

FILED

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DEPARTMENT OF REAL ESTATE
BY: 

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
CAPITAL BENEFIT MORTGAGE INC.; and)
MARCEL PETER BRUETSCH, individually and as)
designated officer of Capital Benefit Mortgage Inc.;)
Respondents.)

No. H- 38467 LA

ACCUSATION

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against CAPITAL BENEFIT MORTGAGE INC. ("CBMI") and MARCEL PETER BRUETSCH ("BRUETSCH"), individually and as designated officer of Capital Benefit Mortgage Inc., is informed and alleges as follows:

1.

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

2.

From October 4, 2001, to the present, Respondent CBMI has been licensed as a corporate real estate broker. At all times relevant herein, CBMI was acting by and through

Respondent BRUETSCH as its designated broker-officer pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

3.

A. On May 16, 1998, BRUETSCH was licensed as a real estate broker. From November 9, 2009, BRUETSCH has been the designated officer of CBMI

Table: Designated Officer Tenure of Capital Benefit Mortgage Inc.

Designated Officer		Tenure
MARCEL PETER BRUETSCH	(current)	November 9, 2009 to date
RONALD NEIL KUROCIK	(former)	June 14, 2004 to November 9, 2009

4.

CBMI is a California corporation owned by real estate salesperson Robert M. Hardy, CBMI's president, secretary, and treasurer.

5.

Whenever reference is made in an allegation in this Accusation to an act or omission of "Respondents", such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondents committed such act or omission while engaged in the furtherance of the business or operations of Respondents and while acting within the course and scope of their corporate authority and employment, including BRUETSCH.

FIRST CAUSE OF ACCUSATION

(Mortgage Loan Audit of Capital Benefit Mortgage Inc.)

6.

At all times mentioned, in the City of Newport Beach, County of Orange, State of California, CBMI and BRUETSCH, acted as real estate brokers and conducted licensed activities within the meaning of:

1 A. Code Section 10131(d) wherein CBMI engaged in a mortgage loan and loan
2 servicing brokerage. CBMI negotiates and services private investor loans, soliciting both
3 borrowers and lenders. Between July 2011 and June 2012, CBMI negotiated thirty-seven (37)
4 private investor loans totaling \$9.2 million dollars. CBMI serviced sixty (60) loans with a
5 principal balance totaling \$14.7 million dollars. Annual loan collections from CBMI's loan
6 servicing activity totaled approximately \$9.7 million. CBMI currently reports to the Department
7 as a threshold broker and as a multi-lender. Between July 2001 to June 2012, CBMI packaged
8 seventy (70) loans totaling \$17.4 million dollars; and

9 B. In addition, CBMI conducted broker-controlled, in-house mortgage loan
10 escrows through its escrow division, under the exemption set forth in California Financial Code
11 for real estate brokers performing escrows incidental to a real estate transaction where the broker
12 is a party and where the broker is performing acts for which a real estate license is required
13 (California Financial Code Section 17006(a)(4)).

14 7.

15 Mortgage Loan and Loan Servicing Audit

16 On June 8, 2012, the Department completed an audit examination of the books
17 and records of Respondent CBMI pertaining to the mortgage loan and loan servicing activities
18 described in Paragraph 6, which require a real estate license. The audit examination covered a
19 period of time beginning on January 1, 2009 to January 31, 2012. The audit examination
20 revealed violations of the Code and the Title 10, Chapter 6, California Code of Regulations
21 ("Regulations") set forth in the following paragraphs, and more fully set forth in Audit Report LA
22 100220 and the exhibits and work papers attached thereto.

23 Trust Account

24 8.

25 At all times mentioned, in connection with the activities described in Paragraph 6,
26 above, CBMI accepted or received funds including funds in trust ("trust funds") from or on

1 behalf of actual or prospective parties involved in mortgage loans and loan servicing activities
2 including borrowers and private lenders handled by CBMI and thereafter made deposits and or
3 disbursements of such funds. From time to time herein mentioned, during the audit period, said
4 trust funds were deposited and/or maintained by CBMI in the bank account as follows:

5 "Capital Benefit Mortgage Inc. Loan Servicing Trust Account ("TA 1")
6 XXXXXXXXX3477"

7 Pacific Mercantile Bank
8 Newport Beach, California
9 (Loan Servicing Account)

10 "Capital Benefit Mortgage Inc. Escrow Trust Account ("TA 2")
11 XXXXXXXXX 5242"

12 Pacific Mercantile Bank
13 Newport Beach, California
14 (Escrow Trust Account for CBMI's mortgage loan activity)

15 Violations of the Real Estate Law
16 (Mortgage Loan Audit)

17 9.

18 In the course of activities described in Paragraphs 6 and 8, above, and during the
19 examination period, described in Paragraph 7, Respondents CBMI and BRUETSCH, acted in
20 violation of the Code and the Regulations in that Respondents:

21 (a) Failed to perform a monthly reconciliation of the balance of all separate
22 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all
23 trust funds received and disbursed by TA 1, in violation of Code Section 10145 and Regulation
24 2831.2.

25 (b) Failed to provide or deliver a Lender/Purchaser Disclosure Statement
26 containing adequate, accurate and complete information as required by Code Section 10232.5 to
private lenders Gil D. (7491), Jo Ann W. (7556), Michael W. (7556), LAXSTAR FLP (7510),

1 Joseph M (7510), Stephen T (7510), Ron F. (7478), William/Leonida M. (7478), before said
2 lenders became obligated to make the loan before the receipt by or on behalf of the broker of any
3 funds from said lenders for these multi-lender loans, in violation of Code Sections 10232.4 and
4 Regulation 2846.

5 (c) Failed to retain a Lender Purchaser Disclosure Statement wherein the lender-
6 purchasers indicated whether or not their investment in the multi-investor loans exceeded ten
7 (10%) of the lender-investor-purchasers net worth, in violation of Code Section 10238(f), for
8 lenders Jo Ann W. (7556), Wilma Joe H. (7510), Joseph M. (7510), Stephen T. (7510), and Leo
9 H. (7510).

10 (d) Failed to maintain an accurate and complete written loan servicing agreement
11 with borrowers and lenders or owners of the promissory notes/trust deeds demonstrating that
12 CBMI was authorized to service the promissory notes/trust deeds secured directly or collaterally
13 by liens on real property, in violation of Code Sections 10233.

14 During the audit period, CBMI maintained inadequate loan servicing agreements
15 with lenders-investors. CBMI was collecting and disbursing borrowers' payments on behalf of
16 private lenders. CBMI's loan servicing agreements failed to include statements that all payments
17 received will be deposited into the broker's trust account and that payments will not be
18 commingled with broker's funds. Also, CBMI's loan servicing agreement did not include a
19 statement that payments would be forwarded to the lenders within twenty-five (25) days of
20 receipt.

21 (e) Failed to provide a complete loan application to borrowers Rachelle D.,
22 Mogan S., and Santiago F., in violation of Code Section 10240 and Regulation 2842.5. CBMI
23 failed to display CBMI's and its agents license numbers on the Mortgage Loan Disclosure
24 Statements.

25 ///

(f) (1) Failed to display CBMI's and its agents license numbers on the Mortgage Disclosure Statements to borrowers Rachelle D., Mogan S., Santiago F., in violation of Code Section 10236.4.

(f) (2) Failed to display CBMI's and its agents license numbers on the Lender Purchaser Disclosure Statements to for lenders Gil D., and William/Leonida M., in violation of Code Section 10236.4.

(g) Failed to retain all records of CBMI's activity during the audit period requiring a real estate broker license, in violation of Code Section 10148.

(h) At all time herein mentioned, BRUETSCH was licensed by the Department as the designated officer of CBMI to qualify it and to act for it as a real estate broker and, as provided by Code Section 10159.2, was responsible for the supervision and control of the activities conducted on behalf of CBMI by its officers, managers and employees as necessary to secure full compliance with the provisions of the Real Estate Law for which a real estate license is required, in violation of Code Section 10177(h) and Regulation 2725.

10.

The conduct of Respondents CBMI and BRUETSCH, described in Paragraph 9, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
9(a)	Code Section 10145 and Regulation 2831.2
9(b)	Code Section 10232.4 and Regulation 2846
9 (c)	Code Section 10238(f)
9(d)	Code Section 10233
9(e)	Code Section 101240 and Regulation 2842.5
9(f)	Code Section 10236.4(b)
9(g)	Code Section 10148

1 9(h) Code Sections 10159.2 and 10177(h) and Regulation
2 2725 (BRUETSCH)

3 The foregoing violations constitute cause for the suspension or revocation of the real estate
4 licenses and license rights of Respondents CBMI and BRUETSCH under the provisions of Code
5 Sections 10177(d) and/or 10177(g) and 10177(h) (BRUETSCH).

6 SECOND CAUSE OF ACCUSATION
7 (Negligence)

8 11.

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

12 THIRD CAUSE OF ACCUSATION
13 (Fiduciary Duty)

14 12.

15 The conduct, acts and omissions of Respondents CBMI and BRUETSCH
16 constitute a breach of fiduciary duty, owed to CBMI's clients within the scope of their contractual
17 relationship and, in violation of Code Section 10177(g) and constitute cause for discipline of the
18 real estate license and license rights of said Respondents pursuant to the provisions of Code
19 Section 10177(g).

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and/or license rights of Respondents CAPITAL BENEFIT
4 MORTGAGE INC. and MARCEL PETER BRUETSCH, individually and as designated and
5 former designated officers of Capital Benefit Mortgage Inc. under the Real Estate Law (Part 1 of
6 Division 4 of the California Business and Professions Code) and for such other and further relief
7 as may be proper under other applicable provisions of law, including, but not limited to costs of
8 audit pursuant to Code Section 10148, and costs of investigation and enforcement pursuant to
9 Code Section 10106.
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11
12 Dated at Los Angeles, California.

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14 this 2nd day of October, 2012.

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16 
17 MARIA SUAREZ
18 Deputy Real Estate Commissioner
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23

24 cc: Capital Benefit Mortgage Inc.
25 Marcel Peter Bruetsch
26 Maria Suarez
Audits – Isabel Beltran
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