

**FILED**

SEP -7 2012

DEPARTMENT OF REAL ESTATE  
BY: Ce

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of ) NO. H-37997 LA  
)  
JMM FINANCIAL, INC., )  
JOSE F. CASARES, individually )  
and as former designated officer )  
of JMM Financial, Inc., )  
LILIA LILIA MARTINI, )  
MARTIN MANUEL MARQUEZ, and )  
TIM J. PISCITELLO, )  
)  
Respondents. )  
\_\_\_\_\_)

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on July 23, 2012, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

FINDINGS OF FACT

1.

On March 12, 2012, Veronica Kilpatrick made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, to Respondents JMM FINANCIAL, INC. and JOSE F. CASARES' last known mailing addresses on file with the

Department on March 26, 2012. A second attempt at service was made on April 23, 2012, by regular mail.

2.

On July 23, 2012, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondents JMM FINANCIAL, INC. and JOSE F. CASARES' default was entered herein.

3.

From December 28, 2006, through December 27, 2010, JMM FINANCIAL, INC. ("JFI") was licensed as a corporate real estate broker, License No. 01788706. From December 27, 2010, through December 28, 2010, Respondent JFI was licensed to act by and through Respondent JOSE F. CASARES as its officer pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law. Respondent JFI's license expired on December 27, 2010. The Department of Real Estate ("Department") retains jurisdiction pursuant Code Section 10103.

4.

From October 13, 2006, through the present, Respondent JOSE F. CASARES ("CASARES") has been licensed as a real estate broker, License No. 01415285.

#### Suspended Corporation

5.

Regulation 2742, subdivision (c), Title 10, Chapter 6, California Code of Regulations ("Regulations") states: "[A] corporation licensed under Section 10211 of the Code shall not engage in the business of a real estate broker while not in good legal standing with the Office of the Secretary of State."

6.

Respondent JFI's corporate rights were suspended by the California Franchise Tax Board on October 1, 2009. No notice of the change in corporate status was provided to the Department by either JFI or CASARES.

### Advance Fee Violations/Fraud/Dishonest Dealing

7.

On or about April 6, 2009, Lilia Martini, a real estate salesperson licensed under the employment of Respondent JFI, offered to assist Enrique C. Martin with the short sale purchase of real property located at 2023 Lakeridge Circle #202, Chula Vista, California ("Lakeridge property"). Enrique C. Martin paid a deposit of \$2,800 toward the purchase of the Lakeridge property. Lilia Martini instructed Martin to make the \$2,800 cashier's check payable to Home Solutions Financial, LLC. Lilia Martini gave Enrique C. Martin an acknowledgement and receipt form under the letterhead of Impact Marketing Alliance, LLC and Home Solutions Financial, LLC. The receipt form falsely indicated that the \$2,800 deposit received from Enrique C. Martin was for a forensic loan audit. Enrique C. Martin received a business card from Lilia Martini for LM Casitas Realty.

8.

Respondent CASARES made misrepresentations to Enrique C. Martin about the status of his purchase of the Lakeridge property. Respondent never placed Enrique C. Martin's \$2,800 deposit in escrow or a trust account. A residential purchase agreement for the Lakeridge property was never provided to Enrique C. Martin and Respondent CASARES never gave Enrique C. Martin an accounting of what happened to his \$2,800 deposit. Respondent CASARES refused to refund Enrique C. Martin's deposit to him after he requested a refund of his money.

### Use of Unlicensed Fictitious Business Name

9.

Respondents JFI and CASARES acted without Department authorization in using the fictitious business names Home Financial Solutions, LLC, Home Solutions Financial, LLC, Impact Marketing Alliance, LLC to engage in activities requiring the issuance of a real estate license.

AUDIT LA 100085

10.

On October 28, 2011, the Department completed an audit examination of the books and records of Respondent JFI's loan modification activities. The audit examination covered a period of time from September 1, 2008 to February 28, 2011. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 100085 and the exhibits and work papers attached to said Audit Report.

11.

At all times mentioned, in connection with the activities described in Paragraph 10, above, JFI accepted or received funds including funds in trust ("trust funds") from or on behalf of actual or prospective parties to transactions including buyers, sellers, lenders and borrowers handled by JFI and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned, during the audit period, said trust funds were deposited and/or maintained by JFI in the bank accounts as follows:

Bank Account 1

JMM FINANCIAL INC DBA Home Solutions Financial  
Account No. [REDACTED] 1162  
Comerica Bank  
Brea, California

Bank Account 2

Milburn Associates LLC DBA HSF Marketing  
Account No. [REDACTED] 1089  
Comerica Bank  
Brea, California

Bank Account 3

JMM FINANCIAL INC DBA Home Solutions  
Account No. [REDACTED] 5095  
Bank of America  
San Francisco, California

Violations

In the course of JFI's loan modification activities during the examination period described in Paragraph 10, Respondent JFI acted in violation of the Code and the Regulations as follows:

(A) Bank Account 1 (B/A-1) had a minimum shortage of \$1,000 as of January 22, 2010. Bank Account 2 (B/A-2) had a minimum shortage of \$2,500 as of October 8, 2009. B/A -1 and B/A-2 were used for the handling of advance fees related to JFI's loan modification activities. Respondent JFI permitted, allowed or caused the disbursement of trust funds from B/A -1 and B/A-2, where the disbursement of funds reduced the total of aggregate funds in the accounts, to an amount which was less than the existing aggregate trust fund liability of JFI to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code Section 10145 and Regulations 2832.1 and 2951.

(B) Respondent JFI charged and collected advance fees for loan modification activities prior to submitting an advance fee agreement to the Department for review. The Department issued a no-objection letter to JFI on June 11, 2009. After June 11, 2009, Respondent JFI used a different advance fee agreement for loan modifications than the advance fee agreement that had been reviewed by the Department, in violation of Code Section 10085 and Regulation 2970.

(C) Respondent JFI deposited trust funds into JFI's general operating accounts B/A-1 and B/A-2 and failed to itemize accounting content as required by Code Section 10146 and Regulation 2972.

(D) Respondent JFI charged and collected advance fees for loan modification activities after October 10, 2009, in violation of Code Sections 10085.6, 10146 and Regulation 2832.

(E) Respondent JFI failed to establish and/or maintain a trust account at a bank or other recognized financial institution in the name of the broker for deposit of advance fees collected by JFI, thereby depositing trust funds in JFI's general accounts (B/A-1, B/A-2 & B/A-3) and thus commingling trust funds with JFI's funds, in violation of Code Sections 10145 and 10176(e) and Regulation 2832.

(F) Advance fees that were collected from borrowers in connection with loan modification transactions were deposited into Respondent JFI's general business account (B/A-1) and used for JFI's general operating expenses. The balance of JFI's general business account was reduced to an amount that was less than the amount of trust funds deposited, thus, conversion of trust funds, in violation of Code Sections 10145 and 10177(j).

(G) Respondent JFI failed to maintain a control record in the form of a columnar record in chronological order of all trust funds including advance fees received, deposited and disbursed, in violation of Code Section 10145 and Regulation 2831.

(H) Respondent JFI failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all advance fees collected, in violation of Code Section 10145 and Regulation 2831.1.

(I) Respondent CASARES was not an authorized signor on B/A-2 from May 18, 2009 to October 7, 2009. Respondent JFI allowed Tina P. Nguyen to be a signatory on JFI's general business accounts (B/A-1 & B/A-3), at a time when she was not licensed by the Department in any capacity, in violation of Code Section 10145 and Regulation 2834.

(J) Respondent JFI employed or compensated unlicensed individuals, Roxana Carreon, Armando Villasenor, Natalie Contreras, Maria Datan, Stephanie St. Mary, Virginia Tapia, Meagan Quesada, Bene Resincoy, Dora Almazan, Maria Zacarias, Sotero Trejo and Haidu Gaza, to act in the capacity of loan agents for JFI, in violation of Code Sections 10130 and 10137.

(K) Respondent JFI conducted real estate activities by using unlicensed fictitious business names "HSF Marketing", "Home Solutions Financial, LLC", "Impact Marketing Alliance", and "Milburn Associates, LLC", in violation of Code Section 10159.5 and Regulation 2731.

(L) JFI conducted loan modification activities out of a branch office located at 1551 N. Tustin Ave., Suite 150, Santa Ana, California, prior to obtaining a branch office license from the Department, in violation of Code Section 10163.

(M) JFI engaged in real estate activities while not in good legal standing with the Office of the Secretary of State after October 1, 2009, in violation of Regulation 2742.

(N) After being given reasonable notice, Respondent JFI failed to retain records in connection with its real estate activities requested by the Department, in violation of Code Section 10148.

(O) Respondent CASARES failed to exercise reasonable control and supervision over the activities conducted on behalf of JFI and its licensees and employees as necessary to secure full compliance with the Real Estate Law, in violation of Code Sections 10177(h) and 10159.2 and Regulation 2725.

#### AUDIT LA 100086

13.

On October 12, 2011, the Department completed an audit examination of the books and records of Respondent CASARES' real estate activities. The audit examination covered a period of time from September 1, 2008 to February 28, 2011. The audit examination revealed a violation of the Code as set forth in the following paragraph, and more fully discussed in Audit Report LA 100086 and the exhibits and work papers attached to said Audit Report.

14.

In connection with the activities described in Paragraph 13, above, CASARES did not maintain a definite place of business to serve as his office for the transaction of business and the place where his license is displayed since June 18, 2010, in violation of Code Section 10162 and Regulation 2715.

#### DETERMINATION OF ISSUES

1.

The suspension of Respondent JFI's corporate status is in violation of Regulation 2742, subdivision (c) and constitutes grounds to suspend or revoke Respondent JFI's corporate real

estate broker license pursuant to Code Sections 10177(d) and 10177(g).

2.

The acknowledgement and receipt form provided to Enrique C. Martin constitutes an advance fee agreement which was not submitted to the Department prior to use is required under Code Section 10085 and Regulation Section 2970.

3.

The advance fee collected from Enrique C. Martin by Respondents JFI and CASARES was not deposited in a trust account as required under Code Section 10146. Respondents JFI and CASARES did not provide an accounting to principals, in violation of Code Section 10146 and Regulation Section 2972.

4.

The conduct, acts and/or omissions of Respondents JFI and CASARES, as set forth above, in collecting advance fees from prospective purchasers or borrowers pursuant to a written fee agreement, which agreement was not submitted to the Department for review prior to use, is in violation of Code Section 10085 and Regulation Section 2970, and constitutes grounds for the suspension or revocation of the licenses and license rights of Respondents JFI and CASARES, pursuant to Code Sections 10177(d).

5.

The conduct, acts and/or omissions of Respondents JFI and CASARES, as set forth above, in collecting advance fees from prospective purchasers or borrowers and failing to deposit the advance fees into a trust account and provide an accounting to principals, is in violation of Code Section 10146 and Regulation Section 2972, and constitutes grounds for the suspension or revocation of the licenses and license rights of Respondents JFI and CASARES pursuant to Code Section 10177(d).

6.

The conduct, acts and/or omissions of Respondents JFI and CASARES, in using an unlicensed fictitious business name to engage in activities requiring a real estate license, violate Code Section 10159.5 and Regulation 2731, and are cause for the suspension or revocation of the licenses and license rights of



Respondents JFI and CASARES pursuant to Code Section 10177(d).

7.

The conduct of Respondent JFI described in Paragraph 12, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
12(A)	Code Section <u>10145</u> and Regulation <u>2832.1</u> , <u>2951</u>
12(B)	Code Section <u>10085</u> and Regulation <u>2970</u>
12(C)	Code Section <u>10146</u> and Regulation <u>2972</u>
12(D)	Code Sections <u>10085.6</u> , <u>10145</u> and <u>10146</u> and Regulation <u>2832</u>
12(E)	Code Sections <u>10145</u> and <u>10176(e)</u> and Regulations <u>2832</u>
12(F)	Code Section <u>10145</u> and <u>10177(j)</u>
12(G)	Code Section <u>10145</u> and Regulation <u>2831</u>
12(H)	Code Section <u>10145</u> and Regulation <u>2831.1</u>
12(I)	Code Section <u>10145</u> and Regulation <u>2834</u>
12(J)	Code Section <u>10130</u> and <u>10137</u>
12(K)	Code Section <u>10159.5</u> and Regulation <u>2731</u>
12(L)	Code Section <u>10163</u>
12(M)	Regulation <u>2742</u>
12(N)	Code Section <u>10148</u>

8.

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of Respondent JFI, as aforesaid, under the provisions of Code Sections 10176(e) for commingling, 10177(d) for violation of the Real Estate Law and 10177(g) for negligence.

9.

The conduct, acts and/or omissions of Respondent CASARES, in allowing Respondent JFI to violate the Real Estate

Law, as set forth above, constitutes a failure by Respondent CASARES, as the officer designated by the corporate broker licensee, to exercise the supervision and control over the activities of Respondent JFI, as required by Code Section 10159.2 and Regulation 2725, and is cause to suspend or revoke the real estate licenses and license rights of Respondent CASARES under Code Section 10177(h).

10.

The conduct, acts and/or omissions of Respondent CASARES, as described in Paragraphs 13 and 14 above, are in violation of Regulation 2715 and Code Section 10162 which constitutes cause for the suspension or revocation of the real estate license and license rights of Respondent CASARES, as aforesaid, under the provisions of Code Sections 10177(d) for violation of the Real Estate Law and 10177(g) for negligence.

11.

The standard of proof applied was clear and convincing proof to a reasonable certainty.

#### ORDER

The licenses and license rights of Respondents JMM FINANCIAL, INC. and JOSE F. CASARES under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon September 27, 2012.

DATED: August 10, 2012.

Real Estate Commissioner



By WAYNE S. BELL  
Chief Counsel

1 Department of Real Estate  
2 320 West Fourth Street, Suite 350  
3 Los Angeles, California 90013-1105

**FILED**

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DEPARTMENT OF REAL ESTATE

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8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of )  
12 ) NO. H-37997 LA  
13 JMM FINANCIAL, INC.; )  
14 JOSE F. CASARES, individually and ) DEFAULT ORDER  
15 as former designated officer of )  
16 JMM Financial, Inc.; LILIA MARTINI; )  
17 MARTIN MANUEL MARQUEZ; )  
18 and TIM J. PISCITELLO, )  
19 Respondents. )

20 Respondents, JMM FINANCIAL, INC. and JOSE F. CASARES,  
21 individually and as former designated officer of JMM Financial,  
22 Inc., having failed to file a Notice of Defense within the time  
23 required by Section 11506 of the Government Code, are now in  
24 default. It is, therefore, ordered that a default be entered on  
25 the record in this matter.

26 IT IS SO ORDERED

July 23, 2012

Real Estate Commissioner

27 By: Dolores Weeks  
Regional Manager