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AUG - 3 2011

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By K. Contreras

In the Matter of the Accusation of)
)
ESTATE FINANCIAL, INC., a Corporation,)
JOSHUA MORRIS YAGUDA, and)
KAREN R. GUTH,)
)
Respondents.)
_____)

NO. H-2276 FR
(As to ESTATE FINANCIAL, INC., Only)

DECISION

This Decision is being issued as to ESTATE FINANCIAL, INC., only (herein "Respondent") in accordance with the provisions of Section 11520 of the Government Code, on evidence in compliance with Section 11505 of the Government Code and pursuant to the Order of Default as to Estate Financial, Inc., only, filed on July 6, 2011. The Findings of Fact set forth herein are based on one or more of the following: (1) express admissions; (2) affidavits; and/or, (3) other evidence as to Respondent.

This Decision revokes Respondent's corporate real estate broker license on grounds of the mishandling of trust funds.

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.

FINDINGS OF FACT

1

On June 27, 2008, Charles W. Koenig made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and form for the Notice of Defense were mailed, by certified and regular mail to Respondent at all mailing addresses on file with the Department on June 27, 2008. Subsequently, on October 7, 2009, John W. Sweeney made the First Amended Accusation in his official capacity as a

Deputy Real Estate Commissioner of the State of California. The First Amended Accusation was mailed by certified and regular mail to Respondent at all mailing addresses on file with the Department on October 7, 2009.

On July 6, 2008, Notices of Defense were received herein within the time prescribed by Section 11506 of the Government Code.

2

On March 12, 2009, a Notice of Hearing was filed, setting the hearing for June 15-18, 2009, in Fresno, California. On June 4, 2009, an Amended Notice of Hearing was filed, setting the hearing for June 15-18, 2009, in San Luis Obispo, California. On January 24, 2011, a Second Continued Notice of Hearing was filed, setting the hearing for June 1, 2011, in Fresno, California. Respondent failed to appear for hearing and a default was entered herein on July 6, 2011.

3

On January 21, 2011, an Order Accepting Voluntary Surrender was filed for JOSHUA MORRIS YAGUDA, and an Order Accepting Voluntary Surrender was filed for KAREN R. GUTH.

4

At all times herein mentioned, Respondent was licensed and/or had license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

5

At all times herein mentioned, Respondent was licensed by the State of California Department of Real Estate (herein the "Department") as a corporate real estate broker by and through JOSHUA MORRIS YAGUDA as designated officer-broker of Respondent to qualify said corporation and to act for said corporation as a real estate broker. Respondent's corporate real estate broker license will expire August 11, 2011.

6

Whenever reference is made in an allegation in this Decision to an act or omission of Respondent, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with Respondent committed such act or omission while engaged in the furtherance of the business or operations of such corporate respondent and while acting within the course and scope of their authority and employment.

7

At all times herein mentioned, Respondent serviced loans for private investors for compensation, acts which require a real estate license pursuant to Section 10131(d) of the Code. From approximately 2003 up through the present time, Respondent obtained two permits from the Department of Corporations (herein "DOC"). Permit #506-2116 (EFI) allows the sale of

fractionalized interests in mortgage loans. Fractionalized interests/loans mean a loan with two (2) or more investors. Permit #506-2484 (EFI Mortgage Fund, LLC) allows the sale of "Membership Interests" in a mortgage pool. Both permits required that loans arranged under authority of the permits be secured by deeds of trust.

8

Respondent maintained two trust accounts and a non-trust bank account. One of the trust accounts handled loan servicing activities only. The other trust account handled construction draws, original investments from investors, and interest reserves. The non-trust bank account handled the activities of the mortgage pool. The accounts mentioned above include the following accounts maintained by Respondent at the Paso Robles, California branch of Heritage Oaks Bank:

- (a) Estate Financial, Inc. Trustee Loan Servicing Account, account number xxxx783 (herein "Trust #1");
- (b) Estate Financial, Inc. Construction Account, account number xxxx775 (herein "Trust #2"); and
- (c) Estate Financial Mortgage Fund LLC (herein the "Pool"), account number xxxx415 (herein "Bank 1").

9

Respondent, without proper authorization, routinely used funds from the mortgage pool to fund projects without obtaining security for the investors, and advanced funds on construction loans that were not secured by deeds of trust.

10

Between approximately April 1, 2005 and April 1, 2008, in connection with the mortgage loan brokerage and trust fund handling activities described above, Respondent:

(a) caused, suffered, or permitted the balance of funds in Trusts #1 and #2 to be reduced to amounts less than the liability of Respondent to all owners of such funds without first obtaining the written consent of each and every owner of such funds, as set out below:

<u>Account</u>	<u>Ending Date</u>	<u>Shortage Amount</u>
Trust #1	9/30/07	\$627,193.40
Trust #2	9/30/07	\$ 24,349.23

(b) failed to keep an accurate record in chronological sequence of all trust funds received and disbursed from Trusts #1 and #2 containing all the information required by Section 2831 of Title 10, of the California Code of Regulations (herein the "Regulations"); and,

(c) failed to keep accurate separate records for each beneficiary or transaction, accounting therein for all funds which were deposited into Trusts #1 and #2, containing all of the information required by Section 2831.1 of the Regulations.

11

The acts and/or omissions of Respondent as described in Paragraph 10, violate Section 10145 of the Code and Sections 2831 and 2831.1 of the Regulations and are grounds for discipline under Section 10177(d) and Section 10177(g) or (j) of the Code.

12

Respondent transferred approximately \$18,256,698.68 from the Pool under DOC Permit #506-2484 into Trust #2 to fund loans.

13

Respondent represented in the circular issued in connection with DOC Permit #506-2484, that the loans described in Paragraph 12, above, would be secured by first deeds of trust.

14

Respondent failed to provide deeds of trust for any of the loans described in Paragraph 12, contrary to its representations made in said circular.

15

Respondent made unsecured loans from the Pool, including the following loans based on misrepresentations and false promises in said circular and therefore acted fraudulently and dishonestly in making the unsecured loans.

1. Loan #189-04 originally for \$824,687.00 (of which approximately \$129,000.00 was added from Pool funds which were not secured by a deed of trust) to build on Lot 6 of 20, Highwater Estates, Granada Hills, California.
2. Loan #518-05, originally for \$8,960,000.00 (of which approximately \$391,000.00 was added from Pool funds which were not secured by a deed of trust) to build a project on 150 Hinds Avenue, Pismo Beach, California.
3. Loan #193-06, originally for \$3,665,720.00 (of which approximately \$1,900,000.00 was added from Pool funds which were not secured by a deed of trust) to build on Parcel 1 of map CO-74-74 and Parcel 1 of map CA-74-74, Paso Robles, California.

16

The acts and/or omissions of Respondent in connection with said loans described in Paragraphs 12 through 15, violate Section 10234 of the Code and are grounds for discipline under Section 10177(d) and Section 10177(g) or (j) of the Code.

17

Respondent failed to provide deeds of trust on the fractionalized loans and/or advances from the Pool and individual investors, including loans #775-03, #189-04, #518-05, #105-06, and #193-06, as represented in the offering circulars issued in connection with Permits #506-2116 and #506-2484.

18

Respondent made unsecured fractionalized loans and advances from the Pool and individual investors based on misrepresentations and false promises made in said circulars and therefore acted fraudulently and dishonestly in making the loans.

19

The acts and/or omissions of Respondent in connection with said loans described in Paragraphs 17 and 18, violate Section 10234 of the Code and are grounds for discipline under Section 10177(d) and Section 10177(g) or (j) of the Code.

20

Respondent routinely advanced funds from the Pool and individual investors in connection with Loans #189-04, #518-05, #105-06, and #193-06, contrary to its own Loan Servicing Agreements, wherein they represented that "Servicer may, however, in its sole discretion and without being so obliged to the Lenders, advance its own funds on behalf of the Lenders ...".

21

The Loan Servicing Agreements referred to above did not authorize Respondent to advance funds from the Pool and individual investors in connection with the loans set out above.

22

The acts and/or omissions of Respondent in connection with the loans described in Paragraph 20, are grounds for discipline under Section 10176(a) and (i) and/or Section 10177(g) or (j) of the Code.

LOAN #775-03

23

On approximately March 31, 2004, Respondent solicited investors to fund a \$915,000.00 loan, identified as Loan #775-03, representing to the contributing investors that said funds would be used to build a project known as Lot 3 Elwood Fee Goleta, California.

24

In addition to the \$915,000.00 Respondent collected from investors to fund Loan #775-03, Respondent added to that amount \$355,668.00 which it took from other already funded loans, including Loan #405-05, #539-04, #571-05, #775-03, #778-03, #779-08, #101-06, and #102-06, without the knowledge or consent of any of the beneficiaries of any of said loans.

25

Of the total amount allocated to Loan #775-03 by Respondent, which was \$1,270,718.00, Respondent disbursed \$776,072.00 to other loans in the subdivision, which disbursements were not secured by deeds of trust, including Loans #238-02, #289-02, #240-02, #241-02, #773-03, #774-03, #152-02, #153-02, #154-02, #200-02, #201-02, #777-03, and #776-03 without the knowledge or consent of any of the beneficiaries of any of said loans. After disbursing \$776,072.00 for the loans identified above, only \$494,645.00 of the loan funds were used for Loan #775-03.

26

Respondent solicited investors to invest their funds in Loan #775-03 based on misrepresentations and false promises, and therefore acted fraudulently and dishonestly in arranging Loan #775-03.

27

The acts and/or omissions of Respondent in connection with said loans described in Paragraphs 23 through 26 are grounds for discipline under Section 10176(a) and (i) and/or Section 10177 (g) or (j) of the Code.

LOAN #189-04

28

On approximately December 20, 2004, Respondent solicited investors to fund a \$824,687.00 loan, identified as Loan #189-04, representing to the contributing investors that said funds would be used to build a project known as Lot 6 of 20 Highwater Estates.

29

In addition to the \$824,687.00 Respondent collected from investors to fund Loan #189-04, Respondent added to that amount \$129,475.00 which it took from the Pool and \$51,996.00 which it took from other already funded loans, including Loans #187-04, #193-04, #194-04, and #200-04, without the knowledge or consent of any of the beneficiaries of any of said loans.

30

Of the total amount allocated to Loan #189-04 by Respondent, which was \$954,162.00, Respondent disbursed \$150,409.00 to other loans in the subdivision, which

disbursements were not secured by deeds of trust, including Loans #184-04, #185-04, #186-04, #188-04, #190-04, #191-04, #192-04, #195-04, #196-04, #197-04, #198-04, #199-04, #201-04, and #202-04, without the knowledge or consent of any of the beneficiaries of any of said loans. After disbursing \$150,409.00 for the loans identified above, only \$852,520.00 of the loan funds were actually used for Loan #189-04.

31

Respondent solicited investors to invest their funds in Loan #189-04 based on misrepresentations and false promises, and therefore acted fraudulently and dishonestly in arranging Loan #189-04.

32

The acts and/or omissions of Respondent in connection with the loans described in Paragraphs 28 through 31 are grounds for discipline under Section 10176(a) and (i) and/or Section 10177 (g) or (j) of the Code.

33

On approximately July 12, 2006, Respondent obtained DOC Permit #506-2116, allowing Respondent to "offer, sell, and issue the securities described in its application." Said permit was due to expire on July 12, 2007.

34

On approximately July 12, 2007, Respondent allowed said permit to lapse and did not renew the permit until approximately October 11, 2007.

35

Between approximately July 12, 2007 and October 11, 2007, Respondent solicited investors to invest in fractionalized loans, including B100-07, B121-07, B122-07, B123-07, B124-07, B125-07, and B126-07, representing that it was operating under DOC Permit #506-2116 when, in fact, DOC Permit #506-2116 had expired.

36

Respondent violated Section 25000 of the Corporations Code, in that Respondent offered, sold, or issued securities as described in its application after its permit had expired and before it had been renewed.

37

Respondent solicited investors to invest in fractionalized loans based on misrepresentations and false promises and therefore acted fraudulently and dishonestly in soliciting for and arranging such transactions after its DOC permit had expired and before it had been renewed.

The acts and/or omissions of Respondent in connection with said loans described in Paragraph 35, are grounds for discipline under Section 10177 (g) or (j) and (n) of the Code.

DETERMINATION OF ISSUES

1

The facts found above constitute cause under Sections 10145, 10234, 10176(a) and (i), 10177(g) or (j) and (n) of the Code, and Sections 2831 and 2831.1 of the Regulations, in conjunction with Section 10177(d) of the Code, for the revocation of all licenses and license rights of Respondent ESTATE FINANCIAL, INC., under the Real Estate Law.

2

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

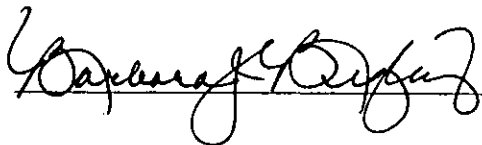
ORDER

The real estate licenses and license rights of Respondent ESTATE FINANCIAL, INC., 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 August 23, 2011.

DATED: 8/2, 2011.

BARBARA J. BIGBY
Acting Real Estate Commissioner



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

FILED

JUL - 6 2011

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)
13 ESTATE FINANCIAL, INC.,) NO. H- 2276 FR
14 a Corporation,)
15 JOSHUA MORRIS YAGUDA, and) DEFAULT ORDER
16 KAREN R. GUTH,) (As to ESTATE FINANCIAL, INC.,
Respondents.) Only)

17 Respondent ESTATE FINANCIAL, INC., only, having been duly served with a
18 Notice of Hearing and having failed to appear on June 1, 2011, at the scheduled time and place of
19 hearing is now in default. It is, therefore, ordered that a default be entered on the record in this
20 matter as to ESTATE FINANCIAL, INC., only.

21 IT IS SO ORDERED JULY 6, 2011.

22 BARBARA J. BIGBY
23 Acting Real Estate Commissioner

24 By:

25 Phillip Ihde
26 PHILLIP IHDE
27 Regional Manager

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FILED

JAN 21 2011

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

ESTATE FINANCIAL, INC.,
a Corporation,
JOSHUA MORRIS YAGUDA, and
KAREN R. GUTH,
Respondents.

NO. H-2276 FR
(As to KAREN R. GUTH, Only)

ORDER ACCEPTING VOLUNTARY SURRENDER

On June 27, 2008, an Accusation was filed in this matter and Amended on October 7, 2009, against Respondents ESTATE FINANCIAL, INC., a Corporation, JOSHUA MORRIS YAGUDA, and KAREN R. GUTH.

By Declaration signed January 9, 2010, Respondent KAREN R. GUTH only, petitioned the Real Estate Commissioner to voluntarily surrender her real estate license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that the petition of Respondent KAREN R. GUTH for the voluntary surrender of her real estate license is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in the

1 Declaration of Respondent KAREN R. GUTH, dated January 9, 2010 (attached hereto as Exhibit
2 "A"). Respondent's license certificate and pocket card shall be sent to the below listed address
3 so that they reach the Department of Real Estate on or before the effective date of this Order:
4

5 **DEPARTMENT OF REAL ESTATE**
6 **Attn: Licensing Flag Section**
7 **P. O. Box 187000**
8 **Sacramento, CA 95818-7000**

9 This Order shall become effective at 12 o'clock noon on

10 February 10, 2011

11 DATED: 12/8/2010

12 JEFF DAVI
13 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	
ESTATE FINANCIAL, INC., a Corporation,)	NO. H-2276 FR
JOSHUA MORRIS YAGUDA, and)	
KAREN R. GUTH,)	(As to Karen R. Guth Only)
)	
Respondents.)	

DECLARATION

My name is KAREN R. GUTH, I am currently licensed as a real estate salesperson and have license rights with respect to said license. I am represented by Steven C. Smith, Esq.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code), I wish to voluntarily surrender my real estate license issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

I understand that by so voluntarily surrendering my license, I may be relicensed as a broker or salesperson only by petitioning for reinstatement pursuant to Section 11522 of the Government Code. I also understand that by so voluntarily surrendering my license, I agree to the following:



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1. The filing of this Declaration shall be deemed as my petition for voluntary surrender.

2. It shall also be deemed to be an understanding and agreement by me that I waive all rights I have to require the Commissioner to prove the allegations contained in the Accusation filed in this matter at a hearing held in accordance with the provisions of the Administrative Procedure Act (Government Code Sections 11400 et seq.), and that I also waive other rights afforded to me in connection with the hearing such as the right to discovery, the right to present evidence in defense of the allegations in the Accusation, and the right to cross-examine witnesses.

3. I further agree that upon acceptance by the Commissioner, as evidenced by an appropriate order, all affidavits and all relevant evidence obtained by the Department in this matter prior to the Commissioner's acceptance, and all allegations contained in the Accusation filed in the Department Case No. H-2276 FR, may be considered by the Department to be true and correct for the purpose of deciding whether to grant relicensure or reinstatement pursuant to Government Code Section 11522.

4. This voluntary surrender and Respondent's decision not to contest the Accusation are made for the purpose of reaching an agreed disposition of this proceeding, and, except as set forth above, shall not be admissible in any other criminal or civil proceedings.

5. I freely and voluntarily surrender my license and license rights under the Real Estate Law.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed on January 9, 2010, at San Luis Obispo, California.

Karen Guth
KAREN R. GUTH, Respondent



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FILED

JAN 21 2011

DEPARTMENT OF REAL ESTATE

By H. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)

ESTATE FINANCIAL, INC.,)
a Corporation,)
JOSHUA MORRIS YAGUDA, and)
KAREN R. GUTH,)

Respondents.)

NO. H-2276 FR

(As to JOSHUA MORRIS YAGUDA, Only)

ORDER ACCEPTING VOLUNTARY SURRENDER

On June 27, 2008, an Accusation was filed in this matter and Amended on October 7, 2009, against Respondents ESTATE FINANCIAL, INC., a Corporation, JOSHUA MORRIS YAGUDA, and KAREN R. GUTH.

By Declaration signed September 2, 2010, Respondent JOSHUA MORRIS YAGUDA only, petitioned the Real Estate Commissioner to voluntarily surrender his real estate license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that the petition of Respondent JOSHUA MORRIS YAGUDA for the voluntary surrender of his real estate license is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in the


1 Declaration of Respondent JOSHUA MORRIS YAGUDA, dated September 2, 2010 (attached
2 hereto as Exhibit "A"). Respondent's license certificate and pocket card shall be sent to the
3 below listed address so that they reach the Department of Real Estate on or before the effective
4 date of this Order:

5
6 **DEPARTMENT OF REAL ESTATE**
7 **Attn: Licensing Flag Section**
8 P. O. Box 187000
9 Sacramento, CA 95818-7000

10 This Order shall become effective at 12 o'clock noon on
11 February 10, 2011

12 DATED: 12/8/2010

13 JEFF DAVI
14 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
 ESTATE FINANCIAL, INC., a Corporation,) NO. H-2276 FR
 JOSHUA MORRIS YAGUDA, and)
 KAREN R. GUTH,) (As to Joshua Morris Yaguda, Only)
)
 Respondents.)

DECLARATION

My name is JOSHUA MORRIS YAGUDA, I am currently licensed as a real estate broker and have license rights with respect to said license. I am represented by Dyke E. Huish, Esq.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code), I wish to voluntarily surrender my real estate license issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

I understand that by so voluntarily surrendering my license, I may be relicensed as a broker or salesperson only by petitioning for reinstatement pursuant to Section 11522 of the Government Code. I also understand that by so voluntarily surrendering my license, I agree to the following:



1 1. The filing of this Declaration shall be deemed as my petition for voluntary
2 surrender.

3 2. It shall also be deemed to be an understanding and agreement by me that I
4 waive all rights I have to require the Commissioner to prove the allegations contained in the
5 Accusation filed in this matter at a hearing held in accordance with the provisions of the
6 Administrative Procedure Act (Government Code Sections 11400 et seq.), and that I also waive
7 other rights afforded to me in connection with the hearing such as the right to discovery, the right
8 to present evidence in defense of the allegations in the Accusation, and the right to cross-examine
9 witnesses.

10 3. I further agree that upon acceptance by the Commissioner, as evidenced by
11 an appropriate order, all affidavits and all relevant evidence obtained by the Department in this
12 matter prior to the Commissioner's acceptance, and all allegations contained in the Accusation
13 filed in the Department Case No. H-2276 FR, may be considered by the Department to be true
14 and correct for the purpose of deciding whether to grant relicensure or reinstatement pursuant to
15 Government Code Section 11522.

16 4. This voluntary surrender and Respondent's decision not to contest the
17 Accusation are made for the purpose of reaching an agreed disposition of this proceeding, and,
18 except as set forth above, shall not be admissible in any other criminal or civil proceedings.

19 5. I freely and voluntarily surrender my license and license rights under the
20 Real Estate Law.

21 I declare under penalty of perjury under the laws of the State of California that the
22 above is true and correct and that this declaration was executed on 9-2-10,
23 2010, at Jamestown, California.

24
25
26 
27 _____
JOSHUA MORRIS YAGUDA, Respondent



RECOMMENDATIONS OF COUNSEL

AMENDED TO INCLUDE INVESTORS NAMES: RICHARD NYE CARLSON, CHRIS MADSON, DENNIS KLASSEN,
VINCENT LA VELLE, ABRAHAM VIERO, TERESA TAWNEY, RICHARD CARLSON, GEORGE JENSEN,

JOHN C. GILBERT (SEE PAGE 5, ¶ 17, LINES 22-27; PAGE 8, ¶ 30, LINES 1-5; and PAGE 9, ¶ 36, LINES 5-9).

DATE
September 24, 2009

SIGNATURE OF COUNSEL

John C. Gilbert

ACTIONS TO BE TAKEN

10
H

1 MARY F. CLARKE, Counsel (SBN 186744)
2 JOHN VAN DRIEL, Counsel, (SBN 84056)
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007

6 Telephone: (916) 227-0789
7 -or- (916) 227-0780 (Direct)

FILED

OCT - 7 2009

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)
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14 ESTATE FINANCIAL, INC.,)
15 a Corporation,)
16 JOSHUA MORRIS YAGUDA, and,)
KAREN R. GUTH,)
Respondents.)

NO. H-2276 FR

FIRST AMENDED
ACCUSATION

17 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate Commissioner of
18 the State of California, for cause of First Amended Accusation against ESTATE FINANCIAL,
19 INC. (herein "EFI"), JOSHUA MORRIS YAGUDA (herein "YAGUDA"), and KAREN R.
20 GUTH (herein "GUTH") is informed and alleges as follows:

21 1

22 The Complainant makes this First Amended Accusation in his official capacity.

23 2

24 At all times herein mentioned, Respondents EFI, YAGUDA, and GUTH
25 (herein collectively "Respondents") were and now are licensed and/or have license rights under
26 the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the
27 Code").

1 3

2 At all times herein mentioned, EFI was and now is licensed by the Department of
3 Real Estate of the State of California (herein "the Department") as a corporate real estate broker
4 by and through YAGUDA as designated officer-broker of EFI to qualify said corporation and to
5 act for said corporation as a real estate broker.

6 4

7 At all times herein mentioned, YAGUDA was and now is licensed by the
8 Department as a real estate broker, individually and as designated officer-broker of EFI. As said
9 designated officer-broker, YAGUDA was at all times mentioned herein responsible pursuant to
10 Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate
11 licensees, and employees of EFI for which a license is required.

12 5

13 At all times herein mentioned, GUTH was and now is licensed by the Department
14 as a real estate salesperson, in the employ of YAGUDA.

15 6

16 Whenever reference is made in an allegation in this Accusation to an act or
17 omission of EFI, such allegation shall be deemed to mean that the officers, directors, employees,
18 agents and/or real estate licensees employed by or associated with EFI committed such act or
19 omission while engaged in the furtherance of the business or operations of such corporate
20 Respondent and while acting within the course and scope of their authority and employment.

21 7

22 At all times herein mentioned, Respondents EFI and YAGUDA engaged in the
23 business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within
24 the State of California within the meaning of Sections 10131(d) and 10131(e) of the Code,
25 including the operation and conduct of a mortgage loan brokerage with the public wherein, on
26 behalf of others, for or in expectation of compensation, Respondents solicited lenders and
27 borrowers for loans secured directly or collaterally by liens on real property, and arranged,

1 negotiated, serviced and collected payments on such loans, and wherein Respondents sold or
2 offered to sell, bought or offered to buy, or exchanged or offered to exchange promissory notes
3 secured directly or collaterally by a lien on real property and performed services for the holders
4 thereof, including servicing and collecting payments on such promissory notes.

5 8

6 In so acting as real estate brokers and salespersons, Respondents accepted or
7 received funds in trust (herein "trust funds") from or on behalf of lenders, investors, borrowers,
8 and others in connection with the mortgage loan brokerage activities described in Paragraph 7,
9 above, and thereafter from time to time made disbursements of said trust funds.

10 SUMMARY OF THE FACTS

11 9

12 At all times herein mentioned, Respondents have serviced loans for private
13 investors for compensation, acts which require a real estate license pursuant to Code Section
14 10131(d). From approximately 2003 up through the present time, Respondents have obtained
15 two permits from the Department of Corporations (herein "DOC"). Permit #506-2116 (EFI)
16 allows the sale of fractionalized interests in mortgage loans. Fractionalized interests/loans mean
17 a loan with two (2) or more investors. Permit #506-2484 (EFI Mortgage Fund, LLC) allows the
18 sale of "Membership Interests" in a mortgage pool. Both permits required that loans arranged
19 under authority of the permits be secured by deeds of trust.

20 10

21 Respondents maintained two trust accounts and a non-trust bank account. One
22 trust account handled loan servicing activities only. The other trust account handled construction
23 draws, original investments from investors, and interest reserves. The non-trust bank account
24 handled the activities of the mortgage pool. The accounts mentioned above include the following
25 accounts maintained by Respondents at the Paso Robles, California branch of Heritage Oaks Bank:

26 (a) Estate Financial, Inc. Trustee Loan Servicing Account, account number
27 1031783 (herein "Trust #1");

1 (b) Estate Financial, Inc. Construction Account, account number
2 1031775(herein "Trust #2"); and

3 (c) Estate Financial Mortgage Fund LLC (herein the "Pool"), account number
4 1039415 (herein "Bank 1").

5 11

6 Respondents, without proper authorization, routinely used funds from the
7 mortgage pool to fund projects without obtaining security for the investors, and advanced funds
8 on construction loans that were not secured by deeds of trust.

9 FIRST CAUSE OF ACTION - TRUST ACCOUNTS #1 AND #2

10 12

11 The allegations of Paragraphs 1 through 11 are incorporated herein by reference.

12 13

13 Between approximately April 1, 2005 and April 1, 2008, in connection with the
14 mortgage loan brokerage and trust fund handling activities described above, Respondents EFI
15 and YAGUDA:

16 (a) caused, suffered, or permitted the balance of funds in Trusts #1 and #2 to be
17 reduced to amounts less than the liability of Respondent to all owners of such funds without first
18 obtaining the written consent of each and every owner of such funds, as set out below:

<u>ACCOUNT</u>	<u>ENDING DATE</u>	<u>SHORTAGE AMOUNT</u>
TRUST #1	9/30/07	\$627,193.40
TRUST #2	9/30/07	\$ 24,349.23

22 (b) failed to keep an accurate record in chronological sequence of all trust funds
23 received and disbursed from Trusts #1 and #2 containing all the information required by Section
24 2831 of Title 10, of the California Code of Regulations (herein the "Regulations"); and,

25 (c) failed to keep accurate separate records for each beneficiary or transaction,
26 accounting therein for all funds which were deposited into Trusts #1 and #2, containing all of
27 the information required by Section 2831.1 of the Regulations.

The acts and/or omissions of Respondents as described in Paragraph 13, violate Section 10145 of the Code and Sections 2831 and 2831.1 of the Regulations and are grounds for discipline under Section 10177(d) and Section 10177(g) or (j) of the Code.

SECOND CAUSE OF ACTION
BANK #1 – THE POOL

The allegations of Paragraphs 1 through 14 are incorporated herein by reference.

Respondents transferred approximately \$18,256,698.68 from the Pool under DOC Permit #506-2484 into Trust #2 to fund various construction loans, including:

1. Loan #189-04 originally for \$824,687.00 (of which approximately \$129,000.00 was added from Pool funds which were not secured by a deed of trust) to build on Lot 6 of 20 Highwater Estates, Granada Hills, California.

2. Loan #518-05, originally for \$8,960,000.00 (of which approximately \$391,000.00 was added from Pool funds which were not secured by a deed of trust) to build a project on 150 Hinds Avenue, Pismo Beach, California.

3. Loan #193-06, originally for \$3,665,720.00 (of which approximately \$1,900,000.00 was added from Pool funds which were not secured by a deed of trust) to build on Parcel 1 of map CO-74-74 and Parcel 1 of map CA-74-74, Paso Robles, California.

Respondents represented in their DOC circular that was issued in connection with DOC Permit #506-2484, that said loans, would be secured by first deeds of trust, said representations were relied upon by Richard Nye Carlson (an investor in Loan #189-04, see #1 above), Chris Madson (an investor in Loan #518-05, see #2 above), and Dennis Klassen (an investor in Loan #193-06, see #3 above).

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Respondents failed to provide deeds of trust for any of said loans, including those described in Paragraphs 16-17, above, contrary to their representations made in said circular.

19

Respondents made unsecured loans from the Pool, including Loans #189-04, #518-05, and #193-06, described in Paragraphs 16-17, above, based on misrepresentations and false promises made in said circular, and therefore acted fraudulently and dishonestly in making said unsecured loans.

20

The acts and/or omissions of Respondents in connection with said loans described in Paragraphs 16-19, violate Section 10234 of the Code and are grounds for discipline under Section 10177(d) and Section 10177(g) or (j) of the Code.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE DEEDS OF TRUST

21

The allegations of Paragraphs 1 through 20 are incorporated herein by reference.

22

Respondents failed to provide deeds of trust on the fractionalized loans and/or advances from the Pool and individual investors, including Loans #775-03, #189-04, #518-05, #105-06, and #193-06, as represented in the offering circulars issued in connection with Permits #506-2116 and #506-2484.

23

Respondents made unsecured fractionalized loans and advances from the Pool and individual investors based on misrepresentations and false promises made in said circulars and therefore acted fraudulently and dishonestly in making the loans.

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The acts and/or omissions of Respondents in connection with said loans described in Paragraph 22, violate Section 10234 of the Code and are grounds for discipline under Section 10177(d) and Section 10177(g) or (j) of the Code.

FOURTH CAUSE OF ACTION
ADVANCED FUNDS

25

The allegations of Paragraphs 1 through 24 are incorporated herein by reference.

26

Respondents routinely advanced funds from the Pool and individual investors in connection with Loans #189-04, #518-05, #105-06, and #193-06, as described in Paragraphs 16-19, above, contrary to their own Loan Servicing Agreements, wherein they represented that "Servicer may, however, in its sole discretion and without being so obliged to the Lenders, advance its own funds on behalf of the Lenders ...".

27

The Loan Servicing Agreements referred to above did not authorize Respondents to advance funds from the Pool and individual investors in connection with the loans set out above.

28

The acts and/or omissions of Respondents in connection with the loans described in Paragraph 26, are grounds for discipline under Section 10176(a) and (i) and/or Section 10177(g) or (j) of the Code.

FIFTH CAUSE OF ACTION
LOAN #775-03

29

The allegations of Paragraphs 1 through 28 are incorporated herein by reference.

\\

1 30

2 Between about August 16, 2000 and May 20, 2008, Respondents solicited
3 investors Lee Vincent LaVelle, Abraham Viero, Teresa Tawney, and others to fund a
4 \$915,000.00 loan, identified as Loan #775-03, representing to said investors that said funds
5 would be used to build a project known as Lot 3 Elwood Fee Goleta, California.

6 31

7 In addition to the \$915,000.00 Respondents collected from said investors to fund
8 Loan #775-03, Respondents added to that amount \$355,668.00, which they took from other
9 already funded loans, including Loans #405-05, #539-04, #571-05, #775-03, #778-03, #779-08,
10 #101-06, and #102-06, without the knowledge or consent of any of the beneficiaries of any of
11 said loans.

12 32

13 Of the total amount allocated to Loan #775-03 by Respondents, which was
14 \$1,270,718.00, Respondents disbursed \$776,072.00 to other loans in the subdivision, which
15 disbursements were not secured by deeds of trust, including Loans #238-02, #289-02, #240-02,
16 #241-02, #773-03, #774-03, #152-02, #153-02, #154-02, #200-02, #201-02, #777-03, and
17 #776-03 without the knowledge or consent of any of the beneficiaries of any of said loans. After
18 disbursing \$776,072.00 for the loans identified above, only \$494,645.00 of the loan funds were
19 used for Loan #775-03.

20 33

21 Respondents solicited said investors to invest their funds in Loan #775-03 based
22 on misrepresentations and false promises, and therefore acted fraudulently and dishonestly in
23 arranging Loan #775-03.

24 34

25 The acts and/or omissions of Respondents in connection with said loans described
26 in Paragraphs 30 through 33 are grounds for discipline under Section 10176(a) and (i) and/or
27 Section 10177 (g) or (j) of the Code.

1 40

2 The acts and/or omissions of Respondents in connection with the loans described
3 in Paragraphs 36 through 39 are grounds for discipline under Section 10176(a) and (i) and/or
4 Section 10177 (g) or (j) of the Code.

5 SEVENTH CAUSE OF ACTION
6 ACTING WITHOUT A DOC PERMIT

7 41

8 The allegations of Paragraphs 1 through 40 are incorporated herein by reference.

9 42

10 On approximately July 12, 2006, Respondent EFI obtained DOC Permit
11 #506-2116 allowing Respondent to "offer, sell, and issue the securities described in its
12 application." Said permit was due to expire on July 12, 2007.

13 43

14 On approximately July 12, 2007, Respondents allowed said permit to lapse and
15 did not renew the permit until approximately October 11, 2007.

16 44

17 Between approximately July 12, 2007 and October 11, 2007, Respondents
18 solicited investors to invest in fractionalized loans, including B100-07, B121-07, B122-07,
19 B123-07, B124-07, B125-07, and B126-07, representing that they were operating under DOC
20 Permit #506-2116, when, in fact DOC Permit #506-2116 had expired.

21 45

22 Respondents violated Section 25000 of the Corporations Code, in that
23 Respondents offered, sold, or issued securities as described in their application after their permit
24 had expired and before it had been renewed.

25 46

26 Respondents solicited investors to invest in fractionalized loans based on
27 misrepresentations and false promises and therefore acted fraudulently and dishonestly in

1 soliciting for and arranging such transactions after their DOC permit had expired and before it
2 had been renewed.

3 47

4 The acts and/or omissions of Respondents in connection with said loans described
5 in Paragraph 44, are grounds for discipline under Section 10177 (g) or (j) and (n) of the Code.

6 EIGHTH CAUSE OF ACTION
7 SUPERVISION BY DESIGNATED OFFICER

8 48

9 The allegations of Paragraphs 1 through 47 are incorporated herein by reference.

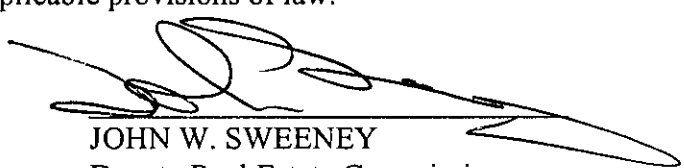
10 49

11 At all times mentioned herein, Respondent YAGUDA failed to exercise
12 reasonable supervision over the acts of Respondent EFI and its agents and employees in such a
13 manner as to allow the acts and omissions on the part of EFI to occur as described above.

14 50

15 The acts and/or omissions of Respondent YAGUDA as described in Paragraphs
16 48 and 49, violate Section 10159.2 of the Code and Section 2725 of the Regulations and are
17 grounds for discipline under Section 10177(d), (g), and (h) of the Code.

18 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
19 of this Fist Amended Accusation and that upon proof thereof a decision be rendered imposing
20 disciplinary action against all licenses and license rights of Respondents under the Real Estate
21 Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further
22 relief as may be proper under other applicable provisions of law.

23
24 
25 JOHN W. SWEENEY
Deputy Real Estate Commissioner

26 Dated at Fresno, California

27 this 30th day of September, 2009.

1 MARY F. CLARKE, Counsel (SBN 186744)
2 JOHN VAN DRIEL, Counsel, (SBN 84056)
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007

FILED

JUN 27 2008

6 Telephone: (916) 227-0789
7 -or- (916) 227-0780 (Direct)

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)
13 ESTATE FINANCIAL, INC.,)
14 a Corporation,)
15 JOSHUA MORRIS YAGUDA, and,)
KAREN R. GUTH,)
Respondents.)

NO. H-2276 FR

ACCUSATION

16 The Complainant, CHARLES W. KOENIG, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against ESTATE FINANCIAL, INC. (herein "EFI") JOSHUA
19 MORRIS YAGUDA (herein "YAGUDA"), and KAREN R. GUTH (herein
20 "GUTH") is informed and alleges as follows:

21 1

22 The Complainant makes this Accusation in his official
23 capacity.

24 2

25 At all times herein mentioned, Respondents EFI, YAGUDA,
26 and GUTH (herein collectively "Respondents") were and now are
27 licensed and/or have license rights under the Real Estate Law

1 (Part 1 of Division 4 of the Business and Professions Code)
2 (herein "the Code").

3 3

4 At all times herein mentioned EFI was and now
5 is licensed by the Department of Real Estate of the State of
6 California (herein "the Department") as a corporate real estate
7 broker by and through YAGUDA as designated officer-broker of EFI
8 to qualify said corporation and to act for said corporation as a
9 real estate broker.

10 4

11 At all times herein mentioned, YAGUDA was and now is
12 licensed by the Department as a real estate broker, individually
13 and as designated officer-broker of EFI. As said designated
14 officer-broker, YAGUDA was at all times mentioned herein
15 responsible pursuant to Section 10159.2 of the Code for the
16 supervision of the activities of the officers, agents, real
17 estate licensees, and employees of EFI for which a license is
18 required.

19 5

20 At all times herein mentioned, GUTH was and now is
21 licensed by the Department as a real estate salesperson, in the
22 employ of EFI. GUTH was also the President of EFI, owning 85%
23 share of the corporation and was an integral part in making the
24 representations as described in Paragraphs 17-40, below.

25 6

26 Whenever reference is made in an allegation in this
27 Accusation to an act or omission of EFI, such allegation shall be

1 deemed to mean that the officers, directors, employees, agents
2 and/or real estate licensees employed by or associated with EFI
3 committed such act or omission while engaged in the furtherance
4 of the business or operations of such corporate Respondent and
5 while acting within the course and scope of their authority and
6 employment.

7 7

8 At all times herein mentioned, Respondents EFI and
9 YAGUDA engaged in the business of, acted in the capacity of,
10 advertised, or assumed to act as real estate brokers within the
11 State of California within the meaning of Sections 10131(d) and
12 10131(e) of the Code, including the operation and conduct of a
13 mortgage loan brokerage with the public wherein, on behalf of
14 others, for or in expectation of compensation, Respondents GUTH
15 and YAGUDA solicited lenders and borrowers for loans secured
16 directly or collaterally by liens on real property, and arranged,
17 negotiated, serviced and collected payments on such loans, and
18 wherein Respondents sold or offered to sell, bought or offered to
19 buy, or exchanged or offered to exchange promissory notes secured
20 directly or collaterally by a lien on real property and performed
21 services for the holders thereof, including servicing and
22 collecting payments on such promissory notes.

23 8

24 In so acting as real estate brokers and salespersons,
25 Respondents accepted or received funds in trust (herein "trust
26 funds") from or on behalf of lenders, investors, borrowers, and
27 others in connection with the mortgage loan brokerage activities

1 described in Paragraph 7, above, and thereafter from time to time
2 made disbursements of said trust funds.

3 SUMMARY OF THE FACTS

4 9

5 At all times herein mentioned, Respondents have
6 serviced loans for private investors for compensation, acts which
7 require a real estate license pursuant to Code Section 10131(d).
8 From approximately 2003 up through the present time, Respondents
9 have obtained two permits from the Department of Corporations
10 (herein "DOC"). Permit #506-2116 (EFI) allows the sale of
11 fractionalized interests in mortgage loans. Fractionalized
12 interests/loans mean a loan with two (2) or more investors.
13 Permit #506-2484 (EFI Mortgage Fund, LLC) allows the sale of
14 "Membership Interests" in a mortgage pool. Both permits required
15 that loans arranged under authority of the permits be secured by
16 deeds of trust.

17 10

18 Respondents maintained two trust accounts and a non-
19 trust bank account. One of the trust accounts handled loan
20 servicing activities only. The other trust account handled
21 construction draws, original investments from investors, and
22 interest reserves. The non-trust bank account handled the
23 activities of the mortgage pool. The accounts mentioned above
24 include the following accounts maintained by Respondents at the
25 Paso Robles, California branch of Heritage Oaks Bank:

26 (a) Estate Financial, Inc. Trustee Loan Servicing
27 Account, account number 1031783 (herein "Trust #1");

1 (b) Estate Financial, Inc. Construction Account,
2 account number 1031775 (herein "Trust #2"); and

3 (c) Estate Financial Mortgage Fund LLC (herein the
4 "Pool"), account number 1039415 (herein "Bank 1").

5 11

6 Respondents, without proper authorization, routinely
7 used funds from the mortgage pool to fund projects without
8 obtaining security for the investors, and advanced funds on
9 construction loans that were not secured by deeds of trust.

10 FIRST CAUSE OF ACTION - TRUST ACCOUNTS #1 AND #2

11 12

12 The allegations of Paragraphs 1 through 11 are
13 incorporated herein by reference.

14 13

15 Between approximately April 1, 2005 and April 1, 2008,
16 in connection with the mortgage loan brokerage and trust fund
17 handling activities described above, Respondents EFI and YAGUDA:

18 (a) caused, suffered, or permitted the balance of
19 funds in Trusts #1 and #2 to be reduced to amounts less than the
20 liability of Respondent to all owners of such funds without first
21 obtaining the written consent of each and every owner of such
22 funds, as set out below:

<u>ACCOUNT</u>	<u>ENDING DATE</u>	<u>SHORTAGE AMOUNT</u>
TRUST #1	9/30/07	\$627,193.40
TRUST #2	9/30/07	\$ 24,349.23

26 (b) failed to keep an accurate record in chronological
27 sequence of all trust funds received and disbursed from Trusts #1

1 and #2 containing all the information required by Section 2831
2 of Title 10, of the California Code of Regulations (herein the
3 "Regulations"); and,

4 (c) failed to keep accurate separate records for each
5 beneficiary or transaction, accounting therein for all funds
6 which were deposited into Trusts #1 and #2, containing all of
7 the information required by Section 2831.1 of the Regulations.

8 14

9 The acts and/or omissions of Respondents as described
10 in Paragraph 13, violate Section 10145 of the Code and Sections
11 2831 and 2831.1 of the Regulations and are grounds for discipline
12 under Section 10177(d) and Section 10177(g) or (j) of the Code.

13 SECOND CAUSE OF ACTION - BANK #1 - THE POOL

14 15

15 The allegations of Paragraphs 1 through 14 are
16 incorporated herein by reference.

17 16

18 Respondents transferred approximately \$18,256,698.68 from
19 the Pool under DOC Permit #506-2484 into Trust #2 to fund loans.

20 17

21 Respondents represented in the circular issued in
22 connection with DOC Permit #506-2484, that the loans described
23 in Paragraph 16, above, would be secured by first deeds of trust.

24 18

25 Respondents failed to provide deeds of trust for any
26 of the loans described in Paragraph 16, contrary to their
27 representations made in said circular.

1
2 Respondents made unsecured loans from the Pool,
3 including the following loans based on misrepresentations and
4 false promises in said circular and therefore acted fraudulently
5 and dishonestly in making the unsecured loans.

6 1. Loan #189-04 originally for \$824,687.00 (of which
7 approximately \$129,000.00 was added from Pool funds which were
8 not secured by a deed of trust) to build on Lot 6 of 20,
9 Highwater Estates, Granada Hills, California.

10 2. Loan #518-05, originally for \$8,960,000.00 (of
11 which approximately \$391,000.00 was added from Pool funds which
12 were not secured by a deed of trust) to build a project on
13 150 Hinds Avenue, Pismo Beach, California.

14 3. Loan #193-06, originally for \$3,665,720.00 (of which
15 approximately \$1,900,000.00 was added from Pool funds which were
16 not secured by a deed of trust) to build on Parcel 1 of map CO-
17 74-74 and Parcel 1 of map CA-74-74, Paso Robles, California.

20

18
19 The acts and/or omissions of Respondents in connection
20 with said loans described in Paragraphs 16 through 19, violate
21 Section 10234 of the Code and are grounds for discipline under
22 Section 10177(d) and Section 10177(g) or (j) of the Code.

23 THIRD CAUSE OF ACTION - FAILURE TO PROVIDE DEEDS OF TRUST

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25 The allegations of Paragraphs 1 through 20 are
26 incorporated herein by reference.

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Respondents failed to provide deeds of trust on the fractionalized loans and/or advances from the Pool and individual investors, including loans #775-03, #189-04, #518-05, #105-06, and #193-06, as represented in the offering circulars issued in connection with Permits #506-2116 and #506-2484.

23

Respondents made unsecured fractionalized loans and advances from the Pool and individual investors based on misrepresentations and false promises made in said circulars and therefore acted fraudulently and dishonestly in making the loans.

24

The acts and/or omissions of Respondents in connection with said loans described in Paragraph 22, violate Section 10234 of the Code and are grounds for discipline under Section 10177(d) and Section 10177(g) or (j) of the Code.

FOURTH CAUSE OF ACTION - ADVANCED FUNDS

25

The allegations of Paragraphs 1 through 24 are incorporated herein by reference.

26

Respondents routinely advanced funds from the Pool and individual investors in connection with loans #189-04, #518-05, #105-06, and #193-06, contrary to their own Loan Servicing Agreements, wherein they represented that "Servicer may, however, in its sole discretion and without being so obliged to the Lenders, advance its own funds on behalf of the Lenders ...".

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The Loan Servicing Agreements referred to above did not authorize Respondents to advance funds from the Pool and individual investors in connection with the loans set out above.

28

The acts and/or omissions of Respondents in connection with the loans described in Paragraph 26, are grounds for discipline under Section 10176(a) and (i) and/or Section 10177(g) or (j) of the Code.

FIFTH CAUSE OF ACTION - LOAN #775-03

29

The allegations of Paragraphs 1 through 28 are incorporated herein by reference.

30

On approximately March 31, 2004, Respondents GUTH and YAGUDA solicited investors to fund a \$915,000.00 loan, identified as loan #775-03, representing to the contributing investors that said funds would be used to build a project known as Lot 3 Elwood Fee Goleta, California.

31

In addition to the \$915,000.00 Respondents collected from investors to fund loan #775-03, Respondents added to that amount \$355,668.00 which they took from other already funded loans, including loan #405-05, #539-04, #571-05, #775-03, #778-03, #779-08, #101-06, and #102-06, without the knowledge or consent of any of the beneficiaries of any of said loans.

\\

1
2 Of the total amount allocated to loan #775-03 by
3 Respondents, which was \$1,270,718.00, Respondents disbursed
4 \$776,072.00 to other loans in the subdivision, which
5 disbursements were not secured by deeds of trust, including loans
6 #238-02, #289-02, #240-02, #241-02, #773-03, #774-03, #152-02,
7 #153-02, #154-02, #200-02, #201-02, #777-03, and #776-03 without
8 the knowledge or consent of any of the beneficiaries of any of
9 said loans. After disbursing \$776,072.00 for the loans
10 identified above, only \$494,645.00 of the loan funds were used
11 for loan #775-03.

12
13 Respondents GUTH and YAGUDA solicited investors to
14 invest their funds in Loan #775-03 based on misrepresentations
15 and false promises, and therefore acted fraudulently and
16 dishonestly in arranging Loan #775-03.

17
18 The acts and/or omissions of Respondents in connection
19 with said loans described in Paragraphs 30 through 33 are grounds
20 for discipline under Section 10176(a) and (i) and/or Section
21 10177 (g) or (j) of the Code.

22 SIXTH CAUSE OF ACTION - LOAN #189-04

23
24 The allegations of Paragraphs 1 through 34 are
25 incorporated herein by reference.

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On approximately December 20, 2004, Respondents GUTH and YAGUDA solicited investors to fund a \$824,687.00 loan, identified as loan #189-04, representing to the contributing investors that said funds would be used to build a project known as Lot 6 of 20 Highwater Estates.

37

In addition to the \$824,687.00 Respondents collected from investors to fund loan #189-04, Respondents added to that amount \$129,475.00 which they took from the Pool and \$51,996.00 which they took from other already funded loans, including loans #187-04, #193-04, #194-04, and #200-04, without the knowledge or consent of any of the beneficiaries of any of said loans.

38

Of the total amount allocated to loan #189-04 by Respondents, which was \$954,162.00, Respondents disbursed \$150,409.00 to other loans in the subdivision, which disbursements were not secured by deeds of trust, including loans #184-04, #185-04, #186-04, #188-04, #190-04, #191-04, #192-04, #195-04, #196-04, #197-04, #198-04, #199-04, #201-04, and #202-04, without the knowledge or consent of any of the beneficiaries of any of said loans. After disbursing \$150,409.00 for the loans identified above, only \$852,520.00 of the loan funds were actually used for loan #189-04.

39

Respondents GUTH and YAGUDA solicited investors to invest their funds in Loan #189-04 based on misrepresentations

1 and false promises, and therefore acted fraudulently and
2 dishonestly in arranging Loan #189-04.

3 40

4 The acts and/or omissions of Respondents GUTH and
5 YAGUDA in connection with the loans described in Paragraphs 36
6 through 39 are grounds for discipline under Section 10176(a) and
7 (i) and/or Section 10177 (g) or (j) of the Code.

8 SEVENTH CAUSE OF ACTION - ACTING WITHOUT A DOC PERMIT

9 41

10 The allegations of Paragraphs 1 through 40 are
11 incorporated herein by reference.

12 42

13 On approximately July 12, 2006, Respondents obtained
14 DOC Permit #506-2116 allowing Respondent EFI to "offer, sell, and
15 issue the securities described in its application." Said permit
16 was due to expire on July 12, 2007.

17 43

18 On approximately July 12, 2007, Respondents allowed
19 said permit to lapse and did not renew the permit until
20 approximately October 11, 2007.

21 44

22 Between approximately July 12, 2007 and October 11,
23 2007, Respondents GUTH and YAGUDA solicited investors to invest
24 in fractionalized loans, including B100-07, B121-07, B122-07,
25 B123-07, B124-07, B125-07, and B126-07, representing that they
26 were operating under DOC Permit #506-2116, when, in fact DOC
27 Permit #506-2116 had expired.

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Respondents violated Section 25000 of the Corporations Code, in that Respondents offered, sold, or issued securities as described in their application after their permit had expired and before it had been renewed.

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Respondents GUTH and YAGUDA solicited investors to invest in fractionalized loans based on misrepresentations and false promises and therefore acted fraudulently and dishonestly in soliciting for and arranging such transactions after their DOC permit had expired and before it had been renewed.

47

The acts and/or omissions of Respondents GUTH and YAGUDA in connection with said loans described in Paragraph 44, are grounds for discipline under Section 10177 (g) or (j) and (n) of the Code.

EIGHTH CAUSE OF ACTION - SUPERVISION BY DESIGNATED OFFICER

48

The allegations of Paragraphs 1 through 47 are incorporated herein by reference.

49

At all times mentioned herein, Respondent YAGUDA failed to exercise reasonable supervision over the acts of Respondent EFI and its agents and employees in such a manner as to allow the acts and omissions on the part of EFI to occur as described above.

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2 The acts and/or omissions of Respondent YAGUDA as
3 described in Paragraphs 48 and 49, violate Section 10159.2 of
4 the Code and Section 2725 of the Regulations and are grounds for
5 discipline under Section 10177(d), (g), and (h) of the Code.

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

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16 
17 CHARLES W. KOENIG
18 Deputy Real Estate Commissioner
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21 Dated at Sacramento, California
22 this 27th day of June, 2008.
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