

STATE OF NEW YORK  
DEPARTMENT OF STATE

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In the Matter of the Application of

**KENNETH LUKSIN**

**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 January 6, 1993 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 44 Hoyt Road, Pound Ridge, New York 10576, was represented by Charles R. Foy, Esq., Whitman & Ransom, 200 Park Avenue, New York, New York 10166.

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 March 2, 1992 the applicant applied for a license as a real estate broker (Dept. Ex. 2). By letter dated June 2, 1992 he was advised by the Division of Licensing Services that it proposed to grant him credit for six months of experience equivalent to that of a real estate salesperson, and that he would have to acquire an additional eighteen months of such experience to qualify for the license. By letters dated June 22 and July 29, 1992 the applicant requested an administrative review of the proposed denial of his application, and by letter dated July 31, 1992 he was advised by Mr. Coyne that the Division of Licensing Services still proposed to deny his application. By letter dated November 24, 1992 the applicant requested an administrative hearing on the proposed denial, and notice of such a hearing was served on him by certified mail on December 3, 1992 (Dept. Ex. 1).

2) The applicant bases his application on the following experience:

a) Starting in 1977 the applicant was licensed real estate salesperson in association with real estate brokers William Gottlieb and Martin W. Halbfinger. The association with Gottlieb lasted approximately two or three years, during which time the applicant claims to have showed apartments and prepared for showing commercial space belonging to Gottlieb, in return for which the applicant received the free use of office space in which to conduct his own demolition business. The applicant did not participate in any lease negotiations in that capacity, and offered no evidence as to the specifics (i.e. location of properties, actual amount of time expended) of the claimed experience. The applicant offered no testimony or other evidence as to the nature of his activities with Halbfinger, which association ended with the expiration of the applicant's license as a salesperson in 1992.

b) The applicant acted as a consultant to business enterprises in real estate matters for more than 20 years as part of his demolition business. This entailed, among other things, meetings with owners and counsel regarding the removal of violations, the searching of records, surveying of buildings, obtaining of permits, reviewing encroachments, dealing with neighboring property owners and with insurance companies, and negotiating with holdover tenants and squatters to have them vacate the spaces which they occupied.

c) The applicant has acted as a consultant to owners of commercial properties. His duties have involved evaluation of buildings regarding the cost of operations and the cost of replacement, analysis of leases and insurance coverage and requirements, and assistance "in the general management of real property either as an employee or as a consultant" (Dept. Ex. 3).

d) Since November, 1986 the applicant has represented himself and other family members in the operation of a small New Jersey shopping center belonging to the estate of his late mother in law. He has "become fully familiar with rentals, advertising, property management, maintenance and all other aspects of owning and operating a commercial real property facility" (Dept. Ex. 3). He has executed leases and lease renewals which were negotiated by him with the assistance of a local real estate broker. The applicant spends one 16 hour day a month travelling to and at the site, and during the rest of the month frequently deals with matters from his New York office. From 1975 to 1986 the applicant was involved, along with other family members, in reviewing sales proposals regarding other properties in the estate.

e) Since September 1990 the applicant has acted, as an independent contractor, as consultant 90-27 Sutphin Boulevard Associates, operator of a 120,000 square foot commercial structure in Jamaica, Queens. He is responsible for monthly rent billing (the rents are, however, paid directly to the owner), property maintenance, coordination of services,

code compliance and tenant relations. The respondent employs persons to operate and maintain the property, and coordinates the execution of leases and lease negotiations, although he does not negotiate the leases.

f) As a consultant in advising buyers and sellers of real property the applicant produces analyses of properties and advises with regards to offers of sale or lease. In this capacity he retains licensed real estate brokers to represent his clients.

g) The applicant has been responsible for the retention of counsel and "facilitation of negotiations whenever required on behalf of clients" (Dept. Ex. 3). Has attended numerous real estate closings to assist clients in the review of closing documents, the making of closing adjustments, and coordination of matters with attorneys.

h) As an volunteer, the applicant acts as an advisor to Community Access, Inc., a not for profit corporation which acquires property and provides housing for mentally ill homeless persons. In this capacity the applicant was directly involved, for several years, in negotiations leading to the acquisition of property located at 107-109 Avenue D, Manhattan, Gouverner Hospital (621 Water Street, Manhattan), Brooklyn Arms Hotel, and the building formerly housing public school 64. Over a period of about one and a half years he performed similar services on behalf of another organization with regards to another property located in the Bronx.

i) For the past four years the applicant has worked as a consultant to a limited partnership known as C.O.F.A.T. His duties have included conducting research with regards to buildings, reviewing leases and abstracts, retaining brokers to lease space, and assisting in retaining counsel.

j) As a principal of Downtown Bronx Revitalization Corporation the applicant has, over a period of five years, been engaged in negotiations to acquire air rights for construction of high rise buildings over Metro North Railroad tracks in the south Bronx.

k) The applicant was recently made a member of the board of directors of the Principal Housing Corporation, which assists the Episcopal church in obtaining funds for non-profit housing. In that capacity he visits sites and meets with lawyers. (The applicant's testimony was not specific as to what happens at those meetings).

#### 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 (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).

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. To fulfill the equivalent experience requirement, the applicant must show that he has obtained two full years of such experience, two years being defined as 3500 hours (two times fifty weeks of 35 hours each). Matter of the Application of McHugh, 66 DOS 90.

With regard to the claimed experience as a real estate salesperson, the applicant has not offered sufficient evidence to enable this tribunal to come to any conclusion as to what, if any, credit should be granted. It is not for me to speculate in the absence of specifics.

Of the experience which the applicant claims is equivalent to that of a licensed real estate salesperson, while much of the claimed is related to the functions of a real estate salesperson, only a small part of it falls within the defined duties of a salesperson (RPL §440(3)), and can be considered in support of the application. Matter of the Application of Harris, 127 DOS 92; see, also, Matter of the Application of Kwit, 30 DOS 89.

The applicable experience is as follows:

- a) Negotiations with holdover tenants and squatters to obtain possession of property slated for demolition, for which the applicant has provided insufficient evidence from which the actual amount of time expended can be determined.
- b) Negotiation of leases and lease renewals for the property owned by the estate of the applicant's late mother in law. From November, 1986 until the date of the hearing, January 1993, allowing one 16 hour day a month for 75 months, the total time expended amounts to 1200 hours. While no further specifics have been given by the applicant, it is reasonable

to believe that an additional 8 hours a month was spent by him in his New York office, resulting in a grand total of 1800 hours.

c) Negotiations on behalf of the not for profit organizations and C.O.F.A.T. While the applicant did not provide a specific breakdown of the actual time expended, considering the complexity of the projects and the time span over which the negotiations took place (in the case of C.O.F.A.T. they were continuing as of the date of the hearing), it is reasonable to conclude that at least 1700 hours were expended by the applicant in qualifying activities.<sup>1</sup>

Attached hereto and made a part hereof is a copy of the applicant's proposed findings of fact with my rulings marked thereon, in accordance with 19 NYCRR 400.12.

#### **CONCLUSIONS 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 Kenneth Luksin 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.

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<sup>1</sup> In the case of equivalent experience the applicant need not produce the same type of records as a required with regards to a claim of experience as a real estate salesperson, and other evidence such as affidavits and the applicant's testimony can be considered. Matter of the Application of Lorick, 163 DOS 92.

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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