

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Application of

BEVERLY DAVIS

DECISION

For Certification as a Residential
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 585 Finnegan Road, Potsdam, New York 13676, was not present.

The Division of Licensing Services was represented by Supervising License Investigator Michael Coyne.

ISSUE

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

FINDINGS OF FACT

By application dated May 2, 1994 the applicant applied for certification as a residential real estate appraiser (State's Ex. 2).

By letter dated July 14, 1994 the applicant was advised by the Division of Licensing Services that it proposed to deny her application for lack of sufficient qualifying experience, and that she could request an administrative review. The applicant made such a request and, subsequently, was granted time to submit additional information. By letter dated December 27, 1994 the applicant was advised that, having completed an administrative review, the Division of Licensing Services continued to propose to deny the application, and that she could request an administrative hearing. By letter January 31, 1995 the applicant requested a hearing, and asked that it be held in Albany. Notice of hearing was served on the applicant by certified mail on February 25, 1995, and on March 20, 1995 she faxed to the tribunal a request for an

adjournment (dated March 17, 1995). That request was denied by letter dated, and mailed on, March 20, 1995.¹

OPINION

I- 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, Patterson v Department of State, 36 AD2d 616, 312 NYS2d 300 (1970); Matter of the Application of Rose Ann Weis, 118 DOS 93, and the applicant never enquired if, and was never advised that, her request for an adjournment had been granted. Matter of the Application of Leland, 49 DOS 95.

II- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that she 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).

III- A hearing on an application for certification is held at the request and instance of an applicant who has been notified of the proposed denial of the application. Failure to make such a request within thirty five days of receipt of the notification results in the notification of denial becoming final. 19 NYCRR 400.4(b).

The applicant requested a hearing in a timely manner, but then failed to appear at the appointed time and place. She is, therefore, deemed to have withdrawn the request for a hearing. Since more than thirty five days have elapsed since the applicant was advised of the proposed denial of his application, the decision to deny the application is final. Matter of the Application of Rose Ann Weis, supra.

¹ The telefax did not contain the usual notation of the telephone number of the sending machine, and the applicant did not supply a voice number. Subsequent to the receipt of the fax, neither the tribunal nor Mr. Coyne, to whom the applicant had made her original oral request for an adjournment and who had advised her to fax the request to the tribunal, received any communications or inquiries regarding the requested adjournment.

IV- If, because of her denied request for an adjournment, the applicant is not deemed to have withdrawn her application, the application still must be denied.

Two types of experience are listed on the application. The first is a group of 9 individual appraisals conducted over a nearly 14 year period running from November 1, 1979 through March 26, 1993. However, since pursuant to 19 NYCRR 1102.1 only experience gained no more than 5 years prior to the submission of the application may be considered, only the two appraisals which were both completed on March 26, 1993 may be applied to this application.

The other type of experience presented by the applicant consists of town-wide mass appraisals conducted on behalf of the towns of Macomb and Pitcairn in 1990 and 1993. Pursuant to 19 NYCRR 1102.6[b] such experience may not be credited.

Accordingly, the applicant has failed to show that she has the required 2 years of creditable experience. Executive Law 160-k.

CONCLUSIONS OF LAW

The applicant has failed to establish that she has sufficient experience to qualify for certification as a residential real estate appraiser and, accordingly, her application should be denied. SAPA §306[1]; Executive Law §§160-k and 160-p.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Beverly Davis for certification 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