

STATE OF NEW YORK  
DEPARTMENT OF STATE  
OFFICE OF ADMINISTRATIVE HEARINGS  
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In the Matter of the Complaint of

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

Complainant,

**DECISION**

Complaint No.: 2016-1941

-against-

**PATRICK J. HENRY,**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on April 5, 2018 at the office of the Department of State located at 123 William Street, New York, New York.

The respondent did not appear.

The complainant was represented by Matthew Wolf, Esq.

**COMPLAINT**

The complaint alleges that the respondent real estate broker made a material misstatement on his license application, engaged in deceptive acts or practices, listed a property for sale without authorization of the seller, and collected and retained monies from an unauthorized sale.

**FINDINGS OF FACT**

1) On January 30, 2018 Notices of Hearing together with copies of the complaint were served by certified and regular mail addressed to the respondent at his address appearing in the records of the Department of State as his current business address, two addresses, in Evans Mills and Watertown, New York used by him on renewal applications, and an address given on a bench warrant. The mailings to the current business address were returned by the Postal Services marked "not deliverable as addressed" and "unable to forward." The certified mailing to the Evans Mills renewal address and to Watertown were returned by the Postal Service marked "unclaimed" and

"unable to forward," but the regular mail to those addresses was not returned. The certified mail to the bench warrant address was returned by the Postal Service marked "MLNO" (moved left no address), and the regular mail to that address was returned with the same marking as well as with the notations "unclaimed" and "unable to forward" (State's Ex. 1).

2) The respondent was initially licensed as a real estate broker on October 22, 2010. After a series of renewals that license expired on November 3, 2017 (State's Ex. 2).

3) On March 9, 1990 the applicant was sentenced to three years of probation and a fine of \$250.00 on his plea of guilty of Attempted Grand Larceny in the 4<sup>th</sup> Degree, Penal Law §§110/155.30, a class A misdemeanor (State's Ex. 4).

4) The respondent applied for his initial license by application dated September 21, 2010 on which he answered "no" to the question "Have you ever been convicted in this state or elsewhere of any criminal offense that is a misdemeanor or a felony?" (State's Ex. 5).

5) On October 5, 2016 a criminal complaint was filed in Oneida County charging the respondent with having sold a manufactured home for \$12,000.00 without any legal authority to do so (State's Ex. 6 and 7). He was indicted on a charge of Grand Larceny in the 3<sup>rd</sup> Degree, Penal Law §155.35, a class D felony, and a bench warrant for his arrest was issued on April 11, 2017 (State's Ex. 8).

6) On December 21, 2017 the respondent pled guilty to Grand Larceny in the 3<sup>rd</sup> Degree, was given credit for time served, and was sentenced to a three year conditional discharge (State's Ex. 11).

7) The complainant's investigator was advised by a State Police investigator that the respondent also had caused a "young couple" to issue him a \$10,000.00 check on a foreclosed property for which the respondent did not have a listing. No documentary evidence supporting that charge was presented.

### **OPINION AND CONCLUSIONS OF LAW**

I- To obtain personal jurisdiction and bind the respondent to the agency decision the complainant must properly serve the respondent with notice of the hearing and a copy of the Complaint and afford him the opportunity to be heard. See, Siegel, New York Practice § 58 (4th ed. 2005). Service of the Notice of Hearing and Complaint in this matter was made by certified mail addressed to the respondent at his last known business address appearing in the records of the Department of State, the addresses on two renewal applications submitted by him, and the address on a bench warrant. The certified and regular mail to the current address and the warrant address was returned without a forwarding address, as was the certified, but not the regular, mail to the renewal addresses.

Where, as here, service by certified mail is returned by the Postal Service, the complainant is required to take any reasonable and practical additional steps available to ensure notice is afforded. See, Jones v. Flowers, 547 US 220, 226 (2006)). In this instance there were no

reasonable and practical steps available as the Postal Service did not have a forwarding address and, in any case, the Notice and Complaint had also been sent by regular mail which was not returned. The complainant was not required to search beyond its records and those provided by the US Postal Service for Appellant's current address. *Department of State v Battista*, 05 DOS APP 11 (2011).

Service properly made in a manner reasonably calculated to provide notice of the time, date, place, manner and nature of the proceedings is sufficient whether or not the opposing party actually receives the notice, see *Persad v Division of Licensing Services*, 63 DOS APP 09 (2009); *Pinger v Division of Licensing Services*, 23 DOS APP 07 (2007). As notice was properly served in this instance, and in fact actually received, the hearing was permissibly conducted in the absence of the applicants. *Patterson v Department of State*, 35 AD2d 616 (3d Dept. 1970); *Staley v Division of Licensing Services*, 14 DOS APP 01 (2001); *Department of State v Battista*, 05 DOS APP 11 (2011); *Roy Staley v Division of Licensing Services*, 14 DOS APP 01 (2001); *Matter of the Application of Rose Ann Weis*, 118 DOS 93 (1993).

II- Inasmuch as the Department of State retains jurisdiction over a disciplinary matter and may impose disciplinary sanctions where (1) the alleged unlawful conduct occurred while the respondent was licensed and (2) the respondent was eligible to automatically renew the prior license at the time of the commencement of the action, and inasmuch as the respondent may automatically renew his license until November 3, 2019 (Real Property Law (RPL) §441 (2)) the expiration of the respondent's license does not deprive this tribunal of jurisdiction over the alleged misconduct. See, *Division of Licensing Services v Akbar Yasrebi*, 12 DOS 99 (1999); *Division of Licensing Services v Thabit Uadah*, 287 DOS 98 (1998).

III- On his original application for a license as a real estate broker the respondent falsely stated that he had never been convicted of a misdemeanor or felony. As a real estate broker applicant is required to establish his or her trustworthiness (RPL §441 (1) (b)) that was a material misstatement and a demonstration of untrustworthiness.

IV- While the Complaint makes no reference to the respondent's conviction, it does establish the validity of the charge that the respondent sold a manufactured home without the authority to do so. I find, therefore, that the respondent's conduct was a further demonstration of untrustworthiness.

V- The charge regarding the \$10,000.00 check allegedly received from a "young couple" was supported only by the testimony of the complainant's investigator that she was told about the incident by a State Police investigator. There was no copy of any criminal complaint presented. Neither was any real evidence that the respondent was not authorized to list the property presented. I find therefore that the charge must be, and is, dismissed.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Patrick J. Henry made a material misstatement on his application and has demonstrated untrustworthiness, and accordingly, pursuant to Real Property Law §441-c, his license as a Real Estate Broker, UID #10351203556, is deemed revoked effective immediately.

/s/

Roger Schneier  
Administrative Law Judge

Dated: April 5, 2018