

STATE OF NEW YORK  
DEPARTMENT OF STATE

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In the Matter of the Application of

**IVAN ORISEK**

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 30, 1992 at the office of the Department of State located at 270 Broadway, New York, New York 10007.

The applicant, of I & O Associates Mortgage Corp., The Tudor, Old Orchard Street, White Plains, New York 10604, having been advised of his right to be represented by an attorney, appeared pro se.

The Division of Licensing Services was represented by Compliance Officer William Schmitz.

**THE ISSUE**

The issue in the hearing was whether the applicant has sufficient experience to qualify for a license as a real estate broker.

**FINDINGS OF FACT**

1) By application dated August 2, 1991 the applicant applied for a license as a real estate broker (Dept. Ex. 2), supporting that application with a claim of experience obtained in the brokering of one and two family owner occupied residences as a registered mortgage broker (Dept. Ex. 4) during the period running from January 5, 1989 through June 24, 1991 (Dept. Ex. 3).

2) By letter dated September 25, 1991 the applicant was advised by the Division of Licensing Services that it proposed to deny his application for reason of lack of qualifying experience, and stated that "(r)egistered mortgage broker experience does not qualify." In response, by letter dated October 7, 1991, the respondent requested an administrative hearing on the application (Dept. Ex. 1). For some reason the matter was not referred to this tribunal by the Division of Licensing Services until March 24, 1992. A notice of hearing was issued on April 3, 1992, scheduling the hearing for May 1, 1992 (Dept. Ex. 1), and the matter was subsequently adjourned twice at the request of the applicant.

**OPINION**

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.).

At the times that the applicant submitted his application and that the hearing was calendared and conducted, it was the established position of the Department of State that experience gained as a registered mortgage broker was not equivalent to that obtained as a licensed real estate salesperson working under the supervision of a licensed real estate broker, and therefore, could not be used to qualify for a license as a real estate broker pursuant to the terms of RPL §441(1)(d). Matter of the Application of Solomon, 4 DOS 91; Matter of the Application of Wizeman, 31 DOS 91; Matter of the Application of Nikolakopoulos, 33 DOS 92. However, on October 8, 1992, subsequent to the hearing in this matter, a determination issued in Matter of the Application of Nacht, 124 DOS 92, in which, based on the tribunal's analysis of the underlying statutory provisions and the functions of a registered mortgage broker, it was stated that

"experience gained in the negotiation of residential mortgage loans may qualify as equivalent experience in an application submitted to the Division of Licensing Services for a license as a real estate broker." 124 DOS 92 at 6.

In view of the holding in that case (in which it was ordered that the application be remanded to the Division of Licensing Services for investigation of the documentation submitted by the applicant), it is clear that, should it be confirmed that the applicant herein has actually obtained the claimed more than two years of experience in the negotiation of mortgages on owner occupied residential real property, the applicant is entitled to be issued a license as a real estate broker.

**CONCLUSIONS OF LAW**

Inasmuch as experience gained in the negotiation of residential mortgage loans may qualify as equivalent experience in an application for a license as a real estate broker, the application herein should be remanded to the Division of Licensing Services for a review of the documentation submitted by the applicant for the purpose of determining

whether it is bona fide. In view of the inordinate delay previously experienced in the referral of the matter to this tribunal, such review should be conducted within a period of no more than forty-five days.

**DETERMINATION**

WHEREFORE, IT IS HEREBY DETERMINED THAT, pursuant to the foregoing and to the provisions of Real Property Law §441-e, the application of Ivan Orisek for a license as a real estate broker is remanded to the Division of Licensing Services for a review of whether the documentation submitted by the applicant is bona fide, and the Division of Licensing Services is directed to, within forty-five days of the date of this determination, either issue to the applicant a license as a real estate broker or, if in its opinion the documentation submitted by the applicant is not bona fide, refer the matter back to this tribunal for the scheduling of additional proceedings.

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 Coon  
Deputy Secretary of State