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: GUSTAVE ROMERO ANAYA, Mortgage Agent License No. UNL, Respondent.	Order No. 2014-108 Case No. 2014-108

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

Issued and Entered,
This 31st day of December, 2014,
By James Westrin,
Commissioner

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 645B of the Nevada Revised Statutes, NRS 645B.010 *et seq.* ("NRS 645B" or "the Statute"), and Chapter 645B of the Nevada Administrative Code, NAC 645B.001 *et seq.* ("NAC 645B" or "the Regulation"), governing the licensing and conduct of mortgage brokers and mortgage agents doing business in the State of Nevada; and,

The Commissioner having been vested with general supervisory power and control over all mortgage brokers and mortgage agents doing business in the State of Nevada pursuant to NRS 645B; and,

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

The Division of Mortgage Lending (the "Division") having received a complaint alleging violations of the Statute and Regulation; and,

The Division having conducted an investigation pursuant to NRS 645B.060(2)(c) and determined, from that investigation that GUSTAVE ROMERO ANAYA ("RESPONDENT") was engaged in activity requiring licensure as a mortgage agent under the Statute and Regulation; and,

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

The Commissioner having reviewed the results of the investigation and made the following FINDINGS OF FACT and CONCLUSION OF LAW:

Findings of Fact

1. NRS 645B.900 prohibits any person from offering or providing any services of a mortgage broker or mortgage agent or otherwise engaging in, carrying on or holding himself or herself out as engaging in or carrying on the business of a mortgage broker or mortgage agent without first obtaining the applicable license issued pursuant to this chapter, unless the person is properly exempt from licensure.

2. NRS 645B.0125, in pertinent part, defines a "mortgage agent" as follows:

> 1. "Mortgage agent" means:
>
> (a) A natural person who:
>
> (1) Is an employee of a mortgage broker or mortgage banker who is required to be licensed pursuant to this chapter or chapter 645E of NRS; and
>
> (2) Is authorized by the mortgage broker or mortgage banker to engage in, on behalf of the mortgage broker or mortgage banker, any activity that would require the person, if the person were not an employee of the mortgage broker or mortgage banker, to be licensed as a mortgage broker or mortgage banker pursuant to this chapter or chapter 645E of NRS;
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> (b) A mortgage broker, qualified employee or mortgage banker who is required by NRS 645B.405 or 645E.290 to be licensed as a mortgage agent; or

(c) A loan processor who is an independent contractor and who is associated with a mortgage broker, mortgage banker or person who holds a certificate of exemption pursuant to NRS 645B.016.

2. The term includes, but is not limited to, a residential mortgage loan originator.

3. NRS 645B.01325 defines a "residential mortgage loan originator" as a natural person who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or other pecuniary gain. The term does not include:

1. A loan processor, underwriter or other natural person who performs clerical or ministerial tasks as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under this chapter, unless the person who performs such clerical or ministerial tasks is an independent contractor[.]

4. NRS 645B.0124(1) defines a "loan processor" as a natural person who:

(a) Receives, collects, distributes or analyzes information that is commonly used for the processing of a residential mortgage loan; and

(b) Communicates with a consumer to obtain the information necessary for the activities described in paragraph (a).

2. The communication described in paragraph (b) of subsection 1 does not include communication offering or negotiating loan rates or terms of counseling consumers about residential mortgage loan rates or terms.

5. NRS 645B.01125 defines "Employee" as a natural person:

1. Whose manner and means of performance of work are subject to the right of control of, or are controlled by, another person; and

2. Whose compensation for federal income tax purposes is reported, or required to be reported, on Form W-2 issued by the controlling person.

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6. NRS 645B.400 provides as follows:

A person shall not act as or provide any of the services of a mortgage agent or otherwise engage in, carry on or hold himself or herself out as engaging in or carrying on the activities of a mortgage agent unless the person:

1. Has a license as a mortgage agent issued pursuant to NRS 645B.410.

2. Is:

(a) If the person is not a loan processor who is an independent contractor, an employee of a mortgage broker or mortgage banker; or

(b) An employee of or associated with a person who holds a certificate of exemption pursuant to NRS 645B.016.

3. If the person is required to register with the Registry:

(a) Is an employee of and whose sponsorship has been entered with the Registry by a mortgage broker, mortgage banker or person who holds a certificate of exemption pursuant to NRS 645B.016 as required by subsection 2 of NRS 645B.450; and

(b) Is registered with and provides any identifying number issued by the Registry.

7. NAC 645B.410 provides as follows:

Unless otherwise specifically prohibited by federal law and pursuant to section 1504(b)(2) of the S.A.F.E. Mortgage Licensing Act, an independent contractor may not engage in the activities of a residential mortgage loan originator as a loan processor or underwriter unless such independent contractor is licensed as a mortgage agent.

8. NRS 645B.670(1)(c)(12) provides as follows:

(c) For each violation committed by a mortgage agent, the Commissioner may impose upon the mortgage agent an administrative fine of not more than $25,000, may suspend, revoke or place conditions upon the mortgage

agent's license, or may do both, if the mortgage agent, whether or not acting as such:

* * *

(12) Has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an *order of the Commissioner* or has assisted or offered to assist another person to commit such a violation.

[Emphasis added.]

9. RESPONDENT previously held a mortgage agent license (MLD License No. 10862) issued by the Commissioner on April 30, 2003. RESPONDENT did not renew this license and it was terminated on January 7, 2009 by operation of law.

10. RESPONDENT is subject to a prior final disciplinary order of the Commissioner (Order No. 2012-08, In the Matter of: Mortgage Capital USA, Inc. and Gustave Anaya), issued and entered on June 18, 2012 against RESPONDENT and his business entity, Mortgage Capital USA, Inc., resulting from violations of NRS 645F and NAC 645F and imposing upon RESPONDENT an administrative fine in the amount of $25,000.00 and other penalties related to RESPONDENT'S misconduct. RESPONDENT has failed to comply with the terms and requirements of Order No. 2012-08.

11. On or about June 17, 2013, the Division received a complaint which caused the Division to commence an investigation into the activities and business practices of RAR Limited ("RAR").

12. During the course of the investigation of RAR, Staff determined the following:

a. RAR was a loan processing company that processed loans for Pinnacle Lending Group, Inc. RAR did not hold a license or certificate of exemption issued by the Commissioner.

b. RAR employed several individuals as independent contractors to act as "loan assistants" to process loan applications. RAR described the activities performed by these 'loan assistants" to include "reviewing credit reports of borrowers along with verifying credit history in terms of debts and payments; checking appraisal and property issues requiring further justifications; helping with loan documentation; inputting information into the system for processing; meeting with clients to answer simple questions and discuss the loan process; generally assisting with files from pre-approval to

closing." The aforementioned activities all fall within the definition of "loan processor" set forth in NRS 645B.0124.

c. In 2013, RESPONDENT was employed by RAR as an independent contractor loan processor.

d. RESPONDENT received compensation from RAR, in 2013, in the amount of $59,028.82. RESPONDENT'S 2013 compensation was reported on an IRS Form 1099-MISC.

e. RESPONDENT received at least eleven checks from RAR during 2013. Each check stated in the memo line of the check that the payment was for "[h]elp on files," "[w]ork on files," or "[h]elp on [borrower name]."

f. RESPONDENT was engaged in activity and conduct which required licensure as a mortgage agent.

13. NAC 645B.515 vests in the Commissioner the authority to order a person engaging in activity in violation of the Statute or Regulation to immediately cease and desist from engaging in the activity.

14. NRS 645B.690 requires the Commissioner to impose an administrative penalty of not more than $50,000 on a person that offers or provides any of the services of a mortgage broker or mortgage agent or otherwise engages in, carries on or holds himself or herself out as engaging in or carrying on the business of a mortgage broker or mortgage agent and, at the time the person was required to have a license pursuant this chapter and the person did not have such a license.

15. NRS 645B.670(1)(c)(12) authorizes the Commissioner to impose an administrative fine of not more than $25,000 upon a mortgage agent (a person who offers or provides any of the services of a mortgage agent, or otherwise engages in, carries on, or holds himself or herself out as engaging in or carrying on the business of a mortgage agent), who has violated an order of the Commissioner.

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

Conclusions of Law

17. It is a violation of NRS 645B.900 for a person to offer or provide any of the services of a mortgage agent or otherwise to engage in, carry on or hold himself out as engaging in or carrying on the

business of a mortgage agent without first obtaining the applicable license issued pursuant to this chapter.

18. It is a violation of NRS 645B.670(1)(c)(12) for a mortgage agent (a person who offers or provides any of the services of a mortgage agent, or otherwise engages in, carries on, or holds himself or herself out as engaging in or carrying on the business of a mortgage agent), to violate an order of the Commissioner.

19. It is a violation of NRS 645B.400 for a loan processor who is an independent contractor to act or provide any of the services of a mortgage agent or otherwise engage in, carry on or hold himself out as engaging in or carrying on the activities of a mortgage agent unless he has first been licensed as a mortgage agent by the Commissioner.

20. NAC 645B.410 prohibits an independent contractor from engaging in the activities of a residential mortgage loan originator as a loan processor unless such independent contractor is licensed as a mortgage agent.

21. RESPONDENT is engaged in activities or conduct which requires licensure under the Statute and Regulation, and not holding the required license and not being exempt from the licensing requirement, RESPONDENT is in violation of NRS 645B.900 as well as NRS 645B.400 and NAC 645B.410. In particular, by receiving compensation or remuneration as an independent contractor engaging in the activities of a residential mortgage loan originator as a loan processor, or for otherwise offering or providing the services of a mortgage agent within the meaning of NRS 645B.0125, or carrying on, or holding himself out as engaging in or carrying on the business of a mortgage agent within the meaning of NRS 645B.0125, without first having obtained a mortgage license as required by NRS 645B or NAC 645B, RESPONDENT is in violation of the Statute and Regulation.

22. RESPONDENT is further in violation of NRS 645B.670(1)(c)(12) by violating an order of the Commissioner, specifically, the Final Order issued and entered on June 18, 2012, due to his failure to remit payment of the $25,000 fine as mandated.

23. The Commissioner is authorized pursuant to NRS 645B.515 to order a person to cease and desist from engaging in any activity that violates any provision of the Statute.

24. The Commissioner is required pursuant to NRS 645B.690 to impose an administrative fine of not more than $50,000 on a person who offers or provides any of the services of a mortgage broker or mortgage agent or otherwise engages in, carries on or holds himself or herself out as engaging in or carrying on the business of a mortgage broker or mortgage agent and, at the time the person was required to have a license pursuant to the Statute and the person did not have such a license.

25. The Commissioner is authorized pursuant to NRS 645B.670(1)(c)(12) to impose an administrative fine of not more than $25,000 upon a mortgage agent (a person who offers or provides any of the services of a mortgage agent, or otherwise engages in, carries on, or holds himself or herself out as engaging in or carrying on the business of a mortgage agent), who has violated an order of the Commissioner.

26. 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 RESPONDENT is or has engaged in unlicensed activity in violation of the Statute and Regulation, and concluded and determined that RESPONDENT should be ordered to: 1) cease and desist from engaging in any activity requiring licensure under NRS 645B; 2) pay administrative fine; and 3) pay the Division's investigative costs.

NOW, THEREFORE, IT IS ORDERED that:

1. RESPONDENT shall immediately CEASE AND DESIST from advertising, engaging in, or otherwise carrying on or holding himself out as engaging in or carrying on any activities that require licensure as a mortgage agent under the Statute.

2. An ADMINISTRATIVE FINE in the amount of $25,000.00 shall be and hereby is imposed on RESPONDENT. The ADMINISTRATIVE FINE shall be and is 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.

3. The Division's INVESTIGATIVE COSTS in the amount of $990.00 shall be and hereby is assessed on RESPONDENT, in accordance with NRS 622.400. The INVESTIGATIVE COSTS 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.

4. An administrative hearing shall be scheduled in this matter **only if** RESPONDENT timely requests 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 30 calendar days of the effective date of this ORDER, RESPONDENT shall be deemed to have waived and relinquished the right to an administrative hearing in this matter and a FINAL ORDER shall be issued**.

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

6. This ORDER shall remain effective and enforceable until terminated, modified, set aside, or suspended in writing by the Commissioner.

7. 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 NRS 645B and NAC 645B and protect the public.

IT IS SO ORDERED.

DIVISION OF MORTGAGE LENDING

By: _____
JAMES WESTRIN, COMMISSIONER

II.

NOTICE OF OPPORTUNITY FOR AN ADMINISTRATIVE HEARING

NAC 645B.515 provides as follows:

1. If a person engages in an activity in violation of the provisions of this chapter or chapter 645B of NRS, the Commissioner may issue an order to the person directing the person to cease and desist from engaging in the activity.

2. The order to cease and desist must be in writing and must state that, in the opinion of the Commissioner, the person has engaged in an activity:

(a) For which the person has not received a license or certificate of exemption as required by chapter 645B of NRS; or

(b) In a manner that violates the provisions of this chapter or chapter 645B of NRS.

3. A person who receives an order to cease and desist pursuant to this section shall not engage in any activity governed by chapter 645B of NRS after receiving the order unless the order is suspended or rescinded.

4. Not later than **30 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.]

NRS 645B.750 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, the Commissioner shall 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 shall enter a final order concerning the matter.

3. A person may appeal a final order of the Commissioner 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 30 calendar days after receiving 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, January 2, 2015, 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 ADMINSTRATIVE FINE AND INVESTIGATIVE COSTS, AND NOTICE OF OPPORTUNITY FOR HEARING, in the matter of GUSTAVE ROMERO ANAYA, addressed as follows:

Gustave Romero Anaya
147 Willow Glen Court
Las Vegas, NV 89074

Certified Receipt Number: 7009 2250 0001 8859 0055

DATED this 31st day of December, 2014

By: _____
Employee of the Division