

1 JASON D. LAZARK, Counsel
State Bar No. 263714
2 Department of Real Estate
P.O. Box 137007
3 Sacramento, CA 95813-7007
4 Telephone: (916) 263-8672
5 (916) 263-8684 (Direct)
6 Fax: (916) 263-3767
7

FILED

SEP 27 2018

DEPARTMENT OF REAL ESTATE
By L. Kropp

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:)
12 OSBORNE HOMES and) No. H-3152 FR
13 ROBERT J. OSBORNE,) ACCUSATION
14 Respondent.)

15 The Complainant, BRENDA SMITH, acting in her official capacity as a
16 Supervising Special Investigator of the State of California, for cause of Accusation against
17 OSBORNE HOMES and ROBERT J. OSBORNE ("collectively referred to as "Respondents"),
18 is informed and alleges as follows:

19 1

20 ROBERT J. OSBORNE is presently licensed and/or has license rights under the
21 Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) ("Code") as a real
22 estate broker. At all relevant times, ROBERT J. OSBORNE was the designated officer of
23 OSBORNE HOMES.

24 2

25 OSBORNE HOMES is presently licensed by the California Department of Real
26 Estate ("the Department") and/or has license rights under the Real Estate Law as a corporate real
27 estate broker, and at all relevant times herein was acting by and through ROBERT J. OSBORNE

1 as its designated officer.

2 3

3 At all times mentioned herein, Respondents engaged in the business of, acted in
4 the capacity of, advertised, or assumed to act as a real estate licensee, in the State of California,
5 within the meaning of Section 10131(a) of the Code, including the operation and conduct of a
6 real estate resale brokerage with the public, wherein, on behalf of others, for compensation or in
7 expectation of compensation, Respondents sold and offered to sell, bought and offered to buy,
8 solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated
9 the purchase and resale of real property.

10 4

11 On or about June 9, 2015, OSBORNE HOMES and Andre Morin ("Morin")
12 entered into an Independent Contractor Agreement whereby Morin agreed to provide inside sales
13 services for OSBORNE HOMES for compensation. Pursuant to "Exhibit A" of the agreement,
14 Morin was tasked with the following responsibilities:

15 **Duties & Responsibilities**

- 16 • Field new business inquiries – inbound calls
- 17 • Update and prospect to previous callers (no-deals)
- 18 • Pitch the value propositions that Osborne Home offers to each potential
19 seller
- 20 • Analyze potential deal by using different software, online databases, and
21 comparable properties
- 22 • Discover the needs of seller's and overcome objections
- 23 • Quickly navigate within a contact management system; multitask and
24 prioritize opportunities
- 25 • Keep comprehensive and complete daily "call logs" for every call
- 26 • Proactively improve performance through coaching and feedback
27 provided by management

5

25 At no time after OSBORNE HOMES and Morin entered into the agreement
26 described above in Paragraph 4 did OSBORNE HOMES or ROBERT J. OSBORNE provide
27 Morin any training or guidance regarding how to conduct his independent contractor duties.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

6

At no time after OSBORNE HOMES and Morin entered into the agreement described above in Paragraph 4 did OSBORNE HOMES or ROBERT J. OSBORNE instruct Morin not to solicit and/or negotiate the purchase and sale of real estate on behalf of OSBORNE HOMES.

7

On or about May 15, 2016, Evelyn Cottrell called Osborne Homes and indicated she wished to sell a home she owned located at 728 Chestnut Avenue, Tracy, California 95375 ("Subject Property"). Morin answered the call on behalf of Osborne Homes. During the conversation between Morin and Ms. Cottrell, Morin offered to have Osborne Homes purchase the Subject Property from Ms. Cottrell for \$130,000.

8

Subsequent to the conversation between Ms. Cottrell and Morin, as discussed above in Paragraph 7, Osborne Homes purchased the Subject Property from Ms. Cottrell.

9

OSBORNE HOMES compensated Morin for his services, including those described above in Paragraph 7.

FIRST CAUSE OF ACTION
Unlawful Compensation
(As to OSBORNE HOMES)

10

Each and every allegation set forth above in Paragraphs 1 through 9, inclusive, is incorporated by this reference as if fully set forth herein.

11

The acts and/or omissions of OSBORNE HOMES, as described above in Paragraphs 3 through 9, constitute violations of Section 10137 (unlawful compensation), and are grounds for the suspension or revocation of all licenses and license rights of OSBORNE

1 HOMES under Sections 10177(d) (willful disregard for the law) and/or 10177(g) (negligence or
2 incompetence) of the Code.

3 SECOND CAUSE OF ACTION
4 FAILURE TO SUPERVISE
5 (As to ROBERT J. OSBORNE)

6 12

7 Each and every allegation in Paragraphs 1 through 11, inclusive, above, is
8 incorporated by this reference as if fully set forth herein.

9 13

10 ROBERT J. OSBORNE, as the supervising broker of OSBORNE HOMES, was
11 required to exercise reasonable supervision and control over the real estate activities and
12 employees of OSBORNE HOMES.

13 14

14 ROBERT J. OSBORNE failed to exercise reasonable supervision over the acts
15 and/or omissions of OSBORNE HOMES in such a manner as to allow the acts and/or omissions,
16 as described above in the FIRST CAUSE OF ACTION of the Accusation to occur, which
17 constitutes cause for the suspension or revocation of the license(s) and license rights of ROBERT
18 J. OSBORNE under Sections 10177(d) and/or 10177(g), 10177(h) (failure to supervise activities
19 of corporation) and 10159.2 (failure to supervise activities of corporation) of the Code, in
20 conjunction with Section 2725, of Title 10, California Code of Regulations (broker supervision).

21 15

22 Section 10106 of the Code provides, in pertinent part, that in any order issued in
23 resolution of a disciplinary proceeding before the Department of Real Estate ("Department"), the
24 Commissioner may request the Administrative Law Judge to direct a licensee found to have
25 committed a violation of this part to pay a sum not to exceed the reasonable costs of the
26 investigation and enforcement of the case.

26 ///
27 ///

1 WHEREFORE, Complainant prays that a hearing be conducted on the
2 allegations of this Accusation and that upon proof thereof, a decision be rendered revoking all
3 license and license rights of Respondent under the Real Estate Law, for the cost of
4 investigation and enforcement as permitted by law, and for such other and further relief as may
5 be proper under other provisions of law.

6
7 
8 BRENDÁ SMITH
9 Supervising Special Investigator

10 Dated at Fresno, California,
11 this 19 day of September, 2018.

12 DISCOVERY DEMAND

13 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the
14 Department hereby makes demand for discovery pursuant to the guidelines set forth in the
15 *Administrative Procedure Act*. Failure to provide Discovery to the Department may result in the
16 exclusion of witnesses and documents at the hearing or other sanctions that the Office of
17 Administrative Hearings deems appropriate.