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

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FILED
NOV 19 2011
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of LENDSURE FINANCIAL SERVICES, INC. and JAMES ANTHONY KONRATH, Respondents.	NO. H-4156 SD STIPULATION AND AGREEMENT

It is hereby stipulated by and between Respondents LENDSURE FINANCIAL SERVICES, INC., ("LENDSURE"), and JAMES ANTHONY KONRATH, ("KONRATH"), (collectively "Respondents"), acting by and through Frank M. Buda, Counsel for Respondents, and the Complainant, acting by and through John W. Barron, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on December 6, 2010, in this matter:

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 Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (hereafter "APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement.

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

3. On December 20, 2010, Respondents filed a Notice of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents acknowledge that Respondents understand that by withdrawing said Notice of Defense, Respondents will thereby waive Respondents' right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that Respondents will waive other rights afforded to Respondents in connection with the hearing such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

4. This Stipulation is based on the factual allegations contained in the Accusation. In the interest of expedience and economy, Respondents choose not to contest these factual allegations, but to remain silent and understand that, as a result thereof, these factual statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set forth below. The Real Estate Commissioner shall not be required to provide further evidence to prove such allegations.

5. This Stipulation and Respondents' decision not to contest the Accusation are made for the purpose of reaching an agreed disposition of this proceeding and are expressly limited to this proceeding and any other proceeding or case in which the Department of Real Estate, the State or the federal government, an agency of this State, or an agency of another state is involved.

6. It is understood by the parties that the Real Estate Commissioner may adopt the Stipulation and Agreement as her decision in this matter, thereby imposing the penalty and sanctions on Respondents' real estate licenses and license rights as set forth in the "Order" below. In the event that the Commissioner in her discretion does not adopt the Stipulation and

Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing and proceeding on the Accusation under all the provisions of the APA and shall not be bound by any admission or waiver made herein.

7. This Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department of Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

8. Respondents understand that by agreeing to this Stipulation and Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business and Professions Code ("the Code"), the cost of the audit which resulted in the determination that Respondents committed the trust fund violation(s) found in the Determination of Issues. The amount of such costs is $3,359.49.

9. Respondents further understand that by agreeing to this Stipulation and Agreement, the findings set forth below in the Determination of Issues become final, and that the Commission may charge said Respondents for the costs of any audit conducted pursuant to Section 10148 of the Code to determine if the violations have been corrected. The maximum cost of said audit shall not exceed $3,359.49.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed that the acts and omissions of Respondents described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondents under the provisions of Sections 10145 and 10177(d) of the Code, and Section 2832 of Title 10 of the California Code of Regulations.

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ORDER

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All licenses and licensing rights of LENDSURE under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Order; provided, however, that:

1. Sixty (60) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

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

b. 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 Order. Should such a determination be made, the Commissioner may, in her discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

2

All licenses and licensing rights of KONRATH under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Order; provided, however, that:

1. Thirty (30) days of said suspension shall be stayed, upon the condition that KONRATH petitions pursuant to Section 10175.2 of the Business and Professions Code and pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at a rate of $50 for each day of the suspension for a total monetary penalty of $1,500.

a. 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 delivered to the Department prior to the effective date of the Decision in this matter.

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b. No further cause for disciplinary action against the real estate license of KONRATH occurs within two (2) years from the effective date of the decision in this matter.

c. If KONRATH 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, KONRATH shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this decision.

d. If KONRATH pays the monetary penalty, and if no further cause for disciplinary action against the real estate license of KONRATH occurs within two (2) years from the effective date of the Decision herein, then the stay hereby granted shall become permanent.

2. The remaining thirty (30) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

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

b. 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 Order. Should such a determination be made, the Commissioner may, in her discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

3. KONRATH shall, within six (6) months from the effective date of this Order, take and pass the Professional Responsibility Examination administered by the Department, including the payment of the appropriate examination fee. If KONRATH fails to satisfy this condition, the Commissioner may order the suspension of all licenses and licensing rights of KONRATH until KONRATH passes the examination.

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4. Notwithstanding any other provision of this Order, all licenses and licensing rights of KONRATH are suspended unless and until he provides proof satisfactory to the Commissioner that he has taken and successfully completed the continuing education course on Trust Fund Accounting and Handling specified in Section 10170.5(a)(3) of the Code. The course must have been completed no earlier than one hundred twenty (120) days prior to the effective date of this Order, and proof must be submitted prior to the effective date of this Order, to prevent suspension of KONRATH's license pursuant to this condition.

3

1. Respondents, jointly and severally, shall pay the sum of $3,359.49 for the Commissioner's cost of the audit which led to this disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. The Commissioner may indefinitely suspend all licenses and licensing right of Respondents pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between Respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondents enter into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

2. Respondents, jointly and severally, shall pay the Commissioner's costs, not to exceed $3,359.49, of any audit conducted pursuant to Section 10148 of the Code to determine if Respondents have corrected the violations described in the Determination of Issues, above, and any other violations found in the audit which led to this disciplinary action. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner detailing the activities performed during the audit and the amount of time spent

performing those activities. If Respondents fail to pay such cost within the sixty (60) days, the Commissioner may indefinitely suspend all licenses and licensing rights of Respondents under the Real Estate Law until payment is made in full or until Respondents enter into an agreement satisfactory to the Commissioner to provide for payment. Upon full payment, the indefinite suspension provided for in this paragraph shall be stayed.

8/29/11
DATED

JOHN W. BARRON, Counsel
Department of Real Estate

* * *

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

8/23/2011
DATED

JAMES ANTHONY KONRATH
Respondent

8/23/2011
DATED

BENJAMIN TIMOTHY CARTER
Designated Officer/Broker for Respondent
LENDSURE FINANCIAL
SERVICES, INC.

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I have reviewed this Stipulation and Agreement and Order as to form and content and have advised my client accordingly.

8-25-11
DATED

FRANK M. BUDA
Attorney for Respondents, LENDSURE FINANCIAL SERVICES, INC., and JAMES ANTHONY KONRATH

* * *

The foregoing Stipulation and Agreement is hereby adopted by me as my Decision in this matter as to Respondents LENDSURE FINANCIAL SERVICES, INC., and JAMES ANTHONY KONRATH and shall become effective at 12 o'clock noon on DEC - 9 2011.

IT IS SO ORDERED 11-9-11.

BARBARA J. BIGBY
Acting Real Estate Commissioner

JOHN W. BARRON, Counsel (SBN 171246)
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FILED
DEC - 6 2010
DEPARTMENT OF REAL ESTATE
By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of LENDSURE FINANCIAL SERVICES, INC., and JAMES ANTHONY KONRATH, Respondents.	No. H-4156 SD ACCUSATION

The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against LENDSURE FINANCIAL SERVICES, INC. (hereafter "LENDSURE"), and JAMES ANTHONY KONRATH (hereafter "KONRATH"), (hereafter collectively "Respondents"), is informed and alleges as follows:

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The Complainant makes this Accusation in his official capacity.

2

At all times relevant herein, LENDSURE was and is licensed by the Department of Real Estate (hereafter "the Department") as a corporate real estate broker.

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3

At all times relevant herein, KONRATH was and is licensed by the Department as a real estate broker.

4

At all times relevant herein, KONRATH was and is licensed by the Department as the designated broker/officer of LENDSURE. As the designated broker/officer, KONRATH is responsible, pursuant to Section 10159.2 (supervision responsibility of corporate officer in charge) of the California Business and Professions Code (hereafter "the Code"), for the supervision of the activities of the officers, agents, real estate licensees and employees of LENDSURE for which a real estate license is required.

5

At all times mentioned, Respondents LENDSURE and KONRATH engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(d) of the Code, including performing services for one or more borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: negotiate one or more loans for, or perform services for, borrowers and/or lenders with respect to the collection of advance fees and loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property; and charged, demanded or collected an advance fee for any of the services offered.

6

Whenever reference is made in an allegation in this Accusation to an act or omission of LENDSURE, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with LENDSURE committed such act or omission while engaged in furtherance of the business or operations of

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LENDSURE and while acting within the course and scope of their corporate authority and employment.

FIRST CAUSE OF ACTION

7

On or about the period of October 5, 2009, and continuing intermittently through October 23, 2009, an audit was conducted of the records of LENDSURE at its main office located at 11939 Rancho Bernardo Road, Suite 204, San Diego, California. The auditor herein examined the records for the period of October 20, 2008, through August 31, 2009 (the audit period).

8

While acting as a real estate broker as described in Paragraph 5, above, and within the audit period, LENDSURE maintained the following bank account for the receipt and disbursement of trust funds (advance fees), and for its general business activities:

Bank of America
16849 Bernardo Center Drive
San Diego, CA 92128

Account Name:	Lendsure Financial Services Inc.
Account No.:	10897-70181
Signatories:	James Konrath (REB) Joseph Lydon (Unlicensed) Stuart Marvin (Unlicensed)

9

The audit described in Paragraph 7, above, revealed that in the course of the activities described in Paragraph 5, above, LENDSURE performed, or failed to perform, the following acts:

(a) LENDSURE failed to maintain a control record for the trust funds received (preparation fees collected before the completion of the entire loan modification service) and disbursed in connection with loan modification activity. Such acts and/or

omissions by LENDSURE violate Section 10145 (handling of trust funds) of the Code and Section 2831 (maintenance of trust fund records) of the Regulations.

(b) LENDSURE failed to maintain separate records for each beneficiary of funds held in its trust account. Such acts and/or omissions by LENDSURE violate Section 10145 of the Code and Section 2831.1 (requirement of separate records for each beneficiary or transaction) of the Regulations.

(c) LENDSURE failed to reconcile the total of separate beneficiary/property records with a control record on a monthly basis. Such acts and/or omissions by LENDSURE violate Section 10145 of the Code and Section 2831.2 (trust fund reconciliation requirement) of the Regulations.

(d) LENDSURE failed to designate its bank account used for trust funds received and disbursed as a trust account. Such acts and/or omissions by LENDSURE violate Section 10145 of the Code and Section 2832 (trust fund handling) of the Regulations.

(e) LENDSURE allowed Joseph Lydon and Stuart Marvin, both unlicensed, to be signatories on the trust account with fidelity bond coverage of $300,000, with a deductible of $25,000. Such acts and/or omissions by LENDSURE violate Section 10145 of the Code and Section 2834 (trust account withdrawals) of the Code.

(f) LENDSURE collected advance fees from principals for providing loan modification services and deposited those funds into its general business bank account instead of a trust account. Such acts and/or omissions by LENDSURE violate Section 10146 (deposit of advance fees into trust account) of the Code.

(g) LENDSURE collected advance fees from principals for providing loan modification services and deposited those fees into LENDSURE's general business account and commingled with LENDSURE's funds. Such acts and/or omissions by LENDSURE violate Sections 10145 and 10176(e) (commingling of funds) of the Code and Section 2835 (commingling of funds) of the Regulations.

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(h) LENDSURE collected advance fees from principals for providing loan modification services and did not maintain and provide an accounting to those principals showing the services rendered, identification of the trust account into which the advance fees were deposited and details of how those funds were disbursed. Such acts and/or omissions by LENDSURE violate Section 2972 (accounting content) of the Regulations.

10

The acts and/or omissions of LENDSURE, as alleged in Paragraph 9, above, are grounds for discipline under Sections 10177(d) (willful disregard or violation of real estate law) and 10177(g) (demonstrated negligence or incompetence involving acts for which license is required) of the Code. In addition, the Department is entitled to reimbursement for the costs of its audit pursuant to Section 10148 (cost of audit in final decision following disciplinary hearing) of the Code.

SECOND CAUSE OF ACTION

11

In connection with the operation and conduct of the real estate activities described in Paragraph 5, above, LENDSURE engaged in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of advance fees within the meaning of Sections 10026 and 10131.2 of the Code including but not limited to the following:

Borrower	Property Address	Payment Date	Advance Fee Amount
Jaime Raffone	16217 Winecreek Road, San Diego	03/06/09	$1595
Ericco Perrota	2860-A Casey Street, San Diego	02/25/09	$1595
Rick McClure	6513 Puerto Drive, Rancho Murrieta	03/12/09	$1595

Clementine Wamboye	3789 Thermiac Gulf Way, Sacramento	04/07/09	$1595
Gina Rawson	46569 El Viento Seco Drive, Temecula	05/05/09	$1595
Caitlin Kelley	227 La mesa Avenue, Encinitas	05/14/09	$ 895
Antonio Lopez	3205 E. Levelglen Drive, West Covina	05/16/09	$ 895

In collecting such advance fees, LENDSURE used a form of advance fee agreement which had not been provided to the Department for review and approval prior to its use. Such acts and/or omissions by LENDSURE violate Section 10085 (prior submission of advance fee materials) of the Code and Section 2970 (prior submission of advance fee materials).

12

The acts and/or omissions of LENDSURE, as alleged in Paragraph 11, above, are grounds for the revocation or suspension of Respondent's real estate license or license rights under Sections 10177(d) and 10177(g) of the Code.

THIRD CAUSE OF ACTION

13

LENDSURE failed to retain records of security deposit disposition statements, tenant agreements and invoices related to the real property located at 1452 Grand Avenue, San Diego, California. Such acts and/or omissions by LENDSURE violate Section 10148 (records retention requirements) of the Code.

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The acts and/or omissions of LENDSURE, as alleged in Paragraph 13, above, are grounds for discipline under Sections 10177(d) and 10177(g) of the Code.

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FOURTH CAUSE OF ACTION

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At all times relevant herein, KONRATH was responsible, as the designated broker/officer for LENDSURE, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. KONRATH failed to exercise reasonable supervision and control over the property management brokering activities of LENDSURE. In particular, KONRATH permitted, ratified and/or caused the conduct described in the First, Second and Third Causes of Action, above, to occur, and failed to take reasonable steps, including, but not limited to, the handling of trust funds, collection of advance fees, supervision of employees and the implementation of policies, rules, procedures and systems to ensure the compliance of the corporation with the Real Estate Law and the Regulations. Such acts and/or omissions of KONRATH violate Section 10159.2 (responsibility of corporate officer in charge) of the Code and Section 2725 (broker supervision requirement) of the Regulations.

16

The acts and/or omissions of KONRATH, as set forth in Paragraph 15, above, constitute grounds for disciplinary action under Sections 10177(d), 10177(g) and 10177(h) (reasonable supervision responsibility of broker) of the Code.

PIOR ADMINISTRATIVE PROCEEDINGS

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On or about April 26, 2010, the Department issued a Desist and Refrain Order directing LENDSURE to immediately desist and refrain from charging, demanding, claiming, collecting or receiving advance fees. On or about October 21, 2010, a hearing was held on the Desist and Refrain Order. On or about October 27, 2010, a Proposed Decision was issued by the Office of Administrative Hearings upholding the Department's Desist and Refrain Order.

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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 Respondents under the Code, and for such other and further relief as may be proper under applicable provisions of law.

CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 6th day of December, 2010.