

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,

-against-

AMENDED DECISION

Complaint No.:C170009

BIANCA EVANS,

Respondent

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The above noted matter came on for hearing before the undersigned, Ziedah F. Diata, on November 29, 2017, at the office of the Department of State (“Department”) located at 123 William Street, New York, New York.

The respondent did not appear.

The Division of Licensing Services (“DLS”) was represented by hearing presenter Aqil Qureshi.

COMPLAINT

The complaint alleges 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 failed to cooperate with the complainant's investigation. At the hearing, the hearing presenter withdrew the charge of failure to cooperate.

FINDINGS OF FACT

1) 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 on September, 18 2017. The certified mail return receipt was returned signed (State's Ex. 1).

2) The respondent was licensed as a real estate salesperson (UID# 10401284773), associated with the licensed real estate broker 25 Realty LLC, for the term beginning February 1, 2016 and ending January 31, 2018 (State’s Ex. 2).

3) In her online application for the license, the respondent certified that she had successfully completed 75 hours of approved pre-licensure education (State's Ex. 2). On February 1, 2016, her license was issued based on the information in her application.

4) On February 6, 2017, the complainant sent the respondent an email requesting that she provide proof of completion of 75 hours of qualifying education (State's Ex. 3). The respondent did not reply to either that email which was sent to the email address that the respondent provided when she applied for her license. A second email was sent on March 17, 2017. (State's Ex. 3). On March 18, 2017, the respondent by email and explained she was never informed by her New York sponsoring broker that classes were a requirement. She indicated her broker gave her study materials and registered her for the exam. She stated that she took the course for her New Jersey real estate license in 2015 and assumed there was reciprocity since she was not told otherwise.

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 in this matter was made by both certified and regular mail addressed to the respondent at the address in the records of the Department of State. The certified return receipt was signed. 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 Department of State retains jurisdiction over a disciplinary matter 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. *See*, *Division of Licensing Services v Akbar Yasrebi*, 12 DOS 99 (1999); *Division of Licensing Services v Thabit Uadah*, 287 DOS 98 (1998). Therefore, since the respondent has until two years after the January 31, 2018 expiration of her license to renew it (RPL §441 (2)), this tribunal retains jurisdiction to adjudicate this matter.

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 must provide proof of having completed 75 hours of qualifying education. Here, the respondent did not provide proof of

completion. In fact, she admitted via email that she did not complete the required education because she believed there was reciprocity with New Jersey. Therefore, she violated RPL § 441(1-A)(d).

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Evans Bianca has violated Real Property Law §§ 441(1-A)(d). Accordingly, pursuant to Real Property Law § 441-c, her license as a real estate salesperson, UID #10401284773, is deemed revoked. She is directed to send, as appropriate, her license certificate, pocket card, and salesperson's identification 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/

Ziedah F. Diata
Administrative Law Judge

Dated: July 13, 2018