

Sent

FILED

AUG 21 2015

BUREAU OF REAL ESTATE

BEFORE THE BUREAU OF REAL ESTATE

By 

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	CalBRE No. H-39734 LA
	)	
GLOBAL STUDENT SERVICES, USA, INC.	)	OAH No. 2015030139
MICHELLE E. WILLEMSE	)	
	)	
<u>Respondents.</u>	)	

DECISION

The Proposed Decision dated August 7, 2015, 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 August 20, 2015

IT IS SO ORDERED AUGUST 20, 2015

REAL ESTATE COMMISSIONER



By: JEFFREY MASON  
Chief Deputy Commissioner

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

In the Matter of the Order to Desist and  
Refrain of

GLOBAL STUDENT SERVICES, USA,  
INC., and MICHELLE E. WILLEMSE,

Respondents.

Case No. H-39734 LA

OAH No. 2015030139

**PROPOSED DECISION**

This matter came on regularly for hearing before Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on July 8, 2015, at Los Angeles, California.

James R. Peel, Staff Counsel for the Bureau of Real Estate (the Bureau), represented Complainant Jeffrey Mason, Chief Deputy Commissioner of the Bureau of Real Estate of the State of California (Complainant).

Steve E. Wohn, Attorney at Law, represented Respondent Global Student Services, USA, Inc. (GSS) and its principal, Michelle E. Willemse (Respondent Willemse), (collectively, Respondents), who appeared at hearing.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on July 8, 2015.

**FINDINGS OF FACT**

1. On January 22, 2015, Complainant Jeffrey Mason filed Order to Desist and Refrain No. H-37934-LA (Order) in his official capacity as Chief Deputy Commissioner of the Bureau. Specifically, the Order, served on Respondents on February 4, 2015, addressed Respondents' alleged performance of acts within the State of California, committed without a real estate license, for which a real estate license was required. Respondents acknowledged receipt of the Order on February 11, 2015. On February 17, 2015, Respondents filed a request for an administrative hearing regarding the Order. All jurisdictional requirements have been met.

2. GSS is a corporation in good standing with the Secretary of State, which serves as a homestay coordinator and/or provider. Respondent Willemse purchased GSS in July 2001 after working for its prior owner for several years. The prior owner did not operate GSS under a licensed broker or have a broker's license.

3. The business model for GSS involves selecting host families to provide a safe and comfortable environment for international students who wish to live in a family environment. GSS serves as an agent for the students, placing them with host families based on their requests and requirements, while the students attend school or internships. GSS does not solicit interested students. Rather, Students apply to GSS through their overseas agent or the college or university they intend to attend. The students pay GSS a fee for homestay services based on the length of stay and the options they have requested. There are no contracts between the students and the hosts. The host families receive a service fee from GSS based on their homestay service option they provide to the students. Respondents do not negotiate the price or bargain for any exchange of lease terms, collect rent, or engage in property management activities in relation to their transactions with students or host families.

4. In addition to providing homestay services, GSS provides international students with airport pick-up services. Also, GSS, through Respondent Willemse, mentors its international students, and serves as a resource when students require help or when they need answers questions related to the homestay process, city logistics, cultural information, or general information about college life. Additionally, GSS provides information on its website about the 911 system designed to educate international students about what to do in the case of an emergency, information about activities, theme parks, museums, sporting events, and other activities to enjoy during their participation in the homestay program. Additionally, the website includes testimonials from former homestay participants describing their experiences living with their host families and learning and sharing cultures.

5. In 2014, GSS placed approximately 200 international students with host families near large and small colleges and universities in southern, central, and northern California, including near University of California campuses, California State University campuses, private colleges, and community colleges.

6. On August 21, 2014, Bingqui Wu, an international student placed by GSS, submitted a complaint with the Bureau in the form of a letter/statement she had written to Respondent Willemse. The letter stated that GSS found Ms. Wu a homestay in Carson, California, but that GSS's service was unsatisfactory. Specifically, Ms. Wu complained that the host family had so many family members, as well as friends and neighbors, who came in and out of the house, she felt unsafe. Additionally, Ms. Wu indicated the noise level made it difficult for her to study. As a result, Ms. Wu requested to withdraw from the homestay program, terminate the contract, and asked for a refund of the \$4,025.78 she paid.<sup>1</sup> When

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<sup>1</sup> The \$4,025.78 included an application fee (\$275), a late booking fee (\$150), a homestay fee (\$3,340), a security deposit (\$100), and a customer convenience charge (\$160.78).

Respondent Willemse advised Ms. Wu there was a no refund policy, Ms. Wu expressed she would seek help from a consumer protection agency or the Better Business Bureau to get her money back. Along with her complaint, Ms. Wu submitted an unsigned copy of GSS's "Homestay Application," also identified as an "Application & Housing Agreement." (Application/Housing Agreement.) Ms. Wu submitted no executed contract between her and GSS.

7. The Bureau assigned Investigator Samuel Delgado, who has served as a special investigator with the Bureau since 2006, to investigate Ms. Wu's complaint. Investigator Delgado, who testified at hearing, reviewed the complaint and conceded that Ms. Wu's complaint was more of a consumer complaint concerning a refund policy as opposed to a complaint related to the leasing of property.

8. However, Investigator Delgado reviewed the unsigned Application/Housing Agreement and made note of certain language contained in it. Specifically, Investigator Delgado noted the Application/Housing Agreement stated, "Thank you for considering [GSS] for your housing requirements." Additionally, the Application/Housing Agreement stated, "To apply, please fill out the Application Form in full and send it to [GSS] via air mail with your payment of \$375.00 US, \$100.00 Security Deposit and \$275.00 non-refundable Application Fee." (Emphasis original.) Additionally, it stated, "If the Application Form, Application Fee/Security Deposit and housing fees are received on or before 45 days prior to arrival, you will receive confirmation of your placement approximately 2-3 weeks before you are scheduled to arrive." It also stated, "[GSS] offers HOMESTAYS selected for you, with local hosts, in a furnished room," and, "[GSS] reserves the right to terminate without compensation a student's housing arrangement if the student is found to have behaved with gross misconduct." (Emphasis original.) The Application/Housing Agreement also stated, "If you wish to continue your stay, all extensions must be directed through the [GSS] office . . . [and] additional fees must be paid in advance and directly to [GSS]." Finally, the Application/Housing Agreement stated, "A security deposit of \$100.00 is to be collected from each student and will be retained by [GSS] until the completion of the student's housing contract." The Application/Housing Agreement mentioned nothing about renting or leasing property, did not refer to potential students as tenants, host families as landlords, or GSS has a company that provides property management services.

9. The language of the Application/Housing Agreement set forth in Factual Finding 8 resulted in Investigator Delgado reaching the conclusion that Respondents had been engaging in acts of solicitation, in that they offered potential tenants places to reside. Investigator Delgado did not interview Ms. Wu in connection with his investigation. Ms. Wu did not testify at hearing.

10. Investigator Delgado also did not interview the host of the home in which Ms. Wu resided. However, the host, Melissa Fronda, testified at hearing. Ms. Fronda and her husband (the Frondas), who owned a home near California State University at Dominguez Hills, had a vacant bedroom in their home. Consequently, the Frondas decided they would

become a host family in a foreign exchange student program. In that regard, Ms. Fronda conducted an internet search and found GSS along with a number of other homestay companies.

11. On August 18, 2014, Ms. Fronda contacted GSS, and, after speaking with Respondent Willemse, completed a host application form and emailed it to Respondent Willemse. That evening, Respondent Willemse visited the Frondas, interviewed them, and inspected their home. After concluding the home passed inspection, Respondent Willemse approved the Frondas to serve as a host family for foreign exchange students. On the following morning, Ms. Wu came to the Frondas' home to begin a 20 week homestay.

12. Ms. Wu lived in the Frondas' home approximately 12 of the 20 weeks.<sup>2</sup> During the period in which Ms. Wu stayed in the Frondas' home, Respondent Willemse called the Frondas once or twice a week to check on Ms. Wu's welfare. The Frondas' received monthly payments from GSS in the amount of \$525 during the period Ms. Wu resided there. The Frondas paid no money to GSS.

13. On October 21, 2014, Investigator Delgado sent Respondent Willemse a letter stating that he believed Respondent were possibly conducting activities defined in Business and Professions Code section 10131<sup>3</sup> that require a real estate license. Specifically, Investigator Delgado stated that GSS and Respondent Willemse were "negotiating or offering to negotiate leases, rental and/or housing agreements in exchange for a fee," but were "not licensed in this State as either a real estate broker or salesperson." In that regard, Investigator Delgado requested Respondents to answer questions setting forth the specific "real estate services" they provided, the length of time they have been providing "real estate services," whether Respondent Willemse was an employee or an independent contractor, the amount paid for the services provided by Respondents, the amount of transactions completed by Respondents over the past year, and whether Respondent had been operating under authority of a license issued to another California agency or under an exemption from the Bureau.

14. On November 7, 2014, in response to Investigator Delgado's correspondence, Respondents sent him a letter stating, in essence, that GSS was a homestay coordinator/provider tasked with providing hosts and host families for international students,

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<sup>2</sup> Because Ms. Wu did not testify, it is unclear why she did not stay for the entire 20 weeks. The parties offered speculation concerning Ms. Wu's decision to leave, but no competent evidence.

<sup>3</sup> Business and Professions Code section 10131, subdivision (b), defines a real estate broker as "a person who, for compensation or in expectation of compensation . . . does or negotiates to do one or more of the following acts for another or others: . . . leases or rents or offers to lease or rent, or solicits listings of places for rent, or solicits for prospective tenants, . . . or collects rents from real property . . . ."

and did not conduct any real estate transactions. Specifically, Respondents stated they did not collect rents, negotiate leases for housing or apartments, and did not serve as a property manager.

15. Investigator Delgado interviewed Respondent Willemse, who reiterated to Investigator Delgado that GSS was providing homestay services for international students and not real estate services. Investigator Delgado, who applied his personal definition for homestay as meaning a company in the business of finding tenants for housing, told Respondent Willemse she needed to obtain a broker's license in order to continue providing homestay services. At hearing, Investigator Delgado admitted he did not base his definition on "anything concrete or on any authority." Investigator Delgado does not possess a real estate license, has not taken any real estate courses, and has never investigated a matter involving homestay services. Additionally, Investigator Delgado did not research or contact any colleges or universities in the State of California concerning their homestay or foreign exchange student programs.

16. On February 4, 2015, Complainant filed its Order stating that, based on the Bureau's investigation, the Complainant had determined that "GSS has engaged in or is engaging in acts or is attempting to engage in the business of, acting in the capacity of, and/or advertising or assuming to act as a real estate broker in the State of California within the meaning of Business and Professions Code section 10131(b) (solicits listings of places for rent or solicits for prospective renters)." The Order included Findings of Fact stating that GSS was not licensed by the Bureau as a real estate broker, that GSS solicited owners of residential properties and renters for compensation or in expectation of compensation and fees, that GSS solicited Ms. Wu to rent residential property, and that GSS demanded and received fees from Ms. Wu. Based on these findings, the Complainant concluded that GSS violated Business and Professions Code section 10130 by engaging in activities without first obtaining a broker's license.

## LEGAL CONCLUSIONS

1. The Bureau has authority to issue an Order to Desist and Refrain if "a person has engaged or is engaging in an activity which is a violation of a provision of this part [the Real Estate Law, Bus. & Prof. Code, § 10000 et. seq.<sup>4</sup>] or which is a violation of a regulation of the commissioner adopted for the purpose of implementing any provision of this part." (§ 10086, subd. (a).)

2. Section 10130 makes it unlawful for a person to act in the capacity of a real estate salesperson or broker without first obtaining a real estate license. A person acts as a real estate broker when the person "for compensation or in expectation of compensation . . .

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<sup>4</sup> Further references to section or "§" are to the Business and Professions Code, unless preceded by "CCR," which refers to title 10 of the California Code of Regulations.

does or negotiates . . . for another or others . . . leases or rents or offers to lease or rent, or solicits listings of places for rent, or solicits for prospective tenants, . . . or collects rents from real property . . . .” (§ 10131, subd. (b).)

3. Here, Complainant failed to establish GSS has “engaged in or is engaging in acts or is attempting to engage in the business of, acting in the capacity of, and/or advertising or assuming to act as a real estate broker in the State of California within the meaning of Business and Professions Code section 10131(b).” Specifically, Complainant has failed to show that GSS “solicits listings of places for rent or solicits for prospective renters,” as alleged in the Order. The evidence shows Respondents provide, and international students pay for, a package of services, including homestay services, airport pick-up services, mentoring services, and resources provided by GSS. In this process, while Respondents may match international students with homestay families, there is no evidence Respondents negotiate leases or rents, offer to lease or rent, solicit listings of places for rent, solicits for prospective tenants, collect rents from real property, or engage in any other acts within the meaning of section 10131, subdivision (b).

4. Complainant’s main concern stems from language set forth in GSS’s Application/Housing Agreement, which led Investigator Delgado to the conclusion that GSS “solicits listings of places for rent or solicits for prospective renters.” Complainant contends that GSS’s Application/Housing Agreement, which referenced language concerning housing arrangements between the students and the host families, masqueraded, in essence, as a rental or lease agreement, and, as such, constituted an act which required a real estate license. However, the evidence does not support this contention. The Application/Housing Agreement included no language describing the student as a tenant, the homeowner as a landlord, or GSS as a property management company. Additionally, the Application/Housing Agreement discussed no payment of rent, utilities, property maintenance, subletting, lead notification requirements, or other basic terms of typical rental or lease agreements. Rather, the Application/Housing Agreement included language consistent with that of a company that provides, for a fee, a package of services, one component of which involves matching and placing international students with host families, which would reasonably include language addressing housing logistics.

5. In sum, none of the services provided by Respondents involves GSS creating landlord/tenant agreements between host families and international students, GSS negotiating rent on students’ behalf, GSS negotiating or collecting rent on homeowners’ behalf, soliciting places for rent on homeowners’ behalf, or soliciting students to become tenants on students’ behalf, and Complainant has not demonstrated otherwise. For these reasons, the Order must be dismissed.

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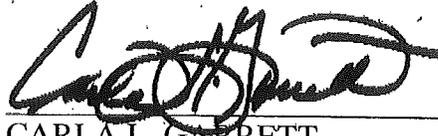
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ORDER

The Order to Desist and Refrain issued against Respondents Global Student Services, USA, Inc., and Michelle E. Willemse is dismissed.

Date: August 7, 2015

A handwritten signature in black ink, appearing to read 'Carla L. Garrett', written over a horizontal line.

CARLA L. GARRETT  
Administrative Law Judge  
Office of Administrative Hearings

1 Bureau of Real Estate  
320 West Fourth Street, Ste. 350  
2 Los Angeles, California 90013

3 (213) 576-6982

**FILED**

FEB 04 2015

BUREAU OF REAL ESTATE

By *[Signature]*

8 BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 To:	)	No. H-39734 LA
	)	
	)	<u>ORDER TO DESIST</u>
12 GLOBAL STUDENT SERVICES,	)	
13 USA, INC.,	)	
14 and MICHELLE E. WILLEMSE,	)	<u>AND REFRAIN</u>
	)	

16 The Commissioner (Commissioner) of the California  
17 Bureau of Real Estate (Bureau) caused an investigation to be made  
18 of the activities of GLOBAL STUDENT SERVICES, USA, INC., and  
19 MICHELLE E. WILLEMSE ("GSS"). Based on that investigation, the  
20 Commissioner has determined that GSS has engaged in or is  
21 engaging in acts or is attempting to engage in the business of,  
22 acting in the capacity of, and/or advertising or assuming to act  
23 as a real estate broker in the State of California within the  
24 meaning of Business and Professions Code Section 10131(b)  
25 (solicits listings of places for rent or solicits for prospective  
26 renters).

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(A) GLOBAL STUDENT SERVICES, USA, INC. and MICHELLE WILLEMSE immediately desist and refrain from: performing any acts within the State of California for which a real estate broker license is required, unless you are so licensed.

DATED: January 22, 2015.

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 the 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: Global Student Services, USA, Inc.  
Michelle Willemse  
1436 Brett Place #18  
San Pedro, CA 90732

JRP:SD

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Bureau of Real Estate  
320 West Fourth Street, Ste. 350  
Los Angeles, California 90013

(213) 576-6982

**FILED**

**FEB 04 2015**

**BUREAU OF REAL ESTATE**

By *[Signature]*

BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \* \*

To:	)	No. H-39734 LA
	)	
	)	<u>ORDER TO DESIST</u>
GLOBAL STUDENT SERVICES,	)	
USA, INC.,	)	
and MICHELLE E. WILLEMSE,	)	
	)	<u>AND REFRAIN</u>

The Commissioner (Commissioner) of the California Bureau of Real Estate (Bureau) caused an investigation to be made of the activities of GLOBAL STUDENT SERVICES, USA, INC., and MICHELLE E. WILLEMSE ("GSS"). Based on that investigation, the Commissioner has determined that GSS has engaged in or is engaging in acts or is attempting to engage in the business of, acting in the capacity of, and/or advertising or assuming to act as a real estate broker in the State of California within the meaning of Business and Professions Code Section 10131(b) (solicits listings of places for rent or solicits for prospective renters).

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3 acts within the State of California for which a real estate  
4 broker license is required, unless you are so licensed.

5  
6 DATED: January 22, 2015.

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8 REAL ESTATE COMMISSIONER

9 

10 By: JEFFREY MASON  
11 Chief Deputy Commissioner

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22 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)."

23  
24 cc: Global Student Services, USA, Inc.  
Michelle Willemse  
25 1436 Brett Place #18  
26 San Pedro, CA 90732

27 JRP:SD