

# THE REAL DEAL

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## Cracking down on phony ads

### Web sites and City Council increase scrutiny of rental bait-and-switch scams

By Jen Benepe

For Cesar Kuriyama, a 25-year-old computer animator, the search for an apartment in one of the most popular cities in the world has been quite painful.

When he and his roommate first started looking, they realized they would have to pay about a \$3,000 broker fee for a small apartment, something Kuriyama could not afford. So he went to Craigslist and found some great no-fee listings for two-bedroom apartments below 42nd Street, his area of preference, that claimed to be renting for \$2,000 a month.

The listings led him to Inapts.com, an agency that said it would provide him with listings for no-fee apartments for an upfront fee of \$190.

But he said after he signed up, it handed him listings that did not even come close to the ones they had advertised. The agency gave him one contact number for an apartment owner who never returned scores of calls, he said.



Two weeks later, after many fruitless phone calls to the company for more contact numbers, Kuriyama thinks he may have been had. Inapts.com said the problem may be the result of a bad business manager no longer employed by the company.

Kuriyama and many others may have thought Craigslist, the free online listing site that started in 1995, would change deceptive listing practices by brokers. With its free listings, it seemed that both tenants with apartment shares and owners with no-fee apartments could reach apartment seekers directly, painlessly, quickly -- and without either party paying a fee.

Kuriyama turned to the Craigslist forum recently to learn that many other apartment seekers reported the same experience with Inapts.com. "My heart sank," he said. "I wish I had checked sooner."

In another case, Tyler Smith also turned to Craigslist when he came to New York: He couldn't afford to spend thousands of dollars in fees for a "hole in the wall."

But he soon found he had to sift through mountains of repeat listings to find one no-fee gem. Then when he showed up for an appointment, the no-fee apartment listed was not available -- but there were plenty of apartments with fees to choose from, a classic bait-and-switch routine.

The Internet spawns more new ways to cheat

Apartment seekers, brokers and experts have said that thanks to online listing services (including the New York Times online and hundreds of other online apartment listers), it is easier for brokers to get away with a number of unethical advertising scams.

As a result, a mind-boggling array of real estate listing services, some teetering on the edge of legitimacy, have appeared in the New York online market. The most common is a firm that presents itself as an Automated Information Vendor, charging an upfront fee, say \$200, for a copy of its listings, so apartment seekers can conduct their own search on foot.

Information from the New York Department of State shows some of these services, like Inapts.com, have even been operating without a state license because of their carefully defined area of services -- putting them in a legal gray area. To complicate the picture even more, both brokers and AIVs have been listing their services on Craigslist under both "no-fee" and "owner" ads, many in violation of state law, said Craig Newmark who founded the online site.

A report by the City Council's Oversight and Investigations Committee released last month as *The Real Deal* went to press found that one-third of "no fee" online ads have hidden brokers' fees. The report examined sites such as Craigslist and Backpage.com.

Covering 105 cities in 23 countries, Craigslist is one of the fastest-growing free listers in the U.S, expanding from 1 billion page

views per month in 2004 to 5 billion this year, according to Newmark.

By far the most popular online listing mechanism for apartments, jobs, goodies, and even dates, the San Francisco company's exponential growth has created new opportunities but also new responsibilities for Newmark, who has found that he and his company are the lightning rod for all that goes on behind the scenes in the rough-and-tumble competition for broker fees.

"The difference between us and most other sites and newspapers is that when we hear about an offender, we do what we can to go after him," said Newmark, speaking from a cell phone in San Francisco.

New York is the largest market for unethical broker listings, Newmark said, which he believes has much to do with the city's unique real estate situation -- a very low vacancy rate, combined with New York's desirability as a destination. He also noted that there is plenty of historical precedent for cheaters among New York brokers, and that unethical brokers are not unique to the age of the Internet.

On the flip side, some legitimate brokers are now crying foul because their efforts to advertise apartments on Craigslist have been drowned out by spammers, or their ads copied, renamed and released under another broker's name, or their good names besmirched in an online forum by a former disgruntled employee.

But as entries to Craigslist have multiplied over the past six years, so has the fraud by brokers, which includes posting fee-based services in the "no-fee" area, the most frequent abuse. Another is "top-listing," which involves repeatedly and automatically posting the same ad so that it continually appears at the top of the page, a serious violation of the Craigslist regulations.

The violations are often accomplished through contracted "spamvertisers," automated posters who operate in Asia, Europe and other countries, whose international ISPs are hard to track, and whose companies are difficult, if not impossible, to penalize, said Newmark.

Monitoring is like a game of 'Whack-A-Mole'

Newmark said some of his customers were so incensed by the cheating they volunteered to monitor the site to cut down on scofflaws. One member of the community, who works as a journalist by day and preferred to remain anonymous, said, "It is a lot easier for brokers to misrepresent themselves now because they are online."

She also said the system itself enhanced the need to autopost, "because if you didn't, you were at a disadvantage."

But both fake owner postings and the use of bait-and-switch tactics are very hard to monitor effectively by just the 23 Craigslist employees and handful of volunteers, said the moonlighter. She likened the phenomenon to playing "Whack-A-Mole," the carnival game where after you hit one target, another immediately takes its place.

Earlier this year, Newmark teamed up with the Real Estate Board of New York in an effort to remedy the situation, and decided to start charging brokers for their listings. Although the new \$10-per-ad price is much lower than traditional newspaper classifieds, which can cost more than \$300 per week, discounts are offered for bulk purchasing, a tremendous incentive for brokers who want to improve the integrity of their listings and also stay online with Craigslist.

"[Our] primary motivation was to eliminate the severe overposting problem," Jim Buckmaster, CEO of Craigslist, told *The Real Deal* several months ago, "and reduce the occurrence of bait-and-switch ads in these categories. Lots of brokers called for this change, but it took us several years to actually do it."

The decision is enforceable by REBNY for its members, because they are bound to the board's code of ethics, said Steve Spinola, president of the organization, and "you are not allowed to do false advertising."

Additionally, offenders are given several warnings, spoken to, and finally cut off from the Craigslist site entirely "with all consideration for due process and fairness," said Newmark.

Larry Sombke, a spokesperson for the New York Department of State, said that because brokers are licensed by DOS they must always identify themselves in any ads they create. The department can respond to formal complaints about brokers and AIVs, and can also issue penalties or revoke a broker's license when warranted, he said.

Less spam with broker fees?

Since the implementation of fees, Craigslist has cut down significantly on misleading and repeat post ads. But about 20 percent of the ads in the "owner" section are actually brokers, a violation of Craigslist rules, said Newmark.

As a test, *The Real Deal* went through the top 50 "owner"-posted ads for New York and surrounding areas, in all price ranges, and

separated those that looked genuine from those that looked deceptive. Being a native New Yorker and continual apartment seeker, this reporter knew how to sniff out the cheaters by looking at the text, structure and other little tip-offs. The results of the review were sent to Newmark, who identified about 60 percent of the "perceived fakes" as actual fakes, in other words, brokers posing as owners in the free section. Newmark subsequently had those ads blocked from the site.

Though scofflaws are being whittled out through rigorous examinations like this, they tend to be a rotating cast of characters instead of the same rule breakers all the time, said the New York monitor. She stated that the problem's persistence lay in the competitive nature of the New York rental market, a notion repeated over and over again by brokers interviewed. Once one company's rule breakers has been identified, another group crops up, but there are only so many brokerage firms in the New York area that haven't come under Newmark's scrutiny.

Still, she noted, "it is very hard single-handedly trying to change the practice of the New York real estate business."

And she, like most of the users of Craigslist, is for the most part clueless about which government entity consumers -- and brokers -- should complain to.

Who exactly is responsible?

After Newmark consulted with REBNY, he approached Eliot Spitzer, the New York state attorney general. Though Spitzer said that he had no jurisdiction over the cases, he gave Newmark a contact at the New York Department of State whose job it is to regulate and license brokers and AIVs.

But Newmark said so far he had seen no action from the state.

In turn, DOS spokesman Sombke said that the department had "no record of a formal complaint filed by Newmark," but that it was reaching out to Craigslist to gain more information about the issues he was raising.

Several experts who declined to be identified for this article noted that the DOS has not engaged in any visible public notification process.

They also pointed out that in filing Internet-related complaints to the department, a simple online software solution that does not necessitate downloads and snail mail would be more appropriate.

In addition, apartment seekers tend to be distracted. After telling his story to this reporter, Cesar Kuriyama said he probably won't have time to send a complaint to DOS because all his free time is being spent trying to find an apartment.

Gale Brewer, a New York City Council member from Manhattan, plans to introduce a City Council resolution to help create greater control over online listers by encouraging the DOS to accept online complaints and other measures, she said.

But the capability of the government to address the problem is still an issue when it comes to the slippery world of the Internet, spamvertisers and untraceable ISPs. Though acknowledging that "the Federal Trade Commission has been tasked by Congress with looking at the problem," Allen Hile, a spokesperson for the FTC, said that until there is better authentication protocol, that is, a means to identify the sender of an email, it is very difficult to trace the source of spam.

"I could say I am Santa Claus sending you a message from the North Pole, and you wouldn't be able to authenticate it," Hile noted.

In the meantime, a quick look at the Craigslist's housing forum where a number of complaints about scammers were being bandied about, and other online forums such as Brownstoner.com, show that consumers do not know where to go.

Many cited the Better Business Bureau as an authority, but calls to the BBB were greeted with a request for \$5 just to get information over the telephone. Also, the BBB Web site offers no free or online ability to register a complaint.

Only one apartment seeker in the forum described getting his fee back through the BBB; others said they were not helpful. The organization did not respond to requests for comment.

Brokers respond

Posters to the Brownstoner and Craigslist forums complained repeatedly about alleged scammers whom they named, including Innovative Apartments (Inapts.com), Best Apartments (BestAptsNYC.com), K & O Realty (KO-realty.com) and Metropolitan Property group (Metropolitanpropertygroup.com).

Nader Jaber of Innovative Apartments said that his company is a "preliminary screening agency" and that "none of my employees has ever listed an apartment in the owner section of Craigslist."

He also said that previous complaints were the result of a bad business manager employed by his company, and that any requests for refunds would be honored.

DOS spokesman Sombke said that his agency had received one complaint against Innovative Apartments, "who it appears may be operating as an unlicensed apartment information vendor," and that they were referring the matter to the Office of the Attorney General. K & O Realty was the subject of only one complaint in four years, he added.

Rob Hamilton at K & O was not reachable for comment by press time.

Sami Katri, the owner at Metropolitan, said any of his 65 agents caught posting "fee-based" ads in a "no-fee" area would be fired. But he admitted that occasionally there could be glitches, some of which could do with the time that elapses between when an ad is placed, and when an agent -- who is often out showing apartments -- could have time to take an ad off. He also said he has worked very closely with Newmark to monitor his agents' postings.

Sombke said that since 2002, DOS had received 19 complaints about BestAptsNYC.com, with only one still under investigation. BestAptsNYC's president, Howard Feingold, said he and his company had rented 4,000 apartments and handled 8,000 clients over the same time period: "Do you know how infinitesimal that decimal point is as a percent of the total business?" he said, referring to the complaints as a percent of his volume.

Feingold also remarked on the unfair conundrum facing his company and other brokers when confronted with negative chat on online forums, which he said were likely "90 percent other brokers" being competitive. He said he had tried many times unsuccessfully to identify the ISPs of bad-mouthers on Craigslist, to determine if they were competitors, disgruntled former employees or real complaints.

Other brokers say the advent of the Internet has created problems for them that are compounded by the degree of competition in the rental market.

Lee Presser, an associate at Coldwell Banker Hunt Kennedy, said one of his ads had been deliberately altered and reissued on Craigslist, but this time bearing the phone number of the landlord client. The ad had been posted by a competing firm who then called the landlord to tell her how careless Presser had been, Presser said.

In another incident, Presser called a so-called "owner ad" on Craigslist, and when he arrived with his client, found it was a broker who marched him into the landlord's rental office, expecting to split the broker fee.

#### Finding a solution

Online apartment seekers have suggested that scofflaws get electronic bad marks next to their name so that their previous behavior will be flagged to unsuspecting users -- a technological feat that's difficult, though not impossible. Still, others think the DOS online complaint forms should be accessible on Craigslist and every other online real estate site.

But for people like Tyler Smith, these solutions won't help in the virtual reality of apartment-hunting on a budget, the very consumer that Craigslist originally attracted. "I looked for owner-rented apartments and there were none -- the brokers snatch them up."