

FILED

FEB 27 2012

APPEALS OFFICE

BEFORE THE APPEALS OFFICER

1
2 In the Administrative Action of:)
3)
4 ALEXANDER CHERIE LTD,)
5)
6 Respondent.)
_____)

Appeal No: 75571-MM

DECISION AND ORDER

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8 This matter came on for hearing before Hearing Officer Michelle L. Morgando, Esq. on
9 June 17, 2011. A series of status checks were held concerning questions posed by the Hearing
10 Officer with the last status check being held on October 6, 2011. The Respondent, Alexander
11 Cherie, Ltd. was present through Nicole Soria and was represented by counsel Leo Flangas, Esq.
12 The State of Nevada, Department of Business and Industry, Division of Mortgage Lending (the
13 "Division") was represented by Deputy Attorney General Kali Fox-Miller, Esq.
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15 The hearing stems from an Order to Cease and Desist, Order Imposing Licensure
16 Conditions, Notice of Intent to Impose Fine and Notice of Right to Request Hearing dated May 7,
17 2010 (the "Division Notice"). By and through such notice, the Division sought (a) to order the
18 Respondent to cease and desist advertising as or conducting specific services, (b) the imposition of
19 a fine in the amount of \$50,000.00 as well as \$3,420.00 in examination fees, (c) attorneys fees to
20 be proven at the hearing, (d) cancellation of all contracts with any Nevada homeowners and a
21 refund of all moneys collected by the Respondent for which services have not been completed, and
22 (e) a reconciliation of all of Respondent's operating and trust accounts by a certified public
23 accountant.
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26 The hearing was conducted pursuant to NRS Chapter 233B, NRS Chapter 645B and all
27 applicable administrative regulations. Witness testimony for the Respondent was presented by
28 Nicole Soria. Witness testimony for the Division was presented by Connie Clapham. The

1 Division's evidence packet filed on December 8, 2010 was entered into evidence as Agency's
2 Exhibit "A".

3 Following a review of the evidence and consideration of the testimony of the witnesses
4 and arguments of counsel, the Hearing Officer renders the following Findings of Fact and
5 Conclusions of Law:
6

7 **FINDINGS OF FACT**

8 1. At the time of the Division Notice, the Respondent was a limited liability company
9 providing services (mortgage loan modifications) under provider License No. 3332. Nicole Soria
10 was licensed by the Division as an associated licensee on January 12, 2010.

11 2. On May 4, 2010, the Division commenced a regularly scheduled annual
12 examination of the Respondent. After completion of the examination, the Division alleged as
13 follows:
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- 15 a. The Respondent failed to file an annual audited financial statement;
- 16 b. The Respondent failed to place monies collected from homeowners in a
17 separate trust account and failed to designate the monies as "trust funds", escrow accounts or other
18 appropriate names indicating that the monies were not the property of the Respondent;
- 19 c. The Respondent failed to keep and maintain complete and accurate records
20 of all covered service transactions, including but not limited to, records relating to the trust
21 accounts that clearly identified the name, address and telephone number of each homeowner, the
22 account number of each loan, the contact information of each lender or loan servicer related to
23 each loan, the amount and date of each deposit, and the amount and date of each withdrawal with
24 the name of each recipient;
- 25 d. The Respondent failed to monthly reconcile balances on deposit equal to
26 all money collected and deposited and not legitimately disbursed to reconcile its bank accounts;
27 and
28

1 e. The Respondent utilized trust moneys for its own personal business
2 purposes. *See* Division Notice and Agency's Ex. "A", pp. 81-84.

3 3. On May 5, 2010, Ms. Soria forwarded a letter to the Division that provided a
4 written explanation to the allegations of the Division. In this letter, Ms. Soria admitted that she
5 and her business partner, William Vinson (also an associated licensee) did withdraw trust monies
6 to maintain the business. Ms. Soria stated that a severe decrease in business in 2010 caused an
7 interruption in revenue and that the trust funds were utilized to process files that were already in
8 some step of the modification process and that the trust funds were utilized to pay payroll,
9 processor services as well as rent and basic office expenses. *See* Agency's Exhibit "A", pp. 81-84.

11 4. At the time of the hearing, Ms. Soria testified as follows:

12 a. In May, 2010 the Respondent had a total of 380 clients.

13 b. An account was established at J. P. Morgan Chase Bank (Account No.
14 0000034433594268). Ms. Soria was informed that the account could not be designated as a "trust
15 account" because she was not an attorney. Ms. Soria stated that this account was used exclusively
16 for client deposits and transactions and that no funds were diverted for her personal use, other than
17 to provide operating income for the business.

18 c. All client files were scheduled for review every eight to ten days and that
19 each file contained a separate ledger page, although a general ledger of all transactions was not
20 kept.
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22 d. The Respondent was unable to afford an annual accounting by a certified
23 public accountant based on the fees (ranging between \$8,000.00 and \$9,000.00).

24 e. At the time of the hearing, all of the client files were completed and 16 files
25 were still not audited or reviewed. With the exception of these 16 files, all other client files were
26 completed by counsel, Mr. Flangas' office. Ms. Soria stated that the remaining files concerned
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1 clients of Chinese origin and these files were in the possession of one of her employees, who was
2 fluent in Chinese. Ms. Soria believes that this employee has left the country.

3 f. Ms. Soria testified that approximately \$2,900.00 is still due and owing to
4 clients.

5 g. The Respondent ceased to operate on May 24, 2010.

6 h. Ms. Soria is not in possession of any closed files as many of her files were
7 seized by the United States Attorney's Office in April 2011 regarding an unrelated matter.

8 i. Ms. Soria testified that the files that were taken by the Division for audit
9 were never returned.

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11 5. An e-mail from Ms. Soria to Connie Clapham, Division Examiner, dated May 4,
12 2010 states that based on all files (45 files in total) as of August 25, 2010, there was an amount of
13 \$9,000.00 due from trust funds and from files transferred from a company identified as "AHS".
14 Agency's Exhibit "A", p. 79.

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16 6. The records from Chase establish that several transfers were made from the trust
17 account to Ms. Soria's personal account. Ms. Soria testified that these transfers were done
18 utilizing an ATM because Chase did not allow online transfers on weekends and that these funds
19 were used to pay operating expenses. Agency's Exhibit "A", pp. 15 & 19.

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21 7. The Chase account had a zero or negative balance on at least nine occasions in
22 2009 and 2010. Agency's Exhibit "A", pp. 2-48.

23 8. The Hearing Officer requested on several occasions that counsel and/or Ms. Soria
24 provide a detailed, written account of the individual files that were not closed and an exact amount
25 owed to clients. This account was not provided.

26 9. At the time of the hearing, Ms. Clapham testified as follows:

27 a. At the time of the audit on May 4, 2010, the Respondent had 42 open files.
28 She reviewed 12 files, selected at random, and found that many had inaccurate client ledgers. Ms.

1 Clapham was unable to locate any payroll or operating accounts and there was no reconciliation of
2 the client trust account. Ms. Clapham was also informed that the Chase bank statements were with
3 a friend of Ms. Soria's and not available for review.

4 b. Respondent currently has a \$25,000.00 cash bond for the purpose of
5 protecting the clients. The owner of the bond, the Respondent, may file an action in District Court
6 to have the bond released.

7 c. Ms. Clapham testified that she was satisfied with Respondent's
8 performance of the loan modifications and instead based her findings on the Respondent's actions
9 concerning the trust account and the lack of accurate documentation in the client files.

10 10. The testimony and documentary evidence establishes that the Respondent violated
11 the following statutes and regulations:

12 a. Failure to provide an annual accounting. NRS 645F.394(2).

13 b. Removal of funds from a trust account when not authorized to do so. NRS
14 645F.394(1) and (2); Permanent Regulation R052-09, Sections 73 and 103(3)(n).

15 c. Did not conduct business in accordance with the law. Permanent
16 Regulation R052-09, Section 103(3)(c).

17 d. Conducted the business in a manner incompatible with the safety of its
18 customers. Permanent Regulation R052-09, Section 103(3)(d).

19 e. Comingled client's money with its own money and converted money for its
20 own use. NRS 645F.394(1) & (2); Permanent Regulation R052-09, Section 103(3)(n).

21 11. The Hearing Officer finds that while the facts establish five (5) separate violations.
22 Ms. Soria/the Respondent was very forthcoming in her efforts and activities regarding the
23 administration of the files and the Chase account. There is no evidence to establish that Ms.
24 Soria/the Respondent diverted or converted funds for her own personal use other than to pay
25 business and operating expenses.
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1 2. Pursuant to NRS 645F.394, “[t]he person who performs any covered services for
2 compensation, the foreclosure consultant or the loan modification consultant shall keep records of
3 all money deposited in a trust account pursuant to subsection 1. The records must clearly indicate
4 the date and time and from whom he or she received the money, the date deposited, the dates of
5 withdrawals, and other pertinent information concerning the transaction, and must show clearly for
6 whose account the money is deposited and to whom the money belongs. The person who
7 performs any covered service for compensation, the foreclosure consultant or the loan
8 modification consultant shall balance each separate trust account at least monthly and provide to
9 the Commissioner, on a form provided by the Commissioner, an annual accounting which shows
10 an annual reconciliation of each separate trust account. All such records and money are subject to
11 inspection and audit by the Commissioner and authorized representatives of the Commissioner.”

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14 NRS 645F.394(2), *repealed* July 1, 2011.

15 3. Permanent Regulation R052-09 provides that “[f]or each violation committed by a
16 person who engages in an activity for which licensure as a covered service provider, foreclosure
17 consultant or loan modification consultant is required under this chapter and chapter 645F of NRS,
18 without regard to whether the person is licensed under this chapter and chapter 645F of NRS, the
19 Commissioner may impose upon the person and administrative fine of not more than \$10,000...if
20 the person...[d]oes not conduct business in accordance with the law or has violated any provision
21 of this chapter or chapter 645F of NRS or any order of the Commissioner’...[i]s in such financial
22 condition that the person cannot continue in business with safety to his customers;...[o]r [h]as
23 commingled the money or other property of a client with his own or has converted money or
24 property of others to his own use” and may “...place conditions upon the persons license...” for
25 each violation of NRS 645F or the Regulation. Permanent Regulation R052-09, Sections
26 103(3)(a), (c), (d) and (n).
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1 procedure to be instituted as set forth in paragraph 4 of this Order.

2 4. Within thirty (30) days after the expiration of the time period in paragraph 3 of
3 this Order, the Respondent/Ms. Soria shall institute all appropriate action(s) to release the surety
4 bond and once the bond is released, shall pay all amounts due and owing to the clients. Proof of
5 said payments shall be provided to the Division at the time the funds are disbursed.

6 **IT IS SO ORDERED** this 27 day of February, 2012.

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MICHELLE L MORGANDO, ESQ.
APPEALS OFFICER

NOTICE: Pursuant to NRS 233B.130, should any party desire to appeal this final determination of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within 30 days after service by mail of this decision.

1 CERTIFICATE OF MAILING

2 The undersigned, an employee of the State of Nevada, Department of Administration,
3 Hearings Division, does hereby certify that on the date shown below, a true and correct copy of
4 the foregoing DECISION AND ORDER was duly mailed, postage prepaid **OR** placed in the
5 appropriate addressee runner file at the Department of Administration, Hearings Division, 2200
S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

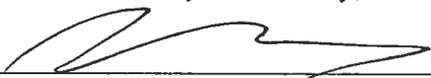
6 ALEXANDER CHERIE LTD
7 ATTN NICOLE SORIA & WILLIAM VINSON
8 3481 E SUNSET RD STE 100
9 LAS VEGAS NV 89120

10 LEO FLANGAS ESQ
11 FLANGAS & LEVENTHAL
12 600 S THIRD ST
13 LAS VEGAS NV 89101

14 DIVISION OF MORTGAGE LENDING
15 STATE OF NEVADA
16 NANCY CORBIN
17 7220 BERMUDA RD STE A
18 LAS VEGAS NV 89119

19 KALI MILLER ESQ
20 ATTORNEY GENERAL'S OFFICE
21 555 E WASHINGTON AVE ST 3900
22 LAS VEGAS NV 89101

23 Dated this 27th day of February, 2012.

24 
25 _____
26 Estela Pinedo, Legal Secretary II
27 Employee of the State of Nevada
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