

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

FILED

AUG 28 2008

DEPARTMENT OF REAL ESTATE

By H. Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA
11

11 * * *

12 TO:

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

NO. H-2292 FR

ORDER TO DESIST AND REFRAIN
(B&P Code Section 10086)

16
17 The Real Estate Commissioner of the State of California
18 has caused an investigation to be conducted of the real estate
19 resale brokerage activities of you, ESTATE FINANCIAL, INC., and
20 JOSHUA MORRIS YAGUDA, and KAREN R. GUTH, (herein referred to
21 collectively as "you"), and is of the opinion that:

22 You, ESTATE FINANCIAL, INC., have violated Sections
23 10145 and 10234 of the California Business and Professions Code
24 (herein "the Code"), and Sections 2831, 2831.1, and 2832.1 of
25 Title 10 of the California Code of Regulations (herein "the
26 Regulations"). This opinion is based on the findings set forth
27 below.

You, JOSHUA MORRIS YAGUDA, have violated Sections 10234, 10159.2, and 10177(h) of the Code and Section 2725 of the Regulations. This opinion is based on the findings set forth below.

You, KAREN R. GUTH, have violated Section 10234 of the Code. This opinion is based on the findings set forth below.

AND, FURTHERMORE, THAT YOU, ESTATE FINANCIAL, INC., and JOSHUA MORRIS YAGUDA, and KAREN R. GUTH have violated Sections 10176(a) and (i), and 10177(d), (g), and/or (j), and (n) of the Code by making substantial misrepresentations and false promises likely to influence, persuade or induce, and other conduct constituting fraud and dishonest dealing, in connection with soliciting, arranging, and managing loans in compliance with the Real Estate Law, Department of Corporations (herein "DOC") Permits #506-2116 and #506-2484, and your own Loan Servicing Agreements. This opinion is based on the findings set forth below.

LICENSE HISTORY

1

At all times herein mentioned, you, ESTATE FINANCIAL, INC., were and now are licensed by the Department of Real Estate of the State of California (herein "the Department") as a corporate real estate broker by and through JOSHUA MORRIS YAGUDA as designated officer-broker.

2

At all times herein mentioned, you, JOSHUA MORRIS YAGUDA, were and now are licensed by the Department as a real estate broker, individually and as designated officer-broker of ESTATE FINANCIAL, INC.

At all times herein mentioned, you, KAREN R. GUTH, were and now are licensed by the Department as a real estate salesperson, in the employ of ESTATE FINANCIAL, INC.

LICENSED ACTIVITIES AND BROKERAGE

At all times herein mentioned, you, ESTATE FINANCIAL, INC., and JOSHUA MORRIS YAGUDA, engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Sections 10131(d) and 10131(e) of the Code, including the operation and conduct of a mortgage loan brokerage with the public wherein, on behalf of others, for or in expectation of compensation, solicited lenders and borrowers for loans secured directly or collaterally by liens on real property, and arranged, negotiated, serviced and collected payments on such loans, and wherein you sold or offered to sell, bought or offered to buy, or exchanged or offered to exchange promissory notes secured directly or collaterally by a lien on real property and performed services for the holders thereof, including servicing and collecting payments on such promissory notes.

At all times mentioned herein you, ESTATE FINANCIAL, INC., and JOSHUA MORRIS YAGUDA, employed and compensated KAREN R. GUTH to perform the acts and conduct the activities described in Paragraph 4 above.

1 MORTGAGE LOAN AUDIT

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3 On approximately April 14, 2008, the Department
4 performed an audit examination of the books and records of you,
5 ESTATE FINANCIAL, INC., pertaining to the mortgage loan
6 activities described in Paragraph 4, above, that require a real
7 estate license. The audit examination covered a period of time
8 between approximately April 1, 2005 and April 1, 2008. The audit
9 examination revealed violations of the Code and Regulations as
10 set forth in Paragraphs 7 through 22, below.

11 VIOLATIONS OF THE REAL ESTATE LAW

12 TRUST ACCOUNT VIOLATIONS

13 7

14 With respect to the licensed activities referred to in
15 Paragraph 4, above, the audit examination referred to above,
16 determined that you, ESTATE FINANCIAL, INC.:

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

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

25 in violation of Section 2832.1 of the Code.

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 the Regulations; and

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

8 FAILURE TO PROVIDE DEEDS OF TRUST

9 8

10 You, ESTATE FINANCIAL, INC., JOSHUA MORRIS YAGUDA
11 and/or KAREN R. GUTH, transferred approximately \$18,256,698.68,
12 from the Estate Financial Mortgage Fund, LLC (herein the "Pool"),
13 into various loans without providing deeds of trust for any of
14 said loans, contrary to representations made by you in ESTATE
15 FINANCIAL, INC.'s DOC circular, in connection with ESTATE
16 FINANCIAL, INC.'s DOC Permit #506-2484.

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18 FURTHERMORE, YOU, ESTATE FINANCIAL, INC., JOSHUA
19 MORRIS YAGUDA and/or KAREN R. GUTH, made the following unsecured
20 loans based on misrepresentations and false promises in ESTATE
21 FINANCIAL, INC.'s DOC circular, in connection with ESTATE
22 FINANCIAL, INC.'s DOC Permit #506-2484, and therefore acted
23 fraudulently and dishonestly in making said unsecured loans.

24 1. Loan #189-04 originally for \$824,687.00 (of which
25 approximately \$129,000.00 was added from Pool funds which were
26 not secured by a deed of trust) to build on Lot 6 of 20,
27 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.

10

You, ESTATE FINANCIAL, INC., JOSHUA MORRIS YAGUDA and/or KAREN R. GUTH, failed to provide deeds of trust on fractionalized loans and/or advances from the Pool and individual investors, including loans #775-03, #189-04, #518-05, #105-06, and #193-06, contrary to the representations you made in ESTATE FINANCIAL, INC.'s DOC circular, in connection with ESTATE FINANCIAL, INC.'s DOC Permits #506-2484 and #506-2116.

ADVANCING FUNDS WITHOUT AUTHORIZATION

11Y

You, ESTATE FINANCIAL, INC., JOSHUA MORRIS YAGUDA, and KAREN R. GUTH, routinely advanced funds from the Pool and individual investors in connection with loans #189-04, #518-05, #105-06, and #193-06, contrary to ESTATE FINANCIAL, INC.'s Loan Servicing Agreements, wherein you 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 ...".

12

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

SPECIFIC MISREPRESENTATIONS - LOAN #775-03

13

You, JOSHUA MORRIS YAGUDA and KAREN R. GUTH, solicited investors to fund loan #775-03 for \$915,000.00, by representing to investors that said funds would be used to build a project known as Lot 3 Elwood Fee Goleta, California.

14

In addition to the \$915,000.00 you collected from investors to fund loan #775-03, you added to that amount \$355,668.00 which you 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.

15

Of the total amount allocated to loan #775-03 by you, which was \$1,270,718.00, you 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.

1 SPECIFIC MISREPRESENTATIONS - LOAN #189-04

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3 You, JOSHUA MORRIS YAGUDA and KAREN R. GUTH, solicited
4 investors to fund loan #189-04 for \$824,687.00, by representing
5 to the contributing investors that said funds would be used to
6 build a project known as Lot 6 of 20 Highwater Estates.

7 17

8 In addition to the \$824,687.00 you collected from
9 investors to fund loan #189-04, you added to that amount
10 \$129,475.00 which you took from the Pool and \$51,996.00, which
11 you took from other already funded loans, including loans
12 #187-04, #193-04, #194-04, and #200-04, without the knowledge or
13 consent of any of the beneficiaries of any of said loans.

14 18

15 Of the total amount allocated to loan #189-04, which
16 was \$954,162.00, you disbursed \$150,409.00 to other loans in the
17 subdivision, which disbursements were not secured by deeds of
18 trust, including loans #184-04, #185-04, #186-04, #188-04,
19 #190-04, #191-04, #192-04, #195-04, #196-04, #197-04, #198-04,
20 #199-04, #201-04, and #202-04, without the knowledge or consent
21 of any of the beneficiaries of any of said loans. After
22 disbursing \$150,409.00 for the loans identified above, only
23 \$852,520.00 of the loan funds were actually used for loan #189-04.

24 ACTING WITHOUT A DOC PERMIT

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26 On approximately July 12, 2006, you ESTATE FINANCIAL,
27 INC., JOSHUA MORRIS YAGUDA, and KAREN R. GUTH, obtained DOC

1 Permit #506-2116 allowing you to "offer, sell, and issue the
2 securities described in its application." Said permit was due
3 to expire on July 12, 2007.

4 20

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

8 21

9 Between approximately July 12, 2007 and October 11,
10 2007, you solicited investors to invest in fractionalized loans,
11 including B100-07, B121-07, B122-07, B123-07, B124-07, B125-07,
12 and B126-07, representing that you were operating under DOC
13 Permit #506-2116, when, in fact DOC Permit #506-2116 had expired.

14 22

15 On approximately April 28, 2008, DOC issued an Order
16 Summarily Suspending both Permits #506-2484 and #506-2116 under
17 Sections 25140(a) and 25143(a) of the California Corporations
18 Code.

19 INADEQUATE SUPERVISION

20 23

21 You, JOSHUA MORRIS YAGUDA, at all times mentioned
22 herein, failed to exercise reasonable supervision over the acts
23 of ESTATE FINANCIAL, INC., and its agents and employees in such
24 a manner as to allow the acts and omissions on the part of
25 ESTATE FINANCIAL, INC., to occur as described above.

26 NOW THEREFORE, YOU, ESTATE FINANCIAL, INC., ARE
27 ORDERED TO DESIST AND REFRAIN from performing any and all acts

1 requiring a real estate license in California unless and until
2 you are in compliance with Sections 10234, 10145, and 10177(n)
3 of the Code, and Sections 2831, 2831.1, and 2832.1 of the
4 Regulations.

5 AND YOU, JOSHUA MORRIS YAGUDA, ARE ORDERED TO DESIST
6 AND REFRAIN from performing any and all acts requiring a real
7 estate license in California unless and until you are in
8 compliance with Sections 10234, 10159.2, and 10177(h) and (n)
9 of the Code and Section 2725 of the Regulations.

10 AND YOU, KAREN R. GUTH, ARE ORDERED TO DESIST AND
11 REFRAIN from performing any and all acts requiring a real estate
12 license in California unless and until you are in compliance
13 with Sections 10234 and 10177(n) of the Code.

14 AND THAT YOU, ESTATE FINANCIAL, INC., JOSHUA MORRIS
15 YAGUDA, AND KAREN R. GUTH, ARE ORDERED TO DESIST AND REFRAIN
16 from soliciting, inducing, accepting or receiving trust funds
17 of lenders until you are in compliance with the Real Estate Law
18 including the Code and Regulations Sections as set out above.

19 AND THAT YOU, ESTATE FINANCIAL, INC., JOSHUA MORRIS
20 YAGUDA, AND KAREN R. GUTH, ARE ORDERED TO DESIST AND REFRAIN
21 from engaging in deceptive lending practices involving, but not
22 limited to, failing to provide deeds of trust, unauthorized
23 advances, and misrepresenting the use of loan funds in violation
24 of Sections 10176(a) and (i), and/or Sections 10177(g) or (j) of
25 the Code.

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1 AND FURTHERMORE THAT YOU, ESTATE FINANCIAL, INC.,
2 JOSHUA MORRIS YAGUDA, AND KAREN R. GUTH, ARE ORDERED TO DESIST
3 AND REFRAIN from soliciting, accepting, and/or receiving trust
4 funds from lenders, and in so doing acting without a properly
5 issued and valid DOC permit, until or unless you are in
6 compliance with Sections 10237 and 10238 of the Code.

7
8 DATED: 8/12/, 2008

9
10 JEFF DAVI
Real Estate Commissioner

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12
13

14 BY: Barbara J. Bigby
Chief Deputy Commissioner

15 cc: ESTATE FINANCIAL, INC.
16 ATTN: JOSHUA MORRIS YAGUDA
806 - 9th Street, Suite 1A
17 Paso Robles, CA 93446-2595

18 JOSHUA MORRIS YAGUDA
ESTATE FINANCIAL, INC.
19 806 - 9th Street, Suite 1A
Paso Robles, CA 93446-2595

20
21 KAREN R. GUTH
8530 Vineyard Drive
22 Paso Robles, CA 93446