

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

FILED
APR 28 2011

DEPARTMENT OF REAL ESTATE
By R. M. ...

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-10738 SF
13 PETER GUY KERSTON,) STIPULATION AND AGREEMENT
14)
15 Respondent.)

16 It is hereby stipulated by and between Respondent PETER GUY KERSTON
17 (hereafter "Respondent"), acting by and through Frank M. Buda, Counsel for Respondent, and
18 the Complainant, acting by and through John W. Barron, Counsel for the Department of Real
19 Estate, as follows for the purpose of settling and disposing of the Accusation filed on July 27,
20 2009, in this matter:

21 1. All issues which were to be contested and all evidence which was to be
22 presented by Complainant and Respondent at a formal hearing on the Accusation, which
23 hearing was to be held in accordance with the provisions of the Administrative Procedure Act
24 (hereafter "APA"), shall instead and in place thereof be submitted solely on the basis of the
25 provisions of this Stipulation and Agreement.

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27 ///

H-10738 SF

PETER GUY KERSTON

1 2. Respondent has received, read and understands the Statement to
2 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department
3 of Real Estate in this proceeding.

4 3. On August 10, 2009, Respondent filed a Notice of Defense pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the
6 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice
7 of Defense. Respondent acknowledges that Respondent understands that by withdrawing said
8 Notice of Defense, Respondent will thereby waive Respondent's right to require the
9 Commissioner to prove the allegations in the Accusation at a contested hearing held in
10 accordance with the provisions of the APA and that Respondent will waive other rights
11 afforded to Respondent in connection with the hearing such as the right to present evidence in
12 defense of the allegations in the Accusation and the right to cross-examine witnesses.

13 4. This Stipulation is based on the factual allegations contained in the
14 Accusation. In the interest of expedience and economy, Respondent chooses not to contest
15 these factual allegations, but to remain silent and understands that, as a result thereof, these
16 factual statements will serve as a prima facie basis for the "Determination of Issues" and
17 "Order" set forth below. The Real Estate Commissioner shall not be required to provide further
18 evidence to prove such allegations. The attached Statement of Mitigation provided by
19 Respondent is hereby incorporated by reference and shall become part of the Stipulation.

20 5. This Stipulation and Respondent's decision not to contest the Accusation
21 are made for the purpose of reaching an agreed disposition of this proceeding and are expressly
22 limited to this proceeding and any other proceeding or case in which the Department of Real
23 Estate, the State or the federal government, an agency of this State, or an agency of another state
24 is involved.

25 6. It is understood by the parties that the Real Estate Commissioner may
26 adopt the Stipulation and Agreement as his decision in this matter, thereby imposing the penalty
27 and sanctions on Respondent's real estate license and license rights as set forth in the "Order"

1 below. In the event that the Commissioner in his discretion does not adopt the Stipulation and
2 Agreement, it shall be void and of no effect, and Respondent shall retain the right to a hearing
3 and proceeding on the Accusation under all the provisions of the APA and shall not be bound
4 by any admission or waiver made herein.

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

9 8. Respondent understands that by agreeing to this Stipulation and
10 Agreement, Respondent agrees to pay to Ted and Linda Davidson the sum of \$750.00.

11 9. Respondent understands that by agreeing to this Stipulation and
12 Agreement, Respondent agrees to pay to Robert and Glenda Fogelstrom the sum of \$500.00.

13 DETERMINATION OF ISSUES

14 By reason of the foregoing stipulations, admissions and waivers and solely for
15 the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed
16 that the acts and omissions of Respondent described in the Accusation are grounds for the
17 suspension or revocation of the licenses and license rights of Respondent under the provisions
18 of Sections 10240 of the Business and Professions Code (hereafter "the Code") in conjunction
19 with Sections 10177(d) and 10177(g) of the Code, and Section 2726 of Title 10 of the California
20 Code of Regulations.

21 ORDER

22 All licenses and licensing rights of Respondent under the Real Estate Law are
23 suspended for a period of sixty (60) days from the effective date of the Decision herein, with 30-
24 days stayed; provided, however, the remaining thirty (30) days of said suspension shall also be
25 stayed upon the condition that:

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1 1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the
2 Business and Professions Code at a rate of \$25.00 for each day of the suspension for a total
3 monetary penalty of \$750.00:

4 a. Said payment shall be in the form of a cashier's check or certified check
5 made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered
6 to the Department prior to the effective date of the Decision in this matter.

7 b. No further cause for disciplinary action against the Real Estate license of
8 Respondent occurs within two (2) years from the effective date of the decision in this matter.

9 c. If Respondent fails to pay the monetary penalty in accordance with the
10 terms and conditions of the Decision, the Commissioner may, without a hearing, order the
11 immediate execution of all or any part of the stayed suspension, in which event, Respondent
12 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
13 Department under the terms of this decision.

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

18 2. Respondent shall pay to Ted and Linda Davidson the sum of \$750.00 prior
19 to the effective date of the Decision in this matter. If Respondent fails to meet this condition,
20 any and all licenses and license rights of Respondent are suspended until Respondent provides
21 proof of payment.

22 3. Respondent shall pay to Robert and Glenda Fogelstrom the sum of
23 \$500.00 prior to the effective date of the Decision in this matter. If Respondent fails to meet
24 this condition, any and all licenses and license rights of Respondent are suspended until
25 Respondent provides proof of payment.

26 4. Respondent shall, within six (6) months from the effective date of this
27 Order, take and pass the Professional Responsibility Examination administered by the

1 Department, including the payment of the appropriate examination fee. If Respondent fails to
2 satisfy this condition, the Commissioner may order the suspension of all licenses and licensing
3 rights until Respondent passes the examination.

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5 4/19/11

6 DATED

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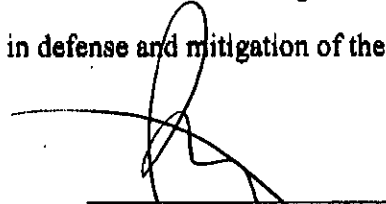
9 JOHN W. BARRON, Counsel
10 Department of Real Estate

11 ***

12 I have read the Stipulation and Agreement and its terms are understood by me
13 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by
14 the California Administrative Procedure Act (including but not limited to Sections 11506,
15 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and
16 voluntarily waive those rights, including the right of requiring the Commissioner to prove the
17 allegations in the Accusation at a hearing at which I would have the right to cross-examine
18 witnesses against me and to present evidence in defense and mitigation of the charges.

19 3/14/11

20 DATED

21 

22 PETER GUY KERSTON
23 Respondent

24 ***

25 *I have reviewed this Stipulation and Agreement and Order as to form and
26 content and have advised my client accordingly.*

27 4-13-11

DATED



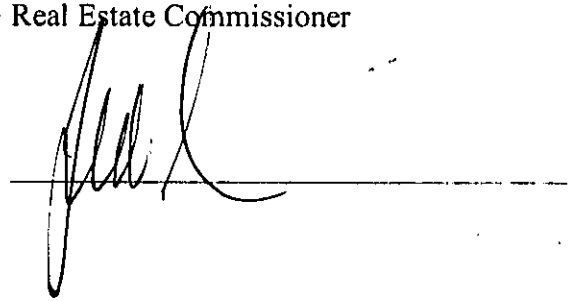
FRANK M. BUDA
Attorney for Respondent

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The foregoing Stipulation and Agreement is hereby adopted by me as my
Decision in this matter as to Respondent PETER GUY KERSTON and shall become effective
at 12 o'clock noon on MAY 19 2011

IT IS SO ORDERED 4-26-2011

JEFF DAVI
Real Estate Commissioner



FILE

FILED

JUL 27 2009

DEPARTMENT OF REAL ESTATE

By *L. Frost*

1 MICHAEL B. RICH, Counsel
2 SBN 84257
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
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10 Telephone: (916) 227-0789

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

11 In the Matter of the Accusation of)
12)
13 PETER GUY KERSTON doing business as)
14 THE MORTGAGE NETWORK WHOLESALE)
15 LENDER, THE MORTGAGE NETWORK, and)
16 THE PROPERTY NETWORK,)
Respondent.)

NO. H-10738 SF
ACCUSATION

17 The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of
18 the State of California, for cause of Accusation against PETER GUY KERSTON doing business
19 under the fictitious names of THE MORTGAGE NETWORK WHOLESALE LENDER, THE
20 MORTGAGE NETWORK, and THE PROPERTY NETWORK, is informed and alleges as
21 follows:

GENERAL ALLEGATIONS

I

22 Respondent PETER GUY KERSTON is licensed and/or has license rights under
23 the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code
24 (hereinafter "the Code").
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II

The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondent in his official capacity.

III

At all times herein mentioned, Respondent PETER GUY KERSTON (hereinafter "Respondent") was and is licensed by the Department of Real Estate (hereinafter "Department") as a real estate broker.

IV

At all times herein mentioned, Respondent engaged in the business of and acted in the capacity of a real estate broker in California, on behalf of another or others, for or in expectation of compensation under Section 10131(d) of the Code, including the operation of and conduct of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, and consummated, and/or wherein such loans were serviced and payments thereon were collected on behalf of others.

FIRST CAUSE OF ACTION

V

There is hereby incorporated in this First, separate and distinct, Cause of Action, all of the allegations contained in Paragraphs I, II, III, and IV of the General Allegations with the same force and effect as if herein fully set forth.

VI

Within the three year period prior to the filing of this Accusation and at all times herein mentioned, in connection with the loan brokerage business described in Paragraph IV, above, Respondent failed, after notice, to provide to the designated representative of the Commissioner of the Department and/or failed to retain for a period of three (3) years pursuant to Section 10148 of the Code a copy of the "Mortgage Loan Disclosure Statement/Good Faith Estimate" showing the name of the broker negotiating the loan, and/or signed by the broker or

1 the real estate licensee acting for the broker, and/or showing the broker license number, and/or
2 showing the license number of the broker's representative, and/or failed to clearly and
3 conspicuously state that the "good faith estimate" was not a loan commitment, and/or failed to
4 disclose the mortgage broker fees and compensation, and/or failed to have signed by the
5 borrower as required by Section 10240 of the Code, in conformance with Section 10241 of the
6 Code, including, but not limited to, the following transactions:

| <u>Borrower</u> | <u>Property</u> | <u>Close Date</u> |
|-------------------------------------|---------------------------------------|-------------------|
| Todd and Lisa Flack | 15 Coverside Court Modesto, CA | 12/31/07 |
| Charles and Cynthia Antonetti | 343 Flint Way Lake Almanor, CA | 10/23/07 |
| Robert and Glenda Ann Fogelstrom | 5175-Davis Drive Lakeport, CA | 5/3/07 |
| William and Lisa Morato | 7208 Roxanne Lane Rohnert Park, CA | 10/11/07 |

16 VII

17 The acts and/or omissions of Respondent as alleged in Paragraph VI, above,
18 constitute grounds for the revocation or suspension of Respondent's licenses and/or license
19 rights under the following provisions:

- 20 (a) As alleged in Paragraph VI, under Section 10240 and 10241 of the Code
21 in conjunction with Section 10177(d) of the Code; and,
22 (b) As alleged in Paragraph VI, under Section under Section 10148 of the
23 Code in conjunction with Section 10177(d) of the Code.

24 SECOND CAUSE OF ACTION

25 VIII

26 There is hereby incorporated in this Second, separate and distinct, Cause of
27 Action, all of the allegations contained in Paragraphs I through VII, inclusive, of the Accusation

1 with the same force and effect as if herein fully set forth.

2 IX

3 Within the three year period prior to the filing of this Accusation, Respondent
4 employed Tyler Fowler, Luis Manuel Frausto-Ramirez, Adrianna Greer, Caroline Kerston,
5 Steven Alan Kerston, Hai Ngoc Lai, Meighan Michelle Marquis, and Mark Robinson as
6 licensed salesperson employees without a written employment agreement as signed by
7 Respondent in violation of Chapter 6, Title 10, California Code of Regulations, Section 2726
8 (hereinafter "Regulations").

9 X

10 Within the three year period prior to the filing of this Accusation, Respondent
11 employed Thomas Butler as a licensed real estate salesperson employee without having actual
12 possession of the license certificate of said employee and/or failed to make said license
13 certificate available for inspection by the designated representative of the Real Estate
14 Commissioner in violation of Section 10160 of the Code and Section 2753 of the Regulations.

15 XI

16 The facts alleged above constitute cause for the suspension or revocation of the
17 licenses and license rights of Respondent under the following provisions:

- 18 (a) As alleged in Paragraph IX, under Section 2726 of the Regulations in
19 conjunction with Section 10177(d) of the Code; and,
20 (b) As alleged in Paragraph X, under Section 10160 of the Code and Section
21 2753 of the Regulations in conjunction with Sections 10165 and 10177(d)
22 of the Code;

23 THIRD CAUSE OF ACTION

24 XII

25 There is hereby incorporated in this Third, separate and distinct, Cause of
26 Accusation, all of the allegations contained in Paragraphs I through XI, inclusive, of the
27 Accusation with the same force and effect as if herein fully set forth.

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XIII

Within the three year period prior to the filing of this Accusation, Respondent in connection with the loan brokerage business described in Paragraph IV, above, submitted to and caused to be printed and circulated by The Press Democrat, a newspaper of general circulation located in Santa Rosa, Sonoma County, California, print advertising soliciting borrowers for loans to be secured by liens on real property that contained the following offer:

FREE - 7 DAY
HAWAIIAN TRIP!
(For 2 incl. airfare!)
Purchase/Refi
Up to 125% of appraisal
~
Problem Credit
or
Perfect Credit

XIV

Within the three year period prior to the filing of this Accusation, Respondent, through the advertisement described in Paragraph XIII, above, and through the express statements of his licensed real estate salesperson employees, induced Ted Davidson and Linda Davidson [hereinafter "Borrowers Davidson"] to apply for a refinance loan to be secured by their residence identified as 413 Ginny Drive, Windsor, California, by representing that he would provide to Borrowers Davidson the seven day Hawaiian trip including airfare.

XV

Within the three year period prior to the filing of this Accusation, on or about May 25, 2007, in reliance upon the representations of Respondent as described in Paragraph XIV, above, Borrowers Davidson applied to Respondent for a loan to refinance the existing loan secured by their 413 Ginny Drive property.

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XVI

Respondent's representations as described in Paragraph XIV, above, were false or misleading and were known by Respondent to be false or misleading when made or were made by Respondent or at his direction with no reasonable grounds for believing said representations to be true. In truth and in fact: Respondent did not intend to provide a Hawaiian trip to Borrowers Davidson; Respondent did not intend to pay for airfare or lodgings for a Hawaiian trip for Borrowers Davidson; and, Respondent did not intend to make any arrangement for such a trip.

XVII

Respondent failed to disclose to Borrowers Davidson the true facts that: Respondent did not intend to provide a Hawaiian trip to Borrowers Davidson; Respondent did not intend to pay for airfare or lodgings for a Hawaiian trip for Borrowers Davidson; and, that Respondent did not intend to make any arrangement for such a trip.

XVIII

Respondent's acts and omissions as described in Paragraphs XIII through XVII, inclusive, above, constituted fraud and dishonest dealing.

XIX

The facts alleged in Paragraphs XIII through XVII, above, are grounds for the suspension or revocation of the licenses and/or license rights of Respondent under Sections 10176(a), 10176(c), 10176(i), 10177(d), 10177(g), and/or 10177(j) of the Code.

FOURTH CAUSE OF ACTION

XX

There is hereby incorporated in this Fourth, separate and distinct, Cause of Accusation, all of the allegations contained in Paragraphs I through XIX, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

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1 XXI

2 Within the three year period prior to the filing of this Accusation, Respondent in
3 connection with the loan brokerage business described in Paragraph IV, above, submitted to and
4 caused to be printed and circulated by The Press Democrat, a newspaper of general circulation
5 located in Santa Rosa, Sonoma County, California, print advertising soliciting borrowers for
6 loans to be secured by liens on real property that contained the following offer:

7
8 RECEIVE A 7 DAY
9 CARIBBEAN OR MEXICAN
10 RIVIERA CRUISE FOR TWO
11 At close of escrow for you or your loan purchase referral
12 Call for details.
13 Up to 125% of appraisal
14 ~
15 Problem Credit
16 or
17 Perfect Credit

18 XXII

19 Within the three year period prior to the filing of this Accusation, Respondent,
20 through the advertisement described in Paragraph XXI, above, and through the express
21 statements of his licensed real estate salesperson employees, induced Robert Fogelstrom and
22 Glenda Fogelstrom [hereinafter "Borrowers Fogelstrom"] to apply for a refinance loan to be
23 secured by their residence identified as 5175 Davis Drive, Lakeport, California, by representing
24 that he would provide to Borrowers Fogelstrom the seven day Caribbean or Mexican cruise.

25 XXIII

26 Within the three year period prior to the filing of this Accusation, on or about
27 February 23, 2007, in reliance upon the representations of Respondent as described in Paragraph
XXII, above, Borrowers Fogelstrom applied to Respondent for a loan to refinance the existing
loan secured by their the 5175 Davis Drive property.

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XXIV

Respondent's representations as described in Paragraph XXII, above, were false or misleading and were known by Respondent to be false or misleading when made or were made by Respondent with no reasonable grounds for believing said representations to be true. In truth and in fact: Respondent did not intend to provide a Caribbean or Mexican cruise to Borrowers Fogelstrom; Respondent did not intend to pay for any costs for a Caribbean or Mexican cruise for Borrowers Fogelstrom; and, Respondent did not intend to make any arrangement for such a cruise.

XXV

Respondent failed to disclose to Borrowers the true facts that: Respondent did not intend to provide a Caribbean or Mexican cruise to Borrowers Fogelstrom; Respondent did not intend to pay for any costs for a Caribbean or Mexican cruise for Borrowers Fogelstrom; and, that Respondent did not intend to make any arrangement for such a cruise.

XXVI

Respondent's acts and omissions as described in Paragraphs XXI through XXV, inclusive, above, constituted fraud and dishonest dealing.

XXVII

The facts alleged in Paragraphs XXI through XXV, above, are grounds for the suspension or revocation of the licenses and/or license rights of Respondent under Sections 10176(a), 10176(c), 10176(i), 10177(d), 10177(g), and/or 10177(j) of the Code.

MATTERS IN AGGRAVATION

XXVIII

Pursuant to a Desist and Refrain Order executed and served by the Commissioner of the California Department of Real Estate, effective December 18, 2007, in Case No H-10273 SF, Respondent PETER GUY KERSTON was ordered to desist and refrain from causing to be published advertisements which included statements or representations with regard to rates, terms, or conditions for making or negotiating loans which were false, misleading or deceptive.

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

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8 E. J. HABERER II
9 Deputy Real Estate Commissioner

10 Dated at Oakland, California,
11 this 20th day of July, 2009
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