

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Application of

RICHARD BERNTSEN

DECISION

For a License as a Real Estate Appraiser

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This matter came on for hearing before the undersigned, Roger Schneier, on January 18, 1995 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 45 Merrick Avenue, Merrick, New York 11566, having been advised of his right to be represented by an attorney, appeared pro se.

The Division of Licensing Services (DLS) was represented by Supervising License Investigator Michael Coyne.

ISSUE

The issue before the tribunal is whether the applicant has sufficient experience to qualify for certification as a residential real estate appraiser.¹

FINDINGS OF FACT

1) By application dated May 5, 1994 the applicant applied for certification as a residential real estate appraiser. After review of documentation submitted by him with the application, and of additional items submitted subsequently, by letter dated July 13, 1994 DLS advised the applicant that it proposed to deny the application because he had only 15 of the required 24 months of qualifying experience, but that he could request an administrative review. The applicant requested such a review, and by letter dated September 26, 1994 the applicant was advised by DLS that after conducting the review it continued to propose to deny the application. The applicant was advised that he could request a formal

¹ While the caption of the matter refers to an application for a license as a real estate appraiser, the application is, in fact, for certification as a residential real estate appraiser. That is significant because, pursuant to Executive Law §160-h, the functions of a certified residential real estate appraiser are less restricted than those of a licensed real estate appraiser.

hearing, which he did by letter dated November 2, 1994. In response, a notice of hearing dated December 2, 1994 was served on the applicant by certified mail on December 5, 1995 (State's Ex. 1).

2) The applicant is a June, 1993 graduate of Northeastern University. The curriculum of that university provides for six months of classes and six months of cooperative work during each year of a five year degree program. In fulfillment of that work requirement the applicant commenced working for R.C Berntsen Assoc. Inc. in March, 1990.

The applicant's initial employment was as an apprentice. However, commencing with an appraisal documented in a report completed on March 28, 1991 he undertook to work as an appraiser. Because of the bifurcated school year, and apparently also because of the dates of school vacations, his appraisal activity, as reported on his appraisal log, occurred in clusters:

March 28, 1991: 1 appraisal
April, 1991: 4 appraisals
May, 1991: 25 appraisals
June, 1991: 10 appraisals
July, 1991: 4 appraisals
August, 1991: 5 appraisals
March, 1992: 9 appraisals
April, 1992: 23 appraisals
May, 1992: 11 appraisals
June, 1992: 16 appraisals
July, 1992: 15 appraisals
August, 1992: 19 appraisals
September 1-3, 1992: 3 appraisals
November 25, 1992: 1 appraisal
December 22-29, 1992: 6 appraisals
March 25-30, 1993: 13 appraisals
June 22-28, 1993: 4 appraisals
August, 1993: 20 appraisals
September, 1993: 37 appraisals
October, 1993: 33 appraisals
November 1-2, 1993: 4 appraisals (State's Ex. 4).²

OPINION

I- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that he has

² According to the respondent, he has continued to perform appraisals since the last date listed on his appraisal logs, but did not list such work on the logs because he thought that what he had submitted was sufficient.

acquired the required experience. State Administrative Procedure Act (SAPA), §306[1]; Executive Law §160-k. Substantial evidence is that which a reasonable mind could accept as supporting a conclusion or ultimate fact. Gray v Adduci, 73 N.Y.2d 741, 536 N.Y.S.2d 40 (1988). "The question...is whether a conclusion or ultimate fact may be extracted reasonably--probatively and logically." City of Utica Board of Water Supply v New York State Health Department, 96 A.D.2d 710, 465 N.Y.S.2d 365, 366 (1983)(citations omitted).

II- In order to qualify for certification as a real estate appraiser, the applicant must establish that he has "the equivalent of two years of appraisal experience in real property appraisal as defined by the board supported by adequate written reports." Executive Law §160-k[1]. Proof of such experience must be provided through a detailed listing of appraisal reports. Executive Law §160-k[3].

The applicant has submitted appraisal logs listing appraisals performed by him. Those logs indicate that he was engaged in full time appraisal work for 13 full months, and during parts of 6 other months. Even if the applicant were to be granted credit for the partial months as if they were full months he would still not have established that he has the required 24 months experience.

In addition to the appraisal logs, the applicant also submitted copies of 25 appraisal reports, some of which are from the 5 months subsequent to the period covered by the logs. That, however, does not satisfy the statutory requirement of a detailed listing. Therefore, experience credit cannot be awarded for those months.

Essentially, for the applicant to qualify on the documentation submitted, the months in which the documentation establishes that he only worked part-time would have to be credited as full months, and he would have to receive credit for the additional months for which he has not submitted a detailed listing of appraisals. Such action would be unlawful and unjustified.

CONCLUSIONS OF LAW

The applicant has failed to establish that he has sufficient experience to qualify for certification as a residential real estate appraiser and, accordingly, his application should be denied. SAPA §306[1]; Executive Law §§160-k and 160-p.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT, pursuant to Executive Law §§160-p, 160-v, and 160-w, that the application of Richard M. Berntsen for certification as a residential real estate appraiser is denied.

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:

Phillip M. Sparkes
Special Deputy Secretary of State