

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-

**DEBORAH L. SCOTT,**

Respondent.

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This matter came on for hearing before the undersigned, Roger Schneier, on June 6, 1995 at the office of the Department of State located at 84 Holland Avenue, Albany, New York.

The respondent, of 121 2nd Street, Albany, New York 12210 was represented by James Green, Esq., City of Albany, Department of Housing, 200 Henry Johnson Boulevard, Albany, New York.

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

**COMPLAINT**

The complaint alleges that the respondent notarized a signature although the signatory was not present.

**PLEA**

The respondent entered a plea nolo contendere, admitting the truth of the allegations, and through Mr. Green offered a statement in explanation and mitigation.

**FINDINGS OF FACT**

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail on May 13, 1995 (State's Ex. 1).

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

3) On or about December 20, 1993 Margaret Booker signed, and filed with the City of Albany Commission of Human Rights, a complaint. On or about February 4, 1994, at the request of a commission staff person, the respondent, an employee of the City of Albany Department of Housing, notarized Ms. Booker's signature, indicating that the document had been subscribed and sworn to before her. Ms. Booker was not present at the time of the notarization, and did not appear before the respondent.

**OPINION**

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 are no allegations that Ms. Booker did not sign the complaint form or that any actual harm arose from the respondent's misconduct, and that her actions obviated the need to require Ms. Booker return to the Commission of Human Rights office to complete her complaint form. I have also taken into consideration Mr. Green's statement that the loss of the respondent's notary commission for an extended period of time would impact negatively on the operations of the Albany Department of Housing, where as part of her job the respondent notarizes several documents a day in transactions involving the obtaining of housing for low and middle income persons. The respondent is admonished, however, that any further violation can be expected to result in the imposition of a more severe penalty.

**CONCLUSIONS OF LAW**

By notarizing a document when the affiant was not present and had not appeared before her the respondent engaged in an act of misconduct. Executive Law §130.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Deborah L. Scott 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 one month, commencing on July 1, 1995 and terminating on July 31, 1995, 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