

1 Department of Real Estate  
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**FILED**

DEC 12 2011

5 DEPARTMENT OF REAL ESTATE  
6 BY: 

7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \* \*

11 TO: )  
12 )  
12 MORTGAGE RESTRUCTURING SOLUTIONS INC. ) No. H- 37726 LA  
13 )  
13 and HARVEY E. GARTE, individually and as )  
14 )  
14 designated officer of Mortgage Restructuring Solutions Inc.; ) ORDER TO DESIST  
15 ) (B&P Code Section 10086)  
16 )  
16 )

17 The Commissioner (Commissioner) of the California Department of Real Estate  
18 (Department) caused an investigation to be made of the activities of MORTGAGE  
19 RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE. Based on that investigation,  
20 the Commissioner has determined that (a) MORTGAGE RESTRUCTURING SOLUTIONS  
21 INC. and HARVEY E. GARTE have engaged in or are engaging in acts or are attempting to  
22 engage in the business of, acting in the capacity of, and/or advertising or assuming to act as real  
23 estate brokers in the State of California within the meaning of Business and Professions Code  
24 Sections 10131(a) (solicitation, negotiation and/or sale real property as the agent of others) and  
25 under the exemption in California Financial Code Section 17006(a)(4) (performing escrows  
26 where the broker is a party, or the broker is performed acts requiring a real estate license).





1 set forth in the following paragraphs, and more fully discussed in Audit Report LA 100076 and  
2 the exhibits and work papers attached to said audit report.

3 General and Trust Accounts

4 4.

5 At all times mentioned, in connection with the activities described in Paragraph 2,  
6 above, MRSI and GARTE accepted or received funds including funds in trust (hereinafter "trust  
7 funds") principally in the form of advance fees collected from economically distressed  
8 homeowner-applicants for loan modifications and/or on behalf of actual or prospective parties,  
9 including lenders and borrowers for loan modifications brokered by MRSI. Thereafter MRSI  
10 made deposits and or disbursements of such trust funds. From time to time herein mentioned  
11 during the audit period, said trust funds were deposited and/or maintained by MRSI in the bank  
12 account as follows:  
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14  
15 "Mortgage Restructuring Solutions Inc. (Trust Account)  
16 Account No. xxxxxx66670  
17 Bank of America

(G/A)

18 (G/A is MRSI's general operating account although named as a "Trust Account"; MRSI did not  
19 maintain a trust account).

20 Loan Modification Audit Violations

21 5.

22 In the course of activities described in Paragraphs 2 and 4, above, and during the  
23 examination period described in Paragraph 3, Respondents MRSI and GARTE, acted in violation  
24 of the Code and the Regulations in which Respondents:

25 (a) (1) Permitted, allowed or caused the disbursement of trust funds in the form of  
26 advance fees collected from homeowner-applicants for loan modifications from MRSI's general  
27

1 operating account, G/A, where the disbursement of funds reduced the total of aggregate funds in  
2 G/A, to an amount which, on October 10, 2009, the (SAFE Act Initiation Date) (Secure and Fair  
3 Enforcement for Mortgage Licenses), was \$28,432.63, less than the existing aggregate trust fund  
4 liability to every principal who was an owner of said funds, without first obtaining the prior  
5 written consent of the owners of said funds, in violation of Code Section 10145 and Regulations  
6 2832.1.

7  
8 (a) (2) Permitted, allowed or caused the disbursement of trust funds in the form of  
9 advance fees collected from homeowner-applicants for loan modifications from MRSI's general  
10 operating account, G/A, where the disbursement of funds reduced the total of aggregate funds in  
11 G/A, to an amount which, on January 31, 2011, was \$113,108.62, less than the existing  
12 aggregate trust fund liability to every principal who was an owner of said funds, without first  
13 obtaining the prior written consent of the owners of said funds, in violation of Code Section  
14 10145 and Regulation 2832.1.

15  
16 (b) Prior to March 26, 2009, MRSI and GARTE collected advance fees within the  
17 meaning of Code Section 10026 from homeowners seeking loan modifications wherein MRSI  
18 did not have and thus failed to provide a pre-approved advance fee agreement from the  
19 Department, in violation of Code Section 10085 and Regulation 2970. The subsequent March  
20 26, 2009, advance fee agreement on file with the Department and the advance fee agreement  
21 actually used by Respondents differ in terms and conditions and are not the same.

22  
23 (c)(1) Failed to establish and maintain a trust account at a bank or other  
24 recognized financial institution in the name of the broker for deposit of advance fees collected by  
25 MRSI, in violation of Code Section 10146, for the aforesaid homeowner/borrowers.

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1 (c) (2) With reference to the lack of an advance fee agreement prior to March 26,  
2 2009, MRSI failed to provide a complete description of services to be rendered provided to each  
3 prospective tenant in 10 point type font and failed to provide an allocation and disbursement of  
4 the amounts collected as the advance fee, in violation of Code Section 10146 and Regulation  
5 2972.

6 (d) Mixed and commingled trust funds and personal funds by depositing advance  
7 fees received from homeowner-applicants into G/A, in violation of Code Sections 10145,  
8 10176(a) and 10176(e) and Regulation 2832.

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

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

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

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1 Table: Unauthorized and Conversion of Unearned Loan Modification Fees

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<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
		Harvey		Due to
1/29/2011	5358	Garte	\$ 10,000.00	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>	

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

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

19 (h) Claimed, charged and collected advance fees after October 10, 2009, the  
 20 SAFE ACT Initiation Date, for negotiating, arranging and/or offering to broker mortgage loans  
 21 and loan modifications and other forms of mortgage loan forbearance for fees paid by the  
 22 borrowers after October 10, 2009. Respondents received and collected advance fees totaling  
 23 \$57,850.00 from homeowners before MRSI had fully performed each and every service for  
 24 which MRSI had contracted to perform or represented that would be performed during the period  
 25  
 26  
 27

1 of October 11, 2009 to January 31, 2011, in violation of Code Sections 10085.6, 10146, 10145  
2 and Regulation 2832.

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

7  
8 (j) (Disclosure of Licensed Status in Advertising). Failed to provide MRSI's  
9 license number upon MRSI's first point of contact with the public including homeowners seeking  
10 loan modifications, in violation of Code Section 10140.6 and Regulation 2773.

11  
12 (k) Failed to retain all records of MRSI's activity during the audit period requiring  
13 a real estate broker license, including the deposit records of G/A 1, such as deposit receipts,  
14 related to advance fees MRSI collected related to its loan modification services, in violation of  
15 Code Section 10148. MRSI did not retain the document pertaining to the completion date of  
16 MRSI's loan modification "submission package" to the lender.

17 (l) GARTE failed to exercise reasonable control and supervision over the activity  
18 of MRSI to secure full compliance with the Real Estate Law, including but not limited to trust  
19 fund handling, mortgage loan brokering, loan modification services and advance fee charge and  
20 collection. Additionally, GARTE had no system in place for regularly monitoring his  
21 compliance with the Real Estate Law especially in regard to establishing, systems, policies and  
22 procedures to review trust fund handling especially including advance fee deposits received from  
23 homeowner-applicants seeking loan modification services, in violation of Code Sections  
24 10159.2, 10177(h) and Regulation 2725.  
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Table: Advance Fees Collected for Loan Modification Services

<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 R.	Nov-08	\$ 2,800.00	Not obtained	None
<b>Ltr of No objection Rec'd</b>				
Robert B.	Sep-09	\$ 3,100.00	Not obtained	None
David M.	Sep-09	\$ 3,500.00	Not obtained	None
<b>After SB94</b>				
David Z.	11/5/2009	\$ 2,600.00	Not obtained	None
Bradden M.	11/29/2009	\$ 3,100.00	Not obtained	None
Mario S.	Jun-10	\$ 3,600.00	Not obtained	None
Donald P. S.	8/30/2010	\$ 3,600.00	Not obtained	None
Joel D.	11/1/2009	\$ 2,500.00	Not obtained	None
Bradley B.	3/17/2010	\$ 2,900.00	Not obtained	None
Thomas M.	6/30/2010	\$ 1,550.00	Not obtained	None
Barbara Ann E.	10/20/2009	\$ 5,600.00	Not obtained	None
Shahram B.	4/11/2011	\$ 3,600.00	Not obtained	None
<b>Total</b>		<b>\$38,450.00</b>		

(Negligence)

9.

The overall conduct of Respondents MRSI and GARTE constitutes negligence or incompetence.

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1 (Breach of Fiduciary Duty)

2 10.

3 The conduct, acts and omissions of Respondents MRSI and GARTE constitute a  
4 breach of fiduciary duty, owed the homeowners contracting for loan modification services, of  
5 good faith, trust, confidence and candor, within the scope of their contractual relationship, in  
6 violation of Code Sections 10176(i) and/or 10177(g).

7 (Supervision and Compliance)

8 11.

9 The overall conduct of Respondent GARTE constitutes a failure on said  
10 Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable  
11 supervision and control over the licensed activities of MRSI as required by Code Section  
12 10159.2 and Regulation 2725, and to keep MRSI in compliance with the Real Estate Law, with  
13 specific regard to trust fund and advance fee handling, mortgage and loan brokering and loan  
14 modification services.

15 CONCLUSIONS OF LAW

16 12. Based on the findings of fact contained in finding 7 with respect to the audit  
17 report, MRSI and GARTE violated Business and Code Sections 10085, 10085.6, 10140.6,  
18 10145, 10146, 10148, 10166.02(a) & (b), 10176(a) , 10176(e) , 10176(i) and 10177(g), and  
19 Title 10, Chapter 6, California Code of Regulations (Regulations) Sections 2725, 2773, 2831,  
20 2831.1, 2832, 2832.1, 2970 and 2972.

21 13. Based on the findings of fact contained in findings 8 through 11 with respect  
22 to the individual loan modifications complaints from homeowner-applicants, MRSI violated  
23 Business and Professions Code Sections 10176(a) and 10177(g).  
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1 14. Based on the findings of fact contained in finding 13, GARTE, violated  
2 Business and Professions Code Sections 10159.2, 10177(h), 10176(i) and 10177(g) and  
3 Regulation 2725.

4 DESIST AND REFRAIN ORDER

5 Based on the Findings of Fact and Conclusions of Law stated herein, it is hereby  
6 ordered that MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE,  
7 whether doing business under their own names, or any other names, or any fictitious name, ARE  
8 HEREBY ORDERED to:

9  
10 1. Immediately desist and refrain from charging, demanding, claiming, collecting  
11 and/or receiving advance fees, as that term is defined in Section 10026 of the Code, in any form,  
12 and under any conditions, with respect to the performance of loan modification or any other form  
13 of mortgage loan forbearance services in connection with loans on residential property  
14 containing four or fewer dwelling units (Code Section 10085.6).

15  
16 2. Immediately desist and refrain from charging, demanding, claiming, collecting  
17 and/or receiving advance fees, as that term is defined in Section 10026 of the Code, for any of  
18 the other real estate related services offered to others, unless and until MORTGAGE  
19 RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE, and each of them,  
20 demonstrate and provide evidence satisfactory to the Commissioner that each:

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

23 (b) has placed all previously collected advance fees into a trust account for that  
24 purpose and is in compliance with Section 10146 of the Code; and  
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1 (c) Has provided an accounting to trust fund owner-beneficiaries from whom  
2 advance fees have previously been collected in compliance with Code Section 10146 and Section  
3 2972 of the Regulations.

4 3. Immediately desist and refrain from real estate brokerage activities unless and  
5 until MORTGAGE RESTRUCTURING SOLUTIONS INC. and HARVEY E. GARTE, are in  
6 compliance with the Real Estate Law.

7 DATED: 9/20, 2011.

8 BARBARA J. BIGBY  
9 Acting Real Estate Commissioner

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24 cc: Mortgage Restructuring Solutions Inc.  
25 Harvey E. Garte  
26 Audits - Gina King  
27 Enforcement - Amelia Vetrone