

facts

1 Department of Real Estate
2 320 W. 4TH Street, Suite 350
3 Los Angeles, CA 90013-1105

4 Telephone: (213) 576-6982

FILED
MAR 20 2013
DEPARTMENT OF REAL ESTATE

by James B. Demus

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 TMG FINANCIAL SERVICES INC, and)
13 KIRK LAWRENCE CONRAD,)
14 individually, and as designated)
15 officer of TMG Financial Services)
16 Inc,)
17 Respondents.)

DRE No: H-37778 LA
OAH No: 2012061241

STIPULATION
AND
AGREEMENT

16 It is hereby stipulated by and between KIRK LAWRENCE
17 CONRAD, represented by Frank M. Buda, Esq. and the Complainant,
18 acting by and through James A. Demus, Counsel for the Department
19 of Real Estate, as follows for the purpose of settling and
20 disposing of the Accusation filed on January 10, 2012, in this
21 matter:

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

1 Stipulation and Agreement ("Stipulation").

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

6 3. Respondent timely filed a Notice of Defense
7 pursuant to Section 11506 of the Government Code for the purpose
8 of requesting a hearing on the allegations in the Accusation.
9 Respondent hereby freely and voluntarily withdraws said Notice of
10 Defense. Respondent acknowledges that he understands that by
11 withdrawing said Notice of Defense he thereby waives the right to
12 require the Commissioner to prove the allegations in the
13 Accusation at a contested hearing held in accordance with the
14 provisions of the APA and that he will waive other rights
15 afforded to him in connection with the hearing such as the right
16 to present evidence in his defense of the allegations in the
17 Accusation and the right to cross-examine witnesses.

18 4. This Stipulation is based on the factual
19 allegations contained in the Accusation. In the interest of
20 expedience and economy, Respondent chooses not to contest these
21 allegations, but to remain silent and understands that, as a
22 result thereof, these factual allegations, without being admitted
23 or denied, will serve as a prima facie basis for the disciplinary
24 action stipulated to herein. The Real Estate Commissioner shall
25 not be required to provide further evidence to prove said factual
26 allegations.

27 5. This Stipulation is made for the purpose of

1 reaching an agreed disposition of this proceeding and is
2 expressly limited to this proceeding and any other proceeding or
3 case in which the Department of Real Estate ("Department"), the
4 state or federal government, or any agency of this state, another
5 state or federal government is a party.

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

16 7. The Order or any subsequent Order of the Real
17 Estate Commissioner made pursuant to this Stipulation shall not
18 constitute an estoppel, merger or bar to any further
19 administrative or civil proceedings by the Department of Real
20 Estate with respect to any matters which were not specifically
21 alleged to be causes for Accusation in this proceeding but do
22 constitute a bar, estoppel and merger as to any allegations
23 actually contained in the Accusation against Respondents herein.

24 8. Respondent understands that by agreeing to this
25 Stipulation, Respondents agrees to pay, pursuant to Business and
26 Professions Code Section 10148, the cost of the audit which led
27 to this disciplinary action. The amount of said cost is \$5,108.

1 not timely made as provided for herein, or as provided for in a
2 subsequent agreement between the Respondent and the Commissioner.
3 The vacation and the set aside of the stay shall remain in effect
4 until payment is made in full, or until Respondent enters into an
5 agreement satisfactory to the Commissioner to provide for
6 payment.

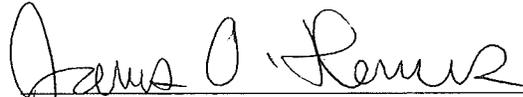
7 III.

8 All licenses and licensing rights of Respondent KIRK
9 LAWRENCE CONRAD are indefinitely suspended unless or until
10 Respondent provides proof satisfactory to the Commissioner, of
11 having taken and successfully completed the continuing education
12 course on trust fund accounting and handling specified in
13 paragraph (3) of subdivision (a) of Section 10170.5 of the
14 Business and Professions Code. Proof of satisfaction of this
15 requirement includes evidence that respondent has successfully
16 completed the trust fund account and handling continuing
17 education course within 120 days prior to the effective date of
18 the Decision in this matter.

19 IV.

20 Respondent KIRK LAWRENCE CONRAD shall within six (6)
21 months from the effective date of the Decision herein, take and
22 pass the Professional Responsibility Examination administered by
23 the Department including the payment of the appropriate
24 examination fee. If Respondent KIRK LAWRENCE CONRAD fails to
25 satisfy this condition, the Commissioner may order suspension of
26 Respondent KIRK LAWRENCE CONRAD's license until Respondent passes
27 the examination.

1
2
3 DATED: 2/8/13


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

5 EXECUTION OF THE STIPULATION

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

17 Respondent can signify acceptance and approval of the
18 terms and conditions of this Stipulation by faxing a copy of its
19 signature page, as actually signed by Respondent, to the
20 Department at the following telephone/fax number: James A. Demus
21 at (213) 576-6917. Respondent agrees, acknowledges and
22 understands that by electronically sending to the Department a
23 fax copy of Respondent's actual signature, as it appears on the
24 Stipulation, that receipt of the faxed copy by the Department
25 shall be as binding on Respondent as if the Department had
26 received the original signed Stipulation.

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DATED: Feb 08 - 2013


KIRK LAWRENCE CONRAD

DATED: 2-8-13


FRANK M. BUDA
Attorney for Respondent

The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondent KIRK LAWRENCE CONRAD and shall become effective at 12 o'clock noon on _____, 2013.

IT IS SO ORDERED _____, 2013.

Real Estate Commissioner

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DATED: _____

_____ KIRK LAWRENCE CONRAD

DATED: _____

FRANK M. BUDA
Attorney for Respondent

The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondent KIRK LAWRENCE CONRAD and
shall become effective at 12 o'clock noon on
APR 19 2013, 2013.

IT IS SO ORDERED March 14, 2013.

WAYNE S. BELL
Real Estate Commissioner



FILED
MAR 15 2013
DEPARTMENT OF REAL ESTATE

By James B. Olin

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) No. H-37778 LA
)
TMG FINANCIAL SERVICES INC; and)
KIRK LAWRENCE CONRAD,)
individually and as designated)
officer of TMG Financial)
Services Inc,)
Respondents.)
_____)

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 February 15, 2012, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent TMG Financial Services Inc's ("TMG") express admissions; (2) affidavits; and (3) Department Audit Report LA100037 and (4) other evidence.

FACTUAL FINDINGS

1.

On November 22, 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 Notice of Defense were mailed by certified and regular mail, to TMG's last known mailing address on file with the Department of Real Estate ("Department") on January 10, 2012.

2.

On , 2013, no Notice of Defense having been filed by TMG within the time prescribed by Section 11506 of the Government Code, TMG's default was entered herein.

LICENSE HISTORY

3.

At all times mentioned, TMG was licensed or had license rights issued by the Department as a corporate real estate broker. TMG was originally licensed as a corporate real estate broker on April 20, 1992.

BROKERAGE

4.

At all times mentioned, in the City of Anaheim, County of Orange, TMG acted as a real estate broker and conducted licensed activities, within the meaning of Business & Professions Code ("Code") Section 10131(d), by soliciting borrowers and lenders and negotiating loans secured by real property.

AUDIT

5.

On January 31, 2011, the Department completed an audit examination of the books and records of TMG pertaining to the activities described in Finding 4, which require a real estate license. The audit examination covered a period of time beginning on September 1, 2007 to August 31, 2010. The audit examinations revealed violations of the Code and Title 10, California Code of Regulations ("Regulations") as set forth in the following paragraphs, and more fully discussed in Audit Report LA100037 and the exhibits and workpapers attached to said audit report.

VIOLATIONS

6.

In the course of activities described in Finding 4 above, and during the examination period described in Finding 5,

Respondents TMG acted in violation of the Code and the Regulations in as follows:

(a) Credit report fees charged to borrowers at the close of escrow and advance fees charged for loan modifications were both deposited into TMG's general business account, in violation of Code Section 10176(e), and not under any exception listed in Regulation 2835.

(b) TMG failed to keep a record of all trust funds received and disbursed for credit report fees and advance fees, in violation of Code Section 10145 and Regulation 2831.

(c) With respect to credit report fees and advance fees received, there were no separate records kept and no reconciliation with records of all trust funds received and disbursed, in violation of Code Section 10145 and Regulation 2831.2.

(d) TMG failed to maintain separate records for each beneficiary of credit reports received and deposited into TMG's general business account, in violation of Code Section 10145 and Regulation 2831.1.

(e) TMG collected advance fees from borrowers and deposited them into a general account, instead of a trust account, in violation of Code Section 10146.

(f) TMG collected advance fees from borrowers in connection with loan modification transactions without having an advance fee agreement approved by the Department, in violation of Code Section 10085 and Regulation 2970.

(g) TMG collected advance fees from borrowers without providing an accounting of the fees to its clients, in violation of Code Section 10146 and Regulation 2972.

(h) TMG failed to provide an approved Mortgage Loan Disclosure Statement to borrowers in 3 out of 5 loan files examined. TMG failed to disclose that it received a yield spread premium from the lender in one file. Good Faith Estimates provided to borrowers failed to state that they did not constitute a loan commitment and did not disclose TMG's corporate license number, in violation of Code Section 10240 and Regulation 2840.

7.

On February 16, 2011, the California Secretary of State suspended the domestic corporation license of TMG. This is in violation of Regulation 2742, and subjects TMG's real estate license and license rights to suspension or revocation pursuant to Code Section 10177(d), 10177(g) and 10177(f).

DETERMINATION OF ISSUES

1.

The conduct of Respondent TMG as described in Findings 6 and 7 herein above, is in violation of Code Sections 10085, 10145, 10146, 10176(e) and 10240 and Title 10, Chapter 6, California Code of Regulations ("Regulations") 2742, 2831, 2831.1, 2831.2, 2835, 2840, 2970 and 2972, and is cause for disciplinary action pursuant to Code Sections 10085, 10176(e), 10177(d), 10177(g) and 10177(f)

2.

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

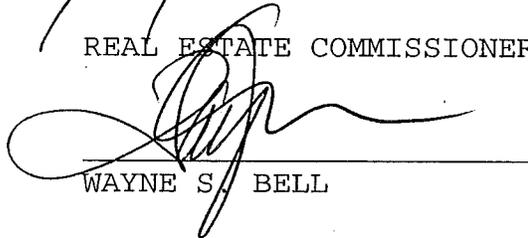
ORDER

The real estate license and license rights of Respondent TMG FINANCIAL SERVICES INC 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 APR 4 2013,

DATED: 3/12/2013,

REAL ESTATE COMMISSIONER


WAYNE S. BELL

1 Department of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105

4 (213) 576-6982

FILED
FEB 25 2013
DEPARTMENT OF REAL ESTATE

James B. Olson

5
6
7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of)

No. H-37778 LA

11 TMG FINANCIAL SERVICES INC; and)
12 KIRK LAWRENCE CONRAD, individually)
13 and as designated officer of TMG)
14 Financial Services Inc,)

Respondents)

15 DEFAULT ORDER

16 Respondent TMG FINANCIAL SERVICES INC, having failed
17 to file a Notice of Defense within the time required by Section
18 11506 of the Government Code, is now in default. It is,
19 therefore, ordered that a default be entered on the record in
20 this matter.

21 IT IS SO ORDERED FEB 25 2013

22 WAYNE S. BELL
23 Real Estate Commissioner

24 *Dolores Weeks*
25 By: DOLORES WEEKS
26 Regional Manager
27

FILED

JAN 10 2012

1 JAMES DEMUS, Counsel (SBN 225005)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

DEPARTMENT OF REAL ESTATE
BY: *Thomas Hulerus*

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6910
7

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	No. H-37778 LA
12	TMG FINANCIAL SERVICES INC, and)	<u>A C C U S A T I O N</u>
13	KIRK LAWRENCE CONRAD,)	
14	individually, and as designated)	
15	officer of TMG Financial Services)	
16	Inc,)	
17	Respondents.)	

17 The Complainant, Maria Suarez, a Deputy Real Estate
18 Commissioner of the State of California, for cause of Accusation
19 against TMG FINANCIAL SERVICES INC and KIRK LAWRENCE CONRAD,
20 individually and as designated officer of TMG Financial Services
21 Inc, alleges as follows:

22 1.

23 The Complainant, Maria Suarez, acting in her official
24 capacity as a Deputy Real Estate Commissioner of the State of
25 California, makes this Accusation against TMG FINANCIAL SERVICES
26 INC and KIRK LAWRENCE CONRAD.

27 ///

1 2.

2 All references to the "Code" are to the California
3 Business and Professions Code and all references to "Regulations"
4 are to Title 10, Chapter 6, California Code of Regulations.

5 LICENSE HISTORY

6 3.

7 A. At all times mentioned, TMG FINANCIAL SERVICES INC
8 ("TMG") and KIRK LAWRENCE CONRAD ("CONRAD") were licensed or had
9 license rights issued by the Department of Real Estate
10 ("Department") as real estate brokers.

11 B. At all times mentioned, TMG was licensed by the
12 Department as a corporate real estate broker by and through
13 CONRAD, as the designated officer and broker responsible,
14 pursuant to Code Section 10159.2 for supervising the activities
15 requiring a real estate license conducted on behalf TMG of by
16 TMG's officers, agents and employees, including CONRAD. TMG was
17 originally licensed on April 20, 1992.

18 C. At all times mentioned, KIRK LAWRENCE CONRAD
19 ("CONRAD") was licensed or had license rights issued by the
20 Department as a real estate broker. On February 21, 1992, CONRAD
21 was originally licensed as a real estate broker. On March 28,
22 2000, CONRAD was licensed as the designated officer of TMG.

23 BROKERAGE

24 TMG FINANCIAL SERVICES INC

25 4.

26 At all times mentioned, in the City of Anaheim, County
27 of Orange, TMG and CONRAD acted as real estate brokers conducting

1 licensed activities within the meaning of Code Section 10131(d)
2 by soliciting borrowers and lenders and negotiating loans secured
3 by real property.

4 AUDIT

5 TMG FINANCIAL SERVICES INC

6 5.

7 On January 31, 2011, the Department completed an audit
8 examination of the books and records of TMG pertaining to the
9 mortgage and loan activities described in Paragraph 4 which
10 require a real estate license. The audit examination covered a
11 period of time beginning on September 1, 2007 to August 31, 2010.
12 The audit examination revealed violations of the Code and the
13 Regulations as set forth in the following paragraphs, and as more
14 fully discussed in Audit Report LA100037 and the exhibits and
15 workpapers attached to said audit report.

16 TRUST ACCOUNT

17 6.

18 During the audit period TMG did not maintain a trust
19 account.

20 VIOLATIONS OF THE REAL ESTATE LAW

21 7.

22 In the course of activities described in Paragraph 4
23 above, and during the examination period described in Paragraph
24 5, Respondents TMG and CONRAD acted in violation of the Code and
25 the Regulations in that:

26 (a) Credit report fees charged to borrowers at the
27 close of escrow and advance fees charged for loan modifications

1 were both deposited into TMG's general business account, in
2 violation of Code Section 10176(e), and not under any exception
3 listed in Regulation 2835.

4 (b) TMG failed to keep a record of all trust funds
5 received and disbursed for credit report fees and advance fees,
6 in violation of Code Section 10145 and Regulation 2831.

7 (c) With respect to credit report fees and advance
8 fees received, there were no separate records kept and no
9 reconciliation with records of all trust funds received and
10 disbursed, in violation of Code Section 10145 and Regulation
11 2831.2.

12 (d) TMG failed to maintain separate records for each
13 beneficiary of credit reports received and deposited into TMG's
14 general business account, in violation of Code Section 10145 and
15 Regulation 2831.1.

16 (e) TMG collected advance fees from borrowers and
17 deposited them into a general account, instead of a trust
18 account, in violation of Code Section 10146.

19 (f) TMG collected advance fees from borrowers in
20 connection with loan modification transactions without having an
21 advance fee agreement approved by the Department, in violation of
22 Code Section 10085 and Regulation 2970.

23 (g) TMG collected advance fees from borrowers without
24 providing an accounting of the fees to its clients, in violation
25 of Code Section 10146 and Regulation 2972.

26 (h) TMG failed to provide an approved Mortgage Loan
27 Disclosure Statement to borrowers in three (3) out of five (5)

1 loan files examined. TMG also failed to disclose to the
2 borrowers that it received a yield spread premium from the lender
3 in one file. Good Faith Estimates provided to borrowers failed
4 to state that they did not constitute a loan commitment and did
5 not disclose TMG's corporate license number, in violation of Code
6 Section 10240 and Regulation 2840.

7 8.

8 The conduct of Respondents TMG and CONRAD, described in
9 Paragraph 7, above, violated the Code and the Regulations as set
10 forth below:

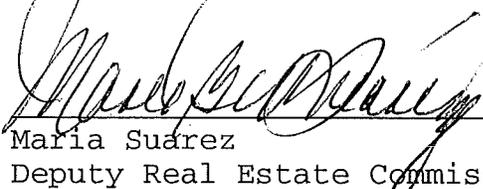
11	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
12		
13	7(a)	Code Section 10176(e) and
14		Regulation 2835
15		
16	7(b)	Code Section 10145 and Regulation
17		2831
18		
19	7(c)	Code Section 10145 and Regulation
20		2831.2
21		
22	7(d)	Code Section 10145 and Regulation
23		2831.1
24		
25	7(e)	Code Section 10146
26		
27		

1 license and license rights to suspension or revocation pursuant
2 to Code Section 10177(d), 10177(g) and/or 10177(f).

3 WHEREFORE, Complainant prays that a hearing be
4 conducted on the allegations of this Accusation and that upon
5 proof thereof, a decision be rendered imposing disciplinary
6 action against the license and license rights of Respondents TMG
7 FINANCIAL SERVICES INC and KIRK LAWRENCE CONRAD, individually and
8 as designated officer of TMG Financial Services Inc, under the
9 Real Estate Law (Part 1 of Division 4 of the Business and
10 Professions Code) and for such other and further relief as may be
11 proper under other applicable provisions of law.

12 Dated at Los Angeles, California

13
14 this 22nd day of November, 2011.

15
16 
17 Maria Suarez
18 Deputy Real Estate Commissioner

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23
24 cc: TMG FINANCIAL SERVICES INC
25 c/o KIRK LAWRENCE CONRAD D.O.
26 Maria Suarez
27 Sacto
Audits