

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.:C170169

-against-

**FERHAT ARAR,**

Respondent.  
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The above noted matter came on for a video hearing before the undersigned, John Kenny, on July 11, 2018, at the offices of the Department of State (“Department”) located at 99 Washington Avenue, Albany, New York and 123 William Street, New York, New York.

The applicant failed to appear. The Division of Licensing Services (“DLS”) was represented by Matthew Wolf, Esq.

**COMPLAINT**

The complaint alleges that respondent real estate salesperson has failed to provide proof that he/she successfully completed the required 75 hours of qualifying education prior to applying for his/her license, that his/her application for licensure contained a material misstatement and that he/she failed to cooperate with the complainant’s investigation.

**FINDINGS OF FACT**

1) The respondent is a licensed real estate salesperson with an expiration date of June 7, 2020 (State’s Ex. 2).

2) On or about March 26, 2018, the Notice of Hearing and Complaint was served by certified and regular mail to the registered address for the respondent at MDRN Residential, 900 Broadway, Fl 4, New York, New York. On or about March 30, 2018, the Post Office returned the certified mail to the DLS as “Return to Sender” with a new forwarding address at MDRN Residential, 443 Park Ave. South, Fl 9, New York, New York. The DLS crossed out the old address (i.e., 900 Broadway) on the original certified return receipt and replaced it with the new

address (i.e., 443 Park Ave. South) which was hand written in its place on the original certified return receipt. The certified return receipt was signed for as being received by someone at the MDRN Residential 443 Park Ave. South address on May 2, 2018 (State's Ex. 1).

3) On June 7, 2016, the respondent submitted an online application seeking licensure as a real estate salesperson. The respondent's examination and education history, based on information provided by the respondent at time of submission, was automatically converted by the Department's licensing system into a "Certification Preparation Report". The Certification Preparation Report indicates, in part, that the respondent claimed his/her qualifying education was completed on or about February 15, 2016. Based upon the respondent's original submission, the DLS issued the requested license on June 8, 2016 (State's Ex.3).

4) By an email dated September 18, 2017, the respondent was informed that he/she needed to provide proof of the required 75 hours of qualifying education by submitting documentation of his/her course completion certificate(s) within 14 days of the date of the email message (State's Ex. 3).

5) By letter dated November 7, 2017, which was sent by email only, the DLS advised the respondent that he/she failed to comply with the September 18, 2017 request for documentation. The DLS proposed the revocation of his/ her real estate salesperson license for non-compliance with the audit. In the letter, the respondent was advised of the right to have a hearing. He/she was also advised he/she could waive his/her right to a hearing and either provide proof of completion of the 75 hours of approved courses, or surrender his/her license by completing an attached Surrender Form. The respondent failed to reply or comply with the request from the DLS (State's Ex. 3).

### **OPINION**

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 (4<sup>th</sup> 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 or not the opposing party actually receives 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 and Complaint in this matter was served by both certified and regular mail to the respondent's registered business addresses. The certified mail was returned to the DLS by the Post Office with a new forwarding address. The DLS served the respondent by certified mail at the new forwarding address. The certified mail was signed for as being received. 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- As the party that initiated the hearing, the burden is on the complainant to prove, by substantial evidence, the truth of the charges set forth in the complaint. State Administrative Procedure Act §306(1). Substantial evidence “means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact... More than seeming or imaginary, it is less than a preponderance of the evidence, overwhelming evidence or evidence beyond a reasonable doubt (citations omitted).” 300 *Gramatan Avenue Associates v. State Div. of Human Rights*, 45NY2d 176, 408 NYS2d 54, 56-57 (1978); *Tutuianu v. New York State*, 22 AD3d 503, 802 NYS2d 465 (2<sup>nd</sup> Dept. 2005). “The question... is whether a ‘conclusion or ultimate fact may be extracted reasonably – probatively and logically”” *City of Utica Board of Water Supply v. New York State Health Department*, 96 AD2d 719, 465 NYS2d 365, 366 (1983), quoting *Gramatan Avenue Associate, supra*, 408 NYS2d at 57.

III- The complaint alleges that the respondent violated Real Property Law (RPL) §441(1)(c) by not supplying proof that he/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. Here, the respondent has not provided such proof and, therefore has violated RPL §441(1-A) (d).

IV- A license as a real estate salesperson or broker may be revoked or suspended if the licensee made a material misstatement on said application for the license. RPL §441-c. A material misstatement in an application is an incorrect statement, or an omission of fact which, in whole or in part, is an essential factor in determining the fitness of the applicant for licensure. *Division of Licensing Services v. Gise*, 48 DOS 88; *see Gise v. Shafer*, 153 AD2d 688, 544 NYS2d 677 (1989). In other words, a material misstatement is any statement made in an application that, if true facts were known, would either (1) automatically disqualify the licensee from renewing his or her license under the requirements outlined in the Real Property Law, Article 12-A, or (2) enable the Division of Licensing Services to, in its discretion, deny the renewal of a license. *Division of Licensing Services v. Bzdel*, 290 DOS 97 (1997). In order to make a material misstatement in violation of the Real Property Law, the licensee must have made the statement with the intent to deceive the licensing agency. *Id.*; *see also Division of Licensing Services v. Bell*, 68 DOS 05 (2005); *Mack v. Division of Licensing Services*, 341 DOS 03 (2003); *Division of Licensing Services v. Schultz*, 168 DOS 12 (2012).

Here, the DLS has failed to prove that the respondent made any material misrepresentations on his/her application for licensure. There is no evidence that he/she did not, in fact, complete his/her 75 hours of qualifying education. Given that there is no proof presented that the respondent made a false statement on his/her application, there cannot be any determination made about whether he/she made a statement with the intent to deceive the DLS. Accordingly, this charge is dismissed.

V- Pursuant to RPL §442-e (5) a real estate salesperson is obligated to cooperate with the complainant’s investigation. By failing to respond to the complainant’s emails, the respondent violated the statute.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT,** Ferhat Arar has violated RPL §§441 (1-A) (d), 442-e (5), and accordingly, pursuant to RPL §441-c, his/her license as a real estate salesperson, UID #10401290092, is suspended effective immediately and until such time as he/she produces proof satisfactory to the Department of State that prior to the submission of his/her original application for that license he/she completed the required 75 hours of real estate salesperson qualifying education. He/she is directed to send, as appropriate, his/her license certificate, pocket card, and salesperson's identification, proof of completion of the qualifying education to Norma Rosario, Department of State, Division of Licensing Services, One Commerce Plaza, 99 Washington Avenue, 5<sup>th</sup> Floor, Albany, New York, 12231-0001.

/S/

John E. Kenny  
Administrative Law Judge

Dated: September 13, 2018