

STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

IN THE MATTER OF. SEQUOIA GROUP, INC, IT'S OFFICERS,
DIRECTORS, EMPLOYEES, AFFILIATES, SUCCESSORS, AGENTS,) File No's. 1000376
ASSIGNS, and MICHAEL R KIMMELMAN, INDIVIDUALLY) & 1000404

ORDER OF REVOCATION AND FINE

TO THE RESPONDENTS:

Sequoia Group, Inc.
c/o Michael R Kimmelman, Registered Agent
578 Barberry Rd.
Highland Park, Illinois 60035-4455

Mr. Michael R Kimmelman
Sequoia Group, Inc
578 Barberry Rd
Highland Park, Illinois

WHEREAS, On August 25, 2011, James L Kopecky, Hearing Officer for the Illinois Secretary of State, Department of Securities ("Department"), held a hearing pursuant to Section 10-55 of The Illinois Business Brokers Act of 1955, 815 ILCS 307/10-1, et seq (the "Act") and 14 Ill Adm. Code 130, Subpart K, to determine whether a permanent Order of Suspension or Revocation should be entered against Sequoia Group, Inc, and its directors, officers, agents, employees, sales representatives, and affiliates, and Michael R. Kimmelman, individually (collectively "Respondents"), and/or granting such other relief as may be authorized under the Act including, but not limited to, the imposition of a monetary fine in the maximum amount of \$10,000 per violation, payable within ten (10) business days of the entry of the Order

WHEREAS, the rulings of the Hearing Officer on the admission of evidence and all motions are deemed to be proper and are hereby concurred with by the Secretary of State:

WHEREAS, the proposed Findings of Fact and Conclusions of Law and Recommendation of the Hearing Officer, James L Kopecky, in the above-captioned matter have been read and examined;

WHEREAS, the Finding of Fact of the Hearing Officer are accepted and are hereby adopted as the Findings of Fact of the Secretary of State as follows.

Order of Revocation and Fine

-2-

FINDINGS OF FACT

- 1 The Department timely served Respondents with a Notice of Hearing.
- 2 The Respondents did not appear at the Hearing
- 3 Respondent Sequoia Group, Inc , ("Sequoia") is an Illinois corporation and maintains its business address at 578 Barberry Road, Highland Park, Illinois 60035-4455.
- 4 Respondent Michael R Kimmelman, ("Kimmelman") an individual who maintains his address at 578 Barberry Road, Highland Park, Illinois 60035-4455
5. That from on or about April 2006 Kimmelman and Sequoia individually and by and through their Officers, Directors, Employees, Affiliates, Successors, Agents and Assigns (collectively, "Respondents"), offered and held themselves out as providing businesses for sale and services to potential business buyers for a fee to more than one Illinois resident.
6. That from on or about April, 2006, to the present, Sequoia was registered with the Secretary of State of Illinois as a Business Broker, and Kimmelman is listed as its Registered Representative.
7. That subsequent to service on Respondents of the December 2, 2010 Order and continuing to on or about May 18, 2011 Respondents Kimmelman and Sequoia were listed on the <http://www.bizbuysell.com> in alliance with The Wall Street Journal Online as Lake County Business Brokers That the area served by Respondents was listed as Lake County, Illinois at the phone number 847-579-0212
8. That Respondents acted as the escrow agent for earnest money deposits paid by Purchasers pursuant to their offers to purchase a business
- 9 That subsequent to January 1, 2008, several Illinois Residents, including Purchaser A and Purchaser B ("Purchasers"), became clients of Respondents, and Purchasers A and B paid to Respondents, as escrow agents, sums aggregating Fifty Thousand (\$50,000 00) Dollars for earnest money deposits, which sums were not returned to those Purchasers when the sales pursuant to their Offers to Purchase were not completed without fault on the part of those Purchasers.

Purchaser A

- 10 That on December 10, 2008 Purchaser A gave to Respondents a check payable to Respondent Sequoia as earnest money to be escrowed in the amount of ten thousand dollars (\$10,000 00), which was deposited into Respondent Sequoia's bank account number XXXXX1129.

Order of Revocation and Fine

-3-

- 11 That checks, electronic payments, ATM transactions, other debits and transfers in various amounts were made from Sequoia's bank account number XXXXX1129 between December 10, 2008 and December 31, 2008, including checks made by Ann Kimmelman, a former Director of Respondent Sequoia, payable to Respondent Kimmelman, totaling one thousand two hundred fifty dollars (\$1,250 00), and a check payable to cash in the amount of three thousand one hundred seventy-two dollars (\$3,172 00) which was cashed by Respondent Kimmelman
- 12 That on November 29, 2008, Respondent Sequoia's bank account number XXXXX1129 had a beginning balance of seven hundred fifty-eight and 83/100 dollars (\$758.83) and on December 31, 2008, and Respondent Sequoia's bank account number XXXXX1129 had an ending balance of less than Seven Hundred (\$700.00) Dollars.
- 13 That Purchaser A's ten thousand dollars (\$10,000.00) earnest money deposit was in its entirety converted by Respondents for personal purposes during the month of December, 2008.
14. That in February of 2009 Purchaser A demanded from Respondents the return of his ten thousand dollars (\$10,000.00) earnest money deposit.
- 15 That in or about December 2009 Purchaser A filed suit in the Circuit Court of the Nineteenth Judicial Circuit Lake County, Illinois, Gen N. 09 SC 8888, against Seller and Respondent Sequoia as escrow agent, for the return of his earnest money deposit.
16. That on March 4, 2010 a Settlement Agreement and Release was entered into by the parties and the Circuit Court action was dismissed on March 4, 2010 subject to the Settlement Agreement The Agreement provided that payment was to be made by Seller and Respondent Sequoia to Purchaser A in two equal installments by May 9, 2010
- 17 On June 22, 2010, in that no payment was received by Purchaser A by the May 9, 2010 deadline, the Court Ordered that Judgment be entered against Seller and Respondent Sequoia jointly and severally in the amount of ten thousand dollars (\$10,000 00) plus costs and attorneys fees.
- 18 That purchaser A has still not received the return of his escrowed funds

Purchaser B

19. That Purchaser B issued two checks to Respondents payable to Respondent Sequoia as earnest money to be escrowed in the amounts of thirty thousand dollars (\$30,000 00) on March 5, 2010, and ten thousand dollars (\$10,000.00) on

Order of Revocation and Fine

-4-

June 21, 2010. That Purchaser B's checks were deposited in Respondent Sequoia's bank account number XXXXX1322

- 20 That on March 31, 2010, Respondent Sequoia's bank account number XXXXX1322 had an ending balance of less than four thousand dollars (\$4,000.00), taking into account Purchaser B's \$30,000.00 March 5, 2010 earnest money deposit and all other deposits and withdrawals to or from that account during the month of March, 2010
- 21 That on June 30, 2010, Respondent Sequoia's bank account number XXXXX1322 had an ending balance of less than fifty dollars (\$50 00) taking into account Purchaser B's \$10,000.00 June 22, 2010 earnest money deposit and all other deposits and withdrawals to or from that account during the month of June, 2010
- 22 That in August of 2010, Purchaser B demanded from Respondents the return of his escrowed forty thousand dollars (\$40,000 00) earnest money deposit
23. That on November 3, 2010, Respondents issued a check from Respondent Sequoia's account number XXXXX1322, payable to Purchaser B in the amount of forty thousand dollars (\$40,000.00), which Purchaser B deposited and on November 12, 2010, and which was returned by Purchaser B's bank to Purchaser B for the reason: "return reason-A not sufficient funds."
- 24 That purchaser B has still not received the return of his earnest money.

Lake County Judgment

- 25 That on June 22, 2010, in the Circuit Court of Nineteenth Judicial Circuit, Lake County, Illinois a judgment in Gen No 09 SC 8884, was entered against Respondent Sequoia and others in the amount of ten thousand dollars (\$10,000 00) plus costs and attorneys fees of two hundred fifty dollars (\$250 00) for breach of a settlement agreement dated March 4, 2010
26. That the Respondents' Application for renewal as Business Broker did not provide any information that the written disclosure document had changed, nor was any copy of the changed pages provided.
- 27 That the Respondents' disciplinary history as reported on its initial filing had changed, Respondents failed to provide the Department with the change and an explanation on a separate page of the filing of the Complaint and subsequent to the Judgment
- 28 That said Complaint and Judgment were not reported to the Department within ten (10) business days as any material change in the information that was filed with the Securities Department when the business broker applied for registration.

Order of Revocation and Fine

-5-

29. That in March 2011, in the Circuit Court of Nineteenth Judicial Circuit, Lake County, Illinois a criminal complaint was filed against Respondent Kimmelman in case No 11 CF 747, *People of the State of Illinois v Michael R Kimmelman*.
- 30 That said criminal Complaint and pending criminal action were not reported to the Department within ten (10) business days as any material change in the information that was filed with the Securities Department when the business broker applied for registration between the filing of said criminal Complaint and the present.

CONCLUSIONS OF LAW

1. The Department properly served the Notice of Hearing on Respondents
- 2 The Notice of Hearing included the information required under Section 1102 of the Code
3. The Secretary of State has jurisdiction over the subject matter pursuant to the Act
4. Because Respondents failed to appear at the time and place set for hearing, in accordance with Section 130.1109, they:
 - (a) waived their right to present evidence, argue, object or cross examine witnesses; or
 - (b) otherwise participate at the hearing
5. That at all times relevant hereto, Sequoia was registered with the Secretary of State of Illinois as a Business Broker, and Kimmelman was listed as its Registered Representative prior to the aforementioned activities in the State of Illinois, and that on December 2, 2010 the Respondents were SUSPENDED by the Secretary of State of Illinois from engaging in the business of business brokering in the State of Illinois until further order of the Secretary of State
- 6 That section 10-5.10 of the Act provides in part “‘Business Broker’ means any person who is required to register under Section 10-10 of this Act and. (4) advertises or represents himself as a business broker . ”
- 7 That the Respondents are business brokers as that term is defined pursuant to Section 10-5.10. of the Illinois Business Brokers Act of 1995 [815 ILCS 307/10-1 et seq.] (the "Act");

Order of Revocation and Fine

-6-

- 8 That by virtue of the foregoing Findings of Fact, the Respondents have violated Section 10-85(b)(1) of the Act by acting as a Business Broker without registration during the period of their suspension.
9. That Section 10-65 of the Act provides: Any person who willfully violates this Act commits a class 4 felony
10. That by virtue of the foregoing, the Respondent has violated Section 10-65 of the Act
11. That Section Sec 10-85 (a)(1)(2) and (3) of the Act Fraudulent and prohibited acts, provides, inter alia, that.
 - (a) A business broker shall not, in connection with a contract for the services of a business broker, either directly or indirectly, do any of the following
 - (1) Employ and device, scheme or artifice to defraud
 - (2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading, unless the statement is made in reasonable reliance on information provided by the client
 - (3) Engage in any act, practice or course of business that operates or would operate as a fraud or deceit upon any person.
12. That by virtue of the foregoing Findings of Fact showing conversion of the Purchasers' escrowed earnest money funds for purposes which it was not intended, the Respondents have violated Sections 10-85 (a)(1)(2) and (3) of the Act
- 13 That Respondents' actions in detailed in the Findings of Fact herein are willful violations of the Act
14. That section 140.200 Procedures for Renewal of Registration as a Business Broker under Section 10-20 of the Act in part provides:
 - a) If a registered business broker wishes to renew its registration, it shall file with the Securities Department the preprinted Illinois Form BB04 together with the renewal filing and examination fee and branch office fee, if any, as specified in Section 140 2110 of this Part.
 - b) Any amendment(s) shall also be filed with the Securities Department within ten business days if any material change occurs in the information that was filed with the Securities Department when the business broker applied for registration

Order of Revocation and Fine

-7-

- 15 That paragraphs 2 and 3 of the Application for renewal as Business Broker provide
 - 2) If any information on the written disclosure document has changed, please provide the Department with a copy of the changed pages
 - 3) If the disciplinary history reported on your initial filing has changed, please provide the Department with the change and an explanation on a separate page
- 16 That Section 10-85(b)(2) of the Act: Fraudulent and prohibited acts [in part, provides]

A business broker shall not either directly or indirectly (b)(2) Fail to file with the Secretary of State any application, report, document, or answer required to be filed under the provisions of this Act or any rule made by the Secretary of State pursuant to this Act or fail to comply with the terms of any order issued pursuant to this Act or rule or made by the Secretary of State
- 17 That by virtue of the foregoing Findings of Fact, the Respondents have violated Sections 10-85(b)(2) of the Act
18. That Section 10-40.(a)(2) of the Act provides, inter alia, that the Secretary of State, after finding that any provision of the Act has been violated, may suspend or revoke the registration of the business broker.
19. That Section 10-55.(a) of the Act provides, inter alia, that in addition to any other sanction or remedy the Secretary of State, after finding that any provision of the Act has been violated, may impose an administrative fine upon the person in an amount not to exceed \$10,000 for each violation

WHEREAS, the Recommendation of the Hearing Officer that Respondents the Sequoia Group, Inc., and its directors, officers agents, employees, sales representatives, and affiliates, and Michael R. Kimmelman, individually, an Order of Default be entered against each Respondent and that a Permanent Order of Revocation be entered against each Respondent prohibiting each Respondent from acting as a Business Broker in the

Order of Revocation and Fine

-8-

State of Illinois is hereby accepted, and the recommendation of the Hearing Officer that said Respondent's, is hereby accepted

NOW THEREFORE IT IS HEREBY ORDERED that, pursuant to the foregoing Findings of Fact and Conclusions of Law, and the Recommendations of the Hearing Officer, and pursuant to the authority provided under Sections 10-65, 10-40(a), 10-55(a),(c) and (d) of the Act.

1. That a Permanent Order of Revocation prohibiting each Respondent from acting as a Business Broker in or from the State of Illinois be and is entered against Respondent Sequoia Group, Inc., Respondent Michael R Kimmelman individually, and Respondent Michael R Kimmelman as registered representative.
2. Respondents Sequoia Group, Inc., and Michael R Kimmelman shall be and are each fined Ten Thousand dollars (\$10,000 00) for violations of the Act, for a total sum of Twenty Thousand Dollars (\$20,000 00).
3. Respondents Sequoia Group, Inc., and Michael R. Kimmelman shall be and are each ordered to pay costs of \$1,500 00.

ENTERED. This 12th day of October, 2011



JESSE WHITE
Secretary of State
State of Illinois

NOTICE. Failure to comply with the terms of this Order shall be a violation of Section 10-65 of The Illinois Business Brokers Act of 1955, 815 ILCS 307/10-1, et seq (the "Act") Any person or entity who fails to comply with the terms of this Order of the Secretary of State, having knowledge of the existence of this Order, shall be guilty of a Class 4 felony.

This is a final order to administrative review pursuant to the Administrative Review Law [735 ILCS 5/3-101 et seq.] and the Rules and Regulations of the Act (14 Ill. Admin. Code, Ch. I, Sec 130 1123) Any action for judicial review must be commenced within thirty-five (35) from the date a copy of this Order is served upon the party seeking review