

STATE OF NEW YORK  
DEPARTMENT OF STATE

-----X

In the Matter of the Application of

**DEBORAH NATALIZIO**

**DECISION**

For a License as a Real Estate Appraiser

-----X

This matter came on for hearing before the undersigned, Roger Schneier, on February 23, 1995 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of P.O Box 2445, Middletown, New York 10940, having been advised of her right to be represented by an attorney, appeared pro se.

The Division of Licensing Services was represented by Supervising License Investigator Michael Coyne.

**ISSUE**

The issue before the tribunal is whether the applicant has sufficient experience to qualify for certification as a general real estate appraiser.<sup>1</sup>

**FINDINGS OF FACT**

By application dated January 11, 1994 the applicant applied for certification as a general real estate appraiser. The application established, as conceded by the Division of Licensing Services, that the applicant is entitled to credit for sufficient "appraisal points" according to the scheme established by 19 NYCRR 1102.2. The application was accompanied by, as required, an experience log listing appraisal experience obtained by the applicant during the period of January 2, 1992 through January 10, 1994 (State's Ex. 2).

By letter dated February 17, 1994 Compliance Officer Michael Kernan advised the applicant that her application had been found deficient because, as the result of several unexplained gaps, the appraisal log did not include the equivalent of 2 years full time appraisal experience. In response, on April 22, 1994 the applicant sent Mr. Kernan a supplemental log listing additional experience and

---

<sup>1</sup> Although the matter is captioned as a hearing an application for a license, what is involved is an application for certification, a distinction established by Executive Law Article 6-E.

intended to fill in the gaps. Mr. Kernan then replied, by letter dated May 10, 1994, that the appraisal log did not conform to the required format, since all items were not included in one listing, to which the applicant replied that she had been told by Compliance Officer William Stavola that it was not necessary to combine the logs (State's Ex. 3).

By letter dated August 5, 1994 the applicant was advised by Mr. Kernan that the Division of Licensing Services proposed to deny her application because she was entitled to credit for only 22 months experience, but that she could request an administrative review. Apparently such a request was made, as by letter dated September 26, 1994 the applicant was advised by Mr. Stavola that after an administrative review the Division of Licensing Services continued to propose to deny her application. In response, the applicant requested a hearing, and a notice of hearing was served on her by certified mail (State's Ex. 1).

#### OPINION

I- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that she has acquired the required experience. 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).

II- Executive Law §160-k provides that an applicant for certification as a real estate appraiser must "possess the equivalent of two years of appraisal experience in real property appraisal...." Pursuant to Executive Law §160-d the State Board of Real Estate Appraisal adopted rules and regulations in aid and furtherance of that requirement. 19 NYCRR 1102.1 states in relevant part: "Qualifying experience. Applicants for both residential certification and general certification must possess at least two years of full time experience." 19 NYCRR 1102.2 goes on to state:

"(a) Applicants will receive credit for experience according to the point system set forth in section 1102.3 of this Part....

(c) Applicants for general certification must have 240 experience points, which shall include at least 180 experience points from appraisals of properties that qualify under the 'General' category in the 'Appraisal Experience Point Schedule' set forth in section 1102.3 of this part."

The way that the two year requirement and the point system is applied is explained to applicants on page 6 of the license/certification application (App. Ex. A):

"Applicants must possess at least two full years of full-time real estate appraisal experience. Experience may be obtained on a cumulative basis with no set time period for acquisition. To assure consistency and fairness in evaluating appraisal experience, the Department of State will use a 'point system' that will serve as a guideline. The point system takes into consideration the number and type of appraisals performed, the type of properties appraised and approved experience credit for teaching.

The following illustrates the number of points that an applicant must attain to satisfy the experience qualifications:

Certified Residential Appraiser and Licensed Appraiser: 240 experience points, including at least 180 points (75%) from appraisals or property listed in the *Appraisal Experience Point Schedule* (below) or appropriate teaching experience.

Certified General Appraiser: 240 experience points, including at least 180 points (75%) from appraisals of property listed in the 'General' category in the *Appraisal Experience Point Schedule* (below) or appropriate teaching experience.

You must provide evidence of this qualifying experience by completing the appraiser point schedule and the experience log. IMPORTANT: It is not necessary to list all appraisals performed, if your experience greatly exceeds the indicated qualifications. You must, however, submit a sufficient amount of appraisal activity that is equivalent to 240-300 points and covers the two-year qualifying period."

Mr. Kernan, testifying on behalf of the Division of Licensing Services, took the position in this proceeding, however, that the applicant must establish both that she has the required points (he concedes that she had established entitlement to credit for 300 points with the submission of the first log), and that without regards to the point system she must establish that she has worked as an appraiser full-time for two years. That position is inconsis-

tent with the regulations and their stated purpose: "To assure consistency and fairness in evaluating appraisal experience," i.e., to establish an objective method of determining if an applicant has sufficient experience. Matter of the Application of Babakhanian, 22 DOS 95. If followed it would restore to the persons reviewing the applications the power to subjectively evaluate the amount of time which should be allowed for each appraisal, in contravention of the objective standards established by the point system. The point system would then become not a method of determining whether the required two years experience had been obtained, but an additional requirement for licensure or certification imposed by regulation without a grant of authority from the Legislature to impose such a requirement, and would be, therefore, invalid. Campagna v Shaffer, 73 NYS2d 237, 538 NYS2d 933 (1989).

This is not a case where, as hypothesized by Mr. Kernan, an applicant might have amassed 240 points in perhaps eight months. It is not a case where, again as hypothesized by Mr. Kernan, the applicant, while working for two years, performed only a few appraisals. Nor is it case in which the experience logs show some months of full time work and some months of part time work, and do not show a full 24 months. Matter of the Application of Berntsen, 11 DOS 95. It is a case where, as the Division of Licensing Services concedes, the applicant conducted appraisals during a time that extended over a period of two full years but argues that, based on its subjective analysis and without regard to its point system, she didn't work full time during those two years.

III- Even were the Division of Licensing Services' methodology to be accepted, the evidence establishes, without reference to the point system, that the applicant has two years of full time appraisal experience.

When read together, the two experience logs reveal that the applicant conducted appraisals for a two year period of time that, with the one exception upon which Mr. Kernan focused, was essentially uninterrupted. In that regards, it is important to note that the dates listed on the logs indicate, as required by the Division of Licensing's form, when the appraisals were completed, and that there is no indication of when any appraisal began or how long an appraisal took to complete. Accordingly, other than Mr. Kernan's testimony that, depending on the nature of the property, an appraisal would take anywhere from 1 day to 1 month,<sup>2</sup> there is no way to tell how long any particular appraisal took.

---

<sup>2</sup> Mr. Kernan testified that based on his reviews of appraisals the following amount of time was usually required for an appraisal: Single family residential property, 1 day; 2 to 4 family residence, 2 days; small business, 5 days; large business, 1 month.

The gap on which Mr. Kernan focused appears on the logs between May 25 and August 23, 1993, the period following the birth of the applicant's child (State's Ex. 4). However, a review of the supplementary experience log shows 3 appraisals completed on June 30, 1993, 3 completed on July 23, 1993, 1 completed on August 10, 1993, and 2 completed on August 12, 1993. In addition, the applicant completed 6 appraisals on September 13, 1993. That evidence, taken together with the testimony of the applicant's employer, Thomas G. Martin, that she consistently worked on a full time basis and worked from home after the birth of her child, and that much of her work involves tax certiorari, which takes longer than normal appraisals and is done several cases at a time, leads to the conclusion that what appears to be a gap in the applicant's work history is merely the result of the way the log form is set up.

**CONCLUSIONS OF LAW**

The applicant has established that she has sufficient experience to qualify for certification as a general real estate appraiser as required by Executive Law §160-k and 19 NYCRR 1102.1 and 1102.2.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT**, pursuant to Executive Law §160-e[3], the application of Deborah Natalizio for certification as a general real estate appraiser is granted, and the Division of Licensing Services is directed to issue the certification forthwith.

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