

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000

4 Telephone: (916) 227-0789

FILED

OCT 23 2008

DEPARTMENT OF REAL ESTATE

By *L. Zui*

10 BEFORE THE DEPARTMENT OF REAL ESTATE

11 STATE OF CALIFORNIA

12 * * *

13 In the Matter of the Accusation of) DRE No. H-5042 SAC
14)
15 APEX FINANCIAL GROUP,) STIPULATION AND AGREEMENT
16 a California Corporation, and)
17 RICHARD JOHN GONZALES,)
18 Respondent.)

19 It is hereby stipulated by and between APEX FINANCIAL GROUP and
20 RICHARD JOHN GONZALES (collectively "Respondents"), acting by and through their
21 attorney, Patrick Curry; and the Complainant, acting by and through John Van Driel, Counsel for
22 the Department of Real Estate; as follows for the purpose of settling and disposing of the
23 Accusation filed on August 5, 2008, in this matter:

24 1. All issues which were to be contested and all evidence which was to be
25 presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing
26 was to be held in accordance with the provisions of the Administrative Procedure Act ("APA"),

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1 shall instead and in place thereof be submitted solely on the basis of the provisions of this
2 Stipulation and Agreement.

3 2. Respondents have received, read and understand the Statement to Respondent,
4 the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate
5 in this proceeding.

6 3. On August 15, 2008, Respondents filed a Notice of Defense pursuant to
7 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
8 in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense.
9 Respondents acknowledge that they understand that by withdrawing said Notice of Defense they
10 will thereby waive their right to require the Commissioner to prove the allegations in the
11 Accusation at a contested hearing held in accordance with the provisions of the APA and that
12 they will waive other rights afforded to them in connection with the hearing such as the right to
13 present evidence in defense of the allegations in the Accusation and the right to cross-examine
14 witnesses.

15 4. Respondents, pursuant to the limitations set forth below, hereby admit that the
16 factual allegations or findings of fact as set forth in the Accusation filed in this proceeding are
17 true and correct and the Real Estate Commissioner shall not be required to provide further
18 evidence of such allegations.

19 5. It is understood by the parties that the Real Estate Commissioner may adopt
20 the Stipulation and Agreement as his Decision in this matter, thereby imposing the penalty and
21 sanctions on Respondents' real estate licenses and license rights as set forth in the below "Order".
22 In the event that the Commissioner in his discretion does not adopt the Stipulation and
23 Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing
24 and proceeding on the Accusation under all the provisions of the APA and shall not be bound by
25 any admission or waiver made herein.

26 6. The Order or any subsequent Order of the Real Estate Commissioner made
27 pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any

1 further administrative or civil proceedings by the Department of Real Estate with respect to any
2 matters which were not specifically alleged to be causes for accusation in this proceeding.

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulations, admissions and waivers, and solely for the
5 purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed
6 that the following determination of issues shall be made:

7 I

8 The conduct of the Respondents, as described in the Accusation, is cause for the
9 suspension or revocation of the real estate license and license rights of Respondents APEX
10 FINANCIAL GROUP and RICHARD JOHN GONZALES under the provisions of Section
11 10137 of the Business and Professions Code ("Code") and as to Respondent RICHARD JOHN
12 GONZALES, Section 10177(d), 10177(h) of the Code and Section 2725 of Title 10, California
13 Code of Regulations.

14 ORDER

15 The real estate broker licenses and license rights of Respondents APEX
16 FINANCIAL GROUP and RICHARD JOHN GONZALES under the Real Estate Law are
17 suspended for a period of thirty (30) days from the effective date of this Order; provided,
18 however, that:

19 A. Thirty (30) days of said suspension shall be stayed for one (1) year upon
20 the terms and conditions that Respondents APEX FINANCIAL GROUP and RICHARD JOHN
21 GONZALES shall obey all laws, rules and regulations governing the rights, duties and
22 responsibilities of a real estate licensee in the State of California; and that no final subsequent
23 determination be made, after hearing or upon stipulation, that cause for disciplinary action
24 occurred within one (1) year from the effective date of this Order. Should such a determination
25 be made, the Commissioner may, in his discretion, vacate and set aside the stay order and
26 reimpose all or a portion of the stayed suspension. Should no such determination be made, the
27 stay imposed herein shall become permanent.

1 B. Upon the condition that Respondents petition pursuant to Section 10175.2
2 of the Business and Professions Code and each pays a monetary penalty pursuant to Section
3 10175.2 of the Business and Professions Code at a rate of \$125.00 for each day of the suspension
4 for a total monetary penalty of \$3,750.00 for each Respondent:

5 (1) Said payments shall be in the form of a cashier's checks or certified checks
6 made payable to the Recovery Account of the Real Estate Fund. Said check
7 must be delivered to the Department prior to the effective date of the Order
8 in this matter.


9 (2) No further cause for disciplinary action against the Real Estate licenses of
10 Respondents occurs within one (1) year from the effective date of the Order
11 in this matter.

12 (3) If Respondents fail to pay the monetary penalty as provided above prior to
13 the effective date of this Order, the stay of the suspension shall be vacated
14 and the order of suspension shall be immediately executed, under Paragraph
15 B of this Order, in which event the Respondents shall not be entitled to any
16 repayment nor credit, prorated or otherwise, for the money paid to the
17 Department under the terms of this Order.

18 (4) If Respondents pay the monetary penalty and if no further cause for
19 disciplinary action against the real estate licenses of Respondents occurs
20 within one (1) year from the effective date of this Order, the entire stay
21 hereby granted under Paragraphs A and B of this Order shall become
22 permanent.

23 9-29-08

24 DATED

25 
26 JOHN VAN DRIEL, Counsel
27 DEPARTMENT OF REAL ESTATE

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I have read the Stipulation and Agreement, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

9/24/09

DATED

By:



APEX FINANCIAL GROUP
Respondent

9/24/09

DATED



RICHARD JOHN GONZALES
Respondent

I have reviewed the Stipulation and Agreement in Settlement as to form and content and have advised my clients accordingly.

9-24-09

DATED



PATRICK CURRY
Attorney for Respondents

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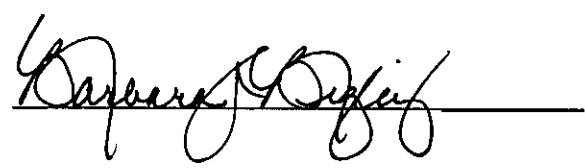
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The foregoing Stipulation and Agreement is hereby adopted by the Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on

NOV 13 2008

IT IS SO ORDERED 10-17-08

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

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

5 Telephone: (916) 227-0789
6 -or- (916) 227-0787 (Direct)

FILED

AUG - 5 2008

DEPARTMENT OF REAL ESTATE

By *L. Zirin*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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|---------------------------------------|---|-------------------|
| 11 In the Matter of the Accusation of |) | No. H-5042 SAC |
| |) | |
| 12 APEX FINANCIAL GROUP, |) | <u>ACCUSATION</u> |
| 13 a California Corporation, and |) | |
| RICHARD JOHN GONZALES, |) | |
| |) | |
| 14 Respondents. |) | |

15
16 The Complainant, Charles Koenig, a Deputy Real Estate
17 Commissioner of the State of California for cause of Accusation
18 against APEX FINANCIAL GROUP (APEX) and RICHARD JOHN GONZALES
19 (GONZALES), collectively referred to as "Respondents", is
20 informed and alleges as follows:

21 1

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

24 FIRST CAUSE OF ACTION

25 2

26 APEX is presently licensed and/or has license rights
27 under the Real Estate Law, Part 1 of Division 4 of the

1 California Business and Professions Code (hereinafter "Code"),
2 as a corporate real estate broker. GONZALES is presently
3 licensed as an individual real estate broker and as the
4 designated officer of APEX.

5 3

6 Donna G. Demarest (Demarest) was licensed by the
7 Department as a real estate salesperson until August 19, 2003,
8 when her license expired.

9 4

10 Whenever reference is made in an allegation in this
11 Accusation to an act or omission of APEX, such allegation shall
12 be deemed to mean that the officers, directors, employees,
13 agents and real estate licensees employed by or associated with
14 APEX committed such act or omissions while engaged in
15 furtherance of the business or operations of APEX and while
16 acting within the course and scope of their corporate authority
17 and employment.

18 5

19 At all times herein mentioned, APEX, engaged in the
20 business of, acted in the capacity of, advertised, or assumed to
21 act as a real estate broker in the State of California within
22 the meaning of Section 10131(d) of the Code, for or in
23 expectation of compensation by soliciting borrowers or lenders
24 for or negotiating loans or collecting payments or performing
25 services for borrowers or lenders or note owners in connection
26 with loans secured directly or collaterally by liens on real
27 property or on a business opportunity.

From approximately August 2005 through September 2007, APEX and GONZALES employed and/or compensated Demarest for performing acts which require a real estate license pursuant to Section 10131(d) of the Code. In particular, Demarest solicited and performed services for borrowers and/or lenders in connection with the loan transactions set out below, for or in expectation of compensation:

| <u>Date</u> | <u>Borrower</u> | <u>Loan Amount</u> | <u>Security</u> |
|-------------|-----------------|--------------------|------------------------------|
| 8-17-05 | Chestine | \$166,000 | 719 E. Banbury Dr., Stockton |
| 10-5-05 | Griggs | \$248,000 | 605 Paloma, Stockton |
| 10-6-05 | Bustos | \$276,000 | 8312 N. Eldorado, Stockton |
| 12-6-05 | Ball | \$55,000 | 16014 Washoan, Apple Valley |
| 5-8-06 | Ball | \$168,000 | 16014 Washoan, Apple Valley |
| 11-30-06 | Bygoytia | \$188,080 | 807 Bryan, Stockton |
| 5-11-07 | Chestine | \$234,000 | 719 E. Banbury Dr., Stockton |
| 8-29-07 | Garcia | \$178,000 | 822 S. Monroe, Stockton |
| 9-14-07 | Chestine | \$105,500 | 2317 Finland, Stockton |

By the commission of the acts alleged in paragraph 6 above, Demarest engaged in the business and acted in the capacity of a real estate broker within the State of California as defined by Section 10131(b) of the Code during a period of time that she was not licensed by the Department in any capacity.

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2 The facts alleged above are grounds for the suspension
3 or revocation of the licenses of APEX and/or GONZALES under
4 Section 10137 of the Code.

5 SECOND CAUSE OF ACTION

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7 Paragraphs 1 through 8 above are incorporated in this
8 Second Cause of Action as if fully set forth herein.

9 10

10 Within the last three years, GONZALES failed to
11 exercise reasonable supervision over the activities of APEX for
12 which a real estate license is required. In particular,
13 GONZALES permitted and/or ratified the conduct described in the
14 First Cause of Action and/or failed to take reasonable steps to
15 implement effective supervision that would have prevented it,
16 including policies, rules, and procedures to oversee and manage
17 the employment of personnel to act in any capacity requiring a
18 real estate license; and the establishment of systems for
19 monitoring compliance with such policies, rules, procedures, and
20 systems, to ensure compliance by APEX with the Real Estate Law.

21 11

22 The acts and/or omissions of GONZALES described above
23 violate Section 10159.2 of the Code and Section 2725 of Title
24 10, California Code of Regulations and are grounds for the
25 revocation or suspension of his licenses under Section 10177 (d)
26 and (h) of the Code.

27 ///

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

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9 
10 CHARLES W. KOENIG
11 Deputy Real Estate Commissioner

12 Dated at Sacramento, California,
13 this 4th day of August, 2008.
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