FILED

JAN 27 2012

DEPARTMENT OF REAL ESTATE

By R. Jones

Department of Real Estate
P.O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0781

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of GENE YAKUBOVICH, Respondent.	No. H-11080 SF STIPULATION AND AGREEMENT

It is hereby stipulated by and between GENE YAKUBOVICH (hereinafter "Respondent") and his attorney, Frank M. Buda, and the Complainant, acting by and through Truly Sughrue, Counsel for the Department of Real Estate (hereinafter "Department"), as follows for the purpose of settling and disposing the Accusation filed on March 9, 2011 in this matter:

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

2. Respondent has received, read, and understands the Statement to Respondent, and the Discovery Provisions of the APA filed by the Department in this proceeding.

3. Respondent 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. Respondent hereby freely and voluntarily withdraw said Notice of Defense. Respondent acknowledges that Respondent understands that by withdrawing said Notice of Defense Respondent will thereby waive Respondent's rights to require the Real Estate Commissioner (hereinafter "Commissioner") to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA, and that Respondent will waive other rights afforded to Respondent 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 expediency and economy, Respondent chooses not to contest these factual allegations, but to remain silent and understands 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 Commissioner shall not be required to provide further evidence to prove such allegations.

5. This Stipulation and Respondent's 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, the state or federal government, an agency of this state, or an agency of another state is involved.

6. Respondent understands that by agreeing to this Stipulation and Agreement, Respondent agrees to pay, pursuant to Section 10148 of the California Business and Professions Code (hereinafter "Code"), the cost of the audit which resulted in the determination that Respondent committed the trust fund violation(s) found in the Determination of Issues. The amount of said costs is $4,870.50.

7. Respondent further understands that by agreeing to this Stipulation and Agreement in Settlement, the findings set forth below in the Determination Of Issues become final, and that the Commissioner may charge said Respondent for the costs of any audit conducted pursuant to Section 10148 of the Code to determine if the violations have been corrected. The maximum costs of said audit shall not exceed $4,870.50.

8. It is understood by the parties that the Commissioner may adopt the Stipulation and Agreement as the Commissioner's decision in this matter thereby imposing the penalty and sanctions on the real estate licenses and license rights of Respondent as set forth in the below "Order". In the event that the Commissioner in the Commissioner's discretion does not adopt the Stipulation and Agreement, it shall be void and of no effect, and Respondent 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.

9. The Order or any subsequent Order of the Commissioner made pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

* * *

DETERMINATION OF ISSUES

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

I

The acts and omissions of Respondent as described in the First Cause of Action of the Accusation are grounds for the suspension or revocation of Respondent's licenses and license rights under Section 10177(d) of the Code in conjunction with Sections 10085, and 10085.5 of the Code and Sections 2970 of Title 10 of the California Code of Regulations (hereinafter "the Regulations").

II

The acts and omissions of Respondent as described in the Second Cause of Action of the Accusation are grounds for the suspension or revocation of Respondent's licenses and license rights under the following sections of the Code and Regulations:

(1) As to Paragraph 12(b), under Section 10177(d) of the Code in conjunction with Section 2831 of the Regulations;

(2) As to Paragraph 12(c), under Section 10177(d) of the Code in conjunction with Section 2831.1 of the Regulations;

(3) As to Paragraph 12(d), under Section 10177(d) of the Code in conjunction with Section 2831.2 of the Regulations;

(4) As to Paragraph 12(e), under Section 10177(d) of the Code in conjunction with Section 2834 of the Regulations;

(5) As to Paragraph 13(a), under Section 10177(d) of the Code in conjunction with Section 2831 of the Regulations;

(6) As to Paragraphs 13(b), under Section 10177(d) of the Code in conjunction with Section 10160 of the Code and Section 2753 of the Regulations; and

* * *

ORDER

I

All licenses and licensing rights of Respondent 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 Respondent petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of $100 for each day of the suspension for a total monetary penalty of $3,000.

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 Order in this matter.

b) No further cause for disciplinary action against the Real Estate licenses of Respondent occurs within two (2) years from the effective date of the decision in this matter.

c) If Respondent fails to pay the monetary penalty as provided above prior to the effective date of this Order, the stay of the suspension shall be vacated as to that Respondent and the order of suspension shall be immediately executed, under this Order, in which event the said Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for the money paid to the Department under the terms of this Order.

d) If Respondent pays the monetary penalty and any other moneys due under this Stipulation and Agreement and if no further cause for disciplinary action against the real estate license of said Respondent occurs within two (2) years from the effective date of this Order, the entire stay hereby granted this Order, as to said Respondent only, shall become permanent.

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

a) 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,

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 his 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.

3. All licenses and licensing rights of Respondent are indefinitely suspended unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in

paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.

4. All licenses and licensing rights of Respondent are indefinitely suspended unless or until Respondent provides proof satisfactory to the Commissioner, of having paid both Ernesto Montes and Natalia Schatchkova the difference between the amount they paid to Respondent for loan modification services ($3500) and the amount Respondent represented to the Department Respondent would charge for loan modification services ($2995).

5. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of $4,870.50 for the Commissioner's cost of the audit which led to this disciplinary action. Respondent shall pay such cost within sixty (60) days of receiving an invoice therefor from the Commissioner. The Commissioner may suspend the Respondent's license 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 the Respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters 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.

6. Pursuant to Section 10148 of the Code, Respondent shall pay the Commissioner's reasonable cost, not to exceed $4,870.50, for an audit to determine if Respondent has corrected the trust fund violation(s) found the Determination of Issues. 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. Respondent shall pay such cost within sixty (60) days of receiving an invoice therefor from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner

may suspend Respondent's license 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 Respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters 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.

8-Dec-11
DATED

TRULY SUGHRUE
Counsel for Complainant

* * *

I have read the Stipulation and Agreement, discussed it with my counsel, 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, 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.

12-08-2011
DATED

GENE YAKUBOVICH
Respondent

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

12-8-2011
DATED

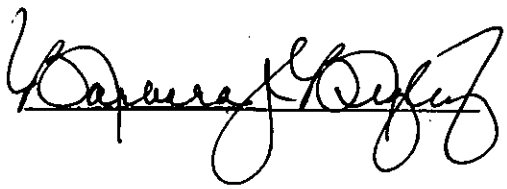
FRANK M. BUDA
Attorney for Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision and shall become effective at 12 o'clock noon on FEB 16 2012

IT IS SO ORDERED 1/9, 2012.

BARBARA J. BIGBY
Acting Real Estate Commissioner



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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of GENE YAKUBOVICH, Respondent.	No. H-11080 SF ACCUSATION

The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against GENE YAKUBOVICH (hereinafter "Respondent"), is informed and alleges as follows:

PRELIMINARY ALLEGATIONS

1

The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

2

Respondent is presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "the Code").

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3

At all times mentioned, Respondent was and is licensed by the Department individually as a real estate broker.

4

At all times mentioned, Respondent 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:

(a) Section 10131(a) of the Code, including the operation and conduct of a real estate resale brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase and resale of real property; and

(b) Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein you, for or in expectation of compensation, for another or others, solicited borrowers or lenders or negotiated loans or collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

FIRST CAUSE OF ACTION

5

Each and every allegation in Paragraphs 1 through 4, inclusive, above are incorporated by this reference as if fully set forth herein.

6

In connection with the operation and conduct of the activities described in Paragraph 4, Respondent 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 (hereinafter "advance fee") of the Code including but not limited to the following:

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HOMEOWNER	Property Address	AMOUNT
Stanislav A.	116 Eagle Creek Ct., Folsom	$3,500
Natalia S.	1762 26th Avenue, San Francisco	$3,500
Vitality G.	525 Almer Road #311, Burlingame	$400
Alexander S.	8032 Del Monte Avenue, Newark	$400
Ernesto M.	971 B Street, Hollister	$3,500

7

In connection with the collection and handling of said advance fees, Respondent:

(a) Failed to cause the advance fee contract and all materials used in obtaining the advance fee agreement to be submitted to the Department of Real Estate prior to use as required by Section 10085 of the Code and Section 2970 of Title 10 of the California Code of Regulations (hereinafter "the Regulations");

(b) Failed to immediately deliver said trust funds into a neutral escrow depository, or into a trust fund account in violation of Section 10146 of the Code; and

(c) Failed to furnish the principal borrower the verified accounting required by Section 10146 of the Code and Section 2972 of the Regulations.

8

The acts and/or omissions of Respondent described in the First Cause of Action, constitute violation of Section 10177(d) of the Code in conjunction with Sections 10085, 10085.5, and 10146 of the Code and Sections 2970 and 2972 of the Regulations, and are cause for the suspension or revocation of the license and license rights of Respondent.

SECOND CAUSE OF ACTION

9

Each and every allegation in Paragraphs 1 through 8, inclusive, above, is incorporated by this reference as if fully set forth herein.

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10

In acting as a real estate broker, as described in Paragraph 6, Respondent accepted or received funds in trust (hereinafter "trust funds") from or on behalf of lenders, investors, note purchasers, borrowers, and others in connection with the servicing, solicitation, negotiation, processing, and consummation of mortgage loan investments by Respondent.

11

The aforesaid trust funds accepted or received by Respondent were deposited or caused to be deposited by Respondent into one or more bank accounts (hereinafter "trust funds accounts") maintained by Respondent for the handling of trust funds, including but not limited to the following:

TITLE AND ACCOUNT NUMBERS	BANK
GEM Consultants, LLC Account No. xxxxx-61202 (hereinafter "Bank 1")	Bank of America 300 S. El Camino Real San Mateo, CA 94402
GEM Consultants Account No. x xxx xxxx 4560 (hereinafter "Bank 2")	US Bank 475 El Camino Real Millbrae, CA 94030
GEM Consultants Account No. x xxx xxxx 4552 (hereinafter "Bank 3")	US Bank 475 El Camino Real Millbrae, CA 94030

12

In connection with the receipt and disbursement of trust funds, Respondent:

(a) Failed to deposit trust funds into one or more trust funds accounts in the name of Respondent as trustee at a bank or other financial institution, in conformance with Section 10145 of the Code and Section 2832 of the Regulations;

(b) Failed to maintain a written control record of all trust funds received and disbursed, containing all information required by Section 2831 of the Regulations;

(c) Failed to maintain separate beneficiary or transaction records containing all information required by Section 2831.1 of the Regulations;

(d) Failed to reconcile the balance of separate beneficiary or transaction records with the control record of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations for each account as required by Section 2831.2 of the Regulations; and

(e) Caused, permitted, and/or allowed, the possible withdrawal of trust funds from the trust funds accounts by a person who was not licensed by the Department and not covered by a fidelity bond in violation of Section 2834 of the Regulations.

13

In the course of the activities described in Paragraph 4, Respondent:

(a) Failed to maintain a written control record of all trust funds received and not placed in broker's trust account containing all information required by Section 2831 of the Regulations; and

(b) Failed to retain the real estate salesperson license certificates of Joseph Minevich, Vadim N. Ryabov, and Aden F. Wong at his main office as required by Section 10160 of the Code and Section 2753 of the Regulations.

14

The facts alleged in the Second Cause of Action are grounds for the suspension or revocation of the license and license rights of Respondent under the following sections of the Code and Regulations:

(1) As to Paragraphs 12(a), under Section 10177(d) of the Code in conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

(2) As to Paragraph 12(b), under Section 10177(d) of the Code in conjunction with Section 2831 of the Regulations;

(3) As to Paragraph 12(c), under Section 10177(d) of the Code in conjunction with Section 2831.1 of the Regulations;

(4) As to Paragraph 12(d), under Section 10177(d) of the Code in conjunction with Section 2831.2 of the Regulations;

(5) As to Paragraph 12(e), under Section 10177(d) of the Code in conjunction with Section 2834 of the Regulations;

(6) As to Paragraph 13(a), under Section 10177(d) of the Code in conjunction with Section 2831 of the Regulations; and

(7) As to Paragraphs 13(b), under Section 10177(d) of the Code in conjunction with Section 10160 of the Code and Section 2753 of the Regulations.

In addition, the Department is entitled to reimbursement of the costs of its audit pursuant to Section 10148 of the Code.

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 Respondent 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.

E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 25th day of February, 2011