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

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|------------------------------------|---|----------------------------|
| In the Matter of the Accusation of |) | No. H-37538 LA |
| |) | |
| GREAT CAPITAL MORTGAGE INC and |) | <u>A C C U S A T I O N</u> |
| ISAIAS MARTINEZ, individually and |) | |
| as former designated officer of |) | |
| Great Capital Mortgage Inc, |) | |
| |) | |
| Respondents. |) | |

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against GREAT CAPITAL MORTGAGE INC and ISAIAS MARTINEZ, individually and as former designated officer of Great Capital Mortgage Inc, alleges as follows:

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 GREAT CAPITAL MORTGAGE INC and ISAIAS MARTINEZ.

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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.

LICENSE HISTORY

3.

A. GREAT CAPITAL MORTGAGE INC ("GCM") presently has license rights with the Department of Real Estate ("Department") as a corporate real estate broker. On February 1, 2011, GCM's license expired. Pursuant to Business and Professions Code Section 10201, GCM retains renewal rights for two years. The Department of Real Estate holds jurisdiction over the lapsed license, pursuant to Business and Professions Code Section 10103.

B. At all times mentioned, ISAIAS MARTINEZ ("MARTINEZ") was licensed and/or had license rights issued by the Department as a real estate broker.

C. From February 2, 2007, through February 1, 2011, GCM was licensed by the Department as a corporate real estate broker by and through MARTINEZ, as the designated officer and broker responsible, pursuant to Code Section 10159.2 for supervising the activities requiring a real estate license conducted on behalf of GCM or by GCM's officers, agents and employees, including MARTINEZ.

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FIRST CAUSE OF ACCUSATION

BROKERAGE

GREAT CAPITAL MORTGAGE INC

4.

At all times mentioned, in the City of Ontario, County of San Bernardino, GCMI acted as a real estate broker conducting licensed activities within the meaning of Code Section 10131(d): negotiating loans or performing services for borrowers in connection with loans secured by liens on real property.

AUDIT

GREAT CAPITAL MORTGAGE INC

5.

On April 19, 2010, the Department completed audit examinations of the books and records of GCMI pertaining to the activities described in Paragraph 4 which require a real estate license. The audit examinations covered a period of time from January 1, 2008 to January 31, 2010. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and as more fully discussed in Audit Report LA 090163 and the exhibits and workpapers attached to said audit report.

TRUST ACCOUNT

6.

During the audit period, GCMI did not maintain a trust account.

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1 VIOLATIONS OF THE REAL ESTATE LAW

2 7.

3 In the course of activities described in Paragraph 4
4 above and during the examination period described in Paragraph 5,
5 Respondent GCMI acted in violation of the Code and the
6 Regulations in that:

7 (a) A control record of trust funds received and
8 disbursed was not maintained, in violation of Code Section 10145
9 and Regulation 2831.

10 (b) Separate records of trust funds received and
11 disbursed for each beneficiary or transaction were not
12 maintained, in violation of Code Section 10145 and Regulation
13 2831.1.

14 (c) A monthly reconciliation of control records for
15 all separate beneficiaries with all trust funds received was not
16 maintained, in violation of Code Section 10145 and Regulation
17 2831.2.

18 (d) The bank account used for receipt and disbursement
19 of trust funds, in connection with loan modification activity,
20 was not designated as a trust account, in violation of Code
21 Section 10145 and Regulation 2832.

22 (e) The advance fees GCMI collected from the
23 principals for loan modification services were deposited into
24 GCMI's general business account, instead of a trust account, in
25 violation of Code Section 10146.

1 (f) Advance fees collected by GCMCI for loan
2 modification services were commingled with GCMCI's general funds,
3 in violation of Code Section 10145 and 10176(e)

4 (g) GCMCI collected advance fees from principals for
5 loan modification services, without first submitting an advance
6 fee agreement to the Department, in violation of Code Section
7 10085 and Regulation 2970.

8 (h) GCMCI collected advance fees from principals for
9 loan modification services without maintaining and providing an
10 accounting to the principals, showing services rendered and
11 identifying a trust account into which the advance fees were
12 deposited. This was in violation of Regulation 2972.

13 (i) GCMCI did not disclose yield spread premiums paid
14 by lenders on three of the reviewed Mortgage Loan Disclosure
15 Statements ("MLDS"). The MLDS were not signed in two of the
16 files examined. These acts or omissions violate Code Section
17 10240 and Regulation 2840.

18 (j) GCMCI did not disclose its corporate license number
19 in the MLDS of seven loan files examined, in violation of Code
20 Section 10236.4.

21 (k) GCMCI engaged in the business of real estate from
22 July 30, 2009 to February 2, 2010, when its corporate license was
23 suspended by the California Secretary of State, in violation of
24 regulation 2742(c).

25 (l) GCMCI used the fictitious business name "Great
26 Capital Mortgage" in connection with mortgage loan broker
27 activity before obtaining a license from the Department bearing

1 that fictitious business name, in violation of Code Section
2 10159.5 and Regulation 2731.

3 (m) GCMi failed to retain the original license
4 certificates of five salespersons at its main business office, in
5 violation of Code Section 10160 and Regulation 2753.

6 (n) After being served with a subpoena duces tecum on
7 March 8, 2010, GCMi and MARTINEZ failed to retain records of the
8 general ledger and cancelled checks for GCMi's general business
9 account, in violation of Code Section 10148.

10 8.

11 The conduct of Respondents GCMi and MARTINEZ, described
12 in Paragraph 6, above, violated the Code and the Regulations as
13 set forth below:

| 14 | <u>PARAGRAPH</u> | <u>PROVISIONS VIOLATED</u> |
|----|------------------|-----------------------------------|
| 15 | | |
| 16 | 7(a) | Code Section 10145 and Regulation |
| 17 | | 2831 |
| 18 | | |
| 19 | 7(b) | Code Section 10145 and Regulation |
| 20 | | 2831.1 |
| 21 | | |
| 22 | 7(c) | Code Section 10145 and Regulation |
| 23 | | 2831.2 |
| 24 | | |
| 25 | 7(d) | Code Section 10145 and Regulation |
| 26 | | 2832 |
| 27 | | |

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- 7(e) Code Section 10146
- 7(f) Code Sections 10145 and 10176(e)
- 7(g) Code Section 10085 and Regulation 2970
- 7(h) Regulation 2972
- 7(i) Code Section 10240 and Regulation 2840
- 7(j) Code Section 10236.4
- 7(k) Regulation 2742(c)
- 7(l) Code Section 10159.5 and Regulation 2731
- 7(m) Code Section 10160 and Regulation 2753
- 7(n) Code Section 10148

8.

Said conduct, acts, and/or omissions are cause for the suspension or revocation of the real estate license and license

1 rights of GCMi and MARTINEZ, under the provisions of Code
2 Sections 10085, 10176(e) and 10177(d)

3
4 NEGLIGENCE

5 9.

6 The overall conduct of Respondents GCMi and MARTINEZ
7 constitutes negligence or incompetence. This conduct and
8 violation are cause for the suspension or revocation of the real
9 estate license and license rights of said Respondents pursuant to
10 Code Section 10177(g).

11 SUPERVISION AND COMPLIANCE

12 10.

13 The overall conduct of Respondent MARTINEZ constituted
14 a failure on his part, as a former officer designated by a
15 corporate broker licensee, to exercise reasonable supervision and
16 control over the licensed activities of GCMi as required by Code
17 Section 10159.2, and to keep GCMi in compliance with the Real
18 Estate Law, and is cause for the suspension or revocation of the
19 real estate license and license rights of MARTINEZ pursuant to
20 the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

21 SECOND CAUSE OF ACCUSATION

22 BROKERAGE

23 ISAIAS MARTINEZ

24 11.

25 At all times mentioned, in the City of Ontario, County
26 of San Bernardino, MARTINEZ acted as a real estate broker
27

1 conducting licensed activities within the meaning of Code Section
2 10131(a): selling or offering to sell real property.

3 AUDIT

4 ISAIAS MARTINEZ

5 12.

6 On April 15, 2010, the Department completed audit
7 examinations of the books and records of MARTINEZ pertaining to
8 the activities described in Paragraph 10 which require a real
9 estate license. The audit examinations covered a period of time
10 from January 1, 2008 to January 31, 2010. The audit examination
11 revealed violations of the Code and the Regulations as set forth
12 in the following paragraphs, and as more fully discussed in Audit
13 Report LA 090164 and the exhibits and workpapers attached to said
14 audit report.

15 TRUST ACCOUNT

16 13.

17 During the audit period, MARTINEZ did not maintain a
18 trust account in connection with the sales activity.

19 VIOLATIONS OF THE REAL ESTATE LAW

20 14.

21 In the course of activities described in Paragraph 11
22 above and during the examination period described in Paragraph
23 12, Respondent MARTINEZ acted in violation of the Code and the
24 Regulations in that:

25 (a) The columnar record of all trust funds received
26 was inaccurate and incomplete. Earnest money deposits (EMDs)
27

1 were not recorded in four examined files and recorded dates of
2 EMDs received and forwarded to escrow were inaccurate in some
3 instances, in violation of Code Section 10145 and Regulation
4 2831.

5 (b) EMDs were held without written authorization from
6 the principals over three days past the acceptance of purchase
7 offers in eleven of the examined files, in violation of Code
8 Section 10145 and Regulation 2832.

9 15.

10 The conduct of Respondent MARTINEZ, described in
11 Paragraph 13, above, violated the Code and the Regulations as set
12 forth below:

| 13 <u>PARAGRAPH</u> | <u>PROVISIONS VIOLATED</u> |
|---------------------|-----------------------------------|
| 14 | |
| 15 14(a) | Code Section 10145 and Regulation |
| 16 | 2831 |
| 17 | |
| 18 14(b) | Code Section 10145 and Regulation |
| 19 | 2832 |

20

21 16.

22 The foregoing violations constitute cause for the
23 suspension or revocation of the real estate license and license
24 rights of MARTINEZ, under the provisions of Code Sections
25 10177(d) and/or 10177(g).

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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 GREAT CAPITAL MORTGAGE INC and ISAIAS MARTINEZ, individually and
6 as former designated officer of Great Capital Mortgage Inc, under
7 the Real Estate Law (Part 1 of Division 4 of the Business and
8 Professions Code) and for such other and further relief as may be
9 proper under other applicable provisions of law.

10 Dated at Los Angeles, California

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12 this 10 day of September 2011

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15 Robin Trujillo
16 Deputy Real Estate Commissioner
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24 cc: GREAT CAPITAL MORTGAGE INC
25 ISAIAS MARTINEZ
26 Robin Trujillo
27 Sacto
Audits