

**FILED**

SEP 10 2013

BEFORE THE BUREAU OF REAL ESTATE

BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

By Gene S. Don

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In the Matter of the Accusation of	)	BRE No. H-37997 LA
	)	
JMM FINANCIAL INC., JOSE F. CASARES,	)	OAH No. 2012090743
individually and as former designated officer of	)	
JMM Financial Inc., <u>LILIA MARTINI</u> ,	)	
<u>MARTIN MANUEL MARQUEZ</u> , and	)	
<u>TIM J. PISCITELLO</u> ,	)	
	)	
	)	
	)	
Respondents.	)	
	)	

DECISION

The Proposed Decision dated July 23, 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

SEP 30 2013

IT IS SO ORDERED 9/3/2013

REAL ESTATE COMMISSIONER

Wayne Bell  
WAYNE BELL

**BEFORE THE  
BUREAU OF REAL ESTATE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation of

JMM FINANCIAL, INC.,  
JOSE F. CASARES, individually  
and as former designated officer of  
JMM Financial, Inc.,  
LILIA MARTINI,  
MARTIN MANUEL MARQUEZ, and  
TIM J. PISCITELLO,

Respondents.

Case No. H-37997 LA

OAH No. 2012090743

**PROPOSED DECISION**

This matter came on regularly for hearing before Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on July 1, 2013, at Los Angeles, California.

Lisette Garcia, Staff Counsel for the Bureau of Real Estate (the Bureau),<sup>1</sup> represented Complainant Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State of California.

The Accusation was served and due notice of the time and place for hearing was given as required by the Government Code. On July 23, 2012, the Bureau issued a default order as to Respondents JMM Financial, Inc. and Jose F. Casares, individually, and as former designated officer of JMM Financial, Inc., for their failure to file a Notice of Defense, and issued a decision accordingly on September 7, 2012. For the remaining three respondents, only the second cause for discipline set forth in the Accusation pertains.

Respondent Martin Manuel Marquez appeared at hearing, and represented himself. Respondents Lilia Martini and Tim J. Piscitello failed to appear at hearing, and no one appeared on their behalf. Consequently, the matter pertaining to Respondents Lilia Martini and Tim J. Piscitello proceeded by way of default hearing.

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<sup>1</sup> Effective July 1, 2013, the Department of Real Estate became the Bureau of Real Estate as part of the Department of Consumer Affairs.

Oral and documentary evidence was received, and the record remained opened until July 15, 2013 for the submission of a certified copy of Accusation H-37568-LA in a prior disciplinary matter filed against Respondent Martin Manuel Marquez. The Bureau timely submitted the certified document, which ALJ Garrett duly marked as Exhibit 18 and admitted into evidence. The record was closed, and the matter was submitted for decision on July 15, 2013.

#### FINDINGS OF FACT

1. On March 26, 2012, Complainant Veronica Kilpatrick filed Accusation No. H-37997-LA in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. On December 28, 2006, the Bureau issued Respondent JMM Financial, Inc. (Respondent JMM) a license as a corporate real estate broker, license number 01788706, which expired on December 27, 2010. From December 27, 2010 through December 28, 2010, Respondent was licensed to act by and through Respondent Jose F. Casares (Respondent Casares).

3. On August 30, 2004, the Bureau issued Respondent Lilia Martini (Respondent Martini) a license to act as a real estate salesperson, license number 01440375. The license expired on March 16, 2013, and had not been renewed as of the time for hearing. From April 18, 2009 through August 8, 2010, Respondent Martini was licensed under Respondent JMM as her employing broker. The Bureau maintains jurisdiction over Respondent Martini pursuant to Business and Professions Code section 10103.

4. On June 27, 2005, the Bureau issued Respondent Martin Manuel Marquez (Respondent Marquez) a license to act as a real estate salesperson, license number 01507390. The license expired on June 29, 2013, and had not been renewed as of the time for hearing. From June 30, 2009 through February 27, 2011, Respondent Marquez was licensed under the employ of Respondent JMM. The Bureau maintains jurisdiction over Respondent Marquez pursuant to Business and Professions Code section 10103.

5. On June 17, 1997, the Bureau issued Respondent Tim J. Piscitello (Respondent Piscitello) a license to act as a real estate salesperson, license number 01222885. The license is due to expire on January 23, 2014. From January 8, 2006 to the present, Respondent Piscitello has not been licensed under the employ of any broker.

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*Lakeridge Property / Affidavit of Enrique C. Martin*

6. On or April 6, 2009, Enrique C. Martin, who provided testimony through affidavit,<sup>2</sup> after hearing Respondent Martini on the radio promoting Home Solutions Financial, LLC (Home Solutions),<sup>3</sup> met with Respondent Martini to discuss purchasing real estate. After the meeting, Mr. Martin, his wife, and Respondent Martini viewed a condominium unit located 2013 Lakeridge Circle in Chula Vista, California (Lakeridge Property). Mr. Martin and his wife, who were first-time buyers, decided they would purchase Unit #202 of the Lakeridge Property, as it was available for short sale. Respondent Martini instructed Mr. Martin and his wife to return with a cashier's check in the amount of \$2,800 as a deposit toward the purchase of the Lakeridge Property, made payable to Home Solutions.

7. On April 6, 2009, Mr. Martin obtained a cashier's check in the amount of \$2,800, made payable to Home Solutions, and immediately delivered it to Respondent Martini. On the same day, Respondent Martini gave Mr. Martin an acknowledgement and receipt form under the letterhead of Impact Marketing Alliance, LLC (Impact)<sup>4</sup> and Home Solutions. The acknowledgement and receipt form falsely represented that the \$2,800 was a deposit for a loan audit and process fee. Mr. Martin had no outstanding real estate loans, as he owned no real estate, and therefore required no loan audit. Respondent Martini provided Mr. Martin with her business card from LM Casitas, which indicated it was a real estate financial services company. Articles of Organization for LM Casitas were filed with the Secretary of State for the State of California on July 11, 2007, and suspended on March 1, 2010. LM Casitas has never been licensed by the Bureau in any capacity.

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<sup>2</sup> The Bureau introduced Mr. Martin's affidavit pursuant to Government Code section 11514, subdivision (a), which provides that "at any time 10 or more days prior to a hearing . . . any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence . . . . Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally." The Bureau provided the respondents timely notice of its intent to introduce Mr. Martin's affidavit into evidence. No respondent notified the Bureau that he or she wished to cross-examine Mr. Martin.

<sup>3</sup> Articles of Organization for Home Solutions were filed with the Secretary of State for the State of California on January 14, 2003. Home Solutions has never been licensed by the Bureau in any capacity.

<sup>4</sup> Articles of Organization for Impact were filed with the Secretary of State for the State of California on January 15, 2009. Impact has never been licensed by the Bureau in any capacity.

8. Thereafter, Mr. Martin and his wife experienced great difficulty reaching Respondent Martini to ascertain the status of their short sale purchase of the Lakeridge Property. Specifically, Mr. Martin left numerous telephone messages for Respondent Martini to call him, but Respondent Martini never returned the calls. Consequently, in June 2009, Mr. Martin and his wife made an unannounced visit to Respondent Martini at the Home Solutions' office. Respondent Martini advised that she had been experiencing personal problems, but that the purchase was going well. Respondent Martini instructed Mr. Martin and his wife to return to the office in two days, so that they could receive a thorough update.

9. Two days later, Mr. Martin returned to the office, and met with Respondent Martini and Respondent Casares, who represented himself as the president of Home Solutions. Respondent Casares explained that the purchase was going well, but that the bank was taking longer than expected to respond to Mr. Martin's offer to purchase the Lakeridge Property. Respondent Casares further advised that Home Solutions would have a response from the bank in six weeks.

10. After approximately six weeks, Mr. Martin attempted to reach Respondent Martini, but was unsuccessful. Mr. Martin and his wife made another unannounced visit to the Home Solutions office to see Respondent Martini. Respondent Martini advised that she had been encountering difficulty locating Respondent Casares. Respondent Martini gave Mr. Martin Respondent Casares' email address so that Mr. Martin could communicate with him.

11. Mr. Martin sent Respondent Casares a number of emails, but Respondent Casares never replied.

12. In August 2009, Mr. Martin requested Respondent Martini to return his \$2,800 deposit. Respondent Martini advised that Respondent Casares had information about their case, and asked that Mr. Martin to come to the Home Solutions office the following day, when Respondent Casares would be in the office.

13. The following day, Mr. Martin went to the Home Solutions office, but Mr. Martin did not talk to Respondent Casares. Instead, Mr. Martin met with Respondent Marquez, who was Home Solutions' loan consultant. Respondent Marquez advised Mr. Martin that his purchase was going well, to wait approximately six more weeks to close escrow, and to understand that the banks were taking long periods of time to complete short sales. Mr. Martin waited another six weeks, but nothing materialized.

14. On or about October 31, 2009, Mr. Martin contacted Respondent Martini and demanded his money back. Respondent Martini told Mr. Martin to give her an opportunity to close the deal, as she had received news that the owner of the Lakeridge Property had vacated the premise, and that it would not be long before escrow closed.

15. By the middle of December 2009, after not receiving any information from Home Solutions about the status of the purchase, Mr. Martin began calling Respondent Martini again, but was unsuccessful in reaching her. Mr. Martin and his wife went to the Home Solutions office, and learned that Respondent Martini had moved her office to a different location. In January 2010, Mr. Martin and his wife went to Respondent Martini's new office to discuss the status of the purchase. However, Respondent Martini's secretary advised them that Respondent Martini no longer worked with Home Solutions, and that she had nothing to discuss with them. After Mr. Martin insisted on talking to Respondent Martini, Respondent Martini told them she was not working on the case, and the only thing she could do was send emails to Respondent Casares, Respondent Marquez, and Virginia Tapia.

16. Thereafter, Mr. Martin began calling Home Solutions every day, until he reached Respondent Marquez. Mr. Martin advised Respondent Marquez that he wanted his money back. Respondent Marquez advised that an employee of Home Solutions had embezzled money, and that Home Solutions' lawyers would contact Mr. Martin to make arrangements to give him his money back. No Home Solutions lawyer ever contacted Mr. Martin.

17. On January 7, 2010, Mr. Martin sent an email addressed to Respondent Casares, Respondent Marquez, and Virginia Tapia demanding a refund of his \$2,800, and also sent each one a certified letter demanding a refund. On January 8, 11, and 12, 2010, Mr. Martin sent each one additional email messages requesting the return of his \$2,800.

18. On January 12, 2010, Respondent Marquez sent a joint email to Respondent Casares, Virginia Tapia, and Mr. Martin, stating, "I have already spoken to Mr. Martin and he is aware of the refund process." Mr. Martin never received his refund.

19. At hearing, despite his wording in the January 12, 2010 email, Respondent Marquez did not recall having any discussions with Mr. Martin, as Mr. Martin only spoke Spanish, and Respondent Marquez neither spoke nor understood Spanish. However, when he learned through Respondent Martini that Mr. Martin was seeking a refund, he sent a note advising upper management of Home Solutions, specifically Tina Gwen, who was one of the owners, that Mr. Martin wanted a refund. Ms. Gwen handled all of the finances at Home Solutions. In addition, Respondent Marquez forwarded all email he received from Mr. Martin to Ms. Gwen concerning his refund requests. Respondent Marquez was not working at Home Solutions at the time Mr. Martin's deposit was submitted to Home Solutions, he never signed anyone up to receive services at Home Solutions, never received any money from Mr. Martin or any other Home Solutions client, never handled any financial matters concerning Home Solutions or its clients, never wrote or deposited checks for or on behalf of Home Solutions, never made any executive decisions for Home Solutions, never advised Mr. Martin or any other client that someone had embezzled funds, and only gave updates to clients pursuant to instructions received from upper management, which, to his knowledge, were truthful. He was simply a "worker bee" for Home Solutions where he helped clients with their loan modifications by overseeing the submission of paperwork to the banks, and

made no misrepresentations to Mr. Martin. Respondent's testimony was credible, given his sincere demeanor at hearing, the way in which he answered questions in a straight-forward manner, and the lack of credible evidence controverting Respondent Marquez' statements.

### *Camino La Pas Property*

20. On October 14, 2009, Maria Oliva, who provided testimony through affidavit,<sup>5</sup> received a notice of trustee's sale addressed collectively to her and her husband, indicating that they were in default on real property located at 892 Camino La Pas in Chula Vista, California (Camino La Pas Property), and that the bank would sell the property at a trustee's sale on October 30, 2009. The house had gone into default as a result of Ms. Oliva and her husband losing their jobs, leaving them unable to pay the monthly mortgage. Ms. Oliva's husband then abandoned her and the children, leaving her to handle the foreclosure on her own.

21. Ms. Oliva contacted her former real estate agent and advised about the foreclosure, and explained she needed help. The agent referred Ms. Oliva to Respondent Martini. When Ms. Oliva contacted Respondent Martini, Respondent Martini said she would enroll Ms. Oliva in a program where Respondent Martini would handle the foreclosure, obtain approximately two months of extra time before Ms. Oliva and her children would have to leave the house, help her move, help re-establish her credit, and help her get another house within the next two years.

22. On October 29, 2009, Respondent Martini, in the presence of Antonio Blas, a Notary Public, instructed Ms. Oliva to sign a grant deed indicating that she was making a bonafide gift of the Camino La Pas Property. Ms. Oliva complied, as she believed she needed to do so in order to give Respondent Martini the authority to work on her behalf. Respondent Martini then signed the name of Ms. Oliva's husband. Mr. Blas notarized the grant deed, and prepared an acknowledgement indicating that Ms. Oliva and her husband had proven to him that they were who they purported themselves to be, and then obtained the thumb print of Ms. Oliva, and the thumb print of Respondent Martini to act as the thumb print of Ms. Oliva's husband. The grant deed was filed at the San Diego County Recorder's Office on October 30, 2009.

23. The following day, on October 30, 2009, Respondent Martini, in the presence of Mr. Blas, fraudulently signed the names of Ms. Oliva and her husband on another grant deed, which indicated that the Camino La Pas Property was to be transferred to Respondent Martini. Mr. Blas notarized the grant deed.

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<sup>5</sup> The Bureau introduced Ms. Oliva's affidavit pursuant to Government Code section 11514, subdivision (a). The Bureau provided the respondents timely notice of its intent to introduce Ms. Oliva's affidavit into evidence. No respondent notified the Bureau that he or she wished to cross-examine Ms. Oliva.

24. Less than one month later, Respondent Martini demanded Ms. Oliva and her children to move out of the Camino La Pas Property.

25. Thereafter, Respondent Martini moved into the Camino La Pas Property, and used it for her own personal benefit. The fraudulent grant deed containing the forged signatures of Ms. Olivia and her husband was filed with the San Diego County Recorder's Office on July 30, 2010.

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*Costs of Prosecution*

26. The Bureau incurred \$3,152.20 in costs for investigating this matter, and \$1,379.50 in enforcement costs, for a total of \$4,531.70 in prosecution costs from May 27, 2010 to May 10, 2013. These costs, established by declarations executed under penalty of perjury, were reasonable pursuant to Business and Professions Code section 10106.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Med. Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

2. Under Business and Professions Code (Code) section 10176, subdivisions (a), (b), and (i), the commissioner may temporarily suspend or permanently revoke a real estate license at any time where the licensee has made a "substantial misrepresentation" (subdivision (a)), made a "false promises of a character likely to influence, persuade, or induce" (subdivision (b)), or for any other conduct "which constitutes fraud or dishonest dealing." (Subdivision (i).)

3. Under Code section 10177, a real estate license may be disciplined if a licensee "[w]illfully disregarded or violated the Real Estate Law" (subdivision (d)), or "[d]emonstrated negligence or incompetence in performing an act for which he or she is required to hold a license." (Subdivision (g).)

4. In *Golde v. Fox* (1979) 98 Cal.App.3d 167, 177-178, the court stated:

A real estate broker often acts in a confidential and fiduciary capacity for his clientele. The term "honesty" as used in section 10152 is to be given the broadest possible meaning. (*Rhoades v. Savage*, supra, 219 Cal.App.2d 294, 299). The real estate profession has, over a period of years, excluded unfit persons and as a result thereof an appreciable amount of public trust and confidence has been built up. The public exposing themselves to a real estate licensee



has reason to believe that the licensee must have demonstrated a degree of honesty and integrity in order to have obtained such a license.

*Respondent Martini*

5. Cause exists to discipline the real estate license of Respondent Martini, pursuant to Code section 10176, subdivisions (a), (b), and (i), in that Respondent Martini made substantial misrepresentations, false promises of a character likely to influence, persuade, or induce, and engaged in other conduct constituting fraud or dishonest dealing, pertaining to Mr. Martin and Ms. Oliva, as set forth in Factual Findings 6 - 25.

6. Cause does not exist to discipline the real estate license of Respondent Martini, pursuant to Code section 10177, subdivisions (d) and (g), as alleged in Count Two of the Accusation, in that there was no clear and convincing evidence that Respondent Martini conducted or offered to conduct any business with Mr. Martin or Ms. Oliva, under LM Casitas Realty, LM Casitas Real Estate, Inc., or Martini Real Estate Financial Services.

*Respondent Marquez*

7. Cause does not exist to discipline the real estate license of Respondent Marquez, pursuant to Code section 10176, subdivisions (a), (b), and (i), as alleged in Count Two of the Accusation, in that there was no clear and convincing evidence that Respondent Marquez made any substantial misrepresentations, false promises of a character likely to influence, persuade, or induce, or engaged in other conduct constituting fraud or dishonest dealing pertaining to Mr. Martin. Respondent Marquez' testimony credibly refuted Mr. Martin's testimony as it pertained to statements Respondent Marquez purportedly said to Mr. Martin, particularly his uncontroverted testimony that he had no discussions with Mr. Martin, as Mr. Martin spoke only Spanish, and Respondent Marquez spoke only English. The Bureau introduced no evidence demonstrating that Mr. Martin spoke English or Respondent Marquez spoke Spanish, or produced any other credible evidence showing that Respondent Marquez had any conversations with Mr. Martin. Even if Respondent Marquez had made the statements Mr. Martin had attributed to him, the Bureau submitted no evidence demonstrating that the statements were false, dishonest, or misleading. Specifically, Mr. Martin's affidavit stated that Respondent Marquez had advised him that his purchase was going well, to wait approximately six more weeks to close escrow, and to understand that the banks were taking long periods of time to complete short sales. The Bureau introduced no evidence showing that Respondent Marquez had misrepresented anything when he purportedly made this statement. Similarly, the Bureau submitted no evidence to show that Respondent Marquez lied to Mr. Martin, when he purportedly advised that an employee of Home Solutions had embezzled money. The Bureau established only that Mr. Martin had made a \$2,800 deposit to purchase the Lakeridge Property, that the purchase was never completed, and that Mr. Martin never received a refund of his \$2,800. However, the Bureau failed to establish clearly and convincingly that Respondent Marquez was responsible for, or

knowingly helped to perpetuate a fraud against Mr. Martin. As such, this matter as it pertains to Respondent Marquez must be dismissed.

*Respondent Piscitello*

8. Cause does not exist to discipline the real estate license of Respondent Piscitello, pursuant to Code section 10177, subdivisions (d) and (g), as alleged in Count Two of the Accusation, in that there was no evidence introduced demonstrating that Respondent Piscitello committed any wrongdoing of any kind, or that Respondent Piscitello conducted or offered to conduct any business under Home Financial Solutions, LLC, Home Solutions Financial, LLC, or Impact Marketing Alliance. As such, this matter as it pertains to Respondent Piscitello must be dismissed.

ORDER

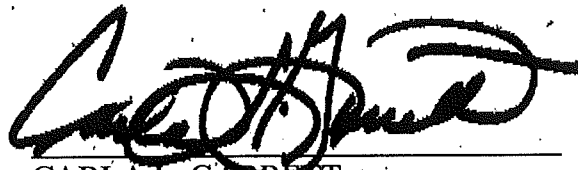
1. The real estate salesperson license of Respondent Martini, license number 01440375, is revoked.

2. Respondent Martini shall pay the cost of investigation and enforcement of the case in the amount of \$4,531.70 on a schedule acceptable to the Commissioner.

3. The Accusation, as it pertains to Respondent Marquez, is dismissed.

4. The Accusation, as it pertains to Respondent Piscitello, is dismissed.

Date: July 23, 2013



CARLA L. GARRETT  
Administrative Law Judge  
Office of Administrative Hearings