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DEPARTMENT OF REAL ESTATE

By L. Frost

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Desist and Refrain Order of	)	
	)	NO. H-5507 SAC
	)	
KRISTIN ALEXANDRA MARSHALL,	)	OAH NO. 2011020244
	)	
Respondent.	)	
	)	

DECISION

The Proposed Decision dated March 24, 2011, 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 MAY 02 2011.

IT IS SO ORDERED 5/2/11

Acting
Real Estate Commissioner

Barbara J. Bigby

BARBARA J. BIGBY

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Request for an Order to Desist and Refrain: KRISTIN ALEXANDRA MARSHALL, Respondent.	Case No. H-5507-SAC OAH Case No. 2011020244

PROPOSED DECISION

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on February 14, 2011.

Kenneth C. Espell, Real Estate Counsel, Department of Real Estate (Department), represented complainant Charles Koenig, a Deputy Real Estate Commissioner of the State of California (complainant).

Respondent Kristin Alexandra Marshall, Esq., was present and represented herself.

Oral and documentary evidence was received. At the conclusion of the hearing, the parties offered oral closing arguments. The record was then closed, and the matter was submitted for decision on February 14, 2011.

FACTUAL FINDINGS

1. Respondent was a licensed real estate salesperson from December 19, 2001, through December 18, 2005. On October 18, 2007, the Department issued real estate broker license number B/01326232 to respondent. Respondent's broker license is current thorough October 17, 2011. Respondent's main office is located at 4690 Duckhorn Drive, Sacramento, California 95834.

2. Respondent is also a licensed attorney who specializes in real estate matters. Respondent's law office and her broker office are located at the same address, with separate offices for each licensed activity. Respondent's law office is designated as the "Law Office of Kristin Marshall, A Professional Corporation." Her law office logo consists of a dark colored square with large white letters "KM."

Beneath these initials within the square are the words "The Law Office of Kristin Marshall."

3. *Norman Schriever*: On February 17, 2004, the Department issued a real estate salesperson license to Norman Schriever. This license is current and will expire on February 21, 2012. Mr. Schriever's last employing broker was Willard Russell Fields. Mr. Fields ceased functioning as Mr. Schriever's employing broker effective February 8, 2010. Since March 30, 2010, the Department has no employing broker associated with Mr. Schriever's salesperson license.

4. Respondent has never been Mr. Schriever's employing broker.

5. *Unity Financial Solution, LLC*: On June 10, 2009, Mr. Schriever filed a Fictitious Business Name Statement with the Sacramento County Department of Finance for "Unity Financial Solutions," a company of which he was President. On July 31, 2009, Mr. Schriever filed Limited Liability Company (LLC) Articles of Organization with the California Secretary of State (Secretary) for Unity Financial Solutions, LLC (Unity). Mr. Schriever listed himself as Unity's sole manager. On August 10, 2009, Mr. Schriever filed a Statement of Information for Unity with the Secretary. Mr. Schriever indicated that Unity was engaged in the business of "marketing" and that he was its president and sole member. Unity's business address of record was listed as 5031 D Street, Sacramento, California.

6. *Sacramento Foreclosurehelp.com*: The Department's Desist and Refrain Order (Factual Finding 11) alleges that Sacramento Foreclosurehelp.com (SFH) "is a company of unknown organization; not registered with the Secretary of States Office. . . The SFH website, which is no longer active, listed Respondent Schriever, without the benefit of a broker supervisor, as the President and Chief Financial Officer of SFH. SFH is engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate broker within the State of California within the meaning of Sections 10131(d) and 10131(e) of the [Business and Professions] Code, including soliciting borrowers to do one or more of the following acts for another or others, for or in expectation of compensation: negotiate loans for, or perform services for, borrowers and/or lenders in connection with loans secured directly or collaterally by one or more liens on real property."[1]

7. The Department has never issued a real estate license to Unity or SFH.

8. Mr. Fields submitted a declaration under penalty of perjury stating that he has never conducted business as either Unity or SFH, is not an officer, director, member, partner, or designated broker for either of these entities and that he never gave Mr. Schriever permission to independently offer loan modifications or to

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[1] Unless otherwise specified, all undesignated statutory references are to the California Business and Professions Code.

conduct any other activities for which a real estate license is required under the business names of either Unity or SFH.

9. *Respondent's Legal Representation of Mr. Schriever*: On September 3, 2009, the Department filed Accusation Number H-5267 against Mr. Schriever. Respondent represented Mr. Schriever in this matter. The allegations contained in that Accusation are unknown. An amended Accusation was filed that named both Unity and SFH and raised concerns that Mr. Schriever was involved in loan modifications through these entities. Respondent and Department counsel Mr. Espell eventually settled this case.

10. On March 17, 2010, respondent wrote to Senior Deputy Commissioner Nishimura, in response to the Department's request for information from Mr. Schriever and specifically, for documents pertaining to Unity and SFH. Respondent advised Ms. Nishimura that she was currently representing Mr. Schriever in the Department's Accusation and provided the following information: "Mr. Schriever's last real estate transaction was approximately 18 months ago, and since that time has sought opportunities outside the real estate realm. Unity Financial Solutions, LLC and Sacramento Foreclosure Help have no transactions or clients; therefore there are no documents that can be provided."

11. *Order to Desist and Refrain*: On November 8, 2010, the Commissioner issued the current Order to Desist and Refrain (Order) against respondent, Mr. Schriever, Unity and SFH. There was no appeal of the Order filed by Mr. Schriever, Unity or SFH. Based upon its investigation, the Commissioner determined that respondent and Mr. Schriever had acted as agents for one another, and had used the unlicensed fictitious business names of Unity and SFH. The Commissioner found that Unity was offering loan modification services and that SFH was offering short sales services.

The Commissioner determined that Mr. Schriever and respondent had engaged in, are engaging in, or are attempting to engage in acts or practices that violated the Code and its implementing regulations, and had done so for or in expectation of compensation in connection with loans secured by real property. Specifically, the Commissioner determined that respondent and Mr. Schriever had advertised or acted in the capacity as a real estate broker within the meaning of section 10131, subdivision (d), by soliciting borrowers and offering loan modification services for which an advanced fee is to be collected. This conduct violated sections 10026 (advance fee), 10130 (unlawful to act as, advertise or assume to act as a real estate broker without a license) and 10139 (criminal penalties for unlicensed activity) of the Code. The Commissioner determined that these acts had occurred beginning October 26, 2009, and continued through May 25, 2010. Unity's website contained references to respondent and her law office "as providing legal review of Unity's . . . clients' mortgage and assistance when dealing with the clients' bank." Respondent had not

employed Schriever as a sales person under her broker's license or registered SFH or Unity as fictitious names associated with her real estate broker's license.

The Commissioner ordered respondent to "immediately desist and refrain from charging, demanding, claiming, collecting and/or receiving advance fees," as that term is defined in Section 10026 for any of the services she offers to others, "unless or until" she provided evidence satisfactory to the Commissioner that she: (a) has an advance fee agreement which has been submitted to the Department in compliance with California Code of Regulation, title 10, sections 2970 and 2972; (b) has placed all previously collected advance fees into a trust account for that purpose ...in compliance with Section 10146 of the Code; (c) has provided an accounting to trust fund owner-beneficiaries pursuant to Section 2972 of the Regulations; and (d) is in compliance with California law, as amended effective as of October 11, 2009, with respect to loan modification and/or forbearance services."[2] The Commissioner further ordered respondent to "immediately desist and refrain from using the fictitious business names" of Unity...or SFH until such time as these entities become duly licensed with the Department or registered as fictitious business names associated with respondent's broker's license."

12. Respondent was personally served with the Order on November 18, 2010.

13. On January 13, 2011, respondent requested an administrative hearing on the Order.[3] The matter was then set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

Commissioner's Investigation

14. Deputy Commissioner Kyle Thomas Jones and Senior Deputy Commissioner Heather Ann Nishimura are members of the Department's loan modification – short sale fraud task force. Their testimony is paraphrased as relevant below.

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[2] Respondent was advised that, under the amended law, she could "only collect advance fees for loan modification or other mortgage loan forbearance services related to commercial loans and loans for residential properties containing five or more dwelling units."

[3] The Department, through Mr. Espell, initially asserted that respondent's request for a hearing was untimely and that it therefore lacked jurisdiction to proceed to hearing. The Department ultimately issued a Notice of Hearing and made no further challenges to the timeliness of respondent's appeal.

15. In October 2009, Ms. Nishimura asked Mr. Jones to "shop" Unity to determine whether it would solicit him for a loan modification and to review its website. On October 26, 2009, Mr. Jones contacted Unity and spoke to Mr. Schriever, using the assumed name Joe Thompson. Mr. Schriever told Mr. Jones/Thompson (hereafter, Jones) that Unity's services were "attorney-backed."

16. On October 27, 2009, Mr. Schriever sent Mr. Jones an email confirming their conversation about Unity's services. Mr. Schriever attached various documents from Unity's website to this email for review, including information about Unity's debt settlement and loan modification programs. Mr. Jones was invited to complete Unity's client intake form and to send it to Mr. Schriever with all his "current credit card statements and current mortgage statements." Mr. Schriever would analyze this information to see if Mr. Jones qualified for Unity's programs.

17. *Information from Unity's October 2009 website provided to Mr. Jones:* Unity's website made numerous references to "our attorneys." For example, the website states that Unity's "attorneys specialize in loan modification, credit card settlement, and debt management of your mortgage, commercial loans, leases, collections, business, and medical debt." Unity described its loan modification program as a mechanism to avoid costly foreclosure, short sale, or bankruptcy, and stated "our attorney achieves this through a legal debt negotiation with your lender and their investors." After a complimentary consultation, Unity would "get you started with our attorney's loan modification program."

Responses to "Frequently Asked Questions" (FAQs) for Unity's loan modification program indicated that the attorney co uld not guarantee that a loan modification would be granted, but that the goal was to negotiate a successful modification. The following response was provided to the FAQs question, "How much does it cost to hire your attorney?"

> The typical attorney fees are $3,200 if you have one loan or $3,600 if you have two loans. The attorney charges a flat fee that is earned in segments once services have been performed and there are never any additional charges or fees. The fee for service is put in a trust account set up for the client and regulated by the rules of the state Bar. Think of this like a neutral holding account to verify that the money for payment of services is available. As the attorney successfully performs certain services detailed in the contract, they bill against the trust account. The client gets accounting updates and it is their money – they can withdraw it anytime if they no longer [sic] to continue with our services.

Unity's debt settlement program website made similar non-specific references to "our attorney" in working out unsecured debt issues. Costs for participation in

Unity's debt settlement program were: "The attorney charges a flat 10% of debt under management and a $75 monthly service fee.

18. Respondent's name and likeness do not appear on any of the October 2009 Unity website pages that were sent to Mr. Jones. Respondent's distinctive law office logo "KM" was not included in any of these website pages. Under the heading "Why Use Us," Unity's loan modification program website asserts that: "**our attorney is local and accountable. . . Our attorney is an accomplished real estate attorney,** as well as a licensed real estate Broker, and will be personally negotiating your mortgage." (bold in original.)

19. Mr. Jones is an experienced real estate broker who has worked with the Department for approximately two years. As part of his job, he has received training in loan modifications and short sales and has investigated many such cases. Based upon his review of Unity's October 2009 website documents, Mr. Jones testified that the cost of Unity's loan modification service was $3,200 for one loan and $3,600 for two loans. The money that Unity's clients prepaid for loan modification legal services was placed into a trust account. Unity offered its clients a money back guarantee by stating that clients could withdraw funds from their trust accounts whenever they decided to discontinue using Unity's services. In his opinion, Unity indicated that it was legal to pay up front or advance fees for loan modifications.

20. Mr. Jones acknowledged that Mr. Schriever never mentioned respondent's name during their October 2009 telephone conversation. Mr. Schriever never told Mr. Jones that respondent did loan modifications for Unity as a broker or that respondent was responsible for Unity's marketing on its website. Mr. Jones acknowledged that: (1) he had no personal knowledge about whether respondent is or was an owner of Unity; (2) he had no knowledge about who was responsible for managing or preparing Unity's marketing materials, other than Mr. Schriever; (3) he had no personal knowledge whether respondent performed any loan modifications or collected any advance fees; and (4) Unity's May 26, 2010 website (described in Finding 23) only mentioned respondent as an attorney and not as a broker.

Mr. Jones testified that, if respondent had personal knowledge of Unity's website advertising for her law office, it could constitute a violation for "solicitation." Mr. Jones believed there was a solicitation regarding KM on Unity's May 2010 website because the names of both a broker, who also happened to be an attorney, and a salesperson appeared on the same website. In Mr. Jones's opinion, because respondent is a licensed real estate broker, she should have investigated any situation involving a licensed salesperson like Mr. Schriever to ensure he had an employing broker and that the companies he used were appropriately affiliated. The Department issues desist and refrain orders to attorneys and non-licensees as well as to its licensees.

21. Ms. Nishimura has been involved with complex investigations, including those involving lending fraud, loan modifications and short sales, during her six years with the Department. On May 26, 2010, Ms. Nishimura printed out 25 pages from Unity's website, and noted it had multiple references to respondent's law office and its "KM" logo. Ms. Nishimura had Senior Deputy Commissioner Chika Sunquist review SFH and Unity's advertisements to determine potential violations.

22. Ms. Sunquist's May 28, 2010 memorandum reported that Mr. Schriever and Lisa Martinez were both licensed salespersons who worked under broker Willard Fields. Both individuals appeared to be using the unlicensed and unregistered name of SFH, conducting business that required a license, and acting in the capacity of real estate brokers. There was no mention of respondent in relation to SFH. Regarding the 2009 and 2010 Unity websites, Ms. Sunquist itemized various statutory violations from representations made, including that Unity requested fees to be paid in advance of services provided, particularly if the consumer was solicited for a loan modification. Ms. Sunquist reported that Unity appeared to be conducting activities which require a license, but that she was "unable, however, to determine if the services advertised are to be performed under any attorney exemption." Her memorandum had no direct mention of respondent.

23. *Unity's May 26, 2010 website*: Unity's May 26, 2010 website pages contained six depictions of respondent's "KM" law office logo. Respondent's logo is on the "information and resources" page which states that "Unity..., our attorney, or our network of trusted professionals can provide these additional services: free loan modification counseling...short sale negotiation...legal review of your real estate mortgage situation...through the **Law Office of Kristin Marshall**..." (bold in original.) In describing how Unity can help, the website discusses actions that can be undertaken by Unity's "attorney in the areas of debt settlement, bankruptcy, and "free loan modification counseling." Respondent's logo is not contained on Unity's "adjustable rate mortgage" (ARM) website pages, which expressly discuss loan modification as a potential solution. The website includes photographs of Mr. Schriever, but no images of respondent. Unity's "bankruptcy" website pages provide "**contact us for more information or a free evaluation from the Law Office of Kristie Marshall to see if bankruptcy is right for you.**" (bold in original.) The Department stipulated that the May 26, 2010 web pages did not list KM or respondent as a broker.

24. Ms. Nishimura acknowledged that she had no personal knowledge whether Unity actually provided the services listed in their website; however, she clarified that Unity's website represented it had already helped over 4,000 people. Ms. Nishimura had no personal knowledge of whether respondent was or is an owner of Unity; whether she had any management or control over Unity's marketing of its website; or whether respondent employed Mr. Schriever or Unity. In Ms. Nishimura's opinion, however, there was a violation by solicitation for a loan modification. Her conclusion was based on the fact that a salesperson was doing loan

modifications with a broker who is also an attorney and there is a limited scope regarding what an attorney can do regarding loan modifications. Specifically, an attorney can only offer real estate services to an existing client. In the Department's view, an attorney cannot solicit new clients to perform short sale or loan modification services; this work requires a broker's license. Respondent had engaged in violations as indicated in the Order because Unity's May 26, 2010 website specifically referred to her law office. Any solicitations, either as a broker or an attorney, would require respondent to ensure that Mr. Schriever was supervised by a broker and that his companies were properly registered and licensed with the Department.

Department records established that respondent did not have an approved advance fee contract and related advertising materials. Ms. Nishimura had no personal knowledge that respondent ever performed loan modifications or accepted advance fees. Whether respondent ever received compensation is not significant because it is the expectation of monetary or nonmonetary compensation that is significant. Ms. Nishimura concluded that respondent was involved with Unity because its website contained her law firm's logo and made references to "our attorney."

Respondent's Evidence

25. Respondent's testimony is summarized in relevant part as follows. Respondent has been an attorney since June 2000. Respondent's law practice focuses on real estate transactions, including cases involving construction defects, product liability, sales, due diligence, and financing issues regarding real estate development. Respondent views client education and counseling as part of her practice as an attorney specializing in real estate matters. Respondent obtained her broker's license to add dimension to her law practice. She maintains a separate broker's practice.

After respondent and Mr. Espell settled the Accusation matter involving Mr. Schriever, Unity and SFH, respondent was served with the Order. Respondent was surprised that she was named in the Order because she had been involved in this matter solely as an attorney working on Mr. Schriever's behalf, trying to resolve issues that were unrelated to her. Respondent immediately called Mr. Espell and left him a "hot" voice mail telling him she felt this action was wrong and unfair. Respondent was concerned about the effect of the Order on her reputation, because she had received letters from several real estate attorneys who offered to defend her license from Departmental action.

On November 18, 2010, Mr. Espell left respondent a voice mail in response to her voice mail, which respondent transcribed. In the message, Mr. Espell explained that he understood that the Order directed to respondent was "going to be intercepted and not sent out for service and cancelled." Mr. Espell apologized and further stated that he would "prepare the paperwork to have that dismissed. . . It was prepared months ago and it should not have gone out for service. So...I will prepare the

dismissal on that and actually what I will do, I will include it in the settlement papers that it has been dismissed as to all individuals. . ."

On December 20, 2010, after waiting over a month for the Order to be dismissed, respondent wrote Mr. Espell a letter outlining the situation at his request. In this letter, respondent inquired why the Order had not been removed from her license and stated her belief that this was "bad faith in light of the fact that we reached a settlement that clearly would not have been resolved without your assurance that this Order would be removed." Respondent further stated:

> As I have stated, and will continue to state, **I have not, now or ever, used my broker's license to perform loan modifications.** I have not now nor have I ever been an owner of Sacramento Foreclosure Help.com or Unity Financial Solutions, LLC.
>
> When I asked you what evidence you were relying on today, you stated my name was used on my client's website. I am an attorney and to the extent my law practice was referenced on the website, it has nothing to do with my broker's license in any capacity whatsoever.

Ultimately, the Order was not dismissed. On January 4, 2011, Mr. Espell wrote to respondent that, "unfortunately, the Department is unwilling to recall the Desist and Refrain Order." Respondent was advised to request a hearing if she wished to continue her challenge to the Order. As set forth in Factual Finding 13, respondent appealed the Order.

26. Respondent denied that she had any ownership or other interest in Unity or SFH or that she had any employment relationship with Mr. Schriever. Respondent denied having any control over Mr. Schriever's marketing of his companies or of his companies' websites. Respondent denied that she was engaged in loan modifications or that she collected any advance fees in this context.

Respondent testified that she had no knowledge of or relationship with Mr. Schriever until she began representing him as an attorney regarding his Accusation in September 2009. Mr. Schriever knew respondent as an attorney and sought her help; respondent worked to settle the matter. Mr. Schriever misappropriated the logo of respondent's law office on his Unity website. These representations were placed on Unity's website without respondent's knowledge or consent. Respondent first learned that Mr. Schriever used her logo on December 20, 2010, when she asked Mr. Espell why the Order had been served on her.

Respondent testified that she has engaged in loan modifications/loan workouts in the past. Since September 2009 when SB 94 became effective, however, respondent has ceased performing loan modifications. Although "loan workouts"

were listed on respondent's February 4, 2010, KM website page, this was not accurate after September 2009. Respondent communicated with the webmaster to have this removed from her website and it has been corrected.

Discussion

27. As set forth in the Factual Findings as a whole, there is insufficient evidence to establish that respondent and Mr. Schriever were acting as agents for each other or that respondent operated an unlicensed business as either SFH or Unity.

Respondent first began her legal representation of Mr. Schriever against the Department's Accusation in September 2009. At this time, and through late February 2010, Mr. Schriever was employed under the Willard Fields' broker's license. There was no evidence offered that respondent was ever involved with the entity known as SFH. Senior Deputy Commissioner Chika Sunquist found that respondent and another salesperson in Mr. Fields' employ were using the unlicensed and unregistered name of SFH and acting outside the scope of their licenses as real estate brokers.

It is undisputed that Mr. Schriever and Unity solicited borrowers and offered loan modification services for which an advanced fee was to be collected in violation of real estate laws and regulations. There is no persuasive evidence that respondent was involved in the ownership, management, or control of Unity, that respondent had any employment or agency relationship with Mr. Schriever, or that respondent knowingly solicited borrowers and offered loan modification services for which an advanced fee was to be collected. The October 2009 Unity website does not depict the logo of respondent's law office or mention respondent by name.

By contrast, Unity's May 26, 2010, website conveys the clear impression that respondent was knowingly involved in Unity and accepted legal referrals from Unity and Mr. Schriever. The crucial issue is whether respondent authorized the use of her name and law firm's logo on Unity's May 26, 2010 website. Both Mr. Jones and Ms. Nishimura testified that whether respondent engaged in violations subject to the Order depended on the nature of her association with Mr. Schriever and Unity. Respondent testified that she had no business association with Mr. Schriever or Unity, did not give permission for her law office logo to be used, and that she had stopped performing loan modifications in her law practice in September 2009, after the passage of SB-94, and months before her logo ever appeared on the Unity website. There was no evidence provided that respondent accepted legal referrals for loan modifications from Unity. The accuracy of respondent's denials was not challenged by any witness. Mr. Schriever is the one person who could challenge respondent's testimony denying that she authorized him or Unity to use of her name and logo. He did not testify. By May 2010, Mr. Schriever had access to respondent's law firm logo because he was her client. Mr. Schriever has had a pattern of acting unethically and outside the scope of his license. Under these circumstances, the Department has not met its burden of

establishing that respondent engaged in the violations asserted in the Order and that the Order should be enforced against her.

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 10086, subdivision (a), if after an investigation, the Commissioner determines that (1) a person has engaged or is engaging in an activity which is a violation of the real estate law, or (2) a real estate broker has engaged or is engaging in a non-exempt activity which is a violation of Financial Code section 17000 et. seq. (the Escrow Law), the Commissioner may issue a desist and refrain order. The respondent to whom the order is directed must, upon receipt of the order, immediately cease the activity described in the order. As set forth in Factual Finding 11, the Commissioner issued a desist and refrain order in this matter on November 8, 2010.

2. When a desist and refrain order is appealed, the Department has the burden of establishing that the order was appropriately issued by a preponderance of the evidence. Because Section 10086 authorizes the Commissioner to issue a desist and refrain order regardless of licensure, respondent's contention that the appropriate standard of proof is clear and convincing evidence is not persuasive.

3. As set forth in section 10131, subdivisions (d) and (e), a real estate broker is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others, including:

> (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.
>
> (e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.

Section 10133, subdivision (a) (3), provides that "the acts described in Section 10131 are not acts for which a real estate license is required if performed by: (3) An attorney at law in rendering legal services to a client."

4. An "advance fee" is defined by Section 10026 as "a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license, or for a listing, as that term is defined in Section 10027, before fully completing the service the licensee contracted to perform or represented would be performed. Neither an advance fee nor the services to be performed shall be separated or divided into components for the purpose of avoiding the application of this division." Section 10146 requires that any broker who contracts for or collects an advance fee from another must deposit these funds into a trust account. The California Code of Regulations, title 10 (CCR), section 2970, subdivision (a), mandates that a "person who proposes to collect an advance fee as defined in Section 10026 in the 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." Specific requirements for approval of advance fee agreements are further outlined in CCR sections 2972.

5. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly in Factual Finding 27, the Department did not meet its burden of establishing legal cause for the issuance of the desist and refrain order against respondent.

ORDER

The Commissioner's Order to Desist and Refrain against respondent KRISTIN ALEXANDRA MARSHALL is dismissed.

DATED: March 24, 2011

MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

DEPARTMENT OF REAL ESTATE
P. O. Box 187007
Sacramento, CA 95818-7007
Telephone: (916) 227-0791

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NOV 15 2010
DEPARTMENT OF REAL ESTATE
By R Henry

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

To: KRISTIN ALEXANDRA MARSHALL, NORMAN JOHANNES SCHRIEVER, Individually and Doing Business as, UNITY FINANCIAL SOLUTIONS, LLC and SACRAMENTO FORECLOSURE HELP.COM	NO. H-5507 SAC 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 KRISTIN ALEXANDRA MARSHALL ("MARSHALL") and NORMAN JOHANNES SCHRIEVER ("SCHRIEVER"). Based on the investigation, the Commissioner has determined that SCHRIEVER and MARSHALL have engaged in, are engaging in, or are attempting to engage in, acts or practices constituting violations of the California Business and Professions Code (the "Code") and/or Title 10, Chapter 6, California Code of Regulations (the "Commissioner's Regulations"), including, but not limited to, the business of, acting in the capacity of, and/or 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 in connection with loans secured by real property) of the

Code and the offering of loan modification services for which an advanced fee is to be collected, in violation of Section 10026 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.

Whenever acts referred to below are attributed to SCHRIEVER, those acts are alleged to have been done by SCHRIEVER, acting by himself, or by and/or through one or more agent, associate, affiliate, and/or co-conspirator, including MARSHALL, or using the unlicensed fictitious business names UNITY FINANCIAL SOLUTIONS, LLC, and/or SACRAMENTO FORECLOSURE HELP.COM, and/or other names or fictitious names unknown at this time.

Whenever acts referred to below are attributed to MARSHALL, those acts are alleged to have been done by MARSHALL, acting by herself, or by and/or through one or more agent, associate, affiliate, and/or co-conspirator, including SCHRIEVER, or using the unlicensed fictitious business names UNITY FINANCIAL SOLUTIONS, LLC, and/or SACRAMENTO FORECLOSURE HELP.COM, and/or other names or fictitious names unknown at this time.

FINDINGS OF FACT

1. SCHRIEVER is presently licensed by or has licensing rights in a real estate salesperson license (RES License # 01401099) issued by the Department. At no time herein mentioned has SCHRIEVER been licensed as or has licensing rights in a real estate broker license issued by the Department.

2. Between July 14, 2009 and March 29, 2010, SCHRIEVER was employed by real estate broker Willard Russell Fields (REB License # 01173743). Fields has never been associated with, SACRAMENTO FORECLOSURE HELP.COM or UNITY FINANCIAL SOLUTIONS, LLC. In addition, Fields never granted SCHRIEVER permission to independently pursue loan modifications or short sales under the fictitious business names SACRAMENTO FORECLOSURE HELP.COM or UNITY FINANCIAL SOLUTIONS, LLC,

and therefore SCHRIEVER was acting outside of the course and scope of his employment with Fields.

Since March 29, 2010, the Department has no record of SCHRIEVER being employed by a supervising broker as a real estate salesperson and is currently listed within the Department records as "NBA" (No Broker Affiliation).

3. Sacramento Foreclosurehelp.com (SFH") is a company of unknown organization; not registered with the Secretary of States Office; and is not licensed by the Department of Real Estate in any capacity. The SFH website, which is no longer active, listed Respondent SCHRIEVER, without the benefit of a broker supervisor, as the President and Chief Financial Officer of SFH. SFH is engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate broker within the State of California within the meaning of Sections 10131(d) and 10131(e) of the Code, including soliciting borrowers to do one or more of the following acts for another or others, for or in expectation of compensation: negotiate loans for, or perform services for, borrowers and/or lenders in connection with loans secured directly or collaterally by one or more liens on real property.

4. MARSHALL is presently licensed or has licensing rights as a real estate broker (REB License # 01326232 issued by the Department). At no time herein mentioned has SCHRIEVER been licensed to MARSHALL as a real estate salesperson.

5. At no time herein mentioned has UNITY FINANCIAL SOLUTIONS, LLC or SACRAMENTO FORECLOSURE HELP.COM been licensed by the Department in any capacity.

6. During the period of time set out below, SCHRIEVER and/or other agents, associates, affiliates, and/or co-conspirators solicited 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 in connection with loans secured directly or collaterally by one or more liens on real property; and charge or demand a fee for any of the services offered, in violation of Sections

10130 (real estate broker license required to perform certain acts) and 10139 (criminal penalties for unlicensed activity) of the Code.

7. On or about October 26, 2009, a Deputy Commissioner using the name "Joe T." (hereinafter, "Undercover Deputy") contacted SCHRIEVER concerning the possibility of a loan modification. SCHRIEVER replied via e-mail at the Undercover Deputy's yahoo.com e-mail address wherein SCHRIEVER sought information from the Undercover Deputy that was to be used to evaluate the Undercover Deputy's financial situation and possible enrollment in UNITY FINANCIAL SOLUTIONS, LLC's loan modification program.

8. On October 29, 2009 and again on February 2, 2010, the Undercover Deputy reviewed the website for UNITY FINANCIAL SOLUTIONS, LLC. On both occasions the review revealed that UNITY FINANCIAL SOLUTIONS, LLC was offering loan modification services.

9. On October 26, 2009 and again on February 2, 2010, the Undercover Deputy reviewed the website for SACRAMENTO FORECLOSURE HELP.COM. On both occasions the review revealed that SACRAMENTO FORECLOSURE HELP.COM was offering short sale services.

10. On or about May 25, 2010, the Undercover Deputy again reviewed the UNITY FINANCIAL SOLUTIONS, LLC website. It was discovered that the website was referencing MARSHALL and MARSHALL's law offices as providing legal review of UNITY FINANCIAL SOLUTIONS, LLC clients' mortgage and assistance when dealing with the clients' bank. At no time has MARSHALL employed SCHRIEVER in her capacity as a real estate broker; nor, has she registered the fictitious business names SACRAMENTO FORECLOSURE HELP.COM or UNITY FINANCIAL SOLUTIONS, LLC as fictitious business names associated with her real estate broker's license.

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CONCLUSIONS OF LAW

11. Based on the Findings of Fact contained in Paragraphs 1 through 10, above, NORMAN JOHANNES SCHRIEVER, acting by and/or through one or more agents, associates, affiliates, and/or co-conspirators using the fictitious business names UNITY FINANCIAL SOLUTIONS, LLC, and/or SACRAMENTO FORECLOSURE HELP.COM, and/or other names or fictitious names unknown at this time, solicited one or more borrowers to perform services for those borrowers and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property located within the State of California, acts which require a real estate license under Section 10131(d) of the Code, during a period of time when NORMAN JOHANNES SCHRIEVER did not hold a valid California Department of Real Estate real estate broker license and was not acting within the course and scope of his employment as a real estate salesperson employed by a supervising broker and which UNITY FINANCIAL SOLUTIONS, LLC and/or SACRAMENTO FORECLOSURE HELP.COM, were not licensed by the Department in any capacity and in violation of Section 10130 of the Code.

12. In addition, at no time has MARSHALL employed SCHRIEVER in her capacity as a real estate broker; nor, has she registered the fictitious business names SACRAMENTO FORECLOSURE HELP.COM or UNITY FINANCIAL SOLUTIONS, LLC as fictitious business names associated with her real estate broker's license and acting by and/or through one or more agents, associates, affiliates, and/or co-conspirators using the fictitious business names UNITY FINANCIAL SOLUTIONS, LLC, and/or SACRAMENTO FORECLOSURE HELP.COM, and/or other names or fictitious names unknown at this time, solicited one or more borrowers to perform services for those borrowers and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property located within the State of California.

DESIST AND REFRAIN ORDER

Based on the Findings of Fact and Conclusions of Law stated herein, NORMAN JOHANNES SCHRIEVER whether doing business under your own name, UNITY FINANCIAL SOLUTIONS, LLC, or SACRAMENTO FORECLOSURE HELP.COM, or any other name or fictitious name, IS HEREBY ORDERED to:

1. Immediately desist and refrain from performing any acts within the State of California for which a real estate broker license is required. In particular, you are ordered to desist and refrain from soliciting borrowers and/or performing services for borrowers or lenders in connection with loans secured directly or collaterally by one or more liens on real property, unless and until you obtain a real estate broker license issued by the Department.

2. 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 NORMAN JOHANNES SCHRIEVER:

(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 of the Code;

(C) Has provided an accounting to trust fund owner-beneficiaries pursuant to Section 2972 of the Regulations; and

(D) Is in compliance with California law, as amended, effective as of October 11, 2009 with respect to loan modification and/or forbearance services. Under the amended law, you can only collect advance fees for loan modification or other mortgage loan forbearance services related to commercial loans and loans for residential properties containing five or more dwelling units.

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3. Immediately desist and refrain from using the names UNITY FINANCIAL SOLUTIONS, LLC, or SACRAMENTO FORECLOSURE HELP.COM until such a time as these entities become duly licensed with the Department or become registered fictitious business names associated with a real estate broker license issued by the Department.

In addition, based on the Findings of Fact and Conclusions of Law stated herein, KRISTIN ALEXANDRA MARSHALL whether doing business under your own name, UNITY FINANCIAL SOLUTIONS, LLC, or SACRAMENTO FORECLOSURE HELP.COM, 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 KRISTIN ALEXANDRA MARSHALL:

(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 of the Code;

(C) Has provided an accounting to trust fund owner-beneficiaries pursuant to Section 2972 of the Regulations; and

(D) Is in compliance with California law, as amended effective as of October 11, 2009, with respect to loan modification and/or forbearance services. Under the amended law, you can only collect advance fees for loan modification or other mortgage loan forbearance services related to commercial loans and loans for residential properties containing five or more dwelling units.

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2. Immediately desist and refrain from using the fictitious business names UNITY FINANCIAL SOLUTIONS, LLC, or SACRAMENTO FORECLOSURE HELP.COM until such a time as these entities become duly licensed with the Department or become registered fictitious business names associated with your real estate broker license.

DATED: 11-8, 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)."

TO:

NORMAN JOHANNES SCHRIEVER
5031 D ST
SACRAMENTO, CA 95819

KRISTIN ALEXANDRA MARSHALL
3021 DELTA TURTLE WAY
SACRAMENTO, CA 95834

KRISTIN ALEXANDRA MARSHALL
4690 DUCKHORN DRIVE
SACRAMENTO, CA 95834

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