


FILED

JAN -4 2012

DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	H-37485 LA
MORTGAGE RESTRUCTURING SOLUTIONS INC.)	
and <u>HARVEY E. GARTE</u> , individually and as)	
designated officer of Mortgage Restructuring Solutions Inc.;)	
)	
Respondents.)	
)	
)	
)	
)	

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On August 29, 2011, an Accusation was filed in this matter against Respondent HARVEY E. GARTE.

On December 7, 2011, Respondent petitioned the Commissioner to voluntarily surrender his real estate broker license rights pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent HARVEY E. GARTE's petition for voluntary surrender of his real estate broker license rights is accepted as of the effective date of

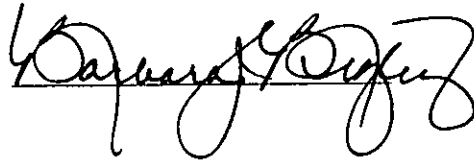
1 this Order as set forth below, based upon the understanding and agreement expressed in
2 Respondent's Declaration dated December 7, 2011, (attached as Exhibit "A" hereto).
3 Respondent's license certificate, pocket card and any branch office license certificate shall be sent
4 to the below listed address so that they reach the Department on or before the effective date of this
5 Order:

6
7 Department of Real Estate
8 Atten: Licensing Flag Section
9 P.O. Box 187000
10 Sacramento, CA 95818-7000

11 This Order shall become effective at 12 o'clock noon on JANUARY 24, 2012.

12 DATED: 12/21, 2011

13 BARBARA J. BIGBY
14 Acting Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
MORTGAGE RESTRUCTURING SOLUTIONS INC.)
and HARVEY E. GARTE, individually and as)
designated officer of Mortgage Restructuring Solutions Inc.;)
Respondents.)

No. H-37485 LA

DECLARATION

My name is HARVEY E. GARTE and I am currently licensed as a real estate broker and/or have license rights with respect to said license. I am represented by Frank M. Buda, Esq., Attorney at Law, in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code), I wish to voluntarily surrender my real estate license rights issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

///

1 I understand that by so voluntarily surrendering my license rights, I may be
2 relicensed as a broker or as a salesperson by petitioning for reinstatement pursuant to Section
3 11522 of the Government Code. I also understand that by so voluntarily surrendering my
4 license(s), I agree to the following:
5

6 1. The filing of this Declaration shall be deemed as my petition for voluntary
7 surrender.

8 2. It shall also be deemed to be an understanding and agreement by me that I
9 waive all rights I have to require the Commissioner to prove the allegations contained in the
10 Accusation ("Accusation") filed in this matter at a hearing held in accordance with the
11 provisions of the Administrative Procedure Act (Government Code Sections 11400 et seq.), and
12 that I also waive other rights afforded to me in connection with the hearing such as the right to
13 discovery, the right to present evidence in defense of the allegations in the Accusation and the
14 right to cross-examine witnesses.
15

16 3. I further agree that upon acceptance by the Commissioner, as evidenced by an
17 appropriate order, all affidavits and all relevant evidence obtained by the Department in this
18 matter prior to the Commissioner's acceptance, and all allegations contained in the Accusation
19 filed in the Department Case No. H-37485 LA, with respect to me may be considered by the
20 Department to be true and correct for the purpose of deciding whether to grant relicensure or
21 reinstatement pursuant to Government Code Section 11522.
22

23 4. I further agree on behalf of MORTGAGE RESTRUCTURING SOLUTIONS
24 INC. to pay the Commissioner's reasonable cost for the audit which led to this action. In
25 calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
26
27

1 estimated average hourly salary for all persons performing audits of real estate brokers, and
2 shall include an allocation for travel time to and from the auditor's place of work. I will pay
3 such cost within 60 days of receiving an invoice from the Commissioner detailing the activities
4 performed during the audit and the amount of time spent performing those activities.

5 I am aware that if I petition for reinstatement in the future, that payment of the
6 audit costs will be a condition of reinstatement.

7
8 5. This Declaration is not an admission by HARVEY E. GARTE as to the
9 allegations in the Accusation. This Declaration is made for the purpose of reaching a resolution
10 of allegations contained in the DRE Case number H-37485 LA, and is expressly limited to this
11 proceeding and any other proceeding or case in which the Department of Real Estate is a party
12 and shall not otherwise be admissible or relied upon by any third parties for any purpose.

13
14 6. I freely and voluntarily surrender all my licenses and license rights under the
15 Real Estate Law.

16 I declare under penalty of perjury under the laws of the State of California that
17 the above is true and correct and that this declaration was executed on December 7th,
18 2011, at Santa Ana California.

19
20
21 
22 HARVEY E. GARTE

Lat

FILED

JAN -4 2012

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
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MORTGAGE RESTRUCTURING SOLUTIONS INC.)
and HARVEY E. GARTE, individually and as)
designated officer of Mortgage Restructuring Solutions Inc.;)
)
Respondents.)
)
)
)
)
)

No. H-37485 LA

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On August 29, 2011, an Accusation was filed in this matter against Respondent
MORTGAGE RESTRUCTURING SOLUTIONS INC.

On December 7, 2011, Respondent petitioned the Commissioner to voluntarily
surrender its real estate broker license rights pursuant to Section 10100.2 of the Business and
Professions Code.

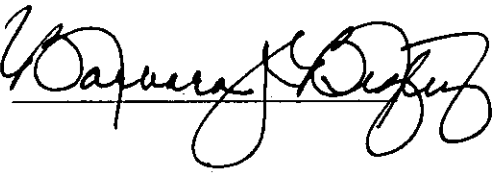
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IT IS HEREBY ORDERED that MORTGAGE RESTRUCTURING SOLUTIONS INC.'s petition for voluntary surrender of its real estate broker license and/or license rights are accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in Respondent's Declaration dated December 7, 2011. Respondents' license certificate, pocket card and any branch office license certificate shall be sent to the below listed address so that they reach the Department on or before the effective date of this Order:

Department of Real Estate
Atten: Licensing Flag Section
P.O. Box 187000
Sacramento, CA 95818-7000

This Order shall become effective at 12 o'clock noon on
January 24, 2012.

DATED: 12/21, 2011

BARBARA J. BIGBY
Acting Real Estate Commissioner


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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
MORTGAGE RESTRUCTURING SOLUTIONS INC.)
and HARVEY E. GARTE, individually and as)
designated officer of Mortgage Restructuring Solutions Inc.;)
)
Respondents.)
)
)
)
)
)

No. H-37485 LA

DECLARATION

My name is HARVEY E. GARTE and I am the designated officer of
MORTGAGE RESTRUCTURING SOLUTIONS INC. which is licensed as a real estate broker
and/or has license rights with respect to said licenses. I am acting on behalf of and am
authorized and empowered to sign this declaration on behalf of MORTGAGE
RESTRUCTURING SOLUTIONS INC. MORTGAGE RESTRUCTURING SOLUTIONS
INC. is represented in this matter by Frank M. Buda, Esq.

///

1 In lieu of proceeding in this matter in accordance with the provisions of the
2 Administrative Procedures Act (Sections 11400 et seq., of the Government Code)
3 MORTGAGE RESTRUCTURING SOLUTIONS INC. wishes to voluntarily surrender its real
4 estate license issued by the Department of Real Estate ("Department"), pursuant to Business
5 and Professions Code Section 10100.2.

6 I understand that MORTGAGE RESTRUCTURING SOLUTIONS INC., by so
7 voluntarily surrendering its license, can only have it reinstated in accordance with the
8 provisions of Section 11522 of the Government Code. I also understand that by so voluntarily
9 surrendering its license rights, MORTGAGE RESTRUCTURING SOLUTIONS INC. agrees to
10 the following:

11 The filing of this Declaration shall be deemed as MORTGAGE
12 RESTRUCTURING SOLUTIONS INC.'s petition for voluntary surrender. It shall also be
13 deemed to be an understanding and agreement by MORTGAGE RESTRUCTURING
14 SOLUTIONS INC. that, it waives all rights it has to require the Commissioner to prove the
15 allegations contained in the Accusation ("Accusation") filed in this matter at a hearing held in
16 accordance with the provisions of the Administrative Procedures Act (Government Code
17 Sections 11400 et seq.), and that it also waives other rights afforded to it in connection with the
18 hearing such as the right to discovery, the right to present evidence in defense of the allegations
19 in the Accusation and the right to cross examine witnesses.

20 I further agree on behalf of MORTGAGE RESTRUCTURING SOLUTIONS
21 INC. that upon acceptance by the Commissioner, as evidenced by an appropriate order, all
22 affidavits and all relevant evidence obtained by the Department in this matter prior to the
23 Commissioner's acceptance, and all allegations contained in the Accusation filed in the
24 Department Case No. H-37485 LA, may be considered by the Department to be true and correct
25 for the purpose of deciding whether or not to grant reinstatement of MORTGAGE
26 RESTRUCTURING SOLUTIONS INC.'s license pursuant to Government Code Section
27 11522.

1 This Declaration is not an admission by MORTGAGE RESTRUCTURING
2 SOLUTIONS INC. as to the allegations in the Accusation. This Declaration is made for the
3 purpose of reaching a resolution of allegations contained in the DRE Case number H-37485
4 LA, and is expressly limited to this proceeding and any other proceeding or case in which the
5 Department of Real Estate is a party and shall not otherwise be admissible or relied upon by any
6 third parties for any purpose.
7

8 I further agree on behalf of MORTGAGE RESTRUCTURING SOLUTIONS
9 INC. to pay the Commissioner's reasonable cost for the audit which led to this action. In
10 calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
11 estimated average hourly salary for all persons performing audits of real estate brokers, and
12 shall include an allocation for travel time to and from the auditor's place of work.
13 MORTGAGE RESTRUCTURING SOLUTIONS INC. will pay such cost within 60 days of
14 receiving an invoice from the Commissioner detailing the activities performed during the audit
15 and the amount of time spent performing those activities.
16
17

18 I am aware that if MORTGAGE RESTRUCTURING SOLUTIONS INC.
19 petitions for reinstatement in the future, that payment of the audit costs will be a condition of
20 reinstatement.
21

22 ///

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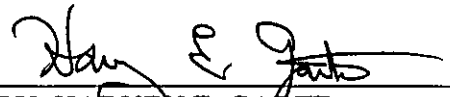
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I declare under penalty of perjury under the laws of the State of California that
the above is true and correct and that I am acting freely and voluntarily on behalf of
MORTGAGE RESTRUCTURING SOLUTIONS INC. to surrender its licenses and all license
rights attached thereto.

December 7, 2011
Date and Place
Santa Ana, CA


BY: HARVEY E. GARTE
Designated Officer of
MORTGAGE RESTRUCTURING
SOLUTIONS INC.

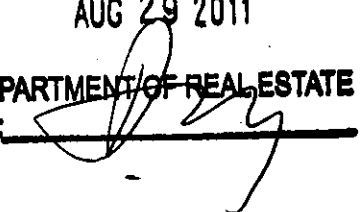
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ELLIOTT MACLENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

FILED

AUG 29 2011

DEPARTMENT OF REAL ESTATE
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	
MORTGAGE RESTRUCTURING SOLUTIONS INC.)	No. H- 37485 LA
and HARVEY E. GARTE, individually and as)	
designated officer of Mortgage Restructuring Solutions Inc.,)	
)	<u>ACCUSATION</u>
Respondents.)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE, alleges as follows:

1.

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

2.

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

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3.

License Status

A. MORTGAGE RESTRUCTURING SOLUTIONS INC. (MRSI). At all times mentioned, Respondent MRSI was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate broker. On August 11, 2008, MRSI was originally licensed as a corporate real estate broker. Respondent MRSI was authorized to act by and through Respondent HARVEY E. GARTE as MRSI's designated broker pursuant to Business and Professions Code (hereinafter Code) Sections 10159.2 and 10211 to be responsible for ensuring compliance with the Real Estate Law.

B. HARVEY E. GARTE (GARTE). At all times mentioned, Respondent GARTE was licensed or had license rights issued by the Department as a real estate broker. On August 20, 1998, GARTE was originally licensed as a real estate broker. On August 11, 2008, GARTE became the designated officer of MRSI.

C. MRSI is owned by GARTE, its president and treasurer.

Brokerage

4.

At all times mentioned, in the City of Santa Ana, County of Orange, MRSI and GARTE acted as real estate brokers conducting licensed activities within the meaning of:

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

B. Code Section 10131(d) and 10131.2. Respondents advertised, solicited and offered to provide loss mitigation and loan modification services to economically distressed homeowners seeking adjustments to the terms and conditions of their home loans including, but

1 not limited to, repayment plans, forbearance plans, partial claims, and reduction in principal or
2 interest, extenuations, foreclosure prevention and short sales.

3 C. During the audit period, Respondents conducted and processed one hundred
4 ninety nine (199) loan modifications charging an advance fee ranging from \$2,800 to \$3,900 per
5 homeowner-applicants, for a total collection of advance fees of \$598,680.

6 FIRST CAUSE OF ACCUSATION
7 (Audit Examination)

8 5.

9 On May 5, 2011, the Department completed an audit examination of the books
10 and records of MRSI pertaining to the mortgage loan brokerage, loan modification and advance
11 fee collection activities only described in Paragraph 4, which require a real estate license. The
12 audit examination covered a period of time beginning on September 1, 2008 and ending on
13 January 31, 2011. The audit examination revealed violations of the Code and the Regulations as
14 set forth in the following paragraphs, and more fully discussed in Audit Report LA 100076 and
15 the exhibits and work papers attached to said audit report.

16 General and Trust Accounts

17 6.

18 At all times mentioned, in connection with the activities described in Paragraph 4,
19 above, MRSI and GARTE accepted or received funds including funds in trust (hereinafter "trust
20 funds") principally in the form of advance fees collected from economically distressed
21 homeowner-applicants for loan modifications and/or on behalf of actual or prospective parties,
22 including lenders and borrowers for loan modifications brokered by MRSI. Thereafter MRSI
23 made deposits and or disbursements of such trust funds. From time to time herein mentioned
24 during the audit period, said trust funds were deposited and/or maintained by MRSI in the bank
25 account as follows:

26 ///

27 ///

1 "Mortgage Restructuring Solutions Inc. (Trust Account)
2 Account No. xxxxxx66670
3 Bank of America

(G/A #1)

4 (G/A #1 is MRSI's General account. Although G/A #1 is named as a "Trust Account" it is not.
5 MRSI did not maintain a trust account).

6 Loan Modification Audit Violations

7 7.

8 In the course of activities described in Paragraphs 4 and 6, above, and during the
9 examination period described in Paragraph 5, Respondents MRSI and GARTE, acted in violation
10 of the Code and the Regulations in which Respondents:

11 (a) (1) Permitted, allowed or caused the disbursement of trust funds in the form of
12 advance fees collected from homeowner-applicants for loan modifications from MRSI's general
13 operating account, G/A #1, where the disbursement of funds reduced the total of aggregate funds
14 in G/A #1, to an amount which, on October 10, 2009, the (SAFE Act Initiation Date) (Secure and
15 Fair Enforcement for Mortgage Licenses), was \$28,432.63, less than the existing aggregate trust
16 fund liability to every principal who was an owner of said funds, without first obtaining the prior
17 written consent of the owners of said funds, in violation of Code Section 10145 and Regulations
18 2832.1.

19 (a) (2) Permitted, allowed or caused the disbursement of trust funds trust funds in
20 the form of advance fees collected from homeowner-applicants for loan modifications from
21 MRSI's general operating account, G/A #1, from G/A #1 where the disbursement of funds
22 reduced the total of aggregate funds in G/A #1, to an amount which, on January 31, 2011, was
23 \$113,108.62, less than the existing aggregate trust fund liability to every principal who was an
24 owner of said funds, without first obtaining the prior written consent of the owners of said funds,
25 in violation of Code Section 10145 and Regulation 2832.1.
26
27

1 (b) Prior to March 26, 2009, MRSI and GARTE collected advance fees within the
2 meaning of Code Section 10026 from homeowners seeking loan modifications wherein MRSI
3 did not have and thus failed to provide a pre-approved advance fee agreement from the
4 Department, in violation of Code Section 10085 and Regulation 2970. The subsequent March
5 26, 2009, advance fee agreement on file with the Department and the advance fee agreement
6 actually used by Respondents differ in terms and conditions and are not the same.
7

8 (c)(1) Failed to establish and maintain a trust account at a bank or other
9 recognized financial institution in the name of the broker for deposit of advance fees collected by
10 MRSI, in violation of Code Section 10146, for the aforesaid homeowner/borrowers.

11 (c) (2) With reference to the lack of an advance fee agreement prior to March 26,
12 2009, MRSI failed to provide a complete description of services to be rendered provided to each
13 prospective tenant in 10 point type font and failed to provide an allocation and disbursement of
14 the amounts collected as the advance fee, in violation of Code Section 10146 and Regulation
15 2972.
16

17 (d) Mixed and commingled trust funds and personal funds by depositing advance
18 fees received from homeowner-applicants into G/A #1, in violation of Code Sections 10145,
19 10176(a) and 10176(e) and Regulation 2832.
20

21 (e) Converted trust funds by depositing trust funds in the form of advance fees
22 solicited from homeowner-applicants into G/A #1. On January 31, 2011, the minimum bank
23 balance of G/A #1, was \$10,878.24. Whereas, G/A #1's accountability should have been
24 \$138,825.02. MRSI reduced the balance in G/A #1, to an amount less than the amount of the
25 trust funds deposited, constituting conversion, in violation of Code Sections 10145 and 10176(i).
26
27

Pursuant to the "Fee and Services Agreement" and the "Agreement for Loan Modification Services" loan modification negotiation services which require a real estate license and which would be not considered fully performed until MRSI successfully obtained a loan modification from the lender. No loan modifications were obtained from the lender by the close of the audit examination on January 31, 2011.

Additionally, Respondents paid operating expenses such as rent and advertising costs and also paid GARTE from trust funds that were deposited into MRSI's general operating account before the services contracted for by the homeowner-applicants were completed.

Table: Unauthorized and Conversion of Unearned Loan Modification Fees

<u>Date</u>	<u>Check No.</u>	<u>Payee</u>	<u>Amount</u>	<u>Memo</u>
1/3/2011	5321	Colton	\$ 3,527.50	Rent
1/7/2011	5325	Capital One	\$ 2,458.72	Advertising
1/7/2011	5326	A/E	\$ 3,500.00	Advertising
1/8/2011	5331	A/E	\$ 15,060.65	Advertising
1/17/2011	5339	Chase	\$ 20,000.00	Advertising
1/28/2011	5340	Capital One	\$ 22,054.21	Advertising
1/21/2011	5342	Citi	\$ 17,223.94	Advertising
1/29/2011	5358	Harvey Garte	\$ 10,000.00	Due to Shareholder
12/15/2010	5293	Chase	\$ 25,000.00	Advertising
12/8/2010	5286	Chase	\$ 20,000.00	Advertising
Total:			<u>\$138,825.02</u>	

(f) Failed to maintain a control record in the form of a columnar record in chronological order of all trust funds including advance fees collected, deposited and disbursed in connection with loan modification services, in violation of Code Section 10145 and Regulation 2831.

///

1 (g) Failed to maintain a separate record for each beneficiary or transaction,
2 thereby failing to account for all trust funds in the form of advance fees collected, deposited and
3 disbursed, in violation of Code Section 10145 and Regulation 2831.1.

4 (h) Claimed, charged and collected advance fees after October 10, 2009, the
5 SAFE ACT Initiation Date, for negotiating, arranging and/or offering to broker mortgage loans
6 and loan modifications and other forms of mortgage loan forbearance for fees paid by the
7 borrowers after October 10, 2009. Respondents received and collected advance fees totaling
8 \$57,850.00 from homeowners before MRSI had fully performed each and every service for
9 which MRSI had contracted to perform or represented that would be performed during the period
10 of October 11, 2009 to January 31, 2011, in violation of Code Sections 10085.6, 10146, 10145
11 and Regulation 2832.
12

13 (i) SAFE ACT (Notice of Loan Activity). MRSI acted as a residential mortgage
14 loan originator (MLO) during the audit period but failed to notify the Department in writing by
15 January 31, 2010, in violation of Code Sections 10166.02(a) and (b) and MRSI failed to maintain
16 a real estate license endorsement as an MLO when required.
17

18 (j) (Disclosure of Licensed Status in Advertising). Failed to provide MRSI's
19 license number upon MRSI's first point of contact with the public including homeowners seeking
20 loan modifications, in violation of Code Section 10140.6 and Regulation 2773.
21

22 (k) Failed to retain all records of MRSI's activity during the audit period requiring
23 a real estate broker license, including the deposit records of G/A 1, such as deposit receipts,
24 related to advance fees MRSI collected related to its loan modification services, in violation of
25 Code Section 10148. MSRI did not retain the document pertaining to the completion date of
26 MRSI's loan modification "submission package" to the lender.
27

1 (l) GARTE failed to exercise reasonable control and supervision over the activity
2 of MRSI to secure full compliance with the Real Estate Law, including but not limited to trust
3 fund handling, mortgage loan brokering, loan modification services and advance fee charge and
4 collection. Additionally, GARTE had no system in place for regularly monitoring his
5 compliance with the Real Estate Law especially in regard to establishing, systems, policies and
6 procedures to review trust fund handling especially including advance fee deposits received from
7 homeowner-applicants seeking loan modification services, in violation of Code Sections
8 10159.2, 10177(h) and Regulation 2725.
9

10 Discipline Statutes and Regulations

11 8.

12 The conduct of Respondents MRSI and GARTE, described in Paragraph 7, above,
13 violated the Code and the Regulations as set forth below:
14

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
15 7(a)	Code Section 10145 and Regulation 2832.1
16 7(b)	Code Section 10085 and Regulation 2970
17 7(c)	Code Section 10146 and Regulation 2972
18 7(d)	Code Section 10145, 10176(a) and 10176(e) and Regulation 2832
19 7(e)	Code Section 10145 and 10176(i)
20 7(f)	Code Section 10145 and Regulation 2831
21 7(g)	Code Section 10145 and Regulation 2831.1
22 7(h)	Code Section 10085.6, 10145 and 10146 and Regulation 2832
23 7(i)	Code Section 10166.02(a) & (b)
24 7(j)	Code Section 10140.6 and Regulation 2773
25 7(k)	Code Section 10148
26 7(l)	Code Section 10159.2 and 10177(h) and Regulation 2725 (GARTE)
27	

1 The foregoing violations constitutes cause for discipline of the real estate license and license
2 rights of MRSI and GARTE, under the provisions of Code Sections 10145, 10176(a), 10176(e),
3 10176(i), 10177(d) and/or 10177(g).

4 SECOND CAUSE OF ACCUSATION
5 (Loan Modification Services)

6 9.

7 At all times mentioned herein, Respondents MRSI and GARTE engaged in the
8 business of a loan modification services and, an advance fee brokerage requiring a real estate
9 license to operate, within the definition of Code Sections 10131(d) and 10131.2.

10 General Allegations

11 10.

12 During the audit period of September 1, 2008 and January 31, 2001, continuing
13 thereafter to date, MRSI and GARTE, solicited economically distressed homeowners facing
14 foreclosure and eviction from their homes, offered loss mitigation and loan modification
15 services, charged, claimed and collected advance fees for services not rendered.

16 Specific Allegations

17 11.

18 Respondents MRSI and GARTE offered loss mitigation and loan modification
19 services to homeowner-applicants seeking downward adjustments or payment extenuations to
20 their home mortgages. Respondents collected advanced fees from said homeowner- applicants
21 without possessing a pre-approved advance fee agreement from the Department until April 3,
22 2009. Thereafter, Respondents failed to obtain the loan modification services to the borrowers.

23 ///

24 ///

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26 ///

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Table: Advance Fees Collected for Loan Modification Services

Complainant:	Contract Date	Advance Fee Pd	Loan Mod Status	Advance Fee Refund?
Prior to No objection				
Lidia Rosales	Nov-08	\$ 2,800.00	Not obtained	None
Ltr of No objection Rec'd				
Robert Bilas	Sep-09	\$ 3,100.00	Not obtained	None
David Murdock	Sep-09	\$ 3,500.00	Not obtained	None
After SB94				
David Ziemer	11/5/2009	\$ 2,600.00	Not obtained	None
Bradden Mendelson	11/29/2009	\$ 3,100.00	Not obtained	None
Mario Serrano	Jun-10	\$ 3,600.00	Not obtained	None
Donald P. Sciarappo	8/30/2010	\$ 3,600.00	Not obtained	None
Joel DeGuzman	11/1/2009	\$ 2,500.00	Not obtained	None
Bradley Brockmeyer	3/17/2010	\$ 2,900.00	Not obtained	None
Thomas Miller	6/30/2010	\$ 1,550.00	Not obtained	None
Barbara Ann Erickson	10/20/2009	\$ 5,600.00	Not obtained	None
Shahram Borjkhani	4/11/2011	\$ 3,600.00	Not obtained	None

Total \$38,450.00

Loan Modification Violations and Disciplinary Statutes

12.

The conduct of Respondents MRSI and GARTE violated the Code and the Regulations as set forth below.

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13.

13(a) Code Section 10176(a) for substantial misrepresentation of loan modification services contracted for but not provided.

13(b) Code Section 10176(b) for making false promises of a character likely to influence, persuade or induce the tabled homeowner-applicants to pay advance fees for loan modification services contracted for but not provided.

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

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

THIRD CAUSE OF ACCUSATION
(Negligence)

14.

The overall conduct of Respondents MRSI and GARTE constitutes negligence and is cause for discipline of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

FOURTH CAUSE OF ACCUSATION
(Fiduciary Duty)

15.

The conduct, acts and omissions of Respondents MRSI and GARTE constitute a breach of fiduciary duty, owed the homeowners contracting for loan modification services, of good faith, trust, confidence and candor, within the scope of their contractual relationship, in violation of Code Sections 10176(i) and/or 10177(g) and constitutes cause for discipline of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

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1 FIFTH CAUSE OF ACCUSATION
2 (Supervision and Compliance)

3 16.

4 The overall conduct of Respondent GARTE constitutes a failure on said
5 Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable
6 supervision and control over the licensed activities of MRSI as required by Code Section 10159.2
7 and Regulation 2725, and to keep MRSI in compliance with the Real Estate Law, with specific
8 regard to trust fund and advance fee handling, mortgage and loan brokering and loan
9 modification services, and is cause for discipline of the real estate license and license rights of
10 Respondent pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

11 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
12 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
13 action against the license and license rights of Respondents MORTGAGE RESTRUCTURING
14 SOLUTIONS INC. and HARVEY E. GARTE, under the Real Estate Law (Part 1 of Division 4
15 of the Business and Professions Code) and for such other and further relief as may be proper
16 under other applicable provisions of law including restitution of advanced fees paid for unearned
17 loan modifications, and for costs of audit.

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19 Dated at Los Angeles, California

20 this 24 August 2011

21 
22 Deputy Real Estate Commissioner

23
24 cc: Mortgage Restructuring Solutions Inc.
25 c/o Harvey E. Garte D.O.
26 Maria Suarez
27 Sacto
Enforcement - Amelia Nunez
Audits - Gina King