

STATE OF NEW YORK  
DEPARTMENT OF STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

-----X

In the Matter of the Complaint of

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

Complainant,

**DECISION**

-against-

**MICHAEL J. CLEARY,**

Respondent.

-----X

The above noted matter came on for hearing before the undersigned, Roger Schneier, on November 3, 1999 at the New York State Office Building located at 65 Court Street, Buffalo, New York.

The respondent did not appear.

The complainant was represented by License Investigator III Marcia Reinagel.

**COMPLAINT**

The complaint alleges that the respondent, a commissioned notary public, was disbarred, and that by reason thereof his commission should be revoked.

**FINDINGS OF FACT**

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail delivered on October 2, 1999 (State's Ex. 1).

2) The respondent is a duly commissioned notary public pursuant to a commission renewed on July 20, 1998 and expiring on July 20, 2000. The commission was issued by reason of his being an attorney at law in the State of New York (State's Ex. 1).

3) On May 7, 1999 the respondent was disbarred (State's Ex. 1).

**OPINION**

I- 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. Executive Law §130; State Administrative Procedure Act §301; *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

II- The respondent was granted his commission as a notary public by virtue of his being an attorney. Accordingly, he was not required to meet any of the educational, experiential, or character standards imposed by the governing statute. Executive Law §130. Cf. *Huber v Shaffer*, 160 Misc2d 923, 611 NYS2d 998 (1993). He is no longer an attorney and, therefore, the basis on which his commission was issued no longer exists. Thus, he is not entitled to that commission.

**CONCLUSIONS OF LAW**

The respondent's commission as a notary public should be revoked inasmuch as he is no longer an attorney and, therefore, the basis upon which he was granted the commission is no longer valid and he no longer qualifies to hold the commission.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** the commission as a notary public of Michael J. Cleary is revoked, effective immediately. He is directed to send his 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: November 8, 1999