

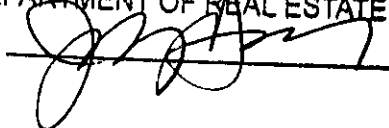
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Department of Real Estate
320 W. 4TH Street, Suite 350
Los Angeles, CA 90013-1105

Telephone: (213) 576-6982

FILED

FEB 14 2011

DEPARTMENT OF REAL ESTATE
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	
FUTURA FINANCIAL INC.; and)	No. H-36681 LA
SCOTT WILLIAM WILSON; individually)	L-2010070696
and as designated officer Futura)	
Financial Inc.,)	<u>STIPULATION</u>
)	<u>AND</u>
Respondents.)	<u>AGREEMENT</u>
)	
)	

It is hereby stipulated by and between Respondents
FUTURA FINANCIAL INC. and SCOTT WILLIAM WILSON, (sometimes
referred to as "Respondents"), represented by Michael A.
Lanphere, Esq., and the Complainant, acting by and through Julie
L. To, Counsel for the Department of Real Estate, as follows for
the purpose of settling and disposing of the Accusation
(Accusation) filed on June 15, 2010, in this matter:

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

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

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

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

21 4. This Stipulation is based on the factual
22 allegations contained in the Accusation. In the interest of
23 expedience and economy, Respondents choose not to contest these
24 allegations, but to remain silent and understand 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
27 action stipulated to herein. The Real Estate Commissioner shall

1 not be required to provide further evidence to prove said factual
2 allegations.

3 5. This Stipulation is made for the purpose of
4 reaching an agreed disposition of this proceeding and is
5 expressly limited to this proceeding and any other proceeding or
6 case in which the Department of Real Estate ("Department"), the
7 state or federal government, or any agency of this state, another
8 state or federal government is involved, and otherwise shall not
9 be admissible in any other criminal or civil proceedings.

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

20 7. The Order or any subsequent Order of the Real
21 Estate Commissioner made pursuant to this Stipulation shall not
22 constitute an estoppel, merger or bar to any further
23 administrative or civil proceedings by the Department of Real
24 Estate with respect to any matters which were not specifically
25 alleged to be causes for Accusation in this proceeding but do
26 constitute a bar, estoppel and merger as to any allegations
27 actually contained in the Accusations against Respondents herein.

1 8. Respondents understand that by agreeing to this
2 Stipulation, Respondents agree to pay, pursuant to Business and
3 Professions Code Section 10148, the cost of original audit (LA
4 090025 (Futura Financial Inc.) which led to this disciplinary
5 action. The amount of said cost for the audit is \$2,846.95.

6 9. Respondents have received, read, and understand the
7 "Notice Concerning Costs of Subsequent Audit". Respondents
8 further understand that by agreeing to this Stipulation, the
9 findings set forth below in the Determination of Issues become
10 final, and the Commissioner may charge Respondents for the cost
11 of any subsequent audit conducted pursuant to Business and
12 Professions Code Section 10148 to determine if the violations
13 have been corrected. The maximum cost of the follow-up audit
14 will not exceed \$2,846.95.

15 DETERMINATION OF ISSUES

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

18 I.

19 The conduct of FUTURA FINANCIAL INC. and SCOTT WILLIAM
20 WILSON, as described in Paragraph 4, above, are in violation of
21 Section 10145 of the Business and Professions Code ("Code") and
22 Section 2832 of Title 10, Chapter 6 of the California Code of
23 Regulations ("Regulations") and is a basis for discipline of
24 Respondent's licenses and license rights as a violation of the
25 Real Estate Law pursuant to Code Section 10177(d).

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1 II.

2 The conduct, acts or omissions of SCOTT WILLIAM WILSON,
3 as described in Paragraph 4, above, are in violation of Code
4 Section 10159.2 and is a basis for discipline of Respondent's
5 license and license rights as violation of the Real Estate Law
6 pursuant to Code Section 10177(h).

7 ORDER

8 WHEREFORE, THE FOLLOWING ORDER is hereby made:

9 I.

10 The license and licensing rights of Respondents FUTURA
11 FINANCIAL INC. and SCOTT WILLIAM WILSON, under the Real Estate
12 Law, are suspended for a period of sixty (60) days from the
13 effective date of this Decision.

14 A. Provided, however, that if Respondents request, the
15 initial thirty (30) days of said suspension (or a portion
16 thereof) shall be stayed for two (2) years upon condition that:

17 1. Each Respondent pays a monetary penalty pursuant to
18 Section 10175.2 of the Business and Professions Code at the rate
19 of \$66.66 per day for each day of the suspension for a monetary
20 penalty of \$2,000 each, or \$4,000 total.

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

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

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

11 5. If Respondents pay the monetary penalty and if no
12 further cause for disciplinary action against the real estate
13 license of Respondents occurs within two (2) years from the
14 effective date of the Decision, the stay hereby granted shall
15 become permanent.

16 B. The remaining thirty (30) days of the sixty (60)
17 day suspension shall be stayed for two (2) years upon the
18 following terms and conditions:

19 1. Respondents shall obey all laws, rules and
20 regulations governing the rights, duties and responsibilities of
21 a real estate licensee in the State of California; and

22 2. That no final subsequent determination be made
23 after hearing or upon stipulation, that cause for disciplinary
24 action occurred within two (2) years from the effective date of
25 this Decision. Should such a determination be made, the
26 Commissioner may, in his discretion, vacate and set aside the
27 stay order and reimpose all or a portion of the stayed

1 suspension. Should no such determination be made, the stay
2 imposed herein shall become permanent.

3 II.

4 Pursuant to Section 10148 of the Business and
5 Professions Code, Respondents shall pay the Commissioner's
6 reasonable cost for (a) the audit which led to this disciplinary
7 action (b) a subsequent audit to determine if Respondents are now
8 in compliance with the Real Estate Law. The cost of the original
9 and subsequent audits which led to this disciplinary action is
10 \$2,846.95. In calculating the amount of the Commissioner's
11 reasonable cost, the Commissioner may use the estimated average
12 hourly salary for all persons performing audits of real estate
13 brokers, and shall include an allocation for travel time to and
14 from the auditor's place of work. Said amount for the prior and
15 subsequent audits shall not exceed \$5,693.90.

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

20 The Commissioner may suspend the license of Respondents
21 pending a hearing held in accordance with Section 11500, et seq.,
22 of the Government Code, if payment is not timely made as provided
23 for herein, or as provided for in a subsequent agreement between
24 the Respondent and the Commissioner. The suspension shall remain
25 in effect until payment is made in full or until Respondents
26 enter into an agreement satisfactory to the Commissioner to
27 provide for payment, or until a decision providing otherwise is

1 adopted following a hearing held pursuant to this condition.

2 III.

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

14 IV.

15 Respondent SCOTT WILLIAM WILSON shall, within nine (9)
16 months from the effective date of this Decision, present evidence
17 satisfactory to the Real Estate Commissioner that Respondent has,
18 since the most recent issuance of an original or renewal real
19 estate license, taken and successfully completed the continuing
20 education requirements of Article 2.5 of Chapter 3 of the Real
21 Estate Law for renewal of a real estate license. If Respondent
22 fails to satisfy this condition, the Commissioner may order the
23 suspension of Respondent's license until Respondent presents such
24 evidence. The Commissioner shall afford Respondent the
25 opportunity for a hearing pursuant to the Administrative
26 Procedure Act to present such evidence.

27 ///


V.

Respondent SCOTT WILLIAM WILSON shall within six (6)
months from the effective date of this Decision, take and pass
the Professional Responsibility Examination administered by the
Department including the payment of the appropriate examination
fee. If Respondent fails to satisfy this condition, the
Commissioner may order suspension of Respondent's license until
Respondent passes the examination.

VI.

Respondent SCOTT WILLIAM WILSON shall, prior to the
effective date of this Decision, present evidence satisfactory to
the Real Estate Commissioner that Respondent has refunded to
borrowers Apama Sarkar (\$300.00), Christopher Michailov (\$60.00),
and Maria/Louis Quiroz (\$24.97) totaling \$384.97. If Respondent
fails to satisfy this condition, the Commissioner may order the
suspension of Respondent's license until Respondent presents such
evidence. The Commissioner shall afford Respondent the
opportunity for a hearing pursuant to the Administrative
Procedure Act to present such evidence.

DATED: 01-25-11


JULIE L. TO, Counsel for
the Department of Real Estate

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* * *

EXECUTION OF THE STIPULATION


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

Respondents (1) shall mail the original signed signature page of the stipulation herein to Julie L. To: Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Suite 350, Los Angeles, California 90013-1105. Additionally, Respondents (2) shall also facsimile or PDF a copy of signed signature page, to the Department at the following fax number: (213) 576-6917, Attention: Julie L. To.

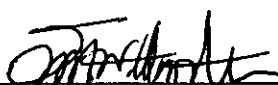
A facsimile or PDF constitutes acceptance and approval of the terms and conditions of this stipulation. Respondents agree, acknowledge and understand that by electronically sending to the Department a facsimile or PDF copy of Respondents' actual signature as it appears on the stipulation that receipt of the

1 facsimile or PDF copy by the Department shall be as binding on
2 Respondents as if the Department had received the original signed
3 stipulation.
4
5


6 DATED: 1/19/11


FUTURA FINANCIAL INC.
BY: SCOTT WILLIAM WILSON,
President of Futura Financial Inc.,
Respondent

11 DATED: 1/19/11


SCOTT WILLIAM WILSON, Respondent

16 DATED: 1/20/11


MICHAEL A. LANPHERE, ESQ.
Attorney for Respondent Futura
Financial Inc.
Approved as to form

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///


26 ///

* * *

1 The foregoing Stipulation and Agreement is hereby
2 adopted as my Decision as to Respondents FUTURA FINANCIAL INC.
3 and SCOTT WILLIAM WILSON, and shall become effective at 12
4 o'clock noon on MAR 16 2011, 2011.

5
6 IT IS SO ORDERED 2/9, 2011.

7
8 JEFF DAVI
9 Real Estate Commissioner

10 
11 BY: Barbara J. Bigby
12 Chief Deputy Commissioner

SECTION 10148
CALIFORNIA BUSINESS AND PROFESSIONS CODE

10148. (a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature.

(b) The commissioner shall charge a real estate broker for the cost of any audit, if the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

(c) If a broker fails to pay for the cost of an audit as described in subdivision (b) within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the cost is paid or until the broker's right to renew a license has expired.

The commissioner may maintain an action for the recovery of the cost in any court of competent jurisdiction. In determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers.

JULIE L. TO, SBN 219482
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6916 (direct)
-or- (213) 576-6982 (office)

FILED

JUN 15 2010

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H- 36681 LA
)	
FUTURA FINANCIAL INC.; and)	<u>A C C U S A T I O N</u>
SCOTT WILLIAM WILSON, individually)	
and as designated officer of)	
Futura Financial Inc.,)	
)	
Respondents.)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against FUTURA FINANCIAL INC. and SCOTT WILLIAM WILSON, individually and as designated officer of Futura Financial Inc., alleges as follows:

1.

The Complainant, Maria Suarez, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against FUTURA FINANCIAL INC. ("FFI") and SCOTT WILLIAM WILSON ("WILSON") .

///

2.

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

Licensing

3.

A. At all times mentioned, FFI and WILSON were licensed or had license rights issued by the Department of Real Estate ("Department") as real estate brokers.

B. At all times material herein, FFI was licensed by the Department as a corporate real estate broker by and through WILSON, pursuant to Code Sections 10211 and 10159.2 for supervising the activities requiring a real estate license conducted on behalf of FFI.

Brokerage

4.

At all times mentioned, in El Monte, County of Los Angeles, FFI and WILSON acted as real estate brokers and conducted licensed activities within the meaning of:

Code Section 10131(d). Respondents operated a mortgage and loan brokerage engaging 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

1 fees often collected in advance as well as at the conclusion of
2 transactions.

3 Audit

4 5.

5 On November 30, 2009, the Department completed an audit
6 examination of the books and records of FFI pertaining to the
7 mortgage and loan activities described in Paragraph 4 that
8 require a real estate license. The audit examination covered a
9 period of time beginning on September 1, 2006 to August 31, 2009.
10 The audit examination revealed violations of the Code and the
11 Regulations as set forth in the following paragraphs, and more
12 fully discussed in Audit Report LA 090025 and the exhibits and
13 work papers attached to said audit report.

14 Trust Account

15 6.

16 A trust account was not maintained during the audit.
17 period.

18 Audit Violations

19 7.

20 In the course of activities described in Paragraph 4
21 above, and during the examination period described in Paragraph
22 5, Respondents FFI and WILSON, acted in violation of the Code and
23 the Regulations in that Respondents:
24
25

26 ///

27 ///

1 (a) Failed to maintain a control record in the form of
2 a columnar record in chronological order of all "Trust Funds
3 Received, Not Placed Broker's Trust Account", in violation of
4 Code Section 10145 and Regulation 2831. Respondents did not
5 maintain a columnar record for transactions where credit report
6 fees and appraisal fees were collected at the close of escrow.

7 (b) Failed to maintain a separate record for each
8 beneficiary or transaction, thereby failing to account for all
9 trust funds received, in violation of Code Section 10145 and
10 Regulation 2831.1. Respondents did not maintain a columnar
11 record for transactions where credit report fees and appraisal
12 fees were collected at the close of escrow.

13 (c) Permitted and/or caused the disbursement of trust
14 funds to credit report companies on the representation that these
15 amounts were needed to pay for credit report fees and appraisal
16 fees, which payments exceeded the actual costs of these services.
17 Respondents did not disclose these "mark-ups" to borrower-
18 beneficiaries Aparna Sarkar, Christopher Michailov and
19 Maria/Louis Quiroz of said trust funds, and did not obtain their
20 consent to these "mark-ups". Respondents retained the difference
21 between the amounts paid and the actual costs of the services, in
22 violation of Code Section 10176(g).

23 (d) Mixed and commingled trust funds and personal funds
24 by depositing credit report fees and appraisal fees received from
25 escrow into FFI's general operating account and issuing checks
26 from said account to the appraisers or credit companies after the
27 escrow checks were deposited, in violation of Code Sections 10145

1 and 10176(e) and Regulation 2832.

2 (e)(1) Failed to retain a true and correct copy of a
3 Department of Real Estate approved Mortgage Loan Disclosure
4 Statement signed by the broker for borrowers William Moreno,
5 Jose/Ana Bravo, Aparna Sarkar, Christopher Michailov and
6 Maria/Louis Quiroz, in violation of Code Section 10240(a).

7 (e)(2) Failed to disclose (1) anticipated liens on the
8 subject property nor disclose the (2) yield spread premiums from
9 lenders on the approved Mortgage Loan Disclosure Statement for
10 the aforesaid borrowers, in violation of Code Section 10240(a)
11 and Regulation 2840.

12 (e)(3) Failed to provide or retain a true and correct
13 copy of a Good Faith Estimate that satisfies the requirements of
14 the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A
15 2601 et seq.), that (1) the Good Faith Estimate does not
16 constitute a loan commitment; and, further sets forth all
17 applicable disclosures including but not limited to (2) yield
18 spread premiums rebates by the lenders outside of closing for
19 borrowers William Moreno, Jose/Ana Bravo and Barbara Leon, in
20 violation of Code Section 10240(c).

21 (f) Failed to display FFI's and the loan agents license
22 numbers, Department's telephone number on the William Moreno,
23 Jose/Ana Bravo, Aparna Sarkar, Christopher Michailov and
24 Maria/Louis Quiroz Mortgage Loan Disclosure Statements, in
25 violation of Code Section 10236.4.

26 (g) Used the fictitious name of "FFI", to conduct
27 licensed activities including a loan modification and advanced

1 fee brokerage, without first obtaining from the Department a
2 license bearing said fictitious business name, in violation of
3 Code Section 10159.5 and Regulation 2731.

4 Disciplinary Statues

5 8.

6 The conduct of Respondents FFI and WILSON described in
7 Paragraph 7, above, violated the Code and the Regulations below:

8 PARAGRAPH

9 PROVISIONS VIOLATED

10 7(a)

11 Code Section 10145 and Regulation
12 2831

13 7(b)

14 Code Section 10145 and Regulation
15 2831.1

16 7(c)

17 Code Section 10176(g)

18 7(d)

19 Code Section 10145 and 10176(e) and
20 Regulations 2832

21 7(e)

22 Code Sections 10240 and 10240(a)
23 and Regulation 2840

24 7(f)

25 Code Section 10236.4
26
27

1
2 7(g)

Code Section 10159.5 and Regulation
3 2731
4

5 The foregoing violations constitute cause for the suspension or
6 revocation of the real estate license and license rights of FFI
7 and WILSON, under the provisions of Code Sections 10176(e),
8 10176(g), 10177(d) and/or 10177(g).

9 Negligence

10 9.

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

17 Broker Supervision

18 10.

19 The overall conduct of Respondent WILSON constitutes a
20 failure on Respondent's part, as officer designated by a
21 corporate broker licensee, to exercise the reasonable supervision
22 and control over the licensed activities of FFI in violation of
23 Code Section 10159.2, and to keep FFI in compliance with the Real
24 Estate Law, and is cause for the suspension or revocation of the
25 real estate license and license rights of WILSON pursuant to the
26 provisions of Code Sections 10177(d), 10177(g) and/or 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 Respondents
5 FUTURA FINANCIAL INC. and SCOTT WILLIAM WILSON, under the Real
6 Estate Law (Part 1 of Division 4 of the Business and Professions
7 Code) and for such other and further relief as may be proper
8 under other applicable provisions of law.

9 Dated at Los Angeles, California

10 this

June 3, 2010.


Deputy Real Estate Commissioner

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23
24 cc: Futura Financial Inc.
25 Maria Suarez
26 Sacto
27 Audits - Isabel Beltran