

1 Department of Real Estate  
2 320 West 4th Street, Suite 350  
3 Los Angeles, CA 90013-1105

4 Telephone: (213) 576-6982

**FILED**

JUN 28 2010

DEPARTMENT OF REAL ESTATE

BY: 

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of )  
13 and Order to Desist and Refrain to )

NO. H-36206 LA  
L-2009100744

14 NIVI INC., and doing business )  
15 as Loan Mods Plus; and VINCENT )  
16 DOMINIC BINDI, individually, and )  
17 as designated broker officer )  
18 for NIVI INC., )

NO. H-36240 LA  
L-2009100745

STIPULATION & AGREEMENT

18 Respondents. )  
19 )

20 It is hereby stipulated by and between NIVI INC., and  
21 VINCENT DOMINIC BINDI, individually, and as designated broker-  
22 officer for Nivi Inc. ("Respondents"), and Respondents'  
23 attorney, Frank Buda, and the Complainant, acting by and  
24 through Cheryl Keily, Counsel for the Department of Real  
25 Estate, as follows for the purpose of settling and disposing of  
26 the Accusation filed on August 27, 2009, in this matter.  
27

1           1. All issues which were to be contested and all  
2 evidence which was to be presented by Complainant and  
3 Respondents at a formal hearing on the Accusation, which hearing  
4 was to be held in accordance with the provisions of the  
5 Administrative Procedure Act (APA), shall instead and in place  
6 thereof be submitted solely on the basis of the provisions of  
7 this Stipulation and Agreement.  
8

9           2. Respondents have received, read and understand the  
10 Statement to Respondent, the Discovery Provisions of the APA and  
11 the Accusation filed by the Department of Real Estate  
12 ("Department") in this proceeding.  
13

14           3. On September 18, 2009, Respondents filed a Notice  
15 of Defense on Accusation, pursuant to Section 11506 of the  
16 Government Code for the purpose of requesting a hearing on the  
17 allegations in the Accusation. Respondents hereby freely and  
18 voluntarily withdraw said Notice of Defense on Accusation.  
19 Respondents acknowledges that they understand that by  
20 withdrawing said Notice of Defense on Accusation they will  
21 thereby waive their right to require the Commissioner to prove  
22 the allegations in the Accusation at a contested hearing held in  
23 accordance with the provisions of the APA and that they will  
24 waive other rights afforded to them in connection with the  
25 hearing, such as the right to present evidence in defense of the  
26  
27

1 allegations in the Accusation and the right to cross-examine  
2 witnesses.

3           4. This Stipulation and Agreement is based on the  
4 factual allegations contained in the Accusation filed in this  
5 proceeding. In the interest of expedience and economy,  
6 Respondents choose not to litigate these allegations at a formal  
7 administrative hearing, but to remain silent and understand  
8 that, as a result thereof, these factual allegations, without  
9 being admitted or denied, will serve as a prima facie basis for  
10 the disciplinary action stipulated to herein. This Stipulation  
11 and Agreement and Respondents' decision not to contest the  
12 Accusation are hereby expressly limited to this proceeding and  
13 made for the sole purpose of reaching an agreed disposition of  
14 this proceeding. Respondents' decision not to contest the  
15 factual allegations at a formal administrative hearing is made  
16 solely for the purpose of effectuating this Stipulation and  
17 Agreement and is intended to be non-binding upon Respondents in  
18 any actions against them, or either of them, by third parties.  
19 The Real Estate Commissioner shall not be required to provide  
20 further evidence to prove said factual allegations.  
21

22           5. Respondents acknowledge receipt of service of the  
23 Commissioner's Desist and Refrain Order, No. H-36240 LA, filed  
24 on September 15, 2009, ("Desist and Refrain Order").  
25 Respondents agree that the Desist and Refrain Order may be used  
26  
27

1 by the Department in any future administrative proceeding in  
2 which Respondents' compliance with the provisions of the Real  
3 Estate Law and the Commissioner's Regulations prohibiting the  
4 claiming, demanding, charging, receiving, collecting or  
5 contracting for the collection of an advance fee in connection  
6 with the sale or lease of real property or to obtain a loan or  
7 loans on real property is in issue.

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

22           7. The Order or any subsequent Order of the Real  
23 Estate Commissioner made pursuant to this Stipulation and  
24 Agreement shall not constitute an estoppel, merger or bar to any  
25 further administrative or civil proceedings by the Department of  
26 Real Estate with respect to any matters which were not  
27

1 specifically alleged to be causes for accusation in this  
2 proceeding.

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulations, admissions  
5 and waivers and solely for the purpose of settlement of the  
6 pending Accusation without a hearing, it is stipulated and  
7 agreed that the following determination of issues shall be  
8 made:  
9

10 1. The conduct, acts or omissions of Respondent NIVI  
11 INC., as set forth in the Accusation, constitute cause to  
12 suspend or revoke the real estate license and license rights of  
13 Respondent NIVI INC. under the provisions of Code Section  
14 10177(g) for violation of Section 10085.  
15

16 2. The conduct, acts or omissions of Respondent  
17 VINCENT DOMINIC BINDI, as set forth in the Accusation,  
18 constitute cause to suspend or revoke the real estate license  
19 and license rights of Respondent VINCENT DOMINIC BINDI under  
20 the provisions of Code Section 10177(h).  
21

22 ORDER

23 WHEREFORE, THE FOLLOWING ORDER is hereby made:

24 All licenses and license rights of Respondent NIVI  
25 INC. and Respondent VINCENT DOMINIC BINDI under the Real Estate  
26 Law are suspended for a period of thirty (30) days from the  
27

1 effective date of this Decision; provided, however, that the  
2 entire period of said suspension shall be stayed for two (2)  
3 years upon the following terms and conditions:

4 1. Respondents shall obey all laws, rules and  
5 regulations governing the rights, duties and responsibilities of  
6 a real estate licensee in the State of California; and

7 2. That no final subsequent determination be made,  
8 after hearing or upon stipulation, that cause for disciplinary  
9 action occurred within two (2) years of the effective date of  
10 this Decision. Should such a determination be made, the  
11 Commissioner may, in his discretion, vacate and set aside the  
12 stay order and reimpose all or a portion of the stayed  
13 suspension. Should no such determination be made, the stay  
14 imposed herein shall become permanent.

15 DATED: May 28, 2010

16 Cheryl D. Keily  
17 CHERYL D. KEILY, Counsel  
18 DEPARTMENT OF REAL ESTATE  
19

20 I have read the Stipulation and Agreement, and its  
21 terms are understood by me and are agreeable and acceptable to  
22 me. I understand that I am waiving rights given to me by the  
23 California Administrative Procedure Act (including but not  
24 limited to Sections 11506, 11508, 11509 and 11513 of the  
25 Government Code), and I willingly, intelligently and  
26 voluntarily waive those rights, including the right of  
27 requiring the Commissioner to prove the allegations in the

MAY-27-10 THU 01:21 PM

FAX NO.

P. 08/08

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.

Respondents can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by Respondents, to the Department at the following telephone/fax number (213) 576-6917. Respondents agree, acknowledge, and understand that by electronically sending to the Department a fax copy of their actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondents as if the Department had received the original signed Stipulation and Agreement.

DATED:

5/27/10

NIVI Inc  
Respondent

DATED:

5/27/10

VINCENT DOMINIC BIVARI  
Respondent

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

DATED:

5-27-10

Frank Buda  
Attorney for Respondents

1 Accusation at a hearing at which I would have the right to  
2 cross-examine witnesses against me and to present evidence in  
3 defense and mitigation of the charges.

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5 the terms and conditions of this Stipulation and Agreement by  
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7 Respondents, to the Department at the following telephone/fax  
8 number (213) 576-6917. Respondents agree, acknowledge, and  
9 understand that by electronically sending to the Department a  
10 fax copy of their actual signature as it appears on the  
11 Stipulation and Agreement, that receipt of the faxed copy by  
12 the Department shall be as binding on Respondents as if the  
13 Department had received the original signed Stipulation and  
14 Agreement.

15 DATED: \_\_\_\_\_

16  
17  
18  
19 NIVI INC.  
Respondent

20 DATED: \_\_\_\_\_

21  
22 VINCENT DOMINIC BINDI  
Respondent

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

25 DATED: \_\_\_\_\_

26  
27 Frank Buda  
Attorney for Respondents



\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision in this matter and shall become  
effective at 12 o'clock noon on JUL 19 2010, 2010.

IT IS SO ORDERED 6/23, 2010.

  
JEFF DAVI  
Real Estate Commissioner

1 CHERYL D. KEILY, SNB# 94008  
2 Department of Real Estate  
3 320 West Fourth Street, Ste. 350  
4 Los Angeles, California 90013

5 Telephone: (213) 576-6982  
6 (Direct) (213) 576-6905

**FILED**

AUG 27 2009

DEPARTMENT OF REAL ESTATE

BY: 

9 DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 \* \* \* \* \*

12 In the Matter of the Accusation

No. H-36206 LA

13 NIVI INC., and doing busi- )  
14 ness as Loan Mods Plus; and )  
15 VINCENT DOMINIC BINDI, )  
16 individually, and as )  
17 designated broker officer )  
18 for NIVI Inc. )  
19 \_\_\_\_\_ )

A C C U S A T I O N

18 The Complainant, Robin Trujillo, a Deputy Real Estate  
19 Commissioner of the State of California, for cause of Accusation  
20 against NIVI INC. ("NIVI"), and doing business as Loan Mods Plus;  
21 and VINCENT DOMINIC BINDI ("BINDI") is informed and alleges as  
22 follows:  
23

24 1.

25 The Complainant, Robin Trujillo, a Deputy Real Estate  
26 Commissioner of the State of California, makes this Accusation in  
27 her official capacity.

2.

Respondent NIVI is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter "Code"), as a real estate corporation acting by and through Respondent BINDI as its designated broker-officer.

3.

Respondent BINDI is presently licensed and/or has license rights under the Real Estate Law as a real estate broker and designated broker-officer of Respondent NIVI.

4.

All further references to respondents herein include Respondents NIVI and BINDI, and also include officers, directors, employees, agents and real estate licensees employed by or associated with NIVI and BINDI, and who at all times herein mentioned were engaged in the furtherance of the business or operations of Respondents NIVI and BINDI, and who were acting within the course and scope of their authority and employment.

5.

At all times relevant herein Respondent BINDI, as the officer designated by Respondent NIVI pursuant to Section 10211 of the Code, was responsible for the supervision and control of the activities conducted on behalf of Respondent NIVI by its officers and employees as necessary to secure full compliance with the Real Estate Law as set forth in Section 10159.2 of the Code.

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6.

Respondent BINDI ordered, caused, authorized or participated in the conduct of Respondent NIVI, as is alleged in this Accusation.

FIRST CAUSE OF ACCUSATION  
(Advance Fee Violation)

7.

At all times mentioned herein, in the State of California, Respondent engaged in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of advance fees, within the meaning of Code Section 10026, including, but not limited to, the following loan modification activities with respect to loans which were secured by liens on real property:

a. On or about December 31, 2008, Respondents NIVI and BINDI, using the fictitious business name "Loan Mods Plus," collected an advance fee of \$2,950 from Heather Hernandez pursuant to the provisions of a written agreement pertaining to loan modification services to be provided by Respondent with respect to a loan secured by the real property located at 1740 Sunshine Drive, Concord, California 94520.

8.

Respondents collected the advance fees described in Paragraph 7, above, pursuant to the provisions of a written agreement which constitutes an advance fee agreement within the meaning of Code Section 10085.

///

9.

Respondents failed to submit the written agreement referred to in Paragraphs 7 and 8, above, to the Commissioner ten days before using it in violation of Code Section 10085 and Section 2970, Title 10, Chapter 6, Code of Regulations ("Regulations").

10.

The conduct, acts and/or omissions of Respondents, as set forth above, are cause for the suspension or revocation of the licenses and license rights of Respondent pursuant to Code Sections 10085, 10177(d) and/or 10177(g).

SECOND CAUSE OF ACCUSATION  
(Failure to Supervise)

11.

Complainant incorporates by this reference the allegations set forth in Paragraphs 1 through 10, above.

12.

The conduct, acts and/or omissions of Respondent BINDI in failing to exercise reasonable supervision over the activities of Respondent NIVI, as more fully set forth above, are cause for the suspension or revocation of the licenses and license rights of Respondent BINDI pursuant to Code sections 10177(d), (g) and/or (h) for violation of Code section 10159.2.

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1 WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against all the licenses and license rights of Respondent  
5 NIVI INC. and VINCENT DOMINIC BINDI, individually, and as  
6 designated broker officer of Nivi Inc., under the Real Estate Law  
7 (Part 1 of Division 4 of the Business and Professions Code), and  
8 for such other and further relief as may be proper under other  
9 applicable provisions of law.

10 Dated at Los Angeles, California  
11 this 26 day of August, 2009.  
12

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14   
15 Robin Trujillo  
16 Deputy Real Estate Commissioner  
17  
18  
19  
20  
21  
22  
23  
24  
25

26 cc: Nivi Inc.  
27 Vincent Dominic Bindi  
Robin Trujillo  
Sacto.