

FILED

SEP 10 2013

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By Gene S. Don

In the Matter of the Accusation of)	BRE No. H-37997 LA
)	
JMM FINANCIAL INC., JOSE F. CASARES,)	OAH No. 2012090743
individually and as former designated officer of)	
JMM Financial Inc., <u>LILIA MARTINI,</u>)	
<u>MARTIN MANUEL MARQUEZ,</u> and)	
<u>TIM J. PISCITELLO,</u>)	
)	
)	
Respondents.)	
)	

DECISION

The Proposed Decision dated July 23, 2013, 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

SEP 30 2013

IT IS SO ORDERED

9/3/2013

REAL ESTATE COMMISSIONER

Wayne Bell
WAYNE BELL

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation of

JMM FINANCIAL, INC.,
JOSE F. CASARES, individually
and as former designated officer of
JMM Financial, Inc.,
LILIA MARTINI,
MARTIN MANUEL MARQUEZ, and
TIM J. PISCITELLO,

Respondents.

Case No. H-37997 LA

OAH No. 2012090743

PROPOSED DECISION

This matter came on regularly for hearing before Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on July 1, 2013, at Los Angeles, California.

Lisete Garcia, Staff Counsel for the Bureau of Real Estate (the Bureau),¹ represented Complainant Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State of California.

The Accusation was served and due notice of the time and place for hearing was given as required by the Government Code. On July 23, 2012, the Bureau issued a default order as to Respondents JMM Financial, Inc. and Jose F. Casares, individually, and as former designated officer of JMM Financial, Inc., for their failure to file a Notice of Defense, and issued a decision accordingly on September 7, 2012. For the remaining three respondents, only the second cause for discipline set forth in the Accusation pertains.

Respondent Martin Manuel Marquez appeared at hearing, and represented himself. Respondents Lilia Martini and Tim J. Piscitello failed to appear at hearing, and no one appeared on their behalf. Consequently, the matter pertaining to Respondents Lilia Martini and Tim J. Piscitello proceeded by way of default hearing.

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¹ Effective July 1, 2013, the Department of Real Estate became the Bureau of Real Estate as part of the Department of Consumer Affairs.

Oral and documentary evidence was received, and the record remained opened until July 15, 2013 for the submission of a certified copy of Accusation H-37568-LA in a prior disciplinary matter filed against Respondent Martin Manuel Marquez. The Bureau timely submitted the certified document, which ALJ Garrett duly marked as Exhibit 18 and admitted into evidence. The record was closed, and the matter was submitted for decision on July 15, 2013.

FINDINGS OF FACT

1. On March 26, 2012, Complainant Veronica Kilpatrick filed Accusation No. H-37997-LA in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. On December 28, 2006, the Bureau issued Respondent JMM Financial, Inc. (Respondent JMM) a license as a corporate real estate broker, license number 01788706, which expired on December 27, 2010. From December 27, 2010 through December 28, 2010, Respondent was licensed to act by and through Respondent Jose F. Casares (Respondent Casares).

3. On August 30, 2004, the Bureau issued Respondent Lilia Martini (Respondent Martini) a license to act as a real estate salesperson, license number 01440375. The license expired on March 16, 2013, and had not been renewed as of the time for hearing. From April 18, 2009 through August 8, 2010, Respondent Martini was licensed under Respondent JMM as her employing broker. The Bureau maintains jurisdiction over Respondent Martini pursuant to Business and Professions Code section 10103.

4. On June 27, 2005, the Bureau issued Respondent Martin Manuel Marquez (Respondent Marquez) a license to act as a real estate salesperson, license number 01507390. The license expired on June 29, 2013, and had not been renewed as of the time for hearing. From June 30, 2009 through February 27, 2011, Respondent Marquez was licensed under the employ of Respondent JMM. The Bureau maintains jurisdiction over Respondent Marquez pursuant to Business and Professions Code section 10103.

5. On June 17, 1997, the Bureau issued Respondent Tim J. Piscitello (Respondent Piscitello) a license to act as a real estate salesperson, license number 01222885. The license is due to expire on January 23, 2014. From January 8, 2006 to the present, Respondent Piscitello has not been licensed under the employ of any broker.

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Lakeridge Property / Affidavit of Enrique C. Martin

6. On or April 6, 2009, Enrique C. Martin, who provided testimony through affidavit,² after hearing Respondent Martini on the radio promoting Home Solutions Financial, LLC (Home Solutions),³ met with Respondent Martini to discuss purchasing real estate. After the meeting, Mr. Martin, his wife, and Respondent Martini viewed a condominium unit located 2013 Lakeridge Circle in Chula Vista, California (Lakeridge Property). Mr. Martin and his wife, who were first-time buyers, decided they would purchase Unit #202 of the Lakeridge Property, as it was available for short sale. Respondent Martini instructed Mr. Martin and his wife to return with a cashier's check in the amount of \$2,800 as a deposit toward the purchase of the Lakeridge Property, made payable to Home Solutions.

7. On April 6, 2009, Mr. Martin obtained a cashier's check in the amount of \$2,800, made payable to Home Solutions, and immediately delivered it to Respondent Martini. On the same day, Respondent Martini gave Mr. Martin an acknowledgement and receipt form under the letterhead of Impact Marketing Alliance, LLC (Impact)⁴ and Home Solutions. The acknowledgement and receipt form falsely represented that the \$2,800 was a deposit for a loan audit and process fee. Mr. Martin had no outstanding real estate loans, as he owned no real estate, and therefore required no loan audit. Respondent Martini provided Mr. Martin with her business card from LM Casitas, which indicated it was a real estate financial services company. Articles of Organization for LM Casitas were filed with the Secretary of State for the State of California on July 11, 2007, and suspended on March 1, 2010. LM Casitas has never been licensed by the Bureau in any capacity.

² The Bureau introduced Mr. Martin's affidavit pursuant to Government Code section 11514, subdivision (a), which provides that "at any time 10 or more days prior to a hearing . . . any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally." The Bureau provided the respondents timely notice of its intent to introduce Mr. Martin's affidavit into evidence. No respondent notified the Bureau that he or she wished to cross-examine Mr. Martin.

³ Articles of Organization for Home Solutions were filed with the Secretary of State for the State of California on January 14, 2003. Home Solutions has never been licensed by the Bureau in any capacity.

⁴ Articles of Organization for Impact were filed with the Secretary of State for the State of California on January 15, 2009. Impact has never been licensed by the Bureau in any capacity.

8. Thereafter, Mr. Martin and his wife experienced great difficulty reaching Respondent Martini to ascertain the status of their short sale purchase of the Lakeridge Property. Specifically, Mr. Martin left numerous telephone messages for Respondent Martini to call him, but Respondent Martini never returned the calls. Consequently, in June 2009, Mr. Martin and his wife made an unannounced visit to Respondent Martini at the Home Solutions' office. Respondent Martini advised that she had been experiencing personal problems, but that the purchase was going well. Respondent Martini instructed Mr. Martin and his wife to return to the office in two days, so that they could receive a thorough update.

9. Two days later, Mr. Martin returned to the office, and met with Respondent Martini and Respondent Casares, who represented himself as the president of Home Solutions. Respondent Casares explained that the purchase was going well, but that the bank was taking longer than expected to respond to Mr. Martin's offer to purchase the Lakeridge Property. Respondent Casares further advised that Home Solutions would have a response from the bank in six weeks.

10. After approximately six weeks, Mr. Martin attempted to reach Respondent Martini, but was unsuccessful. Mr. Martin and his wife made another unannounced visit to the Home Solutions office to see Respondent Martini. Respondent Martini advised that she had been encountering difficulty locating Respondent Casares. Respondent Martini gave Mr. Martin Respondent Casares' email address so that Mr. Martin could communicate with him.

11. Mr. Martin sent Respondent Casares a number of emails, but Respondent Casares never replied.

12. In August 2009, Mr. Martin requested Respondent Martini to return his \$2,800 deposit. Respondent Martini advised that Respondent Casares had information about their case, and asked that Mr. Martin to come to the Home Solutions office the following day, when Respondent Casares would be in the office.

13. The following day, Mr. Martin went to the Home Solutions office, but Mr. Martin did not talk to Respondent Casares. Instead, Mr. Martin met with Respondent Marquez, who was Home Solutions' loan consultant. Respondent Marquez advised Mr. Martin that his purchase was going well, to wait approximately six more weeks to close escrow, and to understand that the banks were taking long periods of time to complete short sales. Mr. Martin waited another six weeks, but nothing materialized.

14. On or about October 31, 2009, Mr. Martin contacted Respondent Martini and demanded his money back. Respondent Martini told Mr. Martin to give her an opportunity to close the deal, as she had received news that the owner of the Lakeridge Property had vacated the premise, and that it would not be long before escrow closed.

15. By the middle of December 2009, after not receiving any information from Home Solutions about the status of the purchase, Mr. Martin began calling Respondent Martini again, but was unsuccessful in reaching her. Mr. Martin and his wife went to the Home Solutions office, and learned that Respondent Martini had moved her office to a different location. In January 2010, Mr. Martin and his wife went to Respondent Martini's new office to discuss the status of the purchase. However, Respondent Martini's secretary advised them that Respondent Martini no longer worked with Home Solutions, and that she had nothing to discuss with them. After Mr. Martin insisted on talking to Respondent Martini, Respondent Martini told them she was not working on the case, and the only thing she could do was send emails to Respondent Casares, Respondent Marquez, and Virginia Tapia.

16. Thereafter, Mr. Martin began calling Home Solutions every day, until he reached Respondent Marquez. Mr. Martin advised Respondent Marquez that he wanted his money back. Respondent Marquez advised that an employee of Home Solutions had embezzled money, and that Home Solutions' lawyers would contact Mr. Martin to make arrangements to give him his money back. No Home Solutions lawyer ever contacted Mr. Martin.

17. On January 7, 2010, Mr. Martin sent an email addressed to Respondent Casares, Respondent Marquez, and Virginia Tapia demanding a refund of his \$2,800, and also sent each one a certified letter demanding a refund. On January 8, 11, and 12, 2010, Mr. Martin sent each one additional email messages requesting the return of his \$2,800.

18. On January 12, 2010, Respondent Marquez sent a joint email to Respondent Casares, Virginia Tapia, and Mr. Martin, stating, "I have already spoken to Mr. Martin and he is aware of the refund process." Mr. Martin never received his refund.

19. At hearing, despite his wording in the January 12, 2010 email, Respondent Marquez did not recall having any discussions with Mr. Martin, as Mr. Martin only spoke Spanish, and Respondent Marquez neither spoke nor understood Spanish. However, when he learned through Respondent Martini that Mr. Martin was seeking a refund, he sent a note advising upper management of Home Solutions, specifically Tina Gwen, who was one of the owners, that Mr. Martin wanted a refund. Ms. Gwen handled all of the finances at Home Solutions. In addition, Respondent Marquez forwarded all email he received from Mr. Martin to Ms. Gwen concerning his refund requests. Respondent Marquez was not working at Home Solutions at the time Mr. Martin's deposit was submitted to Home Solutions, he never signed anyone up to receive services at Home Solutions, never received any money from Mr. Martin or any other Home Solutions client, never handled any financial matters concerning Home Solutions or its clients, never wrote or deposited checks for or on behalf of Home Solutions, never made any executive decisions for Home Solutions, never advised Mr. Martin or any other client that someone had embezzled funds, and only gave updates to clients pursuant to instructions received from upper management, which, to his knowledge, were truthful. He was simply a "worker bee" for Home Solutions where he helped clients with their loan modifications by overseeing the submission of paperwork to the banks, and

made no misrepresentations to Mr. Martin. Respondent's testimony was credible, given his sincere demeanor at hearing, the way in which he answered questions in a straight-forward manner, and the lack of credible evidence controverting Respondent Marquez' statements.

Camino La Pas Property

20. On October 14, 2009, Maria Oliva, who provided testimony through affidavit,⁵ received a notice of trustee's sale addressed collectively to her and her husband, indicating that they were in default on real property located at 892 Camino La Pas in Chula Vista, California (Camino La Pas Property), and that the bank would sell the property at a trustee's sale on October 30, 2009. The house had gone into default as a result of Ms. Oliva and her husband losing their jobs, leaving them unable to pay the monthly mortgage. Ms. Oliva's husband then abandoned her and the children, leaving her to handle the foreclosure on her own.

21. Ms. Oliva contacted her former real estate agent and advised about the foreclosure, and explained she needed help. The agent referred Ms. Oliva to Respondent Martini. When Ms. Oliva contacted Respondent Martini, Respondent Martini said she would enroll Ms. Oliva in a program where Respondent Martini would handle the foreclosure, obtain approximately two months of extra time before Ms. Oliva and her children would have to leave the house, help her move, help re-establish her credit, and help her get another house within the next two years.

22. On October 29, 2009, Respondent Martini, in the presence of Antonio Blas, a Notary Public, instructed Ms. Oliva to sign a grant deed indicating that she was making a bonafide gift of the Camino La Pas Property. Ms. Oliva complied, as she believed she needed to do so in order to give Respondent Martini the authority to work on her behalf. Respondent Martini then signed the name of Ms. Oliva's husband. Mr. Blas notarized the grant deed, and prepared an acknowledgement indicating that Ms. Oliva and her husband had proven to him that they were who they purported themselves to be, and then obtained the thumb print of Ms. Oliva, and the thumb print of Respondent Martini to act as the thumb print of Ms. Oliva's husband. The grant deed was filed at the San Diego County Recorder's Office on October 30, 2009.

23. The following day, on October 30, 2009, Respondent Martini, in the presence of Mr. Blas, fraudulently signed the names of Ms. Oliva and her husband on another grant deed, which indicated that the Camino La Pas Property was to be transferred to Respondent Martini. Mr. Blas notarized the grant deed.

⁵ The Bureau introduced Ms. Oliva's affidavit pursuant to Government Code section 11514, subdivision (a). The Bureau provided the respondents timely notice of its intent to introduce Ms. Oliva's affidavit into evidence. No respondent notified the Bureau that he or she wished to cross-examine Ms. Oliva.

24. Less than one month later, Respondent Martini demanded Ms. Oliva and her children to move out of the Camino La Pas Property.

25. Thereafter, Respondent Martini moved into the Camino La Pas Property, and used it for her own personal benefit. The fraudulent grant deed containing the forged signatures of Ms. Olivia and her husband was filed with the San Diego County Recorder's Office on July 30, 2010.

Costs of Prosecution

26. The Bureau incurred \$3,152.20 in costs for investigating this matter, and \$1,379.50 in enforcement costs, for a total of \$4,531.70 in prosecution costs from May 27, 2010 to May 10, 2013. These costs, established by declarations executed under penalty of perjury, were reasonable pursuant to Business and Professions Code section 10106.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Med. Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

2. Under Business and Professions Code (Code) section 10176, subdivisions (a), (b), and (i), the commissioner may temporarily suspend or permanently revoke a real estate license at any time where the licensee has made a "substantial misrepresentation" (subdivision (a)), made a "false promises of a character likely to influence, persuade, or induce" (subdivision (b)), or for any other conduct "which constitutes fraud or dishonest dealing." (Subdivision (i).)

3. Under Code section 10177, a real estate license may be disciplined if a licensee "[w]illfully disregarded or violated the Real Estate Law" (subdivision (d)), or "[d]emonstrated negligence or incompetence in performing an act for which he or she is required to hold a license." (Subdivision (g).)

4. In *Golde v. Fox* (1979) 98 Cal.App.3d 167, 177-178, the court stated:

A real estate broker often acts in a confidential and fiduciary capacity for his clientele. The term "honesty" as used in section 10152 is to be given the broadest possible meaning. (*Rhoades v. Savage*, supra, 219 Cal.App.2d 294, 299). The real estate profession has, over a period of years, excluded unfit persons and as a result thereof an appreciable amount of public trust and confidence has been built up. The public exposing themselves to a real estate licensee

has reason to believe that the licensee must have demonstrated a degree of honesty and integrity in order to have obtained such a license.

Respondent Martini

5. Cause exists to discipline the real estate license of Respondent Martini, pursuant to Code section 10176, subdivisions (a), (b), and (i), in that Respondent Martini made substantial misrepresentations, false promises of a character likely to influence, persuade, or induce, and engaged in other conduct constituting fraud or dishonest dealing, pertaining to Mr. Martin and Ms. Oliva, as set forth in Factual Findings 6 - 25.

6. Cause does not exist to discipline the real estate license of Respondent Martini, pursuant to Code section 10177, subdivisions (d) and (g), as alleged in Count Two of the Accusation, in that there was no clear and convincing evidence that Respondent Martini conducted or offered to conduct any business with Mr. Martin or Ms. Oliva, under LM Casitas Realty, LM Casitas Real Estate, Inc., or Martini Real Estate Financial Services.

Respondent Marquez

7. Cause does not exist to discipline the real estate license of Respondent Marquez, pursuant to Code section 10176, subdivisions (a), (b), and (i), as alleged in Count Two of the Accusation, in that there was no clear and convincing evidence that Respondent Marquez made any substantial misrepresentations, false promises of a character likely to influence, persuade, or induce, or engaged in other conduct constituting fraud or dishonest dealing pertaining to Mr. Martin. Respondent Marquez' testimony credibly refuted Mr. Martin's testimony as it pertained to statements Respondent Marquez purportedly said to Mr. Martin, particularly his uncontroverted testimony that he had no discussions with Mr. Martin, as Mr. Martin spoke only Spanish, and Respondent Marquez spoke only English. The Bureau introduced no evidence demonstrating that Mr. Martin spoke English or Respondent Marquez spoke Spanish, or produced any other credible evidence showing that Respondent Marquez had any conversations with Mr. Martin. Even if Respondent Marquez had made the statements Mr. Martin had attributed to him, the Bureau submitted no evidence demonstrating that the statements were false, dishonest, or misleading. Specifically, Mr. Martin's affidavit stated that Respondent Marquez had advised him that his purchase was going well, to wait approximately six more weeks to close escrow, and to understand that the banks were taking long periods of time to complete short sales. The Bureau introduced no evidence showing that Respondent Marquez had misrepresented anything when he purportedly made this statement. Similarly, the Bureau submitted no evidence to show that Respondent Marquez lied to Mr. Martin, when he purportedly advised that an employee of Home Solutions had embezzled money. The Bureau established only that Mr. Martin had made a \$2,800 deposit to purchase the Lakeridge Property, that the purchase was never completed, and that Mr. Martin never received a refund of his \$2,800. However, the Bureau failed to establish clearly and convincingly that Respondent Marquez was responsible for, or

knowingly helped to perpetuate a fraud against Mr. Martin. As such, this matter as it pertains to Respondent Marquez must be dismissed.

Respondent Piscitello

8. Cause does not exist to discipline the real estate license of Respondent Piscitello, pursuant to Code section 10177, subdivisions (d) and (g), as alleged in Count Two of the Accusation, in that there was no evidence introduced demonstrating that Respondent Piscitello committed any wrongdoing of any kind, or that Respondent Piscitello conducted or offered to conduct any business under Home Financial Solutions, LLC, Home Solutions Financial, LLC, or Impact Marketing Alliance. As such, this matter as it pertains to Respondent Piscitello must be dismissed.

ORDER

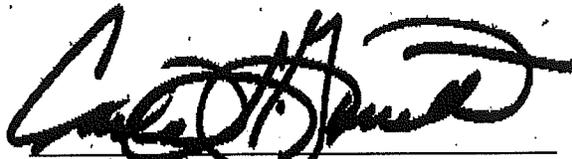
1. The real estate salesperson license of Respondent Martini, license number 01440375, is revoked.

2. Respondent Martini shall pay the cost of investigation and enforcement of the case in the amount of \$4,531.70 on a schedule acceptable to the Commissioner.

3. The Accusation, as it pertains to Respondent Marquez, is dismissed.

4. The Accusation, as it pertains to Respondent Piscitello, is dismissed.

Date: July 23, 2013



CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings

FILED

SEP -7 2012

DEPARTMENT OF REAL ESTATE
BY: Ce

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H-37997 LA
)	
<u>JMM FINANCIAL, INC.,</u>)	
<u>JOSE F. CASARES, individually</u>)	
and as former designated officer)	
of JMM Financial, Inc.,)	
LILIA LILIA MARTINI,)	
MARTIN MANUEL MARQUEZ, and)	
TIM J. PISCITELLO,)	
)	
Respondents.)	
)	

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on July 23, 2012, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

FINDINGS OF FACT

1.

On March 12, 2012, Veronica Kilpatrick made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, to Respondents JMM FINANCIAL, INC. and JOSE F. CASARES' last known mailing addresses on file with the

Department on March 26, 2012. A second attempt at service was made on April 23, 2012, by regular mail.

2.

On July 23, 2012, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondents JMM FINANCIAL, INC. and JOSE F. CASARES' default was entered herein.

3.

From December 28, 2006, through December 27, 2010, JMM FINANCIAL, INC. ("JFI") was licensed as a corporate real estate broker, License No. 01788706. From December 27, 2010, through December 28, 2010, Respondent JFI was licensed to act by and through Respondent JOSE F. CASARES as its officer pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law. Respondent JFI's license expired on December 27, 2010. The Department of Real Estate ("Department") retains jurisdiction pursuant Code Section 10103.

4.

From October 13, 2006, through the present, Respondent JOSE F. CASARES ("CASARES") has been licensed as a real estate broker, License No. 01415285.

Suspended Corporation

5.

Regulation 2742, subdivision (c), Title 10, Chapter 6, California Code of Regulations ("Regulations") states: "[A] corporation licensed under Section 10211 of the Code shall not engage in the business of a real estate broker while not in good legal standing with the Office of the Secretary of State."

6.

Respondent JFI's corporate rights were suspended by the California Franchise Tax Board on October 1, 2009. No notice of the change in corporate status was provided to the Department by either JFI or CASARES.

Advance Fee Violations/Fraud/Dishonest Dealing

7.

On or about April 6, 2009, Lilia Martini, a real estate salesperson licensed under the employment of Respondent JFI, offered to assist Enrique C. Martin with the short sale purchase of real property located at 2023 Lakeridge Circle #202, Chula Vista, California ("Lakeridge property"). Enrique C. Martin paid a deposit of \$2,800 toward the purchase of the Lakeridge property. Lilia Martini instructed Martin to make the \$2,800 cashier's check payable to Home Solutions Financial, LLC. Lilia Martini gave Enrique C. Martin an acknowledgement and receipt form under the letterhead of Impact Marketing Alliance, LLC and Home Solutions Financial, LLC. The receipt form falsely indicated that the \$2,800 deposit received from Enrique C. Martin was for a forensic loan audit. Enrique C. Martin received a business card from Lilia Martini for LM Casitas Realty.

8.

Respondent CASARES made misrepresentations to Enrique C. Martin about the status of his purchase of the Lakeridge property. Respondent never placed Enrique C. Martin's \$2,800 deposit in escrow or a trust account. A residential purchase agreement for the Lakeridge property was never provided to Enrique C. Martin and Respondent CASARES never gave Enrique C. Martin an accounting of what happened to his \$2,800 deposit. Respondent CASARES refused to refund Enrique C. Martin's deposit to him after he requested a refund of his money.

Use of Unlicensed Fictitious Business Name

9.

Respondents JFI and CASARES acted without Department authorization in using the fictitious business names Home Financial Solutions, LLC, Home Solutions Financial, LLC, Impact Marketing Alliance, LLC to engage in activities requiring the issuance of a real estate license.

AUDIT LA 100085

10.

On October 28, 2011, the Department completed an audit examination of the books and records of Respondent JFI's loan modification activities. The audit examination covered a period of time from September 1, 2008 to February 28, 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 100085 and the exhibits and work papers attached to said Audit Report.

11.

At all times mentioned, in connection with the activities described in Paragraph 10, above, JFI accepted or received funds including funds in trust ("trust funds") from or on behalf of actual or prospective parties to transactions including buyers, sellers, lenders and borrowers handled by JFI and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned, during the audit period, said trust funds were deposited and/or maintained by JFI in the bank accounts as follows:

Bank Account 1

JMM FINANCIAL INC DBA Home Solutions Financial
Account No. [REDACTED] 1162
Comerica Bank
Brea, California

Bank Account 2

Milburn Associates LLC DBA HSF Marketing
Account No. [REDACTED] 1089
Comerica Bank
Brea, California

Bank Account 3

JMM FINANCIAL INC DBA Home Solutions
Account No. [REDACTED] 5095
Bank of America
San Francisco, California

Violations

In the course of JFI's loan modification activities during the examination period described in Paragraph 10, Respondent JFI acted in violation of the Code and the Regulations as follows:

(A) Bank Account 1 (B/A-1) had a minimum shortage of \$1,000 as of January 22, 2010. Bank Account 2 (B/A-2) had a minimum shortage of \$2,500 as of October 8, 2009. B/A -1 and B/A-2 were used for the handling of advance fees related to JFI's loan modification activities. Respondent JFI permitted, allowed or caused the disbursement of trust funds from B/A -1 and B/A-2, where the disbursement of funds reduced the total of aggregate funds in the accounts, to an amount which was less than the existing aggregate trust fund liability of JFI to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code Section 10145 and Regulations 2832.1 and 2951.

(B) Respondent JFI charged and collected advance fees for loan modification activities prior to submitting an advance fee agreement to the Department for review. The Department issued a no-objection letter to JFI on June 11, 2009. After June 11, 2009, Respondent JFI used a different advance fee agreement for loan modifications than the advance fee agreement that had been reviewed by the Department, in violation of Code Section 10085 and Regulation 2970.

(C) Respondent JFI deposited trust funds into JFI's general operating accounts B/A-1 and B/A-2 and failed to itemize accounting content as required by Code Section 10146 and Regulation 2972.

(D) Respondent JFI charged and collected advance fees for loan modification activities after October 10, 2009, in violation of Code Sections 10085.6, 10146 and Regulation 2832.

(E) Respondent JFI failed to establish and/or 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 JFI, thereby depositing trust funds in JFI's general accounts (B/A-1, B/A-2 & B/A-3) and thus commingling trust funds with JFI's funds, in violation of Code Sections 10145 and 10176(e) and Regulation 2832.

(F) Advance fees that were collected from borrowers in connection with loan modification transactions were deposited into Respondent JFI's general business account (B/A-1) and used for JFI's general operating expenses. The balance of JFI's general business account was reduced to an amount that was less than the amount of trust funds deposited, thus, conversion of trust funds, in violation of Code Sections 10145 and 10177(j).

(G) Respondent JFI failed to maintain a control record in the form of a columnar record in chronological order of all trust funds including advance fees received, deposited and disbursed, in violation of Code Section 10145 and Regulation 2831.

(H) Respondent JFI failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all advance fees collected, in violation of Code Section 10145 and Regulation 2831.1.

(I) Respondent CASARES was not an authorized signor on B/A-2 from May 18, 2009 to October 7, 2009. Respondent JFI allowed Tina P. Nguyen to be a signatory on JFI's general business accounts (B/A-1 & B/A-3), at a time when she was not licensed by the Department in any capacity, in violation of Code Section 10145 and Regulation 2834.

(J) Respondent JFI employed or compensated unlicensed individuals, Roxana Carreon, Armando Villasenor, Natalie Contreras, Maria Datan, Stephanie St. Mary, Virginia Tapia, Meagan Quesada, Bene Resincoy, Dora Almazan, Maria Zacarias, Sotero Trejo and Haidu Gaza, to act in the capacity of loan agents for JFI, in violation of Code Sections 10130 and 10137.

(K) Respondent JFI conducted real estate activities by using unlicensed fictitious business names "HSF Marketing", "Home Solutions Financial, LLC", "Impact Marketing Alliance", and "Milburn Associates, LLC", in violation of Code Section 10159.5 and Regulation 2731.

(L) JFI conducted loan modification activities out of a branch office located at 1551 N. Tustin Ave., Suite 150, Santa Ana, California, prior to obtaining a branch office license from the Department, in violation of Code Section 10163.

(M) JFI engaged in real estate activities while not in good legal standing with the Office of the Secretary of State after October 1, 2009, in violation of Regulation 2742.

(N) After being given reasonable notice, Respondent JFI failed to retain records in connection with its real estate activities requested by the Department, in violation of Code Section 10148.

(O) Respondent CASARES failed to exercise reasonable control and supervision over the activities conducted on behalf of JFI and its licensees and employees as necessary to secure full compliance with the Real Estate Law, in violation of Code Sections 10177(h) and 10159.2 and Regulation 2725.

AUDIT LA 100086

13.

On October 12, 2011, the Department completed an audit examination of the books and records of Respondent CASARES' real estate activities. The audit examination covered a period of time from September 1, 2008 to February 28, 2011. The audit examination revealed a violation of the Code as set forth in the following paragraph, and more fully discussed in Audit Report LA 100086 and the exhibits and work papers attached to said Audit Report.

14.

In connection with the activities described in Paragraph 13, above, CASARES did not maintain a definite place of business to serve as his office for the transaction of business and the place where his license is displayed since June 18, 2010, in violation of Code Section 10162 and Regulation 2715.

DETERMINATION OF ISSUES

1.

The suspension of Respondent JFI's corporate status is in violation of Regulation 2742, subdivision (c) and constitutes grounds to suspend or revoke Respondent JFI's corporate real

estate broker license pursuant to Code Sections 10177(d) and 10177(g).

2.

The acknowledgement and receipt form provided to Enrique C. Martin constitutes an advance fee agreement which was not submitted to the Department prior to use is required under Code Section 10085 and Regulation Section 2970.

3.

The advance fee collected from Enrique C. Martin by Respondents JFI and CASARES was not deposited in a trust account as required under Code Section 10146. Respondents JFI and CASARES did not provide an accounting to principals, in violation of Code Section 10146 and Regulation Section 2972.

4.

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

5.

The conduct, acts and/or omissions of Respondents JFI and CASARES, as set forth above, in collecting advance fees from prospective purchasers or borrowers and failing to deposit the advance fees into a trust account and provide an accounting to principals, is in violation of Code Section 10146 and Regulation Section 2972, and constitutes grounds for the suspension or revocation of the licenses and license rights of Respondents JFI and CASARES pursuant to Code Section 10177(d).

6.

The conduct, acts and/or omissions of Respondents JFI and CASARES, in using an unlicensed fictitious business name to engage in activities requiring a real estate license, violate Code Section 10159.5 and Regulation 2731, and are cause for the suspension or revocation of the licenses and license rights of

Respondents JFI and CASARES pursuant to Code Section 10177(d).

7.

The conduct of Respondent JFI described in Paragraph 12, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
12(A)	Code Section <u>10145</u> and Regulation <u>2832.1</u> , <u>2951</u>
12(B)	Code Section <u>10085</u> and Regulation <u>2970</u>
12(C)	Code Section <u>10146</u> and Regulation <u>2972</u>
12(D)	Code Sections <u>10085.6</u> , <u>10145</u> and <u>10146</u> and Regulation <u>2832</u>
12(E)	Code Sections <u>10145</u> and <u>10176(e)</u> and Regulations <u>2832</u>
12(F)	Code Section <u>10145</u> and <u>10177(j)</u>
12(G)	Code Section <u>10145</u> and Regulation <u>2831</u>
12(H)	Code Section <u>10145</u> and Regulation <u>2831.1</u>
12(I)	Code Section <u>10145</u> and Regulation <u>2834</u>
12(J)	Code Section <u>10130</u> and <u>10137</u>
12(K)	Code Section <u>10159.5</u> and Regulation <u>2731</u>
12(L)	Code Section <u>10163</u>
12(M)	Regulation <u>2742</u>
12(N)	Code Section <u>10148</u>

8.

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of Respondent JFI, as aforesaid, under the provisions of Code Sections 10176(e) for commingling, 10177(d) for violation of the Real Estate Law and 10177(g) for negligence.

9.

The conduct, acts and/or omissions of Respondent CASARES, in allowing Respondent JFI to violate the Real Estate

Law, as set forth above, constitutes a failure by Respondent CASARES, as the officer designated by the corporate broker licensee, to exercise the supervision and control over the activities of Respondent JFI, as required by Code Section 10159.2 and Regulation 2725, and is cause to suspend or revoke the real estate licenses and license rights of Respondent CASARES under Code Section 10177(h).

10.

The conduct, acts and/or omissions of Respondent CASARES, as described in Paragraphs 13 and 14 above, are in violation of Regulation 2715 and Code Section 10162 which constitutes cause for the suspension or revocation of the real estate license and license rights of Respondent CASARES, as aforesaid, under the provisions of Code Sections 10177(d) for violation of the Real Estate Law and 10177(g) for negligence.

11.

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

ORDER

The licenses and license rights of Respondents JMM FINANCIAL, INC. and JOSE F. CASARES 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 September 27, 2012.

DATED: August 10, 2012.

Real Estate Commissioner



By WAYNE S. BELL
Chief Counsel

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

FILED

JUL 23 2012

DEPARTMENT OF REAL ESTATE
BY: ca

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of)	
)	NO. H-37997 LA
12 <u>JMM FINANCIAL, INC.;</u>)	
13 <u>JOSE F. CASARES, individually and</u>)	<u>DEFAULT ORDER</u>
14 as former designated officer of)	
15 JMM Financial, Inc.; LILIA MARTINI;)	
16 MARTIN MANUEL MARQUEZ;)	
and TIM J. PISCITELLO,)	
)	
Respondents.)	

17 Respondents, JMM FINANCIAL, INC. and JOSE F. CASARES,
18 individually and as former designated officer of JMM Financial,
19 Inc., having failed to file a Notice of Defense within the time
20 required by Section 11506 of the Government Code, are now in
21 default. It is, therefore, ordered that a default be entered on
22 the record in this matter.

23 IT IS SO ORDERED July 23, 2012
24 Real Estate Commissioner

25
26 Dolores Weeks
27 By: DOLORES WEEKS
Regional Manager

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LISSETE GARCIA, Counsel (SBN 211552)
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FILED

MAR 26 2012

DEPARTMENT OF REAL ESTATE

BY: C-3

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	NO. H-37997 LA
)	
JMM FINANCIAL, INC.,)	<u>ACCUSATION</u>
JOSE F. CASARES, individually)	
and as former designated officer)	
of JMM Financial, Inc.,)	
LILIA MARTINI,)	
MARTIN MANUEL MARQUEZ, and)	
TIM J. PISCITELLO,)	
)	
Respondents.)	

The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against JMM FINANCIAL, INC., JOSE F. CASARES, individually and as former designated officer of JMM Financial, Inc., LILIA MARTINI, MARTIN MANUEL MARQUEZ, and TIM J. PISCITELLO (collectively "Respondents") is informed and alleges as follows:

1.

The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

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2.

At all times herein mentioned, Respondents were licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

3.

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.

4.

From December 28, 2006, through December 27, 2010, JMM FINANCIAL, INC. ("JFI") was licensed as a corporate real estate broker, License No. 01788706. From December 27, 2010, through December 28, 2010, Respondent JFI was licensed to act by and through Respondent JOSE F. CASARES as its officer pursuant to Code Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law. Respondent JFI's license expired on December 27, 2010. The Department of Real Estate ("Department") retains jurisdiction pursuant Code Section 10103.

5.

From October 13, 2006, through the present, Respondent JOSE F. CASARES ("CASARES") has been licensed as a real estate broker, License No. 01415285.

6.

From August 30, 2004, through the present, Respondent LILIA MARTINI ("MARTINI") has been licensed as a real estate salesperson, License No. 01440375. Respondent MARTINI was licensed under Respondent JFI as her employing broker from April 18, 2009, through August 8, 2010.

7.

From June 27, 2005, through the present, Respondent MARTIN MANUEL MARQUEZ ("MARQUEZ") has been licensed as a real estate salesperson, License No. 01507390. From June 30, 2009, through February 27, 2011, Respondent MARQUEZ was

1 licensed under the employ of Respondent JFI.

2 8.

3 From June 17, 1997, through the present, TIM J. PISCITELLO (“PISCITELLO”)
4 has been licensed by the Department as a real estate salesperson, license no. 01222885. From
5 January 8, 2006, through the present, Respondent PISCITELLO has been licensed as no business
6 activity (NBA) with no employing broker.

7
8 FIRST CAUSE OF ACCUSATION

9 (Suspended Corporation)

10 (JFI/CASARES)

11 9.

12 Regulation 2742, subdivision (c) states: “[A] corporation licensed under Section
13 10211 of the Code shall not engage in the business of a real estate broker while not in good legal
14 standing with the Office of the Secretary of State.”

15 10.

16 Respondent JFI’s corporate rights were suspended by the California Franchise
17 Tax Board on October 1, 2009. No notice of the change in corporate status was provided to the
18 Department by either JFI or CASARES.

19 11.

20 The suspension of Respondent JFI’s corporate status is in violation of Regulation
21 2742, subdivision (c) and constitutes grounds to suspend or revoke Respondent JFI’s corporate
22 real estate broker license pursuant to Code Sections 10177(d) and/or 10177(g).

23 12.

24 The conduct, acts and/or omissions of Respondent CASARES as set forth in
25 Paragraph 10, above, in failing to adequately supervise the activities of Respondent JFI to ensure
26 compliance with the Real Estate Law, is in violation of Code Section 10159.2 and constitutes
27 grounds to discipline the license and/or license rights of Respondent CASARES pursuant to
28 Code Sections 10177(h), 10177(d) and/or 10177(g).

SECOND CAUSE OF ACCUSATION
ADVANCE FEE VIOLATIONS/FRAUD/DISHONEST DEALING
(Respondents JFI, CASARES, MARTINI, and MARQUEZ)

13.

There is hereby incorporated in this Second, separate Cause of Accusation, all of the allegations contained in Paragraphs 1 through 12 above, with the same force and effect as if herein fully set forth.

14.

Code Section 10131 defines a real estate broker as a person who: (a) sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listing of, or negotiates the purchase, sale or exchange of real property or a business opportunity; or (d) solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property. Code Section 10131.2 defines a real estate broker as a person who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon.

15.

Code Section 10026, in pertinent part, defines an advance fee as a fee that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license. A person who proposes to collect an advance fee as defined in Code Section 10026 must submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for the payment of an advance fee including the form of advance fee agreement proposed for use, pursuant to Section 2970, Regulations of the Real Estate Commissioner, Title 10, Chapter 6, California Code of Regulations. Code Section 10085 also allows the Commissioner to require

1 that any all materials used in obtaining advance fee agreements, including contract forms, be
2 submitted at least 10 calendar days before they are used.

3 16.

4 Home Solutions Financial is a fictitious business name of Respondent JFI.

5 17.

6 Home Financial Solutions, LLC, Home Solutions Financial, LLC, Impact
7 Marketing Alliance, LLC, LM Casitas Realty, LM Casitas Real Estate, Inc., and Martini Real
8 Estate Financial Services have never been licensed by the Department in any capacity.

9 18.

10 Respondent PISCITELLO owns and is a director of Home Financial Solutions,
11 LLC, Home Solutions Financial, LLC, and Impact Marketing Alliance, LLC. Respondent
12 MARTINI owns and is a director of LM Casitas Realty, LM Casitas Real Estate, Inc., and
13 Martini Real Estate Financial Services.

14 19.

15 2023 Lakeridge Circle #202

16 On or about April 6, 2009, Respondent MARTINI offered to assist Enrique C.
17 Martin with the short sale purchase of real property located at 2023 Lakeridge Circle #202,
18 Chula Vista, California ("Lakeridge property"). MARTINI instructed Enrique C. Martin to pay a
19 deposit of \$2,800 toward the purchase of the Lakeridge property. MARTINI instructed Martin to
20 make the \$2,800 cashier's check payable to Home Solutions Financial, LLC. MARTINI gave
21 Enrique C. Martin an acknowledgement and receipt form under the letterhead of Impact
22 Marketing Alliance, LLC and Home Solutions Financial, LLC. The receipt form falsely
23 indicated that the \$2,800 deposit received by MARTINI from Enrique C. Martin was for a
24 forensic loan audit. Enrique C. Martin received a business card from MARTINI for LM Casitas
25 Realty.

26 20.

27 Respondents CASARES, MARTINI, and MARQUEZ, each made
28 misrepresentations to Enrique C. Martin about the status of his purchase of the Lakeridge

1 property. Respondents never placed Enrique C. Martin's \$2,800 deposit in escrow or a trust
2 account. A residential purchase agreement for the Lakeridge property was never provided to
3 Enrique C. Martin and Respondents never gave Enrique C. Martin an accounting of what
4 happened to his \$2,800 deposit. Respondents refused to refund Enrique C. Martin's deposit to
5 him after he requested a refund of his money.

6 21.

7 The acknowledgement and receipt form provided to Enrique C. Martin constitutes
8 an advance fee agreement which was not submitted to the Department prior to use as was
9 required under Code Section 10085 and Regulation Section 2970.

10 22.

11 The advance fees collected by Respondents were not deposited in a trust account
12 as required under Code Section 10146. Respondents did not provide an accounting to principals,
13 in violation of Code Section 10146 and Regulation Section 2972.

14 23.

15 The conduct, acts and/or omissions of Respondents JFI and CASARES, as set
16 forth above, in collecting advance fees from prospective purchasers or borrowers pursuant to a
17 written fee agreement, which agreement was not submitted to the Department for review prior to
18 use, is in violation of Code Section 10085 and Regulation Section 2970, and constitutes grounds
19 for the suspension or revocation of the licenses and license rights of Respondents JFI and
20 CASARES, pursuant to Code Sections 10177(d) or 10177(g).

21 24.

22 The conduct, acts and/or omissions of Respondents JFI and CASARES, as set
23 forth above, in collecting advance fees from prospective purchasers or borrowers and failing to
24 deposit the advance fees into a trust account and provide an accounting to principals, is in
25 violation of Code Section 10146 and Regulation Section 2972, and constitutes grounds for the
26 suspension or revocation of the licenses and license rights of Respondents JFI and CASARES
27 pursuant to Code Sections 10177(d) or 10177(g).

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25.

The conduct, acts and/or omissions of Respondents MARTINI, MARQUEZ, and CASARES as set forth above, in making misrepresentations and engaging in fraud or dishonest dealing with purchaser Enrique C. Martin, constitutes grounds for the suspension or revocation of the licenses and license rights of Respondents MARTINI, MARQUEZ, and CASARES pursuant to Code Sections 10176(a), 10176(b), and 10176(i).

26.

Respondent MARTINI's use of unlicensed fictitious business names LM Casitas Realty, LM Casitas Real Estate, Inc. or Martini Real Estate Financial Services to perform or offer to perform activities that require a real estate broker license is a violation of Code Section 10130 and constitutes grounds for the suspension or revocation of the license and license rights of Respondent MARTINI pursuant to Code Sections 10177(d) and/or 10177(g).

27.

Respondent PISCITELLO's use of unlicensed fictitious business names Home Financial Solutions, LLC, Home Solutions Financial, LLC, and Impact Marketing Alliance, LLC, to perform or offer to perform activities that require a real estate broker license is a violation of Code Section 10130 and constitutes grounds for the suspension or revocation of the license and license rights of Respondent PISCITELLO pursuant to Code Sections 10177(d) and/or 10177(g).

892 Camino La Pas

28.

On or about October 14, 2009, Maria Oliva ("Oliva") received a notice of default on real property she owned located at 892 Camino La Pas, Chula Vista, California ("Camino La Pas property"). Oliva was referred to Respondent MARTINI for assistance to avoid foreclosure of the Camino La Pas property. Respondent MARTINI offered to assist Oliva and instructed Oliva to sign several documents. Unbeknownst to Oliva, MARTINI recorded a grant deed for

1 the Camino La Pas property which transferred ownership to MARTINI. MARTINI instructed
2 Oliva and her son to move out of the Camino La Pas property. Thereafter, MARTINI used the
3 Camino La Pas property for her own personal benefit.

4 29.

5 The conduct, acts and/or omissions of Respondents MARTINI as set forth above,
6 in making misrepresentations and engaging in fraud or dishonest dealing with borrower Maria
7 Oliva, constitutes grounds for the suspension or revocation of the license and license rights of
8 Respondent MARTINI pursuant to Code Sections 10176(a), 10176(b), and 10176(i).

9
10 THIRD CAUSE OF ACCUSATION
11 (Use of Unlicensed Fictitious Business Name)

12 30.

13 There is hereby incorporated in this Third, separate, Cause of Accusation, all of
14 the allegations contained in Paragraphs 1 through 29 above, with the same force and effect as if
15 herein fully set forth.

16 31.

17 The activities described in Paragraphs 19 and 20, above, require a real estate
18 license under Code Section 10131, subdivision (d). Use of a fictitious business name for
19 activities requiring the issuance of a real estate license requires the filing of an application for the
20 use of such name with the Department in accordance with the provisions of Code Section
21 10159.5 and Regulation 2731.

22 32.

23 Respondents JFI and CASARES acted without Department authorization in using
24 the fictitious business names Home Financial Solutions, LLC, Home Solutions Financial, LLC,
25 Impact Marketing Alliance, LLC to engage in activities requiring the issuance of a real estate
26 license.

1 33.

2 The conduct, acts and/or omissions of Respondents JFI and CASARES, as set
3 forth in Paragraphs 31 and 32 above, violate Code Section 10159.5 and Regulation 2731, and are
4 cause for the suspension or revocation of the licenses and license rights of Respondents JFI and
5 CASARES pursuant to Code Sections 10177(d) and/or 10177(g).

6
7 FOURTH CAUSE OF ACCUSATION
8 (AUDIT LA 100085)

9 34.

10 There is hereby incorporated in this Fourth, separate Cause of Accusation, all of
11 the allegations contained in Paragraphs 1 through 33, above, with the same force and effect as if
12 herein fully set forth.

13 Audit LA 100085

14
15 35.

16 On October 28, 2011, the Department completed an audit examination of the
17 books and records of Respondent JFI's loan modification activities. The audit examination
18 covered a period of time from September 1, 2008 to February 28, 2011. The audit examination
19 revealed violations of the Code and the Regulations as set forth in the following paragraphs, and
20 more fully discussed in Audit Report LA 100085 and the exhibits and work papers attached to
21 said Audit Report.

22 36.

23 At all times mentioned, in connection with the activities described in Paragraph
24 35, above, JFI accepted or received funds including funds in trust ("trust funds") from or on
25 behalf of actual or prospective parties to transactions including buyers, sellers, lenders and
26 borrowers handled by JFI and thereafter made deposits and or disbursements of such funds.
27 From time to time herein mentioned during the audit period, said trust funds were deposited
28 and/or maintained by JFI in the bank accounts as follows:

1 Bank Account 1

2 JMM FINANCIAL INC DBA Home Solutions Financial

3 Account No. 1894091162

4 Comerica Bank

5 Brea, California

6 Bank Account 2

7 Milburn Associates LLC DBA HSF Marketing

8 Account No. 1894091089

9 Comerica Bank

10 Brea, California

11 Bank Account 3

12 JMM FINANCIAL INC DBA Home Solutions

13 Account No. 02090-75095

14 Bank of America

15 San Francisco, California

16 37.

17 Violations

18 In the course of JFI's loan modification activities during the examination period
19 described in Paragraph 35, Respondent JFI acted in violation of the Code and the Regulations as
20 follows:
21

22 (A) Bank Account 1 (B/A-1) had a minimum shortage of \$1,000 as of January
23 22, 2010. Bank Account 2 (B/A-2) had a minimum shortage of \$2,500 as of October 8, 2009.
24 B/A -1 and B/A-2 were used for the handling of advance fees related to JFI's loan modification
25 activities. Respondent JFI permitted, allowed or caused the disbursement of trust funds from
26 B/A -1 and B/A-2, where the disbursement of funds reduced the total of aggregate funds in the
27 accounts, to an amount which was less than the existing aggregate trust fund liability of JFI to
28 every principal who was an owner of said funds, without first obtaining the prior written consent

1 of the owners of said funds, as required by Code Section 10145 and Regulations 2832.1 and
2 2951.

3 (B) Respondent JFI charged and collected advance fees for loan modification
4 activities prior to submitting an advance fee agreement to the Department for review. The
5 Department issued a no-objection letter to JFI on June 11, 2009. After June 11, 2009,
6 Respondent JFI used a different advance fee agreement for loan modifications than the advance
7 fee agreement that had been reviewed by the Department, in violation of Code Section 10085
8 and Regulation 2970.

9 (C) Respondent JFI deposited trust funds into JFI's general operating accounts
10 B/A-1 and B/A-2 and failed to itemize accounting content as required by Code Section 10146
11 and Regulation 2972.

12 (D) Respondent JFI charged and collected advance fees for loan modification
13 activities after October 10, 2009, in violation of Code Sections 10085.6, 10146 and Regulation
14 2832.

15 (E) Respondent JFI failed to establish and/or maintain a trust account at a bank or
16 other recognized financial institution in the name of the broker for deposit of advance fees
17 collected by JFI, thereby depositing trust funds in JFI's general accounts (B/A-1, B/A-2 & B/A-
18 3) and thus commingling trust funds with JFI's funds, in violation of Code Sections 10145 and
19 10176(e) and Regulation 2832.

20 (F) Advance fees that were collected from borrowers in connection with loan
21 modification transactions were deposited into Respondent JFI's general business account (B/A-
22 1) and used for JFI's general operating expenses. The balance of JFI's general business account
23 was reduced to an amount that was less than the amount of trust funds deposited, thus,
24 conversion of trust funds, in violation of Code Sections 10145 and 10177(j).
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1 (G) Respondent JFI failed to maintain a control record in the form of a columnar
2 record in chronological order of all trust funds including advance fees received, deposited and
3 disbursed, in violation of Code Section 10145 and Regulation 2831.

4 (H) Respondent JFI failed to maintain a separate record for each beneficiary or
5 transaction, thereby failing to account for all advance fees collected, in violation of Code Section
6 10145 and Regulation 2831.1.

7 (I) Respondent CASARES was not an authorized signor on B/A-2 from May 18,
8 2009 to October 7, 2009. Respondent JFI allowed Tina P. Nguyen to be a signatory on JFI's
9 general business accounts (B/A-1 & B/A-3), at a time when she was not licensed by the
10 Department in any capacity, in violation of Code Section 10145 and Regulation 2834.

11 (J) Respondent JFI employed or compensated unlicensed individuals, Roxana
12 Carreon, Armando Villasenor, Natalie Contreras, Maria Datan, Stephanie St. Mary, Virginia
13 Tapia, Meagan Quesada, Bene Resincoy, Dora Almazan, Maria Zacarias, Sotero Trejo and
14 Haidu Gaza, to act in the capacity of loan agents for JFI, in violation of Code sections 10130 and
15 10137.

16 (K) Respondent JFI conducted real estate activities by using unlicensed fictitious
17 business names "HSF Marketing", "Home Solutions Financial, LLC", "Impact Marketing
18 Alliance", and "Milburn Associates, LLC", in violation of Code Section 10159.5 and Regulation
19 2731.

20 (L) JFI conducted loan modification activities out of a branch office located at
21 1551 N. Tustin Ave., Suite 150, Santa Ana, California, prior to obtaining a branch office license
22 from the Department, in violation of Code section 10163.

23 (M) JFI engaged in real estate activities while not in good legal standing with the
24 Office of the Secretary of State after October 1, 2009, in violation of Regulation 2742.
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1 (N) After being given reasonable notice, Respondent JFI failed to retain records
2 in connection with its real estate activities requested by the Department, in violation of Code
3 Section 10148.

4 (O) Respondent CASARES failed to exercise reasonable control and supervision
5 over the activities conducted on behalf of JFI and its licensees and employees as necessary to
6 secure full compliance with the Real Estate Law, in violation of Code Sections 10177(h) and
7 10159.2 and Regulation 2725.

8 Disciplinary Statutes

9 38.

10 The conduct of Respondent JFI described in Paragraph 37, above, violated the
11 Code and the Regulations as set forth below:
12

13

14 PARAGRAPH	PROVISIONS VIOLATED
15 37(A)	Code Section 10145 and Regulation 2832.1, 2951
16 37(B)	Code Section 10085 and Regulation 2970
17 37(C)	Code Section 10146 and Regulation 2972
18 37(D)	Code Sections 10085.6,10145 and 10146 and Regulation 2832
19 37(E)	Code Sections 10145 and 10176(e) and Regulations 2832
20 37(F)	Code Section 10145 and 10177(j)
21 37(G)	Code Section 10145 and Regulation 2831
22 37(H)	Code Section 10145 and Regulation 2831.1
23 37(I)	Code Section 10145 and Regulation 2834
24 37(J)	Code Section 10130 and 10137
25 37(K)	Code Section 10159.5 and Regulation 2731
26 37(L)	Code Section 10163
27 37(M)	Regulation 2742
28 37(N)	Code Section 10148

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39.

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of Respondent JFI, as aforesaid, under the provisions of Code Sections 10176(e) for commingling, 10177(d) for violation of the Real Estate Law and/or 10177(g) for negligence.

40.

The conduct, acts and/or omissions of Respondent CASARES, in allowing Respondent JFI to violate the Real Estate Law, as set forth above, constitutes a failure by Respondent CASARES, as the officer designated by the corporate broker licensee, to exercise the supervision and control over the activities of Respondent JFI, as required by Code Section 10159.2 and Regulation 2725, and is cause to suspend or revoke the real estate licenses and license rights of Respondent CASARES under Code Sections 10177(h), 10177(d) and/or 10177(g).

FIFTH CAUSE OF ACCUSATION
(AUDIT LA 100086)

41.

There is hereby incorporated in this Fifth, separate Cause of Accusation, all of the allegations contained in Paragraphs 1 through 40, above, with the same force and effect as if herein fully set forth.

Audit LA 100086

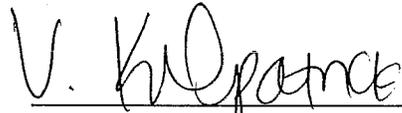
42.

On October 12, 2011, the Department completed an audit examination of the books and records of Respondent CASARES' real estate activities. The audit examination covered a period of time from September 1, 2008 to February 28, 2011. The audit examination revealed a violation of the Code as set forth in the following paragraph, and more fully discussed in Audit Report LA 100086 and the exhibits and work papers attached to said Audit Report.

1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and license rights of Respondents JMM FINANCIAL, INC., JOSE F.
4 CASARES, individually and as former designated officer of JMM Financial, Inc., LILIA
5 MARTINI, MARTIN MANUEL MARQUEZ, and TIM J. PISCITELLO under the Real Estate
6 Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of investigation
7 and enforcement as permitted by law, and for such other and further relief as may be proper
8 under other provisions of law.

9 Dated at Los Angeles, California

10 this 12 day of March, 2012.

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14 VERONICA KILPATRICK
15 Deputy Real Estate Commissioner
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23 cc: JMM Financial, Inc.
24 Jose F. Casares
25 Lilia Martini
26 Martin Manuel Marquez
27 Tim J. Piscitello
28 Veronica Kilpatrick
Sacto.
Andy Chen-Audits