

FILED

MAR - 6 2013

DEPARTMENT OF REAL ESTATE
By E. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

COSTA FINANCIAL REAL ESTATE,
INC. and MAURICIO G. CASTILLO,

Respondents.

No. H-4397 SD

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 January 31, 2013, and the findings of fact set forth herein, which are based on one or more of the following: (1) Respondents' express admissions; (2) affidavits; and (3) other evidence.

This Decision revokes the real estate license and/or license rights of COSTA FINANCIAL REAL ESTATE, INC. (herein COSTA FINANCIAL) on grounds of violations of Sections 10145 (handling of trust funds), 10146 (deposit of trust funds into trust account), 10148 (maintenance of records), 10162 (maintenance of definite place of business), 10176(i) (fraud or dishonest dealing), and 10177(d) (willful disregard or violation of real estate law) and/or 10177(g) (negligence or incompetence) of the Code, and Sections 2715 (notification to Department of Real Estate of principal place of business), 2831 (trust fund records maintenance), 2831.1 (maintenance of separate records for each beneficiary or transaction), 2831.2 (trust account reconciliation), 2832 (trust fund handling), 2834 (trust account withdrawals) and 2972 (verified accounting) of the Regulations; and the real estate license and/or license rights of MAURICIO G. CASTILLO (herein CASTILLO) on grounds of violations of Sections 10159.2, 10162, 10177(d) and/or 10177(g), and 10177(h) (reasonable broker supervision) of the Code, and Sections 2715 and 2725 (broker supervision) of the Regulations.

The right to reinstatement of a revoked real estate license is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of Respondents.

FINDINGS OF FACT

1

On August 8, 2012, Tricia D. Sommers 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, return receipt requested, to Respondents' last known mailing addresses on file with the Department on August 9, 2012.

On January 30, 2013, no Notice of Defense having been received or filed herein within the time prescribed by Section 11506 of the Government Code, Respondents' default was entered herein.

2

COSTA FINANCIAL is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code ("the Code"), as a corporate real estate broker.

3

CASTILLO is presently licensed and/or has license rights under the Code as an individual real estate broker, which license expired on September 25, 2011. At all times relevant, CASTILLO was licensed by the Department as the designated broker/officer of COSTA FINANCIAL. As the designated broker/officer, CASTILLO was responsible, pursuant to Section 10159.2 (responsibility of corporate officer in charge) of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of COSTA FINANCIAL for which a real estate license is required.

4

At no time has Mauricio Calvi ("Calvi") been licensed by the Department to conduct real estate activities in the State of California.

5

At all times relevant, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(d) of the Code, including performing services for one or more borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: negotiate one or more loans for, or perform services for, borrowers and/or lenders with respect to the collection of advance fees and loan modification, loan

refinance, principal reduction, foreclosure abatement or short sale services and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property; and charged, demanded or collected an advance fee for any of the services offered.

6

On or about March 26, 2012, an audit was conducted of COSTA FINANCIAL at the offices of its attorney, Steven C. Vondran, located at 620 Newport Center Drive, Suite 1100, Newport Beach, California, and at the Department's Oakland District Office, where the auditor examined the records for the period of April 1, 2009, through February 29, 2012 (the audit period).

7

While acting as a real estate broker as described in Paragraph 5, above, and within the audit period, COSTA FINANCIAL accepted or received funds in trust (trust funds) in the course of the real estate activities described in Paragraph 5, above, and deposited or caused the funds to be deposited into a bank accounts maintained by COSTA FINANCIAL, including:

Bank Account #1

Union Bank
8949 Clairemont Mesa Blvd.
San Diego, California 992123

Account No.: XXXXX-X4478
Account Name: Costa Financial Real Estate Inc dba
Pacific West Financial Consultants
Signatories: Mauricio Delcastillo (REB/D.O.)
Mauricio Calvi (not licensed)

Thereafter, from time-to-time, Respondents made disbursements of said trust funds.

8

In the course of the activities described in Paragraph 5, above, in connection with the collection and disbursement of trust funds:

- (a) COSTA FINANCIAL failed to maintain control records for Bank Account #1, resulting in an inability of the Department's auditor to determine the balance of that account. Such acts and/or omissions by COSTA FINANCIAL violate Section 10145 of the Code and Sections

2831 and 2831.1 of Title 10 of the California Code of Regulations (“the Regulations”).

- (b) COSTA FINANCIAL failed to deposit trust funds it collected from borrowers into a trust account. Such acts and/or omissions by COSTA FINANCIAL violate Section 10146 of the Code.
- (c) COSTA FINANCIAL failed to designate Bank Account #1 as a trust account. Such acts and/or omissions by COSTA FINANCIAL violate Section 10145 of the Code and Section 2832 of the Regulations.
- (d) COSTA FINANCIAL allowed non-licensee CALVI to withdraw trust funds from Bank Account #1 and did not provide adequate fidelity bond coverage for him. Such acts and/or omissions by COSTA FINANCIAL violate Section 10145 of the Code and Section 2834 of the Regulations.
- (e) COSTA FINANCIAL failed to maintain separate records for each beneficiary or transaction for Bank Account #1. Such acts and/or omissions by COSTA FINANCIAL violate Section 10145 of the Code and Section 2831.1 of the Regulations.
- (f) COSTA FINANCIAL failed to maintain accurate written monthly reconciliations for the balances of all of the separate records with the control records for Bank Account #1. Such acts and/or omissions by COSTA FINANCIAL violate Section 10145 of the Code and Section 2831.2 of the Regulations.
- (g) COSTA FINANCIAL failed to furnish a verified copy of an accounting of advance fees collected at the end of each calendar quarter and when contracts were completed by COSTA FINANCIAL. Such acts and/or omissions by COSTA FINANCIAL violate Section 10145 of the Code and Section 2972 of the Regulations.
- (h) COSTA FINANCIAL failed to retain copies of cancelled checks and deposit slips for Bank Account #1. Such acts and/or omissions by COSTA FINANCIAL violate Section 10148 of the Code.

On or about August 21, 2009, Jose and Maria A. paid COSTA FINANCIAL, doing business as Pacific West, an advance fee of \$2,100 for loan modification services on their real property located at 2165 Harrisman Avenue, San Diego, California. COSTA FINANCIAL failed to obtain a loan modification for Jose and Maria A. and has not returned the advance fees paid to it by them.

On or about July 14, 2009, COSTA FINANCIAL entered into an agreement with Francisco A. and Maria A. to provide loan modification services on their real property located at 610 Patricia Lane, El Cajon, California. On or about July 17, 2009, Francisco A. and Maria A. paid an advance fee of \$1,250 to COSTA FINANCIAL. On or about September 14, 2009, Francisco A. and Maria A. paid an additional \$1,500 in advance fees to COSTA FINANCIAL, and on or about November 14, 2009, they paid a final installment of advance fees of \$250 to COSTA FINANCIAL. COSTA FINANCIAL failed to obtain a loan modification for Jose A. and Maria A. and has not returned the advance fees paid to it by them.

Respondents informed the Department that their main office addresses and mailing addresses are 3665 Ruffin Road, Suite 300, San Diego, California 92123. In or about October 2009, Respondents vacated the Ruffin Road premises and have not provided the Department with new main office and mailing addresses.

As the designated broker officer for COSTA FINANCIAL, CASTILLO was responsible for the supervision and control of the activities conducted on behalf of COSTA FINANCIAL by its officers and employees. CASTILLO failed to exercise reasonable supervision and control over the property management activities of COSTA FINANCIAL. In particular, CASTILLO permitted, ratified and/or caused the conduct described above, to occur, and failed to take reasonable steps, including, but not limited to, the handling of trust funds, supervision of employees and the implementation of policies, rules, procedures and systems to ensure the compliance of the corporation with the Real Estate Law and the Regulations.

DETERMINATION OF ISSUES

Cause of disciplinary action against COSTA FINANCIAL exists with reference to the facts set out in Paragraphs 6 through 11, above, for violation of Sections 10145, 10146, 10148, 10162, 10176(i), and 10177(d) and 10177(g) of the Code, and Sections 2715, 2831, 2831.1, 2831.2, 2832, 2834 and 2972 of the Regulations.

Cause for disciplinary action against CASTILLO exists with reference to the facts set out in Paragraphs 11 and 12, above, for violation of Sections 10159.2, 10162, 10177(d) and 10177(g), and 10177(h) of the Code, and Sections 2715 and 2725 of the Regulations.

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

ORDER

All licenses and licensing rights of Respondents COSTA FINANCIAL REAL ESTATE, INC. and MAURICIO G. CASTILLO 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 on _____

MAR 27 2013

DATED: _____

2/27/2013

REAL ESTATE COMMISSIONER



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Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789

FILED
JAN 31 2013

DEPARTMENT OF REAL ESTATE
By *R. Mat*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	No. H-4397 SD
COSTA FINANCIAL REAL ESTATE,)	
INC. and MAURICIO G. CASTILLO,)	<u>DEFAULT ORDER</u>
)	
Respondents.)	
)	

Respondents, COSTA FINANCIAL REAL ESTATE, INC. and MAURICIO G. CASTILLO, having failed to file a Notice of Defense within the time required by Section 11506 of the Government Code, are now in default. It is, therefore, ordered that a default be entered on the record in this matter.

IT IS SO ORDERED *January 30, 2013*
REAL ESTATE COMMISSIONER

By: *Dolores Weeks*
DOLORES WEEKS
Southern Regional Manager