

PLAG

DEPARTMENT OF REAL ESTATE
P. O. Box 187007
Sacramento, CA 95818-7007
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FILED

MAY - 6 2008

DEPARTMENT OF REAL ESTATE

By K. Max

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) No. H-10200 SF
)
) STIPULATION AND AGREEMENT
KIWI & CO., a California)
Corporation; JON ORVILLE)
FREEMAN; and NATHALIE)
BICH VUONG,)
)
Respondents.)

It is hereby stipulated by and between Respondents
KIWI & CO. (hereinafter "Respondent KIWI"), JON ORVILLE FREEMAN
(hereinafter "Respondent FREEMAN"), and NATHALIE BICH VUONG
(hereinafter "Respondent VUONG"), by and through Respondents'
counsel Bruce A. Cornelius, and the Complainant herein, the
California Department of Real Estate (hereinafter "the
Complainant"), for the purpose of settling and disposing of the
Accusation filed on October 9, 2007 in matter number H-10200 SF
before the Department (hereinafter "the Accusation"):

///

1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and
3 Respondents at a formal hearing on the Accusation, which hearing
4 was to be held in accordance with the provisions of the
5 Administrative Procedure Act (APA), shall instead and in place
6 thereof be submitted solely on the basis of the provisions of
7 this Stipulation and Agreement.

8 2. Respondents have received, read and understand
9 the Statement to Respondent, the Discovery Provisions of the APA
10 and the Accusation filed by the Complainant in this proceeding.

11 3. On October 19, 2007 Respondents KIWI and FREEMAN
12 filed Notices of Defense pursuant to Section 11505 of the
13 Government Code for the purpose of requesting a hearing on the
14 allegations in the Accusation. On or about January 9, 2008,
15 Respondent VUONG appeared in this matter by and through counsel,
16 Bruce A. Cornelius, thereby seeking a hearing on the allegations
17 in the Accusation. Respondents, and each of them, hereby freely
18 and voluntarily withdraw their Notices of Defense and requests
19 for a hearing on this matter. Respondents acknowledge that
20 Respondents understand that by doing so, Respondents will
21 thereby waive Respondents' right to require the Commissioner to
22 prove the allegations in the Accusation at a contested hearing
23 held in accordance with the provisions of the APA and that
24 Respondents will waive other rights afforded to Respondents in
25 connection with the hearing such as the right to present
26 evidence in defense of the allegations in the Accusation and the
27 right to cross-examine witnesses.

1 4. Respondents, pursuant to the limitations set
2 forth below, hereby admit that the factual allegations in the
3 Accusation pertaining to Respondents are true and correct and
4 stipulate and agree that the Real Estate Commissioner shall not
5 be required to provide further evidence of such allegations.

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

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

21 DETERMINATION OF ISSUES

22 By reason of the foregoing stipulations, admissions
23 and waivers, and solely for the purpose of settlement of the
24 pending Accusation without hearing, it is stipulated and agreed
25 between the Respondents and the Complainant that the following
26 Determination of Issues shall be made:

27 ///

1 I

2 The acts and omissions of Respondents described in the
3 Accusation are grounds for the suspension or revocation of the
4 licenses and license rights of Respondent KIWI under the
5 provisions of Section 10137 of the Business and Professions Code
6 (hereinafter "the Code.")

7 II

8 The acts and omissions described in the Accusation are
9 grounds for the suspension or revocation of the license and
10 license rights of Respondent FREEMAN under the provisions of
11 Sections 10130, 10137, 10176(h) and 10177(d) of the Code, and
12 Section 2725 of Title 10 of the California Code of Regulations
13 (hereinafter "the Regulations.")

14 III

15 The acts and omissions described in the Accusation are
16 grounds for the suspension or revocation of the license and
17 license rights of Respondent VUONG under the provisions of
18 Sections 10130, 10137 and 10177(d) of the Code.

19 ORDER

20 I

21 The parties acknowledge and understand that Respondent
22 VUONG's real estate salesperson license expired on April 14,
23 2004, and her renewal rights expired on April 13, 2006.
24 Respondent VUONG hereby admits that the factual allegations in
25 the Accusation pertaining to Respondent VUONG are true and
26 correct and stipulates and agrees that the Real Estate
27 Commissioner may base a denial of any future application for a

1 real estate license submitted by Respondent VUONG upon this
2 Stipulation and Agreement pursuant to the provisions of Sections
3 480 and 485 of the Code.

4 II

5 All licenses and licensing rights of Respondent KIWI
6 under the Real Estate Law are suspended for a period of sixty
7 (60) days from the effective date of this Decision; provided,
8 however:

9 A. If Respondent KIWI petitions, sixty (60) days of the
10 sixty (60) day suspension shall be stayed upon the condition
11 that:

12 (1) Respondent KIWI pays a monetary penalty pursuant
13 to Section 10175.2 of the Code at the rate of \$100.00
14 for each day of the suspension for a total monetary
15 penalty of \$6,000.00,

16 (2) Said payment shall be in the form of a cashier's
17 check or certified check made payable to the Recovery
18 Account of the Real Estate Fund. Said check must be
19 received by the Department prior to the effective date
20 of the Decision in this matter.

21 (3) If Respondent KIWI fails to pay the monetary
22 penalty in accordance with the terms and conditions of
23 the Decision, the Commissioner may, without a hearing,
24 vacate and set aside the stay order and order the
25 immediate execution of all or any part of the stayed
26 suspension.

27 ///

(4) No final subsequent determination be made, after
hearing or upon stipulation, that cause for
disciplinary action against Respondent KIWI, occurred
within two (2) years of the effective date of the
Decision herein. Should such a determination be made
the Commissioner may, in his or her discretion, vacate
and set aside the stay order, and order the execution
of all or any part of the stayed suspension, in which
event Respondent shall not be entitled to any
repayment nor credit, prorated or otherwise, for money
paid to the Department under the terms of this
Decision.

(5) If Respondent KIWI pays the monetary penalty and
if no further cause for disciplinary action against
the real estate license of Respondent KIWI occurs
within two (2) years from the effective date of the
Decision herein, then the stay hereby granted shall
become permanent.

III

All licenses and licensing rights of Respondent
FREEMAN under the Real Estate Law are suspended for a period of
sixty (60) days from the effective date of this Decision;
provided, however:

A. If Respondent FREEMAN petitions, sixty (60) days of the
sixty (60)-day suspension shall be stayed upon the condition
that:

///

1 (1) Respondent FREEMAN pays a monetary penalty
2 pursuant to Section 10175.2 of the Code at the rate of
3 \$100.00 for each day of the suspension for a total
4 monetary penalty of \$6,000.00,

5 (2) Said payment shall be in the form of a cashier's
6 check or certified check made payable to the Recovery
7 Account of the Real Estate Fund. Said check must be
8 received by the Department prior to the effective date
9 of the Decision in this matter.

10 (3) If Respondent FREEMAN fails to pay the monetary
11 penalty in accordance with the terms and conditions of
12 the Decision, the Commissioner may, without a hearing,
13 vacate and set aside the stay order and order the
14 immediate execution of all or any part of the stayed
15 suspension.

16 (4) No final subsequent determination be made, after
17 hearing or upon stipulation, that cause for
18 disciplinary action against Respondent FREEMAN,
19 occurred within two (2) years of the effective date of
20 the Decision herein. Should such a determination be
21 made the Commissioner may, in his or her discretion,
22 vacate and set aside the stay order, and order the
23 execution of all or any part of the stayed suspension,
24 in which event Respondent shall not be entitled to any
25 repayment nor credit, prorated or otherwise, for money
26 paid to the Department under the terms of this
27 Decision.

1 (5) Respondent FREEMAN shall, within six (6) months
2 from the effective date of the Decision, take and pass
3 the Professional Responsibility Examination ("PRE")
4 administered by the Department, including the payment
5 of the appropriate examination fee. If Respondent
6 FREEMAN fails to take and pass the PRE in accordance
7 with the terms and conditions of the Decision, the
8 Commissioner may order the immediate execution of all
9 or any part of the stayed suspension.

10 (6) If Respondent FREEMAN pays the monetary penalty
11 and takes and passes the PRE, and if no further cause
12 for disciplinary action against the real estate
13 license of Respondent FREEMAN occurs within two (2)
14 years from the effective date of the Decision herein,
15 then the stay hereby granted shall become permanent.

16
17 3/24/08
18 DATED

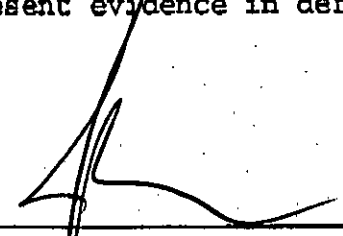
19 
20 JEANINE K. CLASEN, Counsel
21 Department of Real Estate

22 * * *

23 I have read the Stipulation and Agreement and its
24 terms are understood by me and are agreeable and acceptable to
25 me. I understand that I am waiving rights given to me by the
26 California Administrative Procedure Act (including but not
27 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

1 the Commissioner to prove the allegations in the Accusation at a
2 hearing at which I would have the right to cross-examine
3 witnesses against me and to present evidence in defense and
4 mitigation of the charges.
5

6 2/22/08
7 DATED

8 
KIWI & CO.
Respondent
By: JON ORVILLE FREEMAN

9
10
11 2/22/08
12 DATED

13 
JON ORVILLE FREEMAN
Respondent

14
15 2/22/08
16 DATED

17 
NATHALIE BICH VUONG
Respondent

18 Approved as to form and content by counsel for
19 Respondent.

20
21 2/22/08
22 DATED

23 
BRUCE A. CORNELIUS
Attorney for Respondents

24 * * *

IT IS SO ORDERED 4/30, 2008.

[Handwritten signature]

1 JEANINE K. CLASEN, Counsel (SBN 164404)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
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FILED
OCT - 9 2007

DEPARTMENT OF REAL ESTATE

By H. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

12 In the Matter of the Accusation of
13
14 KIWI & CO., a California
15 Corporation; JON ORVILLE FREEMAN;
16 and NATHALIE BICH VUONG,
17 Respondents.

No. H-10200 SF
ACCUSATION

18 The Complainant, CHARLES W. KOENIG, a Deputy Real
19 Estate Commissioner of the State of California for cause of
20 Accusation against KIWI & CO., a California Corporation
21 ("Respondent Kiwi"), JON ORVILLE FREEMAN ("Respondent Freeman")
22 and NATHALIE BICH VUONG ("Respondent Vuong"), collectively
23 referred to herein as "Respondents", is informed and alleges as
24 follows:

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I

The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondents in his official capacity.

II

Respondent Freeman is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (hereinafter "the Code") as a real estate broker. At all times mentioned herein Freeman was also the designated officer of Respondent Kiwi.

III

Respondent Kiwi is presently licensed and/or has license rights under the Code as a corporate real estate broker. At all times herein mentioned Respondent Kiwi operated under the names "Investment Equity Group", "Stonecrest Financial", "Stonecrest Mortgage" and "Stonecrest Realty".

IV

Between on or about April 15, 2000 and on or about April 14, 2004, Respondent Vuong was licensed and/or had license rights under the Code as a real estate salesperson. Respondent Vuong was not licensed by the Department as either a real estate broker or salesperson at any time mentioned herein after April 14, 2004.

V

At various times mentioned herein, Respondent Kiwi engaged in the business of, acted in the capacity of,

1 advertised, or assumed to act as a real estate broker within the
2 State of California, within the meaning of Section 10131(d) of
3 the Code by soliciting borrowers or lenders for or negotiating
4 loans or collecting payments or performing services for
5 borrowers or lenders or note owners in connection with loans
6 secured directly or collaterally by liens on real property or on
7 a business opportunity.

8 VI

9 Whenever reference is made in an allegation in this
10 Accusation to an act or omission of Respondent Kiwi, such
11 allegation shall be deemed to mean that the officers, directors,
12 employees, agents and real estate licensees employed by or
13 associated with Respondent Kiwi committed such act or omission
14 while engaged in furtherance of the business or operation of
15 Respondent Kiwi and while acting within the course and scope of
16 their corporate authority and employment.

17 VII

18 At all times herein mentioned, Respondent Kiwi and
19 Respondent Freeman employed Respondent Vuong as a real estate
20 salesperson and during that time allowed Respondent Vuong to be
21 compensated and to perform services for which a real estate
22 license is required in violation of Section 10137 of the Code.

23 VIII

24 In or about October 2004, Respondent Vuong, while in
25 the employ of Respondent Freeman, negotiated and arranged for a
26 loan in the principal amount of \$171,000 to Shabbir A. Khan and
27 Farida A. Khan ("the Khans"), as borrowers, secured by the real

1 property located at 2364 Golden Bear Circle, Stockton,
2 California. Respondent Vuong was compensated for such services,
3 for which a real estate license is required, in violation of
4 Sections 10130 and 10137 of the Code.

5 IX

6 Between on or about December 13, 2004 and on or about
7 January 14, 2005, Respondent Vuong, while in the employ of
8 Respondent Freeman, negotiated and arranged for two purchase
9 money loans in the total principal amount of \$555,000 to Mahnaz
10 Soufi ("Soufi"), as borrower and purchaser of real property
11 located at 540 Birdsong Street, Gilroy, California. Respondent
12 Vuong was compensated for such services, for which a real estate
13 license is required, in violation of Sections 10130 and 10137 of
14 the Code.

15 X

16 Between on or about January 26, 2005 and on or about
17 March 15, 2005, Respondent Vuong, while in the employ of
18 Respondent Freeman, negotiated and arranged for a loan in the
19 principal amount of \$174,400 to the Khans, as borrowers, secured
20 by real property located at 4190 Riverbrook Court, Stockton,
21 California. Respondent Vuong was compensated for such services,
22 for which a real estate license is required, in violation of
23 Sections 10130 and 10137 of the Code.

24 XI

25 Between on or about January 20, 2005 and on or about
26 March 15, 2005, Respondent Vuong, while in the employ of
27 Respondent Freeman, negotiated and arranged for a loan in the

1 principal amount of \$464,000 to Wilfrido Moya and Juan Luis
2 Martinez ("Moya") as borrowers, secured by real property located
3 at 1070 Ayer Drive, Gilroy, California. Respondent Vuong was
4 compensated for such services, for which a real estate license
5 is required, in violation of Sections 10130 and 10137 of the
6 Code.

7 XII

8 Between on or about February 2, 2005 and on or about
9 April 1, 2005, Respondent Vuong, while in the employ of
10 Respondent Freeman, negotiated and arranged for a loan in the
11 principal amount of \$220,000 to Jorge Avila and Christina Avila
12 ("the Avilas"), as borrowers, secured by the real property
13 located at 3421 and 3425 Fosberg Road, Turlock, California.
14 Respondent Vuong was compensated for such services, for which a
15 real estate license is required, in violation of Sections 10130
16 and 10137 of the Code.

17 XIII

18 At all times mentioned herein, Respondent Freeman
19 failed to exercise reasonable supervision over the activities of
20 his salespersons, and permitted, ratified and/or caused the
21 conduct described above. Respondent Freeman failed to
22 reasonably or adequately review, oversee, inspect and manage the
23 salespersons under his employ, and/or to establish reasonable
24 policies, rules, procedures and systems for such review,
25 oversight, inspection and management.

26 ///

27 ///

XIV

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 Freeman, under Sections 10137 and 10176(h) of the Code, in conjunction with Section 10177(d) of the Code, and Section 2725 of Title 10 of the California Code of Regulations ("the Regulations"), in conjunction with Section 10177(d) of the Code;
- (2) As to Respondent Vuong, under Sections 10130 and 10137 of the Code in conjunction with Section 10177(d) of the Code; and
- (3) As to Respondent Kiwi, under Section 10137 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.

Charles W. Koenig
CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 9th day of October, 2007.