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DEPARTMENT OF REAL ESTATE
P. O. Box 137007
Sacramento, CA 95813
Telephone: (916) 576-8700

FILED

DEC 10 2019

DEPARTMENT OF REAL ESTATE
By *K. Knapp*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

To:)	No. H-6767 SAC
BEN KINNEY, BEN KINNEY TEAM,)	
BKT NAPA, INC., and BKT FOLSOM, INC.,)	<u>ORDER TO DESIST AND REFRAIN</u>
)	(B&P Code Section 10086)
Respondents.)	

The Real Estate Commissioner of the State of California (Commissioner) has caused an investigation to be made of the activities of BEN KINNEY (KINNEY), BEN KINNEY TEAM (BKT), BKT NAPA, INC. (BKT-N), and BKT FOLSOM, INC. (BKT-F), collectively referred to as RESPONDENTS. Based on that investigation, the Commissioner has determined that RESPONDENTS 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), including the business of, acting in the capacity of, and/or advertising or assuming to act as, real estate brokers in the State of California within the meaning of Section 10131(a) (residential resales) of the Code. Furthermore, based on the investigation, the Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order under the authority of Section 10186 of the Code.

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1 limited to: as to BKT-N: 1047 Stonebridge Dr., Napa; California 94558, 105 Kreuzer Ln, Napa,
2 California 94559; and 1257 Rubicon St., Napa, California 94558. As to BKT-F: 7493 Red
3 Willow St., Sacramento, California; 9561 Sheldon Rd., Elk Grove, California 95624; and 3112
4 Corsica Dr., El Dorado Hills, California 95762.

5 6. RESPONDENTS entered into independent contractor agreements with
6 licensed corporate real estate brokers and with individual real estate licensees.

7 7. BKT-N and Live, Love Napa, Inc., a corporate real estate broker licensed
8 by the DEPARTMENT, entered into an independent contractor agreement.

9 8. BKT-N entered into independent contractor agreements with real estate
10 licensees who work for Live, Love Napa, Inc., including but not limited to: Elizabeth Olcott and
11 Ian Zopolos, on or about August 29, 2017, and Sara Medina on or about March 28, 2018.

12 9. BKT-F and Folsom Hall Investors, Inc., a corporate real estate broker
13 licensed by the DEPARTMENT, entered into an independent contractor agreement.

14 10. BKT-F entered into an independent contractor agreement with real estate
15 licensees who work for Folsom Hall Investors, Inc., including but not limited to: Jacob DaRosa
16 and Mark Green on or about January 3, 2018, and Byanna Smith on or about November 27,
17 2017.

18 11. The contracts referenced in Paragraphs 7 and 9, above, are nearly identical,
19 except for the names of the entities.

20 12. The contracts referenced in Paragraphs 8 and 10, above, are nearly
21 identical, except for the names of the parties.

22 13. The Sales Agent Team Member Independent Contractor Agreements
23 contain numerous provisions that indicate that RESPONDENTS are engaged in licensed activity.
24 Such provisions include, but are not limited to, the following provisions, identified by paragraph
25 number in the Agreement in italics:

26 3.6 Contractor (licensee) must submit pending offers to Company (BK entity)
27 for approval.

1 3.10 Best Practices for Successful Agents- Company sets forth duties for
2 licensees.

3 3.11 Personal Sales Goals- Company sets forth goals for licensees.

4 4 Company will compensate Contractor.

5 4.1 Appointment Leads- Indicates that Company owns leads.

6 5 Company's Duties and Obligations:

7 5.1 Support Services include- Transaction closing management, listing
8 management and general sales support.

9 6 Leads, Prospects and Clients:

10 6.2 Indicates that all lists of leads, prospects or clients belong to Company.

11 7.1 Exclusive Sale and Listing Agreements- indicates that Company has a
12 property interest in listings.

13 15 Indicates that Company owns all work product, and lists each item.

14 14 The Independent Contractor agreement, set forth in Paragraphs 8 and 10,
15 above, also contain provisions that indicate licensed activity, including, but not limited to the
16 following:

17 3.f Indicates that Company has to agree to who is hired after a certain date.

18 11 Indicates that Company owns all information and work for hire.

19 (Schedule 1) is a Confidentiality Agreement with indicates that Contractor cannot
20 disclose information, of which Company has exclusive ownership.

21 14. The Ben Kinney website indicates that through its Brivity Platform, leads
22 are provided to licensees who partner with Ben Kinney or one of his entities. Transaction
23 management is another service advertised on the website.

24 CONCLUSIONS OF LAW

25 1. Based on the Findings of Fact contained in Paragraphs 1 through 14,
26 above, Respondents have performed and/or participated in residential resale activities which
27 require a real estate license under Section 10131(a) of the Code, during a period of time when


1 none of the RESPONDENTS were licensed by the DEPARTMENT as a real estate salesperson,
2 real estate broker, or corporate real estate broker, in violation of Section 10130 of the Code.

3 DESIST AND REFRAIN ORDER

4 NOW, THEREFORE, BEN KINNEY, BEN KINNEY TEAM, BKT NAPA,
5 INC., AND BKT FOLSOM, INC., ARE HEREBY ORDERED TO IMMEDIATELY DESIST
6 AND REFRAIN from performing any and all acts within the State of California for which a real
7 broker license is required, unless and until they obtain a real estate broker license.

8 DATED: November 27, 2019

9 DANIEL J. SANDRI
10 ACTING REAL ESTATE COMMISSIONER

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15 NOTICE

16 Business and Professions Code Section 10139 provides that “Any person acting
17 as a real estate broker or real estate salesperson without a license or who advertises using words
18 indicating that he or she is a real estate broker without being so licensed shall be guilty of a
19 public offense punishable by a fine not exceeding twenty thousand dollars (\$20,000), or by
20 imprisonment in the county jail for a term not to exceed six months, or by both fine and
21 imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars
22 (\$60,000)...”
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