

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.:C170168

-against-

**Maxime J. Auguste,**

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 is registered as a real estate salesperson, UID #10401296734, with a license expiration date of November 29, 2018 (State’s Ex. 1). The respondent is associated with HP Greenfield Real Estate Ltd.

2) Notice of Hearing together with a copy of the Complaint was served by certified and regular mail to the business address of the respondent on March 22, 2018. Neither the certified mail or the regular mail were returned to the DLS by the Post Office (State’s Ex. 1).

3) On October 24, 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 29, 2016. Based upon the respondent's original submission, the DLS issued the requested license on November 30, 2016 (State's Ex.3).

4) By an email dated September 18, 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 November 11, 2017, which was sent by email only, the DLS advised the respondent that she failed to comply with the September 18, 2017 request for documentation. The DLS proposed to recommend 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 or she could waive her right to a hearing and either provide proof of completion of the 75 hours of approved courses or that she could 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 (4<sup>th</sup> 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 and regular mailings were 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 (2<sup>nd</sup> 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). By claiming that she had completed her 75 hours of qualifying education on August 29, 2016, and by failing to provide a copy of the course completion certificate, the respondent has made a material misstatement on her application.

V- 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 that statute.

#### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Maxime J. Auguste has violated RPL §§441 (1-A) (d), 442-e (5) and 441-c, 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, 5<sup>th</sup> 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-1-a.pdf>.

/s/

John E. Kenny  
Administrative Law Judge

Dated: June 18, 2018