

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.: 2015-1565

-against-

**KEYNA BURNS,**

Respondent.

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The above noted matter came on for a video conferenced hearing before Administrative Law Judge Teneka Frost-Amusa on June 28, 2017 at the offices of the Department of State located at 99 Washington Avenue, Albany, New York and 123 William Street, New York, New York. Judge Frost-Amusa was subsequently appointed to the Schenectady City Court, and the matter has been re-assigned to the undersigned, Roger Schneier, for determination.

The respondent did not appear at the hearing.

The complainant was represented by Matthew Wolf, Esq.

**COMPLAINT**

The complaint alleges that the respondent real estate salesperson received compensation in a real estate transaction from someone other than the broker with whom she was associated, engaged in a real estate transaction without the supervision of the broker with whom she is associated, collected a commission under an unlicensed name, and engaged in deceptive acts or practices.

**FINDINGS OF FACT**

1) Notice of Hearing together with a copy of the Complaint was served by certified and regular mail addressed to the respondent at her last known address appearing in the records of the Department of State and posted on May 18, 2017. As of the date of the hearing neither the return

receipt nor the mailings were returned by the Postal Service, although Postal Service on-line tracking indicates that as of June 2, 2017 the certified mail was in the process of being returned (State's Ex. 1).

2) The respondent is duly licensed as a real estate salesperson in association with Empire Greatland Realty Inc. ("Empire") for the license period ending July 22, 2018. From March 28, 2012 to November 14, 2014 she was licensed as a real estate salesperson in association with CWB Real Estate LLC ("CWB") (State's Ex. 2).

3) On June 27, 2009 the respondent rented a single family house located at 410 W. 261 Street, Bronx, New York to reside in with her family. Upon renewal of the lease she requested that the lease be placed in the name of her company, Key Property Service LLC.

4) On or about May 15, 2014 the respondent's landlord agreed to release her from the lease. The respondent located another tenant for the property, and arranged for her to rent it. In return the tenant, Jesenia Collazo, paid Key Property Service LLC, which is not a licensed real estate broker in the State of New York, a commission of \$3,500.00. The respondent did not advise CWB of the transaction (State's Ex. 4, 5, and 6).

### **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 (4<sup>th</sup> ed. 2005). Service of the Notice of Hearing and Complaint in this matter was made by certified and regular mail addressed to the respondent at her last known business address appearing in the records of the Department of State. The certified mail apparently was not delivered. Postal Service tracking shows, even though it was not received back, that it was being returned. The regular mail was not returned and, therefore, presumably was delivered.

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 since the regular mail was not returned and, therefore, was apparently delivered. 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- A real estate salesperson may not receive compensation for real estate brokerage transactions from any person other than the broker with whom that salesperson is licensed. Real Property Law (RPL) §442-a. By receiving a rental commission of \$3,500.00 directly from a tenant and not from the broker with whom she was licensed the respondent violated that statute.

III- A real estate salesperson is required to work under the direct supervision of the real estate broker with whom he or she is associated. RPL §440 (3), 19 NYCRR 175.21. By engaging in a real estate broker transaction without such supervision the respondent violated the statute and regulation.

IV- Where a broker or salesperson has received money to which he or she is not entitled, he or she may be required to return it, together with interest, as a condition of retention of his license. *Donati v Shaffer*, 83 NY2d 828, 611 NYS2d 495 (1994); *Kostika v Cuomo*, 41 N.Y.2d 673, 394 N.Y.S.2d 862 (1977); *Zelik v Secretary of State*, 168 AD2d 215, 562 NYS2d 101 (1990); *Edelstein v Department of State*, 16 A.D.2d 764, 227 N.Y.S.2d 987 (1962).

V- In determining the appropriate penalty for the respondent's violations, I have considered that fact that she essentially operated an unlicensed real estate brokerage business. Such conduct is in direct contravention of the basic requirements of the licensing law, and it warrants the revocation of the respondent's license as a real estate salesperson.

### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Keyna Burns has violated Real Property Law §§440 (d) and 442-a and 19 NYCRR 175.21, and has thereby demonstrated untrustworthiness and incompetency, and accordingly, pursuant to Real Property Law §441-c, her license as a real estate salesperson, UID #10401223040, is revoked effective immediately. She is directed to surrender her license certificate, pocket card, and salesperson's identification by mail addressed to Norma Rosario, Department of State, Division of Licensing Services, One Commerce Plaza, 99 Washington Avenue, 5th Floor, Albany, New York 12231-0001, and

**IT IS FURTHER DETERMINED THAT** should the respondent ever apply for a new license pursuant to Real Property Law Article 12-A, no action shall be taken on the application until she has produced proof satisfactory to the Department of State that she has refunded the sum of \$3,500.00 plus interest from May 15 2014 at the legal rate of interest for judgements (currently 9% per year) to Jesenia Collazo.

/s/  
Roger Schneier  
Administrative Law Judge

Dated: January 16, 2018