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FILED

SEP 14 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

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

10 \*\*\*

11 In the Matter of the Accusation of )  
12 ) No. H-5467 SAC  
13 FIRST CAPITAL MORTGAGE )  
14 LOAN CORPORATION, ) ACCUSATION  
15 CHRISTOPHER MICHAEL MILLER )  
16 and JACK ROLLAND EMERSON, )  
17 Respondents. )

18 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner  
19 of the State of California, for cause of Accusation against FIRST CAPITAL MORTGAGE  
20 LOAN CORPORATION (hereafter "FIRST CAPITAL"), CHRISTOPHER MICHAEL MILLER  
21 (hereafter "MILLER") and JACK ROLLAND EMERSON (hereafter "EMERSON") (hereafter  
22 collectively "Respondents"), is informed and alleges as follows:

23 1

24 The Complainant makes this Accusation in her official capacity.

25 2

26 At all times relevant herein, FIRST CAPITAL was and is licensed by the  
27 Department of Real Estate (hereafter "the Department") as a corporate real estate broker.

1 3

2 At all times relevant herein, MILLER was and is licensed by the Department as a  
3 real estate salesperson. MILLER is the Chief Executive Officer, Chief Financial Officer and  
4 100% Shareholder of FIRST CAPITAL.

5 4

6 At all times relevant herein, EMERSON was and is licensed by the Department  
7 as a real estate broker.

8 5

9 At all times relevant herein, EMERSON was and is licensed by the Department  
10 as the designated broker/officer of FIRST CAPITAL. As the designated broker/officer,  
11 EMERSON was responsible, pursuant to Section 10159.2 of the California Business and  
12 Professions Code (hereafter "the Code"), for the supervision of the activities of the officers,  
13 agents, real estate licensees and employees of FIRST CAPITAL for which a real estate license is  
14 required.

15 6

16 At all times herein mentioned, Respondents engaged in the business of, acted in  
17 the capacity of, advertised or assumed to act as a real estate broker within the State of California  
18 within the meaning of Section 10131(d) of the Code, including the operation and conduct of a  
19 loan brokerage business with the public, wherein, on behalf of others, for compensation or in  
20 expectation of compensation, Respondents solicited lenders and borrowers for loans secured  
21 directly or collaterally by liens on real property, and wherein Respondents arranged, negotiated,  
22 processed and consummated such loans.

23 7

24 Whenever reference is made in an allegation in this Accusation to an act or  
25 omission of FIRST CAPITAL, such allegation shall be deemed to mean that the officers,  
26 directors, employees, agents and real estate licensees employed by or associated with FIRST  
27 CAPITAL committed such act or omission while engaged in furtherance of the business or

1 operations of FIRST CAPITAL and while acting within the course and scope of their corporate  
2 authority and employment.

3 FIRST CAUSE OF ACTION

4 8

5 Beginning November 3, 2009, and continuing intermittently through  
6 February 10, 2010, an audit was conducted at FIRST CAPITAL's main office located at 2400  
7 Professional Drive, Suite 150, Roseville, California, where the auditor examined the records for  
8 the period of July 1, 2007, through September 30, 2009 (the audit period).

9 9

10 FIRST CAPITAL did not and does not maintain a trust account and does not  
11 handle investment funds from lenders. Respondents use third party service providers to draft  
12 loan documents and to act as the servicer for the loans they negotiate.

13 10

14 The audit described in Paragraph 8, above, revealed that in the course of the  
15 activities described in Paragraph 6, above, Respondents performed, or failed to perform, the  
16 following acts:

17 (a) FIRST CAPITAL failed to notify the Department about its threshold  
18 reporting status. In April and June of 2007, FIRST CAPITAL arranged two (2) loans totaling  
19 \$395,000. The negotiation of a combination of two (2) or more loans in an aggregate amount of  
20 more than \$250,000 in any successive three (3) months created the rebuttable presumption that  
21 FIRST CAPITAL would meet the threshold for a successive 12-month period. For the  
22 successive 12-month period ending on December 31, 2007, FIRST CAPITAL arranged eleven  
23 (11) loans totaling approximately \$4.7 million. Within thirty (30) days of meeting the threshold  
24 figure, FIRST CAPITAL failed to submit a Threshold Notification to the Department. In  
25 addition, FIRST CAPITAL also failed to submit quarterly and annual threshold reports for 2007  
26 and 2008.

27 ///

1 Such acts and/or omissions violate Sections 10232(e) (30-day threshold reporting  
2 requirement), 10232.2(b) (Requirement to file annual threshold reports) and 10232.25(d)  
3 (Requirement to file statement of non-receipt of trust funds by broker) of the Code.

4 (b) FIRST CAPITAL failed to notify the Department about its multi-lender  
5 activity within thirty (30) days of the first such transaction, including the first multi-lender loan  
6 transaction which was the Mangrove loan that closed in October 2007. In addition, FIRST  
7 CAPITAL did not have a permit issued by the Department of Corporations to exempt the offer  
8 and sale of securities. Such acts and/or omissions violate Section 10238(a) (Reporting  
9 Requirements for Multi-Lender Transactions) of the Code.

10 (c) FIRST CAPITAL failed to provide investors with the proper  
11 Lender/Purchaser Disclosure Statements (hereafter "LPDS"), including the following loan  
12 transactions:

<u>Lender</u>	<u>Borrower Property Address</u>	<u>Investment Amount</u>	<u>Closing Date</u>
Harold Gomes	Dave Collinsworth 1430 Irene Drive Woodland, CA	\$165,000	08/15/07
	-The initial Collinsworth loan was followed by an Extension and Modification Agreement extending the maturity date by one year to September 1, 2010, and reducing the interest rate from 14% to 12%. However, FIRST CAPITAL negotiated that extension and modification without providing a new LPDS to the lender.		
Derek Gilchrist	KLR Fidelity LLC 3912 23 <sup>rd</sup> Avenue Sacramento, CA	\$100,000	08/15/07
Stephen Dougan	KLR Fidelity LLC 3912 23 <sup>rd</sup> Avenue Sacramento, CA	\$ 65,000	12/07/07
Stephen Dougan	KC Development East Avenue Chico, CA	\$1,050,000	12/27/07

1 -On or about February 5, 2009, the maturity date of the initial KC  
2 Development loan was extended to May 1, 2009. However,  
3 FIRST CAPITAL negotiated that extension without providing a  
4 new LPDS to any of the three lenders.

5 Stephen R. Carroll KC Development \$400,000 12/27/07  
6 East Avenue  
7 Chico, CA

8 J. Jay Corbett KC Development \$250,000 12/27/07  
9 East Avenue  
10 Chico, CA

11 Bordigioni Family Philip Holmes \$400,000 03/07/08  
12 Trust 1515 Wood Duck Lane  
13 Meadow Vista, CA

14 -The initial Holmes loan was followed by a Modification of Note  
15 increasing the principal balance to \$466,100. FIRST CAPITAL  
16 negotiated that modification without providing a new LPDS to the  
17 lender.

18 W. Michael Layman Jack Paquin \$150,000 05/09/08  
19 448-B Ramona Avenue  
20 Monterey, CA

21 Jeffry Quandt Jack Paquin \$100,000 05/09/08  
22 448-B Ramona Avenue  
23 Monterey, CA

24 In addition, FIRST CAPITAL arranged a \$280,000 construction loan for Judy  
25 Dancy secured by investment property located at 5609 Odea Drive, Sacramento, California.  
26 Both LPDS's on file for the Judy Dancy loan were incomplete because the broker or his  
27 designated representative failed to sign Page 6, acknowledging that the information contained in  
each LPDS and its attachments were true and correct to the best of his knowledge.

Such acts and/or omissions violate of Sections 10232.4 (Provision of disclosure  
statement to lender/purchaser) and 10238(l) (Written disclosure of material facts of transaction  
to lender/purchaser) of the Code.

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1 (d) FIRST CAPITAL failed to obtain signed Investor Qualification Statements  
2 (hereafter "IQS") from lenders investing in fractionalized notes for multi-lender loan  
3 transactions. The loans extended to KLR Fidelity LLC, KC Development, Judy Dancy and Jack  
4 Paquin were all multi-lender transactions. However, signed IQS's for lenders Derek Gilchrist,  
5 Stephen Dougan, Jay Corbett, Steven Carroll, Michael Hanrihan, Raymond Frink, Michael  
6 Layman and Jeffry Quandt were not on file with FIRST CAPITAL. In addition, Respondent has  
7 not provided sufficient evidence to show that each lender's investment did not exceed 10% of  
8 his net worth or that his investment did not exceed 10% of his adjusted gross income for federal  
9 income tax purposes.

10 Such acts and/or omissions violate Section 10238(f) (Requirement of investor  
11 qualification statement on notes or interests) of the Code.

12 (e) FIRST CAPITAL failed to record deeds of trust in the name of the lender  
13 or the lender's nominee for the following transactions:

14 -David Collinsworth loan secured by the property located at 1430 Irene  
15 Drive in Woodland, California;

16 -KLR Fidelity LLC loan secured by the property located at 3912 23<sup>rd</sup>  
17 Street in Sacramento, California;

18 -KC Development loan secured by the property located on East Street  
19 in Chico, California;

20 -Philip Holmes loan secured by the property located at 1515 Wood Duck  
21 Lane in Meadow Vista, California;

22 -Judy Dancy loan secured by the property located at 5609 Odea Drive in  
23 Sacramento, California; and

24 -Jack Paquin loan secured by the property located at 448 Ramona Avenue,  
25 Monterey, California.

26 Such acts and/or omissions violate Section 10234 (Recordation requirement for  
27 trust deeds on real property) of the Code.

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1 (f) FIRST CAPITAL failed to provide borrowers with complete Mortgage  
2 Loan Disclosure Statements (hereafter "MLDS") by failing to have the broker or his  
3 representative sign the MLDS or failing to disclose information regarding prepayment  
4 provisions, including the following transactions:

<u>Borrower</u>	<u>Property Address</u>	<u>Loan Amount</u>	<u>Closing Date</u>
Dave Collinsworth	1430 Irene Drive Woodland, CA	\$165,000	08/15/07
KLR Fidelity LLC	3912 23 <sup>rd</sup> Avenue Sacramento, CA	\$165,000	12/07/07
KC Development	East Avenue Chico, CA	\$1,700,000	12/27/07
Philip Holmes	1515 Wood Duck Lane Meadow Vista, CA	\$400,000	03/07/08
Jack Paquin	448-B Ramona Drive Monterey, CA	\$250,000	05/09/08

16 In addition, FIRST CAPITAL failed to disclose prepayment provisions for the proposed loan for  
17 the Judy Dancy under Section V of that MLDS.

18 Such acts and/or omissions violate Section 10240 (Provision of mortgage loan  
19 disclosure statement to borrower) of the Code.

20 11

21 The acts and/or omissions as alleged in Paragraph 10, above, violate Sections  
22 10131(d), 10232(e), 10132.2(b), 10132.25(d), 10232.4, 10234, 10238, 10238(f), 10238(l) and  
23 10240, and are grounds for discipline under Sections 10177(d) (Willful disregard/violation of  
24 Real Estate Law) and 10177(g) (Negligence or incompetence performing acts for which license is  
25 required) of the Code. In addition, the Department is entitled to reimbursement for the costs of  
26 its audit pursuant to Section 10148 (Cost of audit in final decision following disciplinary hearing)  
27 of the Code.

1 SECOND CAUSE OF ACTION

2 12

3 Complainant refers to Paragraphs 1 through 11, above, and incorporates them  
4 herein by reference.

5 13

6 The Broker-Salesman Relationship Agreement between EMERSON and MILLER  
7 failed to address material aspects of their relationship. In particular, the wording of the  
8 Agreement shows that MILLER conducted licensed activity under EMERSON's individual  
9 broker's license from EMERSON's main office located at 5641 Frontier Way, Carmichael,  
10 California. However, according to the Department's licensing information, MILLER was never  
11 employed as a salesperson under EMERSON's individual broker's license. Instead, MILLER's  
12 sole employer since January 2004 has been FIRST CAPITAL. The Broker-Salesman  
13 Relationship Agreement also failed to mention FIRST CAPITAL or its main office located at  
14 2400 Professional Drive, Suite 150, Roseville, California.

15 In addition, under the original Broker-Salesman Relationship Agreement,  
16 EMERSON received \$3,500 as an annual fee from MILLER. However, on or about  
17 December 21, 2009, an updated and signed Independent Contractor Agreement was faxed to the  
18 Department for its review. That document was backdated to September 7, 2009. The new  
19 Agreement modified the financial arrangement between EMERSON and MILLER to fee  
20 payment of \$833.33 per month from MILLER to EMERSON.

21 Neither of the above agreements addressed the issue of any compensation to be  
22 paid to MILLER.

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24 The acts and/or omissions as alleged in Paragraph 13, above, violate Section 2726  
25 (Required contents of broker-salesperson relationship agreements) of the California Code of  
26 Regulations (hereafter "the Regulations"), and are grounds for discipline under Section 10177(d)  
27 of the Code.



1 THIRD CAUSE OF ACTION

2 15

3 Complainant refers to Paragraphs 1 through 14, above, and incorporates them  
4 herein by reference.

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6 At all times relevant herein, EMERSON was responsible, as the designated  
7 broker/officer for FIRST CAPITAL, for the supervision and control of the activities conducted  
8 on behalf of the corporation by its officers and employees. EMERSON failed to exercise  
9 reasonable supervision and control over the property mortgage loan brokering activities of  
10 FIRST CAPITAL. In particular, EMERSON permitted, ratified and/or caused the conduct  
11 described in the First and Second Causes of Action, above, to occur, and failed to take  
12 reasonable steps, including, but not limited to, the supervision of employees and the  
13 implementation of policies, rules, procedures and systems to ensure the compliance of the  
14 corporation with the Real Estate Law and the Regulations.

15 17

16 The acts and/or omissions of EMERSON as set forth in Paragraph 16, above,  
17 violate Sections 10159.2 (Responsibilities of corporate officer in charge) of the Code and  
18 Section 2725 (Broker supervision of salespersons) of the Regulations, and constitute grounds for  
19 disciplinary action under Sections 10177(h) (Failure by broker to provide reasonable supervision  
20 of activities of salespersons and/or corporation) and 10177(d) of the Code.

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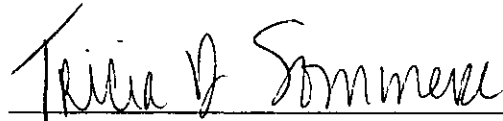
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1                    WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
2 of this Accusation, and that upon proof thereof, a decision be rendered imposing disciplinary  
3 action against all licenses and license rights of Respondents under the Code, and for such other  
4 and further relief as may be proper under applicable provisions of law.

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7 TRICIA D. SOMMERS  
8 Deputy Real Estate Commissioner

9 Dated at Sacramento, California,  
10 this 9th day of September, 2010.