

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

CASE NO C-10-0057

ORDER NO C-10-0057-10-OR01

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ARKANSAS SECURITIES DEPT.

**IN THE MATTER OF:
ARIA & ASSOCIATES, INC. "AMERICAN LOAN ASSISTANCE"
AND ALEX CORTEZ**

RESPONDENTS

CEASE AND DESIST ORDER

On August 13, 2010, the Staff of the Arkansas Securities Department ("Staff") filed a Request for Cease and Desist Order ("Request"), stating that it has information and certain evidence in its possession that indicates Aria & Associates, Inc. "American Loan Assistance" ("Aria") and Alex Cortez ("Cortez") have violated provisions of the Arkansas Fair Mortgage Lending Act ("FMLA"), Ark. Code Ann. §§ 23-39-501 through 23-39-518. The Arkansas Securities Commissioner ("Commissioner") has reviewed the Request, and based upon representations made therein, finds that:

FINDINGS OF FACT

The Staff's Request asserts the following representations of fact:

1. Aria is a California corporation believed by the Staff to have its main office in Irvine, California. Aria has never been licensed under the FMLA in any capacity.
2. Cortez is a "loan counselor" employed by Aria. Cortez is believed to be a resident of California. Cortez has never been licensed under the FMLA in any capacity.
3. In January 2010, Arkansas resident one ("AR1") contacted Aria concerning a modification of the terms of AR1's residential mortgage loan. AR1's residence is located in

Springdale, Arkansas. AR1 spoke with Cortez, an employee of Aria. Cortez told AR1 that Aria could get a modification of AR1's mortgage loan of between one to four percent.

4. After AR1's initial contact with Aria, Cortez sent a fax with attached forms and documents to AR1. The forms and documents Cortez sent to AR1 included: a fax cover sheet containing instructions (attached to the Request as Exhibit 1); general information and instructions sheets (attached to the Request as Exhibit 2); a Borrower Contact and Employment Information form (attached to the Request as Exhibit 3); a Financial Worksheet (attached to the Request as Exhibit 4); a Hardship Letter form (attached to the Request as Exhibit 5); an Aria & Associates, Inc. "American Loan Assistance" Agreement (attached to the Request as Exhibit 6); a return fax cover sheet (attached to the Request as Exhibit 7); an Authorization to Release Information form (attached to the Request as Exhibit 8); a Payment Option Authorization form (attached to the Request as Exhibit 9); another general solicitation page (attached to the Request as Exhibit 10); and a Home Affordable Modification Program Hardship Affidavit form (attached to the Request as Exhibit 11). The information required from AR1 to complete the forms provided by Aria and Cortez is all of the standard personal financial information required from a borrower, like AR1, by a mortgage broker or lender during the mortgage loan application process. AR1 completed and faxed all of the paperwork provided by Aria to Cortez.

5. After AR1 had sent the forms and documents to Cortez, AR1 received a form letter from Aria (attached to the Request as Exhibit 12). This form letter from Aria states "Congratulations! You have been determined eligible for the loan modification program." Later in this same letter it states,

Your lender will contact you often. Do not discuss your hardship or financials. Do not provide any new information, or update/verify any information with your lender; we will do all of that for you as your representative. Please refer them to Aria and Associates and let them know that Aria and Associates has been

authorized to represent you in your request for loan modification. We will be providing your lender with strategically prepared information based on the application you submitted.

6. The Aria & Associates, Inc. "American Loan Assistance" Agreement (attached to the Request as Exhibit 6) required AR1 to pay an advanced 'retainer' fee to Aria in the amount of \$1,800.00. Aria obtained payment of this advanced fee by debiting AR1's checking account on January 25, 2010, for \$200.00, on February 2, 2010, for \$700.00, and on March 2, 2010, for \$900.00. Aria has never refunded or returned any part or portion of this \$1,800.00 to AR1.

7. Paragraphs 11-1 through 11-3 of the Aria & Associates, Inc. "American Loan Assistance" Agreement details the right that AR1 had to a refund of the advanced retainer fee paid by AR1 to Aria. In addition, the general solicitation page (attached to the Request as Exhibit 10) states that "If we (Aria) are unable to resolve your problem, you pay nothing! Guaranteed!" Despite full cooperation and numerous telephone calls from AR1, Aria failed to obtain any modification of AR1's mortgage loan. In fact, AR1 has been unable to determine that Aria performed any real modification work on AR1's behalf. Nevertheless, Aria has failed and refused to refund any amount of the \$1,800.00 AR1 paid to Aria for loan modification services.

CONCLUSIONS OF LAW

8. Pursuant to Ark. Code Ann. § 23-39-503(b) it is unlawful for any person to act or attempt to act, directly or indirectly, as a mortgage broker or loan officer without first obtaining a license from the Commissioner under the FMLA. As detailed in Paragraphs 3 through 5, Aria violated Ark. Code Ann. § 23-39-503(b) when it attempted to act as a mortgage broker with AR1 without first being licensed as a mortgage broker under the FMLA. As detailed in Paragraphs 3 and 4, Cortez violated Ark. Code Ann. § 23-39-503(b) when he solicited and acted as a loan officer with AR1 without first being licensed under the FMLA.

9. Pursuant to Ark. Code Ann. § 23-39-503(c) it is unlawful for any person other than an exempt person to employ, to compensate, or appoint as its agent any person to act as a loan officer unless the loan officer is licensed as a loan officer under the FMLA. As detailed in Paragraphs 3 and 4, Aria violated Ark. Code Ann. § 23-39-503(c) when it employed or appointed Cortez to act as a loan officer with AR1 without first being licensed under the FMLA.

10. Pursuant to Ark. Code Ann. § 23-39-513(7) it is unlawful for any person in connection with the solicitation or making of any mortgage loan to engage in any transaction, practice, or course of business that is misleading or deceptive. The acts of Aria, as detailed in Paragraphs 3 through 7, constitute one violation of Ark. Code Ann. § 23-39-513(7) by Aria.

11. Pursuant to Ark. Code Ann. § 23-39-514(d)(1) upon finding that any action of a person is in violation of the FMLA, the Commissioner may summarily order the person to cease and desist from the prohibited action. The conduct, acts, and practices of Aria and Cortez threaten immediate and irreparable public harm. Based on the Findings of Fact and Conclusions of Law, this Cease and Order is in the public interest and is appropriate pursuant to Ark. Code Ann. § 23-39-514.

ORDER

12. Aria and Cortez shall immediately cease and desist from further violations of Ark. Code Ann. §§ 23-39-503(b) and 23-39-503(c) by ceasing from all mortgage loan activity in Arkansas until such time as Aria, all of its loan officer employees contacting Arkansas residents, and Cortez have been properly licensed under the FMLA.

13. Aria shall immediately cease and desist from further violations of Ark. Code Ann. § 23-39-513(7) by ceasing the distribution of all solicitations, forms, or documents containing misleading or deceptive statements to Arkansas residents.

14. A hearing on this Cease and Desist Order shall be held, if requested by Aria or Cortez in writing within thirty days of the date of the entry of this Cease and Desist Order, or if otherwise ordered by the Commissioner. Such request should be addressed to the Commissioner and submitted to the following address:

Arkansas Securities Commissioner
201 East Markham, Suite 300
Little Rock, Arkansas 72201

If no hearing is requested and none is ordered by the Commissioner, this Cease and Desist Order will remain in effect until it is modified or vacated by the Commissioner. Ark. Code Ann. § 23-39-514(d).

Dated: August 16, 2010



A. Heath Abshure
Arkansas Securities Commissioner