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FILED

MAR 15 2012

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Accusation of No. H-36442 LA

AMERIFUND INC.; AMERIFUND SMART,
HOMES INC.; and RUSSELL J. MASSRO,
individually and as designated
officer of Amerifund Inc. and
Amerifund Smart Homes Inc.,

Respondents.

AMENDED ORDER ACCEPTING VOLUNTARY SURRENDER
OF REAL ESTATE LICENSE

(Nunc Pro Tunc)

19 On January 28, 2010, an Accusation was filed in this
matter against Respondent RUSSELL J. MASSRO.

 On November 22, 2010, Respondent petitioned the
22 Commissioner to voluntarily surrender his real estate broker
23 license and license rights pursuant to Section 10100.2 of the
Business and Professions Code.

 IT IS HEREBY ORDERED that Respondent RUSSELL J.
MASSRO's petition for voluntary surrender of his real estate
broker license and license rights is accepted as of the effective

1 the effective date of this Order as set forth below, based upon
2 the understanding and agreement expressed in Respondent's
3 Declaration dated November 22, 2010 (attached as Exhibit "A"
4 hereto). Respondent's license certificate(s), pocket card(s) and
5 any branch office license certificate(s) shall be sent to the
6 below listed address so that they reach the Department on or
7 before the effective date of this Order:

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

12 This Order, nunc pro tunc to December 30, 2010, shall
13 become effective immediately.

14 3/12/12

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16 BARBARA J. BIGBY
17 Acting Real Estate Commissioner
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FILED

JAN 20 2011

DEPARTMENT OF REAL ESTATE
BY: [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE.

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

AMERIFUND INC.; AMERIFUND SMART
HOMES INC.; and RUSSELL J. MASSRO,
individually and as designated
officer of Amerifund Inc. and
Amerifund Smart Homes Inc.,)

Respondents..)

No. H-36442 LA

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On February 26, 2010, an Accusation was filed in this
matter against Respondent BARAK VOLNER.

On November 22, 2010, Respondent petitioned the
Commissioner to voluntarily surrender his real estate broker
license rights pursuant to Section 10100.2 of the Business and
Professions Code.

IT IS HEREBY ORDERED that Respondent RUSSELL J.
MASSRO's petition for voluntary surrender of his real estate
broker license rights is accepted as of the effective date of

1 this Order as set forth below, based upon the understanding and
2 agreement expressed in Respondent's Declaration dated November
3 22, 2010, (attached as Exhibit "A" hereto). Respondent's license
4 certificate, pocket card and any branch office license
5 certificate shall be sent to the below listed address so that
6 they reach the Department on or before the effective date of this
7 Order:

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

13 This Order shall become effective at 12 o'clock noon on
14 February 9, 2011.

15 DATED: 12/30, 2010

16 JEFF DAVIS
17 Real Estate Commissioner
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EXHIBIT "A"

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

AMERIFUND INC.; AMERIFUND SMART)
HOMES INC.; and RUSSELL J. MASSRO,)
individually and as designated)
officer of Amerifund Inc. and)
Amerifund Smart Homes Inc.,)

No. H-36442 LA

Respondents.)

DECLARATION

My name is RUSSELL J. MASSRO and I am currently
licensed as a real estate broker and/or have license rights with
respect to said license. I am representing myself.

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), I wish to voluntarily
surrender my real estate license(s) issued by the Department of
Real Estate ("Department"), pursuant to Business and Professions
Code Section 10100.2.

1 I understand that by so voluntarily surrendering my
2 license(s), I may be relicensed as a broker or as a salesperson
3 only by petitioning for reinstatement pursuant to Section 11522
4 of the Government Code. I also understand that by so voluntarily
5 surrendering my license(s), I agree to the following:

6 1. The filing of this Declaration shall be deemed as
7 my petition for voluntary surrender.

8 2. It shall also be deemed to be an understanding and
9 agreement by me that I waive all rights I have to require the
10 Commissioner to prove the allegations contained in the Accusation
11 filed in this matter at a hearing held in accordance with the
12 provisions of the Administrative Procedure Act (Government Code
13 Sections 11400 et seq.), and that I also waive other rights
14 afforded to me in connection with the hearing such as the right
15 to discovery, the right to present evidence in defense of the
16 allegations in the Accusation and the right to cross-examine
17 witnesses.

18 3. I further agree that upon acceptance by the
19 Commissioner, as evidenced by an appropriate order, all
20 affidavits and all relevant evidence obtained by the Department
21 in this matter prior to the Commissioner's acceptance, and all
22 allegations contained in the Accusation filed in the Department
23 Case No. H-36642 LA, excluding California Business and
24 Professions Code Sections 10176(a), 10176(b) and 10176(c). may be
25 considered by the Department to be true and correct for the
26 purpose of deciding whether to grant relicensure or reinstatement
27 pursuant to Government Code Section 11522.

4. I freely and voluntarily surrender all my licenses and license rights under the Real Estate Law.

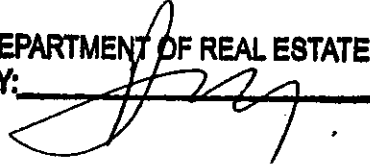
I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed on Nov 22, 2010, at LA Verno, CA, California.


RUSSELL J. MASSRO

FILED

JAN 20 2011

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) No. H-36442 LA
)
AMERIFUND INC.; AMERIFUND SMART)
HOMES INC.; and RUSSELL J. MASSRO,)
individually and as designated)
officer of Amerifund Inc. and)
Amerifund Smart Homes Inc.,)
)
Respondents.)

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On January 28, 2010, an Accusation was filed in this matter against Respondents AMERIFUND INC. and AMERIFUND SMART HOMES INC.

On November 22, 2010, Respondents petitioned the Commissioner to voluntarily surrender their real estate broker licenses rights pursuant to Section 10100.2 of the Business and Professions Code.

///

1 IT IS HEREBY ORDERED that AMERIFUND INC. and AMERIFUND
2 SMART HOMES INC. petition for voluntary surrender of their real
3 estate broker license rights is accepted as of the effective
4 date of this Order as set forth below, based upon the
5 understanding and agreement expressed in Respondent's
6 Declaration dated November 22, 2010, (attached as Exhibit "A"
7 hereto). Respondents' license certificate, pocket card and any
8 branch office license certificate shall be sent to the below
9 listed address so that they reach the Department on or before
10 the effective date of this Order:

11 Department of Real Estate
12 Atten: Licensing Flag Section
13 P.O. Box 187000
14 Sacramento, CA 95818-7000

15 This Order shall become effective at 12 o'clock noon on

16 February 9, 2011.

17 DATED: 12/31, 2010

18 JEFF DAVI
19 Real Estate Commissioner
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EXHIBIT "A"

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

AMERIFUND INC.; AMERIFUND SMART)
HOMES INC.; and RUSSELL J. MASSRO,)
individually and as designated)
officer of Amerifund Inc. and)
Amerifund Smart Homes Inc.,)

No. H-36442 LA

Respondents.)

DECLARATION

My name is Russell J. Massro and I am the designated officer of AMERIFUND INC. and AMERIFUND SMART HOMES INC. which are licensed as real estate brokers and/or have license rights with respect to said licenses. I am authorized to sign this declaration on behalf of AMERIFUND INC. and AMERIFUND SMART HOMES INC.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedures Act (Sections 11400 et seq., of the Government Code) AMERIFUND INC.

1 and AMERIFUND SMART HOMES INC. wish to voluntarily surrender the
2 real estate licenses issued by the Department of Real Estate
3 ("Department"), pursuant to Business and Professions Code
4 Section 10100.2.

5 I understand that AMERIFUND INC. and AMERIFUND SMART
6 HOMES INC., by so voluntarily surrendering their licenses, can
7 only have them reinstated in accordance with the provisions of
8 Section 11522 of the Government Code. I also understand that by
9 so voluntarily surrendering their license rights, AMERIFUND INC.
10 and AMERIFUND SMART HOMES INC. agree to the following:

11 The filing of this Declaration shall be deemed as
12 their petition for voluntary surrender. It shall also be deemed
13 to be an understanding and agreement by AMERIFUND INC. and
14 AMERIFUND SMART HOMES INC. that, they waive all rights they have
15 to require the Commissioner to prove the allegations contained
16 in the Accusation ("Accusation") filed in this matter at a
17 hearing held in accordance with the provisions of the
18 Administrative Procedures Act (Government Code Sections 11400 et
19 seq.), and that they also waive other rights afforded to them in
20 connection with the hearing such as the right to discovery, the
21 right to present evidence in defense of the allegations in the
22 Accusation and the right to cross examine witnesses.

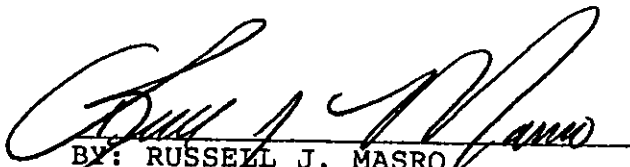
24 I further agree on behalf of AMERIFUND INC. and
25 AMERIFUND SMART HOMES INC. that upon acceptance by the
26 Commissioner, as evidenced by an appropriate order, all
27

1 affidavits and all relevant evidence obtained by the Department
2 in this matter prior to the Commissioner's acceptance, and all
3 allegations contained in the Accusation filed in the Department
4 Case No. H-36442 LA, excluding California Business and
5 Professions Code Sections 10176(a), 10176(b) and 10176(c), may
6 be considered by the Department to be true and correct for the
7 purpose of deciding whether or not to grant reinstatement of
8 AMERIFUND INC. and AMERIFUND SMART HOMES INC.'s licenses
9 pursuant to Government Code Section 11522.

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 AMERIFUND
13 INC. and AMERIFUND SMART HOMES INC. to surrender their licenses
14 and all license rights attached thereto.
15

16 Nov 22, 2010
17 Date and Place

18 LA VERNE, CA

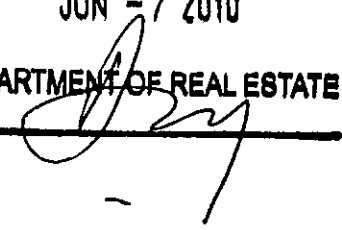
19
20 
21 BY: RUSSELL J. MASRO
22 Designated Officer of
23 Amerifund Inc. and
24 Amerifund Smart Homes Inc.
25
26
27

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)
6 -or- (213) 576-6982 (office)
7

FILED

JUN -7 2010

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 AMERIFUND INC.; AMERIFUND SMART)
13 HOMES INC; and RUSSELL J. MASSRO,)
14 individually and as designated)
15 officer of Amerifund Inc. and)
16 Amerifund Smart Homes Inc.,)

17 Respondents.)

No. H-36442 LA

FIRST AMENDED

ACCUSATION

18 The Accusation filed on January 28, 2010 in this matter
19 is amended in its entirety as follows:

20 The Complainant, Robin Trujillo, a Deputy Real Estate
21 Commissioner of the State of California, for cause of Accusation
22 against AMERIFUND INC., AMERIFUND SMART HOMES INC. and RUSSELL J.
23 MASSRO, individually and as designated officer of Amerifund Inc.
24 and Amerifund Smart Homes Inc., alleges as follows:
25

26 ///

1.

The Complainant, Robin Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against AMERIFUND INC., AMERIFUND SMART HOMES INC. and RUSSELL J. MASSRO.

2.

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

3.

License History

A. AMERIFUND INC. ("AI"). At all times mentioned, Respondent AI was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On February 25, 2008, AI was originally licensed as a corporate real estate broker. At all times mentioned herein, Respondent AI was authorized to act by and through Respondent RUSSELL J. MASSRO as AI's broker designated pursuant to Business and Professions Code (hereinafter "Code") Sections 10159.2 and 10211 to be responsible for ensuring AI's compliance with the Real Estate Law.

B. AMERIFUND SMART HOMES INC. ("ASHI"). At all times mentioned, AI was licensed or had license rights issued by the Department as a real estate broker. On November 17, 2008, AI was originally licensed as a corporate real estate broker. Respondent

1 AI was authorized to act by and through Respondent RUSSELL J.
2 MASSRO as AI's broker designated pursuant to Business and
3 Professions Code (hereinafter "Code") Sections 10159.2 and 10211
4 to be responsible for ensuring AI's compliance with the Real
5 Estate Law.

6 C. RUSSELL J. MASSRO ("MASSRO"). At all times
7 mentioned, MASSRO was licensed or had license rights issued by
8 the Department as a real estate broker. On June 17, 1993, MASSRO
9 was originally licensed as a corporate real estate broker.

10 D. AI and ASHI are sister corporations owned in their
11 entirety by MASSRO.

12 E. AI, ASHI and MASSRO conducted activities requiring
13 a real estate license and an approved advance fee agreement from
14 the Department.

15 Brokerage

16 4.

17 At all times mentioned, in the City of La Verne and
18 County of Los Angeles, AI, ASHI and MASSRO acted as real estate
19 brokers conducting licensed activities within the meaning of Code
20 Sections 10131(d) and 10131.2. AI, ASHI and MASSRO engaged in
21 the business of a mortgage loan brokerage and a loan modification
22 brokerage collecting advance fees.

23 Respondents AI, ASHI and MASSRO advertised, solicited
24 and offered to provide loan modification services to economically
25 distressed homeowners seeking adjustments to the terms and
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1 conditions of their home loans including, but not limited to,
2 repayment plans, forbearance plans, partial claims, and reduction
3 in principal or interest, foreclosure prevention and short sales.

4 AI processed the following loan modifications during the
5 audit period:

6

7 Total Loan 8 Modifications	Pending Loan Modifications	Completed Loan Modifications	Advance Fees Collected
9 222	165	57	\$228,228.66

10

11 AMERIFUND INC.

12 FIRST CAUSE OF ACCUSATION
13 (Mortgage Loan and Loan Modification Audit)

14 5.

15 On September 3, 2009, the Department completed an audit
16 examination of the books and records of AI pertaining to the
17 mortgage loan, loan modification and advance fee activities
18 described in Paragraph 4, which require a real estate license.
19 The audit examination covered a period of time beginning on
20 December 1, 2007 to March 31, 2009. The audit examination
21 revealed violations of the Code and the Regulations as set forth
22 in the following paragraphs, and more fully discussed in Audit
23 Report LA 080267 and the exhibits and work papers attached to
24 said audit report.

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1 aggregate funds in B/A #1, to an amount which, on March 31, 2009,
2 was \$228,470.99, less than the existing aggregate trust fund
3 liability to every homeowner-principal who was an owner of said
4 funds, without first obtaining the prior written consent of the
5 owners, in violation of Code Section 10145 and Regulation 2832.1.

6 (b) Based on a review of web address,
7 www.amerifundsmarthomes.com published on April 14, 2009,
8 Amerifund Smart Homes Inc. (ASHI), AI's sister corporation,
9 solicited home owners and offered to provide loan modification
10 services, under AI's unlicensed fictitious business names,
11 "Amerifund Smart Homes" and "American Smart Loan Modifications"
12 as set forth in Audit LA 080228, below. "Amerifund Smart Homes"
13 is a marketing name designed to generate leads consisting of real
14 estate buyers, sellers, and business contacts and economically
15 distressed borrowers seeking to modify their home loans.

16 AI is the creator of the marketing system. AI also
17 indicated on AI's and AI's home page websites that AI would
18 provide and in fact did provide loan modification services to the
19 aforesaid homeowners using it own name and the fictitious
20 business name of "American Smart Loan Modifications".

21 AI and AI's website www.amerifundsmarthomes.com,
22 designed and implemented by AI, advertised for, and solicited
23 loan modification services. The advertised representations are
24 misleading or deceptive in themselves or through the omission of
25 necessary information to make the advertised representations not
26 misleading in the context in which they are used. This conduct
27

1 by AI is in violation of Code Sections 10176(a), 10235 and
2 Regulation 2848.

3 (c) Collected advance fees within the meaning of Code
4 Section 10026 from homeowners seeking loan modification services
5 wherein AI failed to provide homeowners with a pre-approved
6 advance fee agreement from the Department, in violation of Code
7 Section 10085 and Regulation 2970.

8 (d) With reference to the lack of an advance fee
9 agreement, AI failed to provide a complete description of
10 services to be rendered provided to each homeowner in 10 point
11 type font and failed to provide an allocation and disbursement of
12 the amount collected as the advance fee, in violation of Code
13 Section 10146 and Regulation 2972.

14 (e) B/A #1 was not designated as a trust account, in
15 violation of Code Section 10145 and Regulation 2832(a). B/A #1
16 was the general operating account of AI.

17 (f) Converted trust funds in the amount of
18 \$228,228.66, in advance fees collected from homeowners for loan
19 modifications that AI failed to render. Pursuant to its loan
20 modification agreement "Home Affordable Modification Trial Period
21 Plan", AI collected \$228,228.66 from homeowners. Abrogating its
22 own agreement with homeowners, AI made unauthorized disbursements
23 to itself in the full amount of \$228,228.66, before the agreed to
24 loan modifications services had been rendered. AI then reduced
25 the balance in B/A #1, AI's general account, to an amount that
26
27

1 was less than the amount deposited \$228,228.66, in violation of
2 Code Section 10145, 10176(a), 10176(i), 10176(b), 10176(c) and/or
3 10177(g).

4 (g) Commingled trust funds and personal funds by
5 depositing trust funds in the form of advance fees collected for
6 loan modifications from homeowners into AI's general operating
7 account, B/A #1, instead of depositing trust funds into a
8 properly designated trust account, in violation of Code Sections
9 10145 and 10176(e) and Regulation 2832.

10 (h) Failed to maintain a control record in the form of
11 a columnar record in chronological order of all trust funds
12 including advance fees collected, deposited and disbursed in
13 connection with loan modifications, in violation of Code Section
14 10145 and Regulation 2831.

15 (i) Failed to maintain a separate record for each
16 beneficiary or transaction, thereby failing to account for all
17 trust funds in the form of advance fees collected, deposited and
18 disbursed, in violation of Code Section 10145 and Regulation
19 2831.1.
20

21 (j)(1) Failed to retain a true and correct copy of a
22 Department of Real Estate approved Mortgage Loan Disclosure
23 Statement signed by the broker for borrowers Jimmy Hughes and
24 Gary Spenser, in violation of Code Section 10240; and

25 (j)(2) Failed to disclose yield spread premiums from
26 lenders on the approved Mortgage Loan Disclosure Statement for
27

1 the aforesaid borrowers in violation of Code Section 10240, 10241
2 and Regulation 2840.

3 (k) Employed and/or compensated Lisa Pensick, Veronica
4 Villatoro and Norma Lopez, as loan agents and loss mitigation
5 agents who AI knew were not licensed by the Department as a real
6 estate broker or as a real estate salesperson employed by a real
7 estate broker, for performing acts for which a real estate
8 license is required, including soliciting mortgage loans, in
9 violation of Code Section 10137.

10 (l) Used the fictitious name of "Amerifund Smart Homes"
11 to conduct licensed activities including mortgage loans and loan
12 modifications without holding a license bearing said fictitious
13 business name, in violation of Code Section 10159.5 and
14 Regulation 2731.

15 (m) Failed to notify the Department of the termination
16 of salesperson Nancy Marchiola, in violation of Code Section
17 10161.8 and Regulation 2752; and

18 (n) MASSRO failed to exercise adequate supervision over
19 AI's activities requiring a real estate license to ensure AI's
20 compliance the Real Estate Laws and Regulations and had no system
21 in place for regularly monitoring AI's compliance with the Real
22 Estate Law, in violation of Code Sections 10159.2, 10177(h) and
23 Regulation 2725.
24

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26 ///

Discipline Statutes

8.

The conduct of Respondents AI and MASSRO described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
7(a)	Code Sections 10145 and Regulation 2832.1
7(b)	Code Sections 10176(a) 10235 and Regulation 2848
7(c)	Code Section 10085 and Regulation 2970
7(d)	Code Section 10146 and Regulation 2972
7(e)	Code Section 10145 and Regulation 2832(a)
7(f)	Code Sections 10145, 10176(a), 10176(b), 10176(c), 10176(i) and/or 10177(g)
7(g)	Code Section 10145 and 10176(e) and Regulation 2832
7(h)	Code Section 10145 and Regulation 2831
7(i)	Code Section 10145 and Regulation 2831.1
7(j)	Code Section 10240 and 2840
7(k)	Code Section 10137

1	7(l)	Code Section 10159.5 and Regulation 2731
2	7(m)	Code Sections 10161.8 and Regulation 2752
3	7(n)	Code Sections 10159.2, 10177(h) and Regulation 2725
4		
5		
6		

7
8 The foregoing violations constitute cause for the suspension or
9 revocation of the real estate license and license rights of
10 Respondents AI and MASSRO under the provisions of Code Sections
11 10176(a), 10176(b), 10176(c), 10176(e), 10176(i), 10177(d) and/or
12 10177(g).

13 AMERIFUND SMART HOMES INC.

14 9.

15 Complainant hereby incorporates by reference the allegations set
16 forth in Paragraphs 1 through 8, above.

17 SECOND CAUSE OF ACCUSATION
18 (Mortgage Loan and Loan Modification Audit)

19 10.

20 On April 23, 2009, the Department completed an audit
21 examination of the books and records of ASHI pertaining to the
22 mortgage loan, loan modification and advance fee activities
23 described in Paragraph 4, which require a real estate license.
24 The audit examination covered a period of time beginning on
25 November 29, 2007 to March 31, 2009. The audit examination
26 revealed violations of the Code and the Regulations as set forth
27

1 in the following paragraphs, and more fully discussed in Audit
2 Report LA 080228 and the exhibits and work papers attached to
3 said audit report.

4 Bank and Trust Accounts

5 11.

6 No trust account was maintained during the audit
7 period.

8 Audit Violations

9 12.

10 In the course of activities described in Paragraph 4
11 above, and during the audit examination period described in
12 Paragraph 10, Respondents ASHI and MASSRO acted in violation of
13 the Code and the Regulations in which Respondents:

14 (a) Based on a review of web address,
15 www.amerifundsmarthomes.com published on April 14, 2009,
16 Amerifund Smart Homes Inc. solicited home owners and offered to
17 provide loan modification services, under ASHI's unlicensed
18 fictitious business name, "Amerifund Smart Homes" as set forth in
19 Audit LA 080228, below. "Amerifund Smart Homes" is a marketing
20 name designed to generate live leads consisting of real estate
21 buyers, sellers and business contacts.

22 ASHI is the creator of the marketing system. ASHI also
23 indicated on ASHI's and ASHI's home page website that ASHI would
24 provide and in fact did provide loan modification services to
25 distressed homeowners.

26 ///

1 ASHI's website www.amerifundsmarthomes.com, designed
2 and implements by ASHI, advertises for and solicits loan
3 modification services that are misleading or deceptive in
4 themselves or through the omission of necessary information to
5 make the representations not misleading in the context in which
6 they are used. This conduct by ASHI and ASHI is in violation of
7 Code Section 10235 and Regulation 2848; and

8 (b) Used the fictitious names of "Amerifund Smart
9 Homes," and "Amerifund Smart Loan Modifications" to conduct
10 licensed activities including loan modifications without holding
11 a license bearing said fictitious business names, in violation of
12 Code Section 10159.5 and Regulation 2731.

13
14 Discipline Statutes

15 13.

16 The conduct of Respondents ASHI and MASSRO described in
17 Paragraph 12, above, violated the Code and the Regulations below:

18 PARAGRAPH	PROVISIONS VIOLATED
19 12(a)	Code Sections 10176(a) and 10235 and Regulation 2848
20 12(b)	Code Section 10159.5 and Regulation 2731

21
22
23 The foregoing violations constitute cause for the suspension or
24 revocation of the real estate license and license rights of
25 Respondents ASHI and MASSRO under the provisions of Code Sections
26 10176(a), 10177(d) and/or 10177(g).
27

1
2 AMERIFUND INC.

3 14.

4 Complainant hereby incorporates by reference the allegations set
5 forth in Paragraphs 1 through 13, above.

6 THIRD CAUSE OF ACCUSATION
7 (Broker Escrow Audit Examination)

8 15.

9 On September 15, 2009, the Department completed an
10 audit examination of the books and records of AI pertaining to
11 the broker escrow activities described in Paragraph 4, which
12 require a real estate license. The audit examination covered a
13 period of time beginning on December 01, 2007 to April 30, 2009.
14 The audit examination revealed violations of the Code and the
15 Regulations as set forth in the following paragraphs, and more
16 fully discussed in Audit Report LA 080304 and the exhibits and
17 work papers attached to said audit report.

18 Bank and Trust Accounts

19 16.

20 At all times mentioned, in connection with the
21 activities described in Paragraph 4, above, AI accepted or
22 received funds including funds in trust (hereinafter "trust
23 funds") from or on behalf of actual or prospective parties
24 including buyers and sellers, title companies, lenders and
25 borrowers, for sales and loan and loan modification transactions
26 brokered and escrowed by AI and thereafter made deposits and or
27

disbursements of such funds. From time to time herein mentioned
during the audit period, said trust funds were deposited and/or
maintained by AI as follows:

Amerifund Inc. Escrow Trust Account (VEI4T)
Account No. 165717829916"

US Bank

P.O. Box 1800

St. Paul, Minnesota 55101-0800

(B/A #1)

Amerifund Inc. Escrow Trust Account (VEI4T)
Account No. 0001-782991"

Mellon 1st Business Bank

601 West Fifth St.

Los Angeles, Ca 90071

(Mellon 1st Business Bank merged with US Bank)

(B/A #1)

Amerifund Inc. Escrow Trust Account (VEI)
Account No. 254066478"

Citizens Business Bank

1010 E. Colorado Ave.

Pasadena, CA 91106

(B/A #2)

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Audit Violations

17.

In the course of activities described in Paragraph 4 above, and during the audit examination period described in Paragraph 15, Respondents AI doing business as Homelife Smart Homes and MASSRO acted in violation of the Code and the Regulations in which Respondents:

(a) Permitted, allowed or caused the disbursement of trust funds from B/A #1, where the disbursement of funds reduced the total of aggregate funds in escrow trust account B/A #1 (Mellon 1st Business Bank), to an amount which, on December 31, 2008, was \$1,179, less than the existing aggregate trust fund liability of AI to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Section 10145 and Regulations 2832.1, 2950(g) and 2951.

(b) While acting in the capacity of an escrow holder, failed to place trust funds, accepted on behalf of another into the hands of the owner of the funds, a neutral escrow depository or into a trust fund account in the name of the broker at a bank or other financial institution not later than the next business day following receipt of the funds by the broker or by the broker's salesperson, in violation of Code Section 10145 and Regulations 2832(e) and 2951.

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(c) Failed to maintain an accurate and complete control record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited and disbursed for B/A #1, including appraisal fees, in violation of Code Section 10145 and Regulations 2831, 2950(d) and 2951.

(d) Failed to maintain an accurate and complete separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited and disbursed for B/A #1, including appraisal fees, in violation of Code Section 10145 and Regulations 2831.1, 2950(d) and 2951.

Discipline Statutes

18.

The conduct of Respondents AI and MASSRO described in Paragraph 12, above, violated the Code and the Regulations below:

PARAGRAPH	PROVISIONS VIOLATED
17(a)	Code Section 10145 and Regulations 2832.1, 2950(g) and 2951
17(b)	Code Section 10145 and Regulations 2832(e), 2950(d) and 2951
17(c)	Code Section 10145 and Regulations 2831, 2950(d) and 2951
17(d)	Code Section 10145 and Regulations 2831.1, 2950(d) and 2951

1 The foregoing violations constitute cause for the suspension or
2 revocation of the real estate license and license rights of
3 Respondents AI and MASSRO under the provisions of Code Sections
4 10177(d) and/or 10177(g).

5 Negligence

6 19.

7 The overall conduct of Respondents AI, ASHI and MASSRO,
8 constitutes negligence. This conduct and violation are cause for
9 the suspension or revocation of the real estate license and
10 license rights of Respondents, pursuant to Code Section 10177(g).

11 Supervision And Compliance

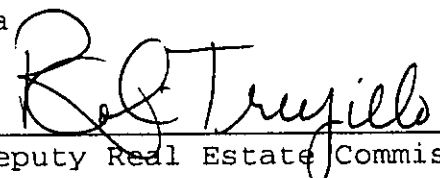
12 20.

13 The overall conduct of Respondent MASSRO constitutes a
14 failure on their part, as officers designated by corporate broker
15 licensees AI and ASHI, to exercise the reasonable supervision and
16 control over the licensed activities of said corporate licensees,
17 as required by Code Section 10159.2 and Regulation 2725, and to
18 keep AI and AI in compliance with the Real Estate Law. Said
19 conduct, acts and omissions are cause for the suspension or
20 revocation of the real estate license and license rights of
21 MASSRO pursuant to the provisions of Code Sections 10177(d) and
22 10177(h). MASSRO failed to exercise reasonable care and
23 supervision over AI and ASHI. Nor did MASSRO have policies and
24 procedures in place to maintain and monitor AI and ASHI's
25 compliance with the Real Estate Law.
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 the license and license rights of Respondents
5 AMERIFUND INC., AMERIFUND SMART HOMES INC. and RUSSELL J. MASSRO,
6 under the Real Estate Law (Part 1 of Division 4 of the Business
7 and Professions Code) and for such other and further relief as
8 may be proper under other applicable provisions of law.
9

10
11 Dated at Los Angeles, California

12 this 3 day of June 2010.

13 
14 Deputy Real Estate Commissioner
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23

24 cc: Amerifund Inc.
25 Amerifund Smart Homes Inc.
26 c/o Russell J. Massro D.O.
27 Robin Trujillo
Sacto
Audits - Chona Soriano

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)
6 -or- (213) 576-6982 (office)
7

FILED

JAN 28 2010

DEPARTMENT OF REAL ESTATE
BY: HP n. 10014

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

12 AMERIFUND INC.; AMERIFUND SMART)
13 HOMES INC; and RUSSELL J. MASSRO,)
14 individually and as designated)
15 officer of Amerifund Inc. and)
16 Amerifund Smart Homes Inc.,)
17 Respondents.)

No. H-36442 LA

A C C U S A T I O N

18 The Complainant, Robin Trujillo, a Deputy Real Estate
19 Commissioner of the State of California, for cause of Accusation
20 against AMERIFUND INC., AMERIFUND SMART HOMES INC. and RUSSELL J.
21 MASSRO, individually and as designated officer of Amerifund Inc.
22 and Amerifund Smart Homes Inc., alleges as follows:
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1.

The Complainant, Robin Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against AMERIFUND INC., AMERIFUND SMART HOMES INC. and RUSSELL J. MASSRO.

2.

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

3.

License History

a. AMERIFUND INC. ("AI"). At all times mentioned, Respondent AI was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On February 25, 2008, AI was originally licensed as a corporate real estate broker. At all times mentioned herein, Respondent AI was authorized to act by and through Respondent RUSSELL J. MASSRO as AI's broker designated pursuant to Business and Professions Code (hereinafter "Code") Sections 10159.2 and 10211 to be responsible for ensuring AI's compliance with the Real Estate Law.

b. AMERIFUND SMART HOMES INC. ("ASHI"). At all times mentioned, ASHI was licensed or had license rights issued by the Department as a real estate broker. On November 17, 2008, ASHI was originally licensed as a corporate real estate broker.

1 Respondent ASHI was authorized to act by and through Respondent
2 RUSSELL J. MASSRO as ASHI's broker designated pursuant to
3 Business and Professions Code (hereinafter "Code") Sections
4 10159.2 and 10211 to be responsible for ensuring ASHI's
5 compliance with the Real Estate Law.

6 c. RUSSELL J. MASSRO ("MASSRO"). At all times
7 mentioned, MASSRO was licensed or had license rights issued by
8 the Department as a real estate broker. On June 17, 1993, MASSRO
9 was originally licensed as a corporate real estate broker.

10 d. AI and ASHI are sister corporations owned in their
11 entirety by MASSRO.

12 e. AI, ASHI and MASSRO conducted activities requiring
13 a real estate license and an approved advance fee agreement from
14 the Department.

15 Brokerage

16 4.

17
18 At all times mentioned, in the City of La Verne and
19 County of Los Angeles, AI, ASHI and MASSRO acted as real estate
20 brokers conducting licensed activities within the meaning of Code
21 Sections 10131(d) and 10131.2. AI, ASHI and MASSRO engaged in
22 the business of a mortgage loan brokerage and a loan modification
23 brokerage collecting advance fees.

24 Respondents AI, ASHI and MASSRO advertised, solicited
25 and offered to provide loan modification services to economically
26 distressed homeowners seeking adjustments to the terms and
27

1 conditions of their home loans including, but not limited to,
2 repayment plans, forbearance plans, partial claims, and reduction
3 in principal or interest, foreclosure prevention and short sales.

4 AI processed the following loan modifications during the
5 audit period:

6

7 Total Loan 8 Modifications	Pending Loan Modifications	Completed Loan Modifications	Advance Fees Collected
9 222	165	57	\$228,228.66

10

11 AMERIFUND INC.

12 FIRST CAUSE OF ACCUSATION
13 (Audit Examination)

14 5.

15 On September 3, 2009, the Department completed an audit
16 examination of the books and records of AI pertaining to the
17 mortgage loan, loan modification and advance fee activities
18 described in Paragraph 4, which require a real estate license.
19 The audit examination covered a period of time beginning on
20 December 1, 2007 to March 31, 2009. The audit examination
21 revealed violations of the Code and the Regulations as set forth
22 in the following paragraphs, and more fully discussed in Audit
23 Report LA 080267 and the exhibits and work papers attached to
24 said audit report.

25
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1 was \$228,470.99, less than the existing aggregate trust fund
2 liability to every homeowner-principal who was an owner of said
3 funds, without first obtaining the prior written consent of the
4 owners, in violation of Code Section 10145 and Regulation 2832.1.

5 (b) Based on a review of web address,
6 www.amerifundsmarthomes.com published on April 14, 2009,
7 Amerifund Smart Homes Inc. (ASHI), AI's sister corporation,
8 solicited home owners and offered to provide loan modification
9 services, under ASHI's unlicensed fictitious business names,
10 "Amerifund Smart Homes" and "American Smart Loan Modifications"
11 as set forth in Audit LA 080228, below. "Amerifund Smart Homes"
12 is a marketing name designed to generate leads consisting of real
13 estate buyers, sellers, and business contacts and economically
14 distressed borrowers seeking to modify their home loans.

15 AI is the creator of the marketing system. AI also
16 indicated on AI's and ASHI's home page websites that AI would
17 provide and in fact did provide loan modification services to the
18 aforesaid homeowners using its own name and the fictitious
19 business name of "American Smart Loan Modifications".

20 AI and ASHI's website www.amerifundsmarthomes.com,
21 designed and implemented by AI, advertised for, and solicited
22 loan modification services. The advertised representations are
23 misleading or deceptive in themselves or through the omission of
24 necessary information to make the advertised representations not
25 misleading in the context in which they are used. This conduct
26
27

1 by ASHI is in violation of Code Sections 10176(a), 10235 and
2 Regulation 2848.

3 (c) Collected advance fees within the meaning of Code
4 Section 10026 from homeowners seeking loan modification services
5 wherein AI failed to provide homeowners with a pre-approved
6 advance fee agreement from the Department, in violation of Code
7 Section 10085 and Regulation 2970.

8 (d) With reference to the lack of an advance fee
9 agreement, AI failed to provide a complete description of
10 services to be rendered provided to each homeowner in 10 point
11 type font and failed to provide an allocation and disbursement of
12 the amount collected as the advance fee, in violation of Code
13 Section 10146 and Regulation 2972.

14 (e) B/A #1 was not designated as a trust account, in
15 violation of Code Section 10145 and Regulation 2832(a). B/A #1
16 was the general operating account of AI.

17 (f) Converted trust funds in the amount of
18 \$228, 228.66, in advance fees collected from homeowners for loan
19 modifications that AI failed to render. AI collected \$228,228.66
20 from homeowners pursuant to its loan modification agreement "
21 Home Affordable Modification Trial Period Plan". Abrogating its
22 own agreement with homeowners, AI made unauthorized disbursements
23 to itself in the full amount of \$228,228.66, before the agreed to
24 loan modifications services had been rendered. AI then reduced
25 the balance in B/A #1, AI's general account, to an amount that
26
27

1 was less than the amount deposited \$228,228.66, in violation of
2 Code Section 10145, 10176(a), 10176(i), 10176(b), 10176(c) and/or
3 10177(g).

4 (g) Commingled trust funds and personal funds by
5 depositing trust funds in the form of advance fees collected for
6 loan modifications from homeowners into AI's general operating
7 account, B/A #1, instead of depositing trust funds into a
8 properly designated trust account, in violation of Code Sections
9 10145 and 10176(e) and Regulation 2832.

10 (h) Failed to maintain a control record in the form of
11 a columnar record in chronological order of all trust funds
12 including advance fees collected, deposited and disbursed in
13 connection with loan modifications, in violation of Code Section
14 10145 and Regulation 2831.

15 (i) Failed to maintain a separate record for each
16 beneficiary or transaction, thereby failing to account for all
17 trust funds in the form of advance fees collected, deposited and
18 disbursed, in violation of Code Section 10145 and Regulation
19 2831.1.
20

21 (j)(1) Failed to retain a true and correct copy of a
22 Department of Real Estate approved Mortgage Loan Disclosure
23 Statement signed by the broker for borrowers Jimmy Hughes and
24 Gary Spenser, in violation of Code Section 10240; and

25 (j)(2) Failed to disclose yield spread premiums from
26 lenders on the approved Mortgage Loan Disclosure Statement for
27

1 the aforesaid borrowers in violation of Code Section 10240, 10241
2 and Regulation 2840.

3 (k) Employed and/or compensated Lisa Pensick, Veronica
4 Villatoro and Norma Lopez, as loan agents and loss mitigation
5 agents who AI knew were not licensed by the Department as a real
6 estate broker or as a real estate salesperson employed by a real
7 estate broker, for performing acts for which a real estate
8 license is required, including soliciting mortgage loans, in
9 violation of Code Section 10137.

10 (l) Used the fictitious name of "Amerifund Smart Homes"
11 to conduct licensed activities including mortgage loans and loan
12 modifications without holding a license bearing said fictitious
13 business name, in violation of Code Section 10159.5 and
14 Regulation 2731.

15 (m) Failed to notify the Department of the termination
16 of salesperson Nancy Marchiola, in violation of Code Section
17 10161.8 and Regulation 2752; and

18 (n) MASSRO failed to exercise adequate supervision over
19 AI's activities requiring a real estate license to ensure AI's
20 compliance the Real Estate Laws and Regulations and had no system
21 in place for regularly monitoring AI's compliance with the Real
22 Estate Law, in violation of Code Sections 10159.2, 10177(h) and
23 Regulation 2725.
24

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26 ///

Discipline Statutes

8.

The conduct of Respondents AI and MASSRO described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
7(a)	Code Sections 10145 and Regulation 2832.1
7(b)	Code Sections 10176(a) 10235 and Regulation 2848
7(c)	Code Section 10085 and Regulation 2970
7(d)	Code Section 10146 and Regulation 2972
7(e)	Code Section 10145 and Regulation 2832(a)
7(f)	Code Sections 10145, 10176(a), 10176(b), 10176(c), 10176(i) and/or 10177(g)
7(g)	Code Section 10145 and 10176(e) and Regulation 2832
7(h)	Code Section 10145 and Regulation 2831
7(i)	Code Section 10145 and Regulation 2831.1
7(j)	Code Section 10240 and 2840
7(k)	Code Section 10137

1	7(l)	Code Section 10159.5 and Regulation 2731
2		
3	7(m)	Code Sections 10161.8 and Regulation 2752
4		
5	7(n)	Code Sections 10159.2, 10177(h) and Regulation 2725
6		

7 The foregoing violations constitute cause for the suspension or
8 revocation of the real estate license and license rights of
9 Respondents AI and MASSRO under the provisions of Code Sections
10 10176(a), 10176(b), 10176(c), 10176(e), 10176(i), 10177(d) and/or
11 10177(g).

12
13 SECOND CAUSE OF ACCUSATION
14 (Loan Modification Services)

15 9.

16 Complainant hereby incorporates by reference the allegations set
17 forth in Paragraphs 1 through 8, above.

18 AMERIFUND INC.

19 SECOND CAUSE OF ACCUSATION
20 (Audit Examination)

21 10.

22 On April 23, 2009, the Department completed an audit
23 examination of the books and records of ASHI pertaining to the
24 mortgage loan, loan modification and advance fee activities
25 described in Paragraph 4, which require a real estate license.
26 The audit examination covered a period of time beginning on
27 November 29, 2007 to March 31, 2009. The audit examination

1 revealed violations of the Code and the Regulations as set forth
2 in the following paragraphs, and more fully discussed in Audit
3 Report LA 080228 and the exhibits and work papers attached to
4 said audit report.

5 Bank and Trust Accounts

6 11.

7 No trust account was kept during the audit period.

8 Audit Violations

9 12.

10 In the course of activities described in Paragraph 4
11 above, and during the audit examination period described in
12 Paragraph 10, Respondents ASHI and MASSRO acted in violation of
13 the Code and the Regulations in which Respondents:
14

15 (a) Based on a review of web address,
16 www.amerifundsmarthomes.com published on April 14, 2009,
17 Amerifund Smart Homes Inc. (ASHI) solicited home owners and
18 offered to provide loan modification services, under ASHI's
19 unlicensed fictitious business name, "Amerifund Smart Homes" as
20 set forth in Audit LA 080228, below. "Amerifund Smart Homes" is a
21 marketing name designed to generate live leads consisting of real
22 estate buyers, sellers and business contacts.

23 AI is the creator of the marketing system. AI also
24 indicated on AI's and ASHI's home page website that AI would
25 provide and in fact did provide loan modification services to
26 distressed homeowners.
27

ASHI's website www.amerifundsmarthomes.com, designed and implements by AI, advertises for and solicits loan modification services that are misleading or deceptive in themselves or through the omission of necessary information to make the representations not misleading in the context in which they are used. This conduct by AI and ASHI is in violation of Code Section 10235 and Regulation 2848; and

(b) Used the fictitious names of "Amerifund Smart Homes," and "Amerifund Smart Loan Modifications" to conduct licensed activities including loan modifications without holding a license bearing said fictitious business names, in violation of Code Section 10159.5 and Regulation 2731.

Discipline Statutes

13.

The conduct of Respondents ASHI and MASSRO described in Paragraph 12, above, violated the Code and the Regulations below:

PARAGRAPH	PROVISIONS VIOLATED
12(a)	Code Sections 10176(a) and 10235 and Regulation 2848
12(b)	Code Section 10159.5 and Regulation 2731

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of Respondents AI and MASSRO under the provisions of Code Sections 10176(a), 10177(d) and/or 10177(g).

Negligence

14.

The overall conduct of Respondents AI, ASHI and MASSRO, constitutes negligence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of said Respondents, pursuant to Code Section 10177(g).

Supervision And Compliance

15.

The overall conduct of Respondent MASSRO constitutes a failure on their part, as officers designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of AI and ASHI, as required by Code Section 10159.2 and Regulation 2725, and to keep AI and ASHI in compliance with the Real Estate Law. Said conduct, acts and omissions are cause for the suspension or revocation of the real estate license and license rights of MASSRO pursuant to the provisions of Code Sections 10177(d) and 10177(h). MASSRO failed to exercise reasonable care and supervision over AI and ASHI, particularly with respect to the trust fund handling monitoring and procedures of Choice Escrow. Nor did MASSRO have policies and procedures in place to maintain and monitor AI and ASHI's compliance with the Real Estate Law.

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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 the license and license rights of Respondents
5 AMERIFUND INC., AMERIFUND SMART HOMES INC. and RUSSELL J. MASSRO,
6 under the Real Estate Law (Part 1 of Division 4 of the Business
7 and Professions Code) and for such other and further relief as
8 may be proper under other applicable provisions of law.
9

10 Dated at Los Angeles, California

11 this 26 day of January 2010

12 
13 Deputy Real Estate Commissioner
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23 cc: Amerifund Inc.
24 Amerifund Smart Homes Inc.
25 c/o Russell J. Massro D.O.
26 Robin Trujillo
27 Sacto
Audits - Chona Soriano
Summer Bakotich