

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-

CHRISTINE W. CAPUTO,

Respondent.

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This matter came on for hearing before the undersigned, Roger Schneier, on February 22, 1995 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of Philip Morris Management Corp. (hereinafter "Philip Morris"), 120 Park Avenue, New York, New York 10017, having been advised of her right to be represented by an attorney, appeared pro se.

The complainant was represented by A. Marc Pellegrino, Esq.

COMPLAINT

The complaint alleges that the respondent affixed her signature and notary stamp to a deed and two affidavits although one of the purported signatories of the documents did not appear before her.

FINDINGS OF FACT

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

2) At all times hereinafter mentioned the respondent was duly commissioned as a notary public. Her commission expired on September 30, 1994 and was not renewed (State's Ex. 2).

3) The respondent is employed by Philip Morris. Sometime during the week of January 11, 1993 she received a telephone call from Anne M. Marlowe, an employee of Philip Morris with whom the respondent has been acquainted since 1988. Mrs. Marlowe asked the

respondent if she would notarize documents which had been signed by her husband and her. The respondent objected to notarizing documents in the absence of Mr. Marlowe, but when Mrs. Marlowe said that the documents were important and that she needed them notarized the respondent agreed that if Mrs. Marlowe would bring her something with Mr. Marlowe's signature for comparison "I would see what I could do...." (State's Ex. 3). The respondent had accommodated Mrs. Marlowe in the same way previously.

On January 18, 1993 Mrs. Marlowe went to the respondent's office. She brought with her an insurance policy and two other documents purportedly bearing Mr. Marlowe's signature, as well as the documents to be notarized. The respondent looked at the documents to be notarized, and Mrs. Marlowe signed them in her presence. Mr. Marlowe's purported signature was already on the documents, consisting of a deed and two affidavits, and after Mrs. Marlowe stated that Mr. Marlowe had signed the documents and the respondent compared the signatures to that on the insurance policy, the respondent notarized the documents (State's Ex. 1 and 3).¹

4) At the time that she notarized the documents the respondent knew that it was improper to do so without Mr. Marlowe being present.

OPINION

I- The respondent is not currently commissioned as a notary public, and was not commissioned at the time of the commencement of the proceeding. She was, however, commissioned at the time of her alleged misconduct, and can, until March 30, 1995, renew her license by merely submitting an application and the required fee to the County Clerk. Executive Law §§130 and 131.

The expiration of a license, or in this case a commission, does not divest the Secretary of State of the jurisdiction to impose disciplinary sanctions for misconduct which occurred while the commission was in effect. Albert Mendel & Sons, inc. v N.Y. State Department of Agriculture and Markets, 90 AD2d 567, 455 NYS2d 867 (1982); Senise v Corcoran, 146 Misc.2d 598, 552 NYS2d 483 (Supreme Ct., NY County 1989). Even an expired license may be revoked. Maine Sugar of Montezuma, Inc. v Wickham, 37 AD2d 381, 325 NYS2d 858 (1971). To allow the lapse of the respondent's commission to divest the Secretary of State of jurisdiction would be to improperly deprive him of his right to disqualify her from holding

¹ It is interesting to note that although the deed states that it was made February 1, 1993, the acknowledgement is dated January 18, 1993, indicating that the deed was signed two weeks prior to its making, and that this inconsistency apparently was not picked up by the professionals involved in the transaction.

such a commission in the future. Brooklyn Audit Co., Inc. v Department of Taxation and Finance, 275 NY 284 (1937).

II- A notary public is a public officer, Patterson v Department of State, 36 AD2d 616, 312 NYS2d 300 (1970), and the need to assure truthfulness in administering oaths and taking acknowledgments is a reason for the existence of the office. Department of State v Lewczyk, 110 DOS 82.

The existence on a document of a notarized acknowledgement or of a jurat indicating that the document was sworn to lends credence to the purported authenticity of that document. The law attaches great importance to the act of the notary, whose notarization of a document causes that document to be evidence without any further proof being required. A certificate of acknowledgement

"makes out a prima facie case as strong as if the facts certified had been duly sworn in open court by a witness, apparently disinterested and worthy of belief. The legal presumption of the proper performance of official duty by a public officer requires that this effect should be given it." Albany County Savings Bank v McCarty, 149 NY 71, 83 (1896).

"The certificate of acknowledgement raises a presumption of due execution of the instrument, which must be weighed against any evidence given to show that it was not duly executed." Kelly v Kelly, 116 Misc. 195, 189 NYS 804, 814 (Supreme Court, Bronx County, 1921).

Regardless of her intent, a notary public acts unlawfully when she notarizes a document without the purported signatory being present. 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).

At the hearing of this matter the respondent appeared to be honestly contrite. However, her misconduct was not inadvertent or isolated. To the contrary, she admits to having officiated on behalf of Mrs. Marlowe on another occasion when the signatory to the document was not present, and acknowledges that she was aware that her conduct was wrong.

CONCLUSIONS OF LAW

1) The Department of State has jurisdiction to conduct these proceedings and to impose disciplinary sanctions on the respondent.

2) By notarizing three documents bearing the purported signature of Michael G. Marlowe without Mr. Marlowe appearing before her the respondent engaged in three acts of misconduct as a notary public in violation of Executive Law §130.

DETERMINATION

WHEREFORE IT IS HEREBY DETERMINED THAT Christine W. Caputo has engaged in three acts of misconduct as a notary public, and accordingly, pursuant to Executive Law §130, should she ever apply for renewal of her commission as a notary public, or for a new commission, such application shall be dealt with as if her prior commission had been revoked.

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