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DEPARTMENT OF REAL ESTATE

By L. Frost

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of JBC FINANCIAL SERVICES, INC. and THOMAS B. McGOVERN, Respondent.	)))))))	No. H-10730 SF

ORDER SUSPENDING REAL ESTATE BROKER LICENSES

TO: JBC FINANCIAL SERVICES, INC. and THOMAS B. McGOVERN ("Respondent McGOVERN"), (collectively referred to as "Respondents").

On December 21, 2009, stayed suspensions of Respondents' real estate broker licenses were issued by the Department of Real Estate on the terms, conditions and restrictions set forth in the Real Estate Commissioner's Decision effective January 19, 2010, in Case No. H-10730 SF. This Decision granted the stayed suspensions of Respondents' real estate broker licenses subject to the provisions of Section 10156.7 of the Business and Professions Code ("the Code") of the State of California, and the additional term, condition and restriction imposed under authority of Section 10148 of the Code that Respondents shall, jointly and severally, pay the Commissioner's reasonable costs for the audit which led to the disciplinary action for trust

fund violations as set forth in the Proposed Decision dated November 19, 2009. The cost of said audit totaled $1,969.30.

On or about February 8, 2010, the Commissioner sent an initial invoice to Respondent McGOVERN for the reasonable costs of the audit. This initial invoice was received at Respondent McGOVERN's office on or about February 16, 2010.

On or about May 5, 2010, the Commissioner sent a second invoice seeking reimbursement for the reasonable costs of the audit. This second invoice was received at Respondent McGOVERN's office on May 17, 2010.

On or about May 17, 2010, Respondent McGOVERN sent the Commissioner a letter requesting an extension of time and payment plan under which to pay the balance of the audit costs.

On or about May 19, 2010, the Commissioner sent a letter to Respondent McGOVERN granting him a six month extension and informing Respondent McGOVERN that his request for a payment plan had been approved. The first payment of $328.25 under the approved payment plan was due on June 21, 2010 and the last payment was due on November 21, 2010.

As of November 15, 2011, the Commissioner has not received any payments for the Commissioner's cost of the audit, as described above.

The Commissioner has determined that Respondents failed to satisfy the conditions described above, and as such, that Respondents are in violation of Sections 10148 and 10177(d) of the Code.

NOW, THEREFORE, IT IS ORDERED under authority of Section 10156.7 of the Code of the State of California that the real estate licenses heretofore issued to Respondents and the exercise of any privileges thereunder are hereby suspended until such time as Respondents provides proof satisfactory to the Commissioner that Respondents have satisfied the conditions, described above, or pending final determination made after hearing (see "Hearing Rights" set forth below).

IT IS FURTHER ORDERED that all license certificates and identification cards issued by the Department of Real Estate which are in the possession of Respondents be immediately surrendered by personal delivery or by mailing in the enclosed self-addressed, stamped envelope to:

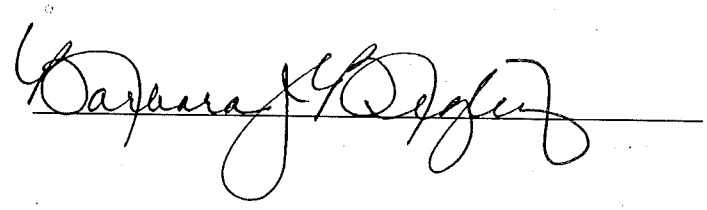
DEPARTMENT OF REAL ESTATE
ATTN: Flag Section
P. O. Box 187000
Sacramento, CA 95818-7000

HEARING RIGHTS: Respondents have the right to a hearing to contest the Commissioner's determination that Respondents are in violation of Sections 10148 and 10177(d) of the Code. If Respondents desire a hearing, Respondents must submit a written request. The request may be in any form, as long as it is in writing and indicates that Respondents want a hearing. Unless a written request for a hearing, signed by or on behalf of Respondents, is delivered or mailed to the Department of Real Estate, Legal Section, at 2201 Broadway, P. O. Box 187007, Sacramento, California 95818-7007, within twenty (20) days after the date that this Order was mailed to or served upon Respondents, the Department will not be obligated or required to provide Respondents with a hearing.

This Order shall be effective immediately.

DATED: 2/2/12

BARBARA J. BIGBY
Acting Real Estate Commissioner



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DEPARTMENT OF REAL ESTATE

By K. Mur

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of JBC FINANCIAL SERVICES, INC. and THOMAS B. McGOVERN, Respondents.	)	NO. H-10730 SF OAH NO. 2009080089

DECISION

The Proposed Decision dated November 19, 2009, 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 JAN 19 2010

IT IS SO ORDERED 12/21/2009.

JEFF DAVI
Real Estate Commissioner

By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of: JBC FINANCIAL SERVICES, INC. and THOMAS B. McGOVERN, Respondents.	Case No. H-10730 SF OAH No. 2009080089

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on October 8, 2009, in Oakland, California.

Real Estate Counsel Richard K. Uno represented complainant Joe M. Carrillo, a Deputy Real Estate Commissioner.

Respondent Thomas B. McGovern was present and represented himself.

The record was left open until October 15, 2009, for respondent to submit a copy of an Independent Contractor Agreement with Rodney Arthur Strong. The document was received on October 14, 2009, and entered into evidence as Exhibit N. Other documents submitted by respondent were not considered. On October 21, 2009, complainant filed an objection to consideration of Exhibit N, as it was not submitted to complainant timely. Complainant's objection was marked for identification as Exhibit 6, and overruled. The record was closed and the matter was submitted for decision on October 21, 2009.

FACTUAL FINDINGS

1. At all times relevant to this proceeding, respondent JBC Financial Services, Inc., has been licensed by the Department of Real Estate under the Real Estate Law (Bus. & Prof. Code, div. 4, pt. 1) as a corporate real estate broker by and through respondent Thomas B. McGovern as designated officer-broker.

2. At all times relevant to this proceeding, respondent Thomas B. McGovern has been licensed by the department as the designated broker/officer of JBC Financial Services Inc. As the designated broker/officer, McGovern is responsible for the supervision of the

activities of the officers, agents, real estate licensees and employees of JBC Financial Services for which a real estate license is required.

3. At all times relevant, respondents JBC Financial Services and respondent McGovern were engaged in the business of real estate brokers within the meaning of Business and Professions Code section 10131, subdivisions (a) and (d), in that they operated and conducted a loan mortgage business.

Department Audit

4. On May 4, 2009, the department conducted an audit of JBC's branch office located at 6056 Rutland Drive, Suite 8, Carmichael, California. The audit period was from January 1, 2008, through April 30, 2009.

5. Within the audit period, JBC accepted or received funds in trust on behalf of borrowers in connection with its mortgage loan brokerage activities, deposited those funds into a bank account[1] (Trust #1) maintained by JBC at Comerica Bank, 444 South El Camino Real, San Mateo, California, and made disbursements of the trust funds.

6. As established through the audit, respondents failed to comply with the following provisions of the Real Estate Law:

a. They failed to designate the Trust #1 as a trust account under the name of JBC Financial Services, Inc., as required by California Code of Regulations, title 10, section 2832.

b. They failed to maintain control records for Trust #1 as required by California Code of Regulations, title 10, section 2831.

c. They failed to maintain separate beneficiary records for Trust #1 as required by California Code of Regulations, title 10, section 2831.1.

d. They failed to reconcile the control record with the separate beneficiary records monthly as required by California Code of Regulations, title 10, section 2831.2.

e. They failed to have a borrower sign the Mortgage Loan Disclosure Statement for property known as 1933 Nepal Court, Yuba City, California, as required by California Code of Regulations, title 10, section 2842.5.

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[1] Trust #1 was entitled JBC Financial Services, Inc. The number of the trust account was 1894114006.

f. They failed to notify the department of its employment of Antonio Garnica Torres as a real estate salesman, as required by California Code of Regulations, title 10, section 2752.

7. It was not established that respondents failed to comply with California Code of Regulations, title 10, section 2726, with respect to JBC's Broker Salesman Agreement with Rodney Arthur Jong. While respondent McGovern was not able to provide a copy of the executed agreement to the auditor, he did provide a copy at hearing.

8. Respondent McGovern failed to exercise reasonable supervision and control over the activities of respondent JBC Financial Services, by permitting the activities and violations set forth in Finding 6 to occur.

Respondents' Evidence

9. Trust #1 was a bank account used for deposits and disbursements related to credit report fees. For a short period of time, and for a small number of clients, Respondent McGovern collected from clients in advance a fee which could cover the cost of running a credit report. At the end of the month respondent McGovern would pay the credit reporting agency for all reports he ordered that month. Respondent McGovern provided his clients with a receipt for the funds he collected from them, but did not understand that the fees he collected constituted trust funds. As a result, he failed to comply with the requirements of the Real Estate Law pertaining to trust accounts in connection with Trust #1 as set forth in Finding 6.

10. Respondents no longer collect fees from clients for credit reports.

11. In May 2009 respondents changed the name of the Trust #1 to JBC Financial Services Trust Account. The trust account has not been utilized other than to deposit $700 from operating funds. Respondents have been compliant with maintaining the trust records required by the Real Estate Law.

12. The main office of respondent JBC is in San Mateo, not Sacramento. The department's audit was conducted in the Sacramento branch office, which opened in November 2008 and closed in February 2009 (although the department was not notified of the closure until May 2009). A total of four loans were transacted while the office was open.

13. Respondents do not perform loan modifications.

LEGAL CONCLUSIONS

1. The standard of proof applied in this proceeding is clear and convincing evidence.

2. Pursuant to Business and Professions Code section 10177, subdivision (d), the Commissioner may suspend or revoke a real estate license if the licensee has "[w]ilfully disregarded or violated the Real Estate Law . . . or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law."[2] Cause for license discipline under this section exists by reason of respondents' violation of California Code of Regulations, title 10, sections 2832, 2831, 2831.1, 2831.2, 2842.5, and 2752 as set forth in Finding 6.

3. Pursuant to Business and Professions Code section 10159.2, subdivision (a), a corporate officer in charge is responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees, including its real estate salespersons, as necessary to secure full compliance with the Real Estate Law. Cause for license discipline exists by reason of respondent McGovern's violation of this section, in conjunction with Business and Professions Code section 10177, subdivision (d), as set forth in Findings 2, 6 and 7.

4. Pursuant to Business and Professions Code section 10177, subdivision (h), the Commissioner may discipline a broker licensee who, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and over the activities of the corporation for which a real estate license is required. Cause for license discipline exists by reason of respondent McGovern's violation of this section as set forth in Findings 2, 6 and 7.

5. Complainant argues that respondents should be ordered to pay for the cost of the department's audit and for the cost of a subsequent audit. That argument is reasonable. The obligation to pay the cost of the audits shall be joint and several. Because the cost of the two audits was not established, respondents may be permitted to pay it over time should the amount exceed $5,000. Complainant also argues that each license should be actually suspended for 30 days. This request is not reasonable, because the violations committed in this case do not warrant an actual suspension. The primary violations committed by respondent McGovern arise from his failure to understand what constitutes trust funds. The amount of trust funds collected was small, and the practice took place for a short period of time. Respondents have changed business practices and appear to be in compliance with the rules and regulations regarding trust funds. All things considered, a stayed suspension is appropriate.

ORDER

All licenses and licensing rights of respondents JBC Financial Services, Inc., and Thomas B. McGovern are suspended for 30 days from the effective date of this Decision; provided, however, that the suspensions shall be stayed upon the following terms and conditions:

[2] The Real Estate Law is found at Business and Professions Code section 10000 et seq.

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

2. Pursuant to Business and Professions Code section 10148, respondents shall, jointly and severally, pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and, b) a subsequent audit to determine if respondents have corrected the trust fund violation(s) found in Legal Conclusion 2. 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 costs, including mileage, time to and from the auditor's place of work and per diem. Respondents shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. If the amount of the audits exceeds $5,000, the Commissioner may permit respondents to pay that amount over a longer period of time. The Commissioner may, in his discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between respondents and the Commissioner. The vacation and the set aside of the stay 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. Should no order vacating the stay be issued, the stay imposed herein shall become permanent.

DATED: November 19, 2009

Melissa Crowell

MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

RICHARD K. UNO, Counsel (SBN 98275)
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-2380

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DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of JBC FINANCIAL SERVICES, INC. and THOMAS B. McGOVERN, Respondents.	NO. H-10730 SF ACCUSATION

The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of the State of California, for Accusation against Respondent JBC FINANCIAL SERVICES, INC. (JBC), and Respondent THOMAS B. McGOVERN, (McGOVERN), is informed and alleges as follows:

1

The Complainant makes this Accusation against Respondents in his official capacity.

2

JBC is presently licensed and/or has license rights by the Department of Real Estate (the Department) as a corporate real estate broker under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (the Code).

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3

At all times herein mentioned, McGOVERN was licensed by the Department as the designated broker/officer of JBC. As the designated broker/officer, McGOVERN was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of JBC for which a real estate license is required.

4

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Section 10131(d) of the Code, including the operation and conduct of a loan brokerage business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents solicited lenders and borrowers for loans secured directly or collaterally by liens on real property, and wherein Respondents arranged negotiated, processed and consummated such loans.

5

Whenever reference is made in an allegation in this Accusation to an act or omission of JBC, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with JBC committed such an act or omission while engaged in furtherance of the business or operations of JBC and while acting within the course and scope of their corporate authority and employment.

FIRST CAUSE OF ACTION

6

On May 4, 2009, an audit was conducted of JBC's branch office located at 6056 Rutland Drive, Suite. 8 in Carmichael, CA, where the auditor examined records for the period of January 1, 2008 through April 30, 2009 (the audit period).

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While acting as a real estate broker as described in Paragraph 4, above, and within the audit period, JBC accepted or received funds in trust (trust funds) from or on behalf of lender, investors, borrowers and others in connection with the mortgage loan brokerage activities, deposited or caused to be deposited those funds into a bank account maintained by JBC at Comerica Bank, 444 South El Camino Real, San Mateo, California, Account No. 1894114006, entitled "JBC Financial Services, Inc." (Trust #1), and thereafter from time to time made disbursements of said trust funds.

8

In the course of the activities described in Paragraph 7, in connection with the collection and disbursement of trust funds, Respondents:

(a) Failed to designate Trust #1 as a trust account and was not under the name of JBC Financial Services, Inc. as trustee as required by Section 2832 of Chapter 6, Title 10, California Code of Regulations (Regulations);

(b) Failed to maintain control records for Trust #1 as required by Section 2831 of the Regulations;

(c) Failed to maintain separate beneficiary records for Trust #1 as required by Section 2831.1 of the Regulations;

(d) Failed to reconcile the control record with the separate beneficiary records, as described above, at least once each month, as required under Section 2831.2 of the Regulations;

(e) For certain real property known as 1933 Nepal Court, Yuba City, California, failed to have the borrower sign the Mortgage Loan Disclosure Statement (MLDS) as required by Section 2842.5 of the Regulations;

(f) JBC's Broker Salesman Agreement with Rodney Arthur Jong was not signed by either party as required by Section 2726 of the Regulations, and;

(g) Although JBC hired Antonio Garnica Torres, a licensed real estate salesperson, it failed to notify the Department of such employment as required by Section 2752 of the Regulations.

9

The acts and/or omissions of Respondents as alleged above violate Sections of the Code (BPC) and Regulations (Reg.) and constitute grounds for disciplinary action under the provisions set out below:

Paragraph	Violation	Grounds for Discipline
10 (a)	Reg. 2832	BPC 10177(d)
10 (b)	Reg. 2831	BPC 10177(d)
10 (c)	Reg. 2831.1	BPC 10177(d)
10 (d)	Reg. 2831.2	BPC 10177(d)
10 (e)	Reg. 2842.5	BPC 10177(d)
10 (f)	Reg. 2726	BPC 10177(d)
10 (g)	Reg. 2752	BPC 10177(d)

SECOND CAUSE OF ACTION

10

At all times herein above mentioned, McGOVERN was responsible, as the designated broker officer of JBC, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. McGOVERN failed to exercise reasonable supervision and control over the property management brokering activities of JBC. In particular, McGOVERN permitted, ratified and/or caused the conduct described in the First and Second Causes of Action, above, to occur, and failed to take reasonable steps, including but not limited to the handling of trust funds, 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.

11

The above acts and/or omissions of McGOVERN constitute grounds for disciplinary action under the provisions of Section 10177 (d) and (h) and violate Section 10159.2 of the Code and Section 2725 of the Regulations.

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 Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.

JOE M. CARILLO
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 16 day of July, 2009.