

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

MAHMOODUL HASSAN

DECISION

For a License as a Real Estate Broker

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on June 29, 1997 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, having been advised of his right to be represented by an attorney, chose to represent himself.

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 has sufficient experience to qualify for a license as a real estate broker.

FINDINGS OF FACT

1) By application dated November 9, 1998 the applicant applied for a license as a real estate broker based on his experience as a licensed real estate salesperson (State's Ex. 2).

2) By letter dated January 29, 1999 the applicant was advised by DLS that it proposed to deny his application because he had "failed to cooperate with a Department of State investigation when requested to submit specific documentation," and that he could request an administrative review, which he apparently did, as by letter dated February 27, 1999 the applicant was advised that after administrative review DLS continued to propose to deny the application, and that he had the right to request an administrative hearing, which he did by letter dated March 10, 1999. The matter having been referred to the tribunal on May 21, 1999, notice of hearing dated May 24, 1999, together with a new denial letter now indicating that the reasons for the proposed denial now were that he had "failed to satisfactorily prove or support the claimed experience for licensure" and "experience statements submitted by the applicant are confusing and contradictory" was served on the applicant by mail (State's Ex. 1).

3) The applicant bases his application on qualifying experience which he claims to have acquired while licensed as a real estate salesperson in association with Eric A. Sterling Realty Inc. and Sterling Appraisals Associates, Inc. (hereinafter both referred to as "Sterling"), licensed real estate brokers. On his application he claimed to have sufficient experience to entitle him to 1750 experience points pursuant to the formula established in 19 NYCRR 179.3.

The applicant's experience point total is derived from seven sales of residential real property. He supports that claimed experience with affidavits from the seven persons to whom he sold those properties (App. Ex. A).¹ He indicated only that experience on his application because it meets the minimum requirements set by the regulation.

The respondent actually has more than the minimum required experience, having consummated more than 20 sales plus additional listings and rentals (State's Ex. 5, Resp. Ex. B and D).

OPINION AND CONCLUSIONS OF LAW

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. Real Property Law (RPL) §441[1][d]; 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- An applicant for a license as a real estate broker who seeks to support the application with experience gained as a real estate salesperson must establish that he or she has at least one full year of such experience. RPL §441[1][d]. To meet that burden, the applicant must have accumulated 1750 experience points. 19 NYCRR 179.2. The applicant has established that he is entitled to credit for the required number of experience points. Accordingly, he is entitled to be licensed as a real estate broker.

DLS questions the applicant's experience claim for two reasons. First, it asserts, he has not submitted sufficient evidence of the claimed 7 sales. I find, however, that the affidavits of the purchasers, which DLS has failed to rebut

¹ Having been granted 30 days to investigate the affidavits of the purchasers, DLS failed to present any evidence to rebut them.

although given 30 days to do so, coupled with the sworn testimony of the applicant, sufficiently support the claim.

Second, DLS asserts that a letter from the applicant's former broker which claims that the applicant "consummated more than 20 sales and numerous listings and rentals" (State's Ex. 5) contradicts the claim on the application of 7 sales. However, the applicant testified that he listed only those 7 sales because that was all that is required and there was no need to list his additional experience. That explanation is logical, reasonable, and believable.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Mahmoodul Hassan for a license as a real estate broker is granted.

Roger Schneier
Administrative Law Judge

Dated: July 29, 1999