

DEPARTMENT OF REAL ESTATE

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Real Estate Commissioner

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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

BEST FUNDING, INC.
and TAMMY KIM aka Shelly Tammy Kim

Case No. H-330002 LA

OAH No. L2006090738

PROPOSED DECISION

This matter was heard on October 12, 2006, at Los Angeles, California, by Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California.

Best Funding, Inc. (Best) and Tammy Kim (TK) were represented by Jim Park, Esq. TK was not present.

Jeff Davi, Real Estate Commissioner (Commissioner), was represented by James Peel, Counsel for Department of Real Estate (Department).

Oral and documentary evidence was received and the matter was argued. The record was left open until October 23, 2006, in order for the parties to discuss settlement. The matter was submitted for decision on October 23, 2006. The parties stipulated that this decision would be due by November 22, 2006.

FACTUAL FINDINGS

1. On June 6, 2006, the Commissioner issued an Order to Desist and Refrain to Best and TK. The Commissioner determined that Best and TK had violated Business and Professions Code (Code)¹ section 10130 by engaging in the business of a real estate broker within the State of California without a real estate broker's license. Best and TK were ordered to desist and refrain from performing any and all acts requiring a real estate license in the State of California until they obtained the required licenses from the Department.

2. Best and TK did not hold a real estate license from July 1, 2002, to September 30, 2006. No evidence was presented that either Best or TK presently hold a valid real estate license.

¹ All further statutory references are to the Business and Professions Code unless otherwise stated.

3. In August 2003, Best and TK obtained a loan for Grace Kim for the purchase of real property located at 4568 West First Street, Unit 206, Los Angeles, California.

4. In July 2003, Best and TK obtained a loan for Suk Kim for the purchase of real property located at 1138 South Serrano Ave., Los Angeles, California. In March 2004, Best and TK obtained a loan for Suk Kim for the purchase of real property located at 918 Fifth Ave., Los Angeles, California.

5. As to each of above-described loans, it was established that a loan broker fee was paid to Best, a corporate entity. The manner of incorporation, and who serves as Best's corporate officers, were not established. TK's relationship to the corporate entity Best was also not established. It was also not established that TK directly received a loan broker's fee. However, it was established that both Grace Kim and Suk Kim dealt exclusively with TK in obtaining their loans and that TK was representing Best.

6. The Commissioner did not establish that Best and TK obtained real estate loans concerning property at 1047 and 1049 South Kenmore Ave, Los Angeles, California, and 2532-2532 ½ West 18th Street, Los Angeles, California.

LEGAL CONCLUSIONS AND DISCUSSION

1. Best and TK obtained real estate loans without a license. However, Best and TK contended that the Commissioner did not establish that TK obtained the above-described loans "for or in expectation of compensation." As such, Best and TK contended the Order should be overruled as to TK. Best and TK conceded that the Order should be upheld as to Best. Therefore, a discussion of the relevant statutory authority is necessary.

2. Code section 10130 states, 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. Code section 10131 states, 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:

[¶] . . . [¶]

(d) Solicits borrowers or lenders for or negotiates loans or collects payments or

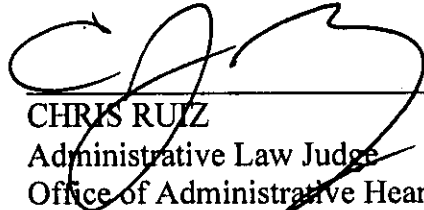
performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity. (Italics added.)

4. TK's argument is not persuasive. The evidence established that TK was the only person directly involved in negotiating the loans. This evidence is sufficient to establish that TK was acting as a broker in expectation of compensation as required by Code section 10131. To conclude otherwise would require a finding that TK was voluntarily working, and not expecting any compensation, while transacting loans at Best. TK did not testify and did not offer any such explanation. Such a conclusion is not rational and does not make sense. (Factual Findings 1-6.)

ORDER

The Order to Desist and Refrain issued to Best Funding, Inc., and Tammy Kim is upheld. Best Funding, Inc., and Tammy Kim are ordered to desist and refrain from performing any and all acts requiring a real estate license in the State of California until such time as the required licenses are obtained from the Department of Real Estate.

DATED: November 13, 2006.


CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

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)

FILED
SEP 27 2006
DEPARTMENT OF REAL ESTATE

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8
9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 To:)	NO. H-33002 LA
)	L-2006090738
13 BEST FUNDING, INC.,)	
14 and TAMMY KIM, aka)	<u>NOTICE OF HEARING</u>
Shelly Tammy Kim.)	<u>ON ORDER TO</u>
)	<u>DESIST AND REFRAIN</u>
)	

15
16 On June 7, 2006, the Real Estate Commissioner of the
17 State of California issued his Order directing the above-named
18 parties to desist and refrain from certain alleged activities.

19 On September 15, 2006, the Department of Real Estate
20 ("Department"), Los Angeles Office, received acknowledgment of
21 the Order to Desist and Refrain from Best Funding, Inc., and
22 Tammy Kim.

23 Jim H. Park and Janine A. Soukiasian, Attorneys for
24 Best Funding, Inc., and Tammy Kim, advised that they would be
25 representing the parties in a hearing held before the Department
26 pursuant to Section 10086 of the Business and Professions Code
27 of the State of California.

1 YOU ARE HEREBY NOTIFIED that a hearing on the Order to
2 Desist and Refrain will be held before the Department of Real
3 Estate at **Office of Administrative Hearings, 320 West Fourth**
4 **Street, Suite 630, Los Angeles, California, on October 12, 2006,**
5 **at the hour of 9:00 a.m.,** or as soon thereafter as the matter
6 can be heard, upon the matters contained in the Order to Desist
7 and Refrain filed June 23, 2006.

8 You may be present at the hearing and may be
9 represented by counsel, but you are neither required to be
10 present at the hearing, nor are you required to be represented
11 by counsel.

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

18 DATED: September 27, 2006.

19
20 JEFF DAVI
21 Real Estate Commissioner

22 By:

23 James R. Peel
24 JAMES R. PEEL, Counsel

25 cc: Best Funding, Inc.
26 Tammy Kim
27 Jim H. Park, Esq.
 Janine A. Soukiasian, Esq.
 Sacto.
 OAH

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

4 (213) 576-6982

FILED
JUN 23 2008

DEPARTMENT OF REAL ESTATE

By 

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * * *

11 To:)	No. H-33002 LA
)	
12 BEST FUNDING, INC.,)	<u>ORDER TO DESIST</u>
13 and TAMMY KIM,)	<u>AND REFRAIN</u>
14 aka Shelly Tammy Kim)	(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, BEST FUNDING, INC., and TAMMY KIM, aka
18 Shelly Tammy Kim, have violated Section 10130 of the Business and
19 Professions Code (hereinafter "Code") by engaging in the business
20 of a real estate broker within the State of California without a
21 real estate broker license.

22 I

23 At no time herein mentioned have you, BEST FUNDING,
24 INC., and TAMMY KIM, been licensed by the Department of Real
25 Estate of the State of California (hereinafter "Department") as a
26 real estate broker.

1 II

2 In or about August, 2003, for or in expectation of
3 compensation, you, solicited Grace Kim for a loan on real
4 property located at 4568 W. First Street, Unit 206, Los Angeles,
5 California.

6 III

7 In or about July, 2003, for or in expectation of
8 compensation, you, solicited Suk M. Kim for a loan on real
9 property located at 1138 South Serrano Ave., Los Angeles,
10 California. In or about March, 2004, you, solicited Suk M. Kim
11 for a loan on real property located at 918 Fifth Ave., Los
12 Angeles, California.

13 IV

14 In or about October, 2003, for or in expectation of
15 compensation, you, solicited Woo Jong Lim for a loan on real
16 property located at 1047 and 1049 South Kenmore Ave., Los
17 Angeles, California.

18 V

19 In or about April, 2004, for or in expectation of
20 compensation, you, solicited Chang Jin Kim for a loan on real
21 property located at 2532-2532 1/2 West 18th Street, Los Angeles,
22 California.

23 VI

24 Your, BEST FUNDING, INC., and TAMMY KIM, acts as
25 described in Paragraphs II, III, IV, and V, above, are acts
26 requiring a real estate broker license under the provisions of
27 Code Section 10131(d).

VII

You, and each of you, violated Code Section 10130 by engaging in the activities described in Paragraphs II, III, IV, and V, above, without first obtaining a real estate broker license from the Department.

NOW, THEREFORE, YOU, BEST FUNDING, INC., and YOU, TAMMY KIM, AKA SHELLY TAMMY KIM, ARE ORDERED TO DESIST AND REFRAIN from performing any and all acts requiring a real estate license in the State of California until you obtain the required licenses from the Department.

DATED: 6-7-, 2006.

JEFF DAVI
Real Estate Commissioner



cc: Tammy Kim
3435 Wilshire Blvd., #2410
Los Angeles, California 90010

Best Funding, Inc.
3435 Wilshire Blvd., #2410
Los Angeles, California 90010

JRP:PK(jrp)