

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.: C170155

-against-

**DAVID CHEUNG,**

Respondent.

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The above noted matter came on for hearing before the undersigned, Aiesha L. Hudson, on February 13, 2018 at the office of the Department of State located at 99 Washington Avenue, Albany, New York.

The respondent failed to appear.

The complainant was represented by Hearing Presenter Aqil Qureshi.

**COMPLAINT**

The complaint alleges that the 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) On February 23, 2016, the respondent submitted an on-line application for a license as a real estate salesperson. In his on-line application for the license, the respondent certified that he had successfully completed 75 hours of approved pre-licensure education on or about February 3, 2016 (State's Ex. 3). Based on the representations in his submission, on February 24, 2016, the respondent was issued a real estate salesperson license, UID# 10401285677, under the sponsorship of Century 21 Bay Benjamin, for a term ending February 23, 2018 (State's Ex. 2, 3).

2) The respondent's association with Century 21 Bay Benjamin was terminated on September 19, 2016 (State's Ex. 2). He is currently not associated with a licensed real estate broker (State's Ex. 3).

3) On August 2, 2017, the complainant sent the respondent an email requesting that he provide proof of completion of 75 hours of qualifying education. The respondent did not reply to either that email or a follow up email sent on August 28, 2017, both of which were sent to the email address that the respondent provided when he applied for his license (State's Ex. 3).

4) Notice of Hearing together with a copy of the Complaint was sent by certified and regular mail to the respondent's residence address in the records of the Department of State on December 26, 2017 (date of posting). Neither the certified or regular mail was returned by the U.S. Postal Service. The certified mail return receipt was returned signed, indicating delivery was made (State's Ex. 1).

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

I- To obtain personal jurisdiction and bind the respondent to the agency decision, DLS must properly serve him with notice of the hearing 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 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).

Service of the Notice of Hearing and Complaint in this matter was made by both certified and regular mail addressed to the respondent at his residence address in the records of the Department of State. Neither the regular or certified mail was returned, and the certified mail receipt was returned signed indicating delivery was made. 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).

II- 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** David Cheung 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 #10401285677, 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.

/s/  
Aiesha L. Hudson  
Administrative Law Judge

Dated: May 17, 2018