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9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA

12	In the Matter of the)	CASE NO.
)	
13	THE CALIFORNIA CORPORATIONS)	FILE NO. 506-2762
14	COMMISSIONER,)	
)	ACCUSATION:
15	Complainant,)	1) ISSUING STOP ORDER REVOKING
16	v.)	PERMIT PURSUANT TO
)	CORPORATIONS CODE SECTION
17	CEDAR FUNDING MORTGAGE FUND,)	25140(a)(1)
18	L.L.C.,)	2) SUMMARILY SUSPENDING PERMIT
)	PURSUANT TO CORPORATIONS
19	Respondent.)	CODE SECTION 25143(a)
20)	

21 Preston DuFauchard, the California Corporations Commissioner ("Commissioner") of the
22 Department of Corporations ("Department") alleges and charges as follows:

- 23 1. The Commissioner brings this action pursuant to Corporations Code sections 25140(a)(1)
24 and 25143(a) (unless otherwise noted all sections hereafter refer to the Corporations Code).
- 25 2. Pursuant to section 25140(a)(1), the Commissioner brings this action to issue a stop order
26 revoking the permit that was issued by the Department to Cedar Funding Mortgage Fund, L.L.C.
27 ("Respondent") under section 25113.
- 28 3. Pursuant to section 25143(a), the Commissioner hereby orders the permit issued to

1 Respondent by the Department be summarily suspended pending final determination of the
2 proceedings initiated herein.

3 4. Respondent, Cedar Funding Mortgage Fund, L.L.C., is a California corporation located at
4 465 Tyler Street, Monterey, California 93940.

5 5. On November 27, 2007, the Department issued a permit under section 25113 to
6 Respondent to offer and sell securities valued up to \$90,000,000 in the form of membership interests
7 in California. The permit expires on November 27, 2008.

8 6. This permit was issued under a limited offering qualification authorizing the offer and
9 sale of Respondent's securities only to investors with (a) a net worth (exclusive of home, furnishings
10 and automobiles) of at least \$250,000 and an annual gross income of at least \$65,000; or (b) a net
11 worth (exclusive of home, furnishings and automobiles) of at least \$500,000; and the amount of each
12 investor's investment in units must not exceed 10% of such investor's net worth (exclusive of home,
13 furnishings and automobiles).

14 7. In support of its permit application, Respondent submitted an offering circular dated
15 November 2007, which states at the first page:

16 The Cedar Funding Mortgage Fund, LLC (the "Fund") is a California limited liability
17 company whose sole manager is Cedar Funding, Inc. (the "Manager"). The Fund has been
18 organized for the purpose of making or investing in loans secured by deeds of trust secured
19 primarily by California real estate, both commercial and residential. Fund loans will be
20 arranged and serviced by the Manager. (See "The Manager and its Affiliates.") *The
21 Manager is a licensed California real estate broker, and all Fund loans will be made or
22 arranged pursuant to this license.* (Emphasis added.)

23 8. The section of the offering circular entitled "The Manager and its Affiliates" states:

24 The Manager of the Fund is Cedar Funding, Inc. The Manager is licensed and qualified to
25 do business in California as a real estate broker. The Manager engages in the business of
26 arranging, funding, selling, purchasing and servicing trust deed investments for its private
27 investors and its own account.

28 9. The offering circular provides the following information about the fund's president:

David A. Nilsen (age 57) is the President and sole stockholder of the Manager and first
became licensed as a California real estate salesperson in 1976 and in 1978 became licensed
as a California real estate broker.

1 10. As of April 22, 2008, Respondent’s president, David Arthur Nilsen, holds California real
2 estate broker’s license number 00525040.

3 11. The fund’s manager, Cedar Funding, Inc., is not a licensed California real estate broker.

4 12. Respondent’s representation in the offering circular that Cedar Funding, Inc. is a
5 licensed California real estate broker violates section 25166, which makes it unlawful for any person
6 to willfully make any untrue statement of a material fact in any application, notice, or report filed
7 with the Commissioner.

8 13. On November 7, 2007, in connection with its application for permit renewal, Respondent
9 also filed with the Department an audited financial statement dated June 11, 2007 for the year ending
10 on December 31, 2006, which was prepared by its certified public accountants, Hayashi & Wayland,
11 L.L.C. (“Hayashi”).

12 14. The June 11, 2007 financial statement that Respondent submitted to the Department
13 indicates at “Note 3” that \$8,527,577 of amounts invested by Respondent in 2006 exceeded the
14 recorded amounts of the deeds.

15 15. On or about April 22, 2008, the Department obtained a copy of a letter dated June 11,
16 2007 that Hayashi sent to Respondent commenting upon the 2006 audited financial statement.

17 16. In the June 11, 2007 letter to Respondent, Hayashi advises that significant “control
18 deficiencies” were discovered while preparing the 2006 financial report. Hayashi’s letter
19 admonishes Respondent that loan proceeds had been disbursed in excess of amounts recorded in
20 deeds of trust, exposing members to unsecured losses.

21 17. The section of the 2007 offering circular titled “Certain Legal Aspects of Fund Loans”
22 provides in pertinent part:

23 Each of the Fund’s loans will be secured directly or indirectly by a deed of trust, the most
24 commonly used real property security device in California . . . The Fund will be the
25 beneficiary under all deeds of trust securing Fund loans.

26 18. According to Respondent’s accountants, a single loan was issued in the amount of
27 \$5,095,980 in the year ending December 31, 2006. The section titled “Note 3” of the 2006 financial
28 statement submitted to the Department discloses:

1 [O]ne of the investments was not in compliance with the loan diversification clause which
2 states that no loan may exceed \$5,000,000 or 15% of the total fund. The amount exceeded
3 was approximately \$96,000.

4 19. Issuing a loan in excess of \$5,000,000 or 15% of the total fund is in violation of the
5 “Lending Standards and Policies” set forth in paragraph 8 of Respondent’s 2007 offering circular,
6 which provides:

7 Loan Diversification. No Fund loan (or Fund interest in a loan) will exceed the greater of (a)
8 \$5,000,000 or (b) 15% of the total Fund capital at the time of the loan.

9 20. Hayashi’s June 11, 2007 letter to Respondent cites the fact that loans totaling
10 \$9,802,155, representing 22.9% of total fund investment in trust deeds, were made to the manager
11 and its affiliates. This practice is in violation of paragraph 6 of the “Lending Standards and Policies”
12 set forth in the offering circular, which states:

13 No Loans to Manager. No loans will be made by the Fund to the Manager or to any of its
14 affiliates, except for any financing extended as part of a sale of real estate owned as a result
15 of foreclosure. (See “Conflicts of Interest – Sale of Real Estate Owned to Affiliates.”)

16 21. The June 11, 2007 letter documents that Respondent informed Hayashi that only
17 \$3,090,443 of the \$9,802,155 in loans made to the manager and affiliates were extended as part of a
18 sale of real estate owned as a result of foreclosures.

19 22. The Commissioner finds that the financial statements submitted by Respondent to the
20 Department for the year ending December 31, 2006, as well as the accompanying June 11, 2007
21 correspondence between Respondent and its accountants, show that Respondent: (1) disbursed
22 \$8,527,577 of loan proceeds not recorded by deeds of trust, exposing fund members to unsecured
23 losses; (2) made a single loan exceeding \$5,000,000 or 15% of the total loan fund, in violation of the
24 fund’s loan diversification clause; (3) and made excessive loans to the fund manager and affiliates.
25 All of these actions are in violation of the terms of the offering circular the Respondent submitted to
26 the Department in November 2007 in support of its application for permit renewal.

27 23. Corporations Code section 25140(a)(1) provides in pertinent part as follows:
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The commissioner . . . may suspend or revoke any permit issued under Section 25113 or 25122 if he or she finds (A) that the order is in the public interest and (B) that the proposed plan of business of the issuer or the proposed issuance or sale of securities is not fair, just, or equitable, or that the issuer does not intend to transact its business fairly and honestly, or that the securities proposed to be issued or the method to be used in issuing them will tend to work a fraud upon the purchaser thereof.

23. Corporations Code section 25143(a) provides in pertinent part as follows:

The commissioner may by order summarily postpone or suspend the effectiveness of any qualification pending final determination of any proceeding under this chapter. Upon the entry of the order, the commissioner shall promptly notify each person specified in subdivision (b) of this section that is has been entered and of the reasons therefor and that upon receipt of a written request the matter will be set down for hearing to commence within 15 business days after such receipt unless the applicant consents to a later date. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice and hearing in accordance with subdivision (b) of this section, may modify or vacate the order or extend it until final determination.

Based on the foregoing, the Commissioner finds that Respondent's proposed plan of business and proposed issuance of securities is not fair, just, or equitable, or that Respondent does not intend to transact business fairly and honestly, or that the securities proposed to be issued or method used in issuing them will tend to work a fraud upon the purchaser thereof. The Commissioner finds it is in the public interest to issue a stop order revoking the Respondent's permit and to order the immediate suspension of the effectiveness of the permit pending a final determination of the permit revocation proceedings.

WHEREFORE, IT IS PRAYED that the permit issued to Cedar Funding Mortgage Fund, L.L.C. under Corporations Code section 25113 be revoked. The permit shall be summarily suspended effective this date.

Dated: April 30, 2008
Sacramento, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
MIRANDA L. MAISON
Senior Corporations Counsel
Enforcement Division