

STATE OF NEW YORK  
DEPARTMENT OF STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Complaint of

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

Complainant,

**DECISION**

-against-

**ALAN P. JOSEPH,**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on February 4, 1998 at the office of the Department of State located at 41 State Street, Albany, New York.

The respondent, of 2532 New Scotland Road, Voorheesville, New York 12186, did not appear.

The complainant was represented by Litigation Counsel Laurence Soronen, Esq.

**COMPLAINT**

The complaint in the matter alleges that respondent has been suspended from the practice of law, and that because of his having qualified for a commission as a notary public on the basis of his status as an attorney, and because of the conduct underlying both his suspension and a prior decision in which he was suspended as an attorney and the suspension was stayed, his commission as a notary public 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 December 15, 1997 (State's Ex. 1).

2) The respondent is a duly commission notary public. That commission was issued by virtue of his being licensed to practice law in the State of New York (State's Ex. 1).

3) By decision and order dated January 30, 1996, *Matter of Alan P. Joseph*, 223 AD2d 999, 637 NYS2d 490, the Supreme Court Appellate Division, Third Department, found the respondent guilty of: Commingling funds in his escrow account, the balance of which fell, on fifteen occasions, below the amounts he was required to maintain; failing to maintain complete records of client's funds; issuing checks against his escrow account when there were insufficient funds to cover the checks; failing to properly account to at least one client for funds received; and failure to reply to status report

requests received in three matters. The Court suspended the respondent from the practice of law for a period of two years, and, having found a lack of venal intent and of client harm, stayed the suspension conditioned on his submitting semiannual reports on his escrow accounts.

4) By decision and order dated March 7, 1997 *Matter of Alan P. Joseph*, 654 NYS2d 476, the Supreme Court Appellate Division, Third Department, found the respondent guilty of failure to maintain client communications, failure to return the unused portion of a retainer upon his discharge, and failure to promptly forward a client's file to new counsel upon his discharge, and suspended him from the practice of law for a period of one year.

**OPINION AND CONCLUSIONS OF LAW**

The acts for which the respondent was suspended from the practice of law are not directly related to the functions of a notary public, which are essentially the authentication of documents. In both cases, it appears that his misconduct arose from an inability to handle the administrative tasks of running a law practice. There is nothing in those acts which would reasonably lead to the conclusion that he would improperly notarize documents. However, he 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 or character standards imposed by the governing statute. Executive Law §130. His commission 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 thus no longer qualifies to hold the commission.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** pursuant to Executive Law §130 the commission as a notary public of Alan P. Joseph is revoked, effectively immediately, and he is directed to immediately send his notary public identification card to Diane Ramundo, Customer Service Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, NY 12208.

Roger Schneier  
Administrative Law Judge

Dated: February 6, 1998