

FILED

JUL 19 2010

DEPARTMENT OF REAL ESTATE

By Jean Alonzo

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-35571 LA
)	
HOME OWNERS ASSISTANCE;)	L-2009030034
FIRST HOUSING OF AMERICA;)	
DEAN ERIC TORO; and)	
<u>SINDEY AVALOS,</u>)	
)	
Respondents.)	

ORDER DENYING RECONSIDERATION

On June 15, 2010, a Decision was rendered in the above-entitled matter. The Decision was to become effective on July 8, 2010, but was stayed by separate Order to July 19, 2010.

On July 7, 2010, Respondent SINDEY AVALOS petitioned for reconsideration of the Decision of June 15, 2010.

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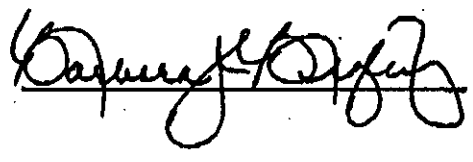
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I have given due consideration to the petition of Respondent SINDEY AVALOS. I find no good cause to reconsider the Decision of June 15, 2010, and reconsideration is hereby denied.

IT IS SO ORDERED 7/19, 2010.

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

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FILED
JUL - 8 2010
DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)		
HOME OWNERS ASSISTANCE;))	NO. H-35571 LA
FIRST HOUSING OF AMERICA INC.;))	L-2009030034
DEAN ERIC TORO; and))	
<u>SINDEY AVALOS,</u>))	
Respondents.))	

ORDER STAYING EFFECTIVE DATE

On June 15, 2010, a Decision was rendered in the above-entitled matter to become effective July 8, 2010. On July 7, 2010, Respondent SINDEY AVALOS filed a petition for reconsideration. IT IS HEREBY ORDERED that the effective date of the Decision of June 15, 2010, is stayed for a period of ten (10) days to consider Respondent SINDEY AVALOS' petition for reconsideration.

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The Decision of June 15, 2010, shall become effective
at 12 o' clock noon on July 19, 2010.

DATED: July 8, 2010.

JEFF DAVI
Real Estate Commissioner

By: Dolores Weeks
DOLORES WEEKS
Regional Manager

FILED

JUN 17 2010

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

DRE No.H-35571 LA
OAH No.L-2009030034

HOME OWNERS ASSISTANCE,
a corporate real estate broker;

FIRST HOUSING OF AMERICA INC.,
a corporate real estate broker;

FIRST MORTGAGE OF AMERICA INC.,
a corporate real estate broker;

DEAN ERIC TORO, individually
and as designated officer of
Home Owners Assistance and
former designated officer of
First Mortgage of America Inc.;

and SINDEY AVALOS,
individually and as designated
officer of First Housing of
America Inc.,

Respondents.

DECISION AFTER REJECTION

1 On August 3, 4, 5, 6, 7, 10 and 11, 2009, a hearing was
2 held before Administrative Law Judge H. Stuart Waxman ("ALJ") of
3 the Office of Administrative Hearings in Los Angeles, California.
4 Complainant, Robin Trujillo, was represented by Martha J. Rosett,
5 Counsel for the Department of Real Estate ("Department").
6 Respondents HOME OWNERS ASSISTANCE INC. ("HOA"), FIRST HOUSING OF
7 AMERICA INC. ("FHA",) DEAN ERIC TORO ("TORO") and SINDEY AVALOS
8 ("AVALOS") were present and were represented by Edward O. Lear,
9 Esq. TORO and AVALOS appeared in their individual capacities as
10 well as in their capacities as designated broker-officers of
11 Respondents HOA and FHA in this matter. Oral and documentary
12 evidence was received. The record was closed on October 9, 2009,
13 and the matter was submitted for decision.

14 First Mortgage of America, Inc. surrendered its license
15 and license rights effective April 21, 2009.

16 On November 6, 2009, the Administrative Law Judge
17 submitted a Proposed Decision which I declined to adopt as my
18 Decision herein. Pursuant to Section 11517(c) of the Government
19 Code of the State of California, Respondents were served with
20 notice of my determination not to adopt the Proposed Decision of
21 the ALJ along with a copy of said Proposed Decision. On
22 December 21, 2009, Respondents were notified that the case would
23 be decided by me upon the record, the transcript of proceedings
24 held on August 3, 4, 5, 6, 7, 10 and 11, 2009, and upon written
25 argument offered by the parties.

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1 The Proposed Decision revoked each Respondent's real
2 estate broker license, but granted each Respondent the right to a
3 restricted broker license, subject to terms and conditions which
4 included a period of five years before being eligible for an
5 unrestricted license. Respondents HOA and FHA were also
6 responsible for payment of costs of the audits which led to the
7 disciplinary action and follow-up audits. Respondents TORO and
8 AVALOS were also required to complete continuing education and
9 the professional responsibility examination.

10 All references to the "Code" herein are to the
11 California Business and Professions Code and all references to
12 "Regulations" are to the California Code of Regulations,
13 Chapter 6, Title 10, unless otherwise indicated.

14 I have given careful consideration to the record in
15 this case, including the transcript of the proceedings of
16 August 3, 4, 5, 6, 7, 10 and 11, 2009.

17 The Department received the last of the transcripts on
18 February 8, 2010. Respondent TORO submitted further argument on
19 February 18, 2010. Respondent AVALOS submitted further argument
20 on February 25, 2010. Although represented at hearing by
21 Mr. Lear, Respondent TORO and Respondent AVALOS each submitted
22 their own brief statements. Written argument was submitted by
23 Complainant on May 5, 2010.

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1 After further consideration of the matter, the
2 following shall constitute the Decision of the Real Estate
3 Commissioner in the above-entitled matter:

4 FACTUAL FINDINGS

5 1. Complainant for the Department, made the
6 Accusation and Second Supplemental Accusation in her official
7 capacity as a Deputy Real Estate Commissioner of the State of
8 California.

9 The Respondents

10 2. HOA was licensed as a corporate real estate broker
11 by the Department on December 28, 2007. TORO is HOA's
12 designated officer. HOA's license will expire on December 27,
13 2011, unless renewed.

14 3. At all relevant times, HOA was a California
15 corporation. The corporate President and CEO of which was Pepi
16 Arthur Abad ("Abad"), who owned or controlled more than 10
17 percent of the corporation's stock. Abad is not now and has
18 never been licensed by the Department in any capacity. Abad is
19 married to AVALOS.

20 4. AVALOS has recently acquired a 100 percent
21 ownership interest in HOA. The change was made in order for
22 HOA to obtain a minority business owner certification.

23 5. FHA was licensed as a corporate real estate broker
24 by the Department on September 16, 2002. AVALOS is FHA's
25 designated officer. FHA's license will expire on September 15,
26 2010, unless renewed.

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1 6. At all relevant times, FHA was a California
2 corporation. Abad was its corporate President and CEO,
3 controlling more than 10 percent of the corporation's stock.

4 7. AVALOS has recently acquired 100 percent ownership
5 of FHA. The change was made in order for FHA to obtain a
6 minority business owner certification.

7 8. First Mortgage of America ("FMA") was licensed as a
8 corporate real estate broker by the Department on October 27,
9 2003. From that date, to January 16, 2004, Alice Cathryn Drake
10 was FMA's designated officer. From January 16, 2004, to February
11 1, 2005, TORO was FMA's designated officer. From February 1,
12 2005, to June 28, 2005, Kevin D. Jones was FMA's designated
13 officer. From June 28, 2005, to January 12, 2007, TORO again
14 served as the designated officer. From January 23, 2007, to
15 April 17, 2008, Bruce Eugene Mangels served as FMA's designated
16 officer. FMA's license was cancelled as of April 17, 2008, but
17 remained in inactive status. FMA's license was scheduled to
18 expire on October 26, 2011, unless renewed. However, FMA
19 surrendered its corporate real estate broker license effective
20 April 21, 2009. The instant action therefore proceeded against
21 Respondents HOA, FHA, TORO and AVALOS only.

22 9. At all relevant times, Abad was FMA's corporate
23 President and CEO, controlling more than 10 percent of the
24 corporation's stock.

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1 10. TORO has approximately 30 years of experience in
2 the real estate industry. Originally licensed by the Department
3 as a salesperson on an unknown date before January 1, 2000, he
4 allowed that license to terminate on May 14, 2003, because he was
5 licensed by the Department as a real estate broker the following
6 day. TORO is the designated broker of HOA and the former
7 designated broker of FMA. His broker license will expire on July
8 16, 2011, unless renewed.

9 11. Originally licensed as a real estate salesperson
10 on March 12, 2002, AVALOS was licensed by the Department as a
11 real estate broker on October 28, 2006. AVALOS is FHA's owner
12 and designated officer. AVALOS' broker license will expire on
13 October 27, 2010, unless renewed.

14 Disciplinary Action by a Different Agency Against Abad

15 12. Complainant established the truth of the
16 allegations in Paragraphs 11 and 12 of the Accusation. Those
17 allegations are repeated verbatim below and constitute factual
18 findings herein.

19 "11.

20 On or about July 14, 2005, in Cases No. S-01-
21 0613 and RS-02-0091, the Department of Motor Vehicles
22 revoked Pepi Abad's vehicle salesperson license, and
23 denied his application for reinstatement of his
24 salesperson license, pursuant to Vehicle Code Section
25 11806(i).

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1 The Order, which was to become effective on August 15,
2 2005, was affirmed on appeal to the Superior Court and
3 became a final judgment on September 19, 2006. The
4 grounds for the discipline of Abad's vehicle
5 salesperson license stemmed from his misconduct as a
6 managerial employee of a vehicle sales dealership
7 during the time persons under his direction and
8 control committed wrongful acts which resulted in the
9 suspension of the dealer's license.

10 12.

11 The disciplinary action taken by the
12 Department of Motor Vehicles against corporate officer
13 Abad, as set forth above, constitutes grounds to
14 discipline the real estate corporation license and
15 license rights of Respondent HOA and Respondent FIRST
16 HOUSING [FHA], pursuant to [Business and Professions]
17 Code Section 10177(f). [Footnote omitted.]"

18 13. The misconduct proven in the Department of Motor
19 Vehicles' action against Abad occurred between 1998 and 2000.
20 Said misconduct was not disclosed in the corporate license
21 applications for HOA and FHA, even though Abad had a greater
22 than 10 percent ownership in the corporations. If done by a
23 real estate licensee, it would be grounds for the suspension or
24 revocation of a California real estate license.

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1 Advance Fees/Fixed Fees

2 14. HOA was originally organized to provide
3 educational services for clients who were interested in
4 purchasing a home but who were not knowledgeable about the
5 process. However, because it was not difficult to qualify for
6 a loan at that time, those services were generally unnecessary.
7 The primary purpose of HOA was subsequently converted to loss
8 mitigation, and the company began offering those services by
9 2008. Until the conversion was complete, FHA performed loan
10 modification services. Respondents testified that FHA and HOA
11 maintained zero tolerance policies against employees submitting
12 false information to lenders in order to make the loan
13 modification packets more attractive.

14 15. In or around January, 2008, HOA and FHA entered
15 into a home loan modification agreement with Jenine Hill
16 ("Hill"). According to that agreement HOA would collect
17 information and put together a loan modification proposal that
18 it would send to Hill's lender. If the lender refused to
19 modify the loan terms, or if the lender's offer was
20 unacceptable to Hill, the home would be sold in a "short sale",
21 with FHA serving as the listing agent. A "short sale," as used
22 in the context of this case, is the sale of real property for a
23 price less than that owed on the mortgage(s), but sufficient to
24 be acceptable to the lender in order to avoid the foreclosure
25 process.

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1 16. HOA gathered information concerning Hill, her
2 home loan and her financial liabilities and packaged them into
3 a "loss mitigation packet" to be sent to the lender. In
4 exchange for that service, Hill was required to agree to pay a
5 fee of \$1,795 to HOA and FHA "upon the submission of loss
6 mitigation packet to the lender" (Loan Modification Agreement,
7 Exhibit 27, page 58.) The Loan Modification Agreement also
8 contained the following language:

9 "I hereby agree and understand that the fee for loan
10 modification submission is \$1,795.00. I personally
11 elected to pay this amount and this fee is being
12 collected exclusively for a formal
13 presentation/submission of my request and is
14 considered earned upon submission of my file.

15
16 Furthermore, I understand it does not come with any
17 implied guarantees from H.O.A./FHOFA [FHA] or their
18 agents. I understand if my request is decline[d] or I
19 decline my lenders [sic] recommended adjustments, that
20 my fee will be applied directly to the sale fee of my
21 home through a "quick" sale method by FHOFA and is non
22 refundable. No guarantees are promised or implied by
23 either the loan modification submission or the attempt
24 to sale m [sic] home."

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1 17. HOA and FHA handled several other loan
2 modification transactions in the same manner as they did with
3 respect to Hill, including but not limited to one for Patricia
4 and Johnny Clark. In each case, they received a fee of between
5 \$1,795 and \$1,995 that was deemed earned upon submission of the
6 loan modification packet to the lender.

7 18. Although the fee was deemed earned upon
8 submission of the loan packet to the lender, it was collected
9 before that time. The fee was deposited into the company's
10 general account instead of being placed into a trust account
11 and held there until the packet was actually submitted.

12 19. Accompanying the loan modification packet were
13 two letters to the lender. The first letter reads in part:

14 "Enclosed, please find a "Loan Modification Proposal"
15 packet for the above-mentioned loan. Home Owners
16 Assistance, Inc. (HOA) is currently working with
17 Jenine T. Hill, home owner, for the abovementioned
18 property. We will be representing Jenine T. Hill,
19 through a final resolution of your secured asset....

20
21 We are requesting that you seriously consider this
22 proposal as an alternative to the inevitable financial
23 downside of a "Short Sale". Please note this file was
24 referred to us by First Housing of America, Inc.
25 (FHOF) a licensed and bonded real estate firm, who
26 [sic] has listed the property and is delaying a short
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sale request until the outcome of the "Loan Modification". FHOFA has identified that the home owner prefers to preserve home ownership and it would be prudent to contemplate this point.

If a wise consideration is not given to this proposal and you decide to decline this request, please understand that Jenine T. Hill will no longer be able to afford any sort of payment whatsoever on his [sic] existing note. Therefore, a short sale will be the only alternative. HOA firmly believes it would be in your company's best interest to seriously consider an alternative to the inevitable financial downside of a "Short Sale".

HOA believes there may be an expeditious way to resolve our client's hardship in today's market. In the event you approve a short sale, consider the duration and the monthly loss you are incurring yourselves into. Enclosed, you will also find a forecasted short sale loss projection based on current market conditions that will be detrimental to your investors.

[PP] ... [PP]

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1 When it comes to the above mentioned services, HOA and
2 FHOFA, will rise above and beyond all your
3 expectations. We look forward to being your number one
4 "Outsource" solution by results. You may contact the
5 Loss Mitigation and Asset Preservation Department at
6 1-877-243-4632 ext. 101. . . ."

7
8 20. The letter contained signature blocks for Pepi
9 Abad as "Director/Founder Home Owners Assistance, Inc. Loss
10 Mitigation Department" and for Sindy Avalos as "Owner/Broker
11 First Housing of America, Inc. Real Estate Division."

12 21. In the second letter to the lender that
13 accompanied the loan modification packet, Abad urged the lender
14 to "act now before a 'Short Sale' or 'Foreclosure' further
15 damages this asset's worth and other homes in the
16 neighborhood." He then set forth a proposal for a loan
17 modification (in Hill's case, comprised of nine components).
18 At the close of the letter, Abad invited the lender to
19 telephone him or his assistant with any "questions, comments
20 or concerns." The signature block read "Pepi A. Abad,
21 Director/Founder Home Owners Assistance, Inc."

22 22. Another form used by Respondents was entitled
23 "Communication With Lender Letter." That document contained a
24 form notice from the borrower to the lender, and a "note" to
25 the homeowner consisting of four paragraphs.

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1 23. The form letter to the lender reads as follows:

2 "I/We have recently decided that we simply can not
3 continue to make our scheduled mortgage payments;
4 we've tried refinancing and have been turned down
5 several times. To eliminate a guaranteed foreclosure
6 we listed our home for a short sale with First Housing
7 of America, Inc., a licensed real estate company that
8 will be contacting you this week. They also have an
9 asset preservation company looking at my file to see
10 if there may be an alternative solution. The
11 companies [sic] name is Home Owners Assistance, Inc.,
12 [sic] they will more than likely be contacting you as
13 well. Please feel free to contact them at 714-619-2869
14 and ask for (loan consultant's name).

15
16 Their corporate headquarters address is 2911 S.
17 Bristol Street, Santa Ana, CA 92704. They encourage
18 me to stay in constant communication w/you until this
19 is resolved."

20
21 24. The note to the homeowner on the Communication
22 With Lender Letter reads in part:

23 "Do not avoid communication with your lender(s), [sic]
24 on the contrary your immediate communication advising
25 them to contact us will be instrumental in advancing
26 your request for a loan modification as soon as
27

1 possible, [sic] please contact them immediately with
2 the above statement.

3
4 Upon your file being submitted, it is possible that
5 your assistance will be needed to accelerate your
6 lender(s) assigned negotiator(s) communication with us
7 or your lender(s) may attempt to circumvent our office
8 all together, [sic] we will be sending a copy packet
9 to you.

10 Should you choose to establish an agreement with your
11 lender on your own we want to thank you in advance
12 for giving us the opportunity to assist you in your
13 homeowner preservation, however, should you elect to
14 negate or reject your lender(s) proposal you are
15 hereby advised that immediate communication with our
16 office is strongly recommended."

17
18 25. On November 21, 2008, the Department issued a
19 Desist and Refrain Order against HOA and FHA for collecting
20 advance fees from customers without submitting the advance fee
21 agreement to the Department for review and prior approval, and
22 against TORO and AVALOS for failing to exercise reasonable
23 supervision over the activities of officers and employees of
24 the two corporations.

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1 26. The conduct of Respondents HOA, FHA, TORO and
2 AVALOS, with respect to their loan modification business, fell
3 within the ambit of their real estate broker licenses pursuant
4 to Code Section 10131.2, and the fees they collected and
5 identified as "fixed fees" were advance fees pursuant to Code
6 Section 10026.

7 27. The ALJ found that in comporting themselves as
8 they did, Respondents were relying on the advice of counsel
9 who was attempting to guide them and assist them in complying
10 with all statutory and regulatory requirements in the new area
11 of loan modification. The ALJ further found that based on
12 their attorney's advice, Respondents believed, in good faith,
13 that they were permitted to charge what they thought were
14 "fixed fees" without an advance fee agreement, previously
15 approved by the Department, in place. Upon learning they may
16 have been wrong, Respondents submitted a proposed advance fee
17 agreement to the Department, and the Department issued a no
18 objection letter to FHA on March 19, 2009.

19 28. The ALJ accepted Respondents' bold assertion
20 that they refunded their fees to all of their clients who were
21 dissatisfied with Respondents' loan modification services,
22 whether or not Respondents had performed the agreed upon work
23 and earned their fees. However, I am unconvinced that any
24 credible supporting evidence of this was presented. The
25 evidence does not support that "dissatisfied clients were made
26 whole."

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1 The Audits

2 *The HOA Audit*

3 29. Between November 5, 2008, and November 19, 2008,
4 the Department conducted an audit of HOA's books and records
5 for the audit period November 1, 2007, through September 30,
6 2008. The auditor found that HOA was primarily involved in
7 the business of loan modifications.

8 30. The auditor made the following findings with
9 respect to HOA's books and records:

10 a. HOA collected advance fees from borrowers in
11 connection with providing loan modification services. The
12 advance fees were deposited into HOA's general business bank
13 account instead of a trust account, thereby co-mingling trust
14 funds and general funds.

15 b. HOA did not maintain a trust account.

16 c. HOA's records were incomplete; the columnar
17 records did not include the date funds were disbursed, to whom
18 funds were disbursed, or the daily balance.

19 d. HOA failed to maintain a separate record for each
20 beneficiary of trust funds received from borrowers in
21 connection with their loan modifications.

22 e. HOA did not maintain a monthly reconciliation of
23 receipts and disbursements of trust funds.

24 f. The advance fees HOA received in connection with
25 its loan modification services were determined pursuant to
26 written agreements with their clients. Those agreements had
27 not been submitted to the Department for review before the

1 clients were asked to sign them.

2 g. HOA received advance fees from borrowers, without
3 maintaining and providing an accounting indicating services to
4 be rendered, where the trust account funds would be deposited
5 and details of how funds were to be disbursed.

6 h. Although HOA was not licensed by the Department
7 until December 28, 2007, it handled loan modification
8 transactions and collected advance fees as early as November
9 2007, without being properly licensed.

10 31. On October 31, 2008, upon the auditor's advice,
11 HOA opened a trust account.

12 *The FHA Audit*

13 32. Between November 6, 2008, and February 11, 2009,
14 the Department conducted an audit of FHA's books and records
15 for the audit period October 1, 2005, through September 30,
16 2008.

17 33. The auditor made the following findings with
18 respect to FHA's books and records:

19 a. FHA collected advance fees from borrowers in
20 connection with providing loan modification services. The
21 advance fees were deposited into FHA's general business bank
22 account instead of a trust account, thereby co-mingling trust
23 funds and general funds.

24 b. FHA's records were incomplete; the columnar
25 records did not include the date funds were disbursed and the
26 daily balance.

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1 c. FHA failed to maintain a separate record for each
2 beneficiary of trust funds received from borrowers in
3 connection with their loan modifications.

4 d. FHA did not maintain a written monthly
5 reconciliation of the receipt and disbursement records, and
6 the total balance of separate beneficiary records for its bank
7 account that was used to handle advance fees.

8 e. The advance fees FHA received in connection with
9 its loan modification services were arranged pursuant to
10 written agreements with their clients. Those agreements had
11 not been submitted to the Department at least 10 days before
12 their use.

13 f. FHA received advance fees from borrowers, without
14 maintaining and providing an accounting indicating services to
15 be rendered, where the trust account funds would be deposited
16 and details of how funds were to be disbursed.

17 The Esquivel and Guerrero Transactions

18 *The Esquivel Transaction*

19 34. In the latter part of 2005, Salvador Esquivel
20 ("Esquivel") responded to a telephone solicitation from FMA
21 personnel who offered to assist him in refinancing his home.
22 The original financing of Esquivel's home was arranged through
23 and handled by FMA approximately one year earlier.

24 35. Esquivel applied for the refinancing of his home
25 through FMA because he wanted to lower his mortgage payment.
26 He was promised a lower monthly payment and a cash-out of
27 \$28,760.07. However, when the time came for Esquivel to sign

1 the loan documents, he discovered that he had been assigned a
2 9.9 percent variable rate loan in place of his original seven
3 (7) percent fixed rate loan, that his cash-out was \$17,084.52,
4 and that his monthly payment had increased by over \$1,000
5 instead of decreasing. Esquivel was not fluent in English,
6 and he was asked to sign the loan documents in the presence of
7 an English-speaking notary public. He signed the loan
8 documents believing the errors would subsequently be
9 corrected.

10 36. After the loan funded, Esquivel was unable to
11 afford his mortgage payments. He complained to FMA. After
12 speaking with various individuals, he met with Abad and
13 threatened to file a lawsuit. Based on their discussion, Abad
14 and Esquivel entered into an agreement according to which FMA
15 would pay Esquivel \$5,500 and would arrange for a no-cost loan
16 in the future. Esquivel accepted those terms but was still
17 unable to make the mortgage payment. He lost his home in
18 foreclosure.

19 *The Guerrero Transaction*

20 37. Respondents stipulated to the truth of the
21 allegations contained in Paragraphs 43, 44 and 45 of the
22 Accusation. Those allegations are repeated verbatim below and
23 constitute factual findings herein:

24 "43.

25 Beginning on or before July 15, 2006, and
26 continuing through on or after September 30, 2006,
27 Respondent FIRST MORTGAGE represented Teresa and

1 Carlos Guerrero in refinancing a loan or loans
2 secured by real property located at 64 East Barnett
3 Street, Ventura, California 93001.

4 44.

5 In relation to the subject loan transaction,
6 on or about September 9, 2006, Christian Ramos signed
7 a loan application as representative of Respondent
8 FIRST MORTGAGE, with a business address of "2823 S.
9 Bristol, Santa Ana, CA 92704." On September 9, 2006,
10 in relation to the subject transaction, Respondents
11 obtained the Guerreros['] signatures on a Federal
12 Truth-in-Lending Disclosure Statement in which the
13 "Creditor" is listed as "FIRST MORTGAGE OF AMERICA
14 (DRE #01402136), 2823 S. Bristol Street, Santa Ana,
15 California 92704."

16 45.

17 At all times mentioned herein, Christian
18 Ramos was not licensed by the Department of Real
19 Estate as a real estate broker, or as a salesperson
20 employed by the real estate broker."

21
22 38. On June 28, 2005, FMA's main office address was
23 changed from 2911 South Bristol, Santa Ana, California 92705,
24 to 2823 South Bristol Street, Santa Ana, California 92704.
25 Accordingly, the address used in the Esquivel and Guerrero
26 transactions was correct.

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1 39. None of FMA's employees who were involved in the
2 Esquivel and/or Guerrero matters were licensed in any capacity
3 by the Department.

4 40. Respondents argued that the Esquivel and
5 Guerrero transactions were handled under FMA's California
6 Finance Lender ("CFL") license. Many of the documents
7 generated in connection with those transactions bear FMA's CFL
8 license number. On one document from the Guerrero
9 transaction, FMA's real estate broker license number is listed
10 as its CFL license number. Respondents argued and the ALJ
11 found that it was a clerical error, and it does not bring the
12 transaction under the ambit of the Real Estate Law.

13 41. I disagree with the ALJ's conclusion that
14 because the Esquivel and Guerrero transactions occurred under
15 FMA's CFL license, the personnel who worked on those
16 transactions were not required to hold licensure issued by the
17 Department of Real Estate.

18 Pursuant to California Financial Code Section 22300,
19 "No licensee shall directly or indirectly charge, contract
20 for, or receive any interest or charge of any nature unless a
21 loan is made." A loan modification does not involve the
22 making of a loan, and therefore a lender may not engage in
23 loan modification intermediary activity under the authority of
24 a CFL license.

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1 Mitigation

2 42. Respondents submitted numerous letters from many
3 of their customers lauding the companies' excellent service
4 and their employees' professionalism. One live witness who
5 knows Abad and AVALOS well described them as "incredibly
6 honest." In describing the commitment of Abad and AVALOS to
7 their customers, he stated, "they would rather gnaw off a limb
8 than disserve a client."

9 43. The ALJ found that the auditor who conducted the
10 audits of HOA and FHA on the Department's behalf, "credibly
11 opined that," based on the highly cooperative and professional
12 attitude of TORO and AVALOS during the audits, and further
13 based on the refunds Respondents gave each of their
14 disgruntled customers even after the company had performed the
15 required work and had earned the fee, the auditor did not
16 believe Respondents constitute a threat to the public.

17 44. As noted in Finding No. 28, above, I do not
18 believe that credible supporting evidence was presented that
19 Respondents gave each disgruntled and dissatisfied customer a
20 refund. Moreover, the ALJ's opinion regarding the credibility
21 of the witnesses who testified is not binding on the
22 Department of Real Estate or the Courts. *Broney vs.*
23 *California Commission on Teacher Credentialing* (2010) Court of
24 Appeal Case No. C060831, 2010 Cal.App. Lexis 625.

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1 LEGAL CONCLUSIONS

2 Disciplinary Action by a Different Agency Against Abad

3 1. Cause exists to discipline the real estate broker
4 licenses of HOA and FHA, pursuant to Business and Professions
5 Code Section 10177, subdivision (f), for discipline imposed
6 against a corporate officer by another agency, as set forth in
7 Findings 12 and 13.

8 2. Code Section 10177 states in relevant part:

9 The commissioner may suspend or revoke the license of a
10 a real estate licensee, or may deny the issuance of a
11 license to an applicant, who has done any of the
12 following, or may suspend or revoke the license of a
13 corporation, or deny the issuance of a license to a
14 corporation, if an officer, director, or person
15 owning or controlling 10 percent or more of the
16 corporation's stock has done any of the following:

17 [PP..PP]

18 (f) . . . had a license issued by another
19 agency of this state . . . revoked or suspended for
20 acts that, if done by a real estate licensee, would
21 be grounds for the suspension or revocation of a
22 California real estate license, if the action of
23 denial, revocation, or suspension by the other agency
24 or entity was taken only after giving the licensee or
25 applicant fair notice of the charges, an opportunity
26 for a hearing, and other due process protections
27 comparable to the Administrative Procedure Act

1 (Chapter 3.5 (commencing with Section 11340), Chapter
2 4 (commencing with Section 11370), and Chapter 5
3 (commencing with Section 11500) of Part 1 of Division
4 3 of Title 2 of the Government Code), and only upon
5 an express finding of a violation of law by the
6 agency or entity.

7 3. Abad's vehicle salesperson license was revoked by
8 the California Department of Motor Vehicles following the
9 filing of an Accusation and a hearing on the merits, pursuant
10 to the Administrative Procedure Act. The revocation was
11 subsequently affirmed in a writ proceeding before the Superior
12 Court. The violations that resulted in the license revocation
13 were of a nature that would be grounds for suspension or
14 revocation of a California real estate license.

15 Advance Fees/Fixed Fees

16 4. Cause exists to discipline real estate broker
17 licenses of HOA, FHA, TORO and AVALOS, pursuant to Business and
18 Professions Code Sections 10176, subdivision (i), 10177,
19 subdivisions (d), (g), and (j), and 10085, and California Code
20 of Regulations, Title 10, Section 2970, for advance fee
21 violations, as set forth in Findings 14 through 28, inclusive.

22 5. HOA, FHA, TORO and AVALOS were operating within
23 the ambit of their respective real estate broker licenses while
24 they were engaging in loan modification transactions, and that
25 the fee they charged their clients were advance fees, pursuant
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1 to Business and Professions Code Section 10026¹, which were
2 charged without a written advance fee agreement having been
3 submitted to the Department for approval. Respondents claim
4 that nothing they did with respect to the loan modification
5 process was among the articulated functions of a real estate
6 broker as set forth in Code Section 10131.2², and that their
7
8

9 ¹ Code Section 10026 states: "The term 'advance fee' as used in this part is
10 a fee claimed, demanded, charged, received, collected or contracted from a
11 principal for a listing, advertisement or offer to sell or lease property,
12 other than in a newspaper of general circulation, issued primarily for the
13 purpose of promoting the sale or lease of business opportunities or real
14 estate or for referral to real estate brokers or salesmen, or soliciting
15 borrowers or lenders for, or to negotiate loans on business opportunities or
16 real estate. As used in this section, 'advance fee' does not include
17 'security' as that term is used in Section 1950.5 of the Civil Code, or a
18 'screening fee' as that term is used in Section 1950.6 of the Civil Code.
19 This section does not exempt from regulation the charging or collecting of a
20 fee under Section 1950.5 or 1950.6 of the Civil Code, but instead regulates
21 fees that are not subject to those sections."

22 ² Code Section 10131.2 states: "A real estate broker within the meaning of
23 this part is also a person who engages in the business of claiming,
24 demanding, charging, receiving, collecting or contracting for the collection
25 of an advance fee in connection with any employment undertaken to promote
26 the sale or lease of real property or of a business opportunity by advance
27 fee listing, advertisement or other offering to sell, lease, exchange or

1 fees were not advance fees, but rather were "fixed fees" for
2 research, assembly and submission of the loan modification
3 packet. They denied negotiating with lenders, claiming that
4 lenders were to contact the homeowners directly, but that they
5 occasionally did call Respondents. The ALJ concluded that the
6 Department had the correct interpretation of Respondents'
7 conduct.

8 6. The language of Respondents' two letters to the
9 lender, the language of the Communication With Lender Letter,
10 the proposed terms for the loan modification, and the
11 invitation to the lender to telephone Respondents, all infer an
12 intent by Respondents to negotiate the terms of the existing
13 loan. That intent is evidenced by the absence from both
14 letters of an instruction to the lender to contact the
15 homeowner directly rather than to negotiate with Respondents.
16 In fact, the second letter contains the following language:
17 "Upon your acceptance we can have Ms. Hill sign and notarize
18 the loan modification agreement and return [it] to your office.

19 . . ."

20 7. Respondents claimed that their loan modification
21 transactions were not governed by Code Sections 10026 and
22 10131.2 because Respondents were not obtaining or negotiating
23 loans, but rather were only submitting information to a lender
24 in an attempt to secure a modification of an already existing

25
26 rent property or a business opportunity, or to obtain a loan or loans
27 thereon."

1 loan. The argument is not convincing. Once the original
2 proposal was sent to the lender along with the invitation to
3 call with questions, comments or concerns, Respondents began
4 the negotiation process. No appreciable difference existed
5 between negotiating the terms of a new loan and re-negotiating
6 the terms of an existing loan. In addition, because the fee
7 Respondents charged their clients would revert to their short
8 sale "sale fee" in the event a loan modification could not be
9 negotiated, that fee was "claimed, demanded, charged, received,
10 collected or contracted from a principal for a listing,
11 advertisement or offer to sell ... property, other than in a
12 newspaper of general circulation, issued primarily for the
13 purpose of promoting the sale ... of ... real estate or for
14 referral to real estate brokers or salesmen, or soliciting ...
15 lenders for, or to negotiate loans on ... real estate." (Code
16 Section 10026.)

17 "Negotiate" is defined as follows: "To transact
18 business; to bargain with another respecting a transaction; to
19 conduct communications or conferences with a view to reaching a
20 settlement or agreement. It is that which passes between
21 parties or their agents in the course of or incident to the
22 making of a contract and is also conversation in arranging
23 terms of contract. [PP] To communicate or confer with another
24 so as to arrive at the settlement of some matter. To meet with
25 another so as to arrive through discussion at some kind of
26 agreement or compromise about something. [Citation.] To
27 discuss or arrange a sale o[r] bargain; to arrange the

1 preliminaries of a business transaction. Also to sell or
2 discount negotiable paper, or assign or transfer it by
3 indorsement and delivery. To conclude by bargain, treaty, or
4 agreement" (Black's Law Dict. (6th ed. 1990) p. 1036.)

5 8. In closing argument, Respondents argued that the
6 Legislature did not intend to regulate loan modifications via
7 Code Section 10131.2 because Senate Bill No. 94, which had not
8 yet been approved and enacted into law, is intended to include
9 loan modifications among the practices for which a real estate
10 broker license is required. That argument was also
11 unpersuasive. At the hearing, Respondents defended their
12 actions by claiming that, at the time they were transacting
13 business in loan modifications, loan modifications were a new
14 phenomenon borne of the sudden downturn in the real estate and
15 other financial markets, and that they were attempting to
16 comply with all applicable statutes and regulations in this all
17 but unknown field. If Respondents are to argue the recency of
18 the loan modification market as a defense, they cannot be heard
19 to argue that the Legislature would have included loan
20 modifications in the original language of Section 10131.2 had
21 it intended them to be included.

22 Subsequent to the hearing, Senate Bill No. 94 was
23 enacted into law. The inclusion of loan modifications in a
24 real estate broker's practice, does not mean they were not
25 included generally under Code Section 10131.2 before the bill
26 was enacted. Respondents' conduct and actions in connection
27 with their loan modification business were governed by Code

1 Section 10131.2 and 10026, even though the term "loan
2 modification" is not expressly used in either statute.

3 9. Finally, Respondents' reliance on *Nelson v.*
4 *Department of Real Estate* (1984) 161 Cal.App.3d 939, is
5 misplaced. Although they are correct that *Nelson* addresses the
6 issue of advance fees in connection with obtaining loans, Code
7 Sections 10026 and 10131.2 include several other broker
8 functions, including the negotiation of loan terms.

9 10. Cause exists to discipline the real estate broker
10 licenses of TORO and AVALOS, pursuant to Business and
11 Professions Code Sections 10159.2, and 10177, subdivisions (d),
12 (g) and (h), for failure to exercise reasonable supervision
13 over the activities of officers and employees of HOA and FHA in
14 connection with advance fees, as set forth in Findings 14
15 through 28, inclusive.

16 Pursuant to Code Section 10159.2, the officer
17 designated by a corporate broker licensee, shall be responsible
18 for the supervision and control of the activities conducted on
19 behalf of the corporation, as necessary to secure full
20 compliance with the Real Estate Law.

21 11. The Respondents' advance fee violations were the
22 result of, among other factors, a failure to adequately
23 supervise their subordinates as alleged and proven at the
24 hearing.

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1 The Audits

2 12. Cause exists to discipline real estate broker
3 licenses of HOA, FHA, TORO and AVALOS, pursuant to Business and
4 Professions Code Sections 10085, 10130, 10145, 10146, 10176,
5 subdivisions (e) and (i), 10177, subdivisions (d) and (g), and
6 California Code of Regulations, Title 10, Sections 2831,
7 2831.1, 2831.2, 2832, 2835, 2970, 2972, for record keeping,
8 trust fund, and advance fee violations, as set forth in
9 Findings 14 through 33, inclusive.

10 13. This cause for discipline relates to the audits
11 of HOA's and FHA's books and records. Although the ALJ
12 concluded that TORO and AVALOS believed, in good faith, based
13 upon their attorney's advice, that they were not charging
14 advance fees and therefore did not need a trust account or its
15 attendant record keeping devices, they were incorrect.
16 Therefore, the charging of advance fees, and the lack of a
17 trust account and proper record keeping constitute violations
18 of Business and Professions Code Section 10146.

19 14. Cause does exist to discipline real estate broker
20 licenses of TORO and AVALOS, pursuant to Business and
21 Professions Code Sections 10159.2, and 10177, subdivisions (d),
22 (g) and (h), for failure to supervise the activities of their
23 respective corporations in connection with record keeping,
24 trust funds, advance fees, as set forth in Findings 14 through
25 33, inclusive.

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1 The Esquivel and Guerrero Transactions

2 15. Cause does exist to discipline TORO's real estate
3 broker license, pursuant to Business and Professions Code
4 sections 10137, 10159.2, 10176, subdivisions (a), (b), (c), and
5 (i), and 10177, subdivisions (d), (g), (h) and (j), for
6 unlicensed activity, dishonest dealings, failure to supervise
7 the activities of FMA, as set forth in Findings 34 through 41,
8 inclusive.

9 16. The ALJ found that the Esquivel and Guerrero
10 transactions were performed under FHA's CFL license and were
11 therefore exempt from the Real Estate Law. However, pursuant
12 to California Financial Code Section 22300, the holder of a CFL
13 license is prohibited from using that license to conduct loan
14 modification activities.

15 17. Respondent's activities fall squarely within the
16 jurisdiction of the Department of Real Estate. Business and
17 Professions Code Section 10131 states in pertinent part:

18 A real estate broker within the meaning of this part
19 is a person who, for a compensation or in expectation
20 of a compensation, regardless of the form or time of
21 payment, does or negotiates to do one or more of the
22 following acts for another or others:

23 (d) Solicits borrowers or lenders for or
24 negotiates loans or collects payments or performs
25 services for borrowers or lenders or note owners in
26 connection with loans secured directly or collaterally
27 by liens on real property or on a business

1 opportunity.

2 (e) Sells or offers to sell, buys or offers to
3 buy, or exchanges or offers to exchange a real
4 property sales contract, or a promissory note secured
5 directly or collaterally by a lien on real property or
6 on a business opportunity, and performs services for
7 the holders thereof.

8 18. The ALJ relied upon Business and Professions Code
9 Section 10133.1, subdivision (a), which states in relevant
10 part:

11 (a) Subdivisions (d) and (e) of Section 10131,
12 Section 10131.1, Article 5 (commencing with Section
13 10230), and Article 7 (commencing with Section 10240)
14 of this code and Section 1695.13 of the Civil Code do
15 not apply to any of the following:

16 (6) Any person licensed as a finance lender when
17 acting under the authority of that license.

18 However, as stated above, Respondent's conduct in
19 negotiating loan terms on behalf of borrowers regarding their
20 existing loans were not actions taken under the authority of
21 that license, because the CFL license does not confer such
22 authority.

23 19. An agency may discipline one of its licensees for
24 bad acts unrelated to its occupation-specific laws (*Windham v.*
25 *Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461).

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1 The Statute of Limitations Issue

2 20. Esquivel signed the loan documents for his home
3 refinance on December 15, 2005. The Accusation was filed on
4 December 30, 2008. Respondents argued that the cause for
5 discipline with respect to the Esquivel matter is barred by the
6 three year statute of limitations set forth in Section 10101.
7 Respondents were incorrect.

8 21. Section 10101 states: The accusation provided
9 for by Section 11503 of the Government Code shall be filed not
10 later than three years from the occurrence of the alleged
11 grounds for disciplinary action unless the acts or omissions
12 with which the licensee is charged involves fraud,
13 misrepresentation or a false promise in which case the
14 accusation shall be filed within one year after the date of
15 discovery by the aggrieved party of the fraud,
16 misrepresentation or false promise or within three years after
17 the occurrence thereof, whichever is later, except that in no
18 case shall an accusation be filed later than 10 years from the
19 occurrence of the alleged grounds for disciplinary action.

20 22. The fourth cause for discipline, which is alleged
21 against FMA and TORO as its designated officer is based on
22 alleged unlicensed activities and "dishonest dealing." The
23 dishonest dealing alleged in the Accusation involves claims of
24 misrepresentation and false promises. Therefore, the three-
25 year statute of limitations set forth in Section 10101 is not
26 applicable.

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1 The Discipline

2 23. Cause exists to revoke the licenses and license
3 rights of HOA and FHA pursuant to Business and Professions Code
4 Section 10177(a). Abad who owned more than 10 percent of the
5 HOA and FHA, when they applied for their licenses failed to
6 disclose his prior discipline in the corporation license
7 applications.

8 24. All evidence presented as mitigation, extenuation
9 and aggravation has been considered.

10 25. The purpose of a disciplinary matter such as this
11 one is to protect the public not only from unscrupulous and
12 conniving professionals, but also from those who are negligent
13 or incompetent. (*Handeland v. Department of Real Estate* (1976)
14 58 Cal.App.3d 513, 518; *Manning vs. Fox* (1984) 151 Cal.App.3d,
15 531, *Camacho v. Youde* (1979) 95 Cal.App.3d 161; *Small v. Smith*
16 (1971) 16 Cal.App.3d 450, 457.)

17 26. Contrary to the opinion of the Administrative Law
18 Judge, I do not feel that the public interest would be
19 adequately protected by allowing Respondents to obtain
20 restricted broker licenses.

21 27. Respondents abrogated their license privileges by

22 (1) permitting unlicensed persons including Abad to
23 solicit advanced fees from economically distressed borrowers
24 for home loan modifications.

25 (2) collecting advanced fees from homeowners prior to
26 performing the work contracted for while asserting the payment
27 in full was based on the submission of two letters to lenders

1 on behalf of the homeowner-borrowers.

2 (3) permitting unlicensed persons including Abad to
3 negotiate with homeowner-borrowers and lenders.

4 (4) designing an automatic mechanism in the loan
5 modification agreement for a short sale listing to HOA and FHA
6 upon notice of a declined loan modification from the lender by
7 applying the paid-in-full advance fee to be credited toward a
8 short sale commission for the sale of the demised property.

9 (5) Improper handling of a trust account and failure
10 to comply with trust fund recording-keeping such as depositing
11 loan modification fees into their corporate trust accounts and
12 not depositing and commingling them into HOA and FHA's general
13 accounts.

14 (6) Inadequate knowledge of the Real Estate Law and
15 their business procedures which were a contributory cause of
16 the violations.

17 (7) Respondents TORO and AVALOS' inadequate
18 supervision.

19 28. Respondents' conduct constitutes negligence or
20 incompetence and a breach of fiduciary duty to their respective
21 clients - the homeowner-borrowers.

22 29. Nor has it been shown that said violations will
23 not reoccur. Protection of the public interest requires
24 imposition of substantial discipline against Respondents'
25 licenses.

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1 30. The objective of an administrative proceeding
2 relating to discipline, if any, is to protect the public, and
3 to determine whether a license holder has exercised his
4 privilege in derogation of the public interest. Such
5 proceedings are not for the primary purpose of punishment.
6 (*Fahmy v. Medical Bd. Of California* (1995) 38 Cal.App.4th 810,
7 817).

8 31. The Real Estate Commissioner is empowered to
9 enforce the provisions of the Real Estate Law "in a manner
10 which achieves the maximum protection for the purchasers of
11 real property and those persons dealing with real estate
12 licensees". Business and Professions Code Section 10050;
13 *Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d
14 513).

15 32. While reasonable minds may differ, the degree of
16 a disciplinary penalty is a matter squarely within the
17 discretion of the Real Estate Commissioner. (*Golde v. Fox*
18 (1979) 98 Cal.App.3d 167, 189).

19 33. The ALJ exhibited doubt and substantial concern
20 for the protection of the public interest by proposing the
21 passage of a five (5) year period to elapse before Respondents
22 become eligible to apply for a plenary license.

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1 Pursuant to my statutory authority to protect persons
2 dealing with licensees and in the exercise of my discretion
3 based on the above Factual Findings and Legal Conclusions, I
4 have determined that the Order of the Proposed Decision of the
5 Administrative Law Judge is not appropriate and that it would
6 not be in the public interest to adopt the Order recommended by
7 the ALJ in his Proposed Decision and therefore said Order is
8 not adopted.

9 The following order is consistent with the protection
10 of the public interest.

11 ORDER

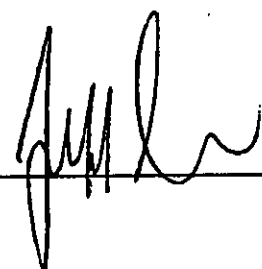
12 WHEREFORE, THE FOLLOWING ORDER is hereby made:

13 All licenses and licensing rights of Respondents HOME
14 OWNERS ASSISTANCE, FIRST HOUSING OF AMERICA, INC., DEAN ERIC
15 TORO, and SINDEY AVALOS are revoked.

16 This Decision shall become effective at 12 o'clock noon
17 on JUL - 8 2010

18 IT IS SO ORDERED 6/15, 2010.

19 JEFF DAVI
20 Real Estate Commissioner

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Handwritten signature/initials

FILED
DEC 21 2009
DEPARTMENT OF REAL ESTATE

Handwritten signature: K. Schneiderholt

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

HOME OWNERS ASSISTANCE,
a corporate real estate broker;
FIRST HOUSING OF AMERICA, INC.,
a corporate real estate broker; DEAN ERIC TORO,
individually and as designated officer of
Home Owners Assistance; and SINDEY AVALOS,
individually and as designated officer of
First Housing of America, Inc.,

Respondents.

No. H-35571 LA
OAH No. 2009030034

NOTICE

TO: HOME OWNERS ASSISTANCE, FIRST HOUSING OF AMERICA, INC., DEAN ERIC TORO, and SINDEY AVALOS, Respondents, and EDWARD O. LEAR, their Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated November 6, 2009, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated November 6, 2009, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record

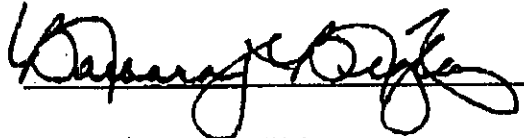
1 herein including the transcript of the proceedings held on August 3, 4, 5, 6, 7, 10 and 11, 2009,
2 any written argument hereafter submitted on behalf of Respondents and Complainant.

3 Written argument of Respondents to be considered by me must be submitted
4 within 15 days after receipt of the transcript of the proceedings of August 3, 4, 5, 6, 7, 10 and 11,
5 2009, at the Los Angeles office of the Department of Real Estate unless an extension of the time
6 is granted for good cause shown.

7 Written argument of Complainant to be considered by me must be submitted
8 within 15 days after receipt of the argument of Respondents at the Los Angeles office of the
9 Department of Real Estate unless an extension of the time is granted for good cause shown.

10 DATED: 12/17/09

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12 JEFF DAVI
13 Real Estate Commissioner

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15 BY: Barbara J. Bigby
16 Chief Deputy Commissioner

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

In the Matter of the Accusation of

**HOME OWNERS ASSISTANCE, a
corporate real estate broker;**

**FIRST HOUSING OF AMERICA INC.,
a corporate real estate broker;**

**FIRST MORTGAGE OF AMERICA INC.,
a corporate real estate broker;**

**DEAN ERIC TORO, individually and as
designated officer of Home Owners
Assistance and former designated officer of
First Mortgage of America Inc.;**

**and SINDEY AVALOS,
individually and as designated officer of
First Housing of America Inc.,**

Respondents.

Case No. H-35571 LA

OAH No. L2009030034

PROPOSED DECISION

This matter came on regularly for hearing on August 3, 4, 5, 6, 7, 10 and 11, 2009, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

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Robin L. Trujillo (Complainant) was represented by Martha J. Rosett, Counsel, Department of Real Estate. Respondents Home Owners Assistance (HOA), First Housing of America, Inc. (FHA), Dean Eric Toro (Toro), and Sindey Avalos (Avalos) were represented by Edward O. Lear, Attorney at Law¹.

Oral and documentary evidence was received. The record was held open to and including October 9, 2009, for the parties to submit closing briefs in accordance with a specified briefing schedule. "Complainant's Closing Argument" was marked as Complainant's Exhibit 36 for identification. "Respondents' Closing Argument" was marked as Respondent's Exhibit "U" for identification. "Complainant's Reply to Respondents' Closing Argument" was marked as Complainant's Exhibit 37 for identification. The record was closed on October 9, 2009, and the matter was deemed submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. Complainant made the Accusation and Second Supplemental Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.

The Respondents

2. HOA was licensed as a corporate real estate broker by the Department of Real Estate (Department) on December 28, 2007. Toro is HOA's designated officer. HOA's license will expire on December 27, 2011, unless renewed.

3. At all relevant times, HOA was a California corporation the corporate President and CEO of which was Pepi Arthur Abad (Abad), who owned or controlled more than 10 percent of the corporation's stock. Abad is not now and has never been licensed by the Department in any capacity. Abad is married to Avalos.

4. Avalos has recently acquired a 100 percent ownership interest in HOA. The change was made in order for OAH to obtain a minority business owner certification.

5. FHA was licensed as a corporate real estate broker by the Department of Real Estate (Department) on September 16, 2002. Avalos is FHA's designated officer. FHA's license will expire on September 15, 2010, unless renewed.

¹ On the first day of hearing, Mr. Lear's associates Marisol Ocampo and Daniel Woodford appeared personally, and Mr. Lear appeared telephonically, because Mr. Lear was prevented from returning to Los Angeles from the east coast because of inclement weather. Mr. Lear personally appeared on the remainder of the hearing dates. Ms. Ocampo and Mr. Woodford appeared on the first day only.

6. At all relevant times, FHA was a California corporation. Abad was its corporate President and CEO, controlling more than 10 percent of the corporation's stock.

7. Avalos has recently acquired 100 percent ownership of FHA. The change was made in order for FHA to obtain a minority business owner certification.

8. First Mortgage of America (FMA) was licensed as a corporate real estate broker by the Department of Real Estate (Department) on October 27, 2003. From that date to January 16, 2004, Alice Cathryn Drake was FMA's designated officer. From January 16, 2004, to February 1, 2005, Toro was FMA's designated officer. From February 1, 2005, to June 28, 2005, Kevin D. Jones was FMA's designated officer. From June 28, 2005, to January 12, 2007, Toro again served as the designated officer. From January 23, 2007, to April 17, 2008, Bruce Eugene Mangels served as FMA's designated officer. The license was cancelled as of April 17, 2008, but remained in inactive status. FMA's license was scheduled to expire on October 26, 2011, unless renewed. However, FMA surrendered its corporate real estate broker license effective April 21, 2009².

9. At all relevant times, Abad was FMA's corporate President and CEO, controlling more than 10 percent of the corporation's stock.

10. Toro has approximately 30 years of experience in the real estate industry. Originally licensed by the Department as a salesperson on an unknown date before January 1, 2000, he allowed that license to terminate on May 14, 2003, because he was licensed by the Department as a real estate broker the following day. Toro is the designated broker of HOA and the former designated broker of FMA. His broker's license will expire on July 16, 2011, unless renewed.

11. Originally licensed as a real estate salesperson on March 12, 2002, Avalos was licensed by the Department as a real estate broker on October 28, 2006. Avalos is FHA's owner and designated officer. Her broker's license will expire on October 27, 2010, unless renewed.

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² The instant action therefore proceeded against Respondents HOA, FHA, Toro and Avalos only.

Disciplinary Action by a Different Agency Against Abad

12. Complainant established the truth of the allegations in paragraphs 11 and 12 of the Accusation. Those allegations are repeated verbatim below and constitute factual findings herein.

11.

On July 14, 2005, in Cases No. S-01-0613 and RS-02-0091, the Department of Motor Vehicles revoked Pepi Abad's vehicle salesperson license, and denied his application for reinstatement of his salesperson license, pursuant to Vehicle Code Section 11806(i). The Order, which was to become effective on August 15, 2005, was affirmed on appeal to the Superior Court and became a final judgment on September 19, 2006. The grounds for the discipline of Abad's vehicle salesperson license stemmed from his misconduct as a managerial employee of a vehicle sales dealership during the time persons under his direction and control committed wrongful acts which resulted in the suspension of the dealer's license.

12.

The disciplinary action taken by the Department of Motor Vehicles against corporate officer Abad, as set forth above, constitutes grounds to discipline the real estate corporation license and license rights of Respondent HOA and Respondent FIRST HOUSING [FHA], pursuant to [Business and Professions] Code Section 10177(f). [Footnote omitted.]

13. The misconduct proven in the Department of Motor Vehicles action against Abad occurred between 1998 and 2000. If done by a real estate licensee, it would be grounds for the suspension or revocation of a California real estate license.

Advance Fees/Fixed Fees

14. HOA was originally organized to provide educational services for clients who were interested in purchasing a home but were not knowledgeable about the process. However, because it was not difficult to qualify for a loan at that time, those services were generally unnecessary. The primary purpose of HOA was subsequently converted to loss mitigation, and the company began offering those services by 2008. Until the conversion was complete, FHA performed loan modification services. Both FHA and HOA maintained zero tolerance policies against employees submitting false information to lenders in order to make the loan modification packets more attractive.

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15. In or around January 2008, HOA and FHA entered into a home loan modification agreement with Jenine Hill (Hill). According to that agreement HOA would collect information and put together a loan modification proposal that it would send to Hill's lender. If the lender refused to modify the loan terms, or if the lender's offer was unacceptable to Hill, the home would be sold in a "short sale"³ with FHA serving as the listing agent.

16. HOA gathered information concerning Hill, her home loan and her financial liabilities and packaged them into a "loss mitigation packet" to be sent to the lender. In exchange for that service, Hill was required to agree to pay a fee of \$1,795 to HOA and FHA "upon the submission of loss mitigation packet to the lender" (Loan Modification Agreement, Exhibit 27, page 58.) The Loan Modification Agreement also contained the following language:

I hereby agree and understand that the fee for loan modification submission is \$1,795.00. I personally elected to pay this amount and this fee is being collected exclusively for a formal presentation/submission of my request and is considered earned upon submission of my file.

Furthermore, I understand it does not come with any implied guarantees from H.O.A./FHOFA [FHA] or their agents. I understand if my request is decline[d] or I decline my lenders [sic] recommended adjustments, that my fee will be applied directly to the sale fee of my home through a "quick" sale method by FHOFA and is non refundable. No guarantees are promised or implied by either the loan modification submission or the attempt to sale m [sic] home.

17. HOA and FHA handled several other loan modification transactions in the same manner as they did with respect to Hill, including but not limited to one for Patricia and Johnny Clark. In each case, they received a fee of between \$1,795 and \$1,995 that was deemed earned upon submission of the loan modification packet to the lender.

18. Although the fee was deemed earned upon submission of the loan packet to the lender, it was collected before that time. The fee was deposited into the company's general account instead of being placed into a trust account and held there until the packet was actually submitted.

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³ A "short sale," as used in the context of this case, is the sale of real property for a price less than that owed on the mortgage(s), but sufficient to be acceptable to the lender in order to avoid the foreclosure process.

19. Accompanying the loan modification packet were two letters to the lender. The first letter reads in part:

Enclosed, please find a "Loan Modification Proposal" packet for the above-mentioned loan. Home Owners Assistance, Inc. (HOA) is currently working with Jenine T. Hill, home owner, for the above-mentioned property. We will be representing Jenine T. Hill, through a final resolution of your secured asset. . . .

We are requesting that you seriously consider this proposal as an alternative to the inevitable financial downside of a "Short Sale". Please note this file was referred to us by First Housing of America, Inc. (FHOF) a licensed and bonded real estate firm, who [sic] has listed the property and is delaying a short sale request until the outcome of the "Loan Modification". FHOFA has identified that the home owner prefers to preserve home ownership and it would be prudent to contemplate this point.

If a wise consideration is not given to this proposal and you decide to decline this request, please understand that Jenine T. Hill will no longer be able to afford any sort of payment whatsoever on his [sic] existing note. Therefore, a short sale will be the only alternative. HOA firmly believes it would be in your company's best interest to seriously consider an alternative to the inevitable financial downside of a "Short Sale".

HOA believes there may be an expeditious way to resolve our client's hardship in today's market. In the event you approve a short sale, consider the duration and the monthly loss you are incurring yourselves into. Enclosed, you will also find a forecasted short sale loss projection based on current market conditions that will be detrimental to your investors.

[¶] . . . [¶]

When it comes to the above mentioned services, HOA and FHOFA, will rise above and beyond all your expectations. We look forward to being your number one "Outsource" solution by results. You may contact the Loss Mitigation and Asset Preservation Department at 1-877-243-4632 ext. 101. . . .

20. The letter contained signature blocks for Pepi Abad as "Director/Founder Home Owners Assistance, Inc. Loss Mitigation Department" and for Sindey Avalos as "Owner/Broker First Housing of America, Inc. Real Estate Division."

21. In the second letter to the lender that accompanied the loan modification packet, Abad urged the lender to "act now before a 'Short Sale' or 'Foreclosure' further damages this asset's worth and other homes in the neighborhood." He then set forth a proposal for a loan modification (in Hill's case, comprised of nine components). At the close of the letter, Abad invited the lender to telephone him or his assistant with any "questions, comments or concerns." The signature block read "Pepi A. Abad, Director/Founder Home Owners Assistance, Inc."

22. Another form used by Respondents was entitled "Communication With Lender Letter." That document contained a form notice from the borrower to the lender, and a "note" to the homeowner consisting of four paragraphs.

23. The form letter to the lender reads as follows:

I/We _____ have recently decided that we simply can not continue to make our scheduled mortgage payments; we've tried refinancing and have been turned down several times. To eliminate a guaranteed foreclosure we listed our home for a short sale with First Housing of America, Inc., a licensed real estate company that will be contacting you this week. They also have an asset preservation company looking at my file to see if there may be an alternative solution. The companies [sic] name is Home Owners Assistance, Inc., [sic] they will more than likely be contacting you as well. Please feel free to contact them at 714-619-2869 and ask for _____ (loan consultant's name).

Their corporate headquarters address is 2911 S. Bristol Street, Santa Ana, CA 92704. They encourage me to stay in constant communication w/you until this is resolved.

24. The note to the home owner on the Communication With Lender Letter reads in part:

Do not avoid communication with your lender(s), [sic] on the contrary your immediate communication advising them to contact us will be instrumental in advancing your request for a loan modification as soon as possible, [sic] please contact them immediately with the above statement.

Upon your file being submitted, it is possible that your assistance will be needed to accelerate your lender(s) assigned negotiator(s) communication with us or your lender(s) may attempt to circumvent our office all together, [sic] we will be sending a copy packet to you.

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Should you choose to establish an agreement with your lender on your own we want to thank you in advance for giving us the opportunity to assist you in your homeowner preservation, however, should you elect to negate or reject your lender(s) proposal you are hereby advised that immediate communication with our office is strongly recommended.

25. On November 21, 2008, the Department issued a Desist and Refrain Order against HOA and FHA for collecting advance fees from customers without submitting the advance fee agreement to the Department for review and prior approval, and against Toro and Avalos for failing to exercise reasonable supervision over the activities of officers and employees of the two companies.

26. The conduct of Respondents HOA, FHA, Toro and Avalos, with respect to their loan modification business, fell within the ambit of their real estate broker licenses pursuant to section 10131.2, and the fees they collected and identified as "fixed fees" were advance fees pursuant to section 10026.

27. In comporting themselves as they did, Respondents were relying on the advice of counsel who was attempting to guide them and assist them in complying with all statutory and regulatory requirements in the new area of loan modification. Based on their attorney's advice, Respondent's believed, in good faith, that they were permitted to charge what they thought were "fixed fees" without an advance fee agreement, previously approved by the Department, in place. Upon learning they may have been wrong, Respondents submitted a proposed advance fee agreement to the Department, and the Department issued a no objection letter to FHA on March 19, 2009.

28. Respondents refunded their fees to all of their clients who were dissatisfied with Respondents' loan modification services, whether or not Respondents had performed the agreed upon work and earned their fees.

The Audits

The HOA Audit

29. Between November 5, 2008, and November 19, 2008, the Department conducted an audit of HOA's books and records for the audit period November 1, 2007, through September 30, 2008. The auditor found that HOA was primarily involved in the business of loan modifications.

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30. The auditor made the following findings with respect to HOA's books and records:

a. HOA collected advance fees from borrowers in connection with providing loan modification services. The advance fees were deposited into HOA's general business bank account instead of a trust account, thereby co-mingling trust funds and general funds.

b. HOA did not maintain a trust account.

c. HOA's records were incomplete; the columnar records did not include the date funds were disbursed, to whom funds were disbursed, or the daily balance.

d. HOA failed to maintain a separate record for each beneficiary of trust funds received from borrowers in connection with their loan modifications.

e. HOA did not maintain a monthly reconciliation of receipts and disbursements of trust funds.

f. The advance fees HOA received in connection with its loan modification services were determined pursuant to written agreements with their clients. Those agreements had not been submitted to the Department for review before the clients were asked to sign them.

g. HOA received advance fees from borrowers, without maintaining and providing an accounting indicating services to be rendered, where the trust account funds would be deposited and details of how funds were to be disbursed.

h. Although HOA was not licensed by the Department until December 28, 2007, it handled loan modification transactions and collected advance fees as early as November 2007, without being properly licensed.

31. On October 31, 2008, upon the auditor's advice, HOA opened a trust account.

The FHA Audit

32. Between November 6, 2008, and February 11, 2009, the Department conducted an audit of FHA's books and records for the audit period October 1, 2005, through September 30, 2008.

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33. The auditor made the following findings with respect to FHA's books and records:

a. FHA collected advance fees from borrowers in connection with providing loan modification services. The advance fees were deposited into FHA's general business bank account instead of a trust account, thereby co-mingling trust funds and general funds.

b. FHA's records were incomplete; the columnar records did not include the date funds were disbursed and the daily balance.

c. FHA failed to maintain a separate record for each beneficiary of trust funds received from borrowers in connection with their loan modifications.

d. FHA did not maintain a written monthly reconciliation of the receipt and disbursement records, and the total balance of separate beneficiary records for its bank account that was used to handle advance fees.

e. The advance fees FHA received in connection with its loan modification services were arranged pursuant to written agreements with their clients. Those agreements had not been submitted to the Department at least 10 days before their use.

f. FHA received advance fees from borrowers, without maintaining and providing an accounting indicating services to be rendered, where the trust account funds would be deposited and details of how funds were to be disbursed.

The Esquivel and Guerrero Transactions

The Esquivel Transaction

34. In the latter part of 2005, Salvador Esquivel (Esquivel) responded to a telephone solicitation from FMA personnel who offered to assist him in refinancing his home. The original financing of Esquivel's home was arranged through and handled by FMA approximately one year earlier.

35. Esquivel applied for the refinancing of his home through FMA because he wanted to lower his mortgage payment. He was promised a lower monthly payment and a cash-out of \$28,760.07. However, when the time came for Esquivel to sign the loan documents, he discovered that he had been assigned a 9.9 percent variable rate loan in place of his original seven percent fixed rate loan, that his cash-out was \$17,084.52, and that his monthly payment had increased by over \$1,000 instead of decreasing. Esquivel was not fluent in English, and he was asked to sign the loan documents in the presence of an English-speaking notary public. He signed the loan documents believing the errors would subsequently be corrected.

36. After the loan funded, Esquivel was unable to afford his mortgage payments. He complained to FMA. After speaking with various individuals, he met with Abad and threatened to file a lawsuit. Based on their discussion, Abad and Esquivel entered into an agreement according to which FMA would pay Esquivel \$5,500 and would arrange for a no-cost loan in the future. Esquivel accepted those terms but was still unable to make the mortgage payment. He lost his home in foreclosure.

The Guerrero Transaction

37. Respondents stipulated to the truth of the allegations contained in paragraphs 43, 44 and 45 of the Accusation. Those allegations are repeated verbatim below and constitute factual findings herein:

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Beginning on or before July 15, 2006, and continuing through on or after September 30, 2006, Respondent FIRST MORTGAGE represented Teresa and Carlos Guerrero in refinancing a loan or loans secured by real property located at 64 East Barnett Street, Ventura, California 93001.

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In relation to the subject loan transaction, on or about September 9, 2006, Christian Ramos signed a loan application as representative of Respondent FIRST MORTGAGE, with a business address of "2823 S. Bristol, Santa Ana, CA 921704." On September 9, 2006, in relation to the subject transaction, Respondents obtained the Guerreros['] signatures on a Federal Truth-in-Lending Disclosure Statement in which the "Creditor" is listed as "FIRST MORTGAGE OF AMERICA (DRE # 01402136), 2823 S. Bristol Street, Santa Ana, California 92704."

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At all times mentioned herein, Christian Ramos was not licensed by the Department of Real Estate as a real estate broker, or as a salesperson employed by the real estate broker.

38. On June 28, 2005, FMA's main office address was changed from 2911 South Bristol, Santa Ana, California 92705, to 2823 South Bristol Street, Santa Ana, California 92704. Accordingly, the address used in the Esquivel and Guerrero transactions was correct.

39. None of FMA's employees who were involved in the Esquivel and/or Guerrero matters were licensed in any capacity by the Department.

40. The Esquivel and Guerrero transactions were handled under FMA's California Finance Lender (CFL) license. Many of the documents generated in connection with those transactions bear FMA's CFL license number. On one document from the Guerrero transaction, FMA's real estate broker license number is listed as its CFL license number. That is a clerical error, and it does not bring the transaction under the ambit of the real estate law.

41. Because the Esquivel and Guerrero transactions occurred under FMA's CFL license, the personnel who worked on those transactions were not required to hold licensure issued by the Department of Real Estate.

Mitigation

42. Respondents submitted numerous letters from many of their customers lauding the companies' excellent service and their employees' professionalism. One live witness who knows Abad and Avalos well described them as "incredibly honest." In describing the commitment of Abad and Avalos to their customers, he stated, "they would rather gnaw off a limb than disserve a client."

43. At the administrative hearing, the auditor who conducted the audits of HOA and FHA on the Department's behalf credibly opined that, based on the highly cooperative and professional attitude of Toro and Avalos during the audits, and further based on the refunds Respondents gave each of their disgruntled customers even after the company had performed the required work and had earned the fee, he does not believe Respondents constitute a threat to the public.

LEGAL CONCLUSIONS

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

Disciplinary Action by a Different Agency Against Abad

1. Cause exists to discipline real estate broker licenses of HOA and FHA, pursuant to Business and Professions Code section 10177, subdivision (f), for discipline imposed against a corporate officer by another agency, as set forth in Findings 12 and 13.

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2. Section 10177 states in relevant part:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

[¶] . . . [¶]

(f) . . . had a license issued by another agency of this state . . . revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

3. Abad's vehicle salesperson license was revoked by the California Department of Motor Vehicles following the filing of an Accusation and a hearing on the merits, pursuant to the Administrative Procedure Act. The revocation was subsequently affirmed in a writ proceeding before the Superior Court. The violations that resulted in the license revocation were of a nature that would be grounds for suspension or revocation of a California real estate license.

Advance Fees/Fixed Fees

4. Cause exists to discipline real estate broker licenses of HOA, FHA, Toro and Avalos, pursuant to Business and Professions Code sections 10176, subdivision (i), 10177, subdivisions (d), (g), and (j), and 10185, and California Code of Regulations, title 10, section 2970, for advance fee violations, as set forth in Findings 14 through 28, inclusive.

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5. Complainant asserts that HOA, FHA, Toro and Avalos were operating within the ambit of their respective real estate broker licenses while they were engaging in loan modification transactions, and that the fee they charged their clients were advance fees, pursuant to Business and Professions Code⁴ section 10026⁵, which were charged without a written advance fee agreement having been submitted to the Department for approval. Respondents claim that nothing they did with respect to the loan modification process was among the articulated functions of a real estate broker as set forth in section 10131.2⁶, and that their fees were not advance fees, but rather were "fixed fees" for research, assembly and submission of the loan modification packet. They denied negotiating with lenders, claiming that lenders were to contact the homeowners directly, but that they occasionally did call Respondents. Complainant has the correct interpretation of Respondents' conduct.

6. The language of Respondents' two letters to the lender, the language of the Communication With Lender Letter, the proposed terms for the loan modification, and the invitation to the lender to telephone Respondents, all infer an intent by Respondents to negotiate the terms of the existing loan. That intent is evinced by the absence from both letters of an instruction to the lender to contact the homeowner directly rather than to negotiate with Respondents. In fact, the second letter contains the following language: "Upon your acceptance we can have Ms. Hill sign and notarize the loan modification agreement and return [it] to your office . . ."

⁴ All statutory references are to the Business and Professions Code unless otherwise indicated.

⁵ Section 10026 states: "The term 'advance fee' as used in this part is a fee claimed, demanded, charged, received, collected or contracted from a principal for a listing, advertisement or offer to sell or lease property, other than in a newspaper of general circulation, issued primarily for the purpose of promoting the sale or lease of business opportunities or real estate or for referral to real estate brokers or salesmen, or soliciting borrowers or lenders for, or to negotiate loans on, business opportunities or real estate. As used in this section, "advance fee" does not include "security" as that term is used in Section 1950.5 of the Civil Code, or a "screening fee" as that term is used in Section 1950.6 of the Civil Code. 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."

⁶ Section 10131.2 states: "A real estate broker within the meaning of this part 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 or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon."

7. Respondents claim that their loan modification transactions were not governed by sections 10026 and 10131.2 because Respondents were not obtaining or negotiating loans, but rather were only submitting information to a lender in an attempt to secure a modification of an already existing loan. The argument is not convincing. Once the original proposal was sent to the lender along with the invitation to call with questions, comments or concerns, Respondents began the negotiation⁷ process. No appreciable difference existed between negotiating the terms of a new loan and re-negotiating the terms of an existing loan. In addition, because the fee Respondents charged their clients would revert to their short sale "sale fee" in the event a loan modification could not be negotiated, that fee was "claimed, demanded, charged, received, collected or contracted from a principal for a listing, advertisement or offer to sell . . . property, other than in a newspaper of general circulation, issued primarily for the purpose of promoting the sale . . . of . . . real estate or for referral to real estate brokers or salesmen, or soliciting . . . lenders for, or to negotiate loans on . . . real estate." (§ 10026.)

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⁷ "Negotiate" is defined as follows: "To transact business; to bargain with another respecting a transaction; to conduct communications or conferences with a view to reaching a settlement or agreement. It is that which passes between parties or their agents in the course of or incident to the making of a contract and is also conversation in arranging terms of contract. [¶] To communicate or confer with another so as to arrive at the settlement of some matter. To meet with another so as to arrive through discussion at some kind of agreement or compromise about something. [Citation.] To discuss or arrange a sale o[r] bargain; to arrange the preliminaries of a business transaction. Also to sell or discount negotiable paper, or assign or transfer it by indorsement and delivery. To conclude by bargain, treaty, or agreement." (Black's Law Dict. (6th ed. 1990) p. 1036.)

8. In closing argument, Respondents argued that the Legislature did not intend to regulate loan modifications via section 10131.2 because Senate Bill No. 94, which has not yet been approved and enacted into law, is intended to include loan modifications among the practices for which a real estate broker license is required. That argument was also unpersuasive. At the hearing, Respondents defended their actions by claiming that, at the time they were transacting business in loan modifications, loan modifications were a new phenomenon borne of the sudden downturn in the real estate and other financial markets, and that they were attempting to comply with all applicable statutes and regulations in this all but unknown field. If Respondents are to argue the recency of the loan modification market as a defense, they cannot be heard to argue that the Legislature would have included loan modifications in the original language of section 10131.2 had it intended them to be included. Further, should Senate Bill No. 94 be enacted into law, the inclusion of loan modifications in a real estate broker's practices does not mean they were not included generally under section 10131.2 before the bill was enacted. Respondents' conduct and actions in connection with their loan modification business were governed by section 10131.2 and 10026, even though the term "loan modification" is not expressly used in either statute.

9. Finally, Respondents' reliance on *Nelson v. Department of Real Estate* (1984) 161 Cal.App.3d 939, is misplaced. Although they are correct that *Nelson* addresses the issue of advance fees in connection with obtaining loans, sections 10026 and 10131.2 include several other broker functions, including the negotiation of loan terms.

10. Cause does not exist to discipline real estate broker licenses of Toro and Avalos, pursuant to Business and Professions Code sections 10159.2, and 10177, subdivisions (d), (g) and (h), for failure to exercise reasonable supervision over the activities of officers and employees of HOA and FHA in connection with advance fees, as set forth in Findings 14 through 28, inclusive.

11. The advance fee violations were the result of Respondents' good faith belief that they were collecting "fixed" but not "advance" fees, and not the result of a failure to adequately supervise their subordinates. The allegation of inadequate supervision was not proven.

The Audits

12. Cause exists to discipline real estate broker licenses of HOA, FHA, Toro and Avalos, pursuant to Business and Professions Code sections 10085, 10130, 10145, 10146, 10176, subdivisions (e) and (i), 10177, subdivisions (d) and (g), and California Code of Regulations, title 10, sections 2831, 2831.1, 2831.2, 2832, 2835, 2970, 2972, for record keeping, trust fund, and advance fee violations, as set forth in Findings 14 through 33, inclusive.

13. This cause for discipline relates to the audits of HOA's and FHA's books and records. Although Toro and Avalos believed, in good faith, based upon their attorney's advice, that they were not charging advance fees and therefore did not need a trust account or its attendant record keeping devices, they were incorrect. Therefore, the charging of advance fees, and the lack of a trust account and proper record keeping constitute the violations.

14. Cause does not exist to discipline real estate broker licenses of Toro and Avalos, pursuant to Business and Professions Code sections 10159.2, and 10177, subdivisions (d), (g) and/or (h), for failure to supervise the activities of their respective corporations in connection with record keeping, trust funds, advance fees, as set forth in Findings 14 through 33, inclusive.

15. The violations were the result of Respondents' good faith belief that they were acting properly and lawfully, and not the result of a failure to adequately supervise their companies' activities. The allegation of inadequate supervision was not proven.

The Esquivel and Guerrero Transactions

16. Cause does not exist to discipline Toro's real estate broker license, pursuant to Business and Professions Code sections 10137, 10159.2, 10176, subdivisions (a), (b), (c), and (i), and 10177, subdivisions (d), (g), (h) and (j), for unlicensed activity, dishonest dealings, failure to supervise the activities of FMA, as set forth in Findings 34 through 41, inclusive.

17. The Esquivel and Guerrero transactions were performed under FMA's CFL license and were therefore exempt from the real estate law.

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18. Business and Professions Code section 10131 states in pertinent part:

A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

[¶] . . . [¶]

(d) Solicits borrowers or lenders for or negotiates loans or 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 or on a business opportunity.

(e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.

19. Business and Professions Code section 10133.1, subdivision (a), states in relevant part:

(a) Subdivisions (d) and (e) of Section 10131, Section 10131.1, Article 5 (commencing with Section 10230), and Article 7 (commencing with Section 10240) of this code and Section 1695.13 of the Civil Code do not apply to any of the following:

[¶] . . . [¶]

(6) Any person licensed as a finance lender when acting under the authority of that license.

20. An agency may discipline one of its licensees for bad acts unrelated to its occupation-specific laws (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461). However, Complainant bore the burden of proving that certain conduct by Toro or his subordinates was improper under the California Finance Lender Law. She failed to sustain that burden.

The Statute of Limitations Issue

21. Esquivel signed the loan documents for his home refinance on December 15, 2005. The Accusation was filed on December 30, 2008. Respondents argue that the cause for discipline with respect to the Esquivel matter are barred by the three-year statute of limitations set forth in section 10101. Respondents are incorrect.

22. Section 10101 states:

The accusation provided for by Section 11503 of the Government Code shall be filed not later than three years from the occurrence of the alleged grounds for disciplinary action unless the acts or omissions with which the licensee is charged involves fraud, misrepresentation or a false promise in which case the accusation shall be filed within one year after the date of discovery by the aggrieved party of the fraud, misrepresentation or false promise or within three years after the occurrence thereof, whichever is later, except that in no case shall an accusation be filed later than 10 years from the occurrence of the alleged grounds for disciplinary action.

23. The fourth cause for discipline, which is alleged against FMA and Toro as its designated officer is based on alleged unlicensed activities and "dishonest dealing." The dishonest dealing alleged in the Accusation involves claims of misrepresentation and false promises. Therefore, the three-year statute of limitations set forth in section 10101 is not applicable.

The Discipline

24. Aside from the revocation of Abad's vehicle salesperson license, this case elicits a picture of two substantial corporate real estate brokers whose designated officers tried to do the right thing wrongly. No convincing evidence established any ignoble motive by Respondents. What was established was Respondents' attempts to assist clients while complying with all applicable statutory and regulatory requirements in a new financial area borne of unprecedented economic challenges. As a result of their efforts, Respondents' satisfied customers far exceed their dissatisfied ones.

25. Respondents continued their attempts to operate their business appropriately after questions arose concerning their business practices, by opening a trust account after trust account violations were found in the audits, and by providing unhappy customers with full refunds, even after all necessary work had been performed and fees were properly earned.

26. Abad's vehicle salesperson license was revoked more than four years ago. The conduct that resulted in the license revocation occurred between 1998 and 2000, and is temporally remote. The evidence did not establish that Abad's wrongful conduct in the motor vehicle context has been carried over into his real estate career.

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27. The purpose of a disciplinary matter such as the one *sub judice* 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.) Respondents acted in good faith. They were incorrect, but not malicious. The public safety, welfare and interest should be adequately protected by the issuance of properly-conditioned restricted licenses.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

As to Respondents Home Owners Assistance and First Housing of America, Inc.:

All licenses and licensing rights of Respondents Home Owners Assistance and First Housing of America, Inc., under the Real Estate Law are revoked; provided, however, restricted real estate broker licenses shall be issued to Respondents pursuant to Section 10156.5 of the Business and Professions Code if Respondents make application therefor and pay to the Department of Real Estate the appropriate fee for the restricted licenses within 90 days from the effective date of this Decision. The restricted licenses issued to Respondents 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:

1. The restricted licenses issued to the respective respondents may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of a conviction or plea of nolo contendere to a crime which is substantially related to that respondent's fitness or capacity as a real estate licensee.

2. The restricted licenses issued to the respective respondents may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that the 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.

3. Respondents 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 five years have elapsed from the effective date of this Decision.

///

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Not adopted

4. Pursuant to Section 10148 of the Business and Professions Code, each respondent shall pay the Commissioner's reasonable cost for: a) the audits which led to this disciplinary action and, b) subsequent audits to determine if each respondent has corrected the trust fund violations found in paragraphs 12 and 13 of the Legal Conclusions. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondents shall pay such costs within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to either or both respondents pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between Respondent(s) and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent(s) enter(s) into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

As to Respondents Dean Eric Toro and Sindey Avalos:

All licenses and licensing rights of Respondents Dean Eric Toro and Sindey Avalos, under the Real Estate Law are revoked; provided, however, restricted real estate broker licenses shall be issued to Respondents pursuant to Section 10156.5 of the Business and Professions Code if Respondents make application therefor and pay to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted licenses issued to Respondents 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:

1. The restricted license issued to the respective respondents may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of a conviction or plea of nolo contendere to a crime which is substantially related to that respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to the respective respondents may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that the 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.

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3. Respondents 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 five years have elapsed from the effective date of this Decision.


4. Each respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that he/she 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(s) fail(s) to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent(s) present(s) such evidence. The Commissioner shall afford Respondent(s) the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Each respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent(s) fail(s) to satisfy this condition, the Commissioner may order suspension of the respective license until Respondent(s) pass(es) the examination.

6. Each respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of each respondent and periodic summaries of salient information concerning each real estate transaction in which the respondent engaged during the period covered by the report.

DATED: November 6, 2009


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

not adopted

1 MARTHA J. ROSETT, Counsel (SBN 142072)
2 Department of Real Estate
3 320 West Fourth St. #350
4 Los Angeles, CA 90013

FILED
APRIL 30, 2009
DEPARTMENT OF REAL ESTATE

4 (213) 576-6982
5 (213) 620-6430

By C. D.

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11	In the Matter of the Accusation of)	No. H-35571 LA
12	HOME OWNERS ASSISTANCE, a)	L-2009030034
13	corporate real estate broker;)	
14	FIRST HOUSING OF AMERICA INC.,)	SECOND SUPPLEMENTAL
15	a corporate real estate broker;)	<u>A C C U S A T I O N</u>
16	DEAN ERIC TORO, individually)	
17	and as designated officer of)	
18	Home Owners Assistance;)	
19	and SINDEY AVALOS,)	
20	individually and as designated)	
21	officer of First Housing of)	
22	America Inc.,)	
23	Respondents.)	

22 Complainant hereby amends the First Supplemental
23 Accusation filed herein on April 2, 2009. This Second
24 Supplemental Accusation corrects the caption of the First
25 Supplemental Accusation.

26 A Fifth Cause of Accusation, is hereby added to read:
27

1
2 FIFTH CAUSE OF ACCUSATION

3 (First Housing of America and Avalos

4 (Audit Nos. LA080029 and LA080177)

5 51.

6 There is hereby incorporated in this Fifth, separate
7 Cause of Accusation, all of the allegations contained in
8 Paragraphs 2 through 9 above, with the same force and effect as if
9 herein fully set forth.

10 52.

11 For purposes of this Fifth Cause of Accusation, all
12 further references to "Respondents" include Respondent FIRST
13 HOUSING and Respondent AVALOS, and also include the employees,
14 agents and real estate licensees employed by or associated with
15 each Respondent, who at all times material herein were engaged in
16 the furtherance of the business or operations of Respondents, and
17 who were acting within the course and scope of their authority,
18 agency or employment.

19
20 53.

21 During a period of time from approximately October 1,
22 2005, and continuing through September 30, 2008, Respondents
23 FIRST HOUSING and AVALOS engaged in the business of, acted in the
24 capacity of, advertised or assumed to act as real estate brokers
25 in the State of California, within the meaning of Code Sections
26 10131(a), 10131(d) and 10131.2, for or in expectation of
27

1 compensation. Respondents FIRST HOUSING and AVALOS represented
2 buyers and sellers of residential property. Respondents also
3 represented borrowers in negotiating and modifying terms and
4 obtaining mortgage loans, and collected advance fees within the
5 meaning of Code Sections 10026 and 10131.2, pursuant to written
6 agreements which constituted advance fee agreements within the
7 meaning of Code Section 10085.

8 54.

9 During the period of time covered by the audit, set
10 forth below, Respondents did not maintain a trust account.
11 Respondents placed trust funds received, including advance fees
12 paid, into a general business account, Account No. 650-3518307,
13 entitled, "First Housing of America, Inc. Operating Account,"
14 located at Wells Fargo Bank, P.O. Box 6995, Portland, OR 97228-
15 6995. The account was used for First Housing's general business
16 operations and the deposit of advance fees.
17

18 55.

19 On or about February 24, 2009, the Department completed
20 its examination of Respondent FIRST HOUSING's books and records
21 pertaining to the mortgage lending activities described in
22 Paragraphs 53 and 54 above, covering a period from approximately
23 October 1, 2005 to September 30, 2008. The primary purpose of
24 the examination was to determine Respondent's compliance with the
25 Real Estate Law. The examination, Audit Nos. LA080029 and LA
26 080177, revealed violations of the Code, and of Title 10, Chapter
27

1 6, California Code of Regulations (hereinafter "Regulations"), as
2 set forth below and as more specifically set forth in the Audit
3 Report and Exhibits attached thereto.

4 56.

5 In the course of activities described in Paragraph 53
6 and 54 above, and during the examination period described in
7 Paragraph 55, Respondents acted in violation of the Code and the
8 Regulations in that:

9 a) During the audit period, Respondents collected
10 approximately \$1,324,250.00 in advance fees from borrowers for
11 the purpose of providing loan modifications. The advance fees
12 were deposited into FIRST HOUSING's general business account,
13 which was not set up as a trust account, and commingled with
14 FHA's general funds, in violation of Code Sections 10145, 10146,
15 and 10176(e) and Regulation 2835. The following are examples:
16

<u>Date Rec'd</u>	<u>Borrower</u>	<u>Amt Collected</u>	<u>Date Dep.</u>
2/1/08	Jorge Medrano	\$ 1,795.00	2/1/08
2/1/08	Calixto Betancourt	\$ 1,795.00	2/1/08
2/1/08	Juan Martinez	\$ 1,795.00	2/1/08
4/3/08	Marco A. Hernandez	\$ 1,795.00	4/3/08
3/6/08	Vicente Hernandez	\$ 1,995.00	3/6/08
2/1/08	Delia Godinez	\$ 1,795.00	2/1/08
6/5/08	Pamela Bacon	\$ 1,600.00	6/5/08
4/3/08	Frank Carmona	\$ 995.00	4/3/08
4/3/08	Benjamin Garcia	\$ 1,995.00	4/3/08

1 the Code and Regulations in the following ways:

2	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
3	56 (a)	Code Sections 10145 10146, 10176(e) and 4 Regulation 2835.
5	56 (b)	Code Section 10145 and 6 Regulation 2831.
7	56 (c)	Code Section 10145 and 8 Regulation 2831.1.
9	56 (d)	Code Section 10145 and 10 Regulation 2831.2.
11	56 (e)	Code Section 10085 and 12 Regulation 2970.
13	56 (f)	13 Regulation 2972.

14 The foregoing violations constitute cause for the
15 suspension or revocation of the real estate licenses and license
16 rights of Respondent FIRST HOUSING and Respondent AVALOS under
17 the provisions of Code Sections 10177(d), 10176(e), 10176(i),
18 10177(g), and 10085.

19 58.

20 The violations set forth above constitute cause for the
21 suspension or revocation of Respondent AVALOS' real estate
22 license and/or license rights, as the broker-officer of
23 Respondent FIRST HOUSING, for failing to supervise the activities
24 of the corporation, in violation of Code Sections 10159.2, in
25 conjunction with 10177(h), 10177(d) and/or 10177(g).

26 ///

27 ///

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondents
5 FIRST HOUSING OF AMERICA INC. and SINDEY AVALOS under the Real
6 Estate Law and for such other and further relief as may be proper
7 under other applicable provisions of law.

8 Dated at Los Angeles, California

9 this 28 day of April, 2009.

11 
12 _____
13 Robin Trujillo
14 Deputy Real Estate Commissioner

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21 cc: Home Owners Assistance
22 First Housing of America, Inc.
23 Dean Eric Toro
24 Sindey Avalos
25 Robin Trujillo
26 Sacto.
27 Audits
OAH
Edward O. Lear, Esq.

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FILED
APRIL 1, 2009
DEPARTMENT OF REAL ESTATE

By C. B.

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	DRE Case Nos.
FIRST MORTGAGE OF AMERICA INC.,)	H-35068 LA
)	H-35571 LA
)	
Respondent.)	

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On October 28, 2008, a First Amended Accusation was filed in this matter against Respondent FIRST MORTGAGE OF AMERICA INC.

On March 4, 2009, Respondent petitioned the Commissioner to voluntarily surrender its corporate real estate broker license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent FIRST MORTGAGE OF AMERICA INC.'s petition for voluntary surrender of its corporate real estate broker license is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in Respondent's Declaration dated

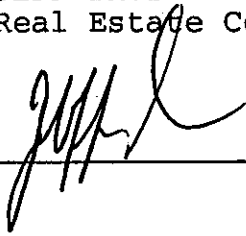
1 March 4, 2009 (attached as Exhibit "A" hereto). Respondent's
2 license certificate(s), pocket card(s) and any branch office
3 license certificate(s) shall be sent to the below listed address
4 so that they reach the Department on or before the effective date
5 of this Order:

6 Department of Real Estate
7 Atten: Licensing Flag Section
8 P.O. Box 187000
9 Sacramento, CA 95818-7000

10 This Order shall become effective at 12 o'clock noon
11 on APRIL 21, 2009.

12 DATED: 3/24/09.

13 JEFF DAVI
14 Real Estate Commissioner

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16 _____

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	DRE Case Nos.
FIRST MORTGAGE OF AMERICA INC.,)	H-35068 LA
)	H-35571 LA
Respondent.)	

DECLARATION

My name is SCOTT L. RICHARDS, ESQ., and I am acting on behalf of FIRST MORTGAGE OF AMERICA INC., which is licensed as a corporation and/or has license rights with respect to said license. I am authorized and empowered to sign this Declaration on behalf of FIRST MORTGAGE OF AMERICA INC.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code) FIRST MORTGAGE OF AMERICA INC. wishes to voluntarily surrender its real estate license issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.


1 I understand that FIRST MORTGAGE OF AMERICA INC., by
2 so voluntarily surrendering its license, can only have it
3 reinstated in accordance with the provisions of Section 11522 of
4 the Government Code. I also understand that by so voluntarily
5 surrendering its license, FIRST MORTGAGE OF AMERICA INC. agrees
6 to the following:

7 The filing of this Declaration shall be deemed as its
8 petition for voluntary surrender. It shall also be deemed to be
9 an understanding and agreement by FIRST MORTGAGE OF AMERICA INC.
10 that, it waives all rights it has to require the Commissioner to
11 prove the allegations contained in the Accusation filed in this
12 matter at a hearing held in accordance with the provisions of
13 the Administrative Procedure Act (Government Code Sections 11400
14 et seq.), and that it also waives other rights afforded to it in
15 connection with the hearing such as the right to discovery, the
16 right to present evidence in defense of the allegations in the
17 Accusation and the right to cross-examine witnesses. I further
18 agree on behalf of FIRST MORTGAGE OF AMERICA INC. that upon
19 acceptance by the Commissioner, as evidenced by an appropriate
20 order, all affidavits and all relevant evidence obtained by the
21 Department in this matter prior to the Commissioner's
22 acceptance, and all allegations contained in the Accusation
23 filed in the Department Case No. H-35068 LA and H-35571 LA, may
24 be considered by the Department to be true and correct for the
25 purpose of deciding whether or not to grant reinstatement of
26 FIRST MORTGAGE OF AMERICA INC.'s license pursuant to Government
27 Code Section 11522.

1 Respondent can signify acceptance and approval of the
2 terms and conditions of this Declaration by faxing a copy of its
3 signature page, as actually signed by Respondent, to the
4 Department at fax number (213) 576-6917. Respondent agrees,
5 acknowledges and understands that by electronically sending to
6 the Department a fax copy of its actual signature as it appears
7 on the Declaration, that receipt of the faxed copy by the
8 Department shall be as binding on Respondent as if the
9 Department had received the original signed Declaration.

10 I declare under penalty of perjury under the laws of
11 the State of California that the above is true and correct and
12 that I am acting freely and voluntarily on behalf of FIRST
13 MORTGAGE OF AMERICA INC. to surrender its license and all
14 license rights attached thereto.

15 I declare under penalty of perjury under the laws of
16 the State of California that the above is true and correct and
17 that this declaration was executed March 4, 2009, at
18 San Antonio, California.

19
20 
21 SCOTT L. RICHARDS, ESQ.
22 On behalf of
23 FIRST MORTGAGE OF AMERICA INC.
24
25
26
27

1 MARTHA J. ROSETT, Counsel (SBN 142072)
2 Department of Real Estate
3 320 West Fourth St. #350
4 Los Angeles, CA 90013

4 (213) 576-6982
5 (213) 620-6430

FILED
APRIL 2, 2009
DEPARTMENT OF REAL ESTATE

By CS

6
7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9
10 STATE OF CALIFORNIA

11 * * * *

12 In the Matter of the Accusation of) No. H-35571 LA
13 HOME OWNERS ASSISTANCE, a) L-2009030034
14 corporate real estate broker;)
15 FIRST HOUSING OF AMERICA INC.,) FIRST SUPPLEMENTAL
16 a corporate real estate broker;) A C C U S A T I O N
17 DEAN ERIC AVALOS, individually)
18 and as designated officer of)
19 Home Owners Assistance;)
20 and SINDEY AVALOS,)
21 individually and as designated)
22 officer of First Housing of)
23 America Inc.,)
24 Respondents.)

22 Complainant hereby supplements and amends the
23 Accusation filed herein On December 30, 2008, as follows:

24 A Fifth Cause of Accusation, is hereby added to read:
25
26
27

FIFTH CAUSE OF ACCUSATION

(First Housing of America and Avalos

(Audit Nos. LA080029 and LA080177)

51.

There is hereby incorporated in this Fifth, separate Cause of Accusation, all of the allegations contained in Paragraphs 2 through 9 above, with the same force and effect as if herein fully set forth.

52.

For purposes of this Fifth Cause of Accusation, all further references to "Respondents" include Respondent FIRST HOUSING and Respondent AVALOS, and also include the employees, agents and real estate licensees employed by or associated with each Respondent, who at all times material herein were engaged in the furtherance of the business or operations of Respondents, and who were acting within the course and scope of their authority, agency or employment.

53.

During a period of time from approximately October 1, 2005, and continuing through September 30, 2008, Respondents FIRST HOUSING and AVALOS engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers in the State of California, within the meaning of Code Sections 10131(a), 10131(d) and 10131.2, for or in expectation of compensation. Respondents FIRST HOUSING and AVALOS represented

1 buyers and sellers of residential property. Respondents also
2 represented borrowers in negotiating and modifying terms and
3 obtaining mortgage loans, and collected advance fees within the
4 meaning of Code Sections 10026 and 10131.2, pursuant to written
5 agreements which constituted advance fee agreements within the
6 meaning of Code Section 10085.

7 54.

8 During the period of time covered by the audit, set
9 forth below, Respondents did not maintain a trust account.
10 Respondents placed trust funds received, including advance fees
11 paid, into a general business account, Account No. 650-3518307,
12 entitled, "First Housing of America, Inc. Operating Account,"
13 located at Wells Fargo Bank, P.O. Box 6995, Portland, OR 97228-
14 6995. The account was used for First Housing's general business
15 operations and the deposit of advance fees.

16 55.

17
18 On or about February 24, 2009, the Department completed
19 its examination of Respondent FIRST HOUSING's books and records
20 pertaining to the mortgage lending activities described in
21 Paragraphs 53 and 54 above, covering a period from approximately
22 October 1, 2005 to September 30, 2008. The primary purpose of
23 the examination was to determine Respondent's compliance with the
24 Real Estate Law. The examination, Audit Nos. LA080029 and LA
25 080177, revealed violations of the Code, and of Title 10, Chapter
26 6, California Code of Regulations (hereinafter "Regulations"), as
27

1 set forth below and as more specifically set forth in the Audit
2 Report and Exhibits attached thereto.

3 56.

4 In the course of activities described in Paragraph 53
5 and 54 above, and during the examination period described in
6 Paragraph 55, Respondents acted in violation of the Code and the
7 Regulations in that:

8 a) During the audit period, Respondents collected
9 approximately \$1,324,250.00 in advance fees from borrowers for
10 the purpose of providing loan modifications. The advance fees
11 were deposited into FIRST HOUSING's general business account,
12 which was not set up as a trust account, and commingled with
13 FHA's general funds, in violation of Code Sections 10145, 10146,
14 and 10176(e) and Regulation 2835. The following are examples:

<u>Date Rec'd</u>	<u>Borrower</u>	<u>Amt Collected</u>	<u>Date Dep.</u>
2/1/08	Jorge Medrano	\$ 1,795.00	2/1/08
2/1/08	Calixto Betancourt	\$ 1,795.00	2/1/08
2/1/08	Juan Martinez	\$ 1,795.00	2/1/08
4/3/08	Marco A. Hernandez	\$ 1,795.00	4/3/08
3/6/08	Vicente Hernandez	\$ 1,995.00	3/6/08
2/1/08	Delia Godinez	\$ 1,795.00	2/1/08
6/5/08	Pamela Bacon	\$ 1,600.00	6/5/08
4/3/08	Frank Carmona	\$ 995.00	4/3/08
4/3/08	Benjamin Garcia	\$ 1,995.00	4/3/08

26 b) Respondents' columnar record of trust funds
27

1 received and disbursed was incomplete, and was missing the date
2 funds were disbursed and the daily balance, in violation of Code
3 Section 10145 and Regulation 2831.

4 c) Respondents did not maintain a separate record for
5 each beneficiary of trust funds received from borrowers in
6 connection with their loan modification, in violation of Code
7 Section 10145 and Regulation 2831.1.

8 d) Respondents did not maintain a written monthly
9 reconciliation of the receipt and disbursement records, and the
10 total balance of separate beneficiary records for its bank
11 account that was used to handle advance fees, in violation of
12 Code Section 10145 and Regulation 2831.2.

13 e) Respondents collected advance fees for the purpose
14 of performing loan modifications without submitting a written
15 agreement to the Department at least ten days in advance, in
16 violation of Code Section 10085 and Regulation 2970.

17 f) Respondents received advance fees from borrowers
18 without maintaining and providing accounting content indicating
19 services to be rendered, where the trust account funds were to be
20 deposited and the details of how funds were to be disbursed, in
21 violation of Regulation 2972.

22
23 57.

24 The conduct, acts and/or omissions of Respondent FIRST
25 HOUSING and AVALOS, as described in Paragraph 56, above, violated
26 the Code and Regulations in the following ways:
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PARAGRAPH

PROVISIONS VIOLATED

56 (a)

Code Sections 10145
10146, 10176(e) and
Regulation 2835.

56 (b)

Code Section 10145 and
Regulation 2831.

56 (c)

Code Section 10145 and
Regulation 2831.1.

56 (d)

Code Section 10145 and
Regulation 2831.2.

56 (e)

Code Section 10085 and
Regulation 2970.

56 (f)

Regulation 2972.

The foregoing violations constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent FIRST HOUSING and Respondent AVALOS under the provisions of Code Sections 10177(d), 10176(e), 10176(i), 10177(g), and 10085.

58.

The violations set forth above constitute cause for the suspension or revocation of Respondent AVALOS' real estate license and/or license rights, as the broker-officer of Respondent FIRST HOUSING, for failing to supervise the activities of the corporation, in violation of Code Sections 10159.2, in conjunction with 10177(h), 10177(d) and/or 10177(g).

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///

///

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondents
5 FIRST HOUSING OF AMERICA INC. and SINDEY AVALOS under the Real
6 Estate Law and for such other and further relief as may be proper
7 under other applicable provisions of law.
8

9 Dated at Los Angeles, California

10 this 1 day of April , 2009.

11
12 
13 Robin Trujillo
14 Deputy Real Estate Commissioner
15
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22 cc: Home Owners Assistance
23 First Housing of America, Inc.
24 Dean Eric Toro
25 Sindey Avalos
26 Robin Trujillo
27 Sacto.
Audits
OAH

SAC

1 MARTHA J. ROSETT, Counsel (SBN 142072)
2 Department of Real Estate
3 320 West Fourth St. #350
4 Los Angeles, CA 90013

FILED
DEC. 30, 2008
DEPARTMENT OF REAL ESTATE

4 (213) 576-6982
5 (213) 620-6430

By C. A.

6
7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) No. H-35571 LA
12)
13 HOME OWNERS ASSISTANCE, a) A C C U S A T I O N
14 corporate real estate broker;)
15)
16 FIRST HOUSING OF AMERICA INC.,)
17 a corporate real estate broker;)
18)
19 FIRST MORTGAGE OF AMERICA INC.,)
20 a corporate real estate broker;)
21)
22 DEAN ERIC TORO, individually)
23 and as designated officer of)
24 Home Owners Assistance and)
25 former designated officer of)
26 First Mortgage of America Inc.;)
27)
28)
29 and SINDEY AVALOS,)
30 individually and as designated)
31 officer of First Housing of)
32 America Inc.,)
33 Respondents.)
34)

35 The Complainant, Robin Trujillo, a Deputy Real Estate
36 Commissioner, for cause of Accusation against HOME OWNERS

1 ASSISTANCE, FIRST HOUSING OF AMERICA INC., FIRST MORTGAGE OF
2 AMERICA INC., DEAN ERIC TORO, individually and as designated
3 broker-officer of Home Owners Assistance and First Mortgage of
4 America Inc., and SINDEY AVALOS, individually and as designated
5 broker-officer of First Housing of America, Inc., is informed and
6 alleges as follows:

7 1.

8 The Complainant, Robin Trujillo, a Deputy Real Estate
9 Commissioner of the State of California, makes this Accusation in
10 her official capacity.

11 Corporate Entities:

12 2.

13 At all times herein mentioned, Respondent HOME OWNERS
14 ASSISTANCE (sometimes referred to as "HOA"), was and still is
15 licensed and/or has license rights under the Real Estate Law
16 (Part 1 of Division 4 of the Business and Professions Code) as a
17 corporate real estate broker. Respondent HOA was originally
18 licensed by the Department of Real Estate ("Department") as a
19 corporate real estate broker on or about December 28, 2007. At
20 all times relevant herein, Respondent HOA was authorized to act
21 by and through Respondent DEAN ERIC TORO as its broker designated
22 pursuant to Business and Professions Code (hereinafter "Code")
23 Section 10159.2 to be responsible for ensuring compliance with
24 the Real Estate Law.
25

26 ///

3.

1
2 At all times herein mentioned, HOME OWNERS ASSISTANCE
3 is and was a California corporation. Pepi Arthur Abad, aka
4 Arthur Pepi Abad, aka Pepi Arturo Abad (sometimes referred to as
5 "Pepi Abad"), is the corporate President and CEO of HOA. At all
6 times relevant herein, Abad has owned or controlled more than 10%
7 of Respondent HOA's stock. Abad is not now and has never been
8 licensed in any capacity by the Department.

9
10 4.

11 At all times herein mentioned, Respondent FIRST HOUSING
12 OF AMERICA INC. (sometimes referred to as "FIRST HOUSING"), was
13 and still is licensed and/or has license rights under the Real
14 Estate Law as a corporate real estate broker. Respondent FIRST
15 HOUSING was originally licensed by the Department as a corporate
16 real estate broker on or about September 16, 2002. At all times
17 relevant herein, Respondent FIRST HOUSING was authorized to act
18 by and through Respondent SINDEY AVALOS as its broker designated
19 pursuant to Code Section 10159.2 to be responsible for ensuring
20 compliance with the Real Estate Law.

21 5.

22 At all times herein mentioned, Respondent FIRST HOUSING
23 of AMERICA INC. is and was a California corporation. Pepi Abad
24 is the corporate President and CEO of FIRST HOUSING. At all
25 times relevant herein, Pepi Abad has owned or controlled more
26 than 10% of Respondent FIRST HOUSING's stock. Abad is not now
27

1 and has never been licensed in any capacity by the Department.
2 Respondent SINDEY AVALOS is a corporate director of FIRST
3 HOUSING.

4 6.

5 At all times herein mentioned, Respondent FIRST
6 MORTGAGE OF AMERICA, INC. (sometimes referred to as "FIRST
7 MORTGAGE"), was and still is licensed and/or has license rights
8 under the Real Estate Law as a corporate real estate broker.
9 Respondent FIRST MORTGAGE was originally licensed by the
10 Department as a corporate real estate broker on or about October
11 27, 2003. Beginning on or about January 16, 2004, and continuing
12 through on or about January 22, 2007, Respondent FIRST MORTGAGE
13 was authorized to act by and through Respondent TORO as its
14 broker and officer designated pursuant to Code Section 10159.2 to
15 be responsible for ensuring compliance with the Real Estate Law.
16 Beginning on or about January 23, 2008, and continuing through
17 April 17, 2008, Respondent FIRST MORTGAGE was authorized to act
18 by and through Bruce Eugene Mangels as its designated broker-
19 officer. Respondent FIRST MORTGAGE does not currently have a
20 designated broker-officer and therefore has an inactive license.
21

22 7.

23 At all times mentioned herein, Pepi Abad was and is the
24 corporate President and CEO of FIRST MORTGAGE. At all times
25 relevant herein, Pepi Abad has owned or controlled more than 10%
26 of Respondent FIRST MORTGAGE's stock. Pepi Abad is not now and
27

has never been licensed in any capacity by the Department.

Broker Licensees:

8.

At all times herein mentioned, Respondent DEAN ERIC TORO (sometimes referred to as "TORO") was and is licensed and/or has license rights under the Code as a real estate broker. Respondent TORO was first licensed as a real estate broker on or about May 15, 2003, and was licensed as a salesperson prior to that time. Beginning on or about December 28, 2007, and continuing through the present time, Respondent TORO was and continues to be the designated broker-officer of Respondent HOA. Beginning on or about January 16, 2004 and continuing through on or after January 22, 2007, Respondent TORO was the designated broker-officer of Respondent FIRST MORTGAGE.

9.

At all times herein mentioned, Respondent SINDEY AVALOS (sometimes referred to as "AVALOS") was and is licensed and/or has license rights under the Code as a real estate broker. Respondent AVALOS was first licensed as a real estate broker on or about October 28, 2006, and was licensed as a salesperson before that time. Beginning on or about September 13, 2007, and continuing through the present time, Respondent AVALOS was and is the designated broker-officer for Respondent FIRST HOUSING. Respondent AVALOS has been a director of Respondent FIRST HOUSING since on or before October 17, 2005.

10.

1 All further references to "Respondents" include the
2 parties listed in Paragraphs 1 through 9 above, as well as the
3 officers, agents and employees of the parties listed in
4 Paragraphs 1 through 9 above.
5

6 FIRST CAUSE OF ACCUSATION:
7 (Disciplinary Action Against Corporate Officer)
8 (HOA and FIRST HOUSING)

11.

9 On or about July 14, 2005, in Cases No. S-01-0613 and
10 RS-02-0091, the Department of Motor Vehicles revoked Pepi Abad's
11 vehicle salesperson license, and denied his application for
12 reinstatement of his salesperson license, pursuant to Vehicle
13 Code Section 11806(i). The Order, which was to become effective
14 on August 15, 2005, was affirmed on appeal to the Superior Court
15 and became a final judgment on September 19, 2006. The grounds
16 for the discipline of Abad's vehicle salesperson license stemmed
17 from his misconduct as a managerial employee of a vehicle sales
18 dealership during the time persons under his direction and
19 control committed wrongful acts which resulted in the suspension
20 of the dealer's license.
21

22 12.

23 The disciplinary action taken by the Department of
24 Motor Vehicles against corporate officer Abad, as set forth
25 above, constitutes grounds to discipline the real estate
26 corporation license and license rights of Respondent HOA and
27

1 Respondent FIRST HOUSING, pursuant to Code Section 10177(f):¹

2 SECOND CAUSE OF ACCUSATION:
3 (Advance Fee Violations)
4 (HOA, FIRST HOUSING, TORO, AVALOS)

5 13.

6 There is hereby incorporated in this Second, separate
7 Cause of Accusation, all of the allegations contained in
8 Paragraphs 2 through 10 above, with the same force and effect as
9 if herein fully set forth.

10 14.

11 For purposes of this Second cause of Accusation, all
12 further references to "Respondents" include Respondent HOA,
13 Respondent FIRST HOUSING, Respondent TORO, and Respondent AVALOS,
14 and also include the employees, agents and real estate licensees
15 employed by or associated with each Respondent, who at all times
16 material herein were engaged in the furtherance of the business
17 or operations of Respondents, and who were acting within the
18 course and scope of their authority, agency or employment.

19 15.

20 During a period of time from approximately November 27,
21 2007, and continuing through September 30, 2008, Respondents HOA,
22 FIRST HOUSING, TORO, and AVALOS engaged in the business of, acted
23 in the capacity of, advertised or assumed to act as real estate
24 brokers in the State of California, within the meaning of Code
25 Sections 10131(d) and 10131.2, for or in expectation of

26
27 ¹ Grounds also exist for discipline of FIRST MORTGAGE's license rights, but this is

1 compensation. Respondents HOA, FIRST HOUSING, TORO, and AVALOS
2 represented borrowers in negotiating and modifying terms and
3 obtaining mortgage loans, and collected advance fees within the
4 meaning of Code Sections 10026 and 10131.2, pursuant to written
5 agreements which constituted advance fee agreements within the
6 meaning of Code Section 10085. Respondents failed to submit
7 these advance fee agreements to the Commissioner before using
8 them.

9 16.

10 On or about January 23, 2008, Respondent HOA and
11 Respondent FIRST HOUSING entered into a Loan Modification
12 Agreement with Jenine Hill. Pursuant to the terms of the
13 agreement, Respondents agreed to negotiate the terms of a
14 residential mortgage loan on Ms. Hill's behalf and to list her
15 home for sale. The agreement called for Ms. Hill to pay
16 Respondents a non-refundable advance fee in advance in the amount
17 of \$1,795.00. Ms. Hill paid the advance fee. On or about July
18 10, 2008, Respondents refunded Ms. Hill's money.

19 17.

20 On or about November 27, 2007, Respondents HOA and
21 FIRST MORTGAGE collected an advance fee from Patricia and Johnny
22 Clark for performance of loan modification services. Respondents
23 failed to perform the services promised or to obtain a loan for
24 the Clarks on more favorable terms.

25
26
27 the subject of a separate accusation in DRE Case No. H-34752 LA.

18.

1 The written agreement between Respondents HOA and FIRST
2 HOUSING and Ms. Hill was not submitted to or reviewed by the
3 Department of Real Estate prior to use. Neither was the
4 agreement between Respondents HOA and FIRST HOUSING and the
5 Clarks.
6

7 19.

8 Additional examples of advance fees from borrowers
9 Respondents collected for the purpose of providing loan
10 modifications during the period of time between November 27, 2008
11 and September 30, 2008 include, but are not limited to, the
12 following transactions:

<u>Date Rec'd</u>	<u>Borrower</u>	<u>Amt Collected</u>	<u>Date Dep.</u>
4/5/08	G. Avila	\$1,795.00	4/7/08
4/30/08	S. Sandoval	\$1,795.00	5/1/08
6/30/08	C. Gonzalez	\$1,995.00	7/2/08
3/31/08	F. Cuando	\$1,795.00	3/31/08
5/2/08	D. Starks	\$1,995.00	5/2/08
6/30/08	E. Ramirez	\$1,795.00	7/1/08
3/29/08	G. Arias	\$1,995.00	3/31/08

22 20.

23 Between November 1, 2007 and September 30, 2008,
24 Respondent HOA collected approximately \$2,934,000.60 in advance
25 fees from borrowers in loan modification transactions. As of
26 September 30, 2008, Respondents had not obtained the Department's
27

1 authorization to use any advance fee agreement.

2 21.

3 The conduct, acts and/or omissions of Respondents HOA,
4 FIRST HOUSING, TORO and AVALOS, as set forth in Paragraphs 14
5 through 20 above, in collecting advance fees from prospective
6 borrowers pursuant to a written fee agreement, which agreement
7 was not submitted to the Department for review prior to use, was
8 in violation of Code Section 10085 and Regulation 2970, and
9 constitutes grounds to discipline the licenses and license rights
10 of Respondents HOA, FIRST HOUSING, TORO and AVALOS pursuant to
11 Code Sections 10177(d), 10176(i), 10177(j) and/or 10177(g).

12 22.

13 The conduct, acts and/or omissions of Respondent TORO
14 and Respondent AVALOS, in failing to exercise reasonable
15 supervision over the activities of officers and employees of HOA
16 and FIRST HOUSING for which a real estate license was required,
17 was in violation of Code Section 10159.2 and constitutes grounds
18 to discipline the licenses and license rights of Respondent TORO
19 and Respondent AVALOS pursuant to Code Sections 10177(h),
20 10177(d) and 10177(g).

21 ///

22 ///

23 ///

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25 ///

26 ///

THIRD CAUSE OF ACCUSATION
(Audit No. LA 080109)
(HOA and TORO)

23.

There is hereby incorporated in this Third, separate cause of Accusation, all of the allegations contained in Paragraphs 2 through 10, and 15 through 20 above, with the same force and effect as if herein fully set forth.

24.

For purposes of this Third Cause of Accusation, all references to "Respondents" include Respondent HOA and Respondent TORO, and also include the employees, agents and real estate licensees employed by or associated with each Respondent, who at all times material herein were engaged in the furtherance of the business or operations of Respondents, and who were acting within the course and scope of their authority, agency or employment.

25.

During a period of time from approximately November 27, 2007, and continuing through September 30, 2008, Respondents HOA and TORO engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers in the State of California, within the meaning of Code Sections 10131(d) and 10131.2, for or in expectation of compensation. Respondents HOA, and TORO represented borrowers in negotiating and modifying terms and obtaining mortgage loans, and collected advance fees within the meaning of Code Sections 10026 and 10131.2, pursuant to

1 written agreements which constituted advance fee agreements
2 within the meaning of Code Section 10085.

3 26.

4 On or about November 26, 2008, the Department completed
5 its examination of Respondent HOA's books and records pertaining
6 to the mortgage lending activities described in Paragraph 25
7 above, covering a period from approximately November 1, 2007 to
8 September 30, 2008. The primary purpose of the examination was
9 to determine Respondent's compliance with the Real Estate Law.
10 The examination, Audit No. LA 080109, revealed violations of the
11 Code, and of Title 10, Chapter 6, California Code of Regulations
12 (hereinafter "Regulations"), as set forth below and as more
13 specifically set forth in the Audit Report and Exhibits attached
14 thereto.

15 27.

16 In the course of activities described in Paragraph 25
17 above, and during the examination period described in Paragraph
18 26, Respondents acted in violation of the Code and the
19 Regulations in that:
20

21 a) Respondents collected advance fees from borrowers
22 for the purpose of providing loan modifications. The advance
23 fees were deposited into HOA's general business account, which
24 was not set up as a trust account, in violation of Code Section
25 10146. The following are examples:

26 ///

27

	<u>Date Rec'd</u>	<u>Borrower</u>	<u>Amt Collected</u>	<u>Date Dep.</u>
1	4/5/08	G. Avila	\$1,795.00	4/7/08
2				
3	4/30/08	S. Sandoval	\$1,795.00	5/1/08
4	6/30/08	C. Gonzalez	\$1,995.00	7/2/08
5	3/31/08	F. Cuando	\$1,795.00	3/31/08
6	5/2/08	D. Starks	\$1,995.00	5/2/08
7	6/30/08	E. Ramirez	\$1,795.00	7/1/08
8	3/29/08	G. Arias	\$1,995.00	3/31/08

9 b) Respondents did not maintain a trust account for
10 the advance fees, in violation of Code Section 10145 and
11 Regulation 2832. Commingling trust funds with general funds is
12 in violation of Code Sections 10176(e) and 10145, and Regulation
13 2835.

14 c) Respondents' records of receipts and disbursements
15 were incomplete, and the columnar records did not include the
16 date funds were disbursed, to whom funds were disbursed, and the
17 daily balance. Respondents failed to maintain proper trust fund
18 records, in violation of Code Section 10145 and Regulation 2831.

19 d) Respondents did not maintain a separate record for
20 each beneficiary of trust funds received from borrowers in
21 connection with their loan modification, in violation of Code
22 Section 10145 and Regulation 2831.1.

23 e) Respondents did not maintain a monthly
24 reconciliation of receipts and disbursements of trust funds, in
25 violation of Code Section 10145 and Regulation 2831.2.
26
27

1 f) HOA received advance fees for the purpose of
2 performing loan modifications, pursuant to written agreements
3 which were not submitted to the Department for review prior to
4 use, in violation of Code Section 10085 and Regulation 2970.
5 During the audit period, Respondent HOA collected approximately
6 \$2,934,00.00 from borrowers in advance fees.

7 g) Respondents received advance fees from borrowers,
8 without maintaining and providing an accounting content
9 indicating services to be rendered, where the trust account funds
10 would be deposited and details of how funds were to be disbursed,
11 in violation of Regulation 2972.

12 h) Respondent HOA, which was incorporated on December
13 28, 2007, handled loan modification transactions and collected
14 advance fees from the borrowers in November 2007 without
15 obtaining a real estate broker license from the Department. An
16 example included the Patricia Clark transaction, in which
17 Respondents collected an advance fee on November 27, 2007.
18 Respondent HOA performed activities requiring a real estate
19 license when they were not properly licensed by the Department as
20 a real estate broker, in violation of Code Section 10130.

22 28.

23 The conduct, acts and/or omissions of Respondent HOA
24 and TORO, as described in Paragraph 27, above, violated the Code
25 and Regulations in the following ways:

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PARAGRAPH

PROVISIONS VIOLATED

- 27 (a) Code Section 10146.
- 27 (b) Code Sections 10145 and 10176(e); and Regulations 2832 and 2835.
- 27 (c) Code Section 10145 and Regulation 2831.
- 27 (d) Code Section 10145 and Regulation 2831.1.
- 27 (e) Code Section 10145 and Regulation 2831.2.
- 27 (f) Code Section 10085 and Regulation 2970.
- 27 (g) Regulation 2972.
- 27 (h) Code Section 10130.

The foregoing violations constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent HOA and Respondent TORO under the provisions of Code Sections 10177(d), 10130, 10176(e), 10176(i), 10177(g), and 10085.

29.

The violations set forth above constitute cause for the suspension or revocation of Respondent TORO's real estate license and/or license rights, as the broker-officer of Respondent HOA, for failing to supervise the activities of the corporation, in violation of Code Sections 10159.2, in conjunction with 10177(h) and 10177(d).

///

33.

1
2 At all times mentioned herein, Respondent FIRST
3 MORTGAGE was licensed by the Department of Real Estate under
4 license number 01402136, with one licensed office location at
5 2911 S. Bristol Street, Santa Ana, CA 92704. At no time
6 mentioned herein was Respondent FIRST MORTGAGE licensed by the
7 Department of Real Estate to conduct activities requiring a real
8 estate license at any other location.

9 Esquivel Transaction

10 34.

11 In late 2005, borrower Salvador Esquivel responded to a
12 telephone solicitation in Spanish in which representatives of
13 Respondent FIRST MORTGAGE offered to assist him in refinancing
14 mortgages on residential property located at 607 E. 246 St.,
15 Wilmington, California. Mr. Esquivel was interested in lowering
16 his monthly payments on two mortgages on his home, which he had
17 purchased a year before.
18

19 35.

20 On November 23, 2005, Mr. Esquivel and his son and
21 daughter met with Pepi Abad, Luis Razo, Kebbin Avalos, Kendall
22 Williams, Raul Sanchez and Baricio Baca at FIRST MORTGAGE offices
23 located at 2823 S. Bristol St. in Santa Ana, California 92704.
24 Mr. Esquivel discussed possible loan terms with Respondent FIRST
25 MORTGAGE's representatives. Mr. Esquivel's primary interest was
26 to lower his monthly payments and avoid incurring pre-payment
27

1 penalties and other costs that would raise his rates and
2 payments. Discussions continued over the next few months.

3 36.

4 On January 1, 2006, Mr. Esquivel was provided loan
5 documents for signing, with very little time to review the
6 papers. He noticed that the new interest rate was 9.9% and
7 variable, in contrast with the 7% fixed rate he previously had.
8 In addition, the monthly payment was approximately \$1,000.00 more
9 than his previous payment. Mr. Esquivel was promised \$28,760.07
10 cash out at closing.

11 37.

12 In connection with Mr. Esquivel's loan, Kendall
13 Williams and a Spanish speaking interpreter presented and
14 explained the terms of the new loan, and completed the loan
15 application on behalf of Respondents. Kendall Williams was not
16 and is not licensed by the Department.

17 38.

18 Loan documentation referred to Respondent FIRST
19 MORTGAGE and listed "2823 S. Bristol St., Santa Ana, California
20 92704," as the contact address. Respondent FIRST MORTGAGE was
21 not licensed to conduct activities requiring a real estate
22 license out of this location. Nor was Respondent FIRST MORTGAGE
23 licensed to conduct activities under a California Finance Lender
24 license at this location.

25
26 ///

39.

1 Business cards provided to Mr. Esquivel for
2 Respondent's representatives, Raul Sanchez, Luis Razo, Fabricio
3 Baca and Kebbin Avalos, listed "FIRST MORTGAGE OF AMERICA" at
4 2823 S. Bristol St., Santa Ana, California 92704. Pepi Abad's
5 business card listed "FIRST HOUSING OF AMERICA," with the address
6 of "2911 S. Bristol Street, Suite B, Santa Ana, California,
7 92704." Pepi Abad, Raul Sanchez, Luis Raz, Fabricio Baca and
8 Kebbin Avalos were not licensed by the Department as real estate
9 brokers or as real estate salespersons employed by a real estate
10 broker.
11

12 40.

13 Mr. Esquivel's new loan transaction closed on or about
14 January 5, 2006. At that time, Mr. Esquivel received a check
15 from escrow in the amount of \$17,084.52, not the promised
16 \$28,760.07.
17

18 41.

19 Subsequent to the closing of the new loan transaction,
20 Mr. Esquivel had further discussions with Respondents. On or
21 about February 9, 2006, Pepi Abad provided Mr. Esquivel with a
22 written statement in Spanish offering to refinance the new loan
23 in two years for zero origination points and no money down, and
24 offering to pay Mr. Esquivel \$5,500.00.

25 /s/

26 ///

27

42.

1
2 Mr. Esquivel was not able to afford the new payments on
3 the subject property, and the property went into foreclosure.

4 Guerrero Transaction

5 43.

6 Beginning on or before July 15, 2006, and continuing
7 through on or after September 30, 2006, Respondent FIRST MORTGAGE
8 represented Teresa and Carlos Guerrero in refinancing a loan or
9 loans secured by real property located at 64 East Barnett Street,
10 Ventura, California 93001.

11 44.

12 In relation to the subject loan transaction, on or
13 about September 9, 2006, Christian Ramos signed a loan
14 application as representative of Respondent FIRST MORTGAGE, with
15 a business address of "2823 S. Bristol, Santa Ana, CA 92704." On
16 September 9, 2006, in relation to the subject transaction,
17 Respondents obtained the Guerreros signatures on a Federal Truth-
18 in-Lending Disclosure Statement in which the "Creditor" is listed
19 as "FIRST MORTGAGE OF AMERICA (DRE # 01402136), 2823 S. Bristol
20 Street, Santa Ana, California 92704."

21
22 45.

23 At all times mentioned herein, Christian Ramos was not
24 licensed by the Department of Real Estate as a real estate
25 broker, or as a salesperson employed by the real estate broker.

26 ///

46.

1
2 At all times mentioned herein, Respondent FIRST
3 MORTGAGE was not licensed to perform activities requiring a real
4 estate license at an office located at 2823 S. Bristol St., Santa
5 Ana, CA 92704. Nor was Respondent FIRST MORTGAGE licensed to
6 conduct activities under a California Finance Lender license at
7 that location.

8
9 47.

10 In relation to the loan transactions set forth in
11 Paragraphs 33 through 46 above, Respondent FIRST MORTGAGE
12 utilized employees and/or representatives in soliciting and
13 negotiating loans who were not licensed by the Department as real
14 estate brokers or as salesperson operating under Respondent FIRST
15 MORTGAGE's real estate broker license. Among the unlicensed
16 representatives performing activities requiring a real estate
17 license were Pepi Abad, Kibbin Avalos, Kendall Williams, and
18 Christian Ramos.

19
20 48.

21 The conduct, acts and/or omissions, as set forth in
22 Paragraphs 33 through 47 above, in employing or compensating
23 representatives for performing activities requiring a real estate
24 license constitutes grounds to revoke the real estate licenses
25 and/or license rights of Respondents FIRST MORTGAGE and TORO
26 pursuant to Code Sections 10137, 10177(d), 10177(g), 10176(i)
27 and/or 10177(j).

49.

1 The conduct, acts and/or omissions of making false
2 and/or misleading representations in order to induce reliance of
3 borrowers, and in otherwise misleading borrowers into accepting
4 loans on less favorable terms to the detriment of the borrowers,
5 as set forth in Paragraphs 33 through 47 above, constitutes
6 grounds to discipline the licenses and/or license rights of
7 Respondents FIRST MORTGAGE and TORO pursuant to Code Sections
8 10176(a), 10176(b), 10176(c), 10176(i) and/or 10177(j).
9

10 50.

11 The conduct, acts and/or omissions set forth above in
12 Paragraphs 33 through 47, in failing to adequately supervise the
13 activities of Respondent FIRST MORTGAGE, constitutes grounds to
14 discipline the license and/or license rights of Respondent TORO
15 pursuant to Code Sections 10159.2, 10177(h), 10177(d), 10177(g),
16 10176(i) and/or 10177(j).
17

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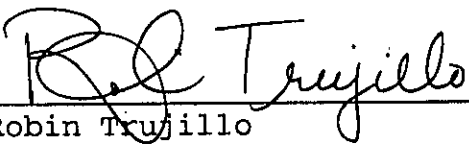
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27

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondents
5 DEAN ERIC TORO, SINDEY AVALOS, FIRST MORTGAGE OF AMERICA, INC.,
6 FIRST HOUSING OF AMERICA INC. and HOME OWNERS ASSISTANCE under
7 the Real Estate Law and for such other and further relief as may
8 be proper under other applicable provisions of law.

9 Dated at Los Angeles, California

10 this 26 day of December, 2008.

11
12 
13 _____
14 Robin Trujillo
15 Deputy Real Estate Commissioner
16
17
18
19
20
21

22 cc: Home Owners Assistance
23 First Housing of America, Inc.
24 First Mortgage of America, Inc.
25 Dean Eric Toro
26 'Sindey Avalos
27 Robin Trujillo
Sacto.
Audits