

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

BERNARD SORRENTINO

DECISION

For Registration as a Hearing Aid Dispenser

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on November 23, 1999 at the office of the Department of State located at 41 State Street, Albany, New York.

The applicant did not appear.

The Division of Licensing Services (hereinafter "DLS") was represented by Litigation Counsel Laurence Soronen, Esq.

ISSUE

The issue before the tribunal is whether the applicant's application to renew his registration as a hearing aid dispenser should be denied for numerous reasons.

FINDINGS OF FACT

1) By application dated August 8, 1999 (State's Ex. 2) the applicant applied for renewal of his registration as a hearing aid dispenser which was due to expire on August 31, 1999 (State's Ex. 9).

2) By letter dated September 13, 1999 DLS advised the applicant that it proposed to deny his application because he: Made false statements and concealed material facts in connection with his 1998 application for registration by failing to reveal the prior suspension of his real estate broker's license and the prior revocation of his hearing aid dealer registration; violated the terms of the prior revocation of his registration by applying for and accepting a new registration without having satisfied a money judgement; failed to furnish satisfactory evidence of good character, reputation and fitness in that he was convicted of Making False Statements in a Bankruptcy Petition, a Federal felony; has been guilty of fraud or fraudulent practices as demonstrated by the prior decision revoking his registration, a civil court judgement, his criminal conviction, and operating as a hearing aid dealer while revoked; and has been grossly negligent in the selling

of a hearing aid, and that he could request an administrative hearing. By letter dated September 14, 1999 the applicant was advised that an additional reason for the proposed denial was that he has been guilty of fraud or fraudulent practices as demonstrated by his operation of an unlicensed hearing aid dealer business, "Digital Hearing Aid System," at an unlicensed address, and with the use of improper contracts. By letter dated September 16, 1999 the applicant requested a hearing. By letter dated September 22, 1999 DLS notified the applicant that an additional reason for the proposed denial was that he made material false statements and concealed material facts in connection with his 1998 application for registration by failing to reveal the prior revocation of his insurance agent/broker license. Accordingly, notice of hearing was served on the applicant by certified mail delivered on October 12, 1999 at the address on the application (State's Ex. 2).

3) By letter dated November 18, 1999, received by the applicant on November 22, 1999, the applicant was reminded of the hearing (State's Ex. 1).

OPINION AND CONCLUSIONS OF LAW

The holding of an ex parte quasi-judicial administrative hearing was permissible, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served. General Business Law (GBL) §800; *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.¹

A hearing on an application for licensure or registration is held at the request and instance of an applicant who has been notified of the proposed denial of the application. GBL §800; 19 NYCRR 400.4[b]. At the hearing it would have been the applicant's burden to establish that he is entitled to be registered as a hearing aid dealer. GBL §790; State Administrative Procedure Act §306.

The applicant made a timely request for a hearing, but, although properly notified, failed to appear at the appointed time and place. He is, therefore, deemed to have withdrawn with the request for a hearing and, more than 35 days having elapsed since he was advised of the proposed denial, the decision to deny the application is final. *Matter of the Application of Delroy Antonio*, 79 DOS 95, *Matter of the Application of Edward Davis*, 58 DOS 94; *Matter of the Application of Jeffery H. Mintz*, 35 DOS 94.

¹ It appears that the applicant makes a practice of failing to appear for hearings although properly notified thereof, having previously done so in a proceeding before the New York State Insurance Department (State's Ex. 8).

The applicant is admonished that with the denial of his application for renewal he is no longer registered as a hearing aid dispenser and may not engage in that business. GBL §790.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Bernard J. Sorrentino for renewal of his registration as a hearing aid dealer is denied.

Roger Schneier
Administrative Law Judge

Dated: November 29, 1999