

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-2380

FILED
JUN - 6 2011

DEPARTMENT OF REAL ESTATE
By R. M. R.

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

10 * * *

11 In the Matter of the Accusation of) DRE No. H-10905 SF
12)
13 INFINITY FUNDING GROUP, INC.) STIPULATION AND AGREEMENT
and MATTHEW THOMAS CASTRO,) IN SETTLEMENT AND ORDER
14)
15 Respondents.)

16 It is hereby stipulated by and between INFINITY FUNDING GROUP, INC.
17 (IFG), and MATTHEW THOMAS CASTRO (CASTRO), and their counsel FRANK M.
18 BUDA, and the Complainant, acting by and through Richard K. Uno, Counsel for the
19 Department of Real Estate; as follows for the purpose of settling and disposing of the
20 Accusation filed on April 15, 2010 as amended on the record during the hearing on October 5,
21 2010, in this matter:

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

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

4 3. On April 28, 2010, Respondents IFG and CASTRO, filed a Notice of Defense
5 pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on
6 the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said
7 Notices of Defense. Respondents acknowledge that they understand that by withdrawing said
8 Notices of Defense they will thereby waive their right to require the Commissioner to prove the
9 allegations in the Accusation at a contested hearing held in accordance with the provisions of
10 the APA and that they will waive other rights afforded to them in connection with the hearing
11 such as the right to present evidence in defense of the allegations in the Accusation and the right
12 to cross-examine witnesses.

13 4. Respondents, pursuant to the limitations set forth below, hereby admit that
14 the factual allegations or findings of fact as set forth in the Accusation filed in this proceeding
15 are true and correct and the Real Estate Commissioner shall not be required to provide further
16 evidence of such allegations.

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

24 6. The Order or any subsequent Order of the Real Estate Commissioner made
25 pursuant to this Stipulation and Agreement In Settlement and Order shall not constitute an
26 estoppel, merger or bar to any further administrative or civil proceedings by the Department of
27

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1 Professions Code (the Code), and constitute grounds for the suspension or revocation of the
2 licenses and license rights of MATTHEW THOMAS CASTRO under the provisions of Sections
3 2725, 2831(a)(6), 2831.2, 2832 and 2834 of the Regulations and Sections 10159.2, 10159.5,
4 10177(d), 10177(g) and 10177(h) of the Code.

5 ORDER

6 A. INFINITY FUNDING GROUP, INC.

7 1. The corporate real estate broker license and license rights of Respondent
8 INFINITY FUNDING GROUP, INC. (IFG), under the Real Estate Law are suspended for a
9 period of sixty (60) days from the effective date of this Order; provided, however, that if IFG
10 petitions, thirty (30) days of said suspension shall be stayed upon condition that:

11 a. IFG pays a monetary penalty pursuant to Section 10175.2 of the Business and
12 Professions Code at the rate of \$100.00 per day for thirty (30) days of the suspension for a total
13 monetary penalty of \$3,000.00.

14 b. Said payment shall be in the form of a cashier's check or certified check made
15 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the
16 Department prior to the effective date of the Decision in this matter.

17 c. No further cause for disciplinary action against the real estate license of
18 IFG occurs within one year from the effective date of the Decision in this matter.

19 d. If IFG fails to pay the monetary penalty in accordance with the terms and
20 conditions of the Decision, the Commissioner may, without a hearing, order the immediate
21 execution of all or any part of the stayed suspension in which event the IFG shall not be entitled
22 to any repayment nor credit, prorated or otherwise, for money paid to the Department under the
23 terms of this Decision.

24 e. If IFG pays the monetary penalty, and if no further cause for disciplinary
25 action against the real estate license of IFG occurs within one (1) year from the effective date
26 of the Decision, the stay hereby granted shall become permanent.

27 ///

1 entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department
2 under the terms of this Decision.

3 e. If CASTRO pays the monetary penalty, and if no further cause for disciplinary
4 action against the real estate license of Respondent occurs within one (1) year from the effective
5 date of the Decision, the stay hereby granted shall become permanent.

6 2. The remaining thirty (30) days of said suspension shall be stayed for one (1)
7 year upon the following terms and conditions:

8 a. CASTRO shall obey all laws, rules and regulations governing the rights,
9 duties and responsibilities of a real estate licensee in the State of California, and,

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

16 3. All licenses and licensing rights of Respondent CASTRO are indefinitely
17 suspended unless or until Respondent provides proof satisfactory to the Commissioner, of
18 having taken and successfully completed the continuing education course on trust fund
19 accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the
20 Business and Professions Code. Proof of satisfaction of this requirement includes evidence that
21 CASTRO has successfully completed the trust fund account and handling continuing education
22 course within 120 days prior to the effective date of the Decision in this matter.

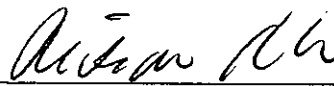
23 INFINITY FUNDING GROUP, INC. AND MATTHEW THOMAS CASTRO

24 1. Pursuant to Section 10148 of the Business and Professions Code, IFG and
25 CASTRO, jointly and severally, shall pay for the cost of the audits in the amount of \$6,475.86
26 for the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action
27 and, b) a subsequent audit to determine if Respondents have corrected the trust fund violations

1 found in the Determination of Issues. In calculating the amount of the Commissioner's
2 reasonable cost, the Commissioner may use the estimated average hourly salary for all persons
3 performing audits of real estate brokers, and shall include an allocation for travel costs,
4 including mileage, time to and from the auditor's place of work and per diem. Respondents
5 shall pay such cost within sixty (60) days of receiving an invoice from the Commissioner
6 detailing the activities performed during the audit and the amount of time spent performing
7 those activities. The Commissioner may, in his discretion, vacate and set aside the stay order,
8 if payment is not timely made as provided for herein, or as provided for in a subsequent
9 agreement between the Respondents and the Commissioner. The vacation and the set aside of
10 the stay shall remain in effect until payment is made in full, or until Respondents enter into an
11 agreement satisfactory to the Commissioner to provide for payment. Should no order vacating
12 the stay be issued, either in accordance with this condition, the stay imposed herein shall
13 become permanent.

14
15 5/5/11

16 DATED

15 

16 RICHARD K. UNO, Counsel
17 DEPARTMENT OF REAL ESTATE

18 * * *

19
20 I have read the Stipulation and Agreement in Settlement and Order and its terms
21 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
22 rights given to me by the California Administrative Procedure Act (including but not limited
23 to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly,
24 intelligently, and voluntarily waive those rights, including the right of requiring the
25 Commissioner to prove the allegations in the Accusation at a hearing at which I would have

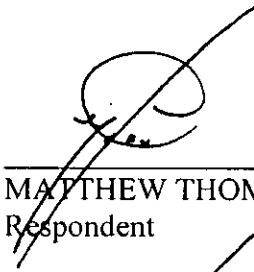
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1 the right to cross-examine witnesses against me and to present evidence in defense and
2 mitigation of the charges.

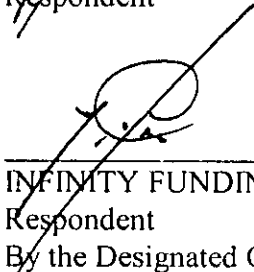
3
4 04/11/2011

5 DATED

6 
MATTHEW THOMAS CASTRO
Respondent

7
8 04/11/2011

9 DATED


10 
INFINITY FUNDING GROUP, INC.
Respondent
By the Designated Officer of
Infinity Funding Group, Inc.
MATTHEW THOMAS CASTRO

11
12 * * *

13 *I have reviewed this Stipulation and Agreement as to form and content and have*
14 *advised my clients accordingly.*

15
16 4-11-11

17 DATED

18 
FRANK M. BUDA
Attorney for Respondents

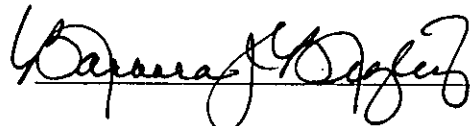
19 * * *

20 The foregoing Stipulation and Agreement In Settlement and Order is hereby
21 adopted by the Real Estate Commissioner as his Decision and Order and shall become effective
22 at 12 o'clock noon on JUN 27 2011

23 IT IS SO ORDERED

24 6/2/11

25 BARBARA J. BIGBY
Acting Real Estate Commissioner

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27 

1 RICHARD K. UNO, Counsel (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-2380
6
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FILED

APR 15 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-10905 SF
13 INFINITY FUNDING GROUP, INC.,)
14 and MATTHEW THOMAS CASTRO,) ACCUSATION
15 Respondents.)

16 The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of
17 the State of California, for Accusation against Respondent INFINITY FUNDING GROUP, INC.
18 (IFG), and Respondent MATTHEW THOMAS CASTRO, (CASTRO), is informed and alleges
19 as follows:

20 1

21 The Complainant makes this Accusation against Respondents in his official
22 capacity.

23 2

24 CASTRO is presently licensed and/or has license rights under the Real Estate
25 Law, Part 1 of Division 4 of the California Business and Professions Code (the Code) as a real
26 estate broker dba Infinity Funding Group, dba Bay Valley Realty and dba Bay Valley Elite
27 Properties.

1 3

2 IFG is presently licensed by the Department of Real Estate (the Department) as
3 a corporate real estate broker.

4 4

5 At all times herein mentioned, CASTRO was licensed by the Department as the
6 designated broker/officer of IFG. As the designated broker/officer, CASTRO was responsible,
7 pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers,
8 agents, real estate licensees and employees of IFG for which a real estate license is required.

9 5

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

17 6

18 At all times herein mentioned, CASTRO engaged in the business of, acted in
19 the capacity of, advertised or assumed to act as a real estate broker in the State of California,
20 within the meaning of Sections 10131(a) and (b) of the Code, including the operation and
21 conduct of a property management business wherein Respondent leased, rented, or offered to
22 lease or rent, solicited listings for lease or rent, collected rents from tenants or lessees, or
23 performed other services for real property owners and tenants or lessees, all for or in
24 expectation of compensation and including the operation and conduct of a residential resale
25 brokerage wherein Respondent bought, sold, or offered to buy or sell, solicited or obtained
26 listings of, and negotiated the purchase, sale or exchange of real property or business
27 opportunities, all for or in expectation of compensation.

Whenever reference is made in an allegation in this Accusation to an act or omission of IFG, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with IFG committed such act or omission while engaged in furtherance of the business or operations of IFG and while acting within the course and scope of their corporate authority and employment.

FIRST CAUSE OF ACTION

Audit No. OK 07-0144

Beginning March 5, 2008, and continuing intermittently through April 21, 2009, an audit was conducted of IFG's main office located at 14895 East 14th Street, San Leandro, California, where the auditor examined records for the period of April 1, 2007 through December 31, 2007 (the audit period).

While acting as a real estate broker as described in Paragraph 5, above, and within the audit period, IFG did not maintain a trust account.

The following facts were ascertained by the audit for the period referred to above:

(a) IFG failed to provide complete Mortgage Loan disclosure Statements to the borrowers set forth below, in violation of Section 10240 of the Code:

<u>Borrower</u>	<u>Property</u>	<u>Loan Amount</u>	<u>Date Closed</u>
Urena, M.	18577 Road 26, Madera	\$284,050.00	07/23/07
Cuarezma, O.	70 Rochelle Drive, Modesto	\$323,000.00	08/31/07
Fernandez, A.	2306 Prescott Road, Modesto	\$420,000.00	09/18/07
Gutierrez, M.	31463 Carroll Avenue, Hayward	\$468,000.00	11/07/07
Caballero, A.	28539 Pacific Drive, Madera	\$208,000.00	04/27/07

///

1 (b) IFG failed to have a complete broker-salesman agreement with George N.
2 Kahenya, as required by Section 2726 of the Regulations and

3 (c) IFG failed to register a branch office, 1660 Olympic Boulevard, Suite
4 200, Walnut Creek, California with the Department as required by Section 10163 of the Code.

5 11

6 The acts and/or omissions of IFG as alleged above violate Sections 2726 of the
7 Regulations, and Sections 10163 and 10240 of the Code and are grounds for disciplinary action
8 under Section 10177(d) of the Code.

9 SECOND CAUSE OF ACTION

10 Audit Nos. OK 07-0198, OK 07-0199 and OK 07-0200

11 12

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

14 13

15 Beginning March 5, 2008, and continuing intermittently through April 21, 2009,
16 an audit was conducted of CASTRO's main office located at 14895 East 14th Street, San
17 Leandro, California, where the auditor examined records for the period of November 1, 2006
18 through December 31, 2007 (the audit period).

19 14

20 The following facts were ascertained by the audit for the period referred to above,
21 including that CASTRO:

- 22 (a) Failed to designate Account #1, #2, #3, #4 and #5 as trust accounts as
23 required by Section 2832 of the Regulations;
- 24 (b) Authorized Frank Fernandez, an unlicensed and unbonded employee, to
25 make trust fund distributions for Bank Account #1 in violation of Section
26 2834 of the Regulations;

27 ///

- 1 (c) Failed to maintain a Record of All Trust Funds Received-Not Placed in
 2 Broker's Trust Account as required by Section 2831(a) (6) of the
 3 Regulations;
 4 (d) Failed to perform and/or maintain records of the monthly reconciliation of
 5 the balance of all beneficiary records as required by Section 2831.2 of the
 6 regulations;
 7 (e) Failed to provide complete Mortgage Loan Disclosure Statements or a
 8 Good Faith Estimate to borrowers (below) as required by Section 10240
 9 of the Code;

<u>Borrower</u>	<u>Property</u>	<u>Amount</u>	<u>Date Closed</u>
Cuellar, R.	1527 Sixth Street, Richmond	\$332,000.00	01/12/07
Davis, Y.	3978 Bissy Common, Fremont	\$271,000.00	03/22/07
Watts, Aaron	2202 Topaz Way, Santa Rosa	\$420,000.00	09/18/07
Abrego, G.	3881 Carmel Way, San Leandro	\$385,000.00	12/14/06

- 14 (f) Failed to Register a fictitious business name, BV Property Management,
 15 with the Department as required by Section 10159.5 of the Code;
 16 (g) Failed to disclose the Yield Spread Premiums (YSP) on the MLDS to the
 17 borrowers set forth below, in violation of Section 10176(g) of the Code;

<u>Borrower</u>	<u>Property</u>	<u>YSP Received</u>
Watts, A.	2202 Topaz Way, Santa Rosa	\$15,339.38
Abreogo, G.	3881 Carmel Way, San Leandro	\$ 1,925.00
Diaz, F.	1771 Harding Street, Seaside	\$19,440.00

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22 The acts/omissions of CASTRO, described in Paragraphs 12 through 14, above
 23 violate Sections 2831(a)(6), 2831.2, 2832 and 2834 of the Regulations and Sections 10176(g)
 24 and 10240 of the Code and are grounds for disciplinary action under Sections 10176(g) and
 25 10177(d) of the Code.

26 ///

27 ///

1 THIRD CAUSE OF ACTION

2 16

3 Complainant refers to Paragraphs 1 through 15 above and incorporates the same
4 herein by reference.

5 17

6 On at least three occasions IFG, while representing buyers, indicated in the
7 Residential Purchase Agreement that the Earnest Money Deposit had been given to IFG as set
8 forth below:

9 <u>Buyer</u>	<u>Property</u>	<u>Amount</u>	<u>Date Offer</u>	<u>Date Received</u>
10 Weiskittel, C.	11644 Circle Way, Dublin	\$5,000.00	11/15/07	11/18/07
11 Abrego, G.	881 Carmel Way, San Leandro	\$5,000.00	11/24/06	12/04/06
12 Robledo, C.	870 Cord Way, Sacramento	\$1,000.00	11/27/06	11/30/06

13 18

14 In fact for each of the transactions, above, IFG was not in possession of the
15 Earnest Money Deposit at the time of the offer, the checks were written at later dates as set forth
16 above.

17 19

18 The representations made by IFG to the sellers that it was in possession of the
19 Earnest Money Deposits set out above were false, and Respondent IFG knew that they were
20 false when those representations were made. Respondent IFG represented that it was in
21 possession of the Earnest Money Deposits to induce the buyers to accept the offers of buyers.

22 20

23 The acts/omissions of IFG, described in Paragraphs 16 through 19, above, are
24 grounds for disciplinary action under Sections 10176(a) and/or (i) of the Code.

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1 FOURTH CAUSE OF ACTION

2 21

3 Complainant refers to Paragraphs 1 through 20, above, and incorporates them
4 herein by reference.

5 22

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

15 23

16 The above acts and/or omissions of CASTRO violate Section 10159.2 of the
17 Code and Section 2725 of the Regulations and constitute grounds for disciplinary action under
18 Section 10177(h) of the Code.

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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 Respondents 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 8th day of April, 2010.