FILED

OCT 09 2012

DEPARTMENT OF REAL ESTATE

By L. Jones

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	NO. H-11269 SF
MORTGAGE MODIFIERS INC., and	)	
MIGUEL ANGEL LOPEZ-SOLETA,	)	OAH NO. 2012040036
	)	
Respondents.	)	

DECISION

The Proposed Decision dated August 29, 2012, 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.

Pursuant to Section 11517(c)(2)(C) of the Government Code, the following corrections are made to Proposed Decision:

On Page 1, paragraph 4, of the Proposed Decision, the referenced Senate Bill should be 94.

This Decision shall become effective at 12 o'clock noon on OCT 29 2012.

IT IS SO ORDERED 10/8/2012

REAL ESTATE COMMISSIONER

By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MORTGAGE MODIFIERS INC., and MIGUEL ANGEL LOPEZ-SOLETA Respondents.	Case No. H-11269 SF OAH No. 2012040036

PROPOSED DECISION

Administrative Law Judge Hannah H. Rose, State of California, Office of Administrative Hearings, heard this matter in Oakland, California on July 31, 2012.

Truly Sughrue, Counsel, represented complainant E. J. Haberer II, a Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California.

Respondent Miguel Angel Lopez-Soleta was present and represented himself and respondent Mortgage Modifiers Inc. Respondent Miguel Angel Lopez-Soleta is also known as Miguel Lopez.

Evidence was received, and the matter was held open until August 3, 2012, for complainant to provide a copy of California Senate Bill 24, which amended the advance fee laws relating to mortgage loan modification and forbearance activities in California, and went into effect on October 11, 2009. Senate Bill 24 was marked as Exhibit 6, and received into evidence. The matter was submitted for decision on August 3, 2012.

FACTUAL FINDINGS

1. Complainant filed the Accusation in his official capacity.

2. Respondents are licensed under the Real Estate Law, Part 1 of Division 4, of the Business and Professions Code. Respondent Miguel Angel Lopez-Soleta (respondent Lopez-Soleta) is a licensed real estate salesperson. His license was issued January 26, 1993. As of January 29, 2009, his employing broker was changed to "Robert Leslie Bradford," at 755 Baywood Drive, Suite 170B, Petaluma, California, 94954. As of July 26, 2010,

respondent Lopez-Soleta's employment with "Bradford Robert Leslie"[1] was discontinued. There has been no succeeding broker listed as respondent Lopez-Soleta's employer since. Respondent Lopez-Soleta has not changed his address with the Department. His real estate salesperson's license will expire April 26, 2013, unless renewed.

3. Mortgage Modifiers Inc. (MMI or respondent MMI), was issued a real estate broker corporate license on May 21, 2008. That license will expire on May 20, 2013, unless renewed. From May 21, 2009 until March 8, 2010, the designated officer for the corporate license was Bradford Robert Leslie, licensed real estate broker. Until March 8, 2010, the corporate main office and mailing address for MMI was listed as 755 Baywood Drive, Suite 170B, Petaluma, California, 94954. Leslie cancelled his status as designated officer effective March 8, 2010, and since then there has not been a designated officer affiliated with MMI. Respondent MMI discontinued its main office address as of March 8, 2010, and no succeeding address has been listed with the Department.

4. At all relevant times, respondent Lopez-Soleta has been the president and 100 percent shareholder of Mortgage Modifiers Inc. At present, he is also the sole employee. On December 21, 2009, respondent Lopez-Soleta filed a Fictitious Business Name Statement with Sonoma County, in which "Mortgage Modifiers Inc., 755 Baywood Drive, Suite 170B, Petaluma, California 94954, Incorporated in the State of California," was registered with the "DBA" of "Mortgage Modifiers Educational & Financial Packaging Service" (DBA). No change of corporate name or registration as a DBA for respondent MMI has been filed with the Department.

5. Between May 2009 and October 11, 2009, respondents MMI acted as a real estate broker corporation and conducted licensed activities within the meaning of section 10131, subdivision (d) of the Business and Professions Code in Petaluma, California. During this time, respondents MMI and Lopez-Soleta operated and conducted a mortgage loan brokerage business with the public wherein respondents, for compensation, solicited borrowers or lenders and/or negotiated loans or collected payments or performed 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. In the course of this business, respondents accepted or received funds in trust from borrowers, and deposited or caused to be deposited those trust funds into a bank account that was a trust account.

6. On July 27, 2009, the Department received an advance fee agreement with accounting format and advance fee advertising for review from respondent Bradford Robert Leslie on behalf of MMI. In a letter dated August 4, 2009, the Department advised Leslie

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[1] Bradford Robert Leslie is identified in respondent Lopez-Soleta's license certification as "Robert Leslie Bradford". He is otherwise identified in certified documents, and throughout the proceedings, as Bradford Robert Leslie. It is presumed that these references are to the same person, who hereinafter shall be referenced as Bradford Robert Leslie.

that the Department had no objection to the use of the agreement and advertising as submitted by respondent MMI and by Bradford Robert Leslie on behalf of MMI, but informed Leslie that the forms could not be used by him as an individual broker

7. On October 11, 2009, California Senate Bill 94 (SB 94) became effective. That bill, in relevant part, prohibited real estate licensees who perform mortgage loan modification services from demanding or receiving advance fees for those services. The forms approved by the Department August 4, 2009 (Factual Finding 6), which included advance fee agreements for loan modification services, could not be used after October 10, 2009.

8. After December 21, 2009, when respondents registered the DBA, they resumed limited loan modification services for clients. Respondent Lopez-Soleta described the services as follows: an MMI employee would meet with clients, obtain loan information, run a "calculator" program to determine the probability of obtaining a loan modification, and make copies of the borrower's necessary financial statements. An MMI employee prepared a handwritten Request for Modification and Affidavit (RMA), and for some clients, the employee also prepared a "hardship letter." The MMI employee then assembled the modification summary, the RMA, the client's financial and loan information, a property value report (run by MMI), and other documents in a package. Each document was marked with the client's loan number. The file was copied, and the client then signed documents. MMI then transmitted a facsimile of the original file to the client's lender. MMI generated a facsimile transmission report indicating the number to which the transmission was sent, the date and time, the number of pages, the result of the transmission, and the client's name. A copy of the report was maintained in MMI's client file. Although the contract used by MMI stated that the client would undertake the submission to the lender, in fact, respondents faxed the documents to the lender in each of the four client files reviewed by the Department's auditor (Factual Findings 13 through 19). Respondents had no further contact with clients after the documents have been faxed and the clients are given a copy of the file.

9. MMI closed approximately three to five packaged client files per week between January 1, 2010 and June 30, 2010.[2] MMI collected $1,995 for its services from each client. These fees were deposited in respondent MMI's general business account at Circle Bank in Petaluma, California (Bank Account #1), in the name of "Mortgage Modifiers Inc. Miguel Lopez." Miguel Lopez was the only signatory on the bank account. Bank Account #1 was not a trust account. There were no trust fund records for this account.

10. MMI's written agreements with clients had the heading "Mortgage Modifiers Inc. Educational & Financial Packaging Service Agreement." Each agreement indicated that it was between "Mortgage Modifiers Inc. ("MMI"), DRE License #01153124" and the client.

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[2] The Department's auditor testified that respondent Lopez-Soleta told him that he closed approximately five packages per month, but respondent testified that he had told him the number was five packages per week. The accounting records indicated deposits consistent with approximately three to five packages per week.

"DRE License #01153124" was written on the bottom of each page of the multiple page agreement. DRE License No. 01153124 is respondent Lopez-Soleta's real estate salesperson license number. MMI also maintained a website at "mtgmodifiers.com," consisting of approximately seven pages. The bottom of each web page contained a footer stating the following: "MORTGAGE MODIFIERS Inc. licensed by the CA DRE #01864579." DRE License No. 01864579 is respondent MMI's real estate broker corporate license number. By this representation on the website, respondent MMI solicited clients for its services, acted as a real estate broker, and set itself forth to clients as a licensed real estate broker. Respondents did not submit to the Department, for prior approval, the client contract or any of the materials used in the website for advertising, promoting, soliciting and negotiating with clients who used MMI's loan modification services and for which respondents collected advance fees.

11. Respondent Lopez-Soleta testified that after SB 94, MMI changed its name and the nature of its business to provide "educational and financial packaging services" for homeowners seeking to obtain modifications of the mortgages on their homes from their lenders, and stopped negotiating with lenders on behalf of clients. Respondent Lopez-Soleta believes that the fees collected for this service are not advance fees of the type prohibited by SB 94 because MMI does not negotiate with lenders and does not have contact with clients after their documents have been faxed to the lender.

12. When an MMI employee sent the facsimile transmission of the loan modification document packages that it had prepared to the clients' lenders, and collected fees for the service, respondents performed acts requiring a real estate license.

Audit of Mortgage Modifiers Inc. and Activity between January and July 2010

13. Between July 7, 2011 and September 13, 2011, Robert Leonard, an Auditor with the Department, conducted an audit of the banking books and records of MMI to determine whether respondents handled and accounted for trust funds, and conducted activities requiring a real estate license in compliance with the Real Estate Law and Regulation. Leonard has been a General Auditor for the Department for over 11 years, and has conducted over 300 audits for the Department. He is knowledgeable and familiar with the Department's laws and regulations. The audit covered the period from January 1, 2010 to June 30, 2011. Leonard reviewed four client files, copies of the checks collected by respondent MMI, copies of bank statements for respondent MMI, and a bank signature card. The audit was in response to information that the Department received indicating that respondent MMI was collecting advance fees in connection with loan modification services. Leonard was a knowledgeable and credible witness.

14. On July 7, 2011, the auditor and a Deputy Real Estate Commissioner attempted to visit the offices of respondent MMI at 755 Baywood Drive, Second Floor, in Petaluma, California. The receptionist confirmed that respondent MMI occupied office space on the second floor of the building. MMI did not occupy suite 170B at this time. No

one answered the receptionist's telephone call to respondent Lopez-Soleta, and the auditor left his business card for him.

15. An initial interview was held with respondent Lopez-Soleta on July 27, 2011, at the above address, in a conference room on the second floor, at which the auditor described the audit scope, and the records requested. Respondent was not forthcoming with the requested documents at that time. After subsequent service of a subpoena, and another meeting, the auditor was provided with all requested documentation. He visited respondents' place of business, and selected and reviewed a sampling of documents for files for client Donald B., clients William L. and Ann D., client Thea D., and client Michael M. Leonard organized and tabulated approximately 250 pages of documents, created a table of contents for the tabulated groups of documents, and prepared an Audit Report Transmittal Memo for complainant. In the course of the audit, Leonard compared the selected documentation with standard audit forms used by the Department. It was not determined how many hours were spent on-site examining respondent's books and records, in transit, or in the preparation of the documents, report and memo.

16. At the time of Leonard's audit, MMI was licensed as a corporate real estate broker. However, there was no designated officer at the time, since Bradford Robert Leslie disassociated with MMI as of March 8, 2010. The status of the corporate license at the time of the audit was "No Broker Affiliation" or "NBA." A corporation cannot act as a licensed real estate entity without an affiliated broker. Although MMI had moved from Suite 170B at the time of the audit, the address of record with the Department was still 755 Baywood Drive, Suite 170B, Petaluma, California. Respondent Lopez-Soleta was then, and still is, the president and 100 percent shareholder of MMI. Although respondent Lopez-Soleta was a licensed real estate salesperson at the time of the audit, he had no broker affiliation, and his license was in a "non-working status." A licensed real estate salesperson cannot work in any capacity requiring a license without an affiliated broker. MMI has never been licensed by the Department to use any fictitious business name. Respondent MMI never reported a change of address to the Department.

17. As an auditor for the Department, Leonard is familiar with the laws and regulations with which a licensee must comply in order to collect an advance fee. Business and Professions Code section 10026, subdivision (a), defines an advance fee, in relevant part, 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". There is an exemption from the prohibition against the collection of advance fees set forth in Business and Professions Code section 10131, but Leonard explained that because respondents were conducting business pursuant to subdivision (d) of that section, the exemption does not apply to the services performed by them. Advance fees must be deposited into a trust fund account, and there are special accounting requirements that must be met for these funds (Legal Conclusions 7 and 12 through 16).

18. Leonard's audit established the following:

(a) Respondents solicited and/or performed services for homeowner/borrowers Donald B., William L. and Anne D., Thea D., and Michael M., in connection with a loan or loans secured directly or collaterally by liens on real property for compensation.

(b) Respondent Lopez-Soleta, on behalf of respondent MMI, received, collected, and contracted for an advance fee in the amount of $1,995 for homeowners/borrowers Donald B., William L. and Anne D., Thea D., and Michael M., for performing services for these borrowers in connection with loans to be secured directly or collaterally by a lien on real property, before the borrower became obligated to complete the loan and for performing activities for which a license is required

(c) Respondents failed to cause the advance fee contracts and all materials that were used in obtaining advance fee agreements to be submitted to the Department prior to their use as required by Business and Professions Code section 10085 and California Code of Regulations, title 10, section 2970.

(d) Respondents failed to immediately deliver the trust funds received as an advance fee into a neutral escrow depository, or into a trust fund account as required by Business and Professions Code section 10146 and California Code of Regulations, title 10, section 2972.

(e) Respondents failed to furnish the client Donald B. the verified accounting required by Business and Professions Code section 10146 and California Code of Regulations, title 10, section 2972.

(f) Bank Account #1 was used by respondents to deposit all fees collected by respondent MMI related to its loan modification services between January 1, 2010 and June 30, 2011. It was not designated as a "Trust Account." Respondent Lopez-Soleta was the designated signatory, as "Miguel Lopez," on Bank Account #1.

(g) Respondents failed to deposit trust funds received in the form of an advance fee into a trust fund account in the name of respondent MMI as trustee at a bank or other financial institution, in conformance with Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.

(h) Respondents failed to maintain a written control record of all trust funds that were received and disbursed for Bank Account #1, in the form of a record in chronological order of all trust funds received, deposited and dispersed, as required by California Code of Regulations, title 10, section 2831.

(i) Respondents failed to maintain separate beneficiary records in Bank Account #1 for each transaction, to show the deposit amount, the disbursement amount, and the daily balance for each beneficiary, in the form required by California Code of Regulations, title 10, section 2831.1.

(j) Respondents failed to reconcile the balance of separate beneficiary transaction records with the control of trust funds received and disbursed at least once a month, and failed to maintain a record of such reconciliations for each account as required by California Code of Regulations, title 10, section 2831.2.

(k) Respondents failed to notify the Department within one business day that respondent MMI had closed its main office as required by California Code of Regulations, title 10, section 2715.

19. Leonard's audit also revealed that while respondent Lopez-Soleta, on behalf of respondent MMI, contracted for, received, and collected, an advance fee in the amount of $1,995 each from homeowners/borrowers Donald B., William L. and Anne D., Thea D. and Michael M., the contract for each of these clients stated that the payment would not be due until the services were complete. Although the contract for each client also stated that the clients would be responsible for the transmission of the documents to their respective lenders, respondents routinely faxed the packaged documents to the lender on behalf of clients. Respondents faxed the loan modification documents to the lender for the four clients whose files were audited.

20. Respondent Lopez-Soleta believed that after he transitioned the business to the DBA, and changed the client contract form, he was no longer performing loan modification services that required a real estate salesperson license, or the supervision of a broker. Respondent has never himself looked into the real estate laws or regulations related to his business. He relied on an attorney to draft the client contract for the DBA, and thought that would be sufficient to assure his compliance with the law. Neither the contract nor the advertising materials used by the DBA were submitted to the Department for review. Respondent Lopez-Soleta does not believe that he is doing anything wrong, and does not believe the Department has jurisdiction over his current business.

21. Respondent Lopez-Soleta did not respond to Leonard's request for an exit interview at the conclusion of the audit. The auditor did not conduct an exit interview. Leonard mailed respondent Lopez-Soleta a copy of the Department's Non-Compliance Summary on September 9, 2011. Since then, respondent Lopez-Soleta removed his license number from the contract documents. MMI's real estate broker corporate license number is still on the company website. Respondents have not changed their business practices in any other way, and they continue to contract with and service clients as described in Factual Findings 8 through 11, 18 and 19, above.

LEGAL CONCLUSIONS

1. The burden of proof in this matter is on complainant to show by clear and convincing evidence to a reasonable certainty that respondents' licenses should be suspended or revoked. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

Applicable Statutes and Regulations

2. Pursuant to Business and Professions Code section 10130, it is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesperson without first obtaining a real estate license from the Department.

3. Business and Professions Code section 10131, subdivision (d), in relevant part, defines a real estate broker as person who, for a compensation or in expectation of a compensation, performs services for borrowers in connection with loans secured directly or collaterally by liens on real property.

4. Business and Professions Code section 10026, in relevant part, defines the term "advance fee" as "a fee, regardless of the 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."

5. Pursuant to Business and Professions Code section 10131.2, a real estate broker is also a person who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to obtain a loan or loans thereon.

6. Business and Professions Code section 10145 requires a broker to hold real estate transaction funds belonging to others in trust. That section, in relevant part, provides:

> (a) (1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.
>
> [¶] . . . [¶]

(c) A real estate salesperson who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.

[¶] . . . [¶]

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

7. Business and Professions Code section 10146 provides, in relevant part, that a real estate broker who contracts for or collects an advance fee shall deposit that fee, when collected, in a trust account with a bank. The funds may only be withdrawn when used for the benefit of the client or five days after verified accounts have been mailed to the client.

8. Pursuant to Business and Professions Code section 10085, the commissioner may require that materials used in obtaining advance fee agreements be submitted to him or her for approval at least 10 calendar days before they are used.

9. Pursuant to Business and Professions Code section 10085.5, subdivision (a), it is unlawful for a person to charge, receive, collect, or contract for an advance fee either for 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 for performing any other activities for which a license is required, unless the person is a licensed real estate broker.

10. Business and Professions Code section 10177, subdivision (d), authorizes the suspension or revocation of the license of a real estate licensee or a corporation, if an officer, director, or person owning 10 percent or more of the corporation's stock, has "willfully" disregarded or violated the Real Estate Laws or the Commissioner's Regulations. The term "willfully," as used in this subdivision, means "done deliberately: not accidental or without purpose." (*Apollo Estates, Inc. v. Department of Real Estate* (1985) 174 Cal.App.3d 625, 639; see also *Manning v. Fox* (1984) 151 Cal.App.3d 531, 542 ["Section 10177, subdivision (d), is designed 'to protect the public not only from conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable salesman.'"].)

11. California Code of Regulations, title 10, section 2715 requires, in relevant part, that every real estate broker maintain on file with the commissioner the address of his principal place of business, and his current mailing address, if different from the business address. Further, every real estate salesperson must also maintain

on file with the commissioner his current mailing address, and when applicable, the address of the principal business office of the broker to whom the salesperson is at the time licensed. A broker is also required to notify the commissioner of any change in location or address his place of business not later than the next business day following the change.

12. California Code of Regulations, title 10, section 2831, describes the trust fund records that a broker must maintain. It provides, in relevant part:

> (a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:
>
> (1) Date trust funds received
> (2) From whom trust funds received
> (3) Amount received
> (4) With respect to funds deposited in an account, date of said deposit.
> (5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
> (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.
> (7) Daily balance of said account.
>
> (b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).
>
> (c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

13. California Code of Regulations, title 10, section 2831.1, requires a broker to keep a separate record for each beneficiary or transaction, accounting for all funds that have been deposited in the broker's trust account. This record must include

information sufficient to identify the transaction and the parties to the transaction. Each record must also be set forth in a specified chronological and columnar form.

14. California Code of Regulations, title 10, section 2831.2, mandates that a broker must perform trust account reconciliations. That section provides, in relevant part, that separate beneficiary records must each be reconciled monthly in any month in which there was any activity. A record of the reconciliation must contain specific information and must be maintained by the broker.

15. California Code of Regulations, title 10, section 2832, subdivision (a), requires, in relevant part, that in conformance with Business and Professions Code section 10145, trust funds must be deposited in a trust account in the name of the broker as trustee, not later than three business days after the broker or salesperson receives the funds.

16. California Code of Regulations, title 10, section 2970, in relevant part, provides 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."

17. California Code of Regulations, title 10, section 2972, in relevant part, provides that each verified accounting to the Commissioner required by Business and Professions Code section 10146 must contain specific information listed in the regulation. It is also required that in the case of an advance fee for the arrangement of a loan secured by real property, additional information must also be submitted.

18. Business and Professions Code section 10148, subdivision (b), states:

> (b) The commissioner shall charge a real estate broker for the cost of any audit, if the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

Causes for Discipline

19. Cause for discipline of both respondent MMI's license as a real estate broker corporation and respondent Lopez-Soleta's license as a real estate salesperson was established pursuant to Business and Professions Code section 10130, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Factual Findings

2, 3, and 8 through 17, 18(a), 19, and Legal Conclusions 2, 3 and 10, in that respondent Lopez-Soleta, acting on behalf of respondent MMI, for compensation, solicited and performed services for borrowers in connection with loans that were secured directly or collaterally by liens on real property.

20. Cause for discipline of both respondent MMI's license as a real estate broker corporation and respondent Lopez-Soleta's license as a real estate salesperson was established pursuant to Business and Professions Code section 10085, and California Code of Regulations, title 10, section 2970, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Factual Findings 6, 7, 10 and 18(c), and Legal Conclusions 4, 5, 8, 10 and 16, in that respondent Lopez-Soleta, acting on behalf of respondent MMI, charged, received, and collected an advance fee within the meaning of Business and Professions Code sections 10026 and 10131.2, and failed to have the advance fee contract and all materials used in obtaining the advance fee agreement to be submitted to the Department at least 10 days prior to its use.

21. Cause for discipline of both respondent MMI's license as a real estate broker corporation and respondent Lopez-Soleta's license as a real estate salesperson was established pursuant to Business and Professions Code section 10085.5, subdivision (a), in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Factual Findings 2, 3, 8 through 12, 16, 17, 18(a) and (b), and 19, and Legal Conclusions 4, 5, and 10, in that respondent Lopez-Soleta, acting on behalf of respondent MMI, charged, received, and collected an advance fee within the meaning of Business and Professions Code sections 10026 and 10131.2, and performed services for which a license is required without having either an active real estate broker corporate license or an active real estate salesperson's license.

22. Cause for discipline of both respondent MMI's license as a real estate broker corporation and respondent Lopez-Soleta's license as a real estate salesperson was established pursuant to Business and Professions Code sections 10145, subdivisions (a)(1) and (c), and 10146, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Factual Findings 9, and 18 (b) and (d), and Legal Conclusions 6, 7, and 10, in that respondent Lopez-Soleta, acting on behalf of respondent MMI, failed to immediately deliver trust funds received into a neutral escrow depository, or into a trust fund account, in violation of Business and Professions Code sections 10145, subdivisions (a)(1) and (c), and 10146.

23. Cause for discipline of both respondent MMI's license as a real estate broker corporation and respondent Lopez-Soleta's license as a real estate salesperson was established pursuant to Business and Professions Code section 10146, and California Code of Regulations, title 10, section 2972, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Factual Findings 9, 16, and 18(e), and Legal Conclusions 3, 6, 7, 10 and 17, in that respondent Lopez-Soleta, acting on behalf of respondent MMI, failed to furnish the principal borrowers, clients Donald B., William L. and

Anne D., Thea D., and Michael M., the verified accounting required by Business and Professions Code section 10146 and California Code of Regulations, title 10, section 2972.

24. Cause for discipline of both respondent MMI's license as a real estate broker corporation and respondent Lopez-Soleta's license as a real estate salesperson was established pursuant to Business and Professions Code sections 10145 and 10146, and California Code of Regulations, title 10, section 2832, subdivision (a), in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Factual Findings 9 and 18(d), (f), and (g), and Legal Conclusions 6, 7, 10, and 15, in that during the audit period, respondent Lopez-Soleta, as the sole owner and sole employee of MMI, failed to designate Bank Account #1 as a trust account, and failed to deposit trust funds into a trust fund account in the name of a valid trustee.

25. Cause for discipline of both respondent MMI's license as a real estate broker corporation and respondent Lopez-Soleta's license as a real estate salesperson was established pursuant to Business and Professions Code section 10145, and California Code of Regulations, title 10, section 2831, subdivisions (a) and (b), in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Factual Findings 9 and 18(h), and Legal Conclusions 6, 10, and 12, in that during the audit period, respondent Lopez-Soleta, as the sole owner and sole employee of MMI, did not maintain a written control record of all trust funds received and disbursed that included all the information required by section 2831, subdivisions (a) and (b).

26. Cause for discipline of both respondent MMI's license as a real estate broker corporation and respondent Lopez-Soleta's license as a real estate salesperson was established pursuant to Business and Professions Code section 10145, subdivision (g), and California Code of Regulations, title 10, section 2831.1, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Factual Findings 9 and 18(i), and Legal Conclusions 6, 10, and 13, in that during the audit period, respondent Lopez-Soleta, as the sole owner and sole employee of MMI, failed to maintain separate beneficiary records in Bank Account #1 for each transaction, to show the deposit amount, the disbursement amount, and the daily balance for each beneficiary.

27. Cause for discipline of both respondent MMI's license as a real estate broker corporation and respondent Lopez-Soleta's license as a real estate salesperson was established pursuant to Business and Professions Code section 10145, subdivision (g) and California Code of Regulations, title 10, section 2831.2, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Factual Findings 6, 9 and 14, and Legal Conclusions 10 and 18(j), in that during the audit period, respondent Lopez-Soleta, as the sole owner and sole employee of MMI, failed to reconcile the balance of separate beneficiary or transaction records with the control records of the trust funds received and disbursed, at least once a month.

28. Cause for discipline of respondent MMI's license as a real estate broker corporation and respondent Lopez-Soleta's license as a real estate salesperson was

established pursuant to California Code of Regulations, title 10, section 2715, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Factual Findings 2, 5, 11, 12, and 18(k), and Legal Conclusions 10 and 11, in that respondent Lopez-Soleta, as the sole owner and sole employee of MMI, failed to notify the Department within the next business day that MMI had changed its location or address.

Cost of Audit

29. Complainant has established that the Department has incurred costs of an audit of respondent MMI's financial books and records in accordance with the Department's laws and regulations by reason of Factual Findings 13 through 21. Pursuant to Business and Professions Code section 10148, subdivision (b), and California Code of Regulations, title 10, section 2930, the reasonable cost of the audit shall be charged to a broker if it is found that the broker has violated Business and Professions Code section 10145 or a regulation or rule of the commissioner interpreting that section. Pursuant to Factual Findings 18(a) through (k), and Legal Conclusions 18 through 28, respondent MMI has violated section 10145 or a regulation interpreting that section. Cause therefore exists to order respondent MMI to pay for the cost of the audit.

Appropriate Discipline

30. The commissioner is charged with the responsibility of monitoring the activities of its licensees to ensure compliance with applicable rules and regulations. In order to ensure the public's protection, the commissioner must be satisfied that its licensees are willing and able to conduct their business within the bounds of the law, and that they exercise reasonable diligence and accuracy in doing so. The commissioner cannot be assured that the public is protected when, as here, licensees engage in a pattern of violating the rules and regulations promulgated by the commissioner.

31. Complainant has established cause to discipline respondent MMI's real estate broker corporate license and respondent Lopez-Soleta's real estate salesperson's license by clear and convincing evidence. At all times during the period of the audit, respondent Lopez-Soleta acted on behalf of MMI. He was the president, sole employee, and 100 percent shareholder. While the trust fund violations were not of a serious nature and no clients were harmed by the largely technical violations under in this case, they were however repeated and numerous. Moreover, after notification of the numerous deficiencies in respondents practices, in this and other regards in connection with its loan modification business, respondents failed to correct any of the deficiencies identified by the Department's audit except to remove respondent Lopez-Soleta's real estate salesperson's license number from the pages of the client contract. The evidence adduced at the hearing demonstrated that, even after notice from the Department, respondents MMI and Lopez-Soleta continued to act as licensees, without the required broker affiliations or Department approval of the forms and advertisements used in its loan modification business. MMI's website remains on the internet, including respondent MMI's real estate broker corporate license number. Respondent Lopez-Soleta clearly understood the significance of the October 2009 legislation

prohibiting licensees from taking advance fees in connection with loan modifications. Nevertheless, even after notification by the Department, respondent Lopez-Soleta never inquired further or sought to understand the alleged violations of real estate laws and regulations.

It is particularly troubling that, against this background, respondent Lopez-Soleta denies any wrongdoing, with the exception of having had his real estate license number on the client contract. He argues that the Department does not maintain any jurisdiction over his business as it is currently practiced, and he has not demonstrated any intention to change those practices. Given his failure to either promptly correct the deficiencies after notification, or to determine their validity, respondents' licenses should be revoked in order to protect the public.

Respondent Lopez-Soleta is the president, 100 percent shareholder, and sole employee of MMI. The respondents will be jointly and severally liable for the payment of the costs of the audit.

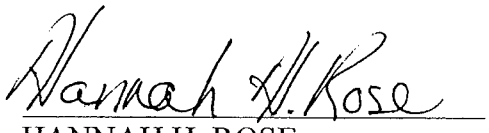
ORDER

1. All licenses and licensing rights of respondent MMI under the Real Estate Law are revoked by reason of Legal Conclusions 1 through 31, jointly and individually.

2. All licenses and licensing rights of respondent Lopez-Soleta under the Real Estate Law are revoked by reason of Legal Conclusions 1 through 27, and 29 through 31, jointly and individually.

3. Respondent MMI and respondent Lopez-Soleta are ordered to pay the cost of the audit within 60 days of mailing the notice of billing by the Department.

Dated: August 29, 2012



HANNAH H. ROSE
Administrative Law Judge
Office of Administrative Hearings

RECEIVED
Dept of Real Estate
AUG 3 1 2012
SACRAMENTO LEGAL

FILED

MAR 28 2012

DEPARTMENT OF REAL ESTATE

By L. Jones

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MORTGAGE MODIFIERS INC., and MIGUEL ANGEL LOPEZ-SOLETA, Respondents.	No. H-11269 SF

ORDER GRANTING RECONSIDERATION

On February 17, 2012, a Decision was rendered in the above-entitled matter to become effective on March 19, 2012 and was stayed by separate Order to March 29, 2012.

On March 15, 2012, Respondents petitioned for reconsideration of the Decision of February 17, 2012. I find that there is good cause to reconsider said Order.

Reconsideration is hereby granted and pursuant to Section 11521(b) of the Government Code and the matter is reassigned to an Administrative Law Judge of the Office of Administrative Hearings for hearing.

This order shall be effective immediately.

Dated: 3/27/2012

By WAYNE S. BELL
Chief Counsel

FILED

MAR 16 2012

DEPARTMENT OF REAL ESTATE

By R. Jones

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MORTGAGE MODIFIERS INC., and MIGUEL ANGEL LOPEZ-SOLETA, Respondents.	NO. H-11269 SF

ORDER STAYING EFFECTIVE DATE

On February 17, 2012, a Decision was rendered in the above-entitled matter to become effective on March 19, 2012.

On March 15, 2012, Respondent filed a petition for reconsideration of the Decision of February 17, 2012.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of ten (10) days. The Decision of February 17, 2012, shall become effective at 12 o'clock noon on March 29, 2012.

DATED: March 15, 2012

BARBARA J. BIGBY
Acting Real Estate Commissioner

William E. Moran

By WILLIAM E. MORAN
Assistant Commissioner, Enforcement

FILED

FEB 27 2012

DEPARTMENT OF REAL ESTATE

By P. Jones

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MORTGAGE MODIFIERS INC., and MIGUEL ANGEL LOPEZ-SOLETA, Respondents.	No. H-11269 SF

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on February 7, 2012, and the findings of fact set forth herein, which are based on one or more of the following: (1) Respondents MORTGAGE MODIFIERS INC., and MIGUEL ANGEL LOPEZ-SOLETA (Respondents) express admissions; (2) affidavits; and (3) other evidence.

FINDINGS OF FACT

1

On December 5, 2011, E. J. Haberer II made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified and regular mail, to Respondents last known mailing address on file with the Department on December 19, 2011.

On February 7, 2012, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

2

Respondents are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code ("Code").

3

At all times mentioned, Respondent MORTGAGE MODIFIERS INC., ("MMI") was and is licensed by the State of California Department of Real Estate ("Department") as a real estate broker corporation. All times after March 18, 2010, to present, MMI failed to have a designated-officer affiliated with its license.

4

Whenever reference is made in an allegation in this Accusation to an act or omission of MMI, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with MMI committed such acts or omissions while engaged in furtherance of the business or operation of MMI and while acting within the course and scope of their corporate authority and employment.

5

At all times mentioned, Respondent MIGUEL ANGEL LOPEZ-SOLETA, ("LOPEZ-SOLETA") was and is licensed by the Department as a real estate salesperson. LOPEZ-SOLETA is the President, and 100 percent shareholder of MMI.

6

At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein you, for or in expectation of compensation, for another or others, solicited borrowers or lenders or negotiated loans or collected payments or performed 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.

7

After March 18, 2010, Respondents willfully caused, suffered, permitted, and/or disregarded the real estate law by allowing MMI to perform the acts and conduct the real estate activities described in Paragraph 6, above, including but not limited to the activities described in Paragraph 8, below.

8

After March 18, 2010, in the course of the employment and activities described in Paragraph 7, above, LOPEZ-SOLETA and/or other agents or employees of MMI whose identities are unknown at this time, on behalf of MMI, solicited and/or performed services for borrowers, in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, for or in expectation of compensation. Such activities include, but are no limited to:

Homeowner	Property Address
Donald B.	610 Pepper Road, Petaluma, CA
William L. and Anne D.	42 Humboldt Avenue, San Anselmo, CA
Thea D.	646 Oak Street, Santa Rosa, CA
Michael M.	5730 Sobrante Avenue, El Sobrante, CA

9

In acting as described in paragraphs 7 through 8, above, Respondents willfully caused, suffered, and/or permitted MMI to willfully disregard Section 10130 of the Code.

10

In connection with the operation and conduct of the activities described in Paragraph 6, LOPEZ-SOLETA, on behalf of MMI, engaged in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of advance fees within the meaning of Sections 10026 and 10131.2 ("advance fee") of the Code including but not limited to the following:

Homeowner	Property Address	Amount
Donald B.	610 Pepper Road, Petaluma, CA	$1,995
William L. and Anne D.	42 Humboldt Avenue, San Anselmo, CA	$1,995
Thea D.	646 Oak Street, Santa Rosa, CA	$1,995
Michael M.	5730 Sobrante Avenue, El Sobrante, CA	$1,995

11

In connection with the collection and handling of said advance fees:

(a) Respondents failed to cause the advance fee contract and all materials used in obtaining the advance fee agreement to be submitted to the Department of Real Estate prior to use as required by Section 10085 of the Code and Section 2970 of Title 10 of the California Code of Regulations ("Regulations");

(b) Respondents failed to immediately deliver said trust funds into a neutral escrow depository, or into a trust fund account in violation of Section 10146 of the Code;

(c) Respondents failed to furnish the principal borrower the verified accounting required by Section 10146 of the Code and Section 2972 of the Regulations.

12

In acting as a real estate broker, as described in Paragraph 6, Respondents accepted or received funds in trust ("trust funds") from or on behalf of lenders, investors, note purchasers, borrowers, and others in connection with the servicing, solicitation, negotiation, processing, and consummation of mortgage loan investments by Respondents.

13

The aforesaid trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into one or more bank accounts ("trust funds accounts") maintained by Respondents for the handling of trust funds, including but not limited to, the following:

TITLE AND ACCOUNT NUMBERS	BANK
Mortgage Modifiers Inc Miguel Lopez. Account No. xxxx5157 (hereinafter "Bank 1")	Circle Bank 35 East Washington Petaluma, CA 94952

14

In connection with the receipt and disbursement of trust funds, Respondents:

(a) Failed to deposit trust funds into one or more trust funds accounts in the name of Respondent as trustee at a bank or other financial institution, in conformance with Section 10145 of the Code and Section 2832 of the Regulations;

(b) Failed to maintain a written control record of all trust funds received and disbursed, containing all information required by Section 2831 of the Regulations;

(c) Failed to maintain separate beneficiary or transaction records containing all information required by Section 2831.1 of the Regulations;

(d) Failed to reconcile the balance of separate beneficiary or transaction records with the control record of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations for each account as required by Section 2831.2 of the Regulations; and

(e) Failed to notify the Department within the next business day that Respondent had closed its main office as required by Section 2715 of the Regulations.

DETERMINATION OF ISSUES

1

Cause for disciplinary action against Respondents exists pursuant to Section 10130 of the Code in conjunction with Section 10177(d) of the Code.

2

Cause for disciplinary action against Respondents exists pursuant to Section 10177(d) of the Code in conjunction with Sections 10085, 10085.5, and 10146 of the Code and Sections 2970 and 2972 of the Regulations.

3

Cause for disciplinary action against Respondents exists pursuant to Section 10177(d) of the Code in conjunction with Section 10145 of the Code and Section 2832 of the Regulations.

4

Cause for disciplinary action against Respondents exists pursuant to Section 10177(d) of the Code in conjunction with Section 2831 of the Regulations.

5

Cause for disciplinary action against Respondents exists pursuant to Section 10177(d) of the Code in conjunction with Section 2831.1 of the Regulations.

6

Cause for disciplinary action against Respondents exists pursuant to Section 10177(d) of the Code in conjunction with Section 2831.2 of the Regulations.

7

Cause for disciplinary action against Respondents exists pursuant to Section 10177(d) of the Code in conjunction with Section 2715 of the Regulations.

8

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

1

All licenses and licensing rights of Respondents MORTGAGE MODIFIERS INC., and MIGUEL ANGEL LOPEZ-SOLETA under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

2

Pursuant to Section 10148 of the Code, Respondents shall pay the Commissioner's reasonable cost for the audit which led to this disciplinary action. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondents shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities preformed during the audit and the amount of time spent performing those activities.

This Decision shall become effective at 12 o'clock noon on MAR 1 9 2012.

DATED: 2/17/12

BARBARA J. BIGBY
Acting Real Estate Commissioner

FILED

TRULY SUGHRUE, Counsel
State Bar No. 223266
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789
(916) 227-0781 (Direct)

December 19, 2011

DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MORTGAGE MODIFIERS INC., and MIGUEL ANGEL LOPEZ-SOLETA, Respondents.	No. H-11269 SF ACCUSATION

The Complainant, E. J. HABERER II, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against MORTGAGE MODIFIERS INC., and MIGUEL ANGEL LOPEZ-SOLETA (hereinafter "Respondents"), are informed and alleges as follows:

PRELIMINARY ALLEGATIONS

1

The Complainant, E. J. HABERER II, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

2

Respondents are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code").

3

At all times mentioned, Respondent MORTGAGE MODIFIERS INC., (hereinafter "MMI") was and is licensed by the State of California Department of Real Estate (hereinafter "Department") as a real estate broker corporation. All times after March 18, 2010, to present, MMI failed to have a designated-officer affiliated with its license.

4

Whenever reference is made in an allegation in this Accusation to an act or omission of MMI, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with MMI committed such acts or omissions while engaged in furtherance of the business or operation of MMI and while acting within the course and scope of their corporate authority and employment.

5

At all times mentioned, Respondent MIGUEL ANGEL LOPEZ-SOLETA, (hereinafter "LOPEZ-SOLETA") was and is licensed by the Department as a real estate salesperson. LOPEZ-SOLETA is the President, and 100 percent shareholder, of MMI.

6

At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein Respondents, for or in expectation of compensation, for another or others, solicited borrowers or lenders or negotiated loans or collected payments or performed 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.

FIRST CAUSE OF ACTION

7

Each and every allegation in Paragraphs 1 through 6, inclusive, above, are incorporated by this reference as if fully set forth herein.

8

On or about November 11, 2009, Respondents willfully caused, suffered, permitted, and/or disregarded the real estate law by allowing MMI to perform the acts and conduct the real estate activities described in Paragraph 6, above, including but not limited to the activities described in Paragraph 9, below.

9

After March 18, 2010, in the course of the employment and activities described in Paragraph 8, above, LOPEZ-SOLETA and/or other agents or employees of MMI whose identities are unknown at this time, on behalf of MMI, solicited and/or performed services for borrowers, in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, for or in expectation of compensation. Such activities include, but are not limited to:

HOMEOWNER	PROPERTY ADDRESS
Donald B.	610 Pepper Road, Petaluma, CA
William L. and Anne D.	42 Humboldt Avenue, San Anselmo, CA
Thea D.	646 Oak Street, Santa Rosa, CA
Michael M.	5730 Sobrante Avenue, El Sobrante, CA

10

In acting as described in paragraphs 8 and 9, above, Respondents willfully caused, suffered, and/or permitted MMI to willfully disregard Section 10130 of the Code.

11

The facts described above as to the First Cause of Action constitute cause to suspend or revoke all licenses and license rights of Respondents pursuant to the provisions of Section 10130 of the Code in conjunction with Section 10177(d) of the Code.

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SECOND CAUSE OF ACTION

12

Each and every allegation in Paragraphs 1 through 11, inclusive, above are incorporated by this reference as if fully set forth herein.

13

In connection with the operation and conduct of the activities described in Paragraph 6, LOPEZ-SOLETA, on behalf of MMI, engaged in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of advance fees within the meaning of Sections 10026 and 10131.2 (hereinafter "advance fee") of the Code including, but not limited to, the following:

HOMEOWNER	PROPERTY ADDRESS	AMOUNT
Donald B.	610 Pepper Road, Petaluma, CA	$1,995
William L. and Anne D.	42 Humboldt Avenue, San Anselmo, CA	$1,995
Thea D.	646 Oak Street, Santa Rosa, CA	$1,995
Michael M.	5730 Sobrante Avenue, El Sobrante, CA	$1,995

14

In connection with the collection and handling of said advance fees:

(a) Respondents failed to cause the advance fee contract and all materials used in obtaining the advance fee agreement to be submitted to the Department of Real Estate prior to use as required by Section 10085 of the Code and Section 2970 of Title 10 of the California Code of Regulations (hereinafter "Regulations");

(b) Respondents failed to immediately deliver said trust funds into a neutral escrow depository, or into a trust fund account in violation of Section 10146 of the Code;

(c) Respondents failed to furnish the principal borrower the verified accounting required by Section 10146 of the Code and Section 2972 of the Regulations.

15

The acts and/or omissions of Respondents as described in the Second Cause of Action, constitute violation of Section 10177(d) of the Code in conjunction with Sections 10085,

10085.5, and 10146 of the Code and Sections 2970 and 2972 of the Regulations, and are cause for the suspension or revocation of Respondents license and license rights.

In addition, the Department is entitled to reimbursement of the costs of its audit pursuant to Section 10148 of the Code.

THIRD CAUSE OF ACTION

16

Each and every allegation in Paragraphs 1 through 15, inclusive, above, are incorporated by this reference as if fully set forth herein.

17

In acting as a real estate broker, as described in Paragraph 6, Respondents accepted or received funds in trust (hereinafter "trust funds") from or on behalf of lenders, investors, note purchasers, borrowers, and others in connection with the servicing, solicitation, negotiation, processing, and consummation of mortgage loan investments by Respondents.

18

The aforesaid trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into one or more bank accounts (hereinafter "trust funds accounts") maintained by Respondents for the handling of trust funds, including but not limited to the following:

TITLE AND ACCOUNT NUMBER	BANK
Mortgage Modifiers Inc Miguel Lopez Account No. xxxx5157 (hereinafter "Bank 1")	Circle Bank 35 East Washington Petaluma, CA 94952

19

In connection with the receipt and disbursement of trust funds, Respondents:

(a) Failed to deposit trust funds into one or more trust funds accounts in the name of Respondent as trustee at a bank or other financial institution, in conformance with Section 10145 of the Code and Section 2832 of the Regulations;

(b) Failed to maintain a written control record of all trust funds received and disbursed, containing all information required by Section 2831 of the Regulations;

(c) Failed to maintain separate beneficiary or transaction records containing all information required by Section 2831.1 of the Regulations;

(d) Failed to reconcile the balance of separate beneficiary or transaction records with the control record of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations for each account as required by Section 2831.2 of the Regulations; and

(e) Failed to notify the Department within the next business day that Respondent had closed its main office as required by Section 2715 of the Regulations.

20

The facts alleged in the Third Cause of Action are grounds for the suspension or revocation of Respondent's license and license rights under the following sections of the Code and Regulations:

(1) As to Paragraph 19(a), under Section 10177(d) of the Code in conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

(2) As to Paragraph 19(b), under Section 10177(d) of the Code in conjunction with Section 2831 of the Regulations;

(3) As to Paragraph 19(c), under Section 10177(d) of the Code in conjunction with Section 2831.1 of the Regulations;

(4) As to Paragraph 19(d), under Section 10177(d) of the Code in conjunction with Section 2831.2 of the Regulations; and

(5) As to Paragraph 19(e), under Section 10177(d) of the Code in conjunction with Section 2715 of the Regulations.

In addition, the Department is entitled to reimbursement of the costs of its audit pursuant to Section 10148 of the Code.

///

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.

Robert Fornan for

E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,

this 5TH day of OCTOBER, 2011

DISCOVERY DEMAND

Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Department of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the *Administrative Procedure Act.* Failure to provide Discovery to the Department of Real Estate may result in the exclusion of witnesses and documents at the hearing or other sanctions that the Office of Administrative Hearings deems appropriate.