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**FILED**

DEC 12 2012

BEFORE THE DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

BY: *[Signature]*

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In the Matter of the Accusation of	)	DRE No. H-35773 LA
	)	OAH No. L-2009040192
JAMES T DUNKELMAN,	)	
	)	
	)	
	)	
Respondent(s).	)	
_____	)	

DECISION

The Proposed Decision dated November 9, 2012, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on January 2, 2013.

IT IS SO ORDERED 12/7/2012

Real Estate Commissioner

*[Signature]*

By WAYNE S. BELL  
Chief Counsel

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JAMES T. DUNKELMAN, doing business  
as First Choice Funding Company,

Respondent.

Case No. H-35773 LA

OAH No. 2009040192

**PROPOSED DECISION**

On November 6, 2012, the parties submitted a signed stipulation (Exhibit 7) that provides as follows:

A. The hearing in the above-captioned case was held on March 23, 2010, and August 10, 2011, before Administrative Law Judge Sophie Agopian of the Office of Administrative Hearings.

B. On February 10, 2012, a telephonic status conference was held in this matter. During the status conference, Presiding Administrative Law Judge Susan L. Formaker of the Office of Administrative Hearings notified the parties that Administrative Law Judge Agopian had been on leave for some time and, due to circumstances beyond the control of the Office of Administrative Hearings, no proposed decision had been issued.

C. Since the time of the telephonic status conference, Administrative Law Judge Agopian has left the employment of the Office of Administrative Hearings.

D. A record of the hearing in this matter, consisting of written transcripts, Administrative Law Judge Agopian's notes, and the exhibits, is in the possession of the Office of Administrative Hearings.

E. In view of the passage of time, and the unavailability of Administrative Law Judge Agopian, the parties wish to expedite the issuance of a proposed decision.

F. The Office of Administrative Hearings offered to strike the record and hold a new hearing with another Administrative Law Judge from the Office of Administrative Hearings, but the parties do not wish to have a second hearing in this matter.

Based on the foregoing facts, the parties stipulate as follows:

1. An alternative Administrative Law Judge from the Office of Administrative Hearings may write and issue a proposed decision in this matter, using the record referred to in Paragraph D above.

2. The parties waive any objections to the limitations in the record arising out of the alternative Administrative Law Judge's not having been present at the hearing.

Pursuant to the foregoing stipulation, the Presiding Administrative Law Judge assigned this matter to Administrative Law Judge Ralph B. Dash who, having read and considered all of the material identified in Paragraph D above, now makes the following Findings of Fact, Legal Conclusions, and Order.

#### FINDINGS OF FACT

1. Elliott MacLennan, Real Estate Counsel, represented Complainant. Lotfy Mrich, Attorney at Law, represented James T. Dunkelman (Respondent).

2. Complainant Robin Trujillo made the Accusation while acting in her official capacity as a Deputy Real Estate Commissioner of the State of California. At the request of Complainant's counsel, made on the record during the second day of the hearing, Administrative Law Judge Agopian struck paragraphs 8 and 9 of the Accusation, and no Findings are made thereon.

3. Official notice is taken from the public records of the Department of Real Estate (Department) that the Department licensed Respondent as a real estate broker, license number B/01195331, on August 24, 1998, and that said license is currently in full force and effect.

4. On May 14, 2008, the Department completed an audit of Respondent's books and records pertaining to his mortgage loan activities. The audit covered the period April 1, 2005 through February 29, 2008 (the audit period). According to the audit report (Exhibit 3), the audit was limited to Respondent's loan activities while doing business under the fictitious business name First Choice Funding Company (First Choice). Official notice is taken from public records that the Department first licensed Respondent to do business as First Choice on August 6, 2007. However, during the entire audit period, Respondent was also the designated officer of Kataoka & Dunkelman, Inc, a licensed corporate real estate broker (KDI), license number 01523642. That license expired on March 28, 2010. The auditor's work papers were not in evidence; however, reasonable inferences drawn from the record show that the audit included transactions in which either KDI, and therefore Respondent, was involved, or transactions in which Respondent used a different fictitious business name. As more fully set forth below, during the relevant time period Respondent was licensed by the

Department to use several fictitious business names and was also the designated officer of yet another licensed corporate broker which, in turn, was also licensed to use certain fictitious business names.

5. The auditor took a sampling of nine mortgage loan files for audit. All nine loans were closed (i.e. funded and recorded) during the period January 31, 2007 through May 2, 2007. Of the nine sample files, the auditor found the following:

- a. Three files did not contain a Mortgage Loan Disclosure Statement (MLDS).
- b. Of the six files that contained an MLDS, three did not include Respondent's name as the broker of record and were not all signed by the prospective borrower and/or the loan agent negotiating the loan.
- c. Six of the files contained no written documentation notifying the borrower that Respondent received, or was due to receive, compensation in the form of a yield spread premium from the lender.<sup>1</sup> According to Respondent, the yield spread premiums were paid to him at the close of escrow and were fully disclosed to the borrowers.
- d. In four of the files that contained an MLDS, Respondent either failed to include his license number or entered an inaccurate license number.
- e. In eight of the files sampled, Respondent conducted his mortgage loan activities using the fictitious business name Premier Lending Company. According to the audit report, Respondent was not licensed by the Department to use this name. According to public records, throughout the audit period the Department had licensed Respondent to do business under the following fictitious business names, in addition to First Choice: Premier Real Estate, Premier Lending, Premier Lender's, Diamond Real Estate and Financial, and Diamond Real Estate. In addition, during the audit period Respondent was the designated officer of Premier Financial Network Group Inc. which, in turn, was licensed to do business under the fictitious names Premier Lending Co. and ERA Premiere Real Estate Co. While many of the fictitious names Respondent was authorized to use are similar, the name "Premiere Lending Company" was not registered with the Department. The Department's permission for Respondent to use the name "Premiere License Co." did not permit Respondent to use the name "Premiere License Company."
- f. Review of the sample loan files showed that Respondent collected appraisal and/or credit report fees which, according to Respondent, were deposited into Respondent's

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<sup>1</sup> A yield spread premium is the money or rebate paid to a mortgage broker for giving a borrower a higher interest rate on a loan in exchange for lower up front costs, such as origination fees, broker fees or discount points. If the borrower chooses a high enough interest rate which carries a large enough rebated yield-spread premium, the loan may contain no "up front" costs resulting in a so called "no cost" loan, the costs actually being paid through the higher interest rate.

general account along with Respondent's fees and commissions. The auditor requested records, including appraisal invoices, cancelled checks and deposit records, and a copy of the "general bank account statement." The auditor also issued subpoenas to Respondent for production of these records. According to the subpoenas (Exhibit 6), the records sought were those of KDI only. Respondent provided no records, stating that his former partner (Kataoka) had retained them all and had locked Respondent out of the business so he had no access thereto. Respondent failed to explain why he had not retained the requested records for those transactions he carried out that did not involve KDI.

6. No evidence was presented that Respondent defrauded or otherwise harmed any clients. The auditor agreed that the matters in Finding 5 were the result of Respondent's negligent record keeping.

### LEGAL CONCLUSIONS

1. Respondent violated the provisions of Business and Professions Code<sup>2</sup> 10240 by reason of Findings 5a and 5b.

2. Respondent violated the provisions sections 10240 and 10241, and California Code of Regulations, title 10 (Regulation), section 2840.1, by reason of Finding 5c.

3. Respondent violated the provisions of section 10236.4, subdivision (b), by reason of Finding 5d.

4. Respondent violated the provisions of section 10159.5 and Regulation 2731 by reason of Finding 5e.

5. Respondent violated the provisions of section 10148 by reason of Finding 5f.

6. The violations set forth in Conclusions 1 through 5 constitute grounds for license discipline under the provisions of section 10177, subdivision (d).

7. The factual basis for the violations set forth in Conclusions 1 through 5, in conjunction with Finding 6, constitute grounds for license discipline under the provisions of section 10177, subdivision (g).

### ORDER

Wherefore, the following order is hereby made:

Under the provisions of Business and Professions Code §495, Respondent James T. Dunkelman is hereby reproved. Insertion of this Order in Respondent's public file maintained by the Department is deemed publication of this Order. As a condition of this

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<sup>2</sup> All statutory references are to the Business and Professions Code.

reproval, Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the license until Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: 11-9-12



**RALPH B DASH**  
Administrative Law Judge  
Office of Administrative Hearings