted to a trial of the matter referred to the committee, without in any

manner calling in question the jurisdiction of the committee or the person or subject matter. Under such circumstances, having selected his tribunal, he is estopped from denying the jurisdiction of the committee of the person and subject matter."

Ryan v. Cudahy, 157 Illinois, 108; 49 L. R. A. 353.

"Objections by a member of an incorporated board of trade that two of the board of directors before whom proceedings for his expulsion were brought were not naturalized citizens, that two of them were prejudiced against him, and that some of them did not hear portions of the evidence, but read it after it had been written out, and that the prosecuting witness was improperly sworn before a notary public, are waived by his appearance before the board and submission of his case for trial by them without objection either to the matter in which that body was constituted or to the mode of its proceeding. *Pitcher v. Chicago Bd. of Trade*, 121 Ill. 42, 13 N. E. 187."

49 L. R. A. 372 note.

"An arbitration held pursuant to corporate by-laws or regulations of a society, under a voluntary submission of the parties, is governed by the ordinary rules of arbitration and award, and the award is equally as binding as if made without reference to such regulations."

2 *C. J.*, 83.

"They may waive irregularities in the arbitration proceedings, and such waiver may be implied as well as express; and as a general rule,

if a party with knowledge of an irregularity in the proceedings continues, without objection, to take part in the proceedings, he waives any objection on account of such irregularity. He cannot thus take the chance of a favorable issue."

5 C. J., 101.

"Now, it is hardly necessary to say that a party situated as Mr. Burt was cannot speculate on the result of an arbitration. If he has reason or ground to repudiate his submission, he must do so promptly and before the award is made. He cannot withhold his repudiation until he ascertains whether or not the award is favorable to him."

Hewitt v. Lehigh and Hudson River R. R. Co., 57 N. J. Equity, 521.

That this arbitration should be held to be binding on Stevenson is certainly borne out by the testimony. Stevenson, himself, testified that Shenkman agreed to be bound by the arbitration.

"A. On the letter the question of the— whether I was entitled to any commission through a multiple listing on account of Shenkman making the original with me. Shenkman, when he stated those facts with me, stated that if the Board seen fit, and I was morally entitled to a division, then he and Mr. Roney should make it and then Mr. Shenyman be reimbursed.

Q. It was Mr. Shenkman's proposition —

A. It was Mr. Shenkman's proposition.

Q. —that if the Board determined he had to pay this commission he would do it; is that it?

A. Yes (S. C. p.)."

It is, therefore, apparent that by the admission of the allegations in the return, Stevenson invoked an arbitration and submitted himself to a hearing on which he gambled on the outcome, and when he found it not to his liking he undertook to set up a denial of the jurisdiction of the arbitration committee. This he is not entitled to do, and it is, therefore, submitted that a finding that the arbitration committee had no jurisdiction over the controversy between Stevenson and Shenkman is unwarranted.

If the arbitration committee did have jurisdiction and the allegation in the return that Stevenson violated that finding, is taken to be true, then there were sufficient grounds for his dismissal from the Real Estate Board.

The return sets up that charges were preferred against him and that he was duly given a hearing on the same.

All of this being admitted by the demurrer, it should have been overruled and it is, therefore, submitted that the judgment of the Supreme Court should be reversed.

THOMPSON & HANSTEIN,
Of Counsel with Appellant.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

JOHN J. STEVENSON,
Relator-Respondent,

v.

ATLANTIC CITY REAL ESTATE BOARD,
Respondent-Appellant.

ON APPEAL.

BRIEF OF RELATOR-RESPONDENT.

The respondent-appellant is a corporation of the State of New Jersey, with a membership composed exclusively of gentlemen engaged in the real estate business in Atlantic City, Atlantic County, New Jersey, each member being entitled to the use of the name "Realtor."

Prior to the action of the respondent-appellant in attempting to expel from membership in the Board the relator-respondent, John J. Stevenson, was an active member of the Board.

The respondent-appellant association, at the time of its organization in 1921, adopted a form of constitution and set of by-laws, and, thereafter, on May 27th, 1924, amended the constitution and by-laws, and had been governed under the amended constitution and by-laws since that date.

Early in January, 1924, a dispute arose between the relator-respondent and one Roney, another member of the Board, as to division of commissions earned under a sale of real estate in Atlantic City, which real estate belonged to one Jacob Shenkman.

The section of the constitution and by-laws applicable to the controversy which then arose, and likewise applicable to the discussion herein, are found on page 161 of the case, under the headings, "Relator's Exhibit 1" and "Relator's Exhibit 2," and provided generally that the president, at the request of any active member, shall appoint a committee of arbitration consisting of five active members, whose duties shall be to hear any differences arising between the members of the Board referred to them for arbitration, and further provided that the committee's findings, after a due and just opportunity is given both parties, shall be binding upon such members, and any member who shall neglect and refuse to comply with such findings shall be liable to suspension and expulsion, as the board of trustees, by a majority, may direct.

The situation that gave rise to the present controversy was this: One Shenkman, who was not a member of the real estate board, owned some property in Atlantic City, which one Roney, who was an active member of the Board, had sold for Shenkman, whereupon commissions on the sale became due Roney.

The Real Estate Board had adopted a system of listing and selling properties by members of the Board known as "Multiple Listing System," under which a member broker, having a client's property for sale, would list it with the secretary of the Board, who then broadcasted the listing, *i. e.*: Property, price, terms, etc., to all other active members of the Board. If the listing member sold the property, he

would get the whole commission; if a member broker other than the listing broker sold the property, the selling broker would get sixty per cent of the commission, the listing broker thirty-five per cent, and the Real Estate Board five per cent (C. 22, ??????,).

The relator-respondent, Stevenson, claimed to have listed the Shenkman property under the multiple listing system prior to its sale by Roney and claimed by reason of said listing to be entitled to thirty-five per cent of the commissions due from Shenkman to Roney, the selling realtor.

There was a dispute between the relator-respondent and Roney as to Stevenson's claim, which gave rise to a letter written by the relator-respondent to a Mr. Faunce, who was then the president of the Board. This letter is Exhibit 3 (C. 162).

In that letter, the relator-respondent starts off by saying that he desires to place before the Board certain facts for arbitration. He recites these facts and says (C. 164, l. 15-20, etc.): "I feel that after you study these facts over, you will arrange for a meeting where Mr. Shenkman, Mr. Roney and myself can be heard personally, and at which time the facts can be explained more clearly than by letter."

Mr. Faunce, the then president of the Board, appointed three active members of the Board to take up with the relator-respondent the question in dispute between him and Roney, the three members appointed by the president being Charles E. Fell, Frank J. Bloom and John R. Siracusa.

It will be seen that no arbitration committee was appointed as called for by the constitution and by-laws, but that the president himself seems to have followed out the request of the relator-respondent as above quoted and appointed three members of the Board to assist Stevenson and Roney in adjusting their differences without resorting to arbitration.

Clearly (and it makes no difference whether we call this committee an arbitration committee or by some other name), the only question for them to determine was whether or not Stevenson had made a multiple listing of the Shenkman property, and whether or not he was entitled to participate in the commissions earned by virtue of the *multiple* listing rules, and the question as to the amount that the owner must pay was not in dispute at all, because, at any rate, the owner was liable to pay Roney the full amount and Stevenson could only participate by virtue of a ruling in his favor by the Real Estate Board.

The committee was appointed by the president, according to the testimony of all of them, had one meeting at which Roney and Stevenson were present and at which Shenkman was also invited to attend, and after hearing what the parties in interest had to say, the committee determined that Stevenson was not entitled to participate in the commissions earned by Roney on the sale of the Shenkman property.

It is not contended by the respondent-appellant that Stevenson, after the finding of the so-called arbitration committee, ever demanded from Roney any part of the commissions earned by him through the Shenkman deal; in fact, it is stipulated that he never did, at any time thereafter, call upon Roney for any participation in the commissions which Shenkman had paid him (C. 32, l. 8).

Stevenson claimed, however, that independently of his right to recover commissions from Roney under the multiple listing system plan of the respondent-appellant, that Shenkman, the owner of the property, had agreed with him, Stevenson, that Shenkman had promised him that in addition to the payment of commissions to the selling broker, he,

Shenkman, would pay Stevenson a commission on the listing that Shenkman had given Stevenson if the sale was made by someone other than Stevenson (C. 78, 6, etc., and 79).

There was never any minute taken of the meeting of the so-called arbitration committee, nor was there any written report filed by that committee, either with the Board as a body, or the secretary thereof, or with the board of trustees, and, in fact, whatever report was made, was made verbally (C. 17-18, and p. 25, 33, etc., and C. 102, 16-20).

No action was ever taken on the report of the so-called arbitration committee by the board of trustees of the respondent-appellant insofar as Roney-Stevenson controversy was concerned.

The so-called arbitration committee made whatever report they did make in March or April of 1924. Fell says the meeting after or the one second following the hearing (C. 26, 186). So that the report must have been made in March or April, 1924.

The only importance of the time when the report of the arbitration committee was made is that the final expulsion of Stevenson from membership did not take place until September 16th, 1924, and Stevenson had not endeavored to adjust his differences as between Shenkman and himself until June 17th, 1924.

Stevenson's claim against Shenkman arose in the settlement of accounts between them in June, 1924, as is shown by Exhibit "Respondent 4" (C. 170), and by Shenkman's letter, "Respondent's Exhibit 6" (C. 171).

On July 1st, 1924, Stevenson received from the president of the Realty Board, a letter demanding that he should withdraw his claim against Shenkman, or that he resign from the Board (C. 166, bottom).

Stevenson refused to resign from the Board, and on September 16th, 1924, received a letter from the president of the Board saying that he was expelled from membership under Article 4, Section 2 of the old constitution and by-laws, and under Article 10, Section 2 of the new constitution and by-laws (C. 165).

The minute of the meeting at which the question of Mr. Stevenson's expulsion arose was under date of September 12th, 1924, and was as follows:

“Mr. Potter, seconded by Mr. Lindsay, moved that Mr. John J. Stevenson be expelled from the Board for non-compliance with the decision of the board of arbitration and action of the board of trustees in connection with the Shenkman matter.”

The only other minutes of the respondent-appellant connected with the case at hand is that of June 30th, 1924, and August 1st, 1924 (C. 17, 22, etc.).

“The president was requested by the Board to write Mr. John J. Stevenson from the Board of Headquarters and tell him he must write a letter to Mr. Shenkman withdrawing his claim, or otherwise, he must resign from the Board.”

On August 1st, “In regard to the matter of Mr. Stevenson and the letter written him by the president with reference to his resigning from the Board, it was regularly moved, seconded and carried that the action of the president in writing such letter be sustained and that the matter be referred to Mr. Walter Hanstein for advice in the matter” (C. 17, 32, etc.).

Just what happened with reference to the proceedings of the so-called arbitration committee is gath-

ered from the testimony of the members of the committee, and it will be noted that its chairman, Mr. Fell, says that he was not appointed as a member of the board of arbitration with reference to any dispute between Shenkman and Stevenson (C. 7, top of page): "That the decision of the Board was rendered orally" (C. 25, at bottom), and he further testified (C. 30, at 7, etc): "Q. The only parties to the dispute, the subject of your arbitration, who were the active members of the Board were John J. Stevenson and Mr. Roney, were they not? A. That is true. Q. Mr. Shenkman was not a member of the Board. A. That is true. Q. Either active or otherwise? A. That is right." And further says (C. 31, bottom): "Mr. Stevenson, to our knowledge, lived up to the decision with regard to Mr. Roney, but not with regard to Mr. Shenkman."

It is stipulated (C. 32 top) that there was no report to the board of directors of the Atlantic City Real Estate Board of any violation on the part of Mr. Stevenson of the findings of the arbitration committee insofar as the findings concerned Stevenson and his commission demands on Roney.

John Siracusa, another member of the so-called arbitration committee, says that there was one sitting of the Board in March (C. 88 at 17), at which Stevenson was not present, at which a verbal announcement of the committee's decision was made. This report was in March or April (C. 89 at 10).

Mr. Bloom, another member of the Board, says that there was one hearing to hear the differences between Roney and Stevenson, and that the decision was announced verbally.

Nothing happened from the time of the finding of the so-called arbitration committee until the meeting of June 30th, when the president was instructed

to advise Stevenson to withdraw his claim against Shenkman, and the meeting of August 31st, when the president's letter to Stevenson was discussed and ratified, until the meeting of September 12th. when Mr. Stevenson was finally expelled from membership.

Mr. Van Potter made a motion to expel Stevenson and says that it was because Stevenson had not complied with the decision of the Board in connection with the Shenkman matter (C. 54, 55 and 56).

The president says that Stevenson was expelled by reason of his demanding commissions from Shenkman, and by reason of other unethical acts (C. 37 and 38).

Mr. Lindsay says (C. 46, 47 and 48), and he seconded the motion, that the expulsion was for the dual reason, and the other witnesses seem to be of the conclusion that Stevenson was expelled for reasons other than those comprehended in the Van Potter motion for the violation of the arbitration committee's finding.

It is contended that the action of the respondent-appellant in expelling the relator-respondent was illegal,

1. Because the respondent-appellant did not proceed in accordance with the constitution and by-laws.

The constitution and by-laws require that in case of dispute between active members of the Board, the president shall appoint a committee consisting of five persons, two of whom shall be selected by each side of the controversy, and the fifth by the president, and that any member who shall refuse or neglect to comply with the findings of such arbitration committee shall be liable to suspension or expulsion.

No such committee was ever appointed, and, therefore, no judgment of such committee was ever re-

ported to the Board, *a fortiori*, there has been no neglect to comply with the findings of the duly constituted arbitration committee.

Only those sections of the constitution and by-laws applicable to the case have been printed, but the fact is that the only method of expulsion or suspension provided for by the constitution and by-laws are the provisions found in the portions thereof printed in this brief.

The proceedings necessary to expel Stevenson were statutory and must be strictly followed.

There is testimony that Stevenson never objected to the so-called arbitration committee as it was constituted, and, as a matter of fact, the relator-respondent admits that he never objected to it nor was he called upon to do so by reason of the fact that the president had not seen fit to dignify the controversy between Stevenson and Roney by the statutory arbitration committee, but had appointed three members of the Board merely to adjust the differences as between Roney and Stevenson.

2. Because, even assuming that the arbitration committee had complied with the provisions of the by-laws, still, the expulsion of Stevenson was based not only on an alleged violation of the findings of the arbitration committee, but also for other reasons upon which there had been no finding of the arbitration committee, and for the hearing of which alleged additional violations no committee had been appointed, no hearing held, or decision rendered.

From the testimony heretofore quoted of Mr. Van Potter, it appears that the motion to expel was made by Mr. Van Potter and seconded by Mr. Lindsay.

Mr. Lindsay says that in addition to expelling because Stevenson had asked Shenkman for payment of what was due him, the Board expelled because:

“Q. There were other reasons urged besides that? A. He was expelled for— Q. No. Were there other reasons urged, is the question now. A. Yes. Q. You say there were other reasons urged. What were they? A. Refusing to abide by the decision of the arbitration committee and the board of directors. Q. And that refusal referred to his demand on Shenkman for commissions, did it not? A. It did. Q. Then was there any other reason upon which he was expelled other than his refusal to abide by the findings of the arbitration committee, which was that he should not ask from Shenkman any portion of the commissions that he claims to have earned on the sale which Roney had effected? A. Well, he was expelled for that, together with the fact that he had misrepresented his multiple listing contract. Q. Then, in addition to the fact that he had demanded from Shenkman commissions which the Board had found he was not entitled to, he was expelled because of irregularities with reference to multiple listing, wasn't he? A. Yes” (C. 47 bottom, and 48).

Mr. Lindsay's examination on this point concludes with the following question: “Q. And at the meeting of September 12th, when he was finally expelled, his alleged violations of the multiple listing system constituted one of the reasons upon which he was expelled? A. Yes” (C. 51 bottom, and 52).

Mr. Harrison, the president of the Board, testified, on page 33, at the bottom: “Q. Was there any reason urged for the expulsion of Mr. Stevenson from the Atlantic City Real Estate Board other than that he had made claim against Shenkman for commissions which he contended were due from Shenk-

man to him by virtue of the sale of property by Roney, which property belonged to Shenkman? A. Yes. Q. There was? A. Yes. Q. And was the reason of his expulsion from membership in the Board not only by reason of his failing to abide by the arbitration committee's finding with reference to Shenkman, but also for other reasons? A. Other reasons in connection with the case. Q. The other reasons were not communicated to Mr. Stevenson, were they? A. Apparently not; not in the letter. They were verbally." And on page 37 at 19, the president again says: "That he was expelled for other reasons than the refusal to abide by the Shenkman finding," and again, on pages 149 to 153, he again says, in response to a question, that Stevenson was expelled for the dual reasons.

3. Because, assuming that the board of arbitration was legally constituted, still, it appears that Stevenson did not disobey their findings by insisting on Shenkman making payment to him under the terms of the separate agreement which Stevenson claimed Shenkman had made.

The sections of the constitution and by-laws heretofore quoted provide the limit of the authority of the Board, to wit: "Hearing any differences arising among the members of the Board," and the "finding shall be binding upon said members."

It has been stipulated as hereinbefore set forth that Stevenson had obeyed the finding of the Board so far as Roney was concerned, and the only parties to the arbitration who were "members of the Board" were Roney and Stevenson.

Shenkman was not a member of the Board, and the differences between Shenkman and Stevenson were not the subject of arbitration before the Board,

nor did the Board have authority under the constitution and by-laws to settle the differences between Stevenson and Shenkman so that Stevenson had a perfect right to claim from Shenkman the enforcement of the separate agreement and it was not the business of the respondent-appellant or its arbitration committee. All that committee could consider was Stevenson's claim as a listing realtor to a thirty-five per cent division of the commission earned by Roney, the selling member.

4. A violation on the part of Stevenson of the rules governing multiple listing is not cause for expulsion, either under the constitution and by-laws, or under the separate rules governing multiple listing.

Under Reason #2, it has been shown that Stevenson was expelled both because he refused to withdraw his claim against Shenkman and because he violated the multiple listing rules.

Respondent-appellant introduced in evidence the rules governing the multiple listing system and it was marked "Respondent's Exhibit 5," (C. 195) as follows:

“IS THERE ANY FINE FOR NOT COMPLYING WITH THE RULES AND REGULATIONS OF THE MULTIPLE LISTING SYSTEM?”

There is no fine attached to the system.

IS THERE ANY OTHER PENALTY, OTHER THAN A FINE FOR NOT COMPLYING WITH THE RULES OF THE SYSTEM?

You merely punish yourself financially. Never forget that the benefits of the Multiple Listing System are mutual and EVERY

REALTOR will profit by it. Certainly you will take advantage of the sales power in moving the property of your client that can be found in the proper use of this system."

From the above it clearly appears that the action of the respondent in expelling Stevenson was illegal. The return of the respondent-appellant admits:

1. "That it is true that the said John J. Stevenson claimed to have listed with the Secretary of the Atlantic City Real Estate Board certain property belonging to one Jacob J. Shenkman, which was afterwards sold through the efforts of Russell C. Roney, a member of the Atlantic City Real Estate Board (C. 183, l. 11)."

2. "That there was an arbitration of the differences between Russell C. Roney and John J. Stevenson."

3. "That the result of said arbitration was that the said John J. Stevenson had no claim either against the said Jacob J. Shenkman or the said Russell C. Roney."

4. "That thereafter, Stevenson instituted suit or made a demand for commissions upon Jacob J. Shenkman."

5. "That the Atlantic City Real Estate Board, being advised of the claim of Stevenson against Shenkman, demanded that the said Stevenson withdraw his claim against the said Jacob J. Shenkman, which the said John J. Stevenson refused to do" (C. 184, l. 3 to 12).

The return to the alternative writ does not deny that Jacob J. Shenkman was not a member of the Atlantic City Real Estate Board, nor does it deny that John J. Stevenson ever disobeyed the finding of

the arbitration committee, insofar as any claim he might have had for participation in the Roney commissions; in fact, the respondent-appellant admits that Stevenson never made any demand on Roney for commissions after the arbitration committee had found against Stevenson's claim. This is borne out by all of the testimony of the respondent's witnesses.

The situation, therefore, on this branch of the case is that the Atlantic City Real Estate Board admits that one of the reasons for expelling Stevenson was because he persisted in his efforts to collect from J. J. Shenkman commissions which he claimed to be due him on the sale of the real estate belonging to Shenkman, which had been sold by Roney, and which Stevenson claimed he had listed under the multiple listing system.

The constitution and by-laws, as set forth on page 3 of the Case, provides for an arbitration of differences "arising among members of the Board" (lines 11 to 24), and further provides that "Any member who shall refuse and neglect to comply with the findings of the Board shall be liable to suspension or expulsion."

The Board exceeded its authority in expelling Stevenson because Shenkman was not a member of the Board, and the finding of the Board could only relate to the differences between Stevenson and Roney, and as the Court said in its opinion, "The powers of the committee could not be extended further than to determine the controversy between Stevenson and Roney." Shenkman was not a member of the Real Estate Board, and Stevenson's relations to Shenkman were not within the scope of the hearing. The expulsion was based upon the theory that Stevenson had not abided by the finding. The action

which he took or proposed to take against Shenkman was upon a separate agreement, as he claimed, with Shenkman. It had nothing to do with the listing of the property, but this matter was not inquired into by the committee before which the meeting was held.

It is submitted that on the pleadings as they appeared before the Supreme Court, there could be no question but what on this branch of the case alone, Stevenson was entitled to a peremptory writ.

The respondent-appellant endeavored to raise an issue of fact in its return to the alternative writ.

The relator-respondent claimed and in his alternative writ sets forth, that he was expelled from membership in said Board for "other reasons," which "other reasons" were not the subject of charges by any member of said Board against said John J. Stevenson.

The respondent-appellant, in its return, says it is not true that the expulsion of said John J. Stevenson was based on "other reasons" than those upon which he had been given a hearing. To cover this branch of the case, the relator-respondent was compelled to give notice of his intention to use the testimony relied upon in the support of the original application, for a writ of mandamus.

The Court, in its opinion, said (p. 194 at 17).

"It also appears that the Real Estate Board expelled Stevenson for 'other reasons' than the alleged violation of the findings of the committee. Stevenson was accorded no hearing upon these 'other reasons.' These reasons might have been the ones which moved the Board to expel Stevenson."

In the testimony of the respondent-appellant, as set forth in the original State of the Case, it clearly

appears that Stevenson was expelled for other reasons. This has been fully argued under Section 2 of this brief.

The last reason relied upon by the relator-respondent is that even if he had violated the finding of the arbitration committee insofar as its findings concerned the relator-respondent and Roney, both members of the Board, that such a violation, under the rules of the respondent-appellant, could not be punished by expulsion.

To state the proposition differently, the controversy between Stevenson and Roney arose out of the rules of the multiple listing system, and if Stevenson did anything at all, he violated the terms of the multiple listing system rules; that is, if he did anything at all as against a member of the Board.

On page 195 of the new Case, the rules of the Board, with reference to the violations of the multiple listing system are fully set forth, and these rules specifically provide "there is no fine attached to this system nor is there any other penalty for not complying with the rules of the system" than that "you merely punish yourself financially."

The respondent-appellant exceeded its authority,

First: In that it expelled Stevenson for resisting in a demand against Shenkman, who was not a member of the Board, and

Second: Because it expelled him for "other reasons" upon which no charges were preferred.

Third: Because it meted out a penalty beyond the provisions of the rules of the Board itself.

The foregoing situation as set forth by the testimony cited in this brief was a situation in which the parties found themselves at the time of the argument of the Rule to Show Cause.

The Supreme Court granted to the relator-respondent an alternative writ of mandamus, the opinion of the Court being found on page 191.

Thereafter, the alternative writ was served on the respondent-appellant, and is to be found on page 174.

The respondent-appellant filed its return to the alternative writ, which is to be found on page 182, and the relator-respondent filed his demurrer to the respondent-appellant's return as set forth on page 186.

It will be noticed that the relator-respondent mislabelled the demurrer to the return, by using the words "Answer to Return" instead of "Demurrer to Return."

The respondent-appellant endeavors to take advantage of this technical defect in the pleadings and argues that the relator-respondent was not entitled to his pre-emptory writ by reason of this technical error.

It is submitted that the pleading labelled "Answer" is in fact and in law a demurrer.

The language of the sixth paragraph of the demurrer, see page 188, is "Because the matters and things set forth in the return made by the respondent in this cause ARE NOT SUFFICIENT IN LAW TO REQUIRE THE RELATOR TO PLEAD THERETO."

The Court below had this same question raised not only in the printed brief but on the oral argument, and dealt with the pleading as a demurrer and granted the pre-emptory writ.

The opinions of the Court below are found first, as to the original application, on page 191, and on the alternative writ, on page 196.

BOLTE & TRIPICIAN,
Attorneys for Relator-Respondent.

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