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May

FILED
MAY 14 2007
DEPARTMENT OF REAL ESTATE



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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-31751 LA
)	
PETER MICHAEL DOWNING,)	
)	
Respondent.)	

ORDER SUSPENDING REAL ESTATE LICENSE

To: PETER MICHAEL DOWNING

On July 3, 2006, Respondent's real estate broker license was suspended for 90 days (stayed for 2 years on terms and conditions) by the Department of Real Estate as set forth in the Real Estate Commissioner's Decision of May 17, 2006, in Case No. H-31751 LA, effective July 3, 2006. Among those terms, conditions and restrictions, Respondent was required to submit, within six months from the aforementioned effective date, evidence of having taken and passed the Professional Responsibility Examination administered by the Department. The Commissioner has determined that as of February 5, 2007, Respondent has failed to satisfy this condition.

1 NOW, THEREFORE, IT IS ORDERED that Respondent's real
2 estate broker license and the exercise of any privileges
3 thereunder is hereby suspended until such time as Respondent
4 provides proof satisfactory to the Department of having taken and
5 passed the Professional Responsibility Examination.

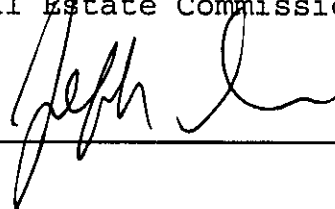
6 IT IS FURTHER ORDERED that all license certificates and
7 identification cards issued by the Department of Real Estate
8 which are in the possession of Respondent be immediately
9 surrendered by personal delivery or by mailing in the enclosed
10 self-addressed envelope to:

11 DEPARTMENT OF REAL ESTATE
12 Attention: Flag Section
13 Post Office Box 187000
14 Sacramento, CA 95818-7000

15 This Order shall be effective immediately.

16 DATED: 4-3, 2007.

17
18 JEFF DAVI
19 Real Estate Commissioner

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21 _____
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1 Department of Real Estate
2 320 West Fourth Street, Suite 350
3 Los Angeles, California 90013-1105
4
5 Telephone: (213) 576-6982
6
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FILED
JUN 1 2008
DEPARTMENT OF REAL ESTATE

By Jana B. Brown

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-31751 LA
12) L-2005060556
13 FIDELITY NATIONAL MORTGAGE)
14 CORPORATION, dba FNMC and) STIPULATION AND AGREEMENT
15 PETER MICHAEL DOWNING,)
16 Individually and as designated)
Officer of FNMC,)
Respondents.)

17
18 It is hereby stipulated by and between FIDELITY
19 NATIONAL MORTGAGE CORPORATION dba FNMC and PETER MICHAEL DOWNING
20 (sometimes referred to as "Respondents") and the Complainant,
21 acting by and through Kelvin K. Lee, Counsel for the Department
22 of Real Estate of the State of California (Department), as
23 follows for the purpose of settling and disposing of the
24 Accusation filed on March 14, 2005, in this matter:
25 1. All issues which were to be contested and all
26 evidence which was to be presented by Complainant and
27 Respondents at a formal hearing on the Accusation, which hearing

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

5 2. Respondents have received, read and understand the
6 Statement to Respondent, the Discovery Provisions (APA) and the
7 Accusation filed by the Department of Real Estate in this
8 proceeding.

9 3. On April 1, 2005, Respondent PETER MICHAEL DOWNING
10 filed a Notice of Defense on Accusation pursuant to Section
11 11506 of the California Government Code for the purpose of
12 requesting a hearing on the allegations in the Accusation.
13 Respondent hereby freely and voluntarily withdraws said Notice
14 of Defense on Accusation. Respondent acknowledges that he
15 understands that by withdrawing said Notice of Defense on
16 Accusation he will thereby waive his right to require the Real
17 Estate Commissioner of the State of California (Commissioner) to
18 prove the allegations in the Accusation at a contested hearing
19 held in accordance with the provisions of the APA and that he
20 will waive other rights afforded to him in connection with the
21 hearing such as the right to present evidence in defense of the
22 allegations in the Accusation and the right to cross-examine
23 witnesses.
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1 4. This Stipulation is based on the factual
2 allegations contained in the Accusation filed in this
3 proceeding. In the interest of expedience and economy,
4 Respondent chooses not to contest these factual allegations
5 but to remain silent and understands that, as a result thereof,
6 these factual statements, without being admitted or denied,
7 will serve as a prima facie basis for the disciplinary action
8 stipulated to herein. The Real Estate Commissioner shall not be
9 required to provide further evidence to prove such allegations.

10 5. This Stipulation and Respondent's decision not to
11 contest the Accusation are made for the purpose of reaching an
12 agreed disposition of this proceeding and are expressly limited
13 to this proceeding and any other proceeding or case in which the
14 Department of Real Estate ("Department"), or another licensing
15 agency of this state, another state, or if the federal
16 government is involved and otherwise shall not be admissible in
17 any other criminal or civil proceedings.

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

3 7. This Order or any subsequent Order of the Real
4 Estate Commissioner made pursuant to this Stipulation shall not
5 constitute an estoppel, merger, or bar to any further
6 administrative or civil proceedings by the Department of Real
7 Estate with respect to any conduct which was not specifically
8 alleged to be causes for accusation in this proceeding.

9 DETERMINATION OF ISSUES

10 By reason of the foregoing stipulations and waivers
11 and solely for the purpose of settlement of the pending
12 Accusation without a hearing, it is stipulated and agreed that
13 the following Determination of Issues (Determination) shall be
14 made:

15 The conduct, acts, and/or omissions of Respondents,
16 FIDELITY NATIONAL MORTGAGE CORPORATION AND PETER MICHAEL DOWNING
17 as set forth in the Accusation, constitute cause for the
18 suspension or revocation of all the real estate licenses and
19 license rights of Respondents under the provisions of Section
20 10145 of the California Business and Professions Code (Code),
21 and Section 2832.1 and 2834, Title 10, Chapter 6, of the
22 California Code of Regulations.
23

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ORDER

1 WHEREFORE, THE FOLLOWING ORDER is hereby made:

2 All licenses and licensing rights of Respondents

3 FIDELITY NATIONAL MORTGAGE CORPORATION and PETER MICHAEL

4 DOWNING, as its designated officer under the Real Estate Law are

5 suspended for a period of ninety (90) days from the effective

6 date of this Decision.

7
8 A. Provided, however, that thirty (30) days of said
9 suspension shall be stayed for two (2) years upon the following
10 terms and conditions:

11 1. Respondents shall obey all laws, rules and
12 regulations governing the rights, duties and responsibilities of
13 a real estate licensee in the State of California.

14 2. Prior to the effective date of this Decision,
15 Respondent PETER MICHAEL DOWNING shall provide conclusive proof
16 to the Department that the trust account shortage previously
17 found for FIDELITY NATIONAL MORTGAGE CORPORATION has been cured.

18 B. The initial sixty (60) day portion of said
19 suspension shall commence on the effective date of this
20 decision; provided, however, that if Respondents petition, said
21 suspension shall be stayed upon condition that:

22 1. Respondents each may petition any or all of
23 the remaining sixty (60) days of their respective
24 said 90-day suspension to be stayed upon
25 condition that each Respondent, FIDELITY NATIONAL
26 MORTGAGE AND PETER MICHAEL DOWNING, pay a
27

1 monetary penalty of \$50.00 per day for a
2 reduction of up to sixty (60) days of the total
3 suspension.

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

10 3. No further cause for disciplinary action
11 against the real estate license of Respondents
12 occurs within two (2) years from the effective
13 date of the Decision in this matter.

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

23 5. That should no final subsequent determination
24 be made, after hearing or upon stipulation that
25 cause for disciplinary action occurred within two
26 (2) years of the effective date of this Decision.
27

1 Should such a determination be made, the
2 Commissioner may, in his discretion, vacate and
3 set aside the stay order and reimpose all or a
4 portion of the stayed suspension. Should no such
5 determination be made, the stay imposed herein
6 shall become permanent.

7 C. Respondent PETER MICHAEL DOWNING shall, within six
8 (6) months from the effective date of the Decision, take and
9 pass the Professional Responsibility Examination administered by
10 the Department including the payment of the appropriate
11 examination fee. If Respondent fails to satisfy this condition,
12 the Commissioner may order suspension of Respondent's license
13 until Respondent passes the examination.

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

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E. Pursuant to Section 10148 of the Business and

1 Professions Code, Respondents FIDELITY NATIONAL MORTGAGE
2 CORPORATION and/or PETER MICHAEL DOWNING, jointly or severally,
3 shall pay the Commissioner's reasonable cost for: a) the audit
4 which led to this disciplinary action and, b) a subsequent audit
5 to determine if Respondents have corrected the trust fund
6 violations found in paragraph 1 of the Determination of Issues.
7 In calculating the amount of the Commissioner's reasonable cost
8 for the subsequent audit, the Commissioner may use the estimated
9 average hourly salary for all persons performing audits of real
10 estate brokers, and shall include an allocation for travel
11 costs, including mileage, time to and from the auditor's place
12 of work and per diem. Said amount for the subsequent audit
13 shall not exceed \$4,888.74.
14

15 Respondents shall pay such cost within sixty (60) days
16 of receiving an invoice from the Commissioner detailing the
17 activities performed during the audit and the amount of time
18 spent performing those activities. The Commissioner may in his
19 discretion, vacate and set aside the stay order, if payment is
20 not timely made as provided for herein, or as provided for in a
21 subsequent agreement between the Respondent and the
22 Commissioner.

23 The vacation and set aside of the stay shall remain in
24 effect until payment is made in full, or until Respondents enter
25 into an agreement satisfactory to the Commissioner to provide
26 for payment. Should no order vacating the stay be issued, the
27 stay imposed herein shall become permanent.

1
2 DATED: Jan. 24, 2006

Kelvin K. Lee
KELVIN K. LEE, Counsel
for the Complainant, the
Department of Real Estate

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4 * * * *

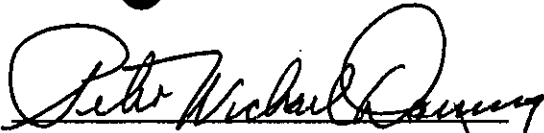
5 I have read the Stipulation and its terms are
6 understood by me and are agreeable and acceptable to me. I
7 understand that I am waiving rights given to me by the APA
8 (including, but not limited to, Sections 11506, 11508, 11509
9 and 11513 of the Government Code) and I willingly, intelligently
10 and voluntarily waive those rights, including the right of
11 requiring the Commissioner to prove the allegations in the
12 Accusation at a hearing at which I would have the right to
13 cross-examine witnesses against me and to present evidence in
14 defense and mitigation of the charges.
15

16 Respondents can signify acceptance and approval of the
17 terms and conditions of this Stipulation by faxing a copy of
18 the signature page, as actually signed by Respondents, to the
19 Department at the following fax number: (213) 576-6917.

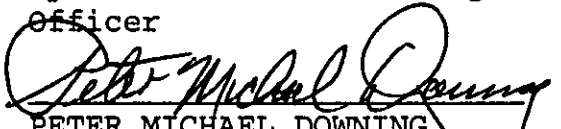
20 Respondents agree, acknowledge and understand that by
21 electronically sending to the Department a fax copy of their
22 actual signature as it appears on the Stipulation, that receipt
23 of the fax copy by the Department shall be as binding on
24 Respondents as if the Department had received the original
25 signed Stipulation and Agreement.
26

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1 DATED: 2-1-06


FIDELITY NATIONAL MORTGAGE
CORPORATION, Respondent
by Peter Michael Downing,
Officer

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3
4 DATED: 2-1-06

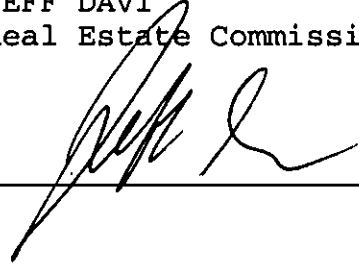

PETER MICHAEL DOWNING
Respondent

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7 * * *

8 The foregoing Stipulation is hereby adopted as my
9 Decision in this matter and shall become effective at 12 o'clock
10 noon on JUL - 3 2008

11 IT IS SO ORDERED 5-17-06

12 JEFF DAVI
13 Real Estate Commissioner

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1 CHRIS LEONG, Counsel (SBN 141079)
Department of Real Estate
2 320 West Fourth Street, Suite 350
Los Angeles, CA 90013-1105
3 Telephone: (213) 576-6982
4 -or- (213) 576-6910 (Direct)

FILED
MAR 14 2005
DEPARTMENT OF REAL ESTATE

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 FIDELITY NATIONAL MORTGAGE) No. H-31751 LA
CORPORATION, a corporation;) A C C U S A T I O N
13 and PETER MICHAEL DOWNING,)
individually and as designated)
14 officer of Fidelity National)
Mortgage Corporation,)
15 Respondents.)
16

17 The Complainant, Maria Suarez, a Deputy Real Estate
18 Commissioner of the State of California, for cause of
19 Accusation against FIDELITY NATIONAL MORTGAGE CORPORATION, a
20 corporation (hereafter "FNMC"); and PETER MICHAEL DOWNING,
21 individually and as designated officer of Fidelity National
22 Mortgage Corporation (hereafter "DOWNING") (hereafter sometimes
23 referred to as "Respondents"), is informed and alleges in her
24 official capacity as follows:

25 1.

26 Respondent FNMC is presently licensed and/or has
27 license rights under the Real Estate Law, Part 1 of Division 4

1 of the California Business and Professions Code (hereafter
2 "Code") as a corporate real estate broker.

3 2.

4 Respondent DOWNING is presently licensed and/or has
5 license rights under the Real Estate Law, Part 1 of Division 4
6 of the Code as a real estate broker and as the designated
7 officer of FNMC.

8 3.

9 At all times material herein, Respondents engaged in
10 the business of, acted in the capacity of, advertised or
11 assumed to act as real estate brokers for others in the State
12 of California, within the meaning of Code Section 10131(d),
13 including the operation and conduct of a mortgage loan business
14 with the public wherein Respondents solicited borrowers and
15 lenders of loans secured by interest in real property in
16 expectation of compensation.

17 AUDIT NO. LA 020359

18 4.

19 On May 7, 2007, the Department of Real Estate
20 (hereafter "Department") concluded its examination of
21 Respondents' books and records pertaining to Respondents'
22 activities as real estate brokers in Audit Report No.
23 LA 020359, covering a period from approximately April 1, 2002
24 to March 31, 2003. The examination revealed violations of the
25 Code and of Title 10, Chapter 6, California Code of Regulations
26 (hereafter "Regulations"), as set forth below, and as more
27 specifically set forth in Audit Report No. LA 020359, and the

related audit report and working papers attached thereto.

5.

At all times herein, in connection with the real estate sales, loan and loan servicing activity described in Paragraph 3 above, Respondents accepted or received funds, including funds in trust (hereafter "trust funds") from or on behalf of actual and prospective parties to transactions handled by Respondents and thereafter made deposits and/or disbursements of such funds. Respondents maintain a trust account for loan activities at Citibank/California Federal Bank, 17632 17th St, Tustin, CA 92780, in the name of Fidelity National Mortgage Corp, Trust Account, Account No. 281-4193997 (hereafter "TA#1").

6.

Respondents acted in violation of the Code and the Regulations as set forth below and as more specifically described in Audit Report No. LA 020359 and the exhibits attached thereto:

(a) As of March 31, 2003, there was a trust fund shortage of \$1,029.60, in violation of Code Section 10145 and Regulation 2832.1;

(b) failed to maintain records of all receipts and disbursements for TA#1, in violation of Code Section 10145 and Regulation 2831;

(c) failed to maintain separate records for each beneficiary or transaction for TA#1, in violation of Code Section 10145 and Regulation 2831.1;

1 (d) failed to maintain records of the reconcilliation
2 of the balance of all separate records with the records of all
3 trust funds received and disbursed for TA#1, including failure
4 to reconcile records from August 2002 to March 2003, in
5 violation of Code Section 10145 and Regulation 2831.2;

6 (e) allowed non-licensees, non-bonded persons, Weiss
7 Omar and Dee Dee Vargas, to be signatories on TA#1, in
8 violation of Section 10145 and Regulation 2834;

9 (f) failed to retain on file true and correct copies
10 of a Department approved Mortgage Loan Disclosure Statement
11 (hereafter "MLDS"), signed by the borrower and the broker or
12 the broker's representative. The MLDS provided to the
13 borrowers, Derby, Long, and Byrd, did not disclose the yield
14 spread premium/rebate paid to FNMC by the lender, in violation
15 of Code Sections 10240 and 10241 and Regulation 2840;

16 (g) FNMC used the unlicensed fictitious name
17 Fidelity National Mortgage, in violation of Code Section
18 10159.5 and Regulation 2731;

19 (h) failed to have a broker-salesperson relationship
20 agreement with Humberto Vega, in violation of Regulation 2726;

21 (i) DOWNING failed to have a policy or procedure in
22 place to maintain records of all trust funds received and
23 disbursed and failed to exercise reasonable supervision over
24 FNMC, in violation of Code Sections 10159.2 and 10177(h) and
25 Regulation 2725.

26 ///

The conduct, acts and omissions of Respondents FNMC and DOWNING, as described above, violated the Code and the Regulations as set forth above and constitutes cause for the suspension or revocation of all real estate licenses and license rights of Respondents under the provisions of Code Sections 10176(i), 10177(d), 10177(j) and/or 10177(g), and of DOWNING pursuant to Code Section 10177(h).

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and/or license rights of Respondent FIDELITY NATIONAL MORTGAGE CORPORATION, a corporation; and PETER MICHAEL DOWNING, individually and as designated officer of Fidelity National Mortgage Corporation, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 9th day of March, 2005.


Deputy Real Estate Commissioner

cc: Fidelity National Mortgage Corporation
Peter Michael Downing
Suarez
Sacto.
LA Audit/Goff
PYK