

1 Department of Real Estate  
2 320 West Fourth Street, #350  
3 Los Angeles, California 90013

4 (213) 576-6982  
5 (213) 576-6914

**FILED**  
JUL 22 2003  
DEPARTMENT OF REAL ESTATE

By Laura B. Dvm

6  
7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 ) DRE No. H-29869 LA  
13 KENAN CARY THAYER, dba Thayer ) OAH No. L-2003010347  
14 Financial, and Ken Thayer Trust )  
15 Deed Servicing, ) STIPULATION AND AGREEMENT  
16 )  
17 Respondent. )  
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27 )

28 It is hereby stipulated by and between KENAN CARY  
29 THAYER, dba Thayer Financial, and Kenan Thayer Trust Deed  
30 Servicing, (sometimes referred to herein as "Respondent"),  
31 acting by and through Daniel A. Nassie, Esq., and the  
32 Complainant, acting by and through Martha J. Rosett, Counsel  
33 for the Department of Real Estate, as follows for the purpose  
34 of settling and disposing of the Accusation filed on  
35 January 7, 2003 in this matter:

36 1. All issues which were to be contested and all  
37 evidence which was to be presented by Complainant and

1 Respondent at a formal hearing on the Accusation, which hearing  
2 was to be held in accordance with the provisions of the  
3 Administrative Procedure Act (APA), shall instead and in place  
4 thereof be submitted solely on the basis of the provisions of  
5 this Stipulation and Agreement.

6           2. Respondent has received, read and understands the  
7 Statement to Respondent, the Discovery Provisions of the APA  
8 and the Accusation filed by the Department of Real Estate in  
9 this proceeding.

10           3. On January 9, 2003, Respondent filed a Notice of  
11 Defense pursuant to Section 11506 of the Government Code for  
12 the purpose of requesting a hearing on the allegations in the  
13 Accusation. In order to effectuate this settlement, Respondent  
14 hereby freely and voluntarily withdraws said Notice of Defense.  
15 Respondent acknowledges that he understands that by withdrawing  
16 said Notice of Defense, he will thereby waive his rights to  
17 require the Commissioner to prove the allegations in the  
18 Accusation at a contested hearing held in accordance with the  
19 provisions of the APA and that he will waive other rights  
20 afforded to him in connection with the hearing such as the  
21 right to present evidence in defense of the allegations in the  
22 Accusation and the right to cross-examine witnesses.

23           4. Respondent, pursuant to the limitations set forth  
24 below, although not admitting or denying the truth of the  
25 allegations, will not contest the factual allegations contained  
26 in the Accusation filed in this proceeding and the Real Estate  
27

1 Commissioner shall not be required to provide further evidence  
2 of such allegations.

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

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

21           7. The Stipulation is entered into by each party  
22 with the express understanding and agreement that it is to be  
23 used for the purposes of settling these proceedings only and  
24 that this stipulation shall not be deemed, used, or accepted as  
25 an acknowledgment or stipulation in any other civil or  
26 administrative proceeding to which this Department is not a  
27 party. Said stipulation is expressly limited to these

1 proceedings and to any further proceeding initiated by or  
2 brought before the Department of Real Estate, and shall have no  
3 collateral estoppel or res judicata effect in any proceeding  
4 other than a proceeding brought by the Department of Real  
5 Estate.

6           8. Respondent understands that by agreeing to this  
7 Stipulation and Agreement, Respondent agrees to pay, pursuant  
8 to Section 10148 of the Business and Professions Code, the cost  
9 of the audit which led to this disciplinary action. The amount  
10 of said cost is \$7,984.01.

11           9. Respondent has received, read and understands the  
12 "Notice Concerning Costs of Subsequent Audit". Respondent  
13 further understands that by agreeing to this Stipulation and  
14 Agreement, the findings set forth below in the Determination of  
15 Issues become final, and that the Commissioner may charge  
16 Respondent for the costs of any subsequent audit conducted  
17 pursuant to Section 10148 of the Business and Professions Code  
18 to determine if the violations have been corrected. The  
19 maximum cost of said audit will not exceed \$7,984.01.

20                           DETERMINATION OF ISSUES

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

25           The conduct, acts or omissions of Respondent KENAN  
26 CARY THAYER, as set forth in the Accusation, constitute cause  
27 to suspend or revoke the real estate license and license rights

1 of Respondent KENAN CARY THAYER under the provisions of  
2 Business and Professions Code ("Code") Sections 10177(d),  
3 10176(e) and 10177(g) for violation of Code Sections 10145,  
4 10229(c) and 10229(j) and Sections 2832.1, 2832, and 2834 of  
5 Title 10, Chapter 6, California Code of Regulations.

6 ORDER

7 WHEREFORE, THE FOLLOWING ORDER is hereby made:

8 1. All licenses and licensing rights of Respondent  
9 KENAN CARY THAYER are suspended for a period of ninety (90)  
10 days from the effective date of this Decision; provided,  
11 however, that sixty (60) days of said suspension shall be  
12 stayed for two (2) years upon the following terms and  
13 conditions:

14 A. Prior to the effective date of this Decision,  
15 Respondent provides evidence satisfactory to the Commissioner  
16 that the trust fund deficit set forth in Audit Report LA 010182  
17 in the amount of \$36,680.95 has been cured, including the  
18 identity of the source of funds used to cure it; and

19 B. All licenses and licensing rights of Respondent  
20 shall be indefinitely suspended unless or until he provides  
21 proof satisfactory to the Commissioner, of having taken and  
22 successfully completed the trust fund accounting and handling  
23 course specified in paragraph (3) of subdivision (a) of  
24 Business and Professions Code Section 10170.5. Proof of  
25 satisfaction of this requirement includes evidence that  
26 Respondent has successfully completed the trust fund accounting  
27 and handling continuing education course within 120 days prior

1 to the effective date of the Decision in this matter. Upon  
2 satisfaction of this condition, the indefinite suspension shall  
3 be stayed for two (2) years upon the following terms and  
4 conditions:

5 1. Respondent shall obey all laws, rules and  
6 regulations governing the rights, duties and responsibilities  
7 of a real estate licensee in the State of California; and

8 2. That no final subsequent determination be made,  
9 after hearing or upon stipulation, that cause for disciplinary  
10 action occurred within two (2) years of the effective date of  
11 this Decision. Should such a determination be made, the  
12 Commissioner may, in her discretion, vacate and set aside the  
13 stay order and reimpose all or a portion of the stayed  
14 suspension. Should no such determination be made, the stay  
15 imposed herein shall become permanent.

16 3. As to the remaining thirty (30) days of said  
17 ninety (90) day suspension, all licenses and licensing rights  
18 of Respondent KENAN CARY THAYER are suspended for a period of  
19 thirty (30) days from the effective date of this Decision;  
20 provided, however, that if Respondent petitions, the remaining  
21 thirty (30) days of said ninety (90) day suspension shall be  
22 stayed upon condition that:

23 a. Respondent pays a monetary penalty pursuant to  
24 Section 10175.2 of the Business and Professions Code at the  
25 rate of \$250 for each day of the suspension for a total  
26 monetary penalty of \$7,500.

27

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

6           c. No further cause for disciplinary action against  
7 the real estate license of Respondent occurs within two years  
8 of the Decision in this matter.

9           d. If Respondent fails to pay the monetary penalty  
10 in accordance with the terms and conditions of the Decision,  
11 the Commissioner may, without a hearing, order the immediate  
12 execution of all or any part of the stayed suspension in which  
13 event the Respondent shall not be entitled to any repayment nor  
14 credit, prorated or otherwise, for the money paid to the  
15 Department under the terms of this Decision.

16           e. If Respondent pays the monetary penalty and if no  
17 further cause for disciplinary action against the real estate  
18 license of Respondent occurs within two years from the  
19 effective date of the Decision, the stay hereby granted shall  
20 become permanent.

21  
22           4. Pursuant to Section 10148 of the Business and  
23 Professions Code, Respondent KENAN CARY THAYER shall pay the  
24 Commissioner's reasonable cost for: a) the audit which led to  
25 this disciplinary action and, b) a subsequent audit to  
26 determine if Respondent has corrected the trust fund violations  
27 found in the Determination of Issues. In calculating the

1 amount of the Commissioner's reasonable cost, the Commissioner  
2 may use the estimated average hourly salary for all persons  
3 performing audits of real estate brokers, and shall include an  
4 allocation for travel costs, including mileage to and from the  
5 auditor's place of work and per diem. Respondent shall pay  
6 such cost within 60 days of receiving an invoice from the  
7 Commissioner detailing the activities performed during the  
8 audit and the amount of time spent performing those activities.  
9 The Commissioner may, in her discretion, vacate and set aside  
10 the stay order if payment is not timely made as provided  
11 herein, or as provided for in a subsequent agreement between  
12 the Respondent and the Commissioner. The vacation and the set  
13 aside of the stay shall remain in effect until payment is made  
14 in full, or until Respondent enters into an agreement  
15 satisfactory to the Commissioner to provide for payment. Should  
16 no order vacating the stay be issued, either in accordance with  
17 this condition or condition "3", the stay imposed herein shall  
18 become permanent.  
19

20 DATED:

6/30/03

Martha J. Rosett

MARTHA J. ROSETT  
Counsel for Complainant

21 \* \* \*

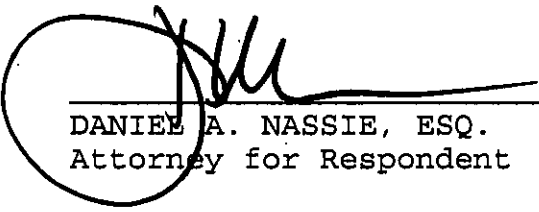
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23 I have read the Stipulation and Agreement, have  
24 discussed it with my attorney, and its terms are understood by  
25 me and are agreeable and acceptable to me. I understand that I  
26 am waiving rights given to me by the California Administrative  
27



1 Procedure Act (including but not limited to Sections 11506,  
2 11508, 11509 and 11513 of the Government Code), and I  
3 willingly, intelligently and voluntarily waive those rights,  
4 including the right of requiring the Commissioner to prove the  
5 allegations in the Accusation at a hearing at which I would  
6 have the right to cross-examine witnesses against me and to  
7 present evidence in defense and mitigation of the charges.

8           Respondent can signify acceptance and approval of the  
9 terms and conditions of this Stipulation and Agreement by faxing  
10 a copy of its signature page, as actually signed by Respondent,  
11 to the Department at the following fax number (213) 576-6917.  
12 Respondent agrees, acknowledges and understands that by  
13 electronically sending to the Department a fax copy of his actual  
14 signature as it appears on the Stipulation, that receipt of the  
15 faxed copy by the Department shall be as binding on Respondent as  
16 if the Department had received the original signed Stipulation  
17 and Agreement.

18 DATED: \_\_\_\_\_   
19 KENAN CARY THAYER

20  
21 DATED: 6-12-03 \_\_\_\_\_   
22 DANIEE A. NASSIE, ESQ.  
23 Attorney for Respondent

24 ///  
25 ///  
26 ///  
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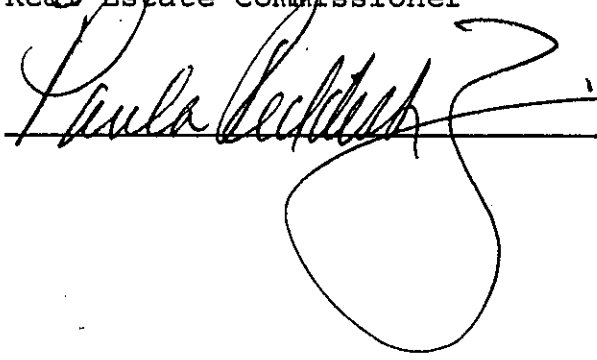
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\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision in this matter and shall become  
effective at 12 o'clock noon on August 11, 2003.

IT IS SO ORDERED July 14, 2003.

PAULA REDDISH ZINNEBANN  
Real Estate Commissioner



*Sack. Jay*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**  
FEB 7 2003

In the Matter of the Accusation )

Case No. H-29869 LA DEPARTMENT OF REAL ESTATE

) OAH No. L-2003010347

KENAN CARY THAYER,

*Laura B. Crow*

Respondent(s.)

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, 6th Floor, Suite 630, Los Angeles, California, on MONDAY, JUNE 30, 2003, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: February 7, 2003

DEPARTMENT OF REAL ESTATE

By: *Martha J. Rosett*  
MARTHA J. ROSETT, Counsel

cc: Kenan Cary Thayer  
Dennis H. Doss/Daniel A. Nassie  
Sacto., OAH  
Audit Section--LA

SAC

1 MARTHA J. ROSETT, Counsel (SBN 142072)  
2 Department of Real Estate  
3 320 West Fourth Street, Suite #350  
4 Los Angeles, California 90013-1105

5 (213) 576-6982  
6 (213) 576-6914

FILED  
JAN - 7 2003  
DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \* \* \*

11	In the Matter of the Accusation of	)	No. H-29869 LA
12		)	
13	KENAN CARY THAYER, dba Thayer	)	<u>A C C U S A T I O N</u>
14	Financial, and Ken Thayer Trust	)	
15	Deed Servicing,	)	
16		)	
	Respondent.	)	

17 The Complainant, Maria Suarez, a Deputy Real Estate  
18 Commissioner of the State of California, for cause of Accusation  
19 against KENAN CARY THAYER, dba Thayer Financial, and Ken Thayer  
20 Trust Deed Servicing, is informed and alleges as follows:

21 1.

22 The Complainant, Maria Suarez, a Deputy Real Estate  
23 Commissioner of the State of California, makes this Accusation in  
24 her official capacity.

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1 2.

2 At all times material herein, Respondent KENAN CARY  
3 THAYER, dba. Thayer Financial, and Ken Thayer Trust Deed  
4 Servicing (hereinafter "Respondent"), was and now is presently  
5 licensed and/or has license rights under the Real Estate Law,  
6 Part 1 of Division 4 of the California Business and Professions  
7 Code (hereinafter "Code"), as a real estate broker.

8 3.

9 All further references to "Respondent", unless  
10 otherwise specified, include the parties identified in Paragraph  
11 2 above, and also includes the officers, directors, employees,  
12 agents and real estate licensees employed by or associated with  
13 said parties, who at all times material herein were engaged in  
14 the furtherance of the business or operations of said parties and  
15 who were acting within the course and scope of their authority,  
16 agency or employment.

17 4.

18 At all times material herein, Respondent engaged in the  
19 business of, acted in the capacity of, advertised or assumed to  
20 act as a real estate broker in the State of California, within  
21 the meaning of Code Section 10131(d), for another or others, for  
22 or in expectation of compensation. Said activity included  
23 performing mortgage loan brokering and trust deed servicing.

24 5.

25 During the period between January 1, 2001 through  
26 November 30, 2001, in connection with the aforesaid mortgage loan  
27 brokerage activities, Respondent accepted or received funds,

1 including funds in trust (hereinafter "trust funds") from or on  
2 behalf of actual and prospective borrowers and lenders and  
3 associations and thereafter made deposits and/or disbursements of  
4 such funds. From time to time herein mentioned, said trust funds  
5 were deposited into a trust account maintained by Respondent at  
6 First Bank and Trust-Newport Beach, 4301 Mac Arthur Blvd.,  
7 Newport Beach, CA 92660, identified as follows:

8 Account No. 9406903278, known as "Ken Thayer Trust Deed  
9 Servicing, c/o Residential First Mortgage." This account  
10 was used as a depository for trust funds received from  
11 borrowers on behalf of several lenders.

12 6.

13 On or about March 7, 2002, the Department completed its  
14 examination of Respondent THAYER's books and records, pertaining  
15 to the property management real estate activities described in  
16 Paragraphs 4 and 5 above, covering a period from approximately  
17 January 1, 2001 through November 30, 2001. The primary purpose  
18 of the examination was to determine Respondent's compliance with  
19 the Real Estate Law. The examination, Audit #LA 010182, revealed  
20 violations of the Code and of Title 10, Chapter 6, California  
21 Code of Regulations ("Regulations"), as set forth below, and as  
22 more specifically set forth in the audit report and attached  
23 exhibits.

24 7.

25 In the course of activities described in Paragraphs 4  
26 and 5 above, and during the examination period described in  
27 Paragraph 6, Respondent acted in violation of the Code and the

1 a) As of the cutoff of November 30, 2001, the Trust  
2 Account had a shortage of \$36,680.95, in violation of Regulation  
3 2832.1 and Code Section 10145.

4 b) Respondent failed to place all trust funds  
5 received into a trust account held in the name of the broker as  
6 trustee, in violation of Regulation 2832 and Code Section 10145.  
7 Funds Respondent received from lenders which were placed in his  
8 personal account included checks from the following lenders:  
9 McClare, Stigna, Reedy, Kroeze, and Schwartz.

10 c) Respondent allowed two individuals who were not  
11 employed by him to be authorized signers on the trust account, in  
12 violation of Regulation 2834 and Code Section 10145.

13 d) Respondent negotiated and serviced two multi-  
14 lender transactions that were hypothecated or secured by notes on  
15 real property as opposed to being secured directly by real  
16 property. These transactions included the Weise-Matranga Loan  
17 No. 00-075 and the Weise-DCLC Loan No. 00-078. This was in  
18 violation of Code Section 10229(c).

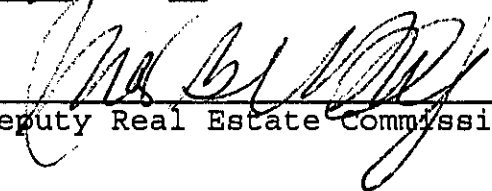
19 e) Respondent collected and disbursed borrowers'  
20 payments on behalf of the lenders without a written agreement  
21 that authorized him to service the notes, in violation of Code  
22 Section 10229(j).

23 The foregoing violations constitute cause for the  
24 suspension or revocation of Respondent's real estate license and  
25 license rights under the provisions of Code Sections 10177(d),  
26 10176(e), and/or 10177(g).

27 //

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

10 Dated at Los Angeles, California  
11 this 26<sup>th</sup> day of December, 2002.

12  
13   
14 Deputy Real Estate Commissioner

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17  
18  
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20  
21  
22  
23  
24 cc: Kenan Cary Thayer  
25 Maria Suarez  
26 Sacto.  
27 RJ  
Audits (Bautista)