

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Complaint of

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

Complainant,

DECISION

-against-

REGINALD POPE and ROBERT N. SKEETE,

Respondents.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on October 6, 1999 at the office of the Department of State located at 123 William Street, New York, New York.

Reginald Pope did not appear. Ronald N. Skeete appeared and advised the tribunal that he was expecting his attorney, James Hurley, Esq., so a recess was taken. After the recess Mr. Skeete advised the tribunal that Mr. Hurley was in court and would not be appearing. Inasmuch as no notice of appearance had been filed and witnesses were present, the matter proceeded in the absence of Mr. Hurley.

The complainant was represented by Litigation Counsel Laurence Soronen, Esq.

COMPLAINT

The complaint alleges that: Mr. Pope, a licensed real estate broker, was convicted of Petit Larceny and ordered to pay, but has absconded without paying, restitution; the acts underlying the conviction demonstrate fraud and untrustworthiness; Mr. Pope did not reveal the conviction and a prior conviction on his applications; Mr. Pope deceived Karen Shaw into signing a quit claim deed; Mr. Skeete notarized the deed although Ms. Shaw was not present.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was mailed to Mr. Pope at his last known business address by certified mail which was delivered on September 9, 1999 (State's Ex. 1).

2) Notice of hearing together with a copy of the complaint was mailed to Mr. Skeete at his address as it appears in the records of the Department of State by certified mail which was delivered on August 31, 1999 (State's Ex.1).

3) Reginald Pope is a duly licensed real estate broker d/b/a Aztec Equities (State's Ex. 1).

4) Robert N. Skeete is a duly commissioned notary public (State's Ex. 1).

5) In or about February, 1997 Ruth Ward contacted Mr. Pope for assistance in avoiding the foreclosure of the mortgage on her home. Over a period of eleven months Mr. Pope had Ms. Ward give him a total of approximately \$24,000.00, which he told her would be used to prevent the foreclosure. Mr. Pope failed to pay that money to the mortgagee bank, and the property was foreclosed upon. Ms. Ward, accordingly, complained to the Bronx County District Attorney, and Mr. Pope was charged with Grand Larceny in the 3rd degree and Criminal Possession of Stolen Property in the 3rd degree, both felonies (State's Ex. 4).

6) On May 7, 1998, in settlement of the criminal charges, Mr. Pope plead guilty to Petit Larceny, a misdemeanor, and agreed to pay restitution not to exceed \$24,000.00, with the exact figure to be provided at sentencing (State's Ex. 5).

7) Mr. Pope has failed to comply with the restitution terms of his sentence, and a warrant has been issued for his arrest (State's Ex. 9).

8) On December 23, 1994 Mr. Pope was convicted of Aggravated Unlicensed Operation of a Motor Vehicle in the 1st degree, Vehicle and Traffic Law §0511, a class E felony (State's Ex. 4 and 6).

9) On real estate broker license applications dated November 2, 1995 and March 22, 1996, Mr. Pope answered "no" to question number 4: "Have you ever been convicted of any criminal offense in this State or elsewhere...?" (State's Ex. 7).

10) On his real estate broker license renewal application dated October 29, 1998 Mr. Pope answered "no" to question number 1: "Since your last renewal, have you been convicted of a crime or offense (not a minor traffic violation), in this state or elsewhere...?" (State's Ex. 7).

11) On September 15, 1997, at the request of Mr. Pope, Mr. Skeete notarized the acknowledgement of a quitclaim deed from Karen

Shaw to Aztec Equities (Mr. Pope's corporation), although Ms. Shaw was not present (State's Ex. 3 and 8). Although there is no evidence that Mr. Skeete was aware of it, Mr. Pope had obtained the deed from Ms. Shaw in a scheme to defraud her of the property. That scheme failed because the mortgagee bank had already foreclosed on the house.

OPINION AND CONCLUSIONS OF LAW

I- As regards Mr. Pope, the holding of an ex parte quasi-judicial administrative hearing was permissible, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served. Real Property Law (RPL) §441-e; *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

II- Mr. Pope's conviction for Petit Larceny arose out of a scheme through which he defrauded a client out of approximately \$24,000.00, a scheme to which he admitted through his guilty plea. That conduct was a demonstration of gross untrustworthiness, which Mr. Pope compounded by absconding without making the restitution to which he agreed as a condition of his guilty plea.

III- On three applications for licensure as a real estate broker Mr. Pope falsely answered "no" to questions asking about whether he had been convicted of criminal offenses. Pursuant to RPL §441-c a license as a real estate broker which was issued in response to an application which contained a material misstatement may be revoked. A material misstatement in an application is an incorrect statement, or an omission of fact which, in whole or in part, is an essential factor in determining the fitness of the applicant for licensure. *Division of Licensing Services v Gise*, 48 DOS 88, conf'd. *sub nom Gise v Shafer*, 153 AD2d 688, 544 NYS2d 677 (1989). In the instant case, had Mr. Pope disclosed his felony conviction on the 1995 and 1996 applications, pursuant to RPL §440-a his licenses would not have been issued. Even without the automatic bar of a felony, the complainant would still have had discretion to consider the conviction. Likewise, had he disclosed the Petit Larceny conviction on his 1998 renewal application, the complainant would again have had such discretion. Therefore, the misstatements were material.

IV- Regardless of his intent, a notary public acts unlawfully when he notarizes a document without the purported signatory being present. *Division of Licensing Services v Caputo*, 37 DOS 95. The notary's "failure accurately to state the fact is not consistent with the strict obligation imposed upon a notary public." *People v Reiter*, 273 NY 348, 350 (1937).

Mr. Skeete notarized a quitclaim deed without the signatory being present. That would have enabled Mr. Pope to use the document to take title to Ms. Shaw's house had the mortgagee,

apparently unbeknownst to Mr. Pope, not already foreclosed on it. The respondent's misconduct was contrary to the fundamental function of notaries public: the authentication of documents, *Division of Licensing Services v Erdheim*, 80 DOS 94, and warrants imposition of the strongest possible penalty.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Reginald Pope has demonstrated untrustworthiness as a real estate broker and has submitted real estate broker license applications containing material misstatements, and, accordingly, pursuant to Real Property Law §441-c, his license as a real estate broker is revoked effective immediately. He is directed to immediately send his license certificate and pocket card to Usha Barat, Customer Service Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, NY 12208, and

IT IS FURTHER DETERMINED THAT Robert N. Skeete has engaged in an act of misconduct as a notary public, and, accordingly, pursuant to Executive Law §130, his commission as a notary public is revoked effective January 1, 2000. He is directed to send his notary pocket card to Usha Barat, Customer Service Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, NY 12208.

Roger Schneier
Administrative Law Judge

Dated: December 13, 1999