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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

11	In the Matter of the Accusation/Statement of)	File Nos.: 413-0944
12	Issues of THE COMMISSIONER OF)	
13	BUSINESS OVERSIGHT,)	ACCUSATION/STATEMENT OF ISSUES
14	Complainant,)	IN SUPPORT OF NOTICE OF INTENTION
15	vs.)	TO ISSUE LICENSE SUSPENSION, DENY
16	SIRVA MORTGAGE, INC.,)	APPLICATION FOR AUTHORITY TO
17	Respondent.)	SERVICE LOANS, AND LEVY PENALTIES
18)	

19 The Complainant is informed and believes, and based upon such information and belief,
20 alleges and charges Respondent as follows:

21 I
22 INTRODUCTION

23 The proposed orders seek to suspend the residential mortgage lender license of Sirva
24 Mortgage, Inc. (“Sirva”) pursuant to section 50317 of the California Residential Mortgage Lending
25 Act (Fin. Code, §§ 50000 et. seq.)(“CRMLA”), deny the pending application of Sirva to add loan
26 servicing authority to its residential mortgage lender license pursuant to Financial Code section
27 50126, and to levy penalties pursuant to Financial Code section 50513 in that Sirva has committed
28 numerous violations of the CRMLA.

II

CURRENT RESIDENTIAL MORTGAGE LENDER LICENSE

Sirva is a residential mortgage lender licensed by the Commissioner of Business Oversight ("Commissioner" or "Complainant") pursuant to the CRMLA. Sirva has its principal place of business located at 6200 Oak Tree Boulevard, Suite 300, Independence, Ohio 44131. Sirva currently has 3 branch office locations under its CRMLA license located in California, and other states. Sirva employs mortgage loan originators in its CRMLA business.

III

THE PENDING APPLICATION

On or about December 6, 2012, Sirva filed an application with the Commissioner to add servicing authority to its residential mortgage lender license. The application was submitted to the Commissioner by filing a California Residential Mortgage Lending Act Amendments checklist. Sirva, however, has yet to update its information in the Nationwide Mortgage Licensing System ("NMLS") to show that it has requested servicing authority in California. The application remains pending.

IV

RESIDENTIAL MORTGAGE LENDING ACT VIOLATIONSA. Commingling:

On or about December 26, 2012, the Commissioner commenced a regulatory examination of the books and records of Sirva under the CRMLA ("2012 regulatory examination"). The 2012 regulatory examination disclosed that Sirva had been depositing trust funds into its company operations account. As of October 31, 2012, Sirva's trust liability was \$181,305.71, which was comprised of trust funds in the form of tax and insurance impounds. However, Sirva's operating account where such trust funds were maintained had a balance of \$392,648.09. Financial Code section 50202(a) prohibits the commingling of trust funds with funds of the licensee. Moreover, Financial Code section 50202(a) and (b) require trust funds be maintained in an account designated as a "trust account".

The Commissioner had found that Sirva was commingling trust funds with its operating

1 funds during the last regulatory examination under the CRMLA that commenced on
2 December 6, 2010. Based upon the findings of the 2010 regulatory examination, the Commissioner
3 instructed Sirva to implement such procedures as necessary to ensure that its funds were not
4 commingled with the trust funds in the future.

5 B. Per Diem Interest Overcharges:

6 The 2012 regulatory examination further disclosed that in two loans, Sirva had charged the
7 borrowers per diem interest in excess of one day prior to the disbursement of loan proceeds in
8 violation of Financial Code section 50204(o). The per diem interest overcharges in the two loans
9 totaled \$152.23. Sirva conducted a self-audit of all loans originated during 2012 regarding per diem
10 interest charges. The self-audit disclosed twenty-six (26) loans with per diem interest overcharges.
11 The Department is currently in the process of obtaining further documentation to test the accuracy of
12 the self-audit.

13 The Commissioner had found that Sirva had overcharged per diem interest in at least one
14 loan transaction during the 2010 regulatory examination.

15 C. Books and Records:

16 Financial Code section 50314 requires CRMLA licensees to maintain its books and records
17 in a manner that will properly enable the Commissioner to determine whether the licensee is
18 complying with the law. In twenty-three percent (23%) of the loans reviewed during the 2012
19 regulatory examination, it appeared that Sirva had overcharged the borrower for appraisal fees, i.e.,
20 the amount stated on the HUD-1 settlement statement for appraisal fees was higher than the
21 appraisal invoice contained in the loan file. Further review of the issue revealed that Sirva had
22 credited back the amount of the appraisal fee overcharge at the time of settlement. However, the
23 appraisal fee overcharge credit was lumped with other credits on the HUD-1 settlement statement.
24 The HUD-1 settlement statements provided to the borrowers were prepared such that the
25 Commissioner was unable to determine if appraisal fee overcharges had occurred¹ and Sirva
26 maintained no documentation in the loan files as to the breakdown of the credits.

27 _____
28 ¹ The settlement agents prepared the HUD-1 settlement statements based upon information provided by Sirva.

1 D. Title Insurance Overcharges:

2 The 2012 regulatory examination additionally disclosed that Sirva had charged a borrower
 3 \$950 for title insurance, but there was no invoice or other documentation to support the charge in
 4 violation of Financial Code section 50204(c) and (i) and California Code of Regulations, title 10,
 5 section 1950.314.4(j)(6). The Commissioner had found that Sirva had overcharged title insurance
 6 fees in at least four loan transactions during the 2010 regulatory examination.

7 E. Unlicensed Servicing:

8 On or about September 17, 2012, Sirva sent a letter to the Commissioner stating that it will
 9 now be retaining servicing rights on the loans it sells. On or about September 18, 2012, Complainant
 10 notified Sirva through NMLS that “The license issued to Sirva Mortgage, Inc. on 5/7/08 is for
 11 lending only. If you wish to add mortgage loan servicer authority to your license authority, please
 12 complete and submit Amendment Checklist for Change of License Authority.” Thereafter, on or
 13 about December 6, 2012, Sirva applied to add residential mortgage loan servicing authority to its
 14 CRMLA license by submitting a California Residential Mortgage Lending Act Amendments
 15 checklist to the Commissioner. The Commissioner has yet to approve the residential mortgage loan
 16 servicing application due to the findings of the 2012 regulatory examination.

17 On or about March 3, 2014, the Commissioner received Sirva’s Report of Principal Amount
 18 of Loans Originated and Aggregate Amount of Loans Serviced for the period ended December 31,
 19 2013 as required by Financial Code sections 50307 and 50401. The report indicated that Sirva had
 20 violated Financial Code section 50002 by servicing residential mortgage loans during 2013.

21 V

22 Financial Code section 50126 provides in pertinent part:

23 (a) Upon reasonable notice and opportunity to be heard, the commissioner
 24 may deny an application for any of the following reasons:

25 . . .

26 (3) The applicant or any officer, director, general partner, or person owning
 27 or controlling, directly or indirectly, 10 percent or more of the outstanding
 28 interests or equity securities of the applicant, has violated any provision of
 this division or the rules thereunder or any similar regulatory scheme of the
 State of California or a foreign jurisdiction.

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Financial Code section 50327 provides in pertinent part:

(a) The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license, if the commissioner finds that:

(1) the licensee has violated any provision of this division or rule or order of the commissioner thereunder; or (2) any fact or condition exists that, if it had existed at the time of the original application for license, reasonably would have warranted the commissioner in refusing to issue the license originally.

Financial Code section 50513 provides in pertinent part:

(a) The commissioner may do one or more of the following:

(4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

(b) The commissioner may impose a civil penalty on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.

(c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

VI

CONCLUSION

Complainant finds, by reason of the foregoing, that Sirva has violated Financial Code sections 50002, 50202, subdivisions (a) and (b), 50204, subdivision (c), 50204, subdivision (i), 50204, subdivision (o), and 50314, and California Code of Regulations, title 10, section 1950.314.4(j)(6) and based thereon, grounds exist to (i) suspend the residential mortgage lender license of Sirva, (ii) deny Sirva's application for loan servicing, and (iii) assess penalties against Sirva pursuant to Financial Code section 50513.

1 WHEREFORE, IT IS PRAYED that:

2 1. Pursuant to Financial Code section 50327, the residential mortgage lender license of
3 Sirva be suspended for a period of up to one month or until such time as Sirva demonstrates that
4 trust funds are no longer commingled and proper procedures are in place to prevent future
5 commingling, whichever is longer;

6 2. Pursuant to Financial Code section 50126, Sirva’s application for loan servicing be
7 denied;

8 3. Pursuant to the Financial Code section 50513(b), a penalty be levied against Sirva for
9 commingling trust funds in violation of Financial Code section 50202 according to proof, but in an
10 amount of at least \$25,000.

11 4. Pursuant to the Financial Code section 50513(b), penalties be levied against Sirva for
12 the twenty-six (26) violations of Financial Code section 50504(o), overcharging per diem interest,
13 according to proof, but in an amount of at least \$1,000 per violation; and

14 5. Pursuant to the Financial Code section 50513(b), penalties be levied against Sirva for
15 the seven instances wherein the Commissioner was unable to readily determine if appraisal fees had
16 been overcharged due to inadequate records in violation of Financial Code section 50314 according
17 to proof, but in an amount of at least \$1,000 per loan transaction;

18 6. Pursuant to the Financial Code section 50513(b), penalties be levied against Sirva for
19 one violation of Financial Code section 50204, subdivisions (c) and (i) and California Code of
20 Regulations, title 10, section 1950.314.4(j)(6), overcharging title insurance fees, according to proof,
21 but in an amount of at least \$1,000 per violation; and

22 7. Pursuant to the Financial Code section 50513(b), penalties be levied against Sirva for
23 engaging in unlicensed servicing activities in violation of Financial Code section 50002 according to
24 proof, but in an amount of at least \$50,000.

25 Dated: October 14, 2014
26 Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

27 By _____
28 Judy L. Hartley
 Senior Corporations Counsel
 Enforcement Division