

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

NESU NURUDDIN

DECISION

For a License as a Real Estate Salesperson
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The above noted matter came on for hearing before the undersigned, Roger Schneier, on May 15, 2018 at the office of the Department of State located in New York, New York.

The applicant failed to appear.

The Division of Licensing Services (hereinafter "DLS") was represented by Matthew Wolf, Esq.

ISSUE

The issue before the tribunal is whether the applicant should be denied a license as a real estate salesperson because of a prior criminal conviction.

FINDINGS OF FACT

1) By application received on December 22, 2017 the applicant applied for a license as a real estate salesperson (State's Ex. 2).

2) On January 28, 2015 the applicant was convicted of Conspiracy to Commit Bank Fraud, 18 USC 1349, a felony (State's Ex. 5).

3) The applicant was granted a Certificate of Relief from Disabilities on April 13, 2016.

4) A prior application by the applicant for a license as a real estate salesperson was denied because of the conviction after hearing in which the applicant was represented by an attorney. *Matter of the Application of Nesu Nuruddin*, 240-DOS-17 (2017).

5) By letter dated January 24, 2018 the applicant was advised by DLS that it proposed to deny his application because of the conviction and that he could request a hearing, which he did by letter received on February 12, 2018. Accordingly, Notice of Hearing was served by certified and regular mail addressed to the applicant at his address appearing on both his application and his

request for a hearing and posted on March 23, 2018. The certified mail was delivered on March 26, 2018, and the regular mail was not returned (State's Ex. 1).

OPINION AND CONCLUSIONS OF LAW

I- To obtain personal jurisdiction and bind the applicant to the agency decision DLS must properly serve the applicant with notice of the hearing and afford him the opportunity to be heard. *See Siegel*, New York Practice § 58 (4th ed., 2005). Service of the Notice of Hearing in this matter was made by certified and regular mail addressed to the applicant at the address appearing on both his application and his request for a hearing and posted on March 23, 2018. The certified mail was delivered on March 26, 2018, and the regular mail was not returned.

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, the hearing was permissibly conducted in the absence of the applicant. *See 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). Accordingly, the holding of an ex parte quasi-judicial administrative hearing was permissible. *Patterson v Department of State*, 35 AD2d 616, 312 NYS2d 300 (1970); *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- A hearing on an application for licensure or registration is held at the request and instance of an applicant who has been notified of the proposed denial of the application. 19 NYCRR 400.4(b). At the hearing it would have been the applicant's burden to establish that he is qualified to be licensed as a real estate salesperson. Real Property Law §441; State Administrative Procedure Act §306.

The applicant made a request for a hearing, but, although properly served with notice, failed to appear. Having considered all of the factors required by Corrections Law Article 23-A, I find that he has, therefore, failed to meet his burden of proving that he is qualified to be licensed as a real estate salesperson. 19 NYCRR 400.4(b); *Matter of the Application of Delroy Antonio*, 79 DOS 95 (1995); *Matter of the Application of Edward Davis*, 58 DOS 94 (1994); *Matter of the Application of Jeffery H. Mintz*, 35 DOS 94 (1994).

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Nesu Nuruddin for a license as a real estate salesperson is denied.

/s/

Roger Schneier

Administrative Law Judge

Dated: May 16, 2018