

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER
Deputy Commissioner
3 ALAN S. WEINGER (CA BAR NO. 86717)
Lead Corporations Counsel
4 LINDA A. STELLA (CA BAR NO. 161903)
Senior Corporations Counsel
5 320 West 4th Street, Ste. 750
Los Angeles, California 90013-1105
6 Telephone: (213) 576-7594 Fax: (213) 576-7181

7 Attorneys for Complainant

8
9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA

11 In the Matter of the Accusation of) OAH Case No.
12 THE CALIFORNIA CORPORATIONS)
13 COMMISSIONER,) File No.: 603-5631
14 Complainant,) ACCUSATION
15 vs.)
16 DANA CAPITAL GROUP, INC.)
17 Respondent.)
18)

19
20 The Complainant is informed and believes, and based upon such information and belief,
21 alleges and charges Respondent as follows:

22 I.

23 Respondent Dana Capital Group, Inc. (“Dana Capital”) is a finance lender/broker licensed
24 by the California Corporations Commissioner (“Commissioner”) pursuant to the California Finance
25 Lenders Law of the State of California (California Financial Code § 22000 et seq.) (“CFL”). Dana
26 Capital currently holds a license issued under the CFL for a location at 8001 Irvine Center Drive,
27 Suite 1200, Irvine, CA 92618.
28

II.

On or about March 6, 2007, the Commissioner, through his examination staff, completed a regulatory examination of the books and records of Dana Capital under the CFLL (“2007 regulatory examination”). The 2007 regulatory examination disclosed multiple violations of the CFLL, most of which were also noted during the Department’s 2003 and 2005 regulatory examinations of Dana Capital. The CFLL violations include:

A. Improper Broker Agreements

The 2007 regulatory examination disclosed that Dana Capital has been using a disclosure form entitled “California Finance Lender Statement” (“CFLS”) that does not meet the requirements of California Financial Code section 22338. Section 22338 requires that broker agreements identify the name, address, and license number of the lender and the broker. All of the CFLS forms reviewed during the most recent regulatory examination only disclose Dana Capital’s name and address and do not reference any of the required lender information.

The Department noted violations of California Financial Code section 22338 during its 2003 and 2005 regulatory examinations and informed Dana Capital of the violations in regulatory letters. Dana Capital has not complied with the required corrective actions.

B. Loans Brokered to Non-CFLL Lenders

The 2007 regulatory examination disclosed that Dana Capital had brokered four loans to non-CFLL lenders in violation of California Financial Code section 22059 as follows:

Loan No.	Lender Brokered to
21441	Washington Mutual Bank
232887	Washington Mutual Bank
20021	Washington Mutual Bank
51522	PMC Bancorp

The Department also noted violations of California Financial Code section 22059 during its 2003 and 2005 regulatory examinations and informed Dana Capital of the violations in regulatory letters.

1 C. Credit Report Fee Overcharges

2 The 2007 regulatory examination disclosed that credit reporting fees charged in the following
3 loans exceeded the actual fees in violation of Code of Federal Regulations, title 24, section
4 3500.14(c).

Loan No.	Fee Charged	Actual Charge	Overcharge
28219	\$25.00	\$10.24	\$14.76
41605	16.00	9.24	6.76
52009	25.00	10.25	14.75
21441	18.00	9.24	8.76
22468	15.00	12.00	3.00

5
6
7
8
9
10
11
12 Violations of federal statutes and regulations promulgated under the Real Estate Settlement
13 Practice Act ("RESPA") including Code of Federal Regulations, title 24, section 3500.14(c) do not
14 comply with the purposes and polices of the CFLL set forth in California Financial Code section
15 22001(a)(4). Further, violations of RESPA do not constitute good business practice as required by
16 California Code of Regulations, title 10, section 1426.

17 Credit report fee overcharges were also noted during the Department's 2003 regulatory
18 examination. The Department had requested that Dana Capital review all accounts that might have
19 similar overcharges for the period of June 1, 2001 through May 31, 2003. Although numerous
20 requests were made, the detailed report of the findings was never provided to the Department.

21 D. Failure to Disclose YSP fees on Good Faith Estimates

22 The 2007 regulatory examination disclosed that Dana Capital routinely failed to disclose the
23 estimated Yield Spread Premium ("YSP") on the Good Faith Estimates in violation of Code of
24 Federal Regulations, title 24, section 3500.7(c). YSP fees were not properly disclosed in the
25 following loans files:
26
27
28

Loan No.	YSP Fee Not Disclosed
28219	\$2,820.00
43613	1912.50
51157	6,109.14
49712	367.88
23381	7,824.38
36055	3,629.00
41605	3,576.75

Violations of federal statutes and regulations promulgated under the RESPA including Code of Federal Regulations, title 24, section 3500.7(c) do not comply with the purposes and policies of the CFLL set forth in California Financial Code section 22001(a)(4). Further, violations of RESPA do not constitute good business practice as required by California Code of Regulations, title 10, section 1426.

This violation was also noted during the Department's 2005 regulatory examination and Dana Capital has failed to take appropriate corrective actions.

E. Failure to Provide Accurate and Complete Books and Records

During the 2007 regulatory examination, Dana Capital failed to provide accurate and complete broker loan logs and cancel and denied loan logs in violation of California Financial Code section 22156 and of California Code of Regulations, title 10, section 1426.

Loan reports received from other lenders revealed that loans brokered by Dana Capital were not reported in Dana Capital's general ledgers. Dana Capital provided a list of 35 combined cancelled and denied loans for the twelve-month period ending December 31, 2005 and 28 cancelled and denied loans for the six-month period ending June 30, 2006. During the same period, Dana Capital brokered and funded over 4200 loans.

The 2005 regulatory examination also revealed that Dana Capital's books and records were incomplete.

1 F. Commissions to Non-Exempt Persons

2 The 2007 regulatory examination disclosed that broker fees were paid to third parties in the
3 following loans in violation of California Code of Regulations, title 10, sections 1451 (b) and (c).

4 Loan No.	Broker Fee Paid to Dana	Third Party	Fees Paid to Third Party
5 43613	\$4,512.50	4 Front Financial	\$3,551.68
6 52273	2,500.00	Millard Financial Group, Inc.	1,857.39
7 53069	6,180.00	Scena Home Loans, Inc.	5,117.51
8 52796	7,650.00	National Fidelity Lending, Inc.	6,170.01
9 52451	4,500.00	Petra-Cephas, LLC	3,540.60

10
11 This issue was also noted during the Department's 2005 regulatory examination. The
12 Department requested that Dana Capital review all accounts that might have similar overcharges.
13 Although numerous requests were made, the detailed report of the findings was never provided to
14 the Department.

15 G. Unlicensed Branch Offices

16 Dana Capital is operating from unlicensed locations in violation California Financial Code
17 sections 22102 and 22152. During the 2007 regulatory examination, Dana Capital stated that
18 approximately 80% of its employees worked from outside retail office locations. Dana Capital
19 provided a list of active and inactive retail office locations as of June 30, 2006. None of these
20 locations are licensed under the CFLL as Dana Capital branch offices.

21 III.

22 On or about May 7, 2007, the Department learned that Dana Capital had ceased doing
23 business. The Department determined that it was necessary to obtain certain information in order to
24 adequately protect the public and borrowers of Dana Capital and to ensure an orderly wind down of
25 the business.

26 Pursuant to California Financial Code section 22150, on or about May 8, 2007, the
27 Department demanded that Dana Capital provide certain information concerning (i) contact number
28 for use by the Department; (ii) loans yet to be completely processed; (iii) the steps that Dana Capital

1 was taking to complete loan transactions; (iv) list and disposition of open/pending loans; (v) list of
2 Dana Capital's bank accounts and balances; (vi) list of pending customer complaints and resolutions;
3 and (vii) reasons for the closure. The Commissioner demanded that some of the information be
4 provided to the Department immediately by facsimile and the remaining information was due within
5 ten days.

6 As of June 28, 2007, Dana Capital has not submitted the information demanded by the
7 Commissioner on May 8, 2007, except for the contact number for use by the Department. The
8 requested information is necessary to protect consumers and adequately address the Department's
9 concerns regarding Dana Capital's abrupt closure. Dana Capital has failed to comply with a demand
10 of the Commissioner for a special report in violation of California Financial Code section 22159(b).

11 IV.

12 California Financial Code section 22338 provides:

13 Each licensed broker shall:

- 14 (a) Deliver to the borrower, or any one thereof, at the time the final negotiation or
15 arrangement is made, a statement showing in clear and distinct terms the name,
16 address, and license number of the broker and the finance lender. The statement
17 shall show the date, amount, and terms of the agreement with the broker, and all
18 amounts paid or to be paid to the broker and to any person other than the finance
19 lender.
- 20 (b) Deliver to the finance lender making the loan a copy of the statement referred to
21 and described in subdivision (a).
- 22 (c) Deliver to the person making any payment to the broker to be retained by the
23 broker, a plain and complete receipt for each payment made, at the time it is
24 made, showing the total amount received, and identifying the brokerage
25 agreement and the loan contract upon which the payment is applied. If the
26 payment is made by a person other than the finance lender, a copy of the receipt
27 shall be delivered to the finance lender.
- 28 (d) When the borrower pays the loan in full, ensure that the finance lender fully
complies with subdivision (e) of Section 22337.
- (e) Deliver to the potential borrower or borrowers, at the time the licensee first
requires or accepts any signed instrument or the payment of any fee, a statement
showing in clear and distinct terms the name, address, and license number of the
broker and finance lender.

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
28

California Financial Code section 22059 states:

A license to act as a broker under this division does not authorize the licensee to negotiate or perform any act as a broker in connection with loans made or to be made by a lender not licensed as a finance lender under this division.

California Financial Code section 22001 provides in pertinent part:

(a) This division shall be liberally construed and applied to promote its underlying purposes and policies, which are:

(4) To protect borrowers against unfair practices by some lenders, having due regard for the interests of legitimate and scrupulous lenders.

California Financial Code section 22156 provides in pertinent part:

Licensees shall keep and use in their business, books, accounts, and records which will enable the commissioner to determine if the licensee is complying with the provisions of this division and with the rules and regulations made by the commissioner.

California Financial Code section 22152 states:

A licensee shall maintain only one place of business under a duplicate or original license issued pursuant to Section 22101 or 22102. The commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this division governing an original issuance of a license.

California Financial Code section 22102 provides in pertinent part:

(a) A licensee seeking to engage in business at a new location shall submit an application to the commissioner by certified mail, return receipt requested, at least 10 days before engaging in business at a new location and pay the fee required by Section 22103.

(b) The commissioner, by regulation, shall adopt a form for the application required by this section. The application shall contain the following information:

- (1) The address of the new location.
- (2) Information on the person responsible for the lending activity at the new location.
- (3) Any additional information required by the commissioner.

(e) A licensee shall not engage in business at a new location in a name other than a name approved by the commissioner.

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
28

California Financial Code section 22150 provides:

The commissioner may make general rules and regulations and specific rulings, demands, and findings for the enforcement of this division, in addition to, and within the general purposes of, this division.

California Financial Code section 22159(b) provides:

A licensee shall make other special reports that may be required by the commissioner.

California Code of Regulations, title 10, section 1426 states:

A finance company shall maintain its books, accounts and records in accordance with generally accepted accounting principles and good business practice.

California Code of Regulations, title 10, section 1451 states:

(a) A finance company shall not charge for "brokerage" services unless that service is actually rendered. In that event, the finance company must clearly identify in its records the full amount of the charge actually paid to a broker licensed under the Law or a person within the authorization provided by subsection (c) who rendered said brokerage service.

(b) No broker or other person shall divide with or rebate to any finance company any portion of the sum collected by way of brokerage and no finance company shall receive or accept any such division or rebate.

(c) No finance company shall pay any compensation to an unlicensed person or company for soliciting or accepting applications for loans, except for an employee regularly employed at a licensed place of business of the finance company. However, a finance company may pay compensation for soliciting or accepting applications or performing services as a broker to a person or company licensed (1) as a real estate broker under Article 2 (commencing with Section 10150) of Chapter 3 of Part 1 of Division 4 of the Business and Profession Code with respect to loans made under Division 9 of the Financial Code or Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or (2) for any brokerage service rendered by a bank, savings and loan association or any other financial institution exempted from the provisions of Division 9 of the Financial Code.

Code of Federal Regulations, title 24, section 3500.14 provides in pertinent part:

(a) Section 8 violation. Any violation of this section is a violation of section 8 of RESPA (12 U.S.C. 2607) and is subject to enforcement as such under § 3500.19.

(c) No split of charges except for actual services performed. No person shall give and

1 no person shall accept any portion, split, or percentage of any charge made or
2 received for the rendering of a settlement service in connection with a transaction
3 involving a federally related mortgage loan other than for services actually
4 performed. A charge by a person for which no or nominal services are performed or
5 for which duplicative fees are charged is an unearned fee and violates this section.
6 The source of the payment does not determine whether or not a service is
7 compensable. Nor may the prohibitions of this Part be avoided by creating an
8 arrangement wherein the purchaser of services splits the fee.

9 Code of Federal Regulations, title 24, section 3500.7(c) provides in pertinent part:

10 (c) Content of good faith estimate. A good faith estimate consists of an estimate, as a
11 dollar amount or range, of each charge which:

12 (1) Will be listed in section L of the HUD-1 or HUD-1A in accordance with the
13 instructions set forth in Appendix A to this part; and

14 (2) That the borrower will normally pay or incur at or before settlement based upon
15 common practice in the locality of the mortgaged property. Each such estimate must
16 be made in good faith and bear a reasonable relationship to the charge a borrower is
17 likely to be required to pay at settlement, and must be based upon experience in the
18 locality of the mortgaged property. As to each charge with respect to which the lender
19 requires a particular settlement service provider to be used, the lender shall make its
20 estimate based upon the lender's knowledge of the amounts charged by such provider.

21 V.

22 California Financial Code section 22700 provides in pertinent part:

23 (a) Licenses issued under this division remain in effect until they are surrendered,
24 revoked, or suspended.

25 (b) Surrender of a license becomes effective 30 days after receipt of an application to
26 surrender the license or within a shorter period of time that the commissioner may
27 determine, unless a revocation or suspension proceeding is pending when the
28 application is filed or a proceeding to revoke or suspend or to impose conditions upon
the surrender is instituted within 30 days after the application is filed. If a proceeding
is pending or instituted, surrender of a license becomes effective at the time and upon
the conditions that the commissioner determines.

On June 7, 2007, the Department received Dana Capital's application to surrender its license.
This proceeding to revoke Dana Capital's CFLL license is instituted within 30 days after the
application was received. Therefore, the Commissioner must determine if and when the surrender
becomes effective.

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
28

VI.

California Financial Code section 22714 provides in pertinent part:

(a) The commissioner shall suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

(1) The licensee has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.

(2) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

VII.

Complainant finds that, by reason of the foregoing, Respondent Dana Capital has violated California Financial Code sections 22338, 22059, 22001, 22156, 22152, 22102, 22159(b) and California Code of Regulations, title 10, sections 1426 and 1451 and based thereon, sufficient grounds exist to revoke the CFLL license of Dana Capital.

WHEREFORE, IT IS PRAYED that the CFLL license of Respondent Dana Capital Group, Inc. be revoked.

Dated: July 2, 2007
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Linda A. Stella
Senior Corporations Counsel