

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.:C170018

-against-

DARA MARSHALL,

Respondent.

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The above noted matter came on for hearing on March 6, 2018 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 Nadine Azarian.

COMPLAINT

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

FINDINGS OF FACT

1) The respondent is registered as a real estate salesperson, UID #10401293231, with a license expiration date of August 25, 2018 (State’s Ex. 3). The respondent is associated with Highline Residential LLC.

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 December 21, 2018. The certified mail was returned as “Insufficient Address-Unable to Forward” and the regular mailing was not returned to the DLS by the Post Office (State’s Ex. 1). On February 21, 2018, The DLS mailed a copy of the Notice of Hearing with a copy of the Complaint by certified and regular mail to the home address of the respondent. Neither the certified or regular mailings were returned to the DLS by the Post Office (State’s Ex. 1).

3) On August 25, 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 her qualifying education was completed on or about July 27, 2016. Based upon the respondent's original submission, the DLS issued the requested license on August 26, 2016 (State's Ex.2).

4) By an email dated February 3, 2017, the respondent was informed that she needed to provide proof of the required 75 hours of qualifying education by submitting documentation of her course completion certificate(s) within 14 days of the date of the email message (State's Ex. 2).

5) By letter dated March 20, 2017, which was sent by email only, the DLS advised the respondent that she failed to comply with the April 7, 2017 request for documentation. The DLS proposed to recommend the revocation of her 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 she could waive her right to a hearing and either provide proof of completion of the 75 hours of approved courses or that she could surrender her 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 in this matter was made by both certified and regular mail to the respondent's last known home and business addresses. Both the certified mailings were returned to the DLS by the Post Office. The regular mailings were 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 she 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) a real estate salesperson is obligated 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 Dara Marshall has violated Real Property Law §§441 (1-A) (d) and 442-e (5), and accordingly, pursuant to Real Property Law §441-c, her license as a real estate salesperson, UID #10401293231, is suspended effective immediately and until such time as she produces proof satisfactory to the Department of State that prior to the submission of her original application for that license she completed the required 75 hours of real estate salesperson qualifying education, and until she shall have paid a fine of \$250.00. She is directed to send, as appropriate, her 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