

FILED

DEC 10 2010

DEPARTMENT OF REAL ESTATE

By K. Zui

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

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

10 In the Matter of the Accusation of)
11)
12 VICTOR YERMAKOV,)
13)
14 Respondent.)

No. H-10903 SF

STIPULATION AND
AGREEMENT

14 It is hereby stipulated by and between VICTOR YERMAKOV (hereafter
15 "Respondent"), and his attorney, Roger D. Wintle, and the Complainant, acting by and
16 through Truly Sughrue, Counsel for the Department of Real Estate, as follows for the purpose
17 of settling and disposing the Accusation filed on April 13, 2010 in this matter:

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

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

26 3. Respondent filed a Notice of Defense pursuant to Section 11505 of the
27 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent

1 acknowledges that he understands that by withdrawing said Notice of Defense he will thereby
2 waive his rights to require the Commissioner to prove the allegations in the Accusation at a
3 contested hearing held in accordance with the provisions of the APA, and that he will waive
4 other rights afforded to him in connection with the hearing such as the right to present evidence
in defense of the allegations in the Accusation and the right to cross-examine witnesses.

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

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

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

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

25 * * *

26 DETERMINATION OF ISSUES

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

4 I

5 The acts and omissions of Respondent as described in the Accusation are
6 grounds for the suspension or revocation of Respondent's licenses and license rights under
7 Section 10234.4 and 10240 of the Code in conjunction with Section 10177(d) of the Code.

8 II

9 The acts and omissions of Respondent as described in the Accusation are
10 grounds for the suspension or revocation of Respondent's licenses and license rights under
11 Sections 4973(d), 4973(e), 4975(k)(1), 4979.6, and 4973(f) of the Financial Code in conjunction
12 with Section 4975(a)(1) of the Financial Code.

13 * * *

14 ORDER

15 I

16 1) All licenses and licensing rights of Respondent under the Real Estate Law
17 are suspended for a period of sixty (60) days from the effective date of this Order; provided,
18 however, that sixty (60) days of said suspension shall be stayed for two (2) years upon the
19 following terms and conditions:

20 (a) Respondent shall obey all laws, rules and regulations governing the
21 rights, duties and responsibilities of a real estate licensee in the State of California; and,

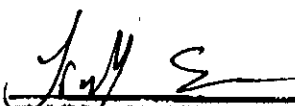
22 (b) That no final subsequent determination be made, after hearing or
23 upon stipulation, that cause for disciplinary action occurred within one (1) year from the effective
24 date of this Order. Should such a determination be made, the Commissioner may, in his
25 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
26 suspension. Should no such determination be made, the stay imposed herein shall become
27 permanent.

2) Respondent shall, within six (6) months from the effective date of this
Decision, take and pass the Professional Responsibility Examination administered by the
Department including the payment of the appropriate examination fee. If Respondent fails to

1 satisfy this condition, the Commissioner may order suspension of the restricted license until
2 Respondent passes the examination.

3
4 26-Oct-10

5 DATED

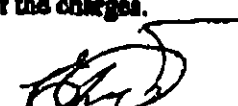
6 
7 TRULY SUCHRUE
8 Counsel for Complainant

9 ***

10 I have read the Stipulation and Agreement, and its terms are understood by me
11 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the
12 California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive
13 those rights, including the right of requiring the Commissioner to prove the allegations in the
14 Accusation at a hearing at which I would have the right to cross-examine witnesses against me
15 and to present evidence in defense and mitigation of the charges.

16 10/26/10

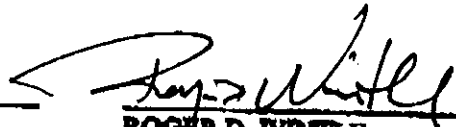
17 DATED

18 
19 VICTOR YERMAKOV
20 Respondent

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

23 10/26/10

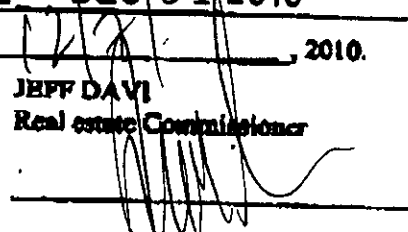
24 DATED

25 
26 ROGER D. WINTLE
27 Attorney for Respondent

28 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
29 shall become effective at 12 o'clock noon on DEC 31 2010

30 IT IS SO ORDERED

31 12/31, 2010.

32 
33 JEFF DAVI
34 Real estate Commissioner

35 -4-

36 H-10003 SF
37 10/25/10

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
P.O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 (916) 227-0781 (Direct)

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DEPARTMENT OF REAL ESTATE

[Signature]

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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)

No. H-10903 SF

13 VICTOR YERMAKOV,)
14)

ACCUSATION

Respondent.)
15

16 The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the
17 State of California, for cause of Accusation against VICTOR YERMAKOV (hereinafter
18 "Respondent"), is informed and alleges as follows:

19 1

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

22 2

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

25 3

26 At all times mentioned, Respondent was and is licensed by the Department of
27 Real Estate (hereinafter "the Department") as a real estate broker.

At all times mentioned, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker 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 Respondent 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.

At all times mentioned, for or in expectation of compensation, on behalf of another or others, Respondent solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, and consummated and/or wherein such loans were serviced and payments thereon were collected, including, but not limited to, the following transactions:

- (A) Real Property: 87 Walnut Avenue, Atherton California
Borrower: Irina Anikina and Sergey Anikin
Purpose of Property: Borrowers' primary residence
Loan Amount: \$50,000.00.
Closing Date: 12/22/08.
Annual Percentage Rate: 60.0%.
Term: 6 months.

The loan set forth in Paragraph 5 is a "covered loan" within the meaning of Section 4970 of the Financial Code.

The loan set forth in Paragraph 5 violated Section 4973(d) of the Financial Code in that the loan included terms under which periodic payments required under the loan are consolidated and paid in advance from the loan proceeds.

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1 8

2 The loan set forth in Paragraph 5 violated Section 4973(e) of the Financial Code
3 in that the loan contained a provision that increased the interest rate as a result of a default.

4 9

5 Respondent originated the loan set forth in Paragraph 5 with no reasonable belief
6 the borrowers could make the scheduled payments on the loan in violation of Section 4973(f) of
7 the Financial Code.

8 10

9 The loan set forth in Paragraph 5 violated Section 4973(k)(1) of the Financial
10 Code in that Respondent failed to provide the "Consumer Caution and Home Ownership
11 Counseling Notice" to the borrower no later than three business days prior to signing of the loan
12 documents.

13 11

14 Respondent originated the loan set forth in Paragraph 5 and charged financing
15 points and fees in excess of \$1,000.00 or six percent (6%) of the original principal balance,
16 exclusive of points and fees, in violation of Section 4979.6 of the Financial Code.

17 12

18 In connection with the mortgage loan brokerage business described in Paragraph
19 4, Respondent failed to timely prepare and deliver to lenders/investors, or cause to be delivered,
20 an accurate written lender/purchaser disclosure statement required by Section 10232.4 of the
21 Code, prior to each investor becoming obligated to make the loan or purchase the note, prior to
22 Respondent's receipt of funds from each investor, and/or prior to disbursement of the investor's
23 funds for the loan or purchase.

24 13

25 In connection with the mortgage loan brokerage business described in Paragraph
26 4, Respondent violated and/or willfully failed to comply with Section 10240 of the Code by:

27 ///

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; and/or,

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 14

8 The acts and/or omissions of Respondent as described in Paragraph 5 through 11
9 are grounds for the suspension or revocation of Respondent's licenses and license rights under
10 Section 4975(a)(1) of the Financial Code in conjunction with Sections 4973(d), 4973(e),
11 4975(k)(1), 4979.6, and 4973(f), of the Financial Code.

12 15

13 The facts alleged in Paragraphs 12 and 13 are grounds for the suspension or
14 revocation of Respondent's licenses and license rights under the following sections of the Code
15 and Regulations:

16 (1) As to Paragraph 12, under Section 10232.4 of the Code in conjunction
17 with Section 10177(d) of the Code; and

18 (2) As to Paragraph 13, under Section 10240 of the Code in conjunction with
19 Section 10177(d) of the Code.

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27 ///

1 WHEREFORE, Complainant prays that a hearing be conducted on the
2 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
3 disciplinary action against all licenses and license rights of Respondent, under the Real Estate
4 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further
5 relief as may be 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 29th day of March, 2010
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