

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Application of

KREY LORICK

DECISION

For a License as a Real Estate Broker

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Pursuant to the designation duly made by the Hon. Gail S. Shaffer, Secretary of State, the above noted matter came on for hearing before the undersigned, Roger Schneier, on December 2, 1992 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 1 Ash Place, Suite 2E, Great Neck, New York 11021, having been advised of his right to be represented by an attorney, appeared pro se.

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

ISSUE

The issue in the hearing was whether the applicant has sufficient experience to qualify for a license as a real estate broker.

FINDINGS OF FACT

1) By application dated May 18, 1992 the applicant applied for a license as a real estate broker (Dept. Ex. 2). By letter dated June 17, 1992 he was advised by the Division of Licensing Services of the need to submit supporting documentation (Dept. Ex. 6). He responded to that letter with a list of nine transactions in which he had worked in various capacities, noting that there were many more but that he had no records and that those listed were all of which he could recall the details of; the affidavit of his former employer attesting to the applicant's employment from December 1988 to March 1992; and a letter from a mortgage broker for which the applicant had provided services (Dept. Ex. 7).

By letter dated July 21, 1992 the applicant was advised by the Division of Licensing Services that it proposed to deny him all experience credit due to his alleged failure to provide documentation of his claimed activity, and by letter dated August 18, 1992 the applicant requested a hearing on his application (Dept. Ex. 1).

2) Although he has been licensed as a real estate salesperson in the past (that license expired on January 31, 1991 and has not been renewed), the applicant seeks to support his application with a claim of equivalent experience, as follows:

a) From December 1989 until March 1992 the applicant was employed by Delta Funding Corporation, a licensed mortgage banker. His initial duties involved telemarketing in the mortgage sales department, the processing of new applications, the verifying of credit and employment information, and the ordering and "tracking" of appraisals. Starting in about June, 1990 he began working both as a "mortgage consultant," in which capacity he was responsible for all aspects of negotiating the origination of new loans, and in the division of the corporation responsible for disposing of properties taken in foreclosure. In that aspect of his employment the applicant was responsible for marketing and negotiating the sale, rental and financing of between 75 and 100 such properties (Dept. Ex. 4).

b) Since 1990 the applicant has worked as a part time (approximately ten hours per week) mortgage consultant with L. Barney & Assoc., a registered mortgage broker. That experience, in which he negotiated the issuance of mortgage loans, resulted in his being granted a registration as a mortgage broker d/b/a KLA Financial & Real Estate Services (App. Ex. A).

OPINION

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. State Administrative Procedure Act §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).

In order to qualify for a license as a real estate broker an applicant must establish that he or she has actively participated in the general real estate brokerage business as a licensed real estate salesperson under the supervision of a licensed real estate broker for a period of not less than one year, or has had equivalent experience in general real estate business for a period of at least two years. Real Property Law (RPL) §441(1)(d). Generally speaking, equivalent experience is such that, if it were not engaged in on behalf of either the applicant himself or the applicant's exclusive employer who is a principal in the transaction, or without the expectation or receipt of compensation, it would require a license as a real estate salesperson or broker. Matter of the Application of Frucht, 114 DOS 91. It may also include experience gained in the brokering of mortgages on owner occupied residential real property. Matter of the Application of Nacht, 124 DOS 92.

Normally, an applicant is required to submit documentary proof of his claimed experience. As a rule, such a requirement is desirable, as it may avoid fraudulent claims. In the case of an application based on

experience as a licensed real estate salesperson, that requirement is not unduly burdensome, as salespersons are required to maintain written records of their transactions. 19 NYCRR 175.21(b). However, blind adherence to such a practice can result in an injustice where, as in this case, the applicant was not required to maintain his own records, and the records maintained by his former employer are not readily available to him.¹ The statute does not mandate that such documentary proof be supplied, but, rather, calls for an "affidavit duly sworn to under oath and/or other such proof required by the department of state." (RPL §441(1)(d)). Here, the applicant has submitted an application which was signed subject to the penalties of perjury, an affidavit of his former employer, and has testified to his experience under oath. Matter of the Application of McHugh, 66 DOS 90.

CONCLUSION OF LAW

The applicant has proved that he possesses at least two years experience equivalent to that of a real estate salesperson as is required for the issuance to him of a license as a real estate broker pursuant to RPL§441(1)(d).

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED, pursuant to Real Property Law §§441(1)(d) and 441-e, that Krey Lorick has sufficient experience to be licensed as a real estate broker, and accordingly the Division of Licensing Services is directed to issue such a license to him forthwith.

¹ The applicant is no longer associated with Delta Funding Corporation, so he cannot gain personal access to its records. In addition, he states that the way in which the company maintains its records makes finding those relating to his transactions "an impossible task" (Dept. Ex. 3), an assertion which the Division of Licensing Services has not disputed.

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:

GAIL S. SHAFFER
Secretary of State
By:

Maureen F. Glasheen
Deputy Secretary of State