

STATE OF NEW YORK
DEPARTMENT OF STATE

-----X

In the Matter of the Complaint of

**DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES,**

Complainant,

DECISION

-against-

REGINALD J. TRONCONE,

Respondent.

-----X

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 respondent, of United Appraisal Service, Scotchtown Road, Box 4690, Middletown, New York 10940, did not appear.

The complainant was represented by Supervising License Investigator Michael Coyne.

COMPLAINT

The complaint alleges that the respondent has failed to submit any materials to substantiate the experience which he claimed in order to obtain his license and certification as a real estate appraiser.

FINDINGS OF FACT

1) Notice of hearing together with a copy of a complaint was served on the respondent by certified mail on November 15, 1995. An amended complaint was served on him by certified mail on December 5, 1995 (State's Ex. 1).

2) On January 13, 1992, pursuant to an application dated November 20, 1991, the applicant was licensed as a real estate appraiser. On January 14, 1994, having fulfilled additional requirements, he was granted certification as a residential real estate appraiser. That certification expired on January 13, 1996 (State's Ex. 2).

3) On July 26, 1994 the complainant wrote to the respondent and advised him that it was conducting an audit of the experience which he claimed on his application. Enclosed with the letter was an experience log form, and the respondent was directed to return the completed log to the complainant within fifteen days. The respondent did not reply to that letter.

On October 4, 1994 the respondent was sent another experience log form, and was directed to complete and return it within ten days. Again, he did not reply.

On January 13, 1995 a third experience log form was sent to the respondent, with the direction to complete and return it by January 31, 1995. He did not reply.

By letter dated April 13, 1995 the respondent was advised that he had not met the experience requirements for licensure or certification, and was directed to surrender his certification within fifteen days. He responded with an undated letter, received on May 8, 1995, in which he claimed that he had previously submitted the required experience log when his status was upgraded from licensed to certified. That claim is untrue, as demonstrated by his letter requesting the upgrade, in which he stated "I don't think it was necessary to include my appraisal log since my experience credits exceeded 400 points when I became state licensed" (State's Ex. 3).

OPINION

I- Pursuant to Executive Law §160-k[3], an applicant for licensure or certification as a real estate appraiser must establish that he has sufficient experience to qualify. So as to implement that requirement, the State Board of Real Estate Appraisal, acting pursuant to authority granted to it by Executive Law §160-d[1], promulgated 19 NYCRR 1102.2[d], which provides:

"Upon request by the Department of State, either prior to certification or after certification, an applicant must provide documentation or other proof, satisfactory to the Department of State, to substantiate any or all of the experience claimed by the applicant. Failure to provide the requested documentation or proof promptly shall be grounds for the Department of State...to suspend or revoke the certification."

The respondent was asked to provide the details of his claimed experience. Although he was given three opportunities to do so, he never returned the experience log, and he has failed to appear in this proceeding to present evidence that he does, in fact, have sufficient qualifying experience. Accordingly, the complainant has

met its burden of proving by substantial evidence that the respondent has not substantiated that he has the claimed experience and has violated 19 NYCRR 1102.2[d].

II- The respondent's certification expired on January 13, 1996, and he is not currently certified. However, pursuant to Executive Law §160-o[2], he may renew his certificate upon the submission of an application with payment of a late fee. Therefore, the Department of State retains jurisdiction. Albert Mendel & Sons, Inc. v N.Y. State Department of Agriculture and Markets, 90 AD2d 567, 455 NYS2d 867 (1982); Main Sugar of Montezuma, Inc. v Wickham, 37 AD2d 381, 325 NYS2d 858; Division of Licensing Services v Falco, 101 DOS 94.

CONCLUSIONS OF LAW

The respondent has failed to submit documentation or other proof satisfactory to the Department of State to substantiate the experience which he claimed that he has in order to obtain his licensure and certification as a residential real estate appraiser (19 NYCRR 1102.2[d]), and should he ever apply for renewal of his certification, or for licensure, he should be required to substantiate his experience.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Reginald J. Tronccone has failed to substantiate the claim of experience upon which he was licensed and certified as a residential real estate appraiser, in violation of 19 NYCRR 1102.2[d], and accordingly, pursuant to Executive Law §160-u, should he ever apply for renewal of his certification, or for licensure, the application shall be dealt with as if that certification was revoked and the respondent shall be required to substantiate his claimed experience prior to the issuance of a new certificate.

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