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DEC -5 2012

DEPARTMENT OF REAL ESTATE
BY: 

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

TO: ARMORED INVESTMENT GROUP, doing
business as Armored Home Loans,
Armored Home Savers and Armored Real
Estate; and ANDREW FRANK ROOSEN,
individually and as designated officer
of Armored Investment Group,
Respondents,

No. H-36352 LA
L-2009120285

ORDER DENY RECONSIDERATION

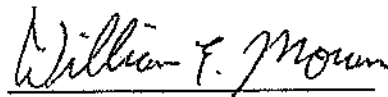
On October 11, 2012, a Decision was rendered in the above-entitled matter. The Decision was to become effective on November 5, 2012. On October 26, 2012, the Department filed a Modification of Order to correct mistakes in the Proposed Decision.

On October 30, 2012, Respondent petitioned for reconsideration of the Decision of October 11, 2012. The Decision and was stayed by separate Order to December 5, 2012.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of October 11, 2012, and reconsideration is hereby denied.

IT IS SO ORDERED December 5, 2012

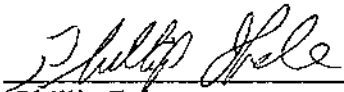
Real Estate Commissioner



By WILLIAM E. MORAN
Assistant Commissioner, Enforcement

1 The Decision of October 11, 2012, as modified on October 26, 2012, shall become
2 effective at 12 o'clock noon on December 5, 2012.

3
4 DATED NOVEMBER 05, 2012
5 Real Estate Commissioner

6 
7 BY: Phillip Ihde
8 Regional Manager

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OCT 28 2012

1 Department of Real Estate
2 320 West 4th Street, Suite 350
3 Los Angeles, California 90013-1105
4 Telephone: (213) 576-6982

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

11 TO:	}	No. H-36352 LA	
		2009120285	
12 ARMORED INVESTMENT GROUP, doing business		}	<u>MODIFICATION OF ORDER</u>
13 as Armored Home Loans, Armored Home,			
14 Savers and Armored Real Estate; and			
15 ANDREW FRANK ROOSEN, individually			
16 and as designated officer of			
17 Armored Investment Group,			
18 Respondents,			

18 On October 11, 2012, a Decision was rendered in the above-entitled matter to
19 become effective November 5, 2012.

20 On October 25, 2012, The Department of Real Estate on its own motion makes
21 correction of mistake pursuant to Section 11518.5(d) of the Government Code.

22 Upon review of the Proposed Decision it was noticed that a time period for
23 Respondent ANDREW FRANK ROOSEN to apply for a restricted salesperson license was not
24 included in the Proposed Decision dated September 14, 2012.

25 After careful review, the Real Estate Commissioner has determined to correct the
26 Decision pursuant to Section 11518.5(d) of the Government Code. The Order of the Proposed
27

FILED

OCT 10 2012

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: 

* * * *

In the Matter of the Accusation of)	No. H-36352 LA
)	OAH: 2009120285
ARMORED INVESTMENT GROUP, doing business)	
as Armored Home Loans, Armored Home)	
Savers and Armored Real Estate; and)	
ANDREW FRANK ROOSEN, individually)	
and as designated officer of)	
Armored Investments Group,)	
)	
Respondent(s).)	
_____)	

DECISION

The Proposed Decision dated September 14, 2012, 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.

This Decision shall become effective at 12 o'clock noon on November 5, 2012.

IT IS SO ORDERED 10/11/2012

Real Estate Commissioner



By WAYNE S. BELL
Chief Counsel

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the First Amended
Accusation Against:

ARMORED INVESTMENT GROUP, etc.,;
ANDREW FRANK ROOSEN, etc.,

Respondents.

Case No. H-36352 LA

OAH No. 2009120285

PROPOSED DECISION

The hearing on this matter was held on September 13, 2011, before Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings. Complainant appeared by Elliott Mac Lennon, Counsel, Department of Real Estate (Department). Respondents Armored Investment Group dba Armored Home Loans, Armored Home Savers and Armored Real Estate, and Andrew Frank Roosen, appeared by Edward O. Lear. Salem Shubash, an officer of Armored Investment Group, and identified during the hearing as the owner of that corporation, appeared as well.

During the hearing amendments were made to the First Amended Accusation, as follows:

At page 6, line 22, the words "prospective tenants" were deleted, and the words "homeowner-borrowers" inserted in their place.

At page 6, lines 24 and 25, the words "to Armando Moreno" were deleted, and the word "fee" changed to "fees."

Typographic errors were corrected, so that on page 8 the identification of a paragraph as number 11 was changed to reference paragraph 12, and on page 9 the second reference to paragraph 13 was changed to 14. Finally, on page 9, line 14, the misspelled word "firth" was changed to "fifth."

Stipulations were reached regarding the truth of some allegations of the First Amended Accusation, and evidence was received as well. The parties also argued the case at the end of the hearing. However, the parties agreed to hold the record open until November 1, 2011, for the production of further documents by Respondents, and a telephonic status conference was set for December 1, 2011, to follow up on such document production.

No documents were produced by Respondents. The status conference did not occur as ordered. Therefore, the record in this matter was reopened, and a telephonic status conference was set for February 10, 2012. During that conference, Complainant's counsel reported his understanding that Respondents would not submit any more documents. The matter was therefore deemed submitted for decision on February 10, 2012.

The ALJ hereby makes his factual findings, legal conclusions, and orders, as follows.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant Maria Suarez maintained the Accusation and First Amended Accusation in the above captioned matter while acting in her official capacity as a Deputy Real Estate Commissioner of the Department.

2. Respondent Armored Investment Group (AIG) is a corporation that has been licensed by the Department to act as a real estate broker, holding license number 01835780. It was originally licensed in November 2007. The license was due to expire in November 2011. At times relevant to this proceeding AIG has used the fictitious names Armored Home Loans, Armored Home Savers, and Armored Real Estate.

3. Respondent Andrew Frank Roosen (Roosen) is an individual licensed by the Department as a real estate broker, holding license number 01805958. That license was due to expire in May 2011. At all times relevant to this matter, Respondent Roosen was the designated officer for AIG. Department records indicate that he was designated officer for another corporation, The Mortgage Banq Corporation, though that firm is not a party in this proceeding. It should be further noted that during the hearing on this matter, Mr. Roosen stated that he was the designated officer of approximately 10 other corporations, but he was unable to identify them at the hearing without consulting his corporate attorney.

4. Respondents filed a notice of defense in this matter, and the hearing ensued. Regardless of whether Respondents' licenses have been renewed, the Department retains jurisdiction to proceed in this matter pursuant to Business and Professions Code section 118, subdivision (b).¹

¹ All further statutory references are to the Business and Professions Code unless otherwise noted.

The 2009 Audit

5. At all times relevant to this matter, Respondents engaged in the business of real estate brokers within the meaning of the Real Estate Law, and they operated a resale, mortgage loan, loan modification and advanced fee brokerage through AIG and its fictitious names. For compensation, or in expectation of compensation and for fees collected in advance, Respondents contacted lenders on behalf of distressed homeowners who were seeking modification or forbearance of the terms of their home loans.

6. On May 19, 2009, the Department completed an audit examination of the books and records of AIG pertaining to the mortgage loan, advanced fee and loan modification service activities that AIG conducted, which activities required a real estate license. The audit, number LA 080216, is hereafter referred to as the 2009 audit. The 2009 audit was for the period from November 1, 2007 to March 31, 2009 (the audit period). The 2009 audit revealed violations of the Real Estate Law and the Commissioner's regulations, described further below.

7. The 2009 audit established that no trust account was maintained during the audit period. Respondents contend, however, that they maintained an escrow account, and they contend that it served to segregate client funds in an appropriate manner.

8. Respondents failed to maintain a control record in the form of a columnar record in chronological order of all trust funds including advance fees received, deposited and disbursed, in violation of section 10145, and California Code of Regulations (CCR), title 10, section 2831.²

9. (A) After receiving a notice and subpoena from the Department on April 16, 2009, Respondents failed to produce all records of AIG's activity during the audit period, for activities that required a real estate license during the audit period. This indicates a failure to maintain records, and therefore a violation of section 10148.

(B) Respondents contended that some files were not made available to the Department because they had been taken by a disgruntled employee. This claim was not sustained by the evidence.

(C) It must be noted, however, that more than just transaction files were not produced. The audit report indicates that a number of source documents were not produced for the Department, including banking records.

² All citations to the CCR are to title 10 thereof.

10. It was established that Respondent Roosen failed to exercise adequate supervision over AIG's activities that required a real estate license so as to ensure compliance by AIG with its obligations under the Real Estate Law, and he had no system in place for regularly monitoring its activities. This constituted a violation of sections 10159.2, 10177, subdivision (h), and CCR section 2725.

The 2010 Audit

11. On August 31, 2010, the Department completed another audit examination of the books and records of AIG pertaining to its mortgage loan, advanced fee and loan modification service activities. That audit, number LA 1000021, will hereafter be referred to as the 2010 audit, and was denominated by the Department as an audit "supplemental" to the 2009 audit. Like the 2009 audit, the 2010 audit covered the period from November 1, 2007 to March 31, 2009, and it was based on the production of more records for the audit period than had been produced during the 2009 audit. The 2010 audit also revealed violations of applicable statutes and regulations during the audit period, as detailed hereafter.

12. The 2010 audit established that AIG accepted or received funds in the form of advanced fees from actual or prospective parties, which included lenders, borrowers, homeowners for mortgage loans or loan modifications. Such funds constituted trust funds and were deposited either into an escrow bank account, or into AIG's general operating account. From time to time such funds were deposited into or disbursed from those two bank accounts, sometimes being moved from one to the other.

13. (A) The 2010 audit established that AIG collected advance fees, as that term is defined in section 10026, from homeowners who were seeking loan modification services but AIG did not have a pre-approved advance fee agreement, that is, one pre-approved by the Department. Thus, AIG could not provide such a pre-approved advance fee agreement to its customers during part of the audit period, i.e., from October 30, 2008 through January 30, 2009. Such constituted a violation of section 10085 and CCR section 2970.

(B) By law, the advance fees collected should have been held in trust, and must be deemed to constitute trust funds.

14. AIG failed to provide a complete description of services to each prospective homeowner borrower in 10-point font and failed to provide an allocation and disbursement of the amount collected as advance fees, in violation of section 10146 and CCR section 2972. Approximately \$23,000 of advance fee money was deposited into AIG's general operating account during the audit period.

15. (A) In the handling of the monies received from customers, AIG, while Roosen was its designated officer, commingled trust funds with AIG personal funds by depositing advance fees that it had collected from loan modification activity into AIG's general operating account. This constituted a violation of sections 10145 and 10176, subdivision (e), and CCR section 2832.

(B) Respondents failed to maintain a complete and accurate control record, in the form of a columnar record in chronological order of all trust funds received, deposited, and disbursed by AIG, in violation of section 10145 and CCR section 2831.

(C) Respondents failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited, or disbursed from the AIG escrow account, which constituted a violation of section 10145 and CCR section 2831.1. Further, no separate trust fund beneficiary records were maintained for advance fees collected by AIG in connection with loan modification activity.

(D) Respondents failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to CCR section 2831.1 with the record of all trust funds received and disbursed from AIG's escrow account, in violation of section 10145 and CCR section 2831.2.

16. Respondents failed to retain all records of AIG's licensed activities during the 2010 audit period, in violation of section 10148. Respondents contended that some files were not made available to the Department because they had been taken by a disgruntled employee. This claim was not sustained by the evidence.

Other Matters Relevant to Determination of the Case

17. (A) The Department's efforts to conduct the 2009 audit were not met with a cooperative response. The auditor, Ms. King, made 13 attempts to schedule a meeting, and it appears that a subpoena was needed to obtain documents from Respondents. The documents obtained were nowhere near complete. Ms. King first contacted Respondent Roosen about the audit on March 19, 2009, and had the subpoena served approximately one month later, on April 16. Incomplete documents were not available until mid-May of that year. Roosen was given a Loan Modification Questionnaire on April 25, and he never filled it out and returned it to the auditor. Respondents provided bank records for the last four months of the audit period (December 2008 to March 2009), failing to produce bank records for a period of one year, i.e., November 2007 to November 2008.

(B) The auditor, Ms. King, noted that when Respondent Roosen met with her on April 24, 2009, he had just two files with him, but he produced 18 files in June 2010, during the 2010 audit.³

³ The 18 files produced for the 2010 audit were short of the number that should have been produced.

18. Respondents asserted that they had made refunds of advanced fees collected to all their customers, except for one; they claimed that one customer had actually obtained a loan modification. However, they presented no corroboration of those claims at the hearing. The auditor did note that some \$34,000 had been disbursed by AIG, but she was unable to verify that the payments from the AIG accounts had been for the purpose of making refunds.

19. (A) During his testimony, Respondent Roosen testified that he thought he could use the AIG escrow account like a trust account, on the notion that it segregated client funds. He believed he was complying with the spirit of the Real Estate Law and the Commissioner's regulations.

(B) In such testimony, Respondent Roosen exhibited an ignorance of his obligations as a broker and designated officer of a corporate broker. This impression of ignorance, and the inference of unprofessional conduct that follows from it, was reinforced by his testimony that he is designated officer of several other companies, but that he could not name them without consulting an attorney.

20. The Respondents have no record of prior discipline. Complainant did not present evidence of consumer harm as a result of Respondents' actions.

LEGAL CONCLUSIONS

1. The Department is vested with jurisdiction to proceed in this matter, based on Factual Findings 1 through 4, and Code sections 118, subdivision (b), 10100 and 10103.

2. Section 10026 defines advance fees as follows:

(a) 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.

(b) For the purposes of this section, the term "advance fee" does not include:

(1) "Security" as that term is used in Section 1950.5 of the Civil Code.

(2) A "screening fee" as that term is used in Section 1950.6 of the Civil Code.

(3) A fee that is claimed, demanded, charged, received, or collected for the purpose of advertising the sale, lease, or exchange of real estate, or of a business opportunity, in a newspaper of general circulation, any other written publication, or through electronic media comparable to any type of written publication, provided that the electronic media or the publication is not under the control or ownership of the broker.

(4) A fee earned for a specific service under a "limited service" contract. For purposes of this section, a "limited service" contract is a written agreement for real estate services described in subdivision (a), (b), or (c) of Section 10131, and pursuant to which such services are promoted, advertised, or presented as stand-alone services, to be performed on a task-by-task basis, and for which compensation is received as each separate, contracted-for task is completed. To qualify for this exclusion, all services performed pursuant to the contract must be described in subdivision (a), (b), or (c) of Section 10131.

(c) A contract between a real estate broker and a principal that requires payment of a commission to the broker after the contract is fully performed does not represent an agreement for an advance fee.

(d) This section does not exempt from regulation the charging or collecting of a fee under Section 1950.5 or 1950.6 of the Civil Code, but instead regulates fees that are not subject to those sections.

Since October 11, 2009, advance fees have been wholly prohibited in loan modification transactions. (§ 10085.6.) In circumstances where they may be received, including in the period before October 2009, the Legislature and the Commissioner made it clear that the transactions must follow certain paths. Hence section 10085 of the Real Estate Law provides that advanced fee contracts may be reviewed by the Commissioner, and CCR section 2970 requires that advance fee contracts be submitted to the Department for review prior to their use. Thus, even before section 10085.6 was adopted, Respondents were obligated to have their advance fee agreements reviewed and approved by the Department.

3. In construing section 10026, pertaining to advance fees, the statute's purpose of protecting the public must be kept in mind. On that point, it is noted that a prior version of section 10026 was subjected to scrutiny by a Federal court in 2004. In *ForSaleByOwner.com Corp. v. Zinnemann* (E.D. Cal. 2004) 347 F.Supp.2d 868, at 878, the District Court spoke to the purpose of section 10026, based on a review of the legislative history. In footnote number 7, the court wrote:

The Court is aware of the legislative history generated when Section 10026 was amended in 1959. According to that history, consumers were then at the mercy of unscrupulous promoters who made false and

fraudulent misrepresentations to property owners in order to exact payment for services rendered in connection with real property transactions. In deciding to restrict the use of advance fees in order to prohibit such behavior, the California Legislature noted that newspapers of general circulation had not been found to engage in the offending practices in question. See Cal. Stats.1959, ch. 2117, at § 14, pp. 4942–43. Accordingly newspapers were given more credibility and an exemption from the advance fee restrictions was provided to them. .

4. (A) Respondents failed to comply with the Commissioner’s regulations in the following particulars. In many instances, the violation also constitutes a violation of a particular statute, which will be noted as well.

(B) Respondents violated CCR section 2831 and Code section 10145 by failing to maintain control records for trust funds, based on Factual Findings 8 and 15(B).

(C) Respondents violated CCR section 2832.1 and Code section 10145 in their handling of trust funds for multiple beneficiaries, based on Factual Finding 11(E).

(D) Respondents violated CCR sections 2970 and 2972, and Code sections 10026 and 10085, in connection with their use of and participation in advance fee agreements, including the failure to submit such agreements to the Department for review, based on Factual Findings 12 and 13(A).

(E) Respondents violated CCR section 2972, and Code section 10146, by failing to provide a contract form with proper disclosures, in proper typeface, based on Factual Findings 12 through 14.

(F) Respondents violated CCR section 2831.1 and Code section 10145 by failing to have separate records for each beneficiary or transaction, based on Factual Finding 15(C).

(G) Respondents violated CCR sections 2831.1 and 2831.2, and Code section 10145, by failing to prepare monthly reconciliations of beneficiary records, based on Factual Finding 15(D).

(H) Respondents violated CCR section 2832, and Code sections 10145 and 10176, subdivision (e), by commingling trust funds of clients with Respondent’s funds, based on Factual Findings 12 through 15(A).

(I) Respondent Roosen violated CCR section 2725 and Code sections 10159.2 and 10177, subdivision (h), by failing to exercise reasonable control and supervision over the real estate business and activities conducted by AIG, based on Factual Findings 10 through 16, and 19.

5. Respondents violated Code section 10148, by failing to maintain records, based on Factual Findings 9(A) and 16.

6. Respondents' licenses are subject to discipline pursuant to Code section 10177, subdivision (d), for their willful disregard of, or violation of, the Real Estate Law or the Commissioner's regulations, based on Legal Conclusions 2 through 5, and their factual predicates.

7. Respondents violated Code sections 10145 and 10177, subdivision (j), by their handling of trust funds, based on Factual Findings 6, 7, 8, 12, 13, and 15. This violation subjects their licenses to discipline pursuant to Code section 10177, subdivision (j).

8. Respondents' licenses are subject to discipline pursuant to Code section 10177, subdivision (d), for their willful disregard of, or violation of, the Real Estate Law based on Legal Conclusions 1 through 7, and their factual predicates.

9. Respondents' licenses are subject to discipline pursuant to section 10177, subdivision (g), for their negligence in the performance of their duties as brokers, and for their breaches of fiduciary duty resulting from their mishandling of trust funds. This Conclusion is based on Legal Conclusions 2 through 8, and Factual Findings 5 through 19.

10. Any allegations upon which findings or legal conclusions have not been made are deemed unproven, or surplage.

11. The purpose of proceedings of this type are to protect the public, and not to punish errant licensees. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786.) In this case it appears that Roosen has allowed numerous violations of statutes and regulations, which threatened the public welfare. At the least, this can be attributed to ignorance of his obligations. However, given his lack of prior discipline, it would not be against the public welfare to revoke his broker's license and to allow him to apply for a restricted real estate salesperson's license, where he could be supervised appropriately. The corporate license should be revoked.

ORDER

1. The real estate broker's license issued to Respondent Armored Investment Group, number 01835780, is hereby revoked.

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2. The real estate broker's license issued to Respondent Andrew Frank Roosen, number 01805958, is hereby revoked, provided, however, that Respondent may apply for a restricted salesperson's license, and a restricted real estate salesperson's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code upon his application for such. 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:

A. The restricted license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(1) The conviction of Respondent Roosen (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee;

(2) The receipt of evidence that Respondent Roosen has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulation of the Real Estate Commissioner or conditions attaching to the restricted license.

B. Respondent Roosen 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 issuance of the restricted license to the Respondent.

C. During the period that the restricted license is in effect Respondent Roosen shall obey all laws, rules, and regulations governing the rights, duties, and responsibilities of a real estate licensee in the State of California, and shall remain in compliance with the terms and conditions of his criminal probation.

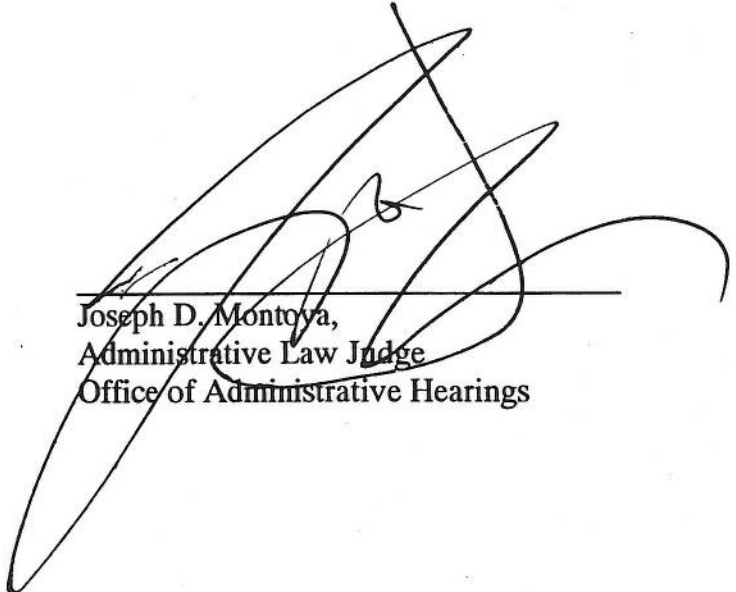
D. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify:

(1) That the employing broker has read the Decision which is the basis for issuing the restricted license; and,

(2) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

E. Respondent shall complete any education or training otherwise required to hold such a restricted license.

September 14, 2012



Joseph D. Montoya,
Administrative Law Judge
Office of Administrative Hearings