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BUREAU OF REAL ESTATE

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

MILO LEWIS,

Respondent.

No. H-5468 SAC
OAH No. 2011060902

ORDER DENYING RECONSIDERATION

On November 7, 2013, a Decision was rendered in the above-entitled matter. The Decision was to become effective December 12, 2013, and was stayed by separate Order to December 23, 2013.

On December 10, 2013, Respondent petitioned for reconsideration of the Decision of November 7, 2013.

I have given due consideration to the petition of Respondent for reconsideration. I find no good cause to reconsider the Decision of November 7, 2013, and reconsideration is hereby denied. Therefore, the Decision of the Real Estate Commissioner of November 7, 2013, shall become effective at 12 o'clock noon on December 23, 2013.

IT IS HEREBY ORDERED 12/19/2013

REAL ESTATE COMMISSIONER

Wayne S. Bell

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BUREAU OF REAL ESTATE

By *[Signature]*

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	NO. H-5468 SAC
MILO LEWIS,)	
)	OAH NO. 2011060902
Respondent.)	
)	

ORDER STAYING EFFECTIVE DATE

On November 7, 2013, a Decision was rendered in the above-entitled matter to become effective on December 12, 2013 ("the Decision").

On December 10, 2013, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Decision.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of ten (10) days, with a new effective date of 12 o'clock noon on December 23, 2013.

DATED: 12/10/2013

REAL ESTATE COMMISSIONER

[Signature]
Wayne S. Bell

FILED

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

NOV 22 2013

BUREAU OF REAL ESTATE

[Handwritten Signature]

In the Matter of the Accusation of)
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 MILO LEWIS,)
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 Respondent.)
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NO. H-5468 SAC

OAH NO. 2011060902

DECISION

The Proposed Decision dated October 15, 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.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension 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 respondent.

This Decision shall become effective at 12 o'clock noon on DEC 12 2013

IT IS SO ORDERED NOV 07 2013

REAL ESTATE COMMISSIONER

[Handwritten Signature]

By: JEFFREY MASON
Chief Deputy Commissioner

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

In the Matter of the Accusation Against:

MILO LEWIS,

Respondent.

Case No. H-5468 SAC

OAH No. 2011060902

PROPOSED DECISION

This matter was heard before Jonathan Lew, Administrative Law Judge, Office of Administrative Hearings, on July 24 and 25, 2013, in Sacramento, California.

Annette E. Ferrante, Counsel, represented Tricia D. Sommers (complainant), a Deputy Real Estate Commissioner with the Bureau of Real Estate (Bureau),¹ Department of Consumer Affairs, State of California.

Milo Lewis (respondent) appeared on his own behalf.

Evidence and testimony were received on July 24 and 25, 2013. The record was left open to allow respondent to file a closing brief and for complainant to file a response. On August 29, 2013, respondent submitted a binder entitled "Respondent Closing Argument and Briefs," which was marked for identification as Exhibit YY. Respondent's binder included Closing Argument plus the following separate matters: 1) Respondent's Motion for Dismissal; 2) Respondent's Motion for All Things Evidence; 3) Respondent's Opposition to Complainant's Summary of Procedural Background and Stated Facts; 4) Respondent's Motion for Jurisdiction and Request to Set Aside and Dismiss H-5469-SAC; and 5) "Other Related Documents."

On October 4, 2013, complainant filed a response, which was marked for identification as Exhibit 13. On October 4, 2013, respondent submitted an "Objection for the Record Regarding Bureau's Rebuttal." The record was closed, and the matter was submitted for decision on October 4, 2013.

¹ On July 1, 2013, the Department of Real Estate became the Bureau of Real Estate within the Department of Consumer Affairs. The term "Bureau" as used herein includes the Department of Real Estate and all actions taken by the Department of Real Estate before it became the Bureau of Real Estate.

SUMMARY

Complainant seeks to revoke respondent's broker license for: (1) collecting advance fees for loan modification services prior to submitting an advance fee agreement to the Bureau for review; (2) continuing to collect advance fees for loan modification services after October 11, 2009; (3) failing to handle trust funds collected from borrowers in accordance with statutory and regulatory requirements; (4) performing loan modification services under business names that were not licensed by the Bureau; (5) authoring a publication (*Homeowner 911*) containing statements constituting misrepresentation, fraud and/or dishonest dealing; and (6) engaging in conduct constituting negligence or incompetence in performing acts requiring a real estate license.

When all the evidence is considered, complainant established by clear and convincing evidence that respondent's broker license should be revoked. But respondent provided sufficient evidence to establish that it would be consistent with public safety to grant him a restricted real estate salesperson license on the terms and conditions set forth below.

FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.
2. Respondent was licensed as a real estate salesperson on September 12, 2006. On August 17, 2007, respondent was licensed as a real estate broker. On that same date respondent added to his license "Cloud 10 Financial Services Group" as a name under which he was doing business (DBA). This DBA was cancelled as of August 16, 2011. The DBA "MILO Real Estate" was added on April 3, 2013. Respondent's broker license will expire on January 16, 2017, unless renewed or revoked.
3. Respondent is the sole owner and has been conducting business under the name "Cloud 10 Financial, Inc." At no time has Cloud 10 Financial, Inc. been licensed by the Bureau in any capacity. As will be discussed below respondent, doing business as Cloud 10 Financial, Inc., offered loan modification services to residential borrowers, including soliciting borrowers for loan modifications, and negotiating the modifications with lenders on behalf of the borrowers.
4. The Bureau has not issued a real estate license to "Cloud 10 Financial.com" and "Realty 10." These entities are not included on respondent's license certification as names under which respondent may conduct real estate business.

Audit Violations

5. Between January 26 and February 11, 2010, the Bureau conducted an audit of the accounting and records of respondent for the period of January 1, 2008, through November 30, 2009. The purpose of the audit was to determine whether respondent handled and accounted for trust funds in accordance with the real estate law, specifically with regard

to respondent's loan modification activities. Respondent contends that the real estate law would not apply to any loan modification services that he performed through Cloud 10 Financial, Inc. because he essentially did that work for free. While respondent acknowledges charging up-front fees for "hardship services plans," he does not believe these were advance fees that he was required to handle and account for as trust funds in accordance with the real estate law. And because respondent does not believe such monies were trust funds, he believes that the assumptions underlying the audit findings are erroneous. His contention is simple. If trust funds were not involved, no trust fund violations can be found. Respondent's defense will be addressed in later Findings.

6. Trust Fund Handling. The Bureau's audit was conducted by Bureau Auditor Penny Xue. Ms. Xue testified at hearing. She reviewed records relating to Cloud 10 Financial, Inc., including bank statements, signature card, loan modification files and real estate salespersons' files.

According to documents reviewed by Ms. Xue, respondent processed 22 transactions for California properties and collected advance fees of \$24,595. As of January 26, 2010, there were four transactions in process. The fees collected by respondent were deposited into a Bank of America account (Bank #1) used to collect advance fees during the audit period. With regard to respondent's business banking practices, the following matters were undisputed:

a. Bank #1 was not designated as a trust account. It was not under the name of respondent or his DBA, Cloud 10 Financial Services Group, as trustee. Trust funds are required to be placed into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution. (Bus. & Prof. Code, §§ 10145, 10146; Cal. Code Regs., tit. 10, § 2832, subd. (a).)

b. Respondent did not maintain control records, separate beneficiary records or trust fund reconciliations for Bank #1. As a consequence, Ms. Xue was unable to determine trust fund accountability and the adjusted balance for Bank #1. (Bus. & Prof. Code, § 10145, subd. (g); Cal. Code Regs., tit. 10, §§ 2831, 2831.1 and 2831.2.)

c. Respondent's Bank #1 was overdrawn with a negative balance of \$70.29 as of October 21, 2009. Respondent failed to obtain written consent of each of the owners of funds in Bank #1 prior to making disbursements that lead to the negative balance in Bank #1. (Bus. & Prof. Code, §§ 10176, 10177, subd. (d); Cal. Code Regs., tit. 10, § 2832.1.)

d. Respondent did not provide a quarterly verified accounting to those borrowers from whom an advance fee was collected, or from any of his clients at any time. (Bus. & Prof. Code, § 10146; Cal. Code Regs., tit. 10, § 2972.)

7. Respondent's Advance Fee Agreement. Business and Professions Code section 10085 requires licensed brokers to submit their advance fee agreement, accounting format, and any advertising or promotional material to the Bureau for review. The broker cannot use the agreement or collect any fee in advance until a "no objection" letter is received from the Bureau.

On December 11, 2008, the Bureau received an Advance Fee Agreement from respondent, doing business as Cloud 10 Financial Services Group.² By letter dated December 18, 2008, the Bureau advised respondent that the agreement could not be used.

8. On January 2, 2009, the Bureau received a second Advance Fee Agreement from respondent, doing business as Cloud 10 Financial Services Group. On January 14, 2009, the Bureau notified respondent that the agreement could not be used because it contained the unlicensed DBA, "Cloud 10" and because a required notice was not in bold print. On January 27, 2009, the Bureau received a third Advance Fee Agreement from respondent, doing business as Cloud 10 Financial Services Group. On January 30, 2009, the Bureau notified respondent that it had "no objection" to respondent's use of the Advance Fee Agreement (No Objection Letter).

9. On October 11, 2009, Senate Bill (SB) 94 was signed into law and took effect immediately. The bill prohibited any person, including real estate licensees, from demanding, charging, or collecting an advance fee from a consumer for loan modification or mortgage loan forbearance services. By letter dated October 12, 2009, the Bureau advised respondent that the Advance Fee Agreement could no longer be used.

10. During the audit, Ms. Xue determined that respondent collected advance fees from Tom Vo for "hardship services plans" for Vanna Nguyen. Respondent collected fees in the amount of \$595 on August 26, 2008, and \$595 on November 20, 2008. These related to

² Business and Professions Code section 10026, subdivision (a), defines the term "advance fee" as follows:

The term "advance fee," as used in this part, is a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license, or for a listing, as that term is defined in Section 10027, before fully completing the service the licensee contracted to perform or represented would be performed. Neither an advance fee nor the services to be performed shall be separated or divided into components for the purpose of avoiding the application of this division.

two different residential properties in Stockton. Ms. Xue further determined that respondent collected advance fees from Bonifacio Gobeia for similar services. Respondent collected fees from Mr. Gobeia in the amount of \$2,840, as documented on a Hardship Services Enrollment Form, dated December 9, 2008. Respondent collected these fees during a period that he had yet to receive a No Objection Letter from the Bureau.

Hardship Services Plan Activities

11. Respondent contends that the “hardship services plans” for which he collected fees were completed for his clients through the unlicensed entity Cloud 10 Financial, Inc. He did not believe that he was engaged in activities requiring a real estate license within the meaning of Business and Professions Code section 10131.³ He explained to the Bureau on April 22, 2010, that if clients desired a loan modification, he would charge more (approximately \$3,000) and that such would be handled through his Bureau-licensed DBA. Since he primarily served low income clients, he worked instead through his hardship services program and engaged in “loss mitigation,” as opposed to negotiating loans within the meaning of section 10131. He explained that this involved preparing and packaging financial information that was submitted to financial institutions on behalf of his clients. He did not consider the charge for such services to be advance fees, and for that same reason he did not believe they were monies that he was required to maintain in a trust account. He averred that he did open a trust account in his name and that he anticipated that when he did collect advance fees for loan modifications these fees would be deposited into that trust account. Respondent contends that the services he provided through Cloud 10 Financial, Inc., which he refers to as “hardship services plans,” were “plans” and nothing more.

12. Advance Fees. Generally, one who performs real estate services must complete the work before collecting the fees. As noted earlier, one exception is where the broker has submitted an advance fee contract to the Bureau and received a No Objection Letter. The prohibition and restrictions placed on collecting advance fees have been in place for years to protect consumers from being victimized by real estate licensees taking upfront money in return for promised services that are not performed. (See Cal. Code Regs., tit. 10, §§ 2970, 2972.) By reason of the following matters and discussion, complainant has established by clear and convincing evidence that respondent collected advance fees for loan modification services.

13. First, respondent collected fees in advance and prior to services being performed. The language on the “Hardship Services Enrollment Form” used in connection

³ Business and Professions Code section 10131, subdivision (d), provides: “A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others: ... (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 or on a business opportunity.”

with Cloud 10 Financial, Inc. looked ahead to services to be performed at a later date. For example, Tom Vo and Vanna Nguyen paid \$595 for each of two residential properties for which loan modifications were sought. (See Finding 10.) The “Hardship Services Enrollment” forms used for the two properties provided in part:

Now that you have enrolled in Hardship Services our skilled professionals will immediately begin services [sic] your needs. ... With your enrollment you will receive the following ... You will receive and be asked to complete an assessment either online or written so that we can streamline the data collection process and learn vital information about where you are. This form will be forwarded to you by your agent. After the assessment is received the corporate office will begin reviewing your information and working on a recommended course of action for your family. You will also receive a book authored by our Corporate Broker, Milo Lewis called “Home Owner 911.” The book is designed to give you the right information, support and perspective on how to deal with hardship and how to save your home and avoid foreclosure. You will receive a consultation by way of phone, in person or workshop depending on volume of hardship files in your area. You will be provided with a custom action plan recommending how to proceed through your hardship as each situation is unique. You will receive constant email support on direction and your hardship coach will help you locate a team of professionals to guide you through your plan. [Underlining added.]

It is clear that the Hardship Services Enrollment Form looked ahead to services to be performed in consideration of past payment received. It is also clear that loan modification services were contemplated. For example, on November 20, 2008, Vanna Nguyen executed a “Borrower’s Authorization” form authorizing Cloud 10 Financial, Inc. to communicate with her lender “for the purpose of Payoff, Modification and/or Repayment plan, Short Refinance....” On August 28 and November 25, 2008, an agent of Cloud 10 Financial, Inc. executed a “Letter of Intent – Home Saving Negotiations” form directed to lenders on behalf of Vanna Nguyen. Cloud 10 Financial, Inc. also maintained a written “Conversation Log” for all transactions involving Vanna Nguyen. A December 5, 2008 Conversation Log entry reads “Sent Docs for mod,” and several other entries provided status updates on Ms. Nguyen’s loan modification. Work on Ms. Nguyen’s behalf clearly went beyond the development of a hardship service plan. This was true generally, as the hardship services plans reviewed in this case largely involved clients seeking assistance with home loans. Respondent’s clients sought his services because they desired to stay in their homes by obtaining a loan modification.

14. Second, respondent has not established that the hardship services were provided in advance of his receipt of fees. Through the time of hearing, respondent did not produce a single example of a written comprehensive hardship assessment plan for which he

received a fee. Respondent, for example, had suggested to Ms. Xue that Mr. Gobeia and all of his clients paid for a “comprehensive hardship assessment plan,” but that he did all loan modification work on their cases for free. Ms. Xue asked respondent as part of the audit to provide her with a copy of such a “comprehensive plan.” Respondent showed her a “Homeowner Hardship Pre-Interview Questionnaire” that was completed for Mr. Gobeia. When Ms. Xue asked respondent whether this one-page form was worth the \$2,840 paid by Mr. Gobeia, respondent declined to comment. Mr. Gobeia signed a “Borrower’s Authorization” form authorizing Cloud 10 Financial, Inc. to communicate with his lenders. On December 10, 2008, an agent for Cloud 10 Financial, Inc. signed a “Letter of Intent – Home Savings Negotiation” form directed to Mr. Gobeia’s lenders. Respondent did obtain one loan modification for Mr. Gobeia’s primary residence. He was not successful in obtaining loan modifications for four other properties owned by Mr. Gobeia.

Respondent’s suggestion that he accepted fees only for hardship services plans, and not loan modifications, is without merit. Rather, he routinely accepted fees in advance of providing such services. The “Conversation Log” entries, for example, contain references to loan modifications and fees collected for such services. As noted by complainant, if no fees were to be charged for loan modifications, there would be no need to reference receipt of loan modification fees in the Conversation Log.

15. Third, it does appear that respondent engaged in business practices that circumvented the real estate laws and allowed him to collect fees up front, without having to bother with any refunds, for loan modification activities. In this regard, *Nelson v. Department of Real Estate* (1984) 161 Cal.App.3d 939 is instructive. In *Nelson*, the First District Court of Appeal held that an agreement requiring the immediate payment of a fee for the preparation of a loan package constituted an advance fee. In that case, the Department of Real Estate filed an accusation against California Consolidated Financial Services, Inc. (CCFS), which was licensed as a real estate broker through its licensee, Allen Nelson. The court found that while the agreement separated the preparation fee from the percentage finder’s fee, the borrowers did not hire CCFS simply to have their loan packages assembled. Rather, they wanted to obtain a loan and “were induced to pay advance preparation fees because CCFS promised to act as their exclusive agent in securing the loans.” (*Id.* at p. 944.) Here, respondent collected a fee up front for enrollment in the Hardship Services Assessment Plan. In each case reviewed by Ms. Xue, the clients received loan modification services. As was the case in *Nelson*, a fee was charged in advance for a service that could not be separated from the consumer’s ultimate goal of obtaining a loan, or a loan modification in this case. The Court of Appeal observed:

Although the agreement breaks CCFS’s fee down into components, i.e., a percentage finder’s fee and a loan package preparation fee, these components nevertheless comprise a single overall fee which Spencer and Calvo agreed to pay for the sole purpose of soliciting lenders, making loan arrangements, and obtaining their loans. “Mere words and ingenuity of contractual expression, whatever their effect between the parties, cannot by description make permissible a course of

conduct forbidden by law.’ [Citation] The question of the violation of a statute is always determined with reference to the private rights of the parties to a transaction, and the result will not turn on the skill with which the parties have manipulated their transaction but on the significance of their acts in the terms of the provisions of the statute itself and of the public policy declared thereby. [Citation.]”

(*Id.* at p. 945.)

This case parallels *Nelson*, both in terms of facts and reasoning. The information that respondent gathered from clients as part of the hardship assessment plan was for the purpose of entering into negotiations on their behalf with lenders for loan modifications. Accordingly, respondent’s Hardship Services Enrollment Form, in all appearances and effects, was a receipt for fees collected in advance for loan modification services.

16. Finally, respondent’s own representations admit to Cloud 10 Financial, Inc. being engaged in loan modification activities. Respondent, for example, issued a public release dated October 22, 2007, publicizing the release of his new book, *Homeowner 911*. The release made the following representations regarding loan modification services available through Cloud 10 Financial, Inc.:

In conjunction with the book, Lewis initiated a Homeowner Hardship Program at Cloud 10 Financial, Inc. to provide hardship assessments and foreclosure mitigation services *such as client representation in negotiations with existing lenders*, and short sales, in which lenders allow debtors to sell the property for less than the amount owed and agree to accept that amount as payment of the debt. ... Unlike many financial services companies, Cloud 10 offers these services at cost, because the last thing on Lewis’ mind is profiting from the misfortune of others. The client pays a modest fee covering costs, which is refunded to the client in the event that they select an option that results in a profit for Cloud 10 (such as a short sale). [Italics added.]

17. The above matters have all been considered in finding that respondent engaged in loan modification activities through Cloud 10 Financial, Inc., that he did not do so for free, and that the fees he collected for “hardship services plans” are properly considered and characterized as advance fees within the meaning of Business and Professions Code section 10026, subdivision (a).

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Other Unlicensed Fictitious Business Names

18. Respondent used the additional fictitious business names "Cloud 10 Financial.com" and "Realty 10" among other names such as "Homeowner 911" in connection with his "hardship services plan" business. These names are not registered with the Bureau under his broker license. Respondent contends that he was not required to register these additional names under his broker's license because he was not using these names in connection with any activities requiring a real estate license. As earlier discussed, the "hardship services plan" business cannot be separated from his loan modification business. Respondent was therefore required to register the additional fictitious business names with the Bureau. (Bus. & Prof. Code, § 10177, subd. (d); Cal. Code Regs., tit. 10, § 2731.)

Fraud and/or Dishonest Dealing

19. Respondent is the author of the publication *Homeowner 911*, a book he provided to each of his "hardship services plan" clients. Several flyers were reprinted and included in the book. For example, pages 76 and 77 of the 2008 edition contain separate flyers with the titles "Our Hardship Services Process" and "Our Hardship Services Guarantee," respectively. The heading on each page reads "Home Owner 911.com" and a statement that it is a member of the Cloud 10 Financial, Inc. "Family of Companies." On the upper right-hand corner, both flyers state "Cloud 10 Financial, Inc. is a California DRE Licensed Company License # 01772537." The referenced license number is respondent's personal broker license number. Similar references to this license number are found elsewhere in the publication. As noted earlier, Cloud 10 Financial, Inc. is not licensed by the Bureau in any capacity and has therefore not been issued a corporate real estate license. The publication has a section entitled "About the Author." It describes respondent as the president and CEO of Cloud 10 Financial, Inc., "as well as its Corporate Broker." Respondent is not the designated officer/broker for the company as Cloud 10 Financial, Inc. is not licensed by the Bureau. In aggravation, complainant noted that respondent had earlier represented in three other flyers promoting seminars/workshops conducted by respondent for Cloud 10 Financial, Inc. that it was licensed by the Bureau through "Lic. # 01267960." This license number corresponded to that belonging to respondent's former employing broker, Ronnie D. Allen.

It was established that respondent made substantial misrepresentations regarding the licensed status of Cloud 10 Financial, Inc., and to his being its corporate broker.

Negligence and/or Incompetence

20. Respondent's belief that his "hardship services plan" activities did not require a real estate license, specifically those activities related to loan modifications, constituted negligence and/or incompetence in performing acts requiring a real estate license. (See Findings 11 through 17.) A real estate broker is expected to understand that licensed activity includes negotiating loans or performing services for borrowers or note owners in connection with loans secured directly or collaterally by liens on real property within the meaning of

Business and Professions Code section 10131, subdivision (d). Respondent was negligent and/or incompetent in not knowing this.

Respondent's Testimony and Evidence

21. Between 2001 and 2007, prior to becoming a real estate broker, respondent was employed by HSBC North America as one of its district managers. In this capacity, he produced or managed upwards of 4,000 real estate loans and refinance transactions. Because he did so as an HSBC employee, he was not required to deal with trust funds, and he worked with an in-house title company.

On October 31, 2006, respondent registered the fictitious business name Cloud 10 Financial Services Group, using his home address. He ceased working with HSBC in April 2007. On April 4, 2007, respondent formed and registered Cloud 10 Financial, Inc. with the California Secretary of State. "Homeowner 911" was subsequently registered with the Secretary of State on January 16, 2008. Respondent noted that all three organizations were formed prior to his obtaining his broker license.

22. Respondent explained that the concept of the "hardship services program" was to provide comprehensive strategic planning around "total hardship situations." There was no requirement that clients have an existing home and many of the clients were not even homeowners. Other clients who were homeowners did not necessarily wish to save their homes from foreclosure. He described Homeowner 911 as being formed as a non-profit corporation to help still other clients who had a mortgage on their primary home and who needed assistance. Even then, respondent indicated that he "pushed a non-profit charitable agenda when it came to mortgage hardship issues where California families were over-powered by deceptive collection practices pushed by the lenders, who we know now were themselves in fear of losing their businesses." Respondent averred that he assisted his clients "without any expectation of compensation."

Respondent explained that he was motivated to help people in crisis because, as a former HSBC refinance professional, he "had a skill set and knowledge that others, especially average homeowners, do not possess." The Stockton community where he then resided was hit particularly hard by the housing crisis. He noted that the pastor of his church specifically requested that he help others in his congregation. These events, along with his own personal experience being homeless at a young age, became the impetus for his starting the hardship services program. He desired to give back to his community.

23. By the time respondent became licensed as a real estate broker in August 2007, Cloud 10 Financial, Inc. was already providing hardship services for a fee. He acknowledged that client information was collected by Cloud 10 Financial, Inc. in developing a hardship assessment plan, but denied that any assessment was used for real estate activities such as loan modifications. He averred that any real estate activity was done under his name or his licensed DBA. Respondent indicated that no hardship enrollment plan services were done under his licensed DBA. Respondent further noted that if he knew that he was engaging in loan modifications through Cloud 10 Financial, Inc., he would have

charged more. He strongly disagrees that the hardship services plan “was a nefarious plot to hide advance fees for modifications behind the mask of strategy development services to circumvent legal obligations regarding trust funds and refunds.”

Respondent no longer collects fees for hardship or loan modification services. He is not marketing any program. His primary focus is on being a “purchase real estate agent.”

24. Respondent characterized his misuse of Bureau license numbers in *Homeowner 911* as administrative errors with no intent to misrepresent information or to deceive others. Similarly, he characterized his failure to have the advance fee contracts pre-approved as being due to his not being aware of the law. He noted that it “defies common sense to think than any profit-motivated real estate broker who knew about this right to charge advance fees for ‘modifications,’ and also knew that the only step required to ‘activate this power’ is sending in a form and waiting for a reply, that someone would refuse that simple vehicle to legal profits.”

25. Respondent denied collecting advance fees prior to review and approval of his advance fee agreement by the Bureau. He asserted that because he was not performing loan modification activities, he did not use the approved advance fee agreement. Similarly, respondent testified that he did not look at his clients’ advance fees as trust funds. He has acknowledged that clients enrolling in the hardship services program paid fees before they received the plan. At no time has he provided an example of a comprehensive written plan. At hearing he suggested that he has provided such comprehensive plans “verbally.”

Respondent did not keep the records that Ms. Xue described in her audit. His office did not maintain control records, separate records or trust account reconciliations. He did not provide quarterly accounting to his clients.

26. Respondent submitted a number of character references. These references were admitted as administrative hearsay and have been considered to the extent permitted under Government Code section 11513, subdivision (d).⁴ The clients who wrote the character references all praise respondent’s work and efforts on their behalf through the hardship service program. By declaration dated July 16, 2013, Kwok York Ling noted that he had worked with respondent at HSBC. Respondent provided him free services. Mr. Ling used a plan developed by respondent to obtain a loan modification.

Steven Alpert is an attorney. By letter dated July 16, 2013, he indicated that respondent has referred at least 10 bankruptcy clients to him because of his interest in having his clients getting “well serviced” and without any expectation of reward.

⁴ Government Code section 11513, subdivision (d), in relevant part, provides:

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

Others (Deborah Johnson and Judy Adams) submitted letters describing how hardship service plans developed by respondent resulted in loan modifications that saved them from foreclosure, and how he “did not charge me for the work with the bank.”

Donna Wade submitted a July 3, 2013 letter that credits respondent for saving her home. She wrote:

I think asking Milo to intervene on our behalf made the difference in whether or not we kept the home that we love. We were getting nowhere, talking to different people every time we called, repeatedly having to submit the same set of documents, only to be told they'd been lost. He's a rising star in that industry when he set out on his own, so he speaks "banker." That gives him more credibility with the banks, and also lets them know he, unlike folks like us, knows the insider secrets on how the system really works. That kind of knowledge could wreak havoc in the hands of the unscrupulous, as history has long demonstrated. But Milo uses his knowledge and access for the common good, to help rebuild his community which was decimated in the housing crash.

27. Joseph Cannon submitted a letter dated July 15, 2013. He also testified at hearing. Mr. Cannon is licensed as a real estate salesperson. He worked under respondent's broker license. He paid approximately \$700 to respondent for a hardship plan. Respondent helped him review bankruptcy and debt settlement options that resulted in resolution of credit card debt issues. Mr. Cannon noted: "It was very clear to me that the fee was charged for the hardship planning and that I should expect no fee to be charged if Milo helped me with my home(s)." Mr. Cannon indicated that the hardship services team "had nothing to do with real estate and it was separate." Although respondent also helped Mr. Cannon save his home from foreclosure, Mr. Cannon considered this part of the hardship services plan, and not a real estate transaction. Mr. Cannon referred his two aunts, Deborah Johnson and Judy Adams, to respondent. They wrote the positive letters described above.

Discussion

28. The "hardship services" provided through Cloud 10 Financial, Inc. predated respondent's licensure as a real estate broker. The program's goal was to give low income families help and objective guidance in dealing with their individual situations as they went through the housing crisis. Avoiding foreclosure was one goal, but this goal fell within a continuum of outcomes and services offered depending upon which one of the "Four Phases of Homeowner Hardship" a client was found to be in after being assessed. The phases themselves are not important to this discussion. However, the fact that respondent provided a comprehensive and individualized approach that did not always entail loan modification as a component of the hardship services plan is important to understanding respondent's motives, as is the fact that he set up this program prior to becoming licensed as a broker. The program built upon his experience with HSBC Bank, where he was involved with processing

loans. Respondent's perceived expertise was based on his experience at HSBC. Nor does it appear that the hardship services program was started as a front or surreptitious scam for providing loan modification services. The amounts charged for the "hardship services" did not appear excessive in most cases, and did not raise the concerns typically associated with real estate licensees taking upfront money in return for promised services that are not performed. The record supports respondent's assertion that he often provided assistance without expectation of profit. In many cases respondent worked diligently on behalf of his clients to save their homes from foreclosure without compensation.

29. While respondent may not have engaged in intentional wrongdoing, he nonetheless failed to comply with applicable statutes and regulations. He did provide loan modification services. (See Findings 11 through 17.) The fees respondent collected from clients before he provided loan modification services to them were "advance fees." Prior to October 11, 2009, he could not legally collect such fees until he had submitted a form advance fee agreement to the Bureau and obtained a no objection letter. After respondent received the No Objection Letter dated January 30, 2009, until SB 94 went into effect on October 11, 2009, he could utilize his Advance Fee Agreement so long as he complied with all its terms. The record is that respondent accepted advance fees for loan modifications without having first obtained a No Objection letter from the Bureau. And that he continued to use the Hardship Services Enrollment form instead of the approved advance fee agreement between January 30 and October 11, 2009.

30. The advance fees that respondent collected were trust funds that had to be placed in a trust account until respondent fully performed all the contracted services. Respondent failed to do so. Respondent also failed to maintain control records, separate records, and trust fund reconciliations. He commingled trust funds with other funds. He used trust funds for business and other expenses. He failed to send quarterly accountings to borrowers. He conducted work through unlicensed entities. Finally, respondent made misrepresentations regarding such entities being licensed by the Bureau.

31. When all the evidence is considered, it would not be consistent with the public interest to allow respondent to retain his broker license. Respondent's failure to understand and comply with applicable law and regulation demonstrates that he should not be allowed to retain his broker license at this time. Complainant contends that respondent's license and license rights must be revoked outright because there is no assurance that he will hold himself accountable for and be subject to the Real Estate Law. In this case, respondent's spirited defense of his hardship services activities notwithstanding, there was no showing that he engaged in intentional wrongdoing, fraud or dishonest dealing. Under these circumstances, it would be consistent with the public interest and safety to grant him a restricted salesperson license under the terms and conditions set forth below.

Other Matters

32. Audit Costs. Business and Professions Code section 10148, subdivision (b), provides that the commissioner shall charge a real estate broker for the cost of any audit where the commissioner has found that the broker has violated section 10145 or a regulation

or rule of the commissioner interpreting section 10145. Ms. Xue expended 63 hours in connection with her audit, between January 19 and March 9, 2010. Her time billed included travel time, entrance interview, review of records, reference organizing and report writing. Ms. Xue's time is billed at \$77 per hour⁵ for \$4,851 in total audit costs associated with this case. The Bureau is entitled to recovery the audit costs detailed above.

33. Evidentiary Rulings. Final evidentiary rulings were made at hearing regarding respondents Exhibits A through Z, contained in respondent's black binder. Respondent's also submitted a white binder containing Exhibits AA through ZZ. At hearing, only Exhibits II, QQ, RR, WW and XX were marked for identification. Respondent was invited to move additional documents from this second binder into evidence, subject to any objection raised by complainant. Respondent now moves the following white binder exhibits into evidence: AA, BB, CC, DD, EE, GG, HH, II, MM, NN, OO, PP, QQ, RR, TT, UU, VV and XX. Complainant's response to respondent's Motion for All Things in Evidence was considered in making the following evidentiary rulings.

- Exhibit AA: Marked for identification only and considered as argument.
- Exhibit BB: Marked for identification only.
- Exhibit CC: Admitted in evidence.
- Exhibit DD: Admitted in evidence.
- Exhibit EE: Admitted in evidence.
- Exhibit GG: Admitted in evidence as administrative hearsay.
- Exhibit HH: Admitted in evidence as administrative hearsay.
- Exhibit II: Admitted in evidence.
- Exhibit MM: Admitted in evidence.
- Exhibit NN: Admitted in evidence.
- Exhibit OO: Admitted in evidence.
- Exhibit PP: Admitted in evidence.
- Exhibit QQ: Admitted in evidence.
- Exhibit RR: Admitted in evidence.
- Exhibit TT: Admitted in evidence as administrative hearsay.
- Exhibit UU: Admitted in evidence as administrative hearsay.
- Exhibit VV: Admitted in evidence as administrative hearsay.
- Exhibit XX: Admitted in evidence as administrative hearsay.

34. Motions for Dismissal. Respondent moves to dismiss both this matter and a separate Bureau Order to Desist and Refrain (Case No. H-5469 SAC) issued against Cloud 10 Financial, Inc. on September 14, 2010. Respondent's motions are denied. An administrative law judge may not entertain a motion for nonsuit or dismissal in an administrative adjudicatory proceeding absent undisputed facts which establish cause for dismissal as a matter of law. (See *Kramer v. State Board of Accountancy* (1962) 200

⁵ Business and Professions Code section 10148 provides that "the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers."

Cal.App.2d 163, 175; *Frost v. State Personnel Board* (1961) 190 Cal.App.2d 1, 5; *Duarte v. New Motor Vehicle Board* (2002) 104 Cal.App.4th 626.) Such facts do not exist in this case.

No jurisdiction exists to consider respondent's motion to dismiss the Order to Desist and Refrain in the separate action involving Cloud 10 Financial, Inc., because that matter was not properly brought before the Office of Administrative Hearings for review.

35. Other Motions. Other matters raised by respondent were considered as part of his closing argument, including his opposition to complainant's "Procedural Background and Fact." Any other motion not expressly considered and ruled upon above is denied.

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 10177, subdivision (d), a real estate license may be suspended or revoked when the licensee has "[w]illfully disregarded or violated the Real Estate Law (Part 1(commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2."

First Cause of Action – Audit Violations

2. Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832, require that a broker place funds accepted on behalf of another into a trust account in the name of the broker, or in a fictitious business name if the broker is the holder of a license bearing such fictitious business name.

California Code of Regulations, title 10, section 2831, in relevant part, provides:

(a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

(1) Date trust funds received.

(2) From whom trust funds received.

(3) Amount received.

(4) With respect to funds deposited in an account, date of said deposit.

(5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.

(6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.

(7) Daily balance of said account.

Respondent failed to designate Bank #1 as a trust account, and the account was not under the name of respondent or his DBA, Cloud 10 Financial Services Group as required by California Code of Regulations, title 10, section 2832, subdivision (a). (Finding 6.) Respondent failed to keep a record of all trust funds received for Bank #1 as required by California Code of Regulations, title 10, section 2831. (Finding 6.) These failures constitute cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

3. California Code of Regulations, title 10, section 2831.1, in relevant part, provides:

(a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

(1) Date of deposit.

(2) Amount of deposit.

(3) Date of each related disbursement.

(4) Check number of each related disbursement.

(5) Amount of each related disbursement.

(6) If applicable, dates and amounts of interest earned and credited to the account.

(7) Balance after posting transactions on any date.

Respondent failed to keep a separate record for each beneficiary or transaction for Bank #1. (Finding 6.) This failure constitutes cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

4. California Code of Regulations, title 10, section 2831.2 provides: The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

Respondent failed to reconcile at least once a month the balance of all separate beneficiary or transaction records with Bank #1, as required by California Code of Regulations, title 10, section 2831.2. (Finding 6.) This failure constitutes cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

5. Business and Professions Code section 10146, in relevant part, provides: Any real estate broker who contracts for or collects an advance fee from any other person, hereinafter referred to as the "principal," shall deposit any such amount or amounts, when collected in a trust account with a bank or other recognized depository. Such funds are trust funds and not the funds of the agent. Amounts may be withdrawn therefrom for the benefit of the agent only when actually expended for the benefit of the principal or five days after the verified accounts mentioned hereinafter have been mailed to the principal.

Respondent failed to place trust funds entrusted to respondent into a trust fund account in the name of respondent as a trustee at a bank or other financial institution for Bank #1 as required by Business and Professions Code section 10146. (Finding 6.) This failure constitutes cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

6. Business and Professions Code section 10130 provides: It is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson within this state without first obtaining a real estate license from the department, or to engage in the business of, act in the capacity of, advertise as, or assume to act as a mortgage loan originator within this state without having obtained a license endorsement.

In violation of Business and Professions Code section 10130, respondent conducted real estate services for which a real estate license is required under the corporate business name Cloud 10 Financial, Inc., a business entity that was not licensed by the Bureau. (Findings 17 and 18.) These violations constitute cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

7. California Code of Regulations, title 10, section 2972 provides: Each verified accounting to a principal or to the commissioner as required by Section 10146 of the Code shall include at least the following information:
 - (a) The name of the agent.
 - (b) The name of the principal.
 - (c) Description of the services rendered or to be rendered.
 - (d) Identification of the trust fund account into which the advance fee has been deposited.
 - (e) The amount of the advance fee collected.
 - (f) The amount allocated or disbursed from the advance fee for each of the following:
 - (1) In providing each of the services enumerated under (c) above.
 - (2) Commissions paid to field agents and representatives.
 - (3) Overhead costs and profit.

Respondent failed to provide quarterly accountings to borrowers as required by Business and Professions Code section 10146 and California Code of Regulations, title 10, section 2972. (Finding 6.) This failure constitutes cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

8. Business and Professions Code section 10085, in relevant part, provides:

The commissioner may require that any or all materials used in obtaining advance fee agreements, including but not limited to the contract forms, letters or cards used to solicit prospective sellers, and radio and television advertising be submitted to him or her at least 10 calendar days before they are used. Should the commissioner determine that any such matter, when used alone or with any other matter, would tend to mislead he or she may,

within 10 calendar days of the date he or she receives same, order that it not be used, disseminated, nor published.

Business and Professions Code section 10085.5, in relevant part, provides:

(a) It shall be unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee (1) for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with loans to be secured directly or collaterally by a lien on real property, before the borrower becomes obligated to complete the loan or, (2) for performing any other activities for which a license is required, unless the person is a licensed real estate broker and has complied with the provisions of this part.

California Code of Regulations, title 10, section 2970, in relevant part, provides:

(a) A person who proposes to collect an advance fee as defined in Section 10026 in the Code shall 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.

Respondent violated Business and Professions Code sections 10130, 10085, and 10085.5, and California Code of Regulations, title 10, section 2970 when he entered into a "Hardship Services Enrollment" contracts with clients through the unlicensed entity Cloud 10 Financial, Inc., and collected an advance fee prior to the submission of a form advance fee agreement to the Bureau for review. (Finding 10.) These violations constitute cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

9. Respondent deposited the advance fees he received from clients into Bank #1, in violation of Business and Professions Code section 10146. This violation constitutes cause to discipline respondent's broker license under Business and Professions Code sections 10176, subdivision (e), and 10177, subdivision (d).

Second Cause of Action – Multiple Beneficiaries Trust Fund Mishandling

10. California Code of Regulations, title 10, section 2832.1 provides: The written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the

existing aggregate trust fund liability of the broker to all owners of the funds.

Respondent violated California Code of Regulations, title 10, section 2832.1 when he failed to obtain the written consent of the owners of funds in Bank #1 prior to making the disbursements that lead to the negative balance in the Bank #1 account. (Finding 6.) These violations constitute cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

Third Cause of Action – Unlicensed Fictitious Business Name

11. California Code of Regulations, title 10, section 2731, subdivision (a) provides: "A licensee shall not use a fictitious business name in the conduct of any activity for which a license is required under the Real Estate law unless the licensee is the holder of a license bearing the fictitious name." Respondent violated California Code of Regulations, title 10, section 2731 when he used the fictitious business names Cloud 10 Financial, Inc., Cloud 10 Financial.com and Realty 10 to engage in real estate activities. (See Findings 3, 4, 17 and 18.) These violations constitute cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

Fourth Cause of Action – Fraud and/or Dishonest Dealing

12. Business and Professions Code section 10176 provides that the following are grounds for disciplinary action:

(a) Making any substantial misrepresentation.

[¶] ... [¶]

(c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.

[¶] ... [¶]

(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

13. Respondent violated Business and Professions Code sections 10176, subdivisions (a) and (c), by reason of the matters set forth in Finding 19. Such violations constitute cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d). No cause for discipline exists under Business and Professions Code section 10176, subdivision (i). It was not established that respondent engaged in fraud or dishonest dealing.

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Fifth Cause of Action – Negligence and/or Incompetence

14. Respondent demonstrated negligence or incompetence in performing acts for which he is required to hold a license. (See Finding 20.) Such constitutes cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (g).

15. Audit Costs. Pursuant to Business and Professions Code section 10148, subdivision (b), the commissioner shall charge a real estate broker for the cost of any audit where the commissioner has found that the broker has violated section 10145 or a regulation or rule of the commissioner interpreting section 10145. Audit costs associated with this case total \$4,851. The Bureau is entitled to recovery these audit costs from respondent. (See Finding 32.)

16. Appropriate Discipline. The matters set forth in Findings 28 through 31 have been considered. Given respondent's violations of statutes and regulations, it would not be consistent with the public interest to allow him to retain his broker license. Complainant has suggested that respondent does not have the honesty and integrity necessary to hold a real estate license. There was no showing that respondent engaged in intentional wrongdoing, fraud or dishonest dealing. Given this and other circumstances considered in this case, it would not be inconsistent with public safety to grant respondent a restricted salesperson license under the terms and conditions set forth below.

ORDER

All licenses and licensing rights of respondent Milo Lewis under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), including his broker license, are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:

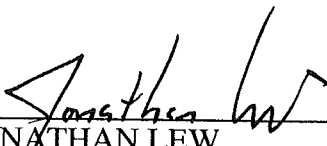
(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent shall pay \$4,851 to the Bureau as the cost of the audit pursuant to Business and Professions Code section 10148.

DATED: October 15, 2013



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings