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

FILED

SEP - 4 2008

DEPARTMENT OF REAL ESTATE

BY: *H. J. Wally*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-34627 LA
)	
R&G LENDING INC.; and)	
JOSEPH A. WEISS, individually)	<u>STIPULATION</u>
and as designated officer of)	AND
R&G Lending Inc.,)	<u>AGREEMENT</u>
)	
Respondents.)	
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17 It is hereby stipulated by and between Respondents
18 R&G LENDING INC., a corporate real estate broker, and JOSEPH A.
19 WEISS, individually and as designated officer of R&G Lending Inc.
20 (sometimes collectively referred to as "Respondents"), and the
21 Complainant, acting by and through Elliott Mac Lennan, Counsel
22 for the Department of Real Estate, as follows for the purpose of
23 settling and disposing of the Accusation ("Accusation") filed on
24 January 2, 2008, in this matter:

26 1. All issues which were to be contested and all
27 evidence which was to be presented by Complainant and Respondents

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

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

10 3. Respondents timely filed a Notice of Defense
11 pursuant to Section 11506 of the Government Code for the purpose
12 of requesting a hearing on the allegations in the Accusation.
13 Respondents hereby freely and voluntarily withdraw said Notice of
14 Defense. Respondents acknowledge that they understand that by
15 withdrawing said Notice of Defense they thereby waive their right
16 to require the Commissioner to prove the allegations in the
17 Accusation at a contested hearing held in accordance with the
18 provisions of the APA and that they will waive other rights
19 afforded to them in connection with the hearing such as the right
20 to present evidence in their defense and the right to cross-
21 examine witnesses.
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23 4. This Stipulation is based on the factual
24 allegations contained in the Accusation. In the interest of
25 expedience and economy, Respondents choose not to contest these
26 allegations, but to remain silent and understand that, as a
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1 result thereof, these factual allegations, without being admitted
2 or denied, will serve as a prima facie basis for the disciplinary
3 action stipulated to herein. The Real Estate Commissioner shall
4 not be required to provide further evidence to prove said factual
5 allegations.

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

13 6. It is understood by the parties that the Real
14 Estate Commissioner may adopt this Stipulation as his Decision in
15 this matter thereby imposing the penalty and sanctions on
16 Respondents' real estate licenses and license rights as set forth
17 in the "Order" herein below. In the event that the Commissioner
18 in his discretion does not adopt the Stipulation, it shall be
19 void and of no effect and Respondents shall retain the right to a
20 hearing and proceeding on the Accusation under the provisions of
21 the APA and shall not be bound by any stipulation or waiver made
22 herein.
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24 7. The Order or any subsequent Order of the Real
25 Estate Commissioner made pursuant to this Stipulation shall not
26 constitute an estoppel, merger or bar to any further
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1 administrative or civil proceedings by the Department of Real
2 Estate with respect to any matters which were not specifically
3 alleged to be causes for Accusation in this proceeding but do
4 constitute a bar, estoppel and merger as to any allegations
5 actually contained in the Accusations against Respondent herein.

6 . 8. Respondents understand that by agreeing to this
7 Stipulation, Respondents agree to pay, pursuant to Business and
8 Professions Code Section 10148, the cost of the audit which led
9 to this disciplinary action. The amount of said cost for the
10 audit is \$2,874.92.

11 9. Respondents have received, read, and understand the
12 "Notice Concerning Costs of Subsequent Audit". Respondents
13 further understand that by agreeing to this Stipulation, the
14 findings set forth below in the Determination of Issues become
15 final, and the Commissioner may charge Respondents for the cost
16 of any subsequent audit conducted pursuant to Business and
17 Professions Code Section 10148 to determine if the violations
18 have been corrected. The maximum cost of the subsequent audit
19 will not exceed \$2,874.92.
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DETERMINATION OF ISSUES

1 By reason of the foregoing, it is stipulated and agreed
2 that the following determination of issues shall be made:
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I.

4 The conduct, acts or omissions of R&G LENDING INC. and
5 JOSEPH A. WEISS, as described in Paragraph 4, above, are in
6 violation of Sections 10137 and 10145 of the Business and
7 Professions Code ("Code") and Section 2831.2 of Title 10, Chapter
8 6 of the California Code of Regulations ("Regulations") and
9 constitute a basis for discipline of Respondents' licenses and
10 license rights as a violation of the Real Estate Law pursuant to
11 Code Section 10177(d).
12

II.

13 The conduct, acts or omissions of JOSEPH A. WEISS, as
14 described in Paragraph 4, above, constitutes a failure to keep
15 R&G LENDING INC. in compliance with the Real Estate Law during
16 the time that he was the officer designated by a corporate broker
17 licensee in violation of Section 10159.2 of the Code. This
18 conduct is a basis for discipline of Respondent's license
19 pursuant to Code Section 10177(h).
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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All license and licensing rights of R&G LENDING INC.
are revoked.

II.

All licenses and licensing rights of Respondent JOSEPH
A. WEISS under the Real Estate Law suspended for a period of
ninety (90) days from the effective date of this Decision;
provided, however, that if Respondent petitions, thirty (30) days
of said suspension (or a portion thereof) shall be stayed for two
(2) years upon condition that:

A. 1. Respondent pays a monetary penalty pursuant to
Section 10175.2 of the Business and Professions Code at the rate
of \$166.67 per day for each day of the suspension for a total
monetary penalty of \$5,000.

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

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

4. If Respondent fails to pay the monetary penalty in

1 accordance with the terms of the Decision, the Commissioner may,
2 without a hearing, order the immediate execution of all or any
3 part of the stayed suspension, in which event the Respondent
4 shall not be entitled to any repayment nor credit, prorated or
5 otherwise, for money paid to the Department under the terms of
6 this Decision.

7 5. If Respondent pays the monetary penalty and if no
8 further cause for disciplinary action against the real estate
9 license of Respondent occurs within two (2) years from the
10 effective date of the Decision, the stay hereby granted shall
11 become permanent.

12 B.1. The remaining sixty (60) days of the ninety (90)
13 day suspension shall be stayed for two (2) years upon the
14 following terms and conditions:

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

18 3. 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 a 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.
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III.

1 Pursuant to Section 10148 of the Business and
2 Professions Code, Respondent JOSEPH A. WEISS shall pay the
3 Commissioner's reasonable cost for (a) the audit of R&G LENDING
4 INC. which led to this disciplinary action (b) and a subsequent
5 audit to determine if Respondent JOSEPH A. WEISS is now in
6 compliance with the Real Estate Law. The cost of the audit which
7 led to this disciplinary action is \$2,874.92. In calculating the
8 amount of the Commissioner's reasonable cost, the Commissioner
9 may use the estimated average hourly salary for all persons
10 performing audits of real estate brokers, and shall include an
11 allocation for travel time to and from the auditor's place of
12 work. Said amount for the prior and subsequent audits shall not
13 exceed \$5,749.84
14

15 Respondent JOSEPH A. WEISS shall pay such cost within
16 60 days of receiving an invoice from the Commissioner detailing
17 the activities performed during the audit and the amount of time
18 spent performing those activities.
19

20 The Commissioner may suspend the license of Respondent
21 JOSEPH A. WEISS pending a hearing held in accordance with Section
22 11500, et seq., of the Government Code, if payment is not timely
23 made as provided for herein, or as provided for in a subsequent
24 agreement between the Respondent and the Commissioner. The
25 suspension shall remain in effect until payment is made in full
26 or until Respondent enters into an agreement satisfactory to the
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1 Commissioner to provide for payment, or until a decision
2 providing otherwise is adopted following a hearing held pursuant
3 to this condition.

4 IV.

5 All licenses and licensing rights of Respondent JOSEPH

6 A. WEISS are indefinitely suspended, unless or until Respondent
7 provides proof satisfactory to the Commissioner, of having taken
8 and successfully completed the continuing education course on
9 trust fund accounting and handling specified in paragraph (3) of
10 subdivision (a) of Section 10170.5 of the Business and
11 Professions Code. Proof of satisfaction of this requirement
12 includes evidence that respondent has successfully completed the
13 trust fund account and handling continuing education course
14 within 120 days prior to the effective date of the Decision in
15 this matter.

16 V.

17 Respondent JOSEPH A. WEISS shall within six months from
18 the effective date of the decision, take and pass the
19 Professional Responsibility Examination administered by the
20 Department including the payment of the appropriate examination
21 fee. If Respondent fails to satisfy this condition, the
22 Commissioner may order suspension of Respondent's license until
23 Respondent passes the examination.
24

25 DATED: 4-04-08

26 ELIOTT MAC LENNAN, Counsel for
27 the Department of Real Estate

* * *

EXECUTION OF THE STIPULATION

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

MAILING AND FACSIMILE

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

23 A facsimile constitutes acceptance and approval of the
24 terms and conditions of this stipulation. Respondents agree,
25 acknowledge and understand that by electronically sending to the
26 Department a facsimile copy of Respondents' actual signature as
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2.

1 All references to the "Code" are to the California
2 Business and Professions Code and all references to "Regulations"
3 are to Title 10, Chapter 6, California Code of Regulations.
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5 LICENSE HISTORY

6 3.

7 A. R&G LENDING INC. At all times mentioned, R&G
8 LENDING INC. ("RGLI") and JOSEPH A. WEISS ("WEISS") were licensed
9 or had license rights issued by the Department of Real Estate
10 ("Department") as a real estate broker.

11 B. At all times material herein, RGLI was licensed by
12 the Department of Real Estate of the State of California
13 (hereinafter "Department") as a corporate real estate broker by
14 and through WEISS, as the designated officer and broker
15 responsible, pursuant to Code Section 10159.2 of the Business and
16 Professions Code for supervising the activities requiring a real
17 estate license conducted on behalf RGLI of by RGLI's officers,
18 agents and employees, including WEISS.
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20 C. On November 10, 2004, in Case No. H-31479 LA,
21 RGLI's broker license was the subject of disciplinary action by
22 the Department as more fully described in Paragraph 11, below.

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BROKERAGE

R&G LENDING INC.

4.

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

FIRST CAUSE OF ACTION

AUDIT

5.

On December 6, 2005, the Department completed a follow-up audit examination of Audit LA 030100 of the books and records of RGLI pertaining to the mortgage and loan activities described in Paragraph 4, that require a real estate license. The audit examination covered a period of time beginning on June 17, 2005 to October 24, 2005. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 050121 and the exhibits and workpapers attached to said audit report.

TRUST ACCOUNT

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, RGLI accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties and

1 principals to transactions handled by RGLI including borrowers
2 and lenders and thereafter made deposits and or disbursements of
3 such funds. RGLI did not maintain a trust account during the
4 audit period.

5 VIOLATIONS OF THE REAL ESTATE LAW

6 7.

7 In the course of activities described in Paragraphs 4
8 and 6, above, and during the examination period described in
9 Paragraph 5, Respondents RGLI and WEISS, acted in violation of
10 the Code and the Regulations in that they:

11 (a) No trust account was maintained for credit report
12 fees received and deposited into RGLI's general account, in
13 violation of Section 10145 and Regulation 2832.

14 (b) Failed to maintain a control record in the form of
15 a columnar record in chronological order of all trust funds
16 received, deposited and disbursed, as required by Code Section
17 10145 and Regulation 2831.

18 (c) Failed to maintain a separate record for each
19 beneficiary or transaction, thereby failing to account for all
20 trust funds received, deposited and disbursed, as required by
21 Code Section 10145 and Regulation 2831.1.

22 (d) Failed to perform a monthly reconciliation of the
23 balance of all separate beneficiary or transaction records
24 maintained pursuant to Regulation 2831.1 with the record of all
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1 trust funds received and disbursed by the escrow trust account,
2 as required by Code Section 10145 and Regulation 2831.2.

3 (e) Mixed and commingled trust funds and personal
4 funds by depositing credit report fees received into RGLI's
5 general operating account and issuing checks from said account to
6 the credit companies after the escrow checks were deposited,
7 violation of Code Section 10176(e).

8 (f) Employed or compensated George Grachen, who was not
9 licensed by the Department as a real estate broker or as a real
10 estate salesperson employed by a real estate broker, for
11 performing acts for which a real estate license is required,
12 including acting as a loan officer for V. & W. Griffin, R. & C.
13 Castro, Charles Powell and S. Lawrence, after his salesperson
14 license was revoked on February 5, 2001, in violation of Code
15 Section 10137; and

16 (g) Employed or compensated Roseanne Woods, who was not
17 licensed by the Department as a real estate broker or as a real
18 estate salesperson employed by a real estate broker, for
19 performing acts for which a real estate license is required,
20 including acting as a loan officer for Romelia Castillo and
21 Heather Hampel when she was employed by another broker, in
22 violation of Code Section 10137.

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

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PARAGRAPH

PROVISIONS VIOLATED

7(a)

Code Section 10145 and Regulation 2832

7(b)

Code Section 10145 and Regulation 2831

7(c)

Code Section 10145 and Regulation 2831.1

7(d)

Code Section 10145 and Regulation 2831.2

7(e)

Code Section 10176(e)

7(f)

Code Section 10137 (Roseanne Woods)

7(g)

Code Section 10137 (George Grachen)

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1 The foregoing violations constitutes cause for the suspension or
2 revocation of the real estate license and license rights of RGLI
3 and WEISS, under the provisions of Code Section 10176(e),
4 10177(d) and/or 10177(g).

5 PRIOR DEPARTMENT ACTION

6 9.

7 On November 10, 2004, in Case No. H-31479 LA, a
8 Stipulation and Agreement became effective against RGLI for
9 violations of Code Section 10145 and Regulations 2831, 2831.1,
10 2831.2 and 2832, based on an Accusation filed on November 10,
11 2004. Respondent RGLI's real estate broker license was suspended
12 for ninety days on terms and conditions including a monetary
13 penalty of \$4,500 and audit costs.

14 SECOND CAUSE OF ACTION

15 10.

16 On April 7, 2004, RGLI filed a corporate license
17 renewal application with the Department. RGLI's failed to reveal
18 the revocation of RGLI's president and sole shareholder George
19 Gerard Grachen's real estate salesperson's license in H-27900 LA
20 for violations of Code Section 10130, in the Corporate License
21 Renewal signed by WEISS on April 1, 2004. This constitutes the
22 renewal of a real estate license by fraud, misrepresentation or
23 deceit or by making a material misstatement of fact on RGLI's
24 license renewal, or making a knowing misrepresentation of a
25 material factor or omitting to state material facts, which is
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1 cause for suspension or revocation of Respondents' RGLI and
2 WEISS' real estate salesperson's license under Code Section and
3 10177(a) and 10177(g).

4 THIRD CAUSE OF ACTION

5 NEGLIGENCE

6 11.

7 The overall conduct of Respondents RGLI and WEISS
8 constitutes negligence or incompetence. This conduct and
9 violation are cause for the suspension or revocation of the real
10 estate license and license rights of said Respondents pursuant to
11 Code Section 10177(g).

12 FOURTH CAUSE OF ACTION

13 SUPERVISION AND COMPLIANCE

14 12.

15 The overall conduct of Respondent WEISS constitutes a
16 failure on his part, as officer designated by a corporate broker
17 licensee, to exercise the reasonable supervision and control over
18 the licensed activities of RGLI as required by Code Section
19 10159.2 and Regulation 2725, and to keep RGLI in compliance with
20 the Real Estate Law, and is cause for the suspension or
21 revocation of the real estate license and license rights of WEISS
22 pursuant to the provisions of Code Sections 10177(d), 10177(g)
23 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 R&G
5 LENDING INC. and JOSEPH A. WEISS, under the Real Estate Law (Part
6 1 of Division 4 of the Business and Professions Code) and for
7 such other and further relief as may be proper under other
8 applicable provisions of law.

9 Dated at Los Angeles, California

10 this *14 February 2007*

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14 Deputy Real Estate Commissioner
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24 cc: R&G Lending Inc.
25 c/o Joseph A. Weiss D.O.
26 Janice Waddell
27 Sacto
Audits - Dorcas Cheng