

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.: C170010

-against-

**JESSICA GARRIGAN,**

Respondent.

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The above noted matter came on for a video conference hearing before the undersigned, Roger Schneier, on September 11, 2018 at the office of the Department of State located at 123 William Street, New York, New York.

The respondent failed to appear as directed at the Department of State office at 65 Court Street, Buffalo, New York.

The complainant was represented by Hearing Presenter Nadine Azarian, who appeared by video conference from the Department of State office 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 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 calendared for April 24, 2018, together with a copy of the Complaint, was served by certified and regular mail addressed to the respondent at her last known residence address and delivered on April 6, 2018. The matter was subsequently adjourned to July 11, 2018, but the Notice of Adjournment was sent to the wrong address. Therefore, the matter was adjourned again to September 11, 2018, and a Notice of Adjournment was sent to the respondent by regular mail addressed to her at the same address as that at which the Notice of Hearing was delivered (State's Ex. 1). I take official notice that the final Notice of Adjournment was not returned by the Postal Service.

2) On May 19, 2016 the respondent was granted a license as a real estate salesperson in association with Young Agency Real Estate and Management in Waterloo, New York. On December 19, 2016 that association was changed to the same company's Seneca Falls, New York office. The association was terminated on July 18, 2017 (State's Ex. 2 and 3). I take official notice of the records of the Department of State that the license expired on May 18, 2018 and has not been renewed.

3) On March 7, 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 address. The certified mail was delivered, and the regular mail was not returned. A subsequent Notice of Adjournment sent to the same address was also not returned.

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 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). The unlawful conduct alleged in this complaint occurred while the respondent was licensed, and pursuant to Real Property Law (RPL) §441(2) the respondent has until May 18, 2020 to apply for renewal of her license. Therefore this tribunal has jurisdiction over this complaint.

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.

### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Jessica Garrigan 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 #10401289395, is deemed 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. She is directed to send proof of completion of the qualifying education prior to the submission of her application 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: September 11, 2018