

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-

JAMES M. BOTAS,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on November 8, 1995 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 21 Donald Drive, Syosset, New York 11791, did not appear.

The complainant was represented by Supervising License Investigator Michael Coyne.

ISSUE

The issue before the tribunal is whether the respondent's certification as a residential real estate appraiser was granted based on non-qualifying experience.

FINDINGS OF FACT

1) The respondent is a duly certified residential real estate appraiser pursuant to a certification expiring on April 30, 1997 (State's Ex. 2).

2) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail on October 21, 1995 (State's Ex. 1). The complaint alleges that the respondent's certification as an appraiser was issued based upon his sworn statement setting forth his experience, and that because he engaged in non-qualifying experience as defined by 19 NYCRR 1102.6 he does not have the required qualifications for certification.

**OPINION AND CONCLUSIONS OF LAW**

As the party which initiated the hearing, the burden is on the complainant to prove, by substantial evidence, the truth of the charges in the complaint. State Administrative Procedure Act (SAPA), §306(1). 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).

The complainant presented no evidence addressing the type of experience obtained by the respondent. Rather, it presented evidence indicating only that the respondent may have failed to respond to its requests for proof of experience (State's Ex. 3). In the absence of any evidence as to the type of experience held by the respondent it must be found that the complainant has failed to meet its burden of proof.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** the complainant has failed to establish that the certification of James M. Botas as a residential real estate appraiser was based on non-qualifying experience, and accordingly the complaint 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