

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-

CLAUDIA TAVERNESE,

Respondent.

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Pursuant to the designation duly made by the Hon. Gail S. Shaffer, Secretary of State, the above noted matter came on for hearing before the undersigned, Roger Schneier, on April 28, 1993 at the New York State Office Building, 333 E. Washington Street, Syracuse, New York.

The respondent, of 508 Bailey Avenue, Chittenango, New York 13037, was represented by Frederick N. Rann, Esq., 128 Main Street, Oneida, New York 13421.

The complainant was represented by Timothy Mahar, Esq.

COMPLAINT

The complaint alleges that the respondent affixed her signature and notary stamp to two documents without the purported signatory appearing before her and acknowledging his signature, while having reason to know that the signatures were not genuine.

FINDINGS OF FACT

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

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

3) In July, 1989 Christopher A. Hill applied to Chase Lincoln First Bank (Chase) for a \$14,330.00 loan for the purchase of an automobile, for which loan he required the guarantee of a co-signer. On a date not established, Hill's wife, Debra, appeared before the respondent (who had formerly been married to Mrs. Hill's father) at her home and asked her to notarize the loan documents. Without first examining the documents to see if they had been signed by Mrs. Hill, the respondent wrote her name and notary identifying information on the documents (the stamp

which she normally used was at her office) (Comp. Ex. 3 & 4). The respondent then observed that the documents were unsigned, and asked Mrs. Hill to explain. Mrs. Hill stated that what was going to be notarized were the signatures of her ex-husband, Mathew Chmielewski, who, she said, was going to be the co-signer. At that point, the respondent tried to reach Chmielewski on the telephone, but was not able to do so, and she told Mrs. Hill that she could not "sign it unless I talk to Matt and know he is going to sign this paper" (trans. p. 44, lines 15-16). She did not, however, cross out the information which she had written on the documents.

The respondent had known Chmielewski from the time that he and Mrs. Hill had started to date, and continued to have contact with him after he and Mrs. Hill divorced, as he and the respondent had young sons who were friends and who saw each other with some frequency. The respondent knew that even after Chmielewski and Mrs. Hill had separated and then divorced Chmielewski had voluntarily helped out Mrs. Hill financially because of his concern for the welfare of his son, who lived with Mrs. Hill. Therefore, she did not think it unusual that Chmielewski would be willing to co-sign the loan.

A day or two later the respondent spoke with Chmielewski when he came to her home to pick up his son. He told her that he had signed documents relating to the purchase of the car by the Hills.¹ However, he was not shown the documents, which the respondent did not have, and did not, therefore, acknowledge the particular signatures in question.

The next day Mrs. Hill appeared at the respondent's office with the loan documents bearing Chmielewski's signature, and the respondent affixed her notary stamp adjacent to the information which she had previously written in by hand, but did not sign the documents. The documents do not contain any language regarding the administration of an oath or the acknowledgement of the signatures, or anything else indicating that notarization is required.

Some time later Chmielewski was contacted by Chase, told that the loan was in default, and asked to make good on the guarantee. He denied having signed the documents. The car was repossessed and, with the help of an attorney whom he paid \$100.00, Chmielewski filed an affidavit of forgery with Chase. In spite of that his credit history continued to indicate that he had defaulted on the guarantee, and in June, 1991 Chase had to send a letter to Citibank indicating that Chmielewski was not responsible for the debt and that Chase had taken action to clear his credit records (Comp. Ex. 7).

¹ Having observed the demeanor of Chmielewski and the respondent when they testified, and having considered the underlying circumstances, including the respondent's initial refusal to complete the notarization of the documents without first speaking with Chmielewski, I have discounted Chmielewski's denials of having signed the documents, which it would appear were motivated by his desire to avoid liability on the loan guarantee.

On January 30, 1990 Chmielewski filed a criminal complaint against the respondent (Comp. Ex. 6). The matter was dealt with in the Village Court of the Village of Chittenango on June 6, 1991 by way of an adjournment in contemplation of dismissal of a charge of "notary fraud" (apparently an alleged violation of Executive Law §135[a]), conditioned on the respondent performing 100 hours of community service. The respondent performed the community service, and the charges were dismissed on December 10, 1992 (Comp. Ex. 5).

OPINION

The normal functions of a notary public are to administer oaths and affirmations, take affidavits and depositions, receive and certify acknowledgments or proofs of various written documents, demand acceptance or payment of certain financial instruments, protest the non-payment or non-acceptance of such instruments, and to perform certain other acts required for international transactions (Executive Law §135).

It is not a function of notary to merely affix her stamp to documents.² However, by doing so the respondent gave the loan guarantee an additional air of authenticity. Department of State v Garner, 8/23/82. Her failure to show the documents to Chmielewski was an act of misconduct, because without doing so she had no way of being certain that the documents which he told her he had signed were the same as those which had been presented to her by Mrs. Hill.

The nature of the respondent's misconduct is magnified by the apparently cavalier attitude with which she deals with her duties as a notary public. When first approached by Mrs. Hill the respondent did not bother to examine the documents to determine whether they were appropriate or in the proper form for notarization, and she wrote her notary identifying information on both documents without regard to the fact that they did not bear Mrs. Hill's signature. When she learned that it was Chmielewski who was to sign the documents she indicated that she would notarize the documents if she could get a verbal acknowledgment that he planned to sign them, which is contrary to the required procedures of having the documents signed before notarization, and then notarizing only with the signatory personally present. People v Reiter, 273 NY 348 (1937); Division of Licensing Services v Tischler, 7 DOS 90. Even after saying that she had to talk to Chmielewski, the respondent did not cross out the notary information which she had written in, which of course created the possibility of Mrs. Hill using the documents without any further contact with the respondent. Finally, after she had affixed her stamp to the documents the respondent failed to sign above the stamp (Executive Law §137).

² The question of the impropriety of the respondent having affixed her stamp to the documents without signing them, and without the documents containing a statement of venue or a jurat or statement of acknowledgement, is not addressed here inasmuch as such conduct was neither charged in the complaint nor litigated in the hearing.

In mitigation of the seriousness of the violation, which is similar to the attesting to the administration of an oath or the taking of an acknowledgement without the signatory being present, I have considered the facts that the Chmielewski did sign the documents and that the respondent's misconduct arose from the careless disregard of proper procedure rather than from intent. She is admonished, however, that any future failure to abide strictly by the proper notary practices may result in the revocation of her commission.

CONCLUSION OF LAW

By affixing her notary stamp to the loan documents without first showing them to Chmielewski and obtaining his acknowledgment that they did, in fact, bear his signature, the respondent engaged in an act of misconduct as a notary public.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Claudia Tavernese 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 year, commencing on August 1, 1993 and terminating July 31, 1994.

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:

GAIL S. SHAFFER
Secretary of State
By:

James N. Baldwin
Executive Deputy Secretary of State