FILED

OCT 22 2013

BUREAU OF REAL ESTATE

By K. Contreras

BEFORE THE

BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	NO. H-4354 SD
MOHAMAD FOUZI HAFFAR,	)	
	)	OAH NO. 2012060664
Respondents.	)	
	)	

DECISION

The Proposed Decision dated September 27, 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 NOV 12 2013.

IT IS SO ORDERED OCT 21 2013.

REAL ESTATE COMMISSIONER

By: JEFFREY MASON
Chief Deputy Commissioner

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

In the Matter of the First Amended Accusation Against:	Case No. H-4354 SD
MOHAMAD FOUZI HAFFAR,	OAH No. 2012060664
Respondent.	

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on August 20, 2013.

John W. Barron, Counsel, represented the complainant.

Edward O. Lear, Attorney at Law, represented respondent, who was present at the administrative hearing.

Evidence was received on August 20, 2013, after which the record was left open until August 30, 2013, to permit respondent to submit proof that he had paid court fines and fees. A document provided by respondent in this regard was marked Exhibit Q and made a part of the record. The matter was submitted on August 30, 2013, with regard to the first, second, fourth and fifth causes of action. Complainant dismissed the third cause of action.

FACTUAL FINDINGS

1. Veronica Kilpatrick, Deputy Real Estate Commissioner, Bureau of Real Estate, State of California, filed the First Amended Accusation against respondent in her official capacity.[1] The First Amended Accusation seeks to discipline respondent for demanding and accepting illegal advance fees from numerous homeowners relating to their efforts to modify their home mortgages.

[1] Effective July 1, 2013, the Department of Real Estate was placed under the Department of Consumer Affairs as the "Bureau of Real Estate."

2. Respondent is presently licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate broker. Respondent was initially licensed on July 26, 2005, and his current broker's license expires on December 7, 2013. Respondent holds a mortgage loan originator license endorsement.

The State Bar Disciplinary Action Relating to Illegal Advance Fees

3. Respondent was a member of the California State Bar until June 21, 2012, when the California Supreme Court issued an order disbarring him from the practice of law for unlawfully demanding and accepting advance fees to perform mortgage loan modifications. The Supreme Court adopted the Stipulations to Facts, Conclusions of Law and Disposition and Order of Involuntary Inactive Enrollment in the State Bar disciplinary action captioned *In the Matter of Mohammed Haffar*, Case Numbers 10-O-08867, 10-O-08870, 10-O-08871, 10-O-10178, 10-O-10646, 10-O-11010, 10-O-11235, 11-O-10040, 11-O-12522. A Judge of the California State Bar Court approved these stipulations on December 22, 2011.

4. By these stipulations, respondent admitted to committing numerous disciplinary infractions involving consumers who had retained respondent to help them obtain mortgage loan modifications. According to these stipulations, respondent committed six violations of Professional Code of Conduct Section 1-300(A), aiding the unauthorized practice of law; one violation of 1-300(C), aiding the unauthorized practice of law; one violation of 1-310, forming a partnership with a non-attorney; eight violations of 1-400(C), soliciting legal representation of consumers; seven violations of 3-110(A), failure to perform legal service with competence; and eight violation of 3-700(D)(2), failure to promptly repay unearned advance fees.

5. In addition, respondent admitted committing six violations of Business and Professions Code Section 6106.3 for willfully violating Civil Code section 2944.7, subdivision (a), unlawfully demanding and accepting advance fees to perform mortgage loan modifications.

6. Respondent in his stipulations admitted taking illegal advance fees from consumers as follows:

7. On or about July 9, 2009, consumer E.P. paid respondent $3,500 in advance fees. In a retainer agreement that the consumer signed, respondent agreed to refund this sum if a loan workout solution was not achieved within 365 days. Consumer E.P. demanded that respondent refund this sum on July 12, 2010. Respondent failed to refund this sum.

8. On or about December 24, 2008, consumers V.R and R.H. employed respondent to provide them with services in connection with negotiating and obtaining a home mortgage loan modification. These consumers paid respondent $3,500 in advance fees. On February 20, 2009, consumers V.R. and R.H. paid respondent an additional $2,500 in advance fees to obtain a home mortgage loan modification on a second property. In a

retainer agreement the consumers signed, respondent agreed to refund this sum if a loan workout solution was not achieved. Consumers V.R. and R.H. demanded the refund of their fees paid to respondent.

9. Respondent failed to obtain loan modifications for consumers V.R. and R.H. for either property and failed to refund the advance fees he collected from them.

10. On or about April 20, 2010, consumer P.M. employed respondent to provide services connected with negotiating and obtaining a home mortgage loan modification. Respondent demanded that consumer P.M. pay him $3,500 in advance fees for this service. Consumer P.M. paid respondent $3,500. In a retainer agreement that the consumer signed, respondent agreed to refund this sum if a loan workout solution was not achieved.

11. Respondent failed to obtain a home mortgage loan medication for consumer P.M. and failed to refund the advance fees he collected from consumer P.M.

12. On or about April 14, 2010, consumer M.F. paid respondent $1,750 in advance fees in connection with negotiating and obtaining a home mortgage loan modification. Consumer M.F. paid respondent an additional $1,750 in advance fees in connection with negotiating and obtaining a home mortgage loan modification. On or about September 4, 2010, consumer M.F. paid respondent an additional $450 in advance fees and on September 16, 2010, consumer M.F. paid an additional $450 in advance fees in connection with negotiating and obtaining a home mortgage loan modification.

13. On or about June 1, 2010, consumer E.A. employed respondent to provide services in connection with negotiating and obtaining a home mortgage loan modification. On or about June 3, 2010, consumer E.A. paid respondent $1,750 in advance fees for this service. On or about June 8, 2010, consumer E.A. paid respondent an additional $1,750 in advance fees for this service.

14. On or about October 18, 2010, consumer E.A.'s mortgage lender served her with a Notice of Default. At that time, E.A. terminated respondent's services and demanded that respondent refund the advance fees he collected. Respondent failed to refund the advance fees consumer E.A. paid respondent.

15. On or about April 6, 2010 consumers C.D. and K.D. paid respondent $1,750 in advance fees for services in connection with negotiating and obtaining a home mortgage loan modification. Consumers C.D. and K.D. paid an additional $1,750 on or about May 6, 2010 in advance fees in connection with respondent's negotiating and obtaining a home mortgage loan modification.

16. On or about January 24, 2011, consumers C.D. and K.D. demanded that respondent refund the $3,500 in advance fees they paid respondent. Respondent failed to respond to their demand or refund the advance fees.

17. Consumer A.B. paid respondent $8,200 in advance fees in connection with obtaining and negotiating a home mortgage loan modification.

18. In or about October 2010, consumer A.B. demanded that respondent refund the advance fees she paid respondent. Respondent failed to respond to consumer A.B.'s demand or refund the advance fees he accepted from consumer A.B.

19. On or about February 10, 2010, consumer M.G. paid respondent $1,750 in advance fees in connection with negotiating and obtaining a home mortgage loan modification. Consumer M.G. paid respondent an additional $1,750 in advance fees in connection with negotiating and obtaining a home mortgage loan modification. Consumer M.G. paid respondent an additional $595 in advance fees in connection with negotiating and obtaining a home mortgage loan modification.

20. On or about October 2010, consumer M.G.'s home was sold at a foreclosure sale. At that time she terminated respondent's services and demanded that he refund the advance fees she paid him. Respondent failed to respond to this demand or refund the advance fees he accepted.

21. On or about July 8, 2010, consumer T.B. paid respondent $3,250 in advance fees for services in connection with negotiating and obtaining two home mortgage loan modifications. On November 22, 2010, consumer T.B. paid respondent another $1,625 in advance fees in connection with negotiating and obtaining two home mortgage loan modifications.

22. On or about December 2010, consumer T.B. learned from her mortgage lender that it was not possible to obtain a loan modification for her second property. At this time, she demanded that respondent refund the advance fees she paid to respondent. Respondent failed to respond to this demand or refund the advance fees he accepted from consumer T.B.

23. Respondent stipulated that he failed to provide any legal services in connection with negotiating and obtaining home mortgage loan modifications and that he did not perform any other legal services of value. Respondent further stipulated that he did not fully perform each and every service he had contracted to perform or represented that he would perform for each of these consumers, prior to demanding, charging, collecting or receiving advance fees.

Respondent's Criminal Conviction for Charging Advance Fees

24. Respondent was convicted of charging advance fees for home mortgage loan modifications. On June 18, 2012, in the Superior Court of the State of California, County of Shasta, Case No. MCRDCRF110001683, respondent was convicted on his plea of guilty of violating Civil Code section 2944.7, subdivision (a), charging an advance fee, in the matter captioned *People of the State of California vs. Mohammad Fouzi Haffar.* The Superior Court suspended imposition of sentence, placed respondent on 12 months informal probation, and

ordered him to refund advance fees in the amount of $17,000 that he had collected from five sets of victims identified in the criminal complaint.

Respondent Failed to Submit Fee Agreements and Advertising to the Bureau

25. Respondent did not file any documentation with the Bureau. Business and Professions Code section 10085 required respondent to obtain approval of advance fee agreements and advance fee advertising relating to the documents he used for the purpose of negotiating and obtaining home mortgage loan modifications. Respondent failed to submit these documents to the Bureau.

Respondent's Evidence: Haffar and Associates

26. On August 17, 2009, respondent filed with the California Secretary of State articles of incorporation for a law firm, Haffar and Associates, a Professional Corporation. Haffar and Associates specialized in negotiating and obtaining mortgage home modifications.

27. At the time, in addition to Haffar and Associates, respondent owned Allied Financial Network, Inc., an entity that respondent still owns. Allied Financial Network, Inc. is a real estate and mortgage brokerage that is engaged in the business of buying, selling, financing, renting, and managing properties throughout the state of California. Respondent was the designated officer and broker of Allied Financial Network, Inc. until May 22, 2012.

28. Effective October 11, 2009, real estate licensees and attorneys were prohibited from demanding or accepting advance fees in connection with negotiating mortgages. The legislation, titled SB 94, was designed to prohibit real estate licensees and attorneys from taking advantage of struggling homeowners who were facing foreclosure. This legislation included Civil Code section 2944.7, subdivision (a), which makes it illegal for any person to demand, charge or collect advance fees for negotiating mortgage home loan modifications.

29. Despite this legislation, respondent sought, as an attorney, to accept advance fees for mortgage loan modifications. To this end, respondent consulted with a legal ethics attorney, David Carr. In a communication dated June 25, 2010, Mr. Carr provided respondent with a draft loan modification fee agreement that Mr. Carr believed was compliant with Civil Code section 2944.7, subdivision (a). Mr. Carr cautioned respondent, however, that "structuring the work and fees to comply with (Civil Code) section 2944.7(a) has not yet been tested by any court."[2] Respondent used this agreement to take advance fees from consumers.

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[2] Mr. Carr stressed in no uncertain terms in his communication to respondent that under the structured fee arrangement an attorney needed to complete specific tasks and have his fingerprints on the loan modification process for it to "pass muster." The specific tasks, Mr. Carr noted, described in the structured fee agreement "must be examined carefully and discharged by an (a)ttorney."

30. Under his law firm, respondent believed he created a working business model where consumers retained his services by paying him advance fees for services relating to negotiating and obtaining loan modifications for consumers. He actively and extensively advertised his loan modification services. One advertisement represented "Home Mortgage Loan Litigation" as a solution to homeowners facing foreclosure.[3] The advertising did not detail what "home mortgage loan litigation" involved. This advertising further represented that consumers would be assisted by "experienced attorneys" who could help distressed homeowners with "Mortgage Loan Litigation in California."

31. Respondent estimated that 90% of his legal practice was devoted to mortgage loan modifications through Haffar and Associates.

32. He testified that he created his law firm because as an attorney he could do more for consumers than he could as a real estate licensee. Respondent did not explain what he meant by this or offer any evidence that he did anything different as an attorney, as opposed to as a licensed broker, in negotiating or obtaining loan modifications for the consumers at issue in this proceeding. In fact, respondent used non-attorneys in his practice to retain consumers and to perform work associated with mortgage loan modifications without attorney supervision.[4]

33. Respondent acknowledged at the hearing that the loan modification fee agreement Mr. Carr prepared for him in June 2010 was not compliant with Civil Code section 2944.7, subdivision (a).

34. Between May 2009 and July 2010, respondent traveled to Syria to make marriage arrangements. As a result he was "absent," as he testified, from the loan modification practice and was not involved in the work being performed at his law firm related to home mortgage loan modifications. Individuals who worked for him, through advertising and retainer agreements approved by respondent, collected advance fees from consumers.

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[3] Consumer M.F. attached this advertisement to her complaint to the Bureau.

[4] Respondent stated in a March 1, 2012 letter to the Department of Real Estate (now the Bureau of Real Estate) that he wanted to "systemize the modification client intake process and systemize the way in which (he prepared loan modification applications for lenders)." He developed this "system," as he termed it, with a non-attorney, Michael Nazarinia, a former account executive at Countywide Mortgage. In this letter respondent did not explain how he did anything different as an attorney, as distinguished from a licensed real estate broker, when he negotiated loan modifications for the consumers. He also did not explain how the system he created benefited individual consumers who retained his services. This system, thus, appears to have been created for his, and Mr. Nazarinia's, financial benefit. Parenthetically, respondent stipulated to the State Bar that he unethically formed a business partnership with Mr. Nazarinia.

35. While acknowledging that he made serious misjudgments in failing to supervise his loan modification business adequately, respondent blamed the non-attorneys in his office for manipulating consumers and for engaging in unethical behavior. He denied that he engaged in dishonest dealing. Respondent stressed that in both his criminal proceeding and in the proceeding before the State Bar he was found to have not engaged in moral turpitude. Now respondent understands, he claimed, the importance of supervising individuals who work for him.

36. Respondent expressed remorse for his conduct. He has written apology letters to his victims and has taken steps towards making restitution to them. Respondent has paid court ordered fines and fees relating to his criminal conviction.

Testimony of Character Witnesses

37. Respondent's wife, Maya Haffar, testified as a character witness on respondent's behalf. Ms. Haffar testified that respondent is a good and honest person and that his problems were due to the fact that he did not supervise his staff properly and he did not read his emails.

38. Maureen Kilbourne is an account executive for Plaza Home Mortgage. She has worked with many brokers. Respondent is one her favorites because he is very honest, and she can trust him. Respondent has a stellar reputation with her company.

39. Pasquale Sprague has worked for Allied Financial Network for the last six years. Respondent, he testified, makes sure that there are no problems in any paperwork between the lender and the consumer. He added that respondent had good quality control mechanisms in place. He testified that respondent is honest.

40. Amar Harrag is a business owner and a licensed real estate broker. He has worked with respondent and regards him as a friend. He regards respondent as moral with solid values.

41. Gregory Hall Tesoni is a businessman. He has a high opinion of respondent and wouldn't hesitate to use respondent in the future for real estate transactions.

42. Tiffany Alleshouse is a real estate agent and broker of record at Allied Financial Network. For the last two months, she has worked at Allied as the designated officer. She regards respondent as very honest and would recommend him to anyone she knows.

Letters In Support

43. Respondent submitted the letters of fourteen individuals who wrote on his behalf. These persons described respondent as an honest, ethical, reliable, compassionate, professional and caring individual, who is involved in his community.

Respondent's Community Involvement

44. Respondent is involved with his mosque and community. He has contributed to the religious school and has helped individuals facing financial difficulties. Respondent regularly contributes a portion of his income to the needy.

Administrative Hearsay Relating to the Complaints of Consumers S.Y., J.L., M.F., C.G. and P.C. to the Department of Real Estate

45. In addition to these matters of record, complaints to the Bureau were filed by consumers S.Y., J.L., M.F., C.G., and P.C., and these complaints were received as administrative hearsay to the extent they might supplement or explain factual findings based on non-hearsay evidence. However, the complaints of consumers S.Y., J.L, C.G., and P.C. do not supplement or explain factual findings based on non-hearsay evidence and, thus, do not establish that respondent collected advance fees from these individuals as complainant alleges. M.F.'s complaint supplements and explains respondent's stipulation to the State Bar to the extent that respondent took illegal advance fees from this consumer.

Motion to Dismiss

46. Respondent moved to dismiss counts one through three on jurisdictional grounds. Respondent asserts that the Bureau lacks jurisdiction pursuant to Business and Professions Code section 10133, subdivision (a), because respondent was doing legal work as an attorney. This motion is denied. Business and Professions Code Section 10133, subdivision (a)(3), provides that the Bureau lacks authority over attorneys at law doing legal work. Business and Professions Code Section 10133 subdivision (b), states that exceptions to the Bureau's licensing requirements do not apply to persons who use these exceptions to evade the law.

By the terms of respondent's stipulation to the Bar, respondent failed to provide any legal services in connection with negotiating and obtaining home mortgage loan modifications, and he admitted he failed to perform any legal services of value. As a result, he can't claim that the Bureau lacks jurisdiction over him since he was not rendering legal services to consumers as an attorney at law.

Regardless of this conclusion, the record is clear that respondent sought to evade the prohibition against accepting advance fees by operating under the moniker of a law firm. In response to this clear statutory prohibition, respondent created a law firm, demanded and accepted advance fees, and operated just as he would have as a real estate broker, except that he took illegal advance fees as retainers. Saliently, at his hearing, respondent did not explain, nor could he explain, how the work he did as a licensed attorney who negotiated and obtained loan modifications for homeowners differed from the work he did as a real estate broker. The only difference, it is concluded, is that respondent accepted advance fees.

LEGAL CONCLUSIONS

1. The complainant has the burden of proving the charging allegations by "clear and convincing proof to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. Business and Professions Code section 10177, subdivisions (f), (g), (j), and (q), provides, in part:

> The commissioner may suspend or revoke the license of a real estate licensee. . . who has done any of the following . . .
>
> [¶]...[¶]
>
> (f) Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or has either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500), and only upon an express finding of a violation of law by the agency or entity.
>
> (g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.
>
> [¶]...[¶]
>
> (j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.
>
> [¶]...[¶]
>
> (q) Violated or failed to comply with Chapter 2 (commencing with Section 2920) of Title 14 of Part 4 of Division 3 of the Civil Code, related to mortgages.

3. Section 10026, subdivision (a), defines an advance fee as "a fee, regardless of form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license . . . before fully completing the service the licensee contracted to perform or represented would be performed."

4. Section 10085 provides that the commissioner "may require that any or all materials used in obtaining advance fee agreements . . . be submitted to him or her at least 10 calendar days before they are used." Further, section 10085 provides that the commissioner "may determine the form of the advance fee agreements, and all materials used in soliciting prospective owners and sellers . . . ." A violation of section 10085 "or of the rules, regulations, orders or requirements of the commissioner thereunder shall constitute grounds for disciplinary action against a licensee."

5. California Code of Regulations, title 10, section 2970, subdivision (a), states: "A person who proposes to collect an advance fee as defined in Section 10026 of the [Business and Professions] Code shall submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for the payment of an advance fee including the form of advance fee agreement proposed for use."

6. Section 10085.5 prohibits the collection of advance fees for loan modification activities. Subdivision (a) reads as follows:

> It shall be unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee . . . for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with loans to be secured directly or collaterally by a lien on real property, before the borrower becomes obligated to complete the loan or, (2) for performing any other activities for which a license is required, unless the person is a licensed real estate broker and has complied with the provisions of this part.

7. Business and Professions Code section 10085.6 provides as follows, in pertinent part:

> (a) Notwithstanding any other provision of law, it shall be unlawful for any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the licensee has fully performed each and every service the licensee contracted to perform or represented that he, she, or it would perform.

[¶]...[¶]

(c) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

8. Civil Code section 2944.7, subdivision (a)(1) provides as follows:

(a) Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.

9. Business and Professions Code section 10166.05, subdivision (c), reads as follows:

Notwithstanding any other provision of law, the commissioner shall not issue a license endorsement to act as a mortgage loan originator to an applicant unless the commissioner makes all of the following findings:

[¶]...[¶]

(c) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the article.

10. California Code of Regulations, title 10, section 2912, provides as follows:

The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code

for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

CAUSES FOR DISCIPLINE

First Cause of Action

11. Cause exists to suspend or revoke respondent's license pursuant to Business and Professions Code section 10177, subdivision (d) (willful disregard/violation of Real Estate Law). Respondent unlawfully claimed, demanded and received an advance fee of $3,500 from homeowners Gary and Gloria G. on May 21, 2010, and advance fees totaling $3,500 on April 14, 2010, and May 15, 2010, from homeowner M.F. in order to solicit lenders on their behalf, in violation of Business and Professions Code section 10085.6. Respondent, further, failed to comply with the provisions of the Real Estate Law when he failed to submit materials he used in advertising, promoting, soliciting and negotiating loan modifications, including advance fee retainer agreements he used, to the Department of Real Estate, in violation of Business and Professions Code sections 10085 and 10085.5, subdivision (a)(2).

12. Cause exists to suspend or revoke respondent's real estate broker license pursuant to Business and Professions Code section 10777, subdivision (j) (fraud or dishonest dealing).[5] The evidence establishes that consumers M.F. and Gloria and Gary G. paid respondent an advance fee with the expectation that they were hiring a law firm of experienced attorneys to assist them. In fact, these consumers obtained the services of non-attorneys who were not even supervised by an attorney and who provided them with no legal services of value. This conduct constitutes dishonest dealing.

13. Cause does not exist to suspend or revoke Respondent's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (g). No evidence was presented, such as expert testimony, to establish that respondent engaged in negligence or that he was incompetent.

14. Cause exists to suspend or revoke respondent's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (q). Respondent failed to comply with Civil Code section 2944.7, subdivision (a), which relates to mortgages. Specifically, respondent took illegal advance fees from consumers M.F. and C.G. in connection with their efforts to have their home mortgages modified.

Second Cause of Action

15. Cause exists to discipline respondent's license pursuant to Business and Professions Code section 10085 and this section's implementing rule, Cal. Code of Regs., title 10, section 2970, subdivision (a). Respondent failed to obtain a no objection letter from the Bureau regarding his contract for advance fees and advertising as required by Section 10085.

Fourth Cause of Action

16. Cause exists to suspend or revoke respondent's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (b) (conviction of crime substantially related to qualifications, functions, or duties of real estate license.) Respondent was convicted of violating Civil Code Section 2944.7, subdivision (a), illegally charging advance fees for home mortgage loan modification, a misdemeanor offense that is substantially related to the qualifications and duties of a real estate licensee.

Fifth Cause of Action

17. Cause exists to discipline respondent's license pursuant to Business and Professions Code section 10177, subdivision (f) (license revocation by another agency for acts that if done by real estate licensee would be grounds for revocation of real estate license). The

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[5] Respondent's argument that he did not engage in dishonest dealing because the State Bar and the Superior Court concluded that his conduct did not constitute "moral turpitude" is not persuasive. The facts of record in this proceeding show that respondent engaged in dishonest dealing.

State Bar disciplined respondent for conduct that would subject his real estate broker license to discipline. Respondent stipulated to the State Bar that he illegally took advance fees from P.M. on April 20, 2010; from M.F. in April and May 2010; from E.A on June 3 and June 8, 2010; from C. and K. D. on April 6 and May 6, 2010; from M.G. on February 10, 2010, and October 15, 2010; and from T.B. on July 8, 2010 and on November 22, 2010. By these acts respondent violated Business and Professions Code section 10085.6, which would be grounds to discipline his license under Business and Professions Code section 10177, subdivision (d) (willful disregard/violation of Real Estate Law).

18. Cause does not exist to suspend or revoke respondent's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (g). No evidence was presented in the form of expert testimony that respondent's conduct constituted negligence or incompetence.

19. Cause exists to suspend or revoke respondent's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (j). Respondent's conduct, as both his stipulations to the State Bar and his testimony make clear, constitutes dishonest dealing. Respondent created a business, which he called a law firm, where he collected illegal advance fees from consumers P.M., M.F., E.A., C. and K. D., M.G., and T.B. Each of these consumers learned of respondent's services through advertising he approved. Each of these consumers signed retainer agreements approved by respondent and paid advance fees accordingly to Haffar and Associates. Each of these consumers thought he or she was engaging the services of experienced attorneys when in fact they were engaging the services of non-attorneys who were not even supervised by an attorney. Respondent then failed to return advance fees he promised he would return when consumers P.M., E.A., C. and K. D., M.G., and T.B. demanded refunds. Respondent's conduct towards these consumers, in terms of its scope, nature and degree, constitutes dishonest dealing.

Cause Exists to Revoke Respondent's Mortgage Loan Originator Endorsement

20. Cause exists to revoke respondent's mortgage loan originator license endorsement under Business and Professions Code section 10166.05, subdivision (c)(lack of general fitness). By his conduct in accepting illegal advance fees from numerous consumers, respondent failed to demonstrate financial responsibility, character, and general fitness as to command the confidence of the community and warrant a determination that as a mortgage loan originator respondent will operate honestly, fairly, and efficiently within the purposes of the Real Estate Law.

Evaluation Regarding Degree of Discipline

21. Respondent asked that he be allowed to hold a probationary license. It is not in the public interest to permit respondent to operate as a real estate broker and the outright revocation of his real estate broker license is appropriate despite the testimony of his character witnesses and the letters of support he submitted.

Under the guise of serving as an attorney, respondent took advantage of numerous homeowners by charging advance fees he was expressly prohibited from charging in his capacity as a real estate broker. This conclusion is supported by the State Bar's conclusion that he provided no legal work for these individuals. His underlying conduct was simply egregious. When consumers demanded refunds, he failed to respond. Respondent's defense that he was involved in making arrangements for his marriage does not constitute a defense since he was responsible for the actions of persons he employed, whether professing to be an attorney or a licensed broker. Respondent's expression of remorse during the hearing was undercut by his testimony that persons who did work for him were, in fact, responsible because they manipulated consumers and engaged in unethical conduct. [See *Arenstein v. California State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 192 ("If a licensee elects to operate his business through employees he must be responsible to the licensing authority for their conduct in the exercise of his license and he is responsible for the acts of his agents or employees done in the course of his business in the operation of the license."] Further, respondent has not made full restitution.

Standing alone, respondent's criminal conviction warrants the outright revocation of his license consistent with the criteria set forth under California Code of Regulations, title 10, section 2912. The conviction is less than two years old, and he remains on probation. (Cal. Code of Regs., tit. 10, § 2912, subds. (a) and (e).) His conviction has not been expunged. (Cal. Code of Regs., tit. 10, § 2912, subd. (c).) Respondent has not made full restitution to the victims. (Cal. Code of Regs., tit. 10, § 2912, subd. (b).) Respondent has not engaged in *significant* and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. (Cal. Code of Regs., tit. 10, § 2912, subd. (l).) Respondent's stable home life (Cal. Code of Regs., tit. 10, § 2912, subd. (j)), corrections he has made to his business practice (Cal. Code of Regs., tit. 10, § 2912, subd. (h)), and his change in attitude (Cal. Code of Regs., tit. 10, § 2912, subd. (m)), do not justify allowing respondent to continue as a real estate broker, even on a probationary basis.

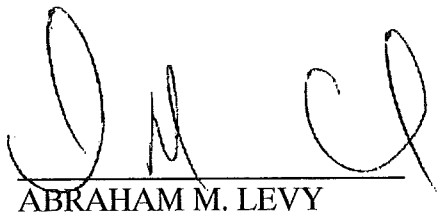
Costs

22. Complainant requested investigation costs totaling $6,147.80, pursuant to Business and Professions Code Section 10106. In connection with this application, complainant submitted declarations of costs signed by complainant and by Mr. Barron. Based upon these declarations, and consistent with the factors outlined by the Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, reasonable costs of investigation and enforcement of this matter are found to be $5,000. A reduction of costs is in consideration of respondent's good faith belief in the merits of his position and the efforts he has taken towards rehabilitation. Respondent is advised that this amount must be paid prior to the reinstatement of any licensing rights, pursuant to Business and Professions Code section 10106, subdivision (g)(1).

ORDER

All licenses and licensing rights of respondent Mohamad Fouzi Haffar, under the Real Estate Law, are revoked. Within 90 days of the effective date of this Decision, respondent shall reimburse the Bureau the sum of $5,000 for its costs of investigation and enforcement.

Dated: September 27, 2013



ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings