

**FILED**

APR 18 2013

BEFORE THE DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA BY: James B. Olson

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In the Matter of the Accusation of	)	DRE No. H-37434 LA
	)	OAH No. 2011090565
HOME RETENTION AND FINANCIAL	)	
PROGRAMS, INC. dba J L Richman and	)	
Associates Co, WINSTON CHI, JONATHAN	)	
ARNO and MICHAEL JEFFREY SIMPSON,	)	
individually, and as designated officers of	)	
Home Retention and Financial Programs Inc.	)	
LLOYDS INVESTMENT INC. and HAMID	)	
REZA LAVASSANI, individually, and as	)	
designated officer of Lloyds Investment Inc.	)	
and <u>ERNESTO GALINDO CARDENAS,</u>	)	
	)	
Respondents.	)	
	)	

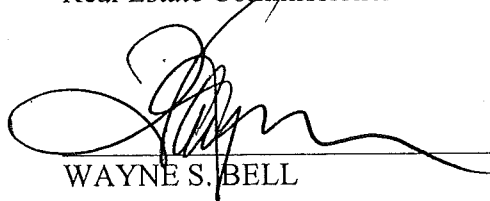
DECISION

The Proposed Decision dated March 6, 2013, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on MAY - 8 2013.

IT IS SO ORDERED 4/12/2013.

Real Estate Commissioner

  
WAYNE S. BELL

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

In the Matter of the First Amended  
Accusation Against:

Case No. H-37434 LA

HOME RETENTION AND FINANCIAL  
PROGRAMS, INC., dba J L Richman and  
Associates Co, WINSTON CHI, JONATHAN  
ARNO and MICHAEL JEFFREY SIMPSON,  
individually, and as designated officers of  
Home Retention and Financial Programs Inc.,  
LLOYDS INVESTMENT INC., and HAMID  
REZA LAVASSANI, individually, and as  
designated officer of Lloyds Investment Inc.  
and ERNESTO GALINATO CARDENAS,

OAH No. 2011090565

Respondents.

**PROPOSED DECISION**

This matter was heard by Michael A. Scarlett, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 4, 2012, in Los Angeles.

James A. Demus, Counsel, represented Maria Suarez, Deputy Real Estate Commissioner (Complainant), California Department of Real Estate (Department).

Respondent Ernesto Galinato Cardenas (Respondent) appeared and represented himself.<sup>1</sup>

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<sup>1</sup> Respondent Home Retention and Financial Programs Inc. voluntarily surrendered its corporate real estate broker license on May 9, 2012, which was accepted by order of the Commissioner on June 6, 2012, effective date of surrender September 4, 2012. Respondents Winston Chi, Jonathan Arno, Michael Jeffrey Simpson, Lloyds Investment Inc. and Hamid Reza Lavassani all entered Stipulations and Agreements on June 6, 2012, settling and disposing of the August 9, 2011 Accusation filed against them. The effective dates of the stipulations are September 4, 2012, for Chi, September 14, 2012, for Arno, September 14, 2012, for Simpson, and September 4, 2012, for Lloyds Investment Inc. and Lavassani. Consequently, this hearing only proceeded against Respondent Cardenas.

Oral and documentary evidence was received and the matter was submitted for decision on June 4, 2012.

### FACTUAL FINDINGS

1. On May 24, 2012, Complainant filed the First Amended Accusation in her official capacity.

2. Respondent is presently licensed as a real estate broker, license number B/01876512. He was first licensed as a real estate broker on March 2, 2011. On January 8, 2009, Respondent filed a Fictitious Business Name Statement for Mortgage Rescue Services (MRS) with the Sacramento County Clerk. Respondent failed to file a Fictitious Business Name Statement for MRS with Department as required by Business and Professions Code section 10159.5, and California Code of Regulations, title 10, section 2731.

3. At all times relevant, Respondent was engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate broker in the State of California, within the meaning of Business and Professions Code sections 10131, subdivision (d), and 10131.2, including negotiating loans or performing services for borrowers and collecting or contracting for the collection of an advance fee, within the meaning of Business and Professions Code section 10026.

4. On February 8, 2009, Alfred and Virginia Dandoy (the Dandoys) entered into an advance fee agreement with MRS in which the Dandoys agreed to pay MRS an advance fee in the amount of \$2,800, of which \$2,000 was to be paid to Home Retention and Financial Programs Inc., dba Richman and Associates (HRFP) for the performance of loan modification services in connection with a loan secured by real property located at 836 W. Provance Avenue, Santa Maria, California. The record does not reflect that Respondent collected the \$2,800 advance fee for this property.<sup>2</sup>

5. On March 7, 2009, Reynaldo and Cristina Borja (the Borjas) signed two authorizations for MRS and "Richman & Associates, Inc.," the dba for HFRP, to represent the Borjas in negotiating loan modifications for their two homes located at 1152 Fountain Grass Drive in Patterson, California, and 3016 Stevens Lane in San Jose, California. On March 7, 2009, and March 10, 2009, the Borjas wrote checks to MRS in the amount of \$2,800 each as advance fees for the loan modifications on the mortgages on their two homes.

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<sup>2</sup> The record showed that on January 13, 2009, the Dandoys also entered into an advance fee agreement with Respondent and MRS for a loan modification on a property located at 664 S. Vecindad Street, Mountain House, California. Respondent admitted at hearing that he collected a \$2,000 advance fee payable to MRS from the Dandoys for a loan modification on this property. However, the Department's First Amended Accusation did not allege this transaction as a cause of discipline, and thus, it cannot form an independent basis for discipline in this hearing.

The terms of the advance fee agreement supplied by MRS provided that \$2,000 of the advance fee for each loan modification would be paid to HRFP.

6. From approximately January to March 2009, Respondent conducted seminars on loan modifications as the spokesperson for HRFP and MRS. Respondent gave potential clients a business card which indicated he was the Chief Executive Officer for MRS and that the company provided "bailout \* modifications & more." In 2009, Respondent introduced himself as a "broker" working on behalf of MRS and HRFP, even though he did not possess a real estate broker license until March 2, 2011.

7. Alfred Dandoy, who was Respondent's brother-in-law and married to Respondent's sister, testified that Respondent invited him to a seminar on loan modifications and told him that he represented "Richman & Associates." Dandoy stated that he paid Respondent \$2,000 for a loan modification and made the check out to MRS. Dandoy testified that although Respondent stated he represented Richman, he worked directly with personnel at Richman and Respondent never provided any services for him in securing a loan modification. Richman/HRFP eventually negotiated a loan modification on behalf of Dandoy in September 2009, but he was not satisfied with the terms and ultimately worked with another company to get his loan modification.

8. Christina Borja testified that she attended a loan modification seminar conducted by Respondent in March 2009. Respondent stated that he would negotiate a loan modification on Borja's behalf and requested an advance fee of \$2,800, \$2,000 of which would be paid to HRFP for the loan modification, for two properties owned by the Borjas. Respondent, MRS, and HRFP, never successfully negotiated a loan modification on either of the properties that the Borjas paid Respondent and MRS an advance fee for the loan modifications. Cristina Borja recalled that Respondent introduced himself as a real estate broker at the March 2009 loan modification seminar she attended.

9. The evidence established that from January through March 2009, Respondent engaged in activities that required a real estate broker license. Respondent, through MRS, entered into advance fee agreements to negotiate loan modifications on behalf of homeowners. MRS was not licensed by the Department as a fictitious business name for Respondent when these advance fee agreements were signed. Respondent also collected advance fees through checks made out to MRS prior to obtaining his broker license in March 2011. Finally, Respondent did not obtain prior approval from the Department before entering into the advance fee agreements in February and March 2009. Although Respondent asserts that he was working under HRFP, the advance fee agreements indicated that the agreements were between MRS and the Borjas, and MRS and the Dandoy, not with HRFP. The Borjas and the Dandoy also made their advance fee payments directly to MRS and Respondent, not HRFP. Neither Respondent nor MRS was licensed to perform the loan modification services solicited by Respondent and MRS in 2009, and Respondent did not obtain prior approval from the Department before entering into the advance fee agreements and collecting the advance fees. Consequently, the Department has established that Respondent's real estate broker license is subject to discipline.

10. Respondent admitted that he entered into advance fee agreements with clients for loan modification services in 2009 and collected advance fees through his fictitious business name MRS. He stated that he did not believe he needed a real estate broker license to conduct these transactions because he was working with HRFP who had a corporate broker license. Respondent stated that he was an “innocent bystander” because he relied upon advice from HRFP and was not told by HRFP that it was unlawful to collect advance fees in the manner that he and MRS were collecting advance fees. Respondent stated he was merely trying to help homeowners get out from under mortgage loans on homes that had depreciated in value by 50 percent or more.

11. Respondent was candid and forthright during his testimony at hearing. He appeared to be honest and truthful in stating that he did not believe he needed a real estate broker license to solicit advance fee agreements for loan modification services in 2009 because HRFP would be processing the modifications and HRFP had a corporate broker license. Respondent thought he was helping homeowners to get out of egregious home mortgages by securing loan modifications through HRFP. Respondent expressed sincere regret and remorse for his conduct.

12. There is no history of prior discipline by the Department against Respondent.

### LEGAL CONCLUSIONS

1. The Commissioner may suspend or revoke the license of a real estate licensee who has willfully disregarded or violated the Real Estate Law or the rules and regulations of the Commissioner for the administration and enforcement of the Real Estate Law, or who has demonstrated negligence or incompetence in performing an act for which the licensee is required to hold a license. (Bus. & Prof. Code § 10177, subs. (d) and (g).)

2. It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or real estate salesman within this state without first obtaining a real estate license from the Department. (Bus. & Prof. Code § 10130.) A real estate broker “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.” (Bus. & Prof. Code § 10131, subd. (d).)

3. The Commissioner may require that any or all materials used in obtaining advance fee agreements be submitted to him or her at least 10 days before they are used. (Bus. & Prof. Code § 10085.) It is unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee for performing services for borrowers in connection with a loan secured by real property, or to perform any other activity for which a license is required, unless the person is a licensed real estate broker. (Bus. & Prof. Code § 10085.5, subd. (a).) An “advance fee” is a fee, regardless of form, claimed, demanded, charged, received, or collected

by a licensee from a principal before fully completing each and every service the licensee contracted to perform, or represented would be performed. (Bus. & Prof. Code § 10026.)

4. Every person applying for a real estate license who desires to have such license issued under a fictitious business name shall file with the application for licensure a certified copy of the fictitious business name statement filed with the county clerk. (Bus. & Prof. Code § 10159.5.)

5. Cause exists to suspend or revoke Respondent's real estate broker license pursuant to Business and Professions Code section 10177, subdivisions (d) and (g), in that Respondent collected advance fees from Reynaldo and Cristina Borja for loan modification services in March 2009 prior to obtaining his broker license, in violation of Business and Professions Code section 10131, subdivision (d), by reason of Factual Findings 2, 5 and 6, and 8 through 10.

6. Cause exists to suspend or revoke Respondent's real estate broker license pursuant to Business and Professions Code section 10177, subdivisions (d) and (g), in that Respondent failed to file the fictitious business name of "Mortgage Rescue Services" with the Department, in violation of Business and Professions Code section 10159.5, by reason of Factual Findings 2, 3, and 9.

7. Cause exists to suspend or revoke Respondent's real estate broker license pursuant to Business and Professions Code section 10177, subdivisions (d) and (g), in that Respondent entered into advance fee agreements with the Borjas on March 7, 2009, and the Dandoys on February 8, 2009, prior to having the advance fee agreements approved by the Department, in violation of Business and Professions Code sections 10085 and 10085.5, by reason of Factual Findings 2 through 12.

8. The evidence established that Respondent entered into advance fee agreements to provide loan modification services to homeowners in February and March 2009 under the fictitious business name of "Mortgage Rescues Services." MRS was not licensed by the Department as a fictitious business name for Respondent in 2009. Respondent also did not obtain his broker license which would have allowed him to perform these services in 2009 until March 2, 2011. Although Respondent asserted that he was performing the services on behalf of HRFP/Richman and Associates, the evidence showed that the advance fee agreements were between MRS and Respondent and the homeowners, and not with HRFP or Richman and Associates. Respondent also collected two advance fees in the amount of \$2,800 each from the Borjas for loan modifications on two of their properties. The advance fees were made payable to MRS and cashed by MRS. Respondent did not seek prior approval from the Department for the advance fees agreements, nor did he have a broker license which authorized him to collect advance fees.

Respondent claimed that he was innocent because he had been advised by personnel at HRFP that his actions were not violative of California real estate law. Respondent's failure to understand or be aware of the requirements of the real estate law,

specifically since he was a real estate salesperson in 2009, does not absolve him of responsibility for his unlawful misconduct. Consequently, Respondent's real estate broker license is subject to revocation. However, there would not be a significant risk to the public's health, safety and welfare if Respondent is issued a properly restricted real estate broker license. Respondent has not incurred prior discipline and he appeared to genuinely regret his actions that resulted in the First Amended Accusation.

## ORDER

All licenses and licensing rights of Respondent Ernesto Galinato Cardenas under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays 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 license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

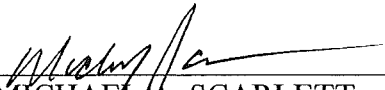
4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education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

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If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: March 6, 2013

  
MICHAEL A. SCARLETT  
Administrative Law Judge  
Office of Administrative Hearings