

By James B. Alon

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of ) No. H-38374 LA  
)  
K2 CAPITAL MANAGEMENT INC, and LAUREN )  
KERR LAYTON, individually, and as )  
former designated officer of K2 )  
Capital Management Inc, )  
)  
Respondents. )  
\_\_\_\_\_ )

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on January 7, 2013, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

FINDINGS OF FACT

1.

On August 23, 2012, Maria Surez made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed by certified mail, return receipt requested, and by regular mail to K2 CAPITAL MANAGEMENT INC's ("K2") last known mailing address on file with the California Department of Real Estate ("Department") on August 24, 2011. Both mailings were returned to sender with no forwarding address.

On November 6, 2012, Veronica Kilpatrick made the First Amended Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The First Amended Accusation was mailed by certified mail, return receipt requested, and by regular mail to K2's last known mailing address on file with the Department on November 8, 2012. Both mailings were returned to sender with no forwarding address.

On January 7, 2013, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, K2's default was entered herein.

2.

K2 is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter "Code"), as a corporate real estate broker. K2 was initially licensed by the Department on May 1, 2009.

3.

George T. Transaction

On or about September 2, 2009, George T. entered into an agreement with K2 in which K2 agreed to negotiate a modification of a loan secured by George T's real property, in exchange for George T's payment of advance fees to K2. \$2,500 in advance fees was received by K2 on September 2, 2009.

4.

Edward M. Transaction

On or about October 5, 2009, Edward M. entered into an agreement with K2 in which K2 agreed to negotiate a modification of a loan secured by Edward M's real property, in exchange for Edward M's payment of advance fees to K2. \$3,000 in advance fees was received by K2 on October 10, 2009.

5.

In aggravation, between March 17, 2009 and August 19, 2009, K2 entered into the following advance fee agreements, which were not approved by the Department:

Consumer(s)	Agreement Date	Advance Fee
Michael M.	3/17/09	\$3,490

Virginia G.	4/24/09	\$3,495
Clarence & Amy C.	8/3/09	\$2,995
Barbara R.	8/5/09	\$2,995
David E.	8/17/09	\$2,995
Frances B. & Veda M.	8/19/09	\$3,000

6.

On or about February 1, 2012, the Franchise Tax Board of the State of California forfeited K2's powers, rights and privileges pursuant to the provisions of the California Revenue and Taxation Code, and the entity's powers, rights and privileges remain forfeited to date.

7.

In aggravation, on or about May 18, 2012, the State of Washington, Department of Financial Services, Division of Consumer Affairs, in Case No: C-11-0589-12-F001, issued a Final Order in which K2 was ordered to cease and desist from engaging in the business of mortgage brokers or loan originators in the State of Washington. K2 was also prohibited from participating in the conduct of the affairs of a mortgage broker in the State of Washington for five (5) years. As more fully set forth in the Statement of Charges, the basis for the Order was that K2 conducted business as a mortgage loan broker in the State of Washington without being licensed to do so, and failed to maintain records, in violation of RCW 19.146.0202(1), (2), and (3), RCW 19.146.200(1) and WAC 208-660-155, RCW 19.146.060 and WAC 208-660-450.

#### DETERMINATION OF ISSUES

1.

Neither the agreements described in Finding 3 and 4 above, nor any other advance fee agreements used by K2 were approved by the Department. The use of the advance fee agreements, referred to in Findings 3 and 4 above, was in violation of Code Sections 10085 and 10085.5 and Title 10, Chapter 6, California Code of Regulations ("Regulations"),

Section 2970. This provides cause for the suspension or revocation of the license and license rights of K2, pursuant to Code Sections 10085, 10177(d), and 10177(g).

2.

The conduct of K2, as alleged In Finding 6 above, is in violation of Regulation 2742 and subjects its real estate license and license rights to suspension or revocation pursuant to Code Section 10177(d), 10177(g) and 10177(f).

3.

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER


All licenses and license rights of K2 CAPITAL MANAGEMENT INC under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on MAR 13 2013.

DATED: 4/31/13.

Real Estate Commissioner

By:



By AWET P. KIDANE  
Chief Deputy Commissioner

**FILED**

JAN - 7 2013

1 Department of Real Estate  
320 West Fourth Street, Suite 350  
2 Los Angeles, CA 90013

DEPARTMENT OF REAL ESTATE  
BY: Jane B. Olsen

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9 STATE OF CALIFORNIA

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No. H-38374 LA

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DEFAULT ORDER

Respondents.

17 Respondent K2 CAPITAL MANAGEMENT INC, having  
18 failed to file a Notice of Defense within the time required  
19 by Section 11506 of the Government Code, is now in default.  
20 It is, therefore, ordered that a default be entered on the  
21 record in this matter.

22 IT IS SO ORDERED

January 3, 2013

Real Estate Commissioner

25 BY:

Dolores Weeks

26 DOLORES WEEKS  
Regional Manager  
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