

ARBITRATION COMPLAINT
ASSOCIATION OF REALTORS®

1. A dispute arising from the real estate business has arisen between me (us) and the person(s) and/or entity(ies) named below (Note: List all persons you wish to name as respondents. If you want to name a corporate entity as a respondent, you must indicate the corporation's legal name as a separately named respondent.):

RESPONDENT(S):

(1) WALT DANIELS
Name of Responsible Broker (Type or Print)

(3)
Name (Type or Print)

ABOVE THE REST/BEST LOAN SERVICES
Name of Firm

Name of Firm

123 SUPERIOR WAY
Street Address

Street Address

RIVERSIDE, CALIFORNIA 92506
City, State, Zip

City, State, Zip

(2)
Name (Type or Print)

(4)
Name (Type or Print)

Name of Firm

Name of Firm

Street Address

Street Address

City, State, Zip

City, State, Zip

2. The respondent(s) owes me the sum of \$ 9,510.00. My claim is based upon the statement attached to this complaint, marked Exhibit "1", which is hereby incorporated by reference and made part of this complaint.

3. At the time the facts and circumstances giving rise to this dispute occurred, I am informed that each respondent was a:

- REALTOR®/REALTOR ASSOCIATE® Member of the Association; and/or
Participant/subscriber of the Association's MLS

4. This dispute is proper for arbitration at the Association as this is a real estate related dispute that arises out of our relationship as REALTORS®/REALTOR ASSOCIATES® and/or arises from a listing filed with the Association's MLS.

5. I, by becoming and remaining a:

- REALTOR®/REALTOR ASSOCIATE® Member of the Association
Participant/subscriber of the Association's MLS

have previously agreed to resolve this dispute with the named respondents through binding arbitration using the Association's facilities and its rules and procedures for arbitration. Accordingly, I submit this dispute to arbitration and reaffirm my agreement to bind myself and any firm for which I am the designated broker of record to be bound by arbitration through the Association. Furthermore, I reaffirm my agreement to abide by the Association's rules and procedures for arbitration and to comply with the arbitration award. I understand and agree that this constitutes an arbitration agreement within the meaning of Part 3 Title 9 of the California Code of Civil Procedure. In the event I or my firm does not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of an arbitration award against me or my firm, I and my firm agree to pay the party obtaining such confirmation their costs and reasonable attorneys' fees incurred in obtaining such confirmation and enforcement.

6. I have filed this arbitration complaint within one hundred and eighty (180) calendar days after the closing of the transaction, if any, or after the facts and circumstances constituting this arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.
7. I understand there will be a mechanical tape recording of the arbitration hearing. I understand that I may purchase a copy of the tape recording solely for the purpose of requesting a procedural review of the arbitration procedures and hearing by the Association's Board of Directors or an appointed review Panel thereof.
8. I understand that I may be represented by legal counsel at any time, including at the arbitration hearing and any procedural review. I further understand and agree that if I intend to have legal representation, I must give written notice of my legal representative's name, address and phone number to all parties and the hearing and/or review Panel at least fifteen (15) calendar days before the scheduled date of the hearing. I understand and agree that failure to comply with this notice requirement may result in a continuance being granted and a continuance fee assessed against me.
9. I understand that the nature of these proceedings are confidential and that I have an obligation to maintain and protect the confidentiality of these proceedings and any resulting decision. I hereby agree to do so unless disclosure is authorized by the Association's rules and procedures or required by law.
10. Unless this dispute is between members of the same office, the responsible broker at the time the facts and circumstances giving rise to this dispute occurred must sign as a co complainant and has signed this complaint.
11. I hereby affirm that the facts and circumstances and the parties in this matter are not related to any pending bankruptcy, civil litigation matter or criminal investigation, including a proceeding before a governmental regulatory agency. If I am unable to make this affirmation, I have attached a written statement describing the pending matter on a separate sheet of paper and have included it with this complaint.
12. I have enclosed my payment in the sum of \$500.00 for the arbitration filing fee with this complaint.
13. Under the penalties of perjury, I declare that this arbitration complaint and the statements contained herein are true and correct to the best of my knowledge and belief.

Dated: October 28, 2009

COMPLAINANT(S):

(1)
Signature

SALLY JOHNSTON
Name of Responsible Broker (Type or Print)

REAL REAL ESTATE SERVICES
Firm

431 PENNY BOULEVARD
Street Address

SAN BERNARDINO, CALIFORNIA 92407
City, State, Zip

(909) 555 1212
Phone

(2)
Signature

BOBBI JONES
Name (Type or Print)

REAL REAL ESTATE SERVICES
Firm

431 PENNY BOULEVARD
Street Address

SAN BERNARDINO, CALIFORNIA 92407
City, State, Zip

(909) 555 1212
Phone

(3)
Signature

Name (Type or Print)

Firm

Street Address

City, State, Zip

Phone

(4)
Signature

Name (Type or Print)

Firm

Street Address

City, State, Zip

Phone

EXHIBIT 1

I, REALTOR® Agent Bobbi Jones, was working with Buyer, Alice. I have known Alice for many years and Alice actually worked for my family as their Nanny.

Over the course of time, Alice had commented to me on how she would ultimately like to buy a home as she was currently renting. As both a friend and knowledgeable in the field of real estate, I had always encouraged Alice to pursue her dream and buy a home.

One day, Alice informed me that she wanted to start looking for a home. She had little money and with shaky credit, Alice informed me that she may need her brother to assist her in purchasing a home. I was happy to assist and the we started looking for properties to purchase.

During the course of six months, Alice and I looked at several properties. I emailed properties to Alice. Sometimes, Alice went on her own and other times I accompanied her.

One day, Alice informed me that one of the properties she had just received from me interested her enough that she wanted to write an offer on it. Alice and I conferred at the property, met with the listing agent, Doris Smith, and all seemed to be going quite well. Alice instructed me to write the offer with specific terms and price of the offer she felt comfortable presenting.

Alice then asked me to please contact her brother Peter's friend and mortgage broker, Walt Daniels, regarding the loan financing. I assured Alice that I would and during the course of writing the offer, I contacted Walt.

During the course of the conversation between Walt and I, Walt informed me that he did not think Alice will be able to secure a loan on her own based on her limited income and shaky credit. Walt recommended that the only way Alice would be able to buy a property was with the assistance of her brother, Peter. The conversation concluded, and I finalized the offer to purchase. I also contacted the listing agent, Doris, to see if there were any other offers on the property. Doris said there were not. I asked Doris for any comparable sales that she might have to support the value the seller was asking for the property and Doris willingly provided me with comps.

I got the offer to Alice with the supporting documents including an Agency Disclosure and asked Alice when the two of us could go over the offer. Having spoken with her brother, Peter, who had spoken with the mortgage broker, Walt, Alice expressed her concern to me about her ability to qualify for the loan. Alice went on to say to me that perhaps her brother Peter would feel comfortable enough to co-sign on the loan beyond the concerns of Peter's wife, who was most uncomfortable with the responsibility of an additional 300K. I understood completely and said I would wait to hear from Alice based on what her brother Peter had to say.

A week went by and I did not have any communication with Alice regarding the offer. Because Alice worked for me, I did not press the issue until Alice finally informed me that because of her

financial issues, she would be holding off on a purchase at that time. I was gracious and took Alice at her word.

Approximately three months later, my husband received a handwritten note from Alice confessing that Alice felt terrible for not stating it sooner but that Alice actually did purchase a home and that she needed to use her mortgage broker to represent her as that was the only way her brother Peter would assist her.

On a hunch, I checked the MLS to find out that indeed, Alice did buy a home but not just any home. Alice purchased the home that I had introduced her to, written the offer on and spoken with Walt, the mortgage broker about. Escrow closed on August 25, 2009. Furthermore, I checked with title to see that both Alice and her brother Peter were on title for the home.

I immediately contacted the listing agent, Doris, to find out what happened. Doris informed me that indeed the buyer did come back with the brother and the mortgage broker who informed Doris that he would now be representing Alice. Doris asked Walt, the mortgage broker, about me and my role in the transaction and Walt informed Doris that everything was fine with me and that “we had worked it out.” Frustrated that Doris had taken a discounted commission, Doris went on to say that not only did Walt receive the full commission to represent Alice but also received a full mortgage broker’s fee for handling the loan. When I asked Doris why she did not contact me to inform me what was happening, Doris told me that the Buyer’s agent had instructed her not to.

I contacted Alice to find out her side of the story, and Alice informed me that the only way her brother would help her was if Walt represented her in the transaction. As it turned out, the offer to purchase the subject property had been accepted within two weeks of my written offer and that the property closed escrow 60 days later. Title was taken in both Alice and her brother’s names.

I then contacted the mortgage broker Walt. I asked Walt why he did what he did and Walt informed me that he had been showing property to Alice, as her real estate broker, prior to me showing Alice property for some time. I asked Walt what that had to do with the subject property that I had introduced to Alice to and Walt responded that the only way the deal was going to happen was with the assistance of the brother Peter. When I questioned Walt as to why Walt did not inform me that Walt had been working with Alice in the past, Walt responded that he didn’t think it mattered.

Upon speaking with my broker about the situation, my broker called Walt to ask him for the commission earned to represent Alice in the sale of the home and Walt rejected any proposal to compensate me. The property was purchased for \$317,000.00. Based on the facts of the case, I believe I am the procuring cause and entitled to the full 3% commission offered in the MLS (\$9,510.00) against the mortgage broker, Walt Daniels.

Bobbi Jones

ARBITRATION RESPONSE

ASSOCIATION OF REALTORS®

Case No. AI09-99 Sally Johnston, Broker vs. Walt Daniels, Broker
Bobbi Jones ABOVE THE REST/BEST LOAN SERVICES
REAL REAL ESTATE SERVICES Respondent(s)
Complainant(s)

At the time the facts and circumstances giving rise to this dispute occurred, I (we) was a:

- REALTOR®/REALTOR ASSOCIATE® Member of the Association
- Participant/subscriber of the Association's MLS

As such, I have previously agreed to resolve this dispute with the named complainants through binding arbitration using the Association's facilities and its rules and procedures for arbitration. Accordingly, I reaffirm my agreement to bind myself and any firm for which I am the designated broker of record to be bound by arbitration through the Association. Furthermore, I reaffirm my agreement to abide by the Association's rules and procedures for arbitration and to comply with the arbitration award. I understand and agree that this constitutes an arbitration agreement within the meaning of Part 3 Title 9 of the California Code of Civil Procedure. **In the event I or my firm does not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of an arbitration award against me or my firm, I and my firm agree to pay the party obtaining such confirmation their costs and reasonable attorneys' fees incurred in obtaining such confirmation and enforcement.**

2. I acknowledge the existence of a dispute arising out of the real estate business but deny any indebtedness to the complainants as alleged in their complaint. My denial is based upon the statement attached, marked "Exhibit A," which is hereby incorporated by reference and made part of this response. If I object to the Association's jurisdiction to process this matter, I have stated those objections in my Exhibit A and I understand that the hearing Panel for this matter will ultimately rule on such objections.
3. **COUNTERCLAIM (if applicable):** Furthermore, I assert a counterclaim against the following complainant(s):

owes me the sum of \$. My claim is based upon the statement attached, marked "Exhibit B," which is hereby incorporated by reference and made part of this response. I understand that if I claim a person(s) other than the complainant(s) owes me money related to this dispute, I must file a separate arbitration complaint with the Association naming that person(s), assuming such person(s) is subject to the jurisdiction of the Association's arbitration process.
4. I understand there will be a mechanical tape recording of the arbitration hearing. I understand that I may purchase a copy of the tape recording solely for the purpose of requesting a procedural review of the arbitration procedures and hearing by the Association's Board of Directors or an appointed review Panel thereof.
5. I understand that I may be represented by legal counsel at any time, including at the arbitration hearing and any procedural review. I further understand and agree that if I intend to have legal representation, I must give written notice of my legal representative's name, law firm name, address and phone number to all parties and the hearing and/or review Panel at least fifteen (15) calendar days before the scheduled date of the hearing. I understand and agree that failure to comply with this notice requirement may result in a continuance being granted and a continuance fee assessed against me.
6. I understand that the nature of these proceedings are confidential and that I have an obligation to maintain and protect the confidentiality of these proceedings and any resulting decision. I hereby agree to do so unless disclosure is authorized by the Association's rules and procedures or required by law.

7. I hereby affirm that the facts and circumstances and the parties in this matter are not related to any pending bankruptcy, civil litigation matter or criminal investigation, including a proceeding before a governmental regulatory agency. If I am unable to make this affirmation, I have attached a written statement describing the pending matter on a separate sheet of paper and have included it with this complaint.
8. Under the penalties of perjury, I declare that this arbitration response and the statements contained herein are true and correct to the best of my knowledge and belief.

Dated: December 2, 2009

RESPONDENT(S):

Signature

WALT DANIELS

Name (Type or Print)

ABOVE THE REST/BEST LOAN SERVICES

Name of Firm

123 SUPERIOR WAY

Street Address

RIVERSIDE, CALIFORNIA 92506

City, State, Zip

(951) 555 1234

Phone

Signature

Name (Type or Print)

Name of Firm

Street Address

City, State, Zip

Phone

EXHIBIT "A" TO RESPONSE

I had known Alice for some time, sister to his dear friend Peter. I showed property on and off for some time. I knew that the only way Alice would be able to buy a property was with the help of her brother.

Sometime in 2006, I stopped showing Alice property because Peter's wife was not comfortable co-signing for a loan for Alice.

When I got a call from another agent stating that Alice was putting an offer in on a property without him, I immediately called Peter to discuss the issue. Peter said that his wife was now okay with co-signing and that Alice was going to buy something. Peter thought that I was no longer interested in working with Alice because I had stopped showing Alice property. I said that I wanted to take care of Alice in the transaction and Peter said "of course."

Peter called Alice and told her to work with me on the deal and Alice said "okay" because she knew she needed her brother's assistance.

I wrote up the deal, negotiated the terms and closed escrow on the property.