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Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105
Telephone: (213) 576-6982 (office)

FILED

MAR 24 2009

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

No. H-34081 LA

NEW DAY TRUST MORTGAGE; and
RANDALL SCOTT GORMAN, individually
and as designated officer of
New Day Trust Mortgage,

STIPULATION
AND
AGREEMENT

Respondents.

It is hereby stipulated by and between Respondents
NEW DAY TRUST MORTGAGE, and RANDALL SCOTT GORMAN, individually
and as designated officer of New Day Trust Mortgage (sometimes
collectively referred to as "Respondents"), and the Complainant,
acting by and through Elliott Mac Lennan, Counsel for the
Department of Real Estate, as follows for the purpose of settling
and disposing of the Accusation ("Accusation") filed on
June 28, 2007, in this matter:

I. All issues which were to be contested and all
evidence which was to be presented by Complainant and Respondents
at a formal hearing on the Accusation, which hearing was to be

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. Respondents have received, read and understand 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. Respondents timely filed a Notice of Defense
10 pursuant to Section 11506 of the Government Code for the purpose
11 of requesting a hearing on the allegations in the Accusation.
12 Respondents hereby freely and voluntarily withdraw said Notice of
13 Defense. Respondents acknowledge that they understand that by
14 withdrawing said Notice of Defense they thereby waive their right
15 to 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 they will waive other rights
18 afforded to them in connection with the hearing such as the right
19 to present evidence in their defense and the right to cross-
20 examine witnesses.
21

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

5 5. This Stipulation is made for the purpose of
6 reaching an agreed disposition of this proceeding and is
7 expressly limited to this proceeding and any other proceeding or
8 case in which the Department of Real Estate ("Department"), the
9 state or federal government, or any agency of this state, another
10 state or federal government is involved.

11 6. It is understood by the parties that the Real
12 Estate Commissioner may adopt this Stipulation as his Decision in
13 this matter thereby imposing the penalty and sanctions on
14 Respondents' 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 Respondents shall retain the right to a
18 hearing and proceeding on the Accusation under the provisions of
19 the APA and shall not be bound by any stipulation or waiver made
20 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 Accusations against Respondent herein.

4 8. Respondents understand that by agreeing to this
5 Stipulation, Respondents agree to pay, pursuant to Business and
6 Professions Code Section 10148, the cost of the audit. The
7 amount of said cost for the audit is \$4,566.85.

8 9. Respondents have received, read, and understand the
9 "Notice Concerning Costs of Subsequent Audit". Respondents
10 further understand that by agreeing to this Stipulation, the
11 findings set forth below in the Determination of Issues become
12 final, and the Commissioner may charge Respondents for the cost
13 of any subsequent audit conducted pursuant to Business and
14 Professions Code Section 10148 to determine if the violations
15 have been corrected. The maximum cost of the subsequent audit
16 will not exceed \$4,566.85.

17
18 DETERMINATION OF ISSUES

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

21 I.

22 The conduct, acts or omissions of NEW DAY TRUST
23 MORTGAGE and RANDALL SCOTT GORMAN, as described in Paragraph 4,
24 above, are in violation of Sections 10145 and 10240 of the
25 Business and Professions Code ("Code") and Section 2832(d) of
26 Title 10, Chapter 6 of the California Code of
27

1 Regulations ("Regulations") and is a basis for discipline of
2 Respondents' license and license rights as violation of the Real
3 Estate Law pursuant to Code Sections 10177(d) and 10177(g).

4 II.

5 The conduct, acts or omissions of RANDALL SCOTT GORMAN,
6 as described in Paragraph 4, above, constitutes a failure to keep
7 New Day Trust Mortgage in compliance with the Real Estate Law
8 during the time that he was the officer designated by a corporate
9 broker licensee in violation of Section 10159.2 of the Code.
10 This conduct is a basis for the suspension or revocation of
11 Respondent's license pursuant to Code Section 10177(h).

12 ORDER

13 WHEREFORE, THE FOLLOWING ORDER is hereby made:

14 I.

15 A. All license and licensing rights of Respondents
16 NEW DAY TRUST MORTGAGE and RANDALL SCOTT GORMAN All license and
17 licensing rights of Respondents, under the Real Estate Law are
18 suspended for a period of sixty (60) days from the effective date
19 of this Decision; provided, however, that if Respondents request,
20 the initial thirty (30) days of said suspension (or a portion
21 thereof) shall be stayed upon condition that:

22 1. Respondents each pay a monetary penalty pursuant to
23 Section 10175.2 of the Business and Professions Code at the rate
24 of \$100.00 per day for each day of the suspension for a total
25 monetary penalty of \$3,000 each or \$6,000 in total.
26
27

1 2. Said payment shall be in the form of a cashier's
2 check or certified check made payable to the Recovery Account of
3 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 3. No further cause for disciplinary action against
7 the real estate licenses of Respondents occurs within two (2)
8 years from the effective date of the Decision in this matter.

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

16 5. If Respondents pay the monetary penalty and if no
17 further cause for disciplinary action against the real estate
18 license of Respondent occurs within two (2) years from the
19 effective date of the Decision, the stay hereby granted shall
20 become permanent
21

22 B. The remaining thirty (30) days of the sixty (60)
23 day suspension shall be stayed for two (2) years upon the
24 following terms and conditions:
25
26
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1 (a) Respondents shall obey all laws, rules and
2 regulations governing the rights, duties and responsibilities of
3 a real estate licensee in the State of California; and

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

12 II.

13 Pursuant to Section 10148 of the Business and
14 Professions Code, Respondents NEW DAY TRUST MORTGAGE and RANDALL
15 SCOTT GORMAN shall pay the Commissioner's reasonable cost for (a)
16 the audit which led to this disciplinary action (b) a subsequent
17 audit to determine if Respondents are now in compliance with the
18 Real Estate Law. The cost of the audit which led to this
19 disciplinary action is \$4,566.85. In calculating the amount of
20 the Commissioner's reasonable cost, the Commissioner may use the
21 estimated average hourly salary for all persons performing audits
22 of real estate brokers, and shall include an allocation for
23 travel time to and from the auditor's place of work. Said amount
24 for the prior and subsequent audits shall not exceed \$9,133.70.

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1 Respondents shall pay such cost within 60 days of
2 receiving an invoice from the Commissioner detailing the
3 activities performed during the audit and the amount of time
4 spent performing those activities.

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

14 III.

15 All licenses and licensing rights of Respondent RANDALL
16 SCOTT GORMAN are indefinitely suspended unless or until
17 Respondent provides proof satisfactory to the Commissioner, of
18 having taken and successfully completed the continuing education
19 course on trust fund accounting and handling specified in
20 paragraph (3) of subdivision (a) of Section 10170.5 of the
21 Business and Professions Code. Proof of satisfaction of this
22 requirement includes evidence that respondent has successfully
23 completed the trust fund account and handling continuing
24 education course within 120 days prior to the effective date of
25 the Decision in this matter.
26
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1 DATED: 10-2-08

E7L
ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

3 * * *

4
5 EXECUTION OF THE STIPULATION

6 We have read the Stipulation. Its terms are understood
7 by us and are agreeable and acceptable to us. We understand that
8 we are waiving rights given to us by the California
9 Administrative Procedure Act (including but not limited to
10 Sections 11506, 11508, 11509 and 11513 of the Government Code),
11 and we willingly, intelligently and voluntarily waive those
12 rights, including the right of requiring the Commissioner to
13 prove the allegations in the Accusation at a hearing at which we
14 would have the right to cross-examine witnesses against us and to
15 present evidence in defense and mitigation of the charges.
16

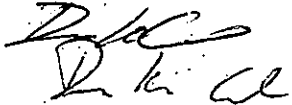
17 MAILING AND FACSIMILE

18 Respondents (1) shall mail the original signed
19 signature page of the stipulation herein to Elliott Mac Lennan:
20 Attention: Legal Section, Department of Real Estate, 320 W.
21 Fourth St., Suite 350, Los Angeles, California 90013-1105.
22 Additionally, Respondents shall also (2) facsimile a copy of
23 signed signature page, to the Department at the following
24 telephone/fax number: (213) 576-6917, Attention: Elliott Mac
25 Lennan.

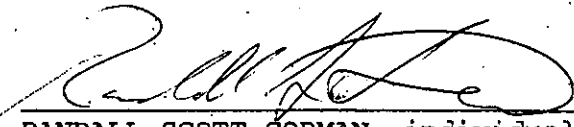
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1 A facsimile constitutes acceptance and approval of the
2 terms and conditions of this stipulation. Respondents agree,
3 acknowledge and understand that by electronically sending to the
4 Department a facsimile copy of Respondents' actual signature as
5 it appears on the stipulation that receipt of the facsimile copy
6 by the Department shall be as binding on Respondents as if the
7 Department had received the original signed stipulation.

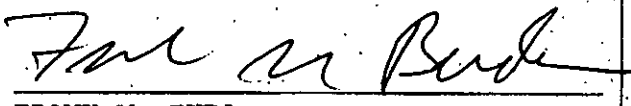
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9
10
11 DATED: 10-13-08


NEW DAY TRUST MORTGAGE, a corporate
real estate broker, Respondent
BY: DAIN K. COURT, CEO

12
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14
15 DATED: 10/13/08


RANDALL SCOTT GORMAN, individually
and as designated officer of New
Day Trust Mortgage, Respondent

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18
19 DATED: 11-4-08


FRANK M. BUDA,
Attorney for Respondents
Approved as to form

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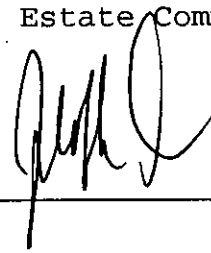
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* * *

1 The foregoing Stipulation and Agreement is hereby
2
3 adopted as my Decision as to Respondents NEW DAY TRUST MORTGAGE
4 and RANDALL SCOTT GORMAN, individually and as designated officer
5 of New Day Trust Mortgage, and shall become effective at
6 12 o'clock noon on April 23, 2009.

7 IT IS SO ORDERED 3/26/09, 2009.

8
9 JEFF DAVI
10 Real Estate Commissioner
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Handwritten initials

FILED
JUN 28 2007

DEPARTMENT OF REAL ESTATE

Handwritten signature

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)
6 -or- (213) 576-6982 (office)

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of	)	No. H-34081 LA
	)	
12 NEW DAY TRUST MORTGAGE; and	)	<u>A C C U S A T I O N</u>
13 RANDALL SCOTT GORMAN,	)	
14 individually and as designated	)	
15 officer of New Day Trust Mortgage,	)	
	)	
	)	
16 Respondents.	)	

17 The Complainant, Maria Suarez, a Deputy Real Estate
18 Commissioner of the State of California, for cause of Accusation
19 against NEW DAY TRUST MORTGAGE and RANDALL SCOTT GORMAN,
20 individually and as designated officer of New Day Trust Mortgage,
21 alleges as follows:

22 1.

23 The Complainant, Maria Suarez, acting in her official
24 capacity as a Deputy Real Estate Commissioner of the State of
25 California, makes this Accusation against NEW DAY TRUST MORTGAGE
26 and RANDALL SCOTT GORMAN.

2.

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

LICENSE HISTORY

3.

A. At all times mentioned, NEW DAY TRUST MORTGAGE ("NEW DAY") and RANDALL SCOTT GORMAN ("GORMAN") were licensed or had license rights issued by the Department of Real Estate ("Department") as real estate brokers.

B. At all times mentioned, NEW DAY was licensed by the Department as a corporate real estate broker by and through GORMAN, as the designated officer and broker responsible, pursuant to Code Section 10159.2 for supervising the activities requiring a real estate license conducted on behalf of NEW DAY by NEW DAY's officers, agents and employees, including GORMAN. NEW DAY was originally licensed on June 23, 2005. GORMAN was originally licensed as a real estate broker on November 3, 2003. GORMAN was the designated officer of NEW DAY from its inception on June 23, 2005 until January 16, 2007. Dain Kristopher Court is the current designated officer.

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1 FIRST CAUSE OF ACTION
2 LICENSED ACTIVITIES AND BROKERAGE
3 NEW DAY TRUST MORTGAGE

4 4.

5 At all times mentioned, in the City of Irvine, County
6 of Orange, NEW DAY and GORMAN acted as real estate brokers
7 conducting licensed activities within the meaning of Code Section
8 10131(d) by operating a mortgage and loan brokerage.

9 AUDIT

10 LA 050195

11 NEW DAY TRUST MORTGAGE

12 5.

13 On February 8, 2006, the Department completed an audit
14 examination of the books and records of NEW DAY pertaining to the
15 mortgage and loan activities described in Paragraph 4, that
16 require a real estate license. The audit examination covered a
17 period of time beginning on June 23, 2005 to December 31, 2005.
18 The audit examination revealed violations of the Code and the
19 Regulations as set forth in the following paragraphs, and more
20 fully discussed in Audit Report LA 050195 and the exhibits and
21 workpapers attached to said audit report.
22

23 TRUST ACCOUNT

24 6.

25 At all times mentioned, in connection with the
26 activities described in Paragraph 4, above, NEW DAY accepted or
27

1 received funds including funds in trust (hereinafter "trust
2 funds") from or on behalf of actual or prospective parties to
3 transactions handled by NEW DAY including buyers and sellers,
4 borrowers and lenders and thereafter made deposits and or
5 disbursements of such funds. During the audit period, NEW DAY
6 did not maintain a trust account.

7 NEW DAY TRUST MORTGAGE

8 VIOLATIONS OF THE REAL ESTATE LAW

9 7.

10 In the course of activities described in Paragraphs 4
11 and 6, above, and during the examination period described in
12 Paragraph 5, Respondents NEW DAY and GORMAN, as indicated, acted
13 in violation of the Code and the Regulations in that they:

14 (a) Failed to place trust funds, including credit
15 report and appraisal fees, accepted on behalf of another into the
16 hands of the owner of the funds, a neutral escrow depository or
17 into a trust fund account in the name of the trustee at a bank or
18 other financial institution not later than three business days
19 following receipt of the funds by the broker or by the broker's
20 salesperson, as required by Code Section 10145 and Regulation
21 2832(d). NEW DAY and GORMAN failed to deposit into a trust
22 account credit report and appraisal fees received through the
23 close of escrow made payable to NEW DAY. NEW DAY failed timely
24 to forward of trust funds due to borrowers Gordon, Gutierrez and
25 McPhail.
26
27

1 (b) Permitted and/or caused the disbursement of trust
2 funds to credit report companies on the representation that these
3 amounts were needed to pay for credit report fees, which payments
4 exceeded the actual costs of these services. Respondents did not
5 disclose these "mark-ups" to borrower-beneficiaries Gordon,
6 Gutierrez and McPhail nor did NEW DAY and GORMAN obtain these
7 beneficiaries consent to these "mark-ups". Respondents NEW DAY
8 and GORMAN retained the difference between the amounts paid and
9 the actual costs of the services, in violation of Code Section
10 10176(a) and 10176(g).

11 (c) Used the fictitious names of "New Day Trust", "New
12 Day Trust Lending" and "New Day Trust Inc." to conduct licensed
13 activities including mortgage loans without holding a license
14 bearing said fictitious business names, in violation of Code
15 Section 10159.5 and Regulation 2731.

16 (d) Failed to provide, maintain or retain a true and
17 correct copy of a Department of Real Estate approved Mortgage
18 Loan Disclosure Statement signed by the broker for borrowers
19 Gordon, Gutierrez and McPhail, in violation of Code Section 10240
20 and Regulation 2840; and

22 (e) Failed to notify the Department of the employment
23 of broker Dain Kristopher Court, without five days of employment,
24 as required by Code Section 10161.8 and Regulation 2752.

25 ///

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8.

The conduct of Respondents NEW DAY and GORMAN, described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

PARAGRAPH

PROVISIONS VIOLATED

7(a)

Code Section 10145 and Regulation
2832(d)

7(b)

Code Section 10176(a) and 10176(g)

7(c)

Code Section 10159.5 and Regulation
2731

7(d)

Code Section 10240 and Regulation
2840

7(e)

Code Section 10161.8 and Regulation
2752

The foregoing violations constitutes cause for the suspension or revocation of the real estate license and license rights of NEW DAY and GORMAN, under the provisions of Code Sections, 10176(a), 10176(g), 10177(d) and/or 10177(g).

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2 SECOND CAUSE OF ACTION

3 LICENSED ACTIVITIES AND BROKERAGE

4 RANDALL SCOTT GORMAN

5 9.

6 At all times mentioned, in the City of Irvine, County
7 of Orange, GORMAN acted as a real estate broker conducting
8 licensed activities within the meaning of Code Section 10131(d)
9 by operating a mortgage and loan brokerage.

10 AUDIT

11 LA 050196

12 RANDALL SCOTT GORMAN

13 10.

14 On February 9, 2006, the Department completed an audit
15 examination of the books and records of GORMAN pertaining to the
16 mortgage and loan activities described in Paragraph 4, that
17 require a real estate license. The audit examination covered a
18 period of time beginning on January 1, 2005 to June 23, 2005.
19 The audit examination revealed violations of the Code and the
20 Regulations as set forth in the following paragraphs, and more
21 fully discussed in Audit Report LA 050196 and the exhibits and
22 workpapers attached to said audit report.
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TRUST ACCOUNT

11.

At all times mentioned, in connection with the activities described in Paragraph 9 above, GORMAN accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by GORMAN including buyers and sellers, borrowers and lenders and thereafter made deposits and or disbursements of such funds. During the audit period, GORMAN did not maintain a trust account.

RANDALL SCOTT GORMAN

VIOLATIONS OF THE REAL ESTATE LAW

12.

In the course of activities described in Paragraphs 9 and 11, above, and during the examination period described in Paragraph 12, Respondent GORMAN acted in violation of the Code and the Regulations in that he:

(a) Failed to place trust funds, including credit report and appraisal fees, accepted on behalf of another into the hands of the owner of the funds, a neutral escrow depository or into a trust fund account in the name of the trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson, as required by Code Section 10145 and Regulation 2832(d). GORMAN failed to deposit into a trust account credit

1 report and appraisal fees received through the close of escrow
2 made payable to GORMAN. GORMAN failed timely to forward of trust
3 funds due to borrowers Gonzalez and Rodriguez.

4 (b) Permitted and/or caused the disbursement of trust
5 funds to credit report companies on the representation that these
6 amounts were needed to pay for credit report fees, which payments
7 exceeded the actual costs of these services. GORMAN did not
8 disclose these "mark-ups" to borrower-beneficiaries Gonzalez and
9 Rodriguez nor did GORMAN obtain these beneficiaries consent to
10 these "mark-ups". GORMAN retained the difference between the
11 amounts paid and the actual costs of the services, in violation
12 of Code Section 10176(a) and 10176(g).

13 (c) Used the fictitious names of "New Day Trust", "New
14 Day Trust Lending" and "New Day Trust Inc." to conduct licensed
15 activities including mortgage loans without holding a license
16 bearing said fictitious business names, in violation of Code
17 Section 10159.5 and Regulation 2731.

18 (d) Failed to provide, maintain or retain a true and
19 correct copy of a Department of Real Estate approved Mortgage
20 Loan Disclosure Statement signed by the broker for borrowers
21 Buhion, Morehead, Rodriguez and Salazar, in violation of Code
22 Section 10240 and Regulation 2840; and

23 (e) Failed to notify the Department of the employment
24 of broker Dain Kristopher Court, without five days of employment,
25 as required by Code Section 10161.8 and Regulation 2752.
26
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13.

The conduct of Respondent GORMAN, described in Paragraph 12, above, violated the Code and the Regulations as set forth below:

PARAGRAPH

PROVISIONS VIOLATED

12(a)

Code Section 10145 and Regulation
2832(d)

12(b)

Code Section 10176(a) and 10176(g)

12(c)

Code Section 10159.5 and Regulation
2731

13(d)

Code Section 10240 and Regulation.
2840

13(e)

Code Section 10161.8 and Regulation
2752

The foregoing violations constitutes cause for the suspension or revocation of the real estate license and license rights of GORMAN, under the provisions of Code Sections, 10176(a), 10176(g), 10177(d) and/or 10177(g).

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1
2 NEGLIGENCE

3 14.

4 The overall conduct of Respondents NEW DAY and GORMAN
5 constitutes negligence or incompetence. This conduct and
6 violation are cause for the suspension or revocation of the real
7 estate license and license rights of said Respondents pursuant to
8 Code Section 10177(g).

9 SUPERVISION AND COMPLIANCE

10 15.

11 The overall conduct of Respondent GORMAN constitutes a
12 failure on his part, as officer designated by a corporate broker
13 licensee, to exercise the reasonable supervision and control over
14 the licensed activities of NEW DAY as required by Code Section
15 10159.2, and to keep NEW DAY in compliance with the Real Estate
16 Law, and is cause for the suspension or revocation of the real
17 estate license and license rights of GORMAN pursuant to the
18 provisions of Code Sections 10177(d) and 10177(h).
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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 the license and license rights of Respondents NEW
5 DAY TRUST MORTGAGE and RANDALL SCOTT GORMAN, under the Real
6 Estate Law (Part 1 of Division 4 of the Business and Professions
7 Code) and for such other and further relief as may be proper
8 under other applicable provisions of law.

9 Dated at Los Angeles, California

10 this 18th day of April 2007. 
11 Deputy Real Estate Commissioner

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23
24 cc: New Day Trust Mortgage
25 c/o Randall Scott Gorman D.O.
26 Maria Suarez
27 Sacto
Audits - Zaky Wanis