

STATE OF NEW YORK  
DEPARTMENT OF STATE  
OFFICE OF ADMINISTRATIVE HEARINGS  
-----X

In the Matter of the Complaint of

**DEPARTMENT OF STATE  
DIVISION OF LICENSING SERVICES,**

Complainant,

**DECISION**

Complaint No.: C170075

-against-

**ANTHONY LEONE,**

Respondent.

-----X

The above-noted matter came on for hearing before the undersigned, Aiesha L. Hudson, on May 2, 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 David Mossberg, Esq.

### **COMPLAINT**

The complaint alleges that the respondent real estate salesperson has failed to provide proof that he successfully completed the required 75 hours of qualifying education prior to applying for his license, and that he failed to cooperate with the complainant's investigation.

### **FINDINGS OF FACT**

1) On October 3, 2016, the respondent submitted an on-line application for a license as a real estate salesperson. In his on-line application for the license, the respondent certified that he had successfully completed 75 hours of approved pre-licensure education on or about September 27, 2016 (State's Ex. 3). Based on the representations in his submission, the respondent was issued a real estate salesperson license, UID# 10401294782, on October 5, 2016, under the sponsorship of Keller Williams Realty, for a term ending on October 4, 2018 (State's Ex. 3).

2) Per Department of State records, the respondent has been associated with the licensed real estate broker CSA Realty Group LLC since February 14, 2018 (State's Ex. 2).

3) On June 5, 2017, the complainant sent the respondent an email requesting that he provide proof of completion of 75 hours of qualifying education to the email address that the respondent provided when he applied for his license within 14 days. The respondent did not reply to that email. The complainant sent a follow up email to the respondent to the same e-mail address on June 23, 2017. The respondent replied on June 27, 2017 by emailing a screenshot of the eAccessNY webpage of "Exam Results," indicating that he passed the New York State Real Estate Exam (State's Ex. 3). That same day, the complainant sent a reply explaining that the screenshot the respondent provided was not sufficient to satisfy the complainant's audit and that the respondent was required to submit a certificate of completion for the 75-hour qualifying education course the respondent took prior to applying for his real estate license (State's Ex. 3). There is no further correspondence from the respondent in the record.

4) Notice of Hearing together with a copy of the Complaint was sent by certified and regular mail to respondent's last known business address in the records of the Department of State on January 22, 2018 (date of Affidavit of Service). Neither the certified or regular mail was returned by the U.S. Postal Service. The certified mail return receipt was returned signed, indicating that delivery was made. After the complainant received notification that the respondent was now associated with the licensed real estate broker CSA Realty Group LLC as of February 14, 2018, the complaint resent the Notice of Hearing together with a copy of the Complaint to the respondent's updated business address on March 23, 2018.<sup>1</sup> Neither the certified or regular mail sent to that address was returned by the U.S. Postal Service. The certified mail return receipt was returned signed, indicating that delivery was made (State's Ex. 1).

### **OPINION AND CONCLUSIONS OF LAW**

I- To obtain personal jurisdiction and bind the respondent to the agency decision, the complainant must properly serve him with notice of the hearing 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 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).

In this case, service of the Notice of Hearing and Complaint in this matter was made by both certified and regular mail addressed to the respondent's last known business address in the records of the Department of State. The regular and certified mail were not returned, and the

---

<sup>1</sup> Of note, there was typographical error in the address to which the Notice of Hearing and Complaint ("NOH") was sent on March 23, 2018, in that the NOH was addressed to the respondent at "SCA Realty Group LLC" rather than at "CSA Realty Group LLC." However, the error was harmless given that the NOH was addressed to the correct individual, Anthony Leone, and sent to the correct address, and the certified mail was *signed for*, indicating delivery was made.

certified mail return receipt was returned signed, indicating the mail was delivered. 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 A.D.2d 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 complaint alleges that the respondent violated 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. Here, although the respondent did respond to the complainant's audit, he has not provided the required proof and therefore has violated RPL § 441(1-A)(d).

IV- Pursuant to RPL § 442-e(5), the respondent was required to cooperate with the complainant's investigation. In this case, the respondent did not respond to the email the complainant sent on June 5, 2017 within the 14-day deadline, but responded promptly after the complainant sent a follow up email on June 23, 2017. Under these circumstances, the tribunal finds the complainant's failure to cooperate charge without merit. While the complainant seeks to penalize the respondent for not promptly responding to the complainant's June 5, 2017 email, this tribunal does not find the respondent's slow response to the complainant's initial email so egregious as to warrant the determination that he failed to cooperate with the complainant's investigation. This charge is therefore dismissed.

### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Anthony Leone 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 #10401294782, is suspended effective immediately and until such time as he produces proof satisfactory to the Department of State that prior to the submission of his original application for that license he completed the required 75 hours of real estate salesperson qualifying education. He is directed to send, as appropriate, his 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.

/S/

Aiesha L. Hudson  
Administrative Law Judge

Dated: August 24, 2018