



This lovely one family house was sold in only two weeks!

If you, or someone you know, would like the same results please ask them to call me.

I will give them a free market analysis.

No obligation, I am just a phone call away."

(Second flyer) "Jamaica Estates

JUST SOLD!....

....(Details of house sold)....

If you, or someone you know would like the same results please ask them to call me.

I will give them a free market analysis.

No obligation, I am just a phone call away."

The first flyer contained Ms. Abramova's name and telephone number. The second flyer contained Ms. Musheyev's name and telephone number.

4) In distributing the flyers the respondents worked on opposite sides of the street. Because they had only one copy of the applicable cease and desist list, Ms. Abramova copied onto a piece of paper the addresses on her side of the street which appeared on the list.

5) One of the homes to which Ms. Abramova distributed the flyers was that of Betsy Mickenberg, 181-62 Tudor Road, Jamaica Estates, New York, which is included on the Jamaica Estates/Queens County cease and desist list dated July 10, 1997 (State's Ex. 6).

6) According to the Ms. Abramova she delivered the flyers to the Mickenberg home in error, as it did not show up in the notations which she had made from the cease and desist list.

7) There is no evidence that, other than in going outwith Ms. Abramova, Ms. Musheyev was in anyway involved in the leaving of the flyers at the Mickenberg home.

**OPINION**

I- Pursuant to RPL §442-h[3]: the Secretary of State may establish cease and desist zones; the owners of residential property within those zones may request that their names and addresses be included on a cease and desist list; and once such a list has been compiled, real estate brokers and salespersons may not solicit agency agreements for the sale of the listed properties. 19 NYCRR 175.17[c][1] also prohibits the solicitation by real estate brokers and salespersons of listings for sale of property included on a the cease and desist list, and 19 NYCRR 175.17[d][1] provides that

"solicitation shall mean an attempt to...obtain a listing of property for sale....Solicitation shall include but not be limited to use of the telephone, mails, delivery services, personal contact or otherwise causing any solicitation, oral or written, direct or by agent: (i) to be delivered or presented to the owner or anyone else at the owner's home address...."

The flyers which Ms. Abramova delivered to the Mickenberg house advise of the sale of houses, inquire as to whether the reader is interested in the same results, and offer a market analysis. They are clearly solicitations.

There is no evidence that would lead to the conclusion that the Ms. Abramova acted wilfully. Rather, it appears that her conduct was the result of an error, and constituted an act of incompetence. *Division of Licensing Services v Mauro* 128 DOS 92.

**CONCLUSIONS OF LAW**

1) By soliciting a listing for sale from the owner of a house which was listed on a currently effective cease and desist list, Ms. Abramova violated 19 NYCRR 175.17[c][1], and thereby demonstrated incompetency as a real estate salesperson.

2) There is no evidence that Ms. Musheyev was in any way responsible for the violation by Ms. Abramova, and the charge against her should, therefore, be dismissed.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Tamara Abramova has demonstrated incompetency and, accordingly, pursuant to Real Property Law §441-c, she shall pay a fine of \$500.00 to the Department of State on or before June 30, 1998. Should she fail to pay the fine her license as a real estate salesperson shall be suspended for a period commencing on July 1, 1998 and terminating two months after the receipt by the Department of State of his license certificate and pocket card. She is directed to send the fine or 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.

**IT IS FURTHER DETERMINED THAT** the charges herein against Lydia Musheyev are dismissed.

Roger Schneier  
Administrative Law Judge

Dated: June 8, 1998