FILED

JUL 19 2010

DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of HOME OWNERS ASSISTANCE; FIRST HOUSING OF AMERICA; DEAN ERIC TORO; and SINDEY AVALOS, Respondents.	NO. H-35571 LA L-2009030034

ORDER DENYING RECONSIDERATION

On June 15, 2010, a Decision was rendered in the above-entitled matter. The Decision was to become effective on July 8, 2010, but was stayed by separate Order to July 19, 2010.

On July 7, 2010, Respondent SINDEY AVALOS petitioned for reconsideration of the Decision of June 15, 2010.

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I have given due consideration to the petition of Respondent SINDEY AVALOS. I find no good cause to reconsider the Decision of June 15, 2010, and reconsideration is hereby denied.

IT IS SO ORDERED 7/19, 2010.

JEFF DAVI
Real Estate Commissioner

BY: Barbara J. Bigby
Chief Deputy Commissioner

FILED
JUL - 8 2010
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of HOME OWNERS ASSISTANCE; FIRST HOUSING OF AMERICA INC.; DEAN ERIC TORO; and SINDEY AVALOS, Respondents.	NO. H-35571 LA L-2009030034

ORDER STAYING EFFECTIVE DATE

On June 15, 2010, a Decision was rendered in the above-entitled matter to become effective July 8, 2010. On July 7, 2010, Respondent SINDEY AVALOS filed a petition for reconsideration.

IT IS HEREBY ORDERED that the effective date of the Decision of June 15, 2010, is stayed for a period of ten (10) days to consider Respondent SINDEY AVALOS' petition for reconsideration.

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The Decision of June 15, 2010, shall become effective at 12 o' clock noon on July 19, 2010.

DATED: July 8, 2010.

JEFF DAVI
Real Estate Commissioner

By: Dolores Weeks
DOLORES WEEKS
Regional Manager

FILED

JUN 17 2010

DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of HOME OWNERS ASSISTANCE, a corporate real estate broker; FIRST HOUSING OF AMERICA INC., a corporate real estate broker; FIRST MORTGAGE OF AMERICA INC., a corporate real estate broker; DEAN ERIC TORO, individually and as designated officer of Home Owners Assistance and former designated officer of First Mortgage of America Inc.; and SINDEY AVALOS, individually and as designated officer of First Housing of America Inc., Respondents.	DRE No.H-35571 LA OAH No.L-2009030034

DECISION AFTER REJECTION

On August 3, 4, 5, 6, 7, 10 and 11, 2009, a hearing was held before Administrative Law Judge H. Stuart Waxman ("ALJ") of the Office of Administrative Hearings in Los Angeles, California. Complainant, Robin Trujillo, was represented by Martha J. Rosett, Counsel for the Department of Real Estate ("Department"). Respondents HOME OWNERS ASSISTANCE INC. ("HOA"), FIRST HOUSING OF AMERICA INC. ("FHA",) DEAN ERIC TORO ("TORO") and SINDEY AVALOS ("AVALOS") were present and were represented by Edward O. Lear, Esq. TORO and AVALOS appeared in their individual capacities as well as in their capacities as designated broker-officers of Respondents HOA and FHA in this matter. Oral and documentary evidence was received. The record was closed on October 9, 2009, and the matter was submitted for decision.

First Mortgage of America, Inc. surrendered its license and license rights effective April 21, 2009.

On November 6, 2009, the Administrative Law Judge submitted a Proposed Decision which I declined to adopt as my Decision herein. Pursuant to Section 11517(c) of the Government Code of the State of California, Respondents were served with notice of my determination not to adopt the Proposed Decision of the ALJ along with a copy of said Proposed Decision. On December 21, 2009, Respondents were notified that the case would be decided by me upon the record, the transcript of proceedings held on August 3, 4, 5, 6, 7, 10 and 11, 2009, and upon written argument offered by the parties.

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The Proposed Decision revoked each Respondent's real estate broker license, but granted each Respondent the right to a restricted broker license, subject to terms and conditions which included a period of five years before being eligible for an unrestricted license. Respondents HOA and FHA were also responsible for payment of costs of the audits which led to the disciplinary action and follow-up audits. Respondents TORO and AVALOS were also required to complete continuing education and the professional responsibility examination.

All references to the "Code" herein are to the California Business and Professions Code and all references to "Regulations" are to the California Code of Regulations, Chapter 6, Title 10, unless otherwise indicated.

I have given careful consideration to the record in this case, including the transcript of the proceedings of August 3, 4, 5, 6, 7, 10 and 11, 2009.

The Department received the last of the transcripts on February 8, 2010. Respondent TORO submitted further argument on February 18, 2010. Respondent AVALOS submitted further argument on February 25, 2010. Although represented at hearing by Mr. Lear, Respondent TORO and Respondent AVALOS each submitted their own brief statements. Written argument was submitted by Complainant on May 5, 2010.

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After further consideration of the matter, the following shall constitute the Decision of the Real Estate Commissioner in the above-entitled matter:

FACTUAL FINDINGS

1. Complainant for the Department, made the Accusation and Second Supplemental Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.

The Respondents

2. HOA was licensed as a corporate real estate broker by the Department on December 28, 2007. TORO is HOA's designated officer. HOA's license will expire on December 27, 2011, unless renewed.

3. At all relevant times, HOA was a California corporation. The corporate President and CEO of which was Pepi Arthur Abad ("Abad"), who owned or controlled more than 10 percent of the corporation's stock. Abad is not now and has never been licensed by the Department in any capacity. Abad is married to AVALOS.

4. AVALOS has recently acquired a 100 percent ownership interest in HOA. The change was made in order for HOA to obtain a minority business owner certification.

5. FHA was licensed as a corporate real estate broker by the Department on September 16, 2002. AVALOS is FHA's designated officer. FHA's license will expire on September 15, 2010, unless renewed.

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6. At all relevant times, FHA was a California corporation. Abad was its corporate President and CEO, controlling more than 10 percent of the corporation's stock.

7. AVALOS has recently acquired 100 percent ownership of FHA. The change was made in order for FHA to obtain a minority business owner certification.

8. First Mortgage of America ("FMA") was licensed as a corporate real estate broker by the Department on October 27, 2003. From that date, to January 16, 2004, Alice Cathryn Drake was FMA's designated officer. From January 16, 2004, to February 1, 2005, TORO was FMA's designated officer. From February 1, 2005, to June 28, 2005, Kevin D. Jones was FMA's designated officer. From June 28, 2005, to January 12, 2007, TORO again served as the designated officer. From January 23, 2007, to April 17, 2008, Bruce Eugene Mangels served as FMA's designated officer. FMA's license was cancelled as of April 17, 2008, but remained in inactive status. FMA's license was scheduled to expire on October 26, 2011, unless renewed. However, FMA surrendered its corporate real estate broker license effective April 21, 2009. The instant action therefore proceeded against Respondents HOA, FHA, TORO and AVALOS only.

9. At all relevant times, Abad was FMA's corporate President and CEO, controlling more than 10 percent of the corporation's stock.

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10. TORO has approximately 30 years of experience in the real estate industry. Originally licensed by the Department as a salesperson on an unknown date before January 1, 2000, he allowed that license to terminate on May 14, 2003, because he was licensed by the Department as a real estate broker the following day. TORO is the designated broker of HOA and the former designated broker of FMA. His broker license will expire on July 16, 2011, unless renewed.

11. Originally licensed as a real estate salesperson on March 12, 2002, AVALOS was licensed by the Department as a real estate broker on October 28, 2006. AVALOS is FHA's owner and designated officer. AVALOS' broker license will expire on October 27, 2010, unless renewed.

Disciplinary Action by a Different Agency Against Abad

12. Complainant established the truth of the allegations in Paragraphs 11 and 12 of the Accusation. Those allegations are repeated verbatim below and constitute factual findings herein.

"11.

On or about July 14, 2005, in Cases No. S-01-0613 and RS-02-0091, the Department of Motor Vehicles revoked Pepi Abad's vehicle salesperson license, and denied his application for reinstatement of his salesperson license, pursuant to Vehicle Code Section 11806(i).

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The Order, which was to become effective on August 15, 2005, was affirmed on appeal to the Superior Court and became a final judgment on September 19, 2006. The grounds for the discipline of Abad's vehicle salesperson license stemmed from his misconduct as a managerial employee of a vehicle sales dealership during the time persons under his direction and control committed wrongful acts which resulted in the suspension of the dealer's license.

12.

The disciplinary action taken by the Department of Motor Vehicles against corporate officer Abad, as set forth above, constitutes grounds to discipline the real estate corporation license and license rights of Respondent HOA and Respondent FIRST HOUSING [FHA], pursuant to [Business and Professions] Code Section 10177(f). [Footnote omitted.]"

13. The misconduct proven in the Department of Motor Vehicles' action against Abad occurred between 1998 and 2000. Said misconduct was not disclosed in the corporate license applications for HOA and FHA, even though Abad had a greater than 10 percent ownership in the corporations. If done by a real estate licensee, it would be grounds for the suspension or revocation of a California real estate license.

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Advance Fees/Fixed Fees

14. HOA was originally organized to provide educational services for clients who were interested in purchasing a home but who were not knowledgeable about the process. However, because it was not difficult to qualify for a loan at that time, those services were generally unnecessary. The primary purpose of HOA was subsequently converted to loss mitigation, and the company began offering those services by 2008. Until the conversion was complete, FHA performed loan modification services. Respondents testified that FHA and HOA maintained zero tolerance policies against employees submitting false information to lenders in order to make the loan modification packets more attractive.

15. In or around January, 2008, HOA and FHA entered into a home loan modification agreement with Jenine Hill ("Hill"). According to that agreement HOA would collect information and put together a loan modification proposal that it would send to Hill's lender. If the lender refused to modify the loan terms, or if the lender's offer was unacceptable to Hill, the home would be sold in a "short sale", with FHA serving as the listing agent. A "short sale," as used in the context of this case, is the sale of real property for a price less than that owed on the mortgage(s), but sufficient to be acceptable to the lender in order to avoid the foreclosure process.

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16. HOA gathered information concerning Hill, her home loan and her financial liabilities and packaged them into a "loss mitigation packet" to be sent to the lender. In exchange for that service, Hill was required to agree to pay a fee of $1,795 to HOA and FHA "upon the submission of loss mitigation packet to the lender" (Loan Modification Agreement, Exhibit 27, page 58.) The Loan Modification Agreement also contained the following language:

> "I hereby agree and understand that the fee for loan modification submission is $1,795.00. I personally elected to pay this amount and this fee is being collected exclusively for a formal presentation/submission of my request and is considered earned upon submission of my file.
>
> Furthermore, I understand it does not come with any implied guarantees from H.O.A./FHOFA [FHA] or their agents. I understand if my request is decline[d] or I decline my lenders [sic] recommended adjustments, that my fee will be applied directly to the sale fee of my home through a "quick" sale method by FHOFA and is non refundable. No guarantees are promised or implied by either the loan modification submission or the attempt to sale m [sic] home."

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17. HOA and FHA handled several other loan modification transactions in the same manner as they did with respect to Hill, including but not limited to one for Patricia and Johnny Clark. In each case, they received a fee of between $1,795 and $1,995 that was deemed earned upon submission of the loan modification packet to the lender.

18. Although the fee was deemed earned upon submission of the loan packet to the lender, it was collected before that time. The fee was deposited into the company's general account instead of being placed into a trust account and held there until the packet was actually submitted.

19. Accompanying the loan modification packet were two letters to the lender. The first letter reads in part:

> "Enclosed, please find a "Loan Modification Proposal" packet for the above-mentioned loan. Home Owners Assistance, Inc. (HOA) is currently working with Jenine T. Hill, home owner, for the abovementioned property. We will be representing Jenine T. Hill, through a final resolution of your secured asset....
>
> We are requesting that you seriously consider this proposal as an alternative to the inevitable financial downside of a "Short Sale". Please note this file was referred to us by First Housing of America, Inc. (FHOF) a licensed and bonded real estate firm, who [sic] has listed the property and is delaying a short

sale request until the outcome of the "Loan Modification". FHOFA has identified that the home owner prefers to preserve home ownership and it would be prudent to contemplate this point.

If a wise consideration is not given to this proposal and you decide to decline this request, please understand that Jenine T. Hill will no longer be able to afford any sort of payment whatsoever on his [sic] existing note. Therefore, a short sale will be the only alternative. HOA firmly believes it would be in your company's best interest to seriously consider an alternative to the inevitable financial downside of a "Short Sale".

HOA believes there may be an expeditious way to resolve our client's hardship in today's market. In the event you approve a short sale, consider the duration and the monthly loss you are incurring yourselves into. Enclosed, you will also find a forecasted short sale loss projection based on current market conditions that will be detrimental to your investors.

[PP] ... [PP]

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When it comes to the above mentioned services, HOA and FHOFA, will rise above and beyond all your expectations. We look forward to being your number one "Outsource" solution by results. You may contact the Loss Mitigation and Asset Preservation Department at 1-877-243-4632 ext. 101. . . ."

20. The letter contained signature blocks for Pepi Abad as "Director/Founder Home Owners Assistance, Inc. Loss Mitigation Department" and for Sindey Avalos as "Owner/Broker First Housing of America, Inc. Real Estate Division."

21. In the second letter to the lender that accompanied the loan modification packet, Abad urged the lender to "act now before a 'Short Sale' or 'Foreclosure' further damages this asset's worth and other homes in the neighborhood." He then set forth a proposal for a loan modification (in Hill's case, comprised of nine components). At the close of the letter, Abad invited the lender to telephone him or his assistant with any "questions, comments or concerns." The signature block read "Pepi A. Abad, Director/Founder Home Owners Assistance, Inc."

22. Another form used by Respondents was entitled "Communication With Lender Letter." That document contained a form notice from the borrower to the lender, and a "note" to the homeowner consisting of four paragraphs.

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23. The form letter to the lender reads as follows:

"I/We have recently decided that we simply can not continue to make our scheduled mortgage payments; we've tried refinancing and have been turned down several times. To eliminate a guaranteed foreclosure we listed our home for a short sale with First Housing of America, Inc., a licensed real estate company that will be contacting you this week. They also have an asset preservation company looking at my file to see if there may be an alternative solution. The companies [sic] name is Home Owners Assistance, Inc., [sic] they will more than likely be contacting you as well. Please feel free to contact them at 714-619-2869 and ask for (loan consultant's name).

Their corporate headquarters address is 2911 S. Bristol Street, Santa Ana, CA 92704. They encourage me to stay in constant communication w/you until this is resolved."

24. The note to the homeowner on the Communication With Lender Letter reads in part:

"Do not avoid communication with your lender(s), [sic] on the contrary your immediate communication advising them to contact us will be instrumental in advancing your request for a loan modification as soon as

possible, [sic] please contact them immediately with the above statement.

Upon your file being submitted, it is possible that your assistance will be needed to accelerate your lender(s) assigned negotiator(s) communication with us or your lender(s) may attempt to circumvent our office all together, [sic] we will be sending a copy packet to you.

Should you choose to establish an agreement with your lender on your own we want to thank you in advance for giving us the opportunity to assist you in your homeowner preservation, however, should you elect to negate or reject your lender(s) proposal you are hereby advised that immediate communication with our office is strongly recommended."

25. On November 21, 2008, the Department issued a Desist and Refrain Order against HOA and FHA for collecting advance fees from customers without submitting the advance fee agreement to the Department for review and prior approval, and against TORO and AVALOS for failing to exercise reasonable supervision over the activities of officers and employees of the two corporations.

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26. The conduct of Respondents HOA, FHA, TORO and AVALOS, with respect to their loan modification business, fell within the ambit of their real estate broker licenses pursuant to Code Section 10131.2, and the fees they collected and identified as "fixed fees" were advance fees pursuant to Code Section 10026.

27. The ALJ found that in comporting themselves as they did, Respondents were relying on the advice of counsel who was attempting to guide them and assist them in complying with all statutory and regulatory requirements in the new area of loan modification. The ALJ further found that based on their attorney's advice, Respondents believed, in good faith, that they were permitted to charge what they thought were "fixed fees" without an advance fee agreement, previously approved by the Department, in place. Upon learning they may have been wrong, Respondents submitted a proposed advance fee agreement to the Department, and the Department issued a no objection letter to FHA on March 19, 2009.

28. The ALJ accepted Respondents' bold assertion that they refunded their fees to all of their clients who were dissatisfied with Respondents' loan modification services, whether or not Respondents had performed the agreed upon work and earned their fees. However, I am unconvinced that any credible supporting evidence of this was presented. The evidence does not support that "dissatisfied clients were made whole."

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The Audits

The HOA Audit

29. Between November 5, 2008, and November 19, 2008, the Department conducted an audit of HOA's books and records for the audit period November 1, 2007, through September 30, 2008. The auditor found that HOA was primarily involved in the business of loan modifications.

30. The auditor made the following findings with respect to HOA's books and records:

a. HOA collected advance fees from borrowers in connection with providing loan modification services. The advance fees were deposited into HOA's general business bank account instead of a trust account, thereby co-mingling trust funds and general funds.

b. HOA did not maintain a trust account.

c. HOA's records were incomplete; the columnar records did not include the date funds were disbursed, to whom funds were disbursed, or the daily balance.

d. HOA failed to maintain a separate record for each beneficiary of trust funds received from borrowers in connection with their loan modifications.

e. HOA did not maintain a monthly reconciliation of receipts and disbursements of trust funds.

f. The advance fees HOA received in connection with its loan modification services were determined pursuant to written agreements with their clients. Those agreements had not been submitted to the Department for review before the

clients were asked to sign them.

g. HOA received advance fees from borrowers, without maintaining and providing an accounting indicating services to be rendered, where the trust account funds would be deposited and details of how funds were to be disbursed.

h. Although HOA was not licensed by the Department until December 28, 2007, it handled loan modification transactions and collected advance fees as early as November 2007, without being properly licensed.

31. On October 31, 2008, upon the auditor's advice, HOA opened a trust account.

The FHA Audit

32. Between November 6, 2008, and February 11, 2009, the Department conducted an audit of FHA's books and records for the audit period October 1, 2005, through September 30, 2008.

33. The auditor made the following findings with respect to FHA's books and records:

a. FHA collected advance fees from borrowers in connection with providing loan modification services. The advance fees were deposited into FHA's general business bank account instead of a trust account, thereby co-mingling trust funds and general funds.

b. FHA's records were incomplete; the columnar records did not include the date funds were disbursed and the daily balance.

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c. FHA failed to maintain a separate record for each beneficiary of trust funds received from borrowers in connection with their loan modifications.

d. FHA did not maintain a written monthly reconciliation of the receipt and disbursement records, and the total balance of separate beneficiary records for its bank account that was used to handle advance fees.

e. The advance fees FHA received in connection with its loan modification services were arranged pursuant to written agreements with their clients. Those agreements had not been submitted to the Department at least 10 days before their use.

f. FHA received advance fees from borrowers, without maintaining and providing an accounting indicating services to be rendered, where the trust account funds would be deposited and details of how funds were to be disbursed.

The Esquivel and Guerrero Transactions

The Esquivel Transaction

34. In the latter part of 2005, Salvador Esquivel ("Esquivel") responded to a telephone solicitation from FMA personnel who offered to assist him in refinancing his home. The original financing of Esquivel's home was arranged through and handled by FMA approximately one year earlier.

35. Esquivel applied for the refinancing of his home through FMA because he wanted to lower his mortgage payment. He was promised a lower monthly payment and a cash-out of $28,760.07. However, when the time came for Esquivel to sign

the loan documents, he discovered that he had been assigned a 9.9 percent variable rate loan in place of his original seven (7) percent fixed rate loan, that his cash-out was $17,084.52, and that his monthly payment had increased by over $1,000 instead of decreasing. Esquivel was not fluent in English, and he was asked to sign the loan documents in the presence of an English-speaking notary public. He signed the loan documents believing the errors would subsequently be corrected.

36. After the loan funded, Esquivel was unable to afford his mortgage payments. He complained to FMA. After speaking with various individuals, he met with Abad and threatened to file a lawsuit. Based on their discussion, Abad and Esquivel entered into an agreement according to which FMA would pay Esquivel $5,500 and would arrange for a no-cost loan in the future. Esquivel accepted those terms but was still unable to make the mortgage payment. He lost his home in foreclosure.

The Guerrero Transaction

37. Respondents stipulated to the truth of the allegations contained in Paragraphs 43, 44 and 45 of the Accusation. Those allegations are repeated verbatim below and constitute factual findings herein:

"43.

Beginning on or before July 15, 2006, and continuing through on or after September 30, 2006, Respondent FIRST MORTGAGE represented Teresa and

Carlos Guerrero in refinancing a loan or loans secured by real property located at 64 East Barnett Street, Ventura, California 93001.

44.

In relation to the subject loan transaction, on or about September 9, 2006, Christian Ramos signed a loan application as representative of Respondent FIRST MORTGAGE, with a business address of "2823 S. Bristol, Santa Ana, CA 92704." On September 9, 2006, in relation to the subject transaction, Respondents obtained the Guerreros[']signatures on a Federal Truth-in-Lending Disclosure Statement in which the "Creditor" is listed as "FIRST MORTGAGE OF AMERICA (DRE #01402136), 2823 S. Bristol Street, Santa Ana, California 92704."

45.

At all times mentioned herein, Christian Ramos was not licensed by the Department of Real Estate as a real estate broker, or as a salesperson employed by the real estate broker."

38. On June 28, 2005, FMA's main office address was changed from 2911 South Bristol, Santa Ana, California 92705, to 2823 South Bristol Street, Santa Ana, California 92704. Accordingly, the address used in the Esquivel and Guerrero transactions was correct.

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39. None of FMA's employees who were involved in the Esquivel and/or Guerrero matters were licensed in any capacity by the Department.

40. Respondents argued that the Esquivel and Guerrero transactions were handled under FMA's California Finance Lender ("CFL") license. Many of the documents generated in connection with those transactions bear FMA's CFL license number. On one document from the Guerrero transaction, FMA's real estate broker license number is listed as its CFL license number. Respondents argued and the ALJ found that it was a clerical error, and it does not bring the transaction under the ambit of the Real Estate Law.

41. I disagree with the ALJ's conclusion that because the Esquivel and Guerrero transactions occurred under FMA's CFL license, the personnel who worked on those transactions were not required to hold licensure issued by the Department of Real Estate.

Pursuant to California Financial Code Section 22300, "No licensee shall directly or indirectly charge, contract for, or receive any interest or charge of any nature unless a loan is made." A loan modification does not involve the making of a loan, and therefore a lender may not engage in loan modification intermediary activity under the authority of a CFL license.

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Mitigation

42. Respondents submitted numerous letters from many of their customers lauding the companies' excellent service and their employees' professionalism. One live witness who knows Abad and AVALOS well described them as "incredibly honest." In describing the commitment of Abad and AVALOS to their customers, he stated, "they would rather gnaw off a limb than disserve a client."

43. The ALJ found that the auditor who conducted the audits of HOA and FHA on the Department's behalf, "credibly opined that," based on the highly cooperative and professional attitude of TORO and AVALOS during the audits, and further based on the refunds Respondents gave each of their disgruntled customers even after the company had performed the required work and had earned the fee, the auditor did not believe Respondents constitute a threat to the public.

44. As noted in Finding No. 28, above, I do not believe that credible supporting evidence was presented that Respondents gave each disgruntled and dissatisfied customer a refund. Moreover, the ALJ's opinion regarding the credibility of the witnesses who testified is not binding on the Department of Real Estate or the Courts. *Broney vs. California Commission on Teacher Credentialing* (2010) Court of Appeal Case No. C060831, 2010 Cal.App. Lexis 625.

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LEGAL CONCLUSIONS

Disciplinary Action by a Different Agency Against Abad

1. Cause exists to discipline the real estate broker licenses of HOA and FHA, pursuant to Business and Professions Code Section 10177, subdivision (f), for discipline imposed against a corporate officer by another agency, as set forth in Findings 12 and 13.

2. Code Section 10177 states in relevant part:

> The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:
>
> [PP...PP]
>
> (f) . . . had a license issued by another agency of this state ... revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act

(Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

3. Abad's vehicle salesperson license was revoked by the California Department of Motor Vehicles following the filing of an Accusation and a hearing on the merits, pursuant to the Administrative Procedure Act. The revocation was subsequently affirmed in a writ proceeding before the Superior Court. The violations that resulted in the license revocation were of a nature that would be grounds for suspension or revocation of a California real estate license.

Advance Fees/Fixed Fees

4. Cause exists to discipline real estate broker licenses of HOA, FHA, TORO and AVALOS, pursuant to Business and Professions Code Sections 10176, subdivision (i), 10177, subdivisions (d), (g), and (j), and 10085, and California Code of Regulations, Title 10, Section 2970, for advance fee violations, as set forth in Findings 14 through 28, inclusive.

5. HOA, FHA, TORO and AVALOS were operating within the ambit of their respective real estate broker licenses while they were engaging in loan modification transactions, and that the fee they charged their clients were advance fees, pursuant

to Business and Professions Code Section 10026[1], which were charged without a written advance fee agreement having been submitted to the Department for approval. Respondents claim that nothing they did with respect to the loan modification process was among the articulated functions of a real estate broker as set forth in Code Section 10131.2[2], and that their

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[1] Code Section 10026 states: "The term 'advance fee' as used in this part is a fee claimed, demanded, charged, received, collected or contracted from a principal for a listing, advertisement or offer to sell or lease property, other than in a newspaper of general circulation, issued primarily for the purpose of promoting the sale or lease of business opportunities or real estate or for referral to real estate brokers or salesmen, or soliciting borrowers or lenders for, or to negotiate loans on business opportunities or real estate. As used in this section, 'advance fee' does not include 'security' as that term is used in Section 1950.5 of the Civil Code, or a 'screening fee' as that term is used in Section 1950.6 of the Civil Code. This section does not exempt from regulation the charging or collecting of a fee under Section 1950.5 or 1950.6 of the Civil Code, but instead regulates fees that are not subject to those sections."

[2] Code Section 10131.2 states: "A real estate broker within the meaning of this part 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 promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or

fees were not advance fees, but rather were "fixed fees" for research, assembly and submission of the loan modification packet. They denied negotiating with lenders, claiming that lenders were to contact the homeowners directly, but that they occasionally did call Respondents. The ALJ concluded that the Department had the correct interpretation of Respondents' conduct.

6. The language of Respondents' two letters to the lender, the language of the Communication With Lender Letter, the proposed terms for the loan modification, and the invitation to the lender to telephone Respondents, all infer an intent by Respondents to negotiate the terms of the existing loan. That intent is evidenced by the absence from both letters of an instruction to the lender to contact the homeowner directly rather than to negotiate with Respondents. In fact, the second letter contains the following language: "Upon your acceptance we can have Ms. Hill sign and notarize the loan modification agreement and return [it] to your office. . ."

7. Respondents claimed that their loan modification transactions were not governed by Code Sections 10026 and 10131.2 because Respondents were not obtaining or negotiating loans, but rather were only submitting information to a lender in an attempt to secure a modification of an already existing

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rent property or a business opportunity, or to obtain a loan or loans thereon."

loan. The argument is not convincing. Once the original proposal was sent to the lender along with the invitation to call with questions, comments or concerns, Respondents began the negotiation process. No appreciable difference existed between negotiating the terms of a new loan and re-negotiating the terms of an existing loan. In addition, because the fee Respondents charged their clients would revert to their short sale "sale fee" in the event a loan modification could not be negotiated, that fee was "claimed, demanded, charged, received, collected or contracted from a principal for a listing, advertisement or offer to sell ... property, other than in a newspaper of general circulation, issued primarily for the purpose of promoting the sale ... of ... real estate or for referral to real estate brokers or salesmen, or soliciting ... lenders for, or to negotiate loans on ... real estate." (Code Section 10026.)

"Negotiate" is defined as follows: "To transact business; to bargain with another respecting a transaction; to conduct communications or conferences with a view to reaching a settlement or agreement. It is that which passes between parties or their agents in the course of or incident to the making of a contract and is also conversation in arranging terms of contract. [PP] To communicate or confer with another so as to arrive at the settlement of some matter. To meet with another so as to arrive through discussion at some kind of agreement or compromise about something. [Citation.] To discuss or arrange a sale o[r] bargain; to arrange the

preliminaries of a business transaction. Also to sell or discount negotiable paper, or assign or transfer it by indorsement and delivery. To conclude by bargain, treaty, or agreement" (Black's Law Dict. (6th ed. 1990) p. 1036.)

8. In closing argument, Respondents argued that the Legislature did not intend to regulate loan modifications via Code Section 10131.2 because Senate Bill No. 94, which had not yet been approved and enacted into law, is intended to include loan modifications among the practices for which a real estate broker license is required. That argument was also unpersuasive. At the hearing, Respondents defended their actions by claiming that, at the time they were transacting business in loan modifications, loan modifications were a new phenomenon borne of the sudden downturn in the real estate and other financial markets, and that they were attempting to comply with all applicable statutes and regulations in this all but unknown field. If Respondents are to argue the recency of the loan modification market as a defense, they cannot be heard to argue that the Legislature would have included loan modifications in the original language of Section 10131.2 had it intended them to be included.

Subsequent to the hearing, Senate Bill No. 94 was enacted into law. The inclusion of loan modifications in a real estate broker's practice, does not mean they were not included generally under Code Section 10131.2 before the bill was enacted. Respondents' conduct and actions in connection with their loan modification business were governed by Code

Section 10131.2 and 10026, even though the term "loan modification" is not expressly used in either statute.

9. Finally, Respondents' reliance on *Nelson v. Department of Real Estate* (1984) 161 Cal.App.3d 939, is misplaced. Although they are correct that *Nelson* addresses the issue of advance fees in connection with obtaining loans, Code Sections 10026 and 10131.2 include several other broker functions, including the negotiation of loan terms.

10. Cause exists to discipline the real estate broker licenses of TORO and AVALOS, pursuant to Business and Professions Code Sections 10159.2, and 10177, subdivisions (d), (g) and (h), for failure to exercise reasonable supervision over the activities of officers and employees of HOA and FHA in connection with advance fees, as set forth in Findings 14 through 28, inclusive.

Pursuant to Code Section 10159.2, the officer designated by a corporate broker licensee, shall be responsible for the supervision and control of the activities conducted on behalf of the corporation, as necessary to secure full compliance with the Real Estate Law.

11. The Respondents' advance fee violations were the result of, among other factors, a failure to adequately supervise their subordinates as alleged and proven at the hearing.

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The Audits

12. Cause exists to discipline real estate broker licenses of HOA, FHA, TORO and AVALOS, pursuant to Business and Professions Code Sections 10085, 10130, 10145, 10146, 10176, subdivisions (e) and (i), 10177, subdivisions (d) and (g), and California Code of Regulations, Title 10, Sections 2831, 2831.1, 2831.2, 2832, 2835, 2970, 2972, for record keeping, trust fund, and advance fee violations, as set forth in Findings 14 through 33, inclusive.

13. This cause for discipline relates to the audits of HOA's and FHA's books and records. Although the ALJ concluded that TORO and AVALOS believed, in good faith, based upon their attorney's advice, that they were not charging advance fees and therefore did not need a trust account or its attendant record keeping devices, they were incorrect. Therefore, the charging of advance fees, and the lack of a trust account and proper record keeping constitute violations of Business and Professions Code Section 10146.

14. Cause does exist to discipline real estate broker licenses of TORO and AVALOS, pursuant to Business and Professions Code Sections 10159.2, and 10177, subdivisions (d), (g) and (h), for failure to supervise the activities of their respective corporations in connection with record keeping, trust funds, advance fees, as set forth in Findings 14 through 33, inclusive.

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The Esquivel and Guerrero Transactions

15. Cause does exist to discipline TORO's real estate broker license, pursuant to Business and Professions Code sections 10137, 10159.2, 10176, subdivisions (a), (b), (c), and (i), and 10177, subdivisions (d), (g), (h) and (j), for unlicensed activity, dishonest dealings, failure to supervise the activities of FMA, as set forth in Findings 34 through 41, inclusive.

16. The ALJ found that the Esquivel and Guerrero transactions were performed under FHA's CFL license and were therefore exempt from the Real Estate Law. However, pursuant to California Financial Code Section 22300, the holder of a CFL license is prohibited from using that license to conduct loan modification activities.

17. Respondent's activities fall squarely within the jurisdiction of the Department of Real Estate. Business and Professions Code Section 10131 states in pertinent part:

> A real estate broker within the meaning of this part 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:
>
> (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.

18. The ALJ relied upon Business and Professions Code Section 10133.1, subdivision (a), which states in relevant part:

(a) Subdivisions (d) and (e) of Section 10131, Section 10131.1, Article 5 (commencing with Section 10230), and Article 7 (commencing with Section 10240) of this code and Section 1695.13 of the Civil Code do not apply to any of the following:

(6) Any person licensed as a finance lender when acting under the authority of that license.

However, as stated above, Respondent's conduct in negotiating loan terms on behalf of borrowers regarding their existing loans were not actions taken under the authority of that license, because the CFL license does not confer such authority.

19. An agency may discipline one of its licensees for bad acts unrelated to its occupation-specific laws (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461).

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The Statute of Limitations Issue

20. Esquivel signed the loan documents for his home refinance on December 15, 2005. The Accusation was filed on December 30, 2008. Respondents argued that the cause for discipline with respect to the Esquivel matter is barred by the three year statute of limitations set forth in Section 10101. Respondents were incorrect.

21. Section 10101 states: The accusation provided for by Section 11503 of the Government Code shall be filed not later than three years from the occurrence of the alleged grounds for disciplinary action unless the acts or omissions with which the licensee is charged involves fraud, misrepresentation or a false promise in which case the accusation shall be filed within one year after the date of discovery by the aggrieved party of the fraud, misrepresentation or false promise or within three years after the occurrence thereof, whichever is later, except that in no case shall an accusation be filed later than 10 years from the occurrence of the alleged grounds for disciplinary action.

22. The fourth cause for discipline, which is alleged against FMA and TORO as its designated officer is based on alleged unlicensed activities and "dishonest dealing." The dishonest dealing alleged in the Accusation involves claims of misrepresentation and false promises. Therefore, the three-year statute of limitations set forth in Section 10101 is not applicable.

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The Discipline

23. Cause exists to revoke the licenses and license rights of HOA and FHA pursuant to Business and Professions Code Section 10177(a). Abad who owned more than 10 percent of the HOA and FHA, when they applied for their licenses failed to disclose his prior discipline in the corporation license applications.

24. All evidence presented as mitigation, extenuation and aggravation has been considered.

25. The purpose of a disciplinary matter such as this one is to protect the public not only from unscrupulous and conniving professionals, but also from those who are negligent or incompetent. *(Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Manning vs. Fox* (1984) 151 Cal.App.3d, 531, *Camacho v. Youde* (1979) 95 Cal.App.3d 161; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

26. Contrary to the opinion of the Administrative Law Judge, I do not feel that the public interest would be adequately protected by allowing Respondents to obtain restricted broker licenses.

27. Respondents abrogated their license privileges by

(1) permitting unlicensed persons including Abad to solicit advanced fees from economically distressed borrowers for home loan modifications.

(2) collecting advanced fees from homeowners prior to performing the work contracted for while asserting the payment in full was based on the submission of two letters to lenders

on behalf of the homeowner-borrowers.

(3) permitting unlicensed persons including Abad to negotiate with homeowner-borrowers and lenders.

(4) designing an automatic mechanism in the loan modification agreement for a short sale listing to HOA and FHA upon notice of a declined loan modification from the lender by applying the paid-in-full advance fee to be credited toward a short sale commission for the sale of the demised property.

(5) Improper handling of a trust account and failure to comply with trust fund recording-keeping such as depositing loan modification fees into their corporate trust accounts and not depositing and commingling them into HOA and FHA's general accounts.

(6) Inadequate knowledge of the Real Estate Law and their business procedures which were a contributory cause of the violations.

(7) Respondents TORO and AVALOS' inadequate supervision.

28. Respondents' conduct constitutes negligence or incompetence and a breach of fiduciary duty to their respective clients - the homeowner-borrowers.

29. Nor has it been shown that said violations will not reoccur. Protection of the public interest requires imposition of substantial discipline against Respondents' licenses.

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30. The objective of an administrative proceeding relating to discipline, if any, is to protect the public, and to determine whether a license holder has exercised his privilege in derogation of the public interest. Such proceedings are not for the primary purpose of punishment. (*Fahmy v. Medical Bd. Of California* (1995) 38 Cal.App.4th 810, 817).

31. The Real Estate Commissioner is empowered to enforce the provisions of the Real Estate Law "in a manner which achieves the maximum protection for the purchasers of real property and those persons dealing with real estate licensees". Business and Professions Code Section 10050; *Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513).

32. While reasonable minds may differ, the degree of a disciplinary penalty is a matter squarely within the discretion of the Real Estate Commissioner. (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 189).

33. The ALJ exhibited doubt and substantial concern for the protection of the public interest by proposing the passage of a five (5) year period to elapse before Respondents become eligible to apply for a plenary license.

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Pursuant to my statutory authority to protect persons dealing with licensees and in the exercise of my discretion based on the above Factual Findings and Legal Conclusions, I have determined that the Order of the Proposed Decision of the Administrative Law Judge is not appropriate and that it would not be in the pubic interest to adopt the Order recommended by the ALJ in his Proposed Decision and therefore said Order is not adopted.

The following order is consistent with the protection of the public interest.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondents HOME OWNERS ASSISTANCE, FIRST HOUSING OF AMERICA, INC., DEAN ERIC TORO, and SINDEY AVALOS are revoked.

This Decision shall become effective at 12 o'clock noon on JUL - 8 2010

IT IS SO ORDERED 6/15, 2010.

JEFF DAVI
Real Estate Commissioner

FILED
DEC 21 2009
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of HOME OWNERS ASSISTANCE, a corporate real estate broker; FIRST HOUSING OF AMERICA, INC., a corporate real estate broker; DEAN ERIC TORO, individually and as designated officer of Home Owners Assistance; and SINDEY AVALOS, individually and as designated officer of First Housing of America, Inc., Respondents.	No. H-35571 LA OAH No. 2009030034

NOTICE

TO: HOME OWNERS ASSISTANCE, FIRST HOUSING OF AMERICA, INC., DEAN ERIC TORO, and SINDEY AVALOS, Respondents, and EDWARD O. LEAR, their Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated November 6, 2009, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated November 6, 2009, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record

herein including the transcript of the proceedings held on August 3, 4, 5, 6, 7, 10 and 11, 2009, any written argument hereafter submitted on behalf of Respondents and Complainant.

Written argument of Respondents to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of August 3, 4, 5, 6, 7, 10 and 11, 2009, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondents at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: 12/17/09

JEFF DAVI
Real Estate Commissioner

BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of **HOME OWNERS ASSISTANCE, a corporate real estate broker;** **FIRST HOUSING OF AMERICA INC., a corporate real estate broker;** **FIRST MORTGAGE OF AMERICA INC., a corporate real estate broker;** **DEAN ERIC TORO, individually and as designated officer of Home Owners Assistance and former designated officer of First Mortgage of America Inc.;** **and SINDEY AVALOS, individually and as designated officer of First Housing of America Inc.,** **Respondents.**	**Case No. H-35571 LA** **OAH No. L2009030034**

PROPOSED DECISION

This matter came on regularly for hearing on August 3, 4, 5, 6, 7, 10 and 11, 2009, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

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Robin L. Trujillo (Complainant) was represented by Martha J. Rosett, Counsel, Department of Real Estate. Respondents Home Owners Assistance (HOA), First Housing of America, Inc. (FHA), Dean Eric Toro (Toro), and Sindey Avalos (Avalos) were represented by Edward O. Lear, Attorney at Law[1].

Oral and documentary evidence was received. The record was held open to and including October 9, 2009, for the parties to submit closing briefs in accordance with a specified briefing schedule. "Complainant's Closing Argument" was marked as Complainant's Exhibit 36 for identification. "Respondents' Closing Argument" was marked as Respondent's Exhibit "U" for identification. "Complainant's Reply to Respondents' Closing Argument" was marked as Complainant's Exhibit 37 for identification. The record was closed on October 9, 2009, and the matter was deemed submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. Complainant made the Accusation and Second Supplemental Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.

The Respondents

2. HOA was licensed as a corporate real estate broker by the Department of Real Estate (Department) on December 28, 2007. Toro is HOA's designated officer. HOA's license will expire on December 27, 2011, unless renewed.

3. At all relevant times, HOA was a California corporation the corporate President and CEO of which was Pepi Arthur Abad (Abad), who owned or controlled more than 10 percent of the corporation's stock. Abad is not now and has never been licensed by the Department in any capacity. Abad is married to Avalos.

4. Avalos has recently acquired a 100 percent ownership interest in HOA. The change was made in order for OAH to obtain a minority business owner certification.

5. FHA was licensed as a corporate real estate broker by the Department of Real Estate (Department) on September 16, 2002. Avalos is FHA's designated officer. FHA's license will expire on September 15, 2010, unless renewed.

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[1] On the first day of hearing, Mr. Lear's associates Marisol Ocampo and Daniel Woodford appeared personally, and Mr. Lear appeared telephonically, because Mr. Lear was prevented from returning to Los Angeles from the east coast because of inclement weather. Mr. Lear personally appeared on the remainder of the hearing dates. Ms. Ocampo and Mr. Woodford appeared on the first day only.

6. At all relevant times, FHA was a California corporation. Abad was its corporate President and CEO, controlling more than 10 percent of the corporation's stock.

7. Avalos has recently acquired 100 percent ownership of FHA. The change was made in order for FHA to obtain a minority business owner certification.

8. First Mortgage of America (FMA) was licensed as a corporate real estate broker by the Department of Real Estate (Department) on October 27, 2003. From that date to January 16, 2004, Alice Cathryn Drake was FMA's designated officer. From January 16, 2004, to February 1, 2005, Toro was FMA's designated officer. From February 1, 2005, to June 28, 2005, Kevin D. Jones was FMA's designated officer. From June 28, 2005, to January 12, 2007, Toro again served as the designated officer. From January 23, 2007, to April 17, 2008, Bruce Eugene Mangels served as FMA's designated officer. The license was cancelled as of April 17, 2008, but remained in inactive status. FMA's license was scheduled to expire on October 26, 2011, unless renewed. However, FMA surrendered its corporate real estate broker license effective April 21, 2009[2].

9. At all relevant times, Abad was FMA's corporate President and CEO, controlling more than 10 percent of the corporation's stock.

10. Toro has approximately 30 years of experience in the real estate industry. Originally licensed by the Department as a salesperson on an unknown date before January 1, 2000, he allowed that license to terminate on May 14, 2003, because he was licensed by the Department as a real estate broker the following day. Toro is the designated broker of HOA and the former designated broker of FMA. His broker's license will expire on July 16, 2011, unless renewed.

11. Originally licensed as a real estate salesperson on March 12, 2002, Avalos was licensed by the Department as a real estate broker on October 28, 2006. Avalos is FHA's owner and designated officer. Her broker's license will expire on October 27, 2010, unless renewed.

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[2] The instant action therefore proceeded against Respondents HOA, FHA, Toro and Avalos only.

Disciplinary Action by a Different Agency Against Abad

12. Complainant established the truth of the allegations in paragraphs 11 and 12 of the Accusation. Those allegations are repeated verbatim below and constitute factual findings herein.

11.

On July 14, 2005, in Cases No. S-01-0613 and RS-02-0091, the Department of Motor Vehicles revoked Pepi Abad's vehicle salesperson license, and denied his application for reinstatement of his salesperson license, pursuant to Vehicle Code Section 11806(i). The Order, which was to become effective on August 15, 2005, was affirmed on appeal to the Superior Court and became a final judgment on September 19, 2006. The grounds for the discipline of Abad's vehicle salesperson license stemmed from his misconduct as a managerial employee of a vehicle sales dealership during the time persons under his direction and control committed wrongful acts which resulted in the suspension of the dealer's license.

12.

The disciplinary action taken by the Department of Motor Vehicles against corporate officer Abad, as set forth above, constitutes grounds to discipline the real estate corporation license and license rights of Respondent HOA and Respondent FIRST HOUSING [FHA], pursuant to [Business and Professions] Code Section 10177(f). [Footnote omitted.]

13. The misconduct proven in the Department of Motor Vehicles action against Abad occurred between 1998 and 2000. If done by a real estate licensee, it would be grounds for the suspension or revocation of a California real estate license.

Advance Fees/Fixed Fees

14. HOA was originally organized to provide educational services for clients who were interested in purchasing a home but were not knowledgeable about the process. However, because it was not difficult to qualify for a loan at that time, those services were generally unnecessary. The primary purpose of HOA was subsequently converted to loss mitigation, and the company began offering those services by 2008. Until the conversion was complete, FHA performed loan modification services. Both FHA and HOA maintained zero tolerance policies against employees submitting false information to lenders in order to make the loan modification packets more attractive.

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15. In or around January 2008, HOA and FHA entered into a home loan modification agreement with Jenine Hill (Hill). According to that agreement HOA would collect information and put together a loan modification proposal that it would send to Hill's lender. If the lender refused to modify the loan terms, or if the lender's offer was unacceptable to Hill, the home would be sold in a "short sale[3]" with FHA serving as the listing agent.

16. HOA gathered information concerning Hill, her home loan and her financial liabilities and packaged them into a "loss mitigation packet" to be sent to the lender. In exchange for that service, Hill was required to agree to pay a fee of $1,795 to HOA and FHA "upon the submission of loss mitigation packet to the lender" (Loan Modification Agreement, Exhibit 27, page 58.) The Loan Modification Agreement also contained the following language:

> I hereby agree and understand that the fee for loan modification submission is $1,795.00. I personally elected to pay this amount and this fee is being collected exclusively for a formal presentation/submission of my request and is considered earned upon submission of my file.
>
> Furthermore, I understand it does not come with any implied guarantees from H.O.A./FHOFA [FHA] or their agents. I understand if my request is decline[d] or I decline my lenders [*sic*] recommended adjustments, that my fee will be applied directly to the sale fee of my home through a "quick" sale method by FHOFA and is non refundable. No guarantees are promised or implied by either the loan modification submission or the attempt to sale m [*sic*] home.

17. HOA and FHA handled several other loan modification transactions in the same manner as they did with respect to Hill, including but not limited to one for Patricia and Johnny Clark. In each case, they received a fee of between $1,795 and $1,995 that was deemed earned upon submission of the loan modification packet to the lender.

18. Although the fee was deemed earned upon submission of the loan packet to the lender, it was collected before that time. The fee was deposited into the company's general account instead of being placed into a trust account and held there until the packet was actually submitted.

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[3] A "short sale," as used in the context of this case, is the sale of real property for a price less than that owed on the mortgage(s), but sufficient to be acceptable to the lender in order to avoid the foreclosure process.

19. Accompanying the loan modification packet were two letters to the lender. The first letter reads in part:

> Enclosed, please find a "Loan Modification Proposal" packet for the above-mentioned loan. Home Owners Assistance, Inc. (HOA) is currently working with Jenine T. Hill, home owner, for the above-mentioned property. We will be representing Jenine T. Hill, through a final resolution of your secured asset. . . .
>
> We are requesting that you seriously consider this proposal as an alternative to the inevitable financial downside of a "Short Sale". Please note this file was referred to us by First Housing of America, Inc. (FHOF) a licensed and bonded real estate firm, who [*sic*] has listed the property and is delaying a short sale request until the outcome of the "Loan Modification". FHOFA has identified that the home owner prefers to preserve home ownership and it would be prudent to contemplate this point.
>
> If a wise consideration is not given to this proposal and you decide to decline this request, please understand that Jenine T. Hill will no longer be able to afford any sort of payment whatsoever on his [*sic*] existing note. Therefore, a short sale will be the only alternative. HOA firmly believes it would be in your company's best interest to seriously consider an alternative to the inevitable financial downside of a "Short Sale".
>
> HOA believes there may be an expeditious way to resolve our client's hardship in today's market. In the event you approve a short sale, consider the duration and the monthly loss you are incurring yourselves into. Enclosed, you will also find a forecasted short sale loss projection based on current market conditions that will be detrimental to your investors.
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> [¶] . . . [¶]
>
> When it comes to the above mentioned services, HOA and FHOFA, will rise above and beyond all your expectations. We look forward to being your number one "Outsource" solution by results. You may contact the Loss Mitigation and Asset Preservation Department at 1-877-243-4632 ext. 101. . . .

20. The letter contained signature blocks for Pepi Abad as "Director/Founder Home Owners Assistance, Inc. Loss Mitigation Department" and for Sindey Avalos as "Owner/Broker First Housing of America, Inc. Real Estate Division."

21. In the second letter to the lender that accompanied the loan modification packet, Abad urged the lender to "act now before a 'Short Sale' or 'Foreclosure' further damages this asset's worth and other homes in the neighborhood." He then set forth a proposal for a loan modification (in Hill's case, comprised of nine components). At the close of the letter, Abad invited the lender to telephone him or his assistant with any "questions, comments or concerns." The signature block read "Pepi A. Abad, Director/Founder Home Owners Assistance, Inc."

22. Another form used by Respondents was entitled "Communication With Lender Letter." That document contained a form notice from the borrower to the lender, and a "note" to the homeowner consisting of four paragraphs.

23. The form letter to the lender reads as follows:

> I/We _____ have recently decided that we simply can not continue to make our scheduled mortgage payments; we've tried refinancing and have been turned down several times. To eliminate a guaranteed foreclosure we listed our home for a short sale with First Housing of America, Inc., a licensed real estate company that will be contacting you this week. They also have an asset preservation company looking at my file to see if there may be an alternative solution. The companies [*sic*] name is Home Owners Assistance, Inc., [*sic*] they will more than likely be contacting you as well. Please feel free to contact them at 714-619-2869 and ask for _____ (loan consultant's name).
>
> Their corporate headquarters address is 2911 S. Bristol Street, Santa Ana, CA 92704. They encourage me to stay in constant communication w/you until this is resolved.

24. The note to the home owner on the Communication With Lender Letter reads in part:

> Do not avoid communication with your lender(s), [*sic*] on the contrary your immediate communication advising them to contact us will be instrumental in advancing your request for a loan modification as soon as possible, [*sic*] please contact them immediately with the above statement.
>
> Upon your file being submitted, it is possible that your assistance will be needed to accelerate your lender(s) assigned negotiator(s) communication with us or your lender(s) may attempt to circumvent our office all together, [*sic*] we will be sending a copy packet to you.

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Should you choose to establish an agreement with your lender on your own we want to thank you in advance for giving us the opportunity to assist you in your homeowner preservation, however, should you elect to negate or reject your lender(s) proposal you are hereby advised that immediate communication with our office is strongly recommended.

25. On November 21, 2008, the Department issued a Desist and Refrain Order against HOA and FHA for collecting advance fees from customers without submitting the advance fee agreement to the Department for review and prior approval, and against Toro and Avalos for failing to exercise reasonable supervision over the activities of officers and employees of the two companies.

26. The conduct of Respondents HOA, FHA, Toro and Avalos, with respect to their loan modification business, fell within the ambit of their real estate broker licenses pursuant to section 10131.2, and the fees they collected and identified as "fixed fees" were advance fees pursuant to section 10026.

27. In comporting themselves as they did, Respondents were relying on the advice of counsel who was attempting to guide them and assist them in complying with all statutory and regulatory requirements in the new area of loan modification. Based on their attorney's advice, Respondent's believed, in good faith, that they were permitted to charge what they thought were "fixed fees" without an advance fee agreement, previously approved by the Department, in place. Upon learning they may have been wrong, Respondents submitted a proposed advance fee agreement to the Department, and the Department issued a no objection letter to FHA on March 19, 2009.

28. Respondents refunded their fees to all of their clients who were dissatisfied with Respondents' loan modification services, whether or not Respondents had performed the agreed upon work and earned their fees.

The Audits

The HOA Audit

29. Between November 5, 2008, and November 19, 2008, the Department conducted an audit of HOA's books and records for the audit period November 1, 2007, through September 30, 2008. The auditor found that HOA was primarily involved in the business of loan modifications.

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30. The auditor made the following findings with respect to HOA's books and records:

a. HOA collected advance fees from borrowers in connection with providing loan modification services. The advance fees were deposited into HOA's general business bank account instead of a trust account, thereby co-mingling trust funds and general funds.

b. HOA did not maintain a trust account.

c. HOA's records were incomplete; the columnar records did not include the date funds were disbursed, to whom funds were disbursed, or the daily balance.

d. HOA failed to maintain a separate record for each beneficiary of trust funds received from borrowers in connection with their loan modifications.

e. HOA did not maintain a monthly reconciliation of receipts and disbursements of trust funds.

f. The advance fees HOA received in connection with its loan modification services were determined pursuant to written agreements with their clients. Those agreements had not been submitted to the Department for review before the clients were asked to sign them.

g. HOA received advance fees from borrowers, without maintaining and providing an accounting indicating services to be rendered, where the trust account funds would be deposited and details of how funds were to be disbursed.

h. Although HOA was not licensed by the Department until December 28, 2007, it handled loan modification transactions and collected advance fees as early as November 2007, without being properly licensed.

31. On October 31, 2008, upon the auditor's advice, HOA opened a trust account.

The FHA Audit

32. Between November 6, 2008, and February 11, 2009, the Department conducted an audit of FHA's books and records for the audit period October 1, 2005, through September 30, 2008.

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33. The auditor made the following findings with respect to FHA's books and records:

a. FHA collected advance fees from borrowers in connection with providing loan modification services. The advance fees were deposited into FHA's general business bank account instead of a trust account, thereby co-mingling trust funds and general funds.

b. FHA's records were incomplete; the columnar records did not include the date funds were disbursed and the daily balance.

c. FHA failed to maintain a separate record for each beneficiary of trust funds received from borrowers in connection with their loan modifications.

d. FHA did not maintain a written monthly reconciliation of the receipt and disbursement records, and the total balance of separate beneficiary records for its bank account that was used to handle advance fees.

e. The advance fees FHA received in connection with its loan modification services were arranged pursuant to written agreements with their clients. Those agreements had not been submitted to the Department at least 10 days before their use.

f. FHA received advance fees from borrowers, without maintaining and providing an accounting indicating services to be rendered, where the trust account funds would be deposited and details of how funds were to be disbursed.

The Esquivel and Guerrero Transactions

The Esquival Transaction

34. In the latter part of 2005, Salvador Esquival (Esquival) responded to a telephone solicitation from FMA personnel who offered to assist him in refinancing his home. The original financing of Esquival's home was arranged through and handled by FMA approximately one year earlier.

35. Esquival applied for the refinancing of his home through FMA because he wanted to lower his mortgage payment. He was promised a lower monthly payment and a cash-out of $28,760.07. However, when the time came for Esquival to sign the loan documents, he discovered that he had been assigned a 9.9 percent variable rate loan in place of his original seven percent fixed rate loan, that his cash-out was $17,084.52, and that his monthly payment had increased by over $1,000 instead of decreasing. Esquival was not fluent in English, and he was asked to sign the loan documents in the presence of an English-speaking notary public. He signed the loan documents believing the errors would subsequently be corrected.

36. After the loan funded, Esquivel was unable to afford his mortgage payments. He complained to FMA. After speaking with various individuals, he met with Abad and threatened to file a lawsuit. Based on their discussion, Abad and Esquival entered into an agreement according to which FMA would pay Esquival $5,500 and would arrange for a no-cost loan in the future. Esquival accepted those terms but was still unable to make the mortgage payment. He lost his home in foreclosure.

The Guerrero Transaction

37. Respondents stipulated to the truth of the allegations contained in paragraphs 43, 44 and 45 of the Accusation. Those allegations are repeated verbatim below and constitute factual findings herein:

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Beginning on or before July 15, 2006, and continuing through on or after September 30, 2006, Respondent FIRST MORTGAGE represented Teresa and Carlos Guerrero in refinancing a loan or loans secured by real property located at 64 East Barnett Street, Ventura, California 93001.

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In relation to the subject loan transaction, on or about September 9, 2006, Christian Ramos signed a loan application as representative of Respondent FIRST MORTGAGE, with a business address of "2823 S. Bristol, Santa Ana, CA 921704." On September 9, 2006, in relation to the subject transaction, Respondents obtained the Guerreros['] signatures on a Federal Truth-in-Lending Disclosure Statement in which the "Creditor" is listed as "FIRST MORTGAGE OF AMERICA (DRE # 01402136), 2823 S. Bristol Street, Santa Ana, California 92704."

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At all times mentioned herein, Christian Ramos was not licensed by the Department of Real Estate as a real estate broker, or as a salesperson employed by the real estate broker.

38. On June 28, 2005, FMA's main office address was changed from 2911 South Bristol, Santa Ana, California 92705, to 2823 South Bristol Street, Santa Ana, California 92704. Accordingly, the address used in the Esquival and Guerrero transactions was correct.

39. None of FMA's employees who were involved in the Esquival and/or Guerrero matters were licensed in any capacity by the Department.

40. The Esquival and Guerrero transactions were handled under FMA's California Finance Lender (CFL) license. Many of the documents generated in connection with those transactions bear FMA's CFL license number. On one document from the Guerrero transaction, FMA's real estate broker license number is listed as its CFL license number. That is a clerical error, and it does not bring the transaction under the ambit of the real estate law.

41. Because the Esquival and Guerrero transactions occurred under FMA's CFL license, the personnel who worked on those transactions were not required to hold licensure issued by the Department of Real Estate.

Mitigation

42. Respondents submitted numerous letters from many of their customers lauding the companies' excellent service and their employees' professionalism. One live witness who knows Abad and Avalos well described them as "incredibly honest." In describing the commitment of Abad and Avalos to their customers, he stated, "they would rather gnaw off a limb than disserve a client."

43. At the administrative hearing, the auditor who conducted the audits of HOA and FHA on the Department's behalf credibly opined that, based on the highly cooperative and professional attitude of Toro and Avalos during the audits, and further based on the refunds Respondents gave each of their disgruntled customers even after the company had performed the required work and had earned the fee, he does not believe Respondents constitute a threat to the public.

LEGAL CONCLUSIONS

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

Disciplinary Action by a Different Agency Against Abad

1. Cause exists to discipline real estate broker licenses of HOA and FHA, pursuant to Business and Professions Code section 10177, subdivision (f), for discipline imposed against a corporate officer by another agency, as set forth in Findings 12 and 13.

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2. Section 10177 states in relevant part:

> The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:
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> [¶] . . . [¶]
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> (f) . . . had a license issued by another agency of this state . . . revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

3. Abad's vehicle salesperson license was revoked by the California Department of Motor Vehicles following the filing of an Accusation and a hearing on the merits, pursuant to the Administrative Procedure Act. The revocation was subsequently affirmed in a writ proceeding before the Superior Court. The violations that resulted in the license revocation were of a nature that would be grounds for suspension or revocation of a California real estate license.

Advance Fees/Fixed Fees

4. Cause exists to discipline real estate broker licenses of HOA, FHA, Toro and Avalos, pursuant to Business and Professions Code sections 10176, subdivision (i), 10177, subdivisions (d), (g), and (j), and 10185, and California Code of Regulations, title 10, section 2970, for advance fee violations, as set forth in Findings 14 through 28, inclusive.

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5. Complainant asserts that HOA, FHA, Toro and Avalos were operating within the ambit of their respective real estate broker licenses while they were engaging in loan modification transactions, and that the fee they charged their clients were advance fees, pursuant to Business and Professions Code[4] section 10026[5], which were charged without a written advance fee agreement having been submitted to the Department for approval. Respondents claim that nothing they did with respect to the loan modification process was among the articulated functions of a real estate broker as set forth in section 10131.2[6], and that their fees were not advance fees, but rather were "fixed fees" for research, assembly and submission of the loan modification packet. They denied negotiating with lenders, claiming that lenders were to contact the homeowners directly, but that they occasionally did call Respondents. Complainant has the correct interpretation of Respondents' conduct.

6. The language of Respondents' two letters to the lender, the language of the Communication With Lender Letter, the proposed terms for the loan modification, and the invitation to the lender to telephone Respondents, all infer an intent by Respondents to negotiate the terms of the existing loan. That intent is evinced by the absence from both letters of an instruction to the lender to contact the homeowner directly rather than to negotiate with Respondents. In fact, the second letter contains the following language: "Upon your acceptance we can have Ms. Hill sign and notarize the loan modification agreement and return [it] to your office . . ."

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[4] All statutory references are to the Business and Professions Code unless otherwise indicated.

[5] Section 10026 states: "The term 'advance fee' as used in this part is a fee claimed, demanded, charged, received, collected or contracted from a principal for a listing, advertisement or offer to sell or lease property, other than in a newspaper of general circulation, issued primarily for the purpose of promoting the sale or lease of business opportunities or real estate or for referral to real estate brokers or salesmen, or soliciting borrowers or lenders for, or to negotiate loans on, business opportunities or real estate. As used in this section, "advance fee" does not include "security" as that term is used in Section 1950.5 of the Civil Code, or a "screening fee" as that term is used in Section 1950.6 of the Civil Code. This section does not exempt from regulation the charging or collecting of a fee under Section 1950.5 or 1950.6 of the Civil Code, but instead regulates fees that are not subject to those sections."

[6] Section 10131.2 states: "A real estate broker within the meaning of this part 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 promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon."

7. Respondents claim that their loan modification transactions were not governed by sections 10026 and 10131.2 because Respondents were not obtaining or negotiating loans, but rather were only submitting information to a lender in an attempt to secure a modification of an already existing loan. The argument is not convincing. Once the original proposal was sent to the lender along with the invitation to call with questions, comments or concerns, Respondents began the negotiation[7] process. No appreciable difference existed between negotiating the terms of a new loan and re-negotiating the terms of an existing loan. In addition, because the fee Respondents charged their clients would revert to their short sale "sale fee" in the event a loan modification could not be negotiated, that fee was "claimed, demanded, charged, received, collected or contracted from a principal for a listing, advertisement or offer to sell . . . property, other than in a newspaper of general circulation, issued primarily for the purpose of promoting the sale . . . of . . . real estate or for referral to real estate brokers or salesmen, or soliciting . . . lenders for, or to negotiate loans on . . . real estate." (§ 10026.)

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[7] "Negotiate" is defined as follows: "To transact business; to bargain with another respecting a transaction; to conduct communications or conferences with a view to reaching a settlement or agreement. It is that which passes between parties or their agents in the course of or incident to the making of a contract and is also conversation in arranging terms of contract. [¶] To communicate or confer with another so as to arrive at the settlement of some matter. To meet with another so as to arrive through discussion at some kind of agreement or compromise about something. [Citation.] To discuss or arrange a sale o[r] bargain; to arrange the preliminaries of a business transaction. Also to sell or discount negotiable paper, or assign or transfer it by indorsement and delivery. To conclude by bargain, treaty, or agreement." (Black's Law Dict. (6th ed. 1990) p. 1036.)

8. In closing argument, Respondents argued that the Legislature did not intend to regulate loan modifications via section 10131.2 because Senate Bill No. 94, which has not yet been approved and enacted into law, is intended to include loan modifications among the practices for which a real estate broker license is required. That argument was also unpersuasive. At the hearing, Respondents defended their actions by claiming that, at the time they were transacting business in loan modifications, loan modifications were a new phenomenon borne of the sudden downturn in the real estate and other financial markets, and that they were attempting to comply with all applicable statutes and regulations in this all but unknown field. If Respondents are to argue the recency of the loan modification market as a defense, they cannot be heard to argue that the Legislature would have included loan modifications in the original language of section 10131.2 had it intended them to be included. Further, should Senate Bill No. 94 be enacted into law, the inclusion of loan modifications in a real estate broker's practices does not mean they were not included generally under section 10131.2 before the bill was enacted. Respondents' conduct and actions in connection with their loan modification business were governed by section 10131.2 and 10026, even though the term "loan modification" is not expressly used in either statute.

9. Finally, Respondents' reliance on *Nelson v. Department of Real Estate* (1984) 161 Cal.App.3d 939, is misplaced. Although they are correct that *Nelson* addresses the issue of advance fees in connection with obtaining loans, sections 10026 and 10131.2 include several other broker functions, including the negotiation of loan terms.

10. Cause does not exist to discipline real estate broker licenses of Toro and Avalos, pursuant to Business and Professions Code sections 10159.2, and 10177, subdivisions (d), (g) and (h), for failure to exercise reasonable supervision over the activities of officers and employees of HOA and FHA in connection with advance fees, as set forth in Findings 14 through 28, inclusive.

11. The advance fee violations were the result of Respondents' good faith belief that they were collecting "fixed" but not "advance" fees, and not the result of a failure to adequately supervise their subordinates. The allegation of inadequate supervision was not proven.

<u>The Audits</u>

12. Cause exists to discipline real estate broker licenses of HOA, FHA, Toro and Avalos, pursuant to Business and Professions Code sections 10085, 10130, 10145, 10146, 10176, subdivisions (e) and (i), 10177, subdivisions (d) and (g), and California Code of Regulations, title 10, sections 2831, 2831.1, 2831.2, 2832, 2835, 2970, 2972, for record keeping, trust fund, and advance fee violations, as set forth in Findings 14 through 33, inclusive.

13. This cause for discipline relates to the audits of HOA's and FHA's books and records. Although Toro and Avalos believed, in good faith, based upon their attorney's advice, that they were not charging advance fees and therefore did not need a trust account or its attendant record keeping devices, they were incorrect. Therefore, the charging of advance fees, and the lack of a trust account and proper record keeping constitute the violations.

14. Cause does not exist to discipline real estate broker licenses of Toro and Avalos, pursuant to Business and Professions Code sections 10159.2, and 10177, subdivisions (d), (g) and/or (h), for failure to supervise the activities of their respective corporations in connection with record keeping, trust funds, advance fees, as set forth in Findings 14 through 33, inclusive.

15. The violations were the result of Respondents' good faith belief that they were acting properly and lawfully, and not the result of a failure to adequately supervise their companies' activities. The allegation of inadequate supervision was not proven.

The Esquivel and Guerrero Transactions

16. Cause does not exist to discipline Toro's real estate broker license, pursuant to Business and Professions Code sections 10137, 10159.2, 10176, subdivisions (a), (b), (c), and (i), and 10177, subdivisions (d), (g), (h) and (j), for unlicensed activity, dishonest dealings, failure to supervise the activities of FMA, as set forth in Findings 34 through 41, inclusive.

17. The Esquival and Guerrero transactions were performed under FMA's CFL license and were therefore exempt from the real estate law.

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18. Business and Professions Code section 10131 states in pertinent part:

> A real estate broker within the meaning of this part 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:
>
> [¶] . . . [¶]
>
> (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.

19. Business and Professions Code section 10133.1, subdivision (a), states in relevant part:

> (a) Subdivisions (d) and (e) of Section 10131, Section 10131.1, Article 5 (commencing with Section 10230), and Article 7 (commencing with Section 10240) of this code and Section 1695.13 of the Civil Code do not apply to any of the following:
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> [¶] . . . [¶]
>
> (6) Any person licensed as a finance lender when acting under the authority of that license.

20. An agency may discipline one of its licensees for bad acts unrelated to its occupation-specific laws (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461). However, Complainant bore the burden of proving that certain conduct by Toro or his subordinates was improper under the California Finance Lender Law. She failed to sustain that burden.

The Statute of Limitations Issue

21. Esquival signed the loan documents for his home refinance on December 15, 2005. The Accusation was filed on December 30, 2008. Respondents argue that the cause for discipline with respect to the Esquival matter are barred by the three-year statute of limitations set forth in section 10101. Respondents are incorrect.

22. Section 10101 states:

> The accusation provided for by Section 11503 of the Government Code shall be filed not later than three years from the occurrence of the alleged grounds for disciplinary action unless the acts or omissions with which the licensee is charged involves fraud, misrepresentation or a false promise in which case the accusation shall be filed within one year after the date of discovery by the aggrieved party of the fraud, misrepresentation or false promise or within three years after the occurrence thereof, whichever is later, except that in no case shall an accusation be filed later than 10 years from the occurrence of the alleged grounds for disciplinary action.

23. The fourth cause for discipline, which is alleged against FMA and Toro as its designated officer is based on alleged unlicensed activities and "dishonest dealing." The dishonest dealing alleged in the Accusation involves claims of misrepresentation and false promises. Therefore, the three-year statute of limitations set forth in section 10101 is not applicable.

The Discipline

24. Aside from the revocation of Abad's vehicle salesperson license, this case elicits a picture of two substantial corporate real estate brokers whose designated officers tried to do the right thing wrongly. No convincing evidence established any ignoble motive by Respondents. What was established was Respondents' attempts to assist clients while complying with all applicable statutory and regulatory requirements in a new financial area borne of unprecedented economic challenges. As a result of their efforts, Respondents' satisfied customers far exceed their dissatisfied ones.

25. Respondents continued their attempts to operate their business appropriately after questions arose concerning their business practices, by opening a trust account after trust account violations were found in the audits, and by providing unhappy customers with full refunds, even after all necessary work had been performed and fees were properly earned.

26. Abad's vehicle salesperson license was revoked more than four years ago. The conduct that resulted in the license revocation occurred between 1998 and 2000, and is temporally remote. The evidence did not establish that Abad's wrongful conduct in the motor vehicle context has been carried over into his real estate career.

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27. The purpose of a disciplinary matter such as the one *sub judice* is to protect the public and not to punish the licensee. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Camacho v. Youde* (1979) 95 Cal.App.3d 161; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Respondents acted in good faith. They were incorrect, but not malicious. The public safety, welfare and interest should be adequately protected by the issuance of properly-conditioned restricted licenses.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

As to Respondents Home Owners Assistance and First Housing of America, Inc.:

All licenses and licensing rights of Respondents Home Owners Assistance and First Housing of America, Inc., under the Real Estate Law are revoked; provided, however, restricted real estate broker licenses shall be issued to Respondents pursuant to Section 10156.5 of the Business and Professions Code if Respondents make application therefor and pay to the Department of Real Estate the appropriate fee for the restricted licenses within 90 days from the effective date of this Decision. The restricted licenses issued to Respondents shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted licenses issued to the respective respondents may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of a conviction or plea of nolo contendere to a crime which is substantially related to that respondent's fitness or capacity as a real estate licensee.

2. The restricted licenses issued to the respective respondents may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that the respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondents shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until five years have elapsed from the effective date of this Decision.

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Not adopted

4. Pursuant to Section 10148 of the Business and Professions Code, each respondent shall pay the Commissioner's reasonable cost for: a) the audits which led to this disciplinary action and, b) subsequent audits to determine if each respondent has corrected the trust fund violations found in paragraphs 12 and 13 of the Legal Conclusions. 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 costs within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to either or both respondents pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between Respondent(s) and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent(s) enter(s) into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

As to Respondents Dean Eric Toro and Sindey Avalos:

All licenses and licensing rights of Respondents Dean Eric Toro and Sindey Avalos, under the Real Estate Law are revoked; provided, however, restricted real estate broker licenses shall be issued to Respondents pursuant to Section 10156.5 of the Business and Professions Code if Respondents make application therefor and pay to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted licenses issued to Respondents shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to the respective respondents may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of a conviction or plea of nolo contendere to a crime which is substantially related to that respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to the respective respondents may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that the respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

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3. Respondents shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until five years have elapsed from the effective date of this Decision.

4. Each respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that he/she has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent(s) fail(s) to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent(s) present(s) such evidence. The Commissioner shall afford Respondent(s) the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Each respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent(s) fail(s) to satisfy this condition, the Commissioner may order suspension of the respective license until Respondent(s) pass(es) the examination.

6. Each respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of each respondent and periodic summaries of salient information concerning each real estate transaction in which the respondent engaged during the period covered by the report.

DATED: November 6, 2009

H. Stuart Waxman

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

not adopted

SAC

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FILED
APRIL 30, 2009
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of HOME OWNERS ASSISTANCE, a corporate real estate broker; FIRST HOUSING OF AMERICA INC., a corporate real estate broker; DEAN ERIC TORO, individually and as designated officer of Home Owners Assistance; and SINDEY AVALOS, individually and as designated officer of First Housing of America Inc., Respondents.	No. H-35571 LA L-2009030034 SECOND SUPPLEMENTAL A C C U S A T I O N

Complainant hereby amends the First Supplemental Accusation filed herein on April 2, 2009. This Second Supplemental Accusation corrects the caption of the First Supplemental Accusation.

A Fifth Cause of Accusation, is hereby added to read:

FIFTH CAUSE OF ACCUSATION

(First Housing of America and Avalos

(Audit Nos. LA080029 and LA080177)

51.

There is hereby incorporated in this Fifth, separate Cause of Accusation, all of the allegations contained in Paragraphs 2 though 9 above, with the same force and effect as if herein fully set forth.

52.

For purposes of this Fifth Cause of Accusation, all further references to "Respondents" include Respondent FIRST HOUSING and Respondent AVALOS, and also include the employees, agents and real estate licensees employed by or associated with each Respondent, who at all times material herein were engaged in the furtherance of the business or operations of Respondents, and who were acting within the course and scope of their authority, agency or employment.

53.

During a period of time from approximately October 1, 2005, and continuing through September 30, 2008, Respondents FIRST HOUSING and AVALOS engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers in the State of California, within the meaning of Code Sections 10131(a), 10131(d) and 10131.2, for or in expectation of

compensation. Respondents FIRST HOUSING and AVALOS represented buyers and sellers of residential property. Respondents also represented borrowers in negotiating and modifying terms and obtaining mortgage loans, and collected advance fees within the meaning of Code Sections 10026 and 10131.2, pursuant to written agreements which constituted advance fee agreements within the meaning of Code Section 10085.

54.

During the period of time covered by the audit, set forth below, Respondents did not maintain a trust account. Respondents placed trust funds received, including advance fees paid, into a general business account, Account No. 650-3518307, entitled, "First Housing of America, Inc. Operating Account," located at Wells Fargo Bank, P.O. Box 6995, Portland, OR 97228-6995. The account was used for First Housing's general business operations and the deposit of advance fees.

55.

On or about February 24, 2009, the Department completed its examination of Respondent FIRST HOUSING's books and records pertaining to the mortgage lending activities described in Paragraphs 53 and 54 above, covering a period from approximately October 1, 2005 to September 30, 2008. The primary purpose of the examination was to determine Respondent's compliance with the Real Estate Law. The examination, Audit Nos. LA080029 and LA 080177, revealed violations of the Code, and of Title 10, Chapter

6, California Code of Regulations (hereinafter "Regulations"), as set forth below and as more specifically set forth in the Audit Report and Exhibits attached thereto.

56.

In the course of activities described in Paragraph 53 and 54 above, and during the examination period described in Paragraph 55, Respondents acted in violation of the Code and the Regulations in that:

a) During the audit period, Respondents collected approximately $1,324,250.00 in advance fees from borrowers for the purpose of providing loan modifications. The advance fees were deposited into FIRST HOUSING's general business account, which was not set up as a trust account, and commingled with FHA's general funds, in violation of Code Sections 10145, 10146, and 10176(e) and Regulation 2835. The following are examples:

Date Rec'd	Borrower	Amt Collected	Date Dep.
2/1/08	Jorge Medrano	$ 1,795.00	2/1/08
2/1/08	Calixto Betancourt	$ 1,795.00	2/1/08
2/1/08	Juan Martinez	$ 1,795.00	2/1/08
4/3/08	Marco A. Hernandez	$ 1,795.00	4/3/08
3/6/08	Vicente Hernandez	$ 1,995.00	3/6/08
2/1/08	Delia Godinez	$ 1,795.00	2/1/08
6/5/08	Pamela Bacon	$ 1,600.00	6/5/08
4/3/08	Frank Carmona	$ 995.00	4/3/08
4/3/08	Benjamin Garcia	$ 1,995.00	4/3/08

b) Respondents' columnar record of trust funds received and disbursed was incomplete, and was missing the date funds were disbursed and the daily balance, in violation of Code Section 10145 and Regulation 2831.

c) Respondents did not maintain a separate record for each beneficiary of trust funds received from borrowers in connection with their loan modification, in violation of Code Section 10145 and Regulation 2831.1.

d) Respondents did not maintain a written monthly reconciliation of the receipt and disbursement records, and the total balance of separate beneficiary records for its bank account that was used to handle advance fees, in violation of Code Section 10145 and Regulation 2831.2.

e) Respondents collected advance fees for the purpose of performing loan modifications without submitting a written agreement to the Department at least ten days in advance, in violation of Code Section 10085 and Regulation 2970.

f) Respondents received advance fees from borrowers without maintaining and providing accounting content indicating services to be rendered, where the trust account funds were to be deposited and the details of how funds were to be disbursed, in violation of Regulation 2972.

57.

The conduct, acts and/or omissions of Respondent FIRST HOUSING and AVALOS, as described in Paragraph 56, above, violated

the Code and Regulations in the following ways:

PARAGRAPH	PROVISIONS VIOLATED
56 (a)	Code Sections 10145 10146, 10176(e) and Regulation 2835.
56 (b)	Code Section 10145 and Regulation 2831.
56 (c)	Code Section 10145 and Regulation 2831.1.
56 (d)	Code Section 10145 and Regulation 2831.2.
56 (e)	Code Section 10085 and Regulation 2970.
56 (f)	Regulation 2972.

The foregoing violations constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent FIRST HOUSING and Respondent AVALOS under the provisions of Code Sections 10177(d), 10176(e), 10176(i), 10177(g), and 10085.

58.

The violations set forth above constitute cause for the suspension or revocation of Respondent AVALOS' real estate license and/or license rights, as the broker-officer of Respondent FIRST HOUSING, for failing to supervise the activities of the corporation, in violation of Code Sections 10159.2, in conjunction with 10177(h), 10177(d) and/or 10177(g).

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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/or license rights of Respondents FIRST HOUSING OF AMERICA INC. and SINDEY AVALOS under the Real Estate Law and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California

this 28 day of April, 2009.

Robin Trujillo
Deputy Real Estate Commissioner

cc: Home Owners Assistance
First Housing of America, Inc.
Dean Eric Toro
Sindey Avalos
Robin Trujillo
Sacto.
Audits
OAH
Edward O. Lear, Esq.

FILED
APRIL 1, 2009
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of FIRST MORTGAGE OF AMERICA INC., Respondent.	DRE Case Nos. H-35068 LA H-35571 LA

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On October 28, 2008, a First Amended Accusation was filed in this matter against Respondent FIRST MORTGAGE OF AMERICA INC.

On March 4, 2009, Respondent petitioned the Commissioner to voluntarily surrender its corporate real estate broker license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent FIRST MORTGAGE OF AMERICA INC.'s petition for voluntary surrender of its corporate real estate broker license is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in Respondent's Declaration dated

March 4, 2009 (attached as Exhibit "A" hereto). Respondent's license certificate(s), pocket card(s) and any branch office license certificate(s) shall be sent to the below listed address so that they reach the Department on or before the effective date of this Order:

Department of Real Estate
Atten: Licensing Flag Section
P.O. Box 187000
Sacramento, CA 95818-7000

This Order shall become effective at 12 o'clock noon on APRIL 21, 2009.

DATED: 3/24/09.

JEFF DAVI
Real Estate Commissioner

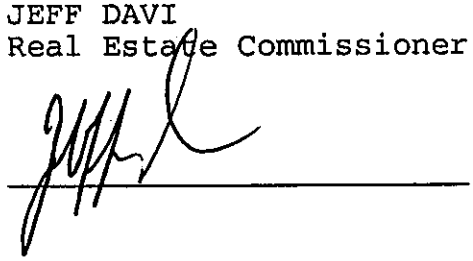

EXHIBIT "A"

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of FIRST MORTGAGE OF AMERICA INC., Respondent.	DRE Case Nos. H-35068 LA H-35571 LA

DECLARATION

My name is SCOTT L. RICHARDS, ESQ., and I am acting on behalf of FIRST MORTGAGE OF AMERICA INC., which is licensed as a corporation and/or has license rights with respect to said license. I am authorized and empowered to sign this Declaration on behalf of FIRST MORTGAGE OF AMERICA INC.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code) FIRST MORTGAGE OF AMERICA INC. wishes to voluntarily surrender its real estate license issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

I understand that FIRST MORTGAGE OF AMERICA INC., by so voluntarily surrendering its license, can only have it reinstated in accordance with the provisions of Section 11522 of the Government Code. I also understand that by so voluntarily surrendering its license, FIRST MORTGAGE OF AMERICA INC. agrees to the following:

The filing of this Declaration shall be deemed as its petition for voluntary surrender. It shall also be deemed to be an understanding and agreement by FIRST MORTGAGE OF AMERICA INC. that, it waives all rights it has to require the Commissioner to prove the allegations contained in the Accusation filed in this matter at a hearing held in accordance with the provisions of the Administrative Procedure Act (Government Code Sections 11400 et seq.), and that it also waives other rights afforded to it in connection with the hearing such as the right to discovery, the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses. I further agree on behalf of FIRST MORTGAGE OF AMERICA INC. that upon acceptance by the Commissioner, as evidenced by an appropriate order, all affidavits and all relevant evidence obtained by the Department in this matter prior to the Commissioner's acceptance, and all allegations contained in the Accusation filed in the Department Case No. H-35068 LA and H-35571 LA, may be considered by the Department to be true and correct for the purpose of deciding whether or not to grant reinstatement of FIRST MORTGAGE OF AMERICA INC.'s license pursuant to Government Code Section 11522.

Respondent can signify acceptance and approval of the terms and conditions of this Declaration by faxing a copy of its signature page, as actually signed by Respondent, to the Department at fax number (213) 576-6917. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of its actual signature as it appears on the Declaration, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Declaration.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that I am acting freely and voluntarily on behalf of FIRST MORTGAGE OF AMERICA INC. to surrender its license and all license rights attached thereto.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed March 4, 2009, at Santa Ana, California.

SCOTT L RICHARDS, ESQ.
On behalf of
FIRST MORTGAGE OF AMERICA INC.

MARTHA J. ROSETT, Counsel (SBN 142072)
Department of Real Estate
320 West Fourth St. #350
Los Angeles, CA 90013

(213) 576-6982
(213) 620-6430

FILED
APRIL 2, 2009
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of HOME OWNERS ASSISTANCE, a corporate real estate broker; FIRST HOUSING OF AMERICA INC., a corporate real estate broker; DEAN ERIC AVALOS, individually and as designated officer of Home Owners Assistance; and SINDEY AVALOS, individually and as designated officer of First Housing of America Inc., Respondents.	No. H-35571 LA L-2009030034 FIRST SUPPLEMENTAL A C C U S A T I O N

Complainant hereby supplements and amends the Accusation filed herein On December 30, 2008, as follows:

A Fifth Cause of Accusation, is hereby added to read:

FIFTH CAUSE OF ACCUSATION

(First Housing of America and Avalos

(Audit Nos. LA080029 and LA080177)

51.

There is hereby incorporated in this Fifth, separate Cause of Accusation, all of the allegations contained in Paragraphs 2 though 9 above, with the same force and effect as if herein fully set forth.

52.

For purposes of this Fifth Cause of Accusation, all further references to "Respondents" include Respondent FIRST HOUSING and Respondent AVALOS, and also include the employees, agents and real estate licensees employed by or associated with each Respondent, who at all times material herein were engaged in the furtherance of the business or operations of Respondents, and who were acting within the course and scope of their authority, agency or employment.

53.

During a period of time from approximately October 1, 2005, and continuing through September 30, 2008, Respondents FIRST HOUSING and AVALOS engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers in the State of California, within the meaning of Code Sections 10131(a), 10131(d) and 10131.2, for or in expectation of compensation. Respondents FIRST HOUSING and AVALOS represented

buyers and sellers of residential property. Respondents also represented borrowers in negotiating and modifying terms and obtaining mortgage loans, and collected advance fees within the meaning of Code Sections 10026 and 10131.2, pursuant to written agreements which constituted advance fee agreements within the meaning of Code Section 10085.

54.

During the period of time covered by the audit, set forth below, Respondents did not maintain a trust account. Respondents placed trust funds received, including advance fees paid, into a general business account, Account No. 650-3518307, entitled, "First Housing of America, Inc. Operating Account," located at Wells Fargo Bank, P.O. Box 6995, Portland, OR 97228-6995. The account was used for First Housing's general business operations and the deposit of advance fees.

55.

On or about February 24, 2009, the Department completed its examination of Respondent FIRST HOUSING's books and records pertaining to the mortgage lending activities described in Paragraphs 53 and 54 above, covering a period from approximately October 1, 2005 to September 30, 2008. The primary purpose of the examination was to determine Respondent's compliance with the Real Estate Law. The examination, Audit Nos. LA080029 and LA 080177, revealed violations of the Code, and of Title 10, Chapter 6, California Code of Regulations (hereinafter "Regulations"), as

set forth below and as more specifically set forth in the Audit Report and Exhibits attached thereto.

56.

In the course of activities described in Paragraph 53 and 54 above, and during the examination period described in Paragraph 55, Respondents acted in violation of the Code and the Regulations in that:

a) During the audit period, Respondents collected approximately $1,324,250.00 in advance fees from borrowers for the purpose of providing loan modifications. The advance fees were deposited into FIRST HOUSING's general business account, which was not set up as a trust account, and commingled with FHA's general funds, in violation of Code Sections 10145, 10146, and 10176(e) and Regulation 2835. The following are examples:

Date Rec'd	Borrower	Amt Collected	Date Dep.
2/1/08	Jorge Medrano	$ 1,795.00	2/1/08
2/1/08	Calixto Betancourt	$ 1,795.00	2/1/08
2/1/08	Juan Martinez	$ 1,795.00	2/1/08
4/3/08	Marco A. Hernandez	$ 1,795.00	4/3/08
3/6/08	Vicente Hernandez	$ 1,995.00	3/6/08
2/1/08	Delia Godinez	$ 1,795.00	2/1/08
6/5/08	Pamela Bacon	$ 1,600.00	6/5/08
4/3/08	Frank Carmona	$ 995.00	4/3/08
4/3/08	Benjamin Garcia	$ 1,995.00	4/3/08

b) Respondents' columnar record of trust funds

received and disbursed was incomplete, and was missing the date funds were disbursed and the daily balance, in violation of Code Section 10145 and Regulation 2831.

c) Respondents did not maintain a separate record for each beneficiary of trust funds received from borrowers in connection with their loan modification, in violation of Code Section 10145 and Regulation 2831.1.

d) Respondents did not maintain a written monthly reconciliation of the receipt and disbursement records, and the total balance of separate beneficiary records for its bank account that was used to handle advance fees, in violation of Code Section 10145 and Regulation 2831.2.

e) Respondents collected advance fees for the purpose of performing loan modifications without submitting a written agreement to the Department at least ten days in advance, in violation of Code Section 10085 and Regulation 2970.

f) Respondents received advance fees from borrowers without maintaining and providing accounting content indicating services to be rendered, where the trust account funds were to be deposited and the details of how funds were to be disbursed, in violation of Regulation 2972.

57.

The conduct, acts and/or omissions of Respondent FIRST HOUSING and AVALOS, as described in Paragraph 56, above, violated the Code and Regulations in the following ways:

PARAGRAPH	PROVISIONS VIOLATED
56 (a)	Code Sections 10145 10146, 10176(e) and Regulation 2835.
56 (b)	Code Section 10145 and Regulation 2831.
56 (c)	Code Section 10145 and Regulation 2831.1.
56 (d)	Code Section 10145 and Regulation 2831.2.
56 (e)	Code Section 10085 and Regulation 2970.
56 (f)	Regulation 2972.

The foregoing violations constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent FIRST HOUSING and Respondent AVALOS under the provisions of Code Sections 10177(d), 10176(e), 10176(i), 10177(g), and 10085.

58.

The violations set forth above constitute cause for the suspension or revocation of Respondent AVALOS' real estate license and/or license rights, as the broker-officer of Respondent FIRST HOUSING, for failing to supervise the activities of the corporation, in violation of Code Sections 10159.2, in conjunction with 10177(h), 10177(d) and/or 10177(g).

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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/or license rights of Respondents FIRST HOUSING OF AMERICA INC. and SINDEY AVALOS under the Real Estate Law and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California

this 1 day of April, 2009.

Robin Trujillo
Deputy Real Estate Commissioner

cc: Home Owners Assistance
First Housing of America, Inc.
Dean Eric Toro
Sindey Avalos
Robin Trujillo
Sacto.
Audits
OAH

SAC

MARTHA J. ROSETT, Counsel (SBN 142072)
Department of Real Estate
320 West Fourth St. #350
Los Angeles, CA 90013

(213) 576-6982
(213) 620-6430

FILED
DEC. 30, 2008
DEPARTMENT OF REAL ESTATE
By C. B

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of HOME OWNERS ASSISTANCE, a corporate real estate broker; FIRST HOUSING OF AMERICA INC., a corporate real estate broker; FIRST MORTGAGE OF AMERICA INC., a corporate real estate broker; DEAN ERIC TORO, individually and as designated officer of Home Owners Assistance and former designated officer of First Mortgage of America Inc.; and SINDEY AVALOS, individually and as designated officer of First Housing of America Inc., Respondents.	No. H-35571 LA A C C U S A T I O N

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner, for cause of Accusation against HOME OWNERS

ASSISTANCE, FIRST HOUSING OF AMERICA INC., FIRST MORTGAGE OF AMERICA INC., DEAN ERIC TORO, individually and as designated broker-officer of Home Owners Assistance and First Mortgage of America Inc., and SINDEY AVALOS, individually and as designated broker-officer of First Housing of America, Inc., is informed and alleges as follows:

1.

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

Corporate Entities:

2.

At all times herein mentioned, Respondent HOME OWNERS ASSISTANCE (sometimes referred to as "HOA"), was and still is licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a corporate real estate broker. Respondent HOA was originally licensed by the Department of Real Estate ("Department") as a corporate real estate broker on or about December 28, 2007. At all times relevant herein, Respondent HOA was authorized to act by and through Respondent DEAN ERIC TORO as its broker designated pursuant to Business and Professions Code (hereinafter "Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

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3.

At all times herein mentioned, HOME OWNERS ASSISTANCE is and was a California corporation. Pepi Arthur Abad, aka Arthur Pepi Abad, aka Pepi Arturo Abad (sometimes referred to as "Pepi Abad"), is the corporate President and CEO of HOA. At all times relevant herein, Abad has owned or controlled more than 10% of Respondent HOA's stock. Abad is not now and has never been licensed in any capacity by the Department.

4.

At all times herein mentioned, Respondent FIRST HOUSING OF AMERICA INC. (sometimes referred to as "FIRST HOUSING"), was and still is licensed and/or has license rights under the Real Estate Law as a corporate real estate broker. Respondent FIRST HOUSING was originally licensed by the Department as a corporate real estate broker on or about September 16, 2002. At all times relevant herein, Respondent FIRST HOUSING was authorized to act by and through Respondent SINDEY AVALOS as its broker designated pursuant to Code Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

5.

At all times herein mentioned, Respondent FIRST HOUSING of AMERICA INC. is and was a California corporation. Pepi Abad is the corporate President and CEO of FIRST HOUSING. At all times relevant herein, Pepi Abad has owned or controlled more than 10% of Respondent FIRST HOUSING's stock. Abad is not now

and has never been licensed in any capacity by the Department. Respondent SINDEY AVALOS is a corporate director of FIRST HOUSING.

6.

At all times herein mentioned, Respondent FIRST MORTGAGE OF AMERICA, INC. (sometimes referred to as "FIRST MORTGAGE"), was and still is licensed and/or has license rights under the Real Estate Law as a corporate real estate broker. Respondent FIRST MORTGAGE was originally licensed by the Department as a corporate real estate broker on or about October 27, 2003. Beginning on or about January 16, 2004, and continuing through on or about January 22, 2007, Respondent FIRST MORTGAGE was authorized to act by and through Respondent TORO as its broker and officer designated pursuant to Code Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law. Beginning on or about January 23, 2008, and continuing through April 17, 2008, Respondent FIRST MORTGAGE was authorized to act by and through Bruce Eugene Mangels as its designated broker-officer. Respondent FIRST MORTGAGE does not currently have a designated broker-officer and therefore has an inactive license.

7.

At all times mentioned herein, Pepi Abad was and is the corporate President and CEO of FIRST MORTGAGE. At all times relevant herein, Pepi Abad has owned or controlled more than 10% of Respondent FIRST MORTGAGE's stock. Pepi Abad is not now and

has never been licensed in any capacity by the Department.

Broker Licensees:

8.

At all times herein mentioned, Respondent DEAN ERIC TORO (sometimes referred to as "TORO") was and is licensed and/or has license rights under the Code as a real estate broker. Respondent TORO was first licensed as a real estate broker on or about May 15, 2003, and was licensed as a salesperson prior to that time. Beginning on or about December 28, 2007, and continuing through the present time, Respondent TORO was and continues to be the designated broker-officer of Respondent HOA. Beginning on or about January 16, 2004 and continuing through on or after January 22, 2007, Respondent TORO was the designated broker-officer of Respondent FIRST MORTGAGE.

9.

At all times herein mentioned, Respondent SINDEY AVALOS (sometimes referred to as "AVALOS") was and is licensed and/or has license rights under the Code as a real estate broker. Respondent AVALOS was first licensed as a real estate broker on or about October 28, 2006, and was licensed as a salesperson before that time. Beginning on or about September 13, 2007, and continuing through the present time, Respondent AVALOS was and is the designated broker-officer for Respondent FIRST HOUSING. Respondent AVALOS has been a director of Respondent FIRST HOUSING since on or before October 17, 2005.

10.

All further references to "Respondents" include the parties listed in Paragraphs 1 through 9 above, as well as the officers, agents and employees of the parties listed in Paragraphs 1 through 9 above.

FIRST CAUSE OF ACCUSATION:
(Disciplinary Action Against Corporate Officer)
(HOA and FIRST HOUSING)

11.

On or about July 14, 2005, in Cases No. S-01-0613 and RS-02-0091, the Department of Motor Vehicles revoked Pepi Abad's vehicle salesperson license, and denied his application for reinstatement of his salesperson license, pursuant to Vehicle Code Section 11806(i). The Order, which was to become effective on August 15, 2005, was affirmed on appeal to the Superior Court and became a final judgment on September 19, 2006. The grounds for the discipline of Abad's vehicle salesperson license stemmed from his misconduct as a managerial employee of a vehicle sales dealership during the time persons under his direction and control committed wrongful acts which resulted in the suspension of the dealer's license.

12.

The disciplinary action taken by the Department of Motor Vehicles against corporate officer Abad, as set forth above, constitutes grounds to discipline the real estate corporation license and license rights of Respondent HOA and

Respondent FIRST HOUSING, pursuant to Code Section 10177(f).[1]

SECOND CAUSE OF ACCUSATION:
(Advance Fee Violations)
(HOA, FIRST HOUSING, TORO, AVALOS)

13.

There is hereby incorporated in this Second, separate Cause of Accusation, all of the allegations contained in Paragraphs 2 though 10 above, with the same force and effect as if herein fully set forth.

14.

For purposes of this Second cause of Accusation, all further references to "Respondents" include Respondent HOA, Respondent FIRST HOUSING, Respondent TORO, and Respondent AVALOS, and also include the employees, agents and real estate licensees employed by or associated with each Respondent, who at all times material herein were engaged in the furtherance of the business or operations of Respondents, and who were acting within the course and scope of their authority, agency or employment.

15.

During a period of time from approximately November 27, 2007, and continuing through September 30, 2008, Respondents HOA, FIRST HOUSING, TORO, and AVALOS engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers in the State of California, within the meaning of Code Sections 10131(d) and 10131.2, for or in expectation of

[1] Grounds also exist for discipline of FIRST MORTGAGE's license rights, but this is

compensation. Respondents HOA, FIRST HOUSING, TORO, and AVALOS represented borrowers in negotiating and modifying terms and obtaining mortgage loans, and collected advance fees within the meaning of Code Sections 10026 and 10131.2, pursuant to written agreements which constituted advance fee agreements within the meaning of Code Section 10085. Respondents failed to submit these advance fee agreements to the Commissioner before using them.

16.

On or about January 23, 2008, Respondent HOA and Respondent FIRST HOUSING entered into a Loan Modification Agreement with Jenine Hill. Pursuant to the terms of the agreement, Respondents agreed to negotiate the terms of a residential mortgage loan on Ms. Hill's behalf and to list her home for sale. The agreement called for Ms. Hill to pay Respondents a non-refundable advance fee in advance in the amount of $1,795.00. Ms. Hill paid the advance fee. On or about July 10, 2008, Respondents refunded Ms. Hill's money.

17.

On or about November 27, 2007, Respondents HOA and FIRST MORTGAGE collected an advance fee from Patricia and Johnny Clark for performance of loan modification services. Respondents failed to perform the services promised or to obtain a loan for the Clarks on more favorable terms.

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the subject of a separate accusation in DRE Case No. H-34752 LA.

18.

The written agreement between Respondents HOA and FIRST HOUSING and Ms. Hill was not submitted to or reviewed by the Department of Real Estate prior to use. Neither was the agreement between Respondents HOA and FIRST HOUSING and the Clarks.

19.

Additional examples of advance fees from borrowers Respondents collected for the purpose of providing loan modifications during the period of time between November 27, 2008 and September 30, 2008 include, but are not limited to, the following transactions:

Date Rec'd	Borrower	Amt Collected	Date Dep.
4/5/08	G. Avila	$1,795.00	4/7/08
4/30/08	S. Sandoval	$1,795.00	5/1/08
6/30/08	C. Gonzalez	$1,995.00	7/2/08
3/31/08	F. Cuando	$1,795.00	3/31/08
5/2/08	D. Starks	$1,995.00	5/2/08
6/30/08	E. Ramirez	$1,795.00	7/1/08
3/29/08	G. Arias	$1,995.00	3/31/08

20.

Between November 1, 2007 and September 30, 2008, Respondent HOA collected approximately $2,934,000.60 in advance fees from borrowers in loan modification transactions. As of September 30, 2008, Respondents had not obtained the Department's

authorization to use any advance fee agreement.

21.

The conduct, acts and/or omissions of Respondents HOA, FIRST HOUSING, TORO and AVALOS, as set forth in Paragraphs 14 through 20 above, in collecting advance fees from prospective borrowers pursuant to a written fee agreement, which agreement was not submitted to the Department for review prior to use, was in violation of Code Section 10085 and Regulation 2970, and constitutes grounds to discipline the licenses and license rights of Respondents HOA, FIRST HOUSING, TORO and AVALOS pursuant to Code Sections 10177(d), 10176(i), 10177(j) and/or 10177(g).

22.

The conduct, acts and/or omissions of Respondent TORO and Respondent AVALOS, in failing to exercise reasonable supervision over the activities of officers and employees of HOA and FIRST HOUSING for which a real estate license was required, was in violation of Code Section 10159.2 and constitutes grounds to discipline the licenses and license rights of Respondent TORO and Respondent AVALOS pursuant to Code Sections 10177(h), 10177(d) and 10177(g).

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THIRD CAUSE OF ACCUSATION
(Audit No. LA 080109)
(HOA and TORO)

23.

There is hereby incorporated in this Third, separate cause of Accusation, all of the allegations contained in Paragraphs 2 though 10, and 15 through 20 above, with the same force and effect as if herein fully set forth.

24.

For purposes of this Third Cause of Accusation, all references to "Respondents" include Respondent HOA and Respondent TORO, and also include the employees, agents and real estate licensees employed by or associated with each Respondent, who at all times material herein were engaged in the furtherance of the business or operations of Respondents, and who were acting within the course and scope of their authority, agency or employment.

25.

During a period of time from approximately November 27, 2007, and continuing through September 30, 2008, Respondents HOA and TORO engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers in the State of California, within the meaning of Code Sections 10131(d) and 10131.2, for or in expectation of compensation. Respondents HOA, and TORO represented borrowers in negotiating and modifying terms and obtaining mortgage loans, and collected advance fees within the meaning of Code Sections 10026 and 10131.2, pursuant to

written agreements which constituted advance fee agreements within the meaning of Code Section 10085.

26.

On or about November 26, 2008, the Department completed its examination of Respondent HOA's books and records pertaining to the mortgage lending activities described in Paragraph 25 above, covering a period from approximately November 1, 2007 to September 30, 2008. The primary purpose of the examination was to determine Respondent's compliance with the Real Estate Law. The examination, Audit No. LA 080109, revealed violations of the Code, and of Title 10, Chapter 6, California Code of Regulations (hereinafter "Regulations"), as set forth below and as more specifically set forth in the Audit Report and Exhibits attached thereto.

27.

In the course of activities described in Paragraph 25 above, and during the examination period described in Paragraph 26, Respondents acted in violation of the Code and the Regulations in that:

a) Respondents collected advance fees from borrowers for the purpose of providing loan modifications. The advance fees were deposited into HOA's general business account, which was not set up as a trust account, in violation of Code Section 10146. The following are examples:

///

Date Rec'd	Borrower	Amt Collected	Date Dep.
4/5/08	G. Avila	$1,795.00	4/7/08
4/30/08	S. Sandoval	$1,795.00	5/1/08
6/30/08	C. Gonzalez	$1,995.00	7/2/08
3/31/08	F. Cuando	$1,795.00	3/31/08
5/2/08	D. Starks	$1,995.00	5/2/08
6/30/08	E. Ramirez	$1,795.00	7/1/08
3/29/08	G. Arias	$1,995.00	3/31/08

b) Respondents did not maintain a trust account for the advance fees, in violation of Code Section 10145 and Regulation 2832. Commingling trust funds with general funds is in violation of Code Sections 10176(e) and 10145, and Regulation 2835.

c) Respondents' records of receipts and disbursements were incomplete, and the columnar records did not include the date funds were disbursed, to whom funds were disbursed, and the daily balance. Respondents failed to maintain proper trust fund records, in violation of Code Section 10145 and Regulation 2831.

d) Respondents did not maintain a separate record for each beneficiary of trust funds received from borrowers in connection with their loan modification, in violation of Code Section 10145 and Regulation 2831.1.

e) Respondents did not maintain a monthly reconciliation of receipts and disbursements of trust funds, in violation of Code Section 10145 and Regulation 2831.2.

f) HOA received advance fees for the purpose of performing loan modifications, pursuant to written agreements which were not submitted to the Department for review prior to use, in violation of Code Section 10085 and Regulation 2970. During the audit period, Respondent HOA collected approximately $2,934,00.00 from borrowers in advance fees.

g) Respondents received advance fees from borrowers, without maintaining and providing an accounting content indicating services to be rendered, where the trust account funds would be deposited and details of how funds were to be disbursed, in violation of Regulation 2972.

h) Respondent HOA, which was incorporated on December 28, 2007, handled loan modification transactions and collected advance fees from the borrowers in November 2007 without obtaining a real estate broker license from the Department. An example included the Patricia Clark transaction, in which Respondents collected an advance fee on November 27, 2007. Respondent HOA performed activities requiring a real estate license when they were not properly licensed by the Department as a real estate broker, in violation of Code Section 10130.

28.

The conduct, acts and/or omissions of Respondent HOA and TORO, as described in Paragraph 27, above, violated the Code and Regulations in the following ways:

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PARAGRAPH	PROVISIONS VIOLATED
27 (a)	Code Section 10146.
27 (b)	Code Sections 10145 and 10176(e); and Regulations 2832 and 2835.
27 (c)	Code Section 10145 and Regulation 2831.
27 (d)	Code Section 10145 and Regulation 2831.1.
27 (e)	Code Section 10145 and Regulation 2831.2.
27 (f)	Code Section 10085 and Regulation 2970.
27 (g)	Regulation 2972.
27 (h)	Code Section 10130.

The foregoing violations constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent HOA and Respondent TORO under the provisions of Code Sections 10177(d), 10130, 10176(e), 10176(i), 10177(g), and 10085.

29.

The violations set forth above constitute cause for the suspension or revocation of Respondent TORO's real estate license and/or license rights, as the broker-officer of Respondent HOA, for failing to supervise the activities of the corporation, in violation of Code Sections 10159.2, in conjunction with 10177(h) and 10177(d).

///

FOURTH CAUSE OF ACCUSATION
(Unlicensed Activities/Dishonest Dealing)
(FIRST MORTGAGE OF AMERICA INC., DEAN TORO)

30.

There is hereby incorporated in this Fourth, separate Cause of Accusation, all of the allegations contained in Paragraphs 2 though 10 above, with the same force and effect as if herein fully set forth.

31.

For purposes of this Fourth Cause of Accusation, all references to "Respondents" include Respondent FIRST MORTGAGE and Respondent TORO, and also include the employees, agents and real estate licensees employed by or associated with each Respondent, who at all times material herein were engaged in the furtherance of the business or operations of Respondents, and who were acting within the course and scope of their authority, agency or employment.

32.

At all times relevant herein, Respondents FIRST MORTGAGE and TORO engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers in the State of California, within the meaning of Code Sections 10131(d), for or in expectation of compensation. Respondents FIRST MORTGAGE and TORO solicited and represented borrowers in negotiating and obtaining mortgage loans.

///

33.

At all times mentioned herein, Respondent FIRST MORTGAGE was licensed by the Department of Real Estate under license number 01402136, with one licensed office location at 2911 S. Bristol Street, Santa Ana, CA 92704. At no time mentioned herein was Respondent FIRST MORTGAGE licensed by the Department of Real Estate to conduct activities requiring a real estate license at any other location.

Esquivel Transaction

34.

In late 2005, borrower Salvador Esquivel responded to a telephone solicitation in Spanish in which representatives of Respondent FIRST MORTGAGE offered to assist him in refinancing mortgages on residential property located at 607 E. 246 St., Wilmington, California. Mr. Esquivel was interested in lowering his monthly payments on two mortgages on his home, which he had purchased a year before.

35.

On November 23, 2005, Mr. Esquivel and his son and daughter met with Pepi Abad, Luis Razo, Kebbin Avalos, Kendall Williams, Raul Sanchez and Baricio Baca at FIRST MORTGAGE offices located at 2823 S. Bristol St. in Santa Ana, California 92704. Mr. Esquivel discussed possible loan terms with Respondent FIRST MORTGAGE representatives. Mr. Esquivel's primary interest was to lower his monthly payments and avoid incurring pre-payment

penalties and other costs that would raise his rates and payments. Discussions continued over the next few months.

36.

On January 1, 2006, Mr. Esquivel was provided loan documents for signing, with very little time to review the papers. He noticed that the new interest rate was 9.9% and variable, in contrast with the 7% fixed rate he previously had. In addition, the monthly payment was approximately $1,000.00 more than his previous payment. Mr. Esquivel was promised $28,760.07 cash out at closing.

37.

In connection with Mr. Esquivel's loan, Kendall Williams and a Spanish speaking interpreter presented and explained the terms of the new loan, and completed the loan application on behalf of Respondents. Kendall Williams was not and is not licensed by the Department.

38.

Loan documentation referred to Respondent FIRST MORTGAGE and listed "2823 S. Bristol St., Santa Ana, California 92704," as the contact address. Respondent FIRST MORTGAGE was not licensed to conduct activities requiring a real estate license out of this location. Nor was Respondent FIRST MORTGAGE licensed to conduct activities under a California Finance Lender license at this location.

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39.

Business cards provided to Mr. Esquivel for Respondent's representatives, Raul Sanchez, Luis Razo, Fabricio Baca and Kebbin Avalos, listed "FIRST MORTGAGE OF AMERICA" at 2823 S. Bristol St., Santa Ana, California 92704. Pepi Abad's business card listed "FIRST HOUSING OF AMERICA," with the address of "2911 S. Bristol Street, Suite B, Santa Ana, California, 92704." Pepi Abad, Raul Sanchez, Luis Raz, Fabricio Baca and Kebbin Avalos were not licensed by the Department as real estate brokers or as real estate salespersons employed by a real estate broker.

40.

Mr. Esquivel's new loan transaction closed on or about January 5, 2006. At that time, Mr. Esquivel received a check from escrow in the amount of $17,084.52, not the promised $28,760.07.

41.

Subsequent to the closing of the new loan transaction, Mr. Esquivel had further discussions with Respondents. On or about February 9, 2006, Pepi Abad provided Mr. Esquivel with a written statement in Spanish offering to refinance the new loan in two years for zero origination points and no money down, and offering to pay Mr. Esquivel $5,500.00.

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42.

Mr. Esquivel was not able to afford the new payments on the subject property, and the property went into foreclosure.

Guerrero Transaction

43.

Beginning on or before July 15, 2006, and continuing through on or after September 30, 2006, Respondent FIRST MORTGAGE represented Teresa and Carlos Guerrero in refinancing a loan or loans secured by real property located at 64 East Barnett Street, Ventura, California 93001.

44.

In relation to the subject loan transaction, on or about September 9, 2006, Christian Ramos signed a loan application as representative of Respondent FIRST MORTGAGE, with a business address of "2823 S. Bristol, Santa Ana, CA 92704." On September 9, 2006, in relation to the subject transaction, Respondents obtained the Guerreros signatures on a Federal Truth-in-Lending Disclosure Statement in which the "Creditor" is listed as "FIRST MORTGAGE OF AMERICA (DRE # 01402136), 2823 S. Bristol Street, Santa Ana, California 92704."

45.

At all times mentioned herein, Christian Ramos was not licensed by the Department of Real Estate as a real estate broker, or as a salesperson employed by the real estate broker.

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46.

At all times mentioned herein, Respondent FIRST MORTGAGE was not licensed to perform activities requiring a real estate license at an office located at 2823 S. Bristol St., Santa Ana, CA 92704. Nor was Respondent FIRST MORTGAGE licensed to conduct activities under a California Finance Lender license at that location.

47.

In relation to the loan transactions set forth in Paragraphs 33 through 46 above, Respondent FIRST MORTGAGE utilized employees and/or representatives in soliciting and negotiating loans who were not licensed by the Department as real estate brokers or as salesperson operating under Respondent FIRST MORTGAGE's real estate broker license. Among the unlicensed representatives performing activities requiring a real estate license were Pepi Abad, Kibbin Avalos, Kendall Williams, and Christian Ramos.

48.

The conduct, acts and/or omissions, as set forth in Paragraphs 33 through 47 above, in employing or compensating representatives for performing activities requiring a real estate license constitutes grounds to revoke the real estate licenses and/or license rights of Respondents FIRST MORTGAGE and TORO pursuant to Code Sections 10137, 10177(d), 10177(g), 10176(i) and/or 10177(j).

49.

The conduct, acts and/or omissions of making false and/or misleading representations in order to induce reliance of borrowers, and in otherwise misleading borrowers into accepting loans on less favorable terms to the detriment of the borrowers, as set forth in Paragraphs 33 through 47 above, constitutes grounds to discipline the licenses and/or license rights of Respondents FIRST MORTGAGE and TORO pursuant to Code Sections 10176(a), 10176(b), 10176(c), 10176(i) and/or 10177(j).

50.

The conduct, acts and/or omissions set forth above in Paragraphs 33 through 47, in failing to adequately supervise the activities of Respondent FIRST MORTGAGE, constitutes grounds to discipline the license and/or license rights of Respondent TORO pursuant to Code Sections 10159.2, 10177(h), 10177(d), 10177(g), 10176(i) and/or 10177(j).

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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/or license rights of Respondents DEAN ERIC TORO, SINDEY AVALOS, FIRST MORTGAGE OF AMERICA, INC., FIRST HOUSING OF AMERICA INC. and HOME OWNERS ASSISTANCE under the Real Estate Law and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 26 day of December, 2008.

Robin Trujillo
Deputy Real Estate Commissioner

cc: Home Owners Assistance
First Housing of America, Inc.
First Mortgage of America, Inc.
Dean Eric Toro
Sindey Avalos
Robin Trujillo
Sacto.
Audits