

1 DEPARTMENT OF REAL ESTATE
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FILED

AUG 24 2011

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

12 To:) NO. H-11204 SF
13)
14 KELLY JOHNSON) 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 KELLY JOHNSON
18 ("Respondent"). Based on that investigation, the Commissioner has determined that Respondent
19 has engaged in, is engaging in, or is attempting to engage in, acts or practices constituting
20 violations of the California Business and Professions Code ("Code") and/or Title 10, Chapter 6,
21 California Code of Regulations ("Regulations"), including acting in the capacity of, advertising
22 or assuming to act as a real estate broker in the State of California within the meaning of Code
23 Sections 10131(d) (performing services for borrowers and/or lenders in connection with loans
24 secured by real property), 10131.2 (collection of advance fees), 10085 (advance fee agreements
25 and materials) and 10085.5 (collecting unauthorized advance fees). Furthermore, based on the
26 investigation, the Commissioner hereby issues the following Findings of Fact, Conclusions of
27 Law, and Desist and Refrain Order under the authority of Section 10086 of the Code.

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FINDINGS OF FACT

1. At all times relevant herein, Respondent was and is licensed by the Department as a real estate salesperson.

2. During the period of time set out below, Respondent performed services for one or more borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: negotiate one or more loans for, or perform services for, borrowers and/or lenders with respect to the collection of advance fees and loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property; and charged, demanded or collected an advance fee for any of the services offered.

3. In furtherance of her plan and scheme to solicit advance fees and provide loan modification services, on or about August 7, 2009, Respondent entered into a loan modification services agreement with Jimenez G. and Maria Gomez P. According to that agreement, Respondent agreed to obtain a loan modification through a company called "Property Relief" on behalf of Jimenez G. and Maria Gomez P. for their real property located at 1629 Dunn Avenue, Richmond, California, in exchange for an advance fee payment of \$3,500.00. On or about that same date, Jimenez G. and Maria Gomez P. paid the advance fee of \$3,500.00 to Respondent. No loan modification was ever obtained by Respondent for Jimenez G. or Maria Gomez P., nor did Respondent ever refund the advance fee paid to her by Jimenez G. and Maria Gomez P.

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CONCLUSIONS OF LAW

4. Based on the Findings of Fact contained in Paragraphs 1 through 3, above, KELLY JOHNSON solicited borrowers and/or performed services for those borrowers with respect to the collection of advance fees and loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property; and

1 charged, demanded or collected advance fees for the services to be provided, which acts require
2 a real estate broker license under Sections 10130 (broker license requirement), 10131(d) and
3 10131.2 of the Code.

4 5. KELLY JOHNSON used a form of advance fee agreement which had not been
5 provided to the Department for prior review and consideration, in violation of Section 10085 of
6 the Code, and Sections 2970 (submission of advance fee materials) and 2972 (content of
7 verified accounting) of the Regulations.

8 DESIST AND REFRAIN ORDER

9 Based on the Findings of Fact and Conclusions of Law stated herein, KELLY
10 JOHNSON, whether doing business under your own name or any other name or fictitious
11 name, IS HEREBY ORDERED to:

- 12 1. Immediately desist and refrain from charging, demanding, claiming, collecting
13 and/or receiving advance fees, as that term is defined in Section 10026 of the
14 Code, for any of the services you offer to others, unless and until you demonstrate
15 and provide evidence satisfactory to the Commissioner that you are properly
16 licensed by the Department as a real estate broker and that KELLY JOHNSON:
 - 17 (a) Has an advance fee agreement which has been submitted to the
18 Department and which is in compliance with Sections 2970 and 2972
19 of the Regulations;
 - 20 (b) Has placed all previously collected advance fees into a trust account
21 for that purpose and are in compliance with Section 10146 (deposit of
22 advance fees into trust account) of the Code;
 - 23 (c) Has provided an accounting to trust fund owner-beneficiaries pursuant
24 to Section 2972 of the Regulations.

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1 2. Immediately desist and refrain from demanding, claiming, collecting and/or
2 receiving advance fees, as that term is defined in Section 10026 of the Code, in any form, and
3 under any conditions, with respect to the performance of loan modification or any other form of
4 mortgage loan forbearance services in connection with loans on residential property containing
5 four or fewer dwelling units.

6 DATED: August 11, 2011

7 BARBARA J. BIGBY
8 Acting Real Estate Commissioner

9
10 *William E. Moran*
11 By WILLIAM E. MORAN
 Assistant Commissioner, Enforcement

12 -NOTICE-

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

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21 cc: Kelly Johnson
 302 Hawk Ridge Drive
 Richmond, CA 94806

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23 Kelly Johnson
24 c/o 61 Airport Boulevard, Suite C
 South San Francisco, CA 94080

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27 ATTY JWB/km