

FILED
APR -7 2005

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Order to)	
Desist and Refrain Issued Against:)	NO. H-4195 SAC
)	
KEVON D. AGARD)	OAH NO. N-2005020103
)	
Respondents.)	
)	

DECISION

The Proposed Decision dated March 22, 2005, 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 APRIL 28, 2005.

IT IS SO ORDERED 3-29-05.

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Order to Desist
and Refrain Directed to:

KEVON D. AGARD

Respondent.

Case No. H-4195 SAC

OAH No. N2005020103

PROPOSED DECISION

This matter was heard by David A. Peters, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on February 17, 2005.

David B. Seals, Counsel, Department of Real Estate, State of California, represented the complainant.

Kevon D. Agard (respondent) appeared and represented himself.

Evidence was received, the record was closed and the matter was submitted on February 17, 2005.

FACTUAL FINDINGS

1. On January 11, 2005, Jeff Davi, made and filed an Order to Desist and Refrain in his capacity as Real Estate Commissioner (Commissioner) of the Department of Real Estate (Department), State of California, directed to respondent Kevon D. Agard, based upon the Commissioner's authority under Business and Professions Code section 10086, which provides in pertinent part:

"If the Commissioner determines through an investigation that a person has engaged or is engaging in an activity which is a violation of a provision (of the real estate law), the commissioner may direct the person to desist and refrain from such activity by issuance of an order."

2. At no time herein mentioned was respondent licensed by the Department as a real estate broker or real estate salesperson.

3. On or about November 4, 2004, respondent, by telephone, contacted Carolyn Lynn Scott (Scott) the owner of two vacant lots, commonly known as 3921 and 3925 Branch Street, Sacramento, California (the property). Respondent contacted Scott in response to an advertisement for the sale of the property placed by Scott in the Penny Saver magazine. Scott told respondent she was asking \$90,000 for each lot, for a total purchase price of \$180,000 for the property. During the conversation respondent told Scott that he was representing "someone else," who would make an offer to purchase the property.

4. On or about November 6, 2004, respondent telephoned Scott and asked her if she had received a faxed offer to purchase the property. Scott informed respondent that she had not received a faxed offer to purchase the property.

5. On or about February 8, 2004, respondent again telephoned Scott and told her that he could get her a full price offer or better on the purchase of the property.

6. Respondent, at no time, told Scott that he wanted to purchase the property for himself.

7. Respondent, as of the date of the hearing, had been in California for 10 months, having moved to California from New York. After coming to California, respondent began working for S & B Investors (S & B), a real estate investment group, owned in major part by Dhan Raj Sahaedo. Respondent's duties for S & B included finding real properties for purchase. Respondent was authorized to write letters to real estate property owners, expressing an interest in purchasing their property. Respondent was compensated for his efforts by being allowed to live in properties owned by S & B. In addition, if a property was purchased by S & B through respondent's efforts, he would be paid based upon a formula which was not established at the hearing. As of the date of the hearing, S & B had not purchased real estate property through respondent and, therefore, had not paid him based upon the formula.

8. On or about November 8, 2004, respondent gave information on the property to Evans Sakani (Sakani), a contractor who worked with S & B. Sakani provided information on the property to The Miller Lafferty Group, Inc. (Miller Lafferty), a licensed real estate broker corporation. Respondent never provided the information on the property to anyone at S & B.

9. On November 9, 2004, Don Miller (Miller) of Miller Lafferty faxed documents, related to the listing and sale of the property, to Scott for her signature. The facsimile cover sheet sent to Scott stated that the property had been referred to Miller Lafferty by respondent. Scott agreed to sell the property through Miller Lafferty.

10. On November 10, 2004, respondent faxed to Miller Lafferty a "Service Agreement" (agreement) dated November 8, 2004, signed by respondent. The agreement among other things provided that Miller Lafferty would agree to compensate respondent in the amount of \$10,000 for his services in connection with the sale of the property, with "...

one half of the agreed payment to be paid upon acceptance of the offer. The balance will be paid upon completion of title exchange." In the agreement respondent describes his services in connection with the sale of the property to include "locating, evaluating and negotiating Real Estate."

11. On November 10, 2004, respondent telephoned Miller and demanded that Miller Lafferty sign the agreement and pay respondent the \$10,000. Miller refused to agree to respondent's demands.

12. In a letter dated November 11, 2004, Michael Lafferty, Broker-Officer and Managing Principal, for Miller Lafferty, informed respondent that Miller Lafferty would not enter into respondent's proposed agreement because, among other things, respondent was not licensed by the Department of Real Estate and therefore could not be compensated by Miller Lafferty for performing acts requiring a real estate license.

13. Respondent testified that he told Scott he wanted to purchase the property for himself, that he never told Scott he was representing someone else and that he never told Scott he could get her a full price offer or better on the sale of the property. Scott's testimony regarding these matters was not credible.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10130, provides in pertinent part:

"It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or real estate salesman (salesperson) within the state without first obtaining a real estate license from the department."

2. The Order to Desist & Refrain referenced in Finding 1 was issued pursuant to Business and Professions Code section 10086, inasmuch as the Commissioner, following investigation, ascertained that respondent, in contravention of Business and Professions Code section 10130, was engaging in the business, or acting in the capacity of, advertising or assuming to act as a real estate licensee, without first obtaining a real estate license.

3. A "real estate broker," as defined in Business and Professions Code section 10131 includes:

"... a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

“(a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity.”

4. Before activities can be found to require a real estate license, a preliminary determination must be made to find that the person was acting (1) for or in expectation of compensation and (2) for another or others. If both elements are found, then a determination must be made whether the other acts performed come within the definition of a real estate broker.

5. Respondent was acting for or in expectation of a compensation within the meaning of Business and Professions Code section 10131, as evidenced by Factual Findings 10 and 11. In the proposed agreement, respondent's fax to Miller Lafferty included a provision by which respondent would be paid \$10,000 for his efforts in connection with the sale of the property. Respondent also made a verbal telephone demand that Miller Lafferty pay him the \$10,000.

6. Respondent was acting for another or others within the meaning of Business and Professions Code section 10131, as evidenced by Findings 3 and 5. Respondent told Scott he was representing someone else who would make an offer to purchase the property and he told Scott that he could get her a full price offer or better on the purchase of the property. Only if respondent was acting on his own behalf is no broker license required (a salesperson license is required when a person is employed to perform specified acts on behalf of a broker). Respondent was acting for another or others.

7. Having satisfied the two elements described in Paragraph 4, it is necessary to turn to the specific type of activity defining a real estate broker. Soliciting prospective sellers is one of the activities defined in Business and Professions section 10131, subdivision (a). Solicitation is defined in Black's Law Dictionary, 5th edition, pages 1248-1249, as follows:

“To appeal for something; to apply to for obtaining something, to ask earnestly, to ask for the purpose of receiving; to endeavor to obtain by asking or pleading; to entreat, implore or importune; to make petition to; to plead for; to try to obtain; and through the word implies a serious request, it requires no particular degree of importunity, entreaty, imploration or supplication ... To awake or excite to action, or to invite. ...”

8. Respondent's statements to Scott, described in Finding 3 and 5, constitute solicitations of a seller within the meaning of Business and Professions Code section 10131, subdivision (a).

"Since the 1984 amendment of section 10131, the Department of Real Estate has interpreted the statutory language as precluding any solicitation for another or others by an unlicensed person of prospective sellers, purchasers, landlords, renters, borrowers or lenders for compensation. 'Unless unreasonable or clearly contrary to the statutory language or purpose, the consistent construction of a statute by an agency charged with responsibility for its implementation is entitled to great deference. [Citation]' (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 460.) The department's interpretation of section 10131 is in accord with the statute's language and purpose." 78 Op. Cal. Atty. Gen. 71 (1995).

9. Giving due consideration to the evidence presented at hearing and based upon the Factual Findings, it is clearly established that respondent engaged in activities for which a real estate license is required in California. Accordingly, cause exists to sustain the Department's order to respondent to desist and refrain from engaging in activities requiring a real estate license pursuant to Business and Professions Code sections 10086, 10130 and 10131, subdivision (a).

ORDER

Respondent KEVON D. AGARD is ordered to immediately desist and refrain from performing any and all acts for which a real estate license is required unless and until a license is issued to respondent from the Department of Real Estate. The Department's Order to Desist and Refrain is sustained.

Dated: March 22, 2005

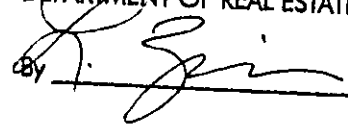


DAVID A. PETERS
Administrative Law Judge
Office of Administrative Hearings

1 Department of Real Estate
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4
5 Telephone: (916) 227-0789
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FILED
JAN 12 2005

DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 TO:

12 KEVON D. AGARD
13
14

)
) No. H-4195 SAC
)

) ORDER TO DESIST AND REFRAIN
) (B&P Code Section 10086)
)
)

15 The Real Estate Commissioner of the State of
16 California (hereinafter "Commissioner") has caused an
17 investigation to be made of your activities and based upon the
18 findings herein below set forth, is of the opinion that you,
19 KEVON D. AGARD, have violated Section 10130 of the California
20 Business and Professions Code (hereinafter Code) by engaging in
21 the business of or acting as a real estate salesperson or
22 broker, within the meaning of Sections 10130 and 10131(a) of the
23 Code without first having obtained a real estate license from
24 the California Department of Real Estate (hereinafter
25 Department).

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I

At no time herein mentioned were you KEVON D. AGARD, licensed by the Department as a real estate broker or salesperson.

II

From on or about November 8, 2004, through the present, you KEVON D. AGARD, performed activities for which a real estate license is required, including but not limited to, soliciting prospective sellers and purchasers of real property. You performed said acts for, but not limited to, prospective seller, Carolyn Lynn Scott. These acts were performed for or in expectation of compensation.

III

The acts soliciting prospective sellers or purchasers of real property or a business opportunity described in Paragraph II above are acts requiring a real estate salesperson or broker license under the provisions of Sections 10130 and 10131(a) of the Code.

IV

You, KEVON D. AGARD, violated Section 10130 of the Code by engaging in the activities described above in Paragraph III without first obtaining a real estate salesperson or broker license from the Department.

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1 NOW THEREFORE, YOU, KEVON D. AGARD, ARE HEREBY ORDERED
2 TO DESIST AND REFRAIN from performing any and all acts for which
3 a real estate license is required until such time as you obtain
4 the required license from the Department.

5 DATED: 1-6-05

JEFF DAVI
Real Estate Commissioner

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10 cc: KEVON D. AGARD
11 2456 BEAUMONT STREET
12 SACRAMENTO, CA 95815
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