

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

2.

Beginning November 7, 2015, ARR CAPITAL became licensed by the State of California, Bureau of Real Estate (“Bureau”) as a real estate broker corporation. At no time prior to November 7, 2015 did ARR CAPITAL hold a license by the Bureau as a real estate broker corporation.

3.

At all times herein mentioned, GREENBRIAR was and is licensed by the Bureau as a real estate broker corporation.

4.

At all times herein mentioned, REHFELDT was and is licensed by the Bureau individually as a real estate broker. Beginning November 7, 2015, REHFELDT became the designated officer of ARR CAPITAL. As said designated broker-officer, REHFELDT was and is responsible, pursuant to section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of ARR CAPITAL for which a license is required.

5.

At all times herein mentioned, COX was and is licensed by the Bureau individually as a real estate broker. At all times herein mentioned COX was and is the designated officer of GREENBRIAR. As said designated broker-officer, COX was and is responsible, pursuant to section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of GREENBRIAR for which a license is required.

6.

At all times relevant to this Accusation, COX was the exclusive owner of CC MTG INV GROUP (“CC GROUP”).

///
///

1 7.

2 At all times herein mentioned, AUSSIEKER was and is licensed by the Bureau
3 individually as a real estate broker.

4 8.

5 When reference is made in an allegation in this Accusation to an act or omission
6 of ARR CAPITAL and/or CC GROUP, such allegation shall be deemed to mean that the
7 officers, directors, employees, agents ad real estate licensees employed by or associated with
8 ARR CAPITAL and/or CC GROUP committed such acts or omissions while engaged in
9 furtherance of the business or operation of ARR CAPITAL and/or CC GROUP and while acting
10 within the course and scope of their corporate authority and employment.

11 9.

12 At all times herein mentioned, Respondents engaged in the business of, acted in
13 the capacity of, advertised, or assumed to act as a real estate licensee, in the State of California,
14 on behalf of others, for compensation or in expectation of compensation, within the meaning of:

15 Section 10131(d) of the Code, including the operation and conduct of a mortgage
16 loan brokerage business with the public wherein Respondents solicited lenders and borrowers for
17 loans secured directly or collaterally by liens on real property or a business opportunity, and
18 wherein such loans were arranged, negotiated, processed, and consummated by Respondents on
19 behalf of others for compensation or in expectation of compensation;

20 Section 10131(e) of the Code, including the operation and conduct of a real estate
21 business with the public wherein Respondents sold or offered to sell, bought or offered to buy, or
22 exchanged or offered to exchange a real property sales contract, or a promissory note secured
23 directly or collaterally by a lien on real property or a business opportunity, and performed
24 services for the holders thereof; and/or

25 Section 10131.1 of the Code, including the operation and conduct of a real estate
26 business with the public wherein Respondents engaged as a principal in the business of making
27 loans or buying from, selling to, or exchanging with the public, real property sales contracts or

1 promissory notes secured directly or collaterally by liens on real property, or who makes
2 agreements with the public for the collection of payments or for the performance of services in
3 connection with real property sales contracts or promissory notes secured directly or collaterally
4 by liens on real property.

5 FIRST CAUSE OF ACTION
6 PRIVATE MONEY LENDING VIOLATION
7 (As to Respondents REHFELDT, ARR CAPITAL and COX)

8 10.

9 Each and every allegation contained above in Paragraphs 1 and 9, inclusive, are
10 incorporated by this reference as if fully set forth herein.

11 11.

12 At all times relevant to this Accusation, REHFELDT, through ARR CAPITAL,
13 and COX, through CC GROUP, negotiated and/or arranged private money loans secured by
14 residential real estate ("hard money loans") for commercial purposes at an interest rate of 9.99
15 percent.

16 12.

17 At all relevant times to this Accusation and in furtherance of the hard money loan
18 business described above, REHFELDT deposited money from his personal savings account into
19 the business account of ARR CAPITAL.

20 13.

21 At all relevant times to this Accusation and in furtherance of the hard money loan
22 business described above, COX deposited money from his personal savings account into the
23 business account of CC GROUP.

24 ///

25 ///

26 ///

27 ///

14.

Within the three years preceding this accusation, in connection with the operation and conduct of the real estate activities described above in Paragraph 9, REHFELDT, ARR CAPITAL, and COX negotiated and/or arranged the following private money loans:

LOAN #	BORROWER	DATE
8015	Stix Development, 5331 Barton Road, Loomis, CA, 95650	4/10/2015
8033	J. Oliver, 5161 Valley View Drive, Placerville, CA, 95667	9/11/2015

15.

In connection with Loan #8015 and Loan #8033, described above in Paragraph 12, REHFELDT, ARR CAPITAL and COX failed to:

(a) deliver to the purchaser a copy of the appraisal or broker's evaluation, as required by sections 10232.3(a)(3) and 10238(h)(3) of the Business and Professions Code ("the Code");

(b) obtain and maintain a statement from the purchaser indicating that the purchaser meets the minimum qualifications of income or net worth, as required by sections 10232.3(b) and 10238(f)(1) of the Code;

(c) obtain and maintain a record of the information used to determine that an investment is suitable and appropriate for the purchaser, as required by section 10232.45 of the Code;

(d) obtain and maintain a disclosure statement containing the information as required by sections 10232.5 and 10238(l) of the Code;

(e) clearly indicate in the real estate brokers' transaction file the provision or provision of the Code or the Corporate Securities Law of 1968 pertaining to the qualification or exemption from qualification under which the transaction is being conducted, and/or retain

1 said information for the period specified in section 10148 of the Code, as required by section
2 10236.7 of the Code; and

3 16.

4 In acting as described above in the First Cause of Action, REHFELDT and COX
5 willfully caused, suffered, and/or permitted ARR and CC GROUP to willfully disregard and/or
6 violate section 10130 of the Code.

7 17.

8 The acts and/or omissions of REHFELDT, ARR CAPITAL and COX, as alleged
9 above in Paragraph 16, constitute grounds for the suspension or revocation of all licenses and
10 license rights of REHFELDT, ARR CAPITAL and COX, pursuant to the following provisions
11 of the Code and Regulations:

12 As to Paragraph 15(a), under section 10177(d) and/or 10177(g) of the Code, in
13 conjunction with sections 10232.3(a)(3) and 10238(h)(3) of the Code;

14 As to Paragraph 15(b), under section 10177(d) and/or 10177(g) of the Code, in
15 conjunction with sections 10232.3(b) and 10238(f)(1) of the Code;

16 As to Paragraph 15(c), under section 10177(d) and/or 10177(g) of the Code, in
17 conjunction with section 10232.45 of the Code;

18 As to Paragraph 15(d), under section 10177(d) and/or 10177(g) of the Code, in
19 conjunction with sections 10232.5 and 10238(l) of the Code;

20 As to Paragraph 15(e), under section 10177(d) and/or 10177(g) of the Code, in
21 conjunction with section 10236.7 of the Code; and

22 18.

23 The facts alleged above in the First Cause of Action are grounds for the suspension or
24 revocation of the licenses and license rights of REHFELDT and COX pursuant to section 10130
25 of the Code in conjunction with section 10177(d) of the Code.

26 ///

27 ///

SECOND CAUSE OF ACTION
LOAN SERVICING VIOLATIONS
(As to Respondent AUSSIEKER only)

19.

Each and every allegation contained above in Paragraphs 1 and 18, inclusive, are incorporated by this reference as if fully set forth herein.

20.

On October 16, 2016, the Bureau conducted an audit of the books and records related to the real estate activities of AUSSIEKER at AUSSIEKER's main office located at 8830 Olive Ranch Lane, Fair Oaks, CA 95628, where the auditor examined records for the period of November 1, 2013, to October 31, 2015 ("audit period").

21.

While doing business within the audit period, AUSSIEKER accepted or received funds in trust ("trust funds") from or on behalf of holders of notes secured by real property in connection with the servicing of loans originated by ARR CAPITAL, REHFELDT, and/or COX, as alleged herein, and thereafter from time to time made disbursements of said trust funds.

22.

The trust funds accepted or received by AUSSIEKER, as described above in Paragraph 21, were deposited or caused to be deposited by AUSSIEKER into trust accounts which were maintained by AUSSIEKER for the handling of trust funds, and thereafter from time-to-time AUSSIEKER made disbursements of said trust funds, identified as follows:

///

///

///

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BANK ACCOUNT #1	
Bank Name and Location:	Bank of America
Account No.:	XXXX XXXX 9674
Entitled:	Mark Aussieker Sole Prop DBA Americas Loan Servicing
Signatories:	Mark Aussieker
No. of Signatures Required:	One

TRUST ACCOUNT #1	
Bank Name and Location:	US Bank
Account No.:	X XXX XXXX 4604
Entitled:	MWA Real Estate America's Loan Servicing Real Estate Trust Account
Signatories:	Unknown
No. of Signatures Required:	One

23.

In the course of the activities described above in Paragraph 9, in connection with the collection and disbursement of trust funds, AUSSIEKER:

(a) failed to properly designate Bank Account #1 as a trust account in the name of AUSSIEKER or his fictitious business name, as trustee, in violation of section 10145 of the Code and section 2832 of the Regulations;

(b) failed to keep a separate record for each beneficiary or transaction for Bank Account #1 containing all of the information required by section 10145(g) of the Code and section 2831.1 of the Regulations;

(c) failed to keep a separate record for each beneficiary or transaction for Trust Account #1 containing all of the information required by section 10145(g) of the Code and

1 section 2831.1 of the Regulations;

2 (d) failed to reconcile at least once per month, the balance of all separate
3 beneficiary or transaction records to the balance of the control records for Bank Account #1, in
4 violation of section 2831.2 of the Regulations;

5 (e) failed to reconcile at least once per month, the balance of all separate
6 beneficiary or transaction records to the balance of the control records for Trust Account #1, in
7 violation of section 2831.2 of the Regulations;

8 (f) caused, suffered or permitted funds held in trust for loan servicing
9 activities to be commingled with business operating account funds, in violation of section
10 10176(e) of the Code

11 (g) during the audit period, AUSSIEKER made collection of payments on
12 behalf of owner or promissory note holders secured directly and/or collaterally by lines on real
13 properties without filing with the Bureau a Threshold Notification as required by section
14 10232(e) of the Code.

15 24.

16 The acts and/or omissions of AUSSIEKER, as alleged in Paragraph 23, above,
17 constitute grounds for the suspension or revocation of all licenses and license rights of
18 AUSSIEKER pursuant to the following provisions of the Code and Regulations:

19 As to Paragraph 23(a), under section 10177(d) and/or 10177(g) of the Code, in
20 conjunction with section 10145 of the Code and section 2832 of the Regulations;

21 As to Paragraph 23(b), under section 10177(d) and/or 10177(g) of the Code, in
22 conjunction with section 10145(g) of the Code and section 2831.1 of the Regulations;

23 As to Paragraph 23(c), under section 10177(d) and/or 10177(g) of the Code, in
24 conjunction with section 10145(g) of the Code and section 2831.1 of the Regulations;

25 As to Paragraph 23(d), under section 10177(d) and/or 10177(g) of the Code, in
26 conjunction with section 2831.2 of the Regulations;

27

1 As to Paragraph 23(e), under section 10177(d) and/or 10177(g) of the Code, in
2 conjunction with section 2831.2 of the Regulations;

3 As to Paragraph 23(f), under section 10177(d) and/or 10177(g) of the Code, in
4 conjunction with section 10167(e) of the Code;

5 As to Paragraph 23(g), under section 10177(d) and/or 10177(g) of the Code, in
6 conjunction with section 10232(e) of the Code; and

7
8 THIRD CAUSE OF ACTION
9 REPORTING VIOLATIONS

9 (As to Respondents ARR CAPITAL, COX, REHFELDT and AUSSIEKER only)

10 25.

11 Each and every allegation contained above in Paragraphs 1 and 24, inclusive, are
12 incorporated by this reference as if fully set forth herein.

13 26.

14 In the course of the activities described above in Paragraph 9, and at all times
15 relevant to this Accusation, ARR CAPITAL, COX, REHFELDT and AUSSIEKER failed to
16 deliver to the Bureau the following documents:

17 (a) Mortgage Loan Activity Notification as required by sections 10166.02(a) and
18 10166.02(f) of the Code; and

19 (b) An annual Business Activity Report for the 2014 reporting year, as required by
20 section 10166.07 of the Code.

21 27.

22 The acts and/or omissions of ARR CAPITAL, COX, REHFELDT and
23 AUSSIEKER, as alleged above in Paragraph 26, constitute grounds for the suspension or
24 revocation of all licenses and license rights of ARR CAPITAL, COX, REHFELDT and
25 AUSSIEKER, pursuant sections 10177(d) and/or 10177(g) of the Code, in conjunction with
26 sections 10166.02(a), 10166.02(f) and 10166.07 of the Code. The acts and/or omissions of ARR
27 CAPITAL, COX, REHFELDT and AUSSIEKER, as alleged above in Paragraph 26, constitute

1 grounds to impose a penalty, not to exceed a total of \$10,000, upon ARR CAPITAL, COX,
2 REHFELDT and AUSSIEKER, pursuant to section 10166.02(f) of the Code.

3 FOURTH CAUSE OF ACTION
4 REPORTING VIOLATION
5 (As to Respondent ARR only)

6 28.

7 Each and every allegation contained above in Paragraphs 1 and 27, inclusive, are
8 incorporated by this reference as if fully set forth herein.

9 29.

10 In the course of the activities described above in Paragraph 9, and at all times
11 relevant to this Accusation, ARR failed to deliver to submit to the Bureau a Multi-Lender
12 Transaction Notice on May 14, 2014, as required by Section 10238 of the Code.

13 30.

14 The acts and/or omissions of ARR CAPITAL, as alleged above in Paragraph 29,
15 constitutes grounds for the suspension or revocation of all licenses and license rights of ARR
16 CAPITAL pursuant sections 10177(d) and/or 10177(g) of the Code, in conjunction with section
17 10238 of the Code.

18 FIFTH CAUSE OF ACTION
19 FAILURE TO MAINTAIN A DEFINATE PLACE OF BUSINESS
20 (As to Respondents REHFELDT and GREENBRIAR only)

21 31.

22 Each and every allegation contained above in Paragraphs 1 and 30, inclusive, are
23 incorporated by this reference as if fully set forth herein.

24 32.

25 On or about September 16, 2015, REHFELDT's main office address on file with
26 the Bureau was listed as Pleasant Grove Blvd & Fairway Dr. 100 yards, Roseville, CA 95678.
27 The aforementioned address is not a definite place of business in the State of California that
served as the office for the transaction of business.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

33.

On or about March 3, 2016, GREENBRIAR's main office address on file with the Bureau was Garfield Ave. & El Camino Ave. 100 yards, Carmichael, CA 95608. The aforementioned address is not a definite place of business in the State of California that served as the office for the transaction of business.

34.

The acts and/or omissions of REHFELDT, as alleged above in Paragraph 32, constitutes grounds for the suspension or revocation of all licenses and license rights of REHFELDT pursuant sections 10177(d) and/or 10177(g) of the Code, in conjunction with section 10162 of the Code.

35.

The acts and/or omissions of GREENBRIAR, as alleged above in Paragraph 33, constitutes grounds for the suspension or revocation of all licenses and license rights of REHFELDT pursuant sections 10177(d) and/or 10177(g) of the Code, in conjunction with section 10162 of the Code.

COST RECOVERY

36.

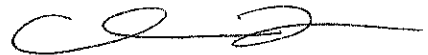
The acts and/or omissions of AUSSIEKER, as alleged above in the Second Cause of Action, entitle the Bureau to reimbursement of the costs of its audit pursuant to section 10148(b) of the Code.

37.

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

///
///

1 WHEREFORE, Complainant prays that a hearing be conducted on the
2 allegations of this Accusation and that upon proof thereof, a decision be rendered revoking all
3 licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the
4 Business and Professions Code), for the cost of investigation and enforcement as permitted by
5 law, and for such other and further relief as may be proper under other provisions of law.
6

7 

8 _____
9 CHIKA SUNQUIST
Supervising Special Investigator

10 Dated at Sacramento, California,
11 this 28th day of October, 2016.
12

13 DISCOVERY DEMAND

14 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Bureau
15 hereby makes demand for discovery pursuant to the guidelines set forth in the *Administrative*
16 *Procedure Act*. Failure to provide Discovery to the Bureau may result in the exclusion of
17 witnesses and documents at the hearing or other sanctions that the Office of Administrative
18 Hearings deems appropriate.
19
20
21
22
23
24
25
26
27