DEPARTMENT OF REAL ESTATE
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FILED

APR 28 2010

DEPARTMENT OF REAL ESTATE

By _____

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

To:	
LAST DANCE INC., and DAVID MASSOT HARVEY	NO. H-4102 SD ORDER TO DESIST AND REFRAIN (B&P Code Section 10086)

The Commissioner (Commissioner) of the California Department of Real Estate (Department) caused an investigation to be made of the activities of LAST DANCE INC. (LDI), and DAVID MASSOT HARVEY (HARVEY). Based on that investigation, the Commissioner has determined that LDI and HARVEY have engaged in acts or practices constituting violations of the California Business and Professions Code and/or Title 10, Chapter 6, California Code of Regulations (Regulations). 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 mentioned, LDI was and is licensed by the Department of Real Estate (hereinafter "Department") as a real estate broker corporation. At all time mentioned and continuing through to October 27, 2008 Jonathan Aldrich Kohl (Kohl) was licensed as the

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designated broker officer of LDI. LDI is licensed to do business using the fictitious business name RE/MAX Associates.

2. At all times mentioned, HARVEY was and is licensed by the Department as a real estate salesperson.

3. At all times mentioned, LDI and HARVEY, using the fictitious business name RE/MAX Associates, engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California, within the meaning of Section 10131(a) of the Code, including the operation and conduct of a real estate resale brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, LDI and HARVEY sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase and resale of real property.

4. On or about January 14, 2008, HARVEY acting on behalf of RE/MAX Associates, entered into a Residential Listing Agreement with Mariano R. Albano to short-sell a property located at 30534 Muir Court, Murrieta (Murrieta property). Addendum no. 2 to the listing agreement provided in part:

> "3.) Seller acknowledges there is NO guarantee the lien holder/lender will accept less than what it costs to close escrow and pay off the encumbrances against the property. As such, the Seller acknowledges the Broker will expend time, effort and money to market the property which may not recoverable if the property cannot be sold due to its over encumbrance. In consideration of Broker's time, effort and marketing, Seller agrees to pay $6,000. First payment of $3,000 on 1/30/2008. Second payment of $3,000 on 2/15/2998. Payable to RE/MAX Associates pursuant to paragraph 4C of the Residential Listing Agreement to offset time, effort and marketing expense. Notwithstanding paragraph 4A, if the property sells and closes escrow and if Listing Agent receives a minimum of a 2.5% Commission from seller's lender, $3,000 will be credited back to the seller at the close of escrow. In the event the property does not sell and does not close escrow for any reason, the Seller agrees that the amount payable in this paragraph toward time, effort and marketing expenses as identified in para. 4C is NOREFUNDABLE."

5. On or about August 16, 2007, HARVEY, on behalf of RE/MAX Associates, entered into a Commercial Residential Income and Vacant Land Listing Agreement with Mariano R. Albano and Pacita A. Albano to short-sell a property located at 106 East 18th

Street, San Diego (San Diego property). Addendum no. 3 to the listing agreement provided in part:

> "3.) Seller acknowledges there is NO guarantee the lien holder/lender will accept less than what it costs to close escrow and pay off the encumbrances against the property. As such, the Seller acknowledges the Broker will expend time, effort and money to market the property which may not recoverable if the property cannot be sold due to its over encumbrance. In consideration of Broker's time, effort and marketing, Seller agrees to pay $4,000. Payment of $4,000 on 2/5/2008. Payable to RE/MAX Associates pursuant to paragraph 4C of the Residential Listing Agreement to offset time, effort and marketing expense. Notwithstanding paragraph 4A, if the property sells and closes escrow and if Listing Agent receives a minimum of a 2.5% Commission from seller's lender, $3,000 will be credited back to the seller at the close of escrow. In the event the property does not sell and does not close escrow for any reason, the Seller agrees that the amount payable in this paragraph toward time, effort and marketing expenses as identified in para. 4C is NOREFUNDABLE."

6. On or about January 30, 2008, Mariano R. Albano paid to RE/MAX Associates $3,000 as the first installment called for in the Muirrieta property listing agreement.

7. On or about February 5, 2008, Mariano R. Albano paid to RE/MAX Associates $4,000 as called for in the San Diego property listing agreement.

CONCLUSIONS OF LAW

Based on the findings of fact contained in paragraphs 1 through 7:

8. LDI, acting by and/or through one or more agents, associates, affiliates, and/or co-conspirators, including, but not limited to HARVEY, and using the fictitious business name RE/MAX Associates, sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase and resale of 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(a) (real estate license required for enumerated acts) and 10131.2 (real estate broker license required to charge or collect an advance fee) of the Code.

9. LDI, acting by and/or through one or more agents, associates, affiliates, and/or co-conspirators, including, but not limited to HARVEY, and using the names RE/MAX Associates, used a form of advance fee agreement in the name of RE/MAX Associates which

had not been provided to the Department for its prior review and consideration, in violation of Section 10085 of the Code (prior submission of advance fee materials required) and Section 2970 (details for prior submission of advance fee materials) of the Regulations.

DESIST AND REFRAIN ORDER

Based on the Findings of Fact and Conclusions of Law stated herein, LDI and HARVEY, whether doing business under your own name, or any other name or fictitious name, are hereby ordered to immediately desist and refrain from charging, demanding, or collecting advance fees, as that term in defined in Section 10026 of the Code, for any of the services you offer to others, in any form, 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 you have:

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

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

(3) Provided an accounting to trust fund owner-beneficiaries pursuant to Section 2972 of the Regulations.

DATED: 4/26/2010

JEFF DAVI
Real Estate Commissioner

By

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)."

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