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BUREAU OF REAL ESTATE

By S. Black

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

RYAN WILLIAM MARIER,

No. H-37126 LA

Respondent.

ORDER DENYING REINSTATEMENT OF LICENSE

BUT GRANTING RIGHT TO A RESTRICTED LICENSE

On August 24, 2011, in Case No. H-37126 LA, a Decision was rendered revoking the real estate broker license of Respondent effective September 19, 2011.

On February 10, 2015, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

I have considered Respondent's petition and the evidence submitted in support thereof.

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1 The Bureau has developed criteria in Section 2911 of Title 10, California Code of
2 Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
3 reinstatement of a license. Among the criteria relevant in this proceeding are:

4 Regulation 2911(j) Discharge of, or bona fide efforts toward discharging,
5 adjudicated debts or monetary obligations to others.

6 Respondent listed 5 civil judgments in his application. Two of them have been
7 satisfied and dismissed. Two others were settled, with no evidence that Respondent has
8 defaulted on repayment. One judgment, a 2011 Breach of Lease Agreement before the Orange
9 County Superior Court, Respondent's Petition Application states that the judgment has not been
10 satisfied, with no explanation for why. (Note this was a \$4,500 small claims
11 judgment. Respondent has satisfied other judgments for substantially more money). This is the
12 only reason why we cannot grant a plenary broker's license.

13 Respondent has failed to demonstrate to my satisfaction that Respondent has
14 undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real
15 estate broker license.

16 I am satisfied, however, that it will not be against the public interest to issue a
17 restricted real estate broker license to Respondent.

18 A restricted real estate broker license shall be issued to Respondent pursuant to
19 Section 10156.5 of the Business and Professions Code, if Respondent satisfies the following
20 conditions prior to and as a condition of obtaining a restricted real estate broker license within
21 twelve (12) months from the effective date of this Order:

22 1. Respondent shall qualify for, take and pass the real estate broker license
23 examination.

24 2. Submittal of a completed application and payment of the fee for a real
25 estate broker license.

26 3. Respondent shall provide proof that reimbursement of the advance fees
27 paid by Wilfred J. Caron in the amount of \$2,495.00 and Timothy Wayne Girard in the amount

1 of \$2,090.00 has been made. If Respondent can not provide such evidence, the monies owed to
2 Wilfred J. Caron and Timothy Wayne Girard shall be subject to the Unclaimed Property Law
3 (Code of Civil Procedure Sections 1500 et. Seq.), and those monies shall be remitted to the
4 California's State Controller. Until Respondent provides proof satisfactory to the Commissioner,
5 the Commissioner will deny any and all licenses.

6 The restricted license issued to Respondent shall be subject to all of the provisions
7 of Section 10156.7 of the Business and Professions Code and to the following limitations,
8 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

13 B. The restricted license issued to Respondent may be suspended prior to
14 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner
15 that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
16 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
17 license.

18 C. Respondent shall not be eligible to apply for the issuance of an
19 unrestricted real estate license nor the removal of any of the limitations, conditions or restrictions
20 of a restricted license until two (2) years have elapsed from the date of the issuance of the
21 restricted license to Respondent.

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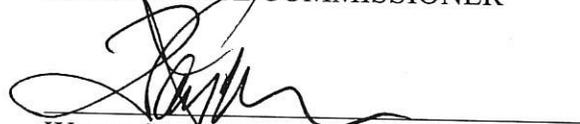
1 D. Respondent shall notify the Commissioner in writing within 72 hours of
2 any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post
3 Office Box 137007, Sacramento, CA 95813-7007. The letter shall set forth the date of
4 Respondent's arrest, the crime for which Respondent was arrested and the name and address of
5 the arresting law enforcement agency. Respondent's failure to timely file written notice shall
6 constitute an independent violation of the terms of the restricted license and shall be grounds for
7 the suspension or revocation of that license.

8 This Order shall become effective at 12 o'clock noon on **JAN 04 2016**

9 IT IS SO ORDERED

12/11/2015

10 REAL ESTATE COMMISSIONER

11 
12
13 Wayne S. Bell

1 Among the terms and conditions, Respondent was required to take and pass the
2 Professional Responsibility Examination within six (6) months from the effective date of the
3 Decision. The Commissioner has determined that as of December 21, 2012, Respondent has
4 failed to satisfy this condition.

5 NOW, THEREFORE, IT IS ORDERED under authority of the Order issued in
6 this matter that the real estate salesperson license heretofore issued to Respondent and the
7 exercise of any privileges thereunder is hereby suspended until such time as Respondent
8 provides proof satisfactory to the Department of compliance with the "condition" referred to
9 above, or pending final determination made after hearing (see "Hearing Rights" set forth below).

10 IT IS FURTHER ORDERED that all license certificates and identification cards
11 issued by Department which are in the possession of Respondent be immediately surrendered by
12 personal delivery or by mailing in the enclosed, self-addressed envelope

13 to:

14
15 Department of Real Estate
16 Attn: Flag Section
17 P. O. Box 187000
18 Sacramento, CA 95818-7000

19 HEARING RIGHTS: You have the right to a hearing to contest the
20 Commissioner's determination that you are in violation of the Order issued in this matter. If you
21 desire a hearing, you must submit a written request. The request may be in any form, as long as
22 it is in writing and indicates that you want a hearing. Unless a written request for a hearing,
23 signed by or on behalf of you, is delivered or mailed to the Department at 320 W. 4th Street,
24 Room 350, Los Angeles, California 90013, within 20 days after the date that this Order was
25 mailed to or served on you, the Department will not be obligated or required to provide you with

26 ///

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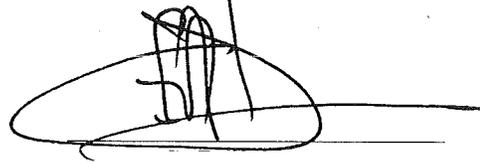
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1 a hearing.

2 This Order shall be effective immediately.

3 DATED: May 13, 2013.

4 REAL ESTATE COMMISSIONER

5 A handwritten signature in black ink, consisting of several vertical and horizontal strokes, is written over a horizontal line. The signature is somewhat stylized and appears to be 'JM'.

6
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8 By: Jeffrey Mason
9 Chief Deputy Commissioner

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FILED

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DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	DRE No. H-37126 LA
)	
RYAN WILLIAM MARIER and)	OAH No. 2011081204
<u>JAMES ERIC PATE,</u>)	
)	
Respondents.)	
_____)	

DECISION

The Proposed Decision dated March 22, 2012, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on
May 21, 2012.

IT IS SO ORDERED 4/22, 2012.

Real Estate Commissioner


By WAYNE S. BELL
Chief Counsel

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation and
Supplemental Accusation Against:

JAMES ERIC PATE,

Respondent.

Case No. H-37126 LA

OAH No. 2011081204

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 28, 2012, in Los Angeles. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Lissete Garcia, Counsel, represented Maria Suarez, Deputy Real Estate Commissioner (Complainant), California Department of Real Estate (Department).

Edward O. Lear, Esq., represented James Eric Pate (Respondent), who was present.

FACTUAL FINDINGS

Parties and Jurisdiction

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

2. From October 5, 2000, through the present, Respondent has been licensed by the Department as a real estate salesperson (License No. S/01297379). From March 12, 2008, through November 10, 2009, Respondent was licensed under the employ of real estate broker Firstline Mortgage, Inc.

3. As discussed in more detail below, Respondent went into business with Ryan William Marier (Marier), who was licensed by the Department as a real estate broker during the relevant times. Mr. Marier was also named as a respondent in this matter, but his license was revoked by default due to his failure to respond timely to the initial Accusation. It was not established that Respondent was ever affiliated with Marier's broker license.

Respondent Goes into the Loan Modification Business

4. Respondent and Mr. Marier were acquaintances who worked in the real estate field. In 2008, they decided to go into business together. Respondent had some prior experience in helping friends and clients with home loan modifications. At this time, the housing market was crashing and the demand for loan modification soared. So Respondent and Marier decided to start a company to provide loan modification services to homeowners.

5. On December 17, 2008, Respondent and Marier formed Pate, Marier and Associates, Inc. (PMAI), a California corporation. Respondent and Marier were the directors and officers of PMAI, and owned all of the corporation's stock. This was the parent company formed as an umbrella for all the various business ventures Respondent and Marier created.

6. On February 17, 2009, PMAI filed a fictitious business name statement with the Orange County Clerk-Recorder for use of the fictitious business name "NHA Group." This fictitious business name was intended for the loan modification business. However, over time, the loan modification business became known by several other business names, including National Home Assistance Group, Inc., National Home Assistance Group, NHA Group, National Home Assistance, and Pate, Marier and Associates. At no time had any of those business names or entities been licensed by the Department. Use of a fictitious business name for activities requiring the issuance of a real estate license requires the filing of an application for the use of such name with the Department in accordance with the provisions of Business and Professions Code section 10159.5.¹

7. On January 20, 2009, Marier submitted to the Department an advance fee agreement and accounting format. On February 24, 2009, the Department issued a letter acknowledging receipt of that document and stating that the Department had no objection to it. However, the advance fee agreements actually used by PMAI in the loan modification business were different in material respects from the one submitted to the Department, and therefore were not approved by the Department prior to use as required by section 10085, and California Code of Regulations, title 10, section 2970 (Regulation).

8. From February 2009 through August 2009, Respondent and Marier, while using the unlicensed fictitious business names described above in Factual Finding No. 6, engaged in loan modification services. Respondent was primarily involved in the administrative affairs of the business, and Marier attended to the finances and operations. Neither of them was involved in actual loan modification work. They employed several individuals to perform the loan modification services, none of whom were licensed by the Department. In all, PMAI was involved in at least 258 loan modification transactions with consumers. Of that total, only two consumers are known to have submitted complaints to the Department, i.e., Wilfred J. Caron and Timothy Wayne Girard.

¹ All further statutory references are to the Business and Professions Code.

9. On or about May 15, 2009, Wilfred J. Caron paid an advance fee of \$2,495 to National Home Assistance Group, Inc., (NHAGI) pursuant to an advance fee agreement for loan modification and negotiation services that had not been approved by the Department. In July 2009, NHAGI sent financial materials to Mr. Caron's primary lender and began negotiations to reduce the loan principal and interest rate of Mr. Caron's loan. Mr. Caron ultimately rejected a loan modification proposal made by his lender. Mr. Caron was not satisfied with NHAGI's services and he requested a full refund in September of 2009. NHAGI did not offer him a refund, but instead referred Mr. Caron to a real estate agent for purposes of arranging a short sale of his property. Mr. Caron entered into a short sale transaction with a willing buyer, but the sale was not consummated because the lender requested the sales price to be increased and the parties did not agree to do so. Mr. Caron decided to no longer pursue a short sale of his home. He has since retained the services of another loan modification business. It was not established that NHAGI failed to perform the loan modification and negotiation services promised to Mr. Caron. In fact, the advance fee agreement Mr. Caron signed indicated that the fee was deemed earned upon a loan modification offer from his lender or a short sale offer on his home, both of which occurred due to the efforts of NHAGI. Mr. Caron submitted his complaint to the Department in May 2010. He still owns his home.

10. On or about July 7, 2009, Timothy Wayne Girard paid an advance fee of \$2,090 to National Home Assistance Group (NHAG) pursuant to an advance fee agreement for loan modification and negotiation services for the first and second mortgages on his home. In September 2009, Mr. Girard's primary lender made a forbearance offer to Mr. Girard. The secondary lender delayed making an offer until the primary lender's position was solidified. Mr. Girard rejected the primary lender's offer. Several months later, NHAG notified Mr. Girard that the business was closing and that no further action would be taken on his file. It was not established that NHAG failed to perform the loan modification and negotiation services promised to Mr. Girard. The advance fee agreement Mr. Girard signed indicated the fee was deemed earned upon a loan modification offer from his lender, which occurred due to the efforts of NHAG. Mr. Girard submitted his complaint to the Department in September 2010. He still owns his home.

11. When Respondent and Marier established their loan modification business in late 2008, they did not think they needed any licenses additional to Marier's broker license to engage in that type of activity. By early 2009, when Legislature enacted laws regulating the loan modification business, Respondent and Marier decided to submit the proposed advance fee agreement to the Department to position themselves for the effective date of those laws in July 2009. However, by that time, Respondent and Marier realized the full extent of the new legislation and quickly realized that they would not be able to have all staff fully licensed and bonded in compliance with the new laws. By August 2009, Respondent and Marier stopped accepting new loan modification work and began closing their business. They tried to resolve the remaining open cases and transferred others to an attorney. They were required to pay the attorney a fee for accepting those cases, as well as transferring to him their pre-paid office lease in order for him to accept their open cases. By December of 2009, Respondent and Marier completely shut-down the loan modification business.

The Audit of PMAI's Books and Records

12. On September 6, 2011, the Department completed an examination of books and records in the possession of Marier, pertaining to the mortgage loan modification activities conducted by PMAI. The audit covered the period from November 13, 2008, through March 31, 2011.

13. The audit revealed that PMAI engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers in the State of California, within the meaning of section 10131, subdivision (d), including soliciting prospective borrowers or lenders for, or negotiating loans, or offering to perform services connected to loans secured directly or collaterally by liens on real property for another or others, for or in expectation of compensation.

14. PMAI was not licensed to engage in the loan modification activities described above. Respondent actively engaged with Marier in operating the unlicensed corporation, whose employees performed acts requiring a real estate license pursuant to section 10131, subdivision (d). Respondent should have known that such activity required a license. He was a licensed salesperson who had taken courses on the scope of activity requiring a license from the Department. He and Marier were well aware of recent legislation pointing to the Department as the regulator of loan modification activity. His partner Marier submitted an advance fee agreement to the Department in anticipation of the newly enacted laws. Most of the loan modification services transacted by PMAI occurred after Marier had submitted the advance fee agreement to the Department. Under these circumstances, Respondent should have known that a license was required to engage in such activity, or at the very least to contact the Department to ascertain whether that was the case.

15. The audit also revealed that PMAI accepted, received, deposited and/or disbursed funds, including funds in trust. Those trust funds, including the advance fees collected by PMAI while engaged in loan modification services, were not deposited in a trust account as required by section 10146. By conservative estimates, Respondent and Marier took in at least \$306,984 in service fees. The audit revealed total receipts of \$1.1 million, although the loan modification fees were comingled with funds from their other ventures.

Mitigation

16. Respondent has no prior history of discipline with the Department.

17. Shortly before the hearing, Respondent fully refunded Mr. Caron and Mr. Girard, including not just the return of their fees but also interest to date. It was not established that Respondent's acts caused any harm to either consumer. Though Mr. Caron and Mr. Girard were not satisfied with the loan modification offers they were given, it was not established that Respondent and Marier breached their contracts or took money for services that were not provided. It was not established that any other PMAI consumer was injured or abandoned by PMAI.

18. Respondent has not been involved in any loan modification activity since he and Marier terminated their loan modification business at the end of 2009. Though he still communicates with Marier, he is no longer involved in real estate with him.

19. Respondent submitted a number of character reference letters from colleagues in the real estate and business fields, former clients, friends and family members. All attest to Respondent generally having good character, integrity and honesty.

20. Respondent has been married for eight years and has three young sons. He and his family regularly attend church. Respondent participates in volunteer activity in his community through his church. He is currently employed by a Fortune 500 company as a manager in a unit involved in loan originations.

LEGAL CONCLUSIONS

1. Cause was established for disciplinary action against Respondent pursuant to section 10177, subdivisions (d) and (g). Respondent, through the loan modification business he co-owned with Marier, collected advance fees from prospective borrowers pursuant to a written fee agreement, which was not submitted to the Department for review prior to use, in violation of section 10085 and Regulation 2970. In addition, Respondent failed to deposit the advance fees into a trust account in violation of section 10146. Therefore, Respondent violated the Real Estate Law in these regards (§ 10177, subd. (d)) and was negligent in carrying out acts requiring a real estate license by failing to ensure the proper advance fee forms were used, and by failing to properly deposit and account for advance fee trust funds in his possession (§ 10177, subd. (g)). (Factual Findings 1-15.)

2. Cause was established for disciplinary action against Respondent pursuant to sections 10137 and 10177, subdivision (d). Respondent was engaged in activities that required a real estate license under sections 10131, subdivision (d), and 10131.2. At the times that Respondent was engaged in the loan modification business with Marier, Respondent's real estate salesperson license was not affiliated with Marier's broker license. By splitting the proceeds of the PMAI business with Marier, and by accepting fees from consumers who retained the services of PMAI's loan modification business, Respondent received compensation for activities that required a real estate license from persons other than the broker under whom he was at the time licensed, in violation of section 10137.² (Factual Findings 1-15.)

3. Cause was established for disciplinary action against Respondent pursuant to sections 10137 and 10177, subdivisions (d) and (g), in that Respondent operated an unlicensed corporation, which Respondent should have known needed to be licensed to perform acts and conduct activity requiring a real estate license as described in section 10131, subdivision (d). (Factual Findings 1-15.)

² The third cause for discipline in the Accusation was alleged only against Marier.

4. Cause was established for disciplinary action against Respondent pursuant to section 10177, subdivision (g), in that Respondent was negligent in aiding and abetting Mr. Marier to violate section 10130, which prohibits unlicensed real estate activity, when Respondent should have known that he, PMAI, and Marier were engaged in conduct for which a real estate license was required, but for which they were not licensed. However, it was not established that cause exists to discipline Respondent pursuant to section 10176, subdivision (i), in that it was not established that Respondent's conduct in this regard equated to fraud or dishonest dealing. (Factual Findings 1-15.)

5A. Since cause for discipline against Respondent's licensing rights has been established, the inquiry shifts to the degree of discipline warranted. Respondent's misconduct is considered moderately serious, in that he facilitated and actively engaged in unlicensed practice under circumstances when he should have known better. A number of important statutes and regulations were violated in the manner in which Respondent and his partner conducted business. Of concern is the fact that not long after submitting an advance fee agreement to the Department, Respondent and his partner abandoned that form and replaced it with one the Department had never seen before. Respondent and his partner benefitted substantially from the loan modification enterprise, in that the business took in at least \$300,000 in fees and probably much more.

5B. On the other hand, there is substantial mitigating evidence in this case to indicate that revocation is unwarranted and would be punitive. It was not established that Respondent engaged in fraud or dishonest dealing. It was not established that Respondent's business breached its contracts with any consumer. In fact, no actual injury to any consumer was established. Nonetheless, Respondent has made restitution on his own accord to the two consumers who complained to the Department about his business. Respondent has no prior record of discipline. Respondent and his partner took extensive efforts to wind down their loan modification business without abandoning their clients. Respondent has completely removed himself from loan modification activity. Other than his failed foray into loan modification in 2009, it appears that Respondent has otherwise conducted himself with integrity and honesty in his personal and professional life.

5C. Under these circumstances, a restricted salesperson license with appropriate conditions is warranted. Pursuant to Regulation 2930, subdivision 18(A), when a licensee has been compensated for performing unlicensed activity, the penalty shall include a suspension. The length of the suspension is calculated by assigning \$100 per day, and dividing \$100 into the total amount of unlicensed compensation, up to a maximum of \$10,000. Since Respondent and his partner received in excess of \$10,000 of compensation for their unlicensed activity, a 100 day suspension is warranted. However, pursuant to Regulation 2930, subdivision 18(A), Respondent shall be allowed to petition the Commissioner to convert the 100 day suspension into a \$10,000 monetary penalty. Other conditions shall include a three year period of restriction, reporting this discipline to his employing broker, being current on his continuing education requirements, and taking and passing the Professional Responsibility Examination to verify that Respondent has an understanding of the California Real Estate Law and its application. (Factual Findings 1-20.)

ORDER

All licenses and licensing rights of Respondent James Eric Pate 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 if Respondent makes application therefore 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 to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. All licenses and licensing rights of Respondent under the Real Estate Law are suspended for a period of 100 days from the effective date of this Decision; provided, however, that if Respondent petitions, said suspension shall be stayed upon condition that:

A. Respondent pays a monetary penalty pursuant to section 10175.2 at the rate of \$100.00 for each day of the suspension for a total monetary penalty of \$10,000.

B. Said payment shall be in the form of a cashier's or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.

C. No further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision in this matter.

D. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

E. If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

3. 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.

4. 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 three years have elapsed from the effective date of this Decision.

5. 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.

6. Respondent 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 Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

7. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

DATED: March 22, 2012



ERIC SAWYER,
Administrative Law Judge
Office of Administrative Hearings

1 LISSETE GARCIA, Counsel (SBN 211552)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6914
7 (Fax) (213) 576-6917

FILED
JAN 18 2012
DEPARTMENT OF REAL ESTATE

By C.A.

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 JAMES ERIC PATE,) DRE No. H-37126 LA
13) OAH No. L-2011081204
14 Respondent.) SUPPLEMENTAL ACCUSATION

15
16 Complainant hereby supplements and amends the
17 Accusation filed on March 10, 2011, as follows:

18 22.

19 AUDIT

20 Complainant incorporates all of the allegations
21 contained in Paragraphs 1 through 21 of the Accusation, with the
22 same force and effect as if herein fully set forth.

23 23.

24 On September 6, 2011, the Department completed an
25 examination of Ryan William Marier's books and records
26 pertaining to the mortgage loan activities and loan modification

1 activities conducted by Ryan William Marier and Respondent PATE
2 in the name of "Pate, Marier and Associates, Inc." doing
3 business as NHA Group and/or National Home Assistance Group.
4 Ryan William Marier and Respondent PATE each owned 50% of Pate,
5 Marier and Associates, Inc. The audit covered the period from
6 November 13, 2008 through March 31, 2011, which examination
7 revealed violations of the Business and Professions Code
8 ("Code") and Regulations as set forth below.

9
10 24.

11 During the audit examination of Ryan William Marier,
12 it was determined that, Respondent PATE and Ryan William Marier,
13 doing business as Pate, Marier and Associates, Inc., NHA Group,
14 or National Home Assistance Group, engaged in the business of,
15 acted in the capacity of, advertised or assumed to act as real
16 estate brokers in the State of California, within the meaning of
17 Section 10131(d) of the Code, including soliciting prospective
18 borrowers or lenders for, or negotiating loans, or offering to
19 perform services connected to loans secured directly or
20 collaterally by liens on real property for another or others,
21 for or in expectation of compensation.

22 25.

23 In connection with the aforementioned real estate
24 activities, it was determined that Respondent PATE and Ryan
25 William Marier, while doing business as Pate, Marier and
26 Associates, Inc., NHA Group, or National Home Assistance Group
accepted, received, deposited and/or disbursed funds including
funds in trust (hereinafter "trust funds"). From time to time

1 herein mentioned, said funds and/or trust funds were maintained
2 by Respondent PATE and Ryan William Marier general bank
3 accounts, including but not necessarily limited to, Account No.
4 2222956621, at Wells Fargo Bank.

5
6 26.

7 The audit examination determined that Respondent Pate,
8 while doing business as Pate, Marier and Associates, Inc., NHA
9 Group or National Home Assistance Group, charged and collected
10 fees in advance from borrowers for loan modification and
11 negotiation activity in violation of Section 10130 of the Code.

12 27.

13 Respondent PATE operated an unlicensed corporation,
14 whom Respondent PATE knew or should have known to be unlicensed,
15 to perform acts and conduct activity requiring a real estate
16 license as described in Section 10131(d) of the Code.

17 28.

18 The conduct, acts and omissions of Respondent PATE
19 described in Paragraphs 26 and 27, above, constitutes cause for
20 the suspension or revocation of all real estate licenses and
21 license rights of Respondent PATE under the provisions of
22 Sections 10137, 10177(d) and/or 10177(g) of the Code.

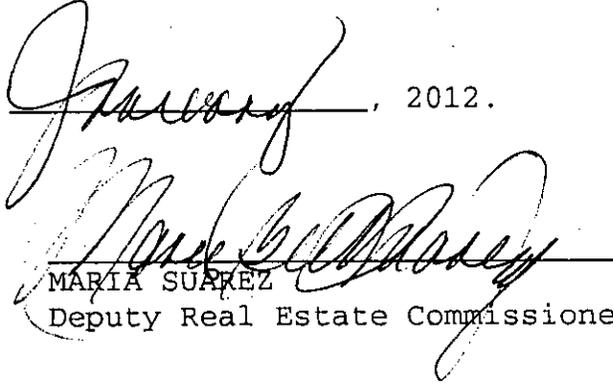
23 29.

24 The conduct, acts and omissions of Respondent PATE,
25 described in Paragraphs 26 and 27, above, in willfully aiding
26 and abetting Ryan William Marier to violate Section 10130 of the
Code is further cause to suspend or revoke all real estate

1 licenses and license rights of Respondent PATE under the
2 provisions of Sections 10177(g) and/or 10176(i) of the Code.

3 WHEREFORE, Complainant prays that a hearing be
4 conducted on the allegations of this Accusation and that upon
5 proof thereof, a decision be rendered imposing disciplinary
6 action against all licenses and/or license rights of Respondent
7 JAMES ERIC PATE under the Real Estate Law (Part 1 of Division 4
8 of the California Business and Professions Code) and for such
9 other and further relief as may be proper under other applicable
10 provisions of law.

11 Dated this 17th day of January, 2012.

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14 
15 MARIA SUAREZ
16 Deputy Real Estate Commissioner
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21

22 cc: James Eric Pate
23 Edward O. Lear, Esq.
24 Maria Suarez
25 Sacto.
26 OAH

2.

From November 13, 2008, through the present, Respondent MARIER has been licensed by the Department of Real Estate ("Department") as a real estate broker, Department License No. 01848936.

3.

From October 5, 2000, through the present, Respondent PATE has been licensed by the Department as a real estate salesperson, Department License No. 01297379. From March 12, 2008 through November 10, 2009, Respondent PATE was licensed under the employ of real estate broker Firstline Mortgage, Inc., Department License No. 00895998.

4.

At all times herein mentioned, Respondent MARIER, engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, by doing or negotiating to do the following acts for another or others, for compensation or in expectation of compensation: (1) sell or offer to sell, solicit prospective sellers or purchasers of, solicit or obtain listings of, or negotiate the purchase, sale or exchange of real property within the meaning of Business and Professions Code ("Code") Section 10131(a); and (2) solicit borrowers, negotiate loans, collect payments or perform services for borrowers in connection with loans secured directly or collaterally by liens on real property within the meaning of Code Section 10131(d).

5.

At no time mentioned herein have National Home Assistance Group, Inc., National Home Assistance Group, NHA Group, National Home Assistance or Pate, Marier and Associates, Inc. ever been licensed by the Department in any capacity.

6.

On December 17, 2008, Respondent MARIER formed Pate, Marier and Associates, Inc., a California corporation.

Respondent MARIER is a director and officer of Pate, Marier and Associates, Inc. and owns or controls 10 percent or more of the corporation's stock.

7.

On February 17, 2009, Pate, Marier and Associates, Inc. filed a fictitious business name statement with the Orange County Clerk-Recorder for use of the fictitious business name "NHA Group".

8.

For an unknown period of time beginning no later than May 15, 2009, while using the unlicensed fictitious business name National Home Assistance Group, Inc., National Home Assistance Group, NHA Group, or National Home Assistance, Respondent MARIER engaged in the business of soliciting to modify or negotiate loans secured by real property, and claimed, demanded, charged, received, collected or contracted for the collection of advance fees, within the meaning of Code Section 10026, for, including but not limited to, the following borrowers:

a. On or about May 15, 2009, Wilfred J. Caron paid an advance fee of \$2,495 to National Home Assistance Group, Inc. pursuant to an advance fee agreement for loan modification and negotiation services. Respondent failed to perform the loan modification and negotiation services that had been promised to Mr. Caron. Respondent failed to refund the advance fee paid by Mr. Caron.

b. On or about July 7, 2009, Timothy Wayne Girard paid an advance fee of \$2,090 to National Home Assistance Group pursuant to an advance fee agreement for loan modification and negotiation services. Respondent failed to perform the loan modification and negotiation services that had been promised to Mr. Girard. Respondent failed to refund the advance fee paid by Mr. Girard.

9.

The advance fee agreement used by Respondent MARIER, while doing business as National Home Assistance Group, Inc.,

National Home Assistance Group, NHA Group, or National Home Assistance, had not been approved by the Department prior to use as is required under Code Section 10085 and Section 2970, Title 10, Chapter 6, California Code of Regulations ("Regulations").

10.

The conduct, acts and/or omissions of Respondent MARIER as set forth above, in collecting advance fees from prospective borrowers pursuant to a written fee agreement, which agreement was not submitted to the Department for review prior to use, was in violation of Code Section 10085 and Section 2970 of the Regulations, and constitutes grounds for the suspension or revocation of the license and license rights of Respondent MARIER pursuant to Code Sections 10177(d) and 10177(g).

11.

The advance fees collected by Respondent MARIER while doing business as National Home Assistance Group, Inc., National Home Assistance Group, NHA Group, or National Home Assistance, were not deposited in a trust account as required under Code Section 10146.

12.

The conduct, acts and/or omissions of Respondent MARIER as set forth above, in collecting advance fees from prospective borrowers and failing to deposit the advance fees into a trust account, was in violation of Code Section 10146 and constitutes grounds for the suspension or revocation of the license and license rights of Respondent MARIER pursuant to Code Sections 10177(d) and 10177(g).

13.

The activities described in Paragraph 8, supra, require a real estate license under Code Sections 10131(d) and 10131.2. Respondent MARIER violated Code Section 10137 by employing and/or compensating individuals who were not licensed as real estate salespersons or as brokers to perform activities requiring a license as follows:

a. Respondent MARIER employed and/or compensated Michelle Lefaoeu and Baron Morledge to perform some or all of the services alleged in Paragraph 8, subsection (a), above though neither was licensed as a real estate salesperson or broker.

b. Respondent MARIER employed and/or compensated Brandon Mickley to perform some or all of the services alleged in Paragraph 8, subsection (b), above, though he was not licensed as a real estate salesperson or broker.

14.

The conduct, acts and/or omissions of Respondent MARIER, as set forth in Paragraph 13, above, violate Code Section 10137, and are cause for the suspension or revocation of the licenses and license rights of Respondent MARIER pursuant to Code Sections 10137, 10177(d) and 10177(g).

15.

Use of a fictitious business name for activities requiring the issuance of a real estate license requires the filing of an application for the use of such name with the Department in accordance with the provisions of Code Section 10159.5.

16.

Respondent MARIER acted without Department authorization in using the fictitious business names National Home Assistance Group, Inc., National Home Assistance Group, NHA Group, or National Home Assistance to engage in activities requiring the issuance of a real estate license.

17.

The conduct, acts and/or omissions of Respondent MARIER, as set forth in Paragraphs 15 and 16, above, violate Code Section 10159.5 and Section 2731 of the Regulations, and are cause for the suspension or revocation of the licenses and license rights of Respondent MARIER pursuant to Code Sections 10177(d) and 10177(g).

DETERMINATION OF ISSUES

1.

Respondent RYAN WILLIAM MARIER's conduct, acts, and/or omissions are in violation of Code Sections 10085, 10137, 10146, and 10159.5 and Regulations 2731 and 2970.

2.

Cause for disciplinary action against Respondent RYAN WILLIAM MARIER exists pursuant to Code Sections 10177(d) and 10177(g).

3.

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

ORDER

The license and license rights of Respondent RYAN WILLIAM MARIER under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon Sept. 19, 2011.

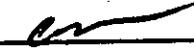
DATED: 8/24, 2011.

BARBARA J. BIGBY
Acting Real Estate Commissioner



1 Department of Real Estate
2 320 West Fourth Street, Suite 350
3 Los Angeles, California 90013-1105

FILED
AUG 11 2011
DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

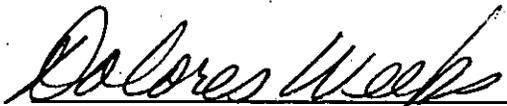
11 In the Matter of the Accusation of)
12) NO. H-37126 LA
13 RYAN WILLIAM MARIER and)
14 JAMES ERIC PATE,) DEFAULT ORDER
15 Respondents.)

16 Respondent, RYAN WILLIAM MARIER, having failed to file
17 a Notice of Defense within the time required by Section 11506
18 of the Government Code, is now in default. It is, therefore,
19 ordered that a default be entered on the record in this matter.

20 IT IS SO ORDERED

August 11, 2011

21 BARBARA J. BIGBY
22 Acting Real Estate Commissioner

23 
24 By: DOLORES WEEKS
25 Regional Manager
26
27

1 rights under the Real Estate Law (Part 1 of Division 4 of the
2 California Business and Professions Code, "Code").

3 3.

4 From November 13, 2008, through the present,
5 Respondent MARIER has been licensed by the Department of Real
6 Estate ("Department") as a real estate broker, Department
7 License No. 01848936.

8 4.

9 From October 5, 2000, through the present, Respondent
10 PATE has been licensed by the Department as a real estate
11 salesperson, Department License No. 01297379. From March 12,
12 2008 through November 10, 2009, Respondent PATE was licensed
13 under the employ of real estate broker Firstline Mortgage, Inc.,
14 Department License No. 00895998.

15 5.

16 At all times herein mentioned, Respondents MARIER and
17 PATE, engaged in the business of, acted in the capacity of,
18 advertised or assumed to act as real estate brokers in the State
19 of California, by doing or negotiating to do the following acts
20 for another or others, for compensation or in expectation of
21 compensation: (1) sell or offer to sell, solicit prospective
22 sellers or purchasers of, solicit or obtain listings of, or
23 negotiate the purchase, sale or exchange of real property within
24 the meaning of Code Section 10131(a); and (2) solicit borrowers,
25 negotiate loans, collect payments or perform services for
26 borrowers in connection with loans secured directly or
collaterally by liens on real property within the meaning of

1 Code Section 10131(d).

2 FIRST CAUSE OF ACCUSATION
3 (Advance Fee Violations)

4 6.

5 At no time mentioned herein have National Home
6 Assistance Group, Inc., National Home Assistance Group, NHA
7 Group, National Home Assistance or Pate, Marier and Associates,
8 Inc. ever been licensed by the Department in any capacity.

9 7.

10 On December 17, 2008, Respondents MARIER and PATE
11 formed Pate, Marier and Associates, Inc., a California
12 corporation. Respondents MARIER and PATE are the directors and
13 officers of Pate, Marier and Associates, Inc. and own or control
14 10 percent or more of the corporation's stock.

15 8.

16 On February 17, 2009, Pate, Marier and Associates,
17 Inc. filed a fictitious business name statement with the Orange
18 County Clerk-Recorder for use of the fictitious business name
19 "NHA Group".

20 9.

21 For an unknown period of time beginning no later than
22 May 15, 2009, while using the unlicensed fictitious business
23 name National Home Assistance Group, Inc., National Home
24 Assistance Group, NHA Group, or National Home Assistance,
25 Respondents MARIER and PATE engaged in the business of
26 soliciting to modify or negotiate loans secured by real

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11.

The conduct, acts and/or omissions of Respondents MARIER and PATE as set forth above, in collecting advance fees from prospective borrowers pursuant to a written fee agreement, which agreement was not submitted to the Department for review prior to use was in violation of Code Section 10085 and Section 2970 of the Regulations, and constitutes grounds for the suspension or revocation of the license and license rights of Respondents MARIER and PATE pursuant to Code Sections 10177(d) and/or 10177(g).

12.

The advance fees collected by Respondent MARIER while doing business as National Home Assistance Group, Inc., National Home Assistance Group, NHA Group, or National Home Assistance, were not deposited in a trust account as required under Code Section 10146.

13.

The conduct, acts and/or omissions of Respondent MARIER as set forth above, in collecting advance fees from prospective borrowers and failing to deposit the advance fees into a trust account was in violation of Code Section 10146 and constitutes grounds for the suspension or revocation of the license and license rights of Respondent MARIER pursuant to Code Sections 10177(d) and/or 10177(g).

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1 SECOND CAUSE OF ACCUSATION
2 (Unlawful employment or payment of compensation)
3 (Unlicensed Activity)

4 14.

5 There is hereby incorporated in this Second, separate,
6 Cause of Accusation, all of the allegations contained in
7 Paragraphs 1 through 13 above, with the same force and effect as
8 if herein fully set forth.

9 15.

10 The activities described in Paragraph 9, supra,
11 require a real estate license under Code Sections 10131(d) and
12 10131.2. Respondent MARIER violated Code Section 10137 by
13 employing and/or compensating individuals who were not licensed
14 as real estate salespersons or as brokers to perform activities
15 requiring a license as follows:

16 a. Respondent MARIER employed and/or compensated
17 Michelle Lefauseu and Baron Morledge to perform some or all of
18 the services alleged in Paragraph 9, subsection (a), above
19 though neither was licensed as a real estate salesperson or
20 broker.
21

22 b. Respondent MARIER employed and/or compensated
23 Brandon Mickley to perform some or all of the services alleged
24 in Paragraph 9, subsection (b), above though he was not licensed
25 as a real estate salesperson or broker.
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16.

The conduct, acts and/or omissions of Respondent MARIER, as set forth in Paragraph 15, above, violate Code Section 10137, and are cause for the suspension or revocation of the licenses and license rights of Respondent MARIER pursuant to Code Sections 10137, 10177(d) and/or 10177(g).

17.

The conduct, acts and/or omissions of Respondent PATE, in accepting compensation for activities that require a real estate license from a person other than the broker under whom he is at the time licensed, violate Code Section 10137, and are cause for the suspension or revocation of the licenses and license rights of Respondent PATE pursuant to Code Sections 10137, 10177(d) and/or 10177(g).

THIRD CAUSE OF ACCUSATION
(Use of Unauthorized Fictitious Business Name)

18.
19.

There is hereby incorporated in this Third, separate, Cause of Accusation, all of the allegations contained in Paragraphs 1 through 17 above, with the same force and effect as if herein fully set forth.

19.

Use of a fictitious business name for activities requiring the issuance of a real estate license requires the filing of an application for the use of such name with the

1 Department in accordance with the provisions of Code Section
2 10159.5.

3 20.

4 Respondent MARIER acted without Department
5 authorization in using the fictitious business names National
6 Home Assistance Group, Inc., National Home Assistance Group, NHA
7 Group, or National Home Assistance to engage in activities
8 requiring the issuance of a real estate license.
9

10 21.

11 The conduct, acts and/or omissions of Respondent
12 MARIER, as set forth in Paragraphs 19 and 20, above, violate
13 Code Section 10159.5 and Section 2731 of the Regulations, and
14 are cause for the suspension or revocation of the licenses and
15 license rights of Respondent MARIER pursuant to Code Sections
16 10177(d) and/or 10177(g).
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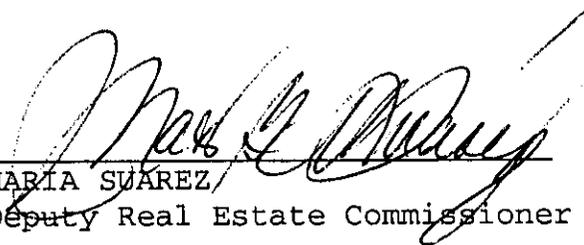
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondents
5 RYAN WILLIAM MARIER and JAMES ERIC PATE under the Real Estate
6 Law (Part 1 of Division 4 of the California Business and
7 Professions Code) and for such other and further relief as may
8 be proper under other applicable provisions of law.

9 this 9th day of March, 2011.

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12 
13 MARIA SUAREZ/
14 Deputy Real Estate Commissioner
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22

23 cc: Ryan William Marier
24 James Eric Pate
25 Maria Suarez
26 Sacto.