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**FILED**

NOV 20 2014

BUREAU OF REAL ESTATE

By 

8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of	)	No. H- 04678 SD
	)	
12 MC MARKETING INC. and MASUD	)	<u>A C C U S A T I O N</u>
13 AKBAR SARWARY, individually, and	)	
14 as designated officer for	)	Mortgage Loan Originator
15 MC Marketing Inc.	)	Endorsements
	)	
16 Respondents.	)	

17 The Complainant, Sylvia Yrigollen, a Deputy Real Estate Commissioner of the  
18 State of California, for cause of Accusation against MC MARKETING INC. ("MC  
19 MARKETING") and MASUD AKBAR SARWARY ("SARWARY"), individually, and as  
20 designated officer and mortgage loan originator control person for MC MARKETING, alleges  
21 as follows:  
22

23 1.

24 The Complainant, Sylvia Yrigollen, a Deputy Real Estate Commissioner of the  
25 State of California, makes this Accusation in her official capacity.  
26  
27

2.

MC MARKETING is presently licensed and/or has license rights under the under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) ("Code") as a real estate corporation acting by and through SARWARY as its designated broker-officer.

3.

MC MARKETING presently holds a company mortgage loan originator ("MLO") license endorsement, Nationwide Mortgage Licensing System ("NMLS") ID Number 385667.

4.

SARWARY is presently licensed and/or has license rights under the under the Real Estate Law as a real estate broker, and at all times relevant herein was the designated broker-officer for MC MARKETING.

5.

SARWARY presently holds an individual MLO license endorsement, NMLS ID Number 154938, and at all times relevant herein was the MLO control person for MC MARKETING.

Prior Bureau Discipline of SARWARY

6.

On or about February 16, 2012, in Case No. H-04214 SD, brought by the Bureau against First Financial and Real Estate Services ("First Financial"), a corporate real estate broker, and SARWARY as the designated officer for the corporation, the Commissioner of the Bureau revoked SARWARY's real estate broker license pursuant to the provisions of Code

1 Section 10159.2(a) and Section 2725 of Title 10, Chapter 6, Code of Regulations  
2 ("Regulations") in conjunction with Code Section 10177(d) under the provisions of Code  
3 Section 10177(h). The revocation of SARWARY's broker license was subject to his right to  
4 apply for and be issued a restricted real estate broker license on the terms and conditions  
5 specified in the Decision. Additionally, any restricted broker's license issued to SARWARY  
6 was suspended for sixty days with thirty days stayed for a period of three years, and  
7 SARWARY was required to provide evidence satisfactory to the Commissioner that trust fund  
8 shortages of First Financial had been cured prior to the effective date of the Decision. On  
9 February 16, 2012, SARWARY was issued a restricted real estate broker license. On August 5,  
10 2014, SARWARY's petition for removal of the restrictions to his restricted broker license was  
11 denied.  
12

13 State of Oregon Discipline  
14

15 7.  
16

17 On or about June 30, 2010, in Case No. M-08-0028, after giving fair notice of  
18 the pending charges and the opportunity to be heard, the Director of the Department of  
19 Consumer and Business Services of the State of Oregon, Division of Finance and Corporate  
20 Securities, issued a consent order to First Financial and SARWARY, as president and 51%  
21 owner of First Financial. The consent order was issued pursuant to the authority of Oregon  
22 Revised Statutes, Sections 86A.127 and 86A.118, and provides as follows:

23 a. that First Financial and SARWARY cease and desist from violating any  
24 provision of the Oregon Mortgage Lender Law (Oregon Revised Statutes, Section 86A.095 to  
25 Section 86A.198) and any rule, order, or policy issued by the Director of the Department of  
26 Consumer and Business Services;  
27

1                   b. that First Financial and SARWARY pay jointly and severally a civil penalty  
2 of \$5,000 for the violations of the Oregon Mortgage Lender Law, and, further that \$3,500 of the  
3 civil penalty be suspended so long as the Oregon respondents remain in full compliance with  
4 the terms of this order and commit no further violations of the Oregon Mortgage Lender Law;  
5 and

6                   c. that the voluntary surrender of First Financial's Oregon mortgage lender  
7 license be accepted effective May 1, 2009.  
8

9                                   State of Washington Discipline

10   8.

11                   On or about April 27, 2011, in Case No. C-09-388-10-CO01, after fair notice of  
12 the pending charges and the opportunity for a hearing, a consent order was entered by the State  
13 of Washington, Department of Financial Institutions, Division of Consumer Services  
14 ("Department of Financial Institutions") against First Financial and SARWARY, as owner,  
15 president, secretary and designated broker of First Financial. By the terms of the consent order  
16 the parties agreed, in relevant part, as follows:  
17

18                                   a. that First Financial's license to conduct the business of a mortgage broker is  
19 surrendered;  
20

21                                   b. that SARWARY's license to conduct the business of a mortgage broker is  
22 surrendered;  
23

24                                   c. that First Financial is prohibited from participating in the conduct of the  
25 affairs of any mortgage broker or consumer loan company licensed by the Department of  
26 Financial Institutions for 10 years from the date of the entry of the consent order in any  
27 capacity, including but not limited to: (1) any financial capacity whether active or passive or (2)

1 as an officer, director, principal, designated broker, employee, or loan originator or (3) any  
2 management, control, oversight or maintenance of any trust account(s) in any way related to any  
3 residential mortgage transaction or (4) receiving, disbursing, managing or controlling in any  
4 way, consumer trust funds in any way related to any Washington residential mortgage  
5 transaction; and

6 d. that SARWARY is prohibited from participating as an officer, director,  
7 owner, or control person of any mortgage broker licensed by the Department of Financial  
8 Institutions, prohibited from originating any loans or taking any action that would otherwise  
9 require a license to be issued by the Department of Financial Institutions, and prohibited from  
10 working in any capacity on loans to Washington residents that are subject to the Consumer  
11 Loan Act (Ann. Revised Code of Washington, Title 31, Chapter 31.04) or Mortgage Broker  
12 Practices Act (Ann. Revised Code of Washington, Title 31, for 10 years from the date of entry  
13 of this consent order.  
14  
15

16 9.

17 The facts alleged in Paragraphs 7 and 8, above, are material as they would have  
18 constituted cause for the denial of a MLO license endorsement application based on the  
19 applicant's failure to meet the requirements of Code Section 10166.05(c) and Section 2758.3 of  
20 the Regulations obligating the holder of a MLO license endorsement to demonstrate such  
21 financial responsibility, character and general fitness as to command the confidence of the  
22 community and to warrant a determination that the mortgage loan originator will operate  
23 honestly, fairly, and efficiently within the purposes of Article 2.1 of the Real Estate Law.  
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26 ///

FIRST CAUSE OF ACCUSATION

(Violation of Code Section 10166.051(b) - Failure to Disclose by SARWARY in individual MLO application)

10.

On or about December 23, 2011, SARWARY submitted an individual MLO endorsement application (MU4) to the NMLS. Section I of the Disclosure Questions entitled "Regulatory Action" contained the following questions:

Question: "Has any State or federal regulatory agency or foreign financial regulatory authority ever:

(4) entered an order against you in connection with a financial services-related activity?

(6) denied or suspended your registration or license, disciplined you, or otherwise by order, prevented you from associating with a financial services-related business or restricted your activities?

(7) barred you from association with an entity regulated by such commissions, authority, agency, or officer, or from engaging in a financial services-related business?"

11.

In the MLO license endorsement application SARWARY submitted to NMLS and described in Paragraph 10, above, SARWARY answered "No" to each of the questions set forth in Paragraph 10, above.

12.

SARWARY's failure to reveal the existence of the regulatory actions by Oregon and Washington, described in Paragraphs 7 and 8, above, constitutes withholding information

1 and/or making a material misstatement in an application for a license endorsement and is cause  
2 for the suspension or revocation of SARWARY's individual MLO endorsement under Section  
3 10166.051(b) of the Code.

4 SECOND CAUSE OF ACCUSATION

5 (Violation of Code §10166.051(b) - Failure to Disclose by SARWARY as control person for  
6 MC MARKETING)

7 13.

8 Complainant hereby incorporates by reference the allegations set forth in  
9 Paragraphs 1 through 12, above.  
10

11 14.

12 On or about September 22, 2012, SARWARY submitted a control person MLO  
13 license endorsement application (MU2) to the NMLS. Section K of the Disclosure Questions  
14 entitled "Regulatory Action" contained the following questions:

15 Question: "Has any State or federal regulatory agency or foreign financial  
16 regulatory authority or *self-regulatory organization (SRO)*<sup>1</sup> ever:

17  
18 (4) entered an order against you in connection with a financial services-related  
19 activity?

20 (6) denied or suspended your registration or license *or application for licensure*,  
21 disciplined you, or otherwise by order, prevented you from associating with a financial  
22 services-related business or restricted your activities?  
23  
24  
25

26 <sup>1</sup> Italicized language highlights difference in the language of the disclosure questions from  
27 those in the First Cause of Accusation containing the 2011 version of the application.

1 (7) barred you from association with an entity regulated by such commissions,  
2 authority, agency, or officer, or from engaging in a financial services-related business?

3 (8) entered an order concerning you in connection with any license or  
4 registration?"

5 15.

6 In the control person MLO license endorsement application SARWARY  
7 submitted to NMLS and described in Paragraph 14, above, SARWARY answered "No" to each  
8 of the questions set forth in Paragraph 14, above.

9 16.

10 SARWARY's failure to reveal the existence of the regulatory actions by Oregon  
11 and Washington, described in Paragraphs 7 and 8, above, constitutes withholding information  
12 and/or making a material misstatement in an application for a license endorsement and is cause  
13 for the suspension or revocation of SARWARY's control person MLO license endorsement  
14 under Section 10166.051(b) of the Code.

15 THIRD CAUSE OF ACCUSATION

16 (Violation of Code §10166.051(b) - Failure to Disclose by SARWARY as designated officer  
17 making MLO company application on behalf of MC MARKETING)

18 17.

19 Complainant hereby incorporates by reference the allegations set forth in  
20 Paragraphs 1 through 16, above.

21 18.

22 On or about November 8, 2012, SARWARY submitted a company MLO license  
23 endorsement application (MU1) on behalf of MC MARKETING to the NMLS. SARWARY



submitted the application as the designated officer/control person of MC MARKETING pursuant to the provisions of Section 2758.6 of the Regulations. Section C of the Disclosure Questions entitled "Regulatory Action Disclosure" contained the following questions:

Question: "*In the past 10 years*<sup>2</sup>, has any State or federal regulatory agency or foreign financial regulatory authority or *self-regulatory organization (SRO)* ever:

(4) entered an order against the *entity or a control affiliate* in connection with a financial services-related activity?

(5) denied, suspended or revoked *the entity's or a control affiliate's* registration or license *or otherwise, by order*, prevented *it* from associating with a financial services-related business or restricted *its* activities?"

19.

In the company MLO license endorsement application SARWARY submitted to NMLS on behalf of MC MARKETING, and described in Paragraph 18, above, SARWARY answered "No" to each of the questions set forth in Paragraph 18, above.

20.

SARWARY's failure in his role as the designated officer of MC MARKETING to reveal the existence of the regulatory actions by Oregon and Washington, described in Paragraphs 7 and 8, above, constitutes withholding information and/or making a material misstatement in an application for a license endorsement and is cause for the suspension or revocation of MC MARKETING's company MLO broker license endorsement under Section 10166.051(b) of the Code.

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<sup>2</sup> Italicized language highlights differences in the language of the disclosure questions from those in the 1<sup>st</sup> and 2<sup>nd</sup> Causes of Accusation containing earlier versions of the MLO application form.

1 Code Section 10106 provides, in pertinent part, that in any order issued in  
2 resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the  
3 administrative law judge to direct a licensee found to have committed a violation of this part to  
4 pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

5 WHEREFORE, Complainant prays that a hearing be conducted on the  
6 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing  
7 disciplinary action against all the license rights of the individual and control person mortgage  
8 loan originator license endorsements of Respondent MASUD AKBAR SARWARY and all the  
9 license rights of the company mortgage loan originator license endorsement of MC  
10 MARKETING INC. under the Real Estate Law, for the cost of investigation and enforcement  
11 as permitted by law, and for such other and further relief as may be proper under other  
12 applicable provisions of law.  
13

14 Dated at Sacramento, California  
15

16 this 19 day of November, 2014.  
17

18   
19 Sylvia Yrigollen  
20 Deputy Real Estate Commissioner  
21  
22  
23  
24

25 cc: Mc Marketing Inc.  
26 Masud Akbar Sarwary  
27 Sylvia Yrigollen  
Sacramento