

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.:C170039

-against-

JONATHAN CABRERA,

Respondent.

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The above noted matter came on for hearing on November 16, 2017 at the office of the Department of State (“Department”) located at 123 William Street, New York, New York. The case has been reassigned from Judge Ziedah Diata to Judge John Kenny.

The applicant failed to appear. The Division of Licensing Services (“DLS”) was represented by Hearing Presenter Aqil Qureshi.

COMPLAINT

The complaint alleges that respondent real estate salesperson has failed to provide proof that he successfully completed the required 75 hours of qualifying education prior to applying for his license, and that he failed to cooperate with the complainant’s investigation.

FINDINGS OF FACT

1) Respondent is registered as a real estate salesperson, UID #10401294594, with a license expiration date of September 29, 2018 (State’s Ex. 1). The respondent is associated with Douglas Elliman Real Estate.

2) Notice of Hearing together with a copy of the Complaint was served by certified and regular mail to the business address of the respondent on September 7, 2017. The certified mail was signed for as being received and the regular mailing was not received back from the Post Office (State’s Ex. 1).

3) On September 22, 2016, the respondent submitted an online application seeking licensure as a real estate salesperson. The respondent's examination and education history, based on information provided by the respondent at time of submission, was automatically converted by the Department's licensing system into a "Certification Preparation Report". The Certification Preparation Report indicates, in part, that the respondent claimed his qualifying education was completed on or about June 9, 2015. Based upon the respondent's original submission, the Department issued the requested license on September 30, 2016 (State's Ex.2).

4) By an email dated April 7, 2017, the respondent was informed that he needed to provide proof of the required 75 hours of qualifying education by submitting documentation of his course completion certificate(s) within 14 days of the date of the email message (State's Ex. 2).

5) By letter dated May 3, 2017, which was sent by email only, the DLS advised the respondent that he failed to comply with the April 7, 2017 request for documentation. The DLS proposed to recommend the revocation of his real estate salesperson license for non-compliance with the audit. In the letter, the respondent was advised of the right to have a hearing or he could waive his right to a hearing and either provide proof of completion of the 75 hours of approved courses or that he could surrender his license by completing an attached Surrender Form (State's Ex. 2). The respondent failed to reply or comply with the request from the DLS.

OPINION

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 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 notice. *See Persad v. Division of Licensing Services*, 63 DOS APP 09 (2009); *Pinger v. Division of Licensing Services*, 23 DOS APP 07 (2007).

Service of the notice of hearing and complaint in this matter was made by regular and certified mail addressed to the respondent at his last known business address as appearing in the records of the DLS. The certified mailing was signed for as received and the regular mailing was not returned to the DLS by the Post Office. Accordingly, to the extent that there is evidence that notice was properly served in this instance, the hearing was permissibly conducted in the respondent's absence. *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); *Matter of the Application of Rose Ann Weis*, 118 DOS 93 (1993).

II- The complaint alleges that the respondent violated Real Property Law (RPL) §441(1)(c) by not supplying proof that he had completed 75 hours of qualifying education. That statute actually applies to real estate broker license applications by real estate salespersons, and provides a method to credit the salesperson's qualifying education to the fulfillment of the required real estate broker qualifying education requirement. It is RPL §441(1-A) (d) which sets forth the requirement that an applicant for a license as a real estate salesperson provide proof of having

completed 75 hours of qualifying education. Here, the respondent has not provided such proof and, therefore has violated RPL §441(1-A) (d).

III- Pursuant to RPL §442-e (5) the respondent was required to cooperate with the complainant's investigation. By failing to respond to the complainant's emails, the respondent violated that statute.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Jonathan Cabrera has violated Real Property Law §§441 (1-A) (d) and 442-e (5), and accordingly, pursuant to Real Property Law §441-c, his license as a real estate salesperson, UID #10401294594, is suspended effective immediately and until such time as he produces proof satisfactory to the Department of State that prior to the submission of his original application for that license he completed the required 75 hours of real estate salesperson qualifying education, and until he shall have paid a fine of \$250.00. He is directed to send, as appropriate, his license certificate, pocket card, and salesperson's identification, proof of completion of the qualifying education, and a certified check or money order for the fine payable to "Secretary of State" to Norma Rosario, Department of State, Division of Licensing Services, One Commerce Plaza, 99 Washington Avenue, 5th Floor, Albany, New York, 12231-0001. As an alternative to payment by check or money order, the fine may be paid by credit card using the form available at <http://www.dos.ny.gov/forms/licensing/1450-f-1-a.pdf>.

/s/
John E. Kenny
Administrative Law Judge

Dated: May 2, 2018