

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-

ROBERT R. CASE,

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 248 Church Street, Poughkeepsie, New York 12601, having been advised of his right to be represented by an attorney, appeared pro se.

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 claimed experience upon which his certification as a general real estate appraiser was based, and, therefore, has not met the prerequisite qualifications for such certification.

#### FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail (Comp. Ex. 1).

2) Based on the information contained in his application of December 20, 1991, on February 10, 1992 the applicant was issued a certification as a general real estate appraiser. The certifica-

tion is currently effective pursuant to its renewal on February 11, 1994 (Comp. Ex. 2).

3) The respondent and the complainant have had the following communications (Comp. Ex. 3, Resp. Ex. A):

a) By letter dated March 1, 1994 the applicant was advised by License Inspector Janine Barnhart that she was conducting an audit of his claimed appraisal experience, and he was requested to complete and return an experience log. The respondent promptly complied.

b) By letter dated March 7, 1994 the respondent was advised by Ms. Barnhart that, based on the information submitted, he was entitled to credit for only twenty of the required twenty four months of experience. He was asked to be more specific with regards to certain of the information on the logs.

c) By letter dated March 25, 1994, with which he enclosed "appraisal directory sheets as required in the original application," the respondent requested additional guidance from the complainant.

d) By letter dated April 8, 1994 the respondent was advised to show four additional months of experience on the log, and was told that all appraisals shown on the log must be available for review upon request.

e) By letter dated May 2, 1994 the respondent was advised that the review of the log was completed, and that he now had to produce copies of ten specified appraisal reports.

f) By letter dated May 6, 1994 the respondent requested that an inspector make an appointment to review the reports in his office, and in response he was advised that was not possible.

g) On March 25, 1994 the respondent advised Ms. Barnhart by telephone that he did not know when he would be able to comply with the request for the reports because of an illness in his family.

h) By letter dated June 2, 1994 the respondent advised Ms. Barnhart that his mother had died on May 30, that he would be involved in settling her affairs "for some time," and that as soon as he had completed doing that he would begin to contact his clients for written permission to release the appraisal reports.

i) By letter dated August 4, 1994 the respondent was advised by District Manager H. Stephen Warden that, as a result of the audit, the complainant had determined that the respondent had failed to substantiate that he has sufficient qualifying experi-

ence, and that if he did not surrender his certification within fifteen days a formal hearing would ensue.

j) By letter to Mr. Warden dated August 10, 1994 the respondent recapped some of the above history, and again requested that an inspector visit his office.

k) By letter dated August 24, 1994 the respondent advised Mr. Warden that he had received permission from six clients to release copies of their appraisals, asked if he should send in those copies, and suggested that "someone pick another appraisal from my inventory list." He did not receive a reply to that letter.

4) The respondent has not presented to the complainant copies of any appraisal reports, and has failed to state when he will produce the requested ten reports.

#### OPINION

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 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 produce copies of ten appraisal reports, and has been granted ample time to do so. He offered to produce six. Taken in the light most favorable to him, his failure to comply appears to result from a self imposed requirement that before supplying the copies he must receive the written approval of his clients. While his concern for his client's privacy may be laudable, there is no basis in law for the respondent's imposing that requirement on the complainant's review process.

The respondent has suggested that pending delivery by him of acceptable reports his certification might be suspended rather than revoked. That is not an acceptable resolution to the matter, as it would require this tribunal to retain jurisdiction for an open-

ended period and, if the parties were unable to agree on the acceptability of what the respondent might produce, to conduct one or more additional hearings. The better practice is to revoke the certification and allow the respondent to reapply once he has resolved his self imposed difficulties.

#### **CONCLUSIONS OF LAW**

The respondent has failed to provide proof, as required by 19 NYCRR 1102[d], that he has acquired the required experience to qualify for certification as an appraiser pursuant to Executive Law §160-k and 19 NYCRR 1102.1, 1102.2, and 1102.3. It is concluded, therefore, that he has not met the minimum qualifications for certification as a general real estate appraiser. Division of Licensing Services v Lilly, 24 DOS 24.

#### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Robert R. Case has failed to meet the minimum qualifications for certification as a general real estate appraiser as established by Executive Law Article 6-E, and accordingly, pursuant to Executive Law §160-u, his certification as a general real estate appraiser is revoked, effective immediately.

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