

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

JOSHUA D. COHEN

For a License as a Real Estate Broker

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DECISION

Complaint No.: 2018-1532

The above noted matter came on for hearing before the undersigned, Roger Schneier, on January 29, 2019 at the office of the Department of State located at 123 William Street, New York, New York.

The applicant having been advised of his right to be represented by an attorney chose to represent himself.

The Division of Licensing Services (DLS) was represented by Jenifer Rajkumar, Esq.

ISSUE

The issue before the tribunal is whether the applicant should be denied a license as a real estate broker because he previously conducted business as a real estate broker without the benefit of a license.

FINDINGS OF FACT

1) By application submitted on October 4, 2018 the applicant applied for a license as a real estate broker (State's Ex. 2).

2) The applicant has owned and operated his own rental real property for approximately 30 years. In 2016 he was asked to manage a residential co-op which was experiencing financial difficulty because of prior mismanagement. He agreed to take on the assignment, which included the collection of maintenance/rent payments from the proprietary lease holders. However, when DLS learned of his activities he was advised his collection of the payments without a license as a real estate broker was unlawful, a fact of which he was not previously aware. He promptly agreed to obtain the required license and, following the guidance of DLS employees, completed real estate salesperson and real estate broker qualifying education and passed all of the required examinations (State's Ex. 1, App. Ex. C).

3) By letter dated October 11, 2018 the applicant was advised by DLS that it proposed to deny his application because his unlicensed activities indicated that he lacked the requisite good

character, trustworthiness and competence, and that he could request a hearing, which he did by letter received on November 9, 2018 (State's Ex. 1).

3) A letter from the president and vice president of the coop which the applicant managed attests to his honesty, integrity, and ability in managing the building, avoiding foreclosure, and putting it on a firm financial footing (App. Ex. A).

4) As evidence of his trustworthiness the applicant submitted proof of licenses issued to him by the New York City Department of Consumer Affairs, the United States Environmental Protection Agency, the Westchester County Department of Consumer Protection, and the City of Yonkers Consumer Protection Bureau (App. Ex. B).

OPINION AND CONCLUSIONS OF LAW

I- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that he is entitled to be licensed as a real estate broker. State Administrative Procedure Act §306(1). Substantial evidence “means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact... More than seeming or imaginary, it is less than a preponderance of the evidence, overwhelming evidence or evidence beyond a reasonable doubt (citations omitted).” *300 Gramatan Avenue Associates v. State Div. of Human Rights*, 45 NY2d 176, 408 NYS2d 54, 56-57 (1978); *Tutuianu v. New York State*, 22 AD3d 503, 802 NYS2d 465 (2nd Dept. 2005). “The question...is whether a ‘conclusion or ultimate fact may be extracted reasonably--probatively and logically’” *City of Utica Board of Water Supply v. New York State Health Department*, 96 AD2d 719, 465 NYS2d 365, 366 (1983), quoting *300 Gramatan Avenue Associates*, *supra*, 408 NYS2d at 57.

II- Pursuant to Real Property Law (RPL) §441 [1] [b], an applicant for a license as a real estate broker must establish that he is trustworthy. DLS contends that the applicant is not trustworthy, as evidenced by his having collected maintenance/rent payments without the benefit of a license as a real estate broker, a violation of RPL §§440 and 440-a.

Having heard and observed the applicant's testimony, I find his assertion that he was unaware the he needed to be licensed to collect the maintenance/rent payments to be entirely credible. The president and vice president of the co-op have attested to the applicant's honesty in saving the co-op from foreclosure, and the applicant's testimony that he did everything that was required of him once he learned that he needed a license is unrefuted. The common understanding of the functions of a real estate broker is that are to negotiate the sale or rental of real property, and it is understandable that a lay person, and, in the experience of the tribunal noted on the record, even an experienced attorney, might be unaware of the requirement of a license to collect maintenance/rent. I find, therefore, that the applicant's unlicensed maintenance/rent collection was the result of excusable ignorance and not evidence of a lack of the requisite good character, trustworthiness and competence, and that he has met his burden of proving by substantial evidence that he is entitled to be licensed as a real estate broker.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT pursuant to Real Property Law §§441 and 441-e the application of Joshua D. Cohen for a license as a real estate broker is granted.

/S/
Roger Schneier
Administrative Law Judge

Dated: January 29, 2019