

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-

JOSEPH R. CALIPARI,

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 37 E. Main Street, Malone, New York 12953, did not appear.

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 he claimed that he has in order to obtain his 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).

2) Pursuant to an application signed by him on October 9, 1992, the respondent was certified as a residential real estate appraiser from November 23, 1992 through November 23, 1994 (Comp. Ex. 2).

3) The following correspondence (Comp. Ex. 3) has been sent to the respondent:

a) On April 5, 1994, as part of an audit of the experience which the respondent claimed on his application, License Inspector Janine Barnhart sent him an Experience Log, with instructions that he was to complete and return it within ten days. The respondent complied, and on April 26, 1994 Ms. Barnhart sent him a letter advising him that the log substantiated only twenty two of the required twenty four months of experience, did not qualify for sufficient experience points,¹ and was unclear with regards to certain claimed items. The respondent was directed to send a corrected log within ten days;

b) On May 3, 1994 Ms. Barnhart sent the respondent another letter, in which she again pointed out a lack of sufficient points and gave the respondent an additional ten days to submit a corrected log;

c) On June 1, 1994 Ms Barnhart sent the respondent yet another letter. She pointed out that his latest submission did not conform to the required format inasmuch as he had not included all of the requested information, that he was improperly claiming experience obtained subsequent to his application, and that he was incorrectly claiming "drive-bys" as experience. The respondent did not respond to that letter;

d) On August 4, 1994 District Manager H. Stephen Warden wrote to the respondent and advised him that the audit had resulted in the conclusion that he had failed to substantiate sufficient qualifying experience, and that if he failed to surrender his certification within fifteen days a formal hearing would be held. As there was no surrender, these proceedings were commenced.

OPINION

I- Pursuant to Executive Law §160-k[3], an applicant for certification as a real estate appraiser must establish that he 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

¹ 19 NYCRR Part 1102 establishes a point system for crediting qualifying experience.

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 provide the details of his claimed experience. Although he was given repeated opportunities to do so, he never provided sufficient details to satisfy the complainant, and he has failed to appear in this proceeding to present evidence that he does, in fact, have sufficient qualifying experience. Accordingly, the complainant has met its burden of proving by substantial evidence that the respondent has not substantiated that he has the claimed experience and has violated 19 NYCRR 1102.2[d].

II- The respondent's certification expired on November 23, 1994, and he is not currently certified. However, pursuant to Executive Law §160-o[2], he may renew his certificate upon the submission of an application with payment of a late fee. Therefore, and in light of the fact that the proceeding was commenced through the service of the notice of hearing prior to the expiration of the certification, 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.

CONCLUSIONS OF LAW

The respondent has failed to submit documentation or other proof satisfactory to the Department of State to substantiate the experience which he claimed that he has in order to obtain his certification as a residential real estate appraiser (19 NYCRR 1102.2[d]), and should he ever apply for renewal of his certification he should be required to substantiate his experience.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Joseph R. Calipari has failed to substantiate the claim of experience upon which he 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 he ever apply for renewal of his certification the application shall be dealt with as if that certification was revoked and the respondent shall be required to substantiate his 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