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FILED

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DEPARTMENT OF REAL ESTATE

By _____

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

To: THE HOME RETENTION TEAM, MARCO A. GUTIERREZ, and JENNIFER V. GUTIERREZ	No. H-11052 SF ORDER TO DESIST AND REFRAIN (B&P Code Section 10086)

The Commissioner (hereinafter "Commissioner") of the California Department of Real Estate (hereinafter "Department") caused an investigation to be made of the activities of THE HOME RETENTION TEAM (hereinafter "HRT"), MARCO A. GUTIERREZ (hereinafter "MARCO"), and JENNIFER V. GUTIERREZ (hereinafter "JENNIFER"). Based on that investigation, the Commissioner has determined that HRT, MARCO, and JENNIFER, have engaged in, are engaging in, or are attempting to engage in, acts or practices constituting violations of the California Business and Professions Code (hereinafter "the Code") and/or Title 10, Chapter 6, California Code of Regulations (hereinafter "the Regulations"), including 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 Sections 10131(d) (performing services for borrowers and/or lenders in connection with loans secured by real property) and 10131.2 (real estate broker license required to charge and collect an advance fee) of the Code.

Furthermore, based on the investigation, the Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order under the authority of Section 10086 of the Code.

FINDINGS OF FACT

1. At no time mentioned has HRT been licensed by the Department in any capacity.

2. At all times mentioned, MARCO was and is licensed by the Department as a real estate broker. From on or about February 6, 2009 to May 5, 2010, MARCO's real estate broker license was suspended pursuant to Family Code Section 17520.

3. At all times mentioned until October 17, 2009, JENNIFER was licensed by the Department as a real estate salesperson. At no time after October 17, 2009, has JENNIFER been licensed by the Department in any capacity.

4. During the period of time set forth below, MARCO, JENNIFER, and/or other agents or employees of HRT whose identifies are unknown at this time, on behalf of HRT solicited 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, demand or collect an advance fee for any of the services offered.

5. HRT solicited homeowners for "Loan Modification Short Sale and Pre-Foreclosure Counseling Services" on their website, www.thehomeretentionteam.com.

6. HRT solicited homeowners for "Loan Modification Short Sale and Pre-Foreclosure Counseling Services" in the church bulletins for Saint Anthony Catholic Church, The Parish of St. Peter Martyr, and Holy Rosary Church. The bulletins include, but are not limited to, the following dates: December 20, 2009, January 10, 2010, January 17, 2010, March 28, 2010, April 11, 2010, April 25, 2010, and July 4, 2010.

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7. On or about November 23, 2009, JENNIFER, MARCO, and/or other agents or employees of HRT whose identifies are unknown at this time, on behalf of HRT, solicited Oscar G. (hereinafter "Oscar") in order to provide a loan modification on behalf of Oscar in connection with a loan secured by real property located at 2596 Marie Antonette Lane, Tracy, California. In furtherance of HRT's plan and scheme to provide loan modification services to Oscar, HRT requested and received an advance fee of $500 from Oscar on November 25, 2009.

CONCLUSIONS OF LAW

8. Based on the Findings of Fact contained in Paragraphs 1 through 7, HRT, MARCO, and JENNIFER, 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, and charged, demanded or collected advance fees for the services to be provided, which acts require a real estate broker license under Section 10131(d) (real estate license required for enumerated acts) and Section 10131.2 (real estate broker license required to charge or collect an advance fee) of the Code.

9. Based on the Findings of Fact contained in Paragraphs 1 through 7, HRT, MARCO, and JENNIFER, used a form of advance fee agreement 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, HRT, MARCO, and JENNIFER, whether doing business under your own name, or any other name or fictitious name, ARE 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; and

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 HRT, MARCO, and JENNIFER:

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

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

(D) Are 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.

3. Immediately desist and refrain from demanding, claiming, collecting and/or receiving advance fees, as that term is defined in Section 10026 of the Code, in any form, and under any conditions, with respect to the performance of loan modification or any other form of mortgage loan forbearance services in connection with loans on residential property containing four or fewer dwelling units (Section 10085.6 of the Code).

DATED: 1-7-11

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)"