

**FILED**

**December 30, 2011**

DEPARTMENT OF REAL ESTATE

By *R. Jones*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of  
  
ANDREW E. CHIU, CIPHER LENDING  
INC., and TROY DONALD VILLAGE,  
Respondent.

NO. H-11163 SF  
OAH NO. 2011080578  
(as to ANDREW E. CHIU only)

ORDER DENYING RECONSIDERATION

On November 1, 2011, a Decision was rendered in the above-entitled matter to become effective December 22, 2011 (herein "the Decision").

On December 20, 2011, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Decision, and on December 20, 2011, the Real Estate Commissioner filed an "Order Staying Effective Date" which stayed the effective date of the Decision until 12:00 noon on January 3, 2012.

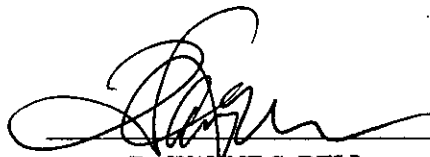
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I have given due consideration to this matter, and I find no good cause to  
reconsider the Decision. Reconsideration is hereby denied.

IT IS HEREBY ORDERED 12/29/2011

BARBARA J. BIGBY  
Acting Real Estate Commissioner



By WAYNE S. BELL  
Chief Counsel

FILED

DEC 20 2011

DEPARTMENT OF REAL ESTATE

By *R Jones*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of  
  
ANDREW E. CHIU, CIPHER LENDING  
INC., and TROY DONALD VILLAGE,  
  
Respondents.

NO. H-11163 SF  
OAH NO. 2011080578  
(as to ANDREW E. CHIU only)

ORDER STAYING EFFECTIVE DATE

On November 1, 2011, a Decision was rendered in the above-entitled matter to become effective on December 22, 2011.

On December 20, 2011, Respondent filed a petition for reconsideration of the Decision of November 1, 2011.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of ten (10) days. The Decision of November 1, 2011, shall become effective at 12 o'clock noon on January 3, 2012.

DATED: 12/20/11

BARBARA J. BIGBY  
Acting Real Estate Commissioner

*Barbara J. Bigby*

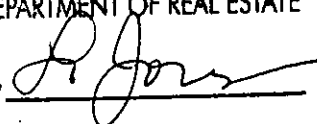
1 Department of Real Estate  
2 P.O. Box 187007  
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0781

FILED

DEC 02 2011

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\*\*\*

11 In the Matter of the Accusation of )

12 ANDREW E. CHIU, CIPHER LENDING )  
13 INC., and TROY DONALD VILLAGE, )

14 Respondents. )

No. H-11163 SF

STIPULATION AND  
AGREEMENT

15 It is hereby stipulated by and between ANDREW E. CHIU and CIPHER  
16 LENDING INC. (Respondents), and the Complainant, acting by and through Truly Sughrue,  
17 Counsel for the Department of Real Estate, as follows for the purpose of settling and  
18 disposing the Accusation filed on June 28, 2011 in this matter:

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

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

27 3. Respondents filed a Notice of Defense pursuant to Section 11505 of the  
Government Code for the purpose of requesting a hearing on the allegations in the Accusation.

1 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents  
2 acknowledge that they understand that by withdrawing said Notice of Defense they will thereby  
3 waive their rights to require the Commissioner to prove the allegations in the Accusation at a  
4 contested hearing held in accordance with the provisions of the APA, and that they will waive  
5 other rights afforded to them in connection with the hearing such as the right to present evidence  
6 in defense of the allegations in the Accusation and the right to cross-examine witnesses.

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

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

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

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

29 8. In lieu of proceeding in this matter in accordance with the provisions of  
30 the APA, CIPHER LENDING INC. (CIPHER) wishes to voluntarily surrender its corporate real  
31

1 estate broker licenses issued by the Department, pursuant to Business and Professions Code  
2 (Code) Section 10100.2. ANDREW E. CHIU (CHIU) is an officer and director of CIPHER, and  
3 is authorized to sign this declaration on behalf of CIPHER. CHIU is representing himself, and is  
4 acting on behalf of CIPHER.

5 9. CHIU understands that by so voluntarily surrendering CIPHER's license,  
6 CIPHER may be relicensed as a broker corporation only by petitioning for reinstatement  
7 pursuant to Section 11522 of the Government Code. CHIU also understands that by so  
8 voluntarily surrendering CIPHER license, Respondents agree to the following:

9 A. The filing of this Stipulation and Agreement shall be deemed as  
10 CIPHER's declaration and petition for voluntary surrender.

11 B. It shall also be deemed to be an understanding and agreement by CIPHER  
12 that it waives all rights CIPHER has to require the Commissioner to prove the allegations  
13 contained in the Accusation filed in this matter at a hearing held in accordance with the  
14 provisions of the APA, and that CIPHER also waives other rights afforded to CIPHER in  
15 connection with the hearing such as the right to discovery, the right to present evidence in  
16 defense of the allegations in the Accusation and the right to cross-examine witnesses.

17 10. CHIU on behalf of CIPHER further agrees that upon acceptance by the  
18 Commissioner, as evidenced by an appropriate order, all affidavits and all relevant evidence  
19 obtained by the Department in this matter prior to the Commissioner's acceptance, and all  
20 allegations contained in the Accusation filed in the Department Case No. H-11163 SF, may be  
21 considered by the Department to be true and correct for the purpose of deciding whether to grant  
22 relicensure or reinstatement pursuant to Government Code Section 11522.

23 11. CHIU on behalf of CIPHER freely and voluntarily surrenders all  
24 CIPHER's licenses and license rights under the Real Estate Law.

25 \* \* \*

26 DETERMINATION OF ISSUES

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

I

The acts and omissions of CIPHER and CHIU as described in the First Cause of Action of the Accusation are grounds for the suspension or revocation of CIPHER and CHIU's licenses and license rights under Sections 10176(a) and 10177(g) of the Code.

II

The acts and omissions of CIPHER as described in the Second Cause of Action of the Accusation are grounds for the suspension or revocation of CIPHER licenses and license rights under the following sections of the Code and Regulations:

(a) As to Paragraph 13, under Section 2742(c) of the Regulations in conjunction with Section 10177(d) of the Code and Section 10177(f) of the Code; and

(b) As to Paragraph 14, under Section 2715 of the Regulations in conjunction with Section 10177(d) of the Code.

\* \* \*

ORDER

I

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

1) Thirty (30) days of said suspension shall be stayed, upon the condition that CHIU petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total monetary penalty of \$3,000.

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

b) No further cause for disciplinary action against the Real Estate licenses of CHIU occurs within one (1) year from the effective date of the decision in this matter.

c) If CHIU fails to pay the monetary penalty as provided above prior to the effective date of this Order, the stay of the suspension shall be vacated and the order of suspension shall be immediately executed, in which event CHIU shall not be entitled to any repayment nor

1 credit, prorated or otherwise, for the money paid to the Department under the terms of  
2 this Order.

3 d) If CHIU pays the monetary penalty and any other moneys due under this Stipulation and  
4 Agreement and if no further cause for disciplinary action against the real estate license of  
5 CHIU occurs within one (1) year from the effective date of this Order, the entire stay  
6 hereby as to Respondent only, shall become permanent.

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

9 a) CHIU shall obey all laws, rules and regulations governing the rights, duties and  
10 responsibilities of a real estate licensee in the State of California; and,

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 3) All licenses and licensing rights of CHIU are indefinitely suspended unless or until  
17 Respondent provides proof satisfactory to the Commissioner, of having made payment to  
18 Vinesh Goyal in the amount of \$2,801, or as otherwise mutually agreed between CHIU and  
19 Vinesh Goyal.

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

25 II

26 CIPHER's petition for voluntary surrender of its corporate real estate broker

27 licenses is accepted as of the effective date of this Order as set forth below, based upon the  
understanding and agreement expressed in Respondents' Declaration incorporated herein as part  
of this Stipulation and Agreement. CIPHER's license certificates, pocket cards, and any branch  
office license certificates shall be sent to the below listed address so that they reach the



1 Department on or before the effective date of this Order:

2 DEPARTMENT OF REAL ESTATE  
3 Attn: Licensing Flag Section  
4 P. O. Box 187000  
5 Sacramento, CA 95818-7000

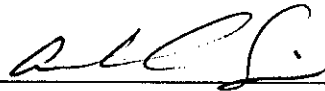
5 4-Oct-11  
6 DATED

  
7 TRULY SUGHRUE  
8 Counsel for Complainant

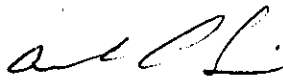
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10 I have read the Stipulation and Agreement, and its terms are understood by me  
11 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the  
12 California Administrative Procedure Act, and I willingly, intelligently 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.

14 9-19-2011  
15 DATED

  
16 ANDREW E. CHIU, on behalf of  
17 CIPHER LENDING INC.  
18 Respondent

17 9-19-2011  
18 DATED

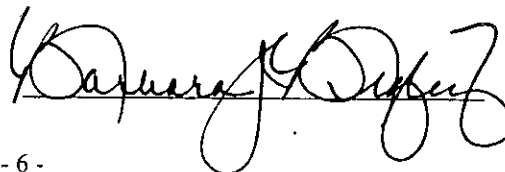
  
19 ANDREW E. CHIU  
20 Respondent

21 \*\*\*

22 The foregoing Stipulation and Agreement is hereby adopted as my Decision and  
23 shall become effective at 12 o'clock noon on DEC 22 2011, 2011.

24 IT IS SO ORDERED 11/1, 2011.

25 BARBARA J. BIGBY  
26 Acting Real Estate Commissioner



FILED

DEC 02 2011

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

4 Telephone: (916) 227-0781

DEPARTMENT OF REAL ESTATE

By P. Jones

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

10 \* \* \*

11 In the Matter of the Accusation of  
12 ANDREW E. CHIU, CIPHER LENDING  
13 INC., and TROY DONALD VILLAGE,  
14 Respondents.

No. H-11163 SF

STIPULATION AND  
AGREEMENT

15 It is hereby stipulated by and between TROY DONALD VILLAGE  
16 (Respondent), and the Complainant, acting by and through Truly Sughrue, Counsel for the  
17 Department of Real Estate, as follows for the purpose of settling and disposing the Accusation  
18 filed on June 28, 2011 in this matter:

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

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

1 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent  
2 acknowledges that Respondent understands that by withdrawing said Notice of Defense  
3 Respondent will thereby waive Respondent's rights to require the Commissioner to prove the  
4 allegations in the Accusation at a contested hearing held in accordance with the provisions of the  
5 APA, and that Respondent will waive other rights afforded to Respondent in connection with the  
6 hearing such as the right to present evidence in defense of the allegations in the Accusation and  
7 the right to cross-examine witnesses.

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

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

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

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

\* \* \*

DETERMINATION OF ISSUES

1 By reason of the forgoing 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 10177(h) of the Business and Professions Code.

8 \* \* \*

9 ORDER

10 I

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

13 1) Sixty (60) days of said suspension shall be stayed for one (1) year upon the following terms  
14 and conditions:

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

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

22 2) Respondent shall, within six (6) months from the effective date of this Decision, take and  
23 pass the Professional Responsibility Examination administered by the Department including  
24 the payment of the appropriate examination fee. If Respondent fails to satisfy this condition,  
25 the Commissioner may order suspension of the license until Respondent passes the  
26 examination.

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4-Oct-11

DATED



TRULY SUGHRUE  
Counsel for Complainant

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

SEPT 30, 2011

DATED

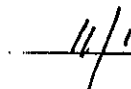


TROY DONALD VILLAGE  
Respondent

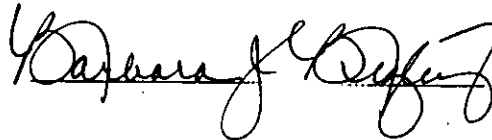
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The foregoing Stipulation and Agreement is hereby adopted as my Decision and shall become effective at 12 o'clock noon on **DEC 22 2011**, 2011.

IT IS SO ORDERED.

 , 2011.

BARBARA J. BIGBY  
Acting Real Estate Commissioner



*Acad.*

**FILED**

June 28, 2011

1 TRULY SUGHRUE, Counsel  
State Bar No. 223266  
2 Department of Real Estate  
P. O. Box 187007  
3 Sacramento, CA 95818-7007  
4 Telephone: (916) 227-0781

DEPARTMENT OF REAL ESTATE

By *d. Jones*

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of )  
ANDREW E. CHIU, CIPHER LENDING )  
INC., and TROY DONALD VILLAGE, )  
Respondents. )

No. H-11163 SF  
ACCUSATION

The Complainant, Phillip Ihde, a Deputy Real Estate Commissioner of the State of California, for Accusation against ANDREW E. CHIU, CIPHER LENDING INC., and TROY DONALD VILLAGE (Respondents), are informed and alleges as follows:

PRELIMINARY ALLEGATIONS

1

The Complainant, Phillip Ihde, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

2

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

3



1 FIRST CAUSE OF ACTION

2 8

3 Each and every allegation in Paragraphs 1 through 7, inclusive, above are  
4 incorporated by this reference as if fully set forth herein.

5 9

6 Beginning in approximately July 2008, CIPHER and CHIU, solicited Vinesh G.  
7 (Vinesh) to apply for a refinance of the loan securing Vinesh's real property located at 1661  
8 Klipspringer Drive, San Jose, California (Klipspringer property). CIPHER and CHIU to induce  
9 Vinesh to apply for a refinance represented contrary to fact that upon the close of escrow Vinesh  
10 would receive a broker credit or refund for the non-recurring closing costs.

11 10

12 On or about August 19, 2008, escrow closed on Vinesh's refinance of the  
13 Klipspringer property. To date, Vinesh has not received his refund for the non-recurring closing  
14 costs.

15 11

16 CIPHER and CHIU's conduct described above constitutes the making of  
17 substantial misrepresentations, and fraud or dishonest dealing, and is cause under Sections  
18 10176(a) and 10176(i) of the Code for suspension or revocation of all licenses and license rights  
19 of Respondent. In the alternative, CIPHER and CHIU's conduct described above constitutes the  
20 making of substantial misrepresentations, and negligence or incompetence in performing acts  
21 requiring a real estate license, and is cause under Sections 10176(a) and 10177(g) of the Code for  
22 suspension or revocation of all licenses and license rights of Respondent.

23 SECOND CAUSE OF ACTION

24 12

25 Each and every allegation in Paragraphs 1 through 11, inclusive, above are  
26 incorporated by this reference as if fully set forth herein.

27 13

Effective February 1, 2010, and continuing through the present, the corporate



1 powers, rights and privileges of CIPHER were suspended by the California Franchise Tax Board  
2 pursuant to the provisions of the California Revenue and Taxation Code. CIPHER while  
3 suspended by the Secretary of State engaged in the real estate resale brokerage activities  
4 described in Paragraph 7.

5 14

6 In the course of the activities described in Paragraph 7, CIPHER failed to notify  
7 the Department within the next business day that CIPHER had closed its main office located at  
8 1375 Lick Avenue #728, San Jose, California, as required by Section 2715 of the Regulations.

9 15

10 The acts and/or omissions of CIPHER as alleged in the Second Cause of Action  
11 constitute grounds for disciplinary action under the following provisions:

12 (a) As to Paragraph 13, under Section 2742(c) of the Regulations in  
13 conjunction with Section 10177(d) of the Code and Section 10177(f) of the Code; and

14 (b) As to Paragraph 14, under Section 2715 of the Regulations in conjunction  
15 with Section 10177(d) of the Code.

16 THIRD CAUSE OF ACTION

17 16

18 Each and every allegation in Paragraphs 1 through 15, inclusive, above, are  
19 incorporated by this reference as if fully set forth herein.

20 17

21 VILLAGE failed to exercise reasonable supervision over the acts of CIPHER in  
22 such a manner as to allow the acts and events described above to occur.

23 18

24 The acts and/or omissions of VILLAGE described in Paragraph 17  
25 constitute failure on the part of VILLAGE, as designated broker-officer for CIPHER, to exercise  
26 reasonable supervision and control over the licensed activities of CIPHER required by Section  
27 10159.2 of the Code.

19

26 The facts described above as to the Third Cause of Accusation constitute cause for  
27 the suspension or revocation of the licenses and license rights of VILLAGE under Section

1 10177(g) and/or Section 10177(h) of the Code and Section 10159.2 of the Code in conjunction  
2 with Section 10177(d) of the Code.

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

8  
9   
10 PHILLIP IHDE  
11 Deputy Real Estate Commissioner

12 Dated at Sacramento, California,  
13 this 28<sup>th</sup> day of JUNE, 2011.

14 DISCOVERY DEMAND

15 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Department of  
16 Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the  
17 *Administrative Procedure Act*. Failure to provide Discovery to the Department of Real Estate  
18 may result in the exclusion of witnesses and documents at the hearing or other sanctions that the  
19 Office of Administrative Hearings deems appropriate.