

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.: C170114

-against-

DANIEL A. AGUILERA,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on June 26, 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 Jasmine Norman, Esq., appearing by video conference from the office of the Department of State at 99 Washington Avenue, Albany, New York.

COMPLAINT

The complaint alleges that the respondent real estate salesperson failed to provide evidence that prior to submitting his license application he completed the required qualifying education, and did not cooperate with the complainant's investigation of his application.

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 his last known residence address appearing in the records of the Department of State and at a residence address which he provided by telephone, and posted on March 6, 2018. The mail sent to the address in the records of the Department of State

was returned by the Postal Service marked "no such number" and "unable to forward." The certified mail sent to the other address was returned unclaimed and without a forwarding address, but the regular mail sent to that address was not returned (State's Ex. 1).

2) On July 12, 2016 the respondent was granted a license as a real estate salesperson in association with Rapid Realty Astoria Inc. On July 26, 2016 he changed his association to Maven Real Estate Group Inc. That association was terminated on February 1, 2017, and the respondent is not currently associated with a broker (State's Ex. 2 and 3).

3) On August 9, 2017 the complainant sent the respondent an email requesting that he provide proof of completion of 75 hours of qualifying education. On August 10, 2017 the respondent replied that he had never completed the education. In a subsequent email the complainant again requested proof of course completion, and the respondent opted to surrender his license. However the surrender form with which he was provided was never received by the complainant (State's Ex. 3).

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 (4th ed. 2005). Notice of Hearing and a copy of the Complaint were served by certified and regular mail addressed to the respondent at his last known residence addresses. The certified mailings were both returned, one unclaimed and the other with a notation that the address was not good, but the regular mail sent to an address provided by the respondent over the telephone was not returned.

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 as the Postal Service did not have a forwarding address. 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 respondent. *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- The complaint alleges that the respondent violated Real Property Law (RPL) §441 (1) (c) by not supplying proof that he 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. The applicant has not provided such proof, and has actually admitted that he did not complete the qualifying education, and, therefore, he has violated RPL §441 (1-a) (d).

III- Pursuant to RPL §442-e (5) a real estate salesperson is obligated to cooperate with the Department of State's investigations of possible license violations. The respondent replied to the complainant's inquiries. I find, therefore, that he did cooperate with the investigation. Accordingly, the charge of non-cooperation is dismissed.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Daniel A. Aguilera has violated Real Property Law §§441 (1-a) (d), and accordingly, pursuant to Real Property Law §441-c, his license as a real estate salesperson, UID #10401291440, is revoked effective immediately. He is directed to send, his license certificate, pocket card to Norma Rosario, Department of State, Division of Licensing Services, One Commerce Plaza, 99 Washington Avenue, 5th Floor, Albany, New York 12231-0001.

/s/
Roger Schneier
Administrative Law Judge

Dated: June 26, 2018