

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 NETWORK FUNDING; and) No. H- 38892 LA
)
ROBERT B. WALDMAN,) ACCUSATION
individually and as designated officer of)
Capital Network Funding,)
)
Respondents.)

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, Department of Real Estate ("Department") for cause of Accusation against CAPITAL NETWORK FUNDING ("CNF") and ROBERT B. WALDMAN ("WALDMAN"), individually and as designated officer of Capital Network Funding, a corporate real estate broker (collectively "Respondents"), is informed and alleges as follows:

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

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From August 10, 2000, through the present, Respondent CNF has been licensed as a real estate corporation. At all times relevant herein, CNF was acting by and through Respondent WALDMAN 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. The ownership and management structure of CNF as of February 28, 2012, is set forth in the table below:

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4.

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 WALDMAN and Harvey Waldman, deceased former owner of CNF.

FIRST CAUSE OF ACCUSATION
(Audit)

5.

At all times mentioned, in the City of Beverly Hills, County of Los Angeles, State of California, Respondents CNF and WALDMAN acted as real estate brokers and conducted licensed activities within the meaning of:

(a) Code Section 10131(d). Respondents engaged in a mortgage and loan brokerage including conducting activities with the public wherein institutional lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, and wherein such loans were arranged, negotiated, processed, consummated, packaged and serviced on behalf of others for compensation or in expectation of compensation and for fees often collected in advance. In addition, CNF solicited borrowers and lenders, negotiated, escrowed and serviced mortgage loans for compensation. CNF negotiated and escrowed mortgage loans for private lenders; and

(b) California Financial Code Section 17006(a)(4). CNF also conducted broker-controlled escrows through its escrow division, "Capital Network Escrow", under the exemption set forth in California Financial Code for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required.

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On June 28, 2012, the Department completed an audit examination of the books and records of Respondent CNF pertaining to the mortgage loan broker, loan servicing and broker escrow activity described in Paragraph 5, which require a real estate license. The audit examination covered a period of time beginning on January 1, 2010 to February 29, 2012. The audit examination revealed violations of the Code and the Title 10, Chapter 6, California Code of Regulations ("Regulations") set forth in the following paragraphs, and more fully set forth in Audit Report LA 100279 and 110191, and the exhibits and work papers attached thereto.

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At all times mentioned, in connection with the activities described in Paragraph 5, above, CNF accepted or received funds including funds in trust ("trust funds") from or on behalf of actual or prospective parties to transactions including lenders and borrowers handled by CNF and thereafter made deposits and or disbursements of such funds. CNF maintained trust accounts for handling advance fee collection activity during the audit period. From time to time herein mentioned, during the audit period, said trust funds were deposited and/or maintained by CNF in the trust accounts set forth below:

Bank:	City National Bank
Bank Address:	Los Angeles, CA 90064
Account Name:	Capital Network Funding Client Trust Account

Description:	TA1 was used to handle advance fee deposits and disbursements
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Bank Address: Los Angeles, CA 90064

Account No.: *****4755

Description: TA2 was used to handle escrow receipts and disbursements

Violations of the Real Estate Law

8.

In the course of activities described in Paragraphs 5 and 7, above, and during the examination period described in Paragraph 6, Respondents CNF and WALDMAN, acted in violation of the Code and the Regulations in which Respondents:

(a) Permitted, allowed or caused the disbursement of trust funds from bank account TA 1, the mortgage loan activity account, where the disbursement of funds reduced the total of aggregate funds in said account into which trust funds in the form of escrow monies were deposited, to an amount which, on February 29, 2012, was \$214,739.42, less than the existing aggregate trust fund accountability of CNF to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Section 10145(a) and Regulations 2832.1, 2950(g) and 2951. The shortage was cured on May 23, 2012;

(b)(1) Failed to file Threshold Trust Fund Status Report for the quarter ending September 30, 2011 within 30 days after the end of the quarter, in violation of Code Section 10232.25;

(b)(2) Failed to file Trust Account Report (Multi-Lender Transactions (RE 852) from June 30, 2011 to September 30, 2011, within 30 days of the end of the quarter, in violation of Code Sections 10232.25 and 10238(k)(3);

1 (c) (1) On or around February 10, 2011, withdrew or paid out trust funds
2 deposited into TA 1 without the prior written consent of every principal or party paying the
3 monies into the respective account, in violation of Code Section 10145. CNF's \$200,000.00
4 unauthorized withdrawal was used to pay off of loan number 1527 Canyon LLC re Engineered
5 Magnetix Inc., on behalf of investor/lender Caryn M, in violation of Code Section 10145; and
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7 (c) (2) On or around February 10, 2011, recorded a \$322,000.00 a deposit into TA
8 2, the escrow trust account, from the 1595 Telluride account when in fact such deposit had never
9 been received into TA 2. After recordation, CNF made unauthorized disbursements in the
10 amount of \$119,676.26 from TA 2, in violation of Code Section 10145;

11 (d) Failed to maintain an accurate and complete control record in the form of a
12 columnar record in chronological order of all trust funds received, deposited and disbursed by
13 CNF's trust accounts TA 1 and TA 2, in violation of Code Section 10145 and Regulation 2831,
14 2950(d) and 2951;

15 (e) Failed to maintain an accurate and complete separate record for all trust funds
16 received, deposited and disbursed by TA 1 and TA 2, in violation of Code Section 10145 and
17 Regulation 2831.1, 2950(d) and 2951;

18 (f) Failed to perform a monthly reconciliation of the balance of all separate
19 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all
20 trust funds received and disbursed by TA 1 and TA 2, in violation of Code Section 10145 and
21 Regulations 2831.2, 2950(d) and 2951;

22 (g) Failed to adequately supervise and control the mortgage loan, loan servicing
23 and broker escrow activity conducted under CNF's real estate broker license. Additionally, had
24 no system in place for regularly monitoring CNF's compliance with the Real Estate Law
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1 especially in regard to establishing, systems, policies and procedures to review trust fund
2 handling, and to keep CNF in compliance with the Real Estate Law, in violation of Code
3 Sections 10159.2, 10177(h) and Regulation 2725;

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5 9.

6 The conduct of Respondents CNF and WALDMAN, described in Paragraph 8,
7 above, violated the Code and the Regulations as set forth below:

8 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
9 8(a)	Code Section 10145 and Regulations 2832.1, 2950(g) and 2951
10 8 (b)	Code Sections 10232.25 and 10238(k)(3)
11 8 (c)	Code Section 10145
12 8 (d)	Code Section 10145 and Regulation 2831, 2950(g) and 2951
13 8 (e)	Code Section 10145 and Regulation 2831.1, 2950(g) and 2951
14 8 (f)	Code Section 10145 and Regulation 2831.2, 2950(g) and 2951
15 8 (g)	Code Sections 10159.2 and 10177(h) and Regulation 2725

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17 The foregoing violations constitute cause for discipline of the real estate licenses and license
18 rights of Respondents CNF and WALDMAN under the provisions of Code Sections 10177(d)
19 and/or 10177(g) and 10177(h)(WALDMAN).

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21 SECOND CAUSE OF ACCUSATION
22 (Negligence)

23 10.

24 The overall conduct of Respondents CNF and WALDMAN constitutes negligence
25 or incompetence and is cause for discipline of the real estate license and license rights of said
26 Respondents pursuant to the provisions of Code Section 10177(g).

THIRD CAUSE OF ACCUSATION
(Fiduciary Duty)

11.

The conduct, acts and omissions of Respondents CNF and WALDMAN constitutes a breach of fiduciary duty, owed to CNF's mortgage loan and loan service brokerage clientele and escrow trust fund beneficiaries of good faith, trust, confidence and candor, within the scope of their brokerage and business relationship, in violation of Code Section 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).

12.

Code Section 10106 provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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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 NETWORK
4 FUNDING and ROBERT B. WALDMAN, individually and as former designated officer of
5 Capital Network Funding, under the Real Estate Law (Part 1 of Division 4 of the California
6 Business and Professions Code) and for such other and further relief as may be proper under
7 other applicable provisions of law, including but not limited to (1) restitution where applicable,
8 pursuant to Government Code Section 11519(d); (2) costs of audit pursuant to Code Section
9 10148; and costs of investigation and enforcement pursuant to Code Section 10106, respectively.
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11 Dated at Los Angeles, California.

12 this 22 day of May, 2013.
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14 ROBIN TRUJILLO
15 Deputy Real Estate Commissioner
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23 cc: Capital Network Funding
24 Robert B. Waldman D.O.
25 Robin Trujillo
26 Audits – Darryl Thomas
Sacto