

FILED

MAR 17 2011

DEPARTMENT OF REAL ESTATE

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	NO. H-10837 SF
)	
JOHN MARCO NEWCOMER,)	OAH NO. 2010040748
)	
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision dated February 4, 2011, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on

APR - 7 2011

IT IS SO ORDERED _____

3/15/2011

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

CWM FINANCIAL CORP.,
JOHN MARCO NEWCOMER, and
WONDERLYN THERESA NETTLES-
TUTWILER,

Respondents.

No. H-10837 SF

OAH No. 2010040748

PROPOSED DECISION

On January 4, 2011, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Truly Sughrue, Counsel, represented Joe M. Carrillo, Deputy Real Estate Commissioner (complainant), Department of Real Estate, State of California.

Respondent John Marco Newcomer (respondent Newcomer) was present for the proceeding, but he was not otherwise represented. No appearance was made by respondents CWM Financial Corp, a corporation, Wonderlyn Theresa Nettles-Tutwiler because of earlier resolution of the accusation against those respondents.

The record was held open for the purpose of affording complainant the opportunity to file a memorandum pertaining to citations to court of appeal decisions that were mentioned by complainant's counsel during the course of closing arguments. On January 5, 2011, OAH filed a letter from complainant's counsel, which was marked as Exhibit "6," and received as argument. Respondent Newcomer was given until January 7, 2011, to file a reply, which was not forthcoming.

On January 7, 2011, the parties were deemed to have submitted the matter and the record closed.

FACTUAL FINDINGS

1. On January 14, 2010, complainant E. J. Haberer II, a Deputy Real Estate Commissioner, Department of Real Estate (the department), State of California, in his official capacity, made the Accusation against respondents CWM Financial Corp, a

corporation, Wonderlyn Theresa Nettles-Tutwiler (Ms. Nettles-Tutwiler) and respondent Newcomer. Before the initial day of the hearing of this matter, respondents CWM Financial Corp., a corporation, and Ms. Nettles-Tutwiler entered into stipulated agreements with the Department that resulted in the voluntary surrender by those respondents of their respective licenses and license rights. Accordingly, the instance administrative adjudication proceeding pertains only to respondent John Marco Newcomer.

Respondent John Marco Newcomer's License History

2. Respondent John Marco Newcomer (respondent Newcomer) is presently licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

On June 23, 2003, the Commissioner issued respondent Newcomer a real estate broker license (number 01239548). Beginning on January 1, 2007, respondent Newcomer caused the department's record to reflect his main office address as a real estate broker as 519 Santa Florita, Millbrae, California. On June 22, 2007, the broker license expired and the main office discontinued. On February 25, 2008, the real estate broker license was renewed and the main office continued at Santa Florita in Millbrae. On August 18, 2009, the main office address for respondent Newcomer was changed to 250 Fisher Avenue, Costa Mesa, California.

Respondent Newcomer's real estate broker license will expire on February 24, 2012.

Respondent Newcomer was issued by the department a real estate salesperson license¹ on June 2, 1998.

3. Beginning on April 21, 2006, respondent Newcomer became the designated broker officer for CWM Financial Corp. The designated broker officer status for respondent Newcomer was cancelled as of August 25, 2008. At all times relevant to the transactions described below, respondent Newcomer, as a real estate broker, was responsible for the reasonable supervision of the activities of the real estate licensees, agents and employees of the CWM Financial Corp.'s offices to which he associated his license as the broker-in-charge.

Department Auditor's Findings and Conclusions

4. Ms. Susie Hsueh offered credible and persuasive evidence at the hearing of this matter. Ms. Hsueh, who is qualified as an accountant, is an auditor with the Department of Real Estate.

¹ The record is not clear whether the real estate salesperson license in respondent Newcomer's name remains active.

5. Beginning on October 6, 2008, and ending on October 23, 2008, Department Auditor Ms. Hsueh (Auditor Hsueh) performed an examination of the real estate loan files, real estate resale files, real estate salesperson licenses, and copies of real estate licenses and broker-salesperson agreements maintained by CWM Financial Corp. Auditor Hsueh conducted the audit examination of real estate broker's records of CWM Financial Corp at the department's office in Oakland.

Auditor Hsueh selected the time span of July 1, 2006, to June 30, 2008, as the period for which she examined the accounting records and other records of the corporate real estate broker's operation for which respondent Newcomer acted as the designated broker officer. Among other purposes, the objective of the auditor's examination was to ascertain whether mortgage loan and property resale activities under the control of the subject real estate broker had been handled and accounted for in accordance with the California Real Estate Law and the Commissioner's Regulations.

6. During the audit examination, Auditor Hsueh met with Ms. Millicent Jackson and Ms. Cassandra Waller-Mims to gain explanations to questions that arose during the course of the audit of the records and operations of the real estate broker's office. (On the date of the meeting [October 9, 2008], Ms. Jackson was the designated broker officer and president of CWM Financial Corporation. And at the time, Ms. Waller-Mims served as the subject corporate broker's vice-president.)

7. On November 20, 2008, Auditor Hsueh issued an Audit Report, which was reviewed and approved by Supervising Auditor Daniel J. Sandri.

The Audit Report, with files numbered OK 08-0034 and OK 08-0039, exclusively pertained to CWM Financial Corp. and its associated licensees. The report contained sections titled "audit scope," "background," "findings," "discussion of issues" and "conclusions." The report reflected acts and omissions on the part of respondent Newcomer. The Audit Report was reasonable and sound.

In the conclusions portion of the Audit Report, the auditor noted the following:

i. Ms. Nettles-Tutwiler, a real estate salesperson, was employed within the offices of CWM Financial Corporation for the time that respondent Newcomer acted as the designated broker officer for the subject corporate real estate broker.

ii. Beginning in approximately March 2007, Ms. Nettles-Tutwiler acted as the agent of Dana Jefferson. During the period of acting as the real estate agent for Dana Jefferson, Ms. Nettles-Tutwiler solicited and obtained from Guaranteed Rate a loan in the amount of \$500,000. The loan, which settled on May 30, 2007, secured an encumbrance on real property located at 8319 North Meath Drive, Stockton, California. While acting as the agent for Dana Jefferson in soliciting and obtaining that loan, Ms. Nettles-Tutwiler represented that the real property would be the primary residence of Dana Jefferson. The

representation was false because Dana Jefferson had purchased, on April 13, 2007, a house at 3639 Nevil Street, Oakland, California as her primary residence.

iii. Beginning in approximately June 2007, Ms. Nettles-Tutwiler acted as the agent of Jamie Wade. During the period of acting as the agent for Jamie Wade, Ms. Nettles-Tutwiler solicited and obtained from Guaranteed Rate a loan in the amount of \$470,250. The loan, which settled on September 20, 2007, secured an encumbrance on real property located at 412 Market Street, Richmond, California. While acting as the agent for Jamie Wade in soliciting and obtaining that loan, Ms. Nettles-Tutwiler represented that the real property would be the primary residence of Jamie Wade. The representation was false because Jamie Wade had purchased, on August 30, 2007, a house at 211 Silver Avenue, Richmond, California as his primary residence.

iv. The acts of Ms. Nettles-Tutwiler resulted in the department's auditor determining that the real estate salesperson had engaged in acts that violated the Real Estate Laws. Her acts were determined to reflect, at a minimum, negligence. And an accusation filed against that real estate salesperson alleged misrepresentation, making false promises, dishonest dealings, and fraud.

Unlawful Acts of Respondent Newcomer

8. During the times material to the matters mentioned herein, respondent Newcomer failed to exercise reasonable supervision of the activities of Ms. Nettles-Tutwiler. Respondent Newcomer permitted, ratified or caused the unprofessional conduct by Ms. Nettles-Tutwiler that is described in Factual Finding seven. Also respondent Newcomer failed to reasonably or adequately review, oversee, inspect and manage salespersons, and, in particular Ms. Nettles-Tutwiler. And, respondent Newcomer failed to establish reasonable policies, rules, procedures and systems for the review, oversight, inspection and management of salesperson associated with the real estate broker's office established and managed by respondent Newcomer.

9. In particular, the monthly meetings at the subject real estate broker's office, which were of short duration, as between Respondent Newcomer and Ms. Nettles-Tutwiler, were insufficient for the subject real estate broker to prevent the unlawful acts and omissions that occurred in the respective real estate transactions that involved Dana Jefferson and Jamie Wade.

10. All of the unlawful and unethical acts and omissions committed by Ms. Nettles-Tutwiler, as described above, are imputed to respondent Newcomer.

11. Respondent Newcomer's failure to exercise reasonable supervision of real estate salesperson activities within the scope of professional endeavors of CWM Financial Corp. involved, at least, negligence and incompetence.

Matters in Mitigation, Matters in Extenuation and Respondent Newcomer's Background

12. In 1998 when Respondent Newcomer acquired licensure as a real estate salesperson licensee he worked for Wachovia Bank. He served as a loan officer "off and on" for the bank from 2003 until 2008.

Respondent has worked as a real estate salesperson for both Coldwell Banker and Prudential Realty. Most recently, he worked for Altos Realty as a broker-associate, although he has had a working relationship with Altos Realty "off and on" since 2003.

13. In approximately March 2006, Respondent Newcomer was invited by Ms. Cassandra Waller-Mims to act as the designated real estate broker for CWM Financial Corp. She promised him that his time and any financial investment would result in a good return for him.

14. At the formation by Ms. Waller Mims of the corporation, respondent Newcomer invested \$13,000 in the business. He claims CWM Financial Corp. and its incorporator, Ms. Wall Mims, owe him \$3,000.

15. Respondent Newcomer did not earn a substantial sum of money during his association with CWM Financial Corp. He was promised that he would be paid \$500 for each file he reviewed and acted as the responsible on behalf of CWM Financial Corp. But Respondent Newcomer estimates that he earned between \$10,000 and \$15,000 for his work as the designated broker officer. (He noted that several checks he received from the corporation "bounced" due to insufficient funds.)

16. Respondent Newcomer asserted that he was "held hostage" by Ms. Waller-Mims in the role of designated broker officer from 2007 until August 25, 2008. Respondent Newcomer was unable to end his association until Ms. Waller-Mims acquired licensure as a real estate broker.

17. Over the many years of his licensed status, Respondent Newcomer has not been the subject of disciplinary action by the Department of Real Estate, except for the accusation filed in this matter.

18. During the course of the Department's audit of the real estate broker's operations, Auditor Hsueh did not find Respondent Newcomer to be uncooperative or resistant to the auditor's investigation efforts in October 2008.

19. Complainant offered no competent evidence to show that Respondent Newcomer unreasonably or unlawfully used client money for his personal use or as the money of the real estate broker's office.

20. Complainant has no record that the Department has initiated disciplinary action against the real estate salesperson license that was issued to him in 1998.

21. Respondent Newcomer has the respect and admiration of consumers who have relied upon him for services as a real estate licensee. He offered two letters² from individuals with whom he has offered services over the years. The letters depict Respondent Newcomer as being professional and honest in his dealings with the authors of the correspondence.

22. Respondent Newcomer is 64 years of age.

23. In mid-2007 through March 2008, he was disabled because of a serious vision disorder. He claims that he is now blind in his left eye due to that long-term ailment. The eye disorder prevented him from working during the year 2009.

24. Due to the effects of the illness that affected his eyes, respondent Newcomer only completed 10 real estate transactions during the year 2010. He believes that he earned \$35,000 last year. His customers for those transactions are "happy" with his work.

His current work as a broker-associate with Altos Realty in San Jose does not involve the supervision of real estate salespersons. Respondent is committed to the idea of rendering services in the future as a real estate licensee in the capacity of serving the interests and needs of customers and the real estate broker with whom he associates his license. He represents that he will follow the real estate laws and regulations of the department.

Matters in Aggravation

25. Before assuming the role as the designated broker-officer for CWM Financial Corp., respondent Newcomer neither studied management classes nor did he learn broker management techniques from prior experiences. At the hearing of this matter, respondent Newcomer proclaimed that he "did not know that he had to take classes" or receive training before acting as a designated broker-officer for a corporate real estate broker's office. He blamed the department's inaction in not affirmatively instructing him in methods to avoid the neglect and lack of knowledge that led to his malfeasance with regard to management functions as a designated broker officer. Respondent Newcomer unpersuasively proclaimed: "How am I to know the law. The department should have stopped [him] before [he] became a manager [by dictating] you cannot do that" regarding real estate broker activities that he was not knowledgeable or trained.

26. Upon receiving the offer from Ms. Waller-Mims to act as the designated broker officer for CWM Financial Corp., respondent Newcomer did not gain a clear description of the duties, functions and responsibilities that he was expected to embrace for the corporate real estate broker. He asked only that "should we get into trouble," that Ms. Waller-Mims pay for attorneys' fees to defend him. (Upon being served with the Accusation

² A letter, dated March 25, 1999, by Susan J. Jone; and, an undated letter, by Mary A. Konsid.

in this matter, respondent was disappointed when Ms. Waller-Mims informed him that she had pursued bankruptcy in the wake of the collapse of the subject real estate enterprise and that she would not pay attorneys' fees to defend respondent Newcomer.)

27. The wrongful acts and omissions of respondent Newcomer did not constitute simple mistakes. Rather the unlawful conduct of another real estate licensee as shown by the evidence established that respondent Newcomer substantially departed from the standards expected of a licensed real estate broker, who was the principal officer-broker of a real estate operation that involved resale of residential property and mortgage loan placement.

28. The certification of license history with the Department for respondent Newcomer reflects that on August 18, 2009, when he ended his role as designated broker officer for CWM Financial Corp., his main office was changed to 250 Fischer Avenue in Costa Mesa, California. At the hearing of this matter, respondent Newcomer explained that the Costa Mesa address is the premises for a loan company that "tried to register" him as a loan officer, but the business relationship never manifested and he has not transacted any business with that loan company. Hence, the address at 250 Fischer Avenue in Costa Mesa has never been a main office from which he has worked, or been associated.

After he ended his association with CWM Financial Corp., respondent Newcomer resumed an employment position with Altos Realty and holds the title of broker-associate. The address for Altos Realty is 1190 South Bascome Avenue, San Jose. But respondent Newcomer has not taken action to notify the department regarding him having a main officer on South Bascome Avenue in San Jose.

Other Matters

29. Respondent Newcomer did not call as a witness any licensed real estate professional to offer evidence regarding his business ethics, professionalism or commitment to the real estate laws of this state.

Ultimate Findings

30. It would be against the public interest to permit respondent Newcomer to maintain a license and licensing rights as a corporate real estate broker. But the public interest will not be adversely affected by way of respondent Newcomer holding a real estate salesperson license because he will not be obligated to supervise or manage real estate salespersons.

LEGAL CONCLUSIONS

The Standard of Proof

1. The standard of proof in an administrative disciplinary action that seeks the suspension or revocation of a real estate professional's license is "clear and convincing evidence to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 583.)

"Clear and convincing evidence" means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered. Clear and convincing evidence requires a finding of high probability for the propositions advanced in an accusation against a targeted respondent licensee. It must be so clear as to leave no substantial doubt and to command the unhesitating assent of every reasonable mind. (*In re Michael G.* (1998) 63 Cal.App.4th 700.) And, the standard of proof known as clear and convincing evidence is required where particularly important individual interests or rights are at stake. (*Weiner v. Fleischman* (1991) 54 Cal.3d 476, 487.)

Complainant established by clear and convincing evidence the foregoing factual findings and the legal conclusions below upon which disciplinary action is imposed upon respondent Newcomer.

Nondelegable Duties

2. Respondent Newcomer attempts to deny responsibility for the failures, omissions, and neglect, of real estate salesperson Ms. Nettles-Tutwiler and other licensees associated with CWM Financial Corp. Respondent Newcomer contends that he should not be held culpable for the malfeasance or misconduct of Ms. Nettles-Tutwiler or others associated with the real estate broker's office known as CWM Financial Corp. Respondent Newcomer advances that the misfeasance or malfeasance of those other actors were independent of his functions as a real estate broker. But, respondent Newcomer's arguments are in error in his perceptions that he is not responsible for the acts of the corporate real estate broker's agents and employees, including Ms. Nettles-Tutwiler.

Respondent Newcomer's defense must be viewed in light of the well-established rule of nondelegable duties of a licensee. The rule, which is similar to the rule of *respondeat superior*, advances that "the licensee, if he elects to operate his business through employees, must be responsible to the licensing authority for their conduct in the exercise of his license." (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 295.) "By virtue of the ownership of a . . . license such owner has a responsibility to see to it that the license is not used in violation of law." (*Ford Dealers Assn. v. Dept. of Motor Vehicles* (1982) 32 Cal.3d 347, 360.)

In citing Civil Code section 2330, the court in the *Ford Dealers Association* case commented that: "The settled rule that licensees can be held liable for the acts of their

employees comports with the general rule governing principal-agent liability. 'An agent represents his principal for all purposes within the scope of his actual or ostensible authority.' (Civil Code section 2330.)" (*Ford Dealers Assn. v. Dept. of Motor Vehicles*, supra, 32 Cal.3d at p. 360.)

The rule of nondelegable duties of licensees is of common law derivation. (*California Assn. of Health Facilities v. Department of Health Services*, supra, 16 Cal.4th, at p. 296; *Van Arsdale v. Hollinger* (1968) 68 Cal.2d 245, 251.) The essential justification for the rule is to ensure accountability of licensees so as to safeguard the public health, safety or welfare.

More importantly, if a licensee, such as respondent Newcomer, were not liable for the acts and omissions of his agents and independent contractors, "effective regulation would be impossible. [The licensee] could contract away the daily operations of his business to independent contractors and become immune to disciplinary action by the licensing authority." (*California Assn. of Health Facilities v. Department of Health Services*, supra, 16 Cal.4th at p. 296.) Such result would undermine effective law enforcement and regulatory oversight.

And, the concept that a licensee will be held liable for the acts of agents is one that has been applied to situations where the agent is an independent contractor or is an employee. (See *Banks v. Board of Pharmacy* (1984) 161 Cal.App.3d 708, 713; *Rob-Mac, Inc. v. Dept. of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797-798.)

Respondent Newcomer must bear full responsibility for the acts and omissions of agents or employees of CWM Financial Corp., a real estate broker's office for which Respondent Newcomer assumed the role of licensed designated officer-broker. Respondent Newcomer was obligated to supervise and control the activities and functions of Ms. Nettles-Tutwiler, who was associated with the subject corporate real estate broker's license.

Statutory Authority - Violations of the Real Estate Law and Commissioner's Regulations

3. Business and Professions Code section 10177, subdivision (d), establishes that the Department of Real Estate Commissioner may suspend or revoke the license of a real estate licensee, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock, "has willfully disregarded or violated the Real Estate Law or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law."

The concept of "willful" is given broad meaning in the realm of administrative licensure disciplinary proceedings. "Willful" does not imply a malicious intent to do wrong or a consciousness for malfeasance on the part of a licensee to violate a rule, statute or standard of due care. The term "willful" . . . does not necessarily imply anything blamable, or any malice or wrong toward the other party, or perverseness or moral delinquency, but merely that the thing done or omitted to be done was done or omitted intentionally. It amounts to nothing more than this: that the person knows what he is doing, intends to do

what he is doing, and is a free agent. . . .” (*Suman v. BMW of North America, Inc.* (1994) 23 Cal.App.4th 1, 12; (See also: *Apollo Estates, Inc. v. Department of Real Estate* (1985) 174 Cal.App.3d 625, 639; *Milner v. Fox* (1980) 102 Cal.App.3d 567, 573-575, fn. 9; *Murrill v. State Board of Accountancy* (1950) 97 Cal.App.2d 709, 713.)

Cause for Discipline against Real Estate Broker License - Respondent Newcomer

4. Business and Professions Code section 10177, subdivision (h), prescribes the Commissioner may suspend or revoke the license of a real estate licensee, who has “[a]s a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.”

California Code of Regulations, title 10, section 2725, sets out the Department’s rules regarding supervision³ by a real estate broker of licensees associated with the license of the real estate broker. The regulation prescribes, in pertinent part:

A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage: . . . transactions requiring a real estate license; . . . [d]ocuments which may have a material effect upon the rights or obligations of a party to the transaction. . . [f]iling, storage and maintenance of such documents. . . [a]dvertising of any service for which a license is required. . . . [r]egular and consistent reports of licensed activities of salespersons. . . . A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

Walter v. Marler (1978) 83 Cal.App.3d 1, makes clear that the duty of a real estate broker extends not only to the supervision of a salesperson but also to each transaction that occurs in a real estate broker’s office.

³ Business and Professions Code section 10177, subdivision (h), prescribes that the Commissioner may suspend or revoke the license of a real estate licensee when such person has “as a broker licensee, failed to exercise reasonable supervision over the activities of his . . . salesperson”

Cause exists for disciplinary action against the license issued to respondent Newcomer under Business and Professions Code section 10177, subdivision (h), and California Code of Regulations, title 10, section 2725, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of the matters set forth in Factual Findings 5 through 11.

5. Business and Professions Code section 10177, subdivision (g), provides that the Commissioner may suspend or revoke the license of a real estate licensee, who has demonstrated negligence or incompetence in performing any act for which he is required to hold a license.

Norman v. Department of Real Estate (1979) 93 Cal.App.3d 768, sets out that a real estate broker may not escape discipline by simply stating "I did not know" regarding acts of real estate salespersons under the broker's direction.

By reason of the negligence or incompetence of Respondent Newcomer in neglecting the duty of a real estate broker to supervise real estate salespersons associated with his broker's license, cause exists for disciplinary action against the license issued to respondent Newcomer under Business and Professions Code section 10177, subdivision (g), in conjunction with section 10177, subdivision (d), by reason of the matters set forth in the factual findings above.

Other Factors Impacting Legal Conclusions and the Order

6. Matters in mitigation, extenuation, and aggravation, as well as respondent Newcomer's background and other matters as set out in Factual Findings 12 through 29, were considered in making the order below.

Measure of Discipline

7. The purpose of an administrative adjudication proceeding, which contemplates the revocation or suspension of a professional or occupational license, is not to punish the individual licensee. The purpose of the agency action that results from the administrative adjudication proceeding is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance, supra*, 135 Cal.App.3d 583.) Respondent's acts and omissions as the designated broker officer for CWM Financial Corp., along with his testimonial evidence at the hearing of this matter, showed that he is not prepared to serve as a real estate broker. But the evidence did not establish that he should be prevented from acting as a real estate salesperson where he can serve the interests of consumer, a supervising broker and the public interest.

ORDER

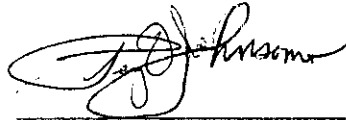
All licenses and licensing rights of respondent Newcomer under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to

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 salesperson 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:

- i. The restricted salesperson license issued to respondent Newcomer 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.
- ii. Any restricted real estate license issued to respondent Newcomer pursuant to this Decision shall be suspended for 45 days from the date of issuance of said restricted license; however, the restricted licensee shall have the privilege to buy down 30 days of the suspension period at the rate of \$100 per day pursuant to section 10175.2 of the Business and Professions Code. And upon the Department's timely receipt of the buy down payment, the remaining 15 days of suspension shall be stayed.
- iii. The restricted license issued to respondent Newcomer 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.
- iv. Respondent Newcomer 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 three years have elapsed from the effective date of this Decision.
- v. Respondent Newcomer 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.
- vi. Respondent Newcomer shall, within twelve 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 respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence. And Respondent Newcomer may possess the restricted real estate salesperson license on the condition that within one hundred twenty (120) days of the effective date of this decision he shall take and pass courses, to the satisfaction of the Department, on the topic of ethics for real estate professional.

DATED: February 4, 2011.



PERRY O. JOHNSON
Administrative Law Judge

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Dept. of Real Estate

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DEC 30 2010

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DEPARTMENT OF REAL ESTATE

[Signature]

7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of

11 }
12 } CWM FINANCIAL CORP., JOHN MARCO
13 } NEWCOMER, and WONDELYN THERESA
14 } NETTLES-TUTWILER.

15 } Respondents

No. H-10837 SF

STIPULATION AND
AGREEMENT

16 It is hereby stipulated by and between WONDELYN THERESA NETTLES-
17 TUTWILER (hereinafter "Respondent"), and the Complainant, acting by and through Truly
18 Sughrue, Counsel for the Department of Real Estate, as follows for the purpose of settling and
19 disposing the Accusation filed on January 20, 2010 in this matter:

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

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

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

9 4. Respondent, pursuant to the limitations set forth below, hereby admits that
10 the factual allegations of the Accusation filed in this proceeding are true and correct and the Real
11 Estate Commissioner shall not be required to provide further evidence to prove such allegations.

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

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

23 * * *

24 DETERMINATION OF ISSUES

25 By reason of the foregoing stipulations and waivers and solely for the purpose of
26 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the
27 following determination of issues shall be made:

I

1 The acts and omissions of Respondent as described in the First Amended
2 Accusation are grounds for the suspension or revocation of Respondent licenses and license
3 rights under Section 10176(a) of the Code.

4 * * *

5 ORDER

6 I

7 A. All real estate license(s) and license rights of Respondent WONDELYN THERESA
8 NETTLES-TUTWILER are revoked.

9 B. A restricted real estate salesperson license shall be issued to Respondent pursuant to
10 Section 10156.6 of the Code if within ninety (90) days of the effective date of the Order.
11 Respondent makes application therefore and pays to the Department the appropriate fee for
12 said license.

13 C. The restricted license issued to Respondent shall be subject to all of the provisions of
14 Section 10156.7 of the Business and Professions Code and to the following conditions and
15 limitations imposed under authority of Section 10156.6 of said Code:

16 1) The restricted license issued to Respondent may be suspended prior to hearing by
17 order of the Real Estate Commissioner in the event of Respondent's conviction or plea
18 of nolo contendere to a crime which bears a substantial relationship to Respondent's
19 fitness or capacity as a real estate licensee.

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

25 3) Respondent shall not be eligible to apply for the issuance of an unrestricted real estate
26 license, nor the removal of any of the conditions of the restricted license, until four (4)
27 years have elapsed from the effective date of this Order.

D. 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

1 employing real estate broker on a form approved by the Department of Real Estate which
2 shall certify:

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

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

7 E. Any restricted license issued to Respondent pursuant to this Decision shall be suspended
8 for a period of sixty (60) days from the issuance of the restricted license.

9 F. Respondent shall, within nine (9) months from the effective date of this Order, present
10 evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most
11 recent issuance of an original or renewal real estate license, taken and successfully
12 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real
13 Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition,
14 the Commissioner may order the suspension of the restricted license until Respondent
15 presents such evidence. The Commissioner shall afford Respondent the opportunity for
16 hearing pursuant to the Administrative Procedure Act to present such evidence.

17 G. Respondent shall, within six (6) months from the effective date of this Decision, take and
18 pass the Professional Responsibility Examination administered by the Department
19 including the payment of the appropriate examination fee. If Respondent fails to satisfy
20 this condition, the Commissioner may order suspension of the restricted license until
21 Respondent passes the examination.

22 2-Dec-10
23 DATED

24 Truly S
25 TRULY SUGHRUE
26 Counsel for Complainant

27 ***

28 I have read the Stipulation and Agreement, have discussed it with my counsel, and
29 its terms are understood by me and are agreeable and acceptable to me. I understand that I am
30 waiving rights given to me by the California Administrative Procedure Act, and I willingly,
31 intelligently and voluntarily waive those rights, including the right of requiring the
32 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the

1 right to cross-examine witnesses against me and to present evidence in defense and mitigation of
2 the charges.

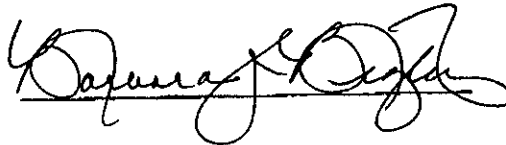
3 12/2/10 Wondelyn Nettles-Tutwiler
4 DATED WONDELYN THERESA NETTLES-TUTWILER
5 Respondent

6 * * *

7 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
8 shall become effective at 12 o'clock noon on JAN 20 2011

9 IT IS SO ORDERED 12/29/2010

10
11 JEFF DAVI
12 Real estate Commissioner

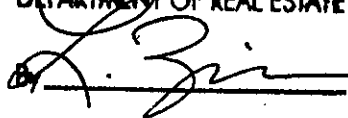
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14
15 BY: Barbara J. Bigby
16 Chief Deputy Commissioner

FILED

APR - 6 2010

DEPARTMENT OF REAL ESTATE



Department of Real Estate
P.O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0781

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

CWM FINANCIAL CORP., JOHN MARCO
NEWCOMER, and WONDELYN THERESA
NETTLES-TUTWILER.

Respondents.

No. H-10837 SF

STIPULATION AND
AGREEMENT

It is hereby stipulated by and between CWM FINANCIAL CORP. (hereafter "Respondent"), and the Complainant, acting by and through Truly Sughrue, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing the Accusation filed on January 20, 2010 in this matter:

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

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

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

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

21 5. This Stipulation and Respondent's decision not to contest the Accusation are
22 made for the purpose of reaching an agreed disposition of this proceeding and are expressly
23 limited to this proceeding and any other proceeding or case in which the Department of Real
24 Estate (herein "the Department"), the state or federal government, an agency of this state, or an
25 agency of another state is involved.
26
27

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

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

14 * * *

15 DETERMINATION OF ISSUES

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

20 I

21 The acts and omissions of Respondent as described in the Accusation are
 22 grounds for the suspension or revocation of Respondent's licenses and license rights under
 23 Section 10240 of the Code in conjunction with Section 10177(d) of the Code.

24 \\ \\ \\
 25 \\ \\ \\
 26 \\ \\ \\
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1 * * *

2 ORDER

3 I


4 All licenses and licensing rights of Respondent under the Real Estate Law are suspended
5 for a period of fifteen (15) days from the effective date of this Order; provided, however, that:

6 1) Fifteen (15) days of said suspension shall be stayed for one (1) year upon the following terms
7 and conditions:

- 8 a) Respondent shall obey all laws, rules and regulations governing the rights, duties and
9 responsibilities of a real estate licensee in the State of California; and,
10
11 b) That no final subsequent determination be made, after hearing or upon stipulation, that
12 cause for disciplinary action occurred within one (1) year from the effective date of this
13 Order. Should such a determination be made, the Commissioner may, in his discretion,
14 vacate and set aside the stay order and reimpose all or a portion of the stayed suspension.
15 Should no such determination be made, the stay imposed herein shall become permanent.

16
17
18
19 22-Feb-10

20 DATED

21 
22 TRULY SUGHRUE
23 Counsel for Complainant

24 * * *

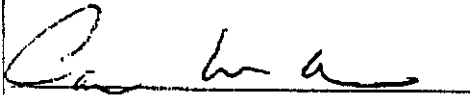
25 I have read the Stipulation and Agreement, and its terms are understood by me
26 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the
27 California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive
those rights, including the right of requiring the Commissioner to prove the allegations in the

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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.

2/10/10

DATED



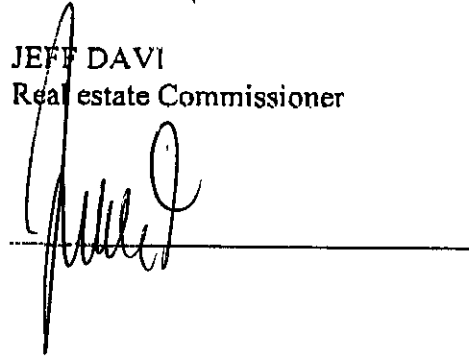
Cassandra Waller-Mims, on behalf of
CWM FINANCIAL CORP.
Respondent

The foregoing Stipulation and Agreement is hereby adopted as my Decision and shall become effective at 12 o'clock noon on **APR 27 2010**

IT IS SO ORDERED

3/20, 2010.

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 Telephone: (916) 227-0789
7 (916) 227-0781 (Direct)

FILED

JAN 20 2010

DEPARTMENT OF REAL ESTATE



8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 CWM FINANCIAL CORP.,)
14 JOHN MARCO NEWCOMER, and)
15 WONDELYN THERESA NETTLES-)
16 TUTWILER,)
Respondents.)

No. H-10837 SF
ACCUSATION

17 The Complainant, E.J. Haberer II, a Deputy Real Estate Commissioner of the
18 State of California, for cause of Accusation against CWM FINANCIAL CORP.,
19 JOHN MARCO NEWCOMER, and WONDELYN THERESA NETTLES-TUTWILER,
20 (hereinafter "Respondents"), is informed and alleges as follows:

21 1

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

24 2

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

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3

At all times mentioned, CWM FINANCIAL CORP., (hereinafter "CWM") was and is licensed by the State of California Department of Real Estate (hereinafter "Department") as a real estate broker corporation.

4

At all times mentioned, Respondent JOHN MARCO NEWCOMER (hereinafter "NEWCOMER") was and is licensed by the Department as an individual real estate broker, and as the designated broker officer of CWM. As said designated officer-broker, NEWCOMER was responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees and employees of CWM for which a license is required.

5

At all times mentioned, Respondent WONDELYN THERESA NETTLES-TUTWILER (hereinafter "NETTLES-TUTWILER") was and is licensed by the Department as a real estate salesperson.

6

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

FIRST CAUSE OF ACTION

7

Each and every allegation in Paragraphs 1 through 6, inclusive, above are incorporated by this reference as if fully set forth herein.

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Beginning on or about March 2007, NETTLES-TUTWILER, acting as an agent of Dana Jefferson, solicited and obtained a loan in the amount of \$500,000 from Guaranteed Rate to be secured by an encumbrance on the property located 8319 North Meath Drive, Stockton, California by representing, contrary to fact, that the property would be the primary residence of Dana Jefferson. In truth, Dana Jefferson purchased 3639 Nevil Street, Oakland California on April 13, 2007 as her primary residence.

9

Beginning on or about June 2007, NETTLES-TUTWILER, acting as an agent of Jamie Wade, solicited and obtained a loan in the amount of \$470,250 from Guaranteed Rate to be secured by an encumbrance on the property located 412 Market Street, Richmond, California by representing, contrary to fact, that the property would be the primary residence of Jamie Wade. In truth, Jamie Wade purchased 211 Silver Avenue, Richmond California on August 30, 2007 as his primary residence.

10

The acts and omissions of NETTLES-TUTWILER described in the First Cause of Action constitute cause to suspend or revoke all licenses and license rights of Respondent pursuant to the provisions of Sections 10176(a), 10176(b), 10176(c), 10176(i), 10177(g) and/or 10177(j) of the Code.

SECOND CAUSE OF ACTION

11

Each and every allegation in Paragraphs 1 through 10, inclusive, above, are incorporated by this reference as if fully set forth herein.

12

In connection with the mortgage loan brokerage business described in Paragraph 6, CWM violated and/or willfully failed to comply with Section 10240 of the Code by:

///

1 (a) Failing to cause to be delivered to the borrowers the written Mortgage
2 Loan Disclosure Statement as required by Section 10241 of the Code;

3 (b) Failing to obtain the signature of the borrowers on written Mortgage Loan
4 Disclosure Statements; and/or

5 (c) Failing to retain on file for a period of three years a true and correct copy
6 of a written Mortgage Loan Disclosure Statements signed by the borrowers.

7 13

8 The facts alleged above are grounds for the suspension or revocation of the
9 licenses and license rights of CWM under Section 10240 of the Code in conjunction with
10 Section 10177(d) of the Code.

11 THIRD CAUSE OF ACTION

12 14

13 Each and every allegation in Paragraphs 1 through 14, inclusive, above, are
14 incorporated by this reference as if fully set forth herein.

15 15

16 NEWCOMER failed to exercise reasonable supervision over the acts of CWM in
17 such a manner as to allow the acts and events described above to occur.

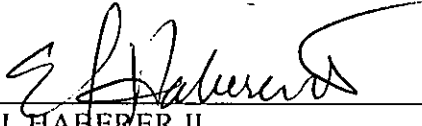
18 16

19 The acts and/or omissions of NEWCOMER described in Paragraph 15 constitute
20 failure on the part of NEWCOMER, as designated broker-officer for CWM, to exercise
21 reasonable supervision and control over the licensed activities of CWM required by Section
22 10159.2 of the Code.

23 17

24 The facts alleged in Paragraphs 15 and 16, are grounds from the suspension or
25 revocation of the licenses and license rights of Respondent NEWCOMER under Sections
26 10177(g) and/or 10177(h) of the Code, and Section 10177(d) of the Code in conjunction with
27 Section 10159.2 of the Code.

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 Real Estate Law (Part 1 of
4 Division 4 of the Business and Professions Code), and for such other and further relief as may be
5 proper under other provisions of law.

6 
7 _____
8 E.J. HABERER II
9 Deputy Real Estate Commissioner

10 Dated at Oakland, California,
11 this 14th day of January, 2010