

DEPARTMENT OF STATE
OFFICE OF THE SECRETARY OF STATE
----- X

In the Matter of

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

Appellant,

**DECISION AND ORDER
5 DOS APP. 00**

-against-

KEITH JOSEPH,

Respondent

----- X

The Department of State, Division of Licensing Services [hereinafter “Appellant”] is appealing the decision of the Office of Administrative Hearings dismissing the complaint filed against the Respondent, Mr. Joseph.

ISSUE

This appeal considers whether the Office of Administrative Hearings committed error in dismissing a complaint for violation of Real Property Law § 442-h(3). Specifically, the question is whether a supervising broker can be held liable for a violation of the law by a subordinate if the broker had no actual knowledge of the subordinate’s violation.

FINDINGS OF FACT

For the purpose of this opinion, the findings of fact in the decision of the Office of Administrative Hearings are adopted in full.

OPINION AND CONCLUSIONS OF LAW

The facts in this case are undisputed.¹ The respondent is a representative real estate broker for Century 21 Hometown Realty/Keith A. Joseph Realty Co. An agent of the Respondent solicited a listing from a homeowner on the Kings County cease and desist list in violation of 19 NYCRR 175.17(c)(1).

¹The respondent did not attend the administrative hearing, nor file a memorandum in opposition to the Appellants appeal; therefore, the facts as submitted by the Appellant have not been disputed.

After a hearing, at which the Respondent failed to appear, the Administrative Law Judge dismissed the complaint. Judge Schneier opined that the Respondent cannot be held vicariously liable for the making of the phone call by his subordinate. I disagree. The Court of Appeals has ruled that a broker/owner can be held liable for the actions of his/her subordinates and may be sanctioned for any legal violations of employees, so long as the sanction does not include license suspension or revocation. Roberts Real Estate Inc., et al., v. New York State Department of State, Division of Licensing Services, 80 N.Y.2d 116 (1992).

Roberts does not mandate that sanctions be brought, but stands only for the proposition that sanctions, other than suspension or revocation, can be levied against a broker for his/her subordinates' violations of Real Property Law.

DETERMINATION

The determination of the Administrative Law Judge is set aside and the matter is remanded for further consideration not inconsistent with this opinion. In light of the Roberts decision, the administrative tribunal should consider all relevant information in determining what sanctions, if any, should be levied.

So ordered on:

Alexander F. Treadwell
Secretary of State