Department of Real Estate
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FILED

SEP 15 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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To: FRANCISCO J. AVILEZ	NO. H-2530 FR ORDER TO DESIST AND REFRAIN (B&P Code Section 10086)

The Commissioner (hereafter "the Commissioner") of the California Department of Real Estate (hereafter "the Department") caused an investigation to be made of the activities of FRANCISCO J. AVILEZ, also known as "Frank J. Avilez" (hereafter "Respondent"). Based on that investigation, the Commissioner has determined that Respondent has engaged in, is engaging in, or is attempting to engage in, acts or practices constituting violations of the California Business and Professions Code ("Code") and/or Title 10, Chapter 6, California Code of Regulations ("Regulations"), including acting in the capacity of, advertising or assuming to act as a real estate broker in the State of California within the meaning of Section 10131(d) (performing services for borrowers and/or lenders in connection with loans secured by real property), 10131.2 (collection of advance fees), 10085 (advance fee agreements and materials) and 10085.5 (collecting unauthorized advance fees) of the Code. Furthermore, based on the investigation, the Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order under the authority of Section 10086 of the Code.

FINDINGS OF FACT

1. At all times relevant herein, Respondent was and is licensed by the Department as a real estate salesperson.

2. During the period of time set out below, Respondent performed services for one or more borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: negotiate one or more loans for, or perform services for, borrowers and/or lenders with respect to the collection of advance fees and loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property; and charged, demanded or collected an advance fee for any of the services offered.

3. In furtherance of his plan and scheme to solicit advance fees and provide loan modification services, on or about March 9, 2009, Respondent entered into a loan modification services agreement with Marcelino U. According to that agreement, Respondent agreed to negotiate a loan modification on behalf of Marcelino U. for his property located at 516 Santa Gertrudis Way, Gonzales, California, in exchange for an advance fee payment of $1,500. On or about that same date, Marcelino U. paid the advance fee of $1,500 to Respondent. No loan modification was ever obtained by Respondent for Marcelino U., nor did Respondent ever refund the advance fee paid to him by Marcelino U.

CONCLUSIONS OF LAW

4. Based on the Findings of Fact contained in Paragraphs 1 through 3, above, FRANCISCO J. AVILEZ, solicited borrowers and/or performed services for those borrowers with respect to the collection of advance fees and loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property; and charged, demanded or collected advance fees for the services to be provided, which acts require a real estate broker license under Sections 10131(d) and 10131.2 of the Code.

5. FRANCISCO J. AVILEZ used a form of advance fee agreement which had not been provided to the Department for it prior review and consideration, in violation of Section 10085 of the Code, and Sections 2970 (submission of advance fee materials) and 2972 (content of verified accounting) of the Regulations.

DESIST AND REFRAIN ORDER

Based on the Findings of Fact and Conclusions of Law stated herein, FRANCISCO J. AVILEZ, whether doing business under your own name, or any other name or fictitious name, IS HEREBY ORDERED to:

1. Immediately desist and refrain from charging, demanding, claiming, collecting and/or receiving advance fees, as that term is defined in Section 10026 of the Code, for any of the services you offer to others, unless and until you demonstrate and provide evidence satisfactory to the Commissioner that you are properly licensed by the Department as a real estate broker and that FRANCISCO J. AVILEZ:

   (a) Has an advance fee agreement which has been submitted to the Department and which is in compliance with Sections 2970 and 2972 of the Regulations;

   (b) Has placed all previously collected advance fees into a trust account for that purpose and are in compliance with Section 10146 (deposit of advance fees into trust account) of the Code;

   (c) Has provided an accounting to trust fund owner-beneficiaries pursuant to Section 2972 of the Regulations.

2. Immediately desist and refrain from demanding, claiming, collecting and/or receiving advance fees, as that term is defined in Section 10026 of the Code, in any form, and under any conditions, with respect to the performance of loan modification or any other form of

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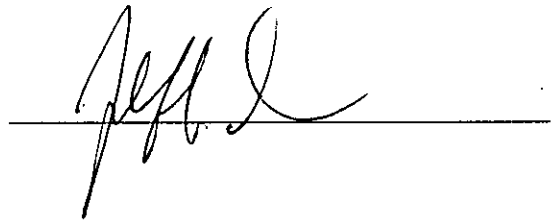
mortgage loan forbearance services in connection with loans on residential property containing four or fewer dwelling units.

DATED: 01/05/2010

JEFF DAVI
Real Estate Commissioner



-NOTICE-

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

cc: Francisco J. Avilez
5668 East Grant Avenue
Fresno, CA 93727