

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 FALCO,

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 21, 1994 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 300 E. Tropicana Ave. TRLB 119, Las Vegas, Nevada 89109-7342, 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 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 21, 1994 (State's Ex. 1).

2) On September 28, 1992, pursuant to an application dated July 30, 1992, the applicant was granted certification as a general real estate appraiser. That certification expired on September 28, 1994 and has not been renewed (State's Ex. 2).

3) On March 1, 1994 the complainant wrote to the respondent and advised him that it was conducting an audit of the experience which he claimed on his application. Enclosed with the letter was an experience log form, and the respondent was directed to return the completed log to the complainant within fifteen days. On March 17, 1994 the respondent telephoned the complainant and stated that he had just received the letter, and he was granted an extension until March 25. By letter dated April 5, 1994 the respondent requested additional time to comply, estimating that he should be able to return the log by the end of the month, and he was granted an additional extension to May 2. No log was ever received from the respondent, and by letter dated August 4, 1994 he was advised that if he did not surrender his 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 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 provide the details of his claimed experience. Although he was given two extensions of the deadline set in the complaint's original request, he never returned the experience log, 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 September 28, 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, 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 general 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 J. Falco has failed to substantiate the claim of experience upon which he was certified as a general 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