

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,

-against-

**DECISION**

Complaint No.:C170009

**SUSAN KING,**

Respondent

-----X

The above noted matter came on for hearing before the undersigned, Ziedah F. Diata, on December 14, 2017, at the office of the Department of State (“Department”) located at 123 William Street, New York, New York.

The respondent, having been advised of her right to appear with counsel or another person of her choosing, chose to appear pro se.

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 (State's Ex. 1).

2) The respondent was licensed as a real estate salesperson, UID# 10401290385, for the term beginning June 14, 2016 and ending June 13, 2018. She was associated with the licensed real estate broker 25 Realty, LLC (State’s Ex. 2).

3) On June 13, 2016, in her online application for licensure as a real estate salesperson, the respondent certified that she had successfully completed 75 hours of approved pre-licensure education (State's Ex. 2). On June 14, 2016, the respondent's license was issued based on the information in her application.

4) On March 7, 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 immediately supply proof. On March 8, 2017, via email, the respondent stated, in relevant part, "I do not have the certificate. I contacted the school where I took the course and apparently I have to take the final again" (State's Ex. 2).

5) By letter dated March 23, 2017, the DLS informed the respondent it was recommending the revocation of her license and that she could provide proof of her coursework or surrender her license. On March 23, 2017, via email, respondent submitted a certificate indicating she completed a 75-hour course on March 20, 2017 (State's Ex/ 2).

6) The respondent testified that in 2016 she took a class online with Real Estate Express and completed an online exam at the end of the class. She took this exam, without a proctor, in her home (Transcript at 15). She testified that although she completed the correct coursework in 2016, the school would only give her a 2017 certificate (Transcript at 9). Although she argued the school wrongfully withheld a 2016 certificate, she also admitted she never took a proctored exam in 2016, and provided no proof of coursework of any kind completed in 2016.

7) The respondent was given the opportunity to submit supplemental information after the hearing in support of her testimony (Transcript at 18). Although the respondent indicated she had proof of payment of the required course in 2016, she did not submit any proof after the hearing.

### **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 June 13, 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 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. The respondent did not complete the qualifying education prior to obtaining her license. Therefore, she violated RPL § 441(1-A)(d).

Pursuant to Title 19 New York Codes, Rules and Regulations § 176.23(g), the course final exam must be proctored. The respondent insisted she met the requirements, but also admitted she took no proctored exam. It is apparent from her testimony that she did not have a firm and clear understanding of the course requirements. The respondent is advised, before applying for a new salespersons license, to review all laws, rules and regulations that relate to the licensure of real estate salespersons.

In determining the penalty in this case, I have considered that the respondent's non-compliance appears to have been unintentional, and she took the course right after she received the email from the DLS requesting proof of qualifying education. I have also considered that she was improperly licensed for a substantial amount of time.

### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Susan King, UID #10401290385, has demonstrated incompetence and violated Real Property Law §§ 441(1-A)(d). Accordingly, pursuant to Real Property Law § 441-c, she shall pay a fine of \$200 to the Department of State on or before December 14, 2018. Further, no future license shall be granted until the fine has been received. She is directed to send a certified check or money order for the fine payable to "Secretary of State," 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: November 5, 2018