OAH 80-1005-31977

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF COMMERCE

In the Matter of Best Assets, Inc.

ORDER ON RECONSIDERATION DENYING SUMMARY DISPOSITION

This matter is pending before Administrative Law Judge LauraSue Schlatter pursuant to a Notice and Order for Hearing filed with the Office of Administrative Hearings on November 12, 2014.

Oliver J. Larson, Assistant Attorney General, represents the Department of Commerce (Department). David J. McGee, Chestnut Cambronne P.A., represents Best Assets, Inc. (Respondent).

On April 8, 2015, Respondent filed a Motion for Summary Disposition. On May 6, 2015, the Department filed a response to the Respondent's motion. Oral argument took place on May 8, 2015, at the Office of Administrative Hearings. On June 16, 2015, the Administrative Law Judge issued an order denying Respondent's Motion for Summary Disposition.

On July 10, 2015, Respondent sent a letter to the Administrative Law Judge requesting reconsideration of the June 16, 2015, Order Denying Summary Disposition. At a prehearing conference on July 20, 2015, with the agreement of the parties, the Administrative Law Judge determined that Respondent's July 10, 2015 letter would be treated as a Motion for Reconsideration of the Order Denying Summary Disposition. On July 27, 2015, the Department filed a responsive memorandum opposing Respondent's Motion for Reconsideration.

Based on all the files and records in this proceeding, and for the reasons explained in the attached Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS ORDERED THAT:

1. On reconsideration, Respondent's Motion for Summary Disposition is **DENIED**.

2. This matter shall proceed according to the schedule set forth in the Third Prehearing Order.

Dated: August 7, 2015

s/LauraSue Schlatter
LAURASUE SCHLATTER
Administrative Law Judge

MEMORANDUM

On June 16, 2015, the Administrative Law Judge issued an Order Denying Respondent's Motion for Summary Disposition (Order). The Order concluded that genuine issues of material fact exist regarding whether the Department properly charged Respondent with failure to obtain a license: 1) as an appraisal management company prior to providing appraisal management services;[1] and 2) as a real estate broker prior to providing brokerage services.[2] The Administrative Law Judge reconsiders the arguments raised by Respondent based on the same standard for summary disposition as applied to the initial motion for summary disposition.[3]

Respondent's Arguments

Respondent's motion for reconsideration maintains the basis for its summary disposition motion "was not whether the activities it was conducting fell within the meaning of real estate brokerage or appraisal services as defined by Minnesota Statutes, but rather whether Best Assets itself was subject to Minnesota Statutes."[4] Asserting that the Administrative Law Judge "did not decide this issue" in the June 16, 2015 Order,[5] Respondent puts forth a more explicit legal argument concerning whether it is subject to the licensure requirements of the real estate broker and appraisal management services statutes.[6]

First, Respondent argues that the definition of "person" which is part of the real estate broker licensure requirement includes "a natural person, firm, partnership,

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[1] Minn. Stat. § 82C.03, subd. 1 (2014).
[2] Minn. Stat. § 82.81, subd. 1 (2014). *See* ORDER DENYING MOTION FOR SUMMARY DISPOSITION at 4-7 (June 16, 2015) (ORDER).
[3] ORDER at 3.
[4] *Id.*
[5] The Administrative Law Judge notes that the ORDER DENYING MOTION FOR SUMMARY DISPOSITION (June 16, 2015) (ORDER) expressly acknowledged the issues raised by this Motion. In the ORDER, the Administrative Law Judge noted "Respondent argues that it is not a 'person' acting 'for another' in the foreclosed real estate transactions it handles for HUD, and instead "claims it is 'acting as an agent of HUD,' a federal government agency" not subject to the real estate licensure requirement. *See* ORDER at 3-4. Also in the ORDER, the Administrative Law Judge noted "Respondent argues HUD is not 'a lender financial institution, client, or any other person' within the meaning of the statute" setting forth the appraisal management licensure requirements. *See* ORDER at 4. In denying the Motion for Summary Disposition, the Administrative Law Judge implicitly rejected these arguments.
[6] *Id.*

corporation or association, and the officers, directors, employees and agents thereof,"[7] but does not include a government agency, its officers, directors, or employees. Furthermore, Respondent asserts, it provided evidence demonstrating that it was acting as an agent of HUD, which is a government agency.[8] Respondent argues that, because it had a delegation of authority from HUD, it should be treated as a government agency exempt from the definition of a "person" required to have a real estate broker license under Minn. Stat. § 82.55, subd. 14.[9]

Respondent asserts that it is not subject to the appraisal management services licensure requirement because the requirement only applies if such services are provided "on behalf of a lender, financial institution, client, or any other person . . ."[10] and that HUD does not fall within any of those terms as defined by the statute because it is a department within the executive branch of the federal government.[11] Respondent argues that "because the actions [it] took with respect to appraisals were on behalf of HUD" and HUD was not a lender, financial institution, client, or any other person, "Best Assets was not performing 'appraisal management services.'"[12]

Department's Arguments

The Department argues that, because Minn. Stat. § 82.55, subd. 14 defines "person" to include a "corporation" and Respondent is a corporation, it is subject to the real estate broker licensing requirements if it is performing real estate management services. The Department contends that nothing in the statute provides an exception from this requirement for a corporation that works for, or has a delegation of authority from, a government agency.[13]

The Department reiterates the argument it made in its original summary disposition response that the delegation of authority provided to Respondent by HUD is limited in nature and includes only the execution of certain documents on behalf of HUD.[14] The Department compares the delegation to a limited power of attorney allowing an agent to execute documents for the principal. The Department argues that this limited delegation cannot transform Best Assets into a federal agency for state regulatory purposes.

According to the Department, the Respondent's delegation theory, if correct, would lead to the untenable result of permitting any person in Minnesota to act as an unlicensed real estate broker by obtaining a power of attorney to execute documents from his or her client. Because principals are generally not required to have a license to sell or manage their own real estate, this would undermine the State's real estate licensing requirements.

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[7] Minn. Stat. § 82.55, subd. 14 (2014).
[8] *Id.* at 2.
[9] Respondent's Request for Reconsideration 2 (July 10, 2015) (Reconsideration Request).
[10] Minn. Stat. § 82C.02, subd. 5 (2014).
[11] *Id.*
[12] Reconsideration Request at 2.
[13] Department's Response to Motion for Reconsideration (July 27, 2015) (Department Response) at 1-2.
[14] Department Response at 2.

The Department counters the Respondent's argument regarding the appraisal management license requirement by pointing to the statutory language of Minn. Stat. § 82C.02, subd. 9 (2014), which defines "client" for purposes of that requirement. The Department notes that the definition of "client" includes "any person or other entity" and that HUD falls within the scope of an "entity."[15]

Analysis

The Administrative Law Judge concludes that, while HUD may not be a "person" for purposes of the real estate broker license requirement, Respondent is a person because Respondent is a corporation. HUD's delegation authorizing Respondent to execute certain documents in connection with the management and sale of certain real estate does not place Respondent squarely in HUD's shoes so as to exempt Respondent from the licensure requirement as a matter of law. The delegation is limited and does not cover the scope of responsibilities Respondent assumed under its contract with HUD.[16] These responsibilities include marketing, inspections, and record-keeping, to name a few.[17] Respondent failed to present any evidence which would demonstrate that it does not have responsibilities beyond executing documents or that the delegation of authority it has is broader than the Department states it is.

In addition, Respondent's employees are not federal employees. Its contract with HUD expressly prohibits "the use of government employees includ[ing] any work performed by the vendor or any of its employees, subcontractors, or consultants."[18]

While HUD paid Respondent to act as HUD's property management agent in Minnesota, and Respondent was specifically delegated authority to execute certain documents, the undisputed facts demonstrate that Respondent was not HUD for all intents and purposes. Respondent was a separate corporation, even as it performed its duties for HUD. Therefore, Respondent is a "person" according to the definition at Minn. Stat. § 82.55, subd. 14, and potentially subject to licensure if it engaged in activities pursuant to Minn. Stat. § 82.55, subd. 19 (2014).

Respondent was also potentially subject to licensure under Minn. Stat. § 82C.03 (2014). Respondent's argument in this regard was purely statutory – that HUD was not a "lender, financial institution, client, or any other person . . . ."[19] The Administrative Law Judge agrees with the Department that HUD does fit within the definition of "client" at Minn. Stat. § 82C.02, subd. 9, which includes "any person or entity." While HUD may not be a person, it is an entity, potentially bringing Respondent within the scope of the licensure requirements of section 82C (2014).

As determined in the June 16, 2015 Order, the questions for hearing will be: 1) whether Respondent's actions in dealing with HUD properties in Minnesota included

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[15] Department Response at 3. Minn. Stat. § 82C.02, subd. 9.
[16] Affidavit of James Rist, Ex. A.
[17] *Id.* at 1-4.
[18] *Id.* at 7.
[19] Minn. Stat. § 82C.02, subd. 5.

"management" as contemplated by the real estate broker licensure statute;[20] and 2) whether Respondent provided HUD with "appraisal management services" as contemplated by Minn. Stat. § 82C, subd. 5.

For the foregoing reasons, on reconsideration, Respondent's Motion for Summary Disposition is denied.

L. S.

[20] ORDER DENYING MOTION FOR SUMMARY DISPOSITION at 5 (June 16, 2015).