

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

DANIEL KING

DECISION

For a License as a Real Estate Appraiser
Assistant

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on July 14, 1998 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, did not appear.

The Division of Licensing Services (hereinafter "DLS") was represented by License Investigator III Richard Drew.

ISSUE

The issue before the tribunal is whether the applicant should be denied a license as a real estate appraiser assistant because of prior criminal convictions.

FINDINGS OF FACT

1) By application dated November 23, 1997 the applicant applied for a license as a real estate appraiser assistant (State's Ex. 6).

2) The applicant has the following record of criminal convictions:

12/14/83-Attempted Robbery in the 2nd degree (State's Ex. 2);

12/22/93-Conspiracy to Commit Murder (New Jersey) (State's Ex. 4).

3) By letter dated February 3, 1998 the applicant was advised by DLS that it proposed to deny his application because of the convictions, and that he could request an administrative review, which he did on February 23, 1998. By letter dated March 12, 1998 he was advised that after review DLS continued to propose to deny the application, and that he could request a hearing, which he did by letter postmarked April 4, 1997. Accordingly, the matter having

been referred to this tribunal on May 15, 1998, notice of hearing calendared for June 19, 1998 was served on the applicant by certified mail delivered to him on May 29, 1998 (State's Ex. 1). At the applicant's request the matter was subsequently adjourned to July 14, 1998.

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. Executive Law §160-v; State Administrative Procedure Act §301[2]; *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

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. 19 NYCRR 400.4[b]. At the hearing it would have been the applicant's burden to establish that he is qualified to be licensed as a real estate appraiser assistant. 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.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Daniel King for a license as a real estate appraiser assistant is denied.

Roger Schneier
Administrative Law Judge

Dated: July 15, 1998