FILED

MAR -8 2013

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Order to Desist and Refrain of PACIFIC MORTGAGE RESOLUTIONS, INC., STALLION LENDING INC., BRABUS FINANCIAL CORPORATION, IRFAN NAZIR, KEVIN CHRISTOPHER VALLE. Respondents.	DRE No. H-38074 LA OAH No. 2012061041

DECISION

The Proposed Decision as to IRFAN NAZIR dated March 5, 2013, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on MAR 28 2013.

IT IS SO ORDERED March 8, 2013.

REAL ESTATE COMMISSIONER

WAYNE S. BELL

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Order to Desist and Refrain Against: PACIFIC MORTGAGE RESOLUTIONS, INC., STALLION LENDING, INC., BRABUS FINANCIAL CORPORATION, IFRAN NAZIR and KEVIN CHRISTOPHER VALLE, Respondents.	Case No. H-38074 LA OAH No. 2012061041

PROPOSED DECISION

This matter was heard by Michael A. Scarlett, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 5, 2012, in Los Angeles.

Lissete Garcia, Counsel, represented Barbara J. Bigby, Acting Real Estate Commissioner (Complainant), California Department of Real Estate (Department).

Peter Aziz, Attorney at Law, represented Respondent Ifran Nazir (Respondent) who was present at the hearing.

No appearance was made on behalf of Pacific Mortgage Resolutions, Inc., Stallion Lending, Inc., Brabus Financial Corporation, and Kevin Christopher, so these Respondents are deemed to be in default of these proceedings.[1]

Oral and documentary evidence was received and the matter was submitted for decision on July 5, 2012.

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[1] There were no Notices of Defense or Requests for Hearing filed on behalf of these Respondents. Consequently, the Department will sustain the Desist and Refrain Order against these Respondents pursuant to Government Code section 11520 without the necessity of a hearing.

FACTUAL FINDINGS

1. Complainant brought the Order to Desist and Refrain in her official capacity as the Acting Real Estate Commissioner. Respondent Ifran Nazir timely submitted a request for a hearing.

2. At no time has Pacific Mortgage Resolutions, Inc. (PMRI) been licensed in any capacity by the Department.

3. PMRI is a corporation formed in California. Respondent Ifran Nazir is currently President, Chief Executive Officer and a Director of PMRI.

4. On January 23, 2008, Stallion Lending, Inc. (Stallion) was issued corporation license number C/01839016. Respondent Nazir was designated officer at the time the corporation license was issued. On January 22, 2012, Stallion's corporation license expired and has not been renewed. Respondent Nazir's Designated Officer title also expired on that date.

5. On May 5, 2003, Brabus Financial Corporation (Brabus) was issued corporation license number C/01381155. Kevin Christopher Valle was the designated officer at the time the corporation license was issued. On May 26, 2009, Valle's designated officer title was cancelled. On May 4, 2011, Brabus's corporation license expired.

6. On October 31, 1998, Respondent Nazir was issued a real estate salesperson license. On June 26, 2002, Respondent Nazir was issued real estate broker license number B/01237704. Said broker license is in full force and effect and will expire on June 25, 2014, unless renewed.

7. At all times herein mentioned, in the State of California, Respondents Nazir, PMRI, Stallion, Brabus, and Valle using their own names or other fictitious business names, engaged in the business of a real estate broker conducting activities requiring a real estate license within the meaning of Business and Professions Code section 10131, subdivision (d), (solicit borrowers for or negotiate loans or perform services for borrowers in connection with loans secured by liens on real property.)

8. On March 9, 2009, Hector and Maria Feria met with Melissa Ham who worked for PMRI to discuss a loan modification on two properties the Ferias owned. Ham promised Hector Feria that she and Respondent Nazir would get a loan modification through "Countrywide" and "Indymac" that would reduce the principal on their two properties. On March 9, 2009, the Ferias signed a "Loan Modification Disclosure and Agreement" (Feria Modification Agreement) with Brabus Financial Corporation, who at the time had Kevin Valle as its designated officer. Hector Feria could not recall if Respondent Nazir was present when they signed the Feria Modification Agreement but recalls that Ham was present on behalf of PMRI and that he met with Ham and Respondent Nazir the same day they signed the Feria Modification Agreement. The Ferias paid PMRI $3,000, $1,500 for each property,

as a deposit for the two loan modifications. Ham told Hector Feria that Respondent Nazir would be handling their files and processing the loan modification. Hector Feria only met Respondent Nazir on one occasion but talked to him several times about the loan modification.

9. The Ferias were not aware that PMRI and Brabus were different entities. They believed that PMRI was going to process their loan modification even though the Feria Modification Agreement was between the Ferias and Brabus. The Ferias paid PMRI for the loan modification and PMRI processed the initial $1,500 deposit through the Ferias' bank account on March 30, 2009. The Ferias primarily dealt with Ham to process the paper work for the loan modification until they became concerned that PMRI was not making any progress on the modification application. Hector Feria contacted Ham and Respondent Nazir on multiple occasions to inquire about the status of the loan modification and got no definitive response. On April 16, 2009, Hector and Maria Feria contacted both Countrywide and Indymac to inquire about the status of their loan modification and was told by both banks that, although they had received initial inquiries about a modification from Brabus/Stallion Lending Inc. for the Ferias, there had not been a loan modification application submitted on behalf of the Ferias. Thereafter, the Ferias attempted to stop payment on the deposits paid to PMRI and demanded a refund of the $3,000 paid to PMRI. Ultimately, Hector Feria contacted Kevin Valle to complain that the loan modification had not been processed by PMRI, Respondent Nazir and Hall. Valle initially told the Ferias that there was nothing he could do and that Respondent Nazir was responsible. However later Valle refunded the Ferias the $3,000 deposit they initially paid to PMRI.

10. The Feria loan modification was never processed by Respondent Nazir and PMRI. At hearing, Respondent Nazir asserted that the $3,000 collected by PMRI from the Ferias was a fee for "forensic auditing" services performed by PMRI to determine whether the Ferias actually qualified for a loan modification, not a fee for the modification itself. According to Respondent Nazir, PMRI's role in the loan modification process was solely to review the applications of prospective candidates for loan modifications to determine whether they qualified for a modification. If the applicant qualified, they were referred to Brabus or Stallion to actually process the loan modification with the financial institutions. Respondent Nazir asserted that Brabus and Stallion would not collect the loan modification fee until the financial institutions had approved the loan modifications.

11. The Feria Modification Agreement contained a Paragraph 4, "Fees and Services," paragraph that indicated that $250 was for "program costs" to be paid "Brabus Financial Corporation" upon the execution of the completed loan modification or loan resolution. Paragraph 2 of the Feria Modification Agreement entitled "Performance of Services" provides that:

> Upon receipt of information from Client for Services as provided herein, Brabus Financial Corporation, shall promptly analyze Client's financial situation, and perform whatever research the Company determines in its sole discretion is necessary, reasonable or advisable,

> in the carrying out of its duties owed Client. Upon completion of the Company's analysis and research efforts, Brabus Financial Corporation, shall engage Client's lender to initiate a loan modification or other resolution on behalf of Client.

Paragraph 2 of the Feria Modification Agreement specifically states that Brabus was to perform the services that Respondent Nazir claimed that PMRI was paid $3,000 to perform.

12. Respondent Nazir's claim that PMRI performed a "forensic audit" for $3,000, and that the actual loan modification was processed by Brabus and/or Stallion for a fee of only $250 per property loan is simply not believable. Respondent Nazir and PMRI's practice of collecting $1,500 to $3,000 up front from loan modification applicants is merely a ploy or scheme to avoid complying with the Department's prohibition on collecting advance fees without first seeking permission from the Department and to cloak PMRI's unlawful activity in performing real estate loan modifications without having a corporate real estate license.

13. Hector Feria credibly testified that he was never told by Respondent Nazir or Melissa Ham that PMRI was only providing "forensic audit" services. He and his wife believed that they paid PMRI to perform the actual loan modification and that the $3,000 paid to PMRI was a deposit for applications for loan modifications on their two properties. The Ferias only dealt with Ham and Respondent Nazir in processing their loan modification applications and contacted Kevin Valle only after unsuccessfully attempting to get a refund of their deposits from Respondent Nazir and PMRI.

14. On April 27, 2009, Jesus Ponce, with the assistance of his daughter, Martha Ponce, signed a "Loan Modification Disclosure and Agreement" (Ponce Modification Agreement) with Brabus Financial Corporation, who at the time had Kevin Valle as its designated officer. The loan modification was for a real estate loan on a property located at 4868 Oregon Avenue, #4870, Long Beach, California 90805. The loan on the property was held by Citi Mortgage, Inc. Ponce was initially told about Respondent Nazir and his loan modification services by Arabelia Bustos, who told Ponce that she worked for Respondent Nazir and PMRI. Ponce worked with Bustos and Sharlene Knorr, who he also believed worked for Respondent Nazir and PMRI, to complete the Ponce Modification Agreement and the financial documents requested by Bustos to complete the loan modification application. On May 11, 2009, Jesus Ponce gave Bustos a check made out to PMRI for $2,500 to process a loan modification application for his home loan. The check was cashed by PMRI and Respondent Nazir.

15. Ponce never received a completed loan modification from his lender through PMRI or Respondent Nazir. Ponce testified that his lender, Citi Mortgage, Inc., told him that a loan modification application had never been submitted on his behalf by Respondent Nazir or PMRI. Ponce requested a refund of the $2,500 paid to PMRI and Respondent Nazir but did not receive a response to his request or a refund. Ponce believed that he was paying Respondent Nazir and PMRI the $2,500 for a loan modification on real property loan on his home. He was not aware that the money he paid was intended to pay for a "forensic audit"

provided by PMRI and Respondent Nazir. Ponce did not know what a "forensic audit" involved, or that it was different than the loan modification. Ponce was never advised by PMRI or Respondent Nazir how the $2,500 he paid was used. Ponce ultimately processed a loan modification for his home through another company.

16. The Ponce Loan Modification Agreement also contained the same Paragraphs 2 and 4 which were included in the Feria Loan Modification (Factual Finding 11) indicating the cost for the loan modification would be $250 and that Brabus Financial Corporation would "analyze Client's financial situation, and perform whatever research the company determines .... is necessary" to provide the loan modification. This language is inconsistent with Respondent Nazir's claim that PMRI was performing a "forsensic audit" to facilitate the loan modification that was to be ultimately provided by Brabus.

17. The evidence established that Respondent Nazir and PMRI were collecting advance fees for the processing of loan modifications on behalf of Hector and Maria Feria and Jesus Ponce. There is no credible evidence that the monies paid by the Ferias and Ponce were intended for forensic audits by PMRI. Both the Ferias and Ponce never heard the term "forensic audit" used when they applied for the loan modifications through PMRI and Respondent Nazir. They were never advised that the money they paid PMRI and Respondent Nazir was for any purpose other than the processing of their loan modification applications. There was also no evidence that any documents signed by the Ferias or Ponce referred to a "forensic audit" as the service to be provided by PMRI, Brabus, or Stallion.

18. Respondent Nazir, PMRI and/or Brabus Financial Corporation, failed to submit advance fee agreements and materials to the Department for approval prior to charging and collecting advance fees from any consumer as required by Business and Professions Code section 10085 and California Code of Regulations, title 10, section 2970.

19. PMRI also unlawfully engaged in activities requiring a real estate license without first obtaining a broker license from the Department, in violation of Business and Professions Code section 10130, when it accepted loan modification applications from Hector and Maria Ferias and Jesus Ponce and purported to process the loan modifications. Although the Feria and Ponce Loan Modification Agreements indicated that Brabus Financial Corporation was processing the loan modifications, the evidence showed that employees of PMRI and Respondent Nazir were the only persons processing the loan modifications and the funds paid by Feria and Ponce were paid to PMRI. PMRI did not possess a real estate broker license entitling it to engage in this activity.

LEGAL CONCLUSIONS

1. In this matter, the burden is on Complainant to establish cause to affirm the Order to Desist and Refrain by a preponderance of the evidence. (*Gardner v. Comm. on Prof. Comp.* (1985) 164 Cal.App.3d 1035, 1039-1040.)

2. Pursuant to section 10086, when "the commissioner determines through an investigation that a person has engaged or is engaging in an activity which is a violation of a provision [of the Real Estate Law], the commissioner may direct the person to desist and refrain from such activity by issuance of an order." By this statute, the Commissioner has jurisdiction to issue such an order against Respondents, even though they are not licensed by the Department. It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or real estate salesman within this state without first first obtaining a real estate license from the Department. (Bus. & Prof. Code § 10130.) A real estate broker "solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity." (Bus. & Prof. Code § 10131, subd. (d).) The commissioner may require that any or all materials used in obtaining advance fee agreements be submitted to him or her at least 10 days before they are used. (Bus. & Prof. Code § 10085.) An "advance fee" is a fee, regardless of form, claimed, demanded, charged, received, or collected by a licensee from a principal before fully completing each and every service the licensee contracted to perform, or represented would be performed. (Bus. & Prof. Code § 10026.)

3. It was established by a preponderance of the evidence that Respondent Nazir, through PMRI, have performed and/or participated in loan modification activities which required a license under the provisions of sections 10131, subdivision (d), during a period of time when PMRI was not licensed by the Department in any capacity, in violation of section 10130. Respondent Nazir, through PMRI, received advance fees for loan modifications from Hector and Maria Feria and Jesus Ponce. The checks for the loan modifications were made out to PMRI and cashed by PMRI. Melissa Ham, Sharlene Knorr, Arabelia Bustos, who all identified themselves as PMRI employees who worked for Respondent Nazir, accepted the loan modification applications from the Ferias and Ponce, explained the loan modification process to them, received the financial documents intended to support the loan modification applications, had the Ferias and Ponce sign a written loan modification agreement, and requested that they pay an advance fee for the loan modification. PMRI and Respondent Nazir accepted $3,000 in advance fees from the Ferias, and $2,500 in advance fees from Jesus Ponce. Thus, Respondent Nazir facilitated unlicensed loan modification activity by PMRI and accepted advance fees without first receiving approval from the Department to collect such fees. (Factual Findings 1-19.)

ORDER

The Order to Desist and Refrain issued against Respondent Ifran Nazir is affirmed.

Respondent Ifran Nazir whether doing business under his own name, or any other name, or any fictitious name, is ordered to:

1. Immediately desist and refrain from charging, demanding, claiming, collecting

and/or receiving advance fees, as that term is defined in Business and Professions Code section 10026, in any form, and under any conditions, with respect to the performance of loan modification or any other form of mortgage loan forbearance services in connection with loans on residential property containing four or fewer dwelling units (Business and Professions Code section 10085.6).

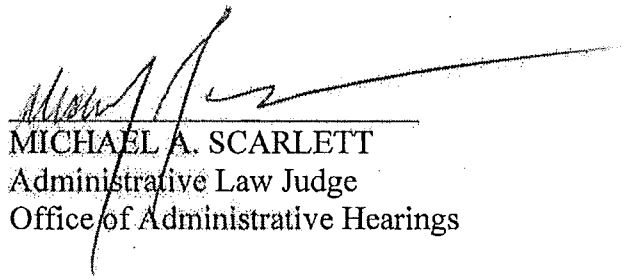
2. Immediately desist and refrain from charging, demanding, claiming, collecting and/or receiving advance fees, as that term is defined in Business and Professions Code section 10026, for any of the other real estate related services offered to others, unless and until Respondent Ifran Nazir demonstrates and provides evidence satisfactory to the Commissioner that he:

a. Has an advance fee agreement which has been submitted to the Department and which is in compliance with Business and Professions Code section 10085 and California Code of Regulations, title 10, section 2970;

b. Has placed all previously collected advance fees into a trust account for that purpose and is compliance with Business and Professions Code section 10146; and

c. Has provided an accounting to trust fund owner-beneficiaries from whom advance fees have previously been collected in compliance with Business and Professions Code section 10146 and California Code of Regulations, title 10, section 2972.

DATED: March 5, 2013



MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings

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FILED

APRIL 23, 2012

DEPARTMENT OF REAL ESTATE
BY: C.R

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

To:	No. H-38074 LA
PACIFIC MORTGAGE RESOLUTIONS, INC. STALLION LENDING, INC. BRABUS FINANCIAL CORPORATION, IRFAN NAZIR and KEVIN CHRISTOPHER VALLE.	ORDER TO DESIST AND REFRAIN (B&P Code Section 10086)

The Commissioner ("Commissioner") of the California Department of Real Estate ("Department") caused an investigation to be made of the activities of PACIFIC MORTGAGE RESOLUTIONS, INC., STALLION LENDING, INC., BRABUS FINANCIAL CORPORATION, IRFAN NAZIR and KEVIN CHRISTOPHER VALLE (collectively "Respondents"). Based on that investigation the Commissioner has determined that PACIFIC MORTGAGE RESOLUTIONS, INC., STALLION LENDING, INC., BRABUS FINANCIAL CORPORATION, IRFAN NAZIR and KEVIN CHRISTOPHER VALLE, have engaged in, are engaging in, acts or practices constituting violations of the California Business and Professions Code ("Code") and/or Title 10, Chapter 6, California Code of Regulations ("Regulations"), including acting in the capacity of, advertising or assuming to act as real estate brokers in the State of California within the meaning of Business and Professions Code Section 10131(d)

(solicit borrowers for or negotiate loans or perform services for borrowers in connection with loans secured by liens on real property). Furthermore, based on that investigation, the Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order under the authority of Section 10086 of the Code.

FINDINGS OF FACT

1. At no time mentioned herein has PACIFIC MORTGAGE RESOLUTIONS, INC. ("PMRI") ever been licensed by the Department in any capacity.

2. PMRI is a corporation formed in California. IRFAN NAZIR ("NAZIR") is currently President, Chief Executive Officer and a Director of PMRI. KEVIN CHRISTOPHER VALLE ("VALLE") was the former President, Chief Executive Officer and Director of PMRI.

3. From January 23, 2008, through the present, STALLION LENDING, INC. has been licensed as a real estate corporation acting by and through NAZIR as its designated broker-officer pursuant to Code Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

4. From May 5, 2003, through May 4, 2011, BRABUS FINANCIAL CORPORATION ("BRABUS") was licensed as a real estate corporation. From May 5, 2007, through May 26, 2009, BRABUS was acting by and through VALLE as its designated broker-officer pursuant to Code Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law. BRABUS' license expired on May 4, 2011. BRABUS has renewal rights under Code Section 10201. The Department retains jurisdiction pursuant Code Section 10103.

5. From June 26, 2002, through the present, NAZIR has been licensed as a real estate broker.

6. From November 16, 2002, through the present, VALLE has been licensed as a real estate broker.

7. At all times herein mentioned, in the State of California, Respondents, while using their own names or other fictitious business names, engaged in the business of a real estate broker conducting activities requiring a real estate license within the meaning of Code Section 10131(d) (solicit borrowers for or negotiate loans or perform services for borrowers in

connection with loans secured by liens on real property).

8. On or about March 30, 2009, Respondents charged and collected an advance fee of $1,500 from Hector and Maria F. for performing services including, without limitation, loan modification and negotiation services in connection with a loan secured by real property. Respondents failed to perform the loan modification and negotiation services that had been promised to Hector and Maria F.

9. On or about May 11, 2009, Respondents charged and collected an advance fee of $2,500 from Jesus P. for performing services including, without limitation, loan modification and negotiation services in connection with a loan secured by real property. Respondents failed to perform the loan modification and negotiation services that had been promised to Jesus P.

10. The advance fee materials and agreement used by Respondents had not been approved by the Department prior to use as is required under Code Section 10085 and Regulation 2970.

CONCLUSIONS OF LAW

11. Based on the information contained in Paragraphs 1 through 10, above, PMRI violated Code Section 10130 by engaging in activities requiring a real estate license without first obtaining a broker license from the Department.

12. Based on the information contained in Paragraphs 1 through 10, above, STALLION LENDING, INC., BRABUS, NAZIR and VALLE violated Code Sections 10085 of the Code and Regulation 2970 by failing to submit advance fee agreements and materials to the Department of Real Estate prior charging and collecting advance fees from any person.

DESIST AND REFRAIN ORDER

Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW stated herein, IT IS HEREBY ORDERED THAT PACIFIC MORTGAGE RESOLUTIONS, INC. immediately desist and refrain from: performing any acts within the State of California for which a real estate broker license is required, unless you are so licensed.

IT IS FURTHER ORDERED THAT STALLION LENDING, INC., BRABUS FINANCIAL CORPORATION, IRFAN NAZIR and KEVIN CHRISTOPHER VALLE, whether doing business under their own names or any other fictitious names, ARE HEREBY ORDERED TO:

1. Immediately desist and refrain from charging, demanding, claiming, collecting and/or receiving advance fees, as that term is defined in Code Section 10026, in any form, and under any conditions, with respect to the performance of loan modification or any other form of mortgage loan forbearance services in connection with loan on residential property containing four or fewer dwelling units (Code Section 10085.6).

2. Immediately desist and refrain from charging, demanding, claiming, collecting and/or receiving advance fees, as that term is defined in Code Section 10026, for any of the other real estate related services offered to others, unless and until STALLION LENDING, INC., BRABUS FINANCIAL CORPORATION, IRFAN NAZIR and KEVIN CHRISTOPHER VALLE, and each of them, demonstrate and provide evidence satisfactory to the Commissioner that each:

a. Has an advance fee agreement which has been submitted to the Department and which is in compliance with Code Section 10085 and Regulation 2970;

b. Has placed all previously collected advance fees into a trust account for that purpose and is in compliance with Code Section 10146; and

c. Has provided an accounting to trust fund owner-beneficiaries from whom advance fees have previously been collected in compliance with Code Section 10146 and Regulation 2972.

DATED: 3/12/12.

BARBARA J. BIGBY
Acting Real Estate Commissioner

Notice: Business and Professions Code Section 10139 provides that "Any person acting as a real estate broker or real estate salesperson without a license or who advertises using words indicating that he or she is a real estate broker without being so licensed shall be guilty of a public offense punishable by a fine not exceeding twenty thousand dollars ($20,000), or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars ($60,000)."

cc: Pacific Mortgage Resolutions, Inc./Irfan Nazir/Kevin Christopher Valle
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