

This Decision shall become effective at 12 o'clock noon on DEC 30 2014.

IT IS SO ORDERED 12/3/2014.

REAL ESTATE COMMISSIONER



WAYNE S. BELL

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

In the Matter of the Amended Accusation
Against:

MICHAEL PELIMIANO SORIANO,
individually, and as designated
Officer of MSM Services, Inc.;

MSM SERVICES, INC.;

LYDIA FRANCISCO SORIANO
Individually, and as designated officer of
MSM Services, Inc.

AGUSTIN NAVARRA ALAYON; and
JOSEPH ANTHONY OLIVA,

Respondents.

Case No. H-39302LA

OAH No. 2014020975

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on September 29 and 30, 2014 in Los Angeles, California. Lissete Garcia, Real Estate Counsel, represented complainant. Respondent Michael Pelimiano Soriano (Respondent Michael Soriano or Michael Soriano), Respondent Lydia Francisco Soriano (Respondent Lydia Soriano or Lydia Soriano), Respondent Agustin Navarra Alayon (Respondent Alayon or Alayon) and Respondent Joseph Anthony Oliva (Respondent Oliva or Oliva) were self-represented. Respondent MSM Services Inc. (Respondent MSM or MSM) is a suspended California corporation; therefore by operation of law, MSM was not entitled to defend itself in this proceeding. Oral and documentary evidence was received, and argument was heard. The record was closed and the matter submitted on September 30, 2014.

FACTUAL FINDINGS

1. Robin Trujillo, Deputy Real Estate Commissioner (Complainant), filed the First Amended Accusation in her official capacity.

2. The Bureau of Real Estate (BRE) issued real estate broker license number 01133773 to Respondent Michael Soriano on April 10, 2007. Michael Soriano was not licensed to do business under a fictitious business name or with any branch offices. Respondent Michael Soriano was licensed to do business only at the main office address of 18616 Bloomfield Avenue, Cerritos, California.

3. The BRE issued real estate broker license number ID01062848 to Respondent Lydia Soriano on July 5, 1991.

4. The BRE issued real estate salesperson license number ID01324865 to Respondent Alayon on December 1, 2001. From June 12, 2012 to November 30, 2013, Respondent Alayon was employed by MSM as a real estate salesperson. The license expired on November 30, 2013.¹

5. The BRE issued real estate salesperson license number ID01785075 to Respondent Oliva on December 12, 2006. From July 18, 2010 to March 17, 2011, Respondent Oliva's employing broker was Ibis Universal Corporation. Since March 18, 2011, Respondent has been licensed as "NBA" which is an acronym for "no broker affiliation" and has therefore been precluded from engaging in activities that require a real estate license.

6. MSM is a California corporation formed on November 12, 2004. Since February 3, 2005, MSM has been licensed by BRE as a real estate corporation, license number ID 01477431. MSM is licensed by BRE to do business as MSM Financial Service, MSM Mortgage Co., and MSM Realty Depot. Respondent Lydia Soriano is the designated officer for MSM. Respondent Michael Soriano is also an officer of MSM. The California Franchise Tax Board suspended all of MSM's powers, rights and privileges effective February 1, 2012. At the time of the hearing, MSM remained under suspension.

7. In addition to MSM, Michael Soriano did business through a company known as Cyberlink Diamond Group, LLC (Cyberlink). Cyberlink operated a multi-level marketing scheme using electronic commerce (e-commerce) and a variety of interactive webpages to market products and services. Some of the services marketed on Cyberlink's webpages were trustee sale delay services, debt settlement services, real estate support services, and loan conversions. Cyberlink has never been licensed by the BRE. Cyberlink operated offices in Panorama City and in Huntington Beach, California.

8. Cyberlink operated through a series of distributors that were called "members" each of which worked under one of approximately 60 "founders." Members were considered independent distributors/ business owners by Cyberlink. Members collected a percentage of the price of each product or service the member sold, and the founders collected an

¹ Respondent Alayon has renewal rights pursuant to Business and Professions Code section 10201 and the BRE has continuing jurisdiction pursuant to Code section 10103.

overriding percentage of the sales made by each member within a particular founder's network. Cyberlink also collected a fee on each of the sales. Cyberlink also sold e-wallet electronic and business payment services using its webpage and dissemination to its network of members and founders who in turn marketed products and services to their own social networks and clients.

9. Michael Soriano testified that Cyberlink also marketed "white label" products which are products from vendors or entities which were repackaged and presented with Cyberlink's logo, letterhead and labeling. Soriano testified that the HLC program was a "white label" product presented to Cyberlink by World Premier Choice Inc., dba Optimal Marketing Group owned by Jennifer Timario and Dennis Timario (World Premier). Michael Soriano explained that the HLC program was a mortgage note purchase program. Under this program, the members marketed the HLC program to potential clients that needed to have the payment, principal or mortgage payments on their homes reduced. If a property was accepted by World Premier for the HLC program, the client was asked to complete a series of documents and pay fees ranging from of \$8,000 to \$25,000. The fee was warranted to be fully refundable if the note was not purchased from the lender within one year. Cyberlink members sold approximately 50 of these "products" before Cyberlink terminated its relationship with World Premier. All funds passed through Cyberlink. Pursuant to a January 28, 2011 "Independent Contractor Agreement" between World Choice and Cyberlink, World Choice was paid \$6,500 from each transaction and the remainder was retained by Cyberlink, its members, and founders.

10. Respondent Michael Soriano testified that the proceeds from the HLC transactions were meant to be seed money for the members of the network until the e-commerce portions of Cyberlink's business were fully functioning and marketable. On a \$9,000 HLC transaction, the member that sold the "product" was compensated \$750, the founder that had brought the member into Cyberlink was paid \$250 per transaction, \$6,500 was paid to World Choice and \$1,500 was retained by Cyberlink. On occasion, more than one founder was entitled to a share of the fee so the fee would be divided amongst those founders.

11. Respondent Alayon, a founder, and a real estate salesperson employed by MSM, attended presentations by World Choice with Michael Soriano to learn about the HLC program. Respondent Alayon made presentations in Los Angeles, San Jose and Las Vegas to various groups of members some of whom were real estate salespersons and real estate brokers. Among the attendees at a seminar given by Respondent Alayon in San Jose, California were Ibis International real estate brokers Michael Bilbao and Fe Tamayo, and one of their salespersons, Respondent Oliva.

12. In July of 2011, Respondent Oliva, with his real estate brokers of record, made a presentation to Precioso P. about the HLC program. At the time Precioso P. was Respondent Oliva's mail carrier. Respondent Oliva had been licensed since 2006, but had never completed a real estate transaction. His brokers Tamayo and Bilbao were present to assist him and to answer any questions that Precioso P. had about the HLC program.

Respondent Oliva explained to Precioso P. that the HLC program would buy his mortgage notes totaling \$820,000 from Bank of America and the principal on the loans would then be reduced. Respondent Oliva explained to Precioso P., as Respondent Alayon had explained to him, that a payment of \$9,000 was required and that the \$9,000 was fully refundable at the end of one year if the mortgage notes had not been purchased. Respondent Oliva explained that Precioso P. had "nothing to lose" in this transaction. Precioso P. deposited \$9,000 in Cyberlink's bank account on July 6, 2011. Oliva did not know or have reason to suspect that the representations that he made to Precioso P. were false and he had no intent to deceive Precioso P. The transaction with Precioso P. was Respondent's Oliva's first real estate transaction. After Precioso P. deposited the funds in Cyberlink's account, Jennifer Lane, an employee of Cyberlink, notified Precioso P. by email that he had been approved for mortgage note purchases and his new combined principal mortgage balance would be \$661,500. Ultimately, Precioso P.'s mortgage notes were not purchased and his principal mortgage balance was not reduced. After the required one year passed, Precioso P. requested a refund.

13. When the request for refund was made by Precioso P., Respondent Oliva contacted his brokers at Ibis International and also assisted Precioso P. in making contact with Respondent Michael Soriano.

14. On November 6, 2012, Precioso P. entered an agreement with Cyberlink wherein it was agreed that Cyberlink would reimburse Precioso P. \$9,000 at the rate of \$100 per month beginning December 1, 2012. Precioso P. never received any payments towards the refund.

15. Solito S. also entered into an agreement with Cyberlink for the HLC program for a property in Las Vegas, Nevada. Respondent Alayon had Solito S. deposit \$9,000 into Cyberlink's bank account. The payment was an advance fee for a loan modification which was to reduce the principal balance on Solito S.'s mortgage. Solito S. paid \$8,000 on March 16, 2011 and another \$1,000 on March 31, 2011. Respondent Alayon told Solito S. that the process would take six to 12 months and that the \$9,000 was fully refundable in one year if the modification was not successful. After 18 months, Solito S. requested, but did not receive a refund. Solito S. also obtained a small claims judgment against Respondent Michael Soriano. The judgment remains unsatisfied.

16. Cyberlink employee Zenaida "Zeny" Bermejo (Bermejo) solicited funds from Victoria N. for a loan modification to reduce her mortgage principal balance. Bermejo was not licensed by the BRE in any capacity. Victoria N. paid \$8,000 for the principal reduction on March 29, 2011 for a home she owned in Burbank, California. Bermejo told Victoria N. that the funds were fully refundable if the loan was not modified within one year. On Bermejo's instruction, Victoria N. stopped making mortgage payments for three months. Victoria N. resumed making her loan payments when she saw that there was no progress on the loan modification. Victoria N. requested, but did not receive, a refund of her \$8,000. Victoria N. contacted Respondent Michael Soriano by telephone and had an attorney send a letter to Respondent Michael Soriano demanding return of her \$8,000.

17. Cyberlink employee Maon Cho (Cho) solicited Angelito A. to obtain a mortgage loan modification. Cho was not licensed by the BRE in any capacity. Cho obtained a \$9,000 advance fee payment from Angelito A. in two payments made on July 5, 2011 and July 12, 2011, which were deposited directly into Cyberlink's account. Cho represented that the payment was fully refundable in one year. Cho represented to Angelito A. that his loan would be modified when Cyberlink's investors purchased his mortgage note from the lender and that his \$9,000 advance fee would be credited against the mortgage principle. During the course of the ensuing year, Angelito A. exchanged communications with Cho and Cyberlink employee Jennifer Lane about the status of the loan modification. When the year had passed and Cyberlink had failed to obtain a loan modification for him, Angelito A. demanded a refund. On July 19, 2012, Angelito A. signed an agreement with Cyberlink wherein it was agreed that he would receive a refund in two payments of \$4,500 on August 5, 2012 and August 12, 2012. Subsequently, on July 27, 2012, Angelito A. entered a subsequent agreement with Cyberlink wherein he agreed that he would accept his refund in payments of \$250 per month beginning in August of 2012. Angelito A. never received a refund.

18. Precioso P., Victoria N., Angelito A. and Soltio S. were each required to sign documents entitled "HLC Preparation Retainer Fee Agreement" and "Service Value Guarantee" which promised loan modifications or purchase of their notes, a lower interest rate, or a reduced principal balance on their mortgages. The advance fee agreements were not approved by the BRE. Each of the advance fee agreements involved modifications of mortgages secured directly or collaterally by liens on real property.

19. At hearing, Respondent Michael Soriano testified that Cyberlink accepted advance fee payments from approximately 50 individuals in amounts ranging from \$8,000 to \$25,000 each. Respondent Michael Soriano testified that his decision to market the HLC program was the cause of Cyberlink's failure and his own bankruptcy. According to Michael Soriano, Cyberlink had undertaken to market World Choice's product, HLC, and relied upon presentations made by the Timarios. Cyberlink founders replicated the Timarios' presentation in their own presentations to members. Cyberlink used a video prepared by World Choice to provide details of the HLC program and answered questions from members and customers based upon the information provided to it by World Choice. Jennifer and Dennis Timario stopped responding to communications from Michael Soriano and his assistants Jennifer and Rachel Lane in 2012. At that time, Cyberlink stopped marketing HLC. Around the same time, requests for refunds were starting to come in to Cyberlink's offices. Michael Soriano attempted to work out repayments with some of the clients while trying to locate Jennifer and Dennis Timmaro. Ultimately, Michael Soriano and Cyberlink were not able to honor the promises of full refunds made by the founders and members of Cyberlink to clients.

20. Cyberlink paid commissions and other compensation to Jennifer Lane, Rachel Lane, Cho, Bermejo, Respondent Alayon, and Respondent Oliva from the advance fee payments made for loan modification transactions. Cyberlink also made payments to

Michael Soriano, his wife Raissa Soriano, his brother Marvin Soriano, his mother Respondent Lydia Soriano and various founders and members. On many occasions, Raissa Soriano used an ATM card to take sums of cash from Cyberlink's business account. Cyberlink did not maintain a trust account for client funds and did not consider itself to be responsible for the client refunds. Instead, Michael Soriano considered World Choice to be responsible for the refunds. Respondent Michael Soriano believes that he was duped by World Choice and that as a result, he is bankrupt and his company failed.

21. At hearing Respondent Michael Soriano testified that Respondent Lydia Soriano and MSM had no involvement with the HLC program and that the payments made from Cyberlink to Respondent Lydia Soriano were made to a bank account he had established as a surprise for her and without her knowledge. Respondent Michael Soriano also testified that he believed that Respondent Alayon and Respondent Oliva acted in good faith based upon the representations of Cyberlink and World Choice and had not intentionally made misrepresentations to clients or taken money under false pretenses. Respondent Michael Soriano expressed that he believed the responsibility for the transactions rested with him and his own decision to do business with World Choice and not with the founders and members of his marketing network that trusted the products he had presented through Cyberlink.

22. Cyberlink's registration with the Secretary of State and its business license in the city of Huntington Beach have been cancelled.

23. On February 26, 2014, BRE auditor Kathleen Mak called Lydia Soriano to schedule an audit appointment to examine the real estate activities conducted under MSM during the period of 2012 to 2014. Lydia Soriano answered the telephone for MSM services while driving her automobile. She told auditor Mak that she was semi-retired and had only conducted one real estate transaction in 2014. She also told auditor Mak that she had no income from real estate activity in 2013. She promised to call auditor Mak back later in the day when she was not driving, but failed to do so. Auditor Mak called Lydia Soriano again on February 27, 2014 to discuss an audit appointment. Lydia Soriano asked the auditor to fax any request for records and promised that she would respond to it by March 7, 2014 after handling some personal problems. An audit was scheduled for March 18, 2014, but on the evening of March 17, 2014, Lydia Soriano left a voice mail message for the auditor cancelling the appointment. In her message, she expressed that she was willing to meet with the auditor "in a few months."

24. On March 24, 2014, Special Investigator William Pak served Lydia Soriano with a subpoena duces tecum which required production of MSM's records at the BRE's Los Angeles District Office. Lydia Soriano did not provide the documents required by the subpoena duces tecum. Instead, she provided a copy of her February 27, 2014 bankruptcy filing in Case No. 2:13-bk-31863-SK, a copy of the Notice to Borrower of Trustee's Sale dated March 7, 2014 regarding her personal residence and a request that the audit be postponed to an unspecified date. Lydia Soriano never provided the requested documents.

25. At hearing, Respondent Lydia Soriano testified that she was not aware of the daily affairs of MSM because she had delegated all of the responsibility for MSM to Respondent Michael Soriano in 2012 after she started a career selling insurance. Respondent Lydia Soriano also testified that she was not aware that MSM's corporate status had been suspended in 2014 when she completed a real estate transaction under the auspices of MSM. Lydia Soriano testified that she did not have possession or knowledge of the whereabouts of MSM's corporate and real estate transaction records. Respondent Lydia Soriano never worked for Cyberlink and never conducted any transactions through Cyberlink. Meanwhile, Respondent Michael Soriano who was too busy with the activities of Cyberlink to handle even the most basic of corporate responsibilities such as maintaining MSM's active corporate status and the required three years of real estate transaction records.

26. Lydia Soriano advised Mak that she did not know whether or not Michael Soriano, salesperson Ruel B. Zonio, or Respondent Alayon had conducted any business through MSM during the period of 2012 to 2014.

27. Respondent Michael Soriano and Respondent Lydia Soriano have filed for bankruptcy. Respondent Alayon works part-time as a caregiver for the elderly and makes minimum wage. He has no other source of income. Respondent Oliva is employed, but the evidence did not establish the capacity or compensation of his employment.

28. The BRE has incurred \$8,363.35 in investigative costs and \$3,711.30 in enforcement costs for a total of \$12,074.65 in reasonable costs incurred in the investigation and prosecution of this matter

DISCUSSION AND LEGAL CONCLUSIONS

1. Business and Professions Code (Code) section 10026, provides that an advance fee, regardless of form, is a fee that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license.
2. Code section 10085 provides that the Commissioner may require that all advance fee agreements and materials be approved in advance of their usage.
3. Code section 10085.5, subdivision (a)(1), provides that it is unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee for soliciting ~~lenders on behalf of borrowers or performing services for borrowers~~ in connection with loans to be secured directly or collaterally by real property, before the borrower is obligated to complete the loan.
4. Code section 10085.6, subdivision (a)(1), provides that is unlawful for any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of loan forbearance for a fee or

other compensation paid by the borrower to claim, demand, charge, collect or receive any compensation until after a licensee has fully performed each and every service the licensee contracted to perform or represented that he, she, or it would perform.

5. Code section 10103 provides that the lapse or suspension of a license by operation of law or by order or decision of the department or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the department, now bureau, of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against a licensee.

6. Code section 10106, subdivision (a), provides that upon request, an administrative law judge may direct a licensee found to have committed a violation of the real estate law to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

7. Code section 10130 provides that 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 without first obtaining a real estate broker license from the BRE.

8. Code section 10131, subdivision (a) provides that a real estate broker is someone who sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity.

9. Code section 10131, subdivision (d) provides that a real estate broker is a person who solicits, negotiates, 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.

10. Code section 10131, subdivision (e) provides that a real estate broker is a person who sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real estate property sales contract, or a promissory note secured directly or collaterally by a lien on real property and performs services for the holders thereof.

11. Code section 10131.1, subdivision (a) provides that a real estate broker is also a person who engages as a principal in the business of making loans or buying from, selling to, or exchanging with the public, real property sales contracts or promissory notes secured directly or collaterally by liens on real property, or who makes agreements with the public, real property sales contracts or promissory notes secured directly or collaterally by liens on real property.

12. Code section 10131.2 provides that a real estate broker is also a person who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property.

13. Code section 10137 provides that it is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any acts which require a real estate broker's license or real estate salesperson license unless the person is either a licensed real estate broker or a licensed real estate person employed under the broker compensating him or her. A licensed real estate salesperson may not pay any compensation to anyone for performing acts which require a real estate license except through his employing broker. It also provides that it is unlawful to compensate directly or indirectly, any licensee for engaging in any activity which requires a mortgage loan originator license endorsement unless the person has a mortgage originator license endorsement.

14. Code section 10139 provides that it is unlawful for any person to act as a real estate broker, real estate salesperson or mortgage loan originator without a license or endorsement.

15. Code section 10145 provides that a real estate broker who accepts funds belonging to others in connection with a transaction shall deposit those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state.

16. Code section 10146 provides that any real estate broker who contracts for or collects an advance fee from any other person, shall deposit the funds into a trust account with a bank or other recognized depository.

17. Code section 10148 provides that for three years a real estate broker must retain copies of all listing deposit receipts, canceled checks, trust records, and other documents executed by him or her in connection with any transactions for which a real estate brokers license is required. The three years shall run from the date of the closing of the transaction or from the date of the listing if the transaction was not completed.

18. Code section 10159.2 provides that the officer designated by a corporate broker shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the real estate law including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

19. Code section 10163 provides that if a real estate corporation has more than one place of business, it must apply for an additional license for each place of business.

20. Code section 10176, subdivision (a), provides that the making of any substantial misrepresentation constitutes cause for discipline.

21. Code section 10176, subdivision (b) provides that the making of any false promises of a character likely to influence, persuade, or induce is cause for discipline.

22. Code section 10176, subdivision (i) provides that any conduct which constitutes fraud or dishonest dealings constitutes cause for discipline.

23. Code section 10177, subdivision (d), provides that willful disregard or violation of the real estate law or regulations constitutes cause for discipline.

24. Code section 10177, subdivision (f), provides that the conduct by a licensee that would have warranted the denial of his application for a real estate license, or discipline issued by another California agency is cause for discipline.

25. Code section 10177, subdivision (g), provides that demonstrated negligence or incompetence in performing an act which requires a real estate license is cause for discipline.

26. Code section 10201 provides that a holder of a real estate license who fails to renew it before the expiration of the period for which it was issued and who has otherwise qualified for such license, may renew it within two years from such expiration upon application and the payment of a late renewal fee in an amount equal to one and one-half times the regular renewal fee in effect at the time the license is reinstated.

27. California Code of Regulations, title 10 (Regulation), section 2725 provides, in part, that a real estate broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures, and systems to review, oversee, inspect, and manage transactions requiring a real estate license, documents which have a material effect upon the rights or obligations of a party to the transactions, the handling of trust funds, filing, storage and maintenance of documents, and advertising of any service for which a license is required.

28. Regulation 2742, subdivision (c) provides that a real estate corporation licensed under Code section 10211 shall not engage in the business of a real estate broker while not in good standing.

29. Civil Code section 2944.7 provides that it is unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance to claim, demand, charge, collect or receive any compensation to charge an advance fee.

First Cause for Discipline

30. Cause exists to discipline Respondent MSM's real estate license pursuant to Code sections 10177, subdivisions (d) and (g) in conjunction with Regulation 2742,

subdivision (c) because MSM demonstrated negligence by conducting real estate business while its corporate status was suspended. (Factual Findings 6 and 24; Legal Conclusions 23, 25 and 28.)

Second Cause for Discipline

31. Cause exists to discipline Respondent MSM's real estate license and the real estate broker licenses of MSM's designated officer Lydia Soriano and Respondent Michael Soriano, a real estate broker and corporate officer, pursuant to Code section 10177, subdivisions (d) and (g) in conjunction with Code Section 10148 because MSM failed to maintain records related to its real estate activities and was required to maintain records in connection with all transactions for which a real estate broker license is required for three years. (Factual Findings 2, 3, 6, and 22-25; Legal Conclusions 17, 23, and 25.)

Third Cause for Discipline

Respondent Michael Soriano

32. Cause exists to discipline Respondent Michael Soriano's real estate broker license pursuant to Code sections 10085.5, 10085.6, and Civil Code section 2944.7 in conjunction with Code section 10177, subdivisions (d) and (g), because Respondent Michael Soriano accepted advance fees through Cyberlink for loan modification services in violation of real estate law and was then negligent in the handling and supervision of the loan modification transactions for Precioso P., Solito S., Victoria N. and Angelito A. (Factual Findings 2, 4, 5, and 7-22; Legal Conclusions 1, 3, 4, 23, 25, and 29.)

33. Cause exists to discipline Respondent Michael Soriano's real estate broker license pursuant to Code section 10176, subdivisions (a), (b) and (i), because Respondent Michael Soriano, through Cyberlink, made substantial false misrepresentations and false promises which influenced, persuaded and induced Precioso P., Solito S., Victoria N. and Angelito A. to enter into advance fee loan modification agreements and pay advance fees to Cyberlink. Respondent Michael Soriano's conduct through Cyberlink constituted dishonest dealings. (Factual Findings 2, 4, 5, and 7-22; Legal Conclusions 1, 3, 4, 21-25 and 29.)

34. Cause exists to discipline Respondent Michael Soriano's real estate broker license pursuant to Code sections 10130, 10137 and 10139, in conjunction with Code section 10177, subdivisions (d) and (g), because Respondent Michael Soriano operated an unlicensed real estate brokerage through Cyberlink and compensated unlicensed persons such as Rachel Lane, Jennifer Lane, Bermejo and Cho for real estate transactions. Respondent Michael Soriano, through Cyberlink also directly compensated Respondent Oliva and Respondent Alayon, who did not hold mortgage loan originator endorsements and who were not employed under his real estate broker's license. (Factual Findings 2, 4, 5, and 7-22; Legal Conclusions 1, 4, 7, 13, 23 and 25.)

35. Cause exists to discipline Respondent Michael Soriano's real estate broker license pursuant to Code sections 10137, 10139, 10145, 10146, 10159.5 and 10163, in conjunction with Code section 10177, subdivisions (d) and (g), because Respondent Michael Soriano placed advance fee trust funds into Cyberlink's business account, failed to maintain a trust account, operated under an unlicensed fictitious business name when operating as Cyberlink, operated two unlicensed branch offices in Panorama City and Huntington Beach, and compensated and employed unlicensed persons to perform acts which require a real estate license and mortgage loan originator endorsement all in violation of the real estate law. (Factual Findings 2, 4, 5, and 7-22; Legal Conclusions 1, 13-16, 18, 19 and 23-25.)

Respondent Alayon

36. Cause exists to discipline Respondent Alayon's real estate salesperson license pursuant to Code sections 10085.5, 10085.6, and Civil Code section 2944.7, in conjunction with Code section 10177, subdivision (d) and (g), because Respondent Alayon accepted advance fees through Cyberlink for loan modification services in violation of real estate law and was then negligent in the handling of the loan modification transaction of Solito S. (Factual Findings 4, 7-15, and 18-20; Legal Conclusions 1, 3, 4, 23, 25, and 29.)

37. Cause exists to discipline Respondent Alayon's real estate salesperson license pursuant to Code section 10176, subdivisions (a), (b) and (i), because Respondent Alayon through Cyberlink, made substantial false misrepresentations and false promises which influenced, persuaded and induced Solito S. to enter into advance fee loan modification agreement and pay advance fees to Cyberlink. Respondent Alayon's actions constituted dishonest dealings. (Factual Findings 4, 7-15, and 18-20; Legal Conclusions 1, 7, 13, 14 and 23-25.)

38. Cause exists to discipline Respondent Alayon's real estate salesperson license pursuant to Code sections 10130, 10137 and 10139, in conjunction with Code section 10177, subdivisions (d), and (g), because Respondent Alayon accepted compensation through Cyberlink, an unlicensed entity which was not his employing broker, acted as a real estate broker without a license, and solicited unlicensed persons to engage in real estate transactions through Cyberlink for which real estate salesperson, real estate broker and mortgage loan originator endorsements were required. (Factual Findings 4, 7-15 and 18-20; Legal Conclusions 1, 7, 13, 14, and 23-25.)

Respondent Oliva

39. Cause exists to discipline Respondent Oliva's real estate salesperson license pursuant to Code sections 10085.5, 10085.6, 10130, and Civil Code section 2944.7, in conjunction with Code section 10177, subdivisions (d) and (g), because Respondent Oliva, acting through Cyberlink, accepted advance fees for a loan modification for Precioso P. and solicited the loan modification without having a mortgage loan originator endorsement as required by Code section 10039. (Factual Findings 5, 8-14 and 18-21; Legal Conclusions 1, 3, 4 and 7.)

40. Cause does not exist to discipline Respondent Oliva's real estate salesperson license pursuant to Code section 10176, subdivisions (a), (b) and (i), because Respondent Oliva did not know or have reason to suspect that the representations that he made to Precioso P. were false and he had no intent to deceive Precioso P. (Factual Findings 5, 8-14, and 18-21; Legal Conclusions 20-22.)

41. Cause exists to discipline Respondent Oliva's real estate salesperson license pursuant to Code sections 10130, 10137 and 10139, in conjunction with Code section 10177, subdivisions (d), and (g), because Respondent Oliva was compensated through Cyberlink, an unlicensed entity which was not his employing broker and he engaged in activity which required a mortgage loan originator endorsement, which he did not have. (Factual Findings 5, 11-14, 18, and 20-21; Legal Conclusions 7, 13, 14, 23 and 25.)

Fourth Cause for Discipline

42. Cause exists to discipline the real estate broker licenses of MSM's designated officer Respondent Lydia Soriano and Respondent Michael Soriano pursuant to Code section 10177, subdivisions (d), (g) and (h), in conjunction with Code section 110159.2 and Regulation 2725, because Respondent Lydia Soriano, as designated officer and Respondent Michael Soriano as a real estate broker and corporate officer, failed to exercise supervision and control over the activities of MSM. (Factual Findings 2-4, 6;7, 15, and 24-26; Legal Conclusions 18, 23, 25, 26 and 26.)

Disposition

43. The purpose of a disciplinary matter is to protect the public and not to punish the licensee. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Camacho v. Youde* (1979) 95 Cal.App.3d 161; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

44. Respondent Michael Soriano violated the real estate law by operating an unlicensed company, and engaging in a scheme to circumvent the prohibitions on advance fee agreements and payments for loan modifications. Moreover, Respondent Michael Soriano received funds with the understanding that efforts would be made to obtain loan modifications through note purchases and principal reductions. Respondent Michael Soriano did not undertake any work and had no reasonable expectation that others would undertake any work to obtain the promised results. Respondent Michael Soriano did not honor the guarantees made to fully refund the funds advanced by Precioso P., Solito S., Victoria N. and Angelito A. The advance fee loan modification agreements used by Respondents Michael Soriano, Alayon and Oliva, violated the law in various aspects. Furthermore, Respondent Michael Soriano, through Cyberlink, encouraged unlicensed employees and agents of Cyberlink to solicit advance fees for loan modifications from clients and profited from such activity. Although Respondent Michael Soriano seeks to blame his woes on others, as a

licensed real estate broker and an officer of a real estate corporation, his conduct is reprehensible and without excuse. In this instance, the public can be protected only by the revocation of the Respondent Michael Soriano's license.

45. Respondent Lydia Soriano abdicated all responsibility for MSM to Respondent Michael Soriano who was too busy with the activities of Cyberlink to handle even the most basic of corporate responsibilities such as maintaining the corporation's active status and the required three years of real estate transaction records. Respondent Lydia Soriano failed to cooperate with BRE attempts to audit MSM's activities and admitted that she continued to transact business through MSM while the corporation was under suspension. Respondents Lydia Soriano and Michael Soriano completely failed to supervise the activities and affairs of MSM. Respondent Lydia Soriano's negligence in the handling of MSM's affairs and her non-compliance with a BRE audit during investigation of MSM's activities show that she cannot be trusted with the responsibilities associated with a real estate broker license and that the license must be revoked in the interest of public protection.

46. Respondent Alayon, through Cyberlink, traveled throughout California and into Nevada soliciting loan modifications using the HLC program. Respondent Alayon did not hold a mortgage loan originator endorsement at any time. While Respondent Alayon personally handled only one of the loan modification transactions at issue in this case, he solicited large groups of Cyberlink members encouraging them to sell loan modifications. Respondent Alayon, as a Cyberlink founder, received a percentage of the advance fees generated by Cyberlink members, such as Respondent Oliva, that operated through his network. Respondent Alayon was deeply involved in the false promises, misrepresentations and solicitations of advance fees on a large scale. Respondent Alayon's large scale involvement in the HLC scheme perpetuated by Cyberlink and Respondent Michael Soriano is disturbing and to allow him to retain his real estate salesperson license would potentially subject the public to further abuses of trust and harm.

47. Respondent Oliva made an unwise decision to associate with Cyberlink. The preponderance of the evidence did not establish that Respondent Oliva had any idea that Cyberlink and the HLC program were frauds. Instead, the evidence established that he learned of the HLC program from his employing real estate broker, attended Respondent Cyberlink's presentation of the HLC program, featuring Respondent Alayon, with his employing brokers. Later, with his employing brokers at his side, Respondent Oliva made a presentation about HLC to Precioso P. and induced him to deposit \$9,000 in advance fees into Cyberlink's bank account. Although Respondent Oliva had been licensed since 2006, the Precioso P. transaction was his first real estate transaction. He was paid \$750 and his broker and Respondent Alayon were each paid percentages of the advance fees. Respondent Oliva never abandoned his client and continued his efforts to assist Precioso P. in obtaining a refund on his own and by providing him with the names and contact information of Cyberlink's operators. The preponderance of the evidence does not establish that the continued licensure of Respondent Oliva places the public at risk. Instead, public protection concerns can be adequately addressed by issuing Respondent Oliva a restricted real estate salesperson license with terms and conditions.

Costs

48. Code section 10106 provides that the Administrative Law Judge may order that a respondent in a disciplinary action pay the reasonable costs of investigation and prosecution. Here, the reasonable costs of investigation and prosecution are \$12,074.65. (Factual Finding 28.)

49. The California Supreme Court, in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, held that the imposition of costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5 (which is very similar to Code section 10106) did not violate due process in a case involving the discipline of a licensed chiropractor. But, the California Supreme Court held that it was incumbent upon the State Board of Chiropractic Examiners to exercise its discretion to reduce or eliminate cost awards in a manner that ensured that the application of section 317.5 did not “deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing.” The Supreme Court set forth four factors that the licensing agency was required to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a “subjective” good faith belief in the merits of his position; (3) whether the licensee raised a “colorable challenge” to the proposed discipline; and (4) whether the licensee had the financial ability to make payments. Since section 317.5 and Code section 10106 have substantially the same language and seek the same sort of cost recovery, it is reasonable to extend the reasoning in *Zuckerman* to Code section 10106 to avoid constitutional pitfalls.

50. The *Zukerman* criteria were applied. Directing Respondents each to pay a pro-rata portion of to the BRE for its enforcement and investigative costs upon reinstatement of their licenses is reasonable and consistent with the BRE’s guidelines.

ORDER

1. All real estate licenses and licensing rights of Respondent MSM Services, Inc. are hereby revoked.

2. Respondent MSM Services, Inc. shall reimburse the Bureau of Real Estate for the reasonable costs of investigation and prosecution of this matter in the amount of \$2,414.93 within 90 days of the effective date of this Decision.

3. All real estate licenses and licensing rights of Respondent Michael Pelimiano Soriano are hereby revoked.

4. Respondent Michael Pelimiano Soriano shall reimburse the Bureau of Real Estate for the reasonable costs of investigation and prosecution of this matter in the amount of \$2,414.93 within 90 days of the effective date of this Decision.

5. As a precondition of the Bureau of Real Estate's acceptance of any application for relicensure or reinstatement, Respondent Michael Pelimiano Soriano shall provide proof of payment of restitution in the amount of \$8,000 to Precioso P., \$8,000 to Solito S, \$8,000 to Victoria N. and \$9,000 to Angelito A.

6. All real estate licenses and licensing rights of Respondent Lydia Francisco Soriano are hereby revoked.

7. Respondent Lydia Francisco Soriano shall reimburse the Bureau of Real Estate for the reasonable costs of investigation and prosecution of this matter in the amount of \$2,414.93 within 90 days of the effective date of this Decision.

8. All real estate licenses and licensing rights of Respondent Agustin Navarra Alayon are hereby revoked.

9. Respondent Agustin Navarra Alayon shall reimburse the Bureau of Real Estate for reasonable costs of investigation and prosecution of this matter in the amount of \$2,414,93 within 90 days of the effective date of this Decision.

10. As a precondition of the Bureau of Real Estate's acceptance of any application for relicensure or reinstatement, Respondent Agustin Navarra Alayon shall provide proof of payment of restitution in the amount of \$1,000 to Solito S.

11. All real estate licenses and licensing rights of Respondent Joseph Anthony Oliva are hereby revoked; however, a restricted real estate salesperson license shall be issued to Respondent Oliva pursuant to Section 10156.5 of the Business and Professions Code if respondent Oliva 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 Oliva 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 issued to respondent Oliva 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.

//

//

b. The restricted license issued to respondent Oliva 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.

c. Respondent Oliva 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 two years have elapsed from the effective date of this Decision.

d. Respondent Oliva 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 Department 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.

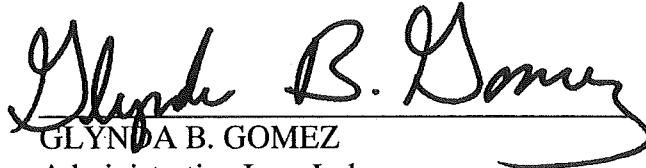
e. Respondent Oliva shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent Oliva 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.

f. Respondent Oliva shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Bureau including the payment of the appropriate examination fee. If respondent Oliva fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

12. Respondent Joseph Anthony Oliva shall reimburse the Bureau of Real Estate for the reasonable costs of investigation and prosecution of this matter in the amount of \$2,414.93 within 90 days of the effective date of this Decision.

13. As a precondition of the BRE's acceptance of any application for a restricted license, Respondent Joseph Anthony Oliva shall provide proof of payment of restitution in the amount of \$1,000 to Precioso P.

DATED: November 6, 2014



GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings