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FILED

DEC 12 2011

DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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TO: MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE, individually and as designated officer of Mortgage Restructuring Solutions Inc.;	No. H- 37726 LA ORDER TO DESIST (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 MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE. Based on that investigation, the Commissioner has determined that (a) MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE 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 Sections 10131(a) (solicitation, negotiation and/or sale real property as the agent of others) and under the exemption in California Financial Code Section 17006(a)(4) (performing escrows where the broker is a party, or the broker is performed acts requiring a real estate license).

Based on that investigation, the Commissioner has determined that MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE 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

License Status

1.

A. MORTGAGE RESTRUCTURING SOLUTIONS INC. (MRSI). At all times mentioned, 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. MRSI was authorized to act by and through HARVEY E. GARTE as MRSI's broker designated 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. At all times mentioned, 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.

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Brokerage

2.

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.

(Audit Examination)

3.

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 2, 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

4.

At all times mentioned, in connection with the activities described in Paragraph 2, 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:

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

(G/A is MRSI's general operating account although named as a "Trust Account"; MRSI did not maintain a trust account).

Loan Modification Audit Violations

5.

In the course of activities described in Paragraphs 2 and 4, above, and during the examination period described in Paragraph 3, 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, where the disbursement of funds reduced the total of aggregate funds in G/A, 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 in the form of advance fees collected from homeowner-applicants for loan modifications from MRSI's general operating account, G/A, where the disbursement of funds reduced the total of aggregate funds in G/A, 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.

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(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, 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. On January 31, 2011, the minimum bank balance of G/A, was $10,878.24. Whereas, G/A's accountability should have been $138,825.02. MRSI reduced the balance in G/A, 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.

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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.

(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.

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(Loan Modification Services)

6.

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

7.

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

8.

MRSI and GARTE offered loss mitigation and loan modification services to homeowner-applicants seeking downward adjustments or payment extenuations to their home mortgages. MRSI and GARTE collected advanced fees from said homeowner- applicants without possessing a pre-approved advance fee agreement from the Department until April 3, 2009. Thereafter, MRSI and GARTE 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 R.	Nov-08	$ 2,800.00	Not obtained	None
Ltr of No objection Rec'd				
Robert B.	Sep-09	$ 3,100.00	Not obtained	None
David M.	Sep-09	$ 3,500.00	Not obtained	None
After SB94				
David Z.	11/5/2009	$ 2,600.00	Not obtained	None
Bradden M.	11/29/2009	$ 3,100.00	Not obtained	None
Mario S.	Jun-10	$ 3,600.00	Not obtained	None
Donald P. S.	8/30/2010	$ 3,600.00	Not obtained	None
Joel D.	11/1/2009	$ 2,500.00	Not obtained	None
Bradley B.	3/17/2010	$ 2,900.00	Not obtained	None
Thomas M.	6/30/2010	$ 1,550.00	Not obtained	None
Barbara Ann E.	10/20/2009	$ 5,600.00	Not obtained	None
Shahram B.	4/11/2011	$ 3,600.00	Not obtained	None
Total		$38,450.00		

(Negligence)

9.

The overall conduct of Respondents MRSI and GARTE constitutes negligence or incompetence.

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(Breach of Fiduciary Duty)

10.

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).

(Supervision and Compliance)

11.

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.

CONCLUSIONS OF LAW

12. Based on the findings of fact contained in finding 7 with respect to the audit report, MRSI and GARTE violated Business and Code Sections 10085, 10085.6, 10140.6, 10145, 10146, 10148, 10166.02(a) & (b), 10176(a) , 10176(e) , 10176(i) and 10177(g), and Title 10, Chapter 6, California Code of Regulations (Regulations) Sections 2725, 2773, 2831, 2831.1, 2832, 2832.1, 2970 and 2972.

13. Based on the findings of fact contained in findings 8 through 11 with respect to the individual loan modifications complaints from homeowner-applicants, MRSI violated Business and Professions Code Sections 10176(a) and 10177(g).

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14. Based on the findings of fact contained in finding 13, GARTE, violated Business and Professions Code Sections 10159.2, 10177(h), 10176(i) and 10177(g) and Regulation 2725.

DESIST AND REFRAIN ORDER

Based on the Findings of Fact and Conclusions of Law stated herein, it is hereby ordered that MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE, whether doing business under their own names, or any other names, or any fictitious name, ARE HEREBY ORDERED to:

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 offered to others, unless and until MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE, and each of them, demonstrate and provide evidence satisfactory to the Commissioner that each:

(a) Has 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;

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

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(c) Has provided an accounting to trust fund owner-beneficiaries from whom advance fees have previously been collected in compliance with Code Section 10146 and Section 2972 of the Regulations.

3. Immediately desist and refrain from real estate brokerage activities unless and until MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE, are in compliance with the Real Estate Law.

DATED: 9/20, 2011.

BARBARA J. BIGBY
Acting Real Estate Commissioner

cc: Mortgage Restructuring Solutions Inc.
Harvey E. Garte
Audits - Gina King
Enforcement - Amelia Vetrone