FILED

JAN -6 2011

DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of ZYAD MALUF, Respondent(s).	NO. H-35969 LA L-2009060669

ORDER STAYING EFFECTIVE DATE

On December 17, 2010, a Decision was rendered in the above-entitled matter to become effective January 06, 2011.

IT IS HEREBY ORDERED that the effective date of the Decision of December 17, 2010, is stayed for a period of thirty (30) days to allow Respondent ZYAD MALUF to file a petition for reconsideration.

The Decision of December 17, 2010, shall become effective at 12 o' clock noon on February 4, 2011.

DATED: January 6, 2011.

JEFF DAVI
Real Estate Commissioner

By: _____
ROBIN TRUJILLO
Regional Manager

FILED

DEC 17 2010

DEPARTMENT OF REAL ESTATE
BY:

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of FASTLINK FINANCIAL INC.; and ZYAD MALUF, individually and as designated officer of Fastlink Financial Inc., Respondents.	DRE No. H-35969 LA OAH No. L-2009060669

DECISION AFTER REJECTION

Nancy Beezy Micon, Administrative Law Judge ("ALJ") Office of Administrative Hearings, State of California, heard this matter on June 14, 2010 in Los Angeles, California.

Elliott Mac Lennan, Counsel for the Department of Real Estate ("Department"), represented Robin Trujillo, Deputy Real Estate Commissioner ("Complainant").

ZYAD MALUF ("MALUF") was present and represented himself as well as FASTLINK FINANCIAL, INC. ("FASTLINK"). MALUF and FASTLINK are sometimes referred to herein as "Respondents". [1]

[1] At the hearing, Complainant brought a motion to amend the First Amended Accusation, at pages 15 and 16, to eliminate the allegations contained in paragraphs A, B, C, G, and H of charging allegation 19 and to revise paragraph D of charging allegation 19 by eliminating the phrase "willful disregard of the Real Estate Law or in" and to revise paragraph I of charging allegation 19 to eliminate reference to Business and Professions Code ("Code") Section 10176, subdivision (i). Complainant also moved to withdraw the specific allegations contained in the Third Cause of Action to the First Amended Accusation at pages 12-14. The motion, which was unopposed, was granted.

Oral and documentary evidence was received and the matter was submitted for decision on June 14, 2010.

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. Respondents were notified that I would decide the case upon the record, the transcript of proceedings held on June 14, 2010, and upon any written argument offered by Respondents and Complainant. Respondents submitted written argument on October 7, 2010. Complainant submitted written argument on November 23, 2010.

I have given careful consideration to the record in this case, including the transcript of proceedings of June 14, 2010. I have also considered the arguments submitted by Respondents and by Complainant. The following shall constitute the Decision of the Real Estate Commissioner ("Commissioner") in this proceeding:

FINDINGS OF FACT

Parties and Jurisdiction

1. Complainant brought the Accusation in her official capacity. Respondents timely submitted Notices of Defense, which contained a request for a hearing.

2. Respondent MALUF was first licensed by the Department as a real estate broker on March 1, 2004. Respondent's broker license will expire on February 29, 2012, unless renewed.

3. Respondent FASTLINK is a California corporation first licensed by the Department on October 26, 2006. At all times relevant, Respondent MALUF was the broker-officer of FASTLINK designated pursuant to Business and Professions Code ("Code") Section 10159.2 to supervise and be responsible for ensuring the corporation's compliance with the Real Estate Law. At all times relevant, MALUF was the secretary and 25% owner

of FASTLINK. Ahmad Khatib, an unlicensed individual, was the corporate president and 75% owner of FASTLINK. FASTLINK's license expired on October 25, 2010.[2]

4. At all times relevant, Respondents engaged in the business of, and acted in the capacity as real estate brokers in the State of California.

5. Respondents do not have a prior record of discipline imposed against them.

Respondents' Activities

6. Respondents engaged in the business of brokering mortgage loans, loan modification and loan restructuring services, among other business activities. The services were performed in connection with loans secured by liens on real property for compensation or in expectation of compensation. In performing the loan modification and loan restructuring services, FASTLINK would charge its customers a fee, often collected in advance as well as at the close of transactions. FASTLINK, in exchange, agreed to negotiate with the holder of the customer's residential property mortgage on behalf of homeowners seeking modification of the terms of their home loans, foreclosure abatement, loan refinance, or short sale of the home, and would attempt to renegotiate the mortgage to terms more favorable to its customers. FASTLINK also handled escrows related to the real estate transactions it brokered.

The Audits

The Audit of FASTLINK's Mortgage Loan and Loan Modification Activities (Audit No.LA 080149)

7. Between December 16, 2008, and February 18, 2009, the Department conducted an audit of FASTLINK's books and records for the audit period November 1, 2006, through December 31, 2008. The examination was initiated to determine whether FASTLINK accounted for trust funds and conducted its real estate activities in conformance

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[2] Pursuant to Business and Professions Code Section 10201, Respondent FASTLINK FINANCIAL has renewal rights for two years. Pursuant to Code Section 10103, the Department retains jurisdiction.

with the Real Estate Laws as set forth in the Code, and in Title 10, Chapter 6 of the California Code of Regulations ("Regulations"). This examination, Audit No: LA 080149 focused on Respondents' mortgage loan and loan modification activities.

8. In a report dated February 23, 2009, the auditor made the following findings with respect to FASTLINK's books and records:

a. During the audit period from November 1, 2006 through December 31, 2008, Respondents engaged in brokering mortgage loans and closed 108 loans, totaling $35,582,200.00.

b. Between August of 2008 and December of 2008, Respondents handled 222 loan modifications and related services, of which 18 were completed as of the time of the audit. In connection with those loan modification services, Respondents collected $668,508.00 in upfront advance fees for services during those five months. Respondents did not maintain a trust account.

c. Respondents collected advance fees from homeowners in connection with loan modification services, and failed to provide the homeowners with an agreement that had been reviewed by the Department, in violation of Code Section 10085 and Regulation 2970.

d. Respondents failed to establish and maintain a trust account, in the name of a broker, for the deposit of advance fees collected by FASTLINK, in violation of Code Section 10146.

e. Respondents deposited trust funds, in the form of advance fees collected from loan modification clients, into FASTLINK's general business operating bank account instead of into a trust account, thereby co-mingling trust funds and general business funds, in violation of Code Sections 10145 and 10176 (e), and Regulation 2832 (a).

f. Respondents failed to maintain a separate record for each beneficiary of trust funds received from borrowers or homeowners in connection with their loan modifications, and failed to maintain a separate record for each transaction, thereby failing to

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account for advance fees collected from borrowers and homeowners for loan modification services, in violation of Code Section 10145 and Regulation 2831.1.

g. Respondents did not perform a monthly reconciliation of the balance of all separate beneficiary or transaction records with a control record of all trust funds received and disbursed in relation to their loan modification activities, in violation of Code Section 10145 and Regulation 2831.2.

h. Respondents failed to provide to prospective borrowers and homeowners a complete description indicating services to be rendered, including the allocation and disbursement of the amount collected as advance fees, in violation of Code Section 10146 and Regulation 2972.

i. Respondents failed to maintain and provide to prospective borrowers and homeowners a Good Faith Estimate containing the broker's real estate license number; a clear and concise statement on the face of the document stating that the Good Faith Estimate does not constitute a loan commitment; and applicable disclosures, including yield spread premiums rebates received outside of closing, in violation of Code Section 10240, 10240(c) and 10241 and Regulations 2840 and 2840.1.

j. Respondents did not disclose its real estate license number on the disclosure statements provided to borrowers, in violation of Code Section 10236.4.

k. Respondents did not accurately represent the amount of yield spread premium rebates it was paid, in violation of Code Sections 10176(a) and 10177(g).

l. Respondents FASTLINK and MALUF failed to notify the Department of the employment of real estate salesperson Shirine Khatib, and failed to maintain a broker-salesperson agreement with her, in violation of Code Section 10161.8 and Regulations 2752 and 2726.

m. The fictitious business name "Fastlink Financial" was used to conduct licensed activities, including loan modification services and advance fee brokerage, without

first obtaining from the Department a license bearing the fictitious business name, in violation of Code Section 10159.5 and Regulation 2731.

The Audit of FASTLINK's Broker Escrow Activities

(Audit No. LA 080223)

9. Between February 17, 2009 and April 14, 2009, the Department conducted an audit of FASTLINK's books and records for the audit period November l, 2006, through June 30, 2008. The examination, Audit No. LA 080223, focused on whether FASTLINK conducted its broker escrow activities in conformance with the Real Estate Laws and applicable Regulations.

10. In a report dated May 11, 2009, the auditor made the following findings with respect to FASTLINK's books and records:

a. Between January 2007 and April 2008, Respondents performed escrow activities related to broker transactions. During this period, Respondents closed 85 escrow transactions valued at $31,353,400.00. Respondents handled approximately $1,296,767.00 in trust funds related to their broker escrow activities during the audit period.

b. Respondents received funds in connection with handling of broker escrows, including trust funds, from or on behalf of actual or prospective parties, including lenders, borrowers, and homeowners. The funds from escrow activities were at times deposited and maintained in the following bank account: Account No. 001-803239, held in the name of Fastlink Financial Inc., Escrow Division Trust Account, Mellon 1st Business Bank, 601 West Fifth Street, Los Angeles, CA 90071. This account was closed on June 5, 2008.

c. Respondents failed to provide written disclosure of MALUF's financial interest and ownership of FASTLINK's escrow division, in violation of Code Sections 10145 and 10176(g), and Regulations 2950(d), 2950(h) and 2951.

11. When the audit examinations were completed, the auditor reviewed the violations described above with designated broker-officer MALUF.

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Desist and Refrain Order (H-36031 LA)

12. On June 5, 2009, in Case No. H-36031 LA, the Department issued a Desist and Refrain Order against Respondents, citing many of the violations cited above, and ordering them to Desist from collecting advance fees from customers without submitting the advance fee agreement to the Department for review and prior approval, and ordering them to comply with the trust fund and record keeping requirements for the handling of advance fees, pursuant to Code Section 10146 and Regulations 2970 and 2972.

Advance Fee Materials

13. On or about June 18, 2009, the Department issued a "No Objection Letter," indicating that the advance fee materials submitted by Respondents in relation to the collection of upfront fees for services, complied with legal requirements.

14. At hearing, Respondent MALUF acknowledged his awareness of new laws, effective October 11, 2009, which prohibit the collection of any upfront fees by anyone, including real estate licensees and lawyers, in relation to services provided to distressed homeowners seeking assistance in avoiding foreclosure.[3]

15. The Department presented evidence at hearing that established that as June 9, 2010, Respondents were continuing to solicit upfront advance fees for loan modification and related forensic audit services, in violation of California law.

16. Respondent MALUF provided letters he had submitted to the Department alleging that between the time of the audit and June 12, 2010, an additional 148 loans had been modified. Respondent asserted that of the remaining 53 files, 28 were in review, 29 had been canceled, seven were in bankruptcy, one in short sale, 15 had been sold, and one was for only a forensic audit. No documentation was offered or provided in support of

[3] Business and Professions Code Section 10085.6, enacted in 2009, and effective October 11, 2009, makes it unlawful for any person to claim, demand, charge, collect or receive any compensation for loan modification or mortgage loan forbearance until after the licensee has fully performed each and every service contracted for. In his questioning of Deputy Bakotich, Respondent asked her about SB 94, which became Code Section 10085.6. In his questioning, he specifically demonstrated an awareness that the law no longer allows collection of advance fees in relation to loan modification and related services. (See Transcript of Proceedings, 107:10-108:16)

Respondent's testimony. No evidence was provided as to the status of trust funds collected in the form of advance fees on any of the transactions, whether completed, or "under review," or "cancelled." No records were created to meet the requirements of Code Section 10146 and the related trust fund handling regulations, keeping track of transactions, when fees were collected and how much, what services were provided, and otherwise accounting for trust funds collected.

17. Respondent MALUF did not provide any documentary evidence as to correction of accounting and record keeping violations cited in either of the two audit examinations. No evidence was provided as to maintenance of a trust account.

Respondents' Stipulation

18. At hearing, Respondents stipulated to violations of Business and Professions Code sections 10137 (employing an unlicensed salesperson), 10177, subdivisions (d) (disregard or violation of the Real Estate Law), (g) (negligence in connection to licensed activity), and (h) (failure of Respondent MALUF to adequately supervise the activities of Respondent FASTLINK).

Respondent MALUF's Testimony and Other Relevant Facts

19. At hearing on the matter of the subject Accusation, Respondent MALUF testified that FASTLINK did not collect advance fees. He asserted that "up front fees" were collected for performance of a forensic audit on the client's loan documents. The "up front" fees collected were generally $2,500 to $3,500. Respondent maintains that a separate contract was entered for loan modifications services and that no fees were charged for loan modification until after the loan was modified. The cost for the loan modification service is approximately $995 per loan.

20. The Department established, however, that the fees Respondents collected and identified as "up front fees" were, in fact, advance fees pursuant to section 10026 and

California Code of Regulations, title 10 (Regulation), section 2970.[4] The forensic audit was conducted in all but one of the cases involving the loan modifications. Testimony from a Department investigator, who posed as a potential customer seeking a loan modification, established that FASTLINK representatives explained to potential customers that a forensic audit was the first part of a three-part loan modification process. The representative told the investigator that the forensic audit needed to be done before the loan package could be submitted for loan modification. In addition, according to FASTLINK's own sales script, a forensic audit examines the borrowers note, riders, itemization of amount financed, truth-in-lending statement, and the final HUD-1 documents to determine whether any "truth-in-lending" or "RESPA" violations are present. The script states: "*Then based on the review of your information that you provide to us, we can move forward with a loan modification. Fastlink Financial, Inc. can assist you in modifying your loan.* (Italics added for emph.)"

21. The conduct of Respondents, with respect to their loan modification business, fell within the ambit of their real estate broker licenses pursuant to sections 10131, subdivision (d), and 10131.2 4.[5]

22. With regard to FASTLINK's loan modification activity, Respondent MALUF failed to supervise and control the activities conducted on behalf of FASTLINK by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law. As a result, FASTLINK collected advance fees without agreements or documents previously having been submitted to the Commissioner for review, failed to

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[4] An advance fee is defined by section 10026 as "a fee demanded, charged, received, collected or contracted from a principal for ... soliciting borrowers or lenders for, or to negotiate loans on ... real estate." In this case, the fees obtained by FASTLINK from customers for loan modification activities qualified as advance fees. Therefore, pursuant to Regulation section 2970, FASTLINK was required to submit to the Commissioner for review an advance fee agreement and related materials before obtaining advance fees from its customers for the loan modification activities.

[5] Pursuant to section 10131, subdivision (d), a real estate broker's license is required to solicit borrowers or lenders or to negotiate loans or collect payments or perform services for borrowers or lenders or note owners in connection with loans secured by real property. The loan modification work engaged in by FASTLINK falls within this definition.

maintain a trust account for advance fees collected, and failed to adequately account for trust funds.

Factors in Aggravation, Mitigation and Rehabilitation

23. Respondents have no prior record of discipline.

24. At hearing, and in correspondence with the Department, Respondent MALUF claimed that he relied upon the advice of counsel to guide him in complying with statutory and regulatory requirements in the new area of loan modification. Respondent acknowledged that he did not directly inquire of anyone at the Department concerning the loan modification activities, prior to the audit.

25. In aggravation, Respondent MALUF continued to wrongly assert at the hearing on this matter that it was acceptable to collect "up front" fees in relation to loan modification and related "forensic audit" services.

26. Respondents have taken some measures to correct the problems described above. Upon receipt of a Desist and Refrain Order, Respondents submitted advance fee materials to the Department for review. In addition, Respondents have notified the Department of the employment of Shirine Hatib and have corrected usage of fictitious business names.

27. No evidence was provided of accountings or refunds to clients of FASTLINK who paid as much as $3,500 each in advance fees, some of whom received no services at all.

CONCLUSIONS OF LAW

1. Cause was established for disciplinary action against the real estate broker licenses of Respondents pursuant to Business and Professions Code sections 10085, 10137, 10145, 10146, 10159.5, 10161.8, 10176 (a), (e) and (g), 10177 (d) and (g), 10236.4, 10240, 10240(c), 10241 and Regulations 2726, 2731, 2752, 2831.1, 2831.2, 2832 (a), 2840, 2840.1, 2950 (d) and (h), 2951, 2970, and 2972.

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2. Cause was established for disciplinary action against Respondent MALUF's real estate broker license pursuant to Code sections 10177 (d), (g) and (h), and Regulation 2725, which provides for discipline against an officer designated by a corporate broker licensee who fails to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required. In this case, section 10159.2 required Respondent to exercise reasonable supervision and control of the activities of FASTLINK such as to ensure full compliance with the Real Estate Law. Respondent failed to exercise adequate supervision and control over FASTLINK's loan modification activity, and undertook no efforts to ensure FASTLINK's compliance with the Real Estate Law pertaining to the submission of proposed advance fee agreements and materials before collecting advance fees for loan modification activity. In light of the duties of supervision and control imposed by sections 10177, subdivision (h), and 10159.2, the "guilty knowledge" defense of section 10179 does not exonerate Respondent from his omissions in supervising and controlling the actions of other employees of FASTLINK.

3. This cause for discipline relates to the audits of FASTLINK's books and records. Although Respondent MALUF testified that Respondents acted in good faith, and believed that they were not charging advance fees and therefore did not need a trust account or its attendant record keeping devices, he was incorrect. The charging of advance fees, and the lack of a trust account and proper record keeping constitute the violations. In addition, Respondents continued to unlawfully collect advance fees and failed to establish and maintain a proper trust account and proper record keeping, even after discussing the audit violations with the Department's auditor, and after receiving an Order to Desist and Refrain from the Department. This willful and knowing misconduct negates claims of "good faith" on Respondents' part.

4. The purpose of these disciplinary proceedings is to protect the public, "not only from conniving real estate salesmen, but also from the uninformed, negligent or unknowedgeable salesman." *(Handeland v. Department of Real Estate* (1976) 58

Cal.App.3d 513, 518.) In this case, ZYAD MALUF engaged and participated in serious violations of the California Real Estate Law, and the public safety, welfare and interest cannot be adequately protected by permitting ZYAD MALUF to continue as a real estate licensee without supervision by a real estate broker. However, the issuance of a properly conditioned and restricted real estate salesperson's license to ZYAD MALUF, with the requirement of broker supervision, would not be contrary to the public safety, welfare, and interest. Moreover, in this case, the public safety, welfare and interest requires that the corporate broker license of FASTLINK FINANCIAL, INC. be properly conditioned and restricted, and that an unrestricted real estate broker be designated as broker-officer of FASTLINK FINANCIAL, INC.

5. Respondents must provide documentation to the Commissioner, submitted by them under penalty of perjury under the laws of the State of California that substantiates their claims of "148 successful loan modifications" from the 229 loan modifications covered under the audit reports. In addition, Respondents must provide documentation to the Commissioner, submitted by them under penalty of perjury under the laws of the State of California, that all of the remaining advance fees collected prior to the Department's June 18, 2009 "No Objection Letter" have been returned and repaid to those persons who paid the advance fees.

6. The following Order is consistent with protection of the public interest.

ORDER

I

All licenses and licensing rights of Respondent FASTLINK FINANCIAL, INC. under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays 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 license issued to Respondent 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 Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere or guilty to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that 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. Respondent 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 two years have elapsed from the effective date of this Decision.

4. During the term of the restricted license, Respondent ZYAD MALUF may not serve as designated officer of the corporation.

5. Respondent shall, prior to the issuance of any restricted license and as a condition of the issuance of the restricted license, submit proof, satisfactory to the Commissioner, which substantiates Respondents' claim of 148 successful loan modifications from the 229 covered under the audit reports referenced in the Accusation, and evidence, satisfactory to the Commissioner, that all the remaining advance fees collected prior to the Department June 18, 2009 "No Objection Letter" to Respondents' Advance Fee Agreement have been returned and repaid to those persons who paid the advance fees.

II

All licenses and licensing rights of Respondent ZYAD MALUF under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 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. Makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision.

2. Respondent shall, prior to the issuance of any restricted real estate salesperson license and as a condition of the issuance of the restricted license, submit proof, satisfactory to the Commissioner, which substantiates Respondents' claim of 148 successful loan modifications from the 229 covered under the audit reports referenced in the Accusation, and evidence, satisfactory to the Commissioner, that all the remaining advance fees collected prior to the Department June 18, 2009 "No Objection Letter" to Respondents' Advance Fee Agreement have been returned and repaid to those persons who paid the advance fees.

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

4. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that 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.

5. Respondent 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 two years have elapsed from the effective date of this Decision.

6. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

7. Respondent MALUF shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that he 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 MALUF fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent MALUF the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

8. Respondent MALUF 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 MALUF fails to satisfy this condition, the Commissioner may order suspension of any license issued until Respondent passes the examination.

III

Pursuant to Section 10148 of the Business and Professions Code, Respondents shall be liable to pay the Commissioner's reasonable cost for the audits which led to this disciplinary action. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondents shall pay such 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 licenses

issued to 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 Respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondents enter 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.

This Decision shall become effective at 12 o'clock noon on JAN 6 2011.

IT IS SO ORDERED 12/17/2010.

JEFF DAVI
Real Estate Commissioner

By WAYNE S. BELL
Chief Counsel

Saito

FILED

AUG 12 2010

DEPARTMENT OF REAL ESTATE
BY:

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of FASTLINK FINANCIAL INC.; and ZYAD MALUF, individually and as designated officer of Fastlink Financial, Inc., Respondents.	No. H-35969 LA OAH No. 2009060669

NOTICE

TO: FASTLINK FINANCIAL INC., and ZYAD MALUF, individually and as designated officer of the corporation, Respondents.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 14, 2010, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 14, 2010, is attached for your information.

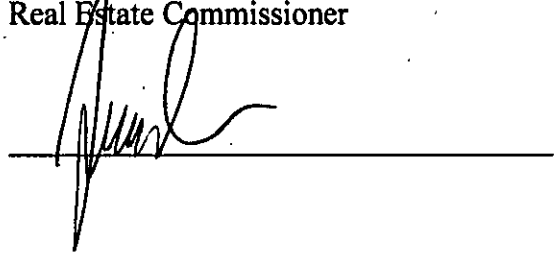
In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on June 14, 2010, any written argument hereafter submitted on behalf of 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 June 14, 2010, 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: 9-10-2010

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against: FASTLINK FINANCIAL INC.; and ZYAD MALUF, individually and as designated officer of Fastlink Financial Inc., Respondents.	Case No. H-35969 LA OAH No. 2009060669

PROPOSED DECISION

This matter was heard by Nancy Beezy Micon, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 14, 2010, in Los Angeles, California.

Elliot Mac Lennan, Counsel, represented Robin L. Trujillo, Deputy Real Estate Commissioner (Complainant), California Department of Real Estate (Department).

Zyad Maluf (Respondent) represented Fastlink Financial Inc. (Fastlink Financial) and himself, individually, and as the designated officer of Fastlink Financial. Respondent and Fastlink Financial will collectively be referred to as "Respondents."

At the hearing, Complainant brought a motion to amend the First Amended Accusation, at pages 15 and 16, to eliminate the allegations contained in paragraphs A., B., C., G., and H of charging allegation 19. and to revise paragraph D. of charging allegation 19. by eliminating the phrase "willful disregard of the Real Estate Law or in" and to revise paragraph I of charging allegation 19. to eliminate reference to Business and Professions Code[1] Section 10176, subdivision (i). Complainant also moved to withdraw the specific allegations contained in the Third Cause of Action to the First Amended Accusation at pages 12-14. The motion, which was unopposed, was granted.

Oral and documentary evidence was presented at the hearing. The record was closed and the matter submitted for decision at the conclusion of the hearing on June 14, 2010.

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[1] All statutory references are to the Business and Professions Code, unless otherwise stated.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense, which contained a request for a hearing.

2. The Department issued a real estate broker license to Respondent on March 1, 2004. Respondent's license will expire on February 29, 2012, unless renewed.

3. The Department issued a corporate real estate broker license to Fastlink Financial on October 26, 2006. Respondent was the designated officer for Fastlink Financial. Fastlink Financial's license will expire on October 25, 2010, unless renewed.

4. At all times relevant, Respondent engaged in the business of, and acted in the capacity of, a real estate broker in the State of California.

5. Respondents do not have a prior record of discipline imposed against them.

Respondents' Activities

6. Respondents engaged in the business of brokering mortgage loans, loan modification and loan restructuring services, among other business activities. The services were performed in connection with loans secured by liens on real property for compensation or in expectation of compensation. In performing the loan modification and loan restructuring services, Fastlink Financial would charge its customers a fee, often collected in advance as well as at the close of transactions. Fastlink Financial, in exchange, agreed to contact the holder of the customer's residential property mortgage on behalf of homeowners seeking modification of the terms of their home loans, foreclosure abatement, loan refinance, or short sale of the home, and would attempt to renegotiate the mortgage to terms more favorable to its customers.

The Audits

The Audit of Fastlink Financial's Mortgage Loans and Loan Modification Activities

7. Between December 16, 2008, and February 18, 2009, the Department conducted an audit of Fastlink Financial's books and records for the audit period November 1, 2006, through December 31, 2008. The examination was initiated to determine whether Fastlink Financial accounted for trust funds and conducted its real estate activities in conformance with the Real Estate Laws and applicable Regulations.

8. In a report dated February 23, 2009, the auditor made the following findings with respect to Fastlink Financial's books and records:

a. Fastlink Financial did not maintain a trust account.

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

c. Fastlink Financial failed to maintain a separate record for each beneficiary of trust funds received from borrowers or homeowners in connection with their loan modifications. Fastlink Financial also failed to maintain a separate record for each transaction. Fastlink Financial thereby failed to account for advance fees collected from borrowers and homeowners for loan modification services.

d. Fastlink Financial did not perform a monthly reconciliation of receipts and disbursements of trust funds.

e. Fastlink Financial collected advance fees from homeowners in connection with its loan modification services. Fastlink Financial failed to provide the homeowners with an agreement that had been pre-approved by the Department.

f. Fastlink Financial failed to establish a trust account, in the name of a broker, for the deposit of advance fees collected by Fastlink Financial.

g. Fastlink Financial failed to provide to prospective borrowers and homeowners a complete description indicating services to be rendered, including the allocation and disbursement of the amount collected as advance fees.

h. Fastlink Financial failed to maintain and provide to prospective borrowers and homeowners a Good Faith Estimate containing: the broker's real estate license number; a clear and concise statement on the face of the document stating that the Good Faith Estimate does not constitute a loan commitment; and applicable disclosures, including yield spread premiums rebates received outside of closing.

i. Fastlink Financial did not disclose its real estate license number on the disclosure statements provided to borrowers.

j. Fastlink Financial did not accurately represent the amount of yield spread premium rebates it was paid. On a loan involving client A. Hazin, Fastlink Financial disclosed it would be receiving a yield spread premium rebate of $4,462.50. In fact, Fastlink Financial received a yield spread premium rebate of $5,020.31 from the lender. On a loan involving E. Martinez, Fastlink Financial disclosed it would be receiving a yield spread premium rebate of $845 from the lender. In fact, Fastlink Financial received a yield spread premium rebate of $1,478.75.

k. Respondents failed to notify the Department of the employment of real estate salesperson Shirine Khatib.

l. The fictitious business name "Fastlink Financial" was used to conduct licensed activities, including loan modification services and advance fee brokerage, without first obtaining from the Department a license bearing the fictitious business name.

The Audit of Fastlink Financial's Broker Escrow Activities

9. Between February 17, 2008 and April 14, 2009, the Department conducted an audit of Fastlink Financial's books and records for the audit period November 1, 2006, through June 30, 2008. The examination was limited to whether Fastlink Financial conducted its real estate escrow activities in conformance with the Real Estate Laws and applicable Regulations.

10. In a report dated May 11, 2009, the auditor made the following findings with respect to Fastlink Financial's books and records:

a. Fastlink Financial received funds in connection with its handling of real estate transactions, including trust funds, from or on behalf of actual or prospective parties, including lenders, borrowers, and homeowners. The funds from escrow activities were at times deposited and maintained in the following bank account: Fastlink Financial Inc. Escrow Division Trust Account, account number 001-803239, held at Mellon 1st Business Bank, in Los Angeles, California.

b. Respondents failed to provide written disclosure of its financial interest and ownership of Fastlink Financial's escrow division.

Respondent's Stipulation

11. Respondent stipulated to violation of Business and Professions Code sections 10137 (employing an unlicensed salesperson), 10177, subdivisions (d) (disregard or violation of the real estate law), (g) (negligence in connection with a loan modification program), and (h) (breach of fiduciary duty).

12. At the time the audit resulting in the February 23, 2009 report was conducted, Fastlink Financial had engaged in loan modification services on 229 files but had achieved a modification on only 18 loans. Between the time of the audit and June 12, 2010, an additional 148 loans had been modified. On the remaining 53 files, 28 were in review, 29 had been canceled, seven were in bankruptcy, one in short sale, 15 had been sold, and one was for only a forensic audit.

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Respondent's Testimony and Other Relevant Facts

13. Respondent testified that Fastlink Financial did not collect advance fees. Respondent asserted that "up front fees" were collected for its performance of a forensic audit on the client's loan documents.[2] The "up front" fees collected were generally $2,500 to $3,500. Respondent maintains that a separate contract was entered for loan modifications services and that no fees were charged for loan modification until after the loan was modified. The cost for the loan modification service is approximately $995 per loan.

14. The Department established, however, that the fees Respondents collected and identified as "up front fees" were, in fact, advance fees pursuant to section 10026 and California Code of Regulations, title 10 (Regulation), section 2970.[3] The forensic audit was conducted in all but one of the cases involving the loan modifications. Testimony from a Department investigator, who posed as a potential customer seeking a loan modification, established that Fastlink Financial representatives explained to potential customers that a forensic audit was the first part of a three-part loan modification process. The representative told the investigator that the forensic audit needed to be done before the loan package could be submitted for loan modification.

15. On or about June 5, 2009, the Department issued a Desist and Refrain Order against Respondents for collecting advance fees from customers without submitting the advance fee agreement to the Department for review and prior approval, failing to maintain a trust account, and failing to adequately account for trust funds.

16. The conduct of Respondents, with respect to their loan modification business, fell within the ambit of their real estate broker licenses pursuant to sections 10131, subdivision (d), and 10131.2.[4]

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[2] According to a Fastlink Financial sales script, a forensic audit examines the borrowers note, riders, itemization of amount financed, truth in lending statement, and the final HUD-1 documents to determine whether any "truth in lending" or "RESPA" violations are present. The script states: "Then based on the review of your information that you provide to us, we can move forward with a loan modification. Fastlink Financial, Inc. can assist you in modifying your loan."

[3] An advance fee is defined by section 10026 as "a fee demanded, charged, received, collected or contracted from a principal for . . . soliciting borrowers or lenders for, or to negotiate loans on . . . real estate." In this case, the fees obtained by Fastlink Financial from customers for loan modification activities qualified as advance fees. Therefore, pursuant to Regulation section 2970, Fastlink Financial was required to submit to the Commissioner for review an advance fee agreement and related materials before obtaining advance fees from its customers for the loan modification activities.

[4] Pursuant to section 10131, subdivision (d), a real estate broker's license is required to solicit borrowers or lenders or to negotiate loans or collect payments or perform

17. With regard to Fastlink Financial's loan modification activity, Respondent failed to supervise and control the activities conducted on behalf of Fastlink Financial by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law. As a result, Fastlink Financial collected advance fees without agreements or documents previously having been submitted to the Commissioner for review, failed to maintain a trust account for advance fees collected, and failed to adequately account for trust funds.

Factors in Aggravation, Mitigation and Rehabilitation

18. Respondents have no prior record of discipline.

19. Respondents relied upon the advice of counsel specializing in the real estate field, who was attempting to guide them and assist them in complying with all statutory and regulatory requirements in the new area of loan modification. Respondents believed, in good faith, that they were permitted to charge what they thought were "up front fees" without an advance fee agreement, previously approved by the Department. Respondents acknowledge that they did not directly inquire of anyone at the Department concerning the loan modification activities.

20. In mitigation, upon learning in approximately June 2009 that they may have been wrong, Respondents submitted to the Department a proposed agreement to collect advance fees for Fastlink Financial's loan modification activities. On June 18, 2009, the Department notified Respondents that it did not object to Fastlink Financial's use of the proposed advance fee agreement and accounting format submitted. In aggravation, Respondent was still asserting at the hearing on this matter that it was acceptable to collect "up front" fees.

21. Respondents have taken measures to correct the problems described above. For example, Respondent has cooperated with the Department since becoming aware of this case. The Department's attorney indicated that Respondent has acted with integrity in all of their dealings.

22. No evidence was presented of financial harm being caused to potential clients and customers of Fastlink Financial as a result of Fastlink Financial's conduct.

LEGAL CONCLUSIONS

1. Cause was established for disciplinary action against the real estate broker licenses of Respondents pursuant to Business and Professions Code sections 10085 (failure to comply with requirements for advance fee agreements), 10137 (employing unlicensed

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for borrowers or lenders or note owners in connections with loans secured by real property. The loan modification work engaged in by The Firm falls within this definition.

salesperson), 10145 (failure to maintain a trust fund), 10146 (failure to deposit advance fees in trust account), 10176, subdivisions (e) (commingling of trust funds) and (g) (failure to disclose interest in escrow division), 10177, subdivisions (d) (willful disregard or violation of the Real Estate Law) or (g) (negligence or incompetence in performing an act for which a license is required), and California Code of Regulations, title 10, sections 2726, 2731, 2831.1, 2831.2, 2832, subdivision (a), 2840, 2950, subdivisions (d) and (h), 2951, 2970, and 2972. (Factual Findings 1-17.)

2. This cause for discipline relates to the audits of Fastlink Financial's books and records. Although Respondents 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.

3. Cause was established for disciplinary action against Respondents' real estate broker licenses pursuant to section 10177, subdivision (h), and California Code of Regulations, title 10, section 2725, which provides for discipline against an officer designated by a corporate broker licensee who fails to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required. In this case, section 10159.2 required Respondent to exercise reasonable supervision and control of the activities of Fastlink Financial such as to ensure full compliance with the Real Estate Law. Respondent failed to exercise adequate supervision and control over Fastlink Financial's loan modification activity, and undertook no efforts to ensure Fastlink Financial's compliance with the Real Estate Law pertaining to the submission of proposed advance fee agreements and materials before collecting advance fees for loan modification activity. In light of the duties of supervision and control imposed by sections 10177, subdivision (h), and 10159.2, the "guilty knowledge" defense of section 10179 does not exonerate Respondent from his omissions in supervising and controlling the actions of other employees of Fastlink Financial. (Factual Findings 1-17.)

4. *Discipline*. This case elicits a picture of corporate real estate brokers whose designated officers tried to do the right thing wrongly. As a result, clients were induced to provide advance fees that were not legally permissible under the circumstances. However, Respondents established a number of mitigating facts indicating that the misconduct was unintentional. Respondents have no other record of discipline with the Department and Respondent has proven himself to be a generally honest person, who has acted with integrity in his dealings with the Department. 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. (Factual Findings 1-22.)

ORDER

All licenses and licensing rights of Respondents Fastlink Financial Inc., and Zyad Maluf 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 Respondents may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

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

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 two years have elapsed from the effective date of this Decision.

4. Respondent Zyad Maluf shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent 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 fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent Zyad Maluf 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. Respondents shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by this Decision or by separate written order issued

not adopted

while the restricted license is in effect such information concerning Respondents' 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.

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7. 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 this matter. 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.

8. Respondents shall, prior to the issuance of this restricted license and as a condition of the issuance of the restricted license, submit proof, satisfactory to the Commissioner, that it has established appropriate trust accounts, and provided supporting documentation and an accounting for the disbursement of all trust funds collected in connection with its loan modification activities.

DATED: July 14, 2010

Nancy Beezy Micon,
Administrative Law Judge
Office of Administrative Hearings

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

FILED

DEC 16 2009

DEPARTMENT OF REAL ESTATE
BY:

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of FASTLINK FINANCIAL INC.; and ZYAD MALUF, individually and as designated officer of Fastlink Financial Inc., Respondents.	No. H-35969 LA FIRST AMENDED ACCUSATION

The Accusation filed on May 13, 2009, is amended in its entirety as now set forth:

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of First Amended Accusation ("Accusation") against FASTLINK FINANCIAL INC. and ZYAD MALUF aka Ed Maluf, individually and as designated officer of Fastlink Financial Inc., alleges as follows:

1.

The Complainant, Robin Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of

California, makes this Accusation against FASTLINK FINANCIAL INC. and ZYAD MALUF.

2.

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

3.

LICENSE HISTORY

A. At all times mentioned, FASTLINK FINANCIAL INC. (FFI) was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate broker. On October 26, 2006 FFI was originally licensed as a corporate real estate broker by and through ZYAD MALUF.

B. At all times mentioned, ZYAD MALUF ("MALUF") was licensed or had license rights issued by the Department as a real estate broker. On March 1, 2004, MALUF was originally licensed as a real estate broker.

BROKERAGE

4.

At all times mentioned, in the City of Anaheim, County of Orange, FFI and MALUF acted as real estate brokers conducting licensed activities within the meaning of:

A. Code Section 10131(d). Respondents FFI and MALUF engaged in activities with the public wherein lenders and borrowers were solicited for loans secured directly or

collaterally by liens on real property, wherein such loans were arranged, negotiated, processed and consummated on behalf of others for compensation or in expectation of compensation and for fees often collected in advance as well as at the conclusion of transactions; and additionally

B. Code Section 10131.2. Respondents FFI engaged in the business of a loan modification and loan restructuring service, and an advance fee brokerage. Respondents performed loan modification services with respect to loans which were secured by liens on real property for compensation or in expectation of compensation and for fees often collected in advance and as well at the close of the transactions. Respondents contacted lenders on behalf of distressed homeowners seeking modification of the terms of their home loans, interest and/or principal reduction, foreclosure abatement, loan refinance, and/or short sale advice and services.

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FIRST CAUSE OF ACTION

MORTGAGE LOAN AND LOAN MODIFICATION AUDIT

5.

On February 23, 2009, the Department completed an audit examination of the books and records of FFI pertaining to the loan modification activities described in Paragraph 4, which require a real estate license. The audit examination covered a period of time from November 1, 2006 to December 31, 2008. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 080149 and the exhibits and work papers attached to said audit report.

BANK AND TRUST ACCOUNTS

6.

FFI did not maintain a trust account during the audit.

VIOLATIONS OF THE REAL ESTATE LAW

MORTGAGE LOAN AND LOAN MODIFICATION AUDIT

7.

In the course of activities described in Paragraph 4 above, and during the examination period described in Paragraph 5, Respondents FFI and MALUF, acted in violation of the Code and the Regulations in that they:

(a) Mixed and commingled trust funds and personal funds by depositing advance fees for loan modification services to be rendered for borrowers and homeowners, including but not limited

to A. Villa, C. Reyes, M. Romero, V. Collazo, M. Ochoa, A. Molano, L. Wilson and E. Munoz, received from said borrowers and homeowners and deposited therein into FFI's general business operating account, instead of depositing said trust funds into a trust account in the name of the broker, in violation of Code Sections 10145 and 10176(e) and Regulation 2832(a).

(b) Failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all advance fees collected from the aforesaid borrowers and homeowners for loan modification services, in violation of Code Section 10145 and Regulation 2831.1.

(c) Failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all trust funds received and disbursed by FFI's general business operating account for loan modification services, as required by Code Section 10145 and Regulation 2831.2.

(d) Collected advance fees within the meaning of Code Section 10026 from homeowners seeking loan modification services wherein FFI failed to provide the aforesaid borrowers and homeowners with a pre-approved advance fee agreement by the Department. The failure of FFI to submit an advance fee agreement to the Department five days prior to its use, is in violation of Code Section 10085 and Regulation 2970.

(e) Failed to establish and maintain a trust account at a bank or other recognized financial institution in the name of the broker for deposit of advance fees collected by FFI, as required by and in violation of Code Section 10146.

(f) With reference to the lack of an advance fee agreement, FFI failed to provide a complete description of services to be rendered provided to each prospective borrower and homeowner, in 10 point type font; and, an including an allocation and disbursement of the amount collected as the advance fee, in violation of Code Section 10085 and Regulation 2972.

(g) Failed to provide or retain a true and correct copy of a Good Faith Estimate that satisfies the requirements of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A 2601 et seq.), that (1) sets forth the broker's real estate license number; and (2) a clear and conspicuous statement on the face of the document stating that the Good Faith Estimate does not constitute a loan commitment; and, further sets forth all applicable disclosures including but not limited to (3) yield spread premiums rebates by the lenders outside of closing for borrowers V. Sanchez, H. Sanchez, P. Gutierrez, J. Orantez and F. Tapia, in violation of Code Sections 10240, 10240(c), 10241 and Regulations 2840 and 2840.1.

(h) Failed to display FFI's Departmental license number, in violation of Code Section 10236.4.

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(i) Misrepresented the true amount of yield spread premiums paid to FFI. The yield spread premium rebates that were paid to FFI the lenders along with their FFI's commissions and fees were disclosed on the Mortgage Loan Disclosure Statements but the amounts which were disclosed were less than the amount actually received from the lenders. The yield spread premium received from the lender on A. Hazin's loan which was $5,020.31 yet the amount disclosed was $4,462.50. The yield spread premium on E. Martinez' loan was $1,478.75, yet the amount disclosed was only $845.00, in violation of Code Sections 10176(a) and/or 10177(g).

(j) Failed to notify the Department of the employment of salesperson Shirine Khatib, in violation of Code Section 10161.8 and Regulation 2752.

(k) Failed to maintain a signed broker salesperson agreement with salesperson Shirine Khatib, in violation of Regulation 2726; and

(l) Used the fictitious name of "Fastlink Financial", to conduct licensed activities including a loan modification and advanced fee brokerage, without first obtaining from the Department a license bearing said fictitious business name, in violation of Code Section 10159.5 and Regulation 2731.

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DISCIPLINE STATUTES AND REGULATIONS

MORTGAGE LOAN AND LOAN MODIFICATION AUDIT

8.

The conduct of Respondents FFI and MALUF, described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
7(a)	Code Sections 10145 and 10176(e) and Regulation 2832(a)
7(b)	Code Sections 10145 and Regulation 2831.1
7(c)	Code Section 10145 and Regulation 2831.2
7(d)	Code Section 10085 and Regulation 2970
7(e)	Code Section 10146
7(f)	Code Sections 10085 and Regulation 2972

7(g)	Code Sections 10240, 10240(c), 10241 and Regulations 2840 and 2840.1
7(h)	Code Section 10236.4
7(i)	Code Section 10176(a)
7(j)	Code Section 10161.8 and Regulation 2752
7(k)	Regulation 2726
7(l)	Code Section 10159.5 and Regulation 2731

The foregoing violations constitutes cause for the suspension or revocation of the real estate license and license rights of FFI and MALUF, under the provisions of Code Sections 10176(a) for substantial misrepresentation, 10176(e) for commingling, 10177(d) for willful disregard of, or for violation of the Real Estate Law and/or 10177(g) for negligence.

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SECOND CAUSE OF ACTION

BROKER ESCROW AUDIT

9.

On May 11, 2009, the Department completed an audit examination of the books and records of FFI pertaining to the broker escrow activities described in Paragraph 4, which require a real estate license. The audit examination covered a period of time from November 1, 2006 to June 30, 2008. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 080223 and the exhibits and work papers attached to said audit report.

ESCROW TRUST ACCOUNT

10.

At all times mentioned, in connection with the activities described in Paragraph 9, above, FFI accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties, including lenders, borrowers and homeowners, to real estate transactions handled by FFI and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by FFI in the bank account as follows:

"Fastlink Financial Inc. Escrow Division Trust Account
Account No. 001-803239"
Mellon 1st Business Bank
Los Angeles, California (escrow trust account)

VIOLATIONS OF THE REAL ESTATE LAW

BROKER ESCROW AUDIT

11.

In the course of activities described in Paragraph 4 and 10, above, and during the examination period described in Paragraph 9, Respondents FFI and MALUF, acted in violation of the Code and the Regulations in which Respondents:

(a) Failed to disclose in writing to all parties FFI's financial interest and ownership of FFI's escrow division, in violation of Code Sections 10145 and 10176(g) and Regulations 2950(d), 2950(h) and 2951.

DISCIPLINE STATUTES AND REGULATIONS

BROKER ESCROW AUDIT

12.

The conduct of Respondents FFI and MALUF, described in Paragraph 11, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
11(a)	Code Sections 10145 and 10176(g) and Regulations 2950(d), 2950(h) and 2951

The foregoing violation constitutes cause for the suspension or revocation of the real estate license and license rights of FFI and MALUF, under the provisions of Code Sections 10177(d) for

willful disregard of, or for violation of the Real Estate Law and/or 10177(g) for negligence.

THIRD CAUSE OF ACTION

FORENSIC AUDIT/LOAN MODIFICATION SERVICES

Specific Allegations

Sheila Rochelle

13.

On or about September 19, 2008, homeowner Sheila Rochelle (Rochelle) entered into a loan modification agreement with FFI. Rochelle was seeking a modification of her homeowner loan for her residence located at, in order to reduce her monthly mortgage payment and otherwise seek debt restructuring. Rochelle was advised by "Moe" Khatib and MALUF, to pay $3,500 for a forensic audit of her home loan prior to and as a condition precedent to performing a loan modification. On September 11, 2008, prior to the signing the loan modification agreement on September 19, 2008, induced by "Moe" Khatib and MALUF's representations, Rochelle paid an advanced fee of $3,500 for the forensic audit and/or loan modification.

Pedro Michel

14.

On or about November 11, 2008, homeowner Pedro Michel (Michel) entered into a contract with FFI. Michel was seeking a modification of his homeowner loan for his residence located at 20523 Alburtis Ave., Lakewood, California, in order to reduce his

monthly mortgage payment and otherwise seek debt restructuring. Michel was advised by agents of FFI, Jamie Franco and Rick Loera. Michel notified them that he had received a loan modification for his residence in April 2008. Jamie Franco and Rick Loera, acting on behalf of FFI, advised Michel that FFI was able to redo the loan modification Michel had received in April 2008, less than twelve (12) months prior, a time period within which another loan modification is not available. Induced by their representations, jointly and severally, Michel paid $3,500 for an anticipated loan modification that after several months never materialized.

Tracy McDuffie

15.

On or about August 25, 2008, homeowner Tracy McDuffie (McDuffie) entered into a contract with FFI. McDuffie sought modification of the homeowner loan for her home located at 1558 Lawren Lane, Colton, California, in order to reduce her monthly mortgage payment and otherwise seek debt restructuring. McDuffie was advised by an unlicensed agent of FFI, Nader Khatib aka "Mike" acting on behalf of FFI, that FFI was able to favorably modify the terms of her home loan. Induced by Nader Khatib's representations, McDuffie made two payments to FFI at Nader Katib's instigation in the amount of $2,000 on August 25, 2008 and $1,500 on or about September 19, 2008, for an anticipated loan modification that after several months never materialized. Ultimately, McDuffie contacted FFI seeking return of $3,500 and

was told that if she could not made her mortgage payment she should move.

Catalina Reyes

15.

On or about August 25, 2008, homeowner Catalina Reyes (Reyes) entered into a contract with FFI. Reyes sought modification of the homeowner loan for her home located at 140 S. Chantilly St., Anaheim, California, in order to reduce her monthly mortgage payment and otherwise seek debt restructuring. Reyes was advised by an unlicensed agent of FFI, "Moe" Khatib aka Ahmad Khatib acting on behalf of FFI, that FFI was able to favorably modify the terms of her home loan. Induced by Nader Khatib's representations, McDuffie made two payments to FFI at Nader Katib's instigation in the amount of $2,000 on August 25, 2008 and $1,500 on or about September 19, 2008, for an anticipated loan modification that after several months never materialized. Ultimately, McDuffie contacted FFI seeking return of $3,500 and was told that if she could not made her mortgage payment she should move.

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ADDITIONAL VIOLATIONS OF THE REAL ESTATE LAW

FORENSIC AUDIT/LOAN MODIFICATION SERVICES

19.

A. Code Section 10176(a) for substantial misrepresentation including, but not limited to, homeowners Sheila Rochelle and Pedro Michel, as set forth in Paragraphs 13 through 15, to induce the aforesaid homeowners to enter into FFI's loan modification program.

B. Code Section 10176(b) for making false promises of a character likely to influence, persuade or induce the aforesaid homeowners to enter into FFI's loan modification program.

C. Code Section 10176(i) for conversion of trust funds in the form of advance fees in the amount of ($3,500) each from Catalina Reyes, Sheila Rochelle, Pedro Michel, and Tracy McDuffie ($3,500), in connection with FFI's loan modification services.

D. Code Section 10177(d) for willful disregard of the Real Estate Law, or in violation of the Real Estate Law.

E. Code Section 10177(g) for negligence in connection with FFI's loan modification program.

F. Code Section 10137 for employing unlicensed persons to perform activities requiring a real estate license, including but not limited to Jaime Franck, Rick Loera, Nader Khatib aka "Mike", Hayat Khatib and or Ahmad Khatib aka "Moe" Khatib, in violation of Code Section 10137.

G. Code Section 10176(c) for a continued and flagrant course of misrepresentations and/or false promises through real estate agents or salespersons including MALUF.

H. Code Sections 10176(a), 10176(i) and/or 10177(g) for intentional or negligent misrepresentation.

I. Code Sections 10176(i) and/or 10177(g) for breach of fiduciary duty.

NEGLIGENCE

17.

The overall conduct of Respondents FFI and MALUF constitutes negligence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

SUPERVISION AND COMPLIANCE

18.

The overall conduct of Respondent MALUF constitutes a failure on Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of FFI as required by Code Section 10159.2 and Regulation 2725, and to keep FFI in compliance with the Real Estate Law, with specific regard to trust fund handling, advance fee handling with respect to conducting loan modification services for homeowners, and is cause for discipline of the real estate license and license

rights of MALUF pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

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 the license and license rights of Respondents FASTLINK FINANCIAL INC. and ZYAD MALUF, under the Real Estate Law (Part 1 of vision 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law including restitution pursuant to the Administrative Procedure Act.

Dated at Los Angeles, California
this 15 day of December 2009.

Deputy Real Estate Commissioner

cc: Fastlink Financial Inc.
c/o Zyad Maluf D.O.
Robin Trujillo
Sacto
Audits - Chona Picayo

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

FILED

MAY 13 2009

DEPARTMENT OF REAL ESTATE

BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of FASTLINK FINANCIAL INC.; and ZYAD MALUF, individually and as designated officer of Fastlink Financial Inc., Respondents.	No. H-35969 LA A C C U S A T I O N

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against FASTLINK FINANCIAL INC. and ZYAD MALUF, individually and as designated officer of Fastlink Financial Inc., alleges as follows:

1.

The Complainant, Robin Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against FASTLINK FINANCIAL INC. and ZYAD MALUF.

2.

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

3.

LICENSE HISTORY

A. At all times mentioned, FASTLINK FINANCIAL INC. (FFI) was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate broker. On October 26, 2006 FFI was originally licensed as a corporate real estate broker by and through ZYAD MALUF.

B. At all times mentioned, ZYAD MALUF ("MALUF") was licensed or had license rights issued by the Department as a real estate broker. On March 1, 2004, MALUF was originally licensed as a real estate broker.

BROKERAGE

4.

At all times mentioned, in the City of Anaheim, County of Orange, FFI and MALUF acted as real estate brokers conducting licensed activities within the meaning of:

A. Code Section 10131(d). Respondents FFI and MALUF engaged in activities with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed and consummated on behalf of

others for compensation or in expectation of compensation and for fees often collected in advance as well as at the conclusion of transactions; and additionally

B. Code Section 10131.2. Respondents FFI engaged in the business of a loan modification and loan restructuring service, and an advance fee brokerage. Respondents performed loan modification services with respect to loans which were secured by liens on real property for compensation or in expectation of compensation and for fees often collected in advance and as well at the close of the transactions. Respondents contacted lenders on behalf of distressed homeowners seeking modification of the terms of their home loans, interest and/or principal reduction, foreclosure abatement, loan refinance, and/or short sale advice and services.

FIRST CAUSE OF ACTION

AUDIT EXAMINATION

5.

On February 23, 2009, the Department completed an audit examination of the books and records of FFI pertaining to the loan modification activities described in Paragraph 4, which require a real estate license. The audit examination covered a period of time from November 1, 2006 to December 31, 2008. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 080149 and the exhibits and

work papers attached to said audit report.

BANK AND TRUST ACCOUNTS

6.

FFI did not maintain a trust account during the audit.

VIOLATIONS OF THE REAL ESTATE LAW

7.

In the course of activities described in Paragraph 4 above, and during the examination period described in Paragraph 5, Respondents FFI and MALUF, acted in violation of the Code and the Regulations in that they:

(a) Mixed and commingled trust funds and personal funds by depositing advance fees for loan modification services to be rendered for borrowers and homeowners, including but not limited to A. Villa, C. Reyes, M. Romero, V. Collazo, M. Ochoa, A. Molano, L. Wilson and E. Munoz, received from said borrowers and homeowners and deposited therein into FFI's general business operating account, instead of depositing said trust funds into a trust account in the name of the broker, in violation of Code Sections 10145 and 10176(e) and Regulation 2832(a).

(b) Failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all advance fees collected from the aforesaid borrowers and homeowners for loan modification services, in violation of Code Section 10145 and Regulation 2831.1.

(c) Failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all trust funds received and disbursed by FFI's general business operating account for loan modification services, as required by Code Section 10145 and Regulation 2831.2.

(d) Collected advance fees within the meaning of Code Section 10026 from homeowners seeking loan modification services wherein FFI failed to provide the aforesaid borrowers and homeowners with a pre-approved advance fee agreement by the Department. The failure of FFI to submit an advance fee agreement to the Department five days prior to its use, is in violation of Code Section 10085 and Regulation 2970.

(e) Failed to establish and maintain a trust account at a bank or other recognized financial institution in the name of the broker for deposit of advance fees collected by FFI, as required by and in violation of Code Section 10146.

(f) With reference to the lack of an advance fee agreement, FFI failed to provide a complete description of services to be rendered provided to each prospective borrower and homeowner, in 10 point type font; and, an including an allocation and disbursement of the amount collected as the advance fee, in violation of Code Section 10085 and Regulation 2972.

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DISCIPLINE STATUTES AND REGULATIONS

8.

The conduct of Respondents FFI and MALUF, described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
7(a)	Code Sections 10145 and 10176(e) and Regulation 2832(a)
7(b)	Code Sections 10145 and Regulation 2831.1
7(c)	Code Section 10145 and Regulation 2831.2
7(d)	Code Section 10085 and Regulation 2970
7(e)	Code Section 10146
7(f)	Code Sections 10085 and Regulation 2972

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The foregoing violations constitutes cause for the suspension or revocation of the real estate license and license rights of FFI and MALUF, under the provisions of Code Sections 10176(e) for commingling, 10177(d) for willful disregard or for violation of the Real Estate Law and/or 10177(g) for negligence.

NEGLIGENCE

9.

The overall conduct of Respondents FFI and MALUF constitutes negligence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

SUPERVISION AND COMPLIANCE

10.

The overall conduct of Respondent MALUF constitutes a failure on Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of FFI as required by Code Section 10159.2 and Regulation 2725, and to keep FFI in compliance with the Real Estate Law, with specific regard to trust fund handling, advance fee handling with respect to conducting loan modification services for homeowners, and is cause for the suspension or revocation of the real estate license and license rights of MALUF pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

IN AGGRAVATION

LOAN MODIFICATION

Pedro Michel

11.

On or about November 11, 2008, homeowner Pedro Michel (Michel) entered into a contract with FFI. Michel was seeking a modification of his homeowner loan for his residence located at 20523 Alburtis Avè., Lakewood, California, in order to reduce his monthly mortgage payment and otherwise seek debt restructuring. Michel was advised by agents of FFI, Jamie Franco and Rick Loera. Michel notified them that he had received a loan modification for his residence in April 2008. Jamie Franco and Rick Loera, acting on behalf of FFI, advised Michel that FFI was able to redo the loan modification Michel had received in April 2008, less than twelve (12) months prior, a time period within which another loan modification is not available. Induced by their representations, jointly and severally, Michel paid $3,500 for an anticipated loan modification that after several months never materialized.

IN AGGRAVATION

12.

Respondents FFI and MALUF knew or should have known of the conduct above set forth in Paragraph 11 through their unlicensed agents Jamie Franco and Rick Loera for FFI's loan modification service transaction for Pedro Michel.

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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 the license and license rights of Respondents FASTLINK FINANCIAL INC. and ZYAD MALUF, under the Real Estate Law (Part 1 of vision 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California

this 12 day of May 2009.

Robin Trujillo

Deputy Real Estate Commissioner

cc: Fastlink Financial Inc.
c/o Zyad Maluf D.O.
Robin Trujillo
Sacto
Audits - Chona Picayo