

STATE OF NEW YORK  
DEPARTMENT OF STATE

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In the Matter of the Application of

**CAROL A. POLCHINSKI**

**DECISION**

For Certification as a Residential  
Real Estate Appraiser

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on January 18, 1996 at the office of the Department of State located at 162 Washington Avenue, Albany, New York.

The applicant, of 10 Hawthorne Drive, Monroe, New York 10950, having been advised of her 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, having been advised by DLS that it proposes to deny her application, has sufficient experience to qualify for certification as a residential real estate appraiser.

**FINDINGS OF FACT**

1) By application dated February 12, 1994 the applicant applied for certification as a residential real estate appraiser. In support of her application she submitted an appraisal experience log covering the period of October 31, 1991 through October 25, 1993. By letter dated April 20, 1994 she was advised by DLS representative Michael Kernan that the log did not include the equivalent of two years of full time appraisal experience, and that she should submit a log for the period of August 10, 1993 through December 31, 1993. In response, on April 25, 1994 the applicant spoke with Mr. Kernan, who explained that he did not consider her experience after August 9, 1993 to be full time. Therefore, by letter dated April 26, 1994 the applicant requested of Mr. Kernan that she be issued an "Assistant Appraiser License" so that she

could gain additional experience, and a she was registered as a real estate appraiser assistant on May 6, 1994 (State's Ex. 2).<sup>1</sup>

The applicant subsequently submitted additional documentation regarding her experience (State's Ex. 3). Included in that documentation were the ten appraisal reports upon which DLS bases its proposed denial. Those reports, which were not submitted by the applicant to owners, buyers, or lenders, arise out appraisals for which the applicant was not compensated, and result from visits to properties which she made, as part of her training, in the company of appraiser Rita Levine, who had been retained to conduct the appraisals. They are entirely the work product of the applicant.

3) By letter dated August 30, 1995 the applicant was advised by DLS of its proposed denial of her application, and that she could request a hearing. The applicant made such a request by letter dated September 21, 1995, and a notice of hearing was served on her by certified mail on October 26, 1995 (State's Ex. 1).

#### OPINION

I- 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).

II- The sole questions regarding the adequacy of the applicant's experience, as framed by the objections of DLS, is whether uncompensated appraisal experience obtained while accompanying an appraiser who was retained to conduct the appraisal, which experience is evidenced by appraisal reports which were not provided by the applicant to some other party for his or her use, may be used to support an application for certification as an appraiser.

An "appraisal" is defined as

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<sup>1</sup> There is no provision or requirement for registration as a real estate appraiser assistant in either the governing statute (Executive Law Article 6-E) or the regulations (19 NYCRR Chapter XXXI). Such registration was apparently instituted informally by the State Board of Real Estate Appraisal.

"an analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate." Executive Law §160-a[2].

Neither the statute nor the regulations enacted in furtherance of it make any reference to a requirement that in order for it to be used for qualifying credit on an application the applicant must have been compensated for conducting an appraisal, or that the appraisal report must have been submitted to some other party.

DLS does not contend that anything is wrong with the contested appraisal reports other than the fact that they arose out of visits to properties made by the applicant in the company of another person who had been hired to, and did also, appraise the properties, with the result that the applicant was not compensated for the appraisals and did not produce the reports for use by some other party. In fact, Rita Levine, having been called by DLS as a witness, testified that the appraisal reports in question were the applicant's own work product.

#### **CONCLUSIONS OF LAW**

The applicant has established by substantial evidence that she has sufficient experience to qualify for certification as a general real estate appraiser and, accordingly, her application should be granted. Executive Law §160-k; SAPA §306[1].

#### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** the application of Carol A. Polchinski for certification as a residential real estate appraiser is granted.

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