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MAR 17 2010
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Order to Desist and Refrain Against NATIONWIDE HOME ASSISTANCE, dba Loan Center Funding Inc.; MICHAEL ALLAN HARRIS; LISA KOMINEK; JAMES RODOGNA; and COREY TOBIN, Respondent(s).	)	No. H-36241 LA L-2009101388

DECISION

The Proposed Decision dated March 1, 2010, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on 3/15/2010.

IT IS SO ORDERED 3/15/2010.

JEFF DAVI
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order Against: NATIONWIDE HOME ASSISTANCE, d/b/a Loan Center Funding, Inc.; MICHAEL ALLAN HARRIS; LISA KOMINEK; JAMES RADOGNA; and COREY TOBIN, Respondents.	Case No. H-36241 LA OAH No. 2009101388

PROPOSED DECISION

This matter was heard on November 18, 2009, by Mark E. Harman, Administrative Law Judge (ALJ), Office of Administrative Hearings, in Los Angeles.

Complainant was represented by Shari L. Sveningson, Real Estate Counsel, Department of Real Estate (Department).

Michael Allan Harris represented himself. No other respondents appeared.

Evidence was presented and the matter submitted for decision on November 18, 2009.

FACTUAL FINDINGS

1. On September 15, 2009, the Real Estate Commissioner of the State of California (Commissioner), acting in his official capacity, issued a Desist and Refrain Order (Order) under Business and Professions Code[1] section 10086 directing eight respondents to desist and refrain from certain alleged activities. Michael Allan Harris requested a hearing on the Commissioner's Order on October 19, 2009, and the matter was set for hearing. On November 2, 2009, the Commissioner amended the Order, reducing the number of respondents to five. The amended Order, as it applies to Michael Allan Harris (Respondent), is the subject of this administrative hearing and proposed decision.

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

2. Respondent is presently licensed as a real estate broker under the Real Estate Law (§ 10000 et seq.). The Commissioner issued Respondent a real estate salesperson's license in May 1988 and a broker's license in July 2004. His broker's license will expire in July 2012, unless renewed.

3. Nationwide Home Assistance (NHA), doing business as Loan Center Funding, is an unknown type of business entity. NHA has never held any licenses issued by the Commissioner. The record failed to establish that NHA was owned or controlled by any particular individuals. At various times, Lisa Kominek (Kominek), James Radogna (Radogna), and Corey Tobin (Tobin) were officers or agents of NHA; neither Kominek, nor Radogna, nor Tobin held any licenses issued by the Commissioner to engage in real estate activities under the Real Estate Law.

4. In 2008 and 2009, NHA, through its officers and agents, engaged in the business of soliciting consumers who were in financial distress due to the high costs of their residential loans and offering, for a fee, to negotiate with the consumers' lenders for loan modifications. NHA's loan modification services were activities for which a real estate broker's license was required under section 10131, subdivision (d). NHA charged consumers an "advance fee" in connection with its loan modification services, as that term is defined in section 10026.[2] NHA, its officers, and its agents violated the Real Estate Law.

5. Respondent's main contention is that he was not responsible for NHA's activities. He asserts that, initially, Hugh Adams and, later, Radogna were the responsible officers for NHA. He asserts that NHA paid a fee to advertise its services on the Roundtable as the show's "sponsors." He maintains he did not participate in their real estate activities. Based on the totality of circumstances, Respondent's assertions lacked credibility. Respondent promoted NHA despite knowing that it was not licensed by the Commissioner. On the other hand, Complainant failed to establish that Respondent controlled NHA's activities or employed individuals to solicit or obtain clients for NHA's services; however, it was established that Respondent facilitated NHA's activities in at least one transaction, as further described below.

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[2] Under 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 connections with loans secured by real property. The loan modification work engaged in by NHA falls within this definition. 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 NHA qualified as advance fees. Therefore, pursuant to California Code of Regulations, title 10, section 2970, NHA was required to submit to the Commissioner for review an advance fee agreement and related materials before obtaining advance fees from it customers for the loan modification activities.

Background

6. In 2008, Respondent co-hosted a radio show, in which he discussed, among other things, aspects of home ownership and real property finance. Initially, his show appeared on radio station KLSX in Los Angeles. The name of this show was "The Home Ownership Roundtable" (Roundtable). Essentially, Respondent or business entities he owned or controlled, directly or indirectly, paid the radio station for the airtime to broadcast the Roundtable. This show was principally a vehicle to advertise Respondent's real estate related services. At some point, the Roundtable moved to radio station KFWB and expanded to two hours on Saturday afternoon. In January 2009, Respondent became sole host of the show, and changed the name to "The Real Estate Life."

7. During the show, Respondent and other individuals discussed how homeowners in financial distress could receive assistance with their residential loans. Interested listeners were directed to call a single toll-free telephone number, dial an extension number corresponding to a particular service, such as refinancing or loan modification services, and speak with a "loan consultant" to get the process started. The individuals answering these calls provided information and received contact information. In some cases, callers were referred to Respondent or a business entity that Respondent controlled. For example, a caller who had the ability to refinance his or her loan would be directed to Benchmark Financial, Inc. (Benchmark), a corporate broker licensee. Respondent is a co-owner and the designated officer responsible for the supervision and control of Benchmark's real estate activities.

8. The Roundtable also published information promoting loan modification services on its internet web site. In 2008, the Roundtable web site contained written materials entitled "Save Your Loan Save Your Home," copyrighted by California Home Ownership Solutions, LLC (CHOS). Roundtable's radio listeners or web site viewers, however, would be unable to distinguish between Respondent, his affiliates, and his so-called "sponsors" based on the content of these communications. The web site materials stated: "Roundtable and their team of specialized loan modification attorneys are helping homeowners fix their loans and save their homes!!! [¶] Do not go with any company for a loan modification unless they have a money back guarantee! Our proven system has a 97 percent success rate and a money back guarantee." These materials also set forth a list of items the listener would need to "get started," and requested the listener to submit personal information through the web site, "and a representative of [CHOS] or [NHA] will contact you within 24 hours." On this record, Respondent failed to establish that he implemented policies and procedures to ensure that his listeners or web site viewers were made aware that Respondent had no relationship with some of the services being offered, or that some of these services were being offered by unlicensed entities, or that Respondent profited from his promotional activities on behalf of both licensed and non-licensed entities. (See Cal. Code Regs., tit.10, § 2770.)

9. Respondent does not dispute his participation in or control of the Roundtable show or its web site, but maintains that the Roundtable merely provided marketing opportunities for several unrelated entities such as NHA. He described NHA as a "sponsor" who paid Respondent or his affiliates a fee to advertise on the show, and that this fee was based solely on the number of telephone calls NHA received from listeners seeking loan modification services. He insisted he did not receive a percentage or commission resulting from fees paid by consumers who entered into NHA's "residential loan modification consulting agreements." Although it can not be found that Respondent was directly involved in the operation of NHA, his credibility was weak regarding the extent to which he profited from NHA's activities. Further, he became directly involved in facilitating NHA's activities in connection with a transaction involving Nora Valadez (Valadez).

The Valadez Transaction

10. In early December 2008, Valadez was listening to the Roundtable show and a discussion about how homeowners who were not in default could receive help through loan modification. The speaker stated that NHA had a 97 percent success rate and a money back guarantee. Valadez was suffering financial problems due to the high costs of her two mortgages. She located the web site for Roundtable and the materials entitled "Save Your Loan Save Your Home." Valadez called the toll-free telephone number, and was prompted to a loan modification consultant. She spoke to Tobin, who offered to email her NHA's "consultation package" for her review. Valadez waited, but never received a package as Tobin had promised. She then called again to the same telephone number and left a message inquiring about the situation.

11. A short time later, Respondent called Valadez and said he would "make sure" Tobin was in touch with her the following day. He then sent an email saying, "I will be sure that this happens no later than Monday." He sent another email to which he had attached a package of information for her to begin the loan modification process. He wrote, "Here is what I have as to a package to get started. As we discussed today, I wanted to send to you to allow you to get started as you expressed." Respondent maintains his actions were simply his attempt to help out his "sponsor."

12. On Monday, December 8, 2008, Valadez received an email from Tobin apologizing for his error for earlier misdirecting the email package. Tobin's email states that, based on their previous conversation, he had calculated that NHA could save her a substantial amount of money through its services. Valadez and Tobin met that day at an office in Tustin, California. There was no one else in the office. Tobin made a series of claims about the success of NHA. Tobin represented that NHA's service would take on average 30 days to complete. Valadez signed the "consultation agreement" and paid Tobin $1,500, which represented the first installment of the $2,999 fee that NHA charged for its services. She provided Tobin with the information needed to set the loan modification process "in motion."

13. Valadez received no communications from NHA for two weeks, so she called Tobin. Valadez spoke instead to Yvonne, the NHA "negotiator" assigned to her file, who said that documents, such as pay stubs and bank statements, were missing from the file and were needed to proceed with negotiations. Valadez faxed Yvonne these documents. On the same date, NHA charged Valadez's credit card an additional $1,499, bringing the total advance fee to $2,999.

14. Three weeks later, Valadez called Yvonne, who said "they were very busy working on her package." Two days, later, Valadez received a call from Judy Mills (Mills) from NHA stating that her package had been reassigned to Mills because Yvonne was too busy. Mills asked for additional information about a credit card statement, which Valadez provided. On January 31, 2009, Valadez emailed Respondent, Tobin, and Mills, stating that NHA had not provided her with the status of her loan modification and requesting NHA refund her $1,500. She did not know at this point in time that NHA had charged an additional $1,499 to her credit card. Respondent replied by email sating that he would "be looking into this matter as I can reach all parties to get all the facts and information." Valadez later received a call from Mills stating that Mills had been working on the modification with the bank. On February 19, 2009, Mills' assistant, Kominek, asked Valadez for more current pay stubs, which Valadez provided.

15. On March 10, 2009, Kominek told Valadez that her bank had not assigned anyone to negotiate the terms of her mortgages. Valadez stated she wanted her money back. Mills told Valadez to put it in writing. Valadez did so, and later received a letter from Radogna, stating that Valadez had forfeited her advanced fees because she would not allow NHA to proceed with the loan modification process.

16. On March 15, 2009, Valadez emailed Respondent to state that she was filing a complaint with the Department due to NHA's failure to perform services, communicate with her regarding the status of her file, or refund her fees. Respondent called Valadez to discuss the matter. He also replied by email, stating that he was going to NHA's offices that week to meet with the people there, and implying that he would help Valadez. At all times, Valadez believed that Respondent was a responsible person connected with NHA's activities. Much later, Valadez received a refund of her money. The evidence failed to establish that Respondent received any compensation in connection with the Valadez transaction. Respondent, however, continued for months thereafter to promote NHA through his radio show and web site despite knowing that neither NHA nor any of its agents held real estate licenses.

The Order

17. The Commissioner's Order states, in part, that the Commissioner has determined that Respondent violated provisions of the Real Estate Law and its regulations while engaging in the business of, acting in the capacity of, or advertising a loan modification service and advance fee brokerage using the name NHA; and

"soliciting, offering to negotiate or perform loan modifications services with respect to loans which were secured by liens on real property for compensation or in expectation of compensation and for fees collected in advance of the transaction." The Order also states that the Commissioner has determined Respondent employed unlicensed individuals to solicit and obtain clients for NHA's loan modification services. The Order further concludes that Respondent violated section 10085 and California Code of Regulations, title 10, section 2970, by not having "approved advance fee agreements on file with the Department." The Order commands Respondent to desist and refrain from employing or compensating unlicensed individuals, to desist and refrain from engaging in advance fee brokerage activities with respect to the performance of loan modification services (as prohibited by section 10085.6), and to desist and refrain from advance fee brokerage activities for any of the other real estate related services unless he has established his compliance with the Real Estate Law and its regulatory requirements.

LEGAL CONCLUSIONS

1. The Commissioner is authorized to issue an order directing a person who has engaged in or is engaging in an activity determined to violate the Real Estate Law or the regulations, to desist and refrain from such activity. The purpose of this statutory enforcement scheme is remedial, for example, to allow the Commissioner to ensure that persons assuming to engage in real estate activities for which a license is required abide by the law and maintain high standards in their dealings with consumers. The Commissioner's authority is liberally construed so that he may meet the myriad situations which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy. A nexus exists between Respondent's conduct and NHA's activities, which renders them both responsible for violations of the Real Estate Law. (See § 10185, which states in part, "Any person, including officers, directors, agents or employees of corporations, who willfully violates or knowingly participates in the violation of this division shall be guilty of a misdemeanor." (Emphasis added.).)

2. Cause exists to order Respondent to desist and refrain from engaging in unlicensed broker activity. The evolving crises in the consumer finance and real estate markets have expanded the opportunities for exploitation of California homeowners who currently are at risk of defaulting or facing foreclosure. The regulatory scheme for the protection of the public rests upon the sound exercise of those skills, services, knowledge, and honesty possessed by licensed real estate brokers. The public relies on licensed real estate brokers to uphold the letter and intent of the law, and not to try to circumvent these laws for their own benefit.

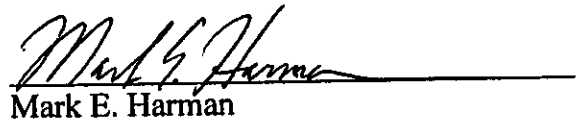
3. Respondent violated section 10131, subdivision (d) by participating in the solicitation and negotiation of the terms of Valadez's agreement with NHA. Although he was not the sponsoring broker for NHA activities, he engaged in a continuing course of conduct which was unlawful. He promoted NHA's unlicensed

activities on his radio show and facilitated a particular NHA transaction. This was particularly egregious because, at all relevant times, he knew that NHA was not a licensed entity. Respondent made little or no effort to create a clear barrier between his broker services and the unlawful services of so-called sponsors such as NHA. Respondent was more than a middleman when he undertook to help Valadez communicate with NHA. Respondent profited from the confusion that he created.

ORDER

The Desist and Refrain Order issued by the Commissioner to Respondent Michael Allan Harris, is hereby upheld in part. Respondent shall immediately desist and refrain from performing any acts within the State of California for which a real estate broker license is required, unless he has demonstrated and provided evidence satisfactory to the commissioner that he is properly licensed by the Department as a real estate broker, and that he is in compliance with the Real Estate Law and its regulatory requirements.

March 1, 2010



Mark E. Harman
Administrative Law Judge
Office of Administrative Hearings

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Telephone: (213) 576-6982

FILED
NOV - 3 2009
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

To: NATIONWIDE HOME ASSISTANCE dba Loan Center Funding, Inc.; MICHAEL ALLAN HARRIS, LISA KOMINEK; JAMES RADOGNA; COREY TOBIN. Respondents.	No. H-36241 LA AMENDED ORDER TO DESIST AND REFRAIN (B & P Code Section 10086)

This Amended Desist and Refrain Order amends the Desist and Refrain Order filed on September 15, 2009. The Commissioner ("Commissioner") of the California Department of Real Estate ("Department") caused an investigation to be made of the activities of NATIONWIDE HOME ASSISTANCE dba Loan Center Funding, Inc. ("NATIONWIDE") MICHAEL ALLAN HARRIS ("HARRIS"), LISA KOMINEK ("KOMINEK"), JAMES RADOGNA ("RADOGNA"), and COREY TOBIN ("TOBIN"). Based on that investigation, the Commissioner has determined that NATIONWIDE, HARRIS, KOMINEK, RADOGNA and TOBIN have engaged in or are engaging in acts or are attempting to engage in the business of, acting in the capacity of, and/or advertising or assuming to act as real estate brokers in the State of California within the meaning of Business and Professions Code Section 10131(d) (soliciting, negotiating and performing services for borrowers in connection with loans secured by real

property) and 10131.2 (advance fee handling).

In addition, based on that investigation, the Commissioner has determined that NATIONWIDE, HARRIS, KOMINEK, RADOGNA and TOBIN have engaged in or are engaging in acts or are attempting to engage in practices constituting violations of the California Business and Professions Code ("Code") and/or Title 10, California Code of Regulations ("Regulations"). Based on the findings of that investigation, set forth below, the Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order under the authority of Section 10086 of the Code.

FINDINGS OF FACT

1. NATIONWIDE is not now, and has never been, licensed by the Department in any capacity.

2. HARRIS is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate broker.

3. KOMINEK was licensed by the Department as a real estate salesperson 8/11/2000. Effective August 10, 1994, KOMINEK'S real estate salesperson license has expired.

4. RADOGNA is not now, and has never been, licensed by the Department in any capacity.

5. TOBIN is not now, and has never been, licensed by the Department in any capacity.

6. At the time set forth below each and every respondent solicited borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: engage in the business of, acted in the capacity of, or advertised a loan modification service and advance fee brokerage using the name Nationwide Home Assistance soliciting, offering to negotiate or perform 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 collected in advance of the transaction.

7. On or about December 8, 2008, NATIONWIDE provided an advance fee contract to Nora Valadez ("Valadez") for loan modification services on Valadez' existing mortgage on her home located at 4700 Via Corzo, Yorba Linda, CA 92886.

8. Between on or about December 8, 2008 and on or about March 18, 2009, HARRIS employed KOMINEK, RADOGNA and TOBIN to solicit and obtain clients for NATIONWIDE's loan modification services.

9. On or about December 8, 2008, KOMINEK, RADOGNA and TOBIN, as representatives of NATIONWIDE, demanded and received an advance fee of $1,500 from Valadez for the activities described in paragraph 7, above.

CONCLUSIONS OF LAW

10. Based on the information contained in Paragraphs 1 through 9, above, HARRIS violated Section 10085 of the Code and Regulation 2970, by not having an approved advance fee agreement on file with the Department.

11. Based on the information contained in Paragraphs 1 through 9, above, HARRIS violated Code Section 10137 of the Code by employing and/or compensating individuals who were not licensed as a real estate salesperson or as a broker to perform activities requiring a real estate license.

12. Based on the information contained in Paragraphs 1 through 9, above, NATIONWIDE, KOMINEK, RADOGNA and TOBIN violated Section 10130 of the Code by engaging in the activities without first obtaining a broker license from the Department.

DESIST AND REFRAIN ORDER

Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW stated herein, IT IS ORDERED THAT:

A. NATIONWIDE HOME ASSISTANCE, LISA KOMINEK, JAMES RADOGNA and COREY TOBIN, immediately desist and refrain from performing any acts within the State of California for which a real estate broker license is required, unless or until you are so licensed;

B. MICHAEL ALLAN HARRIS, immediately desist and refrain from employing and/or compensating individuals who are not licensed as a real estate salesperson or as a broker to perform activities requiring a real estate license;

IT IS FURTHER ORDERED THAT MICHAEL ALLAN HARRIS:

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

2. Immediately desist and refrain from charging, demanding, claiming, collecting and/or receiving advance fees, as that term is defined in Section 10026 of the Code, for any of the other real estate related services you offer to others, unless and until you demonstrate and provide evidence satisfactory to the Commissioner that you are properly licensed by the Department as a real estate broker, and that:

(1) you have an advance fee agreement which has been submitted to the Department and which is in compliance with Section 10085 of the Code and Section 2970 of the Regulations;

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

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(3) you have provided an accounting to trust fund owner-beneficiaries pursuant to Section 2972 of the Regulations.

DATED: 11/2, 2009.

JEFF DAVI
Real Estate Commissioner

BY: Barbara J. Bigby
Chief Deputy Commissioner

Notice: Business and Professions Code Section 10139 provides that "Any person acting as a real estate broker or real estate salesperson without a license or who advertises using words indicating that he or she is a real estate broker without being so licensed shall be guilty of a public offense punishable by a fine not exceeding twenty thousand dollars ($20,000), or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars ($60,000)."

cc: NATIONWIDE HOME ASSISTANCE
535 E. First Street, 2nd Floor
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MICHAEL ALLAN HARRIS
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LISA KOMINEK
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FILED
SEP 15 2009
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

To: NATIONWIDE HOME ASSISTANCE dba Loan Center Funding, Inc.; MICHAEL ALLAN HARRIS dba A Head for Money; A HEAD FOR MONEY ENTERPRISES, INC.; BENCHMARK FINANCIAL, INC.; THE REAL ESTATE LIFE, INC.; LISA KOMINEK; JAMES RADOGNA; COREY TOBIN. Respondents.	No. H-36241 LA ORDER TO DESIST AND REFRAIN (B & P Code Section 10086)

The Commissioner ("Commissioner") of the California Department of Real Estate ("Department") caused an investigation to be made of the activities of NATIONWIDE HOME ASSISTANCE ("NATIONWIDE"), MICHAEL ALLAN HARRIS ("HARRIS"), A HEAD FOR MONEY ENTERPRISES, INC, ("A HEAD FOR MONEY"), BENCHMARK FINANCIAL, INC. ("BENCHMARK"), THE REAL ESTATE LIFE, INC. ("REAL ESTATE LIFE"), LISA KOMINEK ("KOMINEK"), JAMES RADOGNA ("RADOGNA"), and COREY TOBIN ("TOBIN"). Based on that investigation, the Commissioner has determined that NATIONWIDE, HARRIS, A HEAD FOR MONEY, BENCHMARK, REAL ESTATE LIFE, KOMINEK, RADOGNA and TOBIN have engaged in or are engaging in acts or are attempting to engage in the business of, acting in the capacity of, and/or advertising or assuming to act as real estate

brokers in the State of California within the meaning of Code Section 10131(d) (soliciting, negotiating and performing services for borrowers in connection with loans secured by real property) and 10131.2 (advance fee handling).

In addition, based on that investigation, the Commissioner has determined that NATIONWIDE, HARRIS, A HEAD FOR MONEY, BENCHMARK, REAL ESTATE LIFE, KOMINEK, RADOGNA and TOBIN have engaged in or are engaging in acts or are attempting to engage practices constituting violations of the California Business and Professions Code ("Code") and/or Title 10, California Code of Regulations ("Regulations"). Based on the findings of that investigation, set forth below, the Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order under the authority of Section 10086 of the Code.

FINDINGS OF FACT

1. NATIONWIDE is not now, and has never been, licensed by the Department in any capacity.

2. HARRIS is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate broker. HARRIS is currently the designated officer of A HEAD FOR MONEY and BENCHMARK.

3. A HEAD FOR MONEY is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code"), as a real estate corporation.

4. BENCHMARK is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code"), as a real estate corporation.

5. REAL ESTATE LIFE is not now, and has never been, licensed by the Department in any capacity.

6. KOMINEK is not now, and has never been, licensed by the Department in any capacity.

7. RADOGNA is not now, and has never been, licensed by the Department in any capacity.

8. TOBIN is not now, and has never been, licensed by the Department in any capacity.

9. At the time set forth below each and every respondent solicited borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: engaged in the business of, acted in the capacity of, or advertised a loan modification service and advance fee brokerage using the name Nationwide Home Assistance soliciting, offering to negotiate or perform 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 collected in advance of the transaction.

10. On or about December 8, 2008, NATIONWIDE provided an advance fee contract to Nora Valadez ("Valadez") for loan modification services on Valadez' existing mortgage on her home located at 4700 Via Corzo, Yorba Linda, CA 92886.

11. Between on or about December 8, 2008 and on or about March 18, 2009, HARRIS, A HEAD FOR MONEY and BENCHMARK employed REAL ESTATE LIFE, KOMINEK, RADOGNA and TOBIN to solicit and obtain clients for NATIONWIDE's loan modification services.

12. On or about December 8, 2008, KOMINEK, RADOGNA and TOBIN, as representatives of NATIONWIDE, demanded and received an advance fee of $1,500 from Valadez for the activities described in paragraph 10, above.

CONCLUSIONS OF LAW

13. Based on the information contained in Paragraphs 9 through 12, above, HARRIS, A HEAD FOR MONEY and BENCHMARK violated Section 10085 of the Code and Regulation 2970, by not having an approved advance fee agreement on file with the Department.

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14. Based on the information contained in Paragraphs 9 through 12, above, HARRIS, A HEAD FOR MONEY and BENCHMARK violated Code Section 10137 of the Code by employing and/or compensating individuals who were not licensed as a real estate salesperson or as a broker to perform activities requiring a real estate license.

15. Based on the information contained in Paragraphs 9 through 12, above, NATIONWIDE, REAL ESTATE LIFE, KOMINEK, RADOGNA and TOBIN violated Section 10130 of the Code by engaging in the activities without first obtaining a broker license from the Department.

DESIST AND REFRAIN ORDER

Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW stated herein, IT IS ORDERED THAT:

A. NATIONWIDE HOME ASSISTANCE, THE REAL ESTATE LIFE, INC., LISA KOMINEK, JAMES RADOGNA, COREY TOBIN, immediately desist and refrain from performing any acts within the State of California for which a real estate broker license is required, unless or until you are so licensed;

B. MICHAEL ALLAN HARRIS, A HEAD FOR MONEY ENTERPRISES, INC., BENCHMARK FINANCIAL, INC., immediately desist and refrain from employing and/or compensating individuals who are not licensed as a real estate salesperson or as a broker to perform activities requiring a real estate license;

IT IS FURTHER ORDERED THAT each of you immediately desist and refrain from charging, demanding, or collecting an advance fee for any of the services you offer to others, unless and until you demonstrate and provide evidence satisfactory to the Commissioner that you are in full compliance with all of the requirements of the Code and California Code of Regulations relating to charging, collecting, and accounting for advance fees;

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In addition, you, MICHAEL ALLAN HARRIS, A HEAD FOR MONEY ENTERPRISES, INC., BENCHMARK FINANCIAL, INC., ARE ORDERED TO: immediately desist and refrain from collecting advance fees, as that term in defined in Section 10026 of the Code, in any form and particularly with respect to loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services, unless and until you demonstrate and provide evidence satisfactory to the Commissioner that you have:

(i) an advance fee agreement which has been submitted to the Department and which is in compliance with Sections 2970 and 2972 of the Regulations;

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

(iii) provided an accounting to trust fund owner-beneficiaries pursuant to Section 2972 of the Regulations.

DATED: 9-9, 2009.

JEFF DAVI
Real Estate Commissioner

Notice: Business and Professions Code Section 10139 provides that "Any person acting as a real estate broker or real estate salesperson without a license or who advertises using words indicating that he or she is a real estate broker without being so licensed shall be guilty of a public offense punishable by a fine not exceeding twenty thousand dollars ($20,000), or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars ($60,000)."

cc: NATIONWIDE HOME ASSISTANCE
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