FILED

JAN - 4 2012

DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE, individually and as designated officer of Mortgage Restructuring Solutions Inc.; Respondents.	H-37485 LA

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On August 29, 2011, an Accusation was filed in this matter against Respondent HARVEY E. GARTE.

On December 7, 2011, Respondent petitioned the Commissioner to voluntarily surrender his real estate broker license rights pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent HARVEY E. GARTE's petition for voluntary surrender of his real estate broker license rights is accepted as of the effective date of

this Order as set forth below, based upon the understanding and agreement expressed in Respondent's Declaration dated December 7, 2011, (attached as Exhibit "A" hereto). Respondent's license certificate, pocket card and any branch office license certificate shall be sent to the below listed address so that they reach the Department on or before the effective date of this Order:

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

This Order shall become effective at 12 o'clock noon on JANUARY 24, 2012.

DATED: 12/21, 2011

BARBARA J. BIGBY
Acting Real Estate Commissioner

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE, individually and as designated officer of Mortgage Restructuring Solutions Inc.; Respondents.	No. H-37485 LA

DECLARATION

My name is HARVEY E. GARTE and I am currently licensed as a real estate broker and/or have license rights with respect to said license. I am represented by Frank M. Buda, Esq., Attorney at Law, in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code), I wish to voluntarily surrender my real estate license rights issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

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I understand that by so voluntarily surrendering my license rights, I may be relicensed as a broker or as a salesperson by petitioning for reinstatement pursuant to Section 11522 of the Government Code. I also understand that by so voluntarily surrendering my license(s), I agree to the following:

1. The filing of this Declaration shall be deemed as my petition for voluntary surrender.

2. It shall also be deemed to be an understanding and agreement by me that I waive all rights I have to require the Commissioner to prove the allegations contained in the Accusation ("Accusation") filed in this matter at a hearing held in accordance with the provisions of the Administrative Procedure Act (Government Code Sections 11400 et seq.), and that I also waive other rights afforded to me in connection with the hearing such as the right to discovery, the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

3. I further agree that upon acceptance by the Commissioner, as evidenced by an appropriate order, all affidavits and all relevant evidence obtained by the Department in this matter prior to the Commissioner's acceptance, and all allegations contained in the Accusation filed in the Department Case No. H-37485 LA, with respect to me may be considered by the Department to be true and correct for the purpose of deciding whether to grant relicensure or reinstatement pursuant to Government Code Section 11522.

4. I further agree on behalf of MORTGAGE RESTRUCTURING SOLUTIONS INC. to pay the Commissioner's reasonable cost for the audit which led to this 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. I will pay such cost 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.

I am aware that if I petition for reinstatement in the future, that payment of the audit costs will be a condition of reinstatement.

5. This Declaration is not an admission by HARVEY E. GARTE as to the allegations in the Accusation. This Declaration is made for the purpose of reaching a resolution of allegations contained in the DRE Case number H-37485 LA, and is expressly limited to this proceeding and any other proceeding or case in which the Department of Real Estate is a party and shall not otherwise be admissible or relied upon by any third parties for any purpose.

6. I freely and voluntarily surrender all my licenses and license rights under the Real Estate Law.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed on December 7th, 2011, at Santa Ana California.

Harvey E. Garte

HARVEY E. GARTE

FILED

JAN -4 2012

DEPARTMENT OF REAL ESTATE
BY:

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE, individually and as designated officer of Mortgage Restructuring Solutions Inc.; Respondents.	No. H-37485 LA

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On August 29, 2011, an Accusation was filed in this matter against Respondent MORTGAGE RESTRUCTURING SOLUTIONS INC.

On December 7, 2011, Respondent petitioned the Commissioner to voluntarily surrender its real estate broker license rights pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that MORTGAGE RESTRUCTURING SOLUTIONS INC.'s petition for voluntary surrender of its real estate broker license and/or license rights are accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in Respondent's Declaration dated December 7, 2011. Respondents' license certificate, pocket card and any branch office license certificate shall be sent to the below listed address so that they reach the Department on or before the effective date of this Order:

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

This Order shall become effective at 12 o'clock noon on January 24, 2012.

DATED: 12/21, 2011

BARBARA J. BIGBY
Acting Real Estate Commissioner

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE, individually and as designated officer of Mortgage Restructuring Solutions Inc.; Respondents.	)	No. H-37485 LA

DECLARATION

My name is HARVEY E. GARTE and I am the designated officer of MORTGAGE RESTRUCTURING SOLUTIONS INC. which is licensed as a real estate broker and/or has license rights with respect to said licenses. I am acting on behalf of and am authorized and empowered to sign this declaration on behalf of MORTGAGE RESTRUCTURING SOLUTIONS INC. MORTGAGE RESTRUCTURING SOLUTIONS INC. is represented in this matter by Frank M. Buda, Esq.

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

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

The filing of this Declaration shall be deemed as MORTGAGE RESTRUCTURING SOLUTIONS INC.'s petition for voluntary surrender. It shall also be deemed to be an understanding and agreement by MORTGAGE RESTRUCTURING SOLUTIONS INC. that, it waives all rights it has to require the Commissioner to prove the allegations contained in the Accusation ("Accusation") filed in this matter at a hearing held in accordance with the provisions of the Administrative Procedures Act (Government Code Sections 11400 et seq.), and that it also waives other rights afforded to it in connection with the hearing such as the right to discovery, the right to present evidence in defense of the allegations in the Accusation and the right to cross examine witnesses.

I further agree on behalf of MORTGAGE RESTRUCTURING SOLUTIONS INC. that upon acceptance by the Commissioner, as evidenced by an appropriate order, all affidavits and all relevant evidence obtained by the Department in this matter prior to the Commissioner's acceptance, and all allegations contained in the Accusation filed in the Department Case No. H-37485 LA, may be considered by the Department to be true and correct for the purpose of deciding whether or not to grant reinstatement of MORTGAGE RESTRUCTURING SOLUTIONS INC.'s license pursuant to Government Code Section 11522.

This Declaration is not an admission by MORTGAGE RESTRUCTURING SOLUTIONS INC. as to the allegations in the Accusation. This Declaration is made for the purpose of reaching a resolution of allegations contained in the DRE Case number H-37485 LA, and is expressly limited to this proceeding and any other proceeding or case in which the Department of Real Estate is a party and shall not otherwise be admissible or relied upon by any third parties for any purpose.

I further agree on behalf of MORTGAGE RESTRUCTURING SOLUTIONS INC. to pay the Commissioner's reasonable cost for the audit which led to this 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. MORTGAGE RESTRUCTURING SOLUTIONS INC. will pay such cost 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.

I am aware that if MORTGAGE RESTRUCTURING SOLUTIONS INC. petitions for reinstatement in the future, that payment of the audit costs will be a condition of reinstatement.

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

December 7, 2011
Date and Place
Santa Ana, CA

BY: HARVEY E. GARTE
Designated Officer of
MORTGAGE RESTRUCTURING
SOLUTIONS INC.

ELLIOTT MACLENNAN, 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

AUG 29 2011

DEPARTMENT OF REAL ESTATE
BY:

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE, individually and as designated officer of Mortgage Restructuring Solutions Inc., Respondents.	No. H- 37485 LA ACCUSATION

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE, alleges as follows:

1.

The Complainant, Maria Suarez, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation.

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.

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3.

License Status

A. MORTGAGE RESTRUCTURING SOLUTIONS INC. (MRSI). At all times mentioned, Respondent MRSI was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate broker. On August 11, 2008, MRSI was originally licensed as a corporate real estate broker. Respondent MRSI was authorized to act by and through Respondent HARVEY E. GARTE as MRSI's designated broker pursuant to Business and Professions Code (hereinafter Code) Sections 10159.2 and 10211 to be responsible for ensuring compliance with the Real Estate Law.

B. HARVEY E. GARTE (GARTE). At all times mentioned, Respondent GARTE was licensed or had license rights issued by the Department as a real estate broker. On August 20, 1998, GARTE was originally licensed as a real estate broker. On August 11, 2008, GARTE became the designated officer of MRSI.

C. MRSI is owned by GARTE, its president and treasurer.

Brokerage

4.

At all times mentioned, in the City of Santa Ana, County of Orange, MRSI and GARTE acted as real estate brokers conducting licensed activities within the meaning of:

A. Code Section 10131(d). Respondents 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.

B. Code Section 10131(d) and 10131.2. Respondents advertised, solicited and offered to provide loss mitigation and loan modification services to economically distressed homeowners seeking adjustments to the terms and conditions of their home loans including, but

not limited to, repayment plans, forbearance plans, partial claims, and reduction in principal or interest, extenuations, foreclosure prevention and short sales.

C. During the audit period, Respondents conducted and processed one hundred ninety nine (199) loan modifications charging an advance fee ranging from $2,800 to $3,900 per homeowner-applicants, for a total collection of advance fees of $598,680.

FIRST CAUSE OF ACCUSATION
(Audit Examination)

5.

On May 5, 2011, the Department completed an audit examination of the books and records of MRSI pertaining to the mortgage loan brokerage, loan modification and advance fee collection activities only described in Paragraph 4, which require a real estate license. The audit examination covered a period of time beginning on September 1, 2008 and ending on January 31, 2011. 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 100076 and the exhibits and work papers attached to said audit report.

General and Trust Accounts

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, MRSI and GARTE accepted or received funds including funds in trust (hereinafter "trust funds") principally in the form of advance fees collected from economically distressed homeowner-applicants for loan modifications and/or on behalf of actual or prospective parties, including lenders and borrowers for loan modifications brokered by MRSI. Thereafter MRSI made deposits and or disbursements of such trust funds. From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by MRSI in the bank account as follows:

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"Mortgage Restructuring Solutions Inc. (Trust Account)
Account No. xxxxxx66670
Bank of America (G/A #1)

(G/A #1 is MRSI's General account. Although G/A #! Is named as a "Trust Account" it is not. MRSI did not maintain a trust account).

Loan Modification Audit Violations

7.

In the course of activities described in Paragraphs 4 and 6, above, and during the examination period described in Paragraph 5, Respondents MRSI and GARTE, acted in violation of the Code and the Regulations in which Respondents:

(a) (1) Permitted, allowed or caused the disbursement of trust funds in the form of advance fees collected from homeowner-applicants for loan modifications from MRSI's general operating account, G/A #1, where the disbursement of funds reduced the total of aggregate funds in G/A #1, to an amount which, on October 10, 2009, the (SAFE Act Initiation Date) (Secure and Fair Enforcement for Mortgage Licenses), was $28,432.63, less than the existing aggregate trust fund liability to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Section 10145 and Regulations 2832.1.

(a) (2) Permitted, allowed or caused the disbursement of trust funds trust funds in the form of advance fees collected from homeowner-applicants for loan modifications from MRSI's general operating account, G/A #1, from G/A #1 where the disbursement of funds reduced the total of aggregate funds in G/A #1, to an amount which, on January 31, 2011, was $113,108.62, less than the existing aggregate trust fund liability to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Section 10145 and Regulation 2832.1.

(b) Prior to March 26, 2009, MRSI and GARTE collected advance fees within the meaning of Code Section 10026 from homeowners seeking loan modifications wherein MRSI did not have and thus failed to provide a pre-approved advance fee agreement from the Department, in violation of Code Section 10085 and Regulation 2970. The subsequent March 26, 2009, advance fee agreement on file with the Department and the advance fee agreement actually used by Respondents differ in terms and conditions and are not the same.

(c)(1) 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 MRSI, in violation of Code Section 10146, for the aforesaid homeowner/borrowers.

(c) (2) With reference to the lack of an advance fee agreement prior to March 26, 2009, MRSI failed to provide a complete description of services to be rendered provided to each prospective tenant in 10 point type font and failed to provide an allocation and disbursement of the amounts collected as the advance fee, in violation of Code Section 10146 and Regulation 2972.

(d) Mixed and commingled trust funds and personal funds by depositing advance fees received from homeowner-applicants into G/A #1, in violation of Code Sections 10145, 10176(a) and 10176(e) and Regulation 2832.

(e) Converted trust funds by depositing trust funds in the form of advance fees solicited from homeowner-applicants into G/A #1. On January 31, 2011, the minimum bank balance of G/A #1, was $10,878.24. Whereas, G/A #1's accountability should have been $138,825.02. MRSI reduced the balance in G/A #1, to an amount less than the amount of the trust funds deposited, constituting conversion, in violation of Code Sections 10145 and 10176(i).

Pursuant to the "Fee and Services Agreement" and the "Agreement for Loan Modification Services" loan modification negotiation services which require a real estate license and which would be not considered fully performed until MRSI successfully obtained a loan modification from the lender. No loan modifications were obtained from the lender by the close of the audit examination on January 31, 2011.

Additionally, Respondents paid operating expenses such as rent and advertising costs and also paid GARTE from trust funds that were deposited into MRSI's general operating account before the services contracted for by the homeowner-applicants were completed.

Table: Unauthorized and Conversion of Unearned Loan Modification Fees

Date	Check No.	Payee	Amount	Memo
1/3/2011	5321	Colton	$ 3,527.50	Rent
1/7/2011	5325	Capital One	$ 2,458.72	Advertising
1/7/2011	5326	A/E	$ 3,500.00	Advertising
1/8/2011	5331	A/E	$ 15,060.65	Advertising
1/17/2011	5339	Chase	$ 20,000.00	Advertising
1/28/2011	5340	Capital One	$ 22,054.21	Advertising
1/21/2011	5342	Citi	$ 17,223.94	Advertising
1/29/2011	5358	Harvey Garte	$ 10,000.00	Due to Shareholder
12/15/2010	5293	Chase	$ 25,000.00	Advertising
12/8/2010	5286	Chase	$ 20,000.00	Advertising
Total:			$138,825.02	

(f) Failed to maintain a control record in the form of a columnar record in chronological order of all trust funds including advance fees collected, deposited and disbursed in connection with loan modification services, in violation of Code Section 10145 and Regulation 2831.

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(g) Failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all trust funds in the form of advance fees collected, deposited and disbursed, in violation of Code Section 10145 and Regulation 2831.1.

(h) Claimed, charged and collected advance fees after October 10, 2009, the SAFE ACT Initiation Date, for negotiating, arranging and/or offering to broker mortgage loans and loan modifications and other forms of mortgage loan forbearance for fees paid by the borrowers after October 10, 2009. Respondents received and collected advance fees totaling $57,850.00 from homeowners before MRSI had fully performed each and every service for which MRSI had contracted to perform or represented that would be performed during the period of October 11, 2009 to January 31, 2011, in violation of Code Sections 10085.6, 10146, 10145 and Regulation 2832.

(i) SAFE ACT (Notice of Loan Activity). MRSI acted as a residential mortgage loan originator (MLO) during the audit period but failed to notify the Department in writing by January 31, 2010, in violation of Code Sections 10166.02(a) and (b) and MRSI failed to maintain a real estate license endorsement as an MLO when required.

(j) (Disclosure of Licensed Status in Advertising). Failed to provide MRSI's license number upon MRSI's first point of contact with the public including homeowners seeking loan modifications, in violation of Code Section 10140.6 and Regulation 2773.

(k) Failed to retain all records of MRSI's activity during the audit period requiring a real estate broker license, including the deposit records of G/A 1, such as deposit receipts, related to advance fees MRSI collected related to its loan modification services, in violation of Code Section 10148. MSRI did not retain the document pertaining to the completion date of MRSI's loan modification "submission package" to the lender.

(l) GARTE failed to exercise reasonable control and supervision over the activity of MRSI to secure full compliance with the Real Estate Law, including but not limited to trust fund handling, mortgage loan brokering, loan modification services and advance fee charge and collection. Additionally, GARTE had no system in place for regularly monitoring his compliance with the Real Estate Law especially in regard to establishing, systems, policies and procedures to review trust fund handling especially including advance fee deposits received from homeowner-applicants seeking loan modification services, in violation of Code Sections 10159.2, 10177(h) and Regulation 2725.

Discipline Statutes and Regulations

8.

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

PARAGRAPH	PROVISIONS VIOLATED
7(a)	Code Section 10145 and Regulation 2832.1
7(b)	Code Section 10085 and Regulation 2970
7(c)	Code Section 10146 and Regulation 2972
7(d)	Code Section 10145, 10176(a) and 10176(e) and Regulation 2832
7(e)	Code Section 10145 and 10176(i)
7(f)	Code Section 10145and Regulation 2831
7(g)	Code Section 10145and Regulation 2831.1
7(h)	Code Section 10085.6, 10145 and 10146 and Regulation 2832
7(i)	Code Section 10166.02(a) & (b)
7(j)	Code Section 10140.6 and Regulation 2773
7(k)	Code Section 10148
7(l)	Code Section 10159.2 and 10177(h) and Regulation 2725 (GARTE)

The foregoing violations constitutes cause for discipline of the real estate license and license rights of MRSI and GARTE, under the provisions of Code Sections 10145, 10176(a), 10176(e), 10176(i), 10177(d) and/or 10177(g).

SECOND CAUSE OF ACCUSATION
(Loan Modification Services)

9.

At all times mentioned herein, Respondents MRSI and GARTE engaged in the business of a loan modification services and, an advance fee brokerage requiring a real estate license to operate, within the definition of Code Sections 10131(d) and 10131.2.

General Allegations

10.

During the audit period of September 1, 2008 and January 31, 2001, continuing thereafter to date, MRSI and GARTE, solicited economically distressed homeowners facing foreclosure and eviction from their homes, offered loss mitigation and loan modification services, charged, claimed and collected advance fees for services not rendered.

Specific Allegations

11.

Respondents MRSI and GARTE offered loss mitigation and loan modification services to homeowner-applicants seeking downward adjustments or payment extenuations to their home mortgages. Respondents collected advanced fees from said homeowner- applicants without possessing a pre-approved advance fee agreement from the Department until April 3, 2009. Thereafter, Respondents failed to obtain the loan modification services to the borrowers.

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Table: Advance Fees Collected for Loan Modification Services

Complainant:	Contract Date	Advance Fee Pd	Loan Mod Status	Advance Fee Refund?
Prior to No objection				
Lidia Rosales	Nov-08	$ 2,800.00	Not obtained	None
Ltr of No objection Rec'd				
Robert Bilas	Sep-09	$ 3,100.00	Not obtained	None
David Murdock	Sep-09	$ 3,500.00	Not obtained	None
After SB94				
David Ziemer	11/5/2009	$ 2,600.00	Not obtained	None
Bradden Mendelson	11/29/2009	$ 3,100.00	Not obtained	None
Mario Serrano	Jun-10	$ 3,600.00	Not obtained	None
Donald P. Sciarappo	8/30/2010	$ 3,600.00	Not obtained	None
Joel DeGuzman	11/1/2009	$ 2,500.00	Not obtained	None
Bradley Brockmeyer	3/17/2010	$ 2,900.00	Not obtained	None
Thomas Miller	6/30/2010	$ 1,550.00	Not obtained	None
Barbara Ann Erickson	10/20/2009	$ 5,600.00	Not obtained	None
Shahram Borjkhani	4/11/2011	$ 3,600.00	Not obtained	None
Total		$38,450.00		

Loan Modification Violations and Disciplinary Statutes

12.

The conduct of Respondents MRSI and GARTE violated the Code and the Regulations as set forth below.

13.

13(a) Code Section 10176(a) for substantial misrepresentation of loan modification services contracted for but not provided.

13(b) Code Section 10176(b) for making false promises of a character likely to influence, persuade or induce the tabled homeowner-applicants to pay advance fees for loan modification services contracted for but not provided.

13(c) Code Section 10177(d) for violation of the Real Estate Law.

13(d) Code Section 10177(g) for negligence.

THIRD CAUSE OF ACCUSATION
(Negligence)

14.

The overall conduct of Respondents MRSI and GARTE constitutes negligence and is cause for discipline of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

FOURTH CAUSE OF ACCUSATION
(Fiduciary Duty)

15.

The conduct, acts and omissions of Respondents MRSI and GARTE constitute a breach of fiduciary duty, owed the homeowners contracting for loan modification services, of good faith, trust, confidence and candor, within the scope of their contractual relationship, in violation of Code Sections 10176(i) and/or 10177(g) and constitutes cause for discipline of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

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FIFTH CAUSE OF ACCUSATION
(Supervision and Compliance)

16.

The overall conduct of Respondent GARTE constitutes a failure on said Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of MRSI as required by Code Section 10159.2 and Regulation 2725, and to keep MRSI in compliance with the Real Estate Law, with specific regard to trust fund and advance fee handling, mortgage and loan brokering and loan modification services, and is cause for discipline of the real estate license and license rights of Respondent 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 MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law including restitution of advanced fees paid for unearned loan modifications, and for costs of audit.

Dated at Los Angeles, California

this 24 August 2011

Deputy Real Estate Commissioner

cc: Mortgage Restructuring Solutions Inc.
c/o Harvey E. Garte D.O.
Maria Suarez
Sacto
Enforcement - Amelia Nunez
Audits - Gina King