

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-

JOANN L. BRANICK,

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 December 8, 1994 at the office of the Department of State located at 84 Holland Avenue, Albany, New York.

The respondent, of 208 Bird Avenue, Sidney, New York 13838, was not present.

The complainant was represented by Supervising License Investigator Michael Coyne.

COMPLAINT

The complaint alleges that the respondent has failed to submit documentation or other proof satisfactory to the Department of State to substantiate the experience which she claimed that she has in order to obtain her certification as a residential real estate appraiser.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail on November 9, 1994 (Comp. Ex. 1). On December 6, 1994 she sent a telefax to Mr. Coyne in which she stated that she would not appear at the hearing, and that the documentation that she required was in New Jersey (Comp. Ex. 3).

2) Pursuant to an application signed by her on June 22, 1992, the respondent was certified as a residential real estate appraiser from July 20, 1992 through July 20, 1994 (Comp. Ex. 2).

3) The following communications (Comp. Ex. 3) have been had between the complainant and the respondent:

a) On March 1, 1994 License Inspector Janine Barnhart sent the respondent a letter in which she advised her that the complainant was conducting an audit of the experience claimed in the respondent's application and directing the respondent to complete and return within ten days an Experience Log. In response, a telephone call was received by Ms. Barnhart from the respondent's former employer, Jim Insinga, to whose address the letter had been sent. He stated that the respondent no longer worked for him, and that he would forward the letter to her home.

b) On April 5, 1994 Ms. Barnhart sent another letter to the respondent at Mr. Insinga's address, in which she referred to the letter of March 1 and requested a reply within ten days.

c) On April 11, 1994 a copy of the April 5th letter was sent to the respondent at a different address. On April 19, 1994 the respondent replied by telephone. She stated that she would have to go to New Jersey in order to get the information needed to complete the log, and requested an extension until the end of May or beginning of June. After conferring with H. Stephen Warden, her supervisor, Ms. Barnhart told the respondent that she could only give her ten days, and the respondent said that she would try to comply but did not expect that she would be able to do so.

d) On May 10, 1994, in another telephone conversation, the respondent told Ms. Barnhart that she had written to New Jersey the week of April 25th to request the files that she needed, that she had not yet had a reply, and that she could not go to New Jersey for about a month.

d) On August 3, 1994 Mr. Warden sent the respondent a letter in which he informed her that as a result of the audit the complainant had concluded that she had failed to substantiate that she had sufficient qualifying experience, and that if she did not surrender her certification within fifteen days a formal hearing would result.

OPINION

I- Pursuant to Executive Law §160-k[3], an applicant for certification as a real estate appraiser must establish that she has sufficient experience to qualify. So as to implement that requirement, the State Board of Real Estate Appraisal, acting

pursuant to authority granted to it by Executive Law §160-d[1], promulgated 19 NYCRR 1102.2[d], which provides:

"Upon request by the Department of State, either prior to certification or after certification, an applicant must provide documentation or other proof, satisfactory to the Department of State, to substantiate any or all of the experience claimed by the applicant. Failure to provide the requested documentation or proof promptly shall be grounds for the Department of State....to suspend or revoke the certification."

The respondent was asked to complete an Experience Log. Although given repeated extensions of the deadline set by the complainant, the respondent failed to comply. It is significant that after being told on April 19th that she must comply within ten days the respondent did not write for the documents she needed until April 25th, leaving only four days for her letter to get to New Jersey, for the addressee to reply, and for her to receive the reply and then complete and send the log to the complainant, a highly improbable scenario. Further, after having said on May 10th that she would not be able to go to New Jersey to get the files herself for about a month, as of two days before the hearing, or six months after she said she could go to get the files, the respondent apparently still had not made the trip.

The respondent admitted in her December 6th telefax that she does not have the documentation required by her to provide the complainant with the needed details of her experience. Accordingly, the complainant has met its burden of proving by substantial evidence that the respondent has not substantiated that she has the claimed experience and has violated 19 NYCRR 1102.2[d].

II- The respondent's certification expired on July 20, 1994, and she is not currently certified. However, pursuant to Executive Law §160-o[2], she may renew her certificate upon the submission of an application with payment of a late fee. Therefore, the Department of State retains jurisdiction. Albert Mendel & Sons, Inc. v N.Y. State Department of Agriculture and Markets, 90 AD2d 567, 455 NYS2d 867 (1982); Main Sugar of Montezuma, Inc. v Wickham, 37 AD2d 381, 325 NYS2d 858.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Joann L. Branick has failed to substantiate the claim of experience upon which she was certified as a residential real estate appraiser, in violation of 19 NYCRR 1102.2[d], and accordingly, pursuant to Executive Law §160-u, should she ever apply for renewal of her certification the

application shall be dealt with as if that certification was revoked and the respondent shall be required to substantiate her claimed experience prior to the issuance of a new certificate.

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:

Phillip M. Sparkes
Special Deputy Secretary of State