

1 Department of Real Estate
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0789
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FILED
SEP 21 2007

DEPARTMENT OF REAL ESTATE

By *K. P. Dean Harper*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-9907 SF
12)
13 BAYCAL FINANCIAL CORPORATION) STIPULATION AND AGREEMENT
14 and ANTHONY C. K. TSIA,) IN SETTLEMENT
15) AND ORDER
16 Respondents.)

17 It is hereby stipulated by and between BAYCAL
18 FINANCIAL CORPORATION and ANTHONY C. K. TSIA (hereinafter
19 "Respondents") and their attorney of record, K. P. Dean Harper,
20 of Bowles & Verna LLP, and the Complainant, acting by and
21 through David B. Seals, Counsel for the Department of Real
22 Estate, as follows for the purpose of settling and disposing of
23 the Accusation filed on February 23, 2007, in this matter:

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and
26 Respondents at a formal hearing on the Accusation, which hearing
27 was to be held in accordance with the provisions of the
Administrative Procedure Act (APA), shall instead and in place

1 thereof be submitted solely on the basis of the provisions of
2 this Stipulation and Agreement in Settlement.

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

7 3. A Notice of Defense was filed on March 5, 2007 by
8 Respondents, pursuant to Section 11505 of the Government Code
9 for the purpose of requesting a hearing on the allegations in
10 the Accusation. Respondents hereby freely and voluntarily
11 withdraw said Notice of Defense. Respondents acknowledge that
12 they understand that by withdrawing said Notice of Defense they
13 will thereby waive their right to require the Commissioner to
14 prove the allegations in the Accusation at a contested hearing
15 held in accordance with the provisions of the APA and that they
16 will waive other rights afforded to them in connection with the
17 hearing such as the right to present evidence in defense of the
18 allegations in the Accusation and the right to cross-examine
19 witnesses.

20 4. This Stipulation is based on the factual
21 allegations contained in the Accusation. In the interests of
22 expedience and economy, Respondents choose not to contest these
23 allegations, but to remain silent and understand that, as a
24 result thereof, these factual allegations, without being
25 admitted or denied, will serve as a prima facie basis for the
26 disciplinary action stipulated to herein. The Real Estate

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1 Commissioner shall not be required to provide further evidence
2 to prove said factual allegations.

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

14 6. The Order or any subsequent Order of the Real
15 Estate Commissioner made pursuant to this Stipulation and
16 Agreement in Settlement shall not constitute an estoppel, merger
17 or bar to any further administrative or civil proceedings by the
18 Department of Real Estate with respect to any matters which were
19 not specifically alleged to be causes for accusation in this
20 proceeding.

21 7. Respondents have received, read and understand the
22 "Notice Concerning Costs of Subsequent Audits". Respondents
23 understand that by agreeing to this Stipulation and Agreement in
24 Settlement, the findings set forth below in the DETERMINATION OF
25 ISSUES become final, and that the Commissioner may charge
26 Respondents for the costs of any audit for which they are
27 charged pursuant to Section 10148 of the Business and

1 Professions Code (hereinafter the "Code"). The reasonable cost
2 of the audits which led to this disciplinary action is
3 \$5,445.72. The maximum cost of the subsequent audits will not
4 exceed \$5,445.72.

5
6 DETERMINATION OF ISSUES

7 I

8 By reason of the foregoing stipulations, admissions
9 and waivers and solely for the purpose of settlement of the
10 pending Accusation without a hearing, it is stipulated and
11 agreed that the facts alleged above are grounds for the
12 suspension or revocation of the licenses and license rights of
13 Respondent ANTHONY C. K. TSIA under Section 10177(h) of the Code
14 and Section 2725 of the Regulations in conjunction with Section
15 10177(d) of the Code and, as to Respondent BAYCAL FINANCIAL
16 CORPORATION under Section 10177(d) of the Code in conjunction
17 with Section 10145 of the Code and Section 2831.1 of the
18 Regulations.

19 ORDER

20 I

21 All licenses and licensing rights of Respondent BAYCAL
22 FINANCIAL CORPORATION under the Real Estate Law are suspended
23 for a period of one hundred (100) days from the effective date
24 of this Order; provided, however, that:

25 1. Fifty (50) days of said suspension shall be stayed
26 for two (2) years upon the following terms and conditions:

27 ///

1 A. Respondent shall obey all laws, rules and
2 regulations governing the rights, duties and
3 responsibilities of a real estate licensee in the
4 State of California; and

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

15 2. The remaining fifty (50) days of said 100-day
16 suspension shall be stayed upon the condition that Respondent
17 BAYCAL FINANCIAL CORPORATION petition pursuant to Section
18 10175.2 of the Business and Professions Code and pays a monetary
19 penalty pursuant to Section 10175.2 of the Business and
20 Professions Code at a rate of \$100.00 for each day of the
21 suspension for a total monetary penalty of \$5,000.00:

22 A. Said payment shall be in the form of a cashier's
23 check or certified check made payable to the
24 Recovery Account of the Real Estate Fund. Said
25 check must be delivered to the Department prior
26 to the effective date of the Order in this
27 matter.

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

5 C. If Respondent BAYCAL FINANCIAL CORPORATION fails
6 to pay the monetary penalty as provided above
7 prior to the effective date of this Order, the
8 stay of the suspension shall be vacated as to
9 Respondent BAYCAL FINANCIAL CORPORATION and the
10 order of suspension shall be immediately
11 executed, under this Paragraph I of this Order,
12 in which event Respondent BAYCAL FINANCIAL
13 CORPORATION shall not be entitled to any
14 repayment nor credit, prorated or otherwise, for
15 the money paid to the Department under the terms
16 of this Order.

17 D. If Respondent BAYCAL FINANCIAL CORPORATION pays
18 the monetary penalty and any other moneys due
19 under this Stipulation and Agreement and if no
20 further cause for disciplinary action against the
21 real estate licenses of Respondent BAYCAL
22 FINANCIAL CORPORATION occurs within two (2) years
23 from the effective date of this Order, the entire
24 stay hereby granted under Paragraphs I and II of
25 this Order, as to Respondent BAYCAL FINANCIAL
26 CORPORATION only, shall become permanent.

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1 3. Pursuant to Section 10148 of the Business and
2 Professions Code, Respondents ANTHONY C. K. TSIA and BAYCAL
3 FINANCIAL CORPORATION shall pay the Commissioner's reasonable
4 cost for the audit which led to this disciplinary action
5 (\$5,445.72) and a subsequent audit (not to exceed \$5,445.72) to
6 determine if Respondent BAYCAL FINANCIAL CORPORATION has
7 corrected the trust fund violation(s) found in Paragraph I of
8 the Determination of Issues. In calculating the amount of the
9 Commissioner's reasonable cost, the Commissioner may use the
10 estimated average hourly salary for all persons performing
11 audits of real estate brokers, and shall include an allocation
12 for travel time to and from the auditor's place of work.
13 Respondents ANTHONY C. K. TSIA and BAYCAL FINANCIAL CORPORATION
14 shall pay such cost within 60 days of receiving an invoice from
15 the Commissioner detailing the activities performed during the
16 audit and the amount of time spent performing those activities.
17 The Commissioner may suspend the licenses of Respondents ANTHONY
18 C. K. TSIA and BAYCAL FINANCIAL CORPORATION pending a hearing
19 held in accordance with Section 11500, et seq., of the
20 Government Code, if payment is not timely made as provided for
21 herein, or as provided for in a subsequent agreement between
22 Respondents ANTHONY C. K. TSIA and BAYCAL FINANCIAL CORPORATION
23 and the Commissioner. The suspension shall remain in effect
24 until payment is made in full or until Respondents ANTHONY C. K.
25 TSIA and BAYCAL FINANCIAL CORPORATION enter into an agreement
26 satisfactory to the Commissioner to provide for payment, or

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1 until a decision providing otherwise is adopted following a
2 hearing held pursuant to this condition.

3 II

4 All licenses and licensing rights of Respondent
5 ANTHONY C. K. TSIA under the Real Estate Law are suspended for a
6 period of one hundred (100) days from the effective date of this
7 Order; provided, however, that:

8 1. Fifty (50) days of said suspension shall be stayed
9 for two (2) years upon the following terms and conditions:

10 A. Respondent shall obey all laws, rules and
11 regulations governing the rights, duties and
12 responsibilities of a real estate licensee in the
13 State of California; and,

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

24 2. The remaining fifty (50) days of said 100-day
25 suspension shall be stayed upon the condition that Respondent
26 ANTHONY C. K. TSIA petition pursuant to Section 10175.2 of the
27 Business and Professions Code and pays a monetary penalty

1 pursuant to Section 10175.2 of the Business and Professions Code
2 at a rate of \$100.00 for each day of the suspension for a total
3 monetary penalty of \$5,000.00:

- 4 A. Said payment shall be in the form of a cashier's
5 check or certified check made payable to the
6 Recovery Account of the Real Estate Fund. Said
7 check must be delivered to the Department prior
8 to the effective date of the Order in this
9 matter.
- 10 B. No further cause for disciplinary action against
11 the Real Estate licenses of said Respondent
12 ANTHONY C. K. TSIA occurs within two (2) years
13 from the effective date of the decision in this
14 matter.
- 15 C. If Respondent ANTHONY C. K. TSIA fails to pay the
16 monetary penalty as provided above prior to the
17 effective date of this Order, the stay of the
18 suspension shall be vacated as to Respondent
19 ANTHONY C. K. TSIA and the order of suspension
20 shall be immediately executed, under this
21 Paragraph II of this Order, in which event
22 Respondent ANTHONY C. K. TSIA shall not be
23 entitled to any repayment nor credit, prorated or
24 otherwise, for the money paid to the Department
25 under the terms of this Order.

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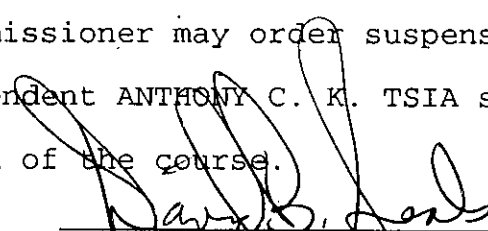
1 D. If Respondent ANTHONY C. K. TSIA pays the
2 monetary penalty and any other moneys due under
3 this Stipulation and Agreement and if no further
4 cause for disciplinary action against the real
5 estate licenses of Respondent ANTHONY C. K. TSIA
6 occurs within two (2) years from the effective
7 date of this Order, the entire stay hereby
8 granted under Paragraphs I and II of this Order,
9 as to Respondent ANTHONY C. K. TSIA only, shall
10 become permanent.

11 3. Pursuant to Section 10148 of the Business and
12 Professions Code, Respondents ANTHONY C. K. TSIA and BAYCAL
13 FINANCIAL CORPORATION shall pay the Commissioner's reasonable
14 cost for the audit which led to this disciplinary action
15 (\$5,445.72) and a subsequent audit (not to exceed \$5,445.72) to
16 determine if Respondent BAYCAL FINANCIAL CORPORATION has
17 corrected the trust fund violation(s) found in Paragraph I of
18 the Determination of Issues. In calculating the amount of the
19 Commissioner's reasonable cost, the Commissioner may use the
20 estimated average hourly salary for all persons performing
21 audits of real estate brokers, and shall include an allocation
22 for travel time to and from the auditor's place of work.
23 Respondents ANTHONY C. K. TSIA and BAYCAL FINANCIAL CORPORATION
24 shall pay such cost within 60 days of receiving an invoice from
25 the Commissioner detailing the activities performed during the
26 audit and the amount of time spent performing those activities.
27 The Commissioner may suspend the licenses of Respondents ANTHONY

1 C. K. TSIA and BAYCAL FINANCIAL CORPORATION pending a hearing
2 held in accordance with Section 11500, et seq., of the
3 Government Code, if payment is not timely made as provided for
4 herein, or as provided for in a subsequent agreement between
5 Respondents ANTHONY C. K. TSIA and BAYCAL FINANCIAL CORPORATION
6 and the Commissioner. The suspension shall remain in effect
7 until payment is made in full or until Respondents ANTHONY C. K.
8 TSIA and BAYCAL FINANCIAL CORPORATION enter into an agreement
9 satisfactory to the Commissioner to provide for payment, or
10 until a decision providing otherwise is adopted following a
11 hearing held pursuant to this condition.

12 4. Respondent ANTHONY C. K. TSIA shall, prior to the
13 date this Stipulation becomes effective, submit proof
14 satisfactory to the Commissioner of having taken and
15 successfully completed the continuing education course on trust
16 fund accounting and handling specified in subdivision (a) of
17 Section 10170.5 of the Business and Professions Code. Proof of
18 satisfaction of this requirement includes evidence that
19 Respondent ANTHONY C. K. TSIA has successfully completed the
20 trust fund account and handling continuing education course
21 within 120 days prior to the effective date of the Stipulation
22 in this matter. If Respondent ANTHONY C. K. TSIA fails to
23 satisfy this condition, the Commissioner may order suspension of
24 Respondent's license until Respondent ANTHONY C. K. TSIA submits
25 satisfactory proof of completion of the course.

26 DATED: Sept. 12, 2007


27 DAVID B. SEALS, Counsel
DEPARTMENT OF REAL ESTATE

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* * *

I have read the Stipulation and Agreement, have discussed it with my counsel, 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 allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

DATED: 8/21/07


ANTHONY C. K. TSIA
Respondent


DATED: 8/21/07


BAYCAL FINANCIAL CORPORATION
Respondent

* * *

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

DATED: 8-22-07


K. P. DEAN HARPER
Attorney for Respondents

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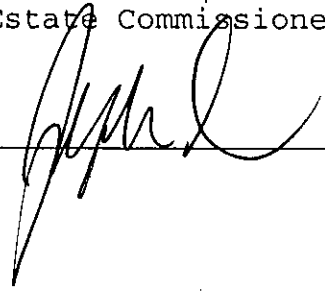
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The foregoing Stipulation and Agreement in Settlement
is hereby adopted by the Real Estate Commissioner as his
Decision and Order and shall become effective at 12 o'clock noon
on **OCT 12 2007**.

IT IS SO ORDERED

9-19-07

JEFF DAVIS
Real Estate Commissioner



1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
FEB 23 2007

DEPARTMENT OF REAL ESTATE

By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-9907 SF
12 BAYCAL FINANCIAL CORPORATION and)	<u>ACCUSATION</u>
13 ANTHONY C. K. TSIA,)	
14 Respondents.)	

15 The Complainant, E. J. Haberer II, a Deputy Real
16 Estate Commissioner of the State of California for cause of
17 Accusation against BAYCAL FINANCIAL CORPORATION (hereinafter
18 "Respondent BAYCAL") and ANTHONY C. K. TSIA (hereinafter
19 "Respondent TSIA "), is informed and alleges as follows:

20 I

21 The Complainant, E. J. Haberer II, a Deputy Real
22 Estate Commissioner of the State of California, makes this
23 Accusation against Respondents in his official capacity.

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II

Respondent BAYCAL is licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code") as a corporate real estate broker.

III

Respondent TSIA is licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code as a real estate broker and as the designated officer of Respondent BAYCAL, Baycal Financial Mortgage Corporation, and BayCal Realty Corporation.

IV

At various times mentioned herein, Respondents TSIA and BAYCAL engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California, within the meaning of Section 10131(d) of the Code by 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.

V

That at all times mentioned herein, Respondents TSIA and BAYCAL accepted or received funds in trust (hereafter trust funds) from and on behalf of their principals placing them in accounts and at times thereafter made disbursements of such funds.

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VI

From November 16, 2005 to December 15, 2005 an investigative audit (#OK 05-0038) was conducted by the Department of the records and bank records of Respondent BAYCAL for the period from January 1, 2004 to November 30, 2005, as said records related to their activities as a real estate broker described above.

VII

Respondent BAYCAL maintained one trust account for its real estate activities at Wells Fargo, P. O. Box 6995, Portland, OR 97228, in the name of Baycal Financial Corporation Client Trust Account, Acct. # 311164776.

VIII

During the three-year period next preceding the filing of this Accusation herein, Respondent BAYCAL failed to maintain an accurate record of all trust funds received for the trust account, in that, the record did not identify from whom trust funds were received or the date the funds were received in violation of Section 2831, Title 10, California Code of Regulations (hereinafter the "Regulations").

IX

During the three-year period next preceding the filing of this Accusation herein, Respondent BAYCAL failed to maintain an accurate separate record for each beneficiary or transaction, in that, the records for each beneficiary or transaction do not have the date funds were received or the date funds are paid in violation of Section 2831.1 of the Regulations.

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X

During the three-year period next preceding the filing of this Accusation herein, Respondent BAYCAL failed to deposit all trust funds received into the trust account within three business days in violation of Section 2832 of the Regulations.

XI

During the three-year period next preceding the filing of this Accusation herein, Respondent BAYCAL deposited checks from escrow and title companies containing client trust funds or trust funds payable by clients to others into a non-trust account in violation of Section 2835 of the Regulations and Section 10176(e) of the Code.

XII

During the three-year period next preceding the filing of this Accusation herein, Respondent BAYCAL failed to state the broker's license number and the Department's license information telephone number on the Mortgage Loan Disclosure Statement/Good Faith Estimate in violation of Section 10236.4 of the Code.

XIII

During the three-year period next preceding the filing of this Accusation herein, Respondent BAYCAL failed to maintain in its files a true and correct copy of the written disclosure statement signed by borrowers James and Joyce Lee in violation of Section 10240(a) of the Code.

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XIV

During the three-year period next preceding the filing of this Accusation herein, Respondent BAYCAL provided disclosure statements with erroneous amounts for broker compensation and items paid outside of escrow and failed to disclose that there would be additional compensation (yield spread premiums) to the broker in violation of Section 10240(c) of the Code.

XV

During the three-year period next preceding the filing of this Accusation herein, Respondent BAYCAL failed to maintain in its main office the license certificates of real estate salespersons Jia Yu Feng, Lin Chung Ngai, Richard J. Mesler, and Salvador Meza in violation of Section 10160 of the Code and Section 2753 of the Regulations.

XVI

During the three-year period next preceding the filing of this Accusation herein, Respondent BAYCAL failed to reveal on the disclosure statement given to borrower Pei that the loan would be made wholly or in part from broker-controlled funds in violation of Section 10241(j) of the Code.

XVII

During the three-year period next preceding the filing of this Accusation herein, licensees Jia Yu Feng and Lin Chung Ngai used business cards with names other than the names in which their licenses were issued by the Department in violation of Section 2731 of the Regulations.

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XVIII

At all times mentioned herein, Respondent TSIA failed to exercise reasonable supervision over the activities of Respondent BAYCAL and its employees, and permitted, ratified and/or caused the conduct described above. Respondent TSIA failed to reasonably or adequately review, oversee, inspect and manage the persons under the employ of Respondent BAYCAL and/or to establish reasonable policies, rules, procedures and systems for such review, oversight, inspection and management.

XIX


The acts and/or omissions of Respondents described above are grounds for the suspension or revocation of Respondents' licenses and license rights as follows:

- (1) As to Respondent BAYCAL, under Section 10176(a) of the Code and Sections 10160, 10236.4, 10240, 10241 of the Code and Sections 2753, 2831, 2831.1, 2832, and 2835 of the Regulations in conjunction with Section 10177(d) of the Code; and
- (2) As to Respondent TSIA, under Section 10177(h) of the Code and Section 2725 of the Regulations in conjunction with Section 10177(d) of the Code.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents, 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 provisions of law.



E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 12 day of February, 2007.