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**FILED**  
MAY - 4 2005  
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

By *K. M. Nichols*

\* \* \* \* \*

In the Matter of the Accusation of	)	No. H-29922 LA
	)	
BGIF, INC., dba Bankers Group	)	L-2003080459
and ANNA MARIE LIZARRAGA,	)	
individually and as the	)	
designated officer for	)	
BGIF, Inc.,	)	
	)	
Respondent(s).	)	

DECISION

The Proposed Decision dated April 1, 2005, 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 MAY -3 2005.

IT IS SO ORDERED 5-3-05

JEFF DAVI  
Real Estate Commissioner  
*Jeff Davi*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

BGIF, INC.  
d.b.a. Bankers Group  
&  
ANNA MARIE LIZARRAGA,  
Individually and as the designated officer for  
BGIF, Inc.,

Respondents.

OAH NO. L2003080459

CASE NO. H-29922 LA

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, at Los Angeles, California on March 7, 2005.

Department of Real Estate Staff Counsel Elliott Mac Lennan represented complainant.

Respondent, Anna M. Lizarraga, personally appeared and was represented by Frank Buda, Esq.

At the commencement of the hearing the parties stipulated that a settlement had been reached between complainant and respondent BGIF, Inc. Based on the stipulation of counsel and after reviewing the signature page of the settlement agreement between the agency and BGIF, Inc., the ALJ severed the action against BGIF, Inc. from the action against respondent Anna M. Lizarraga. Consequently, the instant hearing focused exclusively on respondent Lizarraga.

Oral and documentary evidence was received and the matter was submitted.

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## FACTUAL FINDINGS

The ALJ makes the following Factual Findings:

1. The Accusation was filed by Maria Suarez (complainant) while acting in her official capacity as a Deputy Real Estate Commissioner, Department of Real Estate (DRE), State of California. During the instant hearing complainant moved to amend the accusation against respondent Lizarraga by striking the following allegations: Paragraph 10, subdivisions (d), (f), (g), (h), and (i). Complainant's motion was granted and subdivisions (d), (f), (g), (h), and (i) of paragraph 10 were stricken.

2. On April 16, 1990, Anna M. Lizarraga (respondent) was licensed by the DRE as a real estate broker. At all times relevant to the instant proceedings respondent's real estate broker license was, and currently is, in full force and effect.

3. At all relevant times respondent was licensed by the DRE as the designated officer of BGIF, Inc. (BGIF) to qualify BGIF and to act for BGIF as a real estate broker, as provided by California Business and Professions Code (Code) section 10159.2. Pursuant to Code section 10159.2, respondent was responsible for supervision and control of the activities conducted on behalf of BGIF by BGIF's officers, managers and employees as necessary to secure full compliance with the provisions of the Real Estate Law, including supervision of the salespersons licensed to the corporation in performing functions for which a real estate license is required.

4. At all relevant times, BGIF engaged in business as a real estate broker by: (1) operating as a mortgage and loan broker, d.b.a. Bankers Group and soliciting borrowers and lenders and negotiating and servicing loans including multi-lender loans on real property; and, (2) conducting broker controlled escrows through its escrow division under the exemption set forth in California Financial Code section 17006, subdivision (a), subsection (4) for real estate brokers performing escrows incidental to real estate transactions where the broker is a party and where the broker is performing acts for which a real estate license is required.

5. From March 12, 2002 through April 10, 2002, the DRE examined and audited respondent's books and records concerning BGIF's mortgage and loan brokerage and broker-escrow activities. The audit period covered two years of records; from March 1, 2000 through February 28, 2002. In a report dated April 17, 2002, the DRE auditor describes her findings. (Exhibit 5.)

6. In answer to complainant's allegations against respondent, respondent provided the DRE's April 17, 2002 audit report, a copy of the Accusation against respondent, and all pertinent files to her own expert, a former auditor for the DRE.

Respondent's auditor describes his findings and opinions in a report dated February 24, 2005. (Exhibit C.)

7. Both auditors/experts mentioned in Findings 5 and 6, above, appeared at the hearing and testified. The following factual findings are based on the testimony of the two experts, their reports, and the files and documents they reviewed.

8. At all relevant times BGIF accepted and received funds in trust (trust funds) from or on behalf of borrowers and lenders, and thereafter made disposition of said funds. During the audit period, BGIF maintained the following three trust accounts: Trust Account #1 (T/A #1), BGIF Inc. dba Bankers Group Hard Money Escrow Trust Account; Trust Account #2 (T/A #2), BGIF, Inc. dba Bankers Group Institutional Escrow Trust Account; and Trust Account #3 (T/A #3), BGIF, Inc. dba Bankers Group Collection Trust Account.

9. The audit revealed that as of February 28, 2002, T/A #1 had a "shortage" of \$17,782.97. "Shortage" is defined as an amount less than the existing aggregate trust fund liability of BGIF to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code section 10145 and California Code of Regulations, title 10 (Regulations), sections 2832.1, 2950, subdivision (d) and 2950, subdivision (g).

The vast majority of the shortage in T/A #1 was caused when funds totaling \$17,395.89 were erroneously disbursed from T/A #1 instead of T/A #2. During the course of performing a loan escrow for a borrower, BGIF received funds in the amount of \$17,395.89 and deposited the funds in T/A #2. However, when funds were disbursed at the close of escrow checks in the amount of \$17,395.89 were issued from T/A #1 instead of T/A #2. This accounting error resulted in T/A #1 being \$17,395.89 short, while T/A #2 had a \$17,395.89 overage. This error was discovered and corrected on March 6, 2002, before the DRE commenced its audit. As a result of corrective measures, consisting of transferring \$17,395.89 from T/A #2 to T/A #1, T/A #1 ended up with a true shortage of only \$387.08; which, according to respondent's expert, is "minor" given the fact BGIF handled approximately 8 million dollars in trust funds during the two year period covered by the audit. This "true shortage" was immediately cured at the time of the DRE audit. Currently, T/A #1 is in balance.

10. The audit revealed that respondent failed to maintain accurate and complete control records, in the form of columnar records, in chronological order, of all trust funds received for T/A #1 and T/A #2; and, no control records were maintained at all for T/A #3.

Respondent and BGIF did maintain control records for T/A #1 and T/A #2, however the control records were not complete because the dates funds were

received were not listed, nor were the fund contributors adequately identified. Additionally, there were some posting errors in connection with the T/A #1 and T/A #2 control records. Respondent and BGIF did not maintain control records for T/A #3 because BGIF was in the process of closing out T/A #3. BGIF was only servicing three remaining loans in T/A #3 at the time of the DRE audit. Currently, BGIF does not service any loans and T/A #3 has been closed.

BGIF now maintains control records for its trust accounts by utilizing the Register report in the QuickBooks accounting program. The QuickBooks Register contains all of the information required by Regulations section 2831; including identification of the contributor of the funds and the date the funds are received.

11. The audit revealed that respondent failed to maintain accurate and complete separate records for each beneficiary or transaction connected with T/A #1 and T/A #2; and, respondent maintained no separate record at all for T/A #3.

Respondent and BGIF did maintain separate records for T/A #1 and T/A #2; however, some of the separate records maintained by respondent and BGIF had posting errors and were thus inaccurate and incomplete. BGIF did not maintain separate records for T/A #3 because of the minimal activity in that T/A. Currently BGIF does not service any loans and T/A #3 has been closed.

Respondent immediately took corrective action concerning T/A #1 and T/A #2. Currently, BGIF uses QuickBooks to maintain the T/A records. Each escrow is assigned a separate liability account that allows QuickBooks to generate a separate transaction record for each escrow. The QuickBooks format fully complies with the separate record requirement of Regulations section 2831.1.

12. The audit revealed that respondent permitted a real estate salesperson to be the sole authorized signatory on all three trust accounts. Respondent was not an authorized signatory on any of the trust accounts at the time of the audit.

As soon as this problem was brought to respondent's attention, respondent rectified the situation. On April 10, 2002, respondent was added as an authorized signatory on all three trust accounts.

13. The audit revealed that respondent failed to provide the DRE with timely, accurate, Quarterly and Annual Trust Find Status Reports after meeting the loan negotiating and loan servicing threshold criteria, as required by Code section 10232, subdivision (a), subsections (1), (2), and (3) and Code section 10232.25.

During 2001, BGIF exceeded the threshold criteria of Code section 10232 by: negotiating a combination of ten (10) or more loans in an aggregate amount of more than one million dollars (\$1,000,000.00) (to wit: BGIF negotiated

twenty-four loans aggregating \$2,235,000.00); BGIF collected \$250,000.00 or more (to wit: \$910,543.35) on behalf of owners of promissory notes and/or owners of real property sales contracts in the form of loan payments and loan payoffs; and/or, BGIF collected \$250,000.00 or more (to wit: \$910,543.35) on behalf of obligors of promissory notes or lenders of real property sales contracts. Thus, respondent was required, but failed, to file reports mandated by Code sections 10232 and 10232.25.

Respondent was not conscious of the fact that BGIF had exceeded the threshold requirements embodied in Code section 10232; however, as soon as the DRE auditor alerted respondent to that fact, respondent immediately filed the required reports on April 16, 2002.

14. The audit revealed that respondent failed to provide a true and correct copy of DRE approved Mortgage Loan Disclosure Statements (MLDS), signed by the broker, for four different borrowers.

At the time of the audit respondent believed that in the four cases where the MLDS were not provided, the Good Faith Estimate Forms and the other disclosures required by the Truth-in-Lending Laws met the statutory disclosure requirements. Since the audit, respondent provides MLDS to all borrowers, whether individual or institutional.

15. The audit revealed that the escrow instructions used by BGIF did not contain language specifically advising all parties to transactions that BGIF had an ownership interest in the escrow company.

The escrow instructions used by BGIF at the time of the DRE audit list the "Bankers Group" in the header as the owner of the escrow business. "Bankers Group" is the licensed fictitious business name used by BGIF to broker loans. Consequently, there was no intent on respondent's part to conceal the fact that BGIF was the owner of the escrow holder. Since the audit, BGIF's escrow instructions now contain the following disclosure: "BGIF, Inc., DBA Bankers Group, is acting as both the mortgage loan broker and the escrow holder in this transaction and will be paid an escrow fee. BGIF, Inc. is licensed by the California Department of Real Estate."

16. Respondent was first licensed by the DRE as a real estate salesperson in 1980. She worked as a salesperson for 10 years before becoming a licensed broker in 1990. Respondent has worked continuously in the real estate field as a salesperson and broker for the past 25 years; and, except for the instant action, she has no history of discipline or of client complaints.

17. Respondent resigned as the designated officer for BGIF on October 8, 2003.

18. Respondent regrets the errors that occurred in the instant case and testified that she has learned a great deal about keeping appropriate records and books as a result of the instant action. Respondent also reports that she not only gained greater insight into record keeping requirement, she has also found a great resource to help with any future questions: "Real Estate Compliance Solutions," the professional company that reviewed this case for respondent.

19. In 2001, in addition to having been the designated officer for BGIF, respondent also operated a real estate sales business from her home. The DRE conducted a "survey" of respondent's real estate records on August 20, 2001. As a result of the August 20, 2001 "survey" the DRE issued a "Compliance Notice" letter, dated October 31, 2001. The Compliance Notice letter stated, in pertinent part:

"This letter will serve as notice that on the above-indicated date a survey was performed. The survey indicated that you comply with Real Estate Laws and/or Regulations...keep up the good work." (Exhibit C.)

20. Respondent submitted character reference letters attesting to her good character and her professional work ethic.

21. Three years have passed since the closing date (February 28, 2002) of the audit period in the instant case and there have been no allegations that respondent has engaged in any instances of inappropriate record keeping or sub-standard business practices resulting from any post-February 28, 2002 licensed activities by respondent.

22. No injury was suffered by any of respondent's or BGIF's clients.

### LEGAL CONCLUSIONS

The Administrative Law Judge makes the following Legal Conclusions:

1. Cause exists for discipline of respondent's license because the conduct described in Finding 9 violated Regulations section 2832.1; however, as further noted in Finding 9, under the totality of the circumstances this violation was *de minimus*.

2. Cause exists for discipline of respondent's license because the conduct described in Finding 10 violated Regulations section 2831; however, as further noted in Finding 10, the violations were immediately corrected. Also, as noted in Finding 22, there was no harm to any clients.

3. Cause exists for discipline of respondent's license because the conduct described in Finding 11 violated Regulations section 2831.1; however, as further

noted in Finding 11, respondent took immediate action to correct the violations and to prevent reoccurrence. Also, as noted in Finding 22, there was no harm to any clients.

4. Cause exists for discipline of respondent's license because the conduct described in Finding 12 violated Regulations section 2834; however, as further noted in Finding 12, respondent took immediate action to correct the violations and to prevent reoccurrence. Also, as noted in Findings 17 and 22, respondent no longer works as the designated officer for BGIF, and no harm resulted from respondent's activities.

5. Cause exists for discipline of respondent's license because the conduct described in Finding 13 violated Code sections 10232 and 10232.25; however, as further noted in Finding 13, respondent took immediate action to correct the violations and to prevent reoccurrence. Also, as noted in Finding 22, no harm resulted from respondent's activities.

6. Cause exists for discipline of respondent's license because the conduct described in Finding 14 violated Code section 10240; however, as further noted in Finding 14, respondent took immediate action to correct the violations and to prevent reoccurrence. Also, as noted in Finding 22, no harm resulted from respondent's activities.

7. Cause exists for discipline of respondent's license because the conduct described in Finding 15 violated Regulations section 2950, subdivision (h); however, as further noted in Finding 15, respondent took immediate action to correct the violations and to prevent reoccurrence. Also, as noted in Finding 22, no harm resulted from respondent's activities.

8. Taken in context, respondent's violations, separately and cumulatively, were unintentional and of a minor nature. As noted in Findings 16, 17, 18, 19, 20, 21, and 22, respondent has a long history of working as a DRE licentiate without any violations except for the relatively minor violations which form the basis of the present action against her broker's license. It is also important to note that the violations occurred over three years ago, respondent took immediate action to correct the errors that led to the instant action, respondent's errors did not result from any willful or wanton conduct on her part, and she has learned from her errors. Given these mitigating factors and factors evidencing rehabilitation, no valid administrative purpose would be served by imposing discipline in this case. Disciplinary proceedings are designed to ensure the public is protected and that the licentiate is rehabilitated. Here, respondent has taken the necessary measures to meet those objectives. Under these circumstances imposition of discipline is not warranted and could only be viewed as punitive, not protective or corrective, in nature. Consequently, although bases exist for discipline, the ALJ, in the interests of fairness



and justice concludes that the accusation should be dismissed without imposition of discipline.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The accusation against respondent is dismissed without imposition of discipline.

Dated: April 1, 2005.



ROY W. HEWITT

Administrative Law Judge

Office of Administrative Hearings

1 ELLIOTT MAC LENNAN, SBN 66674  
Department of Real Estate  
2 320 West 4th Street, Ste. 350  
Los Angeles, California 90013-1105

3 Telephone: (213) 576-6911 (direct)  
4 -or- (213) 576-6982 (office)

FILED  
APR -1 2005  
DEPARTMENT OF REAL ESTATE

By K. Hinderholt

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of	)	No. H-29922 LA
	)	
12 <u>BGIF INC.</u> dba Bankers Group, and	)	<u>STIPULATION</u>
13 <u>ANNA MARIE LIZARRAGA,</u>	)	<u>AND</u>
14 individually and as former	)	<u>AGREEMENT</u>
14 designated officer of BGIF INC.	)	
	)	
15 Respondents.	)	
	)	
16	)	

17 It is hereby stipulated by and between BGIF INC. dba  
18 Bankers Group (sometimes referred to as "Respondent"),  
19 represented by Richard A. DeSantis, Esq., and the Complainant,  
20 acting by and through Elliott Mac Lennan, Counsel for the  
21 Department of Real Estate, as follows for the purpose of settling  
22 and disposing of the Accusation filed on January 29, 2003, in  
23 this matter:

24 1. All issues which were to be contested and all  
25 evidence which was to be presented by Complainant and Respondent  
26 at a formal hearing on the Accusation, which hearing was to be  
27

1 held in accordance with the provisions of the Administrative  
2 Procedure Act ("APA"), shall instead and in place thereof be  
3 submitted solely on the basis of the provisions of this  
4 Stipulation and Agreement (Stipulation).

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

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

21           4. This Stipulation is based on the factual  
22 allegations contained in the Accusation. In the interest of  
23 expedience and economy, Respondents choose not to contest these  
24 allegations, but to remain silent and understand that, as a  
25 result thereof, these factual allegations, without being admitted  
26 or denied, will serve as a prima facie basis for the disciplinary  
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1 action stipulated to herein. The Real Estate Commissioner shall  
2 not be required to provide further evidence to prove said factual  
3 allegations.

4 5. This Stipulation and Respondents decision not to  
5 contest the Accusation is made for the purpose of reaching an  
6 agreed disposition of this proceeding and is expressly limited to  
7 this proceeding and any other proceeding or case in which the  
8 Department of Real Estate ("Department"), the state or federal  
9 government, or any agency of this state, another state or federal  
10 government is involved.

11 6. It is understood by the parties that the Real  
12 Estate Commissioner may adopt this Stipulation as his Decision  
13 in this matter thereby imposing the penalty and sanctions on  
14 Respondent's real estate licenses and license rights as set forth  
15 in the "Order" herein below. In the event that the Commissioner,  
16 in his discretion, does not adopt the Stipulation, it shall be  
17 void and of no effect and Respondent's shall retain the right to  
18 a hearing and proceeding on the Accusation under the provisions  
19 of the APA and shall not be bound by any stipulation or waiver  
20 made herein.  
21

22 7. The Order or any subsequent Order of the Real  
23 Estate Commissioner made pursuant to this Stipulation shall not  
24 constitute an estoppel, merger or bar to any further  
25 administrative or civil proceedings by the Department of Real  
26 Estate with respect to any matters which were not specifically  
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1 alleged to be causes for Accusation in this proceeding but do  
2 constitute a bar, estoppel and merger as to any allegations  
3 actually contained in the Accusation against Respondent herein.

4 8. Respondent understands that by agreeing to this  
5 Stipulation, Respondent agrees to pay, pursuant to Business and  
6 Professions Code Section 10148, the cost of the audit (Audit  
7 Report LA 010242/010364) which led to this disciplinary action.  
8 The amount of said cost is \$7,199.92.

9 9. Respondent has received, read, and understands the  
10 "Notice Concerning Costs of Subsequent Audit". Respondent  
11 further understands that by agreeing to this Stipulation, the  
12 findings set forth below in the Determination of Issues become  
13 final, and the Commissioner may charge Respondent for the cost of  
14 any subsequent audits conducted pursuant to Business and  
15 Professions Code Section 10148 to determine if the violations  
16 have been corrected. The maximum cost of the subsequent audit  
17 will not exceed \$7,199.92.  
18

19 DETERMINATION OF ISSUES

20 By reason of the foregoing stipulations, it is  
21 stipulated and agreed that the following determination of issues  
22 shall be made:

23 The conduct, acts or omissions of BGIF INC. as  
24 described in Paragraph 4 above, is in violation of Sections  
25 10145, 10232(a), 10232.25, 10233 and 10240 of the Business and  
26 Professions Code ("Code") and Sections 2831, 2831.1, 2831.2,  
27

1 2832.1, 2834, 2950(d), 2950(g) and 2950(h) of Title 10, Chapter 6  
2 of the California Code of Regulations ("Regulations") and is a  
3 basis for the suspension or revocation of Respondent's license  
4 pursuant to Code Section 10177(d).

5 ORDER

6 WHEREFORE THE FOLLOWING ORDER IS MADE PURSUANT  
7 TO THE WRITTEN STIPULATION OF THE PARTIES:

8 I.

9 A. All licenses and licensing rights of Respondent  
10 BGIF INC. under the Real Estate Law are suspended for a period of  
11 ninety (90) days from the effective date of this Decision;  
12 provided, however, that sixty (60) days of said suspension shall  
13 be stayed for two (2) years upon the following terms and  
14 conditions:

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

18 2. That no final subsequent determination be made,  
19 after hearing or upon stipulation, that cause for disciplinary  
20 action occurred within two (2) years of the effective date of  
21 this Decision. Should such determination be made, the  
22 Commissioner may, in his discretion, vacate and set aside the  
23 stay order and reimpose all or a portion of the stayed  
24 suspension. Should no such determination be made, the stay  
25 imposed herein shall become permanent.  
26

1           B. The initial thirty (30) day portion of said ninety  
2 (90) day suspension shall commence on the effective date of this  
3 Decision; provided, however, that if Respondent petitions, said  
4 suspension shall be stayed upon condition that:

5           1. Pursuant to Section 10175.2 of the Business and  
6 Professions Code, Respondent pays a monetary penalty of one-  
7 hundred dollars (\$100) per day totaling three thousand dollars  
8 (\$3,000).

9           2. Said payment shall be in the form of a cashier's  
10 check or certified check made payable to the Recovery  
11 Account of the Real Estate Fund. Said check must be received  
12 by the Department prior to the effective date of the Decision  
13 in this matter.

14           3. No further cause for disciplinary action against  
15 the real estate license of Respondent occurs within two (2) years  
16 from the effective date of the Decision in this matter.

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

24           5. If Respondent pays the monetary penalty and if no  
25 further cause for disciplinary action against the real estate  
26 license of Respondent occurs within two (2) years from the effective  
27 date of the Decision in this matter.

1 license of Respondent occurs within two (2) years from the  
2 effective date of the Decision, the stay hereby granted shall  
3 become permanent.

4 II.

5 During the two year period set forth above, BGIF INC.  
6 shall submit to the Department of Real Estate a Quarterly Trust  
7 Fund Position Statement as of the last day of each March, June,  
8 September and December. The Position Statement shall be  
9 submitted to the Manager of the Crisis Response Team of the  
10 Department's Los Angeles office not later than 60 days following  
11 the last day of each calendar quarter (March, June, September and  
12 December). The Position Statement shall include the information  
13 and documents specified below and be verified as true and  
14 accurate by Respondent under penalty of perjury. If Respondent  
15 BGIF INC. has no trust fund liability as of the last day of the  
16 calendar quarter, the Position Statement shall so state.

17 The Position Statement shall consist of the following:

18 (1) A schedule of trust fund accountability with the  
19 following information concerning funds held by Respondent BGIF  
20 INC. as agent or trustee to the owner(s) of said funds:

21 (a) Account number and depositories.

22 (b) Names of principals and beneficiaries.

23 (c) Trust fund liability to (b).

24 (2) A report of trust funds in the custody and control  
25 of Respondent as of the accounting date consisting of:  
26



1 (a) A copy of Respondent's trust accounts' bank  
2 statements (listed above as (1)(a)) showing the balance of funds  
3 in the accounts as of the accounting date.

4 (b) A schedule of uncleared checks drawn on the  
5 accounts adjusting the accounts to their true balance as of the  
6 accounting date.

7 (3) A copy of Respondent's (a) trust funds records  
8 maintained pursuant to Section 2831 of the Regulations, (b)  
9 separate records maintained pursuant to Section 2831.1 of the  
10 Regulations and (c) reconciliation maintained pursuant to Section  
11 2831.2 of the Regulations.

12  
13 (4) A statement explaining any discrepancy between the  
14 total liability shown under (1) above and the adjusted trust  
15 accounts' balances shown under (2) above.

16 III.

17 Pursuant to Section 10148 of the Business and  
18 Professions Code, Respondent BGIF INC. shall pay the  
19 Commissioner's reasonable cost for: (a) the audit (Audit Report  
20 LA 010242/010364) which led to this disciplinary action and (b) a  
21 subsequent audit to determine if Respondent BGIF INC. is now in  
22 compliance with the Real Estate Law. The cost of the audit which  
23 led to this disciplinary action is \$7,199.92. In calculating the  
24 amount of the Commissioner's reasonable cost, the Commissioner  
25 may use the estimated average hourly salary for all persons  
26 performing audits of real estate brokers, and shall include an  
27

1 allocation for travel time to and from the auditor's place of  
2 work. Said amount for the prior and subsequent audit shall not  
3 exceed \$14,399.84.

4 Respondent BGIF INC. shall pay such cost within 60 days  
5 of receiving an invoice from the Commissioner detailing the  
6 activities performed during the audit and the amount of time  
7 spent performing those activities.

8 The Commissioner may suspend the license of a  
9 Respondent's BGIF INC. pending a hearing held in accordance with  
10 Section 11500, et seq., of the Government Code, if payment is not  
11 timely made as provided for herein, or as provided for in a  
12 subsequent agreement between the Respondent and the Commissioner.  
13 The suspension shall remain in effect until payment is made in  
14 full or until a Respondent enters into an agreement satisfactory  
15 to the Commissioner to provide for payment, or until a decision  
16 providing otherwise is adopted following a hearing held pursuant  
17 to this condition.  
18

19  
20 DATED: 3-3-05

Elliott MacLennan  
ELLIOTT MAC LENNAN, Counsel for  
the Department of Real Estate

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22 ///  
23 ///  
24 ///  
25 ///  
26 ///

1 \* \* \*

2 We have read the Stipulation and Agreement, and have  
3 discussed it with our counsel. Its terms are understood by us  
4 and are agreeable and acceptable to us. We understand that we  
5 are waiving rights given to us by the California Administrative  
6 Procedure Act (including but not limited to Sections 11506,  
7 11508, 11509 and 11513 of the Government Code), and we willingly,  
8 intelligently and voluntarily waive those rights, including the  
9 right of requiring the Commissioner to prove the allegations in  
10 the Accusation at a hearing at which we would have the right to  
11 cross-examine witnesses against us and to present evidence in  
12 defense and mitigation of the charges.  
13

14 Respondent can signify acceptance and approval of the  
15 terms and conditions of this Stipulation and Agreement by faxing  
16 a copy of its signature page, as actually signed by Respondent,  
17 to the Department at the following telephone/fax number: (213)  
18 576-6917, Attention: Elliott Mac Lennan. Respondent agrees,  
19 acknowledges and understands that by electronically sending to  
20 the Department a fax copy of Respondent's actual signature as it  
21 appears on the Stipulation and Agreement, that receipt of the  
22 faxed copy by the Department shall be as binding on Respondent as  
23 if the Department had received the original signed Stipulation  
24 and Agreement.  
25  
26  
27

1 DATED:

March 3, 2005

*Jeff Davi*

2 **REALTY INC., Respondent**  
3 **BY: STEVEN KARLTON KOP,**  
4 **current designated officer**

5 DATED:

March 4, 2005

6 **Richard A. DeSantis**  
7 **Attorney for Respondents**  
8 **Approved as to form**

9 The foregoing Stipulation and Agreement is hereby  
10 adopted as my Decision and Order and shall become effective at 12  
11 o'clock noon on \_\_\_\_\_ 2005.

12 IT IS SO ORDERED \_\_\_\_\_ 2005.

13 **JEFF DAVI**  
14 **Real Estate Commissioner**

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DATED: \_\_\_\_\_

\_\_\_\_\_  
BGIF INC., Respondent  
BY: STEVEN KARLTON KOP,  
current designated officer

DATED: \_\_\_\_\_

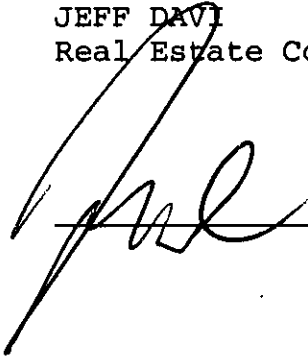
\_\_\_\_\_  
Richard A. DeSantis,  
Attorney for Respondents  
Approved as to form

\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision and Order and shall become effective at 12  
o'clock noon on \_\_\_\_\_ APR 21 \_\_\_\_\_, 2005.

IT IS SO ORDERED 3-23-05, 2005.

JEFF DAVI  
Real Estate Commissioner

  
\_\_\_\_\_

*Handwritten initials/signature*

**BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**FILED**  
JAN - 7 2005  
DEPARTMENT OF REAL ESTATE

*In the Matter of the Accusation of*

BGIF, INC., et al.,

By *K. Medeiros*

Case No. H-29922 LA

OAH No. L-2003080459

}  
}

*Respondent*

**NOTICE OF CONTINUED HEARING ON ACCUSATION**

**To the above named respondent:**

**You are hereby notified** that a hearing will be held before the Department of Real Estate at **Office of Administrative Hearings, 320 West Fourth Street, Ste. 630, Los Angeles, CA** on **March 7-9, 2005**, 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 on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the 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.

DEPARTMENT OF REAL ESTATE

Dated: JAN - 7 2005

By *E.L.*  
ELLIOTT MAC LENNAN, Counsel

cc: BGIF Inc./Anna Marie Lizarraga  
Richard A. DeSantis, Esq./Frank M. Buda, Esq.  
Sacto/OAH/

*Handwritten initials/signature*

**BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**FILED**  
AUG 30 2004  
DEPARTMENT OF REAL ESTATE

*In the Matter of the Accusation of*

By *R. Meberhol*

BGIF INC. and ANNA MARIE LIZARRAGA,

}  
}

Case No. H-29922 LA

OAH No. L-2003080459

*Respondent*

**NOTICE OF CONTINUED HEARING ON ACCUSATION**

**To the above named respondent:**

**You are hereby notified** that a hearing will be held before the Department of Real Estate at **320 W. Fourth Street, Ste. 630, Los Angeles, CA** on **December 27-28, 2004**, 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 on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the 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.

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DEPARTMENT OF REAL ESTATE

Dated: **AUG 30 2004**

By *elliott mac lennan*  
**ELLIOTT MAC LENNAN, Counsel**

cc: BGIF Inc./Anna Marie Lizarraga  
Frank M. Buda, Esq./Richard A. De Santis  
Sacto/OAH/MA

*Handwritten initials/signature*

**FILED**  
OCT - 6 2003  
DEPARTMENT OF REAL ESTATE

**BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

*In the Matter of the Accusation of*

By *K. K. K. K. K.*

BGIF INC., ET AL.,

}  
}

Case No. H-29922 LA

OAH No. L-2003080459

Respondent

**NOTICE OF HEARING ON ACCUSATION**

**To the above named respondent:**

**You are hereby notified** that a hearing will be held before the Department of Real Estate at 320 W. Fourth Street, Ste. 630, Los Angeles, CA on **March 24 & 25, 2004**, 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 on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the 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.

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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.

DEPARTMENT OF REAL ESTATE

Dated: **OCT - 6 2003**

By *E. M. L.*  
**ELLIOTT MAC LENNAN, Counsel**

cc: BGIF Inc./Anna Marie Lizarraga  
Richard De Santis, Esq.,  
Sacto/OAH/MA



*Handwritten initials*

**FILED**

**BEFORE THE DEPARTMENT OF REAL ESTATE 2003  
STATE OF CALIFORNIA DEPARTMENT OF REAL ESTATE**

By *K. W. [Signature]*

*In the Matter of the Accusation of*

BGIF, INC., ET AL.,

}  
}

Case No. H-29922 LA

OAH No. L-2003080459

*Respondent*

**CONTINUED  
NOTICE OF HEARING ON ACCUSATION**

**To the above named respondent:**

**You are hereby notified** that a hearing will be held before the Department of Real Estate at **320 W. Fourth Street, Ste. 630, Los Angeles, CA** on **July 29 & 30, 2004**, 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 on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the 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.

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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.

DEPARTMENT OF REAL ESTATE

Dated: **DEC - 3 2003**

By *[Signature]*  
**ELLIOTT MAC LENNAN, Counsel**

cc: BGIF Inc./Anna M. Lizarraga.  
Richard A. DeSantis, Esq.  
Sacto/OAH/MA

*Shackles*

1 ELLIOTT MAC LENNAN, Counsel  
State Bar No. 66674  
2 Department of Real Estate  
320 West Fourth Street, Suite 350  
3 Los Angeles, California 90013-1105  
4 (213) 576-6911

**FILED**  
JAN 29 2003  
DEPARTMENT OF REAL ESTATE

By *K. Niederholt*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of ) NO. H-29922 LA  
)  
BGIF INC. dba Bankers Group, and )  
13 ANNA MARIE LIZARRAGA, individually ) A C C U S A T I O N  
and as designated officer of )  
14 BGIF Inc., )  
)  
15 Respondents. )  
)

The Complainant, Maria Suarez, a Deputy Real Estate  
Commissioner of the State of California, for cause of Accusation  
against BGIF INC. dba Bankers Group and ANNA MARIE LIZARRAGA,  
individually and as designated officer of BGIF Inc., alleges as  
follows:

1.

The Complainant, Maria Suarez, acting in her official  
capacity as a Deputy Real Estate Commissioner of the State of  
California, makes this Accusation against BGIF INC. ("BGIF") and

1 ANNA MARIE LIZARRAGA, individually as designated officer of BGIF  
2 Inc. ("LIZARRAGA").

3 2.

4 All references to the "Code" are to the California  
5 Business and Professions Code and all references to  
6 "Regulations" are to Title 10, Chapter 6, California Code of  
7 Regulations.

8 3.

9 BGIF and LIZARRAGA (sometimes hereinafter referred to  
10 as Respondents) are presently licensed or have license rights  
11 under the Real Estate Law (Part 1 of Division 4 of the Business  
12 and Professions Code, hereinafter "Code").

13 4.

14 BGIF'S corporate real estate broker license was  
15 originally issued on February 17, 1998. LIZARRAGA was  
16 originally licensed as a real estate broker on April 16, 1990.

17 5.

18 At all time herein mentioned, LIZARRAGA was licensed  
19 by the Department as the designated officer of BGIF to qualify  
20 BGIF and to act for BGIF as a real estate broker as provided by  
21 Code Section 10159.2. LIZARRAGA was responsible for the  
22 supervision and control of the activities conducted on behalf of  
23 BGIF by BGIF's officers, managers and employees as necessary to  
24 secure full compliance with the provisions of the Real Estate  
25 Law including the supervision of the salespersons licensed to  
26

27

1 the corporation in the performance of acts for which a real  
2 estate license is required.

3 6.

4 Whenever reference is made in an allegation in the  
5 Accusation to an act or omission of BGIF, such allegation shall  
6 be deemed to mean that the officers, directors, managers,  
7 employees, agents and real estate licensees employed by or  
8 associated with BGIF, including LIZARRAGA, committed such act or  
9 omission while engaged in the furtherance of BGIF's business or  
10 operation and while acting within the course and scope of BGIF's  
11 corporate authority, agency and employment.

12 7.

13 At all times herein mentioned, BGIF engaged in the  
14 business as a real estate broker within the meaning of:

15 A. Code Section 10131(d). BGIF operated as a  
16 mortgage and loan broker dba Bankers Group, including soliciting  
17 borrowers and lenders and negotiating and servicing loans  
18 including multi-lender loans on real property; and,

19 B. In addition, BGIF conducted broker controlled  
20 escrows through its escrow division under the exemption set  
21 forth in California Financial Code Section 17006(a)(4) for real  
22 estate brokers performing escrows incidental to a real estate  
23 transaction where the broker is a party and where the broker is  
24 performing acts for which a real estate license is required.

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8.

On April 17, 2002, the Department completed an audit examination of the books and records of BGIF pertaining to BGIF's mortgage and loan brokerage and broker-escrow activities, requiring a real estate license as described in Paragraph 7. The audit examination covered a period of time beginning on March 1, 2000 to February 28, 2002. The audit examination revealed violations of the Code and the Regulations as set forth below, and more fully discussed in Audit Reports LA 010242 and LA 010364 and the exhibits and workpapers attached to said audit reports.

9.

At all times mentioned, in connection with the activities described in Paragraph 6, above, BGIF accepted or received funds in trust (trust funds) from or on behalf of borrowers and lenders, and thereafter made disposition of such funds. Respondent BGIF maintained the following three trust accounts during the audit period into which were deposited certain of these funds at:

- "BGIF Inc. dba Bankers Group Hard Money Escrow Trust Account  
Account No. 002235744"  
City National Bank  
Woodland Hills, California ("T/A #1")
  
- "BGIF Inc. dba Bankers Group Institutional Escrow Trust Account  
Account No. 0022354736"  
City National Bank  
Woodland Hills, California ("T/A #2")
  
- ///

1 "BGIF Inc. dba Bankers Group Collection Trust Account  
Account No. 0010094562"  
2 California National Bank  
3 Woodland Hills, California ("T/A #3")  
4

5 10.

6 With respect to the trust funds referred to in  
7 Paragraph 9, it is alleged that BGIF:

8 (a) Permitted, allowed or caused the disbursement of  
9 trust funds from the T/A #1, to an amount which, on February 28,  
10 2002, was \$17,782.97, less than the existing aggregate trust  
11 fund liability of BGIF to every principal who was an owner of  
12 said funds, without first obtaining the prior written consent of  
13 the owners of said funds, as required by Code Section 10145 and  
14 Regulations 2832.1, 2950(d) and 2950(g). The shortage has been  
15 cured.  
16

17 (b) Failed to maintain an accurate and complete  
18 control record in the form of a columnar record in chronological  
19 order of all trust funds received for T/A #1 and T/A #2. No  
20 control record was maintained for T/A #3, as required by Code  
21 Section 10145 and Regulations 2831.

22 (c) Failed to maintain an accurate and complete  
23 separate record for each beneficiary or transaction, thereby  
24 failing to account for T/A #1 and T/A #2. No separate record  
25 was maintained for T/A #3, as required by Code Section 10145 and  
26 Regulation 2831.1.  
27

1 (d) Failed to perform a monthly reconciliation of the  
2 balance of all separate beneficiary or transaction records  
3 maintained pursuant to Regulation 2831.1 with the record of all  
4 trust funds received and disbursed by T/A #3, as required by  
5 Code Section 10145 and Regulations 2831.2.

6 (e) Permitted real estate salesperson Dorothy Reik,  
7 BGIF's owner, to be an authorized signatory on all trust  
8 accounts. LIZARRAGA was not a signatory on any trust account,  
9 as required by Code Section 10145 and Regulation 2834.

10 (f) During 1998, BGIF made or arranged its first  
11 multi-lender transaction, but purged the file of documentation.  
12 On February 19, 1999, BGIF made its first documented multi-  
13 lender loan to borrower Trimes on behalf of lenders Gelbard, the  
14 Kaplans, Zusman and Santell. BGIF failed to submit a notice to  
15 the Department with respect to BGIF's first multi-lender note  
16 secured directly by an interest in the same real property, as  
17 required by Code Section 10229(a).

18 (g) Failed to retain a Lender Purchaser Disclosure  
19 Statement wherein the lender indicated whether the investment in  
20 the multi-lender loan through BGIF satisfied the income and/or  
21 net worth requirements, as required by Code Section 10229(e).  
22 There were no Lender Purchaser Disclosure Statements for lenders  
23 Brody, Santell, Gelbard, Zusman, Kotz, Wok, Segel and Wallick.

24 (h) Failed to deliver a Lender Purchaser Disclosure  
25 Statement containing all the information required by Code  
26  
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1 Section 10232.5 of the Code to various lenders of BGIF before  
2 these lenders became obligated to make the loan before the  
3 receipt by or on behalf of the broker of any funds from that  
4 respective lender for these multi-lender mortgage loans, as  
5 required by Code Section 10229(k). There were no complete  
6 Lender Purchaser Disclosure Statements for the following  
7 lenders: (1) Brody, Segel and Wallick on the Coast & Canyon  
8 Realtors loan and (2) K&K Gelbard and K&N Gelbard on the  
9 Sherman/Warriner loan; and, (3) Brody, Santell, Gelbard, Zusman,  
10 Kotzand and Wolk on the Desantis loan.

11 (i) Failed to obtain written authorization from  
12 lenders of real property promissory notes secured directly or  
13 collaterally by liens on real property or of real property sales  
14 contracts, after undertaking to service said notes or contracts,  
15 as required by Code Sections 10229(j) and 10233. There were no  
16 written servicing agreements authorizing BGIF to act as loan  
17 servicing agent collecting and transmitting borrower payments  
18 for the following lenders: (1) Weinberg and Metelitz for the  
19 Bacchetti loan; (2) Rollins for the Escape on Horseback loan;  
20 and, Pally and Bolinowski for the Rollins loan.

22 (j) Failed to provide the Department with timely or  
23 accurate Quarterly and Annual Trust Fund Status Reports after  
24 meeting the loan negotiating and loan servicing threshold  
25 criteria, as required by Code Section 10232(a)(1)(2)&(3).  
26  
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1 (a) During 2001, BGIF negotiated a combination of  
2 ten (10) or more loans in an aggregate amount of more than one  
3 millions dollars (1,000,00), to wit, BGIF negotiated twenty-four  
4 (24) loans aggregating \$2,235,000, in violation of Code Section  
5 10232(a)(1).

6 (b) During 2001, BGIF collected either:

7 (1) \$250,000 or more, to wit, \$910,543.35 on behalf of  
8 owners of promissory notes or owners of real property sales  
9 contracts in the form of loan payments and loan payoffs, or  
10 both, in violation of Code Section 10232(a)(2); or

11 (2) \$250,000 or more, to wit, \$910,543.35 on behalf of  
12 obligors of promissory notes or lenders of real property sales  
13 contracts, or both, in violation of Code Section 10232(a)(3);  
14 where said promissory notes or real property sales contracts  
15 negotiated or serviced by BGIF are secured directly or  
16 collaterally by liens on real property.  
17

18 (k) as a threshold broker, as described in Code  
19 Section 10232, failed to file with the Department quarterly  
20 trust fund status reports for the fiscal quarters ending June  
21 30, 2001 and September 30, 2001, as required by Code Section  
22 10232.25.

23 (l) Failed to provide/maintain a true and correct copy  
24 of a Department of Real Estate approved Mortgage Loan Disclosure  
25 Statement signed by the broker for borrowers Ferris, Rabkin,  
26 MacLachlan and Hannah, as required by Code Section 10240; and,  
27

1 (m) failed to advise all parties to its escrow  
2 operation of its ownership of said escrow company, as required  
3 by Regulation 2950(h). There was no disclosure on the Shier,  
4 Jr., Rollins or Macht escrow instructions found in the  
5 conventional loan escrow files of BGIF's interest in BGIF's  
6 escrow operation.

7 11.

8 The conduct of Respondent BGIF, described in Paragraph  
9 10, violated the Code and the Regulations as set forth below:


10 <u>PARAGRAPH</u>	11 <u>PROVISIONS VIOLATED</u>
12 10 (a)	13 Code Section 10145 and 14 Regulations 2832.1, 15 2950 (d) and 2950 (g)
16 10 (b)	17 Code Section 10145 and 18 Regulations 2831
19 10 (c)	20 Code Section 10145 and 21 Regulation 2831.1
22 10 (d)	23 Code Section 10145 and 24 Regulation 2831.2
25 10 (e)	26 Code Section 10145 and 27 Regulation 2834
10 (f)	Code Section 10229(a)
10 (g)	Code Section 10229(e)
10 (h)	Code Section 10229(k)



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 licensing rights of Respondents  
5 BGIF INC. and ANNA MARIE LIZARRAGA, individually and as  
6 designated officer of BGIF Inc. under the Real Estate Law (Part  
7 1 of Division 4 of the Business and Professions Code) and for  
8 such other and further relief as may be proper under other  
9 applicable provisions of law.

10 Dated at Los Angeles, California

11 this 21<sup>st</sup> day of January 2003.

12  
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15 Deputy Real Estate Commissioner  
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24 cc: BGIF Inc.  
25 Anna Marie Lizarraga  
26 Maria Suarez  
27 MA  
Sacto  
Audits