

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

ANTHONY COLETTI

DECISION

For a License as a Real Estate Salesperson

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on April 29, 1997 at the New York State Office Building located at 65 Court Street, Buffalo, New York.

The applicant, of 804 Krieger Road, Webster, New York 14580, did not appear.

The Division of Licensing Services (hereinafter "DLS") was represented by District Manager Marcia Reinagel.

ISSUE

The issue before the tribunal is whether the applicant should be denied a license as a real estate salesperson because of a disqualifying criminal conviction.

FINDINGS OF FACT

1) By application dated July 16, 1996 the applicant applied for a license as a real estate salesperson (State's Ex. 2).

2) On June 24, 1996 the applicant was convicted, on his guilty plea, of violating 18 USC §1341, Mail Fraud, and was sentenced to a term of probation of five years and to make restitution in the amount of \$82,709.00 (State's Ex. 6).

3) By letter dated November 19, 1996 the applicant was advised by DLS that it proposed to deny his application because of the conviction and his failure to submit a Certificate of Relief From Disabilities, a Certificate of Good Conduct, or an Executive Pardon, and that he could request an administrative review. On January 27, 1997 the applicant requested such a review, and by letter dated February 27, 1997 he was advised that DLS continued to propose to deny his application, and that he could request an administrative hearing, which he did by telefax on March 21, 1997. Accordingly, notice of hearing was served on the applicant by certified mail on April 9, 1997 (State's Ex. 1).

OPINION AND CONCLUSIONS OF LAW

The holding of an ex parte quasi-judicial administrative hearing was permissible, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served. *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis* 118 DOS 93.

A hearing on an application for licensure or registration is held at the request and instance of an applicant who has been notified of the proposed denial of the application. 19 NYCRR 400.4[b]. At the hearing it would have been the applicant's burden to establish that he is qualified to be licensed as a real estate salesperson. Real Property Law §§440-a and 441; State Administrative Procedure Act §306.

The applicant made a timely request for a hearing, but, although properly notified, failed to appear at the appointed time and place. He is, therefore, deemed to have withdrawn with the request for a hearing and, more than 35 days having elapsed since he was advised of the proposed denial, the decision to deny the application is final. *Matter of the Application of Delroy Antonio*, 79 DOS 95, *Matter of the Application of Edward Davis*, 58 DOS 94; *Matter of the Application of Jeffery H. Mintz* 35 DOS 94.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED that the application of Anthony Coletti for a license as a real estate salesperson is denied.

Roger Schneier
Administrative Law Judge

Dated: May 2, 1997