

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Complaint of

**DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES,**

Complainant,

DECISION

-against-

LUSIA C. EDMAN,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on November 2, 1998 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent did not appear.

The complainant was represented by Litigation Counsel Laurence Soronen, Esq.

Subsequent to the hearing, after Mr. Soronen and the hearing reporter had left, the respondent arrived. Her offer to surrender her license certificate was refused by the tribunal because she did not have her license pocket card with her.

COMPLAINT

The complaint alleges that the respondent has failed to comply with a prior decision of this tribunal and has wrongfully refused to surrender her suspended license as a real estate broker, and has thereby demonstrated untrustworthiness and incompetence.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail delivered to her on October 1, 1998 (State's Ex. 1).

2) The respondent is a licensed real estate broker pursuant to a license expiring on May 8, 2000 but suspended on May 27, 1998 (State's Ex. 1).

3) By decision dated May 27, 1998 the respondent was ordered to make various restitution payments to five persons and to pay a

fine of \$1,000.00 to the Department of State, and her license as a real estate broker was suspended indefinitely pending her compliance with that order. *Division of Licensing Services v Lusie C. Edman*, 145 DOS 98 (State's Ex. 1).

4) The respondent has failed to comply with the prior order and has refused to surrender her license in the face of several demands that she do so, and she continues to engage in business of real estate brokerage.

OPINION AND CONCLUSIONS OF LAW

I- 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. Real Property Law (RPL) §441-e[2]; *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

II- Pursuant to RPL §441-c[2], a real estate broker is obligated to return his or her license certificate and pocket card within five days of having received notice of suspension of his or her license. In failing to do so, and then by refusing to comply with lawful demands that she do so, the respondent violated that statute and thereby demonstrated untrustworthiness and incompetency. In view of her failure to comply with the prior order of suspension, as demonstrated by her continued real estate brokerage activities, the tribunal has no practical choice other than to revoke the respondent's license.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT by failing and refusing to surrender her suspended license certificate and pocket card Lusie C. Edman has demonstrated untrustworthiness and incompetency, and accordingly, pursuant to Real Property Law §441-c her license as a real estate broker is revoked, effective immediately. Should she ever re-apply for a license as a real estate broker or salesperson no action shall be taken on such application until she shall have produced proof satisfactory to the Department of State that she has fully complied with the order of the tribunal contained in 145 DOS 98. The respondent is directed to send her license certificate and pocket card to Diane Ramundo, Customer Service Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, NY 12208.

Roger Schneier
Administrative Law Judge

Dated: November 2, 1998