

File

FILED
OCT 21 2004
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

[Signature]

* * * * *

In the Matter of the Order to Desist)
and Refrain to:)
)
BOB McMAHON, individually)
and doing business as)
Calsouth Equities, Ltd.)

No. H-30597 LA
L-2004080324

DECISION

The Proposed Decision dated October 5, 2004, 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.

Pursuant to Section 11517(b)(3) of the Government Code of the State of California, the Proposed Decision is amended as follows:

Page 1, the caption heading is amended to read "In the Matter of the Order to Desist and Refrain to". The File No. and OAH No. are amended to read "File No. H-30597 LA, OAH No. L-2004080324".

Page 1, paragraph 1, line 2, "San Diego" is amended to read "Riverside".

Page 1, paragraphs 2 and 3 are amended to read: "James R. Peel, Counsel, represented the Department of Real Estate and Bob McMahon was present and represented himself."

Page 1, Factual Findings, paragraph 3, line 1, "December 23, 2003" is amended to read "December 22, 2003".

Page 3, Factual Findings, paragraph 8, line 3, "Aaron" is amended to read "Eaton".

This Decision shall become effective at 12 o'clock noon on November 10, 2004.

AMENDED

IT IS SO ORDERED 10-20-, 2004.

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of :

BOB McMAHON, individually
and doing business as
Calsouth Equities Ltd.,

Respondent.

File No. ~~H-2963 SD~~ H-30597 LA

OAH No. ~~L2004040144~~ L2004080324

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in ~~San Diego~~, California on September 8, 2004.
RIVERSIDE

James R. Peel, Counsel, represented ~~complainant, I Chris Graves, Deputy Real Estate Commissioner~~, Department of Real Estate, State of California.

Bob McMahon was present and represented himself.

The matter was submitted on September 8, 2004.

FACTUAL FINDINGS

1. The Real Estate Commissioner (Commissioner) of the State of California, Department of Real Estate (Department) determined that Bob McMahon, doing business as Calsouth Equities, Ltd. (McMahon) engaged in activities that require a real estate broker license.
2. At all times relevant herein McMahon was not licensed by the Department as a real estate broker. McMahon has not obtained a real estate broker's license.
3. On December ~~23~~²², 2003, the Commissioner issued an Order to McMahon to Desist and Refrain (Order) from engaging in the business of a real estate broker in the State of California without a real estate broker license based on allegation set forth in paragraphs II, III, IV and V of the Order.

4. On June 7, 2002, Dustin Wegner contacted "Tom The Homebuyer" website about selling his interest in the real property located at 6672 Rose Ellen Avenue, Twenty-nine Palms, California (property). Tom Conway (Conway), a private investor who maintains "Tom The Homebuyer" website referred this matter to McMahon. According to the website, Conway is "interested in buying your home."

5. On June 11, 2002, McMahon had a meeting with Dustin Wegner at the property and brought real estate documents and a Notary Public. Tracy Wegner, Dustin Wegner's wife, was present during the meeting, but did not review the documents that McMahon presented to her husband. During the meeting, Dustin Wegner explained that he was three months behind in his mortgage payments and that he wanted McMahon to help sell or buy the property. McMahon stated that his company could do so.

Dustin Wegner executed the documents prepared by McMahon, to wit:

- Grant Deed
- Title Holding Trust Agreement
- Assignment of Beneficial Interest in Title Holding Trust
- Power of Attorney-General
- Letter of Agreement and Addendum
- Authorization to Release Information

The property was owned by Dustin Wegner and Camille Wegner, his ex-wife. By grant deed, Dustin Wegner transferred his interest in the property to D.A. Wegner Trust ODT 6/11/2002, Calsouth Equities Ltd., Trustee (Exhibit B). It appears from the documents that McMahon attempted to establish a title holding trust to be known as "D.A. Wegner Trust aka Rose Ellen Trust." There is no evidence that Dustin Wegner executed this document or that the title holding trust was properly formed or otherwise valid (Exhibit C). Dustin Wegner executed a letter that stated, among other things, that he entered into an agreement with a management company to collect rents and make the loan and insurance payments on his property.

There is no evidence that Dustin Wegner received consideration or benefit for the transfer of his interest in the property.

The interest of Dustin Wegner in the property was not transferred to McMahon.

After Wegner executed the documents, McMahon placed a sign in the front yard and at the end of the street that said "For Sale by Owner, Tom the homebuyer.com". The sign was intended to solicit prospective buyers of the property.

On the date of the meeting Dustin Wegner and Tracy Wegner were in the process of moving from the property.

6. For several months, McMahon contends that he attempted to negotiate with the mortgage lien holders on the property and Wegner's ex-wife. He did not explain what he was attempting to negotiate. There is no evidence that he received a response from Wegner's ex-wife.

7. McMahon solicited buyers for the property owned by Dustin Wegner and Camille Wegner.

8. On October 9, 2002, McMahon entered into a month-to-month lease agreement with Aaron Eaton (Eaton) at the rate of \$500.00 a month, with a security deposit of \$500.00. McMahon testified that the purpose of the lease agreement was to allow ~~Aaron~~ **EATON** to turn on the utilities. He admitted that Eaton was waiting for a settlement in the amount of \$1,500.00; when Eaton received the money McMahon would collect the rent.

9. McMahon did not successfully transfer Dustin Wegner's interest in the property to himself. He solicited buyers and thereafter rented the property to Eaton and allowed him to take possession of the property. McMahon expected to receive rental payments from Eaton. Camille Wegener maintained her interest in the property.

10. Given the facts set forth in Findings 4, 5, 6, 7, 8 and 9, McMahon acted as a real estate broker when he solicited buyers for the property and when he rented the property to Eaton.

LEGAL CONCLUSIONS

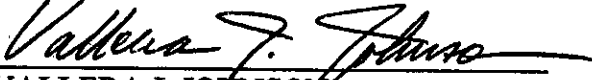
1. McMahon acted as a real estate broker under the provisions of Business and Professions Code section 10131, subsections (a) and (b), by reason of Findings 3, 4, 5, 6, 7, 8, 9 and 10.

2. McMahon violated Business and Professions Code section 10130 by engaging in the activities described in Findings 3, 4, 5, 6, 7, 8, 9 and 10 without first obtaining a real estate broker license from the Department.

ORDER

The Desist and Refrain Order issued by the Real Estate Commissioner to Bob McMahon, individually and doing business as Calsouth Equities, Ltd., dated December 22, 2003, is sustained.

DATED: October 5, 2004


VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

1 Department of Real Estate
2 320 West Fourth Street, Ste. 350
3 Los Angeles, California 90013

4 (213) 576-6982

FILED
DEC 31 2003
DEPARTMENT OF REAL ESTATE

By 

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * * *

11 To:)	No. H-30597 LA
)	
12 BOB McMAHON, individually)	<u>ORDER TO DESIST</u>
13 and doing business as)	<u>AND REFRAIN</u>
14 Calsouth Equities, Ltd.)	(B&P Code § 10086)
)	

15 The Real Estate Commissioner of the State of California
16 (hereinafter "Commissioner") has determined from the findings set
17 forth below that you have violated Section 10130 of the Business
18 and Professions Code (hereinafter "Code") by engaging in the
19 business of a real estate broker within the State of California
20 without a real estate broker license.

21 I

22 At no time herein mentioned have you been licensed by
23 the Department of Real Estate of the State of California
24 (hereinafter "Department") as a real estate broker.

25 II

26 In or about June, 2002, for or in expectation of
27 compensation, you solicited Dustin Wegner to sell 6672 Rose Ellen

1 Avenue, Twenty-nine Palms, California.

2 III

3 In or about June, 2002, for or in expectation of
4 compensation, you solicited parties to rent the above-mentioned
5 property of Dustin Wegner.

6 IV


7 Your acts, as described in Paragraphs II and III,
8 above, are acts requiring a real estate broker license under the
9 provisions of Code Sections 10131(a) and (b).

10 V

11 You violated Section 10130 by engaging in the
12 activities described in Paragraphs II and III, above, without
13 first obtaining a real estate broker license from the Department.

14
15 NOW, THEREFORE, YOU ARE ORDERED TO DESIST AND REFRAIN
16 from performing any and all acts requiring a real estate license
17 in the State of California, individually and under any fictitious
18 name, until you obtain the required license from the Department,
19 including a license to do business under a fictitious name.

20 DATED: December 22, 2003.

21
22
23 
24 JOHN R. LIBERATOR
Chief Deputy Commissioner

25 cc: Bob McMahon
26 56925 Yucca Trail, #201
Yucca Valley, CA 92284

27 JRP:AK

*Hand
File*

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, CA 90013-1105
5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)
7
8

FILED
AUG 23 2004
DEPARTMENT OF REAL ESTATE
[Signature]

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 To:)	NO. H-30597 LA
)	L-2004080324
13 BOB McMAHON, individually)	
14 and doing business as)	<u>NOTICE OF HEARING</u>
15 Calsouth Equities, Ltd.)	<u>ON ORDER TO</u>
)	<u>DESIST AND REFRAIN</u>

16 On December 22, 2003, the Real Estate Commissioner of
17 the State of California issued his Order directing the above-
18 named party to desist and refrain from certain alleged
19 activities.

20 Bob McMahon, dba Calsouth Equities, Ltd., made written
21 request, received in the Department of Real Estate, Los Angeles
22 Office, on August 9, 2004, for hearing pursuant to Section 10086
23 of the Business and Professions Code of the State of California.

24 YOU ARE HEREBY NOTIFIED that a hearing on the Order to
25 Desist and Refrain will be held before the Department of Real
26 Estate at **Riverside State Building, The Magnolia Room, Suite**
27 **204, 3737 Main Street, Riverside, California, on September 8,**
2004, at the hour of 10:00 a.m., or as soon thereafter as the

1 matter can be heard, upon the matters contained in the Order to
2 Desist and Refrain filed December 31, 2003.

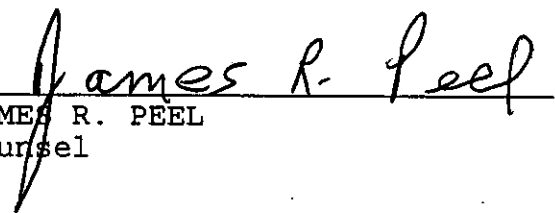
3 You may be present at the hearing and may be
4 represented by counsel, but you are neither required to be
5 present at the hearing, nor are you required to be represented
6 by counsel.

7 You may present any relevant evidence and will be
8 given full opportunity to cross-examine all witnesses testifying
9 against you. You are entitled to the issuance of subpoenas to
10 compel the attendance of witnesses and the production of books,
11 documents or other things by applying to the Department of Real
12 Estate.

13 DATED: August 23, 2004.

14 JOHN R. LIBERATOR
15 Acting Real Estate Commissioner

16
17 By:


18 JAMES R. PEEL
19 Counsel

20
21
22
23 cc: Bob McMahon
24 Sacto.
25 OAH
26
27

1 Department of Real Estate
2 320 West Fourth Street, Ste. 350
3 Los Angeles, California 90013

4 (213) 576-6982

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DEC 31 2003
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By 

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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Chief Deputy Commissioner

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