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BUREAU OF REAL ESTATE

By

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Desist and Refrain Order of AKIB TAMARIA MINIEFEE; ACQUIRED ASSET SOLUTIONS, INC.; ACQUIRED, LLC; and MONICA MAYFIELD MILLER, Respondents.	)))))	H-4517 SD OAH NO.2013110365

ORDER NUNC PRO TUNC MODIFYING DECISION

It having been called to the attention of the Real Estate Commissioner that there is an error in the title of the Decision dated March 16, 2014, effective April 14, 2014, and good cause appearing; therefor, the Decision title is amended to read "In the Matter of the Desist and Refrain of".

IT IS SO ORDERED APRIL 1, 2014.

REAL ESTATE COMMISSIONER

Wayne S. Bell

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BUREAU OF REAL ESTATE

By

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of AKIBA TAMARIA MINIEFEE; ACQUIRED ASSET SOLUTIONS, INC.; ACQUIRED, LLC; and MONICA MAYFIELD MILLER, Respondents.	)	NO. H-4517 SD OAH NO. 2013110365

DECISION

The Proposed Decision dated February 13, 2014, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on APR 14 2014.

IT IS SO ORDERED 3/16/2014.

REAL ESTATE COMMISSIONER

WAYNE S. BELL

BEFORE THE BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Order to Desist and Refrain Issued Against: AKIBA TAMARIA MINIEFEE; ACQUIRED ASSET SOLUTIONS, INC.; ACQUIRED, LLC; and MONICA MAYFIELD MILLER, Respondents.	Case No. H-04517 SD OAH No. 2013110365

PROPOSED DECISION

Administrative Law Judge Angela Villegas, State of California, Office of Administrative Hearings, heard this matter on January 31, 2014, in Los Angeles, California.

Martha Rosett, counsel for the Bureau of Real Estate (Bureau),[1] represented the Real Estate Commissioner of the State of California (Commissioner).

No appearance was made at the hearing by or on behalf of Respondents, despite proper notice to Respondent Miller[2] of the date, time, and location of the hearing. Notice was established not only by proper service of notices of the hearing, but also by Respondent Miller's actual knowledge of the hearing date, time, and location, which was reflected in an unsuccessful request for continuance she made on the day before the hearing.

Oral and documentary evidence was received, and the matter was submitted for decision on January 31, 2014.

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[1] On July 1, 2013, the California Department of Real Estate became the Bureau of Real Estate. To avoid confusion, the remainder of this Proposed Decision will refer to the Bureau.

[2] Respondents Miniefee, Acquired Asset Solutions, Inc., and Acquired, LLC, did not request a hearing in this matter.

REDACTION AND SEALING OF PERSONAL INFORMATION

1. During and after the hearing, it was discovered that Exhibits 2, 7, 7A, 8, and 9 contained unredacted personal identifying numbers, names of third parties, and/or personal financial information.

2. *Redaction.* To preserve the right of public access to the extent possible, the above references were redacted from the Office of Administrative Hearings' file as to Exhibits 2, 8, and 9.

3. *Sealing.* With regard to Exhibits 7 and 7A (a paginated duplicate of Exhibit 7), despite efforts to redact private information, it was not possible to do so without obliterating relevant content. Accordingly, to safeguard the privacy of the information, on the *sua sponte* order of the Administrative Law Judge, Exhibits 7 and 7A are hereby sealed in their entirety.

FACTUAL FINDINGS

1. On July 17, 2013, based on an investigation, the Commissioner, through Chief Deputy Commissioner Jeffrey Mason in his official capacity, issued an Order to Desist and Refrain (Order) against Respondents. Respondent Miller was thereby "ordered to immediately desist and refrain from being employed by or accepting compensation from any person other than the broker through whom she is at the time licensed." (Order at p. 5, lines 1 – 4.) The Commissioner seeks to affirm the Order; Respondent Miller filed a statement requesting a hearing.[3]

2. Respondent Miller was licensed as a real estate salesperson[4] beginning in April 2003. Her license has no history of discipline, and no discipline is sought in the present proceeding. As of November 21, 2013,[5] Miller's license was scheduled to expire on September 26, 2013. Evidence was not presented as to whether the license was renewed. Even if it was not, the Bureau has jurisdiction to proceed pursuant to Business and Professions Code section 10103. The other Respondents are not licensed by the Bureau in any capacity.[6]

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[3] Since Miller was the only respondent who requested a hearing (*cf.* footnote 2, above), she is the only respondent to whom this Decision pertains.

[4] License number S/01368428.

[5] The date of the history certification submitted by the Commissioner concerning Miller's license. (Exhibit 3.)

[6] The Commissioner's evidence (Exhibit 4) at the hearing established the non-licensure of Respondents Miniefee and Acquired Asset Solutions, Inc. It did not establish

3. The Bureau's investigation revealed—and the evidence presented at the hearing showed—that in 2009 and 2010, Miller held herself out as an agent or employee of Respondent Acquired Asset Solutions, Inc. (AQAS). On behalf of AQAS, Miller communicated on numerous occasions, by email and telephone, with two consumers (a married couple), regarding prospective financing for the couple's purchase of real property. Miller's communications with the couple included a solicitation for advance fees, in exchange for negotiating and attempting to arrange one or more loans secured by real property, and the couple paid AQAS $25,000 on Miller's request. Regular contact between Miller, on behalf of AQAS, and the couple continued until May 2010, when the proposed loan failed to fund. Thereupon, the couple sought a refund of the money they had paid to AQAS, which AQAS (through Respondents Miller and Miniefee) refused. At the time of these events, Miller's employing brokers of record were, respectively, Mulhearn Realtors (from May 2, 2009 through February 1, 2010) and Michael Dwayne Sampson (from February 2, 2010 through June 11, 2010). Since Miniefee, AQAS, and Acquired, LLC, were not licensed by the Bureau in any capacity, none of them could have been Miller's employing broker— whether of record or otherwise.

4. On the day before the hearing, likely (but not expressly) in connection with the unsuccessful request for a continuance, Respondent Miller submitted two documents purporting to be declarations: one her own, and the other that of Respondent Miniefee.[7] These "declarations" were offered into evidence by the Commissioner. Miller's "declaration" acknowledged her communications with the couple on behalf of AQAS, but pointed out that she had "never received money for a loan for [the couple.]" (Miller "Declaration" at para. 21.) No other evidence showed what, if any, compensation Respondent Miller received for her efforts, or—assuming she did receive compensation—from whom she received it.

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the non-licensure of Respondent Acquired, LLC. Instead, Exhibit 4 showed the non-licensure of "Acquired Asset Solutions, LLC," an entity with a name similar, but not identical, to that of Respondent Acquired, LLC. Nevertheless, the Order includes a Finding of Fact—presumably evidence-based—that Acquired, LLC, was not licensed by the Bureau, and the present Factual Finding is based on that portion of the Order. (Order at p. 2, lines 20 – 21, Finding of Fact 3.)

[7] The two "declarations" were attested only "to the best of [the declarant's] knowledge." Such a declaration is ordinarily an evidentiary nullity (*Evans v. Unkow* (1995) 38 Cal.App.4th 1490, 1493, 1497-98), but under Government Code sections 11513, subdivision (d), and 11514, subdivision (a), it can still be considered as administrative hearsay: that is, to supplement or explain other evidence.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10086, subdivision (a), invests the Commissioner with power to issue an order to desist and refrain against persons "engaged . . . in an activity which is a violation of a provision of this part[.]" A desist and refrain order must "specify[ ] the nature of the activity and the factual and legal basis for [the Commissioner's] determination." In this instance, as against Respondent Miller, the Order specifies as the "nature of the activity and the factual and legal basis" that Miller was "employed by and/or accept[ed] compensation from . . . person[s] other than the broker under whom she was licensed, . . . in violation of Business and Professions Code Section 10137" (Factual Finding 1) (Order at p. 4, para. 2, lines 3 – 5), and directs that she "immediately desist and refrain from being employed by or accepting compensation from any person other than the broker through whom she is at the time licensed." (Factual Finding 1.) (Order at p. 5, para. 2, lines 2 – 4.)

2. Persons subject to a desist and refrain order may request a hearing to challenge the order. (Bus. & Prof. Code § 10086, subd. (b).) The Commissioner bears the burden of demonstrating grounds to uphold such an order, and in this case, in which no rights or privileges of licensure are at issue, the applicable standard of proof is preponderance of the evidence.[8] The Commissioner's evidence met the applicable standard of proof as to one aspect of the Order, but not as to another.

(a) Business and Professions Code section 10137 provides in relevant part: "No real estate salesperson shall be employed by or accept compensation from any person other than the broker under whom he or she is at the time licensed."

(b) The evidence established that Respondent Miller was "employed by" Respondent AQAS, which at no time was the broker through whom (or which) Miller was licensed. (Factual Findings 2 – 4.) Thus, the portions of the Order making such a finding, and prohibiting further such activity, are substantiated.

(c) On the other hand, the evidence failed to show that Miller accepted compensation from any person other than her broker of record. (Factual Findings 2 – 4.) Consequently, the portions of the Order purporting to make such a finding, and to prohibit such activity, are not substantiated.

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[8] At the hearing, the Commissioner cited *Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039 -1040, for the proposition that the preponderance standard applies. *Gardner* involved teacher retention and dismissal—a matter of an entirely different procedural type from a desist and refrain order—and consequently was not persuasive on the question of the standard of proof applicable here. Nevertheless, for the reasons previously noted, the applicable standard should be preponderance of the evidence.

3. To the extent the Commissioner did not substantiate factual and legal grounds for the Order as against Respondent Miller, the Order must be overturned or vacated. Respondent Miller is, however, still constrained by force of law (Bus & Prof. Code § 10137) to accept compensation for licensed services only from her broker of record.

ORDER

The Order to Desist and Refrain issued by the Real Estate Commissioner on July 17, 2013, against Respondent Monica Mayfield Miller, is hereby affirmed in part and vacated in part, as follows.

1. The following language from page 4, paragraph 2, lines 3 through 5, is vacated: "and/or accepting compensation from[.]" The balance of page 4, paragraph 2, lines 3 through 5, is affirmed.

2. The following language from page 5, paragraph 2, lines 1 through 4, is vacated: "or accepting compensation from[.]" The balance of page 5, paragraph 2, lines 3 through 5, is affirmed.

Dated: February 13, 2014

Angela Villegas
Administrative Law Judge
Office of Administrative Hearings

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DEPARTMENT OF REAL ESTATE
BY:

Department of Real Estate
320 West Fourth St. #350
Los Angeles, CA 90013

(213) 576-6982

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

To: AKIBA TAMARIA MINIEFEE; ACQUIRED ASSET SOLUTIONS, INC.; ACQUIRED, LLC; and MONICA MAYFIELD MILLER.	No. H-04517 SD ORDER TO DESIST AND REFRAIN (B&P Code Section 10086)

The Real Estate Commissioner of the State of California ("Commissioner") has caused an investigation to be made of the activities of AKIBA TAMARIA MINIEFEE; ACQUIRED ASSET SOLUTIONS, INC.; ACQUIRED, LLC; and MONICA MAYFIELD MILLER. Based on that investigation, the Commissioner has determined that AKIBA TAMARIA MINIEFEE; ACQUIRED ASSET SOLUTIONS, INC.; ACQUIRED, LLC and MONICA MAYFIELD MILLER have engaged in, are engaging in, or are attempting to engage in, acts or practices constituting violations of the California Business and Professions Code ("Code"), including acting in the capacity of, advertising and/or assuming to act as a real estate broker in the State of California within the meaning of Code Sections 10131(d) (soliciting borrowers or lenders for or negotiating loans or collecting payments or performing services for

borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property) and 10131.2 (collecting advance fees in connection with those services). Based on that investigation, the Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order under the authority of Section 10086 of the Code.

FINDINGS OF FACT

1. AKIBA TAMARIA MINIEFEE, aka Akiba T. Minefee (MINIEFEE), is not currently and has never been licensed by the Department of Real Estate of the State of California ("Department") as a real estate broker or as a real estate salesperson employed by a real estate broker.

2. ACQUIRED ASSET SOLUTIONS, INC. ("AQAS") is a California corporation. MINIEFEE is an officer and owner of AQAS. AQAS is not currently and has never been licensed by the Department in any capacity.

(a) AQAS' mailing address of record with the California Secretary of State is 28015 Smyth Dr., Valencia, CA 91355-4023.

(b) At all times relevant, AQAS used a business address of 16870 West Bernardo Dr., Suite 436, San Diego, CA 92127, and an internet address of www.aqas.com.

3. ACQUIRED, LLC is a California limited liability company. ACQUIRED, LLC is not currently and has never been licensed by the Department in any capacity. MINIEFEE is the owner and partner of ACQUIRED, LLC. ACQUIRED, LLC's address on record with the California Secretary of State is 7840 El Cajon Blvd., Suite 206, La Mesa, CA 91941.

4. MONICA MAYFIELD MILLER ("MILLER") is licensed by the Department as a real estate salesperson. At all times mentioned herein, MILLER was acting as an employee

and/or agent of AQAS, ACQUIRED LLC and/or MINIEFEE. MILLER was, therefore, not acting in her capacity as an agent or under the supervision of her employing brokers of record.

5. In November and December of 2009, MILLER and MINIEFEE, as representatives of AQAS, solicited consumers Carlton and Bethany S. ("Consumers"), and offered to provide them with assistance in obtaining financing to purchase real property in exchange for payment of an advance fee of $25,000.00, with an additional $25,000.00 due at completion of the transaction. On or about December 18, 2009, Consumers wired $25,000.00 to AQAS, per MILLER and MINIEFEE's instructions.

6. Over the next few months, MILLER and MINIEFEE, as representatives of AQAS, told Consumers that they were engaged in negotiations with lenders on Consumers' behalf. On February 11, 2010, MILLER emailed Consumers a note indicating that a lender agreed to fund a loan for them. On or about February 25, 2010, Consumers entered into an agreement with third parties to purchase real estate in Calabasas, CA. An escrow related to the purchase was opened. On May 4, 2010 and May 5, 2010, Consumers, MILLER and MINIEFEE exchanged emails regarding rates and terms of financing, and changes to funding requirements. MINIEFEE and MILLER communicated that the financing was not going through, as previously planned.

7. On or about May 20, 2010, Consumers cancelled the agreement with AQAS, MINIEFEE and MILLER, and requested a refund of money paid.

CONCLUSIONS OF LAW

1. The conduct, acts and/or omissions of AKIBA TAMARIA MINIEFEE, ACQUIRED ASSET SOLUTIONS, INC., and AQUIRED, LLC, as set forth in the Findings of Fact above, when not licensed by the Department as real estate brokers or as salespersons employed by a licensed real estate broker, as defined in Business and Professions Code Sections

10131(d), and 10131.2, was in violation of Business and Professions Code Sections 10085.5 and 10130.

2. The conduct, acts and/or omissions of MONICA MAYFIELD MILLER, in being employed by and/or accepting compensation from any person other than the broker under whom she was licensed, was in violation of Business and Professions Code Section 10137.

DESIST AND REFRAIN ORDER

Based on the Findings of Fact and Conclusions of Law stated herein, the following Orders are made:

1. AKIBA TAMARIA MINIEFEE, AQCUIRED ASSET SOLUTIONS, INC., and ACQUIRED, LLC, whether doing business under their own names, or any other names, or fictitious names, ARE HEREBY ORDERED to immediately desist and refrain from performing any acts which require a real estate broker license until properly licensed. Such acts include, but are not limited to:

(a) soliciting borrowers and/or performing services for borrowers or lenders in connection with loans secured directly or collaterally by one or more liens on real property, and

(b) charging, demanding, or collecting a fee for any of those services offered to others, unless and until they obtain a real estate broker license issued by the Department, and demonstrate and provide evidence satisfactory to the Commissioner that they are in full compliance with all of the requirements of the Code and of Title 10, Chapter 6 of the California Code of Regulations relating to charging, collecting, and accounting for fees.

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2. MONICA MAYFIELD MILLER, whether doing business under her own name, or any other names, or fictitious names, IS HEREBY ORDERED to immediately desist and refrain from being employed by or accepting compensation from any person other than the broker through whom she is at the time licensed.

DATED: July 17, 2013

REAL ESTATE COMMISSIONER

By: JEFFREY MASON
Chief Deputy Commissioner

Notice: Business and Professions Code Section 10139 provides that "Any person acting as a real estate broker or real estate salesperson without a license or who advertises using words indicating that he or she is a real estate broker without being so licensed shall be guilty of a public offense punishable by a fine not exceeding twenty thousand dollars ($20,000), or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars ($60,000)."

cc: Acquired Asset Solution, Inc.
c/o Presidential Services Incorporated
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