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FILED

OCT 21 2010

DEPARTMENT OF REAL ESTATE
BY: 

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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11 To:) No. H-36877 LA
12)
13 ADVOCATE FOR FAIR LENDING,) ORDER TO DESIST
14 LLC; MARK ALAN SHOEMAKER;) AND REFRAIN
15 and MARIANA RODRIGUEZ,) (B&P Code Section 10086)
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16 The Commissioner ("Commissioner") of the California
17 Department of Real Estate ("Department") caused an investigation
18 to be made of the activities of ADVOCATE FOR FAIR LENDING, LLC
19 ("ADVOCATE"), MARK ALAN SHOEMAKER ("SHOEMAKER"), and MARIANA
20 RODRIGUEZ ("RODRIGUEZ"), and has determined that each of them
21 engaged in or is engaging in acts or practices constituting
22 violations of the California Business and Professions Code
23 ("Code") and/or Title 10, California Code of Regulations
24 ("Regulations"). Said parties are engaging in the business of,
25 acting in the capacity of, advertising, or assuming to act, as a
26 real estate broker in the State of California within the meaning
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1 of Section 10131(d) (soliciting borrowers or lenders or
2 negotiating loans) and Section 10131.2 (advance fee handling).
3 Based on the findings of that investigation, as set forth below,
4 the Commissioner hereby issues the following Findings of Fact and
5 Desist and Refrain Order pursuant to Section 10086 of the Code.

6 FINDINGS OF FACT

7 1. SHOEMAKER is presently licensed and/or has
8 license rights under the Real Estate Law (Part 1 of Division 4
9 of the Code) as a real estate broker.

10 2. At no time herein mentioned have ADVOCATE or
11 RODRIGUEZ been licensed by the Department in any capacity.

12 3. Whenever acts referred to below are attributed to
13 SHOEMAKER, those acts are alleged to have been done by SHOEMAKER,
14 acting by himself, or by and/or through one or more agents,
15 associates, affiliates, and/or co-conspirators, including but not
16 limited to each of those named herein, and using the names
17 ADVOCATE, or any fictitious name unknown at this time.

18 4. SHOEMAKER employed and/or compensated individuals,
19 including those named herein, who were not licensed as real
20 estate salespersons or as real estate brokers to perform some or
21 all of the services alleged in Paragraph 7, below.

22 5. SHOEMAKER engaged in the business of claiming,
23 demanding, charging, receiving, collecting or contracting for the
24 collection of an advance fee, as defined by Code Section 10026,
25 including but not limited to the activities described in
26 Paragraph 7, below.
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1 6. SHOEMAKER failed to submit the advance fee
2 agreements and internet advertising referred to in Paragraph 7,
3 below, to the Commissioner ten days before using them.

4 7. At the times set forth below SHOEMAKER engaged in
5 the business of, acted in the capacity of, or advertised a real
6 estate loan service and advance fee brokerage offering to perform
7 solicitation, negotiation and modification of loans secured by
8 liens on real property for compensation or in expectation of
9 compensation and for fees collected in advance including, but not
10 limited to, the following:

11 a. On or about May 15, 2008, Luisana G. paid an
12 advance fee of \$1,742.30 to Luis Enrique Bahia on behalf of
13 Respondent SHOEMAKER, doing business as ADVOCATE. At the time
14 mentioned Luis Enrique Bahia was a licensed real estate
15 salesperson employed by a broker other than Respondent
16 SHOEMAKER. The advance fee was collected pursuant to the
17 provisions of an agreement pertaining to loan solicitation,
18 negotiation, and modification services to be provided by
19 Respondent SHOEMAKER, doing business as ADVOCATE, with respect
20 to a loan secured by real property.

21 b. On or about December 5, 2008, Jose H. paid an
22 advance fee of \$4,303.92 to Arturo Fernandez on behalf of
23 Respondent SHOEMAKER, doing business as ADVOCATE. At the time
24 mentioned Arturo Fernandez was a licensed real estate
25 salesperson employed by a broker other than Respondent
26 SHOEMAKER. The advance fee was collected pursuant to the
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1 provisions of an agreement pertaining to loan solicitation,
2 negotiation, and modification services to be provided by
3 Respondent SHOEMAKER through ADVOCATE with respect to loans
4 secured by real property located in Mira Loma, California and
5 Tucson, Arizona.

6 c. On or about December 17, 2008, Armando C. paid an
7 advance fee of \$4,200 to RODRIGUEZ on behalf of Respondent
8 SHOEMAKER, doing business as ADVOCATE. The advance fee was
9 collected pursuant to the provisions of an agreement pertaining
10 to loan solicitation, negotiation, and modification services to
11 be provided with respect to a loan secured by real property
12 located in Oxnard, California. RODRIGUEZ represented to Armando
13 C. that the services would be provided by ADVOCATE.

14 d. On or about November 22, 2008, Diana C. paid an
15 advance fee of \$2,621.00 to SHOEMAKER, doing business as
16 ADVOCATE. The advance fee was collected pursuant to the
17 provisions of an agreement pertaining to loan solicitation,
18 negotiation, and modification services to be provided by
19 Respondent SHOEMAKER through ADVOCATE with respect to a loan
20 secured by real property located in Oxnard, California.

22 e. In or around August, 2008, ADVOCATE conducted
23 internet advertising via a website which stated that ADVOCATE
24 would, among other things, negotiate with a homeowners lender to
25 force it to modify mortgage terms, reduce rates, forgive debt,
26 rescind the mortgage or allow the consumer to walk away and get
27 back all the money put into the home, or force a short sale.

CONCLUSIONS OF LAW

1 8. The activities described in Paragraph 7, above,
2
3 require a real estate license under Section 10131(d) and Section
4 10131.2 of the Code.

5 9. Based on the information contained in Paragraph
6 7, above, ADVOCATE and RODRIGUEZ performed and/or participated
7 in loan solicitation, negotiation and modification activities
8 which require a real estate broker license under the provisions
9 of Code Sections 10131(d) and 10131.2 during a period of time
10 when they were not licensed by the Department as a real estate
11 broker nor employed as a real estate salesperson by the broker
12 on whose behalf the activities were performed in violation of
13 Section 10130 of the Code.

14 10. Based on the information contained in Paragraph
15 7, above, SHOEMAKER violated Section 10137 of the Code by
16 employing and/or compensating individuals who were not licensed
17 as a real estate salesperson or as a broker to perform
18 activities requiring a real estate license.

19 11. Based on the information contained in Paragraphs
20 5, 6 and 7, above, SHOEMAKER collected fees pursuant to an
21 agreement which constitutes an advance fee agreement within the
22 meaning of Code Section 10085.

23 12. Based on the information contained in Paragraphs
24 5, 6 and 7, above, the failure by SHOEMAKER to submit the
25 advance fee agreement and radio advertising to the Commissioner
26 ten days before using it constitutes a violation of Code Section
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10085 and Section 2970 of the Regulations.

DESIST AND REFRAIN ORDER

Based on the Findings of Fact and Conclusions of Law stated herein:

1. IT IS HEREBY ORDERED that SHOEMAKER, whether doing business under the name ADVOCATE, or any other names, or any fictitious name:

(i) Immediately desist and refrain from charging, demanding, claiming, collecting and/or receiving advance fees, as that term is defined in Section 10026 of the Code, in any form, and under any conditions, with respect to the performance of loan modification or any other form of mortgage loan forbearance services in connection with loans on residential property containing four or fewer dwelling units (Code Section 10085.6).

(ii) Immediately desist and refrain from charging, demanding, claiming, collecting and/or receiving advance fees, as that term is defined in Section 10026 of the Code, for any of the other real estate related services offered to others, unless and until SHOEMAKER demonstrates and provides evidence satisfactory to the Commissioner that he:

(a) has an advance fee agreement which has been submitted to the Department and which is in compliance with Section 10085 of the Code and Section 2970 of the Regulations;

1 (b) has placed all previously collected advance fees
2 into a trust account for that purpose and is in compliance with
3 Section 10146 of the Code; and

4 (c) has provided an accounting to trust fund owner-
5 beneficiaries from whom advance fees have previously been
6 collected in compliance with Code Section 10146 and Section 2972
7 of the Regulations.

8 2. SHOEMAKER immediately desist and refrain from
9 employing or compensating any person for performing any act for
10 which a real estate license is required unless that person is
11 licensed as a real estate broker, or as a real estate salesperson
12 licensed under the broker employing or compensating him. In
13 particular, SHOEMAKER is ordered to desist and refrain from:

14 (i) employing or compensating any person who does not
15 hold a real estate license from soliciting borrowers and/or
16 performing services for borrowers or lenders in connection with
17 loans secured directly or collaterally by one or more liens on
18 real property.

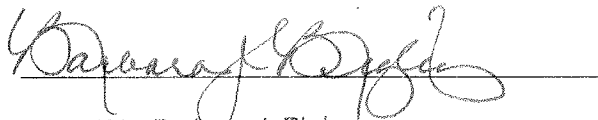
19 3. IT IS HEREBY ORDERED that ADVOCATE FOR FAIR
20 LENDING, LLC and MARIANA RODRIGUEZ, whether doing business under
21 their own names, or any other names, or any fictitious name, ARE
22 HEREBY ORDERED to immediately desist and refrain from performing
23 any acts within the State of California for which a real estate
24 broker license is required. In particular each of them is
25 ORDERED TO DESIST AND REFRAIN from:
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1 (i) charging, demanding, claiming, collecting and/or
2 receiving advance fees, as that term is defined in Section 10026
3 of the Code, in any form, and under any conditions, with respect
4 to the performance of loan modifications or any other form of
5 mortgage loan forbearance service in connection with loans on
6 residential property containing four or fewer dwelling units
7 (Code Section 10085.6); and

8 (ii) charging, demanding, claiming, collecting and/or
9 receiving advance fees, as that term is defined in Section 10026
10 of the Code, for any other real estate related services offered
11 by them to others.

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14 DATED: 10/19, 2010.

15 JEFF DAVI
16 Real Estate Commissioner

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19 BY: Barbara J. Bigby
20 Chief Deputy Commissioner

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22 **Notice:** Business and Professions Code Section 10139 provides
23 that "Any person acting as a real estate broker or real estate
24 salesperson without a license or who advertises using words
25 indicating that he or she is a real estate broker without being
26 so licensed shall be guilty of a public offense punishable by a
27 fine not exceeding twenty thousand dollars (\$20,000), or by
imprisonment in the county jail for a term not to exceed six
months, or by both fine and imprisonment; or if a corporation, be
punished by a fine not exceeding sixty thousand dollars
(\$60,000)."

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