

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF COMMERCE

In the Matter of Robert S. Aslesen individually;  
the Real Estate Broker License of Robert S.  
Aslesen; the Real Estate Corporate License of  
Options Plus Realty, Inc.; the Notary Public  
Commission of Robert Aslesen; the Real  
Estate Closing Agent License of Robert S.  
Aslesen; and the Insurance Producer License  
of Robert S. Aslesen and Split Rock Title,  
LLC.

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATIONS**

This matter came on for hearing before Administrative Law Judge (ALJ) Kathleen D. Sheehy on April 27, 2011, at the Office of Administrative Hearings in St. Paul. The OAH record closed at the conclusion of the hearing that day.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared for the Department of Commerce (Department).

James W. Moen, Esq., Wentzell Law Office, PLLC, 2812 Anthony Lane South, Suite 200, St. Anthony, MN 55418, appeared for Robert Aslesen, Options Plus Realty, Inc., and Split Rock Title, LLC (Respondents).

**STATEMENT OF ISSUES**

Should the Commissioner take disciplinary action against the Respondents pursuant to Minn. Stat. §§ 45.027, subd. 7(a)(4) (2010)<sup>1</sup>; 58.12, subds. 1(b)(2)(iv) & (v); 60K.43, subd. 1(8); 82.35, subd. 1(b) & (f) (2008); and 82.41, subd. 13(a)(9) (2008)?

Based on the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Respondent Robert S. Aslesen formerly held a real estate broker license (No. 778921) that became inactive on June 30, 2008; a real estate closer license (No. 7000001) that became inactive on June 30, 2009; an insurance producer's license (No.

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<sup>1</sup> Unless otherwise noted, all references to Minnesota Statutes are to the 2010 edition.

20534672) that became inactive on October 31, 2008; and a notary commission (No. 6068738) that expired on January 31, 2010.

2. Respondent Options Plus Realty was a licensed real estate company (No. 20375576) until its license became inactive on June 30, 2008. Robert Aslesen is the president and owner of Options Plus Realty.

3. Split Rock Title, LLC, was a licensed insurance agency (No. 20534671) until its license became inactive on October 31, 2008. Robert Aslesen is the president and owner of Split Rock Title, LLC.

4. Robert Aslesen is also the president and owner of Eastwind Construction Consulting, LLC.

5. On June 29, 2010, the Commissioner issued a Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges in this matter. The Notice of and Order for Hearing scheduled a prehearing conference to take place on August 18, 2010. The Respondents appeared for the prehearing conference with counsel, and the hearing was scheduled to take place on December 6-8, 2010.

6. The parties participated in a Settlement Conference on December 7, 2010, but were unable to reach an agreement to resolve this matter. A new hearing date was scheduled for April 27, 2011.

7. Prior to the hearing on April 27, 2011, the Respondents reached a stipulation with the Department of Commerce that they would not contest, but would not admit to, the allegations made in the Statement of Charges. The Respondents reserved the right to make argument to the Commissioner regarding the appropriate sanction to be imposed against them. The Respondents appeared for the hearing and affirmed their agreement to proceed in this manner.

8. The Statement of Charges alleges that between October 2006 and November 2007, Respondent Robert Aslesen knowingly and willfully participated in a scheme to defraud lenders, by kicking back loan proceeds from sellers to buyers of property in a manner that concealed the true flow of funds between the buyers and sellers and the true source of down payments.<sup>2</sup> In furtherance of this scheme, Respondents Aslesen and Split Rock Title, LLC, used Options Plus Realty and Eastwind Construction Consulting as conduits through which loan proceeds were returned to buyers during or after the closings.<sup>3</sup>

9. In numerous transactions, Options Plus Realty was identified as a facilitator to whom the sellers were obligated to pay substantial commissions, in amounts ranging from \$25,000 to \$70,000 per transaction. The only work that Options Plus Realty performed as the facilitator was to draft the purchase agreement. For each

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<sup>2</sup> Statement of Charges ¶¶ 8-9.

<sup>3</sup> Statement of Charges ¶¶ 9 & 15.

transaction, Options Plus Realty charged a fee of \$1,495 and, during or shortly after the closing, Options Plus Realty returned the commission (minus this fee) to the buyers. This amount equaled or exceeded the amount of the buyer's down payment, routinely resulting in positive net cash back to the buyer after the closing.<sup>4</sup>

10. The lenders were not notified that the commissions identified on closing statements as being paid to Options Plus Realty were in fact being returned to buyers. The scheme misled lenders as to the true risk and loan-to-value ratios associated with these loans. Aslesen thus facilitated the sellers in reducing excess inventory in a manner that exposed lenders to substantial losses. Nearly every loan for which Options Plus Realty acted as facilitator is in default or has been foreclosed upon at significant losses to the lender.<sup>5</sup>

11. The Statement of Charges further alleges that Respondent Aslesen and his company, Split Rock Title, LLC, prepared the settlement statements for these transactions and falsely certified that the settlement statements contained true and accurate accounts of how funds were disbursed.<sup>6</sup>

12. In ten transactions regarding properties in Big Lake, Minnesota, for which Split Rock Title, LLC, acted as the closer and Options Plus Realty purported to act as facilitator, approximately \$560,000 in loan proceeds were kicked back to buyers without the knowledge of lenders. These lenders sustained losses on these transactions in excess of \$1 million.<sup>7</sup>

13. In addition, the Statement of Charges alleges that Respondent Aslesen and Tom Rosensteel, the owner of Split Rock Realty, also engaged in a similar scheme with sellers of newly constructed homes to kick back large sums to buyers by disguising the kickback as a construction consulting fee. At the time of closing, the sellers paid a facilitation fee to Options Plus Realty as well as a "consulting fee" of \$36,000 to \$50,000 per home to Eastwind Construction Consulting, LLC (Aslesen's company). To support the scheme, the Respondent created false invoices and lien waivers stating that Eastwind Construction Consulting had provided services that were not in fact provided. During or after the closing, Options Plus Realty and Eastwind Construction Consulting forwarded the fees they had received, minus \$500, to the buyers of each home. In each instance, the amount paid to the buyers was greater than the amount of the down payment made at the closing. Lenders were not aware that these fees were being kicked back to buyers.<sup>8</sup>

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<sup>4</sup> Statement of Charges ¶¶ 10-11.

<sup>5</sup> Statement of Charges ¶ 12 & 14.

<sup>6</sup> Statement of Charges ¶ 13-14.

<sup>7</sup> Statement of Charges ¶ 23.

<sup>8</sup> Statement of Charges ¶¶ 14-16, 18.

14. Respondent Aslesen admitted to the Department that he formed Eastwind Construction Consulting, LLC, for the purpose of using the company as a conduit for providing cash back to borrowers.<sup>9</sup>

15. Nearly all of the homes for which Options Plus Realty and Eastwind Construction Consulting were paid fees later fell into foreclosure, resulting in catastrophic losses for the lenders, borrowers, and communities in which the homes were located.<sup>10</sup>

16. In ten transactions regarding properties in Plymouth, Minnesota, for which Options Plus Realty and Eastwind Construction Consulting received fees, approximately \$653,000 in loan proceeds were kicked back to buyers.<sup>11</sup>

17. Other persons involved in this scheme have entered into consent orders with the Commissioner. Tom Rosensteel, owner of Split Rock Realty, agreed that his individual and company licenses would be revoked and that he would be barred from engaging in mortgage originator or mortgage servicing activity. Amri Elsafy, owner of the Mortgage Shop Service Co., agreed that his mortgage originator license would be revoked and that he would be barred from engaging in mortgage originator or mortgage servicing activity. Elsafy also paid a civil penalty in the amount of \$50,000.<sup>12</sup>

Based on the Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction herein pursuant to Minn. Stat. §§ 14.50; 45.027, subd. 7; 58.12, subd. 2; 60K.43, subd. 2; 82.82, subd. 6; and 359.12.

2. The Notice of Hearing was proper, and the Department has fulfilled all procedural requirements.

3. If a license lapses, is surrendered, withdrawn, terminated, or otherwise becomes ineffective, the commissioner may institute a proceeding within two years after the license was last effective and enter a revocation or suspension order as of the last date on which the license was in effect, or impose a civil penalty not to exceed \$10,000 per violation, unless a different penalty is specified.<sup>13</sup>

4. The commissioner commenced timely action against the Respondents' lapsed or inactive licenses.

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<sup>9</sup> Statement of Charges ¶ 17.

<sup>10</sup> Statement of Charges ¶ 19, 26.

<sup>11</sup> Statement of Charges ¶ 24.

<sup>12</sup> Statement of Charges ¶¶ 20-21.

<sup>13</sup> Minn. Stat. § 45.027, subs. 6 & 11. See also Minn. Stat. § 60K.43, subd. 5; 82.62, subd. 6.

5. The commissioner may deny, suspend, or revoke the authority or license of a person subject to the duties and responsibilities entrusted to the commissioner, or censure that person, if the commissioner finds that the order is in the public interest and the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.<sup>14</sup>

6. The commissioner may bar a person from engaging in residential mortgage origination or servicing if the action is in the public interest and the person has violated a standard of conduct or engaged in a fraudulent, coercive, deceptive, or dishonest act or practice, whether or not the act or practice involves the residential mortgage lending business; or engaged in an act or practice, whether or not the act or practice involves the business of making a residential mortgage loan, that demonstrates untrustworthiness, financial irresponsibility, or incompetence.<sup>15</sup>

7. The commissioner may restrict, censure, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty for any one or more of the following causes: using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility, whether or not involving the business of insurance in this state or elsewhere.<sup>16</sup>

8. The commissioner may deny, suspend or revoke any license or may censure a licensee if the commissioner finds (1) that the order is in the public interest, and (2) that the applicant or licensee, or, in the case of a broker, any officer, director, partner, employee or agent or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker or closing agent or controlled by the broker or closing agent, has engaged in a fraudulent, deceptive, or dishonest practice or has, in the conduct of the licensee's affairs under the license, been shown to be incompetent, untrustworthy, or financially irresponsible.<sup>17</sup> It is a fraudulent, deceptive, or dishonest practice to make any material misrepresentation or permit or allow another to make any material misrepresentation.<sup>18</sup>

9. Every notary who shall charge or receive a fee or reward for any act or service done or rendered as a notary greater than the amount allowed by law, or who dishonestly or unfaithfully discharges duties as a notary is subject to the penalties imposed by Minn. Stat. § 45.027.<sup>19</sup>

10. As alleged in Count I, by repeatedly directing funds from sellers of real property to buyers of real property, without the knowledge of lenders, the Respondents

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<sup>14</sup> Minn. Stat. § 45.027, subd. 7(a)(4).

<sup>15</sup> Minn. Stat. § 58.12, subd. 1(a)(1); subd. 1(b)(2)(iv) & (v).

<sup>16</sup> Minn. Stat. § 60K.43, subd. 1(8).

<sup>17</sup> Minn. Stat. § 82.35, subd. 1(b) & (f) (2008) (renumbered as § 82.82, subd. 1(b) & (f) (2010)).

<sup>18</sup> Minn. Stat. § 82.41, subd. 13(a)(9) (2008) (renumbered as § 81.81, subd. 12(a)(9) (2010)).

<sup>19</sup> Minn. Stat. § 359.12.

engaged in fraudulent, deceptive, and dishonest acts and demonstrated untrustworthiness, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4) (2010); 58.12, subd. 1(b)(2)(iv) & (v) (2010); 60K.43, subd. 1(8) (2010); 82.35, subd. 1(b) & (f) (2008); and 82.41, subd. 13(a)(9) (2008).

11. As alleged in Count II, by falsely representing to lenders that Eastwind Construction Consulting, LLC, had performed legitimate construction consulting services, Respondent Aslesen engaged in fraudulent, deceptive, and dishonest acts and demonstrated untrustworthiness, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4) (2010); 58.12, subd. 1(b)(2)(iv) & (v) (2010); 60K.43, subd. 1(8) (2010); and 82.35, subd. 1(b) & (f) (2008).

12. As alleged in Count III, by creating false invoices and lien waivers indicating that Eastwind Construction Consulting, LLC, had engaged in construction consulting activities, Respondent Aslesen engaged in fraudulent, deceptive, and dishonest acts and demonstrated untrustworthiness in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4) (2010); 58.12, subd. 1(b)(2)(iv) & (v) (2010); 60K.43, subd. 1(8) (2010); 82.35, subd. 1(b) & (f) (2008).

13. As alleged in Count IV, by ignoring lender instructions prohibiting buyers from receiving cash out of real estate transactions, Respondent Aslesen engaged in fraudulent, deceptive, and dishonest acts and demonstrated untrustworthiness, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4) (2010); 58.12, subd. 1(b)(2)(iv) & (v) (2010); and 60K.43, subd. 1(8) (2010).

14. As alleged in Count V, by failing to inform lenders of the conflict of interest associated with Options Plus Realty being a party to transactions closed by Split Rock Title, Respondents engaged in fraudulent, deceptive, and dishonest acts and demonstrated untrustworthiness, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4) (2010); 58.12, subd. 1(b)(2)(iv) & (v) (2010); and 60K.43, subd. 1(8) (2010).

15. Discipline of the Respondents' licenses and notary commission is in the public interest.

Based on the Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

**IT IS RECOMMENDED** that appropriate disciplinary action be taken against Robert S. Aslesen individually; his real estate broker license, notary public commission, real estate closing agent license, and insurance producer license; the real estate corporate license of Options Plus Realty, Inc.; and the insurance producer license of Split Rock Title, LLC.

Dated: May 5, 2011.

s/Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

## NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Michael Rothman, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.