

**FILED**

MAR 13 2012

DEPARTMENT OF REAL ESTATE  
BY: 

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )	
12 )	
13 CALIFORNIA WESTERN FINANCIAL )	No. H- 37950 LA
14 INVESTMENTS INC. ; and )	
15 )	
16 GEORGE GORDON GETZ, )	<u>ACCUSATION</u>
17 individually and as designated officer of )	
18 California Western Financial )	
19 Investments Inc. )	
20 Respondents. )	

21 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of  
22 California, for cause of Accusation against CALIFORNIA WESTERN FINANCIAL  
23 INVESTMENTS INC., and GEORGE GORDON GETZ, individually and as designated officer  
24 of California Western Financial Investments Inc., alleges as follows:

25 1.

26 The Complainant, Maria Suarez, acting in her official capacity as a Deputy Real  
27 Estate Commissioner of the State of California, makes this Accusation.

28 2.

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

1 3.

2 License Status

3 A. CALIFORNIA WESTERN FINANCIAL INVESTMENTS INC. (CWFI). At  
4 all times mentioned, Respondent CWFI was licensed or had license rights issued by the  
5 Department of Real Estate (Department) as a real estate broker. On August 29, 1978, CWFI was  
6 originally licensed as a corporate real estate broker. Respondent CWFI was authorized to act by  
7 and through Respondent GEORGE GORDON GETZ as CWFI's designated broker pursuant to  
8 Business and Professions Code (hereinafter Code) Sections 10159.2 and 10211 to be responsible  
9 for ensuring compliance with the Real Estate Law.

10 B. GEORGE GORDON GETZ (GETZ). At all times mentioned, Respondent  
11 GETZ was licensed or had license rights issued by the Department as a real estate broker. On  
12 April 6, 1973, GETZ was licensed as a real estate broker. On December 24, 2010, GETZ became  
13 the designated officer of CWFI.

14 C. CWFI is owned by equally by George Gordon Getz and Caroline Getz, its  
15 CEO and President/Secretary respectively.

16 Brokerage

17 4.

18 At all times mentioned, in the City of Los Alamitos, County of Orange, CWFI and  
19 GETZ acted as real estate brokers conducting licensed activities within the meaning of:

20 A. Code Section 10131(d). Respondents engaged in activities with the public  
21 wherein lenders and borrowers were solicited for hard-money loans secured directly or  
22 collaterally by liens on real property, wherein such loans were arranged, negotiated, processed,  
23 consummated and serviced on behalf of others for compensation or in expectation of  
24 compensation and for fees often collected in advance; and

25 B. Financial Code Section 17006(a)(4). In addition, CWFI conducted broker-  
26 controlled escrows through its escrow division under the exemption set forth in Section  
27 17006(a)(4) of the California Financial Code for real estate brokers performing escrows

1 incidental to a real estate transaction where the broker is a party and where the broker is  
2 performing acts for which a real estate license is required.

3 FIRST CAUSE OF ACCUSATION  
4 (Audit)

5 5.

6 On December 15, 2011, the Department completed an audit examination of the  
7 books and records of CWFI limited to the mortgage loan and servicing brokerage and CWFI's  
8 activities, as described in Paragraph 4, which require a real estate license. The audit examination  
9 covered a period of time beginning on October 1, 2008 and ending on September 30, 2011. The  
10 audit examination revealed violations of the Code and the Regulations as set forth in the  
11 following paragraphs, and more fully discussed in Audit Report LA 110063/LA 110074 and the  
12 exhibits and work papers attached to said audit report.

13 Bank Accounts

14 6.

15 At all times mentioned, in connection with the activities described in Paragraph 4,  
16 above, CWFI accepted or received funds including funds in trust (hereinafter "trust funds") from  
17 or on behalf of actual or prospective parties including borrowers and lenders/investors for hard-  
18 money and thereafter made deposits and or disbursements of such funds. From time to time  
19 herein mentioned during the audit period, said trust funds were deposited and/or maintained by  
20 CWFI in the banks listed below as follows:

21 T/A 1

22 Bank: First Citizens Bank  
23 Bank Address: P.O. Box 27131  
24 Raleigh, NC  
25 Account Name: California Western Financial Investments Inc.  
Loan Servicing Trust Account  
26 Account No.: XXXXXX7464  
27

1 Purpose:-Depository of funds received from borrowers, disbursement of funds to  
2 lenders.

3 T/A 2

4 Bank: First Citizens Bank

5 Bank Address: P.O. Box 27131  
6 Raleigh, NC

7 Account Name: California Western Financial Investments Inc.  
8 Escrow Trust Account

9 Account No.: XXXXXX7456

10 Purpose: Depository of funds received from borrowers and disbursement of funds to  
11 lenders in connection with escrow transactions, disbursements to borrowers and to other  
12 parties..

13 Audit Violations

14 7.

15 In the course of activities described in Paragraphs 4 and 6, above, and during the  
16 examination period described in Paragraph 5, Respondents CWFI and GETZ, acted in violation  
17 of the Code and the Regulations in which Respondents:

18 (a) Permitted Steven J. Stadnick, a under bonded real estate salesperson, to be an  
19 authorized signatory on the loan servicing and escrow trust accounts, T/A #1 and T/A #2, in  
20 violation of Code Section 10145 and Regulation 2834.

21 (b) Failed to disclose an earnings credit relationship with First Citizens Bank,  
22 wherein bank services charges for the trust accounts were impermissibly offset by earnings credit  
23 earned by CWFI based on volume and flow of funds through said bank, in violation of Code  
24 Section 10176(g).

1 (c) Failed to retain a statement the wherein the private lenders indicated whether  
2 or not the loan they made exceeded ten (10%) of the lenders' net worth, thus failing to meet  
3 qualifying lender suitability standards, in violation of Code Section 10238(f).

4 (d) Negotiated and arranged the Rivas Investments loan for the purpose of  
5 construction, yet CWFI is in violation of Code Section 10238(h) for failing to :

6  
7 (1) use an independent neutral third-party escrow holder for all deposits and  
8 disbursements in the construction loan transactions for Loan #28702, for borrower  
9 Rivas Investments and lender Steven J. Stadnick, in violation of Section  
10 10238(h)(4)(A):

11 (2) use a comprehensive, detailed draw schedule to ensure proper and timely  
12 disbursements to allow for completion of their project (10238(h)(4)(C);

13 (3) base disbursement of draws on verification from independent and  
14 independent person who certified that the repair work performed met the  
15 respective code and standards. Instead, draws were based on an employee of  
16 CWFI, Nancy Maloy, determining the repair work to be  
17 satisfactory(10238(h)(4)(D); and

18 (4) Failed retain a detailed description of actions that would be taken in the  
19 event of a failure to complete the project, whether that failure is due to default,  
20 insufficiency of funds, or other causes, in violation of 10238(h)(4)(F).

21  
22  
23 (e) Failed to notify the Department of the employment of salesperson Susan  
24 Garcia, in violation of Code Section 10161.8 and Regulation 2752.

25 (f) Conducted escrow activities at 3351 Cerritos Avenue, in Los Alamitos,  
26 California, prior to obtaining branch office licenses from the Department, in violation of Code  
27 Section 10163 and Regulation 2715.

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(g) Failed to obtain a real estate endorsement as an [Mortgage Loan Officer] ???  
MLO before CWFI negotiated/serviced mortgage loans secured by one to four units of residential  
real property, in violation of Code Section 10166.02(b).

(h) Failed to disclose in writing to all parties of CWFI's financial interest and  
ownership of CWFI's Escrow Division, in violation of Code Section 10145 and Regulation  
2950(h).

Discipline Statutes and Regulations

8.

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

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
7(a)	Code Section 10145 and Regulation 2834
7(b)	Code Section 10176(g)
7(c)	Code Section 10238(f)
7(d)	Code Section 10238(h)
7(e)	Code Section 10161.8 and Regulation 2752
7(f)	Code Section 10163 and Regulation 2715
7(g)	Code Section 10166.02(b)
7(h)	Code Section 10145and Regulation 2950(h)

The foregoing violations constitute cause for discipline of the real estate license and license rights  
of Respondents CWFI and GETZ, as the case may be, under the provisions of Code Sections  
10177(d) and/or 10177(g).

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SECOND CAUSE OF ACCUSATION  
(Negligence)

9.

The overall conduct of Respondents CWFI and GETZ constitutes negligence and is cause for discipline of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

THIRD CAUSE OF ACCUSATION  
(Fiduciary Duty)

10.

The conduct, acts and omissions of Respondents CWFI and GETZ constitute a breach of fiduciary duty, owed the borrowers and lenders, of good faith, trust, confidence and candor, within the scope of their contractual relationship, in violation of Code Sections 10176(i) and/or 10177(g) and constitutes cause for discipline of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

FOURTH CAUSE OF ACCUSATION  
(Supervision and Compliance)

11.

The overall conduct of Respondent GETZ constitutes a failure on said Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of CWFI as required by Code Section 10159.2 and Regulation 2725, and to keep CWFI in compliance with the Real Estate Law, with specific regard to the lack of financial disclosures to lenders and identity disclosure to escrow holders, and proper investment qualification of private lenders, improper person on trust accounts with draw privileges, and is cause for discipline of the real estate license and license rights of Respondents pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this  
2 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action  
3 against the license and license rights of Respondents CALIFORNIA WESTERN FINANCIAL  
4 INVESTMENTS INC. and GEORGE GORDON GETZ, under the Real Estate Law (Part 1 of  
5 Division 4 of the Business and Professions Code) and for such other and further relief as may be  
6 proper under other applicable provisions of law including, but not limited to, restitution; costs of  
7 audit; and costs of investigation.  
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9  
10 Dated at Los Angeles, California

11 this

8 March 2012.

  
Deputy Real Estate Commissioner

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22 cc: California Western Financial Investments Inc.  
23 c/o George Gordon Getz D.O.  
24 Maria Suarez  
25 Sacto  
26 Enforcement – Anna Li  
27 Audits – Lisa Kwong