

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Application of

ROBERT J. CASEY

DECISION

For a License as a Real Estate Appraiser

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This matter came on for hearing before the undersigned, Roger Schneier, on March 23, 1995 at the office of the Department of State located at 84 Holland Avenue, Albany, New York.

The applicant, of North Country Appraisals, 132 East Main Street, Malone, New York 12953, having been advised of his right to be represented by an attorney, appeared pro se.

The Division of Licensing Services (hereinafter "DLS") was represented by Supervising Licensing Investigator Michael Coyne.

ISSUE

The issue before the tribunal is whether the applicant has sufficient experience to qualify for a license as a residential real estate appraiser.

FINDINGS OF FACT

1) By application dated May 10, 1995 the applicant applied for a license as a residential real estate appraiser (State's Ex. 2).

2) By letter dated September 20, 1994 the applicant was advised by DLS that his application had been found to be deficient because his appraisal log was not in strict chronological order and covered only the period of January 6, 1993 through May 25, 1994, which is not a 2 year period. In response, the applicant submitted a new log which was in chronological order, and which added the period of January 23, 1992 through October 22, 1992 (State's Ex. 3).

3) By letter dated October 12, 1994 the applicant was advised by DLS that it proposed to deny his application for lack of sufficient experience, but that he could request an administrative review. He was granted a full 16 months credit for the period of January 6, 1993 through May 2, 1994, but only 1 month additional credit for the period of January 23, 1992 through October 22, 1992, for which he listed on 12 appraisals. In response, the applicant,

by letter dated October 28, 1994, stated that during the 1992 time period he performed 4 to 6 appraisals a week, but had listed on the log only those appraisals of which he had copies (State's Ex. 1).

4) By letter dated November 22, 1994 the applicant was advised that he was being granted a 15 day extension to provide an affidavit from Farm Credit of NCNY (hereinafter "Farm Credit"), his employer in 1992, with the following information: length of employment; number and type of appraisals performed each month; a statement that the appraisals were performed in general accordance with USPAP (Uniform Standards of Professional Appraisal Practice) standards. However, when no such affidavit was received, the applicant was advised by letter dated December 14, 1994 that DLS continued to propose to deny the application, and that he could request a hearing (State's Ex. 1).

5) By letter dated January 18, 1995 the applicant requested a hearing. In that letter he stated that he had not been able to obtain the affidavit from Farm Credit but that it had agreed to provide documentation now that it had been advised that it was subject to subpoena (State's Ex. 1).

6) On January 18, 1995 Farm Credit sent to DLS an unsworn letter (a copy of which the applicant received that same day), stating that:

a) The applicant was hired on July 1, 1989 and worked as an appraiser from September 9, 1991 until December 1, 1992;

b) That the applicant did residential appraisals but that the number and type of appraisals could not be confirmed; and

c) That the appraisals were not necessarily performed in accordance with USPAP standards (State's Ex. 3).

7) A notice of hearing was served on the applicant by certified mail on February 21, 1995 (State's Ex. 1). In that notice he was advised that he could make application to the tribunal for the issuance of subpoenas. However, although he was aware that the Farm Credit letter did not meet the requirements set by DLS, the applicant did not ask to have Farm Credit subpoenaed.

8) During his discussions with DLS the applicant was advised that he could support his application with proof of appraisals which he told the examiner he had performed in Florida. He declined to do so.

OPINION

I- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that he has acquired the required experience. State Administrative Procedure

Act (SAPA), §306[1]. Substantial evidence is that which a reasonable mind could accept as supporting a conclusion or ultimate fact. Gray v Adduci, 73 N.Y.2d 741, 536 N.Y.S.2d 40 (1988). "The question...is whether a conclusion or ultimate fact may be extracted reasonably--probatively and logically." City of Utica Board of Water Supply v New York State Health Department, 96 A.D.2d 710, 465 N.Y.S.2d 365, 366 (1983)(citations omitted).

II- Executive Law §160-k provides that an applicant for certification as a real estate appraiser must "possess the equivalent of two years of appraisal experience in real property appraisal...." Pursuant to Executive Law §160-d the State Board of Real Estate Appraisal adopted rules and regulations in aid and furtherance of that requirement. 19 NYCRR 1102.1 states in relevant part: "Qualifying experience. Applicants for both residential certification and general certification must possess at least two years of full time experience."

The applicant has claimed experience credit for appraisals conducted during two periods of time. There is no dispute regarding the experience gained during the 16 month period of January 6, 1993 through May 25, 1994, for which DLS concedes the applicant is entitled to full credit. The issue before this tribunal is whether the applicant is entitled to full credit for the 9 month period running from January 23, 1992 through October 22, 1992.

DLS does not dispute either that the applicant was employed as an appraiser during the 1992 period or that he performed the 12 appraisals listed on his experience log. However, absent any proof to support the applicant's claim that he performed additional appraisals during that period, DLS takes the reasonable position that he is not entitled to full credit for the 9 months.

It is the position of DLS, undisputed by the applicant, that the type of residential appraisals claimed by the applicant should take one day each. Applying that standard, the applicant has provided documentation for only 12 days work during the 9 month period. Since 2 years full time experience is required, DLS was perhaps generous in granting the applicant a full month's credit for the 1992 experience.

The applicant was given ample opportunity to submit substantiation of his experience. He knew that he could have a subpoena issued to Farm Credit but failed to act on that knowledge. He was also told that he could submit proof of his Florida experience, but declined to do so. In these circumstances it is proper to deny his application for lack of proof of sufficient experience. Such a denial is without prejudice to his making a new application supported by the proper proof.

CONCLUSIONS OF LAW

The applicant has failed to prove by substantial evidence that he has sufficient experience to qualify for a license as a residential real estate appraiser, and, accordingly, his application should be denied. Executive Law §§160-k and 160-p; SAPA §306[1].

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED, pursuant to Executive Law §§160-p, 160-v, and 160-w, that the application of Robert J. Casey for a license as a residential real estate appraiser is denied.

These are my findings of fact together with my opinion and conclusions of law. I recommend the approval of this determination.

Roger Schneier
Administrative Law Judge

Concur and So Ordered on:

ALEXANDER F. TREADWELL
Secretary of State
By:

Michael E. Stafford, Esq.
Chief Counsel