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FILED  
FEB 08 2001

DEPARTMENT OF REAL ESTATE

By Jean Alamed

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	
	)	No. H-2073 SA
TIM DO,	)	
	)	
Respondent.	)	

ORDER DENYING REINSTATEMENT OF LICENSE

On January 13, 1997, a Decision was rendered herein revoking the real estate salesperson license of Respondent, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on April 8, 1997.

On November 8, 1999, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed

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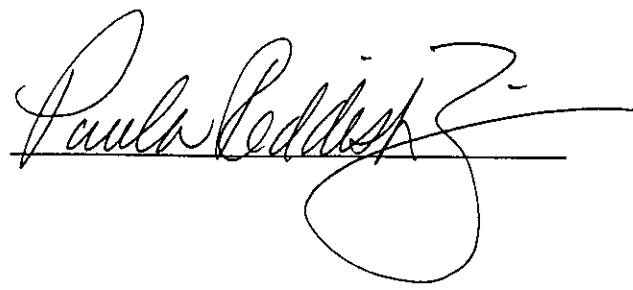
1 to demonstrate to my satisfaction that Respondent has undergone  
2 sufficient rehabilitation to warrant the reinstatement of  
3 Respondent's unrestricted real estate salesperson license. The  
4 disciplinary action in this matter was based upon Respondent  
5 performing acts for which a real estate license is required at a  
6 time when Respondent's real estate salesperson license had  
7 expired. Subsequent to the issuance of a restricted real estate  
8 salesperson license, Respondent solicited prospective purchasers  
9 and sellers of real property while acting in an agency capacity  
10 and for compensation under the name "Grand Telemarketing". At no  
11 time while engaged in said solicitation was Respondent acting in  
12 the employ of a real estate broker. Respondent's conduct  
13 demonstrates that Respondent has not corrected his business  
14 practices nor changed his attitude from that which existed at the  
15 time the conduct that led to the disciplinary action in this  
16 matter occurred.

17 NOW, THEREFORE, IT IS ORDERED that Respondent's  
18 petition for reinstatement of his real estate salesperson license  
19 is denied.

20 This Order shall become effective at 12 o'clock  
21 noon on March 1, 2001.

22 DATED: December 18, 2000

23 PAULA REDDISH ZINNEMANN  
24 Real Estate Commissioner

25   
26  
27

1 Department of Real Estate  
2 107 South Broadway, Room 8107  
3 Los Angeles, California 90012  
4 (213) 897-3937

**FILED**  
MAY 13 1998  
DEPARTMENT OF REAL ESTATE

By 

9 DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 \* \* \* \* \*

12 In the Matter of the Accusation of ) Case No. H-2073 SA  
13 DAT YEN, doing business as )  
14 Home Realty USA, Cal Lending )  
15 Network, California Finance )  
16 Lending, United Funding; and )  
17 TIM DO, )  
Respondent. )

18 STIPULATION AND AGREEMENT

19 I

20 It is hereby stipulated by and between Respondent DAT  
21 YEN (herein "Respondent") and the Complainant acting by and  
22 through V. Ahda Sands, Counsel for the Department of Real  
23 Estate, as follows for the purpose of settling and disposing of  
24 the Accusation filed on April 26, 1996.

25 A. All issues which were to be contested and all  
26 evidence which was to be presented by Complainant and Respondent  
27 at a formal hearing on the Accusation, which hearing was to be  
held in accordance with the provisions of the Administrative



1 Procedure Act (APA), shall instead and in place thereof be  
2 submitted solely on the basis of the provisions of this  
3 Stipulation.

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

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

20 D. Respondent admits the factual allegations in the  
21 Accusation and stipulates, subject to the limitations set forth  
22 below, that the Real Estate Commissioner shall not be required  
23 to provide further evidence of such allegations.

24 E. It is understood by the parties that the Real  
25 Estate Commissioner may adopt the Stipulation and Agreement as  
26 his decision in this matter hereby imposing the penalty and  
27 sanctions on Respondent's real estate license and license rights



1 as set forth in the "Order" below. In the event that the  
2 Commissioner in his discretion does not adopt the Stipulation  
3 and Agreement, the Stipulation and Agreement shall be void and  
4 of no effect, and Respondent shall retain the right to a hearing  
5 and proceeding on the Accusation under all the provisions of the  
6 APA and shall not be bound by any admission or waiver made  
7 herein.

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

14 II

15 DETERMINATION OF ISSUES

16 By reason of the foregoing stipulations, admissions  
17 and waivers and solely for the purpose of settlement of the  
18 pending Accusation without a hearing, it is stipulated and  
19 agreed that the following Determination of Issues be made:

20 The conduct of DAT YEN, as described in the Accusation  
21 is in violation of Sections 10137, 10161.8, 10176(g) and 10240  
22 of the Business and Professions Code and Sections 2725, 2731,  
23 2830, 2831, 2831.1, 2831.2, 2951, 2725, 2840, 2842.5 and 2752,  
24 of Title 10, Chapter 6, California Code of Regulations, and is  
25 grounds for the suspension or revocation of his real estate  
26 license under the provisions of Sections 10137, 10145,



1 10177(d), 10176(g) and 10177(h) of the California Business and  
2 Professions Code.

3 III

4 ORDER

5 WHEREFORE, THE FOLLOWING ORDER is hereby made:

6 All licenses and licensing rights of respondent DAT  
7 YEN under the Real Estate Law are revoked; provided, however, a  
8 restricted real estate broker license shall be issued to DAT YEN  
9 pursuant to Section 10156.5 of the Business and Professions Code  
10 if Respondent makes application therefor and pays to the  
11 Department of Real Estate the appropriate fee for the restricted  
12 license within 90 days from the effective date of this Decision  
13 and Respondent provides proof that the \$1,705.83 United Funding  
14 trust fund shortage has been cured. Said proof must be  
15 submitted to the Department prior to the effective date of this  
16 Decision. The restricted license issued to Respondent shall be  
17 subject to all of the provisions of Section 10156.7 of the  
18 Business and Professions Code and to the following limitations,  
19 conditions and restrictions imposed under the authority of  
20 Section 10156.6 of that Code and the following conditions:

21 1. That Respondent DAT YEN pays, within 45 days  
22 from receipt of the invoice referred to in paragraph "2(a)"  
23 below, the Commissioner's reasonable costs for an audit.

24 2. Respondent DAT YEN shall pay, pursuant to  
25 Section 10148 of the Business and Professions Code, the  
26 Commissioner's reasonable cost for an audit to determine if  
27 Respondent is in compliance with the Real Estate Law. The audit



1 and the audit costs shall pertain to all real estate activity  
2 conducted by DAT YEN, individually or "doing business as",  
3 except those real estate activities conducted by DAT YEN as an  
4 agent for another broker. In calculating the amount of the  
5 Commissioner's reasonable cost, the Commissioner may use the  
6 estimated average hourly salary for all persons performing  
7 audits of real estate brokers, and shall include an allocation  
8 for travel costs, including mileage, time to and from the  
9 auditor's place of work and per diem.

10 (a) Respondent DAT YEN shall pay such  
11 cost within 45 days of receiving an invoice from the  
12 Commissioner detailing the activities performed during the audit  
13 and the amount of time spent performing those activities.

14 (b) Notwithstanding the provisions of  
15 the paragraphs herein, if Respondent DAT YEN fails to pay,  
16 within 45 days from receipt of the invoice specified above, the  
17 Commissioner's reasonable costs for an audit to determine if  
18 Respondent is in compliance with the Real Estate Law, the  
19 Commissioner may order the indefinite suspension of Respondent's  
20 real estate license and license rights. The suspension shall  
21 remain in effect until payment is made in full, or until  
22 Respondent enters into an agreement with the Commissioner to  
23 provide for such payment. The Commissioner may impose further  
24 reasonable disciplinary terms and conditions upon Respondent's  
25 real estate license and license rights as part of any such  
26 agreement.  
27



1                   3.       Respondent shall, within six months from  
2       the effective date of this Decision, take and pass the  
3       Professional Responsibility Examination administered by the  
4       Department of Real Estate including the payment of the  
5       appropriate examination fee. If Respondent fails to satisfy  
6       this condition, the Commissioner may order suspension of  
7       Respondent's license until Respondent passes the examination.

8                   4.       Any restricted license issued to  
9       Respondent may be suspended prior to hearing by Order of the  
10      Real Estate Commissioner in the event of Respondent's conviction  
11      or plea of nolo contendere to a crime which is substantially  
12      related to Respondent's fitness or capacity as a real estate/  
13      licensee.

14                  5.       Any restricted license issued to  
15      Respondent may be suspended prior to hearing by Order of the  
16      Real Estate Commissioner on evidence satisfactory to the  
17      Commissioner that Respondent has violated provisions of the  
18      California Real Estate Law, the Subdivided Lands Law,  
19      Regulations of the Real Estate Commissioner or conditions  
20      attaching to the restricted license.

21                  6.       Respondent DAT YEN shall not be eligible to  
22      apply for the issuance of an unrestricted real estate license  
23      nor for the removal of any of the conditions, limitations or  
24      restrictions of a restricted license until one year has elapsed  
25      from the effective date of this Decision.

26                  7.       Respondent DAT YEN shall, within nine  
27      months from the effective date of this Decision, present





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evidence satisfactory to the Real Estate Commissioner that  
Respondent has, since the most recent issuance of an original or  
renewal real estate license, taken and successfully completed  
the continuing education requirement of Article 2.5 of Chapter 3  
of the Real Estate Law for renewal of a real estate license. If  
Respondent fails to satisfy this condition, the Commissioner may  
order the suspension of the restricted license until the  
Respondent presents such evidence. The Commissioner shall  
afford Respondent the opportunity for a hearing pursuant to the  
Administrative Procedure Act to present such evidence.

8. Respondent DAT YEN cannot be a designated  
officer for any corporation during the period in which his  
license is restricted.

9. The continuing education courses taken by  
Respondent DAT YEN must include a course in trust fund  
accounting for licensed brokers.

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IV

EXECUTION OF STIPULATION

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

DATED: 2/19/98

*Dat Yen*  
DAT YEN

DATED: 2/12/98

*Maxine Monaghan*  
MAXINE MONAGHAN  
Attorney for Respondent

DATED: 3/13/98

*V. Ahda Sands*  
V. AHDA SANDS,  
Counsel for the Department  
of Real Estate

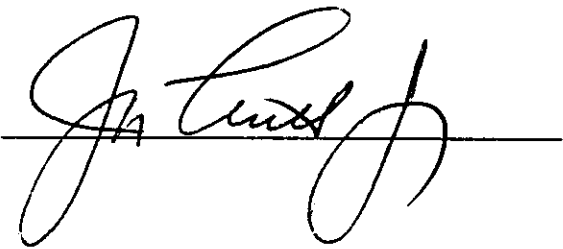
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DECISION

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision in this matter and shall become effective  
at 12 o'clock noon on June 2, 1998.

IT IS SO ORDERED 5/1/98.

JIM ANTT, JR.  
Real Estate Commissioner



*Dat Yen*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**  
MAY 20 1997  
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of ) Case No. H-2073 SA  
 ) OAH No. L-9607201 By Laura B. Orma  
DAT YEN, )  
 )  
 )  
 )  
Respondent. )

**NOTICE OF CONTINUED HEARING ON ACCUSATION**

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 107 South Broadway, 2nd Fl., Los Angeles, California, on OCTOBER 21 & 22, 1997 at the hour of 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

Dated: **MAY 20 1997**

DEPARTMENT OF REAL ESTATE

By: *V. Ahda Sands*  
V. AHDA SANDS, Counsel

cc: Dat Yen

Maxine Monaghan, Esq.  
Sacto.  
OAH

FILED  
MAR 17 1997

DEPARTMENT OF REAL ESTATE

By Jama B. Orma

*Sacto Jan*

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of	)	NO. H-2073 SA
	)	L-9607201
DAT YEN, doing business as	)	
Home Realty USA; Cal Lending	)	
Network; California Finance	)	
Lending; United Funding and	)	
TIM DO,	)	
	)	
	)	
Respondents.	)	

ORDER GRANTING RECONSIDERATION AND  
REMANDING THE CASE TO THE OFFICE OF ADMINISTRATIVE HEARINGS

On January 13, 1997, a Decision was rendered whereby the license and license rights of DAT YEN (hereinafter YEN) were revoked.

On February 25, 1997, Respondent YEN petitioned for reconsideration.

Said Decision of January 13, 1997, revoking the license of YEN, was stayed and would have become effective on March 17, 1997.

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I have considered the petition submitted on behalf of Respondent YEN and have concluded that good cause for reconsideration of the order of January 13, 1997, revoking the license of YEN does exist.

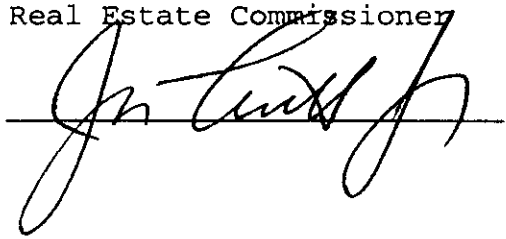
IT IS THEREFORE ORDERED THAT:

1. The Order revoking the license and license rights of YEN effective March 17, 1997, is vacated.

2. This case shall be remanded to the Office of Administrative Hearings for a redetermination of the issues in this matter related to DAT YEN only, thereby affording Respondent YEN an opportunity to present his case.

IT IS SO ORDERED 3/13, 1997.

JIM ANTT, JR.  
Real Estate Commissioner



Dat Yen  
Sacto  
SR  
VAS

*Jacks Jay*

**FILED**  
MAR - 5 1997  
DEPARTMENT OF REAL ESTATE

By *Laura B. Orme*

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of )	NO. H-2073 SA
	L-9607201
DAT YEN, doing business as: )	
Home Realty USA: Cal Lending )	
Network; California Finance )	
Lending; United Funding and )	
TIM DO, )	
_____ )	
Respondents.)	

ORDER STAYING EFFECTIVE DATE

On January 13, 1997, a Decision was rendered in the above-entitled matter to become effective March 7, 1997.

IT IS HEREBY ORDERED that the effective date of the Decision of January 13, 1997, is stayed for a period of additional 10 days as to Respondent DAT YEN only.

The Decision of January 13, 1997, shall become effective at 12 o'clock noon on March 17, 1997.

DATED: March 5, 1997

JIM ANTT, JR.  
Real Estate Commissioner

By: *Randolph Beendia*  
RANDOLPH BEENDIA  
Regional Manager

*Weto  
Joel*

**FILED**  
JAN 28 1997  
DEPARTMENT OF REAL ESTATE

*June B. Orona*

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DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \*

In the Matter of the Accusation of	)	NO. H-2073 SA
	)	
DAT YEN, doing business as	)	L-9607201
Home Realty USA; Cal Lending	)	
Network; California Finance	)	
Lending; United Funding	)	
and TIM DO,	)	
	)	
Respondents.	)	

ORDER STAYING EFFECTIVE DATE

On January 13, 1997, a Decision was rendered in the above-entitled matter to become effective February 6, 1997.

IT IS HEREBY ORDERED that the effective date of the Decision of January 13, 1997 is stayed for a period of 30 days as to respondent DAT YEN only.

The Decision of January 13, 1997 shall become effective at 12 o' clock noon on March 7, 1997.

DATED: 28 Jan. 1997

JIM ANTT, JR.  
Real Estate Commissioner

By: *Randolph Brendia*  
RANDOLPH BRENDIA  
Regional Manager

lbo







5. All further references herein to "respondents" includes the parties identified in findings 3 and 4, as well as the 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.

6. (a) At all relevant times, respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker for others in the State of California within the meaning of Code Sections 10131(a) and 10131(d).

(b) Respondents conducted mortgage loan activities and residential resale transactions with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property. Such loans were arranged, negotiated, processed and consummated on behalf of others for compensation or in expectation of compensation. Respondents also negotiated the sales of real property.

7. In connection with the aforesaid real estate broker activities, respondent Yen accepted or received funds in trust (hereinafter "trust funds") from or on behalf of owners, buyers, lenders and borrowers, and thereafter made disbursements of such funds. Respondent Yen did not maintain a trust account for any of these activities for trust funds received by Home Realty USA, Cal Lending Network, and California Finance Lending.

#### HOME REALTY USA AUDIT VIOLATIONS

8. On August 23, 1994, the Department concluded its audit of the books and records of respondent Yen dba Home Realty USA, pertaining to the real estate broker activities described in findings 6 and 7, for the ten month period ending June 30, 1994. The examination revealed violations of the Code and of the Chapter 6, Title 10, California Code of Regulations ("Regulations") in that respondent Yen:

(a) failed to maintain an adequate formal trust fund receipt journal and a formal trust fund disbursements journal or other records of the receipt and disposition of trust funds received, conforming to the requirements of Section 2831 of the Regulations;

(b) failed to review and initial instruments prepared or signed by real estate salespersons employed by Yen in connection with transactions for which a real estate license is required, which instruments may have a material effect upon the rights or obligations of a parties to the transaction, in violation of Section 2725 of the Regulations; and

(c) failed to notify the Real Estate Commissioner of his employment of salespersons in violation of Section 10161.8(a) of the Code and Section 2752 of the Regulations.

CAL LENDING NETWORK AUDIT VIOLATIONS

9. In connection with the real estate broker activities conducted at Cal Lending Network set forth in findings 6 and 7, respondent Yen accepted or received trust funds from or on behalf of borrowers and lenders and thereafter made disbursements of such funds. Respondent Yen deposited said funds directly into escrow accounts and did not maintain bank trust fund accounts.

10. On August 9, 1994, the Department concluded its audit of the books and records of respondent Yen dba Cal Lending Network, pertaining to the real estate broker activities described in findings 6 and 7, for the thirteen month period ending June 30, 1994. The audit revealed that respondent Yen violated the Code and Regulations as follows:

(a) employed and compensated Do, a person who was not licensed by the Department, to perform acts requiring a real estate license for and in the name of Yen during the period of December 25, 1993 to March 14, 1994. Do's salesperson license was expired during this time. This employment of Do was in violation of Section 10137 of the Code;

(b) failed to notify the Real Estate Commissioner of his employment of salespersons in violation of Section 10161.8(a) of the Code and Section 2752 of the Regulations;

(c) initialed, but did not date instruments prepared or signed by real estate salespersons employed by respondent in connection with transactions for which a real estate license is required, which instruments may have a material effect upon the rights or obligations of parties to the transaction, in violation of Section 2725 of the Regulations; and

(d) failed to disclose to borrowers in writing that he received a rebate from the lenders as additional compensation for processing loan transactions, in violation of Section 10176(g) of the Code.

## CALIFORNIA FINANCE LENDING AUDIT VIOLATIONS

11. In connection with the real estate broker activities conducted by California Finance Lending set forth in findings 6 and 7, respondent Yen accepted or received trust funds from or behalf of borrowers and lenders and thereafter made disbursements of such funds. Respondent Yen deposited said funds directly into escrow accounts and did not maintain bank trust fund accounts.

12. On August 11, 1994, the Department concluded its examination of the books and records of respondent Yen dba California Finance Lending, pertaining to the real estate broker activities described in finding 6 and 7, for the twelve month period ending May 31, 1994. The examination revealed respondent Yen violated the Code and Regulations as follows:

(a) failed to notify the Real Estate Commissioner of his employment of salespersons in violation of Section 10161.8(a) of the Code and Section 2752 of the Regulations;

(b) failed to provide borrowers with a Mortgage Loan Disclosure Statement in violation of Section 10240 of the Code and 2840 and 2842.5 of the Regulations; and

(c) failed to disclose to borrowers in writing that respondent received a rebate from the lenders as additional compensation for processing loan transactions, in violation of Section 10176(g) of the Code.

## UNLICENSED ACTIVITY BY TIM DO

13. Respondent Do's salesperson licensed expired on December 25, 1993, and was not renewed until March 15, 1994. During this expiration period Do was employed by and compensated by Yen at Cal Lending for performing acts requiring a real estate license for and in the name of Yen at Cal Lending. These activities by Do are in violation of Section 10130 of the Code.

## UNITED FUNDING AUDIT VIOLATIONS

14. In connection with the real estate broker activities conducted by United Funding, respondent Yen accepted or received trust funds from or on behalf of borrowers and lenders and thereafter made disbursements of such funds. Respondent Yen deposited said into account 09322-09323, "United Funding Trust Fund Account" (herein T/A #1) maintained at Bank of America, 13952 Brookhurst Street, Garden Grove, California 92643.

15. On August 4, 1994, the Department concluded its examination of the books and records of respondent Yen dba United Funding, pertaining to the real estate broker activities set forth in findings 6 and 7, for the period September 17, 1993 to May 15, 1994. The examination revealed that respondent Yen committed trust fund violations as well as other violations of the Code and Regulations as set forth below:

(a) disbursed or caused or allowed the disbursement of trust funds from the T/A #1, wherein the disbursement of said funds reduced the funds in said account to an amount which on May 15, 1994 was approximately \$1,705.83 less than the existing aggregate trust fund liability to all owners of said funds, without first obtaining the prior written consent of every principal who was an owner of said funds in violation of Regulation Section 2832.1 and Code Section 10145;

(b) engaged in mortgage loan business in the office located at 10900 Westminster Blvd. #3, in Garden Grove, California, without first obtaining a branch license;

(c) failed to first obtain a license from the Department before using the fictitious name "United Funding", in violation of Regulation Section 2731;

(d) failed to notify the Real Estate Commissioner of his employment of salespersons in violation of Section 10161.8(a) of the Code and Section 2752 of the Regulations;

(e) the broker's trust account was not in the broker's name as trustee and the broker was not a signatory on the trust account in violation of Regulation 2830;

(f) failed to maintain adequate separate records for each beneficiary or transaction, accounting therein for said account trust funds received, deposited, and disbursed, conforming to the requirements of Section 2831.1 of the Regulations;

(g) deposited certain credit and appraisal fees in trust into account maintained by United Fund Trust Fund rather than into trust accounts in Yen's name as broker and as trustee in violation of Code Section 10145 and Regulation Section 2830;

(h) violated Section 2831.2 and 2951 of the Regulations by failing to perform a monthly reconciliation of the records of the receipt and disposition of all trust funds received, and the balance of all separate beneficiary or transaction records. Specifically, the broker failed to reconcile the balances in the individual borrower accounts with the trust fund control records and to keep a record of such reconciliation;

(i) failed to review and initial instruments prepared or signed by real estate salespersons employed by respondents in connection with transactions for which a real estate license is required, which instruments may have a material effect upon the rights or obligations of a party to the transaction, in violation of Section 2725 of the Regulations;

(j) failed to provide borrowers with a Borrower Loan Disclosure Statement in violation of Section 10240 of the Code and 2840 of the Regulations; and

(k) failed to disclose to borrowers in writing that respondents received a rebate from the lenders as additional compensation for processing loan transactions, in violation of Section 10176(g) of the Code.

16. (a) There is no record of prior disciplinary action against the licenses held by respondent Yen.

(b) There is no record of prior disciplinary action against the licenses held by respondent Do.

#### DETERMINATION OF ISSUES

##### I

Cause exists for suspension or revocation of all licenses and license rights of respondent Dat Yen, pursuant to Code Sections 10177(d) and 10177(h), for the following violations:

1. for violating Regulation section 2831, as set forth in finding 8(a);

2. for violating Regulation section 2725, as set forth in finding 8(b); and,

3. for violating Regulation section 2752, as set forth in finding 8(c).

II

Cause exists for suspension or revocation of all licenses and license rights of respondent Dat Yen, pursuant to Code Sections 10137, 10176(g), and 10177(d), for the following violations:

1. for violating Code section 10137, as set forth in finding 10(a);
2. for violating Regulation section 2752 and Code section 10161.8, as set forth in finding 10(b);
3. for violating Regulation section 2725, as set forth in finding 10(c); and
4. for violating Code section 10176(g), as set forth in finding 10(d).

III

Cause exist to suspend or revoke all licenses and license rights of respondent Yen, pursuant to Code Sections 10177(d) and 10176(g), for the following violations:

1. for violating Regulation section 2752 and Code section 10161.8, as set forth in finding 12(a);
2. for violating Regulation sections 2840 and 2842.5 and Code section 10240, as set forth in finding 12(a); and
3. for violating Code section 10176(g), as set forth in finding 12(c).

IV

Cause exist to suspend or revoke all licenses and license rights of respondent Yen, pursuant to Code Sections 10177(d), for violating Code section 10130 as set forth in finding 13.

V

Cause exists for suspension or revocation of all licenses and license rights of respondent Dat Yen, pursuant to Code Sections 10176(g), and 10177(d), for the following violations:

1. for violating Regulation section 2832.1 and Code section 10145, as set forth in finding 15(a).
2. for violating Code section 10177(d), as set forth in finding 15(b).



3. for violating Regulation section 2731, as set forth in finding 15(c);

4. for violating Regulation section 2752 and Code section 10161.8, as set forth in finding 15(d);

5. for violating Regulation section 2830, as set forth in finding 15(e);

6. for violating Regulation section 2831.1, as set forth in finding 15(f);

7. for violating Regulation section 2839 and Code section 10145, as set forth in finding 15(g);

8. for violating Regulation sections 2831.2 and 2951, as set forth in finding 15(h);

9. for violating Regulation section 2725, as set forth in finding 15(i);

10. for violating Regulation section 2840 and Code section 10240, as set forth in finding 15(j);

11. for violating Code section 10176(g), as set forth in finding 15(k).

#### VI

Respondent Yen failed to appear for the hearing. As a result, no evidence of mitigation or rehabilitation was presented at the hearing. Without this evidence, there is no basis to support a finding that respondent Yen will conduct his real estate activities in manner consistent with the public welfare. Under these circumstances revocation is appropriate.

#### VII

Cause exist to suspend or revoke all licenses and license rights of respondent Tim Do, pursuant to Code Sections 10177(d), for violating Code section 10130 as set forth in finding 13.

#### ORDER

#### I

All licenses and licensing rights of respondent Dat Yen under the Real Estate Law are revoked.

II

All licenses and licensing rights of respondent Tim Do under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until one (1) year has elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

Dated: December 13, 1996

Humberto Flores

HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**  
AUG - 1 1996  
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of ) Case No. H-2073 SA  
 ) OAH No. L-9607201  
DAT YEN, et al., )  
 )  
 )  
 Respondents. )

By Laura B. Olson

**NOTICE OF HEARING ON ACCUSATION**

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 314 West First Street, Los Angeles, California, on DECEMBER 3 & 4, 1996, at the hour of 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

Dated: August 1, 1996

DEPARTMENT OF REAL ESTATE

By: V. Ahda Sands  
V. AHDA SANDS, Counsel

cc: Dat Yen  
Tim Do  
Sacto.  
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The Complainant, Thomas Mc Crady, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondents.

3

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

4

From August 17, 1978 to present Respondent DAT YEN (hereinafter "YEN") was licensed by the Department as a real estate broker. Respondent DAT YEN was doing business as Home Realty USA; Cal Lending Network; California Finance Lending and United Funding.

5

From December 26, 1989 to present Respondent TIM DO (hereinafter "DO") was licensed by the Department as a real estate salesperson, except for the period of December 25, 1993 to March 15, 1994 when DO's real estate license was expired.

6

All further references herein to "Respondents" includes the parties identified in Paragraphs 4 and 5 also the 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.

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At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker for others in the State of California within the meaning of Code Sections 10131(a) and 10131(d) of the Code, including the operation and conduct of mortgage loan activities and residential resells with the public wherein, on behalf of others and for compensation or in expectation of compensation, Respondents solicited lenders and borrowers for loans secured directly or collaterally by a lien on real property; arranged, negotiated, processed, and consummated said loans and also negotiated the sale of real property.

In connection with the aforesaid real estate broker activities, Respondent YEN accepted or received funds in trust (hereinafter "trust funds") from or on behalf of owners and buyers, lenders and borrowers and thereafter made disbursements of such funds. Respondent YEN did not maintain a trust account for any of these activities.

FIRST CAUSE OF ACCUSATION

HOME REALTY USA AUDIT VIOLATIONS

On August 23, 1994, the Department concluded its examination of Respondents YEN's books and records pertaining to the real estate broker activities described in Paragraph 7, above, for the ten month period ending June 30, 1994, which

1 examination revealed violations of the Code and of the  
2 Regulations as set forth in the following paragraphs:

3 10

4 In connection with the trust funds referred to in  
5 Paragraph 8, above and activities described in Paragraph 7,  
6 Respondent YEN acted in violation of the Code and the Regulations  
7 in that Respondent YEN:

8 (a) failed to maintain an adequate formal  
9 trust fund receipt journal and a formal trust fund disbursements  
10 journal or other records of the receipt and disposition of trust  
11 funds received, conforming to the requirements of Section 2831 of  
12 the Regulations;

13 (b) failed to review and initial instruments  
14 prepared or signed by real estate salespersons employed by YEN in  
15 connection with transactions for which a real estate license is  
16 required, which instruments may have a material effect upon the  
17 rights or obligations of a parties to the transaction, in  
18 violation Section 2725 of the Regulations;

19 (c) failed to notify the Real Estate  
20 Commissioner of his employment of salespersons in violation of  
21 Section 10161.8(a) of the Code and Section 2752 of the  
22 Regulations.

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The acts and omissions of Respondent YEN, described in Paragraph 10, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>	
10(a)	Sec. 2831	of the Regulations;
10(b)	Sec. 2725	of the Regulations;
10(c)	Sec. 2752	of the Regulations;

Each of the foregoing violations separately constitutes cause for the suspension or revocation of all licenses and license rights of Respondent YEN, pursuant to the provisions of Section 10177(d) and 10177(h) of the Code.

SECOND CAUSE OF ACCUSATION

CAL LENDING NETWORK AUDIT VIOLATIONS

In connection with the aforesaid real estate broker activities, Respondent YEN accepted or received funds in trust (hereinafter "trust funds") from or on behalf of borrowers and lenders and thereafter made disbursements of such funds. Respondent YEN purportedly deposited said funds directly into escrow accounts and did not maintain bank trust fund accounts.

On August 9, 1994, the Department concluded its examination of Respondent YEN'S books and records pertaining to the real estate broker activities described in Paragraph 7, above, for the thirteen month period ending June 30, 1994, which examination revealed violations of the Code and of the Regulations as set forth in the following paragraphs:

/

In connection with the trust funds referred to in Paragraph 8, above, Respondent YEN acted in violation of the Code and the Regulations in that Respondents YEN:

(a) Employed and compensated DO, a person who was not licensed by the Department, to perform acts requiring a real estate license for and in the name of YEN during the period of December 25, 1993 to March 14, 1994. DO's salesperson license was expired during this time. This employment of DO was in violation of Section 10137 of the Code;

(b) failed to notify the Real Estate Commissioner of his employment of salespersons in violation of Section 10161.8(a) of the Code and Section 2752 of the Regulations;

(c) initialed, but did not date instruments prepared or signed by real estate salespersons employed by Respondent in connection with transactions for which a real estate license is required, which instruments may have a material effect upon the rights or obligations of parties to the transaction, in violation Section 2725 of the Regulations;

(d) failed to disclose to borrowers in writing that he received a rebate from the lenders as additional compensation for processing loan transactions, in violation of Section 10176(g) of the Code.

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The acts and omissions of Respondent YEN, described in Paragraph 14, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>	
14(a)	Sec. 10137	of the Code;
14(b)	Sec. 2752	of the Regulations;
	Sec. 10161.8	of the Code;
14(c)	Sec. 2725	of the Regulations;
14(d)	Sec. 10176(g)	of the Code.

Each of the foregoing violations separately constitutes cause for the suspension or revocation of all licenses and license rights of Respondent YEN, pursuant to the provisions of Sections 10137, 10176(g) 10177(d) of the Code.

THIRD CAUSE OF ACCUSATION

CALIFORNIA FINANCE LENDING AUDIT VIOLATIONS

In connection with the aforesaid real estate broker activities, Respondent YEN accepted or received funds in trust (hereinafter "trust funds") from or on behalf of borrowers and lenders and thereafter made disbursements of such funds. Respondent YEN purportedly deposited said funds directly into escrow accounts and did not maintain bank trust fund accounts.

On August 11, 1994, the Department concluded its examination of Respondent YEN'S books and records pertaining to the real estate broker activities described in Paragraph 7, above, for the twelve month period ending May 31, 1994, which examination revealed violations of the Code and of the Regulations as set forth in the following paragraphs:

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In connection with his activities d.b.a. California Finance Lending, Respondent YEN acted in violation of the Code and the Regulations in that Respondent YEN:

(a) failed to notify the Real Estate Commissioner of his employment of salespersons in violation of Section 10161.8(a) of the Code and Section 2752 of the Regulations;

(b) failed to provide borrowers with a Mortgage Loan Disclosure Statement in violation of Section 10240 of the Code and 2840 and 2842.5 of the Regulations;

(d) failed to disclose to borrowers in writing that Respondents received a rebate from the lenders as additional compensation for processing loan transactions, in violation of Section 10176(g) of the Code.

The acts and omissions of Respondent YEN, described in Paragraph 18, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>	
18(a)	Sec. 2752	of the Regulations;
	Sec. 10161.8(a)	of the Code;
18(b)	Sec. 10240	of the Code;
	Sec. 2840	of the Regulations;
	Sec. 2842.5	of the Regulations;
18(c)	Sec. 10176(g)	of the Code.

Each of the foregoing violations separately constitutes cause for the suspension or revocation of all licenses and license rights of Respondent YEN, pursuant to the provisions of Section 10177(d) and 10176(g) of the Code.

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FOURTH CAUSE OF ACCUSATION

UNLICENSED ACTIVITY BY TIM DO

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In the course of the activities described in Paragraph 7, above, Respondent DO'S salesperson licensed expired on December 25, 1993, and was not renewed until March 15, 1994. During this expiration period DO was employed by and compensated by YEN at Cal Lending for performing acts requiring a real estate license for and in the name of YEN at Cal Lending. These activities by DO are in violation of Section 10130 of the Code. Each said violation constitutes cause for suspension or revocation of all real estate licenses and license rights of Respondent DO pursuant to the provisions of Section 10177(d) of the Code.

FIFTH CAUSE OF ACCUSATION

UNITED FUNDING AUDIT VIOLATIONS

21

In connection with the aforesaid real estate broker activities, Respondent YEN accepted or received funds in trust (hereinafter "trust funds") from or on behalf of borrowers and lenders and thereafter made disbursements of such funds. Respondent YEN deposited said into account 09322-09323, "United Funding Trust Fund Account" (herein T/A #1) maintained at Bank of America, 13952 Brookhurst Street, Garden Grove, CA 92643.

22

On August 4, 1994, the Department concluded its examination of Respondent YEN'S books and records pertaining to

1 the real estate broker activities described in Paragraph 7,  
2 above, for the period September 17, 1993 to May 15, 1994, which  
3 examination revealed Respondent YEN's violations of the Code and  
4 of the Regulations as set forth in the following paragraphs:

5 (a) Disbursed or caused or allowed the  
6 disbursement of trust funds from the T/A #1, wherein the  
7 disbursement of said funds reduced the funds in said account to  
8 an amount which on May 15, 1994 was approximately \$1,705.83 less  
9 than the existing aggregate trust fund liability to all owners of  
10 said funds, without first obtaining the prior written consent of  
11 every principal who was an owner of said funds in violation of  
12 Regulation Section 2832.1 and Code Section 10145.

13 (b) engaged in mortgage loan business in the  
14 office located at 10900 Westminister Blvd. # 3, in Garden Grove,  
15 California, without first obtaining a branch license.

16 (c) failed to first obtain a license form the  
17 Department before using the fictitious name "United Funding" , in  
18 violation of Regulation Section 2731.

19 (d) failed to notify the Real Estate  
20 Commissioner of his employment of salespersons in violation of  
21 Section 10161:8(a) of the Code and Section 2752 of the  
22 Regulations.

23 (e) The broker's trust account was not in the  
24 broker's name as trustee and the broker was not a signatory on  
25 the trust account in violation of Regulation 2830.

26 (f) Failed to maintain adequate separate records  
27 for each beneficiary or transaction, accounting therein for said

1 account trust funds received, deposited, and disbursed,  
2 conforming to the requirements of Section 2831.1 of the  
3 Regulations.

4 (g) Deposited certain credit and appraisal fees  
5 in trust into account maintained by United Fund Trust Fund rather  
6 than into trust accounts in YEN's name as broker and as trustee  
7 in violation of Code Section 10145 and Regulation Section 2830.

8 (h) Violated Section 2831.2 and 2951 of the  
9 Regulations by failing to perform a monthly reconciliation of the  
10 records of the receipt and disposition of all trust funds  
11 received, and the balance of all separate beneficiary or  
12 transaction records. Specifically, the broker failed to reconcile  
13 the balances in the individual borrower accounts with the trust  
14 fund control records and to keep a record of such reconciliation.

15 (i) YEN failed to review and initial instruments  
16 prepared or signed by real estate salespersons employed by  
17 Respondents in connection with transactions for which a real  
18 estate license is required, which instruments may have a material  
19 effect upon the rights or obligations of a party to the  
20 transaction, in violation Section 2725 of the Regulations.

21 (j) Failed to provide borrowers with a Borrower  
22 Loan Disclosure Statement in violation of Section 10240 of the  
23 Code and 2840 of the Regulations.

24 (k) failed to disclose to borrowers in writing  
25 that Respondents received a rebate from the lenders as  
26 additional compensation for processing loan transactions, in  
27 violation of Section 10176(g) of the Code.

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The conduct, acts and omissions of Respondent YEN, as described in Paragraph 22, above is cause for the suspension or revocation of all real estate licenses and license rights of YEN pursuant to the provisions of Section 10176(g) and 10177(d) 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 Respondents DAT YEN and TIM DO 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 26th day of April, 1996.

THOMAS MC CRADY  

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Deputy Real Estate Commissioner

cc: Dat Yen  
Tim Do  
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