

1 Department of Real Estate  
2 320 W. 4<sup>TH</sup> Street, Suite 350  
3 Los Angeles, CA 90013-1105

4 Telephone: (213) 576-6982

**FILED**

OCT 25 2011

DEPARTMENT OF REAL ESTATE  
BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11	In the Matter of the Accusation of	)	
		)	
12	UNITED CAPITAL MORTGAGE PLANNERS INC.;	)	No. H-37141 LA
	and JOSHUA LESLIE CHIRCHICK,	)	
13	as designated officer of	)	
	United Capital Mortgage Planners Inc.,	)	STIPULATION
14		)	AND
	Respondents.	)	AGREEMENT
15		)	
		)	

17 It is hereby stipulated by and between Respondents  
18 UNITED CAPITAL MORTGAGE PLANNERS INC. and JOSHUA LESLIE  
19 CHIRCHICK, as designated officer of United Capital Mortgage  
20 Planners Inc., (sometimes collectively referred to as  
21 "Respondents"), and the Complainant, acting by and through  
22 Elliott Mac Lennan, Counsel for the Department of Real Estate, as  
23 follows for the purpose of settling and disposing of the  
24 Accusation ("Accusation") filed on March 16, 2011, in this  
25 matter:

26 ///

1           1. All issues which were to be contested and all  
2 evidence which was to be presented by Complainant and Respondents  
3 at a formal hearing on the Accusation, which hearing was to be  
4 held in accordance with the provisions of the Administrative  
5 Procedure Act ("APA"), shall instead and in place thereof be  
6 submitted solely on the basis of the provisions of this  
7 Stipulation and Agreement ("Stipulation").

8           2. Respondents have received, read and understand the  
9 Statement to Respondent, the Discovery Provisions of the APA and  
10 the Accusation filed by the Department of Real Estate in this  
11 proceeding.

12           3. Respondents timely filed a Notice of Defense  
13 pursuant to Section 11506 of the Government Code for the purpose  
14 of requesting a hearing on the allegations in the Accusation.  
15 Respondents hereby freely and voluntarily withdraw said Notice of  
16 Defense. Respondents acknowledge that they understand that by  
17 withdrawing said Notice of Defense they thereby waive their right  
18 to require the Commissioner to prove the allegations in the  
19 Accusation at a contested hearing held in accordance with the  
20 provisions of the APA and that they will waive other rights  
21 afforded to them in connection with the hearing such as the right  
22 to present evidence in their defense and the right to cross-  
23 examine witnesses.

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1           4. This Stipulation is based on the factual  
2 allegations contained in the Accusation. In the interest of  
3 expedience and economy, Respondents choose not to contest these  
4 allegations, but to remain silent and understand that, as a  
5 result thereof, these factual allegations, without being admitted  
6 or denied, will serve as a prima facie basis for the disciplinary  
7 action stipulated to herein. The Real Estate Commissioner shall  
8 not be required to provide further evidence to prove said factual  
9 allegations.

10           5. This Stipulation is made for the purpose of  
11 reaching an agreed disposition of this proceeding and is  
12 expressly limited to this proceeding and any other proceeding or  
13 case in which the Department of Real Estate ("Department"), the  
14 state or federal government, or any agency of this state, another  
15 state or federal government is involved.

16           6. It is understood by the parties that the Real  
17 Estate Commissioner may adopt this Stipulation as his Decision in  
18 this matter thereby imposing the penalty and sanctions on  
19 Respondents' real estate licenses and license rights as set forth  
20 in the "Order" herein below. In the event that the Commissioner  
21 in his discretion does not adopt the Stipulation, it shall be  
22 void and of no effect and Respondents shall retain the right to a  
23 hearing and proceeding on the Accusation under the provisions of  
24 the APA and shall not be bound by any stipulation or waiver made  
25 herein.

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1           7. The Order or any subsequent Order of the Real  
2 Estate Commissioner made pursuant to this Stipulation shall not  
3 constitute an estoppel, merger or bar to any further  
4 administrative or civil proceedings by the Department of Real  
5 Estate with respect to any matters which were not specifically  
6 alleged to be causes for Accusation in this proceeding but do  
7 constitute a bar, estoppel and merger as to any allegations  
8 actually contained in the Accusations against Respondent herein.

9           8. Respondents understand that by agreeing to this  
10 Stipulation, Respondents agree to pay, pursuant to Business and  
11 Professions Code Section 10148, the cost of the audit. The  
12 amount of said cost for the audit is \$2,427.50.

13           9. Respondents have received, read, and understand the  
14 "Notice Concerning Costs of Subsequent Audit". Respondents  
15 further understand that by agreeing to this Stipulation, the  
16 findings set forth below in the Determination of Issues become  
17 final, and the Commissioner may charge Respondents for the cost  
18 of any subsequent audit conducted pursuant to Business and  
19 Professions Code Section 10148 to determine if the violations  
20 have been corrected. The maximum cost of the subsequent audit  
21 will not exceed \$2,427.50.

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1 DETERMINATION OF ISSUES

2 By reason of the foregoing, it is stipulated and agreed  
3 that the following determination of issues shall be made:

4 I.

5 The conduct, acts or omissions of UNITED CAPITAL  
6 MORTGAGE PLANNERS INC. and JOSHUA LESLIE CHIRCHICK, as described  
7 in Paragraph 4, above, are in violation of Sections 10085, 10137,  
8 10145, 10146 and 10240 and of the Business and Professions Code  
9 ("Code") and Sections 2840, 2970 and 2972 of Title 10, Chapter 6  
10 of the California Code of Regulations ("Regulations") and is a  
11 basis for discipline of Respondents' license and license rights  
12 as violation of the Real Estate Law pursuant to Code Sections  
13 10177(d) and 10177(g).

14 II.

15 The conduct, acts or omissions of JOSHUA LESLIE  
16 CHIRCHICK, as described in Paragraph 4, above, are in violation  
17 of Code Section 10159.2 and is a basis for discipline of  
18 Respondent's license and license rights as violation of the Real  
19 Estate Law pursuant to Code Section 10177(h), 10177(g) and  
20 10177(d).

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

The real estate broker license and license rights of Respondent UNITED CAPITAL MORTGAGE PLANNERS INC. under the Real Estate Law are revoked.

II.

The real estate broker license of Respondent JOSHUA LESLIE CHIRCHICK under the Real Estate Law is revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent, pursuant to Section 10156.5 of the Business and Professions Code, if Respondent:

A. Makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision.

B. Respondent shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the

1 effective date of the Decision in this matter.

2 The restricted license issued to Respondent shall be  
3 subject to all of the provisions of Section 10156.7 of the Code  
4 and the following limitations, conditions and restrictions  
5 imposed under authority of Section 10156.6 of that Code.

6 1. The restricted license issued to Respondent may be  
7 suspended prior to hearing by Order of the Real Estate  
8 Commissioner in the event of Respondent's conviction or plea of  
9 nolo contendere to a crime which is substantially related to  
10 Respondent's fitness or capacity as a real estate licensee.

11 2. The restricted license issued to Respondent may be  
12 suspended prior to hearing by Order of the Real Estate  
13 Commissioner on evidence satisfactory to the Commissioner that  
14 Respondent has violated provisions of the California Real Estate  
15 Law, the Subdivided Lands Law, Regulations of the Real Estate  
16 Commissioner or conditions attaching to the restricted license.

17 3. Respondent shall not be eligible to apply for the  
18 issuance of an unrestricted real estate license nor for the  
19 removal of any of the conditions, limitations or restrictions of  
20 a restricted license until two (2) years has elapsed from the  
21 effective date of the issuance of the restricted license.

22 4. Respondent shall submit with any application for  
23 license under an employing broker, or any application for  
24 transfer to a new employing broker, a statement signed by the  
25 prospective employing real estate broker on a form approved by  
26  
27

1 the Department of Real Estate which shall certify:

2 (a) That the employing broker has read the  
3 Decision of the Commissioner which granted  
4 the right to a restricted license; and

5 (b) That the employing broker will exercise  
6 close supervision over the performance by the  
7 restricted licensee relating to activities  
8 for which a real estate license is required.

9  
10 5. Respondent JOSHUA LESLIE CHIRCHICK shall, within  
11 nine (9) months from the effective date of this Decision, present  
12 evidence satisfactory to the Real Estate Commissioner that  
13 Respondent has, since the most recent issuance of an original or  
14 renewal real estate license, taken and successfully completed the  
15 continuing education requirements of Article 2.5 of Chapter 3 of  
16 the Real Estate Law for renewal of a real estate license. If  
17 Respondent fails to satisfy this condition, the Commissioner may  
18 order the suspension of the restricted license until Respondent  
19 presents such evidence. The Commissioner shall afford Respondent  
20 the opportunity for a hearing pursuant to the Administrative  
21 Procedure Act to present such evidence.

22 6. Respondent JOSHUA LESLIE CHIRCHICK shall within six  
23 (6) months from the effective date of the Decision herein, take  
24 and pass the Professional Responsibility Examination administered  
25 by the Department including the payment of the appropriate  
26 examination fee. If Respondent fails to satisfy this condition,  
27 the Commissioner may order suspension of Respondent's license



1 until Respondent passes the examination.

2 III.

3 Pursuant to Section 10148 of the Business and  
4 Professions Code, Respondents UNITED CAPITAL MORTGAGE PLANNERS  
5 INC. and JOSHUA LESLIE CHIRCHICK shall pay the Commissioner's  
6 reasonable cost for (a) the audit which led to this disciplinary  
7 action and (b) a subsequent audit to determine if Respondents are  
8 now in compliance with the Real Estate Law. The cost of the  
9 audit which led to this disciplinary action is 2,427.50. In  
10 calculating the amount of the Commissioner's reasonable cost, the  
11 Commissioner may use the estimated average hourly salary for all  
12 persons performing audits of real estate brokers, and shall  
13 include an allocation for travel time to and from the auditor's  
14 place of work. Said amount for the prior and subsequent audits  
15 shall not exceed \$4,855.00. Respondents shall pay such cost  
16 within 60 days of receiving an invoice from the Commissioner  
17 detailing the activities performed during the audit and the  
18 amount of time spent performing those activities.

19 The Commissioner may suspend the license of Respondents  
20 pending a hearing held in accordance with Section 11500, et seq.,  
21 of the Government Code, if payment is not timely made as provided  
22 for herein, or as provided for in a subsequent agreement between  
23 the Respondent and the Commissioner. The suspension shall remain  
24 in effect until payment is made in full or until Respondents  
25 enter into an agreement satisfactory to the Commissioner to  
26 provide for payment, or until a decision providing otherwise is  
27 adopted following a hearing held pursuant to this condition.

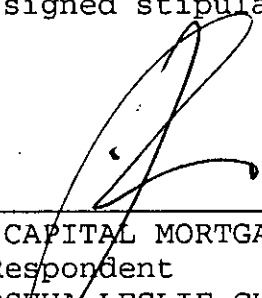


1 MAILING AND FACSIMILE

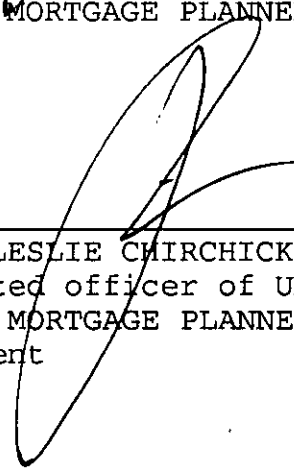
2 Respondents (1) shall mail the original signed  
3 signature page of the stipulation herein to Elliott Mac Lennan:  
4 Attention: Legal Section, Department of Real Estate, 320 W.  
5 Fourth St., Suite 350, Los Angeles, California 90013-1105.  
6 Respondents shall also (2) facsimile a copy of signed signature  
7 page, to the Department at the following telephone/fax number:  
8 (213) 576-6917, Attention: Elliott Mac Lennan.

9 A facsimile constitutes acceptance and approval of the  
10 terms and conditions of this stipulation. Respondents agree,  
11 acknowledge and understand that by electronically sending to the  
12 Department a facsimile copy of Respondents' actual signature as  
13 it appears on the stipulation that receipt of the facsimile copy  
14 by the Department shall be as binding on Respondents as if the  
15 Department had received the original signed stipulation.

16  
17  
18 DATED: 8/8/2011

  
UNITED CAPITAL MORTGAGE PLANNERS  
INC., Respondent  
By: JOSHUA LESLIE CHIRCHICK, as  
designated officer of UNITED  
CAPITAL MORTGAGE PLANNERS INC.

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24 DATED: 8/8/2011

  
JOSHUA LESLIE CHIRCHICK, as  
designated officer of UNITED  
CAPITAL MORTGAGE PLANNERS INC.  
Respondent

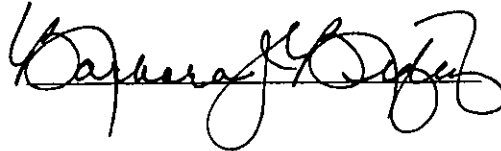
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The foregoing Stipulation and Agreement is hereby  
adopted as my Decision as to Respondents UNITED CAPITAL MORTGAGE  
PLANNERS INC. and JOSHUA LESLIE CHIRCHICK and shall become  
effective at 12 o'clock noon on November 23, 2011.

IT IS SO ORDERED 9/28, 2011.

BARBARA J. BIGBY  
Acting Real Estate Commissioner



Sack

**FILED**

MAR 16 2011

DEPARTMENT OF REAL ESTATE  
BY: \_\_\_\_\_

1 ELLIOTT MAC LENNAN, SBN 66674  
2 Department of Real Estate  
3 320 West 4th Street, Ste. 350  
4 Los Angeles, California 90013-1105  
5  
6  
7  
8 Telephone: (213) 576-6911 (direct)  
9 -or- (213) 576-6982 (office)  
10

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

11 In the Matter of the Accusation of	)	No. H- 37141 LA
12 UNITED CAPITAL MORTGAGE PLANNERS INC.;	)	<u>A C C U S A T I O N</u>
13 and JOSHUA LESLIE CHIRCHICK,	)	
14 as designated officer of	)	
United Capital Mortgage Planners Inc.,	)	
15 Respondents.	)	

16  
17 The Complainant, Maria Suarez, a Deputy Real Estate  
18 Commissioner of the State of California, for cause of Accusation  
19 against UNITED CAPITAL MORTGAGE PLANNERS INC. and JOSHUA LESLIE  
20 CHIRCHICK, as designated officer of United Capital Mortgage  
21 Planners Inc., alleges as follows:

22 1.

23 The Complainant, Maria Suarez, acting in her official  
24 capacity as a Deputy Real Estate Commissioner of the State of  
25 California, makes this Accusation.

26 ///

1 2.

2 All references to the "Code" are to the California  
3 Business and Professions Code and all references to "Regulations"  
4 are to Title 10, Chapter 6, California Code of Regulations.

5 License Status

6 3.

7 A. At all times mentioned, UCMPI was licensed or had  
8 license rights issued by the Department of Real Estate  
9 (Department) as a corporate real estate broker by and through  
10 real estate broker JOSHUA LESLIE CHIRCHICK (CHIRCHICK). UCMPI  
11 was originally licensed as a corporate real estate broker on  
12 September 15, 2006, by and through CHIRCHICK as designated  
13 officer. CHIRCHICK was licensed as a real estate broker on  
14 August 14, 2006 and has been the designated officer of UCMPI  
15 since its inception. On September 15, 2010, UCMPI's corporate  
16 broker license expired.

17 B. MACH Mortgage Consulting Inc. aka MACH Mortgage  
18 Consulting LLC (MACH) is an unlicensed Limited Liability Company  
19 owned and operated by real estate broker Michael Donald Maher.  
20 United Capital Mortgage Planners was MACH's fictitious name since  
21 October 5, 2005. At different time CHIRCHICK and Michael Donald  
22 Maher have shared ownership of MACH and UCMPI.

23 C. Michael Spencer Borghetti (Borghetti) was  
24 originally licensed on September 20, 2006 as a conditional real  
25 estate salesperson. On May 14, 2008, Borghetti was licensed as a  
26 salesperson. On September 20, 2010, said license expired.

27

1 Borghetti retains a right to renew his salesperson license within  
2 two years of expiration pursuant to Code Section 10201.

3 D. Tod Noelete is not now nor has ever been licensed  
4 by the Department.

5 Brokerage

6 4.

7 At all times mentioned, in the Encino, County of Los  
8 Angeles, Respondents UCMPI and CHIRCHICK engaged in the business  
9 of real estate brokers conducting licensed activities within the  
10 meaning of:

11 A. Code Section 10131(d). Respondents engaged in  
12 activities with the public wherein lenders and borrowers were  
13 solicited for loans secured directly or collaterally by liens on  
14 real property, wherein such loans were arranged, negotiated,  
15 processed and consummated on behalf of others for compensation or  
16 in expectation of compensation and for fees often collected in  
17 advance.

18 B. Code Section 10131(d) and 10131.2. Respondents  
19 advertised, solicited and offered to provide loan modification  
20 services to economically distressed homeowners seeking  
21 adjustments to the terms and conditions of their home loans  
22 including, but not limited to, repayment plans, forbearance  
23 plans, partial claims, and reduction in principal or interest,  
24 extenuations, foreclosure prevention and short sales.

25 C. UCMPI primarily involved in originating and  
26 brokering mortgage loans to various financial institutions for  
27 compensation during the audit period. UCMPI closed approximately

1 twenty-eight (28) mortgage loans, totaling \$10,976,000 during the  
2 last twelve months.

3 D. In addition to brokering mortgage loans, UCMPI also  
4 handled twenty-one (21) loan modifications through MACH  
5 collecting approximately \$51,500.00 in fees.

6 FIRST CAUSE OF ACTION  
7 (Audit Examination)

8 5.

9 On April 8, 2010, the Department completed an audit  
10 examination of the books and records of UCMPI pertaining to the  
11 mortgage loan brokerage and the loan modification activities  
12 described in Paragraph 4, above, which require a real estate  
13 license. The audit examination covered a period of time  
14 beginning on November 1, 2006 to December 31, 2009. The audit  
15 examination revealed violations of the Code and the Regulations  
16 as set forth in the following paragraphs, and more fully  
17 discussed in Audit Report LA 090133 and the exhibits and work  
18 papers attached to said audit report.

19 Bank and Trust Accounts

20 6.

21 At all times mentioned, in connection with the  
22 activities described in Paragraph 4, above, UCMPI accepted or  
23 received funds including funds in trust (hereinafter "trust  
24 funds") from or on behalf of actual or prospective parties,  
25 including economically distressed homeowner-borrowers for advance  
26 fees and loan modifications handled by UCMPI and for mortgage  
27 loans. Thereafter UCMPI made deposits and or disbursements of



1 such trust funds. From time to time herein mentioned during the  
2 audit period, said trust funds were deposited and/or maintained  
3 by UCMPI in these bank accounts as UCMPI did not maintain a trust  
4 account during the audit period:

5  
6 "MACH Mortgage Consulting LLC  
7 Account No. xxxxxxxx9305  
8 Union Bank of California  
9 Encino, California

10  
11 (B/A #1 - UCMPI's general business account used for deposit of  
12 advance fees collected from homeowners for loan modifications)

13  
14 Violations of the Real Estate Law

15 7.

16 In the course of activities described in Paragraphs 4  
17 and 6, above, and during the examination period described in  
18 Paragraph 5, Respondents UCMPI and CHIRCHICK, acted in violation  
19 of the Code and the Regulations in that Respondents:

20 (a) (1) Mixed and commingled trust funds with UCMPI's  
21 general funds by depositing trust funds in the form of collected  
22 advance fees solicited from homeowner-borrowers for loan  
23 modification services into B/A #1, the general business bank  
24 account into in violation of Code Sections 10145, 10176(e) and  
25 Regulation 2832; and

26 (a) (2) Failed to advance fees collected by UCMPI/MACH  
27 for loan modification activities from borrowers into a trust  
account in the name of the broker as trustee at a bank or other  
financial institution, in violation of Code Section 10145 of the

1 Code and Regulations 2832(a). Advance fees were deposited into  
2 UCMPI's general business account.

3 (b) Failed to establish and maintain a trust account at  
4 a bank or other recognized financial institution in the name of  
5 the broker for deposit of advance fees collected by UCMPI/MACH  
6 for loan modification activities, in violation of Code Section  
7 10146.

8 (c) Collected advance fees within the meaning of Code  
9 Section 10026 from homeowner-borrowers seeking loan modification  
10 services wherein UCMPI failed to provide homeowner-borrowers, a  
11 pre-approved advance fee agreement from the Department, in  
12 violation of Code Section 10085 and Regulation 2970.

13 (d) With reference to the lack of an advance fee  
14 agreement, UCMPI and CHIRCHICK, failed to provide a complete  
15 description of services to be rendered provided to each  
16 homeowner-borrower in 10 point type font and, an allocation and  
17 disbursement of the amount collected as the advance fee for each  
18 loan modification, in violation of Code Section 10146 and  
19 Regulation 2972.

20 (e) (1) Failed to retain a true and complete copy of a  
21 Department of Real Estate approved Mortgage Loan Disclosure  
22 Statement signed by the broker for borrowers, in violation of  
23 Code Sections 10240 and 10241 and Regulation 2840;

24 (e) (2) Failed to disclose the yield spread premium or  
25 rebate on the Puffer and Serlin loan transactions, in violation  
26 of Code Section 10240 and Regulation 2840;

27 ///

1 (f) Failed to display the Department's license number  
2 on the Puffer and Serlin Mortgage Loan Disclosure Statements, in  
3 violation of Code Section 10236.4.

4 (g) Charged borrowers credit report fees in excess of  
5 the amount billed by the credit reporting company for borrowers,  
6 Reed, Cervantes, Xaverius and Gonzalez, in violation of Code  
7 Section 10176(g). On February 5, 2010, CHIRCHICK refunded the  
8 aforesaid borrowers.

9 (h) Used the fictitious name of " MACH Mortgage  
10 Consulting, LLC", "MACH", United Capital Mtg Planners" and  
11 "United Cap mtg Pinnrs"(sic), to conduct licensed activities  
12 including a loan modification and advanced fee brokerage and  
13 mortgage loan brokerage services, without first obtaining from  
14 the Department a license bearing said fictitious business name,  
15 in violation of Code Section 10159.5 and Regulation 2731.  
16

17 Disciplinary Statutes

18 8.

19 The conduct of Respondents UCMPI and CHIRCHICK  
20 described in Paragraph 7, above, violated the Code and the  
21 Regulations as set forth below:

22 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
23	
24 7(a)	Code Sections 10145 and 10176(e) 25 and Regulation 2832
26	
27 7(b)	Code Section 10146

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7(c)

Code Section 10085 and Regulation  
2970

7(d)

Code Section 10146 and Regulation  
2972

7(e)

Code Sections 10240 and 10241 and  
Regulation 2840

7(f)

Code Section 10236.4

7(g)

Code Section 10176(g)

7(h)

Code Section 10159.5 and Regulation  
2731

The foregoing violations constitutes cause for discipline of the  
real estate license and license rights of UCMPI and CHIRCHICK, as  
aforesaid, under the provisions of Code Sections 10176(e) for  
commingling for undisclosed compensation 10176(g), 10177(d) for  
violation of the Real Estate Law and/or 10177(g) for negligence.

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SECOND CAUSE OF ACCUSATION  
(Loan Modification Services)

9.

At all times mentioned herein, Respondents UCMPI and CHIRCHICK engaged in the business of a loan modification and advance fee brokerage, within the definition of Code Sections 10131(d) and 10131.2.

General Allegations

10.

During 2008 and continuing thereafter to date, UCMPI and CHIRCHICK, dba MACH Mortgage Consulting LLC, solicited economically distressed homeowners facing foreclosure and eviction from their homes, offered loan modification services, charged and collected advance fees.

Specific Allegations

11.

Through MACH Mortgage Consulting LLC, Respondents UCMPI and CHIRCHICK offered loss mitigation and loan modification services to homeowner-borrowers seeking downward adjustments or payment extenuations to their home mortgages. Respondents collected advanced fees from said homeowner-borrowers without possessing a pre-approved advance fee agreement from the Department. Thereafter, Respondents failed to obtain the loan modification or to provide the services contracted for and paid for in advance, or to refund the advance fees paid by the borrowers tabled below:

Table: Loan Modification Services

Homeowner	Date	Status	Advance Fee
Auturo Pedro Jr.	October 07, 2008	Not obtained	\$3,995
Francisco Nuno	November 11, 2008	Not obtained	\$2,245
Ramon/Laura Rodriguez	January 9, 2009	Not obtained	\$3,000
Daniel Murillo	January 19, 2009	Not obtained	\$2,995
Total			\$12,235

Loan Modification Violations and Disciplinary Statutes

12.

The conduct of Respondents UCMPI and CHIRCHICK violated the Code and the Regulations as set forth below with respect to the tabled homeowner-borrowers:

13.

13(a) Code Section 10176(a) for substantial misrepresentation.

13(b) Code Section 10176(b) for making false promises of a character likely to influence, persuade or induce the aforesaid homeowner-borrowers.

13(c) Code Section 10177(d) for violation of the Real Estate Law.

13(d) Code Section 10137 for employing and/or compensating unlicensed loss mitigation agents Tod Noelete (Arturo Pedro Jr.) and/or licensed real estate salespersons that were non broker affiliated including, but not limited to Michael Spencer, Borghetti (Ramon Rodriguez and Daniel Murillo).

13(e) Code Section 10177(g) for negligence.

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Negligence

14.

The overall conduct of Respondents UCMPI and CHIRCHICK constitutes negligence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of Respondents pursuant to Code Section 10177(g).

Breach of Fiduciary Duty

15.

The overall conduct of Respondents UCMPI and CHIRCHICK constitutes a breach of fiduciary duty. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of said Respondents pursuant to the provisions of Code Sections 10176(i) and/or 10177(g).

THIRD CAUSE OF ACCUSATION  
(Failure to Supervise)

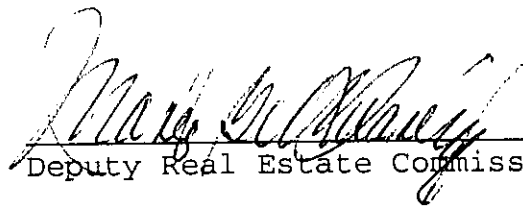
16.

The overall conduct of Respondent CHIRCHICK constitutes a failure on Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of UCMPI, as required by Code Sections 10159.2 and 10211, and to keep UCMPI in compliance with the Real Estate Law, with specific regard to loan modifications services and advance fee handling, requiring a real estate license and is cause for the suspension or revocation of the real estate license and license rights of UCMPI and CHIRCHICK pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of Respondents UNITED CAPITAL MORTGAGE PLANNERS INC. and JOSHUA LESLIE CHIRCHICK, under the Real Estate Law (Part 1 of vision 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law including restitution of advanced fees paid for unearned loan modifications, and for costs of audit.

Dated at Los Angeles, California

this 9 March 2011.   
Deputy Real Estate Commissioner

cc: United Capital Mortgage Planners Inc.  
c/o Joshua Leslie Chirchick D.O.  
Maria Suarez  
Sacto  
Audits - Manijeh Khazrai