

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.: C170162

-against-

**JULISSA ALMONTE,**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on July 24, 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 Penny Zhu, Esq.

Subsequent to the hearing the tribunal was advised that the respondent had requested an adjournment by an email sent at 10:32 am on the day of the hearing, which hearing was noticed for 10:00 am. She stated that she had improperly entered the date of the hearing in her calendar, and that she has completed the qualifying education which is at issue in this matter.

**COMPLAINT**

The complaint alleges that the respondent real estate salesperson failed to provide evidence that prior to submitting her license application she completed the required qualifying education, and did not cooperate with the complainant's investigation of her 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 her last known business address and posted on April 23, 2018. The certified mail was returned by the Postal Service marked "unclaimed" and without a forwarding address, but the regular mail was not returned (State's Ex. 1).

2) On July 11, 2016 the respondent was granted a license as a real estate salesperson (State's Ex. 2 and 3). I take official notice of the records of the Department of State that the license has been renewed, and that it will expire on July 10, 2020.

3) On September 1, 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, both of which were sent to the email address which she provided when she applied for her license (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 her the opportunity to be heard. *See*, Siegel, New York Practice § 58 (4<sup>th</sup> ed. 2005). Notice of Hearing and a copy of the Complaint were served by certified and regular mail addressed to the respondent at her last known business address. The certified mail was returned unclaimed, but the regular mail 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 provide 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). In any case, the regular mail was not returned, and the respondent's emailed request for an adjournment establishes that she did receive that mail.

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 respondent's request for an adjournment, which was sent 32 minutes after the noticed time for commencement of the hearing, was untimely (19 NYCRR 400.11), and by the

time that the tribunal learned of it the hearing had been completed. Therefore, that request is denied.

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. The applicant has not provided such proof and, therefore has violated RPL §441 (1-a) (d).

IV- 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 did not respond to the complainant's inquiries about her qualifying education. That failure to respond constitutes a violation of the statute.

V- In determining what penalty to assess I have considered the claim in the respondent's email requesting an adjournment that she completed the qualifying education.

#### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Julissa Almonte 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 #10401291394, shall be suspended effective August 16, 2018 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, or proof of completion of the qualifying education prior to the submission of her application and a 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-1-a.pdf>.

/S/  
Roger Schneier  
Administrative Law Judge

Dated: July 24, 2018