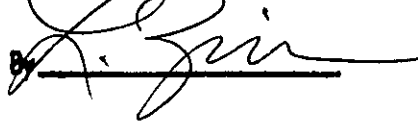


1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187007  
3 Sacramento, CA 95818-7007  
4 Telephone: (916) 227-0791

FILED

APR 28 2010

DEPARTMENT OF REAL ESTATE

By 

8 STATE OF CALIFORNIA  
9  
10 DEPARTMENT OF REAL ESTATE

11 To: )  
12 ) NO. H-4102 SD  
13 LAST DANCE INC., and )  
14 DAVID MASSOT HARVEY ) ORDER TO DESIST AND  
 ) REFRAIN  
 ) (B&P Code Section 10086)

15 The Commissioner (Commissioner) of the California Department of Real Estate  
16 (Department) caused an investigation to be made of the activities of LAST DANCE INC. (LDI),  
17 and DAVID MASSOT HARVEY (HARVEY). Based on that investigation, the Commissioner  
18 has determined that LDI and HARVEY have engaged in acts or practices constituting violations  
19 of the California Business and Professions Code and/or Title 10, Chapter 6, California Code of  
20 Regulations (Regulations). Furthermore, based on the investigation, the Commissioner hereby  
21 issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order under  
22 the authority of Section 10086 of the Code.

23 FINDINGS OF FACT

24 1. At all times mentioned, LDI was and is licensed by the Department of  
25 Real Estate (hereinafter "Department") as a real estate broker corporation. At all time mentioned  
26 and continuing through to October 27, 2008 Jonathan Aldrich Kohl (Kohl) was licensed as the

27 ///

1 designated broker officer of LDI. LDI is licensed to do business using the fictitious business  
2 name RE/MAX Associates.

3           2.       At all times mentioned, HARVEY was and is licensed by the Department  
4 as a real estate salesperson.

5           3.       At all times mentioned, LDI and HARVEY, using the fictitious business  
6 name RE/MAX Associates, engaged in the business of, acted in the capacity of, advertised, or  
7 assumed to act as real estate brokers in the State of California, within the meaning of Section  
8 10131(a) of the Code, including the operation and conduct of a real estate resale brokerage with  
9 the public wherein, on behalf of others, for compensation or in expectation of compensation, LDI  
10 and HARVEY sold and offered to sell, bought and offered to buy, solicited prospective sellers  
11 and purchasers of, solicited and obtained listings of, and negotiated the purchase and resale of  
12 real property.

13           4.       On or about January 14, 2008, HARVEY acting on behalf of RE/MAX  
14 Associates, entered into a Residential Listing Agreement with Mariano R. Albano to short-sell a  
15 property located at 30534 Muir Court, Murrieta (Murrieta property). Addendum no. 2 to the  
16 listing agreement provided in part:

17           “3.) Seller acknowledges there is NO guarantee the lien holder/lender will accept less  
18 than what it costs to close escrow and pay off the encumbrances against the property. As  
19 such, the Seller acknowledges the Broker will expend time, effort and money to market  
20 the property which may not recoverable if the property cannot be sold due to its over  
21 encumbrance. In consideration of Broker’s time, effort and marketing, Seller agrees to  
22 pay \$6,000. First payment of \$3,000 on 1/30/2008. Second payment of \$3,000 on  
23 2/15/2008. Payable to RE/MAX Associates pursuant to paragraph 4C of the Residential  
24 Listing Agreement to offset time, effort and marketing expense. Notwithstanding  
25 paragraph 4A, if the property sells and closes escrow and if Listing Agent receives a  
26 minimum of a 2.5% Commission from seller’s lender, \$3,000 will be credited back to the  
27 seller at the close of escrow. In the event the property does not sell and does not close  
escrow for any reason, the Seller agrees that the amount payable in this paragraph toward  
time, effort and marketing expenses as identified in para. 4C is NO REFUNDABLE.”

25           5.       On or about August 16, 2007, HARVEY, on behalf of RE/MAX  
26 Associates, entered into a Commercial Residential Income and Vacant Land Listing Agreement  
27 with Mariano R. Albano and Pacita A. Albano to short-sell a property located at 106 East 18<sup>th</sup>

1 Street, San Diego (San Diego property). Addendum no. 3 to the listing agreement provided in  
2 part:

3 "3.) Seller acknowledges there is NO guarantee the lien holder/lender will accept less  
4 than what it costs to close escrow and pay off the encumbrances against the property. As  
5 such, the Seller acknowledges the Broker will expend time, effort and money to market  
6 the property which may not recoverable if the property cannot be sold due to its over  
7 encumbrance. In consideration of Broker's time, effort and marketing, Seller agrees to  
8 pay \$4,000. Payment of \$4,000 on 2/5/2008. Payable to RE/MAX Associates pursuant  
9 to paragraph 4C of the Residential Listing Agreement to offset time, effort and marketing  
10 expense. Notwithstanding paragraph 4A, if the property sells and closes escrow and if  
11 Listing Agent receives a minimum of a 2.5% Commission from seller's lender, \$3,000  
12 will be credited back to the seller at the close of escrow. In the event the property does  
13 not sell and does not close escrow for any reason, the Seller agrees that the amount  
14 payable in this paragraph toward time, effort and marketing expenses as identified in  
15 para. 4C is NOREFUNDABLE."

16 6. On or about January 30, 2008, Mariano R. Albano paid to RE/MAX  
17 Associates \$3,000 as the first installment called for in the Muirrieta property listing agreement.

18 7. On or about February 5, 2008, Mariano R. Albano paid to RE/MAX  
19 Associates \$4,000 as called for in the San Diego property listing agreement.

#### 20 CONCLUSIONS OF LAW

21 Based on the findings of fact contained in paragraphs 1 through 7:

22 8. LDI, acting by and/or through one or more agents, associates, affiliates,  
23 and/or co-conspirators, including, but not limited to HARVEY, and using the fictitious business  
24 name RE/MAX Associates, sold and offered to sell, bought and offered to buy, solicited  
25 prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the  
26 purchase and resale of real property, and charged, demanded or collected advance fees for the  
27 services to be provided, which acts require a real estate broker license under Sections 10131(a)  
(real estate license required for enumerated acts) and 10131.2 (real estate broker license  
required to charge or collect an advance fee) of the Code.

9. LDI, acting by and/or through one or more agents, associates, affiliates,  
and/or co-conspirators, including, but not limited to HARVEY, and using the names RE/MAX  
Associates, used a form of advance fee agreement in the name of RE/MAX Associates which

1 had not been provided to the Department for its prior review and consideration, in violation of  
2 Section 10085 of the Code (prior submission of advance fee materials required) and Section  
3 2970 (details for prior submission of advance fee materials) of the Regulations.

4 DESIST AND REFRAIN ORDER

5 Based on the Findings of Fact and Conclusions of Law stated herein, LDI and  
6 HARVEY, whether doing business under your own name, or any other name or fictitious name,  
7 are hereby ordered to immediately desist and refrain from charging, demanding, or collecting  
8 advance fees, as that term is defined in Section 10026 of the Code, for any of the services you  
9 offer to others, in any form, unless and until you demonstrate and provide evidence satisfactory  
10 to the Commissioner that you are properly licensed by the Department as a real estate broker,  
11 and that you have:

12 (1) An advance fee agreement which has been submitted to the Department  
13 and which is in compliance with Sections 2970 and 2972 of the Regulations;

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

16 (3) Provided an accounting to trust fund owner-beneficiaries pursuant to  
17 Section 2972 of the Regulations.

18 DATED: 4/26/2010

19 JEFF DAVI  
20 Real Estate Commissioner

21  
22 By  \_\_\_\_\_  
23

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

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cc: LAST DANCE INC.  
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5232 JACKSON DRIVE #101  
LA MESA, CA 91941

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2683 WIND RIVER ROAD  
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