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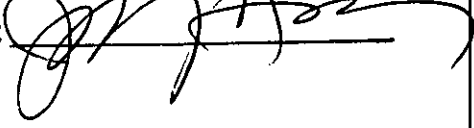
1 Department of Real Estate
2 320 W. 4TH Street, Suite 350
3 Los Angeles, CA 60013-1105

4 Telephone: (213) 576-6982

FILED

MAR 07 2012

DEPARTMENT OF REAL ESTATE

BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA
* * *

10)
11 In the Matter of the Accusation of)
12)
13 NEWKEY FINANCIAL CORP, a)
14 corporate real estate broker; and)
15)
16)
17)
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23)
24)
25)
26)
27)
Respondents.

No. H-37387 LA
L-2011080251

STIPULATION
AND
AGREEMENT

18 It is hereby stipulated by and between Respondent
19 KYLE EDWARD O'KELLY ("O'KELLY"), individually and as designated
20 officer of NEWKEY FINANCIAL CORP, represented by Frank M. Buda,
21 Esq., and the Complainant, acting by and through Julie L. To,
22 Counsel for the Department of Real Estate, as follows for the
23 purpose of settling and disposing of the Accusation
24 ("Accusation") filed on July 12, 2011, in this matter:

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27 ///

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

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

12 3. Respondent filed a Notice of Defense pursuant to
13 Section 11506 of the Government Code for the purpose of
14 requesting a hearing on the allegations in the Accusation.
15 Respondent hereby freely and voluntarily withdraws said Notice of
16 Defense. Respondent acknowledges that he understands that by
17 withdrawing said Notice of Defense he thereby waives his right to
18 require the Commissioner to prove the allegations in the
19 Accusation at a contested hearing held in accordance with the
20 provisions of the APA and that he will waive other rights
21 afforded to him in connection with the hearing such as the right
22 to present evidence in his defense and the right to cross-examine
23 witnesses.
24

25 4. This Stipulation is based on the factual
26 allegations contained in the Accusation. In the interest of
27

1 expedience and economy, Respondent chooses not to contest these
2 allegations, but to remain silent and understands that, as a
3 result thereof, these factual allegations, without being admitted
4 or denied, will serve as a prima facie basis for the disciplinary
5 action stipulated to herein. The Real Estate Commissioner shall
6 not be required to provide further evidence to prove said factual
7 allegations.

8 5. This Stipulation is made for the purpose of
9 reaching an agreed disposition of this proceeding and is
10 expressly limited to this proceeding and any other proceeding or
11 case in which the Department of Real Estate ("Department"), or
12 another licensing agency of this state, another state or if the
13 federal government is involved, and otherwise shall not be
14 admissible in any other criminal or civil proceeding.

15 6. It is understood by the parties that the Real
16 Estate Commissioner may adopt this Stipulation as the
17 Commissioner's Decision in this matter thereby imposing the
18 penalty and sanctions on Respondent's real estate licenses and
19 license rights as set forth in the below "Order". In the event
20 that the Commissioner in her discretion does not adopt the
21 Stipulation, the Stipulation shall be void and of no effect and
22 Respondent shall retain the right to a hearing and proceeding on
23 the Accusation under the provisions of the APA and shall not be
24 bound by any stipulation or waiver made herein.

25 7. The Order or any subsequent Order of the Real
26
27

1 Estate Commissioner made pursuant to this Stipulation shall not
2 constitute an estoppel, merger or bar to any further
3 administrative or civil proceedings by the Department of Real
4 Estate with respect to any matters which were not specifically
5 alleged to be causes for accusation in this proceeding.

6 DETERMINATION OF ISSUES

7 By reason of the foregoing, it is stipulated and agreed
8 that the following determination of issues shall be made:

9 I.

10
11 The conduct of KYLE EDWARD O'KELLY, as described in
12 Paragraph 4, above, is in violation of Section 10240 of the
13 Business and Professions Code ("Code") and is a basis for
14 discipline of Respondent's licenses and license rights as a
15 violation of the Real Estate Law pursuant to Code Section
16 10177(d).

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

The license and licensing rights of Respondent KYLE EDWARD O'KELLY, under the Real Estate Law, are suspended for a period of thirty (30) days from the effective date of this Decision, all stayed upon condition that:

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

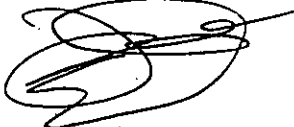
2. That no final subsequent determination be made after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years from the effective date of this Decision. Should such a determination be made, the Commissioner may, in the Commissioner's discretion, vacate and set aside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

II.

Respondent shall make a diligent effort to locate and repay \$1,490.00 to borrower Katie R. ("borrower") beginning on or before the effective date of this Decision. (1) Respondent shall mail the payment(s) by certified mail, return receipt requested, to the borrower's last address on file with or known to Respondent. (2) If any of the payment(s) are returned by the

1 Post Office marked "unable to deliver," Respondent shall employ
2 a locator service (that may be limited to or include or be
3 limited to the Internet or other database retrieval search) to
4 try and locate the aforesaid borrower. Repayments shall then be
5 made to the address(es) recommended by the locator service. (3)
6 If unable to effect repayment after using a locator service,
7 Respondent shall provide reasonable proof satisfactory to the
8 Commissioner of his efforts to comply with the provisions of
9 this paragraph. (4) If the Commissioner determines that proof
10 to be unsatisfactory, the Commissioner shall so advise
11 Respondent, and indicate what additional reasonable efforts
12 should be made to make repayment to the borrower. (5) If the
13 Commissioner determines that reasonable efforts have been made
14 to locate the borrower without success, Respondent shall not be
15 liable for any further repayment. (6) If the Commissioner
16 determines that proof to be unsatisfactory and that reasonable
17 efforts have not been made to locate the borrower, the
18 Commissioner may, by separate order, suspend Respondent's
19 license for thirty (30) days. (7) All proof shall be submitted
20 to Department Counsel Julie L. To, Attention: Legal Section,
21 Department of Real Estate, 320 W. Fourth St., Suite 350, Los
22 Angeles, California 90013-1105, on or before the effective date
23 of this Decision.
24

25 DATED: 02-23-12
26 _____



JULIE L. TO, Counsel for
Department of Real Estate

1 * * *

2 EXECUTION OF THE STIPULATION

3 I have read the Stipulation, and have discussed it with
4 my counsel. Its terms are understood by us and are agreeable and
5 acceptable to us. I understand that I am waiving rights given to
6 me by the California Administrative Procedure Act (including but
7 not limited to Sections 11506, 11508, 11509 and 11513 of the
8 Government Code), and I willingly, intelligently and voluntarily
9 waive those rights, including the right of requiring the
10 Commissioner to prove the allegations in the Accusation at a
11 hearing at which I would have the right to cross-examine
12 witnesses against me and to present evidence in defense and
13 mitigation of the charges.
14

15 MAILING AND FACSIMILE

16
17 Respondent (1) shall mail the original signed signature
18 page of the stipulation herein to Julie L. To: Attention: Legal
19 Section, Department of Real Estate, 320 W. Fourth St., Suite 350,
20 Los Angeles, California 90013-1105. Respondent shall also (2)
21 facsimile a copy of signed signature page, to the Department at
22 the following telephone/fax number: (213) 576-6917, Attention:
23 Julie L. To.

24 ///

25 ///

26 ///

27 ///

A facsimile constitutes acceptance and approval of the terms and conditions of this stipulation. Respondent agrees, acknowledges and understands that by electronically sending to the Department a facsimile copy of Respondent's actual signature as it appears on the stipulation that receipt of the facsimile copy by the Department shall be as binding on Respondent as if the Department had received the original signed stipulation.

11 DATED: 2/23/2012

Kyle E. O'Neil
 KYLE EDWARD O'NEIL, as former
 designated officer of NewKey
 Financial Corp, Respondent

12 DATED: 2 - 23 - 12

Frank M. Buda
 FRANK M. BUDA, ESQ.,
 Attorney for Respondent
 Approved as to form and content

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1 A facsimile constitutes acceptance and approval of the
2 terms and conditions of this stipulation. Respondent agrees,
3 acknowledges and understands that by electronically sending to
4 the Department a facsimile copy of Respondent's actual signature
5 as it appears on the stipulation that receipt of the facsimile
6 copy by the Department shall be as binding on Respondent as if
7 the Department had received the original signed stipulation.

8

9

10 DATED: _____

KYLE EDWARD O'KELLY, as former
designated officer of NewKey
Financial Corp, Respondent

11

12

13 DATED: _____

FRANK M. BUDA, ESQ.,
Attorney for Respondent
Approved as to form and content

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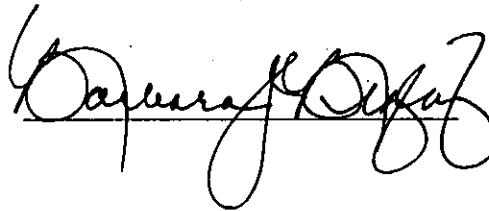
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The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondent KYLE EDWARD O'KELLY,
individually and as designated officer of NEWKEY FINANCIAL CORP.
and shall become effective at 12 o'clock noon on

MAR 27 2012, 2012.

IT IS SO ORDERED 3/5, 2012.

BARBARA J. BIGBY
Acting Real Estate Commissioner



1 JULIE L. To, Counsel (SBN 219482)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6916

FILED

JUL 12 2011

DEPARTMENT OF REAL ESTATE

BY: 

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11	In the Matter of the Accusation of)	No. H-37387 LA
12	NEWKEY FINANCIAL CORP,) <u>A C C U S A T I O N</u>
13	a corporate real estate)
14	Broker; and)
15	KYLE EDWARD O'KELLY,)
16	individually and as designated)
17	officer of NewKey Financial)
18	Corp)
19	Respondents.)

20 The Complainant, Maria Suarez, a Deputy Real Estate
21 Commissioner, for cause of Accusation against NEWKEY FINANCIAL
22 CORP and KYLE EDWARD O'KELLY, individually and as designated
23 broker-officer of NewKey Financial Corp, is informed and alleges
24 as follows:

25 1.

26 The Complainant, Maria Suarez, a Deputy Real Estate
27 Commissioner of the State of California, makes this Accusation
28

1 in her official capacity.

2 LICENSE HISTORY

3 2.

4 A. At all times mentioned, Respondent NEWKEY
5 FINANCIAL CORP (hereinafter Respondent "NFC") and Respondent
6 EDWARD KYLE O'KELLY (hereinafter Respondent O'Kelly) were
7 licensed or had license rights issued by the Department of Real
8 Estate (hereinafter "Department").

9 B. NFC is presently licensed and/or has license
10 rights under the Real Estate Law (Part 1 of Division 4 of the
11 Business and Professions Code) as a corporate real estate
12 broker. Respondent NFC was originally licensed as a corporate
13 real estate broker by the Department of Real Estate (hereinafter
14 "Department") on or about September 18, 2001. Respondent NFC's
15 corporate real estate broker license includes d.b.a.s: Futura
16 Realty of NFC, Newkey Home Lending, and Pinnacle Financial
17 Group. At all times relevant herein, Respondent NFC was
18 authorized to act by and through Respondent KYLE EDWARD O'KELLY
19 (hereinafter Respondent "O'KELLY") and/or Neal Arrington
20 (hereinafter "Arrington") as its designated broker pursuant to
21 Business and Professions Code (hereinafter "Code") Sections
22 10211 and 10159.2 to supervise the activities requiring a real
23 estate license conducted on behalf of NFC and to be responsible
24 for ensuring compliance with the Real Estate Law. Arrington
25 expired as NFC's designated officer on or about September 18,
26 2009. O'KELLY was cancelled as NFC's designated officer on or
27 about May 19, 2010.

1 C. Respondent O'KELLY is presently licensed and/or
2 has license rights under the Real Estate Law (Part 1 of Division
3 4 of the Code) as a real estate broker. Respondent O'KELLY was
4 originally licensed as a real estate salesperson by the
5 Department on or about May 1, 2002; Respondent O'KELLY was
6 originally licensed as a real estate broker by the Department on
7 or about April 18, 2006. O'KELLY was the designated officer for
8 NFC pursuant to Code Section 10159.2, responsible for ensuring
9 compliance with the Real Estate Law. O'KELLY was cancelled as
10 NFC's designated officer on or about May 19, 2010.

11 3.

12 At all times mentioned, in the City of Huntington
13 Beach, Orange County, NFC and O'KELLY acted as real estate
14 brokers and conducted licensed activities within the meaning of:

15 A. Code Section 10131(d): NFC operated a mortgage and
16 loan brokerage engaging in activities with the public wherein
17 lenders and borrowers were solicited for loans secured directly
18 or collaterally by liens on real property, wherein such loans
19 were arranged, negotiated, processed and consummated on behalf
20 of others for compensation or in expectation of compensation and
21 for fees often collected in advance as well as at the conclusion
22 of transactions.

23 4.

24 All further references to "Respondents" herein include
25 the parties identified in Paragraphs 2 and 3, above, and also
26 include the officers, directors, employees, agents and real
27 estate licensees employed by or associated with said parties and
28 who at all times herein mentioned were engaged in the

1 furtherance of the business or operations of said parties and
2 who were acting within the course and scope of their authority
3 and employment.

4 5.

5 At all times relevant herein, Respondent O'KELLY, as
6 the officer designated by Respondent NFC pursuant to Section
7 10211 of the Code, was responsible for the supervision and
8 control of the activities conducted on behalf of Respondent NFC
9 by its officers and employees as necessary to secure full
10 compliance with the Real Estate Law as set forth in Section
11 10159.2 of the Code.

12 6.

13 Respondent O'KELLY ordered, caused, authorized or
14 participated in the conduct of Respondent NFC as is alleged in
15 this Accusation.

16 AUDIT EXAMINATION

17 7.

18 On November 4, 2010, the Department completed an audit
19 examination of the books and records of NFC pertaining to the
20 mortgage loan activities described in Paragraph 3 that require a
21 real estate license. The audit examination covered a period of
22 time beginning on March 1, 2007 to March 1, 2010. The audit
23 examination revealed violations of the Code and the Regulations
24 as set forth in the following paragraphs, and more fully
25 discussed in Audit Report LA 090245 and the exhibits and work
26 papers attached to said audit report.

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1 8.

2 NFC did not maintain a trust account during the audit.
3 O'KELLY informed Department Auditor Darryl M. Thomas that NFC
4 did not maintain any trust accounts during the audit period.

5 FIRST CAUSE OF ACCUSATION
6 (Advance Fee Violation)

7 9.

8 At all times mentioned, in Huntington Beach, in Orange
9 County, California, Respondents engaged in the business of
10 claiming, demanding, charging, receiving, collecting or
11 contracting for the collection of advance fees, within the
12 meaning of Code Section 10026, including, but not limited to,
13 the following loan activities with respect to loans which were
14 secured by liens on real property:

15 a. On or about October 10, 2008, Katie R. paid \$2,995.00
16 via credit card to NFC and NFC representative Chad Brown as
17 advance fees, pursuant to an agreement pertaining to loan
18 solicitation, negotiation, and modification services to be
19 provided by NFC with respect to a loan secured by real property
20 located at 441 South Maple, #37, Mesa, AZ 85206. After ten
21 months, Katie R. received no results on her loan and learned
22 that NFC had not worked on negotiating or modifying the terms of
23 her loan on the Woodside property. On or about June 1, 2009,
24 Katie R. notified NFC that it was no longer authorized to
25 represent her in her loan modification, and requested a full
26 refund. Katie R. received a refund of \$1,505.00 from her credit
27 card company on or about September 29, 2009.

1 10.

2 Respondents collected the advance fees described in
3 Paragraph 9, above, pursuant to the provisions of a written
4 agreement which constitutes an advance fee agreement within the
5 meaning of Code Section 10085.

6 11.

7 Respondents failed to submit the written agreement
8 referred to in Paragraphs 9 and 10, above, to the Commissioner
9 ten days before using it, in violation of Code Section 10085 and
10 Section 2970, Title 10, Chapter 6, Code of Regulations
11 ("Regulations").

12 12.

13 The conduct, acts and/or omissions of Respondents, as
14 set forth above, are cause for the suspension or revocation of
15 the licenses and license rights of Respondents pursuant to Code
16 Sections 10085, 10085.6, 10176(a), 10176(b), 10176(i), 10177(d)
17 and/or 10177(g).

18 SECOND CAUSE OF ACCUSATION

19 (Failure to Produce Approved Mortgage Loan Disclosure Statement)

20 13.

21 Complainant incorporates by reference the allegations
22 set forth in Paragraphs 8 through 12, above.

23 14.

24 In the course of activities described in Paragraphs 3
25 and 9, above, and during the examination period described in
26 Paragraph 7, Respondents NFC and O'KELLY acted in violation of
27 the Code and Regulations in that they failed to retain a true
28 and correct copy of a Department of Real Estate approved

1 California Mortgage Loan Disclosure Statement with the broker
2 signature displayed, in violation of Code Section 10240 and
3 Regulation 2840. Said conduct, acts, and/or omissions of
4 Respondents are cause for suspension or revocation of the
5 licenses and license rights of Respondents pursuant to Code
6 Section 10177(d) and 10177(g).

7 THIRD CAUSE OF ACCUSATION

8 (Failure to Retain Records)

9 15.

10 Complainant incorporates by reference the allegations
11 set forth in Paragraphs 7 through 14, above.

12 16.

13 In the course of activities described in Paragraph 9,
14 above, and during the examination period described in Paragraph
15 7, Respondents NFC and O'KELLY acted in violation of the Code
16 and Regulations in that they failed to retain for three years
17 copies of all listings, deposit receipts, canceled checks, trust
18 records, and other documents executed by him or her or obtained
19 by him or her in connection with any transactions for which a
20 real estate broker license is required, in violation of Code
21 Section 10148. Said conduct, acts, and/or omissions of
22 Respondents are cause for suspension or revocation of the
23 licenses and license rights of Respondents pursuant to Code
24 Section 10177(d) and 10177(g).

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1 FOURTH CAUSE OF ACCUSATION

2 (Failure to Supervise)

3 17.

4 Complainant incorporates by reference the allegations
5 set forth in Paragraphs 7 through 16, above.

6 18.

7 The conduct, acts and/or omissions of Respondent
8 O'KELLY in failing to exercise reasonable supervision over the
9 activities of Respondent NFC, as more fully set forth above, are
10 cause for the suspension or revocation of the licenses and
11 license rights of Respondent O'KELLY pursuant to Code sections
12 10177(d), (g) and/or (h) for violation of Code section 10159.2.

13 FIFTH CAUSE OF ACCUSATION

14 (Corporate Suspension)

15 19.

16 NFC's corporate mortgagee approval powers, powers,
17 rights and privileges were suspended on or about March 24, 2010
18 by the Department of United States Department of Housing and
19 Urban Development.

20 20.

21 Said suspension is cause for the suspension or
22 revocation of the licenses and license rights of Respondent NFC,
23 pursuant to Code Sections 10177(g) and/or 10177(f).

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28

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
5 Respondents NEWKEY FINANCIAL CORP and KYLE EDWARD O'KELLY,
6 individually and as designated broker-officer of NewKey
7 Financial Corp, under the Real Estate Law (Part 1 of Division 4
8 of the Business and Professions Code), and for such other and
9 further relief as may be proper under other applicable
10 provisions of law.

11 Dated at Los Angeles, California
12 this 5th day of July, 2011.

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14 
15 Maria Suarez
16 Deputy Real Estate Commissioner
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26 cc: NewKey Financial Corp
27 Edward Kyle O'Kelly
28 Maria Suarez
Sacto.