

Laudo

1 Department of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105
4
5 Telephone: (213) 576-6982
6
7

FILED

SEP - 3 2009

DEPARTMENT OF REAL ESTATE
BY: [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA
10

11 * * *

12 In the Matter of the Accusation of
13 SIMON JAEYEUN HWANG,
14 Respondent.
15
16

No. H-35641 LA

STIPULATION
AND
AGREEMENT

17 It is hereby stipulated by and between Respondent
18 SIMON JAEYEUN HWANG (sometimes referred to as (Respondent), and
19 the Complainant, acting by and through Elliott Mac Lennan,
20 Counsel for the Department of Real Estate, as follows for the
21 purpose of settling and disposing of the Accusation (Accusation)
22 filed on January 22, 2009, in this matter:
23

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 held in accordance with the provisions of the Administrative

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

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

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

21 4. This Stipulation is based on the factual
22 allegations contained in the Accusation. In the interest of
23 expedience and economy, Respondent chooses not to contest these
24 allegations, but to remain silent and understands 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 is made for the purpose of
5 reaching an agreed disposition of this proceeding and is
6 expressly limited to this proceeding and any other proceeding or
7 case in which the Department of Real Estate ("Department"), the
8 state or federal government, or any agency of this state, another
9 state or federal government is involved, and otherwise shall not
10 be admissible in any other criminal or civil proceedings.

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 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 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.
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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 DETERMINATION OF ISSUES

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

7 The conduct of SIMON JAEYEUN HWANG, as described in
8 Paragraph 4, above, is in violation of Business and Professions
9 Code Sections 10130, 10131.1(c) and 10240(c), and is a basis for
10 discipline of Respondent's license and license rights as
11 violations of the Real Estate Law pursuant to Code Sections
12 10177(d), 10177(g) and 10177(h).

13 ORDER

14 WHEREFORE, THE FOLLOWING ORDER is hereby made:

15 I. All licenses and licensing rights of Respondent
16 SIMON JAEYEUN HWANG under the Real Estate Law are suspended for a
17 period of ninety (90) days from the effective date of this
18 Decision.

19 A. Provided, however, that if Respondent requests, the
20 initial thirty (30) days of said suspension (or a portion
21 thereof) shall be stayed for two (2) years upon condition that:

22 1. Respondent pays a monetary penalty pursuant to
23 Section 10175.2 of the Business and Professions Code at the rate
24 of \$100 per day for each day of the suspension for a total
25 monetary penalty of \$3,000.
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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 license of Respondent occurs within two (2) years
8 from the effective date of the Decision in this matter.

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

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

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

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

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

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19 DATED: 7-26-09

20 ELLIOTT MAC LENNAN, Counsel for
21 the Department of Real Estate

22 * * *

23 EXECUTION OF THE STIPULATION

24 I have read the Stipulation. Its terms are understood
25 by me and are agreeable and acceptable to me. I understand that
26 I am waiving rights given to me by the California Administrative
27 Procedure Act (including but not limited to Sections 11506,

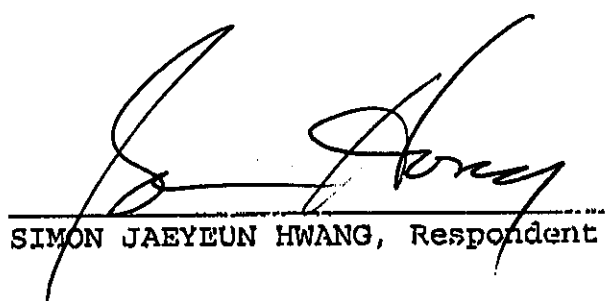
1 11508, 11509 and 11513 of the Government Code), and I willingly,
2 intelligently and voluntarily waive those rights, including the
3 right of requiring the Commissioner to prove the allegations in
4 the Accusation at a hearing at which I would have the right to
5 cross-examine witnesses against me and to present evidence in
6 defense and mitigation of the charges.

7 MAILING AND FACSIMILE

8 Respondent (1) shall mail the original signed signature
9 page of the stipulation herein to Elliott Mac Lennan: Attention:
10 Legal Section, Department of Real Estate, 320 W. Fourth St.,
11 Suite 350, Los Angeles, California 90013-1105. Additionally,
12 Respondent shall also (2) facsimile a copy of signed signature
13 page, to the Department at the following telephone/fax number:
14 (213) 576-6917, Attention: Elliott Mac Lennan. A facsimile
15 constitutes acceptance and approval of the terms and conditions
16 of this stipulation.

17 Respondent agrees, acknowledges and understands that by
18 electronically sending to the Department a facsimile copy of
19 Respondent's actual signature as it appears on the stipulation
20 that receipt of the facsimile copy by the Department shall be as
21 binding on Respondent as if the Department had received the
22 original signed stipulation.
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26 DATED: 7/22/09

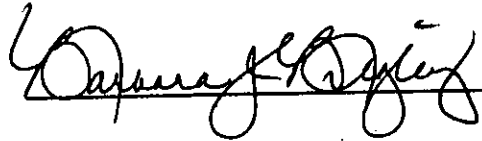

SIMON JAEYEUN HWANG, Respondent

* * *

1 The foregoing Stipulation and Agreement is hereby
2 adopted as my Decision as to Respondent SIMON JAEYEUN HWANG and
3 shall become effective at 12 o'clock noon on
4 September 23, 2009.

5 IT IS SO ORDERED 8/17, 2009.
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8 JEFF DAVI
9 Real Estate Commissioner

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11 BY: Barbara J. Bigby
12 Chief Deputy Commissioner
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ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

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

FILED

JAN 22 2009

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

SIMON JAEYEUN HWANG,

Respondent.

No. H- 35641 LA

A C C U S A T I O N

The Complainant, Robin Trujillo, a Deputy Real Estate
Commissioner of the State of California, acting in her official
capacity, for cause of Accusation against SIMON JAEYEUN HWANG, is
informed and alleges as follows:

1.

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 or to
the California Financial Code.

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1 LICENSE HISTORY

2 2.

3 At all times mentioned, SIMON JAEYEUN HWANG
4 ("HWANG"), was licensed or had license rights issued by the
5 Department of Real Estate ("Department") as a real estate broker.
6 On January 18, 1995, HWANG was originally licensed as a real
7 estate broker.

8 LICENSED ACTIVITIES AND BROKERAGE

9 3.

10 At all times mentioned, in the City of Fullerton,
11 County of Los Orange, HWANG acted as real estate broker and
12 conducted licensed activities within the meaning of Code Section
13 10131(d). HWANG operated a mortgage and loan brokerage dba
14 Citimac Capital Corporation, an unlicensed fictitious business
15 name and unlicensed corporation.

16 AUDIT EXAMINATION

17 4.

18 On July 28, 2008, the Department completed an audit
19 examination of the books and records of HWANG, pertaining to the
20 mortgage loan activities described in Paragraph 3, that require a
21 real estate license. The audit examination covered a period of
22 time beginning on May 1, 2005 to April 30, 2008. The audit
23 examination revealed violations of the Code and the Regulations
24 as set forth below, and more fully discussed in Audit Report LA
25 070306 and the exhibits and workpapers attached thereto.
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1
2 TRUST ACCOUNT

3 5.

4 At all times mentioned, in connection with the
5 activities described in Paragraph 4, HWANG did not maintain a
6 trust account.

7 VIOLATIONS OF THE REAL ESTATE LAW

8 6.

9 With respect to the licensed activities referred to in
10 Paragraph 3, and the audit examination including the exhibits and
11 workpapers referred to in Paragraph 4, it is alleged that HWANG:

12 (a) With respect to the eighteen Kim Family loans secured by
13 liens on five residential real properties:

- 14 • 5551 Monticello Ave., Buena Park
- 15 • 2272 Yarbough Dr., Fullerton
- 16 • 2067 Hetebrink St., Fullerton
- 17 • 1440 Starbuck St., Fullerton
- 18 • 1405 Starbuck St., Fullerton

19 HWANG failed to provide final settlement statements, HUD-1, to
20 the Kim Family, in violation of Code Section 10177(g)

21 (b) dba Citimac Capital Corporation engaged as a
22 principal in the business of making or arranging eight (8) or
23 more loans in a calendar year during the audit period from
24 HWANG's own funds to the public when those loans are held and
25 secured by liens on residential real property without first
26 obtaining a license from the Department for Citimac Capital
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Corporation; in violation of Code Sections 10130 and 10131.1(c);
and

(c) Failed to provide or retain a true and correct copy
of a Good Faith Estimate that satisfies the requirements of the
Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A 2601 et
seq.), that (1) sets forth the broker's real estate license
number; and (2) a clear and conspicuous statement on the face of
the document stating that the Good Faith Estimate does not
constitute a loan commitment; and, further sets forth all
applicable disclosures, signed by the broker, for the Kim Family
borrowers, Do Yoon Kim, Jung Taek Kim and Deborah Kim, in
violation of Code Section 10240(c).

DISCIPLINARY STATUTES AND REGULATIONS

7.

The conduct of Respondent HWANG described in Paragraph
6, above, violated the Code and the Regulations as set forth:

PARAGRAPH

PROVISIONS VIOLATED

6(a)

Code Section 10177(g)

6(b)

Code Sections 10130 and 10131.1(c)

6(c)

Code Section 10240(c)

1 Each of the foregoing violations constitute cause for the
2 suspension or revocation of the real estate license and license
3 rights of Respondent HWANG under the provisions of Code Sections
4 10177(d) and/or 10177(g).

5 8.

6 Used the fictitious name of "Citimac Capital
7 Corporation" to conduct licensed activities including mortgage
8 and loan brokering without holding a license bearing said
9 fictitious business name, in violation of Code Section 10159.5
10 and Regulation 2731.

11 NEGLIGENCE

12 9.

13 The overall conduct of Respondent HWANG constitutes
14 negligence or incompetence. This conduct and violation are cause
15 for the suspension or revocation of the real estate license and
16 license rights of Respondent pursuant to Code Section 10177(g).

17 LACK OF SUPERVISION AND COMPLIANCE

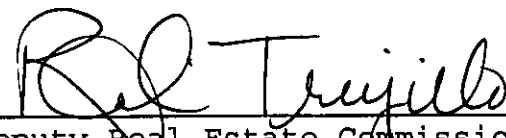
18 10.

19 The overall conduct of HWANG constitutes a failure to
20 exercise supervision and control over the licensed activities of
21 Respondent's brokerage. Nor did HWANG maintain a system in place
22 for regularly monitoring his compliance with the Real Estate Law
23 especially in regard to establishing policies to review trust
24 fund handling and record keeping for his client's trust funds or
25 for supervising salesperson and loan agents, in violation of Code
26 Sections 10177(d) and 10177(h).
27

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against the license and license rights of Respondent SIMON
5 JAEYEUN HWANG, under the Real Estate Law (Part 1 of Division 4 of
6 the Business and Professions Code) and for such other and further
7 relief as may be proper under other applicable provisions of law.

8 Dated at Los Angeles, California

9 this 20 day of January 2009.
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12 _____
13 Deputy Real Estate Commissioner
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24 cc: Simon Jaeyeun Hwang
25 Robin Trujillo
26 Sacto
27 Audits - Zaky Wanis