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**FILED**

APR 20 2012

DEPARTMENT OF REAL ESTATE  
BY: C.2

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 To: ) No. H-38072 LA  
12 LUIS H. MARTINEZ, )  
13 ROSARIO MARIA HERNANDEZ, and ) ORDER TO DESIST  
14 H&R MORTGAGE GROUP, INC. ) AND REFRAIN  
15 ) (B&P Code Section 10086)

16 The Commissioner ("Commissioner") of the California Department of Real Estate  
17 ("Department") caused an investigation to be made of the activities of LUIS H. MARTINEZ,  
18 ROSARIO MARIA HERNANDEZ, and H&R MORTGAGE GROUP, INC. Based on that  
19 investigation the Commissioner has determined that LUIS H. MARTINEZ, ROSARIO MARIA  
20 HERNANDEZ, and H&R MORTGAGE GROUP, INC. have engaged in or are engaging in acts  
21 or attempting to engage in the business of, acting in the capacity of, and/or advertising or  
22 assuming to act as real estate brokers in the State of California within the meaning of Business  
23 and Professions Code Sections 10131(a) (solicit or obtain listings of, or negotiate the purchase,  
24 sale or exchange of real property or a business opportunity) and 10131(b) (solicit for prospective  
25 tenants or negotiate the exchange of leases on real property or on a business opportunity).

26 In addition, based on that investigation, the Commissioner has determined that  
27 LUIS H. MARTINEZ, ROSARIO MARIA HERNANDEZ, and H&R MORTGAGE GROUP,

1 INC. have engaged in or are engaging in acts or are attempting to engage practices constituting  
2 violations of the California Business and Professions Code ("Code") and/or Title 10, California  
3 Code of Regulations ("Regulations"). Based on the findings of that investigation, set forth  
4 below, the Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and  
5 Desist and Refrain Order under the authority of Section 10086 of the Code.

6 FINDINGS OF FACT

7 1. From August 25, 2000, through the present, ROSARIO MARIA  
8 HERNANDEZ ("HERNANDEZ") has been licensed by the Department of Real Estate  
9 ("Department") as a real estate salesperson, Department License No. 01281317.

10 2. H&R MORTGAGE GROUP, INC. ("H&R") and LUIS H. MARTINEZ  
11 ("MARTINEZ") have never been licensed in any capacity by the Department.

12 3. H&R is a California corporation whose corporate rights were suspended by the  
13 Franchise Tax Board on or about January 3, 2011. MARTINEZ is the owner and president of  
14 H&R. HERNANDEZ is the Vice-President of H&R.

15 4. From on or about March 20, 2009, through June 1, 2009, HERNANDEZ and  
16 MARTINEZ, while doing business as H&R, charged and collected advance fees from borrowers  
17 Salvador H., Rosa P., Manuel M., and Rosa M. for loan modification and negotiation services.  
18 Manuel and Rosa M. paid \$2,500 to H&R for loan modification and negotiation services.  
19 Salvador Garcia H. and Rosa P. paid \$2,000 to H&R and HERNANDEZ for loan modification  
20 and negotiation services.

21 CONCLUSIONS OF LAW

22 5. Code Section 10132 defines a real estate salesperson as a person who, for  
23 compensation or in expectation of compensation, is employed by a licensed real estate broker to  
24 do one or more of the acts set forth in Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and  
25 10131.6.

26 6. Under Code Section 10131, a real estate broker is defined as a person who: (a)  
27 sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits

1 or obtains listing of, or negotiates the purchase, sale or exchange of real property or a business  
2 opportunity; or (d) solicits borrowers or lenders for or negotiates loans or collects payment or  
3 performs services for borrowers or lenders or note owners in connection with loans secured  
4 directly or collaterally by liens on real property or on a business opportunity.

5 7. Code Section 10131.2 defines a real estate broker as a person who engages in  
6 the business of claiming, demanding, charging, receiving, collecting or contracting for the  
7 collection of an advance fee in connection with any employment undertaken to promote the sale  
8 or lease of real property or of a business opportunity by advance fee listing, advertisement or  
9 other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a  
10 loan or loans thereon.

11 8. Code Section 10026, in pertinent part, defines an advance fee as a fee that is  
12 claimed, demanded, charged, received, or collected by a licensee for services requiring a license.  
13 A person who proposes to collect an advance fee as defined in Code Section 10026 must submit  
14 to the Commissioner not less than ten calendar days before publication or other use, all materials  
15 to be used in advertising, promoting, soliciting and negotiating an agreement calling for the  
16 payment of an advance fee including the form of advance fee agreement proposed for use,  
17 pursuant to Section 2970, Regulations of the Real Estate Commissioner, Title 10, Chapter 6,  
18 California Code of Regulations. Code Section 10085 also allows the Commissioner to require  
19 that any all materials used in obtaining advance fee agreements, including contract forms, be  
20 submitted at least 10 calendar days before they are used.

21 9. Based on the information contained in Paragraphs 1 through 8, LUIS H.  
22 MARTINEZ, ROSARIO MARIA HERNANDEZ, and H&R MORTGAGE GROUP, INC.  
23 violated Section 10130 of the Code by engaging in the activities without first obtaining a broker  
24 license from the Department or acting under the license of an employing broker.

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