

1 DEPARTMENT OF REAL ESTATE  
2 Los Angeles, CA 90013-1105  
3 Telephone: (213) 620-2072

**FILED**

SEP 22 2022

DEPT. OF REAL ESTATE

By 

7 BEFORE THE DEPARTMENT OF REAL ESTATE  
8 STATE OF CALIFORNIA

9 \* \* \* \*

10 In the Matter of the Accusation against )  
11 NEWPORT CAPITAL REAL ESTATE INC., ) DRE No. H-42273 LA  
12 Respondent. )  
13 \_\_\_\_\_ )

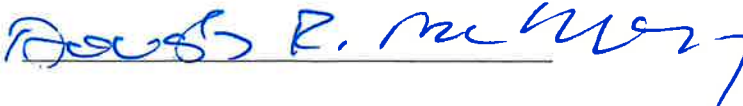
14 DISMISSAL

15 Respondent NEWPORT CAPITAL REAL ESTATE INC.'s license expired on June 28,  
16 2020. Pursuant to Business and Professions Code Section 10201, respondent failed to renew its  
17 license within the two-year grace period; as a result, all license rights have expired.

18 The Accusation herein filed on April 12, 2022, against NEWPORT CAPITAL REAL  
19 ESTATE INC. only, is DISMISSED without prejudice.

20 IT IS SO ORDERED 9.16.22

21 DOUGLAS R. McCAULEY  
22 REAL ESTATE COMMISSIONER

23   
24  
25  
26  
27

FILED

JUN 13 2022

DEPT. OF REAL ESTATE

By Ammon

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation against

DRE No. H-42273 LA

NEWPORT CAPITAL REAL ESTATE, INC. and  
JOHN THORNFIN TAIT, individually and as  
designated officer for Newport Capital Real Estate, 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 May 25, 2022, and the Findings of Fact set forth herein, which are based on one or more of the following: (1) The express admissions of Respondents NEWPORT CAPITAL REAL ESTATE, INC. and JOHN THORNFIN TAIT (collectively "Respondents"); (2) affidavits; and (3) other evidence.

This Decision revokes one or more real estate licenses on the grounds of the violation of the Real Estate Law, Part 1 commencing with Section 10000 of the Business and Professions Code ("Code") and/or the Regulations of the Real Estate Commissioner, Title 10, Chapter 6 of the California Code of Regulations ("Regulations").

Pursuant to Government Code Section 11521, the California Department of Real Estate ("the Department") may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license, or to the reduction of a penalty, is controlled by Section 11522 of the Government Code. A copy of Government Code Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

## FINDINGS OF FACT

1.

On March 11, 2022, Veronica Kilpatrick made the Accusation in her official capacity as a Supervising Special Investigator of the Department. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, return receipt requested, to Respondent's last known mailing address on file with the Department on April 12, 2022.

On May 25, 2022, no Notice of Defense having been received or filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

2.

Respondents were licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Code. Respondent NEWPORT CAPITAL REAL ESTATE, INC.'s ("NCREI") real estate corporation license expired on July 1, 2021. Respondent JOHN THORNFIN TAIT's ("TAIT") real estate broker license expired on January 22, 2022. Respondents have renewal rights pursuant to Code section 10201. The Department retains jurisdiction pursuant to Code Section 10103.

3.

At all times mentioned, Respondents NCREI and TAIT were licensed and/or had licensing rights issued by the Department of Real Estate as a real estate corporation and broker, respectively.

4.

At all times mentioned, in the State of California, Respondents acted as real estate brokers, by conducting, or offering to conduct, licensed activities within the meaning of Code Section 10131, subdivision (a) (sells, buys, or negotiates the purchase, sale or exchange of real property) and subdivision (d) (solicits borrowers or lenders for or negotiates loans in connection with loans secured by real property).

5.

Attached as Exhibit "A" is a true and correct copy of the Accusation filed on April 12, 2022, which is incorporated herein as part of this Decision.

6.

The Department incurred investigation costs of \$7,722.40 and enforcement costs of \$3,120.00 in this matter.

DETERMINATION OF ISSUES

7.

The allegations contained in the Accusation, incorporated herein by reference made in Paragraph 5, above, constitute cause for the suspension or revocation of all the licenses, license endorsements, and license rights of Respondent NCREI under the provisions of Business and Professions Code section 10176, subdivision (a), and Business and Professions Code section 10177, subdivisions (d), (f), (j), and (g), for violation of Business and Professions Code section 10130, 10137, and Regulation 2742, subdivision (c), of the Regulations of the Real Estate Commissioner, Title 10, Chapter 6, California Code of Regulations.

8.

The allegations contained in the Accusation, incorporated herein by reference made in Paragraph 5, above, constitute cause for the suspension or revocation of all the licenses, license endorsements, and license rights of Respondent TAIT under the provisions of Business and Professions Code section 10177, subdivisions (h), (d), and (g), for violation of Business and Professions Code section 10159.2.

9.

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

ORDER

All licenses and licensing rights of Respondents NEWPORT CAPITAL REAL ESTATE, INC. and JOHN THORNFIN TAIT 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 7/13/2022.

DATED: 06-16-22

REAL ESTATE COMMISSIONER

  
DOUGLAS R. McCAULEY

1 LISSETE GARCIA, Counsel (SBN 211552)  
Department of Real Estate  
2 320 West 4th Street, Suite 350  
Los Angeles, California 90013-1105  
3 Telephone: (213) 576-6982  
Direct: (213) 576-6914  
4 Fax: (213) 576-6917  
*Attorney for Department of Real Estate*

**FILED**

APR 12 2022

DEPT. OF REAL ESTATE  
By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation against  
  
12 NEWPORT CAPITAL REAL ESTATE, INC., and  
JOHN THORFIN TAIT, individually and as  
13 designated officer for Newport Capital Real Estate, Inc.,  
  
14 Respondents.

DRE No. 42273 LA

ACCUSATION

16 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the  
17 Department of Real Estate<sup>1</sup> ("Department") of the State of California, makes this Accusation in  
18 her official capacity for cause of Accusation against NEWPORT CAPITAL REAL ESTATE,  
19 INC. and JOHN THORFIN TAIT, individually and as designated officer for Newport Capital  
20 Real Estate, Inc. (collectively "Respondents"), is informed and alleges as follows:

21 1. All references to the "Code" are to the California Business and Professions Code  
22 and all references to "Regulations" are to the Regulations of the Real Estate Commissioner,  
23

24 <sup>1</sup> Between July 1, 2013 and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate under the Department of Consumer Affairs.

1 Title 10, Chapter 6, California Code of Regulations.

2 2. Respondents are presently licensed and/or have license rights under the Real  
3 Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

4 Statement of Facts

5 Licenses

6 3. On June 29, 2016, the Department issued a real estate corporation license to  
7 Respondent NEWPORT CAPITAL REAL ESTATE, INC. ("NCREI"), License ID 02010996.

8 4. Respondent NCREI's license expired on June 30, 2021. Respondent NCREI has  
9 renewal rights pursuant to Code section 10201. The Department retains jurisdiction pursuant to  
10 Code section 10103.

11 5. On or about September 17, 2005, the Department issued a real estate broker  
12 license to Respondent JOHN THORFIN TAIT ("TAIT, Sr."), License ID 01701522.

13 6. Respondent TAIT, Sr.'s license expired on January 22, 2022. Respondent TAIT,  
14 Sr. has renewal rights pursuant to Code section 10201. The Department retains jurisdiction  
15 pursuant to Code section 10103.

16 7. From June 29, 2016, through June 30, 2021, Respondent NCREI was licensed by  
17 the Department as a corporate real estate broker, by and through Respondent TAIT, Sr. as  
18 designated officer-broker of Respondent NCREI to qualify said corporation and to act for said  
19 corporation as a real estate broker.

20 8. At all times relevant herein, Respondent TAIT, Sr. was licensed as the  
21 designated officer-broker for Respondent NCREI, pursuant to section 10211 of the Code. As  
22 said designated officer-broker, Respondent TAIT, Sr., was, at all times mentioned herein,  
23 responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the  
24 officers, agents, real estate licensees, and employees of Respondent NCREI for which a license

1 is required.

2 9. Whenever reference is made in an allegation in this Accusation to an act or  
3 omission of Respondent NCREI, such allegation shall be deemed to mean that the officers,  
4 directors, employees, agents and/or real estate licensees employed by or associated with  
5 Respondent NCREI committed such act or omission while engaged in the furtherance of the  
6 business or operations of such corporate respondent and while acting within the course and  
7 scope of their authority and employment.

8 10. John Robert Tait ("Tait, Jr.") was licensed by the Department as a real estate  
9 salesperson from January 3, 2005 through October 20, 2010, License ID 01466684. The  
10 Department revoked John Tait, Jr.'s real estate salesperson on October 21, 2010. Tait, Jr. is  
11 believed to be the son of Respondent TAIT, Sr.

12 11. On May 22, 2012, the Department issue a real estate salesperson license to Jodi  
13 Trycha Gonzalez ("Gonzalez"), License ID 01895861.

14 12. Christopher Anthony Zarbo ("Zarbo") was licensed by the Department as a real  
15 estate salesperson from April 25, 2006 through June 26, 2012, License ID 01747323. Zarbo  
16 surrendered his real estate salesperson license on or about June 26, 2012.

17 Prior Discipline

18 13. On February 22, 2010, the Department filed a First Amended Accusation in Case  
19 No. H-36110 LA against Tait, Jr., among others. The First Amended Accusation alleged cause  
20 to suspend or revoke Tait, Jr.'s license pursuant to Code section 10177, subdivisions (d) and/or  
21 (g), based on unlawful compensation and unlicensed activities conducted by individuals  
22 including Jodi Gonzalez, an unlicensed person at the time. An administrative hearing was held  
23 and Tait, Jr.'s license was revoked effective October 21, 2010, pursuant to Code section 10177,  
24 subdivisions (d) and (g).

1           14.     On August 3, 2009, the Department filed an Order to Desist and Refrain in Case  
2 No. H-36152 LA against Tait, Jr. for alleged unlicensed activities in violation of Code section  
3 10130.

4           15.     On August 4, 2010, the Department filed an Amended Order to Desist and  
5 Refrain in Case No. H-36589 LA against several entities and individuals including Zarbo and  
6 Jodi Gonzalez for alleged unlicensed activities and unlawful collection of advance fees.

7           16.     On August 18, 2011, the Department filed an Order to Desist and Refrain in  
8 Case No. H-37451 LA against Zarbo and Jodi Gonzalez, among others, for alleged unlicensed  
9 activities and unlawful collection of advance fees.

10          17.     On October 27, 2011, the Department filed a First Amended Accusation in Case  
11 No. H-37358 LA against Zarbo, among others for alleged unlawful employment and  
12 compensation, use of unlicensed fictitious business names, and office abandonment, among other  
13 charges. Gonzalez was one of the individuals alleged to have engaged in unlicensed activities.  
14 Zarbo surrendered his real estate salesperson license effective June 26, 2012.

15          18.     On or about May 4, 2021, Zarbo's petition for reinstatement of Zarbo's real estate  
16 salesperson license was denied.

17   First Cause of Accusation

18   Suspended Corporate Status

19          19.     NCREI is a corporation formed in California, on or about January 5, 2016,  
20 California Corporate Number C3860362. The California Secretary of State suspended  
21 NCREI's corporation status on July 25, 2018, pursuant to the provisions of the California  
22 Corporations Code. The California Franchise Tax Board suspended the entity's powers, rights,  
23 and privileges on December 3, 2018, pursuant to the provisions of the California Revenue and  
24 Taxation Code. NCREI's powers, rights, and privileges remain suspended.



1 20. The suspension of Respondent NCREI is in violation of Regulation 2742,  
2 subdivision (c) and constitutes grounds to suspend or revoke Respondent NCREI's corporate real  
3 estate broker license pursuant to Code section 10177, subdivisions (d) and/or (g).

4 21. Said corporate suspension would have constituted grounds for the denial of  
5 Respondent's corporate real estate broker license under Regulation section 2742 of Chapter 6,  
6 Title 10, California Code of Regulations and is now cause to suspend or revoke the license and  
7 license rights of Respondent NCREI pursuant to Code section 10177, subdivision (f).

8 22. The conduct, acts and/or omissions of Respondent TAIT, Sr. as set forth in  
9 Paragraphs 18 and 19, above, in failing to adequately supervise the activities of Respondent  
10 NCREI is in violation of Section 10159.2 of the Code and constitutes grounds to suspend or  
11 revoke the license and/or license rights of Respondent TAIT, Sr. pursuant to Code section  
12 10177, subdivisions (h), (d) and/or (g).

13 Second Cause of Accusation

14 Berrendo Property

15 23. There is hereby incorporated in this Second, separate and distinct Cause of  
16 Accusation, all of the allegations contained in Paragraphs 1 through 22, with the same force and  
17 effect as if herein fully set forth.

18 24. On or about February 12, 2018, T.D. and D.D.<sup>2</sup> ("buyers/borrowers") purchased  
19 real property located at 24372 Berrendo #7, Laguna Hills ("Berrendo property") from sellers,  
20 K.E. and G.S., who are licensed real estate salespersons.

21 25. NCREI was listed as the broker for the buyers/borrowers in the 2018 purchase  
22 transaction. During the 2018 purchase transaction, the buyers/borrowers dealt with Tait, Jr.,  
23

24 <sup>2</sup> Initials are used in place of individuals' full names to protect their privacy. Documents containing individuals' full names will be provided during the discovery phase of this case to Respondent(s) and/or their attorneys, after service of a timely and proper request for discovery on Complainant's counsel.

1 who was acting on behalf of NCREI. Respondents misrepresented Tait, Jr.'s licensure and  
2 license status by using NCREI'S license number (02010996) for both "John Tait" and NCREI  
3 on the purchase agreement and other transaction documents.

4 26. Both Gonzalez and Zarbo were involved in facilitating the mortgage loan  
5 obtained by the buyers/borrowers for the purchase of the Berrendo property in 2018.

6 27. Due to problems with the loan and payments, the buyers/borrowers decided to  
7 sell the Berrendo property. On December 1, 2018, Gonzalez listed the Berrendo property for  
8 sale. The listing expired on April 1, 2019.

9 28. On April 30, 2019, Tait, Jr., acting on behalf of NCREI, entered into a listing  
10 agreement with the buyers/borrowers for the sale of the Berrendo property. NCREI's corporate  
11 status had been suspended as of July 25, 2018. Respondents misrepresented Tait, Jr.'s licensure  
12 and license status by using NCREI'S license number (02010996) for both "John Tait" and  
13 NCREI on the listing agreement. According to the listing agreement, NCREI was to receive  
14 compensation of six percent (6%) of the listing price.

15 29. On June 14, 2019, Respondents listed the Berrendo property for sale on the  
16 Multiple Listing Service ("MLS"). NCREI was listed as the listing office on the MLS listing.  
17 Again, NCREI's corporate status had been suspended as of July 25, 2018. The listing agent on  
18 the MLS listing was "John Tait" with TAIT, Sr.'s license number (01701522). The  
19 buyers/borrowers dealt with Tait, Jr. regarding the sale of the Berrendo property in 2019.

20 30. On September 17, 2019, Tait, Jr. negotiated an agreement with the  
21 buyers/borrowers of the Berrendo property, and executed a "Modification of Listing, Buyer  
22 Representation or Other Agreement Between Principal and Broker." According to the  
23 agreement, the buyers' agent commission would be 2.25% and the selling agent commission  
24 would be a flat fee of \$500 paid by the seller. The Respondents misrepresented Tait, Jr.'s

1 licensure and license status by using NCREI'S license number (02010996) for both "John Tait"  
2 and NCREI on the agreement.

3 31. Tait, Jr. negotiated with the buyers/borrowers of the Berrendo property regarding  
4 the sale of the Berrendo property. Tait, Jr. charged and demanded an advance fee of \$13,500.00  
5 from the buyers/borrowers for performing services related to the sale and/or modification or  
6 refinance of loans secured by liens on the Berrendo property.

7 32. Sigma Spectrum, Inc. is a corporation formed in Nevada, which is owned and/or  
8 controlled by Tait, Jr. Sigma Spectrum, Inc. has never been licensed by the Department in any  
9 capacity.

10 33. On September 18, 2019, Tait, Jr. charged and collected an advance fee of  
11 \$7,000.00 from the buyers/borrowers of the Berrendo property. The buyers/borrowers paid a  
12 fee of \$30.00 to wire the advance fee funds to Tait, Jr. through Sigma Spectrum, Inc.

13 34. On October 11, 2019, Tait, Jr. charged and collected an advance fee of \$6,500.00  
14 from the buyers/borrowers of the Berrendo property. The buyers/borrowers paid a fee of  
15 \$30.00 to wire the advance fee funds to Tait, Jr. through Sigma Spectrum, Inc.

16 35. The buyers/borrowers of the Berrendo property were unable to sell or refinance  
17 the Berrendo property. In or around May, 2020, the buyers/borrowers asked Tait, Jr. for a  
18 refund of the \$13,500.00 advance fees that they had paid to Tait, Jr. through Sigma Spectrum,  
19 Inc. Tait, Jr. refused to refund the \$13,500.00 in advance fees that Tait, Jr. had collected in  
20 violation of Code sections 10085, 10085.5, and/or 10085.6.

21 36. On March 8, 2021, the buyers/borrowers submitted a complaint to the  
22 Department against Respondents, Tait, Jr., and others.

23 ///

24 ///

1 Unlicensed Activity/Unlawful Compensation

2 37. NCREI and Tait, Jr., engaged in activities which require a real estate broker  
3 license under Code section 10131, subdivisions (a) and/or (d), for compensation or in  
4 expectation of compensation, in violation of Code sections 10130, 10137, and Regulation 2742,  
5 subdivision (c).

6 Advance fees

7 38. Tait, Jr. and Sigma Spectrum, Inc. charged and collected advance fees for  
8 performing or offering to perform activities for borrowers in connection with loans secured by a  
9 lien on real property, or performing or offering to perform activities which require a real estate  
10 broker license, in violation of Code sections 10085, 10085.5, 10085.6, 10146, and Regulations  
11 2970 and 2972.

12 Misrepresentations/Fraud or Dishonest Dealing

13 39. The conduct, acts and/or omissions of NCREI and Tait, Jr., as described above in  
14 Paragraphs 23 through 36, involved making substantial misrepresentations to the  
15 buyers/borrowers of the Berrendo property, which constitutes cause to suspend or revoke the  
16 real estate licenses and license rights of Respondents NCREI and TAIT, Sr. pursuant to Code  
17 section 10176, subdivision (a), and/or Code section 10177, subdivision (j).

18 NCREI and TAIT, Sr.

19 40. The conduct, acts and/or omissions of Respondents, as described above, constitutes  
20 cause to suspend or revoke the real estate licenses and license rights of Respondents NCREI and  
21 TAIT, Sr. pursuant to Code section 10176, subdivision (a), and Code section 10177,  
22 subdivisions (d), (j), and/or (g), for violation of Code sections 10130, 10137, and Regulation  
23 2742, subdivision (c).

24 ///

1 Broker Supervision-TAIT, Sr.

2 41. The conduct, acts and/or omissions of Respondent TAIT, Sr., in allowing NCREI  
3 and Tait, Jr. to violate Code sections 10176, subdivision (a), 10177, subdivision (j), 10130,  
4 10137, 10085, 10085.5, 10085.6, 10146, and Regulations 2970, 2972, and 2742, subdivision  
5 (c), constitutes cause to suspend or revoke the real estate license and license rights of  
6 Respondent TAIT, Sr. pursuant to Code section 10177, subdivision (h), for violation of Code  
7 section 10159.2.

8 Investigation and Enforcement Costs

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

14 Statutory Provisions

15 43. Regulation 2742 provides:

16 "Regulation 2742. Certificate of Status, Qualification or Good Standing.

17 (a) An applicant for an original broker license for a domestic corporation  
18 shall submit with the application, a Certificate of Status (Domestic Corporation)  
19 executed by the California Secretary of State not earlier than 30 days before the  
20 date of mailing or delivering the application to the headquarters office of the  
21 Bureau. However, if the applicant is a domestic corporation which filed its  
22 original Articles of Incorporation not earlier than six (6) months before the date of  
23 mailing or delivering the application to the headquarters office of the Bureau,  
24 Articles of Incorporation executed by the California Secretary of State may be  
submitted instead of a Certificate of Status.

(b) An applicant for an original broker license for a foreign corporation  
shall submit with the application, a Certificate of Qualification or a Certificate of  
Good Standing (Foreign Corporation) executed by the California Secretary of  
State not earlier than 30 days before the date of mailing or delivering the  
application to the headquarters office of the Bureau.

1 (c) A corporation licensed under Section 10211 of the Code shall not  
2 engage in the business of a real estate broker while not in good legal standing  
with the Office of the Secretary of State.”

3 44. Code section 10130 provides:

4 “It is unlawful for any person to engage in the business of, act in the  
5 capacity of, advertise as, or assume to act as a real estate broker or a real estate  
6 salesperson within this state without first obtaining a real estate license from the  
department, or to engage in the business of, act in the capacity of, advertise as, or  
assume to act as a mortgage loan originator within this state without having  
obtained a license endorsement.

7 The commissioner may prefer a complaint for violation of this section  
8 before any court of competent jurisdiction, and the commissioner and his or her  
9 counsel, deputies, or assistants may assist in presenting the law or facts at the  
trial.

10 It is the duty of the district attorney of each county in this state to  
11 prosecute all violations of this section in their respective counties in which the  
violations occur.”

12 45. Code section 10131 provides:

13 “A real estate broker within the meaning of this part is a person who, for a  
14 compensation or in expectation of a compensation, regardless of the form or time  
of payment, does or negotiates to do one or more of the following acts for another  
or others:

15 (a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers  
16 or buyers of, solicits or obtains listings of, or negotiates the purchase, sale, or  
exchange of real property or a business opportunity.

17 (b) Leases or rents or offers to lease or rent, or places for rent, or solicits  
18 listings of places for rent, or solicits for prospective tenants, or negotiates the sale,  
purchase, or exchanges of leases on real property, or on a business opportunity, or  
19 collects rents from real property, or improvements thereon, or from business  
opportunities.

20 (c) Assists or offers to assist in filing an application for the purchase or  
21 lease of, or in locating or entering upon, lands owned by the state or federal  
government.

22 (d) Solicits borrowers or lenders for or negotiates loans or collects  
23 payments or performs services for borrowers or lenders or note owners in  
connection with loans secured directly or collaterally by liens on real property or  
24 on a business opportunity.

1 (e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to  
2 exchange a real property sales contract, or a promissory note secured directly or  
3 collaterally by a lien on real property or on a business opportunity, and performs  
4 services for the holders thereof.”

46. Code section 10137 provides:

5 “It is unlawful for any licensed real estate broker to retain, compensate,  
6 directly or indirectly, any person for performing any of the acts within the scope  
7 of this chapter who is not a licensed real estate broker, or a real estate salesperson  
8 licensed under the responsible broker retaining or compensating him or her, or to  
9 retain or compensate, directly or indirectly, any licensee for engaging in any  
10 activity for which a mortgage loan originator license endorsement is required, if  
11 that licensee does not hold a mortgage loan originator license endorsement;  
12 provided, however, that a licensed real estate broker may pay a commission to a  
13 broker of another state.

14 No real estate salesperson shall accept compensation for activity requiring  
15 a real estate license from any person other than the broker under whom he or she  
16 is at the time licensed.

17 It is unlawful for any licensed real estate salesperson to pay any  
18 compensation for performing any of the acts within the scope of this chapter to  
19 any real estate licensee except through the broker under whom he or she is at the  
20 time licensed. A licensee may enter into an agreement with another licensee to  
21 share that compensation provided that any compensation is paid through the  
22 responsible broker.

23 For a violation of any of the provisions of this section, the commissioner  
24 may temporarily suspend or permanently revoke the license of the real estate  
licensee, in accordance with the provisions of this part relating to hearings.”

47. Code section 10026 provides:

18 “(a) The term “advance fee,” as used in this part, is a fee, regardless of the  
19 form, that is claimed, demanded, charged, received, or collected by a licensee for  
20 services requiring a license, or for a listing, as that term is defined in Section  
21 10027, before fully completing the service the licensee contracted to perform or  
22 represented would be performed. Neither an advance fee nor the services to be  
23 performed shall be separated or divided into components for the purpose of  
24 avoiding the application of this division.

(b) For the purposes of this section, the term “advance fee” does not  
include:

(1) “Security” as that term is used in Section 1950.5 of the Civil  
Code.

1  
2 (2) A "screening fee" as that term is used in Section 1950.6 of the Civil Code.

3 (3) A fee that is claimed, demanded, charged, received, or collected for the purpose of advertising the sale, lease, or exchange of real estate, or of a business opportunity, in a newspaper of general circulation, any other written publication, or through electronic media comparable to any type of written publication, provided that the electronic media or the publication is not under the control or ownership of the broker.

4  
5  
6 (4) A fee earned for a specific service under a "limited service" contract. For purposes of this section, a "limited service" contract is a written agreement for real estate services described in subdivision (a), (b), or (c) of Section 10131, and pursuant to which such services are promoted, advertised, or presented as stand-alone services, to be performed on a task-by-task basis, and for which compensation is received as each separate, contracted-for task is completed. To qualify for this exclusion, all services performed pursuant to the contract must be described in subdivision (a), (b), or (c) of Section 10131.

7  
8  
9  
10 (c) A contract between a real estate broker and a principal that requires payment of a commission to the broker after the contract is fully performed does not represent an agreement for an advance fee.

11  
12 (d) This section does not exempt from regulation the charging or collecting of a fee under Section 1950.5 or 1950.6 of the Civil Code, but instead regulates fees that are not subject to those sections."

13  
14 48. Code section 10085 provides:

15  
16 "The commissioner may require that any or all materials used in obtaining advance fee agreements, including but not limited to the contract forms, letters or cards used to solicit prospective sellers, and radio and television advertising be submitted to him or her at least 10 calendar days before they are used. Should the commissioner determine that any such matter, when used alone or with any other matter, would tend to mislead he or she may, within 10 calendar days of the date he or she receives same, order that it not be used, disseminated, nor published. Any person or entity using, disseminating, or publishing any matter which the commissioner has ordered, pursuant to this section, not to be used, published, or disseminated shall be guilty of a misdemeanor punishable by a fine not exceeding two thousand five hundred dollars (\$2,500) or by imprisonment in the county jail not exceeding six months, or both, for each such use, dissemination, or publication.

17  
18  
19  
20  
21  
22  
23 The commissioner may determine the form of the advance fee agreements, and all material used in soliciting prospective owners and sellers shall be used in



1 the form and manner which he or she determines is necessary to carry out the  
2 purposes and intent of this part.

3 Any violation of any of the provisions of this part or of the rules,  
4 regulations, orders or requirements of the commissioner thereunder shall  
5 constitute grounds for disciplinary action against a licensee, or for proceedings  
6 under Section 10081 of this code, or both. These sanctions are in addition to the  
7 criminal proceedings hereinbefore provided.”

8 49. Code section 10085.5 provides:

9 “(a) It shall be unlawful for any person to claim, demand, charge, receive,  
10 collect, or contract for an advance fee (1) for soliciting lenders on behalf of  
11 borrowers or performing services for borrowers in connection with loans to be  
12 secured directly or collaterally by a lien on real property, before the borrower  
13 becomes obligated to complete the loan or, (2) for performing any other activities  
14 for which a license is required, unless the person is a licensed real estate broker  
15 and has complied with the provisions of this part.

16 (b) This section does not prohibit the acceptance or receipt of an advance  
17 fee by any bank, savings association, credit union, industrial loan company, or  
18 person acting within the scope of a license issued to that person pursuant to  
19 Division 9 (commencing with Section 22000) of the Financial Code, in  
20 connection with loans to be secured directly or collaterally by a lien on real  
21 property. This section does not apply to charges made by title insurers and  
22 controlled escrow companies pursuant to Chapter 1 (commencing with Section  
23 12340) of Part 6 of Division 2 of the Insurance Code.

24 (c) A violation of this section is a public offense punishable by a fine not  
exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail for a  
term not to exceed six months, or by both that fine and imprisonment, or if by a  
corporation, the violation is punishable by a fine not exceeding fifty thousand  
dollars (\$50,000).”

50. Code section 10086 provides:

“ (a) Notwithstanding any other provision of law, it shall be unlawful for  
any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange,  
or otherwise offers to perform a mortgage loan modification or other form of  
mortgage loan forbearance for a fee or other compensation paid by the borrower,  
to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation  
until after the licensee has fully performed each and every service the  
licensee contracted to perform or represented that he, she, or it would  
perform.

1 (2) Take any wage assignment, any lien of any type on real or  
2 personal property, or other security to secure the payment of  
3 compensation.

(3) Take any power of attorney from the borrower for any purpose.

4 (b) A violation of this section by a natural person who is a licensee is a  
5 public offense punishable by a fine not exceeding ten thousand dollars (\$10,000),  
6 by imprisonment in the county jail for a term not to exceed one year, or by both  
7 that fine and imprisonment, or if by a corporation, the violation is punishable by a  
8 fine not exceeding fifty thousand dollars (\$50,000). These penalties are  
9 cumulative to any other remedies or penalties provided by law.

(c) This section shall apply only to mortgages and deeds of trust secured  
by residential real property containing four or fewer dwelling units.”

10 51. Code section 10146 provides:

11 “Any real estate broker who contracts for or collects an advance fee from  
12 any other person, hereinafter referred to as the “principal,” shall deposit any such  
13 amount or amounts, when collected in a trust account with a bank or other  
14 recognized depository. Such funds are trust funds and not the funds of the agent.  
15 Amounts may be withdrawn therefrom for the benefit of the agent only when  
16 actually expended for the benefit of the principal or five days after the verified  
17 accounts mentioned hereinafter have been mailed to the principal. Upon request  
18 of the commissioner, a broker shall furnish to the commissioner an authorization  
19 for examination of financial records of the trust account in accordance with the  
20 procedures set forth in Section 7473 of the Government Code.

21 The commissioner may issue such rules and regulations as he or she  
22 deems necessary to regulate the method of accounting, and to accomplish the  
23 purpose of the provisions of this code relating to advance fees including, but not  
24 limited to, establishing forms for and determining information to be included in  
such accountings. Each principal shall be furnished a verified copy of such  
accountings at the end of each calendar quarter and when the contract has been  
completely performed by the licensee. The commissioner shall be furnished a  
verified copy of any account or all accounts on his or her demand therefor.

Where advance fees actually paid by or on behalf of any principal are not  
handled in accordance with the preceding paragraph, it shall be presumed that the  
agent has violated Sections 506 and 506a of the Penal Code. The principal may  
recover treble damages for amounts so misapplied and shall be entitled to  
reasonable attorney’s fees in any action brought to recover the same.”

22 52. Regulation 2970 provides:

23 “(a) A person who proposes to collect an advance fee as defined in Section  
24 10026 in the Code shall submit to the Commissioner not less than ten calendar  
days before publication or other use, all materials to be used in advertising,

1 promoting, soliciting and negotiating an agreement calling for the payment of an  
2 advance fee including the form of advance fee agreement proposed for use.

3 (b) Material used in advertising, promoting, soliciting and negotiating an  
4 advance fee agreement shall not be approved if it:

5 (1) Includes any representation which is false, misleading or  
6 deceptive.

7 (2) Does not set forth a specific, complete description of the  
8 services to be rendered for the advance fee.

9 (3) Does not set forth the total amount of the advance fee along  
10 with the date on which the fee shall become due and payable.

11 (4) Contains any provision which purports to relieve or exempt the  
12 person collecting the advance fee from an obligation to fulfill verbal  
13 commitments and representations made by employees and agents of the  
14 person contracting for the advance fee.

15 (5) Contains any provision which purports to give a guarantee that  
16 the real property or business opportunity in question will be purchased,  
17 leased or exchanged or that a loan secured by real property will be  
18 obtained as a result of the services rendered by the person collecting the  
19 advance fee.

20 (6) Does not set forth a definite date for full performance of the  
21 services promised under the advance fee agreement.

22 (c) Not less than 10-point type shall be used in advance fee agreements.”

23 53. Regulation 2972 provides:

24 “Each verified accounting to a principal or to the commissioner as  
required by Section 10146 of the Code shall include at least the following  
information:

(a) The name of the agent.

(b) The name of the principal.

(c) Description of the services rendered or to be rendered.

(d) Identification of the trust fund account into which the advance fee has  
been deposited.

(e) The amount of the advance fee collected.

(f) The amount allocated or disbursed from the advance fee for each of the  
following:

(1) In providing each of the services enumerated under (c) above.

(2) Commissions paid to field agents and representatives.

(3) Overhead costs and profit.

(g) In cases in which disbursements have been made for advertising, a  
copy of the advertisement, the name of the publication, the number of the  
advertisements actually published and the dates that they were carried.

(h) In the case of an advance fee for the arrangement of a loan secured by  
a real property or a business opportunity, a list of the names and addresses of the  
persons to whom information pertaining to the principal's loan requirements were  
submitted and the dates of the submittal.”

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 all licenses and/or license rights of Respondents under the Real Estate Law (Part 1 of  
4 Division 4 of the Business and Professions Code), for the cost of investigation and enforcement  
5 as permitted by law, and for such other and further relief as may be proper under other  
6 provisions of law.

7 Dated at San Diego, California this 11 day of March, 2022.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

  
VERONICA KILPATRICK  
Supervising Special Investigator

cc: Newport Capital Real Estate, Inc.  
John Thorfin Tait  
Veronica Kilpatrick  
Sacto.

**FILED**

**MAY 25 2022**

**DEPT. OF REAL ESTATE**

By R. Posada

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

Department of Real Estate  
320 West Fourth St, Ste 350  
Los Angeles, CA, 90013

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA


\*\*\*

In the Matter of the Accusation against:	)	DRE NO. <i>H-42273 LA</i>
	)	
NEWPORT CAPITAL REAL ESTATE, INC., and	)	<u>DEFAULT ORDER</u>
<u>JOHN THORFIN TAIT</u> , individually and as designated	)	
Officer for Newport Capital Real Estate, Inc.,	)	
	)	
Respondents.	)	

Respondent JOHN THORFIN TAIT, having failed to file a Notice of Defense within the time required by Section 11506 of the Government Code, is now in default. It is, therefore, ordered that a default be entered on the record in this matter.

IT IS SO ORDERED MAY 25 2022

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

By:   
CHIKA SUNQUIST  
Assistant Commissioner, Enforcement

1 Department of Real Estate  
2 320 West Fourth St, Ste 350  
3 Los Angeles, CA, 90013  
4  
5  
6  
7

**FILED**

MAY 25 2022

DEPT. OF REAL ESTATE

By R. Posada

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA


10 \* \* \*

11 In the Matter of the Accusation against: ) DRE NO. *H-42273 LA*  
12 )  
13 NEWPORT CAPITAL REAL ESTATE, INC., and ) DEFAULT ORDER  
14 JOHN THORFIN TAIT, individually and as designated )  
15 Officer for Newport Capital Real Estate, Inc., )  
16 Respondents. )

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

21 IT IS SO ORDERED MAY 25 2022

22 DOUGLAS R. McCAULEY  
23 REAL ESTATE COMMISSIONER

24 By:   
25 CHIKA SUNQUIST  
26 Assistant Commissioner, Enforcement  
27