

1 Department of Real Estate
2 320 W. 4th St., Room 350
3 Los Angeles, California 90013
4 Telephone: (213) 576-6982

FILED
FEB 23 2010
DEPARTMENT OF REAL ESTATE
[Signature]

6
7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-35897 LA
12) L-2009 061 291
13 AMERICAN FINANCIAL CORPORATION,)
14 and VERBON KELLEY,) STIPULATION AND AGREEMENT
15 individually and as)
16 designated officer of)
17 the corporation,)
18 Respondents.)

19 It is hereby stipulated by and between AMERICAN
20 FINANCIAL CORPORATION and VERBON KELLEY (sometimes referred to
21 as Respondents), and their attorney Peter R. Nasmyth, Jr., and
22 the Complainant, acting by and through James R. Peel, Counsel
23 for the Department of Real Estate, as follows for the purpose of
24 settling and disposing of the Accusation filed on April 21,
25 2009, in this matter.

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

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

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

10 3. On May 14, 2009, Respondents filed a Notice of
11 Defense pursuant to Section 11506 of the Government Code for the
12 purpose of requesting a hearing on the allegations in the
13 Accusation. Respondents hereby freely and voluntarily withdraw
14 said Notice of Defense. Respondents acknowledge that they
15 understand that by withdrawing said Notice of Defense they will
16 thereby waive their right to require the Commissioner to prove
17 the allegations in the Accusation at a contested hearing held in
18 accordance with the provisions of the APA and that they will
19 waive other rights afforded to them in connection with the
20 hearing, such as the right to present evidence in defense of the
21 allegations in the Accusation and the right to cross-examine
22 witnesses.

23 4. This Stipulation is based on the factual
24 allegations contained in the Accusation filed in this
25 proceeding. In the interest of expedience and economy,
26 Respondents choose not to contest these factual allegations, but
27

1 to remain silent and understand that, as a result thereof, these
2 factual statements, will serve as a prima facie basis for the
3 disciplinary action stipulated to herein. The Real Estate
4 Commissioner shall not be required to provide further evidence
5 to prove such 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
9 to this proceeding and any other proceeding or case in which the
10 Department of Real Estate ("Department"), the state or federal
11 government, or an agency of this state, another state or the
12 federal government is involved.

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

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
27 administrative or civil proceedings by the Department of Real

1 Estate with respect to any conduct which was not specifically
2 alleged to be causes for accusation in this proceeding.

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulations and waivers
5 and solely for the purpose of settlement of the pending
6 Accusation without a hearing, it is stipulated and agreed that
7 the following determination of issues shall be made:

8 The conduct, acts and/or omissions of Respondents
9 AMERICAN FINANCIAL CORPORATION and VERBON KELLEY, as set forth
10 in the Accusation, constitute cause for the suspension or
11 revocation of all of the real estate licenses and license rights
12 of Respondents under the provisions of Section 10177(g) of the
13 Business and Professions Code ("Code").
14

15 ORDER

16
17 A. All licenses and licensing rights of Respondents
18 AMERICAN FINANCIAL CORPORATION and VERBON KELLEY under the Real
19 Estate Law are suspended for a period of sixty (60) days from
20 the effective date of this Decision; provided, however, that
21 thirty (30) days of said suspension shall be stayed for one (1)
22 year upon the following terms and conditions:

23 1. Respondents pay a monetary penalty pursuant to
24 Section 10175.2 of the Business and Professions Code at the rate
25 of \$33.33 for each day of the suspension for a total monetary
26 penalty of \$1,000 (\$2,000 for both Respondents).
27

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

6 3. No further cause for disciplinary action
7 against the real estate licenses of Respondent occurs within one
8 (1) year from the effective date of the Decision in this matter.

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

16 5. If Respondents pay the monetary penalty and if
17 no further cause for disciplinary action against the real estate
18 license of Respondent occurs within one (1) year from the
19 effective date of the Decision, the stay hereby granted shall
20 become permanent.

21 B. The remaining thirty (30) days of said sixty (60)
22 day suspension shall be stayed for one (1) year on the following
23 terms and conditions:

24 1. Respondent shall obey all laws, rules and
25 regulations governing the rights, duties and responsibilities of
26 a real estate licensee in the State of California; and
27

1 2. That no final subsequent determination be made,
2 after hearing or upon stipulation, that cause for disciplinary
3 action occurred within one (1) year of the effective date of
4 this Decision. Should such a determination be made, the
5 Commissioner may, in his discretion, vacate and set aside the
6 stay order and reimpose all or a portion of the stayed
7 suspension. Should no such determination be made, the stay
8 imposed herein shall become permanent.

9 C. All licenses and licensing rights of Respondent
10 VERBON KELLEY are indefinitely suspended unless or until
11 Respondent provides proof satisfactory to the Commissioner, of
12 having taken and successfully completed the continuing education
13 course on trust fund accounting and handling specified in
14 paragraph (3) of subdivision (a) of Section 10170.5 of the
15 Business and Professions Code. Proof of satisfaction of this
16 requirement includes evidence that Respondent has successfully
17 completed the trust fund account and handling continuing
18 education course within 120 days prior to the effective date of
19 the Decision in this matter.
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24 DATED:

Oct. 29, 2009

James R. Peel
JAMES R. PEEL, Counsel for the
Department of Real Estate

1 * * *

2 We have read the Stipulation and Agreement, have
3 discussed it with our counsel, and its terms are understood by
4 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
12 to present evidence in defense and mitigation of the charges.

13 Respondents can signify acceptance and approval of the
14 terms and conditions of this Stipulation and Agreement by faxing
15 a copy of the signature page, as actually signed by Respondents,
16 to the Department at the following telephone/fax number:
17 (213) 576-6917. Respondents agree, acknowledge and understand
18 that by electronically sending to the Department a fax copy of
19 his or her actual signature as it appears on the Stipulation and
20 Agreement, that receipt of the faxed copy by the Department
21 shall be as binding on Respondents as if the Department had
22 received the original signed Stipulation and Agreement.

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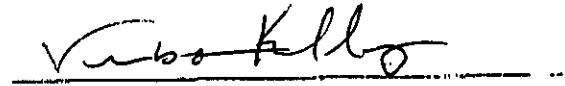
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Further, if the Respondents are represented, the Respondents' counsel can signify his or her agreement to the terms and conditions of the Stipulation and Agreement by submitting that signature via fax.


DATED: 10/14/09


GENERAL COUNSEL FOR
AMERICAN FINANCIAL CORPORATION
Respondent

DATED: 10/13/09


VERBON KELLEY
Respondent

DATED: 10/14/09

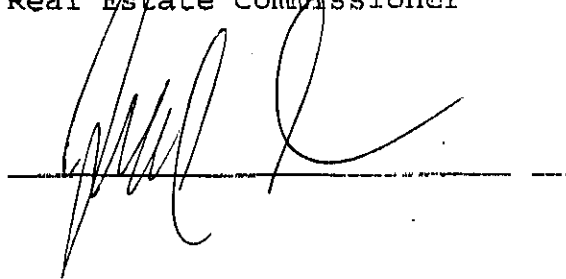

PETER R. NASMYTH, Jr.
Counsel for Respondents

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision and Order in this matter, and shall become effective at 12 o'clock noon on MAR 15 2010.

IT IS SO ORDERED 11-17-09

JEFF DAVI
Real Estate Commissioner



1 Further, if the Respondents are represented, the
2 Respondents' counsel can signify his or her agreement to the
3 terms and conditions of the Stipulation and Agreement by
4 submitting that signature via fax.

5
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7 DATED: _____

AMERICAN FINANCIAL CORPORATION
Respondent

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10 DATED: _____

VERBON KELLEY
Respondent

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12 DATED: _____

PETER R. NASMYTH, Jr.
Counsel for Respondents

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16 * * *

17 The foregoing Stipulation and Agreement is hereby
18 adopted as my Decision and Order in this matter, and shall
19 become effective at 12 o'clock noon on _____.

20 IT IS SO ORDERED _____.

21 JEFF DAVI
22 Real Estate Commissioner
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FILED
APR 21 2009
DEPARTMENT OF REAL ESTATE
[Signature]

1 JAMES R. PEEL, Counsel (SBN 47055)
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Los Angeles, CA 90013-1105
3
4 Telephone: (213) 576-6982
-or- (213) 576-6913 (Direct)

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-35897 LA
12)
13 AMERICAN FINANCIAL CORPORATION,)
14 and VERBON KELLEY,)
individually and as)
14 designated officer of)
the corporation,)
15)
16)
17 Respondents.)

18
19 The Complainant, Robin L. Trujillo, a Deputy Real
20 Estate Commissioner of the State of California, for cause of
21 accusation against AMERICAN FINANCIAL CORPORATION and VERBON
22 KELLEY, individually and as designated officer of the
23 corporation, alleges as follows:

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I

The Complainant, Robin L. Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against AMERICAN FINANCIAL CORPORATION and VERBON KELLEY.

II

AMERICAN FINANCIAL CORPORATION and VERBON KELLEY (hereinafter referred to as "Respondents") are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter Code).

III

At all times herein mentioned, Respondent AMERICAN FINANCIAL CORPORATION was licensed as a real estate broker with Respondent VERBON KELLEY as its designated officer.

IV

At all times material herein, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(d) of the Code including soliciting borrowers and lenders and negotiating loans on real property.

V

On or about December 3, 2008, the Department completed an examination of Respondents' books and records, pertaining to the activities described in Paragraph IV above, covering a period from July 1, 2007, through October 31, 2008, which examination revealed violations of the Code and of Title 10, Chapter 6,

1 California Code of Regulations (hereinafter Regulations) as set
2 forth below.

3 VI

4 The examination described in Paragraph V, above,
5 determined that, in connection with the activities described in
6 Paragraph IV above, Respondents accepted or received funds,
7 including funds in trust (hereinafter "trust funds") from or on
8 behalf of principals, and thereafter made deposit or disbursement
9 of such funds.

10 VII

11 In the course of activities described in Paragraphs IV
12 through VI and during the examination period described in
13 Paragraph V, Respondents acted in violation of the Code and the
14 Regulations as follows, and as more specifically set forth in
15 Audit Report No. LA 080108 and related exhibits:

16 1. Violated Section 10145(a) of the Code by failing to
17 deposit credit report fees and appraisal fees into a broker trust
18 account.

19 2. Violated Regulation 2831 by not maintaining a
20 columnar record of all trust funds received and disbursed
21 including credit report fees and appraisal fees.

22 3. Violated Regulation 2831.1 by not maintaining
23 separate records for each transaction including credit report
24 fees and appraisal fees.

25 4. Violated Sections 10240 and 10241 of the Code by
26 failing to provide a complete Mortgage Disclosure Statement to
27 each borrower. The MLDS did not always disclose yield spread

1 premium rebates the broker received from the lender. The MLDS
2 was not always signed by the broker or the broker's
3 representative.

4 VIII

5 The conduct of Respondents AMERICAN FINANCIAL
6 CORPORATION and VERBON KELLEY, as alleged above, subjects their
7 real estate licenses and license rights to suspension or
8 revocation pursuant to Sections 10177(d) and/or 10177(g) of the
9 Code.

10 IX

11 The conduct of Respondent VERBON KELLEY, as alleged
12 above, is in violation of Code Section 10159.2 and subjects his
13 real estate licenses and license rights to suspension or
14 revocation pursuant to Sections 10177(d), 10177(g), and 10177(h)
15 of the Code.

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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 all licenses and license rights of Respondents
5 AMERICAN FINANCIAL CORPORATION and VERBON KELLEY, individually
6 and as designated officer of American Financial Corporation,
7 under the Real Estate Law (Part 1 of Division 4 of the Business
8 and Professions Code) and for such other and further relief as
9 may be proper under other applicable provisions of law.

10 Dated at Los Angeles, California

11 this 1 day of April, 2009.

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14 _____
15 ROBIN L. TRUJILLO
16 Deputy Real Estate Commissioner
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24 cc: American Financial Corporation
25 Verbon Kelley
26 Robin L. Trujillo
27 Audit Section
Sacto.