

FILED

JUL 06 2007

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
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7 Telephone: (916) 227-0789

DEPARTMENT OF REAL ESTATE

By *A. El*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

| | | |
|----|--------------------------------------|----------------------------------|
| 11 | In the Matter of the Accusation of) | |
| 12 | KAY-CO INVESTMENTS, INC., dba) | NO. H-9817 SF |
| 13 | PACIFIC CAPITAL MORTGAGE, et al.,) | <u>STIPULATION AND AGREEMENT</u> |
| 14 | and RANDALL GILBERT HEYDEN,) | |
| 15 | Respondents.) | |

16 It is hereby stipulated by and between Respondents
17 KAY-CO INVESTMENTS, INC., a corporation and RANDALL GILBERT
18 HEYDEN (hereinafter "Respondents"), individually, acting in pro
19 per, and the Complainant, acting by and through Michael B.
20 Rich, Counsel for the Department of Real Estate, as follows for
21 the purpose of settling and disposing of the Accusation filed
22 on December 19, 2006, in this matter (hereinafter "the
23 Accusation"):

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

RAH

1 Administrative Procedure Act (APA), shall instead and in place
2 thereof be submitted solely on the basis of the provisions of
3 this Stipulation and Agreement.

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

8 3. On January 3, 2007, Respondents filed a Notice of
9 Defense pursuant to Section 11505 of the Government Code for
10 the purpose of requesting a hearing on the allegations in the
11 Accusation. Respondents hereby freely and voluntarily withdraw
12 said Notice of Defense. Respondents acknowledges that
13 Respondents understand that by withdrawing said Notice of
14 Defense Respondents will thereby waive Respondents' right to
15 require the Commissioner to prove the allegations in the
16 Accusation at a contested hearing held in accordance with the
17 provisions of the APA and that Respondents will waive other
18 rights afforded to Respondents in connection with the hearing
19 such as the right to present evidence in defense of the
20 allegations in the Accusation and the right to cross-examine
21 witnesses.

22 4. Respondents, pursuant to the limitations set forth
23 below, hereby admit that the factual allegations in the
24 Accusation pertaining to Respondents are true and correct and
25 stipulates and agrees that the Real Estate Commissioner shall
26 not be required to provide further evidence of such
27 allegations.



1 5. It is understood by the parties that the Real
2 Estate Commissioner may adopt the Stipulation and Agreement as
3 his decision in this matter, thereby imposing the penalty and
4 sanctions on Respondents' real estate licenses and license
5 rights as set forth in the "Order" below. In the event that
6 the Commissioner in his discretion does not adopt the
7 Stipulation and Agreement, it shall be void and of no effect,
8 and Respondents shall retain the right to a hearing and
9 proceeding on the Accusation under all the provisions of the
10 APA and shall not be bound by any admission or waiver made
11 herein.

12 6. This Stipulation and Agreement shall not
13 constitute an estoppel, merger or bar to any further
14 administrative or civil proceedings by the Department of Real
15 Estate with respect to any matters which were not specifically
16 alleged to be causes for accusation in this proceeding.

17 7. Respondents understand that by agreeing to this
18 Stipulation and Agreement in Settlement, Respondents jointly and
19 severally agree to pay, pursuant to Section 10148 of the Business
20 and Professions Code, the cost of the audit that led to this
21 disciplinary action. The amount of said costs is \$5,210.44.

22 8. Respondents have received, read, and understand
23 the "Notice Concerning Costs of Audits". Respondents further
24 understand that by agreeing to this Stipulation and Agreement in
25 Settlement, the findings set forth below in the DETERMINATION OF
26 ISSUES become final, and that the Commissioner may charge
27 Respondent for the costs of any subsequent audit conducted

1 pursuant to Section 10148 of the Business and Professions Code
2 to determine if the violations have been corrected. The maximum
3 costs of said audit will not exceed \$5,210.44.

4 DETERMINATION OF ISSUES

5 By reason of the foregoing stipulations, admissions
6 and waivers and solely for the purpose of settlement of the
7 pending Accusation without hearing, it is stipulated and agreed
8 that the following Determination of Issues shall be made:

9 I

10 The acts and omissions of Respondent KAY-CO
11 INVESTMENTS, INC., described in the First and Second Causes of
12 Action of the Accusation are grounds for the suspension or
13 revocation of the licenses and license rights of Respondent:
14 under the provisions of Section 10145 of the Code and Section
15 2832.1 of Chapter 6, Title 10, California Code of Regulations
16 (hereinafter "Regulations") in conjunction with Section 10177(d)
17 of the Code; under Sections 2831, 2832.1, 2831.2, 2832, and 2834
18 of the Regulations in conjunction with Section 10177(d) of the
19 Code; under Sections 10240 and 10241 of the Code in conjunction
20 with Section 10177(d) of the Code; and, under Section 10177(f)
21 of the Code.

22 II

23 The acts and omissions of Respondent RANDALL GILBERT
24 HEYDEN, described in the Second Cause of Action of the
25 Accusation are grounds for the suspension or revocation of the
26 licenses and license rights of Respondent under Section 10159.2
27 of the Code in conjunction with Section 10177(d) of the Code and

1 Section 10177(h) of the Code.

2 ORDER

3 I

4 A. All licenses and licensing rights of Respondent
5 KAY-CO INVESTMENTS, INC., under the Real Estate Law are
6 suspended for a period of thirty (30) days from the effective
7 date of the Decision herein; provided, however:

8 1. If Respondent KAY-CO INVESTMENTS, INC., petitions,
9 thirty (30) days of the suspension (or a portion thereof) shall
10 be stayed upon the condition that:

11 (a) Respondent pays a monetary penalty pursuant to
12 Section 10175.2 of the Code at the rate of \$100.00 for each day
13 of the suspension for a total monetary penalty of \$3,000.00.

14 (b) Said payment shall be in the form of a cashier's
15 check or certified check made payable to the Recovery Account of
16 the Real Estate Fund. Said check must be received by the
17 Department prior to the effective date of the Decision in this
18 matter.

19 (c) If Respondent fails to pay the monetary penalty
20 in accordance with the terms and conditions of the Decision, the
21 Commissioner may, without a hearing, vacate and set aside the
22 stay order, and order the immediate execution of all or any part
23 of the stayed suspension.

24 (d) No final subsequent determination be made, after
25 hearing or upon stipulation, that cause for disciplinary action
26 against Respondent occurred within two (2) years of the
27 effective date of the Decision herein. Should such a



1 determination be made, the Commissioner may, in his or her
2 discretion, vacate and set aside the stay order, and order the
3 execution of all or any part of the stayed suspension, in which
4 event the Respondent shall not be entitled to any repayment nor
5 credit, prorated or otherwise, for money paid to the Department
6 under the terms of this Decision.

7 (e) If Respondent pays the monetary penalty and if no
8 further cause for disciplinary action against the real estate
9 license of Respondent occurs within two (2) years from the
10 effective date of the Decision herein, then the stay hereby
11 granted shall become permanent.

12 C. Respondent KAY-CO INVESTMENTS, INC., jointly and
13 severally with Respondent RANDALL GILBERT HEYDEN, shall within
14 sixty (60) days of receiving an invoice therefor from the
15 Commissioner, pay the Commissioner's costs in the amount of
16 \$5,210.44 of the audit conducted pursuant to Section 10148 of
17 the Business and Professions Code that resulted in the
18 determination that Respondent committed the violations described
19 in Paragraph I of the Determination of Issues, above. If
20 Respondent fails to pay such cost within the sixty (60) days,
21 the Commissioner may in his or her discretion indefinitely
22 suspend all license and licensing rights of Respondent under the
23 Real Estate Law until payment is made in full or until
24 Respondent enters into an agreement satisfactory to the
25 Commissioner to provide for payment. Upon payment in full, any
26 indefinite suspension provided in this paragraph shall be
27 stayed.

1 D. Respondent KAY-CO INVESTMENTS, INC., jointly and
2 severally with Respondent RANDALL GILBERT HEYDEN, shall pay the
3 Commissioner's costs, not to exceed \$5,210.44 of any audit
4 conducted pursuant to Section 10148 of the Business and
5 Professions Code to determine if Respondent has corrected the
6 violations described in Paragraph I of the Determination of
7 Issues, above. In calculating the amount of the Commissioner's
8 reasonable cost, the Commissioner may use the estimated average
9 hourly salary for all persons performing audits of real estate
10 brokers, and shall include an allocation for travel time to and
11 from the auditor's place of work. Respondent shall pay such
12 cost within sixty (60) days of receiving an invoice therefor
13 from the Commissioner detailing the activities performed during
14 the audit and the amount of time spent performing those
15 activities. If Respondent fails to pay such cost within the
16 sixty (60) days, the Commissioner may in his or her discretion
17 indefinitely suspend all license and licensing rights of
18 Respondent under the Real Estate Law until payment is made in
19 full or until Respondent enters into an agreement satisfactory
20 to the Commissioner to provide for payment. Upon payment in
21 full, the indefinite suspension provided in this paragraph shall
22 be stayed.

23 II

24 All licenses and licensing rights of Respondent
25 RANDALL GILBERT HEYDEN, under the Real Estate Law are
26 indefinitely suspended until such time as Respondent provides
27 proof satisfactory to the Commissioner that Respondent has,

1 within one hundred twenty (120) days prior to the effective date
2 of the Decision herein or any date after said effective date,
3 taken and successfully completed the trust fund accounting and
4 handling course specified in paragraph (3), subdivision (a) of
5 Section 10170.5 of the Business and Professions Code. Upon
6 satisfaction of this condition, the indefinite suspension
7 provided in this paragraph shall be stayed.

8 B. All licenses and licensing rights of Respondent
9 RANDALL GILBERT HEYDEN under the Real Estate Law are suspended
10 for a period of thirty (30) days from the effective date of the
11 Decision herein; provided, however:

12 1. If Respondent petitions, thirty (30) days of said
13 suspension (or a portion thereof) shall be stayed upon condition
14 that:

15 (a) Respondent pays a monetary penalty pursuant to
16 Section 10175.2 of the Code at the rate of \$100.00 for each day
17 of the suspension for a total monetary penalty of \$3,000.00.

18 (b) Said payment shall be in the form of a cashier's
19 check or certified check made payable to the Recovery Account of
20 the Real Estate Fund. Said check must be received by the
21 Department prior to the effective date of the Decision in this
22 matter.

23 (c) If Respondent fails to pay the monetary penalty
24 in accordance with the terms and conditions of the Decision, the
25 Commissioner may, without a hearing, vacate and set aside the
26 stay order, and order the immediate execution of all or any part
27 of the stayed suspension.

1 (d) No final subsequent determination be made, after
2 hearing or upon stipulation, that cause for disciplinary action
3 against Respondent occurred within two (2) years of the
4 effective date of the Decision herein. Should such a
5 determination be made, the Commissioner may, in his or her
6 discretion, vacate and set aside the stay order, and order the
7 execution of all or any part of the stayed suspension, in which
8 event the Respondent shall not be entitled to any repayment nor
9 credit, prorated or otherwise, for money paid to the Department
10 under the terms of this Decision.

11 (e) If Respondent pays the monetary penalty and if no
12 further cause for disciplinary action against the real estate
13 license of Respondent occurs within two (2) years from the
14 effective date of the Decision herein, then the stay hereby
15 granted shall become permanent.

16 C. Respondent RANDALL GILBERT HEYDEN, jointly and
17 severally with Respondent KAY-CO INVESTMENTS, INC., shall within
18 sixty (60) days of receiving an invoice therefor from the
19 Commissioner, pay the Commissioner's costs in the amount of
20 \$5,210.44 of the audit conducted pursuant to Section 10148 of
21 the Business and Professions Code that resulted in the
22 determination that Respondent committed the violations described
23 in Paragraph I of the Determination of Issues, above. If
24 Respondent fails to pay such cost within the sixty (60) days,
25 the Commissioner may in his or her discretion indefinitely
26 suspend all license and licensing rights of Respondent under the
27 Real Estate Law until payment is made in full or until

1 Respondent enters into an agreement satisfactory to the
2 Commissioner to provide for payment. Upon payment in full, any
3 indefinite suspension provided in this paragraph shall be
4 stayed.

5 D. Respondent RANDALL GILBERT HEYDEN, jointly and
6 severally with Respondent KAY-CO INVESTMENTS, INC., shall pay
7 the Commissioner's costs, not to exceed \$5,210.44 of any audit
8 conducted pursuant to Section 10148 of the Business and
9 Professions Code to determine if Respondent has corrected the
10 violations described in Paragraph I of the Determination of
11 Issues, above. In calculating the amount of the Commissioner's
12 reasonable cost, the Commissioner may use the estimated average
13 hourly salary for all persons performing audits of real estate
14 brokers, and shall include an allocation for travel time to and
15 from the auditor's place of work. Respondent shall pay such
16 cost within sixty (60) days of receiving an invoice therefor
17 from the Commissioner detailing the activities performed during
18 the audit and the amount of time spent performing those
19 activities. If Respondent fails to pay such cost within the
20 sixty (60) days, the Commissioner may in his or her discretion
21 indefinitely suspend all license and licensing rights of
22 Respondent under the Real Estate Law until payment is made in
23 full or until Respondent enters into an agreement satisfactory
24 to the Commissioner to provide for payment. Upon payment in
25 full, the indefinite suspension provided in this paragraph shall
26 be stayed.

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April 1, 2007
DATED

Michael B. Rich
MICHAEL B. RICH, Counsel
Department of Real Estate

* * *

I have read the Stipulation and Agreement 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.

KAY-CO INVESTMENTS, INC.
Respondent

May 28 2007
DATED

By: R. Heyden
RANDALL GILBERT HEYDEN,
Designated Broker/Officer

May 28 2007
DATED

R. Heyden
RANDALL GILBERT HEYDEN,
Respondent

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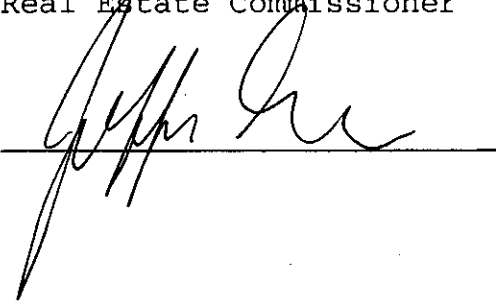
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* * *

The foregoing Stipulation and Agreement is hereby
adopted by me as my Decision in this matter as to Respondent
KAY-CO INVESTMENTS, INC., and Respondent RANDALL GILBERT HEYDEN,
shall become effective at 12 o'clock noon on
JUL 26, 2007.

IT IS SO ORDERED 6-27-07, 2007.

JEFF DAVI
Real Estate Commissioner



FILED

DEC 19 2006

DEPARTMENT OF REAL ESTATE

By S. Lee

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0789

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 KAY-CO INVESTMENTS, INC., dba) NO. H-9817 SF
13 PACIFIC CAPITAL MORTGAGE, et al.,) ACCUSATION
14 and RANDALL GILBERT HEYDEN,)
15 Respondents.)

16 The Complainant, E. J. HABERER II, a Deputy Real Estate
17 Commissioner of the State of California, for Causes of Accusation
18 against KAY-CO INVESTMENTS, INC., doing business under the
19 fictitious names of PACIFIC CAPITAL MORTGAGE, JOSHUA TREE
20 FINANCIAL SERVICES, LOANUS, MORTGAGE CONSULTING GROUP, PRO30
21 FUNDING, PRO30.COM, PACIFIC LIBERTY MORTGAGE, PRO30 MORTGAGE,
22 PRO30 REALTY, and SILVER OAK REALTY, and against RANDALL GILBERT
23 HEYDEN, is informed and alleges as follows:

24 FIRST CAUSE OF ACTION

25 I

26 Respondents KAY-CO INVESTMENTS, INC., (hereafter
27 referred to as "Respondent KAY-CO") and RANDALL GILBERT HEYDEN

1 (hereafter referred to as "Respondent HEYDEN") are presently
2 licensed and/or have license rights under the Real Estate Law,
3 Part 1 of Division 4 of the California Business and Professions
4 Code (hereafter "the Code").

5 II

6 The Complainant, E. J. HABERER II, a Deputy Real Estate
7 Commissioner of the State of California, makes this Accusation
8 against Respondents in his official capacity and not otherwise.

9 III

10 At all times herein mentioned, Respondent KAY-CO was
11 and is licensed by the Department of Real Estate (hereafter "the
12 Department") as a real estate broker corporation and through
13 Respondent HEYDEN as its designated broker officer.

14 IV

15
16 At all times herein mentioned, Respondent HEYDEN was
17 and is licensed by the Department as a real estate broker, and
18 individually as the designated broker officer of Respondent KAY-
19 CO. As said designated officer/broker, Respondent HEYDEN was at
20 all times mentioned herein responsible pursuant to Section
21 10159.2 of the Code for the supervision of the activities of the
22 officers, agents, real estate licensees and employees of
23 Respondent KAY-CO for which a license is required.

24 V

25 Whenever reference is made in an allegation in this
26 Accusation to an act or omission of Respondent KAY-CO, such
27 allegation shall be deemed to mean that the officers, directors,

1 employees, agents and real estate licensees employed by or
2 associated with Respondent KAY-CO committed such act or omission
3 while engaged in the furtherance of the business or operations of
4 Respondent KAY-CO and while acting within the course and scope of
5 their corporate authority and employment.

6 VI

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

19 VII

20 In so acting as a mortgage loan broker, and as escrow
21 holder and agent, Respondent KAY-CO accepted or received funds in
22 trust (hereinafter "trust funds") from or on behalf of lenders or
23 investors, borrowers, and others in connection with the
24 solicitation, negotiation, processing, packaging, and
25 consummation of mortgage loans by Respondent KAY-CO as alleged
26 herein.

27 ///

VIII

The aforesaid trust funds accepted or received by Respondent KAY-CO were deposited or caused to be deposited by Respondent KAY-CO into one or more bank accounts maintained by Respondent KAY-CO for the handling of trust funds at:

(a) Union Bank of California, Kentfield 328, P. O. Box 512380, Los Angeles, California, Account No. 3280004471, entitled "Kay-Co Investments Inc dba Pacific Capital Mortgage Trust Account"

(hereinafter "Trust Account #1);

(b) Union Bank of California, Kentfield 328, P. O. Box 512380, Los Angeles, California, Account No. 3280011974, entitled "Kay-Co Investments Inc Trust Account Pacific Capital Mortgage" (hereinafter "Trust Account #2);

(c) Greater Bay Bank, 999 Fifth Avenue, Suite 100, San Rafael, California, Account No. 601458501, entitled "Kay-Co Investments, Inc. Kay-Co Investments-Trust Trust" (hereinafter "Trust Account #3);

(d) Greater Bay Bank, 999 Fifth Avenue, Suite 100, San Rafael, California, Account No. 1302101013, entitled "Kay-Co Investments Inc Kay-Co Investments-Trust Trust" (hereinafter "Trust Account #4);

(e) Union Bank of California, Kentfield 328, P. O. Box 512380, Los Angeles, California, Account No. 3280004900, entitled "Kay-Co Investments Inc dba

1 Pacific Capital Mortgage" (hereinafter "Bank
2 Account #1); and,

3 (f) Union Bank of California, Kentfield 328, P. O. Box
4 512380, Los Angeles, California, Account No.
5 3280004269, entitled "Kay-Co Investments Inc, dba
6 Pacific Capital Mortgage Associate Branches"
7 (hereinafter "Bank Account #2").

8 IX

9 Within the three year period next preceding to the
10 filing of this Accusation, in connection with the collection and
11 disbursement of trust funds, Respondent KAY-CO failed to deposit
12 and maintain the trust funds in a trust account or neutral escrow
13 depository, or to deliver them into the hands of the owners of
14 the funds, as required by Section 10145 of the Code, in such a
15 manner that as of August 31, 2004, there was a trust fund
16 shortage in the approximate sum of \$20,942.00 in Trust Account #2
17 and, in the approximate sum of \$4,760.00 in Trust Account #4. In
18 so doing, Respondent KAY-CO failed to obtain the prior written
19 consents of the principals for the reduction of the aggregate
20 balance of trust funds in Trust Account #2 and Trust Account #4
21 to an amount less than the existing aggregate trust fund
22 liability to the owners of said funds in conformance with Section
23 2832.1 of Chapter 6, Title 10, California Code of Regulations
24 (hereinafter "Regulations").

25 X

26 Within the three year period next preceding to the
27 filing of this Accusation, in connection with the collection and

1 disbursement of trust funds, Respondent KAY-CO commingled trust
2 funds with Respondent's own money or property when it:
3 transferred \$32,000.00 from Trust Account #2 into Bank Account
4 #2 on April 14, 2004; transferred \$35,000.00 from Trust Account
5 #2 into Bank Account #1 on April 26, 2004; transferred \$5,000.00
6 from Trust Account #2 into Bank Account #1 on July 16, 2004;
7 and, transferred \$8,000.00 from Trust Account #2 into Bank
8 Account #1 on August 10, 2004.

9 XI

10 Within the three year period next preceding the filing
11 of this Accusation, in connection with the receipt and
12 disbursement of trust funds as above alleged, Respondent KAY-CO:

13 (a) Failed to maintain a written control record of all
14 trust funds received and disbursed containing all
15 information required by Section 2831 of the
16 Regulations, including but not limited to
17 recordation of all deposits, from whom received,
18 amount of deposit, check numbers and dates of
19 disbursements, recordation of dates of receipt,
20 and recordation of accurate dates of deposit of
21 trust funds for Trust Account #2;

22 (b) Failed to keep a separate record for each
23 beneficiary or transaction, accounting for all
24 funds that have been deposited to the broker's
25 trust account, containing all of the information
26 required by Section 2831.1 of the Regulations,
27 including, but not limited to an accurate daily

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balance after posting transactions for Trust Account #2 and Trust Account #4;

(c) Failed to reconcile the balance of separate beneficiary or transaction records with the control records of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations as required by Section 2831.2 of the Regulations for Trust Account #2 and Trust Account #4;

(d) Permitted Kay Coleman, a person who neither held a California real estate license nor was adequately bonded, to be a signatory on Trust Account #1, Trust Account #2; Trust Account #3, and Trust Account #4 in violation of Section 2834 of the Regulations; and,

(e) Permitted Michael Navone, Bruce S. Conklin, and Thomas W. Lowe, Jr., persons who, respectively, held a California real estate license, but who were no longer employed by Respondent KAY-CO, to be a signatories on Trust Account #1 in violation of Section 2834 of the Regulations.

XII

Within the three year period next preceding to the filing of this Accusation, in connection with the loan brokerage business described in Paragraph VI(b), above, Respondent KAY-CO failed to provide and/or failed to retain for a period of three (3) years the "Borrower Disclosure" statement, as signed by the

1 borrowers and by the broker, as required by Section 10240 of the
2 Code, in conformance with Section 10241 of the Code, including,
3 but not limited to, the following transactions:

| <u>Borrower</u> | <u>Property</u> | <u>Application Date</u> |
|---------------------------------|---|-------------------------|
| 4 Gregory & Heather 5 Reeves | 4827 La Roda Avenue Los Angeles, California | 3/21/04 |
| 7 David & Laura Fenn | 6242 Girvin Drive Oakland, California | 2/18/04 |
| 8 Anita Kay Vinson | 7647 Camino Colegio Rohnert Park, California | 6/24/04 |
| 9 Charles & Ashley Paff | 19 Rosebank Avenue Kentfield, CA 94904 | 9/23/04 |

12 XIII

13 The acts and/or omissions of Respondent KAY-CO as
14 alleged above constitute grounds for disciplinary action under
15 the following provisions:

- 16 (a) As to Respondent KAY-CO as alleged in Paragraph
17 IX, under Section 10145 of the Code and under
18 Section 2832.1 of the Regulations in conjunction
19 with Section 10177(d) of the Code;
- 20 (b) As to Respondent KAY-CO as Alleged in Paragraph
21 X, under Section 2832 of the Regulations in
22 conjunction with Section 10177(d) of the Code and
23 10176(e) of the Code;
- 24 (c) As to Respondent KAY-CO as alleged in Paragraph
25 XI(a), under Section 2831 of the Regulations in
26 conjunction with Section 10177(d) of the Code;

- 1 (d) As to Respondent KAY-CO as alleged in Paragraph
2 XI(b), under Section 2831.1 of the Regulations in
3 conjunction with Section 10177(d) of the Code;
- 4 (e) As to Respondent KAY-CO as alleged in Paragraph
5 XI(c), under Section 2831.2 of the Regulations in
6 conjunction with Section 10177(d) of the Code;
- 7 (f) As to Respondent KAY-CO as alleged in Paragraph
8 XI(d), under Section 2834 of the Regulations in
9 conjunction with Section 10177(d) of the Code;
- 10 (g) As to Respondent KAY-CO as alleged in Paragraph
11 XI(e), under Section 2834 of the Regulations in
12 conjunction with Section 10177(d) of the Code;
- 13 and,
- 14 (h) As to Respondent KAY-CO as alleged in Paragraph
15 XII, under Section 10240 and 10241 of the Code in
16 conjunction with Section 10177(d) of the Code.

17 SECOND CAUSE OF ACTION

18 XIV

19 There is hereby incorporated in this Second, separate
20 and distinct Cause of Action, all of the allegations contained in
21 Paragraphs I through V, inclusive, of the First Cause of Action
22 with the same force and effect as if herein fully set forth.

23 XV

24 Effective on or about April 15, 2005, before the
25 Consumer Services Division, Department of Financial Institutions,
26 State of Washington, Case No. C-05-046-05F001, Respondent KAY-
27 CO's mortgage broker license, permitting Respondent to engage in

1 mortgage brokering activities within the State of Washington, was
2 revoked pursuant to the filing and service upon Respondent KAY-CO
3 of a Statement of Charges, for violations of the Revised Code of
4 Washington 19.146.228(1) and the Washington Administrative Code
5 208-660-060(3) and 208-660-061 (Failure to pay annual licensing
6 assessment fees for 2003 and 2004), Revised Code of Washington
7 19.146.205(4) and Washington Administrative Code 208-660-080(1)
8 (Failure to maintain required surety bond), and Revised Code of
9 Washington 19.146.215 and Washington Administrative Code 208-660-
10 042 (Failure of designated broker officer to complete or submit
11 certificate of continuing education requirements).

12 XVI

13 The facts alleged in Paragraph VV, above, constitute
14 cause under Sections 10177(f) of the Code for the suspension or
15 revocation of all licenses and license rights of Respondent KAY-
16 CO under the Real Estate Law.

17 THIRD CAUSE OF ACTION

18 XVII

19 There is hereby incorporated in this Third, separate
20 and distinct Cause of Action, all of the allegations contained in
21 Paragraphs I through XIII, inclusive, of the First Cause of
22 Action and Paragraphs XIV through XVI of the Second Cause of
23 Action with the same force and effect as if herein fully set
24 forth.

25 XVIII


26 At all times above mentioned, Respondent HEYDEN was
27 responsible, as the designated broker officer of Respondent

1 HEYDEN, for the supervision and control of the activities
2 conducted on behalf of the corporation by its officers and
3 employees. Respondent HEYDEN failed to exercise reasonable
4 supervision and control over the mortgage brokering activities of
5 Respondent KAY-CO. In particular, Respondent HEYDEN permitted,
6 ratified and/or caused the conduct described in the First and
7 Second Causes of Action, above, to occur, and failed to take
8 reasonable steps, including but not limited to the handling of
9 trust funds, supervision of employees, and the implementation of
10 policies, rules, procedures, and systems to ensure the compliance
11 of the corporation with the Real Estate Law.

12 XIV

13 The above acts and/or omissions of Respondent HEYDEN
14 constitute grounds for disciplinary action under the provisions
15 of Section 10177(h) of the Code and/or Section 10159.2 of the
16 Code in conjunction with Section 10177(d) of the Code.

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

24 
25 E. J. HABERER II
26 Deputy Real Estate Commissioner

26 Dated at Oakland,
27 this 30th day of November, 2006.