

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-

**KEITH KANTROWITZ and
ESTATES TOWN & COUNTRY REALTY, LTD.**

Respondents.

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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 November 16, 1992 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondents, of 2418 Ralph Avenue, Brooklyn, New York 11234, where represented by Alan J. Firestone, Esq., Firestone & Harris, 111 Livingston Street, Brooklyn, New York.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint in the matter alleges that the respondents advertised real property for sale without identifying themselves as real estate brokers, in violation of 19 NYCRR 175.25.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondents by certified mail signed for on November 3, 1992 (Comp. Ex. 1).

2) Keith Kantrowitz is duly licensed as a real estate broker in both his individual name, with an office at 5719 Flatlands Avenue, Brooklyn, New York 11234, and representing Estates Town and Country Realty, Ltd., with an office at 2418 Ralph Avenue, Brooklyn, New York 11234 (Comp. Ex. 2).

3) On May 15, 1992 an advertisement placed by Kantrowitz and reading as follows appeared in the Russian American Daily Newspaper:

"MILL BASIN - 'Price Break'
2 Fam, 7½, 3½, Det. solid brick 40x100,
C/A new white kit. in owners apt. Lg.
yard.

(718) 763-5555" (Comp. Ex. 3).

The respondents have given the advertising agency which places their advertisements standing directions to include the name of the corporate respondent in all of their advertisements. The lack of that information in the advertisement in question resulted from an error made by the advertising agency (Resp. Ex. A and C).

OPINION AND CONCLUSIONS OF LAW

19 NYCRR 175.25 (a) states:

"All advertisements placed by a broker must indicate that the advertiser is a broker or give the name of the broker and his telephone number."

The respondents do not dispute the assertion that the advertisement in question violated the regulation, and base their defense on the fact that it resulted from an error by their advertising agency.

A real estate broker is personally liable to see to the supervision of his or her brokerage office. Real Property Law (RPL) §§440(2) and 441(1)(d); 19 NYCRR 175.20 and 175.21; Division of Licensing Services v Misk, 64 DOS 92.¹ A broker who or which delegates responsibility to another may be held liable when that agent acts in a negligent manner. Division of Licensing Services v Maldon, 137 DOS 92; Restatement (Second) of Agency, §§ 213 and 216. Therefore, although the fact that the improper advertisement resulted from the act of an agent in which the respondents had placed their trust does not insulate them from liability for that act or for being held to have demonstrated incompetency, the seriousness of the violation is mitigated by the fact that the violation was not intentional.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Keith Kantrowitz and Estates Town & Country Realty, Ltd. have demonstrated incompetency as real estate brokers, and accordingly, pursuant to Real Property Law §441-c they are reprimanded therefore, and they are admonished that any future violation of this nature may result in the imposition of a much heavier penalty.

¹ In Misk a factor in the question of whether the broker had adequately supervised his office was an improper advertisement which had been placed by a salesperson.

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:

Maureen F. Glasheen
Deputy Secretary of State