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

11 In the Matter of: ) CRMLA LICENSE NO. 413-0603  
12 THE COMMISSIONER OF BUSINESS ) CFL LICENSE NO. 6037861  
13 OVERSIGHT, ) ACCUSATION IN SUPPORT OF NOTICE OF  
14 Complainant, ) INTENT TO ISSUE ORDER SUSPENDING  
15 v. ) RESIDENTIAL MORTGAGE LENDER AND  
16 ARK-LA-TEX FINANCIAL SERVICES, LLC, ) SERVICER AND FINANCE LENDER  
17 Respondent. ) LICENSES AND TO 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 1. The Department of Business Oversight, through the Commissioner, has jurisdiction  
24 over the licensing and regulation of persons and entities engaged in the business of residential  
25 mortgage lending and/or servicing pursuant to the California Residential Mortgage Lending Act  
26 (CRMLA) (Fin. Code §50000 et seq.) and finance lending and/or brokering pursuant to the  
27 California Financing Law (Fin. Code, section 22000, et seq.) (CFL).  
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1           6.           In 2018, Ark-LA maintained the relevant trust accounts at Compass Bank account  
2 number ending #7824, 202210 for appraisal fees collected (Appraisal Account), and Comerica  
3 Escrow Account number ending in #3090, 100075 (Escrow Account).

4           7.           A review of the trust account reconciliations for January 2018 disclosed that Ark-LA  
5 had failed to properly reconcile the above described trust accounts for the period ended January 31,  
6 2018, resulting in an overage of \$71,010.00 in its Appraisals Account, and a net shortage in the  
7 amount of \$583,823.24 in its Escrow Account. A trust account overage or shortage indicates that  
8 company operating funds have been commingled with trust funds. Financial Code section 50202,  
9 subdivision (a) prohibits the commingling of company funds with trust funds.

10          8.           On April 24, 2018, Ark-LA deposited \$512,813.24 into the Escrow Account to  
11 correct the net shortage calculated as \$583,823.24 less \$71,010.00.

12          9.           Ark-LA was instructed to submit its June 30, 2018 financials to include the balance  
13 sheet, trial balance, trust account reconciliation, bank account statement, and corresponding trust  
14 liability subsidiary ledgers for the above described trust accounts.

15          10.          On August 23, 2018, Ark-LA sent an email to the Commissioner's Examiner  
16 (Examiner) stating that the June 30, 2018 reconciliations and related ledgers could not be reconciled  
17 because Ark-LA could not backdate cash transfers. Ark-LA's email of August 23, 2018 further  
18 stated that Ark-LA has implemented new procedures, methodologies and business practices to  
19 properly reconcile its appraisal accounts to its general operating account in compliance with the  
20 CRMLA. Ark-LA offered to provide to the Commissioner, its reconciliations as of August 31, 2018  
21 to demonstrate its compliance with the CRMLA.

22          11.          On September 24, 2018, Ark-LA provided its bank account reconciliations for its  
23 Appraisal and Escrow Accounts as of August 31, 2018 but failed to provide its monthly  
24 reconciliations between these trust bank accounts and the controlling liability accounts, as required  
25 by the Commissioner.

26          12.          On October 17, 2018, the Examiner sent a follow up letter dated October 17, 2018 to  
27 Ark-LA notifying it that the findings concerning its Appraisal Account had been referred to the  
28 Department's Enforcement Division for further review.

1           13.           On or about February 24, 2019, the Commissioner’s counsel of record in this matter  
2 Uche L. Enenwali (Counsel), received an email from Ark-LA’s counsel, Joseph Mirabella  
3 (Mirabella), acknowledging receipt of the Commissioners letter of October 17, 2018, and stating that  
4 Ark-LA has implemented corrective measures to properly reconcile its Appraisal Account on a  
5 national scale and in timely manner. Mirabella’s email further described in detail the proposed  
6 corrective measures Ark-LA purportedly implemented to ensure compliance with the CRMLA.

7           14.           On or about June 19, 2019, the Examiner posted a license item on NMLS notifying  
8 Ark-LA of pertinent discrepancies noted in its 2018 CRMLA Annual Report, including that “Item 4”  
9 of Ark-LA’s 2018 CRMLA showed no ARM loans were made while “Item 19” reported 15 ARM  
10 loans were made. The Examiner’s notification in NMLS directed Ark-LA to amend its 2018 Annual  
11 Report and Ark-LA timely complied with the Examiner’s request.

12           15.           On October 8, 2019, Counsel received an email from Ark-LA describing additional  
13 corrective measures Ark-LA purportedly adopted to properly reconcile its appraisal escrow account  
14 with its general operating account in compliance with the CRMLA.

15           16.           On December 10, 2019, Counsel emailed Mirabella informing him that the  
16 Commissioner has reviewed Ark-LA’s proposed new measures but required pertinent documents  
17 from Ark-LA to validate Ark-LA’s proposed new measures. Counsel’s email of December 10, 2019  
18 requested Ark-LA to provide no later than December 19, 2019, the following information to the  
19 Commissioner’s Examiner:

20           a.           Evidence of Ark-LA’s weekly reconciliation of its subsidiary ledgers to its liability  
21 controlling accounts;

22           b.           Monthly reconciliation of subsidiary ledger & liability controlling account to its trust  
23 bank statement for the month 12/31/19;

24           c.           The following documents for the period 12/31/19; (i) bank reconciliation for the trust  
25 account/the GAAP reconciliation; (ii) related bank statements for each trust account; (iii) related  
26 subsidiary ledgers for each trust account; (iv) balance sheet, and (v) working trial balance.

27           17.           Counsel did not receive a response to her email of December 10, 2019 from Ark-LA,  
28 and on or about January 31, 2020, counsel contacted Mirabella by telephone to follow up on her

1 December 10, 2019 email and request for documents. Mirabella stated he did not receive Counsel's  
2 email of December 10, 2019 and requested that Counsel resend the email. Counsel obliged  
3 Mirabella's request and on January 31, 2020, resent her email and request for documents dated  
4 December 10, 2019 to Mirabella.

5 18. To date, neither Counsel nor the Department has received a response to Counsel's  
6 emails of December 10, 2019 and January 31, 2020, or the documents requested in those emails  
7 from Ark-LA.

8 19. California Code of Regulations title 10, section 1950.314.1 states in pertinent part:

- 9 a) A residential mortgage lender, residential mortgage lender and servicer, or  
10 residential mortgage loan servicer shall establish, and maintain current, the  
11 following books with reference to its trust accounts:
- 12 (1) A trust account ledger card for each account detailing receipts and disbursement  
13 of all funds deposited by the borrower, lender or seller with the licensee in  
14 connection with the origination, closing or servicing of any mortgage loan. The  
15 funds shall be held in accordance with the terms of a written agreement between  
16 the licensee and such borrower, lender or seller which provides that upon the  
17 occurrence of a specific condition or event, the funds or a portion thereof shall be  
18 disbursed to the borrower, lender or seller.
- 19 (2) Liability controlling account;
- 20 (3) Cash receipt and disbursement journal or a file containing copies of all receipts  
21 and checks and/or check stubs of checks issued by the residential mortgage lender  
22 or residential mortgage loan servicer as a medium of posting to the records  
23 referred to in subsections (a) and (b) in which case adding machine tapes of totals  
24 of receipts and checks shall be retained.
- 25 (b) The records referred to in subsections (a)(1) and (2) shall be reconciled at least  
26 once each month with the bank statements of the trust account. The records  
27 referred to in subsection (a)(1) shall be reconciled at least once each week with  
28 the liability controlling account referred to in subsection (a)(2).

20. Financial Code section 50314 provides in pertinent part:

- 26 (a) Every person subject to this division shall keep documents and records that will  
27 properly enable the commissioner to determine whether the residential mortgage  
28 lending or residential mortgage loan servicing functions performed by that person  
comply with the provisions of this division and with all rules and orders made by  
the commissioner under this division. Upon request of the commissioner,

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residential mortgage lenders and residential mortgage loan servicers shall file an authorization for disclosure to the commissioner of financial records of the licensed business pursuant to Section 7473 of the Government Code.

- (b) The business documents and records of every residential mortgage lender or residential mortgage loan servicer, whether required to be licensed under this division or not, are subject to inspection and examination by the commissioner at any time without prior notice. The provisions of this subdivision shall not apply to persons specified in subdivision (g) of Section 50003. Any person subject to this division shall, upon request and within the time specified in the request, allow inspection and copying of any documents and records by the commissioner or his or her authorized representative.
- (c) The cost of every inspection and examination of a licensee or other person subject to this division shall be paid to the commissioner by the licensee or person examined, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. In determining the cost of any inspection or examination, the commissioner may use the estimated average hourly cost, including overhead, for all persons performing inspections or examinations of licensees or other persons subject to this division for the fiscal year.

**III.**

**CRMLA Suspension/Penalty Statutes**

- 21. 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.
- 22. 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

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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.

**IV.**

**CFL Suspension/Penalty Statutes**

23. Financial Code section 22714 provides in pertinent part:

(a) The commissioner shall suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

...

(2) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

24. Financial Code section 22172 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 finance lender or broker 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 finance lender or broker 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 finance lender or broker 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).

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

4 **V.**

5 **Conclusion**

6 The Commissioner finds that, by reason of the foregoing, Ark-LA has violated Financial  
7 Code section 50314, and California Code of Regulations, title 10, sections 1457, subdivision (d),  
8 1950.314.1, 1. by failing to reconcile its liability controlling accounts to the bank statement balance  
9 at least once per month, and based thereon, grounds exist to (i) suspend the residential mortgage  
10 lender and servicer licenses and the finance lender licenses of Ark-LA, and (ii) assess penalties  
11 against Ark-LA.

12 **VI.**

13 **Prayer**

14 WHEREFORE, IT IS PRAYED that:

15 Pursuant to Financial Code section 50327, the residential mortgage lender and servicer  
16 licenses of Ark-LA-Tex Financial Services, LLC be suspended for a period of up to 12 months;

17 Pursuant to Financial Code section 22714, the finance lender licenses of Ark-LA-Tex  
18 Financial Services, LLC be suspended for a period of up to 12 months;

19 Pursuant to Financial Code section 50513, subdivision (b), a penalty be levied against Ark-  
20 LA-Tex Financial Services, LLC for failure to properly reconcile its trust accounts on a monthly  
21 basis, in violation of Financial Code section 50314 and California Code of Regulations, title 10,  
22 section 1950.314.1, according to proof, but in an amount of at least \$15,000.00;

23 Pursuant to Financial Code section 50513, subdivision (b), a penalty be levied against Ark-  
24 LA-Tex Financial Services, LLC for causing shortages/overages to exist in its Appraisal Escrow and  
25 Escrow Account in violation of California Code of Regulations, title 10, section 1950.314.6  
26 according to proof, but in an amount of at least \$25,000.00;

27 Pursuant to the Financial Code section 50513, subdivision (b), a penalty be levied against  
28 Ark-LA-Tex Financial Services, LLC for commingling company funds with trust funds in its



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Appraisal and Escrow Accounts in violation of Financial Code section 50202, subdivision (a),  
according to proof, but in an amount of at least \$25,000.00.

Dated: June 4, 2020  
Los Angeles, California

MANUEL P. ALVAREZ  
Commissioner of Business Oversight

By \_\_\_\_\_  
UCHE L. ENENWALI  
Senior Counsel  
Enforcement Division