

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Complaint of

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

Complainant,

DECISION

-against-

JOSE CENTTI d/b/a AMERICA REAL ESTATE

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on May 2, 2000 at the office of the Department of State located at 123 William Street, New York, New York.

The respondent, having been advised of his right to be represented by an attorney, chose to represent himself.

The complainant was represented by Supervising License Investigator Bernard Friend.

COMPLAINT

The complaint alleges that the respondent solicited a listing of a residential home for sale from a homeowner whose name and address appear on a cease and desist list.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail posted on March 16, 2000 (State's Ex. 1).

2) The respondent is, and at all times hereinafter mentioned was, duly licensed as a real estate broker d/b/a America Real Estate at 78-27 37th Avenue, Suite 7A, Jackson Heights, New York 11372 (State's Ex. 3).

3) On or about April 17, 1999 the respondent mailed to the Scheid family, whose name and address appear on the Queens County cease and desist list (State's Ex. 1), a letter containing the following text (State's Ex. 5):

"Dear Home Owner:

The reason for this letter is to inform you that I have just sold the house located at 82-15 101 Ave. Ozone Park N.Y. 11417.

I still have customers that are interested to buy houses around your neighborhood. If you know of anyone who would like to sell his/her house. Please call my office at (718) 565-1209.

I thank you in advance for your cooperation.

Sincerely,

Jose Centti
Lic. Real Estate Broker"

4) The respondent has been licensed as a real estate broker for approximately five years, and has had no prior complaints lodged against him. He makes numerous mailings, and it is his practice to check the addresses used against the cease and desist lists. Although he is aware that the Scheids' home is on the Queens list, a mailing was sent to them in error (State's Ex. 6).

5) An offer to resolve the complaint through a pre-hearing conference or payment of a fine, which the complainant asserts was sent to the respondent (State's Ex. 2), was not received.

OPINION AND CONCLUSIONS OF LAW

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 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 letter which the respondent sent to the Scheids was clearly a proscribed solicitation. However, it appears that, as the respondent contends, it was made in advertently. That contention is supported by the fact that no evidence was presented to show that the respondent made mailings to any other homeowner on a cease and desist list.

The mailing in error of a single, isolated solicitation, while a violation of the statute and regulations, is not a demonstration of either untrustworthiness or incompetency, and does not merit the imposition of a license revocation or suspension or of a fine.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Jose Centti has violated Real Property Law §442-h[3], and, accordingly, pursuant to Real Property Law §441-c, he is reprimanded therefore.

Roger Schneier
Administrative Law Judge

Dated: May 5, 2000