

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.:C170129

-against-

**FRANK ACOCELLA,**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on November 6, 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 Hearing Presenter Nadine Azarian, appearing by video conference from the office of the Department of State 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 his license application he completed the required qualifying education, and did not cooperate with the complainant's investigation of his 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 his last known residence address and posted on September 11, 2018. The certified mail was delivered on September 14, 2018, and the regular mail was not returned (State's Ex. 1 and 4).

2) On February 13, 2016 the respondent was granted a license as a real estate salesperson. The license expired on February 12, 2018 (State's Ex. 2 and 3).

3) On August 9, 2017 the complainant sent the respondent an email requesting that he 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 he provided when he applied for his license (State's Ex. 2).

### **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 him 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 his last known residence address. The certified mail was delivered, and the regular mail was 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). Pursuant to Real Property Law (RPL) §441 (2) the respondent may renew his license by no later than February 12, 2020. Therefore, the tribunal retains jurisdiction in this matter.

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

III- 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 his qualifying education. That failure to respond constitutes a violation of the statute.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Frank Acocella, UID #10401285332 has violated Real Property Law §§441 (1-A) (d) and 442-e (5), and accordingly, pursuant to Real Property Law §441-c, his license as a real estate salesperson is deemed 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.

/S/  
Roger Schneier  
Administrative Law Judge

Dated: November 6, 2018