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BUREAU OF REAL ESTATE

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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,

)
) H-4517 SD
) OAH NO.2013110365
)

Respondents.

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

[Signature]
Wayne S. Bell

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BUREAU OF REAL ESTATE

By *[Signature]*

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

[Signature]
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 Miller² 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 salesperson⁴ 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

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 Miniefée) 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 Miniefée, 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 Miniefée.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.

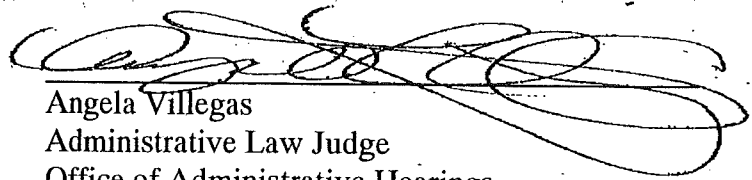
ORDER

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