FILED

MAY 04 2012

DEPARTMENT OF REAL ESTATE

BY: _____

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of NEWKEY FINANCIAL CORP, a corporate real estate broker; and KYLE EDWARD O'KELLY, individually and as designated officer of NewKey Financial Corp. Respondents.	)	NO. H-37387 LA

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on March 6, 2012, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent NEWKEY FINANCIAL CORP's express admissions; (2) affidavits; and (3) Department Audit Report LA 090245, dated November 4, 2010 and (4) other evidence.

FACTUAL FINDINGS

1.

On July 5, 2011, Maria Suarez made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and a Notice of Defense was mailed by certified mail to Respondent's address of record on July 12, 2011.

2.

On March 6, 2012, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent NEWKEY FINANCIAL CORP's default was entered herein.

3.

At all times mentioned, NEWKEY FINANCIAL CORP ("NFC") was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On September 18, 2001, NEWKEY FINANCIAL CORP was originally licensed as a real estate broker.

4.

At all times mentioned, in the City of Huntington Beach, County of Orange, NFC acted as a real estate broker and conducted licensed activities within the meaning of Section 10131(d) of the Code. NFC operated a mortgage and loan brokerage dba Pinnacle Home Loan, Newkey Home Lending, and Futura Realty Of NFC.

5.

On November 4, 2010, the Department completed an audit examination of the books and records of NFC pertaining to the activities described in Finding 4, that require a real estate license. The audit examination covered a period of time beginning on March 1, 2007 to March 1, 2010. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA090245 and the exhibits and workpapers attached to said audit reports.

6.

During the audit period, NFC did not maintain a trust account.

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7.

In the course of activities described in Findings 4 and 6, above, and during the examination period described in Finding 5, Respondent NFC acted in violation of the Business and Professions Code ("Code") and the Title 10, Chapter 6, California Code of Regulations ("Regulations") in that it:

(a) Collected advance fees pursuant to the provisions of a written agreement which constitutes and advance fee agreement within the meaning of Code Section 10085 without first submitting the written agreement to the Commissioner ten days before using it, in violation of Code Section 10085 and Section 2970.

(b) Failed to retain a true and correct copy of a Department of Real Estate approved California Mortgage Loan Disclosure Statement with the broker signature displayed, in violation of Code Section 10240 and Regulation 2840.

(c)Failed to retain for three years copies of all listings, deposit receipts, cancelled checks, trust records, and other documents executed by NFC or obtained by NFC in connection with any transactions for which a real estate broker license is required, in violation of Code Section 10148.

(d)Has had its corporate mortgagee approval powers, rights and privileges suspended on or about March 24, 2010 by the United States Department of Housing and Urban Development, which is cause for discipline of the license and license rights of NFC pursuant to Code Sections 10177(g) and 10177(f).

DETERMINATION OF ISSUES

1.

The conduct of Respondent NFC, as described in Finding 7, herein above, is in violation of Code Sections 10085, 10240, 10148, 10177(g) and 10177(f), and Regulations 2970 and 2840.

2.

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

The real estate broker license and license rights of Respondent NEWKEY FINANCIAL CORP under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on MAY 24 2012, 2012.

DATED: 4/23, 2012

Real Estate Commissioner

By WAYNE S. BELL
Chief Counsel

Department of Real Estate
320 West Fourth Street, Suite 350
Los Angeles, California 90013-1105
(213) 576-6982

FILED

MAR 06 2012

DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of **NEWKEY FINANCIAL CORP**, a corporate real estate broker; and KYLE EDWARD O'KELLY, individually and as designated officer of NewKey Financial Corp. Respondent.	NO. H-37387 LA DEFAULT ORDER

Respondent, NEWKEY FINANCIAL CORP, having failed to file a Notice of Defense within the time required by Section 11506 of the Government Code, is now in default. It is, therefore, ordered that a default be entered on the record in this matter.

IT IS SO ORDERED March 6, 2012.

BARBARA J. BIGBY
Acting Real Estate Commissioner

Dolores Weeks

By: DOLORES WEEKS
Regional Manager

FLAG

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

Telephone: (213) 576-6982

FILED

MAR 07 2012

DEPARTMENT OF REAL ESTATE
BY: [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of NEWKEY FINANCIAL CORP, a corporate real estate broker; and KYLE EDWARD O'KELLY, individually and as designated officer of NewKey Financial Corp, Respondents.	No. H-37387 LA L-2011080251 STIPULATION AND AGREEMENT

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

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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 ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement ("Stipulation").

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

3. Respondent filed a Notice of Defense pursuant to Section 11506 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of Defense he thereby waives his 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 he will waive other rights afforded to him in connection with the hearing such as the right to present evidence in his defense 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, Respondent chooses not to contest these allegations, but to remain silent and understands that, as a result thereof, these factual allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. The Real Estate Commissioner shall not be required to provide further evidence to prove said factual allegations.

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

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

7. The Order or any subsequent Order of the Real

Estate Commissioner made pursuant to this Stipulation 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.

DETERMINATION OF ISSUES

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

I.

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

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

DATED: 02-23-12

JULIE L. TO, Counsel for
Department of Real Estate

* * *

EXECUTION OF THE STIPULATION

I have read the Stipulation, and have discussed it with my counsel. Its terms are understood by us and are agreeable and acceptable to us. 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.

MAILING AND FACSIMILE

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

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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.

DATED: 2/23/2012

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

DATED: 2-23-12

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

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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.

DATED: _____

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

DATED: _____

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

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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

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

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

FILED
JUL 12 2011
DEPARTMENT OF REAL ESTATE
BY: [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of NEWKEY FINANCIAL CORP, a corporate real estate Broker; and KYLE EDWARD O'KELLY, individually and as designated officer of NewKey Financial Corp Respondents.	No. H-37387 LA A C C U S A T I O N

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

1.

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

in her official capacity.

LICENSE HISTORY

2.

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

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

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

3.

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

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

4.

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

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

5.

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

6.

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

AUDIT EXAMINATION

7.

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

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8.

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

FIRST CAUSE OF ACCUSATION
(Advance Fee Violation)

9.

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

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

10.

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

11.

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

12.

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

SECOND CAUSE OF ACCUSATION

(Failure to Produce Approved Mortgage Loan Disclosure Statement)

13.

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

14.

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

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

THIRD CAUSE OF ACCUSATION

(Failure to Retain Records)

15.

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

16.

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

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FOURTH CAUSE OF ACCUSATION

(Failure to Supervise)

17.

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

18.

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

FIFTH CAUSE OF ACCUSATION

(Corporate Suspension)

19.

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

20.

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

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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 the licenses and license rights of Respondents NEWKEY FINANCIAL CORP and KYLE EDWARD O'KELLY, individually and as designated broker-officer of NewKey Financial Corp, 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 applicable provisions of law.

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

Maria Suarez
Deputy Real Estate Commissioner

cc: NewKey Financial Corp
Edward Kyle O'Kelly
Maria Suarez
Sacto.