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FILED

OCT 25 2012

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: *Handwritten signature*

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In the Matter of the Accusation of)	No. H-35261 LA
)	
BETTER MORTGAGE BROKERS, INC.,)	L-2012031278
doing business as Compass Realty,)	
and JOHN THOMAS MARCELL,)	
individually and as designated)	
officer of Better Mortgage)	
Brokers, Inc.,)	
Respondent(s).)	

DECISION

The Proposed Decision dated September 20, 2012, 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 NOV 14 2012.

IT IS SO ORDERED 10/9/2012.

Real Estate Commissioner
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By WAYNE S. BELL
Chief Counsel

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

BETTER MORTGAGE BROKERS, INC.
doing business as Compass Realty, and
JOHN THOMAS MARCELL, individually
and as designated officer of Better Mortgage
Brokers, Inc.

Case No. H-35261 LA

OAH No. 2012031278

Respondents.

PROPOSED DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on August 21, 2012, in Los Angeles, California.

James R. Peel, Real Estate Counsel, represented Barbara J. Bigby, Acting Real Estate Commissioner (Complainant) of the Department of Real Estate (Department) of the State of California.

John Thomas Marcell (Respondent) represented himself and Better Mortgage Brokers, Inc. (Better Mortgage) (collectively Respondents).

Oral and documentary evidence was received and argument heard. The record was closed and the matter submitted for decision on August 21, 2012.

Complainant issued Orders suspending Respondents' real estate licenses on January 9, 2012, finding that Respondents failed to pay audit costs of \$6,556.30 owed to the Department pursuant to a Stipulation and Agreement that Respondents entered into on January 28, 2009, and ordering that the real estate licenses issued to Respondents and the exercise of any privileges thereunder be suspended until such time as Respondents provide proof satisfactory to the Department of having paid for the audit, and further ordering that all license certificates and identification cards issued by the Department which are in the possession of Respondents be immediately surrendered to the Department.

FACTUAL FINDINGS

1. Respondent was the President and primary owner of Better Mortgage from 1981 to 2011. At some point prior to September 2, 2008,¹ the Department conducted an audit of Better Mortgage, which led to the Department pursuing a disciplinary action against Respondents.

2. On September 2, 2008, the Department filed an Accusation against Respondents.

3. On January 28, 2009, Respondents entered into a Stipulation and Agreement with the Department for the purpose of settling the Accusation.

4. According to the Stipulation and Agreement, the Department revoked Better Mortgage's license and licensing rights. However, the Stipulation and Agreement provided that a restricted real estate broker's license would be issued to Better Mortgage upon application within 90 days of the effective date of the Decision.

5. Included in the terms and conditions of the Stipulation and Agreement, Respondents were required to pay for the reasonable cost of the Department's audit of Better Mortgage, an amount of \$6,556.30, as set forth in the Decision, effective April 2, 2009.

6. Except for the suspension ordered on January 9, 2012, Respondents held real estate licenses issued by the Department at all relevant times. Except for the instant suspension, Respondent's broker's license number 01036808 is in full force and effect and is due to expire on March 8, 2013. Except for the instant suspension, Better Mortgage's corporation's license number 00905337 is in full force and effect and due to expire on April 1, 2013.

7. Respondent has failed to pay the Department any portion of the audit costs.

8. Due to Respondent's failure to pay the audit costs, on January 9, 2012, Complainant issued Orders suspending Respondents' real estate licenses, pending a final determination after a hearing.

9. At hearing, Respondent admitted to not paying the audit costs. He claimed that he has not had the financial ability to pay for the audit costs due to losing \$250,000 to an Internal Revenue Service confiscation of his funds and due to not being able to work for some time after being diagnosed with cancer in 2010. Respondent also explained that he closed the company in 2011 as a result of his illness.

¹ The evidence did not establish the exact date of the audit.

10. On March 28, 2011, the Department granted Respondent a six-month extension, until October 11, 2011, to pay the audit costs. Respondent still did not pay any portion of the audit costs to the Department.

11. Respondent, 77, would like to retain his broker's license, which he has held for approximately 25 years. He testified that his only source of income currently is social security income. At hearing, he expressed a willingness to pay the costs over a six month to one year period, but stated that he would need his broker's license to pay the costs since his broker's license is his only source of obtaining employment.

LEGAL CONCLUSIONS

1. Cause exists to suspend Respondents' real licenses, pursuant to Business and Professions Code section 10177, subdivision (k), for violating the terms, conditions, restrictions, and limitations as set forth in Stipulation and Agreement, by failing to pay the audit costs as agreed upon in the Stipulation and Agreement with the Department, as set forth in Factual Findings 1 through 11.

2. In this case, Respondent did not present any evidence of paying even a portion of the audit costs. Respondent's health situation is indeed unfortunate. However, he has had ample time to pay at least a portion of the costs. Although Respondent expressed his willingness at hearing to pay for the audit costs, his actions show otherwise. It has been more than three years since Respondent entered into the Stipulation and Agreement with the Department, and the Department already granted him an extension. Yet, Respondent has completely failed to make even a good faith partial payment. Under the circumstances, the following order is necessary.


ORDER

1. The Commissioner's Orders of January 9, 2012, suspending Respondents' real estate licenses are affirmed.

2. All licenses and licensing rights of Respondents John Thomas Marcell and Better Mortgage Brokers, Inc., under the Real Estate Law, are suspended until such time as Respondent John Thomas Marcell provides proof satisfactory to the Department of having paid for the audit costs.

3. All license certificates and identification cards issued by the Department which are in the possession of Respondents must be surrendered to the Department within 14 (14) days of the effective date of this Decision.

DATED: September 20, 2012



JANKHANA DESAI
Administrative Law Judge
Office of Administrative Hearings