

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Removal and the Prohibition of:

No. 07F-BD068-BNK

3 **FRANCISCO VICENTE MARTINEZ**

4 7002 S. 45th Place
5 Phoenix, AZ 85042

**SUPERINTENDENT'S FINAL
DECISION AND ORDER**

6 Respondent.

7
8 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the record
9 in this matter, including the transcript of the May 23, 2007 administrative hearing, Respondent's July
10 12, 2007 post-hearing letter, and the Administrative Law Judge Decision attached and incorporated
11 herein by this reference, adopts the Administrative Law Judge's Findings of Fact, Conclusions of Law
12 and Recommended Decision.

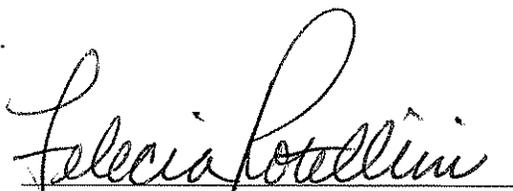
13 ORDER

14 IT IS ORDERED that Respondent is removed from and prohibited from further participation in
15 any manner as a director, officer, employee, agent or other person in the conduct of the affairs of any
16 financial institution or enterprise pursuant to A.R.S. § 6-161.

17 NOTICE

18 The parties are advised that, pursuant to A.R.S. § 41-1092.09, this Order shall be final unless
19 Respondent submits a written motion for rehearing no later than thirty (30) days after service of this
20 decision. The motion for rehearing or review must specify the particular grounds upon which it is
21 based as set forth in A.A.C. R20-4-1219. A copy shall be served upon all other parties to the hearing,
22 including the Attorney General, if the Attorney General is not the party filing the claim of error. In the
23 alternative, the parties may seek judicial review of this decision pursuant to A.R.S. § 41-1092.08(H).

24 DATED this 17th day of July, 2007.

25 

26 Felecia Rotellini
27 Superintendent of Financial Institutions

1 ORIGINAL filed this 17th day of
2 July, 2007, in the office of:

3 Felecia Rotellini
4 Superintendent of Financial Institutions
5 Arizona Department of Financial Institutions
6 ATTN: June Beckwith
7 2910 North 44th Street, Suite 310
8 Phoenix, Arizona 85018

9 COPY of the foregoing mailed/hand delivered
10 This same date to:

11 Lewis D. Kowal, Administrative Law Judge
12 Office of Administrative Hearings
13 1400 West Washington, Suite 101
14 Phoenix, AZ 85007

15 Alyse C. Meislik, Assistant Attorney General
16 Office of the Attorney General
17 1275 West Washington
18 Phoenix, AZ 85007

19 Robert D. Charlton, Assistant Superintendent
20 Arizona Department of Financial Institutions
21 2910 N. 44th Street, Suite 310
22 Phoenix, AZ 85018

23 AND COPY MAILED SAME DATE by
24 Certified Mail, Return Receipt Requested, to:

25 Francisco Vicente Martinez
26 7002 S. 45th Place
27 Phoenix, AZ 85042
28 Respondent

AND COPY MAILED SAME DATE by
Certified Mail, Return Receipt Requested, to:

Angelo Patane, Esq.
Koplow & Patane
10214 North Tatum Blvd.
Suite A750
Phoenix, AZ 85028
Attorney for Respondent

BY: June Beckwith

1 In the Matter of the Removal and
2 Prohibition of:

3 FRANCISCO VICENTE MARTINEZ
4 7002 S. 45th Place
5 Phoenix, AZ 85042

6 Respondent.

No. 07F-BD068-BNK

ADMINISTRATIVE
LAW JUDGE DECISION

9
10 **HEARING:** May 23, 2007. The record remained open for the submission of the
11 court reporter's transcript of the proceeding. The record closed on June 6, 2007.

12 **APPEARANCES:** Assistant Attorney General Alyse C. Meislik for the Arizona
13 Department of Financial Institutions, Angelo Patane, Esq. for Francisco Vicente
14 Martinez.

15 **ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal

16
17 **FINDINGS OF FACT**

- 18 1. At all times material to this matter, Security Mortgage Corporation ("Security
19 Mortgage") was licensed as a mortgage banker by the Arizona Department of Financial
20 Institutions ("Department").
- 21 2. At all times material to this matter, Francisco Vicente Martinez ("Mr. Martinez")
22 was a loan officer with Security Mortgage.
- 23 3. In December 2004, the Arizona Department of Real Estate ("ADRE") conducted
24 an investigation of Profile Realty and Carmen Cantu ("Mr. Cantu"), a licensed real
25 estate salesperson, in response to a complaint filed by Maria Salas ("Ms. Salas")
26 against Mr. Cantu. The complaint alleged that Mr. Cantu engaged in fraudulent
27 conduct in a transaction wherein Ms. Salas' house was sold to a twelve-year-old child,
28 Arthur Morales ("A. Morales"). This ultimately resulted in A. Morales defaulting on the
29 loan transaction, causing forfeiture of the home. Mr. Martinez acted as a loan officer in
30 the Salas transaction involving A. Morales.

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1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

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4. At the time of the ADRE investigation, Henry Soza ("Investigator Soza") was an investigator with ADRE who worked on a joint investigation with Roberto Rivera ("Investigator Rivera"), special agent for the Arizona Attorney General's Office.¹ Subsequently, Investigator Soza became an investigator for the Arizona Department of Financial Institutions ("Department").

5. The above-mentioned investigation into the Salas matter resulted in the Department obtaining ten random files from Security Mortgage that contained transactions involving Mr. Cantu as the referring real estate agent, Betty Barbee ("Ms. Barbee"), Mr. Cantu's managing broker and wife, Mr. Martinez, as the loan officer, and Victoria Cervantes ("Ms. Cervantes") who acted as escrow officer for First National Title Agency ("First National").

6. Investigators Soza and Rivera testified as to their belief that Mr. Martinez, acting in concert with Mr. Cantu, Ms. Barbee and Ms. Cervantes, helped to perpetrate fraudulent loan transactions, most of which involved minor children as borrowers, and that Security Mortgage's files contained false information as to the borrowers' addresses and employment history.

7. The Department proceeded with the instant action to remove and prohibit Mr. Martinez from employment in the financial industry in Arizona. The Department's case involved the presentation of evidence regarding the activities of Mr. Martinez, Mr. Cantu, Ms. Barbee, and Ms. Cervantes relating to the above-mentioned ten transactions.

8. At hearing, the Department relied heavily on a felony conviction Mr. Martinez had for forgery, which act occurred during the A. Morales transaction. Based upon that conviction and information pertaining to the other nine transactions that was obtained during the Department's investigation, the Department drew conclusions as to Mr. Martinez's conduct with respect to the nine transactions.

¹ Investigator Rivera acted as the lead investigator in the joint investigation.

1 9. The results of the investigation conducted by Inspectors Soza and Rivera
2 revealed the following information regarding the ten transactions which the Department
3 relied upon in the instant proceeding:

4 a. The Morales/Salas matter. A. Morales was the borrower in the loan
5 transaction involving the purchase of Ms. Salas' home. The loan amount
6 of \$112,000.00 was funded by and fees of \$5,888.02 were collected by
7 Security Mortgage. The loan officer was Mr. Martinez. The social security
8 number of the borrower was that of A. Morales, the minor child of Ms.
9 Cervantes, the escrow officer employed by the escrow company handling
10 the transaction. The credit report of A. Morales did not show any credit
11 account history. The loan file contained fictitious information in a
12 Verification of Employment form and Verification of Rent or Mortgage form
13 pertaining to A. Morales.

14 b. The Hunt matter. Melissa Hunt, the borrower, was the minor child
15 of Maria Chayra, the seller of the real property. The loan amount of
16 \$124,500.00 was funded by and fees of \$4,181.25 were collected by
17 Security Mortgage. There was fictitious address information contained in
18 the loan file regarding Melissa Hunt. The credit report of Melissa Hunt did
19 not show any credit account history.

20 c. The Halaka matter. Anthony Halaka, the borrower, was the minor
21 child of Albert Halaka, the seller of the property. The loan amount of
22 \$135,000.00 was funded by and fees of \$8,182.50 were collected by
23 Security Mortgage. There was fictitious employment and address
24 information in the loan file pertaining to Anthony Halaka. The credit report
25 of Anthony Halaka did not show any credit account history.

26 d. The Pulini matter. The loan amount of \$128,000.00 was funded by
27 and fees of \$6,087.93 were collected by Security Mortgage. The
28 borrower, John Pulini, is disabled and unemployed as a result of an
29 accident he had in California before he moved to Arizona. The loan file
30 contained fictitious employment and address information regarding John

1 Pulini. The credit report of John Pulini did not show any credit account
2 history.

3 e. The Flores matter. The borrower, Isabelle Flores is a minor child.
4 The loan amount of \$123,000.00 was funded by and fees of \$4,536.25
5 were collected by Security Mortgage. The loan file contained fictitious
6 employment, and address information pertaining to Isabel Flores. The
7 credit report of Isabel Flores did not show any credit account history.

8 f. The Lerma matter. Saul Lerma, the borrower, is a minor. The loan
9 amount of \$246,000.00 was funded by and fees of \$13,455.84. were
10 collected by Security Mortgage. The loan file contained fictitious
11 employment and address information pertaining to Saul Lerma. The
12 credit report of Saul Lerma did not show any credit account history.

13 g. The Bahena matter. Elizabeth Bahena. The loan amount of
14 \$175,000.00 was funded by and fees of \$9,362.12 were collected by
15 Security Mortgage. The loan file contained fictitious employment and
16 address information pertaining to Elizabeth Bahena.

17 h. The Moreno matter. Jazmin Moreno, the borrower, is a minor child.
18 The loan amount of \$157,000.00 was funded by and fees of \$8,811.06
19 were collected by Security Mortgage. The loan file contained fictitious
20 employment and address information pertaining to Jazmin Moreno. The
21 credit report of Jazmin Moreno did not show any credit account history.

22 i. The Palafox matter. Anna Palafox, the borrower, is a minor. The
23 loan amount of \$142,000.00 was funded by and fees of \$3,387.48 were
24 collected by Security Mortgage. The loan file contained fictitious
25 employment and address information pertaining to Anna Palafox..

26 j. The Estrada matter. Miguel Estrada is listed as the borrower. His
27 cousin, Juan Estrada, used Miguel Estrada's social security number for
28 real estate investment. A home was purchased in the name of Miguel
29 Estrada and financing was approved. The loan was funded by Security
30 Mortgage and Juan Estrada received a disbursement of \$33,187.00 from
the sale of the investment property. Due to delinquent mortgage

1 payments, Miguel Estrada's credit was negatively affected and he did not
2 receive the proceeds from the sale of the investment property that was in
3 his name. Miguel Estrada claimed that he never signed any purchase or
4 loan documents pertaining to this transaction. The loan file contained
5 fictitious employment and address information pertaining to Miguel
6 Estrada.

7 10. Investigators Soza and Rivera learned from Troy Turk, an agent with the Social
8 Security Administration, that social security numbers for A. Morales, Melissa Hunt,
9 Anthony Halaka, Isabel Flores, Saul Lerma, Jazmin Moreno, and Anna Palafox showed
10 that they were minors and, as such, could not be purchasers of real estate or borrowers
11 in mortgage loan transactions.

12 11. An indictment was issued on July 19, 2005, in *State of Arizona v. Carmen Cantu,*
13 *Betty Jane Barbee, Francisco Vicente Martinez, and Victoria Marie Cervantes,*
14 Maricopa County Superior Court Case No. CR2005-011595 003 DT ("CR2005-011595
15 003 DT") charging Mr. Martinez with eight counts of Fraudulent Schemes and Artifices,
16 a Class 2 Felony, six counts of Taking Identity of Another, a Class 2 Felony, eight
17 counts of Forgery, a Class 4 Felony, and one count of Theft, a Class 2 Felony.

18 12. On January 3, 2006, the Court accepted plea agreement entered into by Mr.
19 Martinez in *State of Arizona v. Francisco Vicente Martinez,* CR2005-011595 003 DT.
20 Pursuant to the Plea Agreement, Mr. Martinez pled guilty to Count Fifteen, Forgery, a
21 Class 4 Felony, in violation of A.R.S. §§ 13-2002, 13-701, 13-702, 13-701.01, and 13-
22 801. Mr. Martinez agreed to pay joint and several restitution of \$9,999.99.

23 13. On March 25, 2006, the Court sentenced Mr. Martinez in Case No. CR2005-
24 011595 003-DT to serve two months of jail time, and four months of supervised
25 probation and ordered him to pay restitution in the amount of \$9,999.99 to Mary Salas
26 and Michelle Escalante. Mr. Martinez was also ordered not to remain in or return to the
27 United States illegally if deported or processed through voluntary departure.

28 14. It was undisputed that Mr. Martinez has fully complied with the restitution order in
29 Case No. CR2005-011595 and had his sentence modified to exclude jail time.
30

1 15. Investigator Rivera testified that during the interview he conducted with Doris
2 Kallen (Ms. Kallen"), she was shown certain documents relating to the above-
3 mentioned ten transactions and stated:

4 a. She did not sign any Verification of Employment or Verification of
5 Rent or Mortgage form regarding A. Morales, Anthony Halaka, John
6 Pulini, Isabel Flores, Saul Lerma, or Jazmin Moreno.

7 c. She did not sign a Verification of Employment form regarding
8 Miguel Estrada.

9 d. She did not sign a Verification of Rent or Mortgage form regarding
10 Melissa Hunt.

11 e. She generally does not meet borrowers in performing her duties as
12 a loan processor but contacts employers to verify employment.

13 f. The signatures of the above-mentioned documents are not her
14 signatures because she did not sign those documents. She is familiar
15 with the handwriting of Mr. Martinez and stated her belief that the
16 signatures on the documents appear to be those of Mr. Martine.

17 16. Investigator Rivera obtained signature samples of Ms. Kallen and Mr. Martinez.
18 However, Investigator Rivera did not obtain a signature sample of Mr. Martinez signing
19 the name of Ms. Kallen. He opined that the signatures that appeared on the
20 documents do not look like Ms. Kallen's signature. Investigator Rivera compared Mr.
21 Martinez' signature on his driver's licens to those contained in the documents.
22 According to Investigator Rivera, the signatures of Ms. Kallen on the documents looked
23 like the handwriting of Mr. Martinez.

24 17. Mr. Martinez did not testify and, thus, presented no evidence to refute or rebut
25 the testimony of Investigator Rivera as to what Ms. Kallen told him or what he
26 determined based on comparing the handwriting samples of Ms. Kallen and , Mr.
27 Martinez, with the signatures on the documents.

28 18. Investigators Soza and Rivera testified as to their opinion that Mr. Martinez
29 provided false information in the loan processing of the above-mentioned matters.
30 However, with the exception of the Morales matter, they testified that they did not have
any evidence and had not seen any documents presented by the Department that

1 showed Mr. Martinez knew that any of the borrowers were minors, or that he knew the
2 borrowers' employment and address history were false.

3 19. Investigators Soza and Rivera testified as to their opinion that there were enough
4 red flags to cause Mr. Martinez to be suspicious of the borrowers in the above-
5 mentioned ten transactions. Mr. Martinez should have been suspicious of the
6 transaction involving A. Morales because he had difficulty in contacting Mr. Morales and
7 had to get information through Mr. Cantu, and because A. Morales had no credit
8 account history.

9 20. Investigator Rivera testified that, with respect to the Morales matter, by
10 committing forgery, Mr. Martinez engaged in misrepresentation. Investigator Rivera
11 also testified that he interviewed Michael Yancey, Security Mortgage's Chief Executive
12 Officer and 100 % owner and responsible person. Mr. Yancey stated that it is a loan
13 officer's responsibility to verify information needed to process the loan.

14 21. Robert Charlton ("Mr. Charlton"), Assistant Director of the Department, testified:

15 a. The Department proceeds against a person under A.R.S. § 6-161
16 when the public and industry licensed by the Department are at risk.

17 b. In this particular case, there is a risk that Mr. Martinez could be
18 employed by companies licensed by the Department and Mr. Martinez
19 could be placed in a position of trust that would afford him an opportunity
20 to misappropriate additional funds, which would negatively impact the
21 licensed industry and the public.

22 c. It is the exposure to such harm and Mr. Martinez's personal
23 dishonesty that is the reason why it is necessary to ensure that Mr.
24 Martinez not be employed within the licensed industry.

25 22. The testimony of Investigator Soza, Investigator Rivera, and Mr. Charlton, as set
26 forth above, is determined to be credible.
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CONCLUSIONS OF LAW

1. The Superintendent of the Department has the authority to regulate all persons engaged in the mortgage banker business and enforce the applicable statutes and rules. See A.R.S. Title 6, Chapter 9, Article 2,

2. The weight of the evidence of record did not establish that Mr. Martinez violated the provisions of A.R.S. § 6-947(M). There was no credible evidence that showed Mr. Martinez failed to truthfully account for monies belonging to a party to a mortgage loan or mortgage banking transaction and no evidence that showed Mr. Martinez failed to disburse monies in accordance with the mortgage banking loan agreements.

3. Mr. Martinez's January 3, 2006 conviction of one count of Forgery, a Class 4 Felony, in CR2005-011595 003 DT constitutes grounds for the removal of and the prohibition of Mr. Martinez from participating in any manner in the conduct of the affairs of any financial institution or enterprise, pursuant to A.R.S. § 6-161(A)(4).

4. The Department presented credible evidence through the testimony of Investigator Rivera and the investigative notes reflecting that Ms. Kallen denied signing Verification of Employment and/or Rent or Mortgage forms in the Morales, Halaka, Pulini, Flores, Moreno and Estrada matters ("Seven Matters"). According to Investigator Rivera, he and Ms. Kallen formed the belief upon review of the signature of Ms. Kallen contained on those documents in the Seven Matters that Mr. Martinez signed Ms. Kallen's name.

5. The Administrative Law Judge concludes that the weight of the credible evidence of record established that Mr. Martinez violated the provisions of A.R.S. § 6-947(L) by making a misrepresentation in the course of the mortgage banker business by signing the Ms. Kallen's name on the Verification of Employment and/or Verification of Rent or Mortgage in the Seven Matters.

6. Mr. Martinez's violation of A.R.S. § 6-947(L) constitutes grounds for the removal of and prohibition of Mr. Martinez from participating in any manner in the conduct of the affairs of any financial institution or enterprise pursuant to A.R.S. § 6-161(A)(6).

7. The weight of the evidence of record established that Mr. Martinez's conduct, as set forth in the above Findings of Fact, constitutes acts, omissions, and practices which

1 demonstrate personal dishonesty and unfitness to continue in office or to participate in
2 the conduct of the affairs of any financial institution or enterprise within the meaning of
3 A.R.S. § 6-161(A)(1). Such conduct constitutes grounds for removal and the prohibition
4 of Mr. Martinez from participating in any manner in the conduct of the affairs of any
5 financial institution or enterprise within the meaning of A.R.S. § 6-161(A)(1).

6 8. Based on the above, the Superintendent of the Department has sufficient
7 grounds to order the removal of and prohibition of Mr. Martinez from further
8 participation in any manner as a director, officer, employee, agent or other person in the
9 conduct of the affairs of any financial institution or enterprise pursuant to A.R.S. § 6-
10 161.

11 **ORDER**

12 On the effective date of the Order entered in this matter, Mr. Martinez shall be
13 removed from and prohibited from further participation in any manner as a director,
14 officer, employee, agent or other person in the conduct of the affairs of any financial
15 institution or enterprise pursuant to A.R.S. § 6-161.

16 Done this day, June 25, 2007.

17 

18 Lewis D. Kowal
19 Administrative Law Judge

20
21 Original transmitted by mail this
22 25 day of June, 2007, to:

23
24 Arizona Department of Financial Institutions
25 Felecia Rotellini, Superintendent
26 ATTN: June Beckwith
27 2910 North 44th Street, Suite 310
28 Phoenix, AZ 85018

29 By 
30