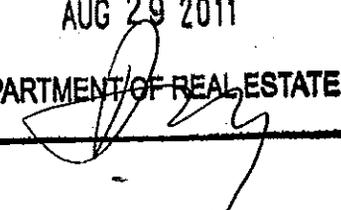


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**FILED**

AUG 29 2011

DEPARTMENT OF REAL ESTATE  
BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 )  
13 MORTGAGE RESTRUCTURING SOLUTIONS INC. ) No. H- 37485 LA  
14 and HARVEY E. GARTE, individually and as )  
15 designated officer of Mortgage Restructuring Solutions Inc., )  
16 Respondents. ) ACCUSATION

17 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State  
18 of California, for cause of Accusation against MORTGAGE RESTRUCTURING SOLUTIONS  
19 INC. and HARVEY E. GARTE, alleges as follows:

20 1.

21 The Complainant, Maria Suarez, acting in her official capacity as a Deputy Real  
22 Estate Commissioner of the State of California, makes this Accusation.

23 2.

24 All references to the "Code" are to the California Business and Professions Code  
25 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

26 ///

27 ///

1 3.

2 License Status

3 A. MORTGAGE RESTRUCTURING SOLUTIONS INC. (MRSI). At all times  
4 mentioned, Respondent MRSI was licensed or had license rights issued by the Department of  
5 Real Estate (Department) as a real estate broker. On August 11, 2008, MRSI was originally  
6 licensed as a corporate real estate broker. Respondent MRSI was authorized to act by and  
7 through Respondent HARVEY E. GARTE as MRSI's designated broker pursuant to Business  
8 and Professions Code (hereinafter Code) Sections 10159.2 and 10211 to be responsible for  
9 ensuring compliance with the Real Estate Law.

10 B. HARVEY E. GARTE (GARTE). At all times mentioned, Respondent  
11 GARTE was licensed or had license rights issued by the Department as a real estate broker. On  
12 August 20, 1998, GARTE was originally licensed as a real estate broker. On August 11, 2008,  
13 GARTE became the designated officer of MRSI.

14 C. MRSI is owned by GARTE, its president and treasurer.

15 Brokerage

16 4.

17 At all times mentioned, in the City of Santa Ana, County of Orange, MRSI and  
18 GARTE acted as real estate brokers conducting licensed activities within the meaning of:

19 A. Code Section 10131(d). Respondents engaged in activities with the public  
20 wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on  
21 real property, wherein such loans were arranged, negotiated, processed and consummated on  
22 behalf of others for compensation or in expectation of compensation and for fees often collected  
23 in advance.

24 B. Code Section 10131(d) and 10131.2. Respondents advertised, solicited and  
25 offered to provide loss mitigation and loan modification services to economically distressed  
26 homeowners seeking adjustments to the terms and conditions of their home loans including, but  
27

1 not limited to, repayment plans, forbearance plans, partial claims, and reduction in principal or  
2 interest, extenuations, foreclosure prevention and short sales.

3 C. During the audit period, Respondents conducted and processed one hundred  
4 ninety nine (199) loan modifications charging an advance fee ranging from \$2,800 to \$3,900 per  
5 homeowner-applicants, for a total collection of advance fees of \$598,680.

6 FIRST CAUSE OF ACCUSATION  
7 (Audit Examination)

8 5.

9 On May 5, 2011, the Department completed an audit examination of the books  
10 and records of MRSI pertaining to the mortgage loan brokerage, loan modification and advance  
11 fee collection activities only described in Paragraph 4, which require a real estate license. The  
12 audit examination covered a period of time beginning on September 1, 2008 and ending on  
13 January 31, 2011. The audit examination revealed violations of the Code and the Regulations as  
14 set forth in the following paragraphs, and more fully discussed in Audit Report LA 100076 and  
15 the exhibits and work papers attached to said audit report.

16 General and Trust Accounts

17 6.

18 At all times mentioned, in connection with the activities described in Paragraph 4,  
19 above, MRSI and GARTE accepted or received funds including funds in trust (hereinafter "trust  
20 funds") principally in the form of advance fees collected from economically distressed  
21 homeowner-applicants for loan modifications and/or on behalf of actual or prospective parties,  
22 including lenders and borrowers for loan modifications brokered by MRSI. Thereafter MRSI  
23 made deposits and or disbursements of such trust funds. From time to time herein mentioned  
24 during the audit period, said trust funds were deposited and/or maintained by MRSI in the bank  
25 account as follows:

26 ///

27 ///

1 "Mortgage Restructuring Solutions Inc. (Trust Account)  
2 Account No. xxxxxx66670  
3 Bank of America

(G/A #1)

4 (G/A #1 is MRSI's General account. Although G/A #1 is named as a "Trust Account" it is not.  
5 MRSI did not maintain a trust account).

6 Loan Modification Audit Violations

7 7.

8 In the course of activities described in Paragraphs 4 and 6, above, and during the  
9 examination period described in Paragraph 5, Respondents MRSI and GARTE, acted in violation  
10 of the Code and the Regulations in which Respondents:

11 (a) (1) Permitted, allowed or caused the disbursement of trust funds in the form of  
12 advance fees collected from homeowner-applicants for loan modifications from MRSI's general  
13 operating account, G/A #1, where the disbursement of funds reduced the total of aggregate funds  
14 in G/A #1, to an amount which, on October 10, 2009, the (SAFE Act Initiation Date) (Secure and  
15 Fair Enforcement for Mortgage Licenses), was \$28,432.63, less than the existing aggregate trust  
16 fund liability to every principal who was an owner of said funds, without first obtaining the prior  
17 written consent of the owners of said funds, in violation of Code Section 10145 and Regulations  
18 2832.1.

19 (a) (2) Permitted, allowed or caused the disbursement of trust funds trust funds in  
20 the form of advance fees collected from homeowner-applicants for loan modifications from  
21 MRSI's general operating account, G/A #1, from G/A #1 where the disbursement of funds  
22 reduced the total of aggregate funds in G/A #1, to an amount which, on January 31, 2011, was  
23 \$113,108.62, less than the existing aggregate trust fund liability to every principal who was an  
24 owner of said funds, without first obtaining the prior written consent of the owners of said funds,  
25 in violation of Code Section 10145 and Regulation 2832.1.  
26  
27

1 (b) Prior to March 26, 2009, MRSI and GARTE collected advance fees within the  
2 meaning of Code Section 10026 from homeowners seeking loan modifications wherein MRSI  
3 did not have and thus failed to provide a pre-approved advance fee agreement from the  
4 Department, in violation of Code Section 10085 and Regulation 2970. The subsequent March  
5 26, 2009, advance fee agreement on file with the Department and the advance fee agreement  
6 actually used by Respondents differ in terms and conditions and are not the same.  
7

8 (c)(1) Failed to establish and maintain a trust account at a bank or other  
9 recognized financial institution in the name of the broker for deposit of advance fees collected by  
10 MRSI, in violation of Code Section 10146, for the aforesaid homeowner/borrowers.

11 (c) (2) With reference to the lack of an advance fee agreement prior to March 26,  
12 2009, MRSI failed to provide a complete description of services to be rendered provided to each  
13 prospective tenant in 10 point type font and failed to provide an allocation and disbursement of  
14 the amounts collected as the advance fee, in violation of Code Section 10146 and Regulation  
15 2972.  
16

17 (d) Mixed and commingled trust funds and personal funds by depositing advance  
18 fees received from homeowner-applicants into G/A #1, in violation of Code Sections 10145,  
19 10176(a) and 10176(e) and Regulation 2832.  
20

21 (e) Converted trust funds by depositing trust funds in the form of advance fees  
22 solicited from homeowner-applicants into G/A #1. On January 31, 2011, the minimum bank  
23 balance of G/A #1, was \$10,878.24. Whereas, G/A #1's accountability should have been  
24 \$138,825.02. MRSI reduced the balance in G/A #1, to an amount less than the amount of the  
25 trust funds deposited, constituting conversion, in violation of Code Sections 10145 and 10176(i).  
26  
27

Pursuant to the "Fee and Services Agreement" and the "Agreement for Loan Modification Services" loan modification negotiation services which require a real estate license and which would be not considered fully performed until MRSI successfully obtained a loan modification from the lender. No loan modifications were obtained from the lender by the close of the audit examination on January 31, 2011.

Additionally, Respondents paid operating expenses such as rent and advertising costs and also paid GARTE from trust funds that were deposited into MRSI's general operating account before the services contracted for by the homeowner-applicants were completed.

Table: Unauthorized and Conversion of Unearned Loan Modification Fees

<u>Date</u>	<u>Check No.</u>	<u>Payee</u>	<u>Amount</u>	<u>Memo</u>
1/3/2011	5321	Colton	\$ 3,527.50	Rent
1/7/2011	5325	Capital One	\$ 2,458.72	Advertising
1/7/2011	5326	A/E	\$ 3,500.00	Advertising
1/8/2011	5331	A/E	\$ 15,060.65	Advertising
1/17/2011	5339	Chase	\$ 20,000.00	Advertising
1/28/2011	5340	Capital One	\$ 22,054.21	Advertising
1/21/2011	5342	Citi	\$ 17,223.94	Advertising
1/29/2011	5358	Harvey Garte	\$ 10,000.00	Due to Shareholder
12/15/2010	5293	Chase	\$ 25,000.00	Advertising
12/8/2010	5286	Chase	\$ 20,000.00	Advertising
Total:			<u>\$138,825.02</u>	

(f) Failed to maintain a control record in the form of a columnar record in chronological order of all trust funds including advance fees collected, deposited and disbursed in connection with loan modification services, in violation of Code Section 10145 and Regulation 2831.

///

1 (g) Failed to maintain a separate record for each beneficiary or transaction,  
2 thereby failing to account for all trust funds in the form of advance fees collected, deposited and  
3 disbursed, in violation of Code Section 10145 and Regulation 2831.1.

4 (h) Claimed, charged and collected advance fees after October 10, 2009, the  
5 SAFE ACT Initiation Date, for negotiating, arranging and/or offering to broker mortgage loans  
6 and loan modifications and other forms of mortgage loan forbearance for fees paid by the  
7 borrowers after October 10, 2009. Respondents received and collected advance fees totaling  
8 \$57,850.00 from homeowners before MRSI had fully performed each and every service for  
9 which MRSI had contracted to perform or represented that would be performed during the period  
10 of October 11, 2009 to January 31, 2011, in violation of Code Sections 10085.6, 10146, 10145  
11 and Regulation 2832.

12 (i) SAFE ACT (Notice of Loan Activity). MRSI acted as a residential mortgage  
13 loan originator (MLO) during the audit period but failed to notify the Department in writing by  
14 January 31, 2010, in violation of Code Sections 10166.02(a) and (b) and MRSI failed to maintain  
15 a real estate license endorsement as an MLO when required.

16 (j) (Disclosure of Licensed Status in Advertising). Failed to provide MRSI's  
17 license number upon MRSI's first point of contact with the public including homeowners seeking  
18 loan modifications, in violation of Code Section 10140.6 and Regulation 2773.

19 (k) Failed to retain all records of MRSI's activity during the audit period requiring  
20 a real estate broker license, including the deposit records of G/A 1, such as deposit receipts,  
21 related to advance fees MRSI collected related to its loan modification services, in violation of  
22 Code Section 10148. MSRI did not retain the document pertaining to the completion date of  
23 MRSI's loan modification "submission package" to the lender.  
24  
25  
26  
27

1 (l) GARTE failed to exercise reasonable control and supervision over the activity  
2 of MRSI to secure full compliance with the Real Estate Law, including but not limited to trust  
3 fund handling, mortgage loan brokering, loan modification services and advance fee charge and  
4 collection. Additionally, GARTE had no system in place for regularly monitoring his  
5 compliance with the Real Estate Law especially in regard to establishing, systems, policies and  
6 procedures to review trust fund handling especially including advance fee deposits received from  
7 homeowner-applicants seeking loan modification services, in violation of Code Sections  
8 10159.2, 10177(h) and Regulation 2725.  
9

10 Discipline Statutes and Regulations

11 8.

12 The conduct of Respondents MRSI and GARTE, described in Paragraph 7, above,  
13 violated the Code and the Regulations as set forth below:  
14

15 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
16 7(a)	Code Section 10145 and Regulation 2832.1
17 7(b)	Code Section 10085 and Regulation 2970
18 7(c)	Code Section 10146 and Regulation 2972
19 7(d)	Code Section 10145, 10176(a) and 10176(e) and Regulation 2832
20 7(e)	Code Section 10145 and 10176(i)
21 7(f)	Code Section 10145 and Regulation 2831
22 7(g)	Code Section 10145 and Regulation 2831.1
23 7(h)	Code Section 10085.6, 10145 and 10146 and Regulation 2832
24 7(i)	Code Section 10166.02(a) & (b)
25 7(j)	Code Section 10140.6 and Regulation 2773
26 7(k)	Code Section 10148
27 7(l)	Code Section 10159.2 and 10177(h) and Regulation 2725 ( GARTE)

1 The foregoing violations constitutes cause for discipline of the real estate license and license  
2 rights of MRSI and GARTE, under the provisions of Code Sections 10145, 10176(a), 10176(e),  
3 10176(i), 10177(d) and/or 10177(g).

4 SECOND CAUSE OF ACCUSATION  
5 (Loan Modification Services)

6 9.

7 At all times mentioned herein, Respondents MRSI and GARTE engaged in the  
8 business of a loan modification services and, an advance fee brokerage requiring a real estate  
9 license to operate, within the definition of Code Sections 10131(d) and 10131.2.

10 General Allegations

11 10.

12 During the audit period of September 1, 2008 and January 31, 2001, continuing  
13 thereafter to date, MRSI and GARTE, solicited economically distressed homeowners facing  
14 foreclosure and eviction from their homes, offered loss mitigation and loan modification  
15 services, charged, claimed and collected advance fees for services not rendered.

16 Specific Allegations

17 11.

18 Respondents MRSI and GARTE offered loss mitigation and loan modification  
19 services to homeowner-applicants seeking downward adjustments or payment extenuations to  
20 their home mortgages. Respondents collected advanced fees from said homeowner- applicants  
21 without possessing a pre-approved advance fee agreement from the Department until April 3,  
22 2009. Thereafter, Respondents failed to obtain the loan modification services to the borrowers.

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1 Table: Advance Fees Collected for Loan Modification Services

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<b>Complainant:</b>	<b>Contract Date</b>	<b>Advance Fee Pd</b>	<b>Loan Mod Status</b>	<b>Advance Fee Refund?</b>
<b>Prior to No objection</b>				
Lidia Rosales	Nov-08	\$ 2,800.00	Not obtained	None
<b>Ltr of No objection Rec'd</b>				
Robert Bilas	Sep-09	\$ 3,100.00	Not obtained	None
David Murdock	Sep-09	\$ 3,500.00	Not obtained	None
<b>After SB94</b>				
David Ziemer	11/5/2009	\$ 2,600.00	Not obtained	None
Bradden Mendelson	11/29/2009	\$ 3,100.00	Not obtained	None
Mario Serrano	Jun-10	\$ 3,600.00	Not obtained	None
Donald P. Sciarappo	8/30/2010	\$ 3,600.00	Not obtained	None
Joel DeGuzman	11/1/2009	\$ 2,500.00	Not obtained	None
Bradley Brockmeyer	3/17/2010	\$ 2,900.00	Not obtained	None
Thomas Miller	6/30/2010	\$ 1,550.00	Not obtained	None
Barbara Ann Erickson	10/20/2009	\$ 5,600.00	Not obtained	None
Shahram Borjkhani	4/11/2011	\$ 3,600.00	Not obtained	None
<b>Total</b>		<b>\$38,450.00</b>		

22

23 Loan Modification Violations and Disciplinary Statutes

24 12.

25 The conduct of Respondents MRSI and GARTE violated the Code and the

26 Regulations as set forth below.

27

1 13.

2 13(a) Code Section 10176(a) for substantial misrepresentation of loan  
3 modification services contracted for but not provided.

4 13(b) Code Section 10176(b) for making false promises of a character likely to  
5 influence, persuade or induce the tabled homeowner-applicants to pay advance fees for loan  
6 modification services contracted for but not provided.

7 13(c) Code Section 10177(d) for violation of the Real Estate Law.

8 13(d) Code Section 10177(g) for negligence.

9  
10 THIRD CAUSE OF ACCUSATION

(Negligence)

11 14.

12 The overall conduct of Respondents MRSI and GARTE constitutes negligence  
13 and is cause for discipline of the real estate license and license rights of said Respondents  
14 pursuant to the provisions of Code Section 10177(g).

15 FOURTH CAUSE OF ACCUSATION

(Fiduciary Duty)

17 15.

18 The conduct, acts and omissions of Respondents MRSI and GARTE constitute a  
19 breach of fiduciary duty, owed the homeowners contracting for loan modification services, of  
20 good faith, trust, confidence and candor, within the scope of their contractual relationship, in  
21 violation of Code Sections 10176(i) and/or 10177(g) and constitutes cause for discipline of the  
22 real estate license and license rights of said Respondents pursuant to the provisions of Code  
23 Section 10177(g).

24 ///

25 ///

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1 FIFTH CAUSE OF ACCUSATION  
2 (Supervision and Compliance)

3 16.

4 The overall conduct of Respondent GARTE constitutes a failure on said  
5 Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable  
6 supervision and control over the licensed activities of MRSI as required by Code Section 10159.2  
7 and Regulation 2725, and to keep MRSI in compliance with the Real Estate Law, with specific  
8 regard to trust fund and advance fee handling, mortgage and loan brokering and loan  
9 modification services, and is cause for discipline of the real estate license and license rights of  
10 Respondent pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

11 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
12 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
13 action against the license and license rights of Respondents MORTGAGE RESTRUCTURING  
14 SOLUTIONS INC. and HARVEY E. GARTE, under the Real Estate Law (Part 1 of Division 4  
15 of the Business and Professions Code) and for such other and further relief as may be proper  
16 under other applicable provisions of law including restitution of advanced fees paid for unearned  
17 loan modifications, and for costs of audit.

18  
19 Dated at Los Angeles, California

20  
21 this

24 August 2011

22   
Deputy Real Estate Commissioner

23  
24 cc: Mortgage Restructuring Solutions Inc.  
25 c/o Harvey E. Garte D.O.  
26 Maria Suarez  
27 Sacto  
Enforcement - Amelia Nunez  
Audits - Gina King