106 DOS 93

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Application of

SULTAN AHMED JAFRI **DECISION**

For a License as a Real Estate Broker.

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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 September 21, 1993 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 333 East 43rd Street, Apt. 320, New York, New York 10017, having been advised of his right to be represented by an attorney, appeared pro se.

The Division of Licensing Services was represented by Special Projects Manager Bernard Friend.

ISSUE

The issue in the hearing was whether the applicant has sufficiently documented his claim that he has the experience required to qualify for a license as a real estate broker.

FINDINGS OF FACT

1) On October 3, 1989 the applicant was issued a license as a real estate salesperson in association with Potential Properties, Inc. (Potential), 48 South Service Road, Melville, New York. That license expired on October 3, 1991 and was renewed on December 24, 1991 for the a term expiring on October 3, 1993 (Dept. Ex. 4).

2) On August 19, 1992 the applicant satisfactorily completed the 45 hour real estate broker qualifying course, and on September 29, 1992 he took and passed the real estate broker application examination. He then, by application dated December 24, 1992, submitted an application for a license as a real estate broker, basing the application upon the experience which he claims he obtained as a real estate salesperson (Dept. Ex. 2).

By letters dated March 23, 1993 and June 17, 1993 the applicant was advised that the Division of Licensing Services proposed to deny his application because of his alleged failure to properly document his claim of experience. By letter dated June 23, 1993 the applicant requested a hearing on the proposed denial (Dept. Ex. 1).

3) The applicant's claim to qualifying experience is based on his association with Potential. On the record of transactions, which is part of the application, he listed three matters. Those matters, as explained and expanded upon by a letter of October 25, 1991 from the representative broker of Potential (Dept. Ex. 3) and the applicant's testimony, are as follows:

a) Maspeth Mews, a condominium project in Maspeth, Queens. For a period of 19 months the applicant was on duty at the on site office 2 days a week from at least 11:00 AM until 3:00 PM (8 hours a week, or a total of 640 hours in the 19 month period).[1] During those times he offered units in the condominium for sale to persons who visited the office.

b) A. Sattar. Attempt to negotiate the sale of a condominium unit in Jackson Heights, Queens. The applicant made 3 or 4 visits of unspecified duration to Mr. Sattar in his attempts to obtain a listing and then sell the property. While the applicant has not specified any particular amount of time spent on the transaction, some credit is due. I have, therefore, allowed one hour for each visit, for a total of an additional 4 hours of credit.

c) Unspecified property in the Hamptons, Long Island. The applicant has given no details regarding this transaction, and, therefore, it is not possible to determine how much credit can be granted.

The applicant asserts that he obtained additional experience, not listed on the record of transactions, but that because Potential has gone out of business and he cannot locate its representative broker (Syed Abbas Ali), and because he is unable, due to an order of protection issued by the Hon. William P. Warren, Family Court, Rockland County (Alima Jafri v Sultan Jafri, Docket No. 0-529-91) (Dept. Ex. 3), to get access to the personal records which he maintained in his home, he cannot give any details of that experience. He was only able to testify to having spoken to unspecified persons in his community (Rockland County), about unspecified possible transactions, at unspecified times. Absent any details it is impossible to determine how much time was expended and, therefore, how much experience credit should be granted.

4) From July 15, 1991 through November 15, 1991 the applicant was employed full time by the Internal Revenue Service.

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[1] The applicant testified that on certain days he was in the office for a longer period, but offered no specifics which would make it possible to determine what and when those period were.

OPINION AND CONCLUSIONS OF LAW

An applicant for a license as a real estate broker must show that he has sufficient experience to qualify for the license. Such experience is gained either through active participation in the general real estate brokerage business as a licensed real estate salesperson under the supervision of a licensed real estate broker for a period of not less than one year, or through equivalent activities in the general real estate business for a period of at least two years (Real Property Law (RPL) §441[d]), a year being defined as 1750 hours (fifty weeks of 35 hours each). Cf. Application of Harris, 127 DOS 92.

As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that he 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).

The applicant has established that he is entitled to credit for 644 hours of qualifying experience. While he claims to have obtained more experience he has been unable to offer any substantiation. While, in light of the non-availability of Potential's representative broker and the order of protection, the lack of details and documentation may not be the applicant's fault, the fact remains that he has not presented this tribunal with sufficient substantial evidence upon which a grant of additional experience credit can be based. The fact that the applicant was licensed for several years does not mean that he was actually working full time as a real estate salesperson during that time. In fact, for 4 months of his licensure he was employed full time by the Internal Revenue Service, and his testimony about his activities when not in the sales office at the Maspeth condominium merely establishes that he had occasional discussions about possible transactions with persons in Rockland County, which is separated by several counties from the Suffolk County office at which he was licensed.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED that Sultan Ahmed Jafri has established that he is entitled to credit for only 644 hours of qualifying experience toward a license as a real estate broker, and, therefore, pursuant to Real Property Law §§441[d] and 441-e and State Administrative Procedure Act §306, his application for a license as a real estate broker is denied without prejudice to his re-applying upon obtaining an additional 1106 hours of qualifying experience as a licensed real estate salesperson.

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:

James N. Baldwin
Executive Deputy Secretary of State