

FILED

FEB 27 2012

APPEALS OFFICE

BEFORE THE APPEALS OFFICER

1 In the Administrative Action of: )  
 2 )  
 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

26 d. The Respondent failed to monthly reconcile balances on deposit equal to  
27 all money collected and deposited and not legitimately disbursed to reconcile its bank accounts;  
28 and

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

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.  
15

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.  
20

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           12.     The Hearing Officer finds that Ms. Soria did in fact transfer the files to the office  
2 of her attorney, who completed all of the contacts with the exception of the approximately 16  
3 remaining open files.

4           13.     The Hearing Officer finds that the exact amount due to clients from the Chase  
5 account is still not defined, nor have the clients to whom money is owed been properly identified.

6           14.     The Hearing Officer finds that the Respondent voluntarily ceased operations and  
7 thus is no longer a viable operating concern.

8           15.     Findings of Fact Nos. 11-14, inclusive, shall be considered mitigating factors in  
9 assessing the amount of the fine imposed below.

10           16.     Counsel for the Division failed to submit an application for attorneys' fees and thus  
11 the Hearing Officer has no factual basis upon which to impose said fees.

12           17.     Any Finding of Fact which may be deemed a Conclusion of Law shall be so  
13 considered.

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16                                   **CONCLUSIONS OF LAW**

17           1.     Pursuant to NRS 645F.394 "[a]ll money paid to a person who performs any  
18 covered service for compensation, a foreclosure consultant or a loan modification consultant by a  
19 person in full or partial payment of covered services to be performed: (a) Must be deposited in a  
20 separate checking account located in a federally insured depository financial institution or credit  
21 union in this State which must be designated as a trust account; (b) Must be kept separate from  
22 money belonging to the person who performs any covered service for compensation. the  
23 foreclosure consultant or loan modification consultant; and (c) Must not be withdrawn by the  
24 person who performs any covered service for compensation, foreclosure consultant or loan  
25 modification consultant until the completion of every covered service as agreed upon in the  
26 contract for covered services." NRS 645F.394(1), *repealed* July 1, 2011.  
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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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8   
9 MICHELLE L MORGANDO, ESQ.  
10 APPEALS OFFICER

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

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