

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS
-----X

In the Matter of the Complaint of

**DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES,**

Complainant,

DECISION

Complaint No.: C170091

-against-

SHANA TIMMER,

Respondent.

-----X

The above noted matter came on for hearing before the undersigned, Aiesha L. Hudson, on March 27, 2018 at the office of the Department of State located at 123 William Street, New York, New York.

The respondent failed to appear.

The complainant was represented by Hearing Presenter Nadine Azarian.

COMPLAINT

The complaint alleges that the 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) On July 11, 2014, the respondent submitted an on-line application for a license as a real estate salesperson. In her on-line application for the license, the respondent certified that she had successfully completed 75 hours of approved pre-licensure education on or about December 7, 2011. Based on the representations in her submission, on June 8, 2016, the respondent was issued a real estate salesperson license, UID# 10401290128, under the sponsorship of Fave Realty, Inc., for a term ending June 7, 2018 (State's Ex. 2).

2) Per Department of State records, the respondent has been associated with the licensed real estate broker Ideal Properties Group LLC since October 11, 2016 (State's Ex. 3).

3) On June 21, 2017, the complainant sent the respondent an email requesting that she 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 July 14, 2017, both of which were sent to the email address that the respondent provided when she applied for her license (State's Ex. 2).

4) Notice of Hearing together with a copy of the Complaint was sent by certified and regular mail to the respondent's last known business address in the records of the Department of State on January 18, 2018 (date of Affidavit of Service). Neither the certified or regular mail was returned by the U.S. Postal Service. The certified mail return receipt was not returned (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 her with notice of the hearing and afford her 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 her last known business address in the records of the Department of State. Neither the regular or certified mail was returned. 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).

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 June 21, 2017 email, the respondent violated that statute.¹

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Shana Timmer 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 #10401290128, 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.

/s/
Aiesha L. Hudson
Administrative Law Judge

Dated: June 14, 2018

¹ Because the respondent's failure to respond to the complainant's July 14, 2017 email was not alleged in the complaint, the tribunal cannot consider it as evidence of the respondent's failure to cooperate with the complainant's investigation.