

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-

LINA WEATHERWAX,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on January 6, 2000 at the office of the Department of State located at 123 William Street, New York, New York.

The respondent did not appear.

The complainant was represented by License Investigator III Richard Drew.

COMPLAINT

The complaint alleges that the respondent, a notary public, has been convicted of a crime and that she failed to disclose that conviction on her renewal application for the 1999 to 2001 licensing period, and that by reason thereof she is guilty of misconduct or incompetence pursuant to Executive Law §130.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served by certified mail addressed to the respondent at her address appearing in the records of the Department of State and posted on November 9, 1999. The mailing was returned by the Postal Service on December 16, 1999 marked "Unclaimed" (State's Ex. 1 and 2).

2) The respondent is a duly commission notary public for the term of April 10, 1999 through April 10, 2000 (State's Ex. 3).

3) On August 25, 1997 the respondent was convicted on her guilty plea to a charge of Criminal Possession of a Forged

Instrument in the 3rd degree, Penal Law §170.20 (State's Ex. 4). The conviction was the result of her having photocopied and altered a doctor's prescription for a drug containing codeine and then having presented that forged document to a pharmacy (State's Ex. 6 and 7).

4) On her March 10, 1999 application for renewal of her commission, the first application submitted after her conviction, the respondent answered "no" to question number 1: "Since your last application, have you been convicted of a crime or offense (not a minor violation)...?" (State's Ex. 5).

OPINION AND CONCLUSIONS OF LAW

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. *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 convicted of Criminal Possession of a Forged Instrument, a crime directly reflecting on her trustworthiness to act as a notary public, the primary function of which is the authentication of documents. She has compounded that by lying about the conviction on her renewal application. Those acts of misconduct clearly establish that she cannot be trusted to fulfill her duties as a notary public honestly, and warrant, pursuant to Executive Law §130, the revocation of her commission.¹

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT pursuant to Executive Law §130 the notary public commission of Lina Weatherwax is revoked effective January 24, 2000. She is directed to send her notary public identification 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: January 7, 2000

¹ While the complaint seeks the revocation of the respondent's commission on the additional grounds of "incompetence," no such grounds appear in the governing statutes.