

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

-against-

DANIEL DIORIO,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on November 7, 2018 at the office of the Department of State located at 123 William Street, New York, New York.

The respondent, having been advised of his right to be represented by an attorney, chose to represent himself.

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 June 21, 2016 the respondent was granted a license as a real estate salesperson. The license expired on June 20, 2018 (State's Ex. 2 and 3).

3) On November 13, 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).

4) According to the respondent's testimony, when he applied for his license he was unaware that in order to properly complete the required 75 hours of qualifying education he had to take and pass an examination administered by the real estate school. He further testified that he stopped working as a real estate salesperson in December 2017 and that he never took the school administered examination.

OPINION AND CONCLUSIONS OF LAW

I- 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 June 20, 2020. Therefore, the tribunal retains jurisdiction in this matter.

II- 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. Pursuant to 19 NYCRR 176.9 (b) a condition of successful completion of the 75 hour course is passing the final examination administered by the school. The respondent did not take such an examination 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 Daniel Diorio, UID #10401290653 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 revoked effective immediately.

/S/
Roger Schneier
Administrative Law Judge

Dated: November 7, 2018