

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL ESTATE COMMISSION)	DOCKET NUMBER REC-E-23-006
)	(REC File No. 10016568)
Complainant,)	
)	
v.)	
)	ORDER TO SHOW CAUSE
MV REALTY OF NEW JERSEY LLC, licensed)	
New Jersey real estate broker (Ref. No. 2077552),)	
DAVID REINER, broker of record of MV Realty)	
of New Jersey LLC (Ref No. 1536586),)	
MV REALTY PBC LLC, an unlicensed Florida)	
limited liability company, AMANDA ZACHMAN,)	
an unlicensed individual, DAVID MANCHESTER,)	
an unlicensed individual and ANTONY)	
MITCHELL, an unlicensed individual)	
)	
Respondents.)	

THIS MATTER being commenced by the New Jersey Real Estate Commission (the “Commission”) in the Department of Banking and Insurance, State of New Jersey, on its own motion, pursuant to the provisions of the Real Estate License Act, N.J.S.A. 45:15-1 to -42 (“the Act”), and the regulations promulgated thereunder, N.J.A.C. 11:5-1.1 to -12.18, and it appearing that:

PRELIMINARY STATEMENT

1. Respondents MV Realty of New Jersey LLC (“MVNJ”), MV Realty PBC LLC (“MV Realty”), David Reiner (“Reiner”), Amanda Zachman (“Zachman”), David Manchester (“Manchester”), and Antony Mitchell (“Mitchell”) (collectively, “Respondents”) have engaged in a predatory and abusive scheme taking advantage of New Jersey homeowners.

2. While Respondents present themselves as a real estate brokerage, their primary business is marketing and selling to New Jersey homeowners a product they deceptively call a “Homeowner Benefit Agreement” (“HBA”). Based on the terms of the HBA and MVNJ’s business model, MVNJ is a financial institution pedaling a usurious financial instrument while masquerading as a real estate brokerage firm.

3. In substance, the HBA provides that MVNJ will pay a homeowner a cash advance, around \$1,000, in exchange for the homeowner’s agreement to use MVNJ exclusively as their real estate broker if they sell their home. The HBA has a 40-year term. As presented to consumers, it entitles MVNJ to a “commission” payment of at least ten times the advance when the homes are sold.

4. In reality, this tenfold repayment, dubbed an “early termination fee,” occurs on virtually any transfer during the 40-year term, whether or not MVNJ provided any such real estate services. This includes transfers by operation of law such as by divorce or foreclosure. MVNJ’s brokerage services come at a premium price, despite their serving as a “transaction broker,” who has fewer obligations than a traditional seller’s agent. The HBA is secured by a lien on the homeowner’s property which is filed with the county.

5. In marketing and selling the HBA, Respondents take extraordinary steps to conceal the true terms of the transaction from homeowners. This includes false and misleading advertising, false statements and misleading half truths made by telemarketers.

THE PARTIES

6. Respondent MVNJ is a New Jersey limited liability company formed on June 11, 2020, and a licensed New Jersey real estate broker, first licensed in this State on July 2, 2020.

7. MVNJ's New Jersey office is located at 100 Walnut Avenue, Suite 210, Clark, New Jersey 07066.

8. Respondent Reiner is an actively licensed New Jersey real estate broker, currently licensed as broker of record for MVNJ.

9. Reiner was first licensed as a real estate salesperson in New Jersey on January 29, 2015 and obtained his real estate broker license on March 12, 2018.

10. Reiner has acted as broker of record for MVNJ since it first became licensed as a real estate broker on July 2, 2020.

11. Respondent MV Realty, a Florida limited liability company, is a licensed as real estate brokerage firm in the state of Florida, under license number CQ1046757.

12. MV Realty was first licensed as a real estate broker in Florida on or about August 14, 2014. MV Realty is not registered to do business in New Jersey and not licensed as a real estate broker in New Jersey.

13. According to the Operating Agreement for MVNJ, MVNJ is a wholly owned subsidiary of MV Realty.

14. Respondent Zachman is an individual residing in the state of Florida.

15. Zachman is licensed as a real estate broker in Florida under license number BK3244459 and registered with the Florida Department of Business and Professional Regulation as the broker of record for MV Realty.

16. Zachman is also licensed as a real estate broker in Georgia, Illinois, Massachusetts, Pennsylvania and Connecticut.

17. Zachman is not and never has been licensed to engage in real estate brokerage business in New Jersey.

18. Zachman is listed in corporate paperwork for MVNJ and MV Realty as a Manager of each company, respectively. At all relevant times, Zachman has been an owner, officer, director, founder, member, manager, employee, servant, agent, representative, and/or independent contractor of MV Realty. At all relevant times herein, Zachman directly participated in, managed and controlled the operations of MV Realty and its subsidiaries, including MVNJ.

19. Respondent Manchester is an individual residing in the state of Florida.

20. Manchester is not and never has been licensed to engage in real estate brokerage business in New Jersey.

21. At all relevant times, Manchester has been an owner, officer, director, founder, member, manager, employee, servant, agent, representative, and/or independent contractor of MV Realty.

22. Manchester has been listed in corporate paperwork as a Manager of MVNJ. At all relevant times herein, Manchester directly participated in, managed and controlled the operations of MV Realty and its subsidiaries, including MVNJ.

23. Respondent Mitchell is an individual residing in the state of Florida.

24. Mitchell has been listed in corporate paperwork as the Chief Executive Officer of MV Realty and a Manager of MVNJ. In MVNJ's application for licensure as a New Jersey real estate broker, Mitchell is listed as CEO of MVNJ and 27% owner of same. At all relevant times, Mitchell has been an owner, officer, director, founder, member, manager, employee, servant,

agent, representative, and/or independent contractor of MV Realty. At all relevant times herein, Mitchell directly participated in, managed and controlled the operations of MV Realty and its subsidiaries, including MVNJ.

RESPONDENTS' PREDATORY SCHEME

25. Although MVNJ holds itself out as a real estate brokerage, its primary business activity is soliciting New Jersey homeowners to enter into HBAs, also referred to as the "Homeowner Benefit Program" ("HBP").

26. In essence, the HBA is an agreement whereby MVNJ offers an upfront cash payment to homeowners in exchange for exclusive rights to list their home in any future sale for a period of 40 years.

27. The upfront cash payment to offered to homeowners, referred to as the "Promotion Fee" in the HBA, purportedly ranges from \$300 - \$5,000.

28. Upon information and belief, the average "Promotion Fee" amount paid to New Jersey homeowners is approximately \$1,000.

29. The "Promotion Fee" is equal to 0.3% of the current value of the real property, as calculated by an automated valuation model utilized by Respondents.

30. Pursuant to the terms of the HBA, in exchange for MVNJ's payment of the "Promotion Fee," the homeowner agrees that MVNJ, or its designee, "will have the exclusive right to act as listing agent (as a transaction broker) for any sale of the property" during the 40-year contract term.

31. The HBA states that MVNJ "is acting strictly as a transaction broker" in the event the homeowner lists the property for sale with MVNJ, pursuant to the terms of the agreement.

32. The HBA does not include any explanation of what a transaction broker is, nor does it provide any information regarding the four business relationship types available between brokers, buyers and sellers of real estate.

33. The HBA states that if a homeowner intends to sell their home during the 40-year contract term, they must list their home with MVNJ or be subject to a penalty, referred to as the “Early Termination Fee.”

34. The HBA provides that upon notification of a homeowner’s intent to list the home for sale, MVNJ “or its designee” will provide a listing agreement to the homeowner, which sets forth the commission payable to MVNJ upon the sale of the home. A listing agreement that will govern the future listing is incorporated by reference to a URL in the HBA.

35. In the event that a sale of the home takes place during the 40-year contract period, the HBA prescribes the commission payable to MVNJ as follows:

a. If no cooperating broker is utilized in the sale of the home, the commission is equal to the greater of: 6% of the sale price of the home, or 3% of MVNJ’s valuation of the home utilized in the HBA (or stated another way, an amount calculated to be ten times, or 1,000%, of the amount of the Promotion Fee paid to the homeowner).

b. If a cooperating broker is utilized in the sale of the home, the commission is equal to the greater of: 3% of the sale price of the home, or 3% of MVNJ’s valuation of the home utilized in the HBA (or stated another way, an amount calculated to be ten times, or 1,000%, of the amount of the Promotion Fee paid to the homeowner).

36. The HBA contains an early termination penalty, referred to as the “Early Termination Fee” in the HBA, which obligates the homeowner to pay MVNJ an amount equal to

a minimum of 3% of the value of their home, regardless of whether MVNJ ever provides any real estate brokerage services to the homeowner.

37. More specifically, the HBA defines the “Early Termination Fee” as an amount that is the greater of: 3% of MVNJ’s valuation of the home utilized in the HBA (or stated another way, an amount calculated to be ten times, or 1,000%, of the amount of the Promotion Fee paid to the homeowner), or 3% of the value of the home at the time the homeowner breaches the HBA or an “Early Termination Event” occurs.

38. The HBA obligates homeowners to pay the “Early Termination Fee” upon the occurrence of certain triggering events, referred to in the HBA as “Early Termination Events.” The HBA lists these events as follows:

- a. A sale or transfer of the property where MVNJ was not paid a commission;
- b. The homeowner terminates or attempts to terminate MVNJ’s right to act as exclusive listing agent for the property; or
- c. The homeowner is no longer the owner of the property due to foreclosure, forfeiture or other transfers in interest, whether voluntary or involuntary, except a transfer to a successor or a transfer for estate planning purposes if, within ten days of the transfer, the successor or applicable administrator or personal representative assumes the homeowner’s contractual obligations under the HBA and agrees to be bound by the terms of the HBA as if they were the homeowner.

39. The HBA further obligates the homeowner to pay the “Early Termination Fee” if the homeowner breaches the agreement in any way, including by entering into any “Prohibited Engagements,” which the HBA defines as:

Engaging, hiring or employing in any way any other real estate brokerage, licensed broker or sales agent. **“Prohibited Engagements”** include listing the **Property** as “for sale by owner” through a third-party service that offers advertising, marketing services or who is compensated in any way for generating interest in the **Property**.

[(Emphasis in original.)]

40. Either through the predetermined commission rate or the early termination penalty set forth in the HBA, MVNJ virtually guarantees that homeowners entering into an HBA will be contractually obligated to pay MVNJ an amount that is, at minimum, ten times (or 1,000% of) the amount of the “Promotional Fee” paid to the homeowner.

41. The HBA contains narrow exceptions to this 1,000% return, which includes certain estate-planning transfers on death if the transferee immediately assumes the agreement. Additionally, the HBA provides that if MVNJ fails to sell the property for six months, the homeowner has a brief window during which they may find a buyer themselves, however the terms surrounding this exception are so onerous that a qualifying sale by the homeowner in this scenario is unlikely to ever occur.

42. Pursuant to the terms of the HBA, MVNJ’s sale commission and the early termination penalty have a “floor,” or guaranteed minimum amount, tied to the MVNJ’s valuation of the home at the time the HBA is executed, with no limitation on the upside. Therefore, the homeowner is forced to shoulder all the market risk associated with the sale price of the property, while MVNJ locks in its tenfold return on its investment (i.e., the “Promotion Fee”), irrespective of any potential downturn in the real estate market.

43. The HBA states that any successors in interest to the property shall be bound by the terms of the HBA.

44. The HBA, and therefore MVNJ's exclusive right to list the property, is fully assignable by MVNJ without requiring any approval by the homeowner or any successors in interest to the property.

45. The HBA provides a security interest to MVNJ in the event a homeowner defaults on the terms of the agreement, entitling MVNJ to place a lien against the property for the amount owed to MVNJ by the homeowner under the terms of the HBA.

46. The HBA also states that MVNJ is entitled to record a "Memorandum" to notice any person who performs a title search on the property or MVNJ's rights under the terms of the HBA.

47. In reality, MVNJ records the HBA Memorandum as a matter of ordinary course. Upon information and belief, a memorandum is recorded in approximately 95% of the HBA transactions.

48. The HBA Memorandum serves as a lien against the property, which often acts as an obstacle for homeowners accessing the equity in their property, such as those seeking to refinance their home.

49. The HBA includes a number of additional terms that reflect the grossly unfair balance of the respective parties' contractual rights and obligations, such as: (a) a forced arbitration clause with a "loser-pays" rule, impeding the ability of homeowners to seek court intervention and prevent a non-judicial foreclosure and imposing a potentially ruinous financial burden for homeowners seeking to enforce their contractual rights; and (b) a prohibition on class-action or collective relief, further buttressing the grossly unfair bargaining power of the respective parties to the agreement.

50. MVNJ aggressively solicits New Jersey homeowners to execute HBAs by pursuing misleading and deceptive marketing tactics and leveraging MVNJ's grossly unfair market knowledge and bargaining power over consumers, including for example, rushing people through the signing process and not giving them a chance to review or have a copy of what they have signed.

51. Consumers regularly enter into HBAs without a full understanding of their contractual obligations under the HBA and without the advice of counsel.

52. To date, MVNJ has entered into no less than 1,251 HBAs with New Jersey homeowners.

53. Out of the 1,251 HBAs executed by MVNJ and New Jersey homeowners, approximately 29, or less than 2.4%, have led to actual real estate listings with MVNJ.

54. Out of the 29 listings that resulted from executed HBAs, approximately 14 sales have been completed, or approximately 1% of the total number of HBAs.

55. Out of the 1,250 HBAs executed by MVNJ and New Jersey homeowners, approximately 29 have led to the homeowner paying MVNJ a penalty (or "Early Termination Fee" as defined in the HBA), without MVNJ providing any brokerage services to the homeowner whatsoever.

56. To date, Respondents have collected hundreds of thousands of dollars in sale commissions and penalties (or "Early Termination Fees" as defined in the HBA) from New Jersey homeowners.

57. No Respondent or any representative of MVNJ ever conducts a visual inspection of a property prior to entering into an HBA with a homeowner.

58. MVNJ fails to provide any meaningful assistance to homeowners that enter into an HBA and subsequently wish to access their home's equity or list their home for sale with MVNJ pursuant to the terms of the HBA.

59. MVNJ is a sham real estate brokerage, which primarily earns revenue by collecting penalties from consumers who enter into HBAs and accidentally or unknowingly breach the terms of the HBA without MVNJ performing any brokerage services for such consumers whatsoever.

EXAMPLES OF RESPONDENTS' SCHEME

A. Consumer A.C.

60. In August 2020, a notary public went to the home of consumer "A.C." with Respondents' HBA, for A.C. and her husband to sign.

61. This was the first time A.C. and her husband had seen the HBA.

62. The notary public was unable to answer any questions A.C. and her husband had about the HBA.

63. The signing process took 20 minutes and A.C. and her husband were not given a copy of the papers after signing.

64. At no time before A.C. and her husband signed the contract did anyone from MVNJ explain the contract terms to them, including that the contract had a 40-year term, an early termination fee, and that a lien would be placed on their home.

65. At no time before A.C. and her husband signed the contract did anyone from MVNJ recommend A.C. and her husband obtain legal counsel, explain that MV Realty represented MV Realty PBC, LLC and Amanda Zachman, provide a document to them entitled Consumer Information Statement, or conduct a visual inspection of the home.

66. A.C. and her husband then received a Zelle deposit from Respondents in the amount of \$1,100.00.

67. Approximately one week after receiving the payment, A.C. and her husband received the copy of the Homeowner Benefit Agreement in the mail and there was no lien or recorded filing attached.

68. Sometime around September 2021, A.C. and her husband decided that they were ready to sell their home and contacted MVNJ. MVNJ said a realtor would be sent to A.C. and her husband's house.

69. About two weeks later, an MVNJ realtor by the name of Brian, went to A.C. and her husband's home. Brian arrived an hour after the scheduled appointment and was completely unprepared. He had no comparable values and no information prepared regarding the property or his plan to sell the property. Brian claimed he would contact A.C. and her husband in a few days with information relating to the value of their home.

70. A.C. tried to contact Brian at least three times after he visited to find out what was happening with the house, but he had many excuses as to why he could not assist them or provide the information they had requested. A.C. also tried to contact Michelle, an MVNJ agent that A.C.'s husband had previously spoken to. A.C. wanted to cancel the HBA and explain the issues with Brian's performance. A.C. and her husband never heard back from Michelle or Brian.

71. In October 2021, after being unable to get any information on the sale of their home and receiving no response from the assigned realtor, A.C. and her husband contacted another real estate agency who promptly listed the home for sale. A.C. and her husband also found a house to purchase and began the closing process on both properties.

72. During the closing process, a title search was performed on A.C. and her husband's property. As a result of the title search, they were told that MVNJ had filed a Lis Pendens in November 2021 seeking a lien against A.C. and her husband's property.

73. Immediately after they discovered the Lis Pendens, A.C. and her husband contacted an attorney, who contacted MV Realty to determine why a lien was placed on their property. They were told that they would have to pay MV Realty \$11,000.00 to settle the matter. If they did not agree to pay, they would be subject to a costly and lengthy dispute which would delay the closings on both properties.

74. In January 2022, A.C. and her husband reluctantly paid MVNJ \$11,000.00, their home was successfully sold, and they were able to purchase the home they currently reside in.

B. Consumer C.G.

75. Sometime around September 2020, Consumer "C.G." received an unsolicited call from an MVNJ agent via telephone who said they were interested in selling his home, and that MVNJ would give him roughly \$800.00 upfront if he agreed to use MVNJ as his agent if he were to sell his home in the future. He said he was not interested.

76. The MVNJ agent called him a few times after that, to offer me money to use them as his realtor, even though C.G. mentioned that he was not interested. Eventually he agreed to sign up for the program because his understanding was that whenever he decided to sell his house he would need to use MVNJ as his realtor, and at the time he needed money for bills. The agent said that the process of signing the contract was simple, and that MVNJ could arrange for a notary to meet C.G. anywhere he wanted to sign the contract.

77. The MVNJ agent explained that the promotion fee of roughly \$800.00 they were offering was a benefit of the Homeowners Benefit Program. Repayment of this money was never mentioned.

78. The MVNJ agent called C.G. to confirm an appointment with the notary to sign the Homeowner Benefit Agreement. The notary agreed to meet at C.G.'s part-time job at the time.

79. C.G. never received a copy of the contract or any documents from MVNJ prior to meeting with the notary and was never offered the possibility of going to a physical location for MVNJ to sign the contract.

80. The notary called C.G. on his cell phone and asked C.G. to meet the notary in the parking lot to review the contract from MVNJ. C.G. tried to ask the notary questions about the contract but the notary was being very blunt and dismissive, and said that he could not answer any questions. C.G. tried to read the agreement in its entirety, but it was very long and complicated and the notary said that C.G. had to sign immediately. The notary said he would not wait for C.G. to finish reading the contract. C.G. tried to ask for more time to review the contract, but the notary repeated that he would leave if C.G. took more time. C.G. really needed the money so he hurriedly signed the contract that same day in the car of the notary in C.G.'s employer's parking lot.

81. At no time before C.G. signed the contract did anyone from MVNJ explain the contract terms to him, including that the contract had a 40-year term, an early termination fee, and that a lien would be placed on his home.

82. At no time before C.G. signed the contract did anyone from MVNJ recommend C.G. obtain legal counsel, explain that MV Realty represented MV Realty PBC, LLC and Amanda Zachman, provide a document to him entitled Consumer Information Statement, or conduct a visual inspection of his home.

83. C.G. asked the notary for a copy of the contract, but he did not give one to C.G. The notary told C.G. that a copy would be sent to C.G. The entire process of signing the documents took maybe 10 to 15 minutes total and most of that time was spent arguing with the notary for more time to read the documents.

84. C.G. never received a copy of the contract he signed from MVNJ.

85. Sometime after C.G. signed the MVNJ contract, he received a direct deposit from MV Realty for \$780.00.

86. MVNJ never informed C.G. about the details of the contract, including that the term of the contract was for 40 years and that a lien would be placed on his home.

87. In the spring of 2022, C.G. decided to sell his home. He contacted Century 21, and the realtor who sold him the house initially, as he was pleased with her service and wanted to use her again. He was able to sell the house very quickly.

88. It was during the process of completing the closing paperwork that C.G. found out about a lien on his property by MVNJ. By this time, he had forgotten about the contract with MVNJ, which is no surprise since MVNJ had never provided C.G. with a copy of the contract. When C.G. found out about the lien at closing, he tried to reach out to MV Realty to cancel the contract but received no response.

89. At the closing, the title agency withheld 6% of the sale price to cover the lien placed on C.G.'s property by MVNJ and put it into an escrow account. The policy of the title agency was to withhold double the amount of any forbearances to cover cost and settle everything. MVNJ claimed it was owed 3% of the sales price or \$11,430.00, so the amount withheld by the title agency was \$22,860.00.

90. The title agency would not release the money until C.G. cleared the lien that MVNJ placed on C.G.'s property.

91. Over about the next month C.G. called MVNJ multiple times to try to negotiate a resolution with them. He never received a response from MVNJ.

92. C.G. needed the money that was in the escrow account to pay his bills. He decided to just give MVNJ the 3% fee that it was demanding to be repaid. The title agency paid out \$11,430.00 to MVNJ and \$11,430.00 to C.G.

93. C.G. only received confirmation from the title agency that MVNJ had received payment. MVNJ never responded to C.G.

C. Consumer J.T.

94. In approximately mid-April 2022, "J.T." received an unsolicited telemarketing call from MVNJ offering her \$800 in exchange for her agreement to use MVNJ as her realtor if she ever decided to sell her home in New Jersey.

95. A few days later, MVNJ contacted J.T. again to reiterate the same offer.

96. On May 8, 2022, MVNJ sent a notary to J.T.'s home with copies of an HBA for J.T. to execute.

97. None of the terms within the HBA were explained to J.T. and the entire process took approximately ten minutes.

98. J.T. was never made aware that the HBA had a 40-year term, that a lien would be placed on her home, or all of the scenarios wherein she would be subject to an early termination penalty.

99. After signing the HBA, J.T. was never provided with a copy of the executed document.

100. On or about May 10, 2022, J.T. received \$800 from MVNJ via an electronic bank transfer.

101. In July 2022, J.T. decided to refinance the mortgage on her Barnegat, New Jersey home.

102. The bank refinancing J.T.'s mortgage notified J.T. of MVNJ's lien upon her home.

103. J.T. contacted Reiner at MVNJ and asked for the lien to be removed, but MVNJ refused.

104. In July 2022, J.T. paid an early termination penalty to MVNJ in the amount of \$7,816.80 in order to complete the refinance of her mortgage.

D. Consumer C.F.

105. In approximately late October 2021, "C.F." received an unsolicited telemarketing call from MVNJ offering to her \$1,655 in exchange for her agreement to use MVNJ as her realtor if she ever decided to sell her home in New Jersey.

106. A few days later, MVNJ contacted C.F. again to reiterate the same offer.

107. On November 11, 2021, MVNJ sent a notary to C.F.'s home with copies of an HBA for C.F. to execute.

108. None of the terms within the HBA were explained to C.F. and the entire process took approximately twenty minutes.

109. C.F. was never made aware that the HBA had a 40-year term, that a lien would be placed on her home, or all of the scenarios wherein she would be subject to an early termination penalty.

110. After signing the HBA, C.F. was never provided with a copy of the executed document.

111. Approximately ten days later, C.F. received \$1,655 from MVNJ via an electronic bank transfer.

112. Although C.F. has not tried to cancel the contract with MVNJ, nor has she attempted to sell or refinance her home, she feels worried and tricked after learning of the 40-year term of the agreement and that there is a lien on her home.

OTHER STATES' ACTIONS AGAINST RESPONDENTS

113. Regulators in at least five other states have filed actions against Respondents.

114. In Massachusetts, the court entered a preliminary injunction enjoining Respondents' business practices.

115. Additional preliminary injunction proceedings are pending in other states.

COUNT I – DECEPTIVE AND DISHONEST BUSINESS PRACTICES

116. The Commission repeats and realleges each of the preceding paragraphs as if set forth at length herein.

117. The Commission has the power to suspend, revoke, or place on probation the license of any licensee for a violation of the Act. N.J.S.A. 45:15-17.

118. In addition, the Commission may impose a monetary penalty of up to \$5,000 for the first violation of the Act, and up to \$10,000 for any subsequent violation. N.J.S.A. 45:15-17.

119. The Commission may also order restitution. N.J.A.C. 11:5-8.1; N.J.S.A. 45:15-9; N.J.S.A. 45:15-17.

120. It is a violation of the Act to engage in any conduct that constitutes fraud or dishonest dealing. N.J.S.A. 45:15-17(l).

121. It is a violation of the Act to engage in any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty. N.J.S.A. 45:15-17(e).

122. The terms of the HBA amount to grossly unfair contractual obligations resulting from the use of expertise and control of the real estate market by MVNJ, which result in assumption by New Jersey homeowners of a burden which is at odds with the common understanding of the ordinary and untrained member of the public.

123. The terms of the HBA are unconscionable.

124. The manner in which Respondents promote and sign homeowners to an HBA is unconscionable.

125. Specifically, for example, Respondents' use of a 40-year term in the HBAs, placing a lien on consumers' homes, failing to fully explain the terms of the HBA, sending out notaries to who do not explain the documents as part of the signing process, failing to give consumers copies of the documents they sign prior to or after the signing process, and then later extracting far more than they had paid each consumer for little or no services provided are fraud or dishonest dealing and demonstrate unworthiness, incompetency, bad faith or dishonesty, in violation of the Act, N.J.S.A. 45:15-17(e) and (l).

126. Every HBA Respondents signed with a New Jersey homeowner, and every commission or early termination fee Respondents obtained or received as a result of an HBA, is in violation of the Act, N.J.S.A. 45:15-17(e) and (l).

127. Because Respondents' HBAs are unconscionable contracts, they are also therefore unenforceable as a matter of law.

COUNT II – UNLICENSED ACTIVITY

128. The Commission repeats and realleges each of the preceding paragraphs as if set forth at length herein.

129. No person shall engage either directly or indirectly in the business of a real estate broker, broker-salesperson or salesperson, temporary or otherwise, and no person shall advertise or represent himself as being authorized to act as a real estate broker, broker-salesperson or salesperson, or to engage in any of the activities described in N.J.S.A. 45:15-3, without being licensed to do so. N.J.S.A. 45:15-1.

130. Any single act, transaction or sale shall constitute engaging in business within the meaning of the Act. N.J.S.A. 45:15-2.

131. A real estate broker, for the purposes of the Act, is defined to be a person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate or solicits for prospective purchasers or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate or negotiates, or offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain conducts a public or private competitive sale of lands or any interest in lands. N.J.S.A. 45:15-3.

132. At its core, the solicitation and closing of the HBAs is the purchase of an interest in real estate, or the offer or attempt to negotiate the purchase of an interest in real estate, in

exchange for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, as contemplated by N.J.S.A. 45:15-3.

133. In other words, for a small cash incentive, MVNJ purchases from a homeowner an interest in his/her home vis a vis the right to attempt to negotiate the purchase of that home for the ensuing 40 years, thereby earning either a commission on that sale or a penalty fee.

134. The small cash incentive offered by MVNJ to the homeowner also constitutes an offer or attempt or agreement to negotiate a loan that is secured by real estate, as contemplated by as contemplated by N.J.S.A. 45:15-3, specifically because the HBA is secured by a memorandum recorded against the real estate.

135. Both of these elements of the HBA amount to a real estate brokerage activity, which requires a license pursuant to N.J.S.A. 45:15-3.

136. The Act prohibits violations of any of the provisions of the Act or of the administrative rules adopted by the Commission pursuant to the Act. N.J.S.A. 45:15-17(t).

137. The Commission is expressly vested with the power and authority to make, prescribe and enforce any and all rules and regulations for the conduct of the real estate brokerage business consistent with the provisions of Chapter 15 of Title 45 of the Revised Statutes. N.J.S.A. 45:15-17(t).

138. At all relevant times, Zachman directly supervised the activity of Reiner, and regularly provided direction regarding the hiring of MVNJ's real estate salespersons and broker-salespersons (collectively, "MVNJ Licensees") and other personnel decisions for MVNJ.

139. MVNJ Licensees received training, supervision and guidance regarding the solicitation of HBAs directly from Zachman, Manchester and/or Mitchell.

140. Upon information and belief, MVNJ have held two weekly meetings, remotely over the internet, with the MVNJ Licensees. One weekly meeting was/is held by Zachman and Manchester, and pertains to direction regarding soliciting HBAs. The other meeting was/is held by Reiner, and relates to completing market valuations to be used in connection with the HBAs.

141. MVNJ Licensees are provided with access to a lead generation system utilized by MV Realty, which delivers contact information of homeowners that are then directly solicited by MVNJ Licensees to enter into HBAs.

142. Reiner is not involved in lead generation or tracking for MVNJ.

143. Upon information and belief, MVNJ Licensees are compensated a flat \$500 fee for each HBA sold. These payments are issued directly from MV Realty, which is not licensed as a real estate broker in New Jersey.

144. Homeowners that enter into an HBA and have questions or concerns regarding the HBA are provided with the phone number for MV Realty, MVNJ's unlicensed Florida parent company.

145. MV Realty, Zachman, Manchester, and Mitchell are unlicensed to engage in real estate brokerage business in New Jersey and have never held a real estate license in New Jersey.

146. Guidance, direction, supervision and training regarding the solicitation and execution of HBAs by MVNJ and its licensed agents was provided by MV Realty, through Zachman, Manchester, and/or Mitchell.

147. At all relevant times, as chief executive officer, Mitchell, Zachman and/or Manchester controlled, or had the ability to control, and oversaw the operations and management of MVNJ.

148. At all relevant times, Zachman directly supervised the activity of Reiner, the broker of record of MVNJ, and Zachman regularly provided direction regarding the hiring of licensees and personnel decisions for MVNJ.

149. Zachman, not Reiner, signed the HBAs on behalf of MVNJ, which constitutes conduct that required a license.

150. Reiner, as the broker of record, is responsible for MVNJ's conduct. N.J.A.C. 11:5-4.2.

151. Because they engaged in real estate brokerage business in New Jersey without being licensed to do so, MV Realty, Zachman, Manchester, and Mitchell violated N.J.S.A. 45:15-1.

152. Because MV Realty, Zachman, Manchester and Mitchell engaged in unlicensed activity on behalf of MVNJ, MVNJ therefore also violated N.J.S.A. 45:15-1.

153. Because under N.J.A.C. 11:5-4.2, Reiner, as broker of record, is responsible for all activity conducted by or on behalf of MVNJ, Reiner also violated N.J.S.A. 45:15-1.

154. Due to the illegal involvement of unlicensed persons MV Realty, Zachman, Manchester and Mitchell on behalf of MVNJ and Reiner, every HBA Respondents signed with a New Jersey homeowner, and every commission or early termination fee Respondents obtained or received as a result of an HBA, is in violation of the Act's licensure requirement, N.J.S.A. 45:15-1.

155. Each violation of N.J.S.A. 45:15-1 by Respondents is subject to monetary penalties against Respondents, and license revocation for Reiner and MVNJ. N.J.S.A. 45:15-17(t).

COUNT III – VIOLATION OF FIDUCIARY DUTIES

156. The Commission repeats and realleges each of the preceding paragraphs as if set forth at length herein.

157. New Jersey real estate brokers are subject to, and shall strictly comply with, the laws of agency and the principles governing fiduciary relationships. N.J.A.C. 11:5-6.4(a).

158. In the pursuit of real estate brokerage business in the State of New Jersey, every licensed broker owes the duties of ordinary care and undivided loyalty to the interests of the principal they have undertaken to represent in a real estate transaction, pursuant to N.J.A.C. 11:5-6.4(a).

159. The vast majority of residential real estate sales in New Jersey which utilize a licensed broker involve fiduciary relationships whereby licensees act as agents of the seller and/or buyer.

160. The “transaction broker” business relationship is rarely used and not the market norm for residential real estate sales.

161. Neither Respondents nor their representatives explained to homeowners the meaning of a transaction broker or the differences between that business relationship and an agency relationship typically applicable to the real estate sales industry.

162. When entering into an HBA, New Jersey homeowners are unaware that they are signing away their right, for 40 years, to be represented by an agent that is legally obligated to prioritize the homeowner’s interests over the interests of all other parties.

163. Due to confusing contract terms, misleading marketing and the omission of critical information regarding the HBAs, New Jersey homeowners are misled to believe that MVNJ is acting or will act as their listing agent in relation to the HBA and the future sales of their homes.

164. The facts and circumstances surrounding the business practices utilized in the solicitation of HBAs, and applicable law, created an agency relationship between MVNJ and each of the New Jersey homeowners that entered into an HBA.

165. MVNJ's valuation of homes for the purpose of HBAs was completed without any physical inspection of the property.

166. The amount of the "Promotion Fee," MVNJ's commission rate and the HBA penalty or "Early Termination Fee," is set by the initial valuation completed by MVNJ prior to the execution of the HBA.

167. Stated another way, the initial valuation of a property sets the minimum return amount payable to MVNJ by a New Jersey homeowner entering into an HBA.

168. The "floor" or minimum amount of a sale commission or penalty payable to MVNJ by a New Jersey homeowner that enters into an HBA is ten times, or 1,000%, of the "Promotion Fee."

169. Therefore, MVNJ has an incentive to provide an inflated valuation, to increase the "floor amount" of a future sale commission or penalty payable to MVNJ, or to MV Realty and its principals, specifically Respondents.

170. By failing to disclose MVNJ's inherent conflict of interest in the valuation of a property subject to an HBA, MVNJ and Reiner as broker of record, breached their fiduciary duty of undivided loyalty to the interest of every New Jersey homeowner that entered into an HBA, in violation of N.J.A.C. 11:5-6.4(a).

171. By failing to conduct a visual inspection for each property prior to assigning a value and prescribing a minimum commission rate and penalty amount, as set forth more fully above,

MVNJ and Reiner, as broker of record, violated their duty of ordinary care to every New Jersey homeowner that entered into an HBA with MVNJ, in violation of N.J.A.C. 11:5-6.4(a).

172. By failing to disclose that Reiner and/or MVNJ Licensees are compensated for each HBA that is executed by New Jersey homeowners, MVNJ and Reiner as broker of record, breached their duty of loyalty to the interests of every New Jersey homeowner that entered into an HBA, in violation of N.J.A.C. 11:5-6.4(a).

173. By failing to ensure that MVNJ Licensees disclosed all material information to New Jersey homeowners, as set forth at length above, prior to executing an HBA, Reiner and MVNJ failed to treat all parties to a real estate transaction fairly, in violation of N.J.A.C. 11:5-6.4(a).

174. By violating N.J.A.C. 11:5-6.4(a), Reiner and MVNJ are subject to license revocation and monetary penalties for every HBA that was signed on behalf of MVNJ, and for every commission or fee that resulted from an HBA. N.J.S.A. 45:15-17(t).

175. Due to their roles in controlling and directing MVNJ's conduct in New Jersey, MV Realty, Zachman, Manchester, and Mitchell are subject to monetary penalties for every HBA that was signed on behalf of MVNJ, and for every commission or fee that resulted from an HBA. N.J.S.A. 45:15-17(t).

176. By breaching their duty of absolute loyalty to every New Jersey homeowner that entered into an HBA, as set forth more fully above, MVNJ and Reiner have forfeited their right to a commission for each and every HBA it entered into in New Jersey.

COUNT IV – MISLEADING ADVERTISING

177. The Commission repeats and realleges each of the preceding paragraphs as if set forth at length herein.

178. No real estate advertisement shall contain false, misleading or deceptive claims or misrepresentations. In all advertisements which make express or implied claims that are likely to

be misleading in the absence of certain qualifying information such qualifying information shall be disclosed in the advertisement in a clear and conspicuous manner. N.J.A.C. 11:5-6.1(r).

179. At all relevant times herein, Respondents marketed the HBA on the internet using the MV Realty website: www.homeownerbenefit.com (the “MV Realty Website”).

180. Respondents also utilized other platforms including Google and Facebook to advertise the HBAs.

181. MV Realty Website states that “[t]here’s no obligation to repay the money you receive under this program,” without any apparent additional qualifying information.

182. However, this was false, misleading or deceptive because the HBA requires consumers to pay an early termination fee of at least ten times the amount borrowed upon any transfer of title, including those not typically considered to be a sale, e.g., transfers upon divorce, foreclosure, or to family members for estate planning purposes.

183. In April 2022, and at other relevant times, the MV Realty Website explicitly and falsely claimed that “[the HBP] is not a mortgage refinance or loan” and Respondents described the HBA in its Google advertisements as, among other things, “more than stimulus,” a “loyalty program,” and a “Loan Alternative” with “No Debt.”

184. This was false, misleading or deceptive because every homeowner who signed an HBA did therefore owe Respondents at least ten times the amount that Respondents provided the homeowner, even if Respondents did nothing for that homeowner, an obligation the homeowner had for 40 years under the HBA and which was filed with the county as a lien.

185. The MV Realty Website continues to explicitly and falsely claim that the HBP is not a loan by stating “MV Realty’s Homeowner Benefit Program® offers between \$300-\$5000 cash without taking out a loan.”

186. This was false, misleading or deceptive because every homeowner who signed an HBA did therefore owe Respondents at least ten times the amount that Respondents provided the homeowner, even if Respondents did nothing for that homeowner, an obligation the homeowner had for 40 years under the HBA and which was filed with the county as a lien.

187. The FAQ section of the MV Realty Website also explicitly and falsely states that no lien will be filed against consumers' homes. Specifically, the FAQ section states:

Do you file a lien on my house?

No, we file a memorandum. The purpose of the memorandum is to serve public notice of the homeowner's obligations under the HBP® agreement.

188. This statement is false, misleading or deceptive because the memorandum Respondents filed functioned just like a lien.

189. The MV Realty Website claims that MV Realty will assist homeowners seeking to refinance their property encumbered by an HBA memorandum. Specifically, the MV Realty Website states the following in an FAQ related to refinancing:

What if I want to refinance my home?

No problem! We have a department strictly dedicated to these situations so that we can facilitate them. In these cases, we will lift the notice or subordinate our notice's position, and after the refinance is complete, we will put the **memorandum or lien** back on . . .

[(Emphasis added).]

190. This was false, misleading or deceptive because in reality, MVNJ does not provide any meaningful assistance to homeowners seeking to refinance their property.

191. In fact, in at least one instance, MV Realty collected the early termination fee from a New Jersey homeowner when she refinanced her home, an event which, under the terms of the HBA, is not supposed to trigger the early termination fee.

192. By publishing internet advertisements that contain false, misleading or deceptive claims or misrepresentations, without the disclosure of qualifying information or additional clarification, as set forth more fully above, Respondents violated N.J.A.C. 11:5-6.1(r).

193. Every false, misleading or deceptive advertisement in violation of N.J.A.C. 11:5-6.1(r) subjects Respondents to license revocation and monetary penalties. N.J.S.A. 45:15-17(t).

194. Every day that Respondents published false, misleading or deceptive advertisement in violation of N.J.A.C. 11:5-6.1(r) subjects Respondents to license revocation and monetary penalties. N.J.S.A. 45:15-17(t).

195. Every HBA that Respondents obtained from a New Jersey homeowner was procured implicitly under false, misleading or deceptive advertisements in violation of N.J.A.C. 11:5-6.1(r), and therefore every HBA that Respondents obtained from a New Jersey homeowner subjects Respondents to license revocation and monetary penalties. N.J.S.A. 45:15-17(t).

COUNT V – FALSE PROMISES OR SUBSTANTIAL MISREPRESENTATIONS

196. The Commission repeats and realleges each of the preceding paragraphs as if set forth at length herein.

197. The Act prohibits making any false promises or any substantial misrepresentation. N.J.S.A. 45:15-17(a).

198. In the operation of their business, Respondents engaged in acts of deception and made false promises and misrepresentations including, but not limited to, the following:

- a. That Respondents will not be repaid unless consumers decide to sell their property and/or that there is no obligation to repay Respondents, when, in fact, the early termination fee requires that the consumer pay a severe penalty of at least ten times the amount received upon any transfer of title, including those not typically considered to be a sale, e.g., transfers upon divorce, foreclosure, or to family members for estate planning purposes;
- b. That the agreements are not loans, when in fact they are loans with undisclosed terms, including, but not limited to hidden usurious interest rates;
- c. That no liens will be filed against the property, when the Memorandum of Benefit is filed in the County Recorder's Office and effectively acts as a lien and/or failing to disclose that a lien will be filed against the property during the initial call;
- d. Falsely claiming that MV Realty will work with consumers who wish to refinance, when in fact New Jersey consumers do not receive meaningful assistance from MV Realty when they seek to refinance their homes; and
- e. Failing to disclose the 40-year contract term during the initial sales pitch or on the MV Realty Website.

199. Each false promise or substantial misrepresentation by Respondents is a separate violation of N.J.S.A. 45:15-17(a), subjecting Respondents to a separate civil penalty as well as license revocation.

**COUNT VI – FLAGRANT AND CONTINUED COURSE OF MISREPRESENTATION
OR MAKING OF FALSE PROMISES**

200. The Commission repeats and realleges each of the preceding paragraphs as if set forth at length herein.

201. The Act prohibits pursuing a flagrant and continued course of misrepresentation or making of false promises through agents, broker-salespersons, or salespersons, advertisements or otherwise. N.J.S.A. 45:15-17(c).

202. By making false promises and substantial misrepresentations to New Jersey consumers over a period of years and creating a program whose essential and unconscionable

terms were not disclosed, Defendants pursued a flagrant and continued course of misrepresentation or making of false promises through agents, broker-salespersons, or salespersons, advertisements or otherwise, in violation of the Real Estate License Act, N.J.S.A. 45:15-17(c).

COUNT VII – BROKERAGE OFFICE PRACTICES

203. The Commission repeats and realleges each of the preceding paragraphs as if set forth at length herein.

204. Prior to a salesperson or referral agent engaging in any real estate brokerage activity, a broker and the salesperson or referral agent must enter into and sign a written agreement that contains the terms of their business relationship. N.J.A.C. 11:5-4.1(a).

205. The Commission will hold responsible individual brokers for any actions of the broker licensee or any person employed by or licensed through the broker licensee taken in the pursuit of its real estate brokerage business which violate any of the provisions of the Act, or the regulations promulgated thereunder. N.J.A.C. 11:5-4.2(a)(1).

206. Every real estate transaction in which a broker licensee participates as a broker shall be under the ultimate supervision of the individual broker. N.J.A.C. 11:5-4.2(a)(2).

207. No arrangement, direct or indirect, shall be entered into by any licensee whereby an individual licensee lends his name or license for the benefit of another person, firm or corporation, or whereby the provisions of the real estate statute and rules relating to licensing are circumvented. N.J.A.C. 11:5-4.3(a).

208. Lending a broker's license for the benefit of another person, firm or corporation shall be construed as including any arrangement whereby a broker fails to personally oversee and direct the operations of the business of which he or she is licensed as broker of record or employing broker. N.J.A.C. 11:5-4.3(b).

209. The licensee supervising the main office shall be so employed on a full-time basis and, when not required to be away from the office for reasons related to the business of the office, shall be physically present at that office during usual business hours at least five days per calendar week (excluding vacations and emergencies) and shall not be otherwise employed during such time. N.J.A.C. 11:5-4.4(a).

210. Every real estate broker shall maintain a designated main office open to the public. N.J.A.C. 11:5-4.4(a) and N.J.S.A. 45:15-12.

211. Respondents utilized the MVNJ Licensees to solicit HBAs.

212. Respondents never entered into independent contractor or employment agreements containing the terms of its business relationship with any MVNJ Licensee prior to MVNJ Licensees engaging in brokerage activity, in violation of N.J.A.C. 11:5-4.1(a).

213. Reiner failed to be physically present at MVNJ's office during usual business hours at least five days per calendar week, and to maintain an office open to the public during ordinary business hours, in violation of N.J.A.C. 11:5-4.4(a) and N.J.S.A. 45:15-12.

214. Reiner entered into an arrangement whereby Reiner did not personally oversee and direct the operations of MVNJ and lent his license to MV Realty, Zachman, Manchester and/or Mitchell, all unlicensed in New Jersey, for the benefit of MV Realty, Zachman, Manchester and/or Mitchell, which conduct constitutes prohibited license lending, in violation of N.J.A.C. 11:5-4.3(a) and (b).

215. As broker of record, Reiner is responsible for all the violations alleged in this count, and every violation alleged in every other count in the Order to Show Cause, under N.J.A.C. 11:5-4.2(a)(1) and (2).

216. Every violation by Reiner alleged in this count and in every other count subjects Reiner to license revocation and monetary penalties under N.J.S.A. 45:15-17(t).

217. Since Reiner's violations in this count and every other count were through and on behalf of MVNJ, MVNJ is subject to license revocation and monetary penalties for every violation alleged in this count and every other count of this Order to Show Cause under N.J.S.A. 45:15-17(t).

218. Since Reiner and MVNJ's violations were under the direction and control of MV Realty, Zachman, Manchester, and Mitchell, therefore MV Realty, Zachman, Manchester, and Mitchell are subject to monetary penalties for every violation alleged in this count and every other count of this Order to Show Cause. N.J.S.A. 45:15-17(t).

**COUNT VIII – PROHIBITED PRESCRIBED OR PREDETERMINED
COMMISSION RATE**

219. The Commission repeats and realleges each of the preceding paragraphs as if set forth at length herein.

220. N.J.A.C. 11:5-6.2(b) prohibits any listing agreement or contract for the sale of real property, or any interest therein, from containing a prescribed or predetermined fee, commission rate or commission amount.

221. In some of their HBAs, Respondents defined their commission for the future sale of a property as follows:

If there is no other broker who, in addition to the MV Realty, participates in the sale of the Property ("Cooperating Broker"), then MV Realty shall receive six percent (6%) of the total sales price for the Property or [3% of the value of the home at the time the HBA is signed as determined by Respondents], whichever is greater (the "Company's Commission"). If there is a Cooperating Broker involved in the sale, then MV Realty shall receive three percent (3%) of the total sales price for the Property or [3% of the value of

the home at the time the HBA is signed as determined by Respondents], whichever is greater (the “Company's Commission”)

222. Respondents also used an alternative form of the HBA with some homeowners that defined Respondents’ commission as “an amount equal to six (6%) percent of the total price that the **Property** is sold for. However, the **Commission** may not be lower than three (3%) percent of [a specific stated dollar amount] (plus applicable sales tax), which is the current home value estimate of the **Property.**” (Emphasis added.)

223. Respondents may have used another format of the HBA as well.

224. Respondents generally used the “greater of” or “may not be lower” language, which set a floor, but no ceiling.

225. Specifically, there would be a preprinted dollar amount in the HBA, setting the floor of 3% of the value of the home at the time the HBA is signed, as determined by Respondents.

226. The commission for the future sale of the property would thus be set as at least 3% of the value of the home at the time the HBA is signed as determined by Respondents, or a percentage of the future sale amount.

227. For every HBA that Respondents entered into, no homeowner was offered the ability to, was able to, or did negotiate the commission percentage rates, or the floor amount that was set.

228. No matter what language Respondents used to define their commission, it was not open or subject to negotiation by the homeowner signing the HBA.

229. Respondents included this language in their HBAs:

NEGOTIATIONS FOR COMPENSATION. YOU ACKNOWLEDGE EACH OF THE FOLLOWING: (1) THAT THE AMOUNTS YOU PAY UNDER THIS AGREEMENT HAVE BEEN DISCUSSED AND NEGOTIATED WITH AND BY YOU; (2) THAT THE COMPENSATION, FEE AND/OR COMMISSION

TO BE COLLECTED BY MV REALTY OR ITS DESIGNEE UNDER A LISTING AGREEMENT IN THE EVENT THAT YOU DECIDE TO SELL THE PROPERTY HAVE ALSO BEEN DISCUSSED AND NEGOTIATED WITH AND BY YOU; AND (3) THAT YOU HAVE VOLUNTARILY AND FREELY AGREED TO BOTH THE AMOUNT TO BE PAID TO YOU UNDER THIS AGREEMENT AND THE COMPENSATION TO BE RECEIVED BY MV REALTY OR ITS DESIGNEE IN THE EVENT THAT YOU DECIDE TO SELL THE PROPERTY DURING THE TERM OF THIS AGREEMENT.

230. This language, stating that Respondents' commission was negotiated, was false – there was no negotiation.

231. Further, through their HBAs, Respondents locked in their commission for all of the affected homes for the next forty (40) years, no matter what happened in the real estate market or in the world, and even if there was to be a separate listing agreement completed after the HBA was signed, the commission rate was already set.

232. Respondents also used their HBAs and the liens filed after the HBA was signed, to enforce an “early termination fee” which paid them even if they did nothing for a homeowner.

233. The early termination fee, similar to the commission, also set a floor and no ceiling.

234. Specifically, it was 3% of the “greater of” the value of the home at the time the HBA is signed, as determined by Respondents, or the “the fair market value of the Property at the time you breach this Agreement or an Early Termination Event occurs.”

235. Similar to their commission rates and amounts, these early termination amounts and rates were set and not open to negotiation.

236. The HBAs are in essence listing agreements, or else they set the terms of a future listing agreement, so they were required to comply with N.J.A.C. 11:5-6.2(b).

237. Through the use of HBAs, Respondents utilized listing agreements or terms for listing agreements that contain prescribed and predetermined commission rates, in violation of N.J.A.C. 11:5-6.2(b).

238. Every HBA in violation of N.J.A.C. 11:5-6.2(b) subjects Respondents to a separate civil penalty and license revocation under N.J.S.A. 45:15-17(t).

COUNT IX – LICENSEE BUSINESS RELATIONSHIPS

239. The Commission repeats and realleges each of the preceding paragraphs as if set forth at length herein.

240. Pursuant to N.J.A.C. 11:5-6.9(c), (d)(3) and (e)(2), licensees are required to supply certain information regarding their working relationship with parties to a real estate transaction when securing brokerage agreements on residential properties.

241. N.J.A.C. 11:5-6.9(a)(1) defines “brokerage agreement” to mean: a written agreement between a brokerage firm and a party describing the terms under which that firm will perform brokerage services as specified in N.J.S.A. 45:15-3. Brokerage agreements include, but are not limited to, sale and rental listing agreements, buyer-broker, lessee-broker, transaction broker, and dual agency agreements.

242. The HBA constitutes a brokerage agreement within the meaning of N.J.A.C. 11:5-6.9(a)(1).

243. The Commission’s rules require all licensees to verbally inform prospective sellers of real property of the four business relationships described in N.J.A.C. 11:5-6.9(h) prior to the first discussion regarding the seller’s motivation or a selling price is discussed. Those licensees who intend to enter into a brokerage agreement with a seller are required to deliver the Consumer

Information Statement no later than the commencement of the listing or transaction brokerage agreement presentation.

244. At no time prior to any New Jersey homeowner entering into an HBA did any Respondent or their representatives ever verbally inform such homeowners of the four possible business relationships available between sellers and real estate licensees described in N.J.A.C. 11:5-6.9(h).

245. At no time prior to, nor concurrent with the commencement of, any New Jersey homeowner entering into an HBA did any Respondent or their representatives ever deliver a copy of the Consumer Information Statement to any such homeowner.

246. Reiner, as broker of record of MVNJ, failed to ensure that MVNJ Licensees verbally informed sellers of the four business relationships described within N.J.A.C. 11:5-6.9 prior to the first discussion of the sellers' motivation or the desired selling price being discussed, in violation of N.J.A.C. 11:5-6.9(e)(2)(i).

247. Reiner, as broker of record of MVNJ, failed to ensure that MVNJ Licensees who intended to enter into a listing agreement or brokerage agreement with the seller deliver the Consumer Information Statement no later than the commencement of the listing agreement or HBA, which constitutes a brokerage agreement, in violation of N.J.A.C. 11:5-6.9(e)(2)(iv).

248. Respondents, by signing HBAs or causing HBAs to be signed, without sellers being verbally informed of the four business relationships described within N.J.A.C. 11:5-6.9 prior to the first discussion of the sellers' motivation or the desired selling price being discussed, and without delivering the Consumer Information Statement no later than the commencement of the listing agreement or HBA, violated N.J.A.C. 11:5-6.9(e)(2)(i) and N.J.A.C. 11:5-6.9(e)(2)(iv).

249. Every violation by Respondents of N.J.A.C. 11:5-6.9(e)(2)(i) and N.J.A.C. 11:5-6.9(e)(2)(iv) subjects Respondents to a separate civil penalty and license revocation under N.J.S.A. 45:15-17(t).

COUNT X – PROHIBITED INDUCEMENT TO ENTER INTO A LISTING AGREEMENT

250. The Commission repeats and realleges each of the preceding paragraphs as if set forth at length herein.

251. The Commission’s regulations state that:

No offering of free, discounted or other services or products, including the offering of a free appraisal, shall be made by a real estate licensee in any advertisement or promotional material or otherwise where the promotion or offering involves a lottery, a contest, a game or a drawing, or the offering of a lot or parcel or lots or parcels, or where the consumer is required to enter into a sale, listing or other real estate contract as a condition of the promotion or offer.

[N.J.A.C. 11:5-6.1(m).]

252. Further: “The prohibition upon licensees making offerings of free, discounted or other services or products as set forth in (m) above applies to all such offerings which confer a monetary benefit upon consumers.” N.J.A.C. 11:5-6.1(m)(2).

253. The “Promotion Fee” paid to homeowners that enter into HBAs with MVNJ constitutes a monetary benefit upon consumers where the consumer is required to enter into a sale, listing or other real estate contract as a condition of the promotion or offer, in violation of N.J.A.C. 11:5-6.1(m)(2).

254. Every HBA entered into by Respondents violated N.J.A.C. 11:5-6.1(m)(2).

255. Every violation of N.J.A.C. 11:5-6.1(m)(2) by Respondents subjects Respondents to a separate civil penalty and license revocation under N.J.S.A. 45:15-17(t).

COUNT XI – FAILURE TO RECOMMEND LEGAL COUNSEL

256. The Commission repeats and realleges each of the preceding paragraphs as if set forth at length herein.

257. N.J.A.C. 11:5-6.4(i) states that “[i]t shall be the duty of a licensee to recommend that legal counsel be obtained whenever the interests of a party to a transaction seem to require it.”

258. Respondents never recommended that a homeowner seek legal counsel in connection with executing an HBA.

259. Given the significance of consumer interests involved, the large monetary amount that the HBA provided Respondents would later extract from each homeowner, the complex and novel issues associated with entering into an HBA, and the lack of transparency involved in the marketing and solicitation of HBAs, Respondents should have known that consumer interests required legal counsel prior to entering into an HBA.

260. Respondents failed to recommend or ensure that New Jersey homeowners obtain legal counsel prior to entering into an HBA, an agreement whereby such homeowners grant MVNJ 40-year contractual rights to a substantial portion of the equity in their home, secured by a lien on the property, in violation of N.J.A.C. 11:5-6.4(i).

261. Every HBA entered into by Respondents violated N.J.A.C. 11:5-6.4(i).

262. Every violation of N.J.A.C. 11:5-6.4(i) by Respondents subjects Respondents to a separate civil penalty and license revocation under N.J.S.A. 45:15-17(t).

**COUNT XII – FAILURE TO PROVIDE COPIES OF FULLY EXECUTED
CONTRACTS**

263. The Commission repeats and realleges each of the preceding paragraphs as if set forth at length herein.

264. N.J.S.A. 45:15-17(f) requires that real estate licensees provide their clients with a fully executed copy of any sale or exclusive sales or rental listing contract at the time of execution thereof.

265. Respondents regularly failed to provide fully executed copies of the HBA at the time of execution by New Jersey homeowners.

266. By failing to provide fully executed copies of the HBAs at the time of execution, Respondents violated N.J.S.A. 45:15-17(f).

267. Every HBA entered into by Respondents where Respondents failed to provide fully executed copies of the HBA at the time of execution by New Jersey homeowners violated N.J.S.A. 45:15-17(f) and subjects Respondents to a separate civil penalty and license revocation under N.J.S.A. 45:15-17(t).

COUNT XIII – FAILURE TO CONDUCT VISUAL INSPECTIONS

268. The Commission repeats and realleges each of the preceding paragraphs as if set forth at length herein.

269. Pursuant to N.J.A.C. 11:5-6.4(b), every licensee is required make a reasonable effort to ascertain all material information concerning the physical condition of every property for which he or she accepts an agency or which he or she is retained to market as a transaction broker. The rule further clarifies that a reasonable effort to ascertain material information must include, at a minimum, inquiries to the seller about any physical conditions which may affect the property

and a visual inspection of the property to determine if there are any readily observable physical conditions affecting the property.

270. Respondents did not conduct a visual inspection of a property prior to a homeowner executing an HBA.

271. For purposes of executing an HBA, the value of a property is determined by Respondents based on a conversation with the seller and a comparative market analysis of the property utilizing Respondents' automated valuation software.

272. The valuation is then used to determine the "Promotion Fee" as well as the amount of MVNJ's sale commission and penalty (or "Early Termination Fee") in the HBA, which potentially binds the homeowner, and his/her heirs, for the next 40 years.

273. Therefore, homeowners are provided with a valuation of their property at the time the HBA is executed, which is derived without a visual inspection by a licensee, and which sets the minimum amount of money that the homeowner will owe to Respondents under the HBA, even if the valuation is wildly inaccurate.

274. Respondents failed to ensure that a visual inspection is conducted of all properties prior to a valuation being assigned to a property and utilized in an HBA, in violation of N.J.A.C. 11:5-6.4(b)(1)(ii).

275. Because they were all entered into without a visual inspection of the property, every HBA entered into by Respondents violated N.J.A.C. 11:5-6.4(b)(1)(ii).

276. Every violation of N.J.A.C. 11:5-6.4(b)(1)(ii) by Respondents subjects Respondents to a separate civil penalty and license revocation under N.J.S.A. 45:15-17(t).

**COUNT XIV – MISSING LANGUAGE REGARDING
REAL ESTATE COMMISSION SPLITS**

277. The Commission repeats and realleges each of the preceding paragraphs as if set forth at length herein.

278. Pursuant to N.J.A.C. 11:5-6.4(f)(3), all listing agreements must include certain language regarding commission splits.

279. Respondents' HBAs set the terms of future real estate listings.

280. Thus, even if Respondents intended to later execute a separate listing agreement, since the HBAs set key terms of the future listing, such as Respondents' commission rate, the HBAs had to comply with the rules regarding listing agreements.

281. In that regard, while Respondents' HBAs set out the commission Respondents would later extract from homeowners, whether 3%, 6% or 9% of the home's value, which would be thousands of dollars, many of Respondents' HBAs did not clearly describe how the commission would be split between Respondents and any cooperating brokers.

282. Respondents failed to include the required language regarding commission splits in their HBAs, in violation of N.J.A.C. 11:5-6.4(f)(3).

283. Every HBA entered into by Respondents without the required language regarding commission splits violated N.J.A.C. 11:5-6.4(f)(3).

284. Every violation of N.J.A.C. 11:5-6.4(f)(3) by Respondents subjects Respondents to a separate civil penalty and license revocation under N.J.S.A. 45:15-17(t).

COUNT XV – UNLICENSED MORTGAGE LOANS

285. The Commission repeats and realleges each of the preceding paragraphs as if set forth at length herein.

286. The New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 to -89 (“NJRMLA”), regulates the activities of residential mortgage lenders, residential mortgage brokers, and mortgage loan originators.

287. The intent of the NJRMLA “is to protect consumers seeking mortgage loans to ensure that the mortgage lending industry operates without unfair, deceptive, and fraudulent practices” See N.J.S.A. 17:11C-52.

288. Residential mortgage lenders, residential mortgage brokers, and mortgage loan originators are required to be licensed by the Department of Banking and Insurance pursuant to N.J.S.A. 17:11C-54(a) and (c).

289. None of Respondents are licensed with the Department of Banking and Insurance as residential mortgage lenders, residential mortgage brokers, and/or mortgage loan originators.

290. Although Respondents claim that the HBAs are not loans, which are clearly subject to consumer protection laws, the terms of the agreement operate as residential mortgage loans.

291. Unlike legitimate listing agreements, which are not typically procured through the offering of up-front payments to consumers, do not last for 40 years, and are not secured by the consumer’s home, the HBAs are secured with a recorded Memorandum of Benefits, have a 40-year term, and require homeowners to pay at least ten times the amount received from MV Realty, regardless of whether Respondents assist in any way with a sale of a consumer’s home.

292. Additionally, Respondents advanced the “promotional fee” to consumers without promising and/or performing meaningful services in return.

293. Specifically, the HBAs provide that Respondents will serve as a “transaction broker” and not as a typical real estate seller’s agent who owe consumers the duty of loyalty.

294. Furthermore, the HBAs incorporate by reference a sample listing agreement which states that Respondents need only use “reasonable efforts” to locate a buyer which could be satisfied by a mere posting of a simple listing on a multiple listing service (“MLS”).

295. Stated another way, Respondents could charge a 6% commission for doing nothing but posting a simple listing on an MLS.

296. Thus, Respondents’ agreements are actually disguised “residential mortgage loan[s]” as defined by N.J.S.A. 17:11C-52.

297. The difference between what the consumer actually receives as the “promotional fee” and what the consumer is required to repay through the commission or the 3% early termination fee, represents interest on the residential mortgage loan.

298. To the extent the recorded Memorandum of Benefits was not in first position, it is a “secondary mortgage loan[s], as defined by N.J.S.A. 17:11C-53.

299. Most, if not all, of the residential mortgage loans provided by Respondents to New Jersey homeowners were “secondary mortgage loans,” as defined by the NJRMLA.

300. Respondents have been acting as residential mortgage lenders and mortgage loan originators, as defined by the NJRMLA.

301. Respondents were not and are not licensed by the Department of Banking and Insurance to provide residential mortgage loans and/or secondary mortgage loans, in violation of N.J.S.A. 17:11C-53.

302. By issuing loans without the required license, Respondents violated N.J.S.A. 45:15-17(e) by engaging in unfair and deceptive business practices and engaging in conduct demonstrating bad faith, dishonesty and unworthiness for licensure.

COUNT XVI – PREDATORY AND USURIOUS MORTGAGE LOANS

303. The Commission repeats and realleges each of the preceding paragraphs as if set forth at length herein.

304. Respondents did not provide, in a conspicuous manner, the unique identifier assigned to the licensee through the National Mortgage Licensing (“NMLS”), on all residential mortgage loan application forms, solicitations, and advertisements, in violation of N.J.S.A. 17:11C-72.

305. Respondents falsely advertised many aspects of the HBP on the MV Realty website and elsewhere, including, without limitation: a) that the HBP was “not a loan”; b) that the money received under the program would not have to be repaid; c) that no lien would be placed on homeowners’ properties; and d) that MV Realty would assist homeowners who sought to refinance their homes, in violation of N.J.S.A. 17:11C-75(d).

306. Respondents engaged in unfair and deceptive practices and employed a scheme to defraud and mislead homeowners, including by misrepresenting, circumventing and concealing the true nature of the HBP, in violation of N.J.S.A. 17:11C-75(e).

307. The HBA and Memorandum of Benefits failed to include statutorily required language for secondary mortgage loans, in violation of N.J.S.A. 17:11C-78(a) and (c).

308. Although many, if not all, of the residential mortgage loans provided by Respondents to New Jersey homeowners were secondary mortgage loans, it is possible Respondents’ residential mortgage loans could represent a first lien on residential real estate.

309. New Jersey's civil usury statute, N.J.S.A. 31:1-1 to -9, caps interest rates on loans at 6% per annum, or 16% per annum where there is a written contract specifying the rate of interest.

310. New Jersey's civil usury statute and implementing regulation, specifically N.J.S.A. 31:1-1(b) and N.J.A.C. 3:1-1.1(b), set the maximum interest rate on loans secured by a first lien on real property to at least 6% per annum, but not more than the Monthly Index of Long Term United States Government Bond Yields, compiled by the Board of Governors of the Federal Reserve System, and as published by said Board of Governors in the monthly Federal Reserve Bulletin, for the second preceding calendar month plus an additional 3.5% per annum rounded off to the nearest quarter of 1% per annum.

311. The difference between what the consumer actually receives as the "promotion fee" and what the consumer is required to repay through the commission or the 3% early termination fee, represents interest on the loans.

312. New Jersey's criminal usury statute, specifically N.J.S.A. 2C-21-19, caps annual interest rates at 30% for non-corporate borrowers.

313. Regardless of whether Respondents' mortgage represents a secondary mortgage loan or a first lien on real property, Respondents regularly charge New Jersey homeowners annual interest rates on their residential loans that far exceed the maximum rates permitted by New Jersey law.

314. By violating the standards of NJRMLA and by violating the usury laws, N.J.S.A. 31:1-1(b), N.J.S.A. 2C:21-19, N.J.A.C. 3:1-1.1(b), with their predatory and usurious loan practices, as described above, Respondents violated N.J.S.A. 45:15-17(e) by engaging in unfair and deceptive business practices and engaging in conduct demonstrating bad faith, dishonesty and unworthiness for licensure.

And for good cause shown,

IT IS on this 6th day of June, 2023

ORDERED that Respondents shall show cause why their real estate licenses should not be suspended or revoked and/or why fines or other sanctions, including restitution, should not be imposed pursuant to N.J.S.A. 45:15-9, N.J.S.A. 45:15-17, and N.J.A.C. 11:5-1.1 to -12.18. Respondents shall file a written Answer to the charges in this Order to Show Cause as required by N.J.A.C. 11:5-11.2 within twenty (20) days of the service of this Order. As required by N.J.A.C. 11:5-11.2, Respondents' written Answer must include specific admissions or denials of all allegations in this Order to Show Cause, state the factual basis of each and every factual allegation denied, and assert any defenses that Respondents intend to present in the event that this matter is deemed a contested case and a plenary hearing is held; and

IT IS FURTHER ORDERED that failure to comply with all of the requirements of N.J.A.C. 11:5-11.2 may result in a determination that there are no material facts or issues of law in dispute and any presentation made to the Commission will be limited to the issue of the severity of any sanction or penalty to be imposed; and

IT IS FURTHER ORDERED that the Commission will review this Order to Show Cause and Answer(s) filed, if any, at a meeting scheduled on or after the 6th day of June, 2023 at 9:30 a.m. to determine whether there is a material fact or issue of law contested. No appearance is required at that time; and

IT IS FURTHER ORDERED that if the Commission determines that there is a material fact or issue of law contested, a hearing will be scheduled for a future date; and

IT IS FURTHER ORDERED that if the Commission determines that there is no material fact or issue of law contested, a hearing shall be scheduled at which the Respondents will be limited

to presenting witnesses and documentary evidence regarding the issue of the severity of any sanction or penalty to be imposed; and

IT IS FURTHER ORDERED that a copy of this Order be served upon Respondents as provided in N.J.S.A. 45:15-18, which service may be accomplished by serving a copy of this Order on Respondents personally, or by delivering a copy thereof to their last known business addresses via certified mail.



Marlene Caride
Commissioner
New Jersey Department of Banking and Insurance
New Jersey Real Estate Commission