DEPARTMENT OF STATE
OFFICE OF THE SECRETARY OF STATE

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In the Matter of

THOMAS A. SANTISI, MARIE SANTISI,
LINDA DEGUANNO, DOROTHY HERMAN
AND PRUDENTIAL LONG ISLAND REALTY,

Appellants,

DECISION AND ORDER
DOS 11 APP 01

-against-

DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES,

Respondent

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Thomas A. Santisi, et. al. [hereinafter "Appellants"] appeal a ruling of the Office of Administrative Hearings.

Department of State Division of Licensing Services ["hereinafter Respondent"] filed a memorandum in opposition.

ISSUE

This matter considers whether the Appellants may appeal a ruling by the Office of Administrative Hearings prior to final determination of the case.

FINDINGS OF FACT

Respondent filed a multi-count complaint against the Appellants. Prior to the administrative hearing conducted by the Office of Administrative Hearings, Appellants moved to dismiss the complaint. The Administrative Law Judge, Judge Schneier, ruled that as a matter of law the motion was untimely.

OPINION AND CONCLUSIONS OF LAW

The State Administrative Procedures Act, § 301(3) mandates that state agencies must "adopt rules governing the procedures on adjudicatory proceedings and appeals." Pursuant to that section of law, the Department of State has promulgated rules governing administrative hearings and administrative appeals (19 NYCRR 400).

Section 400.6 of the New York Code of Rules and Regulations [hereinafter "NYCRR"] allows for a motion to dismiss "for failure of proof . . . at the conclusion of a direct case presented by the complaining division of the Department of State." At that point, the Administrative Law Judge has three options:

1. Grant the motion.
2. Deny the motion and continue the hearing, or
3. Reserve the decision on the motion and continue the hearing.

If the Administrative Law Judge denies the motion to dismiss, that denial "is not a final disposition and right to appeal to the Secretary of State . . .." 19 NYCRR §400.6(b).

Based upon the facts and the law, Appellants have no standing to file an appeal with the Secretary of State at this juncture. As the Respondent correctly points out in its Memorandum ,"if an [Appellant] cannot appeal the ALJ's denial of its motion to dismiss made at the conclusion of the [division of licensing services] case . . . then the [Appellant] in the instant case most certainly cannot appeal the ALJ's denial of the motion to dismiss before hearing is even commenced."

DETERMINATION

The issues raised by the Appellants cannot properly be brought before the Secretary of State until a final decision on the merits has been issued by the Office of Administrative Hearings. No further review of

this matter will occur until the Office of Administrative Hearings issues a final ruling on the merits and a timely appeal is filed. The Appellants' motion is denied and the matter is remanded for further proceedings consistent with this Determination.

So ordered on:

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Randy A. Daniels
Secretary of State