

1 DEPARTMENT OF REAL ESTATE
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FILED

APR 21 2010

DEPARTMENT OF REAL ESTATE

By K. Contreras

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

11 * * *

12 TO:)
13)
14 HERIBERTO AVILA, JR.,) NO. H-2478 FR
15 AVILA VENTURE PARTNERS INC.,)
16 21ST COLONIAL REAL ESTATE,) ORDER TO DESIST AND REFRAIN
17 21ST COLONIAL MORTGAGE,) (B & P Code Section 10086)
18 NATIONAL MORTGAGE BAILOUT INC.,)
19 and SINGER & VENTURA, LLP.)

17 The Commissioner (Commissioner) of the California Department of Real Estate
18 (Department) caused an investigation to be made of the activities HERIBERTO AVILA, JR.
19 (AVILA), AVILA VENTURE PARTNERS INC. (AVPI), 21ST COLONIAL REAL ESTATE
20 (21 CRE), 21ST COLONIAL MORTGAGE (21 CM), NATIONAL MORTGAGE BAILOUT
21 INC. (NMBOI), and SINGER & VENTURA, LLP (S & V) (collectively referred to as
22 "Respondents"). As a result of the investigation, the Commissioner has determined that
23 Respondents have engaged in, are engaging in, or are attempting to engage in, acts or practices
24 constituting violations of the California Business and Professions Code (Code) and/or Title 10,
25 Chapter 6, California Code of Regulations (Regulations), including engaging in the business of,
26 acting in the capacity of, and/or advertising or assuming to act as, real estate brokers in the State
27 of California within the meaning of Section 10131(d) (performing services for borrowers in

1 connection with loans secured by real property) of the Code. Additionally, the Commissioner has
2 determined that Respondents have violated Sections 10130 (unlicensed activity), 10131.2
3 (advance fees), 10085 (advanced fee agreements), 10085.5 (advance fee payments), 10146
4 (depositing advanced fees into a trust account), 10176(a) (misrepresentation), (b) (false
5 promises), (c) (continued and flagrant course of misrepresentation and/or making false promises),
6 and (i) (fraud and dishonest dealing by licensee), and 10177(d) (violating the real estate law), (g)
7 (negligence) and/or (j) (fraud and dishonest dealing) of the Code and Sections 2970 (advance fee
8 materials) and 2972 (accounting content) of the Regulations. Based on the investigation, the
9 Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist and
10 Refrain Order under the authority of Section 10086 of the Code.

11 Whenever acts referred to below are attributed to AVILA, AVPI, 21 CRE, 21 CM,
12 NMBOI, and S & V those acts are alleged to have been done by AVILA, AVPI, 21 CRE, 21 CM,
13 NMBOI, and S & V acting by themselves, or by and/or through one or more agents, associates,
14 affiliates, and/or co-conspirators, known or unknown.

15 FINDINGS OF FACT

16
17 1. AVILA is not now, and has never been, licensed by the Department in any
18 capacity. Effective March 25, 2009, in Case No. H-2305 FR, the Real Estate Commissioner
19 denied AVILA's application for a real estate salesperson license.

20 2. AVPI has been licensed by the Department as a real estate broker since
21 June 28, 2006; said license will expire June 27, 2010.

22 3. 21 CRE is a dba of AVPI.

23 4. 21 CM is a dba of AVPI.

24 5. NMBOI is not now, and has never been, licensed by the Department in any
25 capacity.

26 6. S & V is not now, and has never been, licensed by the Department in any
27 capacity.

1 7. During the period of time set out below, AVILA, AVPI, 21 CRE, 21 CM,
2 NMBOI, and S & V, solicited borrowers and negotiated to do one or more of the following acts
3 for another or others, for or in expectation of compensation: negotiate one or more loans for, or
4 perform services for, borrowers and/or lenders in connection with loans secured directly or
5 collaterally by one or more liens on real property; and charge, demand or collect an advance fee
6 for any of the services offered.

7 Jose L. Ponce Transaction

8 8. On about January 29, 2009, AVPI, acting through AVILA dba 21 CM, met
9 with and solicited Jose L. Ponce (Ponce) to engage in loan modification services to save Ponce's
10 home on 1375 E. Millard Way, Dinuba, CA, from being lost in foreclosure.

11 9. In furtherance of AVPI's plan and scheme to provide loan modification
12 services to Ponce, AVILA, assuring Ponce that he would obtain an affordable loan modification
13 within 30 to 90 days, requested and collected the following advance fees from Ponce:

<u>Date</u>	<u>Amount</u>	<u>On Behalf of</u>
1/29/09	\$3,500	NMBO;
1/29/09	\$1,500	S & V;
2/8/09	\$1,500	S & V; and,
3/27/09	\$250	S & V.

14 10. AVILA failed to provide a successful and sustainable loan modification.

15 11. Between about March 28, 2009 and March 31, 2009, upon the request of
16 Ponce for a return of the advance fees, AVILA refused to return the advanced fees to Ponce.
17

18 AVILA's solicitation of Department employee Rene Esquivel

19 12. On about August 25, 2009, AVILA, on behalf of AVPI dba 21 CM, Fresno,
20 California, solicited Department employee, Rene Esquivel (Esquivel), to engage AVPI and its
21 employees and agents to represent Esquivel in negotiating with his lender, a loan modification of
22 one or more loans which was represented to AVILA to be in arrears or in default. In connection
23 with that solicitation, AVILA represented to Esquivel that he had obtained hundreds of loan
24 modifications and that an advance fee in the amount of \$3,500 would be charged and collected
25
26
27

1 from Esquivel for services to be performed by AVPI and S & V in obtaining a modification of
2 loan terms for one or more loans secured by real property owned by Esquivel.

3 CONCLUSIONS OF LAW

4 1. Based on the Findings of Fact contained in Paragraphs 1 through 12, AVILA,
5 NMBOI, and S & V, acting by themselves, or by and/or through one or more agents, associates,
6 affiliates, and/or co-conspirators, solicited borrowers and the Department's own employee to
7 perform services for those borrowers and said employee and their lenders in connection with
8 loans secured directly or collaterally by one or more liens on real property, and charged, demanded
9 or collected advance fees, which acts require a real estate broker license under Sections 10130,
10 10131(d), 10131.2, 10085, 10085.5 and 10146 of the Code, during a period of time when
11 AVILA, NMBOI, and S & V were not licensed by the Department as real estate brokers.

12 2. Based on the Findings of Fact contained in Paragraphs 1 through 12, AVPI,
13 21 CRE, and 21 CM, acting by themselves, or by and/or through one or more agents, associates,
14 affiliates, and/or co-conspirators, known or unknown, solicited borrowers and performed services
15 for those borrowers and/or those borrowers' lenders in connection with loans secured directly or
16 collaterally by one or more liens on real property, and charged, demanded or collected advance
17 fees for the services to be provided, in violation of Sections 10131.2, 10085, 10085.5, 10146,
18 10176(a), (b), (c), and (i), and 10177(d), (g) and/or (j) of the Code, and Sections 2970 and 2972
19 of the Regulations.

20 DESIST AND REFRAIN ORDER

21 Based on the Findings of Fact and Conclusions of Law stated herein, you,
22 HERIBERTO AVILA, JR., NATIONAL MORTGAGE BAILOUT INC., and SINGER &
23 VENTURA, LLP, whether doing business under your own names, or any other names or
24 fictitious names, ARE HEREBY ORDERED to: immediately desist and refrain from performing
25 any acts within the State of California for which a real estate broker license is required until and
26 unless you have obtained a broker license. And, in particular, you are ordered to desist and
27 refrain from soliciting borrowers and/or performing services for borrowers or lenders in

1 connection with loans secured directly or collaterally by one or more liens on real property, and
2 from charging, demanding, or collecting advance fees under any conditions in connection with
3 loan modification or other foreclosure rescue services..

4 Based on the Findings of Fact and Conclusions of Law stated herein, you,
5 AVILA VENTURE PARTNERS INC., 21st COLONIAL REAL ESTATE, and 21st COLONIAL
6 MORTGAGE, whether doing business under your own names, or any other names or fictitious
7 names, ARE HEREBY ORDERED to: immediately desist and refrain from charging, demanding,
8 or collecting advance fees for any of the services you offer to others under any conditions in
9 connection with loan modification or other foreclosure rescue services.

10 DATED: _____ 4/14, 2010

11 JEFF DAVI
12 Real Estate Commissioner

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15 **-NOTICE-**

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

22 cc:

21 22 23 24	HERIBERTO AVILA, JR. 1612 11st Street Reedley, CA 93654 <hr/> NATIONAL MORTGAGE BAILOUT INC. ATTN: PEDRO GALVAN JR. 1612 11st Street Reedley, CA 93654	AVILA VENTURE PARTNERS INC. dba 21 st COLONIAL REAL ESTATE dba 21 st COLONIAL MORTGAGE ATTN: PEDRO GALVAN JR. 1612 11st Street Reedley, CA 93654
25 26 27	SINGER & VENTURA, LLP Attn: Agent for Service of Process 4431 S. Eastern Ave., Ste 1 Las Vegas, NV 89119	SINGER & VENTURA, LLP Attn: Daniel I. Singer/Agent for Service Law Offices of Daniel I. Singer 4870 Santa Monica Avenue, Suite 2B San Diego, CA 92107

TTY MFC/kc