

FILED  
AUG 24 2007

DEPARTMENT OF REAL ESTATE

By Anne Shaw

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of ) No. H-3472 SD  
SYDNEY ERIC KAHN, )  
Respondent. )

ORDER SUSPENDING REAL ESTATE LICENSE

(Professional Responsibility Examination)

TO: SYDNEY ERIC KAHN ("Respondent"):

On October 31, 2006, a Decision was rendered herein suspending Respondent's real estate broker license, but staying the imposition of such suspension subject to terms and restrictions set forth in the Real Estate Commissioner's Decision effective November 20, 2006, in Case No. H-3472 SD. Among those terms and conditions, the Decision required Respondent to take and pass the Professional Responsibility Examination (hereinafter "the condition") within six months after November 20, 2006, the

1 effective date of the Decision, and provided that if Respondent  
2 failed to satisfy this condition, the Commissioner may order  
3 suspension of the restricted license until Respondent passes the  
4 examination.

5 As of July 13, 2007, Respondent has failed to submit  
6 proof satisfactory to the Commissioner of successfully passing  
7 the above-ordered examination. The Commissioner has determined  
8 that Respondent has failed to satisfy this condition, and as  
9 such, that Respondent's license may be suspended until Respondent  
10 satisfies this condition.

11 NOW, THEREFORE, IT IS ORDERED under authority of  
12 Section 10156.7 of the Business and Professions Code of the State  
13 of California that Respondent's real estate broker license and  
14 the exercise of any privileges thereunder is hereby suspended  
15 until such time as Respondent provides proof satisfactory to the  
16 Commissioner of compliance with the condition referred to above,  
17 or pending final determination made after hearing (see "Hearing  
18 Rights" set forth below).

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

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

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

This Order shall be effective immediately.

DATED: 1/11, 2007.

JEFF DAVIS  
Real Estate Commissioner

- 3 -

1 Department of Real Estate  
2 P.O. Box 187007  
3 Sacramento, CA 95818-7007  
4 Telephone: (916) 227-0781  
5  
6

FILED  
OCT 31 2006

DEPARTMENT OF REAL ESTATE

By Anne Shawna

7 BEFORE THE DEPARTMENT OF REAL ESTATE  
8 STATE OF CALIFORNIA  
9

\* \* \*

10 In the Matter of the Accusation of )  
11 SYDNEY ERIC KAHN, )  
12 Respondent. )  
13 )  
14 )

No. H-3472 SD

STIPULATION AND  
AGREEMENT

15 It is hereby stipulated by and between SYDNEY ERIC  
16 KAHN (hereinafter "Respondent") and their attorney, Eric R.  
17 Ginder, and the Complainant, acting by and through Truly  
18 Sughrue, Counsel for the Department of Real Estate, as follows  
19 for the purpose of settling and disposing the Accusation filed  
20 on March 27, 2006 in this matter:

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

1 Stipulation and Agreement.

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

5 3. Respondent filed a Notice of Defense pursuant to  
6 Section 11505 of the Government Code for the purpose of  
7 requesting a hearing on the allegations in the Accusation.  
8 Respondent hereby freely and voluntarily withdraws said Notice of  
9 Defense. Respondent acknowledges that he understands that by  
10 withdrawing said Notice of Defense he will thereby waive his  
11 rights to require the Commissioner to prove the allegations in  
12 the Accusation at a contested hearing held in accordance with the  
13 provisions of the APA, and that he will waive other rights  
14 afforded to them in connection with the hearing such as the right  
15 to present evidence in defense of the allegations in the  
16 Accusation and the right to cross-examine witnesses.

17 4. This stipulation is based on the factual  
18 allegations contained in the Accusation. In the interest of  
19 expediency and economy, Respondent chooses not to contest these  
20 factual allegations, but to remain silent and understands that,  
21 as a result thereof, these factual statements will serve as a  
22 prima facie basis for the "Determination of Issues" and "Order"  
23 set forth below. The Real Estate Commissioner shall not be  
24 required to provide further evidence to prove such allegations.

25 5. This Stipulation and Respondent's decision not to  
26 contest the Accusation are made for the purpose of reaching an  
27

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

6           6. Respondent understands that by agreeing to this  
7 Stipulation and Agreement, Respondent agrees to pay, pursuant to  
8 Section 10148 of the California Business and Professions Code,  
9 the cost of the audit which resulted in the determination that  
10 Respondent committed the trust fund violation(s) found in  
11 Paragraph I, below, of the Determination of Issues. The amount  
12 of said costs is \$4,452.00.

13           7. Respondent further understands that by agreeing  
14 to this Stipulation and Agreement in Settlement, the findings  
15 set forth below in the Determination Of Issues become final, and  
16 that the Commissioner may charge said Respondent for the  
17 costs of any audit conducted pursuant to Section 10148 of  
18 the California Business and Professions Code to determine if  
19 the violations have been corrected. The maximum costs of  
20 said audit shall not exceed \$4,452.00.

21           8. It is understood by the parties that the Real  
22 Estate Commissioner may adopt the Stipulation and Agreement as  
23 his decision in this matter thereby imposing the penalty and  
24 sanctions on the real estate licenses and license rights of  
25 Respondent as set forth in the below "Order". In the event that  
26 the Commissioner in his discretion does not adopt the Stipulation  
27

1 and Agreement, it shall be void and of no effect, and Respondent  
2 shall retain the right to a hearing and proceeding on the  
3 Accusation under all the provisions of the APA and shall not be  
4 bound by any admission or waiver made herein.

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

12 \* \* \*

13 DETERMINATION OF ISSUES

14 By reason of the foregoing stipulations and waivers and  
15 solely for the purpose of settlement of the pending Accusation  
16 without a hearing, it is stipulated and agreed that the following  
17 determination of issues shall be made:  
18

19 I

20 The acts and omissions of Respondent SYDNEY ERIC KAHN  
21 as described in the Accusation are grounds for the suspension or  
22 revocation of Respondent licenses and license rights under the  
23 following sections of the Code and Regulations:

24 (a) As to Paragraphs VIII(a) under Section 10145 of  
25 the Code in conjunction with Section 10177(d) of the Code;  
26  
27

1 (b) As to Paragraph VIII(b), under Section 10145 and  
2 Section 2832.1 of the Regulations in conjunction with Section  
3 10177(d) of the Code;

4 (c) As to Paragraph VIII(c), under Section 2831 of  
5 the Regulations in conjunction with Section 10177(d) of the  
6 Code;

7 (d) As to Paragraph IX under Section 10232.4 of the  
8 Code in conjunction with Section 10177(d) of the Code; and

9 (e) As to Paragraph X under Section 10240 of the Code  
10 in conjunction with Section 10177(d) of the Code; and

11 (f) As to Paragraphs XI, under Section 10176(g) and  
12 10176(a) of the Code.

13 \* \* \*

14 ORDER

15 All licenses and licensing rights of Respondent SYDNEY ERIC  
16 KAHN under the Real Estate Law are suspended for a period of one  
17 hundred and twenty (120) days from the effective date of this  
18 Order; provided, however, that:

19 1) Sixty (60) days of said suspension shall be stayed, upon the  
20 condition that Respondent petition pursuant to Section 10175.2  
21 of the Business and Professions Code and pays a monetary  
22 penalty pursuant to Section 10175.2 of the Business and  
23 Professions Code at a rate of \$100 for each day of the  
24 suspension for a total monetary penalty of \$6,000.

25 a) Said payment shall be in the form of a cashier's check or  
26 certified check made payable to the Recovery Account of the  
27



1 Real Estate Fund. Said check must be delivered to the  
2 Department prior to the effective date of the Order in this  
3 matter.

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

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

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

23 2) The remaining sixty (60) days of said suspension shall be  
24 stayed for two (2) years upon the following terms and  
25 conditions:

26 a) Respondent shall obey all laws, rules and regulations  
27 governing the rights, duties and responsibilities of a real

estate licensee in the State of California; and,

b) That no final subsequent determination be made, after  
hearing or upon stipulation, that cause for disciplinary  
action occurred within two (2) years from the effective date  
of this Order. Should such a determination be made, the  
Commissioner may, in his discretion, vacate and set aside  
the stay order and reimpose all or a portion of the stayed  
suspension. Should no such determination be made, the stay  
imposed herein shall become permanent.

3) Respondent shall, within six (6) 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 the license until Respondent passes  
the examination.

4) Respondent shall, prior to the effective date of this  
Decision, submit proof satisfactory to the Commissioner of  
having taken and successfully completed the continuing  
education course on trust fund accounting and handling  
specified in subdivision (a) of Section 10170.5 of the  
Business and Professions Code. Proof of satisfaction of this  
requirement includes evidence that Respondent has successfully  
completed the trust fund account and handling continuing  
education course within 120 days prior to the effective date  
of the Decision in this matter. If Respondent fails to satisfy  
this condition, the Commissioner may order the suspension of

Respondent's license until Respondent presents proof that she has successfully completed the trust fund course.


5) Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay the sum of \$4,452.00 for the Commissioner's cost of the audit which led to this disciplinary action. Respondent shall pay such cost within forty-five (45) days of receiving an invoice therefor from the Commissioner. The Commissioner may suspend Respondent's license pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

6) Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay the Commissioner's reasonable cost, not to exceed \$4,452.00, for an audit to determine if Respondents have corrected the trust fund violation(s) found in Paragraph I of the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost

1 within forty-five (45) days of receiving an invoice therefor  
2 from the Commissioner detailing the activities performed  
3 during the audit and the amount of time spent performing those  
4 activities. The Commissioner may suspend Respondent's license  
5 pending a hearing held in accordance with Section 11500, et  
6 seq., of the Government Code, if payment is not timely made as  
7 provided for herein, or as provided for in a subsequent  
8 agreement between Respondent and the Commissioner. The  
9 suspension shall remain in effect until payment is made in  
10 full or until Respondent enters into an agreement satisfactory  
11 to the Commissioner to provide for payment, or until a  
12 decision providing otherwise is adopted following a hearing  
13 held pursuant to this condition.

14 9/14/06

15 DATED

16   
17 TRULY SUGHRUE  
18 Counsel for Complainant

19 \* \* \*

20 I have read the Stipulation and Agreement, discussed it  
21 with my counsel, and its terms are understood by me and are  
22 agreeable and acceptable to me. I understand that I am waiving  
23 rights given to me by the California Administrative Procedure  
24 Act, and I willingly, intelligently and voluntarily waive those  
25 rights, including the right of requiring the Commissioner to  
26 prove the allegations in the Accusation at a hearing at which I  
27 would have the right to cross-examine witnesses against me and to  
present evidence in defense and mitigation of the charges.

9-6-06

DATED

SYDNEY ERIC KAHN  
Respondent

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

9-6-06

DATED

ERIC A. GYNDER  
Attorney for Respondent

\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision and shall become effective at 12 o'clock  
noon on NOV 20 2006

IT IS SO ORDERED

10/23/ 2006.

JEFF DAVI  
Real estate Commissioner

1 TRULY SUGHRUE, Counsel  
2 State Bar No. 223266  
3 Department of Real Estate  
4 P.O. Box 187007  
5 Sacramento, CA 95818-7007  
6  
7 Telephone: (916) 227-0781  
8

FILED  
MAR 27 2006

DEPARTMENT OF REAL ESTATE

*[Signature]*

9 BEFORE THE DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of )  
13 SYDNEY ERIC KAHN, )  
14 Respondents. )

No. H-3472 SD  
ACCUSATION

15 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate  
16 Commissioner, for causes of Accusation against SYDNEY ERIC KAHN  
17 (hereinafter "Respondent"), is informed and alleges as follows:

18 I

19 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate  
20 Commissioner of the State of California, makes this Accusation in  
21 his official capacity.

22 II

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

26 \\\

III

At all times herein mentioned, Respondent was and is licensed by the Department as a real estate broker, individually and under the fictitious business name of La Jolla Funding.

IV

At all times herein mentioned, Respondent engaged in activities on behalf of others for which a real estate license is required, for or in expectation of compensation, soliciting borrowers or lenders for or negotiating loans or collecting payments or performing services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity in California.

V

In acting as mortgage loan brokers, as described in Paragraph IV, Respondent accepted or received funds in trust (hereinafter "trust funds") from or on behalf of lender and/or borrowers, as alleged herein, and thereafter from time to time made disbursements of said trust funds.

VI

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

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**TITLE AND ACCOUNT NUMBERS**

**BANK**

Sydney E. Kahn aka La Jolla Funding  
Escrow Trust Account  
Account No. 2018668699  
(Trust #1)

Wells Fargo Bank  
9360 Clairemont Mesa  
Blvd.  
San Diego, CA 92123

VII

Between on or about July 1, 2003 through March 31, 2005, in connection with the collection and disbursement of said trust funds, Respondent:

(a) Failed to deposit and maintain trust funds in Trust #1 in such manner that as of March 31, 2005, there was a shortage of \$137.02 of trust funds.

(b) Failed to obtain prior written consent from each of the principals for the reduction of the aggregate balance of trust funds in Trust #1 to an amount less than the existing aggregate trust fund liability to the owners of said funds in violation of Section 2832.1 of the Regulations.

(c) Failed to maintain a written control record of all trust funds received and disbursed for Trust #1 containing all information required by Section 2831.

VIII

In connection with the mortgage loan brokerage business described in Paragraph IV, Respondent failed to comply with the requirements of Section 10232.4 of the Code, in that Respondent failed to provide prospective mortgage loan investors the statement described in Section 10232.5 of the Code before such investors became obligated to make the loan or purchase, and failed to obtain the signature of prospective mortgage loan



1 investors on the statement described in Section 10232.5 of the  
2 Code; and

3 IX

4 In connection with the mortgage loan brokerage  
5 business described in Paragraph IV, Respondent violated and/or  
6 willfully failed to comply with Section 10240 of the Code, in  
7 that Respondent:

8 (a) failed to cause to be delivered to the borrowers  
9 the written Disclosure Statement required by Section 10241 of  
10 the Code;

11 (b) failed to obtain the signature of the borrowers  
12 on any Written Disclosure Statement; and/or

13 (c) failed to retain on file for a period of three  
14 years a true and correct copy of any Written Disclosure  
15 Statement signed by the borrowers.

16 X

17 In connection with the mortgage loan brokerage business  
18 described in Paragraph IV, Respondent earned a credit based on  
19 the investable balance in the trust account and did not disclose  
20 such excess compensation or secret profit to the borrowers in  
21 violation of Section 10176(g) and 10176(a) of the Code.

22 PRIOR DISCIPLINE

23 XI

24 Effective December 8, 2004, in Case No. H-2979 SD, the  
25 Real Estate Commissioner disciplined the real estate broker  
26 license of Respondents SYDNEY ERIC KAHN and First La Jolla  
27 Lenders Inc.'s for violation of Sections 10159.5, 10229(a),

1 10229(e), 10229(g)(3), 10229(k), 10232.2, 10232.5, 10232.25, and  
2 10240 of the Code, and Section 2731, 2831, 2731.1, 2831.2, 2832,  
3 and 2834 of the Regulations. In addition, Respondent SYDNEY  
4 ERIC KAHN was disciplined for a violation of Section 10177(h) of  
5 the Code and Section 2725 of the Regulations. The discipline  
6 imposed upon Respondent was a 120-day suspension stayed upon  
7 terms and conditions.

### 8 XII

9 The facts alleged above are grounds for the suspension  
10 or revocation of Respondent's licenses and license rights under  
11 the following sections of the Code and Regulations:

12 (a) As to Paragraphs VII(a) under Section 10145 of  
13 the Code in conjunction with Section 10177(d) of the Code;

14 (b) As to Paragraph VII(b), under Section 10145 and  
15 Section 2832.1 of the Regulations in conjunction with Section  
16 10177(d) of the Code;

17 (c) As to Paragraph VII(c), under Section 2831 of the  
18 Regulations in conjunction with Section 10177(d) of the Code;

19 (d) As to Paragraph VIII under Section 10232.4 of the  
20 Code in conjunction with Section 10177(d) of the Code; and

21 (e) As to Paragraph IX under Section 10240 of the Code  
22 in conjunction with Section 10177(d) of the Code; and

23 (f) As to Paragraphs X, under Section 10176(g) and  
24 10176(a) of the Code.

25  
26 WHEREFORE, Complainant prays that a hearing be  
27 conducted on the allegations of this Accusation and that upon

1 proof thereof, a decision be rendered imposing disciplinary  
2 action against all licenses and license rights of Respondent,  
3 under the Real Estate Law (Part 1 of Division 4 of the Business  
4 and Professions Code), and for such other and further relief as  
5 may be proper under other provisions of law.

6  
7   
8 J. CHRIS GRAVES  
9 Deputy Real Estate Commissioner

10 Dated at San Diego, California,  
11 this 13<sup>th</sup> day of March 2006  
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