

July 18, 2011

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

DEPARTMENT OF REAL ESTATE

By J. Jones

4 Telephone: (916) 227-0789
5
6

7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of)
11)
12 FIRST HOME, INC., and)
13 WALTER ZHOVREBOFF,)
14 Respondents.)

NO. H-10989 SF

**STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER**

15
16 It is hereby stipulated by and between Respondents WALTER ZHOVREBOFF,
17 individually, and as the Designated Officer of FIRST HOME, INC., and FIRST HOME, INC.,
18 (herein "Respondents"), and the Complainant, acting by and through Kenneth C. Espell, Counsel
19 for the Department of Real Estate (herein "the Department"), as follows for the purpose of
20 settling and disposing of the Accusation filed on August 19, 2010, in this matter (herein "the
21 Accusation"):

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

27 ///

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

4 3. A Notice of Defense was filed on November 4, 2010, by Respondents,
5 pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on
6 the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said
7 Notice of Defense. Respondents acknowledge that they understand that by withdrawing said
8 Notice of Defense, they will thereby waive their right to require the Real Estate Commissioner
9 (herein "the Commissioner") to prove the allegations in the Accusation at a contested hearing
10 held in accordance with the provisions of the APA and that they will waive other rights afforded
11 to them in connection with the hearing such as the right to present evidence in defense of the
12 allegations in the Accusation and the right to cross-examine witnesses.

13 4. Respondents, pursuant to the limitations set forth below, hereby admit that the
14 factual allegations pertaining to them in the Accusation filed in this proceeding are true and
15 correct and the Commissioner shall not be required to provide further evidence of such
16 allegations.

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

24 6. The Order or any subsequent Order of the Commissioner made pursuant to this
25 Stipulation and Agreement in Settlement and Order shall not constitute an estoppel, merger, or
26 bar to any further administrative or civil proceedings by the Department with respect to any
27 matters which were not specifically alleged to be causes for accusation in this proceeding..

1 D. For at least the three (3) transactions, failed to maintain within the transaction
2 records Mortgage Loan Disclosure Statements which were fully and accurately prepared and
3 failed to provide for inspection a copy of the Mortgage Loan Disclosure Statement for two (2)
4 transaction files in violation of Sections 10240 and 10241 of the Code.

5 E. Caused the disbursement of funds from Trust Account #1 which caused the
6 balance of the trust funds in Trust #1 to be less than the existing aggregate trust fund liability
7 without the written consent of every principal who was an owner of the funds, all in violation of
8 Section 10145 of the Code and Sections 2832 and 2832.1 of the Regulations.

9 F. Failed to have the original real estate salespersons licenses for all real estate
10 salespersons employed by FIRST HOME, INC. in FIRST HOME, INC.'s possession at its main
11 office in violation of Section 10160 of the Code and Section 2753 of the Regulations.

12 G. Failed to have updated real estate salesperson license information for all real
13 estate salespersons employed by FIRST HOME, INC at FIRST HOME, INC.'s main office
14 address in violation of Section 10161.8 of the Code.

15 H. Failed to have broker/salesperson agreements for all real estate salespersons
16 employed by FIRST HOME, INC., in violation of Section 2726 of the Regulations.

17 I. From approximately July 1, 2008 to approximately November 3, 2010 engaged in
18 the business of, acted in the capacity of, advertised, or assumed to act as a the corporate real
19 estate broker while not in good standing with the California Secretary of State in violation of
20 Section 2742(c) of the Regulations.

21 J. WALTER ZHOVREBOFF failed to exercise reasonable supervision over the
22 acts of FIRST HOME, INC., in violation of Section 10159.2 of the Code,

23 K. WALTER ZHOVREBOFF was negligent or incompetent in performing acts
24 requiring a real estate license, in violation of Section 10177(g) of the Code.

25 ///

26 ///

1 taken and successfully completed the continuing education requirements of Article 2.5 of
2 Chapter 3 of the Real Estate Law for renewal of a real estate license. If WALTER
3 ZHOVREBOFF fails to satisfy this condition, the Commissioner may order the suspension of
4 WALTER ZHOVREBOFF's restricted license until WALTER ZHOVREBOFF presents such
5 evidence. The Commissioner shall afford WALTER ZHOVREBOFF the opportunity for a
6 hearing pursuant to the APA to present such evidence.

7 C. WALTER ZHOVREBOFF shall, within six (6) months from the issuance
8 of the restricted license, take and pass the Professional Responsibility Examination
9 administered by the Department, including the payment of the appropriate examination fee. If
10 WALTER ZHOVREBOFF fails to satisfy this condition, the Commissioner may order the
11 suspension of the restricted licenses of WALTER ZHOVREBOFF until WALTER
12 ZHOVREBOFF passes the examination.

13 D. WALTER ZHOVREBOFF shall prior to and as a condition of the
14 issuance of said restricted license, present evidence satisfactory to the Real Estate Commissioner,
15 via certification from a licensed CPA, that the trust fund shortage alleged in the Accusation
16 (\$1,377.00) and all other violations enumerated in the Accusation have been cured. The
17 certification shall be submitted to the Department of Real Estate, Legal Section, P. O. Box
18 187007, Sacramento, CA 95818-7007.

19 E. Pursuant to Section 10148 of the Code, WALTER ZHOVREBOFF shall
20 pay the sum of \$3,975.00 for the Commissioner's cost of the audit which led to this disciplinary
21 action. WALTER ZHOVREBOFF shall pay such cost within sixty (60) days of receiving an
22 invoice therefore from the Commissioner. The Commissioner may indefinitely suspend all
23 licenses and licensing rights of WALTER ZHOVREBOFF pending a hearing held in accordance
24 with Section 11500, et seq., of the Government Code, if payment is not timely made as provided
25 for herein, or as provided for in a subsequent agreement between WALTER ZHOVREBOFF and
26 the Commissioner. The suspension shall remain in effect until payment is made in full or until
27 WALTER ZHOVREBOFF enters into an agreement satisfactory to the Commissioner to provide

1 for payment, or until a decision providing otherwise is adopted following a hearing held pursuant
2 to this condition.

3 F. WALTER ZHOVREBOFF shall pay the Commissioner's costs, not to
4 exceed \$3,975.00, for any audit conducted pursuant to Section 10148 of the Code to determine if
5 Respondents has corrected the violations described in Paragraph I of the Determination of Issues,
6 above. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may
7 use the estimated average hourly salary for all persons performing audits of real estate brokers,
8 and shall include an allocation for travel time to and from the auditor's place of work. WALTER
9 ZHOVREBOFF shall pay such cost within sixty (60) days of receiving an invoice therefore from
10 the Commissioner detailing the activities performed during the audit and the amount of time
11 spent performing those activities. If WALTER ZHOVREBOFF fails to pay such cost within the
12 sixty (60) days of receiving an invoice, the Commissioner may indefinitely suspend all licenses
13 and licensing rights of WALTER ZHOVREBOFF under the Real Estate Law until payment is
14 made in full or until WALTER ZHOVREBOFF enter into an agreement satisfactory to the
15 Commissioner to provide for payment. Upon payment in full, the indefinite suspension provided
16 in this paragraph shall be stayed.

17 II

18 A. All licenses and licensing rights of FIRST HOME, INC., under the Real
19 Estate Law are revoked; provided, however, a restricted corporate broker license shall be issued
20 to FIRST HOME, INC., pursuant to Section 10156.5 of the Code if, within ninety (90) days
21 from the effective date of the Decision entered pursuant to this Order, FIRST HOME, INC.,
22 makes application for the restricted license and pays to the Department the appropriate fee
23 therefor.

24 B. The restricted license issued to FIRST HOME, INC., shall be subject to
25 all of the provisions of Section 10156.7 of the Code and to the following limitations,
26 conditions, and restrictions imposed under authority of Section 10156.6 of that Code:

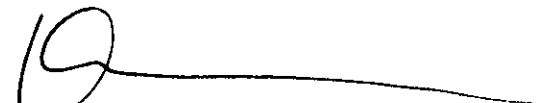
27 1. The restricted licenses issued to FIRST HOME, INC., may be suspended

1 prior to hearing by Order of the Commissioner in the event of FIRST HOME, INC.'s, conviction
2 or plea of nolo contendere to a crime which is substantially related to FIRST HOME, INC.,
3 fitness or capacity as a real estate licensee.

4 2. The restricted license issued to FIRST HOME, INC., may be suspended
5 prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that
6 FIRST HOME, INC., violated provisions of the California Real Estate Law, the Subdivided
7 Lands Law, Regulations of the Real Estate Commissioner, or any condition attaching to the
8 restricted licenses.

9 3. FIRST HOME, INC., shall not be eligible to apply for the issuance of an
10 unrestricted real estate license or for the removal of any of the conditions, limitations or restrictions
11 of a restricted license until four (4) years have elapsed from the effective date of this Order.

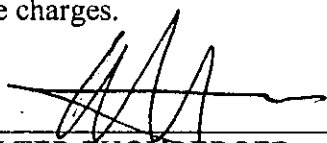
12
13 6/3/11
14 DATED

15
16 
17 KENNETH C. ESPELL, Counsel
18 DEPARTMENT OF REAL ESTATE

19 * * *

20 I have read the Stipulation and Agreement in Settlement and Order and its terms
21 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
22 rights given to me by the California APA (including but not limited to Sections 11506, 11508,
23 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive
24 those rights, including the right of requiring the Commissioner to prove the allegations in the
25 Accusation at a hearing at which I would have the right to cross-examine witnesses against me
26 and to present evidence in defense and mitigation of the charges.

27
28 5/31/2011
29 DATED

30 
31 WALTER ZHOVREBOFF
32 Individually and on behalf of
33 Respondent FIRST HOME, INC.

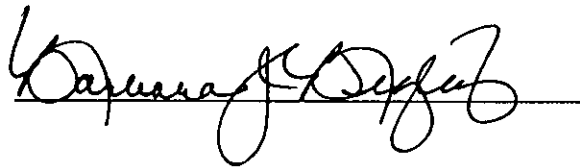
34 * * *

1 The foregoing Stipulation and Agreement in Settlement and Order is hereby
2 adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on,

3 AUG 08 2011

4 IT IS SO ORDERED 7/8/11

6 BARBARA J. BIGBY
7 Acting Real Estate Commissioner

8 
9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

AUG 19 2010

DEPARTMENT OF REAL ESTATE

[Signature]

1 KENNETH C. ESPELL, Counsel (SBN 178757)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0868 (Direct)

7
8
9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12	In the Matter of the Accusation of)	
13)	NO. H-10989 SF
14	FIRST HOME, INC., and,)	<u>ACCUSATION</u>
15	WALTER ZHOVREBOFF)	
16	Respondents.)	

17 The Complainant, E. J. HABERER II, in his official capacity as Deputy Real
18 Estate Commissioner of the State of California, for Accusation against Respondents FIRST
19 HOME, INC. ("FHI"), and, WALTER ZHOVREBOFF ("ZHOVREBOFF"), is informed and
20 alleges as follows:

21 THE RESPONDENTS

22 1

23 At all times herein mentioned, Respondent ZHOVREBOFF was and now is
24 licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business
25 and Professions Code) (herein "the Code") as a real estate broker. In addition, ZHOVREBOFF
26 conducts business under the registered fictitious business names First Regency Financial and
27 Home Quest Realty.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

At all times herein mentioned herein FHI was and now is licensed by the Department of Real Estate of the State of California (herein "the Department") as a corporate real estate broker by and through ZHOVREBOFF as its designated officer-broker. In addition, FHI conducts business under the registered fictitious business name California Dream Alliance. On or about July 1, 2008 the California Franchise Tax Board suspended FHI's powers, rights and privileges pursuant to the provisions of the California Revenue and Taxation Code and at all times since then, FHI's powers, rights and privileges have remained suspended.

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

Whenever reference is made in an allegation in this Accusation to an act or omission of FHI, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with FHI 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.

At all times herein mentioned, Respondents 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 compensation or in expectation of compensation, Respondents serviced and collected payments on loans secured directly or collaterally by liens on real property, and wherein Respondents

1 performed services for the holders of promissory notes secured directly or collaterally by a lien
2 on real property, including collecting payments thereon, and in addition, Respondent conducted
3 residential real estate resale activities.

4 FIRST CAUSE OF ACTION

5 Audit Violations

6 6

7 Beginning on August 10, 2009, and continuing intermittently until September 30,
8 2009, at FHI's main office located at 5517 Geary Blvd., San Francisco, California wherein the
9 auditor examined records for the period January 1, 2008 to June 30, 2009 (the audit period).

10 7

11 In the course of the activities described in Paragraph 5, above, for the audit
12 period:

13 a. A bank reconciliation for Trust Account #1 was prepared as of June 30, 2009.
14 The adjusted bank balance as of June 30, 2009 was \$323.00. As of June 30, 2009, the
15 reconstructed accountability totaled \$1,700 which resulted in a shortage of one thousand three
16 hundred seventy-seven dollars (\$1,377.00). The source of the shortage could not be identified.

17 b. FHI failed to maintain accounting records of all trust funds received and
18 disbursed (control records) maintained for Trust Account #1 which included a daily balance
19 column in violation of Section 2831 of the Regulations:

20 c. FHI failed to maintain accounting records of each beneficiary (beneficiary
21 records) for Trust Account #1 which included a daily balance column in violation of Section
22 2831.1 of the Regulations;

23 d. FHI failed to prepare monthly reconciliations comparing the balance of the
24 control records to the total balance of the beneficiary records for Trust Account in violation of
25 Section 2831.2 of the Regulations;

26 e. For the seven (7) transactions listed below, FHI failed to deposit trust funds
27 into a trust account within three (3) business days after receipt of the funds in violation of Section
2832 of the Regulations;

<u>Borrowers</u>	<u>Amount Received</u>	<u>Date Received</u>	<u>Date Deposited</u>
Ka Chung & Phyllis Ho	\$500.00	04/01/09	04/26/09
Lori & Angus McGulpin	\$375.00	04/07/09	04/16/09
Steven Yee	\$450.00	04/08/09	04/16/09
Diep Lien	\$425.00	04/23/09	07/09/09
Nancy Martz	\$500.00	05/29/09	06/04/09
Son Ngo	\$400.00	06/12/09	06/18/09
Hannay Chan & Ling Wu	\$450.00	06/25/09	07/01/09

f. For at least the three (3) transactions listed below, FHI failed to maintain within the transaction records, Mortgage Loan Disclosure Statements which were fully and accurately prepared and failed to provide for inspection a copy of the Mortgage Loan Disclosure Statement for the two (2) of the files listed below in violation of Sections 10240 and 10241 of the Code;

<u>Borrowers</u>	<u>Property Address</u>	<u>Information Missing on MLDS</u>
Aron & Daniel Choi	2230 Gellert Blvd. #3209, South San Francisco, CA 94080	- Broker's and agent's DRE license numbers were not disclosed.
Nichole Borg	851 Woodside Way #122, San Mateo, CA 94401	- Broker's and agent's DRE license numbers were not disclosed. - MLDS was not signed and dated by either broker or agent. - Potential not-in-time delivery of MLDS within three business days after completion of loan application. Loan application was signed on 7/30/08 and MLDS was signed on 8/15/08.
Lisa Wu	6542 Fulton Street, San Francisco, CA 94121	- Agent's DRE license number was not disclosed. - Incorrect information regarding broker's name and license number was provided

///

///

<u>Borrowers</u>	<u>Property Address</u>	<u>Unavailable Documents</u>
William & Veronica Lopez	2210 Gellert Blvd. #5103, South San Francisco, CA 94080	No MLDS was available for review.
Zulfiyar Hai	1488 El Camino Real #104, South San Francisco, CA 94080	No MLDS was available for review.

g. FHI caused disbursement of funds which caused the balance of the trust funds in Trust #1 to be less than the existing aggregate trust fund liability of FHI to all owners of the funds. This reduction of trust funds was done without the written consent of every principal who was an owner of the funds, all in violation of Section 10145 of the Code (trust fund handling) and Sections 2832 (trust fund handling procedures) and 2832.1 of the Regulations (written approval of trust fund owners necessary to draw below aggregate total trust fund liability); each violation which constitutes separate cause for suspension or revocation of all licenses and license rights of FHI pursuant to Section 10177(d) of the Code (willful disregard or violated Real Estate Law or rules and regulations of the commissioner).

h. FHI failed to have the original real estate salesperson ("RES") licenses for the below listed employees in FHI's possession at its main office in violation of Section 10160 of the Code and Section 2753 of the Regulations:

<u>Name of RES</u>
Brindley, Kevin William
Normant, Nichole
Tomasetti, Richard

i. FHI failed to have updated real estate salesperson license information at FHI's main office address in violation of Section 10161.8 of the Code. They were the following:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

<u>Name of RES</u>
Parrott, Jeffrey H
Tao, Sara
Tulchinsky, Nikita
Encizo, Deborah
Yu, Gabriela

j. FHI did not have broker-salesperson agreements for the following real estate salespersons in violation of Section 2726 of the Regulations:

<u>Name of RES</u>
Parrott, Jeffrey H
Encizo, Deborah
Normant, Nichole

8

The acts and/or omissions of FHI as alleged above violated Sections 2726, 2753, 2831, 2831.1, 2831.2, 2832, and 2832.1 of the Regulations, and 10145, 10160, 10161.8, 10240 and 10241 of the Code and are grounds for discipline under Section 10177(d) of the Code.

SECOND CAUSE OF ACTION
Suspended Corporation

9

Each and every allegation in Paragraphs 1 through 8, inclusive, above, is incorporated by this reference as if fully set forth herein

10

Effective approximately July 1, 2008 and continuing through the present, the corporate powers, rights and privileges of FHI were suspended by the California Franchise Tax Board pursuant to the provisions of the California Revenue and Taxation Code and FHI's legal standing with the California Office of the Secretary of State was "suspended." As a result of the

///
///

1 suspension of its corporate privileges, at no time herein mentioned was FHI entitled to conduct
2 business in the State of California as a corporate real estate broker.

3 11

4 Between approximately July 1, 2008 and the present, FHI engaged in the
5 business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within
6 the State of California within the meaning of Section 10131(a) of the Code, including the
7 operation and conduct of a real estate resale brokerage business with the public wherein, on
8 behalf of others, for compensation or in expectation of compensation, FHI solicited borrowers
9 or lenders for or negotiated loans or collected payments or performed services for borrowers or
10 lenders or note owners in connection with loans secured directly or collaterally by liens on real
11 property or on a business opportunity pursuant to Section 10131(a), including, but not limited
12 to, the following real estate loan transactions:

13

Principal/Client	Property Address	Closing Date
William & Veronica Lopez	2210 Gellert Blvd. #5103 So. San Francisco, CA	June 11, 2009
Zulfiyar Hai.	1488 El Camino Real, #104 So. San Francisco, CA	April 22, 2009

14
15
16
17

12 12

18 In acting as described in Paragraphs 10 through 11 above, FHI and
19 ZHOVREBOFF have violated Section 2742(c) of the Regulations (Corporation shall not engage
20 in the business of real estate broker while not in good legal standing with the Office of the
21 Secretary of State) and 10130 (License required to conduct real estate related transactions) in
22 conjunction with Section 10177(d) of the Code (Willful disregard or violation of real estate law).

23 ///

24 ///

25 ///

26 ///

27 ///

THIRD CAUSE OF ACTION
Failure to Supervise

13

Each and every allegation in Paragraphs 1 through 12, inclusive, above, is incorporated by this reference as if fully set forth herein.

14

ZHOVREBOFF, as the designated officer/broker of Respondent FHI was required to exercise reasonable supervision and control over the activities of Respondent FHI. ZHOVREBOFF failed to exercise reasonable supervision over the acts of FHI thereby allowing, permitting and/or ratifying the acts and omissions as described in the paragraphs above to occur, all in violation of Section 10159.2 of the Code, which constitutes cause for suspension or revocation of all licenses and license rights of Respondent FHI under Sections 10177(d) and 10177(h) of the Code.

FOURTH CAUSE OF ACTION
Negligence and/or Incompetence

15

Each and every allegation in Paragraphs 1 through 13, inclusive, above are incorporated by this reference as if fully set forth herein.


16

The acts and omissions of Respondents FHI and/or ZHOVREBOFF, and each of them, described in the paragraphs above, constitute negligence or incompetence in performing acts requiring a real estate license, and therefore is cause under Section 10177(g) of the Code for suspension or revocation of all licenses and license rights of Respondents FHI and/or ZHOVREBOFF, and each of them.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Real Estate

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under the provisions of law.


E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 30th day of July, 2010.