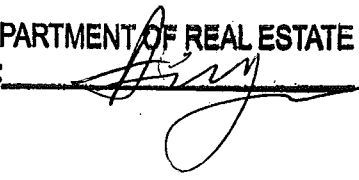


1 Elliott Mac Lennan, Counsel (SBN 66674)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

FILED

4 Telephone: (213) 576-6982
5 (Direct) (213) 576-6911

JAN 12 2012

DEPARTMENT OF REAL ESTATE
BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 HARVEST FINANCIAL.NET INC.,)
14 doing business as Harvest Financial;)
15 and MARK EDWIN GLASIER,)
16 individually and as designated)
17 officer of Harvest Financial.Net Inc.,)
18 Respondents.)
19)
20)
21)
22)
23)
24)
25)
26)

No. H- 37786 LA

ACCUSATION

18 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
19 of California, for cause of Accusation against HARVEST FINANCIAL.NET INC. ("HFN")
20 doing business as Harvest Financial and MARK EDWIN GLASIER, ("GLASIER"), individually
21 and as designated officer of Harvest Financial .Net Inc. (collectively "Respondents"), is informed
22 and alleges as follows:

23 1.

24 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
25 of California, makes this Accusation in her official capacity.

26 ///

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

2.

From December 4, 2001, through the present, Respondent HFN has been licensed as a real estate corporation. At all times relevant herein, HFN was acting by and through Respondent GLASIER as its designated broker-officer pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law. Respondent HFN is licensed to do business as by and through GLASIER from its original licensure on December 4, 2001.

3.

From November 5, 1981 through the present, Respondent GLASIER has been licensed as a real estate broker.

4.

Whenever reference is made in an allegation in this Accusation to an act or omission of "Respondents", such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondents committed such act or omission while engaged in the furtherance of the business or operations of Respondents and while acting within the course and scope of their corporate authority and employment.

FIRST CAUSE OF ACCUSATION

(Mortgage Loan Brokerage and Broker-Controlled Escrow Audit)

5.

At all times mentioned, in the City of Lake Forest, County of Orange, State of California, Respondents HFN and GLASIER acted as a corporate real estate broker and conducted licensed activities within the meaning of:

A. Code Section 10131(d). Respondents engaged in a Mortgage and Loan Brokerage including conducting activities with the public wherein institutional and private hard money lenders and borrowers were solicited for loans secured directly or collaterally by liens on

1 real property, wherein such loans were arranged, negotiated, processed, consummated and
2 services on behalf of others for compensation or in expectation of compensation and for fees
3 often collected in advance; and
4

5 B. In addition, HFN conducted broker-controlled, in-house escrows through its
6 escrow division, "HFN Escrow", under the exemption set forth in California Financial Code
7 Section 17006(a)(4) for real estate brokers performing escrows incidental to a real estate
8 transaction where the broker is a party and where the broker is performing acts for which a real
9 estate license is required.

10 Audit

11 6.

12 On March 30, 2011, the Department completed an audit examination of the books
13 and records of Respondent HFN pertaining to the mortgage loan broker and broker escrow
14 activities described in Paragraph 5, which require a real estate license. The audit examination
15 covered a period of time beginning on January 1, 2008 and ending on January 31, 2011. The
16 audit examination revealed violations of the Code and the Title 10, Chapter 6, California Code of
17 Regulations ("Regulations") set forth in the following paragraphs, and more fully set forth in
18 Audit Report LA 100088 and LA 1000204, and the exhibits and work papers attached thereto.
19

20 Trust Account

21 7.

22 At all times mentioned, in connection with the activities described in Paragraph 6,
23 above, HFN accepted or received funds including funds in trust ("trust funds") from or on behalf
24 of actual or prospective parties to transactions including buyers, sellers, lenders and borrowers
25 handled by HFN and thereafter made deposits and or disbursements of such funds. From time to
26

1 time herein mentioned, during the audit period, said trust funds were deposited and/or maintained
2 by HFN in the bank accounts as follows. HFN maintained a trust account for its escrow division
3 only and not for its mortgage loan brokerage activities:
4

5 "Harvest Financial.Net Inc. dba HFN Trust Account ("T/A 1")

6 XXXXXX9545"

7 City National Bank

8 City of Commerce, California

9 (Escrow Trust Account)

10 "Harvest Financial.Net Inc. dba HFN Escrow, Broker, as Trustee ("T/A 2")

11 XXXXXX4264"

12 Farmers & Merchants Bank

13 Lake Forest, California

14 (Prior Escrow Trust Account)

15 Violations of the Real Estate Law

16 8.

17 In the course of activities described in Paragraphs 5 and 7, above, and during the
18 examination period, described in Paragraph 6, Respondents HFN and GLASIER, acted in
19 violation of the Code and the Regulations in that Respondents:
20

21 (a) (1) Permitted, allowed or caused the disbursement of trust funds from the
22 escrow trust account, T/A 1, where the disbursement of funds reduced the total of aggregate
23 funds in T/A 1, to an amount which, on January 31, 2011, was at a minimum \$3,729.34, less than
24 the existing aggregate trust fund accountability of HFN to every principal who was an owner of
25 said funds, without first obtaining the prior written consent of the owners of said funds, in
26

1 violation of Code Section 10145(a) and Regulations 2832.1, 2950(g) and 2951. The
2 unrepatriated shortage was caused by overdrawn escrow balances.

3 (a) (2) Permitted, allowed or caused the disbursement of trust funds from
4 the escrow trust account, T/A 2. where the disbursement of funds reduced the total of aggregate
5 funds in T/A 2, to an amount which, on January 31, 2011, was at a minimum \$782.32, less than
6 the existing aggregate trust fund accountability of HFN to every principal who was an owner of
7 said funds, without first obtaining the prior written consent of the owners of said funds, in
8 violation of Code Section 10145(a) and 10148 and Regulations 2832.1, 2950(g) and 2951. The
9 unrepatriated shortage was caused by overdrawn escrow balances.
10

11 (b) Failed to place appraisal and credit report fees collected from borrowers into a
12 trust account in the name of the broker as trustee at a bank or other financial institution, in
13 violation of Code Section 10145 and Regulation 2832(a).
14

15 (c)(1) Escrow Trust Funds. Failed to maintain a control record in the form of a
16 columnar record in chronological order of all trust funds received, deposited and disbursed from
17 T/A 1, in violation of Code Section 10145 and Regulations 2831, 2950(d) and 2951.

18 (c)(2) Mortgage Loan Brokerage: Credit Report and Appraisal Fees. Failed to
19 maintain a control record in the form of a columnar record in chronological order of all trust funds
20 received, deposited and disbursed from HFN's general operating account, in violation of Code
21 Section 10145 and Regulation 2831.
22

23 (d)(1) Escrow Trust Funds. Failed to maintain a separate record for each
24 beneficiary or transaction for T/A 1, in violation of Code Section 10145 and Regulations 2831.1,
25 2950(d) and 2951.
26

1 (d) (2) Mortgage Loan Brokerage: Credit Report and Appraisal Fees. Failed to
2 maintain a separate record for each beneficiary or transaction for HFN's general operating
3 account, in violation of Code Section 10145 and Regulation 2831.1.
4

5 (e)(1) Escrow Trust Funds. Failed to perform a monthly reconciliation of the
6 balance of all separate beneficiary or transaction records maintained pursuant to Regulation
7 2831.1 with the record of all trust funds received and disbursed by T/A 1, in violation of Code
8 Section 10145 and Regulations 2831.2, 2950(d) and 2951.
9

10 (e)(2) Credit Report and Appraisal Fees. Failed to perform a monthly
11 reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant
12 to Regulation 2831.1 with the record of all trust funds received and disbursed by HFN's general
13 operating account, in violation of Code Section 10145 and Regulation 2831.2.
14

15 (f) Permitted Dorine Fontaine, HFN's former Escrow Officer, and Mark Bennet,
16 HFN's bookkeeper, unlicensed and unbonded persons, to be authorized signatories on escrow
17 trust accounts T/A 1 and T/A 2, in violation of Code Section 10145 and Regulation 2834.
18

19 (g) Failed to disclose in writing to all parties of HFN's financial interest and
20 ownership of HFN's Escrow Division, "HFN Escrow", in violation of Code Section 10145 and
21 Regulation 2950(h).
22

23 (h)(1) Failed to retain a true and correct copy of a Department of Real Estate
24 approved Mortgage Loan Disclosure Statement signed by the broker for borrowers Guest,
25 Duffy/Calvin, Pieratt, Parker, Lahr and Ledbetter, in violation of Code Section 10240 and
26 Regulation 2840;

///

1 (h)(2) Failed to disclose yield spread premiums from lenders on the approved
2 Mortgage Loan Disclosure Statement for the borrowers Guest, Duffy/Calvin, Pieratt, Parker,
3 Lahr and Ledbetter, in violation of Code Section 10240, 10241 and Regulation 2840.1.

4 (h)(3) Failed to comply with the disclosure and compliance requirements for a
5 non-traditional mortgage product negotiated by HFN for the borrower D'Agostino, in violation of
6 Code Section 10240 and Regulation 2842.

7 (i) Used the fictitious name of "HFN Escrow", to conduct licensed activities,
8 without first obtaining from the Department a license bearing said fictitious business name, in
9 violation of Code Section 10159.5 and Regulation 2731.

10 (j) Failed to retain all records of HFN's activity during the audit period requiring a
11 real estate broker license, in violation of Code Section 10148.

12 (k) Respondent GLASIER failed to exercise reasonable control and supervision
13 over the activities conducted by HFN's employees and/or licensees as necessary to secure full
14 compliance with the Real Estate laws, including but not limited to, broker escrow activity:
15 control records of all trust funds handled through HFN's two trust accounts, T/A 1 and T/A 2,
16 for the audit period; separate records for the funds handled through T/A 1 in 2008; records of
17 reconciliation for the trust funds handled through T/A 1 for the audit period; 2008 escrow
18 transaction files and records of deposits for the \$60,000.00 handled in T/A 1, as required
19 pursuant to Code Section 10159.2 and Regulation 2725, is in violation of Code Section
20 10177(h).

21 ///

22 ///

23 ///

9.

The conduct of Respondents HFN and GLASIER, described in Paragraph 8, above, violated the Code and the Regulations as set forth below:

| <u>PARAGRAPH</u> | <u>PROVISIONS VIOLATED</u> |
|------------------|--|
| 8(a) | Code Sections 10145 and 10148 and Regulations 2832.1, 2950(g) and 2951 |
| 8(b) | Code Section 10145 and Regulation 2832 |
| 8(c) | Code Section 10145 and Regulations 2831, 2950(d) and 2951 |
| 8(c) | Code Section 10145 and Regulations 2831.1, 2950(d) and 2951 |
| 8(d) | Code Section 10145 and Regulations 2831, 2950(d) and 2951 |
| 8(e) | Code Section 10145 and Regulations 2831.2, 2950(d) and 2951 |
| 8(f) | Code Section 10145 and Regulations 2834, 2950(d) and 2951 |
| 8(g) | Code Section 10145 and Regulation 2950(h) |
| 8(h) | Code Sections 10240 and 10241 and Regulations 2840, 2840.1 and 2842 |
| 8(i) | Code Section 10159.5 and Regulation 2731 |
| 8(j) | Code Section 10148 |

1
2 8 (k)

Code Sections 10177(h) and 10159.2 and
Regulation 2725 (GLASIER)

3
4 10.

5 The foregoing violations constitute cause for discipline of the real estate licenses
6 and license rights of Respondents HFN and GLASIER under the provisions of Code Sections
7 10177(d) and/or 10177(g).

8 SECOND CAUSE OF ACCUSATION
(Negligence)

9 11.

10 The overall conduct of Respondents HFN and GLASIER constitutes negligence
11 and is cause for discipline of the real estate license and license rights of said Respondents
12 pursuant to the provisions of Code Section 10177(g).

13 THIRD CAUSE OF ACCUSATION
(Fiduciary Duty)

14
15 12.

16 The conduct, acts and omissions of Respondents HFN and GLASIER constitute a
17 breach of fiduciary duty, owed to HFN's clients and trust fund beneficiaries of good faith, trust,
18 confidence and candor, within the scope of their brokerage and escrow relationship, in violation
19 of Code Section 10177(g) and constitutes cause for discipline of the real estate license and
20 license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

21 FOURTH CAUSE OF ACCUSATION
(Supervision and Compliance)

22 13.

23 The overall conduct of Respondent GLASIER constitutes a failure on said
24 Respondent's part, as officer designated by a corporate broker licensee, to exercise reasonable
25 supervision and control over the licensed activities of HFN and its officers and employees, as
26 required by Code Section 10159.2 and Regulation 2725, and to keep HFN in compliance with the

1 Real Estate Law, with specific regard to mortgage loan brokerage disclosures and trust fund and
2 escrow division handling, and is cause for discipline of the real estate license and license rights of
3 Respondent pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).
4

5 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
6 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
7 action against all licenses and/or license rights of Respondents HARVEST FINANCIAL.NET
8 INC. and MARK EDWIN GLASIER, individually and as designated officer of Harvest
9 Financial.Net Inc., under the Real Estate Law (Part 1 of Division 4 of the California Business and
10 Professions Code) and for such other and further relief as may be proper under other applicable
11 provisions of law, including but not limited to, restitution where applicable and costs of audit.

12 Dated at Los Angeles, California.

13
14 this 12th day of December, 2011.

15 
16 MARIA SUAREZ
17 Deputy Real Estate Commissioner
18
19
20
21
22

23 cc: Harvest Financial.Net Inc.
24 Michael Lee Williams
25 Maria Suarez
26 Ginsheng Yee
Audits - Zaky Wanis
Sacto