

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,

AMENDED DECISION

Complaint No.:C170163

-against-

Christina Alonge,

Respondent.

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The above noted matter came on for hearing before the undersigned, John Kenny, on June 5, 2018, at the offices of the Department of State (“Department”) located at 99 Washington Avenue, Albany, New York.

The applicant failed to appear. The Division of Licensing Services (“DLS”) was represented by Jenifer Rajkumar, Esq.

COMPLAINT

The complaint alleges that 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, that her application for licensure contained a material misstatement and that she failed to cooperate with the complainant’s investigation.

FINDINGS OF FACT

1) The respondent was registered as a real estate salesperson whose license expired on April 17, 2018. The respondent has not renewed her license (State’s Ex. 2).

2) Notice of Hearing together with a copy of the Complaint were served by certified and regular mail to the business address of the respondent on March 22, 2018. The certified mail was signed for as received and the regular mail was not returned to the DLS by the Post Office (State’s Ex. 1).

3) On April 8, 2016, the respondent submitted an online application seeking licensure as a real estate salesperson. The respondent’s examination and education history, based on information provided by the respondent at time of submission, was automatically converted by the

Department's licensing system into a "Certification Preparation Report". The Certification Preparation Report indicates, in part, that the respondent claimed her qualifying education was completed on or about August 20, 2013. Based upon the respondent's original submission, the DLS issued the requested license on April 18, 2016 (State's Ex.3).

4) By an email dated September 1, 2017, the respondent was informed that she needed to provide proof of the required 75 hours of qualifying education by submitting documentation of her course completion certificate(s) within 14 days of the date of the email message (State's Ex. 3).

5) By letter dated October 23, 2017, which was sent by email only, the DLS advised the respondent that she failed to comply with the September 1, 2017 request for documentation. The DLS proposed the revocation of her real estate salesperson license for non-compliance with the audit. In the letter, the respondent was advised of the right to have a hearing. She was also advised she could waive her right to a hearing and either provide proof of completion of the 75 hours of approved courses, or surrender her license by completing an attached Surrender Form (State's Ex. 3). The respondent failed to reply or comply with the request from the DLS (State's Ex. 3, Affirmation of Marcella Rose and Examination Audit).

OPINION

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 (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 or not the opposing party actually receives 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 in this matter was made by both certified and regular mail to the respondent's last business addresses. The certified mail was signed for as received. The regular mail was not returned to the DLS by the Post Office. 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- As the party that initiated the hearing, the burden is on the complainant to prove, by substantial evidence, the truth of the charges set forth in the complaint. 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*, 45NY2d 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 *Gramatan Avenue Associate*, *supra*, 408 NYS2d at 57.

III- 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).

IV- A license as a real estate salesperson or broker may be revoked or suspended if the licensee made a material misstatement on said application for the license. RPL §441-c. A material misstatement in an application is an incorrect statement, or an omission of fact which, in whole or in part, is an essential factor in determining the fitness of the applicant for licensure. *Division of Licensing Services v. Gise*, 48 DOS 88; *see Gise v. Shafer*, 153 AD2d 688, 544 NYS2d 677 (1989). In other words, a material misstatement is any statement made in an application that, if true facts were known, would either (1) automatically disqualify the licensee from renewing his or her license under the requirements outlined in the Real Property Law, Article 12-A, or (2) enable the Division of Licensing Services to, in its discretion, deny the renewal of a license. *Division of Licensing Services v. Bzdel*, 290 DOS 97 (1997). In order to make a material misstatement in violation of the Real Property Law, the licensee must have made the statement with the intent to deceive the licensing agency. *Id.*; *see also Division of Licensing Services v. Bell*, 68 DOS 05 (2005); *Mack v. Division of Licensing Services*, 341 DOS 03 (2003); *Division of Licensing Services v. Schultz*, 168 DOS 12 (2012).

Here, the DLS has failed to prove that the respondent made any material misrepresentations on her application for licensure. There is no evidence that she did not, in fact, complete her 75 hours of qualifying education. Given that there is no proof presented that the respondent made a false statement on her application, there cannot be any determination made about whether she made a statement with the intent to deceive the DLS. Accordingly, this charge is dismissed.

V- The DLS retains jurisdiction over a disciplinary hearing and may impose disciplinary sanctions where (1) the alleged unlawful conduct occurred while the respondent was licensed and (2) the respondent was eligible to automatically renew the prior license at the time of the commencement of the action and when the hearing was held (*see Division of Licensing Services v. Akbar Yasrebi*, 12 DOS 99 (1999); *Division of Licensing Services v. Thabit Uqdah*, 287 DOS 98 (1998); *see also Albert Mendel & Son, Inc. v. New York Dept. of Agriculture and Markets*, 90 AD2d 567, 567, 455 N.Y.S. 2d 867, 869 (1982); *Maine Sugar of Montezuma, Inc. v. Wickham*, 37 AD2d 381, 383, 325 N.Y.S. 2d 858, 860 (1971)). RPL §441 (2) provides that the renewal period for a real estate salesperson's license is "two years from the date of expiration of a previously issued license." The expiration of a real estate salesperson's or broker's license does not deprive the Department of State of jurisdiction arising out of an event occurring prior to the expiration of such license, nor does it deprive the Department of State of the ability to revoke the expired license (*see Maine Sugar of Montezuma*, 37 AD2d at 383; *DLS v. Carol Branch*, 2267 DOS 07 (2007);

see also Matter of Brooklyn Audit Co. v. Department of Taxation & Fin. 275 N.Y. 284, 286 (1937); *Albert Mendel & Son, Inc.*, 90 AD 2d at 567). In this case, the respondent claimed that she had completed her qualifying education on August 20, 2013, which the DLS relied upon in issuing the license on April 18, 2016. She failed to cooperate with the DLS investigation in September and October of 2017. Pursuant to RPL §441(2), the respondent is entitled to renew her license by submission of an application prior to April 16, 2020. As the respondent is eligible to renew her license on or before April 20, 2020, the DLS retains jurisdiction and may impose disciplinary sanctions.

VI- Pursuant to RPL §442-e (5) a real estate salesperson is obligated to cooperate with the complainant's investigation. By failing to respond to the complainant's emails, the respondent violated the statute.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT, Christina Alonge has violated RPL §§441 (1-A) (d), 442-e (5), and accordingly, pursuant to RPL §441-c, her license as a real estate salesperson, UID #10401293231, 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. As an alternative to payment by check or money order, the fine may be paid by credit card using the form available at <http://www.dos.ny.gov/forms/licensing/1450-f-l-a.pdf>.

/s/

John E. Kenny

Administrative Law Judge

Dated: June 20, 2018