

SEP 24 2008

DEPARTMENT OF REAL ESTATE

By K. Contreras

* * *

NO. H-2260 FR

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on September 10, 2008. The findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and/or, (3) other evidence.

The right to reinstatement of a revoked real estate license is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of Respondent.

I

- 1 -

On September 10, 2008, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

II

Respondent DAVID ARTHUR NILSEN is licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code as a real estate broker. Said license will expire on July 16, 2010.

III

Between approximately January 1, 2006 and December 31, 2007, in connection with the collection and disbursement of trust funds, Respondent caused a shortage of \$13,952,051.55, as of December 31, 2007, without the prior written consent of the owners of the trust funds. Respondent also failed to place all trust funds into trust accounts in the name of Respondent as trustee at a bank or other financial institution and failed to reconcile at least once a month the balance of all separate beneficiary or transaction records with the record of all trust funds received and disbursed from the bank and/or trust accounts.

IV

Between approximately January 1, 2006 and December 31, 2007, in connection with Respondent's mortgage loan activities, Respondent failed to record deeds of trust in the names of the lenders as beneficiaries; recorded deeds of trust in the name of "CEDAR FUNDING, INC," a corporation owned solely by Respondent, rather than in the names of the lenders as beneficiaries; negotiated loans with more than 10 lenders on each loan; failed to obtain income and net worth qualification statements for any of the lenders/investors; acted as the borrower, individually, and through Accustom Development, LLC, in at least 26 multi-lender loans totaling \$37,888,239.00 and failed to disclose to the Department his self-dealing and involvement as a borrower; failed to obtain loan servicing agreements for various loans; and failed to obtain a corporate real estate broker license for Cedar Funding, Inc., as Cedar Funding, Inc., was performing licensed activities without a license when it entered into loan servicing agreements.

V

Between approximately July 10, 2002 and January 3, 2007, through an elaborate plan and scheme defrauded investors out of funds totaling \$450,000.00, and the securing property at 603 Belavida Road (herein the "Belavida Property"), Monterey, California, by advancing \$100,000.00 in additional funds to the borrower and by executing various Grant Deeds and assignments, effectively deeding the Belavida property to himself.

DETERMINATION OF ISSUES

I

The facts found above constitute cause under Sections 10130, 10145, 10234, 10238(e), (f), and (k) of the Business and Professions Code and Sections 2832, 2831.2, and 2849.01 of the Regulations for suspension or revocation of all license and license rights of Respondent under the Real Estate Law.

II

The facts found above constitute cause for discipline under Sections 10176(i) and 10177(d) of the Business and Professions Code.

III

The standard of proof applied is clear and convincing proof to a reasonable certainty.

ORDER

The real estate license and license rights of Respondent DAVID ARTHUR NILSEN under the provisions of Part I of Division 4 of the Business and Professions Code are hereby revoked.

This Decision shall become effective at 12 o'clock noon
on October 14, 2008.

DATED: 9/23, 2008.

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4
5 Telephone: (916) 227-0789
6
7

FILED

SEP 10 2008

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 DAVID ARTHUR NILSEN,) NO. H-2260 FR
13 Respondent.) DEFAULT ORDER
14

15 Respondent, DAVID ARTHUR NILSEN, having failed to file
16 a Notice of Defense within the time required by Section 11506
17 of the Government Code, is now in default. It is, therefore,
18 ordered that a default be entered on the record in this matter
19 as to DAVID ARTHUR NILSEN.

20 IT IS SO ORDERED September 10th, 2008.

21
22 JEFF DAVI
Real Estate Commissioner

23
24 By: Charles W. Koenig
25 CHARLES W. KOENIG
Regional Manager
26
27

1 MARY F. CLARKE, Real Estate Counsel (SBN 186744)
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FILED

MAY 16 2008

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 DAVID ARTHUR NILSEN,) NO. H-2260 FR
14 Respondent.) ACCUSATION

15 The Complainant, CHARLES W. KOENIG, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against DAVID ARTHUR NILSEN, (herein "Respondent"), dba CEDAR
18 FUNDING and CEDAR PROPERTIES, is informed and alleges as follows:

19 I

20 The Complainant, CHARLES W. KOENIG, a Deputy Real
21 Estate Commissioner of the State of California, makes this
22 Accusation in his official capacity.

23 II

24 At all times mentioned herein Respondent was and now
25 is licensed and/or has license rights under the Real Estate Law
26 (Part 1 of Division 4 of the Business and Professions Code)
27 (herein "the Code").

1 III

2 At all times mentioned, Respondent was licensed by the
3 California Department of Real Estate (herein "Department") as a
4 real estate broker.

5 IV

6 At all times herein mentioned Respondent engaged in the
7 business of, acted in the capacity of, advertised, or assumed to
8 act as a real estate broker within the State of California within
9 the meaning of Section 10131(d) of the Code, including the
10 operation and conduct of a mortgage loan brokerage with the
11 public wherein, on behalf of others, for compensation or in
12 expectation of compensation, Respondent solicited lenders and
13 borrowers for loans secured directly or collaterally by liens on
14 real property, and wherein Respondent arranged, negotiated,
15 processed, and consummated such loans.

16 V

17 At all times mentioned herein between on or about
18 January 1, 2007 and on or about December 31, 2007, in course of
19 the activities described in Paragraph IV above, Respondent
20 closed approximately 40 loans totaling approximately \$24
21 million. Currently Respondent services 130 loans totaling
22 approximately \$147 million.

23 FIRST CAUSE OF ACTION

24 VI

25 In so acting as a real estate broker, as described in
26 Paragraphs IV and V, above, Respondent accepted or received
27 funds in trust (herein "trust funds") from or on behalf of

1 lenders, investors, borrowers and others in connection with the
2 mortgage loan brokerage activities and thereafter from time to
3 time made disbursements of said trust funds.

4 VII

5 The aforesaid trust funds accepted or received by
6 Respondent were deposited or caused to be deposited by Respondent
7 into one or more bank accounts maintained by Respondent,
8 including but not necessarily limited to:

- 9 a) the "David A. Nilsen dba Cedar Funding Escrow
10 Trust Account" account, account number 41705146
11 maintained by Respondent at the Monterey,
12 California Branch of First National Bank (herein
13 "Trust #1");
- 14 b) the "David A. Nilsen dba Cedar Funding Servicing
15 Account" account, account number 41705542
16 maintained by Respondent at the Monterey,
17 California Branch of First National Bank (herein
18 "Trust #2");
- 19 c) the "David A. Nilsen dba Cedar Funding Escrow
20 Trust Account" account, account number 701-
21 2196023, maintained by Respondent at the Carmel,
22 California Branch of Wells Fargo (herein "Trust
23 #3"); and
- 24 d) the "David A. Nilsen dba Cedar Funding Servicing
25 Account" account, account number 701-2196015,
26 maintained by Respondent at the Carmel, California
27 Branch of Wells Fargo (herein "Bank #1").

VIII

Between on or about January 1, 2006 and on or about December 31, 2007, in connection with the collection and disbursement of said trust funds, Respondent:

(a) caused, suffered or permitted the balance of funds in Trust Account #3 to be reduced to an amount which, as of December 31, 2007, was at least \$13,952,051.55 less than the aggregate liability of Respondent to all owners of such funds, without the prior written consent of the owners of such funds, in violation of Section 10145 of the Code Section 2832.1 of the California Code of Regulations (herein "the Regulations");

(b) failed, with respect to Bank #1, to place trust funds entrusted to Respondent into the hands of a principal on whose behalf the funds were received, into a neutral escrow depository, or into a trust fund account in the name of Respondent as trustee at a bank or other financial institution, in conformance with the requirements of Section 10145 of the Code and Section 2832 of the Regulations, in that Respondent placed such funds into Bank #1, an account that was not in the name of Respondent as trustee; and,

(c) failed, with respect to Trust #1, #2, and #3, and Bank #1, to reconcile, at least once a month, the balance of all separate beneficiary or transaction

1 records with the record of trust funds received
2 and disbursed from such accounts required by
3 Section 2831.2 of Title 10, Chapter 6 of the
4 Regulations.

5 IX

6 Between on or about January 1, 2006 and on or about
7 December 31, 2007, in connection with the activities described
8 in Paragraphs IV and V, above, Respondent:

- 9 (a) failed to record deeds of trust in the names of
10 the lenders as beneficiaries, including, but not
11 limited to, the following loans to:

12	<u>Loan #</u>	<u>Borrower</u>	<u>Amount</u>
13	5188	Accustom Development	\$2,150,000;
14	5324	Aurangzeb Pirzada	\$1,760,000;
14	5363	Accustom Development	\$1,500,000;
14	5364	Accustom Development	\$3,000,000;
15	5490	Neo Ventures	\$ 856,000;
15	5505	Christopher Garwood	\$2,000,000; and
16	5537	Michael Shults	\$1,281,000,

17 in violation of Section 10234 of the Code;

- 18 (b) recorded deeds of trust in the name of "CEDAR
19 FUNDING, INC," a corporation owned solely by
20 Respondent, rather than in the names of the
21 lenders as beneficiaries, including, but not
22 limited to, said loans described in Paragraph
23 IX(a), above, in violation of Section 10176(i)
24 of the Code;

- 25 (c) negotiated loans with more than 10 lenders on each
26 loan, including, but not limited to, the following
27 loans:

<u>Loan #</u>	<u>Borrower</u>	<u>Amount</u>
5188	Accustom Development	\$2,150,000;
5363	Accustom Development	\$1,500,000;
5364	Accustom Development	\$3,000,000;
5505	Christopher Garwood	\$2,000,000; and
5537	Michael Shults	\$1,281,000,

in violation of Section 10238(f) of the Code;

- (d) failed to obtain income and net worth qualification statements for any of the lenders/investors on said loans, including, but not limited to, those described in Paragraph IX(a), above, in violation of Section 10238(f) of the Code;
- (e) acted as the borrower, individually, and through Accustom Development, LLC, in at least 26 multi-lender loans totaling \$37,888,239, including, but not limited to the following loans to:

<u>Loan #</u>	<u>Borrower</u>	<u>Amount</u>
5188	Accustom Development	\$2,150,000;
5363	Accustom Development	\$1,500,000; and
5364	Accustom Development	\$3,000,000,

in violation of Section 10238(e) of the Code;

- (f) failed to disclose to the Department the activities described in Paragraph IX(e), in violation of Section 2849.01 of the Regulations;
- (g) failed to obtain loan servicing agreements for the following loans, including, but not limited to:

<u>Loan#</u>	<u>Lender</u>
5363	Debra A. Thorngate Davis
5364	Jodi Mclean
5364	Selene Olms
5505	Randall A. McChesney,

in violation of Section 10238(k) of the Code; and

1 (h) failed to obtain a corporate real estate
2 broker license for Cedar Funding, Inc., a
3 Corporation, in that Respondent allowed Cedar
4 Funding, Inc., to enter into loan servicing
5 agreements, including, but not limited to,
6 those described in Paragraph IX(g), in
7 violation of Section 10130 of the Code.

8
9 SECOND CAUSE OF ACTION

10 X

11 There is hereby incorporated in this Second, separate
12 and distinct, Cause of Accusation all of the allegations
13 contained in Paragraphs I through IX of the First Cause of
14 Accusation with the same force and effect as if herein fully set
15 forth.

16 XI

17 On or about July 10, 2002, Stanley D. Post, Trustee of
18 the Stanley D. Post DDS Inc., Profit Sharing Plan & Trust (herein
19 "Post") agreed, by and through Respondent, to become one of
20 several pooled investors (herein "pooled investors") who were to
21 enter into a loan transaction with Kavanaugh Development Co.,
22 Inc. (herein "Kavanaugh"), a California corporation, wherein the
23 pooled investors would loan a total of \$450,000.00 to Kavanaugh,
24 which loan was to be secured in their names as a first position
25 security on real property described as 603 Belavida Road,
26 Monterey, California (herein "Belavida property"), which was
27 owned by Kavanaugh.

1 XII

2 On or about February 5, 2003, unbeknownst to Post,
3 Respondent advanced another \$100,000.00 to Kavanaugh under the
4 deed of trust, diluting the security of Post and each of the
5 other pooled investors.

6 XIII

7 On or about April 9, 2004, unbeknownst to Post,
8 Kavanaugh executed a Grant Deed deeding title to the Belavida
9 property to a fictitious entity, Belavida Court, Inc., (herein
10 "Belavida Court") of which Respondent was president.

11 XIV

12 On or about September 4, 2004, unbeknownst to Post,
13 Respondent recorded an Assignment of the Deed of Trust assigning
14 the interest retained by him on behalf of Post and each of the
15 other pooled investors, to Cedar Funding, Inc. (herein "Cedar
16 Funding"), a corporation owned solely by Respondent.

17 XV

18 On or about December 23, 2004, unbeknownst to Post,
19 Respondent recorded a Grant Deed deeding title to the Belavida
20 property from Belavida Court to himself and his wife, Angela
21 Nilsen.

22 XVI

23 On or about June 24, 2005 Respondent, unbeknownst to
24 Post, recorded a Grant Deed deeding any interest Cedar Funding
25 may have had in the Belavida property to himself and his wife,
26 Angela Nilsen.

27 \\\

1 XVIII

2 On or about June 24, 2005, unbeknownst to Post,
3 Respondent borrowed \$2,430,000.00 from Metrocities, and gave
4 Metrocities a deed of trust on the Belavida property, which deed
5 of trust was recorded June 24, 2005.

6 XVIII

7 On or about January 30, 2007, unbeknownst to Post,
8 Respondent executed a deed of trust in favor of Cedar Funding,
9 replicating the original Kavanaugh loan, in the amount of
10 \$550,000.00, which deed of trust was recorded February 16, 2007.

11 XIX

12 On or about January 30, 2007, unbeknownst to Post,
13 Respondent executed a deed of trust in favor of Cedar Funding,
14 replicating the original Kavanaugh loan, in the amount of
15 \$650,000.00, which deed of trust was recorded March 27, 2007.

16 XX

17 The facts alleged in Paragraphs XI through XIX, above,
18 are grounds for the suspension or revocation of the licenses and
19 license rights of Respondent pursuant to Section 10176(i) of the
20 Code.

21 XXI

22 The facts alleged above are grounds for the suspension
23 or revocation of the licenses and license rights of Respondent
24 under the following provisions of the Code and/or the Regulations:

- 25 (a) as to Paragraph VIII(a) under Section 10145 of
26 the Code and Section 2832.1 of the Regulations in
27 conjunction with Section 10177(d) of the Code;

- 1 (b) as to Paragraph VIII(b) under Section 10145 of
2 the Code and Section 2832 of the Regulations in
3 conjunction with Section 10177(d) of the Code;
4 (c) as to Paragraph VIII(c) under Section 10145 of the
5 Code and Section 2831.2 of the Regulations in
6 conjunction with Section 10177(d) of the Code;
7 (d) as to Paragraph IX(a) under Section 10234 of
8 the Code and in conjunction with Section 10177(d)
9 of the Code;
10 (e) as to Paragraph IX(b) under Section 10176(i) of
11 the Code in conjunction with Section 10177(d) of
12 the Code;
13 (f) as to Paragraph IX(c) under Section 10238(f) of
14 the Code in conjunction with Section 10177(d) of
15 the Code;
16 (g) as to Paragraph IX(d) under Section 10238(f) of
17 the Code in conjunction with Section 10177(d) of
18 the Code;
19 (h) as to Paragraph IX(e) under Section 10238(e) of
20 the Code in conjunction with Section 10177(d) of
21 the Code;
22 (i) as to Paragraph IX(f) under Section 2849.01 of the
23 Regulations in conjunction with Section 10177(d)
24 of the Code;
25 (j) as to Paragraph IX(g) under Section 10238(k) of
26 the Code in conjunction with Section 10177(d) of
27 the Code;

1 (k) as to Paragraph IX(h) under Section 10130 of the
2 Code in conjunction with Section 10177(d) of the
3 Code; and

4 (l) as to Paragraph XX under Section 10176(i) of the
5 Code in conjunction with Section 10177(d) of the
6 Code.

7 WHEREFORE, Complainant prays that a hearing be
8 conducted on the allegations of this Accusation and that upon
9 proof thereof a decision be rendered imposing disciplinary
10 action against all licenses and license rights of Respondent
11 under the Real Estate Law (Part 1 of Division 4 of the Business
12 and Professions Code) and for such other and further relief as
13 may be proper under other applicable provisions of law.

14
15
16 
17 CHARLES W. KOENIG
18 Deputy Real Estate Commissioner
19

20 Dated at Sacramento, California
21 this 16th day of May, 2008.
22
23
24
25
26
27