

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-

PATRICIA PERKINSON

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on December 21, 1995 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 4120 Hutchinson River Parkway, Apt. 18E, Bronx, New York 10475, having been advised of her right to be represented by an attorney, appeared pro se.

The complainant was represented by Assistant Litigation Counsel Scott NeJame, Esq.

#### COMPLAINT

The complaint alleges that the respondent notarized the acknowledgement portions of two blank forms; that she failed to place on the forms the date of her notarial act or the names of the persons who purportedly appeared before her; that the signatures of the alleged signatories were subsequently forged on the documents, which were then filed in Surrogate's Court; that the purported signatories did not appear before the respondent and did not acknowledge their signatures to her; that the purported signatories suffered pecuniary damages as a result of the respondent's acts; and that by reason thereof the respondent is guilty of engaging in acts of professional misconduct.

#### FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail on December 2, 1995 (State's Ex. 1).

2) The respondent is, and at all times hereinafter mentioned was, a duly commissioned notary public (State's Ex. 2).

3) On February 1, 1988 Viola Francis presented the respondent with two "Renunciation of Letters of Administration and Waiver of Citation" forms relating to the estate of James V. Francis, and asked the respondent to notarize them. The full details of the forms had not been completed, and

they had not been signed by the purported signatories.<sup>1</sup> The respondent wrote the venue, date, and names of the purported signatories, Lois G. Francis and Coreen Francis Moran, on the forms. Based on Viola Francis' statement that the signatures of Lois G. Francis and Coreen Francis Moran would be obtained later, the respondent then signed the forms after the statement "to me personally known to be the same person described in and who executed the foregoing instrument, and to me such person duly acknowledged that he or she executed the same," and affixed her notary stamp (State's Ex. 3, 4, and 5).

Neither Lois G. Francis nor Coreen Francis Moran appeared before the respondent (State's Ex. 5), and they did not acknowledge to her that they had signed the documents. Their signatures were forged on the documents by, or at the direction of, Viola Francis, and the documents were filed in Surrogate's Court, Bronx County, on February 26, 1988. Although the purported signatories were not aware of court proceedings at the time, they did eventually receive shares of the estate.

### OPINION

I- As the party which initiated the hearing, the burden is on the complainant to prove, by substantial evidence, the truth of the charges in the complaint. 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).

The complaint in this matter encompasses various charges. The evidence clearly supports, and the respondent does not deny, the charges that: the respondent notarized forms on which there were no signatures; the signatures were subsequently forged and the documents were filed in Surrogate's Court; and the purported signatories did not appear before the respondent and did not acknowledge their signatures to her. The evidence refutes the charges that the forms were blank when the respondent notarized them and that she failed to place on them the date of her notarial act or the names of the purported signatories.

II- Regardless of her intent, a notary public acts unlawfully when she 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).

The respondent notarized two documents which were clearly intended for use in court proceedings. She did so without the purported signatories being present and acknowledging their signatures, and thereby made it possible for Viola Francis to commit a fraud on the court. That the purported signatories

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<sup>1</sup> Although the title of proceeding and a clause consenting to the appointment of Viola Francis as administratrix may have been typed on the forms before they were presented to the respondent, the handwritten names, addresses, relationships to the decedent, and signatures of the purported signatories, and the dates of their purported signing, were missing.

eventually received shares in the estate in no way excuses or mitigates the respondents misconduct. Her contention that she was told that the signatures would be obtained after the notarization is absolutely no excuse for her clear violation of her obligations as a notary public. Her conduct was inimical to the very essence of the office of notary public.

#### **CONCLUSIONS OF LAW**

1) By notarizing the purported acknowledgments on two unsigned documents when the purported signatories had not appeared before her and had not acknowledged to her that they had signed the documents the respondent engaged in acts of misconduct as a notary public.

2) The complainant failed to establish by substantial evidence that the respondent notarized forms which were blank, and that she failed to place on the forms the date of her notarial act or the names of the purported signatories, and those charges should be dismissed.

#### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** by notarizing purported acknowledgements on two unsigned documents without the purported signatories having appeared before her and without those purported signatories having acknowledged that they had signed the documents, Patricia Perkinson engaged in acts of misconduct as a notary public, and accordingly, pursuant to Executive Law §130, her commission as a notary public is revoked, effective immediately.

**IT IS FURTHER DETERMINED THAT** all other charges herein are 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:

ALEXANDER F. TREADWELL  
Secretary of State  
By:

Michael E. Stafford, Esq.  
Chief Counsel