

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Complaint of

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

Complainant,

DECISION

-against-

JOSEPH A. STABILE,

Respondent.

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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 March 10, 1993 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 1550 Dear Park Avenue, Deer Park, New York 11729, an attorney at law, having been advised of his right to be represented by counsel, appeared pro se.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint in the matter alleges that the respondent, a licensed real estate broker, failed to conspicuously post a sign indicating his name and business as a real estate broker, of sufficient size to be readable from the sidewalk outside the building at which he is so licensed, in violation of Real Property Law (RPL) §441-a(3).

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail delivered on February 23, 1993 (Comp. Ex. 1).

2) The respondent is duly licensed as a real estate broker in his own name at 102 Boathouse Lane West, West Bay Shore, New York 11706 (Comp. Ex. 2).

3) On September 18, 1992 Senior License Investigator Steven Wakely went to the respondent's licensed premises in order to conduct an inspection, and observed that there was no sign posted on the exterior of the building.

4) The respondent has never engaged in any real estate brokerage transactions at his licensed address, which is a townhouse in a private residential community, access to which is obtained by passing through an attended security gate. Pursuant to the rules of the homeowners association there are no signs on the houses, and names do not appear on the mail boxes, which are placed in clusters along the private roads, which do not have sidewalks. The only brokerage transaction in which the applicant ever engaged was conducted out of his law office in Deer Park, where his license is posted and where there is an indication that he is a licensed real estate broker on the office directory in the lobby of the office building.

OPINION AND CONCLUSIONS OF LAW

I- RPL §441-a(3) provides that licensed real estate broker

"shall have and maintain a definite place of business within this state, and shall conspicuously post on the outside of the building in which said office is conducted a sign of sufficient size to be readable from the sidewalk indicating the name and the business of the applicant (sic) as a licensed real estate broker, unless said office shall be located in an office, apartment or hotel building, in which event the name and the words "licensed real estate broker" shall be posted in the space provided for the posting of names of occupants of the building, other than the mail box."

The respondent has complied with that statute. He has and maintains a definite place of business in his law office, and his name and the fact that he is a licensed real estate broker appear on the lobby directory. Although that is not the address at which he is licensed, since on his application he listed his residence address as also his business address, the statute does not require that the sign be posted at the licensed address, but only at the address at which the licensee conducts business.

What the respondent should have been charged with, but was not, was a violation of RPL §441(1)(b), which requires that an applicant for a license as a real estate broker state on his or her application "(t)he place or places, including the city, town or village, with the street and number, where the business is to be conducted." Pursuant to that section it is unlawful to operate a real estate brokerage business at an unlicensed address. While that issue was touched on at the hearing, since it was not fully litigated, and since it is not clear

that had the charge been stated in the complaint no additional evidence would have been forthcoming, the respondent may not be held guilty in this proceeding of violating that section. Tollin v Elleby, 77 Misc.2d 708, 354 NYS2d 856 (Civil Ct., NY County 1974); Helman v Dixon, 71 Misc.2d 1057, 338 NYS 2d 139 (Civil Ct., NY County 1972); Division of Licensing Services v Abramo, 56 DOS 91; Division of Licensing Services v DeMaso, 40 DOS 91. However, it is noted that at the hearing the respondent was in possession of a change of address form. He is admonished that, if he has not yet done so, he should immediately file such a form to change the address on his license to that of his office.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the charge that Joseph A. Stabile violated Real Property Law §441-a(3) is dismissed.

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:

James N. Baldwin
Executive Deputy Secretary of State