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

FINAL ORDER TO CEASE AND DESIST
AND
IMPOSING AN ADMINISTRATIVE FINE

Issued and Entered,
This 8th day of June, 2012,
By James Westrin,
Commissioner

WHEREAS, the Commissioner of the State of Nevada, Department of Business and Industry, Division of Mortgage Lending (the "Commissioner") is statutorily charged with the responsibility and authority to administer and enforce Chapter 645F of the Nevada Revised Statutes, NRS 645F.010 *et seq.* (the "Act"), and Chapter 645F of the Nevada Administrative Code, NAC 645F.001 *et seq.*, as amended by Adopted 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,

WHEREAS, the Commissioner is statutorily vested with general supervisory power and control over all covered service providers doing business in the State of Nevada pursuant to NRS 645F; and,

WHEREAS, on or about April 23, 2012, the Commissioner issued to Respondents an ORDER TO CEASE AND DESIST, ORDER IMPOSING AN ADMINISTRATIVE FINE AND NOTICE OF

OPPORTUNITY FOR ADMINISTRATIVE HEARING (the "Order"), attached hereto as Exhibit 1 and incorporated herein by this reference; and,

WHEREAS, the Order was mailed to Respondents at their last known address of record on April 23, 2012, via certified mail and first class United States mail; and,

WHEREAS, the Order advised Respondents that Respondents were entitled to an administrative hearing in this matter if Respondents filed a written request for a hearing within 20 days of receipt of the Order; and,

WHEREAS, Respondents failed to file a written request for a hearing within 20 days of receipt of the Order, as required by Chapter 645F of the NAC, NAC 645F.001 et seq., as amended by § 108 of the Regulation.

NOW, THEREFORE, based upon the factual findings set forth above and the files and records of the Division of Mortgage Lending, **IT IS HEREBY ORDERED THAT:**

1. The findings of fact and conclusions of law set forth in the Order shall be and hereby are found to be true and correct.

2. A FINAL ORDER TO CEASE AND DESIST AND ORDER IMPOSING AN ADMINISTRATIVE FINE shall be and hereby is issued and entered against Respondents. FORTHWITH, Respondents shall:

   a. CEASE AND DESIST from engaging in any activity requiring licensure under the Act or the Regulation.

   b. Remit the ADMINISTRATIVE FINE as set forth in the Order.

3. This Order shall be and is effective on the date it is issued and entered, as shown in the caption hereof.

4. This Order shall remain in effect and fully enforceable until terminated, modified, or set aside, in writing by the Commissioner.

5. The Commissioner specifically retains jurisdiction of the matter(s) contained herein to issue such further order or orders as he may deem just, necessary, or appropriate so as to assure compliance with the law and protect the interest of the public.

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IT IS SO ORDERED.

DIVISION OF MORTGAGE LENDING

By: _____
JAMES WESTRIN
COMMISSIONER

EXHIBIT “1”

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,

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

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

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

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

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

Findings of Fact

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

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

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

> 1. Financial counseling, including, without limitation, debt counseling and budget counseling.

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

3. Contacting a creditor on behalf of a homeowner.

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

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

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

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

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

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

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

11. Providing the services of a loan modification consultant.

12. Providing the services of a foreclosure consultant.

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

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

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

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

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

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

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

"If you would like to see if we can help then click here to apply now"

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

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

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

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

Conclusions of Law

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

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

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

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

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

Order

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

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

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

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

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

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

IT IS FURTHER ORDERED that the Commissioner specifically retains jurisdiction over the matters contained herein and has the authority to issue such further order(s) as he shall deem just, 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

II.

NOTICE OF OPPORTUNITY FOR AN ADMINSITRATIVE HEARING

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

> (4) Not later than 20 calendar days after receiving an order pursuant to this section, the person who receives the order may file a verified petition with the Commissioner to request a hearing. Upon receipt of the verified petition, the Commissioner may, for good cause shown, suspend the order pending the hearing. The Commissioner will hold the hearing on a date not later than 30 calendar days after the date the petition is filed unless the Commissioner and the person agree to another date. The order to cease and desist is rescinded if the Commissioner fails to:
>
> (a) Hold a hearing:
>
> (1) Not later than 30 calendar days after the petition is filed; or
>
> (2) On a date agreed to by the Commissioner and the person; or
>
> (b) Render a written decision within 45 days after the hearing is concluded.
>
> (5) The decision of the Commissioner after a hearing is a final decision of the Commissioner for the purposes of judicial review. [Emphasis added.]

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

> 1. If the Commissioner enters an order taking any disciplinary action against a person, denying a person's application for a license, denying a provider the right to teach approved courses, denying the approval of a provider's course or denying the right of an instructor of a provider to teach an approved course or approved courses, the Commissioner will cause a written notice of the order to be served personally or sent by certified mail or telegram to the person.

2. Unless a hearing has already been conducted concerning the matter, the person, upon application, is entitled to a hearing. If the person does not make such an application within 20 days after the date of the initial order, the Commissioner will enter a final order concerning the matter.

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

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

Division of Mortgage Lending
Attn. Susan Slack
7220 Bermuda Road, Suite A
Las Vegas, Nevada 89119

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

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Mortgage Lending, and that on, April 24, 2012, I deposited in the U.S. mail, postage prepaid via First Class Mail and Certified Return Receipt Requested, a true and correct copy of the foregoing, ORDER TO CEASE AND DESIST, ORDER IMPOSING AN ADMINISTRATIVE FINE AND NOTICE OF OPPORTUNITY FOR HEARING, for MORTGAGE CAPITAL USA, INC. AND GUSTAVE ANAYA., addressed as follows:

Gustave Anaya
Mortgage Capital USA, Inc.
3430 E. Flamingo Road, Suite 104A
Las Vegas, NV 89121

Certified Receipt Number: 7009 2250 0001 8859 3230

DATED this 23rd day of April, 2012

By: Susan Slack
Employee of the Division

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Mortgage Lending, and that on, June 20th, 2012, I deposited in the U.S. mail, postage prepaid via First Class Mail and Certified Return Receipt Requested, a true and correct copy of the foregoing, FINAL ORDER TO CEASE AND DESIST AND IMPOSING AN ADMINISTRATIVE FINE, for MORTGAGE CAPITAL USA, INC. and GUSTAVE ANAYA, addressed as follows:

Gustave Anaya
Mortgage Capital USA, Inc.
3430 E. Flamingo Road #104
Las Vegas, NV 89121

Certified Receipt Number: 7009 2250 0001 8861 0968

DATED this 19th day of June, 2012

By: Susan Slack
Employee of the Division