

SACTO
Flag

FILED

JUN 12 2012

Department of Real Estate
320 West Fourth Street, #350
Los Angeles, California 90013

DEPARTMENT OF REAL ESTATE
BY: Guadalupe Salinas

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-37510 LA
)	2011100458
APEX FINANCIAL & INVESTMENTS INC,)	
dba Home Assistance & Relief, and)	<u>STIPULATION AND</u>
FRANCIS Y. CHOE, individually, and)	<u>AGREEMENT</u>
as designated officer of Apex)	
Financial & Investments Inc,)	
Respondents.)	

It is hereby stipulated by and between APEX FINANCIAL & INVESTMENTS INC and FRANCIS Y. CHOE, individually and as designated officer of APEX FINANCIAL & INVESTMENTS INC, and the Complainant, acting by and through James A. Demus, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the First Amended Accusation in this matter, filed on October 19, 2011:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents at a formal hearing on the First Amended Accusation, which

1 hearing was to be held in accordance with the provisions of the
2 Administrative Procedure Act (APA), shall instead and in place
3 thereof be submitted solely on the basis of the provisions of
4 this Stipulation and Agreement (Stipulation).

5 2. Respondents have received, read and understand the
6 Statement to Respondent, the Discovery Provisions of the APA and
7 the Accusations filed by the Department of Real Estate in this
8 proceeding.

9 3. Respondents filed Notices of Defense pursuant to
10 Section 11506 of the Government Code for the purpose of
11 requesting a hearing on the allegations in the Accusation.
12 Respondents hereby freely and voluntarily withdraw said Notices
13 of Defense. Respondents acknowledge that they understand that by
14 withdrawing said Notices of Defense they thereby waive their
15 right to require the Commissioner to prove the allegations in the
16 Accusation at a contested hearing held in accordance with the
17 provisions of the APA and that they will waive other rights
18 afforded to them in connection with the hearing such as the right
19 to present evidence in their defense and the right to cross-
20 examine witnesses.

21 4. This Stipulation is based on the factual
22 allegations contained in the First Amended Accusation. In the
23 interest of expedience and economy, Respondents choose not to
24 contest these allegations, but to remain silent and understand
25 that, as a result thereof, these factual allegations, without
26 being admitted or denied, will serve as a prima facie basis for
27 the disciplinary action stipulated to herein. The Real Estate

1 Commissioner shall not be required to provide further evidence to
2 prove said factual allegations.

3 5. This Stipulation is based on Respondents' decision
4 not to contest the allegations set forth in the First Amended
5 Accusation as a result of the agreement negotiated between the
6 parties. This Stipulation is expressly limited to this
7 proceeding and any further proceeding initiated by or brought
8 before the Department of Real Estate based upon the factual
9 allegations in the First Amended Accusation and is made for the
10 sole purpose of reaching an agreed disposition of this
11 proceeding. The decision of Respondents not to contest the
12 allegations contained in the "Order" herein below, is made solely
13 for the purpose of effectuating this Stipulation. It is the
14 intent and understanding of the parties that this Stipulation
15 shall not be binding or admissible against Respondents in any
16 actions against Respondents by third parties.

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

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

7 DETERMINATION OF ISSUES

8 By reason of the foregoing stipulations and solely for
9 the purpose of settlement of the Accusation without a hearing, it
10 is stipulated and agreed that the following determination of
11 issues shall be made:

12 I

13 The conduct of APEX FINANCIAL & INVESTMENTS INC, as
14 described in Paragraph 4, above, is in violation of California
15 Business and Profession Code ("Code") Sections 10085, 10240,
16 10236.4(b), 10140.6(b) and Sections 2773 and 2840 of Title 10,
17 Chapter 6, California Code of Regulations and is a basis for
18 discipline of APEX FINANCIAL & INVESTMENTS INC's licenses and
19 license rights pursuant to Sections 10177(d) and 10177(g) of the
20 Code.

21 II

22 The conduct of FRANCIS Y. CHOE, as described in
23 Paragraph 4, above, is in violation of Code Section 10159.2, 1
24 and is a basis for discipline of FRANCIS Y. CHOE' licenses and
25 license rights pursuant to Sections 10177(d) and 10177(h) of the
26 Code.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
5
7

2
3

4

5
6
7
8
9
0

- 1
- 2
- 3

4
5
6
7
8
9
0
1

2

3
1
5

1. Respondent pays a monetary penalty pursuant to
Section 10175.2 of the Code at the rate of \$100 for each day of
the suspension for a total monetary penalty of \$3,000.

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

3. No further cause for disciplinary action against
the real estate license of Respondent occurs within two years
from the effective date of the Decision in this matter.

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

5. If Respondent pays the monetary penalty and if no
further cause for disciplinary action against the real estate
license of Respondent occurs within two years from the effective
date of the Decision, the stay hereby granted shall become
permanent.

III.

All licenses and licensing rights of Respondent
FRANCIS Y. CHOE under the Real Estate Law are suspended for a
period of ninety (90) days from the effective date of this

1 Decision; provided, however, that sixty (60) days of said
2 suspension, shall be stayed for two (2) years upon the
3 following terms and conditions:

4 1. Respondent 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 IV.

16 If Respondent FRANCIS Y. CHOE petitions, an additional
17 30 days shall be stayed upon condition that:

18 1. Respondent pays a monetary penalty pursuant to
19 Section 10175.2 of the Code at the rate of \$100 for each day of
20 the suspension for a total monetary penalty of \$3,000.

21 2. Said payment shall be in the form of a cashier's
22 check or certified check made payable to the Recovery Account of
23 the Real Estate Fund. Said check must be received by the
24 Department prior to the effective date of the Decision in this
25 matter.

1 3. No further cause for disciplinary action against
2 the real estate license of Respondent occurs within two years
3 from the effective date of the Decision in this matter.

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

11 5. If Respondent pays the monetary penalty and if no
12 further cause for disciplinary action against the real estate
13 license of Respondent occurs within two years from the effective
14 date of the Decision, the stay hereby granted shall become
15 permanent.

16 V.

17 Respondent FRANCIS Y. CHOE shall within six (6) months
18 from the effective date of the Decision herein, take and pass the
19 Professional Responsibility Examination administered by the
20 Department including the payment of the appropriate examination
21 fee. If Respondent fails to satisfy this condition,
22 the Commissioner may order suspension of Respondent FRANCIS Y.
23 CHOE's license until Respondent passes the examination.

24 VI.

25 All licenses and licensing rights of Respondent
26 FRANCIS Y. CHOE are indefinitely suspended unless or until
27 Respondent provides proof satisfactory to the Commissioner, of

1 having taken and successfully completed the continuing education
2 course on trust fund accounting and handling specified in
3 paragraph (3) of subdivision (a) of Section 10170.5 of the
4 Business and Professions Code. Proof of satisfaction of this
5 requirement includes evidence that respondent has successfully
6 completed the trust fund account and handling continuing
7 education course within 120 days prior to the effective date of
8 the Decision in this matter.

9
10
11 DATED: 5/11/12

James A. Demus
JAMES A. DEMUS, Counsel for
the Department of Real Estate

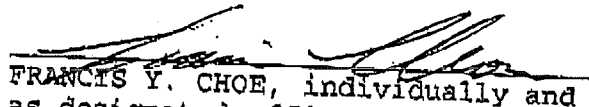
12
13 EXECUTION OF THE STIPULATION

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

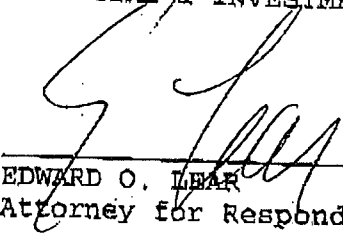
25 Respondents can signify acceptance and approval of the
26 terms and conditions of this Stipulation by faxing a copy of the
27

1 signature page, as actually signed by Respondents, to the
2 Department at the following telephone/fax number: James A. Demus
3 at (213) 576-6917. Respondents agree, acknowledge and understand
4 that by electronically sending to the Department a fax copy of
5 Respondent's actual signature as it appears on the Stipulation,
6 that receipt of the faxed copy by the Department shall be as
7 binding on Respondents as if the Department had received the
8 original signed Stipulation.

9
10 DATED: 5/09/12


FRANCIS Y. CHOE, individually and
as designated officer of APEX
FINANCIAL & INVESTMENTS INC.

11
12
13
14 DATED: 5/9/12


EDWARD O. LEAR
Attorney for Respondents

15
16
17 * * *

18
19 The foregoing Stipulation and Agreement is hereby
20 adopted as my Decision as to Respondents APEX FINANCIAL &
21 INVESTMENTS INC and FRANCIS Y. CHOE and shall become effective at
22 12 o'clock noon on _____, 2012.

23 IT IS SO ORDERED _____, 2012

24
25 Real Estate Commissioner
26
27 _____

1 signature page, as actually signed by Respondents, to the
2 Department at the following telephone/fax number: James A. Demus
3 at (213) 576-6917. Respondents agree, acknowledge and understand
4 that by electronically sending to the Department a fax copy of
5 Respondent's actual signature as it appears on the Stipulation,
6 that receipt of the faxed copy by the Department shall be as
7 binding on Respondents as if the Department had received the
8 original signed Stipulation.

9
10 DATED: _____

11 FRANCIS Y. CHOE, individually and
12 as designated officer of APEX
13 FINANCIAL & INVESTMENTS INC.

14 DATED: _____

15 EDWARD O. LEAR
16 Attorney for Respondents

17 * * *

18
19 The foregoing Stipulation and Agreement is hereby
20 adopted as my Decision as to Respondents APEX FINANCIAL &
21 INVESTMENTS INC and FRANCIS Y. CHOE and shall become effective at
22 12 o'clock noon on JUL 13 2012, 2012.

23 IT IS SO ORDERED June 3, 2012

24 Real Estate Commissioner

25 
26
27

- 10 - By WAYNE S. BELL
Chief Counsel