

FILED

OCT 14 2010

DEPARTMENT OF REAL ESTATE

By B. Contreras

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Order to )  
Desist and Refrain Directed to: )  
)  
)  
OPTIONPLUS HOMES, INC., )  
and CRAIG SHERMAN. )  
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NO. H-5413 SAC

OAH NO. N-2010070623

**DECISION**

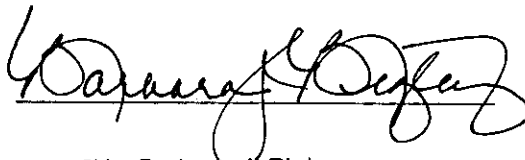
The Proposed Decision dated September 29, 2010, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on

November 3, 2010.

IT IS SO ORDERED 10/14, 2010.

JEFF DAVI  
Real Estate Commissioner



BY: Barbara J. Bigby  
Chief Deputy Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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

Case No. H-5413 SAC

OAH No. 2010070623

OPTIONPLUS HOMES, INC., and  
CRAIG SHERMAN.

**PROPOSED DECISION**

Administrative Law Judge JoAnn Irwin Eshelman, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on August 6, and 11, 2010.

Mary F. Clarke, Counsel, Department of Real Estate (Department), represented Real Estate Commissioner Jeff Davi (Commissioner).

Craig Sherman is President of OptionPlus Homes, Inc. (OptionPlus). He appeared on his own behalf and on behalf of OptionPlus.

Oral and documentary evidence was received on August 6, 2010. The matter was continued to August 11, 2010, to allow the Commissioner time to review documents offered on the first day of hearing by Mr. Sherman. On August 11, 2010, additional evidence was received. The matter was submitted for decision and the record closed on August 11, 2010.

**ISSUE**

Did Mr. Sherman or his corporation OptionPlus, engage in unlicensed activity as a real estate broker in 17 lease-option transactions between July 2008 and June 2009?

**FACTUAL FINDINGS**

*Background*

1. On June 16, 2005, Mr. Sherman filed Articles of Incorporation for OptionPlus with the California Secretary of State (Secretary of State).

2. On May 5, 2008, Mr. Sherman filed a Statement of Information (Statement) with the Secretary of State listing himself as the Chief Executive Officer and Secretary for OptionPlus. He listed his wife, Ladybird Sherman, as the Chief Financial Officer. Mr. Sherman and his wife were listed as the only two directors of OptionPlus. Mr. Sherman identified the type of business as "real estate related activities."

3. On March 30, 2009, Mr. Sherman filed another Statement, indicating that there were no changes from the previous filing.

4. On May 12, 2009, a real estate agent submitted a complaint to the Department after finding OptionPlus on Craigslist. The agent contended that OptionPlus was engaged in business which requires a real estate license.

5. Neither Mr. Sherman nor OptionPlus has ever been licensed by the Department in any capacity.

#### *Procedural History*

6. On June 3, 2010, Jeff Davi, Real Estate Commissioner of the State of California, filed a Desist and Refrain Order (Order), based on an investigation of the activities of OptionPlus and Mr. Sherman. Mr. Davi filed the Order in his official capacity, pursuant to Business and Professions Code<sup>1</sup> section 10086.

7. In the Order, Mr. Davi alleged that OptionPlus and Mr. Sherman, "have engaged in, are engaging in, or are attempting to engage in, acts or practices constituting violations of the California Business and Professions Code (Code) and/or title 10, Chapter 6, California Code of Regulations (Regulations) including 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(a) (real property sales) and (b) (property management services) of the Code." Mr. Davi alleged that the unlicensed activity involved a 2009 lease-option between Eric Gundersen (owner) and Lynn Edmonds (assignee), and at least 16 other similar transactions, listed in the Order as occurring between July 14, 2008, and June 17, 2009.

8. On July 3, 2010, the Department served the Order on OptionPlus and Mr. Sherman.

9. On July 9, 2010, Mr. Sherman requested a hearing on the Order. On July 12, 2010, the Department sent Mr. Sherman and OptionPlus a notice that hearing on the Order would be held at the Office of Administrative Hearings on August 6, 2010.

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<sup>1</sup> Any further statutory references are to the Business and Professions Code, unless otherwise noted.

*The Gundersen-Edmonds Lease-Option*

10. In early 2009, Lyn and Samuel Edmonds were looking for a home to buy or rent and discovered the OptionPlus website. They looked at a property in Elk Grove, listed on the OptionPlus website, and met Lyn Harris, an employee of OptionPlus. Ms. Edmonds was not interested in the Elk Grove property but gave information for Ms. Harris to complete an application with OptionPlus. Ms. Harris promised to let the Edmonds know if a house came on the market in Stockton, where they wanted to buy.

11. On February 10, 2009, OptionPlus signed a Residential Lease Agreement (Lease) as Tenant and an Option to Purchase Agreement (Option)<sup>2</sup> as Tenant/Optionee for a property at 4521 White Forge Drive in Stockton, California (White Forge property). Landlord/Optionor Eric Gundersen also signed both documents on that date. The Lease was for 36 months and provided that "the original tenants only have the right to sublet and/or assign, sell, and transfer or convey any rights, responsibilities, liabilities and obligations which the Tenants or their heirs, executors and administrators may have in this contract to a third party." The Option allowed the Tenant/Optionee to purchase the White Forge property at a fixed price of \$329,899 at any time during the 36-month lease period. The Tenant/Optionee would receive a (down payment) credit of \$400 for each monthly lease payment of \$2,000 during the 36-month option period. OptionPlus was to pay Mr. Gundersen the amount of \$500 as non-refundable option consideration. The Option could not be assigned without the written permission of the Lessor/Optionor.

12. Attached to the Option was a separate page entitled "OptionPlus Homes, Inc. Business Relationship Disclosure" (Disclosure), which stated,

OptionPlus Homes, Inc. represents only the interests of OptionPlus Homes, Inc. OptionPlus Homes, Inc. is not a licensed real estate broker and makes no representations as such. OptionPlus Homes, Inc. acts only on behalf of OptionPlus Homes, Inc. and does not represent the interests or act on behalf of any other seller, buyer, lessor, lessee, or any other party with an interest in a real property transaction, sale, purchase, hypothecation, or leasehold.

Mr. Gundersen signed this Disclosure on February 10, 2009.

13. On February 14, 2009, OptionPlus notified the Edmonds of the White Forge property. Ms. Harris made arrangements for Ms. Edmonds to view the property and explained the lease option process to her. Ms. Harris answered Ms. Edmonds' questions

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<sup>2</sup> The courts have defined an option as "an agreement by which an owner invests another with the exclusive right to buy certain property at a stipulated price, within a limited time (6 Cal. Jur., p. 48, sec. 27)." (*Tufts v. Mann* (1931) 116 Cal.App.170, 178.)

about the property and emailed her follow-up information showing that Mr. Gundersen was current in his mortgage payments.

14. On February 19, 2009, Ms. Edmonds was notified that Mr. Sherman had processed her application, and was "recommending" her for the White Forge property.

15. Sometime between February 10 and February 23, 2009, Mr. Sherman renegotiated the Lease and Option for the White Forge property. The purchase price was reduced by \$4,000 to \$325,899. The down payment credit was also reduced from \$400 to \$290 for each monthly lease payment of \$2,000 during the option period. The option consideration of \$500 to be paid by OptionPlus to Mr. Gundersen remained unchanged. The property was to be sold in "as is" condition.

16. OptionPlus signed the modified Lease and Option on February 23, 2009. Mr. Gundersen signed those documents two days later, on February 25, 2009. The modified Lease and Option were both dated February 23, 2009. Mr. Gundersen signed the Disclosure a second time on February 25, 2009.

17. On February 25, 2009, OptionPlus assigned the Option to Ms. Edmonds for a non-refundable fee of \$6,960. She was to pay \$3,110 toward the assignment fee immediately, with the balance to be paid in 35 monthly installments of \$110 each. The standard, pre-printed language in the Assignment of Agreement (Assignment) document, allowed OptionPlus to reserve "the right to reclaim [its] sole interest in the Agreement" if Ms. Edmonds failed to pay the assignment fee during the 35 months. OptionPlus was authorized to open a contract servicing account to collect payments from Ms. Edmonds "on behalf of Seller [Mr. Gundersen] and Assignor [OptionPlus]." The Assignment stated in bold letters, "**The assignment fee is non-refundable.**" In a paragraph just above the signature section, the Assignment noted, "Seller and Assignee agree and understand that Assignor is not acting as a Real Estate Broker or agent in this transaction and is not representing either party, but rather is acting as a principal in selling his interest in the above referenced Agreement to Assignee." The document contained a paragraph which states that the seller "accept[s] and approve[s] the terms of this Assignment" with space below for the seller's signature.

18. Ms. Edmonds received the modified Lease and Option, and the Assignment for the White Forge property by email from Ms. Harris on February 26, 2009. Ms. Edmonds signed both the modified Lease and Option on February 27, 2009. She was unclear why the Assignment was dated February 25, 2009, and believed she may have backdated it by mistake.

19. The amount of time between the signing of the initial Lease and Option by OptionPlus and Mr. Gundersen and the assignment of those agreements to Ms. Edmonds was 15 days.

20. Ms. Edmonds received no disclosures about the White Forge property from either Mr. Sherman or the owner, Mr. Gundersen. She accepted the property in "as is" condition and had planned to do an inspection before exercising her option to buy. Ms. Edmonds was aware that the Lease provided for the tenant to pay up to \$750 per needed repair, and "felt okay" with this because the home was built in 2008. Ms. Edmonds understood that she was paying a fee for OptionPlus' services as "the middleperson." She knew that OptionPlus did not represent either buyer or seller in her transaction. She thought that the \$290 set aside each month from her rent would be credited as a down payment toward the purchase, and expected that amount to be kept in a separate account while it was accruing. Ms. Edmonds also understood that OptionPlus would have a third party collect rent payments.

21. Between March 2 and 23, 2009, the Edmonds paid \$3,500 to OptionPlus, which was a little more than one-half the fee they agreed to pay for the Assignment. On April 6, 2009, the Edmonds paid the first installment of \$2,110 on the Lease and Option agreements. On May 4, 2009, they paid a reduced installment of \$1,660 because they deducted their cost of disposing of items which had been left in the residence by the owner. Payments made by the Edmonds in June 2009 and thereafter were sent to the contract servicing company as arranged by Mr. Sherman.

22. On April 1, 2009, the owner stopped paying the mortgage on the White Forge property. The property ultimately went into foreclosure proceedings and was sold on March 4, 2010, in a Trustee's Sale to someone other than the Edmonds for \$329,882.69. Ms. Edmonds stopped making payments to Mr. Gundersen on October 1, 2009, and lived in the property rent-free for 10 months until she and her family moved out on July 25, 2010.

23. On November 9, 2009, Ms. Edmonds contacted Mr. Sherman asked for a refund of "any deposit money or rent credits that may have been collected or set aside through Contract Servicing." On November 23, 2009, Mr. Sherman responded that the OptionPlus assignment fee was not refundable, but that he would not collect the remaining amount owed from Ms. Edmonds.

24. Kyle Thomas Jones, Deputy Commissioner for the Department, investigated this case and identified several issues when he reviewed the three documents signed by OptionPlus and the Edmonds: 1) Both the Lease and Option were marketed to Ms. Edmonds in a very brief period, only four days. This was not a reasonable time lapse for marketing, according to Mr. Jones. 2) The Lease contained a provision requiring the tenant to pay for all maintenance up to \$750 per needed repair. Mr. Jones commented that this was not a typical lease provision since landlords are usually responsible for all repairs. 3) If the Option was not exercised for any reason, there would be no refund of rent or rent credits. 4) None of the documents provided the usual disclosures for such transactions. 5) OptionPlus retained rights to the property under the Assignment. If OptionPlus was merely assigning an option, Mr. Jones stated that OptionPlus would have no further rights to the property after the assignment was executed. 6) The Assignment allowed OptionPlus to open an account to

collect rent for the landlord and to receive monthly payments toward the assignment fee from Ms. Edmonds.

25. Mr. Jones' statement that there were no disclosures in any of the three documents is not accurate. There are two disclosures in the Lease. Paragraph 41, entitled "General Disclosures," provides information about the possibility of lead-based paint and radon gas in the home. It is accurate that specific disclosures, usually required in residential sales agreements, were not included in the Option. However, paragraph 4 in the Option, entitled "Property Condition," makes clear that the "property is being sold in "as is" condition, ..."

26. Mr. Jones reviewed the Disclosure signed by Ms. Edmonds and Mr. Gundersen. Mr. Jones believed that, by having the parties sign the Disclosure, Mr. Sherman was attempting to protect himself and OptionPlus from any liability in the White Forge property transaction.

*Other Lease-Option Transactions by OptionPlus*

27. During the investigation, Mr. Jones reviewed 16 other transactions involving lease-options and assignments executed by OptionPlus between July 14, 2008, and June 17, 2009. Mr. Jones found that the 16 transactions were similar to the Gundersen – Edmonds transaction, with agreements that were similar and, in some cases, virtually identical to the documents signed by Ms. Edmonds. In some cases, the Lease, Option and Assignment were all signed on the same day. The landlords and assignees in those transactions authorized OptionPlus to arrange with a contract servicing company to collect rent and assignment fees and distribute them to the landlord and OptionPlus, respectively.

28. Mr. Jones' investigation was incomplete because it did not include all the documents signed by the parties in the 16 other transactions. Mr. Sherman provided additional documents for nine of the 16 transactions. The information from those documents is included in the following chart.

<u>Date Option First Signed</u>	<u>Landlord</u>	<u>Property Address</u>	<u>Assignee</u>	<u>Date Assignment Signed</u>
7/14/08	Mazid/ Akhter	4468 Aubergine Wy. Mather, CA	McNally/ Finaulahi	9/3/08
8/6/08	Visionary Homes, Inc.	7760 SE Harmony Dr. Milwaukee, OR	Swayne/Koch	9/16/08
10/16/08	Welch	508 E. Main St. Molalla, OR	Wilcott	no Assignment received

<u>Date Option First Signed</u>	<u>Landlord</u>	<u>Property Address</u>	<u>Assignee</u>	<u>Date Assignment Signed (continued)</u>
8/31/08	Corazza	16140 SW Colleen Ct. Beaverton, OR	Klicke	9/16/08
9/23/08	Leman	8945 Sunset Ave. Fair Oaks, CA	Rajuan	10/16/08
11/13/08	Foy	748 Portugal Way Sacramento, CA	Williams	not fully executed
no dated signature page	Dinette/ Visionary Homes, Inc.	738 SE Anderson Ln. Gresham, OR	Clark	not fully executed
no dated signature page	Gonzalez	1207 Glowood Spring Hill, FL	Sonnay, Jr.	no Assignment received
11/27/08	Pirrung	311 Penchow Cir. Sacramento, CA	Boyle	2/12/09
no dated signature page	Bae/Kim	5650 Northborough Dr., Sacramento, CA	Barron	2/23/09
no dated signature page	Palmer/ JCG Construction	1795 NW 21st Terrace, Gresham, OR	Gonzales	3/3/09
3/2/09	Lee/Yee	10391 Jillson Wy. Elk Grove, CA	Gardner	3/6/09
3/1/09	Maddux	4826 SE 79 <sup>th</sup> Ave. Portland, OR	Coe	3/19/09
5/10/09	Dickinson	1543 SW Hilary St. McMinnville, OR	Sweet	5/22/09
not fully executed	Welch	508 East Main St., Unit 1, Molalla, OR	Valenzuela	not fully executed
6/17/09	Watkins	3449 Norland Ct. Holiday, FL	Portilla	6/17/09



29. With the addition of Mr. Sherman's documents, it is possible to do a more complete evaluation of the 16 transactions. In seven of the 16 transactions, the terms of the Option were re-negotiated sometime between the signing of the initial two agreements (the Lease and Option) by the Landlord and OptionPlus, and the subsequent assignment. Typically, the purchase price of the property was reduced, or in one transaction, increased, and the down payment credit was modified.<sup>3</sup> In one transaction, the rent was reduced (Pirrung - Boyles), and in another (Visionary Homes, Inc. - Swayne/Koch) the option consideration fee, paid by OptionPlus to the Landlord/Optionor, was increased. Each of the seven re-negotiated transactions included at least one and usually two Disclosures signed by the Landlord/Optionor and the Assignee.

30. Mr. Jones expressed particular concern about the time lapse between the date the initial Lease and Option were signed by the Landlord/Optionor and OptionPlus, and the date those agreements were assigned. In one of the 16 transactions (Watkins - Portilla), the Option was signed and assigned on the same day. In eight of the transactions, the time lapse ranged from four days (Lees/Yee - Gardner) to 77 days (Pirrung - Boyle). In the remaining seven transactions the time lapse is unknown because documents were either not provided, not fully executed or there was no dated signature page (Welch - Wilcott; Foy - Williams; Dinette/ Visionary Homes, Inc. - Clark; Gonzales - Sonnay, Jr.; Bae/Kim - Barron; Palmer/JCG Construction - Gonzales; and Welch - Valenzuela).

31. The standard, pre-printed language in the Lease, Option, Assignment and Disclosure documents used in each of the above transactions was virtually the same. That language was also the same as language used in the documents for the Gundersen - Edmonds transaction. OptionPlus received or anticipated receiving a specified assignment fee in each of the 16 transactions.

32. OptionPlus is involved in two other types of transactions similar to those described above. In each of these transactions, OptionPlus has the parties sign a Disclosure acknowledging that OptionPlus is not acting as a real estate broker or agent. The first type of transaction is a "straight lease." OptionPlus leases a "rent-to-own" home from a seller and then sub-leases it to a renter without giving the renter the option to purchase. According to Mr. Sherman, this type of transaction allows OptionPlus to hold the property in its portfolio in anticipation of future appreciation.

33. The second type of transaction is called a "sandwich lease option." Again OptionPlus leases a "rent-to-own" home from a seller, but remains a tenant/buyer on the original agreement. OptionPlus then sublets the "rent-to-own" home to another tenant/buyer, giving them the option to purchase. If the sub-tenant does not exercise the option to buy then OptionPlus can still purchase the property under the original agreement. Mr. Sherman calls

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<sup>3</sup> The transactions in which the price was reduced were: Mazid/Akhter - McNally/ Finaulahi; Visionary Homes, Inc. - Swayne/Koch; Corazza - Klicke; Leman - Rajuan; Pirrung - Boyle; and Maddux - Coe. The transaction in which the price was increased was Foy - Williams.

this the "ProtectionPlus Program" because OptionPlus assumes risk in continuing as tenant/buyer on the original agreement with the seller. OptionPlus has had to evict several of its "sub-tenants" and has had to pay for property repairs and back rent in "sandwich lease option" transactions.

*The OptionPlus Website*

34. Mr. Sherman maintains a website for OptionPlus which serves as his means to locate and recruit both sellers and buyers. He describes the OptionPlus Homes Lease-to-Own Program as follows:

Lease-to-own is like an extended escrow period during which time the buyer helps pay a portion of the seller's mortgage payments in exchange for being allowed to live in the home until the sale closes. They treat the home as if it's theirs, because some day it probably will be. The typical buyer has stable income and rental payment history, but has some credit issues to work out or needs time to save up for a larger down payment.

OptionPlus Homes maintains a database of over 3,500 families who intend to purchase a home within 2 years. We are experts at:

- Locating families who are well qualified for a lease-to-own program
- Structuring pricing and terms on a win-win lease-to-own agreement
- Marketing properties to the target audience

We owe our 4 years of market success to presenting a simple solution for an otherwise complex transaction. Tenant/buyers trust our company because we know how to present the lease-to-own concept to them in a non-intimidating manner. Since the tenant/buyer pays our fees, you can achieve your financial objectives while avoiding the risk and inconvenience of a 'For Sale by Owner' transaction.

In our program, the tenant/buyer pays a low move-in cost that is credited back to them at the time of purchase. In addition, a portion of their monthly rent is credited back to them so at the time of sale they show a 3% - 5% down payment. This 'incubation' period enables people with strong rental and income history to improve their credit and save for a down payment to become successful homeowners. These credits are

added to the purchase price you require, so they don't reduce your proceeds monthly or at the time of sale.

35. On the website, OptionPlus offers various services and resources to landlord/sellers, including property marketing, photographing and showing the property, fielding all calls and inquiries, screening all applicants, obtaining a signed contract from the tenant/buyer, and collecting and disbursing all move-in costs including the landlord's nonrefundable option fee and first month's rent. Option Plus offers the landlord "the right to review and approve the applicant," and promises to "send account details directly to an escrow company that will bill the tenant/buyer on a monthly basis and issue and collect late payment notices on your behalf." OptionPlus tells the landlord, "After we have obtained all contracts, placed the tenant/buyer, collected and dispersed [sic] the initial funds, and set-up the automatic payment processing system, we turn the account over to your control" without any cost to the landlord "as the tenant/buyer pays our profit." The website also provides sellers with a "Lease-to-Own Versus Selling Calculator" to help them determine the relative costs for a "traditional sale," "For Sale by Owner," or "OptionPlus Rent to Own" transaction.

36. For tenant/buyers, OptionPlus maintains rent-to-own inventory on the website which includes detailed descriptions of properties available in locations throughout the United States. The tenant/buyers can sign-up for property notification and can be assigned a "local representative" to arrange for them to view a home, move through the rent-to-own process and prepare an application. Tenant/buyers who complete the application with OptionPlus are added to a database of tenant/buyers who are looking for homes. The website includes a calculator to help tenant/buyers determine "How Much Home Can I Afford?"

37. Mr. Sherman has created a credit repair guide called "Your Step-by-Step Guide to a 720 Credit Score (Guide)." The Guide is given to every tenant, sub-tenant or assignee "to help prepare them for the eventual purchase." It is not known whether this Guide is available on the OptionPlus website.

38. OptionPlus has a disclosure and disclaimer on the website concerning its role in the rent-to-own transactions.

We are not real estate agents or property managers. Instead of 'representing' you, we take on the role of tenant in all of our transactions so we have a vested interest in ensuring that everything runs like clockwork. We then assign the agreement to a hand selected buyer from our proprietary database.

39. Mr. Jones examined the OptionPlus website as part of his investigation. He believes that what he saw on the website confirms that OptionPlus is acting in the role of a real estate broker or agent. Mr. Jones identified many phrases on the website which are references to negotiation and solicitation, such as, "preparing buyers for final purchase," "no obligation until you approve the buyer," "These Buyers Were Prequalified in the Past 30 days...", and "Free 'Property Management'."

*Mr. Sherman's testimony*

40. Mr. Sherman operates OptionPlus as an investment company, seeking to make a profit through rent-to-own or lease-option residential real estate transactions. Mr. Sherman maintains that none of the transactions he negotiated through OptionPlus are done on behalf of another or others; they are all done with OptionPlus acting as a principal.

41. In the transactions where OptionPlus arranges for payments to be collected for the landlord through a contract servicing company, Mr. Sherman stated that he is not acting as a property manager. All parties, the landlord, OptionPlus and the assignee, sign the contract servicing agreement to allow payments to be distributed properly. This testimony was corroborated by Contract Servicing Agreements from the Gundersen –Edmonds, Mazid/Akhter – McNally/Finaulahi, Leman – Rajuan, Maddux – Coe, and Dickinson – Sweet transactions. OptionPlus pays the landlord on a set schedule before receiving the payment from the subleasee, which is contrary to the practice in property management, according to Mr. Sherman. This testimony was corroborated by a batch of cancelled OptionPlus checks, issued on September 5, 2008, and October 6 and 7, 2008, to make rent payments to various landlords regardless of the OptionPlus collection date from the subleasee.

42. Mr. Sherman had an Option on each property listed on the OptionPlus website. OptionPlus did not own any of them. The Option agreement has value and is an instrument that can be sold for a profit. Whenever there was a change in the Option price or terms this triggered the need for a re-negotiation with the seller. Market conditions, re-evaluation of a property, and a particular buyer's circumstances could all trigger re-negotiation of the Option agreement. The majority of Options needed modification to provide safeguards and preserve the net terms with the seller.

## LEGAL CONCLUSIONS

### *Jurisdiction*

1. Under section 10086, subdivision (a), if after an investigation, the Commissioner determines that a person has engaged or is engaging in an activity which is a violation of the real estate law, the Commissioner may issue a desist and refrain order. The respondent to whom the order is directed must, upon receipt of the order, immediately cease the activity described in the order. The Commissioner issued a desist and refrain order in this matter on June 3, 2010 (Finding 6).

### *Relevant Statutes*

2. Section 10130 prohibits any person from acting as a real estate broker or salesperson without a license. That section 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 a real estate salesman within this state without first obtaining a real estate license from the department.

[¶] ... [¶]

3. Section 10131 lists the acts performed by a real estate broker. That section provides, in pertinent part:

A real estate broker within the meaning of this part is 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.

(b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.

[¶] ... [¶]

4. Section 10133 describes certain individuals who do not require a real estate license to perform the acts described in section 10131. Section 10133, subdivision (a) states, in pertinent part,

The acts described in Section 10131 are not acts for which a real estate license is required if performed by:

(1) A regular officer of a corporation or a general partner of a partnership with respect to real property owned or leased by the corporation or partnership, respectively, or in connection with the proposed purchase or leasing of real property by the corporation or partnership, respectively, if the acts are not performed by the officer or partner in expectation of special compensation.

[¶] ... [¶]

(b) The exemptions in subdivision (a) are not applicable to a person who uses or attempts to use them for the purpose of evading the provisions of this part.

### *Discussion*

4. Section 10131 defines a real estate broker as a person who does or negotiates to do certain listed acts “for a compensation or in expectation of compensation.” OptionPlus and Mr. Sherman, as its Chief Executive Officer (CEO), performed the actions described in the Factual Findings for compensation in the form of an assignment fee, paid by the assignee(s) (Findings 17, 27 and 31). In so doing, he removed himself from the exemption under section 10133, subdivision (a)(1), as set forth in Legal Conclusion 3.

5. The key question in this case is whether OptionPlus and Mr. Sherman were performing the acts listed in Section 10131 “for another or others.” Mr. Sherman contends that because OptionPlus was listed as a Tenant, Optionee, and Assignor on the transaction documents, the corporation is acting as a principal and, therefore, is exempt from licensing requirements. This contention is not correct. OptionPlus was not a principal because it did not actually own any of the properties for which it held a Lease, Option or Assignment (Findings 11, 28 and 42). (See *Robinson v. Murphy* (1979) 96 Cal.App.3d 763.) OptionPlus owned a contractual right under the Option, which allowed the corporation the opportunity to purchase each of the properties under certain specified terms and conditions within a limited time frame (Findings 11 and 42).

6. The ultimate goal in the Gundersen - Edmonds and 16 other transactions was to transfer property from the seller to the end buyer. This goal is clearly spelled out on the OptionPlus website, where Mr. Sherman refers to, “an extended escrow period during which time the buyer helps pay a portion of the seller’s mortgage payments in exchange for being allowed to live in the home until the sale closes” (Finding 34). Mr. Sherman acted on behalf of another or others in the 17 “rent-to-own,” or lease-option transactions described in the Factual Findings.

7. As set forth in the Factual Findings, in the Gundersen – Edmonds transaction, the 16 other transactions, and on the OptionPlus website, OptionPlus and Mr. Sherman, as its Chief Executive Officer, engaged in:

- sales or offers to sell options to purchase property,
- buys or offers to buy such options,
- solicitation of prospective sellers or purchasers of such options,
- solicitation of property listings from sellers, and
- negotiations of the purchase, sale or exchange of real property through option agreements.

In addition, OptionPlus and Mr. Sherman engaged in:

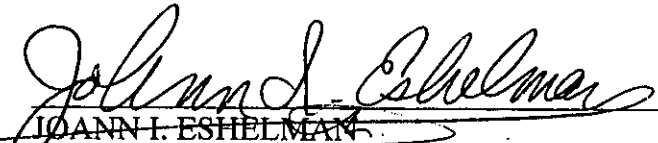
- leasing or renting or offers to lease or rent,
- soliciting listings of places for rent,
- soliciting prospective tenants, and
- negotiating the sale, purchase or exchanges of leases on real property in connection with options to purchase the leased property.

8. As set forth in Legal Conclusions 4 through 7, OptionPlus and Mr. Sherman engaged in acts listed in Section 10131, subdivisions (a) and (b), which are the acts of a real estate broker. OptionPlus and Mr. Sherman required a license to perform such acts, but were unlicensed during the time when those transactions took place (Finding 5). OptionPlus and Mr. Sherman have violated the real estate licensing laws of the State of California.

ORDER

The Commissioner's Order to Desist and Refrain is upheld.

DATED: September 29, 2010



JOANN I. ESHELMAN

Administrative Law Judge  
Office of Administrative Hearings

1 DEPARTMENT OF REAL ESTATE  
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3 Sacramento, CA 95818-7007  
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FILED

JUN 16 2010

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE  
9 DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 TO: )  
13 ) NO. H- 5413 SAC  
14 OPTIONPLUS HOMES, INC., and )  
14 CRAIG SHERMAN. ) ORDER TO DESIST AND REFRAIN  
15 ) (B&P Code Section 10086)

16 The Commissioner (Commissioner) of the California Department of Real Estate  
17 (Department) caused an investigation to be made of the activities of OPTIONPLUS HOMES,  
18 INC. (OPTIONPLUS), a California Corporation, and CRAIG SHERMAN (SHERMAN).  
19 Based on that investigation, the Commissioner has determined that OPTIONPLUS and  
20 SHERMAN have engaged in, are engaging in, or are attempting to engage in, acts or practices  
21 constituting violations of the California Business and Professions Code (Code) and/or Title 10,  
22 Chapter 6, California Code of Regulations (Regulations) including acting in the capacity of,  
23 advertising, or assuming to act as real estate brokers in the State of California within the  
24 meaning of Section 10131(a) (real property sales) and (b) (property management services) of  
25 the Code. Furthermore, based on the investigation, the Commissioner hereby issues the  
26 following Findings of Fact and Desist and Refrain Order under the authority of Section 10086 of  
27 the Code.



1 FINDINGS OF FACT

2 1. At no time herein mentioned has OPTIONPLUS been licensed by the  
3 Department in any capacity.

4 2. At no time herein mentioned has SHERMAN been licensed by the  
5 Department in any capacity.

6 3. During the periods of time set out below, OPTIONPLUS and SHERMAN  
7 negotiated to do one or more of the following acts for another or others for, or in expectation of,  
8 compensation: sell or offer to sell; buy or offer to buy; solicit prospective sellers and/or  
9 purchasers or solicit or negotiate the purchase, sale or exchange of real property; lease or rent or  
10 offer to lease or rent; place for rent; solicit listings of places for rent; solicit for prospective  
11 tenants; negotiate the sale, purchase or exchange of leases on real property, or on a business  
12 opportunity; collect rents from real property, or improvements thereon.

13 4. On about February 23, 2009, OPTIONPLUS and SHERMAN entered into a  
14 36-Month Residential Lease Agreement (herein "Lease") and a 36-Month Option To Purchase  
15 Agreement (herein "Option") for a real property located at 4521 White Forge Dr., Stockton, CA  
16 95312 (herein "White Forge property") which was owned by Eric Gunderson (herein  
17 "Gunderson") for the price of approximately \$325,899.00. On the same day, February 23, 2009,  
18 OPTIONPLUS and SHERMAN assigned both the Option and the Lease to Lynn Edmonds  
19 (herein "Edmonds") for a fee of about \$6,960.00.

20 5. On about October 29, 2009, a default was filed by BAC Home Loans  
21 Servicing LP's, trustee, Recontrust Company, on the White Forge property, as Gunderson was in  
22 arrears on the mortgage in the amount of about \$17,802.00 as of about October 28, 2009. The  
23 White Forge property was sold at public auction on March 4, 2010, for approximately  
24 \$329,882.00. On about April 5, 2010, A Notice To Quit was issued to: "ERIC GUNDERSEN  
25 AND ALL OTHERS IN POSSESSION." OPTIONPLUS and SHERMAN refused to return the  
26 \$6,960.00 fee to Edmonds.

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1                   6. Between about July 14, 2008, and June 17, 2009, OPTIONPLUS and  
 2 SHERMAN, entered into at least 16 other similar transactions as those described in Paragraphs 4  
 3 and 5, above, i.e., solicited property owners and tenants/buyers, entered into Leases and Options  
 4 with property owners and, on the same date, for compensation, assigned the Leases and Options  
 5 to tenants/buyers as assignees, as follows:

<u>Date</u>	<u>Property Owner(s)</u>	<u>Property Address</u>	<u>Assignee(s)</u>
7/14/08	Abel Hasnat & M. Al Mazid	4661 Abergine Way Mather, CA	John J. McNally
8/06/08	Visionary Homes Inc.	7760 SE Harmony Dr Milwaukie, OR	Emmett Swayne & Chantelle Koch
8/15/08	Michael & Sonia Welch	508 E. Main St Molalla, OR	Garrett A. Wilcott
8/29/08	Jon A. & Lisa A. Corazza	16140 SW Colleen Ct Beaverton, OR	Ward & Leona Klicke
9/17/08	Harry E. Leman	8945 Sunset Ave. Fair Oaks, CA	Oren Rajuan
11/12/08	Michael P. & May A. Foy	748 Portugal Way Sacramento, CA	Donald Williams
1/1/09	Thomas D. Dinette, Visionary Homes Inc.	738 SE Anderson Lane Gresham, OR	Tracie Clark
1/13/09	Manuel & Juana Gonzalez	1207 Glowood Spring Hill, FL	Harold E. Sonnay Jr.
1/20/09	Jennifer A. Pirrung	311 Penhow Cir. Sacramento, CA	Michael & Isabel Boyle
1/27/09	Bae Beth & Tae H. Kim	5650 Northborough Dr. Sacramento, CA	Peter & Jody Barron
2/18/09	JCG Construction & Greg Palmer	1795 NW 21 <sup>st</sup> Terrace Gresham, OR	Charlie Gonzales
2/27/09	Huey K. Lee, May M. Lee, & Benjamin K. Yee	10391 Jillson Way Elk Grove, CA	Rennelle & James Gardner
3/1/09	Joseph M. Sr. & Jacqueline Maddox	4826 SE 79 <sup>th</sup> Ave. Portland, OR	Kimberly Coe
5/6/09	Richard L. & Suzanne Dickinson	1543 SW Hilary St. McMinnville, OR	Timothy & Lenora Sweet

<u>Date</u>	<u>Property Owner(s)</u>	<u>Property Address</u>	<u>Assignee(s)</u>
6/3/09	Michael & Sonia Welch	508 East Main St, Unit 1 Molalla, OR	Eliseo & Mariam Valenzuela
6/17/09	Janice Watkins	3449 Norland Ct. Holiday, FL	Lisa Portilla

CONCLUSIONS OF LAW

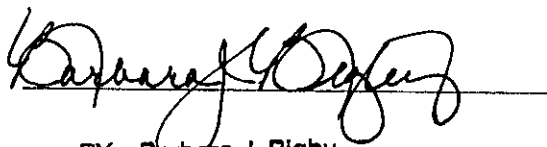
Based on the Findings of Fact contained in Paragraphs 1 through 6, OPTIONPLUS and SHERMAN have performed and participated in property management and real property sales activities, both of which require a real estate license under Sections 10130 and 10131(a) and (b) of the Code during a period of time when OPTIONPLUS and SHERMAN were not licensed by the Department in any capacity.

DESIST AND REFRAIN ORDER

Based upon the Findings of Fact and Conclusions of Law stated herein, you OPTIONPLUS HOMES, INC., and CRAIG SHERMAN, ARE HEREBY ORDERED to immediately Desist and Refrain from performing any acts within the State of California for which a real estate license is required, and in particular, that you immediately Desist and Refrain from providing or participating in real property sales activities and/or property management services for others for compensation unless and until you obtain appropriate licenses issued by the Department.

DATED: 6/3, 2010

JEFF DAVI  
Real Estate Commissioner



BY: Barbara J. Bigby  
Chief Deputy Commissioner

- NOTICE -

1  
2 Business and Professions Code Section 10139 provides that, "Any person acting  
3 as a real estate broker or real estate salesperson without a license or who advertises using words  
4 indicating that he or she is a real estate broker without being so licensed shall be guilty of a  
5 public offense punishable by a fine not exceeding twenty thousand dollars (\$20,000), or by  
6 imprisonment in the county jail for a term not to exceed six months, or by both fine and  
7 imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars  
8 (\$60,000) . . ."

9  
10  
11 cc: OPTIONPLUS HOMES, INC.  
12 ATTN: CRAIG SHERMAN, Agent for Service  
13 9245 Laguna Springs Drive, #200  
Elk Grove, CA 95758

14 CRAIG SHERMAN  
15 5000 Laguna Woods Dr.  
16 Elk Grove, CA 95758  
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TTY MFC/kc 27