

**STATE OF FLORIDA
FLORIDA REAL ESTATE COMMISSION**

**IN RE: THE PETITION FOR DECLARATORY STATEMENT
FILED BY BROKERNATION REAL ESTATE, INC.**

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	4/7/2017
File #	2017-02794

**FINAL ORDER GRANTING PETITION
FOR DECLARATORY STATEMENT**

DS 2016-090

This matter came before the Florida Real Estate Commission (Commission) pursuant to Section 120.565, Florida Statutes on January 17, 2017 and on March 21, 2017, in Orlando, Florida. Brokernation filed a petition for declaratory statement on November 23, 2016 and notice of its receipt was published in the Florida Administrative Register. Petitioner filed supplemental information on February 16, 2017.

Having considered the Petition and supplemental information, and relevant statutes and rules, the Commission issues the following:

FINDINGS OF FACT

1. The facts considered by the Commission are as alleged in the Petition and supplemental information, copies of which are attached hereto and incorporated by reference, and presented at the meeting, with no further investigation by the Commission.

2. Petitioner asks the Commission's opinion whether Section 475.25(1)(h), F.S., is violated by the Petitioner's compensation of independent contractor recruiters based on a percentage of the Petitioner's gross revenue, which is derived from monthly/yearly membership fees as well as administrative fees for closings and rentals paid by licensed brokers and sales associates to the Petitioner.

CONCLUSIONS OF LAW

3. The Commission has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Chapter 28-105, Florida Administrative Code.

4. The Commission finds that the payment structure as described in the petition and supplemental information provided by the Petitioner does not violate Section 475.25(1)(h), Florida Statutes.

Therefore, the Commission GRANTS the petition.

The application of this Final Order is limited to the set of facts incorporated herein. This Final Order shall be effective upon filing with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 5th day of April, 2017.



LORI CRAWFORD
Executive Director
Florida Real Estate Commission

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 PROCEEDING 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 Order has been provided by U.S. Mail to: Arnel Ortega, Esquire, 40 NW 3rd Street, Suite 200, Miami, Florida 33128; and by hand/interoffice delivery to Tom Barnhart, Special Counsel, Suite PL-01, The Capitol, Tallahassee, Florida 32399-1050; and the Florida Real Estate Commission, 400 West Robinson Street, Suite N801, Orlando, Florida 32801-1757, on or before 5:00 p.m.,

this 7th day of April, 2017.



A circular stamp is partially visible behind the signature.

QUINTERO ORTEGA PL

The Courthouse Center
40 NW 3rd Street, Suite 200
Miami, Florida 33128
Telephone: (786) 517-5297

February 16, 2017

Florida Real Estate Commission
Department of Business and Professional Regulation
Division of Real Estate
400 W Robinson St. N801
Orlando, FL 32801

RE: Supplemental Information for Petition for Declaratory Statement DS 2016-090
BrokerNation Real Estate, Inc.

To the Florida Real Estate Commission:

Please accept this supplemental information to BrokerNation Real Estate Inc.'s ("BNRE") original Petition for Declaratory Statement dated November 22, 2016. The typical scenario that my client is inquiring about is where an unlicensed independent contractor ("unlicensed recruiter") recruits a licensed broker, broker associate, or sales associate ("licensed agent") for BNRE. That licensed agent pays monthly or yearly membership fees to BNRE whether that licensed agent closes a sale or not. When the licensed agent does close a sale, then that licensed agent pays a fee to BNRE for administrative services, which is a separate and distinct fee from the commission BNRE charges the seller and/or buyer ("consumer"). To clarify, BNRE charges a typical commission to the consumer and charges a separate administrative fee to the licensed agent for the performance of administrative services. Neither the administrative fee nor the membership fee is ever charged to the consumer.

BNRE pays the unlicensed recruiter only from the fees collected from the membership fees and administrative fees collected from the licensed agent, none of which are paid by the consumer and accordingly are not included in the Closing Disclosure. The Licensed Agent cannot pass on those fees to the consumer. The unlicensed recruiter is never paid from funds collected by BNRE from the commission collected from the consumer. Furthermore, no fees are ever shared with the unlicensed recruiter "for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set forth in s. 475.01(1)(a)" because the unlicensed recruiter never actually refers real estate business, clients, prospects, or customers. The only thing the unlicensed recruiter did was to introduce the licensed broker to BNRE.

We hope that the above explanation provides enough detail for the Commission to provide an official opinion of how Florida Statute 475.25(1)(h) applies to BrokerNation Real Estate, Inc. in its particular set of circumstances. The petitioner does not request a hearing. We will be available by telephone to answer any questions the Commission may have during the February 21, 2017 meeting. Kindly provide a call in number, along with a specific time.

Thank you in advance for your attention to this matter. Should you have any questions or need additional information, please contact me at (786) 517-5297 ext. 3.

Sincerely yours,

A handwritten signature in cursive script that reads "Arnel Ortega". The signature is written in black ink and is positioned above the typed name.

Arnel Ortega, Esq.

QUINTERO ORTEGA PL

The Courthouse Center
40 NW 3rd Street, Suite 200
Miami, Florida 33128
Telephone: (786) 517-5297

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	11/23/2016
File #	

November 22, 2016

Florida Real Estate Commission
Department of Business and Professional Regulation
Division of Real Estate
400 W Robinson St. N801
Orlando, FL 32801

DS 2016-090

RE: Petition for Declaratory Statement Before the Florida Real Estate Commission

Dear Sir or Madam:

Please accept this Petition on behalf of my client, BrokerNation Real Estate Inc. ("BNRE"), for a formal opinion according to Section 120.565, Florida Statutes and Chapter 28-105, Florida Administrative Code, specifically 28-105.002. We are requesting a declaratory statement pertaining to Florida Statute 475.25(1)(h), which prohibits a licensed Broker from sharing a commission or other compensation with a person not properly licensed as a broker, broker associate, or sales associate under the laws of this state, for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set forth in s. 475.01(1)(a). The reason for the request is to determine if Florida Statute 475.25(1)(h) is violated by the Petitioner's compensation of independent contractor recruiters based on a percentage of the Petitioner's gross revenue, which is derived from monthly/yearly membership fees as well as administrative fees for closings and rentals paid by licensed brokers and sales associates to the Petitioner. We believe that the payment structure is in compliance with F.S. 475.25(1)(h) because no fees are being paid to the recruiters "for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set forth in s. 475.01(1)(a)."

1. Petitioner:
BrokerNation Real Estate Inc.
10800 Biscayne Blvd., Suite 830,
Miami, FL 33161
Email: aromero@brokernationre.com
Telephone: (305) 602-4410
2. Attorney:
Arnel Ortega
40 NW 3rd Street, Suite 200
Miami, FL 33128
Email: aortega@4uslaws.com
Telephone: (786) 517-5297
Facsimile: (786) 517-5295

3. Declaratory Statement sought on: Florida Statute 475.25(1)(h)
4. Description of how the statute may substantially affect the petitioner in the petitioner's particular set of circumstances:
 - a. BrokerNation Real Estate, Inc. ("BNRE") is a Real Estate Brokerage company that is hiring independent contractor recruiters, who are not licensed as brokers, broker associates, or sales associates under Florida law, to recruit properly licensed brokers, broker associates, or sales associates.
 - b. The recruited licensed brokers, broker associates, or sales associates pay a monthly or yearly membership fee to BNRE as well as administrative fees for each closing or rental transaction.
 - c. Each independent contractor recruiter will be compensated from BNRE's Gross Revenue derived from the membership and administrative fees collected from the specific licensed brokers, broker associates, or sales associates recruited by the individual recruiter.
 - d. Florida Statute 475.25(1)(h) states:
 - (1) The commission may deny an application for licensure, registration, or permit, or renewal thereof; may place a licensee, registrant, or permittee on probation; may suspend a license, registration, or permit for a period not exceeding 10 years; may revoke a license, registration, or permit; may impose an administrative fine not to exceed \$5,000 for each count or separate offense; and may issue a reprimand, and any or all of the foregoing, if it finds that the licensee, registrant, permittee, or applicant:
 - (h) Has shared a commission with, or paid a fee or other compensation to, a person not properly licensed as a broker, broker associate, or sales associate under the laws of this state, for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set forth in s. 475.01(1)(a).
 - e. Florida Statute 475.01(1)(a) states:
 - (1) As used in this part:
 - (a) "Broker" means a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, 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,

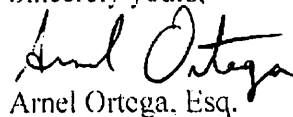
exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights, 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, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists. A broker renders a professional service and is a professional within the meaning of s. 95.11(4)(a). 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, and those appraisal services which may be performed by a registered trainee appraiser as defined in part II. The term "broker" also includes any person who is a general partner, officer, or director of a partnership or corporation which acts as a broker. The term "broker" also includes any person or entity who undertakes to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons, except as provided in ss. 475.011 and 721.20.

- f. We believe that BNRE's payment structure described above is in compliance with F.S. 475.25(1)(h) as BNRE will be paying its independent contractor recruiters only from the company's gross revenue derived from membership and administrative fees and not "for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set forth in s. 475.01(1)(a)."

The Florida Realtors Board Legal team was consulted and did not find any statute, rule or order prohibiting BNRE's proposed pay structure. However, we request the Florida Real Estate Commission's official opinion of how Florida Statute 475.25(1)(h) applies to BrokerNation Real Estate, Inc. in these particular set of circumstances in order to insure compliance with the law. The petitioner does not request a hearing.

Thank you in advance for your attention to this matter. Should you have any questions or need additional information, please contact me at (786) 517-5297 ext. 3.

Sincerely yours,


Arnel Ortega, Esq.