

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA REAL ESTATE COMMISSION**

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	7/25/2013
File #	2013-04204

**IN RE: Petition for Declaratory Statement
by H. Scott Gleason, Esquire**

**FINAL ORDER GRANTING PETITION
FOR DECLARATORY STATEMENT**

H. Scott Gleason, Esquire filed a petition for declaratory statement on behalf of an unidentified client on May 8, 2013. Notice of receipt of the petition was published in the Florida Administrative Register on May 24, 2013. The petition was considered by the Commission at its meeting in Orlando on June 18, 2013.

By his petition, Gleason seeks a statement from the Commission:

that no Broker's license is required in the State of Florida if employees of the Client are leasing and/or managing real estate assets owned by the Client and/or its affiliates (the "Client Management Activities"), and not by third-parties, and such employees of the Client are not compensated on a commission or transaction basis.

DS 2013-040

FACTS

1. Gleason asserts the following to be the facts of this case for purposes of this petition:

The Client is a publicly-traded company that owns real estate assets in Florida through a series of special purpose limited liability companies (the "Client SPVs"). Each client SPV owns a single real estate asset of the Client (the "Client Assets") and none of the Client SPVs have employees. The Client does not undertake Client Management Activities for unaffiliated third-parties or with respect to real estate assets owned by unaffiliated third-parties. Historically, the Client Assets were managed by third-parties unaffiliated with the Client, the Client's employees or the Client SPVs. The Client now intends to undertake the Client

Management Activities of the Client Assets internally through the Client's employees. The Client's employees who would render the Client Management Activities to the Client or the Client SPVs would not be compensated on a commission or transaction basis, and they would not be licensed real estate Brokers in the State of Florida.

2. During the Commission's consideration of this Petition on June 18, 2013, Gleason confirmed that the SPVs are 100% wholly owned subsidiaries of the parent company.

CONCLUSIONS OF LAW

3. The Commission is authorized to issue this declaratory statement by Section 120.565, Florida Statutes.

4. H. Scott Gleason, Esquire, has standing to seek the requested declaratory statement on behalf of the unidentified client.

5. Section 475.01(1)(a), Florida Statutes, provides in part:

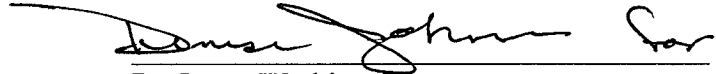
“Broker means a person who, for another, and for a compensation... appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another... or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does or is calculated to, result in a sale, exchange, or leasing thereof, and who receives...any compensation.....thereof..... Where the term “appraise” or “appraising” appears in the definition of the term broker, it specifically excludes those appraisal services which must be performed only by a state-licensed or state-certified appraiser....

6. As a result of the foregoing facts and conclusions of law, the Commission orders:

So long as there is a publicly traded umbrella organization that owns real estate assets in Florida through its special purpose limited liability company which is 100% wholly owned by that umbrella organization, they may use unlicensed employees so long as they are paid a salary and not commission.

DONE and ORDERED this 23rd day of July, 2013.

For Florida Real Estate Commission




By Juana Watkins, Director
Director of Real Estate

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68 FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to H. Scott Gleason, Esquire, O'Melveny & Myers LLP, Times Square Tower, 7 Times Square, New York, New York 10036-6524, and to Tom Barnhart, Special Counsel, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, this 25th day of July, 2013.

fo: 
Agency Clerk

DIVISION OF REAL ESTATE



O'MELVENY & MYERS LLP

Times Square Tower
7 Times Square
New York, New York 10036-6524

TELEPHONE (212) 326-2000
FACSIMILE (212) 326-2061
www.omm.com

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	5/8/2013
File #	

MAY 08 2013
FRONT DESK
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May 7, 2013

VIA OVERNIGHT DELIVERY

DS 2013-040

OUR FILE NUMBER
368,105-015

WRITER'S DIRECT DIAL
(212) 326-2287

Division of Real Estate
400 West Robinson Street, N801
Orlando, FL 32801
Telephone: (850) 487-1395

WRITER'S E-MAIL ADDRESS
sgleason@omm.com

Re: Declaratory Statement: Broker's License Issue

Ladies and Gentlemen:

On behalf of our client (the "Client"), this letter constitutes our request for a declaratory statement from the Division of Real Estate that no Broker's license is required in the State of Florida if employees of the Client are leasing and/or managing real estate assets owned by the Client and/or its affiliates (the "Client Management Activities"), and not by third-parties, and such employees of the Client are not compensated on a commission or transaction basis.

Client Background Facts

The Client is a publicly-traded company that owns real estate assets in Florida through a series of special purpose limited liability companies (the "Client SPVs"). Each Client SPV owns a single real estate asset of the Client (the "Client Assets") and none of the Client SPVs have employees. The Client does not undertake Client Management Activities for unaffiliated third-parties or with respect to real estate assets owned by unaffiliated third-parties. Historically, the Client Assets were managed by third-parties unaffiliated with the Client, the Client's employees

or the Client SPVs. The Client now intends to undertake the Client Management Activities of the Client Assets internally through the Client's employees. The Client's employees who would render the Client Management Activities to the Client or the Client SPVs would not be compensated on a commission or transaction basis, and they would not be licensed real estate Brokers in the State of Florida.

Communications with Division of Real Estate.

In view of the above-stated facts, we had spoken last week with representatives from the Florida Department of Business and Professional Regulation, Division of Real Estate (the "Division of Real Estate") regarding the question of the applicability to the Client employees of the requirement for a Broker's license under the Florida Statutes, Title XXXII, Chapter 475. The representative of the Real Estate Division with whom we spoke suggested that because the answer to our question was unclear that we should request a declaratory statement from the Division of Real Estate.

Statute Summary

§475.01 contains the definition of a "Broker", and anyone who meets this definition without a relevant exception under the statute is required to hold a Broker's license. The definition of Broker includes anyone who "for another, and for a compensation...rents, or offers, attempts or agrees to...negotiate the...rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including...leases...or who takes any part in the procuring of...lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases...or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in

a...leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists.” §475.011 contains an exception related to owners of property and their employees (not paid on a transactional basis) which exempts “any individual, corporation...which...leases its own real property; however, this exemption shall not be available if and to the extent that an agent, employee, or independent contractor paid a commission or other compensation strictly on a transactional basis is employed to make sales, exchanges, or leases to or with customers in the ordinary course of an owner’s business of selling, exchanging, or leasing real property to the public.”

Our Assessment

Based on the above definition and exception, we believe that the application of the above statute to the Client’s facts would allow the Client to conclude that (a) if the Client allows the Client’s employees who would undertake the Client Management Activities to do so solely with respect to the Client Assets owned by the Client or the Client SPVs -- and not for third-parties or with respect to real estate assets owned by third-parties, and (b) if the Client employees who would undertake the Client Management Activities would not be compensated by the Client or the Client SPVs on a commission or transaction basis, then the Client’s employees who would undertake the Client Management Activities with respect to the Client Assets would not need to be licensed real estate Brokers in the State of Florida.

On the basis of the foregoing, we look forward to a declaratory statement from the Division of Real Estate that the Client is authorized to have the Client’s employees render Client

O'MELVENY & MYERS LLP

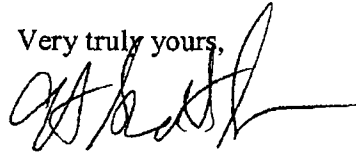
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Management Activities to the Client or the Client SPVs without requiring the Client's employees to be licensed real estate Brokers in the State of Florida.

If you have any questions or comments, please call the undersigned at (212) 326-2287.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'H. Scott Gleason', with a long horizontal flourish extending to the right.

H. Scott Gleason

cc: Peter T. Healy, Esq.
Candace Novell, Esq.