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APR 21 2010

DEPARTMENT OF REAL ESTATE
BY: _____

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Desist and Refrain Against:	)	No. H-36147 LA
	)	L-2009090171
TIM HURLBUT INC., doing business as OK to Walk; TIMOTHY N. HURLBUT; ALAN VERZANI, INC., doing business as OK to Walk; ALAN VERZANI; KEVIN DEROSIER; MICHAEL BARNETT, INC.; and MIKE BARNETT,	)	

DECISION

The Proposed Decision dated April 1, 2010, 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 MAY 11 2010.

IT IS SO ORDERED 4/21/2010.

JEFF DAVI
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order Against: TIM HURLBUT INC., doing business as OK to Walk; TIMOTHY N. HURLBUT; ALAN VERZANI, INC., doing business as OK to Walk; ALAN VERZANI; KEVIN DEROSIER; MICHAEL BARNETT, INC.; and MIKE BARNETT, Respondents.	Case No. H-36147 LA OAH No. 2009090171

PROPOSED DECISION

This matter was heard on January 25, 2010, by Mark Harman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), in Los Angeles. It was heard in conjunction with a related matter entitled *In the Matter of the Accusation Against Timothy N. Hurlbut* (agency case no. H-36115; OAH no. 2009080829).

The California Real Estate Commissioner (Commissioner) was represented by Cheryl D. Keily, Real Estate Counsel, Department of Real Estate (Department).

Timothy N. Hurlbut (Respondent or Hurlbut) represented himself.

Evidence was presented and the matter was submitted for decision on January 25, 2010. On February 8, 2010, the ALJ received a letter from Complainant's counsel explaining that the related matters, although based on similar factual allegations, arose under separate legal applications, and therefore, the ALJ was requested to prepare a separate proposed decision for each matter. The letter was marked for identification as exhibit 8. Complainant's request is granted; a separate proposed decision shall be issued concurrently in OAH no. 2009080829.

FACTUAL FINDINGS

1. On July 30, 2009, the Commissioner, acting in his official capacity, filed a Desist and Refrain Order (Order) under Business and Professions Code[1]

[1] All further statutory references are to the Business and Professions Code, unless specified otherwise.

section 10086 directing seven respondents to desist and refrain from certain alleged activities. Respondent Hurlbut requested a hearing on the Commissioner's Order. The hearing and proposed decision in this matter does not pertain to any respondent named in the Order's caption except Hurlbut.

2. Respondent is presently licensed as a real estate salesperson under the Real Estate Law (§ 10000 et seq.). In November 2007, the Commissioner issued Respondent a real estate salesperson's license, at which time he entered the employ of Angelina-Ayden, Inc., doing business as Power Lending, 806 East Lincoln Avenue, Orange, California 92865, and remained employed there until September 2008. His real estate salesperson license will expire in November 2011, unless renewed.

3. In May 2007, Respondent formed a California corporation named Tim Hurlbut, Inc. (THI), with its principal place of business on Lincoln Avenue in Orange, California. At all times relevant, Respondent was the sole officer of THI. In April 2008, THI filed a new fictitious business name statement in the Office of the Orange County Clerk-Recorder (County) indicating that THI was doing business as "OK to Walk," located at 806 E. Lincoln Avenue, Orange, California. Also in April 2008, THI made application to do business within the City of Orange (City) under the business names "OK to Walk," "OK to Modify," and "OK to Settle." According to the City's business license records, the business was closed on July 31, 2008.[2]

4. Beginning in 2007, Respondent was a loan officer for, and later, he became the sales manager for, Power Lending. Alan Verzani, Kevin Derosier, and Michael Barnett (Barnett) were also employed at Power Lending. In early 2008, residential lending fell sharply. In April 2008, Power Lending was shutting down. Clientele were searching for other means to cope with their mortgage problems. Respondent began researching ways of starting his own business offering loan modification services using the names "OK to Walk" and "OK to Modify."

5. Respondent consulted with attorneys and other professionals. These professionals prepared sample agreements, including an advance fee agreement, which Respondent intended to submit to the Department for approval. Respondent was aware of the laws regulating real estate brokerage activities that could apply to the business model he was developing, but the details of the legal requirements were vague to him. Respondent and other Power Lending employees began soliciting applications and information from consumers interested in loan modification services as early as April or May 2008. Some of the consumers submitted information or applications to Respondent. Several were referred to a law firm. It is not known how many consumers entered into contractual relationships with Respondent or the business entities he controlled while he pondered whether to proceed in business.

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[2] A declaration by Rosalie Brooks, Senior Finance Clerk, City of Orange, was received in evidence as administrative hearsay. (Exhibit A.)

6. In June or early July 2008, Respondent "hired" Barnett as one of his employees. He knew that Barnett was not licensed as a real estate professional. He knew that Barnett was soliciting consumers who could be interested in loan modification services.

7. Eventually, Respondent became uncomfortable with the legal responsibilities of the proposed business model and decided that he would not engage in any advance fee for service arrangements with clients. On July 28, 2008, he notified his employees, including Barnett, of his decision to discontinue operations of his business, and he instructed Barnett not to accept any advance fees from consumers. Respondent maintains that he never authorized Barnett to accept advance fees from consumers. Respondent asserts that Barnett was acting outside the scope of his authority when he solicited consumers Ijeoma Maduakor (Maduakor), and Joe and Mercy Udeochu (Udeochu), and received advance fees from them. The Maduakor and Udeochu transactions are the primary basis for the Order.

8 In mid-July 2008, Barnett solicited two consumers, Maduakor and Udeochu, for loan modification services using written agreements identifying "OK to Walk" or "OK to Modify" as the company providing the loan modification services. These contracts were identical to the samples prepared by Respondent's consultants. These contracts required the consumers to pay an advance fee to the company. Barnett directed Maduakor and Udeochu each to pay $2,500, and directed them to make their checks payable to M.B.I., Inc. Barnett endorsed, and cashed or deposited, these consumers' checks in early August 2008. These conclusions are supported by Maduakor's and Udeochu's declarations and attached exhibits. (Exhibits 6 and 7.)

9. Respondent credibly testified that Barnett obtained and used these written agreements without Respondent's permission. He claimed that he had no direct or indirect contact with Maduakor or Udeochu. Barnett, in fact, signed a letter, which was received in evidence as administrative hearsay (Exhibit F), in which Barnett admitted to using these contracts and receiving advance fees without Respondent's knowledge. This letter corroborated Respondent's testimony. There was no evidence contradicting Respondent's version of these events. Barnett, however, was acting as an agent for THI when he made these transactions. These activities required a real estate broker license under section 10130 et seq., because Barnett solicited consumers for loan modification services and contracted for an "advance fee" for these services, as that term is defined in section 10026.[3]

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[3] Under sections 10131, subdivision (d), a real estate broker is defined as a person who solicits borrowers or lenders for, or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with, loans secured by real property. Barnett and THI solicited consumers for performing loan modification services, which comes within this definition, and charged them an "advance fee." Section 10026 defines an "advanced fee" as "a fee demanded,

10. Respondent claims that he transferred all of his interest in "OK to Walk" to Alan Verzani Inc. (AVI) in early August 2008. In fact, AVI filed with the County a change to the fictitious business name statement for "OK to Walk" in August 2008, indicating that AVI was the registered owner; however, Respondent never filed an "Abandonment" indicating that THI was no longer a registered owner under this fictitious business name statement.

The Order

11. The Commissioner's Order states, in part, that the Commissioner has determined that Respondent violated provisions of the Real Estate Law and its regulations while engaging in the business of, acting in the capacity of, advertising, or assuming to act, as a real estate broker in the State of California. It further states that Respondent engaged in the business of, acted in the capacity of, or advertised a loan modification service and advance fee brokerage using the name OK to Walk. The Order stated that Respondent was "offering to perform and performing loan modification services with respect to loans which were secured by liens on real property for compensation or in expectation of compensation and for fees collected in advance as well as at the conclusion of the transaction." The Order further describes the details of two transactions between Barnett and consumers that involved the consumers' monies being transferred to Barnett on July 28, and August 4 and 8, 2008, pursuant to the provisions of written agreements pertaining to loan modification services to be provided by the seven respondents named in the caption, including Respondent. Finally, it states that the Commissioner has determined Respondent was engaging in unlicensed real estate broker activity. The Order commands all seven respondents, including Respondent, to desist and refrain from performing any acts within the state of California for which a real estate broker license is required, including soliciting borrowers and performing services for borrowers or lenders in connection with real property loans, and charging, demanding, or collecting an advance fee for any of these services, until they have been issued a license and have demonstrated they are in compliance with the requirements of the Real Estate Law.

LEGAL CONCLUSIONS

1. The Commissioner is authorized to issue an order directing a person who has engaged in or is engaging in an activity determined to violate the Real Estate Law or the regulations, to desist and refrain from such activity. This enforcement power is remedial and helps ensure that persons assuming to engage in real estate activities for which a license is required will abide by the law and maintain high standards in their dealings with consumers. The Commissioner's authority is liberally construed so that he may meet the myriad situations which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy.

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charged, received, collected or contracted from a principal for . . . soliciting borrowers or lenders for, or to negotiate loans on . . . real estate."

2. Cause exists to order Respondent to desist and refrain from engaging in unlicensed real estate broker activity, in violation of section 10130, based on factual finding numbers 1 through 10. Between April and July 2008, Respondent was the sole officer of THI, a corporation that did business as OK to Walk and OK to Modify. Respondent hired Barnett to solicit consumers in May or June 2008. Barnett was an agent of THI. Respondent was aware Barnett was engaging in solicitations and offering loan modification services on behalf of THI, an activity requiring a real estate broker license. Neither Respondent nor THI had obtained a broker license during the relevant period. Respondent is liable as a principal for THI's activities and for the activities of THI's employees.

3. The Order referenced two transactions of which Respondent was unaware. However, there is a sufficient nexus between Respondent's conduct and Barnett's solicitations of loan modification service agreements to hold Respondent accountable for violating the licensing requirement. Respondent and his employees were soliciting consumers for loan modification agreements as early as April 2008. These solicitations, by themselves, violated the licensing requirements of the Real Estate Law. Even though Respondent decided at a later time to abandon his business plan, and he maintains that he never received compensation from any consumers, it is reasonable to infer that Respondent expected to receive compensation from these solicitations once he had resolved some of the issues with his business plan. Even if Barnett was not explicitly authorized to use the loan modification agreements or receive advance fees, Barnett's activities while he was employed by THI and under Respondent's control are sufficient to deem Respondent responsible for engaging in unlicensed real estate broker activity.

ORDER

The Desist and Refrain Order issued by the Commissioner to Respondent Timothy N. Hurlbut, is upheld. Respondent shall immediately desist and refrain from performing any acts within the State of California for which a real estate broker license is required, unless he has demonstrated and provided evidence satisfactory to the commissioner that he is properly licensed by the Department as a real estate broker, and that he is in compliance with the Real Estate Law and its regulatory requirements.

April 1, 2010

Mark E. Harman

Mark E. Harman
Administrative Law Judge
Office of Administrative Hearings

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

Telephone: (213) 576-6982

FILED

JUL 30 2009

DEPARTMENT OF REAL ESTATE
BY: _____

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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To: TIM HURLBUT INC., doing business as OK to Walk, TIMOTHY N. HURLBUT, ALAN VERZANI INC., doing business as OK to Walk, ALAN VERZANI, KEVIN DEROSIER, MICHAEL BARNETT, INC., and MIKE BARNETT.	No. H-36147 LA ORDER TO DESIST AND REFRAIN (B&P Section 10086)

The Commissioner ("Commissioner") of the California Department of Real Estate ("Department") caused an investigation to be made of the activities of TIM HURLBUT INC., doing business as Ok to Walk, TIMOTHY N. HURLBUT, ALAN VERZANI INC., doing business as Ok to Walk, ALAN VERZANI, KEVIN DEROSIER, MICHAEL BARNETT, INC. and MIKE BARNETT, and has determined that each has engaged in or are engaging in acts or practices constituting violations of the California Business and Professions Code ("Code") and/or Title 10, California Code of Regulations ("Regulations") including engaging in the business of, acting in

the capacity of, advertising, or assuming to act, as real estate brokers in the State of California within the meaning of Section 10131(d) (soliciting borrowers or lenders or negotiating loans) and Section 10131.2 (claiming advance fees in connection with a loan) of the Code. Based on the findings of that investigation, as set forth below, the Commissioner hereby issues the following Findings of Fact and Desist and Refrain Order pursuant to Section 10086 of the Code.

FINDINGS OF FACT

1. At no time herein mentioned has TIM HURLBUT INC., doing business as OK to Walk, ALAN VERZANI INC., doing business as OK to Walk, ALAN VERZANI, KEVIN DEROSIER, MICHAEL BARNETT, INC. or MIKE BARNETT been licensed by the Department in any capacity.

2. TIMOTHY N. HURLBUT is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate salesperson.

3. At the time set forth below TIM HURLBUT INC., doing business as OK to Walk, TIMOTHY N. HURLBUT, ALAN VERZANI INC., doing business as OK to Walk, ALAN VERZANI, KEVIN DEROSIER, MICHAEL BARNETT, INC. and MIKE BARNETT engaged in the business of, acted in the capacity of, or advertised a loan modification service and advance fee brokerage using the name OK to Walk offering to perform and performing loan modification services with respect to loans which were secured by liens on real property for compensation or in expectation of compensation

and for fees often collected in advance as well as at the conclusion of the transaction.

a. On or about July 31, 2008, Ijeoma Maduakor paid an advance fee of $2,500 to MIKE BARNETT and KEVIN DEROSIER, acting on behalf of MICHAEL BARNETT, INC. The advance fee was collected pursuant to the provisions of a written agreement pertaining to loan modification services to be provided by TIM HURLBUT INC., doing business as OK to Walk, TIMOTHY N. HURLBUT, ALAN VERZANI INC., doing business as OK to Walk, and ALAN VERZANI with respect to a loan secured by the real property located at 1744 E. Helmick, Carson, California 90746.

b. On or about August 4, 2008, Joe and Mercy Udeochu (the "Udeochus") paid an advance fee of $1,000 to MIKE BARNETT and KEVIN DEROSIER, acting on behalf of MICHAEL BARNETT, INC. The advance fee was collected pursuant to the provisions of a written agreement pertaining to loan modification services to be provided by TIM HURLBUT INC., doing business as OK to Walk, TIMOTHY N. HURLBUT, ALAN VERZANI INC., doing business as OK to Walk, and ALAN VERZANI with respect to a loan secured by the real property located at 19707 Reinhart Avenue, Carson, California 90746. Thereafter, on or about August 8, 2008, MIKE BARNETT and KEVIN DEROSIER, acting on behalf of MICHAEL BARNETT, INC., collected an additional advance fee of $1,500 from the Udeochus pursuant to the provisions of the same loan modification agreement.

CONCLUSIONS OF LAW

4. Based on the information contained in Paragraph 3, above, TIM HURLBUT INC., doing business as OK to Walk, ALAN VERZANI INC., doing business as OK to Walk, ALAN VERZANI, KEVIN DEROSIER, MICHAEL BARNETT, INC. and MIKE BARNETT have performed and/or participated in loan modification activities which require a license under the provision of Code Sections 10131(d) and 10131.2 during a period of time when none of them were licensed by the Department in any capacity.

5. Based on the information contained in Paragraph 3, above, TIMOTHY N. HURLBUT, performed and/or participated in loan modification activities which require a real estate broker license under the provisions of Code Sections 10131(d) and 10131.2 during a period of time when he was not licensed by the Department as a real estate broker nor employed as a real estate salesperson by a broker on whose behalf the activities were performed.

DESIST AND REFRAIN ORDER

Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW stated herein, it is hereby ordered that TIM HURLBUT INC., doing business as Ok to Walk, TIMOTHY N. HURLBUT, ALAN VERZANI INC., doing business as Ok to Walk, ALAN VERZANI, KEVIN DEROSIER, MICHAEL BARNETT, INC. and MIKE BARNETT, whether doing business under their own names, or any other names, or any fictitious name, ARE HEREBY ORDERED to immediately desist and refrain from performing any acts within the State of California for which a

real estate broker license is required. In particular each of them is ordered to desist and refrain from:

(i) 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

(ii) charging, demanding, or collecting an advance fee for any of the services they offer to others, unless and until they obtain a real estate broker license issued by the Department, and until they demonstrate and provide evidence satisfactory to the Commissioner that they are in full compliance with all requirements of the Code and Regulations relating to charging, collecting, and accounting for advance fees.

DATED: 7/28, 2009.

JEFF DAVI
Real Estate 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)."

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