


flag

**FILED**

AUG 04 2014

BUREAU OF REAL ESTATE

By



BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

\*\*\*

In the Matter of the Order to Desist and Refrain Issued against

CATHERINE CAMPBELL,

Respondent.

) CalBRE No. H-38997 LA  
) OAH No. L-2014050929  
)  
)  
)  
)  
)  
)

DECISION

The Proposed Decision dated July 9, 2014, 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

AUG 25 2014

IT IS SO ORDERED

JUL 31 2014

REAL ESTATE COMMISSIONER



By: JEFFREY MASON  
Chief Deputy Commissioner

**BEFORE THE  
BUREAU OF REAL ESTATE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

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

Catherine Campbell,

Respondent.

Case No. H-38997 LA

OAH No. 2014050929

**PROPOSED DECISION**

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on June 9, 2014.

Amelia Vetrone, Staff Counsel, represented Complainant, the Real Estate Commissioner of the Bureau of Real Estate (Bureau).

Respondent Catherine Campbell represented herself.

Oral and documentary evidence was received at the hearing, and the matter was submitted June 9, 2014.

On August 8, 2013, Complainant issued an order that Respondent desist and refrain from performing acts for which a real estate broker is required. The order is affirmed.

**FACTUAL FINDINGS**

1. Complainant issued the Desist and Refrain Order in his official capacity.
2. Respondent has never been licensed as a real estate broker or salesperson.
3. Respondent has lived in the Sungate Country mobile home park in Cathedral City since 1998. The mobile home park is on Indian trust land for the which the Bureau of Indian Affairs, Palm Springs Agency, serves as trustee. The park's residents live in mobile homes that they purchase, located on lots that they lease. The mobile homes, typically 400

to 500 square feet in area, are registered as "trailers" with the Department of Motor Vehicles.<sup>1</sup>

4. For some years Respondent represented sellers of mobile homes in the mobile home park. She advertised units for sale on Craigslist, with pictures and descriptive paragraphs about the properties, advising readers, "For more information contact Cathy" at Respondent's phone number. Respondent showed the units to prospective buyers, telling them that she represented the sellers. She represented the sellers in negotiations, accepted deposits, drew up the purchase and lease documents, and charged the sellers \$500. She also represented mobile home owners who wanted to rent their units rather than sell them, subleasing the land. She never told buyers or sellers that she had a real estate license.

5. At hearing, Respondent testified that until the Desist and Refrain Order, she did not know she needed a license to negotiate on behalf of the mobile home sellers, and has stopped doing it. She no longer advertises units for sale, and believes that she never "solicited," because she understood "solicitation" to mean advertising herself and her services, rather than the units themselves. She has removed her name from "for sale" signs, and explained to leaseholders that she cannot advertise or be involved in price discussions on their behalf. She now understands that she cannot negotiate the sale of mobile homes because the sale also involves lease of the lot on which the homes are located. She intends to continue to show units when asked and to work as a "clerical typist" in filling out forms.

#### LEGAL CONCLUSIONS

1. The Bureau has authority to issue an Order to Desist and Refrain if "a person has engaged or is engaging in an activity which is a violation of a provision of this part [the Real Estate Law, Bus. & Prof. Code, § 10000 et. seq.<sup>2</sup>]." (§ 10086, subd. (a).)

---

<sup>1</sup> "Mobile home" is used here to include both "mobile home" (which is defined in Health & Saf. Code, § 18008, subd. (a)) and "manufactured home" (defined in Health & Saf. Code, § 18008, subd. (a).) Both terms refer to a structure that is "transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation system when connected to the required utilities, and includes . . . plumbing, heating, air conditioning, and electrical systems[.]" Although there are technical differences between the two types of mobile housing, and the two terms are mutually exclusive (Health & Saf. Code, § 18008 subd. (a)), they are often confused (Health & Saf. Code, § 18000, subd. (b)(2)), and there was no evidence in the record as to which type of mobile housing was involved in any transaction.

<sup>2</sup> Further references to section or "§" are to the Business and Professions Code unless otherwise designated.

2. Respondent's actions violated section 10130, which makes it unlawful for a person to act in the capacity of a real estate salesperson or broker without first obtaining a real estate license. A person acts as a real estate broker when the person "[l]eases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property[.]" (§ 10131, subd. (b).) Respondent solicited prospective tenants and negotiated on behalf of prospective lessors (Factual Finding 4), and thus acted as broker, violating section 10130.

3. Paragraph 5 of the Desist and Refrain Order alleges that under section 10131.6, Respondent could not negotiate the sale of mobile homes without a real estate broker license because listing and negotiating the sale of mobile homes requires a real estate license under section 10131, subdivision (a). But while a real estate broker *may* act as broker of mobile homes that are registered under the Mobile Housing Act of 1980 (Health & Saf. Code, § 18000 et. seq.),<sup>3</sup> a real estate broker license is not required to broker the sale or lease of a mobile home. Instead, a mobile home dealer license from the Department of Housing and Community Development is required to act as a broker in the sale or lease of a mobile home. (Health & Saf. Code, § 18045.) But, as Respondent acknowledged at hearing, a real estate license is required to act as a broker in a mobile home sale that is part of a transaction in which real property is leased. The Desist and Refrain Order should have alleged that Respondent engaged advertising and negotiating leases in real property, an activity that requires a real estate license under section 10131, subdivision (b). The error did not deprive Respondent of adequate notice of the issues, as the hearing focused on the real estate leasing aspect of her activities, and Respondent was able to address the leasing issue. Paragraph 5 also alleges that Respondent, "as a resident of the mobilehome park, is exempt from the licensing requirement for rental activity under code section 10131.01." Section 10131.01 exempts managers of mobile home parks, or employees of management companies, from the licensing requirement. Neither section 10131.01 nor any other provision of the Real Estate Law exempts anyone from the licensing requirement simply because that person lives in the mobile home park where the lot is leased. But this error created no confusion: at hearing, neither party even mentioned section 10131.01 or any sort of exemption from a licensing requirement.

4. The Desist and Refrain Order presents a confused picture of the law, but the evidence established, and Respondent admitted, that she was, however unwittingly, in violation of section 10131(b). The Desist and Refrain Order, ordering Respondent to "desist and refrain from performing any acts within the State of California for which a real estate broker license is required," should therefore be affirmed.

---

<sup>3</sup> "Notwithstanding any other provision of law, a person licensed as a real estate broker may sell or offer to sell, buy or offer to buy, solicit prospective purchasers of, solicit or obtain listings of, or negotiate the purchase, sale, or exchange of any mobilehome only if the mobilehome has been registered under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code." (Bus. & Prof Code, § 10131.6, subd. (a).)

ORDER

The Order to Desist and Refrain issued against Respondent Catherine Campbell is affirmed.

DATED: July 9, 2014

*Howard Posner*

\_\_\_\_\_  
HOWARD POSNER  
Administrative Law Judge  
Office of Administrative Hearings