

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

September 11, 1970
Real Estate Commission

Leo Carignan, Executive Secretary

Withdrawal Agreement – Multiple Listing Service

SYLLABUS:

A multiple listing service that offers to agree or does agree with an owner of real estate to list the owner's property for sale is acting as a real estate broker.

FACTS:

The A.B.C. Multiple Listing Service Inc., uses a withdrawal agreement that contains the following language:

“Subject Property:

Listing No.:

Owner:

The A.B.C. MULTIPLE LISTING SERVICE, INC. of Portland, Maine and _____ hereby agree to withdraw Real Estate listing No. _____ from their files and Service, remove any “for sale” signs and to consider the property off the market and not for sale as of _____

“In consideration of the above withdrawal and of the special sales effort on the part of the A.B.C. Multiple Listing Service, Inc. and by _____ do hereby agree to the following conditions:

“If the owners should reconsider and if the above named property should come back on the market and be for sale at any time during the next 6 months, the owners do agree to relist their property with the above named broker and A.B.C. Multiple Listing Service, Inc. at an agreed price, for a period of not less than 4 months and at a commission rate of _____ % of the selling price.

“The time of this agreement shall expire 19--.

Owner

Agent:

Approved by
(A.B.C.M.L.S.) Director”

ISSUE:

Is the A.B.C. Multiple Listing Service, Inc. acting as a real estate broker in offering to enter into or entering into the subject agreement?

ANSWER:

Yes.

REASON:

The Maine Real Estate Law defines a real estate broker as:

“ . . . any person, firm, partnership, association or corporation who for a compensation or valuable consideration sells or offers for sale, buys or offers to

buy, or negotiates the purchase or sale or exchange of real estate, . . . or offers to list for sale . . . any real estate . . . for others as a whole or partial vocation.” (Emphasis added.) 32 M.R.S.A. § 4001 (2).

The subject withdrawal agreement provides, in pertinent part that:

“If the owners should reconsider and if the above named property should come back on the market and be for sale at any time during the next 6 months, the owners do agree to relist their property with the above named broker and A.B.C.M.L.S., Inc. at an agreed price, for a period of not less than 4 months and at a commission rate of % of the selling price.”

The above language would appear to obligate the owner to relist his real property, as for sale, with both the broker and A.B.C.M.L.S. at a stated commission rate.

Since A.B.C.M.L.S. is party to an agreement wherein an owner of real estate purports to agree to list his property as for sale with A.B.C.M.L.S. for a commission, the listing service would be engaging in an activity which falls within the definition of a real estate broker, to wit:

“. . . [one] who for a compensation . . . offers to list for sale . . . any real estate . . . for others as a whole or partial vocation.” 32 M.R.S.A. § 4001 (2).

It should be noted that I offer no opinion as to the legal rights of the parties to the subject agreement but instead consider the language of the agreement for what it purports, on its face, to accomplish.

In conclusion, if the A.B.C.M.L.S. offers to or does enter into an agreement containing the language as noted earlier it would be acting as a real estate broker under 32 M.R.S.A. § 4001 (2) and as such would be required to comply with the licensing provisions of this State.

CLAYTON N. HOWARD
Assistant Attorney General

September 17, 1970
Labor and Industry

Joseph W. Emerson, Chief Inspector of Boilers

Boiler Regulation in a Commercial, Nuclear, Electric Power Plant in Maine

SYLLABUS:

Steam generators in a commercial electric plant, including a nuclear operated plant, located within this State, are under the control of the federal government (42 USC §§ 2021 (c), 2014 (cc) and 2133 and 2018) or the Maine Public Utilities Commission, 35 M.R.S.A. § 15, and 42 USC § 2021 (k).

FACTS:

A commercial, nuclear, electric power plant contains “steam generators,” which, by definition, are “boilers.” 26 M.R.S.A. § 173 empowers the Maine Board of Boiler Rules and Regulations to “formulate rules for the safe and proper construction, installation, repair, use and operation of steam boilers in this State.” On March 24, 1964, the Board adopted Section III (Nuclear Vessels) of the American Society of Mechanical Engineers Code, “insofar as this Section may apply to steam boilers or ‘steam generators’ in nuclear steam generating installations in this State.” 26 M.R.S.A. § 142 provides that “This