

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF MORTGAGE LENDING

Before the Commissioner of the Division of Mortgage Lending

In the Matter of:

MORTGAGE CAPITAL USA, INC.
Mortgage Broker License No. 2915
Covered Service Provider License No. UNL,
and
GUSTAVE ANAYA, PRESIDENT
Associated Covered Service Provider, UNL,
Respondents.

Order No. 2012-08

ORDER TO CEASE AND DESIST,
ORDER IMPOSING AN ADMINISTRATIVE FINE,
AND
NOTICE OF OPPORTUNITY FOR HEARING

Issued and Entered,
This 23rd day of April, 2012,
By James Westrin,
Commissioner

I.
ORDER TO CEASE AND DESIST VIOLATING NRS 645F.010 *et seq.*,
and
ORDER IMPOSING AN ADMINISTRATIVE FINE

The Commissioner of the State of Nevada, Department of Business and Industry, Division of Mortgage Lending (the "Commissioner") having been statutorily charged with the responsibility and authority to administer and enforce Chapter 645F of the Nevada Revised Statutes, NRS 645F.010 *et seq.*, and Chapter 645F of the Nevada Administrative Code, NAC 645F.001 *et seq.*, as amended by Adopted Permanent Regulation of the Commissioner of Mortgage Lending, R052-09, (the "Regulation") governing the licensing and conduct of covered service providers in the State of Nevada;
and,

1 The Commissioner having been vested with general supervisory power and control over all
2 covered service providers doing business in the State of Nevada pursuant to NRS 645F; and,

3 The Commissioner having been further vested with broad authority to conduct examinations and
4 investigations to determine whether any person has violated any provision of NRS 645F or the
5 Regulation; and,

6 The Division of Mortgage Lending (the "Division") having determined, during the course of
7 conducting an examination of MORTGAGE CAPITAL USA, INC ("MORTGAGE CAPITAL"),
8 pursuant to provisions of NRS 645B.010 *et seq.*, that MORTGAGE CAPITAL is engaged in activities
9 or conduct that violate NRS 645F; and,

10 The Division staff having reported the results of its examination to the Commissioner; and,

11 The Commissioner, having reviewed the results of the examination, made the following
12 FINDINGS OF FACT and CONCLUSIONS OF LAW from such examinations:
13

14 Findings of Fact

15 1. NAC 645F.001 *et seq.*, as amended by § 17 of the Regulation, provides as follows:

16 A person shall not advertise services as, provide any of the services of, act
17 as or conduct business as a covered service provider, foreclosure
18 consultant or loan modification consultant or otherwise engage in, carry
19 on or hold himself out as engaging in or carrying on the activities of a
20 covered service provider, foreclosure consultant or loan modification
21 consultant unless the person has a license as a covered service provider,
22 foreclosure consultant or loan modification consultant, as applicable,
23 issued pursuant to this chapter and chapter 645F of NRS.

24 2. Pursuant to NRS 645F.310, "Covered Service" is defined to include, without limitation, all of
25 the following:

26 1. Financial counseling, including, without limitation, debt counseling
27 and budget counseling.
28

1 2. Receiving money for the purpose of distributing it to creditors in
2 payment or partial payment of any obligation secured by a mortgage or
3 other lien on a residence in foreclosure.

4 3. Contacting a creditor on behalf of a homeowner.

6 4. Arranging or attempting to arrange for an extension of the period
7 within which a homeowner may cure a default and reinstate an obligation
8 pursuant to a note, mortgage or deed of trust.

9 5. Arranging or attempting to arrange for any delay or postponement of
10 the time of a foreclosure sale of a residence in foreclosure.

11 6. Advising a homeowner regarding the filing of any document or
12 assisting in any manner in the preparation of any document for filing with
13 a bankruptcy court.

14 7. Giving any advice, explanation or instruction to a homeowner which
15 in any manner relates to the cure of a default in or the reinstatement of an
16 obligation secured by a mortgage or other lien on a residence, the full
17 satisfaction of the obligation, or the postponement or avoidance of a
18 foreclosure sale.

19 8. Arranging or conducting, or attempting to arrange or conduct, for a
20 homeowner any forensic loan audit or review or other audit or review of
21 loan documents.

22 9. Arranging or attempting to arrange for a homeowner the purchase by a
23 third party of the homeowner's mortgage loan.

24 10. Arranging or attempting to arrange for a homeowner a reduction of
25 the principal of the homeowner's mortgage loan when such a mortgage
26 loan is held by or serviced by a third party.

27 11. Providing the services of a loan modification consultant.

28 12. Providing the services of a foreclosure consultant.

1 3. MORTGAGE CAPITAL made application for and was granted a license by the Commissioner
2 as a mortgage broker, License No. 2915, pursuant to provisions of NRS 645B, on April 17, 2007.
3 GUSTAVE ANAYA, (“ANAYA”) was, and continues to be, the owner of MORTGAGE CAPITAL,
4 (collectively, the “RESPONDENTS”).

6 4. The Division staff commenced an examination of the books and records of MORTGAGE
7 CAPITAL pursuant to NRS 645B.060(2)(d). During the course of the examination the Division
8 determined RESPONDENTS are engaged in activity requiring licensure as an independent and
9 associated covered service provider, respectively, under NRS 645F. A review of the Division’s records
10 reveals that RESPONDENTS are not currently and have never been licensed by the Commissioner as an
11 independent or associated covered service provider, pursuant to the provisions of NRS 645F. The
12 examination specifically revealed the following:

13 a. RESPONDENTS, operating out of a business location at 3430 E. Flamingo
14 Road, Suite A in Las Vegas, Nevada, are advertising and offering to provide services to homeowners to
15 help homeowners obtain a mortgage loan modification, prevent foreclosure or other covered services, as
16 defined in NRS 645F.310.

17 b. RESPONDENTS operate a website located at www.mortgagecapusa.com which
18 contains, in part, the following statements and solicitation:

19 “As millions of homeowners have become saddled with adjustable rate mortgages and no longer have
20 the ability to refinance into a new loan, there may be only one solution for these stressed borrowers:

21 loan modification.”

22 ***

23 “We will demonstrate to lenders why it is in their interest to work out a new arrangement with you.”

24 ***

25 “...unfortunately you are often just a number in their spreadsheet. While you can negotiate on your own
26 behalf often times [sic] you may hear that there is nothing you can do to modify your loan, however this
27 isn’t always true. By using our expertise we can often help turn no into yes”

28 “If you would like to see if we can help then [click here to apply now](#)”

1 c. Based upon information and belief, RESPONDENTS general business practice is
2 to claim, demand, charge, collect or receive upfront fees from homeowners before successfully
3 completing the loan modification or other covered services.

4 5. NAC 645F.001 *et seq.*, as amended by § 108(1)-(3) of the Regulation, vests in the
6 Commissioner the authority to order a person engaging in activity in violation of NRS 645F or the
7 Regulation to immediately cease and desist from engaging in the activity.

8 6. NRS 645F.410(1) grants the Commissioner the authority to impose an administrative penalty of
9 not more than \$25,000 on any person licensed or required to be licensed pursuant to provisions of NRS
10 645F who violates any provisions of this chapter or any regulation adopted pursuant thereto or any other
11 applicable law.

12 7. Any finding of fact that may be deemed a conclusion of law shall be so construed.

13 **Conclusions of Law**

14 8. It is a violation of NAC 645F.001 *et seq.*, as amended by § 17 and § 102 of the Regulation, for a
15 person to advertise, engage in, or otherwise carry on or hold oneself out as engaging in or carrying on
16 the activities of a covered service provider without first obtaining a license under provisions of NRS
17 645F and NAC 645F.

18 9. By offering, soliciting or advertising through its website to provide assistance to homeowners to
19 obtain a loan modification or to negotiate with the homeowner's lender, RESPONDENTS have
20 advertised, engaged in, or otherwise held themselves out as covered service providers, in violation of
21 NAC 645F.001 *et seq.*, as amended by § 17 and § 102 of the Regulation.

22 10. The Commissioner is authorized pursuant to NAC 645F.001 *et seq.*, as amended by § 108 the
23 Regulation, to order a person to cease and desist from engaging in any activity that violates any
24 provision of NRS 645F.

25 11. The Commissioner is authorized pursuant to NRS 645F.410(1) to impose an administrative
26 penalty of not more than \$25,000 on any person licensed or required to be licensed as a covered service
27 provider who violates any provisions of this chapter or any regulation adopted pursuant thereto or any
28 other applicable law.

1 12. Any conclusion of law that may be deemed a finding of fact shall be so construed.

2 **Order**

3 The Commissioner having formed the opinion based upon the foregoing that RESPONDENTS
4 are engaged in unlicensed activity in violation of NRS 645F and NAC 645F, and concluded and
6 determined that RESPONDENTS should be ordered to: 1) cease and desist from engaging in any
7 activity requiring licensure under NRS 645F, and 2) pay an administrative fine.

8 NOW, THEREFORE, IT IS ORDERED that RESPONDENTS shall immediately CEASE AND
9 DESIST from violating NRS 645F.010 et seq. by advertising, engaging in, or otherwise carrying on or
10 holding themselves out as engaging in or carrying on any activities of a covered service provider.

11 IT IS FURTHER ORDERED that an ADMINISTRATIVE FINE in the amount of Twenty-Five
12 Thousand Dollars and No Cents (\$25,000.00) shall be and hereby is imposed, jointly and severally, on
13 RESPONDENTS, in accordance with NRS 645F.410. The ADMINISITRATIVE FINE shall be due and
14 payable on the 30th day following the effective date of this order and shall be tendered to the Division in
15 accordance with the attached wire transfer instructions.

16 IT IS FURTHER ORDERED that an administrative hearing shall be scheduled in this matter
17 only if RESPONDENTS timely request an administrative hearing in accordance with the instructions
18 set forth in Section II of this ORDER entitled Notice of Opportunity for an Administrative Hearing. If
19 no administrative hearing is requested within 20 calendar days of the effective date of this ORDER,
20 RESPONDENTS shall be deemed to have waived and relinquished the right to an administrative
21 hearing in this matter and a FINAL ORDER shall be issued in this matter.

22 IT IS FURTHER ORDERED that this Order shall be and is effective and enforceable on the
23 date that it is issued, as shown in the caption hereof.

24 IT IS FURTHER ORDERED that this Order shall remain effective and enforceable until
25 terminated, modified, set aside, or suspended in writing by the Commissioner.

26 IT IS FURTHER ORDERED that the Commissioner specifically retains jurisdiction over the
27 matters contained herein and has the authority to issue such further order(s) as he shall deem just,
28 necessary, and appropriate to enforce provisions of NRS 645F and NAC 645 and to protect the public.

IT IS SO ORDERED.

DIVISION OF MORTGAGE LENDING

By: 
JAMES WESTRIN
COMMISSIONER

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1 II.

2 NOTICE OF OPPORTUNITY FOR AN ADMINISTRATIVE HEARING

3
4 NAC 645F.001 et seq., as amended by § 108(4)-(5) of the Regulation, provides as follows:

5 (4) Not later than 20 calendar days after receiving an order pursuant to
6 this section, the person who receives the order may file a verified petition
7 with the Commissioner to request a hearing. Upon receipt of the verified
8 petition, the Commissioner may, for good cause shown, suspend the order
9 pending the hearing. The Commissioner will hold the hearing on a date
10 not later than 30 calendar days after the date the petition is filed unless the
11 Commissioner and the person agree to another date. The order to cease
12 and desist is rescinded if the Commissioner fails to:

13 (a) Hold a hearing:

14 (1) Not later than 30 calendar days after the petition is filed; or

15 (2) On a date agreed to by the Commissioner and the person; or

16 (b) Render a written decision within 45 days after the hearing is
17 concluded.

18 (5) The decision of the Commissioner after a hearing is a final decision of
19 the Commissioner for the purposes of judicial review. [Emphasis added.]

20 NAC 645F.001 et seq., as amended by § 113 of the Regulation, provides as follows:

21 1. If the Commissioner enters an order taking any disciplinary action
22 against a person, denying a person's application for a license, denying a
23 provider the right to teach approved courses, denying the approval of a
24 provider's course or denying the right of an instructor of a provider to
25 teach an approved course or approved courses, the Commissioner will
26 cause a written notice of the order to be served personally or sent by
27 certified mail or telegram to the person.
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1 2. Unless a hearing has already been conducted concerning the matter,
2 the person, upon application, is entitled to a hearing. If the person does
3 not make such an application within 20 days after the date of the initial
4 order, the Commissioner will enter a final order concerning the matter.

6 3. A person may appeal a final order of the Commissioner taking any
7 disciplinary action against the person in accordance with the provisions of
8 chapter 233B of NRS that apply to a contested case. [Emphasis added.]

9 **If you wish to exercise your right to an opportunity for an administrative hearing, within**
10 **20 calendar days after the date of this Order, you must file a verified petition with the**
11 **Commissioner to request a hearing.** The verified petition requesting a hearing must be delivered to:

12 Division of Mortgage Lending

13 Attn. Susan Slack

14 7220 Bermuda Road, Suite A

15 Las Vegas, Nevada 89119

16 **If you fail to timely file a verified petition to request a hearing, your right to a hearing to**
17 **contest this matter will be deemed waived and relinquished.**