

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Complaint of

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

Complainant,

DECISION

-against-

CLARENCE DAVIS,

Respondent.

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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 June 14, 1993 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 106 Remsen Avenue, Brooklyn, New York 11212, did not appear.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint in the matter alleges that the respondent operated a real estate brokerage business under the unlicensed trade name of "Clarence Davis Florida Homes Realty", in violation of Real Property Law (RPL) §440-a.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail (Comp. Ex. 1).

2) The respondent is licensed as a real estate broker in his individual name, with an office located at 106 Remsen Avenue, Brooklyn, New York 11203 (Comp. Ex. 2 and 4).

3) On October 9, 1992 complainant's investigator Carlton Richards visited the respondent's office and observed and photographed a large outdoor sign with the following wording:

"CLARENCE DAVIS
FLORIDA HOMES
REALTY" (Comp. Ex. 3).

During the course of the investigation of the matter the respondent admitted to doing business under the name "Clarence Davis Realty." He stated that the phrase "FLORIDA HOMES" referred not to the name of the business, but to the fact that he specializes in the sale of homes in Florida.

4) In 1989 the respondent had been advised by the complainant that could not use a trade name under which he was not licensed.

OPINION

RPL §440-a, as implemented by RPL §441(1), requires that a real estate broker be licensed in the exact name under which he conducts business. Division of Licensing Services v Lawson, 42 DOS 93. The respondent has admitted to doing business under the unlicensed name of "Clarence Davis Realty." That by itself is an admission that he violated the law. I find however that, as established by the very wording of his sign, he was also doing business under the name "Clarence Davis Florida Homes Realty," as charged in the complaint.

The fact that the respondent had previously been warned that he could not do business under an unlicensed trade name should be considered in determining what penalty to impose. He is admonished that any further use of an unlicensed name can be expected to result in the imposition of a severe penalty, possibly including revocation of his license as a real estate broker.

CONCLUSIONS OF LAW

By doing business under the unlicensed trade name of Clarence Davis Florida Homes Realty the respondent violated RPL §440-a.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Clarence Davis has violated Real Property Law §440-a, and accordingly, pursuant to Real Property Law §441-c, he shall pay fine of \$500.00 to the Department of State on or before August 31, 1993, and should he fail to pay the fine his license as a real estate broker shall be suspended for a period of one month, commencing on September 1, 1993 and terminating on September 30, 1993.

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