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In the Matter of the Complaint of

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

Complainant,

**DECISION**

-against-

**ANNE D'ELIA**

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 1340 E. 26th Street, Brooklyn, New York 11210, was not present. However, prior to the hearing, David Warmflash, Esq., of Sexter & Warmflash, 61 Broadway, New York, New York 10009, entered a plea of nolo contendere on her behalf (State's Ex. 4).

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

**ISSUE**

The issue before the tribunal is whether the respondent engaged in an act of misconduct as a notary public by notarizing a signature although the purported signatory did not appear before her.

**FINDINGS OF FACT**

1) The respondent is, and has been since at least March 30, 1992, a duly commissioned notary public (State's Ex. 2).

**OPINION AND CONCLUSIONS OF LAW**

I- The respondent's plea of nolo contendere to a complaint alleging that on or about July 20, 1993 she notarized the acknowledgement of the purported signature of Frances Carbonaro on a "Waiver and Consent on Probate" form although Carbonaro was not present and did not appear before her (State's Ex. 1), while not an admission of the facts charged in the complaint, is the equivalent of a plea of guilty. People v Daiboch, 265 NY 125 (1934). Therefore, it will support the same conclusions of law and the imposition of the same penalty as would a finding of the truth of the charges after an evidentiary hearing.

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).

In mitigation of any penalty to be imposed, I have considered the fact that there it is not alleged that Ms Carbonaro did not sign the document, and that no evidence was offered as to the degree of the pecuniary damages which she is alleged to have suffered. I have also noted that according to her affidavit the document was apparently given to the respondent for notarization by Mr. Warmflash, by whose law firm she is employed (State's Ex. 3). However, the respondent is admonished that in the future she must conscientiously adhere to all of the formal requirements of notarization regardless of from whom and in what circumstances she has received a document. Failure to do so can be expected to result in the revocation of her commission.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Anne D'Elia has engaged in an act of misconduct as a notary public and, accordingly, pursuant to Executive Law §130, her commission as a notary public is suspended for a period of three months commencing on February 1, 1996 and terminating on April 30, 1996, both dates inclusive.

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