

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.: C170177

-against-

BRIANNA PARSAGIAN,

Respondent.

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The above-noted matter came on for hearing before the undersigned, Aiesha L. Hudson, on July 31, 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 David Mossberg, Esq.

COMPLAINT

The complaint alleges that the respondent real estate salesperson failed to provide proof that she successfully completed the required 75 hours of qualifying education prior to applying for her license, that she failed to cooperate with the complainant's investigation, that she made a material misstatement on her application for a license, and that she has thereby demonstrated untrustworthiness and/or incompetency.

FINDINGS OF FACT

1) On June 14, 2016, the respondent submitted an on-line application for a license as a real estate salesperson. In her on-line application for the license, the respondent certified that she had successfully completed 75 hours of approved pre-licensure education on or about June 1, 2016 (State's Ex. 3). Based on the representations in her submission, on June 22, 2016, the respondent was issued a real estate salesperson license, UID# 10401290706, under the sponsorship of Keller Williams Northern New York, for a term ending June 21, 2018 (State's Ex. 2).

2) The respondent's association with Keller Williams Northern New York was terminated on July 28, 2016 (State's Ex. 2).

3) On October 10, 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 sent on November 7, 2017, both of which were sent to the email address that the respondent provided when she applied for her license (State's Ex. 3).

4) Notice of Hearing together with a copy of the Complaint was sent by certified and regular mail to the respondent's residential address in the records of the Department of State on May 22, 2018 (date of posting). The regular and certified mail were not returned by the U.S. Postal Service. The certified mail return receipt also was not returned (State's Ex. 1).

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 and Complaint in this matter was made by both certified and regular mail addressed to the respondent at her home address in the records of the Department of State.¹ Neither the certified nor regular mail were returned from the Post Office. 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 A.D.2d 616 (3d Dep't 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 in this matter even though the respondent's registration expired of its own terms. *Albert Mendel & Sons, Inc. v. N.Y. State Department of Agriculture and Markets*, 90 A.D.2d 567, 455 N.Y.S.2d 867 (1982); *Main Sugar of Montezuma, Inc. v. Wickham*, 37 A.D.2d 381, 325 N.Y.S.2d 858 (1971). 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. Yasrebi*, 12 DOS 99 (1999); *Division of Licensing Services v. Uqdah*, 287 DOS 98 (1998). Both criteria are met in the case at bar.

¹ The respondent was no longer associated with a real estate broker at the time of service of the Notice of Hearing and 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. Here, the respondent has not provided such proof and, therefore has violated RPL § 441(1-A)(d).

IV- Pursuant to RPL § 442-e(5) the respondent was required to cooperate with the complainant's investigation. By failing to respond to the complainant's emails, the respondent violated that statute.

V- RPL § 441-c(1) allows the Department of State to revoke or suspend the license of a real estate salesperson who makes a "material misstatement" in the application for the license. A material misstatement in an application presented to the Division of Licensing Services is a false or incorrect statement that, in part or in whole, is an essential factor in determining the fitness of the applicant for licensure. *Division of Licensing Services v. Balram*, 290 DOS 97 (1997); *Division of Licensing Services v. Deyonge*, 361 DOS 97 (1997) (citing *Division of Licensing Services v. Gise*, 48 DOS 88 (1988), *confirmed by Gise v. Shaffer*, 153 A.D.2d 688, 544 N.Y.S.2d 677 (2d Dep't 1989)). In other words, a material misstatement is any statement made in an application that, if the 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. *Balram*, 290 DOS 97. In determining whether the false statement is a violation of the Real Property Law, the issue is whether the licensee made the misstatement 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).

Complainant's material misstatement charge fails because the complainant failed to prove that the respondent made any false statement or misrepresentation on her application for licensure. There is no evidence that she did not, in fact, complete the qualifying education requirement. That the respondent failed to provide proof that she completed the qualifying education requirement before submitting her application does not establish that she failed to comply with that education requirement. In fact, since the respondent did not respond to the complainant's emails, the complainant does not know, and could not reasonably know, whether the respondent completed the qualifying education requirement. *See Division of Licensing Services v. Garcia*, 327 DOS 11 (2011) (material misstatement charge dismissed where there was no evidence real estate salesperson made false statement about continuing education compliance since he failed to respond to Department's letter or appear at hearing). Given that there is no proof presented that the respondent made a false statement on her license application, there cannot be any determination made about whether she made a statement with the intent to deceive the Department of State. Accordingly, this charge is dismissed.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Brianna Parsagian has violated Real Property Law §§ 441(1-A)(d) and 442-e(5), and has demonstrated untrustworthiness in violation of Real Property Law § 441-c. Accordingly, her license as a real estate salesperson, UID #10401290706, is deemed revoked, effective as of the date the license expired, June 21, 2018. She is directed to send, as appropriate, her license certificate, pocket card, and salesperson's identification, to Norma Rosario, Department of State, Division of Licensing Services, One Commerce Plaza, 99 Washington Avenue, 5th Floor, Albany, New York 12231-0001.

/S/

Aiesha L. Hudson
Administrative Law Judge

Dated: January 11, 2019