

1 Department of Real Estate
2 320 W. 4TH Street, Suite 350
3 Los Angeles, CA 90013-1105
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8 Telephone: (213) 576-6982

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

11 In the Matter of the Accusation of)
12 INDEPENDENT REALTY FINANCE CORP.) No. H-36510 LA
13 doing business as Independent) L-2010091111
14 Home Loans, Independent Realty,)
15 Independent Settlement Services,)
16 and JF Realty & Investments;)
17 CHRISTINA A. FISH; and JAMES) STIPULATION
18 EDWARD FISH, individually and as)
19 designated officer and former) AND
20 officer of Independent Realty) AGREEMENT
21 Finance Corp.,)
22 Respondents.)
23)
24)
25)
26)
27)

21 It is hereby stipulated by and between Respondent
22 CHRISTINA A. FISH, (sometimes referred to as "Respondent"), and
23 the Complainant, acting by and through Elliott Mac Lennan,
24 Counsel for the Department of Real Estate, as follows for the
25 purpose of settling and disposing of the Accusation filed on
26 March 15, 2010, in this matter:
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1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and Respondent
3 at a formal hearing on the Accusation, which hearing was to be
4 held in accordance with the provisions of the Administrative
5 Procedure Act ("APA"), shall instead and in place thereof be
6 submitted solely on the basis of the provisions of this
7 Stipulation and Agreement ("Stipulation").

8 2. Respondent has received, read and understands the
9 Statement to Respondent, the Discovery Provisions of the APA and
10 the Accusation filed by the Department of Real Estate in this
11 proceeding.

12 3. Respondent filed a Notice of Defense pursuant to
13 Section 11506 of the Government Code for the purpose of
14 requesting a hearing on the allegations in the Accusation.
15 Respondent hereby freely and voluntarily withdraws said Notice of
16 Defense. Respondent acknowledges that she understands that by
17 withdrawing said Notice of Defense she thereby waives her right
18 to require the Commissioner to prove the allegations in the
19 Accusation at a contested hearing held in accordance with the
20 provisions of the APA and that she will waive other rights
21 afforded to her in connection with the hearing such as the right
22 to present evidence in her defense 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. In the interest of
3 expedience and economy Respondent chooses not to contest these
4 allegations but to remain silent and understands that, as a
5 result thereof, these factual allegations, without being admitted
6 or denied, will serve as a prima facie basis for the disciplinary
7 action stipulated to herein. The Real Estate Commissioner shall
8 not be required to provide further evidence to prove said factual
9 allegations.

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

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

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

8 8. Respondent understands that by agreeing to this
9 Stipulation, Respondent agrees to pay, pursuant to Business and
10 Professions Code Section 10148, the cost of the original audit
11 (LA 080113 and LA 080141), as set forth in the Order, below. The
12 amount of said cost for the audit is \$12,290.52.

13 DETERMINATION OF ISSUES

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

16 I.

17
18 The conduct of CHRISTINA A. FISH, as described in
19 Paragraph 4, herein above, is in violation of Sections 10085,
20 10145, 10176(e), 10176(g) and 10240 of the Business and
21 Professions Code ("Code") and Sections 2831, 2831.1, 2831.2,
22 2832, 2834, 2840, 2950(d), 2950(g), 2951 and 2970 of Title 10,
23 Chapter 6 of the California Code of Regulations ("Regulations")
24 and is a basis for discipline of Respondent's license and license
25 rights as a violation of the Real Estate Law pursuant to Code
26 Sections 10176(e), 10176(g), 10177(d) and 10177(g).
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II.

1 The conduct, acts and omissions of CHRISTINA A. FISH,
2 as described in Paragraph 4, herein above, constitutes a failure
3 to ensure that Independent Realty Finance Corp., was in
4 compliance with the Real Estate Law during the time of her tenure
5 as its designated officer and is a basis for discipline of
6 Respondent's license pursuant to Code Sections 10177(d), and
7 10177(g) and 10177(h).
8

9 ORDER

10 WHEREFORE, THE FOLLOWING ORDER is hereby made:

11 I.

12 The real estate broker license of Respondent
13 CHRISTINA A. FISH under the Real Estate Law is revoked;
14 provided, however, a restricted real estate salesperson license
15 shall be issued to Respondent, pursuant to Section 10156.5 of the
16 Business and Professions Code, if Respondent:
17

18 A. Makes application therefor and pays to the
19 Department of Real Estate the appropriate fee for the restricted
20 license within ninety (90) days from the effective date of this
21 Decision.

22 B. Respondent shall, prior to and as a condition of
23 the issuance of the restricted license, submit proof satisfactory
24 to the Commissioner of having taken and successfully completed
25 the continuing education course on trust fund accounting and
26 handling specified in paragraph (3) of subdivision (a) of Section
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1 10170.5 of the Business and Professions Code. Proof of
2 satisfaction of this requirement includes evidence that
3 respondent has successfully completed the trust fund account and
4 handling continuing education course within 120 days prior to the
5 effective date of the Decision in this matter.

6 C. Respondent shall, prior to and as a condition of
7 the issuance of the restricted license, first provide evidence
8 satisfactory to the Commissioner that Respondent continues to
9 retain \$25,237.74, as per the Audit Report, in the Independent
10 Realty Finance Corp. escrow trust account or other trust account:

11 Said \$25,237.74 shall continue to be retained as
12 aforementioned until the trust fund beneficiaries are (1) located
13 (2) via a search, including but not limited to Internet search
14 engines, (3) paid and (4) Respondent returns to the Department and
15 (5) acknowledgement of receipt from the beneficiaries, or,
16 failing this said sum shall (6) escheat to the State of
17 California after 3 years.

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19 The restricted license issued to Respondent shall be
20 subject to all of the provisions of Section 10156.7 of the Code
21 and the following limitations, conditions and restrictions
22 imposed under authority of Section 10156.6 of that Code.

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1 1. The restricted license issued to Respondent may be
2 suspended prior to hearing by Order of the Real Estate
3 Commissioner in the event of Respondent's conviction or plea of
4 nolo contendere to a crime which is substantially related to
5 Respondent's fitness or capacity as a real estate licensee.

6 2. The restricted license issued to Respondent may
7 be suspended prior to hearing by Order of the Real Estate
8 Commissioner on evidence satisfactory to the Commissioner that
9 Respondent has violated provisions of the California Real Estate
10 Law, the Subdivided Lands Law, Regulations of the Real Estate
11 Commissioner or conditions attaching to the restricted license.

12 3. Respondent shall not be eligible to apply for the
13 issuance of an unrestricted real estate license nor for the
14 removal of any of the conditions, limitations or restrictions of
15 a restricted license until four (4) years has elapsed from the
16 effective date of the issuance of the restricted license.

17 4. Respondent shall submit with any application for
18 license under an employing broker, or any application for
19 transfer to a new employing broker, a statement signed by the
20 prospective employing real estate broker on a form approved by
21 the Department of Real Estate which shall certify:

- 22 (a) That the employing broker has read the
23 Decision of the Commissioner which granted
24 the right to a restricted license; and
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1 (b) That the employing broker will exercise

2 close supervision over the performance by the
3 restricted licensee relating to activities
4 for which a real estate license is required.

5 5. Respondent shall, within nine (9) months from the

6 effective date of this Decision, present evidence satisfactory to
7 the Real Estate Commissioner that Respondent has, since the most
8 recent issuance of an original or renewal real estate license,
9 taken and successfully completed the continuing education
10 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
11 for renewal of a real estate license. If Respondent fails to
12 satisfy this condition, the Commissioner may order the suspension
13 of the restricted license until Respondent presents such
14 evidence. The Commissioner shall afford Respondent the
15 opportunity for a hearing pursuant to the Administrative
16 Procedure Act to present such evidence.

17
18 6. Respondent shall within six (6) months from the

19 effective date of the Decision herein, take and pass the
20 Professional Responsibility Examination administered by the
21 Department including the payment of the appropriate examination
22 fee. If Respondent fails to satisfy this condition, the
23 Commissioner may order suspension of Respondent's license until
24 Respondent passes the examination.

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II.

1 Pursuant to Section 10148 of the Code, Respondent shall
2 pay the Commissioner's reasonable cost for the original audit (LA
3 080113 and LA 080141) which led to this disciplinary action. The
4 cost of the audit which led to this disciplinary actions is
5 \$12,290.52. In calculating the amount of the Commissioner's
6 reasonable cost for the subsequent audit, the Commissioner may
7 use the estimated average hourly salary for all persons
8 performing audits of real estate brokers, and shall include an
9 allocation for travel time to and from the auditor's place of
10 work. The Commissioner may suspend the restricted license issued
11 to Respondent pending a hearing held in accordance with Section
12 11500, et seq., of the Government Code, if payment is not timely
13 made as provided for herein, or as provided for in a subsequent
14 agreement between Respondent and the Commissioner. The
15 suspension shall remain in effect until payment is made in full
16 or until Respondent enters into an agreement satisfactory to the
17 Commissioner to provide for payment, or until a decision
18 providing otherwise is adopted following a hearing held pursuant
19 to this condition.
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III.

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23 Respondent shall, within six (6) months from the
24 effective date of this Decision, present evidence satisfactory to
25 the Real Estate Commissioner that (1) restitution of fees paid
26 for loan modification services have been repaid or (2) unless
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1 determined by the Real Estate Commissioner to be satisfied or not
2 to be applicable, with respect to the tabled California
3 homeowner-borrowers:

4 California Homeowners Restitution

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| Homeowner/Borrower | Advanced Fees Paid |
|--------------------|--------------------|
| Lund | \$2,279.62 |
| Gaxiola | \$1,995 |
| Miller | \$2,495.00 |
| Total Advance Fees | \$6,769.62 |

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13 If Respondent fails to satisfy this condition, the
14 Commissioner may order the suspension of the restricted license
15 until Respondent presents such evidence.

16 To the extent that restitution repayment is applicable:

17 (1) Respondent shall deliver or mail the restitution
18 payments, if any, by certified mail, return receipt requested, to
19 the borrowers' last address on file with or known to Respondent.

20 (2) If any of the payments are returned by the Post
21 Office marked "unable to deliver," Respondent shall employ a
22 locator service (that may include or be limited to the Internet
23 or other database retrieval search) to try and locate the
24 aforsaid borrowers. Repayments shall then be made to the
25 addresses recommended by the locator service including but not
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1 limited to Internet search engines.

2 (3) If unable to effect repayment after using a locator
3 service, Respondent shall provide reasonable proof satisfactory
4 to the Commissioner of Respondent's efforts to comply with the
5 provisions of this Paragraph.

6 (4) If the Commissioner determines that proof to be
7 unsatisfactory, he shall so advise Respondent, and indicate what
8 additional reasonable efforts should be made to make repayment to
9 the borrowers.

10 (5) If Respondent fails to satisfy this condition, the
11 Commissioner may order suspension of Respondent's restricted
12 license until Respondent effects compliance herein, and,

13 (6) any unpaid loan modification application fees shall
14 escheat to the State of California after 3 years.

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17 DATED: 2-17-11

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

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19 * * *

20 EXECUTION OF THE STIPULATION

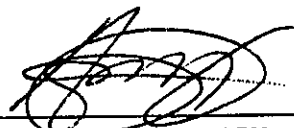
21 I have read the Stipulation and Agreement and discussed
22 it with my attorney. Its terms are understood by me and are
23 agreeable and acceptable to me. I understand that I am waiving
24 rights given to me by the California Administrative Procedure Act
25 (including but not limited to Sections 11506, 11508, 11509 and
26 11513 of the Government Code), and I willingly, intelligently and
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1 voluntarily waive those rights, including the right of requiring
2 the Commissioner to prove the allegations in the Accusation at a
3 hearing at which I would have the right to cross-examine
4 witnesses against me and to present evidence in defense and
5 mitigation of the charges.

6 FACSIMILE and E-MAIL/SCANNED SIGNATURES

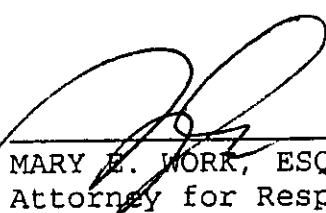
7 Respondent can signify acceptance and approval of the
8 terms and conditions of this Stipulation by faxing or e-mailing a
9 copy of the scanned signature page, as actually signed by
10 Respondent, to the Department at the following facsimile number:
11 Elliott Mac Lennan at (213) 576-6917. Respondent agrees,
12 acknowledge and understand that by electronically sending to the
13 Department a fax or e-mailed copy of Respondent's actual
14 signature as it appears on the Stipulation, that receipt of the
15 faxed or e-mailed copy by the Department shall be as binding on
16 Respondent as if the Department had received the original signed
17 Stipulation.
18

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21 DATED: 2/11/11



CHRISTINA A. FISH,
Respondent

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25 DATED: 2/11/11



MARY E. WORK, ESQ.
Attorney for Respondent

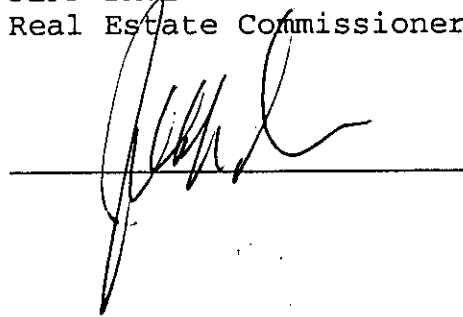
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The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondent CHRISTINA A. FISH and
shall become effective at 12 o'clock noon on
April 29, 2011.

IT IS SO ORDERED March 23, 2011.

JEFF DAVI
Real Estate Commissioner

A handwritten signature in black ink, appearing to read "Jeff Davi", is written over a horizontal line. The signature is stylized and cursive.

Just

FILED

MAR 30 2011

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Accusation of)
)
 INDEPENDENT REALTY FINANCE CORP.)
 doing business as Independent)
 Home Loans, Independent Realty,)
 Independent Settlement Services,)
 and JF Realty & Investments;)
 CHRISTINA A. FISH; and JAMES)
 EDWARD FISH, individually and as)
 designated officer and former)
 officer of Independent Realty)
 Finance Corp.,)
)
 Respondents.)

No. H-36510 LA

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On March 15, 2010, an Accusation was filed in this matter against Respondent INDEPENDENT REALTY FINANCE CORP.

On January 1, 2011, Respondent petitioned the Commissioner to voluntarily surrender its real estate broker license rights pursuant to Section 10100.2 of the Business and Professions Code.

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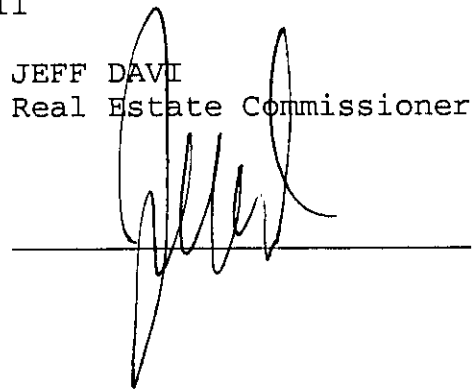
IT IS HEREBY ORDERED that INDEPENDENT REALTY FINANCE CORP. petition for voluntary surrender of its real estate broker license rights is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in Respondent's Declaration dated January 1, 2011, (attached as Exhibit "A" hereto). Respondents' license certificate, pocket card and any branch office license certificate shall be sent to the below listed address so that they reach the Department on or before the effective date of this Order:

Department of Real Estate
Atten: Licensing Flag Section
P.O. Box 187000
Sacramento, CA 95818-7000

This Order shall become effective at 12 o'clock noon on
April 19, 2011.

DATED: March 23, 2011

JEFF DAVI
Real Estate Commissioner



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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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|---|---|----------------|
| In the Matter of the Accusation of |) | |
| |) | No. H-36510 LA |
| <u>INDEPENDENT REALTY FINANCE CORP.</u> |) | |
| doing business as Independent |) | |
| Home Loans, Independent Realty, |) | |
| Independent Settlement Services, |) | |
| and JF Realty & Investments; |) | |
| CHRISTINA A. FISH; and JAMES |) | |
| EDWARD FISH, individually and as |) | |
| designated officer and former |) | |
| officer of Independent Realty |) | |
| Finance Corp., |) | |
| |) | |
| Respondents. |) | |

DECLARATION

My name is CHRISTINA A. FISH and I am the designated officer of INDEPENDENT REALTY FINANCE CORP. which is licensed as real estate brokers and/or have license rights with respect to said licenses and represented by Mary E. Work, Esq. I am authorized to sign this declaration on behalf of INDEPENDENT REALTY FINANCE CORP.

1 In lieu of proceeding in this matter in accordance
2 with the provisions of the Administrative Procedures Act
3 (Sections 11400 et seq., of the Government Code) INDEPENDENT
4 REALTY FINANCE CORP. wishes to voluntarily surrender its real
5 estate license issued by the Department of Real Estate
6 ("Department"), pursuant to Business and Professions Code
7 Section 10100.2.

8 I understand that INDEPENDENT REALTY FINANCE CORP., by
9 so voluntarily surrendering its license, can only have them
10 reinstated in accordance with the provisions of Section 11522 of
11 the Government Code. I also understand that by so voluntarily
12 surrendering its license and license rights, INDEPENDENT REALTY
13 FINANCE CORP. agrees to the following:


14 The filing of this Declaration shall be deemed as
15 INDEPENDENT REALTY FINANCE CORP.'s petition for voluntary
16 surrender. It shall also be deemed to be an understanding and
17 agreement by INDEPENDENT REALTY FINANCE CORP. that, it waives
18 all rights it has to require the Commissioner to prove the
19 allegations contained in the Accusation ("Accusation") filed in
20 this matter at a hearing held in accordance with the provisions
21 of the Administrative Procedures Act (Government Code Sections
22 11400 et seq.), and that INDEPENDENT REALTY FINANCE CORP. also
23 waives other rights afforded to it in connection with the
24 hearing such as the right to discovery, the right to present
25 evidence in defense of the allegations in the Accusation and the
26 right to cross examine witnesses.

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1 I further agree on behalf of INDEPENDENT REALTY
2 FINANCE CORP. that upon acceptance by the Commissioner, as
3 evidenced by an appropriate order, all affidavits and all
4 relevant evidence obtained by the Department in this matter
5 prior to the Commissioner's acceptance, and all allegations
6 contained in the Accusation filed in the Department Case No. H-
7 36510 LA, excluding California Business and Professions Code
8 Sections 10176(b), 10176(c) and 10176(i) and 10177(j), may be
9 considered by the Department to be true and correct for the
10 purpose of deciding whether or not to grant reinstatement of
11 INDEPENDENT REALTY FINANCE CORP.'s license pursuant to
12 Government Code Section 11522.

13 I declare under penalty of perjury under the laws of
14 the State of California that the above is true and correct and
15 that I am acting freely and voluntarily on behalf of INDEPENDENT
16 REALTY FINANCE CORP. to surrender their licenses and all license
17 rights attached thereto.

18 2/1/ Santa Ana, 2010 2011
19 Date and Place

20
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22 
23 BY: CHRISTINA A. FISH
24 Designated Officer of
25 Independent Realty Finance Corp.
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FILED

MAR 30 2011

DEPARTMENT OF REAL ESTATE
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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|------------------------------------|---|----------------|
| In the Matter of the Accusation of |) | No. H-36510 LA |
| INDEPENDENT REALTY FINANCE CORP. |) | |
| doing business as Independent |) | |
| Home Loans, Independent Realty, |) | |
| Independent Settlement Services, |) | |
| and JF Realty & Investments; |) | |
| CHRISTINA A. FISH; and JAMES |) | |
| EDWARD FISH, individually and as |) | |
| designated officer and former |) | |
| officer of Independent Realty |) | |
| Finance Corp., |) | |
| |) | |
| |) | |
| Respondents. |) | |

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On March 15, 2010, an Accusation was filed in this matter against Respondent JAMES EDWARD FISH.

On January 15, 2011 Respondent petitioned the Commissioner to voluntarily surrender his real estate broker license rights pursuant to Section 10100.2 of the Business and Professions Code.

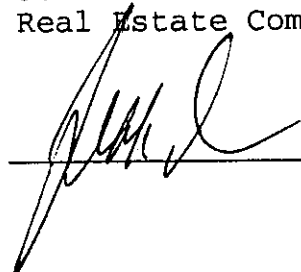
1 IT IS HEREBY ORDERED that Respondent JAMES EDWARD FISH'
2 petition for voluntary surrender of his real estate broker
3 license rights is accepted as of the effective date of this Order
4 as set forth below, based upon the understanding and agreement
5 expressed in Respondent's Declaration dated January 15, 2011,
6 (attached as Exhibit "A" hereto). Respondent's license
7 certificate, pocket card and any branch office license
8 certificate shall be sent to the below listed address so that
9 they reach the Department on or before the effective date of this
10 Order:

11
12 Department of Real Estate
13 Atten: Licensing Flag Section
14 P.O. Box 187000
15 Sacramento, CA 95818-7000

16 This Order shall become effective at 12 o'clock noon on
17 April 19 _____, 2011.

18 DATED: March 23 _____, 2011

19 JEFF DAVI
20 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

| | | |
|--|---|----------------|
| In the Matter of the Accusation of |) | No. H-36510 LA |
| INDEPENDENT REALTY FINANCE CORP. |) | |
| doing business as Independent |) | |
| Home Loans, Independent Realty, |) | |
| Independent Settlement Services, |) | |
| and JF Realty & Investments; |) | |
| CHRISTINA A. FISH; and <u>JAMES</u> |) | |
| <u>EDWARD FISH</u> , individually and as |) | |
| designated officer and former |) | |
| officer of Independent Realty |) | |
| Finance Corp., |) | |
| |) | |
| Respondents. |) | |

DECLARATION

My name is JAMES EDWARD FISH, and I am currently licensed as a real estate broker and/or have license rights with respect to said license. I am represented by Mary E. Work, Esq. in this matter.

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1 In lieu of proceeding in this matter in accordance
2 with the provisions of the Administrative Procedure Act
3 (Sections 11400 et seq., of the Government Code), I wish to
4 voluntarily surrender my real estate broker license and license
5 rights issued by the Department of Real Estate ("Department"),
6 pursuant to Business and Professions Code Section 10100.2.

7 I understand that by so voluntarily surrendering my
8 license and license rights, I may be relicensed as a broker only
9 by petitioning for reinstatement pursuant to Section 11522 of
10 the Government Code. I also understand that by so voluntarily
11 surrendering my license, I agree to the following:

12 1. The filing of this Declaration shall be deemed as
13 my petition for voluntary surrender.

14 2. It shall also be deemed to be an understanding
15 and agreement by me that I waive all rights I have to require
16 the Commissioner to prove the allegations contained in the
17 Accusation ("Accusation") filed in this matter at a hearing held
18 in accordance with the provisions of the Administrative
19 Procedure Act (Government Code Sections 11400 et seq.), and that
20 I also waive other rights afforded to me in connection with the
21 hearing such as the right to discovery, the right to present
22 evidence in defense of the allegations in the Accusation and the
23 right to cross-examine witnesses.

24 3. I further agree that upon acceptance by the
25 Commissioner, as evidenced by an appropriate order, all
26 affidavits and all relevant evidence obtained by the Department
27 in this matter prior to the Commissioner's acceptance, and all

1 allegations contained in the Accusation filed in the Department
2 Case No. H-36510 LA, may be considered by the Department to be
3 true and correct for the purpose of deciding whether to grant
4 relicensure or reinstatement pursuant to Government Code Section
5 11522.

6 4. I freely and voluntarily surrender all my license
7 and license rights under the Real Estate Law.

8 I declare under penalty of perjury under the laws of
9 the State of California that the above is true and correct and
10 that this declaration was executed on Jan 15th, 2010, 11
11 at Santa Ana, California.

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JAMES EDWARD FISH

Handwritten initials

1 SHARI SVENINGSON, SBN 195298
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6907 (direct)
6 -or- (213) 576-6982 (office)

FILED
MAR 15 2010
DEPARTMENT OF REAL ESTATE

Handwritten signature

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 INDEPENDENT REALTY FINANCE CORP.)
13 doing business as Independent)
14 Home Loans, Independent Realty,)
15 and JF Realty & Investments;)
16 CHRISTINA A. FISH; and JAMES)
17 EDWARD FISH, individually and as)
18 designated officer and former)
19 officer of Independent Realty)
20 Finance Corp.,)
21 Respondents.)

No. H-36510 LA

A C C U S A T I O N

20 The Complainant, Robin Trujillo, a Deputy Real Estate
21 Commissioner of the State of California, for cause of Accusation
22 against INDEPENDENT REALTY FINANCE CORP. dba Independent Home
23 Loans, Independent Realty, Independent Settlement Services, and
24 JF Realty & Investments, CHRISTINA A. FISH aka Christina
25 Anagnostopoulou Fish, individually and as designated officer of
26
27

1 Independent Realty Finance Corp., and JAMES EDWARD FISH,
2 individually and as former designated officer of Independent
3 Realty Finance Corp., alleges as follows:

4 1.

5 The Complainant, Robin Trujillo, acting in her official
6 capacity as a Deputy Real Estate Commissioner of the State of
7 California, makes this Accusation against INDEPENDENT REALTY
8 FINANCE CORP., CHRISTINA A. FISH and JAMES EDWARD FISH.

9 2.

10 All references to the "Code" are to the California
11 Business and Professions Code and all references to "Regulations"
12 are to Title 10, Chapter 6, California Code of Regulations.
13

14 3.

15 License History

16 A. INDEPENDENT REALTY FINANCE CORP. ("IRFC"). At all
17 times mentioned, Respondent INDEPENDENT REALTY FINANCE CORP. was
18 licensed or had license rights issued by the Department of Real
19 Estate ("Department") as a real estate broker. On August 28,
20 2004, IRFC was originally licensed as a corporate real estate
21 broker. At all times mentioned herein, Respondent IRFC was
22 authorized to act by and through Respondent CHRISTINA A. FISH as
23 IRFC's broker designated pursuant to Business and Professions
24 Code (hereinafter "Code") Sections 10159.2 and 10211 to be
25 responsible for ensuring compliance with the Real Estate Law.
26
27

1 B. CHRISTINA A. FISH. At all times mentioned,
2 Respondent CHRISTINA A. FISH ("CHRISTINA FISH") was licensed or
3 had license rights issued by the Department as a real estate
4 broker. On August 27, 2008, CHRISTINA FISH was originally
5 licensed as a real estate broker and on August 27, 2008, became
6 the designated officer of IRFC succeeding JAMES EDWARD FISH.

7 C. JAMES EDWARD FISH. At all times mentioned,
8 Respondent JAMES EDWARD FISH ("JAMES FISH") was licensed or had
9 license rights issued by the Department as a real estate broker.
10 On January 1, 2006, FISH was originally licensed as a real estate
11 broker. From January 1, 2006 to August 27, 2008 JAMES FISH was
12 the designated officer of IRFC, preceding CHRISTINA A. FISH.

13 D. JAMES EDWARD FISH, is the corporate President,
14 Secretary and Treasurer of IRFC. At all times mentioned herein,
15 JAMES FISH has owned or controlled more than 10% of IRFC's stock,
16 to wit, JAMES FISH is the sole shareholder of IRFC.
17

18

| Designated Officers | From | To |
|---------------------|---------|---------|
| Christina Fish | 8/28/08 | date |
| James Fish | 1/1-06 | 8/28/08 |

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Brokerage

4.

At all times mentioned, in the City of Santa Ana, County of Orange, IRFC, CHRISTINA FISH and JAMES FISH acted as real estate brokers conducting licensed activities within the meaning of:

A. Code Section 10131(a). Respondents IRFC, CHRISTINA FISH and JAMES FISH engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers, including the solicitation for listings of and the negotiation of the sale of real property as the agent of others. Respondents operated a residential resale brokerage dba Independent Realty and JF Realty and Investments.

B. Code Section 10131(d). Respondents IRFC, CHRISTINA FISH and JAMES FISH engaged in activities with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed and consummated on behalf of others for compensation or in expectation of compensation and for fees often collected in advance. Respondents operated a mortgage and loan brokerage dba Independent Home Loans and JF Realty and Investments; and

C. In addition, IRFC conducted broker-controlled escrows through its escrow division, Independent Settlement Services, under the exemption set forth in California Financial

1 Code Section 17006(a)(4) for real estate brokers performing
2 escrows incidental to a real estate transaction where the broker
3 is a party and where the broker is performing acts for which a
4 real estate license is required.

5 FIRST CAUSE OF ACTION

6 Escrow Audit

7 5.

8 On February 27, 2009, the Department completed an audit
9 examination of the books and records of IRFC pertaining to the
10 mortgage loan brokerage and broker-controlled escrow activities
11 described in Paragraph 4, which require a real estate license.
12 The audit examination covered a period of time beginning on
13 January 1, 2006 to October 31, 2008. The audit examination
14 revealed violations of the Code and the Regulations as set forth
15 in the following paragraphs, and more fully discussed in Audit
16 Report LA 080113 (mortgage loan) and LA 080141 (broker escrow)
17 and the exhibits and work papers attached to said audit report.
18

19 Bank Account

20 6.

21 At all times mentioned, in connection with the
22 activities described in Paragraph 4, above, IRFC accepted or
23 received funds including funds in trust (hereinafter "trust
24 funds") from or on behalf of actual or prospective parties,
25 including lenders, borrowers, homeowners and escrow holders for
26 mortgage loan transactions and escrows handled by IRFC.
27

1 Thereafter IRFC made deposits and or disbursements of such trust
2 funds. From time to time herein mentioned during the audit
3 period, said trust funds were deposited and/or maintained by IRFC
4 in the bank account as follows:

5 "Independent Real Finance Corp. dba Independent Home Loans Escrow
6 Account/Settlement Services
7 Account No. 168-9990198
8 Wells Fargo Bank
9 Santa Ana, CA 92705 (escrow bank account)

8
9 Audit Violations

10 7.

11 In the course of activities described in Paragraphs 4
12 and 6, above, and during the examination period described in
13 Paragraph 5, Respondents acted in violation of the Code and the
14 Regulations in that Respondents IRFC and:

15 (a) (1) CHRISTINA FISH. Permitted, allowed or caused
16 the disbursement of trust funds from the escrow bank account
17 where the disbursement of funds reduced the total of aggregate
18 funds in escrow bank account, to an amount which, on October 31,
19 2008, was \$2,968.20, less than the existing aggregate trust fund
20 liability of IRFC's to every principal who was an owner of said
21 funds, without first obtaining the prior written consent of the
22 owners of said funds, in violation of Code Section 10145 and
23 Regulations 2832.1, 2950(g) and 2951.

24 (a) (2) An unidentified and unaccounted deposit of funds
25 in the amount of \$25,237.74, was also found in the escrow bank
26 account. Said \$25,237.74 was reduced by the amount of the
27

1 shortage, \$2,968.20, to \$22,269.54, on October 31, 2008, in
2 violation of Code Section 10145 and Regulations 2950(d) and 2951.

3 (b) (1) CHRISTINA FISH and JAMES FISH. Mixed and
4 commingled trust funds belonging to borrowers and personal funds
5 by depositing credit report fees received through escrow in the
6 amount of \$9,932.36 into IRFC's general account, in violation of
7 Code Sections 10145 and 10176(e) and Regulation 2832.

8 (b) (2) CHRISTINA FISH and JAMES FISH. Failed to place
9 trust funds in the form of credit report fees collected at the
10 close of escrow, accepted on behalf of another into the hands of
11 the owner of the funds, a neutral escrow depository or into a
12 trust fund account in the name of the trustee at a bank or other
13 financial institution not later than three business days
14 following receipt of the funds by the broker or by the broker's
15 salesperson, in violation of Code Section 10145 and Regulation
16 2832(d).

17 (c) (1) JAMES FISH. Failed to retain a true and
18 correct copy of a Department of Real Estate approved Mortgage
19 Loan Disclosure Statement signed by the broker for borrowers G.
20 Sandoval, M. Ramirez, G. Ramyan, C. Jubilado, M. Learmouth and F.
21 Flores, in violation of Code Sections 10240, 10241 and Regulation
22 2840; and

23 (c) (2) JAMES FISH. Failed to disclose yield spread
24 premiums from lenders on the approved Mortgage Loan Disclosure
25
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1 Statement for the aforesaid borrowers, in violation of Code
2 Sections 10240, 10241 and Regulation 2840, as set forth below:

3 (d) CHRISTINA FISH and JAMES FISH. Failed to place
4 trust funds in the form of credit report fees collected from
5 borrowers at the close of escrow into a trust account in the name
6 of the broker as trustee at a bank or other financial
7 institution, in violation of Code Section 10145 of the Code and
8 Regulation 2832(a). Credit report fees were deposited into the
9 escrow bank account; they were not placed into a trust account.

10 (e) CHRISTINA FISH and JAMES FISH. Failed to maintain
11 an accurate and complete control record in the form of a columnar
12 record in chronological order of escrow trust funds received for,
13 in violation of Code Section 10145 and Regulations 2831, 2950(d)
14 and 2951.

15 (f) CHRISTINA FISH and JAMES FISH. Failed to maintain
16 an accurate and complete separate record for each beneficiary or
17 transaction, thereby failing to account for all escrow trust
18 funds received, in violation of Code Section 10145 and Regulation
19 2831.1, 2950(d) and 2951.

20 (g) CHRISTINA FISH and JAMES FISH. Failed to perform
21 an accurate monthly reconciliation of the balance of all separate
22 beneficiary or transaction records maintained pursuant to
23 Regulation 2831.1 with the record of all trust funds received and
24 disbursed by the escrow bank account, in violation of Code
25 Section 10145 and Regulations 2831.2, 2950(d) and 2951. An
26
27

1 unidentified and unaccounted deposit of funds in the amount of
2 \$25,237.74, was found in the escrow bank account.

3 (h) CHRISTINA FISH and JAMES FISH. Permitted
4 unlicensed and unbonded persons Alicia Smith and Gieselle
5 Abinales to be authorized signatories on the escrow bank account
6 into which were deposited escrow trust funds, in violation of
7 Code Section 10145 and Regulation 2834, 2950(d) and 2951.

8 (i) JAMES FISH. Failed to disclose in writing, to wit
9 on IRFC's escrow/settlement instructions to all parties of IRFC's
10 financial and ownership interest of its escrow division,
11 Independent Settlement Services, in violation of Code Sections
12 10145 and 10176(g) and Regulation 2950(h), as set forth in the
13 below table.
14

15

| Borrower | Escrow Number | Date of Escrow |
|-----------------------------------|---------------|----------------|
| Miguel Ramirez - Jennyzet Rios | 5557 - MS | 8/15/08 |
| Luis Ku | 5473 - AS | 5/18/07 |
| Michael/Denise Learmouth | 5548 - MS | 12/212/07 |
| Anna Ramirez. | 5545 - MS | 12/13/07 |

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Discipline Statutes and Regulations

8.

The conduct of Respondents INDEPENDENT REALTY FINANCE CORP., CHRISTINA FISH and JAMES FISH, described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

| PARAGRAPH | PROVISIONS VIOLATED |
|-----------|--|
| 7(a) | Code Section 10145 and Regulations 2832.1, 2950(d), 2950(g) and 2951 |
| 7(b) | Code Section 10145 and 10176(e) and Regulation 2832 |
| 7(c) | Code Sections 10240 and 10241 and Regulation 2840 |
| 7(d) | Code Section 10145 and Regulation 2832(a) |
| 7(e) | Code Section 10145 and Regulations 2831, 2950(d) and 2951 |
| 7(f) | Code Section 10145 and Regulations 2831.1, 2950(d) and 2951 |
| 7(g) | Code Section 10145 and Regulations 2831.2, 2950(d) and 2951 |
| 7(h) | Code Section 10145 and Regulations 2834, 2950(d) and 2951 |
| 7(i) | Code Sections 10145 and 10176(g) and Regulation 2950(h) |

1 The foregoing violations constitutes cause for the suspension or
2 revocation of the real estate license and license rights of
3 Respondents INDEPENDENT REALTY FINANCE CORP., CHRISTINA FISH and
4 JAMES FISH, under the provisions of Code Sections 10176(e),
5 10176(g), 10177(d) and/or 10177(g).

6 SECOND CAUSE OF ACTION

7 Loan Modification Violation

8 9.

9 At the time set forth below each and every Respondent
10 solicited borrowers and negotiated to do one or more of the
11 following acts for another or others, for or in expectation of
12 compensation: engaged in the business of, acted in the capacity
13 of, or advertised a loan modification service and advance fee
14 brokerage using the names including but not limited to
15 'Independent Realty' and Independent Settlement Services'
16 soliciting, offering to negotiate or perform loan modification
17 services with respect to loans which were secured by liens on
18 real property for compensation or in expectation of compensation
19 and for fees collected in advance of the transaction.

20 Lund transaction

21 10.

22 In approximately October 2008, Independent Settlement
23 Services, by and through Wolfgang Kuehn, solicited Mr. and Mrs.
24 Fred Lund (the Lunds) in order to provide loan negotiation and
25 modification services to save the Lund's home from foreclosure.
26
27

1 11.

2 In furtherance of Independent Settlement Services' plan
3 and scheme to provide loan negotiation and/or modification
4 services to the Lunds, Independent Settlement Services requested
5 an advance fee of \$2,279.62 from them. In reliance on
6 Independent Settlement Services' representations, the Lunds paid
7 Independent Settlement Services a total of \$2,279.62 between
8 October 31, 2008 and November 21, 2008.

9 12.

10 After the Lunds paid the \$2,279.62 mentioned above to
11 Independent Settlement Services, they received no further
12 communications or services of any type from anyone connected in
13 any way with Independent Settlement Services or Independent
14 Realty.

15 Gaxiola transaction

16 13.

17 In approximately September 2008, Independent Settlement
18 Services, by and through Ricardo Salazar, solicited Juan Manuel
19 Gaxiola (Gaxiola) in order to provide loan negotiation and
20 modification services to save the Gaxiola's home from
21 foreclosure.
22

23 14.

24 In furtherance of Independent Settlement Services' plan
25 and scheme to provide loan negotiation and/or modification
26 services to Gaxiola, Independent Settlement Services requested an
27

1 advance fee of \$1,995 from him. In reliance on Independent
2 Settlement Services' representations, the Gaxiola paid
3 Independent Settlement Services \$1,995 on or about September 2,
4 2008.

5 15.

6 After Gaxiola paid the \$1,995 mentioned above to
7 Independent Settlement Services, he received no further
8 communications or services of any type from anyone connected in
9 any way with Independent Settlement Services or Independent
10 Realty.

11 Miller transaction

12 16.

13 In approximately November 2008, Independent Settlement
14 Services, by and through Ricardo Salazar and Wolfgang Kuehn,
15 solicited Kalaokahku Miller (Miller) in order to provide loan
16 negotiation and modification services to save the Miller's home
17 from foreclosure.

18 17.

19 In furtherance of Independent Settlement Services' plan
20 and scheme to provide loan negotiation and/or modification
21 services to Miller, Independent Settlement Services requested an
22 advance fee of \$2,495 from Miller. In reliance on Independent
23 Settlement Services' representations, Miller paid Independent
24 Settlement Services \$2,495 on or about November 20, 2008.

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1 18.

2 After Miller paid the \$,2495 mentioned above to
3 Independent Settlement Services, Miller received no further
4 communications or services of any type from anyone connected in
5 any way with Independent Settlement Services or Independent
6 Realty.

7 19.

8 The conduct, acts or omissions of Respondents IRFC dba
9 Independent Realty, Independent Settlement Services, CHRISTINA
10 FISH and JAMES FISH, as set forth above in Paragraph 9-18,
11 subjects their real estate licenses and license rights to
12 discipline under the following Code Sections:

13 (a) 10176(a) for making false and/or misleading
14 representations in order to induce the forenamed homeowners to
15 enter into IRFC's loan modification program.

16 (b) 10176(b) for making false promises of a character
17 likely to influence, persuade or induce the forenamed homeowners,
18 to enter into IRFC's loan modification agreement.

19 (c) 10176(c) for a continued and flagrant course of
20 misrepresentation or making of false promises through real estate
21 agents or salespersons.

22 (d) 10176(i) and/or 10177(j) for fraud and dishonest
23 dealing.

24 (e) 10177(d) for all Respondents for willful disregard
25 of the Real Estate Law in connection with IRFC's loan
26

27

1 modification program.

2 (f) 10177(d) for violation of the Real Estate Law in
3 connection with IRFC's loan modification program.

4 (g) 10177(g) for negligence in connection with IRFC's
5 loan modification scheme.

6 (h) 10176(i) for failing to act in a fiduciary capacity
7 with respect to the forenamed homeowners.

8 (i) 10085 and Regulation 2970 for collecting advance
9 fees without having an approved advance fee agreement on file
10 with the Department.

11 Negligence

12 20.

13 The overall conduct of all Respondents constitutes
14 negligence and is cause for the suspension or revocation of the
15 real estate license and license rights of said Respondents
16 pursuant to the provisions of Code Section 10177(g).

17 Supervision and Compliance

18 21.

19 The overall conduct of Respondents CHRISTINA FISH and
20 JAMES FISH constitutes a failure on said Respondents' part, as
21 officer and former officer designated by a corporate broker
22 licensee, to exercise the reasonable supervision and control over
23 the licensed activities of IRFC as required by Code Section
24 10159.2 and Regulation 2725, and to keep IRFC in compliance with
25 the Real Estate Law, with specific regard to trust fund and
26
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1 credit report fee handling, escrow accounting and escrow
2 procedure, and mortgage and loan brokering, and is cause for
3 discipline of the real estate license and license rights of all
4 Respondents CHRISTINA FISH and JAMES FISH pursuant to the
5 provisions of Code Sections 10177(d), 10177(g) and 10177(h).

6 THIRD CAUSE OF ACTION

7 Criminal Conviction

8 22.

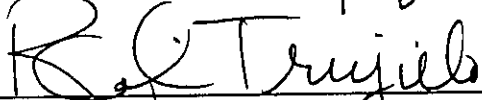
9 On or about April 15, 2009, in the United States
10 District Court Southern District of California, in case no. 8:03-
11 SA CR-03-318, Respondent JAMES FISH was convicted of violating
12 Title 18 U.S.C. Section 1343, 2(a) (Wire Fraud, Aiding and
13 Abetting), a felony. This crime involves moral turpitude, which
14 bears a substantial relationship under Section 2910, Title 10,
15 Chapter 6, California Code of Regulations to the qualifications,
16 functions or duties of a real estate licensee.
17

18 23.

19 The crime of which Respondent JAMES FISH was convicted,
20 as described in Paragraph 19 above, constitutes cause under
21 Sections 490 and 10177(b) of the Code for the suspension or
22 revocation of the license and license rights of Respondent under
23 the Real Estate Law.
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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
5 INDEPENDENT REALTY FINANCE CORP., CHRISTINA A. FISH and JAMES
6 EDWARD FISH dba Independent Home Loans, Independent Realty,
7 Independent Settlement, and JF Realty & Investments, under the
8 Real Estate Law (Part 1 of vision 4 of the Business and
9 Professions Code) and for such other and further relief as may be
10 proper under other applicable provisions of law.

11 Dated at Los Angeles, California *this 1 day of March 2010.*

12 
13 Deputy Real Estate Commissioner

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23
24 cc: Independent Realty Finance Corp.
25 c/o Christina A. Fish D.O.
26 James Edward Fish
27 Robin Trujillo
Sacto
Audits - Dorcas Cheng