

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-

LAURIE BELL,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on December 6, 1995 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of CAS Appraisal Service, One Stone Place, Bronxville, New York 10708, was represented by Robert P. Kelly, Esq., Clune, Hayes, Frey, Bentzen & Clune, P.C., 480 Mamaroneck Avenue, Harrison, New York 10528.

The complainant was represented by Supervising License Investigator Michael Coyne.

ISSUE

The complaint alleges that the respondent was granted certification as a residential real estate appraiser based on non-qualifying experience as defined in 19 NYCRR 1102.6, and seeks revocation of that certification.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was personally served on the respondent on November 2, 1995 (State's Ex. 1).

2) The respondent is, and has been since July 26, 1993, duly certified as a residential real estate appraiser (State's Ex. 2).

3) In response to an audit conducted by the complainant, the applicant submitted proof of 15 months of appraisal experience

(State's Ex. 3 and 4).

MOTION TO DISMISS

The complainant's case dealt only with the amount of experience submitted by the respondent, and contained no evidence regarding non-qualifying experience. Upon inquiry by the tribunal, Mr. Coyne state that the complainant was, in fact, proceeding on the theory that the respondent had insufficient experience, but had neglected to serve an amended complaint, although it had intended to do so. Consequently, a motion was made to dismiss for failure to establish a prime facie case.

As the party which instituted the proceedings, the burden is on the complainant to establish the truth of the charge by substantial evidence. State Administrative Procedure Act §306[1]. In this case there is absolutely no evidence to support the stated charge. Accordingly, the motion to dismiss must be granted.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the charge that Laurie Bell does not meet the prerequisite qualifications for certification as a residential real estate appraiser because she engaged in non-qualifying experience is dismissed.

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